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REPORT of the MINNESOTA CORPORATE FARM LAW TASK FORCE

Prepared Under Authority Of
Chapter 622, Section 6 of the 1994 Laws of Minnesota

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I. INTRODUCTION

A. Task Force Charge

The Minnesota Corporate Farm Task Force was created by Chapter 622, Section 6 of the 1994 Laws of Minnesota. The statute creating the task force contained the following historical perspective:

Current Minnesota law generally precludes corporations from owning farm land or operating a farming enterprise. Corporate farming law has been developed over a period of 14 decades, and the development has included numerous changes to accommodate shifting priorities in agriculture and a recognition that the economic and social climate of the state is not static.

The same section expressed the following reasons for creation of the task force:

There is a concern whether current corporate farming law, especially as it relates to the breeding and raising of swine, represents the appropriate balance between protection of family farms and opportunity for creative new enterprise structures organized by multiple farmers. Farmers wish to support a corporate farming law that is in the overall best interest of production agriculture and preservation of the family farm unit as the main component of the agricultural economy of the state. The study, legislative report, and legislative recommendations authorized by this section will increase public and legislative understanding of the issues involved.

The task force was given the following charge:

The task force must examine current and projected impacts of corporate, partnership, and limited liability company farming enterprises on the economic, social, and environmental conditions and structures of rural Minnesota. The study should consider probable impacts on both agriculture related and nonagricultural businesses in rural communities. Issues of nonpoint source pollution and other environmental issues must be considered. The task force shall also examine the issue of responsibility for pollution damage.

The task force report was given a reporting deadline of February 15, 1995.

The statute provided the task force would be made up of ten members, four each from the Senate and House of Representatives and two public members appointed by Governor Arne Carlson. The task force membership is as follows:¹

Senator Joe Bertram, Sr. (Chair)
Senator Charles A. Berg
Senator Steve Dille
Senator Steven Morse
Representative Doug Peterson (Co-Chair)
Representative Gene Hugoson
Representative Andy Steensma²
Representative Steve Wenzel³
Dr. Ben Senauer
Mr. Curtis Watson

\$40,000 was provided to the task force by the Minnesota Legislature and staffing, including meeting preparation, research, and report preparation, was provided by the Minnesota Department of Agriculture.⁴

The task force was required to have at least four public hearings, three of which had to be held in greater Minnesota. The task force met on the following dates at the following locations:

<u>DATE:</u>	<u>LOCATION:</u>
September 22, 1994	Minnesota Dept. of Agriculture
October 25, 1994	Morris, MN
December 8, 1994	Northfield, MN
December 27, 1994	Ortonville, MN
January 26, 1995	State Capitol

The complete statute is attached to this report as Appendix A.

¹ The following legislative staff participated in the task force: Senate Agriculture Committee Administrator Janet Baumgartner, Senate Counsel Chris Stang, Senate Research Analyst Greg Knopff, Senate IR Researcher Lance LaFrombois, House Agriculture Committee Administrator Pat Plonski, House Counsel Sam Rankin, and House IR Research Consultant Ed Werner, and House DFL Caucus Research Consultant Dave Musielewicz.

² Representative Steensma was not re-elected in November, 1994. No replacement was appointed by the House of Representatives for the term beginning January 3, 1995.

³ Representative Wenzel appointed state Representative Marvin Dauner as his representative on the task force.

⁴ Agriculture Commissioner Elton R. Redalen appointed the following Minnesota Department of Agriculture staff to work with the task force: Assistant Commissioner Bill Oemichen, Assistant Department Legal Counsel Gail Ryan, Ag Planning & Development Division Supervisor Dave Ball, Legal Analyst Richard Prim, and Law Clerk Barb Van Zomeren. Assistant Attorney General Paul Strandberg and MPCA Supervisor Dave Nelson also participated in the task force.

II. SUMMARY OF TASK FORCE HEARING MINUTES⁵

The Corporate Farm Law Task Force held four public hearings around the state of Minnesota. The initial public hearing was held at the Department of Agriculture on September 22, 1994. During the initial meeting Senator Bertram was elected chair of the task force, and Representative Peterson was elected co-chair. Members of the task force also requested the following tasks be performed:

- (1) summarize statutory information gathered from other states,
- (2) conduct library research on economic, environmental and social impact issues,
- (3) prepare a letter to the Commissioner of the Pollution Control Agency requesting that a MPCA representative be present at future meetings,
- (4) establish a mailing list for the task force, and
- (5) adequately publicize the meetings through meeting notices and press releases.

The other three hearings were held in Morris on October 25, Northfield on December 8, and Ortonville on December 27.

Public testimony addressed the following general topic areas:

1. **The changes that were made to the corporate farm law during the 1994 legislative session.** Many farmers voiced their support of the changes that were made. Several farm groups such as Farm Bureau, MN State Cattlemen, MN Pork Producers, and MN Corn Growers Association stated that they continue to support the changes, as they had during the legislative session. Some people criticized the change saying that the change to unlimited shareholders was too drastic. With the exception of including the dairy industry in the changes, allowing limited liability companies, and creating an exception for a feedlot to be built by the Minnesota Corn Processors, no other changes to the corporate farm law were advocated.

2. **Limited Liability Companies.** Much of the public testimony surrounded Senator Berg's proposal to allow limited liability companies into agriculture. A fair number of the people testifying stated that they opposed limited liability companies because they were concerned about the cost of environmental cleanup should such entities go bankrupt. However, a number of people who testified stated that they supported limited liability companies as a valuable tool for farmers to remain competitive with farming operations from other states.

3. **Including the dairy industry in the 1994 changes.** The dairy industry was excluded from the changes made to the corporate farming law during the 1994

⁵ Copies of meeting minutes with full descriptions of the public testimony at each task force public hearing are attached at Appendix B.

legislative session because it was unclear whether or not the industry wanted to be included. Several persons testified that the dairy industry should be included because the state is losing dairy farmers at a rate of 2-3 a day. Those in favor of including the dairy industry felt this was a way of giving farmers the ability to expand their operations to make them more efficient and thus more profitable. Other people testified that it is too soon to include dairy. They suggested that the state evaluate what effect the changes will have before making any more changes. Those persons opposing the inclusion of dairy cited the national milk pricing system as the primary reason farmers were going out of business. Rotational grazing was also often suggested as an alternative to expanding to become profitable. Those persons supporting rotational grazing stated that farmers are able to lower their costs while gaining more leisure time.

4. **Potential for surface and ground water contamination.** Many witnesses were concerned about large livestock confinement facilities because they felt the manure storage facilities at such sites have not been proven to adequately protect against serious surface or groundwater contamination. One person suggested the state place a moratorium on earthen lagoons until the state had more information. Others testified that large feedlots, when properly managed, could be at least as environmentally sound as smaller feedlots because of the higher level of scrutiny the larger feedlots receive from both the public and regulatory agencies.

5. **Odor control.** A number of witnesses complained about the odor problems associated with large livestock confinement operations. More than a couple farmers complained that they were nearly surrounded by swine confinement buildings causing them to be inundated with repugnant odors no matter which way the wind blew. Other farmers stated that Minnesota should address the odor problem directly by funding odor control technology research instead of approaching the problem indirectly by regulating the types of ownership forms available to farmers.

6. **Environmental liability.** Several farmers asked who would be liable if a corporate livestock operation went bankrupt. Assistant Attorney General Paul Strandberg researched the issue and presented his findings to the task force. (See Appendix F) Mr. Strandberg felt that barring any criminal activity, the individual members of a limited liability company, or a shareholder in a corporation, would only be liable up to the amount of their investment and would not be held personally liable. If the assets of the corporation were not sufficient to fully remediate an existing environmental problem, the remaining cleanup costs could potentially be born by county or state taxpayers.

7. **Bonding.** Requiring large livestock operations to post a bond to secure against taxpayers being forced to accept the cost of environmental cleanup was presented as an answer to the environmental liability problem. Assistant Commissioner Bill Oemichen explained counties have the authority to set bonds if granted by county ordinance. No one specifically objected to the idea, but there would likely be objection if it were to apply to everyone and the requested bonds were so large as to make the project economically

unfeasible. If the bonding requirement were limited to large operations, then the question would be which operations would be considered large.

Furthermore, several witnesses questioned the availability of bonds.

8. Changes in the livestock industry. Several farmers stated that changes in the livestock industry made the 1994 legislative changes necessary. Technological changes in maintaining herd health and the need for improved genetics were cited as forces that were driving the industry to become larger and more specialized. However, several farmers said they did not have access to sufficient capital to adopt the new practices and technology. They stated that the new changes allowed farmer members to cooperatively pool capital and to seek a portion of the necessary capital from outside investors. Some farmers did not like the idea of allowing unlimited numbers of shareholders even if all the shareholders were farmers, while other farmers objected to allowing non-farmer investment.

9. Beginning farmers. Many farmers stated that cooperatives were a good way for young farmers to get into farming. Most young farmers complain that they do not have access to the type of capital necessary to start a successful livestock operation. Because young farmers can purchase shares in a cooperative operation, or have the cooperative handle the breeding or similar phase of the livestock operation, the need for capital is reduced. Other farmers stated that cooperatives were not necessary for young farmers to enter the business, some of those people cited low-cost methods of production such as rotational grazing or pasture farrowing as available alternatives for young farmers.

10. National competition over livestock market share. Another factor that farmers supportive of the changes in the legislation cited was the intense competition over the livestock industry that is occurring nationally. They felt Minnesota farmers needed the ability to compete with farms in other states. They said that farmers in Minnesota should not be worrying about competing with each other, but with farms located in other states. Several other people downplayed the importance of national competition by referring to the environmental and social conditions suffered by other states. They were concerned that Minnesota not trade its small farmers or its environmental quality for market share in the livestock industry.

11. Networking. Several farmers testified that the word "corporate" generated an immediate negative reaction during discussions. Those farmers testified that what they were doing was not large multi-national corporations entering agriculture, but instead were forming associations of small farmers to gain competitive efficiencies. This type of association was commonly referred to as "networking". Other farmers testified they were concerned about the size of some of the operations. They felt that in some instances too many farmers were allowed to become members of a limited liability type of entity. Several farmers felt that farming should remain at the individual level and that instead of allowing large operations, the legislature should be concentrating on finding ways to make small farms profitable.

12. **Local community support.** Several people testified, and one person presented a master's thesis indicating, that small farms do a better job of supporting their local community through their spending patterns. The testimony centered around evidence that small farms purchase more of their supplies, equipment, and financing locally, while larger farms tend to make relatively more of their purchases outside of their community. Several farmers countered by saying that jobs were created by the new operations which meant the purchase of homes, and more children attending local schools. Some people who were employees of these type of operations stated that had it not been for that job, they would not be in farming at all. Some even hoped to be able to buy into the operation they worked for.

13. **County zoning.** Some people testified that counties should be able to set their own environmental standards and not be governed by the Minnesota Pollution Control Agency. Other farmers testified they believe the current MPCA permitting process is sufficient and should not be duplicated at the local level. Others testified they feared inconsistent zoning from county to county and attempts to greatly restrict agricultural growth.

14. **Protecting infrastructure.** Several farmers felt that the legislative changes were good because they would increase production which would in turn mean that processors would have enough supply to keep them from moving to other parts of the country. This preserving of processors was termed protecting infrastructure and was a big concern of the dairy industry because it was not included in the changes, and because it also suffers from a lack of production. Other farmers are leery of big operations because they are worried that the large producers will close what little market is left by completely filling the packers or processors demand.

15. **Minnesota Corn Processors (MCP) proposed feedlot.** MCP has over 3,000 farmer/members. MCP representatives testified they would like to build a large cattle feedlot so their farmer members would be able to add value to the waste product from their ethanol plant in Marshall. MCP testified that they could not currently meet the percentage of farmers needed to be livestock farmers because they are made up primarily of row crop farmers. They stated they would be exploring an amendment to the corporate farm statute. Several farmers that testified regarding MCP's proposal stated that they would not be in favor of it.

16. **Value-added processing.** Value-added processing is a term used to describe farmers "moving up the food chain" or further processing raw material to add value to it. In the corporate farm context, value-added processing is commonly used to describe the feeding of row crops to livestock, or transforming the row crop into ethanol. Farmers, by performing the additional processing, receive a better "price" from their crop than if they were to sell it as a raw commodity. Many farmers supported the changes that were made because it allowed them to form livestock cooperatives to which they can feed their row crops, which in turn allowed them to receive a larger portion of the "food dollar".

Other farmers criticized these types of operations as being one step closer to complete vertical integration of the food industry, which would mean that they would be closed out.

17. Market access. Many farmers cited as their greatest concern the loss of market access. They felt that vertical integration and growing of animals under contract was reducing their ability to sell their animals at a competitive price. Other farmers stated that individuals will have to improve their genetics to receive better prices. However, many farmers stated that in order to improve their genetics they would have to start growing their animals under contract and as a result lose much of their independence. Other farmers suggested marketing cooperatives as an answer to the problem of market access. Such group marketing is beneficial to farmers because it gives individuals marketing power they would not have on their own.

18. Antitrust. Several farmers felt the state should push for tougher enforcement of the Packers and Stockyards Act and federal Clayton and/or Sherman Antitrust Statutes at the federal level.

III. THE MINNESOTA CORPORATE FARM LAW⁶

A. History of the Minnesota Corporate Farm Law

The Minnesota Corporate Farm Law and the Alien Ownership Law was adopted by the Minnesota Legislature and signed into law by the Governor in 1973.⁷

The 1973 Law defined terms and authorized new land ownership entities, including “family farm corporations” and “authorized farm corporations.” The ownership limitations were placed on “agricultural land and land capable of being used for farming.” Furthermore, limits were placed on the corporate leasing of land in addition to restrictions on direct ownership. Finally, a number of exemptions were included, mostly for the purpose of grandfathering in corporate land owners. An annual report to the Minnesota Department of Agriculture was also required.⁸

In 1975, the Minnesota Legislature amended the Corporate Farm Law to include a provision that a majority of the shareholders in an authorized farm corporation must reside on the farm or be actively engaged in farming. The annual report is made more detailed, regulated public utilities are allowed to own farmland for business purposes provided the land is under lease to a family farm, and exemptions are created for large asparagus producing and religious corporations.⁹

In 1977, the Alien Ownership Law was strengthened.

In 1978, the Minnesota Legislature excluded the poultry industry from the Corporate Farm Law’s restrictions.

The 1981 Legislature extended corporate ownership restrictions to include pension or investment funds. Existing holdings by family trusts are grandfathered into the law. The Alien Ownership Law is also strengthened further.

In 1983, the Alien Ownership Law is amended to allow a foreign pipeline company to own 40 acre parcels of land for pumping stations.

In 1986, the Minnesota Legislature strengthened the Corporate Farming Law by requiring a corporation holding land through enforcement of a debt to lease the farm to a family farm unit. Furthermore, a right-of-first-refusal provision is added to require a corporation foreclosing on a farm to offer the farm to the former owner first.

⁶ A summary of other state’s corporate farm statutes is attached as Appendix C.

⁷ Minn. Stat. Section 500.221 for the Alien Ownership Law and Minn. Stat. Section 500.24 for the Corporate Farm Law.

⁸ Chapter 427, Section 1 of the 1973 Laws of Minnesota.

⁹ Chapter 324, Section 1 of the 1975 Laws of Minnesota.

In 1987, the Minnesota Legislature strengthens the right-of-first-refusal provision.¹⁰

The 1988 Minnesota Legislature imposed a 1,500 maximum acreage limitation on authorized farm corporations and authorized farm partnerships and expanded the law to include limited partnerships. The Legislature also reduced the ten year period for most corporations to own farmland to five years and applied the right-of-first-refusal provision to limited partnerships.¹¹

The 1989 Minnesota Legislature amended the Corporate Farm Law to provide that aliens and non-American corporations are allowed to own agricultural lands if necessary to meet pollution control laws or rules.¹²

In 1991, the Minnesota Legislature exempted aquatic farms from the Corporate Farm Law.¹³

In 1992, the Minnesota Legislature broadened the Corporate Farm Law restrictions to include limited liability companies.¹⁴

In 1993, the Minnesota Legislature amended the Corporate Farm Law to provide a three year statute of limitation for failure to comply with the right-of-first-refusal provisions.¹⁵

The 1994 Minnesota Legislature, besides creating this task force, amended the Corporate Farm Law to expand the definition of authorized farm corporations to allow any number of shareholders for a corporation engaged in the production of livestock other than dairy cattle, provided 75% of the control and financial investment is held by Minnesota farmers and 51% of the required percentage of farmers are actively engaged in livestock production. The Legislature also defined “farmer” and “actively engaged in livestock production.”¹⁶ Finally, the Legislature added a provision requiring the corporation to sell all castrated animals to be finished and to annually report total production and sales.

The Senate voted 58 to 0 and the House 103 to 2 for this change in the law. In addition, several farm groups endorsed this change including: Ag Commodity Coalition, Minnesota Farm Bureau, Minnesota State Cattlemen, Minnesota Pork Producers, Minnesota Corn Grower Association, Minnesota Farmers Union and the Minnesota Department of Agriculture.

¹⁰ Chapter 396, Article 2, Sections 1 to 3 of the 1987 Laws of Minnesota.

¹¹ Chapter 610, Sections 2 to 9 and Chapter 700, Sections 1 to 2 of the 1988 Laws of Minnesota.

¹² Chapter 353, Section 10 of the 1989 Laws of Minnesota.

¹³ Chapter 263, Section 1 and Chapter 309, Section 16 of the 1991 Laws of Minnesota.

¹⁴ Chapter 517, Article 1, Section 36 of the 1992 Laws of Minnesota.

¹⁵ Chapter 123, Sections 1 and 2 of the 1993 Laws of Minnesota.

¹⁶ Chapter 622, Sections 2 and 3 of the 1994 Laws of Minnesota.

House Counsel Sam Rankin provides an extensive review of the history of the Minnesota Corporate Farm Law beginning in 1851 to 1991. This review is attached as Appendix D to this report.

B. The Minnesota Corporate Farm Law

The purpose of the Minnesota Corporate Farm Law, as stated in the preamble to its statute, is to establish the family farm as the most socially desirable mode of agriculture production, and to thereby promote the stability of rural communities. Its main provision prohibits corporations, limited liability companies, pension investment funds or limited partnerships from farming or owning farmland.

The legislature provided for a number of exemptions, the most commonly granted is for "family farm corporations." The basic requirements for this exemption are that the corporation has to be founded for the purpose of farming, the majority of shareholders must be relatives within the third degree of kindred under civil law, and finally, at least one shareholder must reside on the farm or be actively operating the farm.

The second major exemption is the "authorized farm corporation," which can be organized in one of two ways. Under the first option, it is limited to five shareholders, all of whom must be natural persons. In addition, only a single class of shares is permitted, shareholders owning 51% or more of the interest in the corporation must reside on farmland or be actively engaged in agriculture, revenue from rent, royalties, dividends, interest and annuities cannot exceed 20 percent of gross receipts and ownership is limited to 1,500 acres. Under the second option, the corporation must be engaged in the production of livestock other than dairy cattle and formed by natural persons or family farm corporations that provide 75% or more of the capital investment. In addition, only a single class of shares is permitted, all of the shareholders must be natural persons or a family farm corporation. Shareholders holding 75% or more of the control and financial investment in the corporation must be farmers residing in Minnesota. Furthermore, at least 51% of the required percentage of farmers must be actively engaged in livestock production. Finally, revenue from rent, royalties, dividends, interest and annuities cannot exceed 20 percent of gross receipts and ownership is limited to 1,500 acres.

The last major exemption from the Corporate Farm Law is the breeding stock exemption. The legislature gave the Department of Agriculture the discretion to define many details of this exemption.

Under the terms of the corporate farm law statute, the Department of Agriculture is given the responsibility of administering the law and the Attorney General's Office is given the responsibility of enforcing the law.

In terms of administration of the law, the Department of Agriculture conducts the annual reporting process, reviews applications and drafts certifications. Department legal staff

review the applications and draft the certifications for the Commissioner's signature. Department clerical staff conduct the annual reporting process.

The Department of Agriculture requires all new entities to complete a full corporate report form. After the initial reporting, the entity is mailed annual questionnaires which ask whether or not there have been any changes in the farm operations. If there have been changes, the farmer can report those changes on the questionnaire or request that the full report form be mailed to them. The questionnaires and report forms that indicate changes are then reviewed by Department legal staff to assure continued compliance with the statute's provisions.

The Department also maintains a corporate farm database as well as hard files documenting the annually reported information. Currently, the database contains 1,475 corporations, limited partnerships, and pension or investment funds. Of the 1,475, approximately 75% are family farm corporations or partnerships. Another 7% are authorized farm corporations or partnerships. The remaining farms are qualified under the statute's various exemptions.

If the Department discovers an entity that has not complied with the statute, or if an entity is found to be acting outside of the terms on which it was granted certification, the Department contacts them by letter to try to bring them into compliance. If those attempts are unsuccessful, those entities are reported to the Attorney General's Office for enforcement proceedings.

IV. TRENDS IN THE MINNESOTA LIVESTOCK INDUSTRY

A. Dairy. The Minnesota dairy industry is in a serious state of decline. We are consistently losing two to three dairy farmers per day and have since 1985 because of an aging dairy farm infrastructure, aging dairy farmers, and because of controversial 1985 Congressional changes in the Federal Milk Marketing Order System.

In 1986, Minnesota had nearly 26,000 dairy farmers. As of January 1, 1995, Minnesota had approximately 12,335 dairy farmers still in production.

Minnesota is currently the fifth ranking state in the nation in dairy production. In 1983, Minnesota farmers produced 10.9 billion pounds of milk and accounted for 7.8% of the national market. By 1990, Minnesota farmers produced 10 billion pounds of milk and accounted for a greatly reduced 6.8% of the national production. In 1994, Minnesota produced just less than 9.4 billion pounds and our share of national milk production fell below 6.1%.

This decline in milk production has greatly decreased the supply of milk for Minnesota's very large dairy processing industry. Several Minnesota processors have reported milk supplies are so short that they are running at less than 70% capacity and one East Central Minnesota plant reportedly closed in 1994 because of the milk shortage.

As the number of Minnesota dairy farms decrease, the average size of Minnesota dairy farms is increasing. In 1990, the average Minnesota farm had 44 cows. By 1994, the farm size grew to nearly 50 cows. Prior to 1990, Minnesota had very few farms with more than 100 cows. Now, more than 150 farms have more than 100 cows and nine farms milk more than 500 cows. Nonetheless, Minnesota still has the smallest average sized dairy farms in the nation and for many, characterizes the image many have of the "family farm."

B. Poultry. Poultry is an important industry in Minnesota. Minnesota ranks as the second largest turkey producing state in the nation and tenth in egg production.

Poultry is a highly concentrated industry. Through vertical integration, approximately 90 percent of all production is grown under contract between farmer producers and large poultry processors or integrators.¹⁷ The contract method of production dominates the poultry industry to the extent that there is no real market in which an independent poultry producer can sell their product. The trend in this sector of livestock production is not so

¹⁷ *Corporate Farm Law and Livestock Confinement Issues: The Social, Economic, and Environmental Challenge: Background Materials*, Minnesota Environmental Initiative, March 31, 1994, at 83. [hereinafter Minn. Env. Init.] An "integrator" is a poultry processor who owns the birds and contracts with farmers for their production. The poultry industry is said to be vertically integrated because vertical integration occurs when a packer or feed company moves down into the production chain through contract production.

much occurring in terms of the method of production, but more in terms of farmer producers beginning to complain about the contract production method.

The source of the conflict between the integrators and producers appropriately enough centers around the contract itself. Under the terms of most contracts, the integrators provide the chicks, feed, and medication while the producer generally provides the labor and the buildings.¹⁸ Many poultry farmers, primarily in the southern states have begun to speak out against what they feel to be unfair practices used by poultry integrators. One of the primary objections has been in the length of the contract itself because most poultry buildings take between 10-15 years to pay for, while the length of the average contract is for one flock of birds. This situation puts the producer in a very weak position because they are afraid if they complain about anything their contract will not be renewed and they will be left with a useless building that has not been paid for yet. Not so ironically, many farmers have learned that once they have left one integrator or have not been renewed by an integrator, no other integrator will sign a contract with them. Many farmers have also complained that once their buildings are nearly paid for, the integrator will tell them they need to make expensive improvements, and that if the improvements are not made their contract will not be renewed. The length of the contract is not their only complaint. Lawsuits have been filed and won against poultry integrators for illegal weighing practices, misgrading and wrongful termination.¹⁹

Minnesota's poultry industry has been excepted from the Minnesota Corporate Farm Law since 1978. Minnesota has not experienced the same type of contracting problems the southern states are experiencing, partly because the Minnesota Department of Agriculture regulates agricultural production contracts.²⁰

C. Beef. Beef is also a vital Minnesota agricultural industry.

Minnesota has approximately 39,000 cattle operations and 16,000 beef cow operations. These numbers have been fairly steady over the past five years.

Minnesota cattle operations generally have fewer than 100 head. Fewer than 25% have more than 100 head, but this percentage is growing by about one percent per year. Minnesota beef cow operations average fewer than 50 head. Approximately 15% of the beef cow operations have more than 50 head and this percentage has been growing about one percent per year since 1989.

Nationally, the beef processing industry is dominated by a small number of packing companies. In 1990, three companies, IBP, Excel Corp., and ConAgra slaughtered nearly 80 percent of all fat cattle in the United States.²¹

¹⁸ Christopher R. Kelly, *Production Contracts Present New Issues and Concerns*, Lindquist and Vennum Agricultural Law Report, October/November 1993, at 12.

¹⁹ *Id.*

²⁰ Minn. Stat. Sections 17.90 - 17.98 (1994).

²¹ A.V. Krebs, The Corporate Reaper, The Book of Agribusiness (1991).

D. **Swine.** The Minnesota swine industry is experiencing rapid change and is concentrated in the southwest part of the state. In 1994, Minnesota had 15,000 hog operations and a rapid expansion of farmer-owned swine cooperatives is occurring.

Nationally, the swine industry is characterized by both vertical and horizontal integration.²² In terms of vertical integration, approximately 20 percent of production is done under contract.²³ Horizontal integration is occurring through the emergence of "super producers".²⁴ Super producers include National Farms, Tyson Foods, Murphy Farms, and Carrol Foods.²⁵ Together these four operations market approximately 4 million head annually.²⁶ Super producers represent the fastest growing segment of the U.S. swine industry.²⁷ The rise of super producers appears to be at the cost of smaller producers. There has been a dramatic reduction in the number of producers marketing less than 1,000 head and a dramatic increase in the number of producers marketing more than 50,000 head.²⁸

The takeover of the swine industry by either type of integration, or both types, is fueled by the comparative weakness of individual livestock producers in terms of profitability. Vertical integration through contract production is accelerated by individual farmers frustration with their own unprofitability. Farmers that are not currently successful, or that are close to being forced out of the market, see contracting as a way to shield themselves from the fluctuations in the market pricing system. Meanwhile, horizontal integration increases every time an independent producer is forced out of business because the loss of production gives the super producers room to expand. The strongest weapon farmers have against further "closing" of the swine industry is their own profitability. If farmers are profitable, they will not need to enter into contract production. Furthermore, if farmers are not forced out of business, there may be no room for super producers to expand.

Swine producers must also adjust to trends in both consumer demand and technology development. Consumers are becoming more health conscious and are demanding a leaner, more uniform product.²⁹ New technologies are also emerging in swine production and, as is the case with all new technology, it is the early adopters of the new technologies that will reap the greatest benefit.

New technologies and market demands have moved the pork industry to a point where access to expertise, capital, and land area for efficient

²² V. James Rhodes, *Cooperatives' Role in Hog Contract Production*, U.S.D.A. Agricultural Cooperative Service Research Report, 116, 1993.

²³ Minn. Env. Init., *supra* note 17, at 83.

²⁴ Rhodes, *supra* note 23, at 5. A super producer is one that produces over 50,000 head a year.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ William F. Lazarus and Brian L. Buhr, *Minnesota Pork Industry Review*, June 1994, at 63.

utilization of wastes will probably determine who can employ the technologies necessary for low cost production of a high quality product. A systems approach that captures the herd health benefits of multiple site production, all-in / all-out pig flow, and specialized expertise is moving the industry to larger sized firms. However, while size tends to favor effective use of some of these new technologies, record systems show the top 25-30% of so-called small to medium size producers are still very competitive in achieving low cost production. Many of those producers have adopted cost cutting technologies. Some producers are also finding ways to work together to implement technologies they can not adopt alone. This is encouraging for the Minnesota swine industry. However, it also suggests that those who remain fiercely independent, and unwilling to change and compete, face an uncertain future in the pork production business.³⁰

The pressure from vertical and horizontal integration, consumer demand, and new technologies have greatly intensified swine production. The swine industry is no longer simply a "mortgage lifter" where a farmer is able to raise a few head on their farm to provide additional income, it is now a highly specialized, competitive and sophisticated business.

³⁰ Bob Koehler and Lee Johnston, Structural Change in the Swine Industry, October 21, 1994 Draft at page 3.

V. ENVIRONMENTAL CONSIDERATIONS OF THE CORPORATE FARMING DEBATE

Environmental concerns were raised numerous times during the task force public hearings in Northfield and Ortonville. Issues raised included the adequacy of MPCA feedlot regulations, officer and shareholder liability, and local zoning controls.

Dave Nelson of the Minnesota Pollution Control Agency, Assistant Attorney General Paul Strandberg, and Assistant Minnesota Agriculture Commissioner Bill Oemichen responded to questions raised by persons testifying at the public meetings and task force members.

A. MPCA Feedlot Regulations

The MPCA feedlot statute and regulations are contained at Minn. Stat. Section 116.07, subd. 7, and Minn. Rule, parts 7020.0100 - 7020.1900 respectively. The feedlot program consist of a set of definitions, requirements, and procedures that a feedlot owner must follow to comply with Minnesota law. As mentioned earlier these rules can be found in Minnesota Rules Chapter 7020.

For instance the rules define a feedlot:

Animal feedlot - a lot or building or combination of lots or buildings intended for the confined feeding, breeding, raising, or holding of animals and specifically designed as a confinement area in which manure may accumulate, or where the concentration of animals is such that a vegetative cover cannot be maintained within the enclosure. Open lots used for feeding and rearing poultry shall be considered animal feedlots. Pastures shall not be considered animal feedlots.

Pastures are areas where grass or other growing plants are used for grazing and where the concentration of animals is such that a vegetation cover is maintained during the growing seasons except in the immediate vicinity of temporary supplemental feeding or watering systems.

Another important definition in the rules is animal unit. Animal units are a measure that compares the amount of manure produced by a slaughter steer or heifer to the manure produced by other types of livestock. Animal units are used as a design standard for feedlots. For animals not listed below, such as deer or elk, the number of animal units is defined as the average weight of the animal divided by 1,000 pounds.

ANIMAL UNIT EQUIVALENTS

ANIMAL

EQUIVALENT

Slaughter steer or heifer	1.0 animal unit
Horse	1.0 animal unit
Mature dairy cow	1.4 animal unit
Swine under 55 pounds	.05 animal unit
Swine over 55 pounds	.4 animal unit
Sheep	.1 animal unit
Duck	.2 animal unit
Turkey	.018 animal unit
Chicken	.01 animal unit

The rules define three important terms regarding the actual permit:

Certificate of compliance - a letter from the MPCA or the County Feedlot Officer to the owner of a feedlot stating that the feedlot meets MPCA requirements.

Interim permit - a permit which is issued when the potential pollution hazard can be corrected within 10 months from date of issue, or to allow construction of earthen manure storage structures.

Permit - a document issued to an applicant which contains requirements, conditions, and compliance schedules relating to the discharge of animal manure pollutants.

It is necessary to apply for a feedlot permit if the producer has a feedlot with more than 10 animal units and whenever any of the following occur:

- *A new feedlot is to be constructed.*
- *A feedlot is expanded or modified.*
- *A change in ownership takes place.*
- *An existing feedlot is restocked after being abandoned for more than 5 years.*
- *An inspection by the MPCA staff reveals that the feedlot is creating a potential pollution hazard.*

The following paragraphs generally describes applicable feedlot requirements.

1. Standards for design and construction of earthen storage structures.³¹

MPCA currently requires that all earthen basins and lagoons for manure storage be designed and inspected during construction by qualified professional engineers or Soil Conservation Service (SCS) staff. Virtually all earthen manure storage structures must be lined to limit seepage that may pollute groundwater.

2. Standards of design and construction of concrete pits.

The MPCA requires that all non-earthen manure storage structures (e.g. concrete pits) of more than 500,000 gallons be designed by qualified professional engineers or SCS staff. Structures smaller than this do not require design, but information about soils at the site of perimeter drain tiling to prevent damage is required for all sub-surface structures.

3. The effects of manure management on ground and surface water.

The MPCA requires that livestock producers have enough cropland available to use manure as a fertilizer or soil amendment, based on the nutrient content of the manure. Proper management requires analysis of manure for nutrient content, and calculation of application rates based on this nutrient content and crop needs. At present, the MPCA usually requires a producer to only demonstrate that they have enough acres available for such management. However, in some cases more detailed management plans are required.

B. Minnesota Environmental Liability for Corporate Officers and Shareholders.

A corporation's owners and officers will not be held individually responsible for corporate-caused environmental problems. This absence of personal liability is true for all forms of entities including family farm corporations, authorized farm corporations, and limited liability corporations.³² Assistant Attorney General Paul Strandberg provided a December 21, 1994 memorandum to the task force on the issue of "Corporate Officer and Shareholder Liability for Feedlot Environmental Matters." This memorandum is attached to this report as Appendix F. Assistant Agriculture Commissioner Bill

³¹ Much of this information came from a October 19, 1994 letter from MPCA Commissioner Charles W. Williams to state Representative Stephen G. Wenzel. A copy of this letter is attached at Appendix E.

³² However, if the officers of the corporate entity do not honor the corporate formalities such as keeping separate bank accounts, holding corporation board meetings and keeping meeting minutes, etc. the Minnesota Courts have allowed creditors to "pierce the corporate veil" and by doing so, made the officers personally liable for corporate debts.

Oemichen discussed this issue in greater detail at the Ortonville public hearing (See December 27, 1994 Task Force Meeting Minutes at Appendix B).

C. Local Zoning Controls.

Minnesota Law provides counties and townships with zoning authority.³³ The purpose of zoning is to promote the “health, safety, morals and general welfare of the community . . .”³⁴

The MPCA animal feedlot rules also provide authority to counties for feedlot regulation. See Minn. Stat. Section 116.07 and Minn. Rule, part 7020.

However, state law does not authorize other local units of government, including townships, to regulate feedlots. The Minnesota Court of Appeals held in Board of Supervisors of Crooks Township v. ValAdCo, 504 N.W.2d 267 (Minn. Ct. App. 1993), that a Renville County township’s ordinance regulating feedlots was pre-empted by state regulation of feedlots and invalidated the township ordinance.³⁵

D. Odor Rule.

Concerns were raised at both the Northfield and Ortonville hearings of the task force regarding the odors generated by certain livestock facilities, particularly swine. The Minnesota Pollution Agency reported that at the present time. Minnesota does have an odor rule (MN Rules part 7011.0300 to 7011.0330). However, efforts are being made to repeal this odor rule because it is scientifically outdated and is therefore unenforceable. Attached as Appendix I is the Legislative Update Fact Sheet prepared by the Minnesota Pollution Control Agency that addresses the background of the rule and the recommendations of the MPCA.

³³ Minn. Stat. Chapter 394 provides zoning authority to counties and Minn. Stat. Chapter 366 provides zoning authority to townships.

³⁴ Minn. Stat. Sections 394.21 and 391.24.

³⁵ A copy of this decision is attached to this report at Appendix G. The Court of Appeals found particular fault with the ordinance’s setback and bond requirements.

VI. THE ECONOMIC IMPACT OF CORPORATE, PARTNERSHIP AND LIMITED LIABILITY COMPANY FARMING ON RURAL COMMUNITIES

A charge of the task force is to examine the current and projected impacts of corporate, partnership and limited liability company farming enterprises on the economic conditions and structures of rural Minnesota. An Internet database search was conducted by the Planning and Ag Development Division of the Minnesota Department of Agriculture to determine the scope of information available on this topic. A bibliography has been compiled. See Appendix H.

As of 1992, the vast majority of Minnesota's 75,079 farms were individual or family sole proprietorships: 66,068 or 88.9%. There were 25 corporations operating in Minnesota that were not family held and had more than 10 stockholders; they controlled 5,767 of the 25.7 million acres being farmed in the state. There were 229 cooperatives, trusts, estates and institutions owning 72,214 acres.³⁶

Economic impact involves a fair number of measures or indicators: farmers' income, land prices, market access, crop and livestock prices, and impact on local suppliers of inputs and non-agricultural businesses. Testimony at the three Greater Minnesota public hearings, Morris, Northfield and Ortonville, voiced the following economic concerns and ideas.

Testimony at Morris, MN revolved around the 1994 changes to the corporate farm law that allowed "authorized livestock corporations" with unlimited number of shareholders to farm in Minnesota. Many felt the law was good because it allowed farmers to pool resources and skills, take advantage of economies of scale, share financial risk, make it easier for young farmers to start farming and make it easier for farmers to get financing. One of the farmers involved in a livestock cooperative testified that the cooperative system helped him to stay in farming, paid better than jobs in town and provided health insurance benefits.

Testimony on economic issues at Northfield had an entirely different focus. Concern was expressed that large corporate farms would be able to control markets and force small farmers out of business. It was also mentioned that a large economic impact could be felt by local units of government if they end up having to pay for pollution damage by large units that go out of business. One person testified that studies have shown that corporate farming leads to lower incomes, greater unemployment and less retail trade.

Testimony at Ortonville included concerns about markets being closed off to individual producers if large cooperatives are controlling them. The opinion was expressed that farmers have a better chance of achieving economic success by networking activities

³⁶ 1992 Census of Agriculture: Minnesota State and County Data, Part 23, Volume 1, Geographic Area Series, Bureau of the Census, U.S. Department of Commerce, 1994, p 47.

that result in value added processing of farm products. Concern was expressed about large cooperatives buying their goods and services from outside of the area instead of patronizing local businesses and keeping the local economy healthy. A farmer testified that his membership in a group hog raising and marketing cooperative allowed five families to be supported by his operation instead of only two that would be supported by a crop only operation.

Publications in recent years have reported on the growth of large scale farming and the impact of anti-corporate farming laws. In an article in Hogs Today, the changes in market share of total U.S. hog production for each of nine states is reported. States with anti-corporate farming laws, Kansas, Iowa, Minnesota, Nebraska, South Dakota and Wisconsin had all suffered market share declines except Iowa. Colorado and North Carolina with no corporate restrictions had increased their market shares 85% and 94%, respectively, between 1990 and 1994.³⁷

On March 31, 1994, the Minnesota Environmental Initiative and the Minnesota Department of Agriculture co-sponsored a forum in New Ulm, Minnesota on the corporate farm law and livestock confinement issues. Issues considered at the conference included manure management in livestock confinement units, value added food production and processing. Conference speakers represented a wide variety of viewpoints. Some of the economic concerns that were included in the conference materials stated that corporations generally have greater access to capital, allowing them to bid up the price of land; vertical integrators can create the loss of public markets, perhaps shutting out private, independent producers altogether.³⁸

Regarding the impact of large farms on the rural community an article in the Minneapolis Star Tribune noted that the mayor of Amboy, MN, the site of a 10,000 sow operation, indicated that the operation had brought 26 children to the local schools, filled all the available homes in town and has given a boost to businesses.³⁹ The same operation created 41 jobs, 31 of those held by local farmers.⁴⁰

A graduate student at the University of Minnesota did a study of the local spending patterns of farmers in southwest Minnesota. He concluded that "...farm size seems to be the most important indicator of how likely a farmer is to spend locally for needed farm goods and services."⁴¹ The general trend was as the size of the operation increased, the manager(s) were able to devote more time to obtaining farm inputs from outside of the community. It was also noted that many larger crop farmers were getting together with other farms to make large quantity purchases from outside sources.

³⁷ Tom Morgan, *Border Wars*, Hogs Today, March, 1994.

³⁸ Minn. Env. Init., *supra* note 17, at 82-3

³⁹ James Walsh, *Hog Heaven*, Minneapolis Star Tribune, September 4, 1994.

⁴⁰ Carolyn Pesce, *Hog Farmers Feeling Hog-tied*, USA Today, September 16, 1994.

⁴¹ Local Spending Patterns of Farm Businesses in Southwest Minnesota, a thesis submitted to the faculty of the Graduate School of the University of Minnesota by John Wade Chism, September 1993, at 42.

VII. SOCIAL ASPECTS OF THE CORPORATE FARMING DEBATE.

Agriculture is at the root of Minnesota's social structure. A strong family farm system provides the base for the duplication of services needed to serve the state's small rural communities.

Farming is a lifestyle as much as a livelihood. Rural communities have depended on farming to provide social structure, as well as vocational options, employment, and responsible land-use. Family-owned and -operated farms are the agricultural unit best suited to fulfill these social functions. The existence of numerous family farms maximizes the opportunity for individuals to farm and spreads the benefits throughout the state.⁴²

Having acknowledged agriculture's, and more specifically the family farm's, central role in Minnesota's social culture, it is necessary to also state that the future of family farms as historically perceived is uncertain.⁴³ Since 1980, Minnesota has lost 20 percent of its farms and 35 percent of its livestock operations.⁴⁴ Furthermore, with an aging farming population and demographic trends predicting even greater loss of young people to urban centers, Minnesota must accept the fact that traditional family farming practices, as we know them, are in trouble.⁴⁵ This does not mean that the state should give up on its farmers or its rural communities. It merely means that "the state's farm policy can best help the family farmer by providing the incentive, the funding, and the technical support to develop alternative farming methods that are profitable, environmentally sound, and build rural community."⁴⁶

Alternative farming methods does not necessarily mean large or corporate. The task force received testimony from several individuals who were successful using low input methods such as rotational grazing of beef and dairy, and pasture farrowing for swine. However, the task force also received testimony from individuals asking the state not to restrict their options when it came to the structure of their operation. They felt that if a group of farmers wanted to associate with one another or "network" under a cooperative structure they should be able to do so.

The task force received testimony that larger farms do not support their communities as well as smaller farms because smaller farms were more likely to make their purchases locally. However, the task force also received testimony from individuals who felt the larger operations support the community by providing jobs that are competitive with

⁴² *Corporate Farm Law and Livestock Confinement Issues: The Social, Economic, and Environmental Challenge: Conference Report*, Minnesota Environmental Initiative, March 31, 1994, at 5.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Tim Kjos, *Too Many Farmers and Obsolete Towns: Demographer Says Changes in Rural Minnesota Part of Trend*, Detroit Lakes Tribune, March 24, 1994, at C7.

⁴⁶ *Id.* at 3.

urban sources of employment. Several people testified they would not be in agriculture today if it were not for the job they had working for cooperative farming organizations. Those employees in turn purchase homes, attend religious services, educate their children and receive their medical treatment locally.

Other people testified that the presence of some larger operations supports the infrastructure that all farms need to be successful. They said farmers are concerned about losing packing and processing facilities, and that the presence of some larger operations assure the packer or processor that there will be enough supply to meet its demand.

VIII. POTENTIAL OPTIONS FOR ADOPTION BY THE TASK FORCE

The Minnesota Department of Agriculture presented the Minnesota Corporate Farm Task Force with the following list of options for consideration at the task force's January 26, 1995 meeting. The options were developed from the public testimony at the three Greater Minnesota hearings.

A. List of potential options

1. Whether the corporate farm law should be amended to allow limited liability companies.
2. Whether the corporate farm law should be amended to include the dairy industry under the new authorized farm corporation provision.
3. Whether the state should adopt tougher environmental standards on feedlots.
4. Whether the corporate farm law should be renamed to remove the word corporate from the title.
5. Whether the state should provide economic incentives for larger operations.
6. Whether or not contract production of livestock should be regulated by the corporate farm law.
7. Whether the state should increase funding to the Department of Agriculture and the Office of Attorney General to cover the costs associated with administration and enforcement of the corporate farm law.
8. Whether the corporate farm law should be repealed.
9. Whether the 1500 acre limitation on authorized farm corporations should be amended or eliminated.
10. Whether the corporate farm law should be completely redrafted.
11. Whether the state should support livestock marketing cooperatives.
12. Whether the state should fund research on odor control technology.
13. Whether the state should conclude that large feedlots, properly managed, are not a threat to water quality.
14. Whether the state should require that corporate entities post an environmental cleanup bond before allowing them to engage in farming.

B. Debate of the potential options

The Minnesota Department of Agriculture also presented the task force members with the following arguments for and against the adoption of the possible options.

1. Whether the corporate farm law should be amended to allow limited liability companies.

A. Yes. Farmers should be able to organize their operations under this ownership form in the same way all other businesses are allowed to. This ownership form has considerable tax, estate planning, and asset protection benefits that farmers should be able to take advantage of. This ownership form does not provide any more limited liability than any of the other already allowed corporate forms such as Subchapter C or S.

B. No. Many farmers are concerned about the clean up costs of large manure lagoons. They feel that if limited liability companies were to be allowed into agriculture and subsequently go bankrupt, the public would have to pay for the clean up. They feel the environment is too important to provide further ownership forms that limit the liability of the owner/operator. Under the limited liability ownership form, as with other corporate forms, individual investor liability is limited to the amount of their investment, whereas individual proprietors are liable for environmental cleanup to the extent they have non-exempt assets. Furthermore, under the limited liability company structure it is possible to separate the "ownership interest" into "governance rights" and "financial rights" which means that farmers could sell out from under themselves the profits from the farming operations in order to get capital. Farmers are concerned about becoming hired help or sharecroppers on their own land, and the limited liability company concept might allow that to occur.

2. Whether the corporate farm law should be amended to include the dairy industry under the new authorized farm corporation provision.

A. Yes. The dairy industry is in trouble. Minnesota is currently losing 3-4 dairy farmers a day. Some counties are reporting that they have lost up to 40 percent of their dairy farmers. Furthermore, with the loss of producers, dairy processing facilities are forced to operate at less than capacity. This declining production situation is forcing processors to move to other regions of the country. The loss of processing facilities only accelerates the decline of the dairy industry in Minnesota. Dairy farmers should be allowed to enter into cooperative production structures in the same way that other livestock farmers are. Under the cooperative structure, efficient larger scale dairy operations would increase the profitability of the individual farmer members and would provide the necessary supply to keep, and perhaps attract, processors.

B. No. Minnesota's dairy industry is not in trouble because the state's producers are inefficient, but because farmers in this region of the country are not given a

competitive price for their milk. Expansions in the dairy industry in other parts of the country are not the result of more efficient production but instead are the result of an outdated pricing structure that encourages milk production where such production is not practical. Also, even if the national pricing structure is not changed and current medium sized confinement dairy operations remain unprofitable, larger operations are not necessarily the only answer to the profitability problem. Many farmers are exploring the option of rotational grazing their dairy herd as a way of increasing their profitability.

3. Whether the state should adopt tougher environmental standards on feedlots.

A. Yes. The potential environmental problems posed by large earthen storage lagoons provide the need for stronger environmental regulations. Odor is currently reported as a major concern by farmers who are located near the lagoons. Many feel they have had their property values reduced by the odor. A recent study shows that there may be serious health effects not previously associated with odor such as increased levels of stress, headaches and reduced sex drive. Many farmers also believe that the Pollution Control Agency has inadequate information regarding the ability of earthen storage lagoons, particularly clay liners, to protect against ground or surface water contamination. Several farmers believe that counties should be able to make their own environmental decisions and should not be bound by standards established by the Pollution Control Agency.

B. No. The state of Minnesota already has some of the toughest environmental regulations on farming and feedlots in the nation. Tougher regulations may be unnecessary and further regulations place Minnesota's farmers at a competitive disadvantage to other less restrictive states. Furthermore, some farmers are concerned about individual counties establishing conflicting zoning and environmental standards.

4. Whether the corporate farm law should be renamed to remove the word corporate from the title.

A. Yes. The word corporate evokes an automatically negative reaction. The law instead should be renamed something that would more closely represent the purpose of the law. Some have suggested that the word corporate be replaced with networking, because the purpose of the statute is intended to allow farmers to cooperate or network".

B. No. Changing the title of the statute would be a futile semantic exercise that would carry no substantive benefit, and would work to only confuse the issues surrounding corporate agriculture.

5. Whether the state should provide economic incentives for larger operations.

A. Yes. Other states are providing economic incentives in an attempt to increase their share of the livestock industry. If Minnesota wants to be able to keep or increase its market share, it will have to compete with those states by matching their tactics, including providing economic incentives.

B. No. Large operations already have advantages over small operations due to economies of scale. If the state were to provide further economic advantages, smaller operations would not be able to compete and would be forced out of business.

6. Whether or not contract production of livestock should be regulated by the corporate farm law.

A. Yes. Several farmers argue that contract production of animals is farming and should be covered by the corporate farm law. Farmers argue that contract production closes markets and reduces those under contract to hired help.

B. No. Contract production is not farming and should not be covered by the statute. Producing livestock under contract can benefit farmers by leveling off price fluctuations and allowing them access to the best quality genetics.

7. Whether the state should increase funding to the Department of Agriculture and the Office of Attorney General to cover the costs associated with administration and enforcement of the corporate farm law.

A. Yes. Currently, the Department of Agriculture does not receive a general fund appropriation to cover the costs of administering the corporate farm law. Moreover, the increasing number and complexity of the applications for certification is increasing the amount of time spent monitoring the law.

B. No. With a trend towards downsizing government and a general reduction in agency appropriations, there are limited funds available for administration.

8. Whether the corporate farm law should be repealed.

A. Yes. The statute places Minnesota farmers at a competitive disadvantage to other states that do not restrict corporate farming. Furthermore, the statute is so confusing and so riddled with exceptions that it is ineffective. Finally, the statute has failed its purpose because the number of family farmers continues to decline. Therefore the statute should be repealed.

B. No. The statute, while complicated and full of exceptions, still serves the purpose of preventing multi-national corporations from entering into agriculture and competing with the family farm. Therefore, the statute still has a purpose and should remain in place.

9. Whether the 1500 acre limitation on authorized farm corporations should be amended or eliminated.

A. Yes. In certain areas of the state that are row crop intensive the 1500 acre limitation is too small.

B. No. A function of the corporate farm law is to limit the size of farms by limiting investment. It is feasible under the law that five shareholders could still purchase more acreage than it has been deemed desirable by the legislature, therefore, the acreage limitation is necessary to control the size of farms.

10. Whether the corporate farm law should be completely redrafted.

A. Yes. The corporate farm law as currently drafted is confusing and it has several contradictory passages. Therefore, the corporate farm law should be rewritten to make the law more clear and to remove interpretive ambiguity.

B. No. The statute is the evolution of several years of legislative refinement. If the statute were to be rewritten more interpretive issues may be created than are resolved. Furthermore, the most confusing passages are the exceptions to the general prohibition against corporations owning agricultural land, and those exceptions would be politically if not legally difficult to revoke.

11. Whether the state should support livestock marketing cooperatives.

A. Yes. Marketing cooperatives are an effective way for individual producers to gain market power and to preserve market access. The state should find ways of promoting or granting financial assistance to marketing cooperatives.

B. No. Marketing cooperatives should be privately funded. Furthermore some farmers fear that marketing cooperatives will take the industry one step further to a closed market system wherein if you are not a member of a cooperative you will not be able to sell your animals independently.

12. Whether the state should fund research on odor control technology.

A. Yes. Odors are a significant problem with large livestock confinement operations and evidence is beginning to show the health effects that may be caused by manure odors. Therefore, as a service to both the livestock industry and those persons who live near livestock facilities the state should fund odor technology research.

B. No. Odor is not a significant problem associated with livestock confinement operations. Furthermore, publicly funded research would only subsidize the costs associated with large scale operations. Such a subsidy could increase the number of

large earthen storage lagoons which also have serious surface and ground water contamination potential.

13. Whether the state should conclude that large feedlots, properly managed, are not a threat to water quality.

A. Yes. Large feedlots are no more of an environmental threat than the equivalent number of smaller feedlots if they are properly managed. Furthermore, larger operations are less likely to be improperly managed because of the higher level of scrutiny the larger operations receive from both the public at large and relevant regulatory agencies.

B. No. Large feedlots pose a greater environmental risk than the equivalent number of smaller feedlots because the waste is more geographically concentrated. Furthermore, the ability of clay lined earthen lagoons and other types of animal waste facilities to protect the environment has not been adequately established.

14. Whether the state should require that corporate entities post an environmental cleanup bond before allowing them to engage in farming.

A. Yes. Because the corporate structure allows for limited liability, and because large quantities of concentrated waste pose a serious environmental hazard, corporate livestock entities over a certain size should be required to post an environmental cleanup bond to prevent the public from having to pay environmental cleanup costs should the entity file bankruptcy.

B. No. Other states do not require the posting of a bond. Requiring Minnesota farmers to do so puts them at a competitive disadvantage. Also, Environmental cleanup bonds might not even be available for purchase.

IX. TASK FORCE CONCLUSIONS AND RECOMMENDATIONS TO THE LEGISLATURE

The Minnesota Corporate Farm Task Force adopted the following conclusions and recommendations at its January 26, 1995 meeting at the State Capitol.

Recommendations Adopted by the Task Force

1. Whether the corporate farm law should be completely redrafted. The task force voted unanimously to recommend having the Department of Agriculture rewrite the corporate farm law to make it more understandable.
2. Whether the state should support livestock marketing and processing cooperatives. The task force voted unanimously to recommend that the state support livestock marketing and processing cooperatives.
3. Whether the state should fund research on odor control technology. The task force voted unanimously to recommend the state fund research on odor control technology.
4. Whether the minimum number of animal units constituting a feedlot should be raised from 10 to 50 animal units. The task force voted unanimously to recommend that the minimum number of animal units constituting a feedlot be raised from 10 to 50 animal units.
5. Whether the state should provide economic incentives for livestock operations. The task force voted unanimously to recommend that the state provide economic incentives for livestock operations.
6. Whether the corporate farm law should be amended to reduce the required percentage of farmers actively engaged in livestock production from 51 percent to 35 percent for authorized farm corporations. The task force voted 7 to 2 to lower the required percentage to 35 percent.
7. Whether the corporate farm law should be repealed. The task force voted 8 to 1 to recommend keeping the corporate farm law.
8. Whether the 1500 acre limitation on authorized farm corporations should be amended or eliminated. The task force voted 5 to 4 to recommend amending or eliminating the 1500 acre limitation.

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Recommendations not Adopted by the Task Force

9. Whether the state should conclude that large feedlots, properly managed, are not a threat to water quality. The task force voted 5 to 4 to recommend policy language indicating that large feedlots, properly managed, are not a threat to water quality.
10. Whether the state should require that corporate entities post an environmental cleanup bond before allowing them to engage in farming. The task force voted unanimously against requiring the posting of an environmental cleanup bond.
11. Whether the corporate farm law should be amended to include the dairy industry under the new authorized farm corporation provision. The task force voted against recommending including the dairy industry under the new authorized farm corporation provision.
12. Whether the state should adopt tougher environmental standards on feedlots. The task force voted unanimously against recommending tougher environmental standards on feedlots.
13. Whether the state should increase funding to the Department of Agriculture and the Office of the Attorney General to cover the costs associated with administration and enforcement of the corporate farm law. The task force voted unanimously not to recommend increasing funding to the Department of Agriculture and the Office of Attorney General for the administration and enforcement of the corporate farm law.

Recommendations Resulting in a Tie Vote by the Task Force.

14. Whether the law should be amended to allow farmers to form limited liability companies. The task force voted not to recommend allowing farmers to form limited liability companies on a 4 to 4 tie with Senator Bertram not voting.
15. Local units of government may not adopt pollution control standards that are more stringent than the Minnesota Pollution Control Agency unless approved by the Minnesota Pollution Control Agency. Local units of government should continue to have authority for local land use planning and zoning. The recommendation was not approved on a 4 to 4 tie with Senator Bertram not voting.

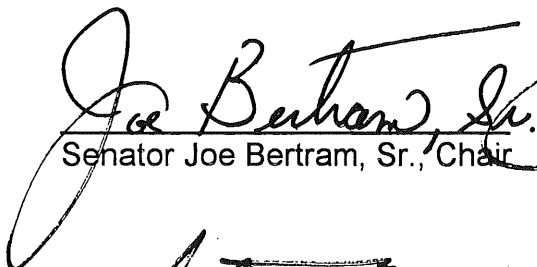
Recommendations not Moved to a Vote by the Task Force

16. Whether the corporate farm law should be renamed to remove the word corporate from the title. Recommendation No. 4 was not moved to a vote.
17. Whether the state should provide economic incentives for larger operations. Recommendation No. 5 was not moved to a vote.

18. Whether or not contract production of livestock should be regulated by the corporate farm law. Recommendation No. 6 was not moved to a vote.

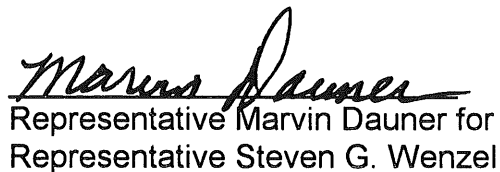
Respectfully submitted this 15th day of February, 1995.

The Minnesota Corporate Farm Law Task Force


Senator Joe Bertram, Sr., Chair


Representative Doug Peterson,
Co-chair

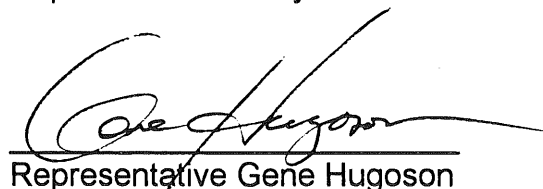

Senator Steve Dille

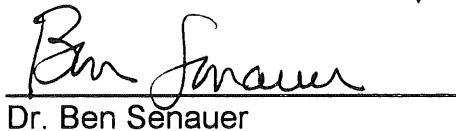

Representative Marvin Dauner for
Representative Steven G. Wenzel


Senator Steven Morse


Representative Andy Steensma


Senator Charles A. Berg


Representative Gene Hugoson


Dr. Ben Senauer


Mr. Curt Watson

APPENDIX A

CHAPTER 622—S.F.No. 1948

An act relating to agriculture; providing for cooperative farming agreements on certain lands; changing the law limiting corporate farming; changing liability of certain agricultural operations; creating corporate farming law task force and requiring legislative report; amending Minnesota Statutes 1992, sections 97A.135, subdivision 3; 500.24, subdivisions 2 and 3; and 561.19, subdivisions 1 and 2.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1992, section 97A.135, subdivision 3, is amended to read:

Subd. 3. **COOPERATIVE FARMING AGREEMENTS.** On any public hunting, game refuge, ~~or~~ wildlife management area, or scientific and natural area lands, the commissioner may enter into written cooperative farming agreements ~~with nearby farmers~~ on a sharecrop basis, without competitive bidding, for the purpose of ~~establishing or maintaining wildlife food or cover for habitat purposes and plant management.~~ Cooperative farming agreements may also be used to allow pasturing of livestock. The agreements may provide for the bartering of a share of any crop, ~~not exceeding \$1,500 in value and~~ produced from these lands, for services ~~such as weed control, planting, cultivation, or other wildlife habitat practices or products that will enhance or benefit the management of state lands for plant and animal species.~~ Cooperative farming agreements pursuant to this section shall not be considered leases for tax purposes under section 272.01, subdivision 2, or 273.19.

Sec. 2. Minnesota Statutes 1992, section 500.24, subdivision 2, is amended to read:

Subd. 2. **DEFINITIONS.** For the purposes of this section, the terms defined in this subdivision have the meanings here given them:

(a) "Farming" means the production of (1) agricultural products; (2) livestock or livestock products; (3) milk or milk products; or (4) fruit or other horticultural products. It does not include the processing, refining, or packaging of said products, nor the provision of spraying or harvesting services by a processor or distributor of farm products. It does not include the production of timber or forest products or the production of poultry or poultry products.

(b) "Family farm" means an unincorporated farming unit owned by one or more persons residing on the farm or actively engaging in farming.

(c) "Family farm corporation" means a corporation founded for the purpose of farming and the ownership of agricultural land in which the majority of the voting stock is held by and the majority of the stockholders are persons or the spouses of persons related to each other within the third degree of kindred according to the rules of the civil law, and at least one of said related persons is residing on or actively operating the farm, and none of whose stockholders are

corporations; provided that a family farm corporation shall not cease to qualify as such hereunder by reason of any devise or bequest of shares of voting stock.

(d) "Authorized farm corporation" means a corporation meeting the following standards under clause (1) or (2):

(1)(i) its shareholders do not exceed five in number;

(2) (ii) all its shareholders, other than any estate are natural persons;

(3) (iii) it does not have more than one class of shares; and

(4) (iv) its revenues from rent, royalties, dividends, interest and annuities does not exceed 20 percent of its gross receipts; and

(5) (v) shareholders holding 51 percent or more of the interest in the corporation must be residing on the farm or actively engaging in farming;

(6) (vi) the authorized farm corporation, directly or indirectly, owns or otherwise has an interest, whether legal, beneficial, or otherwise, in any title to no more than 1,500 acres of real estate used for farming or capable of being used for farming in this state; and

(7) (vii) a shareholder of the authorized farm corporation is not a shareholder in other authorized farm corporations that directly or indirectly in combination with the authorized farm corporation own not more than 1,500 acres of real estate used for farming or capable of being used for farming in this state; or

(2)(i) the corporation is engaged in the production of livestock other than dairy cattle; and not engaged in farming activities otherwise prohibited under this section;

(ii) all its shareholders other than an estate, are natural persons or a family farm corporation;

(iii) it does not have more than one class of shares;

(iv) its revenue from rent, royalties, dividends, interest and annuities does not exceed 20 percent of its gross receipts;

(v) shareholders holding 75 percent or more of the control and financial investment in the corporation must be farmers residing in Minnesota and at least 51 percent of the required percentage of farmers must be actively engaged in livestock production;

(vi) the authorized farm corporation, directly or indirectly, owns or otherwise has an interest, whether legal, beneficial, or otherwise, in any title to no more than 1,500 acres of real estate used for farming or capable of being used for farming in this state;

(vii) a shareholder of the authorized farm corporation is not a shareholder

in other authorized farm corporations that directly or indirectly in combination with the authorized farm corporation own not more than 1,500 acres of real estate used for farming or capable of being used for farming in this state; and

(viii) the corporation was formed for the production of livestock other than dairy cattle by natural persons or family farm corporations that provide 75 percent or more of the capital investment.

(e) "Agricultural land" means land used for farming.

(f) "Pension or investment fund" means a pension or employee welfare benefit fund, however organized, a mutual fund, a life insurance company separate account, a common trust of a bank or other trustee established for the investment and reinvestment of money contributed to it, a real estate investment trust, or an investment company as defined in United States Code, title 15, section 80a-3. "Pension or investment fund" does not include a benevolent trust established by the owners of a family farm, authorized farm corporation or family farm corporation.

(g) "Farm homestead" means a house including adjoining buildings that has been used as part of a farming operation or is part of the agricultural land used for a farming operation.

(h) "Family farm partnership" means a limited partnership formed for the purpose of farming and the ownership of agricultural land in which the majority of the interests in the partnership is held by and the majority of the partners are persons or the spouses of persons related to each other within the third degree of kindred according to the rules of the civil law, and at least one of the related persons is residing on or actively operating the farm, and none of the partners are corporations. A family farm partnership does not cease to qualify as a family farm partnership because of a devise or bequest of interest in the partnership.

(i) "Authorized farm partnership" means a limited partnership meeting the following standards:

(1) it has been issued a certificate from the secretary of state or is registered with the county recorder and farming and ownership of agricultural land is stated as a purpose or character of the business;

(2) its partners do not exceed five in number;

(3) all its partners, other than an estate, are natural persons;

(4) its revenues from rent, royalties, dividends, interest, and annuities do not exceed 20 percent of its gross receipts;

(5) its general partners hold at least 51 percent of the interest in the land assets of the partnership and reside on the farm or are actively engaging in farming not more than 1,500 acres as a general partner in an authorized limited partnership;

(6) its limited partners do not participate in the business of the limited partnership including operating, managing, or directing management of farming operations;

(7) the authorized farm partnership, directly or indirectly, does not own or otherwise have an interest, whether legal, beneficial, or otherwise, in a title to more than 1,500 acres of real estate used for farming or capable of being used for farming in this state; and

(8) a limited partner of the authorized farm partnership is not a limited partner in other authorized farm partnerships that directly or indirectly in combination with the authorized farm partnership own not more than 1,500 acres of real estate used for farming or capable of being used for farming in this state.

(j) "Farmer" means a person who regularly participates in physical labor or operations management in the farmer's farming operation and files "Schedule F" as part of the person's annual Form 1040 filing with the United States Internal Revenue Service.

(k) "Actively engaged in livestock production" means that a person performs day-to-day physical labor or day-to-day operations management that significantly contributes to livestock production and the functioning of a livestock operation.

Sec. 3. Minnesota Statutes 1992, section 500.24, subdivision 3, is amended to read:

Subd. 3. FARMING AND OWNERSHIP OF AGRICULTURAL LAND BY CORPORATIONS RESTRICTED. No corporation, limited liability company, pension or investment fund, or limited partnership shall engage in farming; nor shall any corporation, limited liability company, pension or investment fund, or limited partnership, directly or indirectly, own, acquire, or otherwise obtain an interest, whether legal, beneficial or otherwise, in any title to real estate used for farming or capable of being used for farming in this state. Livestock that are delivered for slaughter or processing may be fed and cared for by a corporation up to 20 days prior to slaughter or processing. Provided, however, that the restrictions in this subdivision do not apply to corporations or partnerships in clause (b) and do not apply to corporations, limited partnerships, and pension or investment funds that record its name and the particular exception under clauses (a) to (s) under which the agricultural land is owned or farmed, have a conservation plan prepared for the agricultural land, report as required under subdivision 4, and satisfy one of the following conditions under clauses (a) to (s):

(a) a bona fide encumbrance taken for purposes of security;

(b) a family farm corporation, an authorized farm corporation, a family farm partnership, or an authorized farm partnership as defined in subdivision 2 or a general partnership;

(c) agricultural land and land capable of being used for farming owned by a corporation as of May 20, 1973, or a pension or investment fund as of May 12, 1981, including the normal expansion of such ownership at a rate not to exceed 20 percent of the amount of land owned as of May 20, 1973, or, in the case of a pension or investment fund, as of May 12, 1981, measured in acres, in any five-year period, and including additional ownership reasonably necessary to meet the requirements of pollution control rules;

(d) agricultural land operated for research or experimental purposes with the approval of the commissioner of agriculture, provided that any commercial sales from the operation must be incidental to the research or experimental objectives of the corporation. A corporation, limited partnership, or pension or investment fund seeking to operate agricultural land for research or experimental purposes must submit to the commissioner a prospectus or proposal of the intended method of operation, containing information required by the commissioner including a copy of any operational contract with individual participants, prior to initial approval of an operation. A corporation, limited partnership, or pension or investment fund operating agricultural land for research or experimental purposes prior to May 1, 1988, must comply with all requirements of this clause except the requirement for initial approval of the project;

(e) agricultural land operated by a corporation or limited partnership for the purpose of raising breeding stock, including embryos, for resale to farmers or operated for the purpose of growing seed, wild rice, nursery plants or sod. An entity that is organized to raise livestock other than dairy cattle under this clause that does not meet the definition requirement for an authorized farm corporation must:

(1) sell all castrated animals to be fed out or finished to farming operations that are neither directly or indirectly owned by the business entity operating the breeding stock operation; and

(2) report its total production and sales annually to the commissioner of agriculture;

(f) agricultural land and land capable of being used for farming leased by a corporation or limited partnership in an amount, measured in acres, not to exceed the acreage under lease to such corporation as of May 20, 1973, or to the limited partnership as of May 1, 1988, and the additional acreage required for normal expansion at a rate not to exceed 20 percent of the amount of land leased as of May 20, 1973, for a corporation or May 1, 1988, for a limited partnership in any five-year period, and the additional acreage reasonably necessary to meet the requirements of pollution control rules;

(g) agricultural land when acquired as a gift (either by grant or a devise) by an educational, religious, or charitable nonprofit corporation or by a pension or investment fund or limited partnership; provided that all lands so acquired by a pension or investment fund, and all lands so acquired by a corporation or limited partnership which are not operated for research or experimental purposes,

or are not operated for the purpose of raising breeding stock for resale to farmers or operated for the purpose of growing seed, wild rice, nursery plants or sod must be disposed of within ten years after acquiring title thereto;

(h) agricultural land acquired by a pension or investment fund or a corporation other than a family farm corporation or authorized farm corporation, as defined in subdivision 2, or a limited partnership other than a family farm partnership or authorized farm partnership as defined in subdivision 2, for which the corporation or limited partnership has documented plans to use and subsequently uses the land within six years from the date of purchase for a specific nonfarming purpose, or if the land is zoned nonagricultural, or if the land is located within an incorporated area. A pension or investment fund or a corporation or limited partnership may hold such agricultural land in such acreage as may be necessary to its nonfarm business operation; provided, however, that pending the development of agricultural land for nonfarm purposes, such land may not be used for farming except under lease to a family farm unit, a family farm corporation, an authorized farm corporation, a family farm partnership, or an authorized farm partnership, or except when controlled through ownership, options, leaseholds, or other agreements by a corporation which has entered into an agreement with the United States of America pursuant to the New Community Act of 1968 (Title IV of the Housing and Urban Development Act of 1968, United States Code, title 42, sections 3901 to 3914) as amended, or a subsidiary or assign of such a corporation;

(i) agricultural lands acquired by a pension or investment fund or a corporation or limited partnership by process of law in the collection of debts, or by any procedure for the enforcement of a lien or claim thereon, whether created by mortgage or otherwise; provided, however, that all lands so acquired be disposed of within ten years after acquiring the title if acquired before May 1, 1988, and five years after acquiring the title if acquired on or after May 1, 1988, acquiring the title thereto, and further provided that the land so acquired shall not be used for farming during the ten-year or five-year period except under a lease to a family farm unit, a family farm corporation, an authorized farm corporation, a family farm partnership, or an authorized farm partnership. The aforementioned ten-year or five-year limitation period shall be deemed a covenant running with the title to the land against any grantee, assignee, or successor of the pension or investment fund, corporation, or limited partnership. Notwithstanding the five-year divestiture requirement under this clause, a financial institution may continue to own the agricultural land if the agricultural land is leased to the immediately preceding former owner, but must divest of the agricultural land within the ten-year period. Livestock acquired by a pension or investment fund, corporation, or limited partnership in the collection of debts, or by a procedure for the enforcement of lien or claim on the livestock whether created by security agreement or otherwise after the effective date of this act, must be sold or disposed of within one full production cycle for the type of livestock acquired or 18 months after the livestock is acquired, whichever is later;

(j) agricultural land acquired by a corporation regulated under the provi-

sions of Minnesota Statutes 1974, chapter 216B, for purposes described in that chapter or by an electric generation or transmission cooperative for use in its business, provided, however, that such land may not be used for farming except under lease to a family farm unit, a family farm corporation, or a family farm partnership;

(k) agricultural land, either leased or owned, totaling no more than 2,700 acres, acquired after May 20, 1973, for the purpose of replacing or expanding asparagus growing operations, provided that such corporation had established 2,000 acres of asparagus production;

(l) all agricultural land or land capable of being used for farming which was owned or leased by an authorized farm corporation as defined in Minnesota Statutes 1974, section 500.24, subdivision 1, clause (d), but which does not qualify as an authorized farm corporation as defined in subdivision 2, clause (d);

(m) a corporation formed primarily for religious purposes whose sole income is derived from agriculture;

(n) agricultural land owned or leased by a corporation prior to August 1, 1975, which was exempted from the restriction of this subdivision under the provisions of Laws 1973, chapter 427, including normal expansion of such ownership or leasehold interest to be exercised at a rate not to exceed 20 percent of the amount of land owned or leased on August 1, 1975, in any five-year period and the additional ownership reasonably necessary to meet requirements of pollution control rules;

(o) agricultural land owned or leased by a corporation prior to August 1, 1978, including normal expansion of such ownership or leasehold interest, to be exercised at a rate not to exceed 20 percent of the amount of land owned or leased on August 1, 1978, and the additional ownership reasonably necessary to meet requirements of pollution control rules, provided that nothing herein shall reduce any exemption contained under the provisions of Laws 1975, chapter 324, section 1, subdivision 2;

(p) an interest in the title to agricultural land acquired by a pension fund or family trust established by the owners of a family farm, authorized farm corporation or family farm corporation, but limited to the farm on which one or more of those owners or shareholders have resided or have been actively engaged in farming as required by subdivision 2, clause (b), (c), or (d);

(q) agricultural land owned by a nursing home located in a city with a population, according to the state demographer's 1985 estimate, between 900 and 1,000, in a county with a population, according to the state demographer's 1985 estimate, between 18,000 and 19,000, if the land was given to the nursing home as a gift with the expectation that it would not be sold during the donor's lifetime. This exemption is available until July 1, 1995;

(r) the acreage of agricultural land and land capable of being used for farm-

ing owned and recorded by an authorized farm corporation as defined in Minnesota Statutes 1986, section 500.24, subdivision 2, paragraph (d), or a limited partnership as of May 1, 1988, including the normal expansion of the ownership at a rate not to exceed 20 percent of the land owned and recorded as of May 1, 1988, measured in acres, in any five-year period, and including additional ownership reasonably necessary to meet the requirements of pollution control rules;

(s) agricultural land owned or leased as a necessary part of an aquatic farm as defined in section 17.47, subdivision 3.

Sec. 4. Minnesota Statutes 1992, section 561.19, subdivision 1, is amended to read:

Subdivision 1. **DEFINITIONS.** For the purposes of this section, the following terms have the meanings given them:

(a) "Agricultural operation" means a facility and its appurtenances for the production of crops, livestock, poultry, dairy products or poultry products, but not a facility primarily engaged in processing agricultural products.

(b) "Established date of operation" means the date on which the agricultural operation commenced. If the agricultural operation is subsequently expanded or significantly altered, the established date of operation for each expansion or alteration is deemed to be the date of commencement of the expanded or altered operation. As used in this paragraph, "expanded or significantly altered" means:

(1) an expansion by at least 25 percent in the amount of a particular crop grown or the number of a particular kind of animal or livestock located on an agricultural operation; or

(2) a distinct change in the kind of agricultural operation, as in changing from one kind of crop, livestock, animal, or product to another, but not merely a change from one generally accepted agricultural practice to another in producing the same crop or product.

(c) "Family farm" means an unincorporated farm unit owned by one or more persons or spouses of persons related to each other within the third degree of kindred according to the rules of the civil law at least one of whom is residing or actively engaged in farming on the farm unit, or a "family farm corporation," as that term is defined in section 500.24, subdivision 2.

Sec. 5. Minnesota Statutes 1992, section 561.19, subdivision 2, is amended to read:

Subd. 2. **AGRICULTURAL OPERATION NOT A NUISANCE.** (a) An agricultural operation ~~which is a part of a family farm~~ is not and shall not become a private or public nuisance after ~~six~~ two years from its established date of operation if the operation was not a nuisance at its established date of operation.

(b) An agricultural operation is operating according to generally accepted agricultural practices if it is located in an agriculturally zoned area and complies with the provisions of all applicable federal and state statutes and rules or any issued permits for the operation.

(c) The provisions of this subdivision do not apply:

~~(a)~~ (1) to a condition or injury which results from the negligent or improper operation of an agricultural operation or from operations contrary to commonly accepted agricultural practices or to applicable state or local laws, ordinances, rules, or permits;

~~(b)~~ (2) when an agricultural operation causes injury or direct threat of injury to the health or safety of any person;

~~(c)~~ (3) to the pollution of, or change in the condition of, the waters of the state or the overflow of waters on the lands of any person;

~~(d)~~ (4) to an animal feedlot facility with a swine capacity of 1,000 or more animal units as defined in the rules of the pollution control agency for control of pollution from animal feedlots, or a cattle capacity of 2,500 animals or more; or

~~(e)~~ (5) to any prosecution for the crime of public nuisance as provided in section 609.74 or to an action by a public authority to abate a particular condition which is a public nuisance.

Sec. 6. CORPORATE FARMING LAW TASK FORCE.

Subdivision 1. PURPOSE. Current Minnesota law generally precludes corporations from owning farm land or operating a farming enterprise. Corporate farming law has been developed over a period of 14 decades, and the development has included numerous changes to accommodate shifting priorities in agriculture and a recognition that the economic and social climate of the state is not static. There is a concern whether current corporate farming law, especially as it relates to the breeding and raising of swine, represents the appropriate balance between protection of family farms and opportunity for creative new enterprise structures organized by multiple farmers. Farmers wish to support a corporate farming law that is in the overall best interest of production agriculture and preservation of the family farm unit as the main component of the agricultural economy in the state. The study, legislative report, and legislative recommendations authorized by this section will increase public and legislative understanding of the issues involved.

Subd. 2. CREATION; MEMBERSHIP. (a) There is hereby created a corporate farming law task force with ten members appointed as follows:

(1) the chairs of the agriculture policy committees of the Minnesota senate and house of representatives, or their designees;

(2) two members of the Minnesota house of representatives appointed by the speaker of the house;

(3) one member of the Minnesota house of representatives appointed by the minority leader of the house;

(4) two members of the Minnesota senate appointed by the senate committee on rules and administration;

(5) one member of the Minnesota senate appointed by the minority leader of the senate;

(6) one member with education and experience in the area of agricultural economics appointed by the governor of Minnesota; and

(7) one member who is the operator of a production agriculture farm in Minnesota appointed by the governor.

(b) Each of the appointing authorities must make their respective appointments not later than June 15, 1994.

(c) Citizen members of the task force may be reimbursed for expenses as provided in Minnesota Statutes, section 15.059, subdivision 6.

(d) The first meeting of the task force must be called and convened by the chairs of the agriculture policy committees of the senate and the house of representatives. Task force members must then elect a permanent chair from among the task force members.

Subd. 3. CHARGE. The task force must examine current and projected impacts of corporate, partnership, and limited liability company farming enterprises on the economic, social, and environmental conditions and structures of rural Minnesota. The study should consider probable impacts on both agriculture related and nonagricultural businesses in rural communities. Issues of non-point source pollution and other environmental issues must also be considered. The task force shall also examine the issue of responsibility for potential pollution damage.

Subd. 4. RESOURCES; STAFF SUPPORT; CONTRACT SERVICES. The commissioner of agriculture shall provide necessary resources and staff support for the meetings, hearings, activities, and report of the task force. To the extent the task force determines it appropriate to contract with nonstate providers for research or analytical services, the commissioner shall serve as the fiscal agent for the task force.

Subd. 5. PUBLIC HEARINGS. The task force shall hold at least four public hearings on the issue of corporate farming law and the impacts of other potential legal structures of farming operations, with specific emphasis on appropriate regulation of business structures involved in swine breeding and raising. At least three of the hearings must be held in greater Minnesota.

Subd. 6. REPORT. Not later than February 15, 1995, the corporate farming law task force shall report to the legislature on the findings of its study. The

report must include recommendations for improvements in Minnesota Statutes that are in the best interests of production agriculture in the state and the economic, environmental, and social environment and preservation of the family farm.

Subd. 7. EXPIRATION. The corporate farming law task force expires 45 days after its report and recommendations are delivered to the legislature or on May 15, 1995, whichever date is earlier.

Sec. 7. EFFECTIVE DATE.

Section 6 is effective the day following final enactment.

Presented to the governor May 6, 1994

Signed by the governor May 10, 1994, 3:54 p.m.

CHAPTER 623—S.F.No. 2429

An act relating to the use of public services and resources; modifying the list of protected game birds; authorizing nonresident multiple zone antlered deer licenses; exemptions from pest control licensing; purchase of archery deer licenses after the firearms season opens; limiting the authority of the commissioner of natural resources to regulate archery; administration of contraceptive chemicals to wild animals; possession of firearms in muzzle-loader only deer zones; modifying restrictions on operation of snowmobiles by minors; providing for free small game licenses for disabled veterans; undesirable exotic aquatic plants and wild animals; Eurasian wild pigs; clarifying the requirement to wear blaze orange clothing during deer season; allowing local road authorities to remove beaver dams and lodges near public roads; exemptions from fur buying and selling licensure; extending hours for tending traps; allowing released game birds to be recaptured without a license; allowing use of retractable broadhead arrows in taking big game; authorizing the commissioner of natural resources to allow use of certain mechanical devices for hooking fish; allowing nonresidents to take rough fish by harpooning; requiring the department of natural resources to share in the expense of partition fences; allowing the taking of two deer in designated counties during the 1994 and 1995 hunting seasons; abolishing the nonresident bear guide license; clarifying restrictions on importation of fish imported from Ontario; temporarily modifying provisions relating to raccoon and red fox; requiring reports; consolidating and recodifying statutes providing limitations on private personal injury liability; providing immunity for certain volunteer athletic physicians and trainers; limiting liability for certain injuries arising out of nonprofit livestock activities; modifying provisions dealing with recreational land use liability; providing limitations on liability of officers, directors, and agents of economic development authorities; amending Minnesota Statutes 1992, sections 18.317, subdivisions 1, 1a, 2, 3, 4, and 5; 84.966, subdivision 1; 84.967; 84.968, subdivision 2; 84.9691; 86B.401, subdivision 11; 97A.015, subdivisions 24 and 52; 97A.115, subdivision 2; 97A.441, by adding a subdivision; 97A.475, subdivision 3; 97A.485, subdivision 9; 97A.501, by adding a subdivision; 97B.035, by adding a subdivision; 97B.075; 97B.211, subdivision 2; 97B.701, by adding a subdivision;

CORPORATE FARMING LAW TASK FORCE

October 25, 1994
Stevens County Meeting

The Corporate Farming Law Task Force public hearing was held in Morris Minnesota. The hearing was preceded by lunch with speaker David Preisler, the Executive Director of the Minnesota Pork Producers Association and a tour arranged by Senator Berg of several Stevens County farming operations.

Mr. Preisler spoke on the state of the hog industry in Minnesota. He cited statistics from a report titled "Minnesota Pork Industry Review" which was commissioned by his organization. He stated that Minnesota lost its number 3 rank in hog production to North Carolina in 1993. The number of hog producers has dropped in half since 1980 down from approximately 30,000 hog producers to 15,000 in 1993. He also stated that breeding numbers show even a more serious decline is pending because it is the number of breeding animals that dictate where hogs will be grown in the future. In terms of breeding stock between 1983 and 1993 Minnesota dropped 5 percent. Meanwhile, North Carolina was up 103 percent, Arkansas was up 118 percent, Colorado was up 150 percent, and Oklahoma was up 173 percent over the same time period. These statistics according to Mr. Preisler indicated that Minnesota needed to be more aggressive in terms of market share, by allowing farmers to gain advantages through "networking".

The farming operations that were toured included: Evergreen Farms, Northland Pork, Hilltop Swine, Wulf Limousine, and Fehr's Cattle Feeding.

The public hearing was called to order by Senator Joe Bertram at 7:00 P.M. at the Sunwood Inn in Morris, Minnesota.

Persons participating in the meeting:

Task Force Members: Senator Joe Bertram, Senator Charlie Berg, Senator Steve Dille, Senator Steven Morse, Representative Gene Hugoson, Representative Doug Peterson, Representative Marvin Dauner, Dr. Ben Senauer, and Mr. Curt Watson

Member Absent: Representative Andy Steensma

Legislative Staff: House Agriculture Committee Administrator Pat Plonski, Senate Legislative Analyst Greg Knopff, and House Legislative Analyst Samuel Rankin

Department of Agriculture Staff: Assistant MDA Commissioner Bill Oemichen, Assistant Department Counsel Gail Ryan, Supervisor David Ball, and Legal Analyst Richard Prim

Pollution Control Agency Staff: Dave Nelson, Supervisor Feedlot Division

Office of Attorney General Staff: Assistant Attorney General Paul Strandberg

Senator Bertram called for the beginning of public testimony.

Members of the public offering testimony included:

1. Dave Starner, a pork producer from Hoffman, MN. Executive Director of the Minnesota Pork Producers, and Chairman of Production Technology and Research Committee, MPPA. Mr. Starner offered his support of the changes in the corporate farm law made last session. He stated that farmers want to be able to compete with large corporations. He also spoke of the changes in the hog industry including vertical integration and the move to larger farms. Mr. Starner is a producer-member of Evergreen Farms.

2. Dan Perkins, Stevens County Adult Farm Management Instructor. Mr. Perkins commended the new law because it allows individuals to combine resources and skills, versus expecting the individual farmer owner to perform all labor and management tasks. He stated that the law allows farmers to pool capital, and pick up economies of scale. He also felt the law reduces individual farmer's debt load and stress level. Senator Bertram commented that the changes allow young farmers the opportunity to enter into agriculture. Mr. Perkins agreed. Representative Hugoson asked whether it is easier for farmers to get financing when associated with such entities. Mr. Perkins said that the banks are more comfortable with the entity. Mr. Perkins would like to remove the word corporate from the discussion; what he sees the discussion being about is joint ventures or commingling strengths.

3. Ed Ellison, a farmer and leader of Agassiz Pork, Herman, MN. Mr. Ellison thanked the legislators for the change in the law. Mr. Ellison was developing a farrow to finish coop at the time the legislation was passed, and the change allowed them to form their operation. Representative Dauner asked if there were any changes that needed to be made to the corporate farm law. Mr. Ellison responded that he was pleased with the law the way it is.

4. Richard Schieck, a pork producer from Sunberg. Mr. Schieck commented on the changes in the industry. With the changes that are occurring, he felt he needed to expand his 60-sow operation. However, he did not know if he could afford such expansion. Instead he was interested in developing a cooperative system. He has no suggested changes for the current law, except that he would like to see limited liability companies become an available ownership form for farmers. He is also concerned about nuisance suits because he feels that his operation does not smell any worse than sewage treatment plants. Senator Bertram commented that the word corporate does not necessarily mean large farms, some people call the relationships that are formed "networking" under a corporate structure. Farmers network to divide up an operation, or to locate the breeding operation for several farms in a single unit. It does not mean that the net farming operations will be any larger.

5. Loren Carr, Executive Vice President Morris State Bank. Mr. Carr asked if there was a definition of the "family farm". He supports the legislative changes, and the limited liability company concept because they allow farmers to compete just like every business has to. He commented that other businesses (ex. banks) are expanding or merging operations to be more competitive. He felt that farmers need the ability to do so also.

6. Tim Bormann, Production Manager, Evergreen Partners I. Mr. Bormann said that there are a lot of advantages to cooperative systems like Evergreen. Mr. Bormann felt

that Evergreen Partners I, gave him an opportunity to stay in farming. He said the job pays better than the jobs in town. He receives pay incentives based on animal performance, and he also is given health benefits. He said that right now he is not able to buy into the operation, but hopes that buying in will be an option he will be able to exercise in the future.

7. Greg Boerboom, a pork producer from Marshall, MN, Chairman of Minnesota Pork Producers Membership Committee. Mr. Boerboom stated that new technology is driving changes in the hog industry. He is a member of Well-Cam breeders. As a member of the operation, he likes being able to share the labor, emotional stress and financial risk involved with these new larger operations. He compared swine cooperatives to other cooperative efforts used historically in farming. Senator Bertram asked what people are afraid of in these cooperative operations. Mr. Boerboom said that there is fear of bigness, and of new technology. He said that there has always been fear of new technology. Representative Peterson asked when is large too large. Mr. Boerboom did not know. Senator Dille commented on the fear of new technology. He said that the term "Luddite" is used for people who are afraid of new technology. Senator Dille also listed what he believed were suggested changes to the corporate farm law coming from the speakers. The changes or suggestions are as follows: a) Take the word "corporate" out of the statute. b) Include dairy in the changes to the statute. c) Allow limited liability companies. d) Work on developing odor control technology. e) Conclude that big feedlots, properly managed, are not a threat to water quality. Senator Berg said that if we are looking for changes, he would suggest repealing the corporate farm law, that limited liability companies are needed, and the 1500 acre limitation should be looked at. Senator Morse asked whether we should open up the statute to the point that multi-national firms would be allowed to move into Minnesota. Representative Dauner stated that he is not thinking about repealing the corporate farm law, such a move would not help compromise, it would be war.

8. Don Buhl, pork producer, Tyler, MN, Executive Director, Minnesota Pork Producers, Chairman of Legislative Committee of MPPA. Mr. Buhl stated that the swine industry is very important to the state. If looked at as a single entity, the swine industry is the 5th largest employer in the state. He stated that the changes in the swine industry are national in scope. He felt the benefits of "networking" were well documented in the attempt to deal with the changes occurring at the national level. Representative Peterson commented that he was concerned about manure management, and whether small farmers will be put out of business by environmental regulation intended for the large operations. Representative Hugoson stated that the state needs to be realistic about the corporate farm law because Minnesota's farmers are competing against the Tyson's, et al, wherever they are located. He felt that we need to do what we can to help our farmers compete.

9. Mike Leonard, Security State Bank of Fergus Falls. Mr. Leonard said that he and others are trying to improve the dairy industry through the Ottertail County Dairy Business Retention and Enhancement Program. He is concerned over the decreasing number of grade A and Grade B dairy producers. He is also worried about loss of dairy processing plants, feed mills, electric power usage, and young people. He suggested that the corporate farm law be changed to retain and expand the dairy industry. Senator Berg asked whether the dairy men in his area would support such a change. Mr. Leonard was not sure.

10. Denzel Cooper, Ag Extension Ottertail County. Mr. Cooper reiterated comments made by Mr. Leonard and added that Ottertail County is losing 3-4 dairy producers a month. He also stated that it takes 48,000 cows to make a processing plant to operate efficiently, and the area now has only 38,000.

11. Charles Connelly, a small diversified farmer. Mr. Connelly felt that farming is becoming too industrialized. He stated that constant farm expansion includes constant debt. He felt smaller farms better support the local community and that nitrogen and phosphorus will be causes of water pollution. He suggested that the state turn away from industrialized corporate agriculture. He wanted the legislature to focus on making farming more profitable and he opposes the changes that were made to the statute last year.

12. John Letterman, pork producer from Brandon. Mr. Letterman is a part of a 7 member marketing cooperative. He likes the option of expanding into cooperative production. Before the changes were made to the corporate farm law, he was considering leaving the industry.

13. Jerry Jacoby, Chair of Minnesota Corn Processors. Mr. Jacoby wanted to add to the list of changes that Senator Dille had made. His organization would like to build a feedlot in Minnesota. However the current law, with its livestock farmer percentage restriction does not allow them to do so. He stated that his organization may be forced to build the feedlot somewhere else.

14. Jerry Schoenfeld, Minnesota Pork Producers. Mr. Schoenfeld made several suggestions. He felt that the state needs more research money going into odor control, and nutrient research. He would like to see that state resolve conflicting state policies. He felt that the majority of pork producers do not want to open up the law to allow the Tysons into the industry. He felt that local zoning ordinances need to be looked at. He stated that now there is very different approaches being taken at the local level. He suggested that the state allow limited liability companies. Finally he stated that the state needs to keep processors in this state.

Senator Bertram adjourned the meeting at 9:30 p.m.

CORPORATE FARMING LAW TASK FORCE

December 8, 1994
Rice County Meeting

The Corporate Farming Law Task Force public hearing was held in Northfield Minnesota. The hearing was preceded by a tour arranged by Senator Morse of several farming operations in the Altura, Lewiston, and Goodhue, areas. Lunch was also served with three area hog farmers giving presentations about their operations. Two of the farmers described their pasture farrowing operations, while the third described his more conventional operation.

The public hearing was called to order by Senator Joe Bertram at 7:00 p.m. at the First United Church of Christ in Northfield, Minnesota.

Persons participating in the meeting:

Task Force Members: Senator Joe Bertram, Senator Charlie Berg, Senator Steve Dille, Senator Steven Morse, Representative Gene Hugoson, Representative Doug Peterson, and Dr. Ben Senauer

Members Absent: Representative Marvin Dauner, Representative Andy Steensma, Mr. Curt Watson

Legislative Staff: House Agriculture Committee Administrator Pat Plonski, Senate Legislative Analyst Greg Knopff, House Legislative Analyst Samuel Rankin, and Committee Secretary Lori Meyer

Department of Agriculture Staff: MDA Commissioner Elton R. Redalen, Assistant Department Counsel Gail Ryan, Supervisor David Ball, and Legal Analyst Richard Prim

Pollution Control Agency Staff: Dave Nelson, Supervisor Feedlot Division

Office of Attorney General Staff: Assistant Attorney General Paul Strandberg

Senator Bertram called for the beginning of public testimony.

Members of the public offering testimony included:

1. Richard Nord. Mr. Nord submitted a petition asking for an Environmental Assessment Worksheet for Holden Farm Inc.'s proposed expansion. The petition contained 36 signatures. Mr. Nord lives within 1000 feet of several aspects of Holden Farm Inc.'s operations including hog barns, manure lagoons, and dead animal pits. Mr. Nord opposes loosening the corporate farm law, and amending the statute to allow limited liability companies. Mr. Nord accused Holden Farm Inc. of several illegal practices.

2. Katey Wortel. Ms. Wortel appeared on behalf of the Mankato Area Environmentalists. She stated that the state does not have enough information on earthen lagoons. She stated that her organization endorses a state wide moratorium on large earthen lagoons until the state has better information on the potential environmental hazards associated with them. She defined large as over a 1000 animal units. She felt that the corporate farm law and the state's agricultural policy should support sustainable agriculture.

3. Elwood Lips. Mr. Lips suggested the corporate farm statute be left alone during the next legislative session, so that the state can assess the impact of the most recent changes to the corporate farm law. He stated that family farms need a strong corporate farm law so that they can survive. He felt that creative new structures are fine, but family farms can not compete with the large operations that close markets and force out family farmers.

4. David Roberts. Mr. Roberts stated that although he is not a farmer, he is a consumer of ag products and is also a concerned citizen. He stated that he felt that small farmers are better stewards of the land than corporate operations are.

5. Charlotte Cornille. Ms. Cornille asked how does farm type affect quality of life in the overall rural community. She cited studies that found that communities based on a system of small family farms have a better quality of life. She stated that smaller sized farms lead to; superior public services, higher rates of social and political participation, less social stratification, lower poverty rates, more diverse and stable business center. She also stated that corporate farming leads to; population decline, lower incomes, fewer community services, less participation in the democratic process, less retail trade, environmental pollution, greater unemployment, and social stratification.

6. Darlene Hand. Ms. Hand stated that small farmers suffer the most from large corporate operations. She stated that strengthening the corporate farm law will prevent the odor, pollution, and health problems that rural residents are being forced to accept as a result of corporate farming. She also stated that strengthening the corporate farm law is the best way of keeping family farms on the land.

7. Charles Umbanhouar. Mr. Umbanhouar stated that he is a professor of political science at St. Olaf college. He encouraged the task force in its report to the legislature to not focus only on economic issues. He stated that the corporate farm law grew out of the Jeffersonian agri-political tradition. Therefore social, environmental and political issues should also be considered. He stated that the family farm structure is a social structure that represents traditional family values, and should be supported.

8. Debra Sullivan. Ms. Sullivan stated that she is strongly against changing the corporate farm law to allow limited liability companies. She is worried that others will have to assume the environmental liability posed by large operations formed under the limited liability company structure. She is concerned about the type of environment this generation will leave for the next.

9. Jan Stevens. Ms. Stevens stated that the state should be cautious in restricting ownership forms in agriculture. She feels that there is room for many types and sizes and structures of farm operations. She feels that we need to help farmers compete.

10. David Priesler. Mr. Priesler stated that the Minnesota Pork Producers supported the changes that were made to the corporate farm law during the last legislative session. He also favored farmers having the option of forming limited liability companies. He expressed concern that some counties are not intending to apply for loan funds available

under the Agriculture Best Management Practices loan program. He felt that farmers needed to be able to take advantage of the loan funds to upgrade their animal waste facilities. He also expressed concern about counties and townships duplicating the environmental function of the Minnesota Pollution Control Agency through their zoning functions. Mr. Priesler stated that the state needs to do something to try to prevent the further loss of the state's packing capacity. He stated that within the last two years the state has lost the equivalent of 25000 head of hog packing capacity per day.

11. Stephanie Henrikson. Ms. Henrikson said that people want to farm their own land, not to be paid employees for large operations. She stated that she has spoken to employees of PCA who say that they are afraid to speak out. She also stated that she knows farmers who are afraid to speak out against large operations. She stated that we need a farm policy that is fair. She questioned the statement that the changes to the corporate farm law were made to support family farms by saying that you can not support large confinement operations and small family farms at the same time. She stated that only Nebraska with its Initiative 300 is protecting family farmers.

12. Charlotte Salmon. Ms. Salmon has traveled around the U.S. and the world and has compared farming structures. She encouraged the task force to look at Nebraska's Initiative 300. She stated that Initiative 300 places competition on a level playing field.

13. Dr. Henry Kermott. Dr. Kermott's statement was read by Richard Bachman. Dr. Kermott is a professor of biology at St. Olaf. He stated that leakage from large confinement facilities can not be prevented by any means for any more than a few years. He stated that there are new liners and leaking liners, no other kinds. He stated that large confinement operations will pollute, no question about it.

14. Harvey Wollum. Mr. Wollum stated that he represented the Minnesota State Cattlemen which wanted to thank the legislature and the members of the task force for the changes that were made to the corporate farm law. He also supported limited liability companies.

15. Sam Benjamin. Mr. Benjamin said that Minnesota farmers need to view themselves not just as Minnesotans, but need to question where they will fit in the world picture of agriculture. He stated that if you want to save family farmers you need to preserve the option to incorporate at any level. He referenced the competition over the hog industry occurring nationwide. He suggested that the task force keep the corporate farm issue and the environmental issue separate.

16. Peggy McKinnon. Ms. McKinnon encouraged the task force to set policies that are fair to everyone, not policies that favor large operations.

17. Chris Robbins. Ms. Robbins Represented the Cannon River Watershed Partnership, a 250 member watershed organization. She felt that the changes that were made to the corporate farm law will increase the number of feedlot applications in the watershed. She is concerned that the river will be degraded.

18. Dick Levins. Mr. Levins presented research by a graduate student indicating that there was a correlation between farm size and community support. He stated that small farms better support their community because they are more likely to buy locally.

19. Tom Spartz. Mr. Spartz stated that he came to the task force as an angry citizen. He stated that he is not a farmer, but has lived in the country all of his life, and that he doesn't want to smell hog manure. He is concerned about corporations putting up big lots.

He also expressed concern about the nuisance suit limitation that was passed during the last session. He stated that people are beginning to not trust their government. He feels that the people do not want these things and the government is allowing them.

20. Jim Wendland. Mr. Wendland represented the Minnesota Corn Growers Association. He stated that his organization supported the changes to the corporate farm law because it gives farmers the opportunity to operate more efficiently and gain profitability through value-added processing. He thinks this is what is going to allow farmers to stay in business.

21. David Paxson. Mr. Paxson does not want to see the corporate farm law further loosened. He believes there is a difference between farms and animal factories. He believes there is a difference in attitude once a farm becomes a corporation in that no one feels responsible. He stated that he would favor measures that would slow down the process of farms going corporate.

22. Jenee Varner. Ms. Varner represented Central Minnesota COACT which is an organization opposed to corporate farming. She feels that large operations harm rural economies by driving out smaller farmers. She feels that counties should be able to set their own environmental standards.

23. Edward Langerab. Mr. Langerab commented on the limited liability company. He felt that shareholders would only be liable up to the amount of their investment. Senator Berg questioned Dave Nelson of PCA about whether the shareholders would be shielded from environmental liability. Mr. Nelson said that under several environmental laws the individuals can be reached in criminal prosecutions. Senator Morse then stated that the shareholders would be protected for non-criminal environmental damage. Senator Berg stated that he did not think that was true. Paul Strandberg with the Minnesota Attorney General's Office stated that he would research the issue and prepare a response for the next task force meeting.

24. Gary Allen. Mr. Allen is a dairy farmer who feels that farmers are having trouble capitalizing the types of operations that can make them profitable, and as a result he is concerned about losing dairy infrastructure. He asked why dairy was excluded from the recent change to the corporate farm law. Senator Berg stated that during the last session it was unclear from the people representing the dairy industry whether or not the dairy industry wanted to be included, therefore they were excluded.

25. Ron Durst. Mr. Durst stated that he doubted anyone would invest in any company without their liability being limited to the amount of their investment. He stated that if the corporate farm law was enacted to save dairy farmers it has done a poor job. He feels that the state's market share is being lost to other parts of the country and our infrastructure, in terms of processing facilities, is going with it.

26. Dave Fredrickson. Mr. Fredrickson represented the Minnesota Farmers Union which opposes any further changes being made to loosen the corporate farm law during the next session before an assessment is made regarding the effect the recent changes will have. He also stated that his organization opposed the limited liability company concept.

27. Todd Lein. Mr. Lein spoke representing the Land Stewardship Project. He stated that farmers are concerned about access to markets.

28. Lynn Hayes. Ms. Hayes stated that she is an attorney with the Farmer's Legal Action Group. She stated that the issue of liability for environmental liability can and

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should be looked at, and decided by the legislature. She encouraged the legislature to make shareholders personally liable for any environmental damage caused by a corporate farm.

Senator Bertram stated that the next corporate farm task force hearing will be held in Ortonville at 7:00 p.m. at the Matador Supper Club. He then adjourned the meeting at 10:30 p.m.

CORPORATE FARMING LAW TASK FORCE
December 27, 1994
Big Stone County Meeting

The Corporate Farming Law Task Force public hearing was held in Ortonville Minnesota.

The public hearing was called to order by Senator Joe Bertram at 7:00 p.m. at the Matador Supper Club in Ortonville, Minnesota.

Persons participating in the meeting:

Task Force Members: Senator Joe Bertram, Senator Charlie Berg, Senator Steve Dille, Senator Steven Morse, Representative Steven Wenzel, Representative Marvin Dauner, Representative Gene Hugoson, and Representative Doug Peterson, Mr. Curt Watson

Members Absent: Dr. Ben Senauer

Legislators: Representative Charles Brown

Legislative Staff: Senate Counsel Chris Stang

Department of
Agriculture Staff: Assistant Commissioner William L. Oemichen, Assistant Department Counsel Gail Ryan, Supervisor David Ball, and Law Clerk Barb Van Zommeren

Pollution Control
Agency Staff: Dave Nelson, Supervisor Feedlot Division

Office of Attorney
General Staff: Assistant Attorney General Paul Strandberg

Senator Bertram called the meeting to order at 7:00 p.m.

Agency staff offering testimony included:

1. William L. Oemichen. Assistant Commissioner, Minnesota Department of Agriculture. Assistant Commissioner Oemichen provided a brief introduction to the corporate farm law, explained the changes that were made to the law during the 1994 legislative session, recited the charge of the task force, and answered questions from members of the public attending the meeting. Assistant Commissioner Oemichen stated that the Department of Agriculture has only received one application for certification under the new authorized livestock farm corporation provision.

2. Dave Nelson. Supervisor Feedlot Division, Minnesota Pollution Control Agency. Mr. Nelson provided a description of the Minnesota Pollution Control Agencies feedlot permitting process. Mr. Nelson stated the number of feedlot permit applications have increased dramatically in the last few years.

Members of the public offering testimony included:

3. June Warner. Ms. Warner represented Central Minnesota COACT. She stated Morrison and Todd counties have each lost 40 percent of their dairy farmers in the last decade. She

supported the Minnesota Milk Pricing Law. She stated she opposes large scale confinement operations that do not support the local business community. She stated the legislature should look to the Ag Developer 2000 project as a viable alternative to limited liability companies and large corporate confinement operations. Senator Berg stated some dairy processors are faced with moving because of declining supply. He asked whether small farmers would not be better off if some large farms were present to preserve the processing industry. Ms. Warner stated that instead of large operations, the dairy industry in Minnesota needs a better price structure. Representative Brown stated that the heart of agriculture is the cost of production and a reasonable profit. He stated that corporate farming is not the answer.

4. Stanly Estes. Mr. Estes felt persons representing corporations should not be allowed to testify because corporations are not natural persons. He also felt most people who testified at public hearings were on an expense account or were paid to testify. He stated normal citizens do not have the time or resources to prepare testimony. He felt individual people should be paid for their time and mileage to testify, in order to promote more average person input. He believes 95 percent of Minnesotans oppose corporate farms and that all farmers do not want to lose control of the land and markets. He felt the task force was unbalanced in viewpoint, and that all the hearings were held in the southwest.

5. Paul Stark. Mr. Stark spoke on behalf of the Minnesota Farm Bureau. He stated that Farm Bureau maintains its full support of the changes made to the law during the last legislative session. He also stated that Farm Bureau supports the limited liability company concept.

6. Charles Cornille. Mr. Cornille encouraged the task force to leave the law alone, and to help family farms.

7. Carmen Fernholz. Mr. Fernholz stated he was concerned about market access. He stated he had previously never feared the local buying station not buying his hogs, but he is beginning to worry. He is concerned about large coops closing markets to individuals. He supports group marketing, but feels it is not necessary to have large cooperative production. He stated uniform genetics should be provided by the breeding stock producers. He felt young people can get into farming on their own and that they do not need to join cooperatives to enter into farming. Senator Dille asked Mr. Fernholz if he would support Minnesota Corn Processors idea of setting up a large cattle feedlot. Mr. Fernholz stated he would not because he would rather see independent farmers raising those cattle. Representative Brown asked if limited liability companies were allowed, who would be liable for any necessary environmental liability. Senator Bertram cited an Attorney General Opinion from Assistant Attorney General Paul Strandberg which determined it is unlikely that individual shareholders would be held liable in the event of a bankruptcy. Assistant Commissioner Oemichen responded the company would be held liable to the extent of its assets in the same way any person or entity is held liable; after those assets have been exhausted the cost of cleanup would be born by taxpayers, and potentially through the use of superfund dollars. Senator Morse stated that a small, farmer-wide fee system or a system requiring bonding to cover environmental cleanup should be looked into as a potential answer to the liability issue.

8. Jan Melberg. Ms. Melberg stated she is a shareholder in Churchill Cooperative. She felt the corporate farm law was passed to prevent multi-national corporations from entering agriculture, not to prevent farmers from joining together. She stated we need to give young people the opportunity to enter into farming. She regrets the loss of rural population and the increasing number of abandoned farm sites. She felt farmers need the ability to network

and join together to be successful through value added processing. She argued that the state needs to look to the future to preserve its farmers.

9. Dennis Timmerman. Mr. Timmerman stated in the last two years there have been several large sow operations built around him. He recently had to wait three weeks to sell his cattle because contract production had filled the packers demand. He opposed the Minnesota Corn Processors building a cattle feedlot. He felt allowing large operations will only increase the problems independent farmers are having marketing their animals. He opposes further changes in the corporate farm law, especially to allow limited liability companies. He also felt the Minnesota Attorney General should be instructed to investigate any violations that may be currently occurring. He felt that violations of the packers and stockyards act were occurring. He also would like to see the United States Attorney investigate for antitrust violations. Senator Bertram stated that according to the packers and processors has spoken with, they are leaving for two reasons, the first reason being the Pollution Control Agency and the second reason being worker's compensation costs.

10. Jim Quackenbush. Mr. Quackenbush stressed the importance of the livestock industry to the state both economically and socially. He stated five families are supported by his current farming operations where only two families could be supported if only row crops were produced. He stated he is a shareholder in Evergreen Partners, Inc, and that he also takes advantage of a group marketing program. He stated new technologies are forcing changes, and that he applauded the legislature for changing the corporate farm statute to allow farmers to keep up with those changes.

11. F.W. Habberman. Mr. Habberman stated there is a large cooperative putting up buildings in his area, and that the cooperative is not getting its financing or any other supplies locally. He also questioned whether or not the members were farmers. He said large operations will drive the little farmers out.

12. Lester Fredrickson. Mr. Fredrickson is a former Renville County Commissioner. He is surrounded by large hog operations and is consequently surrounded by swine odor. He stated no one has the right to destroy his quality of life. He feels there are better ways to handle the manure. He feels that operations with lagoons should be required to post a bond or some other form of security to cover any environmental liability. He opposes limited liability companies.

13. Stephanie Henriksen. Ms. Henriksen felt the change that was made during last session was too drastic. She suggested the law be changed to reflect a 20 shareholder limitation. She also said the state should continue to restrict limited liability companies and the dairy industry. She cited an article from Agri-News encouraging Senator Berg to drop his plans for the corporate farm law. She felt the "get big or get out" message has scared farmers into an "every one for themselves" type of attitude. She feels there is more to this discussion than profit.

14. Virginia Homme. Ms. Homme is a member of the Southwest Minnesota Sustainable Farming Association, the Land Stewardship Project, and is also on the board of directors for the Minnesota Food Association. Ms. Homme stated the task force should assess what effect last year's changes will have before making any further changes. She cited a newspaper article that indicated that Renville County has, through its new hog operations, added the sewage equivalent of 25,000 people. She cited the Center for Rural Affairs in Nebraska as saying corporate farms enjoy a 30% tax advantage over non-incorporated farms. She felt the state should level the playing field rather than increase the disparity. Senator Berg stated South Dakota and Nebraska are both looking at loosening their corporate farming laws.

15. Gerald Lacey. Mr. Lacey stated he was representing barley growers. He felt people in the Red River Valley are more receptive to cooperatives because they have seen, through the sugar beet cooperatives, how coops can work for farmers. He stated farmers are going to need all the tools they can find. He felt farmers needed to either form marketing coops, or form coops to handle the actual processing. He stated his children are losing money raising hogs because they do not have a contract. He said farmers need assistance from the Department of Agriculture to help establish marketing coops. Representative Brown asked Mr. Lacey about odor. Mr. Lacey suggested the state attack the odor problem directly, not indirectly through corporate limitations. Mr. Watson asked about farmer owned processing. Mr. Lacey stated that he would favor farmer owned processing as well as other more aggressive ideas intended to save agriculture.

16. Patrick Fish. Mr. Fish spoke representing Stella Foods which is a dairy processor from Big Stone South Dakota. He stated that due to declining milk volumes his company might be forced to move out of the midwest. He stated his company is sensitive to the economic impacts rural communities would suffer should their plants be forced to close. He feels more efficient and lower cost production methods need to be used to preserve the dairy industry in the midwest.

17. Jim Van Der Pol. Mr. Van Der Pol stated he farrows 75-100 litters of swine a year. He is suspicious of limited liability companies, although his major concern is market access. He invited the audience to a pasture farrowing field day as an example of an alternative to large confinement systems. He said his costs are half of what they would be in confinement. He also said his hogs do not smell while they are on pasture. Senator Morse asked what more, other than market access, can the state do to help his type of production to be successful. Mr. Van Der Pol suggested the state encourage enforcement of environmental laws, urge the state's attorney general to investigate antitrust violations in the packing industry, and come to his field day and see his alternative. Representative Peterson asked what the state can do to preserve market access. Mr. Van Der Pol stated the state needs to find out why the packers are leaving.

18. Dorinda Ohnstad. Ms. Ohnstad stated she is both the Director of Economic Development, and the Planning and Zoning Administrator for the city of Ortonville. She is concerned about the dairy industry because the local processors are operating at less than capacity and may be forced to move. She stated if one of their local processors were to move, approximately 90 well paying jobs might be lost. Those jobs, if they were lost, would have an additional impact on the local community's service industries. She said the state needs to work towards saving its existing dairy farmers. She also said she would like to see a large operation be built if it would keep the processors in the area. She believes the environment can continue to be preserved while maintaining industry.

19. Gary Van Dyke. Mr. Van Dyke said he opposed a Minnesota Corn Processors proposal to set up a large cattle feedlot in South Dakota. He feels large operations should be held liable for any environmental damage they might cause. He also said large operations do not patronize local main street businesses. He asked the task force not to change the law to make it any weaker.

Senator Bertram adjourned the meeting at 10:00 P.M.

CORPORATE FARMING LAW TASK FORCE
January 26, 1995
Draft Report Review

The Corporate Farming Law Task Force public meeting was held in St. Paul, Minnesota. The meeting was held to review the draft task force report and to adopt recommendations to the legislature.

The public meeting was called to order by Senator Joe Bertram at 7:25 p.m. at the State Capitol, room 15.

Persons participating in the meeting:

Task Force Members: Senator Joe Bertram, Senator Charlie Berg, Senator Steve Dille, Senator Steven Morse, Representative Gene Hugoson, Representative Doug Peterson, Representative Marvin Dauner, Dr. Ben Senauer, and Mr. Curt Watson.

Members Absent: None.

Legislative Staff: House Agriculture Committee Administrator Pat Plonski, Senate Counsel Chris Stang, and Senate Legislative Analyst Greg Knopff

Department of
Agriculture Staff: Assistant Commissioner William L. Oemichen, Assistant Department Counsel Gail Ryan, and Legal Analyst Richard Prim

Pollution Control
Agency Staff: Dave Nelson, Supervisor Feedlot Division

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Discussion of the task force report:

1. Senator Bertram requested that Department of Agriculture staff provide an overview of the report, and pointed out to the task force members a list of conclusions or recommendations that the members would be discussing and potentially adopting.

2. Senator Berg submitted to the task force an article describing limited liability companies.

3. Assistant Commissioner Bill Oemichen outlined the sections of the report and reiterated the charge of the task force. Senator Bertram authorized the Department to give copies of the draft report to members of the public.

4. Senator Morse inquired as to where testimony regarding the economic impacts of large operations versus small operations was located in the report. Assistant Commissioner Oemichen responded that individual testimony is summarized in the minutes from each meeting which were included in an appendix to the report. Assistant Commissioner Oemichen also pointed out research from the University of Minnesota which was presented

to the task force and which was specifically cited to in the Economic and Social sections of the task force report.

5. Mr. Watson inquired into why the court case *Board of Sup'rs v. ValAdCo*¹ was included in the draft report. Mr. Watson felt that the case was about zoning and not about corporate farming. Assistant Commissioner Oemichen responded that the reason the case was included was because legislative staff recommended that it be included, because local zoning authority for environmental concerns was a topic of discussion at the public hearings, and because the task force was charged with considering the environmental impacts of corporate farming. Senator Berg stated that the case was a Minnesota Court of Appeals decision, and he inquired as to whether the case had been appealed. Mr. Watson stated that the decision had been appealed to the Minnesota Supreme Court which chose not to hear it.

6. Assistant Commissioner Oemichen stated that the legislature appropriated \$40,000 to the task force with the Department of Agriculture charged with staffing the task force and acting as the fiscal agent. The Department has spent to date approximately \$3,500, primarily on buses and meals. The printing of the report will be billed to the task force account when it is completed. The Department estimated that, barring any further expenditures by task force members, there would be approximately \$35-36,000 left over. Senator Bertram stated that the task force is to be commended for being conservative with public funds. Assistant Commissioner Oemichen stated that the task force would expire 45 days after the submission of the report which is due February 15. Therefore, if the report is submitted as scheduled the task force would expire April 1. Senator Bertram asked whether the money would go back to the General Fund upon the expiration of the task force. Assistant Commissioner Oemichen stated the money would go back into the General Fund on June 30. Senator Bertram inquired into the ability of the task force to study a site somewhere else. Assistant Commissioner Oemichen, while deferring to legislative legal staff, felt that the task force could do so before the task force expired, but that it might need other authorizing legislation to do so after April 1.

7. Senator Bertram stated he wanted to make it clear that the changes that were made last year were not made to permit corporations to farm. He requested that Assistant Commissioner Oemichen again explain the changes that were made to the statute during the last legislative session. Assistant Commissioner Oemichen again outlined the law and the changes that were made. Specifically, he stated that farmers were given greater authority to form cooperatives, and that the law was not opened to allow large corporations into agriculture.

8. Mr. Watson stated that in regard to the spending patterns of large operations. The operation that he is a member of has tracked its spending patterns and its findings would contradict those of the research submitted by the University of Minnesota. Mr. Watson also cited to the testimony from the public hearing held in Morris, Minnesota regarding the positive economic impact and opportunities that have been created by the changes made to the corporate farm law.

9. Senator Bertram suggested that the task force members begin reviewing the potential recommendations listed in the report, and vote on whether or not they wanted to include any or all of them in the report.

¹ 504 N.W.2d 267 (Minn. App. 1993).

10. Representative Dauner pointed out apparent conflicts between the article Senator Berg submitted on limited liability companies and the draft report's summary of other state's corporate farming laws. Assistant Commissioner Oemichen stated that the Department would make corrections to the report if necessary.

11. Senator Dille suggested that the task force go down the list of recommendations and vote on them. Representative Peterson inquired into the voting procedures. He suggested that the members provide individual position papers, and that House and Senate position papers be drafted. He also felt the task force did not need to vote on the issues. Senator Bertram stated that the task force was created to make unified recommendations. It was ultimately decided that members could move any individual recommendation for discussion and then a vote would be held.

12. Senator Berg moved recommendation no. 1 to a vote. Recommendation no. 1 reads: "Whether the corporate farm law should be amended to allow limited liability companies." Senator Berg also moved to amend the language of recommendation no. 1 so that it would read: "Whether the law should be amended to allow farmers to form limited liability companies." Representative Peterson again questioned how the voting would proceed. He stressed the importance of the task force's recommendations, and was concerned about the procedure for voting and the amendment of recommendations. Representative Dauner stated that he heard very little from people who wanted limited liability companies, and felt the members of the task force members should listen to the people who testified about the limited liability issue. Senator Dille responded that the members of the task force should also provide leadership. Senator Morse stated that the task force had not received any expert testimony on any of the issues. He questioned how passive investment and other issues work in limited liability companies. Senator Morse also stated that if limited liability companies were to be allowed he hoped that they would be allowed to do so through the corporate farm law versus amending other law so that, at a minimum, the restrictions that are placed on other forms of corporations would be applied to limited liability companies as well. Senator Bertram called for the vote. By voice vote Senator Bertram stated that the recommendation would be voted down. Senator Berg requested a division, the recommendation was voted down due to a 4 to 4 tie with Senator Bertram not voting.

13. Senator Bertram moved recommendation no. 2 to a vote. Recommendation no. 2 reads: "Whether the corporate farm law should be amended to include the dairy industry under the new authorized farm corporation provision." Senator Bertram stated that the dairy industry has made it clear that they do not wish to be included in the changes made last year. Senator Dille stated that he has heard from a dairy farmer and a dairy consultant that the dairy industry should be included. Senator Bertram called for a vote. A voice vote indicated the task force would recommend that dairy not be included.

14. Senator Dille moved recommendation no 3 to a vote. Recommendation no. 3 reads: "Whether the state should adopt tougher environmental standards on feedlots." Senator Dille stated that Minnesota already has the toughest regulations on feedlots in the country and that they should not be strengthened any further. Senator Morse asked whether this recommendation would apply to odor. Senator Dille stated that he would move to amend the recommendation to exclude odor. Instead of amending the recommendation it was suggested that Senator Morse make his suggestion when the task force discussed a later recommendation dealing with odor. Senator Bertram called for a vote on the original recommendation. The task force voted unanimously that the state should not adopt tougher environmental standards on feedlots.

15. Recommendation no. 4 was not moved to a vote.

16. Recommendation no. 5 was not moved to a vote.

17. Recommendation no. 6 was not moved to a vote.

18. Senator Dille moved recommendation no. 7 to a vote. Recommendation no. 7 reads: "Whether the state should increase funding to the Department of Agriculture and the Office of Attorney General to cover the costs associated with administration and enforcement of the corporate farm law." Senator Bertram called for a vote. The task force voted unanimously not to increase funding.

19. Senator Dille moved recommendation no. 8 to a vote. Recommendation no. 8 reads: "Whether the corporate farm law should be repealed." Senator Bertram called for a vote. The task force voted 8 to 1 to keep the corporate farm law.

20. Senator Dille moved recommendation no. 9 to a vote. Recommendation no. 9 reads: "Whether the 1500 acre limitation should be amended or eliminated." Senator Dille felt the limitation was outdated and that it could be hard for some operations to exist on only 1500 acres. Senator Bertram called for a vote. By voice vote Senator Bertram stated that the recommendation was voted down. A division was requested. The recommendation was approved by a 5 to 4 vote.

21. Senator Dille moved recommendation no. 10 to a vote. Recommendation no. 10 reads: "Whether the corporate farm law should be completely redrafted." Senator Dille stated that the law as written is confusing and should be rewritten so that it is more understandable. He recommended that Department staff provide a rewrite. Representatives Dauner and Peterson inquired whether the redraft would be done to simply clarify the language or to make substantive policy changes. Senator Morse stated that, while it would be difficult, it was worthwhile to try to clarify the language as long as the intent of the statute was not lost. The recommendation passed on a unanimous voice vote.

22. Representative Peterson inquired as to whether recommendation no. 11 came from testimony at the Ortonville hearing regarding preserving market access. Assistant Commissioner Oemichen responded that it was. Representative Peterson then moved the recommendation to a vote. Recommendation no. 11 reads: "Whether the state should support livestock marketing cooperatives." Representative Peterson moved that the language "and processing" should be added to the recommendation. The recommendation would then read "Whether the state should support livestock marketing and processing cooperatives." Representative Dauner stated that the hog industry supports being able to enter into processing cooperatives. Mr. Watson stated that even people who were at opposite ends with their testimony agreed favorably on this issue. Senator Bertram called for a vote. The recommendation was adopted by a unanimous voice vote.

23. Senator Morse suggested amending recommendation no. 12 which reads: "Whether the state should fund research on odor control technology" so that it would read: "Whether the state should fund research on odor control technology and consider adopting measures to address odor concerns of those living near livestock confinement operations." Representative Peterson moved for vote on Senator Morse's amendment. Senator Bertram was concerned about regulating farmers more than other businesses, and about non-agricultural people moving into the country and then complaining about the farming that goes on in rural areas. Mr. Watson questioned whether they were singling out livestock versus other farming practices. Senator Morse was concerned about responding to the concerns expressed in testimony presented at the hearings regarding odors. And he thought more should be done than to just study the problem. Representative Dauner was concerned

that if the recommendation was to be adopted as Senator Morse had suggested that the discussion would immediately turn to setbacks, an issue better suited for local governments. Senator Morse stated that he was not necessarily think of setbacks, but he did feel that more should be done than simply study the problem. Dave Nelson from the MPCA stated that there is a odor rule on the books, but it is scientifically outdated and is therefore unenforceable. Senator Bertram called for a vote on the Morse amendment. A voice vote, followed by a division was called for. The amendment failed 6 to 3. Senator Morse then asked if this is not going to be mandatory, then why should the state fund it. Senator Dille and Representative Dauner said research should be conducted because odor is such a big issue, and because odor is a primary threat to the state's livestock industry. Bertram then called for a vote on the original language. The recommendation was unanimously adopted by voice vote.

24. Senator Dille moved recommendation no. 13 to a vote. Recommendation no. 13 reads: "Whether the state should conclude that large feedlots, properly managed, are not a threat to water quality." Senator Morse stated that there is currently a state funded research project that is being conducted to try to determine this issue. Senator Morse asked whether the task force would be jumping ahead of the research by making such an affirmative statement. Senator Dille felt that the water quality argument that is currently being made against large feedlot is scientifically unsound, and he would like to move past that argument. Senator Morse felt that water quality is a valid concern especially in the karst regions of the state which are subject to sinkholes. Representative Dauner questioned the meaning of properly managed, because what is considered properly managed can change over time. Representative Peterson stated that he does not mind that Minnesota has the toughest environmental standards because no one will want to live in rural Minnesota if they can not drink the water. Senator Bertram called for a vote. A voice vote was followed by a division. The recommendation was approved 5 to 4.

25. Senator Morse stated that the testimony the task force received indicated that the cleanup of abandoned sites was a major concern of the public. Senator Morse stated he was not so much in favor of a bond, but he was more in favor of a cleanup fund created through a permit assessment. Senator Bertram asked Assistant Commissioner Oemichen whether or not counties can currently require the posting of a bond. Assistant Commissioner Oemichen stated that they could. Senator Dille thought the problem should be taken care of by the next purchaser through the normal bankruptcy, foreclosure and resale procedures. Representative Peterson would like to make sure that counties do not get stuck with the cleanup costs. Assistant Attorney General Paul Strandberg stated that there would be cleanup liability for the owner operator to the extent of the individual's or the corporate entity's assets. Senator Morse and Mr. Watson suggested that MPCA research the issue to discover how serious a threat the abandonment and cleanup problem really is. Senator Dille moved recommendation number 14 to a vote. Recommendation no. 14 reads: "Whether the state should require that corporate entities post an environmental cleanup bond before allowing them to engage in farming." Senator Bertram called for a vote. The recommendation was voted down by a unanimous voice vote.

26. Senator Berg proposed a recommendation raising the minimum number of animal units constituting a feedlot from 10 to a higher number. He then suggested 50 animal units as an alternative. He thought the small number unnecessarily qualified a lot of hobby farms as feedlots which created a lot of administrative expense and waste. Representative Dauner suggested that the number be increased, but that the task force then let someone with expertise set the number. Senator Dille stated that he supported the 50 animal unit number. Senator Berg suggested the task force ask Dave Nelson his opinion. Mr. Nelson stated that the MPCA would not object to raising the number to 50. Senator Morse asked if Mr. Nelson could suggest a number. Mr. Nelson stated that 50 sounded

like a good number. Senator Berg moved his recommendation, including the 50 animal unit suggestion, to a vote. Senator Bertram called for a vote. The recommendation was approved by unanimous voice vote.

27. Dr. Senauer made a suggestion that the MPCA gather facts on abandoned feedlots. Mr. Nelson stated that they have little information at this time. He knew of one case where a lender had to pay approximately \$100,000 to cleanup a site. However, he stated that this was a worst case scenario because the operator had been storing manure in an abandoned gravel pit. He also knew of a county that had to take over a site after tax forfeiture, but the site was cleaned up by a subsequent purchaser. Representative Hugoson asked Mr. Nelson whether or not he knew of an instance where a local government unit had to pay for the cleanup costs. Mr. Nelson stated that he was not aware of any, and he thought he would be if there was one. There was no formal motion, and no vote taken.

28. Senator Dille moved that the task force amend recommendation number 5, which was not moved to a vote earlier, so that it would read: "Whether the state should provide economic incentives for livestock operations." The recommendation as amended was adopted by a unanimous voice vote.

29. Senator Dille moved a recommendation that the provision in the new authorized farm corporation that requires 51% of the farmers to be actively engaged in livestock production be deleted. The proposal would amend Minn. Stat. § 500.24, subd. 2(d)(2)(v) so that it would read: "shareholders holding 75% or more of the control and financial investment in the corporation must be farmers residing in Minnesota." Representative Dauner stated that this provision was debated at great length and that he would not be in favor of deleting it. Senator Berg mentioned that this provision precludes Minnesota Corn Processors from building its proposed feedlot. Mr. Watson also stated that this provision could cause trouble when organizations start to have shareholder turnover. He also stated that it was incongruous that the statute would allow non-farmer investment and then preclude some farmers simply because they are not livestock farmers. Representative Peterson stated that he did not feel the House would support any changes in the percentages. He feels the change made last year was a big surprise to his constituents and they do not want any further changes. Representative Peterson also stated that the percentages in the legislation were the result of intense negotiation and compromise which apparently all sides were able to live with, and he felt that the task force should not upset that compromise so soon after its enactment. Representative Hugoson felt that the restriction could cause some real problems for ethanol plants and other organizations trying to do value-added processing. Senator Morse suggested instead of deleting the 51% requirement the percentage should be lowered to 35%. Senator Bertram called for a voice vote and then a division. The 35% amendment to Senator Dille's recommendation was adopted. The overall recommendation, as amended was adopted by voice vote 7 to 2.

30. Senator Dille made a recommendation which reads "Local units of government may not adopt pollution control standards that are more stringent than the MPCA unless approved by the MPCA. Local units of government should continue to have authority for local land use planning and zoning." Senator Dille stated that local units of government do not have the scientific expertise necessary to set environmental standards. Senator Morse stated that he did not agree with Senator Dille's recommendation, and he felt local units of government should be able to adopt those measures they feel necessary. Senator Dille felt there should be uniform and scientifically sound environmental standards established statewide. Representative Hugoson agreed with Senator Dille because he felt having both the MPCA and local units of government setting environmental standards would be wasteful and farmers would end up having to pay for the environmental review twice. Mr. Watson said that the state already occupies the environmental field, and it is necessary that

the state have uniform standards in this area. Senator Morse responded that counties that have adopted the feedlot program can set environmental standards for feedlots. Senator Bertram called for a vote. Senator Bertram stated that the recommendation was adopted by voice vote. Representative Dauner called for a division. Senator Bertram did not vote and the recommendation failed on a tie.

Senator Bertram adjourned the meeting at 10:25 p.m.

SUMMARY OF OTHER STATE'S CORPORATE FARM STATUTES

A. Nebraska¹

Nebraska's prohibition on corporate farming appears in the Nebraska State Constitution. Corporations or syndicates (limited partnerships) are prohibited from obtaining an interest in real estate used for farming or from engaging in farming or ranching.

The Nebraska Constitution provides an exemption for a "family farm or ranch corporation" in which the majority of the voting stock is held by shareholders related within the fourth degree of kindred. At least one shareholder must reside on or be actively engaged in the day to day labor and management of the farm or ranch. In addition, none of the shareholders can be non resident aliens and can only be a corporation or partnership if all the shareholders or partners are persons related within the fourth degree of kindred to the majority of the shareholders in the family farm corporation. If a family farm corporation ceases to meet these criteria it is given 50 years to either requalify or dissolve and return to personal ownership.

The Secretary of State monitors corporate and syndicate farming operations and purchases of farmland. The Attorney General's Office is the agency with enforcement authority. If the Secretary of State or the Attorney General fails to perform their duties, Nebraska citizens and entities have standing in district court to seek enforcement. The Nebraska legislature may enact by general law further restrictions on agricultural operations which are contrary to the intent of this section. The Nebraska Constitution does not provide for any reporting requirements.

B. Wisconsin²

Wisconsin's Corporate Farm Law was codified in 1973. Wisconsin prohibits corporations or trusts from owning land on which to carry on the following farming operations: the production of dairy products not including the processing of such dairy products, the production of cattle, hogs, and sheep; and the production of wheat, field corn, barley, oats, rye, hay, pasture, soybeans, millet and sorghum.

Moreover, for a corporation or trust to carry on those types of farming operations additional requirements must be met. The shareholders or beneficiaries must be natural persons and cannot exceed 15 in number. In addition, no more than 2 classes of shares are permitted.

¹ Nebraska Constitution, Article XII, Section 8(1) (1989).

² Wisconsin Statutes Annotated, Section 182.001 (1993).

The district attorney of any county in which probable cause that a violation has occurred shall bring an action to enjoin such operations and a request for a court order requiring the corporation or trust to divest itself of the land within a reasonable period of time. Wisconsin's statute imposes no duty to report.

C. Kansas³

According to Kansas statute, no corporation, trust, limited liability company, limited partnership or corporate partnership, other than a family farm corporation, an authorized farm corporation, limited liability agricultural company, limited agricultural partnership, family trust, authorized trust or testamentary trust shall either directly, or indirectly, own, acquire, or otherwise obtain or lease any agricultural land. However, the 1994 legislature amended the statute to allow individual counties to "opt in" or "opt out" of corporate farming for dairy or hog production facilities. The county can permit corporate operations by county board resolution or by the vote of the county electorate.

A "family farm corporation" is founded for the purpose of farming and the ownership of agricultural land in which the majority of the voting stock is held by persons related to each other within the third degree of kinship. All of the stockholders must be natural persons or persons acting in a fiduciary capacity for the benefit of natural persons and at least one of the stockholders must be a person residing on the farm or actively engaged in the labor or management of the farming operation.

An "authorized farm corporation" is founded for the purpose of farming and defined as other than a family farm corporation of which all of the incorporators are Kansas residents. The stockholders must be natural persons or persons acting in a fiduciary capacity for the benefit of natural persons and cannot exceed 10 in number. At least 30% of the stockholders must be persons residing on the farm or actively engaged in the day to day labor or management of the farming operation.

A "limited liability agricultural company" and a "limited agricultural partnership" are founded for the purpose of farming and ownership of agricultural land in which the members/partners do not exceed 10 in number. The members/partners are natural persons, persons acting in a fiduciary capacity for the benefits of natural persons or nonprofit corporations or general partnerships other than corporate partnerships formed under the laws of the state of Kansas. At least one of the members/general partners is a person residing on the farm or actively engaged in the labor or management of the farming operation.

³ Kansas Statutes, Sections 17-5901 to 17-5906, 1994 Session Laws of Kansas, Chapter 331 and Chapter 130.

A "family trust" exists when a majority of the equitable interest in the trust is held by persons related to each other within the third degree of kinship. In addition, all beneficiaries are natural persons, persons acting in a fiduciary capacity, other than as a trustee for a trust, or are nonprofit corporations.

An "authorized trust" is a trust other than a family trust. It requires that the beneficiaries do not exceed 15 and are all natural persons, persons acting in fiduciary capacity, other than as trustee for a trust or are nonprofit corporations. In addition, the gross income of the trust must not be exempt from state or federal taxation.

All entities holding more than 10 acres of agricultural land within the state are required to make annual reports to the Secretary of State. The attorney general, or district or county attorney may institute suits to enforce the law.

D. South Dakota⁴

The intent of the South Dakota Corporate Farm Law is the recognition of the importance of the family farm to the economic and moral stability of the state and that the existence of the family farm is threatened by conglomerates in farming. Therefore, no foreign or domestic corporation or limited liability company shall own, lease, hold or otherwise control agricultural land in the state.

South Dakota provides two major exemptions. First, an exemption for a "family farm corporation" which is founded for the purpose of farming and the ownership of agricultural land in which the majority of the voting stock is held by the majority of the stockholders who are members of a family related to each other within the third degree of kindred. At least one of the stockholders is a person who is residing on or actively operating the farm or who has resided on or has actively operated the farm, and none of the stockholders are corporations unless founded for the purpose of farming and the ownership of agricultural land in which a majority of the voting stock is held by resident stock holders who are family farmers and are actively engaged in farming as their primary economic activity.

Second, an exemption for an "authorized small farm corporation" in which the shareholders do not exceed ten in number and are all natural persons. In addition the shares must be all of one class and revenues from rent, royalties, dividends, interest and annuities can not exceed twenty percent of its gross receipts. A 1993 amendment redefined "corporation" to include a limited liability company.

South Dakota requires a corporation engaged in farming to file an initial and an annual report. The Attorney General's Office is responsible for enforcement.

⁴ South Dakota Codified Laws, Chapter 47-9A (1993).

E. Missouri⁵

After September 28, 1975, no corporation not already engaged in farming shall engage in farming nor acquire interest or title in any agricultural land in Missouri. In 1993, the Missouri statute was amended to exempt certain counties from the corporate farm law.

The Missouri statute provides exemptions for "family farm corporations" and "authorized farm corporations." A "family farm corporation" is a corporation incorporated for the purpose of farming and the ownership of agricultural land in which at least one-half of the voting stock is held by members of a family related to each other within the third degree. At least one of the stockholders must reside on the farm or be actively engaged in operating the farm. An "authorized farm corporation" requires all shareholders to be natural persons, estates, or a trust and it must receive two-thirds or more of its total net income from farming.

Reports must be filed with the director of the state department of agriculture by every corporation engaged in farming or proposing to commence farming. The Attorney General's Office is given enforcement authority.

F. Oklahoma⁶

Oklahoma corporate farm restrictions appear in the state constitution and state statutes. After June 1, 1978, Oklahoma prohibits a corporation to be formed for the purpose of owning or leasing any interest in land to be used in the business of farming or ranching. The legislature in 1994 added an exemption to allow those presently engaged in fluid milk processing to engage in dairy production.

An exemption is provided for a domestic corporation in which the shareholders are natural persons, estates, trustees of trusts, or statutorily excepted corporations. The corporation must have no more than 10 shareholders. (For a corporation incorporated for the purpose of breeding horses the shareholders shall not be more than 25). In addition, not more than 35% of the corporation's annual gross receipts shall be from any source other than farming or ranching or allowing others to extract from the corporate lands any minerals. Trustees of trusts, partnerships, limited partnerships and limited liability companies are awarded a similar exemption as long as the beneficiaries/partners/members do not exceed 10 in number and at least 65% of the annual gross receipts are derived from farming or ranching or allowing others to extract minerals underlying lands held by the entity.

⁵ Vernon's Annotated Missouri Statutes, Section 350.010 (1994).

⁶ Oklahoma Constitution Article XXII, Section II, Oklahoma Statutes, Chapter 21, Section 951 (1994).

Oklahoma has no reporting provisions. The State Board of Agriculture has civil and criminal enforcement authority. Any resident of a county may initiate an action for divestment of an interest in land held by a corporation in violation of the statute.

G. Iowa⁷

The intent behind the Iowa Corporate Farm Law is to preserve free and private enterprise, prevent monopoly, and protect consumers. No corporation or trust other than "family farm corporation, "authorized farm corporation," "family trust," "authorized trust," or testamentary trust shall either directly or indirectly, acquire or otherwise obtain or lease any agricultural land.

A "family farm corporation" is founded for the purpose of farming and the ownership of agricultural land in which the majority of the voting stock is held by persons related to each other within the third degree of kinship. All of its stockholders are natural persons, trustees or family trusts. In addition, 60% of the gross revenues of the corporation over the last consecutive three-year period comes from farming.

An "authorized farm corporation" is a corporation other than a family farm corporation in which the stockholders do not exceed 25 and are all natural persons, trustees or nonprofit corporations. Land ownership is limited to 1500 acres.

An "authorized trust" is a trust other than a family trust in which the beneficiaries do not exceed 25 and are all natural persons, trustees or nonprofit corporations. In addition, the trust income must not be exempt from state or federal tax. Land ownership is limited to 1500 acres.

A "family farm limited partnership" is defined where the majority of the partnership interest is held by persons related within the third degree of kinship. The general partner manages and supervises day to day farming operations. The limited partners are natural persons, trustees or family trusts. Finally, 60% of the gross revenues of the partnership over the last three consecutive years is derived from farming.

A "family trust" exists when a majority of the interest is held by persons related to each other in the third degree of kinship. All the beneficiaries must be natural persons, or trustees, or nonprofit corporations. After July 1, 1988, the trust must be established for the purpose of farming and 60% of the gross revenues of the trust over the last consecutive three-year period must come from farming.

⁷ Iowa Code Chapter 9H (1993).

Iowa prohibits any processor of beef or pork or limited partnership in which a processor holds partnership shares as general partner or limited partner or a limited liability company in which a processor is a member to own control or operate a feedlot in Iowa in which hogs or cattle are fed for slaughter. In addition, a processor shall not directly or indirectly control the manufacturing, processing, or preparation for sale of pork products derived from swine if the processor contracted for the care and feeding of the swine in Iowa.

The attorney general or county attorney may institute suits on behalf of the state. Iowa requires annual reports from all entities except a family farm corporation, a family farm limited partnership, and a family trust.

H. North Dakota⁸

North Dakota prohibits all corporations and limited liability companies from owning or leasing land used for farming or ranching and from engaging in the business of farming or ranching.

A corporation or limited liability company may engage in farming or own land for farming as long as each shareholder or member is related to each other within the fourth degree of kinship and each shareholder or member is an individual, a trust or an estate. The entity must not have more than 15 shareholders or members. Each individual who is a shareholder or member must be a citizen or permanent resident alien of the United States. The officers and directors or governors and managers must be shareholders who are actively engaged in operating the farm or ranch and at least one of its shareholders must be an individual residing on or operating the farm or ranch. In addition, at least sixty-five percent of the gross income of the corporation or limited liability company over the previous five years must have been derived from farming or ranching operations. Finally, the income from nonfarm rent, nonfarm royalties, dividends, interest, and annuities cannot exceed twenty percent of the gross income of the corporation or limited liability company.

The Attorney General's Office is responsible for enforcement. However, any corporation or limited liability company authorized to engage in farming or ranching or any resident of a county in which a violation occurs may also initiate an action. North Dakota requires every farming or ranching corporation or limited liability company to file an initial report and articles of incorporation with the Secretary of State. In addition, every corporation or limited liability company engaged in farming or ranching must file an annual report with the Secretary of State. Furthermore, corporations and limited liability companies not engaged in farming or ranching but that own a tract of land which is larger than twenty acres

⁸ North Dakota Century Code Chapter 10-06 (1993).

and used for farming or ranching must file a report with the Attorney General within 12 months of any transactions involving that land.

A chart outlining the major provisions of each state's corporate farm law is attached to this summary.

Laws and Regulations Affecting Livestock Production

	Environment	Taxes	Zoning	Corporate Farming Restrictions	Workers' Comp	Farmland Preservation/ Right-to-Farm	Other
✓ Arkansas	Regulations govern handling and disposal of waste	Assessed based on productivity or use	Little interest at local level in zoning	No provisions found	Ag farm labor exempt; no provisions to waive exemption	Ag processing and distribution facilities protected	Little success in challenging operations as nuisances
✓ California	Comprehensive water quality control act	Income-based taxation and preferential assessment	May be affected by existence of ag preserves	Allows co-ops and non-profit corp. marketing organizations	Compulsory coverage; no exemptions	Right-to-Farm law requires farm in existence 3 years	Ag preserves may be created
✓ Colorado	Confined feeding operations regulated	Ag and livestock production exempt from property tax	Local zoning may occur	No prohibitions found	Workers comp or insurance required for all farm operators	Substantial farm growth not protected under Right-to-Farm	Air emission permits required for hog farms
✓ Illinois	New laws focus on odor nuisance	Reduced property taxes for pollution improvements	Zoning may be for ag purposes	Ag Land Ownership Act applies	Compulsory; some exemptions for farm labor	Has Ag Areas Conservation, Protection Act	Nuisance Suit Act gives some protection to farms
✓ Indiana	Has Confined Feeding Control Law	Has ag advisory council for evaluation of land	No law prohibits developing ag land	No restrictions found	Exempt; employers may waive exemption	Has Right-to-Farm law, no farmland preservation	Conservation Easement Act helps preserve ag land
✓ Iowa	Enforcement on complaint-only basis	5-year tax exemption for owner-operated cattle feedlots	Laws limit local governments from developing ag land	Corporate farming law limits vertical integration	Exempt; employers may waive exemption	Ag Areas have been created	Iowa farmers fight vertical integration and bigness
✓ Kansas	Permit required for most feedlots	Some exemptions for ag products and equipment	Operations are subject to zoning	Farmers by county can opt in or opt out of corporate farming	Exempt; employers may waive exemption	Protection through Right-to-Farm law	Regulations control siting of operations
✓ Minnesota	State and local regulations are extensive	Protects farmers from taxes based on non-ag use value	Ag use zoning prohibits non-farm dwellings	Has corporate farming law	Compulsory; exempts persons employed by family farms	Has plan for ag land preservation	Has limited nuisance protection
✓ Missouri	Construction and operation permits required	Preferential taxes for ag property	Not specifically used to protect farmland or operations	Passed a weak 1993 law with county exemptions	Exempt; employers may waive exemption	1990 revisions enhanced Right-to-Farm protection	Some farm growth protected under Right-to-Farm law
✓ Nebraska	Waste control is the main focus of laws	Allows preferential tax for ag land	Used to protect ag uses	Constitution prevents corporate ownership	Exempt; employers may waive exemption	Conservation, preservation allowed by easement.	Best Mgt. Practices used to maintain water quality
✓ North Carolina	Laws becoming more restrictive	Construction materials exempt from sales tax	Farms exempt from county zoning ordinances	No restrictions on corporate ownership of land	Labor laws treat farms like business	Has Right-to-Farm and voluntary ag districts	Favorable financing climate for growth
✓ Oklahoma	Coverage is under EPA General Permit	Broad exemptions from taxation	Zoning laws exempt farms	Restrictions strong, but contain farm exemptions	Compulsory; may be exempt based on wages	Right-to-Farm laws based on management practices	EPA outlines Best Mgt Practices (BMPs)
✓ Pennsylvania	Farmers need nutrient management plan	Family farm corps. exempt from some corporate taxes	No restrictions on zoning	No corporate farming law; vertical integration OK	Farm labor exempt from minimum wage and overtime	Has Right-to-Farm and Farmland Preservation	Has First-Time Farmer program
✓ South Dakota	Laws haven't limited growth	Some taxes high; but no personal property taxes	County controls zoning regulations	Has corporate farming law	Labor laws not limiting to growth	Passed Right-to-Farm law in 1992, but no rules to enforce	Bankers still cautious about livestock
✓ Texas	Coverage is under EPA General Permit	Ag use value is based on capacity to produce	Commercial ag purposes not protected from zoning	No restrictions found	Compulsory on migrant and seasonal help or \$25,000 payroll	Comprehensive Right-to-Farm law	EPA General Permit outlines BMPs for livestock
✓ Utah	Has Pollution Discharge Elimination System	Exemption for land in ag use and farm machinery	Control is with counties	No prohibitions found	Compulsory if employ for over 5 weeks at 40 hours/week	Protects operations in existence 3 years	Conservation easements used to protect farmland
✓ Wisconsin	Many non-point source water quality laws	Local property taxes are often high	May have areas zoned for exclusive ag use	Restricts certain activities; requires divestiture	Compulsory; may cover if employ 6+ weeks for 20 days/year	Types of nuisance action remedies are restricted	Financial help for water pollution abatement

HOUSE RESEARCH

Information Brief

Sam Rankin, Legislative Analyst
296-5047

Corporate Farm Law 1851 - 1991

Few areas of real property law or agricultural policy are as controversial as land ownership by corporations and non-citizens. The Minnesota legislature has wrestled with this issue on over a hundred occasions during the past 135 years. It has acted on corporate farm law more than 30 times since 1851.

Chronology of Major Corporate Farm Law Changes

1851 *Revised Statutes of the Territory of Minnesota* is adopted, borrowing heavily on the *1849 Revised Statutes of the State of Wisconsin*. This document contains an unequivocal statement regarding land ownership policy:

Any alien may acquire and hold lands, or any right thereto...and he may convey, mortgage, and devise the same,...and in all cases such lands shall be held, conveyed, mortgaged, or devised...as if such alien were a native citizen of this territory or of the United States.

1858 Minnesota is granted statehood.

1859 Virtually identical language concerning alien land ownership is carried forward from territorial status to state law.

1866 Editors simplify the language of the land ownership law to read:

Aliens may take, hold, transmit and convey real estate; and no title to real estate shall be invalid on account of the alienage of any former owner.

1887 General Laws of the State of Minnesota, Chapter 204 makes substantive changes.

[This was a period of economic unrest and distress; a decade after the founding of the Patrons of Husbandry (Grange); and a time when the overwhelming economic power and dominance of the railroad corporations and Standard Oil was feared by virtually all farmers and others in production level enterprises.]

1. It is made unlawful for a person who is not a citizen or a person intending to become a citizen to acquire, hold, or own real estate acquired after December 31, 1888.
2. A corporation or association with more than 20 percent of its ownership held by persons who are not U.S. citizens is prohibited from acquiring title to any real estate after December 31, 1888, unless the right to hold land is protected by a treaty between the U.S. government and a foreign country.
3. An exception is made to the prohibitions in (1) and (2) for alien persons or corporations who acquire the land by foreclosing on a mortgage or collection of a debt.
4. For U.S. corporations, only a corporation operating a railway, canal, or turnpike is allowed to continue to hold or own more than 5,000 acres of land within the state, and those corporations can acquire and hold land in the future only if the land is actually needed for the operation of the railroad, canal, or turnpike.

1905 The legislature contracts to have the text of Minnesota Laws revised, edited, and adopted as state statute.

1907 An amendment passes, providing that if a corporation or alien acquires property by foreclosure or enforcement of a debt it must be disposed of within ten years after acquisition, and all property held at the time of enactment of this amendment (1907) must be disposed of before 1917.

1911 An amendment passes exempting from the corporate ownership prohibition any corporation actually engaged in manufacturing in the state so long as only the amount of land needed for the manufacturing operation is owned. If an exempted corporation ceases manufacturing within Minnesota, the land must be disposed of within ten years after the manufacturing ceases.

1939 The new Revisor of Statutes codifies Minnesota laws passed since 1905 and publishes them as Minnesota Statutes. The language and organizational structure of the laws is modernized, but there are no substantive changes.

1947 An amendment gives "railroad corporations" unlimited right to own and hold lands in the state.

1949 A major amendment changes the 5,000 acre corporate limitation so that it applies only to corporations engaged in farming operations. In addition, a corporation doing manufacturing within the state can continue to hold lands needed for the manufacturing business but within ten years must dispose of any additional lands not needed for the manufacturing business.

- 1953** An amendment gives "any common carrier" unlimited right to own and hold lands in the state.
- 1959** A minor amendment to the alien ownership clause validates the ownership of lands received by an alien in the dissolution of a corporation.
- 1971** A major amendment requires that foreign and domestic corporations using agricultural land for growing crops or keeping poultry or livestock must annually report their status and holdings to the Department of Agriculture.
- 1973** Existing statute (M.S. 500.22) which deals with both alien ownership and corporate ownership in the same section is repealed and the subject matter is split into two separate (new) sections of statute: (MS 500.221 for alien ownership [individual and corporate] and MS 500.24 for corporate ownership).
- Terms are defined and new land ownership structures are authorized, including "family farm corporations" and "authorized farm corporations."
- Ownership limitations are much more specific, relating specifically to "agricultural land and land capable of being used for farming..."
- Limits are placed on corporate leasing of land in addition to restrictions on direct ownership.
- A number of exceptions are spelled out, mostly for the purpose of grandfathering in corporate land holders.
- 1975** Amendments to corporate ownership law require that a majority of shareholders in an authorized farm corporation must reside on the farm or be actively engaged in farming. Also, the maximum number of shareholders in an authorized farm corporation is reduced from ten to five.
- Minor amendments restrict the rate of expansion of farm land owned by corporations through the grandfather clause.
- Regulated public utilities are allowed to own farm land for business purposes, but any farming operations on the land must be carried out under lease to a family farm.
- Exemptions are created for a large asparagus producing corporation and for religious corporations whose sole income is derived from agriculture.
- The annual report required of corporate land owners is made more detailed.

- 1977** Alien ownership restrictions are completely re-drafted and tightened for both natural persons and non-American corporations. Non-American corporations are defined as those with less than 80 percent of each class of stock held by citizens or permanent resident aliens of the U.S.
- Existing alien land owners (individual and corporate) are grandfathered in.
- All interest in agricultural land acquired by an alien person or a non-American corporation through enforcement of a debt must be disposed of within three years after the interest is acquired.
- Alien land owners are required to submit a detailed report annually to the Commissioner of Agriculture.
- 1978** Corporate ownership restrictions are changed to exclude the production of poultry or poultry products from the definition of farming, thus allowing corporations in the poultry business to be exempt from corporate farm law.
- 1981** Alien ownership restrictions are tightened by requiring that an alien owner must actually reside within the U.S. for at least six months out of each 12 month period.
- The Commissioner of Agriculture is given authority to investigate (with subpoena power) any information leading "him" to believe that a violation of alien ownership may exist.
- Corporate ownership restrictions are applied to pension or investment funds and family trusts. Some existing holdings by family trusts are grandfathered in.
- 1983** An amendment to the alien corporate ownership provisions allows a foreign pipeline company (Canadian) to own 40 acre parcels of land as sites for pumping stations.
- 1986** An amendment to the corporate ownership law requires a corporation holding land through enforcement of a debt to lease the farm to a family farm unit. The lease agreement must prohibit intentional damage or destruction to conservation practices on the agricultural land. If conservation practices are damaged, the corporation must repay the state for any contributions the state originally made to the conservation practice, plus interest.
- An amendment requires that a corporation that has foreclosed property must allow the former owner a right of first refusal for repurchase of the property.
- 1987** The right-of-first-refusal law is substantially expanded.

1988

The corporate farm law is expanded to include limited partnerships, and maximum acreage limits (generally 1,500 acres of farm land) are imposed.

The time limit for a corporation to own farm land is reduced from ten years to five years, but a financial institution may continue to hold farm land for up to ten years if the land is leased to the former owner.

The right-of-first-refusal law is applied to limited partnerships.

The right-of-first-refusal is further expanded, to the benefit of the previous owner.

1989

Alien persons or non-American corporations involved in vegetable processing are allowed to own agricultural land if the land is necessary to meet pollution control laws or rules.

1991

A corporation operating an aquatic farm is allowed to own or lease agricultural land necessary for operation of the aquatic farm.



Minnesota Pollution Control Agency

October 19, 1994

The Honorable Stephen G. Wenzel
 Minnesota House of Representatives
 312 S.E. Third Street
 Little Falls, Minnesota 56345

Dear Representative Wenzel:

I received your letter of October 3, 1994, regarding environmental regulations for large feedlot operations. Thank you for sharing your concerns with us. As you requested, this letter provides a summary of Minnesota Pollution Control Agency (MPCA) standards for construction of feedlots.

MPCA or county feedlot staff must review livestock facilities for water quality hazards prior to construction. Water pollution can be created by any size livestock facility. The MPCA requires that new facilities be constructed so that no hazards are created, and that hazards caused by existing facilities be corrected within specified time frames.

There has been a great deal of interest in the water quality effects of livestock facilities in the past several years. In particular, there have been a number of issues brought forward which have required revision of MPCA policies for administration of the "feedlot rules," Minn. Rules ch. 7020. A number of these issues are under consideration both by MPCA staff and by subcommittees of the MPCA Feedlot Advisory Group. Among these issues are:

1. Standards for design and construction of earthen manure storage structures.

MPCA currently requires that all earthen basins and lagoons for manure storage be designed and inspected during construction by qualified professional engineers or Soil Conservation Service (SCS) staff. Virtually all earthen manure storage structures must be lined to limit seepage that may pollute ground water. I recently responded to a letter from Representative Chuck Brown on these same issues. I have enclosed a copy of my letter to Representative Brown for your information.

You may be interested to note that a research study to examine the amount of leakage from these structures was established in Morrison County in 1994, thanks to the interest and efforts of Roger Kuklok and Mark Wettlaufer of Morrison County staff, with the cooperation of staff from MPCA, the University of Minnesota, and the SCS. The Legislative Commission on Minnesota Resources recently provided funding to do additional research of this same type.

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The Honorable Stephen G. Wenzel

Page 2

2. Standards of design and construction of concrete pits.

The MPCA requires that all non-earthen manure storage structures (e.g. concrete pits) of more than 500,000 gallons be designed by qualified professional engineers or SCS staff. Structures smaller than this do not require design, but information about soils at the site or perimeter drain tiling to prevent damage is required for all sub-surface structures.

3. The effects of manure management on ground and surface water.

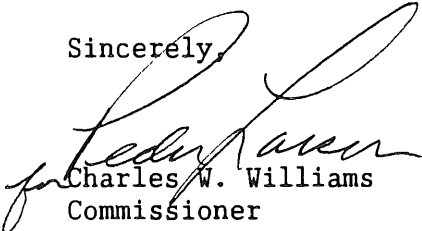
The MPCA requires that livestock producers have enough cropland available to use manure as a fertilizer or soil amendment, based on the nutrient content of the manure. Proper management requires analysis of manure for nutrient content, and calculation of application rates based on this nutrient content and crop needs. At present, the MPCA usually requires a producer to only demonstrate that they have enough acres available for such management. However, in some cases more detailed management plans are required.

A number of recent inter-agency efforts (including the MPCA) have resulted in publication of manure management guidebooks by the Minnesota Extension Service (MES), and development and distribution of the Manure Application Planner software package. The MES and SCS have begun providing service to producers using this new software. There are a number of educational efforts across the state providing assistance to producers on manure management. A significant portion of this effort is related to water quality improvement.

I have provided information on a number of applications received and reviewed on a separate page.

If you have any other questions or would like more detailed information, feel free to contact Randy Ellingboe of my staff at (612) 296-9209. Thank you again for your interest in the program.

Sincerely,



Charles W. Williams
Commissioner

CWW:jmg

Enclosure

MPCA FEEDLOT PERMITS ISSUED SINCE 1/93

	Certificates of Compliance	Interim Permits	Total
1993			
January	22	5	27
February	109	2	111
March	99	10	109
April	79	6	85
May	45	9	54
June	63	10	73
July	57	6	63
August	45	18	63
September	70	20	90
October	35	29	64
November	32	22	54
December	<u>39</u>	<u>6</u>	<u>45</u>
TOTAL	695	143	838
1994			
January	24	10	34
February	42	0	42
March	44	9	53
April	55	11	66
May	43	11	54
June	30	8	38
July	45	16	61
August	119	48	167
September	<u>67</u>	<u>33</u>	<u>100</u>
TOTAL	469	146	615

Office of the Attorney General

TO : CORPORATE FARM TASK FORCE DATE : December 21, 1994

FROM : PAUL A. STRANDBERG PHONE: 297-4391 (Voice)
Assistant Attorney General 296-1410 (TDD)

SUBJECT: Corporate Officer and Shareholder Liability
for Feedlot Environmental Matters

At the December 8, 1994 meeting of the Task Force in Northfield, Senator Bertram requested information regarding officer and shareholder liability for environmental damage which might arise from corporate livestock operations.¹ The short answer is that, under most circumstances, a corporation's owners and officers will not be held individually responsible for corporate-caused environmental problems. It is a fundamental legal principle that a corporation's officers and shareholders will not be responsible for the corporation's liabilities absent special circumstances.

In the environmental area, there are certain exceptions. See, e.g., Minn. Stat. § 115B.03 (1992) which makes certain operators and officers liable under superfund. A corporate officer may be liable for violations of the hazardous waste laws by the corporation when the officer directed the activities of the corporation giving rise to the violation. Further, when a corporation is used to perpetrate fraudulent or illegal acts, the courts will "pierce the corporate veil" to find owners and officers liable. None of these exceptions appear to apply to the livestock setting.

In the cases of abandoned manure lagoons which the task force has heard describe, it is unlikely, given the current state of the law, that individual corporate shareholders would be found liable if, for example, a corporation went out of business as a result of bankruptcy. Any violations relating to the abandoned lagoons and resulting environmental risk, would not likely be intentional, but rather inadvertent due to business-related conditions or unexpected lagoon failure. Thus, the funds available to address the problem would be limited to the assets of the corporation and the individual shareholders could not be successfully pursued. If, as is likely the case, the corporation became insolvent, the land in which the lagoon was located would probably be tax-forfeited. That means that it would be administered and managed by the county. If there was, indeed, an environmental problem, the Pollution Control Agency could seek county cooperation to fix that problem. At this time, I am not aware of any state or county funds that could be used to properly close abandoned manure lagoons.

1. For purposes of the memorandum, "corporation" includes any limited liability entity including corporations, limited partnerships and limited liability companies.

If, on the other hand, an individual owner or general partnership owned the livestock facility which developed pollution problems, the individual owners would be liable to the extent of their non-exempt assets. If those assets were insufficient, public entities involved would be placed in the situation described above.

cc: Bill Oemichen
Rick Cool
Alan Williams
Scott Strand

STRAP:DH7

APPENDIX G

BOARD OF SUP'RS v. VALADCO

Cite as 504 N.W.2d 267 (Minn.App. 1993)

Minn. 267

it was first discovered in the fall of 1986. The undisputed facts are that Fier told Radmer, who in turn informed the Red Wing Police. Fier gave Radmer appellant's name and the circumstances surrounding the incident with Putnam. Radmer was also apprised of Putnam's criminal history. C.A.R.A. requires no more than "one report from any institution, facility, school, or agency." Minn.Stat. § 626.556, subd. 3(a). In addition, the statute envisions some persons may be "mandated . . . [in] assisting in assessment" of a child abuse report. *Id.*, subd. 4(a)(1). Hence, Brown assisted Fier in the report. As a result, we conclude that respondents sufficiently complied with the reporting requirements of the statute.

Since there was no underlying civil cause of action for failure to report suspected child abuse and since respondents, nevertheless, complied with the reporting statute, we do not need to rule on whether respondents are protected by principles of discretionary immunity and quasi-judicial immunity.

DECISION

We agree with the trial court that since Minn.Stat. § 626.556 does not impose a duty between respondents and appellant which can support a negligence action, appellant has failed to state a claim for which relief can be granted. In addition, the facts demonstrate respondents complied with the reporting requirements. As a result, no genuine issues of material fact were in dispute and summary judgment was proper.

Affirmed.



BOARD OF SUPERVISORS OF CROOKS TOWNSHIP, RENVILLE COUNTY, Minnesota, Appellant.

v.

VALADCO, Respondent.

No. C5-93-155.

Court of Appeals of Minnesota.

Aug. 10, 1993.

Review Denied Sept. 30, 1993.

Farm cooperative sought approval to build hog confinement facilities. Township sought declaratory and injunctive relief to prohibit construction based on local ordinance. The District Court, Renville County, John J. Weyrens, J., granted summary judgment for cooperative, and township appealed. The Court of Appeals, Harvey A. Holtan, Acting J., held that: (1) ordinance was preempted by state regulation of animal feedlots, and (2) ordinance conflicted with state law.

Affirmed.

1. Municipal Corporations ¶592(1)

If state law fully occupies particular field of legislation, local regulation is preempted; local ordinance attempting to impose additional regulation in preempted field is void, even if it does not duplicate or directly conflict with any express provision of state law.

2. Municipal Corporations ¶592(1)

To determine whether state law has preempted local regulation, court considers subject matter of regulation, whether subject matter has been so fully covered by state law as to have become solely matter of state concern, whether legislature in partially regulating subject matter indicated it is matter solely of state concern, and whether subject matter is of such nature that local regulation would have unreasonably adverse effects upon general population.

3. Health and Environment §25.5(5).

Municipal Corporations §592(1)

State regulation of pollution from manure produced in animal feedlots preempted township's regulation of same subject matter where legislature set up broad statutory scheme which provided for local input but was ultimately controlled by state agency, despite fact that one aspect of local regulation included bond requirement not included under state law. M.S.A. § 116.07, subd. 7.

4. Municipal Corporations §592(1)

Township could not invoke "police power" as justification for regulation of animal feedlots where local regulation of that subject matter was preempted by state law. M.S.A. § 365.10, subd. 17(d, f, g).

5. Zoning and Planning §14

State regulation which allows for local land use planning of residential and agricultural areas does not allow local government to impose specific requirements on construction and operation of animal feedlots.

6. Health and Environment §25.5(9)

Minnesota Pollution Control Agency retains ultimate reviewing authority over county decisions regarding processing of animal feedlot applications although statute and regulations allow for "local" input through county involvement. M.S.A. § 116.07, subd. 7.

7. Municipal Corporations §111(2)

Under doctrine of conflict, local ordinance is invalid only if express and implied terms of ordinance and state statute are irreconcilable.

8. Health and Environment §25.5(5)

Municipal Corporations §592(1)

Township ordinance requiring additional permit for animal feedlots was invalid because it conflicted with state law on that subject; ordinance requirements could prevent construction of animal feedlot facilities despite approval by Minnesota Pollu-

tion Control Agency. M.S.A. § 116.07, subd. 7.

Syllabus by the Court

Local ordinance regulating pollution from animal feedlots is preempted by and in conflict with Minn.Stat. § 116.07, subd. 7 (1992).

J. Brian O'Leary, O'Leary and Moritz, Chartered, Springfield, for appellant.

Gary W. Koch, Gislason, Dosland, Hunter & Malecki, New Ulm, for respondent.

John P. Dooley, St. Michael, for amicus curiae Minnesota Ass'n of Townships.

Considered and decided by CRIPPEN, P.J., and KALITOWSKI and HOLTAN,* JJ.

OPINION

HARVEY A. HOLTAN, Judge.

A township appeals from summary judgment prohibiting enforcement of its ordinance regulating pollution from animal feedlots. We affirm the district court's decision that the ordinance is preempted by and in conflict with Minn.Stat. § 116.07, subd. 7 (1992).

FACTS

ValAdCo, a cooperative of thirty-eight farm families, sought state and county approval to build two hog confinement facilities on land zoned for agricultural uses in Crooks Township. The Renville County Board of Commissioners approved permits for both sites.

The Minnesota Pollution Control Agency (MPCA) prepared and distributed an Environmental Assessment Worksheet. During the public comment period, the MPCA received correspondence from local residents and state agencies.

The MPCA responded to concerns expressed about ground water availability and contamination, and odors. The MPCA

appointment pursuant to Minn. Const. art. VI, § 10.

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by

concluded that the ValAdCo project as modified during the review process did not have the potential for significant environmental effects and did not require an Environmental Impact Statement. The MPCA issued the feedlot permits and the Department of Natural Resources issued a water appropriation permit.

After application but prior to approval and issuance of the county and MPCA permits, Crooks Township enacted Ordinance No. 1991-1. The ordinance requires anyone desiring to operate an animal feedlot or livestock sewage lagoon to obtain a permit from the township. ValAdCo never applied for a township permit.

After ValAdCo obtained the county and MPCA permits and began construction, Crooks Township sought declaratory and injunctive relief to prohibit construction of the hog confinement facilities. The district court denied injunctive relief and granted summary judgment for ValAdCo, finding the ordinance invalid because it was preempted by and in conflict with Minn. Stat. § 116.07, subd. 7. Crooks Township appeals.

ISSUE

Is the Crooks Township ordinance preempted by or in conflict with Minn.Stat. § 116.07, subd. 7 (1992)?

ANALYSIS

[1] The Minnesota Supreme Court has defined preemption as the "occupying the field" concept. *Mangold Midwest Co. v. Village of Richfield*, 274 Minn. 347, 356, 143 N.W.2d 813, 819 (1966). A state law may fully occupy a particular field of legislation so that there is no room for local regulation. *Id.* If a local ordinance attempts to impose additional regulation in that field it is void, even if it does not duplicate or directly conflict with any express provision of the state law. *Id.*

[2] Four questions are relevant to determining whether there is preemption:

(1) What is the subject matter being regulated?

(2) Has the subject matter been so fully covered by state law as to have become solely a matter of state concern?

(3) Has the legislature in partially regulating the subject matter indicated that it is a matter solely of state concern?

(4) Is the subject matter itself of such a nature that local regulation would have unreasonably adverse effects upon the general population?

Id. at 353, 143 N.W.2d at 820.

[3] The subject matter of the ordinance is the control of pollution from manure produced in animal feedlots. That is the very subject regulated under state law by Minn.R. 7020.0100-.1900 (1991) promulgated to comply with state pollution control policies expressed in Minn.Stat. chapters 115 and 116. We are convinced that the nature of this subject matter as well as the comprehensive statutory scheme demonstrates the legislature's intent to preempt local enactments on this subject.

Pollution by its very nature is difficult to confine to particular geographical areas. For that reason the state has set up a statutory structure for issuing animal feedlot permits that provides for local input but retains ultimate control in the state. This promotes uniform interpretation and application of state rules and allows the state to take into account the environmental and economic welfare of the state as a whole.

The breadth of the statutory scheme is demonstrated by the thorough review undertaken by the MPCA. The MPCA permit application required ValAdCo to provide information on the number and type of animals to be confined; the location of the feedlot; soil and hydrogeological conditions; a map or aerial photograph of all wells, buildings, lakes and watercourses within 1,000 feet of the proposed feedlot; a manure management plan, including handling and application techniques, acreage available for manure application, and plans for any manure storage structure; and any additional site-specific or project-specific information requested by the MPCA. Minn.R. 7020.0500, subpt. 2 (1991).

Next the MPCA completed an Environmental Assessment Worksheet (EAW) and solicited public comment pursuant to Minn.R. 4410.1000-1700 (1991). The MPCA received letters from 37 local residents, the Department of Natural Resources (DNR), the Minnesota Historical Society, and the Minnesota Department of Health concerning odors and ground water availability and contamination. The MPCA specifically responded to the comments and addressed the concerns in its findings and conclusions.

After pumping tests were conducted, the DNR concluded that ValAdCo's project would not jeopardize ground water supplies. The MPCA approved ValAdCo's manure management plan, which included provisions for waste and soil testing, a 100-foot setback between any residence and landspreading operation, sewage lagoon linings that meet MPCA guidelines, and MPCA-recommended setbacks from residences and surface waters when applying wastes.

The MPCA also approved ValAdCo's proposed measures to minimize odor problems. The agency noted that landspreading of animal wastes is very common in the area around the ValAdCo sites and that the odors from its project should not be any worse than those from existing operations.

The MPCA issued the permits based on information specific to the ValAdCo project as well as its experience in monitoring similar facilities in the state. It stated:

[T]he nature of the project has been fully examined and all significant environmental effects have been identified and evaluated. The potential environmental effects have also been evaluated in previous environmental review of similar projects, and have been found to be subject to effective regulatory controls.

The MPCA also noted that the ValAdCo operation would be subject to continued monitoring by state agencies.

In the midst of the MPCA review process, Crooks Township enacted its own ordinance with different pollution control requirements for animal feedlots. The ordi-

nance requires anyone who wants to maintain a feedlot or livestock sewage lagoon to obtain a township permit in addition to the county and state permits. Facilities already in existence on the date of enactment are exempt from its provisions. The ordinance contains guidelines for waste application rates and establishes setback distances for sewage lagoons. It also requires anyone constructing a sewage lagoon to file a surety bond or cash with the township board of supervisors. The parties stipulated that the bond required of ValAdCo would total \$1,350,000 for the two sites. Any violation of the ordinance is a misdemeanor, and each day any violation continues constitutes a separate offense.

The ordinance's bond requirement presents an issue somewhat different from the setback requirements. In contrast to the MPCA's thorough evaluation of the sewage lagoon and manure application issues, there is no indication that the MPCA considered requiring a bond or making other arrangements to cover costs of cleaning up any spills or of closing the facilities if ValAdCo turns out to be financially irresponsible. A bond is not, strictly speaking, a measure to control pollution from animal feedlots. Rather, it is a way to hold owners financially responsible, in advance, for pollution that may occur in the future.

Nonetheless, we view the absence of a bond requirement in the statutory scheme for issuing animal feedlot permits as an indication of the legislature's judgment that the MPCA application review process provides adequate protection to the public and the environment. The statutory provisions reflect the balance struck by the legislature between the need to control pollution from manure, and the desire to foster a healthy agricultural economy. See Minn.R. 7020.0100 ("An adequate supply of healthy livestock, poultry, and other animals is essential to the well-being of Minnesota citizens and the nation. . . . [A] joint county-state program is desirable because it will insure local involvement, minimal disruption to agricultural operations and protect the environment from further degradation.").

[4] We are not persuaded by Crooks Township's argument that its ordinance must be upheld because it regulates the health and safety of the people and environment of the township. The township cites Minn.Stat. § 365.10, subd. 17 (1992) as authority for its ordinance. That statute allows town voters to grant the town board the authority to provide for specific activities within certain categories, such as the protection of public and private property, the promotion of health, safety, order, and convenience, and the general welfare. *Id.*, subd. 17(d), (f), (g).

The fact that health and safety concerns provided the motivation for enacting the ordinance does not make the ordinance valid. Although municipalities have the power to regulate in the interest of public health, safety, and welfare, a township cannot invoke "police power" to accomplish what is otherwise preempted by state statute. *Minnesota Agric. Aircraft Ass'n v. Township of Mantrap*, 498 N.W.2d 40, 43 (Minn.App.1993); see also *City of Minnetonka v. Mark Z. Jones Assoc.*, 306 Minn. 217, 236 N.W.2d 163 (1975) (state building code preempts city construction ordinance to the extent the ordinance purports to adopt more stringent fire prevention measures concerning design and construction of buildings).

If every township were allowed to set its own pollution control conditions, the result could be a patchwork of different rules. Compliance with varying local rules would be burdensome and would have a detrimental effect on the efficient operation of the state's agricultural industry.

[5] We also reject the township's argument that state pollution control laws themselves specifically authorize the type of ordinance enacted here. The township points to language in Minn.R. 7020.0100 that "[i]n repealing the old rules controlling pollution from animal feedlots . . . the agency will look to local units of government to provide adequate land use planning for residential and agricultural areas. It has been the agency's experience that residential and agricultural uses of land are often incompatible and that the best forum

for resolving the conflicting use of land is at the local level. However, in promulgating these rules the agency does not seek to abdicate its mandate . . ."

Contrary to the township's position, this language focuses only on the local government's designation of land as residential or agricultural. It says that local government is the best forum for resolving conflicts over the best *type of use* for land. It does not express the intention that, once land has been properly zoned for agricultural use, local government may impose specific requirements on the construction and operation of animal feedlots.

[6] Furthermore, Minn.R. 7020.0100 specifically discusses a cooperative program between the MPCA and counties. It refers to "local" input in the context of county actions. The rule notes that "a joint county-state program is desirable because it will insure local involvement." The counties' role in processing animal feedlot applications is set forth in detail in Minn.Stat. § 116.07, subd. 7 and Minn.R. 7020.1500-.1900 (1991). In all cases the MPCA retains ultimate reviewing authority over county decisions.

Crooks Township wrongly relies on *Wisconsin Public Intervenor v. Mortier*, — U.S. —, 111 S.Ct. 2476, 115 L.Ed.2d 532 (1991) to support its position. In *Mortier*, the Supreme Court held that the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) did not occupy the field of pesticide regulation and that the particular local ordinance did not conflict with FIFRA. *Id.* at —, 111 S.Ct. at 2485-87. However, the Court had no occasion to discuss state law preemption; the state supreme court had not addressed state law preemption because of its decision that the federal statute preempted the local ordinance. *Id.* at —, 111 S.Ct. at 2481. Moreover, the fact that one local ordinance is not preempted by federal statute does not help resolve whether another local ordinance that deals with different subject matter is preempted by a state statute.

[7] Finally, we find the ordinance not only preempted by state law but also in

conflict with it. The Minnesota Supreme Court distinguishes the preemption doctrine of "occupying the field" from the doctrine of "conflict," under which a local ordinance is invalid only if the express and implied terms of the ordinance and the state statute are irreconcilable. *Mangold*, 274 Minn. at 352, 356, 143 N.W.2d at 816, 819.

[8] The ordinance conflicts with state law because its setback requirements would prohibit construction of the ValAdCo facilities, which the MPCA and county have already approved. See *NSP v. City of Granite Falls*, 463 N.W.2d 541, 545 (Minn. App.1990), *pet. for rev. denied* (Minn. Jan. 14 & 24, 1991); *State v. Apple Valley Redi-Mix, Inc.*, 379 N.W.2d 136, 139 (Minn. App.1985). The ordinance's fixed setback requirements run contrary to the MPCA's focus on site- and project-specific determinations of what are appropriate pollution control measures. The ordinance is not merely complementary to and in furtherance of state regulations. ValAdCo could be in compliance with MPCA requirements yet be prosecuted under the local ordinance.

We recognize that local communities have important concerns about pollution and the extent to which they can impose their own regulations. The legislature could help eliminate uncertainty and forestall litigation by explicitly stating when particular legislation preempts local regulations. See *Minnesota Agric. Aircraft Ass'n*, 498 N.W.2d at 42 (statute expressly preempts local ordinances). The fact that the legislature explicitly preempts local enactments in one statute but not in another can raise doubts about whether preemption is intended in the latter case. Nonetheless, we are persuaded here that the nature of the matter regulated, together with the comprehensive statutory scheme, evidence the legislature's intent to preempt local regulation of pollution from animal feedlots.

DECISION

A local ordinance regulating pollution from animal feedlots is preempted by and

in conflict with Minn.Stat. § 116.07, subd. 7. We affirm the district court's grant of summary judgment finding the ordinance invalid.

Affirmed.



B & B FLOOR COVERING
CO., Appellant,

v.

COUNTRY VIEW BUILDERS,
INC., Defendant,

Chicago Title Insurance Company,
et al., Respondents.

No. C6-93-343.

Court of Appeals of Minnesota.

Aug. 10, 1993.

Review Denied Oct. 19, 1993.

Garnishor brought action against garnishees for garnished amount. The District Court, Anoka County, James A. Morrow, J., granted summary judgment for garnishees, and garnishor appealed. The Court of Appeals, Norton, J., held that funds held by garnishees were garnishable under garnishment statute, although garnishees did not "owe" money to debtor.

Reversed and remanded.

1. Garnishment § 13. 41

Funds held by garnishee were garnishable under garnishment statute, although garnishee did not "owe" money to debtor; "due" and "owing" language of garnishment statute does not require obligor-obligee relationship to exist between garnishee and debtor in order for effective garnish-

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Odor Rule Fact Sheet

Minnesota's odor rule (MN Rules part 7011.0300 to 7011.0330) has become outdated and needs to be repealed. The existing rule is technically obsolete and unfair to facilities that do not cause nuisance problems in the community. The Minnesota Pollution Control Agency (MPCA) believes that withdrawing the odor rule is overdue and is consistent with the U.S. Environmental Protection Agency's (EPA) policies regarding odors.

Background

The current rule regulates odor in two ways: 1) in terms of the odor concentration at the property line of facilities (the ambient odor standard), and, 2) in terms of the concentration of odors and the emission rate from stacks at facilities (the odor emission standard). These standards are difficult to enforce due to technical limitations in the test method required by the odor rule. The American Society for Testing and Materials (ASTM) withdrew this test method in 1986 and authors of the method maintain that it was never intended to be used as a regulatory tool.

It is difficult to accurately quantify odors. Under the current test method, a panel of six or more people determine whether or not an odor is detectable at various concentrations. Since sensitivity to odors varies widely from person to person, the results are very subjective. And, as the human nose is more sensitive to odor than any available machine, there is no prospect of replacing this method with a more analytical or objective method in the near future.

Due to the subjectivity and lack of more analytical techniques, there is a large margin of error associated with the test method and this lack of certainty poses enforcement problems. For example, under the current rules, it is quite possible for stack tests to show a facility to be in compliance while area residents have lodged verified complaints about odors. Conversely, it is possible that a company can be found in violation of the current odor emission standard even when it has not caused an odor problem in the surrounding community. Both of these scenarios have occurred on more than one occasion.

Enforcement problems are further complicated by the fact that there is no direct correlation between odor concentration at a stack and the ambient odor concentration in the surrounding community. Research indicates that the stack emission limits, if met, should give compliance with ambient odor concentrations. However, this does not take into account other variables such as weather patterns that affect the rate at which the odors disperse or the sensitivity to the odors that a particular segment of the population may have. Since these factors are different in each community, applying the existing rule fairly on a statewide level is not possible. To address this problem, staff at the MPCA believe that odor complaints are best handled through local nuisance rules or regulations.

No federal standards for odor exist at this time. In 1977, Congress directed the EPA to study odor emissions and decide if a National Ambient Air Quality Standard (NAAQS) should be created. In 1980, the EPA concluded that it should not formulate an NAAQS for odors. This decision was based on four factors:



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- It is difficult to develop objective standards for odors because perception of odors is so subjective.
- State and local controls were adequate.
- Any regulation would prohibit many emissions that do not harm or annoy the public.
- Odors are not caused by a single pollutant, so it is hard to associate health effects with a given odor concentration.

Citizens with odor complaints are often concerned that offensive odors cause adverse health effects, but because something smells bad does not mean that it is toxic. For instance, hydrogen sulfide has a very unpleasant rotten egg odor, but is not toxic at low concentrations. Other substances, such as cyanide or carbon monoxide, have a pleasant odor, or no odor at all, and can be toxic at low concentrations.

Substances considered to be toxic will be regulated by air toxics provisions of the Clean Air Act Amendments of 1990. In most cases, odor complaints simply constitute a public nuisance — not a health hazard.

Recommendations

The MPCA has requested that the odor rule, in its current form, be deleted.

The existing rule is technically obsolete and can be unfair to facilities that do not cause odor problems in the communities that surround them. The subjectivity and margin of error associated with the tests makes them unsuitable as an enforcement tool. And, the rules do not consider the impact, if any, on the community surrounding the odor source.

For these reasons, the MPCA is proposing that the odor rule be repealed. MPCA staff have been working to draft a new rule that relies less on numerical standards. Staff believe that odor problems can best be regulated at the local level, where local units of government can take into account unique factors within the community.

MPCA Contacts

For more information on this legislation, contact either of the following MPCA Air Quality Division staff: Todd Biewen, 296-8156, or Mike Sandusky, 296-7543.

