

Prospering Under Pressure - Who is the Enemy?

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■ Introduction

For the last twenty five years I have had the pleasure of being a part of the confined livestock industry, first as a college professor either teaching or doing research related to waste management and then as a consultant working on environmental concerns for numerous clients. In this twenty five year period, I have had the opportunity of working in twenty-nine (29) states including all of the major livestock producing states in the midwest, mid-atlantic, southeast, southwest and the plains states, several Canadian provinces, Mexico and several countries in South America. In the last ten years I have traveled almost every week of the year on behalf of my clients. Quite likely I have seen more livestock manure, more lagoons and waste handling systems than most of the members of the audience. I have seen countless sets of regulations developed and have participated in numerous hearings, trials and lawsuits related to confined livestock facilities. It is from this perspective and experience that I would like to share my thoughts with you this morning on the topic of "Prospering Under Pressure - Who is the Enemy?"

To be in the confined livestock business you have to expect to experience pressure - and a lot of it. Confined livestock producers have pressures to meet production goals and remain financially sound while protecting the environment and the image of agriculture. The challenges exist at every turn in the road.

Livestock production is a mainstay of North American agriculture and has been for more than two centuries. The confined livestock industry is the largest single user of feed grains in North America. We supply wholesome, nutritious protein to the North American public in addition to numerous other countries. However, as we all appreciate, we are experiencing new and diverse challenges and we are feeling the resultant pressures. I think that what most of us fear more than anything else is uncertainty. If we can quantify the problem,

add some reasonable definition to the problem, then we can organize ourselves and make prudent business decisions. If we don't define the problem then we will likely become a casualty. This morning I want to visit with you about defining several of the "environmental enemies" we face and likely will continue to face as an industry. After I attempt to define these enemies I will then outline what I feel that we must do if the confined livestock industry is to survive and thrive in North America.

■ **Defining the Environmental Enemy**

There is not just one single enemy that is challenging the confined livestock industry with regards to the environment. In fact, we have several enemies. The enemy can take many forms. By my definition the environmental enemies can include:

- an uninformed or under-informed public,
- some politicians,
- some regulations and regulatory agencies,
- anti-organizations, and
- some confined livestock producers.

Uninformed or Under-Informed Public

We have to face the facts. The percentage of the North American public that is directly involved with production agriculture is declining every year. The same can be said for the percentage of North Americans that are involved in confined livestock production. This simply means that most North Americans do not have a clear, if any, understanding of our industry or its challenges. We are a minority.

We live in an age where most North Americans have almost instantaneous access to an unbelievable amount of information. Our information systems are very powerful factors in our lives. We make our daily decisions based on the information at hand. We have radio. We have newspapers. We have television. We have the Internet. Never before has the North American public been so informed. However, being informed does not necessarily translate into someone being knowledgeable. There is a lot of misconception about the confined livestock industry.

I currently live in Raleigh, NC. I have lived in North Carolina for over twenty years. While North Carolina is not my native state, I have learned to love North Carolina and have raised my family there. I own property in North Carolina. I have worked most of my professional career in North Carolina and I have

developed a business that is headquartered in North Carolina. You might say I have put down roots. Given the above, you can appreciate the fact that I truly resent being personally blamed for all of the environmental problems related to the confined livestock industry that have been attributed to North Carolina. I have lost clients because I have a North Carolina address. I have had organizations picket my business and harass my employees. This is interesting since, by my own count, I have designed fewer than ten confined waste systems in North Carolina and, to the best of my knowledge, all are still operating successfully. I have been portrayed as the “father of lagoons”. I have been characterized most unfavorably on various web sites because I have been willing to work with the confined livestock industry. All of this is due to misinformation and, frankly, it hurts at times. Perhaps you have experienced some of the same treatment.

However, regardless of how we have been characterized we, as an industry, must continue our educational efforts. We need to let the North American public know about the confined livestock industry and what we are doing about managing our facilities and protecting our natural resources. Obviously as individuals, we can't be expected to educate the world. Which simply highlights the fact that the confined livestock industry has to have an organized educational program. If we do not tell the story, then it will be told by others.

Some Politicians

I have not lost faith in all politicians. For many reasons I must confess that I have no political aspirations of my own. However, given my reasonably extensive, if not almost continuous travels over the past decade I have had many opportunities to observe the fact that quite a few politicians have taken advantage of the confined livestock industry to promote their ambitions. Every election year I try to take notice when someone either holding office or aspiring to hold office suddenly becomes aware of the impending or imminent dangers of confined livestock operations. This revelation of anticipated environmental catastrophe is especially strong in those seeking the positions of Attorney General, State Senator or Representative or Governor and occasionally a US Representative or Senator get involved. I am not as familiar with the Canadian electoral process, however, I would guess that environmental issues related to the confined livestock industry have been debated in more than one public election in the past few years in the provinces.

Several years ago Agri-Waste Technology, Inc. was retained by a corporate client to design waste handling systems for several proposed swine facilities in a mid-western state. Project development began in late spring. Unfortunately the client had not anticipated that the development of these sites would become the focus of the fall elections. The incumbent Attorney General was up for re-election. I spent a lot of time that year in the state capital defending the waste

system designs for the proposed facilities. I lost track of the number of trips that I made on behalf of my client on the matter.

On most trips we met in the state capital, often in the Attorney General's office where I, and my clients, were typically outnumbered four or five to one with representatives of at least half a dozen state government departments and agencies. I spent hours at the white board in front of the state regulatory agency engineers and numerous lawyers outlining and defending our environmental program. We went through more than one set of state-assigned engineers that had the task of "taking us down". I found myself having to answer questions as to what impact our facilities would have on the chorus frog, a couple of varieties of bats, rattlesnakes and the mating habits of white tail deer. The Attorney General was really out to nail us to the wall. However, we countered the regulatory agencies on every move.

On one occasion, we had more than twenty representatives of state agencies descend on one of the client's construction sites under the pretense of witnessing the installation of a flexible membrane liner. When they arrived the regulators fanned out in all directions with the intent of defining any and all potential environmental concerns at the construction site. The best that they could come up with was an observation of some spilled motor oil at the earthwork contractor's fuel depot.

My client eventually had to agree to establishing some dedicated habitat for the chorus frog. The chorus frog, incidentally, has never been seen on the site.

Then a miracle occurred. If I remember correctly, the miracle took place on the first Tuesday in November. The incumbent Attorney General won the election but sometime during election night he must have received a revelation that my client's facilities were not an environmental threat. To this day the facilities have existed in harmony with chorus frogs, bats, rattlesnakes, white tail deer - whose population, I might add is on the rise in the area - and in equal harmony with all of the state's regulatory officials.

I have seen the confined livestock industry harmed in at least three ways by politicians. First we have experienced the problem of politicians making unflattering, if not untruthful, alarmist, statements about our industry. This equates to negative publicity and tends to promote the concept that the confined livestock industry is irresponsible and a bad citizen.

The second concern that I have with some politicians is the quality of the legislation that is offered and sometimes passed. I am convinced that quite a few politicians did very poorly in math and science in school. Or at the very least, many on their staff were in the lower third of their graduating classes. Some of the ideas that are suggested to be included in legislation make very little sense and when passed the legislation is almost impossible to regulate.

The third concern that I have with politicians is the influence that some exercise on regulatory agencies. In one state in which I have worked I was informed by a regulatory official that I, as a licensed engineer, would no longer be able to make certain state required inspections to my clients' facilities. When I inquired as to the reason for this recent prohibition, I was told that the State Senator that had sponsored recent legislation directed at the confined livestock industry had contacted the regulatory office responsible for overseeing the confined livestock industry and suggested that the prohibition on my offering service to my client was his intent, even though there was neither any legislation nor regulation that even hinted at the prohibition. This "unofficial" regulation is obviously inappropriate if not illegal.

The confined livestock industry has to become and stay involved in the political process. If not, our industry will be the victim of considerable frustration and expense. It is important for confined livestock producers to work collectively to support worthy candidates. A dollar contributed to a candidate that will at least listen to our industry's concerns is a worthwhile investment. Many of my clients are becoming more politically active than they have in the past out of a sense of necessity. The number of tours of confined livestock facilities offered to candidates is increasing. The number of calls to candidates is increasing. It is very important that we tell our story and let the politicians know that we contribute to political candidates, we are business people, we pay taxes, we and our employees vote and we have a significant impact on the local economy.

Some Regulations and Regulatory Agencies

I will openly state that I am in favour of scientific based regulations that are designed to protect the environment. Just as we have regulations that define appropriate driving practices, appropriate regulations for the confined livestock industry are important. In fact, I feel that they are a necessity. When clients come to me seeking advice on where to locate facilities I frequently advise them to consider states where the regulatory process is well defined. I would much rather have good, fair regulations in place than to operate without them. We need to know what the standard is going to be. Without appropriate environmental regulations the confined livestock producer is left to guess at how his performance will be evaluated and perhaps be left vulnerable to the wiles of those with personal anti-agriculture agendas.

Regulatory agencies are charged with the responsibility of interpreting legislation into regulations and then enforcing the regulations. The intent is worthwhile, however, the execution is frequently lacking. Often times I have encountered situations where regulatory agencies do not understand agriculture or the environment. Sometimes the agency does not have the appropriate technical staff or the resources to obtain such talent. In addition, there are also situations where some bureaucrats take advantage of their

regulatory authority inappropriately. In other cases, regulatory officials succumb to pressures from individuals or groups or the press and react unfairly, irrationally or inappropriately. The net result of the above is to leave the confined livestock industry frustrated and uncertain as to who and what to believe and very skeptical and untrusting of regulatory agencies. In the worst scenario, environmental regulations have been used as open-ended, self-interpreted tools to force and coerce confined livestock producers to make concessions and changes that are totally unwarranted and unnecessary - all in the name of protecting the environment. Unfortunately I have seen situations where the confined livestock producer is in a position in which they feel compelled to go along with the regulatory agency's demands to protect the producer's business interest. On one occasion a regulatory agency forced a client to abandon a perfectly good, flexible membrane lined lagoon that had absolutely no problems. All because regulations adopted several years after the lagoon was constructed required a defined separation distance between the floor of the lagoon and the groundwater table. This was not right. The environment certainly was not improved by the move since all that was gained was a vertical separation between the floor of the lagoon and the seasonally high ground water level of approximately ten feet where only a five-foot separation had previously existed. Quite likely there was more potential for negative environmental impact during the closure of the old lagoon than there would have ever been by leaving the lagoon in place.

The principal weapon of the confined livestock industry is to exercise its right to participate in the rule making process whenever possible. It is much easier to influence regulators and regulations before regulations take place. In some cases it is necessary to take legal action to force the re-evaluation of poorly written regulations. However, some confined livestock producers or representative organizations are reluctant to take on the establishment. There are always risks involved and the price for involvement can be expensive. However, we do not have much, if any, room to criticize poor regulations or regulators if we are not involved in the regulatory development process.

Anti-Organizations

It is great to know that in North America we enjoy many unparalleled freedoms. One of these freedoms is the right to have an opposite point of view. However, there is a big difference between having and expressing an opposite point of view and in having an evil and malicious intent to cause a confined livestock producer undeserved frustration and expense in the name of preserving the environment. From my humble perspective, many of the anti-organizations are long on zeal and fervor and very short on facts. In fact it reminds me of a story Jerry Clower told about several dogs involved in a fight one day. In the south we have a vegetable that we call okra. Now okra has been eaten in Southern homes for generations much the same as many of us eat grits. These are two of our best kept secrets. When you are in the north you just don't expect to find

good grits or okra. Now you can prepare okra in a number of ways. You can batter dip and fry it, you can use it in soups and gumbo or you can boil it. Many folks in the south think that boiled okra in season is a staple. Boiled okra has a very slippery consistency. There is a mighty short time between placing a bite of boiled okra in the mouth and when it reaches the stomach! It goes down mighty fast. Now it turns out that after dinner one day the housewife was feeding the dogs the scraps from the table, which included some boiled okra. Southern dogs think just about as highly as do humans for their boiled okra. So the dogs took to fighting over the bowl of scrap that contained the boiled okra. What ensued was a major canine confrontation. One hound managed to get his tongue on the boiled okra and it went down so fast that he didn't realize that the okra was gone. The dogs continued to fight all afternoon not realizing that there was nothing left to fight over. Many of the anti-organizations are the same way, they really don't know what they are fighting about, they just like to fight. I am convinced that some anti-organizations have taken on the confined livestock industry just for the sake of exercising their lawyers.

After one particularly heated public hearing that I attended many years ago in a very rural setting one of the protestors came up to me and said "Dr. Safley, this community fought the installation of telephones, installing a rural water system and rural electrification so why should you be surprised that we intend to fight the swine facilities that your client is proposing?" I guess the confined livestock industry is in pretty good company if we are likely to have the same positive impact to North America as telephones, electricity and a dependable water supply. Nonetheless, you have to wonder about the intent of folks that just want to fight for fighting's sake.

Recently, I had a client that was attempting to obtain a permit for a confined livestock operation. The application was submitted and the regulatory agency thoroughly reviewed the material and in due course was ready to grant the permit. However, the newly formed anti-organization succeeded in getting one of the state representatives to hold an almost unprecedented "informational" meeting. Several hundred persons attended the meeting and many had opportunity to speak. The regulatory agency took written and oral comments from over two hundred persons and reviewed and commented on each point. The regulatory agency concluded that there were no technical deficiencies in the application and awarded the permit. The particular state's regulatory system allowed for a review of the decision to award the permit and the anti-organization took advantage of the opportunity. The anti-organization was successful in getting nearly 1000 persons to write the regulatory agency and protest the decision. Fortunately, the regulatory agency had sufficient character to withstand the pressure and the permit held. What is really interesting is that all but one or two of the protestors lived ten or more miles from the proposed facility. In addition, the facility was down wind and hydrologically down gradient from the protestants.

In another situation, a facility was granted a permit. The facility was constructed and some five years later the facility went through the appropriate process for renewing its permit. The facility had never had a single complaint and the regulatory agency inspected the facility at the time of the permit application renewal and found no deficiencies. After the renewal permit was granted, an anti-organization appealed re-issuance of the permit, hired an out of state engineer to critique the renewal application in addition to the original application and traveled several hundred miles to visit the regulatory agency and the governor's staff. What is interesting is that none of the adjacent property owners protested the facility, none of the over twenty five protestants lived near the facility and some lived more than fifty miles away. Fortunately, again, the regulatory agency did the right thing and upheld the permit.

On more than one occasion I have known where anti-organizations resorted to vandalism and criminal mischief. On a few occasions gunfire has taken place. At more than one hearing or public meeting police protection has been required. I have also known of several situations where feral or imported hogs were intentionally placed in close proximity to a producer's facility in an attempt to force some desired change or inflict frustration.

I have observed that many anti-organizations are well organized, dedicated, typically ill-informed, sometimes poorly led but capable of generating considerable resources to fight confined livestock facilities. Sometimes the anti-organizations are part of national groups that boast of significant political and legal clout. Even if the anti-organizations are unsuccessful in their attempts at either depopulating or over-regulating a confined livestock facility, the organizations are still successful at costing producers and tax payers considerable amounts of money in lost time and legal expenses. We should have laws that protect confined livestock producers from anti-organizations that would inappropriately target producers.

Some Confined Livestock Producers

In addition to the environmental enemies that I have already defined I have to reluctantly, but honestly, include one other "enemy" to the list. This enemy is some members of our own industry - confined livestock agriculture. I have a few concerns.

First, there are some few confined livestock producers that have facilities that could possibly be contributing to environmental degradation and refusing to take appropriate corrective action. My concern is about a producer having a waste system that is leaking or otherwise causing a problem. These problems may go undetected by regulatory personnel for some time. However, when the news is released that a long-standing, but unreported problem has been detected it gives the entire confined livestock industry a black eye and is likely the catalyst that will initiate additional regulations.

My second concern regarding confined livestock producers is the fact that some elect not to be proactive. Proactive in educating the non-agricultural public; proactive in participating in the regulatory process; proactive in ensuring that their own facilities are well-maintained and are not polluting; proactive in seeking and adopting new environmental technology. I do not feel that the confined livestock industry can afford anything but being proactive. If we are not leading then we are following.

Another concern is site selection. I have seen producers attempt to site facilities in close proximity to state parks, wildlife refuges and areas with questionable geology. In fact, I was once requested to appear before a planning commission at an evening meeting to promote the location of the facility that the client was proposing. I asked the client if I could inspect the site prior to the hearing. When I arrived at the site I found that the site was bordered on two sides by a river and while driving around the site I almost drove into four sinkholes. Sometimes I find clients that want a facility so badly that they put all reason aside. Some of the skepticism that we face is the result of our own manufacture.

Fortunately the vast majority of all confined livestock producers that I have had the pleasure of working for are environmentally conscious. We need to be very concerned about those producers that are not.

■ Suggested Environmental Protocol

Based on my experience in working with the confined livestock industry for many years I have compiled the following list of actions and activities that I recommend producers implement to ensure that they remain in an environmentally sustainable situation.

Inspections

Confined livestock producers should have a well defined inspection policy. Each facility should be inspected by the owner/manager at the minimum once a week. Many facilities need to be inspected daily. In addition, facilities should be inspected once a year by a qualified professional. Any deficiencies should be addressed promptly. Often times such an inspection can serve multiple purposes including a refresher course on environmental policy and practices to key employees.

Manure Management Plans

Each confined livestock operation needs to have a written manure management plan. Many states already require this activity. In the United

States our Environmental Protection Agency will be requiring each livestock facility to have, over the course of the next couple of years, a Comprehensive Nutrient Management Plan (CNMP). This plan can be considered to be an upgraded version of what most states currently require in the form of a manure management plan. The CNMP will have to be maintained as an active or "live" document that is routinely updated. Each state will be defining the criteria for the CNMP, which can only be prepared and certified by specifically credentialed professionals. Unfortunately the requirements for developing the CNMP and its contents likely will vary between states.

Manure management plans should be followed precisely. The manure management plan should be promptly updated as facility changes are made.

Records

One of the items that CNMPs must incorporate is a detailed record-keeping system. From now on it will be a requirement to fully document all aspects of the implementation of the CNMP. If you do not have a good record-keeping system you will need to initiate one in the near term.

Groundwater Protection

The CNMP documentation will require evidence of lack of hydrologic connection. In some states producers are being forced to empty ponds and lagoons and develop appropriate liners if the producer does not have sufficient liner documentation. Many states now require groundwater monitoring wells.

Regulatory Involvement

From my perspective, confined livestock producers must be aware of all proposed regulations and become involved in the development of the regulations. In addition, it is imperative that you personally know the regulatory officials that will likely be inspecting your facility. Many times a producer can avoid regulatory problems by anticipating the concerns that the regulatory inspector will likely define.

Permit Review

Confined livestock producers should review their permits at least once every six months. Make sure that you know about all reporting and compliance requirements and that you familiarize appropriate employees about defined requirements. Make sure that you initiate efforts to review permits well in advance of the permit review period.

System Redundancy

Whenever possible it is a good practice to add redundancy to your manure management system. This may take the form of adding a back up pump or obtaining an additional spreading easement. I subscribe to the “foxhole” philosophy with regard to manure management systems. The longer that you plan to stay in the foxhole the more flexibility the producer needs to incorporate into the manure management system.

Know Your Neighbours and Your Enemies

Quite likely your neighbour is not your enemy. However, it is imperative that you personally know all of your neighbours. Attempt open communication if possible and be as sensitive as possible. As a part of the new US Farm Bill, the USDA, through the NRCS Environmental Quality Incentive Program (EQIP) program is now offering significant economic incentives to livestock producers to upgrade their manure handling systems. Individual producers can be eligible for up to \$450,000 in cost share money (75% NRCS/25% producer). This is a wonderful opportunity for the confined livestock producer. Unfortunately there is not enough money to go around this year. However, funding levels are scheduled to increase over the next several years.

Continue Your Educational Efforts

Staying educated on environmental matters is as important as staying in tune with the latest nutritional or reproductive management strategies. We have to keep in mind that outside of herd health problems, environmental problems have the greatest potential for possible facility closure. It is important to be knowledgeable about new technology that becomes available and adopt appropriate technology when feasible.

■ Conclusion

In conclusion I have defined several enemies of the confined livestock industry:

- Uninformed or Under-Informed Public
- Some Politicians
- Some Regulations and Regulatory Agencies
- Anti-Organizations
- Some Confined Livestock Producers

Confined livestock producers must identify their enemies and be prepared to take appropriate action. Sometimes the action will be required by independent

producers. Other situations will call for the combined efforts of the confined livestock producers of a state or region. Several actions and activities that confined livestock producers should implement include:

- Inspections
- Manure Management Plans
- Records
- Groundwater Protection
- Regulatory Involvement
- Permit Review
- System Redundancy
- Know your Enemies and Neighbours
- Continue your Educational Efforts.

Implementing the above will allow producers a much better chance of prospering under pressure.