

# FLAG



FARMERS' LEGAL  
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March 2, 2005

Secretary of Agriculture Mike Johanns  
U.S. Department of Agriculture  
1400 Independence Avenue S.W.  
Washington, DC 20250

Dear Secretary Johanns:

Re: Pursuant to the Pork Act, Petition Requesting Halt to Expenditure  
of \$6 Million in Pork Checkoff Funds for an Environmental  
Protection Agency "Research Study"

Pursuant to 7 U.S.C. § 4814(a)(1)(A) and (B), Petitioners request that you halt the expenditure of \$6 million in pork checkoff funds for a "research study" of air emissions from concentrated hog feed operations to be conducted pursuant to a "Consent Agreement" between the Environmental Protection Agency (EPA) and pork industry interests. *See* 70 Fed. Reg. 4958 (January 31, 2005) ("Consent Agreement"). **Petitioners request expedited consideration of this Petition, and waive their right to a hearing.**

Petitioners are: Iowa hog farmer Mark McDowell, Minnesota hog farmers Jim Joens and Richard Smith, and the Campaign for Family Farms, including Iowa Citizens for Community Improvement, Land Stewardship Project, Missouri Rural Crisis Center, Illinois Stewardship Alliance, and Citizens Action Coalition of Indiana on behalf of their pork checkoff-paying hog farmer members.

The Consent Agreement allows individual producers to enter into agreements with EPA that give them immunity from civil liability under the Clean Air Act, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), and the Emergency Planning and Community Right-To-Know Act (EPCRA) in exchange for payment of a civil penalty. 70 Fed. Reg. 4959 (January 31, 2005). In addition, all participating operations must make their operations available for monitoring and pay a fee of approximately \$2,500 per farm to pay for a two-year study of data collected from selected farms. *Id.* Only five pork operations will be selected

for monitoring. *See* National Air Emissions Research Study Questions and Answers, <http://www.porkboard.org/environment/Information/National%20Air%20Emissions%20Study%20QA.rtf>. The pork checkoff has committed \$6 million for the “study,” which will cover pork producers’ \$2,500 fee to cover the pork portion of the EPA study. *See* Air Emissions Agreement, <http://www.porkboard.org/environment/Information/LeadStory.asp>; *see also* Alan Guebert, *Sweet Deal for Large Farms Likely Will Raise a Big Stink*, Farm and Food File (Feb. 10, 2005) (copy attached).

As set forth in the attached mailing to checkoff-paying hog farmers, the National Pork Board (NPB) “has committed a total of \$6 million for the nationally coordinated study from the 2004 and 2005 budgets.” Declaration of Mark McDowell, Ex. 1, p. 2. This commitment and expenditure of funds is improper under the Pork Promotion, Research, and Consumer Information Act (“Pork Act”), 7 U.S.C. § 4801 *et seq.*, because it is beyond the scope of the Pork Act, as it not designed to “strengthen the position of the pork industry in the marketplace” or “maintain, develop, and expand markets for pork and pork products.” 7 U.S.C. § 4801(b)(1) and does not fall within the definition of “research” under 7 U.S.C. § 4802(13)(a). Moreover, given the imminent decision from the United States Supreme Court that may well likely result in the termination of the entire pork checkoff program (see below), it is wholly irresponsible of USDA to approve the expenditure of such significant funds for two years; such commitment of funds is an intentional and disgraceful waste of hog farmers’ hard-earned money.

**The Use of Checkoff Funds for the EPA Study Violates the Pork Act.**

Even if the Pork Act is not declared unconstitutional by the Supreme Court, the use of pork checkoff funds for the EPA study is not in accordance with the Pork Act and is in excess of the statutory jurisdiction granted to NPB and USDA under the Pork Act.

**1 The Use of Checkoff Funds for the EPA Consent Decree Study is Beyond the Scope of the Pork Act and Thus is Impermissible**

The purpose of the Pork Act is to:

- (A) strengthen the position of the pork industry in the marketplace;  
and
- (B) maintain, develop, and expand markets for pork and pork products.

7 U.S.C. § 4801(b)(1). This purpose is to be fulfilled through a coordinated program of promotion, research, and consumer information....” *Id.* “Research,” under the Pork Act, is limited to: “research designed to advance, expand, or improve the image, desirability, nutritional value, usage, marketability, production, or quality of porcine animals, pork, or pork products.” 7 U.S.C. § 4802(13)(a); 7 C.F.R. § 1230.23.

The National Pork Board has agreed to spend \$6 million of checkoff funds from its 2004 and 2005 budgets to fund a “study” of air emissions from a “sampling” of concentrated hog feeding operations. McDowell Declaration, Ex. 1, pp. 2, 1. The National Pork Board has represented that: “The Pork Checkoff is involved in selecting the researchers, designing the research protocols, selecting monitoring sites and assisting in project verification.”

This “study” has nothing to do with the promotion of pork or finding markets for pork or pork products. It therefore does not fulfill the purpose of the Pork Act pursuant to 7 U.S.C. § 4801(b)(1).

It also is not “designed to advance, expand, or improve the image, desirability, nutritional value, usage, marketability, production, or quality of porcine animals, pork, or pork products,” as the term “research” is defined in the Pork Act. 7 U.S.C. § 4802(13)(a). The study clearly has nothing to do with the nutritional value of pork. It will not improve the usage or quality of pork. It does nothing to improve the production of pork. By the National Pork Board’s own admission, this is an “environmental” study, not a study having anything to do with the marketing or promotion of pork. McDowell Declaration, Ex. 1, p. 3.

And it will not improve the image or desirability of pork. If anything, it will *harm* the image of pork, drawing attention to pork producers who are signing up for immunity from any liability for violating our nation’s federal pollution laws. Any reasonable person would read this Consent Agreement as only benefiting large, concentrated animal feeding operations (CAFOs), since only large operations emit sufficient quantities of covered substances to have to worry about application of the Clean Air Act in the first instance. The Consent Agreement also raises more questions than it answers: if hog operations are safe—as NPB would like consumers to believe—why would operators need immunity? Why wouldn’t they consent to monitoring without first demanding immunity if they have nothing to hide? Already the agreement has been criticized in the public media. *See* attached.

Because the “study” does not fall within any of the purposes of the Pork Act and is well beyond what is permissible checkoff-funded “research,” the study therefore is an unauthorized expenditure of checkoff funds. The commitment and expenditure of these checkoff funds for this purpose is not in accordance with the Pork Act and is in excess of its statutory jurisdiction set forth in the Pork Act. We request that you halt it immediately.

Even if the EPA “study” were considered “research” under the Pork Act, the mechanism chosen for funding it is impermissible. Rather than directly funding the “research,” the pork checkoff is paying the \$2,500 “fee” on behalf of pork producers who sign up. *See* Air Emissions Agreement, <http://www.porkboard.org/environment/Information/LeadStory.asp>; *see also* Alan Guebert, *Sweet Deal for Large Farms Likely Will Raise a Big Stink*, Farm and Food File (Feb. 10, 2005). The immunity producers receive under the Consent Agreement is contingent upon receipt of that “fee.” 70 Fed. Reg. 4967 (January 31, 2005). The pork checkoff thus is funding a fee that buys individual pork producers’ immunity from environmental laws. That the fee thereafter goes into a pot of money that pays for the “study” does not save this program. It’s merely a thin veil of cover for what the \$6 million is really doing: it’s buying legal immunity for large CAFOs that bully their way into local communities, pollute the air and water of those communities, and reduce the quality of life of those people who live nearby. That the pork checkoff is paying \$6 million for this immunity is an outrage. It is also outside the statutory authority of the Pork Act under 7 U.S.C. §§ 4801(b)(1) and 4802(13)(A).

**Entering Into Two-Year Obligations of Pork Checkoff Funds, Given the Possible Imminent Termination of the Pork Checkoff is Irresponsible and an Abuse of Discretion.**

On October 25, 2002, United States District Court Judge Richard Enslen declared the entire pork checkoff “unconstitutional and rotten.” 229 F. Supp. 2d 779, 791 (D. Mich. 2002). Judge Enslen ordered the pork checkoff terminated within 30 days. *Id.* The Sixth Circuit affirmed Judge Enslen’s decision on the merits, *See Michigan Pork Producers Ass’n v. Veneman*, 348 F.3d 157 (6th Cir. 2003), but the termination order has been stayed pending a decision on the government’s petition for certiorari in the case. The certiorari petition is being held pending the outcome of the Supreme Court’s decision in *Livestock Marketing Ass’n v. Veneman*, 335 F. 3d 711 (8th Cir. 2003), *cert. granted*, 124 S. Ct. 2389 (U.S. May 24, 2004). A decision in the *LMA* case is expected any day now, and a decision affirming the lower courts’ opinions would result in the entire pork checkoff being terminated in a

matter of months. The National Pork Board's two-year commitment and the Secretary's approval of \$6 million from 2005 and 2006 budgets—which may not even exist after the Supreme Court rules—is arbitrary, capricious, and an abuse of discretion. It is also an outrage.

**The Pork Checkoff's Commitment Pursuant to the Consent Agreement Appears to Violate the 2001 Settlement Agreement Between USDA and the National Pork Producers Council.**

For many years, the National Pork Producers Council (NPPC) was the general contractor for the pork checkoff. USDA was sternly chastised by the Office of Inspector General for allowing NPB to broadly delegate its duties to NPPC. In 2001, USDA and NPPC entered into a court-approved settlement agreement that allowed the pork checkoff to continue, but separated NPPC from NPB and required that NPB fulfill its statutorily mandated duties to itself administer the pork checkoff program.

Despite the supposed separation, this Consent Agreement involving the commitment of \$6 million of pork checkoff funds was negotiated by NPPC, supposedly on behalf of pork producers. *See EPA Air Emissions Consent Agreement Fact Sheet*, [http://www.nppc.org/hot\\_topics/airemissionsbackgrounder.html](http://www.nppc.org/hot_topics/airemissionsbackgrounder.html) ("NPPC has worked for three years to help negotiate this agreement."); *Questions and Answers*, [http://www.nppc.org/hot\\_topicsQ&A.html](http://www.nppc.org/hot_topicsQ&A.html) ("NPPC helped negotiate the legal protections in the consent agreement"). In none of the materials put out by NPB, NPPC, EPA, or USDA is NPB mentioned as having any involvement in the negotiations. In addition, it is NPPC, not NPB, that conducted information sessions around the country about the Consent Agreement, with the pork checkoff paying—at a minimum—to promote those information sessions. *See McDowell Dec.*, Ex. 1, p. 3. Although it appears that checkoff funds are being used to pay for NPPC's role, apparently NPB has not formalized any contractual relationship with NPPC. *See* attached FOIA Request and AMS Response.

**Conclusion**

Petitioners hereby request that you immediately halt all pork checkoff commitments for any expenses related to the EPA Consent Agreement, and that any monies already expended be returned to the pork checkoff fund.

By copy of this letter to the Office of General Counsel and the Office of the Inspector General, Petitioners hereby request the Office of Inspector General to conduct an investigation into this "under the table" arrangement. The Office of Inspector General should investigate: NPPC's past, current, and

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future role in the Consent Agreement; NPB's past, current, and future role in the negotiations and the EPA Consent Agreement; what checkoff funds have been paid or committed to NPPC; whether the 2001 separation agreement has been violated; and whether USDA has properly fulfilled its oversight roles. We ask the Office of General Counsel to take immediate action requiring NPPC to disgorge and return any pork checkoff funds it has received for any work relating to the EPA Consent Agreement.

Sincerely,

FARMERS' LEGAL ACTION GROUP, INC

A handwritten signature in black ink that reads "Susan E. Stokes / PM". The signature is written in a cursive, flowing style.

Susan E. Stokes  
Legal Director  
Email: [ssokes@flaginc.org](mailto:ssokes@flaginc.org)

cc: Nancy S. Bryson, General Counsel, Office of the General Counsel  
Phyllis K. Fong, Office of Inspector General

# Sweet deal for large farms likely will raise a big stink

For generations U.S. meat and egg producers joked about the earthy aromas emanating from their farms.

"That's what money smells like out here," they'd say to city slickers who raised a stink about the odor.

As the livestock and poultry sectors industrialized, however, that homey line lost its punch, and for good reason. Today animal agriculture accounts for 500 million tons of manure — triple the amount of human waste generated in America — each year and almost 80 percent of all ammonia emissions, according to the U.S. Environmental Protection Agency.

Even as the smelly problem grew, EPA enforcement of the Clean Air Act in agriculture dwindled. Critics note that EPA mostly abandoned enforcement in 2002 after the White House intervened on behalf of agribusiness buddies.

On Jan. 31 the EPA and key players in the dairy, egg, broiler and pork industry formalized a solution to address the smelly problem: We'll study it for two years to see if the Clean Air Act actually applies to animal agriculture.

The deal, formally titled the "Air Quality Compliance Agreement," is as sweet as the country air is sour.

In simple terms, meat, milk and egg producers can voluntarily pay EPA \$2,500 to help fund a two-year air monitoring study of "animal feeding operations." The study will be EPA's benchmark for future Clean Air Act enforcement.

In return for the cash, EPA will grant amnesty to each entity that signs a consent agreement against most past and future (through at least 2007) federal and state clean air violations and civil lawsuits.

The deal was worked out by reps from the National Pork Producers Council, the Egg Board and dairy and broiler industry — the same entities whose members have the most to lose if EPA uses the Clean Air Act to go after farmers.

These same folks — such as giant pork and poultry integrators Tyson Foods, Smithfield and Premium Standard Farms — have the most to gain from the amnesty while the study determines what air quality problems exist down on the integrated farm.

Sweet, eh?

"Yes, on first take it would appear

so," says Kirk Ferrell, vice president of public policy at the National Pork Producers Council in Washington, D.C. "But look, the pork and poultry industry has come forward to get this issue resolved.

"And," he adds, "we've agreed to pay for it, and we're willing to live by the results of the monitoring. That's good for everyone."

And it is — if the two-year air quality study actually shows the Clean Air Act should be applied to animal agriculture.

"We don't know that it does," explains Tom Skinner, EPA's

acting assistant for enforcement and compliance, "thus the study."

Others disagree.

"The Clean Air Act applies," says Michele Merkel, a former lawyer at EPA and now senior counsel at the Environment Integrity Project in Washington, D.C. "This is just more stalling by EPA and livestock integrators."

If so, it's cheap — at least for the pork giants. According to both the National Pork Producers and the National Pork Board, \$5 million to \$7 million of pork checkoff funds will underwrite pork's share of the study. In effect, says Carrie Tengan, director of environmental services at the Pork Board, pork producers who sign the consent agreement will have their \$2,500 EPA fee covered by the checkoff.

The cash, she explains, will pay for all the monitoring equipment and all the "24/7 monitoring" in the two-year study. Purdue University, she adds, will act as EPA's "independent monitoring contractor" to develop pork's plan for the study (on four, "maybe more," pork farms) and collate the collected data.

All this is news to EPA.

"We have no knowledge of pork's plan," says an agency spokesperson, "nor do we have any signed contracts."

Even so, the overall plan is in place and farmers have 90 days after Jan. 31 to sign on the dotted line and get a pass on past and future EPA enforcement actions. And, says one critic of the cash-for-amnesty plan, provide two more years of priceless cover to the corporate integrators responsible for most of ag's smelly problem.

Alan Guebert is a syndicated columnist from Delavan, Ill



## The issue:

The pork and poultry industries have worked out an agreement with the EPA to see if the Clean Air Act will apply to animal agriculture

## Guebert's comment:

This plan seems a sneaky way for the pork and poultry giants to avoid future lawsuits



Alan Guebert

## DECLARATION OF MARK MCDOWELL

I, Mark McDowell, respectfully declare as follows:

1. I am a hog farmer residing in Hampton, Iowa. I sell hogs and pay the pork "checkoff" pursuant to the Pork Act when I sell hogs. I sold hogs in 2004 and 2005 and paid the mandatory pork checkoff in those years.

2. Attached hereto as Exhibit 1 is a true and correct copy of the Pork Checkoff Special Edition Report, February 2005. I received this in the mail in February 2005.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 28th day of February in Hampton, Iowa.

A handwritten signature in cursive script that reads "Mark McDowell". The signature is written in dark ink and is positioned above a horizontal line.

Mark McDowell



# pork checkoff

# special edition REPORT

February 2005, Vol. 23, No. 2



## What you need to know about the Air Emissions Agreement.

The U.S. Environmental Protection Agency (EPA) announced Jan. 21 that it has reached an agreement to study air emissions from livestock and poultry operations. The so-called "consent agreement" spells out in detail how farmers, including pork producers, can participate.

Dave Culbertson, a pork producer from Geneseo, Ill., and president of the National Pork Board, said the agreement ultimately will affect all pork producers. "We're sending this special report to all producers so they can become more familiar with the details and so they can better understand the role their investment in the Pork Checkoff is playing."

A key provision of the agreement is a Pork Checkoff-funded two-year benchmark research study of the air emissions from a sampling of operations across the country. Based on the findings, EPA will set national air policies, identify farm emissions thresholds, and then implement regulations. The rationale for the study is that federal and state air regulators currently lack the information needed to correctly interpret current laws for farms of different size, design and location. Climate, animal numbers and age, and farm management are all key variables that affect emissions; the study will help to define those differences.

A second part of this agreement provides legal protections for past emissions, but only producers who sign the consent agreement with EPA and pay a nominal penalty are released from potential

liability for any federal violations that may have occurred prior to the new air policies. And all producers, whether they signed the agreement or not, will be subject to applicable permitting, emissions reporting and other compliance requirements once the data are analyzed and EPA publishes new national livestock air emissions standards.

Also, producers who sign the agreement agree to become part of the pool from which the farms in the two-year monitoring study will be selected. Details about the consent agreement and about sign-up procedures are available from the EPA ([www.epa.gov](http://www.epa.gov)) and from the National Pork Producers Council ([www.nppc.org](http://www.nppc.org)), which helped to negotiate the agreement with EPA.

### Why the Checkoff is involved

"The Pork Checkoff is committed to providing sound science for industry-wide issues like this," said Max Schmidt, a pork producer from Elma, Iowa, and chair of the Pork Checkoff's Environmental Committee. "The Air Emissions Study is necessary to establish standards that are scientifically valid for use in setting regulatory thresholds. It should also help strengthen the perception of pork producers and their production practices. Virtually every pork producer knows it's in his or her best interest to have clean air, and most have been taking steps to make sure that happens."

continued on the inside

continued from the front



## The Reasons Behind Sound Science

The Pork Checkoff is addressing the need for standards by providing input on how scientific data can be used to develop and apply air emissions standards. This approach may help mitigate any regulations that could have been based on nonscientific evidence.

"This study is an opportunity for the pork industry to move with EPA down the same path," said Schmidt. "EPA is asking the pork industry to provide industry input into their regulations to ensure they are based on sound science. The Pork Checkoff has already funded several environmental projects; this study is the next logical progression to make our industry stronger."

Because the EPA plans to regulate the entire animal agriculture industry, it is important for the pork industry to have data that can be used specifically for the standards that will be imposed on it. The study will collect new data from farms around the country and aggregate existing emissions information from previous studies. These data will be compiled and will serve as the beginning of a database to which new emissions can be added and against which control technologies can be compared.

## The Details of the Data

The Pork Checkoff is involved in selecting researchers, designing the research

protocols, selecting monitoring sites and assisting in project verification. The Pork Checkoff has committed a total of \$6 million for the nationally coordinated research study from the 2004 and 2005 budgets.

The Air Emissions Study will collect data from pork farms, based on three regions: Southeast, Midwest and West. The following characteristics will be considered when choosing a farm from which to collect the data: phase of production, barn ventilation type and type of manure storage/treatment system. Tests will measure ammonia ( $\text{NH}_3$ ), hydrogen sulfide ( $\text{H}_2\text{S}$ ), total suspended particulates (TSPs), particulate matter smaller than 10 and 2.5 microns, and volatile organic compounds.

## Producer Participation: You Can Make a Difference

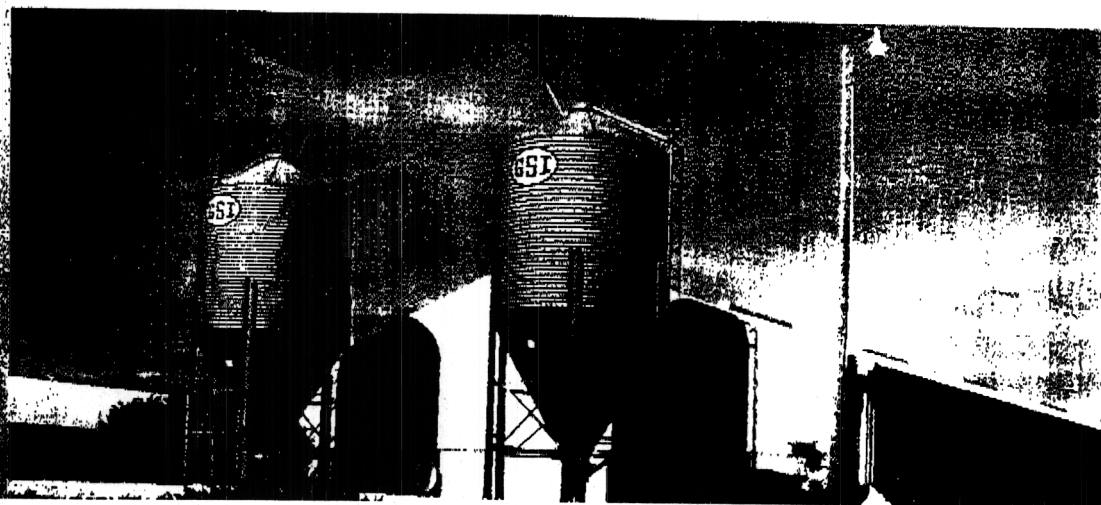
Pork producers are crucial to the success of the Air Emissions Study. Representative farms will be selected for monitoring and measurement to provide the needed data. Without these on-farm measurements, federal agencies would be forced to rely on best-estimate guidelines that may not be accurate or that may have been adjusted from other livestock species data.

Participating in the consent agreement with EPA is voluntary, but all pork producers are being encouraged to consider signing the agreement to ensure the success of science-based industry standards.

**"This study is an opportunity for the pork industry to move with EPA down the same path."**

**Max Schmidt**  
pork producer from  
Elma, Iowa, and chair of  
the Pork Checkoff's  
Environmental Committee

**pork  
checkoff**  
your investment.  
your future.



The deadline for signing the consent agreement will be sometime this spring – 90 days from publication of the consent agreement in the Federal Register.

For additional information about the consent agreement, producers can go to the National Pork Producers Council, [www.nppc.org](http://www.nppc.org).

For additional information about sign-up procedures, producers can go to the EPA, [www.epa.gov](http://www.epa.gov).

And for additional information about the Air Emissions study, producers can call the Pork Checkoff Service Center at 800-456-PORK.

## Your Investment, Your Future

Through their investment in the Pork Checkoff, pork producers across the country are helping to strengthen the future of the pork industry with the Air Emissions Study. Using practical pork production methods to collect data will help ensure that reasonable standards are set for the pork industry.

"It's up to producer organizations like the Pork Checkoff to work toward a better future for the industry," said Schmidt. "The commitment and investment of the Pork Checkoff is something all producers should recognize."

The Air Emissions Study has been planned and designed with pork producers' best interests in mind, with acknowledgment of the need for EPA regulations and thresholds, Schmidt said. The study will help producers comply once the regulations are set.

**NPPC will conduct four regional meetings for pork producers.**

Feb. 10 in Raleigh, N.C.

Feb. 11 in Indianapolis, Ind.

Feb. 15 in Des Moines, Iowa

Feb. 16 in Kansas City, Mo.

Check [nppc.org](http://nppc.org) for additional details.



The Pork Checkoff recognizes that producers are good stewards of the environment. After all, producers rely on land, water and air resources to have a successful operation. Because of this commitment by pork producers, the Pork Checkoff is dedicated to funding environmental research programs that can benefit all producers and their operations.

In previous years, the Pork Checkoff has funded air-quality and odor-control initiatives to evaluate new technologies that can reduce odor and emissions from pork operations. As states continue to regulate emissions on livestock operations, research is needed to evaluate changes in production design and practices to help reduce emissions.

"Since 1997, the Pork Checkoff has spent about \$2.5 million to conduct air-quality research," said Carrie Tengman, director of environmental services for the Pork Checkoff. "Today we have a better understanding of what emissions swine facilities are producing."

Through Pork Checkoff research, the following activities have been determined to help reduce odor:

- Appropriate cleaning of the alleyways
- Draining shallow pits on manure storage to keep air quality in buildings high
- Proper ventilation in each building
- Proper manure application procedures to make sure odor isn't a problem and to maintain good relations with neighbors

Other Pork Checkoff-funded studies have looked at ways to modify hogs' diets, have determined how to best locate new facilities and have helped producers understand the impact production facilities have on neighbors. Research also has looked at how air quality within swine barns affects pigs and pig performance.

"It is essential that we research how pork production affects the environment," said Tengman. "The results of this research will help determine what changes we can make to improve the entire pork industry."

With the groundwork laid by Pork Checkoff-funded research, the Air Emissions Study is the next logical progression for research investments. The Pork Checkoff will continue to fund appropriate environmental research programs to help support pork producers as they face new challenges.

# Welcome to Your First *special edition*



Dave Culbertson  
President of the  
National Pork Board

By now, you are all familiar with the *Pork Checkoff Report*. This *Pork Checkoff Report: Special Edition* newsletter is an opportunity for the Pork Checkoff to provide pork producers more detailed information on an issue or priority in which they are investing. Not only will you learn more about the featured issue, you'll understand why it affects each and every producer in the pork industry. And you'll learn why the Pork Checkoff is committed to funding projects that will secure a stronger future for pork and pork producers. The more you know and understand about the changes the pork industry faces, the more you can prepare for your own future.

If you have comments or questions on the Pork Checkoff or issues featured in *Pork Checkoff Report: Special Edition*, please call the Producer Service Center at 800-456-PORK or log on to [www.porkboard.org](http://www.porkboard.org).

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✉ [porkboard.org](http://porkboard.org) or the Pork Checkoff Service Center @ (800) 456-PORK

National Pork Board  
P.O. Box 9114  
Des Moines, IA 50306

**pork**  
checkoff



**Star Tribune January 31, 2005**

**Editorial: Phew!/EPA's giveaway to feedlots**

Every polluter in the country would like the kind of deal the U.S. Environmental Protection Agency proposes to cut with factory-sized hog, poultry and cattle operations:

Sign up for monitoring of your toxic and noxious air emissions, and receive a three- to six-year amnesty from prosecution for violating federal clean air laws. All it will cost you is a modest contribution to our research program, calculated on a sliding scale (\$200 for the smallest operations, \$100,000 for the biggest). Oh, and if you're among the 30 or so farms we choose to monitor, we'll want your permission to set up instruments and check them from time to time.

Some 4,000 livestock operations are expected to sign up for EPA's research project, and who can blame them? Even the maximum enrollment charge is a pittance compared to penalties that can run above \$25,000 a day for violating the Clean Air Act. It's an even better bargain if you assume, as seems reasonable, that participation in the federal program may help a polluting feedlot ward off lawsuits by local governments and private citizens.

EPA has come late to this particular problem -- industrial-scale air pollution from factory-sized farms -- and its new approach, negotiated with industry, will forestall enforcement actions that are already overdue. The agency says it will spend three years developing new methods and standards for policing feedlots; credible observers think it will probably take at least twice that long.

In the meantime, the polluting operations will continue to pump out ammonia, methane, hydrogen sulfide, fine particles and other noxious substances in concentrations that are not only broadly annoying but sometimes harmful to the environment and human health.

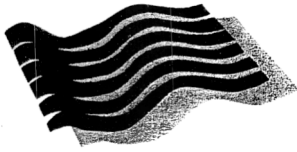
EPA's new program is spurred by findings of the National Academy of Sciences, which two years ago put to rest the notion that feedlot emissions can be assumed safe though stinky, and called on federal agencies to get serious about regulating them. The argument for its collaborative approach is that data collection will be easier if farmers are cooperative than if they are not.

This might make some sense if EPA lacked the authority to monitor as it pleases, or if the pollution problem had not reached the point where regulators and private plaintiffs are already bringing, and winning, lawsuits based on current health standards.

It's fine for EPA to refine its regulatory tools, but there's no good reason it should suspend its enforcement responsibilities in the meantime -- especially at the thousands of livestock operations whose only participation in the new "research" will be writing a small check.

In a slightly different context, EPA's offer might seem like extortion, and the feedlot payments like bribes. Certainly EPA has established that its plan is legal, but it still smells to high heaven.

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January 31, 2005

**VIA FACSIMILE AND FIRST CLASS MAIL**  
**FAX: (202) 720-1362**

Zipora Bullard, FOIA/PA Officer  
USDA, Agricultural Marketing Service  
Room 3517-S AG Stop 0202  
1400 Independence Ave. S.W.  
Washington DC 20250-0273

RE: FOIA Request Regarding Pork Checkoff Contract and Funds

Dear Ms. Bullard:

On behalf of the Campaign for Family Farms (CFF), I am submitting this Freedom of Information Act (FOIA) request for specific documents related to the Environmental Protection Agency's Notice of Consent Agreement and Final Order regarding Animal Feeding Operations (Consent Agreement), published in today's Federal Register (70 Fed. Reg. 4958 (January 31, 2005)). Pursuant to the FOIA, 5 U.S.C. § 552, please provide copies of any and all agreements between the National Pork Producers Council and USDA, AMS, or the National Pork Board related in any way to the Consent Agreement, and all documents that reflect the dollar amount already paid to or to be paid to the National Pork Producers Council related to the Consent Agreement from funds generated pursuant to the Pork Promotion, Research, and Consumer Information Act, 7 U.S.C. § 4801 et seq.

CFF requests that this FOIA request be processed on an expedited basis pursuant to 5 U.S.C. § 552(a)(6)(E). The required statement setting forth the reasons why the request should be expedited is attached.

Please send all documents in response to this FOIA request to my office, Farmers' Legal Action Group, Inc., at the following address

Susan E. Stokes  
Farmers' Legal Action Group, Inc.  
360 North Robert Street, Suite 500  
St. Paul, MN 55101

Zipora Bullard, FOIA/PA Officer  
January 2005  
Page 2  
FLAG

Sincerely,

Handwritten signatures of Susan Stokes and others.

Susan Stokes  
Legal Director  
Email: sstokes@flaginc.org

Enclosure

cc: Paul D. Clement  
Matthew Collette  
Ori

STATE OF MINNESOTA     )  
COUNTY OF RAMSEY     )     SS.

Susan E. Stokes, after swearing to tell the truth, states:

1. I am the Legal Director for Farmers' Legal Action Group, Inc., (FLAG) a non-profit legal center based in St. Paul, Minnesota, which represents the Campaign for Family Farms (CFF).
2. This statement is made and filed to set forth the reasons the attached FOIA request must be processed on an expedited basis.
3. Published in Today's Federal Register, at 70 Fed. Reg. 4958 (January 31, 2005), is a Notice of Consent Agreement and Final Order concerning Animal Feeding Operations (Consent Agreement). Comments on the Consent Agreement are due no later than March 2, 2005.
4. CFF intends to comment on various aspects of the Consent Agreement. One critical aspect that CFF intends to comment upon is the propriety of using funds generated by the Pork Promotion, Research, and Consumer Information Act (the "pork checkoff"), 7 U.S.C. § 4801 *et seq.* to implement the Consent Decree.
5. A "compelling need" for the requested documents within the meaning of 5 U.S.C. § 522(a)(6)(E)(v)(II) is that, in order to timely comment on the propriety of the expenditure of pork checkoff funds on the Consent Decree, CFF must first know the extent of such expenditures, which is the subject of the attached FOIA request.

**Susan E. Stokes**

Subscribed and sworn to before me this  
31st day of January, 2005.

*Mary Rita Gorman Capes*  
Mary Rita Gorman Capes  
Notary Public





FEB 14 2005



United States  
Department of  
Agriculture

Agricultural  
Marketing  
Service

STOP 0202 – Room 3510-S  
1400 Independence Avenue, SW.  
Washington, DC 20250-0202

IN REPLY, PLEASE REFER TO:  
AMS FOIA No. 44-05

FEB - 9 2

Ms. Susan E. Stokes  
Farmers' Legal Action Group, Inc.  
360 North Robert Street, Suite 500  
St. Paul, Minnesota 55101

Dear Ms. Stokes:

This is in response to your Freedom of Information Act (FOIA) request dated January 31, 2005, which was received in this office on February 2, 2005. You requested copies of any and all agreements between the Department of Agriculture, the Agricultural Marketing Service, or the National Pork Board and the National Pork Producers Council (NPPC) in relation to Environmental Protection Agency's Notice of Consent Agreement and Final Order (70 FR 4958). Also, your request included any documents that reflect the dollar amount already paid to or to be paid to NPPC.

The Agricultural Marketing Service does not have any documents responsive to your request.

You may appeal this action within 45 days from the date of this letter. Any such appeal should be in writing, addressed to the Administrator, Agricultural Marketing Service, USDA, STOP 0201 – Room 3071-S, 1400 Independence Avenue, SW., Washington, D.C. 20250-0201. If you decide to file an appeal, please provide specific reasons why you believe modification of the initial action is warranted. To facilitate processing your appeal, the phrase "FOIA APPEAL" should be placed in capital letters on the front of the envelope.

Sincerely,

A handwritten signature in cursive script that reads "Zipora D Bullard".

Zipora D. Bullard  
Freedom of Information Act Officer