



National Milk Producers Federation

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December 14, 2018

United States Environmental Protection Agency
Office of Land and Emergency Management
1200 Pennsylvania Avenue
Mail Code 5104A
Washington, DC 20460

Re: Docket No. EPA-HQ-OLEM-2018-0318, Emergency Release Notification Regulations on Reporting Exemption for Air Emissions from Animal Waste at Farms; Emergency Planning and Community Right-to-Know Act (EPCRA)

The National Milk Producers Federation (NMPF), established in 1916 and based in Arlington, VA, develops and carries out policies that advance the well-being of dairy producers and the cooperatives they own. The members of NMPF's cooperatives produce the majority of the U.S. milk supply, making NMPF the voice of dairy producers on Capitol Hill and with government agencies.

NMPF is pleased to offer its views in response to EPA's request for comments on the proposal to exempt the reporting of air emissions from animal waste under EPCRA. We concur with the proposal and commend the Agency for putting it forth.

As you are aware NMPF was very disappointed with the April 11, 2017 United States Court of Appeals for the District of Columbia's vacatur of the December 18, 2008 rule which limited the scope of reporting air emissions from manure. Both EPCRA and the Comprehensive Environmental Response and Liability Act (CERCLA) statutes were designed to assist in identifying releases of hazardous substances and to facilitate remedial action. Requiring farmers to report air emissions from manure under either law is contrary to the purpose of those laws impedes the efforts to respond to actual emergency releases by creating massive paperwork backlogs and using up resources that should be utilized for those emergencies. The emergency response community is on the record already being opposed to receiving manure air emission reports under EPCRA. And, the U.S. Coast which receives hazardous release reports under CERCLA is also on the record in opposition to receiving manure air emission reports.

NMPF and other agriculture groups worked diligently in 2017 and 2018 to inform Congress of the ramifications of the Court's ruling and quickly bipartisan support materialized. The speed with which Congress acted and the volume of support from both parties sent a clear message that manure air emission reporting is nonsensical. In addition, the October 3, 1986, Conference on EPCRA made it clear that air emission reporting of these releases was unwarranted and contrary to what Congress intended. Specifically, page 285 of the Conference Reports (see attached excerpt) says:

Agri-Mark, Inc.
Associated Milk
Producers Inc.
Bongards' Creameries
Cooperative Milk
Producers Association
Cortland Bulk Milk
Producers Cooperative
Dairy Farmers of
America, Inc.
Ellsworth
Cooperative Creamery
FarmFirst Dairy
Cooperative
First District Assoc.
Foremost Farms USA
Land O'Lakes, Inc.
Lone Star Milk
Producers
Maryland & Virginia
Milk Producers
Cooperative Association
Michigan Milk
Producers Association
Mid-West
Dairymen's Company
Mount Joy Farmers
Cooperative Association
Northwest Dairy Assoc.
Oneida-Madison Milk
Producers Cooperative
Association
Prairie Farms Dairy, Inc.
Premier Milk Inc.
Scioto County
Cooperative Milk
Producers' Association
Select Milk
Producers, Inc.
Southeast Milk, Inc.
St. Albans Cooperative
Creamery, Inc.
Swiss Valley Farms
Tillamook County
Creamery Association
United Dairymen
of Arizona
Upstate Niagara
Cooperative, Inc.
Zia Milk
Producers, Inc.

On-site releases that do not extend off-site are exempt from the requirements. **In addition, releases which are continuous or frequently occurring and do not require reporting under CERCLA do not require reporting under this section [emphasis added].**

On March 13, 2018, the Congressional Research Service (CRS) issued a memorandum to the Senate Committee on Environment and Public Works (see attached) regarding a supplemental analysis of the FARM Act (S. 24521), which discusses three situations where reporting is required under Section 304 of EPCRA. The third situation described below is relevant.

In this third situation, releases of extremely hazardous substances listed under EPCRA would require notification under Section 304(a)(2), if the release:
(A) is not a federally permitted release as defined in Section 101(10) of CERCLA;⁶
(B) is in an amount in excess of a reportable quantity that the U.S. Environmental Protection Agency (EPA) designated under Section 302 of EPCRA; and
(C) “occurs in a manner” that would require notification under Section 103 of CERCLA.

Page 284 of the 1986 Conference Report (see attachment) specifically discussed the situation and explained when clause “C” applies **“This requires notification where there is a release of an extremely hazardous substance that would require notice under section 103(a) of CERCLA but for the fact that the substance is not specifically listed under CERCLA as requiring such notice [emphasis added].”**

Ammonia and hydrogen sulfide, the primary air emissions from manure, are specifically listed under CERCLA (see attached excerpt from EPA List of Lists). Given that ammonia and hydrogen sulfide are listed, clause “C” is not satisfied and therefore no reporting obligation under EPCRA 304(a)(2) materializes.

NMPF concurs with the sentiment Congress expressed in 1986, it made sense then and it makes sense now.

NMPF also concurs with EPA’s proposed changes and the language EPA has utilized to effectuate the exemption and definition of “Animal Waste” and “Farm” as shown below.

§ 355.31

What types of releases are exempt from the emergency release notification requirements of this subpart?

* * * * *

(g) Air emissions from animal waste (including decomposing animal waste) at a farm.

3. Amend § 355.61 by adding in alphabetical order the definitions “Animal waste” and “Farm” to read as follows:

§ 355.61

How are key words in this part defined?

Animal waste means feces, urine, or other excrement, digestive emission, urea, or similar substances emitted by animals (including any form of livestock, poultry, or fish). This term includes animal waste that is mixed or commingled with bedding, compost, feed, soil, or any other material typically found with such waste.

* * * * *

Farm means a site or area (including associated structures) that—

(1) Is used for—

(i) The production of a crop; or

(ii) The raising or selling of animals (including any form of livestock, poultry, or fish); and

(2) Under normal conditions, produces during a farm year any agricultural products with a total value equal to not less than \$1,000.

In conclusion, the record is clear, Congress, the U.S. Coast Guard, Emergency Responders around the country all oppose air emission from manure reporting. We appreciate the opportunity to share our views on this important topic and commend the agency for its diligence for the past year on this issue and look forward to your finalizing this rule as proposed.

Sincerely,



Clay Detlefsen
Senior Vice President, Environmental and
Regulatory Affairs & Staff Counsel

Attachments