



Reporting Requirements for Emissions from Animal Waste

Under the Emergency Planning and Community Right-to-Know Act (EPCRA) (RIN 2050-AH28)

EPA is considering reinstating the reporting requirements for animal waste air emissions at farms under the Emergency Planning and Community Right-to-Know Act (EPCRA). In so doing, EPA would rescind its June 13, 2019 final rule exempting EPCRA reporting of animal waste air emissions at farms.

EPA Should Retain the 2019 Rule, Which Rests on Solid Legal Footing

- In the 2018 FARM Act, Congress exempted air emissions from animal waste at farms from reporting under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) Section 103. Because of the interplay between the CERCLA Section 103 reporting provision and the EPCRA Section 304 emergency notification provision, such air emissions are not subject to notification under EPCRA Section 304.
- EPA's 2019 Rule explained in great detail why the statutory text, EPCRA's legislative history, and prior regulatory practice all point to the same conclusion: once Congress exempted air emissions from animal waste at farms from CERCLA Section 103 reporting, such emissions are also exempt from EPCRA Section 304 emergency notification.
 - EPA's analysis of EPCRA's legislative history tracks the analysis set forth in the March 13, 2018 memorandum from the Congressional Research Service (CRS) to the Senate Committee on Environment and Public Works analyzing the Farm Act.
 - Maintaining the 2019 Rule is necessary to ensure consistency with longstanding EPA regulations. Specifically:
 - A 1987 rule (52 FR 13381) explains why EPA adopted certain CERCLA statutory exclusions—found in the CERCLA section 101(22) definition of “release”—into its EPCRA regulations despite the absence of identical statutory exclusions in EPCRA's text. Such releases included emissions from engine exhaust of motor vehicles, rolling stock, aircraft, vessels, or pipeline pumping station engines; releases of certain nuclear material from a nuclear incident; and the normal application of fertilizer.
 - Later that year, EPA promulgated another rule (52 FR 13378) adopting numerous statutory exemptions from CERCLA reporting—found in CERCLA sections 101(10) and 103(e) and (f)—into its EPCRA regulations. Such exemptions included, among other things, the application, handling, and storage of registered pesticide products. Notably, the FARM Act exclusion for air emissions from animal waste at farms is found in CERCLA Section 103(e) and thus, the 2019 Rule is virtually identical to this 1987 Rule.

- To state the obvious, the natural breakdown of livestock manure is not an emergency release, which is the focus of EPCRA section 304 emergency notification. As EPA explained in a 1998 rulemaking:
 - “With respect to the availability of public information regarding the sources and doses of radiation exposure in local communities, **the purpose of . . . EPCRA section 304 reporting . . . is to notify government personnel of releases of hazardous substances so that a timely decision can be made regarding the need for a response action to protect public health or welfare or the environment. These reporting programs are not intended to serve as a source of public information on radiation sources and exposures.** The community right-to-know reporting requirements, toxic release inventory requirements, and related provisions under EPCRA sections 311, 312, and 313 remain in effect. Therefore, the reporting exemptions will not significantly impact a community’s ability and right to know about hazardous substances.” 63 Fed. Reg. 13,460, 13,464 (Mar. 19, 1998).
- EPA’s 2019 Rule again recognized that EPCRA’s emergency notification provision (Section 304) is not an information sharing provision. EPA should **not** retreat from that sound conclusion.

Policy Considerations Weigh Heavily Against Rescinding the 2019 Rule

- The National Association of SARA Title III Program Officials is on record stating that state and local emergency response agencies do not need or want EPCRA Section 304 notifications for air emissions from animal waste at farms. In their words, these reports “are of no particular value to [local emergency planning committees] and first responders and they are generally ignored because they do not relate to any particular event.” Rather than receive useless and duplicative notifications, such emergency response officials need coordination between the farm and local responders and planning committees.
- Despite nearly two decades of work, EPA has yet to finalize reliable, scientifically sound emissions estimating methodologies for air emissions from animal waste at farms. Without sound methodologies, it is irresponsible and bad policy to require farms to submit information that is inaccurate and unreliable. Equally important, the public has no need for emissions estimates that are inaccurate and unreliable. Thus, even if public disclosure were a relevant purpose behind EPCRA Section 304—which it is not in EPA’s own view—that purpose would **not** be served here.
- Farmers are already on the receiving end of threatening and harassing calls from activist groups seeking to put them out of business. A likely consequence of rescinding the 2019 Rule and requiring farms to report air emissions from animal waste would be increased harassment of farmers, all due to inaccurate and unreliable estimates.