Message

From: Davis, Patrick [davis.patrick@epa.gov]
Sent: 10/3/2017 11:08:24 PM
To: Jennings, Kim [Jennings.Kim@epa.gov]; Gioffre, Patricia [Gioffre.Patricia@epa.gov]; Breen, Barry [Breen.Barry@epa.gov]
Subject: Fwd: EPCRA Q&A
Attachments: Routine Agricultural Operations -QA_DRAFT 10-2-17 v.1.docx; ATT00001.htm

Deliberative Process / Ex. 5

Patrick Davis
Environmental Protection Agency
Deputy Associate Director, Office of Land and Emergency Management
202-564-3103 office
Cellular Phone / Ex. 6

Emails sent to this address may be subject to FOIA.

Sent from my iPhone

Begin forwarded message:

> **From:** "Bodine, Susan" <bodine.susan@epa.gov>
> **Date:** October 3, 2017 at 6:24:27 PM EDT
> **To:** "Davis, Patrick" <davis.patrick@epa.gov>, "Brown, Byron" <brown.byron@epa.gov>, "Fotouhi, David" <Fotouhi.David@epa.gov>
> **Subject: RE: EPCRA Q&A**

Deliberative Process / Ex. 5

> -----Original Message-----
> From: Davis, Patrick
> Sent: Tuesday, October 3, 2017 4:33 PM
> To: Brown, Byron <brown.byron@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>
> Subject: FW: EPCRA Q&A
>
> EPCRA Q&A for our thoughts.
>
> Patrick Davis
> Environmental Protection Agency

Deputy Assistant Administrator, Office of Land and Emergency Management
202-564-3103 office
202-380-8341 cell
Cellular Phone / Ex. 6
Information sent to this email address may be subject to FOIA.

-----Original Message-----
From: Jennings, Kim
Sent: Tuesday, October 3, 2017 4:01 PM
To: Davis, Patrick <davis.patrick@epa.gov>; Breen, Barry <Breen.Barry@epa.gov>; Brooks, Becky <Brooks.Becky@epa.gov>; Cheatham, Reggie <cheatham.reggie@epa.gov>; Clark, Becki <Clark.Becki@epa.gov>
Cc: Jacob, Sicy <Jacob.Sicy@epa.gov>; Franklin, Kathy <Franklin.Kathy@epa.gov>; Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Hull, George <Hull.George@epa.gov>; Beaman, Joe <Beaman.Joe@epa.gov>; Bosecker, Elizabeth <Bosecker.Elizabeth@epa.gov>
Subject: FW: EPCRA Q&A

FYI. I wanted to get this out to folks ASAP since we have the meeting with OGC on Thursday on this Q and A.

Thanks,
Kim

Kim Jennings
Division Director || Regulations Implementation Division U.S. Environmental Protection Agency || Office of Emergency Management
E-mail: jennings.kim@epa.gov || Desk: (202) 564-7998 ||

-----Original Message-----
From: Michaud, John
Sent: Tuesday, October 03, 2017 3:01 PM
To: Jennings, Kim <Jennings.Kim@epa.gov>
Cc: Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Lewis, Jen <Lewis.Jen@epa.gov>; Swenson, Erik <Swenson.Erik@epa.gov>; Salo, Earl <Salo.Earl@epa.gov>; Openchowski, Charles <openchowski.charles@epa.gov>
Subject: EPCRA Q&A

Kim --

Deliberative Process / Ex. 5

Let me know if you have any questions.

Thanks.

John

John R Michaud
Associate General Counsel
Solid Waste and Emergency Response Law Office
202-564-5518
michaud.john@epa.gov

-----Original Message-----
From: Jennings, Kim
Sent: Tuesday, October 03, 2017 7:50 AM
To: Michaud, John <Michaud.John@epa.gov>
Cc: Gioffre, Patricia <Gioffre.Patricia@epa.gov>
Subject: RE:

Hi John,

Is the EPCRA Q & A complete? Can you send it to us?

Our AA is asking and we have a briefing scheduled with OMB on Thursday on this and the guidance.

Thanks,
Kim

Kim Jennings
Division Director || Regulations Implementation Division U.S. Environmental Protection Agency || Office of Emergency Management
E-mail: jennings.kim@epa.gov || Desk: (202) 564-7998 ||

-----Original Message-----
From: Jennings, Kim
Sent: Friday, September 29, 2017 6:47 AM
To: Michaud, John <Michaud.John@epa.gov>
Cc: Gioffre, Patricia <Gioffre.Patricia@epa.gov>
Subject: FW:

Hi John,

Attorney Client / Ex. 5

Thanks,
Kim

Kim Jennings
Division Director || Regulations Implementation Division U.S. Environmental Protection Agency || Office of Emergency Management
E-mail: jennings.kim@epa.gov || Desk: (202) 564-7998 ||

-----Original Message-----
From: Jennings, Kim
Sent: Friday, September 29, 2017 6:42 AM
To: Cheatham, Reggie <cheatham.reggie@epa.gov>; Gioffre, Patricia <Gioffre.Patricia@epa.gov>

Cc: Clark, Becki <Clark.Becki@epa.gov>
Subject:

Hi Reggie and Becki,

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5 OGC currently has the EPCRA Q & A and is revising it and working it up their management chain. **Deliberative Process / Ex. 5** The RID team will be doing a final review of the CERCLA guidance, which will provide information on who should be reporting, how to estimate their releases, and how they can report, including continuous release reporting. **Deliberative Process / Ex. 5**
Deliberative Process / Ex. 5 OMB has requested, via OLEM PARMS, a briefing next Thursday (10/5) at 1 pm on the EPCRA Q & A. They will not be reviewing the guidance.

Let me know if you have any questions or want to discuss. I am in the office today.

Thanks,
Kim

Kim Jennings
Division Director || Regulations Implementation Division U.S. Environmental Protection Agency || Office of Emergency Management
E-mail: jennings.kim@epa.gov || Desk: (202) 564-7998 ||

-----Original Message-----
From: Cheatham, Reggie
Sent: Thursday, September 28, 2017 6:09 PM
To: Jennings, Kim <Jennings.Kim@epa.gov>; Gioffre, Patricia <Gioffre.Patricia@epa.gov>
Cc: Clark, Becki <Clark.Becki@epa.gov>
Subject: FW:

I saw the draft....where are we on going final?

Reggie Cheatham, Director
Office of Emergency Management, USEPA
202.564.8003 (O); 202.689.9400 (M);
cheatham.reggie@epa.gov
Doris Williams, Executive Assistant
202.564.0053

-----Original Message-----
From: Breen, Barry
Sent: Thursday, September 28, 2017 6:06 PM
To: Davis, Patrick <davis.patrick@epa.gov>; Cheatham, Reggie <cheatham.reggie@epa.gov>
Subject: FW:

Patrick, do you already have the substance needed for us to get back to Ryan?

If not, Reggie, would you please ask Kim to draft a reply?

Barry

-----Original Message-----
From: Jackson, Ryan
Sent: Thursday, September 28, 2017 5:54 PM
To: Cheatham, Reggie <cheatham.reggie@epa.gov>
Cc: Fotouhi, David <Fotouhi.David@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Breen, Barry <Breen.Barry@epa.gov>; Davis, Patrick <davis.patrick@epa.gov>
Subject:

Gentlemen, I know OLEM is working on it but I'm looking for an update on the ag cercla/Epra reporting exemption. I need to get this out and know the schedule.

Deliberative Process / Ex. 5 When are these documents ready

Ryan Jackson
Chief of Staff
U.S. EPA
Personal Phone / Ex. 6

Message

From: Fotouhi, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FEBAF0D56AAB43F8A9174B18218C1182-FOTOUHI, DA]
Sent: 1/6/2018 9:06:11 PM
To: Schwab, Justin [schwab.justin@epa.gov]; Baptist, Erik [baptist.erik@epa.gov]
Subject: RE: Daily 8:30am Meetings

Sorry—I hit send inadvertently—still working on this draft. I'll send a complete version shortly.

David Fotouhi

Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

From: Fotouhi, David
Sent: Saturday, January 6, 2018 4:06 PM
To: Schwab, Justin <schwab.justin@epa.gov>; Baptist, Erik <baptist.erik@epa.gov>
Subject: RE: Daily 8:30am Meetings

Key items for week of January 8-12

- Water Law Office
  - **Ohio 303(d) list litigation.** [Sarah Greenwalt likely will provide this update]. An environmental group challenged EPA Region 5's approval of Ohio's 2016 impaired waters list, even though the State did not demonstrate that it gathered and analyzed all available information and data on the open waters of Lake Erie for potential nutrient impairment. Before leaving for the holidays, the Administrator reviewed and approved a letter to Ohio EPA that would withdraw EPA Region 5's approval of Ohio's impaired waters list specifically as to the open waters of Lake Erie and would ask the state to perform the requisite analysis within 60 days. Attorney Client / Ex. 5

    Attorney Client / Ex. 5
  - **City of Kennett, Mo. v. EPA.** DOJ is defending EPA's approval of Missouri's TMDL for nitrogen, phosphorus, and total dissolved solids for the Buffalo Ditch against a challenge by a municipality. This district court dismissed the challenge on standing and mootness grounds. Oral argument in 8th Circuit will take place on January 11.
- Solid Water & Emergency Response Law Office
  - **Gold King Mine—New Mexico litigation.** Attorney Client / Ex. 5

    Attorney Client / Ex. 5
  - **Gold King Mine—Utah litigation.** On January 5, the State of Utah filed an amended complaint in Utah v. Environmental Restoration et al. (D. Utah), a pending case against EPA's contractors concerning the Gold King Mine release. The amended complaint added EPA, the Administrator, and the United States as defendants and included claims under CERCLA, RCRA, the Clean Water Act, and the Federal Tort Claims Act. Attorney Client / Ex. 5

    Attorney Client / Ex. 5

    Attorney Client / Ex. 5

    Attorney Client / Ex. 5 Sarah coordinated with Liz on Thursday regarding a potential press response.
  - Reporting of air emissions from farms. [Jeff Sands should provide this update]. The DC Circuit's mandate is expected to issue on January 22 in the case that vacated EPA's 2008 rule that provided an

exemption to farmers from the statutory obligation to report air emissions from farms under CERCLA and EPA. In October, EPA issued guidance to assist farms with reporting emissions under CERCLA and included an interpretation of EPCRA that emissions resulting from "routine agricultural operations" did not require reporting. Jeff Sands, Tate Bennett, David Fotouhi, and OLEM staff have been coordinating closely with agricultural groups, USDA, the National Response Center, and others to ensure that farmers understand their obligations under CERCLA, to clarify and simplify the reporting obligation to the extent possible, and to ensure that the National Response Center (manned by the Coast Guard) is prepared

David Fotouhi

Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

From: Schwab, Justin
Sent: Saturday, January 6, 2018 1:13 PM
To: Baptist, Erik <Baptist.Erik@epa.gov>
Cc: Fotouhi, David <Fotouhi.David@epa.gov>
Subject: Re: Daily 8:30am Meetings

Erik, call me when you can this weekend to discuss.

Sent from my iPhone

On Jan 5, 2018, at 9:15 PM, Baptist, Erik <Baptist.Erik@epa.gov> wrote:

> From Ryan re Matt's responsibilities for the daily meetings:
>
> **OGC** (Matt Leopold)
> - Update on cases and matters requiring immediate and short-term attention
> - Update on upcoming issues
>
> I'm stepping in for Matt on Monday, so please let me know of any issues.
>
> Here's what I've got so far:
> 1. TSCA Lead Dust decision and potential rehearing
> 2. GHG Emissions from Motor Vehicles Update (re CA waiver)
> 3. Kigali Amendment memo
> 4. ESA nationwide consultations re 3 pesticides - final NMFS BiOps issued
>
> Sent from my iPhone

Message

From: Fotouhi, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FEBAF0D56AAB43F8A9174B18218C1182-FOTOUHI, DA]
Sent: 1/24/2018 6:33:37 PM
To: Donaldson, Teri (EPW) [Teri_Donaldson@epw.senate.gov]
Subject: RE: please take a look
Attachments: cercla_epcra_factsheet_final.pdf

The attached factsheet contains a good summary.

David Fotouhi

Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

From: Donaldson, Teri (EPW) [mailto:Teri_Donaldson@epw.senate.gov]
Sent: Wednesday, January 24, 2018 1:27 PM
To: Fotouhi, David <Fotouhi.David@epa.gov>
Subject: RE: please take a look

Could you also describe the current state of any reporting under CERCLA EPCRA for animal waste emissions?

Thanks!

From: Fotouhi, David [mailto:Fotouhi.David@epa.gov]
Sent: Wednesday, January 24, 2018 12:32 PM
To: Donaldson, Teri (EPW) <Teri_Donaldson@epw.senate.gov>
Cc: Willson, James (EPW) <James_Willson@epw.senate.gov>
Subject: Re: please take a look

Yes, that will work. Thank you.

Sent from my iPhone

On Jan 24, 2018, at 12:20 PM, Donaldson, Teri (EPW) <Teri_Donaldson@epw.senate.gov> wrote:

> Let do this at 1, okay? It won't take long.
>
> ---
>
> **From:** Fotouhi, David [mailto:Fotouhi.David@epa.gov]
> **Sent:** Wednesday, January 24, 2018 11:53 AM
> **To:** Donaldson, Teri (EPW) <Teri_Donaldson@epw.senate.gov>
> **Subject:** Re: please take a look
>
> Teri: my apologies, I've been pulled into an urgent meeting with my principal. I will try you as soon as I am able.
>
> Sent from my iPhone
>
> On Jan 24, 2018, at 11:42 AM, Donaldson, Teri (EPW) <Teri_Donaldson@epw.senate.gov> wrote:

Standing by.

From: Fotouhi, David [mailto:Fotouhi.David@epa.gov]
Sent: Wednesday, January 24, 2018 10:07 AM
To: Donaldson, Teri (EPW) <Teri_Donaldson@epw.senate.gov>
Cc: Palich, Christian <palich.christian@epa.gov>; Willson, James (EPW) <James_Willson@epw.senate.gov>
Subject: Re: please take a look

I'm not available then, but could do 11:30 or noon. Would that work?

Sent from my iPhone

On Jan 24, 2018, at 10:05 AM, Donaldson, Teri (EPW) <Teri_Donaldson@epw.senate.gov> wrote:

> Thanks. Does 10:45 work for you?
>
> Teri L. Donaldson
> General Counsel
> U.S. Senate
> Environment and Public Works Committee
> (202) 224-2829 (direct)
> (202) 945-7337 (cell)
> Teri_Donaldson@epw.senate.gov
>
> On Jan 23, 2018, at 10:13 PM, Fotouhi, David <Fotouhi.David@epa.gov> wrote:
>
>> Teri:
>>
>> Sorry for not connecting with you today—I will take a look at this draft and give you a ring tomorrow.
>>
>> Best,
>>
>> David
>>
>> **David Fotouhi**
>>
>> Deputy General Counsel
>> Office of General Counsel
>> U.S. Environmental Protection Agency
>> Tel: +1 202.564.1976
>> fotouhi.david@epa.gov
>>
>> ---
>>
>> **From:** Donaldson, Teri (EPW) [mailto:Teri_Donaldson@epw.senate.gov]
>> **Sent:** Tuesday, January 23, 2018 5:51 PM
>> **To:** Fotouhi, David <Fotouhi.David@epa.gov>
>> **Cc:** Palich, Christian <palich.christian@epa.gov>; Willson, James (EPW)

<James_Willson@epw.senate.gov>
Subject: please take a look

David,

Please take a quick look and give me a call. I've added Section 3....

Thanks!

Teri

Teri L. Donaldson
General Counsel
U.S. Senate, Environment and Public Works Committee
410 Dirksen Senate Office Building
Washington, DC 20510
202-224-2829 (0) 202-224-5167 (f)
202-945-7337 (cell)
Teri_Donaldson@epw.senate.gov

United States Environmental Protection Agency

Office of Land and Emergency Management

520-F-17-001
January 2018
www.epa.gov/animalwaste

CERCLA and EPCRA Reporting Requirements for Air Releases of Hazardous Substances from Animal Waste at Farms

Overview

Two environmental laws, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and Emergency Planning and Community Right-to-Know Act (EPCRA), require reporting releases of a hazardous substance that exceeds a reportable quantity within a 24-hour period. The purpose of the notification is for federal, state, and local officials to evaluate the need for an emergency response to mitigate the effects of the release to the community.

Due to a recent court decision, some farms (including ranches, livestock operations and/or animal operations) will soon be required to report hazardous substance air releases from animal waste under CERCLA.

Why do I need to report?

Previously, EPA exempted farms from reporting hazardous substance air releases from animal waste under CERCLA, and only large concentrated animal feeding operations (CAFOs) were subject to EPCRA reporting, which is a separate but related law.

Citizen groups challenged the validity of EPA's rule, and the U.S. Court of Appeals for the DC Circuit struck down EPA's rule on April 11, 2017. Therefore, EPA's regulatory exemption no longer applies.

As a result of the Court decision, farms with animal operations that release certain amounts of hazardous substances will be required to report these air emissions as early as January 22, 2018.

When do I need to report?

The Court is expected to issue its order on January 22, 2018. Farms do not have to report until the Court issues its mandate.

Do I need to submit a CERCLA report?

Reporting is required when releases of hazardous substances (like ammonia or hydrogen sulfide) from animal waste meet or exceed their reportable quantities within a 24-hour period. For a complete list of CERCLA hazardous substances, please see the Resources link at: www.epa.gov/animalwaste.

What substances need to be reported?

Ammonia (NH_3) and hydrogen sulfide (H_2S) are common hazardous substances emitted from animal waste that require reporting if released to the air in amounts greater than or equal to their reportable quantity of 100 lbs within a 24-hour period. If a farm releases any other hazardous substances above their designated reportable quantities within a 24-hour period, those need to be reported as well.

How do I estimate releases?

To help you comply with the reporting requirements, EPA has made resources available on its website that may be helpful in estimating emissions. You may also use other models for estimating emissions or you may estimate quantities of releases by relying on:

- Past release data;
- Engineering estimates;
- Your knowledge of the facility's operations and release history; or
- Your best professional judgment.

Why Can't EPA Tell Me How Many Animals Require Reporting?

EPA recognizes it will be challenging for farmers to estimate releases because there is no generally accepted methodology for estimating these emissions at this time.

Many factors influence emissions:

- geographic location;
- environmental conditions;
- management practices (e.g. feed, manure);
- animal characteristics (e.g. number, species, life stage);
- operating conditions; and
- general management practices.

Due to the complex interactions of these factors, emissions cannot be standardized based solely on the number and type of animals at each animal operation. For example, there are many scenarios when operations with fewer animals will have higher emissions than operations with greater numbers of the same species of animals.

EPA is working on developing methodologies to estimate emissions from a wide variety of operations and thus better inform emission estimates from animal waste. However, that work will not be completed prior to the Court's mandate that farms report.

Waterkeeper et al. v. EPA, No. 1:18-cv-02135 (D.D.C.); EPA-HQ-2018-007135 ED_002290B_00037822-00001

Facility owners and operators are required to report an estimate only-monitoring data is not required. Additionally, farmers are not required to reduce emissions. Farmers should keep a copy of the calculation for future reference. For more information, please see the Resources link at: www.epa.gov/animalwaste.

How do I report for CERCLA?

To comply with CERCLA reporting requirements for air releases of hazardous substances from animal waste, instead of reporting every day, farms may follow a streamlined reporting process known as "continuous release reporting." This requires the facility owner or operator to follow the steps outlined in the column to the right.

How often do I need to estimate emissions?

If you use the continuous release reporting process, you need to review emissions from the farm once a year. You'll also need to estimate emissions following any significant changes in operations that may result in statistically significant increases in emissions.

Do I need to submit an EPCRA report?

EPA interprets the statute to exclude farms that use substances in "routine agricultural operations" from reporting under EPCRA section 304. This encompasses routine operations at farms, animal feeding operations, nurseries, other horticultural operations, and aquaculture. For more information, see: www.epa.gov/epcra/question-and-answer-epcra-reporting-requirements-air-releases-hazardous-substances-animal.

Do farms that have animals that reside primarily outside of an enclosed structure and graze on pastures, need to comply with reporting releases of hazardous substances from animal wastes under CERCLA?

Yes, if the facility has releases above the reportable quantity. EPA considers all contiguous property under common ownership to be a single facility for reporting purposes. For purposes of determining whether you have a reportable release, a person must identify all of the sources of hazardous substances releases, identify the quantities that are emitted from each source, and add up the quantities released for the facility. In making this determination, farms should include all releases from the facility, including releases from animal waste due to animals that reside primarily outside of an enclosed structure.

Additional Resources

- Email comments or suggestions on guidance materials to: CERCLA103.guidance@epa.gov
- Regional Contacts: www.epa.gov/epcra/cr-erns-regional-contacts
- Continuous Release Reporting Forms: www.epa.gov/animalwaste
- National Response Center: 800-424-8802 or farms@uscg.mil

CERCLA Continuous Release Reporting Process

Step 1: Provide the National Response Center (NRC) with an initial continuous release notificationby email (farms@uscg.mil) or by phone (1-800-424-8802). An owner or operator can send one email notification for multiple farms.

Your email should identify that this is an initial continuous release notification and include:

- Name of the farm
- Location of the farm (e.g., name of city/town and state)
- Name(s) of the hazardous substance(s) released (ammonia and/or hydrogen sulfide)

Note: The NRC does not require personally identifiable information, such as an address for a private residence. A generic location (name of city/town and state) may be sufficient.

You will receive an email from the NRC with a single identification number (CR-ERNS) for your farms(s). Include the CR-ERNS number on the follow-up report discussed in Step 2.

Step 2: Within 30 days of the NRC notification, submit an initial written notification to the EPA Regional Office for the area where the release occurs (see www.epa.gov/epcra/cr-erns-regional-contacts). Use the Continuous Release Reporting Form.

Step 3: Submit a one-time first anniversary follow-up report to the EPA Regional Office.

If there are significant changes at your operation that could result in a change in emissions, additional reporting may be necessary.

Questions?

- See the CERCLA and EPCRA guidance for more information: www.epa.gov/animalwaste
- Call the EPCRA, RMP & Oil Information Center at: 1-800-424-9346

Waterkeeper et al. v. EPA, No. 1:18-cv-02135 (D.D.C.); EPA-HQ-2018-007135 ED_002290B_00037822-00002

Message

From: Fotouhi, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FEBAF0D56AAB43F8A9174B18218C1182-FOTOUHI, DA]
Sent: 1/24/2018 6:25:44 PM
To: Donaldson, Teri (EPW) [Teri_Donaldson@epw.senate.gov]
CC: Willson, James (EPW) [James_Willson@epw.senate.gov]
Subject: RE: please take a look
Attachments: EPA-HQ-OAR-2017-0638-0003.pdf

Please see attached

David Fotouhi

Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

From: Donaldson, Teri (EPW) [mailto:Teri_Donaldson@epw.senate.gov]
Sent: Wednesday, January 24, 2018 12:19 PM
To: Fotouhi, David <Fotouhi.David@epa.gov>
Cc: Willson, James (EPW) <James_Willson@epw.senate.gov>
Subject: RE: please take a look

Let do this at 1, okay? It won't take long.

From: Fotouhi, David [mailto:Fotouhi.David@epa.gov]
Sent: Wednesday, January 24, 2018 11:53 AM
To: Donaldson, Teri (EPW) <Teri_Donaldson@epw.senate.gov>
Subject: Re: please take a look

Teri: my apologies, I've been pulled into an urgent meeting with my principal. I will try you as soon as I am able.

Sent from my iPhone

On Jan 24, 2018, at 11:42 AM, Donaldson, Teri (EPW) <Teri_Donaldson@epw.senate.gov> wrote:

> Standing by.
>
> ---
>
> **From:** Fotouhi, David [mailto:Fotouhi.David@epa.gov]
> **Sent:** Wednesday, January 24, 2018 10:07 AM
> **To:** Donaldson, Teri (EPW) <Teri_Donaldson@epw.senate.gov>
> **Cc:** Palich, Christian <palich.christian@epa.gov>; Willson, James (EPW) <James_Willson@epw.senate.gov>
> **Subject:** Re: please take a look
>
> I'm not available then, but could do 11:30 or noon. Would that work?
>
> Sent from my iPhone
>
> On Jan 24, 2018, at 10:05 AM, Donaldson, Teri (EPW) <Teri_Donaldson@epw.senate.gov> wrote:

Thanks. Does 10:45 work for you?

Teri L. Donaldson
General Counsel
U.S. Senate
Environment and Public Works Committee
(202) 224-2829 (direct)
(202) 945-7337 (cell)
Teri_Donaldson@epw.senate.gov

On Jan 23, 2018, at 10:13 PM, Fotouhi, David <Fotouhi.David@epa.gov> wrote:

Teri:

Sorry for not connecting with you today—I will take a look at this draft and give you a ring tomorrow.

Best,

David

David Fotouhi

Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

From: Donaldson, Teri (EPW) [mailto:Teri_Donaldson@epw.senate.gov]
Sent: Tuesday, January 23, 2018 5:51 PM
To: Fotouhi, David <Fotouhi.David@epa.gov>
Cc: Palich, Christian <palich.christian@epa.gov>; Willson, James (EPW) <James_Willson@epw.senate.gov>
Subject: please take a look

David,

Please take a quick look and give me a call. I've added Section 3....

Thanks!

Teri

Teri L. Donaldson
General Counsel
U.S. Senate, Environment and Public Works Committee
410 Dirksen Senate Office Building
Washington, DC 20510
202-224-2829 (0) 202-224-5167 (f)
202-945-7337 (cell)

Teri_Donaldson@epw.senate.gov

E. Scott Pruitt
Administrator

December 15, 2017

Mr. Tom Frantz
President
Association of Irritated Residents
30100 Orange Street
Shafter, California 93263

Dear Mr. Frantz:

On September 21, 2009, the Humane Society of the United States and other environmental and citizen groups[1] (collectively, "petitioners") sent a letter to the U.S. Environmental Protection Agency petitioning the agency to list concentrated animal feeding operations as a category of sources under section 111(b)(1)(A) of the Clean Air Act and, thereafter, to promulgate standards of performance for new CAFOs under CAA section 111(b)(1)(B) and prescribe regulations for state-performance standards for existing CAFOs under CAA section 111(d).

I write to inform you that the EPA is denying this petition to list CAFOs as a category of sources under CAA section 111. This denial fully and finally responds to this petition and is the EPA's final agency action on this petition.

The EPA recognizes that emissions from this sector exist and has been undertaking multiple activities related to CAFO emissions as part of the agency's preferred approach to address these emissions. As discussed below, the EPA has developed and is implementing a comprehensive strategy to address CAFO air emissions that includes conducting a nationwide study of air emissions from CAFOs and developing improved emission-estimating methodologies for these emissions; gathering additional information about the magnitude of CAFO emissions and their control options; considering to what extent existing CAA regulations address CAFO emissions; evaluating the various CAA regulatory tools that might be used to further address CAFO emissions; and then determining which regulatory tool or tools would be most appropriate to regulate CAFO emissions to protect public health and welfare. Further, in determining the sequence and timing of undertaking regulatory action, the agency must consider the most efficient

[1] In addition to the Humane Society of the United States, the other petitioners are Association of Irritated Residents, Center on Race, Poverty and the Environment, Clean Air Task Force, Dairy Education Alliance, El Comité Para el Bienestar de Earlimart, Environmental Integrity Project, Friends of the Earth, Sierra Club and Waterkeeper Alliance.

1200 Pennsylvania Ave, NW • Mail Code 1101A • Washington, DC 20460 • (202) 564-4700 • Fax: (202) 501-1450

This paper is printed with vegetable-oil-based inks and is 100-percent postconsumer recycled material, chlorine-free-processed and recyclable.

and effective uses of its limited resources in light of ongoing budgetary uncertainties. Given the actions that the agency is undertaking and its resource constraints, the EPA is declining at this time to determine whether to list CAFOs as a source category under CAA section 111, and the agency, thus, is denying your petition. This denial is not based on a determination as to whether CAFOs meet the requirements for listing under CAA section 111(b)(1)(A). In the future, the EPA may initiate a process to determine whether to list CAFOs under CAA section 111(b)(1)(A); however, the agency has decided that it will not do so now.

I. Introduction

A. Statutory Provisions

Clean Air Act section 111(b)(1)(A) provides that the EPA shall "publish (and from time to time thereafter shall revise) a list of categories of stationary sources [and shall include a category on the list] if in [the Administrator's] judgment it causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare." For categories that the EPA lists under CAA section 111(b)(1)(A), CAA section 111(b)(1)(B) requires the EPA to propose federal standards of performance for new sources within the newly established category within one year of listing and then, after an opportunity for public comment, finalize the standards within one year of publishing the proposed standards.

B. Procedural History

On September 21, 2009, the petitioners sent a letter to the EPA petitioning the agency to list CAFOs and to promulgate standards of performance under CAA section 111 (which we will refer to as the "September 2009 Petition"). The petitioners specifically requested that the EPA undertake a rulemaking that:

(1) Finds that the air pollutants hydrogen sulfide and ammonia constitute air pollution that endangers U.S. public health or welfare;

(2) Announces the Administrator's judgment that emissions of methane, nitrous oxide, hydrogen sulfide, ammonia, volatile organic compounds and particulate matter from CAFOs contribute significantly to air pollution that is reasonably anticipated to endanger public health and welfare;

(3) Lists CAFOs as a category of stationary sources pursuant to CAA section 111(b)(1)(A); and

(4) Promulgates standards of performance for air emissions of methane, nitrous oxide, hydrogen sulfide, ammonia, VOC and PM from new and existing CAFOs under CAA sections 111(b) and 111(d).

September 2009 Petition, at page 4.

In January 2015, some of the petitioners (the Humane Society of the United States, Association of Irritated Residents, Environmental Integrity Project, Friends of the Earth and Sierra Club) filed a complaint with the United States District Court for the District of Columbia alleging that the EPA had unreasonably delayed in responding to the petition. The Court dismissed the case after finding that the plaintiffs had failed to notify the EPA 180 days before filing the suit, as required by CAA section 304(a).

On October 7, 2016, the same petitioners notified the EPA of their intent to file suit, as required under CAA section 304(a). On August 23, 2017, these petitioners filed a complaint with the United States District Court for the District of Columbia, alleging that the EPA had unreasonably delayed in responding to the September 2009 Petition.

II. Summary of the September 2009 Petition

In their September 2009 Petition, the petitioners cited the requirements of CAA section 111 and asserted that CAFOs meet the definition of a stationary source that emits air pollutants that endanger public health and welfare. The petitioners focused on listing CAFOs as a source category under the CAA in order for the EPA to promulgate performance standards for this sector to control emissions of the major pollutants emitted by CAFOs.

The petitioners included general statistics about the CAFO industry and asserted that CAFOs emit more pollutants than traditional, small-scale farms due to CAFOs' confinement and manure-management practices. The petitioners listed major pollutants emitted by CAFOs as being: (1) the greenhouse gases methane and nitrous oxide, (2) hydrogen sulfide, (3) ammonia, (4) PM and (5) VOC. The petitioners further discussed these pollutants, including the health and welfare effects they cause, in order to support the claim that emissions from CAFOs endanger public health. The petitioners cited examples of effects of exposure to these pollutants, including public health effects, such as respiratory illness, increased cancer rates, death and welfare effects, such as crop damage, atmospheric acidification, habitat loss and severe haze.

The petitioners asserted that CAFOs are significant contributors of these pollutants due to the number of CAFOs and the amount of waste they produce. The petitioners included examples of statistics from studies conducted at local, national and global scales regarding quantities of emissions of these pollutants and site-specific data related to public-nuisance complaints and individual facility reports. Finally, the petitioners listed various management practices and technologies that the petitioners assert have been demonstrated to reduce emissions of some of these pollutants from specific subsectors of CAFOs.

III. Response to Requests

After thoroughly considering the petitioners' request to list and regulate CAFOs under CAA section 111, the EPA has concluded that the complex nature of emission sources and emissions from this sector requires the agency to continue its comprehensive approach toward this sector by first evaluating CAFO emissions and then determining further regulatory actions to address these emissions. As discussed below, in responding to this petition, the EPA has considered (a) the need for more accurate methodologies to estimate air emissions from CAFOs, including the critical role of that information in implementing a comprehensive regulatory

strategy; (b) the agency's multiple ongoing actions taken to date in support of its comprehensive approach for addressing air emissions from CAFOs; and (c) the agency's limited resources and competing priorities.

A. The Need for and Importance of Developing Accurate CAFO Air Emissions Methodologies in the EPA's Comprehensive Approach

The interactive and highly complex nature of CAFO air emissions requires new, more accurate methodologies for estimating those emissions. Establishing sound emissions estimates is a fundamental step to establish a comprehensive, effective and efficient regulatory strategy to address CAFO air emissions. To this end, the agency first is gathering information to most accurately characterize the emissions from CAFOs, and, once the agency has sufficient information on CAFO emissions, it will determine the appropriate regulatory approach to address those emissions.

CAFOs can emit a variety of air pollutants, including those listed in the petition and summarized above, as well as hazardous air pollutants, carbon dioxide and reduced sulfur compounds. These pollutants are emitted from various sources at animal feeding operations, including confinement structures (e.g. barns, corrals), manure management systems and fields. Additionally, other agricultural equipment (e.g. engines, boilers) used on CAFOs emit pollutants; some of which are covered by other existing New Source Performance Standard programs. Many factors influence emissions, including the geographic location and environmental conditions (e.g. soil type, precipitation, humidity, temperature, water availability, wind conditions, terrain), management practices (e.g. feed, manure), animal characteristics (e.g. number, species, life stage), operating conditions (e.g. housing/confinement types) and general management practices. Due to the complex interactions of all of these factors, CAFO emissions cannot be standardized based solely on the number and type of animals at each operation. There are many scenarios when a CAFO with fewer animals will have higher emissions than a CAFO with a greater number of the same species of animals. Further, historic emission-measurement techniques, such as those used in some of the studies cited by the petitioners, vary widely, and many are imprecise and impacted by local conditions. This variability makes it difficult to compare or aggregate results of multiple studies for the purposes of developing simple emission-estimating methodologies. Therefore, historic studies on CAFO emissions provide insufficient information to accurately characterize the nature and extent of the emissions, which is necessary information not only for evaluating regulatory options, but also for reaching the conclusions needed to list a source category under CAA section 111(b)(1)(A), if the EPA ultimately decides to do so, as discussed further below.

Due to the uncertainties surrounding air emissions from CAFOs, the EPA and the U.S. Department of Agriculture jointly commissioned a report from the National Research Council titled *Air Emissions from Animal Feeding Operations: Current Knowledge, Future Needs*, which was published in 2003.[2] The report established the determination that it was not appropriate to estimate air emissions from CAFOs simply by multiplying the number of animal units by existing

[2] Ad Hoc Committee on Air Emissions from Animal Feeding Operations, Committee on Animal Nutrition, National Research Council, *Air Emissions from Animal Feeding Operations: Current Knowledge, Future Needs* (2003). ISBN: 0-309-50758-8. http://www.nap.edu/catalog/10586.html.

emission factors for most pollutants. Additionally, the report stated that process-based modeling "will help provide scientifically sound estimates of air emissions from AFOs for use in regulatory and management programs."[3] Similarly, the EPA's Science Advisory Board reiterated this conclusion when it recommended in 2013 that the EPA develop process-based modeling approaches to predict air emissions.[4]

Developing accurate methodologies to estimate air emissions from CAFOs is an important first step under the EPA's implementation of its comprehensive strategy to address those emissions. Improved emission-estimation methodologies will both better describe the emission sources on a farm and enhance the EPA's emission inventories of these pollutants. The agency uses emissions inventories for a variety of policy and regulatory purposes, and these inventories are important in determining the extent to which CAFOs are subject to existing regulatory requirements and in developing any future regulations. These purposes include: (1) assessing a sector's contribution to nationwide emissions of a pollutant, an assessment that would be used to consider whether (as petitioners contend) CAFOs significantly cause or contribute to emissions of pollutants that endanger public health and welfare; (2) supporting boundary determinations in the initial area designation process following the promulgation of new or revised National Ambient Air Quality Standards, which impacts the emission sources that are considered for control under a state implementation plan; (3) evaluating the potential public health and welfare benefits of proposed regulations; and (4) supporting state and EPA air-quality modeling efforts, which are used for Prevention of Significant Deterioration and New Source Review permitting, as well as to develop SIPs that may include regulatory measures for CAFOs to reduce emissions of criteria pollutants or their precursors (such as PM and ammonia). Once the EPA finalizes CAFO emission-estimating methodologies, the agency can use them to improve emissions inventories, which will lead to more accurate understanding of the amounts of emissions from various emission sources on a farm. These improved emissions inventories will also allow the EPA to more accurately compare the contribution of CAFO emissions to regional and national levels of those pollutants.

With this better understanding and more accurate information, the EPA then can best evaluate the impacts of CAFO air emissions on public health and welfare and implement a comprehensive regulatory strategy to best address those emissions from the animal feeding sector under the CAA, with consideration of the multiple regulatory programs that may affect the sector and, depending on what regulatory approach is warranted, the most appropriate, effective and efficient means within each program. The CAA provides multiple ways to address emissions from CAFOs, depending on the target pollutant and nature of the emissions (point or fugitive). For example, the NAAQS program addresses the regulation of criteria pollutants from all sources, including stationary sources, National Emission Standards for Hazardous Air Pollutants promulgated under CAA section 112 address HAP from stationary sources, and NSPS and emissions guidelines under CAA section 111 cover certain pollutants as provided in that provision. Additionally, Title V operating permits and NSR/PSD pre-construction permits are required for sources in any source category subject to air-permitting requirements. While specific CAFOs are

---

[3] Ibid.

[4] *SAB Review of Emissions-Estimating Methodologies for Broiler Animal Feeding Operations and for Lagoons and Basins at Swine and Dairy Animal Feeding Operations* (2013). EPA-SAB-13-003 Available at: https://yosemite.epa.gov/sab/SABPRODUCT.NSF/81e39f4c09954fcb85256ead006be86e/ae6639dd6b79360e852579a4004e5529!OpenDocument&TableRow=2.3#2.

subject to existing requirements under some of these programs (e.g. Title V operating permits, PM NAAQS), the EPA has not promulgated standards specifically designed to reduce air emissions from CAFOs due to the need to accurately characterize emissions from the sector first.

Even if the EPA ultimately were to decide to regulate CAFOs under CAA section 111 as part of its regulatory strategy, the EPA would need additional information about CAFO emissions in order to determine the scope of the listing and to promulgate standards. For example, when developing regulations under CAA section 111, the agency must determine how to define the source category, which pollutants to address, which emission sources to control and what degree of emission reductions are achievable. Once the EPA finalizes new CAFO emission-estimating methodologies, the agency will be able to consider emissions of each significant pollutant from CAFOs as a whole sector, by sub-sector (e.g. specific animal species) and by emission source (e.g. barns, lagoons) and better identify and assess specific regulatory approaches to address those emissions. Having this information will aid the EPA in multiple ways, including those outlined below, if it decides to list and regulate CAFOs under CAA section 111.

First, the agency must determine the appropriate scope of the source category or categories to list. With respect to the scope of possible source categories, if the significant pollutants differ based on emission source and animal species, the agency may determine that having multiple source categories based on specific animal species and/or emission sources (e.g. cattle feedlots, swine lagoons) is more appropriate than listing "CAFOs" as a single source category. This level of information, which the EPA does not yet have and is working to develop, is critical to ensuring the most effective and efficient regulatory strategy and would allow the agency to make a considered judgement as to whether a listed source category should be defined broadly or narrowly. Such a determination would be consistent with other regulatory approaches under CAA section 111 where, depending on the sector, the agency has either listed a category broadly or focused on specific emission points.[5]

Second, additional information about the nature and quantity of pollutants emitted from CAFOs will ensure that the EPA has adequate information to make a listing decision regarding whether CAFOs' emissions of one or more of the pollutants in question "cause, or contribute significantly to, air pollution, which may reasonably be anticipated to endanger public health and welfare." The determination of whether CAFO emissions of methane, nitrous oxide, hydrogen sulfide, ammonia, PM, VOC or other pollutants meet this condition would be informed by the improved emission inventories discussed above.

Third, setting standards under CAA section 111 requires the EPA to determine the "best system of emission reduction" (BSER) for the listed source category and determine what degree

[5] For example, the standards in 40 CFR part 60, subpart BBB cover a given industrial sector, the rubber tire industry, in a single source category by defining emission limits for a single pollutant (VOC) from multiple types of facilities, including undertread cementing, sidewall cementing, tread end cementing, bead cementing, green tire spraying and Michelin-A, Michelin-B, and Michelin-C automatic operations. Alternately, in 40 CFR part 60, subparts T, U, V, W and X, the agency promulgated standards for separate source categories within a given industrial sector, the phosphate fertilizer industry (i.e. wet-process phosphoric acid, superphosphoric acid, diammonium phosphate, triple superphosphate and granular triple superphosphate plants, respectively). In other cases, the EPA sets standards for a specific emission source, regardless of industrial sector, such as the regulations for electric utility steam-generating units (boilers) limiting emissions of PM, nitrogen oxides and sulfur dioxide in 40 CFR part 60, subpart Da.

of emission reduction is achievable from the application of that BSER to sources in the source category. The additional information that the EPA is gathering will help it identify emission controls currently used at CAFOs. The emission-estimating methodologies that the agency is finalizing will allow the EPA to estimate potential emission reductions resulting from the application of various control options in a standardized way, which would aid the evaluation of the BSER for the source category(ies) in a potential future rulemaking. CAA section 111(b)(1)(B) requires the EPA to propose standards within one year of listing a source category and to promulgate final standards within one year of proposal. This limited timeframe for proposal and promulgation of standards necessitates that EPA gather sufficient and sufficiently reliable information to facilitate consideration of control options and the development of BSER prior to listing a new source category; otherwise, it would be difficult for the EPA to meet these statutory deadlines.

In sum, having more accurate emissions-estimating methodologies and the subsequent, improved inventories ensures that the EPA will be able to implement an overarching, effective and efficient regulatory strategy to address CAFO emissions. The emission-estimating methodologies will also improve estimates of the impact of current requirements for CAFOs and potential impact of any proposed requirements. This will help the agency determine the most appropriate approach with respect to air emissions from CAFOs and avoid potential problems, such as duplicative and overlapping regulatory requirements, that could arise from addressing these emissions in a piecemeal fashion under multiple CAA programs without considering how the various programs work together. Thus, this approach will allow the agency to ensure consistency between existing and proposed additional requirements and avoid creating unnecessary regulatory burden for CAFOs. For all of these reasons, development of the emission-estimating methodologies, as advised by the National Research Council and the EPA's SAB, is a fundamental initial step under the comprehensive strategy that the EPA is implementing to reduce air emissions from CAFOs. Our ongoing steps and expected time frame for addressing these issues is discussed in the next section.

Furthermore, once the EPA obtains the necessary information on the nature and extent of CAFO emissions, if the EPA determines that additional action to address CAFO emissions is warranted under CAA section 111 or otherwise, the improved emissions information will be relevant in deciding the timing of further action on CAFO emissions. This is because the timing of potential regulatory action on CAFO emissions must be weighed against other actions that the EPA could take to address emissions of these same pollutants from other source categories. For example, the EPA might determine that while certain pollutants from CAFOs warrant further action, other sources of those pollutants should be addressed first, based on the relative level of overall emissions of those pollutants from each of the source categories, the location of the emission sources within each source category or other factors.

B. The EPA's Ongoing Steps to Implement the Agency's Comprehensive Strategy and Reduce Emissions from CAFOs

To better understand and evaluate emissions from CAFOs, the EPA has been undertaking the National Air Emissions Monitoring Study. The study is a fundamental step that the agency intends to complete in order to determine how to best address emissions from CAFOs within the CAA's regulatory framework. NAEMS will help the agency develop methodologies to estimate

emissions of ammonia, hydrogen sulfide, PM and VOC from a wide variety of types of CAFOs.[6] These methodologies can better inform the estimation of emissions and exposures related to point sources located at these operations. Until the EPA more fully understands the level and sources of emissions of different pollutants, it would be premature for the agency to decide which CAA regulatory tool or tools could be most effectively applied to protect public health and welfare from these emissions.

After the research team, which was led by Purdue University with EPA oversight, collected emissions data for NAEMS from 2007 to 2010, the EPA analyzed the data and developed two draft emissions-estimating methodologies in 2012, which the agency published for public comment.[7] The EPA also submitted the methodologies to the SAB, which reviewed the methodologies and issued a final report in 2013. As stated earlier, the SAB recommended that the agency develop more rigorous methodologies for estimating emissions. In the interim, the SAB provided recommendations for expanding the data set and commented on the applicability of the draft emission estimating methodologies developed in 2012. The SAB found that NAEMS "is sufficient to start the development and evaluation of simplified process-based modeling approaches that would reflect the heterogeneity of CAFOs" and recognized that "the EPA may need to apply statistical approaches to assess emissions while it is developing and evaluating process-based models."[8] Since 2013, the EPA has been continuing to develop the methodologies consistent with the SAB recommendations, though that work has been slowed by various factors, as discussed next.

The EPA's Office of the Inspector General reported in a 2017 assessment of the status of NAEMS that the development of emission-estimating methodologies slowed while the EPA decided how to address some of the SAB's concerns.[9] At the same time that many government programs faced cutbacks due to sequestration, this project was also affected. Since 2013, the EPA has continued the development of emission-estimating methodologies using its statistically based approach and has taken steps recommended by the SAB, such as acquiring additional data sets from other external studies and reassessing data completeness criteria for NAEMS. Additionally, a lack of technical expertise due to staff retirement/reassignment and resource constraints (including discontinuation of funding for the contract supporting the study) due to competing priorities further slowed progress. In responding to the OIG's draft report, the EPA's Office of Air and Radiation outlined its plan to complete NAEMS, including working in partnership with the EPA's Office of Research and Development and agreeing with the OIG's recommendations to conduct systematic planning for future development of emission-estimating methodologies by April 2018. Based on the results of the systematic planning, the EPA will determine the emission source and pollutant combinations for which emission-estimating methodologies can be developed

---

[6] The types of CAFOs monitored for NAEMS include operations feeding swine, dairy cows and broiler and layer poultry.

[7] See 77 FR at 14716-14717 (March 13, 2012).

[8] *SAB Review of Emissions-Estimating Methodologies for Broiler Animal Feeding Operations and for Lagoons and Basins at Swine and Dairy Animal Feeding Operations*, EPA-SAB-13-003 (2013).

[9] U.S. Environmental Protection Agency Office of Inspector General, *Eleven Years After Agreement, EPA Has Not Developed Reliable Emission Estimation Methods to Determine Whether Animal Feeding Operations Comply with Clean Air Act and Other Statutes*. Report No. 17-P-0396 (2017).

and establish milestones for issuing the draft methodologies. The EPA expects to post these milestones on the agency's website by July 2018.[10]

While the EPA is completing NAEMS, the agency also has been undertaking other activities under existing regulations and programs that will help characterize emissions from this sector and support the implementation of the comprehensive strategy to address CAFO emissions, as well as directly address specific components of petitioners' concerns about the effects on health and welfare of CAFOs' emissions. For example, the EPA's August 2016 final PM Implementation Rule includes requirements that will generate information that will assist the EPA in evaluating emissions of ammonia, which is a precursor of fine particles (less than 2.5 micrometers, $PM_{2.5}$). This rule requires states to demonstrate that they have plans that will reduce $PM_{2.5}$ to at or below the standard over a specified number of years.[11] As part of this process, the EPA recognizes that the treatment of $PM_{2.5}$ precursors, including ammonia from sources such as animal feeding operations, is important in developing a $PM_{2.5}$ attainment plan or implementing the NSR program in a nonattainment area.[12] Specifically, the rule's preamble states that the EPA's 2011 National Emissions Inventory estimated that livestock raising was the largest source of ammonia emissions, contributing about 54 percent of total ammonia emissions, but also acknowledges that there was some uncertainty in quantifying ammonia emissions and other $PM_{2.5}$ precursors from source categories including livestock and fertilizer application.[13] Therefore, the rule requires states to control ammonia emissions, if necessary, for expeditious attainment or if ammonia contributes significantly to $PM_{2.5}$ levels which exceed the standard in a particular nonattainment area. These control measures would be adopted through state regulations that are submitted to the EPA as part of a SIP. The EPA expects the requirements contained in the 2016 final PM Implementation rule to further improve its understanding of emissions at the same time that updates to the 2014 NEI and "other uses of the NAEMS data will help to reduce uncertainties in current ammonia inventories and will improve the quality of future emissions inventories needed for implementing the $PM_{2.5}$ NAAQS."[14] This set of improvements will significantly aid the EPA's comprehensive strategy for addressing CAFO emissions to account for CAFO emission reductions required by existing regulations.

Additionally, in September 2017, the EPA, with the USDA, released a best-management practices document for livestock and poultry production farms, including CAFOs, titled *Agricultural Air Quality Conservation Measures: Reference Guide for Poultry and Livestock Production Systems*.[15] This document identifies measures that have been demonstrated to reduce air emissions of pollutants (ammonia, greenhouse gases, hydrogen sulfide, PM and VOC) from farms. While it does not involve the quantification of emissions, the guide clearly describes different practices and control technologies that reduce emissions of these pollutants. The guide supports the EPA's efforts to characterize available control technologies and practices for different

---

[10] See, "Response to the Office of Inspector General's Draft Report, *Emissions From Animal Feeding Operations Remain Largely Uncharacterized More Than 7 Years After Study Completed* (Project No. OPE-FY16-0018), June 23, 2017.

[11] See, "Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements." 81 FR 58010 (August 24, 2016).

[12] See 81 FR at 58014 (August 24, 2016).

[13] See 81 FR at 58016, 58032 (August 24, 2016).

[14] See 81 FR at 58032 (August 24, 2016).

[15] Available at https://www.epa.gov/sites/production/files/2017-01/documents/web_placeholder.pdf.

pollutants, emission sources and subsectors of CAFOs, which would be required to establish control options under the EPA's comprehensive strategy to reduce emissions from this sector, consistent with the statutory factors and requirements within the CAA. Although the reference guide does not impose federal requirements to reduce CAFO emissions, the guide helps states make informed decisions when considering adoption of pollutant controls and helps CAFOs determine which practices may be suitable for implementation of emission reductions on a site-specific basis. In fact, the guide includes an appendix listing existing state programs or regulations pertaining to air emissions from livestock and poultry operations. States that are developing programs to reduce air emissions from CAFOs can use the appendix to study the different approaches as models and to examine their potential applicability to other states.

Finally, the EPA will also consider applicable reporting requirements for CAFOs in assessing the extent of current requirements for CAFOs, following a court decision under the Comprehensive Environmental Response, Compensation and Liability Act and the Emergency Planning and Community Right-to-Know Act. In April 2017, the United States Court of Appeals for the District of Columbia Circuit vacated a 2008 rule that exempted farms from reporting air releases of hazardous substances from animal waste under Section 103 of CERCLA and, if the farms stable or confine fewer than certain numbers of animals, under Section 304 of EPCRA.[16] Ammonia and hydrogen sulfide are considered hazardous substances under CERCLA and EPCRA. Farms releasing hazardous substances to air from animal wastes, equal to or greater than their reportable quantities, within any 24-hour period, must notify the appropriate authorities because the 2008 exemption no longer applies.[17] The EPA is unable to provide emission-estimating methodologies for use with these reports until NAEMS is complete and will give owners and operators guidance so that these reports may be based on broad-range estimates that include uncertainties. As the EPA implements its comprehensive strategy for CAFO emissions, the agency will ensure that the regulatory approach adopted to address CAFO sources of ammonia and hydrogen sulfide emissions is consistent with these requirements and avoids duplicative obligations to the maximum extent possible.

C. The EPA's Limited Resources and Need to Set Regulatory Priorities

Due to resource constraints, the EPA is never able to take all actions at the same time and must always consider its obligations and authorities under the CAA and other statutes when determining which activities to undertake at what point in time and how to most efficiently complete its regulatory mission. In recent years, the agency has been continually required to accomplish more activities with less resources, making prioritization and efficiency even more necessary. The Office of Air Quality Planning and Standards houses the Sector Policies and Programs Division, which would be charged with making a determination whether to list CAFOs under CAA section 111 and, if listed, promulgating CAA section 111 standards for CAFOs. The office has seen a general decline in its budget for several years. Further, SPPD already is required to take numerous final agency actions with mandatory deadlines set by the CAA and court orders. As an example of just one part of the division's work, SPPD currently faces court-ordered

[16] *Waterkeeper Alliance* v. *EPA*, 853 F.3d 527 (D.C. Cir. 2017).

[17] See https://www.epa.gov/epcra/cercla-and-epcra-reporting-requirements-air-releases-hazardous-substances-animal-waste-farms.

deadlines for the completion of 33 residual risk and technology reviews of NESHAP for specific source categories in the next three years[18] and is anticipating a court order setting deadlines for the completion of residual risk and technology reviews of the NESHAP for an additional nine source categories.[19] In addition to the work on these reviews, SPPD also has ongoing obligations related to NSPS, non-residual risk and technology review NESHAP projects, CAA section 129 incinerator regulations and activities related to these rulemakings, including responses to Freedom of Information Act requests, rule implementation support, rule amendments addressing issues that hinder implementation, development of various electronic information systems such as electronic data submittal systems and stakeholder outreach. Looking at the EPA more broadly, the EPA is engaged in a large number of regulatory actions under other parts of the CAA and under other statutes. The EPA's ongoing regulatory work is described in the EPA's Regulatory Agenda, which the EPA publishes semi-annually, and its Regulatory Plan, which is published annually.[20]

In considering whether and when to take the regulatory actions requested in the September 2009 Petition, the EPA must balance those possible actions with all of the other obligations and authorities that the EPA has under the CAA and other statutes. If staff and other agency resources were shifted to take the action that petitioners' request, they would not be available for other agency work. As discussed above, the EPA is pursuing a comprehensive strategy to study and appropriately address CAFO emissions, and the EPA is committing resources to implement that approach. After considering the agency's current CAFO strategy, and in light of all of the other tasks before the agency, the EPA does not believe it should shift additional resources at this time to determine whether to list and regulate CAFOs under CAA section 111.

IV. Conclusion

In light of the EPA's current comprehensive strategy to address CAFO emissions and the agency's limited resources and the need to prioritize its regulatory activity and to use its resources efficiently, the EPA is declining at this time to determine whether CAFOs should be listed as a source category under CAA section 111. Undertaking such a determination at this time is not consistent with its comprehensive strategy to address CAFO emissions and would therefore be premature. Additionally, it would require the agency to divert resources from other work to a degree the agency believes is inappropriate given its resource constraints and priorities. Thus, the EPA is denying your petition to list CAFOs as a source category under CAA section 111.

Though the EPA has declined at this time to consider whether to list CAFOs as a source category under CAA section 111, the agency may consider listing and regulation of CAFOs under CAA section 111 as part of its comprehensive strategy for this sector in the future. If the agency does so, it will at that time address any additional issues that may arise from considering such listing and subsequent regulation under CAA section 111, such as how to apply the CAA section 111 definition of stationary source to CAFOs.

---

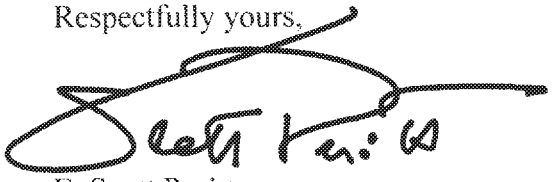
[18] See *California Communities Against Air Toxics*, Case No.15-512 (D.D.C.) (order dated March 13, 2017), and *Blue Ridge Environmental Defense League*, Case no. 16-364 (D.D.C.) (order dated March 22, 2017).

[19] See *Community In-Power and Development Association, Inc.* v. *Pruitt*, Case No 16-1074 (D.D.C.).

[20] More information on the EPA's Semiannual Regulatory Agenda and Regulatory Plan, including information on how to see the agency's most recent agenda and plan, is available at https://www.epa.gov/laws-regulations/regulatory-agendas-and-regulatory-plans.

For the reasons discussed above, the EPA is denying the September 2009 Petition to list CAFOs as a source category under CAA section 111. This is the EPA's final agency action on this petition.

Respectfully yours,



E. Scott Pruitt

E. SCOTT PRUITT
ADMINISTRATOR

December 15, 2017

Mr. Brent Newell
Legal Director
Center on Race, Poverty and the Environment
1999 Harrison Street, Suite 650
Oakland, California 94612

Dear Mr. Newell:

On September 21, 2009, the Humane Society of the United States and other environmental and citizen groups[1] (collectively, "petitioners") sent a letter to the U.S. Environmental Protection Agency petitioning the agency to list concentrated animal feeding operations as a category of sources under section 111(b)(1)(A) of the Clean Air Act and, thereafter, to promulgate standards of performance for new CAFOs under CAA section 111(b)(1)(B) and prescribe regulations for state-performance standards for existing CAFOs under CAA section 111(d).

I write to inform you that the EPA is denying this petition to list CAFOs as a category of sources under CAA section 111. This denial fully and finally responds to this petition and is the EPA's final agency action on this petition.

The EPA recognizes that emissions from this sector exist and has been undertaking multiple activities related to CAFO emissions as part of the agency's preferred approach to address these emissions. As discussed below, the EPA has developed and is implementing a comprehensive strategy to address CAFO air emissions that includes conducting a nationwide study of air emissions from CAFOs and developing improved emission-estimating methodologies for these emissions; gathering additional information about the magnitude of CAFO emissions and their control options; considering to what extent existing CAA regulations address CAFO emissions; evaluating the various CAA regulatory tools that might be used to further address CAFO emissions; and then determining which regulatory tool or tools would be most appropriate to regulate CAFO emissions to protect public health and welfare. Further, in determining the sequence and timing of undertaking regulatory action, the agency must consider the most efficient

[1] In addition to the Humane Society of the United States, the other petitioners are Association of Irritated Residents, Center on Race, Poverty and the Environment, Clean Air Task Force, Dairy Education Alliance, El Comité Para el Bienestar de Earlimart, Environmental Integrity Project, Friends of the Earth, Sierra Club and Waterkeeper Alliance.

1200 PENNSYLVANIA AVE. NW • MAIL CODE 1101A • WASHINGTON, DC 20460 • (202) 564-4700 • FAX: (202) 501-1450

This paper is printed with vegetable-oil-based inks and is 100-percent postconsumer recycled material, chlorine-free-processed and recyclable.

and effective uses of its limited resources in light of ongoing budgetary uncertainties. Given the actions that the agency is undertaking and its resource constraints, the EPA is declining at this time to determine whether to list CAFOs as a source category under CAA section 111, and the agency, thus, is denying your petition. This denial is not based on a determination as to whether CAFOs meet the requirements for listing under CAA section 111(b)(1)(A). In the future, the EPA may initiate a process to determine whether to list CAFOs under CAA section 111(b)(1)(A); however, the agency has decided that it will not do so now.

I. Introduction

A. Statutory Provisions

Clean Air Act section 111(b)(1)(A) provides that the EPA shall "publish (and from time to time thereafter shall revise) a list of categories of stationary sources [and shall include a category on the list] if in [the Administrator's] judgment it causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare." For categories that the EPA lists under CAA section 111(b)(1)(A), CAA section 111(b)(1)(B) requires the EPA to propose federal standards of performance for new sources within the newly established category within one year of listing and then, after an opportunity for public comment, finalize the standards within one year of publishing the proposed standards.

B. Procedural History

On September 21, 2009, the petitioners sent a letter to the EPA petitioning the agency to list CAFOs and to promulgate standards of performance under CAA section 111 (which we will refer to as the "September 2009 Petition"). The petitioners specifically requested that the EPA undertake a rulemaking that:

(1) Finds that the air pollutants hydrogen sulfide and ammonia constitute air pollution that endangers U.S. public health or welfare;

(2) Announces the Administrator's judgment that emissions of methane, nitrous oxide, hydrogen sulfide, ammonia, volatile organic compounds and particulate matter from CAFOs contribute significantly to air pollution that is reasonably anticipated to endanger public health and welfare;

(3) Lists CAFOs as a category of stationary sources pursuant to CAA section 111(b)(1)(A); and

(4) Promulgates standards of performance for air emissions of methane, nitrous oxide, hydrogen sulfide, ammonia, VOC and PM from new and existing CAFOs under CAA sections 111(b) and 111(d).

September 2009 Petition, at page 4.

In January 2015, some of the petitioners (the Humane Society of the United States, Association of Irritated Residents, Environmental Integrity Project, Friends of the Earth and Sierra Club) filed a complaint with the United States District Court for the District of Columbia alleging that the EPA had unreasonably delayed in responding to the petition. The Court dismissed the case after finding that the plaintiffs had failed to notify the EPA 180 days before filing the suit, as required by CAA section 304(a).

On October 7, 2016, the same petitioners notified the EPA of their intent to file suit, as required under CAA section 304(a). On August 23, 2017, these petitioners filed a complaint with the United States District Court for the District of Columbia, alleging that the EPA had unreasonably delayed in responding to the September 2009 Petition.

II. Summary of the September 2009 Petition

In their September 2009 Petition, the petitioners cited the requirements of CAA section 111 and asserted that CAFOs meet the definition of a stationary source that emits air pollutants that endanger public health and welfare. The petitioners focused on listing CAFOs as a source category under the CAA in order for the EPA to promulgate performance standards for this sector to control emissions of the major pollutants emitted by CAFOs.

The petitioners included general statistics about the CAFO industry and asserted that CAFOs emit more pollutants than traditional, small-scale farms due to CAFOs' confinement and manure-management practices. The petitioners listed major pollutants emitted by CAFOs as being: (1) the greenhouse gases methane and nitrous oxide, (2) hydrogen sulfide, (3) ammonia, (4) PM and (5) VOC. The petitioners further discussed these pollutants, including the health and welfare effects they cause, in order to support the claim that emissions from CAFOs endanger public health. The petitioners cited examples of effects of exposure to these pollutants, including public health effects, such as respiratory illness, increased cancer rates, death and welfare effects, such as crop damage, atmospheric acidification, habitat loss and severe haze.

The petitioners asserted that CAFOs are significant contributors of these pollutants due to the number of CAFOs and the amount of waste they produce. The petitioners included examples of statistics from studies conducted at local, national and global scales regarding quantities of emissions of these pollutants and site-specific data related to public-nuisance complaints and individual facility reports. Finally, the petitioners listed various management practices and technologies that the petitioners assert have been demonstrated to reduce emissions of some of these pollutants from specific subsectors of CAFOs.

III. Response to Requests

After thoroughly considering the petitioners' request to list and regulate CAFOs under CAA section 111, the EPA has concluded that the complex nature of emission sources and emissions from this sector requires the agency to continue its comprehensive approach toward this sector by first evaluating CAFO emissions and then determining further regulatory actions to address these emissions. As discussed below, in responding to this petition, the EPA has considered (a) the need for more accurate methodologies to estimate air emissions from CAFOs, including the critical role of that information in implementing a comprehensive regulatory

strategy; (b) the agency's multiple ongoing actions taken to date in support of its comprehensive approach for addressing air emissions from CAFOs; and (c) the agency's limited resources and competing priorities.

A. The Need for and Importance of Developing Accurate CAFO Air Emissions Methodologies in the EPA's Comprehensive Approach

The interactive and highly complex nature of CAFO air emissions requires new, more accurate methodologies for estimating those emissions. Establishing sound emissions estimates is a fundamental step to establish a comprehensive, effective and efficient regulatory strategy to address CAFO air emissions. To this end, the agency first is gathering information to most accurately characterize the emissions from CAFOs, and, once the agency has sufficient information on CAFO emissions, it will determine the appropriate regulatory approach to address those emissions.

CAFOs can emit a variety of air pollutants, including those listed in the petition and summarized above, as well as hazardous air pollutants, carbon dioxide and reduced sulfur compounds. These pollutants are emitted from various sources at animal feeding operations, including confinement structures (e.g. barns, corrals), manure management systems and fields. Additionally, other agricultural equipment (e.g. engines, boilers) used on CAFOs emit pollutants; some of which are covered by other existing New Source Performance Standard programs. Many factors influence emissions, including the geographic location and environmental conditions (e.g. soil type, precipitation, humidity, temperature, water availability, wind conditions, terrain), management practices (e.g. feed, manure), animal characteristics (e.g. number, species, life stage), operating conditions (e.g. housing/confinement types) and general management practices. Due to the complex interactions of all of these factors, CAFO emissions cannot be standardized based solely on the number and type of animals at each operation. There are many scenarios when a CAFO with fewer animals will have higher emissions than a CAFO with a greater number of the same species of animals. Further, historic emission-measurement techniques, such as those used in some of the studies cited by the petitioners, vary widely, and many are imprecise and impacted by local conditions. This variability makes it difficult to compare or aggregate results of multiple studies for the purposes of developing simple emission-estimating methodologies. Therefore, historic studies on CAFO emissions provide insufficient information to accurately characterize the nature and extent of the emissions, which is necessary information not only for evaluating regulatory options, but also for reaching the conclusions needed to list a source category under CAA section 111(b)(1)(A), if the EPA ultimately decides to do so, as discussed further below.

Due to the uncertainties surrounding air emissions from CAFOs, the EPA and the U.S. Department of Agriculture jointly commissioned a report from the National Research Council titled *Air Emissions from Animal Feeding Operations: Current Knowledge, Future Needs*, which was published in 2003.[2] The report established the determination that it was not appropriate to estimate air emissions from CAFOs simply by multiplying the number of animal units by existing

[2] Ad Hoc Committee on Air Emissions from Animal Feeding Operations, Committee on Animal Nutrition, National Research Council, *Air Emissions from Animal Feeding Operations: Current Knowledge, Future Needs* (2003). ISBN: 0-309-50758-8. http://www.nap.edu/catalog/10586.html.

emission factors for most pollutants. Additionally, the report stated that process-based modeling "will help provide scientifically sound estimates of air emissions from AFOs for use in regulatory and management programs."[3] Similarly, the EPA's Science Advisory Board reiterated this conclusion when it recommended in 2013 that the EPA develop process-based modeling approaches to predict air emissions.[4]

Developing accurate methodologies to estimate air emissions from CAFOs is an important first step under the EPA's implementation of its comprehensive strategy to address those emissions. Improved emission-estimation methodologies will both better describe the emission sources on a farm and enhance the EPA's emission inventories of these pollutants. The agency uses emissions inventories for a variety of policy and regulatory purposes, and these inventories are important in determining the extent to which CAFOs are subject to existing regulatory requirements and in developing any future regulations. These purposes include: (1) assessing a sector's contribution to nationwide emissions of a pollutant, an assessment that would be used to consider whether (as petitioners contend) CAFOs significantly cause or contribute to emissions of pollutants that endanger public health and welfare; (2) supporting boundary determinations in the initial area designation process following the promulgation of new or revised National Ambient Air Quality Standards, which impacts the emission sources that are considered for control under a state implementation plan; (3) evaluating the potential public health and welfare benefits of proposed regulations; and (4) supporting state and EPA air-quality modeling efforts, which are used for Prevention of Significant Deterioration and New Source Review permitting, as well as to develop SIPs that may include regulatory measures for CAFOs to reduce emissions of criteria pollutants or their precursors (such as PM and ammonia). Once the EPA finalizes CAFO emission-estimating methodologies, the agency can use them to improve emissions inventories, which will lead to more accurate understanding of the amounts of emissions from various emission sources on a farm. These improved emissions inventories will also allow the EPA to more accurately compare the contribution of CAFO emissions to regional and national levels of those pollutants.

With this better understanding and more accurate information, the EPA then can best evaluate the impacts of CAFO air emissions on public health and welfare and implement a comprehensive regulatory strategy to best address those emissions from the animal feeding sector under the CAA, with consideration of the multiple regulatory programs that may affect the sector and, depending on what regulatory approach is warranted, the most appropriate, effective and efficient means within each program. The CAA provides multiple ways to address emissions from CAFOs, depending on the target pollutant and nature of the emissions (point or fugitive). For example, the NAAQS program addresses the regulation of criteria pollutants from all sources, including stationary sources. National Emission Standards for Hazardous Air Pollutants promulgated under CAA section 112 address HAP from stationary sources, and NSPS and emissions guidelines under CAA section 111 cover certain pollutants as provided in that provision. Additionally, Title V operating permits and NSR/PSD pre-construction permits are required for sources in any source category subject to air-permitting requirements. While specific CAFOs are

---

[3] Ibid.

[4] *SAB Review of Emissions-Estimating Methodologies for Broiler Animal Feeding Operations and for Lagoons and Basins at Swine and Dairy Animal Feeding Operations* (2013). EPA-SAB-13-003 Available at: https://yosemite.epa.gov/sab/SABPRODUCT.NSF/81e39f4c09954fcb85256ead006be86e/ae6639dd6b79360e852579a4004e5529!OpenDocument&TableRow=2.3#2.

subject to existing requirements under some of these programs (e.g. Title V operating permits, PM NAAQS), the EPA has not promulgated standards specifically designed to reduce air emissions from CAFOs due to the need to accurately characterize emissions from the sector first.

Even if the EPA ultimately were to decide to regulate CAFOs under CAA section 111 as part of its regulatory strategy, the EPA would need additional information about CAFO emissions in order to determine the scope of the listing and to promulgate standards. For example, when developing regulations under CAA section 111, the agency must determine how to define the source category, which pollutants to address, which emission sources to control and what degree of emission reductions are achievable. Once the EPA finalizes new CAFO emission-estimating methodologies, the agency will be able to consider emissions of each significant pollutant from CAFOs as a whole sector, by sub-sector (e.g. specific animal species) and by emission source (e.g. barns, lagoons) and better identify and assess specific regulatory approaches to address those emissions. Having this information will aid the EPA in multiple ways, including those outlined below, if it decides to list and regulate CAFOs under CAA section 111.

First, the agency must determine the appropriate scope of the source category or categories to list. With respect to the scope of possible source categories, if the significant pollutants differ based on emission source and animal species, the agency may determine that having multiple source categories based on specific animal species and/or emission sources (e.g. cattle feedlots, swine lagoons) is more appropriate than listing "CAFOs" as a single source category. This level of information, which the EPA does not yet have and is working to develop, is critical to ensuring the most effective and efficient regulatory strategy and would allow the agency to make a considered judgement as to whether a listed source category should be defined broadly or narrowly. Such a determination would be consistent with other regulatory approaches under CAA section 111 where, depending on the sector, the agency has either listed a category broadly or focused on specific emission points.[5]

Second, additional information about the nature and quantity of pollutants emitted from CAFOs will ensure that the EPA has adequate information to make a listing decision regarding whether CAFOs' emissions of one or more of the pollutants in question "cause, or contribute significantly to, air pollution, which may reasonably be anticipated to endanger public health and welfare." The determination of whether CAFO emissions of methane, nitrous oxide, hydrogen sulfide, ammonia, PM, VOC or other pollutants meet this condition would be informed by the improved emission inventories discussed above.

Third, setting standards under CAA section 111 requires the EPA to determine the "best system of emission reduction" (BSER) for the listed source category and determine what degree

[5] For example, the standards in 40 CFR part 60, subpart BBB cover a given industrial sector, the rubber tire industry, in a single source category by defining emission limits for a single pollutant (VOC) from multiple types of facilities, including undertread cementing, sidewall cementing, tread end cementing, bead cementing, green tire spraying and Michelin-A, Michelin-B, and Michelin-C automatic operations. Alternately, in 40 CFR part 60, subparts T, U, V, W and X, the agency promulgated standards for separate source categories within a given industrial sector, the phosphate fertilizer industry (i.e. wet-process phosphoric acid, superphosphoric acid, diammonium phosphate, triple superphosphate and granular triple superphosphate plants, respectively). In other cases, the EPA sets standards for a specific emission source, regardless of industrial sector, such as the regulations for electric utility steam-generating units (boilers) limiting emissions of PM, nitrogen oxides and sulfur dioxide in 40 CFR part 60, subpart Da.

of emission reduction is achievable from the application of that BSER to sources in the source category. The additional information that the EPA is gathering will help it identify emission controls currently used at CAFOs. The emission-estimating methodologies that the agency is finalizing will allow the EPA to estimate potential emission reductions resulting from the application of various control options in a standardized way, which would aid the evaluation of the BSER for the source category(ies) in a potential future rulemaking. CAA section 111(b)(1)(B) requires the EPA to propose standards within one year of listing a source category and to promulgate final standards within one year of proposal. This limited timeframe for proposal and promulgation of standards necessitates that EPA gather sufficient and sufficiently reliable information to facilitate consideration of control options and the development of BSER prior to listing a new source category; otherwise, it would be difficult for the EPA to meet these statutory deadlines.

In sum, having more accurate emissions-estimating methodologies and the subsequent, improved inventories ensures that the EPA will be able to implement an overarching, effective and efficient regulatory strategy to address CAFO emissions. The emission-estimating methodologies will also improve estimates of the impact of current requirements for CAFOs and potential impact of any proposed requirements. This will help the agency determine the most appropriate approach with respect to air emissions from CAFOs and avoid potential problems, such as duplicative and overlapping regulatory requirements, that could arise from addressing these emissions in a piecemeal fashion under multiple CAA programs without considering how the various programs work together. Thus, this approach will allow the agency to ensure consistency between existing and proposed additional requirements and avoid creating unnecessary regulatory burden for CAFOs. For all of these reasons, development of the emission-estimating methodologies, as advised by the National Research Council and the EPA's SAB, is a fundamental initial step under the comprehensive strategy that the EPA is implementing to reduce air emissions from CAFOs. Our ongoing steps and expected time frame for addressing these issues is discussed in the next section.

Furthermore, once the EPA obtains the necessary information on the nature and extent of CAFO emissions, if the EPA determines that additional action to address CAFO emissions is warranted under CAA section 111 or otherwise, the improved emissions information will be relevant in deciding the timing of further action on CAFO emissions. This is because the timing of potential regulatory action on CAFO emissions must be weighed against other actions that the EPA could take to address emissions of these same pollutants from other source categories. For example, the EPA might determine that while certain pollutants from CAFOs warrant further action, other sources of those pollutants should be addressed first, based on the relative level of overall emissions of those pollutants from each of the source categories, the location of the emission sources within each source category or other factors.

B. The EPA's Ongoing Steps to Implement the Agency's Comprehensive Strategy and Reduce Emissions from CAFOs

To better understand and evaluate emissions from CAFOs, the EPA has been undertaking the National Air Emissions Monitoring Study. The study is a fundamental step that the agency intends to complete in order to determine how to best address emissions from CAFOs within the CAA's regulatory framework. NAEMS will help the agency develop methodologies to estimate

emissions of ammonia, hydrogen sulfide, PM and VOC from a wide variety of types of CAFOs.[6] These methodologies can better inform the estimation of emissions and exposures related to point sources located at these operations. Until the EPA more fully understands the level and sources of emissions of different pollutants, it would be premature for the agency to decide which CAA regulatory tool or tools could be most effectively applied to protect public health and welfare from these emissions.

After the research team, which was led by Purdue University with EPA oversight, collected emissions data for NAEMS from 2007 to 2010, the EPA analyzed the data and developed two draft emissions-estimating methodologies in 2012, which the agency published for public comment.[7] The EPA also submitted the methodologies to the SAB, which reviewed the methodologies and issued a final report in 2013. As stated earlier, the SAB recommended that the agency develop more rigorous methodologies for estimating emissions. In the interim, the SAB provided recommendations for expanding the data set and commented on the applicability of the draft emission estimating methodologies developed in 2012. The SAB found that NAEMS "is sufficient to start the development and evaluation of simplified process-based modeling approaches that would reflect the heterogeneity of CAFOs" and recognized that "the EPA may need to apply statistical approaches to assess emissions while it is developing and evaluating process-based models."[8] Since 2013, the EPA has been continuing to develop the methodologies consistent with the SAB recommendations, though that work has been slowed by various factors, as discussed next.

The EPA's Office of the Inspector General reported in a 2017 assessment of the status of NAEMS that the development of emission-estimating methodologies slowed while the EPA decided how to address some of the SAB's concerns.[9] At the same time that many government programs faced cutbacks due to sequestration, this project was also affected. Since 2013, the EPA has continued the development of emission-estimating methodologies using its statistically based approach and has taken steps recommended by the SAB, such as acquiring additional data sets from other external studies and reassessing data completeness criteria for NAEMS. Additionally, a lack of technical expertise due to staff retirement/reassignment and resource constraints (including discontinuation of funding for the contract supporting the study) due to competing priorities further slowed progress. In responding to the OIG's draft report, the EPA's Office of Air and Radiation outlined its plan to complete NAEMS, including working in partnership with the EPA's Office of Research and Development and agreeing with the OIG's recommendations to conduct systematic planning for future development of emission-estimating methodologies by April 2018. Based on the results of the systematic planning, the EPA will determine the emission source and pollutant combinations for which emission-estimating methodologies can be developed

---

[6] The types of CAFOs monitored for NAEMS include operations feeding swine, dairy cows and broiler and layer poultry.

[7] See 77 FR at 14716-14717 (March 13, 2012).

[8] *SAB Review of Emissions-Estimating Methodologies for Broiler Animal Feeding Operations and for Lagoons and Basins at Swine and Dairy Animal Feeding Operations*, EPA-SAB-13-003 (2013).

[9] U.S. Environmental Protection Agency Office of Inspector General, *Eleven Years After Agreement, EPA Has Not Developed Reliable Emission Estimation Methods to Determine Whether Animal Feeding Operations Comply with Clean Air Act and Other Statutes*. Report No. 17-P-0396 (2017).

and establish milestones for issuing the draft methodologies. The EPA expects to post these milestones on the agency's website by July 2018.[10]

While the EPA is completing NAEMS, the agency also has been undertaking other activities under existing regulations and programs that will help characterize emissions from this sector and support the implementation of the comprehensive strategy to address CAFO emissions, as well as directly address specific components of petitioners' concerns about the effects on health and welfare of CAFOs' emissions. For example, the EPA's August 2016 final PM Implementation Rule includes requirements that will generate information that will assist the EPA in evaluating emissions of ammonia, which is a precursor of fine particles (less than 2.5 micrometers, $PM_{2.5}$). This rule requires states to demonstrate that they have plans that will reduce $PM_{2.5}$ to at or below the standard over a specified number of years.[11] As part of this process, the EPA recognizes that the treatment of $PM_{2.5}$ precursors, including ammonia from sources such as animal feeding operations, is important in developing a $PM_{2.5}$ attainment plan or implementing the NSR program in a nonattainment area.[12] Specifically, the rule's preamble states that the EPA's 2011 National Emissions Inventory estimated that livestock raising was the largest source of ammonia emissions, contributing about 54 percent of total ammonia emissions, but also acknowledges that there was some uncertainty in quantifying ammonia emissions and other $PM_{2.5}$ precursors from source categories including livestock and fertilizer application.[13] Therefore, the rule requires states to control ammonia emissions, if necessary, for expeditious attainment or if ammonia contributes significantly to $PM_{2.5}$ levels which exceed the standard in a particular nonattainment area. These control measures would be adopted through state regulations that are submitted to the EPA as part of a SIP. The EPA expects the requirements contained in the 2016 final PM Implementation rule to further improve its understanding of emissions at the same time that updates to the 2014 NEI and "other uses of the NAEMS data will help to reduce uncertainties in current ammonia inventories and will improve the quality of future emissions inventories needed for implementing the $PM_{2.5}$ NAAQS."[14] This set of improvements will significantly aid the EPA's comprehensive strategy for addressing CAFO emissions to account for CAFO emission reductions required by existing regulations.

Additionally, in September 2017, the EPA, with the USDA, released a best-management practices document for livestock and poultry production farms, including CAFOs, titled *Agricultural Air Quality Conservation Measures: Reference Guide for Poultry and Livestock Production Systems*.[15] This document identifies measures that have been demonstrated to reduce air emissions of pollutants (ammonia, greenhouse gases, hydrogen sulfide, PM and VOC) from farms. While it does not involve the quantification of emissions, the guide clearly describes different practices and control technologies that reduce emissions of these pollutants. The guide supports the EPA's efforts to characterize available control technologies and practices for different

---

[10] See, "Response to the Office of Inspector General's Draft Report, *Emissions From Animal Feeding Operations Remain Largely Uncharacterized More Than 7 Years After Study Completed* (Project No. OPE-FY16-0018), June 23, 2017.

[11] See, "Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements." 81 FR 58010 (August 24, 2016).

[12] See 81 FR at 58014 (August 24, 2016).

[13] See 81 FR at 58016, 58032 (August 24, 2016).

[14] See 81 FR at 58032 (August 24, 2016).

[15] Available at https://www.epa.gov/sites/production/files/2017-01/documents/web_placeholder.pdf.

pollutants, emission sources and subsectors of CAFOs, which would be required to establish control options under the EPA's comprehensive strategy to reduce emissions from this sector, consistent with the statutory factors and requirements within the CAA. Although the reference guide does not impose federal requirements to reduce CAFO emissions, the guide helps states make informed decisions when considering adoption of pollutant controls and helps CAFOs determine which practices may be suitable for implementation of emission reductions on a site-specific basis. In fact, the guide includes an appendix listing existing state programs or regulations pertaining to air emissions from livestock and poultry operations. States that are developing programs to reduce air emissions from CAFOs can use the appendix to study the different approaches as models and to examine their potential applicability to other states.

Finally, the EPA will also consider applicable reporting requirements for CAFOs in assessing the extent of current requirements for CAFOs, following a court decision under the Comprehensive Environmental Response, Compensation and Liability Act and the Emergency Planning and Community Right-to-Know Act. In April 2017, the United States Court of Appeals for the District of Columbia Circuit vacated a 2008 rule that exempted farms from reporting air releases of hazardous substances from animal waste under Section 103 of CERCLA and, if the farms stable or confine fewer than certain numbers of animals, under Section 304 of EPCRA.[16] Ammonia and hydrogen sulfide are considered hazardous substances under CERCLA and EPCRA. Farms releasing hazardous substances to air from animal wastes, equal to or greater than their reportable quantities, within any 24-hour period, must notify the appropriate authorities because the 2008 exemption no longer applies.[17] The EPA is unable to provide emission-estimating methodologies for use with these reports until NAEMS is complete and will give owners and operators guidance so that these reports may be based on broad-range estimates that include uncertainties. As the EPA implements its comprehensive strategy for CAFO emissions, the agency will ensure that the regulatory approach adopted to address CAFO sources of ammonia and hydrogen sulfide emissions is consistent with these requirements and avoids duplicative obligations to the maximum extent possible.

C. The EPA's Limited Resources and Need to Set Regulatory Priorities

Due to resource constraints, the EPA is never able to take all actions at the same time and must always consider its obligations and authorities under the CAA and other statutes when determining which activities to undertake at what point in time and how to most efficiently complete its regulatory mission. In recent years, the agency has been continually required to accomplish more activities with less resources, making prioritization and efficiency even more necessary. The Office of Air Quality Planning and Standards houses the Sector Policies and Programs Division, which would be charged with making a determination whether to list CAFOs under CAA section 111 and, if listed, promulgating CAA section 111 standards for CAFOs. The office has seen a general decline in its budget for several years. Further, SPPD already is required to take numerous final agency actions with mandatory deadlines set by the CAA and court orders. As an example of just one part of the division's work, SPPD currently faces court-ordered

[16] *Waterkeeper Alliance* v. *EPA*, 853 F.3d 527 (D.C. Cir. 2017).

[17] See https://www.epa.gov/epcra/cercla-and-epcra-reporting-requirements-air-releases-hazardous-substances-animal-waste-farms.

deadlines for the completion of 33 residual risk and technology reviews of NESHAP for specific source categories in the next three years[18] and is anticipating a court order setting deadlines for the completion of residual risk and technology reviews of the NESHAP for an additional nine source categories.[19] In addition to the work on these reviews, SPPD also has ongoing obligations related to NSPS, non-residual risk and technology review NESHAP projects, CAA section 129 incinerator regulations and activities related to these rulemakings, including responses to Freedom of Information Act requests, rule implementation support, rule amendments addressing issues that hinder implementation, development of various electronic information systems such as electronic data submittal systems and stakeholder outreach. Looking at the EPA more broadly, the EPA is engaged in a large number of regulatory actions under other parts of the CAA and under other statutes. The EPA's ongoing regulatory work is described in the EPA's Regulatory Agenda, which the EPA publishes semi-annually, and its Regulatory Plan, which is published annually.[20]

In considering whether and when to take the regulatory actions requested in the September 2009 Petition, the EPA must balance those possible actions with all of the other obligations and authorities that the EPA has under the CAA and other statutes. If staff and other agency resources were shifted to take the action that petitioners' request, they would not be available for other agency work. As discussed above, the EPA is pursuing a comprehensive strategy to study and appropriately address CAFO emissions, and the EPA is committing resources to implement that approach. After considering the agency's current CAFO strategy, and in light of all of the other tasks before the agency, the EPA does not believe it should shift additional resources at this time to determine whether to list and regulate CAFOs under CAA section 111.

IV. Conclusion

In light of the EPA's current comprehensive strategy to address CAFO emissions and the agency's limited resources and the need to prioritize its regulatory activity and to use its resources efficiently, the EPA is declining at this time to determine whether CAFOs should be listed as a source category under CAA section 111. Undertaking such a determination at this time is not consistent with its comprehensive strategy to address CAFO emissions and would therefore be premature. Additionally, it would require the agency to divert resources from other work to a degree the agency believes is inappropriate given its resource constraints and priorities. Thus, the EPA is denying your petition to list CAFOs as a source category under CAA section 111.

Though the EPA has declined at this time to consider whether to list CAFOs as a source category under CAA section 111, the agency may consider listing and regulation of CAFOs under CAA section 111 as part of its comprehensive strategy for this sector in the future. If the agency does so, it will at that time address any additional issues that may arise from considering such listing and subsequent regulation under CAA section 111, such as how to apply the CAA section 111 definition of stationary source to CAFOs.

---

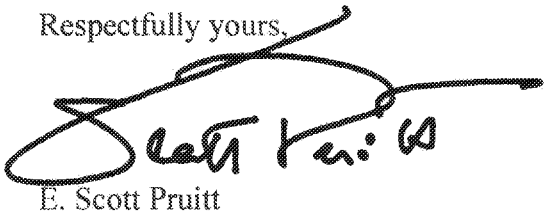
[18] See *California Communities Against Air Toxics*, Case No.15-512 (D.D.C.) (order dated March 13, 2017), and *Blue Ridge Environmental Defense League*, Case no. 16-364 (D.D.C.) (order dated March 22, 2017).

[19] See *Community In-Power and Development Association, Inc.* v. *Pruitt*, Case No 16-1074 (D.D.C.).

[20] More information on the EPA's Semiannual Regulatory Agenda and Regulatory Plan, including information on how to see the agency's most recent agenda and plan, is available at https://www.epa.gov/laws-regulations/regulatory-agendas-and-regulatory-plans.

For the reasons discussed above, the EPA is denying the September 2009 Petition to list CAFOs as a source category under CAA section 111. This is the EPA's final agency action on this petition.

Respectfully yours,



E. Scott Pruitt

E. SCOTT PRUITT
ADMINISTRATOR

December 15, 2017

Ms. Ann Weeks
Senior Counsel, Legal Director
Clean Air Task Force
114 State Street, 6th Floor
Boston, Massachusetts 02109

Dear Ms. Weeks:

On September 21, 2009, the Humane Society of the United States and other environmental and citizen groups[1] (collectively, "petitioners") sent a letter to the U.S. Environmental Protection Agency petitioning the agency to list concentrated animal feeding operations as a category of sources under section 111(b)(1)(A) of the Clean Air Act and, thereafter, to promulgate standards of performance for new CAFOs under CAA section 111(b)(1)(B) and prescribe regulations for state-performance standards for existing CAFOs under CAA section 111(d).

I write to inform you that the EPA is denying this petition to list CAFOs as a category of sources under CAA section 111. This denial fully and finally responds to this petition and is the EPA's final agency action on this petition.

The EPA recognizes that emissions from this sector exist and has been undertaking multiple activities related to CAFO emissions as part of the agency's preferred approach to address these emissions. As discussed below, the EPA has developed and is implementing a comprehensive strategy to address CAFO air emissions that includes conducting a nationwide study of air emissions from CAFOs and developing improved emission-estimating methodologies for these emissions; gathering additional information about the magnitude of CAFO emissions and their control options; considering to what extent existing CAA regulations address CAFO emissions; evaluating the various CAA regulatory tools that might be used to further address CAFO emissions; and then determining which regulatory tool or tools would be most appropriate to regulate CAFO emissions to protect public health and welfare. Further, in determining the sequence and timing of undertaking regulatory action, the agency must consider the most efficient

[1] In addition to the Humane Society of the United States, the other petitioners are Association of Irritated Residents, Center on Race, Poverty and the Environment, Clean Air Task Force, Dairy Education Alliance, El Comité Para el Bienestar de Earlimart, Environmental Integrity Project, Friends of the Earth, Sierra Club and Waterkeeper Alliance.

1200 PENNSYLVANIA AVE. NW • MAIL CODE 1101A • WASHINGTON, DC 20460 • (202) 564-4700 • FAX: (202) 501-1450

This paper is printed with vegetable-oil-based inks and is 100-percent postconsumer recycled material, chlorine-free-processed and recyclable.

and effective uses of its limited resources in light of ongoing budgetary uncertainties. Given the actions that the agency is undertaking and its resource constraints, the EPA is declining at this time to determine whether to list CAFOs as a source category under CAA section 111, and the agency, thus, is denying your petition. This denial is not based on a determination as to whether CAFOs meet the requirements for listing under CAA section 111(b)(1)(A). In the future, the EPA may initiate a process to determine whether to list CAFOs under CAA section 111(b)(1)(A); however, the agency has decided that it will not do so now.

I. Introduction

A. Statutory Provisions

Clean Air Act section 111(b)(1)(A) provides that the EPA shall "publish (and from time to time thereafter shall revise) a list of categories of stationary sources [and shall include a category on the list] if in [the Administrator's] judgment it causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare." For categories that the EPA lists under CAA section 111(b)(1)(A), CAA section 111(b)(1)(B) requires the EPA to propose federal standards of performance for new sources within the newly established category within one year of listing and then, after an opportunity for public comment, finalize the standards within one year of publishing the proposed standards.

B. Procedural History

On September 21, 2009, the petitioners sent a letter to the EPA petitioning the agency to list CAFOs and to promulgate standards of performance under CAA section 111 (which we will refer to as the "September 2009 Petition"). The petitioners specifically requested that the EPA undertake a rulemaking that:

(1) Finds that the air pollutants hydrogen sulfide and ammonia constitute air pollution that endangers U.S. public health or welfare;

(2) Announces the Administrator's judgment that emissions of methane, nitrous oxide, hydrogen sulfide, ammonia, volatile organic compounds and particulate matter from CAFOs contribute significantly to air pollution that is reasonably anticipated to endanger public health and welfare;

(3) Lists CAFOs as a category of stationary sources pursuant to CAA section 111(b)(1)(A); and

(4) Promulgates standards of performance for air emissions of methane, nitrous oxide, hydrogen sulfide, ammonia, VOC and PM from new and existing CAFOs under CAA sections 111(b) and 111(d).

September 2009 Petition, at page 4.

In January 2015, some of the petitioners (the Humane Society of the United States, Association of Irritated Residents, Environmental Integrity Project, Friends of the Earth and Sierra Club) filed a complaint with the United States District Court for the District of Columbia alleging that the EPA had unreasonably delayed in responding to the petition. The Court dismissed the case after finding that the plaintiffs had failed to notify the EPA 180 days before filing the suit, as required by CAA section 304(a).

On October 7, 2016, the same petitioners notified the EPA of their intent to file suit, as required under CAA section 304(a). On August 23, 2017, these petitioners filed a complaint with the United States District Court for the District of Columbia, alleging that the EPA had unreasonably delayed in responding to the September 2009 Petition.

II. Summary of the September 2009 Petition

In their September 2009 Petition, the petitioners cited the requirements of CAA section 111 and asserted that CAFOs meet the definition of a stationary source that emits air pollutants that endanger public health and welfare. The petitioners focused on listing CAFOs as a source category under the CAA in order for the EPA to promulgate performance standards for this sector to control emissions of the major pollutants emitted by CAFOs.

The petitioners included general statistics about the CAFO industry and asserted that CAFOs emit more pollutants than traditional, small-scale farms due to CAFOs' confinement and manure-management practices. The petitioners listed major pollutants emitted by CAFOs as being: (1) the greenhouse gases methane and nitrous oxide, (2) hydrogen sulfide, (3) ammonia, (4) PM and (5) VOC. The petitioners further discussed these pollutants, including the health and welfare effects they cause, in order to support the claim that emissions from CAFOs endanger public health. The petitioners cited examples of effects of exposure to these pollutants, including public health effects, such as respiratory illness, increased cancer rates, death and welfare effects, such as crop damage, atmospheric acidification, habitat loss and severe haze.

The petitioners asserted that CAFOs are significant contributors of these pollutants due to the number of CAFOs and the amount of waste they produce. The petitioners included examples of statistics from studies conducted at local, national and global scales regarding quantities of emissions of these pollutants and site-specific data related to public-nuisance complaints and individual facility reports. Finally, the petitioners listed various management practices and technologies that the petitioners assert have been demonstrated to reduce emissions of some of these pollutants from specific subsectors of CAFOs.

III. Response to Requests

After thoroughly considering the petitioners' request to list and regulate CAFOs under CAA section 111, the EPA has concluded that the complex nature of emission sources and emissions from this sector requires the agency to continue its comprehensive approach toward this sector by first evaluating CAFO emissions and then determining further regulatory actions to address these emissions. As discussed below, in responding to this petition, the EPA has considered (a) the need for more accurate methodologies to estimate air emissions from CAFOs, including the critical role of that information in implementing a comprehensive regulatory

strategy; (b) the agency's multiple ongoing actions taken to date in support of its comprehensive approach for addressing air emissions from CAFOs; and (c) the agency's limited resources and competing priorities.

A. The Need for and Importance of Developing Accurate CAFO Air Emissions Methodologies in the EPA's Comprehensive Approach

The interactive and highly complex nature of CAFO air emissions requires new, more accurate methodologies for estimating those emissions. Establishing sound emissions estimates is a fundamental step to establish a comprehensive, effective and efficient regulatory strategy to address CAFO air emissions. To this end, the agency first is gathering information to most accurately characterize the emissions from CAFOs, and, once the agency has sufficient information on CAFO emissions, it will determine the appropriate regulatory approach to address those emissions.

CAFOs can emit a variety of air pollutants, including those listed in the petition and summarized above, as well as hazardous air pollutants, carbon dioxide and reduced sulfur compounds. These pollutants are emitted from various sources at animal feeding operations, including confinement structures (e.g. barns, corrals), manure management systems and fields. Additionally, other agricultural equipment (e.g. engines, boilers) used on CAFOs emit pollutants; some of which are covered by other existing New Source Performance Standard programs. Many factors influence emissions, including the geographic location and environmental conditions (e.g. soil type, precipitation, humidity, temperature, water availability, wind conditions, terrain), management practices (e.g. feed, manure), animal characteristics (e.g. number, species, life stage), operating conditions (e.g. housing/confinement types) and general management practices. Due to the complex interactions of all of these factors, CAFO emissions cannot be standardized based solely on the number and type of animals at each operation. There are many scenarios when a CAFO with fewer animals will have higher emissions than a CAFO with a greater number of the same species of animals. Further, historic emission-measurement techniques, such as those used in some of the studies cited by the petitioners, vary widely, and many are imprecise and impacted by local conditions. This variability makes it difficult to compare or aggregate results of multiple studies for the purposes of developing simple emission-estimating methodologies. Therefore, historic studies on CAFO emissions provide insufficient information to accurately characterize the nature and extent of the emissions, which is necessary information not only for evaluating regulatory options, but also for reaching the conclusions needed to list a source category under CAA section 111(b)(1)(A), if the EPA ultimately decides to do so, as discussed further below.

Due to the uncertainties surrounding air emissions from CAFOs, the EPA and the U.S. Department of Agriculture jointly commissioned a report from the National Research Council titled *Air Emissions from Animal Feeding Operations: Current Knowledge, Future Needs*, which was published in 2003.[2] The report established the determination that it was not appropriate to estimate air emissions from CAFOs simply by multiplying the number of animal units by existing

[2] Ad Hoc Committee on Air Emissions from Animal Feeding Operations, Committee on Animal Nutrition, National Research Council, *Air Emissions from Animal Feeding Operations: Current Knowledge, Future Needs* (2003). ISBN: 0-309-50758-8. http://www.nap.edu/catalog/10586.html.

emission factors for most pollutants. Additionally, the report stated that process-based modeling "will help provide scientifically sound estimates of air emissions from AFOs for use in regulatory and management programs."[3] Similarly, the EPA's Science Advisory Board reiterated this conclusion when it recommended in 2013 that the EPA develop process-based modeling approaches to predict air emissions.[4]

Developing accurate methodologies to estimate air emissions from CAFOs is an important first step under the EPA's implementation of its comprehensive strategy to address those emissions. Improved emission-estimation methodologies will both better describe the emission sources on a farm and enhance the EPA's emission inventories of these pollutants. The agency uses emissions inventories for a variety of policy and regulatory purposes, and these inventories are important in determining the extent to which CAFOs are subject to existing regulatory requirements and in developing any future regulations. These purposes include: (1) assessing a sector's contribution to nationwide emissions of a pollutant, an assessment that would be used to consider whether (as petitioners contend) CAFOs significantly cause or contribute to emissions of pollutants that endanger public health and welfare; (2) supporting boundary determinations in the initial area designation process following the promulgation of new or revised National Ambient Air Quality Standards, which impacts the emission sources that are considered for control under a state implementation plan; (3) evaluating the potential public health and welfare benefits of proposed regulations; and (4) supporting state and EPA air-quality modeling efforts, which are used for Prevention of Significant Deterioration and New Source Review permitting, as well as to develop SIPs that may include regulatory measures for CAFOs to reduce emissions of criteria pollutants or their precursors (such as PM and ammonia). Once the EPA finalizes CAFO emission-estimating methodologies, the agency can use them to improve emissions inventories, which will lead to more accurate understanding of the amounts of emissions from various emission sources on a farm. These improved emissions inventories will also allow the EPA to more accurately compare the contribution of CAFO emissions to regional and national levels of those pollutants.

With this better understanding and more accurate information, the EPA then can best evaluate the impacts of CAFO air emissions on public health and welfare and implement a comprehensive regulatory strategy to best address those emissions from the animal feeding sector under the CAA, with consideration of the multiple regulatory programs that may affect the sector and, depending on what regulatory approach is warranted, the most appropriate, effective and efficient means within each program. The CAA provides multiple ways to address emissions from CAFOs, depending on the target pollutant and nature of the emissions (point or fugitive). For example, the NAAQS program addresses the regulation of criteria pollutants from all sources, including stationary sources, National Emission Standards for Hazardous Air Pollutants promulgated under CAA section 112 address HAP from stationary sources, and NSPS and emissions guidelines under CAA section 111 cover certain pollutants as provided in that provision. Additionally, Title V operating permits and NSR/PSD pre-construction permits are required for sources in any source category subject to air-permitting requirements. While specific CAFOs are

---

[3] Ibid.

[4] *SAB Review of Emissions-Estimating Methodologies for Broiler Animal Feeding Operations and for Lagoons and Basins at Swine and Dairy Animal Feeding Operations* (2013). EPA-SAB-13-003 Available at: https://yosemite.epa.gov/sab/SABPRODUCT.NSF/81e39f4c09954fcb85256ead006be86e/ae6639dd6b79360e852579a4004e5529!OpenDocument&TableRow=2.3#2.

subject to existing requirements under some of these programs (e.g. Title V operating permits, PM NAAQS), the EPA has not promulgated standards specifically designed to reduce air emissions from CAFOs due to the need to accurately characterize emissions from the sector first.

Even if the EPA ultimately were to decide to regulate CAFOs under CAA section 111 as part of its regulatory strategy, the EPA would need additional information about CAFO emissions in order to determine the scope of the listing and to promulgate standards. For example, when developing regulations under CAA section 111, the agency must determine how to define the source category, which pollutants to address, which emission sources to control and what degree of emission reductions are achievable. Once the EPA finalizes new CAFO emission-estimating methodologies, the agency will be able to consider emissions of each significant pollutant from CAFOs as a whole sector, by sub-sector (e.g. specific animal species) and by emission source (e.g. barns, lagoons) and better identify and assess specific regulatory approaches to address those emissions. Having this information will aid the EPA in multiple ways, including those outlined below, if it decides to list and regulate CAFOs under CAA section 111.

First, the agency must determine the appropriate scope of the source category or categories to list. With respect to the scope of possible source categories, if the significant pollutants differ based on emission source and animal species, the agency may determine that having multiple source categories based on specific animal species and/or emission sources (e.g. cattle feedlots, swine lagoons) is more appropriate than listing "CAFOs" as a single source category. This level of information, which the EPA does not yet have and is working to develop, is critical to ensuring the most effective and efficient regulatory strategy and would allow the agency to make a considered judgement as to whether a listed source category should be defined broadly or narrowly. Such a determination would be consistent with other regulatory approaches under CAA section 111 where, depending on the sector, the agency has either listed a category broadly or focused on specific emission points.[5]

Second, additional information about the nature and quantity of pollutants emitted from CAFOs will ensure that the EPA has adequate information to make a listing decision regarding whether CAFOs' emissions of one or more of the pollutants in question "cause, or contribute significantly to, air pollution, which may reasonably be anticipated to endanger public health and welfare." The determination of whether CAFO emissions of methane, nitrous oxide, hydrogen sulfide, ammonia, PM, VOC or other pollutants meet this condition would be informed by the improved emission inventories discussed above.

Third, setting standards under CAA section 111 requires the EPA to determine the "best system of emission reduction" (BSER) for the listed source category and determine what degree

[5] For example, the standards in 40 CFR part 60, subpart BBB cover a given industrial sector, the rubber tire industry, in a single source category by defining emission limits for a single pollutant (VOC) from multiple types of facilities, including undertread cementing, sidewall cementing, tread end cementing, bead cementing, green tire spraying and Michelin-A, Michelin-B, and Michelin-C automatic operations. Alternately, in 40 CFR part 60, subparts T, U, V, W and X, the agency promulgated standards for separate source categories within a given industrial sector, the phosphate fertilizer industry (i.e. wet-process phosphoric acid, superphosphoric acid, diammonium phosphate, triple superphosphate and granular triple superphosphate plants, respectively). In other cases, the EPA sets standards for a specific emission source, regardless of industrial sector, such as the regulations for electric utility steam-generating units (boilers) limiting emissions of PM, nitrogen oxides and sulfur dioxide in 40 CFR part 60, subpart Da.

of emission reduction is achievable from the application of that BSER to sources in the source category. The additional information that the EPA is gathering will help it identify emission controls currently used at CAFOs. The emission-estimating methodologies that the agency is finalizing will allow the EPA to estimate potential emission reductions resulting from the application of various control options in a standardized way, which would aid the evaluation of the BSER for the source category(ies) in a potential future rulemaking. CAA section 111(b)(1)(B) requires the EPA to propose standards within one year of listing a source category and to promulgate final standards within one year of proposal. This limited timeframe for proposal and promulgation of standards necessitates that EPA gather sufficient and sufficiently reliable information to facilitate consideration of control options and the development of BSER prior to listing a new source category; otherwise, it would be difficult for the EPA to meet these statutory deadlines.

In sum, having more accurate emissions-estimating methodologies and the subsequent, improved inventories ensures that the EPA will be able to implement an overarching, effective and efficient regulatory strategy to address CAFO emissions. The emission-estimating methodologies will also improve estimates of the impact of current requirements for CAFOs and potential impact of any proposed requirements. This will help the agency determine the most appropriate approach with respect to air emissions from CAFOs and avoid potential problems, such as duplicative and overlapping regulatory requirements, that could arise from addressing these emissions in a piecemeal fashion under multiple CAA programs without considering how the various programs work together. Thus, this approach will allow the agency to ensure consistency between existing and proposed additional requirements and avoid creating unnecessary regulatory burden for CAFOs. For all of these reasons, development of the emission-estimating methodologies, as advised by the National Research Council and the EPA's SAB, is a fundamental initial step under the comprehensive strategy that the EPA is implementing to reduce air emissions from CAFOs. Our ongoing steps and expected time frame for addressing these issues is discussed in the next section.

Furthermore, once the EPA obtains the necessary information on the nature and extent of CAFO emissions, if the EPA determines that additional action to address CAFO emissions is warranted under CAA section 111 or otherwise, the improved emissions information will be relevant in deciding the timing of further action on CAFO emissions. This is because the timing of potential regulatory action on CAFO emissions must be weighed against other actions that the EPA could take to address emissions of these same pollutants from other source categories. For example, the EPA might determine that while certain pollutants from CAFOs warrant further action, other sources of those pollutants should be addressed first, based on the relative level of overall emissions of those pollutants from each of the source categories, the location of the emission sources within each source category or other factors.

B. The EPA's Ongoing Steps to Implement the Agency's Comprehensive Strategy and Reduce Emissions from CAFOs

To better understand and evaluate emissions from CAFOs, the EPA has been undertaking the National Air Emissions Monitoring Study. The study is a fundamental step that the agency intends to complete in order to determine how to best address emissions from CAFOs within the CAA's regulatory framework. NAEMS will help the agency develop methodologies to estimate

emissions of ammonia, hydrogen sulfide, PM and VOC from a wide variety of types of CAFOs.[6] These methodologies can better inform the estimation of emissions and exposures related to point sources located at these operations. Until the EPA more fully understands the level and sources of emissions of different pollutants, it would be premature for the agency to decide which CAA regulatory tool or tools could be most effectively applied to protect public health and welfare from these emissions.

After the research team, which was led by Purdue University with EPA oversight, collected emissions data for NAEMS from 2007 to 2010, the EPA analyzed the data and developed two draft emissions-estimating methodologies in 2012, which the agency published for public comment.[7] The EPA also submitted the methodologies to the SAB, which reviewed the methodologies and issued a final report in 2013. As stated earlier, the SAB recommended that the agency develop more rigorous methodologies for estimating emissions. In the interim, the SAB provided recommendations for expanding the data set and commented on the applicability of the draft emission estimating methodologies developed in 2012. The SAB found that NAEMS "is sufficient to start the development and evaluation of simplified process-based modeling approaches that would reflect the heterogeneity of CAFOs" and recognized that "the EPA may need to apply statistical approaches to assess emissions while it is developing and evaluating process-based models."[8] Since 2013, the EPA has been continuing to develop the methodologies consistent with the SAB recommendations, though that work has been slowed by various factors, as discussed next.

The EPA's Office of the Inspector General reported in a 2017 assessment of the status of NAEMS that the development of emission-estimating methodologies slowed while the EPA decided how to address some of the SAB's concerns.[9] At the same time that many government programs faced cutbacks due to sequestration, this project was also affected. Since 2013, the EPA has continued the development of emission-estimating methodologies using its statistically based approach and has taken steps recommended by the SAB, such as acquiring additional data sets from other external studies and reassessing data completeness criteria for NAEMS. Additionally, a lack of technical expertise due to staff retirement/reassignment and resource constraints (including discontinuation of funding for the contract supporting the study) due to competing priorities further slowed progress. In responding to the OIG's draft report, the EPA's Office of Air and Radiation outlined its plan to complete NAEMS, including working in partnership with the EPA's Office of Research and Development and agreeing with the OIG's recommendations to conduct systematic planning for future development of emission-estimating methodologies by April 2018. Based on the results of the systematic planning, the EPA will determine the emission source and pollutant combinations for which emission-estimating methodologies can be developed

---

[6] The types of CAFOs monitored for NAEMS include operations feeding swine, dairy cows and broiler and layer poultry.

[7] See 77 FR at 14716-14717 (March 13, 2012).

[8] *SAB Review of Emissions-Estimating Methodologies for Broiler Animal Feeding Operations and for Lagoons and Basins at Swine and Dairy Animal Feeding Operations*, EPA-SAB-13-003 (2013).

[9] U.S. Environmental Protection Agency Office of Inspector General, *Eleven Years After Agreement, EPA Has Not Developed Reliable Emission Estimation Methods to Determine Whether Animal Feeding Operations Comply with Clean Air Act and Other Statutes.* Report No. 17-P-0396 (2017).

and establish milestones for issuing the draft methodologies. The EPA expects to post these milestones on the agency's website by July 2018.[10]

While the EPA is completing NAEMS, the agency also has been undertaking other activities under existing regulations and programs that will help characterize emissions from this sector and support the implementation of the comprehensive strategy to address CAFO emissions, as well as directly address specific components of petitioners' concerns about the effects on health and welfare of CAFOs' emissions. For example, the EPA's August 2016 final PM Implementation Rule includes requirements that will generate information that will assist the EPA in evaluating emissions of ammonia, which is a precursor of fine particles (less than 2.5 micrometers, $PM_{2.5}$). This rule requires states to demonstrate that they have plans that will reduce $PM_{2.5}$ to at or below the standard over a specified number of years.[11] As part of this process, the EPA recognizes that the treatment of $PM_{2.5}$ precursors, including ammonia from sources such as animal feeding operations, is important in developing a $PM_{2.5}$ attainment plan or implementing the NSR program in a nonattainment area.[12] Specifically, the rule's preamble states that the EPA's 2011 National Emissions Inventory estimated that livestock raising was the largest source of ammonia emissions, contributing about 54 percent of total ammonia emissions, but also acknowledges that there was some uncertainty in quantifying ammonia emissions and other $PM_{2.5}$ precursors from source categories including livestock and fertilizer application.[13] Therefore, the rule requires states to control ammonia emissions, if necessary, for expeditious attainment or if ammonia contributes significantly to $PM_{2.5}$ levels which exceed the standard in a particular nonattainment area. These control measures would be adopted through state regulations that are submitted to the EPA as part of a SIP. The EPA expects the requirements contained in the 2016 final PM Implementation rule to further improve its understanding of emissions at the same time that updates to the 2014 NEI and "other uses of the NAEMS data will help to reduce uncertainties in current ammonia inventories and will improve the quality of future emissions inventories needed for implementing the $PM_{2.5}$ NAAQS."[14] This set of improvements will significantly aid the EPA's comprehensive strategy for addressing CAFO emissions to account for CAFO emission reductions required by existing regulations.

Additionally, in September 2017, the EPA, with the USDA, released a best-management practices document for livestock and poultry production farms, including CAFOs, titled *Agricultural Air Quality Conservation Measures: Reference Guide for Poultry and Livestock Production Systems.*[15] This document identifies measures that have been demonstrated to reduce air emissions of pollutants (ammonia, greenhouse gases, hydrogen sulfide, PM and VOC) from farms. While it does not involve the quantification of emissions, the guide clearly describes different practices and control technologies that reduce emissions of these pollutants. The guide supports the EPA's efforts to characterize available control technologies and practices for different

---

[10] See, "Response to the Office of Inspector General's Draft Report, *Emissions From Animal Feeding Operations Remain Largely Uncharacterized More Than 7 Years After Study Completed* (Project No. OPE-FY16-0018), June 23, 2017.

[11] See, "Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements." 81 FR 58010 (August 24, 2016).

[12] See 81 FR at 58014 (August 24, 2016).

[13] See 81 FR at 58016, 58032 (August 24, 2016).

[14] See 81 FR at 58032 (August 24, 2016).

[15] Available at https://www.epa.gov/sites/production/files/2017-01/documents/web_placeholder.pdf.

pollutants, emission sources and subsectors of CAFOs, which would be required to establish control options under the EPA's comprehensive strategy to reduce emissions from this sector, consistent with the statutory factors and requirements within the CAA. Although the reference guide does not impose federal requirements to reduce CAFO emissions, the guide helps states make informed decisions when considering adoption of pollutant controls and helps CAFOs determine which practices may be suitable for implementation of emission reductions on a site-specific basis. In fact, the guide includes an appendix listing existing state programs or regulations pertaining to air emissions from livestock and poultry operations. States that are developing programs to reduce air emissions from CAFOs can use the appendix to study the different approaches as models and to examine their potential applicability to other states.

Finally, the EPA will also consider applicable reporting requirements for CAFOs in assessing the extent of current requirements for CAFOs, following a court decision under the Comprehensive Environmental Response, Compensation and Liability Act and the Emergency Planning and Community Right-to-Know Act. In April 2017, the United States Court of Appeals for the District of Columbia Circuit vacated a 2008 rule that exempted farms from reporting air releases of hazardous substances from animal waste under Section 103 of CERCLA and, if the farms stable or confine fewer than certain numbers of animals, under Section 304 of EPCRA.[16] Ammonia and hydrogen sulfide are considered hazardous substances under CERCLA and EPCRA. Farms releasing hazardous substances to air from animal wastes, equal to or greater than their reportable quantities, within any 24-hour period, must notify the appropriate authorities because the 2008 exemption no longer applies.[17] The EPA is unable to provide emission-estimating methodologies for use with these reports until NAEMS is complete and will give owners and operators guidance so that these reports may be based on broad-range estimates that include uncertainties. As the EPA implements its comprehensive strategy for CAFO emissions, the agency will ensure that the regulatory approach adopted to address CAFO sources of ammonia and hydrogen sulfide emissions is consistent with these requirements and avoids duplicative obligations to the maximum extent possible.

C. The EPA's Limited Resources and Need to Set Regulatory Priorities

Due to resource constraints, the EPA is never able to take all actions at the same time and must always consider its obligations and authorities under the CAA and other statutes when determining which activities to undertake at what point in time and how to most efficiently complete its regulatory mission. In recent years, the agency has been continually required to accomplish more activities with less resources, making prioritization and efficiency even more necessary. The Office of Air Quality Planning and Standards houses the Sector Policies and Programs Division, which would be charged with making a determination whether to list CAFOs under CAA section 111 and, if listed, promulgating CAA section 111 standards for CAFOs. The office has seen a general decline in its budget for several years. Further, SPPD already is required to take numerous final agency actions with mandatory deadlines set by the CAA and court orders. As an example of just one part of the division's work, SPPD currently faces court-ordered

[16] *Waterkeeper Alliance* v. *EPA*, 853 F.3d 527 (D.C. Cir. 2017).

[17] See https://www.epa.gov/epcra/cercla-and-epcra-reporting-requirements-air-releases-hazardous-substances-animal-waste-farms.

deadlines for the completion of 33 residual risk and technology reviews of NESHAP for specific source categories in the next three years[18] and is anticipating a court order setting deadlines for the completion of residual risk and technology reviews of the NESHAP for an additional nine source categories.[19] In addition to the work on these reviews, SPPD also has ongoing obligations related to NSPS, non-residual risk and technology review NESHAP projects, CAA section 129 incinerator regulations and activities related to these rulemakings, including responses to Freedom of Information Act requests, rule implementation support, rule amendments addressing issues that hinder implementation, development of various electronic information systems such as electronic data submittal systems and stakeholder outreach. Looking at the EPA more broadly, the EPA is engaged in a large number of regulatory actions under other parts of the CAA and under other statutes. The EPA's ongoing regulatory work is described in the EPA's Regulatory Agenda, which the EPA publishes semi-annually, and its Regulatory Plan, which is published annually.[20]

In considering whether and when to take the regulatory actions requested in the September 2009 Petition, the EPA must balance those possible actions with all of the other obligations and authorities that the EPA has under the CAA and other statutes. If staff and other agency resources were shifted to take the action that petitioners' request, they would not be available for other agency work. As discussed above, the EPA is pursuing a comprehensive strategy to study and appropriately address CAFO emissions, and the EPA is committing resources to implement that approach. After considering the agency's current CAFO strategy, and in light of all of the other tasks before the agency, the EPA does not believe it should shift additional resources at this time to determine whether to list and regulate CAFOs under CAA section 111.

IV. Conclusion

In light of the EPA's current comprehensive strategy to address CAFO emissions and the agency's limited resources and the need to prioritize its regulatory activity and to use its resources efficiently, the EPA is declining at this time to determine whether CAFOs should be listed as a source category under CAA section 111. Undertaking such a determination at this time is not consistent with its comprehensive strategy to address CAFO emissions and would therefore be premature. Additionally, it would require the agency to divert resources from other work to a degree the agency believes is inappropriate given its resource constraints and priorities. Thus, the EPA is denying your petition to list CAFOs as a source category under CAA section 111.

Though the EPA has declined at this time to consider whether to list CAFOs as a source category under CAA section 111, the agency may consider listing and regulation of CAFOs under CAA section 111 as part of its comprehensive strategy for this sector in the future. If the agency does so, it will at that time address any additional issues that may arise from considering such listing and subsequent regulation under CAA section 111, such as how to apply the CAA section 111 definition of stationary source to CAFOs.

---

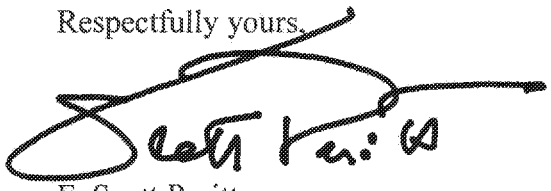
[18] See *California Communities Against Air Toxics*, Case No.15-512 (D.D.C.) (order dated March 13, 2017), and *Blue Ridge Environmental Defense League*, Case no. 16-364 (D.D.C.) (order dated March 22, 2017).

[19] See *Community In-Power and Development Association, Inc.* v. *Pruitt*, Case No 16-1074 (D.D.C.).

[20] More information on the EPA's Semiannual Regulatory Agenda and Regulatory Plan, including information on how to see the agency's most recent agenda and plan, is available at https://www.epa.gov/laws-regulations/regulatory-agendas-and-regulatory-plans.

For the reasons discussed above, the EPA is denying the September 2009 Petition to list CAFOs as a source category under CAA section 111. This is the EPA's final agency action on this petition.

Respectfully yours,



E. Scott Pruitt

E. Scott Pruitt
Administrator

December 15, 2017

Mr. Charles Tebbutt
Dairy Education Alliance
c/o Western Environmental Law Center
P.O. Box 10947
Eugene, Oregon 97401

Dear Mr. Tebbutt:

On September 21, 2009, the Humane Society of the United States and other environmental and citizen groups[1] (collectively, "petitioners") sent a letter to the U.S. Environmental Protection Agency petitioning the agency to list concentrated animal feeding operations as a category of sources under section 111(b)(1)(A) of the Clean Air Act and, thereafter, to promulgate standards of performance for new CAFOs under CAA section 111(b)(1)(B) and prescribe regulations for state-performance standards for existing CAFOs under CAA section 111(d).

I write to inform you that the EPA is denying this petition to list CAFOs as a category of sources under CAA section 111. This denial fully and finally responds to this petition and is the EPA's final agency action on this petition.

The EPA recognizes that emissions from this sector exist and has been undertaking multiple activities related to CAFO emissions as part of the agency's preferred approach to address these emissions. As discussed below, the EPA has developed and is implementing a comprehensive strategy to address CAFO air emissions that includes conducting a nationwide study of air emissions from CAFOs and developing improved emission-estimating methodologies for these emissions; gathering additional information about the magnitude of CAFO emissions and their control options; considering to what extent existing CAA regulations address CAFO emissions; evaluating the various CAA regulatory tools that might be used to further address CAFO emissions; and then determining which regulatory tool or tools would be most appropriate to regulate CAFO emissions to protect public health and welfare. Further, in determining the sequence and timing of undertaking regulatory action, the agency must consider the most efficient

[1] In addition to the Humane Society of the United States, the other petitioners are Association of Irritated Residents, Center on Race, Poverty and the Environment, Clean Air Task Force, Dairy Education Alliance, El Comité Para el Bienestar de Earlimart, Environmental Integrity Project, Friends of the Earth, Sierra Club and Waterkeeper Alliance.

1200 Pennsylvania Ave. NW • Mail Code 1101A • Washington, DC 20460 • (202) 564-4700 • Fax: (202) 501-1450

This paper is printed with vegetable-oil-based inks and is 100-percent postconsumer recycled material, chlorine-free-processed and recyclable.

and effective uses of its limited resources in light of ongoing budgetary uncertainties. Given the actions that the agency is undertaking and its resource constraints, the EPA is declining at this time to determine whether to list CAFOs as a source category under CAA section 111, and the agency, thus, is denying your petition. This denial is not based on a determination as to whether CAFOs meet the requirements for listing under CAA section 111(b)(1)(A). In the future, the EPA may initiate a process to determine whether to list CAFOs under CAA section 111(b)(1)(A); however, the agency has decided that it will not do so now.

I. Introduction

A. Statutory Provisions

Clean Air Act section 111(b)(1)(A) provides that the EPA shall "publish (and from time to time thereafter shall revise) a list of categories of stationary sources [and shall include a category on the list] if in [the Administrator's] judgment it causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare." For categories that the EPA lists under CAA section 111(b)(1)(A), CAA section 111(b)(1)(B) requires the EPA to propose federal standards of performance for new sources within the newly established category within one year of listing and then, after an opportunity for public comment, finalize the standards within one year of publishing the proposed standards.

B. Procedural History

On September 21, 2009, the petitioners sent a letter to the EPA petitioning the agency to list CAFOs and to promulgate standards of performance under CAA section 111 (which we will refer to as the "September 2009 Petition"). The petitioners specifically requested that the EPA undertake a rulemaking that:

(1) Finds that the air pollutants hydrogen sulfide and ammonia constitute air pollution that endangers U.S. public health or welfare;

(2) Announces the Administrator's judgment that emissions of methane, nitrous oxide, hydrogen sulfide, ammonia, volatile organic compounds and particulate matter from CAFOs contribute significantly to air pollution that is reasonably anticipated to endanger public health and welfare;

(3) Lists CAFOs as a category of stationary sources pursuant to CAA section 111(b)(1)(A); and

(4) Promulgates standards of performance for air emissions of methane, nitrous oxide, hydrogen sulfide, ammonia, VOC and PM from new and existing CAFOs under CAA sections 111(b) and 111(d).

September 2009 Petition, at page 4.

In January 2015, some of the petitioners (the Humane Society of the United States, Association of Irritated Residents, Environmental Integrity Project, Friends of the Earth and Sierra Club) filed a complaint with the United States District Court for the District of Columbia alleging that the EPA had unreasonably delayed in responding to the petition. The Court dismissed the case after finding that the plaintiffs had failed to notify the EPA 180 days before filing the suit, as required by CAA section 304(a).

On October 7, 2016, the same petitioners notified the EPA of their intent to file suit, as required under CAA section 304(a). On August 23, 2017, these petitioners filed a complaint with the United States District Court for the District of Columbia, alleging that the EPA had unreasonably delayed in responding to the September 2009 Petition.

II. Summary of the September 2009 Petition

In their September 2009 Petition, the petitioners cited the requirements of CAA section 111 and asserted that CAFOs meet the definition of a stationary source that emits air pollutants that endanger public health and welfare. The petitioners focused on listing CAFOs as a source category under the CAA in order for the EPA to promulgate performance standards for this sector to control emissions of the major pollutants emitted by CAFOs.

The petitioners included general statistics about the CAFO industry and asserted that CAFOs emit more pollutants than traditional, small-scale farms due to CAFOs' confinement and manure-management practices. The petitioners listed major pollutants emitted by CAFOs as being: (1) the greenhouse gases methane and nitrous oxide, (2) hydrogen sulfide, (3) ammonia, (4) PM and (5) VOC. The petitioners further discussed these pollutants, including the health and welfare effects they cause, in order to support the claim that emissions from CAFOs endanger public health. The petitioners cited examples of effects of exposure to these pollutants, including public health effects, such as respiratory illness, increased cancer rates, death and welfare effects, such as crop damage, atmospheric acidification, habitat loss and severe haze.

The petitioners asserted that CAFOs are significant contributors of these pollutants due to the number of CAFOs and the amount of waste they produce. The petitioners included examples of statistics from studies conducted at local, national and global scales regarding quantities of emissions of these pollutants and site-specific data related to public-nuisance complaints and individual facility reports. Finally, the petitioners listed various management practices and technologies that the petitioners assert have been demonstrated to reduce emissions of some of these pollutants from specific subsectors of CAFOs.

III. Response to Requests

After thoroughly considering the petitioners' request to list and regulate CAFOs under CAA section 111, the EPA has concluded that the complex nature of emission sources and emissions from this sector requires the agency to continue its comprehensive approach toward this sector by first evaluating CAFO emissions and then determining further regulatory actions to address these emissions. As discussed below, in responding to this petition, the EPA has considered (a) the need for more accurate methodologies to estimate air emissions from CAFOs, including the critical role of that information in implementing a comprehensive regulatory

strategy; (b) the agency's multiple ongoing actions taken to date in support of its comprehensive approach for addressing air emissions from CAFOs; and (c) the agency's limited resources and competing priorities.

A. The Need for and Importance of Developing Accurate CAFO Air Emissions Methodologies in the EPA's Comprehensive Approach

The interactive and highly complex nature of CAFO air emissions requires new, more accurate methodologies for estimating those emissions. Establishing sound emissions estimates is a fundamental step to establish a comprehensive, effective and efficient regulatory strategy to address CAFO air emissions. To this end, the agency first is gathering information to most accurately characterize the emissions from CAFOs, and, once the agency has sufficient information on CAFO emissions, it will determine the appropriate regulatory approach to address those emissions.

CAFOs can emit a variety of air pollutants, including those listed in the petition and summarized above, as well as hazardous air pollutants, carbon dioxide and reduced sulfur compounds. These pollutants are emitted from various sources at animal feeding operations, including confinement structures (e.g. barns, corrals), manure management systems and fields. Additionally, other agricultural equipment (e.g. engines, boilers) used on CAFOs emit pollutants; some of which are covered by other existing New Source Performance Standard programs. Many factors influence emissions, including the geographic location and environmental conditions (e.g. soil type, precipitation, humidity, temperature, water availability, wind conditions, terrain), management practices (e.g. feed, manure), animal characteristics (e.g. number, species, life stage), operating conditions (e.g. housing/confinement types) and general management practices. Due to the complex interactions of all of these factors, CAFO emissions cannot be standardized based solely on the number and type of animals at each operation. There are many scenarios when a CAFO with fewer animals will have higher emissions than a CAFO with a greater number of the same species of animals. Further, historic emission-measurement techniques, such as those used in some of the studies cited by the petitioners, vary widely, and many are imprecise and impacted by local conditions. This variability makes it difficult to compare or aggregate results of multiple studies for the purposes of developing simple emission-estimating methodologies. Therefore, historic studies on CAFO emissions provide insufficient information to accurately characterize the nature and extent of the emissions, which is necessary information not only for evaluating regulatory options, but also for reaching the conclusions needed to list a source category under CAA section 111(b)(1)(A), if the EPA ultimately decides to do so, as discussed further below.

Due to the uncertainties surrounding air emissions from CAFOs, the EPA and the U.S. Department of Agriculture jointly commissioned a report from the National Research Council titled *Air Emissions from Animal Feeding Operations: Current Knowledge, Future Needs*, which was published in 2003.[2] The report established the determination that it was not appropriate to estimate air emissions from CAFOs simply by multiplying the number of animal units by existing

[2] Ad Hoc Committee on Air Emissions from Animal Feeding Operations, Committee on Animal Nutrition, National Research Council, *Air Emissions from Animal Feeding Operations: Current Knowledge, Future Needs* (2003). ISBN: 0-309-50758-8. http://www.nap.edu/catalog/10586.html.

emission factors for most pollutants. Additionally, the report stated that process-based modeling "will help provide scientifically sound estimates of air emissions from AFOs for use in regulatory and management programs."[3] Similarly, the EPA's Science Advisory Board reiterated this conclusion when it recommended in 2013 that the EPA develop process-based modeling approaches to predict air emissions.[4]

Developing accurate methodologies to estimate air emissions from CAFOs is an important first step under the EPA's implementation of its comprehensive strategy to address those emissions. Improved emission-estimation methodologies will both better describe the emission sources on a farm and enhance the EPA's emission inventories of these pollutants. The agency uses emissions inventories for a variety of policy and regulatory purposes, and these inventories are important in determining the extent to which CAFOs are subject to existing regulatory requirements and in developing any future regulations. These purposes include: (1) assessing a sector's contribution to nationwide emissions of a pollutant, an assessment that would be used to consider whether (as petitioners contend) CAFOs significantly cause or contribute to emissions of pollutants that endanger public health and welfare; (2) supporting boundary determinations in the initial area designation process following the promulgation of new or revised National Ambient Air Quality Standards, which impacts the emission sources that are considered for control under a state implementation plan; (3) evaluating the potential public health and welfare benefits of proposed regulations; and (4) supporting state and EPA air-quality modeling efforts, which are used for Prevention of Significant Deterioration and New Source Review permitting, as well as to develop SIPs that may include regulatory measures for CAFOs to reduce emissions of criteria pollutants or their precursors (such as PM and ammonia). Once the EPA finalizes CAFO emission-estimating methodologies, the agency can use them to improve emissions inventories, which will lead to more accurate understanding of the amounts of emissions from various emission sources on a farm. These improved emissions inventories will also allow the EPA to more accurately compare the contribution of CAFO emissions to regional and national levels of those pollutants.

With this better understanding and more accurate information, the EPA then can best evaluate the impacts of CAFO air emissions on public health and welfare and implement a comprehensive regulatory strategy to best address those emissions from the animal feeding sector under the CAA, with consideration of the multiple regulatory programs that may affect the sector and, depending on what regulatory approach is warranted, the most appropriate, effective and efficient means within each program. The CAA provides multiple ways to address emissions from CAFOs, depending on the target pollutant and nature of the emissions (point or fugitive). For example, the NAAQS program addresses the regulation of criteria pollutants from all sources, including stationary sources, National Emission Standards for Hazardous Air Pollutants promulgated under CAA section 112 address HAP from stationary sources, and NSPS and emissions guidelines under CAA section 111 cover certain pollutants as provided in that provision. Additionally, Title V operating permits and NSR/PSD pre-construction permits are required for sources in any source category subject to air-permitting requirements. While specific CAFOs are

---

[3] Ibid.

[4] *SAB Review of Emissions-Estimating Methodologies for Broiler Animal Feeding Operations and for Lagoons and Basins at Swine and Dairy Animal Feeding Operations* (2013). EPA-SAB-13-003 Available at: https://yosemite.epa.gov/sab/SABPRODUCT.NSF/81e39f4c09954fcb85256ead006be86e/ae6639dd6b79360e852579a4004e5529!OpenDocument&TableRow=2.3#2.

subject to existing requirements under some of these programs (e.g. Title V operating permits, PM NAAQS), the EPA has not promulgated standards specifically designed to reduce air emissions from CAFOs due to the need to accurately characterize emissions from the sector first.

Even if the EPA ultimately were to decide to regulate CAFOs under CAA section 111 as part of its regulatory strategy, the EPA would need additional information about CAFO emissions in order to determine the scope of the listing and to promulgate standards. For example, when developing regulations under CAA section 111, the agency must determine how to define the source category, which pollutants to address, which emission sources to control and what degree of emission reductions are achievable. Once the EPA finalizes new CAFO emission-estimating methodologies, the agency will be able to consider emissions of each significant pollutant from CAFOs as a whole sector, by sub-sector (e.g. specific animal species) and by emission source (e.g. barns, lagoons) and better identify and assess specific regulatory approaches to address those emissions. Having this information will aid the EPA in multiple ways, including those outlined below, if it decides to list and regulate CAFOs under CAA section 111.

First, the agency must determine the appropriate scope of the source category or categories to list. With respect to the scope of possible source categories, if the significant pollutants differ based on emission source and animal species, the agency may determine that having multiple source categories based on specific animal species and/or emission sources (e.g. cattle feedlots, swine lagoons) is more appropriate than listing "CAFOs" as a single source category. This level of information, which the EPA does not yet have and is working to develop, is critical to ensuring the most effective and efficient regulatory strategy and would allow the agency to make a considered judgement as to whether a listed source category should be defined broadly or narrowly. Such a determination would be consistent with other regulatory approaches under CAA section 111 where, depending on the sector, the agency has either listed a category broadly or focused on specific emission points.[5]

Second, additional information about the nature and quantity of pollutants emitted from CAFOs will ensure that the EPA has adequate information to make a listing decision regarding whether CAFOs' emissions of one or more of the pollutants in question "cause, or contribute significantly to, air pollution, which may reasonably be anticipated to endanger public health and welfare." The determination of whether CAFO emissions of methane, nitrous oxide, hydrogen sulfide, ammonia, PM, VOC or other pollutants meet this condition would be informed by the improved emission inventories discussed above.

Third, setting standards under CAA section 111 requires the EPA to determine the "best system of emission reduction" (BSER) for the listed source category and determine what degree

[5] For example, the standards in 40 CFR part 60, subpart BBB cover a given industrial sector, the rubber tire industry, in a single source category by defining emission limits for a single pollutant (VOC) from multiple types of facilities, including undertread cementing, sidewall cementing, tread end cementing, bead cementing, green tire spraying and Michelin-A, Michelin-B, and Michelin-C automatic operations. Alternately, in 40 CFR part 60, subparts T, U, V, W and X, the agency promulgated standards for separate source categories within a given industrial sector, the phosphate fertilizer industry (i.e. wet-process phosphoric acid, superphosphoric acid, diammonium phosphate, triple superphosphate and granular triple superphosphate plants, respectively). In other cases, the EPA sets standards for a specific emission source, regardless of industrial sector, such as the regulations for electric utility steam-generating units (boilers) limiting emissions of PM, nitrogen oxides and sulfur dioxide in 40 CFR part 60, subpart Da.

of emission reduction is achievable from the application of that BSER to sources in the source category. The additional information that the EPA is gathering will help it identify emission controls currently used at CAFOs. The emission-estimating methodologies that the agency is finalizing will allow the EPA to estimate potential emission reductions resulting from the application of various control options in a standardized way, which would aid the evaluation of the BSER for the source category(ies) in a potential future rulemaking. CAA section 111(b)(1)(B) requires the EPA to propose standards within one year of listing a source category and to promulgate final standards within one year of proposal. This limited timeframe for proposal and promulgation of standards necessitates that EPA gather sufficient and sufficiently reliable information to facilitate consideration of control options and the development of BSER prior to listing a new source category; otherwise, it would be difficult for the EPA to meet these statutory deadlines.

In sum, having more accurate emissions-estimating methodologies and the subsequent, improved inventories ensures that the EPA will be able to implement an overarching, effective and efficient regulatory strategy to address CAFO emissions. The emission-estimating methodologies will also improve estimates of the impact of current requirements for CAFOs and potential impact of any proposed requirements. This will help the agency determine the most appropriate approach with respect to air emissions from CAFOs and avoid potential problems, such as duplicative and overlapping regulatory requirements, that could arise from addressing these emissions in a piecemeal fashion under multiple CAA programs without considering how the various programs work together. Thus, this approach will allow the agency to ensure consistency between existing and proposed additional requirements and avoid creating unnecessary regulatory burden for CAFOs. For all of these reasons, development of the emission-estimating methodologies, as advised by the National Research Council and the EPA's SAB, is a fundamental initial step under the comprehensive strategy that the EPA is implementing to reduce air emissions from CAFOs. Our ongoing steps and expected time frame for addressing these issues is discussed in the next section.

Furthermore, once the EPA obtains the necessary information on the nature and extent of CAFO emissions, if the EPA determines that additional action to address CAFO emissions is warranted under CAA section 111 or otherwise, the improved emissions information will be relevant in deciding the timing of further action on CAFO emissions. This is because the timing of potential regulatory action on CAFO emissions must be weighed against other actions that the EPA could take to address emissions of these same pollutants from other source categories. For example, the EPA might determine that while certain pollutants from CAFOs warrant further action, other sources of those pollutants should be addressed first, based on the relative level of overall emissions of those pollutants from each of the source categories, the location of the emission sources within each source category or other factors.

B. The EPA's Ongoing Steps to Implement the Agency's Comprehensive Strategy and Reduce Emissions from CAFOs

To better understand and evaluate emissions from CAFOs, the EPA has been undertaking the National Air Emissions Monitoring Study. The study is a fundamental step that the agency intends to complete in order to determine how to best address emissions from CAFOs within the CAA's regulatory framework. NAEMS will help the agency develop methodologies to estimate

emissions of ammonia, hydrogen sulfide, PM and VOC from a wide variety of types of CAFOs.[6] These methodologies can better inform the estimation of emissions and exposures related to point sources located at these operations. Until the EPA more fully understands the level and sources of emissions of different pollutants, it would be premature for the agency to decide which CAA regulatory tool or tools could be most effectively applied to protect public health and welfare from these emissions.

After the research team, which was led by Purdue University with EPA oversight, collected emissions data for NAEMS from 2007 to 2010, the EPA analyzed the data and developed two draft emissions-estimating methodologies in 2012, which the agency published for public comment.[7] The EPA also submitted the methodologies to the SAB, which reviewed the methodologies and issued a final report in 2013. As stated earlier, the SAB recommended that the agency develop more rigorous methodologies for estimating emissions. In the interim, the SAB provided recommendations for expanding the data set and commented on the applicability of the draft emission estimating methodologies developed in 2012. The SAB found that NAEMS "is sufficient to start the development and evaluation of simplified process-based modeling approaches that would reflect the heterogeneity of CAFOs" and recognized that "the EPA may need to apply statistical approaches to assess emissions while it is developing and evaluating process-based models."[8] Since 2013, the EPA has been continuing to develop the methodologies consistent with the SAB recommendations, though that work has been slowed by various factors, as discussed next.

The EPA's Office of the Inspector General reported in a 2017 assessment of the status of NAEMS that the development of emission-estimating methodologies slowed while the EPA decided how to address some of the SAB's concerns.[9] At the same time that many government programs faced cutbacks due to sequestration, this project was also affected. Since 2013, the EPA has continued the development of emission-estimating methodologies using its statistically based approach and has taken steps recommended by the SAB, such as acquiring additional data sets from other external studies and reassessing data completeness criteria for NAEMS. Additionally, a lack of technical expertise due to staff retirement/reassignment and resource constraints (including discontinuation of funding for the contract supporting the study) due to competing priorities further slowed progress. In responding to the OIG's draft report, the EPA's Office of Air and Radiation outlined its plan to complete NAEMS, including working in partnership with the EPA's Office of Research and Development and agreeing with the OIG's recommendations to conduct systematic planning for future development of emission-estimating methodologies by April 2018. Based on the results of the systematic planning, the EPA will determine the emission source and pollutant combinations for which emission-estimating methodologies can be developed

---

[6] The types of CAFOs monitored for NAEMS include operations feeding swine, dairy cows and broiler and layer poultry.

[7] See 77 FR at 14716-14717 (March 13, 2012).

[8] *SAB Review of Emissions-Estimating Methodologies for Broiler Animal Feeding Operations and for Lagoons and Basins at Swine and Dairy Animal Feeding Operations*, EPA-SAB-13-003 (2013).

[9] U.S. Environmental Protection Agency Office of Inspector General, *Eleven Years After Agreement, EPA Has Not Developed Reliable Emission Estimation Methods to Determine Whether Animal Feeding Operations Comply with Clean Air Act and Other Statutes*. Report No. 17-P-0396 (2017).

and establish milestones for issuing the draft methodologies. The EPA expects to post these milestones on the agency's website by July 2018.[10]

While the EPA is completing NAEMS, the agency also has been undertaking other activities under existing regulations and programs that will help characterize emissions from this sector and support the implementation of the comprehensive strategy to address CAFO emissions, as well as directly address specific components of petitioners' concerns about the effects on health and welfare of CAFOs' emissions. For example, the EPA's August 2016 final PM Implementation Rule includes requirements that will generate information that will assist the EPA in evaluating emissions of ammonia, which is a precursor of fine particles (less than 2.5 micrometers, $PM_{2.5}$). This rule requires states to demonstrate that they have plans that will reduce $PM_{2.5}$ to at or below the standard over a specified number of years.[11] As part of this process, the EPA recognizes that the treatment of $PM_{2.5}$ precursors, including ammonia from sources such as animal feeding operations, is important in developing a $PM_{2.5}$ attainment plan or implementing the NSR program in a nonattainment area.[12] Specifically, the rule's preamble states that the EPA's 2011 National Emissions Inventory estimated that livestock raising was the largest source of ammonia emissions, contributing about 54 percent of total ammonia emissions, but also acknowledges that there was some uncertainty in quantifying ammonia emissions and other $PM_{2.5}$ precursors from source categories including livestock and fertilizer application.[13] Therefore, the rule requires states to control ammonia emissions, if necessary, for expeditious attainment or if ammonia contributes significantly to $PM_{2.5}$ levels which exceed the standard in a particular nonattainment area. These control measures would be adopted through state regulations that are submitted to the EPA as part of a SIP. The EPA expects the requirements contained in the 2016 final PM Implementation rule to further improve its understanding of emissions at the same time that updates to the 2014 NEI and "other uses of the NAEMS data will help to reduce uncertainties in current ammonia inventories and will improve the quality of future emissions inventories needed for implementing the $PM_{2.5}$ NAAQS."[14] This set of improvements will significantly aid the EPA's comprehensive strategy for addressing CAFO emissions to account for CAFO emission reductions required by existing regulations.

Additionally, in September 2017, the EPA, with the USDA, released a best-management practices document for livestock and poultry production farms, including CAFOs, titled *Agricultural Air Quality Conservation Measures: Reference Guide for Poultry and Livestock Production Systems*.[15] This document identifies measures that have been demonstrated to reduce air emissions of pollutants (ammonia, greenhouse gases, hydrogen sulfide, PM and VOC) from farms. While it does not involve the quantification of emissions, the guide clearly describes different practices and control technologies that reduce emissions of these pollutants. The guide supports the EPA's efforts to characterize available control technologies and practices for different

---

[10] See, "Response to the Office of Inspector General's Draft Report, *Emissions From Animal Feeding Operations Remain Largely Uncharacterized More Than 7 Years After Study Completed* (Project No. OPE-FY16-0018), June 23, 2017.

[11] See, "Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements." 81 FR 58010 (August 24, 2016).

[12] See 81 FR at 58014 (August 24, 2016).

[13] See 81 FR at 58016, 58032 (August 24, 2016).

[14] See 81 FR at 58032 (August 24, 2016).

[15] Available at https://www.epa.gov/sites/production/files/2017-01/documents/web_placeholder.pdf.

pollutants, emission sources and subsectors of CAFOs, which would be required to establish control options under the EPA's comprehensive strategy to reduce emissions from this sector, consistent with the statutory factors and requirements within the CAA. Although the reference guide does not impose federal requirements to reduce CAFO emissions, the guide helps states make informed decisions when considering adoption of pollutant controls and helps CAFOs determine which practices may be suitable for implementation of emission reductions on a site-specific basis. In fact, the guide includes an appendix listing existing state programs or regulations pertaining to air emissions from livestock and poultry operations. States that are developing programs to reduce air emissions from CAFOs can use the appendix to study the different approaches as models and to examine their potential applicability to other states.

Finally, the EPA will also consider applicable reporting requirements for CAFOs in assessing the extent of current requirements for CAFOs, following a court decision under the Comprehensive Environmental Response, Compensation and Liability Act and the Emergency Planning and Community Right-to-Know Act. In April 2017, the United States Court of Appeals for the District of Columbia Circuit vacated a 2008 rule that exempted farms from reporting air releases of hazardous substances from animal waste under Section 103 of CERCLA and, if the farms stable or confine fewer than certain numbers of animals, under Section 304 of EPCRA.[16] Ammonia and hydrogen sulfide are considered hazardous substances under CERCLA and EPCRA. Farms releasing hazardous substances to air from animal wastes, equal to or greater than their reportable quantities, within any 24-hour period, must notify the appropriate authorities because the 2008 exemption no longer applies.[17] The EPA is unable to provide emission-estimating methodologies for use with these reports until NAEMS is complete and will give owners and operators guidance so that these reports may be based on broad-range estimates that include uncertainties. As the EPA implements its comprehensive strategy for CAFO emissions, the agency will ensure that the regulatory approach adopted to address CAFO sources of ammonia and hydrogen sulfide emissions is consistent with these requirements and avoids duplicative obligations to the maximum extent possible.

C. The EPA's Limited Resources and Need to Set Regulatory Priorities

Due to resource constraints, the EPA is never able to take all actions at the same time and must always consider its obligations and authorities under the CAA and other statutes when determining which activities to undertake at what point in time and how to most efficiently complete its regulatory mission. In recent years, the agency has been continually required to accomplish more activities with less resources, making prioritization and efficiency even more necessary. The Office of Air Quality Planning and Standards houses the Sector Policies and Programs Division, which would be charged with making a determination whether to list CAFOs under CAA section 111 and, if listed, promulgating CAA section 111 standards for CAFOs. The office has seen a general decline in its budget for several years. Further, SPPD already is required to take numerous final agency actions with mandatory deadlines set by the CAA and court orders. As an example of just one part of the division's work, SPPD currently faces court-ordered

[16] *Waterkeeper Alliance* v. *EPA*, 853 F.3d 527 (D.C. Cir. 2017).

[17] See https://www.epa.gov/epcra/cercla-and-epcra-reporting-requirements-air-releases-hazardous-substances-animal-waste-farms.

deadlines for the completion of 33 residual risk and technology reviews of NESHAP for specific source categories in the next three years[18] and is anticipating a court order setting deadlines for the completion of residual risk and technology reviews of the NESHAP for an additional nine source categories.[19] In addition to the work on these reviews, SPPD also has ongoing obligations related to NSPS, non-residual risk and technology review NESHAP projects, CAA section 129 incinerator regulations and activities related to these rulemakings, including responses to Freedom of Information Act requests, rule implementation support, rule amendments addressing issues that hinder implementation, development of various electronic information systems such as electronic data submittal systems and stakeholder outreach. Looking at the EPA more broadly, the EPA is engaged in a large number of regulatory actions under other parts of the CAA and under other statutes. The EPA's ongoing regulatory work is described in the EPA's Regulatory Agenda, which the EPA publishes semi-annually, and its Regulatory Plan, which is published annually.[20]

In considering whether and when to take the regulatory actions requested in the September 2009 Petition, the EPA must balance those possible actions with all of the other obligations and authorities that the EPA has under the CAA and other statutes. If staff and other agency resources were shifted to take the action that petitioners' request, they would not be available for other agency work. As discussed above, the EPA is pursuing a comprehensive strategy to study and appropriately address CAFO emissions, and the EPA is committing resources to implement that approach. After considering the agency's current CAFO strategy, and in light of all of the other tasks before the agency, the EPA does not believe it should shift additional resources at this time to determine whether to list and regulate CAFOs under CAA section 111.

IV. Conclusion

In light of the EPA's current comprehensive strategy to address CAFO emissions and the agency's limited resources and the need to prioritize its regulatory activity and to use its resources efficiently, the EPA is declining at this time to determine whether CAFOs should be listed as a source category under CAA section 111. Undertaking such a determination at this time is not consistent with its comprehensive strategy to address CAFO emissions and would therefore be premature. Additionally, it would require the agency to divert resources from other work to a degree the agency believes is inappropriate given its resource constraints and priorities. Thus, the EPA is denying your petition to list CAFOs as a source category under CAA section 111.

Though the EPA has declined at this time to consider whether to list CAFOs as a source category under CAA section 111, the agency may consider listing and regulation of CAFOs under CAA section 111 as part of its comprehensive strategy for this sector in the future. If the agency does so, it will at that time address any additional issues that may arise from considering such listing and subsequent regulation under CAA section 111, such as how to apply the CAA section 111 definition of stationary source to CAFOs.

---

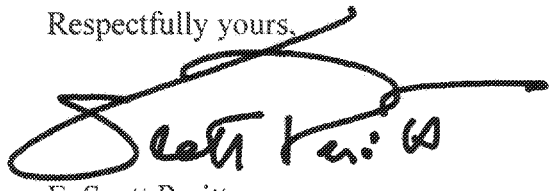
[18] See *California Communities Against Air Toxics*, Case No.15-512 (D.D.C.) (order dated March 13, 2017), and *Blue Ridge Environmental Defense League*, Case no. 16-364 (D.D.C.) (order dated March 22, 2017).

[19] See *Community In-Power and Development Association, Inc.* v. *Pruitt*, Case No 16-1074 (D.D.C.).

[20] More information on the EPA's Semiannual Regulatory Agenda and Regulatory Plan, including information on how to see the agency's most recent agenda and plan, is available at https://www.epa.gov/laws-regulations/regulatory-agendas-and-regulatory-plans.

For the reasons discussed above, the EPA is denying the September 2009 Petition to list CAFOs as a source category under CAA section 111. This is the EPA's final agency action on this petition.

Respectfully yours,



E. Scott Pruitt

E. Scott Pruitt
Administrator

December 15, 2017

Ms. Teresa DeAnda
President
El Comité para el Bienestar de Earlimart
P.O. Box 10725
Earlimart, California 93219

Dear Ms. DeAnda:

On September 21, 2009, the Humane Society of the United States and other environmental and citizen groups[1] (collectively, "petitioners") sent a letter to the U.S. Environmental Protection Agency petitioning the agency to list concentrated animal feeding operations as a category of sources under section 111(b)(1)(A) of the Clean Air Act and, thereafter, to promulgate standards of performance for new CAFOs under CAA section 111(b)(1)(B) and prescribe regulations for state-performance standards for existing CAFOs under CAA section 111(d).

I write to inform you that the EPA is denying this petition to list CAFOs as a category of sources under CAA section 111. This denial fully and finally responds to this petition and is the EPA's final agency action on this petition.

The EPA recognizes that emissions from this sector exist and has been undertaking multiple activities related to CAFO emissions as part of the agency's preferred approach to address these emissions. As discussed below, the EPA has developed and is implementing a comprehensive strategy to address CAFO air emissions that includes conducting a nationwide study of air emissions from CAFOs and developing improved emission-estimating methodologies for these emissions; gathering additional information about the magnitude of CAFO emissions and their control options; considering to what extent existing CAA regulations address CAFO emissions; evaluating the various CAA regulatory tools that might be used to further address CAFO emissions; and then determining which regulatory tool or tools would be most appropriate to regulate CAFO emissions to protect public health and welfare. Further, in determining the sequence and timing of undertaking regulatory action, the agency must consider the most efficient

[1] In addition to the Humane Society of the United States, the other petitioners are Association of Irritated Residents, Center on Race, Poverty and the Environment, Clean Air Task Force, Dairy Education Alliance, El Comité Para el Bienestar de Earlimart, Environmental Integrity Project, Friends of the Earth, Sierra Club and Waterkeeper Alliance.

1200 Pennsylvania Ave. NW • Mail Code 1101A • Washington, DC 20460 • (202) 564-4700 • Fax: (202) 501-1450

This paper is printed with vegetable-oil-based inks and is 100-percent postconsumer recycled material, chlorine-free-processed and recyclable.

and effective uses of its limited resources in light of ongoing budgetary uncertainties. Given the actions that the agency is undertaking and its resource constraints, the EPA is declining at this time to determine whether to list CAFOs as a source category under CAA section 111, and the agency, thus, is denying your petition. This denial is not based on a determination as to whether CAFOs meet the requirements for listing under CAA section 111(b)(1)(A). In the future, the EPA may initiate a process to determine whether to list CAFOs under CAA section 111(b)(1)(A); however, the agency has decided that it will not do so now.

I. Introduction

A. Statutory Provisions

Clean Air Act section 111(b)(1)(A) provides that the EPA shall "publish (and from time to time thereafter shall revise) a list of categories of stationary sources [and shall include a category on the list] if in [the Administrator's] judgment it causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare." For categories that the EPA lists under CAA section 111(b)(1)(A), CAA section 111(b)(1)(B) requires the EPA to propose federal standards of performance for new sources within the newly established category within one year of listing and then, after an opportunity for public comment, finalize the standards within one year of publishing the proposed standards.

B. Procedural History

On September 21, 2009, the petitioners sent a letter to the EPA petitioning the agency to list CAFOs and to promulgate standards of performance under CAA section 111 (which we will refer to as the "September 2009 Petition"). The petitioners specifically requested that the EPA undertake a rulemaking that:

(1) Finds that the air pollutants hydrogen sulfide and ammonia constitute air pollution that endangers U.S. public health or welfare;

(2) Announces the Administrator's judgment that emissions of methane, nitrous oxide, hydrogen sulfide, ammonia, volatile organic compounds and particulate matter from CAFOs contribute significantly to air pollution that is reasonably anticipated to endanger public health and welfare;

(3) Lists CAFOs as a category of stationary sources pursuant to CAA section 111(b)(1)(A); and

(4) Promulgates standards of performance for air emissions of methane, nitrous oxide, hydrogen sulfide, ammonia, VOC and PM from new and existing CAFOs under CAA sections 111(b) and 111(d).

September 2009 Petition, at page 4.

In January 2015, some of the petitioners (the Humane Society of the United States, Association of Irritated Residents, Environmental Integrity Project, Friends of the Earth and Sierra Club) filed a complaint with the United States District Court for the District of Columbia alleging that the EPA had unreasonably delayed in responding to the petition. The Court dismissed the case after finding that the plaintiffs had failed to notify the EPA 180 days before filing the suit, as required by CAA section 304(a).

On October 7, 2016, the same petitioners notified the EPA of their intent to file suit, as required under CAA section 304(a). On August 23, 2017, these petitioners filed a complaint with the United States District Court for the District of Columbia, alleging that the EPA had unreasonably delayed in responding to the September 2009 Petition.

II. Summary of the September 2009 Petition

In their September 2009 Petition, the petitioners cited the requirements of CAA section 111 and asserted that CAFOs meet the definition of a stationary source that emits air pollutants that endanger public health and welfare. The petitioners focused on listing CAFOs as a source category under the CAA in order for the EPA to promulgate performance standards for this sector to control emissions of the major pollutants emitted by CAFOs.

The petitioners included general statistics about the CAFO industry and asserted that CAFOs emit more pollutants than traditional, small-scale farms due to CAFOs' confinement and manure-management practices. The petitioners listed major pollutants emitted by CAFOs as being: (1) the greenhouse gases methane and nitrous oxide, (2) hydrogen sulfide, (3) ammonia, (4) PM and (5) VOC. The petitioners further discussed these pollutants, including the health and welfare effects they cause, in order to support the claim that emissions from CAFOs endanger public health. The petitioners cited examples of effects of exposure to these pollutants, including public health effects, such as respiratory illness, increased cancer rates, death and welfare effects, such as crop damage, atmospheric acidification, habitat loss and severe haze.

The petitioners asserted that CAFOs are significant contributors of these pollutants due to the number of CAFOs and the amount of waste they produce. The petitioners included examples of statistics from studies conducted at local, national and global scales regarding quantities of emissions of these pollutants and site-specific data related to public-nuisance complaints and individual facility reports. Finally, the petitioners listed various management practices and technologies that the petitioners assert have been demonstrated to reduce emissions of some of these pollutants from specific subsectors of CAFOs.

III. Response to Requests

After thoroughly considering the petitioners' request to list and regulate CAFOs under CAA section 111, the EPA has concluded that the complex nature of emission sources and emissions from this sector requires the agency to continue its comprehensive approach toward this sector by first evaluating CAFO emissions and then determining further regulatory actions to address these emissions. As discussed below, in responding to this petition, the EPA has considered (a) the need for more accurate methodologies to estimate air emissions from CAFOs, including the critical role of that information in implementing a comprehensive regulatory

strategy; (b) the agency's multiple ongoing actions taken to date in support of its comprehensive approach for addressing air emissions from CAFOs; and (c) the agency's limited resources and competing priorities.

A. The Need for and Importance of Developing Accurate CAFO Air Emissions Methodologies in the EPA's Comprehensive Approach

The interactive and highly complex nature of CAFO air emissions requires new, more accurate methodologies for estimating those emissions. Establishing sound emissions estimates is a fundamental step to establish a comprehensive, effective and efficient regulatory strategy to address CAFO air emissions. To this end, the agency first is gathering information to most accurately characterize the emissions from CAFOs, and, once the agency has sufficient information on CAFO emissions, it will determine the appropriate regulatory approach to address those emissions.

CAFOs can emit a variety of air pollutants, including those listed in the petition and summarized above, as well as hazardous air pollutants, carbon dioxide and reduced sulfur compounds. These pollutants are emitted from various sources at animal feeding operations, including confinement structures (e.g. barns, corrals), manure management systems and fields. Additionally, other agricultural equipment (e.g. engines, boilers) used on CAFOs emit pollutants; some of which are covered by other existing New Source Performance Standard programs. Many factors influence emissions, including the geographic location and environmental conditions (e.g. soil type, precipitation, humidity, temperature, water availability, wind conditions, terrain), management practices (e.g. feed, manure), animal characteristics (e.g. number, species, life stage), operating conditions (e.g. housing/confinement types) and general management practices. Due to the complex interactions of all of these factors, CAFO emissions cannot be standardized based solely on the number and type of animals at each operation. There are many scenarios when a CAFO with fewer animals will have higher emissions than a CAFO with a greater number of the same species of animals. Further, historic emission-measurement techniques, such as those used in some of the studies cited by the petitioners, vary widely, and many are imprecise and impacted by local conditions. This variability makes it difficult to compare or aggregate results of multiple studies for the purposes of developing simple emission-estimating methodologies. Therefore, historic studies on CAFO emissions provide insufficient information to accurately characterize the nature and extent of the emissions, which is necessary information not only for evaluating regulatory options, but also for reaching the conclusions needed to list a source category under CAA section 111(b)(1)(A), if the EPA ultimately decides to do so, as discussed further below.

Due to the uncertainties surrounding air emissions from CAFOs, the EPA and the U.S. Department of Agriculture jointly commissioned a report from the National Research Council titled *Air Emissions from Animal Feeding Operations: Current Knowledge, Future Needs*, which was published in 2003.[2] The report established the determination that it was not appropriate to estimate air emissions from CAFOs simply by multiplying the number of animal units by existing

[2] Ad Hoc Committee on Air Emissions from Animal Feeding Operations, Committee on Animal Nutrition, National Research Council, *Air Emissions from Animal Feeding Operations: Current Knowledge, Future Needs* (2003). ISBN: 0-309-50758-8. http://www.nap.edu/catalog/10586.html.

emission factors for most pollutants. Additionally, the report stated that process-based modeling "will help provide scientifically sound estimates of air emissions from AFOs for use in regulatory and management programs."[3] Similarly, the EPA's Science Advisory Board reiterated this conclusion when it recommended in 2013 that the EPA develop process-based modeling approaches to predict air emissions.[4]

Developing accurate methodologies to estimate air emissions from CAFOs is an important first step under the EPA's implementation of its comprehensive strategy to address those emissions. Improved emission-estimation methodologies will both better describe the emission sources on a farm and enhance the EPA's emission inventories of these pollutants. The agency uses emissions inventories for a variety of policy and regulatory purposes, and these inventories are important in determining the extent to which CAFOs are subject to existing regulatory requirements and in developing any future regulations. These purposes include: (1) assessing a sector's contribution to nationwide emissions of a pollutant, an assessment that would be used to consider whether (as petitioners contend) CAFOs significantly cause or contribute to emissions of pollutants that endanger public health and welfare; (2) supporting boundary determinations in the initial area designation process following the promulgation of new or revised National Ambient Air Quality Standards, which impacts the emission sources that are considered for control under a state implementation plan; (3) evaluating the potential public health and welfare benefits of proposed regulations; and (4) supporting state and EPA air-quality modeling efforts, which are used for Prevention of Significant Deterioration and New Source Review permitting, as well as to develop SIPs that may include regulatory measures for CAFOs to reduce emissions of criteria pollutants or their precursors (such as PM and ammonia). Once the EPA finalizes CAFO emission-estimating methodologies, the agency can use them to improve emissions inventories, which will lead to more accurate understanding of the amounts of emissions from various emission sources on a farm. These improved emissions inventories will also allow the EPA to more accurately compare the contribution of CAFO emissions to regional and national levels of those pollutants.

With this better understanding and more accurate information, the EPA then can best evaluate the impacts of CAFO air emissions on public health and welfare and implement a comprehensive regulatory strategy to best address those emissions from the animal feeding sector under the CAA, with consideration of the multiple regulatory programs that may affect the sector and, depending on what regulatory approach is warranted, the most appropriate, effective and efficient means within each program. The CAA provides multiple ways to address emissions from CAFOs, depending on the target pollutant and nature of the emissions (point or fugitive). For example, the NAAQS program addresses the regulation of criteria pollutants from all sources, including stationary sources, National Emission Standards for Hazardous Air Pollutants promulgated under CAA section 112 address HAP from stationary sources, and NSPS and emissions guidelines under CAA section 111 cover certain pollutants as provided in that provision. Additionally, Title V operating permits and NSR/PSD pre-construction permits are required for sources in any source category subject to air-permitting requirements. While specific CAFOs are

---

[3] Ibid.

[4] *SAB Review of Emissions-Estimating Methodologies for Broiler Animal Feeding Operations and for Lagoons and Basins at Swine and Dairy Animal Feeding Operations* (2013). EPA-SAB-13-003 Available at: https://yosemite.epa.gov/sab/SABPRODUCT.NSF/81e39f4c09954fcb85256ead006be86e/ae6639dd6b79360e852579a4004e5529!OpenDocument&TableRow=2.3#2.

subject to existing requirements under some of these programs (e.g. Title V operating permits, PM NAAQS), the EPA has not promulgated standards specifically designed to reduce air emissions from CAFOs due to the need to accurately characterize emissions from the sector first.

Even if the EPA ultimately were to decide to regulate CAFOs under CAA section 111 as part of its regulatory strategy, the EPA would need additional information about CAFO emissions in order to determine the scope of the listing and to promulgate standards. For example, when developing regulations under CAA section 111, the agency must determine how to define the source category, which pollutants to address, which emission sources to control and what degree of emission reductions are achievable. Once the EPA finalizes new CAFO emission-estimating methodologies, the agency will be able to consider emissions of each significant pollutant from CAFOs as a whole sector, by sub-sector (e.g. specific animal species) and by emission source (e.g. barns, lagoons) and better identify and assess specific regulatory approaches to address those emissions. Having this information will aid the EPA in multiple ways, including those outlined below, if it decides to list and regulate CAFOs under CAA section 111.

First, the agency must determine the appropriate scope of the source category or categories to list. With respect to the scope of possible source categories, if the significant pollutants differ based on emission source and animal species, the agency may determine that having multiple source categories based on specific animal species and/or emission sources (e.g. cattle feedlots, swine lagoons) is more appropriate than listing "CAFOs" as a single source category. This level of information, which the EPA does not yet have and is working to develop, is critical to ensuring the most effective and efficient regulatory strategy and would allow the agency to make a considered judgement as to whether a listed source category should be defined broadly or narrowly. Such a determination would be consistent with other regulatory approaches under CAA section 111 where, depending on the sector, the agency has either listed a category broadly or focused on specific emission points.[5]

Second, additional information about the nature and quantity of pollutants emitted from CAFOs will ensure that the EPA has adequate information to make a listing decision regarding whether CAFOs' emissions of one or more of the pollutants in question "cause, or contribute significantly to, air pollution, which may reasonably be anticipated to endanger public health and welfare." The determination of whether CAFO emissions of methane, nitrous oxide, hydrogen sulfide, ammonia, PM, VOC or other pollutants meet this condition would be informed by the improved emission inventories discussed above.

Third, setting standards under CAA section 111 requires the EPA to determine the "best system of emission reduction" (BSER) for the listed source category and determine what degree

[5] For example, the standards in 40 CFR part 60, subpart BBB cover a given industrial sector, the rubber tire industry, in a single source category by defining emission limits for a single pollutant (VOC) from multiple types of facilities, including undertread cementing, sidewall cementing, tread end cementing, bead cementing, green tire spraying and Michelin-A, Michelin-B, and Michelin-C automatic operations. Alternately, in 40 CFR part 60, subparts T, U, V, W and X, the agency promulgated standards for separate source categories within a given industrial sector, the phosphate fertilizer industry (i.e. wet-process phosphoric acid, superphosphoric acid, diammonium phosphate, triple superphosphate and granular triple superphosphate plants, respectively). In other cases, the EPA sets standards for a specific emission source, regardless of industrial sector, such as the regulations for electric utility steam-generating units (boilers) limiting emissions of PM, nitrogen oxides and sulfur dioxide in 40 CFR part 60, subpart Da.

of emission reduction is achievable from the application of that BSER to sources in the source category. The additional information that the EPA is gathering will help it identify emission controls currently used at CAFOs. The emission-estimating methodologies that the agency is finalizing will allow the EPA to estimate potential emission reductions resulting from the application of various control options in a standardized way, which would aid the evaluation of the BSER for the source category(ies) in a potential future rulemaking. CAA section 111(b)(1)(B) requires the EPA to propose standards within one year of listing a source category and to promulgate final standards within one year of proposal. This limited timeframe for proposal and promulgation of standards necessitates that EPA gather sufficient and sufficiently reliable information to facilitate consideration of control options and the development of BSER prior to listing a new source category; otherwise, it would be difficult for the EPA to meet these statutory deadlines.

In sum, having more accurate emissions-estimating methodologies and the subsequent, improved inventories ensures that the EPA will be able to implement an overarching, effective and efficient regulatory strategy to address CAFO emissions. The emission-estimating methodologies will also improve estimates of the impact of current requirements for CAFOs and potential impact of any proposed requirements. This will help the agency determine the most appropriate approach with respect to air emissions from CAFOs and avoid potential problems, such as duplicative and overlapping regulatory requirements, that could arise from addressing these emissions in a piecemeal fashion under multiple CAA programs without considering how the various programs work together. Thus, this approach will allow the agency to ensure consistency between existing and proposed additional requirements and avoid creating unnecessary regulatory burden for CAFOs. For all of these reasons, development of the emission-estimating methodologies, as advised by the National Research Council and the EPA's SAB, is a fundamental initial step under the comprehensive strategy that the EPA is implementing to reduce air emissions from CAFOs. Our ongoing steps and expected time frame for addressing these issues is discussed in the next section.

Furthermore, once the EPA obtains the necessary information on the nature and extent of CAFO emissions, if the EPA determines that additional action to address CAFO emissions is warranted under CAA section 111 or otherwise, the improved emissions information will be relevant in deciding the timing of further action on CAFO emissions. This is because the timing of potential regulatory action on CAFO emissions must be weighed against other actions that the EPA could take to address emissions of these same pollutants from other source categories. For example, the EPA might determine that while certain pollutants from CAFOs warrant further action, other sources of those pollutants should be addressed first, based on the relative level of overall emissions of those pollutants from each of the source categories, the location of the emission sources within each source category or other factors.

B. The EPA's Ongoing Steps to Implement the Agency's Comprehensive Strategy and Reduce Emissions from CAFOs

To better understand and evaluate emissions from CAFOs, the EPA has been undertaking the National Air Emissions Monitoring Study. The study is a fundamental step that the agency intends to complete in order to determine how to best address emissions from CAFOs within the CAA's regulatory framework. NAEMS will help the agency develop methodologies to estimate

emissions of ammonia, hydrogen sulfide, PM and VOC from a wide variety of types of CAFOs.[6] These methodologies can better inform the estimation of emissions and exposures related to point sources located at these operations. Until the EPA more fully understands the level and sources of emissions of different pollutants, it would be premature for the agency to decide which CAA regulatory tool or tools could be most effectively applied to protect public health and welfare from these emissions.

After the research team, which was led by Purdue University with EPA oversight, collected emissions data for NAEMS from 2007 to 2010, the EPA analyzed the data and developed two draft emissions-estimating methodologies in 2012, which the agency published for public comment.[7] The EPA also submitted the methodologies to the SAB, which reviewed the methodologies and issued a final report in 2013. As stated earlier, the SAB recommended that the agency develop more rigorous methodologies for estimating emissions. In the interim, the SAB provided recommendations for expanding the data set and commented on the applicability of the draft emission estimating methodologies developed in 2012. The SAB found that NAEMS "is sufficient to start the development and evaluation of simplified process-based modeling approaches that would reflect the heterogeneity of CAFOs" and recognized that "the EPA may need to apply statistical approaches to assess emissions while it is developing and evaluating process-based models."[8] Since 2013, the EPA has been continuing to develop the methodologies consistent with the SAB recommendations, though that work has been slowed by various factors, as discussed next.

The EPA's Office of the Inspector General reported in a 2017 assessment of the status of NAEMS that the development of emission-estimating methodologies slowed while the EPA decided how to address some of the SAB's concerns.[9] At the same time that many government programs faced cutbacks due to sequestration, this project was also affected. Since 2013, the EPA has continued the development of emission-estimating methodologies using its statistically based approach and has taken steps recommended by the SAB, such as acquiring additional data sets from other external studies and reassessing data completeness criteria for NAEMS. Additionally, a lack of technical expertise due to staff retirement/reassignment and resource constraints (including discontinuation of funding for the contract supporting the study) due to competing priorities further slowed progress. In responding to the OIG's draft report, the EPA's Office of Air and Radiation outlined its plan to complete NAEMS, including working in partnership with the EPA's Office of Research and Development and agreeing with the OIG's recommendations to conduct systematic planning for future development of emission-estimating methodologies by April 2018. Based on the results of the systematic planning, the EPA will determine the emission source and pollutant combinations for which emission-estimating methodologies can be developed

---

[6] The types of CAFOs monitored for NAEMS include operations feeding swine, dairy cows and broiler and layer poultry.

[7] See 77 FR at 14716-14717 (March 13, 2012).

[8] *SAB Review of Emissions-Estimating Methodologies for Broiler Animal Feeding Operations and for Lagoons and Basins at Swine and Dairy Animal Feeding Operations*, EPA-SAB-13-003 (2013).

[9] U.S. Environmental Protection Agency Office of Inspector General, *Eleven Years After Agreement, EPA Has Not Developed Reliable Emission Estimation Methods to Determine Whether Animal Feeding Operations Comply with Clean Air Act and Other Statutes*. Report No. 17-P-0396 (2017).

and establish milestones for issuing the draft methodologies. The EPA expects to post these milestones on the agency's website by July 2018.[10]

While the EPA is completing NAEMS, the agency also has been undertaking other activities under existing regulations and programs that will help characterize emissions from this sector and support the implementation of the comprehensive strategy to address CAFO emissions, as well as directly address specific components of petitioners' concerns about the effects on health and welfare of CAFOs' emissions. For example, the EPA's August 2016 final PM Implementation Rule includes requirements that will generate information that will assist the EPA in evaluating emissions of ammonia, which is a precursor of fine particles (less than 2.5 micrometers, $PM_{2.5}$). This rule requires states to demonstrate that they have plans that will reduce $PM_{2.5}$ to at or below the standard over a specified number of years.[11] As part of this process, the EPA recognizes that the treatment of $PM_{2.5}$ precursors, including ammonia from sources such as animal feeding operations, is important in developing a $PM_{2.5}$ attainment plan or implementing the NSR program in a nonattainment area.[12] Specifically, the rule's preamble states that the EPA's 2011 National Emissions Inventory estimated that livestock raising was the largest source of ammonia emissions, contributing about 54 percent of total ammonia emissions, but also acknowledges that there was some uncertainty in quantifying ammonia emissions and other $PM_{2.5}$ precursors from source categories including livestock and fertilizer application.[13] Therefore, the rule requires states to control ammonia emissions, if necessary, for expeditious attainment or if ammonia contributes significantly to $PM_{2.5}$ levels which exceed the standard in a particular nonattainment area. These control measures would be adopted through state regulations that are submitted to the EPA as part of a SIP. The EPA expects the requirements contained in the 2016 final PM Implementation rule to further improve its understanding of emissions at the same time that updates to the 2014 NEI and "other uses of the NAEMS data will help to reduce uncertainties in current ammonia inventories and will improve the quality of future emissions inventories needed for implementing the $PM_{2.5}$ NAAQS."[14] This set of improvements will significantly aid the EPA's comprehensive strategy for addressing CAFO emissions to account for CAFO emission reductions required by existing regulations.

Additionally, in September 2017, the EPA, with the USDA, released a best-management practices document for livestock and poultry production farms, including CAFOs, titled *Agricultural Air Quality Conservation Measures: Reference Guide for Poultry and Livestock Production Systems*.[15] This document identifies measures that have been demonstrated to reduce air emissions of pollutants (ammonia, greenhouse gases, hydrogen sulfide, PM and VOC) from farms. While it does not involve the quantification of emissions, the guide clearly describes different practices and control technologies that reduce emissions of these pollutants. The guide supports the EPA's efforts to characterize available control technologies and practices for different

---

[10] See, "Response to the Office of Inspector General's Draft Report, *Emissions From Animal Feeding Operations Remain Largely Uncharacterized More Than 7 Years After Study Completed* (Project No. OPE-FY16-0018), June 23, 2017.

[11] See, "Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements." 81 FR 58010 (August 24, 2016).

[12] See 81 FR at 58014 (August 24, 2016).

[13] See 81 FR at 58016, 58032 (August 24, 2016).

[14] See 81 FR at 58032 (August 24, 2016).

[15] Available at https://www.epa.gov/sites/production/files/2017-01/documents/web_placeholder.pdf.

pollutants, emission sources and subsectors of CAFOs, which would be required to establish control options under the EPA's comprehensive strategy to reduce emissions from this sector, consistent with the statutory factors and requirements within the CAA. Although the reference guide does not impose federal requirements to reduce CAFO emissions, the guide helps states make informed decisions when considering adoption of pollutant controls and helps CAFOs determine which practices may be suitable for implementation of emission reductions on a site-specific basis. In fact, the guide includes an appendix listing existing state programs or regulations pertaining to air emissions from livestock and poultry operations. States that are developing programs to reduce air emissions from CAFOs can use the appendix to study the different approaches as models and to examine their potential applicability to other states.

Finally, the EPA will also consider applicable reporting requirements for CAFOs in assessing the extent of current requirements for CAFOs, following a court decision under the Comprehensive Environmental Response, Compensation and Liability Act and the Emergency Planning and Community Right-to-Know Act. In April 2017, the United States Court of Appeals for the District of Columbia Circuit vacated a 2008 rule that exempted farms from reporting air releases of hazardous substances from animal waste under Section 103 of CERCLA and, if the farms stable or confine fewer than certain numbers of animals, under Section 304 of EPCRA.[16] Ammonia and hydrogen sulfide are considered hazardous substances under CERCLA and EPCRA. Farms releasing hazardous substances to air from animal wastes, equal to or greater than their reportable quantities, within any 24-hour period, must notify the appropriate authorities because the 2008 exemption no longer applies.[17] The EPA is unable to provide emission-estimating methodologies for use with these reports until NAEMS is complete and will give owners and operators guidance so that these reports may be based on broad-range estimates that include uncertainties. As the EPA implements its comprehensive strategy for CAFO emissions, the agency will ensure that the regulatory approach adopted to address CAFO sources of ammonia and hydrogen sulfide emissions is consistent with these requirements and avoids duplicative obligations to the maximum extent possible.

C. The EPA's Limited Resources and Need to Set Regulatory Priorities

Due to resource constraints, the EPA is never able to take all actions at the same time and must always consider its obligations and authorities under the CAA and other statutes when determining which activities to undertake at what point in time and how to most efficiently complete its regulatory mission. In recent years, the agency has been continually required to accomplish more activities with less resources, making prioritization and efficiency even more necessary. The Office of Air Quality Planning and Standards houses the Sector Policies and Programs Division, which would be charged with making a determination whether to list CAFOs under CAA section 111 and, if listed, promulgating CAA section 111 standards for CAFOs. The office has seen a general decline in its budget for several years. Further, SPPD already is required to take numerous final agency actions with mandatory deadlines set by the CAA and court orders. As an example of just one part of the division's work, SPPD currently faces court-ordered

[16] *Waterkeeper Alliance* v. *EPA*, 853 F.3d 527 (D.C. Cir. 2017).

[17] See https://www.epa.gov/epcra/cercla-and-epcra-reporting-requirements-air-releases-hazardous-substances-animal-waste-farms.

deadlines for the completion of 33 residual risk and technology reviews of NESHAP for specific source categories in the next three years[18] and is anticipating a court order setting deadlines for the completion of residual risk and technology reviews of the NESHAP for an additional nine source categories.[19] In addition to the work on these reviews, SPPD also has ongoing obligations related to NSPS, non-residual risk and technology review NESHAP projects, CAA section 129 incinerator regulations and activities related to these rulemakings, including responses to Freedom of Information Act requests, rule implementation support, rule amendments addressing issues that hinder implementation, development of various electronic information systems such as electronic data submittal systems and stakeholder outreach. Looking at the EPA more broadly, the EPA is engaged in a large number of regulatory actions under other parts of the CAA and under other statutes. The EPA's ongoing regulatory work is described in the EPA's Regulatory Agenda, which the EPA publishes semi-annually, and its Regulatory Plan, which is published annually.[20]

In considering whether and when to take the regulatory actions requested in the September 2009 Petition, the EPA must balance those possible actions with all of the other obligations and authorities that the EPA has under the CAA and other statutes. If staff and other agency resources were shifted to take the action that petitioners' request, they would not be available for other agency work. As discussed above, the EPA is pursuing a comprehensive strategy to study and appropriately address CAFO emissions, and the EPA is committing resources to implement that approach. After considering the agency's current CAFO strategy, and in light of all of the other tasks before the agency, the EPA does not believe it should shift additional resources at this time to determine whether to list and regulate CAFOs under CAA section 111.

IV. Conclusion

In light of the EPA's current comprehensive strategy to address CAFO emissions and the agency's limited resources and the need to prioritize its regulatory activity and to use its resources efficiently, the EPA is declining at this time to determine whether CAFOs should be listed as a source category under CAA section 111. Undertaking such a determination at this time is not consistent with its comprehensive strategy to address CAFO emissions and would therefore be premature. Additionally, it would require the agency to divert resources from other work to a degree the agency believes is inappropriate given its resource constraints and priorities. Thus, the EPA is denying your petition to list CAFOs as a source category under CAA section 111.

Though the EPA has declined at this time to consider whether to list CAFOs as a source category under CAA section 111, the agency may consider listing and regulation of CAFOs under CAA section 111 as part of its comprehensive strategy for this sector in the future. If the agency does so, it will at that time address any additional issues that may arise from considering such listing and subsequent regulation under CAA section 111, such as how to apply the CAA section 111 definition of stationary source to CAFOs.

---

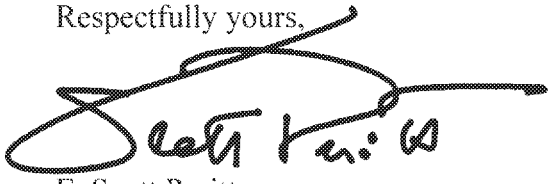
[18] See *California Communities Against Air Toxics*, Case No.15-512 (D.D.C.) (order dated March 13, 2017), and *Blue Ridge Environmental Defense League*, Case no. 16-364 (D.D.C.) (order dated March 22, 2017).

[19] See *Community In-Power and Development Association, Inc.* v. *Pruitt*, Case No 16-1074 (D.D.C.).

[20] More information on the EPA's Semiannual Regulatory Agenda and Regulatory Plan, including information on how to see the agency's most recent agenda and plan, is available at https://www.epa.gov/laws-regulations/regulatory-agendas-and-regulatory-plans.

For the reasons discussed above, the EPA is denying the September 2009 Petition to list CAFOs as a source category under CAA section 111. This is the EPA's final agency action on this petition.

Respectfully yours,



E. Scott Pruitt

E. Scott Pruitt
Administrator

December 15, 2017

Mr. Abel Russ
Attorney
Environmental Integrity Project
1000 Vermont Avenue, NW, Suite 1100
Washington, D.C. 20005

Dear Mr. Russ:

On September 21, 2009, the Humane Society of the United States and other environmental and citizen groups[1] (collectively, "petitioners") sent a letter to the U.S. Environmental Protection Agency petitioning the agency to list concentrated animal feeding operations as a category of sources under section 111(b)(1)(A) of the Clean Air Act and, thereafter, to promulgate standards of performance for new CAFOs under CAA section 111(b)(1)(B) and prescribe regulations for state-performance standards for existing CAFOs under CAA section 111(d).

I write to inform you that the EPA is denying this petition to list CAFOs as a category of sources under CAA section 111. This denial fully and finally responds to this petition and is the EPA's final agency action on this petition.

The EPA recognizes that emissions from this sector exist and has been undertaking multiple activities related to CAFO emissions as part of the agency's preferred approach to address these emissions. As discussed below, the EPA has developed and is implementing a comprehensive strategy to address CAFO air emissions that includes conducting a nationwide study of air emissions from CAFOs and developing improved emission-estimating methodologies for these emissions; gathering additional information about the magnitude of CAFO emissions and their control options; considering to what extent existing CAA regulations address CAFO emissions; evaluating the various CAA regulatory tools that might be used to further address CAFO emissions; and then determining which regulatory tool or tools would be most appropriate to regulate CAFO emissions to protect public health and welfare. Further, in determining the sequence and timing of undertaking regulatory action, the agency must consider the most efficient

[1] In addition to the Humane Society of the United States, the other petitioners are Association of Irritated Residents, Center on Race, Poverty and the Environment, Clean Air Task Force, Dairy Education Alliance, El Comité Para el Bienestar de Earlimart, Environmental Integrity Project, Friends of the Earth, Sierra Club and Waterkeeper Alliance.

1200 Pennsylvania Ave. NW • Mail Code 1101A • Washington, DC 20460 • (202) 564-4700 • Fax: (202) 501-1450

This paper is printed with vegetable-oil-based inks and is 100-percent postconsumer recycled material, chlorine-free-processed and recyclable.

and effective uses of its limited resources in light of ongoing budgetary uncertainties. Given the actions that the agency is undertaking and its resource constraints, the EPA is declining at this time to determine whether to list CAFOs as a source category under CAA section 111, and the agency, thus, is denying your petition. This denial is not based on a determination as to whether CAFOs meet the requirements for listing under CAA section 111(b)(1)(A). In the future, the EPA may initiate a process to determine whether to list CAFOs under CAA section 111(b)(1)(A); however, the agency has decided that it will not do so now.

I. Introduction

A. Statutory Provisions

Clean Air Act section 111(b)(1)(A) provides that the EPA shall "publish (and from time to time thereafter shall revise) a list of categories of stationary sources [and shall include a category on the list] if in [the Administrator's] judgment it causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare." For categories that the EPA lists under CAA section 111(b)(1)(A), CAA section 111(b)(1)(B) requires the EPA to propose federal standards of performance for new sources within the newly established category within one year of listing and then, after an opportunity for public comment, finalize the standards within one year of publishing the proposed standards.

B. Procedural History

On September 21, 2009, the petitioners sent a letter to the EPA petitioning the agency to list CAFOs and to promulgate standards of performance under CAA section 111 (which we will refer to as the "September 2009 Petition"). The petitioners specifically requested that the EPA undertake a rulemaking that:

(1) Finds that the air pollutants hydrogen sulfide and ammonia constitute air pollution that endangers U.S. public health or welfare;

(2) Announces the Administrator's judgment that emissions of methane, nitrous oxide, hydrogen sulfide, ammonia, volatile organic compounds and particulate matter from CAFOs contribute significantly to air pollution that is reasonably anticipated to endanger public health and welfare;

(3) Lists CAFOs as a category of stationary sources pursuant to CAA section 111(b)(1)(A); and

(4) Promulgates standards of performance for air emissions of methane, nitrous oxide, hydrogen sulfide, ammonia, VOC and PM from new and existing CAFOs under CAA sections 111(b) and 111(d).

September 2009 Petition, at page 4.

In January 2015, some of the petitioners (the Humane Society of the United States, Association of Irritated Residents, Environmental Integrity Project, Friends of the Earth and Sierra Club) filed a complaint with the United States District Court for the District of Columbia alleging that the EPA had unreasonably delayed in responding to the petition. The Court dismissed the case after finding that the plaintiffs had failed to notify the EPA 180 days before filing the suit, as required by CAA section 304(a).

On October 7, 2016, the same petitioners notified the EPA of their intent to file suit, as required under CAA section 304(a). On August 23, 2017, these petitioners filed a complaint with the United States District Court for the District of Columbia, alleging that the EPA had unreasonably delayed in responding to the September 2009 Petition.

II. Summary of the September 2009 Petition

In their September 2009 Petition, the petitioners cited the requirements of CAA section 111 and asserted that CAFOs meet the definition of a stationary source that emits air pollutants that endanger public health and welfare. The petitioners focused on listing CAFOs as a source category under the CAA in order for the EPA to promulgate performance standards for this sector to control emissions of the major pollutants emitted by CAFOs.

The petitioners included general statistics about the CAFO industry and asserted that CAFOs emit more pollutants than traditional, small-scale farms due to CAFOs' confinement and manure-management practices. The petitioners listed major pollutants emitted by CAFOs as being: (1) the greenhouse gases methane and nitrous oxide, (2) hydrogen sulfide, (3) ammonia, (4) PM and (5) VOC. The petitioners further discussed these pollutants, including the health and welfare effects they cause, in order to support the claim that emissions from CAFOs endanger public health. The petitioners cited examples of effects of exposure to these pollutants, including public health effects, such as respiratory illness, increased cancer rates, death and welfare effects, such as crop damage, atmospheric acidification, habitat loss and severe haze.

The petitioners asserted that CAFOs are significant contributors of these pollutants due to the number of CAFOs and the amount of waste they produce. The petitioners included examples of statistics from studies conducted at local, national and global scales regarding quantities of emissions of these pollutants and site-specific data related to public-nuisance complaints and individual facility reports. Finally, the petitioners listed various management practices and technologies that the petitioners assert have been demonstrated to reduce emissions of some of these pollutants from specific subsectors of CAFOs.

III. Response to Requests

After thoroughly considering the petitioners' request to list and regulate CAFOs under CAA section 111, the EPA has concluded that the complex nature of emission sources and emissions from this sector requires the agency to continue its comprehensive approach toward this sector by first evaluating CAFO emissions and then determining further regulatory actions to address these emissions. As discussed below, in responding to this petition, the EPA has considered (a) the need for more accurate methodologies to estimate air emissions from CAFOs, including the critical role of that information in implementing a comprehensive regulatory

strategy; (b) the agency's multiple ongoing actions taken to date in support of its comprehensive approach for addressing air emissions from CAFOs; and (c) the agency's limited resources and competing priorities.

A. The Need for and Importance of Developing Accurate CAFO Air Emissions Methodologies in the EPA's Comprehensive Approach

The interactive and highly complex nature of CAFO air emissions requires new, more accurate methodologies for estimating those emissions. Establishing sound emissions estimates is a fundamental step to establish a comprehensive, effective and efficient regulatory strategy to address CAFO air emissions. To this end, the agency first is gathering information to most accurately characterize the emissions from CAFOs, and, once the agency has sufficient information on CAFO emissions, it will determine the appropriate regulatory approach to address those emissions.

CAFOs can emit a variety of air pollutants, including those listed in the petition and summarized above, as well as hazardous air pollutants, carbon dioxide and reduced sulfur compounds. These pollutants are emitted from various sources at animal feeding operations, including confinement structures (e.g. barns, corrals), manure management systems and fields. Additionally, other agricultural equipment (e.g. engines, boilers) used on CAFOs emit pollutants; some of which are covered by other existing New Source Performance Standard programs. Many factors influence emissions, including the geographic location and environmental conditions (e.g. soil type, precipitation, humidity, temperature, water availability, wind conditions, terrain), management practices (e.g. feed, manure), animal characteristics (e.g. number, species, life stage), operating conditions (e.g. housing/confinement types) and general management practices. Due to the complex interactions of all of these factors, CAFO emissions cannot be standardized based solely on the number and type of animals at each operation. There are many scenarios when a CAFO with fewer animals will have higher emissions than a CAFO with a greater number of the same species of animals. Further, historic emission-measurement techniques, such as those used in some of the studies cited by the petitioners, vary widely, and many are imprecise and impacted by local conditions. This variability makes it difficult to compare or aggregate results of multiple studies for the purposes of developing simple emission-estimating methodologies. Therefore, historic studies on CAFO emissions provide insufficient information to accurately characterize the nature and extent of the emissions, which is necessary information not only for evaluating regulatory options, but also for reaching the conclusions needed to list a source category under CAA section 111(b)(1)(A), if the EPA ultimately decides to do so, as discussed further below.

Due to the uncertainties surrounding air emissions from CAFOs, the EPA and the U.S. Department of Agriculture jointly commissioned a report from the National Research Council titled *Air Emissions from Animal Feeding Operations: Current Knowledge, Future Needs*, which was published in 2003.[2] The report established the determination that it was not appropriate to estimate air emissions from CAFOs simply by multiplying the number of animal units by existing

[2] Ad Hoc Committee on Air Emissions from Animal Feeding Operations, Committee on Animal Nutrition, National Research Council, *Air Emissions from Animal Feeding Operations: Current Knowledge, Future Needs* (2003). ISBN: 0-309-50758-8. http://www.nap.edu/catalog/10586.html.

emission factors for most pollutants. Additionally, the report stated that process-based modeling "will help provide scientifically sound estimates of air emissions from AFOs for use in regulatory and management programs."[3] Similarly, the EPA's Science Advisory Board reiterated this conclusion when it recommended in 2013 that the EPA develop process-based modeling approaches to predict air emissions.[4]

Developing accurate methodologies to estimate air emissions from CAFOs is an important first step under the EPA's implementation of its comprehensive strategy to address those emissions. Improved emission-estimation methodologies will both better describe the emission sources on a farm and enhance the EPA's emission inventories of these pollutants. The agency uses emissions inventories for a variety of policy and regulatory purposes, and these inventories are important in determining the extent to which CAFOs are subject to existing regulatory requirements and in developing any future regulations. These purposes include: (1) assessing a sector's contribution to nationwide emissions of a pollutant, an assessment that would be used to consider whether (as petitioners contend) CAFOs significantly cause or contribute to emissions of pollutants that endanger public health and welfare; (2) supporting boundary determinations in the initial area designation process following the promulgation of new or revised National Ambient Air Quality Standards, which impacts the emission sources that are considered for control under a state implementation plan; (3) evaluating the potential public health and welfare benefits of proposed regulations; and (4) supporting state and EPA air-quality modeling efforts, which are used for Prevention of Significant Deterioration and New Source Review permitting, as well as to develop SIPs that may include regulatory measures for CAFOs to reduce emissions of criteria pollutants or their precursors (such as PM and ammonia). Once the EPA finalizes CAFO emission-estimating methodologies, the agency can use them to improve emissions inventories, which will lead to more accurate understanding of the amounts of emissions from various emission sources on a farm. These improved emissions inventories will also allow the EPA to more accurately compare the contribution of CAFO emissions to regional and national levels of those pollutants.

With this better understanding and more accurate information, the EPA then can best evaluate the impacts of CAFO air emissions on public health and welfare and implement a comprehensive regulatory strategy to best address those emissions from the animal feeding sector under the CAA, with consideration of the multiple regulatory programs that may affect the sector and, depending on what regulatory approach is warranted, the most appropriate, effective and efficient means within each program. The CAA provides multiple ways to address emissions from CAFOs, depending on the target pollutant and nature of the emissions (point or fugitive). For example, the NAAQS program addresses the regulation of criteria pollutants from all sources, including stationary sources, National Emission Standards for Hazardous Air Pollutants promulgated under CAA section 112 address HAP from stationary sources, and NSPS and emissions guidelines under CAA section 111 cover certain pollutants as provided in that provision. Additionally, Title V operating permits and NSR/PSD pre-construction permits are required for sources in any source category subject to air-permitting requirements. While specific CAFOs are

---

[3] Ibid.

[4] *SAB Review of Emissions-Estimating Methodologies for Broiler Animal Feeding Operations and for Lagoons and Basins at Swine and Dairy Animal Feeding Operations* (2013). EPA-SAB-13-003 Available at: https://yosemite.epa.gov/sab/SABPRODUCT.NSF/81e39f4c09954fcb85256ead006be86e/ae6639dd6b79360e852579a4004e5529!OpenDocument&TableRow=2.3#2.

subject to existing requirements under some of these programs (e.g. Title V operating permits, PM NAAQS), the EPA has not promulgated standards specifically designed to reduce air emissions from CAFOs due to the need to accurately characterize emissions from the sector first.

Even if the EPA ultimately were to decide to regulate CAFOs under CAA section 111 as part of its regulatory strategy, the EPA would need additional information about CAFO emissions in order to determine the scope of the listing and to promulgate standards. For example, when developing regulations under CAA section 111, the agency must determine how to define the source category, which pollutants to address, which emission sources to control and what degree of emission reductions are achievable. Once the EPA finalizes new CAFO emission-estimating methodologies, the agency will be able to consider emissions of each significant pollutant from CAFOs as a whole sector, by sub-sector (e.g. specific animal species) and by emission source (e.g. barns, lagoons) and better identify and assess specific regulatory approaches to address those emissions. Having this information will aid the EPA in multiple ways, including those outlined below, if it decides to list and regulate CAFOs under CAA section 111.

First, the agency must determine the appropriate scope of the source category or categories to list. With respect to the scope of possible source categories, if the significant pollutants differ based on emission source and animal species, the agency may determine that having multiple source categories based on specific animal species and/or emission sources (e.g. cattle feedlots, swine lagoons) is more appropriate than listing "CAFOs" as a single source category. This level of information, which the EPA does not yet have and is working to develop, is critical to ensuring the most effective and efficient regulatory strategy and would allow the agency to make a considered judgement as to whether a listed source category should be defined broadly or narrowly. Such a determination would be consistent with other regulatory approaches under CAA section 111 where, depending on the sector, the agency has either listed a category broadly or focused on specific emission points.[5]

Second, additional information about the nature and quantity of pollutants emitted from CAFOs will ensure that the EPA has adequate information to make a listing decision regarding whether CAFOs' emissions of one or more of the pollutants in question "cause, or contribute significantly to, air pollution, which may reasonably be anticipated to endanger public health and welfare." The determination of whether CAFO emissions of methane, nitrous oxide, hydrogen sulfide, ammonia, PM, VOC or other pollutants meet this condition would be informed by the improved emission inventories discussed above.

Third, setting standards under CAA section 111 requires the EPA to determine the "best system of emission reduction" (BSER) for the listed source category and determine what degree

[5] For example, the standards in 40 CFR part 60, subpart BBB cover a given industrial sector, the rubber tire industry, in a single source category by defining emission limits for a single pollutant (VOC) from multiple types of facilities, including undertread cementing, sidewall cementing, tread end cementing, bead cementing, green tire spraying and Michelin-A, Michelin-B, and Michelin-C automatic operations. Alternately, in 40 CFR part 60, subparts T, U, V, W and X, the agency promulgated standards for separate source categories within a given industrial sector, the phosphate fertilizer industry (i.e. wet-process phosphoric acid, superphosphoric acid, diammonium phosphate, triple superphosphate and granular triple superphosphate plants, respectively). In other cases, the EPA sets standards for a specific emission source, regardless of industrial sector, such as the regulations for electric utility steam-generating units (boilers) limiting emissions of PM, nitrogen oxides and sulfur dioxide in 40 CFR part 60, subpart Da.

of emission reduction is achievable from the application of that BSER to sources in the source category. The additional information that the EPA is gathering will help it identify emission controls currently used at CAFOs. The emission-estimating methodologies that the agency is finalizing will allow the EPA to estimate potential emission reductions resulting from the application of various control options in a standardized way, which would aid the evaluation of the BSER for the source category(ies) in a potential future rulemaking. CAA section 111(b)(1)(B) requires the EPA to propose standards within one year of listing a source category and to promulgate final standards within one year of proposal. This limited timeframe for proposal and promulgation of standards necessitates that EPA gather sufficient and sufficiently reliable information to facilitate consideration of control options and the development of BSER prior to listing a new source category; otherwise, it would be difficult for the EPA to meet these statutory deadlines.

In sum, having more accurate emissions-estimating methodologies and the subsequent, improved inventories ensures that the EPA will be able to implement an overarching, effective and efficient regulatory strategy to address CAFO emissions. The emission-estimating methodologies will also improve estimates of the impact of current requirements for CAFOs and potential impact of any proposed requirements. This will help the agency determine the most appropriate approach with respect to air emissions from CAFOs and avoid potential problems, such as duplicative and overlapping regulatory requirements, that could arise from addressing these emissions in a piecemeal fashion under multiple CAA programs without considering how the various programs work together. Thus, this approach will allow the agency to ensure consistency between existing and proposed additional requirements and avoid creating unnecessary regulatory burden for CAFOs. For all of these reasons, development of the emission-estimating methodologies, as advised by the National Research Council and the EPA's SAB, is a fundamental initial step under the comprehensive strategy that the EPA is implementing to reduce air emissions from CAFOs. Our ongoing steps and expected time frame for addressing these issues is discussed in the next section.

Furthermore, once the EPA obtains the necessary information on the nature and extent of CAFO emissions, if the EPA determines that additional action to address CAFO emissions is warranted under CAA section 111 or otherwise, the improved emissions information will be relevant in deciding the timing of further action on CAFO emissions. This is because the timing of potential regulatory action on CAFO emissions must be weighed against other actions that the EPA could take to address emissions of these same pollutants from other source categories. For example, the EPA might determine that while certain pollutants from CAFOs warrant further action, other sources of those pollutants should be addressed first, based on the relative level of overall emissions of those pollutants from each of the source categories, the location of the emission sources within each source category or other factors.

B. The EPA's Ongoing Steps to Implement the Agency's Comprehensive Strategy and Reduce Emissions from CAFOs

To better understand and evaluate emissions from CAFOs, the EPA has been undertaking the National Air Emissions Monitoring Study. The study is a fundamental step that the agency intends to complete in order to determine how to best address emissions from CAFOs within the CAA's regulatory framework. NAEMS will help the agency develop methodologies to estimate

emissions of ammonia, hydrogen sulfide, PM and VOC from a wide variety of types of CAFOs.[6] These methodologies can better inform the estimation of emissions and exposures related to point sources located at these operations. Until the EPA more fully understands the level and sources of emissions of different pollutants, it would be premature for the agency to decide which CAA regulatory tool or tools could be most effectively applied to protect public health and welfare from these emissions.

After the research team, which was led by Purdue University with EPA oversight, collected emissions data for NAEMS from 2007 to 2010, the EPA analyzed the data and developed two draft emissions-estimating methodologies in 2012, which the agency published for public comment.[7] The EPA also submitted the methodologies to the SAB, which reviewed the methodologies and issued a final report in 2013. As stated earlier, the SAB recommended that the agency develop more rigorous methodologies for estimating emissions. In the interim, the SAB provided recommendations for expanding the data set and commented on the applicability of the draft emission estimating methodologies developed in 2012. The SAB found that NAEMS "is sufficient to start the development and evaluation of simplified process-based modeling approaches that would reflect the heterogeneity of CAFOs" and recognized that "the EPA may need to apply statistical approaches to assess emissions while it is developing and evaluating process-based models."[8] Since 2013, the EPA has been continuing to develop the methodologies consistent with the SAB recommendations, though that work has been slowed by various factors, as discussed next.

The EPA's Office of the Inspector General reported in a 2017 assessment of the status of NAEMS that the development of emission-estimating methodologies slowed while the EPA decided how to address some of the SAB's concerns.[9] At the same time that many government programs faced cutbacks due to sequestration, this project was also affected. Since 2013, the EPA has continued the development of emission-estimating methodologies using its statistically based approach and has taken steps recommended by the SAB, such as acquiring additional data sets from other external studies and reassessing data completeness criteria for NAEMS. Additionally, a lack of technical expertise due to staff retirement/reassignment and resource constraints (including discontinuation of funding for the contract supporting the study) due to competing priorities further slowed progress. In responding to the OIG's draft report, the EPA's Office of Air and Radiation outlined its plan to complete NAEMS, including working in partnership with the EPA's Office of Research and Development and agreeing with the OIG's recommendations to conduct systematic planning for future development of emission-estimating methodologies by April 2018. Based on the results of the systematic planning, the EPA will determine the emission source and pollutant combinations for which emission-estimating methodologies can be developed

---

[6] The types of CAFOs monitored for NAEMS include operations feeding swine, dairy cows and broiler and layer poultry.

[7] See 77 FR at 14716-14717 (March 13, 2012).

[8] *SAB Review of Emissions-Estimating Methodologies for Broiler Animal Feeding Operations and for Lagoons and Basins at Swine and Dairy Animal Feeding Operations*, EPA-SAB-13-003 (2013).

[9] U.S. Environmental Protection Agency Office of Inspector General, *Eleven Years After Agreement, EPA Has Not Developed Reliable Emission Estimation Methods to Determine Whether Animal Feeding Operations Comply with Clean Air Act and Other Statutes*, Report No. 17-P-0396 (2017).

and establish milestones for issuing the draft methodologies. The EPA expects to post these milestones on the agency's website by July 2018.[10]

While the EPA is completing NAEMS, the agency also has been undertaking other activities under existing regulations and programs that will help characterize emissions from this sector and support the implementation of the comprehensive strategy to address CAFO emissions, as well as directly address specific components of petitioners' concerns about the effects on health and welfare of CAFOs' emissions. For example, the EPA's August 2016 final PM Implementation Rule includes requirements that will generate information that will assist the EPA in evaluating emissions of ammonia, which is a precursor of fine particles (less than 2.5 micrometers, $PM_{2.5}$). This rule requires states to demonstrate that they have plans that will reduce $PM_{2.5}$ to at or below the standard over a specified number of years.[11] As part of this process, the EPA recognizes that the treatment of $PM_{2.5}$ precursors, including ammonia from sources such as animal feeding operations, is important in developing a $PM_{2.5}$ attainment plan or implementing the NSR program in a nonattainment area.[12] Specifically, the rule's preamble states that the EPA's 2011 National Emissions Inventory estimated that livestock raising was the largest source of ammonia emissions, contributing about 54 percent of total ammonia emissions, but also acknowledges that there was some uncertainty in quantifying ammonia emissions and other $PM_{2.5}$ precursors from source categories including livestock and fertilizer application.[13] Therefore, the rule requires states to control ammonia emissions, if necessary, for expeditious attainment or if ammonia contributes significantly to $PM_{2.5}$ levels which exceed the standard in a particular nonattainment area. These control measures would be adopted through state regulations that are submitted to the EPA as part of a SIP. The EPA expects the requirements contained in the 2016 final PM Implementation rule to further improve its understanding of emissions at the same time that updates to the 2014 NEI and "other uses of the NAEMS data will help to reduce uncertainties in current ammonia inventories and will improve the quality of future emissions inventories needed for implementing the $PM_{2.5}$ NAAQS."[14] This set of improvements will significantly aid the EPA's comprehensive strategy for addressing CAFO emissions to account for CAFO emission reductions required by existing regulations.

Additionally, in September 2017, the EPA, with the USDA, released a best-management practices document for livestock and poultry production farms, including CAFOs, titled *Agricultural Air Quality Conservation Measures: Reference Guide for Poultry and Livestock Production Systems*.[15] This document identifies measures that have been demonstrated to reduce air emissions of pollutants (ammonia, greenhouse gases, hydrogen sulfide, PM and VOC) from farms. While it does not involve the quantification of emissions, the guide clearly describes different practices and control technologies that reduce emissions of these pollutants. The guide supports the EPA's efforts to characterize available control technologies and practices for different

---

[10] See, "Response to the Office of Inspector General's Draft Report, *Emissions From Animal Feeding Operations Remain Largely Uncharacterized More Than 7 Years After Study Completed* (Project No. OPE-FY16-0018), June 23, 2017.

[11] See, "Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements." 81 FR 58010 (August 24, 2016).

[12] See 81 FR at 58014 (August 24, 2016).

[13] See 81 FR at 58016, 58032 (August 24, 2016).

[14] See 81 FR at 58032 (August 24, 2016).

[15] Available at https://www.epa.gov/sites/production/files/2017-01/documents/web_placeholder.pdf.

pollutants, emission sources and subsectors of CAFOs, which would be required to establish control options under the EPA's comprehensive strategy to reduce emissions from this sector, consistent with the statutory factors and requirements within the CAA. Although the reference guide does not impose federal requirements to reduce CAFO emissions, the guide helps states make informed decisions when considering adoption of pollutant controls and helps CAFOs determine which practices may be suitable for implementation of emission reductions on a site-specific basis. In fact, the guide includes an appendix listing existing state programs or regulations pertaining to air emissions from livestock and poultry operations. States that are developing programs to reduce air emissions from CAFOs can use the appendix to study the different approaches as models and to examine their potential applicability to other states.

Finally, the EPA will also consider applicable reporting requirements for CAFOs in assessing the extent of current requirements for CAFOs, following a court decision under the Comprehensive Environmental Response, Compensation and Liability Act and the Emergency Planning and Community Right-to-Know Act. In April 2017, the United States Court of Appeals for the District of Columbia Circuit vacated a 2008 rule that exempted farms from reporting air releases of hazardous substances from animal waste under Section 103 of CERCLA and, if the farms stable or confine fewer than certain numbers of animals, under Section 304 of EPCRA.[16] Ammonia and hydrogen sulfide are considered hazardous substances under CERCLA and EPCRA. Farms releasing hazardous substances to air from animal wastes, equal to or greater than their reportable quantities, within any 24-hour period, must notify the appropriate authorities because the 2008 exemption no longer applies.[17] The EPA is unable to provide emission-estimating methodologies for use with these reports until NAEMS is complete and will give owners and operators guidance so that these reports may be based on broad-range estimates that include uncertainties. As the EPA implements its comprehensive strategy for CAFO emissions, the agency will ensure that the regulatory approach adopted to address CAFO sources of ammonia and hydrogen sulfide emissions is consistent with these requirements and avoids duplicative obligations to the maximum extent possible.

C. The EPA's Limited Resources and Need to Set Regulatory Priorities

Due to resource constraints, the EPA is never able to take all actions at the same time and must always consider its obligations and authorities under the CAA and other statutes when determining which activities to undertake at what point in time and how to most efficiently complete its regulatory mission. In recent years, the agency has been continually required to accomplish more activities with less resources, making prioritization and efficiency even more necessary. The Office of Air Quality Planning and Standards houses the Sector Policies and Programs Division, which would be charged with making a determination whether to list CAFOs under CAA section 111 and, if listed, promulgating CAA section 111 standards for CAFOs. The office has seen a general decline in its budget for several years. Further, SPPD already is required to take numerous final agency actions with mandatory deadlines set by the CAA and court orders. As an example of just one part of the division's work, SPPD currently faces court-ordered

[16] *Waterkeeper Alliance* v. *EPA*, 853 F.3d 527 (D.C. Cir. 2017).

[17] See https://www.epa.gov/epcra/cercla-and-epcra-reporting-requirements-air-releases-hazardous-substances-animal-waste-farms.

deadlines for the completion of 33 residual risk and technology reviews of NESHAP for specific source categories in the next three years[18] and is anticipating a court order setting deadlines for the completion of residual risk and technology reviews of the NESHAP for an additional nine source categories.[19] In addition to the work on these reviews, SPPD also has ongoing obligations related to NSPS, non-residual risk and technology review NESHAP projects, CAA section 129 incinerator regulations and activities related to these rulemakings, including responses to Freedom of Information Act requests, rule implementation support, rule amendments addressing issues that hinder implementation, development of various electronic information systems such as electronic data submittal systems and stakeholder outreach. Looking at the EPA more broadly, the EPA is engaged in a large number of regulatory actions under other parts of the CAA and under other statutes. The EPA's ongoing regulatory work is described in the EPA's Regulatory Agenda, which the EPA publishes semi-annually, and its Regulatory Plan, which is published annually.[20]

In considering whether and when to take the regulatory actions requested in the September 2009 Petition, the EPA must balance those possible actions with all of the other obligations and authorities that the EPA has under the CAA and other statutes. If staff and other agency resources were shifted to take the action that petitioners' request, they would not be available for other agency work. As discussed above, the EPA is pursuing a comprehensive strategy to study and appropriately address CAFO emissions, and the EPA is committing resources to implement that approach. After considering the agency's current CAFO strategy, and in light of all of the other tasks before the agency, the EPA does not believe it should shift additional resources at this time to determine whether to list and regulate CAFOs under CAA section 111.

IV. Conclusion

In light of the EPA's current comprehensive strategy to address CAFO emissions and the agency's limited resources and the need to prioritize its regulatory activity and to use its resources efficiently, the EPA is declining at this time to determine whether CAFOs should be listed as a source category under CAA section 111. Undertaking such a determination at this time is not consistent with its comprehensive strategy to address CAFO emissions and would therefore be premature. Additionally, it would require the agency to divert resources from other work to a degree the agency believes is inappropriate given its resource constraints and priorities. Thus, the EPA is denying your petition to list CAFOs as a source category under CAA section 111.

Though the EPA has declined at this time to consider whether to list CAFOs as a source category under CAA section 111, the agency may consider listing and regulation of CAFOs under CAA section 111 as part of its comprehensive strategy for this sector in the future. If the agency does so, it will at that time address any additional issues that may arise from considering such listing and subsequent regulation under CAA section 111, such as how to apply the CAA section 111 definition of stationary source to CAFOs.

---

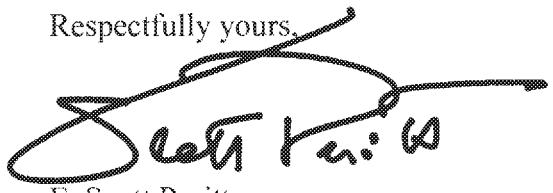
[18] See *California Communities Against Air Toxics*, Case No.15-512 (D.D.C.) (order dated March 13, 2017), and *Blue Ridge Environmental Defense League*, Case no. 16-364 (D.D.C.) (order dated March 22, 2017).

[19] See *Community In-Power and Development Association, Inc.* v. *Pruitt*, Case No 16-1074 (D.D.C.).

[20] More information on the EPA's Semiannual Regulatory Agenda and Regulatory Plan, including information on how to see the agency's most recent agenda and plan, is available at https://www.epa.gov/laws-regulations/regulatory-agendas-and-regulatory-plans.

For the reasons discussed above, the EPA is denying the September 2009 Petition to list CAFOs as a source category under CAA section 111. This is the EPA's final agency action on this petition.

Respectfully yours,



E. Scott Pruitt

E. Scott Pruitt
Administrator

December 15, 2017

Mr. Erich Pica
President
Friends of the Earth
1101 15th Street, NW, 11th Floor
Washington, D.C. 20005

Dear Mr. Pica:

On September 21, 2009, the Humane Society of the United States and other environmental and citizen groups[1] (collectively, "petitioners") sent a letter to the U.S. Environmental Protection Agency petitioning the agency to list concentrated animal feeding operations as a category of sources under section 111(b)(1)(A) of the Clean Air Act and, thereafter, to promulgate standards of performance for new CAFOs under CAA section 111(b)(1)(B) and prescribe regulations for state-performance standards for existing CAFOs under CAA section 111(d).

I write to inform you that the EPA is denying this petition to list CAFOs as a category of sources under CAA section 111. This denial fully and finally responds to this petition and is the EPA's final agency action on this petition.

The EPA recognizes that emissions from this sector exist and has been undertaking multiple activities related to CAFO emissions as part of the agency's preferred approach to address these emissions. As discussed below, the EPA has developed and is implementing a comprehensive strategy to address CAFO air emissions that includes conducting a nationwide study of air emissions from CAFOs and developing improved emission-estimating methodologies for these emissions; gathering additional information about the magnitude of CAFO emissions and their control options; considering to what extent existing CAA regulations address CAFO emissions; evaluating the various CAA regulatory tools that might be used to further address CAFO emissions; and then determining which regulatory tool or tools would be most appropriate to regulate CAFO emissions to protect public health and welfare. Further, in determining the sequence and timing of undertaking regulatory action, the agency must consider the most efficient

[1] In addition to the Humane Society of the United States, the other petitioners are Association of Irritated Residents, Center on Race, Poverty and the Environment, Clean Air Task Force, Dairy Education Alliance, El Comité Para el Bienestar de Earlimart, Environmental Integrity Project, Friends of the Earth, Sierra Club and Waterkeeper Alliance.

1200 Pennsylvania Ave, NW • Mail Code 1101A • Washington, DC 20460 • (202) 564-4700 • Fax: (202) 501-1450

This paper is printed with vegetable-oil-based inks and is 100-percent postconsumer recycled material, chlorine-free-processed and recyclable.

and effective uses of its limited resources in light of ongoing budgetary uncertainties. Given the actions that the agency is undertaking and its resource constraints, the EPA is declining at this time to determine whether to list CAFOs as a source category under CAA section 111, and the agency, thus, is denying your petition. This denial is not based on a determination as to whether CAFOs meet the requirements for listing under CAA section 111(b)(1)(A). In the future, the EPA may initiate a process to determine whether to list CAFOs under CAA section 111(b)(1)(A); however, the agency has decided that it will not do so now.

I. Introduction

A. Statutory Provisions

Clean Air Act section 111(b)(1)(A) provides that the EPA shall "publish (and from time to time thereafter shall revise) a list of categories of stationary sources [and shall include a category on the list] if in [the Administrator's] judgment it causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare." For categories that the EPA lists under CAA section 111(b)(1)(A), CAA section 111(b)(1)(B) requires the EPA to propose federal standards of performance for new sources within the newly established category within one year of listing and then, after an opportunity for public comment, finalize the standards within one year of publishing the proposed standards.

B. Procedural History

On September 21, 2009, the petitioners sent a letter to the EPA petitioning the agency to list CAFOs and to promulgate standards of performance under CAA section 111 (which we will refer to as the "September 2009 Petition"). The petitioners specifically requested that the EPA undertake a rulemaking that:

(1) Finds that the air pollutants hydrogen sulfide and ammonia constitute air pollution that endangers U.S. public health or welfare;

(2) Announces the Administrator's judgment that emissions of methane, nitrous oxide, hydrogen sulfide, ammonia, volatile organic compounds and particulate matter from CAFOs contribute significantly to air pollution that is reasonably anticipated to endanger public health and welfare;

(3) Lists CAFOs as a category of stationary sources pursuant to CAA section 111(b)(1)(A); and

(4) Promulgates standards of performance for air emissions of methane, nitrous oxide, hydrogen sulfide, ammonia, VOC and PM from new and existing CAFOs under CAA sections 111(b) and 111(d).

September 2009 Petition, at page 4.

In January 2015, some of the petitioners (the Humane Society of the United States, Association of Irritated Residents, Environmental Integrity Project, Friends of the Earth and Sierra Club) filed a complaint with the United States District Court for the District of Columbia alleging that the EPA had unreasonably delayed in responding to the petition. The Court dismissed the case after finding that the plaintiffs had failed to notify the EPA 180 days before filing the suit, as required by CAA section 304(a).

On October 7, 2016, the same petitioners notified the EPA of their intent to file suit, as required under CAA section 304(a). On August 23, 2017, these petitioners filed a complaint with the United States District Court for the District of Columbia, alleging that the EPA had unreasonably delayed in responding to the September 2009 Petition.

II. Summary of the September 2009 Petition

In their September 2009 Petition, the petitioners cited the requirements of CAA section 111 and asserted that CAFOs meet the definition of a stationary source that emits air pollutants that endanger public health and welfare. The petitioners focused on listing CAFOs as a source category under the CAA in order for the EPA to promulgate performance standards for this sector to control emissions of the major pollutants emitted by CAFOs.

The petitioners included general statistics about the CAFO industry and asserted that CAFOs emit more pollutants than traditional, small-scale farms due to CAFOs' confinement and manure-management practices. The petitioners listed major pollutants emitted by CAFOs as being: (1) the greenhouse gases methane and nitrous oxide, (2) hydrogen sulfide, (3) ammonia, (4) PM and (5) VOC. The petitioners further discussed these pollutants, including the health and welfare effects they cause, in order to support the claim that emissions from CAFOs endanger public health. The petitioners cited examples of effects of exposure to these pollutants, including public health effects, such as respiratory illness, increased cancer rates, death and welfare effects, such as crop damage, atmospheric acidification, habitat loss and severe haze.

The petitioners asserted that CAFOs are significant contributors of these pollutants due to the number of CAFOs and the amount of waste they produce. The petitioners included examples of statistics from studies conducted at local, national and global scales regarding quantities of emissions of these pollutants and site-specific data related to public-nuisance complaints and individual facility reports. Finally, the petitioners listed various management practices and technologies that the petitioners assert have been demonstrated to reduce emissions of some of these pollutants from specific subsectors of CAFOs.

III. Response to Requests

After thoroughly considering the petitioners' request to list and regulate CAFOs under CAA section 111, the EPA has concluded that the complex nature of emission sources and emissions from this sector requires the agency to continue its comprehensive approach toward this sector by first evaluating CAFO emissions and then determining further regulatory actions to address these emissions. As discussed below, in responding to this petition, the EPA has considered (a) the need for more accurate methodologies to estimate air emissions from CAFOs, including the critical role of that information in implementing a comprehensive regulatory

strategy; (b) the agency's multiple ongoing actions taken to date in support of its comprehensive approach for addressing air emissions from CAFOs; and (c) the agency's limited resources and competing priorities.

A. The Need for and Importance of Developing Accurate CAFO Air Emissions Methodologies in the EPA's Comprehensive Approach

The interactive and highly complex nature of CAFO air emissions requires new, more accurate methodologies for estimating those emissions. Establishing sound emissions estimates is a fundamental step to establish a comprehensive, effective and efficient regulatory strategy to address CAFO air emissions. To this end, the agency first is gathering information to most accurately characterize the emissions from CAFOs, and, once the agency has sufficient information on CAFO emissions, it will determine the appropriate regulatory approach to address those emissions.

CAFOs can emit a variety of air pollutants, including those listed in the petition and summarized above, as well as hazardous air pollutants, carbon dioxide and reduced sulfur compounds. These pollutants are emitted from various sources at animal feeding operations, including confinement structures (e.g. barns, corrals), manure management systems and fields. Additionally, other agricultural equipment (e.g. engines, boilers) used on CAFOs emit pollutants; some of which are covered by other existing New Source Performance Standard programs. Many factors influence emissions, including the geographic location and environmental conditions (e.g. soil type, precipitation, humidity, temperature, water availability, wind conditions, terrain), management practices (e.g. feed, manure), animal characteristics (e.g. number, species, life stage), operating conditions (e.g. housing/confinement types) and general management practices. Due to the complex interactions of all of these factors, CAFO emissions cannot be standardized based solely on the number and type of animals at each operation. There are many scenarios when a CAFO with fewer animals will have higher emissions than a CAFO with a greater number of the same species of animals. Further, historic emission-measurement techniques, such as those used in some of the studies cited by the petitioners, vary widely, and many are imprecise and impacted by local conditions. This variability makes it difficult to compare or aggregate results of multiple studies for the purposes of developing simple emission-estimating methodologies. Therefore, historic studies on CAFO emissions provide insufficient information to accurately characterize the nature and extent of the emissions, which is necessary information not only for evaluating regulatory options, but also for reaching the conclusions needed to list a source category under CAA section 111(b)(1)(A), if the EPA ultimately decides to do so, as discussed further below.

Due to the uncertainties surrounding air emissions from CAFOs, the EPA and the U.S. Department of Agriculture jointly commissioned a report from the National Research Council titled *Air Emissions from Animal Feeding Operations: Current Knowledge, Future Needs*, which was published in 2003.[2] The report established the determination that it was not appropriate to estimate air emissions from CAFOs simply by multiplying the number of animal units by existing

[2] Ad Hoc Committee on Air Emissions from Animal Feeding Operations, Committee on Animal Nutrition, National Research Council, *Air Emissions from Animal Feeding Operations: Current Knowledge, Future Needs* (2003). ISBN: 0-309-50758-8. http://www.nap.edu/catalog/10586.html.

emission factors for most pollutants. Additionally, the report stated that process-based modeling "will help provide scientifically sound estimates of air emissions from AFOs for use in regulatory and management programs."[3] Similarly, the EPA's Science Advisory Board reiterated this conclusion when it recommended in 2013 that the EPA develop process-based modeling approaches to predict air emissions.[4]

Developing accurate methodologies to estimate air emissions from CAFOs is an important first step under the EPA's implementation of its comprehensive strategy to address those emissions. Improved emission-estimation methodologies will both better describe the emission sources on a farm and enhance the EPA's emission inventories of these pollutants. The agency uses emissions inventories for a variety of policy and regulatory purposes, and these inventories are important in determining the extent to which CAFOs are subject to existing regulatory requirements and in developing any future regulations. These purposes include: (1) assessing a sector's contribution to nationwide emissions of a pollutant, an assessment that would be used to consider whether (as petitioners contend) CAFOs significantly cause or contribute to emissions of pollutants that endanger public health and welfare; (2) supporting boundary determinations in the initial area designation process following the promulgation of new or revised National Ambient Air Quality Standards, which impacts the emission sources that are considered for control under a state implementation plan; (3) evaluating the potential public health and welfare benefits of proposed regulations; and (4) supporting state and EPA air-quality modeling efforts, which are used for Prevention of Significant Deterioration and New Source Review permitting, as well as to develop SIPs that may include regulatory measures for CAFOs to reduce emissions of criteria pollutants or their precursors (such as PM and ammonia). Once the EPA finalizes CAFO emission-estimating methodologies, the agency can use them to improve emissions inventories, which will lead to more accurate understanding of the amounts of emissions from various emission sources on a farm. These improved emissions inventories will also allow the EPA to more accurately compare the contribution of CAFO emissions to regional and national levels of those pollutants.

With this better understanding and more accurate information, the EPA then can best evaluate the impacts of CAFO air emissions on public health and welfare and implement a comprehensive regulatory strategy to best address those emissions from the animal feeding sector under the CAA, with consideration of the multiple regulatory programs that may affect the sector and, depending on what regulatory approach is warranted, the most appropriate, effective and efficient means within each program. The CAA provides multiple ways to address emissions from CAFOs, depending on the target pollutant and nature of the emissions (point or fugitive). For example, the NAAQS program addresses the regulation of criteria pollutants from all sources, including stationary sources, National Emission Standards for Hazardous Air Pollutants promulgated under CAA section 112 address HAP from stationary sources, and NSPS and emissions guidelines under CAA section 111 cover certain pollutants as provided in that provision. Additionally, Title V operating permits and NSR/PSD pre-construction permits are required for sources in any source category subject to air-permitting requirements. While specific CAFOs are

---

[3] Ibid.

[4] *SAB Review of Emissions-Estimating Methodologies for Broiler Animal Feeding Operations and for Lagoons and Basins at Swine and Dairy Animal Feeding Operations* (2013). EPA-SAB-13-003 Available at: https://yosemite.epa.gov/sab/SABPRODUCT.NSF/81e39f4c09954fcb85256ead006be86e/ae6639dd6b79360e852579a4004e5529!OpenDocument&TableRow=2.3#2.

subject to existing requirements under some of these programs (e.g. Title V operating permits, PM NAAQS), the EPA has not promulgated standards specifically designed to reduce air emissions from CAFOs due to the need to accurately characterize emissions from the sector first.

Even if the EPA ultimately were to decide to regulate CAFOs under CAA section 111 as part of its regulatory strategy, the EPA would need additional information about CAFO emissions in order to determine the scope of the listing and to promulgate standards. For example, when developing regulations under CAA section 111, the agency must determine how to define the source category, which pollutants to address, which emission sources to control and what degree of emission reductions are achievable. Once the EPA finalizes new CAFO emission-estimating methodologies, the agency will be able to consider emissions of each significant pollutant from CAFOs as a whole sector, by sub-sector (e.g. specific animal species) and by emission source (e.g. barns, lagoons) and better identify and assess specific regulatory approaches to address those emissions. Having this information will aid the EPA in multiple ways, including those outlined below, if it decides to list and regulate CAFOs under CAA section 111.

First, the agency must determine the appropriate scope of the source category or categories to list. With respect to the scope of possible source categories, if the significant pollutants differ based on emission source and animal species, the agency may determine that having multiple source categories based on specific animal species and/or emission sources (e.g. cattle feedlots, swine lagoons) is more appropriate than listing "CAFOs" as a single source category. This level of information, which the EPA does not yet have and is working to develop, is critical to ensuring the most effective and efficient regulatory strategy and would allow the agency to make a considered judgement as to whether a listed source category should be defined broadly or narrowly. Such a determination would be consistent with other regulatory approaches under CAA section 111 where, depending on the sector, the agency has either listed a category broadly or focused on specific emission points.[5]

Second, additional information about the nature and quantity of pollutants emitted from CAFOs will ensure that the EPA has adequate information to make a listing decision regarding whether CAFOs' emissions of one or more of the pollutants in question "cause, or contribute significantly to, air pollution, which may reasonably be anticipated to endanger public health and welfare." The determination of whether CAFO emissions of methane, nitrous oxide, hydrogen sulfide, ammonia, PM, VOC or other pollutants meet this condition would be informed by the improved emission inventories discussed above.

Third, setting standards under CAA section 111 requires the EPA to determine the "best system of emission reduction" (BSER) for the listed source category and determine what degree

[5] For example, the standards in 40 CFR part 60, subpart BBB cover a given industrial sector, the rubber tire industry, in a single source category by defining emission limits for a single pollutant (VOC) from multiple types of facilities, including undertread cementing, sidewall cementing, tread end cementing, bead cementing, green tire spraying and Michelin-A, Michelin-B, and Michelin-C automatic operations. Alternately, in 40 CFR part 60, subparts T, U, V, W and X, the agency promulgated standards for separate source categories within a given industrial sector, the phosphate fertilizer industry (i.e. wet-process phosphoric acid, superphosphoric acid, diammonium phosphate, triple superphosphate and granular triple superphosphate plants, respectively). In other cases, the EPA sets standards for a specific emission source, regardless of industrial sector, such as the regulations for electric utility steam-generating units (boilers) limiting emissions of PM, nitrogen oxides and sulfur dioxide in 40 CFR part 60, subpart Da.

of emission reduction is achievable from the application of that BSER to sources in the source category. The additional information that the EPA is gathering will help it identify emission controls currently used at CAFOs. The emission-estimating methodologies that the agency is finalizing will allow the EPA to estimate potential emission reductions resulting from the application of various control options in a standardized way, which would aid the evaluation of the BSER for the source category(ies) in a potential future rulemaking. CAA section 111(b)(1)(B) requires the EPA to propose standards within one year of listing a source category and to promulgate final standards within one year of proposal. This limited timeframe for proposal and promulgation of standards necessitates that EPA gather sufficient and sufficiently reliable information to facilitate consideration of control options and the development of BSER prior to listing a new source category; otherwise, it would be difficult for the EPA to meet these statutory deadlines.

In sum, having more accurate emissions-estimating methodologies and the subsequent, improved inventories ensures that the EPA will be able to implement an overarching, effective and efficient regulatory strategy to address CAFO emissions. The emission-estimating methodologies will also improve estimates of the impact of current requirements for CAFOs and potential impact of any proposed requirements. This will help the agency determine the most appropriate approach with respect to air emissions from CAFOs and avoid potential problems, such as duplicative and overlapping regulatory requirements, that could arise from addressing these emissions in a piecemeal fashion under multiple CAA programs without considering how the various programs work together. Thus, this approach will allow the agency to ensure consistency between existing and proposed additional requirements and avoid creating unnecessary regulatory burden for CAFOs. For all of these reasons, development of the emission-estimating methodologies, as advised by the National Research Council and the EPA's SAB, is a fundamental initial step under the comprehensive strategy that the EPA is implementing to reduce air emissions from CAFOs. Our ongoing steps and expected time frame for addressing these issues is discussed in the next section.

Furthermore, once the EPA obtains the necessary information on the nature and extent of CAFO emissions, if the EPA determines that additional action to address CAFO emissions is warranted under CAA section 111 or otherwise, the improved emissions information will be relevant in deciding the timing of further action on CAFO emissions. This is because the timing of potential regulatory action on CAFO emissions must be weighed against other actions that the EPA could take to address emissions of these same pollutants from other source categories. For example, the EPA might determine that while certain pollutants from CAFOs warrant further action, other sources of those pollutants should be addressed first, based on the relative level of overall emissions of those pollutants from each of the source categories, the location of the emission sources within each source category or other factors.

B. The EPA's Ongoing Steps to Implement the Agency's Comprehensive Strategy and Reduce Emissions from CAFOs

To better understand and evaluate emissions from CAFOs, the EPA has been undertaking the National Air Emissions Monitoring Study. The study is a fundamental step that the agency intends to complete in order to determine how to best address emissions from CAFOs within the CAA's regulatory framework. NAEMS will help the agency develop methodologies to estimate

emissions of ammonia, hydrogen sulfide, PM and VOC from a wide variety of types of CAFOs.[6] These methodologies can better inform the estimation of emissions and exposures related to point sources located at these operations. Until the EPA more fully understands the level and sources of emissions of different pollutants, it would be premature for the agency to decide which CAA regulatory tool or tools could be most effectively applied to protect public health and welfare from these emissions.

After the research team, which was led by Purdue University with EPA oversight, collected emissions data for NAEMS from 2007 to 2010, the EPA analyzed the data and developed two draft emissions-estimating methodologies in 2012, which the agency published for public comment.[7] The EPA also submitted the methodologies to the SAB, which reviewed the methodologies and issued a final report in 2013. As stated earlier, the SAB recommended that the agency develop more rigorous methodologies for estimating emissions. In the interim, the SAB provided recommendations for expanding the data set and commented on the applicability of the draft emission estimating methodologies developed in 2012. The SAB found that NAEMS "is sufficient to start the development and evaluation of simplified process-based modeling approaches that would reflect the heterogeneity of CAFOs" and recognized that "the EPA may need to apply statistical approaches to assess emissions while it is developing and evaluating process-based models."[8] Since 2013, the EPA has been continuing to develop the methodologies consistent with the SAB recommendations, though that work has been slowed by various factors, as discussed next.

The EPA's Office of the Inspector General reported in a 2017 assessment of the status of NAEMS that the development of emission-estimating methodologies slowed while the EPA decided how to address some of the SAB's concerns.[9] At the same time that many government programs faced cutbacks due to sequestration, this project was also affected. Since 2013, the EPA has continued the development of emission-estimating methodologies using its statistically based approach and has taken steps recommended by the SAB, such as acquiring additional data sets from other external studies and reassessing data completeness criteria for NAEMS. Additionally, a lack of technical expertise due to staff retirement/reassignment and resource constraints (including discontinuation of funding for the contract supporting the study) due to competing priorities further slowed progress. In responding to the OIG's draft report, the EPA's Office of Air and Radiation outlined its plan to complete NAEMS, including working in partnership with the EPA's Office of Research and Development and agreeing with the OIG's recommendations to conduct systematic planning for future development of emission-estimating methodologies by April 2018. Based on the results of the systematic planning, the EPA will determine the emission source and pollutant combinations for which emission-estimating methodologies can be developed

---

[6] The types of CAFOs monitored for NAEMS include operations feeding swine, dairy cows and broiler and layer poultry.

[7] See 77 FR at 14716-14717 (March 13, 2012).

[8] *SAB Review of Emissions-Estimating Methodologies for Broiler Animal Feeding Operations and for Lagoons and Basins at Swine and Dairy Animal Feeding Operations*, EPA-SAB-13-003 (2013).

[9] U.S. Environmental Protection Agency Office of Inspector General, *Eleven Years After Agreement, EPA Has Not Developed Reliable Emission Estimation Methods to Determine Whether Animal Feeding Operations Comply with Clean Air Act and Other Statutes*, Report No. 17-P-0396 (2017).

and establish milestones for issuing the draft methodologies. The EPA expects to post these milestones on the agency's website by July 2018.[10]

While the EPA is completing NAEMS, the agency also has been undertaking other activities under existing regulations and programs that will help characterize emissions from this sector and support the implementation of the comprehensive strategy to address CAFO emissions, as well as directly address specific components of petitioners' concerns about the effects on health and welfare of CAFOs' emissions. For example, the EPA's August 2016 final PM Implementation Rule includes requirements that will generate information that will assist the EPA in evaluating emissions of ammonia, which is a precursor of fine particles (less than 2.5 micrometers, $PM_{2.5}$). This rule requires states to demonstrate that they have plans that will reduce $PM_{2.5}$ to at or below the standard over a specified number of years.[11] As part of this process, the EPA recognizes that the treatment of $PM_{2.5}$ precursors, including ammonia from sources such as animal feeding operations, is important in developing a $PM_{2.5}$ attainment plan or implementing the NSR program in a nonattainment area.[12] Specifically, the rule's preamble states that the EPA's 2011 National Emissions Inventory estimated that livestock raising was the largest source of ammonia emissions, contributing about 54 percent of total ammonia emissions, but also acknowledges that there was some uncertainty in quantifying ammonia emissions and other $PM_{2.5}$ precursors from source categories including livestock and fertilizer application.[13] Therefore, the rule requires states to control ammonia emissions, if necessary, for expeditious attainment or if ammonia contributes significantly to $PM_{2.5}$ levels which exceed the standard in a particular nonattainment area. These control measures would be adopted through state regulations that are submitted to the EPA as part of a SIP. The EPA expects the requirements contained in the 2016 final PM Implementation rule to further improve its understanding of emissions at the same time that updates to the 2014 NEI and "other uses of the NAEMS data will help to reduce uncertainties in current ammonia inventories and will improve the quality of future emissions inventories needed for implementing the $PM_{2.5}$ NAAQS."[14] This set of improvements will significantly aid the EPA's comprehensive strategy for addressing CAFO emissions to account for CAFO emission reductions required by existing regulations.

Additionally, in September 2017, the EPA, with the USDA, released a best-management practices document for livestock and poultry production farms, including CAFOs, titled *Agricultural Air Quality Conservation Measures: Reference Guide for Poultry and Livestock Production Systems*.[15] This document identifies measures that have been demonstrated to reduce air emissions of pollutants (ammonia, greenhouse gases, hydrogen sulfide, PM and VOC) from farms. While it does not involve the quantification of emissions, the guide clearly describes different practices and control technologies that reduce emissions of these pollutants. The guide supports the EPA's efforts to characterize available control technologies and practices for different

---

[10] See, "Response to the Office of Inspector General's Draft Report, *Emissions From Animal Feeding Operations Remain Largely Uncharacterized More Than 7 Years After Study Completed* (Project No. OPE-FY16-0018), June 23, 2017.

[11] See, "Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements." 81 FR 58010 (August 24, 2016).

[12] See 81 FR at 58014 (August 24, 2016).

[13] See 81 FR at 58016, 58032 (August 24, 2016).

[14] See 81 FR at 58032 (August 24, 2016).

[15] Available at https://www.epa.gov/sites/production/files/2017-01/documents/web_placeholder.pdf.

pollutants, emission sources and subsectors of CAFOs, which would be required to establish control options under the EPA's comprehensive strategy to reduce emissions from this sector, consistent with the statutory factors and requirements within the CAA. Although the reference guide does not impose federal requirements to reduce CAFO emissions, the guide helps states make informed decisions when considering adoption of pollutant controls and helps CAFOs determine which practices may be suitable for implementation of emission reductions on a site-specific basis. In fact, the guide includes an appendix listing existing state programs or regulations pertaining to air emissions from livestock and poultry operations. States that are developing programs to reduce air emissions from CAFOs can use the appendix to study the different approaches as models and to examine their potential applicability to other states.

Finally, the EPA will also consider applicable reporting requirements for CAFOs in assessing the extent of current requirements for CAFOs, following a court decision under the Comprehensive Environmental Response, Compensation and Liability Act and the Emergency Planning and Community Right-to-Know Act. In April 2017, the United States Court of Appeals for the District of Columbia Circuit vacated a 2008 rule that exempted farms from reporting air releases of hazardous substances from animal waste under Section 103 of CERCLA and, if the farms stable or confine fewer than certain numbers of animals, under Section 304 of EPCRA.[16] Ammonia and hydrogen sulfide are considered hazardous substances under CERCLA and EPCRA. Farms releasing hazardous substances to air from animal wastes, equal to or greater than their reportable quantities, within any 24-hour period, must notify the appropriate authorities because the 2008 exemption no longer applies.[17] The EPA is unable to provide emission-estimating methodologies for use with these reports until NAEMS is complete and will give owners and operators guidance so that these reports may be based on broad-range estimates that include uncertainties. As the EPA implements its comprehensive strategy for CAFO emissions, the agency will ensure that the regulatory approach adopted to address CAFO sources of ammonia and hydrogen sulfide emissions is consistent with these requirements and avoids duplicative obligations to the maximum extent possible.

C. The EPA's Limited Resources and Need to Set Regulatory Priorities

Due to resource constraints, the EPA is never able to take all actions at the same time and must always consider its obligations and authorities under the CAA and other statutes when determining which activities to undertake at what point in time and how to most efficiently complete its regulatory mission. In recent years, the agency has been continually required to accomplish more activities with less resources, making prioritization and efficiency even more necessary. The Office of Air Quality Planning and Standards houses the Sector Policies and Programs Division, which would be charged with making a determination whether to list CAFOs under CAA section 111 and, if listed, promulgating CAA section 111 standards for CAFOs. The office has seen a general decline in its budget for several years. Further, SPPD already is required to take numerous final agency actions with mandatory deadlines set by the CAA and court orders. As an example of just one part of the division's work, SPPD currently faces court-ordered

[16] *Waterkeeper Alliance* v. *EPA*, 853 F.3d 527 (D.C. Cir. 2017).

[17] See https://www.epa.gov/epcra/cercla-and-epcra-reporting-requirements-air-releases-hazardous-substances-animal-waste-farms.

deadlines for the completion of 33 residual risk and technology reviews of NESHAP for specific source categories in the next three years[18] and is anticipating a court order setting deadlines for the completion of residual risk and technology reviews of the NESHAP for an additional nine source categories.[19] In addition to the work on these reviews, SPPD also has ongoing obligations related to NSPS, non-residual risk and technology review NESHAP projects, CAA section 129 incinerator regulations and activities related to these rulemakings, including responses to Freedom of Information Act requests, rule implementation support, rule amendments addressing issues that hinder implementation, development of various electronic information systems such as electronic data submittal systems and stakeholder outreach. Looking at the EPA more broadly, the EPA is engaged in a large number of regulatory actions under other parts of the CAA and under other statutes. The EPA's ongoing regulatory work is described in the EPA's Regulatory Agenda, which the EPA publishes semi-annually, and its Regulatory Plan, which is published annually.[20]

In considering whether and when to take the regulatory actions requested in the September 2009 Petition, the EPA must balance those possible actions with all of the other obligations and authorities that the EPA has under the CAA and other statutes. If staff and other agency resources were shifted to take the action that petitioners' request, they would not be available for other agency work. As discussed above, the EPA is pursuing a comprehensive strategy to study and appropriately address CAFO emissions, and the EPA is committing resources to implement that approach. After considering the agency's current CAFO strategy, and in light of all of the other tasks before the agency, the EPA does not believe it should shift additional resources at this time to determine whether to list and regulate CAFOs under CAA section 111.

IV. Conclusion

In light of the EPA's current comprehensive strategy to address CAFO emissions and the agency's limited resources and the need to prioritize its regulatory activity and to use its resources efficiently, the EPA is declining at this time to determine whether CAFOs should be listed as a source category under CAA section 111. Undertaking such a determination at this time is not consistent with its comprehensive strategy to address CAFO emissions and would therefore be premature. Additionally, it would require the agency to divert resources from other work to a degree the agency believes is inappropriate given its resource constraints and priorities. Thus, the EPA is denying your petition to list CAFOs as a source category under CAA section 111.

Though the EPA has declined at this time to consider whether to list CAFOs as a source category under CAA section 111, the agency may consider listing and regulation of CAFOs under CAA section 111 as part of its comprehensive strategy for this sector in the future. If the agency does so, it will at that time address any additional issues that may arise from considering such listing and subsequent regulation under CAA section 111, such as how to apply the CAA section 111 definition of stationary source to CAFOs.

---

[18] See *California Communities Against Air Toxics*, Case No.15-512 (D.D.C.) (order dated March 13, 2017), and *Blue Ridge Environmental Defense League*, Case no. 16-364 (D.D.C.) (order dated March 22, 2017).

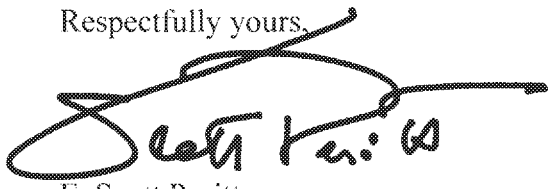
[19] See *Community In-Power and Development Association, Inc.* v. *Pruitt*, Case No 16-1074 (D.D.C.).

[20] More information on the EPA's Semiannual Regulatory Agenda and Regulatory Plan, including information on how to see the agency's most recent agenda and plan, is available at https://www.epa.gov/laws-regulations/regulatory-agendas-and-regulatory-plans.

Waterkeeper et al. v. EPA, No. 1:18-cv-02135 (D.D.C.); EPA-HQ-2018-007135 ED_002290B_00037852-00083

For the reasons discussed above, the EPA is denying the September 2009 Petition to list CAFOs as a source category under CAA section 111. This is the EPA's final agency action on this petition.

Respectfully yours,



E. Scott Pruitt

E. Scott Pruitt
Administrator

December 15, 2017

Ms. Sarah Hodgon
National Program Director
Sierra Club
50 F Street, NW, 8th Floor
Washington, D.C. 20001

Dear Ms. Hodgon:

On September 21, 2009, the Humane Society of the United States and other environmental and citizen groups[1] (collectively, "petitioners") sent a letter to the U.S. Environmental Protection Agency petitioning the agency to list concentrated animal feeding operations as a category of sources under section 111(b)(1)(A) of the Clean Air Act and, thereafter, to promulgate standards of performance for new CAFOs under CAA section 111(b)(1)(B) and prescribe regulations for state-performance standards for existing CAFOs under CAA section 111(d).

I write to inform you that the EPA is denying this petition to list CAFOs as a category of sources under CAA section 111. This denial fully and finally responds to this petition and is the EPA's final agency action on this petition.

The EPA recognizes that emissions from this sector exist and has been undertaking multiple activities related to CAFO emissions as part of the agency's preferred approach to address these emissions. As discussed below, the EPA has developed and is implementing a comprehensive strategy to address CAFO air emissions that includes conducting a nationwide study of air emissions from CAFOs and developing improved emission-estimating methodologies for these emissions; gathering additional information about the magnitude of CAFO emissions and their control options; considering to what extent existing CAA regulations address CAFO emissions; evaluating the various CAA regulatory tools that might be used to further address CAFO emissions; and then determining which regulatory tool or tools would be most appropriate to regulate CAFO emissions to protect public health and welfare. Further, in determining the sequence and timing of undertaking regulatory action, the agency must consider the most efficient

[1] In addition to the Humane Society of the United States, the other petitioners are Association of Irritated Residents, Center on Race, Poverty and the Environment, Clean Air Task Force, Dairy Education Alliance, El Comité Para el Bienestar de Earlimart, Environmental Integrity Project, Friends of the Earth, Sierra Club and Waterkeeper Alliance.

1200 Pennsylvania Ave. NW • Mail Code 1101A • Washington, DC 20460 • (202) 564-4700 • Fax: (202) 501-1450

This paper is printed with vegetable-oil-based inks and is 100-percent postconsumer recycled material, chlorine-free-processed and recyclable.

and effective uses of its limited resources in light of ongoing budgetary uncertainties. Given the actions that the agency is undertaking and its resource constraints, the EPA is declining at this time to determine whether to list CAFOs as a source category under CAA section 111, and the agency, thus, is denying your petition. This denial is not based on a determination as to whether CAFOs meet the requirements for listing under CAA section 111(b)(1)(A). In the future, the EPA may initiate a process to determine whether to list CAFOs under CAA section 111(b)(1)(A); however, the agency has decided that it will not do so now.

I. Introduction

A. Statutory Provisions

Clean Air Act section 111(b)(1)(A) provides that the EPA shall "publish (and from time to time thereafter shall revise) a list of categories of stationary sources [and shall include a category on the list] if in [the Administrator's] judgment it causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare." For categories that the EPA lists under CAA section 111(b)(1)(A), CAA section 111(b)(1)(B) requires the EPA to propose federal standards of performance for new sources within the newly established category within one year of listing and then, after an opportunity for public comment, finalize the standards within one year of publishing the proposed standards.

B. Procedural History

On September 21, 2009, the petitioners sent a letter to the EPA petitioning the agency to list CAFOs and to promulgate standards of performance under CAA section 111 (which we will refer to as the "September 2009 Petition"). The petitioners specifically requested that the EPA undertake a rulemaking that:

(1) Finds that the air pollutants hydrogen sulfide and ammonia constitute air pollution that endangers U.S. public health or welfare;

(2) Announces the Administrator's judgment that emissions of methane, nitrous oxide, hydrogen sulfide, ammonia, volatile organic compounds and particulate matter from CAFOs contribute significantly to air pollution that is reasonably anticipated to endanger public health and welfare;

(3) Lists CAFOs as a category of stationary sources pursuant to CAA section 111(b)(1)(A); and

(4) Promulgates standards of performance for air emissions of methane, nitrous oxide, hydrogen sulfide, ammonia, VOC and PM from new and existing CAFOs under CAA sections 111(b) and 111(d).

September 2009 Petition, at page 4.

In January 2015, some of the petitioners (the Humane Society of the United States, Association of Irritated Residents, Environmental Integrity Project, Friends of the Earth and Sierra Club) filed a complaint with the United States District Court for the District of Columbia alleging that the EPA had unreasonably delayed in responding to the petition. The Court dismissed the case after finding that the plaintiffs had failed to notify the EPA 180 days before filing the suit, as required by CAA section 304(a).

On October 7, 2016, the same petitioners notified the EPA of their intent to file suit, as required under CAA section 304(a). On August 23, 2017, these petitioners filed a complaint with the United States District Court for the District of Columbia, alleging that the EPA had unreasonably delayed in responding to the September 2009 Petition.

II. Summary of the September 2009 Petition

In their September 2009 Petition, the petitioners cited the requirements of CAA section 111 and asserted that CAFOs meet the definition of a stationary source that emits air pollutants that endanger public health and welfare. The petitioners focused on listing CAFOs as a source category under the CAA in order for the EPA to promulgate performance standards for this sector to control emissions of the major pollutants emitted by CAFOs.

The petitioners included general statistics about the CAFO industry and asserted that CAFOs emit more pollutants than traditional, small-scale farms due to CAFOs' confinement and manure-management practices. The petitioners listed major pollutants emitted by CAFOs as being: (1) the greenhouse gases methane and nitrous oxide, (2) hydrogen sulfide, (3) ammonia, (4) PM and (5) VOC. The petitioners further discussed these pollutants, including the health and welfare effects they cause, in order to support the claim that emissions from CAFOs endanger public health. The petitioners cited examples of effects of exposure to these pollutants, including public health effects, such as respiratory illness, increased cancer rates, death and welfare effects, such as crop damage, atmospheric acidification, habitat loss and severe haze.

The petitioners asserted that CAFOs are significant contributors of these pollutants due to the number of CAFOs and the amount of waste they produce. The petitioners included examples of statistics from studies conducted at local, national and global scales regarding quantities of emissions of these pollutants and site-specific data related to public-nuisance complaints and individual facility reports. Finally, the petitioners listed various management practices and technologies that the petitioners assert have been demonstrated to reduce emissions of some of these pollutants from specific subsectors of CAFOs.

III. Response to Requests

After thoroughly considering the petitioners' request to list and regulate CAFOs under CAA section 111, the EPA has concluded that the complex nature of emission sources and emissions from this sector requires the agency to continue its comprehensive approach toward this sector by first evaluating CAFO emissions and then determining further regulatory actions to address these emissions. As discussed below, in responding to this petition, the EPA has considered (a) the need for more accurate methodologies to estimate air emissions from CAFOs, including the critical role of that information in implementing a comprehensive regulatory

strategy; (b) the agency's multiple ongoing actions taken to date in support of its comprehensive approach for addressing air emissions from CAFOs; and (c) the agency's limited resources and competing priorities.

A. The Need for and Importance of Developing Accurate CAFO Air Emissions Methodologies in the EPA's Comprehensive Approach

The interactive and highly complex nature of CAFO air emissions requires new, more accurate methodologies for estimating those emissions. Establishing sound emissions estimates is a fundamental step to establish a comprehensive, effective and efficient regulatory strategy to address CAFO air emissions. To this end, the agency first is gathering information to most accurately characterize the emissions from CAFOs, and, once the agency has sufficient information on CAFO emissions, it will determine the appropriate regulatory approach to address those emissions.

CAFOs can emit a variety of air pollutants, including those listed in the petition and summarized above, as well as hazardous air pollutants, carbon dioxide and reduced sulfur compounds. These pollutants are emitted from various sources at animal feeding operations, including confinement structures (e.g. barns, corrals), manure management systems and fields. Additionally, other agricultural equipment (e.g. engines, boilers) used on CAFOs emit pollutants; some of which are covered by other existing New Source Performance Standard programs. Many factors influence emissions, including the geographic location and environmental conditions (e.g. soil type, precipitation, humidity, temperature, water availability, wind conditions, terrain), management practices (e.g. feed, manure), animal characteristics (e.g. number, species, life stage), operating conditions (e.g. housing/confinement types) and general management practices. Due to the complex interactions of all of these factors, CAFO emissions cannot be standardized based solely on the number and type of animals at each operation. There are many scenarios when a CAFO with fewer animals will have higher emissions than a CAFO with a greater number of the same species of animals. Further, historic emission-measurement techniques, such as those used in some of the studies cited by the petitioners, vary widely, and many are imprecise and impacted by local conditions. This variability makes it difficult to compare or aggregate results of multiple studies for the purposes of developing simple emission-estimating methodologies. Therefore, historic studies on CAFO emissions provide insufficient information to accurately characterize the nature and extent of the emissions, which is necessary information not only for evaluating regulatory options, but also for reaching the conclusions needed to list a source category under CAA section 111(b)(1)(A), if the EPA ultimately decides to do so, as discussed further below.

Due to the uncertainties surrounding air emissions from CAFOs, the EPA and the U.S. Department of Agriculture jointly commissioned a report from the National Research Council titled *Air Emissions from Animal Feeding Operations: Current Knowledge, Future Needs*, which was published in 2003.[2] The report established the determination that it was not appropriate to estimate air emissions from CAFOs simply by multiplying the number of animal units by existing

[2] Ad Hoc Committee on Air Emissions from Animal Feeding Operations, Committee on Animal Nutrition, National Research Council, *Air Emissions from Animal Feeding Operations: Current Knowledge, Future Needs* (2003). ISBN: 0-309-50758-8. http://www.nap.edu/catalog/10586.html.

Waterkeeper et al. v. EPA, No. 1:18-cv-02135 (D.D.C.); EPA-HQ-2018-007135 ED_002290B_00037852-00088

emission factors for most pollutants. Additionally, the report stated that process-based modeling "will help provide scientifically sound estimates of air emissions from AFOs for use in regulatory and management programs."[3] Similarly, the EPA's Science Advisory Board reiterated this conclusion when it recommended in 2013 that the EPA develop process-based modeling approaches to predict air emissions.[4]

Developing accurate methodologies to estimate air emissions from CAFOs is an important first step under the EPA's implementation of its comprehensive strategy to address those emissions. Improved emission-estimation methodologies will both better describe the emission sources on a farm and enhance the EPA's emission inventories of these pollutants. The agency uses emissions inventories for a variety of policy and regulatory purposes, and these inventories are important in determining the extent to which CAFOs are subject to existing regulatory requirements and in developing any future regulations. These purposes include: (1) assessing a sector's contribution to nationwide emissions of a pollutant, an assessment that would be used to consider whether (as petitioners contend) CAFOs significantly cause or contribute to emissions of pollutants that endanger public health and welfare; (2) supporting boundary determinations in the initial area designation process following the promulgation of new or revised National Ambient Air Quality Standards, which impacts the emission sources that are considered for control under a state implementation plan; (3) evaluating the potential public health and welfare benefits of proposed regulations; and (4) supporting state and EPA air-quality modeling efforts, which are used for Prevention of Significant Deterioration and New Source Review permitting, as well as to develop SIPs that may include regulatory measures for CAFOs to reduce emissions of criteria pollutants or their precursors (such as PM and ammonia). Once the EPA finalizes CAFO emission-estimating methodologies, the agency can use them to improve emissions inventories, which will lead to more accurate understanding of the amounts of emissions from various emission sources on a farm. These improved emissions inventories will also allow the EPA to more accurately compare the contribution of CAFO emissions to regional and national levels of those pollutants.

With this better understanding and more accurate information, the EPA then can best evaluate the impacts of CAFO air emissions on public health and welfare and implement a comprehensive regulatory strategy to best address those emissions from the animal feeding sector under the CAA, with consideration of the multiple regulatory programs that may affect the sector and, depending on what regulatory approach is warranted, the most appropriate, effective and efficient means within each program. The CAA provides multiple ways to address emissions from CAFOs, depending on the target pollutant and nature of the emissions (point or fugitive). For example, the NAAQS program addresses the regulation of criteria pollutants from all sources, including stationary sources. National Emission Standards for Hazardous Air Pollutants promulgated under CAA section 112 address HAP from stationary sources, and NSPS and emissions guidelines under CAA section 111 cover certain pollutants as provided in that provision. Additionally, Title V operating permits and NSR/PSD pre-construction permits are required for sources in any source category subject to air-permitting requirements. While specific CAFOs are

---

[3] Ibid.

[4] *SAB Review of Emissions-Estimating Methodologies for Broiler Animal Feeding Operations and for Lagoons and Basins at Swine and Dairy Animal Feeding Operations* (2013). EPA-SAB-13-003 Available at: https://yosemite.epa.gov/sab/SABPRODUCT.NSF/81e39f4c09954fcb85256ead006be86e/ae6639dd6b79360e852579a4004e5529!OpenDocument&TableRow=2.3#2.

subject to existing requirements under some of these programs (e.g. Title V operating permits, PM NAAQS), the EPA has not promulgated standards specifically designed to reduce air emissions from CAFOs due to the need to accurately characterize emissions from the sector first.

Even if the EPA ultimately were to decide to regulate CAFOs under CAA section 111 as part of its regulatory strategy, the EPA would need additional information about CAFO emissions in order to determine the scope of the listing and to promulgate standards. For example, when developing regulations under CAA section 111, the agency must determine how to define the source category, which pollutants to address, which emission sources to control and what degree of emission reductions are achievable. Once the EPA finalizes new CAFO emission-estimating methodologies, the agency will be able to consider emissions of each significant pollutant from CAFOs as a whole sector, by sub-sector (e.g. specific animal species) and by emission source (e.g. barns, lagoons) and better identify and assess specific regulatory approaches to address those emissions. Having this information will aid the EPA in multiple ways, including those outlined below, if it decides to list and regulate CAFOs under CAA section 111.

First, the agency must determine the appropriate scope of the source category or categories to list. With respect to the scope of possible source categories, if the significant pollutants differ based on emission source and animal species, the agency may determine that having multiple source categories based on specific animal species and/or emission sources (e.g. cattle feedlots, swine lagoons) is more appropriate than listing "CAFOs" as a single source category. This level of information, which the EPA does not yet have and is working to develop, is critical to ensuring the most effective and efficient regulatory strategy and would allow the agency to make a considered judgement as to whether a listed source category should be defined broadly or narrowly. Such a determination would be consistent with other regulatory approaches under CAA section 111 where, depending on the sector, the agency has either listed a category broadly or focused on specific emission points.[5]

Second, additional information about the nature and quantity of pollutants emitted from CAFOs will ensure that the EPA has adequate information to make a listing decision regarding whether CAFOs' emissions of one or more of the pollutants in question "cause, or contribute significantly to, air pollution, which may reasonably be anticipated to endanger public health and welfare." The determination of whether CAFO emissions of methane, nitrous oxide, hydrogen sulfide, ammonia, PM, VOC or other pollutants meet this condition would be informed by the improved emission inventories discussed above.

Third, setting standards under CAA section 111 requires the EPA to determine the "best system of emission reduction" (BSER) for the listed source category and determine what degree

[5] For example, the standards in 40 CFR part 60, subpart BBB cover a given industrial sector, the rubber tire industry, in a single source category by defining emission limits for a single pollutant (VOC) from multiple types of facilities, including undertread cementing, sidewall cementing, tread end cementing, bead cementing, green tire spraying and Michelin-A, Michelin-B, and Michelin-C automatic operations. Alternately, in 40 CFR part 60, subparts T, U, V, W and X, the agency promulgated standards for separate source categories within a given industrial sector, the phosphate fertilizer industry (i.e. wet-process phosphoric acid, superphosphoric acid, diammonium phosphate, triple superphosphate and granular triple superphosphate plants, respectively). In other cases, the EPA sets standards for a specific emission source, regardless of industrial sector, such as the regulations for electric utility steam-generating units (boilers) limiting emissions of PM, nitrogen oxides and sulfur dioxide in 40 CFR part 60, subpart Da.

of emission reduction is achievable from the application of that BSER to sources in the source category. The additional information that the EPA is gathering will help it identify emission controls currently used at CAFOs. The emission-estimating methodologies that the agency is finalizing will allow the EPA to estimate potential emission reductions resulting from the application of various control options in a standardized way, which would aid the evaluation of the BSER for the source category(ies) in a potential future rulemaking. CAA section 111(b)(1)(B) requires the EPA to propose standards within one year of listing a source category and to promulgate final standards within one year of proposal. This limited timeframe for proposal and promulgation of standards necessitates that EPA gather sufficient and sufficiently reliable information to facilitate consideration of control options and the development of BSER prior to listing a new source category; otherwise, it would be difficult for the EPA to meet these statutory deadlines.

In sum, having more accurate emissions-estimating methodologies and the subsequent, improved inventories ensures that the EPA will be able to implement an overarching, effective and efficient regulatory strategy to address CAFO emissions. The emission-estimating methodologies will also improve estimates of the impact of current requirements for CAFOs and potential impact of any proposed requirements. This will help the agency determine the most appropriate approach with respect to air emissions from CAFOs and avoid potential problems, such as duplicative and overlapping regulatory requirements, that could arise from addressing these emissions in a piecemeal fashion under multiple CAA programs without considering how the various programs work together. Thus, this approach will allow the agency to ensure consistency between existing and proposed additional requirements and avoid creating unnecessary regulatory burden for CAFOs. For all of these reasons, development of the emission-estimating methodologies, as advised by the National Research Council and the EPA's SAB, is a fundamental initial step under the comprehensive strategy that the EPA is implementing to reduce air emissions from CAFOs. Our ongoing steps and expected time frame for addressing these issues is discussed in the next section.

Furthermore, once the EPA obtains the necessary information on the nature and extent of CAFO emissions, if the EPA determines that additional action to address CAFO emissions is warranted under CAA section 111 or otherwise, the improved emissions information will be relevant in deciding the timing of further action on CAFO emissions. This is because the timing of potential regulatory action on CAFO emissions must be weighed against other actions that the EPA could take to address emissions of these same pollutants from other source categories. For example, the EPA might determine that while certain pollutants from CAFOs warrant further action, other sources of those pollutants should be addressed first, based on the relative level of overall emissions of those pollutants from each of the source categories, the location of the emission sources within each source category or other factors.

B. The EPA's Ongoing Steps to Implement the Agency's Comprehensive Strategy and Reduce Emissions from CAFOs

To better understand and evaluate emissions from CAFOs, the EPA has been undertaking the National Air Emissions Monitoring Study. The study is a fundamental step that the agency intends to complete in order to determine how to best address emissions from CAFOs within the CAA's regulatory framework. NAEMS will help the agency develop methodologies to estimate

emissions of ammonia, hydrogen sulfide, PM and VOC from a wide variety of types of CAFOs.[6] These methodologies can better inform the estimation of emissions and exposures related to point sources located at these operations. Until the EPA more fully understands the level and sources of emissions of different pollutants, it would be premature for the agency to decide which CAA regulatory tool or tools could be most effectively applied to protect public health and welfare from these emissions.

After the research team, which was led by Purdue University with EPA oversight, collected emissions data for NAEMS from 2007 to 2010, the EPA analyzed the data and developed two draft emissions-estimating methodologies in 2012, which the agency published for public comment.[7] The EPA also submitted the methodologies to the SAB, which reviewed the methodologies and issued a final report in 2013. As stated earlier, the SAB recommended that the agency develop more rigorous methodologies for estimating emissions. In the interim, the SAB provided recommendations for expanding the data set and commented on the applicability of the draft emission estimating methodologies developed in 2012. The SAB found that NAEMS "is sufficient to start the development and evaluation of simplified process-based modeling approaches that would reflect the heterogeneity of CAFOs" and recognized that "the EPA may need to apply statistical approaches to assess emissions while it is developing and evaluating process-based models."[8] Since 2013, the EPA has been continuing to develop the methodologies consistent with the SAB recommendations, though that work has been slowed by various factors, as discussed next.

The EPA's Office of the Inspector General reported in a 2017 assessment of the status of NAEMS that the development of emission-estimating methodologies slowed while the EPA decided how to address some of the SAB's concerns.[9] At the same time that many government programs faced cutbacks due to sequestration, this project was also affected. Since 2013, the EPA has continued the development of emission-estimating methodologies using its statistically based approach and has taken steps recommended by the SAB, such as acquiring additional data sets from other external studies and reassessing data completeness criteria for NAEMS. Additionally, a lack of technical expertise due to staff retirement/reassignment and resource constraints (including discontinuation of funding for the contract supporting the study) due to competing priorities further slowed progress. In responding to the OIG's draft report, the EPA's Office of Air and Radiation outlined its plan to complete NAEMS, including working in partnership with the EPA's Office of Research and Development and agreeing with the OIG's recommendations to conduct systematic planning for future development of emission-estimating methodologies by April 2018. Based on the results of the systematic planning, the EPA will determine the emission source and pollutant combinations for which emission-estimating methodologies can be developed

---

[6] The types of CAFOs monitored for NAEMS include operations feeding swine, dairy cows and broiler and layer poultry.

[7] See 77 FR at 14716-14717 (March 13, 2012).

[8] *SAB Review of Emissions-Estimating Methodologies for Broiler Animal Feeding Operations and for Lagoons and Basins at Swine and Dairy Animal Feeding Operations*, EPA-SAB-13-003 (2013).

[9] U.S. Environmental Protection Agency Office of Inspector General, *Eleven Years After Agreement, EPA Has Not Developed Reliable Emission Estimation Methods to Determine Whether Animal Feeding Operations Comply with Clean Air Act and Other Statutes*. Report No. 17-P-0396 (2017).

and establish milestones for issuing the draft methodologies. The EPA expects to post these milestones on the agency's website by July 2018.[10]

While the EPA is completing NAEMS, the agency also has been undertaking other activities under existing regulations and programs that will help characterize emissions from this sector and support the implementation of the comprehensive strategy to address CAFO emissions, as well as directly address specific components of petitioners' concerns about the effects on health and welfare of CAFOs' emissions. For example, the EPA's August 2016 final PM Implementation Rule includes requirements that will generate information that will assist the EPA in evaluating emissions of ammonia, which is a precursor of fine particles (less than 2.5 micrometers, $PM_{2.5}$). This rule requires states to demonstrate that they have plans that will reduce $PM_{2.5}$ to at or below the standard over a specified number of years.[11] As part of this process, the EPA recognizes that the treatment of $PM_{2.5}$ precursors, including ammonia from sources such as animal feeding operations, is important in developing a $PM_{2.5}$ attainment plan or implementing the NSR program in a nonattainment area.[12] Specifically, the rule's preamble states that the EPA's 2011 National Emissions Inventory estimated that livestock raising was the largest source of ammonia emissions, contributing about 54 percent of total ammonia emissions, but also acknowledges that there was some uncertainty in quantifying ammonia emissions and other $PM_{2.5}$ precursors from source categories including livestock and fertilizer application.[13] Therefore, the rule requires states to control ammonia emissions, if necessary, for expeditious attainment or if ammonia contributes significantly to $PM_{2.5}$ levels which exceed the standard in a particular nonattainment area. These control measures would be adopted through state regulations that are submitted to the EPA as part of a SIP. The EPA expects the requirements contained in the 2016 final PM Implementation rule to further improve its understanding of emissions at the same time that updates to the 2014 NEI and "other uses of the NAEMS data will help to reduce uncertainties in current ammonia inventories and will improve the quality of future emissions inventories needed for implementing the $PM_{2.5}$ NAAQS."[14] This set of improvements will significantly aid the EPA's comprehensive strategy for addressing CAFO emissions to account for CAFO emission reductions required by existing regulations.

Additionally, in September 2017, the EPA, with the USDA, released a best-management practices document for livestock and poultry production farms, including CAFOs, titled *Agricultural Air Quality Conservation Measures: Reference Guide for Poultry and Livestock Production Systems*.[15] This document identifies measures that have been demonstrated to reduce air emissions of pollutants (ammonia, greenhouse gases, hydrogen sulfide, PM and VOC) from farms. While it does not involve the quantification of emissions, the guide clearly describes different practices and control technologies that reduce emissions of these pollutants. The guide supports the EPA's efforts to characterize available control technologies and practices for different

---

[10] See, "Response to the Office of Inspector General's Draft Report, *Emissions From Animal Feeding Operations Remain Largely Uncharacterized More Than 7 Years After Study Completed* (Project No. OPE-FY16-0018), June 23, 2017.

[11] See, "Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements." 81 FR 58010 (August 24, 2016).

[12] See 81 FR at 58014 (August 24, 2016).

[13] See 81 FR at 58016, 58032 (August 24, 2016).

[14] See 81 FR at 58032 (August 24, 2016).

[15] Available at https://www.epa.gov/sites/production/files/2017-01/documents/web_placeholder.pdf.

pollutants, emission sources and subsectors of CAFOs, which would be required to establish control options under the EPA's comprehensive strategy to reduce emissions from this sector, consistent with the statutory factors and requirements within the CAA. Although the reference guide does not impose federal requirements to reduce CAFO emissions, the guide helps states make informed decisions when considering adoption of pollutant controls and helps CAFOs determine which practices may be suitable for implementation of emission reductions on a site-specific basis. In fact, the guide includes an appendix listing existing state programs or regulations pertaining to air emissions from livestock and poultry operations. States that are developing programs to reduce air emissions from CAFOs can use the appendix to study the different approaches as models and to examine their potential applicability to other states.

Finally, the EPA will also consider applicable reporting requirements for CAFOs in assessing the extent of current requirements for CAFOs, following a court decision under the Comprehensive Environmental Response, Compensation and Liability Act and the Emergency Planning and Community Right-to-Know Act. In April 2017, the United States Court of Appeals for the District of Columbia Circuit vacated a 2008 rule that exempted farms from reporting air releases of hazardous substances from animal waste under Section 103 of CERCLA and, if the farms stable or confine fewer than certain numbers of animals, under Section 304 of EPCRA.[16] Ammonia and hydrogen sulfide are considered hazardous substances under CERCLA and EPCRA. Farms releasing hazardous substances to air from animal wastes, equal to or greater than their reportable quantities, within any 24-hour period, must notify the appropriate authorities because the 2008 exemption no longer applies.[17] The EPA is unable to provide emission-estimating methodologies for use with these reports until NAEMS is complete and will give owners and operators guidance so that these reports may be based on broad-range estimates that include uncertainties. As the EPA implements its comprehensive strategy for CAFO emissions, the agency will ensure that the regulatory approach adopted to address CAFO sources of ammonia and hydrogen sulfide emissions is consistent with these requirements and avoids duplicative obligations to the maximum extent possible.

C. The EPA's Limited Resources and Need to Set Regulatory Priorities

Due to resource constraints, the EPA is never able to take all actions at the same time and must always consider its obligations and authorities under the CAA and other statutes when determining which activities to undertake at what point in time and how to most efficiently complete its regulatory mission. In recent years, the agency has been continually required to accomplish more activities with less resources, making prioritization and efficiency even more necessary. The Office of Air Quality Planning and Standards houses the Sector Policies and Programs Division, which would be charged with making a determination whether to list CAFOs under CAA section 111 and, if listed, promulgating CAA section 111 standards for CAFOs. The office has seen a general decline in its budget for several years. Further, SPPD already is required to take numerous final agency actions with mandatory deadlines set by the CAA and court orders. As an example of just one part of the division's work, SPPD currently faces court-ordered

[16] *Waterkeeper Alliance* v. *EPA*, 853 F.3d 527 (D.C. Cir. 2017).

[17] See https://www.epa.gov/epcra/cercla-and-epcra-reporting-requirements-air-releases-hazardous-substances-animal-waste-farms.

deadlines for the completion of 33 residual risk and technology reviews of NESHAP for specific source categories in the next three years[18] and is anticipating a court order setting deadlines for the completion of residual risk and technology reviews of the NESHAP for an additional nine source categories.[19] In addition to the work on these reviews, SPPD also has ongoing obligations related to NSPS, non-residual risk and technology review NESHAP projects, CAA section 129 incinerator regulations and activities related to these rulemakings, including responses to Freedom of Information Act requests, rule implementation support, rule amendments addressing issues that hinder implementation, development of various electronic information systems such as electronic data submittal systems and stakeholder outreach. Looking at the EPA more broadly, the EPA is engaged in a large number of regulatory actions under other parts of the CAA and under other statutes. The EPA's ongoing regulatory work is described in the EPA's Regulatory Agenda, which the EPA publishes semi-annually, and its Regulatory Plan, which is published annually.[20]

In considering whether and when to take the regulatory actions requested in the September 2009 Petition, the EPA must balance those possible actions with all of the other obligations and authorities that the EPA has under the CAA and other statutes. If staff and other agency resources were shifted to take the action that petitioners' request, they would not be available for other agency work. As discussed above, the EPA is pursuing a comprehensive strategy to study and appropriately address CAFO emissions, and the EPA is committing resources to implement that approach. After considering the agency's current CAFO strategy, and in light of all of the other tasks before the agency, the EPA does not believe it should shift additional resources at this time to determine whether to list and regulate CAFOs under CAA section 111.

IV. Conclusion

In light of the EPA's current comprehensive strategy to address CAFO emissions and the agency's limited resources and the need to prioritize its regulatory activity and to use its resources efficiently, the EPA is declining at this time to determine whether CAFOs should be listed as a source category under CAA section 111. Undertaking such a determination at this time is not consistent with its comprehensive strategy to address CAFO emissions and would therefore be premature. Additionally, it would require the agency to divert resources from other work to a degree the agency believes is inappropriate given its resource constraints and priorities. Thus, the EPA is denying your petition to list CAFOs as a source category under CAA section 111.

Though the EPA has declined at this time to consider whether to list CAFOs as a source category under CAA section 111, the agency may consider listing and regulation of CAFOs under CAA section 111 as part of its comprehensive strategy for this sector in the future. If the agency does so, it will at that time address any additional issues that may arise from considering such listing and subsequent regulation under CAA section 111, such as how to apply the CAA section 111 definition of stationary source to CAFOs.

---

[18] See *California Communities Against Air Toxics*, Case No.15-512 (D.D.C.) (order dated March 13, 2017), and *Blue Ridge Environmental Defense League*, Case no. 16-364 (D.D.C.) (order dated March 22, 2017).

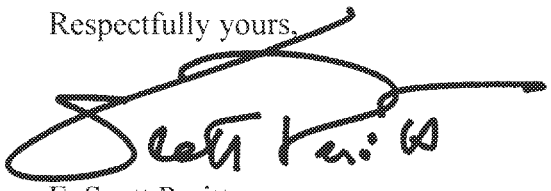
[19] See *Community In-Power and Development Association, Inc.* v. *Pruitt*, Case No 16-1074 (D.D.C.).

[20] More information on the EPA's Semiannual Regulatory Agenda and Regulatory Plan, including information on how to see the agency's most recent agenda and plan, is available at https://www.epa.gov/laws-regulations/regulatory-agendas-and-regulatory-plans.

Waterkeeper et al. v. EPA, No. 1:18-cv-02135 (D.D.C.); EPA-HQ-2018-007135 ED_002290B_00037852-00095

For the reasons discussed above, the EPA is denying the September 2009 Petition to list CAFOs as a source category under CAA section 111. This is the EPA's final agency action on this petition.

Respectfully yours,



E. Scott Pruitt

E. SCOTT PRUITT
ADMINISTRATOR

December 15, 2017

Mr. Jonathan Lovvorn
Mr. Daniel Lutz
The Humane Society of the United States
1255 23rd Street, N.W., Suite 450
Washington, D.C. 20037

Dear Mr. Lovvorn and Mr. Lutz:

On September 21, 2009, the Humane Society of the United States and other environmental and citizen groups[1] (collectively, "petitioners") sent a letter to the U.S. Environmental Protection Agency petitioning the agency to list concentrated animal feeding operations as a category of sources under section 111(b)(1)(A) of the Clean Air Act and, thereafter, to promulgate standards of performance for new CAFOs under CAA section 111(b)(1)(B) and prescribe regulations for state-performance standards for existing CAFOs under CAA section 111(d).

I write to inform you that the EPA is denying this petition to list CAFOs as a category of sources under CAA section 111. This denial fully and finally responds to this petition and is the EPA's final agency action on this petition.

The EPA recognizes that emissions from this sector exist and has been undertaking multiple activities related to CAFO emissions as part of the agency's preferred approach to address these emissions. As discussed below, the EPA has developed and is implementing a comprehensive strategy to address CAFO air emissions that includes conducting a nationwide study of air emissions from CAFOs and developing improved emission-estimating methodologies for these emissions; gathering additional information about the magnitude of CAFO emissions and their control options; considering to what extent existing CAA regulations address CAFO emissions; evaluating the various CAA regulatory tools that might be used to further address CAFO emissions; and then determining which regulatory tool or tools would be most appropriate to regulate CAFO emissions to protect public health and welfare. Further, in determining the sequence and timing of undertaking regulatory action, the agency must consider the most efficient

[1] In addition to the Humane Society of the United States, the other petitioners are Association of Irritated Residents, Center on Race, Poverty and the Environment, Clean Air Task Force, Dairy Education Alliance, El Comité Para el Bienestar de Earlimart, Environmental Integrity Project, Friends of the Earth, Sierra Club and Waterkeeper Alliance.

1200 PENNSYLVANIA AVE. NW • MAIL CODE 1101A • WASHINGTON, DC 20460 • (202) 564-4700 • FAX: (202) 501-1450

This paper is printed with vegetable-oil-based inks and is 100-percent postconsumer recycled material, chlorine-free-processed and recyclable.

and effective uses of its limited resources in light of ongoing budgetary uncertainties. Given the actions that the agency is undertaking and its resource constraints, the EPA is declining at this time to determine whether to list CAFOs as a source category under CAA section 111, and the agency, thus, is denying your petition. This denial is not based on a determination as to whether CAFOs meet the requirements for listing under CAA section 111(b)(1)(A). In the future, the EPA may initiate a process to determine whether to list CAFOs under CAA section 111(b)(1)(A); however, the agency has decided that it will not do so now.

I. Introduction

A. Statutory Provisions

Clean Air Act section 111(b)(1)(A) provides that the EPA shall "publish (and from time to time thereafter shall revise) a list of categories of stationary sources [and shall include a category on the list] if in [the Administrator's] judgment it causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare." For categories that the EPA lists under CAA section 111(b)(1)(A), CAA section 111(b)(1)(B) requires the EPA to propose federal standards of performance for new sources within the newly established category within one year of listing and then, after an opportunity for public comment, finalize the standards within one year of publishing the proposed standards.

B. Procedural History

On September 21, 2009, the petitioners sent a letter to the EPA petitioning the agency to list CAFOs and to promulgate standards of performance under CAA section 111 (which we will refer to as the "September 2009 Petition"). The petitioners specifically requested that the EPA undertake a rulemaking that:

(1) Finds that the air pollutants hydrogen sulfide and ammonia constitute air pollution that endangers U.S. public health or welfare;

(2) Announces the Administrator's judgment that emissions of methane, nitrous oxide, hydrogen sulfide, ammonia, volatile organic compounds and particulate matter from CAFOs contribute significantly to air pollution that is reasonably anticipated to endanger public health and welfare;

(3) Lists CAFOs as a category of stationary sources pursuant to CAA section 111(b)(1)(A); and

(4) Promulgates standards of performance for air emissions of methane, nitrous oxide, hydrogen sulfide, ammonia, VOC and PM from new and existing CAFOs under CAA sections 111(b) and 111(d).

September 2009 Petition, at page 4.

In January 2015, some of the petitioners (the Humane Society of the United States, Association of Irritated Residents, Environmental Integrity Project, Friends of the Earth and Sierra Club) filed a complaint with the United States District Court for the District of Columbia alleging that the EPA had unreasonably delayed in responding to the petition. The Court dismissed the case after finding that the plaintiffs had failed to notify the EPA 180 days before filing the suit, as required by CAA section 304(a).

On October 7, 2016, the same petitioners notified the EPA of their intent to file suit, as required under CAA section 304(a). On August 23, 2017, these petitioners filed a complaint with the United States District Court for the District of Columbia, alleging that the EPA had unreasonably delayed in responding to the September 2009 Petition.

II. Summary of the September 2009 Petition

In their September 2009 Petition, the petitioners cited the requirements of CAA section 111 and asserted that CAFOs meet the definition of a stationary source that emits air pollutants that endanger public health and welfare. The petitioners focused on listing CAFOs as a source category under the CAA in order for the EPA to promulgate performance standards for this sector to control emissions of the major pollutants emitted by CAFOs.

The petitioners included general statistics about the CAFO industry and asserted that CAFOs emit more pollutants than traditional, small-scale farms due to CAFOs' confinement and manure-management practices. The petitioners listed major pollutants emitted by CAFOs as being: (1) the greenhouse gases methane and nitrous oxide, (2) hydrogen sulfide, (3) ammonia, (4) PM and (5) VOC. The petitioners further discussed these pollutants, including the health and welfare effects they cause, in order to support the claim that emissions from CAFOs endanger public health. The petitioners cited examples of effects of exposure to these pollutants, including public health effects, such as respiratory illness, increased cancer rates, death and welfare effects, such as crop damage, atmospheric acidification, habitat loss and severe haze.

The petitioners asserted that CAFOs are significant contributors of these pollutants due to the number of CAFOs and the amount of waste they produce. The petitioners included examples of statistics from studies conducted at local, national and global scales regarding quantities of emissions of these pollutants and site-specific data related to public-nuisance complaints and individual facility reports. Finally, the petitioners listed various management practices and technologies that the petitioners assert have been demonstrated to reduce emissions of some of these pollutants from specific subsectors of CAFOs.

III. Response to Requests

After thoroughly considering the petitioners' request to list and regulate CAFOs under CAA section 111, the EPA has concluded that the complex nature of emission sources and emissions from this sector requires the agency to continue its comprehensive approach toward this sector by first evaluating CAFO emissions and then determining further regulatory actions to address these emissions. As discussed below, in responding to this petition, the EPA has considered (a) the need for more accurate methodologies to estimate air emissions from CAFOs, including the critical role of that information in implementing a comprehensive regulatory

strategy; (b) the agency's multiple ongoing actions taken to date in support of its comprehensive approach for addressing air emissions from CAFOs; and (c) the agency's limited resources and competing priorities.

A. The Need for and Importance of Developing Accurate CAFO Air Emissions Methodologies in the EPA's Comprehensive Approach

The interactive and highly complex nature of CAFO air emissions requires new, more accurate methodologies for estimating those emissions. Establishing sound emissions estimates is a fundamental step to establish a comprehensive, effective and efficient regulatory strategy to address CAFO air emissions. To this end, the agency first is gathering information to most accurately characterize the emissions from CAFOs, and, once the agency has sufficient information on CAFO emissions, it will determine the appropriate regulatory approach to address those emissions.

CAFOs can emit a variety of air pollutants, including those listed in the petition and summarized above, as well as hazardous air pollutants, carbon dioxide and reduced sulfur compounds. These pollutants are emitted from various sources at animal feeding operations, including confinement structures (e.g. barns, corrals), manure management systems and fields. Additionally, other agricultural equipment (e.g. engines, boilers) used on CAFOs emit pollutants; some of which are covered by other existing New Source Performance Standard programs. Many factors influence emissions, including the geographic location and environmental conditions (e.g. soil type, precipitation, humidity, temperature, water availability, wind conditions, terrain), management practices (e.g. feed, manure), animal characteristics (e.g. number, species, life stage), operating conditions (e.g. housing/confinement types) and general management practices. Due to the complex interactions of all of these factors, CAFO emissions cannot be standardized based solely on the number and type of animals at each operation. There are many scenarios when a CAFO with fewer animals will have higher emissions than a CAFO with a greater number of the same species of animals. Further, historic emission-measurement techniques, such as those used in some of the studies cited by the petitioners, vary widely, and many are imprecise and impacted by local conditions. This variability makes it difficult to compare or aggregate results of multiple studies for the purposes of developing simple emission-estimating methodologies. Therefore, historic studies on CAFO emissions provide insufficient information to accurately characterize the nature and extent of the emissions, which is necessary information not only for evaluating regulatory options, but also for reaching the conclusions needed to list a source category under CAA section 111(b)(1)(A), if the EPA ultimately decides to do so, as discussed further below.

Due to the uncertainties surrounding air emissions from CAFOs, the EPA and the U.S. Department of Agriculture jointly commissioned a report from the National Research Council titled *Air Emissions from Animal Feeding Operations: Current Knowledge, Future Needs*, which was published in 2003.[2] The report established the determination that it was not appropriate to estimate air emissions from CAFOs simply by multiplying the number of animal units by existing

[2] Ad Hoc Committee on Air Emissions from Animal Feeding Operations, Committee on Animal Nutrition, National Research Council, *Air Emissions from Animal Feeding Operations: Current Knowledge, Future Needs* (2003). ISBN: 0-309-50758-8. http://www.nap.edu/catalog/10586.html.

emission factors for most pollutants. Additionally, the report stated that process-based modeling "will help provide scientifically sound estimates of air emissions from AFOs for use in regulatory and management programs."[3] Similarly, the EPA's Science Advisory Board reiterated this conclusion when it recommended in 2013 that the EPA develop process-based modeling approaches to predict air emissions.[4]

Developing accurate methodologies to estimate air emissions from CAFOs is an important first step under the EPA's implementation of its comprehensive strategy to address those emissions. Improved emission-estimation methodologies will both better describe the emission sources on a farm and enhance the EPA's emission inventories of these pollutants. The agency uses emissions inventories for a variety of policy and regulatory purposes, and these inventories are important in determining the extent to which CAFOs are subject to existing regulatory requirements and in developing any future regulations. These purposes include: (1) assessing a sector's contribution to nationwide emissions of a pollutant, an assessment that would be used to consider whether (as petitioners contend) CAFOs significantly cause or contribute to emissions of pollutants that endanger public health and welfare; (2) supporting boundary determinations in the initial area designation process following the promulgation of new or revised National Ambient Air Quality Standards, which impacts the emission sources that are considered for control under a state implementation plan; (3) evaluating the potential public health and welfare benefits of proposed regulations; and (4) supporting state and EPA air-quality modeling efforts, which are used for Prevention of Significant Deterioration and New Source Review permitting, as well as to develop SIPs that may include regulatory measures for CAFOs to reduce emissions of criteria pollutants or their precursors (such as PM and ammonia). Once the EPA finalizes CAFO emission-estimating methodologies, the agency can use them to improve emissions inventories, which will lead to more accurate understanding of the amounts of emissions from various emission sources on a farm. These improved emissions inventories will also allow the EPA to more accurately compare the contribution of CAFO emissions to regional and national levels of those pollutants.

With this better understanding and more accurate information, the EPA then can best evaluate the impacts of CAFO air emissions on public health and welfare and implement a comprehensive regulatory strategy to best address those emissions from the animal feeding sector under the CAA, with consideration of the multiple regulatory programs that may affect the sector and, depending on what regulatory approach is warranted, the most appropriate, effective and efficient means within each program. The CAA provides multiple ways to address emissions from CAFOs, depending on the target pollutant and nature of the emissions (point or fugitive). For example, the NAAQS program addresses the regulation of criteria pollutants from all sources, including stationary sources, National Emission Standards for Hazardous Air Pollutants promulgated under CAA section 112 address HAP from stationary sources, and NSPS and emissions guidelines under CAA section 111 cover certain pollutants as provided in that provision. Additionally, Title V operating permits and NSR/PSD pre-construction permits are required for sources in any source category subject to air-permitting requirements. While specific CAFOs are

---

[3] Ibid.

[4] *SAB Review of Emissions-Estimating Methodologies for Broiler Animal Feeding Operations and for Lagoons and Basins at Swine and Dairy Animal Feeding Operations* (2013). EPA-SAB-13-003 Available at: https://yosemite.epa.gov/sab/SABPRODUCT.NSF/81e39f4c09954fcb85256ead006be86e/ae6639dd6b79360e852579a4004e5529!OpenDocument&TableRow=2.3#2.

subject to existing requirements under some of these programs (e.g. Title V operating permits, PM NAAQS), the EPA has not promulgated standards specifically designed to reduce air emissions from CAFOs due to the need to accurately characterize emissions from the sector first.

Even if the EPA ultimately were to decide to regulate CAFOs under CAA section 111 as part of its regulatory strategy, the EPA would need additional information about CAFO emissions in order to determine the scope of the listing and to promulgate standards. For example, when developing regulations under CAA section 111, the agency must determine how to define the source category, which pollutants to address, which emission sources to control and what degree of emission reductions are achievable. Once the EPA finalizes new CAFO emission-estimating methodologies, the agency will be able to consider emissions of each significant pollutant from CAFOs as a whole sector, by sub-sector (e.g. specific animal species) and by emission source (e.g. barns, lagoons) and better identify and assess specific regulatory approaches to address those emissions. Having this information will aid the EPA in multiple ways, including those outlined below, if it decides to list and regulate CAFOs under CAA section 111.

First, the agency must determine the appropriate scope of the source category or categories to list. With respect to the scope of possible source categories, if the significant pollutants differ based on emission source and animal species, the agency may determine that having multiple source categories based on specific animal species and/or emission sources (e.g. cattle feedlots, swine lagoons) is more appropriate than listing "CAFOs" as a single source category. This level of information, which the EPA does not yet have and is working to develop, is critical to ensuring the most effective and efficient regulatory strategy and would allow the agency to make a considered judgement as to whether a listed source category should be defined broadly or narrowly. Such a determination would be consistent with other regulatory approaches under CAA section 111 where, depending on the sector, the agency has either listed a category broadly or focused on specific emission points.[5]

Second, additional information about the nature and quantity of pollutants emitted from CAFOs will ensure that the EPA has adequate information to make a listing decision regarding whether CAFOs' emissions of one or more of the pollutants in question "cause, or contribute significantly to, air pollution, which may reasonably be anticipated to endanger public health and welfare." The determination of whether CAFO emissions of methane, nitrous oxide, hydrogen sulfide, ammonia, PM, VOC or other pollutants meet this condition would be informed by the improved emission inventories discussed above.

Third, setting standards under CAA section 111 requires the EPA to determine the "best system of emission reduction" (BSER) for the listed source category and determine what degree

[5] For example, the standards in 40 CFR part 60, subpart BBB cover a given industrial sector, the rubber tire industry, in a single source category by defining emission limits for a single pollutant (VOC) from multiple types of facilities, including undertread cementing, sidewall cementing, tread end cementing, bead cementing, green tire spraying and Michelin-A, Michelin-B, and Michelin-C automatic operations. Alternately, in 40 CFR part 60, subparts T, U, V, W and X, the agency promulgated standards for separate source categories within a given industrial sector, the phosphate fertilizer industry (i.e. wet-process phosphoric acid, superphosphoric acid, diammonium phosphate, triple superphosphate and granular triple superphosphate plants, respectively). In other cases, the EPA sets standards for a specific emission source, regardless of industrial sector, such as the regulations for electric utility steam-generating units (boilers) limiting emissions of PM, nitrogen oxides and sulfur dioxide in 40 CFR part 60, subpart Da.

of emission reduction is achievable from the application of that BSER to sources in the source category. The additional information that the EPA is gathering will help it identify emission controls currently used at CAFOs. The emission-estimating methodologies that the agency is finalizing will allow the EPA to estimate potential emission reductions resulting from the application of various control options in a standardized way, which would aid the evaluation of the BSER for the source category(ies) in a potential future rulemaking. CAA section 111(b)(1)(B) requires the EPA to propose standards within one year of listing a source category and to promulgate final standards within one year of proposal. This limited timeframe for proposal and promulgation of standards necessitates that EPA gather sufficient and sufficiently reliable information to facilitate consideration of control options and the development of BSER prior to listing a new source category; otherwise, it would be difficult for the EPA to meet these statutory deadlines.

In sum, having more accurate emissions-estimating methodologies and the subsequent, improved inventories ensures that the EPA will be able to implement an overarching, effective and efficient regulatory strategy to address CAFO emissions. The emission-estimating methodologies will also improve estimates of the impact of current requirements for CAFOs and potential impact of any proposed requirements. This will help the agency determine the most appropriate approach with respect to air emissions from CAFOs and avoid potential problems, such as duplicative and overlapping regulatory requirements, that could arise from addressing these emissions in a piecemeal fashion under multiple CAA programs without considering how the various programs work together. Thus, this approach will allow the agency to ensure consistency between existing and proposed additional requirements and avoid creating unnecessary regulatory burden for CAFOs. For all of these reasons, development of the emission-estimating methodologies, as advised by the National Research Council and the EPA's SAB, is a fundamental initial step under the comprehensive strategy that the EPA is implementing to reduce air emissions from CAFOs. Our ongoing steps and expected time frame for addressing these issues is discussed in the next section.

Furthermore, once the EPA obtains the necessary information on the nature and extent of CAFO emissions, if the EPA determines that additional action to address CAFO emissions is warranted under CAA section 111 or otherwise, the improved emissions information will be relevant in deciding the timing of further action on CAFO emissions. This is because the timing of potential regulatory action on CAFO emissions must be weighed against other actions that the EPA could take to address emissions of these same pollutants from other source categories. For example, the EPA might determine that while certain pollutants from CAFOs warrant further action, other sources of those pollutants should be addressed first, based on the relative level of overall emissions of those pollutants from each of the source categories, the location of the emission sources within each source category or other factors.

B. The EPA's Ongoing Steps to Implement the Agency's Comprehensive Strategy and Reduce Emissions from CAFOs

To better understand and evaluate emissions from CAFOs, the EPA has been undertaking the National Air Emissions Monitoring Study. The study is a fundamental step that the agency intends to complete in order to determine how to best address emissions from CAFOs within the CAA's regulatory framework. NAEMS will help the agency develop methodologies to estimate

emissions of ammonia, hydrogen sulfide, PM and VOC from a wide variety of types of CAFOs.[6] These methodologies can better inform the estimation of emissions and exposures related to point sources located at these operations. Until the EPA more fully understands the level and sources of emissions of different pollutants, it would be premature for the agency to decide which CAA regulatory tool or tools could be most effectively applied to protect public health and welfare from these emissions.

After the research team, which was led by Purdue University with EPA oversight, collected emissions data for NAEMS from 2007 to 2010, the EPA analyzed the data and developed two draft emissions-estimating methodologies in 2012, which the agency published for public comment.[7] The EPA also submitted the methodologies to the SAB, which reviewed the methodologies and issued a final report in 2013. As stated earlier, the SAB recommended that the agency develop more rigorous methodologies for estimating emissions. In the interim, the SAB provided recommendations for expanding the data set and commented on the applicability of the draft emission estimating methodologies developed in 2012. The SAB found that NAEMS "is sufficient to start the development and evaluation of simplified process-based modeling approaches that would reflect the heterogeneity of CAFOs" and recognized that "the EPA may need to apply statistical approaches to assess emissions while it is developing and evaluating process-based models."[8] Since 2013, the EPA has been continuing to develop the methodologies consistent with the SAB recommendations, though that work has been slowed by various factors, as discussed next.

The EPA's Office of the Inspector General reported in a 2017 assessment of the status of NAEMS that the development of emission-estimating methodologies slowed while the EPA decided how to address some of the SAB's concerns.[9] At the same time that many government programs faced cutbacks due to sequestration, this project was also affected. Since 2013, the EPA has continued the development of emission-estimating methodologies using its statistically based approach and has taken steps recommended by the SAB, such as acquiring additional data sets from other external studies and reassessing data completeness criteria for NAEMS. Additionally, a lack of technical expertise due to staff retirement/reassignment and resource constraints (including discontinuation of funding for the contract supporting the study) due to competing priorities further slowed progress. In responding to the OIG's draft report, the EPA's Office of Air and Radiation outlined its plan to complete NAEMS, including working in partnership with the EPA's Office of Research and Development and agreeing with the OIG's recommendations to conduct systematic planning for future development of emission-estimating methodologies by April 2018. Based on the results of the systematic planning, the EPA will determine the emission source and pollutant combinations for which emission-estimating methodologies can be developed

---

[6] The types of CAFOs monitored for NAEMS include operations feeding swine, dairy cows and broiler and layer poultry.

[7] See 77 FR at 14716-14717 (March 13, 2012).

[8] *SAB Review of Emissions-Estimating Methodologies for Broiler Animal Feeding Operations and for Lagoons and Basins at Swine and Dairy Animal Feeding Operations*, EPA-SAB-13-003 (2013).

[9] U.S. Environmental Protection Agency Office of Inspector General, *Eleven Years After Agreement, EPA Has Not Developed Reliable Emission Estimation Methods to Determine Whether Animal Feeding Operations Comply with Clean Air Act and Other Statutes*. Report No. 17-P-0396 (2017).

and establish milestones for issuing the draft methodologies. The EPA expects to post these milestones on the agency's website by July 2018.[10]

While the EPA is completing NAEMS, the agency also has been undertaking other activities under existing regulations and programs that will help characterize emissions from this sector and support the implementation of the comprehensive strategy to address CAFO emissions, as well as directly address specific components of petitioners' concerns about the effects on health and welfare of CAFOs' emissions. For example, the EPA's August 2016 final PM Implementation Rule includes requirements that will generate information that will assist the EPA in evaluating emissions of ammonia, which is a precursor of fine particles (less than 2.5 micrometers, $PM_{2.5}$). This rule requires states to demonstrate that they have plans that will reduce $PM_{2.5}$ to at or below the standard over a specified number of years.[11] As part of this process, the EPA recognizes that the treatment of $PM_{2.5}$ precursors, including ammonia from sources such as animal feeding operations, is important in developing a $PM_{2.5}$ attainment plan or implementing the NSR program in a nonattainment area.[12] Specifically, the rule's preamble states that the EPA's 2011 National Emissions Inventory estimated that livestock raising was the largest source of ammonia emissions, contributing about 54 percent of total ammonia emissions, but also acknowledges that there was some uncertainty in quantifying ammonia emissions and other $PM_{2.5}$ precursors from source categories including livestock and fertilizer application.[13] Therefore, the rule requires states to control ammonia emissions, if necessary, for expeditious attainment or if ammonia contributes significantly to $PM_{2.5}$ levels which exceed the standard in a particular nonattainment area. These control measures would be adopted through state regulations that are submitted to the EPA as part of a SIP. The EPA expects the requirements contained in the 2016 final PM Implementation rule to further improve its understanding of emissions at the same time that updates to the 2014 NEI and "other uses of the NAEMS data will help to reduce uncertainties in current ammonia inventories and will improve the quality of future emissions inventories needed for implementing the $PM_{2.5}$ NAAQS."[14] This set of improvements will significantly aid the EPA's comprehensive strategy for addressing CAFO emissions to account for CAFO emission reductions required by existing regulations.

Additionally, in September 2017, the EPA, with the USDA, released a best-management practices document for livestock and poultry production farms, including CAFOs, titled *Agricultural Air Quality Conservation Measures: Reference Guide for Poultry and Livestock Production Systems*.[15] This document identifies measures that have been demonstrated to reduce air emissions of pollutants (ammonia, greenhouse gases, hydrogen sulfide, PM and VOC) from farms. While it does not involve the quantification of emissions, the guide clearly describes different practices and control technologies that reduce emissions of these pollutants. The guide supports the EPA's efforts to characterize available control technologies and practices for different

---

[10] See, "Response to the Office of Inspector General's Draft Report, *Emissions From Animal Feeding Operations Remain Largely Uncharacterized More Than 7 Years After Study Completed* (Project No. OPE-FY16-0018), June 23, 2017.

[11] See, "Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements." 81 FR 58010 (August 24, 2016).

[12] See 81 FR at 58014 (August 24, 2016).

[13] See 81 FR at 58016, 58032 (August 24, 2016).

[14] See 81 FR at 58032 (August 24, 2016).

[15] Available at https://www.epa.gov/sites/production/files/2017-01/documents/web_placeholder.pdf.

pollutants, emission sources and subsectors of CAFOs, which would be required to establish control options under the EPA's comprehensive strategy to reduce emissions from this sector, consistent with the statutory factors and requirements within the CAA. Although the reference guide does not impose federal requirements to reduce CAFO emissions, the guide helps states make informed decisions when considering adoption of pollutant controls and helps CAFOs determine which practices may be suitable for implementation of emission reductions on a site-specific basis. In fact, the guide includes an appendix listing existing state programs or regulations pertaining to air emissions from livestock and poultry operations. States that are developing programs to reduce air emissions from CAFOs can use the appendix to study the different approaches as models and to examine their potential applicability to other states.

Finally, the EPA will also consider applicable reporting requirements for CAFOs in assessing the extent of current requirements for CAFOs, following a court decision under the Comprehensive Environmental Response, Compensation and Liability Act and the Emergency Planning and Community Right-to-Know Act. In April 2017, the United States Court of Appeals for the District of Columbia Circuit vacated a 2008 rule that exempted farms from reporting air releases of hazardous substances from animal waste under Section 103 of CERCLA and, if the farms stable or confine fewer than certain numbers of animals, under Section 304 of EPCRA.[16] Ammonia and hydrogen sulfide are considered hazardous substances under CERCLA and EPCRA. Farms releasing hazardous substances to air from animal wastes, equal to or greater than their reportable quantities, within any 24-hour period, must notify the appropriate authorities because the 2008 exemption no longer applies.[17] The EPA is unable to provide emission-estimating methodologies for use with these reports until NAEMS is complete and will give owners and operators guidance so that these reports may be based on broad-range estimates that include uncertainties. As the EPA implements its comprehensive strategy for CAFO emissions, the agency will ensure that the regulatory approach adopted to address CAFO sources of ammonia and hydrogen sulfide emissions is consistent with these requirements and avoids duplicative obligations to the maximum extent possible.

C. The EPA's Limited Resources and Need to Set Regulatory Priorities

Due to resource constraints, the EPA is never able to take all actions at the same time and must always consider its obligations and authorities under the CAA and other statutes when determining which activities to undertake at what point in time and how to most efficiently complete its regulatory mission. In recent years, the agency has been continually required to accomplish more activities with less resources, making prioritization and efficiency even more necessary. The Office of Air Quality Planning and Standards houses the Sector Policies and Programs Division, which would be charged with making a determination whether to list CAFOs under CAA section 111 and, if listed, promulgating CAA section 111 standards for CAFOs. The office has seen a general decline in its budget for several years. Further, SPPD already is required to take numerous final agency actions with mandatory deadlines set by the CAA and court orders. As an example of just one part of the division's work, SPPD currently faces court-ordered

[16] *Waterkeeper Alliance* v. *EPA*, 853 F.3d 527 (D.C. Cir. 2017).

[17] See https://www.epa.gov/epcra/cercla-and-epcra-reporting-requirements-air-releases-hazardous-substances-animal-waste-farms.

deadlines for the completion of 33 residual risk and technology reviews of NESHAP for specific source categories in the next three years[18] and is anticipating a court order setting deadlines for the completion of residual risk and technology reviews of the NESHAP for an additional nine source categories.[19] In addition to the work on these reviews, SPPD also has ongoing obligations related to NSPS, non-residual risk and technology review NESHAP projects, CAA section 129 incinerator regulations and activities related to these rulemakings, including responses to Freedom of Information Act requests, rule implementation support, rule amendments addressing issues that hinder implementation, development of various electronic information systems such as electronic data submittal systems and stakeholder outreach. Looking at the EPA more broadly, the EPA is engaged in a large number of regulatory actions under other parts of the CAA and under other statutes. The EPA's ongoing regulatory work is described in the EPA's Regulatory Agenda, which the EPA publishes semi-annually, and its Regulatory Plan, which is published annually.[20]

In considering whether and when to take the regulatory actions requested in the September 2009 Petition, the EPA must balance those possible actions with all of the other obligations and authorities that the EPA has under the CAA and other statutes. If staff and other agency resources were shifted to take the action that petitioners' request, they would not be available for other agency work. As discussed above, the EPA is pursuing a comprehensive strategy to study and appropriately address CAFO emissions, and the EPA is committing resources to implement that approach. After considering the agency's current CAFO strategy, and in light of all of the other tasks before the agency, the EPA does not believe it should shift additional resources at this time to determine whether to list and regulate CAFOs under CAA section 111.

IV. Conclusion

In light of the EPA's current comprehensive strategy to address CAFO emissions and the agency's limited resources and the need to prioritize its regulatory activity and to use its resources efficiently, the EPA is declining at this time to determine whether CAFOs should be listed as a source category under CAA section 111. Undertaking such a determination at this time is not consistent with its comprehensive strategy to address CAFO emissions and would therefore be premature. Additionally, it would require the agency to divert resources from other work to a degree the agency believes is inappropriate given its resource constraints and priorities. Thus, the EPA is denying your petition to list CAFOs as a source category under CAA section 111.

Though the EPA has declined at this time to consider whether to list CAFOs as a source category under CAA section 111, the agency may consider listing and regulation of CAFOs under CAA section 111 as part of its comprehensive strategy for this sector in the future. If the agency does so, it will at that time address any additional issues that may arise from considering such listing and subsequent regulation under CAA section 111, such as how to apply the CAA section 111 definition of stationary source to CAFOs.

---

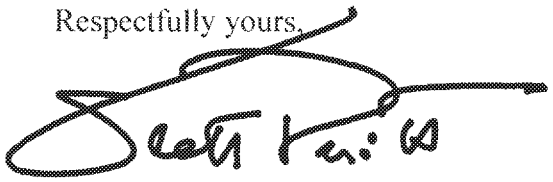
[18] See *California Communities Against Air Toxics*, Case No.15-512 (D.D.C.) (order dated March 13, 2017), and *Blue Ridge Environmental Defense League*, Case no. 16-364 (D.D.C.) (order dated March 22, 2017).

[19] See *Community In-Power and Development Association, Inc.* v. *Pruitt*, Case No 16-1074 (D.D.C.).

[20] More information on the EPA's Semiannual Regulatory Agenda and Regulatory Plan, including information on how to see the agency's most recent agenda and plan, is available at https://www.epa.gov/laws-regulations/regulatory-agendas-and-regulatory-plans.

For the reasons discussed above, the EPA is denying the September 2009 Petition to list CAFOs as a source category under CAA section 111. This is the EPA's final agency action on this petition.

Respectfully yours,



E. Scott Pruitt

E. Scott Pruitt
Administrator

December 15, 2017

Ms. Malaika Elias
Mr. Daniel Estrin
Waterkeeper Alliance
180 Maiden Lane, Suite 603
New York, New York 10038

Dear Ms. Elias and Mr. Estrin:

On September 21, 2009, the Humane Society of the United States and other environmental and citizen groups[1] (collectively, "petitioners") sent a letter to the U.S. Environmental Protection Agency petitioning the agency to list concentrated animal feeding operations as a category of sources under section 111(b)(1)(A) of the Clean Air Act and, thereafter, to promulgate standards of performance for new CAFOs under CAA section 111(b)(1)(B) and prescribe regulations for state-performance standards for existing CAFOs under CAA section 111(d).

I write to inform you that the EPA is denying this petition to list CAFOs as a category of sources under CAA section 111. This denial fully and finally responds to this petition and is the EPA's final agency action on this petition.

The EPA recognizes that emissions from this sector exist and has been undertaking multiple activities related to CAFO emissions as part of the agency's preferred approach to address these emissions. As discussed below, the EPA has developed and is implementing a comprehensive strategy to address CAFO air emissions that includes conducting a nationwide study of air emissions from CAFOs and developing improved emission-estimating methodologies for these emissions; gathering additional information about the magnitude of CAFO emissions and their control options; considering to what extent existing CAA regulations address CAFO emissions; evaluating the various CAA regulatory tools that might be used to further address CAFO emissions; and then determining which regulatory tool or tools would be most appropriate to regulate CAFO emissions to protect public health and welfare. Further, in determining the sequence and timing of undertaking regulatory action, the agency must consider the most efficient and effective uses of its limited resources in light of ongoing budgetary uncertainties. Given the

[1] In addition to the Humane Society of the United States, the other petitioners are Association of Irritated Residents, Center on Race, Poverty and the Environment, Clean Air Task Force, Dairy Education Alliance, El Comité Para el Bienestar de Earlimart, Environmental Integrity Project, Friends of the Earth, Sierra Club and Waterkeeper Alliance.

1200 Pennsylvania Ave, NW • Mail Code 1101A • Washington, DC 20460 • (202) 564-4700 • Fax: (202) 501-1450

This paper is printed with vegetable-oil-based inks and is 100-percent postconsumer recycled material, chlorine-free-processed and recyclable.

actions that the agency is undertaking and its resource constraints, the EPA is declining at this time to determine whether to list CAFOs as a source category under CAA section 111, and the agency, thus, is denying your petition. This denial is not based on a determination as to whether CAFOs meet the requirements for listing under CAA section 111(b)(1)(A). In the future, the EPA may initiate a process to determine whether to list CAFOs under CAA section 111(b)(1)(A); however, the agency has decided that it will not do so now.

I. Introduction

A. Statutory Provisions

Clean Air Act section 111(b)(1)(A) provides that the EPA shall "publish (and from time to time thereafter shall revise) a list of categories of stationary sources [and shall include a category on the list] if in [the Administrator's] judgment it causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare." For categories that the EPA lists under CAA section 111(b)(1)(A), CAA section 111(b)(1)(B) requires the EPA to propose federal standards of performance for new sources within the newly established category within one year of listing and then, after an opportunity for public comment, finalize the standards within one year of publishing the proposed standards.

B. Procedural History

On September 21, 2009, the petitioners sent a letter to the EPA petitioning the agency to list CAFOs and to promulgate standards of performance under CAA section 111 (which we will refer to as the "September 2009 Petition"). The petitioners specifically requested that the EPA undertake a rulemaking that:

(1) Finds that the air pollutants hydrogen sulfide and ammonia constitute air pollution that endangers U.S. public health or welfare;

(2) Announces the Administrator's judgment that emissions of methane, nitrous oxide, hydrogen sulfide, ammonia, volatile organic compounds and particulate matter from CAFOs contribute significantly to air pollution that is reasonably anticipated to endanger public health and welfare;

(3) Lists CAFOs as a category of stationary sources pursuant to CAA section 111(b)(1)(A); and

(4) Promulgates standards of performance for air emissions of methane, nitrous oxide, hydrogen sulfide, ammonia, VOC and PM from new and existing CAFOs under CAA sections 111(b) and 111(d).

September 2009 Petition, at p. 4.

In January 2015, some of the petitioners (the Humane Society of the United States, Association of Irritated Residents, Environmental Integrity Project, Friends of the Earth and Sierra Club) filed a complaint with the United States District Court for the District of Columbia alleging that the EPA had unreasonably delayed in responding to the petition. The Court dismissed the case after finding that the plaintiffs had failed to notify the EPA 180 days before filing the suit, as required by CAA section 304(a).

On October 7, 2016, the same petitioners notified the EPA of their intent to file suit, as required under CAA section 304(a). On August 23, 2017, these petitioners filed a complaint with the United States District Court for the District of Columbia, alleging that the EPA had unreasonably delayed in responding to the September 2009 Petition.

II. Summary of the September 2009 Petition

In their September 2009 Petition, the petitioners cited the requirements of CAA section 111 and asserted that CAFOs meet the definition of a stationary source that emits air pollutants that endanger public health and welfare. The petitioners focused on listing CAFOs as a source category under the CAA in order for the EPA to promulgate performance standards for this sector to control emissions of the major pollutants emitted by CAFOs.

The petitioners included general statistics about the CAFO industry and asserted that CAFOs emit more pollutants than traditional, small-scale farms due to CAFOs' confinement and manure-management practices. The petitioners listed major pollutants emitted by CAFOs as being: (1) the greenhouse gases methane and nitrous oxide, (2) hydrogen sulfide, (3) ammonia, (4) PM and (5) VOC. The petitioners further discussed these pollutants, including the health and welfare effects they cause, in order to support the claim that emissions from CAFOs endanger public health. The petitioners cited examples of effects of exposure to these pollutants, including public health effects, such as respiratory illness, increased cancer rates, death and welfare effects, such as crop damage, atmospheric acidification, habitat loss and severe haze.

The petitioners asserted that CAFOs are significant contributors of these pollutants due to the number of CAFOs and the amount of waste they produce. The petitioners included examples of statistics from studies conducted at local, national and global scales regarding quantities of emissions of these pollutants and site-specific data related to public-nuisance complaints and individual facility reports. Finally, the petitioners listed various management practices and technologies that the petitioners assert have been demonstrated to reduce emissions of some of these pollutants from specific subsectors of CAFOs.

III. Response to Requests

After thoroughly considering the petitioners' request to list and regulate CAFOs under CAA section 111, the EPA has concluded that the complex nature of emission sources and emissions from this sector requires the agency to continue its comprehensive approach toward this sector by first evaluating CAFO emissions and then determining further regulatory actions to address these emissions. As discussed below, in responding to this petition, the EPA has

considered (a) the need for more accurate methodologies to estimate air emissions from CAFOs, including the critical role of that information in implementing a comprehensive regulatory strategy; (b) the agency's multiple ongoing actions taken to date in support of its comprehensive approach for addressing air emissions from CAFOs; and (c) the agency's limited resources and competing priorities.

A. The Need for and Importance of Developing Accurate CAFO Air Emissions Methodologies in the EPA's Comprehensive Approach

The interactive and highly complex nature of CAFO air emissions requires new, more accurate methodologies for estimating those emissions. Establishing sound emissions estimates is a fundamental step to establish a comprehensive, effective and efficient regulatory strategy to address CAFO air emissions. To this end, the agency first is gathering information to most accurately characterize the emissions from CAFOs, and, once the agency has sufficient information on CAFO emissions, it will determine the appropriate regulatory approach to address those emissions.

CAFOs can emit a variety of air pollutants, including those listed in the petition and summarized above, as well as hazardous air pollutants, carbon dioxide and reduced sulfur compounds. These pollutants are emitted from various sources at animal feeding operations, including confinement structures (e.g., barns and corrals), manure management systems and fields. Additionally, other agricultural equipment (e.g., engines and boilers) used on CAFOs emit pollutants; some of which are covered by other existing New Source Performance Standard programs. Many factors influence emissions, including the geographic location and environmental conditions (e.g., soil type, precipitation, humidity, temperature, water availability, wind conditions and terrain), management practices (e.g., feed and manure), animal characteristics (e.g., number, species and life stage), operating conditions (e.g., housing/confinement types) and general management practices. Due to the complex interactions of all of these factors, CAFO emissions cannot be standardized based solely on the number and type of animals at each operation. There are many scenarios when a CAFO with fewer animals will have higher emissions than a CAFO with a greater number of the same species of animals. Further, historic emission-measurement techniques, such as those used in some of the studies cited by the petitioners, vary widely and many are imprecise and impacted by local conditions. This variability makes it difficult to compare or aggregate results of multiple studies for the purposes of developing simple emission-estimating methodologies. Therefore, historic studies on CAFO emissions provide insufficient information to accurately characterize the nature and extent of the emissions, which is necessary information not only for evaluating regulatory options, but also for reaching the conclusions needed to list a source category under CAA section 111(b)(1)(A), if the EPA ultimately decides to do so, as discussed further below.

Due to the uncertainties surrounding air emissions from CAFOs, the EPA and the U.S. Department of Agriculture jointly commissioned a report from the National Research Council titled *Air Emissions from Animal Feeding Operations: Current Knowledge, Future Needs*, which

was published in 2003.[2] The report established the determination that it was not appropriate to estimate air emissions from CAFOs simply by multiplying the number of animal units by existing emission factors for most pollutants. Additionally, the report stated that process-based modeling "will help provide scientifically sound estimates of air emissions from AFOs for use in regulatory and management programs."[3] Similarly, the EPA's Science Advisory Board reiterated this conclusion when it recommended in 2013 that the EPA develop process-based modeling approaches to predict air emissions.[4]

Developing accurate methodologies to estimate air emissions from CAFOs is an important first step under the EPA's implementation of its comprehensive strategy to address those emissions. Improved emission-estimation methodologies will both better describe the emission sources on a farm and enhance the EPA's emission inventories of these pollutants. The agency uses emissions inventories for a variety of policy and regulatory purposes, and these inventories are important in determining the extent to which CAFOs are subject to existing regulatory requirements and in developing any future regulations. These purposes include: (1) assessing a sector's contribution to nationwide emissions of a pollutant, an assessment that would be used to consider whether (as petitioners contend) CAFOs significantly cause or contribute to emissions of pollutants that endanger public health and welfare; (2) supporting boundary determinations in the initial area designation process following the promulgation of a new or revised National Ambient Air Quality Standards, which impacts the emission sources that are considered for control under a state implementation plan; (3) evaluating the potential public health and welfare benefits of proposed regulations; and (4) supporting state and EPA air-quality modeling efforts, which are used for Prevention of Significant Deterioration and New Source Review permitting, as well as to develop SIPs that may include regulatory measures for CAFOs to reduce emissions of criteria pollutants or their precursors (such as PM and ammonia). Once the EPA finalizes CAFO emission-estimating methodologies, the agency can use them to improve emissions inventories, which will lead to more accurate understanding of the amounts of emissions from various emission sources on a farm. These improved emissions inventories will also allow the EPA to more accurately compare the contribution of CAFO emissions to regional and national levels of those pollutants.

With this better understanding and more accurate information, the EPA then can best evaluate the impacts of CAFO air emissions on public health and welfare and implement a comprehensive regulatory strategy to best address those emissions from the animal feeding sector under the CAA, with consideration of the multiple regulatory programs that may affect the sector and, depending on what regulatory approach is warranted, the most appropriate, effective and efficient means within each program. The CAA provides multiple ways to address emissions from CAFOs, depending on the target pollutant and nature of the emissions (point or fugitive). For example, the NAAQS program addresses the regulation of criteria pollutants from all sources, including stationary sources, National Emission Standards for Hazardous Air Pollutants

---

[2] Ad Hoc Committee on Air Emissions from Animal Feeding Operations, Committee on Animal Nutrition, National Research Council, *Air Emissions from Animal Feeding Operations: Current Knowledge, Future Needs* (2003). ISBN: 0-309-50758-8. http://www.nap.edu/catalog/10586.html

[3] Ibid.

[4] *SAB Review of Emissions-Estimating Methodologies for Broiler Animal Feeding Operations and for Lagoons and Basins at Swine and Dairy Animal Feeding Operations* (2013). EPA-SAB-13-003 Available at: https://yosemite.epa.gov/sab/SABPRODUCT.NSF/81e39f4c09954fcb85256ead006be86e/ac6639dd6b79360e852579a4004e5529!OpenDocument&TableRow=2.3#2.

promulgated under CAA section 112 address HAP from stationary sources, and NSPS and emissions guidelines under CAA section 111 cover certain pollutants as provided in that provision. Additionally, Title V operating permits and NSR/PSD pre-construction permits are required for sources in any source category subject to air permitting requirements. While specific CAFOs are subject to existing requirements under some of these programs (e.g., Title V operating permits and PM NAAQS), the EPA has not promulgated standards specifically designed to reduce air emissions from CAFOs due to the need to accurately characterize emissions from the sector first.

Even if the EPA ultimately were to decide to regulate CAFOs under CAA section 111 as part of its regulatory strategy, the EPA would need additional information about CAFO emissions in order to determine the scope of the listing and to promulgate standards. For example, when developing regulations under CAA section 111, the agency must determine how to define the source category, which pollutants to address, which emission sources to control and what degree of emission reductions are achievable. Once the EPA finalizes new CAFO emission estimating methodologies, the agency will be able to consider emissions of each significant pollutant from CAFOs as a whole sector, by sub-sector (e.g., specific animal species), and by emission source (e.g., barns or lagoons) and better identify and assess specific regulatory approaches to address those emissions. Having this information will aid the EPA in multiple ways, including those outlined below, if it decides to list and regulate CAFOs under CAA section 111.

First, the agency must determine the appropriate scope of the source category or categories to list. With respect to the scope of possible source categories, if the significant pollutants differ based on emission source and animal species, the agency may determine that having multiple source categories based on specific animal species and/or emission sources (e.g., cattle feedlots, swine lagoons) is more appropriate than listing "CAFOs" as a single source category. This level of information, which the EPA does not yet have and is working to develop, is critical to ensuring the most effective and efficient regulatory strategy and would allow the agency to make a considered judgement as to whether a listed source category should be defined broadly or narrowly. Such a determination would be consistent with other regulatory approaches under CAA section 111 where, depending on the sector, the agency has either listed a category broadly, or focused on specific emission points.[5]

Second, additional information about the nature and quantity of pollutants emitted from CAFOs will ensure that the EPA has adequate information to make a listing decision regarding whether CAFOs' emissions of one or more of the pollutants in question "cause, or contribute significantly to, air pollution, which may reasonably be anticipated to endanger public health and welfare." The determination of whether CAFO emissions of methane, nitrous oxide, hydrogen

[5] For example, the standards in 40 CFR part 60, subpart BBB cover a given industrial sector, the rubber tire industry, in a single source category by defining emission limits for a single pollutant (VOC) from multiple types of facilities, including undertread cementing, sidewall cementing, tread end cementing, bead cementing, green tire spraying and Michelin-A, Michelin-B, and Michelin-C automatic operations. Alternately, in 40 CFR part 60, subparts T, U, V, W and X, the agency promulgated standards for separate source categories within a given industrial sector, the phosphate fertilizer industry (i.e., wet-process phosphoric acid, superphosphoric acid, diammonium phosphate, triple superphosphate and granular triple superphosphate plants, respectively). In other cases, the EPA sets standards for a specific emission source, regardless of industrial sector, such as the regulations for electric utility steam-generating units (boilers) limiting emissions of PM, nitrogen oxides and sulfur dioxide in 40 CFR part 60, subpart Da.

sulfide, ammonia, PM, VOC or other pollutants meet this condition would be informed by the improved emission inventories discussed above.

Third, setting standards under CAA section 111 requires the EPA to determine the "best system of emission reduction" for the listed source category and determine what degree of emission reduction is achievable from the application of that BSER to sources in the source category. The additional information that the EPA is gathering will help it identify emission controls currently used at CAFOs. The emission estimating methodologies that the agency is finalizing will allow the EPA to estimate potential emission reductions resulting from the application of various control options in a standardized way, which would aid the evaluation of the BSER for the source category(ies) in a potential future rulemaking. CAA section 111(b)(1)(B) requires the EPA to propose standards within one year of listing a source category and to promulgate final standards within one year of proposal. This limited timeframe for proposal and promulgation of standards necessitates that EPA gather sufficient and sufficiently reliable information to facilitate consideration of control options and the development of BSER prior to listing a new source category; otherwise, it would be difficult for the EPA to meet these statutory deadlines.

In sum, having more accurate emissions-estimating methodologies and the subsequent, improved inventories ensures that the EPA will be able to implement an overarching, effective and efficient regulatory strategy to address CAFO emissions. The emission-estimating methodologies will also improve estimates of the impact of current requirements for CAFOs and potential impact of any proposed requirements. This will help the agency determine the most appropriate approach with respect to air emissions from CAFOs and avoid potential problems, such as duplicative and overlapping regulatory requirements, that could arise from addressing these emissions in a piecemeal fashion under multiple CAA programs without considering how the various programs work together. Thus, this approach will allow the agency to ensure consistency between existing and proposed additional requirements and avoid creating unnecessary regulatory burden for CAFOs. For all of these reasons, development of the emission-estimating methodologies, as advised by the National Research Council and the EPA's SAB, is a fundamental initial step under the comprehensive strategy that the EPA is implementing to reduce air emissions from CAFOs. Our ongoing steps and expected time frame for addressing these issues is discussed in the next section.

Furthermore, once the EPA obtains the necessary information on the nature and extent of CAFO emissions, if the EPA determines that additional action to address CAFO emissions is warranted under CAA section 111 or otherwise, the improved emissions information will be relevant in deciding the timing of further action on CAFO emissions. This is because the timing of potential regulatory action on CAFO emissions must be weighed against other actions that the EPA could take to address emissions of these same pollutants from other source categories. For example, the EPA might determine that while certain pollutants from CAFOs warrant further action, other sources of those pollutants should be addressed first, based on the relative level of overall emissions of those pollutants from each of the source categories, the location of the emission sources within each source category, or other factors.

B. The EPA's Ongoing Steps to Implement the Agency's Comprehensive Strategy and Reduce Emissions from CAFOs

To better understand and evaluate emissions from CAFOs, the EPA has been undertaking the National Air Emissions Monitoring Study. The study is a fundamental step that the agency intends to complete in order to determine how to best address emissions from CAFOs within the CAA's regulatory framework. NAEMS will help the agency develop methodologies to estimate emissions of ammonia, hydrogen sulfide, PM and VOC from a wide variety of types of CAFOs.[6] These methodologies can better inform the estimation of emissions and exposures related to point sources located at these operations. Until the EPA more fully understands the level and sources of emissions of different pollutants, it would be premature for the agency to decide which CAA regulatory tool or tools could be most effectively applied to protect public health and welfare from these emissions.

After the research team, which was led by Purdue University with EPA oversight, collected emissions data for NAEMS from 2007 to 2010, the EPA analyzed the data and developed two draft emissions-estimating methodologies in 2012, which the agency published for public comment.[7] The EPA also submitted the methodologies to the SAB, which reviewed the methodologies and issued a final report in 2013. As stated earlier, the SAB recommended that the agency develop more rigorous methodologies for estimating emissions. In the interim, the SAB provided recommendations for expanding the data set and commented on the applicability of the draft emission estimating methodologies developed in 2012. The SAB found that NAEMS "is sufficient to start the development and evaluation of simplified process-based modeling approaches that would reflect the heterogeneity of CAFOs" and recognized that "the EPA may need to apply statistical approaches to assess emissions while it is developing and evaluating process-based models."[8] Since 2013, the EPA has been continuing to develop the methodologies consistent with the SAB recommendations, though that work has been slowed by various factors, as discussed next.

The EPA's Office of the Inspector General reported in a 2017 assessment of the status of NAEMS that the development of emission-estimating methodologies slowed while the EPA decided how to address some of the SAB's concerns.[9] At the same time that many government programs faced cutbacks due to sequestration, this project was also affected. Since 2013, the EPA has continued the development of emission-estimating methodologies using its statistically based approach and has taken steps recommended by the SAB, such as acquiring additional data sets from other external studies and reassessing data completeness criteria for NAEMS. Additionally, a lack of technical expertise due to staff retirement/reassignment and resource constraints (including discontinuation of funding for the contract supporting the study) due to competing

---

[6] The types of CAFOs monitored for NAEMS include operations feeding swine, dairy cows, and broiler and layer poultry.

[7] See 77 FR at 14716-14717 (March 13, 2012).

[8] *SAB Review of Emissions-Estimating Methodologies for Broiler Animal Feeding Operations and for Lagoons and Basins at Swine and Dairy Animal Feeding Operations*, EPA-SAB-13-003 (2013).

[9] U.S. Environmental Protection Agency Office of Inspector General, *Eleven Years After Agreement, EPA Has Not Developed Reliable Emission Estimation Methods to Determine Whether Animal Feeding Operations Comply with Clean Air Act and Other Statutes*, Report No. 17-P-0396 (2017).

priorities further slowed progress. In responding to the OIG's draft report, the EPA's Office of Air and Radiation outlined its plan to complete NAEMS, including working in partnership with the EPA's Office of Research and Development and agreeing with the OIG's recommendations to conduct systematic planning for future development of emission-estimating methodologies by April 2018. Based on the results of the systematic planning, the EPA will determine the emission source and pollutant combinations for which emission-estimating methodologies can be developed and establish milestones for issuing the draft methodologies. The EPA expects to post these milestones on the agency's website by July 2018.[10]

While the EPA is completing NAEMS, the agency also has been undertaking other activities under existing regulations and programs that will help characterize emissions from this sector and support the implementation of the comprehensive strategy to address CAFO emissions, as well as directly address specific components of petitioners' concerns about the effects on health and welfare of CAFOs' emissions. For example, the EPA's August 2016 final PM Implementation Rule includes requirements that will generate information that will assist the EPA in evaluating emissions of ammonia, which is a precursor of fine particles (less than 2.5 micrometers, $PM_{2.5}$). This rule requires states to demonstrate that they have plans that will reduce $PM_{2.5}$ to at or below the standard over a specified number of years.[11] As part of this process, the EPA recognizes that the treatment of $PM_{2.5}$ precursors, including ammonia from sources such as animal feeding operations, is important in developing a $PM_{2.5}$ attainment plan or implementing the NSR program in a nonattainment area.[12] Specifically, the rule's preamble states that the EPA's 2011 National Emissions Inventory estimated that livestock raising was the largest source of ammonia emissions, contributing about 54 percent of total ammonia emissions, but also acknowledges that there was some uncertainty in quantifying ammonia emissions and other $PM_{2.5}$ precursors from source categories including livestock and fertilizer application.[13] Therefore, the rule requires states to control ammonia emissions, if necessary, for expeditious attainment or if ammonia contributes significantly to $PM_{2.5}$ levels which exceed the standard in a particular nonattainment area. These control measures would be adopted through state regulations that are submitted to the EPA as part of a SIP. The EPA expects the requirements contained in the 2016 final PM Implementation rule to further improve its understanding of emissions at the same time that updates to the 2014 NEI and "other uses of the NAEMS data will help to reduce uncertainties in current ammonia inventories and will improve the quality of future emissions inventories needed for implementing the $PM_{2.5}$ NAAQS."[14] This set of improvements will significantly aid the EPA's comprehensive strategy for addressing CAFO emissions to account for CAFO emission reductions required by existing regulations.

Additionally, in September 2017, the EPA, with the USDA, released a best-management practices document for livestock and poultry production farms, including CAFOs, titled *Agricultural Air Quality Conservation Measures: Reference Guide for Poultry and Livestock*

---

[10] See, "Response to the Office of Inspector General's Draft Report, *Emissions From Animal Feeding Operations Remain Largely Uncharacterized More Than 7 Years After Study Completed* (Project No. OPE-FY16-0018), June 23, 2017.

[11] See, "Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements," 81 FR 58010 (August 24, 2016).

[12] See 81 FR at 58014 (August 24, 2016).

[13] See 81 FR at 58016, 58032 (August 24, 2016).

[14] See 81 FR at 58032 (August 24, 2016).

Production Systems.[15] This document identifies measures that have been demonstrated to reduce air emissions of pollutants (ammonia, greenhouse gases, hydrogen sulfide, PM and VOC) from farms. While it does not involve the quantification of emissions, the guide clearly describes different practices and control technologies that reduce emissions of these pollutants. The guide supports the EPA's efforts to characterize available control technologies and practices for different pollutants, emission sources and subsectors of CAFOs, which would be required to establish control options under the EPA's comprehensive strategy to reduce emissions from this sector, consistent with the statutory factors and requirements within the CAA. Although the reference guide does not impose federal requirements to reduce CAFO emissions, the guide helps states make informed decisions when considering adoption of pollutant controls and helps CAFOs determine which practices may be suitable for implementation of emission reductions on a site-specific basis. In fact, the guide includes an appendix listing existing state programs or regulations pertaining to air emissions from livestock and poultry operations. States that are developing programs to reduce air emissions from CAFOs can use the appendix to study the different approaches as models and to examine their potential applicability to other states.

Finally, the EPA will also consider applicable reporting requirements for CAFOs in assessing the extent of current requirements for CAFOs, following a court decision under the Comprehensive Environmental Response, Compensation and Liability Act and the Emergency Planning and Community Right-to-Know Act. In April 2017, the United States Court of Appeals for the District of Columbia Circuit vacated a 2008 rule that exempted farms from reporting air releases of hazardous substances from animal waste under Section 103 of CERCLA and, if the farms stable or confine fewer than certain numbers of animals, under Section 304 of EPCRA..[16] Ammonia and hydrogen sulfide are considered hazardous substances under CERCLA and EPCRA. Farms releasing hazardous substances to air from animal wastes, equal to or greater than their reportable quantities, within any 24-hour period, must notify the appropriate authorities because the 2008 exemption no longer applies.[17] The EPA is unable to provide emission-estimating methodologies for use with these reports until NAEMS is complete, and will give owners and operators guidance so that these reports may be based on broad-range estimates that include uncertainties. As the EPA implements its comprehensive strategy for CAFO emissions, the agency will ensure that the regulatory approach adopted to address CAFO sources of ammonia and hydrogen sulfide emissions is consistent with these requirements and avoids duplicative obligations to the maximum extent possible.

C. The EPA's Limited Resources and Need to Set Regulatory Priorities

Due to resource constraints, the EPA is never able to take all actions at the same time, and must always consider its obligations and authorities under the CAA and other statutes when determining which activities to undertake at what point in time and how to most efficiently complete its regulatory mission. In recent years, the agency has been continually required to accomplish more activities with less resources, making prioritization and efficiency even more necessary. The Office of Air Quality Planning and Standards houses the Sector Policies and

[15] Available at https://www.epa.gov/sites/production/files/2017-01/documents/web_placeholder.pdf.
[16] *Waterkeeper Alliance* v. *EPA*, 853 F.3d 527 (D.C. Cir. 2017).
[17] See https://www.epa.gov/epcra/cercla-and-epcra-reporting-requirements-air-releases-hazardous-substances-animal-waste-farms.

Programs Division, which would be charged with making a determination whether to list CAFOs under CAA section 111 and, if listed, promulgating CAA section 111 standards for CAFOs. The office has seen a general decline in its budget for several years. Further, SPPD already is required to take numerous final agency actions with mandatory deadlines set by the CAA and court orders. As an example of just one part of the division's work, SPPD currently faces court-ordered deadlines for the completion of 33 residual risk and technology reviews of NESHAP for specific source categories in the next three years,[18] and is anticipating a court order setting deadlines for the completion of residual risk and technology reviews of the NESHAP for an additional nine source categories.[19] In addition to the work on these reviews, SPPD also has ongoing obligations related to NSPS, non-residual risk and technology review NESHAP projects, CAA section 129 incinerator regulations, and activities related to these rulemakings, including responses to Freedom of Information Act requests, rule implementation support, rule amendments addressing issues that hinder implementation, development of various electronic information systems such as electronic data submittal systems and stakeholder outreach. Looking at the EPA more broadly, the EPA is engaged in a large number of regulatory actions under other parts of the CAA and under other statutes. The EPA's ongoing regulatory work is described in the EPA's Regulatory Agenda, which the EPA publishes semi-annually, and its Regulatory Plan, which is published annually.[20]

In considering whether and when to take the regulatory actions requested in the September 2009 Petition, the EPA must balance those possible actions with all of the other obligations and authorities that the EPA has under the CAA and other statutes. If staff and other agency resources were shifted to take the action that petitioners' request, they would not be available for other agency work. As discussed above, the EPA is pursuing a comprehensive strategy to study and appropriately address CAFO emissions, and the EPA is committing resources to implement that approach. After considering the agency's current CAFO strategy, and in light of all of the other tasks before the agency, the EPA does not believe it should shift additional resources at this time to determine whether to list and regulate CAFOs under CAA section 111.

IV. Conclusion

In light of the EPA's current comprehensive strategy to address CAFO emissions, and the agency's limited resources and the need to prioritize its regulatory activity and to use its resources efficiently, the EPA is declining at this time to determine whether CAFOs should be listed as a source category under CAA section 111. Undertaking such a determination at this time is not consistent with its comprehensive strategy to address CAFO emissions, and would therefore be premature. Additionally, it would require the agency to divert resources from other work, to a degree the agency believes is inappropriate given its resource constraints and priorities. Thus, the EPA is denying your petition to list CAFOs as a source category under CAA section 111.

Though the EPA has declined at this time to consider whether to list CAFOs as a source category under CAA section 111, the agency may consider listing and regulation of CAFOs under

---

[18] See *California Communities Against Air Toxics*, Case No.15-512 (D.D.C.) (order dated March 13, 2017), and *Blue Ridge Environmental Defense League*, Case no. 16-364 (D.D.C.) (order dated March 22, 2017).
[19] See *Community In-Power and Development Association, Inc.* v. *Pruitt*, Case No 16-1074 (D.D.C.).
[20] More information on the EPA's Semiannual Regulatory Agenda and Regulatory Plan, including information on how to see the agency's most recent agenda and plan, is available at https://www.epa.gov/laws-regulations/regulatory-agendas-and-regulatory-plans.

CAA section 111 as part of its comprehensive strategy for this sector in the future. If the agency does so, it will at that time address any additional issues that may arise from considering such listing and subsequent regulation under CAA section 111, such as how to apply the CAA section 111 definition of stationary source to CAFOs.

For the reasons discussed above, the EPA is denying the September 2009 Petition to list CAFOs as a source category under CAA section 111. This is the EPA's final agency action on this petition.

Respectfully yours,

E. Scott Pruitt

Waterkeeper et al. v. EPA, No. 1:18-cv-02135 (D.D.C.); EPA-HQ-2018-007135 ED_002290B_00037852-00120

Message

From: Fotouhi, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FEBAF0D56AAB43F8A9174B18218C1182-FOTOUHI, DA]
Sent: 1/26/2018 3:39:55 PM
To: Palich, Christian [palich.christian@epa.gov]
Subject: FW: please take a look

FYI—an update on my back and forth with Teri. Again, I'm not going to be able to do much substantive work on this today, so I'm going to ask my lead staff attorney on this to coordinate.

David Fotouhi

Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

From: Donaldson, Teri (EPW) [mailto:Teri_Donaldson@epw.senate.gov]
Sent: Friday, January 26, 2018 10:34 AM
To: Fotouhi, David <Fotouhi.David@epa.gov>
Subject: Re: please take a look

Thank you. We just need to pare this down and marry it with a description of why the data being reported in not meaningful -- some of that info is on EPA's website. Lack of methodology. Lack of valid data collection etc

Can you take a shot at this and I'll ring you soon?

Thanks.

Teri

Teri L. Donaldson
General Counsel
U.S. Senate
Environment and Public Works Committee
(202) 224-2829 (direct)
(202) 945-7337 (cell)
Teri_Donaldson@epw.senate.gov

On Jan 26, 2018, at 10:11 AM, Fotouhi, David <Fotouhi.David@epa.gov> wrote:

> Teri:
>
> Here is an excerpt from DOJ's brief (filed during the Obama Administration EPA and DOJ) defending EPA's 2008 that provides a good summary of why EPA does not consider this information helpful:
>
>> Here, EPA determined that it would not likely respond to air releases of hazardous substances from animal waste at farms for several reasons. First, EPA has not responded to any releases of hazardous substances from animal waste at farms above reportable quantities to date. 73 Fed. Reg. at 76,953 (JA 6); Resp. to Comments 24 (JA 623). Second, the releases generally occur on a

regular, ongoing basis. 73 Fed. Reg. at 76,952 (JA 5). Third, responding to such releases would be infeasible because there is not yet a reasonable method to estimate (and therefore mitigate) emissions from animal waste. Resp. to Comments at 18-19 (JA 617-18).

The record also shows that state and local agencies are unlikely to respond to such releases, because they are aware of the ongoing releases from farms in their jurisdiction, they had not received complaints about adverse health effects from such releases, and they did not believe a response would be effective at correcting the emissions . . . .

* * *

The Reporting Exemption Rule is reasonable because it reduces the burden on federal, state, and local response agencies and covered farms where the reports will not be used to enable response actions.

First, EPA estimated that the Rule would reduce the burden on federal, state, and local government agencies by a total of approximately 160,000 hours and $8,000,000 over the ten-year period of 2009-2018. 73 Fed. Reg. at 76,954 (JA 7); see also EPA, Economic Analysis 41-42, Ex. 16b (Dec. 11, 2008) ("Economic Analysis") (JA 595-96). Approximately 150,000 of these saved hours are federal. Economic Analysis at 41-42 (JA 595-96). These figures do not even include the burden on the National Response Center, which receives an average of approximately 34,000 notifications of releases each year (from all facilities), 99 percent of which are conveyed to EPA. See 73 Fed. Reg. at 76,950 (JA 3).

Second, EPA estimates that the Rule will reduce the burden on covered farms by a total of approximately 1,300,000 hours and $60,000,000 over the 2009-2018 period. 73 Fed. Reg. at 76,954 (JA 7); see also Economic Analysis at 39-40, Ex. 15b (JA 593-94).

Third, by reducing the time and resources that federal, state, and local agencies spend processing reports of air releases from animal waste at farms, which are not likely to lead to a response action, those agencies can focus their resources on evaluating and responding to emergencies that are likely to require response actions. See, e.g., Resp. to Comments at 21 (JA 620). While not reduced to a dollar figure or number of hours in EPA's analysis, this benefit is nonetheless significant in carrying out the primary purposes of the notification requirements.

David Fotouhi

Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

From: Donaldson, Teri (EPW) [mailto:Teri_Donaldson@epw.senate.gov]
Sent: Thursday, January 25, 2018 4:04 PM
To: Fotouhi, David <Fotouhi.David@epa.gov>
Subject: RE: please take a look

Very helpful.

Please reply with additional description of what CAFO's are currently reporting under the 2008 rule, and why that information has little or no utility. You can also ring me, if you prefer.

I assume that only CAFOs are reporting? I am most interested in being prepared to explain that limited utility of this information.

Thanks.

Teri

From: Fotouhi, David [mailto:Fotouhi.David@epa.gov]
Sent: Thursday, January 25, 2018 3:02 PM
To: Donaldson, Teri (EPW) <Teri_Donaldson@epw.senate.gov>
Cc: Willson, James (EPW) <James_Willson@epw.senate.gov>
Subject: RE: please take a look

Hi, Teri. Some very brief responses are below. I can provide more details by phone later this afternoon. I'm available after 5:45 p.m. Thank you.

1. Are you asking about all facilities subject to CERCLA reporting obligations? As to farms, the D.C. Circuit's mandate has not issued, so EPA's 2008 rule is still in place.
2. EPA's regulations at 40 CFR 302.8 describe the information that currently is required for continuous release reporting under CERCLA.
3. EPA's view is that it does not need these reports because its rarely if ever necessary for EPA to respond to these releases. EPA based its 2008 rule on this rationale and built a record to support it. The D.C. Circuit ruled that CERCLA did not give EPA the authority to create this carve-out by rule. *See Waterkeeper Alliance*, 853 F.3d at 537-38 ("Because the EPA's action here can't be justified either as a reasonable interpretation of any statutory ambiguity or implementation of a de minimis exception, we grant Waterkeeper's petition and vacate the Final Rule."); *id.* at 538 (Brown, J., concurring) ("EPA set forth *no* statutory ambiguity authorizing its *Final Rule*. Under [*Chevron*] Step One, this ends the matter." (internal citation omitted)).

David Fotouhi

Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

From: Donaldson, Teri (EPW) [mailto:Teri_Donaldson@epw.senate.gov]
Sent: Thursday, January 25, 2018 2:40 PM
To: Fotouhi, David <Fotouhi.David@epa.gov>
Cc: Willson, James (EPW) <James_Willson@epw.senate.gov>
Subject: RE: please take a look

Hi David,

Please explain:

1. Exactly which types of facilities are reporting today and pursuant to what mandate?
2. Given the undeveloped state of the science, exactly what data are these facilities reporting?
3. What possible use could this data have?

Can we talk about these questions at 4:00 today?

Thanks!

Teri

From: Fotouhi, David [mailto:Fotouhi.David@epa.gov]
Sent: Wednesday, January 24, 2018 1:34 PM
To: Donaldson, Teri (EPW) <Teri_Donaldson@epw.senate.gov>
Subject: RE: please take a look

The attached factsheet contains a good summary.

David Fotouhi

Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

From: Donaldson, Teri (EPW) [mailto:Teri_Donaldson@epw.senate.gov]
Sent: Wednesday, January 24, 2018 1:27 PM
To: Fotouhi, David <Fotouhi.David@epa.gov>
Subject: RE: please take a look

Could you also describe the current state of any reporting under CERCLA EPCRA for animal waste emissions?

Thanks!

From: Fotouhi, David [mailto:Fotouhi.David@epa.gov]
Sent: Wednesday, January 24, 2018 12:32 PM
To: Donaldson, Teri (EPW) <Teri_Donaldson@epw.senate.gov>
Cc: Willson, James (EPW) <James_Willson@epw.senate.gov>
Subject: Re: please take a look

Yes, that will work. Thank you.

Sent from my iPhone

On Jan 24, 2018, at 12:20 PM, Donaldson, Teri (EPW) <Teri_Donaldson@epw.senate.gov> wrote:

> Let do this at 1, okay? It won't take long.
>
> ---
>
> **From:** Fotouhi, David [mailto:Fotouhi.David@epa.gov]
> **Sent:** Wednesday, January 24, 2018 11:53 AM
> **To:** Donaldson, Teri (EPW) <Teri_Donaldson@epw.senate.gov>
> **Subject:** Re: please take a look
>
> Teri: my apologies, I've been pulled into an urgent meeting with my principal. I will try you as soon as I am able.
>
> Sent from my iPhone

On Jan 24, 2018, at 11:42 AM, Donaldson, Teri (EPW) <Teri_Donaldson@epw.senate.gov> wrote:

Standing by.

From: Fotouhi, David [mailto:Fotouhi.David@epa.gov]
Sent: Wednesday, January 24, 2018 10:07 AM
To: Donaldson, Teri (EPW) <Teri_Donaldson@epw.senate.gov>
Cc: Palich, Christian <palich.christian@epa.gov>; Willson, James (EPW) <James_Willson@epw.senate.gov>
Subject: Re: please take a look

I'm not available then, but could do 11:30 or noon. Would that work?

Sent from my iPhone

On Jan 24, 2018, at 10:05 AM, Donaldson, Teri (EPW) <Teri_Donaldson@epw.senate.gov> wrote:

Thanks. Does 10:45 work for you?

Teri L. Donaldson
General Counsel
U.S. Senate
Environment and Public Works Committee
(202) 224-2829 (direct)
(202) 945-7337 (cell)
Teri_Donaldson@epw.senate.gov

On Jan 23, 2018, at 10:13 PM, Fotouhi, David <Fotouhi.David@epa.gov> wrote:

Teri:

Sorry for not connecting with you today—I will take a look at this draft and give you a ring tomorrow.

Best,

David

David Fotouhi

Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

From: Donaldson, Teri (EPW) [mailto:Teri_Donaldson@epw.senate.gov]
Sent: Tuesday, January 23, 2018 5:51 PM
To: Fotouhi, David <Fotouhi.David@epa.gov>
Cc: Palich, Christian <palich.christian@epa.gov>; Willson, James (EPW) <James_Willson@epw.senate.gov>
Subject: please take a look

David,

Please take a quick look and give me a call. I've added Section 3....

Thanks!

Teri

Teri L. Donaldson
General Counsel
U.S. Senate, Environment and Public Works Committee
410 Dirksen Senate Office Building
Washington, DC 20510
202-224-2829 (0) 202-224-5167 (f)
202-945-7337 (cell)
Teri_Donaldson@epw.senate.gov

Message

From: Fotouhi, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FEBAF0D56AAB43F8A9174B18218C1182-FOTOUHI, DA]
Sent: 10/11/2017 7:38:17 PM
To: Michaud, John [Michaud.John@epa.gov]; Lewis, Jen (Lewis.Jen@epa.gov) [Lewis.Jen@epa.gov]
Subject: FW: CERCLA 103 Farm Emissions Guidance
Attachments: Guidance for Farms DRAFT 10112017 .docx

Importance: High

FYI

David Fotouhi

Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

From: Gioffre, Patricia
Sent: Wednesday, October 11, 2017 3:37 PM
To: Davis, Patrick <davis.patrick@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>
Cc: Breen, Barry <Breen.Barry@epa.gov>; Hilosky, Nick <Hilosky.Nick@epa.gov>; Clark, Becki <Clark.Becki@epa.gov>; Cheatham, Reggie <cheatham.reggie@epa.gov>; Indermark, Michele <Indermark.Michele@epa.gov>; Jennings, Kim <Jennings.Kim@epa.gov>; Brooks, Becky <Brooks.Becky@epa.gov>
Subject: CERCLA 103 Farm Emissions Guidance
Importance: High

Attached is the most recent version of the guidance for CERCLA 103 reporting. Please note that the hyperlinks in the document may not be active. We will have them working when they go live on the EPA website.

Let me know if you have any questions or concerns.
Best wishes!

Patty Gioffre
Acting Deputy Division Director
USEPA (OLEM/OEM/RID)
1200 Pennsylvania Ave. NW (5104A)
Washington, DC 20460
202-564-1972
202-748-7139 (cell)

From: Davis, Patrick
Sent: Wednesday, October 11, 2017 12:08 PM
To: Bodine, Susan <bodine.susan@epa.gov>
Cc: Brown, Byron <brown.byron@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Gioffre, Patricia <Gioffre.Patricia@epa.gov>
Subject: Re: Farm Emissions

Patti,

Please send this group the most recent version of the guidance.

Thanks,

Patrick Davis
Environmental Protection Agency
Deputy Associate Director, Office of Land and Emergency Management
202-564-3103 office
Cellular Phone / Ex. 6

Emails sent to this address may be subject to FOIA.

Sent from my iPhone

On Oct 11, 2017, at 11:26 AM, Bodine, Susan <bodine.susan@epa.gov> wrote:

> Patrick, can you send us the most recent version of the guidance?
>
> **From:** Davis, Patrick
> **Sent:** Wednesday, October 11, 2017 9:57 AM
> **To:** Brown, Byron <brown.byron@epa.gov>
> **Cc:** Bodine, Susan <bodine.susan@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>
> **Subject:** Re: Farm Emissions
>
> Both EPCRA Q&A and cercla guidance will post on our website on October 16. OMB has the EPCRA Q&A and we expect it back from them by 10/12.
>
> Patrick Davis
> Environmental Protection Agency
> Deputy Associate Director, Office of Land and Emergency Management
> 202-564-3103 office
> Cellular Phone / Ex. 6
>
> Emails sent to this address may be subject to FOIA.
>
> Sent from my iPhone
>
> On Oct 10, 2017, at 5:34 PM, Brown, Byron <brown.byron@epa.gov> wrote:
>
> **Deliberative Process / Ex. 5**
>
> https://www.epa.gov/epcra/cercla-and-epcra-reporting-requirements-air-releases-hazardous-substances-animal-waste-farms
>
> **From:** Bodine, Susan
> **Sent:** Tuesday, October 10, 2017 5:32 PM
> **To:** Brown, Byron <brown.byron@epa.gov>; Davis, Patrick <davis.patrick@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>
> **Subject:** RE: Farm Emissions

I thought the guidance did not go to OMB, only the Q&A.

Deliberative Process / Ex. 5

Patrick, do you have an updated version?

From: Brown, Byron
Sent: Tuesday, October 10, 2017 5:28 PM
To: Davis, Patrick <davis.patrick@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>
Subject: Farm Emissions

Just wanted to clarify whether we have issued the draft guidance for calculating emissions (attached), and if not when we expect to release it. And separately would like to confirm that the draft we sent to OMB is the EPCRA interpretive rule/guidance on routine agricultural operations. Any idea on timing – whether that will get released before Nov. deadline. Thanks.

Byron R. Brown
Deputy Chief of Staff for Policy
Office of the Administrator
U.S. Environmental Protection Agency

Message

From: Fotouhi, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FEBAF0D56AAB43F8A9174B18218C1182-FOTOUHI, DA]
Sent: 10/11/2017 7:21:31 PM
To: Schwab, Justin [Schwab.Justin@epa.gov]
Subject: Fwd: EPCRA section 304 - Summary of OMB/ DOJ call and elevating delay concerns

Sent from my iPhone

Begin forwarded message:

From: "Lewis, Jen" <Lewis.Jen@epa.gov>
Date: October 11, 2017 at 1:09:04 PM EDT
To: "Fotouhi, David" <Fotouhi.David@epa.gov>
Subject: FW: EPCRA section 304 - Summary of OMB/ DOJ call and elevating delay concerns

A summary from OEM, below. We can discuss in more detail at 2, along with attorney's fees.

Jen Lewis
Deputy Associate General Counsel
Solid Waste and Emergency Response Law Office
(202) 564-2097

From: Gioffre, Patricia
Sent: Wednesday, October 11, 2017 12:35 PM
To: Davis, Patrick <davis.patrick@epa.gov>; Breen, Barry <Breen.Barry@epa.gov>; Simon, Nigel <Simon.Nigel@epa.gov>; Brooks, Becky <Brooks.Becky@epa.gov>; Hilosky, Nick <Hilosky.Nick@epa.gov>; Clark, Becki <Clark.Becki@epa.gov>; Cheatham, Reggie <cheatham.reggie@epa.gov>
Cc: Indermark, Michele <Indermark.Michele@epa.gov>; Hostage, Barbara <Hostage.Barbara@epa.gov>; Noggle, William <Noggle.William@epa.gov>; Jennings, Kim <Jennings.Kim@epa.gov>; Principe, Vanessa <Principe.Vanessa@epa.gov>; Lewis, Jen <Lewis.Jen@epa.gov>; Michaud, John <Michaud.John@epa.gov>; Swenson, Erik <Swenson.Erik@epa.gov>; Salo, Earl <Salo.Earl@epa.gov>; Jacob, Sicy <Jacob.Sicy@epa.gov>; Franklin, Kathy <Franklin.Kathy@epa.gov>; Hull, George <Hull.George@epa.gov>; Bosecker, Elizabeth <Bosecker.Elizabeth@epa.gov>
Subject: EPCRA section 304 - Summary of OMB/ DOJ call and elevating delay concerns
Importance: High

Barry/Patrick-This is to alert you of the outcome from today's call with OMB and DOJ on the EPCRA section 304 interpretive Q&A.

If we plan to issue guidance on 10/16, we need senior management to call over to OMB to request that we close interagency review by COB Thursday 10/12.

- **Deliberative Process / Ex. 5**

Attorney Client / Ex. 5

OMB recommends:

- Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

OGC-Please feel free to add or correct anything I've characterized in this email.
Please let me know if you have additional questions.

Patty Gioffre
Acting Deputy Division Director
USEPA (OLEM/OEM/RID)
1200 Pennsylvania Ave. NW (5104A)
Washington, DC 20460
202-564-1972
202-748-7139 (cell)

Message

From: Fotouhi, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FEBAF0D56AAB43F8A9174B18218C1182-FOTOUHI, DA]
Sent: 10/11/2017 5:14:08 PM
To: Michaud, John [Michaud.John@epa.gov]; Lewis, Jen (Lewis.Jen@epa.gov) [Lewis.Jen@epa.gov]
Subject: FW: EPCRA Q&A
Attachments: Routine Agricultural Operations -QA_DRAFT 10-2-17 v.1.docx

I just met with Susan on the EPCRA interpretive rule. Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

David Fotouhi

Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

-----Original Message-----
From: Bodine, Susan
Sent: Wednesday, October 11, 2017 1:08 PM
To: Fotouhi, David <Fotouhi.David@epa.gov>
Subject: FW: EPCRA Q&A

See attached for my earlier comments

-----Original Message-----
From: Bodine, Susan
Sent: Tuesday, October 3, 2017 6:24 PM
To: Davis, Patrick <davis.patrick@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>
Subject: RE: EPCRA Q&A

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

-----Original Message-----
From: Davis, Patrick
Sent: Tuesday, October 3, 2017 4:33 PM
To: Brown, Byron <brown.byron@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>
Subject: FW: EPCRA Q&A

EPCRA Q&A for our thoughts.

Patrick Davis
Environmental Protection Agency
Deputy Assistant Administrator, Office of Land and Emergency Management
202-564-3103 office
Cellular Phone / Ex. 6

Information sent to this email address may be subject to FOIA.

-----Original Message-----
From: Jennings, Kim
Sent: Tuesday, October 3, 2017 4:01 PM
To: Davis, Patrick <davis.patrick@epa.gov>; Breen, Barry <Breen.Barry@epa.gov>; Brooks, Becky <Brooks.Becky@epa.gov>; Cheatham, Reggie <cheatham.reggie@epa.gov>; Clark, Becki <Clark.Becki@epa.gov>

Cc: Jacob, Sicy <Jacob.Sicy@epa.gov>; Franklin, Kathy <Franklin.Kathy@epa.gov>; Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Hull, George <Hull.George@epa.gov>; Beaman, Joe <Beaman.Joe@epa.gov>; Bosecker, Elizabeth <Bosecker.Elizabeth@epa.gov>
Subject: FW: EPCRA Q&A

FYI. I wanted to get this out to folks ASAP since we have the meeting with OGC on Thursday on this Q and A.

Thanks,
Kim

Kim Jennings
Division Director || Regulations Implementation Division U.S. Environmental Protection Agency || Office of Emergency Management
E-mail: jennings.kim@epa.gov || Desk: (202) 564-7998 ||

-----Original Message-----
From: Michaud, John
Sent: Tuesday, October 03, 2017 3:01 PM
To: Jennings, Kim <Jennings.Kim@epa.gov>
Cc: Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Lewis, Jen <Lewis.Jen@epa.gov>; Swenson, Erik <Swenson.Erik@epa.gov>; Salo, Earl <Salo.Earl@epa.gov>; Openchowski, Charles <openchowski.charles@epa.gov>
Subject: EPCRA Q&A

Kim --

Deliberative Process / Ex. 5

Let me know if you have any questions.

Thanks.

John

John R Michaud
Associate General Counsel
Solid Waste and Emergency Response Law Office
202-564-5518
michaud.john@epa.gov

-----Original Message-----
From: Jennings, Kim
Sent: Tuesday, October 03, 2017 7:50 AM
To: Michaud, John <Michaud.John@epa.gov>
Cc: Gioffre, Patricia <Gioffre.Patricia@epa.gov>
Subject: RE:

Hi John,

Is the EPCRA Q & A complete? Can you send it to us?

Our AA is asking and we have a briefing scheduled with OMB on Thursday on this and the guidance.

Thanks,
Kim

Kim Jennings
Division Director || Regulations Implementation Division U.S. Environmental Protection Agency || Office of Emergency Management
E-mail: jennings.kim@epa.gov || Desk: (202) 564-7998 ||

-----Original Message-----
From: Jennings, Kim
Sent: Friday, September 29, 2017 6:47 AM
To: Michaud, John <Michaud.John@epa.gov>
Cc: Gioffre, Patricia <Gioffre.Patricia@epa.gov>
Subject: FW:

Hi John,

Attorney Client / Ex. 5

Thanks,
Kim

Kim Jennings
Division Director || Regulations Implementation Division U.S. Environmental Protection Agency || Office of Emergency Management
E-mail: jennings.kim@epa.gov || Desk: (202) 564-7998 ||

-----Original Message-----
From: Jennings, Kim
Sent: Friday, September 29, 2017 6:42 AM
To: Cheatham, Reggie <cheatham.reggie@epa.gov>; Gioffre, Patricia <Gioffre.Patricia@epa.gov>
Cc: Clark, Becki <Clark.Becki@epa.gov>
Subject:

Hi Reggie and Becki,

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5 GC currently has the EPCRA Q & A and is revising it and working it up their management chain. Cellular Phone / Ex. 6 Deliberative Process / Ex. 5 The RID team will be doing a final review of the CERCLA guidance, which will provide information on who should be reporting, how to estimate their releases, and how they can report, including continuous release reporting. Deliberative Process / Ex. 5 Deliberative Process / Ex. 5 OMB has requested, via OLEM PARMS, a briefing next Thursday (10/5) at 1 pm on the EPCRA Q & A. They will not be reviewing the guidance.

Let me know if you have any questions or want to discuss. I am in the office today.

Thanks,
Kim

Kim Jennings
Division Director || Regulations Implementation Division U.S. Environmental Protection Agency || Office of Emergency Management
E-mail: jennings.kim@epa.gov || Desk: (202) 564-7998 ||

-----Original Message-----
From: Cheatham, Reggie
Sent: Thursday, September 28, 2017 6:09 PM
To: Jennings, Kim <Jennings.Kim@epa.gov>; Gioffre, Patricia <Gioffre.Patricia@epa.gov>
Cc: Clark, Becki <Clark.Becki@epa.gov>
Subject: FW:

I saw the draft....where are we on going final?

Reggie Cheatham, Director
Office of Emergency Management, USEPA
202.564.8003 (O); 202.689.9400 (M);
cheatham.reggie@epa.gov
Doris Williams, Executive Assistant
202.564.0053

-----Original Message-----
From: Breen, Barry
Sent: Thursday, September 28, 2017 6:06 PM
To: Davis, Patrick <davis.patrick@epa.gov>; Cheatham, Reggie <cheatham.reggie@epa.gov>
Subject: FW:

Patrick, do you already have the substance needed for us to get back to Ryan?

If not, Reggie, would you please ask Kim to draft a reply?

Barry

-----Original Message-----
From: Jackson, Ryan
Sent: Thursday, September 28, 2017 5:54 PM
To: Cheatham, Reggie <cheatham.reggie@epa.gov>
Cc: Fotouhi, David <Fotouhi.David@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Breen, Barry <Breen.Barry@epa.gov>; Davis, Patrick <davis.patrick@epa.gov>
Subject:

Gentlemen, I know OLEM is working on it but I'm looking for an update on the ag cercla/Epra reporting exemption. I need to get this out and know the schedule.

Deliberative Process / Ex. 5

Ryan Jackson
Chief of Staff
U.S. EPA
Personal Phone / Ex. 6

Message

From: Fotouhi, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FEBAF0D56AAB43F8A9174B18218C1182-FOTOUHI, DA]
Sent: 10/13/2017 3:14:20 PM
To: Bolen, Brittany [bolen.brittany@epa.gov]
Subject: FW: CERCLA 103 Farm Emissions Guidance

FYSA

David Fotouhi

Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

From: Davis, Patrick
Sent: Friday, October 13, 2017 10:50 AM
To: Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>
Cc: Breen, Barry <Breen.Barry@epa.gov>; Hilosky, Nick <Hilosky.Nick@epa.gov>; Clark, Becki <Clark.Becki@epa.gov>; Cheatham, Reggie <cheatham.reggie@epa.gov>; Indermark, Michele <Indermark.Michele@epa.gov>; Jennings, Kim <Jennings.Kim@epa.gov>; Brooks, Becky <Brooks.Becky@epa.gov>
Subject: RE: CERCLA 103 Farm Emissions Guidance

Thank you. When CERCLA posts on Monday please share the link with me.

Thanks,

Patrick Davis
Environmental Protection Agency
Deputy Assistant Administrator, Office of Land and Emergency Management
202-564-3103 office
Cellular Phone / Ex. 6

Information sent to this email address may be subject to FOIA.

From: Gioffre, Patricia
Sent: Friday, October 13, 2017 10:49 AM
To: Davis, Patrick <davis.patrick@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>
Cc: Breen, Barry <Breen.Barry@epa.gov>; Hilosky, Nick <Hilosky.Nick@epa.gov>; Clark, Becki <Clark.Becki@epa.gov>; Cheatham, Reggie <cheatham.reggie@epa.gov>; Indermark, Michele <Indermark.Michele@epa.gov>; Jennings, Kim <Jennings.Kim@epa.gov>; Brooks, Becky <Brooks.Becky@epa.gov>
Subject: RE: CERCLA 103 Farm Emissions Guidance

We will plan to post the 10/12 version of the CERCLA 103 web text by noon on Monday.
I'll keep an eye out for the markups on the continuous release reporting form.
Thanks!

Patty Gioffre

Acting Deputy Division Director
USEPA (OLEM/OEM/RID)
1200 Pennsylvania Ave. NW (5104A)
Washington, DC 20460
202-564-1972
202-748-7139 (cell)

From: Davis, Patrick
Sent: Friday, October 13, 2017 10:45 AM
To: Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>
Cc: Breen, Barry <Breen.Barry@epa.gov>; Hilosky, Nick <Hilosky.Nick@epa.gov>; Clark, Becki <Clark.Becki@epa.gov>; Cheatham, Reggie <cheatham.reggie@epa.gov>; Indermark, Michele <Indermark.Michele@epa.gov>; Jennings, Kim <Jennings.Kim@epa.gov>; Brooks, Becky <Brooks.Becky@epa.gov>
Subject: RE: CERCLA 103 Farm Emissions Guidance

Thank you. Michael Formica from the Pork Producers just called. He is send me a redlined version of the continuous release report. I will share it with you when I get it.

Can we please post the CERCLA guidance on our website by Noon on Monday, October 16?

Patrick Davis
Environmental Protection Agency
Deputy Assistant Administrator, Office of Land and Emergency Management
202-564-3103 office
Cellular Phone / Ex. 6

Information sent to this email address may be subject to FOIA.

From: Gioffre, Patricia
Sent: Friday, October 13, 2017 10:37 AM
To: Davis, Patrick <davis.patrick@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>
Cc: Breen, Barry <Breen.Barry@epa.gov>; Hilosky, Nick <Hilosky.Nick@epa.gov>; Clark, Becki <Clark.Becki@epa.gov>; Cheatham, Reggie <cheatham.reggie@epa.gov>; Indermark, Michele <Indermark.Michele@epa.gov>; Jennings, Kim <Jennings.Kim@epa.gov>; Brooks, Becky <Brooks.Becky@epa.gov>
Subject: RE: CERCLA 103 Farm Emissions Guidance

We will have a draft to send forward next week. The streamlined reporting form will need OMB approval.

- OMB, PARMS and RID staff participated in a call yesterday to develop an emergency package to address information collection issues, including streamlining the continuous release reporting form for farmers
- OMB is expecting a package on Monday 10/23

Patty Gioffre
Acting Deputy Division Director
USEPA (OLEM/OEM/RID)
1200 Pennsylvania Ave. NW (5104A)
Washington, DC 20460
202-564-1972
202-748-7139 (cell)

From: Davis, Patrick
Sent: Friday, October 13, 2017 10:32 AM
To: Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>
Cc: Breen, Barry <Breen.Barry@epa.gov>; Hilosky, Nick <Hilosky.Nick@epa.gov>; Clark, Becki <Clark.Becki@epa.gov>; Cheatham, Reggie <cheatham.reggie@epa.gov>; Indermark, Michele <Indermark.Michele@epa.gov>; Jennings, Kim <Jennings.Kim@epa.gov>; Brooks, Becky <Brooks.Becky@epa.gov>
Subject: RE: CERCLA 103 Farm Emissions Guidance

Hi Patti,

Thank you for sending this. I do not have additional changes.

Please send the "streamlined continuous release report" when it is finished.

Thanks,

Patrick Davis
Environmental Protection Agency
Deputy Assistant Administrator, Office of Land and Emergency Management
202-564-3103 office
Cellular Phone / Ex. 6

Information sent to this email address may be subject to FOIA.

From: Gioffre, Patricia
Sent: Friday, October 13, 2017 10:19 AM
To: Davis, Patrick <davis.patrick@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>
Cc: Breen, Barry <Breen.Barry@epa.gov>; Hilosky, Nick <Hilosky.Nick@epa.gov>; Clark, Becki <Clark.Becki@epa.gov>; Cheatham, Reggie <cheatham.reggie@epa.gov>; Indermark, Michele <Indermark.Michele@epa.gov>; Jennings, Kim <Jennings.Kim@epa.gov>; Brooks, Becky <Brooks.Becky@epa.gov>
Subject: RE: CERCLA 103 Farm Emissions Guidance

Yes, there is a revised version to reflect recommendations from OGC. See the attached version. The changes are in redline/strikeout.
Please let me know if you have any questions.

Best wishes!

Patty Gioffre
Acting Deputy Division Director
USEPA (OLEM/OEM/RID)
1200 Pennsylvania Ave. NW (5104A)
Washington, DC 20460
202-564-1972
202-748-7139 (cell)

From: Davis, Patrick
Sent: Friday, October 13, 2017 9:59 AM
To: Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>

Cc: Breen, Barry <Breen.Barry@epa.gov>; Hilosky, Nick <Hilosky.Nick@epa.gov>; Clark, Becki <Clark.Becki@epa.gov>; Cheatham, Reggie <cheatham.reggie@epa.gov>; Indermark, Michele <Indermark.Michele@epa.gov>; Jennings, Kim <Jennings.Kim@epa.gov>; Brooks, Becky <Brooks.Becky@epa.gov>
Subject: RE: CERCLA 103 Farm Emissions Guidance

Hi Patti,

Did the CERCLA guidance document change on October 12?

If so, please send the most recent version that we intend to post on Monday, October 16.

Thanks,

Patrick Davis
Environmental Protection Agency
Deputy Assistant Administrator, Office of Land and Emergency Management
202-564-3103 office
Cellular Phone / Ex. 6

Information sent to this email address may be subject to FOIA.

From: Gioffre, Patricia
Sent: Wednesday, October 11, 2017 3:37 PM
To: Davis, Patrick <davis.patrick@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>
Cc: Breen, Barry <Breen.Barry@epa.gov>; Hilosky, Nick <Hilosky.Nick@epa.gov>; Clark, Becki <Clark.Becki@epa.gov>; Cheatham, Reggie <cheatham.reggie@epa.gov>; Indermark, Michele <Indermark.Michele@epa.gov>; Jennings, Kim <Jennings.Kim@epa.gov>; Brooks, Becky <Brooks.Becky@epa.gov>
Subject: CERCLA 103 Farm Emissions Guidance
Importance: High

Attached is the most recent version of the guidance for CERCLA 103 reporting. Please note that the hyperlinks in the document may not be active. We will have them working when they go live on the EPA website.

Let me know if you have any questions or concerns.
Best wishes!

Patty Gioffre
Acting Deputy Division Director
USEPA (OLEM/OEM/RID)
1200 Pennsylvania Ave. NW (5104A)
Washington, DC 20460
202-564-1972
202-748-7139 (cell)

From: Davis, Patrick
Sent: Wednesday, October 11, 2017 12:08 PM
To: Bodine, Susan <bodine.susan@epa.gov>
Cc: Brown, Byron <brown.byron@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Gioffre, Patricia <Gioffre.Patricia@epa.gov>
Subject: Re: Farm Emissions

Patti,

Please send this group the most recent version of the guidance.

Thanks,

Patrick Davis
Environmental Protection Agency
Deputy Associate Director, Office of Land and Emergency Management
202-564-3103 office
Cellular Phone / Ex. 6

Emails sent to this address may be subject to FOIA.

Sent from my iPhone

On Oct 11, 2017, at 11:26 AM, Bodine, Susan <bodine.susan@epa.gov> wrote:

> Patrick, can you send us the most recent version of the guidance?
>
> ---
>
> **From:** Davis, Patrick
> **Sent:** Wednesday, October 11, 2017 9:57 AM
> **To:** Brown, Byron <brown.byron@epa.gov>
> **Cc:** Bodine, Susan <bodine.susan@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>
> **Subject:** Re: Farm Emissions
>
> Both EPCRA Q&A and cercla guidance will post on our website on October 16. OMB has the EPCRA Q&A and we expect it back from them by 10/12.
>
> Patrick Davis
> Environmental Protection Agency
> Deputy Associate Director, Office of Land and Emergency Management
> 202-564-3103 office
> Cellular Phone / Ex. 6
>
> Emails sent to this address may be subject to FOIA.
>
> Sent from my iPhone
>
> On Oct 10, 2017, at 5:34 PM, Brown, Byron <brown.byron@epa.gov> wrote:
>
> **Deliberative Process / Ex. 5**
>
> https://www.epa.gov/epcra/cercla-and-epcra-reporting-requirements-air-releases-hazardous-substances-animal-waste-farms
>
> ---
>
> **From:** Bodine, Susan
> **Sent:** Tuesday, October 10, 2017 5:32 PM
> **To:** Brown, Byron <brown.byron@epa.gov>; Davis, Patrick <davis.patrick@epa.gov>;

Fotouhi, David <Fotouhi.David@epa.gov>
Subject: RE: Farm Emissions

I thought the guidance did not go to OMB, only the Q&A.

Deliberative Process / Ex. 5

Patrick, do you have an updated version?

From: Brown, Byron
Sent: Tuesday, October 10, 2017 5:28 PM
To: Davis, Patrick <davis.patrick@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>
Subject: Farm Emissions

Just wanted to clarify whether we have issued the draft guidance for calculating emissions (attached), and if not when we expect to release it. And separately would like to confirm that the draft we sent to OMB is the EPCRA interpretive rule/guidance on routine agricultural operations. Any idea on timing – whether that will get released before Nov. deadline. Thanks.

Byron R. Brown
Deputy Chief of Staff for Policy
Office of the Administrator
U.S. Environmental Protection Agency

Message

From: Fotouhi, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FEBAF0D56AAB43F8A9174B18218C1182-FOTOUHI, DA]
Sent: 11/27/2017 6:30:32 PM
To: Mills, Derek [Mills.Derek@epa.gov]
Subject: Fwd: NEW DECISION - CERCLA EPCRA - Waterkeeper v. EPA, 09-1017 (DC Cir.)
Attachments: CERCLA-EPCRA litigation - update - 11.27.17.docx; ATT00001.htm

For the White House report.

Sent from my iPhone

Begin forwarded message:

> **From:** "Swenson, Erik" <Swenson.Erik@epa.gov>
> **Date:** November 27, 2017 at 1:12:11 PM EST
> **To:** OGC Immediate Office MGMT <OGC_Immediate_Office_MGMT@epa.gov>, OGC Immediate Office Support <OGCFrontOfficeSupportStaff@epa.gov>
> **Cc:** "DeRobertis, Cecilia" <DeRobertis.Cecilia@epa.gov>, "Lewis, Jen" <Lewis.Jen@epa.gov>, "Salo, Earl" <Salo.Earl@epa.gov>, "Openchowski, Charles" <openchowski.charles@epa.gov>, "Michaud, John" <Michaud.John@epa.gov>
> **Subject: NEW DECISION - CERCLA EPCRA - Waterkeeper v. EPA, 09-1017 (DC Cir.)**
>
> On November 22, 2017, the DC Circuit Court of Appeals granted EPA's motion to further stay the mandate to enforce CERCLA/EPCRA reporting requirements for farms until January 22, 2018. Attorney Client / Ex. 5

Attorney Client / Ex. 5

SWERLO EXECUTIVE SUMMARY

TOPIC: CERCLA/EPCRA Reporting Requirement for Hazardous Animal Waste Air Releases

DATE: November 27, 2017

PURPOSE/ACTION NEEDED: For your information - Update

- On November 22, 2017, the DC Circuit Court of Appeals granted EPA's motion to further stay the mandate to enforce CERCLA/EPCRA requirements for farms until January 22, 2018.
- Attorney Client / Ex. 5

BACKGROUND:

- On December 18, 2008, EPA published a final rule that exempted all farms from reporting air releases of hazardous substances from animal waste under CERCLA § 103, and exempted farms that stabled or confined animals in numbers smaller than a large concentrated animal feeding operation from reporting such releases under EPCRA § 304.
- On April 11, 2017, the DC Circuit Court of Appeals struck down the final rule, eliminating the reporting exemptions for farms. EPA sought additional time from the Court to issue the mandate, thus delaying the effective date so that EPA could develop guidance materials to help farmers understand their reporting obligations.
- EPA has since developed guidance on its website to assist farmers in meeting reporting requirements once the mandate issues in January 2018. Because most farms are expected to qualify under the continuous release reporting option, EPA has developed a streamlined continuous release reporting form for farms that is currently under expedited OMB review. The further stay of the mandate gives EPA time to distribute the streamlined form, and also to improve the guidance in light of comments on it. EPA is also continuing to communicate with animal/agriculture stakeholders to answer frequently asked questions that arise over the reporting obligations.

Message

From: Fotouhi, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FEBAF0D56AAB43F8A9174B18218C1182-FOTOUHI, DA]
Sent: 10/12/2017 10:52:18 PM
To: Bolen, Brittany [bolen.brittany@epa.gov]
Subject: FW: CERCLA 103 Farm Emissions Guidance
Attachments: Guidance for Farms DRAFT 10112017 .docx

Importance: High

David Fotouhi

Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

From: Gioffre, Patricia
Sent: Wednesday, October 11, 2017 3:37 PM
To: Davis, Patrick <davis.patrick@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>
Cc: Breen, Barry <Breen.Barry@epa.gov>; Hilosky, Nick <Hilosky.Nick@epa.gov>; Clark, Becki <Clark.Becki@epa.gov>; Cheatham, Reggie <cheatham.reggie@epa.gov>; Indermark, Michele <Indermark.Michele@epa.gov>; Jennings, Kim <Jennings.Kim@epa.gov>; Brooks, Becky <Brooks.Becky@epa.gov>
Subject: CERCLA 103 Farm Emissions Guidance
Importance: High

Attached is the most recent version of the guidance for CERCLA 103 reporting. Please note that the hyperlinks in the document may not be active. We will have them working when they go live on the EPA website.

Let me know if you have any questions or concerns.
Best wishes!

Patty Gioffre
Acting Deputy Division Director
USEPA (OLEM/OEM/RID)
1200 Pennsylvania Ave. NW (5104A)
Washington, DC 20460
202-564-1972
202-748-7139 (cell)

From: Davis, Patrick
Sent: Wednesday, October 11, 2017 12:08 PM
To: Bodine, Susan <bodine.susan@epa.gov>
Cc: Brown, Byron <brown.byron@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Gioffre, Patricia <Gioffre.Patricia@epa.gov>
Subject: Re: Farm Emissions

Patti,

Please send this group the most recent version of the guidance.

Thanks,

Patrick Davis
Environmental Protection Agency
Deputy Associate Director, Office of Land and Emergency Management
202-564-3103 office
Cellular Phone / Ex. 6

Emails sent to this address may be subject to FOIA.

Sent from my iPhone

On Oct 11, 2017, at 11:26 AM, Bodine, Susan <bodine.susan@epa.gov> wrote:

> Patrick, can you send us the most recent version of the guidance?
>
> **From:** Davis, Patrick
> **Sent:** Wednesday, October 11, 2017 9:57 AM
> **To:** Brown, Byron <brown.byron@epa.gov>
> **Cc:** Bodine, Susan <bodine.susan@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>
> **Subject:** Re: Farm Emissions
>
> Both EPCRA Q&A and cercla guidance will post on our website on October 16. OMB has the EPCRA Q&A and we expect it back from them by 10/12.
>
> Patrick Davis
> Environmental Protection Agency
> Deputy Associate Director, Office of Land and Emergency Management
> 202-564-3103 office
> Cellular Phone / Ex. 6
>
> Emails sent to this address may be subject to FOIA.
>
> Sent from my iPhone
>
> On Oct 10, 2017, at 5:34 PM, Brown, Byron <brown.byron@epa.gov> wrote:
>
> **Deliberative Process / Ex. 5**
>
> https://www.epa.gov/epcra/cercla-and-epcra-reporting-requirements-air-releases-hazardous-substances-animal-waste-farms
>
> **From:** Bodine, Susan
> **Sent:** Tuesday, October 10, 2017 5:32 PM
> **To:** Brown, Byron <brown.byron@epa.gov>; Davis, Patrick <davis.patrick@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>
> **Subject:** RE: Farm Emissions

I thought the guidance did not go to OMB, only the Q&A.

Deliberative Process / Ex. 5

Patrick, do you have an updated version?

From: Brown, Byron
Sent: Tuesday, October 10, 2017 5:28 PM
To: Davis, Patrick <davis.patrick@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>
Subject: Farm Emissions

Just wanted to clarify whether we have issued the draft guidance for calculating emissions (attached), and if not when we expect to release it. And separately would like to confirm that the draft we sent to OMB is the EPCRA interpretive rule/guidance on routine agricultural operations. Any idea on timing – whether that will get released before Nov. deadline. Thanks.

Byron R. Brown
Deputy Chief of Staff for Policy
Office of the Administrator
U.S. Environmental Protection Agency

Message

From: Fotouhi, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FEBAF0D56AAB43F8A9174B18218C1182-FOTOUHI, DA]
Sent: 5/22/2017 11:32:59 PM
To: Ford, Hayley [ford.hayley@epa.gov]
CC: Schwab, Justin [schwab.justin@epa.gov]; Munoz, Charles [munoz.charles@epa.gov]
Subject: RE: 30-Day Report updates

Hi, Hayley: Please see our update below.

1. **MURRAY ENERGY CORPORATION, ET AL V. EPA, NO.16-2432 – <u>ORAL ARGUMENT HELD, COMPLIANCE PLAN FILED</u>.** In this appeal of *Murray Energy Corp. et al. v. McCarthy*, (N.D. W. Va. 2016) in the Fourth Circuit, the Plaintiff alleged and the district court held that the Agency has failed to perform a non-discretionary duty under Section 321(a) of the Clean Air Act to evaluate potential loss or shifts of employment within an industry caused by regulations implementing the Act. Attorney Client / Ex. 5

   Attorney Client / Ex. 5

   Attorney Client / Ex. 5 Oral argument was held in the Fourth Circuit on May 9, 2017.
   Timing: Comprehensive compliance plan filed with district court on May 15, 2017. Study of employment effects of Clean Air Act on coal sector due July 1, unless the Fourth Circuit provides relief before that date. **Contact**: Justin Schwab, Deputy General Counsel, schwab.justin@epa.gov

2. **STATE OF WEST VIRGINIA, ET AL. V. EPA, NO. 15-1363 (D.C. CIR.) – <u>CONTINUED ABEYANCE REQUESTED</u>.** On April 28, 2016, the *en banc* court issued an order holding the litigation challenging the Clean Power Plan in abeyance for 60 days and instructing the parties to file briefs by May 15, 2017, on the question whether the case should remain held in abeyance or whether the court should remand the rule to the Agency. On May 15, DOJ requested the court to hold the case in abeyance pending EPA's review of the rule. The rule's supporters have asked the court to remand the rule to EPA.
   Timing: Parties filed briefs with D.C. Circuit on May 15, 2017 **Contact**: David Fotouhi, Deputy General Counsel, fotouhi.david@epa.gov

3. **CENTER FOR REGULATORY REASONABLENESS V. EPA, 849 F.3D 453 (D.C. CIR. 2017)—<u>RESPONSE TO PETITION FOR REHEARING FILED</u>.** Petitioner sought review of two EPA letters discussing an earlier Eighth Circuit court decision addressing Clean Water Act regulations and policies as they relate to permit conditions for publicly owned treatment works. On February 28, 2017, the court denied review, holding that it lacked jurisdiction under Clean Water Act section 509(b) to review EPA's letters and statements on the issue because petitioner was out of time for review or because they did not announce an effluent limitation or other limitation on discharge. On April 11, 2017, the petitioners filed a petition for rehearing *en banc*, and the court has ordered EPA to respond to the petition. DOJ filed a response to the petition for rehearing *en banc* on May 16, 2017.
   Timing: Briefing is complete. The D.C. Circuit will assess the filings and determine whether to grant rehearing.
   Contact: David Fotouhi, Deputy General Counsel, fotouhi.david@epa.gov

4. **WATERKEEPER ALLIANCE V. EPA, NO. 09-1017 (D.C. CIR.) <u>DELAY OF MANDATE REQUESTED</u>.** On April 11, 2017, the D.C. Circuit Court of Appeals vacated EPA's final rule entitled the "CERCLA/EPCRA Administrative Reporting Exemption for Air

Releases of Hazardous Substances from Animal Waste at Farms" (73 FR 76948, Dec. 18, 2008). As a result of the Court's decision, farming operations formerly exempted will have to report their aerial emissions of hazardous substances under CERCLA § 103 and EPCRA § 304 once the court issues its mandate. On May 19, EPA moved to stay the issuance of the mandate until June 2, Attorney Client / Ex. 5

Attorney Client / Ex. 5

Attorney Client / Ex. 5 Waterkeeper Alliance has opposed this request.

Timing: EPA requested delay of mandate until June 2, Attorney Client / Ex. 5 Attorney Client / Ex. 5 The Court can rule on the initial request at any time.

Contact: David Fotouhi, Deputy General Counsel, fotouhi.david@epa.gov

5. **NEW MEXICO V. COLORADO, NO. 220147 (S.CT.)—INVITATION BRIEF TO BE FILED.** New Mexico filed a motion in the U.S. Supreme Court for leave to file a bill of complaint against Colorado, seeking to hold Colorado liable under CERCLA, RCRA, and federal common law for the release of hazardous waste on August 5, 2015, from the Gold King Mine in Colorado. In November 2016, the Supreme Court invited the Acting Solicitor General to file a brief in this case "expressing the views of the United States." Attorney Client / Ex. 5 Attorney Client / Ex. 5

Timing: EPA understands that the Office of the Solicitor General anticipates filing its invitation brief by May 23, 2017, and a decision is anticipated by end of June 2017.

Contact: David Fotouhi, Deputy General Counsel, fotouhi.david@epa.gov or Justin Schwab, Deputy General Counsel, schwab.justin@epa.gov.

David Fotouhi

Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

From: Ford, Hayley
Sent: Monday, May 22, 2017 5:54 PM
To: Fotouhi, David <fotouhi.david@epa.gov>
Cc: Schwab, Justin <schwab.justin@epa.gov>
Subject: RE: 30-Day Report updates

Perfect thank you!

Hayley Ford
Deputy White House Liaison
Office of the Administrator
Environmental Protection Agency
Room: 3309C William Jefferson Clinton North
ford.hayley@epa.gov
Phone: 202-564-2022
Cell: 202-306-1296

From: Fotouhi, David
Sent: Monday, May 22, 2017 5:37 PM
To: Ford, Hayley <ford.hayley@epa.gov>
Cc: Schwab, Justin <schwab.justin@epa.gov>
Subject: Re: 30-Day Report updates

Hi, Hayley. Yes, I will send you an update later today ASAP.

Sent from my iPhone

On May 22, 2017, at 5:26 PM, Ford, Hayley <ford.hayley@epa.gov> wrote:

> Hi David and Justin,
>
> Any update on the below legal section for the 30-day? Thanks!

Hayley Ford
Deputy White House Liaison
Office of the Administrator
Environmental Protection Agency
Room: 3309C William Jefferson Clinton North
ford.hayley@epa.gov
Phone: 202-564-2022
Cell: 202-306-1296

Message

From: Fotouhi, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FEBAF0D56AAB43F8A9174B18218C1182-FOTOUHI, DA]
Sent: 7/12/2017 12:27:31 AM
To: Ferguson, Lincoln [ferguson.lincoln@epa.gov]
Subject: RE: CERCLA/RCRA

Lincoln:

Here is some background on the CERCLA/EPCRA release reporting rule litigation and potential administrative next steps.

On April 11, 2017, the D.C. Circuit vacated EPA's Bush-era rule exempting farms from reporting releases of Ammonia and Hydrogen Sulfide from animals from EPCRA and CERCLA statutory reporting requirements. *Waterkeeper Alliance v. EPA*, No. 09-1017 (D.C. Cir.) (Apr. 11, 2017). On July 3, the DC Circuit denied the National Pork Producers Council's petition for rehearing of the decision. Attorney Client / Ex. 5

Attorney Client / Ex. 5

Here is a brief overview of the administrative options that OGC and OLEM have developed to address impact of the rule's vacatur. We have a briefing scheduled for the Administrator on this on Friday afternoon to discuss these options.

- EPCRA

Deliberative Process / Ex. 5

- CERCLA

Deliberative Process / Ex. 5

David Fotouhi

Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency

Tel: +1 202.564.1976
fotouhi.david@epa.gov

From: Ferguson, Lincoln
Sent: Tuesday, July 11, 2017 10:42 AM
To: Fotouhi, David <fotouhi.david@epa.gov>
Subject: FW: CERCLA/RCRA

David –

See below. Do you have any update on animal waste under RCRA & CERCLA?

Thanks,
Lincoln

From: Brown, Byron
Sent: Tuesday, July 11, 2017 10:36 AM
To: Bolen, Brittany <bolen.brittany@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>
Cc: Dravis, Samantha <dravis.samantha@epa.gov>
Subject: RE: CERCLA/RCRA

I don't think they would be interested in hardrock mining issue. Instead, I think they are probably tracking how animal waste is handled under RCRA & CERCLA and whether releases of ammonia trigger reporting under the toxic release inventory. David in OGC has been following the litigation in these areas.

From: Bolen, Brittany
Sent: Tuesday, July 11, 2017 10:32 AM
To: Ferguson, Lincoln <ferguson.lincoln@epa.gov>
Cc: Dravis, Samantha <dravis.samantha@epa.gov>; Brown, Byron <brown.byron@epa.gov>
Subject: Re: CERCLA/RCRA

CERCLA/RCRA is under OLEM. Assuming they may ask about cercla hard rock mining rule or CCR, Byron is best PoC.

Sent from my iPhone

On Jul 11, 2017, at 10:10 AM, Ferguson, Lincoln <ferguson.lincoln@epa.gov> wrote:

> For the Turkey Federation in the morning they mentioned some of their members may ask about CERCLA...is that in your shop? Or who should I go to get an update on this?
>
> **Lincoln Ferguson**
> Senior Advisor to the Administrator
> Office of Public Affairs
> U.S. EPA
> (202) 564-1935

Message

From: Fotouhi, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FEBAF0D56AAB43F8A9174B18218C1182-FOTOUHI, DA]
Sent: 4/25/2017 5:09:31 PM
To: Jones, Gail-R [Jones.Gail-R@epa.gov]
Subject: RE: Request for an Appointment-April 25 or 26

Hi, Gail. I think the meeting with this group is supposed to be right now, but I haven't heard from security that they've arrived. Any word from them? Am I getting my dates mixed up?

David Fotouhi

Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

From: Jones, Gail-R
Sent: Monday, April 24, 2017 2:23 PM
To: Fotouhi, David <fotouhi.david@epa.gov>
Subject: RE: Request for an Appointment-April 25 or 26

Yes, I talked with Tammy and she is all set for this meeting.

Gail

From: Fotouhi, David
Sent: Monday, April 24, 2017 1:42 PM
To: Jones, Gail-R <Jones.Gail-R@epa.gov>
Subject: RE: Request for an Appointment-April 25 or 26

Did this get all worked out for tomorrow?

David Fotouhi

Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

From: Jones, Gail-R
Sent: Tuesday, April 18, 2017 9:55 AM
To: Fotouhi, David <fotouhi.david@epa.gov>
Subject: RE: Request for an Appointment-April 25 or 26

Good morning,

I will check with Tammy today and get this worked out for you.

Gail

From: Fotouhi, David
Sent: Monday, April 17, 2017 7:57 AM
To: Jones, Gail-R <Jones.Gail-R@epa.gov>
Subject: FW: Request for an Appointment-April 25 or 26

Hi, Gail. Could you help me coordinate the logistics for this meeting and follow up with Tammy Dennee as appropriate? I anticipate the meeting being small enough that it can take place in my office. Let me know if you have questions or need anything else from me.

David Fotouhi

Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

From: Tammy Dennee [mailto:tammy.dennee@oregondairyfarmers.org]
Sent: Friday, April 14, 2017 5:40 PM
To: Fotouhi, David <fotouhi.david@epa.gov>
Subject: Re: Request for an Appointment-April 25 or 26

David,

Could we meet with you at 1:00 pm on the 25th? Our issues would include the recent CIRCLA/EPCRA reversal (air quality issues for Dairy), and WOTUS. Mostly, we would like to establish relationship with you and your colleagues as the new Administrator gets settled together with the new Administration.

I will look forward to your confirmation.

Easter blessings,

Tammy L. Dennee, CMP, CAE
LEGISLATIVE DIRECTOR

OREGON DAIRY FARMERS ASSOCIATION
1320 Capitol Street NE, Suite 160
Salem, OR 97301

Phone: (971) 599-5269
Fax: (541) 647-6487
Mobile: (541) 980-6887
E-Mail: tammy.dennee@oregondairyfarmers.org

www.oregondairyfarmers.org

On Fri, Apr 14, 2017 at 2:24 PM, Fotouhi, David <fotouhi.david@epa.gov> wrote:

Tammy:

I would be glad to meet with you and your team. It might be helpful if you could provide me with a few details regarding the topics that you would like to discuss in order for me to ensure that we are joined by the right people. Regarding times, the afternoon of Tuesday the 25th is relatively open for me; let me know if a time in that window would work for you.

Best regards,

David

David Fotouhi

Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

-----Original Message-----
From: Tammy Dennee [mailto:tammy.dennee@oregondairyfarmers.org]
Sent: Thursday, April 13, 2017 12:32 PM
To: Fotouhi, David <fotouhi.david@epa.gov>
Subject: Request for an Appointment-April 25 or 26

David,
My name is Tammy Dennee. I serve as the Legislative Director for the Oregon Dairy Farmers Association. I will be bringing two of our board member/dairy farmers to D.C the week of April 24. Would you have time to meet with our small team?

Thank you, in advance, for your consideration.

Tammy Dennee, CMP, CAE- Legislative Director Oregon Dairy Farmers Association
541.980.6887
Tammy.dennee@oregondairyfarmers.org

Message

From: Principe, Vanessa [Principe.Vanessa@epa.gov]
Sent: 9/27/2017 1:12:59 PM
To: Bosecker, Elizabeth [Bosecker.Elizabeth@epa.gov]; Franklin, Kathy [Franklin.Kathy@epa.gov]; Gioffre, Patricia [Gioffre.Patricia@epa.gov]; Jacob, Sicy [Jacob.Sicy@epa.gov]; Beaman, Joe [Beaman.Joe@epa.gov]
CC: Jennings, Kim [Jennings.Kim@epa.gov]
Subject: RE: Review requested- CERCLA/EPCRA Website Guidance- DRAFT
Attachments: Guidance for Farms DRAFT 09 25 2017 KF and BB edits_VP.docx

My observations/suggested edits over Kathy's/Beth's.

Thanks, V

From: Bosecker, Elizabeth
Sent: Wednesday, September 27, 2017 8:34 AM
To: Franklin, Kathy ; Gioffre, Patricia ; Jacob, Sicy ; Beaman, Joe ; Principe, Vanessa
Cc: Jennings, Kim
Subject: RE: Review requested- CERCLA/EPCRA Website Guidance- DRAFT

Here are my edits/comments on top of Kathy's.

Thanks,

Beth

Elizabeth M. Bosecker
U.S. Environmental Protection Agency
Office of Emergency Management
Office of Land and Emergency Management
1200 Pennsylvania Ave NW (Mail Code: 5104A)
Washington, DC 20460
Phone: (202)564-7612

From: Franklin, Kathy
Sent: Tuesday, September 26, 2017 4:06 PM
To: Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Jacob, Sicy <Jacob.Sicy@epa.gov>; Beaman, Joe <Beaman.Joe@epa.gov>; Bosecker, Elizabeth <Bosecker.Elizabeth@epa.gov>; Principe, Vanessa <Principe.Vanessa@epa.gov>
Cc: Jennings, Kim <Jennings.Kim@epa.gov>
Subject: RE: Review requested- CERCLA/EPCRA Website Guidance- DRAFT

My edits in attached document.

Kathy Franklin
USEPA, Office of Emergency Management
WJ Clinton North Bldg., Rm. 6450G Mailcode 5104A
1200 Pennsylvania Ave. NW, Washington, DC 20460 (Zip 20004 for private courier delivery)
Phone: 202-564-7987
Email: franklin.kathy@epa.gov

From: Gioffre, Patricia
Sent: Tuesday, September 26, 2017 9:59 AM

To: Jacob, Sicy <Jacob.Sicy@epa.gov>; Beaman, Joe <Beaman.Joe@epa.gov>; Bosecker, Elizabeth <Bosecker.Elizabeth@epa.gov>; Franklin, Kathy <Franklin.Kathy@epa.gov>; Principe, Vanessa <Principe.Vanessa@epa.gov>
Cc: Jennings, Kim <Jennings.Kim@epa.gov>
Subject: Review requested- CERCLA/EPCRA Website Guidance- DRAFT

Attached is a draft guidance that we can put on the EPA website for farmers on how to comply with CERCLA and EPCRA reporting requirements for air emissions from animal wastes.

Sicy developed the substance (thank you!) and I tried to make it web friendly.
Please review and provide suggested edits by mid-day Thursday (9/28) if possible. I'd like to send over to OGC by COB Thursday for their review.

Patty Gioffre
US EPA/OLEM/OEM
202-564-1972
202-748-7139 (cell)

Follow OLEM on Twitter @EPALand

From: Jacob, Sicy
Sent: Friday, September 15, 2017 12:14 PM
To: Jennings, Kim <Jennings.Kim@epa.gov>; Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Principe, Vanessa <Principe.Vanessa@epa.gov>
Cc: Jacob, Sicy <Jacob.Sicy@epa.gov>
Subject: Guidance for Farms (DRAFT)

Hi, I drafted the guidance for farms (attached). I have some questions/comments for you guys. Feel free to edit as necessary. Thanks.

Sicy Jacob
Chemical Engineer
Regulations Implementation Division
Office of Emergency Management
U.S. EPA, MailCode 5104A
1200 Pennsylvania Avenue, NW
Washington DC 20004
(202) 564-8019

Reporting Air Releases of Hazardous Substances from Animal Wastes under CERCLA and EPCRA

On December 18, 2008, EPA published a final rule that exempted farms from reporting air releases of hazardous substances from animal waste. This final rule applied to:

- Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); and
- Section 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA), ~~if the~~for farms that stable or confine fewer than a certain number of animals.

On April 11, 2017, the DC Circuit Court vacated this final rule.

What does the court ~~vacatur~~ action to vacate the rule mean for farmers?

To comply with CERCLA section 103, farmers must notify the National Response Center (NRC) at 1-800-424-8802 or 202-267-2675 when farms have air releases of hazardous substances from animal wastes that are equal to or greater than their reportable quantities (RQs) within any 24-hour period.

Deliberative Process / Ex. 5

When do I have to comply?

In response to a request from EPA, the DC Circuit Court extended the date by which farms must begin reporting these releases to November 15, 2017. Starting on this date, all farms that have releases of hazardous substances to air from animal wastes, equal to or greater than their reportable quantities, within any 24-hour period, must notify the NRC of such releases.

What substances need to be reported?

Click here for a complete list of CERCLA hazardous substances and their reportable quantities (RQs). Typical hazardous substances associated with animal wastes include:

- Ammonia (RQ 100 lbs)
- Hydrogen sulfide (RQ 100 lbs)
- [Others…]

Do I have to submit a report when I apply fertilizers or pesticides to crops?

No, farmers do not need to report releases that include the normal application of fertilizers and the application of pesticide products registered under the Federal Insecticide, Fungicide, and Rodenticide

Commented [PV1]: Suggested edit – expecting not many of those that will now be subject to reporting are familiar with the term – and they don't need to be.

Commented [FK2]: The rule had a definition for this. I guess we cannot define what this is now? Could we do

Deliberative Process / Ex. 5

is a question.

Commented [BE3R2]: I agree that it will come up as a question.

Commented [PV4R2]: Presumed this was a universally understood term. Not being familiar with it, at es, he

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

If this is a convoluted regulatory definition, suggest best a link to a Q&A / guidance/ webpage.

Deliberative Process / Ex. 5

Commented [FK6R5]: After the meeting today, I realize that we were purposely not trying to explain our new interpretation here because OMB is to review the QAs and not the guidance, so I guess ignore my edits here.

Commented [PV7R5]: Agree – see my comment above.

Deliberative Process / Ex. 5

Act (FIFRA). However, any spills or accidents involving these substances must be immediately reported to the NRC when they meet or exceed the reportable quantity.

How do I know when to report?

Formatted: Space Before: 0 pt, After: 8 pt

EPA is currently developing methodologies for estimating releases of ammonia and hydrogen sulfide from animal wastes at farms. While EPA finalizes these, farms may use any of the resources provided below or any other studies available to you for estimating releases.

Disclaimer: The EPA does not endorse these studies. These are provided to farms to use while EPA finalizes its methodologies for estimating emissions of ammonia and hydrogen sulfide from animal wastes. Farms may use any other methodologies that are available for estimating releases of ammonia and hydrogen sulfide to air from animal wastes.

Commented [GP9]: Clear with Robin

1. **Dairy Operations**

   Page 3 is a worksheet for estimating ammonia and hydrogen sulfide emissions from dairy operations. Emission estimates are inclusive of ammonia emissions from animal pen surfaces and the runoff holding pond(s). Ammonia emission rates vary between summer and winter months. This worksheet indicates that hydrogen sulfide levels are fairly stable throughout the year.

   (*Source: These emission estimates are based on research data collected by Texas AgriLife Research, Texas AgriLife Extension Service, Texas A&M University, USDA-Agricultural Research Service, and West Texas A&M University.*)

Deliberative Process / Ex. 5

2. **Swine operations**

   This calculation worksheet estimates ammonia and hydrogen sulfide emissions from swine operations using typical confinement housing and manure storages that are~~and~~ located in a temperate climate. Emission rates are provided for shallow and deep storage pits.

   (Source: The emissions estimates are derived from research reported by:
   Gay, S.W., D.R. Schmidt, C.J. Clanton, K.A. Janni, L.D. Jacobson, S. Weisberg. 2003. Odor, Total Reduced Sulfur and Ammonia Emissions from Animal Housing Facilities and Manure Storage Units in Minnesota. Applied Engineering in Agriculture, 19(3) 347-360, ASABE, St. Joseph, MI.

   and:
   Jacobson, L.D., A.J. Heber, S.J. Hoff, Y. Zhang, D.B. Beasley, J.A. Koziel, and B.P. Hetchler. 2006. Aerial Pollutants Emissions from Confined Animal Buildings. Summary report, Ag Air Workshop, USDA-IFAFS research and demonstration program.) This study indicates that these values are a good faith estimate of emissions from swine operations using typical confinement housing and manure storages and located in a temperate climate.

3. **Poultry Operations**

   This document provides ammonia and hydrogen sulfide emission rates for poultry operations, including broilers, laying hens and turkeys. This study lists emission rates for various housing type for each species. It also includes instructions for using the emission rates to calculate emissions for these substances, as well as examples on calculating emissions.

   (Source: Hongwei Xin, Robert Burns, and Hong Li. January 2009. Ammonia (NH3) and Hydrogen Sulfide (H2S) Emission Rates for Poultry Operations. Agricultural and Biosystems Engineering Dept., Iowa State University, Ames, Iowa)

Commented [JS11]: None of the above or this one have rates on "ducks" but I think the next study maybe used since it has rates for egg producing birds, meat producing birds).

4. **General emission estimates for ammonia from beef, dairy, horse, swine, poultry operations**

This is an ammonia emissions estimator for beef, dairy, horse, poultry (broiler, turkey, and ducks,), and swine. This study was completed by the University of Nebraska on ammonia losses from animal housing facilities in various conditions (i.e. open dirt lots, ~~in~~ on cool and humid days) for different species.

- Here is an example for calculating emissions of ammonia for a farm that houses 5,000 swine, using the emission rates provided in the study listed above.
- Here is another example for calculating emissions of ammonia for a beef feedlot with 1,000 head of cattle~~s~~.

(Source: Rick Stowell and Rick Koelsch, University of Nebraska)

I think I need to report-who do I call?

You must immediately notify the ~~National Response Center (~~**NRC**~~)~~ **at 1-800-424-8802** or **202-267-2675** when you have a release of any CERCLA hazardous substance at or above its reportable quantity within any 24-hour period.

Commented [BE12]: This acronym was already spelled out above in the document.

Do I have to call the NRC every time my emissions exceed the reportable quantity in a 24-hour period?

No. If your farm has releases that are continuous and stable in quantity and rate, you can contact the NRC and submit an annual report.

EPA interprets "continuous" to mean a release that occurs, without interruption or abatement, that is routine, anticipated, and intermittent during normal operation or treatment processes. "Stable in quantity and rate" means predictable and regular, in amount and rate of emission.

A continuous release may be a release that occurs 24 hours a day, such as emissions from animal waste. Note- Continuous releases do not require immediate release notification when you follow the process for reporting continuous releases.

What is the process for reporting a continuous release?

Farms may follow these steps to report air emissions from animal wastes (e.g. ammonia and hydrogen sulfide releases):

- Step 1-Call the NRC at 1-800-424-8802 (toll-free) or within Washington, DC, 202-267-2675 and identify the report as an "initial continuous release notification"
- Step 2-Submit an initial written notification to the EPA Regional Office
- Step 3-One year later, submit an additional follow-up written notification

Commented [BE13]: We may get questions about where this needs to be sent in each region.

~~Ongoing~~ In addition, you should ~~i~~immediately notify the NRC and EPA regional offices of any statistically significant increases (SSI) or of a change in previously submitted release information. An SSI is an

episodic release of a hazardous substance that exceeds the release quantity described in the upper bound of the normal range of the farm's continuous release report. This is an ongoing requirement.

To assist you with reporting continuous releases, EPA has developed a guide on the Reporting Requirements for Continuous Releases of Hazardous Substances that includes forms for written reports. The Guide provides an overview of the information required for the initial and first anniversary follow-up reports to assist your collection of the required information.

Overview of Continuous Release Notification

Commented [FK14]: This section seems duplicative of the steps reported previously. Why not just combine info from both sections into one section?

Commented [BE15R14]: I agree. This could be combined with what is already above. I feel like more detail is provided in this section though.

Step 1- Call the NRC at 1-800-424-8802 (toll-free); within Washington DC, 202-267-2675.

In order to qualify at a continuous release notification, the caller must inform the NRC representative that this is an "initial continuous release notification."

Provide the NRC representative with:

- The name and location of the farm
- The name(s) of the hazardous substance(s) released

The NRC representative will provide an identification number (CR-ERNS) for your farm. You may have to use this number for any follow-up report or notification that is~~are~~ required under the continuous release reporting requirements.

Step 2- Submit an initial written notification to the EPA Regional Office for the area where the release occurs, within 30 days of the call to the NRC.

EPA developed a continuous release reporting form that farms may use to provide the initial written notification.

Step 3- Within 30 days of the first anniversary date of the initial written notification (i.e. the first continuous release report), the person in charge of the farm should verify and update the information submitted initially for each of the hazardous substances reported to the NRC and to the EPA Regional Office. The revised continuous release reporting form should be submitted to the EPA Regional Office. This follow-up report should be re-certified by the person in charge of the farm.

Resources:

40 CFR part 302- Designation, Reportable Quantities, and Notification

Reporting Requirements for Continuous Releases of Hazardous Substances

Deliberative Process / Ex. 5

Message

From: Jacob, Sicy [Jacob.Sicy@epa.gov]
Sent: 9/27/2017 7:27:44 PM
To: Franklin, Kathy [Franklin.Kathy@epa.gov]; Principe, Vanessa [Principe.Vanessa@epa.gov]; Gioffre, Patricia [Gioffre.Patricia@epa.gov]; Jennings, Kim [Jennings.Kim@epa.gov]; Bosecker, Elizabeth [Bosecker.Elizabeth@epa.gov]; Tarrab, Alan [tarrab.alan@epa.gov]; Beaman, Joe [Beaman.Joe@epa.gov]; Hull, George [Hull.George@epa.gov]
CC: Belke, Jim [Belke.Jim@epa.gov]
Subject: RE: Q&A on Routine Agricultural Operations under EPCRA 304
Attachments: Routine Agricultural Operations -QA_DRAFT 9-22-17 Kathy Sicy Joe edits.docx; EPCRA Section 304 Q & A 09 27 2017.docx

Importance: High

Hi, Everyone: So, after seeing Patrick's comment this morning on the Q &A, then Kathy, Joe, Vanessa, and then I had comments too (see the first attachment).

I understand Patrick's concern, so I decided to revise the whole Q & A (see the second attachment). I asked Jim B. to read the revised Q & A to see if it makes sense. Thanks, Jim.

I know this is a new version that we need to send around to OGC and the front office.

Note: The 2008 final rule only focus on air releases. It says in the preamble that we are not
Thanks.

Sicy Jacob
Chemical Engineer
Regulations Implementation Division
Office of Emergency Management
U.S. EPA, MailCode 5104A
1200 Pennsylvania Avenue, NW
Washington DC 20004
(202) 564-8019

From: Franklin, Kathy
Sent: Wednesday, September 27, 2017 1:31 PM
To: Jacob, Sicy ; Principe, Vanessa ; Gioffre, Patricia ; Jennings, Kim ; Bosecker, Elizabeth ; Tarrab, Alan ; Beaman, Joe ; Hull, George
Subject: RE: Q&A on Routine Agricultural Operations under EPCRA 304

I made edits on the Sharepoint version that was in Patrick Davis' email. I managed to attach the file.

Kathy Franklin
USEPA, Office of Emergency Management
WJ Clinton North Bldg., Rm. 6450G Mailcode 5104A
1200 Pennsylvania Ave. NW, Washington, DC 20460 (Zip 20004 for private courier delivery)
Phone: 202-564-7987
Email: franklin.kathy@epa.gov

From: Jacob, Sicy
Sent: Wednesday, September 27, 2017 10:56 AM
To: Principe, Vanessa <Principe.Vanessa@epa.gov>; Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Jennings, Kim <Jennings.Kim@epa.gov>; Franklin, Kathy <Franklin.Kathy@epa.gov>; Bosecker, Elizabeth <Bosecker.Elizabeth@epa.gov>; Tarrab, Alan <tarrab.alan@epa.gov>; Beaman, Joe <Beaman.Joe@epa.gov>; Hull, George <Hull.George@epa.gov>
Subject: RE: Q&A on Routine Agricultural Operations under EPCRA 304

I like Vanessa's re-write of the question. I agree with her on keeping the paragraph that Patrick questioned.

Sicy Jacob
Chemical Engineer
Regulations Implementation Division
Office of Emergency Management
U.S. EPA, MailCode 5104A
1200 Pennsylvania Avenue, NW
Washington DC 20004
(202) 564-8019

From: Principe, Vanessa
Sent: Wednesday, September 27, 2017 9:33 AM
To: Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Jennings, Kim <Jennings.Kim@epa.gov>; Jacob, Sicy <Jacob.Sicy@epa.gov>; Franklin, Kathy <Franklin.Kathy@epa.gov>; Bosecker, Elizabeth <Bosecker.Elizabeth@epa.gov>; Tarrab, Alan <tarrab.alan@epa.gov>; Beaman, Joe <Beaman.Joe@epa.gov>; Hull, George <Hull.George@epa.gov>
Subject: RE: Q&A on Routine Agricultural Operations under EPCRA 304

Stumbled a bit over the phrasing of the question:

> Question: Do farmers have to report air releases of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) hazardous substances and/or Emergency Planning and Community Right-to-Know Act (EPCRA) extremely hazardous substances from animal wastes under EPCRA Section 304?

Deliberative Process / Ex. 5

> Question: Do farmers have to report air releases of hazardous or extremely hazardous substances from animal wastes under EPCRA Section 304?

Deliberative Process / Ex. 5

Thanks, V

From: Gioffre, Patricia
Sent: Tuesday, September 26, 2017 4:20 PM
To: Davis, Patrick <davis.patrick@epa.gov>; Breen, Barry <Breen.Barry@epa.gov>; Brooks, Becky <Brooks.Becky@epa.gov>; Hostage, Barbara <Hostage.Barbara@epa.gov>; Noggle, William <Noggle.William@epa.gov>; Cogliano, Gerain <Cogliano.Gerain@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>; Ziegel, Dean <Ziegel.Dean@epa.gov>
Cc: Jennings, Kim <Jennings.Kim@epa.gov>; Clark, Becki <Clark.Becki@epa.gov>; Jacob, Sicy <Jacob.Sicy@epa.gov>; Franklin, Kathy <Franklin.Kathy@epa.gov>; Bosecker, Elizabeth <Bosecker.Elizabeth@epa.gov>; Beaman, Joe <Beaman.Joe@epa.gov>; Hull, George <Hull.George@epa.gov>; Tarrab, Alan <tarrab.alan@epa.gov>; Principe, Vanessa

<Principe.Vanessa@epa.gov>; Swenson, Erik <Swenson.Erik@epa.gov>; Michaud, John <Michaud.John@epa.gov>; Lewis, Jen <Lewis.Jen@epa.gov>; Indermark, Michele <Indermark.Michele@epa.gov>; Cheatham, Reggie <cheatham.reggie@epa.gov>; Salo, Earl <Salo.Earl@epa.gov>
Subject: Q&A on Routine Agricultural Operations under EPCRA 304
Importance: High

Attached is a draft Q&A on EPA's interpretation of routine agricultural operations.

OGC is currently reviewing; however, I am sharing with others for feedback.
Given the timeframe we have to issue guidance (by 10/16/17), please respond with any questions/concerns at your earliest convenience.

Best wishes!

Patty Gioffre
Acting Deputy Division Director
USEPA (OLEM/OEM/RID)
1200 Pennsylvania Ave. NW (5104A)
Washington, DC 20460
202-564-1972
202-748-7139 (cell)

Question: Do farms have to report hazardous substances released to air from animal wastes under EPCRA Section 304?

A: No. Although in general, EPCRA section 304 requires facilities "at which a hazardous chemical is produced, used or stored" to report releases of reportable quantities of any EPCRA Extremely Hazardous Substance and of any CERCLA hazardous substance to state and local authorities, farms are exempt from reporting hazardous substances released to air from animal wastes under Section 304.

The term "hazardous chemical" is defined under the Occupational Safety and Health Administration (OSHA) Hazard Communication Standard (HCS) [29 CFR 1910.1200 (c)]. Under EPCRA sections 329 and 311(e) the term "hazardous chemical" has the same meaning as "hazardous chemical" under the OSHA HCS but with certain exceptions, including "any substance to the extent it is used in routine agricultural operations." (see EPCRA section 311(e)(5) as codified in the definition of a hazardous chemical under 40 CFR part 355.61).

EPA interprets the term "routine agricultural operations" broadly, to encompass a wide range of growing operations, such as farms, nurseries, other horticultural operations and aquaculture. Existing guidance provides that the following are substances used in routine agricultural operations:

- Paint used for maintaining farm equipment;
- Fuel used at the farm to operate machinery or to heat buildings in a farm for housing animals; and
- Pesticides and fertilizers used for growing crops
- Chemicals used for growing and breeding fish and aquatic plants in an aquacultural operation.

Some farms raise animals, and those animals, naturally, generate waste. The farms often store, and may use, the animal waste as fertilizer. The storage and use of the waste is an inherent part of raising the animals; and is therefore, a "routine agricultural operation."

Question: Do farmers have to report air releases of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) hazardous substances and/or Emergency Planning and Community Right-to-Know Act (EPCRA) extremely hazardous substances from animal wastes under EPCRA Section 304?

Answer:

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5 chemicals are "used in routine agricultural operations." Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

EPCRA section 304 requires facilities "at which a hazardous chemical is produced, used or stored" to report releases of reportable quantities of any EPCRA Extremely Hazardous Substance and of any CERCLA hazardous substance to the:

- Local Emergency Planning Committee (LEPC), for any area likely to be affected by the release; and
- State Emergency Response Commission (SERC), of any State, likely to be affected by the release.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5 Under EPCRA sections 329 and 311(e) "hazardous chemical" h Deliberative Process / Ex. 5 s but with certain exceptions, including "any substance to the extent it is used in routine agricultural operations." (see EPCRA section 311(e)(5) as codified in the definition of a hazardous chemical under 40 CFR part 355.61).

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5 s, they are not hazardous chemicals under EPCRA, to the extent that they are used in routine agricultural operations. Therefore, they are not subject to reporting requirements under EPCRA section 304.

The Environmental Protection Agency (EPA) interprets the term "routine agricultural operations" broadly, to encompass a wide range of growing operations, such as farms, nurseries, other horticultural operations and aquaculture. Existing guidance provides that the following are substances used in routine agricultural operations:

- Paint used for maintaining farm equipment;
- Fuel used at the farm to operate machinery or to heat buildings in a farm for housing animals; and
- Chemicals used for growing and breeding fish and aquatic plants in an aquacultural operation.

Some farms raise animals, and those animals, naturally, generate waste. The farms often store, and may use, the animal waste as fertilizer. The storage and use of the waste is an inherent part of raising the animals; and is therefore, a "routine agricultural operation."

EPA notes that a district court stated that ammonia from chicken waste at chicken farms is not used in routine agricultural operations because farmers "want to get rid of it because it is harmful to the chickens." *Sierra Club, Inc. v. Tyson Foods, Inc.*, 299 F. Supp. 2d 693 (W.D. Ky. 2003). EPA disagrees with the district court. The storage and use of animal waste is an inherent part of raising animals and is therefore a "routine agricultural operation," even if the waste can cause harm if it is not stored and managed correctly.

Deliberative Process / Ex. 5

Question: Do farmers have to report air releases of hazardous or extremely hazardous substances from animal wastes under EPCRA Section 304?

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Commented [JS8]:

Deliberative Process / Ex. 5

Message

From: Gioffre, Patricia [Gioffre.Patricia@epa.gov]
Sent: 4/9/2018 3:51:27 PM
To: Gioffre, Patricia [Gioffre.Patricia@epa.gov]; Jennings, Kim [Jennings.Kim@epa.gov]; Jacob, Sicy [Jacob.Sicy@epa.gov]; ODea, Elise [odea.elise@epa.gov]; Lewis, Jen [Lewis.Jen@epa.gov]; Franklin, Kathy [Franklin.Kathy@epa.gov]; Thomas, Latosha [Thomas.Latosha@epa.gov]; Mayer, Eileen [Mayer.Eileen@epa.gov]; Cooperstein, Sharon [Cooperstein.Sharon@epa.gov]; Cogliano, Gerain [Cogliano.Gerain@epa.gov]; Noggle, William [Noggle.William@epa.gov]; Sullivan, Tim [Sullivan.Tim@epa.gov]; Swenson, Erik [Swenson.Erik@epa.gov]
Subject: RE: Gioffre, Patricia has shared 'Animal Waste Website 4-4-18_revisions'

Thanks to many of you that already commented on the revised website (link in email below).

There are a few additional changes that I'd like to get input on:

Deliberative Process / Ex. 5

Patty Gioffre
USEPA/OLEM/OEM/RID
202-564-1972
202-748-7139 (cell)

From: Gioffre, Patricia [mailto:no-reply@sharepointonline.com]
Sent: Wednesday, April 04, 2018 4:48 PM
To: Jennings, Kim ; Jacob, Sicy ; ODea, Elise ; Lewis, Jen ; Franklin, Kathy ; Thomas, Latosha ; Mayer, Eileen ; Cooperstein, Sharon ; Cogliano, Gerain ; Noggle, William
Cc: Gioffre, Patricia
Subject: Gioffre, Patricia has shared 'Animal Waste Website 4-4-18_revisions'

I took a first attempt to revise the animal waste website.

Take a look and let me know what you think. **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

We need to agree on edits and then have OP coordinate with OMB.

Patty

Open Animal Waste Website 4-4-18_revisions.docx

See more related to Gioffre, Patricia in Delve.

Get the SharePoint mobile app!

Message

From: Davis, Patrick [davis.patrick@epa.gov]
Sent: 9/26/2017 9:42:55 PM
To: Gioffre, Patricia [Gioffre.Patricia@epa.gov]; Breen, Barry [Breen.Barry@epa.gov]; Brooks, Becky [Brooks.Becky@epa.gov]; Hostage, Barbara [Hostage.Barbara@epa.gov]; Noggle, William [Noggle.William@epa.gov]; Cogliano, Gerain [Cogliano.Gerain@epa.gov]; Sullivan, Tim [Sullivan.Tim@epa.gov]; Ziegel, Dean [Ziegel.Dean@epa.gov]; Darwin, Veronica [darwin.veronica@epa.gov]
CC: Jennings, Kim [Jennings.Kim@epa.gov]; Clark, Becki [Clark.Becki@epa.gov]; Jacob, Sicy [Jacob.Sicy@epa.gov]; Franklin, Kathy [Franklin.Kathy@epa.gov]; Bosecker, Elizabeth [Bosecker.Elizabeth@epa.gov]; Beaman, Joe [Beaman.Joe@epa.gov]; Hull, George [Hull.George@epa.gov]; Tarrab, Alan [tarrab.alan@epa.gov]; Principe, Vanessa [Principe.Vanessa@epa.gov]; Swenson, Erik [Swenson.Erik@epa.gov]; Michaud, John [Michaud.John@epa.gov]; Lewis, Jen [Lewis.Jen@epa.gov]; Indermark, Michele [Indermark.Michele@epa.gov]; Cheatham, Reggie [cheatham.reggie@epa.gov]; Salo, Earl [Salo.Earl@epa.gov]; Brown, Byron [brown.byron@epa.gov]; Fotouhi, David [fotouhi.david@epa.gov]
Subject: RE: Q&A on Routine Agricultural Operations under EPCRA 304

<!--[if lte mso 15 || CheckWebRef]-->

Davis, Patrick has shared a OneDrive for Business file with you. To view it, click the link below.

Routine Agricultural Operations -QA_DRAFT 9-22-17 PD edits.docx

<!--[endif]-->

See my edits to EPCRA Q&A tracked on the attached.

Thanks,

Patrick Davis
Environmental Protection Agency
Deputy Assistant Administrator, Office of Land and Emergency Management
202-564-3103 office
202-380-8341 cell

Information sent to this email address may be subject to FOIA.

From: Gioffre, Patricia
Sent: Tuesday, September 26, 2017 4:20 PM
To: Davis, Patrick ; Breen, Barry ; Brooks, Becky ; Hostage, Barbara ; Noggle, William ; Cogliano, Gerain ; Sullivan, Tim ; Ziegel, Dean
Cc: Jennings, Kim ; Clark, Becki ; Jacob, Sicy ; Franklin, Kathy ; Bosecker, Elizabeth ; Beaman, Joe ; Hull, George ; Tarrab, Alan ; Principe, Vanessa ; Swenson, Erik ; Michaud, John ; Lewis, Jen ; Indermark, Michele ; Cheatham, Reggie ; Salo, Earl
Subject: Q&A on Routine Agricultural Operations under EPCRA 304
Importance: High

Attached is a draft Q&A on EPA's interpretation of routine agricultural operations.

OGC is currently reviewing; however, I am sharing with others for feedback.
Given the timeframe we have to issue guidance (by 10/16/17), please respond with any questions/concerns at your earliest convenience.

Best wishes!

Patty Gioffre
Acting Deputy Division Director
USEPA (OLEM/OEM/RID)
1200 Pennsylvania Ave. NW (5104A)
Washington, DC 20460
202-564-1972
202-748-7139 (cell)

Message

From: Gioffre, Patricia [Gioffre.Patricia@epa.gov]
Sent: 9/28/2017 3:18:08 PM
To: Jacob, Sicy [Jacob.Sicy@epa.gov]; Franklin, Kathy [Franklin.Kathy@epa.gov]; Beaman, Joe [Beaman.Joe@epa.gov]; Jennings, Kim [Jennings.Kim@epa.gov]; Hull, George [Hull.George@epa.gov]; Clark, Becki [Clark.Becki@epa.gov]; Cheatham, Reggie [cheatham.reggie@epa.gov]; Bosecker, Elizabeth [Bosecker.Elizabeth@epa.gov]
CC: Hostage, Barbara [Hostage.Barbara@epa.gov]; Cogliano, Gerain [Cogliano.Gerain@epa.gov]; Noggle, William [Noggle.William@epa.gov]
Subject: Fwd: Request to Post information today: EPCRA/CERCLA website announcement

As requested by Patrick Davis, we have posted an announcement on our website today to give the public notice that we are planning to provide guidance on our website by 10/16/17.

We should be able to send out to regional contacts and our colleagues in OAR and OW.

See the link in the email below.

Sent from my iPhone

Begin forwarded message:

> **From:** "Mayer, Eileen" <Mayer.Eileen@epa.gov>
> **Date:** September 28, 2017 at 10:41:31 AM EDT
> **To:** "Gioffre, Patricia" <Gioffre.Patricia@epa.gov>
> **Cc:** "Jennings, Kim" <Jennings.Kim@epa.gov>, "Hull, George" <Hull.George@epa.gov>, "Taylor, Trish" <Taylor.Trish@epa.gov>, "Colip, Matthew" <colip.matthew@epa.gov>
> **Subject: RE: Request to Post information today: EPCRA/CERCLA website announcement**
>
> The page is live and available at: https://www.epa.gov/epcra/cercla-and-epcra-reporting-requirements-air-releases-hazardous-substances-animal-waste-farms
> There is also a link on the EPCRA homepage.
> Eileen M. Mayer
> Web Editor-in-Chief (EPCRA, RMP, Oil Spills Regulations, and Emergency Response)
> Office of Emergency Management
> U.S. Environmental Protection Agency
> 202-564-9628
>
> ---
>
> **From:** Gioffre, Patricia
> **Sent:** Thursday, September 28, 2017 10:20 AM
> **To:** Mayer, Eileen <Mayer.Eileen@epa.gov>
> **Cc:** Jennings, Kim <Jennings.Kim@epa.gov>; Hull, George <Hull.George@epa.gov>; Taylor, Trish <Taylor.Trish@epa.gov>
> **Subject:** Request to Post information today: EPCRA/CERCLA website announcement
> Eileen- We got the message today from Patrick Davis that it is OK to post this information on our website. He would like it up today if that is possible.
> ---
> Patty Gioffre
> USEPA (OLEM/OEM)
> 1200 Pennsylvania Ave. NW (5104A)
> Washington, DC 20460
> 202-564-1972
> 202-748-7139 (cell)
> ---

Follow OLEM on Twitter @EPALand

Message

From: Gioffre, Patricia [no-reply@sharepointonline.com]
Sent: 11/8/2017 4:50:20 PM
To: Franklin, Kathy [Franklin.Kathy@epa.gov]; Principe, Vanessa [Principe.Vanessa@epa.gov]; Bosecker, Elizabeth [Bosecker.Elizabeth@epa.gov]; Indermark, Michele [Indermark.Michele@epa.gov]; Cogliano, Gerain [Cogliano.Gerain@epa.gov]; Hostage, Barbara [Hostage.Barbara@epa.gov]; Noggle, William [Noggle.William@epa.gov]; Lewis, Jen [Lewis.Jen@epa.gov]; Swenson, Erik [Swenson.Erik@epa.gov]; Salo, Earl [Salo.Earl@epa.gov]; ODea, Elise [odea.elise@epa.gov]; Sullivan, Tim [Sullivan.Tim@epa.gov]; Ziegel, Dean [Ziegel.Dean@epa.gov]; Beasley, Lynn [Beasley.Lynn@epa.gov]; Dunkins, Robin [Dunkins.Robin@epa.gov]; Costa, Allison [Costa.Allison@epa.gov]; Schrock, Bill [Schrock.Bill@epa.gov]; Hull, George [Hull.George@epa.gov]; Jacob, Sicy [Jacob.Sicy@epa.gov]; Jennings, Kim [Jennings.Kim@epa.gov]
CC: Gioffre, Patricia [Gioffre.Patricia@epa.gov]
Subject: Gioffre, Patricia has invited you to 'CERCLA 103 EPCRA 304 Reporting'

Welcome to the CERCLA/EPCRA SharePoint site.
We can use this site to collaborate on the various ongoing projects related to CERCLA 103/EPCRA 304 reporting requirements for air releases of hazardous substances from animal waste at farms.

Go to CERCLA 103 EPCRA 304 Reporting

Follow this site to get updates in your newsfeed.

Get the SharePoint mobile app!

Message

From: Bosecker, Elizabeth [Bosecker.Elizabeth@epa.gov]
Sent: 10/10/2017 12:04:03 PM
To: Beaman, Joe [Beaman.Joe@epa.gov]; Jennings, Kim [Jennings.Kim@epa.gov]; Gioffre, Patricia [Gioffre.Patricia@epa.gov]; Jacob, Sicy [Jacob.Sicy@epa.gov]; Principe, Vanessa [Principe.Vanessa@epa.gov]; Hull, George [Hull.George@epa.gov]; Franklin, Kathy [Franklin.Kathy@epa.gov]
Subject: RE: Review requested for press inquiry on EPCRA CERCLA Vacatur (due 4 pm on 10/10)

I also have no additional edits. Thank you, Patty!

Beth

Elizabeth M. Bosecker
U.S. Environmental Protection Agency
Office of Emergency Management
Office of Land and Emergency Management
1200 Pennsylvania Ave NW (Mail Code: 5104A)
Washington, DC 20460
Phone: (202)564-7612

From: Beaman, Joe
Sent: Tuesday, October 10, 2017 8:02 AM
To: Jennings, Kim ; Gioffre, Patricia ; Jacob, Sicy ; Principe, Vanessa ; Hull, George ; Franklin, Kathy ; Bosecker, Elizabeth
Subject: RE: Review requested for press inquiry on EPCRA CERCLA Vacatur (due 4 pm on 10/10)

No edits.

These look great Patty!

From: Jennings, Kim
Sent: Tuesday, October 10, 2017 6:45 AM
To: Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Jacob, Sicy <Jacob.Sicy@epa.gov>; Principe, Vanessa <Principe.Vanessa@epa.gov>; Hull, George <Hull.George@epa.gov>; Franklin, Kathy <Franklin.Kathy@epa.gov>; Bosecker, Elizabeth <Bosecker.Elizabeth@epa.gov>; Beaman, Joe <Beaman.Joe@epa.gov>
Subject: RE: Review requested for press inquiry on EPCRA CERCLA Vacatur (due 4 pm on 10/10)

See my edits.

Thanks for drafting these Patty.

Kim

Kim Jennings
Division Director || Regulations Implementation Division
U.S. Environmental Protection Agency || Office of Emergency Management
E-mail: jennings.kim@epa.gov || **Desk:** (202) 564-7998 ||

From: Gioffre, Patricia
Sent: Monday, October 09, 2017 9:48 PM
To: Jennings, Kim <Jennings.Kim@epa.gov>; Jacob, Sicy <Jacob.Sicy@epa.gov>; Principe, Vanessa <Principe.Vanessa@epa.gov>; Hull, George <Hull.George@epa.gov>; Franklin, Kathy <Franklin.Kathy@epa.gov>;

Bosecker, Elizabeth <Bosecker.Elizabeth@epa.gov>; Beaman, Joe <Beaman.Joe@epa.gov>
Subject: Review requested for press inquiry on EPCRA CERCLA Vacatur (due 4 pm on 10/10)
Importance: High

I've taken a first attempt to draft responses. Please review and edit. Once we agree on an initial draft, let's loop in OECA and OGC.
Can everyone review these draft responses before 11 am?

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Patty Gioffre
US EPA/OLEM/OEM
202-564-1972
202-748-7139 (cell)

Follow OLEM on Twitter @EPALand

From: Principe, Vanessa
Sent: Friday, October 06, 2017 4:24 PM
To: Jacob, Sicy <Jacob.Sicy@epa.gov>; Hull, George <Hull.George@epa.gov>; Beaman, Joe <Beaman.Joe@epa.gov>
Cc: Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Jennings, Kim <Jennings.Kim@epa.gov>
Subject: RESPONSES DUE COB TUESDAY 10/10 - FW: ACTION: Brownfield Ag News re: CAFOs reporting
Importance: High

All,

This press inquiry came in late Friday. Requested an extension until COB Tuesday. See questions below in email train.

A couple of them could be tricky - thought we may need to run responses thru OGC.

Thanks, V

From: Jones, Enesta
Sent: Friday, October 06, 2017 4:14 PM
To: Colip, Matthew <colip.matthew@epa.gov>
Cc: Principe, Vanessa <Principe.Vanessa@epa.gov>; Roache, Brendan <Roache.Brendan@epa.gov>; Clark, Becki <Clark.Becki@epa.gov>; Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Jennings, Kim <Jennings.Kim@epa.gov>; Taylor, Trish <Taylor.Trish@epa.gov>
Subject: Re: ACTION: Brownfield Ag News re: CAFOs reporting

Sure, COB Tuesday — thanks all.

On Oct 6, 2017, at 4:12 PM, Colip, Matthew <colip.matthew@epa.gov> wrote:

Hi Vanessa,

I asked for an extension to Tuesday morning. Is more time needed ?

Enesta – can we push deadline to COB Tuesday?

Matt

Matthew Colip
Office of Communications, Partnerships and Analysis
Office of Land and Emergency Management (OLEM)
U.S. Environmental Protection Agency
Office: 202-566-2641
Mobile: 202-597-1887
Follow us on Twitter @EPALand

From: Principe, Vanessa
Sent: Friday, October 06, 2017 4:11 PM
To: Jones, Enesta <Jones.Enesta@epa.gov>
Cc: Roache, Brendan <Roache.Brendan@epa.gov>; Clark, Becki <Clark.Becki@epa.gov>; Colip, Matthew <colip.matthew@epa.gov>; Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Jennings, Kim <Jennings.Kim@epa.gov>
Subject: FW: ACTION: Brownfield Ag News re: CAFOs reporting
Importance: High

Enesta,

FYI – forwarding our request for additional time for this inquiry given its sensitivities.

Thanks, Vanessa

From: Principe, Vanessa
Sent: Friday, October 06, 2017 3:56 PM
To: Roache, Brendan <Roache.Brendan@epa.gov>
Cc: Clark, Becki <Clark.Becki@epa.gov>; Colip, Matthew <colip.matthew@epa.gov>
Subject: RE: ACTION: Brownfield Ag News re: CAFOs reporting
Importance: High

Most of the folks working on this action are out until Tuesday. Additionally, given the interest on this action and the nature of the questions, I would want to run the responses through OGC.

Respectfully requesting additional time for OEM to "run the traps" on this - until early next week.

Thanks, V

From: Roache, Brendan
Sent: Friday, October 06, 2017 3:34 PM

To: Principe, Vanessa <Principe.Vanessa@epa.gov>
Cc: Clark, Becki <Clark.Becki@epa.gov>; Colip, Matthew <colip.matthew@epa.gov>
Subject: FW: ACTION: Brownfield Ag News re: CAFOs reporting

Vanessa,

Since you're Acting this afternoon for RID, do you have any input/response on the reporter's questions below related to the Concentrated Animal Feeding Operation questions?

Thanks.
Brendan

From: Colip, Matthew
Sent: Friday, October 06, 2017 3:25 PM
To: Indermark, Michele <Indermark.Michele@epa.gov>; Cheatham, Reggie <cheatham.reggie@epa.gov>; Clark, Becki <Clark.Becki@epa.gov>; Roache, Brendan <Roache.Brendan@epa.gov>
Subject: ACTION: Brownfield Ag News re: CAFOs reporting

See inquiry below – deadline 4pm today

From: Jones, Enesta
Sent: Friday, October 06, 2017 3:22 PM
To: Colip, Matthew <colip.matthew@epa.gov>; Cohen, Nancy <Cohen.Nancy@epa.gov>; Benjamin, Kent <Benjamin.Kent@epa.gov>; Taylor, Trish <Taylor.Trish@epa.gov>
Cc: Jones, Enesta <Jones.Enesta@epa.gov>
Subject: ACTION: Brownfield Ag News re: CAFOs reporting

He added a question:
What is a "reportable quantity" and how is it determined when that quantity is reached?

Good day! Tight deadline; please let me know if you need more time.

Reporter: Tom Steever
Outlet: Brownfield Ag News
DDL: 4 p.m. today

Can you confirm that this taking place 11/15?
How big of an area does it affect (U.S. at large)?
How will farmers know when they've reached a reporting threshold?
How big a livestock operation is affected?
What penalties are there for violations?

Message

From: Beaman, Joe [Beaman.Joe@epa.gov]
Sent: 10/10/2017 2:34:15 PM
To: Franklin, Kathy [Franklin.Kathy@epa.gov]
Subject: RE: Review requested for press inquiry on EPCRA CERCLA Vacatur (due 4 pm on 10/10)

Kathy,

Deliberative Process / Ex. 5

Joe

From: Franklin, Kathy
Sent: Tuesday, October 10, 2017 10:32 AM
To: Hull, George ; Gioffre, Patricia ; Jennings, Kim ; Jacob, Sicy ; Principe, Vanessa ; Bosecker, Elizabeth ; Beaman, Joe
Subject: RE: Review requested for press inquiry on EPCRA CERCLA Vacatur (due 4 pm on 10/10)

Deliberative Process / Ex. 5

Kathy Franklin
USEPA, Office of Emergency Management
WJ Clinton North Bldg., Rm. 6450G Mailcode 5104A
1200 Pennsylvania Ave. NW, Washington, DC 20460 (Zip 20004 for private courier delivery)
Phone: 202-564-7987
Email: franklin.kathy@epa.gov

From: Hull, George
Sent: Tuesday, October 10, 2017 9:55 AM
To: Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Jennings, Kim <Jennings.Kim@epa.gov>; Jacob, Sicy <Jacob.Sicy@epa.gov>; Principe, Vanessa <Principe.Vanessa@epa.gov>; Franklin, Kathy <Franklin.Kathy@epa.gov>; Bosecker, Elizabeth <Bosecker.Elizabeth@epa.gov>; Beaman, Joe <Beaman.Joe@epa.gov>
Subject: RE: Review requested for press inquiry on EPCRA CERCLA Vacatur (due 4 pm on 10/10)

Patty,

Deliberative Process / Ex. 5

From: Gioffre, Patricia
Sent: Monday, October 09, 2017 9:48 PM
To: Jennings, Kim <Jennings.Kim@epa.gov>; Jacob, Sicy <Jacob.Sicy@epa.gov>; Principe, Vanessa <Principe.Vanessa@epa.gov>; Hull, George <Hull.George@epa.gov>; Franklin, Kathy <Franklin.Kathy@epa.gov>; Bosecker, Elizabeth <Bosecker.Elizabeth@epa.gov>; Beaman, Joe <Beaman.Joe@epa.gov>
Subject: Review requested for press inquiry on EPCRA CERCLA Vacatur (due 4 pm on 10/10)
Importance: High

I've taken a first attempt to draft responses. Please review and edit. Once we agree on an initial draft, let's loop in OECA and OGC.
Can everyone review these draft responses before 11 am?

Press inquiry questions:

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Patty Gioffre
US EPA/OLEM/OEM
202-564-1972
202-748-7139 (cell)

Follow OLEM on Twitter @EPALand

From: Principe, Vanessa
Sent: Friday, October 06, 2017 4:24 PM
To: Jacob, Sicy <Jacob.Sicy@epa.gov>; Hull, George <Hull.George@epa.gov>; Beaman, Joe <Beaman.Joe@epa.gov>
Cc: Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Jennings, Kim <Jennings.Kim@epa.gov>
Subject: RESPONSES DUE COB TUESDAY 10/10 - FW: ACTION: Brownfield Ag News re: CAFOs reporting
Importance: High

All,

This press inquiry came in late Friday. Requested an extension until COB Tuesday. See questions below in email train.

A couple of them could be tricky - thought we may need to run responses thru OGC.

Thanks, V

From: Jones, Enesta
Sent: Friday, October 06, 2017 4:14 PM
To: Colip, Matthew <colip.matthew@epa.gov>
Cc: Principe, Vanessa <Principe.Vanessa@epa.gov>; Roache, Brendan <Roache.Brendan@epa.gov>; Clark, Becki <Clark.Becki@epa.gov>; Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Jennings, Kim <Jennings.Kim@epa.gov>; Taylor, Trish <Taylor.Trish@epa.gov>
Subject: Re: ACTION: Brownfield Ag News re: CAFOs reporting

Sure, COB Tuesday — thanks all.

On Oct 6, 2017, at 4:12 PM, Colip, Matthew <colip.matthew@epa.gov> wrote:

Hi Vanessa,

I asked for an extension to Tuesday morning. Is more time needed ?

Enesta – can we push deadline to COB Tuesday?

Matt

Matthew Colip
Office of Communications, Partnerships and Analysis
Office of Land and Emergency Management (OLEM)
U.S. Environmental Protection Agency
Office: 202-566-2641
Mobile: 202-597-1887
Follow us on Twitter @EPALand

From: Principe, Vanessa
Sent: Friday, October 06, 2017 4:11 PM
To: Jones, Enesta <Jones.Enesta@epa.gov>
Cc: Roache, Brendan <Roache.Brendan@epa.gov>; Clark, Becki <Clark.Becki@epa.gov>; Colip, Matthew <colip.matthew@epa.gov>; Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Jennings, Kim <Jennings.Kim@epa.gov>
Subject: FW: ACTION: Brownfield Ag News re: CAFOs reporting
Importance: High

Enesta,

FYI – forwarding our request for additional time for this inquiry given its sensitivities.

Thanks, Vanessa

From: Principe, Vanessa
Sent: Friday, October 06, 2017 3:56 PM
To: Roache, Brendan <Roache.Brendan@epa.gov>
Cc: Clark, Becki <Clark.Becki@epa.gov>; Colip, Matthew <colip.matthew@epa.gov>
Subject: RE: ACTION: Brownfield Ag News re: CAFOs reporting
Importance: High

Most of the folks working on this action are out until Tuesday. Additionally, given the interest on this action and the nature of the questions, I would want to run the responses through OGC.

Respectfully requesting additional time for OEM to "run the traps" on this - until early next week.

Thanks, V

From: Roache, Brendan
Sent: Friday, October 06, 2017 3:34 PM
To: Principe, Vanessa <Principe.Vanessa@epa.gov>
Cc: Clark, Becki <Clark.Becki@epa.gov>; Colip, Matthew <colip.matthew@epa.gov>
Subject: FW: ACTION: Brownfield Ag News re: CAFOs reporting

Vanessa,

Since you're Acting this afternoon for RID, do you have any input/response on the reporter's questions below related to the Concentrated Animal Feeding Operation questions?

Thanks.
Brendan

From: Colip, Matthew
Sent: Friday, October 06, 2017 3:25 PM
To: Indermark, Michele <Indermark.Michele@epa.gov>; Cheatham, Reggie <cheatham.reggie@epa.gov>; Clark, Becki <Clark.Becki@epa.gov>; Roache, Brendan <Roache.Brendan@epa.gov>
Subject: ACTION: Brownfield Ag News re: CAFOs reporting

See inquiry below – deadline 4pm today

From: Jones, Enesta
Sent: Friday, October 06, 2017 3:22 PM
To: Colip, Matthew <colip.matthew@epa.gov>; Cohen, Nancy <Cohen.Nancy@epa.gov>; Benjamin, Kent <Benjamin.Kent@epa.gov>; Taylor, Trish <Taylor.Trish@epa.gov>
Cc: Jones, Enesta <Jones.Enesta@epa.gov>
Subject: ACTION: Brownfield Ag News re: CAFOs reporting

He added a question:
What is a "reportable quantity" and how is it determined when that quantity is reached?

Good day! Tight deadline; please let me know if you need more time.

Reporter: Tom Steever
Outlet: Brownfield Ag News
DDL: 4 p.m. today

Can you confirm that this taking place 11/15?
How big of an area does it affect (U.S. at large)?
How will farmers know when they've reached a reporting threshold?
How big a livestock operation is affected?
What penalties are there for violations?

Message

From: Jacob, Sicy [Jacob.Sicy@epa.gov]
Sent: 10/10/2017 2:40:14 PM
To: Principe, Vanessa [Principe.Vanessa@epa.gov]; Gioffre, Patricia [Gioffre.Patricia@epa.gov]
CC: Hull, George [Hull.George@epa.gov]; Franklin, Kathy [Franklin.Kathy@epa.gov]; Bosecker, Elizabeth [Bosecker.Elizabeth@epa.gov]; Beaman, Joe [Beaman.Joe@epa.gov]; Jennings, Kim [Jennings.Kim@epa.gov]
Subject: RE: Review requested for press inquiry on EPCRA CERCLA Vacatur (due 4 pm on 10/10)

Sorry Patty. I didn't know you wanted comments by 11. **Personal Matters / Ex. 6** However, I want to provide comments on Vanessa's edits.

Kathy: Joe B has been working on the universe that would be affected. He reviewed the RIA for the 2008 rule to provide the burden analysis to OMB.

Deliberative Process / Ex. 5

Well, anyway we are going to discuss all these at 1:30. Talk to you all then. Thanks.

Sicy Jacob
Chemical Engineer
Regulations Implementation Division
Office of Emergency Management
U.S. EPA, MailCode 5104A
1200 Pennsylvania Avenue, NW
Washington DC 20004
(202) 564-8019

From: Principe, Vanessa
Sent: Tuesday, October 10, 2017 10:15 AM
To: Gioffre, Patricia
Cc: Jacob, Sicy ; Hull, George ; Franklin, Kathy ; Bosecker, Elizabeth ; Beaman, Joe ; Jennings, Kim
Subject: RE: Review requested for press inquiry on EPCRA CERCLA Vacatur (due 4 pm on 10/10)

Some suggested edits. Concern that we don't say any more than we need to at this time.

Take or leave as you see fit.

Thanks Patty, V

From: Jennings, Kim
Sent: Tuesday, October 10, 2017 6:45 AM
To: Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Jacob, Sicy <Jacob.Sicy@epa.gov>; Principe, Vanessa <Principe.Vanessa@epa.gov>; Hull, George <Hull.George@epa.gov>; Franklin, Kathy <Franklin.Kathy@epa.gov>; Bosecker, Elizabeth <Bosecker.Elizabeth@epa.gov>; Beaman, Joe <Beaman.Joe@epa.gov>
Subject: RE: Review requested for press inquiry on EPCRA CERCLA Vacatur (due 4 pm on 10/10)

See my edits.

Thanks for drafting these Patty.

Kim

Kim Jennings
Division Director || Regulations Implementation Division
U.S. Environmental Protection Agency || Office of Emergency Management
E-mail: jennings.kim@epa.gov || **Desk:** (202) 564-7998 ||

From: Gioffre, Patricia
Sent: Monday, October 09, 2017 9:48 PM
To: Jennings, Kim <Jennings.Kim@epa.gov>; Jacob, Sicy <Jacob.Sicy@epa.gov>; Principe, Vanessa <Principe.Vanessa@epa.gov>; Hull, George <Hull.George@epa.gov>; Franklin, Kathy <Franklin.Kathy@epa.gov>; Bosecker, Elizabeth <Bosecker.Elizabeth@epa.gov>; Beaman, Joe <Beaman.Joe@epa.gov>
Subject: Review requested for press inquiry on EPCRA CERCLA Vacatur (due 4 pm on 10/10)
Importance: High

I've taken a first attempt to draft responses. Please review and edit. Once we agree on an initial draft, let's loop in OECA and OGC.
Can everyone review these draft responses before 11 am?

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Patty Gioffre
US EPA/OLEM/OEM
202-564-1972

202-748-7139 (cell)

Follow OLEM on Twitter @EPALand

From: Principe, Vanessa
Sent: Friday, October 06, 2017 4:24 PM
To: Jacob, Sicy <Jacob.Sicy@epa.gov>; Hull, George <Hull.George@epa.gov>; Beaman, Joe <Beaman.Joe@epa.gov>
Cc: Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Jennings, Kim <Jennings.Kim@epa.gov>
Subject: RESPONSES DUE COB TUESDAY 10/10 - FW: ACTION: Brownfield Ag News re: CAFOs reporting
Importance: High

All,

This press inquiry came in late Friday. Requested an extension until COB Tuesday. See questions below in email train.

A couple of them could be tricky - thought we may need to run responses thru OGC.

Thanks, V

From: Jones, Enesta
Sent: Friday, October 06, 2017 4:14 PM
To: Colip, Matthew <colip.matthew@epa.gov>
Cc: Principe, Vanessa <Principe.Vanessa@epa.gov>; Roache, Brendan <Roache.Brendan@epa.gov>; Clark, Becki <Clark.Becki@epa.gov>; Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Jennings, Kim <Jennings.Kim@epa.gov>; Taylor, Trish <Taylor.Trish@epa.gov>
Subject: Re: ACTION: Brownfield Ag News re: CAFOs reporting

Sure, COB Tuesday — thanks all.

On Oct 6, 2017, at 4:12 PM, Colip, Matthew <colip.matthew@epa.gov> wrote:

Hi Vanessa,

I asked for an extension to Tuesday morning. Is more time needed ?

Enesta – can we push deadline to COB Tuesday?

Matt

Matthew Colip
Office of Communications, Partnerships and Analysis
Office of Land and Emergency Management (OLEM)
U.S. Environmental Protection Agency
Office: 202-566-2641
Mobile: 202-597-1887
Follow us on Twitter @EPALand

From: Principe, Vanessa
Sent: Friday, October 06, 2017 4:11 PM

To: Jones, Enesta <Jones.Enesta@epa.gov>
Cc: Roache, Brendan <Roache.Brendan@epa.gov>; Clark, Becki <Clark.Becki@epa.gov>; Colip, Matthew <colip.matthew@epa.gov>; Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Jennings, Kim <Jennings.Kim@epa.gov>
Subject: FW: ACTION: Brownfield Ag News re: CAFOs reporting
Importance: High

Enesta,

FYI – forwarding our request for additional time for this inquiry given its sensitivities.

Thanks, Vanessa

From: Principe, Vanessa
Sent: Friday, October 06, 2017 3:56 PM
To: Roache, Brendan <Roache.Brendan@epa.gov>
Cc: Clark, Becki <Clark.Becki@epa.gov>; Colip, Matthew <colip.matthew@epa.gov>
Subject: RE: ACTION: Brownfield Ag News re: CAFOs reporting
Importance: High

Most of the folks working on this action are out until Tuesday. Additionally, given the interest on this action and the nature of the questions, I would want to run the responses through OGC.

Respectfully requesting additional time for OEM to "run the traps" on this - until early next week.

Thanks, V

From: Roache, Brendan
Sent: Friday, October 06, 2017 3:34 PM
To: Principe, Vanessa <Principe.Vanessa@epa.gov>
Cc: Clark, Becki <Clark.Becki@epa.gov>; Colip, Matthew <colip.matthew@epa.gov>
Subject: FW: ACTION: Brownfield Ag News re: CAFOs reporting

Vanessa,

Since you're Acting this afternoon for RID, do you have any input/response on the reporter's questions below related to the Concentrated Animal Feeding Operation questions?

Thanks.
Brendan

From: Colip, Matthew
Sent: Friday, October 06, 2017 3:25 PM
To: Indermark, Michele <Indermark.Michele@epa.gov>; Cheatham, Reggie <cheatham.reggie@epa.gov>; Clark, Becki <Clark.Becki@epa.gov>; Roache, Brendan <Roache.Brendan@epa.gov>
Subject: ACTION: Brownfield Ag News re: CAFOs reporting

See inquiry below – deadline 4pm today

From: Jones, Enesta
Sent: Friday, October 06, 2017 3:22 PM
To: Colip, Matthew <colip.matthew@epa.gov>; Cohen, Nancy <Cohen.Nancy@epa.gov>; Benjamin, Kent

<Benjamin.Kent@epa.gov>; Taylor, Trish <Taylor.Trish@epa.gov>
Cc: Jones, Enesta <Jones.Enesta@epa.gov>
Subject: ACTION: Brownfield Ag News re: CAFOs reporting

He added a question:
What is a "reportable quantity" and how is it determined when that quantity is reached?

Good day! Tight deadline; please let me know if you need more time.

Reporter: Tom Steever
Outlet: Brownfield Ag News
DDL: 4 p.m. today

Can you confirm that this taking place 11/15?
How big of an area does it affect (U.S. at large)?
How will farmers know when they've reached a reporting threshold?
How big a livestock operation is affected?
What penalties are there for violations?

Message

From: Gioffre, Patricia [Gioffre.Patricia@epa.gov]
Sent: 10/10/2017 7:10:14 PM
To: Cheatham, Reggie [cheatham.reggie@epa.gov]; Clark, Becki [Clark.Becki@epa.gov]
CC: Jennings, Kim [Jennings.Kim@epa.gov]; Indermark, Michele [Indermark.Michele@epa.gov]; Lewis, Jen [Lewis.Jen@epa.gov]; Michaud, John [Michaud.John@epa.gov]; Swenson, Erik [Swenson.Erik@epa.gov]; Salo, Earl [Salo.Earl@epa.gov]; Sullivan, Tim [Sullivan.Tim@epa.gov]; Ziegel, Dean [Ziegel.Dean@epa.gov]; Jacob, Sicy [Jacob.Sicy@epa.gov]; Principe, Vanessa [Principe.Vanessa@epa.gov]; Franklin, Kathy [Franklin.Kathy@epa.gov]; Hull, George [Hull.George@epa.gov]
Subject: Review requested for press inquiry on EPCRA CERCLA Vacatur (due 4 pm on 10/10)

Importance: High

Reggie/Becki-
Please take a look at the draft response to the press inquiry below. These responses have been reviewed by OECA and OGC. I am just waiting for OECA to confirm the answer to the penalty question. Please note the tight turnaround time. The reporter is requesting a response by 4 pm today.

Press inquiry questions:

- **Can you confirm that this taking place 11/15?**

Deliberative Process / Ex. 5

- **How big of an area does it affect (U.S. at large)?**

Deliberative Process / Ex. 5

- **How will farmers know when they've reached a reporting threshold?**

Deliberative Process / Ex. 5

- **How big a livestock operation is affected?**

Deliberative Process / Ex. 5

- **What penalties are there for violations?**

Deliberative Process / Ex. 5

- **What is a "reportable quantity" and how is it determined when that quantity is reached?**

Deliberative Process / Ex. 5

Patty Gioffre
Acting Deputy Division Director
USEPA (OLEM/OEM/RID)
1200 Pennsylvania Ave. NW (5104A)
Washington, DC 20460
202-564-1972
202-748-7139 (cell)

Press inquiry questions:

- **Can you confirm that this taking place 11/15?**

Deliberative Process / Ex. 5

- **How big of an area does it affect (U.S. at large)?**

Deliberative Process / Ex. 5

- **How will farmers know when they've reached a reporting threshold?**

Deliberative Process / Ex. 5

- **How big a livestock operation is affected?**

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

- **What penalties are there for violations?** *(OECA-please review draft and possibly simplify to avoid overwhelming the other Q&As. Response is condensed from a Q&A on the EPA website)*

Deliberative Process / Ex. 5

- **What is a "reportable quantity" and how is it determined when that quantity is reached?**

Deliberative Process / Ex. 5

From: Principe, Vanessa
Sent: Friday, October 06, 2017 4:24 PM
To: Jacob, Sicy <Jacob.Sicy@epa.gov>; Hull, George <Hull.George@epa.gov>; Beaman, Joe <Beaman.Joe@epa.gov>
Cc: Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Jennings, Kim <Jennings.Kim@epa.gov>
Subject: RESPONSES DUE COB TUESDAY 10/10 - FW: ACTION: Brownfield Ag News re: CAFOs reporting
Importance: High

All,

This press inquiry came in late Friday. Requested an extension until COB Tuesday. See questions below in email train.

A couple of them could be tricky - thought we may need to run responses thru OGC.

Thanks, V

From: Jones, Enesta
Sent: Friday, October 06, 2017 4:14 PM
To: Colip, Matthew <colip.matthew@epa.gov>
Cc: Principe, Vanessa <Principe.Vanessa@epa.gov>; Roache, Brendan <Roache.Brendan@epa.gov>; Clark, Becki <Clark.Becki@epa.gov>; Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Jennings, Kim <Jennings.Kim@epa.gov>; Taylor,

Trish <Taylor.Trish@epa.gov>
Subject: Re: ACTION: Brownfield Ag News re: CAFOs reporting

Sure, COB Tuesday — thanks all.

On Oct 6, 2017, at 4:12 PM, Colip, Matthew <colip.matthew@epa.gov> wrote:

Hi Vanessa,

I asked for an extension to Tuesday morning. Is more time needed ?

Enesta – can we push deadline to COB Tuesday?

Matt

Matthew Colip
Office of Communications, Partnerships and Analysis
Office of Land and Emergency Management (OLEM)
U.S. Environmental Protection Agency
Office: 202-566-2641
Mobile: 202-597-1887
Follow us on Twitter @EPALand

From: Principe, Vanessa
Sent: Friday, October 06, 2017 4:11 PM
To: Jones, Enesta <Jones.Enesta@epa.gov>
Cc: Roache, Brendan <Roache.Brendan@epa.gov>; Clark, Becki <Clark.Becki@epa.gov>; Colip, Matthew <colip.matthew@epa.gov>; Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Jennings, Kim <Jennings.Kim@epa.gov>
Subject: FW: ACTION: Brownfield Ag News re: CAFOs reporting
Importance: High

Enesta,

FYI – forwarding our request for additional time for this inquiry given its sensitivities.

Thanks, Vanessa

From: Principe, Vanessa
Sent: Friday, October 06, 2017 3:56 PM
To: Roache, Brendan <Roache.Brendan@epa.gov>
Cc: Clark, Becki <Clark.Becki@epa.gov>; Colip, Matthew <colip.matthew@epa.gov>
Subject: RE: ACTION: Brownfield Ag News re: CAFOs reporting
Importance: High

Most of the folks working on this action are out until Tuesday. Additionally, given the interest on this action and the nature of the questions, I would want to run the responses through OGC.

Respectfully requesting additional time for OEM to "run the traps" on this - until early next week.

Thanks, V

From: Roache, Brendan
Sent: Friday, October 06, 2017 3:34 PM
To: Principe, Vanessa <Principe.Vanessa@epa.gov>
Cc: Clark, Becki <Clark.Becki@epa.gov>; Colip, Matthew <colip.matthew@epa.gov>
Subject: FW: ACTION: Brownfield Ag News re: CAFOs reporting

Vanessa,

Since you're Acting this afternoon for RID, do you have any input/response on the reporter's questions below related to the Concentrated Animal Feeding Operation questions?

Thanks.
Brendan

From: Colip, Matthew
Sent: Friday, October 06, 2017 3:25 PM
To: Indermark, Michele <Indermark.Michele@epa.gov>; Cheatham, Reggie <cheatham.reggie@epa.gov>; Clark, Becki <Clark.Becki@epa.gov>; Roache, Brendan <Roache.Brendan@epa.gov>
Subject: ACTION: Brownfield Ag News re: CAFOs reporting

See inquiry below – deadline 4pm today

From: Jones, Enesta
Sent: Friday, October 06, 2017 3:22 PM
To: Colip, Matthew <colip.matthew@epa.gov>; Cohen, Nancy <Cohen.Nancy@epa.gov>; Benjamin, Kent <Benjamin.Kent@epa.gov>; Taylor, Trish <Taylor.Trish@epa.gov>
Cc: Jones, Enesta <Jones.Enesta@epa.gov>
Subject: ACTION: Brownfield Ag News re: CAFOs reporting

He added a question:
What is a "reportable quantity" and how is it determined when that quantity is reached?

Good day! Tight deadline; please let me know if you need more time.

Reporter: Tom Steever
Outlet: Brownfield Ag News
DDL: 4 p.m. today

Can you confirm that this taking place 11/15?
How big of an area does it affect (U.S. at large)?
How will farmers know when they've reached a reporting threshold?
How big a livestock operation is affected?
What penalties are there for violations?

Message

From: Indermark, Michele [Indermark.Michele@epa.gov]
Sent: 10/10/2017 8:24:46 PM
To: Gioffre, Patricia [Gioffre.Patricia@epa.gov]; Sullivan, Tim [Sullivan.Tim@epa.gov]
CC: Jennings, Kim [Jennings.Kim@epa.gov]; Lewis, Jen [Lewis.Jen@epa.gov]; Michaud, John [Michaud.John@epa.gov]; Swenson, Erik [Swenson.Erik@epa.gov]; Salo, Earl [Salo.Earl@epa.gov]; Ziegel, Dean [Ziegel.Dean@epa.gov]; Jacob, Sicy [Jacob.Sicy@epa.gov]; Principe, Vanessa [Principe.Vanessa@epa.gov]; Franklin, Kathy [Franklin.Kathy@epa.gov]; Hull, George [Hull.George@epa.gov]; Miles, James [miles.james@epa.gov]
Subject: RE: Review requested for press inquiry on EPCRA CERCLA Vacatur (due 4 pm on 10/10)

Reggie and Becki are reviewing now…

From: Gioffre, Patricia
Sent: Tuesday, October 10, 2017 3:24 PM
To: Sullivan, Tim ; Cheatham, Reggie ; Clark, Becki
Cc: Jennings, Kim ; Indermark, Michele ; Lewis, Jen ; Michaud, John ; Swenson, Erik ; Salo, Earl ; Ziegel, Dean ; Jacob, Sicy ; Principe, Vanessa ; Franklin, Kathy ; Hull, George ; Miles, James
Subject: RE: Review requested for press inquiry on EPCRA CERCLA Vacatur (due 4 pm on 10/10)

Great! Thanks so much!

Patty Gioffre
US EPA/OLEM/OEM
202-564-1972
202-748-7139 (cell)

Follow OLEM on Twitter @EPALand

From: Sullivan, Tim
Sent: Tuesday, October 10, 2017 3:23 PM
To: Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Cheatham, Reggie <cheatham.reggie@epa.gov>; Clark, Becki <Clark.Becki@epa.gov>
Cc: Jennings, Kim <Jennings.Kim@epa.gov>; Indermark, Michele <Indermark.Michele@epa.gov>; Lewis, Jen <Lewis.Jen@epa.gov>; Michaud, John <Michaud.John@epa.gov>; Swenson, Erik <Swenson.Erik@epa.gov>; Salo, Earl <Salo.Earl@epa.gov>; Ziegel, Dean <Ziegel.Dean@epa.gov>; Jacob, Sicy <Jacob.Sicy@epa.gov>; Principe, Vanessa <Principe.Vanessa@epa.gov>; Franklin, Kathy <Franklin.Kathy@epa.gov>; Hull, George <Hull.George@epa.gov>; Miles, James <miles.james@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: RE: Review requested for press inquiry on EPCRA CERCLA Vacatur (due 4 pm on 10/10)

Hi, Patti.

I confirmed – per the statutes and the Enforcement Response Policy for EPCRA Sections 304, 311, and 312 and CERCLA Section 103 – that EPCRA Section 325 and CERCLA Section 109 provide for per-day penalties for each day the violation continues.

Thanks –

Tim

Timothy J. Sullivan
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1595 Wynkoop Street (MC 8MSU)
Denver, Colorado 80202

Phone: 303.312.6196 | Email: sullivan.tim@epa.gov

Help eliminate environmental violations - report tips and complaints at:
http://www.epa.gov/compliance/complaints/index.html

NOTICE: This message may contain deliberative, attorney-client, attorney work product, or otherwise privileged material. Do not release this message under FOIA without appropriate review. If you are not the intended recipient, please advise the sender immediately by reply e-mail and delete this message and any attachments from your machine and all storage media whether in electronic or hard copy. Thank you.

From: Gioffre, Patricia
Sent: Tuesday, October 10, 2017 1:10 PM
To: Cheatham, Reggie <cheatham.reggie@epa.gov>; Clark, Becki <Clark.Becki@epa.gov>
Cc: Jennings, Kim <Jennings.Kim@epa.gov>; Indermark, Michele <Indermark.Michele@epa.gov>; Lewis, Jen <Lewis.Jen@epa.gov>; Michaud, John <Michaud.John@epa.gov>; Swenson, Erik <Swenson.Erik@epa.gov>; Salo, Earl <Salo.Earl@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>; Ziegel, Dean <Ziegel.Dean@epa.gov>; Jacob, Sicy <Jacob.Sicy@epa.gov>; Principe, Vanessa <Principe.Vanessa@epa.gov>; Franklin, Kathy <Franklin.Kathy@epa.gov>; Hull, George <Hull.George@epa.gov>
Subject: Review requested for press inquiry on EPCRA CERCLA Vacatur (due 4 pm on 10/10)
Importance: High

Reggie/Becki-
Please take a look at the draft response to the press inquiry below. These responses have been reviewed by OECA and OGC. I am just waiting for OECA to confirm the answer to the penalty question. Please note the tight turnaround time. The reporter is requesting a response by 4 pm today.

Press inquiry questions:

- **Can you confirm that this taking place 11/15?**

Deliberative Process / Ex. 5

- **How big of an area does it affect (U.S. at large)?**

Deliberative Process / Ex. 5

- **How will farmers know when they've reached a reporting threshold?**

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

- **How big a livestock operation is affected?**

Deliberative Process / Ex. 5

- **What penalties are there for violations?**

Deliberative Process / Ex. 5

- **What is a "reportable quantity" and how is it determined when that quantity is reached?**

Deliberative Process / Ex. 5

Patty Gioffre
Acting Deputy Division Director
USEPA (OLEM/OEM/RID)
1200 Pennsylvania Ave. NW (5104A)
Washington, DC 20460
202-564-1972
202-748-7139 (cell)

Press inquiry questions:

- **Can you confirm that this taking place 11/15?**

Deliberative Process / Ex. 5

- **How big of an area does it affect (U.S. at large)?**

Deliberative Process / Ex. 5

- **How will farmers know when they've reached a reporting threshold?**

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

- **How big a livestock operation is affected?**

Deliberative Process / Ex. 5

- **What penalties are there for violations?** *(OECA-please review draft and possibly simplify to avoid overwhelming the other Q&As. Response is condensed from a Q&A on the EPA website)*

Deliberative Process / Ex. 5

- **What is a "reportable quantity" and how is it determined when that quantity is reached?**

Deliberative Process / Ex. 5

From: Principe, Vanessa
Sent: Friday, October 06, 2017 4:24 PM
To: Jacob, Sicy <Jacob.Sicy@epa.gov>; Hull, George <Hull.George@epa.gov>; Beaman, Joe <Beaman.Joe@epa.gov>
Cc: Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Jennings, Kim <Jennings.Kim@epa.gov>

Subject: RESPONSES DUE COB TUESDAY 10/10 - FW: ACTION: Brownfield Ag News re: CAFOs reporting
Importance: High

All,

This press inquiry came in late Friday. Requested an extension until COB Tuesday. See questions below in email train.

A couple of them could be tricky - thought we may need to run responses thru OGC.

Thanks, V

From: Jones, Enesta
Sent: Friday, October 06, 2017 4:14 PM
To: Colip, Matthew <colip.matthew@epa.gov>
Cc: Principe, Vanessa <Principe.Vanessa@epa.gov>; Roache, Brendan <Roache.Brendan@epa.gov>; Clark, Becki <Clark.Becki@epa.gov>; Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Jennings, Kim <Jennings.Kim@epa.gov>; Taylor, Trish <Taylor.Trish@epa.gov>
Subject: Re: ACTION: Brownfield Ag News re: CAFOs reporting

Sure, COB Tuesday — thanks all.

On Oct 6, 2017, at 4:12 PM, Colip, Matthew <colip.matthew@epa.gov> wrote:

Hi Vanessa,

I asked for an extension to Tuesday morning. Is more time needed ?

Enesta – can we push deadline to COB Tuesday?

Matt

Matthew Colip
Office of Communications, Partnerships and Analysis
Office of Land and Emergency Management (OLEM)
U.S. Environmental Protection Agency
Office: 202-566-2641
Mobile: 202-597-1887
Follow us on Twitter @EPALand

From: Principe, Vanessa
Sent: Friday, October 06, 2017 4:11 PM
To: Jones, Enesta <Jones.Enesta@epa.gov>
Cc: Roache, Brendan <Roache.Brendan@epa.gov>; Clark, Becki <Clark.Becki@epa.gov>; Colip, Matthew <colip.matthew@epa.gov>; Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Jennings, Kim <Jennings.Kim@epa.gov>
Subject: FW: ACTION: Brownfield Ag News re: CAFOs reporting
Importance: High

Enesta,

FYI – forwarding our request for additional time for this inquiry given its sensitivities.

Thanks, Vanessa

From: Principe, Vanessa
Sent: Friday, October 06, 2017 3:56 PM
To: Roache, Brendan <Roache.Brendan@epa.gov>
Cc: Clark, Becki <Clark.Becki@epa.gov>; Colip, Matthew <colip.matthew@epa.gov>
Subject: RE: ACTION: Brownfield Ag News re: CAFOs reporting
Importance: High

Most of the folks working on this action are out until Tuesday. Additionally, given the interest on this action and the nature of the questions, I would want to run the responses through OGC.

Respectfully requesting additional time for OEM to "run the traps" on this - until early next week.

Thanks, V

From: Roache, Brendan
Sent: Friday, October 06, 2017 3:34 PM
To: Principe, Vanessa <Principe.Vanessa@epa.gov>
Cc: Clark, Becki <Clark.Becki@epa.gov>; Colip, Matthew <colip.matthew@epa.gov>
Subject: FW: ACTION: Brownfield Ag News re: CAFOs reporting

Vanessa,

Since you're Acting this afternoon for RID, do you have any input/response on the reporter's questions below related to the Concentrated Animal Feeding Operation questions?

Thanks.
Brendan

From: Colip, Matthew
Sent: Friday, October 06, 2017 3:25 PM
To: Indermark, Michele <Indermark.Michele@epa.gov>; Cheatham, Reggie <cheatham.reggie@epa.gov>; Clark, Becki <Clark.Becki@epa.gov>; Roache, Brendan <Roache.Brendan@epa.gov>
Subject: ACTION: Brownfield Ag News re: CAFOs reporting

See inquiry below – deadline 4pm today

From: Jones, Enesta
Sent: Friday, October 06, 2017 3:22 PM
To: Colip, Matthew <colip.matthew@epa.gov>; Cohen, Nancy <Cohen.Nancy@epa.gov>; Benjamin, Kent <Benjamin.Kent@epa.gov>; Taylor, Trish <Taylor.Trish@epa.gov>
Cc: Jones, Enesta <Jones.Enesta@epa.gov>
Subject: ACTION: Brownfield Ag News re: CAFOs reporting

He added a question:
What is a "reportable quantity" and how is it determined when that quantity is reached?

Good day! Tight deadline; please let me know if you need more time.

Reporter: Tom Steever
Outlet: Brownfield Ag News
DDL: 4 p.m. today

Can you confirm that this taking place 11/15?
How big of an area does it affect (U.S. at large)?
How will farmers know when they've reached a reporting threshold?
How big a livestock operation is affected?
What penalties are there for violations?

Message

From: Gioffre, Patricia [Gioffre.Patricia@epa.gov]
Sent: 9/21/2017 7:47:19 PM
To: Jacob, Sicy [Jacob.Sicy@epa.gov]; Jennings, Kim [Jennings.Kim@epa.gov]; Beaman, Joe [Beaman.Joe@epa.gov]; Principe, Vanessa [Principe.Vanessa@epa.gov]; Hull, George [Hull.George@epa.gov]; Franklin, Kathy [Franklin.Kathy@epa.gov]
Subject: Revised Q/A for routine ag operations-review requested
Attachments: Routine Agricultural Operations -QA_revised 9-20-17_redline.docx

Importance: High

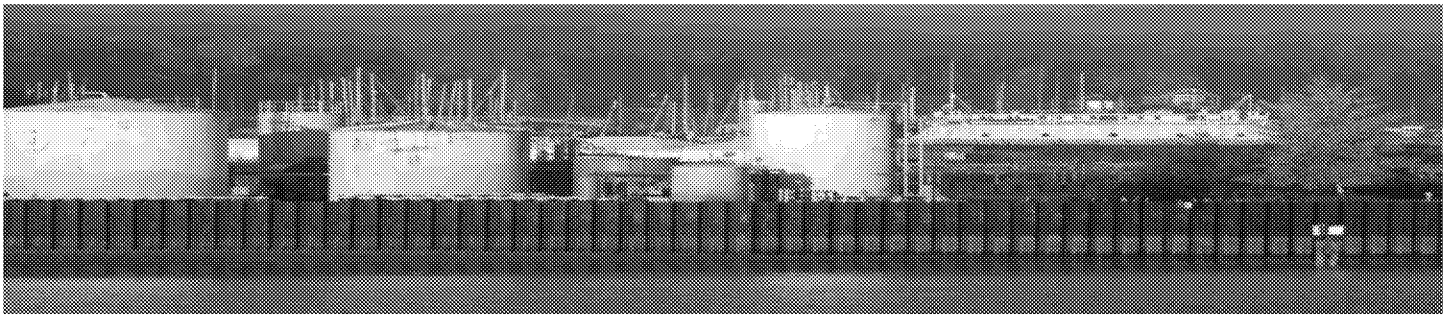
All-Please take a look at the attached revised Q/A. Let me know what you think of these changes. I'd like to send to OGC soon.

Patty Gioffre
USEPA (OLEM/OEM)
1200 Pennsylvania Ave. NW (5104A)
Washington, DC 20460
202-564-1972
202-748-7139 (cell)

Follow OLEM on Twitter @EPALand

Message

From: [EPA] [SERC-TERC.Updates@epa.gov]
Sent: 11/1/2017 9:11:08 PM
To: Franklin, Kathy [Franklin.Kathy@epa.gov]
Subject: [serc_terc_monthly_update] November 2017 Edition



SERC-TERC Updates [November 2017]

The purpose of the *SERC-TERC Updates* is to identify and share new policies, guidance, and training resources that may be useful to the State Emergency Response Commissions (SERCs) and Tribal Emergency Response Commissions (TERCs).

SERCs, TERCs, and Federal Partners:
Please forward this monthly update to your stakeholders

Mention of non-EPA documents, presentations, training opportunities and conferences does not constitute an U.S. EPA endorsement of their contents, only an acknowledgment that they exist and may be relevant to the SERC-TERC audience.

If you have any comments on this *Update*, please let us know: SERC-TERC.Updates@epa.gov

Regulatory and Policy Information related to Chemical Safety & Security

- **Updated Contact Information for Federal Explosives Licensees and Permittees**
  - The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will provide updated contact information for federal explosives licensees and permittees (FELs) in each SERC/TERC's geographic area.
  - In November, ATF will disseminate this information directly to SERC and TERC points of contact.
    - ATF provides this information on a biannual basis.
    - This plan was developed partially in response to concerns voiced by explosives industry associations that emphasized the need for more frequent and regular contact with local authorities.
  - This information can be further disseminated to first responders and appropriate LEPC/TEPC members to:
    - Help establish relationships and facilitate better communication between these local responders and the FELs in their areas;
    - Assist local responders in discussing FEL explosives storage information for emergency planning and response purposes; and

        - Enable local authorities and FELs to discuss and develop training for emergencies involving the explosives plants and storage facilities.
    - Questions / for more information: Dean.Dickinson@atf.gov
- **DHS Offers Vital Tools for Top-Screen Submissions and PSP Requirements**
    - The Department of Homeland Security (DHS) has enhanced their Chemical Facility Anti-Terrorism Standards (CFATS) tiering methodology and update CSAT 2.0.
        - DHS has notified over 90% of the facilities that have submitted Top-Screens in the past, and still have chemicals of interest at screening threshold quantities, to resubmit the online survey through the Chemical Security Assessment Tool (CSAT) 2.0.
        - Utilizing the revised and streamline online surveys and the enhanced tiering methodology, DHS has received more than 23,000 unique facility Top-Screens.
            - Nearly 22,000 unique facilities have been issued tiering determination letters.
                - As of October 24, 2017, DHS covers 3,495 facilities.
    - Vetting those who have access to chemicals of interest and other sensitive parts of high-risk chemical facilities is a key aspect of facility security, and DHS continues to work with facilities on the Personnel Surety Program (PSP) requirement.
        - The PSP tool has been updated and fully integrated into CSAT 2.0.
        - To date, 62 facilities are approved for Risk-Based Performance Standards 12(iv) with nearly 10,000 names vetted.
        - DHS expects to begin the process for gaining approval to collect information, allowing them to vet names at Tier 3 and 4 facilities later in 2017.
            - DHS plans to roll out the program to Tier 3 or 4 facilities in 2018.
    - For more information on CFATS: https://www.dhs.gov/chemical-facility-anti-terrorism-standards
    - For CFATS-related questions: CFATS@hq.dhs.gov
- **EPA Provides Guidance for Farmers for Reporting Animal Waste**
  [NOTE: this Hot Topic of Interest was sent to you via a *SERC-TERC Flash Update* last week**]**
    - On October 25, 2017, EPA released guidance to assist farmers in reporting air releases of hazardous substances from animal waste at farms.
        - EPA is making this information available to provide time for farmers to review and prepare for the reporting obligation, which could become effective as early as November 15, 2017.
    - On December 18, 2008, EPA published a final rule that exempted certain farms from reporting air releases of hazardous substances from animal waste.
        - On April 11, 2017, the DC Circuit Court vacated this final rule.
        - In response to a request from EPA, the DC Circuit Court extended the date on which its ruling would become effective to November 15, 2017.
            - Unless the court further extends this date, farms (including those previously exempted by EPA's rule) that release hazardous substances to the air from animal wastes equal to or greater than the reportable quantities for those hazardous substances within any 24-hour period must comply with applicable statutory reporting requirements.
    - The EPA guidance information includes links to resources that farmers can use to calculate emissions tailored to specific species of livestock.

- View EPA's guidance and Frequently Asked Questions on reporting air emissions from animal waste: https://www.epa.gov/epcra/cercla-and-epcra-reporting-requirements-air-releases-hazardous-substances-animal-waste-farms
    - EPA will revise this guidance, as necessary, to reflect additional information to assist farm owners and operators to meet reporting obligations.
    - Interested parties may submit comments or suggestions by November 24, 2017.

Training Opportunities & Conferences

- **Ammonia Safety and Training Institute (ASTI) "Ammonia Safety Days" Training**
    - ASTI offers FREE ammonia safety training.
    - Each training is an 8-hour conference-style presentation designed for industry, firefighters and regulators addressing prevention of and safe response to ammonia emergencies.
    - Sample topics include hazard analysis, equipment problems leading to emergencies, emergency shutdown, emergency control and containment, safety plans, personnel protection equipment, decontamination, integrating with public safety responders, monitoring systems, public receptors, communications, and safe escape or shelter.
    - Ammonia Safety Days will be held in the following locations:

Reno/Sparks NV	November 13-14
Houston, TX	November 14
Kehei, Maui HI	March 7, 2018
Las Vegas, NV	March 28, 2018
Salinas, CA	May 24, 2018

    - For more information and registration: https://ammonia-safety.com/safety-days or contact asti@ammonia-safety.com or 831-761-2935.
- **44th Annual Conference on Explosives and Blasting Technique, January 28 to 31, 2018, San Antonio, TX**
    - Join nearly 1,600 blasters, manufacturers, government officials and industry leaders at the world's largest conference on explosives engineering.
        - Conference is sponsored by the International Society of Explosives Engineers.
        - Registration is now open.
    - For more information: https://www.isee.org/conferences/2018-conference

For More Information

- EPCRA: https://www.epa.gov/epcra
- RMP: https://www.epa.gov/rmp
- Critical Infrastructure / Chemical Security: http://www.dhs.gov/critical-infrastructure-chemical-security
- CFATS: https://www.dhs.gov/risk-chemical-facility-anti-terrorism-standards-cfats
- NASTTPO: http://nasttpo.com/

Environmental Protection Agency / Department of Homeland Security & US Coast Guard
Department of Labor & Occupational Safety and Health Administration /
Department of Transportation
Bureau of Alcohol, Tobacco, Firearms and Explosives / Department of Agriculture

---

You are currently subscribed to serc_terc_monthly_update as: Franklin.Kathy@epa.gov

To unsubscribe, send a blank email to leave-1679737-2412806.2069b75bd0b3715ac3ffcff1b6f8c23e@lists.epa.gov

For problems with this list, contact serc_terc_monthly_update-Owner@lists.epa.gov

---

Message

From: Mayer, Eileen [Mayer.Eileen@epa.gov]
Sent: 6/29/2017 6:53:51 PM
To: Jennings, Kim [Jennings.Kim@epa.gov]; Principe, Vanessa [Principe.Vanessa@epa.gov]; Gerardin, Margaret [Gerardin.Margaret@epa.gov]; Franklin, Kathy [Franklin.Kathy@epa.gov]; Yonce, Stacey [yonce.stacey@epa.gov]; Jacob, Sicy [Jacob.Sicy@epa.gov]; Gioffre, Patricia [Gioffre.Patricia@epa.gov]; Bosecker, Elizabeth [Bosecker.Elizabeth@epa.gov]
Subject: Draft Communication Strategies for EPCRA/RMP/SPLASHS
Attachments: Communication Strategy EPCRA.docx; Communication Strategy RMP.docx; Communication Strategy SPLASHS.docx

Hi everyone,
Thank you again for meeting with me yesterday. Attached are the brief, high level communication strategies for each program. We'll develop more detailed strategies as each rule/action/product moves forward. Please take a minute to review to make sure I captured things appropriately. Also, let me know if you thought of any additional products or communication channels.

Thank you for your input!

Eileen M. Mayer
Office of Emergency Management
U.S. Environmental Protection Agency
(202) 564-9628

Communication Strategy for EPCRA

Current Situation/Background

- Potential interpretive guidance or rule on animal waste at farms, depending on court ruling
- Annual EPCRA reporting to states and local governments
- Long term – 35th EPCRA anniversary in 2021

Overall Program Objectives

Manage the non-section 313 sections of EPCRA, including:

- annual Tier I and II reporting and trade secret forms (annual update of Tier2 Submit software and training)
    - maintain lists of state reporting requirements and State Emergency Response Commission contact information
- Continuous Release Reporting

Communication Objectives

- Provide stakeholder notification of proposed rule, notice and comment period, or interpretive guidance
- Provide regional notification as needed
- Improve Release Notification information on the EPCRA website

Key Messages

EPCRA increases the public's knowledge and access to information on chemicals at individual facilities, their uses, and releases into the environment.

Near Term Products

- Develop and maintain lists of stakeholder names and emails for trade associations, CEPP regional contacts/regional management

Target Audiences

- Facilities
- Governments (federal/state/tribal/local)
- EPA regional contacts
- Trade associations/public interest groups
- Congressional representatives and staff

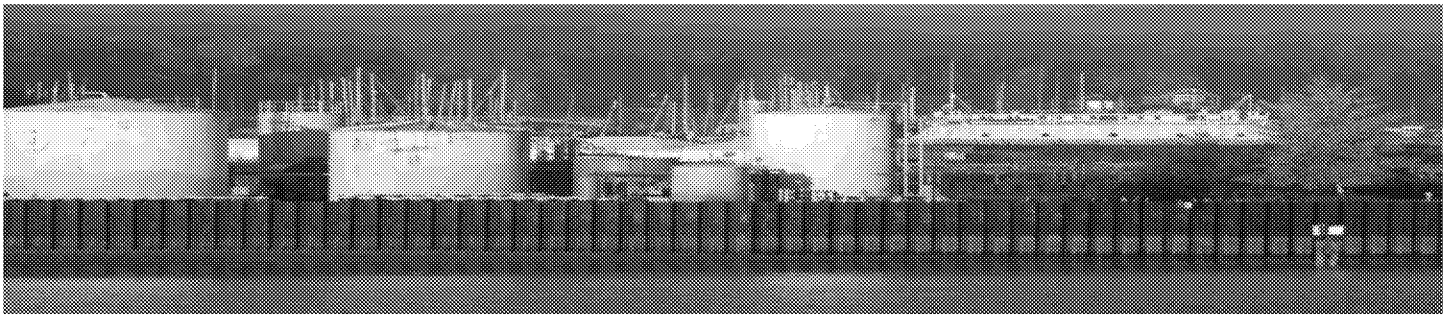
Communication Channels

- New releases/briefs
- Desk statements
- Training events/Webinars
- Web content

[DATE \@ "MMMM d, yyyy"]

Message

From: [EPA] [SERC-TERC.Updates@epa.gov]
Sent: 10/26/2017 3:40:26 PM
To: Franklin, Kathy [Franklin.Kathy@epa.gov]
Subject: [serc_terc_monthly_update] FLASH Update: October 2017



- - SERC-TERC Flash Update - -

Hello SERCs, TERCs, and Federal Partners.

Here is a late-breaking / time-sensitive item of interest:

Hot Topic

EPA Provides **Guidance for Farmers for Reporting Animal Waste**

- On October 25, 2017, EPA released guidance to assist farmers in reporting air releases of hazardous substances from animal waste at farms.
  - EPA is making this information available to provide time for farmers to review and prepare for the reporting obligation, which could become effective as early as November 15, 2017.
- On December 18, 2008, EPA published a final rule that exempted certain farms from reporting air releases of hazardous substances from animal waste.
  - On April 11, 2017, the DC Circuit Court vacated this final rule.
  - In response to a request from EPA, the DC Circuit Court extended the date on which its ruling would become effective to November 15, 2017.
    - Unless the court further extends this date, farms (including those previously exempted by EPA's rule) that release hazardous substances to the air from animal wastes equal to or greater than the reportable quantities for those hazardous substances within any 24-hour period must comply with applicable statutory reporting requirements.
- The EPA guidance information includes links to resources that farmers can use to calculate emissions tailored to specific species of livestock.
- View EPA's guidance and Frequently Asked Questions on reporting air emissions from animal waste: https://www.epa.gov/epcra/cercla-and-epcra-reporting-requirements-air-releases-hazardous-substances-animal-waste-farms
  - EPA will revise this guidance, as necessary, to reflect additional information to assist farm owners and operators to meet reporting obligations.
  - Interested parties may submit comments or suggestions by November 24, 2017.

- - -

PLEASE NOTE: The next regular edition of *SERC-TERC Updates* should arrive in early November 2017.

The purpose of the *SERC-TERC Updates* is to identify and share new policies, guidance, and training resources that may be useful to the State Emergency Response Commissions (SERCs) and Tribal Emergency Response Commissions (TERCs).

Environmental Protection Agency / Department of Homeland Security & US Coast Guard
Department of Labor & Occupational Safety and Health Administration / Department of Transportation
Bureau of Alcohol, Tobacco, Firearms and Explosives / Department of Agriculture

---
You are currently subscribed to serc_terc_monthly_update as: Franklin.Kathy@epa.gov

To unsubscribe, send a blank email to leave-1678840-2412806.2069b75bd0b3715ac3ffcff1b6f8c23e@lists.epa.gov

For problems with this list, contact serc_terc_monthly_update-Owner@lists.epa.gov
---

Message

From: Salo, Earl [Salo.Earl@epa.gov]
Sent: 10/11/2017 9:22:47 PM
To: Gioffre, Patricia [Gioffre.Patricia@epa.gov]; Jacob, Sicy [Jacob.Sicy@epa.gov]; Principe, Vanessa [Principe.Vanessa@epa.gov]; Franklin, Kathy [Franklin.Kathy@epa.gov]; Hull, George [Hull.George@epa.gov]; Lewis, Jen [Lewis.Jen@epa.gov]; Michaud, John [Michaud.John@epa.gov]; Swenson, Erik [Swenson.Erik@epa.gov]; Hostage, Barbara [Hostage.Barbara@epa.gov]
CC: Noggle, William [Noggle.William@epa.gov]; Prins, Christopher [Prins.Christopher@epa.gov]; Sullivan, Tim [Sullivan.Tim@epa.gov]; Ziegel, Dean [Ziegel.Dean@epa.gov]; Beasley, Lynn [Beasley.Lynn@epa.gov]; Beaman, Joe [Beaman.Joe@epa.gov]
Subject: RE: EPCRA 304 Q&A-Additional OMB comments
Attachments: Waterkeeper old Q&As.docx

Looking at these Q&As and also a Q&A that Kathy Franklin sent, Deliberative Process / Ex. 5 Deliberative Process / Ex. 5 Attached is a description of some of the Q&As, and what EPA might say about some of them. I'd appreciate your comments on them, Deliberative Process / Ex. 5 Deliberative Process / Ex. 5 Thanks!

-----Original Appointment-----
From: Gioffre, Patricia
Sent: Wednesday, October 11, 2017 2:22 PM
To: Jacob, Sicy; Principe, Vanessa; Franklin, Kathy; Hull, George; Lewis, Jen; Michaud, John; Salo, Earl; Swenson, Erik; Hostage, Barbara
Cc: Noggle, William; Prins, Christopher; Sullivan, Tim; Ziegel, Dean; Beasley, Lynn; Beaman, Joe
Subject: EPCRA 304 Q&A-Additional OMB comments
When: Wednesday, October 11, 2017 2:30 PM-3:30 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Conference call 866-299-3188 202-564-1972#

Update-Adding some FAQs from our website that relate to routine agricultural operations.

All-I've sent a message to OLEM senior leaders to provide a summary of today's call with DOJ and OMB and to provide them an opportunity to elevate on the schedule. Let's get together this afternoon to discuss additional OMB comments and determine next steps to respond.

I've attached the second set of comments from OMB and added our revisions from the response developed by OGC on the first set of comments.
I then highlighted, in yellow, the additional comments for OGC to address. I think OEM can address the blue highlighted comments. Let's get together this afternoon to discuss and determine next steps.

Message

From: Janifer, Pamela [Janifer.Pamela@epa.gov]
Sent: 10/26/2017 2:04:38 AM
To: Gioffre, Patricia [Gioffre.Patricia@epa.gov]; Swenson, Erik [Swenson.Erik@epa.gov]; Lewis, Jen [Lewis.Jen@epa.gov]; Salo, Earl [Salo.Earl@epa.gov]; Michaud, John [Michaud.John@epa.gov]; Jacob, Sicy [Jacob.Sicy@epa.gov]; Franklin, Kathy [Franklin.Kathy@epa.gov]; Bosecker, Elizabeth [Bosecker.Elizabeth@epa.gov]; Principe, Vanessa [Principe.Vanessa@epa.gov]; Sullivan, Tim [Sullivan.Tim@epa.gov]; Ziegel, Dean [Ziegel.Dean@epa.gov]; Beasley, Lynn [Beasley.Lynn@epa.gov]; Hostage, Barbara [Hostage.Barbara@epa.gov]; Cogliano, Gerain [Cogliano.Gerain@epa.gov]; Noggle, William [Noggle.William@epa.gov]; Hull, George [Hull.George@epa.gov]; Beaman, Joe [Beaman.Joe@epa.gov]; Cooperstein, Sharon [Cooperstein.Sharon@epa.gov]; Dunkins, Robin [Dunkins.Robin@epa.gov]; Costa, Allison [Costa.Allison@epa.gov]; Schrock, Bill [Schrock.Bill@epa.gov]
CC: Clark, Becki [Clark.Becki@epa.gov]; Cheatham, Reggie [cheatham.reggie@epa.gov]; Jennings, Kim [Jennings.Kim@epa.gov]; Brooks, Becky [Brooks.Becky@epa.gov]; Taylor, Trish [Taylor.Trish@epa.gov]; Breen, Barry [Breen.Barry@epa.gov]; Simon, Nigel [Simon.Nigel@epa.gov]; Darwin, Veronica [darwin.veronica@epa.gov]; Davis, Patrick [davis.patrick@epa.gov]; Grantham, Nancy [Grantham.Nancy@epa.gov]; Gerardin, Margaret [Gerardin.Margaret@epa.gov]; Mayer, Eileen [Mayer.Eileen@epa.gov]; Indermark, Michele [Indermark.Michele@epa.gov]; Hilosky, Nick [Hilosky.Nick@epa.gov]
Subject: RE: EPCRA CERCLA Ag Guidance is now available

Thank you Patricia,

Pamela

Pamela Janifer
U.S. Environmental Protection Agency
Office of Congressional Affairs
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
202.564.6969
Janifer.pamela@epa.gov

From: Gioffre, Patricia
Sent: Wednesday, October 25, 2017 9:30 PM
To: Swenson, Erik ; Lewis, Jen ; Salo, Earl ; Michaud, John ; Jacob, Sicy ; Franklin, Kathy ; Bosecker, Elizabeth ; Principe, Vanessa ; Sullivan, Tim ; Ziegel, Dean ; Beasley, Lynn ; Hostage, Barbara ; Cogliano, Gerain ; Noggle, William ; Hull, George ; Beaman, Joe ; Cooperstein, Sharon ; Dunkins, Robin ; Costa, Allison ; Schrock, Bill
Cc: Clark, Becki ; Cheatham, Reggie ; Jennings, Kim ; Brooks, Becky ; Taylor, Trish ; Breen, Barry ; Simon, Nigel ; Darwin, Veronica ; Davis, Patrick ; Janifer, Pamela ; Grantham, Nancy ; Gerardin, Margaret ; Mayer, Eileen ; Indermark, Michele ; Hilosky, Nick
Subject: EPCRA CERCLA Ag Guidance is now available
Importance: High

I am pleased to announce that the EPCRA/CERCLA ag guidance is live on the EPA website. To view EPA's guidance and Frequently Asked Questions on reporting air emissions from animal waste, see: https://www.epa.gov/epcra/cercla-and-epcra-reporting-requirements-air-releases-hazardous-substances-animal-waste-farms

Thank you all for your assistance developing this guidance and for your support through the interagency review process. It was a lot of work and we couldn't have done it without your expertise!

Best wishes!

Patty Gioffre
Acting Deputy Division Director
USEPA (OLEM/OEM/RID)
1200 Pennsylvania Ave. NW (5104A)
Washington, DC 20460
202-564-1972
202-748-7139 (cell)

Message

From: CERCLA103.guidance [CERCLA103.guidance@epa.gov]
Sent: 11/8/2017 10:52:04 PM
To: Jacob, Sicy [Jacob.Sicy@epa.gov]; Franklin, Kathy [Franklin.Kathy@epa.gov]; Jennings, Kim [Jennings.Kim@epa.gov]
Subject: FW: EPCRA/CERCLA Facility Definition & CAFO reporting requirements.

This is the only other email we have received thus far.
There is one SPAM message but I won't forward that.

Patty Gioffre
US EPA/OLEM/OEM
202-564-1972
202-748-7139 (cell)

Follow OLEM on Twitter @EPALand

From: Steven Pratt [mailto:spratt@enviroag.com]
Sent: Monday, November 06, 2017 3:47 PM
To: CERCLA103.guidance
Subject: EPCRA/CERCLA Facility Definition & CAFO reporting requirements.

I am commenting on which definition of "facility" to use with FARMS.

CERCLA and EPCRA definitions are different. From "EPA Reporting Requirements for Continuous Releases of Hazardous Substances":

CERCLA:
A "facility" is defined under CERCLA to include any building, structure, installation, equipment, pipe or pipeline, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft or any site or area where a hazardous substance has been deposited, stored, disposed of or placed, or otherwise come to be located. There may be one or more facilities at a particular site.

EPCRA:
The definition of the term "facility" under EPCRA differs from the CERCLA definition. Under Section 329(4) of EPCRA, a facility is defined as all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites that are owned and controlled by the same person.

The CERCLA definition is more suited to industrial facilities with easily quantifiable sources. Sources on farms are not usually very specific source quantifiable, and also tend to have multiple farms that are contiguous and/or adjacent. EPA's own emission factors take in a facility/farm as a whole primarily dependent on head count. The EPCRA definition makes more sense for farm reporting for CERCLA also.

Please take the above comments in consideration in any new rulemakings for CAFO reporting of continuous emissions.

Thank you,
Steven Pratt

ENVIRO-AG EAE ENGINEERING

STEVEN PRATT, P.E.

3404 Airway Blvd. • Amarillo, Texas 79118
Tel (806) 353-6123 • Direct (806) 350-5469
Fax (806) 353-4132 • spratt@enviroag.com

Enviro-Ag Engineering, Inc. is a progressive consulting firm offering a unique blend of talent and engineering experience. EAE is centrally located to serve a client base covering much of the United States. This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please notify the sender and delete this message. For more information, please visit our website or give us a call at 800-753-6525.

Disclaimer

The information contained in this communication from the sender is confidential. It is intended solely for use by the recipient and others authorized to receive it. If you are not the recipient, you are hereby notified that any disclosure, copying, distribution or taking action in relation of the contents of this information is strictly prohibited and may be unlawful.

This email has been scanned for viruses and malware, and may have been automatically archived by **Mimecast Ltd**, an innovator in Software as a Service (SaaS) for business. Providing a **safer** and **more useful** place for your human generated data. Specializing in; Security, archiving and compliance. To find out more Click Here.

Message

From: Jacob, Sicy [Jacob.Sicy@epa.gov]
Sent: 11/8/2017 11:01:39 PM
To: CERCLA103.guidance [CERCLA103.guidance@epa.gov]; Franklin, Kathy [Franklin.Kathy@epa.gov]; Jennings, Kim [Jennings.Kim@epa.gov]
Subject: RE: EPCRA/CERCLA Facility Definition & CAFO reporting requirements.

Ok thanks.

Sicy Jacob
Chemical Engineer
Regulations Implementation Division
Office of Emergency Management
U.S. EPA, MailCode 5104A
1200 Pennsylvania Avenue, NW
Washington DC 20004
(202) 564-8019

From: CERCLA103.guidance
Sent: Wednesday, November 08, 2017 5:52 PM
To: Jacob, Sicy ; Franklin, Kathy ; Jennings, Kim
Subject: FW: EPCRA/CERCLA Facility Definition & CAFO reporting requirements.

This is the only other email we have received thus far.
There is one SPAM message but I won't forward that.

Patty Gioffre
US EPA/OLEM/OEM
202-564-1972
202-748-7139 (cell)

Follow OLEM on Twitter @EPALand

From: Steven Pratt [mailto:spratt@enviroag.com]
Sent: Monday, November 06, 2017 3:47 PM
To: CERCLA103.guidance <CERCLA103.guidance@epa.gov>
Subject: EPCRA/CERCLA Facility Definition & CAFO reporting requirements.

I am commenting on which definition of "facility" to use with FARMS.

CERCLA and EPCRA definitions are different. From "EPA Reporting Requirements for Continuous Releases of Hazardous Substances":

CERCLA:
A "facility" is defined under CERCLA to include any building, structure, installation, equipment, pipe or pipeline, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft or any site or area

where a hazardous substance has been deposited, stored, disposed of or placed, or otherwise come to be located. There may be one or more facilities at a particular site.

EPCRA:
The definition of the term "facility" under EPCRA differs from the CERCLA definition. Under Section 329(4) of EPCRA, a facility is defined as all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites that are owned and controlled by the same person.

The CERCLA definition is more suited to industrial facilities with easily quantifiable sources. Sources on farms are not usually very specific source quantifiable, and also tend to have multiple farms that are contiguous and/or adjacent. EPA's own emission factors take in a facility/farm as a whole primarily dependent on head count. The EPCRA definition makes more sense for farm reporting for CERCLA also.

Please take the above comments in consideration in any new rulemakings for CAFO reporting of continuous emissions.

Thank you,
Steven Pratt

ENVIRO-AG EAE ENGINEERING
STEVEN PRATT, P.E.
3404 Airway Blvd. • Amarillo, Texas 79118
Tel (806) 353-6123 • Direct (806) 350-5469
Fax (806) 353-4132 • spratt@enviroag.com

Enviro-Ag Engineering, Inc. is a progressive consulting firm offering a unique blend of talent and engineering experience. EAE is centrally located to serve a client base covering much of the United States. This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please notify the sender and delete this message. For more information, please visit our website or give us a call at 800-753-6525.

Disclaimer

The information contained in this communication from the sender is confidential. It is intended solely for use by the recipient and others authorized to receive it. If you are not the recipient, you are hereby notified that any disclosure, copying, distribution or taking action in relation of the contents of this information is strictly prohibited and may be unlawful.

This email has been scanned for viruses and malware, and may have been automatically archived by **Mimecast Ltd**, an innovator in Software as a Service (SaaS) for business. Providing a **safer** and **more useful** place for your human generated data. Specializing in; Security, archiving and compliance. To find out more Click Here.

Message

From: Gioffre, Patricia [Gioffre.Patricia@epa.gov]
Sent: 11/13/2017 1:48:24 PM
To: Jennings, Kim [Jennings.Kim@epa.gov]; Jacob, Sicy [Jacob.Sicy@epa.gov]; Hull, George [Hull.George@epa.gov]; Franklin, Kathy [Franklin.Kathy@epa.gov]; Bosecker, Elizabeth [Bosecker.Elizabeth@epa.gov]; Cogliano, Gerain [Cogliano.Gerain@epa.gov]; Noggle, William [Noggle.William@epa.gov]; Hostage, Barbara [Hostage.Barbara@epa.gov]; Swenson, Erik [Swenson.Erik@epa.gov]; Salo, Earl [Salo.Earl@epa.gov]; Lewis, Jen [Lewis.Jen@epa.gov]; ODea, Elise [odea.elise@epa.gov]; Dunkins, Robin [Dunkins.Robin@epa.gov]; Costa, Allison [Costa.Allison@epa.gov]; Schrock, Bill [Schrock.Bill@epa.gov]; Beasley, Lynn [Beasley.Lynn@epa.gov]; Sullivan, Tim [Sullivan.Tim@epa.gov]; Ziegel, Dean [Ziegel.Dean@epa.gov]; Indermark, Michele [Indermark.Michele@epa.gov]; Cheatham, Reggie [cheatham.reggie@epa.gov]; Clark, Becki [Clark.Becki@epa.gov]; Gerardin, Margaret [Gerardin.Margaret@epa.gov]; Mayer, Eileen [Mayer.Eileen@epa.gov]
Subject: Environmentalists Fear EPA Will Exempt All AFOs From Emissions Reports

Environmentalists Fear EPA Will Exempt All AFOs From Emissions Reports

November 10, 2017

Environmentalists are warning a federal appeals court that EPA is seeking to create a legal loophole to essentially exempt all animal feeding operations (AFOs) from certain federal hazardous substance reporting requirements, which would partially nullify an April ruling from the court that requires thousands of smaller AFOs to report for the first time.

In a Nov. 9 legal filing in *Waterkeeper Alliance, et al. v. EPA*, environmentalists warn the U.S. Court of Appeals for the District of Columbia Circuit that EPA's recent request to again extend issuance of the court's reporting mandate -- beyond the existing Nov. 14 deadline -- is a ruse to allow the agency to issue a new rule exempting most farms from reporting under community right-to-know law.

The D.C. Circuit's April ruling in the case overturned a 2008 EPA rule that exempted thousands of smaller AFOs from requirements to report their air emissions of hazardous substances under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), also known as the Superfund law, and also the Emergency Planning and Community Right-To-Know Act (EPCRA).

EPA has asked for repeated extensions of the deadline to implement the ruling, citing the need to finalize guidance and tools necessary for farms to report their emissions of substances such as ammonia and hydrogen sulfide, generated in large quantities by animal waste.

However, in its interim guidance on the issue announced Oct. 26, EPA also says it is working on a rule that would reinterpret key statutory language regarding the meaning of “routine agricultural operations” that are exempt from EPCRA reporting.
“EPA is not seeking time to help AFOs 'come into compliance,' but rather time to promulgate an illegal rule so that they never have to comply. EPA’s 'preliminary interpretation' would thus violate the Court’s mandate by directing AFOs that they need not comply with EPCRA,” environmentalists write.

“In an about-face from the Agency’s prior positions, EPA’s interim guidance documents adopt an industry theory in order to immediately exempt all AFOs from EPCRA’s reporting requirement. This new exemption has an even broader effect than the Final Rule this Court found to be illegal,” they say.

Further, “EPA sidesteps the required rulemaking procedure of the Administrative Procedure Act by having this exemption take immediate effect, even before the start of its proposed rulemaking process,” they claim.

They ask the court to deny EPA's motion to extend issuance of the mandate again until two months after another stay order, or until Jan. 17, whichever is later. They also ask the court to clarify that its mandate does not allow the “blanket EPCRA exemption that EPA now seeks” and to retain jurisdiction for three years, “or as long as the Court deems sufficient, to ensure that the reporting requirements in EPCRA and CERCLA are finally enforced as to AFOs.”

In a document linked to its interim guidance, EPA says that EPCRA does not require reporting of “any substance to the extent it is used in routine agricultural operations."

Environmentalists' Arguments

EPA says it now “interprets the phrase 'used in routine agricultural operations' to include, for example, the handling and storage of waste for potential use as fertilizer.” The agency says Congress intended for farms to be treated differently than other sources of pollution, and “EPA does not believe Congress intended the generation, handling or storage of animal waste to subject farms to reporting if they do not otherwise produce, use or store hazardous chemicals."

Environmentalists note that EPA in the document apparently establishes this interpretation and exemption immediately, even though the agency is still taking comment on the guidance through Nov. 25 and wants extra time to issue a regulation on the question, violating the Administrative Procedure Act.

One industry source cautions that while under the terms of EPCRA, as properly interpreted, farms are indeed exempt, their CERCLA reporting obligation would remain even under EPA's new statutory interpretation. EPCRA requires reporting to local emergency response authorities of releases, while CERCLA reporting is centralized through the Coast Guard's National Response Center (NRC) -- and this is still a huge problem, the source says, because NRC is seriously understaffed to handle its new workload.

In a Nov. 9 filing in the lawsuit, the National Pork Producers Council and the U.S. Poultry and Egg Association say “the Court should continue to stay the mandate so that EPA can complete what it started and provide farmers more specific and final guidance before they must estimate and report emissions."

The farm groups in their filing warn of chaos if the court does not further stay compliance. “Nothing has changed with respect to the science of emissions estimation on farms since the time of this Court’s ruling -- scientists have still not coalesced around a recommended emissions estimation method. Farmers, the vast majority of whom have no legal counsel at the ready to advise them, still struggle with interpreting unfamiliar terms in EPA’s regulations,” they say.

Also, the NRC is not equipped to handle the expected large volume of reports from AFOs, and is mishandling the few reports from AFOs it has already received, the groups claim.

The groups cite an email from NRC official Jim Morrow to Sen. Deb Fischer (R-NE), which says, “At the current NRC resource levels, an influx of calls will cause tremendous wait times for all callers. This may result in extreme delays in

incident notifications, or even failure altogether in receiving reports and disseminating time critical incident information." -- *Stuart Parker* (sparker@iwpnews.com)

Patty Gioffre
Acting Deputy Division Director
USEPA (OLEM/OEM/RID)
1200 Pennsylvania Ave. NW (5104A)
Washington, DC 20460
202-564-1972
202-748-7139 (cell)

From: InsideEPA.com [mailto:insideepa-alerts@iwpnews.com]
Sent: Monday, November 13, 2017 6:50 AM
To: Gioffre, Patricia
Subject: The Morning Headlines from InsideEPA.com -- November 13, 2017

TRUMP'S EPA: Agency at a crossroads -- Complete coverage

November 13, 2017

Latest News

Wehrum Could Revert To EPA NAAQS Process With Earlier Political Input

Newly confirmed EPA Office of Air & Radiation (OAR) chief William Wehrum could now undo an Obama-era policy memo on ambient air standard reviews and reinstate a process from Wehrum's prior tenure at EPA during the George W. Bush administration that gave political leadership more control earlier in the reviews, sources say.

Environmentalists Fear EPA Will Exempt All AFOs From Emissions Reports

Environmentalists are warning a federal appeals court that EPA is seeking to create a legal loophole to essentially exempt all animal feeding operations (AFOs) from certain federal hazardous substance reporting requirements, which would partially nullify an April ruling from the court that requires thousands of smaller AFOs to report for the first time.

EAB Weighs Limits On EPA Power To Soften Obama-Era Nutrient Permits

EPA's Environmental Appeals Board (EAB) is weighing a new case over the agency's bid to soften nutrient limits in a wastewater treatment plant's Clean Water Act (CWA) discharge permit, potentially testing the limits of the

Trump administration's ability to loosen permits crafted by its predecessors despite the law's "anti-backsliding" provisions.

New Jersey Eyes DOJ's Input On EPCRA Defense Against Data Disclosure

New Jersey officials say the Department of Justice's (DOJ) input may be warranted after their criticism of an EPA-administered reporting law in the state's defense against environmentalist and labor groups' lawsuit seeking release of industrial facility data, in a case that could have broad implications for public disclosure of facility data.

EPA Fights 'Constructive Submission' Theory Seeking To Force TMDL

EPA is urging a federal district court to reject environmentalists' "constructive submission" theory that the lack of a state-crafted waterbody cleanup plan for the Columbia and Snake rivers in Washington and Oregon means the states have abandoned efforts to craft a plan and that the agency must now impose its own plan on them.

Daily Feed

Senate Democrats ask GAO to review new EPA advisors policy

Democratic Senators are asking the Government Accountability Office to expand its probe of EPA's new policies for choosing members of its advisory committees.

EPA developing nutrients 'willingness to pay' survey

EPA is taking comment on its plan to survey the public's willingness to pay for nutrient controls that would improve the quality of recreational waters coastal New England.

EDF outlines issues for TSCA inventory rule suit

Environmentalists outline issues they plane to raise in litigation challenging EPA's inventory reset rule establishing universe of existing chemicals for review under the new toxics law.

Federal prosecutors subpoena Icahn RFS data

Federal prosecutors in New York have subpoenaed documents pertaining to billionaire Carl Icahn's role in possible manipulation of biofuels markets, adding to pressure on the former presidential adviser over the issue.

Ewire: Major climate report doesn't change EPA's CPP plans

In today's news roundup: The Trump administration's major climate science report is not altering EPA's plan to repeal the Clean Power Plan or nominees' views on the issue.

Biofuels producers urge Trump to increase cellulosic RFS targets

As a Nov. 30 deadline for issuance of the final 2018 RFS approaches, advanced biofuels interests are trying to boost their fuel volumes, while the oil sector seeks a reduced RFS.

Read all the latest EPA news, analysis and documents →

EDITORIAL CONTACT

703-562-8763

E-MAIL →

CUSTOMER SERVICE

703-416-8505

E-MAIL →

Site Licenses Available

Want to share access to InsideEPA.com with your colleagues? We have economical site license packages available to fit any size organization, from a few people at one location to company-wide access. For more information on how you can get greater access to InsideEPA.com for your office, contact our Online Customer Service department at 703-416-8505 or iepa@iwpnews.com.

Please do not respond to this e-mail, as it was sent from an unmonitored mailbox. If you have a customer service inquiry, please contact us at iepa@iwpnews.com . If you no longer wish to receive these messages, you can change your e-mail settings on InsideEPA.com (you may need to log in).

Mailing address: 1919 South Eads Street, Suite 201, Arlington VA 22202

Telephone: 703-416-8500 or 1-800-424-9068

Copyright © 2017 Inside Washington Publishers. All rights reserved About Us | Privacy Policy

Message

From: Gioffre, Patricia [Gioffre.Patricia@epa.gov]
Sent: 12/20/2017 6:11:01 PM
To: Haas, Craig [Haas.Craig@epa.gov]; Brown, Deborah [Brown.Deborah@epa.gov]; Chin, William [chin.bill@epa.gov]; Gaffey, Jim [Gaffey.Jim@epa.gov]; O'Donnell, Mary Jane [Odonnell.Maryjane@epa.gov]; Peavey, Dwight [Peavey.Dwight@epa.gov]; Rascher, Chris [rascher.chris@epa.gov]; Smith, Catherine [smith.catherine@epa.gov]; Wallace, Leonard [Wallace.Len@epa.gov]; Gallagher, Shirin [Gallagher.Shirin@epa.gov]; Garcia, Terry [Garcia.Terry@epa.gov]; Hales, Bob [Hales.Bob@epa.gov]; Hartman, Bob [Hartman.Bob@epa.gov]; Leefers, Kristin [Leefers.Kristin@epa.gov]; LeGreid, Kathleen [LeGreid.Kathleen@epa.gov]; Magdangal, David [magdangal.david@epa.gov]; Mairs, Stephanie [Mairs.Stephanie@epa.gov]; McFadden, Kelly [McFadden.Kelly@epa.gov]; Meinhardt, Danielle [meinhardt.danielle@epa.gov]; Morales, Javier [Morales.Javier@epa.gov]; Phillips, Peter [Phillips.Peter@epa.gov]; Vergeront, Julie [Vergeront.Julie@epa.gov]; Williams, Erin [Williams.Erin@epa.gov]; Banner, Ellen [Banner.Ellen@epa.gov]; Dholakia, Umesh [Dholakia.Umesh@epa.gov]; Ghaffari, Mozafar [Ghaffari.Mozafar@epa.gov]; Harrington, Dwayne [Harrington.Dwayne@epa.gov]; Leung, Chao [Leung.Chao@epa.gov]; Maimone, Francesco [Maimone.Francesco@epa.gov]; Mosher, Eric [Mosher.Eric@epa.gov]; Ouedraogo, Idrissa [ouedraogo.idrissa@epa.gov]; Petty, Joel [petty.joel@epa.gov]; Regna, Jean [Regna.Jean@epa.gov]; Rivera, Carlos [Rivera.Carlos@epa.gov]; Rodriguez, Nancy [Rodriguez.Nancy@epa.gov]; Armstrong, Joan [Armstrong.Joan@epa.gov]; Baginski, Alfred [Baginski.Alfred@epa.gov]; Beckley, Patrick [Beckley.Patrick@epa.gov]; Daniel, Kevin [Daniel.Kevin@epa.gov]; Dunn, Michael [dunn.michael@epa.gov]; Gallagher, Theresa (R3) [gallagher.theresa@epa.gov]; Garcia, Jefferie [Garcia.Jefferie@epa.gov]; Gardner, Allison [Gardner.Allison@epa.gov]; Gilley, Anne [Gilley.anne@epa.gov]; Hunt, Mary [Hunt.Mary@epa.gov]; Nilsen, Ashley [Nilsen.Ashley@epa.gov]; pandya, perry [pandya.perry@epa.gov]; Parent, Suzanne [Parent.Suzanne@epa.gov]; VanOrden, James [VanOrden.James@epa.gov]; Weiss, Cynthia [Weiss.Cynthia@epa.gov]; Welsh, Mike [Welsh.Mike@epa.gov]; Ziegler, Lauren [Ziegler.Lauren@epa.gov]; Bookman, Robert [Bookman.Robert@epa.gov]; Caplan, Robert W. [Caplan.Robert@epa.gov]; Chow, Eddie [Chow.Eddie@epa.gov]; Cobb, Brandon [cobb.brandon@epa.gov]; Crum, Lynda [Crum.Lynda@epa.gov]; Devkota, Om [devkota.om@epa.gov]; Fite, Mark [Fite.Mark@epa.gov]; Grant, Deanne [Grant.Deanne@epa.gov]; Groendyke, Todd [Groendyke.Todd@epa.gov]; Juan, Rodolfo [Juan.Rodolfo@epa.gov]; Kono, Michiko [Kono.Michiko@epa.gov]; Noles, Jordan [Noles.Jordan@epa.gov]; Nowell, Valerie [Nowell.Valerie@epa.gov]; Platt, Kerry [Platt.Kerry@epa.gov]; Poole, Vinson [Poole.Vinson@epa.gov]; Refuge, Danielle [Refuge.Danielle@epa.gov]; Rouch, Ellen [Rouch.Ellen@epa.gov]; Rubini, Suzanne [Rubini.Suzanne@epa.gov]; Russo, Todd [Russo.Todd@epa.gov]; Spagg, Beverly [Spagg.Beverly@epa.gov]; Toney, Anthony [Toney.Anthony@epa.gov]; Warrilow, Phyllis [Warrilow.Phyllis@epa.gov]; Weeks, Victor [weeks.victor@epa.gov]; White, Erika [White.Erika@epa.gov]; Bezerra, Joana [bezerra.joana@epa.gov]; Chomycia, Greg [chomycia.greg@epa.gov]; Chrzaszcz, Monika [chrzaszcz.monika@epa.gov]; Entzminger, James [entzminger.james@epa.gov]; Hans, Mick [hans.mick@epa.gov]; Jager, Ginger [jager.ginger@epa.gov]; Kaiser, Steven [kaiser.steven@epa.gov]; Mayhugh, Robert [mayhugh.robert@epa.gov]; Moore, Cecilia [moore.cecilia@epa.gov]; Palomo, Silvia [palomo.silvia@epa.gov]; Riley, Ellen [riley.ellen@epa.gov]; Smith, Robert H [smith.roberth@epa.gov]; Wagner, William [wagner.william@epa.gov]; Barra, Michael [barra.michael@epa.gov]; Clay, Jeffrey [clay.jeffrey@epa.gov]; Ford, Debbie [Ford.Debbie@epa.gov]; Foster, Althea [foster.althea@epa.gov]; Hodges, Angela [Hodges.Angela@epa.gov]; Howard, AshleyA [Howard.AshleyA@epa.gov]; Mason, Steve [mason.steve@epa.gov]; Moore, Nathaniel [Moore.Nathaniel@epa.gov]; Murdock, James [Murdock.James@epa.gov]; Pearson, Evan [Pearson.Evan@epa.gov]; Phelps, Sherronda [Phelps.Sherronda@epa.gov]; Robledo, Tony [Robledo.Tony@epa.gov]; Rogers, Elizabeth [rogers.elizabeth@epa.gov]; Smalley, Bryant [smalley.bryant@epa.gov]; Smith, Monica [smith.monica@epa.gov]; Stucky, Marie [Stucky.Marie@epa.gov]; Tates, Samuel [Tates.Samuel@epa.gov]; Thompson, Steve [thompson.steve@epa.gov]; Trawick, Matthew [Trawick.Matthew@epa.gov]; Ward, Misty [ward.misty@epa.gov]; Bieri, Britt [bieri.britt@epa.gov]; Blunk, Terri [Blunk.Terri@epa.gov]; Bosch, Raymond [Bosch.Raymond@epa.gov]; Brewer, Laura [brewer.laura@epa.gov]; Bunch, Howard [Bunch.Howard@epa.gov]; Harper, Jodi [Harper.Jodi@epa.gov]; Hayes, Scott [Hayes.Scott@epa.gov]; Hensley, Dave [Hensley.Dave@epa.gov]; Hoard, Christine [Hoard.Christine@epa.gov]; LaBoda, Sarah [LaBoda.Sarah@epa.gov]; Mills, Clarissa [mills.clarissa@epa.gov]; Ndiaye, Fatimatou [Ndiaye.Fatimatou@epa.gov]; Pessetto, Jared [Pessetto.Jared@epa.gov]; Reitz, Katherine [reitz.katherine@epa.gov]; Reitz, Patricia [Reitz.Patricia@epa.gov]; Rosado-Chaparro, Wilfredo [Rosado-Chaparro.Wilfredo@epa.gov]; Stotts, Krystal [Stotts.Krystal@epa.gov]; Trotter, Jennifer [Trotter.Jennifer@epa.gov]; Weekley, Erin [weekley.erin@epa.gov]; Whisnant, Amber [Whisnant.Amber@epa.gov]; Atencio, Kathie [Atencio.Kathie@epa.gov]; Bockstahler, Breann [Bockstahler.breann@epa.gov]; Broussard, Rebecca [Broussard.Rebecca@epa.gov]; Chavez, Luke

[Chavez.Luke@epa.gov]; Cobb, David [cobb.david@epa.gov]; Meyer, Jeff [Meyer.Jeff@epa.gov]; Ramirez, Steven A [ramirez.stevena@epa.gov]; Reed, Lori [Reed.Lori@epa.gov]; Robinson, Janis [Robinson.Janis@epa.gov]; Weiner, Marc [Weiner.Marc@epa.gov]; Bazley, Greg [Bazley.Greg@epa.gov]; Berg, Elizabeth [Berg.Elizabeth@epa.gov]; BERMAN, TESSA [Berman.Tessa@epa.gov]; Deyoe, Jeremy [deyoe.jeremy@epa.gov]; Gallo, Madeline [Gallo.Madeline@epa.gov]; Henry, Karen [Henry.Karen@EPA.GOV]; Johnstone, Jeremy [Johnstone.Jeremy@epa.gov]; jones, bill [jones.bill@epa.gov]; Lawrence, Kathryn [Lawrence.Kathryn@epa.gov]; Lucas, Robert [Lucas.Robert@epa.gov]; Moore, Letitia (Separated 5/18/18) [Moore.Letitia@epa.gov]; Nixon, Donald [nixon.donald@epa.gov]; Proboszcz, Angie [Proboszcz.Angie@EPA.GOV]; Rongone, Marie [Rongone.Marie@epa.gov]; Steiner, Cyntia [Steiner.Cyntia@epa.gov]; Wirtschafter, Joshua [Wirtschafter.Joshua@epa.gov]; Averback, Jonathan [Averback.Jonathan@epa.gov]; Belke, Jim [Belke.Jim@epa.gov]; Bosecker, Elizabeth [Bosecker.Elizabeth@epa.gov]; Brown, Stephanie [Brown.Stephanie@epa.gov]; Burnett, Michael [Burnett.Michael@epa.gov]; Dixon, Chelsea [Dixon.Chelsea@epa.gov]; Franklin, Kathy [Franklin.Kathy@epa.gov]; Garvey, Mark [Garvey.Mark@epa.gov]; Gerardin, Margaret [Gerardin.Margaret@epa.gov]; Hunt, Stuart [Hunt.Stuart@epa.gov]; Jacob, Sicy [Jacob.Sicy@epa.gov]; Lischinsky, Robert [Lischinsky.Robert@epa.gov]; Mears, Gilbert [Mears.Gilbert@epa.gov]; Miles, James [miles.james@epa.gov]; Presler, Amos [presler.amos@epa.gov]; Saenz, Diana [Saenz.Diana@epa.gov]; Santacroce, Jeffrey [Santacroce.Jeffrey@epa.gov]; Seltzer, Mark [Seltzer.Mark@epa.gov]; Skinner-Thompson, Jonathan [Skinner-Thompson.Jonathan@epa.gov]; Sullivan, Greg [Sullivan.Greg@epa.gov]; Swenson, Erik [Swenson.Erik@epa.gov]; Tekrony, Linda [Tekrony.Linda@epa.gov]; Varco, Joseph [varco.joseph@epa.gov]; Yonce, Stacey [yonce.stacey@epa.gov]; Ziegel, Dean [Ziegel.Dean@epa.gov]

CC: Mortensen, Ginah [mortensen.ginah@epa.gov]; Subramanian, Hema [Subramanian.Hema@epa.gov]; Jennings, Kim [Jennings.Kim@epa.gov]; Jacob, Sicy [Jacob.Sicy@epa.gov]; Hull, George [Hull.George@epa.gov]; Principe, Vanessa [Principe.Vanessa@epa.gov]; Thomas, Latosha [Thomas.Latosha@epa.gov]; Lewis, Jen [Lewis.Jen@epa.gov]; Thomas, Latosha [Thomas.Latosha@epa.gov]; Lee, Eugene [Lee.Eugene@epa.gov]

Subject: Update: CERCLA/EPCRA Ag issues 12/20

Attachments: Animal Waste Emissions Reporting Requirements Communications Plan (DRAFT....docx

The holidays are upon us and before we head off to spend quality time with our loved ones, I'd like to take a moment to share the latest news on the CERCLA/EPCRA reporting requirements.

New NRC Email Address

The NRC has created a shorter simpler email address for farmers to use to submit initial continuous release notification. The new email address is farms@uscg.mil and it is currently operational, so feel free to start spreading the news! We have updated the website with the shorter address.

NRC Improved Outreach

NRC is in the process of updating the recorded message at the Call Center (800-424-8802, Option 2) that directs farmers to send an email. The recording will reference the shorter email address and will identify the three information elements that must be included in the email.

To help guide farmers through the next step after the initial email is sent, the NRC auto-generated email will also be updated to include a link to the EPA website and to direct farmers to send a written report to EPA within 30 days of when the mandate is issued (January 22nd). The NRC will revise the email to remove reference to the mandate on January 22nd.

At this time, the NRC is still limiting notifications to email.

Streamlined Continuous Release Form

The comment period on the revised continuous release form for farms ended on Friday, December 15th. OEM is reviewing the comments, updating the form and the burden estimate in the ICR, and hopes to get an approved form from OMB in mid-January.

Communication Strategy

OEM has a new communication specialist, Latosha Thomas. Latosha has developed the attached communication strategy to prepare for implementing the CERCLA EPCRA reporting requirements on January 22nd. If you have

suggestions for additional stakeholders to be included in the attached document, or additional ideas for how to reach out to farmers, please send comments directly to Latosha, and copy me, Kim Jennings, and Sicy Jacob.

Please join me in welcoming Latosha to OEM!

Guidance Updates

OEM is in the process of developing additional questions and answers for the CERCLA EPCRA website. There have been no substantive changes to the guidance content since my last message on 12/5.

Holiday POCs in OEM

Kim Jennings will be available tomorrow, 12/21 if you have any questions or concerns.
Sicy Jacob is out of the office and will be returning on Thursday 12/28.
I'll be out of the office starting tomorrow and will return on Thursday 12/28.

Happy Holidays to you all! Warm Wishes for a Safe and Happy 2018!
☺

Patty Gioffre
US EPA/OLEM/OEM
202-564-1972
202-748-7139 (cell)

Follow OLEM on Twitter @EPALand

Message

From: Mayer, Eileen [Mayer.Eileen@epa.gov]
Sent: 1/8/2018 8:24:29 PM
To: Gioffre, Patricia [Gioffre.Patricia@epa.gov]; Jennings, Kim [Jennings.Kim@epa.gov]; Lewis, Jen [Lewis.Jen@epa.gov]; Subramanian, Hema [Subramanian.Hema@epa.gov]; Dunkins, Robin [Dunkins.Robin@epa.gov]; Costa, Allison [Costa.Allison@epa.gov]; Schrock, Bill [Schrock.Bill@epa.gov]; Jacob, Sicy [Jacob.Sicy@epa.gov]; Franklin, Kathy [Franklin.Kathy@epa.gov]; Principe, Vanessa [Principe.Vanessa@epa.gov]
CC: Thomas, Latosha [Thomas.Latosha@epa.gov]
Subject: RE: REVIEW REQUESTED DRAFT- Two new Questions for the CERCLA EPCRA website

<!--[if lte mso 15 || CheckWebRef]-->

Mayer, Eileen has shared a OneDrive for Business file with you. To view it, click the link below.

New Frequent Questions EM Revisions.docx

<!--[endif]-->
Suggested revisions are attached.

Eileen M. Mayer
Web Editor-in-Chief (EPCRA, RMP, Oil Spills Regulations, and Emergency Response)
Office of Emergency Management
U.S. Environmental Protection Agency
202-564-9628

From: Gioffre, Patricia
Sent: Monday, January 08, 2018 3:10 PM
To: Jennings, Kim ; Lewis, Jen ; Subramanian, Hema ; Dunkins, Robin ; Costa, Allison ; Schrock, Bill ; Jacob, Sicy ; Franklin, Kathy ; Principe, Vanessa
Cc: Thomas, Latosha ; Mayer, Eileen
Subject: REVIEW REQUESTED DRAFT- Two new Questions for the CERCLA EPCRA website
Importance: High

In order to prepare for some commonly asked questions, I am suggesting the following two questions that we can post to the website quickly. The rest of the questions will be posted by January 22nd. The first paragraph in the 2nd question is from the response to the CAA 111 petition recently signed by the Administrator (though I removed CAFO) since the same principals apply for pastured animals.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Please take a look at these two questions and get back to me quickly with any edits.
Thanks!

Patty Gioffre
USEPA (OLEM/OEM)
1200 Pennsylvania Ave. NW (5104A)
Washington, DC 20460
202-564-1972
202-748-7139 (cell)

Follow OLEM on Twitter @EPALand

Message

From: Franklin, Kathy [Franklin.Kathy@epa.gov]
Sent: 1/18/2018 3:13:13 PM
To: Gioffre, Patricia [Gioffre.Patricia@epa.gov]; OLEM OEM RID [OLEM_OEM_RID@epa.gov]
CC: Indermark, Michele [Indermark.Michele@epa.gov]; Cheatham, Reggie [cheatham.reggie@epa.gov]; Clark, Becki [Clark.Becki@epa.gov]; Lewis, Jen [Lewis.Jen@epa.gov]; Swenson, Erik [Swenson.Erik@epa.gov]; Salo, Earl [Salo.Earl@epa.gov]
Subject: RE: Cattlemen Launch Drive To Block Looming AFO Emissions Reporting Duty

Also see
http://www.beefusa.org/newsreleases1.aspx?newsid=6539

Cattlemen Kick Off Campaign to Prevent Farms, Ranches From Being Regulated Like Toxic Superfund Sites

The webpage also has a link to "a new online video featuring the group's Chief Environmental Counsel, Scott Yager. In the video, Yager dons a yellow hazmat suit and explains the issue at an actual toxic Superfund site near Fredericksburg, Virginia. He then shows the contrast between the contaminated Superfund site and a cattle farm in nearby Louisa County, Virginia, that would likely have to comply with the new reporting requirements."

Kathy Franklin
USEPA, Office of Emergency Management
WJ Clinton North Bldg., Rm. 6450G Mailcode 5104A
1200 Pennsylvania Ave. NW, Washington, DC 20460 (Zip 20004 for private courier delivery)
Phone: 202-564-7987
Email: franklin.kathy@epa.gov

From: Gioffre, Patricia
Sent: Thursday, January 18, 2018 8:20 AM
To: OLEM OEM RID
Cc: Indermark, Michele ; Cheatham, Reggie ; Clark, Becki ; Lewis, Jen ; Swenson, Erik ; Salo, Earl
Subject: Cattlemen Launch Drive To Block Looming AFO Emissions Reporting Duty

January 17, 2018

The National Cattlemen's Beef Association (NCBA) is waging a last-minute push for Congress to block a looming Jan. 22 deadline for thousands of animal feeding operations (AFOs) to being reporting their hazardous air emissions for the first time, and some lawmakers are looking to include the ban in pending budget legislation.

"NCBA is working with allies on Capitol Hill to introduce and quickly pass legislation that would correct the situation. The group is also working with other agricultural organizations to spotlight the issue and build support for a legislative fix," it says in a Jan. 16 statement. The group estimates the number of farms that would suddenly have to report their emissions at up to 200,000 if lawmakers fail to block next week's reporting duty.

"Unless this ridiculous situation is fixed, agricultural producers will soon have their operations treated like toxic Superfund sites," NCBA President Craig Uden said in the statement.

Livestock groups including NCBA have warned that in the absence of commonly accepted methods to estimate AFO emissions, the reporting requirement may be impossible to meet. Also, they are concerned that the Coast Guard, which will receive the reports, is ill-equipped to handle an influx of reports and may be overwhelmed.

Under an April ruling by the U.S. Court of Appeals for the District of Columbia Circuit in Waterkeeper Alliance, et al. v. EPA, thousands of smaller AFOs previously exempted from reporting by EPA must begin reporting their emissions under

the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) Jan. 22. The court has already at EPA's urging delayed issuance of its mandate several times while the agency works to provide farms with methods to estimate and report their emissions, but has set Jan. 22 as the final deadline.

Once the court's mandate issues, AFOs will immediately be required to report their emissions of substances such as ammonia and hydrogen sulfide, if they exceed the federal reporting threshold of 100 pounds per day, to the Coast Guard's National Response Center. EPA in the fall issued "interim" guidance on how farms can achieve this, and the agency continues to work on methods for reporting.

Although the court's ruling also vacated EPA's exemption of smaller AFOs from reporting to state and local first responders under the Emergency Planning and Community Right-To-Know Act (EPCRA), EPA in its guidance said such EPCRA reporting will not be necessary. In a January fact sheet on reporting requirements, EPA confirms this interpretation of EPCRA, which holds that "routine agricultural operations" are exempt from reporting under that law.

ECBA in its statement says, "neither of these laws was ever intended to govern agricultural operations," noting that this was also the position of the Obama administration.

Emissions Reporting

Environmental groups that won the Waterkeeper case sought a "clarification" of the court's ruling that would preclude EPA's exemption of farms from EPCRA reporting, but the court Dec. 18 declined to do so.

In the fact sheet, EPA says, "EPA is working on developing methodologies to estimate emissions from a wide variety of operations and thus better inform emission estimates from animal waste. However, that work will not be completed prior to the Court's mandate that farms report."

The agency in the document outlines its "streamlined" option for continuous emissions reporting from farms that do not have the "episodic" releases of hazardous substances typically associated with industrial sites reporting under CERCLA or EPCRA.

EPA does not require farms to measure emissions, or to reduce them. Initial reports can be conducted using EPA's estimation methodology, or using "past release data; engineering estimates; your knowledge of the facility's operations and release history; or your best professional judgment," EPA says. Farms must review their reporting once per year, and also if they substantially increase emissions.

NCBA's campaign comes as a bipartisan group of lawmakers is urging House leaders to preserve an amendment that was attached to the lower chamber's fiscal year 2018 spending bill for EPA and other agencies that would block the AFO reporting mandate.

In a Jan. 9 letter to House Speaker Paul Ryan (R-WI) and Minority Leader Nancy Pelosi (D-CA), 87 House members led by Rep. Billy Long (R-MO) and Jim Costa (D-CA) urge continued support for Long's amendment to the House spending bill, H.R. 3354, when the leaders negotiate a spending bill to fund the government for the rest of the fiscal year. The Long amendment was approved in the House-passed version of the bill, but its fate is now uncertain.

Congressional budget negotiations with the Senate are ongoing, with another stop-gap funding measure possible to avoid a government shutdown if comprehensive funding legislation cannot be agreed to by Jan. 19. -- Stuart Parker (sparker@iwpnews.com)

Patty Gioffre
US EPA/OLEM/OEM
202-564-1972
202-748-7139 (cell)

Follow OLEM on Twitter @EPALand

From: InsideEPA.com [mailto:insideepa-alerts@iwpnews.com]
Sent: Thursday, January 18, 2018 6:49 AM
To: Gioffre, Patricia <Gioffre.Patricia@epa.gov>
Subject: The Morning Headlines from InsideEPA.com -- January 18, 2018

REDEFINING EPA: Overhauling an agency and its mission -- Complete coverage

January 18, 2018

Latest News

Budget Gridlock Renews Talk Of Mostly Flat EPA FY18 Funding Scenario

The ongoing federal budget stalemate that has left EPA and other agencies without final spending plans more than 100 days into fiscal year 2018 is reviving talk of a seemingly unlikely scenario in which lawmakers approve

a year-long continuing resolution (CR) that only slightly tweaks current EPA funding levels, allowing it to avoid the steepest cuts to many programs.

EPA Pushes Redevelopment At Superfund Sites, Sparking Industry Concern

EPA has released an initial list of 31 Superfund sites at which the agency plans to promote reuse opportunities for developers and businesses, an effort that may be aimed at overcoming difficulties the agency has previously faced getting cleanup sites "ready for anticipated use" due in part to difficulties implementing institutional controls.

Cattlemen Launch Drive To Block Looming AFO Emissions Reporting Duty

The National Cattlemen's Beef Association (NCBA) is waging a last-minute push for Congress to block a looming Jan. 22 deadline for thousands of animal feeding operations (AFOs) to being reporting their hazardous air emissions for the first time, and some lawmakers are looking to include the ban in pending budget legislation.

Industry Unnerved By Pruitt's Push For Excavation At Some Superfund Sites

EPA Administrator Scott Pruitt's close oversight of high-profile Superfund cleanup decisions, as well as strict remedies he has supported for some sites, is drawing concern among potentially responsible parties (PRPs) that the administrator is signaling plans to embrace costlier excavation remedies at some sites.

PRPs Urge EPA To Avoid Broad Excavation At West Lake Landfill Site

Potentially responsible parties (PRPs) at the West Lake Landfill site in Bridgeton, MO, are urging EPA officials to avoid a broad excavation remedy as Administrator Scott Pruitt prepares to announce a cleanup remedy at the high-profile Superfund site.

Daily Feed

EPA defends 'Top 21' Superfund site list in response to GOP concerns

A top EPA waste official defended the list of sites the agency has identified for priority oversight by Administrator Scott Pruitt but sidestepped lawmakers concerns over lack of new funds.

Environmentalists seek end to U.S. biodiesel mandates

Backed by former Rep. Henry Waxman (D-CA), environmentalists are calling for an end to U.S. biodiesel mandates, blaming the fuel for environmental damage.

Sierra Club suit faults EPA air monitoring rule's public notice limits

The environmental group says an Obama-era rule easing states' burdens in establishing air monitoring networks unlawfully limits opportunities for public comment.

Ewire: Trump officials, California renew talks on vehicle GHGs

In today's Ewire: California officials are slated to travel to Washington this month to talk with the Trump adminiatrion about possible changes to vehicle greenhouse gas and fuel economy standards. Plus, EPA readies more buyouts and South Dakota threatens to return delegated authorities.

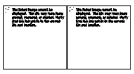
NAS prepares to examine Legionella in drinking water systems

The National Academy of Sciences, through an EPA-sponsored study, is preparing to review the state of the science on controlling and preventing *Legionella* in water systems.

Read all the latest EPA news, analysis and documents →

EDITORIAL CONTACT
703-562-8763
E-MAIL →

CUSTOMER SERVICE
703-416-8505
E-MAIL →



Site Licenses Available

Want to share access to InsideEPA.com with your colleagues? We have economical site license packages available to fit any size organization, from a few people at one location to company-wide access. For more information on how you can get greater access to InsideEPA.com for your office, contact our Online Customer Service department at 703-416-8505 or iepa@iwpnews.com.

Please do not respond to this e-mail, as it was sent from an unmonitored mailbox. If you have a customer service inquiry, please contact us at iepa@iwpnews.com .

UNSUBSCRIBE If you no longer wish to receive these messages, you can unsubscribe by clicking here.

Mailing address: 1919 South Eads Street, Suite 201, Arlington VA 22202

Telephone: 703-416-8500 or 1-800-424-9068

Copyright © 2018 Inside Washington Publishers. All rights reserved About Us | Privacy Policy

Message

From: Franklin, Kathy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=9926DB767E80460A918921C8D2F81576-KAFRANKL]
Sent: 10/12/2017 7:55:04 PM
To: Gioffre, Patricia [Gioffre.Patricia@epa.gov]
Subject: Re: Section 304 Ag QA and CERCLA reporting guidance
Attachments: an_advisory_6-5-15 final.pdf

the disclaimer language attached to EPA guidance is like the footnote 1 in the AN guidance attached.

Kathy Franklin || Office of Emergency Management ||
US Environmental Protection Agency|| MC:5104-A ||
1200 Pennsylvania Avenue NW, Washington, DC 20460
202-564-7987 office|| franklin.kathy@epa.gov

From: Franklin, Kathy
Sent: Thursday, October 12, 2017 3:27:39 PM
To: Gioffre, Patricia
Subject: Re: Section 304 Ag QA and CERCLA reporting guidance

Deliberative Process / Ex. 5

Kathy Franklin || Office of Emergency Management ||
US Environmental Protection Agency|| MC:5104-A ||
1200 Pennsylvania Avenue NW, Washington, DC 20460
202-564-7987 office|| franklin.kathy@epa.gov

From: Franklin, Kathy
Sent: Thursday, October 12, 2017 3:18:48 PM
To: Gioffre, Patricia
Subject: Re: Section 304 Ag QA and CERCLA reporting guidance

I see Bill attached the QA for the 3:30 meeting.

Kathy Franklin || Office of Emergency Management ||
US Environmental Protection Agency|| MC:5104-A ||
1200 Pennsylvania Avenue NW, Washington, DC 20460
202-564-7987 office|| franklin.kathy@epa.gov

From: Franklin, Kathy
Sent: Thursday, October 12, 2017 3:17:09 PM
To: Gioffre, Patricia
Subject: Section 304 Ag QA and CERCLA reporting guidance

Do you have the latest versions of the Section 304 QA and CERCLA 103 farm guidance to follow along for discussion at the next two meetings? I am not sure of what is the latest.

Kathy Franklin || Office of Emergency Management ||

US Environmental Protection Agency|| MC:5104-A ||
1200 Pennsylvania Avenue NW, Washington, DC 20460
202-564-7987 office|| franklin.kathy@epa.gov

Message

From: Gioffre, Patricia [Gioffre.Patricia@epa.gov]
Sent: 10/2/2017 1:20:13 PM
To: Galloway, Carol [Galloway.Carol@epa.gov]; Jennings, Kim [Jennings.Kim@epa.gov]
Subject: RE: Info on the CERCLA/EPCRA vacatur of the reporting exemption for CAFOs

Yes, I am happy to participate. Please send me the conference call information.

Patty Gioffre
US EPA/OLEM/OEM
202-564-1972
202-748-7139 (cell)

Follow OLEM on Twitter @EPALand

From: Galloway, Carol
Sent: Friday, September 29, 2017 11:19 AM
To: Jennings, Kim <Jennings.Kim@epa.gov>; Gioffre, Patricia <Gioffre.Patricia@epa.gov>
Subject: FW: Info on the CERCLA/EPCRA vacatur of the reporting exemption for CAFOs

Thanks very much! Patty, please let me know if you are available and if you need any more information. Thanks.

Carol Galloway
913-551-5092

Pesticides, Waste and Toxics Branch
Monitoring, Assistance and Media Programs Division
Office of Compliance
CAFO Coordinator
Tribal Pesticides
Worker Safety
Certification and Training
Pollinator Protection

EPA National Ag Center
http://www.epa.gov/agriculture

Mailing address:
EPA R7 STC/Ag Center
300 Minnesota Ave.
Kansas City, KS 66101

From: Jennings, Kim
Sent: Friday, September 29, 2017 9:23 AM
To: Galloway, Carol <Galloway.Carol@epa.gov>

Cc: Gioffre, Patricia <Gioffre.Patricia@epa.gov>
Subject: RE: Info on the CERCLA/EPCRA vacatur of the reporting exemption for CAFOs

Hi Carol,

Thanks for the invitation. I am out of the office on vacation that day but I have included Patty Gioffre in this email who is the Acting Deputy Division Director to see if she is available to be on the call.

Thanks,
Kim

Kim Jennings
Division Director || Regulations Implementation Division
U.S. Environmental Protection Agency || Office of Emergency Management
E-mail: jennings.kim@epa.gov || **Desk:** (202) 564-7998 ||

From: Galloway, Carol
Sent: Thursday, September 28, 2017 2:44 PM
To: Jennings, Kim <Jennings.Kim@epa.gov>
Subject: FW: Info on the CERCLA/EPCRA vacatur of the reporting exemption for CAFOs

Kim,

I'm the NPDES CAFO Compliance Coordinator in the Office of Compliance and with the Office of Wastewater Management, we have a monthly conference call with Regional NPDES CAFO Coordinators. Would you or someone from your group be available to give us an update on the vacatur of the reporting exemption on our next call, October 12, 2:00 eastern?
The call is internal with EPA folks from HQ and the Regions. Thanks!

Carol Galloway
913-551-5092

Pesticides, Waste and Toxics Branch
Monitoring, Assistance and Media Programs Division
Office of Compliance
CAFO Coordinator
Tribal Pesticides
Worker Safety
Certification and Training
Pollinator Protection

EPA National Ag Center
http://www.epa.gov/agriculture

Mailing address:
EPA R7 STC/Ag Center
300 Minnesota Ave.
Kansas City, KS 66101

From: Jennings, Kim
Sent: Thursday, September 28, 2017 12:52 PM

To: Dunkins, Robin <Dunkins.Robin@epa.gov>; Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Swenson, Erik <Swenson.Erik@epa.gov>; Jacob, Sicy <Jacob.Sicy@epa.gov>; Bosecker, Elizabeth <Bosecker.Elizabeth@epa.gov>; Salo, Earl <Salo.Earl@epa.gov>; Franklin, Kathy <Franklin.Kathy@epa.gov>; Hull, George <Hull.George@epa.gov>
Cc: Sullivan, Tim <Sullivan.Tim@epa.gov>; Schrock, Bill <Schrock.Bill@epa.gov>; Costa, Allison <Costa.Allison@epa.gov>; Mills, Kathy <Mills.Kathy@epa.gov>; Ashley, Jackie <Ashley.Jackie@epa.gov>; Bonnelycke, Nina <Bonnelycke.Nina@epa.gov>

Hi all,

Just wanted to let you know that we posted an announcement on the website that the rule was vacated, we got an extension until November 14, and we are working in guidance.

See link: https://www.epa.gov/epcra/cercla-and-epcra-reporting-requirements-air-releases-hazardous-substances-animal-waste-farms

Thanks,
Kim

Kim Jennings
Division Director || Regulations Implementation Division
U.S. Environmental Protection Agency || Office of Emergency Management
E-mail: jennings.kim@epa.gov || **Desk:** (202) 564-7998 ||

Message

From: Molloy, Jennifer [molloy.jennifer@epa.gov]
Sent: 1/18/2018 6:37:09 PM
To: Subramanian, Hema [Subramanian.Hema@epa.gov]; Thomas, Latosha [Thomas.Latosha@epa.gov]; Jennings, Kim [Jennings.Kim@epa.gov]; Gioffre, Patricia [Gioffre.Patricia@epa.gov]
CC: Nitsch, Chad [Nitsch.Chad@epa.gov]; Dunkins, Robin [Dunkins.Robin@epa.gov]; Galloway, Carol [Galloway.Carol@epa.gov]; Sands, Jeffrey [sands.jeffrey@epa.gov]
Subject: RE: EPCRA/CERCLA outreach with ACWA

I will forward the meeting to scheduler to everyone on this e-mail. Sean (at ACWA) is putting together the agenda and we agreed this is the primary agenda topic. Everything else falls into the 2 minute update realm. I'll also forward Sean the website link below so he can include it in anything he distributes prior to the call.

Jenny Molloy
U.S. EPA
Water Permits Division
202.564.1939
molloy.jennifer@epa.gov

From: Subramanian, Hema
Sent: Thursday, January 18, 2018 1:26 PM
To: Thomas, Latosha <Thomas.Latosha@epa.gov>; Jennings, Kim <Jennings.Kim@epa.gov>; Gioffre, Patricia <Gioffre.Patricia@epa.gov>
Cc: Molloy, Jennifer <molloy.jennifer@epa.gov>; Nitsch, Chad <Nitsch.Chad@epa.gov>; Dunkins, Robin <Dunkins.Robin@epa.gov>; Galloway, Carol <Galloway.Carol@epa.gov>; Sands, Jeffrey <sands.jeffrey@epa.gov>
Subject: RE: EPCRA/CERCLA outreach with ACWA

Jenny,

Patty Gioffre and Kim Jennings can join the ACWA call next Wednesday, if they can be added to the calendar invite. The agenda can list them as speakers, with their website for context: www.epa.gov/animalwaste.

They will jump off the call once their topic is done, but Sean mentioned that many water agencies have been getting questions on this, so it's possible this topic could take up a lot of the call.

Thank you,
---Hema.

Hema Subramanian
Special Assistant to the Senior Advisor for Agriculture (detail)
Office of the Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460
Phone (202) 564-5041
subramanian.hema@epa.gov

From: Subramanian, Hema
Sent: Wednesday, January 17, 2018 9:11 AM
To: Latosha Thomas (Thomas.Latosha@epa.gov) <Thomas.Latosha@epa.gov>; Jennings, Kim <Jennings.Kim@epa.gov>; Gioffre, Patricia <Gioffre.Patricia@epa.gov>

Cc: Molloy, Jennifer <molloy.jennifer@epa.gov>; Nitsch, Chad <Nitsch.Chad@epa.gov>; Dunkins, Robin <Dunkins.Robin@epa.gov>; Carol Galloway <Galloway.Carol@epa.gov>; Sands, Jeffrey <sands.jeffrey@epa.gov>
Subject: EPCRA/CERCLA outreach with ACWA

Hello all,

My home branch (Water CAFO team) has a standing bimonthly call with the Association of Clean Water Administrators next Wednesday at 2-3 pm EST, which is coordinated by Sean Rolland and Jenny Molly (cc'ed). This call is attended by many of the state water CAFO/AFO and EPA Regional water CAFO/AFO staff – who may end up fielding calls as points of contact for farmers affected by the EPCRA/CERCLA contacts.

They have room on the agenda for the call next week if your team would like to join as guests at 2 pm to discuss the new requirements and outreach. If not, Sean can help you set up a separate call on the EPCRA/CERCLA topic.

Thank you, and hope this helps!
---Hema.

Hema Subramanian
Special Assistant to the Senior Advisor for Agriculture (detail)
Office of the Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460
Phone (202) 564-5041
subramanian.hema@epa.gov

Message

From: Paola Kleimann [paola@avanticorporation.com]
Sent: 10/27/2017 3:39:56 PM
To: Mortensen, Ginah [mortensen.ginah@epa.gov]; Charles Herrmann [cherrmann@avanticorporation.com]; Emily Gorman [emily@avanticorporation.com]
CC: Galloway, Carol [Galloway.Carol@epa.gov]
Subject: RE: EPA Releases Guidance on Reporting Air Emissions of Hazardous Substances from Animal Waste at Farms
Attachments: statute_CERCLA.PNG; statute_EPCRA.PNG; Farm Activity_Air Emissions-Releases.PNG

Hello,

We updated both pages and they are ready for publishing. Please see the attached images to see what we updated/added.

Thank you!
Paola

From: Mortensen, Ginah [mailto:mortensen.ginah@epa.gov]
Sent: Thursday, October 26, 2017 3:05 PM
To: Paola Kleimann <paola@avanticorporation.com>; Charles Herrmann <cherrmann@avanticorporation.com>; Emily Gorman <emily@avanticorporation.com>
Cc: Galloway, Carol <Galloway.Carol@epa.gov>
Subject: RE: EPA Releases Guidance on Reporting Air Emissions of Hazardous Substances from Animal Waste at Farms

Great! Thank you.

We also need to update the information on our laws and regs pages – both the by law and by the activity pages.

Thanks!
Ginah

Ginah Mortensen
913-551-5028

Attorney Advisor
Compliance Policy Staff
Monitoring, Assistance, and Media Programs Division
Office of Compliance

Director, EPA National Agriculture Center
1-888-663-2155
http://www.epa.gov/agriculture

To receive notifications about updates to the EPA agriculture website and EPA news items of interest to the ag community, subscribe to the Ag Center's News Service by sending a blank email to this address:
join-agcenter@lists.epa.gov

From: Paola Kleimann [mailto:paola@avanticorporation.com]
Sent: Thursday, October 26, 2017 1:52 PM
To: Mortensen, Ginah <mortensen.ginah@epa.gov>; Charles Herrmann <cherrmann@avanticorporation.com>; Emily

Gorman <emily@avanticorporation.com>
Cc: Galloway, Carol <Galloway.Carol@epa.gov>
Subject: Re: EPA Releases Guidance on Reporting Air Emissions of Hazardous Substances from Animal Waste at Farms

Hello,

The news release has been added to both pages.

Thank you!
Paola

From: Mortensen, Ginah <mortensen.ginah@epa.gov>
Sent: Thursday, October 26, 2017 1:15:34 PM
To: Charles Herrmann; Emily Gorman; Paola Kleimann
Cc: Galloway, Carol
Subject: FW: EPA Releases Guidance on Reporting Air Emissions of Hazardous Substances from Animal Waste at Farms

Hello Avanti,

Please add this news release to our Newsroom page and to the homepage side bar as soon as possible.

Thanks!
Ginah

Ginah Mortensen
913-551-5028

Attorney Advisor
Compliance Policy Staff
Monitoring, Assistance, and Media Programs Division
Office of Compliance

Director, EPA National Agriculture Center
1-888-663-2155
http://www.epa.gov/agriculture

To receive notifications about updates to the EPA agriculture website and EPA news items of interest to the ag community, subscribe to the Ag Center's News Service by sending a blank email to this address:
join-agcenter@lists.epa.gov

From: Hull, George
Sent: Thursday, October 26, 2017 11:49 AM
To: Mortensen, Ginah <mortensen.ginah@epa.gov>
Subject: FW: EPA Releases Guidance on Reporting Air Emissions of Hazardous Substances from Animal Waste at Farms

Ginah,

Per my phone message, here is the Press Release on reporting of air emissions of hazardous substances from animal waste. This was sent out to both ag publications and our larger press list, this morning. It should also be posted in the EPA Newsroom web page. - George

CONTACT: press@epa.gov

EPA Releases Guidance on Reporting Air Emissions of Hazardous Substances from Animal Waste at Farms

WASHINGTON (October 25, 2017) — Today, EPA is releasing guidance to assist farmers in reporting air releases of hazardous substances from animal waste at farms. EPA is making this information available

to provide time for farmers to review and prepare for the reporting deadline, currently set for November 15, 2017

"EPA is working diligently to address undue regulatory burden on American farmers," **said Administrator Scott Pruitt.** "While we continue to examine our options for reporting requirements for emissions from animal waste, EPA's guidance is designed to help farmers comply with the current requirements."

On December 18, 2008, EPA published a final rule that exempted farms from reporting air releases of hazardous substances from animal waste. On April 11, 2017, the DC Circuit Court vacated this final rule. In response to a request from EPA, the DC Circuit Court extended the date by which farms must begin reporting these releases to November 15, 2017. Unless the court further delays this date, all farms (including those previously exempted) that have releases of hazardous substances to air from animal wastes equal to or greater than the reportable quantities for those hazardous substances within any 24-hour period must provide notification of such releases.

The EPA guidance information includes links to resources that farmers can use to calculate emissions tailored to specific species of livestock. To view EPA's guidance and Frequently Asked Questions on reporting air emissions from animal waste: https://www.epa.gov/epcra/cercla-and-epcra-reporting-requirements-air-releases-hazardous-substances-animal-waste-farms.

EPA will revise this guidance, as necessary, to reflect additional information to assist farm owners and operators to meet reporting obligations. Interested parties may submit comments or suggestions by November 24, 2017.

Message

From: Galloway, Carol [Galloway.Carol@epa.gov]
Sent: 1/16/2018 11:31:22 PM
To: Jill Heemstra [jill.heemstra@unl.edu]; 'lpelc@extension.org' [lpelc@extension.org]
Subject: Correction: EPA factsheets on CERCLA-EPCRA reporting for animal waste

My apologies- There was a typo in the website address below. The correct link is www.epa.gov/animalwaste

>
Subject: EPA factsheets on CERCLA-EPCRA reporting for animal waste

Attached are factsheets (in English and Spanish) on the CERCLA/EPCRA reporting requirements for air releases of hazardous substances from animal waste. These are final and ready to go public. Please distribute to your networks for outreach. Here is some stock language (with contact info) that can be inserted into emails:

> Due to a recent court decision, farms (including ranches, livestock operations and/or animal operations) will soon be required to report hazardous substance air releases from animal waste under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) when they release hazardous substances from animal waste in amounts greater than/equal to their reportable quantity within a 24-hour period. The purpose of these fact sheets and FAQs is to provide an overview and basic information for those who are impacted by this new requirement.
>
> If you have any questions, please contact the Environmental Protection Agency via the information provided below:
>
> - Visit www.epa.gov/animalwaste for guidance and access to the continuous release reporting forms
> - Email comments or suggestions on guidance materials to: CERCLA103.guidance@epa.gov
> - Regional Contacts: www.epa.gov/epcra/cr-erns-regional-contacts
> - Call with questions: 1-800-424-9346

The factsheets are also available on the CERCLA/EPCRA website. A link is available at the top of the page: www.eap.gov/animalwaste or you can link to the factsheets directly at https://www.epa.gov/epcra/fact-sheet-cercla-and-epcra-reporting-requirements-air-releases-hazardous-substances-animal.

A public service announcement (PSA) is expected to be released to ag radio networks later today, and an online toolkit with other outreach materials will also be out soon. For the time being, feel free to share this factsheet with any contacts who may field questions from farmers once the PSA airs.

Let me know if you have any questions/concerns.
Thank you!

Patty Gioffre
USEPA (OLEM/OEM)
1200 Pennsylvania Ave. NW (5104A)
Washington, DC 20460
202-564-1972
202-748-7139 (cell)

--
You received this message because you are subscribed to the Google Groups "Livestock and Poultry Environmental Learning Centers" group.
To post to this group, send email to lpelc@extension.org.
Visit this group at https://groups.google.com/a/extension.org/group/lpelc/.
To view this discussion on the web visit https://groups.google.com/a/extension.org/d/msgid/lpelc/DM5PR09MB1418E4FC14146B415BF6D82085EA0%40DM5PR09MB1418.namprd09.prod.outlook.com.

Message

From: Galloway, Carol [Galloway.Carol@epa.gov]
Sent: 1/16/2018 9:26:09 PM
To: Jill Heemstra [jill.heemstra@unl.edu]; 'lpelc@extension.org' [lpelc@extension.org]
Subject: Release of CERCLA/EPCRA reporting fact sheets
Attachments: CERCLA EPCRA Factsheet FINAL (SPANISH).pdf; CERCLA EPCRA Factsheet FINAL.pdf

Attached are factsheets (in English and Spanish) from EPA on the CERCLA/EPCRA reporting requirements for air releases of hazardous substances from animal waste. Please distribute to your networks for outreach.

Due to a recent court decision, farms (including ranches, livestock operations and/or animal operations) will soon be required to report hazardous substance air releases from animal waste under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) when they release hazardous substances from animal waste in amounts greater than/equal to their reportable quantity within a 24-hour period. The purpose of these fact sheets and FAQs is to provide an overview and basic information for those who are impacted by this new requirement.

If you have any questions, please contact the Environmental Protection Agency via the information provided below:

- Visit www.epa.gov/animalwaste for guidance and access to the continuous release reporting forms
- Email comments or suggestions on guidance materials to: CERCLA103.guidance@epa.gov
- Regional Contacts: www.epa.gov/epcra/cr-erns-regional-contacts
- Call with questions: 1-800-424-9346

The factsheets are also available on the CERCLA/EPCRA website. A link is available at the top of the page: www.eap.gov/animalwaste or you can link to the factsheets directly at https://www.epa.gov/epcra/fact-sheet-cercla-and-epcra-reporting-requirements-air-releases-hazardous-substances-animal.

--
You received this message because you are subscribed to the Google Groups "Livestock and Poultry Environmental Learning Centers" group.
To post to this group, send email to lpelc@extension.org.
Visit this group at https://groups.google.com/a/extension.org/group/lpelc/.
To view this discussion on the web visit https://groups.google.com/a/extension.org/d/msgid/lpelc/DM5PR09MB141851A45E01F8BFD3953EFB85EA0%40DM5PR09MB1418.namprd09.prod.outlook.com.

Message

From: Mortensen, Ginah [mortensen.ginah@epa.gov]
Sent: 10/26/2017 5:13:13 PM
To: Hull, George [Hull.George@epa.gov]
CC: Galloway, Carol [Galloway.Carol@epa.gov]
Subject: RE: EPA Releases Guidance on Reporting Air Emissions of Hazardous Substances from Animal Waste at Farms

Hello George,

Thank you for the information. We'll be sure to post it on the web site.

Thanks!
Ginah

Ginah Mortensen
913-551-5028

Attorney Advisor
Compliance Policy Staff
Monitoring, Assistance, and Media Programs Division
Office of Compliance

Director, EPA National Agriculture Center
1-888-663-2155
http://www.epa.gov/agriculture

To receive notifications about updates to the EPA agriculture website and EPA news items of interest to the ag community, subscribe to the Ag Center's News Service by sending a blank email to this address:
join-agcenter@lists.epa.gov

From: Hull, George
Sent: Thursday, October 26, 2017 11:49 AM
To: Mortensen, Ginah <mortensen.ginah@epa.gov>
Subject: FW: EPA Releases Guidance on Reporting Air Emissions of Hazardous Substances from Animal Waste at Farms

Ginah,

Per my phone message, here is the Press Release on reporting of air emissions of hazardous substances from animal waste. This was sent out to both ag publications and our larger press list, this morning. It should also be posted in the EPA Newsroom web page. - George

U.S. ENVIRONMENTAL PROTECTION AGENCY
NEWS RELEASE
WWW.EPA.GOV/NEWSROOM

CONTACT: press@epa.gov

EPA Releases Guidance on Reporting Air Emissions of Hazardous Substances from Animal Waste at Farms

WASHINGTON (October 25, 2017) — Today, EPA is releasing guidance to assist farmers in reporting air releases of hazardous substances from animal waste at farms. EPA is making this information available to provide time for farmers to review and prepare for the reporting deadline, currently set for November 15, 2017

"EPA is working diligently to address undue regulatory burden on American farmers," **said Administrator Scott Pruitt**. "While we continue to examine our options for reporting requirements for emissions from animal waste, EPA's guidance is designed to help farmers comply with the current requirements."

On December 18, 2008, EPA published a final rule that exempted farms from reporting air releases of hazardous substances from animal waste. On April 11, 2017, the DC Circuit Court vacated this final rule. In response to a request from EPA, the DC Circuit Court extended the date by which farms must begin reporting these releases to November 15, 2017. Unless the court further delays this date, all farms (including those previously exempted) that have releases of hazardous substances to air from animal wastes equal to or greater than the reportable quantities for those hazardous substances within any 24-hour period must provide notification of such releases.

The EPA guidance information includes links to resources that farmers can use to calculate emissions tailored to specific species of livestock. To view EPA's guidance and Frequently Asked Questions on reporting air emissions from animal waste: https://www.epa.gov/epcra/cercla-and-epcra-reporting-requirements-air-releases-hazardous-substances-animal-waste-farms.

EPA will revise this guidance, as necessary, to reflect additional information to assist farm owners and operators to meet reporting obligations. Interested parties may submit comments or suggestions by November 24, 2017.

Visit the EPA's Newsroom

Message

From: Mortensen, Ginah [mortensen.ginah@epa.gov]
Sent: 10/26/2017 2:06:59 PM
To: Carbone, Chad [Carbone.Chad@epa.gov]
CC: Galloway, Carol [Galloway.Carol@epa.gov]
Subject: Thanks! {end} RE: CERCLA and EPCRA Ag Guidance is now available

Ginah Mortensen
913-551-5028

Attorney Advisor
Compliance Policy Staff
Monitoring, Assistance, and Media Programs Division
Office of Compliance

Director, EPA National Agriculture Center
1-888-663-2155
http://www.epa.gov/agriculture

To receive notifications about updates to the EPA agriculture website and EPA news items of interest to the ag community, subscribe to the Ag Center's News Service by sending a blank email to this address:
join-agcenter@lists.epa.gov

From: Carbone, Chad
Sent: Thursday, October 26, 2017 9:02 AM
To: Vizard, Elizabeth <Vizard.Elizabeth@epa.gov>; Lischinsky, Robert <Lischinsky.Robert@epa.gov>; VanTil, Barbara <vantil.barbara@epa.gov>
Cc: Messina, Edward <Messina.Edward@epa.gov>; Duffy, Rick <Duffy.Rick@epa.gov>; Segall, Martha <Segall.Martha@epa.gov>; Mortensen, Ginah <mortensen.ginah@epa.gov>
Subject: FW: CERCLA and EPCRA Ag Guidance is now available

BCs,

Please see below as it may relate to your program areas.

From: Mortensen, Ginah
Sent: Thursday, October 26, 2017 9:29 AM
To: Carbone, Chad <Carbone.Chad@epa.gov>
Cc: Galloway, Carol <Galloway.Carol@epa.gov>
Subject: FW: CERCLA and EPCRA Ag Guidance is now available

Hello Chad,

MAMPD management and others in MAMPD (Air Branch, PWTB, others?) may be interested in the email below.

Thanks!
Ginah

Ginah Mortensen
913-551-5028

Attorney Advisor
Compliance Policy Staff
Monitoring, Assistance, and Media Programs Division
Office of Compliance

Director, EPA National Agriculture Center
1-888-663-2155
http://www.epa.gov/agriculture

To receive notifications about updates to the EPA agriculture website and EPA news items of interest to the ag community, subscribe to the Ag Center's News Service by sending a blank email to this address: join-agcenter@lists.epa.gov

---

From: Gioffre, Patricia
Sent: Wednesday, October 25, 2017 8:35 PM
To: Dunkins, Robin <Dunkins.Robin@epa.gov>; Costa, Allison <Costa.Allison@epa.gov>; Schrock, Bill <Schrock.Bill@epa.gov>; Subramanian, Hema <Subramanian.Hema@epa.gov>; Molloy, Jennifer <molloy.jennifer@epa.gov>; Brennan, Ross <Brennan.Ross@epa.gov>; Bonnelycke, Nina <Bonnelycke.Nina@epa.gov>; Mortensen, Ginah <mortensen.ginah@epa.gov>
Cc: Jennings, Kim <Jennings.Kim@epa.gov>; Jacob, Sicy <Jacob.Sicy@epa.gov>; Ziegel, Dean <Ziegel.Dean@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>; Haas, Craig <Haas.Craig@epa.gov>; OLEM OEM Managers <OLEMOEMManagers@epa.gov>; Cheatham, Reggie <cheatham.reggie@epa.gov>; Clark, Becki <Clark.Becki@epa.gov>; Indermark, Michele <Indermark.Michele@epa.gov>
Subject: CERCLA and EPCRA Ag Guidance is now available

I am pleased to announce that the CERCLA/ EPCRA ag guidance is live on the EPA website. The guidance is intended to assist farmers in reporting air releases of hazardous substances from animal waste at farms. EPA is making this information available to provide time for farmers to review and prepare for the reporting obligation, which could become effective as early as November 15, 2017.

> On December 18, 2008, EPA published a final rule that exempted certain farms from reporting air releases of hazardous substances from animal waste. On April 11, 2017, the DC Circuit Court vacated this final rule. In response to a request from EPA, the DC Circuit Court extended the date on which its ruling would become effective to November 15, 2017. Unless the court further extends this date, farms (including those previously exempted by EPA's rule) that release hazardous substances to the air from animal wastes equal to or greater than the reportable quantities for those hazardous substances within any 24-hour period must comply with applicable statutory reporting requirements.
>
> To view EPA's guidance and Frequently Asked Questions on reporting air emissions from animal waste: https://www.epa.gov/epcra/cercla-and-epcra-reporting-requirements-air-releases-hazardous-substances-animal-waste-farms
>
> EPA will revise this guidance, as necessary, to reflect additional information to assist farm owners and operators to meet reporting obligations. Interested parties may submit comments or suggestions by November 24, 2017.

Please share this information with your interested stakeholders and regional contacts.

Best wishes!

Patty Gioffre
Acting Deputy Division Director
USEPA (OLEM/OEM/RID)
1200 Pennsylvania Ave. NW (5104A)
Washington, DC 20460
202-564-1972
202-748-7139 (cell)

Message

From: Mortensen, Ginah [mortensen.ginah@epa.gov]
Sent: 10/20/2017 6:14:30 PM
To: Emily Gorman [emily@avanticorporation.com]
CC: Galloway, Carol [Galloway.Carol@epa.gov]; Paola Kleimann [paola@avanticorporation.com]; Charles Herrmann [cherrmann@avanticorporation.com]
Subject: RE: Smart Sectors program; other items

Great. I'll take a look.

Thanks!

Ginah Mortensen
913-551-5028

Attorney Advisor
Compliance Policy Staff
Monitoring, Assistance, and Media Programs Division
Office of Compliance

Director, EPA National Agriculture Center
1-888-663-2155
http://www.epa.gov/agriculture

To receive notifications about updates to the EPA agriculture website and EPA news items of interest to the ag community, subscribe to the Ag Center's News Service by sending a blank email to this address:
join-agcenter@lists.epa.gov

From: Emily Gorman [mailto:emily@avanticorporation.com]
Sent: Friday, October 20, 2017 12:51 PM
To: Mortensen, Ginah <mortensen.ginah@epa.gov>
Cc: Galloway, Carol <Galloway.Carol@epa.gov>; Paola Kleimann <paola@avanticorporation.com>; Charles Herrmann <cherrmann@avanticorporation.com>
Subject: RE: Smart Sectors program; other items

Hi Ginah,

We have made the following updates and the pages to review and publish are found below:

- Added Smart Sectors link and description to the Partnerships page
  - https://wcms.epa.gov/node/106943/revisions/598043/view
- Updated CERLA/EPCRA narrative and added Air Quality Conservation Measures Reference Guides under new Conservation Practices section to the Air and Ag page
  - https://wcms.epa.gov/node/104665/revisions/598111/view
- Crops page: Added Air Quality Conservation Measures Reference Guide under new Conservation Practices section
  - https://wcms.epa.gov/node/106939/revisions/598415/view
- Animal Production page: Added Air Quality Conservation Measures Reference Guide under new Conservation Practices section
  - https://wcms.epa.gov/node/82273/revisions/598443/view

- We have also added these topics to the A-Z topics list for your review to publish. We will make another draft after it is published to continue to check the A-Z topics list, but at least the new topics will be added.
    - https://wcms.epa.gov/node/102189/revisions/598049/view

Please, let us know if you have any questions or edits.

Thanks!
Emily

From: Emily Gorman
Sent: Thursday, October 19, 2017 5:39 PM
To: 'Mortensen, Ginah' <mortensen.ginah@epa.gov>; Charles Herrmann <cherrmann@avanticorporation.com>; Paola Kleimann <paola@avanticorporation.com>
Cc: Galloway, Carol <Galloway.Carol@epa.gov>
Subject: RE: Smart Sectors program; other items

Hi Ginah,

Thanks for the clarification! The bold text below seems to be repetitive… Would you agree to remove the strike-through text?

On April 11, 2017, the DC Circuit Court vacated a final rule that EPA published in 2008 exempting farms from reporting air releases of hazardous substances from animal waste under CERCLA and EPCRA.

In response to a request from EPA, the DC Circuit Court extended the date by which farms must begin reporting these releases to November 15, 2017.

~~**EPA is working expeditiously to develop information to assist famers in complying with the reporting requirements.**~~

To assist farmers in meeting reporting requirements, EPA is currently developing guidance. EPA is working expeditiously to have this guidance available to farmers to give them time to review it and comply with the reporting requirements.

Thanks,
Emily

From: Mortensen, Ginah [mailto:mortensen.ginah@epa.gov]
Sent: Thursday, October 19, 2017 4:42 PM
To: Emily Gorman <emily@avanticorporation.com>; Charles Herrmann <cherrmann@avanticorporation.com>; Paola Kleimann <paola@avanticorporation.com>
Cc: Galloway, Carol <Galloway.Carol@epa.gov>
Subject: RE: Smart Sectors program; other items

Hello Emily,

See my answers below in bold and dark blue. Please let me know if you have questions. Carol, if you have any revisions to the CERCLA/EPCRA paragraph, please reply to all.

Thanks!

Ginah Mortensen
913-551-5028

Attorney Advisor
Compliance Policy Staff
Monitoring, Assistance, and Media Programs Division
Office of Compliance

Director, EPA National Agriculture Center
1-888-663-2155
http://www.epa.gov/agriculture

To receive notifications about updates to the EPA agriculture website and EPA news items of interest to the ag community, subscribe to the Ag Center's News Service by sending a blank email to this address:
join-agcenter@lists.epa.gov

From: Emily Gorman [mailto:emily@avanticorporation.com]
Sent: Thursday, October 19, 2017 2:21 PM
To: Mortensen, Ginah <mortensen.ginah@epa.gov>; Charles Herrmann <cherrmann@avanticorporation.com>; Paola Kleimann <paola@avanticorporation.com>
Cc: Galloway, Carol <Galloway.Carol@epa.gov>
Subject: RE: Smart Sectors program; other items

Hi Ginah,

I am going through your requested updates below and have added a couple questions in blue below for clarification:

- On the Ag and Air page, there is a link to the new CERCLA/EPCRA requirement, but we need to update the narrative to reflect the recent changes: https://www.epa.gov/agriculture/agriculture-agriculture-and-air-quality#emissionsagpractices
    - What narrative are you referencing that needs to be updated and where is the updated information? The link above goes to our page for Air Emissions from Agricultural Practices that doesn't reference the CERCLA/EPCRA requirements. CERCLA/EPCRA info is under the "Reporting Requirements for Air Releases from Animal Waste" section.

Near the bottom of the Air Emissions page at the link above is a subsection on Exemptions from Reporting Requirements. From the title of the subsection, delete "Exemptions from" and delete all but the link to the CERCLA and EPCRA Reporting page. I've included language to insert, below. Please let me know if you have questions. Sorry for being so vague in my earlier email.

> ~~**Exemptions from**~~ **Reporting Requirements for Air Releases of Hazardous Substances from Farm Animal Waste**
>
> ~~**EPA has finalized a rule providing a full exemption for reporting air releases of hazardous substances from animal waste at farms to the federal government and a partial exemption of reporting the releases to state and local governments.**~~
>
> ~~**This new rule exempts all farms from reporting air releases under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The new rule requires only large animal feeding operations to report certain types of releases to local and state agencies, as directed by the Emergency Planning and Community Right-to-Know Act (EPCRA). See Press Release for more information.**~~
> **Insert the following:**
> **On April 11, 2017, the DC Circuit Court vacated a final rule that EPA published in 2008 exempting farms from reporting air releases of hazardous substances from animal waste under CERCLA and EPCRA.**
> **In response to a request from EPA, the DC Circuit Court extended the date by which farms must begin reporting these releases to November 15, 2017.**

EPA is working expeditiously to develop information to assist famers in complying with the reporting requirements.
To assist farmers in meeting reporting requirements, EPA is currently developing guidance. EPA is working expeditiously to have this guidance available to farmers to give them time to review it and comply with the reporting requirements.

•CERCLA and EPCRA Reporting Requirements for Air Releases of Hazardous Substances from Animal Waste at Farms ~~– The DC Circuit Court extended the date by which farms must begin reporting air releases of hazardous substances from animal waste to November 15, 2017.~~

- Add "CERCLA and EPCRA Reporting Requirements for Air Releases of Hazardous Substances at Farms" to the A-Z list under Air Emissions from Ag Practices; the A- Z list the link should go to the info on our site
    - Would "CERCLA and EPCRA Reporting Requirements for Air Releases of Hazardous Substances at Farms" be a subtopic of Air Emission of Ag Practices? **Yes, please.** And would this link to the same location as the 3rd bullet item below? **Yes, please. That means there will be two entries on the A – Z list for the same topic, slightly different titles. We think there may be quite a bit of attention to this item when the compliance information comes out and I want people to find it easily. I know this is confusing, so let me know if you need more info.**
- On the A -Z list, under "C" add an entry for "CERCLA/EPCRA Reporting Requirements" and the link should go to the info on our site.

Thanks,

Emily Gorman
Environmental Scientist
Avanti Corporation
703-765-0060 x113

From: Mortensen, Ginah [mailto:mortensen.ginah@epa.gov]
Sent: Tuesday, October 17, 2017 5:13 PM
To: Charles Herrmann <cherrmann@avanticorporation.com>; Emily Gorman <emily@avanticorporation.com>; Paola Kleimann <paola@avanticorporation.com>
Cc: Galloway, Carol <Galloway.Carol@epa.gov>
Subject: RE: Smart Sectors program; other items

Some more updates for the website, please:

- On the Ag and Air page, there is a link to the new CERCLA/EPCRA requirement, but we need to update the narrative to reflect the recent changes: https://www.epa.gov/agriculture/agriculture-agriculture-and-air-quality#emissionsagpractices
- Add "CERCLA and EPCRA Reporting Requirements for Air Releases of Hazardous Substances at Farms" to the A-Z list under Air Emissions from Ag Practices; the A- Z list the link should go to the info on our site
- On the A -Z list, under "C" add an entry for "CERCLA/EPCRA Reporting Requirements" and the link should go to the info on our site.
- To the Animal Production page and the Air page, add info and a link to "Agricultural Air Quality Conservation Measures: Reference Guide for Poultry and Livestock Production Systems." Please see the attached email for more info.
- To the Air page and the Crops page , add info and a link to "Agricultural Air Quality Conservation Measures: Reference Guide for Cropping Systems and General Land Management,"
- On the A - Z page, add an entry for Conservation Practices; under that entry add bullets for "Agricultural Air Quality Conservation Measures: Reference Guide for Poultry and Livestock Production Systems" and

"Agricultural Air Quality Conservation Measures: Reference Guide for Cropping Systems and General Land Management," -- the links should go to our pages. See the attached email for more info.

If you have questions or would like to discuss, please let me know.

Ginah Mortensen
913-551-5028

Attorney Advisor
Compliance Policy Staff
Monitoring, Assistance, and Media Programs Division
Office of Compliance

Director, EPA National Agriculture Center
1-888-663-2155
http://www.epa.gov/agriculture

To receive notifications about updates to the EPA agriculture website and EPA news items of interest to the ag community, subscribe to the Ag Center's News Service by sending a blank email to this address:
join-agcenter@lists.epa.gov

From: Mortensen, Ginah
Sent: Tuesday, October 17, 2017 3:15 PM
To: Charles Herrmann <cherrmann@avanticorporation.com>; Emily Gorman <emily@avanticorporation.com>; Paola Kleimann <paola@avanticorporation.com>
Cc: Galloway, Carol <Galloway.Carol@epa.gov>
Subject: Smart Sectors program; other items

Do we link to the newly announced Smart Sectors program on our site? If we don't, we should, at least on the a – z list. Carol, Avanti, Suggestions for other places? – What about in the "Partnerships" section?

Also the Animal Ag Discussion Group, coordinated by the Office of Water, is meeting next week in Denver. The Regional Ag Advisors will be attending, too. Carol is presenting.

If possible I would like to have the News items be as up to date as possible before that meeting because our page may get some attention, . Would it be possible to do a News and Alerts late this week?

Let me know if you have questions.

Thanks!

Ginah Mortensen
913-551-5028

Attorney Advisor
Compliance Policy Staff
Monitoring, Assistance, and Media Programs Division
Office of Compliance

Director, EPA National Agriculture Center
1-888-663-2155
http://www.epa.gov/agriculture

To receive notifications about updates to the EPA agriculture website and EPA news items of interest to the ag community, subscribe to the Ag Center's News Service by sending a blank email to this address: join-agcenter@lists.epa.gov

Message

From: Mortensen, Ginah [mortensen.ginah@epa.gov]
Sent: 5/2/2017 8:44:11 PM
To: Galloway, Carol [Galloway.Carol@epa.gov]
Subject: RE: Question about the recent court ruling

I agree it's pretty early, but I wonder if three are others who are looking for info, too. Would Robin be working on this issue? Someone else? Maybe ask them what we should say on our page, if anything, or if there is a link we should add, such as the one she mentions.

Ginah Mortensen
913-551-5028

Attorney Advisor
Compliance Policy Staff
Monitoring, Assistance, and Media Programs Division
Office of Compliance

Director, EPA National Agriculture Center
1-888-663-2155
http://www.epa.gov/agriculture

To receive notifications about updates to the EPA agriculture website and EPA news items of interest to the ag community, subscribe to the Ag Center's News Service by sending a blank email to this address: join-agcenter@lists.epa.gov

---

From: Galloway, Carol
Sent: Tuesday, May 02, 2017 3:36 PM
To: Mortensen, Ginah <mortensen.ginah@epa.gov>
Subject: FW: Question about the recent court ruling

I've passed this along to Troy for a response, but I wanted to forward her observation about updating the website. I don't think it makes sense to update the information until the dust settles. What do you think?

From: Kindt, Trish [mailto:Trish.Kindt@state.sd.us]
Sent: Monday, April 24, 2017 2:00 PM
To: Galloway, Carol <Galloway.Carol@epa.gov>
Subject: Question about the recent court ruling

Carol,

My name is Trish Kindt. I work in the SD Spills section/EPCRA section.

I got your name from Kent Woodmansey with our feedlot program.

I just wanted to know if EPA is planning to put together some guidance for livestock producers in response to the April 11, 2017 court decision regarding the Comprehensive Environmental Response Compensation and Liability Act (CERCLA)/Emergency Planning and Community Right to Know Act (EPCRA) Administrative Reporting Exemption for Air Releases of Hazardous Substances from Animal Waste at Farms.

I see this webpage has not been updated yet (not a criticism – I KNOW it hasn't been long)
https://www.epa.gov/agriculture/agriculture-agriculture-and-air-quality#reportingrequirements

Anyway, right now all I can do is refer producers to the EPA continuous Releases reporting page. I'm wondering if EPA is planning to put together something that is more specific to ag facilities. Anything you can tell me about what EPA is doing/planning/expecting to see in response to the new rule would be greatly appreciated.

Please feel free to contact me if you have questions.

Trish Kindt
South Dakota Department of Environment and Natural Resources
523 East Capitol Avenue
Pierre, SD 57501
(800) 433-2288
Title III: http://denr.sd.gov/titleiii
Spills/Releases: http://denr.sd.gov/spills

Message

From: Hull, George [Hull.George@epa.gov]
Sent: 11/14/2017 8:29:00 PM
To: Mortensen, Ginah [mortensen.ginah@epa.gov]
CC: Jennings, Kim [Jennings.Kim@epa.gov]; Gioffre, Patricia [Gioffre.Patricia@epa.gov]; Galloway, Carol [Galloway.Carol@epa.gov]
Subject: IMPORTANT follow-up to the EPCRA/CERCLA Ag issues

Hi Ginah,

Following up to my phone message, I'm writing to ask your help in spreading some update information to the agriculture contacts across EPA regarding notification of air emissions from animal waste. We have worked with the National Response Center to make several changes to address issues around the receipt and routing of initial continuous release notifications. These changes are explained in the text below. Could you please share this text with the list of agriculture contacts across EPA's offices. Thank you for your help.

George Hull
Office of Emergency Management
U.S. EPA
Tel. 202-564-0790

EPA Colleagues,

Several issues have arisen related to farmer owners/operators making their initial continuous release notification of emissions from animal waste to the National Response Center (NRC) . First, the NRC is experiencing a large volume of calls, which have the potential to overwhelm their capacity. Second, the automated system the NRC uses to ensure release notifications get to the appropriate Federal, State, and local response officials, has resulted in some State and local officials calling the farm owners/operators to get more information about the release they reported and what response is needed. In order to resolve these issues, EPA has been working with NRC program officials and made the following changes:

- The NRC has established an e-mail notification system so farm owners/operators can email their continuous release reports to the NRC, as an alternative to calling the NRC. Farmers who have multiple farms can list the name and location of all farms, as well as the associated name(s) of hazardous substance(s) released, in one e-mail. Please encourage farmers to use this e-mail option to provide the National Response Center (NRC) with their initial continuous release notification. The NRC e-mail address is: NRC-CERCLA-EPCRA-REPORT@uscg.mil. Alternatively, the NRC phone number for these notifications is: 1-800-424-8802.
- Once the email is received by the NRC e-mail notification system, it will generate an automatic response e-mail with a generic identification number (CR-ERNS) for the farm (note: this number will be the same for all farm owners/operators who provide their initial notification to the NRC via email). The farm owner/operator will place that CR-ERNS number on the follow-up written notification report that is required to be submitted to the EPA Regional Office within 30 days. Therefore, on or around December 15, 2017, all EPA Regional offices will be receiving a large number of written continuous release reports from farm owners/operators.

Regarding the factsheet or "cheat sheet" that was developed to provide compliance assistance to farmers who may soon need to report air release from animal waste under the CERCLA section 103, EPA is working on revising that document to include the above information and will get that out to you as soon as possible.