

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1291

2005 HOUSE AGRICULTURE
HB 1291

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1291

House Agriculture Committee

☐ Conference Committee

Hearing Date 1---27---05

Tape Number
THREE
THREE

Side A
A

Side B
B

Meter #
02.9 TO 49.1
0.00 TO 36.6

Committee Clerk Signature



Minutes:

CHAIRMAN NICHOLAS: OK, Committee Members, we will open on HB 1291

The Bill deals with ""relating to open air feed lots"". The committee will stand at ease for a couple of minutes until we get people in from the hall.

CHAIR: We will open the hearing.

REPRESENTATIVE BRANDENBURG: DIST 28 We have more cattle in my Dist. Then what we have people. History, using the scentometer. Feed lots issues. Odor levels.

Technology has advanced and we are now going into a new method which is hydrogen sulfide method which is a sound science menthol. It is a better method of determining the odor level in a feed lot. A scentometer was more based on a health issue. There are lots of people here to speak that are familiar

with hydrogen sulfide.method. This bill would dispose of the scentometer and we would use hydrogen sulfide method..

SENATOR ERBELE: I think it is time for this bill. We are finishing 60 thousand head of cattle in North Dakota presently. This has a positive economic impact of \$98 million and supports 1200 jobs. If we double that we multiply that out. According to NDSU live stock has the greater multiplier in the ND economic. Every dollar that is spent on live stock in ND Turns over four and a half times. In our states economy. This bill will stimulate the value added agriculture. I STAND IN SUPPORT OF 1291.

WADE MOSER: NORTH DAKOTA STOCKMAN ASSOCIATION: We are in support of HB 1291. What we are looking for is a scientific resolution to a problem and a potential way Remove human error if possible. We area not asking to be exempt from any law. We have to follow local, state and federal laws to stay in compliance and use the best science possible.

We don't feel that the scentometer is a good measurement. Even though the people are trained to use the scentometer we believe there will be human error involved. When you step out of your car you basically contaminate yourself. Then you have to put the scentometer up to your face to take a reading. There is a concern with hydrogen sulfide and that is the measurement that we would like to be regulated under. EPA put out a document called air emissions character and management. It is on there Web Sight. There is a section in there that differences in operating practices can effect emissions substantially. In order to comply with the hydrogen sulfide you are going to have a book of rules, a management plan in place.

If you get a permit you will have to follow that. What we are asking for is a good scientific machine that can take out the human error to take readings. If there is a violation then action has to be taken.

WE ARE ASKING FOR SUPPORT OF THIS BILL. We are hoping that you will concur.

CHAIRMAN NICHOLAS:

REPRESENTATIVE ONSTAD: EPA SETS STANDARDS?

WADE MOSER: My understanding is that EPA does not regulate or mandate.

CHAIRMAN NICHOLAS: Additional testimony.

MARK QUANBECK: {{Please see printed testimony}} Purchased Square Butte ranch feedlot in 1997

CHAIRMAN NICHOLAS: AFTER TESTIMONY WAS READ ASKED FOR QUESTIONS.

REPRESENTATIVE ONSTAD: When you took over the feed lot was there a permit in place.

MARK: Yes we did. It was a feeding lot permit that graduated to increase from Sept. First to October late or November first. I don't remember. It was to graduated down to June 1st.

This was pretty new stuff to us We started finding out all of these rules an regulations that ND has to not exist in other places. These types of permits do not exist anywhere. There is no hope of running a feed lot where you have to have it emptied by such and such a date.

You just can make appointments like that with you cow heard. Weaning calf's really put us in a bind. We had 900 cows and pears under draut conditions on fields. We had to start feeding them some how. Here we were they moved us 45 days back. We had erosion problems.

We sold our cow heard. Reduced our problems. Negotiated with neighbors. The neighbors have it in there head that this law will drive us out. I don't think that should be the way it was.

The health department may have made a mistake because they have opened the door. They made a model that this feedlot was going to create odors. We have letters of support for nine out of ten neighbors. It is one person against another.

DALE AND ALVINA AFFOLTER: Mr. Chairman and Committee Members. We are Alvina and Dean Affolter and are in opposition of HB 1291. [[please read printed testimony]] Previous owner had just received a 365 day permit before he sold the feed lot to us. A seasonal feed lot is not done anywhere in the US. The odors have not proved to be health problems.

CHAIRMAN NICHOLAS: Additional testimony.

JAMES SCHMIDT; Director of North Dakota Corn Growers Association. [[please see and read printed testimony]] WE URGE A DO PASS ON 1291

James Schmidt brought testimony from Jocie Iszler, Executive Director North Dakota Corn Council which is attached. We urge a DO PASS

CHAIRMAN NICHOLAS: Next testimony in support of this bill.

BRIAN KRAMER: NORTH DAKOTA FARM BUREAU TESTIMONY.. I am Briant Kramer and I am representing ND Farm Bureau in support of HB 1291.

CHAIRMAN NICHOLAS: How many more are there here who are in favor of this bill. How many want to speak.

CHAIRMAN NICHOLAS:

WOODY BARTH: FARMERS UNION AND 35 THOUSAND MEMBERS. WE STAND IN SUPPORT OF BILL. WE BELIEVE IT WOULD BENEFIT OUR ECONOMY.

CHAIRMAN NICHOLAS: ADDITIONAL TESTIMONY:

BILL PRICE: MISSOURI RIVER FEEDER:

I feed north of Manna. I am with FEEDER COUNCIL. We are family farms. We work with the state Health Department. Environmental issues will never go away. I support HBO 1291

I also have testimony from Sinner Brothers and Bresnahan, partners in farming. We support HB 1291.

I also have testimony from Jeff Kvamme. A feed lot manager.

CHAIRMAN NICHOLAS: We will take opposition to this bill.

DAVID GLATT: NORTH DAKOTA DEPARTMENT OF HEALTH: Good morning Mr. And members of the House Agriculture Commmittee.Chairman My name is David Glatt, and DI am section chief of the Environmental health Section for the North Dakota Department of Health. I am here today to provide testimony in opposition of HB 1291.[[PLEASE SEE PRINTED TESTIMONY OF DAVID GLATT;

CHAIRMAN NICHOLAS: Representative Brandenburg.

REPRESENTATIVE BRANDENBURG: Thank you Mr. Chairman. Talking to this issue with feed lots. What the hell is going on?

DAVID GLATT: Basically a feed lot moved right next door to an existing residence. The feed lot moved basically right next door. There were issues. We new we would have problems. We tried to get the parties together to negotiate. The first owner had a arrangement where the lot could operate so many month of the year. That was agreed on. The feed lot was sold and the new owners agreed to those conditions.

REPRESENTATIVE BRANDENBURG: Why would anyone build a new house right next to a feed lot.

DAVID GLATT: The house was built right across the road and the monitoring location is a half mile away. The lot was first in time so the house was not. The issue here is some odors are always there. We live in an agricultural and there is a certain amount of odor that everyone in

the state has to deal with. Odors above a limit no one should have to deal with. That is why they established rules. There was discussion on the tape as to how the scentometer works.

There is a half mile set back as to feed lots. Unless it feed more then 10,000 cattle.

Other odors that come about. There are exemptions as to odors from lagoons in the spring .

Municipal lagoon

in spring. Also hauling manure to fields for a short period of time. Weather dose not have an effect on the scentometer reading. Not to my knowledge.

BELTER: What would be the disadvantage of hydrogen sulfide?

DAVE GLATT: First of all the hydrogen sulfide. There is no correlation. If I take it to a feed lot and it dose not register so to speak it dose not mean there is no odor, it means there is no hydrogen sulfide there.

REPRESENTATIVE BRANDENBURG: The question I have is the health issue relating to the scentometer. Health issue. Explain the hydrogen sulfide method which is based on sound Science and the scentometer which is based on health issues.

DAVE GLATT: What the scentometer, it dose not deal with chronic or acute exposure to compounds that would be considered health problems. Could be one hundred different compounds. Some not a health issue at all and some of them very much a health issue.

The H₂S, this is a health related compound. We agree with that. It measures only one element or compound out of 100's . It is like picking a needle out of a hay stack.

The hydrogen sulfide is of sound science. The people that use the scentometer go through a certification process. EPA is now looking at odors. Hydrogen is not the only compound that

creates health problems. They are looking at feedlots, methane, ammonia etc. So limiting it to just the one compound the scentometer is better.

REPRESENTATIVE ONSTAD: How often do you go to feed lots.

DAVE: Only if there is a complaint.

Zoning plays crucial role. The set back is very important.

REPRESENTATIVE BELTER: Feed lot is large investment. What if they have lot close down because of the reading of this machine? Other states that have large feed lots apparent don't have the rules and regulations. From an investment stand point there has to be some certainty that you are not going or your investment is going to become worthless because someone comes along with a scentometer or some other rule that says your feed lot sticks to much. How do we deal with that. Subject to liability.

DAVE GLATT: We all have an interest in there success. Zoning regulations that identify where you can put these operations. Environmental problems.

CHAIRMAN NICHOLAS: NEXT TESTIMONY.

GINGER AND NILES HUSHKA: 2634 Square Butte Lane N. Mandan ND

The introduction of this amendment destroys the original intent of this legislation. It is a step backwards. {{Please see attached testimony}}

KEITH JOHNSON: R.S. NDPHA-NDEHA We oppose Bill. Odors are complex. {{ Please see attached testimony}} Places where we don't have separation is where we don't have problems. WE URGE A DO NOT PASS.

The enforcement is up to public health. Again the set back is paramount. As to property rights the person who was there first has the property rights. If a feed lot is there first and you build

a house within one half mile you have no rights as to odor. They can't complain. The century code deals with this. Nuisance laws Any thing that impacts peoples pleasure.

REPRESENTATIVE BELTER: What constitutes who was there first. Older farm sights have changed hands, older feed lots have changed hands several times. Dose the feed lot have rights? Or dose the other buildings have the rights even though they have changed hands.

KEITH JOHNSON: In the counties that I work with the conversion of the farm buildings To a non farm residence would constitute a change in use. It changes tax. The use and the way the county see it. We look at it as if he saw the feed lot when he bought the farmstead or farm.

CHAIRMAN: How many left to testify in opposition of bill

LYLE: Assistant Attorney General: We have worked on changes on zoning laws. Odor laws. It dose not make much sense to export our feeding lots. We need value added in ND We do regulate because of methane etc. The EPA is becoming more involved. Set back should solve problems. One half mile. As to regulations. They are presented to person getting the permit. The legislature established the law.

CHAIRMAN NICHOLAS: Other testimony.

CHARLES LINDERMAN: Carrington ND DO NOT PASS [[please see printed testimony}}

MIKE LEFFRIG: This is a lawyer bill. The bottom line is that there will be law suits.

Common law can't be ignored. Don't change century code because of one mis-located feed lot.

MIKE TOMACK: Investment becomes worthless if we don't have zoning laws etc.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1291

House Agriculture Committee

☐ Conference Committee

Hearing Date 2---10---05

Tape Number
THREE

Side A
A

Side B

Meter #
00 TO 41.0

Committee Clerk Signature



Minutes:

CHAIRMAN NICHOLAS: We are going to move to Representative Brandenburgs bill.

Relating with open air feedlots. We have asked the Health Department to be with us this morning to do some additional work. The health department, I appreciate the efforts you have put into accommodate us. To expedite things I am going to ask the health department to give us some information as to what areas they see they can accommodate committee and the sponsors of the bill.

DAVE GLOTT: Thank you Mr. Chairman. What we are handing out here is the results of some discussions we have had with several different groups. This is our attempt to take a look as to what we should do for the odor regulations. This our attempt take a look at what we can do for the odor regulations To provide more flexibility for rules. I can just go over these rules and open to the session. Not everyone had a chance to look at these. Some of the people that we did discuss it with are just now looking at it as you are. We look at border regulations within

city limits. Odor regulations within townships. And counties. How would we go about actually go about doing odor measurements and modifying it somewhat to give it flexibility and some certainties in that process. In 23--25--11 regulations orders and rules.

[[[please read the possible amendment which is attached.]]]]

DAVE GLOTT: There is one thing that is not in here is and I would like to have some discussion on here is approved owner management plans what I see departmentally that if the one person goes out and we have a seven odor issue we resort to the owner management plan. We have an approved plan for implementation. Giving the operator the opportunity to take care of the odors. If in the future we get more complaints. The only way that the department could get an enforceable action is if we send out 2 inspectors. They both would have to not a violation. Two violations with in 50 minutes of each other in a two hour period. Take one reading , go away, come back at least 15 minutes later, take another reading. If that one inspector finds a violation that is one half of the equation. The other inspector would have to do the same thing. If they both identify a violation then they have an enforceable violation. That basically provides a check with two inspectors out there.

That primarily is where the amendments would go.

REPRESENTATIVE ONSTAD: What is the basis for 15 minutes later

DAVE GLATT: Where this would go is that we with a single inspector would go out there and measure and there was a problem with the wind blowing in certain directions. We would identify the problem. A second inspector come in to verify. It is tough to be out there two days in a row with inspectors.

REPRESENTATIVE BRANDENBURG: WE want to correct problem. We have not had a lot of experience with violations.

DAVE GLOTT: Initially we would try to work with the operators. Fix current problem. After identifying problem. We give operators time to address problem. Operators that cooperate and are doing everything they can. We are flexible on that. If they tell us to take a hike we have to address it differently to get there attention.

REPRESENTATIVE FROELICH: On paragraph three. Is scentometer approved by the FDA, or USDA. Or UPA.

DAVE GLOTT: I don't know if it has there stamp of approval. It is an approved way of identifying odors.

CHAIR: Are there questions of Mr. Glott. O.K. Thanks Dave.

ATTORNEY GENERAL REPRESENTATIVE. Feed lots are getting larger Rainy conditions make the feed lots have more odor. Five to ten thousand head need distance. Set backs apply to get feedlots away from residences. These are legislative studies that won't go away. Counties have not addressed the zoning.

CHAIRMAN NICHOLAS: NEXT.

MARK QUANBECK: Read testimonia that is attached to minutes.

WADE MOSER: I have some concern about first section of amendment. We might Have to look at developments moving into close area of sales barns, etc. Kist Livestock for example in Mandan. Also West Fargo and others.

CHAIRMAN NICHOLAS: Can you come with an amendment. Look into city ordinances. WE need to get zoning at county level.

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House Agriculture Committee

Bill/Resolution Number HB 1291

Hearing Date 2---10---05

GENE: Separation, residential areas from feed lots and sales barns.

CHAIRMAN NICHOLAS CLOSED WITH DEFER TO IMPENDING AMENDMENTS.

CLOSED

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1291

House Agriculture Committee

☐ Conference Committee

Hearing Date 2---11---05

Tape Number
ONE

Side A
A

Side B

Meter #
32.6 TO END

Committee Clerk Signature



Minutes:

CHAIRMAN NICHOLAS OPENED ON HB 1291.

[[[PLEASE SEE MINUTES FROM FIRST HEARING ON THIS]]]].

This bill pertains to the discharge into the ambient air any objectionable odorous air contaminant that measures seven odor concentration units or higher outside the property boundary where the discharge is occurring. There was possible amendment to N.D.C.C. Sec. 23-25-11 REGULATIONS OF ODORS--RULES. The committee went through the possible amendments.

THE CHAIR ASKED OF THE COMMITTEE MEMBERS, AFTER AN EXPLANATION OF THE AMENDMENTS WAS GONE THROUGH, WHAT THERE WISHES WERE.

Page 2

House Agriculture Committee

Bill/Resolution Number HB 1291

Hearing Date 2---11---05

A MOTION WAS MADE FOR ADOPTION OF AMENDMENTS BY REPRESENTATIVE
BRANDENBURG. THE MOTION WAS SECONDED BY REPRESENTATIVE
HEADLAND.

CHAIRMAN NICHOLAS ENTERTAINED A MOTION FOR HB 1291.

REPRESENTATIVE BRANDENBURG MADE A MOTION FOR A DO PASS

REPRESENTATIVE HEADLAND SECONDED THE MOTION.

THE ROLL WAS TAKEN.

THERE WERE 11 YES

2 NO

0 ABSENT

REPRESENTATIVE ONSTAD CARRIED THE BILL.

CHAIRMAN NICNOLAS CLOSED ON 1291

Possible Amendments to N.D.C.C. § 23-25-11

Section 1. AMENDMENT. Section 23-25-11 of the North Dakota Century Code is amended and reenacted as follows:

23-25-11 Regulation of odors -- Rules.

1. In areas located within a city or the area over which a city has exercised extraterritorial zoning as defined in section 40-47-01.1, a person may not discharge into the ambient air any objectionable odorous air contaminant that measures seven odor concentration units or higher outside the property boundary where the discharge is occurring. Where an agricultural operation as defined by section 42-04-01 has been in operation for more than one year as provided by section 42-04-02, and the business or residence making the odor complaint was built or established after the agricultural operation was established, then the measurement for compliance with the seven odor concentration units standard must be taken within one hundred feet [30.48 meters] of the subsequently established residence, church, school, business, or public building, making the complaint, rather than at the property boundary of the agricultural operation.

2. In areas located outside a city or outside the area over which a city has exercised extraterritorial zoning as defined in section 40-47-01.1, a person may not discharge into the ambient air any objectionable odorous air contaminant that causes odors that measure seven odor concentration units or higher as measured at any of the following locations:

a. Within one hundred feet [30.48 meters] of any residence, church, school, business, or public building, or within a campground or public park. An odor measurement may not be taken at the residence of the owner or operator of the source of the odor, or at any residence, church, school, business, or public building, or within a campground or public park, that is built or established within one-half mile [.80 kilometer] of the source of the odor after the source of the odor has been built or established; or

b. At any point located beyond one-half mile [.80 kilometer] from the source of the odor, except for property owned by the owner or operator of the source of the odor, or over which the owner or operator of the source of the odor has purchased an odor easement.

c. When a county or township has zoned or established a setback distance for a concentrated feeding operation that is greater than one-half mile [.80 kilometer] under either section 11-33-02 or section 58-03-11, measurements for compliance with the seven odor concentration units standard must be taken at the setback distance, rather than one-half mile [.80 kilometer] from the facility under subdivision b; except for any residence, church, school, business, public building, park or campground within the setback distance that was built or established before the concentrated feeding operation was established (unless the concentrated feeding operation has obtained an odor easement from the pre-existing facility).

3. An odor measurement may be taken only with a properly maintained scentometer, [delete by an odor panel] or by another instrument or method approved by the state department of health, and only by inspectors certified by the department who have successfully completed a department-sponsored odor certification course and demonstrated the ability to distinguish various odor samples and concentrations. When a single certified inspector measures a violation of this section, the department may send a certified letter of apparent non-compliance to the person causing the apparent violation, and may negotiate remedies to address the apparent violation, but the department may not proceed with an enforcement action unless at least two certified inspectors at the same time each measure a violation, and then each confirm the violation by a second odor measurement taken by each certified inspector at least fifteen minutes, but no more than two hours, after the first measurement is taken, that also violates this section.

4. A person is exempt from this section while spreading or applying animal manure or other recycled agricultural material to land in accordance with a nutrient management plan approved by the state department of health. A person is exempt from this section while spreading or applying animal manure or other recycled agricultural material to land owned or leased by that person in accordance with rules adopted by the department. An owner or operator of a lagoon or waste storage pond permitted by the department is exempt from this section in the spring from the time when the cover of the permitted lagoon or pond begins to melt until fourteen days after all the ice cover on the lagoon or pond has completely melted. Notwithstanding these exemptions, all persons shall manage their property and systems to minimize the impact of odors on their neighbors.

5. This section does not apply to chemical compounds that can be individually measured by instruments, other than a scentometer, that have been designed and proven to measure the individual chemical or chemical compound, such as hydrogen sulfide, to a reasonable degree of scientific certainty, and for which the state department of health has established a specific limitation by rule.

6. For purposes of this section, a public park is a park established by the federal government, the state, or a political subdivision of the state in the manner prescribed by law. For purposes of this section, a campground is a public or private area of land used exclusively for camping and open to the public for a fee on a regular or seasonal basis.

House Amendments to HB 1291 - Agriculture Committee 02/15/2005

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 23-25-11 of the North Dakota Century Code, relating to animal feeding operations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-25-11 of the North Dakota Century Code is amended and reenacted as follows:

23-25-11. Regulation of odors - Rules.

1. In areas located within a city or the area over which a city has exercised extraterritorial zoning as defined in section 40-47-01.1, a person may not discharge into the ambient air any objectionable odorous air contaminant that measures seven odor concentration units or higher outside the property boundary where the discharge is occurring. If an agricultural operation as defined by section 42-04-01 has been in operation for more than one year, as provided by section 42-04-02, and the business or residence making the odor complaint was built or established after the agricultural operation was established, the measurement for compliance with the seven odor concentration units standard must be taken within one hundred feet [30.48 meters] of the subsequently established residence, church, school, business, or public building making the complaint rather than at the property boundary of the agricultural operation.
2. In areas located outside a city or outside the area over which a city has exercised extraterritorial zoning as defined in section 40-47-01.1, a person may not discharge into the ambient air any objectionable odorous air contaminant that causes odors that measure seven odor concentration units or higher as measured at any of the following locations:
 - a. Within one hundred feet [30.48 meters] of any residence, church, school, business, or public building, or within a campground or public park. An odor measurement may not be taken at the residence of the owner or operator of the source of the odor, or at any residence, church, school, business, or public building, or within a campground or public park, that is built or established within one-half mile [.80 kilometer] of the source of the odor after the source of the odor has been built or established; or
 - b. At any point located beyond one-half mile [.80 kilometer] from the source of the odor, except for property owned by the owner or operator of the source of the odor, or over which the owner or operator of the source of the odor has purchased an odor easement.
 - c. If a county or township has zoned or established a setback distance for a concentrated feeding operation which is greater than one-half mile [.80 kilometer] under either section 11-33-02 or section 58-03-11, measurements for compliance with the seven odor concentration units standard must be taken at the setback distance rather than one-half mile [.80 kilometer] from the facility under subdivision b. except for any residence, church, school, business, public building, park, or campground within the setback distance which was built or established before the concentrated feeding operation was

established, unless the concentrated feeding operation has obtained an odor easement from the preexisting facility.

3. An odor measurement may be taken only with a properly maintained scentometer, by an odor panel, or by another instrument or method approved by the state department of health, and only by inspectors certified by the department who have successfully completed a department-sponsored odor certification course and demonstrated the ability to distinguish various odor samples and concentrations. If a certified inspector measures a violation of this section, the department may send a certified letter of apparent noncompliance to the person causing the apparent violation and may negotiate with the owner or operator for the establishment of an odor management plan and best management practices to address the apparent violation. The department shall give the owner or operator at least fifteen days to implement the odor management plan. If the odor problem persists, the department may proceed with an enforcement action provided at least two certified inspectors at the same time each measure a violation and then confirm the violation by a second odor measurement taken by each certified inspector, at least fifteen minutes, but no more than two hours, after the first measurement.
4. A person is exempt from this section while spreading or applying animal manure or other recycled agricultural material to land in accordance with a nutrient management plan approved by the state department of health. A person is exempt from this section while spreading or applying animal manure or other recycled agricultural material to land owned or leased by that person in accordance with rules adopted by the department. An owner or operator of a lagoon or waste storage pond permitted by the department is exempt from this section in the spring from the time when the cover of the permitted lagoon or pond begins to melt until fourteen days after all the ice cover on the lagoon or pond has completely melted. Notwithstanding these exemptions, all persons shall manage their property and systems to minimize the impact of odors on their neighbors.
5. This section does not apply to chemical compounds that can be individually measured by instruments, other than a scentometer, that have been designed and proven to measure the individual chemical or chemical compound, such as hydrogen sulfide, to a reasonable degree of scientific certainty, and for which the state department of health has established a specific limitation by rule.
6. For purposes of this section, a public park is a park established by the federal government, the state, or a political subdivision of the state in the manner prescribed by law. For purposes of this section, a campground is a public or private area of land used exclusively for camping and open to the public for a fee on a regular or seasonal basis.
7. a. In a county that does not regulate the nature, scope, and location of an animal feeding operation under section 11-33-02, the department shall require that any new animal feeding operation permitted under chapter 61-28 be set back from any existing residence, church, school, business, public building, park, or campground.
 - (1) If there are fewer than three hundred animals, there is no minimum setback requirement.
 - (2) If there are at least three hundred animals but no more than one thousand animals, the setback for any animal operation is one-half mile [.80 kilometer].

- (3) If there are at least one thousand one animals but no more than two thousand animals, the setback for a hog operation is three-fourths mile [1.20 kilometers] and the setback for any other animal operation is one-half mile [.80 kilometer].
 - (4) If there are at least two thousand one animals but no more than five thousand animals, the setback for a hog operation is one mile [1.60 kilometers] and the setback for any other animal operation is three-fourths mile [1.20 kilometers].
 - (5) If there are five thousand one or more animals, the setback for a hog operation is one and one-half miles [2.40 kilometers] and the setback for any other animal operation is one mile [1.60 kilometers].
- b. The setbacks set forth in subdivision a do not apply if the owner or operator applying for the permit obtains an odor easement from the preexisting use that is closer.
 - c. The department shall define by rule the number of animals that constitute an animal unit.
8. A permitted animal feeding operation may expand its permitted capacity by twenty-five percent on one occasion without triggering a higher setback distance."

Renumber accordingly

HB 1291

Date:

Roll Call Vote #:

2-11-05

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

House HOUSE AGRICULTURE COMMITTEE

Committee

☐ Check here for Conference Committee

move Amendment

Legislative Council Amendment Number

Action Taken

DO PASS

Motion Made By

BRANDENBURG

Seconded By

BELTER

Representatives
REP. EUGENE NICHOLAS
CHAIRMAN
REP. JOYCE KINGSBURY
VICE CHAIRMAN
REP. WESLEY BELTER

REP. M. BRANDENBURG
REP. CHUCK DAMSCHEN
REP. CHAIG HEADLAND
REP. GARY KREIDT
REP. GERALD UGLEM
REP. JOHN WALL

Yes No

Representatives
REP. TRACY BOE

Yes No

REP. ROD FROELICH

REP. PHILLIP
MUELLER

REP. KENTON ONSTAD

Voices
Opp

Total (Yes)

No

Absent

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

HB 1291

Date:

Roll Call Vote #:

2-11-05

**2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.**

House **HOUSE AGRICULTURE COMMITTEE**

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

As Amended

Action Taken

DO PASS

Motion Made By

BRANDENBURG

Seconded By

HEADLAND

Representatives	Yes	No	Representatives	Yes	No
REP. EUGENE NICHOLAS CHAIRMAN	✓		REP. TRACY BOE	✓	
REP. JOYCE KINGSBURY VICE CHAIRMAN	✓		REP. ROD FROELICH	✓	
REP. WESLEY BELTER	✓		REP. PHILLIP MUELLER		✓
REP. M. BRANDENBURG	✓		REP. KENTON ONSTAD	✓	
REP. CHUCK DAMSCHEN	✓				
REP. CHAIG HEADLAND	✓				
REP. GARY KREIDT		✓			
REP. GERALD UGLEM	✓				
REP. JOHN WALL	✓				

Total (Yes)

11

No

2

Absent

0

Floor Assignment

ONSTAD

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1291: Agriculture Committee (Rep. Nicholas, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (11 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1291 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 23-25-11 of the North Dakota Century Code, relating to animal feeding operations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-25-11 of the North Dakota Century Code is amended and reenacted as follows:

23-25-11. Regulation of odors - Rules.

1. In areas located within a city or the area over which a city has exercised extraterritorial zoning as defined in section 40-47-01.1, a person may not discharge into the ambient air any objectionable odorous air contaminant that measures seven odor concentration units or higher outside the property boundary where the discharge is occurring. If an agricultural operation as defined by section 42-04-01 has been in operation for more than one year, as provided by section 42-04-02, and the business or residence making the odor complaint was built or established after the agricultural operation was established, the measurement for compliance with the seven odor concentration units standard must be taken within one hundred feet [30.48 meters] of the subsequently established residence, church, school, business, or public building making the complaint rather than at the property boundary of the agricultural operation.
2. In areas located outside a city or outside the area over which a city has exercised extraterritorial zoning as defined in section 40-47-01.1, a person may not discharge into the ambient air any objectionable odorous air contaminant that causes odors that measure seven odor concentration units or higher as measured at any of the following locations:
 - a. Within one hundred feet [30.48 meters] of any residence, church, school, business, or public building, or within a campground or public park. An odor measurement may not be taken at the residence of the owner or operator of the source of the odor, or at any residence, church, school, business, or public building, or within a campground or public park, that is built or established within one-half mile [.80 kilometer] of the source of the odor after the source of the odor has been built or established; or
 - b. At any point located beyond one-half mile [.80 kilometer] from the source of the odor, except for property owned by the owner or operator of the source of the odor, or over which the owner or operator of the source of the odor has purchased an odor easement.
 - c. If a county or township has zoned or established a setback distance for a concentrated feeding operation which is greater than one-half mile [.80 kilometer] under either section 11-33-02 or section 58-03-11, measurements for compliance with the seven odor concentration units standard must be taken at the setback distance rather than one-half mile [.80 kilometer] from the facility under

subdivision b, except for any residence, church, school, business, public building, park, or campground within the setback distance which was built or established before the concentrated feeding operation was established, unless the concentrated feeding operation has obtained an odor easement from the preexisting facility.

3. An odor measurement may be taken only with a properly maintained scentometer, by an odor panel, or by another instrument or method approved by the state department of health, and only by inspectors certified by the department who have successfully completed a department-sponsored odor certification course and demonstrated the ability to distinguish various odor samples and concentrations. If a certified inspector measures a violation of this section, the department may send a certified letter of apparent noncompliance to the person causing the apparent violation and may negotiate with the owner or operator for the establishment of an odor management plan and best management practices to address the apparent violation. The department shall give the owner or operator at least fifteen days to implement the odor management plan. If the odor problem persists, the department may proceed with an enforcement action provided at least two certified inspectors at the same time each measure a violation and then confirm the violation by a second odor measurement taken by each certified inspector, at least fifteen minutes, but no more than two hours, after the first measurement.
4. A person is exempt from this section while spreading or applying animal manure or other recycled agricultural material to land in accordance with a nutrient management plan approved by the state department of health. A person is exempt from this section while spreading or applying animal manure or other recycled agricultural material to land owned or leased by that person in accordance with rules adopted by the department. An owner or operator of a lagoon or waste storage pond permitted by the department is exempt from this section in the spring from the time when the cover of the permitted lagoon or pond begins to melt until fourteen days after all the ice cover on the lagoon or pond has completely melted. Notwithstanding these exemptions, all persons shall manage their property and systems to minimize the impact of odors on their neighbors.
5. This section does not apply to chemical compounds that can be individually measured by instruments, other than a scentometer, that have been designed and proven to measure the individual chemical or chemical compound, such as hydrogen sulfide, to a reasonable degree of scientific certainty, and for which the state department of health has established a specific limitation by rule.
6. For purposes of this section, a public park is a park established by the federal government, the state, or a political subdivision of the state in the manner prescribed by law. For purposes of this section, a campground is a public or private area of land used exclusively for camping and open to the public for a fee on a regular or seasonal basis.
7. a. In a county that does not regulate the nature, scope, and location of an animal feeding operation under section 11-33-02, the department shall require that any new animal feeding operation permitted under chapter 61-28 be set back from any existing residence, church, school, business, public building, park, or campground.

- (1) If there are fewer than three hundred animals, there is no minimum setback requirement.
 - (2) If there are at least three hundred animals but no more than one thousand animals, the setback for any animal operation is one-half mile [.80 kilometer].
 - (3) If there are at least one thousand one animals but no more than two thousand animals, the setback for a hog operation is three-fourths mile [1.20 kilometers] and the setback for any other animal operation is one-half mile [.80 kilometer].
 - (4) If there are at least two thousand one animals but no more than five thousand animals, the setback for a hog operation is one mile [1.60 kilometers] and the setback for any other animal operation is three-fourths mile [1.20 kilometers].
 - (5) If there are five thousand one or more animals, the setback for a hog operation is one and one-half miles [2.40 kilometers] and the setback for any other animal operation is one mile [1.60 kilometers].
- b. The setbacks set forth in subdivision a do not apply if the owner or operator applying for the permit obtains an odor easement from the preexisting use that is closer.
- c. The department shall define by rule the number of animals that constitute an animal unit.
8. A permitted animal feeding operation may expand its permitted capacity by twenty-five percent on one occasion without triggering a higher setback distance."

Renumber accordingly

2005 SENATE AGRICULTURE

HB 1291

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1291

Senate Agriculture Committee

☐ Conference Committee

Hearing Date March 17, 2005

Tape Number	Side A	Side B	Meter #
1	x		1334 - end
1		x	0 - 4352

Committee Clerk Signature



Minutes:

Chairman Flakoll opened the hearing on HB 1291, a bill relating to animal feeding operations.

All members were present.

Representative Brandenburg introduced the bill. The bill first came out to ban the scentometer. It became evident that whatever they passed in the house had to stand the test of the courts. They did some work in the House dealing with set backs to allow for expansion of feedlots. You will hear people who have concerns about these issues. The bill also allows a period of time to correct a problem. This bill is very important. He would like to get rid of the scentometer and really promote animal agriculture in North Dakota. However, there are people who live in houses near these feedlots and they have concerns too. Animal agriculture is a big part of this state. There was a lot of hard work put into this bill in the House.

Senator Flakoll asked if he will walk them through the bill.

Representative Brandenburg said it talks about language for a preexisting facility. It gives 15 days after an odor measurement for the feedlot to correct the problem. It also requires two separate readings by two different operators before a violation is noted.

Senator Erbele asked on page 1 line 15 the references to 7 odor concentration units, where does the 7 come from.

Representative Brandenburg said the 7 was agreed upon by the Health and Agriculture Departments back in the 1999 session. There can be numbers from 5 to 11 and up to 20 but 7 was the number selected. That number was not changed in the bill. The bill deals with setbacks and allowing the 15 days to make corrections to a feedlot.

Senator Erbele asked if the 7 level was discussed.

Representative Brandenburg said the Health Department and the Attorney General's office will testify this has to stand the test of courts if someone challenges it. If we lost in court, the way the population is shifting, it will be harder and harder to keep these things in place. This is a compromise. You can try to change the number. Now there is a 1/2 mile setback and it has been extended depending upon the number of animals. Representative Froelich could not be here but he does support the bill and asked Representative Brandenburg to tell the committee.

Senator Klein asked if a feedlot is in place and wants to expand and add animal units and if they have a neighbor at 1/2 mile, would they now not be able to expand beyond the distance or can they expand because they were there first.

Representative Brandenburg said the Health Department and Attorney General's office can answer the question.

Senator Klein asked if the scentometer is still here.

Representative Brandenburg said it is still here. He would like to get rid of it but more power to you.

Senator Flakoll said Chris Friesz, legislative intern, has distributed a handout with the current law, the 1969 penalties, the penalties that changed in 1975 and the 1999 changes in penalties.

David Glatt, Health Department, testified in favor of the bill. (written testimony) (meter 2360)

There are over 500 permitted operations in North Dakota and there have only been three violations and are very infrequent. Significant odors are associated with these violations.

Senator Klein asked if we are more stringent than the federal regulation.

Mr. Glatt said there are not really any federal regulations. States have chosen to use various methods to regulate odors.

Senator Klein asked if we are tougher than Colorado.

Mr. Glatt said we are different than Colorado, we use a scentometer. Some other states are more stringent than we are, some are equal and some are less stringent. Some states use setbacks instead of a scentometer.

Senator Klein said in Colorado they do not use a scentometer, they use setbacks.

Mr. Glatt said they do use a scentometer but they apply it differently to animal feeding operations. He has a list of what other states do and he will get it to the committee.

Senator Klein asked as far as seasonal feeding permits, are we changing that in the bill.

Mr. Glatt said no, this bill is dealing with where odor readings are taken.

Senator Klein asked how auction markets are handled.

Mr. Glatt said that is a tough one especially because many are located within city limits and have been around a while. They have relaxed the rule somewhat to allow a reading 100 feet from the complaining party.

Senator Urlacher asked about the number scale, what happens when there is expansion.

Mr. Glatt said it allows a one time expansion of 25%. If it is an established animal feeding operation and they want to expand beyond their permitted size this would not prohibit the expansion, it would determine where the odor reading would be taken.

Senator Seymour asked about enforcement of odor complaints.

Mr. Glatt said it would be on a complaint basis only. When a complaint is received, an officer goes out. If the odor is too high, they would be given 15 days to correct the problem before another reading is taken. If a second complaint is received, two officers would go out and each must measure the odor level before a violation would occur.

Senator Urlacher asked how this blends with county zoning.

Mr. Glatt said if the county has zoning, the state would defer to the county zoning. The problem they run into is counties that do not have zoning in place so they have non-compatible land uses locating next door to each other.

Senator Urlacher asked how many counties or townships are not zoned.

Mr. Glatt said he is not sure, there are more zoned than not now because they are seeing the problems. The Health Department would much rather see the county do the zoning.

Senator Erbele asked about the 500 permitted operations, how many are hogs, how many are cattle.

Mr. Glatt said he doesn't know, the vast majority are cattle, they are seeing more hogs.

Senator Klein said he read there is planned development in Mandan near a livestock auction barn. How do we direct that.

Mr. Glatt said that is a tough issue, they have been wracking their brains about it. How do you protect the interests of an established, preexisting operation and not usurp the zoning and planning interests of the city. He does not know how to do it. If the city is hell bent on put non compatible uses next to each other there are going to be problems.

Senator Klein said if he is reading the bill correctly, if a house is built near the sale barn, an odor reading would be taken 100 feet away.

Mr. Glatt clarified it would be 100 feet away from the house. The law is currently at the property line of the sale barn so the bill would be less stringent.

Senator Erbele asked if there are any health issues associated with odors.

Mr. Glatt said it is primarily a nuisance issue although there are some studies that show there are certain types of significant odors that are associated with health issues. He also clarified that previous rule established 2 odor units at the property line which is small. They have gone up to the seven which is significant odor. If you go much higher than 7, depending on what is causing the odor, there can be health issues associated with the odor.

Senator Erbele asked what are the gradations on a scentometer.

Mr. Glatt said the readings are 2, greater than 2 and up to 7 and the next is 15. It depends on how much outside air is mixed with filtered air, there are different gradations.

Senator Flakoll asked if it is linear.

Mr. Glatt said he thinks so, he could find out.

Senator Urlacher asked if it is 2 separate people who are taking readings.

Mr. Glatt said that is correct. First, they have to have certified noses. Some people have very sensitive noses and some have dull noses. The certification process weeds out the super sensitive and the super dull noses. Then they have to be certified on how to use the scentometer. Then the 2 inspectors have to each independently of the other take a reading before a violation can be established.

Senator Urlacher asked if wind direction is considered. (meter 3826)

Mr. Glatt said there is no violation unless there is a person there, unless there is a complaint, if the wind is going right towards their house there could be a violation. If the wind is going the other way, there would not be a violation because there would be no one to complain about it. One of the good things about the bill is it allows 15 days to address the issues and there could be different climatic conditions or they could make some changes to their operations.

Senator Taylor asked what odor management measures could be undertaken in 15 days to remedy a high odor reading. How much success can we have with it.

Mr. Glatt said a fair amount of success. Certain times of year are worse than others, spring thaw when there is a lot of moisture and warming temperatures. Not piling manure on site, those types of things.

Senator Klein asked if they have had 3 calls or 3 violations.

Mr. Glatt said 3 violations, they have had a lot more calls than that. They get a lot of calls on sugar beet plants and they monitor them but they do not have violations with sugar beet plants so that gives an idea of what strong odors they are talking about.

Wade Moser, North Dakota Stockmen's Association, testified in favor of the bill. When the bill was introduced in the house it was 12 lines, very simple. They had a problem with the

scentometer and questioned its accuracy. Then apparently an attorney got hold of the bill and it is now 110 lines. The reason they brought the bill was there was a better measurement for a health hazard. The health hazard has been identified ammonium or hydrogen sulfide. They thought that was a better way to address the issue at hand. After going through 2 rules of rule making with the Health Department they think the Health Department is trying to work with the North Dakota Stockmen's Association and the industry to get remedies to their problems. If this legislation doesn't solve the problems, they will be back next session to try again. They think it is an improvement to have time to correct a problem before there is a violation. Having two inspectors get independent scentometer readings addresses the problem with the scentometer. When an inspector steps out of a car, he contaminates himself and because he smells an odor. He cannot get that odor out of his mind and take an accurate reading, they have some problems with that. The bill is in fairly good shape except number one of the bill. When they testified in the house they were up against the deadline and number one was a concern because it includes auction markets. Except one market, Bowman, all the auction markets in North Dakota are surrounded by the city and could be impacted by this. Kist in Mandan has been mentioned. Others that will be impacted are Farmers in Bismarck, Jamestown, Lake Region in Devils Lake, Napoleon, Northern in Minot, Rugby, Sitting Bull in Williston, Stockmen's West and East in Dickinson, West Fargo, Wishek and Edgely. Every one has been in business for more than 35 years. They used to be out of town and town has grown up around them. These laws and regulations have come into being after they were in business and they deserve some protection. The North Dakota Stockmen's Association recommends they receive the same protection that feedlots get, based on their size. They all clean there pens regularly and that creates a short term

problem. He can just see big houses south of Kist Livestock making calls and whether it is harassment or legitimate complaints, since they have been there for over 50 years, they deserve some protection. The bill currently is 100 feet from the complainants doorstep. Depending on where the house is built, this is not giving the sale barn any protection.

Senator Klein asked if 1/2 mile would be adequate. (meter 4823)

Mr. Moser said yes, in most cases that would be fair. In most cases they had that kind of buffer prior to growth around them.

Senator Klein said he thinks the Health Department is looking for some help on this because they don't know how to handle it. If we establish the 1/2 mile it would help back them up as they move forward on these things. He has heard two things, health hazard and nuisance, which are we talking about here.

Mr. Moser said he thinks nuisance more than a health hazard.

Brian Kramer, North Dakota Farm Bureau, testified in favor of the bill. (written testimony)
(meter 5061)

Senator Klein asked about the penalties, are they big.

Mr. Kramer said the Health Department would be better at explaining the penalties. He knows there have been some substantial penalties in the past.

Senator Klein asked if Mr. Kramer's suggestion is to be careful here, to let the counties zone this. Would every county be different.

Mr. Kramer said absolutely. Cass County or Burleigh County compared to the county where

Senator Taylor is from, its a whole different world. Set backs are an easy fix. A feedlot on a hill without any cover around it, the odors will spread a lot farther than a feedlot down in a valley

surrounded by trees. On a hill, odors may be detected for 2 or 3 miles while down in the valley they may not be detectable in 200 yards. Each situation is different and needs to be examined and the remedies applied individually.

Lyle Whitham, assistant attorney general representing the Health Department, testified in favor of the bill. (meter 5669) The amendments are not 110 lines long but when you put them into the bill, it becomes that long. Prior to 1999, odors were regulated by rule by the Health Department. In 1999 the legislature put the odor standard into statute. Prior to 1999, it was a greater than 2 standard, if you could smell it a 2 that constituted a violation. Prior to 1999 odors were read at the edge of your property line. In 1999, the idea was that in rural areas, measurements were taken 1/2 mile away except for preexisting buildings and residences that were within that 1/2 mile. This was a nuisance doctrine which is first in time has the established right. If you move next to a feedlot, knowing it is there, that is not going to constitute a violation and the standard will be measured by where it was before they moved in. To go through the amendments, in subsection 1, lines 11- 18, that added within city limits for agricultural operations the idea of first in time, first in right. IN the 1999 bill, that wasn't there. Its the same kind of concept from the 1999 law and put in into city limits, instead of measuring at the property line, for those preexisting agricultural facilities, it would be measured 100 feet from the residence or building claiming impact. They are open to better ideas, that is the best idea they could come up with. If you look at a larger set back you are going to run into some real potential objections from cities. On subdivision C of subsection 2, under the 1999 law, you took the odor reading 1/2 mile away. If the county zoned a larger set back distance for a large facility, it makes sense you would take the reading at the greater setback distance rather than 1/2 mile. This would also apply

to the larger setbacks in the amendment recommended this morning by Mr. Glatt. In subsection 3 additional time is allowed before a violation and 2 noses are required before a violation. He grew up on a ranch and is aware of the issues exist out there for rural counties. For example as a state's attorney in McHenry county, he dealt with a zoning issue on the Souris River. The zoning commission for the county hadn't met for 15 years, since 1959. County zoning, especially in the western part of the state, hasn't been looked at and a lot of townships are unincorporated and haven't zoned at all. In subsection 7, those areas that haven't zoned, there is a presumptive setback established by the legislature. Another important concept is the idea of an odor easement. If you set up your feedlot next to someone and they agree to it, you can get an easement and file it and the odor reading would be taken at the setback distance. Also, if the county or township does zone, subsection 7 would no longer be in effect. Subsection 8 provides that any existing facility can expand by 25% without an increased setback distance.

Senator Flakoll asked if a feedlot expands from 300 to 3000 and there is a neighbor and at 300 head everything was fine but at 3000 head the setback would increase and now the neighbor is within the setback, who is first? (meter 275, side B)

Mr. Whitham said first in time first in right. If you have a permitted feeding operation and they move in next to you, they should move in knowing there is a possibility you will expand. This is a tough legal question. With the 1/2 mile, it is an easy answer. With the possibility of an expansion increasing the setback distance to 3/4 mile, he doesn't know.

Senator Flakoll asked if you change species, you go from 300 head of cattle and add 500 head of hogs.

Mr. Whitham said an animal is an animal, you can change species within your permitted animal limits without dealing with larger setbacks.

Senator Klein asked if a house is there and a feedlot is purchased across the road and it was set up for 500 animal units, could he expand. Would he be in violation.

Mr. Whitham said he can say unequivocally you can expand up to the next setback distance which in beef is 2000 head, if you look at presumptive levels which are also the presumptive levels in the model ordinance. On page 4 of the bill, subdivision 3, if at least 1000 animal units but less than 2000 animal units the setback for hogs is 3/4 mile but for beef it is still 1/2 mile. You can go all the way up to 5000 animal units with beef from 500 without dealing with increased setbacks. If you are permitted for 5000 you can go up another 25% without any additional setback distances under subdivision 8.

Senator Urlacher asked if there was an odor easement, if they wanted to expand, could they expand beyond the setback distance.

Mr. Whitham said they can expand 25% under subdivision 8. If he was a lawyer advising a client on what size to get a permit for, he would advise to go up to the limit of subdivision 3 and then they could expand another 25% over that without having to deal with increased set back distance. If they were looking adding hogs at some point, he would advise them to look at getting a 3/4 mile setback and have them in place so they would have the ability to expand. Some thinking ahead for operators will allow them to expand.

Senator Taylor asked if an odor easement would be a way to mitigate the housing coming up against an auction barn, to require odor easements, is that common. (meter 641)

Mr. Whitham said it is not common but it is a good idea. That would be one way to address it. You would want to buy that from the developer or better yet, the city could require that from the developer as a condition of them moving in next to a preexisting use.

Senator Taylor asked if that would be most appropriately done at the local level rather than the state.

Mr. Whitham said zoning is a local function and they should be able to plan their communities as they want. We do not want to step into that role. We want to have some kind of back stop if they haven't done their job.

Dale Effertz, partner in Square Butte Ranch, testified. (written testimony) (meter 767)

Senator Seymour said the housing next door was put in on a conditional use permit. What was the condition. Were they allowed to be there for a certain length of time.

Mr. Effertz said it was put on agricultural land and that is not a compatible use. He spoke with the county yesterday and that land is still zoned agricultural.

Senator Klein asked if the idea was to improve what we currently have, you don't think this is an improvement but if it is killed, we certainly won't be in any better shape than we were before.

Mr. Effertz said this bill is an improvement over current law. Before 1999 the scentometer was a rule and not a law and their feedlot was in existence before then. The rule was turned into law when the rule, in his opinion, should not have been allowed. The Century Code says the Health Department can't write a rule that is more stringent than federal regulations and there is no federal regulation on nuisance odors.

Senator Klein said going back to 1999 there was a lot of time spent on this issue, it was hog related at the time, so we knew where we were at because there was a feeling the Health

Department could come in and declare an operation in violation because it was so vague. In 1999 it was an attempt to help feedlots. Maybe they didn't go far enough.

Mr. Effertz said he agrees it was a good faith effort to make an improvement to the existing rule, but in hindsight we shouldn't have had that rule, it should not have been allowed. The way other states are dealing with nuisance odors, with odor control plans and setbacks. The counties can take care of it. Local jurisdictions take care of this, not the Health Department. In counties that do not have zoning, one way to deal with it is if someone applies for a permit, allow the county a certain amount of time to deal with it, to do the zoning, that keeps it on a local level.

Senator Klein said rule is law once it is established. The legislature has to correct the rules that are established, we can't just say don't do that anymore. We don't want to make this so onerous that we can't get it passed. We have to find some sort of common ground.

Mr. Effertz said he tends to agree but this is getting so big with so many contradictions that at some point we have to look at it and ask if we are really addressing the problem.

Senator Klein asked if number 7 doesn't allow the county to establish, do you have zoning in your county?

Mr. Effertz said they didn't when the feedlot was built. Both Oliver and Morton counties adopted the model zoning ordinance in the fall of 2002 or 2003.

Senator Klein asked if he didn't have the opportunity to go to the county zoning commissions and approach it there.

Mr. Effertz said that is exactly what he is saying. This bill puts zoning at the hands of the Health Department when the county does not have zoning. They claim they don't want that, let's give the counties an opportunity to address zoning if they don't have it.

Senator Klein said that's where he is going with this, if the county has zoning, it is used, when the zoning is not there you use the state.

Mr. Effertz said exactly. If they don't want to have zoning why should the Health Department force zoning on them.

Senator Urlacher said he doesn't know why counties don't put zoning in and whether we can force zoning on them. He would have to review the legality of that.

Mr. Effertz said he spoke with Senator Christmann about this. He would have to look at it but potentially you could have 299 cows and go to town and buy 10 more and go over the threshold of 300 and a new neighbor has moved in 1/2 mile away and the Health Department could come in and say you had to get rid of 9 cows.

Senator Flakoll said he referenced the regulations he operates under, if the regulations were not there would he be allowed to have a feedlot at all. Were they put in so he could have a feedlot, he says he is the only one to have it, was he given those special circumstances to allow him to have a feedlot.

Mr. Effertz said he did not build the feedlot. It was built in 1995 by someone else, they purchased it in 1997, there was a seasonal permit that when they purchased it the permit stayed identical for 5 years. The scentometer was a rule at the time of purchase. They found out the rule should not have been, the Century Code expressly prohibits the Health Department from adopting a rule that is more stringent than federal regulations and there are no federal regulation regarding nuisance odors. That part of the code passed in 1987 or 1989. Upon further investigation they found there aren't seasonal permits for feedlots, it doesn't really make sense. When are there not going to be odors in Kansas or Texas, it is always warm and moist. So they

applied for a year round permit like every feedlot in the country. Instead of gaining more time to feed, they got 60 days less. There is a strong case for saying the Health Department has a track record of over regulation of feedlots. This language is an improvement but there is an track record of over regulation. They are the only feedlot in the nation with a seasonal permit.

Senator Flakoll said that might depend if you are the smeller and the smellee.

Senator Klein said there have only been three violations, you have been in operation since 1997, this just didn't happen yesterday, have you been fighting this since 1997. You must have had a run in with the Health Department. When did this start.

Mr. Effertz said he can't pinpoint a day, when the rule became a law it seemed they had a mechanism to start taking odor readings.

Senator Klein asked if since 1999 he has had some scrapes. (meter 2444)

Mr. Effertz said yes, there were complaints about the feedlot when it was being designed. There have been continual complaints since the day it was drawn up.

Senator Klein asked if he has so many animal units he can have by law.

Mr. Effertz said by Health Department permit, they have 1250 animal units for 7 months.

Keith Johnson, North Dakota Public Health and Environmental Health Associations, testified in favor of the bill. (written testimony) (meter 2556) 42-04.04, the right to farm legislation, says any operation encroached upon by a city or surrounding development can't be declared a nuisance. We can rely on that to cover the Kist situation. The city could exercise eminent domain and could take Kist, you can't nuisance Kist out of existence.

Senator Urlacher asked if he knows why counties don't zone.

Mr. Johnson said he is perplexed by it. He thinks it is because they don't like to say no to their neighbors.

Senator Seymour said it takes a lot of work.

Senator Flakoll asked if he knows anything about the scentometer.

Mr. Johnson said yes.

Senator Flakoll asked what is the statistical accuracy required for certification.

Mr. Johnson said he does not know. He has gone through the test. About 60% of the noses that start the test are certified.

Dean Affolter testified in favor of the bill. (meter 2987. He is on the other side of this issue, he is the neighbor closest to the feedlot. He established his residence in May of 1979. The feedlot moved in 1994. First it was a cow/calf operation. He was there 15 years before the feedlot. The owners were two guys from the city, going to make a million dollars in the cattle business, they lost their butt in the first two or three years. They ended up selling it out. These particular individuals who are here today bought the feedlot in 1997. At the time they bought it out there were restrictions on the feedlot, they knew it, their attorney was there with them. Senator Klein asked Mr. Effertz if he worked with the county when Morton county adopted the feedlot bill and the reason was because they didn't show, they didn't know. The neighbors were there. In Oliver county when it passed, Prices were there, one of the biggest feedlot in the state, they read the paper. That is why it got voted in, its a good thing for Morton County. Morton county voted it in on November 7 and Oliver county on November 12 of 2003. This isn't just one sided. It protects not just the feedlot operator it also protects the residents, it isn't just one sided. This is a good bill. Coming to par with other states that with the cattle industry expanding in the state of

North Dakota there is enough room for everybody without piling up against a subdivision that was there since 1978 and wanting to expand to 2400 head within 600 feet of his house and not expect to get any more violations. A 2 reading is irritating, a 7 reading is gut wrenching, a 15 reading on a scentometer is more than gut wrenching. On this particular feedlot, where are the owners. They don't live out there. One lives in Bismarck, has had 7 years to move out there and hasn't and the other lives 2 miles to the east. They don't have to worry about these smells, they can go home and forget about it. When he has a birthday party out there or confirmation, if the wind is from the southeast, the people wonder how I can take this. If you want to be a feedlot operator, if you want to be in the cattle business, live on the premises. He says he is 15 miles from town, they don't live out there, they have a hired man living out there which is fine. But they do not partake in the smells on a daily basis like he and his family do. He has family who farms in the western part of the state and they come to visit and they say great feedlot, bad location.

Senator Urlacher asked if he lives there all day long, what is your occupation.

Mr. Affolter said he does shift work for Minnesota Power at BNI Coal. With feedlots, not only do you have smells you have hay grinding. When the wind is out of the southeast, ask the state, they have pictures of the chaff laying on the vehicles, on the porch, every place. Lately it has been getting better, they are waiting to grind until the wind is not out of the southeast but two years ago its like the waited until it was out of the southeast to grind.

Mark Quanbeck, partner in Square Butte Ranch Feedlot, testified in favor of the bill. (written testimony) (meter 3533) He knows the regulations were passed that year, they went through the process of being approved to feed cattle by the county, they brought a lot of resistance against us,

Page 18

Senate Agriculture Committee

Bill/Resolution Number HB 1291

Hearing Date March 17, 2005

everybody got mad and they had discussions and they were approved by the county for 2000 head year round. It is the permit by the Health Department that is stopping them. They are using a model to anticipate what the odors would be, that is what they have always done. It is an exceptional case, there are a lot of feedlots that are close to people and a lot of states that stink worse than this.

Chairman Flakoll closed the hearing on HB 1291.

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1291

Senate Agriculture Committee

☐ Conference Committee

Hearing Date March 18, 2005

Tape Number

1

Side A

x

Side B

Meter #

15 - 2897

Committee Clerk Signature



Minutes:

Chairman Flakoll opened the discussion on HB 1291. Senator Seymour was absent.

Senator Flakoll distributed some information about the scentometer and the standards of various states (attached). He understands Senator Klein has distributed the .0301 and .0302 amendments. He asked Wade Moser from the North Dakota Stockmen's Association to explain the amendments.

Wade Moser, North Dakota Stockmen's Association, appeared to discuss the amendments.

(meter 170) During testimony yesterday, someone said they thought the auction barns would be covered under 42-04.01. Mr. Moser and Senator Klein went to Legislative Council to look at the definition of an agricultural operation to see if this section of the code covered auction barns and Anita Thomas said it is a stretch. To assure they were addressing the issue it was recommended that auction markets be listed as agricultural operations in the definition. When they talked to the Health Department and others, they viewed them as being agricultural

operations. Amendment .0302 clarifies that part of it. The .0301 amendment puts it into the same context as if it were an agricultural operation out in the country with a setback. In almost every case the auction markets in the state had that kind of buffer prior to the city encroaching around them. The only other change was that recommended by the health department which clarifies the setback distance and changes animals to animal units which is standard language.

Senator Erbele asked if animal units refer to the size of an animal, for example a pen of 600# calves would be 3/4 of a unit.

Mr. Moser said that is correct, and it standardizes across species as well.

Senator Flakoll asked how the amendments regarding the sale barns play into existing laws, with subsection 7 does it takes precedence. With this bill there is the understanding that we will try to make as many people happy as possible and get a bill passed. We will get a bill that will not make everyone happy forever.

Mr. Moser said we are new with the rules, there have not been a lot of violations, we need to take a run at this and see what happens. If we run into problems and have people dissatisfied we will see you next session and see if we can correct some problems. They have had conversations with the League of Cities and they do not seem to have a lot of difficulty or they would have been here yesterday and today. He agrees this will not solve everyone's problems.

Senator Flakoll asked if subsection 7 applies to sale barns.

Mr. Moser said it does not address the sale barns, subsection 1 on page 1 addresses the auction barns.

Senator Flakoll said local law would only apply to feedlots.

Mr. Moser said that is his understanding.

Senator Taylor asked if animal unit by definition is a 1000# cow/calf pair.

Mr. Moser said yes.

Senator Taylor asked about hogs, what portion of an animal unit are they, about 5 hogs per animal unit?

Mr. Moser said he would find out about each species.

Senator Taylor asked about the comment yesterday that we are putting the Health Department in charge of zoning. This is actually a legislative action. Has Mr. Moser talked to anyone on the Feeder Council or anyone else, is there general agreement that in subsection 7 that it is something folks can live with and feel they have a process they can work with in the legislature.

Mr. Moser said when people think about the process itself, there is lots of confusion regarding who has zoning authority and who has health authority. There are lots of people on the zoning side who think they have to site these feedlots when actually that is the responsibility of the Health Department. When you sit down and walk through the process, we could eliminate problems. The people in the livestock industry realize this is more to their advantage than disadvantage by having an automatic setback when someone isn't going to step up and address it. We have counties that, for whatever reason, do not want to do it and that is their option. The person who is going to site a feedlot can eliminate a lot of problems by recognizing who is around.

Senator Erbele asked if the county doesn't zone, then the state setbacks apply. Can the county zoning be more or less stringent than the state as long as they have something in place.

Mr. Moser said yes. The model zoning plan can be modified by counties to fit their needs, they can go up or down. If the county makes their zoning stricter or more lenient, the state setbacks

will not be in effect. The state setbacks are not really zoning, the zoners can change everything overnight if they want.

Chairman Flakoll said we have time if the committee needs it.

Senator Erbele moved the amendment proposed by the Health Department from David Glatt's testimony.

Senator Taylor seconded the motion.

The motion passed on a roll call vote 5-0-1.

Senator Erbele moved amendment .0301.

Senator Taylor seconded the motion.

The motion passed on a roll call vote 5-0-1.

Senator Erbele moved amendment .0302.

Senator Taylor seconded the motion.

Senator Taylor asked about section 42-04, what other protection do they get in that section.

Mr. Moser said 42-04 is the nuisance provision. It gives them the protection so that if they have been in operation for a year and have not been a nuisance you cannot be considered a nuisance.

They cannot pass ordinances to make you a nuisance.

The motion passed on a roll call vote 5-0-1.

Senator Flakoll said he asked Anita Thomas about the discussion in testimony yesterday regarding the Health Department not being able to make rules that are more stringent than federal regulations. She did not think that provision applied and was a moot point. Senator Flakoll distributed a copy of the email from Ms. Thomas.

Senator Flakoll said he is still perplexed about what will happen with the stockyards in Mandan.
(meter 1620)

Senator Klein said maybe we can ask Mr. Moser. The way he understands it, they would still have the right to continue. Some day they would be pushed out by purchase.

Senator Flakoll asked by eminent domain?

Senator Taylor said no, just increasing land values.

Senator Klein said he thinks they will be protected now.

Mr. Moser said he thinks so, if they follow with first in time.

Senator Flakoll said protected from an odor standpoint. In all honesty, in every stockyard he has been in, odor is the last thing he would think of.

Senator Flakoll said the more we change...

Senator Klein said this started as a simple scentometer bill and we had a lot of input. We can't make this bill work for everybody just the way they want. We are allowing animal agriculture something, we are respecting the rights of those who were there first, we are providing some protection for the stockyards. The people who spoke last yesterday didn't seem like they were really for the bill but they didn't say they were against it. This is as good a compromise as we are going to come up with.

Senator Flakoll said he thinks it is safe to say if everyone in the room who testified yesterday had to vote on the bill they would vote for it because it helps their position, they may not get everything they want.

Senator Erbele asked about the seasonal permit, was that a health department rule.

Senator Flakoll said they established the rule as an option to having no feedlot.

Senator Klein said under this law they would have 15 days to fix the problem, it is giving a little flexibility.

Senator Flakoll said he has a problem with the potential fines, \$10,000/day.

Senator Klein said we didn't add the fines, they were in there.

Senator Klein asked if the Health Department rolls in and starts fining. He doesn't think so, he thinks they call and say they have a complaint.

Senator Flakoll said in testimony they said they do not drive up and down section lines looking for a violation. They come when they are called.

Senator Taylor said the bill has come a long way. We are not here to pass legislation for 1 incident, this is good for the industry and the state.

Senator Erbele asked about the feedlot siting permits, nutrient management and best management practices, is there a standard within the Health Department that says you have to study run off etc. How is that developed and permitted.

Mr. Moser said it is looked at for siting, soil types, topography, in most cases in their experience in working with Scott Ressler, their in house expert, he makes an initial site inspection and makes a recommendation. If they need to make some changes, the engineers get involved. They do their measurements and calculations. By the time it gets to the Health Department for a permit, they have some high powered professionals involved to make the determination.

Senator Klein said we have come a long way in setting standards into law since 1999. Would someone be building a feedlot now like they did in 1997, in the same spot.

Mr. Moser said the amendment that talks about having a setback if the counties don't have one will take care of that. As part of the application process, you will have to identify residents

around the site and if you identify residents within 1/2 mile it will be a red flag and the Health Department will say you have to find a different site. Without that amendment, with the rules in place today, we could run into that problem again. The Health Department would probably say we will give you the permit but it will be conditional because they don't want another problem.

Senator Klein said with this bill we have helped things along, we have clarified things.

Mr. Moser said he agrees.

Senator Urlacher said the environmental requirements are also going to play a part in siting.

Those requirements are in place and now we are adding the setbacks. It won't be easy in a lot of respects to get a site.

Senator Flakoll asked Mr. Moser, there are temporary sale facilities, a sale at the West Fargo Fairgrounds for example, are those kinds of facilities affected.

Mr. Moser said he doesn't think so. County fairs have achievement days and an auction, the cattle display on the streets of Harvey, they are temporary. He hopes we are not looking at that.

Senator Flakoll said he doesn't think it is anyone's intent to include those kinds of facilities in the sale barn category.

Senator Urlacher said we have these things in place and we have to run with it and give it a test just like we do on a lot of other legislation.

Senator Taylor said most of the short term functions do not produce that much odor.

Senator Klein moved a do pass on HB 1291 as amended.

Senator Taylor seconded the motion.

The motion passed on a roll call vote 5-0-1.

Senator Erbele will carry the bill.

DEPARTMENT OF HEALTH'S
PROPOSED AMENDMENTS TO FIRST ENGROSSED HOUSE BILL NO. 1291
TO First Engrossment to HB 1291

Page 2, line 14, after "58-03-11," insert "or when the setback distance is greater than one-half mile [.80 kilometer] under subsection 7,"

Page 4, line 1, remove "animals" and insert "animal units"

Page 4, line 3, remove "animals" and insert "animal units"

Page 4, line 4, remove "animals" and insert "animal units"

Page 4, line 6, remove "animals" and insert "animal units"

Page 4, line 7, remove "animals" and insert "animal units"

Page 4, line 10, remove "animals" and insert "animal units"

Page 4, line 11, remove "animals" and insert "animal units"

Page 4, line 14, remove "animals" and insert "animal units"

from HD

Date:

Roll Call Vote #

3/18/05
1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1291

Senate Agriculture

Committee



Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Move amendment from Health Department

Motion Made By

Sen. Erbele

Seconded By

Sen. Taylor

Senators

Yes

No

Senators

Yes

No

Senator Flakoll

✓

Senator Seymour

A

Senator Erbele

✓

Senator Taylor

✓

Senator Klein

✓

Senator Urlacher

✓

Total (Yes)

5

No

0

Absent

1

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

March 17, 2005

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1291

Page 1, line 15, replace "within" with "at a point that is at least one-half mile [.80 kilometer] from
the"

Page 1, remove lines 16 and 17

Renumber accordingly

Date:

3/18/05

Roll Call Vote #

2

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. HB 1291

Senate Agriculture

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Make amendment .0301

Motion Made By

Sen. Erbele

Seconded By

Sen. Taylor

Senators
Senator Flakoll
Senator Erbele
Senator Klein
Senator Urlacher

Yes No

✓
✓
✓
✓

Senators

Senator Seymour
Senator Taylor

Yes No

A
✓

Total (Yes)

5

No

0

Absent

1

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

March 17, 2005

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1291

Page 1, line 1, replace "section" with "sections" and after "23-25-11" insert "and 42-04-01"

Page 1, line 2, after "operations" insert "and livestock auction markets"

Page 4, after line 23, insert:

"SECTION 2. AMENDMENT. Section 42-04-01 of the North Dakota Century Code is amended and reenacted as follows:

42-04-01. Agricultural operation defined. As used in this chapter, "agricultural operation" means the science and art of production of producing plants and animals useful to people; by a corporation or a limited liability company as allowed under chapter 10-06.1; or by a corporation or limited liability company, a partnership, or a proprietorship; and including, to a variable extent, includes the preparation of these products for people's use and ~~their~~ the disposal of these products by marketing or otherwise, and other means. The term includes livestock auction markets and horticulture, floriculture, viticulture, forestry, dairy, livestock, poultry, bee, and any and all forms of farm products, and farm production."

Renumber accordingly

Date:

3/18/05

Roll Call Vote #

3

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. HB 1291

Senate Agriculture

Committee



Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Move amendment . 0302

Motion Made By

Sen. Erbele

Seconded By

Sen. Urlacher

Senators
Senator Flakoll
Senator Erbele
Senator Klein
Senator Urlacher

Yes No

✓

✓

✓

✓

Senators
Senator Seymour
Senator Taylor

Yes No

A

✓

Total (Yes)

5

No

0

Absent

1

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

Date:

3/18/05

Roll Call Vote #

4

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1291

Senate Agriculture

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

No Pass As Amended

Motion Made By

Sen. Klein

Seconded By

Sen. Taylor

Senators
Senator Flakoll
Senator Erbele
Senator Klein
Senator Urlacher

Yes No

✓
✓
✓
✓

Senators

Senator Seymour
Senator Taylor

Yes No

A
✓

Total (Yes)

5

No

0

Absent

1

Floor Assignment

Sen. Erbele

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1291, as engrossed: Agriculture Committee (Sen. Flakoll, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1291 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "section" with "sections" and after "23-25-11" insert "and 42-04-01"

Page 1, line 2, after "operations" insert "and livestock auction markets"

Page 1, line 15, replace "within" with "at a point that is at least one-half mile [.80 kilometer] from the"

Page 1, remove lines 16 and 17

Page 2, line 14, remove the second "section" and after the underscored comma insert "or if the setback distance under subsection 7 is greater than one-half mile [.80 kilometer]."

Page 4, line 1, replace "animals" with "animal units"

Page 4, line 3, replace "animals" with "animal units"

Page 4, line 4, replace "animals" with "animal units"

Page 4, line 6, replace "animals" with "animal units"

Page 4, line 7, replace "animals" with "animal units"

Page 4, line 10, replace "animals" with "animal units"

Page 4, line 11, replace "animals" with "animal units"

Page 4, line 14, replace "animals" with "animal units"

Page 4, after line 23, insert:

"SECTION 2. AMENDMENT. Section 42-04-01 of the North Dakota Century Code is amended and reenacted as follows:

42-04-01. Agricultural operation defined. As used in this chapter, "agricultural operation" means the science and art of production of producing plants and animals useful to people; by a corporation or a limited liability company as allowed under chapter 10-06.1; or by a corporation or limited liability company, a partnership, or a proprietorship; and including, to a variable extent, includes the preparation of these products for people's use and ~~their~~the disposal of these products by marketing or otherwise, and other means. The term includes livestock auction markets and horticulture, floriculture, viticulture, forestry, dairy, livestock, poultry, bee, and any and all forms of farm products, and farm production."

Renumber accordingly

2005 HOUSE AGRICULTURE

CONFERENCE COMMITTEE

HB 1291

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB 1291**

~ House Agriculture Committee

☒ Conference Committee

Hearing Date 4---13---05

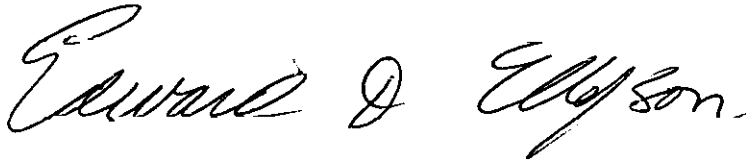
Tape Number
ONE

Side A
A

Side B

Meter #
00.0 TO 10.0

Committee Clerk Signature



Minutes:

CHAIRMAN NICHOLAS: O.K. We will open the Conference Committee on HB 1291.

The Conference Committee consisted of CHAIRMAN NICHOLAS,

REPRESENTATIVE BRANDENBURG AND REPRESENTATIVE FROELICH. On

the HOUSE SIDE. SENATORS, URLACHAER, ERBELE AND TAYLOR ARE ON THE

SENATE SIDE. HB 1291 IS RELATING TO ANIMAL FEEDING OPERATIONS.

RELATES TO EXTRATERRITORIAL ZONING, AMBIENT AIR AND ANY

OBJECTIONABLE ODOROUS AIR CONTAMINATION MEASUREMENTS OF

ODOR. THERE WERE TWO MORE AMENDMENTS INTRODUCED BY SENATOR

ERBELE. THE AMENDMENTS ARE ATTACHED. THEY DEAL WITH SET BACKS

AS TO FEEDER LOTS, SALES BARNs AND THE LIKE FROM

Page 2
House Agriculture Committee
Bill/Resolution Number HB 1291
Hearing Date 4---13---05

**RESIDENTIAL AND COMMERCIAL LOCATIONS. THE COMMITTEE
ADJOURNED EARLY AFTER THE OPENING OF THE COMMITTEE MEETING
AND WENT OUT TO KIST LIVESTOCK. THE N.D. HEALTH DEPARTMENT
WAS THERE AND THE CONFERENCE COMMITTEE AND HEALTH
DEPARTMENT TOOK READING AS TO ANIMAL ETC. ODORS. WHEN THE
COMMITTEE CAME BACK FROM KIST THEY ADJOURNED AGAIN WITH THE
PLAN TO WORK ON ADDITIONAL AMENDMENTS. WE WILL MEET AGAIN
TOMORROW, THURSDAY, 14 APRIL 05 AT 10:00 A.M.
CHAIRMAN NICHOLAS: CLOSED ON HB 1291**

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB 1291**

~~House Agriculture Committee~~

☒ Conference Committee

Hearing Date 4---14---05

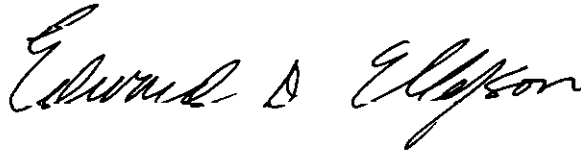
Tape Number
ONE

Side A
A

Side B

Meter #
00.0 TO 12

Committee Clerk Signature



Minutes:

CHAIRMAN NICHOLAS: O.K. CONFERENCE COMMITTEE MEMBERS WE WILL REOPEN ON HB 1291. The Conference Committee consisted of Chairman Nicholas, Rep. Brandenburg and Rep. Froelich on the House side. On the Senate side were Sen. Erbele, Sen. Urlacher, and Sen. Taylor. HB 1291 IS RELATING TO ANIMAL FEED LOTS AND RELATES TO EXTRATERRITORIAL ZONING, AMBIENT AIR AND ANY OBJECTIONABLE

ODOROUS AIR CONTAMINATION MEASUREMENTS OF ODOR. THERE WERE NEW AMENDMENTS INTRODUCED AGAIN TODAY.

AS TO SET BACKS OR DISTANCES FROM FEED LOTS, SALES BARNS ETC. FOR OR AS TO RESIDENTIAL AREAS AND OR INDUSTRIAL AREAS. THE NEW AMENDMENTS ARE ATTACHED TO THESE MINUTES.

CHAIRMAN NICHOLAS: Asked Dave Glatt to explain the law on property boundaries.

He spoke to property boundaries being property line as to set backs. For example 50 feet
10 feet etc. Use property line to start measurement.

SENATOR TAYLOR: Few complaints so far.

SENATOR ERBELE: 500 TO 1000 feet would work for me. Can't come closer then
500 feet.

KEITH JOHNSON: 500 feet would be a good balance. Only for sales barns. Works with city
ordinances.

SENATOR ERBELE: You can move within a odor restriction but you must sign a
Disclaimer. Sales barn not responsible.

CONNIE S. BISMARCK CITY COUNCIL: We don't want more then 500 feet.

REP. BRANDENBURG MADE A MOTION TO MOVE ON AMENDMENTS

SEN: TAYLOR SECONDED THE MOTION.

CHAIRMAN NICHOLAS: VOICE VOTE YAS

CHAIRMAN NICHOLAS: O.K. I WILL ENTERTAIN A MOTION ON HB 1291.

SENATOR ERBELE MADE A MOTION FOR A DO PASS. SENATE RECEDED FROM
HOUSE AMENDMENTS ON H.J. 977, 978 AND ADOPTED AMENDMENTS.

REPRESENTATIVE FROELICH: SECONDED THE MOTION.

THERE WERE 6 YES 0 NO 0 ABSENT

CHAIRMAN NICHOLAS THANKED THE CONFERENCE COMMITTEE FOR THERE
WORK ON THE BILL AND CLOSED ON HB 1291.

THERE WERE NO RECORDED MINUTES ON THIS HEARING. FOR ONE REASON

Page 3

House Agriculture Committee

Bill/Resolution Number HB 1291

Hearing Date 4---14---05

OR ANOTHER THE TAPE DID NOT RECORD.

**AGAIN: PLEASE READ THE ATTACHED AMENDMENTS THAT WERE ADOPTED
ON THE CONFERENCE COMMITTEE HELD 4---14---05 THE AMENDMENTS
ARE ATTACHED.**

April 12, 2005

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1291

Page 1, line 1, replace "section" with "sections" and after "23-25-11" insert "and 42-04-01"

Page 1, line 2, after "operations" insert "and livestock auction markets"

Page 1, line 15, replace "within" with "at a point that is at least three-eighths mile [.60 kilometer]
from the"

Page 1, remove lines 16 and 17

Page 2, line 12, replace the third "a" with "an animal"

Page 2, line 13, remove "concentrated"

Page 2, line 14, remove the second "section" and after the underscored comma insert "or if the
setback distance under subsection 7 is greater than one-half mile [.80 kilometer]."

Page 2, line 19, replace "concentrated" with "animal"

Page 2, line 20, replace "concentrated" with "animal"

Page 4, line 1, replace "animals" with "animal units"

Page 4, line 3, replace "animals" with "animal units"

Page 4, line 4, replace "animals" with "animal units"

Page 4, line 6, replace "animals" with "animal units"

Page 4, line 7, replace "animals" with "animal units"

Page 4, line 10, replace "animals" with "animal units"

Page 4, line 11, replace "animals" with "animal units"

Page 4, line 14, replace "animals" with "animal units"

Page 4, line 20, replace "The department shall define by rule the number of animals that
constitute an" with "For purposes of this section:

- (1) One mature dairy cow, whether milking or dry, equals 1.33 animal units;
- (2) One dairy cow, heifer or bull, other than an animal described in paragraph 1 equals 1.0 animal unit;
- (3) One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal unit;

- (4) One cow-calf pair equals 1.0 animal unit;
- (5) One swine weighing 55 pounds [24.948 kilograms] or more equals 0.4 animal unit;
- (6) One swine weighing less than 55 pounds [24.948 kilograms] equals 0.1 animal unit;
- (7) One horse equals 2.0 animal units;
- (8) One sheep or lamb equals 0.1 animal unit;
- (9) One turkey equals 0.0182 animal unit;
- (10) One chicken, other than a laying hen, equals 0.008 animal unit;
- (11) One laying hen equals 0.012 animal unit;
- (12) One duck equals 0.033 animal unit; and
- (13) Any livestock not listed in paragraphs 1 through 12 equals 1.0 animal unit per each one thousand pounds [453.59 kilograms] whether single or combined animal weight."

Page 4, remove line 21

Page 4, after line 23, insert:

- "9. Neither a county nor a township may regulate or through any means impose restrictions or requirements on animal feeding operations or on other agricultural operations except as permitted under sections 11-33-02 and 58-03-11.

SECTION 2. AMENDMENT. Section 42-04-01 of the North Dakota Century Code is amended and reenacted as follows:

42-04-01. Agricultural operation defined. As used in this chapter, "agricultural operation" means the science and art of production of producing plants and animals useful to people, by a corporation or a limited liability company as allowed under chapter 10-06.1, or by a corporation or limited liability company, a partnership, or a proprietorship, and including, to a variable extent, includes the preparation of these products for people's use and ~~their~~ the disposal of these products by marketing or otherwise, and other means. The term includes livestock auction markets and horticulture, floriculture, viticulture, forestry, dairy, livestock, poultry, bee, and any and all forms of farm products, and farm production."

Renumber accordingly

Conference Committee Amendments to Engrossed HB 1291 (50573.0307) - 04/14/2005

That the Senate recede from its amendments as printed on pages 977 and 978 of the Senate Journal and pages 1321 and 1322 of the House Journal and that Engrossed House Bill No. 1291 be amended as follows:

Page 1, line 1, replace "section" with "sections" and after "23-25-11" insert "and 42-04-01"

Page 1, line 2, after "operations" insert "and livestock auction markets"

Page 1, line 18, after the underscored period insert "The measurement may not be taken within five hundred feet [.15 kilometer] of the property boundary of the agricultural operation."

Conference Committee Amendments to Engrossed HB 1291 (50573.0307) - 04/14/2005

Page 2, line 12, replace the third "a" with "an animal"

Page 2, line 13, remove "concentrated"

Page 2, line 14, remove the second "section" and after the underscored comma insert "or if the setback distance under subsection 7 is greater than one-half mile [.80 kilometer]."

Page 2, line 19, replace "concentrated" with "animal"

Page 2, line 20, replace "concentrated" with "animal"

Conference Committee Amendments to Engrossed HB 1291 (50573.0307) - 04/14/2005

Page 4, line 1, replace "animals" with "animal units"

Page 4, line 3, replace "animals" with "animal units"

Page 4, line 4, replace "animals" with "animal units"

Page 4, line 6, replace "animals" with "animal units"

Page 4, line 7, replace "animals" with "animal units"

Page 4, line 10, replace "animals" with "animal units"

Page 4, line 11, replace "animals" with "animal units"

Page 4, line 14, replace "animals" with "animal units"

Page 4, line 20, replace "The department shall define by rule the number of animals that constitute an" with "For purposes of this section:

- (1) One mature dairy cow, whether milking or dry, equals 1.33 animal units;
- (2) One dairy cow, heifer or bull, other than an animal described in paragraph 1 equals 1.0 animal unit;
- (3) One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal unit;
- (4) One cow-calf pair equals 1.0 animal unit;
- (5) One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4 animal unit;
- (6) One swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1 animal unit;
- (7) One horse equals 2.0 animal units;
- (8) One sheep or lamb equals 0.1 animal unit;
- (9) One turkey equals 0.0182 animal unit;
- (10) One chicken, other than a laying hen, equals 0.008 animal unit;
- (11) One laying hen equals 0.012 animal unit;
- (12) One duck equals 0.033 animal unit; and
- (13) Any livestock not listed in paragraphs 1 through 12 equals 1.0 animal unit per each one thousand pounds [453.59 kilograms] whether single or combined animal weight."

Page 4, remove line 21

Page 4, after line 23, insert:

- "9. Neither a county nor a township may regulate or through any means impose restrictions or requirements on animal feeding operations or on

other agricultural operations except as permitted under sections 11-33-02 and 58-03-11.

SECTION 2. AMENDMENT. Section 42-04-01 of the North Dakota Century Code is amended and reenacted as follows:

42-04-01. Agricultural operation defined. As used in this chapter, "agricultural operation" means the science and art of production of producing plants and animals useful to people, by a corporation or a limited liability company as allowed under chapter 10-06.1, or by a corporation or limited liability company, a partnership, or a proprietorship, and including, to a variable extent, includes the preparation of these products for people's use and ~~their~~ the disposal of these products by marketing or otherwise, and other means. The term includes livestock auction markets and horticulture, floriculture, viticulture, forestry, dairy, livestock, poultry, bee, and any and all forms of farm products, and farm production."

Renumber accordingly

REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)

Bill Number 1291 (, as (re)engrossed):

Date: 4-14-05

Your Conference Committee HSE. AGG.

For the Senate:

YES / NO

For the House:

YES / NO

ERBELE YES CHAIR NICHOLAS Yes
URLACHER Yes BRANDENBURG Yes
TAYLOR Yes FROELICH Yes

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) 1321 -- 1322

___, and place on the Seventh order.

___, adopt (further) amendments as follows, and place on the
Seventh order:

___, having been unable to agree, recommends that the committee be discharged
and a new committee be appointed.

((Re)Engrossed) was placed on the Seventh order of business on the calendar.

DATE:

CARRIER:

4-14-05
NICHOLAS - ERBELE

LC NO. of amendment

LC NO. 50573 0307 of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

MOTION MADE BY:

Rep BRANDENBURG

SECONDED BY:

SEN TAYLOR

VOTE COUNT

6 YES 0 NO 0 ABSENT

Revised 4/1/05

REPORT OF CONFERENCE COMMITTEE

HB 1291, as engrossed: Your conference committee (Sens. Erbele, Urlacher, Taylor and Reps. Nicholas, Brandenburg, Froelich) recommends that the **SENATE RECEDE** from the Senate amendments on HJ pages 1321-1322, adopt amendments as follows, and place HB 1291 on the Seventh order:

That the Senate recede from its amendments as printed on pages 977 and 978 of the Senate Journal and pages 1321 and 1322 of the House Journal and that Engrossed House Bill No. 1291 be amended as follows:

Page 1, line 1, replace "section" with "sections" and after "23-25-11" insert "and 42-04-01"

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- (4) One cow-calf pair equals 1.0 animal unit;
- (5) One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4 animal unit;
- (6) One swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1 animal unit;
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Renumber accordingly

Engrossed HB 1291 was placed on the Seventh order of business on the calendar.

2005 TESTIMONY

HB 1291

My name is Mark Quanbeck, my brother-in-law Dale Effertz and I purchased the Square Butte ranch feedlot in 1997. The feedlot had been built by a local engineer with good new buildings and pen designs that drained into a holding pond, he had really tried to do it right. We had been feeding our cows and calves on our pasture land 3 miles to the east with what most operators have as a facility, the bare minimum, that had no containment of the runoff or buildings to speak of. When this new feedlot came up for sale it was directly adjacent to our own pasture land it was an obvious decision for us.

The land was all zoned agriculture, the buildings were all new, and the lot looked terrific to us as producers. We soon discovered a neighbor to the north did not believe it looked terrific and in fact never wanted it built. We got increasingly frequent visits from the health department inspector Gary Habistrol and his coworkers, most initiated by complaints from the neighbor. The permit we were issued seemed quite restrictive to us, and we soon learned there would be no flexibility given to us as producers. This made it nearly impossible to use the feedlot properly, and put us at risk for a lawsuit for the regulations were clearly a setup to put us out of business. We put in a request for a permit to feed year round with the health department and after multiple contentious public meetings, the county approved our permit because we were grandfathered in because the feedlot existed before any county zoning existed. This then required the health department to act, a week before we were to wean calves and give shots the health department informed us we would not be getting any relief on our spring, summer, or fall feeding, but in fact would be losing 45 days of feeding in the fall and 16 in the spring. This was already the only permit in the nation that permitted only seasonal feeding and now it was even more restrictive. The irony is this reduction in feeding is detrimental to the environment because feeding in the yard contains the runoff, reduces erosion, and lessens the footprint cattle feeding requires.

The science of odor requires more study than just snapshot measurement. Open air feedlot odor sources change continuously and cannot be monitored with any reliability. Operating on a complaint basis encourages activists to continually complain, knowing the producers reputation and will could be damaged with ever increasing activism.

If the state does regulate this way in the future it should buy the facility, level it and put it up for sale. It will save the state, community, and the producer a lot of money and anguish. This law gives the health department broad authority and I believe the responsibility to shut down businesses in the state during times of greater odor emissions. They have essentially issued an air quality permit to Square Butte Ranch by forcing it to operate only seasonally. This was done preemptively without proof of violation but through modeling. There is no precedence for this nationally that I know of and it is very expensive and complicated to enforce. The template for this preemptive modeling has been established by the health department with this seasonal permit and may require them to impose it on other feedlots or businesses.

States such as Colorado, South Dakota, and Minnesota do not regulate this way simply because it is unworkable, the expense is too great and there is actually a negative impact on the community. Instead of finding ways to get along, there is the constant illusion the producer can be driven out. Those states instead rely on nutrient and odor control plans that ensure that best management practices are used.

We feel activism against our facility had the purpose of essentially taking of our property without compensation. These facilities can not just disappear without cost and if financial interests want it torn down those interests should compensate the producer for his/or her loss.

North Dakota Health Department already requires permitted feedlots to have odor control and nutrient management plans agreed to prior to being permitted. It also has the authority to regulate feedlots using these plans. It is our opinion future policy should rely on these methods of regulation, they already exist, it is what is being done on a national basis. The continuous measurement and monitoring of a facility is of no value to the state and the state could avoid future predicaments such as ours.

I have a feeling were going to get pretty beat up today so I invite any representatives out to our facility to see for yourself. We are 8 miles north of interstate on highway 25 turn at exit 147. This state has been so good to my family in so many ways and I only wish the best for North Dakota, using existing odor control and nutrient management plans to regulate feedlots as is done in other states will a positive benefit for North Dakota.

Testimony
of Alvina and Dean Affolter
In Opposition of House Bill 1291
Regarding Open Air Feedlots Odor Levels
January 27, 2005

Mr. Chairman and Committee Members. We are Alvina and Dean Affolter and are in opposition of House Bill No. 1291 to amend and reenact subsection 3 of Section 23-25-11 of the North Dakota Century Code regarding odor measurements. To determine an open air feedlot odor levels, the department may measure only hydrogen sulfide levels and may not use a a scentometer.

We are not against agricultural. North Dakota is big enough to place feedlots in certain areas where odor would not be a problem.

This particular feedlot wants to expand to 2500 head on a year round basis. This will be a REAL problem with odors.

Some history first – Dean Affolter purchased almost 50 acres of land in Oliver County on the Oliver – Morton County Line in 1978 along Highway 25. In 1979 he built a quonset and moved out there and since has built a house, barns and has many trees. A person's first investment is their home and property. See attached map. In 1995 a feedlot was built in Morton County by our home about 600 feet. It was first started as a 450 cow-calf operation. It grew to over 1200 animal units with limitations.

It was sold in 1997 to the current owners. We live northwest of this particular feedlot and the smells are overwhelming at times. The smell at times carries throughout the inside of our house. We are limited to enjoying our outdoor activities because of the manure smell. The flies are overwhelming at times AND the hay grinding every 10+ days.

When wind comes from southeast we have chaffs appear on our vehicles, in our yard, our porch and our house. Years ago 9 bulls spent the night in our yard by our nice 30 foot evergreens, broke branches, and left manure in the yard.

The thaw cycle makes it smell. The warm - hot temperatures in fall-winter-spring make it smell.

This owner-operator has been willingly signing a yearly Approval to Operate a Concentrated Livestock Operation from the ND State Health Department from November 1, 1997 to current contract of November 2004. It is subject to rules, regulations, and orders from the ND State Health Department on conditions that are specified. Attached is a contract of 1997. Note the limitations of animals and time frame. See No. 8 – approval shall in no way permit or authorize the discharge of any objectionable odorous air contaminant which is in excess of the limit of established in the ND Administrative Code Ch. 33-15-16 of ND Air Pollution Control Rules. Why? Because of close proximity to neighbor to northwest.

Both owners do not live on feedlot site. One owner of the feedlot lives 2 miles to the east. The other owner lives in Bismarck, North Dakota. They are unaware of smell during days, evenings and nights.

Two other families that live one-half mile or more to the north of the Affolter's residence were there before feedlot was built. One family wanted to purchase land to north of them so this would not happen to them. That land is now owned by a relative of feedlot owners. The other 6 families moved in after feedlot was built.

I have attached an Air Pollution Control Field Odor Survey done on June 19, 2003. Note temperature and OCU or odor concentration units – up to 15 - its gut wrenching. The people doing these tests are certified using the scentometer. The human nose is best in detecting odors. The Legislature in 2000 changed the scentometer readings from 3 to a 7 for a violation. At a 3 it smells and at 15 it is gut wrenching. Also attached is a Hydrogen Sulfide Data Sheet. Measuring only hydrogen sulfide is a small portion of all gases. The number would be so high it would be unbearable.

I requested from the ND State Health Department what other states have air quality standards on feedlots. I received the attached sheet on Ambient Air Quality Standards for Animal Feeding Operations dated 1-24-2005. The hydrogen sulfide meter is used in Colorado for large hog operations only. The ND State Health Department provided me with information on feedlots that have had odor violations and penalties in the past 10 years. There were three facilities with violations out of more than 400 registered

facilities. Of these three facilities none were shut down. Two of these facilities the owners do not live on site.

For years the agriculture people are selling their land for subdivisions to be developed in the country. There has been tremendous growth of homes along Highway 1806 and Highway 25 in Morton County in the last 10 years. Most realtors and county officials like seeing growth. Approving subdivisions and expanding feedlots are not compatible especially when a subdivision was there first.

We believe it is NOT necessary to amend and reenact subsection 3 of Section 23-25-22 of the ND Century Code relating to open air feedlots because of one feedlot that wants changes.

In 1999 the ND Legislative Assembly approved amendments to the law to limit powers of local government to prohibit or prevent use of land or buildings for farming or ranching but allow local government to regulate and scope of concentrated feeding operations. This was Senate Bills 2355 and 2365.

Various Work Group Members came together to make a History of the Development of a Model Zoning Ordinance For Animal Feeding Operations which was final in March 2000 by the ND Department of Health. A Model Zoning Ordinance for Animal Feeding Operations was final in 2000.

Morton and Oliver Counties have adopted the Model Feedlot Ordinances in 2003.

Page 5

Other counties have adopted some type for Model Feedlot Ordinances.

See attached letters from Missouri West Water System, Mor Gran Sou Electric Cooperative, Oliver County Commissioners.

Thank you for your time in this matter. We will try to answer any questions.

30951c



APPROVAL TO OPERATE

A Concentrated Livestock Operation

In accordance with North Dakota Century Code (NDCC) Chs. 61-28 and 23-25, approval of the Q & E Cattle Ranch LLP., owned by Dale Efforts and Mark Quanbeck, located in the NE ¼, NE ¼, Section 4, Township 140 N, Range 82 W, in Morton County, North Dakota is granted provided the following conditions are met.

This Approval To Operate shall be effective from November 1, 1997 through October 31, 1998; and is subject to all applicable rules, regulations, and orders now or hereafter in effect of the North Dakota Department of Health and to the conditions specified below:

1. The Department Shall be informed if the maximum number of animal units is exceeded or if there is a change in the type of animals on site. The Health Department has the right to require the maximum number of animal units allowed at any time be reduced if it is shown that excessive odors or nuisance are impacting nearby residents. The owner shall have an alternative area where the livestock can be placed if they need to be removed from the facility site.

The maximum number of animal units allowed at the facility site shall be:

November 1 through April 30:	1250 Animal units
May 1 through June 1	1250-200 transition phase:
Numbers shall be reduced gradually depending on availability of pasture and to minimize odor concerns.	
June 1 through September 1:	200 Animal units
September 1- October 31	200-1250 transition phase:
Numbers may be increased gradually so as not to cause excess odors or other nuisance concerns.	

2. The Department shall be informed of any changes in the physical operation of the facility.
3. There shall be regular and adequate maintenance and upkeep to prevent degradation of the structures, to insure the system continues to operate as designed and to insure the pond can contain runoff from a 25 year- 24 hour rain event which for Morton County is a 3.7 inch rain.
4. All embankments shall be constructed of relatively impervious materials and compacted sufficiently to form a stable structure. An appropriate liner material shall be installed and maintained to prevent excess seepage from the storage pond. The liner in the upper portion of the pond shall be maintained annually by scarifying and recompaction. A two foot liner shall be installed by November, 2000. Once the two foot liner is installed, only routine upkeep of the liner is required.
5. Dead animals shall be disposed of in a manner acceptable to the North Dakota Board of Animal Health, and in accordance with NDCC section 36-14-19.
6. Land application of waste shall be in accordance with Natural Resources Conservation Service (NRCS) utilization recommendations. Waste shall be applied in a manner such

that it will not be washed into waters of the state or cause odors to impact nearby residents.

Injection of the waste is required within a quarter mile of any inhabited dwelling unless permission has been obtained from the occupants to allow surface application and immediate incorporation of the waste.

Waste surface applied to non-vegetated cropland shall be incorporated into the soil the same day, unless circumstances beyond the permittee's control prevent such incorporation. Such circumstances shall be documented for Department review. Waste may be applied to cropped fields, grass, alfalfa, or pasture, however it shall not be applied within ¼ mile of a paved road or inhabited dwelling.

Because of the close proximity to a residential area, timely and adequate cleaning of manure shall be done to prevent excess odors from the facility. If odor violations are recorded, the Department will require steps be taken to reduce the odor concerns. This may include requiring the facility to remove the manure from the facility site.

7. To demonstrate proper land application of waste, the Department recommends records be maintained showing the date, location, volume and rate waste is applied, as well as the crop to be grown.
8. This approval shall in no way permit or authorize the discharge of any objectionable odorous air contaminant which is in excess of the limits established in North Dakota Administrative Code Ch. 33-15-16 of the North Dakota Air Pollution Control Rules.
9. This approval shall in no way permit or authorize the maintenance of a public nuisance or danger to public health or safety.
10. If the facility is sold or transferred to new ownership, the Department must be notified prior to the transfer of ownership.

Prior to the expiration of this approval to operate and prior to the reissuance of the Approval to Operate, the Department will evaluate if the facility has complied with this approval and demonstrated the control of odors and nuisance. Any request for modifications in the reissuance of the Approval to Operate must be submitted to the Department in writing 60 days prior to the expiration of this approval.

The above conditions are considered part of the proper operation of the facility. If any of the above conditions cannot be met, the Department must be notified in writing, within five (5) days. Also, if any structural changes are made that are different than the approved design plan, the Department must be notified in writing, prior to making these changes. **The Department must be notified when construction of this facility is completed.**

Authorized Department personnel shall be permitted access to the facility to determine compliance with Department rules and regulations.

The owner/operator of this facility shall comply with all State and Federal environmental laws and rules, and shall also comply with all local building, fire, zoning and other applicable ordinances, codes, and rules.

Any noncompliance with the approval conditions or with state requirements shall be reported to the Department as soon as possible after the facility becomes aware of the noncompliance.

condition. This approval becomes effective upon signature of the Department after consent of both parties.

I certify that I have read and understand the above information and agree to operate the facility in a manner that will meet all the conditions listed herein.

OWNER / APPLICANT

By

(signature)

By

(signature)

By

(print name here)

By

(print name here)

Date

11-5-97

Date

11-5-97

FOR THE NORTH DAKOTA DEPARTMENT OF HEALTH

By

By:

Dennis Fewless, Director
Water Quality Division

Date

11/6/97



AIR POLLUTION CONTROL FIELD ODOR SURVEY

North Dakota Department of Health
SFN 8440 (5/99)

Source *Square butte Ranch feedlot*

Type of Facility *Feedlot*

Location *Morton County - North of Mandan*

Inspection Date *6/19/03* | Type of Inspection *odor*

Would you consider the odor objectionable if it were present in your place of residence?

Yes No

Observer (Print Name)

Affiliation

Signature

☒

Gary Haberstroh

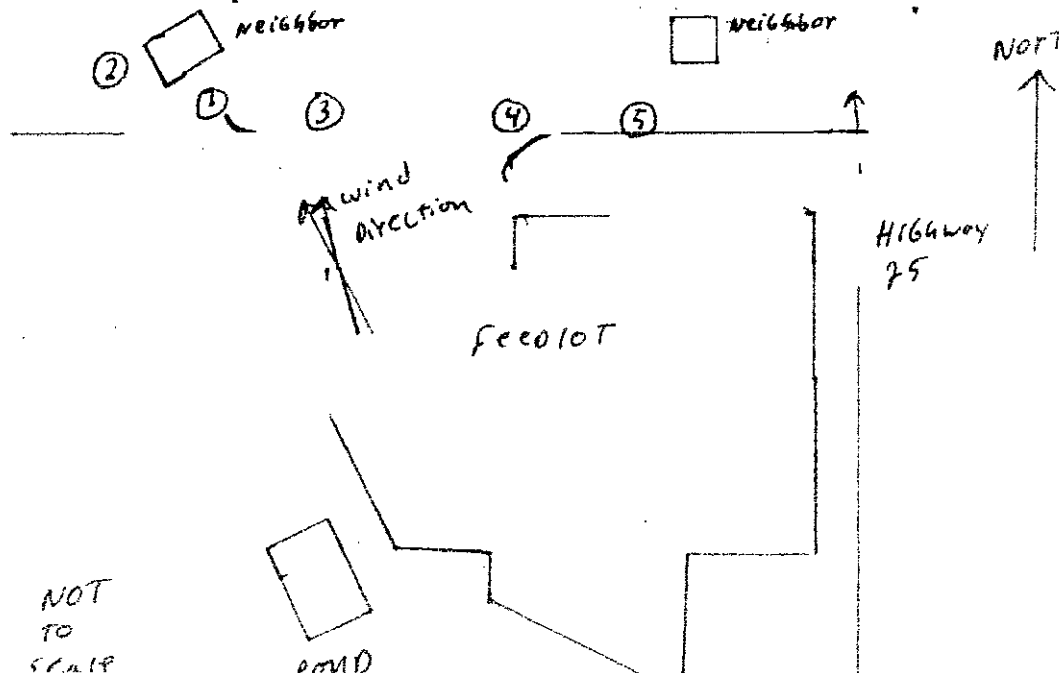
NO D H

Gary Haberstroh

Time of Reading	Location of Reading	Wind Direction	Wind Speed	Ambient Temperature	*OCU	Initials
4:15	① Neighbors driveway - ~100 ft from house	SSE	10-15	85	2	GH
4:25	② Neighbors backyard - ~100 ft from house	SSE	10-15	85	15	GH
4:45	③ Road North of Feedlot - West of Driveway	SSE	10-15	85	2 15	GH
4:50	④ Road North of Feedlot - Driveway	SSE	10-15	85	15	GH
5:00	⑤ Road North of Feedlot - North of Silage Pit	SSE	10-15	85	15	GH

*Odor Concentration Units

Sketch/Comments:



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Hydrogen Sulfide Data Sheet

Hydrogen Sulfide: H₂S

Hazard:

Flamable will explode; LEL 4.0%

Classification

Health: extremely toxic

OX: oxidizing agent

Synonyms:

hydrosulfuric acid, sewer gas, sour gas, rotten egg smell

Exposure limits:

(OSHA) PEL/TWA: 10 ppm

(ACGIH) STEL: 15 ppm / 15 min.

(OSHA) IDLH: 300 ppm / 30 min.

Industries:

Oil and Gas industries (complete from drilling to refining), pulp and paper, and waste water treatment

Hydrogen sulfide is a colorless gas that is known by its characteristic rotten egg like odor. It appears naturally as a byproduct of decomposition. One of the drawbacks to trusting the senses (olfactory) for protection against hydrogen sulfide is that prolonged exposure to the gas renders the sense of smell inoperative.

Hydrogen sulfide is a highly toxic gas. It reacts with the enzymes in the blood stream which inhibit cell respiration. In other words, high concentrations of hydrogen sulfide can shut off the lungs. Low concentration exposure to the gas can burn the respiratory tract and cause swelling around the eyes.

Effects of Various H₂S Levels

Hydrogen Sulfide Levels in PPM	Resulting Condition/Effects on Humans
0.13	Minimal perceptible odor
4.6r	0 Easily detected, moderate odor
10	Beginning eye irritation. Permissible Exposure Level, 8 hours (OSHA, ACGIH)
27	Strong, unpleasant odor, but not intolerable.
100	Coughing, eye irritation, loss of sense of smell after 2 to 5 minutes.
200-300	0 Marked conjunctivitis (eye inflammation) and respiratory tract irritation after one hour of exposure.
500-700	Loss of consciousness, cessation (stopping or pausing) of respiration, and death.
1000-2000	Unconsciousness at once, with early cessation of respiration and death in a few minutes. Death may occur even if individual is removed to fresh air at once.

Source: American National Standards Institute (ANSI Standard No. Z37.2-1972 CHLORINE GAS DATA SHEET)

*Industrial Scientific
1001 Oakdale Road,
Oakdale, PA
15071-1500
412-788-4353
Toll Free 1-800-DETECTS
FAX 412-788-8353
e-mail: info@indsci.com*

1-24-05

**Ambient Air Quality Standards or Odor Nuisance Standards
that apply to Animal Feeding Operations**

The following standards apply to the states as shown

Odor Standard (scentometer)	Nuisance criteria for odors (based on number and frequency of complaints)	Hydrogen Sulfide Standard (30 ppb - nuisance standard)	Require animal feeding operations to have odor control plan
ND WY CO CT IL KY MO	MI NC RI TX VI	MN IA WI	NE MN MI TX

States with odor standard
Limit in Odor Concentration Units (OCU)

5.4 OCU	7 OCU	24 OCU	Other
MO	ND WY CO CT KY	IL (see other)	IL- 8 OCU residential/public 24 OCU Industrial, 16 OCU ambient off property

All readings are legal to be taken at property boundary except ND, which must be taken at 1/2 mile setback, unless a residence was there first.

*Hydrogen sulfide meter used in Colorado -
- Large hog operations only*

correlation - H₂S + odors is NOT THERE.

MISSOURI WEST WATER SYSTEM



May 19, 2003

Mr. Dennis Fewless, Director
ND Dept. of Health
Water Quality Division
P.O. Box 5520
Bismarck ND 58502-5520

SUBJECT: OPPOSITION TO EXPANSION OF SQ. BUTTE FEEDLOT

Dear Mr. Dennis Fewless:

As General Manager of the Missouri West Water System (MWWS), I write in opposition to expansion of the special use permit and allowed operation levels of the Square Butte Feedlot in Morton County. The reasons are as follows:

- Public funds, federal, state and local, were expended to construct a publicly owned rural water system to the existing residences in this area. That investment is placed in jeopardy by this expansion. The Morton County Commission, by approving residential subdivisions in this area, has designated this as a "Residential Growth Area". The investment of funds, both public and private, into this area is significant and based on prior approvals of area land uses.
- The record of complaints demonstrates an existing inability to control obnoxious odor, noise and dust levels. Increasing capacity will only serve to exacerbate enforcement problems. These problems make residential lots undesirable to potential residents. Residential Property values diminish as an area becomes less desirable.
- Initial approvals were given under "Special Use" status. That "Special Use" status indicates a prior knowledge of incompatible adjoining uses. Now is an excellent time to stop expanding the non-compatible use levels at the expense of adjoining area properties.

The MWWS requests that you **deny facility expansion.**

Sincerely,

Mike Kemnitz
General Manager

Cc: Morton Cnty Water Resource Dist., Morton Cnty Comm.,

20



Mor-Gran-Sou Electric Cooperative, Inc.

202 6th Avenue West
PO Box 297
Flasher, North Dakota 58535-0297

Telephone: (701) 597-3301 • Toll-free: (800) 750-8212 • Fax: (701) 597-3915

May 20, 2003

Mr. Dennis Fewless, Director
ND Department of Health
Water Quality Division
PO Box 5520
Bismarck, ND 58502-5520

RE: Square Butte Feedlot

Dear Mr. Fewless,

As General Manager/CEO of Mor-Gran-Sou Electric Cooperative (MGS), I want to express concerns to the proposed expansion of the Square Butte Feedlot in Morton County. The following are particular issues that cause MGS concern.

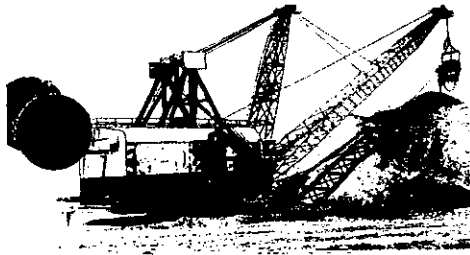
- ☐ Through the years, the Morton County Commission has approved many residential subdivisions in this area. This approved development has resulted in a residential growth area made up of rural residential subdivision located down wind from the proposed feedlot expansion.
- ☐ Square Butte Feedlot has demonstrated an inability to control obnoxious odor, noise and dust problems over the years, as demonstrated by the number of complaints. The inability to control environmental issues has a very negative impact on the existing homeowners and potential development in the area. The proposed expansion will only compound the current situation.
- ☐ The approved residential growth in this area of Morton County has caused the members of MGS to invest more than \$1,000,000 into new infrastructure in this area. This investment was made based on an environment that is supportive to rural subdivision living. The expansion of this feedlot and the resulting environmental issues appears to be in conflict with this and therefore will jeopardize the investment by the members of MGS.

While we actively support value-added agricultural projects similar to the Square Butte Feedlot expansion, we also support compatible organized development. Based on our experience over the years feedlots and rural housing developments are not compatible with each other.

Sincerely,

Donald A. Franklund
General Manager/CEO

cc: Morton County Commission



Oliver County

Center, North Dakota 58530



April 2, 2003

Dean Affolter
2995 Hwy 25
Mandan, ND 58554

Re: Q & E Cattle Ranch LLP Expansion

At the regular April 1, 2003 Oliver County Commission Proceedings,
Dwaine Helmers moved and Howard Henke seconded to concur with the Oliver
County Planning and Zoning recommendation that opposes expansion of the Q & E
Cattle Ranch LLP livestock facility in Morton County. All in favor, none opposed;
motion carried.

Sincerely,

Barbara Fleming
Oliver County Auditor

House Bill 1291

Agricultural Committee Hearing:

January 27 10:30 AM

Dear Ag Committee Members:

Enclosed you will find Information from other states and cities on how they are handling nuisance odor concerns. The Department of Health in Minnesota has emailed us a 299 page study that they completed in 2004.

If any of you or other legislators would like a copy of this report or web addresses, phone contacts, or other documents please feel free to contact us anytime.

deffertz@starband.net

701/663-4615 Feedlot

701/663-6574 Fax

Thank you,

Square Butte Ranch

The following information was taken directly from a (299) page report that was prepared by the Minnesota Pollution Control Agency, or from direct conversations with Health Department Officials in the various states.

5.3.2 Upper Midwest:

Of the states surrounding Minnesota, North Dakota, South Dakota, Iowa and Wisconsin, only North Dakota has an odor statute that sets specific limits for odorous emissions. The remaining states either have no statewide odor regulations (Iowa and South Dakota) or as in Wisconsin, set no measurable standards for odor emissions. Noteworthy programs are discussed immediately following.

Limits or Standards of Odor Strength:

Of the many interviews conducted as part of the odor investigation of jurisdictions within the United States, a total of seven jurisdictions regulate odorous emissions based on standards of odor strength and concentration. These jurisdictions include North Dakota, San Francisco, Colorado, Idaho, Missouri, North Carolina, and Wyoming. Jurisdictions which have odor strength standards in statute, but which do not in practice enforce these standards include Chicago, Connecticut, and Louisiana. The reasons given for this lack of enforcement were the cumbersome nature of using odor-measurement equipment by inspectors. In Chicago and Connecticut, current odor enforcement is done with inspectors smelling the ambient air and, if an odor is detected, working through a facilitative process with the offending facility in order to redress the problem.

San Francisco:

Not a lot of feedlots there.

Colorado:

All manufacturing and agriculture is exempt except for large confined swine operations. Only 1 to 2 complaints per year against all sources other than swine operations.

Idaho:

Idaho does not use Olfactometry. It is too expensive for equipment and staff training. All complaints are referred to the Ag Department. Idaho Legislature was quite specific that ag operations were outside the purview of the DEQ. Idaho's procedures have worked well and have been accepted reasonably well by industries.

Missouri:

Feedlots under 7,500 Animal Units are exempt. Class 1A CAFO's must develop an odor control plan. They work with others to help comply and almost all complaints are from swine. No cattle feeding operations are restricted.

North Carolina:

Does not use the scentometer. They work with facilities to institute the Best Management Plan.

Wyoming:

Air quality permits are not an option. They do not issue air quality permits as North Dakota has essentially done by limiting feeding during certain times of the year. Wyoming does not limit feeding. Permits are only based on water quality, which obviously does not limit an operation to seasonal feeding.

****It is important to note that any odor control measures that are being implemented in the above states have come as a result of very large confinement swine operations.**

More Areas:

Massachusetts:

We are trying to take the state out of the enforcement of odor and put the onus of enforcement onto local jurisdictions.

Des Moines, Iowa:

We spell out a compliance process. No financial penalties for being out of compliance.

Connecticut:

Although the use of scentometers is referenced in the regulation, as a matter of practical enforcement they were found to be unsuitable.

Chicago:

There is a flexible time period established to address nuisance odor violations.

Minneapolis:

The city prefers to work with the industry to resolve any odor situations that may occur. They prefer to facilitate a solution because a \$70 fine does not have much effect on large industry.

Minnehaha County:

We do not specifically address nuisance odors, there is no good available objective means for measuring odors.

Oregon:

No measurement technology is used in substantiating a complaint, beyond the inspector's judgment of ambient air quality. Oregon found odor measurement technology to be unreliable and was not a valuable part of the process. Nuisance odor complaints arising from CAFOs are handled through the state Department of Agriculture.

Rhode Island:

Work with facility to address persistent odor concerns.

Sioux City, Iowa:

There are many potential nuisance odor emitting industries including ag-related industrial processing such as meat packing, rendering, Knox Gelatin and others. In Aarons opinion, the city has been very successful in working with the industries in Sioux City to abate the problem of nuisance odors by instituting Best Available Control Technology (BACT).

South Carolina:

Best agricultural management practices are used. They don't have odor measurement technology other than their nose.

Vermont:

Agricultural uses exempt from odor rule. Since Vermont is so rural and not densely populated the scope of odor issue is not very broad.

Wisconsin:

Inspectors don't use any measurement technology other than their nose. Talk to facility to address the problem. There are no penalties for being out of compliance.

Texas:

Require animal feeding operations to have odor control plan.

3

TESTIMONY
To the
HOUSE AGRICULTURE COMMITTEE
Of the
NORTH DAKOTA LEGISLATURE

RE: HOUSE BILL 1291

By James Schmidt, Director
North Dakota Corn Growers Association

January 27, 2005

Chairman Nicholas and Members of the Committee:

Thank you for this opportunity to submit testimony on House Bill 1291. I am here today to urge your DO PASS vote on this bill that exempts open-air feedlots from scentometer measurements in rural areas and replaces it with a Hydrogen Sulfide Threshold.

I am a livestock producer from Menoken ND and also serve on the board of directors of the ND Corn Growers Association. I chair the Livestock Action Team consisting of both Grower Association directors and ND Corn Council directors. Because livestock is the primary user of ND grown corn our mission is to foster the growth of the livestock industry in ND. Over the last 3 years the Livestock Action Team has directed approximately \$250,000 toward livestock projects. Our goal is to improve the figure of only 20% of agricultural receipts coming from Livestock in ND compared to 43% in Minnesota, 48% in South Dakota and 49% in Montana.

The information that has been provided to us by the ND Feeder Council shows that the Scentometer is not commonly used in other states such as South Dakota, Minnesota, Iowa, Nebraska and Kansas. This information also indicates that the subjective nature of the scentometer leads to unnecessary costs due to increased risk of regulation and litigation. This discourages feedlots and other livestock industry from locating in North Dakota. It appears that the hydrogen sulfide measure is a better measurement of odor concentrations in the ambient air in North Dakota.

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TESTIMONY
To the
HOUSE AGRICULTURE COMMITTEE
Of the
NORTH DAKOTA LEGISLATURE

RE: HOUSE BILL 1291

By Jocie Iszler, Executive Director
North Dakota Corn Council

January 27, 2005

Chairman Nicholas and Members of the Committee:

Thank you for this opportunity to submit testimony on House Bill 1291. The ND Corn Council urges your DO PASS vote on this bill that exempts open-air feedlots from sentometer measurements in rural areas and replaces it with a Hydrogen Sulfide Threshold.

The mission of the ND Corn Council is to expand existing markets and develop new markets for ND grown corn. Because livestock is the primary user of ND grown corn our mission is to foster the growth of the livestock industry in ND. Over the last 3 years the ND Corn Council has directed approximately \$250,000 toward livestock projects. The Council's goal is to improve the figure of only 20% of agricultural receipts coming from Livestock in ND compared to 43% in Minnesota, 48% in South Dakota and 49% in Montana.

The information that has been provided to the ND Corn Council by the ND Feeder Council shows that the Scentometer is not commonly used in other states such as South Dakota, Minnesota, Iowa, Nebraska and Kansas. This information also indicates that the subjective nature of the scentometer leads to unnecessary costs due to increased risk of regulation and litigation. This discourages feedlots and other livestock industry from locating in North Dakota. It appears that the hydrogen sulfide measure is a better measurement of odor concentrations in the ambient air in North Dakota.



North Dakota Farm Bureau

Administration:
1101 1st Ave N
P.O. Box 2064
Fargo, ND 58107
701-298-2200 • 1-800-367-9668
Fax: 701-298-2210

State Headquarters:
4023 State St
P.O. Box 2793
Bismarck, ND 58502
701-224-0330 • 1-800-932-8869
Fax: 701-224-9485

www.ndfb.org

North Dakota Farm Bureau Testimony
on
House Bill 1291
presented by
Brian Kramer
January 27, 2005

Good morning Chairman Nicholas and members of the House Agriculture Committee. I am Brian Kramer and I am representing North Dakota Farm Bureau in support of House Bill 1291.

The delegates to the most recent North Dakota Farm Bureau convention passed policy that states, "We support the elimination of ambient air odor standards as a regulation on open-air feedlots." The main reason for this policy is the issue of the scentometer. This device is used to measure odor strength.

The problem is that the scentometer is a subjective test. A person sniffs through an air chamber at various dilution settings to determine the odor reading. Two people sniffing the exact same sample could come to very different conclusions. There are machines that can detect levels of hydrogen sulfide. Therefore it seems logical that using a scientific measurement of hydrogen sulfide would remove the subjectivity and provide a more accurate analysis of the ambient air.

If we truly want to encourage animal agriculture in this state, we must strive to develop standards that can protect the environment and provide a positive, progressive, science-based business opportunity for our livestock producers. We cannot impede its progress by relying on subjective testing methods as we now have.

We hope that you will give HB 1291 a favorable recommendation. Thank you, I would try to answer any questions.




SINNER BROS. & BRESNAHAN
PARTNERS IN FARMING

Fax to: Bill Price

Fax From: Tom Bresnahan, Sinner Bros. & Bresnahan

As a feedlot owner and manager, we have resisted expansion and investment in feedlot facilities and structures in North Dakota because of issues like the current Odor Law.

Please support House Bill 1291

7
Fax to: Bill Price
From: Jeff Kvamme
Date: 01-26-05

As a Feedlot Manager in North Dakota, I have already been pushed out of one feedlot due to urban development. Fortunately, I was able to find Managers position at another feedlot in North Dakota. The feedlot I currently manage has been feeding cattle since the 1950's, but due to the location, the current Odor Law could limit my time at this feedlot as well. I would the have to relocate my wife and five children elsewhere. My three employees and their families would also have to relocate. I am sure we could all find employment in a feedlot in rural South Dakota or Nebraska even though it is something we would prefer not to do.

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The investment made into feedlots as large as Missouri river feeders can not be allowed to be put at risk by laws that can become such a tool of activists. Health Department employees have indicated that readings more than a half mile away from my feedlot could have resulted in scentometer violations. Large feedlots are very susceptible to such regulation and I don't believe it is in the best interests of North Dakota to put them at risk. We can not allow feedlots that have sound management practices to be regulated by such a law when clearly the precedence for aggressive regulation has been set. Most states do not impose punitive damages on the producer for scentometer readings but rather work with the producer to improve the producers practices.

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Testimony

House Bill 1291

House Agriculture Committee

Thursday, January 27, 2005; 10:30 a.m.

North Dakota Department of Health

Good morning, Chairman Nicholas and members of the House Agriculture Committee. My name is David Glatt, and I am section chief of the Environmental Health Section for the North Dakota Department of Health. I am here today to provide testimony in opposition of House Bill 1291.

House Bill 1291 amends an existing odor law by directing that air quality impacts associated with open air feedlots be limited to the monitoring of hydrogen sulfide. The department is aware of the issues expressed by all concerned parties and of the effort by the state Legislature to find a resolution to this important issue. It is our opinion that past legislation addressing odor measurement has resulted in the current law that is equitable and fair. As such, we respectfully request a do-not-pass determination for House Bill 1291.

The current odor law works by protecting the rights of both producers and rural residents. Since the revision of the rules in the 1999 legislative session that instituted a "first in time, first in right" doctrine, the department has recorded only three odor violations at two different animal feeding operations. Putting these violations into context, these are not aware of 545 permitted operations, or less than 0.4 percent of the operations in the state. It is important to note that one of these violations was from a facility less than one-quarter mile from an established rural residence; the other was within a city zoning authority. If the change in the law is being proposed due to a reported adverse impact on the animal feeding operations in the state, the monitoring and enforcement data do not support such a determination.

Because odors can be composed of a combination of several hundred compounds can cause an odor, no electronic instrument has been developed to measure odors. Scientists have tried to develop an "electric nose" but have not developed one to date. Scientists have also tried to utilize "indicator gases" for livestock operations which, in theory, would be in higher concentrations in strong-odor conditions and lower concentrations in low-odor conditions. To date, there has been no indicator gas identified for livestock operations. Of note, states that use hydrogen sulfide as a standard indicate that they have not seen any correlation between odors and the hydrogen sulfide concentration at open lot

feeding operations. In other words, significant odors could be present without the presence of hydrogen sulfide.

Several states besides North Dakota utilize the Scentometer to measure odor concentrations. In North Dakota, the odor threshold at which a problem is identified is seven odor units. To put this in perspective, the department has conducted several monitoring events at sugar beet and potato processing facilities in eastern North Dakota. Using the criteria identified in the current law requiring a one-half mile setback from the source, the department has not recorded an odor violation at these facilities. As a result, the odors that many people notice and attribute to these processing facilities would have to be of a greater intensity to cause a violation. Odors needed to cause a violation are typically characterized as significant and offensive. The Scentometer as used in North Dakota has been recognized by several states as a valid method of odor determination. The Scentometer uses scientific principles and produce readings that can be replicated.

States have not taken a consistent approach to address odors generated from animal feeding operations. However, most, if not all, states address odor issues either at the state or local level. State approaches have included the use of Scentometers, increased permit restrictions, setbacks, deferring to local jurisdictions to implement odor restrictions, requirements for modeling and continuous monitoring, and implementation of odor management plans. The bottom line is that odors from livestock operations can be an issue, and states have realized the need to address them.

The Environmental Protection Agency is currently embarking on an enforcement action which will address the emission of air pollutants from certain animal feeding operations. With this action EPA will also be initiating a research effort to identify the odor constituents of concern as well as the appropriate modeling, monitoring and control techniques. This research effort is anticipated to be completed in two years. One recommendation would be to evaluate the results from the EPA study before any further action is proposed by the state.

In conclusion, the regulation and control of odors have taken many forms in states throughout the nation. Each one addresses the unique issues and concerns expressed in its respective jurisdictions. These odor-control measures typically take a complex approach drawing on several regulatory, technical and operational tools, such as permitting, monitoring and zoning. North Dakota's current law has worked for a vast majority of the ag-related operations in the state and will continue to work to protect both the producer and rural landowner.

This concludes my testimony. I am happy to answer any questions you may have.

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House Bill 1291
Testimony for Hearing 1-27-05

We oppose any amendment to subsection 3 of section 23-25-11 as proposed.

The original provisions of the Century Code specifies the intention of this law as: "To achieve and maintain the best air quality possible consistent with the best available control technology, to protect human health, welfare and property, to prevent injury to plant and animal life, to promote the economic and social development of the state, to foster the comfort and convenience of the people, and to facilitate the enjoyment of the natural attractions of the state." The introduction of this amendment destroys the original intent of this legislation.

It is difficult for feedlots and other odor generators to co-exist with neighbors. Nationwide, laws are developed to deal with this problem. Without adequate measurements and enforcing standards such as we now have in North Dakota, regulators can not find common ground for neighbors to co-exist. Enforcing a standard for only one element of odor pollution sets up the likelihood of increased odor pollution from such things as ammonia, dust, dander and pathogens. A scentometer is currently our "best available control technology." If we eliminate it as a tool, we have no reasonable way of applying standards. This bill introduces ambiguity into a system that currently works. It will only lead to greater numbers of insoluble odor complaints.

When feedlots are properly managed they generate acceptable levels of odor. In the rare occasions where poorly managed operations create problems for neighbors, it is the duty of the State to provide dispute regulation. By removing the current method of testing without an adequate replacement means, we would create situations that can not be resolved.

Agriculture can only be affected negatively by the passage of this amendment. It will encourage poor or lazy operators to pay less attention to their operations environment; this will result in higher levels of disease among animals and humans, greater concentrations of flies, generally hurting the reputations of well-run feedlot facilities. It will damage North Dakota's commitment to "plant and animal life" and to the "economic and social development of the state."

The intent of the Century Code is to lay out standards to protect all of us. This amendment removes the ability of the State to lay out the standards that adequately regulate feedlot odor. It is a step backwards and can only create further controversy and problems, forcing feedlots and neighbors further apart.

Ginger and Niles Hushka
2634 Square Butte Lane N.
Mandan, ND 58554

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HB 1291
Testimony in Opposition
Keith Johnson, R.S.
NDPHA-NDEHA

Odors are complex. They consist of ammonia, volatile organics, organic acids, and reduced sulfur compounds of all sorts, including sulfide and sulfite salts of hydrogen, iron, sodium, and others. Therefore, the monitoring of one compound – hydrogen sulfide – will not effectively indicate an odor problem. Further, if you have no hydrogen sulfide detected, according to this bill, you have no odor on which to carry out enforcement. That doesn't mean the feedlot doesn't stink – you just can't do anything about it.

The result would be that feedlot owners' property rights to accumulate manure would trump the rights of adjacent property owners to the enjoyment of their property. It wouldn't matter who was there first, or who moved in on whom. The proponents of this bill claim that the separation requirements in county or township zoning should address this issue. Again, the net result is that, once sited in a location, the feedlot would be **immune** to regulatory enforcement **as long as they didn't produce hydrogen sulfide**. Most open air feedlots don't produce much hydrogen sulfide.

The scentometer is a fair and reasonably consistent way to monitor and quantify odor. It is used widely across the United States to good effect. The odor level of seven odor concentration units required to declare an odor a nuisance is a high level which, when smelled, leaves no doubt that an odor is offensive.

The continued development of animal feeding operations depends on a fair and consistent regulatory mechanism to ensure the property rights of surrounding landowners. A perception that a feedlot is beyond the power of any agency to ensure its proper operation will hamstring future economic development. The passage of this bill would tilt the playing field so strongly in favor of the feedlot operators that a perception of unfairness would result. I ask you to vote in favor of a "Do Not Pass" on this bill.

14
Testimony on HB 1291 to the House Committee on Agriculture

By Charles Linderman

Carrington, ND

January 27, 2005

I am a farmer and a professional agricultural engineer specializing in livestock waste management. The greatest challenge to livestock waste management now and in the foreseeable future is odor management and air quality.

As you all know, livestock development represents a great economic opportunity for ND agriculture. As you also know, the mention of livestock development brings out high levels of concern from those who will be neighbors to that development. We must never appear to lack concern for those potential neighbors. It is in our best interest to be good environmental stewards, both in fact and in appearance.

Researchers have found at least 168 different gaseous compounds that may be emitted by animal production systems*. The smells that people experience around a livestock feeding operation are the result of a mix of a number of these compounds.

The two odorous compounds that are most likely to impact human neighbors and ecosystems are hydrogen sulfide and ammonia. The concentrations of these compounds can be scientifically measured. However, several researchers have categorically stated that hydrogen sulfide or ammonia concentrations do not correlate well to livestock odors. In fact, there is no known relationship between the concentration of any specific gas mixture and its odor**.

Furthermore, there are airborne dusts and particles which can carry with them ammonia and various volatile organic compounds.

There are two general approaches to measuring odor:

- 1) Measure individual gas concentrations with scientific instruments.
- 2) Use olfactometry which can be defined as the use of trained individuals and standard procedures to describe and measure levels of odor.

HB 1291 tells the Health Department it can only use the first approach for open air feedlots. However, if odor is the problem being addressed, you can see that this approach is not effective.

For many obvious reasons, olfactometry is not a perfect way to assess livestock odors. However, it remains the best method currently available***. Therefore, it is scientifically sound to have the Health Department continue to use the scentometer to assess odor conditions near animal feeding operations.

HB1291 in its current form could cause negatively feelings by non-agriculture neighbors and actually be negative for livestock development and should not be passed as introduced.

* "Animal Agriculture and Air Quality", David Schmidt, Editor, Department of Biosystems & Agricultural Engineering, 2004, Univ. of Minnesota, p.4

** Ibid., p.23

*** Ibid., p.24

Possible Amendments to N.D.C.C. § 23-25-11

Section 1. AMENDMENT. Section 23-25-11 of the North Dakota Century Code is amended and reenacted as follows:

23-25-11 Regulation of odors -- Rules.

1. In areas located within a city or the area over which a city has exercised extraterritorial zoning as defined in section 40-47-01.1, a person may not discharge into the ambient air any objectionable odorous air contaminant that measures seven odor concentration units or higher outside the property boundary where the discharge is occurring. Where an agricultural operation as defined by section 42-04-01 has been in operation for more than one year as provided by section 42-04-02, and the business or residence making the odor complaint was built or established after the agricultural operation was established, then the measurement for compliance with the seven odor concentration units standard must be taken within one hundred feet [30.48 meters] of the subsequently established residence, church, school, business, or public building, making the complaint, rather than at the property boundary of the agricultural operation.

2. In areas located outside a city or outside the area over which a city has exercised extraterritorial zoning as defined in section 40-47-01.1, a person may not discharge into the ambient air any objectionable odorous air contaminant that causes odors that measure seven odor concentration units or higher as measured at any of the following locations:

a. Within one hundred feet [30.48 meters] of any residence, church, school, business, or public building, or within a campground or public park. An odor measurement may not be taken at the residence of the owner or operator of the source of the odor, or at any residence, church, school, business, or public building, or within a campground or public park, that is built or established within one-half mile [.80 kilometer] of the source of the odor after the source of the odor has been built or established; or

b. At any point located beyond one-half mile [.80 kilometer] from the source of the odor, except for property owned by the owner or operator of the source of the odor, or over which the owner or operator of the source of the odor has purchased an odor easement.

c. When a county or township has zoned or established a setback distance for a concentrated feeding operation that is greater than one-half mile [.80 kilometer] under either section 11-33-02 or section 58-03-11, measurements for compliance with the seven odor concentration units standard must be taken at the setback distance, rather than one-half mile [.80 kilometer] from the facility under subdivision b, except for any residence, church, school, business, public building, park or campground within the setback distance that was built or established before the concentrated feeding operation was established (unless the concentrated feeding operation has obtained an odor easement from the pre-existing facility).

3. An odor measurement may be taken only with a properly maintained scentometer, by an odor panel, or by another instrument or method approved by the state department of health, and only by inspectors certified by the department who have successfully completed a department-sponsored odor certification course and demonstrated the ability to distinguish various odor samples and concentrations. When a single certified inspector measures a violation of this section, the department may send a certified letter of apparent non-compliance to the person causing the apparent violation, and may negotiate with the owner or operator an odor management plan and best management practices to address the apparent violation. The department must give the owner or operator at least 15 days to implement the odor management plan. If the odor problem persists, the department may then proceed with an enforcement action if at least two certified inspectors at the same time each measure a violation, and then confirm the violation by a second odor measurement that violates the standard taken by each certified inspector at least fifteen minutes, but no more than two hours, after the first measurement.

4. A person is exempt from this section while spreading or applying animal manure or other recycled agricultural material to land in accordance with a nutrient management plan approved by the state department of health. A person is exempt from this section while spreading or applying animal manure or other recycled agricultural material to land owned or leased by that person in accordance with rules adopted by the department. An owner or operator of a lagoon or waste storage pond permitted by the department is exempt from this section in the spring from the time when the cover of the permitted lagoon or pond begins to melt until fourteen days after all the ice cover on the lagoon or pond has completely melted. Notwithstanding these

exemptions, all persons shall manage their property and systems to minimize the impact of odors on their neighbors.

5. This section does not apply to chemical compounds that can be individually measured by instruments, other than a scentometer, that have been designed and proven to measure the individual chemical or chemical compound, such as hydrogen sulfide, to a reasonable degree of scientific certainty, and for which the state department of health has established a specific limitation by rule.

6. For purposes of this section, a public park is a park established by the federal government, the state, or a political subdivision of the state in the manner prescribed by law. For purposes of this section, a campground is a public or private area of land used exclusively for camping and open to the public for a fee on a regular or seasonal basis.

7. In counties that have not regulated the nature, scope, and location of animal feeding operations under section 11-33-02, the department is to require the following setback distances from each existing residence, church, school, business, public building, park, or campground, for any new animal feeding operations permitted by the department under chapter 61-28 and its implementing rules, except when the owner or operator applying for the permit obtains an odor easement from the pre-existing use that is closer than these distances:

Number of Animals	Hog Operations (setback distances)	Other Animal Operations (setback distances)
fewer than 300	none	none
300 – 1000	0.50 mi (0.805 km)	0.50 mi (0.805 km)
1001 or more	0.75 mi (1.207 km)	0.50 mi (0.805 km)
2001 or more	1.00 mi (1.609 km)	0.75 mi (1.207 km)
5001 or more	1.50 mi (2.414 km)	1.00 mi (1.609 km)

The department must establish rules defining the number of animals that constitute an animal unit for each of the animal types. Permitted animal feeding operations may expand twenty five percent (25%) one time over their permitted capacity without triggering a higher setback distance.

IN A NUTSHELL; MARK QUANBECK
SQUARE BUTTER RANCH

IT IS IMPORTANT THAT THE FACILITY
BE ALLOWED TO PERFORM REMEDIAL ACTIONS
BEFORE VIOLATIONS ARE WRITTEN. A RELIANCE
ON A ODOR CONTROL PLAN RATHER THAN
CONTINUOUS MEASUREMENT AND MONITORING
WILL LOWER THE COST OF THE REGULATION
AND INCREASE THE BENEFIT. THESE FACILITIES
WILL RESPOND TO THE BENEFITS OF
TWO MAKING AN AFFORDABLE ODOR CONTROL
PLAN MUCH MORE READILY THAN THE
ARGUMENTATIVE, PUNITIVE, AND TIME
CONSTRAINING PROCESS OF CONTINUOUS
MEASUREMENT.

NDCC 23-25-10

NDCC, 23-25-10

NORTH DAKOTA CENTURY CODE
TITLE 23. HEALTH AND SAFETY
CHAPTER 23-25. AIR POLLUTION CONTROL

** Origination of Fines***23-25-10 Enforcement -- Penalties -- Injunctions.**

1. Any person who willfully violates this chapter, or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter, is subject to a fine of not more than ten thousand dollars per day per violation, or by imprisonment for not more than one year, or both. If the conviction is for a violation committed after a first conviction of such person under this subsection, punishment must be by a fine of not more than twenty thousand dollars per day per violation, or by imprisonment for not more than two years, or both.
2. Any person who violates this chapter, or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter, with criminal negligence as defined by section 12.1-02-02, is subject to a fine of not more than ten thousand dollars per day per violation, or by imprisonment for not more than six months, or both.
3. Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter, upon conviction, is subject to a fine of not more than ten thousand dollars per day per violation, or by imprisonment for not more than six months, or both.
4. Any person who violates this chapter, or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter, is subject to a civil penalty not to exceed ten thousand dollars per day per violation.
5. Without prior revocation of any pertinent permits, the department, in accordance with the laws of this state governing injunction or other process, may maintain an action in the name of the state against any person to enjoin any threatened or continuing violation of any provision of this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter.

Source: S.L. 1969, ch. 260, § 10; 1975, ch. 231, § 10; 1999, ch. 240, § 1.

Session Laws 1969 ch. 260 § 10

502

CHAPTER 260

HEALTH AND SAFETY

1. The issuance of modification of rules and regulations including emergency orders relating to control of air pollution; or
2. Determining compliance with rules and regulations of the department,

shall be conducted in accordance with the provisions of chapter 28-32 of the North Dakota Century Code, and appeals may be taken as therein provided. Where an emergency exists requiring immediate action to protect the public health and safety, the department may, without notice or hearing, issue an order reciting the existence of such emergency and requiring that such action be taken as is necessary to meet this emergency. Notwithstanding any provision of this Act, such order shall be effective immediately, but on application to the department shall be afforded a hearing before the state health council within ten days. On the basis of such hearing, the emergency order shall be continued, modified or revoked within thirty days after such hearing.

Section 9. Injunction Proceedings.) The violation of any provision of this Act, or any rule, regulation, or order issued thereunder is declared a nuisance inimical to the public health, welfare, and safety. Whenever in the judgment of the department any person has engaged in or is about to engage in any acts or practices which constitute or will constitute a violation of this Act, or any rule, regulation, or order issued thereunder, the state health officer in accordance with the laws of this state governing injunctions and other process may maintain an action in the name of the people of the state enjoining such action or practices, or for an order directing compliance, and upon a showing by the department that such person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted.

Section 10. Penalties.) Any person violating any provision of this Act or any rule, regulation, or order issued thereunder, shall be guilty of a misdemeanor and upon conviction shall be punished as provided by law.

Approved March 13, 1969.

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CHAPTER 231

HEALTH AND SAFETY

2. Nothing herein shall be construed to prevent disclosure of any report, or record of information to federal, state, or local agencies when necessary for purposes of administration of any federal, state, or local air pollution control laws, or when relevant in any proceeding under this chapter.

SECTION 9. AMENDMENT.) Section 23-25-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-25-08. ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW.) Any proceeding under this chapter for:

1. The issuance or modification of rules and regulations including emergency orders relating to control of air pollution; or
2. Determining compliance with rules and regulations of the department,

shall be conducted in accordance with the provisions of chapter 28-32, and appeals may be taken as therein provided. Where an emergency exists requiring immediate action to protect the public health and safety, the department may, without notice or hearing, issue an order reciting the existence of such emergency and requiring that such action be taken as is necessary to meet this emergency. Notwithstanding any provision of this chapter, such order shall be effective immediately, but on application to the department an interested person shall be afforded a hearing before the state health council within ten days. On the basis of such hearing, the emergency order shall be continued, modified, or revoked within thirty days after such hearing. Except as provided for in this section, notice of any hearing held under this chapter shall be issued at least thirty days prior to the date specified for the hearing.

SECTION 10. AMENDMENT.) Section 23-25-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-25-10. ENFORCEMENT - PENALTIES - INJUNCTIONS.)

1. If, after the completion of the administrative hearing process, the department determines that a violation of this chapter, or any rule, regulation, or order of the department issued under this chapter, has occurred, it shall make all of its evidence and findings available to the attorney general for use in any remedial action his office determines to be appropriate, including an action for injunctive relief.
2. Any person who willfully violates this chapter or any permit condition or limitation implementing this chapter shall be punished by a fine of not more than twenty-five thousand dollars per day of violation, or by imprisonment

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ment in the county jail for not more than one year, or by both such fine and imprisonment. If the conviction is for a violation committed after a first conviction of such person under this subsection, punishment shall be by a fine of not more than fifty thousand dollars per day of violation, or by imprisonment in the county jail for not more than two years, or by both such fine and imprisonment.

3. Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter, shall, upon conviction, be punished by a fine of not more than ten thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.
4. Any person who violates this chapter, or any permit condition or limitation implementing this chapter, and any person who violates any order issued by the department, shall be subject to a civil penalty not to exceed ten thousand dollars per day of such violation.

Nothing in this chapter shall be construed to deny use of the remedy of injunctive relief where it is deemed appropriate.

SECTION 11. REPEAL.) Sections 23-25-07 and 23-25-09 of the North Dakota Century Code are hereby repealed.

Approved March 9, 1975

CHAPTER 240

SENATE BILL NO. 2178

(Natural Resources Committee)

(At the request of the Department of Health)

AIR AND WATER POLLUTION PENALTIES

AN ACT to amend and reenact sections 23-25-10 and 61-28-08 of the North Dakota Century Code, relating to air and water pollution penalties; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-25-10 of the North Dakota Century Code is amended and reenacted as follows:

23-25-10. Enforcement - Penalties - Injunctions.

1. If, after the completion of the administrative hearing process, the department determines that a violation of this chapter, or any rule, regulation, or order of the department issued under this chapter, has occurred, it shall make all of its evidence and findings available to the attorney general for use in any remedial action his office determines to be appropriate, including an action for injunctive relief.

2. Any person who willfully violates this chapter, or any permit condition or, rule, order, limitation, or other applicable requirement implementing this chapter ~~must be punished by~~, is subject to a fine of not more than ~~twenty-five~~ ten thousand dollars per day ~~of~~ per violation, or by imprisonment in the county jail for not more than one year, or by both ~~such fine and imprisonment~~. If the conviction is for a violation committed after a first conviction of such person under this subsection, punishment must be by a fine of not more than ~~fifty~~ twenty thousand dollars per day ~~of~~ per violation, or by imprisonment in the county jail for not more than two years, or by both ~~such fine and imprisonment~~.

2. Any person who violates this chapter, or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter, with criminal negligence as defined by section 12.1-02-02, is subject to a fine of not more than ten thousand dollars per day per violation, or by imprisonment for not more than six months, or both.

3. Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter ~~or any~~ permit condition, rule, order, limitation, or other applicable requirement implementing this chapter, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter; ~~must~~ or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter, upon conviction, be punished by is subject to a fine of not more than ten thousand dollars per day per violation, or by imprisonment in

the county jail for not more than six months, or by both such fine and imprisonment.

4. Any person who violates this chapter, or any permit condition ~~or, rule, order, limitation, or other applicable requirement implementing this chapter, and any person who violates any order issued by the department,~~ is subject to a civil penalty not to exceed ten thousand dollars per day of such per violation.

Nothing in this chapter may be construed to deny use of the remedy of injunctive relief where it is deemed appropriate.

5. Without prior revocation of any pertinent permits, the department, in accordance with the laws of this state governing injunction or other process, may maintain an action in the name of the state against any person to enjoin any threatened or continuing violation of any provision of this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter.

SECTION 2. AMENDMENT. Section 61-28-08 of the North Dakota Century Code is amended and reenacted as follows:

61-28-08. Penalties - Injunctions.

1. Any person who willfully violates this chapter, or any permit condition ~~or, rule, order, limitation, or other applicable requirement implementing this chapter shall be punished by,~~ is subject to a fine of not more than ~~twenty-five~~ ten thousand dollars per day of per violation, or by imprisonment ~~in the county jail~~ for not more than one year, or both. If the conviction is for a violation committed after a first conviction of such person under this ~~paragraph subsection,~~ punishment shall be by a fine of not more than ~~fifty~~ twenty thousand dollars per day of per violation, or by imprisonment ~~in the county jail~~ for not more than two years, or by both.
2. Any person who violates this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter, with criminal negligence as defined by section 12.1-02-02, is subject to a fine of not more than ten thousand dollars per day per violation, or by imprisonment for not more than six months, or both.
3. Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter ~~or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter,~~ shall upon conviction, ~~be punished by~~ is subject to a fine of not more than ~~ten~~ five thousand dollars per day per violation or by imprisonment ~~in the county jail~~ for not more than six months, or by both.
3. 4. Any person who violates this chapter, or any permit condition ~~or, rule, order, limitation, or other applicable requirement implementing this chapter, and any person who violates any order issued by the~~ order, limitation, or other applicable requirement implementing the this

Testimony

House Bill 1291

Senate Agriculture Committee

Thursday, March 17, 2005, 10 a.m.

North Dakota Department of Health

Good morning, Chairman Flakoll and members of the Senate Agriculture Committee. My name is David Glatt, and I am section chief of the Environmental Health Section for the North Dakota Department of Health. I am here today to provide testimony in support of House Bill 1291 as amended.

The Department of Health is submitting two housekeeping amendments to engrossed House Bill 1291: (1) the first makes clear that the odor readings will be taken at the increased setback distance created by subsection 7 when that new provision applies; (2) the second adds the word "units" in defining "animal units" that was inadvertently left out when the bill was amended in the House.

House Bill 1291 as amended defines locations for odor readings, setback distances in counties (or townships), notification requirements for noncompliant animal feeding operations and development of timelines for implementing odor management plans. If counties have not regulated the nature, scope and location of feeding operations, the department must require setbacks as determined by the size of the operation and identified in the following table:

Setback Distances for Animal Feeding Operations

Number of Animal Units	Hog Operations	Other Animal Operations
fewer than 300	none	none
300 - 1000	0.50 mi (0.805 km)	0.50 mi (0.805 km)
1001 or more	0.75 mi (1.207 km)	0.50 mi (0.805 km)
2001 or more	1.00 mi (1.609 km)	0.75 mi (1.207 km)
5001 or more	1.50 mi (2.414 km)	1.00 mi (1.609 km)

The department is aware of the concerns expressed and appreciates the efforts by all parties to find an equitable resolution to the important issue of odors from animal feeding operations.

Background Information

Initially, House Bill 1291 directed that air quality impacts associated with open-air feedlots be limited to the monitoring of hydrogen sulfide. However, states using a hydrogen sulfide standard report that they have not seen any correlation between odors and the hydrogen sulfide concentration at open-air lot feedlots. In other words, significant odors can be present without the presence of hydrogen sulfide.

Scientists have tried to identify "indicator gases" for livestock operations which, in theory, would occur in higher concentrations in strong-odor conditions and lower concentrations in low-odor conditions. However, these attempts have been unsuccessful.

In addition, the fact that some odors may be produced by a combination of several hundred compounds has complicated the development of an electronic instrument to accurately measure odors.

Although there is not a nationwide, consistent approach for states to follow in dealing with nuisance odors generated from animal feeding operations, states have been actively addressing the odor issue. State approaches have included the use of scentometers, increased permit restrictions, setbacks, continuous monitoring and odor management plans. In some cases, state have deferred to the local jurisdictions to implement odor regulations.

Over the years, North Dakota's existing odor law has proven effective for a vast majority of the ag-related operations in the state. It is the department's belief that the odor law as amended by House Bill 1291 will continue to protect the interests of both the livestock producer and rural landowner.

This concludes my testimony. I am happy to answer any questions you may have.



North Dakota Farm Bureau

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North Dakota Farm Bureau Testimony
on
House Bill 1291
presented by
Brian Kramer
January 27, 2005

Good morning Chairman Flakoll and members of the Senate Agriculture Committee. I am Brian Kramer and I am representing North Dakota Farm Bureau in support of House Bill 1291.

The delegates to the most recent North Dakota Farm Bureau convention passed policy that states, "We support the elimination of ambient air odor standards as a regulation on open-air feedlots." The main reason for this policy is the issue of the scentometer. This device is used to measure odor strength.

The problem is that the scentometer is a subjective test. A person sniffs through an air chamber at various dilution settings to determine the odor reading. Two people sniffing the exact same sample could come to very different conclusions. Engrossed HB1291 takes steps in the right direction by requiring that two people take separate samples and they must come to the same conclusion before an enforcement action can take place.

The Department of Health added language regarding an odor management plan. This idea also has merit. But it would seem that if a feeding operation is abiding by the odor management plan, there should be some exemptions from enforcement actions. Further remedial steps may be necessary, but fines or other penalties do nothing to correct the situation.

We are encouraged by the positive steps taken, but would encourage the committee to consider amending the bill to provide that if the odor management plan is being followed, no penalties will be applied.

We are somewhat concerned with the language giving the Health Department zoning authority through establishment of setbacks where none have been established by the local political subdivision. We feel the local entities should be encouraged to adopt zoning following the guidelines that have been developed by the state. We feel the local political subdivisions are taking steps to establish zoning and they are the correct entities to do so.

I thank you for the opportunity to speak and I would try to answer any questions.

3-17-05 Senate Agricultural Committee Hearing Testimony

Chairman Flakoll, and members of the senate Ag committee. My Name is Dale Effertz and I am a partner in Square Butte Ranch. This bill is very important to us as our feedlot is being regulated like no other feedlot in the nation. This has become one of those situations that you read about in the newspaper that happens in San Francisco, the Netherlands or maybe France.

It is our opinion that NDCC chapter 23-25-11, the regulation of odors, should be repealed.

Prior to 1999 the scentometer rule, the regulation of odors, was applied by the Health Department as a rule in North Dakota Administrative Code chapter 33-15-16. However, NDCC 23-01-04 expressly prohibits the Health Department from adopting a rule that is more stringent than the corresponding federal regulation addressing the same circumstance, unless the department makes a written finding that the corresponding federal regulation is not adequate to protect public health and the environment of the state. **There are no corresponding federal regulations regarding nuisance odors.** Therefore the scentometer rule should be repealed instead of made law. It would seem virtually impossible for the North Dakota Department of Health to demonstrate a public health concern regarding odors from open-air feedlots, when other states have feedlots of 50,000 to 100,000 head and do not regulate odors.

Open-air feedlots have even been exempted from the current EPA study that has been proposed to study odor. We have talked to representatives from nearly every mid-western state and they **do not** issue seasonal permits for open-air feedlots. Texas, as an example requires that feedlots in existence before 1998, that continue to operate or expand their operations may have a ¼ mile buffer or **(I repeat or)** an odor control plan, one or the other.

Feedlots are not asking to be exempt from all regulation, on the contrary if you read through the new Health Department rules you will see that the Health Department has numerous pages of new regulations to implement. Our feedlot currently has an odor control plan and a nutrient management plan. Even without the scentometer these plans and the other regulations proposed by the department exceed what most other states require of feedlots.

At the March feeder council meeting two weeks ago the feedlots expressed strong support for changing the current law. There was strong concern that developers and investors that move to ½ mile from feedlots can shut them down under existing law. Niles Hushka can do that very thing to our feedlot and has development plans already drawn up.

The Health Department will still have the power to control odors just like every other state. All permitted Sale Barns, Feedlots, and Processors are required to have an Odor Control plan. Odor Control Plans address odors. The scentometer doesn't control odor but addresses penalties and unfairly targets feedlots because individually we do not employ as many people as ag processors, coal mines, or sale barns.

Counties have the authority to zone. County commissioners can adopt the model zoning ordinance that provides setbacks or they can regulate feedlots with their own zoning requirements. However, NDCC chapter 11-33-02 provides specific rights to farming and ranching, which expressly includes concentrated animal feeding operations.

Do we really want a feeding industry in this state or do we want to continue to ship our calves, our corn, and soon our ethanol feed by-products out of state. Our feedlot is in agricultural zoned land. We are 15 miles from the nearest town. To borrow a quote from one of Niles Hushka's letters to the Health Department, our feedlot is not creating any impacts above those normally expected in a rural and agriculturally zoned area.

That's right agriculturally zoned area. All of the land surrounding our feedlot is zoned agriculture. The houses that are located north of our land all got special variances for a conditional use permit to build a house on ag land. Oliver counties agricultural district regulations expressly limit uses of agricultural land to agriculture and those compatible with agriculture.

Residents that move into the country should know four things:

1. They have the right to purchase agricultural zoned property and to apply for a variance for a conditional use permit to build a house.
2. They also have the right to purchase as much property as they want or need so they are comfortable in their surroundings.
3. They can request a zoning change on the surrounding property to limit the use of the surrounding land to practices that they are more comfortable with.
4. If they are uncomfortable with the agricultural surroundings in agricultural zoned land they can always move to where they are more comfortable.

In this state people live with grain terminals, sugar beet plants, canola plants, oil wells, coal mines, gravel pits, cattle, ethanol plants, dust, chemicals, and more. People in cities live with traffic noise, railroad noise, bars, gas stations, city lagoons, power lines, oil refineries, industry and more. In this country if you want exclusive privacy you buy it or you zone it.

One of the points that the attorney for the Health Department makes is the first in time first in right. **What constitutes first in time?** Is it a place, or a business, or an individual, or is it zoning. My contention is that zoning is a least one criterion for determining first in time. Especially agriculturally zoned land. We are an agricultural state and zoning chapter 11-33 makes this very apparent. We need to protect our agriculture.

Current HouseBill 1291 is at least four pages long and growing, yet it still does not protect our industry in this state. This law will have to grow to 10 pages and more and will be loaded with contradictions. The current bill gives zoning power to the Health Department. They shouldn't have that power. They don't need that power. The current bill try's to establish who was there first and where to take odor readings. But what if a sale barn expands, who then, was there first. What is expansion at a sale barn, is it expansion when they add another daily sale or add another purebred bull sale, or add another pen. Who is going to right those rules? How about the canola plant near Velva that started out as a sunflower plant was sold and turned into a canola crushing plant. What about the rancher who buys ten more cows and crosses one of those thresholds and is now zoned out of compliance by the Health Department even though his county doesn't agree. Maybe they don't need to worry because nobody will complain, but what if one of these fine attorneys in this room is hired and forces the Health Department to enforce the law.

It is time for the legislature to take control back from the Health Department, back from the attorneys and restore local jurisdiction to a nuisance concern that is not a public health concern.

We can be forced to clean keep our facility clean and to implement best management practices to minimize the impact that our feedlot has on our neighbors, but we cannot be forced out of business without compensation.

HouseBill 1291 and NDCC 23-25-11 should be repealed or redone.

Thank you,

Dale Effertz
Square Butte Ranch

We need to get on par and compete for our own calves with other feeding states. The surrounding states have nearly 50 % of their agricultural receipts that come from livestock as compared to only 20 % in North Dakota. The new ethanol plants being built in North Dakota will produce enough product for 450,000 feeder cattle. With a direct economic impact of at least \$150 per calf those 450,000 head would equal \$67 million dollars in direct economic impact.

3. An eligible applicant may receive a program grant not exceeding five thousand five hundred dollars in the first year of the biennium. Any funds appropriated by the legislative assembly for the grant program which are remaining after the first year of the biennium may be distributed to eligible applicants in the second year of the biennium in any amount determined by the state health council.

23-01-04. Effect of rules and regulations. All rules and regulations promulgated by the health council under the powers granted by any provisions of this title are binding upon all county and municipal health officers, and upon all county, municipal, and private medical hospitals and upon related institutions, and have the force and effect of law.

23-01-04.1. Rulemaking authority and procedure.

1. Except as provided in subsection 2, no rule which the state department of health, hereinafter the department, adopts for the purpose of the state administering a program under the federal Clean Air Act, federal Clean Water Act, federal Safe Drinking Water Act, federal Resource Conservation and Recovery Act, federal Comprehensive Environmental Response, Compensation and Liability Act, federal Emergency Planning and Community Right to Know Act of 1986, federal Toxic Substances Control Act, or federal Atomic Energy Act of 1954, may be more stringent than corresponding federal regulations which address the same circumstances. In adopting such rules, the department may incorporate by reference corresponding federal regulations.
2. The department may adopt rules more stringent than corresponding federal regulations or adopt rules where there are no corresponding federal regulations, for the purposes described in subsection 1, only if it makes a written finding after public comment and hearing and based upon evidence in the record, that corresponding federal regulations are not adequate to protect public health and the environment of the state. Those findings must be supported by an opinion of the department referring to and evaluating the public health and environmental information and studies contained in the record which form the basis for the department's conclusions.
3. If the department, upon petition by any person affected by a rule of the department, identifies rules more stringent than federal regulations or rules where there are no corresponding federal regulations, the department shall review and revise those rules to comply with this section within nine months of the filing of the petition.
4. All existing rules of the department remain in full force and effect after July 10, 1989, pending department review and revision under subsection 3.
5. Any person who is issued a notice of violation, or a denial of a permit or other approval, based upon a rule of the department which is more stringent than a corresponding federal regulation or where there is no corresponding federal regulation, may assert a partial defense to that notice, or a partial challenge to that denial, on the basis and to the extent that the department's rule violates this section by imposing requirements more stringent than corresponding federal regulations, unless the more stringent rule of the department has been adopted in compliance with this section.
6. The provisions of this section may not be construed so as to require the department to review and propose revisions to any existing rule regarding the collection of fees by the department in connection with the administration of any program identified in subsection 1.

23-01-04.2. Legislative intent - Health vaccination charges. It is the intent of the legislative assembly that the state department of health adopt rules defining appropriate

The addition of the underlined sentence below to the paragraph 4 of original century code protects open air feedlots and sale barns from the subjective use of the scentometer, while relying on already required odor control plans to regulate and solve agricultural odor issues.

If, it is still felt that additional language is desired to address odor issues that may arise from large, confinement hog operations, current law is still there to address those concerns.

An amendment to House Bill 1291.

North Dakota Century Code 23-25-11

Subsection 4 of section 23-25-11 of the North Dakota Century Code is as follows:

4. A person is exempt from this section while spreading or applying animal manure or other recycled agricultural material to land in accordance with a nutrient management plan approved by the state department of health. A person is exempt from this section while spreading or applying animal manure or other recycled agricultural material to land owned or leased by that person in accordance with the rules adopted by the department. An owner or operator of a lagoon or waste storage pond permitted by the department is exempt from this section in the spring from the time when the cover of the permitted lagoon or pond begins to melt until fourteen days after all the ice cover on the lagoon or pond has completely melted. ***An owner operator is exempt of this section when operating an open air feedlot or livestock sale facility (salebarn) in accordance with a nutrient management and odor control plan approved by the Department of Health.*** Notwithstanding these exemptions, all persons shall manage their property and systems to minimize the impact of odors on their neighbors.



ODOR CONTROL PLAN

Place a check (✓) in the appropriate box:

- ☐ An odor control plan is NOT required for this feedyard.
- ☐ An odor control plan is required for this feedyard

If a feedyard does not meet the buffer requirements listed in the figure below, an odor control plan must be developed. The odor control plan, if required by this paragraph, shall be developed and implemented to control and reduce odors, dust, and other air contaminants. The plan shall identify all structural and management practices that the operator will employ to minimize odor and control air contaminants at the feedyard. At a minimum, the plan shall include, where applicable, procedures for manure/litter collection, manure, litter, and wastewater storage and treatment, land application, dead animal handling, and dust control.

The buffer distance shall be measured from the nearest edge of the permanent odor sources to the nearest edge of any occupied residence or business structure, school (including associated recreational areas), permanent structure containing a place of worship, or public park.

First year of feedyard operations at this location:

Figure: 30 TAC §321.43(j)(2)

AFO Status and Proposed Action	Buffer Option 1	Buffer Option 2
Construction of an AFO that started or plans to start operations after August 19, 1998.	1/2 mile buffer	1/4 mile buffer and an odor control plan in accordance with subparagraph (F) of this paragraph
Expansion of an AFO that started operations after August 19, 1998.	1/2 mile buffer	1/4 mile buffer and an odor control plan in accordance with subparagraph (F) of this paragraph
X Continued operation of an AFO that was in operation on or before August 19, 1998.	1/4 mile buffer	odor control plan in accordance with subparagraph (F) of this paragraph.
X Expansion or modification of an AFO that was in operation on or before August 19, 1998.	1/4 mile buffer	odor control plan in accordance with subparagraph (F) of this paragraph

IF REQUIRED,
INSERT ODOR CONTROL PLAN FOLLOWING THIS PAGE

HB1291
Testimony in Support
Keith Johnson, for the ND Public Health & Env. Health Assns.
March 17, 2005
#380

I stood in opposition to this bill on the House side. At that time, it was a very different bill. I commend the subcommittee for the work they have put into it. As it stands now, this bill will benefit both the livestock industry and their neighbors.

The odor monitoring procedures are reasonable and fair. The scentometer is still the best all around device available for quantifying odor. Since odor is caused by many, many compounds, a meter that measures each and every compound is just not feasible. The requirement of two people doing any monitoring for enforcement is a good protection for livestock facilities.

The real improvement in this bill is in the setback requirements for facilities locating in areas that have not exercised their local responsibility to implement land use policies. To date, we have never had a verified nuisance odor where the proper setbacks were in place. All enforceable odor actions have resulted from a combination of manure management that resulted in odors and an inadequate separation from surrounding landowners. An adequate separation not only makes a livestock operation a better neighbor, it makes the operator's job of management easier. This, in turn, will be an encouragement to the industry for further development.

We encourage passage of this bill in its present form. We would ask you to resist any requests for exemptions that would weaken the bill's positive effect on agriculture and fair enforcement.

My name is Mark Quanbeck , I am a partner in Square Butte Ranch Feedlot. I am here to say I enjoy feeding cattle and am proud of our facility although the engineer that built and designed it deserves much of the credit. My family has made it a viable business with the investment of much sweat and capital equity and plan on continued improvements to lessen the impact on the community even more.

The cost of the current odor regulation to our corn producers, vet suppliers, us as owners, and the state health department or essentially state taxpayers has been abhorrent. I would estimate this cost vastly exceeds the value of our facility, with virtually not benefit to the community. The reason for this is the reactionary nature of this law, continuous monitoring of a site gives the false illusion, to opponents of your business, that a gotcha measurement will result in heavy fines, opportunities for lawsuits, and the eventual closure of the business. As the cost of having teams of engineers measure the odor of cattle and already known quantity mount, any benefits of having a more shared destiny approach or good neighbor policy will be ignored and not realized, the real benefactors will be the attorney's and activists. It is to augmentative and will eventually result in litigation of some form and is not a tool for improvement.

The Science of odor requires more study than just a snapshot measurement. Open air feedlot odor sources change continuously and cannot be monitored with any reliability. Operating on a complaint basis encourages activists to continually complain, knowing the producers reputation and will could be damaged with ever increasing activism. As I've said before if the state does regulate this way in the future it should buy the facility, level it and put it up for sale. It will save the state, community, and the producer a lot of money and anguish. This law gives one or two individuals in the state health department broad authority and I believe the responsibility to shut down businesses in the state during times of greater odor emissions. This is power other states do not give HD bureaucrats, they allow local elected officials to determine Land use. The HD is going to state however that other states have odors laws similar to ND, this is not true, the handful of states that do address odor have not gone after cattle feedlots they essentially focus on hog producers. The only other state that has a law this restrictive is Wyoming and I encourage you to go on the Outdoor council's website, extremist environmental group, see what they are doing to one of their hog producers. Again even the outdoor council has not set its sites on cattle feeding, and certainly not a small feedlot such as ours.

There is a more engineered response to odor concerns and that would be make use of an existing HD regulation that all permitted feedlots in ND already are required to have, an odor control plan. This is an extensive site specific document that encourages best management practices be used, such as pen scraping, timely manure hauling, covering feed, and management of any stagnant water. This is more of a good neighbor policy, which will result in workable solutions for the feedlot or salebarn and the community. The activists would still have a powerful voice in how the feedlot or salebarn is managed but unfortunately the attorneys will be forced drum up business elsewhere.

Since we have owned our feedlot we have been held at 1250 AMU in the winter season only. We applied for a 1500 AMU permit year round, when neither Morton or Oliver

counties had any zoning in 2000 and had multiple public meetings. This would not have required one change to our existing facility and satisfied recommended space requirements for AMU's. Again not one new post would have been driven in the ground, the county approved our application and the HD proceeded to shrink out winter feeding season 60 days and gave us no relief on the AMU numbers. We have done great improvements to this yard in the time we've owned it but have gotten nothing from the HD but increasing regulation and pressure close our operation. This is a legitimate business in a area that has historically been used to for cattle and agriculture and should not be treated this way.

The future of the livestock industry is being determined right now, do you want to continue to impose a self inflicted roadblock and allow other states and nations to assume ND's role in it. If this law exists as it is today, it is only a matter of time before more feedlots and Sale barns will have to start paying attorneys to defend what I believe is a legitimate business, livestock feeding.

Flakoll, Tim

From: Thomas, L. Anita
Sent: Wednesday, March 16, 2005 5:10 PM
To: Flakoll, Tim
Subject: E-mail regarding 23-01-04.1

Tim - I looked at 23-01-04.1.

23-01-04.1(1) provides that the state dept. of health may not adopt rules that are more stringent than federal rules in administering a program under a variety of listed Acts. .

That subsection is not applicable to HB 1291 (ag odors). As far as I know, none of the listed Acts address ag odors. In fact, I am told, the feds do not regulate ag odors.

23-01-04.1(2) provides that the state dept. of health may adopt rules that are more stringent than federal rules or adopt rules where there are no corresponding federal rules, for the purposes described in subsection 1 , only if it makes a finding that the corresponding federal rules are not adequate Again, this references the variety of acts listed in subsection 1 -- and those acts don't address ag odors.

Unless I am missing something, it seems that the email you received is addressing a moot point.



3/17/2005

Facility Name	Department Contact	Inspection Date
EnviroPork of North Dakota	Gary Haberstroh	4/15/2001
THORSGARD SUNRISE ACRES	Gary Haberstroh/Brady Espe	4/26/2001
EnviroPork of North Dakota	Gary Kline	5/14/2001
EnviroPork of North Dakota	Gary Kline	7/24/2001
EnviroPork of North Dakota	Gary Haberstroh	11/29/2001
Dean Karsky Dairy	Brady Espe	6/25/2002
EnviroPork of North Dakota	Gary Kline	8/12/2002
Dean Karsky Dairy	Rex Herring - SW District Health Unit	8/20/2002
Dean Karsky Dairy	Brady Espe	8/22/2002
Dean Karsky Dairy	Brady Espe	8/22/2002
Q&E Cattle Ranch	Gary Haberstroh	9/18/2002
Q&E Cattle Ranch	Brady Espe	1/8/2003
Q&E Cattle Ranch	Gary Bracht	3/20/2003
Q&E Cattle Ranch	Brady Espe	3/20/2003
Q&E Cattle Ranch	Gaylan Staael	3/21/2003
Q&E Cattle Ranch	Gary Haberstroh	4/11/2003
Q&E Cattle Ranch	Gaylan Staael	4/11/2003
Q&E Cattle Ranch	Brady Espe	5/15/2003
Q&E Cattle Ranch	Gary Haberstroh	6/2/2003
Q&E Cattle Ranch	Brady Espe	6/4/2003
Q&E Cattle Ranch	Brady Espe / Mike Berg	6/9/2003
Q&E Cattle Ranch	Mike Berg	6/19/2003
Q&E Cattle Ranch	Gary Haberstroh	6/19/2003
Q&E Cattle Ranch	Gary Haberstroh	6/20/2003
Q&E Cattle Ranch	Gary Haberstroh	6/30/2003
Q&E Cattle Ranch	Gary Haberstroh	7/1/2003
Q&E Cattle Ranch	Gary Haberstroh	7/2/2003
Q&E Cattle Ranch	Gary Haberstroh	7/18/2003
Wishek Livestock Market Inc.	Mike Berg	7/24/2003
Dean Karsky Dairy	Brady Espe	9/8/2003
EnviroPork of North Dakota		10/20/2003
EnviroPork of North Dakota	Brady Espe	11/5/2003
Q&E Cattle Ranch	Brady Espe	11/9/2003
Q&E Cattle Ranch	Mike Berg	11/28/2003
Q&E Cattle Ranch	Gary Haberstroh	2/26/2004
Forest River Colony	Karl Rockeman	8/17/2004
Dean Karsky Dairy	Rex Herring SWDHU	9/25/2004
Dean Karsky Dairy	Karl Rockeman	9/29/2004
EnviroPork of North Dakota	Brady Espe	10/7/2004
Dean Karsky Dairy	Rex Herring SWDHU	11/3/2004
Dean Karsky Dairy	Karl Rockeman	11/15/2004



One-quarter mile (red) and one-half mile (blue) setbacks from the Kist Livestock operation in Mandan, North Dakota

North Dakota Department of Health - Division of Water Quality March 2005 wtg