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for the variation observed.

The source of nutrient inputs to livestock operations is illustrated in Figure 4. Purchased animal feeds were a significant source of the N and P inputs. Nitrogen inputs as feed varied from 33 to 77 percent of total N inputs for farms with less than 250 animal units and more than 2,500 animal units, respectively. Phosphorus inputs as feed showed less variation, ranging from 62 to 71 percent of total inputs for the same livestock groupings. Livestock units < 250 animal units were predominantly swine operations. The addition of inorganic P to swine diets contributed to purchased animal feed being a primary source of P inputs.

Commercial fertilizer was the most significant N input for livestock operations with < 2,500 animal units. Fertilizer was also an important source of P input for these same farms. Commercial fertilizer was an insignificant nutrient input for the livestock operations with > 2,500 animal units (2 percent of nitrogen inputs and 1 percent of phosphorus inputs).

Industry Implications

This study highlights several critical implications relative to managing livestock operations in harmony with the environment.

1. Evaluating livestock systems nutrient balance from a whole-farm perspective provides a more complete picture of the driving forces behind nutrient-related environmental challenges. Accumulation of nutrients resulting from an imbalance of nutrient inputs and outputs is a problem for many, but not all, Nebraska livestock operations.

2. An assessment of environmental risk based strictly on factors such as livestock herd size or livestock to crop land density oversimplifies a complex issue. Both factors provided a very limited explanation of the variation in observed nutrient balance. Neither smaller-sized livestock operations or operations better integrated with crop production insured a “sustainable” nutrient balance resulted.

3. New strategies are needed for addressing the risk associated with nutrient accumulations on livestock operations. Management practices which stop nutrient leaks (i.e., feedlot runoff control) will not resolve nutrient related problems associated with livestock production. Nutrient management planning that focuses on improved utilization of manure nutrients to replace commercial fertilizers address only part of the nutrient inputs to most livestock operation. Future nutrient planning efforts should focus on improving whole-farm nutrient balances by:

- Reducing purchased feed nutrient inputs,
- Expanding managed outputs of nutrients by marketing manure nutrients to off-farm customers.

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The *Pig Pro* Decision, Networking, and Environmental Protection: The Public Policy Challenge*

J. David Aiken¹

On August 29, 1997, the Nebraska Supreme Court issued its first decision interpreting the provisions of Initiative 300 (I300), Nebraska’s family farm constitutional amendment. In its *Pig Pro* decision, a unanimous court ruled five Dawson county farmers who sought to form a non-profit cooperative corporation would violate article XII §12 of the Nebraska Constitution (I300). The decision means Nebraska farmers cannot network their operations and receive limited liability protection under I300.

The *Pig Pro* decision, handed down just when new, large swine facilities were proposed throughout the state, created an uproar. Many observers believe Nebraska swine producers do not produce enough hogs to keep existing Nebraska packing plants busy. These observers fear that if swine production is not increased, packers may leave Nebraska when their facilities need to be replaced. This would hurt the state’s swine industry.

Although increasing swine production would address packer supply concerns, policy makers have at least two options to consider: (1) allow the increased swine production to come

primarily from new swine facilities, some very large and developed by out-of-state interests or (2) encourage increased production from current Nebraska hog producers, including networking.

One way to allow Nebraska producers to compete with larger operations is for existing producers to network their operations along the line of the *Pig Pro* pig cooperative. Before I300 was adopted in 1982, “pig cops” were a common feature of the Nebraska swine industry. Neighbors would form a separate corporation for a farrowing operation. A manager would

(Continued on next page)



be hired to run the farrowing operation, and the pig co-op shareholders would receive pigs to feed to market weight on a rotating basis. This approach allowed pig co-op shareholders to concentrate on their grain production and feeding operations.

This practice was outlawed by I300 in 1982, although existing pig co-ops were “grandfathered.” The Nebraska Supreme Court ruled in *Pig Pro* that new pig co-ops violate I300. Nonetheless, networking could help Nebraska swine producers supply the additional hogs needed to keep Nebraska packers fully supplied.

Interestingly, limited liability company (LLC) statutes may provide a way to legally authorize networking without amending I300. LLCs combine elements of corporations and partnerships into a new and distinct legal form of business organization. When I300 was adopted in 1982, LLCs were not well-known in Nebraska, and were legal only in Florida and Wyoming. LLCs were not authorized in Nebraska until 1993, with family farm LLCs first authorized the following year.

I300’s corporate farming restrictions apply to (1) non-family farm or ranch corporations and (2) non-family farm or ranch limited partnerships. But I300 does not address LLCs, which in 1982 had not yet appeared on Nebraska’s legal landscape. Only the Nebraska Supreme Court can officially determine whether LLCs are subject to I300 or not. But if LLCs are, in fact, not regulated by I300, the Unicameral could legally authorize LLCs to engage in agriculture on terms different from I300. Under this approach, the Unicameral could, for example, authorize neighbors to network livestock operations under a “small farm LLC”, with LLC limited liability protection.

For example, small farm LLCs could be legislatively defined to require all LLC members to be current operating farmers. Similarly, the number of small farm LLC members could be limited to, for example, six. These types of limitations could prevent the small farm LLC from becoming a vehicle for investor involvement, the basic

aim of I300, but still allow limited neighbor networking.

Small farm LLCs could lead to increased swine production in Nebraska to meet packer supply needs. But even without small farm LLCs, Nebraska swine production is still likely to increase if the proposed swine facilities around the state are developed. Some of the proposed facilities are large, prompting neighbor concerns about possible environmental effects. Several Nebraska counties are considering developing feedlot zoning regulations to control feedlot development.

Current Nebraska feedlot regulation policy is feedlot friendly. Because Nebraska is only beginning to see the rapid development of large swine facilities that has occurred in other states, our feedlot regulations have not been updated to deal with the special challenges posed by larger livestock facilities. That updating is likely to occur in 1998, and could consider both odor impacts and water quality protection (the current program focus).

Most (including most livestock producers) would agree livestock operations should be conducted in a way that respects neighbor’s rights. The following changes could help accomplish that:

- large operations could be required to submit livestock waste management plans designed to minimize odors and water contamination
- large operations could be required to post cleanup bonds
- livestock operations would be required to follow best management practices (BMPs) in order to receive nuisance lawsuit protection under the Right to Farm law
- counties could be given the option to establish interim zoning regulations in order to develop a comprehensive plan and permanent county zoning regulation.

Let’s look at these proposals in more detail.

Livestock waste management plans

Currently, the Nebraska Department of Environmental Quality (DEQ) requires livestock waste management plans for livestock operations requiring a DEQ water quality permit. However DEQ does not have staffing to monitor waste management plan compliance.

Changes to the current program could include (1) having sufficient acres for livestock waste disposal taking both nitrogen and phosphate loading rates into account, (2) requiring the larger facultative lagoons instead of smaller manure pits with 180 days storage in situations where odors are a concern and (3) requiring more stringent requirements to reduce nutrient leaching into groundwater. Natural Resource Districts, some of which already regulate manure application, could work with feedlot operators to help them meet manure application requirements.

Cleanup bonds

DEQ is authorized to require an environmental restoration (i.e. cleanup) bond as a condition for any permit DEQ issues. DEQ has not yet imposed cleanup bonds for feedlots. However, the special environmental impacts of large livestock operations may justify the imposition of a cleanup bonds as a feedlot permit condition.

Feedlot BMPs

Nebraska’s first feedlot nuisance statute required livestock operators to use BMPs to qualify for nuisance lawsuit protection. This BMP requirement was not included in the subsequent Nebraska Right-to-Farm Act. However, most livestock operators would probably agree they should be subject to reasonable BMP requirements to show their willingness to be good neighbors.

In Ontario, where this approach is used, nuisance complaints are taken to an agricultural board instead of to court.



The board determines whether the appropriate BMPs are being used. If not, the board works with the producer to implement approved BMPs. This approach would focus the effort on implementing livestock BMPs instead of filing lawsuits to deal with livestock nuisance situations.

Interim county zoning regulations

Thirty-two Nebraska counties have adopted zoning regulations, authorizing them to regulate feedlot design, location and management. Other counties facing the development of new, large swine facilities are considering similar county zoning laws. However,

zoning takes two years or more to implement, from development of a county comprehensive plan to the county board's adoption of the zoning regulation. The authority to establish temporary zoning regulations could allow needed time for counties to develop a permanent zoning regulation. Making interim county zoning authority optional would give each county the choice of whether or not to regulate feedlots under a temporary zoning regulation.

Large operations

What constitutes a "large operation" would be subject to considerable political debate, as would networking

through new small farm LLCs. However, the failure (1) to enact adequate environmental safeguards for livestock production and (2) to encourage increased swine production through networking could hurt Nebraska's swine industry in the future. Hopefully these proposals will spark a healthy discussion which could have major implications for the future health of Nebraska's swine (and livestock) industry.

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