

LG 9-21-06
11/2/06



Arizona House of Representatives House Majority Research MEMORANDUM

Kathi Knox
Deputy Director of Research
Legislative Research Analyst,
Natural Resources and Agriculture Committee

1700 W. Washington
Phoenix, AZ 85007-2848
Office (602) 926-5480
FAX (602) 417-3134

To: JOINT LEGISLATIVE AUDIT COMMITTEE
Re: Agricultural Best Management Practices Advisory Committees
Date: September 20, 2006

Attached is the final report of the sunset review of the Agricultural Best Management Practices Advisory Committees, which was conducted by the House of Representatives Natural Resources and Agriculture and Senate Natural Resources and Rural Affairs Committee of Reference on September 1, 2006.

This report has been distributed to the following individuals and agencies:

Governor of the State of Arizona
The Honorable Janet Napolitano

President of the Senate
Senator Ken Bennett

Speaker of the House of Representatives
Representative Jim Weiers

Senate Members
Senator Jake Flake, Cochair
Senator Marsha Arzberger
Senator Timothy S. Bee
Senator Robert Blendu
Senator Robert Cannell

House Members
Representative Russ Jones, Cochair
Representative Cheryl Chase
Representative Ann Kirkpatrick
Representative Tom O'Halleran
Representative Kyrsten Sinema

Arizona Department of Environmental Quality
Department of Library, Archives & Public Records
Auditor General

Senate Republican Staff
Senate Research Staff
Senate Democratic Staff
Senate Resource Center

House Majority Staff
House Research Staff
House Democratic Staff
Chief Clerk

COMMITTEE OF REFERENCE REPORT:

AGRICULTURAL BEST MANAGEMENT PRACTICES ADVISORY COMMITTEES

Background

Pursuant to Section 41-2953, Arizona Revised Statutes, the Joint Legislative Audit Committee (JLAC) assigned the sunset review of the Agricultural Best Management Practices Advisory Committees to the Senate Natural Resources and Rural Affairs and the House of Representatives Natural Resources and Agriculture Committee of Reference.

The Agricultural Best Management Practices Advisory Committees for the application of nitrogen fertilizer and for Concentrated Animal Feeding Operations (CAFOs) were established by the Legislature in 1986 to develop and recommend best management practices to the Director of the Arizona Department of Environmental Quality (ADEQ). The Legislature charged the committees with periodically re-examining, evaluating and proposing modifications to agricultural best management practices.

Committee of Reference Sunset Review Procedures

The Committee of Reference held a public hearing on September 1, 2006, to review the ADEQ response to the sunset factors as required by A.R.S § 41-2954, subsections D and F, and to receive public testimony (*See Attachment 4*). Testimony was received from Jim Buster, ADEQ legislative liaison; Shelly Tunis, Yuma Fresh Vegetable Association; Rick Lavis, Arizona Cottongrowers' Association; and Bas Aja, Arizona Cattlemen's Association.

Committee of Reference Recommendations

The Committee of Reference recommended that the Agricultural Best Management Practices Advisory Committee for the application of nitrogen fertilizer be discontinued. The Committee of Reference also recommended that the Agricultural Best Management Practices Advisory Committee for Concentrated Animal Feeding Operations be combined with the Grazing Best Management Practices Advisory Committee and be continued for five years. Continuation legislation will address the issues raised during the committee of reference discussions.

SUNSET REPORT REQUIREMENTS

Pursuant to Section 41-2954 subsection F, Arizona Revised Statutes

**** Note: The following answers are a summary of the information provided by the Arizona Department of Environmental Quality (ADEQ). Please see Attachment 2 for the complete ADEQ response to the sunset factors required by A.R.S. § 41-2954 subsections D and F.*

I. An identification of the problem or the needs that the advisory committees are intended to address.

The Agricultural Best Management Practices Advisory Committees for the application of nitrogen fertilizer and for Concentrated Animal Feeding Operations (CAFOs) were established by the Legislature in 1986 to develop and recommend best management practices to the Director of the Arizona Department of Environmental Quality. The Legislature charged the committees with periodically re-examining, evaluating and proposing modifications to agricultural best management practices.

The Agricultural Best Management Practices Committees submitted recommendations for the application of nitrogen fertilizers to the Director of ADEQ in 1998. It has never made formal recommendations for the operation of Concentrated Animal Feeding Operations (CAFOs).

II. A statement, to the extent practicable, in quantitative and qualitative terms, of the objectives of such advisory committees and their anticipated accomplishments.

No further objectives or accomplishments are anticipated.

III. An identification of any other agencies having similar, conflicting or duplicate objectives, and an explanation of the manner in which the agency avoids duplication or conflict with other such agencies.

No conflicts appear to exist.

IV. An assessment of the consequences of eliminating the advisory committees or of consolidating them with another agency.

The Legislature should eliminate these committees since they have been replaced by an extensive ADEQ stakeholder process at which the agricultural community can bring whomever they like to advocate for Arizona agriculture. ADEQ contemplates no substantive rule changes on these issues in the foreseeable future. If, however, changes are needed, the agency would use its long-standing and effective stakeholder process to bring together affected parties for their input and expertise.

Attachments

1. Letter from Rep. Russ Jones to ADEQ requesting information.
2. Sunset factors pursuant to A.R.S § 41-2954, subsections D and F.
3. Meeting Notice.
4. Minutes of Committee of Reference Meeting.

RUSSELL L. JONES
1700 WEST WASHINGTON, SUITE H
PHOENIX, ARIZONA 85007-2844
CAPITOL PHONE: (602) 926-5273
CAPITOL FAX: (602) 417-3124
TOLL FREE: 1-800-352-8404
rjones@azleg.gov

COMMITTEES:
NATURAL RESOURCES AND
AGRICULTURE,
VICE-CHAIRMAN
COUNTIES, MUNICIPALITIES AND
MILITARY AFFAIRS
TRANSPORTATION

DISTRICT 24

June 20, 2006

Stephen Owens
Director, ADEQ
1110 W. Washington St.
Phoenix, AZ 85007

Dear Director Owens:

The sunset review process prescribed in Title 41, Chapter 27, Arizona Revised Statutes, provides a system for the Legislature to evaluate the need to continue the existence of state agencies. During the sunset review process, an agency is reviewed by a legislative committee of reference. On completion of the sunset review, the committee of reference recommends to continue revise, consolidate or terminate the agency.

The Joint Legislative Audit Committee has assigned the sunset review of the **Agricultural Best Management Practices Advisory Committee** to the committee of reference comprised of members of the House of Representatives Natural Resources and Agriculture Committee and the Senate Natural Resources and Rural Affairs Committee.

Pursuant to A.R.S. § 41-2954, the committee of reference is required to consider certain factors in deciding whether to recommend continuance, modification or termination of an agency. Please provide your response to those factors as provided below:

1. The objective and purpose in establishing the agency.
2. The effectiveness with which the agency has met its objective and purpose and the efficiency with which it has operated.
3. The extent to which the agency has operated within the public interest.
4. The extent to which rules adopted by the agency are consistent with the legislative mandate.
5. The extent to which the agency has encouraged input from the public before adopting its rules and the extent to which it has informed the public as to its actions and their expected impact on the public.
6. The extent to which the agency has been able to investigate and resolve complaints that are within its jurisdiction.

7. The extent to which the Attorney General or any other applicable agency of state government has the authority to prosecute actions under the enabling legislation.
8. The extent to which the agency has addressed deficiencies in its enabling statutes that prevent it from fulfilling its statutory mandate.
9. The extent to which changes are necessary in the laws of the agency to adequately comply with these factors.
10. The extent to which the termination of the agency would significantly harm the public health, safety or welfare.
11. The extent to which the level of regulation exercised by the agency is appropriate and whether less or more stringent levels of regulation would be appropriate.
12. The extent to which the agency has used private contractors in the performance of its duties and how effective use of private contractors could be accomplished.

Additionally please provide written responses to the following:

1. An identification of the problem or the needs that the agency is intended to address.
2. A statement, to the extent practicable, in quantitative and qualitative terms, of the objectives of such agency and its anticipated accomplishments.
3. An identification of any other agencies having similar, conflicting or duplicate objectives, and an explanation of the manner in which the agency avoids duplication or conflict with other such agencies.
4. An assessment of the consequences of eliminating the agency or of consolidating it with another agency.

In addition to responding to the factors in A.R.S. § 41-2954, please provide the committee of reference with a copy of your most recent annual report. Your response should be received by **August 1, 2006** so we may proceed with the sunset review and schedule the required public hearing. Please submit the requested information to:

Kathi Knox, Majority Research Staff
Arizona House of Representatives
1700 West Washington
Phoenix, AZ 85007

Thank you for your time and cooperation. If you have any questions, please feel free to contact me at 6902-926-5273 or Kathi Knox, the House of Representatives Natural Resources and Agriculture Committee Analyst, at 602-926-5480.

Sincerely,



Russell Jones, State Representative
Chair, Natural Resources and Agriculture Committee of Reference

cc: Joan Card
Don Butler

Herb Guenther
Dean Sander



Janet Napolitano
Governor

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

1110 West Washington Street • Phoenix, Arizona 85007
(602) 771-2300 • <http://azdeq.gov>



Stephen A. Owens
Director

August 7, 2006

The Honorable Russell L. Jones
House of Representatives
1700 W. Washington
Phoenix, Az. 85007

Dear Chairman Jones:

Enclosed you will find the sunset review report for the Agricultural Best Management Practices Committees. After consultation with the Agricultural Community, ADEQ recommends that pursuant to ARS §41-2954 the legislature sunset these committees established by ARS §49-248. The advisory committee on nitrogen application has not made any formal recommendations since it went through the sunset process in 1996. The advisory committee on Concentrated Animal Feeding Operations (CAFOs) has not met since 2005. It met twice during that year and did not have a quorum.

If rule changes affecting Arizona agriculture become appropriate in the future, ADEQ plans to use its long-standing and effective stakeholder and that process will include whomever the Agricultural Community chooses to bring to the table.

The agency looks forward to the meeting on August 24th when we can discuss this issue with the committee. If you have any questions before then, please do not hesitate to give me a call at (602)771-2204.

Sincerely,

Patrick J. Cunningham
For Patrick J. Cunningham
Deputy Director
ADEQ

SUNSET REPORT REQUIRED PURSUANT TO § 41-2954, ARIZONA REVISED STATUTES FOR THE AGRICULTURAL BEST MANAGEMENT PRACTICES ADVISORY COMMITTEES

1. The objective and purpose in establishing the advisory committees.

The Agricultural Best Management Practices Advisory Committees for the application of nitrogen fertilizer and for Concentrated Animal Feeding Operations (CAFOs) were established by the Legislature in 1986 to develop and recommend best management practices to the Director of the Arizona Department of Environmental Quality (ADEQ). The Legislature charged the committees with periodically re-examining, evaluating and proposing modifications to agricultural best management practices.

2. The effectiveness with which the advisory committees have met their objective and purpose and the efficiency with which they have operated.

The Agricultural Best Management Practices (BMPs) Advisory Committee for CAFOs met in April and May of 2005 regarding the Aquifer Protection Permit rule amendment on CAFO impoundments. It took no action and did not have a quorum the second time it met. The BMPs Advisory Committee for nitrogen application has not met since 1999.

3. The extent to which the advisory committees have operated within the public interest.

Since the committees have not met in such a long time this question is difficult to answer. Although a quorum did not materialize, ADEQ and the advisory committee on CAFOs operated the 2005 meetings in the public interest. The committees, however, have not met officially in six years.

4. The extent to which rules adopted by the agency are consistent with the legislative mandate.

To our knowledge the committees have not made any formal recommendations since they last went through the sunset process in 1996; therefore, this question does not apply.

5. The extent to which the agency has encouraged input from the public before adopting its rules and the extent to which it has informed the public as to its actions and their expected impact on the public.

See answer to question #3. In addition, all rules adopted by ADEQ have been consistent with the legislative mandate since the Governor's Regulatory Review Council (GRRC) has verified all approval of such rules.

6. **The extent to which the agency has been able to investigate and resolve complaints that are within its jurisdiction.**

See answer to question #3.

7. **The extent to which the Attorney General or any other applicable agency of state government has the authority to prosecute actions under the enabling legislation.**

According to ARS § 49-261 through 49-265, the Attorney General's Office may enforce the rules adopted by the Arizona Department of Environmental Quality based upon recommendations made by the Agricultural Best Management Practices Advisory Committees.

8. **The extent to which the advisory committees have addressed deficiencies in their enabling statutes which prevent them from fulfilling their statutory mandate.**

None.

9. **The extent to which changes are necessary in the laws of the agency to adequately comply with the factors listed in this subsection.**

ADEQ had adopted rules based on input from the advisory committees in the 1990s. Since that time, ADEQ has relied on its stakeholder process to reach the agricultural community and will continue to do so. One example is the pesticide rules adopted in 2005.

10. **The extent to which the termination of the advisory committees would significantly harm the public health, safety or welfare.**

The advisory committees have not officially met for many years. If at some future date rule changes become necessary, ADEQ will invite a stakeholder group to address the issues. Effective, formal public bodies can be cumbersome to appoint. Further, they require expertise in Open Meeting Laws. The specialized nature of those involved in the Agricultural Advisory Committee make it difficult to appoint all relevant interests. Moreover, the statutes require a specific partisan mix which creates difficulty in attainment within the agricultural community. In certain industries, such as swine or poultry production, few options exist. If the one or two qualifying member(s) decline to participate, the Governor's office cannot properly fill the committee slots and it may lead to problems in obtaining a quorum. Termination of these committees would not harm public health, safety, or welfare. ADEQ's standard stakeholder process will accommodate any potential rule changes to the Best Management Practices. It will also allow the agricultural community to bring whomever it wants to the ADEQ stakeholder process. ADEQ has no plans at this time to revisit Best Management Practices.

11. **The extent to which the level of regulation exercised by the agency is appropriate and whether less or more stringent levels of regulation would be appropriate.**

See #9 above.

12. **The extent to which the advisory committees have used private contractors in the performance of their duties and how effective use of private contractors could be accomplished.**

In 1995 the committees discussed this issue and determined that using a private contractor to study this issue would result in increased costs to the taxpayers. Since these committees have not had an official meeting in several years and since ADEQ has promulgated its rule packages, hiring a private contractor would be unnecessary.

ADDITIONAL QUESTIONS

- I. **An identification of the problem or the needs that the advisory committees are intended to address.**

The Agricultural Best Management Practices Committees submitted recommendations for the application of nitrogen fertilizers to the Director of ADEQ in 1998. It has never made formal recommendations for the operation of Concentrated Animal Feeding Operations (CAFOs).

- II. **A statement, to the extent practicable, in quantitative and qualitative terms, of the objectives of such advisory committees and their anticipated accomplishments.**

No further objectives or accomplishments are anticipated.

- III. **An identification of any other agencies having similar, conflicting or duplicate objectives, and an explanation of the manner in which the agency avoids duplication or conflict with other such agencies.**

No conflicts appear to exist.

- IV. **An assessment of the consequences of eliminating the advisory committees or of consolidating them with another agency.**

The Legislature should eliminate these committees since they have been replaced by an ADEQ stakeholder process at which the agricultural community is able to bring whomever they like to advocate for Arizona agriculture. ADEQ contemplates no substantive rule changes on these issues in the foreseeable future. However, if changes are needed, the agency would use its stakeholder process to bring together affected parties for their input and expertise.

Interim agendas can be obtained via the Internet at <http://www.azleg.state.az.us/InterimCommittees.asp>

ARIZONA STATE LEGISLATURE

INTERIM MEETING NOTICE OPEN TO THE PUBLIC

SENATE NATURAL RESOURCES AND RURAL AFFAIRS AND HOUSE OF
REPRESENTATIVES NATURAL RESOURCES AND AGRICULTURE COMMITTEE OF
REFERENCE FOR THE SUNSET HEARING OF:
GRAZING BEST MANAGEMENT PRACTICES ADVISORY COMMITTEE
AGRICULTURAL BEST MANAGEMENT PRACTICES ADVISORY COMMITTEES

Date: Friday, September 1, 2006

Time: 2:00 P.M.

Place: HHR 3

AGENDA

1. Call to Order
2. Opening Remarks
3. Grazing Best Management Practices Advisory Committee
 - Presentation
 - Public Testimony
 - Discussion
 - Recommendations by the Committee of Reference
4. Agricultural Best Management Practices Advisory Committees
 - Presentation
 - Public Testimony
 - Discussion
 - Recommendations by the Committee of Reference
5. Adjourn

Members:

Senator Jake Flake, Co-Chair
Senator Marsha Arzberger
Senator Tim Bee
Senator Robert Blendu
Senator Robert Cannell

Representative Russ Jones, Co-Chair
Representative Cheryl Chase
Representative Ann Kirkpatrick
Representative Tom O'Halleran
Representative Kyrsten Sinema

8/25/06
jmb

People with disabilities may request reasonable accommodations such as interpreters, alternative formats, or assistance with physical accessibility. If you require accommodations, please contact the Chief Clerk's Office at (602) 926-3032, TDD (602) 926-3241.

ARIZONA STATE LEGISLATURE
Forty-seventh Legislature – Second Regular Session

SENATE NATURAL RESOURCES AND RURAL AFFAIRS AND HOUSE OF
REPRESENTATIVES NATURAL RESOURCES AND AGRICULTURE COMMITTEE
OF REFERENCE FOR THE SUNSET HEARING OF:
GRAZING BEST MANAGEMENT PRACTICES ADVISORY COMMITTEE
AGRICULTURAL BEST MANAGEMENT PRACTICES ADVISORY COMMITTEES

Minutes of Meeting
Friday, September 1, 2006

House Hearing Room 3 -- 2:00 p.m.

CoChairman Jones called the meeting to order at 2:07 p.m. and attendance was noted by the secretary.

Members Present

Senator Tim Bee	Representative Kyrsten Sinema
Senator Robert Blendu	Senator Jake Flake, Co-Chair
Senator Robert Cannell	Representative Russ Jones, CoChair
Representative Cheryl Chase	

Members Absent

Senator Marsha Arzberger	Representative Tom O'Halleran
Representative Ann Kirkpatrick	

Speakers Present

Kathi Knox, Majority Research Analyst
Jim Buster, Legislative Liaison, Arizona Department of Environmental Quality (ADEQ)
Shelly A. Tunis, Legislative Liaison, Yuma Fresh Vegetable Association
Rick Lavis, Vice-President, Arizona Cotton Growers
Bas Aja, Legislative Liaison, Arizona Cattlemen's Association

CoChairman Jones thanked everyone for their patience and perseverance since the last meeting which was short a quorum. Good use was made of the time since then as a stakeholders' meeting was held which produced some good ideas. Testimony will be heard by two different individuals today.

Kathi Knox, Majority Research Analyst, stated that the sunset review process is an evaluation tool used to determine if agencies should be continued. Every agency or commission is required

to go through a review at least every ten years. Sunset reviews are based on a sunset audit prepared by the Auditor General's office, or, as in this instance, the committee of reference (COR). The COR is required to submit a sunset committee review report containing recommendations. The legislative staff will then prepare legislation if continuation is recommended and draft a report. The legislation would be introduced in the 2007 session to continue the agencies beyond the termination date of July 1, 2007.

Jim Buster, Legislative Liaison, Arizona Department of Environmental Quality (ADEQ), stated that, since the agencies have not met for a while, the position of ADEQ is not to continue the agencies. In speaking to some of the members and stakeholders, such as Bas Aja, while waiting for a quorum last week, a compromise was reached to collapse the two committees into one.

Mr. Buster believes they have the compromise to bring together the effective stakeholders, the regulators and industry members. He recommended Bas Aja and C.B. "Doc" Lane for the advisory committee. No major changes are foreseen in the near future, In terms of nitrogen application, the final report was made in 1998 and those issues are not surfacing. He noted that Joan Card, Director, Water Quality Division, is present to answer questions (Attachments 1 and 2).

CoChairman Jones mentioned that staggered terms were originally established so all the knowledge and experience of the committee is not lost at the same time. He is not sure that is in the draft and asked if it is a good idea to include staggered terms. Mr. Buster said the stakeholders are not adamant on that issue and did not include staggered terms. The committees have not met in a while. The requirement for a certain number of Republicans and Democrats was removed because it is difficult to fill those positions. The new committee may not meet in the next five years and perhaps a sunset of five years is needed as Mr Aja suggested; however, even though staggered terms is a good idea, he does not believe it is necessary in this case.

Senator Blendu asked why both committees should not be sunset if the committee that will be established will not meet in the foreseeable future.

Senator Flake answered that the Grazing Best Management Practices Advisory Committee was established about eight years ago because of strong objections he had with a ruling by the Environmental Protection Agency (EPA). At that time meetings were being held around the state about nitrogen in the ground due to cattle grazing. He attended a meeting in Flagstaff where he heard things he could not believe. It was almost to the point that in order to comply with the regulations, the cattle would have to be diapered. He did not say anything in the meeting but spoke later with the Director of ADEQ who did not know the substance of the meetings. Because of the ridiculous things that were said, the Grazing Best Management Practices Advisory Committee was formed so everything would have to go through the committee. Senator Flake said there does not seem to be anything on the horizon at present, but with EPA something could come up any time. He believes it is important to retain the committee in order to counteract these types of problems, and he believes it can be of assistance to ADEQ.

Senator Blendu said he would like to have this explanation on record so these kinds of policies come through the Legislature as opposed to a fiat from an agency. CoChairman Jones agreed. He said he sees it is more as a contingency committee, and, due to the lengthy time it takes to go through the rule-making process, there is an advantage in that it is already in place. Hopefully, the committee will never have to meet, but it will be available to take care of any issues if it is necessary.

Shelly A. Tunis, Legislative Liaison, Yuma Fresh Vegetable Association, stated that in 1986 the Legislature decided that nitrogen fertilizer used in farming operations needed to be regulated in the State of Arizona so Best Management Practices (BMP) was adopted. Also, in 1986 the Legislature created ADEQ. One of the reasons the Legislature created best management practices on nitrogen fertilizer was because there was no experience of what ADEQ would do since it did not previously exist. Now, 20 years later, it is known what ADEQ does with nitrogen fertilizer (Attachment 3). ADEQ has not changed the rules since 1991. There is no outcry from the public or industry to change these rules which seem to be working, and, in the interim, the Legislature adopted a procedure with more input from stakeholders in the rule-making process. All that leads to the conclusion that issues related to nitrogen fertilizer and best management practices in farming operations have been settled and stakeholders have had enough input in the ADEQ process over the past couple of years. For that reason, the Yuma Fresh Vegetable Association supports the sunset of the Agricultural Best Management Practices Advisory Committees.

Mr. Jones asked Ms. Tunis' opinion about melding the two committees. Ms. Tunis stated she has no opinion about the part relating to cattle. Senator Flake asked if it would provide the necessary protection even though it is a larger committee with representations of the livestock industry and agriculture. Ms. Tunis said she understands there are no agricultural people on the draft committee, only livestock personnel.

Rick Lavis, Vice-President, Arizona Cotton Growers Association, stated he is present to second the positions stated, especially Senator Flake's position. This is the first time in 25 years he can remember being in favor of a sunset, and, in this case, it is absolutely justifiable. He was here when the 1986 act was passed which was done for a number of reasons. The environmental community believed farmers were using an excessive amount of nitrogen fertilizers on crops and could be polluting groundwater. The possibility of producing "blue babies" was brought out in the legislative process resulting in the creation of the BMPs and the request to create a statutory reference on these issues. The issue before this committee is not nitrogen fertilizer, but whether the structure created in 1986 is still appropriate. Mr. Lavis said he does not believe so, and therefore, supports the sunset of the Agricultural Best Management Practices Advisory Committee. The Legislature required in statute that rules be produced on nitrogen fertilizer. As an issue for groundwater contamination, he referred to a report produced in 1991 by the University of Arizona and read the following into the record.

"The spatial distribution of the wells testing above the 10 mg standard does not present any clear association with human activities which may be responsible for

these elevated nitrate levels. Intensive agricultural areas, as well as with locations with no agriculture at all, have shown elevated nitrate levels in well water.”

“Contributions of nitrates can come from multiple sources, including mineralized soil, organic matter, geological deposits, septic tanks, sewage-treatment plants, concentrated animal operations, and agricultural applications of nitrogen fertilizer.”

He stated that the conclusion of the report is that it is almost impossible to find where those intensive nitrates might be.

Mr. Lavis continued by saying that the last issue was the “blue babies.” The presence of excessive nitrates in drinking water is the most serious for bottled-fed infants less than 6 months old whose immature digestive systems are unable to properly metabolize nitrates. Bacteria in an infant’s stomach converts nitrates to nitrites that react with hemoglobin to form methemoglobin, a condition referred to as methaemoglobinaemia. This molecule is unable to carry oxygen, so symptoms of oxygen starvation begin to occur. Because oxygen starvation causes a bluish discoloration of the body, it is commonly referred to as “blue baby disease” which is potentially fatal but very easy to treat if diagnosed. The number of incidences is very difficult to determine because it is not a disease that is routinely reported to public health agencies. As of the date of the 1991 report no confirmed cases resulting from agriculture contamination were reported in Arizona.

Mr. Lavis said maybe the 1986 act was ahead of the realities because nothing has been seen since and ADEQ has not raised the issue. There have also been no reported instances by the public health system. He believes it is unnecessary to have a BMP committee in place as there are other structures to handle any cases should they occur.

Senator Cannell said it seems that the main argument is there are other methods to deal with this. One could get to a point technologically where nitrogen could be traced to the source, whether from farming or elsewhere. Mr. Lavis said that the most important thing is that it is not related directly to agriculture.

Bas Aja, Legislative Liaison, Arizona Cattlemen’s Association, said he supports the sunset of the nitrogen fertilizer committee and combination of the other two (Attachment 4). Regarding Mr. Lavis’ testimony about the “blue baby” syndrome, etc. and how things have changed, the most important regulation he has seen relating to nitrogen fertilizer came about because of a very tragic incident, the Oklahoma City bombing. Now it is important to trace fertilizer to where it is being used and who has it. It is also being used to produce electricity and methane, and the Japanese have even produced gasoline from manure. There are still a few federal laws coming down the pike so he would like to see a committee in place in case the state has to address some federal rules.

Mr. Aja said he would also be remiss if he did not thank the ADEQ for working with the stakeholders.

Senator Flake asked his opinion as to five-year terms versus the ten-years. He believes five years works.

CoChairman Jones asked if there is any reason to include staggered terms if the committee recommends a five-year continuation. Mr. Aja answered that it would probably be better to have continuity, so 5-year terms would be fine in this case. If 10 years was recommended, there should be some staggering.

Senator Flake moved the adoption of the proposed language that was distributed that combines the best management practices issues relating to livestock, into one advisory committee instead of two. This would be for a period of 5 years and provide for staggered terms for committee members and allow any current members to complete their terms. The motion carried.

Senator Flake moved the reconsideration of the above motion. The motion carried.

Senator Flake moved the adoption of the proposed language that was distributed that combines the best management practices issues relating to livestock, into one advisory committee instead of two. This would be for a period of five years. The motion carried.

Senator Flake moved that the Nitrogen Fertilizer Best Management Practices Advisory Committee be allowed to terminate. The motion carried.

The CoChairman instructed staff to prepare legislation to make these changes and draft the COR report for next session.

Without objection, the meeting adjourned at 2:40 p.m.



Pat Hudock, Committee Secretary
September 7, 2006

(Original minutes, attachments and tape on file in the Office of the Chief Clerk)