Appointment

From: Do, Bebhinn [do.bebhinn@epa.gov]
Sent: 8/23/2021 2:15:20 PM
To: Do, Bebhinn [Do.Bebhinn@epa.gov]; Dunkins, Robin [Dunkins.Robin@epa.gov]; Schrock, Bill [Schrock.Bill@epa.gov]; Thomas Hebert [tom.hebert@bayardridge.com]; Rumsey, Ian [rumsey.ian@epa.gov]; Yelverton, Will [Yelverton.Will@epa.gov]; chaduep@unitedegg.com; pbredwell@poultryegg.org; crichter@thepolicygroup.com; Sullivan, Tim [Sullivan.Tim@epa.gov]
CC: Banner, Shannon [banner.shannon@epa.gov]; Nash, Maliha [Nash.Maliha@epa.gov]; Dietrich, Yijia [Dietrich.Yijia@epa.gov]; Croghan, Carry [Croghan.Carry@epa.gov]; Walker, JohnT [Walker.Johnt@epa.gov]; Paul Bredwell [pbredwell@uspoultry.org]

Subject: NAEMS poultry model summary and discussion
Location: Microsoft Teams Meeting

Start: 9/13/2021 8:00:00 PM
End: 9/13/2021 9:00:00 PM
Show Time As: Busy

Required Attendees: Dunkins, Robin; Schrock, Bill; Thomas Hebert; Rumsey, Ian; Yelverton, Will; chaduep@unitedegg.com; pbredwell@poultryegg.org; crichter@thepolicygroup.com; Sullivan, Tim
Optional Attendees: Banner, Shannon; Nash, Maliha; Dietrich, Yijia; Croghan, Carry; Walker, JohnT; Paul Bredwell

Opportunity to review and discuss the new poultry models.

Models are available on: Draft Air Emissions Estimating Methodologies for Animal Feeding Operations | US EPA

Microsoft Teams meeting

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Appointment

From: Do, Bebhinn [do.bebhinn@epa.gov]
Sent: 9/14/2021 4:55:08 AM
To: +17708814418; Application 207a6836-d031-4764-a9d8-c1193f455f21; Chad Gregory [chaduep@unitedegg.com]; Application 9e133cac-5238-4d1e-aaa0-d8ff4ca23f4e; Dunkins, Robin [Dunkins.Robin@epa.gov]; Banner, Shannon [banner.shannon@epa.gov]; Sullivan, Tim [Sullivan.Tim@epa.gov]; Rumsey, Ian [rumsey.ian@epa.gov]; Do, Bebhinn [do.bebhinn@epa.gov]; Christian Richter [CRichter@nickelinstitute.org]; Nash, Maliha [Nash.Maliha@epa.gov]; Croghan, Carry [Croghan.Carry@epa.gov]; Schrock, Bill [Schrock.Bill@epa.gov]

Subject: Meeting (ScheduledMeeting)/Thread Id: 19:meeting_YTllZWYxYWEtZjA1Zi00ZDU1LWJjNDctNzExZjk1NTQ2ZTI2@thread.v2/Communication Id: 90116900-0897-4189-ba0f-eb7aaf890cb9/+17708814418,Chad Gregory,Dunkins, Robin,Banner, Shannon,Sullivan, Tim,Rumsey, Ian,Do, Be...

Start: 9/13/2021 7:55:07 PM
End: 9/13/2021 8:41:20 PM
Show Time As: Busy

Recurrence: (none)

Required Attendees: +17708814418; Application 207a6836-d031-4764-a9d8-c1193f455f21; Chad Gregory; Application 9e133cac-5238-4d1e-aaa0-d8ff4ca23f4e; Dunkins, Robin; Banner, Shannon; Sullivan, Tim; Rumsey, Ian; Do, Bebhinn; Christian Richter; Nash, Maliha; Croghan, Carry; Schrock, Bill

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Start Time (UTC): 9/13/2021 7:55:07 PM
End Time (UTC): 9/13/2021 8:41:20 PM
Duration: 00:46:12.8083465

[9/13/2021 7:59:17 PM (UTC)] +17708814418 joined.
[9/13/2021 8:41:13 PM (UTC)] +17708814418 left.
[9/13/2021 7:59:17 PM (UTC)] Application 207a6836-d031-4764-a9d8-c1193f455f21 joined.
[9/13/2021 8:41:13 PM (UTC)] Application 207a6836-d031-4764-a9d8-c1193f455f21 left.
[9/13/2021 7:59:44 PM (UTC)] chaduep@unitedegg.com joined.
[9/13/2021 8:41:08 PM (UTC)] chaduep@unitedegg.com left.
[9/13/2021 7:59:38 PM (UTC)] Application 9e133cac-5238-4d1e-aaa0-d8ff4ca23f4e joined.
[9/13/2021 8:41:20 PM (UTC)] Application 9e133cac-5238-4d1e-aaa0-d8ff4ca23f4e left.
[9/13/2021 7:59:39 PM (UTC)] Application 9e133cac-5238-4d1e-aaa0-d8ff4ca23f4e joined.
[9/13/2021 8:41:14 PM (UTC)] Application 9e133cac-5238-4d1e-aaa0-d8ff4ca23f4e left.
[9/13/2021 8:01:08 PM (UTC)] Dunkins.Robin@epa.gov joined.
[9/13/2021 8:41:10 PM (UTC)] Dunkins.Robin@epa.gov left.
[9/13/2021 7:59:14 PM (UTC)] banner.shannon@epa.gov joined.
[9/13/2021 8:41:12 PM (UTC)] banner.shannon@epa.gov left.
[9/13/2021 7:58:58 PM (UTC)] Sullivan.Tim@epa.gov joined.
[9/13/2021 8:41:13 PM (UTC)] Sullivan.Tim@epa.gov left.
[9/13/2021 8:00:14 PM (UTC)] rumsey.ian@epa.gov joined.
[9/13/2021 8:41:18 PM (UTC)] rumsey.ian@epa.gov left.
[9/13/2021 7:59:39 PM (UTC)] Application 9e133cac-5238-4d1e-aaa0-d8ff4ca23f4e joined.
[9/13/2021 8:41:20 PM (UTC)] Application 9e133cac-5238-4d1e-aaa0-d8ff4ca23f4e left.
[9/13/2021 7:59:37 PM (UTC)] +17708814418 joined.
[9/13/2021 8:41:13 PM (UTC)] +17708814418 left.
[9/13/2021 7:55:07 PM (UTC)] do.bebhinn@epa.gov joined.
[9/13/2021 8:41:20 PM (UTC)] do.bebhinn@epa.gov left.
[9/13/2021 8:02:26 PM (UTC)] CRichter@nickelinstitute.org joined.
[9/13/2021 8:41:11 PM (UTC)] CRichter@nickelinstitute.org left.
[9/13/2021 8:03:30 PM (UTC)] Nash.Maliha@epa.gov joined.
[9/13/2021 8:41:11 PM (UTC)] Nash.Maliha@epa.gov left.
[9/13/2021 8:25:31 PM (UTC)] Croghan.Carry@epa.gov joined.
[9/13/2021 8:41:20 PM (UTC)] Croghan.Carry@epa.gov left.
[9/13/2021 7:59:18 PM (UTC)] Schrock.Bill@epa.gov joined.
[9/13/2021 8:41:11 PM (UTC)] Schrock.Bill@epa.gov left.
```

Appointment

From: Do, Bebhinn [do.bebhinn@epa.gov]
Sent: 8/23/2021 2:15:20 PM
To: Do, Bebhinn [Do.Bebhinn@epa.gov]; Dunkins, Robin [Dunkins.Robin@epa.gov]; Schrock, Bill [Schrock.Bill@epa.gov]; Thomas Hebert [tom.hebert@bayardridge.com]; Rumsey, Ian [rumsey.ian@epa.gov]; Yelverton, Will [Yelverton.Will@epa.gov]; chaduep@unitedegg.com; pbredwell@poultryegg.org; crichter@thepolicygroup.com; Sullivan, Tim [Sullivan.Tim@epa.gov]
CC: Banner, Shannon [banner.shannon@epa.gov]; Nash, Maliha [Nash.Maliha@epa.gov]; Dietrich, Yijia [Dietrich.Yijia@epa.gov]; Croghan, Carry [Croghan.Carry@epa.gov]; Walker, JohnT [Walker.Johnt@epa.gov]; Paul Bredwell [pbredwell@uspoultry.org]

Subject: NAEMS poultry model summary and discussion
Location: Microsoft Teams Meeting

Start: 9/13/2021 8:00:00 PM
End: 9/13/2021 9:00:00 PM
Show Time As: Busy

Required Attendees: Dunkins, Robin; Schrock, Bill; Thomas Hebert; Rumsey, Ian; Yelverton, Will; chaduep@unitedegg.com; pbredwell@poultryegg.org; crichter@thepolicygroup.com; Sullivan, Tim
Optional Attendees: Banner, Shannon; Nash, Maliha; Dietrich, Yijia; Croghan, Carry; Walker, JohnT; Paul Bredwell

Opportunity to review and discuss the new poultry models.

Models are available on: Draft Air Emissions Estimating Methodologies for Animal Feeding Operations | US EPA

Microsoft Teams meeting

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Appointment

From: Do, Bebhinn [do.bebhinn@epa.gov]
Sent: 8/23/2021 2:15:20 PM
To: Do, Bebhinn [Do.Bebhinn@epa.gov]; Dunkins, Robin [Dunkins.Robin@epa.gov]; Schrock, Bill [Schrock.Bill@epa.gov]; Thomas Hebert [tom.hebert@bayardridge.com]; Rumsey, Ian [rumsey.ian@epa.gov]; Yelverton, Will [Yelverton.Will@epa.gov]; chaduep@unitedegg.com; pbredwell@poultryegg.org; crichter@thepolicygroup.com; Sullivan, Tim [Sullivan.Tim@epa.gov]
CC: Banner, Shannon [banner.shannon@epa.gov]; Nash, Maliha [Nash.Maliha@epa.gov]; Dietrich, Yijia [Dietrich.Yijia@epa.gov]; Croghan, Carry [Croghan.Carry@epa.gov]; Walker, JohnT [Walker.Johnt@epa.gov]; Paul Bredwell [pbredwell@uspoultry.org]

Subject: NAEMS poultry model summary and discussion
Location: Microsoft Teams Meeting

Start: 9/13/2021 8:00:00 PM
End: 9/13/2021 9:00:00 PM
Show Time As: Busy

Required Attendees: Dunkins, Robin; Schrock, Bill; Thomas Hebert; Rumsey, Ian; Yelverton, Will; chaduep@unitedegg.com; pbredwell@poultryegg.org; crichter@thepolicygroup.com; Sullivan, Tim
Optional Attendees: Banner, Shannon; Nash, Maliha; Dietrich, Yijia; Croghan, Carry; Walker, JohnT; Paul Bredwell

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Appointment

From: Chad Gregory [chaduep@unitedegg.com]
Sent: 8/23/2021 3:23:51 PM
To: Do, Bebhinn [do.bebhinn@epa.gov]

Subject: Accepted: NAEMS poultry model summary and discussion
Location: Microsoft Teams Meeting

Start: 9/13/2021 8:00:00 PM
End: 9/13/2021 9:00:00 PM
Show Time As: Busy

Recurrence: (none)

Message

From: Dunkins, Robin [Dunkins.Robin@epa.gov]
Sent: 8/16/2021 1:52:03 PM
To: Thomas Hebert [tom.hebert@bayardridge.com]
CC: Chad Gregory (chaduep@unitedegg.com) [chaduep@unitedegg.com]; Do, Bebhinn [do.bebhinn@epa.gov]
Subject: RE: Setting a teleconference with the poultry folks

Good morning Tom,
I hope all is well. Similar to the meeting we had with the pork industry right after we posted the swine EEMs, we want to have a discussion with the poultry industry stepping them through the EEMs for their sector. I'm hoping we have the EEMs posted early this week. I am thinking first week in September, as early as September 1st which is a Wednesday. I'm cc'ing Bebhinn on the dates/times and we'll get back to you.

Robin Dunkins, Group Leader
Natural Resources Group
OAR/OAQPS/SPPD Mail Code: E143-03
U.S. Environmental Protection Agency
Research Triangle Park, NC 27711
919-541-5335 office
919-605-1178 mobile
dunkins.robin@epa.gov

From: Thomas Hebert <tom.hebert@bayardridge.com>
Sent: Monday, August 16, 2021 9:38 AM
To: Dunkins, Robin <Dunkins.Robin@epa.gov>
Cc: Chad Gregory (chaduep@unitedegg.com) <chaduep@unitedegg.com>
Subject: Setting a teleconference with the poultry folks

Hi Robin,

Chad mentioned that you would like a chance to visit with the poultry folks soon to talk about the release of EPA's draft report on poultry emissions factors. I will work with the poultry crew to arrange this. Can you tell me when you would like to do this, and your day/times you are available for a call? I expect 60 minutes should be enough time, but please advise if not.

I hope all is well!

Tom

Tom Hebert
Bayard Ridge Group
(C) Ex. 6 Personal Privacy (PP)
(D) 202-381-0231

Message

From: Chad Gregory [chaduep@unitedegg.com]
Sent: 9/16/2021 1:13:56 PM
To: Do, Bebhinn [do.bebhinn@epa.gov]; Thomas Hebert [tom.hebert@bayardridge.com]; pbredwell@poultryegg.org; crichter@thepolicygroup.com
CC: Dunkins, Robin [Dunkins.Robin@epa.gov]; Schrock, Bill [Schrock.Bill@epa.gov]; Paul Bredwell [pbredwell@uspoultry.org]; Rumsey, Ian [rumsey.ian@epa.gov]; Yelverton, Will [Yelverton.Will@epa.gov]
Subject: RE: NAEMS poultry model summary and discussion
Attachments: ATT00001.txt

Thank you so much Bebhinn and EPA team.

Chad Gregory
President and CEO
United Egg Producers
chaduep@unitedegg.com
770-360-9220 (office)
Ex. 6 Personal Privacy (PP) (cell)
www.unitedegg.com

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From: Do, Bebhinn <do.bebhinn@epa.gov>
Sent: Wednesday, September 15, 2021 2:47 PM
To: Thomas Hebert <tom.hebert@bayardridge.com>; Chad Gregory <chaduep@unitedegg.com>; pbredwell@poultryegg.org; crichter@thepolicygroup.com
Cc: Dunkins, Robin <Dunkins.Robin@epa.gov>; Schrock, Bill <Schrock.Bill@epa.gov>; Paul Bredwell <pbredwell@uspoultry.org>; Rumsey, Ian <rumsey.ian@epa.gov>; Yelverton, Will <Yelverton.Will@epa.gov>
Subject: RE: NAEMS poultry model summary and discussion

Thank you for joining the call on Monday. I just wanted to share the slides from the talk on Monday and remind you the draft reports are available on the project website: https://www.epa.gov/afos-air/draft-air-emissions-estimating-methodologies-animal-feeding-operations

Please let me know if you have any follow up questions.

Best regards,
Bebhinn

Bebhinn Do
U.S. Environmental Protection Agency
Office of Air Quality Planning and Standards

Sector Policies and Programs Division, Natural Resources Group
109 T.W. Alexander Drive Research Triangle Park, NC 27711 (Mail Code: E143-03)
(919) 541-0573 | do.bebhinn@epa.gov | Pronouns: she/her/hers

Message

From: Thomas Hebert [tom.hebert@bayardridge.com]
Sent: 8/16/2021 1:54:04 PM
To: Dunkins, Robin [Dunkins.Robin@epa.gov]
CC: Chad Gregory (chaduep@unitedegg.com) [chaduep@unitedegg.com]; Do, Bebhinn [do.bebhinn@epa.gov]
Subject: RE: Setting a teleconference with the poultry folks

Thanks Robin. We will appreciate the chance to get briefed and ask questions after the draft report is posted. We will work with Bebhinn to set this up.

Best,

Tom

From: Dunkins, Robin <Dunkins.Robin@epa.gov>
Sent: Monday, August 16, 2021 9:52 AM
To: Thomas Hebert <tom.hebert@bayardridge.com>
Cc: Chad Gregory (chaduep@unitedegg.com) <chaduep@unitedegg.com>; Do, Bebhinn <do.bebhinn@epa.gov>
Subject: RE: Setting a teleconference with the poultry folks

Good morning Tom,
I hope all is well. Similar to the meeting we had with the pork industry right after we posted the swine EEMs, we want to have a discussion with the poultry industry stepping them through the EEMs for their sector. I'm hoping we have the EEMs posted early this week. I am thinking first week in September, as early as September 1st which is a Wednesday. I'm cc'ing Bebhinn on the dates/times and we'll get back to you.

Robin Dunkins, Group Leader
Natural Resources Group
OAR/OAQPS/SPPD Mail Code: E143-03
U.S. Environmental Protection Agency
Research Triangle Park, NC 27711
919-541-5335 office
919-605-1178 mobile
dunkins.robin@epa.gov

From: Thomas Hebert <tom.hebert@bayardridge.com>
Sent: Monday, August 16, 2021 9:38 AM
To: Dunkins, Robin <Dunkins.Robin@epa.gov>
Cc: Chad Gregory (chaduep@unitedegg.com) <chaduep@unitedegg.com>
Subject: Setting a teleconference with the poultry folks

Hi Robin,

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I hope all is well!

Tom

Tom Hebert
Bayard Ridge Group
(C) Ex. 6 Personal Privacy (PP)
(D) 202-381-0231

Message

From: Christian Richter [crichter@thepolicygroup.com]
Sent: 9/16/2021 2:44:07 AM
To: Do, Bebhinn [do.bebhinn@epa.gov]; Thomas Hebert [tom.hebert@bayardridge.com]; chaduep@unitedegg.com; pbredwell@poultryegg.org
CC: Dunkins, Robin [Dunkins.Robin@epa.gov]; Schrock, Bill [Schrock.Bill@epa.gov]; Paul Bredwell [pbredwell@uspoultry.org]; Rumsey, Ian [rumsey.ian@epa.gov]; Yelverton, Will [Yelverton.Will@epa.gov]
Subject: Re: NAEMS poultry model summary and discussion

Thanks, Bebhinn!

Best regards,

Christian

From: Do, Bebhinn <do.bebhinn@epa.gov>
Sent: Wednesday, September 15, 2021, 2:46 PM
To: Thomas Hebert; chaduep@unitedegg.com; pbredwell@poultryegg.org; Christian Richter
Cc: Dunkins, Robin; Schrock, Bill; Paul Bredwell; Rumsey, Ian; Yelverton, Will
Subject: RE: NAEMS poultry model summary and discussion

Thank you for joining the call on Monday. I just wanted to share the slides from the talk on Monday and remind you the draft reports are available on the project website: https://www.epa.gov/afos-air/draft-air-emissions-estimating-methodologies-animal-feeding-operations

Please let me know if you have any follow up questions.

Best regards,
Bebhinn

Bebhinn Do
U.S. Environmental Protection Agency
Office of Air Quality Planning and Standards
Sector Policies and Programs Division, Natural Resources Group
109 T.W. Alexander Drive Research Triangle Park, NC 27711 (Mail Code: E143-03)
(919) 541-0573 | do.bebhinn@epa.gov | Pronouns: she/her/hers

Appointment

From: Paul Bredwell [pbredwell@uspoultry.org]
Sent: 8/23/2021 2:48:56 PM
To: Do, Bebhinn [do.bebhinn@epa.gov]

Subject: Accepted: [EXTERNAL] NAEMS poultry model summary and discussion
Location: Microsoft Teams Meeting

Start: 9/13/2021 8:00:00 PM
End: 9/13/2021 9:00:00 PM
Show Time As: Busy

Recurrence: (none)

Message

From: Do, Bebhinn [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CE5A954491DF4DD2A084BA5BEFAA11DE-DO, BEBHINN]
Sent: 7/14/2022 3:09:45 PM
To: formicam@nppc.org
CC: Schrock, Bill [Schrock.Bill@epa.gov]
Subject: FW: NAEMS update: draft dairy models now posted

We have posted the draft air emission models for dairy operations, which were developed using data gathered during the National Air Emissions Monitoring Study (NAEMS). The reports for the dairy sector is now available via the NAEMS project site (https://www.epa.gov/afos-air/national-air-emissions-monitoring-study).

The dairy report was developed using the same process as the swine and poultry reports. Similar to the previous reports, we wanted to offer to meet to discuss the report and the NAEMS project further. Please let me know if you are interested.

Best regards,
Bebhinn

Bebhinn Do (she/her/hers)
U.S. Environmental Protection Agency
Office of Air Quality Planning and Standards
Sector Policies and Programs Division, Natural Resources Group
109 T.W. Alexander Drive
Research Triangle Park, NC 27711 (Mail Code: E143-03)
(919) 541-0573 | do.bebhinn@epa.gov

Appointment

From: Do, Bebhinn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ce5a954491df4dd2a084ba5befaa11de-Do, Bebhinn]
Sent: 8/23/2021 2:47:55 PM
To: chaduep@unitedegg.com; pbredwell@poultryegg.org; crichter@thepolicygroup.com

Subject: NAEMS poultry model summary and discussion
Location: Microsoft Teams Meeting

Start: 9/13/2021 8:00:00 PM
End: 9/13/2021 9:00:00 PM
Show Time As: Tentative

Required Attendees: Dunkins, Robin; Schrock, Bill; Thomas Hebert; Rumsey, Ian; Yelverton, Will; chaduep@unitedegg.com; pbredwell@poultryegg.org; crichter@thepolicygroup.com
Optional Attendees: Banner, Shannon; Nash, Maliha; Dietrich, Yijia; Croghan, Carry; Walker, JohnT

Opportunity to review and discuss the new poultry models.

Models are available on: Draft Air Emissions Estimating Methodologies for Animal Feeding Operations | US EPA

Microsoft Teams meeting

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Message

From: Do, Bebhinn [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CE5A954491DF4DD2A084BA5BEFAA11DE-DO, BEBHINN]
Sent: 7/14/2022 3:07:44 PM
To: NAEMS [NAEMS@epa.gov]
CC: Schrock, Bill [Schrock.Bill@epa.gov]; Dunkins, Robin [Dunkins.Robin@epa.gov]
BCC: Snyder, Rodney [Snyder.Rodney@epa.gov]; Miles Keogh [mkeogh@4cleanair.org]; kpoole@ecos.org; Jason Sloan [jsloan@csg.org]; Muriel, Jasmin [Muriel.Jasmin@epa.gov]; amanda@nasda.org; formicam@nppc.com; pbredwell@uspoultry.org; chaduep@unitedegg.com; jjonker@nmpf.org; crichter@thepolicygroup.com; syager@beef.org; dcapjane@aol.com; echeuse@earthjustice.org; tom.hebert@bayardridge.com; hprado@aeb.org
Subject: NAEMS update: draft dairy models now posted

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The dairy report was developed using the same process as the swine and poultry reports. Similar to the previous reports, we wanted to offer to meet to discuss the report and the NAEMS project further. Please let me know if you are interested.

Best regards,
Bebhinn

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Message

From: Do, Bebhinn [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CE5A954491DF4DD2A084BA5BEFAA11DE-DO, BEBHINN]
Sent: 9/15/2021 6:46:35 PM
To: Thomas Hebert [tom.hebert@bayardridge.com]; chaduep@unitedegg.com; pbredwell@poultryegg.org; crichter@thepolicygroup.com
CC: Dunkins, Robin [Dunkins.Robin@epa.gov]; Schrock, Bill [Schrock.Bill@epa.gov]; Paul Bredwell [pbredwell@uspoultry.org]; Rumsey, Ian [rumsey.ian@epa.gov]; Yelverton, Will [Yelverton.Will@epa.gov]
Subject: RE: NAEMS poultry model summary and discussion
Attachments: Poultry_RollOut_9.13.2021.pptx

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Best regards,
Bebhinn

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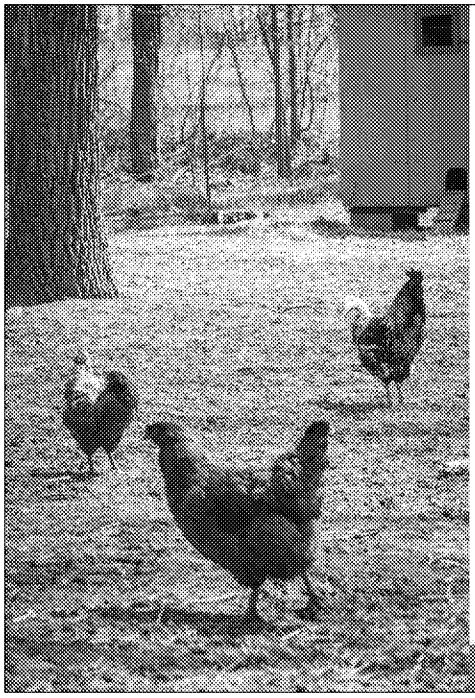
Office of Air Quality Planning and Standards
Sector Policies and Programs Division, Natural Resources Group
109 T.W. Alexander Drive Research Triangle Park, NC 27711 (Mail Code: E143-03)
(919) 541-0573 | do.bebhinn@epa.gov | Pronouns: she/her/hers

Draft Emissions Estimating Methodologies for Poultry Animal Feeding Operations Discussion

The meeting will begin shortly.

Draft Emissions Estimating Methodologies for Poultry Animal Feeding Operations

September 2021



Outline

- Model Development Overview
- What's new in the poultry reports
- Uses & Limitations of the Emission Models
- What's next & Schedule

Overview

- On August 18, 2021, EPA posted the draft emission estimating methodologies (emission models) for egg-layer and broiler animal feeding operations (AFO).
  - Egg-layer farms: high rise houses, manure belt houses, and manure sheds
  - Broiler farms: broiler house
- These draft poultry emission models utilize data collected as part of the National Air Emissions Monitoring Study (NAEMS).
  - The broiler modeling dataset was supplemented with data from a Kentucky study.
- The emission models provide methods for estimating air emissions of NH_3, H_2S, and PM (TSP, PM_{10}, $PM_{2.5}$) from houses and manure sheds at poultry operations throughout the country.
- EPA has developed approximately 20 emission models for the various emission source and pollutant combinations at poultry operations.

Model Development Overview

- Select parameters
  - Conduct literature review to identify factors that influence emissions
  - Conduct exploratory data analysis to see trends when comparing individual parameters to monitored emissions
  - Select parameters with strong trends in the literature and/or the exploratory data analysis, while also considering data quantity and potential ease of measurement for a producer
- Create test models for daily emissions with combinations of identified parameters
- Select daily emission model based on subjective evaluation of accuracy and ease of use
- Evaluate model by "jackknife" technique where one barn was removed from the dataset
- Develop annual emission estimates and estimates of uncertainty

Selection of Parameters: Egg-layers

Measured Parameter	
Animals	Inventory
	Weight
Barn conditions	Exhaust temperature
	Exhaust relative humidity
	Ventilation rate/airflow
Meteorological conditions	Ambient temperature
	Ambient relative humidity
	Wind speed

- Also considered:
  - Hen age
  - Management Phase (experimental)
  - Manure Age
- For manure sheds, the inventory and live animal weight was lagged by 5 days to reflect the amount of time it takes for the manure to travel to the shed.

Selection of Parameters: Broiler Houses

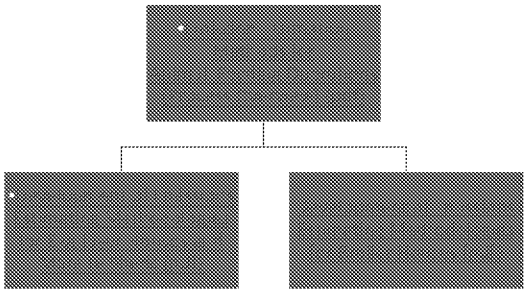
Measured Parameter	
Animals	Inventory
	Weight
Barn conditions	Exhaust temperature
	Exhaust relative humidity
Meteorological conditions	Ambient temperature
	Ambient relative humidity

- Also considered:
  - Flock age
  - Litter age
  - Litter status
    - Experimental
    - Indication of the number of flocks since full clean out
  - Management Phase (experimental)

What's new

Report Overview

- Reports have been restructured
- Created the "process overview" report ("All Sectors" report)
  - Provides the overarching information relevant to all animal types
    - Background information on the consent agreement and NAEMS
    - General process for developing emission models
  - Animal specific information in separate reports
    - Any exceptions to the process
    - Animal specific results

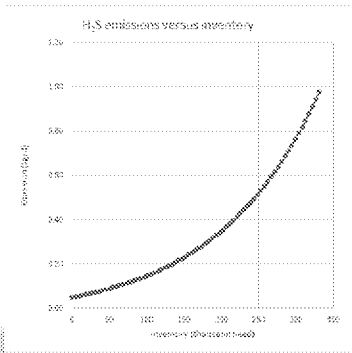


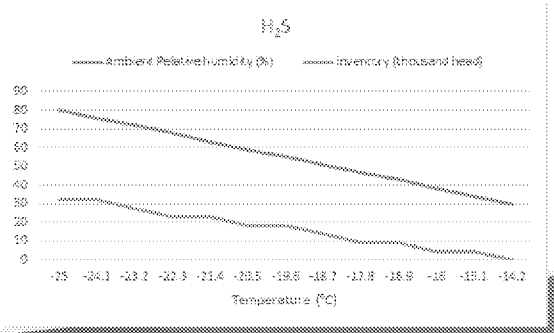
Added report elements

- Replications of Independent measurements
  - Tested models with secondary data
  - Broilers and high rise houses
- Limitation analysis
- Data concerns

New: Limitation analysis

- Two types of analysis:
  - Varied one parameter, held others constant
  - Tested a range of all parameters together.





Uses of the Emission Models

- These models *estimate* emissions.
- The final models will be used by participants in the Air Compliance Agreement and other poultry AFOs to determine whether their emissions trigger certain Clean Air Act permitting requirements.
- The models may also be useful for general estimates of emissions from poultry operations across the US or comparisons between operations in different regions.
- The current *draft* models should not be used for these purposes until they are finalized.
- When the models are final, EPA will provide a tool that will apply the model to estimate emissions for farms.

Limitations of the Emission Models

- The models do not estimate emissions for all pollutants, or all emission sources found on poultry operations.
- The models do not incorporate all the site-specific management factors that can affect emissions.
- The models cannot be used to quantify impacts of best management practices on emissions.
- The model estimates uncontrolled emissions and the typical management at the time of data collection.

What's next?

- Two additional draft reports
  - Draft dairy report
  - Draft VOC report
- Revisions
  - Take what we have learned, make revision across all reports
- Public Comment Draft release
- Formal public comment period
- Final revisions
- Final release

Date	Milestone	Status
September 2019	Call for information for additional VOC data	Complete
August 2020	Draft models for ammonia, hydrogen sulfide and particulate matter emissions from swine farms	Complete
August 2021	Draft models for ammonia, hydrogen sulfide and particulate matter emissions from poultry (broiler and layer) farms	Complete
March 2022	Draft models for ammonia, hydrogen sulfide and particulate matter emissions from dairy farms	
May 2022	Draft models for volatile organic compound emissions from swine, poultry and dairy farms	
TBD	Stakeholder review period	
TBD	Finalization of all AFO emission models	

Contact Info:

Project website: https://www.epa.gov/afos-air/national-air-emissions-monitoring-study#main-content

If you have questions or informal comments:

NAEMS@epa.gov

This report is an external draft for review purposes only and does not constitute U.S. Environmental Protection Agency policy.

Appendix A

Emission Models

Models Development: Form

$$Y_p(\ln\{pollutant\}) = \beta_0 + \beta_1 \mathrm{X}_1 + \beta_2 \mathrm{X}_2 + \ldots + \beta_k \mathrm{X}_k$$

Where:

Y_p is the log transformed emissions

β_0 is a constant

X_i is a predictive parameter (e.g., ambient temperature, wind speed)

β_i is the coefficient for parameter X_i

Emission Models: High Rise Houses

Pollutant	Intercept	Inventory (thousand head)	Ambient Temperature (°C)	Ambient Relative Humidity (%)
H_2S	2.723104	0.009798	0.020988	0.003752
NH_3	2.659821	0.005890	0.038714	0.001761
PM_{10}	6.870178	0.007684	0.014477	-0.003022
$PM_{2.5}$	4.621874	0.008039	0.051013	-0.018133
TSP	7.599452	0.007927	0.013670	-0.005795

Emission Models: Manure Belt Houses

Pollutant	Intercept	Inventory (thousand head)	Ambient Temperature (°C)	Ambient Relative Humidity (%)
H_2S	3.739100	0.007300	0.022200	0.004800
NH_3	2.439200	0.004700	0.029400	0.001900
PM_{10}	6.631005	0.007205		
$PM_{2.5}$	-127.448900	0.534577		
TSP	6.936206	0.009870		

Emission Models: Manure Sheds

Pollutant	Intercept	Inventory, lagged 5 days (thousand head)	Ambient Temperature (°C)
H_2S	1.295775	0.004976	-0.02416
NH_3	-0.194945	0.003927	-0.01375
PM_{10}	4.5366	0.000732	
$PM_{2.5}$	-30.57734	0.067599	
TSP	4.041666	0.002286	

Emission Models: Broiler Houses

Pollutant	Intercept	Live animal weight (thousand kg)	Ambient Temperature (°C)	Ambient Relative Humidity (%)
H_2S	2.824278	0.016214	0.015048	0.004429
NH_3	1.60581	0.008532	0.020739	0.004038
PM_{10}	397.28057	40.872002	10.401892	-6.584463
$PM_{2.5}$	15.776704	4.087002	1.308433	-0.464143
TSP	1518.9199	85.598315	22.632906	-21.28833

Appendix B

Consent Agreement Requirements

Consent Agreement Requirements

- **Paragraph 28(B):** If the emissions estimating methodologies demonstrate that a source does not trigger any Clean Air Act permitting requirements, the source must certify this outcome to the EPA in writing within 60 days after the EPA publishes the emission estimating methodologies applicable to the emission units at that source or facility.
- **Paragraph 28(C)(i):** If the emissions estimating methodologies demonstrate that a source triggers Clean Air Act permitting requirements, the source must submit all permit applications required by the permitting authority for the source within 120 days.
  - Agreement participants should consult the Agreement for additional specifics related to permitting requirements and control technologies.
  - **Paragraph 28(C)(d):** Farms installing waste-to-energy systems will have an additional 180 days to submit permit applications.
- **Paragraph 28(C)(i)(b):** The annual emissions from a source shall be determined based on current operating methods and on the maximum number of animals housed at the source at any time over the 24 months prior to EPA's publication of the applicable emissions-estimating methodologies.

Appendix C

Model development process

Selection of Parameters: Egg-layers

Measured Parameter	
Animals	Inventory
	Weight
Barn conditions	Exhaust temperature
	Exhaust relative humidity
	Ventilation rate/airflow
Meteorological conditions	Ambient temperature
	Ambient relative humidity
	Wind speed

- Also considered:
  - Hen age
  - Management Phase (experimental)
  - Manure Age
- For manure sheds, the inventory and live animal weight was lagged by 5 days to reflect the amount of time it takes for the manure to travel to the shed.

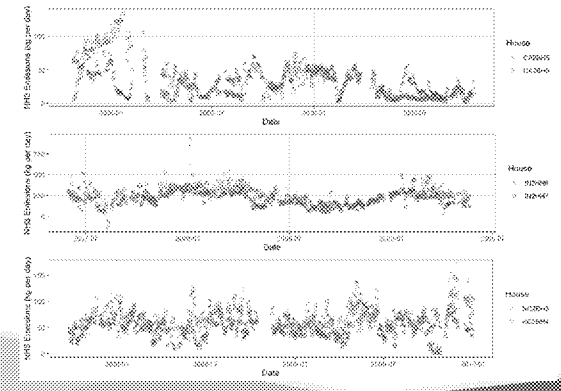
Selection of Parameters: Broiler Houses

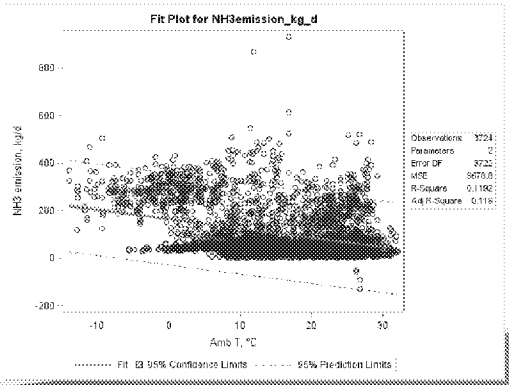
Measured Parameter	
Animals	Inventory
	Weight
Barn conditions	Exhaust temperature
	Exhaust relative humidity
Meteorological conditions	Ambient temperature
	Ambient relative humidity

- Also considered:
  - Flock age
  - Litter age
  - Litter status
    - Experimental
    - Indication of the number of flocks since full load out
  - Management Phase (experimental)

Selection of Parameters:

- Literature Review
- Exploratory Data Analysis
  - Plots to identify trends
  - Regressions to assess strength of the relationships





Models Development: Poultry Production

- EPA developed separate models for:
  - High rise houses
  - Manure belt houses
  - Manure Shed
  - Broiler houses

Model Development: Statistical Approach

- Linear mixed-effects model
- Performed a natural log transformation on the average daily emissions before fitting a model
- Evaluate the models based on their performance (e.g., error, bias) and their potential ease of use (i.e., how easily could a farmer potentially obtain measurements of the predictor values)

Models Development: Form

$$Y_p(\ln\{pollutant\}) = \beta_0 + \beta_1 \mathrm{X}_1 + \beta_2 \mathrm{X}_2 + \ldots + \beta_k \mathrm{X}_k$$

Where:

Y_p is the log transformed emissions

β_0 is a constant

X_i is a predictive parameter (e.g., ambient temperature, wind speed)

β_i is the coefficient for parameter X_i

Model Development: Evaluation

- "Jackknife"
  - Examines the cumulative effect of multiple "minus-one-house" runs on coefficient estimates
  - Models predict emissions for the subset sample left out
  - The predicted emissions are then evaluated using the observed (measured) data for the subset sample left out
  - Limited data for manure shed prevented this analysis for this source. Exploring alternatives for the final report.

Model Development: Annual Emissions Estimate

- Annual emissions are estimated by summing the daily emissions over the course of a year
- Also developed an estimate of uncertainty for the model
  - Developed based on variation of a predictor variable
  - Ran multiple simulations for each day for each value of the predictor to estimate the residual
  - Percent uncertainty plotted versus annual emission and fitted with a model of uncertainty for the emission estimate
- Developed a method to combine the uncertainty for each component of the farm (e.g., house and manure sheds) for a farm total uncertainty

Improvements from 2012 Draft Emission Models

- Switched to linear regressions, which prevents inconsistent results for extreme values
- Adjusted parameter selection to include more robust literature review
- Expanded the criteria to evaluate model performance
  - Added residual plots (i.e., model fit plots) and calculated model performance statistics
- Refined evaluation approach to the "minus-one-house" technique, which is a more refined statistical approach with temporally correlated data

Appointment

From: Do, Bebhinn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ce5a954491df4dd2a084ba5befaa11de-Do, Bebhinn]
Sent: 8/23/2021 2:15:19 PM
To: Dunkins, Robin [Dunkins.Robin@epa.gov]; Schrock, Bill [Schrock.Bill@epa.gov]; Thomas Hebert [tom.hebert@bayardridge.com]; Rumsey, Ian [rumsey.ian@epa.gov]; Yelverton, Will [Yelverton.Will@epa.gov]; chaduep@unitedegg.com; pbredwell@poultryegg.org; crichter@thepolicygroup.com; Sullivan, Tim [Sullivan.Tim@epa.gov]
CC: Banner, Shannon [banner.shannon@epa.gov]; Nash, Maliha [Nash.Maliha@epa.gov]; Dietrich, Yijia [Dietrich.Yijia@epa.gov]; Croghan, Carry [Croghan.Carry@epa.gov]; Walker, JohnT [Walker.Johnt@epa.gov]; Paul Bredwell [pbredwell@uspoultry.org]

Subject: NAEMS poultry model summary and discussion
Location: Microsoft Teams Meeting

Start: 9/13/2021 8:00:00 PM
End: 9/13/2021 9:00:00 PM
Show Time As: Busy

Required Attendees: Dunkins, Robin; Schrock, Bill; Thomas Hebert; Rumsey, Ian; Yelverton, Will; chaduep@unitedegg.com; pbredwell@poultryegg.org; crichter@thepolicygroup.com; Sullivan, Tim
Optional Attendees: Banner, Shannon; Nash, Maliha; Dietrich, Yijia; Croghan, Carry; Walker, JohnT; Paul Bredwell

Opportunity to review and discuss the new poultry models.

Models are available on: Draft Air Emissions Estimating Methodologies for Animal Feeding Operations | US EPA

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Message

From: Paul Bredwell [pbredwell@uspoultry.org]
Sent: 8/4/2021 11:19:23 PM
To: Dunkins, Robin [Dunkins.Robin@epa.gov]
Subject: Draft Emission Estimating Models for Swine operations

Robin,

I just got off the phone with my industry contact that agreed to help us out.

He is aware of a farm that has 30 houses, Each house contains 19,000 birds per houses. These are older houses with a smaller footprint.

He is aware of another farm that has 12 houses. Each house contains 38,000 birds per house. These are newer houses with a larger footprint.

I hope this helps.

Best,

Paul Bredwell

Paul J Bredwell III, P.E.
Executive Vice President – Regulatory Programs
U. S. Poultry & Egg Association
1530 Cooledge Road
Tucker, Georgia 30084
D: 678-514-1973
M: Ex. 6 Personal Privacy (PP)
pbredwell@uspoultry.org

Message

From: Thomas Hebert [tom.hebert@bayardridge.com]
Sent: 8/16/2021 1:37:31 PM
To: Dunkins, Robin [Dunkins.Robin@epa.gov]
CC: Chad Gregory (chaduep@unitedegg.com) [chaduep@unitedegg.com]
Subject: Setting a teleconference with the poultry folks

Hi Robin,

Chad mentioned that you would like a chance to visit with the poultry folks soon to talk about the release of EPA's draft report on poultry emissions factors. I will work with the poultry crew to arrange this. Can you tell me when you would like to do this, and your day/times you are available for a call? I expect 60 minutes should be enough time, but please advise if not.

I hope all is well!

Tom

Tom Hebert
Bayard Ridge Group
(C) Ex. 6 Personal Privacy (PP)
(D) 202-381-0231

Message

From: Dunkins, Robin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=50505AF25AF94494AD34EE072A4F1E45-RDUNKINS]
Sent: 8/5/2021 4:38:12 AM
To: Paul Bredwell [pbredwell@uspoultry.org]
Subject: Re: Draft Emission Estimating Models for Swine operations

Thanks

Robin Dunkins, Group Leader
Natural Resources Group
USEPA OAR/OAQPS
Research Triangle Park, NC 27711
919-541-5335 office
919-605-1178 mobile
dunkins.robin@epa.gov

On Aug 4, 2021, at 7:21 PM, Paul Bredwell <pbredwell@uspoultry.org> wrote:

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Sent: 7/14/2022 3:09:45 PM
To: Michael Formica [formicam@nppc.org]
CC: Schrock, Bill [Schrock.Bill@epa.gov]
Subject: FW: NAEMS update: draft dairy models now posted

We have posted the draft air emission models for dairy operations, which were developed using data gathered during the National Air Emissions Monitoring Study (NAEMS). The reports for the dairy sector is now available via the NAEMS project site (https://www.epa.gov/afos-air/national-air-emissions-monitoring-study).

The dairy report was developed using the same process as the swine and poultry reports. Similar to the previous reports, we wanted to offer to meet to discuss the report and the NAEMS project further. Please let me know if you are interested.

Best regards,
Bebhinn

Bebhinn Do (she/her/hers)
U.S. Environmental Protection Agency
Office of Air Quality Planning and Standards
Sector Policies and Programs Division, Natural Resources Group
109 T.W. Alexander Drive
Research Triangle Park, NC 27711 (Mail Code: E143-03)
(919) 541-0573 | do.bebhinn@epa.gov

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Location: Microsoft Teams Meeting

Start: 9/13/2021 8:00:00 PM
End: 9/13/2021 9:00:00 PM
Show Time As: Busy

Required Attendees: Dunkins, Robin; Schrock, Bill; Thomas Hebert; Rumsey, Ian; Yelverton, Will; chaduep@unitedegg.com; pbredwell@poultryegg.org; crichter@thepolicygroup.com; Sullivan, Tim
Optional Attendees: Banner, Shannon; Nash, Maliha; Dietrich, Yijia; Croghan, Carry; Walker, JohnT; Paul Bredwell

Opportunity to review and discuss the new poultry models.

Models are available on: Draft Air Emissions Estimating Methodologies for Animal Feeding Operations | US EPA

Microsoft Teams meeting

Join on your computer or mobile app
Click here to join the meeting

Or call in (audio only)

Ex. 6 Personal Privacy (PP) | States, Raleigh

Find a local number | Reset PIN

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Appointment

From: Do, Bebhinn [do.bebhinn@epa.gov]
Sent: 8/23/2021 2:15:21 PM
To: Do, Bebhinn [Do.Bebhinn@epa.gov]; Dunkins, Robin [Dunkins.Robin@epa.gov]; Schrock, Bill [Schrock.Bill@epa.gov]; Thomas Hebert [tom.hebert@bayardridge.com]; Rumsey, Ian [rumsey.ian@epa.gov]; Yelverton, Will [Yelverton.Will@epa.gov]; chaduep@unitedegg.com; pbredwell@poultryegg.org; crichter@thepolicygroup.com; Sullivan, Tim [Sullivan.Tim@epa.gov]
CC: Banner, Shannon [banner.shannon@epa.gov]; Nash, Maliha [Nash.Maliha@epa.gov]; Dietrich, Yijia [Dietrich.Yijia@epa.gov]; Croghan, Carry [Croghan.Carry@epa.gov]; Walker, JohnT [Walker.Johnt@epa.gov]; Paul Bredwell [pbredwell@uspoultry.org]

Subject: NAEMS poultry model summary and discussion
Location: Microsoft Teams Meeting

Start: 9/13/2021 8:00:00 PM
End: 9/13/2021 9:00:00 PM
Show Time As: Tentative

Required Attendees: Dunkins, Robin; Schrock, Bill; Thomas Hebert; Rumsey, Ian; Yelverton, Will; chaduep@unitedegg.com; pbredwell@poultryegg.org; crichter@thepolicygroup.com; Sullivan, Tim
Optional Attendees: Banner, Shannon; Nash, Maliha; Dietrich, Yijia; Croghan, Carry; Walker, JohnT; Paul Bredwell

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Learn More | Meeting options

Message

From: Mills, Kathy [Mills.Kathy@epa.gov]
Sent: 11/2/2021 7:48:53 PM
To: Noonan, Jenny [Noonan.Jenny@epa.gov]
CC: Dunkins, Robin [Dunkins.Robin@epa.gov]; Schrock, Bill [Schrock.Bill@epa.gov]; Do, Bebhinn [do.bebhinn@epa.gov]; Banner, Shannon [banner.shannon@epa.gov]
Subject: FW: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Mills, Kathy has shared a OneDrive for Business file with you. To view it, click the link below.

PetitionDeskStatements.docx

Hi Jenny,

Ex. 5 Deliberative Process (DP)

KB

Kathy "KB" Mills ~ SPPD ~ U. S. EPA, OAQPS ~ 919-541-1599

From: Dunkins, Robin <Dunkins.Robin@epa.gov>
Sent: Wednesday, October 27, 2021 6:02 PM
To: Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>; Do, Bebhinn <do.bebhinn@epa.gov>; Mills, Kathy <Mills.Kathy@epa.gov>
Subject: FW: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Robin Dunkins, Group Leader
Natural Resources Group
OAR/OAQPS/SPPD Mail Code: E143-03
U.S. Environmental Protection Agency
Research Triangle Park, NC 27711
919-541-5335 office
919-605-1178 mobile
dunkins.robin@epa.gov

From: Dunkins, Robin
Sent: Wednesday, October 27, 2021 6:00 PM
To: Perrin, Rebecca <Perrin.Rebecca@epa.gov>; Snyder, Rodney <Snyder.Rodney@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Ex. 5 Deliberative Process (DP)

I have the RMNP meeting on my calendar. I was going to listen in on some of that meeting but let me know if I should stay on for the entire call.

Robin Dunkins, Group Leader
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From: Perrin, Rebecca <Perrin.Rebecca@epa.gov>
Sent: Wednesday, October 27, 2021 5:54 PM
To: Dunkins, Robin <Dunkins.Robin@epa.gov>; Snyder, Rodney <Snyder.Rodney@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Thanks! I have a steering committee meeting for RMNP tomorrow, **Ex. 5 Deliberative Process (DP)**
Ex. 5 Deliberative Process (DP)

Rebecca Perrin
U.S. Environmental Protection Agency
DL: 303-312-6311

From: Dunkins, Robin <Dunkins.Robin@epa.gov>
Sent: Wednesday, October 27, 2021 3:52 PM
To: Perrin, Rebecca <Perrin.Rebecca@epa.gov>; Snyder, Rodney <Snyder.Rodney@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Thanks Rebecca. We received the petition/notification thru CMS today. However, I informed OAR that this should be assigned to OECA. OAR is responsible for the NAEMS and the EEMS but OECA is responsible to the consent agreement itself. Stay tuned.

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FYI… https://whistleblower.org/press-release/press-release-legal-petition-challenges-epa-inaction-on-factory-farm-air-pollution/

Rebecca Perrin
R8 Ag Advisor | U.S. Environmental Protection Agency
DL: 303-312-6311

Message

From: Do, Bebhinn [do.bebhinn@epa.gov]
Sent: 10/29/2021 3:53:00 PM
To: Mills, Kathy [Mills.Kathy@epa.gov]
CC: Dunkins, Robin [Dunkins.Robin@epa.gov]; Schrock, Bill [Schrock.Bill@epa.gov]; Banner, Shannon [banner.shannon@epa.gov]
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

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PetitionDeskStatements.docx

KB,

Draft desk statement attached. **Ex. 5 Deliberative Process (DP)** I thought you could start a review in the meantime.

I'll have that by Monday.

BD

From: Mills, Kathy <Mills.Kathy@epa.gov>
Sent: Thursday, October 28, 2021 7:19 AM
To: Dunkins, Robin <Dunkins.Robin@epa.gov>; Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>; Do, Bebhinn <do.bebhinn@epa.gov>
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Kathy "KB" Mills ~ SPPD ~ U. S. EPA, OAQPS ~ 919-541-1599

From: Dunkins, Robin <Dunkins.Robin@epa.gov>
Sent: Wednesday, October 27, 2021 6:02 PM
To: Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>; Do, Bebhinn <do.bebhinn@epa.gov>; Mills, Kathy <Mills.Kathy@epa.gov>
Subject: FW: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

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U.S. Environmental Protection Agency
Research Triangle Park, NC 27711

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919-605-1178 mobile
dunkins.robin@epa.gov

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Ex. 5 Deliberative Process (DP)

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U.S. Environmental Protection Agency
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dunkins.robin@epa.gov

From: Perrin, Rebecca <Perrin.Rebecca@epa.gov>
Sent: Wednesday, October 27, 2021 5:48 PM
To: Snyder, Rodney <Snyder.Rodney@epa.gov>; Dunkins, Robin <Dunkins.Robin@epa.gov>
Subject: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

FYI... https://whistleblower.org/press-release/press-release-legal-petition-challenges-epa-inaction-on-factory-farm-air-pollution/

Rebecca Perrin
R8 Ag Advisor | U.S. Environmental Protection Agency
DL: 303-312-6311

Message

From: Dunkins, Robin [Dunkins.Robin@epa.gov]
Sent: 10/29/2021 6:16:05 PM
To: Mills, Kathy [Mills.Kathy@epa.gov]; Do, Bebhinn [do.bebhinn@epa.gov]
CC: Schrock, Bill [Schrock.Bill@epa.gov]; Banner, Shannon [banner.shannon@epa.gov]
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Ex. 5 Deliberative Process (DP)

Robin Dunkins, Group Leader
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U.S. Environmental Protection Agency
Research Triangle Park, NC 27711
919-541-5335 office
919-605-1178 mobile
dunkins.robin@epa.gov

From: Mills, Kathy <Mills.Kathy@epa.gov>
Sent: Friday, October 29, 2021 1:51 PM
To: Do, Bebhinn <do.bebhinn@epa.gov>
Cc: Dunkins, Robin <Dunkins.Robin@epa.gov>; Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Thanks Bebhinn. **Ex. 5 Deliberative Process (DP)**
Ex. 5 Deliberative Process (DP) Let me know when this can go to PACS.
KB

Kathy "KB" Mills ~ SPPD ~ U. S. EPA, OAQPS ~ 919-541-1599

From: Do, Bebhinn <do.bebhinn@epa.gov>
Sent: Friday, October 29, 2021 11:53 AM
To: Mills, Kathy <Mills.Kathy@epa.gov>
Cc: Dunkins, Robin <Dunkins.Robin@epa.gov>; Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>
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Ex. 5 Deliberative Process (DP)

Rebecca Perrin
U.S. Environmental Protection Agency
DL: 303-312-6311

From: Dunkins, Robin <Dunkins.Robin@epa.gov>
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To: Perrin, Rebecca <Perrin.Rebecca@epa.gov>; Snyder, Rodney <Snyder.Rodney@epa.gov>
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Natural Resources Group
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From: Perrin, Rebecca <Perrin.Rebecca@epa.gov>
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To: Snyder, Rodney <Snyder.Rodney@epa.gov>; Dunkins, Robin <Dunkins.Robin@epa.gov>
Subject: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

FYI... https://whistleblower.org/press-release/press-release-legal-petition-challenges-epa-inaction-on-factory-farm-air-pollution/

Rebecca Perrin
R8 Ag Advisor | U.S. Environmental Protection Agency
DL: 303-312-6311

Message

From: Dunkins, Robin [Dunkins.Robin@epa.gov]
Sent: 10/28/2021 9:03:02 PM
To: Sullivan, Tim [Sullivan.Tim@epa.gov]; Do, Bebhinn [do.bebhinn@epa.gov]
CC: Schrock, Bill [Schrock.Bill@epa.gov]; Banner, Shannon [banner.shannon@epa.gov]
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Tim,

Ex. 5 AC/DP

Ex. 5 AC/DP Let's talk about that tomorrow if you're in.

Robin Dunkins, Group Leader
Natural Resources Group
OAR/OAQPS/SPPD Mail Code: E143-03
U.S. Environmental Protection Agency
Research Triangle Park, NC 27711
919-541-5335 office
919-605-1178 mobile
dunkins.robin@epa.gov

From: Sullivan, Tim <Sullivan.Tim@epa.gov>
Sent: Thursday, October 28, 2021 4:46 PM
To: Do, Bebhinn <do.bebhinn@epa.gov>
Cc: Schrock, Bill <Schrock.Bill@epa.gov>; Dunkins, Robin <Dunkins.Robin@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Thanks for sharing, Bebhinn.

I have included some suggested edits and comments in the document at its original file location. Please let me know if you have any questions or want to discuss anything.

Ex. 5 AC/DP

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

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From: Do, Bebhinn <do.bebhinn@epa.gov>
Sent: Thursday, October 28, 2021 1:37 PM
To: Sullivan, Tim <Sullivan.Tim@epa.gov>
Cc: Schrock, Bill <Schrock.Bill@epa.gov>; Dunkins, Robin <Dunkins.Robin@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>
Subject: FW: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Tim,

Ex. 5 AC/DP

Ex. 5 AC/DP A linked copy of the draft is attached.
Please let me know if you have any problems accessing it.

Bebhinn

From: Dunkins, Robin <Dunkins.Robin@epa.gov>
Sent: Thursday, October 28, 2021 2:35 PM
To: Schrock, Bill <Schrock.Bill@epa.gov>
Cc: Do, Bebhinn <do.bebhinn@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>
Subject: Re: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Bill can you share with Tim

Robin Dunkins, Group Leader
Natural Resources Group
USEPA OAR/OAQPS
Research Triangle Park, NC 27711
919-541-5335 office
919-605-1178 mobile
dunkins.robin@epa.gov

On Oct 28, 2021, at 2:26 PM, Schrock, Bill <Schrock.Bill@epa.gov> wrote:

Ex. 5 Deliberative Process (DP)

From: Do, Bebhinn <do.bebhinn@epa.gov>
Sent: Thursday, October 28, 2021 9:57 AM
To: Dunkins, Robin <Dunkins.Robin@epa.gov>; Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Ex. 5 Deliberative Process (DP)

BD

From: Mills, Kathy <Mills.Kathy@epa.gov>
Sent: Thursday, October 28, 2021 7:19 AM
To: Dunkins, Robin <Dunkins.Robin@epa.gov>; Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>; Do, Bebhinn <do.bebhinn@epa.gov>
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dunkins.robin@epa.gov

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Sent: Wednesday, October 27, 2021 6:00 PM

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U.S. Environmental Protection Agency
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Rebecca Perrin
R8 Ag Advisor | U.S. Environmental Protection Agency
DL: 303-312-6311

Message

From: Do, Bebhinn [do.bebhinn@epa.gov]
Sent: 11/1/2021 3:26:18 PM
To: Mills, Kathy [Mills.Kathy@epa.gov]
CC: Dunkins, Robin [Dunkins.Robin@epa.gov]; Schrock, Bill [Schrock.Bill@epa.gov]; Banner, Shannon [banner.shannon@epa.gov]
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

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PetitionDeskStatements.docx

KB,
No worries on the tracking. It happens.

Ex. 5 Deliberative Process (DP). So it's done from my side.

Ex. 5 Deliberative Process (DP)

BD

From: Mills, Kathy <Mills.Kathy@epa.gov>
Sent: Monday, November 1, 2021 8:11 AM
To: Do, Bebhinn <do.bebhinn@epa.gov>
Subject: FW: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Gonna be a busy week so starting off with a – "where are we on this" and let me know when I can move it to PACS.
Thx,
KB

Kathy "KB" Mills ~ SPPD ~ U. S. EPA, OAQPS ~ 919-541-1599

From: Mills, Kathy
Sent: Friday, October 29, 2021 1:51 PM
To: Do, Bebhinn <Do.Bebhinn@epa.gov>
Cc: Dunkins, Robin <Dunkins.Robin@epa.gov>; Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Ex. 5 Deliberative Process (DP)
Ex. 5 Deliberative Process (DP) Let me know when this can go to PACS.
KB

Kathy "KB" Mills ~ SPPD ~ U. S. EPA, OAQPS ~ 919-541-1599

From: Do, Bebhinn <do.bebhinn@epa.gov>
Sent: Friday, October 29, 2021 11:53 AM
To: Mills, Kathy <Mills.Kathy@epa.gov>
Cc: Dunkins, Robin <Dunkins.Robin@epa.gov>; Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

KB,

Draft desk statement attached. **Ex. 5 Deliberative Process (DP)** I thought you could start a review in the meantime.

I'll have that by Monday.

BD

From: Mills, Kathy <Mills.Kathy@epa.gov>
Sent: Thursday, October 28, 2021 7:19 AM
To: Dunkins, Robin <Dunkins.Robin@epa.gov>; Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>; Do, Bebhinn <do.bebhinn@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Ex. 5 Deliberative Process (DP)

Kathy "KB" Mills ~ SPPD ~ U. S. EPA, OAQPS ~ 919-541-1599

From: Dunkins, Robin <Dunkins.Robin@epa.gov>
Sent: Wednesday, October 27, 2021 6:02 PM
To: Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>; Do, Bebhinn <do.bebhinn@epa.gov>; Mills, Kathy <Mills.Kathy@epa.gov>
Subject: FW: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Robin Dunkins, Group Leader
Natural Resources Group
OAR/OAQPS/SPPD Mail Code: E143-03
U.S. Environmental Protection Agency
Research Triangle Park, NC 27711
919-541-5335 office
919-605-1178 mobile
dunkins.robin@epa.gov

From: Dunkins, Robin
Sent: Wednesday, October 27, 2021 6:00 PM
To: Perrin, Rebecca <Perrin.Rebecca@epa.gov>; Snyder, Rodney <Snyder.Rodney@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Ex. 5 Deliberative Process (DP)

I have the RMNP meeting on my calendar. I was going to listen in on some of that meeting but let me know if I should stay on for the entire call.

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Ex. 5 Deliberative Process (DP)

Rebecca Perrin
U.S. Environmental Protection Agency
DL: 303-312-6311

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Subject: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

FYI... https://whistleblower.org/press-release/press-release-legal-petition-challenges-epa-inaction-on-factory-farm-air-pollution/

Rebecca Perrin
R8 Ag Advisor | U.S. Environmental Protection Agency
DL: 303-312-6311

Message

From: Noonan, Jenny [Noonan.Jenny@epa.gov]
Sent: 11/3/2021 1:14:12 AM
To: Mills, Kathy [Mills.Kathy@epa.gov]
CC: Dunkins, Robin [Dunkins.Robin@epa.gov]; Schrock, Bill [Schrock.Bill@epa.gov]; Do, Bebhinn [do.bebhinn@epa.gov]; Banner, Shannon [banner.shannon@epa.gov]
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Thanks for the chance to review. I've made some suggestions and asked a few questions.

😊Jenny

From: Mills, Kathy <Mills.Kathy@epa.gov>
Sent: Tuesday, November 02, 2021 3:49 PM
To: Noonan, Jenny <Noonan.Jenny@epa.gov>
Cc: Dunkins, Robin <Dunkins.Robin@epa.gov>; Schrock, Bill <Schrock.Bill@epa.gov>; Do, Bebhinn <do.bebhinn@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>
Subject: FW: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

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Ex. 5 Deliberative Process (DP)

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Rebecca Perrin
R8 Ag Advisor | U.S. Environmental Protection Agency
DL: 303-312-6311

Message

From: Do, Bebhinn [do.bebhinn@epa.gov]
Sent: 11/3/2021 11:49:25 AM
To: Mills, Kathy [Mills.Kathy@epa.gov]
CC: Dunkins, Robin [Dunkins.Robin@epa.gov]; Schrock, Bill [Schrock.Bill@epa.gov]; Banner, Shannon [banner.shannon@epa.gov]
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

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Sent: Tuesday, November 2, 2021 3:49 PM
To: Noonan, Jenny <Noonan.Jenny@epa.gov>
Cc: Dunkins, Robin <Dunkins.Robin@epa.gov>; Schrock, Bill <Schrock.Bill@epa.gov>; Do, Bebhinn <do.bebhinn@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>
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Ex. 5 Deliberative Process (DP)

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Robin Dunkins, Group Leader
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OAR/OAQPS/SPPD Mail Code: E143-03

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Rebecca Perrin
R8 Ag Advisor | U.S. Environmental Protection Agency
DL: 303-312-6311

Message

From: Dunkins, Robin [Dunkins.Robin@epa.gov]
Sent: 11/3/2021 12:57:48 PM
To: Do, Bebhinn [do.bebhinn@epa.gov]; Mills, Kathy [Mills.Kathy@epa.gov]
CC: Schrock, Bill [Schrock.Bill@epa.gov]; Banner, Shannon [banner.shannon@epa.gov]
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

I will try to go in and review at lunch time.

Robin Dunkins, Group Leader
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U.S. Environmental Protection Agency
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919-541-5335 office
919-605-1178 mobile
dunkins.robin@epa.gov

From: Do, Bebhinn <do.bebhinn@epa.gov>
Sent: Wednesday, November 03, 2021 7:49 AM
To: Mills, Kathy <Mills.Kathy@epa.gov>
Cc: Dunkins, Robin <Dunkins.Robin@epa.gov>; Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

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Sent: Tuesday, November 2, 2021 3:49 PM
To: Noonan, Jenny <Noonan.Jenny@epa.gov>
Cc: Dunkins, Robin <Dunkins.Robin@epa.gov>; Schrock, Bill <Schrock.Bill@epa.gov>; Do, Bebhinn <do.bebhinn@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>
Subject: FW: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

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Ex. 5 Deliberative Process (DP)

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R8 Ag Advisor | U.S. Environmental Protection Agency
DL: 303-312-6311

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Sent: 11/3/2021 8:13:54 PM
To: Dunkins, Robin [Dunkins.Robin@epa.gov]
CC: Schrock, Bill [Schrock.Bill@epa.gov]; Banner, Shannon [banner.shannon@epa.gov]
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution
Attachments: PetitionDeskStatements.docx

Attached!
BD

From: Dunkins, Robin <Dunkins.Robin@epa.gov>
Sent: Wednesday, November 3, 2021 4:11 PM
To: Do, Bebhinn <do.bebhinn@epa.gov>
Cc: Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>
Subject: Re: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Can you send me clean copy not sharpoint link

Robin Dunkins, Group Leader
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USEPA OAR/OAQPS
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dunkins.robin@epa.gov

On Nov 3, 2021, at 3:42 PM, Do, Bebhinn <Do.Bebhinn@epa.gov> wrote:

Do, Bebhinn has shared a OneDrive for Business file with you. To view it, click the link below.

<image00001.png> PetitionDeskStatements.docx

Ex. 5 Deliberative Process (DP)

From: Dunkins, Robin <Dunkins.Robin@epa.gov>
Sent: Wednesday, November 3, 2021 3:26 PM
To: Do, Bebhinn <do.bebhinn@epa.gov>; Mills, Kathy <Mills.Kathy@epa.gov>
Cc: Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

I just reviewed the latest version of desk statement and I'm ok with all edits

Robin Dunkins, Group Leader
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Sent: Wednesday, November 03, 2021 4:14 PM
To: Dunkins, Robin <Dunkins.Robin@epa.gov>
Cc: Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Attached!
BD

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Subject: Re: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Can you send me clean copy not sharpoint link

Robin Dunkins, Group Leader
Natural Resources Group
USEPA OAR/OAQPS
Research Triangle Park, NC 27711
919-541-5335 office
919-605-1178 mobile
dunkins.robin@epa.gov

On Nov 3, 2021, at 3:42 PM, Do, Bebhinn <Do.Bebhinn@epa.gov> wrote:

Do, Bebhinn has shared a OneDrive for Business file with you. To view it, click the link below.

<image00001.png> PetitionDeskStatements.docx

Ex. 5 Deliberative Process (DP)

From: Dunkins, Robin <Dunkins.Robin@epa.gov>
Sent: Wednesday, November 3, 2021 3:26 PM
To: Do, Bebhinn <do.bebhinn@epa.gov>; Mills, Kathy <Mills.Kathy@epa.gov>
Cc: Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

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Robin Dunkins, Group Leader
Natural Resources Group
OAR/OAQPS/SPPD Mail Code: E143-03
U.S. Environmental Protection Agency
Research Triangle Park, NC 27711
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919-605-1178 mobile
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Subject: FW: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Hi Jenny,

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

KB

Kathy "KB" Mills ~ SPPD ~ U. S. EPA, OAQPS ~ 919-541-1599

From: Dunkins, Robin <Dunkins.Robin@epa.gov>
Sent: Wednesday, October 27, 2021 6:02 PM
To: Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>; Do, Bebhinn <do.bebhinn@epa.gov>; Mills, Kathy <Mills.Kathy@epa.gov>
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From: Dunkins, Robin
Sent: Wednesday, October 27, 2021 6:00 PM
To: Perrin, Rebecca <Perrin.Rebecca@epa.gov>; Snyder, Rodney <Snyder.Rodney@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Ex. 5 Deliberative Process (DP)

I have the RMNP meeting on my calendar. I was going to listen in on some of that meeting but let me know if I should stay on for the entire call.

Robin Dunkins, Group Leader
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Ex. 5 Deliberative Process (DP)

Rebecca Perrin
U.S. Environmental Protection Agency
DL: 303-312-6311

From: Dunkins, Robin <Dunkins.Robin@epa.gov>
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To: Perrin, Rebecca <Perrin.Rebecca@epa.gov>; Snyder, Rodney <Snyder.Rodney@epa.gov>
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FYI... https://whistleblower.org/press-release/press-release-legal-petition-challenges-epa-inaction-on-factory-farm-air-pollution/

Rebecca Perrin
R8 Ag Advisor | U.S. Environmental Protection Agency
DL: 303-312-6311

Message

From: Do, Bebhinn [do.bebhinn@epa.gov]
Sent: 11/3/2021 8:44:20 PM
To: Dunkins, Robin [Dunkins.Robin@epa.gov]
CC: Schrock, Bill [Schrock.Bill@epa.gov]; Banner, Shannon [banner.shannon@epa.gov]
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution
Attachments: PetitionDeskStatements.docx

I missed that. **Ex. 5 Deliberative Process (DP)**
BD

From: Dunkins, Robin <Dunkins.Robin@epa.gov>
Sent: Wednesday, November 3, 2021 4:32 PM
To: Do, Bebhinn <do.bebhinn@epa.gov>
Cc: Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Ex. 5 Deliberative Process (DP)

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Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

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DL: 303-312-6311

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Rebecca Perrin
R8 Ag Advisor | U.S. Environmental Protection Agency

DL: 303-312-6311

Message

From: Mills, Kathy [Mills.Kathy@epa.gov]
Sent: 11/4/2021 11:16:22 AM
To: Dunkins, Robin [Dunkins.Robin@epa.gov]; Do, Bebhinn [do.bebhinn@epa.gov]
CC: Schrock, Bill [Schrock.Bill@epa.gov]; Banner, Shannon [banner.shannon@epa.gov]
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Good news! Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

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Rebecca Perrin
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DL: 303-312-6311

Message

From: Dunkins, Robin [Dunkins.Robin@epa.gov]
Sent: 11/29/2021 8:33:40 PM
To: Mills, Kathy [Mills.Kathy@epa.gov]; South, Peter [South.Peter@epa.gov]; Cozzie, David [Cozzie.David@epa.gov]; Hunt, Virginia [Hunt.Virginia@epa.gov]
CC: Do, Bebhinn [do.bebhinn@epa.gov]; Schrock, Bill [Schrock.Bill@epa.gov]; Banner, Shannon [banner.shannon@epa.gov]; Gmyr, Joanna [Gmyr.Joanna@epa.gov]; Joseph, Wanda [joseph.wanda@epa.gov]
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Hey all,
I'm behind sending this out. Just letting you know I need to send out today if possible

Robin Dunkins, Group Leader
Natural Resources Group
OAR/OAQPS/SPPD Mail Code: E143-03
U.S. Environmental Protection Agency
Research Triangle Park, NC 27711
919-541-5335 office
919-605-1178 mobile
dunkins.robin@epa.gov

From: Mills, Kathy <Mills.Kathy@epa.gov>
Sent: Tuesday, November 23, 2021 1:42 PM
To: South, Peter <South.Peter@epa.gov>; Cozzie, David <Cozzie.David@epa.gov>; Hunt, Virginia <Hunt.Virginia@epa.gov>
Cc: Dunkins, Robin <Dunkins.Robin@epa.gov>; Do, Bebhinn <do.bebhinn@epa.gov>; Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>; Gmyr, Joanna <Gmyr.Joanna@epa.gov>; Joseph, Wanda <joseph.wanda@epa.gov>
Subject: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Ex. 5 Deliberative Process (DP)

Thank you,
KB

Kathy "KB" Mills ~ SPPD ~ U. S. EPA, OAQPS ~ 919-541-1599

Message

From: Sullivan, Tim [Sullivan.Tim@epa.gov]
Sent: 10/28/2021 8:46:23 PM
To: Do, Bebhinn [do.bebhinn@epa.gov]
CC: Schrock, Bill [Schrock.Bill@epa.gov]; Dunkins, Robin [Dunkins.Robin@epa.gov]; Banner, Shannon [banner.shannon@epa.gov]; Sullivan, Tim [Sullivan.Tim@epa.gov]
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Thanks for sharing, Bebhinn.

I have included some suggested edits and comments in the document at its original file location. Please let me know if you have any questions or want to discuss anything.

Ex. 5 AC/DP

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: Do, Bebhinn <do.bebhinn@epa.gov>
Sent: Thursday, October 28, 2021 1:37 PM
To: Sullivan, Tim <Sullivan.Tim@epa.gov>
Cc: Schrock, Bill <Schrock.Bill@epa.gov>; Dunkins, Robin <Dunkins.Robin@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>
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Tim,

Ex. 5 AC/DP

Ex. 5 AC/DP A linked copy of the draft is attached.
Please let me know if you have any problems accessing it.

Bebhinn

From: Dunkins, Robin <Dunkins.Robin@epa.gov>
Sent: Thursday, October 28, 2021 2:35 PM
To: Schrock, Bill <Schrock.Bill@epa.gov>
Cc: Do, Bebhinn <do.bebhinn@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>
Subject: Re: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Bill can you share with Tim

Robin Dunkins, Group Leader
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On Oct 28, 2021, at 2:26 PM, Schrock, Bill <Schrock.Bill@epa.gov> wrote:

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From: Do, Bebhinn <do.bebhinn@epa.gov>
Sent: Thursday, October 28, 2021 9:57 AM
To: Dunkins, Robin <Dunkins.Robin@epa.gov>; Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>
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To: Perrin, Rebecca <Perrin.Rebecca@epa.gov>; Snyder, Rodney <Snyder.Rodney@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Ex. 5 Deliberative Process (DP)

I have the RMNP meeting on my calendar. I was going to listen in on some of that meeting but let me know if I should stay on for the entire call.

Robin Dunkins, Group Leader
Natural Resources Group
OAR/OAQPS/SPPD Mail Code: E143-03
U.S. Environmental Protection Agency
Research Triangle Park, NC 27711
919-541-5335 office
919-605-1178 mobile
dunkins.robin@epa.gov

From: Perrin, Rebecca <Perrin.Rebecca@epa.gov>
Sent: Wednesday, October 27, 2021 5:54 PM

To: Dunkins, Robin <Dunkins.Robin@epa.gov>; Snyder, Rodney <Snyder.Rodney@epa.gov>
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Ex. 5 Deliberative Process (DP)

Rebecca Perrin
U.S. Environmental Protection Agency
DL: 303-312-6311

From: Dunkins, Robin <Dunkins.Robin@epa.gov>
Sent: Wednesday, October 27, 2021 3:52 PM
To: Perrin, Rebecca <Perrin.Rebecca@epa.gov>; Snyder, Rodney <Snyder.Rodney@epa.gov>
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FYI... https://whistleblower.org/press-release/press-release-legal-petition-challenges-epa-inaction-on-factory-farm-air-pollution/

Rebecca Perrin
R8 Ag Advisor | U.S. Environmental Protection Agency
DL: 303-312-6311

Message

From: Do, Bebhinn [do.bebhinn@epa.gov]
Sent: 10/28/2021 7:37:01 PM
To: Sullivan, Tim [Sullivan.Tim@epa.gov]
CC: Schrock, Bill [Schrock.Bill@epa.gov]; Dunkins, Robin [Dunkins.Robin@epa.gov]; Banner, Shannon [banner.shannon@epa.gov]
Subject: FW: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Do, Bebhinn has shared a OneDrive for Business file with you. To view it, click the link below.

PetitionDeskStatements.docx

Tim,

Ex. 5 AC/DP

Ex. 5 AC/DP A linked copy of the draft is attached. Please let me know if you have any problems accessing it.

Bebhinn

From: Dunkins, Robin <Dunkins.Robin@epa.gov>
Sent: Thursday, October 28, 2021 2:35 PM
To: Schrock, Bill <Schrock.Bill@epa.gov>
Cc: Do, Bebhinn <do.bebhinn@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>
Subject: Re: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Bill can you share with Tim

Robin Dunkins, Group Leader
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USEPA OAR/OAQPS
Research Triangle Park, NC 27711
919-541-5335 office
919-605-1178 mobile
dunkins.robin@epa.gov

On Oct 28, 2021, at 2:26 PM, Schrock, Bill <Schrock.Bill@epa.gov> wrote:

Ex. 5 Deliberative Process (DP)

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Sent: Thursday, October 28, 2021 7:19 AM
To: Dunkins, Robin <Dunkins.Robin@epa.gov>; Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>; Do, Bebhinn <do.bebhinn@epa.gov>
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Ex. 5 Deliberative Process (DP)

Kathy "KB" Mills ~ SPPD ~ U. S. EPA, OAQPS ~ 919-541-1599

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Sent: Wednesday, October 27, 2021 6:02 PM
To: Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>; Do, Bebhinn <do.bebhinn@epa.gov>; Mills, Kathy <Mills.Kathy@epa.gov>
Subject: FW: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Robin Dunkins, Group Leader
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OAR/OAQPS/SPPD Mail Code: E143-03

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From: Schrock, Bill [Schrock.Bill@epa.gov]
Sent: 10/28/2021 6:26:11 PM
To: Do, Bebhinn [do.bebhinn@epa.gov]; Dunkins, Robin [Dunkins.Robin@epa.gov]; Banner, Shannon [banner.shannon@epa.gov]
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To: Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>; Do, Bebhinn <do.bebhinn@epa.gov>; Mills, Kathy <Mills.Kathy@epa.gov>
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DL: 303-312-6311

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Sent: Wednesday, October 27, 2021 5:48 PM
To: Snyder, Rodney <Snyder.Rodney@epa.gov>; Dunkins, Robin <Dunkins.Robin@epa.gov>
Subject: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

FYI… https://whistleblower.org/press-release/press-release-legal-petition-challenges-epa-inaction-on-factory-farm-air-pollution/

Rebecca Perrin
R8 Ag Advisor | U.S. Environmental Protection Agency
DL: 303-312-6311

Message

From: Dunkins, Robin [Dunkins.Robin@epa.gov]
Sent: 10/28/2021 6:35:32 PM
To: Schrock, Bill [Schrock.Bill@epa.gov]; Do, Bebhinn [do.bebhinn@epa.gov]; Banner, Shannon [banner.shannon@epa.gov]
Subject: Fwd: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

FYI

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USEPA OAR/OAQPS
Research Triangle Park, NC 27711
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919-605-1178 mobile
dunkins.robin@epa.gov

Begin forwarded message:

From: "Snyder, Rodney" <Snyder.Rodney@epa.gov>
Date: October 28, 2021 at 1:16:10 PM EDT
To: "Dunkins, Robin" <Dunkins.Robin@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Sounds good. Thanks, Robin!

Rod Snyder
Senior Advisor for Agriculture
Office of the Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460
Cell: (202) 503-5749
snyder.rodney@epa.gov

From: Dunkins, Robin <Dunkins.Robin@epa.gov>
Sent: Thursday, October 28, 2021 12:02 PM
To: Snyder, Rodney <Snyder.Rodney@epa.gov>
Cc: Perrin, Rebecca <Perrin.Rebecca@epa.gov>
Subject: Re: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP) I will try to get back to you ASAP

Robin Dunkins, Group Leader
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USEPA OAR/OAQPS
Research Triangle Park, NC 27711

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dunkins.robin@epa.gov

On Oct 28, 2021, at 11:33 AM, Snyder, Rodney <Snyder.Rodney@epa.gov> wrote:

Rebecca, thanks for flagging. Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Talk soon,

Rod Snyder
Senior Advisor for Agriculture
Office of the Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460
Cell: (202) 503-5749
snyder.rodney@epa.gov

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To: Perrin, Rebecca <Perrin.Rebecca@epa.gov>; Snyder, Rodney <Snyder.Rodney@epa.gov>
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DL: 303-312-6311

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From: Dunkins, Robin [Dunkins.Robin@epa.gov]
Sent: 10/28/2021 6:34:50 PM
To: Schrock, Bill [Schrock.Bill@epa.gov]
CC: Do, Bebhinn [do.bebhinn@epa.gov]; Banner, Shannon [banner.shannon@epa.gov]
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Bill can you share with Tim

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R8 Ag Advisor | U.S. Environmental Protection Agency
DL: 303-312-6311

Message

From: Mills, Kathy [Mills.Kathy@epa.gov]
Sent: 11/23/2021 6:41:48 PM
To: South, Peter [South.Peter@epa.gov]; Cozzie, David [Cozzie.David@epa.gov]; Hunt, Virginia [Hunt.Virginia@epa.gov]
CC: Dunkins, Robin [Dunkins.Robin@epa.gov]; Do, Bebhinn [do.bebhinn@epa.gov]; Schrock, Bill [Schrock.Bill@epa.gov]; Banner, Shannon [banner.shannon@epa.gov]; Gmyr, Joanna [Gmyr.Joanna@epa.gov]; Joseph, Wanda [joseph.wanda@epa.gov]
Subject: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Flag: Follow up

Mills, Kathy has shared a OneDrive for Business file with you. To view it, click the link below.

PetitionDeskStatements.docx

Ex. 5 Deliberative Process (DP)

Thank you,
KB

Kathy "KB" Mills ~ SPPD ~ U. S. EPA, OAQPS ~ 919-541-1599

Message

From: Do, Bebhinn [do.bebhinn@epa.gov]
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To: Dunkins, Robin [Dunkins.Robin@epa.gov]; Schrock, Bill [Schrock.Bill@epa.gov]; Banner, Shannon [banner.shannon@epa.gov]
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From: Perrin, Rebecca <Perrin.Rebecca@epa.gov>
Sent: Wednesday, October 27, 2021 5:54 PM
To: Dunkins, Robin <Dunkins.Robin@epa.gov>; Snyder, Rodney <Snyder.Rodney@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Thanks! I have a steering committee meeting for RMNP tomorrow, **Ex. 5 Deliberative Process (DP)**
Ex. 5 Deliberative Process (DP)

Rebecca Perrin
U.S. Environmental Protection Agency
DL: 303-312-6311

From: Dunkins, Robin <Dunkins.Robin@epa.gov>
Sent: Wednesday, October 27, 2021 3:52 PM
To: Perrin, Rebecca <Perrin.Rebecca@epa.gov>; Snyder, Rodney <Snyder.Rodney@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Thanks Rebecca. We received the petition/notification thru CMS today. However, I informed OAR that this should be assigned to OECA. OAR is responsible for the NAEMS and the EEMS but OECA is responsible to the consent agreement itself. Stay tuned.

Robin Dunkins, Group Leader
Natural Resources Group
OAR/OAQPS/SPPD Mail Code: E143-03
U.S. Environmental Protection Agency
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919-541-5335 office
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From: Perrin, Rebecca <Perrin.Rebecca@epa.gov>
Sent: Wednesday, October 27, 2021 5:48 PM
To: Snyder, Rodney <Snyder.Rodney@epa.gov>; Dunkins, Robin <Dunkins.Robin@epa.gov>
Subject: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

FYI... https://whistleblower.org/press-release/press-release-legal-petition-challenges-epa-inaction-on-factory-farm-air-pollution/

Rebecca Perrin
R8 Ag Advisor | U.S. Environmental Protection Agency
DL: 303-312-6311

Message

From: Dunkins, Robin [Dunkins.Robin@epa.gov]
Sent: 10/27/2021 10:02:02 PM
To: Schrock, Bill [Schrock.Bill@epa.gov]; Banner, Shannon [banner.shannon@epa.gov]; Do, Bebhinn [do.bebhinn@epa.gov]; Mills, Kathy [Mills.Kathy@epa.gov]
Subject: FW: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

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From: Dunkins, Robin
Sent: Wednesday, October 27, 2021 6:00 PM
To: Perrin, Rebecca <Perrin.Rebecca@epa.gov>; Snyder, Rodney <Snyder.Rodney@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Ex. 5 Deliberative Process (DP)

I have the RMNP meeting on my calendar. I was going to listen in on some of that meeting but let me know if I should stay on for the entire call.

Robin Dunkins, Group Leader
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U.S. Environmental Protection Agency
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919-541-5335 office
919-605-1178 mobile
dunkins.robin@epa.gov

From: Perrin, Rebecca <Perrin.Rebecca@epa.gov>
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Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

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Rebecca Perrin
U.S. Environmental Protection Agency
DL: 303-312-6311

From: Dunkins, Robin <Dunkins.Robin@epa.gov>
Sent: Wednesday, October 27, 2021 3:52 PM
To: Perrin, Rebecca <Perrin.Rebecca@epa.gov>; Snyder, Rodney <Snyder.Rodney@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

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From: Perrin, Rebecca <Perrin.Rebecca@epa.gov>
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To: Snyder, Rodney <Snyder.Rodney@epa.gov>; Dunkins, Robin <Dunkins.Robin@epa.gov>
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FYI... https://whistleblower.org/press-release/press-release-legal-petition-challenges-epa-inaction-on-factory-farm-air-pollution/

Rebecca Perrin
R8 Ag Advisor | U.S. Environmental Protection Agency
DL: 303-312-6311

Message

From: Hunt, Virginia [Hunt.Virginia@epa.gov]
Sent: 10/27/2021 11:02:52 AM
To: Dunkins, Robin [Dunkins.Robin@epa.gov]; Schrock, Bill [Schrock.Bill@epa.gov]; Banner, Shannon [banner.shannon@epa.gov]; Ma, Cyrus [Ma.Cyrus@epa.gov]
CC: Mills, Kathy [Mills.Kathy@epa.gov]; Gmyr, Joanna [Gmyr.Joanna@epa.gov]; Hall, Deshelia [Hall.DeShelia@epa.gov]
Subject: FW: CMS New Assignment - AX-22-000-0451
Attachments: AX-22-000-0451control slip.pdf; AX-22-000-0451 ltr.pdf

Control AX-21-000-0451 has been delegated to SPPD. The attached control slip and incoming letter regarding a petition to rescind the Air Consent Agreement and enforce clean air laws against animal feeding operations are attached for your review and assignment within your group. The final response must be uploaded into CMS by November 10. The following steps will be helpful to you:

Ex. 5 Deliberative Process (DP)

For response examples, please visit the Comms Team archive:
Ex. 6 Personal Privacy (PP)

Thank you,

Virginia L. Hunt
Administrative Specialist
OAQPS SPPD RCG
109 T.W. Alexander Drive
RTP, NC 27711
Hours 6am -2:30pm EST M-F
ba
-----Original Message-----
From: cmsadmin@epa.gov <cmsadmin@epa.gov>
Sent: Tuesday, October 26, 2021 3:18 PM
To: eck.janet@epa.gov; South, Peter <South.Peter@epa.gov>; Hunt, Virginia <Hunt.Virginia@epa.gov>; Brown, Annette <Brown.Annette@epa.gov>; Joseph, Wanda <joseph.wanda@epa.gov>; Gates, Adrian <gates.adrian@epa.gov>; Gmyr, Joanna <Gmyr.Joanna@epa.gov>; Mills, Kathy <Mills.Kathy@epa.gov>; Crowley, Kate <crowley.kate@epa.gov>
Subject: CMS New Assignment - Blanche Scott - AX-22-000-0451

Control AX-22-000-0451 has been assigned to your office on 10/26/2021 3:17:55 PM by Blanche Scott. Please go to the CMS webpage to view the details of the control.

Summary Information -
Control Number: AX-22-000-0451
Control Subject: Reading File - Petition to Rescind the Air Consent Agreement and Enforce Clean Air Laws Against Animal Feeding Operations
From: Miller, Emily; Stella, Cristina; Connor, Hannah M.M.; Saun, Amy van; Russ, Abel; Heinzen, Tarah; Newell, Brent

Note: This Email was automatically generated. Please do not attempt to respond to it. You can access
Ex. 6 Personal Privacy (PP)

Tue Oct 26 12:33:07 EDT 2021
Ex. 6 Personal Privacy (PP) @epa.gov>
FW: Petition to End Animal Feeding Operation Air Consent Agreement
To: " Ex. 6 Personal Privacy (PP) @epa.gov>

Reading file

From: Emily A. Miller <eamiller@fwwatch.org>
Sent: Tuesday, October 26, 2021 11:03 AM
To: Regan, Michael <Regan.Michael@epa.gov>
Cc: Tarah Heinzen <theinzen@fwwatch.org>; Brent Newell <bnewell@publicjustice.net>; Hannah Connor <HConnor@biologicaldiversity.org>; abel russ <aruss@environmentalintegrity.org>; Cristina Stella <cstella@aldf.org>; Larissa Liebmann <lliebmann@aldf.org>; Amy van Saun <AvanSaun@CenterforFoodSafety.org>; Kristina Sinclair <kSinclair@CenterforFoodSafety.org>
Subject: Petition to End Animal Feeding Operation Air Consent Agreement

Administrator Regan:

Attached, and at the following link, please find a petition from 24 organizations to rescind the Air Consent Agreement and enforce clean air laws against animal feeding operations: https://www.foodandwaterwatch.org/wp-content/uploads/2021/10/2021.10.26-Petition-re-2005-Air-Consent-Agreement-1.pdf.

Thank you for your consideration.

Sincerely

Emily Miller

Staff Attorney

Food & Water Watch

1616 P St. NW, Suite 300

Washington, DC 20036

eamiller@fwwatch.org

(202) 683-2500

BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

ANIMAL LEGAL DEFENSE FUND, BUFFALO RIVER WATERSHED ALLIANCE (ARKANSAS), CENTER FOR BIOLOGICAL DIVERSITY, CENTER FOR FOOD SAFETY, CENTER ON RACE, POVERTY, & THE ENVIRONMENT (CALIFORNIA), CLEAN WATER FOR NORTH CAROLINA (NORTH CAROLINA), EARTHJUSTICE, ENVIRONMENTAL INTEGRITY PROJECT, FARM AID, FRIENDS OF THE EARTH, FRIENDS OF FAMILY FARMERS (OREGON), FRIENDS OF TOPPENISH CREEK (WASHINGTON), FOOD ANIMAL CONCERNS TRUST, FOOD & WATER WATCH, GOVERNMENT ACCOUNTABILITY PROJECT, HUMANE SOCIETY OF THE UNITED STATES, IOWA CITIZENS FOR COMMUNITY IMPROVEMENT (IOWA), INSTITUTE FOR AGRICULTURE & TRADE POLICY, JOHNS HOPKINS CENTER FOR A LIVABLE FUTURE, NORTH CAROLINA CONSERVATION NETWORK (NORTH CAROLINA), PUBLIC JUSTICE, SOCIALLY RESPONSIBLE AGRICULTURE PROJECT, SOUTHERN ENVIRONMENTAL LAW CENTER, AND WATERKEEPER ALLIANCE

Petitioners,

v.

MICHAEL REGAN, ADMINISTRATOR,
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Respondent.

PETITION TO RESCIND THE AIR CONSENT AGREEMENT
AND ENFORCE CLEAN AIR LAWS AGAINST ANIMAL FEEDING OPERATIONS

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I. INTRODUCTION

Rural communities deserve a safe, prosperous, and plentiful food system rooted in dignity and respect. In this system, Black, Indigenous, Latino, Asian, and white communities enjoy clean land, air, and water where independent family farms and renewable energy build diversified, local, and thriving rural economies. Sadly, past administrations have prioritized the interests of corporate-controlled industrial agriculture over the well-being of rural communities. Corporate integrators, trade groups, and other powerful titans of industry, have flourished while communities and farmers have suffered through years of pollution, hollowed out Main Streets, and declining economic opportunities. This has led to what any neutral observer would decry as undemocratic oppression and exploitation. Our government has the duty and authority to protect the health and well-being of our communities by enforcing federal air pollution laws, which do not exempt this industrial system.

Over sixteen years ago, the Environmental Protection Agency (EPA), under the President George W. Bush administration, announced an Agreement and Final Order it had secretly negotiated with the National Pork Producers Council. In the agreement, EPA refrained from enforcing key air pollution control and public disclosure laws against any animal feeding operation (AFO) that agreed to pay a nominal penalty to fund a nationwide air monitoring program to establish Emission Estimating Methodologies (EEMs) for AFOs.[1] Nearly *14,000* AFOs signed up for this sweetheart deal, known as the Air Consent Agreement. By its own terms, this deal should have been completed over a decade ago, in 2010.[2] Yet, as of the date of this letter, EPA has yet to finalize *any* EEMs or end the Air Consent Agreement. As a result of EPA's protracted delay, thousands of the nation's largest AFOs continue to enjoy protection from EPA enforcement actions, even if their emissions exceed permit limits or reporting thresholds. EPA's implementation of the Air Consent Agreement over the past three presidential administrations demonstrates a complete, bipartisan abdication of EPA's enforcement authority.

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[1] Notice of Animal Feeding Operation Consent Agreement & Final Order, 70 Fed. Reg. 4957 (Jan. 31, 2005) [hereinafter 2005 Notice]; *see also id.* at 4962 Appendix 1: Air Consent Agreement [hereinafter 2005 Air Consent Agreement].

[2] EPA OIG, IMPROVING AIR QUALITY: ELEVEN YEARS AFTER AGREEMENT EPA HAS NOT DEVELOPED RELIABLE EMISSIONS ESTIMATION METHODS TO DETERMINE WHETHER ANIMAL FEEDING OPERATIONS COMPLY WITH CLEAN AIR ACT AND OTHER STATUTES, Report No. 17-P-0396, at 5 (Sept. 19, 2017) [hereinafter 2017 OIG REPORT], available at https://www.epa.gov/sites/default/files/2017-09/documents/_epaoig_20170919-17-p-0396.pdf.

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Pursuant to the right to petition the government provided in the First Amendment to the U.S. Constitution[3] and the Administrative Procedure Act,[4] Petitioners formally submit this petition to EPA to put an end to the enforcement amnesty. The Petitioners collectively represent millions of citizens from across the United States, including many individuals adversely impacted by CAFO air pollution in their communities.

We request your written response regarding this unacceptable dereliction of duty within **30 days** of receiving this Petition. We ask that you rescind the Air Consent Agreement, take all actions consistent with President Biden's executive orders to enforce all applicable laws against AFOs, and prioritize environmental justice in enforcement and climate actions. If you instead wish to continue the policies of the past three administrations, please set forth the reasons for refusing to grant this petition.

II. AIR POLLUTION FROM AFOs HAS SERIOUS HEALTH IMPACTS ON SURROUNDING COMMUNITIES.

Air pollution is the largest environmental mortality risk factor in the United States, and agriculture—particularly industrial animal production—is a major contributor to reduced air quality.[5] According to a recent study published in the Proceedings of the National Academy of Sciences of the United States (PNAS), air pollution from U.S. agriculture includes direct emissions of fine particulate matter ($PM_{2.5}$) and $PM_{2.5}$ precursors such as ammonia (NH_3), nitrogen oxides (NO_x), sulfur dioxide (SO_2), and volatile organic compounds (VOCs).[6] This pollution causes 17,900 U.S. deaths per year, with 15,900 deaths from food production and 2,000 deaths linked to nonfood products.[7] Of the 15,900 deaths from food production, 80 percent, or 12,700 deaths, are attributable to industrial animal production, with the remaining 20 percent

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[3] U.S. CONST. amend. I.
[4] 5 U.S.C. 553(e).
[5] J. Stanaway et al., *Global, Regional, & National Comparative Risk Assessment of 84 Behavioural, Environmental, & Occupational, And Metabolic Risks or Clusters of Risks For 195 Countries & Territories, 1990-2017*, 392 LANCET 1923 (2018), https://www.thelancet.com/action/showPdf?pii=S0140-6736%2818%2932225-6; J. Lelieveld et al., *The Contribution Of Outdoor Air Pollution Sources To Premature Mortality On A Global Scale*, 525 NATURE 367 (2015); S. Bauer et al., *Significant Atmospheric Aerosol Pollution Caused By World Food Cultivation*, 43 GEOPHYS. RES. LETT. 5394 (2016), https://agupubs.onlinelibrary.wiley.com/doi/epdf/10.1002/2016GL068354.
[6] N. Domingo et al., *Air Quality-Related Health Damages of Food*, 118 PNAS e2013637118, 1 (2021), https://www.pnas.org/content/pnas/118/20/e2013637118.full.pdf.
[7] *Id.*

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attributable to plant-based foods.[8] The majority of deaths—12,400 deaths each year—are attributable to ammonia acting as a $PM_{2.5}$ precursor.[9] The study noted that on-farm emission reduction interventions, such as improved livestock waste management and fertilizer application practices, combined with dietary shifts toward more plant-based foods, could dramatically reduce the number of mortalities caused by this industry.[10]

Another recent study found that poultry AFOs in Pennsylvania were a major risk factor for pneumonia.[11] The authors observed that "[e]xposure to air pollutants such as particulate matter . . . reduc[es] the lung's defenses against bacterial pathogens, thereby increasing susceptibility to respiratory infections."[12] In addition, the authors also noted that

> As a source of air pollution, industrial food animal production can compromise respiratory health. These large, homogeneous, densely packed livestock operations emit particulate matter, endotoxins, and other pollutants, which spread downwind through ventilation fans and emissions from decomposing manure. Adverse effects on lung function and increased respiratory symptoms have been reported among individuals living near [industrial food animal production], particularly among susceptible groups.

The study found a 66 percent increase in the odds of being diagnosed with community-acquired pneumonia among people living closest to high-density poultry operations, demonstrating that "residing closer to more and larger poultry operations was associated with [community-acquired pneumonia], a cause of significant morbidity and mortality."[13]

EPA is culpable for many of these deaths and illnesses. For nearly two decades, EPA's sustained approach of ignoring pollution generated by the AFO industry under the guise of the Air Consent Agreement has resulted in the emission of significant amounts of unchecked air pollution, including ozone, $PM_{2.5}$, nitrogen oxides, sulfur dioxide, and VOCs–pollutants that EPA is required to regulate under the Clean Air Act (CAA). To make matters worse, during this

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[8] *Id.* at 2.
[9] *Id.* at 1.
[10] *Id.*
[11] M. Poulsen et al., *High-Density Poultry Operations & Community-Acquired Pneumonia in Pennsylvania*, 2 ENV'T. EPIDEMIOLOGY e013 (June 2018), https://journals.lww.com/environepidem/Fulltext/2018/06000/High_density_poultry_operations_and.5.aspx.
[12] *Id.* at 1.
[13] *Id.* at 6.

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same period EPA moved to exempt the industry from having to comply with two critical pollution reporting statutes: the Emergency Planning and Community Right to Know Act (EPCRA), and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA),[14] resulting in reduced public access to the information that affected communities need to protect themselves, and likely in turn contributing to greater mortality in communities surrounding these operations.

In 2013, scientists at John Hopkins University analyzed the practical public health impacts of EPA's efforts to limit public access to information about pollution from AFOs.[15] As the authors summarized:

> Despite literature associating AFOs with compromised air quality and residential proximity to AFOs with adverse health outcomes, availability of information concerning AFO airborne hazardous releases ranged from limited to nonexistent across the states that we examined . . . . These data gaps compromise the ability of public health officials and scientists to characterize exposures and risks, and limit their ability to implement and evaluate interventions when appropriate. The lack of data also means that information on AFO hazardous releases is not available to residents of affected communities.[16]

EPA's failure to address harmful emissions, compounded by its efforts to keep citizens in the dark about AFO pollution, has contributed to serious public health impacts.

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[14] CERCLA/EPCRA Administrative Reporting Exemption for Air Releases of Hazardous Substances from Animal Waste at Farms, 73 Fed. Reg. 76,948 (Dec. 18, 2008) (exempting airborne hazardous releases from animal waste at farms (including AFOs) from CERCLA and EPCRA reporting requirements); *Waterkeeper Alliance v. EPA*, 853 F.3d 527, 537–38 (D.C. Cir. 2017) (vacating EPA's 2008 rule and rejecting EPA's argument that the reporting requirements serve no regulatory purpose); Vacatur Response—CERCLA/EPCRA Administrative Reporting Exemption for Air Releases of Hazardous Substances From Animal Waste at Farms; FARM Act Amendments to CERCLA Release Notification Requirements, 83 Fed. Reg. 37444 (Aug. 1, 2018) (incorporating revisions enacted by the FARM Act, which exempts farms from CERCLA release reporting requirements, despite the D.C. Circuit's vacatur of the 2008 final rule in *Waterkeeper Alliance v. EPA*); Amendment to Emergency Release Notification Regulations on Reporting Exemption for Air Emissions from Animal Waste at Farms; Emergency Planning and Community Right to Know Act 84 Fed. Reg. 27,533 (June 13, 2019) (adding the reporting exemption for air emissions from animal waste at farms provided in section 103(e) of CERCLA); *see also* EPA, *CERCLA & EPCRA Reporting Requirements for Air Releases of Hazardous Substances from Animal Waste at Farms*, EPA (last visited Oct. 21, 2021), https://www.epa.gov/epcra/cercla-and-epcra-reporting-requirements-air-releases-hazardous-substances-animal-waste-farms.

[15] T. Smith et al., *Availability of Information about Airborne Hazardous Releases from AFOs*, 8 PLOS ONE e85342 (2013), https://doi.org/10.1371/journal.pone.0085342.

[16] *Id.* at 7.

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III. THE AIR CONSENT AGREEMENT SHIELDS AFOs FROM EPA ENFORCEMENT ACTIONS.

A. Rather than Enforce the Law, EPA Worked with Industry to Craft the Air Consent Agreement.

In the early 2000s, after years of dereliction by AFO operators of their obligation to seek CAA permits and report emissions under CERCLA and EPCRA, EPA took a series of legal actions designed to bring delinquent AFOs into the CAA permitting program.[17] Those legal actions constitute the last time EPA meaningfully enforced the CAA against AFO polluters.

Instead of continuing to use litigation or other comparable methods to move AFOs into compliance with their obligations under the CAA, EPA spent three years crafting a backroom deal with representatives of the pork industry, egg producers, and other AFO industry groups for a "safe harbor" against enforcement in the form of a release and covenant not to sue for potential violations of the CAA, CERCLA, and EPCRA. As outlined in a memorandum sent to EPA officials in June 2002, industry representatives offered to fund a nationwide air emissions monitoring study to collect emissions data from AFOs in exchange for enforcement protection.[18] The industry's June 2002 safe harbor proposal formed almost verbatim the Air Consent Agreement that EPA published for voluntary enrollment in early 2005.[19]

Under the Agreement secretly negotiated with industry representatives, EPA promised not to sue AFOs for violating CAA permitting requirements or CERCLA/EPCRA reporting requirements in exchange for AFOs paying a nominal civil penalty to fund the nationwide air emissions monitoring study.

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[17] *See, e.g.*, Press Release, Dep't of Justice, Ohio's Largest Egg Producer Agrees to Dramatic Air Pollution Reductions from Three Giant Facilities (Feb. 23, 2004), https://www.justice.gov/archive/opa/pr/2004/February/04_enrd_105.htm; 2017 OIG REPORT at 17 ("[M]onitoring conducted as part of an EPA enforcement case in 2003 demonstrated . . . total PM emissions of 550 and 700 tons per year at two large egg-layer AFOs," significantly "exceed[ing] the 250-tons-per-year permitting threshold for PM emissions."); *see also* Press Release, Dep't of Justice, Government Reaches Settlements with Seaboard Foods and PIC USA (Sept. 15, 2006), https://www.justice.gov/archive/opa/pr/2006/September/06_crm_625.html; Press Release, Dep't of Justice, Nation's Second Largest Hog Producer Reaches Settlement With U.S. & Citizen's Group (Nov. 1, 2001), https://www.justice.gov/archive/opa/pr/2001/November/01_enrd_604.htm.

[18] 2002 Industry Safe Harbor Proposal.

[19] *See id.*; 2005 Notice at 4958.

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B. The Air Consent Agreement Provided a Safe Harbor from Enforcement of Federal Law Pending the Finalization of EEMs.

The Air Consent Agreement outlines two main sections: (1) the Consent Agreement, and (2) the Monitoring Fund. The Consent Agreement includes the main terms of the Agreement between participating AFOs and the government, including a safe harbor under which the government releases and covenants not to sue participating AFOs for civil violations of the CAA; section 103 of CERCLA; and section 304 of EPCRA.[20] In exchange for this enforcement forbearance from EPA, participating AFOs agreed to pay a nominal penalty, as well as a payment of $2,500 per facility, into a fund known as the Monitoring Fund, which was then to be used to finance the two-year National Air Emissions Monitoring Study (NAEMS).[21]

The Agreement's safe harbor provision covers two substantive Clean Air Act permitting programs, the Title V operating permit program, and applicable State Implementation Plan (SIP) requirements for VOC, ammonia, hydrogen sulfide, and particulate matter. First, it includes the requirements applicable to new and expanding major stationary sources under Parts C and D of Title I, Prevention of Significant Deterioration (PSD) and New Source Review (NSR).[22] Second, it includes operating permits required under Title V for major stationary sources.[23] Third, it includes any SIP requirements that regulate the rate, quantity, or concentration of the covered air pollutants.[24]

In all three permitting programs, the severity of the air pollution in a given air basin determines whether a stationary source exceeds a certain tons per year threshold and thus must obtain a permit under PSD, NSR, and Title V as a major stationary source. This threshold ranges from 10 tons per year in an extreme ozone nonattainment area to 250 tons per year in an area that attains the applicable National Ambient Air Quality Standard.

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[20] 2005 Air Consent Agreement at ¶¶ 7–23.
[21] *Id.* at ¶ 53.
[22] *Id.* at ¶ 26; 42 U.S.C. §§ 7470-7515.
[23] 2005 Air Consent Agreement at ¶ 26; 42 U.S.C. §§ 7661–7661f.
[24] 2005 Air Consent Agreement at ¶ 26.

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The Agreement's safe harbor provision covers two reporting requirements: section 103 of CERCLA,[25] and section 304 of EPCRA. EPCRA contains a general requirement that facilities that "release" more than a threshold quantity of an "extremely hazardous substance" must report that release to local emergency response agencies, and that those reports must be made available to the public.[26] Immediate release reporting under EPCRA provides local and state emergency responders with information critical to appropriately assessing and safely responding to citizen complaints of suspicious or noxious odors. EPA lists ammonia and hydrogen sulfide as "extremely hazardous substances" under EPCRA and lists a reportable quantity of 100 pounds per day. The Air Consent Agreement's safe harbor provision continues to exempt participating AFOs from EPA enforcement for failing to report these releases.

According to EPA, its reason for exchanging a safe harbor from enforcement of the CAA, CERCLA, and EPCRA for a two-year monitoring study was to timely "collect data and aggregate it with appropriate existing emissions data; analyze the monitoring results; and create tools (*e.g.,* tables and/or emission models) that AFOs could use to determine whether they emit pollutants at levels that require them to apply for permits under the CAA or submit notifications under CERCLA or EPCRA."[27] And further, because the monitoring study would be "designed to generate scientifically credible data to provide for the characterization of emissions from all major types of AFOs in all geographic areas where they are located," it would ultimately be used "to produce a scientifically sound basis for measuring and estimating air emissions from AFOs" through EEMs.[28] Thus, EPA provided that the reason for the Agreement was to ensure "the achievement of real environmental benefits to protect public health and the environment while supporting a sustainable agricultural sector."[29]

To that end, once the final EEMs are published the participating AFOs would have a defined amount of time to apply the EEMs to their operations and determine whether any CAA, CERCLA, or EPCRA statutory obligations apply, and, if so, bring their operations into

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[25] Subsequently, the Fair Agricultural Reporting Method (FARM) Act expressly exempted reporting of air emissions from animal waste at a farm from CERCLA section 103. *See* Pub. L. 115-141 § 1101-03 (codified at 42 U.S.C. § 9603(e) (2018)).
[26] 42 U.S.C. § 11004(a).
[27] 2005 Notice at 4960.
[28] *Id.*
[29] *Id.* at 4961.

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compliance with those requirements.[30] Once a participating AFO complies with each of those requirements, "the statute of limitations for all claims covered by the release and covenant not to sue . . . will be tolled from the date this Agreement is approved by the [Environmental Appeals Board] until . . . 120 days after Respondent files the required certification . . . or December 31, 2011," whichever is earlier.[31] In the alternative, if EPA determines that it cannot develop EEMs, then it should notify participants that the Air Consent Agreement, including its enforcement amnesty, will come to a close.[32] As the amnesty tolling provision suggests, EPA anticipated that the terms of the Air Consent Agreement would be met and the Agreement fulfilled before 2012 at the latest.[33]

The Air Consent Agreement embodies a highly unusual enforcement philosophy inconsistent with the Clean Air Act's enforcement scheme. EPA alleged violations prior to any investigation, assessed civil penalties without considering civil penalty factors, and invited participants to enter into the Agreement after it had already been negotiated for years with the industry. By its own terms, the Agreement deferred enforcement until the Agency developed EEMs, which EPA expected to complete within 18 months of completing NAEMS.

C. The Environmental Appeals Board and the D.C. Circuit Court of Appeals Allowed EPA to Implement the Air Consent Agreement.

To enter the Air Consent Agreement, an AFO owner or operator needed only to inform EPA of its election to participate and provide EPA with certain information regarding the size and number of AFOs that they designated for inclusion. In total, nearly 2,600 participants, representing 13,900 AFO facilities in 42 states, entered into the Air Consent Agreement.[34] "According to the EPA, these 13,900 AFOs comprise more than 90 percent of the largest AFOs in the United States," and included participants from across the broiler chicken, egg layer, hog, and dairy industries.[35]

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[30] 2005 Air Consent Agreement at ¶ 28.
[31] *Id.* ¶ 31.
[32] *Id.* ¶ 38.
[33] *Id.*; *see also* 2017 OIG REPORT at 5 (providing that "[b]ased on . . . original expectations, . . . AFOs would have obtained any necessary permits and installed emission controls by 2010").
[34] 2017 OIG REPORT at 6.
[35] *Id.*

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In 2006, EPA's Environmental Appeals Board (EAB) approved individual Consent Agreements in batches. In addition to ratifying the Agreements, EAB affirmed EPA's authority to enter into the Agreement as an administrative enforcement action.[36] The relevant penalties and monitoring funds were collected from individual participants as well as from the National Pork Board, which provided at least $6,000,000 towards payment of these fees on behalf of hog producers rather than the producers paying those fees themselves.[37] The NAEMS process then began in earnest in 2007—the year NAEMS monitoring should have been completed according to the original timeline. It continued for three years, rather than two, and "completed in early 2010, about 2 years later than originally expected."[38]

Several environmental and community groups challenged the Air Consent Agreement as a rulemaking that violated the CAA, CERCLA, EPCRA, and public notice and comment requirements. The D.C. Circuit Court of Appeals denied the groups' consolidated petitions for review, holding that the Agreement is an enforcement action not subject to judicial review.[39]

In its briefing before the D.C. Circuit, EPA took the legal position that the safe harbor was a "limited covenant not to sue" that would last approximately three and a half years until 2010.[40] The court took EPA at its word, concluding that the Agreement "merely defers enforcement" and a "limited deferral subject to enforcement conditions works no change in the agency's substantive interpretation or implementation of the Acts."[41] The court also rejected the

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[36] *See, e.g.*, *In re Consent Agreements & Proposed Final Orders for AFOs*, 2006 WL 478143 (EAB Jan. 27, 2006) (finding that first twenty Agreements were administrative penalty orders subject to Board review).

[37] Initially, the National Pork Board was enjoined from contributing $6,000,000 on behalf of producers because the contribution was found to violate the Pork Act and contravene public policy, but this decision was reversed by a second administrative law judge allowing the National Pork Board to pay farmer's fees associated with EPA's Air Emission Study. *See In re: McDowell*, 65 Agric. Dec. 795 (U.S.D.A. 2006) *rev'd*, *In re: McDowell*, 67 Agric. Dec. 1230, 1232 (U.S.D.A. 2008) ("revers[ing] the ALJ's Initial Decision [and granting Administrator's motion to dismiss] [because] Petitioners lack standing, the Second Amended Petition fails to state a legally cognizable claim, and the National Pork Board' s payment of the per-farm-fee associated with EPA's Air Emissions Study is in accordance with the Pork Act and the Pork Order").

[38] 2017 OIG REPORT at 11; 10 ("Based on the original expectations for completion of the tasks in the Notice, the NAEMS monitoring would have been completed in 2007, and the EPA would have begun publishing EEMs in 2009."); 12 (Figure 4) (comparing expected and actual NAEMS development timeline).

[39] *Ass'n of Irritated Residents v. EPA*, 494 F.3d 1027, 1031 (D.C. Cir. 2007).

[40] *See* EPA's Brief at 11-12, 23, 28, (D.C. Cir. Feb. 2, 2007).

[41] *Ass'n of Irritated Residents*, 494 F.3d. at 1033.

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groups' contention that EPA had abdicated its enforcement duty because the court believed the limited deferral "is part of the agency's attempt to ensure that AFOs comply with the Acts."[42]

Had the court understood that EPA would extend its "limited" deferral for over ten years to 2021 and beyond—straight through the Obama and Trump Administrations—then that unbound deferral would undoubtedly have affected the court's analysis.

D. EPA Has Relied On The Air Consent Agreement To Deny Petitions To Regulate Air Emissions from AFOs.

To make matters worse, in addition to using the Air Consent Agreement and EEM process as a shield against adequately enforcing the CAA or EPCRA against AFO polluters, EPA is using the Agreement as an excuse to deny or ignore every administrative petition related to AFO air pollution that has been filed with the Agency since 2005. EPA is also allowing AFOs to use the Agreement to keep citizens from enforcing EPCRA.

Since 2005, EPA has received several administrative rulemaking petitions to address AFO emissions, including a 2009 petition to list and regulate AFOs as a source category under CAA Section 111 (2009 CAFO Source Petition),[43] and a 2011 petition to regulate ammonia as a criteria pollutant under CAA Sections 108 and 109 (2011 Ammonia Petition).[44] According to a report by EPA's Office of the Inspector General (OIG), discussed further below, "EPA staff told [OIG] they did not plan to evaluate the need for additional regulations as laid out in these petitions until the EEMs are finalized."[45]

For the 2009 CAFO Source Petition, EPA's refusal to engage with the subject matter of the petition came in the form of a denial of the petition in 2017.[46] As noted in the denial signed by former EPA Administrator Scott Pruitt, EPA explicitly denied the petition not on the

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[42] *Id.* at 1035.
[43] The Humane Soc'y of the U.S., Petition to the U.S. EPA to List Concentrated Animal Feeding Operations Under CAA Section 111 (B)(1)(A) (Sep. 21, 2009).
[44] Environmental Integrity Project, Petition to the U.S. EPA for the Regulation of Ammonia as a Criteria Pollutant Under Clean Air Act Sections 108 and 109 (Apr. 6, 2011).
[45] 2017 OIG REPORT at 18.
[46] Denial of Petition to List Concentrated Animal Feeding Operations Under Clean Air Act, 82 Fed. Reg. 60,940 (Dec. 26, 2017).

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substance of the request,[47] but rather due to the "ongoing budgetary uncertainties" and EEM process.[48] Acknowledging the findings of the 2017 OIG Report, the denial letter then goes on to say that EPA will conduct a systematic planning process as identified in that report by April 2018 and establish milestones for issuing updated draft EEMs by July 2018.[49] A comprehensive set of draft or final EEMs still has yet to be issued, but EPA continues to use the EEM process as a convenient excuse not to take further action to *actually address* and limit air pollution from concentrated animal feeding operations (CAFOs), as this petition would have enabled.

With respect to the 2011 Ammonia Petition, EPA has failed to respond—even as the evidence of harm continues to mount.[50] As mentioned above, public health scientists have drawn clear connections between ammonia from animal production and thousands of annual PM-related deaths, and have also shown that living in close proximity to AFOs is associated with pneumonia.[51] Another study found significant associations between Pennsylvania CAFOs and asthma.[52] The authors of the ammonia study noted that industrial food animal production facilities "are a source of odors and several air pollutants, including particulate matter, hydrogen sulfide, and ammonia," and "these air pollutants and odors have been associated with asthma exacerbations."[53] The role of ammonia in exacerbating water quality impairments has also become more clear over time. It now appears that AFOs emit more ammonia—and more ammonia deposits closer to the source of emissions than previously thought.[54] This means that

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[47] Letter from E. Scott Pruitt, Administrator, EPA, to Tom Frantz, President, Ass'n of Irritated Residents, at 2 (Dec. 15, 2017) ("This denial is not based on a determination as to whether CAFOs meet the requirements for listing under CAA section 111(b)(1)(A).").
[48] *Id.* at 1–2.
[49] *Id.* at 8–9.
[50] Although the petitioners challenged EPA's failure to respond in 2015 (re-filed in 2016), petitioners voluntarily dismissed the complaint in 2017. *See* Notice of Voluntary Dismissal, *Environmental Integrity Project et al. v. EPA*, Case No. 16-cv-02203-ABJ (D.D.C. Jan. 17, 2017).
[51] *See supra* Part II.
[52] S. Rasmussen et al., *Proximity to Industrial Food Animal Production & Asthma Exacerbations in Pennsylvania, 2005-2012*, 14 INT'L J. ENV'T. RESH. PUB. HEALTH 362 (2017).
[53] *Id.*
[54] *See, e.g.*, ENV'T INTEGRITY PROJECT , AMMONIA EMISSIONS FROM POULTRY INDUSTRY MORE HARMFUL TO CHESAPEAKE BAY THAN PREVIOUSLY THOUGHT (2018), https://environmentalintegrity.org/wp-content/uploads/2017/02/Ammonia-Report.pdf; *see also* ENV'T INTEGRITY PROJECT, POULTRY INDUSTRY POLLUTION IN THE CHESAPEAKE REGION (2020), https://environmentalintegrity.org/wp-content/uploads/2020/04/EIP-Poultry-Report.pdf; J. Baker et al., *Modeling & Measurements of Ammonia from Poultry Operations: Their Emissions, Transport, & Deposition in the Chesapeake Bay*, 706 SCI. TOTAL ENVIRONMENT 135290 (Mar. 2020), https://www.sciencedirect.com/science/article/pii/S0048969719352829.

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ammonia is a central contributor to algae blooms, dead zones, and other impairments in large estuaries like the Chesapeake Bay.

In addition, EPA continues to allow AFOs to use the Air Consent Agreement and EEM development process to keep citizens from enforcing statutes such as EPCRA[55] against AFOs.[56] Although EPA can prevent the Agreement from being used as an affirmative defense in EPCRA citizen enforcement suits, the agency has opted not to do so. As a result, EPA is allowing this Agreement to stand in the way of effective enforcement of this statute against AFO polluters, regardless of the amount or persistence of that pollution.

IV. EPA'S MONITORING STUDY WAS FLAWED, UNDERMINING EPA'S ABILITY TO DEVELOP VALID EEMs.

A. EPA Limited the Size and Geographic Scope of its Study, Despite the Entry of Nearly 14,000 AFOs into the Agreement.

In announcing the Air Consent Agreement and NAEMS Protocol, EPA claimed that "[m]onitoring will occur at facilities across the country to get a representative sample of the facility types," and the NAEMS "protocol will provide sufficient data to get a valid sample that is representative of the vast majority of the participating AFOs."[57] EPA intended to use the results of this monitoring study "to generate scientifically credible data to provide for the characterization of emissions from all major types of AFOs in all geographic areas where they are located."[58] However, the study fell far short of achieving this goal for a variety of reasons,

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[55] In 2019, EPA finalized a rule exempting AFOs from their reporting obligations under EPCRA section 304. *See* Amendment to Emergency Release Notification Regulations on Reporting Exemption for Air Emissions From Animal Waste at Farms; Emergency Planning and Community Right-to-Know Act, 84 Fed. Reg. 27,533 (June 13, 2019). That rulemaking has been challenged in federal court by a coalition of environmental and environmental justice groups, including many of the signatories here. *Rural Empowerment Association for Community Help, v. EPA*, Case No. 18-02260-TJK (D.D.C. 2019). Following the D.C. Circuit's decision in *Waterkeeper Alliance v. EPA*, 853 F.3d 527, 537–38 (D.C. Cir. 2017), we expect the court to overturn EPA's 2019 rule, and therefore believe that AFOs may use the Air Consent Agreement to hamper citizen suit enforcement of EPCRA.

[56] *See, e.g., Humane Soc'y of the United States v. Hanor Company of Wisconsin*, LLC, 289 F. Supp. 3d 692 (E.D. N.C. 2018).

[57] 2005 Notice at 4960; *see also id.* at 4968 (Attach. B to App. 1: NAEMS Protocol).

[58] *Id.* at 4960.

including the industry's role in selecting sites, the small number of selected sites, and EPA's flawed site selection methodology.[59]

From the onset, the design and implementation of the study was limited because industry exerted significant control on the pool of potential study sites. Although "EPA acknowledged that emissions data should be collected for every type of animal feeding operation and practice," EPA officials concluded that the industry should be responsible for site selection,[60] deferring to industry yet again.

Records obtained by the Environmental Integrity Project under the Freedom of Information Act confirm that AFO owners and operators played a major role in selecting the sites in NAEMS.[61] For example, Perdue broiler facilities did not participate in the Air Consent Agreement. Perhaps as a direct consequence, NAEMS did not include a single broiler site in the Mid-Atlantic, despite incredible industry concentration in the region.[62] Further, Tyson Foods, one of the largest meat producers in the United States, directly sponsored the data collection at its broiler sites in Kentucky.[63]

Moreover, despite almost 14,000 AFOs receiving enforcement protection under the Agreement, the NAEMS study itself only included 27 sites at 20 AFOs in 10 states.[64] The small

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[59] *See* GAO, CONCENTRATED ANIMAL FEEDING OPERATIONS: EPA NEEDS MORE INFORMATION & A CLEARLY DEFINED STRATEGY TO PROTECT AIR & WATER QUALITY FROM POLLUTANTS OF CONCERN37–39 (2008) https://www.gao.gov/assets/gao-08-944.pdf ("[T]he National Air Emissions Monitoring Study may not provide the data that EPA needs to develop comprehensive protocols for quantifying air emissions from [AFOs] for a variety of reasons.") [hereinafter 2008 GAO Report]; *see also id.* at 7 ("[A]s currently structured, the study may not provide the scientific and statistically valid data it was intended to provide and that EPA needs to develop air emissions protocols.").

[60] *Id.* at 38–39 ("According to EPA officials, the industry identified those monitoring sites that they believed best represented the type of operations and manure management practices that are in their various animal sectors.").

[61] Letter from Tarah Heinzen, Env't Integrity Project, to EPA Docket Center, (June 11, 2012) (citing email from Heber to Nizich (Aug. 9, 2006) (stating that "the National Milk Producers Federation approved these site selections for the NAEMS")).

[62] *See* PEW, *Big Chicken: Pollution & Industrial Poultry Production in America* (July 26, 2011), https://www.pewtrusts.org/en/research-and-analysis/reports/2011/07/26/big-chicken-pollution-and-industrial-poultry-production-in-america; *see also* EPA, *2012 Monitored AFOs*, https://archive.epa.gov/airquality/afo2012/web/html/index.html.

[63] IOWA STATE UNIV. & UNIV. OF KENTUCKY, FINAL PROJECT REPORT ON SOUTHEASTERN BROILER GASEOUS & PARTICULATE MATTER EMISSIONS MONITORING (Dec. 2009) (describing emissions monitoring results of two Tyson broiler production houses located on two separate farm sites in western Kentucky), https://archive.epa.gov/airquality/afo2012/web/pdf/ky1bsummaryreport.pdf.

[64] *See* 2017 OIG REPORT at 7; *see also 2012 Monitored AFOs*, https://archive.epa.gov/airquality/afo2012/web/html/index.html.

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number of sites selected led the Government Accountability Office (GAO) to raise concerns in 2008, before the completion of NAEMS, that "the study did not include a sufficient number of monitoring sites to establish a statistically valid sample."[65] As explained in GAO's report, "[w]ithout such a sample . . . EPA will not be able to accurately estimate emissions for all types of operations."[66]

EPA also failed to select geographically representative sites. When designing NAEMS, EPA purportedly intended to study a statistically significant number of representative sites and generate "scientifically credible data to provide for the characterization of emissions from all major types of AFOs in all geographic areas where they are located."[67] Yet the study design fell far short of anything capable of achieving this. Primary Investigators for the sites were selected before the NAEMS sites themselves, limiting the role of representativeness in the site selection process since investigators needed to be proximately located to NAEMS sites.[68] As GAO observed:

> [T]he monitoring study does not include the 16 combinations of animal types and geographic regional pairings recommended by EPA's expert panel. The panel recommended this approach so that the study sample would be representative of the vast majority of participating animal feeding operations, accounting for differences in climatic conditions, manure-handling methods, and density of operations. However, EPA approved only 12 of the 16 combinations recommended by the expert panel, excluding southeastern broiler, eastern layer, midwestern turkey, and southern dairy operations.[69]

Atmospheric conditions, facility age and design, feed, and other variables may significantly impact air emissions.[70] Therefore, a statistically significant study should include multiple sites representing as many different sets of climate and geographic conditions as possible. This was simply not possible with such a small number of sites.

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[65] 2008 GAO Report at 7, 38–39.
[66] *Id.*
[67] 2005 Notice at 4960; *see also* 2008 GAO Report at 36.
[68] Letter from Tarah Heinzen, Env't Integrity Project, to EPA Docket Center, (June 11, 2012) (citing Heber, "Site Selection Procedure" (Jun. 10, 2005)).
[69] 2008 GAO Report at 37–38.
[70] *See* 2005 Notice at 4977 (listing several "influences on emissions" provided by producer, rather than collected by study).

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B. EPA Failed to Generate Adequate Data to Develop EEMs.

In response to the initial announcement of the Agreement and NAEMS, experts and community groups raised concerns about the protocol, even before EPA had selected sites or initiated monitoring.[71] While the study was ongoing, GAO again warned EPA that NAEMS may not "provide data of sufficient quantity and quality" to establish the planned EEMs.[72] But EPA ignored those concerns. Consequently, EPA's NAEMS study did not generate the data needed to develop comprehensive protocols for quantifying air emissions from AFOs. In 2013, years after EPA concluded the monitoring study, EPA's Scientific Advisory Board (SAB) confirmed the concerns raised by GAO in 2008 regarding the small number of sites in the study and the quality of the data.[73]

In reviewing EPA's draft EEMs, which the SAB ultimately found unsuitable for national use, SAB panel members noted that the California broiler data sets for Total Suspended Particles and $PM_{2.5}$ had less than 10 percent completeness, while that entire site had only 20 percent completeness during the fall.[74] EPA also had problems receiving data from contractors and excluded data due to changes in monitoring method. Short monitoring periods at certain sites in combination with missing or invalidated data has resulted in a much smaller than anticipated dataset from which to develop EEMs.

Moreover, EPA's unnecessarily restrictive data completeness requirements further limited the availability of usable data. The NAEMS protocol required 75 percent of any hour's data to be valid to accept the hour's data, and 75 percent of any day's hours to accept the day's data.[75] The 2013 SAB Report noted the study's low data completeness rates, questioning EPA's

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[71] Many of the signatories submitted comments regarding EPA's flawed 2005 Air Consent Agreement and NAEMS Protocol. *See, e.g.,* Comments by B. Newell et al., Center on Race, Poverty & the Environment et al., EPA-HQ-OAR-2004-0237-0476 (Mar. 1, 2005).
[72] 2008 GAO Report at 7.
[73] EPA SCI. ADVISORY BD., REVIEW OF EEMS FOR BROILER AFOS AND FOR LAGOONS & BASINS AT SWINE & DAIRY AFOS 2 (Apr. 19, 2013), available at https://yosemite.epa.gov/sab%5CSABPRODUCT.NSF/08A7FD5F8BD5D2FE85257B52004234FE/$File/EPA-SAB-13-003-unsigned%20.pdf, [hereinafter 2013 SAB REPORT] ("In summary, the SAB concludes that the EPA has developed statistical models based on combined data sets and predictor variables which have limited the ability of the models to predict emissions beyond the small number of farms in the dataset.").
[74] *Id.*
[75] *Id.*

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decision to require a "too stringent and unnecessary" 75 percent completeness despite the study's frequent failure to meet that goal.[76]

Though EPA has acknowledged the problems with its completeness criteria,[77] it has failed to rectify the issue. When issuing the August 2020 draft swine EEMs, EPA conceded that completeness requirements for its open area/source data should be lowered, but only to 52 percent.[78] However, EPA then released draft poultry EEMs in August 2021 that retained the 75 percent completeness requirement for all data sources.[79] The completeness criteria for swine barn emission data have also remained unchanged, and EPA maintains that "the potential need to revise this value for barn source emissions will be assessed at a later date, if appropriate."[80] Yet no such assessment has taken place.

The more EPA evaluates the data, the more problems it uncovers. For instance, in the draft swine EEMs released in August 2020, EPA discovered new issues with ventilation and moisture interference, resulting in the invalidation and removal of numerous ammonia, hydrogen sulfide, and particulate matter measurements from the dataset.[81] The revision included the removal of all open source ammonia emissions data from one of only four monitoring sites.[82] This continued reduction of the dataset, which is already too small to provide a complete representative sample, only further compromises EPA's ability to establish accurate EEMs.

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[76] *Id.* at 26.
[77] *See* EPA, QUALITY ASSURANCE PROJECT PLAN: DEVELOPMENT OF EEMS FOR AIR EMISSIONS FROM AFOS 15 (Mar. 13, 2018) [hereinafter 2018 QAPP], available at https://www.epa.gov/sites/default/files/2018-03/documents/final_eem_qapp_v0.0_for_web_0.pdf. .
[78] *Id.* EPA, DEVELOPMENT OF EEMS FOR SWINE BARNS & LAGOONS, DRAFT 3-1 to3-4. (Aug. 2020), [hereinafter 2020 Draft EEMs for Swine Barns & Lagoons] available at https://www.epa.gov/sites/default/files/2020-08/documents/development_of_emissions_estimating_methodologies_for_swine_barns_and_lagoons.pdf.
[79] EPA, DEVELOPMENT OF EEMS FOR BROILER OPERATIONS, DRAFT 5-3 to 5-4 (Aug. 2021) [hereinafter 2021 Draft EEMs for Broilers], available at https://www.epa.gov/sites/default/files/2016-06/documents/afobroilereemreport2012draft.pdf; DEVELOPMENT OF EEMS FOR EGG-LAYING HOUSES & MANURE SHEDS, DRAFT 2-2 (Aug. 2021) [hereinafter 2021 Draft EEMs for Poultry Houses & Manure Sheds], https://www.epa.gov/system/files/documents/2021-08/development_of_emissions_estimating_methodologies_for_egg_layer_houses_and_manure_sheds.pdf.
[80] 2018 QAPP at 15.
[81] 2020 Draft EEMs for Swine Barns & Lagoons at 3-2 and 4-2.
[82] *Id.* at 3-16 and 3-17.

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C. EPA Failed to Finalize EEMs Following the Completion of NAEMS.

Following the completion of NAEMS in 2010, three years later than expected, the initial terms of the Air Consent Agreement provided that EPA had 18 months to evaluate the data collected through the study and publish emission unit-specific estimating methodologies.[83] In 2012, EPA published draft EEMs for 8 of the 36 emission sources and pollutants described in the Agreement.[84] Those draft EEMs, which covered broiler AFOs and lagoons and basins at swine and dairy AFOs, were noticed for public comment and submitted to the agency's Scientific Advisory Board (SAB) for review and feedback.[85]

The response to the draft EEMs from both the public and EPA's own SAB was highly critical and called into question NAEMS design and methodology, the data generated, EPA's statistical approach, its treatment of the available data, and the agency's ability to use the draft to accurately estimate air pollution from facilities not otherwise included in the study itself.[86] The SAB lambasted EPA for its approach to the NAEMS process and the data collected, concluding—among other things—that the draft EEMs developed by EPA should not be applied on a national scale because "EPA has developed statistical models based on combined data sets and predictor variables which have limited the ability of the models to predict emissions beyond the small number of farms in the dataset."[87]

The SAB recommended that "EPA not apply the current versions of the statistical and modeling tools for estimating emissions beyond the farms in EPA's data set," and provided "recommendations for how the agency may expand the data set and the applicability of the

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[83] 2005 Air Consent Agreement at ¶ 32 ("EPA will publish [EEMs] within 18 months of the conclusion of the monitoring period . . . .").

[84] *See* 2017 OIG REPORT at 11; EPA, DEVELOPMENT OF EEMS FOR LAGOONS & BASINS AT SWINE & DAIRY AFOS, DRAFT (Feb. 2012) [hereinafter 2012 Draft EEMs for Swine & Dairy AFOs], available at https://yosemite.epa.gov/sab/SABPRODUCT.NSF/81e39f4c09954fcb85256ead006be86e/AE6639DD6B79360E852579A4004E5529/$File/PDF+for+Development+of+Emissions+Estimating+Methodologies+for+Lagoons+and+Basins+at+Swine+and+Dairy+Animal+Feeding+Operation.pdf; EPA, DEVELOPMENT OF EEMS FOR BROILER OPERATIONS, DRAFT (Feb. 2012) [hereinafter 2012 Draft EEMs for Broilers], available at https://www.epa.gov/sites/default/files/2016-06/documents/afobroileeemreport2012draft.pdf..

[85] Notice of Availability: Draft Documents Related to the Development of EEMs for Broiler AFOs and Lagoons & Basins for Swine & Dairy AFOs, 77 Fed. Reg. 14716 (Mar. 13, 2012); *see also* Comments Submitted in Response to Notice of Availability, https://www.regulations.gov/document/EPA-HQ-OAR-2010-0960-0015/comment.

[86] Many of the signatories submitted comments regarding EPA's flawed 2012 Draft EEMs. *See, e.g.,* Comments Submitted by R. Lawrence, Center for a Livable Future, EPA-HQ-OAR-2010-0960-0037 (Jun. 11, 2012); T. Heinzen, Environmental Integrity Project et al., EPA-HQ-OAR-2010-0960-0026 (Jun. 11, 2012).

[87] 2013 SAB REPORT at 2.

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models."[88] For example, SAB recommended that EPA expand its dataset by collecting data from monitoring efforts outside of the NAEMS, and using NAEMS data that were initially excluded due to EPA's data completeness criteria.[89]

The SAB also advocated for a process-based modeling approach to EEM development, noting that "[p]rocess-based models would be more likely to be successful in representing a broad range of conditions than the current models because [they] represent the chemical, biological and physical processes and constraints associated with emissions."[90]

In short, the SAB told EPA to go back to the drawing board and revise its process for developing EEMs based on the data gathered through NAEMS. EPA has responded to some of SAB's concerns, but not all. As a result, EPA has yet to finalize any EEMs or bring any participating parties into compliance with the CAA, CERCLA, and EPCRA. Nor has EPA revoked the safe harbor provision established in the Air Consent Agreement.

D. EPA Has Failed to Consider Available Information from Peer-Reviewed Studies.

Given the clear flaws in NAEMS design and implementation, which yielded non-representative and incomplete data, it was incumbent upon EPA to expand the scope of AFO emission data it relied on to ensure accurate EEMs. However, the draft EEMs continue to rely exclusively on the limited NAEMS data, rather than incorporating findings from numerous peer-reviewed AFO emissions studies. The small number of sites in each livestock sector and the data gaps and technical problems experienced during NAEMS heighten the importance of outside research. EPA's decision to limit available information will result in inadequate EEMs.

From 2007 to 2010, EPA collected emissions data at 27 sites across 20 AFOs. The data were originally published in 2011 and finalized in 2012. EPA relied exclusively on these data to develop the 2012 draft EEMs for broilers and lagoons/basins at swine and dairy AFOs, as well as the 2020 and 2021 draft EEMs for swine and poultry AFOs. However, the Air Consent

[88] *Id.*
[89] *Id.* at 1.
[90] *Id.* at 2.

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Agreement requires that EPA consider *all* relevant information when developing EEMs, not just the data collected at a small sample of AFOs during the monitoring study:

> The term "Emissions-Estimating Methodologies" means those procedures that will be developed by EPA, based on data from the national air emissions monitoring study *and any other relevant data and information*, to estimate daily and total annual emissions from individual Emission Units and/or Sources.[91]

Although the Agreement clearly provides that EPA must consider "relevant data and information" *other* than the monitoring data, EPA has elected to interpret this term so narrowly as to exclude all information not derived from NAEMS. In 2011, EPA asked the public to submit information relating to the agency's development of draft EEMs for broiler confinement facilities and lagoons/basins at swine and dairy AFOs.[92] Despite receiving several relevant, peer-reviewed emissions studies in response to the call for information, EPA ultimately concluded that none of the studies were relevant to the EPA's draft EEMs.[93]

In an attempt to justify EPA's narrow reading of the Air Consent Agreement and exclusion of outside data, the 2012 draft EEMs for Swine and Dairy AFOs state that "none of the articles previously obtained by the EPA to support emissions factor development used remote sensing techniques to measure lagoon emissions."[94] This explanation is inadequate. EPA did not explain why it preferred remote sensing techniques over other techniques. Nor did it explain why the techniques used in the outside studies were incompatible with the remote sensing data. Similarly, in the 2012 draft EEMs for Broilers, EPA disregarded peer-reviewed poultry emissions studies solely because the researchers used different methods.[95]

Since the publication of the 2012 draft EEMs, EPA has reaffirmed its commitment to relying exclusively on NAEMS data. In 2018, after nearly a decade of delay and inaction, EPA decided to put off any investigation into the "potential need for additional non-NAEMS data"

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[91] 2005 Air Consent Agreement at ¶10 (emphasis added); *see also* 2005 Notice at 4960 ("EPA will use the data generated from the monitoring *and all other available, relevant data* to develop [EEMs]") (emphasis added).
[92] *See* Call for Information Related to the Development of EEMs for AFOs, 76 Fed. Reg. 3060 (Jan. 19, 2011); *see also Comments Submitted in Response to Call for Information*, https://www.regulations.gov/document/EPA-HQ-OAR-2010-0960-0001/comment.
[93] 2012 Draft EEMs for Swine & Dairy AFOs Table 3-3, 2012 Draft EEMs for Broilers Table 3-14 (Feb. 2012).
[94] 2012 Draft EEMs for Swine & Dairy AFOs at 3-14.
[95] 2012 Draft EEMs for Broilers at 4-13 to 4-23.

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until a "later stage" in the project "if appropriate."[96] The 2020 draft EEMs for Swine AFOs used peer-reviewed studies only to inform the selection of possible model parameters.[97] But the Air Consent Agreement requires EPA to use available data to *develop* the EEMs.[98]

EPA's continued exclusion of clearly relevant data from the EEM development process violates the Air Consent Agreement and confirms that continuing the already protracted EEM development process would be futile. Moreover, EPA cannot develop adequate EEMs based exclusively on the outdated and incomplete NAEMS monitoring data collected from 2007 to 2010 because the industry has changed considerably since the monitoring study concluded over a decade ago.[99] Furthermore, new studies regarding air emissions from AFOs have been published in recent years, revealing important insights about the emissions generated from various AFO sources and their impacts on local communities.[100] Without the addition of recent outside studies, any EEMs developed by EPA will fail to accurately estimate emissions from AFOs.

E. The 2017 OIG Report Urged EPA to Either Finalize the EEMs or End the Agreement.

In 2017, six years after all EEMs were supposed to be finalized, OIG released a report on EPA's actions to evaluate air emissions from AFOs, focusing on the Air Consent Agreement and NAEMS.[101] As with the SAB, OIG was highly critical of EPA's extreme delay in developing EEMs following the completion of NAEMS, noting that "competing priorities [have] resulted in the EPA's Office of Air and Radiation putting the EEM effort largely on hold" to the extent that "the EPA stopped funding the contract for NAEMS analysis."[102] OIG also expressed concern

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[96] 2018 QAPP at 14.
[97] 2020 Draft EEMs for Swine Barns & Lagoons at 13-1 to 13-2.
[98] 2005 Notice at 4960.
[99] Over the past nine years alone, significant changes to the hog, dairy, broiler, and egg-laying industries can be observed in particular state CAFO expansion trends. For instance, the number of CAFOs operating in Iowa, a state dominated by the hog industry, has increased by 136 percent since 2011. There are 43 percent more CAFOs operating in Wisconsin, where the dairy industry is most prevalent, than what existed in 2011. In Delaware, a broiler-focused state, the CAFO industry has grown by 838 percent. And Ohio, a state dominated by egg-laying operations, has seen a 33 percent increase. *See* EPA, NPDES CAFO Rule Implementation Status – National Summary, Endyear 2011 (Dec. 31, 2011), https://www.epa.gov/sites/default/files/2015-08/documents/npdes_cafo_rule_implementation_status_-_national_summary_endyear_2011_0.pdf; EPA, NPDES CAFO Rule Implementation Status – National Summary, Endyear 2020 (May 11, 2021), https://www.epa.gov/sites/default/files/2021-05/documents/cafo_status_report_2020.pdf.
[100] *See* discussion, *supra* Part I.
[101] 2017 OIG REPORT at 1.
[102] *Id.* at 10.

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about the lack of EPA agricultural air expertise and committed resources, noting that the agency "did not have staff with combined expertise in agricultural emissions, air quality[,] and statistical analysis."[103]

Although EPA completed NAEMS in early 2010, EPA has yet to finalize the EEMs to make CAA and CERCLA/EPCRA compliance determinations under the terms of the Air Consent Agreement. OIG expressed concern that although the civil enforcement protections were initially planned to expire in 2012, all 14,000 AFOs that participated in the Agreement continue to enjoy civil enforcement protections, and EPA has put several important actions on hold pending development of the EEMs.[104] In short, as OIG concluded, "EPA's ability to characterize and address AFO air emissions is unchanged since its 2005 Agreement with the AFO industry intended to produce reliable emissions estimation methods."[105]

To continue moving the EEM process forward, OIG recommended that EPA conduct adequate systematic planning—something that the agency should have done *before* conducting NAEMS or preparing the draft EEMs.[106] "Based on the results of systematic planning," EPA should "determine and document the decision as to whether the EPA is able to develop scientifically and statistically sound emission estimating methodologies for each originally planned emission source and pollutant combination."[107] After conducting those reviews, OIG recommended that EPA should "[f]or the emission source and pollutant combinations for which the Office of Air and Radiation determines it can develop scientifically and statistically sound emission estimating methodologies, establish public milestone dates for issuing each draft emission estimating methodology" and "[f]or any emission source and pollutant combinations for which the Office of Air and Radiation determines it cannot develop emission estimating methodologies, notify Air Consent Agreement participants of this determination, and that the release and covenant not to sue for those emission sources and pollutant types will expire in accordance with paragraph 38 of the 2005 Air [Consent] Agreement."[108]

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[103] *Id.* at 16.
[104] *Id.*
[105] *Id.* at 18.
[106] *Id.* at 22.
[107] *Id.* at 23.
[108] *Id.*

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Since the OIG report was published in 2017, EPA has continued to drag its feet regarding EEM development, despite the clear course correcting path that OIG laid out for the Agency. While EPA maintains that it has timely implemented all OIG recommended actions,[109] in reality, the only action that EPA has completed in good faith is the very first on the list—publishing a planning document to guide future EEMs development.[110] As for the remaining four OIG recommendations, EPA has either failed to comply altogether or implemented them in such a half-hearted way so as to undermine their whole purpose, namely, to prevent any further delay.

According to OIG's corrective action timeline, based on the results of EPA's systematic planning, EPA was to "document the decision" as to which EEMs could be developed and which could not no later than June 30, 2018.[111] Yet when the June deadline came, all EPA had decided was that, "for now,"[112] it would move forward with developing EEMs for all pollutants and all source categories, even while holding out the possibility that "emission source categories might be revised during subsequent stages of EEM development" upon further investigation.[113] In other words, instead of making any real effort to narrow the scope of feasible EEMs, as OIG intended, the Agency simply made a placeholder determination to proceed as originally planned to check an item off its OIG to-do list. Conveniently, this also allowed EPA to hold off on implementing another OIG action—ending enforcement amnesty for affected Air Consent Agreement participants—since only a finalized decision to abandon certain EEMs could trigger this requirement.[114] However, this did not stop the Office of Enforcement and Compliance Assurance from certifying that this action, which has yet to occur, was "complete."[115]

Moreover, because EPA opted to move forward with the development of all originally planned EEMs, EPA was required to "set public milestone dates" for issuance of all draft EEMs

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[109] *See* Memorandum from W. Wehrum, Assistant Administrator, *OAR-18-000-9472 - Certification Memo for Office of Inspector General (OIG) Report No. 17-P-0396* (July 30, 2018) ED_004549_00036447-00001 (certifying completion of OAR corrective actions); M. Badalamente, *Certification of Performance Audit* (Apr. 2, 2019) ED_004549_00036462-00001 (certifying completion of OECA corrective action) [hereinafter OECA Certification Memo].
[110] *See* 2018 QAPP at 14.
[111] 2017 OIG REPORT at 23.
[112] Email from Tim Sullivan to Lauren Kabler Re: 2017 OIG Report, ED_005459-00036448-00003 (Sep. 20, 2018).
[113] 2018 QAPP at 16.
[114] 2017 OIG REPORT at 23.
[115] OECA Certification Memo at 1-2 (paradoxically stating OECA's action is "complete" because OECA stands ready to implement it "within 60 days of OAR finalizing its determination").

and to keep the public informed of the status of EEM development.[116] While EPA did set publicly available issuance dates (yet another box checked), it has made no effort to meet these self-imposed deadlines. In fact, every time a deadline nears, the Agency updates the schedule to give itself more time. In the agency's revised schedule for developing EEMs, EPA committed to issuing draft EEMs beginning in September 2019 and ending no later than November 2020.[117] However, after revising the schedule more than five times in just two years, with the most recent schedule slide occurring just this past August, EPA now lists the date for issuing all draft EEMs as May 2022.[118] While OIG required EPA to "set public milestone dates," it surely did not intend for EPA to push back the dates whenever the agency failed to meet an upcoming deadline. The purpose of the updated schedule was to prevent continued delay and uncertainty regarding EPA's development process. As of the date of this letter, EPA continues to delay the EEMs and fall behind its own updated timeline.

V. EPA SHOULD TERMINATE THE AIR CONSENT AGREEMENT BECAUSE EPA HAS FAILED TO PRODUCE VALID EEMs.

A. EPA Should Abandon the Fundamentally Flawed NAEMS and EEMs Development Process in Favor of Existing Models.

As discussed above, EPA cannot rely on the NAEMS data collected at 20 AFOs from because these data are not representative of current emissions from AFOs across the country. At this stage in the EEM development process, EPA cannot correct the flaws in NAEMS and EEM design or implementation. And although EPA has acknowledged the issues limiting the applicability of the data and affecting its current efforts to establish legitimate EEMs, it has failed to sufficiently address those issues. Moreover, EPA already has process-based models and emissions factors that it can use for the purposes of estimating emissions from AFOs and making compliance determinations. Where such methods are available, EPA should immediately adopt the methods as the default EEMs.

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[116] 2017 OIG REPORT at 23.
[117] *See* Archived EPA Webpage: *National Air Emissions Monitoring Study* (Jul. 3, 2018), http://web.archive.org/web/20180703144202/https://www.epa.gov/afos-air/national-air-emissions-monitoring-study.
[118] *See* EPA, National Air Emissions Monitoring Study (last visited 10/22/2021) https://www.epa.gov/afos-air/national-air-emissions-monitoring-study.

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In 2013, nearly a decade ago, EPA's Science Advisory Board recommended that the EPA "consider developing EEMs at a variety of levels of complexity to provide options for producers with different levels of data availability."[119]

> Models of varying complexity should be developed based on the level of input provided by a given producer (e.g., one model may be developed considering the composition of a feed ration, while a less complex model using default industry values could be used if a producer does not wish to or cannot disclose information regarding feed rations).[120]

This SAB recommendation is critical. As discussed above, data limitations often make the implementation of EEMs impractical or impossible. To implement the 2020 and 2021 draft EEMs for swine and poultry AFOs, AFO operators would essentially have to run multiple statistical models for each emissions source, each day of the year, using actual daily data points, like animal inventory, average animal weights, ambient air temperature, and wind speed, to estimate annual emissions.[121] This is problematic in at least two ways. First, it would be difficult for potential sources and regulators to acquire and process the large amount of data required to generate annual emissions estimate. Second, since the draft EEMs require actual input data, they cannot readily be used to estimate future emissions from proposed (or existing) sources.

The current forms of the EEMs are thus inconsistent with the CAA, which asks proposed and existing sources to provide emissions estimates in the form of annual emission potential (an upper-bound estimate that does not require daily model iterations).[122] EPA therefore needs EEMs that utilize default assumptions. The SAB strongly recommended this approach, but EPA unfortunately continues to ignore it.[123]

EPA has also recommended this simplified approach in other contexts. For example, in 2019, EPA published guidance for estimating animal waste emissions for purposes of complying

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[119] 2013 SAB REPORT at 2, 4.
[120] *Id.* at 14
[121] *Id.*
[122] If implemented, the 2020 Draft EEMs for Swine AFOs would not produce Potential to Emit (PTE) estimates. These estimates provide critical information in determining how the CAA applies at a given facility, and if a facility is a "major source." The draft EEMs instead prescribe the use of actual animal inventories and will not determine if facilities are "major sources" as required.
[123] 2013 SAB REPORT at 14 ("The EPA should create a modeling approach that can be defined using default parameters that can be simply attained and that would reflect the heterogeneity of AFOs.").

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with CERCLA and EPCRA.[124] Some of the methods recommended in this guidance were simple emissions factors (e.g., pounds per animal per day).[125] Other recommended methods were in the form of worksheets that used a combination of site-specific information (e.g., animal housing type and maximum permitted capacity) and default parameters (e.g., animal-specific nitrogen excretion rates and ammonia loss factors). The worksheets are notable for two reasons. First, the worksheets generate "peak" pollutant emissions, based on maximum/permitted animal capacity, which is consistent with CAA "potential to emit" requirements. Second, the worksheets are easy to implement with limited data because they incorporate default parameters.

In sum, EPA already estimates emissions, and recommends that others do so, using methods that are consistent with the CAA and SAB guidance and are easy to implement. Yet it continues to insist on developing flawed EEMs that fail all of these criteria. This is flagrantly arbitrary and unreasonable, and only serves one purpose—to continue to protect a large source of air pollution from regulation.

B. EPA Overstates the Difficulty of Developing Process-Based Models, Which the Agency Is Already Using in Other Contexts.

Since the beginning of the EEM development process, the scientific community has recommended that EPA pursue a process-based approach. In 2003, the National Academies of Sciences (NAS) concluded that the "use of process-based modeling will help provide scientifically sound estimates of air emissions from AFOs for use in regulatory and management programs."[126] Ten years later, in 2013, EPA's Science Advisory Board made the same recommendation.[127] Today, nearly two decades after the NAS first recommended a process-based approach, and despite the fact that EPA is already using process-based models in other contexts, EPA maintains that it cannot yet develop process-based EEMs.

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[124] EPA, *CERCLA & EPCRA Reporting Requirements for Air Releases of Hazardous Substances from Animal Waste at Farms*, EPA (last visited Aug. 27, 2021), https://www.epa.gov/epcra/cercla-and-epcra-reporting-requirements-air-releases-hazardous-substances-animal-waste-farms.
[125] *See, e.g.*, EPA, Calculation Worksheet: Ammonia and Hydrogen Sulfide from Dairy Operations (2009) available at https://www.michigan.gov/documents/deq/deq-ess-cafo-worksheet-dairyemissions_266406_7.pdf.
[126] NAT'L RSCH. COUNCIL, AIR EMISSIONS FOR ANIMAL FEEDING OPERATIONS: CURRENT KNOWLEDGE, FUTURE NEEDS, 103 (2003).
[127] 2013 SAB REPORT at 10-13.

EPA concedes that its statistical approach is flawed, and now describes the statistical approach as an "interim" solution until more reliable process-based models can be developed.[128] EPA suggests that this approach "follow[s] the expert recommendations and [is] consistent with the Air [Consent] Agreement."[129] This is simply not true—EPA is *not* following the Air Consent Agreement or the SAB recommendations, both of which emphasize the need for data from outside of NAEMS. The SAB reminded EPA that process-based models would require the Agency to consider outside information:

> Developing a rigorous process-based EEM will require extensive data beyond the range of values, conditions, and types of farms available in the NAEMS data set. To address this data gap the EPA should consider using data collected through mechanisms outside the consent agreement, including data published in peer-reviewed literature, raw data from key studies, data that support key literature, and additional data that the EPA has collected since receiving data in response to the Call for Information on AFOs and emissions.[130]

EPA has not done this. The delay in developing process-based EEMs is almost entirely due to EPA's failure to collect or consider the necessary data.

More broadly, it is important to consider EPA's track record. EPA's chosen course of action, developing interim statistical models, has already taken more than 16 years and is *still* not complete. If this is EPA's *interim* solution, how many more decades will it take before EPA can meet its "long term" goals of developing process-based EEMs? At this rate, the industry is changing faster than the EEM development process, and whatever EPA develops will immediately be outdated. Given EPA's history of protracted delay, it makes no sense to continue developing flawed "interim" EEMs while EPA contemplates a plan for someday, maybe developing legitimate EEMs. The problem of air pollution from AFOs deserves actual solutions, not more wheel-spinning.

Developing process-based models will not require more time than completing its flawed statistical models. EPA is already using process-based models (and other models) to estimate AFO emissions and has acknowledged that process-based models accurately predict NAEMS

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[128] *See, e.g.*, 2020 Draft EEMs for Swine Barns & Lagoons at 1-8 to 1-9.
[129] *Id.* at 1-8.
[130] 2013 SAB REPORT at 14.

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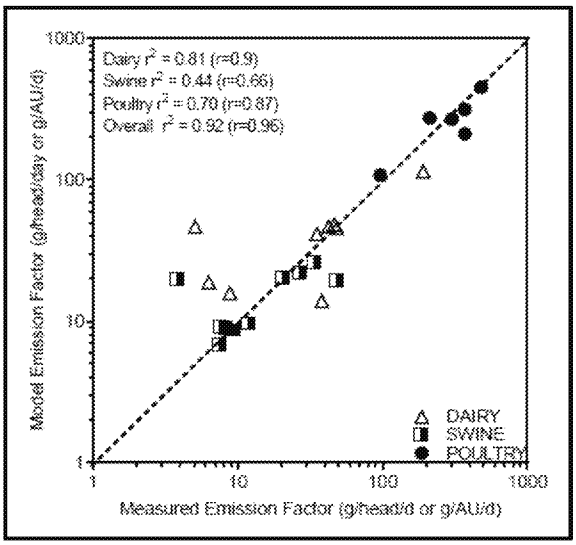
emissions based on NAEMS input data. Ironically, although EPA claims to be interested in any "suitable model[s] available in literature to use,"[131] it ignores the high-quality process-based model being used *by EPA* in its National Emissions Inventory (NEI).

As part of its NEI, the Agency estimates ammonia emissions from dairy, beef, poultry, and swine operations using a process-based model developed by Carnegie-Mellon University (CMU).[132] This model has been evaluated against NAEMS monitoring data, and one author observed that "the process-based [Farm Emissions Models] perform reasonably well in predicting the magnitude of ammonia emissions, their seasonal cycle, and farm-to-farm variability."[133] It is particularly noteworthy that the CMU model "was able to differentiate between farms and practice," as shown in the figure below.[134]

Figure 1: Comparison of Process-Based Model Predictions and NAEMS Monitoring Data



[131] 2018 QAPP at 19.
[132] EPA, 2017 NATIONAL EMISSIONS INVENTORY: JANUARY 2021 UPDATED RELEASE, TECHNICAL SUPPORT DOCUMENT 4-61 (2021); A. McQuilling & P. Adams, *Semi-Empirical Process-Based Models For Ammonia Emissions From Beef, Swine, & Poultry Operations In The United States*, 120 ATMOS. ENVTL. 127 (Nov. 2015).
[133] A. McQuilling, *Ammonia Emissions from Livestock in the United States: From Farm-Level Models to a New National Inventory,* at 51 (Jan. 2, 2016) (Ph.D dissertation Carnegie Mellon University), https://kilthub.cmu.edu/articles/thesis/Ammonia_Emissions_from_Livestock_in_the_United_States_From_Farm-Level_Models_to_a_New_National_Inventory/6714665.
[134] *Id.* at 75, 80.

As explained by the author, "this result shows the model's skill in capturing big picture emissions as well as the ammonia emissions variability driven by practices in addition to meteorology which has been shown in both seasonal and daily evaluations."[135]

Another model that EPA at least acknowledges is the U.S. Department of Agriculture's Farm Systems Model, which includes process-based models for estimated ammonia and hydrogen sulfide emissions from dairy operations. The model has even been shown to accurately predict ammonia emissions from NAEMS dairy barns and manure storage structures.[136]

If these models are good enough for EPA's emissions inventory and do a reasonable job of predicting NAEMS emissions, then they should be good enough for estimating emissions from AFOs for the purpose of applying for CAA permits or reporting qualifying releases. For example, if the question is whether a facility emits more than a certain threshold, such as 10 or 100 tons of ammonia per year,[137] then the CMU model is sufficient. This is particularly true where we already know that many AFOs emit well above the higher threshold.[138]

EPA's foot-dragging is based on the deeply flawed premise that the Agency won't know how much pollution AFOs emit until after the agency's planned EEMs are complete. This premise is false. EPA has a variety of options for estimating emissions, and these options are in fact better than the EEMs—they are more consistent with CAA requirements and SAB recommendations, and they are accurate enough to provide the kinds of information that the industry, regulators, and residents need to comply with the law. EPA has no legitimate basis for dragging this process out any longer.

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[135] *Id.* at 80.
[136] 2018 QAPP at 19; *see also* C. Rotz et. al., *Ammonia emission model for whole farm evaluation of dairy production systems*, 43 J. ENV'T. QUAL. 1143 (2014).
[137] *See, e.g.*, 42 U.S.C. §§ 7412(a)(1) (definition of "major source" of hazardous air pollutants); § 7479(1) (definition of "major emitting facility"); § 7602(j) (definition of "major emitting facility").
[138] *See, e.g.*, Notice of Lodging of Consent Decree Under CERCLA, 69 Fed. Reg. 11,649 (Mar. 11, 2004). The company subject to this Consent Decree, Buckeye Egg Farm L.P., reported ammonia emissions of over 800 tons per year from one facility, over 375 tons per year from a second facility, and "nearly 275" tons per year from a third facility. *Id.* at 11,649–50.

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VI. IF EPA DECIDES TO PROCEED WITH THE FLAWED EEM DEVELOPMENT PROCESS, IT MUST IMMEDIATELY RESCIND THE SAFE HARBOR PROVISION.

As explained above, EPA's failure to regulate air pollution from AFOs causes both significant health impacts and a dearth of information available to impacted individuals about pollutant releases and impacts. Additionally, AFO air pollution and the resulting odors are diminishing the quality of life and depressing property values in communities across the nation.[139] EPA must immediately rescind the enforcement protections granted to AFOs. In addition, EPA must rely on external sources and public input when developing any draft EEMs based on the agency's inherently flawed monitoring data and development process.

A. EPA Should Immediately Rescind the Safe Harbor Provisions of the Air Consent Agreement.

Although EPA has the authority to rescind the safe harbor provisions of the Air Consent Agreement at any time, it has refused to do so, choosing instead to grant extended immunity to AFOs that emit significant air pollution and cause adverse public health impacts in surrounding communities. EPA's continued refusal to enforce the law against AFOs is an abdication of its enforcement authority. It contradicts congressional intent and strips affected communities of their legal and procedural remedies to address increased air emissions from AFOs. Thus, EPA should take immediate action to rescind the safe harbor provisions of the Air Consent Agreement.

B. EPA Should Not Finalize Any EEMs Without Robust Public Participation.

If EPA proceeds with its protracted EEM development process, it must prioritize public participation. During the decades-long process of developing the EEMs, the Agency has primarily engaged the AFO industry. EPA intends to hold a "stakeholder review period" once new draft EEMs are available but the timing of this review period is currently unknown.[140] It is

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[139] *See, e.g.*, Y. HONG & P. EBNER, PURDUE ANIMAL SCIENCES, IMPACT OF CFO ODOR & ODOR SETBACK MODELS, (JAN. 2017), https://ag.purdue.edu/cfo/Documents/ID-485_CFO_2017.pdf; ROMAN KEENEY, PURDUE EXTENSION, COMMUNITY IMPACTS OF CAFOS: PROPERTY VALUES (2008), https://www.extension.purdue.edu/extmedia/ID/ID-363-W.pdf.

[140] *See* EPA, *National Air Emissions Monitoring Study: Timeline for the Release of AFO Emission Models*, (last visited Oct. 25, 2021), https://www.epa.gov/afos-air/national-air-emissions-monitoring-study.

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unclear who EPA considers "stakeholders" in this process, but presumably this "stakeholder review period" involves EPA releasing all EEMs simultaneously for a 30-day public comment period. This would be a wholly inadequate means to engage the public, especially in comparison to the extensive influence that industry groups have had throughout the EEMs process. A robust notice and comment opportunity is necessary to meaningfully engage *all* stakeholders and ensure that the EEMs do not exacerbate health impacts and inequalities.

Rural communities experiencing the detrimental effects of AFOs lack access to complete information about the impacts and regulation of AFOs, and rarely are provided with a forum to voice their concerns and seek remedies from the government. Rather, EPA has frequently used the EEMs process as a shield to avoid meaningfully responding to and acting on AFO air pollution concerns raised with the Agency. A transparent and accessible notice and comment period for the EEMs will provide a necessary—albeit much-delayed—opportunity for the Agency to hear from the stakeholders most impacted by EPA's decisions regarding EEMs.

Furthermore, the complexity and abstract nature of environmental modeling presents unique and significant barriers to full public participation.[141] EPA should take steps to overcome and mitigate these barriers. For example, a comment period of 90 days would provide impacted communities and advocacy groups the time needed to assess the impacts of the EEMs and engage in outreach to ensure that all interested parties are aware and informed. The complex nature of the EEMs also means that groups and members of the public likely will need to engage experts to review the EEMs and develop technical comments, necessitating a longer comment period. EPA should also hold public listening sessions with content aimed at meaningfully engaging the public in EEMs development, such as layperson explanations of the process of developing the EEMs and the EEMs' impacts and limitations. Similarly, EPA should ensure members of the public are able to hear each other's comments.

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[141] *See generally* J. Fine & D. Owen, *Technocracy & Democracy: Conflicts Between Models & Participation in Environmental Law & Planning*, 56 HASTINGS L.J. 901 (2005), https://repository.uchastings.edu/cgi/viewcontent.cgi?article=3590&context=hastings_law_journal.

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Robust public participation in the finalization of any EEMs is also necessary for EPA to comply with the President's Executive Orders pertaining to environmental justice.[142] AFO air pollution is an environmental justice issue—"people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality" are far more likely to be exposed to AFO air pollution and suffer the health, quality of life, and financial consequences.[143] The Biden Administration has pledged to make environmental justice a priority and directed EPA to "assess whether, and to what extent, its programs and policies perpetuate systemic barriers to opportunities and benefits for people of color and other underserved groups."[144] Agencies are further tasked with "evaluat[ing] opportunities, consistent with applicable law, to increase coordination, communication, and engagement with community-based organizations and civil rights organizations."[145] The finalization of the EEMs is an important opportunity for EPA to advance these objectives, and the failure of EPA to ensure meaningful public participation in the EEMs would contravene the Administration's directives.

The petitioners, as well as many other groups that work with rural communities impacted by AFOs, also could provide EPA with valuable information and context. Two petitioners are environmental justice organizations, which work with communities adversely affected by AFO air pollution, including in North Carolina and California. Many of the petitioners have sought to engage with EPA on the issue of air pollution from AFOs for well over a decade, including challenging the Agreement at the EAB and in the D.C. Circuit, submitting the 2009 CAFO Source Petition, and submitting the 2011 Ammonia Petition. The petitioners have also extensively worked with, and represented in legal actions, members of communities directly

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[142] *See* Exec. Order No. 13985, Advancing Racial Equity & Support for Underserved Communities Through the Federal Government, 86 Fed. Reg. 7009 (Jan. 25, 2021), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1817697/pdf/ehp0115-000317.pdf.

[143] *See id. See also* 2017 OIG REPORT at 3, *see also* K. Donham et al., *Community Health & Socioeconomic Issues Surrounding Concentrated Animal Feeding Operations*, 115 ENV'T. HEALTH PERSPECTIVES (2007).

[144] Exec. Order No. 13985; *see also* Exec. Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 Fed Reg. 7629 (Feb. 16, 1994) ("[E]ach Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations. . . .").

[145] Exec. Order No. 13985.

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impacted by AFO pollution. Therefore, the petitioners possess extensive expertise that would be valuable in the process of finalizing the EEMs.

VII. CONCLUSION

The Air Consent Agreement has been an unmitigated failure. During EPA's extended amnesty and fundamentally inadequate NAEMS process, jurisdictions like California have estimated emissions and permitted AFOs with readily available data.[146] The SAB has demonstrated that EPA's NAEMS and EEM development processes reflect the principle of "garbage in, garbage out." EPA has blown far past its 2007 "limited" deferral representation to the D.C. Circuit and its 2017 response to the OIG, landing rural communities in a purgatory of legalized air pollution. Further delay only demonstrates EPA's abdication of its enforcement responsibility and will not yield a better outcome.

We support EPA efforts to develop state-of-the-art and accurate emissions estimating methodologies, but that process should never have been used to shield the industry from enforcement, and in any case, it is well past the time when the NAEMS and EEM process could justify a temporary suspension of applicable law. The reality is that facts and science change over time, and emissions assumptions will also change over time. There is no end to that process. However, EPA can, and routinely does, estimate emissions from many sources of air pollution, including AFOs, using the best science available. The Agency must do the same here. EPA must end the Air Consent Agreement, immediately publish the best currently available emissions methods or emissions factors for each pollutant, and enforce the CAA.

The petitioners therefore petition EPA to rescind the Air Consent Agreement granting enforcement protections to nearly 14,000 AFOs. In addition to a written response confirming the agency's rescission of the Air Consent Agreement, we petition EPA to act immediately to implement CAA permitting and reporting programs, prioritize enforcement actions against AFOs contributing to air pollution and related health impacts in environmental justice communities, and develop process-based models unbound from an unending license to pollute.

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[146] EPA, based on its CAA oversight, has actual knowledge of jurisdictions like California, including the San Joaquin Valley Unified Air Pollution Control District, with AFO permitting programs and State Implementation Plan programs applicable to such facilities.

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aruss@environmentalintegrity.org

Tarah Heinzen
Emily Miller
Food & Water Watch
1616 P St. NW, Suite 300
Washington, DC 20036
theinzen@fwwatch.org
eamiller@fwwatch.org

Brent Newell
Public Justice Foundation
1620 L St. NW, Suite 630
Washington, DC 20036
bnewell@publicjustice.net

On behalf of Petitioners

ED_013141A_00000066-00036

Message

From: Banner, Shannon [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=31A8AE9EB1D3430B93DF5F81480C9999-BANNER, SHA]
Sent: 6/27/2022 6:05:06 PM
To: Spence, Kelley [Spence.Kelley@epa.gov]
Subject: FW: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Banner, Shannon has shared a OneDrive for Business file with you. To view it, click the link below.

PetitionDeskStatements.docx

From: Mills, Kathy <Mills.Kathy@epa.gov>
Sent: Tuesday, November 23, 2021 1:42 PM
To: South, Peter <South.Peter@epa.gov>; Cozzie, David <Cozzie.David@epa.gov>; Hunt, Virginia <Hunt.Virginia@epa.gov>
Cc: Dunkins, Robin <Dunkins.Robin@epa.gov>; Do, Bebhinn <do.bebhinn@epa.gov>; Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>; Gmyr, Joanna <Gmyr.Joanna@epa.gov>; Joseph, Wanda <joseph.wanda@epa.gov>
Subject: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Ex. 5 Deliberative Process (DP)

Thank you,
KB

Kathy "KB" Mills ~ SPPD ~ U. S. EPA, OAQPS ~ 919-541-1599

Message

From: Radtke, Meghan [Radtke.Meghan@epa.gov]
Sent: 11/5/2021 3:10:57 PM
To: Noggle, William [Noggle.William@epa.gov]
CC: Gioffre, Patricia [Gioffre.Patricia@epa.gov]; Belke, Jim [Belke.Jim@epa.gov]
Subject: RE: FARM Act bullets for Barry and Carlton

Awesome. Thank you!

Meghan

Meghan Radtke, Ph.D., Biologist
Special Assistant
Office of Emergency Management
Office of Land and Emergency Management
U.S. Environmental Protection Agency
Office: 202-566-0592
Mobile: 703-472-8215

From: Noggle, William <Noggle.William@epa.gov>
Sent: Friday, November 5, 2021 10:50 AM
To: Radtke, Meghan <Radtke.Meghan@epa.gov>
Cc: Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Belke, Jim <Belke.Jim@epa.gov>
Subject: RE: FARM Act bullets for Barry and Carlton

Meghan,
Thanks for the comment/edits. I made the changes. Ex. 5 Deliberative Process (DP)
Ex. 5 Deliberative Process (DP)

Thanks again,
Bill

From: Radtke, Meghan <Radtke.Meghan@epa.gov>
Sent: Friday, November 5, 2021 8:59 AM
To: Noggle, William <Noggle.William@epa.gov>
Cc: Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Belke, Jim <Belke.Jim@epa.gov>; Radtke, Meghan <Radtke.Meghan@epa.gov>
Subject: RE: FARM Act bullets for Barry and Carlton

Hi Bill,

See below for a question on one bullet and minor edits to another (in red). Ex. 5 Deliberative Process (DP)
Ex. 5 Deliberative Process (DP)

Thanks!

Meghan

Meghan Radtke, Ph.D., Biologist
Special Assistant
Office of Emergency Management

Office of Land and Emergency Management
U.S. Environmental Protection Agency
Office: 202-566-0592
Mobile: 703-472-8215

From: Noggle, William <Noggle.William@epa.gov>
Sent: Thursday, November 4, 2021 1:35 PM
To: Radtke, Meghan <Radtke.Meghan@epa.gov>; Perovich, Gina <Perovich.Gina@epa.gov>; Waltzer, Sam <Waltzer.Sam@epa.gov>
Cc: Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Belke, Jim <Belke.Jim@epa.gov>
Subject: FW: FARM Act bullets for Barry and Carlton

Meghan, Gina, Sam,
See below for the bullets for Carlton and Barry on animal waste reporting. Please keep us posted on what you want to include.

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Thanks,
Bill

From: Radtke, Meghan <Radtke.Meghan@epa.gov>
Sent: Thursday, November 4, 2021 7:48 AM
To: Noggle, William <Noggle.William@epa.gov>; Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Belke, Jim <Belke.Jim@epa.gov>; Perovich, Gina <Perovich.Gina@epa.gov>; Waltzer, Sam <Waltzer.Sam@epa.gov>
Cc: Radtke, Meghan <Radtke.Meghan@epa.gov>
Subject: RE: FARM Act bullets for Barry and Carlton

Hi All,

Ex. 5 Deliberative Process (DP) Do you think you can get them to me tomorrow (Friday)? Ex. 5 Deliberative Process (DP)

Thanks!

Meghan

Meghan Radtke, Ph.D., Biologist
Special Assistant
Office of Emergency Management
Office of Land and Emergency Management
U.S. Environmental Protection Agency
Office: 202-566-0592
Mobile: 703-472-8215

From: Noggle, William <Noggle.William@epa.gov>
Sent: Wednesday, November 3, 2021 11:38 AM
To: Radtke, Meghan <Radtke.Meghan@epa.gov>; Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Belke, Jim <Belke.Jim@epa.gov>
Subject: RE: FARM Act bullets for Barry and Carlton

Will do. Thank you

From: Radtke, Meghan <Radtke.Meghan@epa.gov>
Sent: Wednesday, November 3, 2021 11:37 AM
To: Noggle, William <Noggle.William@epa.gov>; Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Belke, Jim <Belke.Jim@epa.gov>
Cc: Radtke, Meghan <Radtke.Meghan@epa.gov>
Subject: FARM Act bullets for Barry and Carlton

Hi All,

Ex. 5 Deliberative Process (DP)

Thanks!

Meghan

Meghan Radtke, Ph.D., Biologist
Special Assistant
Office of Emergency Management
Office of Land and Emergency Management
U.S. Environmental Protection Agency
Office: 202-566-0592
Mobile: 703-472-8215

Message

From: Radtke, Meghan [Radtke.Meghan@epa.gov]
Sent: 11/5/2021 5:41:56 PM
To: Noggle, William [Noggle.William@epa.gov]
CC: Gioffre, Patricia [Gioffre.Patricia@epa.gov]; Belke, Jim [Belke.Jim@epa.gov]
Subject: FW: FARM Act bullets for Barry and Carlton

Hi Bill,

Can you help **Ex. 5 Deliberative Process (DP)**

Meghan

Meghan Radtke, Ph.D., Biologist
Special Assistant
Office of Emergency Management
Office of Land and Emergency Management
U.S. Environmental Protection Agency
Office: 202-566-0592
Mobile: 703-472-8215

From: Salyer, Kathleen <Salyer.Kathleen@epa.gov>
Sent: Friday, November 5, 2021 12:03 PM
To: Radtke, Meghan <Radtke.Meghan@epa.gov>; Roache, Brendan <Roache.Brendan@epa.gov>
Subject: RE: FARM Act bullets for Barry and Carlton

Thanks Meghan. **Ex. 5 Deliberative Process (DP)**

Ex. 5 Deliberative Process (DP)

From: Radtke, Meghan <Radtke.Meghan@epa.gov>
Sent: Friday, November 5, 2021 11:15 AM
To: Salyer, Kathleen <Salyer.Kathleen@epa.gov>; Roache, Brendan <Roache.Brendan@epa.gov>
Cc: Radtke, Meghan <Radtke.Meghan@epa.gov>
Subject: FW: FARM Act bullets for Barry and Carlton

Hi Kathleen and Brendan,

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP) Can you please take a look?

Ex. 5 Deliberative Process (DP)

Thanks!

Meghan

Meghan Radtke, Ph.D., Biologist
Special Assistant
Office of Emergency Management
Office of Land and Emergency Management

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Mobile: 703-472-8215

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To: Radtke, Meghan <Radtke.Meghan@epa.gov>; Perovich, Gina <Perovich.Gina@epa.gov>; Waltzer, Sam <Waltzer.Sam@epa.gov>
Cc: Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Belke, Jim <Belke.Jim@epa.gov>
Subject: FW: FARM Act bullets for Barry and Carlton

Meghan, Gina, Sam,
See below for the bullets for Carlton and Barry on animal waste reporting. Please keep us posted on what you want to include.

Ex. 5 Deliberative Process (DP)

Thanks,
Bill

Message

From: Noggle, William [Noggle.William@epa.gov]
Sent: 11/5/2021 7:01:00 PM
To: Radtke, Meghan [Radtke.Meghan@epa.gov]
CC: Gioffre, Patricia [Gioffre.Patricia@epa.gov]; Belke, Jim [Belke.Jim@epa.gov]; Jacob, Sicy [Jacob.Sicy@epa.gov]
Subject: RE: FARM Act bullets for Barry and Carlton

Ex. 5 Deliberative Process (DP)

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Cc: Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Belke, Jim <Belke.Jim@epa.gov>
Subject: FW: FARM Act bullets for Barry and Carlton

Hi Bill,

Can you help **Ex. 5 Deliberative Process (DP)**

Meghan

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Cc: Radtke, Meghan <Radtke.Meghan@epa.gov>
Subject: FW: FARM Act bullets for Barry and Carlton

Hi Kathleen and Brendan,

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP) Can you please take a look?

Ex. 5 Deliberative Process (DP)

Thanks!

Meghan

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Cc: Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Belke, Jim <Belke.Jim@epa.gov>
Subject: FW: FARM Act bullets for Barry and Carlton

Meghan, Gina, Sam,
See below for the bullets for Carlton and Barry on animal waste reporting. Please keep us posted on what you want to include.

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Thanks,
Bill

Message

From: Radtke, Meghan [Radtke.Meghan@epa.gov]
Sent: 11/5/2021 7:13:55 PM
To: Noggle, William [Noggle.William@epa.gov]
CC: Gioffre, Patricia [Gioffre.Patricia@epa.gov]; Belke, Jim [Belke.Jim@epa.gov]; Jacob, Sicy [Jacob.Sicy@epa.gov]; Radtke, Meghan [Radtke.Meghan@epa.gov]
Subject: RE: FARM Act bullets for Barry and Carlton

Hi Bill,

Ex. 5 Deliberative Process (DP) Are you okay with the following? Feel free to make additional edits.

Ex. 5 Deliberative Process (DP)

Meghan Radtke, Ph.D., Biologist
Special Assistant
Office of Emergency Management
Office of Land and Emergency Management
U.S. Environmental Protection Agency
Office: 202-566-0592
Mobile: 703-472-8215

From: Noggle, William <Noggle.William@epa.gov>
Sent: Friday, November 5, 2021 3:01 PM
To: Radtke, Meghan <Radtke.Meghan@epa.gov>
Cc: Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Belke, Jim <Belke.Jim@epa.gov>; Jacob, Sicy <Jacob.Sicy@epa.gov>
Subject: RE: FARM Act bullets for Barry and Carlton

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To: Noggle, William <Noggle.William@epa.gov>
Cc: Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Belke, Jim <Belke.Jim@epa.gov>
Subject: FW: FARM Act bullets for Barry and Carlton

Hi Bill,

Can you help Ex. 5 Deliberative Process (DP)

Meghan

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Office of Emergency Management
Office of Land and Emergency Management
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Sent: Friday, November 5, 2021 12:03 PM
To: Radtke, Meghan <Radtke.Meghan@epa.gov>; Roache, Brendan <Roache.Brendan@epa.gov>
Subject: RE: FARM Act bullets for Barry and Carlton

Thanks Meghan. Ex. 5 Deliberative Process (DP)
Ex. 5 Deliberative Process (DP)

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Sent: Friday, November 5, 2021 11:15 AM
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Hi Kathleen and Brendan,

Ex. 5 Deliberative Process (DP)
Ex. 5 Deliberative Process (DP) Can you please take a look?

Ex. 5 Deliberative Process (DP)

Thanks!

Meghan

Meghan Radtke, Ph.D., Biologist
Special Assistant
Office of Emergency Management
Office of Land and Emergency Management
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Mobile: 703-472-8215

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Cc: Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Belke, Jim <Belke.Jim@epa.gov>
Subject: FW: FARM Act bullets for Barry and Carlton

Meghan, Gina, Sam,
See below for the bullets for Carlton and Barry on animal waste reporting. Please keep us posted on what you want to include.

Ex. 5 Deliberative Process (DP)

Thanks,

Bill

Message

From: Noggle, William [Noggle.William@epa.gov]
Sent: 11/5/2021 7:17:27 PM
To: Radtke, Meghan [Radtke.Meghan@epa.gov]
CC: Gioffre, Patricia [Gioffre.Patricia@epa.gov]; Belke, Jim [Belke.Jim@epa.gov]; Jacob, Sicy [Jacob.Sicy@epa.gov]
Subject: RE: FARM Act bullets for Barry and Carlton

Meghan,

Ex. 5 Deliberative Process (DP)

Thanks,
Bill

From: Radtke, Meghan <Radtke.Meghan@epa.gov>
Sent: Friday, November 5, 2021 3:14 PM
To: Noggle, William <Noggle.William@epa.gov>
Cc: Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Belke, Jim <Belke.Jim@epa.gov>; Jacob, Sicy <Jacob.Sicy@epa.gov>; Radtke, Meghan <Radtke.Meghan@epa.gov>
Subject: RE: FARM Act bullets for Barry and Carlton

Hi Bill,

Ex. 5 Deliberative Process (DP) Are you okay with the following? Feel free to make additional edits.

Ex. 5 Deliberative Process (DP)

Meghan Radtke, Ph.D., Biologist
Special Assistant
Office of Emergency Management
Office of Land and Emergency Management
U.S. Environmental Protection Agency
Office: 202-566-0592
Mobile: 703-472-8215

From: Noggle, William <Noggle.William@epa.gov>
Sent: Friday, November 5, 2021 3:01 PM
To: Radtke, Meghan <Radtke.Meghan@epa.gov>
Cc: Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Belke, Jim <Belke.Jim@epa.gov>; Jacob, Sicy <Jacob.Sicy@epa.gov>
Subject: RE: FARM Act bullets for Barry and Carlton

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Cc: Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Belke, Jim <Belke.Jim@epa.gov>
Subject: FW: FARM Act bullets for Barry and Carlton

Hi Bill,

Can you help Ex. 5 Deliberative Process (DP)

Meghan

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Special Assistant
Office of Emergency Management
Office of Land and Emergency Management
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Office: 202-566-0592
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From: Salyer, Kathleen <Salyer.Kathleen@epa.gov>
Sent: Friday, November 5, 2021 12:03 PM
To: Radtke, Meghan <Radtke.Meghan@epa.gov>; Roache, Brendan <Roache.Brendan@epa.gov>
Subject: RE: FARM Act bullets for Barry and Carlton

Thanks Meghan. Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

From: Radtke, Meghan <Radtke.Meghan@epa.gov>
Sent: Friday, November 5, 2021 11:15 AM
To: Salyer, Kathleen <Salyer.Kathleen@epa.gov>; Roache, Brendan <Roache.Brendan@epa.gov>
Cc: Radtke, Meghan <Radtke.Meghan@epa.gov>
Subject: FW: FARM Act bullets for Barry and Carlton

Hi Kathleen and Brendan,

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP) Can you please take a look?

Ex. 5 Deliberative Process (DP)

Thanks!

Meghan

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Office of Emergency Management
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Mobile: 703-472-8215

From: Noggle, William <Noggle.William@epa.gov>
Sent: Thursday, November 4, 2021 1:35 PM
To: Radtke, Meghan <Radtke.Meghan@epa.gov>; Perovich, Gina <Perovich.Gina@epa.gov>; Waltzer, Sam <Waltzer.Sam@epa.gov>
Cc: Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Belke, Jim <Belke.Jim@epa.gov>
Subject: FW: FARM Act bullets for Barry and Carlton

Meghan, Gina, Sam,
See below for the bullets for Carlton and Barry on animal waste reporting. Please keep us posted on what you want to include.

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Thanks,
Bill

Message

From: Radtke, Meghan [Radtke.Meghan@epa.gov]
Sent: 11/5/2021 7:20:45 PM
To: Noggle, William [Noggle.William@epa.gov]
CC: Gioffre, Patricia [Gioffre.Patricia@epa.gov]; Belke, Jim [Belke.Jim@epa.gov]; Jacob, Sicy [Jacob.Sicy@epa.gov]
Subject: RE: FARM Act bullets for Barry and Carlton

Ex. 5 Deliberative Process (DP)

Meghan

Meghan Radtke, Ph.D., Biologist
Special Assistant
Office of Emergency Management
Office of Land and Emergency Management
U.S. Environmental Protection Agency
Office: 202-566-0592
Mobile: 703-472-8215

From: Noggle, William <Noggle.William@epa.gov>
Sent: Friday, November 5, 2021 3:17 PM
To: Radtke, Meghan <Radtke.Meghan@epa.gov>
Cc: Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Belke, Jim <Belke.Jim@epa.gov>; Jacob, Sicy <Jacob.Sicy@epa.gov>
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Meghan,

Ex. 5 Deliberative Process (DP)

Thanks,
Bill

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Sent: Friday, November 5, 2021 3:14 PM
To: Noggle, William <Noggle.William@epa.gov>
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Subject: RE: FARM Act bullets for Barry and Carlton

Hi Bill,

Ex. 5 Deliberative Process (DP) Are you okay with the following? Feel free to make additional edits.

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Meghan Radtke, Ph.D., Biologist
Special Assistant
Office of Emergency Management
Office of Land and Emergency Management
U.S. Environmental Protection Agency
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Subject: FW: FARM Act bullets for Barry and Carlton

Hi Bill,

Can you help Ex. 5 Deliberative Process (DP)

Meghan

Meghan Radtke, Ph.D., Biologist
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Office of Land and Emergency Management
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From: Salyer, Kathleen <Salyer.Kathleen@epa.gov>
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Hi Kathleen and Brendan,

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Ex. 5 Deliberative Process (DP)

Thanks!

Meghan

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Meghan, Gina, Sam,
See below for the bullets for Carlton and Barry on animal waste reporting. Please keep us posted on what you want to include.

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Thanks,
Bill

Message

From: Radtke, Meghan [Radtke.Meghan@epa.gov]
Sent: 11/8/2021 12:38:34 PM
To: Noggle, William [Noggle.William@epa.gov]
CC: Gioffre, Patricia [Gioffre.Patricia@epa.gov]; Belke, Jim [Belke.Jim@epa.gov]; Jacob, Sicy [Jacob.Sicy@epa.gov]; Radtke, Meghan [Radtke.Meghan@epa.gov]
Subject: RE: FARM Act bullets for Barry and Carlton

Hi Bill,

Ex. 5 Deliberative Process (DP) So, we should be good for now.

Thank you!

Meghan

Meghan Radtke, Ph.D., Biologist
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Office of Emergency Management
Office of Land and Emergency Management
U.S. Environmental Protection Agency
Office: 202-566-0592
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Sent: Friday, November 5, 2021 3:17 PM
To: Radtke, Meghan <Radtke.Meghan@epa.gov>
Cc: Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Belke, Jim <Belke.Jim@epa.gov>; Jacob, Sicy <Jacob.Sicy@epa.gov>
Subject: RE: FARM Act bullets for Barry and Carlton

Meghan,

Ex. 5 Deliberative Process (DP)

Thanks,
Bill

From: Radtke, Meghan <Radtke.Meghan@epa.gov>
Sent: Friday, November 5, 2021 3:14 PM
To: Noggle, William <Noggle.William@epa.gov>
Cc: Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Belke, Jim <Belke.Jim@epa.gov>; Jacob, Sicy <Jacob.Sicy@epa.gov>; Radtke, Meghan <Radtke.Meghan@epa.gov>
Subject: RE: FARM Act bullets for Barry and Carlton

Hi Bill,

Ex. 5 Deliberative Process (DP) Are you okay with the following? Feel free to make additional edits.

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Meghan Radtke, Ph.D., Biologist
Special Assistant
Office of Emergency Management
Office of Land and Emergency Management
U.S. Environmental Protection Agency
Office: 202-566-0592
Mobile: 703-472-8215

From: Noggle, William <Noggle.William@epa.gov>
Sent: Friday, November 5, 2021 3:01 PM
To: Radtke, Meghan <Radtke.Meghan@epa.gov>
Cc: Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Belke, Jim <Belke.Jim@epa.gov>; Jacob, Sicy <Jacob.Sicy@epa.gov>
Subject: RE: FARM Act bullets for Barry and Carlton

Ex. 5 Deliberative Process (DP)

From: Radtke, Meghan <Radtke.Meghan@epa.gov>
Sent: Friday, November 5, 2021 1:42 PM
To: Noggle, William <Noggle.William@epa.gov>
Cc: Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Belke, Jim <Belke.Jim@epa.gov>
Subject: FW: FARM Act bullets for Barry and Carlton

Hi Bill,

Can you help Ex. 5 Deliberative Process (DP)

Meghan

Meghan Radtke, Ph.D., Biologist
Special Assistant
Office of Emergency Management
Office of Land and Emergency Management
U.S. Environmental Protection Agency
Office: 202-566-0592

Mobile: 703-472-8215

From: Salyer, Kathleen <Salyer.Kathleen@epa.gov>
Sent: Friday, November 5, 2021 12:03 PM
To: Radtke, Meghan <Radtke.Meghan@epa.gov>; Roache, Brendan <Roache.Brendan@epa.gov>
Subject: RE: FARM Act bullets for Barry and Carlton

Thanks Meghan. Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

From: Radtke, Meghan <Radtke.Meghan@epa.gov>
Sent: Friday, November 5, 2021 11:15 AM
To: Salyer, Kathleen <Salyer.Kathleen@epa.gov>; Roache, Brendan <Roache.Brendan@epa.gov>
Cc: Radtke, Meghan <Radtke.Meghan@epa.gov>
Subject: FW: FARM Act bullets for Barry and Carlton

Hi Kathleen and Brendan,

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP) Can you please take a look?

Ex. 5 Deliberative Process (DP)

Thanks!

Meghan

Meghan Radtke, Ph.D., Biologist
Special Assistant
Office of Emergency Management
Office of Land and Emergency Management
U.S. Environmental Protection Agency
Office: 202-566-0592
Mobile: 703-472-8215

From: Noggle, William <Noggle.William@epa.gov>
Sent: Thursday, November 4, 2021 1:35 PM
To: Radtke, Meghan <Radtke.Meghan@epa.gov>; Perovich, Gina <Perovich.Gina@epa.gov>; Waltzer, Sam <Waltzer.Sam@epa.gov>
Cc: Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Belke, Jim <Belke.Jim@epa.gov>
Subject: FW: FARM Act bullets for Barry and Carlton

Meghan, Gina, Sam,
See below for the bullets for Carlton and Barry on animal waste reporting. Please keep us posted on what you want to include.

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Thanks,
Bill

Message

From: Dunkins, Robin [Dunkins.Robin@epa.gov]
Sent: 11/8/2021 8:01:32 PM
To: Noggle, William [Noggle.William@epa.gov]; Lewis, Jen [Lewis.Jen@epa.gov]; Swenson, Erik [Swenson.Erik@epa.gov]; Gioffre, Patricia [Gioffre.Patricia@epa.gov]; Belke, Jim [Belke.Jim@epa.gov]; Jacob, Sicy [Jacob.Sicy@epa.gov]; Douglas, Mark [douglas.mark@epa.gov]; Sullivan, Tim [Sullivan.Tim@epa.gov]
CC: Miles, Erin [Miles.Erin@epa.gov]
Subject: RE: AFO petition and EPCRA reporting
Attachments: NAEMSUpdate.OAR.08.05.21.docx

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP) Let me know. You can also go to our website that contains a lot of information on the consent agreement, NAEMS, and draft EEMs

Robin Dunkins, Group Leader
Natural Resources Group
OAR/OAQPS/SPPD Mail Code: E143-03
U.S. Environmental Protection Agency
Research Triangle Park, NC 27711
919-541-5335 office
919-605-1178 mobile
dunkins.robin@epa.gov

From: Dunkins, Robin
Sent: Monday, November 08, 2021 2:51 PM
To: Noggle, William <Noggle.William@epa.gov>; Lewis, Jen <Lewis.Jen@epa.gov>; Swenson, Erik <Swenson.Erik@epa.gov>; Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Belke, Jim <Belke.Jim@epa.gov>; Jacob, Sicy <Jacob.Sicy@epa.gov>; Douglas, Mark <douglas.mark@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
Cc: Miles, Erin <Miles.Erin@epa.gov>
Subject: RE: AFO petition and EPCRA reporting

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP) Let me know if you have any questions.

Robin Dunkins, Group Leader
Natural Resources Group
OAR/OAQPS/SPPD Mail Code: E143-03
U.S. Environmental Protection Agency
Research Triangle Park, NC 27711
919-541-5335 office
919-605-1178 mobile
dunkins.robin@epa.gov

-----Original Appointment-----
From: Noggle, William <Noggle.William@epa.gov>
Sent: Thursday, November 04, 2021 5:04 PM
To: Noggle, William; Lewis, Jen; Swenson, Erik; Gioffre, Patricia; Belke, Jim; Jacob, Sicy; Douglas, Mark; Sullivan, Tim
Cc: Dunkins, Robin; Miles, Erin
Subject: AFO petition and EPCRA reporting

When: Monday, November 08, 2021 2:00 PM-2:30 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Microsoft Teams Meeting

-----Original Appointment-----
From: Noggle, William <Noggle.William@epa.gov>
Sent: Thursday, November 4, 2021 1:57 PM
To: Noggle, William; Lewis, Jen; Swenson, Erik; Gioffre, Patricia; Belke, Jim; Jacob, Sicy; Douglas, Mark; Sullivan, Tim
Subject: AFO petition and EPCRA reporting
When: Monday, November 8, 2021 2:00 PM-2:30 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Microsoft Teams Meeting

Microsoft Teams meeting

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d States, Washington DC

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Message

From: Sullivan, Tim [Sullivan.Tim@epa.gov]
Sent: 11/10/2021 9:44:19 PM
To: Dunkins, Robin [Dunkins.Robin@epa.gov]; Do, Bebhinn [do.bebhinn@epa.gov]; Schrock, Bill [Schrock.Bill@epa.gov]; Belke, Jim [Belke.Jim@epa.gov]; Swenson, Erik [Swenson.Erik@epa.gov]; Noggle, William [Noggle.William@epa.gov]; Jacob, Sicy [Jacob.Sicy@epa.gov]; Gioffre, Patricia [Gioffre.Patricia@epa.gov]; Lewis, Jen [Lewis.Jen@epa.gov]; Douglas, Mark [douglas.mark@epa.gov]; Miles, Erin [Miles.Erin@epa.gov]; Stahle, Susan [Stahle.Susan@epa.gov]
CC: Sullivan, Tim [Sullivan.Tim@epa.gov]
Subject: FW: Response to your October 26, 2021 Petition to Rescind the Air Consent Agreement and Enforce Clean Air Laws Against Animal Feeding Operations
Attachments: AFOs - Petition To Rescind_Response (Nov. 10 2021).pdf

The initial response to Petitioners acknowledging receipt of their petition is attached for your reference.

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

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From: Julian, Jaime <Julian.Jaime@epa.gov>
Sent: Wednesday, November 10, 2021 2:04 PM
To: eamiller@fwwatch.org; hconnor@biologicaldiversity.org; theinzen@fwwatch.org; bnewell@publicjustice.net; abel russ <aruss@environmentalintegrity.org>; AvanSaun@CenterforFoodSafety.org; cstella@aldf.org; lliebmann@aldf.org
Cc: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Goffman, Joseph <Goffman.Joseph@epa.gov>; Breen, Barry <Breen.Barry@epa.gov>; Prieto, Jeffrey <Prieto.Jeffrey@epa.gov>; Snyder, Rodney <Snyder.Rodney@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>; Julian, Jaime <Julian.Jaime@epa.gov>
Subject: Response to your October 26, 2021 Petition to Rescind the Air Consent Agreement and Enforce Clean Air Laws Against Animal Feeding Operations

Petitioners,

Please find attached the Environmental Protection Agency's response to your October 26, 2021 Petition to Rescind the Air Consent Agreement and Enforce Clean Air Laws Against Animal Feeding Operations, signed by Larry Starfield, the Acting Assistant Administrator of EPA's Office of Enforcement and Compliance Assurance.

Thank you for bringing your concerns to our attention.

Sincerely,

Jaime Julian, Special Assistant
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Office: 202-564-3217 | Mobile: 202-815-7105
Pronouns: she/her

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

November 10, 2021

Via E-Mail

Cristina Stella
Larissa Liebmann
Animal Legal Defense Fund
525 East Cotati Avenue
Cotati, California 94931

Hannah Connor
Center for Biological Diversity
1411 K Street NW, Suite 1300
Washington, D.C. 20005

Amy van Saun
Center for Food Safety
2009 NE Alberta Street, Suite 207
Portland, Oregon 97211

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

Tarah Heinzen
Emily Miller
Food & Water Watch
1616 P Street NW, Suite 300
Washington, D.C. 20036

Brent Newell
Public Justice Foundation
1620 L Street NW, Suite 630
Washington, D.C. 20036

Re: Petition to Rescind the Animal Feeding Operation Air Compliance Agreement

Dear Petitioners:

We have received your October 26, 2021 petition requesting that the United States Environmental Protection Agency rescind the Animal Feeding Operation Air Compliance Agreement.

We are currently evaluating your petition. Given the nature of the issues raised by your petition, it will require additional time to consult with the various agency program offices that work on those issues.

We appreciate that your petition has brought your concerns regarding these important issues to our attention. If you have further questions, please contact Tim Sullivan at (303) 312-6196 or sullivan.tim@epa.gov.

Sincerely,
LAWRENCE STARFIELD Digitally signed by LAWRENCE STARFIELD Date: 2021.11.10 13:51:02 -05'00'
Lawrence E. Starfield
Acting Assistant Administrator

cc: Joseph Goffman, Acting Assistant Administrator, EPA Office of Air and Radiation
Barry Breen, Acting Assistant Administrator, EPA Office of Land and Emergency Management
Jeffrey Prieto, EPA General Counsel
Rod Snyder, EPA Agricultural Advisor

Message

From: Lewis, Jen [Lewis.Jen@epa.gov]
Sent: 11/4/2021 7:26:24 PM
To: Sullivan, Tim [Sullivan.Tim@epa.gov]
CC: Swenson, Erik [Swenson.Erik@epa.gov]; Noggle, William [Noggle.William@epa.gov]; Jacob, Sicy [Jacob.Sicy@epa.gov]; Belke, Jim [Belke.Jim@epa.gov]
Subject: Re: AFO EPCRA Reporting
Attachments: AFO-CAFO - Petition to Rescind.pdf

Can we set up a call? I read about this and am interested to learn more. Email is the bane of my existence these days so if it's possible for us to all chat for 30 min, that would be great.

Ex. 5 AC/DP I'll defer to you on when we try to meet with Tim.

Jen Lewis
Deputy Associate General Counsel
Solid Waste and Emergency Response Law Office
Office of General Counsel
(202) 564-2097

On Nov 4, 2021, at 2:05 PM, Sullivan, Tim <Sullivan.Tim@epa.gov> wrote:

Hello, Erik and Bill.

You may or may not have seen that the Administrator recently received the attached petition to rescind the Animal Feeding Operation Air Compliance Agreement. Ex. 5 AC/DP

Ex. 5 AC/DP

I am happy to jump on a quick call if any one has any initial questions on the petition to rescind or if it would be easier than an email Ex. 5 AC/DP

Ex. 5 Deliberative Process (DP)

Thanks in advance –

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

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http://www.epa.gov/compliance/complaints/index.html

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BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

ANIMAL LEGAL DEFENSE FUND, BUFFALO RIVER WATERSHED ALLIANCE (ARKANSAS), CENTER FOR BIOLOGICAL DIVERSITY, CENTER FOR FOOD SAFETY, CENTER ON RACE, POVERTY, & THE ENVIRONMENT (CALIFORNIA), CLEAN WATER FOR NORTH CAROLINA (NORTH CAROLINA), EARTHJUSTICE, ENVIRONMENTAL INTEGRITY PROJECT, FARM AID, FRIENDS OF THE EARTH, FRIENDS OF FAMILY FARMERS (OREGON), FRIENDS OF TOPPENISH CREEK (WASHINGTON), FOOD ANIMAL CONCERNS TRUST, FOOD & WATER WATCH, GOVERNMENT ACCOUNTABILITY PROJECT, HUMANE SOCIETY OF THE UNITED STATES, IOWA CITIZENS FOR COMMUNITY IMPROVEMENT (IOWA), INSTITUTE FOR AGRICULTURE & TRADE POLICY, JOHNS HOPKINS CENTER FOR A LIVABLE FUTURE, NORTH CAROLINA CONSERVATION NETWORK (NORTH CAROLINA), PUBLIC JUSTICE, SOCIALLY RESPONSIBLE AGRICULTURE PROJECT, SOUTHERN ENVIRONMENTAL LAW CENTER, AND WATERKEEPER ALLIANCE

Petitioners,

v.

MICHAEL REGAN, ADMINISTRATOR,
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Respondent.

PETITION TO RESCIND THE AIR CONSENT AGREEMENT
AND ENFORCE CLEAN AIR LAWS AGAINST ANIMAL FEEDING OPERATIONS

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ED_013141A_00000102-00002

I. INTRODUCTION

Rural communities deserve a safe, prosperous, and plentiful food system rooted in dignity and respect. In this system, Black, Indigenous, Latino, Asian, and white communities enjoy clean land, air, and water where independent family farms and renewable energy build diversified, local, and thriving rural economies. Sadly, past administrations have prioritized the interests of corporate-controlled industrial agriculture over the well-being of rural communities. Corporate integrators, trade groups, and other powerful titans of industry, have flourished while communities and farmers have suffered through years of pollution, hollowed out Main Streets, and declining economic opportunities. This has led to what any neutral observer would decry as undemocratic oppression and exploitation. Our government has the duty and authority to protect the health and well-being of our communities by enforcing federal air pollution laws, which do not exempt this industrial system.

Over sixteen years ago, the Environmental Protection Agency (EPA), under the President George W. Bush administration, announced an Agreement and Final Order it had secretly negotiated with the National Pork Producers Council. In the agreement, EPA refrained from enforcing key air pollution control and public disclosure laws against any animal feeding operation (AFO) that agreed to pay a nominal penalty to fund a nationwide air monitoring program to establish Emission Estimating Methodologies (EEMs) for AFOs.[1] Nearly *14,000* AFOs signed up for this sweetheart deal, known as the Air Consent Agreement. By its own terms, this deal should have been completed over a decade ago, in 2010.[2] Yet, as of the date of this letter, EPA has yet to finalize *any* EEMs or end the Air Consent Agreement. As a result of EPA's protracted delay, thousands of the nation's largest AFOs continue to enjoy protection from EPA enforcement actions, even if their emissions exceed permit limits or reporting thresholds. EPA's implementation of the Air Consent Agreement over the past three presidential administrations demonstrates a complete, bipartisan abdication of EPA's enforcement authority.

---

[1] Notice of Animal Feeding Operation Consent Agreement & Final Order, 70 Fed. Reg. 4957 (Jan. 31, 2005) [hereinafter 2005 Notice]; *see also id.* at 4962 Appendix 1: Air Consent Agreement [hereinafter 2005 Air Consent Agreement].

[2] EPA OIG, IMPROVING AIR QUALITY: ELEVEN YEARS AFTER AGREEMENT EPA HAS NOT DEVELOPED RELIABLE EMISSIONS ESTIMATION METHODS TO DETERMINE WHETHER ANIMAL FEEDING OPERATIONS COMPLY WITH CLEAN AIR ACT AND OTHER STATUTES, Report No. 17-P-0396, at 5 (Sept. 19, 2017) [hereinafter 2017 OIG REPORT], available at https://www.epa.gov/sites/default/files/2017-09/documents/_epaoig_20170919-17-p-0396.pdf.

ED_013141A_00000102-00003

Pursuant to the right to petition the government provided in the First Amendment to the U.S. Constitution[3] and the Administrative Procedure Act,[4] Petitioners formally submit this petition to EPA to put an end to the enforcement amnesty. The Petitioners collectively represent millions of citizens from across the United States, including many individuals adversely impacted by CAFO air pollution in their communities.

We request your written response regarding this unacceptable dereliction of duty within **30 days** of receiving this Petition. We ask that you rescind the Air Consent Agreement, take all actions consistent with President Biden's executive orders to enforce all applicable laws against AFOs, and prioritize environmental justice in enforcement and climate actions. If you instead wish to continue the policies of the past three administrations, please set forth the reasons for refusing to grant this petition.

II. AIR POLLUTION FROM AFOs HAS SERIOUS HEALTH IMPACTS ON SURROUNDING COMMUNITIES.

Air pollution is the largest environmental mortality risk factor in the United States, and agriculture—particularly industrial animal production—is a major contributor to reduced air quality.[5] According to a recent study published in the Proceedings of the National Academy of Sciences of the United States (PNAS), air pollution from U.S. agriculture includes direct emissions of fine particulate matter ($PM_{2.5}$) and $PM_{2.5}$ precursors such as ammonia (NH_3), nitrogen oxides (NO_x), sulfur dioxide (SO_2), and volatile organic compounds (VOCs).[6] This pollution causes 17,900 U.S. deaths per year, with 15,900 deaths from food production and 2,000 deaths linked to nonfood products.[7] Of the 15,900 deaths from food production, 80 percent, or 12,700 deaths, are attributable to industrial animal production, with the remaining 20 percent

---

[3] U.S. CONST. amend. I.
[4] 5 U.S.C. 553(e).
[5] J. Stanaway et al., *Global, Regional, & National Comparative Risk Assessment of 84 Behavioural, Environmental, & Occupational, And Metabolic Risks or Clusters of Risks For 195 Countries & Territories, 1990-2017*, 392 LANCET 1923 (2018), https://www.thelancet.com/action/showPdf?pii=S0140-6736%2818%2932225-6; J. Lelieveld et al., *The Contribution Of Outdoor Air Pollution Sources To Premature Mortality On A Global Scale*, 525 NATURE 367 (2015); S. Bauer et al., *Significant Atmospheric Aerosol Pollution Caused By World Food Cultivation*, 43 GEOPHYS. RES. LETT. 5394 (2016), https://agupubs.onlinelibrary.wiley.com/doi/epdf/10.1002/2016GL068354.
[6] N. Domingo et al., *Air Quality-Related Health Damages of Food*, 118 PNAS e2013637118, 1 (2021), https://www.pnas.org/content/pnas/118/20/e2013637118.full.pdf.
[7] *Id.*

ED_013141A_00000102-00004

attributable to plant-based foods.[8] The majority of deaths—12,400 deaths each year—are attributable to ammonia acting as a $PM_{2.5}$ precursor.[9] The study noted that on-farm emission reduction interventions, such as improved livestock waste management and fertilizer application practices, combined with dietary shifts toward more plant-based foods, could dramatically reduce the number of mortalities caused by this industry.[10]

Another recent study found that poultry AFOs in Pennsylvania were a major risk factor for pneumonia.[11] The authors observed that "[e]xposure to air pollutants such as particulate matter . . . reduc[es] the lung's defenses against bacterial pathogens, thereby increasing susceptibility to respiratory infections."[12] In addition, the authors also noted that

> As a source of air pollution, industrial food animal production can compromise respiratory health. These large, homogeneous, densely packed livestock operations emit particulate matter, endotoxins, and other pollutants, which spread downwind through ventilation fans and emissions from decomposing manure. Adverse effects on lung function and increased respiratory symptoms have been reported among individuals living near [industrial food animal production], particularly among susceptible groups.

The study found a 66 percent increase in the odds of being diagnosed with community-acquired pneumonia among people living closest to high-density poultry operations, demonstrating that "residing closer to more and larger poultry operations was associated with [community-acquired pneumonia], a cause of significant morbidity and mortality."[13]

EPA is culpable for many of these deaths and illnesses. For nearly two decades, EPA's sustained approach of ignoring pollution generated by the AFO industry under the guise of the Air Consent Agreement has resulted in the emission of significant amounts of unchecked air pollution, including ozone, $PM_{2.5}$, nitrogen oxides, sulfur dioxide, and VOCs–pollutants that EPA is required to regulate under the Clean Air Act (CAA). To make matters worse, during this

---

[8] *Id.* at 2.
[9] *Id.* at 1.
[10] *Id.*
[11] M. Poulsen et al., *High-Density Poultry Operations & Community-Acquired Pneumonia in Pennsylvania*, 2 ENV'T. EPIDEMIOLOGY e013 (June 2018), https://journals.lww.com/environepidem/Fulltext/2018/06000/High_density_poultry_operations_and.5.aspx.
[12] *Id.* at 1.
[13] *Id.* at 6.

ED_013141A_00000102-00005

same period EPA moved to exempt the industry from having to comply with two critical pollution reporting statutes: the Emergency Planning and Community Right to Know Act (EPCRA), and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA),[14] resulting in reduced public access to the information that affected communities need to protect themselves, and likely in turn contributing to greater mortality in communities surrounding these operations.

In 2013, scientists at John Hopkins University analyzed the practical public health impacts of EPA's efforts to limit public access to information about pollution from AFOs.[15] As the authors summarized:

> Despite literature associating AFOs with compromised air quality and residential proximity to AFOs with adverse health outcomes, availability of information concerning AFO airborne hazardous releases ranged from limited to nonexistent across the states that we examined . . . . These data gaps compromise the ability of public health officials and scientists to characterize exposures and risks, and limit their ability to implement and evaluate interventions when appropriate. The lack of data also means that information on AFO hazardous releases is not available to residents of affected communities.[16]

EPA's failure to address harmful emissions, compounded by its efforts to keep citizens in the dark about AFO pollution, has contributed to serious public health impacts.

---

[14] CERCLA/EPCRA Administrative Reporting Exemption for Air Releases of Hazardous Substances from Animal Waste at Farms, 73 Fed. Reg. 76,948 (Dec. 18, 2008) (exempting airborne hazardous releases from animal waste at farms (including AFOs) from CERCLA and EPCRA reporting requirements); *Waterkeeper Alliance v. EPA*, 853 F.3d 527, 537–38 (D.C. Cir. 2017) (vacating EPA's 2008 rule and rejecting EPA's argument that the reporting requirements serve no regulatory purpose); Vacatur Response—CERCLA/EPCRA Administrative Reporting Exemption for Air Releases of Hazardous Substances From Animal Waste at Farms; FARM Act Amendments to CERCLA Release Notification Requirements, 83 Fed. Reg. 37444 (Aug. 1, 2018) (incorporating revisions enacted by the FARM Act, which exempts farms from CERCLA release reporting requirements, despite the D.C. Circuit's vacatur of the 2008 final rule in *Waterkeeper Alliance v. EPA*); Amendment to Emergency Release Notification Regulations on Reporting Exemption for Air Emissions from Animal Waste at Farms; Emergency Planning and Community Right to Know Act 84 Fed. Reg. 27,533 (June 13, 2019) (adding the reporting exemption for air emissions from animal waste at farms provided in section 103(e) of CERCLA); *see also* EPA, *CERCLA & EPCRA Reporting Requirements for Air Releases of Hazardous Substances from Animal Waste at Farms*, EPA (last visited Oct. 21, 2021), https://www.epa.gov/epcra/cercla-and-epcra-reporting-requirements-air-releases-hazardous-substances-animal-waste-farms.

[15] T. Smith et al., *Availability of Information about Airborne Hazardous Releases from AFOs*, 8 PLOS ONE e85342 (2013), https://doi.org/10.1371/journal.pone.0085342.

[16] *Id.* at 7.

ED_013141A_00000102-00006

III. THE AIR CONSENT AGREEMENT SHIELDS AFOs FROM EPA ENFORCEMENT ACTIONS.

A. Rather than Enforce the Law, EPA Worked with Industry to Craft the Air Consent Agreement.

In the early 2000s, after years of dereliction by AFO operators of their obligation to seek CAA permits and report emissions under CERCLA and EPCRA, EPA took a series of legal actions designed to bring delinquent AFOs into the CAA permitting program.[17] Those legal actions constitute the last time EPA meaningfully enforced the CAA against AFO polluters.

Instead of continuing to use litigation or other comparable methods to move AFOs into compliance with their obligations under the CAA, EPA spent three years crafting a backroom deal with representatives of the pork industry, egg producers, and other AFO industry groups for a "safe harbor" against enforcement in the form of a release and covenant not to sue for potential violations of the CAA, CERCLA, and EPCRA. As outlined in a memorandum sent to EPA officials in June 2002, industry representatives offered to fund a nationwide air emissions monitoring study to collect emissions data from AFOs in exchange for enforcement protection.[18] The industry's June 2002 safe harbor proposal formed almost verbatim the Air Consent Agreement that EPA published for voluntary enrollment in early 2005.[19]

Under the Agreement secretly negotiated with industry representatives, EPA promised not to sue AFOs for violating CAA permitting requirements or CERCLA/EPCRA reporting requirements in exchange for AFOs paying a nominal civil penalty to fund the nationwide air emissions monitoring study.

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[17] *See, e.g.*, Press Release, Dep't of Justice, Ohio's Largest Egg Producer Agrees to Dramatic Air Pollution Reductions from Three Giant Facilities (Feb. 23, 2004), https://www.justice.gov/archive/opa/pr/2004/February/04_enrd_105.htm; 2017 OIG REPORT at 17 ("[M]onitoring conducted as part of an EPA enforcement case in 2003 demonstrated . . . total PM emissions of 550 and 700 tons per year at two large egg-layer AFOs," significantly "exceed[ing] the 250-tons-per-year permitting threshold for PM emissions."); *see also* Press Release, Dep't of Justice, Government Reaches Settlements with Seaboard Foods and PIC USA (Sept. 15, 2006), https://www.justice.gov/archive/opa/pr/2006/September/06_crm_625.html; Press Release, Dep't of Justice, Nation's Second Largest Hog Producer Reaches Settlement With U.S. & Citizen's Group (Nov. 1, 2001), https://www.justice.gov/archive/opa/pr/2001/November/01_enrd_604.htm.

[18] 2002 Industry Safe Harbor Proposal.

[19] *See id.*; 2005 Notice at 4958.

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B. The Air Consent Agreement Provided a Safe Harbor from Enforcement of Federal Law Pending the Finalization of EEMs.

The Air Consent Agreement outlines two main sections: (1) the Consent Agreement, and (2) the Monitoring Fund. The Consent Agreement includes the main terms of the Agreement between participating AFOs and the government, including a safe harbor under which the government releases and covenants not to sue participating AFOs for civil violations of the CAA; section 103 of CERCLA; and section 304 of EPCRA.[20] In exchange for this enforcement forbearance from EPA, participating AFOs agreed to pay a nominal penalty, as well as a payment of $2,500 per facility, into a fund known as the Monitoring Fund, which was then to be used to finance the two-year National Air Emissions Monitoring Study (NAEMS).[21]

The Agreement's safe harbor provision covers two substantive Clean Air Act permitting programs, the Title V operating permit program, and applicable State Implementation Plan (SIP) requirements for VOC, ammonia, hydrogen sulfide, and particulate matter. First, it includes the requirements applicable to new and expanding major stationary sources under Parts C and D of Title I, Prevention of Significant Deterioration (PSD) and New Source Review (NSR).[22] Second, it includes operating permits required under Title V for major stationary sources.[23] Third, it includes any SIP requirements that regulate the rate, quantity, or concentration of the covered air pollutants.[24]

In all three permitting programs, the severity of the air pollution in a given air basin determines whether a stationary source exceeds a certain tons per year threshold and thus must obtain a permit under PSD, NSR, and Title V as a major stationary source. This threshold ranges from 10 tons per year in an extreme ozone nonattainment area to 250 tons per year in an area that attains the applicable National Ambient Air Quality Standard.

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[20] 2005 Air Consent Agreement at ¶¶ 7–23.
[21] *Id.* at ¶ 53.
[22] *Id.* at ¶ 26; 42 U.S.C. §§ 7470-7515.
[23] 2005 Air Consent Agreement at ¶ 26; 42 U.S.C. §§ 7661–7661f.
[24] 2005 Air Consent Agreement at ¶ 26.

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The Agreement's safe harbor provision covers two reporting requirements: section 103 of CERCLA,[25] and section 304 of EPCRA. EPCRA contains a general requirement that facilities that "release" more than a threshold quantity of an "extremely hazardous substance" must report that release to local emergency response agencies, and that those reports must be made available to the public.[26] Immediate release reporting under EPCRA provides local and state emergency responders with information critical to appropriately assessing and safely responding to citizen complaints of suspicious or noxious odors. EPA lists ammonia and hydrogen sulfide as "extremely hazardous substances" under EPCRA and lists a reportable quantity of 100 pounds per day. The Air Consent Agreement's safe harbor provision continues to exempt participating AFOs from EPA enforcement for failing to report these releases.

According to EPA, its reason for exchanging a safe harbor from enforcement of the CAA, CERCLA, and EPCRA for a two-year monitoring study was to timely "collect data and aggregate it with appropriate existing emissions data; analyze the monitoring results; and create tools (*e.g.,* tables and/or emission models) that AFOs could use to determine whether they emit pollutants at levels that require them to apply for permits under the CAA or submit notifications under CERCLA or EPCRA."[27] And further, because the monitoring study would be "designed to generate scientifically credible data to provide for the characterization of emissions from all major types of AFOs in all geographic areas where they are located," it would ultimately be used "to produce a scientifically sound basis for measuring and estimating air emissions from AFOs" through EEMs.[28] Thus, EPA provided that the reason for the Agreement was to ensure "the achievement of real environmental benefits to protect public health and the environment while supporting a sustainable agricultural sector."[29]

To that end, once the final EEMs are published the participating AFOs would have a defined amount of time to apply the EEMs to their operations and determine whether any CAA, CERCLA, or EPCRA statutory obligations apply, and, if so, bring their operations into

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[25] Subsequently, the Fair Agricultural Reporting Method (FARM) Act expressly exempted reporting of air emissions from animal waste at a farm from CERCLA section 103. *See* Pub. L. 115-141 § 1101-03 (codified at 42 U.S.C. § 9603(e) (2018)).
[26] 42 U.S.C. § 11004(a).
[27] 2005 Notice at 4960.
[28] *Id.*
[29] *Id.* at 4961.

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compliance with those requirements.[30] Once a participating AFO complies with each of those requirements, "the statute of limitations for all claims covered by the release and covenant not to sue . . . will be tolled from the date this Agreement is approved by the [Environmental Appeals Board] until . . . 120 days after Respondent files the required certification . . . or December 31, 2011," whichever is earlier.[31] In the alternative, if EPA determines that it cannot develop EEMs, then it should notify participants that the Air Consent Agreement, including its enforcement amnesty, will come to a close.[32] As the amnesty tolling provision suggests, EPA anticipated that the terms of the Air Consent Agreement would be met and the Agreement fulfilled before 2012 at the latest.[33]

The Air Consent Agreement embodies a highly unusual enforcement philosophy inconsistent with the Clean Air Act's enforcement scheme. EPA alleged violations prior to any investigation, assessed civil penalties without considering civil penalty factors, and invited participants to enter into the Agreement after it had already been negotiated for years with the industry. By its own terms, the Agreement deferred enforcement until the Agency developed EEMs, which EPA expected to complete within 18 months of completing NAEMS.

C. The Environmental Appeals Board and the D.C. Circuit Court of Appeals Allowed EPA to Implement the Air Consent Agreement.

To enter the Air Consent Agreement, an AFO owner or operator needed only to inform EPA of its election to participate and provide EPA with certain information regarding the size and number of AFOs that they designated for inclusion. In total, nearly 2,600 participants, representing 13,900 AFO facilities in 42 states, entered into the Air Consent Agreement.[34] "According to the EPA, these 13,900 AFOs comprise more than 90 percent of the largest AFOs in the United States," and included participants from across the broiler chicken, egg layer, hog, and dairy industries.[35]

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[30] 2005 Air Consent Agreement at ¶ 28.
[31] *Id.* ¶ 31.
[32] *Id.* ¶ 38.
[33] *Id.*; *see also* 2017 OIG REPORT at 5 (providing that "[b]ased on . . . original expectations, . . . AFOs would have obtained any necessary permits and installed emission controls by 2010").
[34] 2017 OIG REPORT at 6.
[35] *Id.*

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In 2006, EPA's Environmental Appeals Board (EAB) approved individual Consent Agreements in batches. In addition to ratifying the Agreements, EAB affirmed EPA's authority to enter into the Agreement as an administrative enforcement action.[36] The relevant penalties and monitoring funds were collected from individual participants as well as from the National Pork Board, which provided at least $6,000,000 towards payment of these fees on behalf of hog producers rather than the producers paying those fees themselves.[37] The NAEMS process then began in earnest in 2007—the year NAEMS monitoring should have been completed according to the original timeline. It continued for three years, rather than two, and "completed in early 2010, about 2 years later than originally expected."[38]

Several environmental and community groups challenged the Air Consent Agreement as a rulemaking that violated the CAA, CERCLA, EPCRA, and public notice and comment requirements. The D.C. Circuit Court of Appeals denied the groups' consolidated petitions for review, holding that the Agreement is an enforcement action not subject to judicial review.[39]

In its briefing before the D.C. Circuit, EPA took the legal position that the safe harbor was a "limited covenant not to sue" that would last approximately three and a half years until 2010.[40] The court took EPA at its word, concluding that the Agreement "merely defers enforcement" and a "limited deferral subject to enforcement conditions works no change in the agency's substantive interpretation or implementation of the Acts."[41] The court also rejected the

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[36] *See, e.g.*, *In re Consent Agreements & Proposed Final Orders for AFOs*, 2006 WL 478143 (EAB Jan. 27, 2006) (finding that first twenty Agreements were administrative penalty orders subject to Board review).

[37] Initially, the National Pork Board was enjoined from contributing $6,000,000 on behalf of producers because the contribution was found to violate the Pork Act and contravene public policy, but this decision was reversed by a second administrative law judge allowing the National Pork Board to pay farmer's fees associated with EPA's Air Emission Study. *See In re: McDowell*, 65 Agric. Dec. 795 (U.S.D.A. 2006) *rev'd*, *In re: McDowell*, 67 Agric. Dec. 1230, 1232 (U.S.D.A. 2008) ("revers[ing] the ALJ's Initial Decision [and granting Administrator's motion to dismiss] [because] Petitioners lack standing, the Second Amended Petition fails to state a legally cognizable claim, and the National Pork Board' s payment of the per-farm-fee associated with EPA's Air Emissions Study is in accordance with the Pork Act and the Pork Order").

[38] 2017 OIG REPORT at 11; 10 ("Based on the original expectations for completion of the tasks in the Notice, the NAEMS monitoring would have been completed in 2007, and the EPA would have begun publishing EEMs in 2009."); 12 (Figure 4) (comparing expected and actual NAEMS development timeline).

[39] *Ass'n of Irritated Residents v. EPA*, 494 F.3d 1027, 1031 (D.C. Cir. 2007).

[40] *See* EPA's Brief at 11-12, 23, 28, (D.C. Cir. Feb. 2, 2007).

[41] *Ass'n of Irritated Residents*, 494 F.3d. at 1033.

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groups' contention that EPA had abdicated its enforcement duty because the court believed the limited deferral "is part of the agency's attempt to ensure that AFOs comply with the Acts."[42]

Had the court understood that EPA would extend its "limited" deferral for over ten years to 2021 and beyond—straight through the Obama and Trump Administrations—then that unbound deferral would undoubtedly have affected the court's analysis.

D. EPA Has Relied On The Air Consent Agreement To Deny Petitions To Regulate Air Emissions from AFOs.

To make matters worse, in addition to using the Air Consent Agreement and EEM process as a shield against adequately enforcing the CAA or EPCRA against AFO polluters, EPA is using the Agreement as an excuse to deny or ignore every administrative petition related to AFO air pollution that has been filed with the Agency since 2005. EPA is also allowing AFOs to use the Agreement to keep citizens from enforcing EPCRA.

Since 2005, EPA has received several administrative rulemaking petitions to address AFO emissions, including a 2009 petition to list and regulate AFOs as a source category under CAA Section 111 (2009 CAFO Source Petition),[43] and a 2011 petition to regulate ammonia as a criteria pollutant under CAA Sections 108 and 109 (2011 Ammonia Petition).[44] According to a report by EPA's Office of the Inspector General (OIG), discussed further below, "EPA staff told [OIG] they did not plan to evaluate the need for additional regulations as laid out in these petitions until the EEMs are finalized."[45]

For the 2009 CAFO Source Petition, EPA's refusal to engage with the subject matter of the petition came in the form of a denial of the petition in 2017.[46] As noted in the denial signed by former EPA Administrator Scott Pruitt, EPA explicitly denied the petition not on the

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[42] *Id.* at 1035.
[43] The Humane Soc'y of the U.S., Petition to the U.S. EPA to List Concentrated Animal Feeding Operations Under CAA Section 111 (B)(1)(A) (Sep. 21, 2009).
[44] Environmental Integrity Project, Petition to the U.S. EPA for the Regulation of Ammonia as a Criteria Pollutant Under Clean Air Act Sections 108 and 109 (Apr. 6, 2011).
[45] 2017 OIG REPORT at 18.
[46] Denial of Petition to List Concentrated Animal Feeding Operations Under Clean Air Act, 82 Fed. Reg. 60,940 (Dec. 26, 2017).

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substance of the request,[47] but rather due to the "ongoing budgetary uncertainties" and EEM process.[48] Acknowledging the findings of the 2017 OIG Report, the denial letter then goes on to say that EPA will conduct a systematic planning process as identified in that report by April 2018 and establish milestones for issuing updated draft EEMs by July 2018.[49] A comprehensive set of draft or final EEMs still has yet to be issued, but EPA continues to use the EEM process as a convenient excuse not to take further action to *actually address* and limit air pollution from concentrated animal feeding operations (CAFOs), as this petition would have enabled.

With respect to the 2011 Ammonia Petition, EPA has failed to respond—even as the evidence of harm continues to mount.[50] As mentioned above, public health scientists have drawn clear connections between ammonia from animal production and thousands of annual PM-related deaths, and have also shown that living in close proximity to AFOs is associated with pneumonia.[51] Another study found significant associations between Pennsylvania CAFOs and asthma.[52] The authors of the ammonia study noted that industrial food animal production facilities "are a source of odors and several air pollutants, including particulate matter, hydrogen sulfide, and ammonia," and "these air pollutants and odors have been associated with asthma exacerbations."[53] The role of ammonia in exacerbating water quality impairments has also become more clear over time. It now appears that AFOs emit more ammonia—and more ammonia deposits closer to the source of emissions than previously thought.[54] This means that

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[47] Letter from E. Scott Pruitt, Administrator, EPA, to Tom Frantz, President, Ass'n of Irritated Residents, at 2 (Dec. 15, 2017) ("This denial is not based on a determination as to whether CAFOs meet the requirements for listing under CAA section 111(b)(1)(A).").
[48] *Id.* at 1–2.
[49] *Id.* at 8–9.
[50] Although the petitioners challenged EPA's failure to respond in 2015 (re-filed in 2016), petitioners voluntarily dismissed the complaint in 2017. *See* Notice of Voluntary Dismissal, *Environmental Integrity Project et al. v. EPA*, Case No. 16-cv-02203-ABJ (D.D.C. Jan. 17, 2017).
[51] *See supra* Part II.
[52] S. Rasmussen et al., *Proximity to Industrial Food Animal Production & Asthma Exacerbations in Pennsylvania, 2005-2012*, 14 INT'L J. ENV'T. RESH. PUB. HEALTH 362 (2017).
[53] *Id.*
[54] *See, e.g.*, ENV'T INTEGRITY PROJECT , AMMONIA EMISSIONS FROM POULTRY INDUSTRY MORE HARMFUL TO CHESAPEAKE BAY THAN PREVIOUSLY THOUGHT (2018), https://environmentalintegrity.org/wp-content/uploads/2017/02/Ammonia-Report.pdf; *see also* ENV'T INTEGRITY PROJECT, POULTRY INDUSTRY POLLUTION IN THE CHESAPEAKE REGION (2020), https://environmentalintegrity.org/wp-content/uploads/2020/04/EIP-Poultry-Report.pdf; J. Baker et al., *Modeling & Measurements of Ammonia from Poultry Operations: Their Emissions, Transport, & Deposition in the Chesapeake Bay*, 706 SCI. TOTAL ENVIRONMENT 135290 (Mar. 2020), https://www.sciencedirect.com/science/article/pii/S0048969719352829.

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ammonia is a central contributor to algae blooms, dead zones, and other impairments in large estuaries like the Chesapeake Bay.

In addition, EPA continues to allow AFOs to use the Air Consent Agreement and EEM development process to keep citizens from enforcing statutes such as EPCRA[55] against AFOs.[56] Although EPA can prevent the Agreement from being used as an affirmative defense in EPCRA citizen enforcement suits, the agency has opted not to do so. As a result, EPA is allowing this Agreement to stand in the way of effective enforcement of this statute against AFO polluters, regardless of the amount or persistence of that pollution.

IV. EPA'S MONITORING STUDY WAS FLAWED, UNDERMINING EPA'S ABILITY TO DEVELOP VALID EEMs.

A. EPA Limited the Size and Geographic Scope of its Study, Despite the Entry of Nearly 14,000 AFOs into the Agreement.

In announcing the Air Consent Agreement and NAEMS Protocol, EPA claimed that "[m]onitoring will occur at facilities across the country to get a representative sample of the facility types," and the NAEMS "protocol will provide sufficient data to get a valid sample that is representative of the vast majority of the participating AFOs."[57] EPA intended to use the results of this monitoring study "to generate scientifically credible data to provide for the characterization of emissions from all major types of AFOs in all geographic areas where they are located."[58] However, the study fell far short of achieving this goal for a variety of reasons,

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[55] In 2019, EPA finalized a rule exempting AFOs from their reporting obligations under EPCRA section 304. *See* Amendment to Emergency Release Notification Regulations on Reporting Exemption for Air Emissions From Animal Waste at Farms; Emergency Planning and Community Right-to-Know Act, 84 Fed. Reg. 27,533 (June 13, 2019). That rulemaking has been challenged in federal court by a coalition of environmental and environmental justice groups, including many of the signatories here. *Rural Empowerment Association for Community Help, v. EPA*, Case No. 18-02260-TJK (D.D.C. 2019). Following the D.C. Circuit's decision in *Waterkeeper Alliance v. EPA*, 853 F.3d 527, 537–38 (D.C. Cir. 2017), we expect the court to overturn EPA's 2019 rule, and therefore believe that AFOs may use the Air Consent Agreement to hamper citizen suit enforcement of EPCRA.

[56] *See, e.g., Humane Soc'y of the United States v. Hanor Company of Wisconsin*, LLC, 289 F. Supp. 3d 692 (E.D. N.C. 2018).

[57] 2005 Notice at 4960; *see also id.* at 4968 (Attach. B to App. 1: NAEMS Protocol).

[58] *Id.* at 4960.

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including the industry's role in selecting sites, the small number of selected sites, and EPA's flawed site selection methodology.[59]

From the onset, the design and implementation of the study was limited because industry exerted significant control on the pool of potential study sites. Although "EPA acknowledged that emissions data should be collected for every type of animal feeding operation and practice," EPA officials concluded that the industry should be responsible for site selection,[60] deferring to industry yet again.

Records obtained by the Environmental Integrity Project under the Freedom of Information Act confirm that AFO owners and operators played a major role in selecting the sites in NAEMS.[61] For example, Perdue broiler facilities did not participate in the Air Consent Agreement. Perhaps as a direct consequence, NAEMS did not include a single broiler site in the Mid-Atlantic, despite incredible industry concentration in the region.[62] Further, Tyson Foods, one of the largest meat producers in the United States, directly sponsored the data collection at its broiler sites in Kentucky.[63]

Moreover, despite almost 14,000 AFOs receiving enforcement protection under the Agreement, the NAEMS study itself only included 27 sites at 20 AFOs in 10 states.[64] The small

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[59] *See* GAO, CONCENTRATED ANIMAL FEEDING OPERATIONS: EPA NEEDS MORE INFORMATION & A CLEARLY DEFINED STRATEGY TO PROTECT AIR & WATER QUALITY FROM POLLUTANTS OF CONCERN37–39 (2008) https://www.gao.gov/assets/gao-08-944.pdf ("[T]he National Air Emissions Monitoring Study may not provide the data that EPA needs to develop comprehensive protocols for quantifying air emissions from [AFOs] for a variety of reasons.") [hereinafter 2008 GAO Report]; *see also id.* at 7 ("[A]s currently structured, the study may not provide the scientific and statistically valid data it was intended to provide and that EPA needs to develop air emissions protocols.").

[60] *Id.* at 38–39 ("According to EPA officials, the industry identified those monitoring sites that they believed best represented the type of operations and manure management practices that are in their various animal sectors.").

[61] Letter from Tarah Heinzen, Env't Integrity Project, to EPA Docket Center, (June 11, 2012) (citing email from Heber to Nizich (Aug. 9, 2006) (stating that "the National Milk Producers Federation approved these site selections for the NAEMS")).

[62] *See* PEW, *Big Chicken: Pollution & Industrial Poultry Production in America* (July 26, 2011), https://www.pewtrusts.org/en/research-and-analysis/reports/2011/07/26/big-chicken-pollution-and-industrial-poultry-production-in-america; *see also* EPA, *2012 Monitored AFOs*, https://archive.epa.gov/airquality/afo2012/web/html/index.html.

[63] IOWA STATE UNIV. & UNIV. OF KENTUCKY, FINAL PROJECT REPORT ON SOUTHEASTERN BROILER GASEOUS & PARTICULATE MATTER EMISSIONS MONITORING (Dec. 2009) (describing emissions monitoring results of two Tyson broiler production houses located on two separate farm sites in western Kentucky), https://archive.epa.gov/airquality/afo2012/web/pdf/ky1bsummaryreport.pdf.

[64] *See* 2017 OIG REPORT at 7; *see also 2012 Monitored AFOs*, https://archive.epa.gov/airquality/afo2012/web/html/index.html.

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number of sites selected led the Government Accountability Office (GAO) to raise concerns in 2008, before the completion of NAEMS, that "the study did not include a sufficient number of monitoring sites to establish a statistically valid sample."[65] As explained in GAO's report, "[w]ithout such a sample . . . EPA will not be able to accurately estimate emissions for all types of operations."[66]

EPA also failed to select geographically representative sites. When designing NAEMS, EPA purportedly intended to study a statistically significant number of representative sites and generate "scientifically credible data to provide for the characterization of emissions from all major types of AFOs in all geographic areas where they are located."[67] Yet the study design fell far short of anything capable of achieving this. Primary Investigators for the sites were selected before the NAEMS sites themselves, limiting the role of representativeness in the site selection process since investigators needed to be proximately located to NAEMS sites.[68] As GAO observed:

> [T]he monitoring study does not include the 16 combinations of animal types and geographic regional pairings recommended by EPA's expert panel. The panel recommended this approach so that the study sample would be representative of the vast majority of participating animal feeding operations, accounting for differences in climatic conditions, manure-handling methods, and density of operations. However, EPA approved only 12 of the 16 combinations recommended by the expert panel, excluding southeastern broiler, eastern layer, midwestern turkey, and southern dairy operations.[69]

Atmospheric conditions, facility age and design, feed, and other variables may significantly impact air emissions.[70] Therefore, a statistically significant study should include multiple sites representing as many different sets of climate and geographic conditions as possible. This was simply not possible with such a small number of sites.

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[65] 2008 GAO Report at 7, 38–39.
[66] *Id.*
[67] 2005 Notice at 4960; *see also* 2008 GAO Report at 36.
[68] Letter from Tarah Heinzen, Env't Integrity Project, to EPA Docket Center, (June 11, 2012) (citing Heber, "Site Selection Procedure" (Jun. 10, 2005)).
[69] 2008 GAO Report at 37–38.
[70] *See* 2005 Notice at 4977 (listing several "influences on emissions" provided by producer, rather than collected by study).

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B. EPA Failed to Generate Adequate Data to Develop EEMs.

In response to the initial announcement of the Agreement and NAEMS, experts and community groups raised concerns about the protocol, even before EPA had selected sites or initiated monitoring.[71] While the study was ongoing, GAO again warned EPA that NAEMS may not "provide data of sufficient quantity and quality" to establish the planned EEMs.[72] But EPA ignored those concerns. Consequently, EPA's NAEMS study did not generate the data needed to develop comprehensive protocols for quantifying air emissions from AFOs. In 2013, years after EPA concluded the monitoring study, EPA's Scientific Advisory Board (SAB) confirmed the concerns raised by GAO in 2008 regarding the small number of sites in the study and the quality of the data.[73]

In reviewing EPA's draft EEMs, which the SAB ultimately found unsuitable for national use, SAB panel members noted that the California broiler data sets for Total Suspended Particles and $PM_{2.5}$ had less than 10 percent completeness, while that entire site had only 20 percent completeness during the fall.[74] EPA also had problems receiving data from contractors and excluded data due to changes in monitoring method. Short monitoring periods at certain sites in combination with missing or invalidated data has resulted in a much smaller than anticipated dataset from which to develop EEMs.

Moreover, EPA's unnecessarily restrictive data completeness requirements further limited the availability of usable data. The NAEMS protocol required 75 percent of any hour's data to be valid to accept the hour's data, and 75 percent of any day's hours to accept the day's data.[75] The 2013 SAB Report noted the study's low data completeness rates, questioning EPA's

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[71] Many of the signatories submitted comments regarding EPA's flawed 2005 Air Consent Agreement and NAEMS Protocol. *See, e.g.,* Comments by B. Newell et al., Center on Race, Poverty & the Environment et al., EPA-HQ-OAR-2004-0237-0476 (Mar. 1, 2005).
[72] 2008 GAO Report at 7.
[73] EPA SCI. ADVISORY BD., REVIEW OF EEMS FOR BROILER AFOS AND FOR LAGOONS & BASINS AT SWINE & DAIRY AFOS 2 (Apr. 19, 2013), available at https://yosemite.epa.gov/sab%5CSABPRODUCT.NSF/08A7FD5F8BD5D2FE85257B52004234FE/$File/EPA-SAB-13-003-unsigned%20.pdf, [hereinafter 2013 SAB REPORT] ("In summary, the SAB concludes that the EPA has developed statistical models based on combined data sets and predictor variables which have limited the ability of the models to predict emissions beyond the small number of farms in the dataset.").
[74] *Id.*
[75] *Id.*

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decision to require a "too stringent and unnecessary" 75 percent completeness despite the study's frequent failure to meet that goal.[76]

Though EPA has acknowledged the problems with its completeness criteria,[77] it has failed to rectify the issue. When issuing the August 2020 draft swine EEMs, EPA conceded that completeness requirements for its open area/source data should be lowered, but only to 52 percent.[78] However, EPA then released draft poultry EEMs in August 2021 that retained the 75 percent completeness requirement for all data sources.[79] The completeness criteria for swine barn emission data have also remained unchanged, and EPA maintains that "the potential need to revise this value for barn source emissions will be assessed at a later date, if appropriate."[80] Yet no such assessment has taken place.

The more EPA evaluates the data, the more problems it uncovers. For instance, in the draft swine EEMs released in August 2020, EPA discovered new issues with ventilation and moisture interference, resulting in the invalidation and removal of numerous ammonia, hydrogen sulfide, and particulate matter measurements from the dataset.[81] The revision included the removal of all open source ammonia emissions data from one of only four monitoring sites.[82] This continued reduction of the dataset, which is already too small to provide a complete representative sample, only further compromises EPA's ability to establish accurate EEMs.

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[76] *Id.* at 26.
[77] *See* EPA, QUALITY ASSURANCE PROJECT PLAN: DEVELOPMENT OF EEMS FOR AIR EMISSIONS FROM AFOS 15 (Mar. 13, 2018) [hereinafter 2018 QAPP], available at https://www.epa.gov/sites/default/files/2018-03/documents/final_eem_qapp_v0.0_for_web_0.pdf. .
[78] *Id.* EPA, DEVELOPMENT OF EEMS FOR SWINE BARNS & LAGOONS, DRAFT 3-1 to3-4. (Aug. 2020), [hereinafter 2020 Draft EEMs for Swine Barns & Lagoons] available at https://www.epa.gov/sites/default/files/2020-08/documents/development_of_emissions_estimating_methodologies_for_swine_barns_and_lagoons.pdf.
[79] EPA, DEVELOPMENT OF EEMS FOR BROILER OPERATIONS, DRAFT 5-3 to 5-4 (Aug. 2021) [hereinafter 2021 Draft EEMs for Broilers], available at https://www.epa.gov/sites/default/files/2016-06/documents/afobroilereemreport2012draft.pdf; DEVELOPMENT OF EEMS FOR EGG-LAYING HOUSES & MANURE SHEDS, DRAFT 2-2 (Aug. 2021) [hereinafter 2021 Draft EEMs for Poultry Houses & Manure Sheds], https://www.epa.gov/system/files/documents/2021-08/development_of_emissions_estimating_methodologies_for_egg_layer_houses_and_manure_sheds.pdf.
[80] 2018 QAPP at 15.
[81] 2020 Draft EEMs for Swine Barns & Lagoons at 3-2 and 4-2.
[82] *Id.* at 3-16 and 3-17.

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C. EPA Failed to Finalize EEMs Following the Completion of NAEMS.

Following the completion of NAEMS in 2010, three years later than expected, the initial terms of the Air Consent Agreement provided that EPA had 18 months to evaluate the data collected through the study and publish emission unit-specific estimating methodologies.[83] In 2012, EPA published draft EEMs for 8 of the 36 emission sources and pollutants described in the Agreement.[84] Those draft EEMs, which covered broiler AFOs and lagoons and basins at swine and dairy AFOs, were noticed for public comment and submitted to the agency's Scientific Advisory Board (SAB) for review and feedback.[85]

The response to the draft EEMs from both the public and EPA's own SAB was highly critical and called into question NAEMS design and methodology, the data generated, EPA's statistical approach, its treatment of the available data, and the agency's ability to use the draft to accurately estimate air pollution from facilities not otherwise included in the study itself.[86] The SAB lambasted EPA for its approach to the NAEMS process and the data collected, concluding—among other things—that the draft EEMs developed by EPA should not be applied on a national scale because "EPA has developed statistical models based on combined data sets and predictor variables which have limited the ability of the models to predict emissions beyond the small number of farms in the dataset."[87]

The SAB recommended that "EPA not apply the current versions of the statistical and modeling tools for estimating emissions beyond the farms in EPA's data set," and provided "recommendations for how the agency may expand the data set and the applicability of the

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[83] 2005 Air Consent Agreement at ¶ 32 ("EPA will publish [EEMs] within 18 months of the conclusion of the monitoring period . . . .").

[84] *See* 2017 OIG REPORT at 11; EPA, DEVELOPMENT OF EEMS FOR LAGOONS & BASINS AT SWINE & DAIRY AFOS, DRAFT (Feb. 2012) [hereinafter 2012 Draft EEMs for Swine & Dairy AFOs], available at https://yosemite.epa.gov/sab/SABPRODUCT.NSF/81e39f4c09954fcb85256ead006be86e/AE6639DD6B79360E852579A4004E5529/$File/PDF+for+Development+of+Emissions+Estimating+Methodologies+for+Lagoons+and+Basins+at+Swine+and+Dairy+Animal+Feeding+Operation.pdf; EPA, DEVELOPMENT OF EEMS FOR BROILER OPERATIONS, DRAFT (Feb. 2012) [hereinafter 2012 Draft EEMs for Broilers], available at https://www.epa.gov/sites/default/files/2016-06/documents/afobroileeemreport2012draft.pdf..

[85] Notice of Availability: Draft Documents Related to the Development of EEMs for Broiler AFOs and Lagoons & Basins for Swine & Dairy AFOs, 77 Fed. Reg. 14716 (Mar. 13, 2012); *see also* Comments Submitted in Response to Notice of Availability, https://www.regulations.gov/document/EPA-HQ-OAR-2010-0960-0015/comment.

[86] Many of the signatories submitted comments regarding EPA's flawed 2012 Draft EEMs. *See, e.g.,* Comments Submitted by R. Lawrence, Center for a Livable Future, EPA-HQ-OAR-2010-0960-0037 (Jun. 11, 2012); T. Heinzen, Environmental Integrity Project et al., EPA-HQ-OAR-2010-0960-0026 (Jun. 11, 2012).

[87] 2013 SAB REPORT at 2.

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models."[88] For example, SAB recommended that EPA expand its dataset by collecting data from monitoring efforts outside of the NAEMS, and using NAEMS data that were initially excluded due to EPA's data completeness criteria.[89]

The SAB also advocated for a process-based modeling approach to EEM development, noting that "[p]rocess-based models would be more likely to be successful in representing a broad range of conditions than the current models because [they] represent the chemical, biological and physical processes and constraints associated with emissions."[90]

In short, the SAB told EPA to go back to the drawing board and revise its process for developing EEMs based on the data gathered through NAEMS. EPA has responded to some of SAB's concerns, but not all. As a result, EPA has yet to finalize any EEMs or bring any participating parties into compliance with the CAA, CERCLA, and EPCRA. Nor has EPA revoked the safe harbor provision established in the Air Consent Agreement.

D. EPA Has Failed to Consider Available Information from Peer-Reviewed Studies.

Given the clear flaws in NAEMS design and implementation, which yielded non-representative and incomplete data, it was incumbent upon EPA to expand the scope of AFO emission data it relied on to ensure accurate EEMs. However, the draft EEMs continue to rely exclusively on the limited NAEMS data, rather than incorporating findings from numerous peer-reviewed AFO emissions studies. The small number of sites in each livestock sector and the data gaps and technical problems experienced during NAEMS heighten the importance of outside research. EPA's decision to limit available information will result in inadequate EEMs.

From 2007 to 2010, EPA collected emissions data at 27 sites across 20 AFOs. The data were originally published in 2011 and finalized in 2012. EPA relied exclusively on these data to develop the 2012 draft EEMs for broilers and lagoons/basins at swine and dairy AFOs, as well as the 2020 and 2021 draft EEMs for swine and poultry AFOs. However, the Air Consent

[88] *Id.*
[89] *Id.* at 1.
[90] *Id.* at 2.

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Agreement requires that EPA consider *all* relevant information when developing EEMs, not just the data collected at a small sample of AFOs during the monitoring study:

> The term "Emissions-Estimating Methodologies" means those procedures that will be developed by EPA, based on data from the national air emissions monitoring study *and any other relevant data and information*, to estimate daily and total annual emissions from individual Emission Units and/or Sources.[91]

Although the Agreement clearly provides that EPA must consider "relevant data and information" *other* than the monitoring data, EPA has elected to interpret this term so narrowly as to exclude all information not derived from NAEMS. In 2011, EPA asked the public to submit information relating to the agency's development of draft EEMs for broiler confinement facilities and lagoons/basins at swine and dairy AFOs.[92] Despite receiving several relevant, peer-reviewed emissions studies in response to the call for information, EPA ultimately concluded that none of the studies were relevant to the EPA's draft EEMs.[93]

In an attempt to justify EPA's narrow reading of the Air Consent Agreement and exclusion of outside data, the 2012 draft EEMs for Swine and Dairy AFOs state that "none of the articles previously obtained by the EPA to support emissions factor development used remote sensing techniques to measure lagoon emissions."[94] This explanation is inadequate. EPA did not explain why it preferred remote sensing techniques over other techniques. Nor did it explain why the techniques used in the outside studies were incompatible with the remote sensing data. Similarly, in the 2012 draft EEMs for Broilers, EPA disregarded peer-reviewed poultry emissions studies solely because the researchers used different methods.[95]

Since the publication of the 2012 draft EEMs, EPA has reaffirmed its commitment to relying exclusively on NAEMS data. In 2018, after nearly a decade of delay and inaction, EPA decided to put off any investigation into the "potential need for additional non-NAEMS data"

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[91] 2005 Air Consent Agreement at ¶10 (emphasis added); *see also* 2005 Notice at 4960 ("EPA will use the data generated from the monitoring *and all other available, relevant data* to develop [EEMs]") (emphasis added).
[92] *See* Call for Information Related to the Development of EEMs for AFOs, 76 Fed. Reg. 3060 (Jan. 19, 2011); *see also Comments Submitted in Response to Call for Information*, https://www.regulations.gov/document/EPA-HQ-OAR-2010-0960-0001/comment.
[93] 2012 Draft EEMs for Swine & Dairy AFOs Table 3-3, 2012 Draft EEMs for Broilers Table 3-14 (Feb. 2012).
[94] 2012 Draft EEMs for Swine & Dairy AFOs at 3-14.
[95] 2012 Draft EEMs for Broilers at 4-13 to 4-23.

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until a "later stage" in the project "if appropriate."[96] The 2020 draft EEMs for Swine AFOs used peer-reviewed studies only to inform the selection of possible model parameters.[97] But the Air Consent Agreement requires EPA to use available data to *develop* the EEMs.[98]

EPA's continued exclusion of clearly relevant data from the EEM development process violates the Air Consent Agreement and confirms that continuing the already protracted EEM development process would be futile. Moreover, EPA cannot develop adequate EEMs based exclusively on the outdated and incomplete NAEMS monitoring data collected from 2007 to 2010 because the industry has changed considerably since the monitoring study concluded over a decade ago.[99] Furthermore, new studies regarding air emissions from AFOs have been published in recent years, revealing important insights about the emissions generated from various AFO sources and their impacts on local communities.[100] Without the addition of recent outside studies, any EEMs developed by EPA will fail to accurately estimate emissions from AFOs.

E. The 2017 OIG Report Urged EPA to Either Finalize the EEMs or End the Agreement.

In 2017, six years after all EEMs were supposed to be finalized, OIG released a report on EPA's actions to evaluate air emissions from AFOs, focusing on the Air Consent Agreement and NAEMS.[101] As with the SAB, OIG was highly critical of EPA's extreme delay in developing EEMs following the completion of NAEMS, noting that "competing priorities [have] resulted in the EPA's Office of Air and Radiation putting the EEM effort largely on hold" to the extent that "the EPA stopped funding the contract for NAEMS analysis."[102] OIG also expressed concern

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[96] 2018 QAPP at 14.
[97] 2020 Draft EEMs for Swine Barns & Lagoons at 13-1 to 13-2.
[98] 2005 Notice at 4960.
[99] Over the past nine years alone, significant changes to the hog, dairy, broiler, and egg-laying industries can be observed in particular state CAFO expansion trends. For instance, the number of CAFOs operating in Iowa, a state dominated by the hog industry, has increased by 136 percent since 2011. There are 43 percent more CAFOs operating in Wisconsin, where the dairy industry is most prevalent, than what existed in 2011. In Delaware, a broiler-focused state, the CAFO industry has grown by 838 percent. And Ohio, a state dominated by egg-laying operations, has seen a 33 percent increase. *See* EPA, NPDES CAFO Rule Implementation Status – National Summary, Endyear 2011 (Dec. 31, 2011), https://www.epa.gov/sites/default/files/2015-08/documents/npdes_cafo_rule_implementation_status_-_national_summary_endyear_2011_0.pdf; EPA, NPDES CAFO Rule Implementation Status – National Summary, Endyear 2020 (May 11, 2021), https://www.epa.gov/sites/default/files/2021-05/documents/cafo_status_report_2020.pdf.
[100] *See* discussion, *supra* Part I.
[101] 2017 OIG REPORT at 1.
[102] *Id.* at 10.

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about the lack of EPA agricultural air expertise and committed resources, noting that the agency "did not have staff with combined expertise in agricultural emissions, air quality[,] and statistical analysis."[103]

Although EPA completed NAEMS in early 2010, EPA has yet to finalize the EEMs to make CAA and CERCLA/EPCRA compliance determinations under the terms of the Air Consent Agreement. OIG expressed concern that although the civil enforcement protections were initially planned to expire in 2012, all 14,000 AFOs that participated in the Agreement continue to enjoy civil enforcement protections, and EPA has put several important actions on hold pending development of the EEMs.[104] In short, as OIG concluded, "EPA's ability to characterize and address AFO air emissions is unchanged since its 2005 Agreement with the AFO industry intended to produce reliable emissions estimation methods."[105]

To continue moving the EEM process forward, OIG recommended that EPA conduct adequate systematic planning—something that the agency should have done *before* conducting NAEMS or preparing the draft EEMs.[106] "Based on the results of systematic planning," EPA should "determine and document the decision as to whether the EPA is able to develop scientifically and statistically sound emission estimating methodologies for each originally planned emission source and pollutant combination."[107] After conducting those reviews, OIG recommended that EPA should "[f]or the emission source and pollutant combinations for which the Office of Air and Radiation determines it can develop scientifically and statistically sound emission estimating methodologies, establish public milestone dates for issuing each draft emission estimating methodology" and "[f]or any emission source and pollutant combinations for which the Office of Air and Radiation determines it cannot develop emission estimating methodologies, notify Air Consent Agreement participants of this determination, and that the release and covenant not to sue for those emission sources and pollutant types will expire in accordance with paragraph 38 of the 2005 Air [Consent] Agreement."[108]

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[103] *Id.* at 16.
[104] *Id.*
[105] *Id.* at 18.
[106] *Id.* at 22.
[107] *Id.* at 23.
[108] *Id.*

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Since the OIG report was published in 2017, EPA has continued to drag its feet regarding EEM development, despite the clear course correcting path that OIG laid out for the Agency. While EPA maintains that it has timely implemented all OIG recommended actions,[109] in reality, the only action that EPA has completed in good faith is the very first on the list—publishing a planning document to guide future EEMs development.[110] As for the remaining four OIG recommendations, EPA has either failed to comply altogether or implemented them in such a half-hearted way so as to undermine their whole purpose, namely, to prevent any further delay.

According to OIG's corrective action timeline, based on the results of EPA's systematic planning, EPA was to "document the decision" as to which EEMs could be developed and which could not no later than June 30, 2018.[111] Yet when the June deadline came, all EPA had decided was that, "for now,"[112] it would move forward with developing EEMs for all pollutants and all source categories, even while holding out the possibility that "emission source categories might be revised during subsequent stages of EEM development" upon further investigation.[113] In other words, instead of making any real effort to narrow the scope of feasible EEMs, as OIG intended, the Agency simply made a placeholder determination to proceed as originally planned to check an item off its OIG to-do list. Conveniently, this also allowed EPA to hold off on implementing another OIG action—ending enforcement amnesty for affected Air Consent Agreement participants—since only a finalized decision to abandon certain EEMs could trigger this requirement.[114] However, this did not stop the Office of Enforcement and Compliance Assurance from certifying that this action, which has yet to occur, was "complete."[115]

Moreover, because EPA opted to move forward with the development of all originally planned EEMs, EPA was required to "set public milestone dates" for issuance of all draft EEMs

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[109] *See* Memorandum from W. Wehrum, Assistant Administrator, *OAR-18-000-9472 - Certification Memo for Office of Inspector General (OIG) Report No. 17-P-0396* (July 30, 2018) ED_004549_00036447-00001 (certifying completion of OAR corrective actions); M. Badalamente, *Certification of Performance Audit* (Apr. 2, 2019) ED_004549_00036462-00001 (certifying completion of OECA corrective action) [hereinafter OECA Certification Memo].
[110] *See* 2018 QAPP at 14.
[111] 2017 OIG REPORT at 23.
[112] Email from Tim Sullivan to Lauren Kabler Re: 2017 OIG Report, ED_005459-00036448-00003 (Sep. 20, 2018).
[113] 2018 QAPP at 16.
[114] 2017 OIG REPORT at 23.
[115] OECA Certification Memo at 1-2 (paradoxically stating OECA's action is "complete" because OECA stands ready to implement it "within 60 days of OAR finalizing its determination").

and to keep the public informed of the status of EEM development.[116] While EPA did set publicly available issuance dates (yet another box checked), it has made no effort to meet these self-imposed deadlines. In fact, every time a deadline nears, the Agency updates the schedule to give itself more time. In the agency's revised schedule for developing EEMs, EPA committed to issuing draft EEMs beginning in September 2019 and ending no later than November 2020.[117] However, after revising the schedule more than five times in just two years, with the most recent schedule slide occurring just this past August, EPA now lists the date for issuing all draft EEMs as May 2022.[118] While OIG required EPA to "set public milestone dates," it surely did not intend for EPA to push back the dates whenever the agency failed to meet an upcoming deadline. The purpose of the updated schedule was to prevent continued delay and uncertainty regarding EPA's development process. As of the date of this letter, EPA continues to delay the EEMs and fall behind its own updated timeline.

V. EPA SHOULD TERMINATE THE AIR CONSENT AGREEMENT BECAUSE EPA HAS FAILED TO PRODUCE VALID EEMs.

A. EPA Should Abandon the Fundamentally Flawed NAEMS and EEMs Development Process in Favor of Existing Models.

As discussed above, EPA cannot rely on the NAEMS data collected at 20 AFOs from because these data are not representative of current emissions from AFOs across the country. At this stage in the EEM development process, EPA cannot correct the flaws in NAEMS and EEM design or implementation. And although EPA has acknowledged the issues limiting the applicability of the data and affecting its current efforts to establish legitimate EEMs, it has failed to sufficiently address those issues. Moreover, EPA already has process-based models and emissions factors that it can use for the purposes of estimating emissions from AFOs and making compliance determinations. Where such methods are available, EPA should immediately adopt the methods as the default EEMs.

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[116] 2017 OIG REPORT at 23.
[117] *See* Archived EPA Webpage: *National Air Emissions Monitoring Study* (Jul. 3, 2018), http://web.archive.org/web/20180703144202/https://www.epa.gov/afos-air/national-air-emissions-monitoring-study.
[118] *See* EPA, National Air Emissions Monitoring Study (last visited 10/22/2021) https://www.epa.gov/afos-air/national-air-emissions-monitoring-study.

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In 2013, nearly a decade ago, EPA's Science Advisory Board recommended that the EPA "consider developing EEMs at a variety of levels of complexity to provide options for producers with different levels of data availability."[119]

> Models of varying complexity should be developed based on the level of input provided by a given producer (e.g., one model may be developed considering the composition of a feed ration, while a less complex model using default industry values could be used if a producer does not wish to or cannot disclose information regarding feed rations).[120]

This SAB recommendation is critical. As discussed above, data limitations often make the implementation of EEMs impractical or impossible. To implement the 2020 and 2021 draft EEMs for swine and poultry AFOs, AFO operators would essentially have to run multiple statistical models for each emissions source, each day of the year, using actual daily data points, like animal inventory, average animal weights, ambient air temperature, and wind speed, to estimate annual emissions.[121] This is problematic in at least two ways. First, it would be difficult for potential sources and regulators to acquire and process the large amount of data required to generate annual emissions estimate. Second, since the draft EEMs require actual input data, they cannot readily be used to estimate future emissions from proposed (or existing) sources.

The current forms of the EEMs are thus inconsistent with the CAA, which asks proposed and existing sources to provide emissions estimates in the form of annual emission potential (an upper-bound estimate that does not require daily model iterations).[122] EPA therefore needs EEMs that utilize default assumptions. The SAB strongly recommended this approach, but EPA unfortunately continues to ignore it.[123]

EPA has also recommended this simplified approach in other contexts. For example, in 2019, EPA published guidance for estimating animal waste emissions for purposes of complying

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[119] 2013 SAB REPORT at 2, 4.
[120] *Id.* at 14
[121] *Id.*
[122] If implemented, the 2020 Draft EEMs for Swine AFOs would not produce Potential to Emit (PTE) estimates. These estimates provide critical information in determining how the CAA applies at a given facility, and if a facility is a "major source." The draft EEMs instead prescribe the use of actual animal inventories and will not determine if facilities are "major sources" as required.
[123] 2013 SAB REPORT at 14 ("The EPA should create a modeling approach that can be defined using default parameters that can be simply attained and that would reflect the heterogeneity of AFOs.").

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with CERCLA and EPCRA.[124] Some of the methods recommended in this guidance were simple emissions factors (e.g., pounds per animal per day).[125] Other recommended methods were in the form of worksheets that used a combination of site-specific information (e.g., animal housing type and maximum permitted capacity) and default parameters (e.g., animal-specific nitrogen excretion rates and ammonia loss factors). The worksheets are notable for two reasons. First, the worksheets generate "peak" pollutant emissions, based on maximum/permitted animal capacity, which is consistent with CAA "potential to emit" requirements. Second, the worksheets are easy to implement with limited data because they incorporate default parameters.

In sum, EPA already estimates emissions, and recommends that others do so, using methods that are consistent with the CAA and SAB guidance and are easy to implement. Yet it continues to insist on developing flawed EEMs that fail all of these criteria. This is flagrantly arbitrary and unreasonable, and only serves one purpose—to continue to protect a large source of air pollution from regulation.

B. EPA Overstates the Difficulty of Developing Process-Based Models, Which the Agency Is Already Using in Other Contexts.

Since the beginning of the EEM development process, the scientific community has recommended that EPA pursue a process-based approach. In 2003, the National Academies of Sciences (NAS) concluded that the "use of process-based modeling will help provide scientifically sound estimates of air emissions from AFOs for use in regulatory and management programs."[126] Ten years later, in 2013, EPA's Science Advisory Board made the same recommendation.[127] Today, nearly two decades after the NAS first recommended a process-based approach, and despite the fact that EPA is already using process-based models in other contexts, EPA maintains that it cannot yet develop process-based EEMs.

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[124] EPA, *CERCLA & EPCRA Reporting Requirements for Air Releases of Hazardous Substances from Animal Waste at Farms*, EPA (last visited Aug. 27, 2021), https://www.epa.gov/epcra/cercla-and-epcra-reporting-requirements-air-releases-hazardous-substances-animal-waste-farms.
[125] *See, e.g.*, EPA, Calculation Worksheet: Ammonia and Hydrogen Sulfide from Dairy Operations (2009) available at https://www.michigan.gov/documents/deq/deq-ess-cafo-worksheet-dairyemissions_266406_7.pdf.
[126] NAT'L RSCH. COUNCIL, AIR EMISSIONS FOR ANIMAL FEEDING OPERATIONS: CURRENT KNOWLEDGE, FUTURE NEEDS, 103 (2003).
[127] 2013 SAB REPORT at 10-13.

EPA concedes that its statistical approach is flawed, and now describes the statistical approach as an "interim" solution until more reliable process-based models can be developed.[128] EPA suggests that this approach "follow[s] the expert recommendations and [is] consistent with the Air [Consent] Agreement."[129] This is simply not true—EPA is *not* following the Air Consent Agreement or the SAB recommendations, both of which emphasize the need for data from outside of NAEMS. The SAB reminded EPA that process-based models would require the Agency to consider outside information:

> Developing a rigorous process-based EEM will require extensive data beyond the range of values, conditions, and types of farms available in the NAEMS data set. To address this data gap the EPA should consider using data collected through mechanisms outside the consent agreement, including data published in peer-reviewed literature, raw data from key studies, data that support key literature, and additional data that the EPA has collected since receiving data in response to the Call for Information on AFOs and emissions.[130]

EPA has not done this. The delay in developing process-based EEMs is almost entirely due to EPA's failure to collect or consider the necessary data.

More broadly, it is important to consider EPA's track record. EPA's chosen course of action, developing interim statistical models, has already taken more than 16 years and is *still* not complete. If this is EPA's *interim* solution, how many more decades will it take before EPA can meet its "long term" goals of developing process-based EEMs? At this rate, the industry is changing faster than the EEM development process, and whatever EPA develops will immediately be outdated. Given EPA's history of protracted delay, it makes no sense to continue developing flawed "interim" EEMs while EPA contemplates a plan for someday, maybe developing legitimate EEMs. The problem of air pollution from AFOs deserves actual solutions, not more wheel-spinning.

Developing process-based models will not require more time than completing its flawed statistical models. EPA is already using process-based models (and other models) to estimate AFO emissions and has acknowledged that process-based models accurately predict NAEMS

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[128] *See, e.g.*, 2020 Draft EEMs for Swine Barns & Lagoons at 1-8 to 1-9.
[129] *Id.* at 1-8.
[130] 2013 SAB REPORT at 14.

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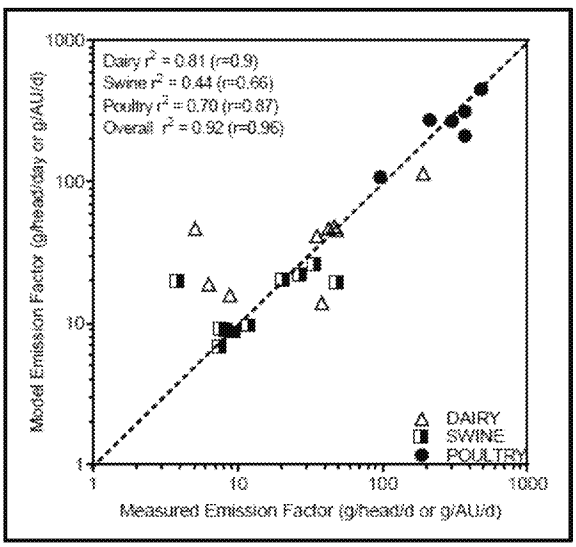
emissions based on NAEMS input data. Ironically, although EPA claims to be interested in any "suitable model[s] available in literature to use,"[131] it ignores the high-quality process-based model being used *by EPA* in its National Emissions Inventory (NEI).

As part of its NEI, the Agency estimates ammonia emissions from dairy, beef, poultry, and swine operations using a process-based model developed by Carnegie-Mellon University (CMU).[132] This model has been evaluated against NAEMS monitoring data, and one author observed that "the process-based [Farm Emissions Models] perform reasonably well in predicting the magnitude of ammonia emissions, their seasonal cycle, and farm-to-farm variability."[133] It is particularly noteworthy that the CMU model "was able to differentiate between farms and practice," as shown in the figure below.[134]

Figure 1: Comparison of Process-Based Model Predictions and NAEMS Monitoring Data



[131] 2018 QAPP at 19.
[132] EPA, 2017 NATIONAL EMISSIONS INVENTORY: JANUARY 2021 UPDATED RELEASE, TECHNICAL SUPPORT DOCUMENT 4-61 (2021); A. McQuilling & P. Adams, *Semi-Empirical Process-Based Models For Ammonia Emissions From Beef, Swine, & Poultry Operations In The United States*, 120 ATMOS. ENVTL. 127 (Nov. 2015).
[133] A. McQuilling, *Ammonia Emissions from Livestock in the United States: From Farm-Level Models to a New National Inventory,* at 51 (Jan. 2, 2016) (Ph.D dissertation Carnegie Mellon University), https://kilthub.cmu.edu/articles/thesis/Ammonia_Emissions_from_Livestock_in_the_United_States_From_Farm-Level_Models_to_a_New_National_Inventory/6714665.
[134] *Id.* at 75, 80.

As explained by the author, "this result shows the model's skill in capturing big picture emissions as well as the ammonia emissions variability driven by practices in addition to meteorology which has been shown in both seasonal and daily evaluations."[135]

Another model that EPA at least acknowledges is the U.S. Department of Agriculture's Farm Systems Model, which includes process-based models for estimated ammonia and hydrogen sulfide emissions from dairy operations. The model has even been shown to accurately predict ammonia emissions from NAEMS dairy barns and manure storage structures.[136]

If these models are good enough for EPA's emissions inventory and do a reasonable job of predicting NAEMS emissions, then they should be good enough for estimating emissions from AFOs for the purpose of applying for CAA permits or reporting qualifying releases. For example, if the question is whether a facility emits more than a certain threshold, such as 10 or 100 tons of ammonia per year,[137] then the CMU model is sufficient. This is particularly true where we already know that many AFOs emit well above the higher threshold.[138]

EPA's foot-dragging is based on the deeply flawed premise that the Agency won't know how much pollution AFOs emit until after the agency's planned EEMs are complete. This premise is false. EPA has a variety of options for estimating emissions, and these options are in fact better than the EEMs—they are more consistent with CAA requirements and SAB recommendations, and they are accurate enough to provide the kinds of information that the industry, regulators, and residents need to comply with the law. EPA has no legitimate basis for dragging this process out any longer.

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[135] *Id.* at 80.
[136] 2018 QAPP at 19; *see also* C. Rotz et. al., *Ammonia emission model for whole farm evaluation of dairy production systems*, 43 J. ENV'T. QUAL. 1143 (2014).
[137] *See, e.g.*, 42 U.S.C. §§ 7412(a)(1) (definition of "major source" of hazardous air pollutants); § 7479(1) (definition of "major emitting facility"); § 7602(j) (definition of "major emitting facility").
[138] *See, e.g.*, Notice of Lodging of Consent Decree Under CERCLA, 69 Fed. Reg. 11,649 (Mar. 11, 2004). The company subject to this Consent Decree, Buckeye Egg Farm L.P., reported ammonia emissions of over 800 tons per year from one facility, over 375 tons per year from a second facility, and "nearly 275" tons per year from a third facility. *Id.* at 11,649–50.

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VI. IF EPA DECIDES TO PROCEED WITH THE FLAWED EEM DEVELOPMENT PROCESS, IT MUST IMMEDIATELY RESCIND THE SAFE HARBOR PROVISION.

As explained above, EPA's failure to regulate air pollution from AFOs causes both significant health impacts and a dearth of information available to impacted individuals about pollutant releases and impacts. Additionally, AFO air pollution and the resulting odors are diminishing the quality of life and depressing property values in communities across the nation.[139] EPA must immediately rescind the enforcement protections granted to AFOs. In addition, EPA must rely on external sources and public input when developing any draft EEMs based on the agency's inherently flawed monitoring data and development process.

A. EPA Should Immediately Rescind the Safe Harbor Provisions of the Air Consent Agreement.

Although EPA has the authority to rescind the safe harbor provisions of the Air Consent Agreement at any time, it has refused to do so, choosing instead to grant extended immunity to AFOs that emit significant air pollution and cause adverse public health impacts in surrounding communities. EPA's continued refusal to enforce the law against AFOs is an abdication of its enforcement authority. It contradicts congressional intent and strips affected communities of their legal and procedural remedies to address increased air emissions from AFOs. Thus, EPA should take immediate action to rescind the safe harbor provisions of the Air Consent Agreement.

B. EPA Should Not Finalize Any EEMs Without Robust Public Participation.

If EPA proceeds with its protracted EEM development process, it must prioritize public participation. During the decades-long process of developing the EEMs, the Agency has primarily engaged the AFO industry. EPA intends to hold a "stakeholder review period" once new draft EEMs are available but the timing of this review period is currently unknown.[140] It is

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[139] *See, e.g.*, Y. HONG & P. EBNER, PURDUE ANIMAL SCIENCES, IMPACT OF CFO ODOR & ODOR SETBACK MODELS, (JAN. 2017), https://ag.purdue.edu/cfo/Documents/ID-485_CFO_2017.pdf; ROMAN KEENEY, PURDUE EXTENSION, COMMUNITY IMPACTS OF CAFOS: PROPERTY VALUES (2008), https://www.extension.purdue.edu/extmedia/ID/ID-363-W.pdf.

[140] *See* EPA, *National Air Emissions Monitoring Study: Timeline for the Release of AFO Emission Models*, (last visited Oct. 25, 2021), https://www.epa.gov/afos-air/national-air-emissions-monitoring-study.

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unclear who EPA considers "stakeholders" in this process, but presumably this "stakeholder review period" involves EPA releasing all EEMs simultaneously for a 30-day public comment period. This would be a wholly inadequate means to engage the public, especially in comparison to the extensive influence that industry groups have had throughout the EEMs process. A robust notice and comment opportunity is necessary to meaningfully engage *all* stakeholders and ensure that the EEMs do not exacerbate health impacts and inequalities.

Rural communities experiencing the detrimental effects of AFOs lack access to complete information about the impacts and regulation of AFOs, and rarely are provided with a forum to voice their concerns and seek remedies from the government. Rather, EPA has frequently used the EEMs process as a shield to avoid meaningfully responding to and acting on AFO air pollution concerns raised with the Agency. A transparent and accessible notice and comment period for the EEMs will provide a necessary—albeit much-delayed—opportunity for the Agency to hear from the stakeholders most impacted by EPA's decisions regarding EEMs.

Furthermore, the complexity and abstract nature of environmental modeling presents unique and significant barriers to full public participation.[141] EPA should take steps to overcome and mitigate these barriers. For example, a comment period of 90 days would provide impacted communities and advocacy groups the time needed to assess the impacts of the EEMs and engage in outreach to ensure that all interested parties are aware and informed. The complex nature of the EEMs also means that groups and members of the public likely will need to engage experts to review the EEMs and develop technical comments, necessitating a longer comment period. EPA should also hold public listening sessions with content aimed at meaningfully engaging the public in EEMs development, such as layperson explanations of the process of developing the EEMs and the EEMs' impacts and limitations. Similarly, EPA should ensure members of the public are able to hear each other's comments.

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[141] *See generally* J. Fine & D. Owen, *Technocracy & Democracy: Conflicts Between Models & Participation in Environmental Law & Planning*, 56 HASTINGS L.J. 901 (2005), https://repository.uchastings.edu/cgi/viewcontent.cgi?article=3590&context=hastings_law_journal.

ED_013141A_00000102-00032

Robust public participation in the finalization of any EEMs is also necessary for EPA to comply with the President's Executive Orders pertaining to environmental justice.[142] AFO air pollution is an environmental justice issue—"people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality" are far more likely to be exposed to AFO air pollution and suffer the health, quality of life, and financial consequences.[143] The Biden Administration has pledged to make environmental justice a priority and directed EPA to "assess whether, and to what extent, its programs and policies perpetuate systemic barriers to opportunities and benefits for people of color and other underserved groups."[144] Agencies are further tasked with "evaluat[ing] opportunities, consistent with applicable law, to increase coordination, communication, and engagement with community-based organizations and civil rights organizations."[145] The finalization of the EEMs is an important opportunity for EPA to advance these objectives, and the failure of EPA to ensure meaningful public participation in the EEMs would contravene the Administration's directives.

The petitioners, as well as many other groups that work with rural communities impacted by AFOs, also could provide EPA with valuable information and context. Two petitioners are environmental justice organizations, which work with communities adversely affected by AFO air pollution, including in North Carolina and California. Many of the petitioners have sought to engage with EPA on the issue of air pollution from AFOs for well over a decade, including challenging the Agreement at the EAB and in the D.C. Circuit, submitting the 2009 CAFO Source Petition, and submitting the 2011 Ammonia Petition. The petitioners have also extensively worked with, and represented in legal actions, members of communities directly

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[142] *See* Exec. Order No. 13985, Advancing Racial Equity & Support for Underserved Communities Through the Federal Government, 86 Fed. Reg. 7009 (Jan. 25, 2021), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1817697/pdf/ehp0115-000317.pdf.

[143] *See id. See also* 2017 OIG REPORT at 3, *see also* K. Donham et al., *Community Health & Socioeconomic Issues Surrounding Concentrated Animal Feeding Operations*, 115 ENV'T. HEALTH PERSPECTIVES (2007).

[144] Exec. Order No. 13985; *see also* Exec. Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 Fed Reg. 7629 (Feb. 16, 1994) ("[E]ach Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations. . . .").

[145] Exec. Order No. 13985.

impacted by AFO pollution. Therefore, the petitioners possess extensive expertise that would be valuable in the process of finalizing the EEMs.

VII. CONCLUSION

The Air Consent Agreement has been an unmitigated failure. During EPA's extended amnesty and fundamentally inadequate NAEMS process, jurisdictions like California have estimated emissions and permitted AFOs with readily available data.[146] The SAB has demonstrated that EPA's NAEMS and EEM development processes reflect the principle of "garbage in, garbage out." EPA has blown far past its 2007 "limited" deferral representation to the D.C. Circuit and its 2017 response to the OIG, landing rural communities in a purgatory of legalized air pollution. Further delay only demonstrates EPA's abdication of its enforcement responsibility and will not yield a better outcome.

We support EPA efforts to develop state-of-the-art and accurate emissions estimating methodologies, but that process should never have been used to shield the industry from enforcement, and in any case, it is well past the time when the NAEMS and EEM process could justify a temporary suspension of applicable law. The reality is that facts and science change over time, and emissions assumptions will also change over time. There is no end to that process. However, EPA can, and routinely does, estimate emissions from many sources of air pollution, including AFOs, using the best science available. The Agency must do the same here. EPA must end the Air Consent Agreement, immediately publish the best currently available emissions methods or emissions factors for each pollutant, and enforce the CAA.

The petitioners therefore petition EPA to rescind the Air Consent Agreement granting enforcement protections to nearly 14,000 AFOs. In addition to a written response confirming the agency's rescission of the Air Consent Agreement, we petition EPA to act immediately to implement CAA permitting and reporting programs, prioritize enforcement actions against AFOs contributing to air pollution and related health impacts in environmental justice communities, and develop process-based models unbound from an unending license to pollute.

---

[146] EPA, based on its CAA oversight, has actual knowledge of jurisdictions like California, including the San Joaquin Valley Unified Air Pollution Control District, with AFO permitting programs and State Implementation Plan programs applicable to such facilities.

ED_013141A_00000102-00034

Date: October 26, 2021

Respectfully Submitted,

Cristina Stella
Larissa Liebmann
Animal Legal Defense Fund
525 East Cotati Avenue
Cotati, CA 94931
cstella@aldf.org
lliebmann@aldf.org

Hannah Connor
Center for Biological Diversity
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Brent Newell
Public Justice Foundation
1620 L St. NW, Suite 630
Washington, DC 20036
bnewell@publicjustice.net

On behalf of Petitioners

ED_013141A_00000102-00035

Message

From: Sullivan, Tim [Sullivan.Tim@epa.gov]
Sent: 11/4/2021 6:05:16 PM
To: Swenson, Erik [Swenson.Erik@epa.gov]; Noggle, William [Noggle.William@epa.gov]
CC: Lewis, Jen [Lewis.Jen@epa.gov]; Jacob, Sicy [Jacob.Sicy@epa.gov]; Belke, Jim [Belke.Jim@epa.gov]; Sullivan, Tim [Sullivan.Tim@epa.gov]
Subject: AFO EPCRA Reporting
Attachments: AFO-CAFO - Petition to Rescind.pdf

Hello, Erik and Bill.

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Ex. 5 AC/DP

I am happy to jump on a quick call if any one has any initial questions on the petition to rescind or if it would be easier than an email Ex. 5 AC/DP

Thanks in advance –

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

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Message

From: Sullivan, Tim [Sullivan.Tim@epa.gov]
Sent: 11/4/2021 9:02:57 PM
To: Belke, Jim [Belke.Jim@epa.gov]
CC: Swenson, Erik [Swenson.Erik@epa.gov]; Noggle, William [Noggle.William@epa.gov]; Jacob, Sicy [Jacob.Sicy@epa.gov]; Gioffre, Patricia [Gioffre.Patricia@epa.gov]; Lewis, Jen [Lewis.Jen@epa.gov]; Sullivan, Tim [Sullivan.Tim@epa.gov]
Subject: RE: AFO EPCRA Reporting

Thanks for setting up the meeting, Jim—much appreciated.

I am going to forward the meeting invite to Robin Dunkins (OAR) who is a main point of contact for the AFO air monitoring study and emissions model development process in case she wants to join Ex. 5 AC/DP

Ex. 5 AC/DP

Ex. 5 AC/DP

Thanks again –

Tim

Timothy J. Sullivan
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From: Belke, Jim <Belke.Jim@epa.gov>
Sent: Thursday, November 4, 2021 2:15 PM
To: Lewis, Jen <Lewis.Jen@epa.gov>
Cc: Swenson, Erik <Swenson.Erik@epa.gov>; Noggle, William <Noggle.William@epa.gov>; Jacob, Sicy <Jacob.Sicy@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>; Gioffre, Patricia <Gioffre.Patricia@epa.gov>
Subject: RE: AFO EPCRA Reporting

Hi Jen – Ex. 5 AC/DP

Ex. 5 AC/DP

Jim Belke

From: Lewis, Jen <Lewis.Jen@epa.gov>
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To: Sullivan, Tim <Sullivan.Tim@epa.gov>
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Subject: Re: AFO EPCRA Reporting

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Jen Lewis
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Office of General Counsel
(202) 564-2097

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Ex. 5 AC/DP

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Tim

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Message

From: Noggle, William [Noggle.William@epa.gov]
Sent: 11/5/2021 2:21:53 PM
To: Belke, Jim [Belke.Jim@epa.gov]; Gioffre, Patricia [Gioffre.Patricia@epa.gov]
Subject: FW: FARM Act bullets for Barry and Carlton

Patty, Jim,

Ex. 5 Deliberative Process (DP)

From: Noggle, William
Sent: Thursday, November 4, 2021 1:35 PM
To: Radtke, Meghan <Radtke.Meghan@epa.gov>; Perovich, Gina <Perovich.Gina@epa.gov>; Waltzer, Sam <Waltzer.sam@epa.gov>
Cc: Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Belke, Jim <Belke.Jim@epa.gov>
Subject: FW: FARM Act bullets for Barry and Carlton

Meghan, Gina, Sam,
See below for the bullets for Carlton and Barry on animal waste reporting. Please keep us posted on what you want to include.

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Thanks,
Bill

From: Radtke, Meghan <Radtke.Meghan@epa.gov>
Sent: Thursday, November 4, 2021 7:48 AM
To: Noggle, William <Noggle.William@epa.gov>; Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Belke, Jim <Belke.Jim@epa.gov>; Perovich, Gina <Perovich.Gina@epa.gov>; Waltzer, Sam <Waltzer.Sam@epa.gov>
Cc: Radtke, Meghan <Radtke.Meghan@epa.gov>
Subject: RE: FARM Act bullets for Barry and Carlton

Hi All,

Ex. 5 Deliberative Process (DP) Do you think you can get them to me tomorrow (Friday)? Ex. 5 Deliberative Process (DP)

Thanks!

Meghan

Meghan Radtke, Ph.D., Biologist
Special Assistant
Office of Emergency Management
Office of Land and Emergency Management
U.S. Environmental Protection Agency
Office: 202-566-0592
Mobile: 703-472-8215

From: Noggle, William <Noggle.William@epa.gov>
Sent: Wednesday, November 3, 2021 11:38 AM
To: Radtke, Meghan <Radtke.Meghan@epa.gov>; Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Belke, Jim <Belke.Jim@epa.gov>
Subject: RE: FARM Act bullets for Barry and Carlton

Will do. Thank you

From: Radtke, Meghan <Radtke.Meghan@epa.gov>
Sent: Wednesday, November 3, 2021 11:37 AM
To: Noggle, William <Noggle.William@epa.gov>; Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Belke, Jim <Belke.Jim@epa.gov>
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From: Noggle, William [Noggle.William@epa.gov]
Sent: 11/5/2021 2:49:48 PM
To: Radtke, Meghan [Radtke.Meghan@epa.gov]
CC: Gioffre, Patricia [Gioffre.Patricia@epa.gov]; Belke, Jim [Belke.Jim@epa.gov]
Subject: RE: FARM Act bullets for Barry and Carlton

Meghan,
Thanks for the comment/edits. I made the changes. Also, we added one more bullet (highlighted) Ex. 5 Deliberative Process (DP)
Ex. 5 Deliberative Process (DP)

Thanks again,
Bill

From: Radtke, Meghan <Radtke.Meghan@epa.gov>
Sent: Friday, November 5, 2021 8:59 AM
To: Noggle, William <Noggle.William@epa.gov>
Cc: Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Belke, Jim <Belke.Jim@epa.gov>; Radtke, Meghan <Radtke.Meghan@epa.gov>
Subject: RE: FARM Act bullets for Barry and Carlton

Hi Bill,

See below for a question on one bullet and minor edits to another (in red). Ex. 5 Deliberative Process (DP)
Ex. 5 Deliberative Process (DP)

Thanks!

Meghan

Meghan Radtke, Ph.D., Biologist
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Message

From: Belke, Jim [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=9C32DF961C274152B3BA2873B03AE555-JBELKE]
Sent: 11/4/2021 8:14:57 PM
To: Lewis, Jen [Lewis.Jen@epa.gov]
CC: Swenson, Erik [Swenson.Erik@epa.gov]; Noggle, William [Noggle.William@epa.gov]; Jacob, Sicy [Jacob.Sicy@epa.gov]; Sullivan, Tim [Sullivan.Tim@epa.gov]; Gioffre, Patricia [Gioffre.Patricia@epa.gov]
Subject: RE: AFO EPCRA Reporting

Hi Jen – you should have received a calendar invite from Bill for next Monday. Ex. 5 AC/DP

Ex. 5 AC/DP

Jim Belke

From: Lewis, Jen <Lewis.Jen@epa.gov>
Sent: Thursday, November 04, 2021 3:26 PM
To: Sullivan, Tim <Sullivan.Tim@epa.gov>
Cc: Swenson, Erik <Swenson.Erik@epa.gov>; Noggle, William <Noggle.William@epa.gov>; Jacob, Sicy <Jacob.Sicy@epa.gov>; Belke, Jim <Belke.Jim@epa.gov>
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Timothy J. Sullivan
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Sent: 11/4/2021 8:09:30 PM
To: Gioffre, Patricia [Gioffre.Patricia@epa.gov]
CC: Noggle, William [Noggle.William@epa.gov]
Subject: FW: AFO EPCRA Reporting
Attachments: AFO-CAFO - Petition to Rescind.pdf

FYI – Bill scheduled a call for next week.

From: Lewis, Jen <Lewis.Jen@epa.gov>
Sent: Thursday, November 04, 2021 3:26 PM
To: Sullivan, Tim <Sullivan.Tim@epa.gov>
Cc: Swenson, Erik <Swenson.Erik@epa.gov>; Noggle, William <Noggle.William@epa.gov>; Jacob, Sicy <Jacob.Sicy@epa.gov>; Belke, Jim <Belke.Jim@epa.gov>
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Sent: 11/5/2021 2:28:32 PM
To: Noggle, William [Noggle.William@epa.gov]
CC: Gioffre, Patricia [Gioffre.Patricia@epa.gov]
Subject: RE: FARM Act bullets for Barry and Carlton

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP) They all look fine to me.

From: Noggle, William <Noggle.William@epa.gov>
Sent: Friday, November 05, 2021 10:22 AM
To: Belke, Jim <Belke.Jim@epa.gov>; Gioffre, Patricia <Gioffre.Patricia@epa.gov>
Subject: FW: FARM Act bullets for Barry and Carlton

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Office: 202-566-0592
Mobile: 703-472-8215

From: Noggle, William <Noggle.William@epa.gov>
Sent: Wednesday, November 3, 2021 11:38 AM
To: Radtke, Meghan <Radtke.Meghan@epa.gov>; Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Belke, Jim <Belke.Jim@epa.gov>
Subject: RE: FARM Act bullets for Barry and Carlton

Will do. Thank you

From: Radtke, Meghan <Radtke.Meghan@epa.gov>
Sent: Wednesday, November 3, 2021 11:37 AM
To: Noggle, William <Noggle.William@epa.gov>; Gioffre, Patricia <Gioffre.Patricia@epa.gov>; Belke, Jim <Belke.Jim@epa.gov>
Cc: Radtke, Meghan <Radtke.Meghan@epa.gov>
Subject: FARM Act bullets for Barry and Carlton

Hi All,

Ex. 5 Deliberative Process (DP)

Thanks!

Meghan

Meghan Radtke, Ph.D., Biologist
Special Assistant
Office of Emergency Management
Office of Land and Emergency Management
U.S. Environmental Protection Agency
Office: 202-566-0592
Mobile: 703-472-8215

Message

From: Egan, Patrick [egan.patrick@epa.gov]
Sent: 10/26/2021 5:57:15 PM
To: Greene, Mary [Greene.Mary.E@epa.gov]; Belser, Evan [Belser.Evan@epa.gov]
CC: Hull, George [Hull.George@epa.gov]
Subject: FW: DDL: 3 p.m. ET: today: E&E re Petition to rescind the Air Consent Agreement

Mary and Evan,

Earlier today 24 advocacy groups filed a legal petition requesting EPA to rescind the air consent agreement with animal feeding operations that was created during the GW Bush's administration. E & E News is requesting a comment. Ex. 5 AC/DP

Ex. 5 AC/DP

Thanks,

Pat

Patrick J. Egan, M.P.A.
Deputy Director of Communications
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW (MC: 2201A)
Washington, DC 20460
Office: 202-564-4059 | Cell: 202-440-3883

From: Jones, Enesta <Jones.Enesta@epa.gov>
Sent: Tuesday, October 26, 2021 1:41 PM
To: Hull, George <Hull.George@epa.gov>; Egan, Patrick <egan.patrick@epa.gov>
Subject: DDL: 3 p.m. ET: today: E&E re Petition to rescind the Air Consent Agreement

Hi George & Pat,
Any comment or input from OECA here?

> **From:** "Srinivasan, Gautam" <Srinivasan.Gautam@epa.gov>
> **Date:** October 26, 2021 at 1:36:00 PM EDT
> **To:** "Jones, Enesta" <Jones.Enesta@epa.gov>, "Millett, John" <Millett.John@epa.gov>, "DeLuca, Isabel" <DeLuca.Isabel@epa.gov>, "Bremer, Kristen" <Bremer.Kristen@epa.gov>, "Conrad, Daniel" <conrad.daniel@epa.gov>
> **Subject: RE: DDL: 3 p.m. ET: today: E&E re Petition to rescind the Air Consent Agreement**
>
> Ex. 5 AC/DP
>
> ++++++++++++++++++++++++++++
> he/him/his
> (202) 695-6287 (c)
>
> ---
>
> **From:** Jones, Enesta <Jones.Enesta@epa.gov>
> **Sent:** Tuesday, October 26, 2021 1:16 PM
> **To:** Millett, John <Millett.John@epa.gov>; DeLuca, Isabel <DeLuca.Isabel@epa.gov>; Bremer, Kristen

<Bremer.Kristen@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Conrad, Daniel <conrad.daniel@epa.gov>
Subject: DDL: 3 p.m. ET: today: E&E re Petition to rescind the Air Consent Agreement

Please help! **DDL: 3 p.m. ET today.**

Ex. 5 AC/DP

From: Sean Reilly <sreilly@eenews.net>
Date: October 26, 2021 at 1:03:53 PM EDT
To: EPA Press Office <press@epa.gov>
Subject: Petition to rescind the Air Consent Agreement

Hi folks:

Please see the news release below with the embedded petition and let me know if you have any comment on the petitioners' request to end the George W. Bush administration agreement referenced therein. My deadline is 3:00 today.

Thanks,
Sean

Sean Reilly
Reporter
E&E News/Politico
Ex. 6 Personal Privacy (PP) (Cell)
Skype: Sreilly_69
sreilly@eenews.net
Twitter: @SeanatGreenwire

CENTER *for* BIOLOGICAL DIVERSITY *Because life*

For Immediate Release, October 26, 2021

Contact: Peter Hart, Food & Water Watch, (732) 266-4932, phart@fwwatch.org
Amy van Saun, Center for Food Safety, (585) 747-0151, avansaun@centerforfoodsafety.org
Hannah Connor, Center for Biological Diversity, (202) 681-1676, hconnor@biologicaldiversity.org
Mike Andrade-Heymsfield, Animal Legal Defense Fund, (707) 364-8387, media@aldf.org

Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Petition Calls for End to Decades-Long Amnesty for Factory Farm Polluters

WASHINGTON— As President Biden continues to promise that his administration will address the climate crisis and protect the air we breathe from industrial polluters, 24 advocacy organizations a demanding his Environmental Protection Agency live up to that promise by doing more to protect communities from factory farms.

The groups filed a legal petition with the EPA today urging it to enforce federal air pollution laws against these major polluters, something the agency has refused to do for nearly two decades.

Over 16 years ago, the George W. Bush administration announced an agreement and final order i secretly negotiated with the National Pork Producers Council. The EPA agreed to refrain from enforcing key air-pollution control and public-disclosure laws like the Clean Air Act against any ani feeding operation that signed up for the deal.

In exchange, participating feeding operations agreed to pay a small penalty to fund a nationwide a monitoring program that was supposed to help the EPA develop more accurate air emissions estimating methodologies. The methodologies were intended to allow the EPA and citizens to calc factory farms' pollution and begin enforcing clean air laws.

Nearly 14,000 animal feeding operations signed up for this deal, known as the Air Consent Agreer which, by its own terms, should have been completed in 2010. Yet, due in part to the fundamental flawed ways in which the EPA designed, ran and used the data collected from the air monitoring s the agency has yet to finalize any methodologies or end the consent agreement.

As a result of the EPA's protracted delay, thousands of the nation's largest animal feeding operati continue to enjoy protection from EPA enforcement actions, even if their air pollution emissions ex legal limits or reporting thresholds.

The feeding operations emit a number of deadly air pollutants like ammonia, hydrogen sulfide, particulate matter, volatile organic compounds and climate-altering methane. According to a recer study, the livestock industry's air pollution is responsible for more than 12,700 deaths per year — deaths than are attributed to coal-fired power plants.

In light of the serious and unregulated public health impacts of air pollution from the feeding opera the advocacy groups are demanding that the EPA put a stop to its "unacceptable dereliction of dut terminating the Air Consent Agreement and taking all actions consistent with Biden's executive orc to enforce applicable clean air laws against the feeding operations.

The petitioners include: Animal Legal Defense Fund, Buffalo River Watershed Alliance (Arkansas) Center for Biological Diversity, Center for Food Safety, Clean Water for North Carolina, Center on Race, Poverty & the Environment (California), Earthjustice, Environmental Integrity Project, Farm Friends of the Earth, Friends of Family Farmers (Oregon), Friends of Toppenish Creek (Washingto Food Animal Concerns Trust, Food & Water Watch, Government Accountability Project, Humane Society of the United States, Iowa Citizens for Community Improvement, Institute for Agriculture & Trade Policy, John Hopkins Center for a Livable Future, North Carolina Conservation Network, Pu

Justice, Socially Responsible Agriculture Project, Southern Environmental Law Center, and Waterkeeper Alliance.

"AFO air pollution not only harms human health and our environment, it also exacerbates the suffe faced by the animals living at these facilities," said Stephen Wells, executive director of the Anima Legal Defense Fund. "This free pass to pollute the air is another way our federal government subsidizes this cruel industry and helps it to thrive and expand."

"Air pollution from factory farms kills almost 13,000 people a year, yet the EPA continues to sit on keister as the meat industry emits more and more air pollution without consequences," said Hanna Connor, an attorney at the Center for Biological Diversity. "The agency's practice of ignoring these dangerous emissions for 16 years now makes it an accomplice in likely more than 200,000 deaths countless harms to the environment and wildlife. Enough is enough."

"Communities surrounding the mega-dairies in Oregon have suffered long enough from their air pollution," said Amy van Saun, senior attorney at the Center for Food Safety's Pacific Northwest o "No one wants to live near these stinking and hazardous operations, yet EPA continues to sacrific most marginalized people to the benefit of industry profit."

"We are simply asking the EPA to level the playing field and treat this industry the same way it trea every other industry," said Abel Russ, senior attorney at the Environmental Integrity Project. "We strongly support the agency's efforts to update the science, but that process is always ongoing — should never be used as an excuse to put critical environmental protections on hold. No other indu gets that kind of special treatment. It's unfair, and it has important consequences to overburdened communities across the country."

"The EPA has given factory farms a free pass to pollute since 2005, when it negotiated a backroo amnesty deal with the industry essentially exempting it from federal air pollution laws," said Emily Miller, staff attorney at Food & Water Watch. "Since then, factory farms have been freely spewing dangerous air contaminants into the environment, not only threatening the health of nearby communities, but also contributing to climate change. This needs to stop."

"For decades, the factory farm industry has insulated itself from the necessary enforcement critica just food system and healthy climate," said Brent Newell, senior attorney at the Public Justice Foo Project. "The Air Consent Agreement, now more than 16 years old, has given factory farms a free to pollute and reflects past administrations' failure to take urgent action and prioritize human healt over the profit-driven interests of Big Ag. We urge the EPA to grant this petition and to finally aban an agreement that not only undermines the law, but also entrenches the factory farm system in a that harms Black, Latino, Indigenous, Asian and white rural communities."

The Center for Biological Diversity is a national, nonprofit conservation organization with more than 1.7 m members and online activists dedicated to the protection of endangered species and wild places.

Andy Parker
Media Specialist, Environmental Health Program
Center for Biological Diversity
aparker@biologicaldiversity.org
503-310-5569

Message

From: Sullivan, Tim [Sullivan.Tim@epa.gov]
Sent: 10/27/2021 2:30:46 PM
To: Belser, Evan [Belser.Evan@epa.gov]; Caballero, Kathryn [Caballero.Kathryn@epa.gov]; Fried, Gregory [Fried.Gregory@epa.gov]
CC: Brahmbhatt, Roshni [brahmbhatt.Roshni@epa.gov]; Sullivan, Tim [Sullivan.Tim@epa.gov]
Subject: FW: CMS New Assignment - AX-22-000-0451
Attachments: AX-22-000-0451control slip.pdf; AX-22-000-0451 ltr.pdf

Ex. 5 AC/DP

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

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-----Original Message-----
From: Schrock, Bill <Schrock.Bill@epa.gov>
Sent: Wednesday, October 27, 2021 5:44 AM
To: Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: FW: CMS New Assignment - AX-22-000-0451

Tim-The petition was assigned to us for response. Ex. 5 Deliberative Process (DP) Also, it sounds like you're kinda busy right now so not sure you need anything else on your plate unfortunately. Ex. 5 Deliberative Process (DP)
Ex. 5 Deliberative Process (DP)
Ex. 5 Deliberative Process (DP) Thanks.

-----Original Message-----
From: Hunt, Virginia <Hunt.Virginia@epa.gov>
Sent: Wednesday, October 27, 2021 7:03 AM

To: Dunkins, Robin <Dunkins.Robin@epa.gov>; Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>; Ma, Cyrus <Ma.Cyrus@epa.gov>
Cc: Mills, Kathy <Mills.Kathy@epa.gov>; Gmyr, Joanna <Gmyr.Joanna@epa.gov>; Hall, Deshelia <Hall.DeShelia@epa.gov>
Subject: FW: CMS New Assignment - AX-22-000-0451

Control AX-21-000-0451 has been delegated to SPPD. The attached control slip and incoming letter regarding a petition to rescind the Air Consent Agreement and enforce clean air laws against animal feeding operations are attached for your review and assignment within your group. The final response must be uploaded into CMS by November 10. The

Ex. 5 Deliberative Process (DP)

For response examples, please visit the Comms Team archive:

Ex. 6 Personal Privacy (PP)

Thank you,

Virginia L. Hunt
Administrative Specialist
OAQPS SPPD RCG
109 T.W. Alexander Drive
RTP, NC 27711
Hours 6am -2:30pm EST M-F
ba
-----Original Message-----
From: cmsadmin@epa.gov <cmsadmin@epa.gov>
Sent: Tuesday, October 26, 2021 3:18 PM
To: eck.janet@epa.gov; South, Peter <South.Peter@epa.gov>; Hunt, Virginia <Hunt.Virginia@epa.gov>; Brown, Annette <Brown.Annette@epa.gov>; Joseph, Wanda <joseph.wanda@epa.gov>; Gates, Adrian <gates.adrian@epa.gov>; Gmyr, Joanna <Gmyr.Joanna@epa.gov>; Mills, Kathy <Mills.Kathy@epa.gov>; Crowley, Kate <crowley.kate@epa.gov>
Subject: CMS New Assignment - Blanche Scott - AX-22-000-0451

Control AX-22-000-0451 has been assigned to your office on 10/26/2021 3:17:55 PM by Blanche Scott. Please go to the CMS webpage to view the details of the control.

Summary Information -
Control Number: AX-22-000-0451
Control Subject: Reading File - Petition to Rescind the Air Consent Agreement and Enforce Clean Air Laws Against Animal Feeding Operations
From: Miller, Emily; Stella, Cristina; Connor, Hannah M.M.; Saun, Amy van; Russ, Abel; Heinzen, Tarah; Newell, Brent

Note: This Email was automatically generated. Please do not attempt to respond to it. You can access this control at

Ex. 6 Personal Privacy (PP)

Message

From: Sullivan, Tim [Sullivan.Tim@epa.gov]
Sent: 10/27/2021 3:24:38 PM
To: Greene, Mary [Greene.Mary.E@epa.gov]
CC: Hull, George [Hull.George@epa.gov]; Egan, Patrick [egan.patrick@epa.gov]; Belser, Evan [Belser.Evan@epa.gov]; Sullivan, Tim [Sullivan.Tim@epa.gov]
Subject: RE: DDL: 3 p.m. ET: today: E&E re Petition to rescind the Air Consent Agreement
Attachments: AFO-CAFO - Petition to Rescind.pdf

Hi, Mary.

EIP ***signed*** the petition.

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

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http://www.epa.gov/compliance/complaints/index.html

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From: Egan, Patrick <egan.patrick@epa.gov>
Sent: Wednesday, October 27, 2021 6:26 AM
To: Greene, Mary <Greene.Mary.E@epa.gov>; Belser, Evan <Belser.Evan@epa.gov>
Cc: Hull, George <Hull.George@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: RE: DDL: 3 p.m. ET: today: E&E re Petition to rescind the Air Consent Agreement

I did not see their name in the list of petitioners.

Pat

Patrick J. Egan, M.P.A.
Deputy Director of Communications
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW (MC: 2201A)
Washington, DC 20460
Office: 202-564-4059 | Cell: 202-440-3883

From: Greene, Mary <Greene.Mary.E@epa.gov>
Sent: Wednesday, October 27, 2021 8:14 AM
To: Belser, Evan <Belser.Evan@epa.gov>; Egan, Patrick <egan.patrick@epa.gov>
Cc: Hull, George <Hull.George@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: RE: DDL: 3 p.m. ET: today: E&E re Petition to rescind the Air Consent Agreement

Did the Environmental Integrity Project sign-on to this petition? Ex. 5 AC/DP
Ex. 5 AC/DP

Mary E. Greene
Director, Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
WJC Building South, Rm 1119B
Office: 202 564 0254
Cell: 202 430 2876

From: Belser, Evan <Belser.Evan@epa.gov>
Sent: Tuesday, October 26, 2021 2:01 PM
To: Egan, Patrick <egan.patrick@epa.gov>; Greene, Mary <Greene.Mary.E@epa.gov>
Cc: Hull, George <Hull.George@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: RE: DDL: 3 p.m. ET: today: E&E re Petition to rescind the Air Consent Agreement

Adding Tim who handled these for OCE many years ago. If memory serves, these concerned CAA, EPCRA, and CERCLA
Ex. 5 AC/DP

Tim, your thoughts?

Evan

From: Egan, Patrick <egan.patrick@epa.gov>
Sent: Tuesday, October 26, 2021 1:57 PM
To: Greene, Mary <Greene.Mary.E@epa.gov>; Belser, Evan <Belser.Evan@epa.gov>
Cc: Hull, George <Hull.George@epa.gov>
Subject: FW: DDL: 3 p.m. ET: today: E&E re Petition to rescind the Air Consent Agreement

Mary and Evan,

Earlier today 24 advocacy groups filed a legal petition requesting EPA to rescind the air consent agreement with animal feeding operations that was created during the GW Bush's administration. E & E News is requesting a comment. Ex. 5 AC/DP
Ex. 5 AC/DP

Thanks,

Pat

Patrick J. Egan, M.P.A.
Deputy Director of Communications
Office of Enforcement and Compliance Assurance

U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW (MC: 2201A)
Washington, DC 20460
Office: 202-564-4059 | Cell: 202-440-3883

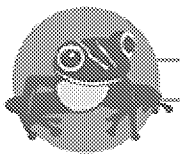
From: Jones, Enesta <Jones.Enesta@epa.gov>
Sent: Tuesday, October 26, 2021 1:41 PM
To: Hull, George <Hull.George@epa.gov>; Egan, Patrick <egan.patrick@epa.gov>
Subject: DDL: 3 p.m. ET: today: E&E re Petition to rescind the Air Consent Agreement

Hi George & Pat,
Any comment or input from OECA here?

> **From:** "Srinivasan, Gautam" <Srinivasan.Gautam@epa.gov>
> **Date:** October 26, 2021 at 1:36:00 PM EDT
> **To:** "Jones, Enesta" <Jones.Enesta@epa.gov>, "Millett, John" <Millett.John@epa.gov>, "DeLuca, Isabel" <DeLuca.Isabel@epa.gov>, "Bremer, Kristen" <Bremer.Kristen@epa.gov>, "Conrad, Daniel" <conrad.daniel@epa.gov>
> **Subject: RE: DDL: 3 p.m. ET: today: E&E re Petition to rescind the Air Consent Agreement**
>
> **Ex. 5 AC/DP**
>
> ++++++++++++++++++++++++++++
> he/him/his
> (202) 695-6287 (c)
>
> **From:** Jones, Enesta <Jones.Enesta@epa.gov>
> **Sent:** Tuesday, October 26, 2021 1:16 PM
> **To:** Millett, John <Millett.John@epa.gov>; DeLuca, Isabel <DeLuca.Isabel@epa.gov>; Bremer, Kristen <Bremer.Kristen@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Conrad, Daniel <conrad.daniel@epa.gov>
> **Subject:** DDL: 3 p.m. ET: today: E&E re Petition to rescind the Air Consent Agreement
>
> Please help! **DDL: 3 p.m. ET today.**
> **Ex. 5 AC/DP**
>
> > **From:** Sean Reilly <sreilly@eenews.net>
> > **Date:** October 26, 2021 at 1:03:53 PM EDT
> > **To:** EPA Press Office <press@epa.gov>
> > **Subject: Petition to rescind the Air Consent Agreement**
> >
> > Hi folks:
> >
> > Please see the news release below with the embedded petition and let me know if you have any comment on the petitioners' request to end the George W. Bush administration agreement referenced therein. My deadline is 3:00 today.

Thanks,
Sean

Sean Reilly
Reporter
E&E News/Politico
Ex. 6 Personal Privacy (PP) (Cell)
Skype: Sreilly_69
sreilly@eenews.net
Twitter: @SeanatGreenwire



CENTER *for* BIOLOGICAL DIVERSITY *Because life*

For Immediate Release, October 26, 2021

Contact: Peter Hart, Food & Water Watch, (732) 266-4932, phart@fwwatch.org
Amy van Saun, Center for Food Safety, (585) 747-0151, avansaun@centerforfoodsafety.org
Hannah Connor, Center for Biological Diversity, (202) 681-1676, hconnor@biologicaldiversity.org
Mike Andrade-Heymsfield, Animal Legal Defense Fund, (707) 364-8387, media@aldf.org

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"We are simply asking the EPA to level the playing field and treat this industry the same way it trea every other industry," said Abel Russ, senior attorney at the Environmental Integrity Project. "We

strongly support the agency's efforts to update the science, but that process is always ongoing — should never be used as an excuse to put critical environmental protections on hold. No other indu gets that kind of special treatment. It's unfair, and it has important consequences to overburdened communities across the country."

"The EPA has given factory farms a free pass to pollute since 2005, when it negotiated a backroor amnesty deal with the industry essentially exempting it from federal air pollution laws," said Emily Miller, staff attorney at Food & Water Watch. "Since then, factory farms have been freely spewing dangerous air contaminants into the environment, not only threatening the health of nearby communities, but also contributing to climate change. This needs to stop."

"For decades, the factory farm industry has insulated itself from the necessary enforcement critica just food system and healthy climate," said Brent Newell, senior attorney at the Public Justice Foo Project. "The Air Consent Agreement, now more than 16 years old, has given factory farms a free to pollute and reflects past administrations' failure to take urgent action and prioritize human healt over the profit-driven interests of Big Ag. We urge the EPA to grant this petition and to finally aban an agreement that not only undermines the law, but also entrenches the factory farm system in a that harms Black, Latino, Indigenous, Asian and white rural communities."

The Center for Biological Diversity is a national, nonprofit conservation organization with more than 1.7 m members and online activists dedicated to the protection of endangered species and wild places.

Arizona • California • Colorado • Florida • N. Carolina • New York • Oregon • Virginia • Washington, D.C. • La Paz, Me

BiologicalDiversity.org

Andy Parker
Media Specialist, Environmental Health Program
Center for Biological Diversity
aparker@biologicaldiversity.org
503-310-5569

Message

From: Greene, Mary [Greene.Mary.E@epa.gov]
Sent: 10/27/2021 3:33:24 PM
To: Sullivan, Tim [Sullivan.Tim@epa.gov]
CC: Hull, George [Hull.George@epa.gov]; Egan, Patrick [egan.patrick@epa.gov]; Belser, Evan [Belser.Evan@epa.gov]
Subject: RE: DDL: 3 p.m. ET: today: E&E re Petition to rescind the Air Consent Agreement

Ex. 5 AC/DP Thanks Tim.

Mary E. Greene
Director, Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
WJC Building South, Rm 1119B
Office: 202 564 0254
Cell: 202 430 2876

From: Sullivan, Tim <Sullivan.Tim@epa.gov>
Sent: Wednesday, October 27, 2021 11:25 AM
To: Greene, Mary <Greene.Mary.E@epa.gov>
Cc: Hull, George <Hull.George@epa.gov>; Egan, Patrick <egan.patrick@epa.gov>; Belser, Evan <Belser.Evan@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: RE: DDL: 3 p.m. ET: today: E&E re Petition to rescind the Air Consent Agreement

Hi, Mary.

EIP ***signed*** the petition.

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

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http://www.epa.gov/compliance/complaints/index.html

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From: Egan, Patrick <egan.patrick@epa.gov>
Sent: Wednesday, October 27, 2021 6:26 AM
To: Greene, Mary <Greene.Mary.E@epa.gov>; Belser, Evan <Belser.Evan@epa.gov>
Cc: Hull, George <Hull.George@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: RE: DDL: 3 p.m. ET: today: E&E re Petition to rescind the Air Consent Agreement

I did not see their name in the list of petitioners.

Pat

Patrick J. Egan, M.P.A.
Deputy Director of Communications
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW (MC: 2201A)
Washington, DC 20460
Office: 202-564-4059 | Cell: 202-440-3883

From: Greene, Mary <Greene.Mary.E@epa.gov>
Sent: Wednesday, October 27, 2021 8:14 AM
To: Belser, Evan <Belser.Evan@epa.gov>; Egan, Patrick <egan.patrick@epa.gov>
Cc: Hull, George <Hull.George@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: RE: DDL: 3 p.m. ET: today: E&E re Petition to rescind the Air Consent Agreement

Did the Environmental Integrity Project sign-on to this petition? Ex. 5 AC/DP
Ex. 5 AC/DP

Mary E. Greene
Director, Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
WJC Building South, Rm 1119B
Office: 202 564 0254
Cell: 202 430 2876

From: Belser, Evan <Belser.Evan@epa.gov>
Sent: Tuesday, October 26, 2021 2:01 PM
To: Egan, Patrick <egan.patrick@epa.gov>; Greene, Mary <Greene.Mary.E@epa.gov>
Cc: Hull, George <Hull.George@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: RE: DDL: 3 p.m. ET: today: E&E re Petition to rescind the Air Consent Agreement

Adding Tim who handled these for OCE many years ago. If memory serves, these concerned CAA, EPCRA, and CERCLA
Ex. 5 AC/DP

Tim, your thoughts?

Evan

From: Egan, Patrick <egan.patrick@epa.gov>
Sent: Tuesday, October 26, 2021 1:57 PM
To: Greene, Mary <Greene.Mary.E@epa.gov>; Belser, Evan <Belser.Evan@epa.gov>

Cc: Hull, George <Hull.George@epa.gov>
Subject: FW: DDL: 3 p.m. ET: today: E&E re Petition to rescind the Air Consent Agreement

Mary and Evan,

Earlier today 24 advocacy groups filed a legal petition requesting EPA to rescind the air consent agreement with animal feeding operations that was created during the GW Bush's administration. E & E News is requesting a comment. Ex. 5 AC/DP

Ex. 5 AC/DP

Thanks,

Pat

Patrick J. Egan, M.P.A.
Deputy Director of Communications
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW (MC: 2201A)
Washington, DC 20460
Office: 202-564-4059 | Cell: 202-440-3883

From: Jones, Enesta <Jones.Enesta@epa.gov>
Sent: Tuesday, October 26, 2021 1:41 PM
To: Hull, George <Hull.George@epa.gov>; Egan, Patrick <egan.patrick@epa.gov>
Subject: DDL: 3 p.m. ET: today: E&E re Petition to rescind the Air Consent Agreement

Hi George & Pat,
Any comment or input from OECA here?

> **From:** "Srinivasan, Gautam" <Srinivasan.Gautam@epa.gov>
> **Date:** October 26, 2021 at 1:36:00 PM EDT
> **To:** "Jones, Enesta" <Jones.Enesta@epa.gov>, "Millett, John" <Millett.John@epa.gov>, "DeLuca, Isabel" <DeLuca.Isabel@epa.gov>, "Bremer, Kristen" <Bremer.Kristen@epa.gov>, "Conrad, Daniel" <conrad.daniel@epa.gov>
> **Subject: RE: DDL: 3 p.m. ET: today: E&E re Petition to rescind the Air Consent Agreement**
>
> Ex. 5 AC/DP
>
> ++++++++++++++++++++++++++++
> he/him/his
> (202) 695-6287 (c)
>
> ---
>
> **From:** Jones, Enesta <Jones.Enesta@epa.gov>
> **Sent:** Tuesday, October 26, 2021 1:16 PM
> **To:** Millett, John <Millett.John@epa.gov>; DeLuca, Isabel <DeLuca.Isabel@epa.gov>; Bremer, Kristen <Bremer.Kristen@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Conrad, Daniel <conrad.daniel@epa.gov>
> **Subject:** DDL: 3 p.m. ET: today: E&E re Petition to rescind the Air Consent Agreement

Please help! **DDL: 3 p.m. ET today.**

Ex. 5 AC/DP

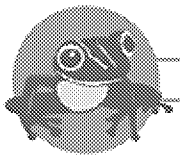
From: Sean Reilly <sreilly@eenews.net>
Date: October 26, 2021 at 1:03:53 PM EDT
To: EPA Press Office <press@epa.gov>
Subject: Petition to rescind the Air Consent Agreement

Hi folks:

Please see the news release below with the embedded petition and let me know if you have any comment on the petitioners' request to end the George W. Bush administration agreement referenced therein. My deadline is 3:00 today.

Thanks,
Sean

Sean Reilly
Reporter
E&E News/Politico
Ex. 6 Personal Privacy (PP) (Cell)
Skype: Sreilly_69
sreilly@eenews.net
Twitter: @SeanatGreenwire



CENTER *for* BIOLOGICAL DIVERSITY *Because life*

For Immediate Release, October 26, 2021

Contact: Peter Hart, Food & Water Watch, (732) 266-4932, phart@fwwatch.org
Amy van Saun, Center for Food Safety, (585) 747-0151, avansaun@centerforfoodsafety.org
Hannah Connor, Center for Biological Diversity, (202) 681-1676, hconnor@biologicaldiversity.org
Mike Andrade-Heymsfield, Animal Legal Defense Fund, (707) 364-8387, media@aldf.org

Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Petition Calls for End to Decades-Long Amnesty for Factory Farm Polluters

WASHINGTON— As President Biden continues to promise that his administration will address the climate crisis and protect the air we breathe from industrial polluters, 24 advocacy organizations a

demanding his Environmental Protection Agency live up to that promise by doing more to protect communities from factory farms.

The groups filed a legal petition with the EPA today urging it to enforce federal air pollution laws against these major polluters, something the agency has refused to do for nearly two decades.

Over 16 years ago, the George W. Bush administration announced an agreement and final order i secretly negotiated with the National Pork Producers Council. The EPA agreed to refrain from enforcing key air-pollution control and public-disclosure laws like the Clean Air Act against any ani feeding operation that signed up for the deal.

In exchange, participating feeding operations agreed to pay a small penalty to fund a nationwide a monitoring program that was supposed to help the EPA develop more accurate air emissions estimating methodologies. The methodologies were intended to allow the EPA and citizens to calc factory farms' pollution and begin enforcing clean air laws.

Nearly 14,000 animal feeding operations signed up for this deal, known as the Air Consent Agreer which, by its own terms, should have been completed in 2010. Yet, due in part to the fundamental flawed ways in which the EPA designed, ran and used the data collected from the air monitoring s the agency has yet to finalize any methodologies or end the consent agreement.

As a result of the EPA's protracted delay, thousands of the nation's largest animal feeding operati continue to enjoy protection from EPA enforcement actions, even if their air pollution emissions ex legal limits or reporting thresholds.

The feeding operations emit a number of deadly air pollutants like ammonia, hydrogen sulfide, particulate matter, volatile organic compounds and climate-altering methane. According to a recen study, the livestock industry's air pollution is responsible for more than 12,700 deaths per year — deaths than are attributed to coal-fired power plants.

In light of the serious and unregulated public health impacts of air pollution from the feeding opera the advocacy groups are demanding that the EPA put a stop to its "unacceptable dereliction of dut terminating the Air Consent Agreement and taking all actions consistent with Biden's executive ord to enforce applicable clean air laws against the feeding operations.

The petitioners include: Animal Legal Defense Fund, Buffalo River Watershed Alliance (Arkansas) Center for Biological Diversity, Center for Food Safety, Clean Water for North Carolina, Center on Race, Poverty & the Environment (California), Earthjustice, Environmental Integrity Project, Farm Friends of the Earth, Friends of Family Farmers (Oregon), Friends of Toppenish Creek (Washingto Food Animal Concerns Trust, Food & Water Watch, Government Accountability Project, Humane Society of the United States, Iowa Citizens for Community Improvement, Institute for Agriculture & Trade Policy, John Hopkins Center for a Livable Future, North Carolina Conservation Network, Pu Justice, Socially Responsible Agriculture Project, Southern Environmental Law Center, and Waterkeeper Alliance.

"AFO air pollution not only harms human health and our environment, it also exacerbates the suffe faced by the animals living at these facilities," said Stephen Wells, executive director of the Anima

Legal Defense Fund. "This free pass to pollute the air is another way our federal government subsidizes this cruel industry and helps it to thrive and expand."

"Air pollution from factory farms kills almost 13,000 people a year, yet the EPA continues to sit on keister as the meat industry emits more and more air pollution without consequences," said Hanna Connor, an attorney at the Center for Biological Diversity. "The agency's practice of ignoring these dangerous emissions for 16 years now makes it an accomplice in likely more than 200,000 deaths countless harms to the environment and wildlife. Enough is enough."

"Communities surrounding the mega-dairies in Oregon have suffered long enough from their air pollution," said Amy van Saun, senior attorney at the Center for Food Safety's Pacific Northwest o "No one wants to live near these stinking and hazardous operations, yet EPA continues to sacrific most marginalized people to the benefit of industry profit."

"We are simply asking the EPA to level the playing field and treat this industry the same way it trea every other industry," said Abel Russ, senior attorney at the Environmental Integrity Project. "We strongly support the agency's efforts to update the science, but that process is always ongoing — should never be used as an excuse to put critical environmental protections on hold. No other indu gets that kind of special treatment. It's unfair, and it has important consequences to overburdened communities across the country."

"The EPA has given factory farms a free pass to pollute since 2005, when it negotiated a backroor amnesty deal with the industry essentially exempting it from federal air pollution laws," said Emily Miller, staff attorney at Food & Water Watch. "Since then, factory farms have been freely spewing dangerous air contaminants into the environment, not only threatening the health of nearby communities, but also contributing to climate change. This needs to stop."

"For decades, the factory farm industry has insulated itself from the necessary enforcement critica just food system and healthy climate," said Brent Newell, senior attorney at the Public Justice Foo Project. "The Air Consent Agreement, now more than 16 years old, has given factory farms a free to pollute and reflects past administrations' failure to take urgent action and prioritize human healt over the profit-driven interests of Big Ag. We urge the EPA to grant this petition and to finally aban an agreement that not only undermines the law, but also entrenches the factory farm system in a that harms Black, Latino, Indigenous, Asian and white rural communities."

The Center for Biological Diversity is a national, nonprofit conservation organization with more than 1.7 m members and online activists dedicated to the protection of endangered species and wild places.

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BiologicalDiversity.org

Andy Parker
Media Specialist, Environmental Health Program
Center for Biological Diversity
aparker@biologicaldiversity.org
503-310-5569

Message

From: Greene, Mary [Greene.Mary.E@epa.gov]
Sent: 10/27/2021 3:45:19 PM
To: Belser, Evan [Belser.Evan@epa.gov]
Subject: RE: CMS New Assignment - AX-22-000-0451

Ex. 5 AC/DP

Mary E. Greene
Director, Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
WJC Building South, Rm 1119B
Office: 202 564 0254
Cell: 202 430 2876

From: Belser, Evan <Belser.Evan@epa.gov>
Sent: Wednesday, October 27, 2021 11:43 AM
To: Greene, Mary <Greene.Mary.E@epa.gov>; Caballero, Kathryn <Caballero.Kathryn@epa.gov>; Fried, Gregory <Fried.Gregory@epa.gov>; Brahmbhatt, Roshni <brahmbhatt.Roshni@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Denton, Loren <Denton.Loren@epa.gov>; Ortega, Kellie <Ortega.Kellie@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: RE: CMS New Assignment - AX-22-000-0451

I somehow forgot to include Tim on this.

From: Belser, Evan
Sent: Wednesday, October 27, 2021 10:44 AM
To: Greene, Mary <Greene.Mary.E@epa.gov>; Kathryn Caballero (Caballero.Kathryn@epa.gov) <Caballero.Kathryn@epa.gov>; Gregory Fried (Fried.Gregory@epa.gov) <Fried.Gregory@epa.gov>; Brahmbhatt, Roshni <brahmbhatt.Roshni@epa.gov>; Karin Koslow (Koslow.Karin@epa.gov) <Koslow.Karin@epa.gov>; Loren Denton (Denton.Loren@epa.gov) <Denton.Loren@epa.gov>; Kellie Ortega (Ortega.Kellie@epa.gov) <Ortega.Kellie@epa.gov>
Subject: FW: CMS New Assignment - AX-22-000-0451

Hello everyone,

Ex. 5 AC/DP

Evan

From: Sullivan, Tim <Sullivan.Tim@epa.gov>
Sent: Wednesday, October 27, 2021 10:31 AM
To: Belser, Evan <Belser.Evan@epa.gov>; Caballero, Kathryn <Caballero.Kathryn@epa.gov>; Fried, Gregory <Fried.Gregory@epa.gov>

Cc: Brahmbhatt, Roshni <brahmbhatt.Roshni@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: FW: CMS New Assignment - AX-22-000-0451

Ex. 5 AC/DP

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

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-----Original Message-----
From: Schrock, Bill <Schrock.Bill@epa.gov>
Sent: Wednesday, October 27, 2021 5:44 AM
To: Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: FW: CMS New Assignment - AX-22-000-0451

Tim-The petition was assigned to us for response. Ex. 5 Deliberative Process (DP) Also, it sounds like you're kinda busy right now so not sure you need anything else on your plate unfortunately. Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

-----Original Message-----
From: Hunt, Virginia <Hunt.Virginia@epa.gov>
Sent: Wednesday, October 27, 2021 7:03 AM
To: Dunkins, Robin <Dunkins.Robin@epa.gov>; Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>; Ma, Cyrus <Ma.Cyrus@epa.gov>
Cc: Mills, Kathy <Mills.Kathy@epa.gov>; Gmyr, Joanna <Gmyr.Joanna@epa.gov>; Hall, Deshelia <Hall.DeShelia@epa.gov>
Subject: FW: CMS New Assignment - AX-22-000-0451

Control AX-21-000-0451 has been delegated to SPPD. The attached control slip and incoming letter regarding a petition to rescind the Air Consent Agreement and enforce clean air laws against animal feeding operations are attached for

your review and assignment within your group. The final response must be uploaded into CMS by November 10. The

Ex. 5 Deliberative Process (DP)

For response examples, please visit the Comms Team archive:

Ex. 6 Personal Privacy (PP)

Thank you,

Virginia L. Hunt
Administrative Specialist
OAQPS SPPD RCG
109 T.W. Alexander Drive
RTP, NC 27711
Hours 6am -2:30pm EST M-F
ba
-----Original Message-----
From: cmsadmin@epa.gov <cmsadmin@epa.gov>
Sent: Tuesday, October 26, 2021 3:18 PM
To: eck.janet@epa.gov; South, Peter <South.Peter@epa.gov>; Hunt, Virginia <Hunt.Virginia@epa.gov>; Brown, Annette <Brown.Annette@epa.gov>; Joseph, Wanda <joseph.wanda@epa.gov>; Gates, Adrian <gates.adrian@epa.gov>; Gmyr, Joanna <Gmyr.Joanna@epa.gov>; Mills, Kathy <Mills.Kathy@epa.gov>; Crowley, Kate <crowley.kate@epa.gov>
Subject: CMS New Assignment - Blanche Scott - AX-22-000-0451

Control AX-22-000-0451 has been assigned to your office on 10/26/2021 3:17:55 PM by Blanche Scott. Please go to the CMS webpage to view the details of the control.

Summary Information -
Control Number: AX-22-000-0451
Control Subject: Reading File - Petition to Rescind the Air Consent Agreement and Enforce Clean Air Laws Against Animal Feeding Operations
From: Miller, Emily; Stella, Cristina; Connor, Hannah M.M.; Saun, Amy van; Russ, Abel; Heinzen, Tarah; Newell, Brent

Note: This Email was automatically generated. Please do not attempt to respond to it. You can access this control at

Ex. 6 Personal Privacy (PP)

Message

From: Sullivan, Tim [Sullivan.Tim@epa.gov]
Sent: 10/27/2021 3:40:28 PM
To: Belser, Evan [Belser.Evan@epa.gov]; Caballero, Kathryn [Caballero.Kathryn@epa.gov]; Fried, Gregory [Fried.Gregory@epa.gov]
CC: Brahmbhatt, Roshni [brahmbhatt.Roshni@epa.gov]; Sullivan, Tim [Sullivan.Tim@epa.gov]
Subject: RE: CMS New Assignment - AX-22-000-0451
Attachments: AX-22-000-0451control slip.pdf; AX-22-000-0451 ltr.pdf

Ex. 5 AC/DP

Thanks –

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

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From: Sullivan, Tim <Sullivan.Tim@epa.gov>
Sent: Wednesday, October 27, 2021 8:31 AM
To: Belser, Evan <Belser.Evan@epa.gov>; Caballero, Kathryn <Caballero.Kathryn@epa.gov>; Fried, Gregory <Fried.Gregory@epa.gov>
Cc: Brahmbhatt, Roshni <brahmbhatt.Roshni@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: FW: CMS New Assignment - AX-22-000-0451

Ex. 5 AC/DP

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

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-----Original Message-----
From: Schrock, Bill <Schrock.Bill@epa.gov>
Sent: Wednesday, October 27, 2021 5:44 AM
To: Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: FW: CMS New Assignment - AX-22-000-0451

Tim-The petition was assigned to us for response. Ex. 5 Deliberative Process (DP) Also, it sounds like you're kinda busy right now so not sure you need anything else on your plate unfortunately Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

-----Original Message-----
From: Hunt, Virginia <Hunt.Virginia@epa.gov>
Sent: Wednesday, October 27, 2021 7:03 AM
To: Dunkins, Robin <Dunkins.Robin@epa.gov>; Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>; Ma, Cyrus <Ma.Cyrus@epa.gov>
Cc: Mills, Kathy <Mills.Kathy@epa.gov>; Gmyr, Joanna <Gmyr.Joanna@epa.gov>; Hall, Deshelia <Hall.DeShelia@epa.gov>
Subject: FW: CMS New Assignment - AX-22-000-0451

Control AX-21-000-0451 has been delegated to SPPD. The attached control slip and incoming letter regarding a petition to rescind the Air Consent Agreement and enforce clean air laws against animal feeding operations are attached for your review and assignment within your group. The final response must be uploaded into CMS by November 10. The

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For response examples, please visit the Comms Team archive:
Ex. 6 Personal Privacy (PP)

Thank you,

Virginia L. Hunt
Administrative Specialist
OAQPS SPPD RCG
109 T.W. Alexander Drive
RTP, NC 27711
Hours 6am -2:30pm EST M-F
ba
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From: cmsadmin@epa.gov <cmsadmin@epa.gov>
Sent: Tuesday, October 26, 2021 3:18 PM
To: eck.janet@epa.gov; South, Peter <South.Peter@epa.gov>; Hunt, Virginia <Hunt.Virginia@epa.gov>; Brown, Annette <Brown.Annette@epa.gov>; Joseph, Wanda <joseph.wanda@epa.gov>; Gates, Adrian <gates.adrian@epa.gov>; Gmyr, Joanna <Gmyr.Joanna@epa.gov>; Mills, Kathy <Mills.Kathy@epa.gov>; Crowley, Kate <crowley.kate@epa.gov>
Subject: CMS New Assignment - Blanche Scott - AX-22-000-0451

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Summary Information -
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From: Miller, Emily; Stella, Cristina; Connor, Hannah M.M.; Saun, Amy van; Russ, Abel; Heinzen, Tarah; Newell, Brent

Note: This Email was automatically generated. Please do not attempt to respond to it. You can access this control at
Ex. 6 Personal Privacy (PP)

Message

From: Greene, Mary [Greene.Mary.E@epa.gov]
Sent: 10/27/2021 3:52:54 PM
To: Belser, Evan [Belser.Evan@epa.gov]; Caballero, Kathryn [Caballero.Kathryn@epa.gov]; Fried, Gregory [Fried.Gregory@epa.gov]; Brahmbhatt, Roshni [brahmbhatt.Roshni@epa.gov]; Koslow, Karin [Koslow.Karin@epa.gov]; Denton, Loren [Denton.Loren@epa.gov]; Ortega, Kellie [Ortega.Kellie@epa.gov]; Sullivan, Tim [Sullivan.Tim@epa.gov]
Subject: RE: CMS New Assignment - AX-22-000-0451

All – please remove me from this email chain. Thank you.

Mary E. Greene
Director, Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
WJC Building South, Rm 1119B
Office: 202 564 0254
Cell: 202 430 2876

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Subject: FW: CMS New Assignment - AX-22-000-0451

Hello everyone,

Ex. 5 AC/DP

Evan

From: Sullivan, Tim <Sullivan.Tim@epa.gov>
Sent: Wednesday, October 27, 2021 10:31 AM

To: Belser, Evan <Belser.Evan@epa.gov>; Caballero, Kathryn <Caballero.Kathryn@epa.gov>; Fried, Gregory <Fried.Gregory@epa.gov>
Cc: Brahmbhatt, Roshni <brahmbhatt.Roshni@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: FW: CMS New Assignment - AX-22-000-0451

Ex. 5 AC/DP

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

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Sent: Wednesday, October 27, 2021 5:44 AM
To: Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: FW: CMS New Assignment - AX-22-000-0451

Tim-The petition was assigned to us for response. Ex. 5 Deliberative Process (DP) Also, it sounds like you're kinda busy right now so not sure you need anything else on your plate unfortunately. Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

-----Original Message-----
From: Hunt, Virginia <Hunt.Virginia@epa.gov>
Sent: Wednesday, October 27, 2021 7:03 AM
To: Dunkins, Robin <Dunkins.Robin@epa.gov>; Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>; Ma, Cyrus <Ma.Cyrus@epa.gov>
Cc: Mills, Kathy <Mills.Kathy@epa.gov>; Gmyr, Joanna <Gmyr.Joanna@epa.gov>; Hall, Deshelia <Hall.DeShelia@epa.gov>
Subject: FW: CMS New Assignment - AX-22-000-0451

Control AX-21-000-0451 has been delegated to SPPD. The attached control slip and incoming letter regarding a petition to rescind the Air Consent Agreement and enforce clean air laws against animal feeding operations are attached for your review and assignment within your group. The final response must be uploaded into CMS by November 10. The

Ex. 5 Deliberative Process (DP)

For response examples, please visit the Comms Team archive:

Ex. 6 Personal Privacy (PP)

Thank you,

Virginia L. Hunt
Administrative Specialist
OAQPS SPPD RCG
109 T.W. Alexander Drive
RTP, NC 27711
Hours 6am -2:30pm EST M-F
ba
-----Original Message-----
From: cmsadmin@epa.gov <cmsadmin@epa.gov>
Sent: Tuesday, October 26, 2021 3:18 PM
To: eck.janet@epa.gov; South, Peter <South.Peter@epa.gov>; Hunt, Virginia <Hunt.Virginia@epa.gov>; Brown, Annette <Brown.Annette@epa.gov>; Joseph, Wanda <joseph.wanda@epa.gov>; Gates, Adrian <gates.adrian@epa.gov>; Gmyr, Joanna <Gmyr.Joanna@epa.gov>; Mills, Kathy <Mills.Kathy@epa.gov>; Crowley, Kate <crowley.kate@epa.gov>
Subject: CMS New Assignment - Blanche Scott - AX-22-000-0451

Control AX-22-000-0451 has been assigned to your office on 10/26/2021 3:17:55 PM by Blanche Scott. Please go to the CMS webpage to view the details of the control.

Summary Information -
Control Number: AX-22-000-0451
Control Subject: Reading File - Petition to Rescind the Air Consent Agreement and Enforce Clean Air Laws Against Animal Feeding Operations
From: Miller, Emily; Stella, Cristina; Connor, Hannah M.M.; Saun, Amy van; Russ, Abel; Heinzen, Tarah; Newell, Brent

Note: This Email was automatically generated. Please do not attempt to respond to it. You can access this control at

Ex. 6 Personal Privacy (PP)

Message

From: Greene, Mary [Greene.Mary.E@epa.gov]
Sent: 10/27/2021 3:53:31 PM
To: Belser, Evan [Belser.Evan@epa.gov]
Subject: RE: CMS New Assignment - AX-22-000-0451

Okay – that is helpful. Thank you. Ex. 5 AC/DP

Ex. 5 AC/DP

Mary E. Greene
Director, Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
WJC Building South, Rm 1119B
Office: 202 564 0254
Cell: 202 430 2876

From: Belser, Evan <Belser.Evan@epa.gov>
Sent: Wednesday, October 27, 2021 11:50 AM
To: Greene, Mary <Greene.Mary.E@epa.gov>
Subject: RE: CMS New Assignment - AX-22-000-0451

Ex. 5 AC/DP

From: Greene, Mary <Greene.Mary.E@epa.gov>
Sent: Wednesday, October 27, 2021 11:45 AM
To: Belser, Evan <Belser.Evan@epa.gov>
Subject: RE: CMS New Assignment - AX-22-000-0451

Ex. 5 AC/DP

Mary E. Greene
Director, Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
WJC Building South, Rm 1119B
Office: 202 564 0254
Cell: 202 430 2876

From: Belser, Evan <Belser.Evan@epa.gov>
Sent: Wednesday, October 27, 2021 11:43 AM
To: Greene, Mary <Greene.Mary.E@epa.gov>; Caballero, Kathryn <Caballero.Kathryn@epa.gov>; Fried, Gregory <Fried.Gregory@epa.gov>; Brahmbhatt, Roshni <brahmbhatt.Roshni@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Denton, Loren <Denton.Loren@epa.gov>; Ortega, Kellie <Ortega.Kellie@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: RE: CMS New Assignment - AX-22-000-0451

I somehow forgot to include Tim on this.

From: Belser, Evan
Sent: Wednesday, October 27, 2021 10:44 AM
To: Greene, Mary <Greene.Mary.E@epa.gov>; Kathryn Caballero (Caballero.Kathryn@epa.gov) <Caballero.Kathryn@epa.gov>; Gregory Fried (Fried.Gregory@epa.gov) <Fried.Gregory@epa.gov>; Brahmbhatt, Roshni <brahmbhatt.Roshni@epa.gov>; Karin Koslow (Koslow.Karin@epa.gov) <Koslow.Karin@epa.gov>; Loren Denton (Denton.Loren@epa.gov) <Denton.Loren@epa.gov>; Kellie Ortega (Ortega.Kellie@epa.gov) <Ortega.Kellie@epa.gov>
Subject: FW: CMS New Assignment - AX-22-000-0451

Hello everyone,

Ex. 5 AC/DP

Evan

From: Sullivan, Tim <Sullivan.Tim@epa.gov>
Sent: Wednesday, October 27, 2021 10:31 AM
To: Belser, Evan <Belser.Evan@epa.gov>; Caballero, Kathryn <Caballero.Kathryn@epa.gov>; Fried, Gregory <Fried.Gregory@epa.gov>
Cc: Brahmbhatt, Roshni <brahmbhatt.Roshni@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: FW: CMS New Assignment - AX-22-000-0451

Ex. 5 AC/DP

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

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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.

-----Original Message-----
From: Schrock, Bill <Schrock.Bill@epa.gov>
Sent: Wednesday, October 27, 2021 5:44 AM
To: Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: FW: CMS New Assignment - AX-22-000-0451

Tim-The petition was assigned to us for response. Ex. 5 Deliberative Process (DP) Also, it sounds like you're kinda busy right now so not sure you need anything else on your plate unfortunately. Ex. 5 Deliberative Process (DP)

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Cc: Mills, Kathy <Mills.Kathy@epa.gov>; Gmyr, Joanna <Gmyr.Joanna@epa.gov>; Hall, Deshelia <Hall.DeShelia@epa.gov>
Subject: FW: CMS New Assignment - AX-22-000-0451

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Ex. 6 Personal Privacy (PP)

Thank you,

Virginia L. Hunt
Administrative Specialist
OAQPS SPPD RCG
109 T.W. Alexander Drive
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Hours 6am -2:30pm EST M-F
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Sent: Tuesday, October 26, 2021 3:18 PM

To: eck.janet@epa.gov; South, Peter <South.Peter@epa.gov>; Hunt, Virginia <Hunt.Virginia@epa.gov>; Brown, Annette <Brown.Annette@epa.gov>; Joseph, Wanda <joseph.wanda@epa.gov>; Gates, Adrian <gates.adrian@epa.gov>; Gmyr, Joanna <Gmyr.Joanna@epa.gov>; Mills, Kathy <Mills.Kathy@epa.gov>; Crowley, Kate <crowley.kate@epa.gov>
Subject: CMS New Assignment - Blanche Scott - AX-22-000-0451

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Summary Information -
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Control Subject: Reading File - Petition to Rescind the Air Consent Agreement and Enforce Clean Air Laws Against Animal Feeding Operations
From: Miller, Emily; Stella, Cristina; Connor, Hannah M.M.; Saun, Amy van; Russ, Abel; Heinzen, Tarah; Newell, Brent

Note: This Email was automatically generated. Please do not attempt to respond to it. You can access this control at

Ex. 6 Personal Privacy (PP)

Message

From: cmsadmin@epa.gov [cmsadmin@epa.gov]
Sent: 10/27/2021 4:57:52 PM
To: Koslow, Karin [Koslow.Karin@epa.gov]; Pollins, Mark [Pollins.Mark@epa.gov]; Kabler, Lauren [Kabler.Lauren@epa.gov]; McCray, Deborah [Mccray.Deborah@epa.gov]; Bunnell, Julia [Bunnell.Julia@epa.gov]; Theis, Joseph [Theis.Joseph@epa.gov]; Fried, Gregory [Fried.Gregory@epa.gov]; Belser, Evan [Belser.Evan@epa.gov]; Miles, James [miles.james@epa.gov]; Porter, Amy [Porter.Amy@epa.gov]; Rakowski, Michele [rakowski.michele@epa.gov]
Subject: CMS New Assignment - Jaime Julian - AX-22-000-0451

Control AX-22-000-0451 has been assigned to your office on 10/27/2021 12:57:52 PM by Jaime Julian.
Please go to the CMS webpage to view the details of the control.

Summary Information -
Control Number: AX-22-000-0451
Control Subject: Reading File - Petition to Rescind the Air Consent Agreement and Enforce Clean Air Laws Against Animal Feeding Operations
From: Miller, Emily; Stella, Cristina; Connor, Hannah M.M.; Saun, Amy van; Russ, Abel; Heinzen, Tarah; Newell, Brent

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Ex. 6 Personal Privacy (PP)

Tue Oct 26 12:33:07 EDT 2021
Ex. 6 Personal Privacy (PP) @epa.gov>
FW: Petition to End Animal Feeding Operation Air Consent Agreement
To: Ex. 6 Personal Privacy (PP) @epa.gov>

Reading file

From: Emily A. Miller <eamiller@fwwatch.org>
Sent: Tuesday, October 26, 2021 11:03 AM
To: Regan, Michael <Regan.Michael@epa.gov>
Cc: Tarah Heinzen <theinzen@fwwatch.org>; Brent Newell <bnewell@publicjustice.net>; Hannah Connor <HConnor@biologicaldiversity.org>; abel russ <aruss@environmentalintegrity.org>; Cristina Stella <cstella@aldf.org>; Larissa Liebmann <lliebmann@aldf.org>; Amy van Saun <AvanSaun@CenterforFoodSafety.org>; Kristina Sinclair <kSinclair@CenterforFoodSafety.org>
Subject: Petition to End Animal Feeding Operation Air Consent Agreement

Administrator Regan:

Attached, and at the following link, please find a petition from 24 organizations to rescind the Air Consent Agreement and enforce clean air laws against animal feeding operations: https://www.foodandwaterwatch.org/wp-content/uploads/2021/10/2021.10.26-Petition-re-2005-Air-Consent-Agreement-1.pdf.

Thank you for your consideration.

Sincerely

Emily Miller

Staff Attorney

Food & Water Watch

1616 P St. NW, Suite 300

Washington, DC 20036

eamiller@fwwatch.org

(202) 683-2500

BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

ANIMAL LEGAL DEFENSE FUND, BUFFALO RIVER WATERSHED ALLIANCE (ARKANSAS), CENTER FOR BIOLOGICAL DIVERSITY, CENTER FOR FOOD SAFETY, CENTER ON RACE, POVERTY, & THE ENVIRONMENT (CALIFORNIA), CLEAN WATER FOR NORTH CAROLINA (NORTH CAROLINA), EARTHJUSTICE, ENVIRONMENTAL INTEGRITY PROJECT, FARM AID, FRIENDS OF THE EARTH, FRIENDS OF FAMILY FARMERS (OREGON), FRIENDS OF TOPPENISH CREEK (WASHINGTON), FOOD ANIMAL CONCERNS TRUST, FOOD & WATER WATCH, GOVERNMENT ACCOUNTABILITY PROJECT, HUMANE SOCIETY OF THE UNITED STATES, IOWA CITIZENS FOR COMMUNITY IMPROVEMENT (IOWA), INSTITUTE FOR AGRICULTURE & TRADE POLICY, JOHNS HOPKINS CENTER FOR A LIVABLE FUTURE, NORTH CAROLINA CONSERVATION NETWORK (NORTH CAROLINA), PUBLIC JUSTICE, SOCIALLY RESPONSIBLE AGRICULTURE PROJECT, SOUTHERN ENVIRONMENTAL LAW CENTER, AND WATERKEEPER ALLIANCE

Petitioners,

v.

MICHAEL REGAN, ADMINISTRATOR,
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Respondent.

PETITION TO RESCIND THE AIR CONSENT AGREEMENT
AND ENFORCE CLEAN AIR LAWS AGAINST ANIMAL FEEDING OPERATIONS

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I. INTRODUCTION

Rural communities deserve a safe, prosperous, and plentiful food system rooted in dignity and respect. In this system, Black, Indigenous, Latino, Asian, and white communities enjoy clean land, air, and water where independent family farms and renewable energy build diversified, local, and thriving rural economies. Sadly, past administrations have prioritized the interests of corporate-controlled industrial agriculture over the well-being of rural communities. Corporate integrators, trade groups, and other powerful titans of industry, have flourished while communities and farmers have suffered through years of pollution, hollowed out Main Streets, and declining economic opportunities. This has led to what any neutral observer would decry as undemocratic oppression and exploitation. Our government has the duty and authority to protect the health and well-being of our communities by enforcing federal air pollution laws, which do not exempt this industrial system.

Over sixteen years ago, the Environmental Protection Agency (EPA), under the President George W. Bush administration, announced an Agreement and Final Order it had secretly negotiated with the National Pork Producers Council. In the agreement, EPA refrained from enforcing key air pollution control and public disclosure laws against any animal feeding operation (AFO) that agreed to pay a nominal penalty to fund a nationwide air monitoring program to establish Emission Estimating Methodologies (EEMs) for AFOs.[1] Nearly *14,000* AFOs signed up for this sweetheart deal, known as the Air Consent Agreement. By its own terms, this deal should have been completed over a decade ago, in 2010.[2] Yet, as of the date of this letter, EPA has yet to finalize *any* EEMs or end the Air Consent Agreement. As a result of EPA's protracted delay, thousands of the nation's largest AFOs continue to enjoy protection from EPA enforcement actions, even if their emissions exceed permit limits or reporting thresholds. EPA's implementation of the Air Consent Agreement over the past three presidential administrations demonstrates a complete, bipartisan abdication of EPA's enforcement authority.

---

[1] Notice of Animal Feeding Operation Consent Agreement & Final Order, 70 Fed. Reg. 4957 (Jan. 31, 2005) [hereinafter 2005 Notice]; *see also id.* at 4962 Appendix 1: Air Consent Agreement [hereinafter 2005 Air Consent Agreement].

[2] EPA OIG, IMPROVING AIR QUALITY: ELEVEN YEARS AFTER AGREEMENT EPA HAS NOT DEVELOPED RELIABLE EMISSIONS ESTIMATION METHODS TO DETERMINE WHETHER ANIMAL FEEDING OPERATIONS COMPLY WITH CLEAN AIR ACT AND OTHER STATUTES, Report No. 17-P-0396, at 5 (Sept. 19, 2017) [hereinafter 2017 OIG REPORT], available at https://www.epa.gov/sites/default/files/2017-09/documents/_epaoig_20170919-17-p-0396.pdf.

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Pursuant to the right to petition the government provided in the First Amendment to the U.S. Constitution[3] and the Administrative Procedure Act,[4] Petitioners formally submit this petition to EPA to put an end to the enforcement amnesty. The Petitioners collectively represent millions of citizens from across the United States, including many individuals adversely impacted by CAFO air pollution in their communities.

We request your written response regarding this unacceptable dereliction of duty within **30 days** of receiving this Petition. We ask that you rescind the Air Consent Agreement, take all actions consistent with President Biden's executive orders to enforce all applicable laws against AFOs, and prioritize environmental justice in enforcement and climate actions. If you instead wish to continue the policies of the past three administrations, please set forth the reasons for refusing to grant this petition.

II. AIR POLLUTION FROM AFOs HAS SERIOUS HEALTH IMPACTS ON SURROUNDING COMMUNITIES.

Air pollution is the largest environmental mortality risk factor in the United States, and agriculture—particularly industrial animal production—is a major contributor to reduced air quality.[5] According to a recent study published in the Proceedings of the National Academy of Sciences of the United States (PNAS), air pollution from U.S. agriculture includes direct emissions of fine particulate matter ($PM_{2.5}$) and $PM_{2.5}$ precursors such as ammonia (NH_3), nitrogen oxides (NO_x), sulfur dioxide (SO_2), and volatile organic compounds (VOCs).[6] This pollution causes 17,900 U.S. deaths per year, with 15,900 deaths from food production and 2,000 deaths linked to nonfood products.[7] Of the 15,900 deaths from food production, 80 percent, or 12,700 deaths, are attributable to industrial animal production, with the remaining 20 percent

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[3] U.S. CONST. amend. I.
[4] 5 U.S.C. 553(e).
[5] J. Stanaway et al., *Global, Regional, & National Comparative Risk Assessment of 84 Behavioural, Environmental, & Occupational, And Metabolic Risks or Clusters of Risks For 195 Countries & Territories, 1990-2017*, 392 LANCET 1923 (2018), https://www.thelancet.com/action/showPdf?pii=S0140-6736%2818%2932225-6; J. Lelieveld et al., *The Contribution Of Outdoor Air Pollution Sources To Premature Mortality On A Global Scale*, 525 NATURE 367 (2015); S. Bauer et al., *Significant Atmospheric Aerosol Pollution Caused By World Food Cultivation*, 43 GEOPHYS. RES. LETT. 5394 (2016), https://agupubs.onlinelibrary.wiley.com/doi/epdf/10.1002/2016GL068354.
[6] N. Domingo et al., *Air Quality-Related Health Damages of Food*, 118 PNAS e2013637118, 1 (2021), https://www.pnas.org/content/pnas/118/20/e2013637118.full.pdf.
[7] *Id.*

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attributable to plant-based foods.[8] The majority of deaths—12,400 deaths each year—are attributable to ammonia acting as a $PM_{2.5}$ precursor.[9] The study noted that on-farm emission reduction interventions, such as improved livestock waste management and fertilizer application practices, combined with dietary shifts toward more plant-based foods, could dramatically reduce the number of mortalities caused by this industry.[10]

Another recent study found that poultry AFOs in Pennsylvania were a major risk factor for pneumonia.[11] The authors observed that "[e]xposure to air pollutants such as particulate matter . . . reduc[es] the lung's defenses against bacterial pathogens, thereby increasing susceptibility to respiratory infections."[12] In addition, the authors also noted that

> As a source of air pollution, industrial food animal production can compromise respiratory health. These large, homogeneous, densely packed livestock operations emit particulate matter, endotoxins, and other pollutants, which spread downwind through ventilation fans and emissions from decomposing manure. Adverse effects on lung function and increased respiratory symptoms have been reported among individuals living near [industrial food animal production], particularly among susceptible groups.

The study found a 66 percent increase in the odds of being diagnosed with community-acquired pneumonia among people living closest to high-density poultry operations, demonstrating that "residing closer to more and larger poultry operations was associated with [community-acquired pneumonia], a cause of significant morbidity and mortality."[13]

EPA is culpable for many of these deaths and illnesses. For nearly two decades, EPA's sustained approach of ignoring pollution generated by the AFO industry under the guise of the Air Consent Agreement has resulted in the emission of significant amounts of unchecked air pollution, including ozone, $PM_{2.5}$, nitrogen oxides, sulfur dioxide, and VOCs–pollutants that EPA is required to regulate under the Clean Air Act (CAA). To make matters worse, during this

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[8] *Id.* at 2.
[9] *Id.* at 1.
[10] *Id.*
[11] M. Poulsen et al., *High-Density Poultry Operations & Community-Acquired Pneumonia in Pennsylvania*, 2 ENV'T. EPIDEMIOLOGY e013 (June 2018), https://journals.lww.com/environepidem/Fulltext/2018/06000/High_density_poultry_operations_and.5.aspx.
[12] *Id.* at 1.
[13] *Id.* at 6.

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same period EPA moved to exempt the industry from having to comply with two critical pollution reporting statutes: the Emergency Planning and Community Right to Know Act (EPCRA), and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA),[14] resulting in reduced public access to the information that affected communities need to protect themselves, and likely in turn contributing to greater mortality in communities surrounding these operations.

In 2013, scientists at John Hopkins University analyzed the practical public health impacts of EPA's efforts to limit public access to information about pollution from AFOs.[15] As the authors summarized:

> Despite literature associating AFOs with compromised air quality and residential proximity to AFOs with adverse health outcomes, availability of information concerning AFO airborne hazardous releases ranged from limited to nonexistent across the states that we examined . . . . These data gaps compromise the ability of public health officials and scientists to characterize exposures and risks, and limit their ability to implement and evaluate interventions when appropriate. The lack of data also means that information on AFO hazardous releases is not available to residents of affected communities.[16]

EPA's failure to address harmful emissions, compounded by its efforts to keep citizens in the dark about AFO pollution, has contributed to serious public health impacts.

---

[14] CERCLA/EPCRA Administrative Reporting Exemption for Air Releases of Hazardous Substances from Animal Waste at Farms, 73 Fed. Reg. 76,948 (Dec. 18, 2008) (exempting airborne hazardous releases from animal waste at farms (including AFOs) from CERCLA and EPCRA reporting requirements); *Waterkeeper Alliance v. EPA*, 853 F.3d 527, 537–38 (D.C. Cir. 2017) (vacating EPA's 2008 rule and rejecting EPA's argument that the reporting requirements serve no regulatory purpose); Vacatur Response—CERCLA/EPCRA Administrative Reporting Exemption for Air Releases of Hazardous Substances From Animal Waste at Farms; FARM Act Amendments to CERCLA Release Notification Requirements, 83 Fed. Reg. 37444 (Aug. 1, 2018) (incorporating revisions enacted by the FARM Act, which exempts farms from CERCLA release reporting requirements, despite the D.C. Circuit's vacatur of the 2008 final rule in *Waterkeeper Alliance v. EPA*); Amendment to Emergency Release Notification Regulations on Reporting Exemption for Air Emissions from Animal Waste at Farms; Emergency Planning and Community Right to Know Act 84 Fed. Reg. 27,533 (June 13, 2019) (adding the reporting exemption for air emissions from animal waste at farms provided in section 103(e) of CERCLA); *see also* EPA, *CERCLA & EPCRA Reporting Requirements for Air Releases of Hazardous Substances from Animal Waste at Farms*, EPA (last visited Oct. 21, 2021), https://www.epa.gov/epcra/cercla-and-epcra-reporting-requirements-air-releases-hazardous-substances-animal-waste-farms.

[15] T. Smith et al., *Availability of Information about Airborne Hazardous Releases from AFOs*, 8 PLOS ONE e85342 (2013), https://doi.org/10.1371/journal.pone.0085342.

[16] *Id.* at 7.

ED_013141A_00000170-00007

III. THE AIR CONSENT AGREEMENT SHIELDS AFOs FROM EPA ENFORCEMENT ACTIONS.

A. Rather than Enforce the Law, EPA Worked with Industry to Craft the Air Consent Agreement.

In the early 2000s, after years of dereliction by AFO operators of their obligation to seek CAA permits and report emissions under CERCLA and EPCRA, EPA took a series of legal actions designed to bring delinquent AFOs into the CAA permitting program.[17] Those legal actions constitute the last time EPA meaningfully enforced the CAA against AFO polluters.

Instead of continuing to use litigation or other comparable methods to move AFOs into compliance with their obligations under the CAA, EPA spent three years crafting a backroom deal with representatives of the pork industry, egg producers, and other AFO industry groups for a "safe harbor" against enforcement in the form of a release and covenant not to sue for potential violations of the CAA, CERCLA, and EPCRA. As outlined in a memorandum sent to EPA officials in June 2002, industry representatives offered to fund a nationwide air emissions monitoring study to collect emissions data from AFOs in exchange for enforcement protection.[18] The industry's June 2002 safe harbor proposal formed almost verbatim the Air Consent Agreement that EPA published for voluntary enrollment in early 2005.[19]

Under the Agreement secretly negotiated with industry representatives, EPA promised not to sue AFOs for violating CAA permitting requirements or CERCLA/EPCRA reporting requirements in exchange for AFOs paying a nominal civil penalty to fund the nationwide air emissions monitoring study.

---

[17] *See, e.g.*, Press Release, Dep't of Justice, Ohio's Largest Egg Producer Agrees to Dramatic Air Pollution Reductions from Three Giant Facilities (Feb. 23, 2004), https://www.justice.gov/archive/opa/pr/2004/February/04_enrd_105.htm; 2017 OIG REPORT at 17 ("[M]onitoring conducted as part of an EPA enforcement case in 2003 demonstrated . . . total PM emissions of 550 and 700 tons per year at two large egg-layer AFOs," significantly "exceed[ing] the 250-tons-per-year permitting threshold for PM emissions."); *see also* Press Release, Dep't of Justice, Government Reaches Settlements with Seaboard Foods and PIC USA (Sept. 15, 2006), https://www.justice.gov/archive/opa/pr/2006/September/06_crm_625.html; Press Release, Dep't of Justice, Nation's Second Largest Hog Producer Reaches Settlement With U.S. & Citizen's Group (Nov. 1, 2001), https://www.justice.gov/archive/opa/pr/2001/November/01_enrd_604.htm.

[18] 2002 Industry Safe Harbor Proposal.

[19] *See id.*; 2005 Notice at 4958.

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B. The Air Consent Agreement Provided a Safe Harbor from Enforcement of Federal Law Pending the Finalization of EEMs.

The Air Consent Agreement outlines two main sections: (1) the Consent Agreement, and (2) the Monitoring Fund. The Consent Agreement includes the main terms of the Agreement between participating AFOs and the government, including a safe harbor under which the government releases and covenants not to sue participating AFOs for civil violations of the CAA; section 103 of CERCLA; and section 304 of EPCRA.[20] In exchange for this enforcement forbearance from EPA, participating AFOs agreed to pay a nominal penalty, as well as a payment of $2,500 per facility, into a fund known as the Monitoring Fund, which was then to be used to finance the two-year National Air Emissions Monitoring Study (NAEMS).[21]

The Agreement's safe harbor provision covers two substantive Clean Air Act permitting programs, the Title V operating permit program, and applicable State Implementation Plan (SIP) requirements for VOC, ammonia, hydrogen sulfide, and particulate matter. First, it includes the requirements applicable to new and expanding major stationary sources under Parts C and D of Title I, Prevention of Significant Deterioration (PSD) and New Source Review (NSR).[22] Second, it includes operating permits required under Title V for major stationary sources.[23] Third, it includes any SIP requirements that regulate the rate, quantity, or concentration of the covered air pollutants.[24]

In all three permitting programs, the severity of the air pollution in a given air basin determines whether a stationary source exceeds a certain tons per year threshold and thus must obtain a permit under PSD, NSR, and Title V as a major stationary source. This threshold ranges from 10 tons per year in an extreme ozone nonattainment area to 250 tons per year in an area that attains the applicable National Ambient Air Quality Standard.

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[20] 2005 Air Consent Agreement at ¶¶ 7–23.
[21] *Id.* at ¶ 53.
[22] *Id.* at ¶ 26; 42 U.S.C. §§ 7470-7515.
[23] 2005 Air Consent Agreement at ¶ 26; 42 U.S.C. §§ 7661–7661f.
[24] 2005 Air Consent Agreement at ¶ 26.

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The Agreement's safe harbor provision covers two reporting requirements: section 103 of CERCLA,[25] and section 304 of EPCRA. EPCRA contains a general requirement that facilities that "release" more than a threshold quantity of an "extremely hazardous substance" must report that release to local emergency response agencies, and that those reports must be made available to the public.[26] Immediate release reporting under EPCRA provides local and state emergency responders with information critical to appropriately assessing and safely responding to citizen complaints of suspicious or noxious odors. EPA lists ammonia and hydrogen sulfide as "extremely hazardous substances" under EPCRA and lists a reportable quantity of 100 pounds per day. The Air Consent Agreement's safe harbor provision continues to exempt participating AFOs from EPA enforcement for failing to report these releases.

According to EPA, its reason for exchanging a safe harbor from enforcement of the CAA, CERCLA, and EPCRA for a two-year monitoring study was to timely "collect data and aggregate it with appropriate existing emissions data; analyze the monitoring results; and create tools (*e.g.,* tables and/or emission models) that AFOs could use to determine whether they emit pollutants at levels that require them to apply for permits under the CAA or submit notifications under CERCLA or EPCRA."[27] And further, because the monitoring study would be "designed to generate scientifically credible data to provide for the characterization of emissions from all major types of AFOs in all geographic areas where they are located," it would ultimately be used "to produce a scientifically sound basis for measuring and estimating air emissions from AFOs" through EEMs.[28] Thus, EPA provided that the reason for the Agreement was to ensure "the achievement of real environmental benefits to protect public health and the environment while supporting a sustainable agricultural sector."[29]

To that end, once the final EEMs are published the participating AFOs would have a defined amount of time to apply the EEMs to their operations and determine whether any CAA, CERCLA, or EPCRA statutory obligations apply, and, if so, bring their operations into

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[25] Subsequently, the Fair Agricultural Reporting Method (FARM) Act expressly exempted reporting of air emissions from animal waste at a farm from CERCLA section 103. *See* Pub. L. 115-141 § 1101-03 (codified at 42 U.S.C. § 9603(e) (2018)).
[26] 42 U.S.C. § 11004(a).
[27] 2005 Notice at 4960.
[28] *Id.*
[29] *Id.* at 4961.

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compliance with those requirements.[30] Once a participating AFO complies with each of those requirements, "the statute of limitations for all claims covered by the release and covenant not to sue . . . will be tolled from the date this Agreement is approved by the [Environmental Appeals Board] until . . . 120 days after Respondent files the required certification . . . or December 31, 2011," whichever is earlier.[31] In the alternative, if EPA determines that it cannot develop EEMs, then it should notify participants that the Air Consent Agreement, including its enforcement amnesty, will come to a close.[32] As the amnesty tolling provision suggests, EPA anticipated that the terms of the Air Consent Agreement would be met and the Agreement fulfilled before 2012 at the latest.[33]

The Air Consent Agreement embodies a highly unusual enforcement philosophy inconsistent with the Clean Air Act's enforcement scheme. EPA alleged violations prior to any investigation, assessed civil penalties without considering civil penalty factors, and invited participants to enter into the Agreement after it had already been negotiated for years with the industry. By its own terms, the Agreement deferred enforcement until the Agency developed EEMs, which EPA expected to complete within 18 months of completing NAEMS.

C. The Environmental Appeals Board and the D.C. Circuit Court of Appeals Allowed EPA to Implement the Air Consent Agreement.

To enter the Air Consent Agreement, an AFO owner or operator needed only to inform EPA of its election to participate and provide EPA with certain information regarding the size and number of AFOs that they designated for inclusion. In total, nearly 2,600 participants, representing 13,900 AFO facilities in 42 states, entered into the Air Consent Agreement.[34] "According to the EPA, these 13,900 AFOs comprise more than 90 percent of the largest AFOs in the United States," and included participants from across the broiler chicken, egg layer, hog, and dairy industries.[35]

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[30] 2005 Air Consent Agreement at ¶ 28.
[31] *Id.* ¶ 31.
[32] *Id.* ¶ 38.
[33] *Id.*; *see also* 2017 OIG REPORT at 5 (providing that "[b]ased on . . . original expectations, . . . AFOs would have obtained any necessary permits and installed emission controls by 2010").
[34] 2017 OIG REPORT at 6.
[35] *Id.*

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In 2006, EPA's Environmental Appeals Board (EAB) approved individual Consent Agreements in batches. In addition to ratifying the Agreements, EAB affirmed EPA's authority to enter into the Agreement as an administrative enforcement action.[36] The relevant penalties and monitoring funds were collected from individual participants as well as from the National Pork Board, which provided at least $6,000,000 towards payment of these fees on behalf of hog producers rather than the producers paying those fees themselves.[37] The NAEMS process then began in earnest in 2007—the year NAEMS monitoring should have been completed according to the original timeline. It continued for three years, rather than two, and "completed in early 2010, about 2 years later than originally expected."[38]

Several environmental and community groups challenged the Air Consent Agreement as a rulemaking that violated the CAA, CERCLA, EPCRA, and public notice and comment requirements. The D.C. Circuit Court of Appeals denied the groups' consolidated petitions for review, holding that the Agreement is an enforcement action not subject to judicial review.[39]

In its briefing before the D.C. Circuit, EPA took the legal position that the safe harbor was a "limited covenant not to sue" that would last approximately three and a half years until 2010.[40] The court took EPA at its word, concluding that the Agreement "merely defers enforcement" and a "limited deferral subject to enforcement conditions works no change in the agency's substantive interpretation or implementation of the Acts."[41] The court also rejected the

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[36] *See, e.g.*, *In re Consent Agreements & Proposed Final Orders for AFOs*, 2006 WL 478143 (EAB Jan. 27, 2006) (finding that first twenty Agreements were administrative penalty orders subject to Board review).

[37] Initially, the National Pork Board was enjoined from contributing $6,000,000 on behalf of producers because the contribution was found to violate the Pork Act and contravene public policy, but this decision was reversed by a second administrative law judge allowing the National Pork Board to pay farmer's fees associated with EPA's Air Emission Study. *See In re: McDowell*, 65 Agric. Dec. 795 (U.S.D.A. 2006) *rev'd*, *In re: McDowell*, 67 Agric. Dec. 1230, 1232 (U.S.D.A. 2008) ("revers[ing] the ALJ's Initial Decision [and granting Administrator's motion to dismiss] [because] Petitioners lack standing, the Second Amended Petition fails to state a legally cognizable claim, and the National Pork Board' s payment of the per-farm-fee associated with EPA's Air Emissions Study is in accordance with the Pork Act and the Pork Order").

[38] 2017 OIG REPORT at 11; 10 ("Based on the original expectations for completion of the tasks in the Notice, the NAEMS monitoring would have been completed in 2007, and the EPA would have begun publishing EEMs in 2009."); 12 (Figure 4) (comparing expected and actual NAEMS development timeline).

[39] *Ass'n of Irritated Residents v. EPA*, 494 F.3d 1027, 1031 (D.C. Cir. 2007).

[40] *See* EPA's Brief at 11-12, 23, 28, (D.C. Cir. Feb. 2, 2007).

[41] *Ass'n of Irritated Residents*, 494 F.3d. at 1033.

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groups' contention that EPA had abdicated its enforcement duty because the court believed the limited deferral "is part of the agency's attempt to ensure that AFOs comply with the Acts."[42]

Had the court understood that EPA would extend its "limited" deferral for over ten years to 2021 and beyond—straight through the Obama and Trump Administrations—then that unbound deferral would undoubtedly have affected the court's analysis.

D. EPA Has Relied On The Air Consent Agreement To Deny Petitions To Regulate Air Emissions from AFOs.

To make matters worse, in addition to using the Air Consent Agreement and EEM process as a shield against adequately enforcing the CAA or EPCRA against AFO polluters, EPA is using the Agreement as an excuse to deny or ignore every administrative petition related to AFO air pollution that has been filed with the Agency since 2005. EPA is also allowing AFOs to use the Agreement to keep citizens from enforcing EPCRA.

Since 2005, EPA has received several administrative rulemaking petitions to address AFO emissions, including a 2009 petition to list and regulate AFOs as a source category under CAA Section 111 (2009 CAFO Source Petition),[43] and a 2011 petition to regulate ammonia as a criteria pollutant under CAA Sections 108 and 109 (2011 Ammonia Petition).[44] According to a report by EPA's Office of the Inspector General (OIG), discussed further below, "EPA staff told [OIG] they did not plan to evaluate the need for additional regulations as laid out in these petitions until the EEMs are finalized."[45]

For the 2009 CAFO Source Petition, EPA's refusal to engage with the subject matter of the petition came in the form of a denial of the petition in 2017.[46] As noted in the denial signed by former EPA Administrator Scott Pruitt, EPA explicitly denied the petition not on the

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[42] *Id.* at 1035.
[43] The Humane Soc'y of the U.S., Petition to the U.S. EPA to List Concentrated Animal Feeding Operations Under CAA Section 111 (B)(1)(A) (Sep. 21, 2009).
[44] Environmental Integrity Project, Petition to the U.S. EPA for the Regulation of Ammonia as a Criteria Pollutant Under Clean Air Act Sections 108 and 109 (Apr. 6, 2011).
[45] 2017 OIG REPORT at 18.
[46] Denial of Petition to List Concentrated Animal Feeding Operations Under Clean Air Act, 82 Fed. Reg. 60,940 (Dec. 26, 2017).

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substance of the request,[47] but rather due to the "ongoing budgetary uncertainties" and EEM process.[48] Acknowledging the findings of the 2017 OIG Report, the denial letter then goes on to say that EPA will conduct a systematic planning process as identified in that report by April 2018 and establish milestones for issuing updated draft EEMs by July 2018.[49] A comprehensive set of draft or final EEMs still has yet to be issued, but EPA continues to use the EEM process as a convenient excuse not to take further action to *actually address* and limit air pollution from concentrated animal feeding operations (CAFOs), as this petition would have enabled.

With respect to the 2011 Ammonia Petition, EPA has failed to respond—even as the evidence of harm continues to mount.[50] As mentioned above, public health scientists have drawn clear connections between ammonia from animal production and thousands of annual PM-related deaths, and have also shown that living in close proximity to AFOs is associated with pneumonia.[51] Another study found significant associations between Pennsylvania CAFOs and asthma.[52] The authors of the ammonia study noted that industrial food animal production facilities "are a source of odors and several air pollutants, including particulate matter, hydrogen sulfide, and ammonia," and "these air pollutants and odors have been associated with asthma exacerbations."[53] The role of ammonia in exacerbating water quality impairments has also become more clear over time. It now appears that AFOs emit more ammonia—and more ammonia deposits closer to the source of emissions than previously thought.[54] This means that

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[47] Letter from E. Scott Pruitt, Administrator, EPA, to Tom Frantz, President, Ass'n of Irritated Residents, at 2 (Dec. 15, 2017) ("This denial is not based on a determination as to whether CAFOs meet the requirements for listing under CAA section 111(b)(1)(A).").
[48] *Id.* at 1–2.
[49] *Id.* at 8–9.
[50] Although the petitioners challenged EPA's failure to respond in 2015 (re-filed in 2016), petitioners voluntarily dismissed the complaint in 2017. *See* Notice of Voluntary Dismissal, *Environmental Integrity Project et al. v. EPA*, Case No. 16-cv-02203-ABJ (D.D.C. Jan. 17, 2017).
[51] *See supra* Part II.
[52] S. Rasmussen et al., *Proximity to Industrial Food Animal Production & Asthma Exacerbations in Pennsylvania, 2005-2012*, 14 INT'L J. ENV'T. RESH. PUB. HEALTH 362 (2017).
[53] *Id.*
[54] *See, e.g.*, ENV'T INTEGRITY PROJECT , AMMONIA EMISSIONS FROM POULTRY INDUSTRY MORE HARMFUL TO CHESAPEAKE BAY THAN PREVIOUSLY THOUGHT (2018), https://environmentalintegrity.org/wp-content/uploads/2017/02/Ammonia-Report.pdf; *see also* ENV'T INTEGRITY PROJECT, POULTRY INDUSTRY POLLUTION IN THE CHESAPEAKE REGION (2020), https://environmentalintegrity.org/wp-content/uploads/2020/04/EIP-Poultry-Report.pdf; J. Baker et al., *Modeling & Measurements of Ammonia from Poultry Operations: Their Emissions, Transport, & Deposition in the Chesapeake Bay*, 706 SCI. TOTAL ENVIRONMENT 135290 (Mar. 2020), https://www.sciencedirect.com/science/article/pii/S0048969719352829.

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ammonia is a central contributor to algae blooms, dead zones, and other impairments in large estuaries like the Chesapeake Bay.

In addition, EPA continues to allow AFOs to use the Air Consent Agreement and EEM development process to keep citizens from enforcing statutes such as EPCRA[55] against AFOs.[56] Although EPA can prevent the Agreement from being used as an affirmative defense in EPCRA citizen enforcement suits, the agency has opted not to do so. As a result, EPA is allowing this Agreement to stand in the way of effective enforcement of this statute against AFO polluters, regardless of the amount or persistence of that pollution.

IV. EPA'S MONITORING STUDY WAS FLAWED, UNDERMINING EPA'S ABILITY TO DEVELOP VALID EEMs.

A. EPA Limited the Size and Geographic Scope of its Study, Despite the Entry of Nearly 14,000 AFOs into the Agreement.

In announcing the Air Consent Agreement and NAEMS Protocol, EPA claimed that "[m]onitoring will occur at facilities across the country to get a representative sample of the facility types," and the NAEMS "protocol will provide sufficient data to get a valid sample that is representative of the vast majority of the participating AFOs."[57] EPA intended to use the results of this monitoring study "to generate scientifically credible data to provide for the characterization of emissions from all major types of AFOs in all geographic areas where they are located."[58] However, the study fell far short of achieving this goal for a variety of reasons,

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[55] In 2019, EPA finalized a rule exempting AFOs from their reporting obligations under EPCRA section 304. *See* Amendment to Emergency Release Notification Regulations on Reporting Exemption for Air Emissions From Animal Waste at Farms; Emergency Planning and Community Right-to-Know Act, 84 Fed. Reg. 27,533 (June 13, 2019). That rulemaking has been challenged in federal court by a coalition of environmental and environmental justice groups, including many of the signatories here. *Rural Empowerment Association for Community Help, v. EPA*, Case No. 18-02260-TJK (D.D.C. 2019). Following the D.C. Circuit's decision in *Waterkeeper Alliance v. EPA*, 853 F.3d 527, 537–38 (D.C. Cir. 2017), we expect the court to overturn EPA's 2019 rule, and therefore believe that AFOs may use the Air Consent Agreement to hamper citizen suit enforcement of EPCRA.

[56] *See, e.g., Humane Soc'y of the United States v. Hanor Company of Wisconsin*, LLC, 289 F. Supp. 3d 692 (E.D. N.C. 2018).

[57] 2005 Notice at 4960; *see also id.* at 4968 (Attach. B to App. 1: NAEMS Protocol).

[58] *Id.* at 4960.

including the industry's role in selecting sites, the small number of selected sites, and EPA's flawed site selection methodology.[59]

From the onset, the design and implementation of the study was limited because industry exerted significant control on the pool of potential study sites. Although "EPA acknowledged that emissions data should be collected for every type of animal feeding operation and practice," EPA officials concluded that the industry should be responsible for site selection,[60] deferring to industry yet again.

Records obtained by the Environmental Integrity Project under the Freedom of Information Act confirm that AFO owners and operators played a major role in selecting the sites in NAEMS.[61] For example, Perdue broiler facilities did not participate in the Air Consent Agreement. Perhaps as a direct consequence, NAEMS did not include a single broiler site in the Mid-Atlantic, despite incredible industry concentration in the region.[62] Further, Tyson Foods, one of the largest meat producers in the United States, directly sponsored the data collection at its broiler sites in Kentucky.[63]

Moreover, despite almost 14,000 AFOs receiving enforcement protection under the Agreement, the NAEMS study itself only included 27 sites at 20 AFOs in 10 states.[64] The small

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[59] *See* GAO, CONCENTRATED ANIMAL FEEDING OPERATIONS: EPA NEEDS MORE INFORMATION & A CLEARLY DEFINED STRATEGY TO PROTECT AIR & WATER QUALITY FROM POLLUTANTS OF CONCERN37–39 (2008) https://www.gao.gov/assets/gao-08-944.pdf ("[T]he National Air Emissions Monitoring Study may not provide the data that EPA needs to develop comprehensive protocols for quantifying air emissions from [AFOs] for a variety of reasons.") [hereinafter 2008 GAO Report]; *see also id.* at 7 ("[A]s currently structured, the study may not provide the scientific and statistically valid data it was intended to provide and that EPA needs to develop air emissions protocols.").

[60] *Id.* at 38–39 ("According to EPA officials, the industry identified those monitoring sites that they believed best represented the type of operations and manure management practices that are in their various animal sectors.").

[61] Letter from Tarah Heinzen, Env't Integrity Project, to EPA Docket Center, (June 11, 2012) (citing email from Heber to Nizich (Aug. 9, 2006) (stating that "the National Milk Producers Federation approved these site selections for the NAEMS")).

[62] *See* PEW, *Big Chicken: Pollution & Industrial Poultry Production in America* (July 26, 2011), https://www.pewtrusts.org/en/research-and-analysis/reports/2011/07/26/big-chicken-pollution-and-industrial-poultry-production-in-america; *see also* EPA, *2012 Monitored AFOs*, https://archive.epa.gov/airquality/afo2012/web/html/index.html.

[63] IOWA STATE UNIV. & UNIV. OF KENTUCKY, FINAL PROJECT REPORT ON SOUTHEASTERN BROILER GASEOUS & PARTICULATE MATTER EMISSIONS MONITORING (Dec. 2009) (describing emissions monitoring results of two Tyson broiler production houses located on two separate farm sites in western Kentucky), https://archive.epa.gov/airquality/afo2012/web/pdf/ky1bsummaryreport.pdf.

[64] *See* 2017 OIG REPORT at 7; *see also 2012 Monitored AFOs*, https://archive.epa.gov/airquality/afo2012/web/html/index.html.

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number of sites selected led the Government Accountability Office (GAO) to raise concerns in 2008, before the completion of NAEMS, that "the study did not include a sufficient number of monitoring sites to establish a statistically valid sample."[65] As explained in GAO's report, "[w]ithout such a sample . . . EPA will not be able to accurately estimate emissions for all types of operations."[66]

EPA also failed to select geographically representative sites. When designing NAEMS, EPA purportedly intended to study a statistically significant number of representative sites and generate "scientifically credible data to provide for the characterization of emissions from all major types of AFOs in all geographic areas where they are located."[67] Yet the study design fell far short of anything capable of achieving this. Primary Investigators for the sites were selected before the NAEMS sites themselves, limiting the role of representativeness in the site selection process since investigators needed to be proximately located to NAEMS sites.[68] As GAO observed:

> [T]he monitoring study does not include the 16 combinations of animal types and geographic regional pairings recommended by EPA's expert panel. The panel recommended this approach so that the study sample would be representative of the vast majority of participating animal feeding operations, accounting for differences in climatic conditions, manure-handling methods, and density of operations. However, EPA approved only 12 of the 16 combinations recommended by the expert panel, excluding southeastern broiler, eastern layer, midwestern turkey, and southern dairy operations.[69]

Atmospheric conditions, facility age and design, feed, and other variables may significantly impact air emissions.[70] Therefore, a statistically significant study should include multiple sites representing as many different sets of climate and geographic conditions as possible. This was simply not possible with such a small number of sites.

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[65] 2008 GAO Report at 7, 38–39.
[66] *Id.*
[67] 2005 Notice at 4960; *see also* 2008 GAO Report at 36.
[68] Letter from Tarah Heinzen, Env't Integrity Project, to EPA Docket Center, (June 11, 2012) (citing Heber, "Site Selection Procedure" (Jun. 10, 2005)).
[69] 2008 GAO Report at 37–38.
[70] *See* 2005 Notice at 4977 (listing several "influences on emissions" provided by producer, rather than collected by study).

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B. EPA Failed to Generate Adequate Data to Develop EEMs.

In response to the initial announcement of the Agreement and NAEMS, experts and community groups raised concerns about the protocol, even before EPA had selected sites or initiated monitoring.[71] While the study was ongoing, GAO again warned EPA that NAEMS may not "provide data of sufficient quantity and quality" to establish the planned EEMs.[72] But EPA ignored those concerns. Consequently, EPA's NAEMS study did not generate the data needed to develop comprehensive protocols for quantifying air emissions from AFOs. In 2013, years after EPA concluded the monitoring study, EPA's Scientific Advisory Board (SAB) confirmed the concerns raised by GAO in 2008 regarding the small number of sites in the study and the quality of the data.[73]

In reviewing EPA's draft EEMs, which the SAB ultimately found unsuitable for national use, SAB panel members noted that the California broiler data sets for Total Suspended Particles and $PM_{2.5}$ had less than 10 percent completeness, while that entire site had only 20 percent completeness during the fall.[74] EPA also had problems receiving data from contractors and excluded data due to changes in monitoring method. Short monitoring periods at certain sites in combination with missing or invalidated data has resulted in a much smaller than anticipated dataset from which to develop EEMs.

Moreover, EPA's unnecessarily restrictive data completeness requirements further limited the availability of usable data. The NAEMS protocol required 75 percent of any hour's data to be valid to accept the hour's data, and 75 percent of any day's hours to accept the day's data.[75] The 2013 SAB Report noted the study's low data completeness rates, questioning EPA's

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[71] Many of the signatories submitted comments regarding EPA's flawed 2005 Air Consent Agreement and NAEMS Protocol. *See, e.g.,* Comments by B. Newell et al., Center on Race, Poverty & the Environment et al., EPA-HQ-OAR-2004-0237-0476 (Mar. 1, 2005).
[72] 2008 GAO Report at 7.
[73] EPA SCI. ADVISORY BD., REVIEW OF EEMS FOR BROILER AFOS AND FOR LAGOONS & BASINS AT SWINE & DAIRY AFOS 2 (Apr. 19, 2013), available at https://yosemite.epa.gov/sab%5CSABPRODUCT.NSF/08A7FD5F8BD5D2FE85257B52004234FE/$File/EPA-SAB-13-003-unsigned%20.pdf, [hereinafter 2013 SAB REPORT] ("In summary, the SAB concludes that the EPA has developed statistical models based on combined data sets and predictor variables which have limited the ability of the models to predict emissions beyond the small number of farms in the dataset.").
[74] *Id.*
[75] *Id.*

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decision to require a "too stringent and unnecessary" 75 percent completeness despite the study's frequent failure to meet that goal.[76]

Though EPA has acknowledged the problems with its completeness criteria,[77] it has failed to rectify the issue. When issuing the August 2020 draft swine EEMs, EPA conceded that completeness requirements for its open area/source data should be lowered, but only to 52 percent.[78] However, EPA then released draft poultry EEMs in August 2021 that retained the 75 percent completeness requirement for all data sources.[79] The completeness criteria for swine barn emission data have also remained unchanged, and EPA maintains that "the potential need to revise this value for barn source emissions will be assessed at a later date, if appropriate."[80] Yet no such assessment has taken place.

The more EPA evaluates the data, the more problems it uncovers. For instance, in the draft swine EEMs released in August 2020, EPA discovered new issues with ventilation and moisture interference, resulting in the invalidation and removal of numerous ammonia, hydrogen sulfide, and particulate matter measurements from the dataset.[81] The revision included the removal of all open source ammonia emissions data from one of only four monitoring sites.[82] This continued reduction of the dataset, which is already too small to provide a complete representative sample, only further compromises EPA's ability to establish accurate EEMs.

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[76] *Id.* at 26.
[77] *See* EPA, QUALITY ASSURANCE PROJECT PLAN: DEVELOPMENT OF EEMS FOR AIR EMISSIONS FROM AFOS 15 (Mar. 13, 2018) [hereinafter 2018 QAPP], available at https://www.epa.gov/sites/default/files/2018-03/documents/final_eem_qapp_v0.0_for_web_0.pdf. .
[78] *Id.* EPA, DEVELOPMENT OF EEMS FOR SWINE BARNS & LAGOONS, DRAFT 3-1 to3-4. (Aug. 2020), [hereinafter 2020 Draft EEMs for Swine Barns & Lagoons] available at https://www.epa.gov/sites/default/files/2020-08/documents/development_of_emissions_estimating_methodologies_for_swine_barns_and_lagoons.pdf.
[79] EPA, DEVELOPMENT OF EEMS FOR BROILER OPERATIONS, DRAFT 5-3 to 5-4 (Aug. 2021) [hereinafter 2021 Draft EEMs for Broilers], available at https://www.epa.gov/sites/default/files/2016-06/documents/afobroileremreport2012draft.pdf; DEVELOPMENT OF EEMS FOR EGG-LAYING HOUSES & MANURE SHEDS, DRAFT 2-2 (Aug. 2021) [hereinafter 2021 Draft EEMs for Poultry Houses & Manure Sheds], https://www.epa.gov/system/files/documents/2021-08/development_of_emissions_estimating_methodologies_for_egg_layer_houses_and_manure_sheds.pdf.
[80] 2018 QAPP at 15.
[81] 2020 Draft EEMs for Swine Barns & Lagoons at 3-2 and 4-2.
[82] *Id.* at 3-16 and 3-17.

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C. EPA Failed to Finalize EEMs Following the Completion of NAEMS.

Following the completion of NAEMS in 2010, three years later than expected, the initial terms of the Air Consent Agreement provided that EPA had 18 months to evaluate the data collected through the study and publish emission unit-specific estimating methodologies.[83] In 2012, EPA published draft EEMs for 8 of the 36 emission sources and pollutants described in the Agreement.[84] Those draft EEMs, which covered broiler AFOs and lagoons and basins at swine and dairy AFOs, were noticed for public comment and submitted to the agency's Scientific Advisory Board (SAB) for review and feedback.[85]

The response to the draft EEMs from both the public and EPA's own SAB was highly critical and called into question NAEMS design and methodology, the data generated, EPA's statistical approach, its treatment of the available data, and the agency's ability to use the draft to accurately estimate air pollution from facilities not otherwise included in the study itself.[86] The SAB lambasted EPA for its approach to the NAEMS process and the data collected, concluding—among other things—that the draft EEMs developed by EPA should not be applied on a national scale because "EPA has developed statistical models based on combined data sets and predictor variables which have limited the ability of the models to predict emissions beyond the small number of farms in the dataset."[87]

The SAB recommended that "EPA not apply the current versions of the statistical and modeling tools for estimating emissions beyond the farms in EPA's data set," and provided "recommendations for how the agency may expand the data set and the applicability of the

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[83] 2005 Air Consent Agreement at ¶ 32 ("EPA will publish [EEMs] within 18 months of the conclusion of the monitoring period . . . .").

[84] *See* 2017 OIG REPORT at 11; EPA, DEVELOPMENT OF EEMS FOR LAGOONS & BASINS AT SWINE & DAIRY AFOS, DRAFT (Feb. 2012) [hereinafter 2012 Draft EEMs for Swine & Dairy AFOs], available at https://yosemite.epa.gov/sab/SABPRODUCT.NSF/81e39f4c09954fcb85256ead006be86e/AE6639DD6B79360E852579A4004E5529/$File/PDF+for+Development+of+Emissions+Estimating+Methodologies+for+Lagoons+and+Basins+at+Swine+and+Dairy+Animal+Feeding+Operation.pdf; EPA, DEVELOPMENT OF EEMS FOR BROILER OPERATIONS, DRAFT (Feb. 2012) [hereinafter 2012 Draft EEMs for Broilers], available at https://www.epa.gov/sites/default/files/2016-06/documents/afobroileeemreport2012draft.pdf..

[85] Notice of Availability: Draft Documents Related to the Development of EEMs for Broiler AFOs and Lagoons & Basins for Swine & Dairy AFOs, 77 Fed. Reg. 14716 (Mar. 13, 2012); *see also* Comments Submitted in Response to Notice of Availability, https://www.regulations.gov/document/EPA-HQ-OAR-2010-0960-0015/comment.

[86] Many of the signatories submitted comments regarding EPA's flawed 2012 Draft EEMs. *See, e.g.,* Comments Submitted by R. Lawrence, Center for a Livable Future, EPA-HQ-OAR-2010-0960-0037 (Jun. 11, 2012); T. Heinzen, Environmental Integrity Project et al., EPA-HQ-OAR-2010-0960-0026 (Jun. 11, 2012).

[87] 2013 SAB REPORT at 2.

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models."[88] For example, SAB recommended that EPA expand its dataset by collecting data from monitoring efforts outside of the NAEMS, and using NAEMS data that were initially excluded due to EPA's data completeness criteria.[89]

The SAB also advocated for a process-based modeling approach to EEM development, noting that "[p]rocess-based models would be more likely to be successful in representing a broad range of conditions than the current models because [they] represent the chemical, biological and physical processes and constraints associated with emissions."[90]

In short, the SAB told EPA to go back to the drawing board and revise its process for developing EEMs based on the data gathered through NAEMS. EPA has responded to some of SAB's concerns, but not all. As a result, EPA has yet to finalize any EEMs or bring any participating parties into compliance with the CAA, CERCLA, and EPCRA. Nor has EPA revoked the safe harbor provision established in the Air Consent Agreement.

D. EPA Has Failed to Consider Available Information from Peer-Reviewed Studies.

Given the clear flaws in NAEMS design and implementation, which yielded non-representative and incomplete data, it was incumbent upon EPA to expand the scope of AFO emission data it relied on to ensure accurate EEMs. However, the draft EEMs continue to rely exclusively on the limited NAEMS data, rather than incorporating findings from numerous peer-reviewed AFO emissions studies. The small number of sites in each livestock sector and the data gaps and technical problems experienced during NAEMS heighten the importance of outside research. EPA's decision to limit available information will result in inadequate EEMs.

From 2007 to 2010, EPA collected emissions data at 27 sites across 20 AFOs. The data were originally published in 2011 and finalized in 2012. EPA relied exclusively on these data to develop the 2012 draft EEMs for broilers and lagoons/basins at swine and dairy AFOs, as well as the 2020 and 2021 draft EEMs for swine and poultry AFOs. However, the Air Consent

[88] *Id.*
[89] *Id.* at 1.
[90] *Id.* at 2.

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Agreement requires that EPA consider *all* relevant information when developing EEMs, not just the data collected at a small sample of AFOs during the monitoring study:

> The term "Emissions-Estimating Methodologies" means those procedures that will be developed by EPA, based on data from the national air emissions monitoring study *and any other relevant data and information*, to estimate daily and total annual emissions from individual Emission Units and/or Sources.[91]

Although the Agreement clearly provides that EPA must consider "relevant data and information" *other* than the monitoring data, EPA has elected to interpret this term so narrowly as to exclude all information not derived from NAEMS. In 2011, EPA asked the public to submit information relating to the agency's development of draft EEMs for broiler confinement facilities and lagoons/basins at swine and dairy AFOs.[92] Despite receiving several relevant, peer-reviewed emissions studies in response to the call for information, EPA ultimately concluded that none of the studies were relevant to the EPA's draft EEMs.[93]

In an attempt to justify EPA's narrow reading of the Air Consent Agreement and exclusion of outside data, the 2012 draft EEMs for Swine and Dairy AFOs state that "none of the articles previously obtained by the EPA to support emissions factor development used remote sensing techniques to measure lagoon emissions."[94] This explanation is inadequate. EPA did not explain why it preferred remote sensing techniques over other techniques. Nor did it explain why the techniques used in the outside studies were incompatible with the remote sensing data. Similarly, in the 2012 draft EEMs for Broilers, EPA disregarded peer-reviewed poultry emissions studies solely because the researchers used different methods.[95]

Since the publication of the 2012 draft EEMs, EPA has reaffirmed its commitment to relying exclusively on NAEMS data. In 2018, after nearly a decade of delay and inaction, EPA decided to put off any investigation into the "potential need for additional non-NAEMS data"

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[91] 2005 Air Consent Agreement at ¶10 (emphasis added); *see also* 2005 Notice at 4960 ("EPA will use the data generated from the monitoring *and all other available, relevant data* to develop [EEMs]") (emphasis added).
[92] *See* Call for Information Related to the Development of EEMs for AFOs, 76 Fed. Reg. 3060 (Jan. 19, 2011); *see also Comments Submitted in Response to Call for Information*, https://www.regulations.gov/document/EPA-HQ-OAR-2010-0960-0001/comment.
[93] 2012 Draft EEMs for Swine & Dairy AFOs Table 3-3, 2012 Draft EEMs for Broilers Table 3-14 (Feb. 2012).
[94] 2012 Draft EEMs for Swine & Dairy AFOs at 3-14.
[95] 2012 Draft EEMs for Broilers at 4-13 to 4-23.

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until a "later stage" in the project "if appropriate."[96] The 2020 draft EEMs for Swine AFOs used peer-reviewed studies only to inform the selection of possible model parameters.[97] But the Air Consent Agreement requires EPA to use available data to *develop* the EEMs.[98]

EPA's continued exclusion of clearly relevant data from the EEM development process violates the Air Consent Agreement and confirms that continuing the already protracted EEM development process would be futile. Moreover, EPA cannot develop adequate EEMs based exclusively on the outdated and incomplete NAEMS monitoring data collected from 2007 to 2010 because the industry has changed considerably since the monitoring study concluded over a decade ago.[99] Furthermore, new studies regarding air emissions from AFOs have been published in recent years, revealing important insights about the emissions generated from various AFO sources and their impacts on local communities.[100] Without the addition of recent outside studies, any EEMs developed by EPA will fail to accurately estimate emissions from AFOs.

E. The 2017 OIG Report Urged EPA to Either Finalize the EEMs or End the Agreement.

In 2017, six years after all EEMs were supposed to be finalized, OIG released a report on EPA's actions to evaluate air emissions from AFOs, focusing on the Air Consent Agreement and NAEMS.[101] As with the SAB, OIG was highly critical of EPA's extreme delay in developing EEMs following the completion of NAEMS, noting that "competing priorities [have] resulted in the EPA's Office of Air and Radiation putting the EEM effort largely on hold" to the extent that "the EPA stopped funding the contract for NAEMS analysis."[102] OIG also expressed concern

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[96] 2018 QAPP at 14.
[97] 2020 Draft EEMs for Swine Barns & Lagoons at 13-1 to 13-2.
[98] 2005 Notice at 4960.
[99] Over the past nine years alone, significant changes to the hog, dairy, broiler, and egg-laying industries can be observed in particular state CAFO expansion trends. For instance, the number of CAFOs operating in Iowa, a state dominated by the hog industry, has increased by 136 percent since 2011. There are 43 percent more CAFOs operating in Wisconsin, where the dairy industry is most prevalent, than what existed in 2011. In Delaware, a broiler-focused state, the CAFO industry has grown by 838 percent. And Ohio, a state dominated by egg-laying operations, has seen a 33 percent increase. *See* EPA, NPDES CAFO Rule Implementation Status – National Summary, Endyear 2011 (Dec. 31, 2011), https://www.epa.gov/sites/default/files/2015-08/documents/npdes_cafo_rule_implementation_status_-_national_summary_endyear_2011_0.pdf; EPA, NPDES CAFO Rule Implementation Status – National Summary, Endyear 2020 (May 11, 2021), https://www.epa.gov/sites/default/files/2021-05/documents/cafo_status_report_2020.pdf.
[100] *See* discussion, *supra* Part I.
[101] 2017 OIG REPORT at 1.
[102] *Id.* at 10.

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about the lack of EPA agricultural air expertise and committed resources, noting that the agency "did not have staff with combined expertise in agricultural emissions, air quality[,] and statistical analysis."[103]

Although EPA completed NAEMS in early 2010, EPA has yet to finalize the EEMs to make CAA and CERCLA/EPCRA compliance determinations under the terms of the Air Consent Agreement. OIG expressed concern that although the civil enforcement protections were initially planned to expire in 2012, all 14,000 AFOs that participated in the Agreement continue to enjoy civil enforcement protections, and EPA has put several important actions on hold pending development of the EEMs.[104] In short, as OIG concluded, "EPA's ability to characterize and address AFO air emissions is unchanged since its 2005 Agreement with the AFO industry intended to produce reliable emissions estimation methods."[105]

To continue moving the EEM process forward, OIG recommended that EPA conduct adequate systematic planning—something that the agency should have done *before* conducting NAEMS or preparing the draft EEMs.[106] "Based on the results of systematic planning," EPA should "determine and document the decision as to whether the EPA is able to develop scientifically and statistically sound emission estimating methodologies for each originally planned emission source and pollutant combination."[107] After conducting those reviews, OIG recommended that EPA should "[f]or the emission source and pollutant combinations for which the Office of Air and Radiation determines it can develop scientifically and statistically sound emission estimating methodologies, establish public milestone dates for issuing each draft emission estimating methodology" and "[f]or any emission source and pollutant combinations for which the Office of Air and Radiation determines it cannot develop emission estimating methodologies, notify Air Consent Agreement participants of this determination, and that the release and covenant not to sue for those emission sources and pollutant types will expire in accordance with paragraph 38 of the 2005 Air [Consent] Agreement."[108]

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[103] *Id.* at 16.
[104] *Id.*
[105] *Id.* at 18.
[106] *Id.* at 22.
[107] *Id.* at 23.
[108] *Id.*

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Since the OIG report was published in 2017, EPA has continued to drag its feet regarding EEM development, despite the clear course correcting path that OIG laid out for the Agency. While EPA maintains that it has timely implemented all OIG recommended actions,[109] in reality, the only action that EPA has completed in good faith is the very first on the list—publishing a planning document to guide future EEMs development.[110] As for the remaining four OIG recommendations, EPA has either failed to comply altogether or implemented them in such a half-hearted way so as to undermine their whole purpose, namely, to prevent any further delay.

According to OIG's corrective action timeline, based on the results of EPA's systematic planning, EPA was to "document the decision" as to which EEMs could be developed and which could not no later than June 30, 2018.[111] Yet when the June deadline came, all EPA had decided was that, "for now,"[112] it would move forward with developing EEMs for all pollutants and all source categories, even while holding out the possibility that "emission source categories might be revised during subsequent stages of EEM development" upon further investigation.[113] In other words, instead of making any real effort to narrow the scope of feasible EEMs, as OIG intended, the Agency simply made a placeholder determination to proceed as originally planned to check an item off its OIG to-do list. Conveniently, this also allowed EPA to hold off on implementing another OIG action—ending enforcement amnesty for affected Air Consent Agreement participants—since only a finalized decision to abandon certain EEMs could trigger this requirement.[114] However, this did not stop the Office of Enforcement and Compliance Assurance from certifying that this action, which has yet to occur, was "complete."[115]

Moreover, because EPA opted to move forward with the development of all originally planned EEMs, EPA was required to "set public milestone dates" for issuance of all draft EEMs

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[109] *See* Memorandum from W. Wehrum, Assistant Administrator, *OAR-18-000-9472 - Certification Memo for Office of Inspector General (OIG) Report No. 17-P-0396* (July 30, 2018) ED_004549_00036447-00001 (certifying completion of OAR corrective actions); M. Badalamente, *Certification of Performance Audit* (Apr. 2, 2019) ED_004549_00036462-00001 (certifying completion of OECA corrective action) [hereinafter OECA Certification Memo].
[110] *See* 2018 QAPP at 14.
[111] 2017 OIG REPORT at 23.
[112] Email from Tim Sullivan to Lauren Kabler Re: 2017 OIG Report, ED_005459-00036448-00003 (Sep. 20, 2018).
[113] 2018 QAPP at 16.
[114] 2017 OIG REPORT at 23.
[115] OECA Certification Memo at 1-2 (paradoxically stating OECA's action is "complete" because OECA stands ready to implement it "within 60 days of OAR finalizing its determination").

and to keep the public informed of the status of EEM development.[116] While EPA did set publicly available issuance dates (yet another box checked), it has made no effort to meet these self-imposed deadlines. In fact, every time a deadline nears, the Agency updates the schedule to give itself more time. In the agency's revised schedule for developing EEMs, EPA committed to issuing draft EEMs beginning in September 2019 and ending no later than November 2020.[117] However, after revising the schedule more than five times in just two years, with the most recent schedule slide occurring just this past August, EPA now lists the date for issuing all draft EEMs as May 2022.[118] While OIG required EPA to "set public milestone dates," it surely did not intend for EPA to push back the dates whenever the agency failed to meet an upcoming deadline. The purpose of the updated schedule was to prevent continued delay and uncertainty regarding EPA's development process. As of the date of this letter, EPA continues to delay the EEMs and fall behind its own updated timeline.

V. EPA SHOULD TERMINATE THE AIR CONSENT AGREEMENT BECAUSE EPA HAS FAILED TO PRODUCE VALID EEMs.

A. EPA Should Abandon the Fundamentally Flawed NAEMS and EEMs Development Process in Favor of Existing Models.

As discussed above, EPA cannot rely on the NAEMS data collected at 20 AFOs from because these data are not representative of current emissions from AFOs across the country. At this stage in the EEM development process, EPA cannot correct the flaws in NAEMS and EEM design or implementation. And although EPA has acknowledged the issues limiting the applicability of the data and affecting its current efforts to establish legitimate EEMs, it has failed to sufficiently address those issues. Moreover, EPA already has process-based models and emissions factors that it can use for the purposes of estimating emissions from AFOs and making compliance determinations. Where such methods are available, EPA should immediately adopt the methods as the default EEMs.

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[116] 2017 OIG REPORT at 23.
[117] *See* Archived EPA Webpage: *National Air Emissions Monitoring Study* (Jul. 3, 2018), http://web.archive.org/web/20180703144202/https://www.epa.gov/afos-air/national-air-emissions-monitoring-study.
[118] *See* EPA, National Air Emissions Monitoring Study (last visited 10/22/2021) https://www.epa.gov/afos-air/national-air-emissions-monitoring-study.

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In 2013, nearly a decade ago, EPA's Science Advisory Board recommended that the EPA "consider developing EEMs at a variety of levels of complexity to provide options for producers with different levels of data availability."[119]

> Models of varying complexity should be developed based on the level of input provided by a given producer (e.g., one model may be developed considering the composition of a feed ration, while a less complex model using default industry values could be used if a producer does not wish to or cannot disclose information regarding feed rations).[120]

This SAB recommendation is critical. As discussed above, data limitations often make the implementation of EEMs impractical or impossible. To implement the 2020 and 2021 draft EEMs for swine and poultry AFOs, AFO operators would essentially have to run multiple statistical models for each emissions source, each day of the year, using actual daily data points, like animal inventory, average animal weights, ambient air temperature, and wind speed, to estimate annual emissions.[121] This is problematic in at least two ways. First, it would be difficult for potential sources and regulators to acquire and process the large amount of data required to generate annual emissions estimate. Second, since the draft EEMs require actual input data, they cannot readily be used to estimate future emissions from proposed (or existing) sources.

The current forms of the EEMs are thus inconsistent with the CAA, which asks proposed and existing sources to provide emissions estimates in the form of annual emission potential (an upper-bound estimate that does not require daily model iterations).[122] EPA therefore needs EEMs that utilize default assumptions. The SAB strongly recommended this approach, but EPA unfortunately continues to ignore it.[123]

EPA has also recommended this simplified approach in other contexts. For example, in 2019, EPA published guidance for estimating animal waste emissions for purposes of complying

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[119] 2013 SAB REPORT at 2, 4.
[120] *Id.* at 14
[121] *Id.*
[122] If implemented, the 2020 Draft EEMs for Swine AFOs would not produce Potential to Emit (PTE) estimates. These estimates provide critical information in determining how the CAA applies at a given facility, and if a facility is a "major source." The draft EEMs instead prescribe the use of actual animal inventories and will not determine if facilities are "major sources" as required.
[123] 2013 SAB REPORT at 14 ("The EPA should create a modeling approach that can be defined using default parameters that can be simply attained and that would reflect the heterogeneity of AFOs.").

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with CERCLA and EPCRA.[124] Some of the methods recommended in this guidance were simple emissions factors (e.g., pounds per animal per day).[125] Other recommended methods were in the form of worksheets that used a combination of site-specific information (e.g., animal housing type and maximum permitted capacity) and default parameters (e.g., animal-specific nitrogen excretion rates and ammonia loss factors). The worksheets are notable for two reasons. First, the worksheets generate "peak" pollutant emissions, based on maximum/permitted animal capacity, which is consistent with CAA "potential to emit" requirements. Second, the worksheets are easy to implement with limited data because they incorporate default parameters.

In sum, EPA already estimates emissions, and recommends that others do so, using methods that are consistent with the CAA and SAB guidance and are easy to implement. Yet it continues to insist on developing flawed EEMs that fail all of these criteria. This is flagrantly arbitrary and unreasonable, and only serves one purpose—to continue to protect a large source of air pollution from regulation.

B. EPA Overstates the Difficulty of Developing Process-Based Models, Which the Agency Is Already Using in Other Contexts.

Since the beginning of the EEM development process, the scientific community has recommended that EPA pursue a process-based approach. In 2003, the National Academies of Sciences (NAS) concluded that the "use of process-based modeling will help provide scientifically sound estimates of air emissions from AFOs for use in regulatory and management programs."[126] Ten years later, in 2013, EPA's Science Advisory Board made the same recommendation.[127] Today, nearly two decades after the NAS first recommended a process-based approach, and despite the fact that EPA is already using process-based models in other contexts, EPA maintains that it cannot yet develop process-based EEMs.

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[124] EPA, *CERCLA & EPCRA Reporting Requirements for Air Releases of Hazardous Substances from Animal Waste at Farms*, EPA (last visited Aug. 27, 2021), https://www.epa.gov/epcra/cercla-and-epcra-reporting-requirements-air-releases-hazardous-substances-animal-waste-farms.
[125] *See, e.g.*, EPA, Calculation Worksheet: Ammonia and Hydrogen Sulfide from Dairy Operations (2009) available at https://www.michigan.gov/documents/deq/deq-ess-cafo-worksheet-dairyemissions_266406_7.pdf.
[126] NAT'L RSCH. COUNCIL, AIR EMISSIONS FOR ANIMAL FEEDING OPERATIONS: CURRENT KNOWLEDGE, FUTURE NEEDS, 103 (2003).
[127] 2013 SAB REPORT at 10-13.

EPA concedes that its statistical approach is flawed, and now describes the statistical approach as an "interim" solution until more reliable process-based models can be developed.[128] EPA suggests that this approach "follow[s] the expert recommendations and [is] consistent with the Air [Consent] Agreement."[129] This is simply not true—EPA is *not* following the Air Consent Agreement or the SAB recommendations, both of which emphasize the need for data from outside of NAEMS. The SAB reminded EPA that process-based models would require the Agency to consider outside information:

> Developing a rigorous process-based EEM will require extensive data beyond the range of values, conditions, and types of farms available in the NAEMS data set. To address this data gap the EPA should consider using data collected through mechanisms outside the consent agreement, including data published in peer-reviewed literature, raw data from key studies, data that support key literature, and additional data that the EPA has collected since receiving data in response to the Call for Information on AFOs and emissions.[130]

EPA has not done this. The delay in developing process-based EEMs is almost entirely due to EPA's failure to collect or consider the necessary data.

More broadly, it is important to consider EPA's track record. EPA's chosen course of action, developing interim statistical models, has already taken more than 16 years and is *still* not complete. If this is EPA's *interim* solution, how many more decades will it take before EPA can meet its "long term" goals of developing process-based EEMs? At this rate, the industry is changing faster than the EEM development process, and whatever EPA develops will immediately be outdated. Given EPA's history of protracted delay, it makes no sense to continue developing flawed "interim" EEMs while EPA contemplates a plan for someday, maybe developing legitimate EEMs. The problem of air pollution from AFOs deserves actual solutions, not more wheel-spinning.

Developing process-based models will not require more time than completing its flawed statistical models. EPA is already using process-based models (and other models) to estimate AFO emissions and has acknowledged that process-based models accurately predict NAEMS

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[128] *See, e.g.*, 2020 Draft EEMs for Swine Barns & Lagoons at 1-8 to 1-9.
[129] *Id.* at 1-8.
[130] 2013 SAB REPORT at 14.

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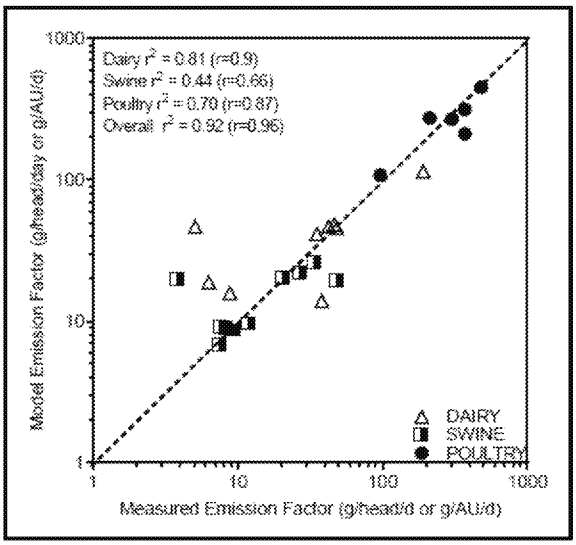
emissions based on NAEMS input data. Ironically, although EPA claims to be interested in any "suitable model[s] available in literature to use,"[131] it ignores the high-quality process-based model being used *by EPA* in its National Emissions Inventory (NEI).

As part of its NEI, the Agency estimates ammonia emissions from dairy, beef, poultry, and swine operations using a process-based model developed by Carnegie-Mellon University (CMU).[132] This model has been evaluated against NAEMS monitoring data, and one author observed that "the process-based [Farm Emissions Models] perform reasonably well in predicting the magnitude of ammonia emissions, their seasonal cycle, and farm-to-farm variability."[133] It is particularly noteworthy that the CMU model "was able to differentiate between farms and practice," as shown in the figure below.[134]

Figure 1: Comparison of Process-Based Model Predictions and NAEMS Monitoring Data



[131] 2018 QAPP at 19.
[132] EPA, 2017 NATIONAL EMISSIONS INVENTORY: JANUARY 2021 UPDATED RELEASE, TECHNICAL SUPPORT DOCUMENT 4-61 (2021); A. McQuilling & P. Adams, *Semi-Empirical Process-Based Models For Ammonia Emissions From Beef, Swine, & Poultry Operations In The United States*, 120 ATMOS. ENVTL. 127 (Nov. 2015).
[133] A. McQuilling, *Ammonia Emissions from Livestock in the United States: From Farm-Level Models to a New National Inventory,* at 51 (Jan. 2, 2016) (Ph.D dissertation Carnegie Mellon University), https://kilthub.cmu.edu/articles/thesis/Ammonia_Emissions_from_Livestock_in_the_United_States_From_Farm-Level_Models_to_a_New_National_Inventory/6714665.
[134] *Id.* at 75, 80.

As explained by the author, "this result shows the model's skill in capturing big picture emissions as well as the ammonia emissions variability driven by practices in addition to meteorology which has been shown in both seasonal and daily evaluations."[135]

Another model that EPA at least acknowledges is the U.S. Department of Agriculture's Farm Systems Model, which includes process-based models for estimated ammonia and hydrogen sulfide emissions from dairy operations. The model has even been shown to accurately predict ammonia emissions from NAEMS dairy barns and manure storage structures.[136]

If these models are good enough for EPA's emissions inventory and do a reasonable job of predicting NAEMS emissions, then they should be good enough for estimating emissions from AFOs for the purpose of applying for CAA permits or reporting qualifying releases. For example, if the question is whether a facility emits more than a certain threshold, such as 10 or 100 tons of ammonia per year,[137] then the CMU model is sufficient. This is particularly true where we already know that many AFOs emit well above the higher threshold.[138]

EPA's foot-dragging is based on the deeply flawed premise that the Agency won't know how much pollution AFOs emit until after the agency's planned EEMs are complete. This premise is false. EPA has a variety of options for estimating emissions, and these options are in fact better than the EEMs—they are more consistent with CAA requirements and SAB recommendations, and they are accurate enough to provide the kinds of information that the industry, regulators, and residents need to comply with the law. EPA has no legitimate basis for dragging this process out any longer.

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[135] *Id.* at 80.
[136] 2018 QAPP at 19; *see also* C. Rotz et. al., *Ammonia emission model for whole farm evaluation of dairy production systems*, 43 J. ENV'T. QUAL. 1143 (2014).
[137] *See, e.g.*, 42 U.S.C. §§ 7412(a)(1) (definition of "major source" of hazardous air pollutants); § 7479(1) (definition of "major emitting facility"); § 7602(j) (definition of "major emitting facility").
[138] *See, e.g.*, Notice of Lodging of Consent Decree Under CERCLA, 69 Fed. Reg. 11,649 (Mar. 11, 2004). The company subject to this Consent Decree, Buckeye Egg Farm L.P., reported ammonia emissions of over 800 tons per year from one facility, over 375 tons per year from a second facility, and "nearly 275" tons per year from a third facility. *Id.* at 11,649–50.

VI. IF EPA DECIDES TO PROCEED WITH THE FLAWED EEM DEVELOPMENT PROCESS, IT MUST IMMEDIATELY RESCIND THE SAFE HARBOR PROVISION.

As explained above, EPA's failure to regulate air pollution from AFOs causes both significant health impacts and a dearth of information available to impacted individuals about pollutant releases and impacts. Additionally, AFO air pollution and the resulting odors are diminishing the quality of life and depressing property values in communities across the nation.[139] EPA must immediately rescind the enforcement protections granted to AFOs. In addition, EPA must rely on external sources and public input when developing any draft EEMs based on the agency's inherently flawed monitoring data and development process.

A. EPA Should Immediately Rescind the Safe Harbor Provisions of the Air Consent Agreement.

Although EPA has the authority to rescind the safe harbor provisions of the Air Consent Agreement at any time, it has refused to do so, choosing instead to grant extended immunity to AFOs that emit significant air pollution and cause adverse public health impacts in surrounding communities. EPA's continued refusal to enforce the law against AFOs is an abdication of its enforcement authority. It contradicts congressional intent and strips affected communities of their legal and procedural remedies to address increased air emissions from AFOs. Thus, EPA should take immediate action to rescind the safe harbor provisions of the Air Consent Agreement.

B. EPA Should Not Finalize Any EEMs Without Robust Public Participation.

If EPA proceeds with its protracted EEM development process, it must prioritize public participation. During the decades-long process of developing the EEMs, the Agency has primarily engaged the AFO industry. EPA intends to hold a "stakeholder review period" once new draft EEMs are available but the timing of this review period is currently unknown.[140] It is

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[139] *See, e.g.*, Y. HONG & P. EBNER, PURDUE ANIMAL SCIENCES, IMPACT OF CFO ODOR & ODOR SETBACK MODELS, (JAN. 2017), https://ag.purdue.edu/cfo/Documents/ID-485_CFO_2017.pdf; ROMAN KEENEY, PURDUE EXTENSION, COMMUNITY IMPACTS OF CAFOS: PROPERTY VALUES (2008), https://www.extension.purdue.edu/extmedia/ID/ID-363-W.pdf.

[140] *See* EPA, *National Air Emissions Monitoring Study: Timeline for the Release of AFO Emission Models*, (last visited Oct. 25, 2021), https://www.epa.gov/afos-air/national-air-emissions-monitoring-study.

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unclear who EPA considers "stakeholders" in this process, but presumably this "stakeholder review period" involves EPA releasing all EEMs simultaneously for a 30-day public comment period. This would be a wholly inadequate means to engage the public, especially in comparison to the extensive influence that industry groups have had throughout the EEMs process. A robust notice and comment opportunity is necessary to meaningfully engage *all* stakeholders and ensure that the EEMs do not exacerbate health impacts and inequalities.

Rural communities experiencing the detrimental effects of AFOs lack access to complete information about the impacts and regulation of AFOs, and rarely are provided with a forum to voice their concerns and seek remedies from the government. Rather, EPA has frequently used the EEMs process as a shield to avoid meaningfully responding to and acting on AFO air pollution concerns raised with the Agency. A transparent and accessible notice and comment period for the EEMs will provide a necessary—albeit much-delayed—opportunity for the Agency to hear from the stakeholders most impacted by EPA's decisions regarding EEMs.

Furthermore, the complexity and abstract nature of environmental modeling presents unique and significant barriers to full public participation.[141] EPA should take steps to overcome and mitigate these barriers. For example, a comment period of 90 days would provide impacted communities and advocacy groups the time needed to assess the impacts of the EEMs and engage in outreach to ensure that all interested parties are aware and informed. The complex nature of the EEMs also means that groups and members of the public likely will need to engage experts to review the EEMs and develop technical comments, necessitating a longer comment period. EPA should also hold public listening sessions with content aimed at meaningfully engaging the public in EEMs development, such as layperson explanations of the process of developing the EEMs and the EEMs' impacts and limitations. Similarly, EPA should ensure members of the public are able to hear each other's comments.

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[141] *See generally* J. Fine & D. Owen, *Technocracy & Democracy: Conflicts Between Models & Participation in Environmental Law & Planning*, 56 HASTINGS L.J. 901 (2005), https://repository.uchastings.edu/cgi/viewcontent.cgi?article=3590&context=hastings_law_journal.

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Robust public participation in the finalization of any EEMs is also necessary for EPA to comply with the President's Executive Orders pertaining to environmental justice.[142] AFO air pollution is an environmental justice issue—"people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality" are far more likely to be exposed to AFO air pollution and suffer the health, quality of life, and financial consequences.[143] The Biden Administration has pledged to make environmental justice a priority and directed EPA to "assess whether, and to what extent, its programs and policies perpetuate systemic barriers to opportunities and benefits for people of color and other underserved groups."[144] Agencies are further tasked with "evaluat[ing] opportunities, consistent with applicable law, to increase coordination, communication, and engagement with community-based organizations and civil rights organizations."[145] The finalization of the EEMs is an important opportunity for EPA to advance these objectives, and the failure of EPA to ensure meaningful public participation in the EEMs would contravene the Administration's directives.

The petitioners, as well as many other groups that work with rural communities impacted by AFOs, also could provide EPA with valuable information and context. Two petitioners are environmental justice organizations, which work with communities adversely affected by AFO air pollution, including in North Carolina and California. Many of the petitioners have sought to engage with EPA on the issue of air pollution from AFOs for well over a decade, including challenging the Agreement at the EAB and in the D.C. Circuit, submitting the 2009 CAFO Source Petition, and submitting the 2011 Ammonia Petition. The petitioners have also extensively worked with, and represented in legal actions, members of communities directly

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[142] *See* Exec. Order No. 13985, Advancing Racial Equity & Support for Underserved Communities Through the Federal Government, 86 Fed. Reg. 7009 (Jan. 25, 2021), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1817697/pdf/ehp0115-000317.pdf.

[143] *See id. See also* 2017 OIG REPORT at 3, *see also* K. Donham et al., *Community Health & Socioeconomic Issues Surrounding Concentrated Animal Feeding Operations*, 115 ENV'T. HEALTH PERSPECTIVES (2007).

[144] Exec. Order No. 13985; *see also* Exec. Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 Fed Reg. 7629 (Feb. 16, 1994) ("[E]ach Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations. . . .").

[145] Exec. Order No. 13985.

impacted by AFO pollution. Therefore, the petitioners possess extensive expertise that would be valuable in the process of finalizing the EEMs.

VII. CONCLUSION

The Air Consent Agreement has been an unmitigated failure. During EPA's extended amnesty and fundamentally inadequate NAEMS process, jurisdictions like California have estimated emissions and permitted AFOs with readily available data.[146] The SAB has demonstrated that EPA's NAEMS and EEM development processes reflect the principle of "garbage in, garbage out." EPA has blown far past its 2007 "limited" deferral representation to the D.C. Circuit and its 2017 response to the OIG, landing rural communities in a purgatory of legalized air pollution. Further delay only demonstrates EPA's abdication of its enforcement responsibility and will not yield a better outcome.

We support EPA efforts to develop state-of-the-art and accurate emissions estimating methodologies, but that process should never have been used to shield the industry from enforcement, and in any case, it is well past the time when the NAEMS and EEM process could justify a temporary suspension of applicable law. The reality is that facts and science change over time, and emissions assumptions will also change over time. There is no end to that process. However, EPA can, and routinely does, estimate emissions from many sources of air pollution, including AFOs, using the best science available. The Agency must do the same here. EPA must end the Air Consent Agreement, immediately publish the best currently available emissions methods or emissions factors for each pollutant, and enforce the CAA.

The petitioners therefore petition EPA to rescind the Air Consent Agreement granting enforcement protections to nearly 14,000 AFOs. In addition to a written response confirming the agency's rescission of the Air Consent Agreement, we petition EPA to act immediately to implement CAA permitting and reporting programs, prioritize enforcement actions against AFOs contributing to air pollution and related health impacts in environmental justice communities, and develop process-based models unbound from an unending license to pollute.

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[146] EPA, based on its CAA oversight, has actual knowledge of jurisdictions like California, including the San Joaquin Valley Unified Air Pollution Control District, with AFO permitting programs and State Implementation Plan programs applicable to such facilities.

ED_013141A_00000170-00035

Date: October 26, 2021

Respectfully Submitted,

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On behalf of Petitioners

ED_013141A_00000170-00036

Message

From: Sullivan, Tim [Sullivan.Tim@epa.gov]
Sent: 10/26/2021 6:15:46 PM
To: Belser, Evan [Belser.Evan@epa.gov]
CC: Sullivan, Tim [Sullivan.Tim@epa.gov]
Subject: RE: DDL: 3 p.m. ET: today: E&E re Petition to rescind the Air Consent Agreement

Ex. 5 AC/DP

Timothy J. Sullivan
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
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Phone: 303.312.6196 | Email: sullivan.tim@epa.gov

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Sent: Tuesday, October 26, 2021 12:13 PM
To: Sullivan, Tim <Sullivan.Tim@epa.gov>
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Thanks,

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From: Jones, Enesta <Jones.Enesta@epa.gov>
Sent: Tuesday, October 26, 2021 1:16 PM
To: Millett, John <Millett.John@epa.gov>; DeLuca, Isabel <DeLuca.Isabel@epa.gov>; Bremer, Kristen <Bremer.Kristen@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Conrad, Daniel <conrad.daniel@epa.gov>
Subject: DDL: 3 p.m. ET: today: E&E re Petition to rescind the Air Consent Agreement

Please help! **DDL: 3 p.m. ET today.**

Ex. 5 AC/DP

From: Sean Reilly <sreilly@eenews.net>
Date: October 26, 2021 at 1:03:53 PM EDT
To: EPA Press Office <press@epa.gov>
Subject: Petition to rescind the Air Consent Agreement

Hi folks:

Please see the news release below with the embedded petition and let me know if you have any comment on the petitioners' request to end the George W. Bush administration agreement referenced therein. My deadline is 3:00 today.

Thanks,
Sean

Sean Reilly
Reporter
E&E News/Politico
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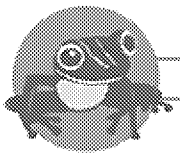

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For Immediate Release, October 26, 2021

Contact: Peter Hart, Food & Water Watch, (732) 266-4932, phart@fwwatch.org
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Mike Andrade-Heymsfield, Animal Legal Defense Fund, (707) 364-8387, media@aldf.org

Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Petition Calls for End to Decades-Long Amnesty for Factory Farm Polluters

WASHINGTON— As President Biden continues to promise that his administration will address the climate crisis and protect the air we breathe from industrial polluters, 24 advocacy organizations a demanding his Environmental Protection Agency live up to that promise by doing more to protect communities from factory farms.

The groups filed a legal petition with the EPA today urging it to enforce federal air pollution laws against these major polluters, something the agency has refused to do for nearly two decades.

Over 16 years ago, the George W. Bush administration announced an agreement and final order i secretly negotiated with the National Pork Producers Council. The EPA agreed to refrain from enforcing key air-pollution control and public-disclosure laws like the Clean Air Act against any ani feeding operation that signed up for the deal.

In exchange, participating feeding operations agreed to pay a small penalty to fund a nationwide a monitoring program that was supposed to help the EPA develop more accurate air emissions estimating methodologies. The methodologies were intended to allow the EPA and citizens to calc factory farms' pollution and begin enforcing clean air laws.

Nearly 14,000 animal feeding operations signed up for this deal, known as the Air Consent Agreer which, by its own terms, should have been completed in 2010. Yet, due in part to the fundamental

flawed ways in which the EPA designed, ran and used the data collected from the air monitoring s the agency has yet to finalize any methodologies or end the consent agreement.

As a result of the EPA's protracted delay, thousands of the nation's largest animal feeding operati continue to enjoy protection from EPA enforcement actions, even if their air pollution emissions ex legal limits or reporting thresholds.

The feeding operations emit a number of deadly air pollutants like ammonia, hydrogen sulfide, particulate matter, volatile organic compounds and climate-altering methane. According to a recen study, the livestock industry's air pollution is responsible for more than 12,700 deaths per year — deaths than are attributed to coal-fired power plants.

In light of the serious and unregulated public health impacts of air pollution from the feeding opera the advocacy groups are demanding that the EPA put a stop to its "unacceptable dereliction of dut terminating the Air Consent Agreement and taking all actions consistent with Biden's executive or to enforce applicable clean air laws against the feeding operations.

The petitioners include: Animal Legal Defense Fund, Buffalo River Watershed Alliance (Arkansas) Center for Biological Diversity, Center for Food Safety, Clean Water for North Carolina, Center on Race, Poverty & the Environment (California), Earthjustice, Environmental Integrity Project, Farm Friends of the Earth, Friends of Family Farmers (Oregon), Friends of Toppenish Creek (Washingt Food Animal Concerns Trust, Food & Water Watch, Government Accountability Project, Humane Society of the United States, Iowa Citizens for Community Improvement, Institute for Agriculture & Trade Policy, John Hopkins Center for a Livable Future, North Carolina Conservation Network, Pu Justice, Socially Responsible Agriculture Project, Southern Environmental Law Center, and Waterkeeper Alliance.

"AFO air pollution not only harms human health and our environment, it also exacerbates the suffe faced by the animals living at these facilities," said Stephen Wells, executive director of the Anima Legal Defense Fund. "This free pass to pollute the air is another way our federal government subsidizes this cruel industry and helps it to thrive and expand."

"Air pollution from factory farms kills almost 13,000 people a year, yet the EPA continues to sit on keister as the meat industry emits more and more air pollution without consequences," said Hanna Connor, an attorney at the Center for Biological Diversity. "The agency's practice of ignoring these dangerous emissions for 16 years now makes it an accomplice in likely more than 200,000 deaths countless harms to the environment and wildlife. Enough is enough."

"Communities surrounding the mega-dairies in Oregon have suffered long enough from their air pollution," said Amy van Saun, senior attorney at the Center for Food Safety's Pacific Northwest o "No one wants to live near these stinking and hazardous operations, yet EPA continues to sacrific most marginalized people to the benefit of industry profit."

"We are simply asking the EPA to level the playing field and treat this industry the same way it trea every other industry," said Abel Russ, senior attorney at the Environmental Integrity Project. "We strongly support the agency's efforts to update the science, but that process is always ongoing — should never be used as an excuse to put critical environmental protections on hold. No other indu

gets that kind of special treatment. It's unfair, and it has important consequences to overburdened communities across the country."

"The EPA has given factory farms a free pass to pollute since 2005, when it negotiated a backroor amnesty deal with the industry essentially exempting it from federal air pollution laws," said Emily Miller, staff attorney at Food & Water Watch. "Since then, factory farms have been freely spewing dangerous air contaminants into the environment, not only threatening the health of nearby communities, but also contributing to climate change. This needs to stop."

"For decades, the factory farm industry has insulated itself from the necessary enforcement critica just food system and healthy climate," said Brent Newell, senior attorney at the Public Justice Foo Project. "The Air Consent Agreement, now more than 16 years old, has given factory farms a free to pollute and reflects past administrations' failure to take urgent action and prioritize human healt over the profit-driven interests of Big Ag. We urge the EPA to grant this petition and to finally aban an agreement that not only undermines the law, but also entrenches the factory farm system in a that harms Black, Latino, Indigenous, Asian and white rural communities."

The Center for Biological Diversity is a national, nonprofit conservation organization with more than 1.7 m members and online activists dedicated to the protection of endangered species and wild places.

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BiologicalDiversity.org

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Message

From: Sullivan, Tim [Sullivan.Tim@epa.gov]
Sent: 10/26/2021 6:11:05 PM
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Sean Reilly
Reporter
E&E News/Politico
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For Immediate Release, October 26, 2021

Contact: Peter Hart, Food & Water Watch, (732) 266-4932, phart@fwwatch.org
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"For decades, the factory farm industry has insulated itself from the necessary enforcement critica just food system and healthy climate," said Brent Newell, senior attorney at the Public Justice Foo Project. "The Air Consent Agreement, now more than 16 years old, has given factory farms a free to pollute and reflects past administrations' failure to take urgent action and prioritize human healt over the profit-driven interests of Big Ag. We urge the EPA to grant this petition and to finally aban an agreement that not only undermines the law, but also entrenches the factory farm system in a that harms Black, Latino, Indigenous, Asian and white rural communities."

The Center for Biological Diversity is a national, nonprofit conservation organization with more than 1.7 m members and online activists dedicated to the protection of endangered species and wild places.

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BiologicalDiversity.org

Andy Parker
Media Specialist, Environmental Health Program
Center for Biological Diversity
aparker@biologicaldiversity.org
503-310-5569

Message

From: Sullivan, Tim [Sullivan.Tim@epa.gov]
Sent: 10/26/2021 6:17:04 PM
To: Belser, Evan [Belser.Evan@epa.gov]
CC: Sullivan, Tim [Sullivan.Tim@epa.gov]
Subject: RE: DDL: 3 p.m. ET: today: E&E re Petition to rescind the Air Consent Agreement

Ex. 5 AC/DP

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

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From: Sullivan, Tim <Sullivan.Tim@epa.gov>
Sent: Tuesday, October 26, 2021 12:16 PM
To: Belser, Evan <Belser.Evan@epa.gov>
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Sent: Tuesday, October 26, 2021 12:13 PM
To: Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: RE: DDL: 3 p.m. ET: today: E&E re Petition to rescind the Air Consent Agreement

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From: Sullivan, Tim <Sullivan.Tim@epa.gov>
Sent: Tuesday, October 26, 2021 2:11 PM
To: Belser, Evan <Belser.Evan@epa.gov>; Egan, Patrick <egan.patrick@epa.gov>; Greene, Mary <Greene.Mary.E@epa.gov>
Cc: Hull, George <Hull.George@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: RE: DDL: 3 p.m. ET: today: E&E re Petition to rescind the Air Consent Agreement

You are correct Evan on the scope of the Agreement. Ex. 5 AC/DP

Ex. 5 AC/DP

Thanks –

Tim

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Subject: RE: DDL: 3 p.m. ET: today: E&E re Petition to rescind the Air Consent Agreement

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Ex. 5 AC/DP

Thanks,

Pat

Patrick J. Egan, M.P.A.
Deputy Director of Communications
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW (MC: 2201A)
Washington, DC 20460
Office: 202-564-4059 | Cell: 202-440-3883

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Any comment or input from OECA here?

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> **Date:** October 26, 2021 at 1:36:00 PM EDT
> **To:** "Jones, Enesta" <Jones.Enesta@epa.gov>, "Millett, John" <Millett.John@epa.gov>, "DeLuca, Isabel" <DeLuca.Isabel@epa.gov>, "Bremer, Kristen" <Bremer.Kristen@epa.gov>, "Conrad, Daniel" <conrad.daniel@epa.gov>
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> he/him/his
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Subject: DDL: 3 p.m. ET: today: E&E re Petition to rescind the Air Consent Agreement

Please help! **DDL: 3 p.m. ET today.**

Ex. 5 AC/DP

From: Sean Reilly <sreilly@eenews.net>
Date: October 26, 2021 at 1:03:53 PM EDT
To: EPA Press Office <press@epa.gov>
Subject: Petition to rescind the Air Consent Agreement

Hi folks:

Please see the news release below with the embedded petition and let me know if you have any comment on the petitioners' request to end the George W. Bush administration agreement referenced therein. My deadline is 3:00 today.

Thanks,
Sean

Sean Reilly
Reporter
E&E News/Politico
Ex. 6 Personal Privacy (PP) (Cell)
Skype: Sreilly_69
sreilly@eenews.net
Twitter: @SeanatGreenwire

CENTER *for* BIOLOGICAL DIVERSITY *Because life*

For Immediate Release, October 26, 2021

Contact: Peter Hart, Food & Water Watch, (732) 266-4932, phart@fwwatch.org
Amy van Saun, Center for Food Safety, (585) 747-0151, avansaun@centerforfoodsafety.org
Hannah Connor, Center for Biological Diversity, (202) 681-1676, hconnor@biologicaldiversity.org
Mike Andrade-Heymsfield, Animal Legal Defense Fund, (707) 364-8387, media@aldf.org

Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Petition Calls for End to Decades-Long Amnesty for Factory Farm Polluters

WASHINGTON— As President Biden continues to promise that his administration will address the climate crisis and protect the air we breathe from industrial polluters, 24 advocacy organizations a demanding his Environmental Protection Agency live up to that promise by doing more to protect communities from factory farms.

The groups filed a legal petition with the EPA today urging it to enforce federal air pollution laws against these major polluters, something the agency has refused to do for nearly two decades.

Over 16 years ago, the George W. Bush administration announced an agreement and final order i secretly negotiated with the National Pork Producers Council. The EPA agreed to refrain from enforcing key air-pollution control and public-disclosure laws like the Clean Air Act against any ani feeding operation that signed up for the deal.

In exchange, participating feeding operations agreed to pay a small penalty to fund a nationwide a monitoring program that was supposed to help the EPA develop more accurate air emissions estimating methodologies. The methodologies were intended to allow the EPA and citizens to calc factory farms' pollution and begin enforcing clean air laws.

Nearly 14,000 animal feeding operations signed up for this deal, known as the Air Consent Agreer which, by its own terms, should have been completed in 2010. Yet, due in part to the fundamental flawed ways in which the EPA designed, ran and used the data collected from the air monitoring s the agency has yet to finalize any methodologies or end the consent agreement.

As a result of the EPA's protracted delay, thousands of the nation's largest animal feeding operati continue to enjoy protection from EPA enforcement actions, even if their air pollution emissions ex legal limits or reporting thresholds.

The feeding operations emit a number of deadly air pollutants like ammonia, hydrogen sulfide, particulate matter, volatile organic compounds and climate-altering methane. According to a recen study, the livestock industry's air pollution is responsible for more than 12,700 deaths per year — deaths than are attributed to coal-fired power plants.

In light of the serious and unregulated public health impacts of air pollution from the feeding opera the advocacy groups are demanding that the EPA put a stop to its "unacceptable dereliction of dut terminating the Air Consent Agreement and taking all actions consistent with Biden's executive orc to enforce applicable clean air laws against the feeding operations.

The petitioners include: Animal Legal Defense Fund, Buffalo River Watershed Alliance (Arkansas) Center for Biological Diversity, Center for Food Safety, Clean Water for North Carolina, Center on Race, Poverty & the Environment (California), Earthjustice, Environmental Integrity Project, Farm Friends of the Earth, Friends of Family Farmers (Oregon), Friends of Toppenish Creek (Washingto Food Animal Concerns Trust, Food & Water Watch, Government Accountability Project, Humane Society of the United States, Iowa Citizens for Community Improvement, Institute for Agriculture & Trade Policy, John Hopkins Center for a Livable Future, North Carolina Conservation Network, Pu

Justice, Socially Responsible Agriculture Project, Southern Environmental Law Center, and Waterkeeper Alliance.

"AFO air pollution not only harms human health and our environment, it also exacerbates the suffe faced by the animals living at these facilities," said Stephen Wells, executive director of the Anima Legal Defense Fund. "This free pass to pollute the air is another way our federal government subsidizes this cruel industry and helps it to thrive and expand."

"Air pollution from factory farms kills almost 13,000 people a year, yet the EPA continues to sit on keister as the meat industry emits more and more air pollution without consequences," said Hanna Connor, an attorney at the Center for Biological Diversity. "The agency's practice of ignoring these dangerous emissions for 16 years now makes it an accomplice in likely more than 200,000 deaths countless harms to the environment and wildlife. Enough is enough."

"Communities surrounding the mega-dairies in Oregon have suffered long enough from their air pollution," said Amy van Saun, senior attorney at the Center for Food Safety's Pacific Northwest o "No one wants to live near these stinking and hazardous operations, yet EPA continues to sacrific most marginalized people to the benefit of industry profit."

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Andy Parker
Media Specialist, Environmental Health Program
Center for Biological Diversity
aparker@biologicaldiversity.org
503-310-5569

Message

From: Egan, Patrick [egan.patrick@epa.gov]
Sent: 10/27/2021 12:25:51 PM
To: Greene, Mary [Greene.Mary.E@epa.gov]; Belser, Evan [Belser.Evan@epa.gov]
CC: Hull, George [Hull.George@epa.gov]; Sullivan, Tim [Sullivan.Tim@epa.gov]
Subject: RE: DDL: 3 p.m. ET: today: E&E re Petition to rescind the Air Consent Agreement

I did not see their name in the list of petitioners.

Pat

Patrick J. Egan, M.P.A.
Deputy Director of Communications
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW (MC: 2201A)
Washington, DC 20460
Office: 202-564-4059 | Cell: 202-440-3883

From: Greene, Mary <Greene.Mary.E@epa.gov>
Sent: Wednesday, October 27, 2021 8:14 AM
To: Belser, Evan <Belser.Evan@epa.gov>; Egan, Patrick <egan.patrick@epa.gov>
Cc: Hull, George <Hull.George@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: RE: DDL: 3 p.m. ET: today: E&E re Petition to rescind the Air Consent Agreement

Did the Environmental Integrity Project sign-on to this petition? Ex. 5 AC/DP
Ex. 5 AC/DP

Mary E. Greene
Director, Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
WJC Building South, Rm 1119B
Office: 202 564 0254
Cell: 202 430 2876

From: Belser, Evan <Belser.Evan@epa.gov>
Sent: Tuesday, October 26, 2021 2:01 PM
To: Egan, Patrick <egan.patrick@epa.gov>; Greene, Mary <Greene.Mary.E@epa.gov>
Cc: Hull, George <Hull.George@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
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Tim, your thoughts?

Evan

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To: Greene, Mary <Greene.Mary.E@epa.gov>; Belser, Evan <Belser.Evan@epa.gov>
Cc: Hull, George <Hull.George@epa.gov>
Subject: FW: DDL: 3 p.m. ET: today: E&E re Petition to rescind the Air Consent Agreement

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Ex. 5 AC/DP

Thanks,

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From: Jones, Enesta <Jones.Enesta@epa.gov>
Sent: Tuesday, October 26, 2021 1:41 PM
To: Hull, George <Hull.George@epa.gov>; Egan, Patrick <egan.patrick@epa.gov>
Subject: DDL: 3 p.m. ET: today: E&E re Petition to rescind the Air Consent Agreement

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To: EPA Press Office <press@epa.gov>
Subject: Petition to rescind the Air Consent Agreement

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Sean

Sean Reilly
Reporter
E&E News/Politico
Ex. 6 Personal Privacy (PP) (Cell)
Skype: Sreilly_69
sreilly@eenews.net
Twitter: @SeanatGreenwire

CENTER *for* BIOLOGICAL DIVERSITY *Because life*

For Immediate Release, October 26, 2021

Contact: Peter Hart, Food & Water Watch, (732) 266-4932, phart@fwwatch.org
Amy van Saun, Center for Food Safety, (585) 747-0151, avansaun@centerforfoodsafety.org
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Arizona • California • Colorado • Florida • N. Carolina • New York • Oregon • Virginia • Washington, D.C. • La Paz, Me

BiologicalDiversity.org

Andy Parker
Media Specialist, Environmental Health Program
Center for Biological Diversity

aparker@biologicaldiversity.org
503-310-5569

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Any comment or input from OECA here?

From: "Srinivasan, Gautam" <Srinivasan.Gautam@epa.gov>
Date: October 26, 2021 at 1:36:00 PM EDT
To: "Jones, Enesta" <Jones.Enesta@epa.gov>, "Millett, John" <Millett.John@epa.gov>, "DeLuca, Isabel" <DeLuca.Isabel@epa.gov>, "Bremer, Kristen" <Bremer.Kristen@epa.gov>, "Conrad, Daniel" <conrad.daniel@epa.gov>
Subject: RE: DDL: 3 p.m. ET: today: E&E re Petition to rescind the Air Consent Agreement

Ex. 5 AC/DP

++++++++++++++++++++++++++++
he/him/his
(202) 695-6287 (c)

From: Jones, Enesta <Jones.Enesta@epa.gov>
Sent: Tuesday, October 26, 2021 1:16 PM
To: Millett, John <Millett.John@epa.gov>; DeLuca, Isabel <DeLuca.Isabel@epa.gov>; Bremer, Kristen <Bremer.Kristen@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Conrad, Daniel <conrad.daniel@epa.gov>
Subject: DDL: 3 p.m. ET: today: E&E re Petition to rescind the Air Consent Agreement

Please help! **DDL: 3 p.m. ET today.**

Ex. 5 AC/DP

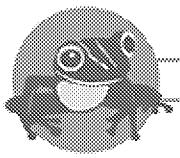
From: Sean Reilly <sreilly@eenews.net>
Date: October 26, 2021 at 1:03:53 PM EDT
To: EPA Press Office <press@epa.gov>
Subject: Petition to rescind the Air Consent Agreement

Hi folks:

Please see the news release below with the embedded petition and let me know if you have any comment on the petitioners' request to end the George W. Bush administration agreement referenced therein. My deadline is 3:00 today.

Thanks,
Sean

Sean Reilly
Reporter
E&E News/Politico
Ex. 6 Personal Privacy (PP) (Cell)
Skype: Sreilly_69
sreilly@eenews.net
Twitter: @SeanatGreenwire



CENTER *for* BIOLOGICAL DIVERSITY *Because life*

For Immediate Release, October 26, 2021

Contact: Peter Hart, Food & Water Watch, (732) 266-4932, phart@fwwatch.org
Amy van Saun, Center for Food Safety, (585) 747-0151, avansaun@centerforfoodsafety.org
Hannah Connor, Center for Biological Diversity, (202) 681-1676, hconnor@biologicaldiversity.org
Mike Andrade-Heymsfield, Animal Legal Defense Fund, (707) 364-8387, media@aldf.org

Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Petition Calls for End to Decades-Long Amnesty for Factory Farm Polluters

WASHINGTON— As President Biden continues to promise that his administration will address the climate crisis and protect the air we breathe from industrial polluters, 24 advocacy organizations a demanding his Environmental Protection Agency live up to that promise by doing more to protect communities from factory farms.

The groups filed a legal petition with the EPA today urging it to enforce federal air pollution laws against these major polluters, something the agency has refused to do for nearly two decades.

Over 16 years ago, the George W. Bush administration announced an agreement and final order i secretly negotiated with the National Pork Producers Council. The EPA agreed to refrain from enforcing key air-pollution control and public-disclosure laws like the Clean Air Act against any ani feeding operation that signed up for the deal.

In exchange, participating feeding operations agreed to pay a small penalty to fund a nationwide a monitoring program that was supposed to help the EPA develop more accurate air emissions estimating methodologies. The methodologies were intended to allow the EPA and citizens to calc factory farms' pollution and begin enforcing clean air laws.

Nearly 14,000 animal feeding operations signed up for this deal, known as the Air Consent Agreer which, by its own terms, should have been completed in 2010. Yet, due in part to the fundamental flawed ways in which the EPA designed, ran and used the data collected from the air monitoring s the agency has yet to finalize any methodologies or end the consent agreement.

As a result of the EPA's protracted delay, thousands of the nation's largest animal feeding operatic continue to enjoy protection from EPA enforcement actions, even if their air pollution emissions ex legal limits or reporting thresholds.

The feeding operations emit a number of deadly air pollutants like ammonia, hydrogen sulfide, particulate matter, volatile organic compounds and climate-altering methane. According to a recen study, the livestock industry's air pollution is responsible for more than 12,700 deaths per year — deaths than are attributed to coal-fired power plants.

In light of the serious and unregulated public health impacts of air pollution from the feeding opera the advocacy groups are demanding that the EPA put a stop to its "unacceptable dereliction of dut terminating the Air Consent Agreement and taking all actions consistent with Biden's executive orc to enforce applicable clean air laws against the feeding operations.

The petitioners include: Animal Legal Defense Fund, Buffalo River Watershed Alliance (Arkansas) Center for Biological Diversity, Center for Food Safety, Clean Water for North Carolina, Center on Race, Poverty & the Environment (California), Earthjustice, Environmental Integrity Project, Farm Friends of the Earth, Friends of Family Farmers (Oregon), Friends of Toppenish Creek (Washingto Food Animal Concerns Trust, Food & Water Watch, Government Accountability Project, Humane Society of the United States, Iowa Citizens for Community Improvement, Institute for Agriculture & Trade Policy, John Hopkins Center for a Livable Future, North Carolina Conservation Network, Pu Justice, Socially Responsible Agriculture Project, Southern Environmental Law Center, and Waterkeeper Alliance.

"AFO air pollution not only harms human health and our environment, it also exacerbates the suffe faced by the animals living at these facilities," said Stephen Wells, executive director of the Anima Legal Defense Fund. "This free pass to pollute the air is another way our federal government subsidizes this cruel industry and helps it to thrive and expand."

"Air pollution from factory farms kills almost 13,000 people a year, yet the EPA continues to sit on keister as the meat industry emits more and more air pollution without consequences," said Hanna Connor, an attorney at the Center for Biological Diversity. "The agency's practice of ignoring these dangerous emissions for 16 years now makes it an accomplice in likely more than 200,000 deaths countless harms to the environment and wildlife. Enough is enough."

"Communities surrounding the mega-dairies in Oregon have suffered long enough from their air pollution," said Amy van Saun, senior attorney at the Center for Food Safety's Pacific Northwest o "No one wants to live near these stinking and hazardous operations, yet EPA continues to sacrific most marginalized people to the benefit of industry profit."

"We are simply asking the EPA to level the playing field and treat this industry the same way it trea every other industry," said Abel Russ, senior attorney at the Environmental Integrity Project. "We

strongly support the agency's efforts to update the science, but that process is always ongoing — should never be used as an excuse to put critical environmental protections on hold. No other indu gets that kind of special treatment. It's unfair, and it has important consequences to overburdened communities across the country."

"The EPA has given factory farms a free pass to pollute since 2005, when it negotiated a backroor amnesty deal with the industry essentially exempting it from federal air pollution laws," said Emily Miller, staff attorney at Food & Water Watch. "Since then, factory farms have been freely spewing dangerous air contaminants into the environment, not only threatening the health of nearby communities, but also contributing to climate change. This needs to stop."

"For decades, the factory farm industry has insulated itself from the necessary enforcement critica just food system and healthy climate," said Brent Newell, senior attorney at the Public Justice Foo Project. "The Air Consent Agreement, now more than 16 years old, has given factory farms a free to pollute and reflects past administrations' failure to take urgent action and prioritize human healt over the profit-driven interests of Big Ag. We urge the EPA to grant this petition and to finally aban an agreement that not only undermines the law, but also entrenches the factory farm system in a that harms Black, Latino, Indigenous, Asian and white rural communities."

The Center for Biological Diversity is a national, nonprofit conservation organization with more than 1.7 m members and online activists dedicated to the protection of endangered species and wild places.

Arizona • California • Colorado • Florida • N. Carolina • New York • Oregon • Virginia • Washington, D.C. • La Paz, Me

BiologicalDiversity.org

Andy Parker
Media Specialist, Environmental Health Program
Center for Biological Diversity
aparker@biologicaldiversity.org
503-310-5569

Message

From: Belser, Evan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D9A0635C271A4BAC9C20634E45083C66-BELSER, EVAN]
Sent: 10/27/2021 2:43:39 PM
To: Greene, Mary [Greene.Mary.E@epa.gov]; Kathryn Caballero (Caballero.Kathryn@epa.gov) [Caballero.Kathryn@epa.gov]; Gregory Fried (Fried.Gregory@epa.gov) [Fried.Gregory@epa.gov]; Brahmbhatt, Roshni [brahmbhatt.Roshni@epa.gov]; Karin Koslow (Koslow.Karin@epa.gov) [Koslow.Karin@epa.gov]; Loren Denton (Denton.Loren@epa.gov) [Denton.Loren@epa.gov]; Kellie Ortega (Ortega.Kellie@epa.gov) [Ortega.Kellie@epa.gov]
Subject: FW: CMS New Assignment - AX-22-000-0451
Attachments: AX-22-000-0451control slip.pdf; AX-22-000-0451 ltr.pdf

Hello everyone,

Ex. 5 AC/DP

Evan

From: Sullivan, Tim <Sullivan.Tim@epa.gov>
Sent: Wednesday, October 27, 2021 10:31 AM
To: Belser, Evan <Belser.Evan@epa.gov>; Caballero, Kathryn <Caballero.Kathryn@epa.gov>; Fried, Gregory <Fried.Gregory@epa.gov>
Cc: Brahmbhatt, Roshni <brahmbhatt.Roshni@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: FW: CMS New Assignment - AX-22-000-0451

Ex. 5 AC/DP

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

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-----Original Message-----
From: Schrock, Bill <Schrock.Bill@epa.gov>
Sent: Wednesday, October 27, 2021 5:44 AM
To: Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: FW: CMS New Assignment - AX-22-000-0451

Tim-The petition was assigned to us for response. Ex. 5 Deliberative Process (DP) Also, it sounds like you're kinda busy right now so not sure you need anything else on your plate unfortunately. Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

-----Original Message-----
From: Hunt, Virginia <Hunt.Virginia@epa.gov>
Sent: Wednesday, October 27, 2021 7:03 AM
To: Dunkins, Robin <Dunkins.Robin@epa.gov>; Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>; Ma, Cyrus <Ma.Cyrus@epa.gov>
Cc: Mills, Kathy <Mills.Kathy@epa.gov>; Gmyr, Joanna <Gmyr.Joanna@epa.gov>; Hall, Deshelia <Hall.DeShelia@epa.gov>
Subject: FW: CMS New Assignment - AX-22-000-0451

Control AX-21-000-0451 has been delegated to SPPD. The attached control slip and incoming letter regarding a petition to rescind the Air Consent Agreement and enforce clean air laws against animal feeding operations are attached for your review and assignment within your group. The final response must be uploaded into CMS by November 10. The

Ex. 5 Deliberative Process (DP)

For response examples, please visit the Comms Team archive:
Ex. 6 Personal Privacy (PP)

Thank you,

Virginia L. Hunt
Administrative Specialist
OAQPS SPPD RCG
109 T.W. Alexander Drive
RTP, NC 27711
Hours 6am -2:30pm EST M-F
ba
-----Original Message-----

From: cmsadmin@epa.gov <cmsadmin@epa.gov>
Sent: Tuesday, October 26, 2021 3:18 PM
To: eck.janet@epa.gov; South, Peter <South.Peter@epa.gov>; Hunt, Virginia <Hunt.Virginia@epa.gov>; Brown, Annette <Brown.Annette@epa.gov>; Joseph, Wanda <joseph.wanda@epa.gov>; Gates, Adrian <gates.adrian@epa.gov>; Gmyr, Joanna <Gmyr.Joanna@epa.gov>; Mills, Kathy <Mills.Kathy@epa.gov>; Crowley, Kate <crowley.kate@epa.gov>
Subject: CMS New Assignment - Blanche Scott - AX-22-000-0451

Control AX-22-000-0451 has been assigned to your office on 10/26/2021 3:17:55 PM by Blanche Scott. Please go to the CMS webpage to view the details of the control.

Summary Information -
Control Number: AX-22-000-0451
Control Subject: Reading File - Petition to Rescind the Air Consent Agreement and Enforce Clean Air Laws Against Animal Feeding Operations
From: Miller, Emily; Stella, Cristina; Connor, Hannah M.M.; Saun, Amy van; Russ, Abel; Heinzen, Tarah; Newell, Brent

Note: This Email was automatically generated. Please do not attempt to respond to it. You can access this control at

Ex. 6 Personal Privacy (PP)

Message

From: Belser, Evan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D9A0635C271A4BAC9C20634E45083C66-BELSER, EVAN]
Sent: 10/27/2021 3:42:40 PM
To: Greene, Mary [Greene.Mary.E@epa.gov]; 'Kathryn Caballero (Caballero.Kathryn@epa.gov)' [Caballero.Kathryn@epa.gov]; Gregory Fried (Fried.Gregory@epa.gov) [Fried.Gregory@epa.gov]; Brahmbhatt, Roshni [brahmbhatt.Roshni@epa.gov]; Karin Koslow (Koslow.Karin@epa.gov) [Koslow.Karin@epa.gov]; Loren Denton (Denton.Loren@epa.gov) [Denton.Loren@epa.gov]; Kellie Ortega (Ortega.Kellie@epa.gov) [Ortega.Kellie@epa.gov]; Sullivan, Tim [Sullivan.Tim@epa.gov]
Subject: RE: CMS New Assignment - AX-22-000-0451

I somehow forgot to include Tim on this.

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Sent: Wednesday, October 27, 2021 10:44 AM
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Subject: FW: CMS New Assignment - AX-22-000-0451

Hello everyone,

Ex. 5 AC/DP

Evan

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Cc: Brahmbhatt, Roshni <brahmbhatt.Roshni@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: FW: CMS New Assignment - AX-22-000-0451

Ex. 5 AC/DP

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

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Sent: Wednesday, October 27, 2021 5:44 AM
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Subject: FW: CMS New Assignment - AX-22-000-0451

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Sent: Wednesday, October 27, 2021 7:03 AM
To: Dunkins, Robin <Dunkins.Robin@epa.gov>; Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>; Ma, Cyrus <Ma.Cyrus@epa.gov>
Cc: Mills, Kathy <Mills.Kathy@epa.gov>; Gmyr, Joanna <Gmyr.Joanna@epa.gov>; Hall, Deshelia <Hall.DeShelia@epa.gov>
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Message

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Sent: 10/27/2021 3:49:07 PM
To: Greene, Mary [Greene.Mary.E@epa.gov]
Subject: RE: CMS New Assignment - AX-22-000-0451

Ex. 5 AC/DP

From: Greene, Mary <Greene.Mary.E@epa.gov>
Sent: Wednesday, October 27, 2021 11:45 AM
To: Belser, Evan <Belser.Evan@epa.gov>
Subject: RE: CMS New Assignment - AX-22-000-0451

Ex. 5 AC/DP

Mary E. Greene
Director, Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
WJC Building South, Rm 1119B
Office: 202 564 0254
Cell: 202 430 2876

From: Belser, Evan <Belser.Evan@epa.gov>
Sent: Wednesday, October 27, 2021 11:43 AM
To: Greene, Mary <Greene.Mary.E@epa.gov>; Caballero, Kathryn <Caballero.Kathryn@epa.gov>; Fried, Gregory <Fried.Gregory@epa.gov>; Brahmbhatt, Roshni <brahmbhatt.Roshni@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Denton, Loren <Denton.Loren@epa.gov>; Ortega, Kellie <Ortega.Kellie@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
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Ex. 5 AC/DP

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Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
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Phone: 303.312.6196 | Email: sullivan.tim@epa.gov

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Sent: 10/27/2021 3:49:55 PM
To: Greene, Mary [Greene.Mary.E@epa.gov]
Subject: RE: CMS New Assignment - AX-22-000-0451

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Director, Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
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From: Belser, Evan
Sent: Wednesday, October 27, 2021 10:44 AM
To: Greene, Mary <Greene.Mary.E@epa.gov>; Kathryn Caballero (Caballero.Kathryn@epa.gov) <Caballero.Kathryn@epa.gov>; Gregory Fried (Fried.Gregory@epa.gov) <Fried.Gregory@epa.gov>; Brahmbhatt, Roshni <brahmbhatt.Roshni@epa.gov>; Karin Koslow (Koslow.Karin@epa.gov) <Koslow.Karin@epa.gov>; Loren Denton (Denton.Loren@epa.gov) <Denton.Loren@epa.gov>; Kellie Ortega (Ortega.Kellie@epa.gov) <Ortega.Kellie@epa.gov>
Subject: FW: CMS New Assignment - AX-22-000-0451

Hello everyone,

Ex. 5 AC/DP

Ex. 5 AC/DP

Evan

From: Sullivan, Tim <Sullivan.Tim@epa.gov>
Sent: Wednesday, October 27, 2021 10:31 AM
To: Belser, Evan <Belser.Evan@epa.gov>; Caballero, Kathryn <Caballero.Kathryn@epa.gov>; Fried, Gregory <Fried.Gregory@epa.gov>
Cc: Brahmbhatt, Roshni <brahmbhatt.Roshni@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: FW: CMS New Assignment - AX-22-000-0451

Ex. 5 AC/DP

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.

-----Original Message-----
From: Schrock, Bill <Schrock.Bill@epa.gov>
Sent: Wednesday, October 27, 2021 5:44 AM
To: Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: FW: CMS New Assignment - AX-22-000-0451

Tim-The petition was assigned to us for response. Ex. 5 Deliberative Process (DP) Also, it sounds like you're kinda busy right now so not sure you need anything else on your plate unfortunately. Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

-----Original Message-----
From: Hunt, Virginia <Hunt.Virginia@epa.gov>

Sent: Wednesday, October 27, 2021 7:03 AM
To: Dunkins, Robin <Dunkins.Robin@epa.gov>; Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>; Ma, Cyrus <Ma.Cyrus@epa.gov>
Cc: Mills, Kathy <Mills.Kathy@epa.gov>; Gmyr, Joanna <Gmyr.Joanna@epa.gov>; Hall, Deshelia <Hall.DeShelia@epa.gov>
Subject: FW: CMS New Assignment - AX-22-000-0451

Control AX-21-000-0451 has been delegated to SPPD. The attached control slip and incoming letter regarding a petition to rescind the Air Consent Agreement and enforce clean air laws against animal feeding operations are attached for your review and assignment within your group. The final response must be uploaded into CMS by November 10. The following steps will be helpful to you:

Ex. 5 Deliberative Process (DP)

For response examples, please visit the Comms Team archive:

Ex. 6 Personal Privacy (PP)

Thank you,

Virginia L. Hunt
Administrative Specialist
OAQPS SPPD RCG
109 T.W. Alexander Drive
RTP, NC 27711
Hours 6am -2:30pm EST M-F
ba
-----Original Message-----
From: cmsadmin@epa.gov <cmsadmin@epa.gov>
Sent: Tuesday, October 26, 2021 3:18 PM
To: eck.janet@epa.gov; South, Peter <South.Peter@epa.gov>; Hunt, Virginia <Hunt.Virginia@epa.gov>; Brown, Annette <Brown.Annette@epa.gov>; Joseph, Wanda <joseph.wanda@epa.gov>; Gates, Adrian <gates.adrian@epa.gov>; Gmyr, Joanna <Gmyr.Joanna@epa.gov>; Mills, Kathy <Mills.Kathy@epa.gov>; Crowley, Kate <crowley.kate@epa.gov>
Subject: CMS New Assignment - Blanche Scott - AX-22-000-0451

Control AX-22-000-0451 has been assigned to your office on 10/26/2021 3:17:55 PM by Blanche Scott. Please go to the CMS webpage to view the details of the control.

Summary Information -
Control Number: AX-22-000-0451
Control Subject: Reading File - Petition to Rescind the Air Consent Agreement and Enforce Clean Air Laws Against Animal Feeding Operations
From: Miller, Emily; Stella, Cristina; Connor, Hannah M.M.; Saun, Amy van; Russ, Abel; Heinzen, Tarah; Newell, Brent

Note: This Email was automatically generated. Please do not attempt to respond to it. You can access this control at

Ex. 6 Personal Privacy (PP)

Message

From: Belser, Evan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D9A0635C271A4BAC9C20634E45083C66-BELSER, EVAN]
Sent: 10/26/2021 6:01:14 PM
To: Egan, Patrick [egan.patrick@epa.gov]; Greene, Mary [Greene.Mary.E@epa.gov]
CC: Hull, George [Hull.George@epa.gov]; Sullivan, Tim [Sullivan.Tim@epa.gov]
Subject: RE: DDL: 3 p.m. ET: today: E&E re Petition to rescind the Air Consent Agreement

Adding Tim who handled these for OCE many years ago. If memory serves, these concerned CAA, EPCRA, and CERCLA
Ex. 5 AC/DP

Tim, your thoughts?

Evan

From: Egan, Patrick <egan.patrick@epa.gov>
Sent: Tuesday, October 26, 2021 1:57 PM
To: Greene, Mary <Greene.Mary.E@epa.gov>; Belser, Evan <Belser.Evan@epa.gov>
Cc: Hull, George <Hull.George@epa.gov>
Subject: FW: DDL: 3 p.m. ET: today: E&E re Petition to rescind the Air Consent Agreement

Mary and Evan,

Earlier today 24 advocacy groups filed a legal petition requesting EPA to rescind the air consent agreement with animal feeding operations that was created during the GW Bush's administration. E & E News is requesting a comment. Ex. 5 AC/DP
Ex. 5 AC/DP

Thanks,

Pat

Patrick J. Egan, M.P.A.
Deputy Director of Communications
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW (MC: 2201A)
Washington, DC 20460
Office: 202-564-4059 | Cell: 202-440-3883

From: Jones, Enesta <Jones.Enesta@epa.gov>
Sent: Tuesday, October 26, 2021 1:41 PM
To: Hull, George <Hull.George@epa.gov>; Egan, Patrick <egan.patrick@epa.gov>
Subject: DDL: 3 p.m. ET: today: E&E re Petition to rescind the Air Consent Agreement

Hi George & Pat,
Any comment or input from OECA here?

> **From:** "Srinivasan, Gautam" <Srinivasan.Gautam@epa.gov>
> **Date:** October 26, 2021 at 1:36:00 PM EDT
> **To:** "Jones, Enesta" <Jones.Enesta@epa.gov>, "Millett, John" <Millett.John@epa.gov>, "DeLuca, Isabel"

<DeLuca.Isabel@epa.gov>, "Bremer, Kristen" <Bremer.Kristen@epa.gov>, "Conrad, Daniel" <conrad.daniel@epa.gov>
Subject: RE: DDL: 3 p.m. ET: today: E&E re Petition to rescind the Air Consent Agreement

Ex. 5 AC/DP

++++++++++++++++++++++++++++
he/him/his
(202) 695-6287 (c)

From: Jones, Enesta <Jones.Enesta@epa.gov>
Sent: Tuesday, October 26, 2021 1:16 PM
To: Millett, John <Millett.John@epa.gov>; DeLuca, Isabel <DeLuca.Isabel@epa.gov>; Bremer, Kristen <Bremer.Kristen@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Conrad, Daniel <conrad.daniel@epa.gov>
Subject: DDL: 3 p.m. ET: today: E&E re Petition to rescind the Air Consent Agreement

Please help! **DDL: 3 p.m. ET today.**
Ex. 5 AC/DP

From: Sean Reilly <sreilly@eenews.net>
Date: October 26, 2021 at 1:03:53 PM EDT
To: EPA Press Office <press@epa.gov>
Subject: Petition to rescind the Air Consent Agreement

Hi folks:

Please see the news release below with the embedded petition and let me know if you have any comment on the petitioners' request to end the George W. Bush administration agreement referenced therein. My deadline is 3:00 today.

Thanks,
Sean

Sean Reilly
Reporter
E&E News/Politico
Ex. 6 Personal Privacy (PP) Cell)
Skype: Sreilly_69
sreilly@eenews.net
Twitter: @SeanatGreenwire

CENTER *for* BIOLOGICAL DIVERSITY *Because life*

For Immediate Release, October 26, 2021

Contact: Peter Hart, Food & Water Watch, (732) 266-4932, phart@fwwatch.org
Amy van Saun, Center for Food Safety, (585) 747-0151, avansaun@centerforfoodsafety.org
Hannah Connor, Center for Biological Diversity, (202) 681-1676, hconnor@biologicaldiversity.org
Mike Andrade-Heymsfield, Animal Legal Defense Fund, (707) 364-8387, media@aldf.org

Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Petition Calls for End to Decades-Long Amnesty for Factory Farm Polluters

WASHINGTON— As President Biden continues to promise that his administration will address the climate crisis and protect the air we breathe from industrial polluters, 24 advocacy organizations a demanding his Environmental Protection Agency live up to that promise by doing more to protect communities from factory farms.

The groups filed a legal petition with the EPA today urging it to enforce federal air pollution laws against these major polluters, something the agency has refused to do for nearly two decades.

Over 16 years ago, the George W. Bush administration announced an agreement and final order i secretly negotiated with the National Pork Producers Council. The EPA agreed to refrain from enforcing key air-pollution control and public-disclosure laws like the Clean Air Act against any ani feeding operation that signed up for the deal.

In exchange, participating feeding operations agreed to pay a small penalty to fund a nationwide a monitoring program that was supposed to help the EPA develop more accurate air emissions estimating methodologies. The methodologies were intended to allow the EPA and citizens to calc factory farms' pollution and begin enforcing clean air laws.

Nearly 14,000 animal feeding operations signed up for this deal, known as the Air Consent Agreer which, by its own terms, should have been completed in 2010. Yet, due in part to the fundamental flawed ways in which the EPA designed, ran and used the data collected from the air monitoring s the agency has yet to finalize any methodologies or end the consent agreement.

As a result of the EPA's protracted delay, thousands of the nation's largest animal feeding operati continue to enjoy protection from EPA enforcement actions, even if their air pollution emissions ex legal limits or reporting thresholds.

The feeding operations emit a number of deadly air pollutants like ammonia, hydrogen sulfide, particulate matter, volatile organic compounds and climate-altering methane. According to a recen study, the livestock industry's air pollution is responsible for more than 12,700 deaths per year — deaths than are attributed to coal-fired power plants.

In light of the serious and unregulated public health impacts of air pollution from the feeding opera the advocacy groups are demanding that the EPA put a stop to its "unacceptable dereliction of dut

terminating the Air Consent Agreement and taking all actions consistent with Biden's executive orc to enforce applicable clean air laws against the feeding operations.

The petitioners include: Animal Legal Defense Fund, Buffalo River Watershed Alliance (Arkansas) Center for Biological Diversity, Center for Food Safety, Clean Water for North Carolina, Center on Race, Poverty & the Environment (California), Earthjustice, Environmental Integrity Project, Farm Friends of the Earth, Friends of Family Farmers (Oregon), Friends of Toppenish Creek (Washingto Food Animal Concerns Trust, Food & Water Watch, Government Accountability Project, Humane Society of the United States, Iowa Citizens for Community Improvement, Institute for Agriculture & Trade Policy, John Hopkins Center for a Livable Future, North Carolina Conservation Network, Pu Justice, Socially Responsible Agriculture Project, Southern Environmental Law Center, and Waterkeeper Alliance.

"AFO air pollution not only harms human health and our environment, it also exacerbates the suffe faced by the animals living at these facilities," said Stephen Wells, executive director of the Anima Legal Defense Fund. "This free pass to pollute the air is another way our federal government subsidizes this cruel industry and helps it to thrive and expand."

"Air pollution from factory farms kills almost 13,000 people a year, yet the EPA continues to sit on keister as the meat industry emits more and more air pollution without consequences," said Hanna Connor, an attorney at the Center for Biological Diversity. "The agency's practice of ignoring these dangerous emissions for 16 years now makes it an accomplice in likely more than 200,000 deaths countless harms to the environment and wildlife. Enough is enough."

"Communities surrounding the mega-dairies in Oregon have suffered long enough from their air pollution," said Amy van Saun, senior attorney at the Center for Food Safety's Pacific Northwest o "No one wants to live near these stinking and hazardous operations, yet EPA continues to sacrific most marginalized people to the benefit of industry profit."

"We are simply asking the EPA to level the playing field and treat this industry the same way it trea every other industry," said Abel Russ, senior attorney at the Environmental Integrity Project. "We strongly support the agency's efforts to update the science, but that process is always ongoing — should never be used as an excuse to put critical environmental protections on hold. No other indu gets that kind of special treatment. It's unfair, and it has important consequences to overburdened communities across the country."

"The EPA has given factory farms a free pass to pollute since 2005, when it negotiated a backroor amnesty deal with the industry essentially exempting it from federal air pollution laws," said Emily Miller, staff attorney at Food & Water Watch. "Since then, factory farms have been freely spewing dangerous air contaminants into the environment, not only threatening the health of nearby communities, but also contributing to climate change. This needs to stop."

"For decades, the factory farm industry has insulated itself from the necessary enforcement critica just food system and healthy climate," said Brent Newell, senior attorney at the Public Justice Foo Project. "The Air Consent Agreement, now more than 16 years old, has given factory farms a free to pollute and reflects past administrations' failure to take urgent action and prioritize human healt over the profit-driven interests of Big Ag. We urge the EPA to grant this petition and to finally aban

an agreement that not only undermines the law, but also entrenches the factory farm system in a v
that harms Black, Latino, Indigenous, Asian and white rural communities."

*The Center for Biological Diversity is a national, nonprofit conservation organization with more than 1.7 m
members and online activists dedicated to the protection of endangered species and wild places.*

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BiologicalDiversity.org

Andy Parker
Media Specialist, Environmental Health Program
Center for Biological Diversity
aparker@biologicaldiversity.org
503-310-5569

Message

From: Belser, Evan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D9A0635C271A4BAC9C20634E45083C66-BELSER, EVAN]
Sent: 10/26/2021 6:13:20 PM
To: Sullivan, Tim [Sullivan.Tim@epa.gov]
Subject: RE: DDL: 3 p.m. ET: today: E&E re Petition to rescind the Air Consent Agreement

Ex. 5 AC/DP

From: Sullivan, Tim <Sullivan.Tim@epa.gov>
Sent: Tuesday, October 26, 2021 2:11 PM
To: Belser, Evan <Belser.Evan@epa.gov>; Egan, Patrick <egan.patrick@epa.gov>; Greene, Mary <Greene.Mary.E@epa.gov>
Cc: Hull, George <Hull.George@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: RE: DDL: 3 p.m. ET: today: E&E re Petition to rescind the Air Consent Agreement

You are correct Evan on the scope of the Agreement Ex. 5 AC/DP

Ex. 5 AC/DP

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

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From: Belser, Evan <Belser.Evan@epa.gov>
Sent: Tuesday, October 26, 2021 12:01 PM
To: Egan, Patrick <egan.patrick@epa.gov>; Greene, Mary <Greene.Mary.E@epa.gov>
Cc: Hull, George <Hull.George@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: RE: DDL: 3 p.m. ET: today: E&E re Petition to rescind the Air Consent Agreement

Adding Tim who handled these for OCE many years ago. If memory serves, these concerned CAA, EPCRA, and CERCLA

Ex. 5 AC/DP

Tim, your thoughts?

Evan

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Ex. 5 AC/DP

Thanks,

Pat

Patrick J. Egan, M.P.A.
Deputy Director of Communications
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW (MC: 2201A)
Washington, DC 20460
Office: 202-564-4059 | Cell: 202-440-3883

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>
> Ex. 5 AC/DP
>
> ++++++++++++++++++++++++++++
> he/him/his
> (202) 695-6287 (c)
>
> ---
>
> **From:** Jones, Enesta <Jones.Enesta@epa.gov>
> **Sent:** Tuesday, October 26, 2021 1:16 PM

To: Millett, John <Millett.John@epa.gov>; DeLuca, Isabel <DeLuca.Isabel@epa.gov>; Bremer, Kristen <Bremer.Kristen@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Conrad, Daniel <conrad.daniel@epa.gov>
Subject: DDL: 3 p.m. ET: today: E&E re Petition to rescind the Air Consent Agreement

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Ex. 5 AC/DP

From: Sean Reilly <sreilly@eenews.net>
Date: October 26, 2021 at 1:03:53 PM EDT
To: EPA Press Office <press@epa.gov>
Subject: Petition to rescind the Air Consent Agreement

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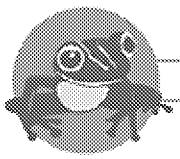
Thanks,
Sean

Sean Reilly
Reporter
E&E News/Politico
Ex. 6 Personal Privacy (PP) (Cell)
Skype: Sreilly_69
sreilly@eenews.net
Twitter: @SeanatGreenwire



CENTER *for* BIOLOGICAL DIVERSITY *Because life*

For Immediate Release, October 26, 2021

Contact: Peter Hart, Food & Water Watch, (732) 266-4932, phart@fwwatch.org
Amy van Saun, Center for Food Safety, (585) 747-0151, avansaun@centerforfoodsafety.org
Hannah Connor, Center for Biological Diversity, (202) 681-1676, hconnor@biologicaldiversity.org
Mike Andrade-Heymsfield, Animal Legal Defense Fund, (707) 364-8387, media@aldf.org

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The Center for Biological Diversity is a national, nonprofit conservation organization with more than 1.7 m members and online activists dedicated to the protection of endangered species and wild places.

Andy Parker
Media Specialist, Environmental Health Program
Center for Biological Diversity
aparker@biologicaldiversity.org
503-310-5569

Message

From: Belser, Evan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D9A0635C271A4BAC9C20634E45083C66-BELSER, EVAN]
Sent: 10/26/2021 6:16:59 PM
To: Sullivan, Tim [Sullivan.Tim@epa.gov]
Subject: RE: DDL: 3 p.m. ET: today: E&E re Petition to rescind the Air Consent Agreement

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Subject: RE: DDL: 3 p.m. ET: today: E&E re Petition to rescind the Air Consent Agreement

Ex. 5 AC/DP

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

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Sent: Tuesday, October 26, 2021 12:13 PM
To: Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: RE: DDL: 3 p.m. ET: today: E&E re Petition to rescind the Air Consent Agreement

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Sent: Tuesday, October 26, 2021 2:11 PM
To: Belser, Evan <Belser.Evan@epa.gov>; Egan, Patrick <egan.patrick@epa.gov>; Greene, Mary <Greene.Mary.E@epa.gov>
Cc: Hull, George <Hull.George@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: RE: DDL: 3 p.m. ET: today: E&E re Petition to rescind the Air Consent Agreement

You are correct Evan on the scope of the Agreement Ex. 5 AC/DP

Ex. 5 AC/DP

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

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http://www.epa.gov/compliance/complaints/index.html

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From: Belser, Evan <Belser.Evan@epa.gov>
Sent: Tuesday, October 26, 2021 12:01 PM
To: Egan, Patrick <egan.patrick@epa.gov>; Greene, Mary <Greene.Mary.E@epa.gov>
Cc: Hull, George <Hull.George@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: RE: DDL: 3 p.m. ET: today: E&E re Petition to rescind the Air Consent Agreement

Adding Tim who handled these for OCE many years ago. If memory serves, these concerned CAA, EPCRA, and CERCLA

Ex. 5 AC/DP

Tim, your thoughts?

Evan

From: Egan, Patrick <egan.patrick@epa.gov>
Sent: Tuesday, October 26, 2021 1:57 PM
To: Greene, Mary <Greene.Mary.E@epa.gov>; Belser, Evan <Belser.Evan@epa.gov>
Cc: Hull, George <Hull.George@epa.gov>
Subject: FW: DDL: 3 p.m. ET: today: E&E re Petition to rescind the Air Consent Agreement

Mary and Evan,

Earlier today 24 advocacy groups filed a legal petition requesting EPA to rescind the air consent agreement with animal feeding operations that was created during the GW Bush's administration. E & E News is requesting a comment. Ex. 5 AC/DP

Ex. 5 AC/DP

Thanks,

Pat

Patrick J. Egan, M.P.A.
Deputy Director of Communications
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW (MC: 2201A)
Washington, DC 20460
Office: 202-564-4059 | Cell: 202-440-3883

From: Jones, Enesta <Jones.Enesta@epa.gov>
Sent: Tuesday, October 26, 2021 1:41 PM
To: Hull, George <Hull.George@epa.gov>; Egan, Patrick <egan.patrick@epa.gov>
Subject: DDL: 3 p.m. ET: today: E&E re Petition to rescind the Air Consent Agreement

Hi George & Pat,
Any comment or input from OECA here?

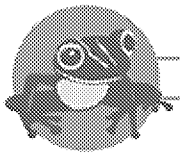
> **From:** "Srinivasan, Gautam" <Srinivasan.Gautam@epa.gov>
> **Date:** October 26, 2021 at 1:36:00 PM EDT
> **To:** "Jones, Enesta" <Jones.Enesta@epa.gov>, "Millett, John" <Millett.John@epa.gov>, "DeLuca, Isabel" <DeLuca.Isabel@epa.gov>, "Bremer, Kristen" <Bremer.Kristen@epa.gov>, "Conrad, Daniel" <conrad.daniel@epa.gov>
> **Subject: RE: DDL: 3 p.m. ET: today: E&E re Petition to rescind the Air Consent Agreement**
>
> Ex. 5 AC/DP
>
> ++++++++++++++++++++++++++++
> he/him/his
> (202) 695-6287 (c)
>
> ---
>
> **From:** Jones, Enesta <Jones.Enesta@epa.gov>
> **Sent:** Tuesday, October 26, 2021 1:16 PM
> **To:** Millett, John <Millett.John@epa.gov>; DeLuca, Isabel <DeLuca.Isabel@epa.gov>; Bremer, Kristen <Bremer.Kristen@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Conrad, Daniel <conrad.daniel@epa.gov>
> **Subject:** DDL: 3 p.m. ET: today: E&E re Petition to rescind the Air Consent Agreement
>
> Please help! **DDL: 3 p.m. ET today.**
> Ex. 5 AC/DP
>
> > **From:** Sean Reilly <sreilly@eenews.net>
> > **Date:** October 26, 2021 at 1:03:53 PM EDT
> > **To:** EPA Press Office <press@epa.gov>
> > **Subject: Petition to rescind the Air Consent Agreement**

Hi folks:

Please see the news release below with the embedded petition and let me know if you have any comment on the petitioners' request to end the George W. Bush administration agreement referenced therein. My deadline is 3:00 today.

Thanks,
Sean

Sean Reilly
Reporter
E&E News/Politico
Ex. 6 Personal Privacy (PP) (Cell)
Skype: Sreilly_69
sreilly@eenews.net
Twitter: @SeanatGreenwire



CENTER *for* BIOLOGICAL DIVERSITY *Because life*

For Immediate Release, October 26, 2021

Contact: Peter Hart, Food & Water Watch, (732) 266-4932, phart@fwwatch.org
Amy van Saun, Center for Food Safety, (585) 747-0151, avansaun@centerforfoodsafety.org
Hannah Connor, Center for Biological Diversity, (202) 681-1676, hconnor@biologicaldiversity.org
Mike Andrade-Heymsfield, Animal Legal Defense Fund, (707) 364-8387, media@aldf.org

Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Petition Calls for End to Decades-Long Amnesty for Factory Farm Polluters

WASHINGTON— As President Biden continues to promise that his administration will address the climate crisis and protect the air we breathe from industrial polluters, 24 advocacy organizations a demanding his Environmental Protection Agency live up to that promise by doing more to protect communities from factory farms.

The groups filed a legal petition with the EPA today urging it to enforce federal air pollution laws against these major polluters, something the agency has refused to do for nearly two decades.

Over 16 years ago, the George W. Bush administration announced an agreement and final order i secretly negotiated with the National Pork Producers Council. The EPA agreed to refrain from enforcing key air-pollution control and public-disclosure laws like the Clean Air Act against any ani feeding operation that signed up for the deal.

In exchange, participating feeding operations agreed to pay a small penalty to fund a nationwide a monitoring program that was supposed to help the EPA develop more accurate air emissions estimating methodologies. The methodologies were intended to allow the EPA and citizens to calc factory farms' pollution and begin enforcing clean air laws.

Nearly 14,000 animal feeding operations signed up for this deal, known as the Air Consent Agreer which, by its own terms, should have been completed in 2010. Yet, due in part to the fundamental flawed ways in which the EPA designed, ran and used the data collected from the air monitoring s the agency has yet to finalize any methodologies or end the consent agreement.

As a result of the EPA's protracted delay, thousands of the nation's largest animal feeding operati continue to enjoy protection from EPA enforcement actions, even if their air pollution emissions ex legal limits or reporting thresholds.

The feeding operations emit a number of deadly air pollutants like ammonia, hydrogen sulfide, particulate matter, volatile organic compounds and climate-altering methane. According to a recen study, the livestock industry's air pollution is responsible for more than 12,700 deaths per year — deaths than are attributed to coal-fired power plants.

In light of the serious and unregulated public health impacts of air pollution from the feeding opera the advocacy groups are demanding that the EPA put a stop to its "unacceptable dereliction of du terminating the Air Consent Agreement and taking all actions consistent with Biden's executive or to enforce applicable clean air laws against the feeding operations.

The petitioners include: Animal Legal Defense Fund, Buffalo River Watershed Alliance (Arkansas) Center for Biological Diversity, Center for Food Safety, Clean Water for North Carolina, Center on Race, Poverty & the Environment (California), Earthjustice, Environmental Integrity Project, Farm Friends of the Earth, Friends of Family Farmers (Oregon), Friends of Toppenish Creek (Washingt Food Animal Concerns Trust, Food & Water Watch, Government Accountability Project, Humane Society of the United States, Iowa Citizens for Community Improvement, Institute for Agriculture & Trade Policy, John Hopkins Center for a Livable Future, North Carolina Conservation Network, Pu Justice, Socially Responsible Agriculture Project, Southern Environmental Law Center, and Waterkeeper Alliance.

"AFO air pollution not only harms human health and our environment, it also exacerbates the suffe faced by the animals living at these facilities," said Stephen Wells, executive director of the Anima Legal Defense Fund. "This free pass to pollute the air is another way our federal government subsidizes this cruel industry and helps it to thrive and expand."

"Air pollution from factory farms kills almost 13,000 people a year, yet the EPA continues to sit on keister as the meat industry emits more and more air pollution without consequences," said Hanna Connor, an attorney at the Center for Biological Diversity. "The agency's practice of ignoring these dangerous emissions for 16 years now makes it an accomplice in likely more than 200,000 deaths countless harms to the environment and wildlife. Enough is enough."

"Communities surrounding the mega-dairies in Oregon have suffered long enough from their air pollution," said Amy van Saun, senior attorney at the Center for Food Safety's Pacific Northwest o

"No one wants to live near these stinking and hazardous operations, yet EPA continues to sacrific most marginalized people to the benefit of industry profit."

"We are simply asking the EPA to level the playing field and treat this industry the same way it trea every other industry," said Abel Russ, senior attorney at the Environmental Integrity Project. "We strongly support the agency's efforts to update the science, but that process is always ongoing — should never be used as an excuse to put critical environmental protections on hold. No other indu gets that kind of special treatment. It's unfair, and it has important consequences to overburdened communities across the country."

"The EPA has given factory farms a free pass to pollute since 2005, when it negotiated a backroo amnesty deal with the industry essentially exempting it from federal air pollution laws," said Emily Miller, staff attorney at Food & Water Watch. "Since then, factory farms have been freely spewing dangerous air contaminants into the environment, not only threatening the health of nearby communities, but also contributing to climate change. This needs to stop."

"For decades, the factory farm industry has insulated itself from the necessary enforcement critica just food system and healthy climate," said Brent Newell, senior attorney at the Public Justice Foo Project. "The Air Consent Agreement, now more than 16 years old, has given factory farms a free to pollute and reflects past administrations' failure to take urgent action and prioritize human healt over the profit-driven interests of Big Ag. We urge the EPA to grant this petition and to finally aban an agreement that not only undermines the law, but also entrenches the factory farm system in a that harms Black, Latino, Indigenous, Asian and white rural communities."

The Center for Biological Diversity is a national, nonprofit conservation organization with more than 1.7 m members and online activists dedicated to the protection of endangered species and wild places.

Arizona • California • Colorado • Florida • N. Carolina • New York • Oregon • Virginia • Washington, D.C. • La Paz, Me

BiologicalDiversity.org

Andy Parker
Media Specialist, Environmental Health Program
Center for Biological Diversity
aparker@biologicaldiversity.org
503-310-5569

Message

From: Belser, Evan [Belser.Evan@epa.gov]
Sent: 10/27/2021 3:42:40 PM
To: Greene, Mary [Greene.Mary.E@epa.gov]; Caballero, Kathryn [Caballero.Kathryn@epa.gov]; Fried, Gregory [Fried.Gregory@epa.gov]; Brahmbhatt, Roshni [brahmbhatt.Roshni@epa.gov]; Koslow, Karin [Koslow.Karin@epa.gov]; Denton, Loren [Denton.Loren@epa.gov]; Ortega, Kellie [Ortega.Kellie@epa.gov]; Sullivan, Tim [Sullivan.Tim@epa.gov]
Subject: RE: CMS New Assignment - AX-22-000-0451

I somehow forgot to include Tim on this.

From: Belser, Evan
Sent: Wednesday, October 27, 2021 10:44 AM
To: Greene, Mary <Greene.Mary.E@epa.gov>; Kathryn Caballero (Caballero.Kathryn@epa.gov) <Caballero.Kathryn@epa.gov>; Gregory Fried (Fried.Gregory@epa.gov) <Fried.Gregory@epa.gov>; Brahmbhatt, Roshni <brahmbhatt.Roshni@epa.gov>; Karin Koslow (Koslow.Karin@epa.gov) <Koslow.Karin@epa.gov>; Loren Denton (Denton.Loren@epa.gov) <Denton.Loren@epa.gov>; Kellie Ortega (Ortega.Kellie@epa.gov) <Ortega.Kellie@epa.gov>
Subject: FW: CMS New Assignment - AX-22-000-0451

Hello everyone,

Ex. 5 AC/DP

Evan

From: Sullivan, Tim <Sullivan.Tim@epa.gov>
Sent: Wednesday, October 27, 2021 10:31 AM
To: Belser, Evan <Belser.Evan@epa.gov>; Caballero, Kathryn <Caballero.Kathryn@epa.gov>; Fried, Gregory <Fried.Gregory@epa.gov>
Cc: Brahmbhatt, Roshni <brahmbhatt.Roshni@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: FW: CMS New Assignment - AX-22-000-0451

Ex. 5 AC/DP

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

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-----Original Message-----
From: Schrock, Bill <Schrock.Bill@epa.gov>
Sent: Wednesday, October 27, 2021 5:44 AM
To: Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: FW: CMS New Assignment - AX-22-000-0451

Tim-The petition was assigned to us for response. Ex. 5 Deliberative Process (DP) Also, it sounds like you're kinda busy right now so not sure you need anything else on your plate unfortunately. Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

-----Original Message-----
From: Hunt, Virginia <Hunt.Virginia@epa.gov>
Sent: Wednesday, October 27, 2021 7:03 AM
To: Dunkins, Robin <Dunkins.Robin@epa.gov>; Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>; Ma, Cyrus <Ma.Cyrus@epa.gov>
Cc: Mills, Kathy <Mills.Kathy@epa.gov>; Gmyr, Joanna <Gmyr.Joanna@epa.gov>; Hall, Deshelia <Hall.DeShelia@epa.gov>
Subject: FW: CMS New Assignment - AX-22-000-0451

Control AX-21-000-0451 has been delegated to SPPD. The attached control slip and incoming letter regarding a petition to rescind the Air Consent Agreement and enforce clean air laws against animal feeding operations are attached for your review and assignment within your group. The final response must be uploaded into CMS by November 10. The

Ex. 5 Deliberative Process (DP)

For response examples, please visit the Comms Team archive:
Ex. 6 Personal Privacy (PP)

Thank you,

Virginia L. Hunt
Administrative Specialist
OAQPS SPPD RCG
109 T.W. Alexander Drive
RTP, NC 27711
Hours 6am -2:30pm EST M-F
ba
-----Original Message-----
From: cmsadmin@epa.gov <cmsadmin@epa.gov>
Sent: Tuesday, October 26, 2021 3:18 PM
To: eck.janet@epa.gov; South, Peter <South.Peter@epa.gov>; Hunt, Virginia <Hunt.Virginia@epa.gov>; Brown, Annette <Brown.Annette@epa.gov>; Joseph, Wanda <joseph.wanda@epa.gov>; Gates, Adrian <gates.adrian@epa.gov>; Gmyr, Joanna <Gmyr.Joanna@epa.gov>; Mills, Kathy <Mills.Kathy@epa.gov>; Crowley, Kate <crowley.kate@epa.gov>
Subject: CMS New Assignment - Blanche Scott - AX-22-000-0451

Control AX-22-000-0451 has been assigned to your office on 10/26/2021 3:17:55 PM by Blanche Scott. Please go to the CMS webpage to view the details of the control.

Summary Information -
Control Number: AX-22-000-0451
Control Subject: Reading File - Petition to Rescind the Air Consent Agreement and Enforce Clean Air Laws Against Animal Feeding Operations
From: Miller, Emily; Stella, Cristina; Connor, Hannah M.M.; Saun, Amy van; Russ, Abel; Heinzen, Tarah; Newell, Brent

Note: This Email was automatically generated. Please do not attempt to respond to it. You can access this control at

Ex. 6 Personal Privacy (PP)

Message

From: Belser, Evan [Belser.Evan@epa.gov]
Sent: 10/27/2021 2:43:39 PM
To: Greene, Mary [Greene.Mary.E@epa.gov]; Caballero, Kathryn [Caballero.Kathryn@epa.gov]; Fried, Gregory [Fried.Gregory@epa.gov]; Brahmbhatt, Roshni [brahmbhatt.Roshni@epa.gov]; Koslow, Karin [Koslow.Karin@epa.gov]; Denton, Loren [Denton.Loren@epa.gov]; Ortega, Kellie [Ortega.Kellie@epa.gov]
Subject: FW: CMS New Assignment - AX-22-000-0451
Attachments: AX-22-000-0451control slip.pdf; AX-22-000-0451 ltr.pdf

Hello everyone,

Ex. 5 AC/DP

Evan

From: Sullivan, Tim <Sullivan.Tim@epa.gov>
Sent: Wednesday, October 27, 2021 10:31 AM
To: Belser, Evan <Belser.Evan@epa.gov>; Caballero, Kathryn <Caballero.Kathryn@epa.gov>; Fried, Gregory <Fried.Gregory@epa.gov>
Cc: Brahmbhatt, Roshni <brahmbhatt.Roshni@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: FW: CMS New Assignment - AX-22-000-0451

Ex. 5 AC/DP

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

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-----Original Message-----
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Sent: Wednesday, October 27, 2021 5:44 AM
To: Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: FW: CMS New Assignment - AX-22-000-0451

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From: Hunt, Virginia <Hunt.Virginia@epa.gov>
Sent: Wednesday, October 27, 2021 7:03 AM
To: Dunkins, Robin <Dunkins.Robin@epa.gov>; Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>; Ma, Cyrus <Ma.Cyrus@epa.gov>
Cc: Mills, Kathy <Mills.Kathy@epa.gov>; Gmyr, Joanna <Gmyr.Joanna@epa.gov>; Hall, Deshelia <Hall.DeShelia@epa.gov>
Subject: FW: CMS New Assignment - AX-22-000-0451

Control AX-21-000-0451 has been delegated to SPPD. The attached control slip and incoming letter regarding a petition to rescind the Air Consent Agreement and enforce clean air laws against animal feeding operations are attached for your review and assignment within your group. The final response must be uploaded into CMS by November 10. The

Ex. 5 Deliberative Process (DP)

For response examples, please visit the Comms Team archive:
Ex. 6 Personal Privacy (PP)

Thank you,

Virginia L. Hunt
Administrative Specialist
OAQPS SPPD RCG
109 T.W. Alexander Drive
RTP, NC 27711
Hours 6am -2:30pm EST M-F
ba
-----Original Message-----
From: cmsadmin@epa.gov <cmsadmin@epa.gov>
Sent: Tuesday, October 26, 2021 3:18 PM

To: eck.janet@epa.gov; South, Peter <South.Peter@epa.gov>; Hunt, Virginia <Hunt.Virginia@epa.gov>; Brown, Annette <Brown.Annette@epa.gov>; Joseph, Wanda <joseph.wanda@epa.gov>; Gates, Adrian <gates.adrian@epa.gov>; Gmyr, Joanna <Gmyr.Joanna@epa.gov>; Mills, Kathy <Mills.Kathy@epa.gov>; Crowley, Kate <crowley.kate@epa.gov>
Subject: CMS New Assignment - Blanche Scott - AX-22-000-0451

Control AX-22-000-0451 has been assigned to your office on 10/26/2021 3:17:55 PM by Blanche Scott. Please go to the CMS webpage to view the details of the control.

Summary Information -
Control Number: AX-22-000-0451
Control Subject: Reading File - Petition to Rescind the Air Consent Agreement and Enforce Clean Air Laws Against Animal Feeding Operations
From: Miller, Emily; Stella, Cristina; Connor, Hannah M.M.; Saun, Amy van; Russ, Abel; Heinzen, Tarah; Newell, Brent

Note: This Email was automatically generated. Please do not attempt to respond to it. You can access this control at

Ex. 6 Personal Privacy (PP)

NACAA
national association of clean air agencies
WASHINGTON UPDATE
October 23-29, 2021 www.4cleanair.org

In this week's Washington Update:

1. Sweeping Budget Reconciliation Bill Calls for Significant Air Agency Funding
2. Fifteen States Urge Biden Administration to "Act Swiftly" to Propose and Adopt "Robust" Rules to Limit NOx Emissions from Heavy-Duty Trucks
3. EPA Publishes Compliance Report on Phase 1 Heavy-Duty Vehicle GHG Rule
4. House Oversight Committee Grills Oil Execs Over Global Warning
5. Think Tank Identifies Legal and Technological Tools EPA Can Use to Regulate Significant Emissions from Fossil-Fuel Powered Appliances
6. Navistar Agrees to Reduce NOx Emissions and Pay $52 Million Civil Penalty to Settle Clean Air Act Claims
7. Advocate Petition Seeks End To AFO Enforcement Amnesty

This Week in Review

(1) Sweeping Budget Reconciliation Bill Calls for Significant Air Agency Funding (October 28, 2021) – Democrats in the U.S. House of Representatives have released the text of a sweeping $1.75 trillion budget reconciliation bill that contains significant additional grant funding for a host of clean air and climate programs. H.R. 5376, the "Build Back Better Act," which contains approximately $550 billion for climate programs, is being considered by the House Rules Committee as a next step before being taken up by the full House. The 1,684-page bill contains numerous grant programs for which state and local air agencies would be eligible if the legislation is passed. These include, among others, a $250 million grant program for state and local clean air agencies to engage in planning to reduce greenhouse gases (GHGs). Title III of the bill includes provisions that "The Administrator shall make a grant to least one eligible entity in each State for the costs of developing a plan for the reduction of greenhouse gas air pollution…Each such plan shall include programs, policies, measures, and projects that will achieve or facilitate the reduction of greenhouse gas air pollution" The bill also enumerates a $4.75 billion program for grants to states and other eligible entities for implementation of those plans. In addition, Title III of the bill would appropriate $2.6 billion in competitive grants for zero emission vehicles and equipment at ports; $150 million for collaborative community wildfire grants under Section 103; $60 million in additional funds under the Diesel Emissions Reduction Act (DERA); $117.5 million for fenceline monitoring, screening monitoring, national air toxics trend stations and other air toxics and community monitoring; $50 million to expand the NAAQS monitoring network with new multipollutant monitoring stations; $25 million in Clean Air Act grants to state and local agencies under Sections 103 and 105; and $5 million for states to adopt GHG and zero-emission mobile source standards pursuant to Section 177 of the Clean Air Act. For further information: https://rules.house.gov/sites/democrats.rules.house.gov/files/BILLS-

117HR5376RH-RCP117-17.pdf (see especially beginning page 301) and https://rules.house.gov/bill/117/hr-5376

(2) Fifteen States Urge Biden Administration to "Act Swiftly" to Propose and Adopt "Robust" Rules to Limit NO_x Emissions from Heavy-Duty Trucks (October 26, 2021) – A multistate coalition sent a letter to Gina McCarthy, President Biden's National Climate Advisor, and Michael S. Regan, Administrator of EPA, urging that EPA "act swiftly" to propose "robust" new federal rules to reduce nitrogen oxide (NO_x) emissions from highway heavy-duty trucks. Offering support for President Biden's August 5, 2021, "Clean Trucks Plan" (under Executive Order 14037) spurring stronger federal standards for these emissions, 14 AGs and a state Director of Environmental Health and Protection write, "Strong heavy-duty NO_x standards are both technologically feasible and cost-effective, as California's Heavy-Duty Omnibus Regulation demonstrates, and necessary to protect historically disadvantaged communities that for far too long have suffered the concentrated impacts of heavy-duty truck pollution." The signatories explain the critical need for rigorous NO_x standards to assist states in meeting their clean air obligations under the National Ambient Air Quality Standards, as identified in State Implementation Plans, and to protect environmental justice communities. They close by writing, "We understand that EPA will soon release its Notice of Proposed Rulemaking for 2027 NO_x standards as part of its Clean Trucks Plan, with a goal of finalizing standards by December 2022. We urge EPA not to delay this important rulemaking for any reason, but to act swiftly to put into place strong, comprehensive standards as stringent as California's Omnibus Regulation and as protective of our most vulnerable residents." Those signing the letter are the AGs of California, Delaware, Hawaii, Illinois, Massachusetts, Maine, Maryland, Minnesota, Pennsylvania, Rhode Island, Vermont, Washington, Wisconsin and the District of Columbia and the Director of Environmental Health and Protection for Colorado. For further information:
https://oag.ca.gov/system/files/attachments/press-docs/Heavy%20Duty%20Truck%20NOx%20Emissions%20-%20Multistate%20Letter%20%281%29.pdf

(3) EPA Publishes Compliance Report on Phase 1 Heavy-Duty Vehicle GHG Rule (October 28, 2021) – The Compliance Division of EPA's Office of Transportation and Air Quality released the *Phase 1 Heavy-Duty Vehicle and Engine Greenhouse Gas Emissions Compliance Report (2014-2018)*. In the report, EPA uses as measures of success of the heavy-duty (HD) GHG program industry's ability to 1) create the systems and processes needed to demonstrate compliance, 2) improve their products with lower GHG emissions and fuel consumption and 3) demonstrate, through their reporting to EPA, that the fleet of vehicles they produced complies with the aggregated fleet standards. The Phase 1 HD GHG Rule was adopted in 2011 by EPA and the National Highway Traffic Safety Administration, became mandatory in 2014 and was phased in by model year (MY) 2017. According to EPA, manufacturers have not only exceeded the rule's compliance guidelines, many have banked GHG credits though MY 2018 in each of the three vehicle averaging sets. EPA also notes that the Phase 1

compliance standards are the first such standards in this sector and "their success highlights the importance of progressive regulatory measures in industry." For further information: https://www.epa.gov/compliance-and-fuel-economy-data/epa-heavy-duty-vehicle-and-engine-greenhouse-gas-emissions

(4) House Oversight Committee Grills Oil Execs Over Global Warning (October 28, 2021) – The U.S. House of Representatives Committee on Oversight and Reform held a hearing that examined six top executives of the largest multinational oil companies and their trade associations to determine the role their companies and groups played in downplaying and discrediting the role played by fossil fuels in contributing to climate damage. Titled "Fueling the Climate Crisis: Exposing Big Oil's Disinformation Campaign to Prevent Climate Action", the hearing featured testimony from the chief executives of Exxon Mobil Corporation, BP America Inc., Shell Oil Company, Chevron Corporation, the American Petroleum Institute and the U.S. Chamber of Commerce. These executives testified before the Committee after providing thousands of documents in response to a September 16, 2021 congressional request exploring internal decision-making by these organizations aimed at undermining and deterring regulation of GHG emissions. "The fossil fuel industry has had scientific evidence about the dangers of climate change since at least 1977. Yet for decades, the industry spread denial and doubt about the harm of its products—undermining the science and preventing meaningful action on climate change even as the global climate crisis became increasingly dire, and its deadly impact on Americans increased," Chair Carolyn Maloney (D-NY) said in opening the hearing. Ranking Member James Comer (R-KY), Rep. Byron Donalds (R-FL) and other Republican lawmakers rejected the accusation that these organizations had misled the public and called for the companies to increase fuel production to lower consumer costs. Dissatisfied with the testimony and documents provided by the companies, Rep. Maloney suggested she might subpoena additional documents: "I see no choice but to continue our committee's investigation until we see the truth." For further information: https://oversight.house.gov/legislation/hearings/fueling-the-climate-crisis-exposing-big-oil-s-disinformation-campaign-to

(5) Think Tank Identifies Legal and Technological Tools EPA Can Use to Regulate Significant Emissions from Fossil-Fuel Powered Appliances (October 25, 2021) – The Institute for Policy Integrity (IPI) at the New York University School of Law announced the release of its report, *Regulating New Fossil-Fuel Appliances Under Section 111(b) of the Clean Air Act*, in which it details the legal and technological tools EPA can use to address an "overlooked source of damaging pollution" – fossil fuel-powered appliances, which are "ubiquitous" in residential and commercial buildings. According to IPI, these appliances emit three times more nitrogen oxide (NO_x) than the nation's gas-fired power plants and nearly as much carbon dioxide, "[y]et, while [EPA] has limited gas power plants' NO_x emissions since the 1970s and greenhouse gas emissions since 2015, the agency has never regulated emissions from residential fossil-fuel appliances and restricts emissions from only a tiny fraction of heating systems in commercial buildings." But, as IPI explains, EPA has statutory authority to set

federal performance standards for new residential and commercial fossil-fuel appliances under Clean Air Act Section 111(b) because 1) these appliances qualify as "stationary sources," 2) they "contribute significantly" to harmful air pollution and 3) multiple means of reducing emissions from these appliances are "adequately demonstrated" and could inform a "best system of emission reduction." IPI also concludes that 1) issuance by EPA of performance standard for fossil-fuel appliances under Section 111(b) would not preclude continued regulation of these appliances by other government entities and 2) federal appliance standards could allow emissions averaging and trading across manufacturers' appliance fleets. For further information: https://policyintegrity.org/files/publications/Gas_Appliances_Report_v3.pdf

(6) Navistar Agrees to Reduce NO_x Emissions and Pay $52 Million Civil Penalty to Settle Clean Air Act Claims (October 25, 2021) – Under the terms of a proposed consent decree, diesel truck and engine manufacturer Navistar, Inc. has agreed to mitigate at least 10,000 tons of NO_x emissions and pay a $52 million civil penalty to resolve alleged Clean Air Act violations resulting from its sale of heavy-duty diesel engines that were not covered by an EPA certificate of conformity and did not meet applicable emissions standards. The agreement would resolve a lawsuit brought by federal prosecutors in 2015 in the U.S. District Court for the Northern District of Illinois. The Clean Air Act requires manufacturers of on-highway engines to apply for and obtain a certificate of conformity demonstrating compliance with emissions standards before introducing an engine into U.S. commerce. The United States' complaint alleges that Navistar violated CAA Section 203(a)(1) when it sold 7,749 on-highway heavy-duty diesel engines (HDDEs) in model year 2010 that failed to meet 2010 emissions standards. Navistar claimed that the engines were EPA-certified model year 2009 engines, but the government contends that because Navistar completed their manufacturing and assembly in 2010, they were actually model year 2010 engines and required a certificate of conformity demonstrating compliance with emissions standards that took effect in 2010. To settle these claims, Navistar has agreed to acquire older, higher-polluting HDDEs from the used market and destroy enough of them to result in at least 10,000 tons of NO_x emissions reduction. The mitigation must be structured through projects approved by EPA that will take geographic diversity into account and benefit communities overburdened by air pollution. Navistar will also pay a $52 million civil penalty. The proposed consent decree will be subject to a 30-day public comment period and final approval by the court. For further information: https://www.epa.gov/enforcement/navistar-inc-clean-air-act-settlement

(7) Advocate Petition Seeks End To AFO Enforcement Amnesty (October 26, 2021) - A coalition of two dozen advocacy groups has filed a petition for EPA to withdraw a 2004 policy exempting animal feeding operations (AFOs) from Clean Air Act enforcement actions by the agency. Under the 2004 Air Consent Agreement, about 14,000 AFOs signed up to pay into a fund that would invest in feedlot emission estimation methods. NACAA comments in a March 3, 2005 letter raised concerns with this agreement, and a 2017 report by the EPA's Office of

Inspector General was also strongly critical of the policy. The October 26, 2021 petition signed by the Center for Biological Diversity, Iowa Citizens for Community Improvement, the Animal Legal Defense Fund, and other organizations argues that EPA has yet to finalize any of the methods, and that the policy continues to shield AFOs from enforcement long after the program was supposed to end. The petition alleges that emissions of ammonia, sulfur dioxide and other pollutants persist from AFO facilities without federal action, while state and local agencies have moved ahead by estimating emissions and issuing permits to AFOs "with readily available data." The petition requests a response within 30 days. For further information:
https://www.biologicaldiversity.org/campaigns/industrial_animal_agriculture/pdfs/2021-10-26-Petition-re-2005-Air-Consent-Agreement.pdf and
https://www.epa.gov/sites/default/files/2016-06/documents/afolagooneemreport2012draftappe.pdf and
https://www.4cleanair.org/wp-content/uploads/2021/01/CAFOCommentLetter_0.pdf

The Week Ahead

- COP26: Uniting the World to Tackle Climate Change – October 31-November 12, 2021
- The Future of Sustainable Air Travel – November 2, 2021
- Commerce Department International Trade Administration Teleconference of the Renewable Energy and Energy Efficiency Advisory Committee – November 2, 2021
- U.S. EPA Teleconference of the Children's Health Protection Advisory Committee – November 2-3, 2021
- American Council on Renewable Energy (ACORE) Grid Forum – November 3-4, 2021
- Autos2050: Transforming Mobility – The Auto Innovators Summit – November 3-4, 3021

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Message

From: Julian, Jaime [Julian.Jaime@epa.gov]
Sent: 11/10/2021 9:04:22 PM
To: eamiller@fwwatch.org; hconnor@biologicaldiversity.org; theinzen@fwwatch.org; bnewell@publicjustice.net; abel russ [aruss@environmentalintegrity.org]; AvanSaun@CenterforFoodSafety.org; cstella@aldf.org; lliebmann@aldf.org
CC: Starfield, Lawrence [Starfield.Lawrence@epa.gov]; Goffman, Joseph [Goffman.Joseph@epa.gov]; Breen, Barry [Breen.Barry@epa.gov]; Prieto, Jeffrey [Prieto.Jeffrey@epa.gov]; Snyder, Rodney [Snyder.Rodney@epa.gov]; Shiffman, Cari [Shiffman.Cari@epa.gov]; Sullivan, Tim [Sullivan.Tim@epa.gov]; Julian, Jaime [Julian.Jaime@epa.gov]
Subject: Response to your October 26, 2021 Petition to Rescind the Air Consent Agreement and Enforce Clean Air Laws Against Animal Feeding Operations
Attachments: AFOs - Petition To Rescind_Response (Nov. 10 2021).pdf

Petitioners,

Please find attached the Environmental Protection Agency's response to your October 26, 2021 Petition to Rescind the Air Consent Agreement and Enforce Clean Air Laws Against Animal Feeding Operations, signed by Larry Starfield, the Acting Assistant Administrator of EPA's Office of Enforcement and Compliance Assurance.

Thank you for bringing your concerns to our attention.

Sincerely,

Jaime Julian, Special Assistant
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Office: 202-564-3217 | Mobile: 202-815-7105
Pronouns: she/her

Inside E.P.A. Weekly report

An Inside Washington Publication

An exclusive report on the U.S. Environmental Protection Agency

Vol. 42, No. 44 - November 5, 2021

Officials Signal Plans For EPA Power Plant Rules Despite High Court Review

Posted November 1, 2021

Top Biden administration officials are signaling they plan to continue crafting strict EPA power plant rules even as the Supreme Court agrees to hear a case that could curb the agency's authority to broadly limit greenhouse gas emissions from the sector by barring it from regulating "beyond the fenceline" of a particular plant to force generation shifting.

In a Nov. 1 press call, National Climate Advisor Gina McCarthy suggested that officials could regulate the sector's emissions of both conventional and climate pollution.

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Industry Groups Appeal WOTUS Vacatur, Citing 'Regulatory Roller Coaster'

Posted October 29, 2021

A coalition of Arizona industry groups, backed by related national trade associations, is appealing a federal judge's vacatur of the Trump-era definition of waters of the United States (WOTUS), seeking to reverse a decision that led the Biden administration to halt implementation of the rule and revert to policies adopted in the 1980s and 90s.

The groups, led by the Arizona Rock Products Association, filed their appeal with the U.S. Court of Appeals for the 9th Circuit on Oct. 25, saying the judge erred by not first ruling on the merits of the case and therefore placed businesses "back on the regulatory roller coaster."

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EPA's GenX Assessment Could Preview Strict New Limits For PFOA, PFOS

Posted November 1, 2021

EPA's risk assessment of GenX, a widely used per- and polyfluoroalkyl substance (PFAS), adopts an approach that observers say could also support tough limits on the more widely-studied PFAS known as PFOA and PFOS — which one environmentalist says "could have enormous implications" as EPA is already considering new assessments for them.

EPA's Oct. 25 assessment of GenX sets the agency's most stringent reference dose (RfD) — the largest daily ingestion rate estimated to be free of health risks — for any PFAS the agency has assessed, but also notes that the

continued on page 13

Lobbying Heats Up On Water Infrastructure Amid Doubts Over Budget Bill

Posted November 2, 2021

Mayors and other local officials are urging lawmakers to quickly pass both the bipartisan infrastructure bill and Democrats' budget reconciliation package, saying cities have been waiting for the drinking water and other investments for too long, although some are raising concerns about tax provisions in the budget bill that could increase their borrowing costs.

The calls for action come as the future of the bipartisan infrastructure bill and the reconciliation package, known as the Build Back Better Act, are in doubt due to Sen. Joe Manchin's (D-WV) comments Nov. 1 that he would not commit

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EPA Readying For New Recycling Program Grants Under Spending Bills

Posted November 2, 2021

EPA is ramping up its preparation to create new recycling grant and funding programs and bolster its upcoming National Recycling Strategy in the event congressional leaders and the White House can reach a deal on the programs in pending infrastructure and spending legislation.

Both the bipartisan, Senate-passed infrastructure bill and pending appropriations legislation "are contemplating" a significant amount of funding for recycling-related programs at EPA, Nena Shaw, acting director of EPA's Resource Conservation and Sustainability Division, told a state-EPA roundtable on materials management at the Association of State & Territorial Solid Waste Management Officials' virtual annual meeting last week.

She added that these pieces of legislation are a "huge opportunity for us, especially in advance of our National Recycling Strategy," which the agency hopes to make final next month.

"We recognize that we need to start even though we don't yet have the funds," she said.

If approved, the new grant money would significantly expand EPA funding for municipal recycling programs at a time when the Biden administration is poised to issue a final national recycling strategy that is expected to strengthen a draft plan the Trump EPA issued last year and to require the agency to improve its metrics for calculating recycling rates.

While EPA lacks regulatory authority to mandate recycling, lawmakers from both parties are supporting some efforts to spur additional actions, especially as officials scramble to create domestic markets for local recycling materials in the wake of China's decision to shutter its markets.

For example, the bipartisan infrastructure bill, which has cleared the Senate and is awaiting a vote in the House, would provide $55 million annually for five years to fund EPA grants to states to improve waste management infrastructure including municipal recycling programs, according to a press release from Sen. Sheldon Whitehouse (D-RI), the sponsor of the measure.

It also adopts language from S. 923, known as the RECYCLE Act, which, according to its Senate sponsors, would provide $15 million per year for five years for EPA to provide grants to states, local governments, tribes and others to provide public education and outreach to consumers on community recycling programs.

And it would have EPA create a model recycling program toolkit for states, local governments and tribes to improve recycling rates, according to the Senate sponsors.

In addition, pending budget reconciliation legislation could provide additional funds for EPA recycling programs.

Shaw said the Office of Resource Conservation and Recovery, which is part of the agency's Office of Land and Emergency Management, is working with the EPA's general counsel and grants and debarment offices to determine how the grants would work, and is making a decision tree to explore various outcomes.

One important factor will be how much funding EPA receives as that will dictate decisions, noting that "we want people to have funds that will be meaningful and impactful for the work that needs to be done."

Asked what impacts would occur regarding recycling programs if the infrastructure bill does not become law, Shaw said the strategy is the hardest matter to address when it comes to this, noting the agency is trying to "narrowly scope what we're looking at for [fiscal year 2022] and beyond, recognizing that there's quite a bit of uncertainty about what our bandwidth is going to be."

Recycling Plastics, Food Waste

Given that, she said, the agency has tried to think twice about what it is committed to, noting work will definitely continue on recycling plastics — as efforts are linked to requirements under previously passed legislation known as the Save Our Seas Act 2.0 — and on food waste.

The opportunity on food waste "is to take advantage of the groundswell of support around the issue not only nationally, but internationally, and recognizing that we need to put a larger strategy in place," she said.

While work on those two efforts will continue, the speed in which it continues will be affected by whether the infrastructure legislation is enacted, she added.

The other waste streams the Biden administration is focusing on in the recycling realm are electronics and other sources of critical minerals, Shaw said. "So I think there's going to be more to come on that," she said. EPA is considering going beyond the agency's Sustainable Materials Management (SMM) electronics challenge when it comes to recycling electronics, she said. Critical minerals will be a key part of that, she added. Under the SMM electronics challenge, EPA encourages electronics manufacturers and others to send 100 percent of used electronics they collect to certified recyclers and refurbishers.

Nicole Villamizar, acting associate director of the Resource Conservation and Sustainability Division who also spoke on the webinar, said textiles are another waste stream the administration is highlighting. Further, longstanding efforts regarding recycling of infrastructure materials would also continue, she said.

Shaw said that if the infrastructure legislation is enacted, EPA plans to work with states to structure the recycling-related grants program in a way that succeeds in meeting the great needs that exist. They extend from some communities that currently have no recycling infrastructure to others that are "leading the way."

She also hinted at aspects of the final National Recycling Strategy that the agency hopes to release in November,

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and noted potential impacts of supply chain disruptions on recycling efforts.

The recycling strategy "does broaden from where we were in the draft to something that is much more focused on the circular economy," reflecting public comments received on the draft, she said. The draft strategy, released in October 2020, set out three overarching objectives for boosting recycling: reducing contamination in the recycling stream, increasing efficiency at recycling facilities and improving markets for recycled material. A month later, EPA announced an aggressive economy-wide goal for that strategy of recycling 50 percent of waste material including plastic, paper and metal by 2030.

But the draft strategy was criticized by Sen. Tom Carper (D-DE), who is now the chairman of the Senate Environment & Public Works (EPW) Committee, and state groups for not being aggressive enough. They called on EPA to significantly strengthen it, saying the agency should expand the plan to emphasize reduction and reuse and move to adopting product stewardship policies. Carper argued that EPA's heavy focus on enhancing education on recycling and pushing infrastructure investments are "woefully inadequate responses to a huge national and global problem," saying that instead "better markets are the critical ingredient to increasing recycling rates."

Market Development

The "market development piece" will be key in the strategy, Shaw now says, propelled by China's "National Sword" policy — which restricts imports of recyclables from the United States — and supply chain disruptions that have arisen during the pandemic that may increase the price of recycled material as a commodity. She added, "you'll see [market development] front and center in the strategy when it comes out."

Trying to reduce contamination in the recycling stream is also significant, she said. The supply chain issues have also boosted the importance of recycling to obtain critical minerals, she indicated.

Further, the agency is looking to strengthen its data collection in order to support its strategy of increasing the recycling rate to 50 percent by 2030 and to fulfill needs under the infrastructure legislation, she said. EPA is discussing with the White House Office of Management & Budget about boosting data collection to help it track progress in meeting recycling goals. The infrastructure legislation has sped up the agency's "desire and need for us to track, manage and report," she said. "We're looking at a pretty stunning amount of work if the infrastructure bill and appropriations come to pass, such that we'll need our technology to work efficiently." — *Suzanne Yohannan* (syohannan@iwpnews.com)

Lacking Key Pledges, EPA's Lead Reduction Strategy Wins Mixed Reviews

Posted October 28, 2021

The Biden administration has taken key steps toward cutting exposures to lead, including setting a strict new safety screening level for children and issuing an EPA-led, government-wide plan to prevent exposures to lead contamination, especially in overburdened communities where disparities in children's blood lead levels persist.

But the measures are winning mixed reviews from environmentalists who say they do not go far enough.

EPA's plan is "a positive start" but falls short on specifics beyond the serious lead problem communities face, Earthjustice said in a statement. The group argues EPA treats lead as only a "legacy" concern, but that lead is still emitted at significant levels from steel mills, incinerators and battery recyclers, among other industry sources.

The holistic approach offered by EPA is long overdue, Earthjustice senior attorney Jonathan Smith says in the statement, but the plan is "disappointing because EPA does not commit to adopting health-based lead paint standards and makes no commitment at all about an endangerment finding for aviation gasoline, EPA's first step to regulate leaded aviation gas."

In addition, the Natural Resources Defense Council's (NRDC) health and food senior strategic director, Erik Olson, praised the strategy as "our best chance to end the urgent and entirely preventable public health crisis caused by lead exposure," but NRDC also said the plan fails to offer specific actions it will take to address drinking water contamination from lead, in response to the group's lawsuit over a Trump-era regulation.

EPA's new draft strategy, called "EPA Strategy to Reduce Lead Exposures and Disparities in U.S. Communities," was published in the *Federal Register* Oct. 28 and is out for public comment until Jan. 26. It adopts a "whole-of-government" approach that includes programs across EPA as well as plans to collaborate with other federal agencies such as the Department of Housing and Urban Development (HUD) to tackle lead contamination issues. Lead can impair physical and mental development in children.

The strategy aims to build on 40 years of progress EPA says has been made in lowering lead levels, "and to focus attention on overburdened communities with environmental justice concerns," consistent with a White House Jan. 20 executive order on equity. "The United States has made substantial progress in reducing lead exposure, but significant disparities remain along racial, ethnic, and socioeconomic lines," it says.

This strategy "really takes the former federal lead action plan to reduce lead exposure" — which was developed in 2018 under the Trump administration — and looks to expand on that work and "really raise the bar in terms of the kinds of protections people have from lead," Carlton Waterhouse, nominated to head EPA's waste office, told a state waste

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managers' annual meeting Oct. 28.

"This strategy will also provide an emphasis on dealing with existing disparities that we're aware of, based on socioeconomic status and race with regard to children's blood lead levels," he said. He cited an illustration of that initiative as a collaboration between EPA and HUD at Superfund sites.

Under that initiative, the agencies will develop pilot sites in communities with HUD facilities near Superfund sites where EPA, HUD and other government agencies will use their collective expertise and resources to transform the area through capacity building, lead cleanups, worker training and development and health monitoring, he said.

CDC Reference Value

A key driver for such efforts appears to be a strict new blood lead reference value, used to identify children with high levels of exposure, from the Centers for Disease Control and Prevention (CDC). CDC announced Oct. 28 that it is lowering its current value from 5 micrograms per deciliter (ug/dl) to 3.5 ug/dl.

According to CDC, the updated values are aimed at encouraging federal agencies, state and local health departments and others to "focus resources on children with the highest [blood lead levels] compared to most U.S. children ages 1-5 so more prompt actions can be taken to 1) reduce their levels, 2) mitigate health effects, and 3) identify and eliminate sources of exposure."

As such, EPA's strategy seeks to reduce lead exposures across media — from paint, dust, soil and air — and also includes enhanced enforcement and compliance assurance measures. The final strategy, to be issued following public comment, will include a timeline of milestones and metrics for tracking EPA progress.

The agency outlines three new approaches it says it will apply to its actions. These are lowering lead exposures locally with a focus on communities and promoting environmental justice, which will involve identifying communities with known or likely lead exposures and then focusing actions to lower those risks; developing and implementing national protective standards, analytical tools and outreach to lower lead levels nationally; and applying a government-wide approach to reducing lead exposures.

Many of the measures have been ongoing. For instance, the strategy includes EPA's ongoing plans under the toxics law to revisit dust-lead hazard standards and dust-lead clearance levels, as required by both a Biden executive order triggering reviews of Trump-era rules and a recent appellate ruling in *A Community Voice, et al. v. EPA* ordering EPA to overhaul a suite of hazard standards that the Trump administration set in 2019 for lead paint and its dust, including these two levels.

The strategy also includes new measures, such as adopting a collaborative approach to lower lead at Superfund sites, and reupping plans that seemed to have previously stalled to revise the agency's soil cleanup policy.

EPA "plans to set new recommendations for screening sites and strengthen preliminary remediation goals to reduce lead exposure in communities and protect human health and the environment in accordance with the latest science." In light of the *A Community Voice* decision, the agency is also revising its 2001 soil-lead hazard standards.

In addition to the EPA-HUD pilot program, the Superfund program plans to "work with a broad range of stakeholders to leverage multiple authorities and tools to address lead exposures beyond the site releases, for example, lead-based paint or lead in drinking water."

Lead Service Lines

The strategy notes that on drinking water, funding through pending infrastructure legislation will provide tens of billions of dollars to ensure elimination of "all lead drinking water pipes and service lines in the United States." But it says more actions to address drinking water are expected, as the strategy will be updated to include anticipated Biden administration-directed actions on drinking water. EPA is also reviewing the Trump EPA's lead and copper rule revisions to determine if they are consistent with the Biden administration's policy priorities.

On air, the strategy lists several actions, including working to lower ambient air emissions of lead; having the Office of Research & Development develop a new science assessment for lead to inform the latest review of lead ambient air quality standards; reviewing emissions standards for lead-emitting sources to adopt technology advances and respond to risk concerns; and collaborating with the Federal Aviation Administration to reduce lead from piston-engine aircraft.

In enforcement, EPA plans to prioritize "high-impact" lead cases in communities with disproportionate environmental harms from lead and expand geographic initiatives in EPA regions to identify lead hot spots with more than one source of lead exposure, among other measures.

And the strategy also outlines other Toxic Substances Control Act measures the agency will work on.

Some commenters praised the agency's action. For example, Betsy Southerland, a former official in EPA's water and waste offices, said in a statement issued by the Environmental Protection Network, comprised of former agency alumni, that the strategy is "a comprehensive and coordinated federal approach to protecting children and adults from exposure to lead in paint, soil, and drinking water, especially in communities of color and lower wealth communities."

And Mustafa Santiago Ali, a former assistant associate administrator in EPA's Office of Environmental Justice, said in the same statement that the agency's draft strategy will allow EPA to "finally begin to institute a set of intersectional actions that assist our most vulnerable communities to move from surviving to thriving." — *Suzanne Yohannan* (syohannan@iwpnews.com)

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Some Prep For PFAS Regulation As EPA Roadmap Sets Upcoming Actions

Posted October 28, 2021

EPA's recently released strategy for addressing per- and polyfluoroalkyl substances (PFAS) across its programs is prompting some law firms to caution companies to prepare compliance strategies, while other observers and stakeholders already appear to be ahead of the curve in prepping for regulatory changes.

While EPA is not expected to finalize drinking water and Superfund regulatory actions and propose wastewater effluent limits until 2023, stakeholders have already begun preparing for regulation.

For instance, the American Society for Testing and Materials (ASTM), an international industry standards-setting organization, plans in December to amend its environmental site assessment standard, used by property buyers to meet "due diligence" requirements under Superfund law, to now account for PFAS in what appears to signal the organization's recognition of EPA's plans to regulate the chemicals.

Meanwhile, 3M, one of the legacy manufacturers of PFAS, may be trying to stay ahead of the curve as EPA prepares to regulate PFAS and move on cleanups The company this month settled for $99 million PFAS contamination lawsuits in Alabama over contamination linked to its Decatur, AL, PFAS facility.

According to the Minnesota-based *Star Tribune*, that amount "is on top of over $100 million already spent on cleanup and a promise to spend even more through a consent decree with the state of Alabama and [EPA] reached in July 2020."

The company, together with other defendants, also inked a separate $12 million settlement of class-action claims brought by Alabama utility customers whose drinking water was contaminated with various PFAS, according to media reports.

But despite such settlements, EPA's recent push to move ahead on regulations for PFAS under a variety of environmental laws through its Oct. 18 PFAS roadmap is expected to lead to litigation.

The roadmap details scores of new research, regulatory and remedial steps it plans to take to address the persistent chemicals. "The risks posed by PFAS demand that the Agency attack the problem on multiple fronts at the same time," the roadmap says. "EPA must leverage the full range of statutory authorities to confront the human health and ecological risks of PFAS. . . . Cumulatively, these actions will build upon one another and lead to more enduring and protective solutions."

But John Sheehan, a former EPA and Justice Department attorney now with the law firm Earth and Water Law, notes the tension in EPA's roadmap between recognizing the need for much more research on PFAS while at the same time it will be issuing regulations.

That may be "an area of weakness" when the agency defends itself against litigation, he says, adding that he expects the agency's drinking water limits, once finalized, will "undoubtedly" be challenged in court. He questions whether the state of science will be known enough when setting the standards and notes that under SDWA, regulators set very specific regulatory limits. He says the question is how will that limit be arrived at, noting some states have set very stringent limits, down to 1 part per trillion for the two most studied PFAS. Other states have not gone as stringent as that.

Such an expectation comes as suits brought by 3M and others are already challenging state drinking water and groundwater standards for PFAS, as several states have been ahead of EPA in regulating the ubiquitous chemicals.

EPA Roadmap

The roadmap, which updates a plan released by the Trump administration, outlines numerous regulatory actions under the Safe Drinking Water Act (SDWA), Clean Water Act (CWA), Comprehensive, Environmental Response, Compensation and Liability Act (CERCLA), Clean Air Act and Toxic Substances Control Act (TSCA), including accelerated deadlines to set drinking water standards for the two most well studied PFAS.

Among those actions, EPA plans to publish draft drinking water standards for those two PFAS — perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS) — under SDWA in the fall of 2022, and finalize those in the fall of 2023 — sooner than its statutory deadlines.

And it also plans to propose the designation of those same two chemicals as CERCLA "hazardous substances" next spring, while finalizing their designation in the summer of 2023.

Law firms are stepping up their warnings to companies to assess their potential liabilities before regulatory actions stemming from the roadmap are taken. "It will be critical for companies potentially impacted by PFAS regulation or liability to closely track (and potentially comment on) upcoming PFAS rule proposals and evaluate how new EPA guidance will affect their compliance strategies," says the law firm Troutman Pepper in an analysis of the roadmap.

And the law firm Fox Rothschild in an Oct. 27 article zeroes in on EPA's plans to regulate wastewater containing PFAS from certain industry sectors, cautioning, "Those in the relevant sectors — and those in the sectors that EPA is continuing to study — should begin planning now to get involved in the regulatory process, and to meet whatever new limitations result." EPA's plan is to propose effluent limitations for PFAS manufacturers in the summer of 2023, it notes.

Meanwhile, ASTM is prepping property buyers to start voluntarily considering PFAS when evaluating properties for environmental contamination as part of "due diligence" efforts. The upcoming amended standard would identify PFAS

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as a "non-scope consideration," meaning there would be no requirement to consider PFAS during a phase I environmental site assessment to meet the Superfund law's "all appropriate inquiries" (AAI) standard, the law firm Winston & Strawn says in an Oct. 21 article on its website.

But, it notes the "intense regulatory scrutiny" PFAS has seen over the past few years, with state regulation and the likelihood they will be designated in the next few years as CERCLA hazardous substances, among other regulatory actions.

And, the law firm DLA Piper in an Oct. 5 alert on the ASTM amendment says while the "non-scope consideration" list of chemicals is not required to be assessed under an AAI, such an addition "may help a prospective purchaser or other interested party navigate environmental risks related to a target property." The upcoming amendment "may offer some clarity to prospective purchasers, lenders, and other interested parties with respect to PFAS risks at a property," it says.

The law firms say ASTM plans to amend its Standard Practice for the Phase I Environmental Site Assessment Process, or ASTM E1527 standard, in December. A spokesperson for ASTM did not respond by press time to a query on the update.

EPA has set out specific reporting requirements for AAIs, which is a process used to evaluate a property's environmental condition and assess potential liability for contamination; AAIs are required in order to obtain certain liability defenses under the Superfund law, according to an agency factsheet.

DLA Piper says, "If and when PFOA and PFOS are designated 'hazardous substances' under CERCLA, they will be required to be evaluated within the scope of the ASTM E1527-13 Standard." It cautions, "Prospective purchasers should therefore include PFAS as part of their environmental due diligence in states where PFAS regulations are already present or in anticipation of the likely listing of PFAS and PFOS as hazardous substances under CERCLA in the near future." — *Suzanne Yohannan* (syohannan@iwpnews.com)

Attorneys Downplay Near-Term Impacts Of EPA's RCRA PFAS Plans

Posted November 1, 2021

Industry attorneys are generally downplaying any significant near-term impacts from EPA's recent decision to eventually address per- and polyfluoroalkyl substances (PFAS) under the Resource Conservation & Recovery Act (RCRA), pointing to the deliberative process the agency will follow and its faster plan to address some of the chemicals under the Superfund law.

EPA's announcement to move ahead with two rulemakings under RCRA "in the near term is interesting but not terribly significant," says Jeffrey Longsworth, an attorney at the law firm Barnes & Thornburg who represents many industry groups on PFAS issues.

Longsworth adds that the interesting and significant RCRA action "will be the next step when EPA has to decide and defend which wastes to regulate as hazardous and what will be exempt."

He notes that EPA's Superfund plans to designate two PFAS are on a faster path than the RCRA proposals and if finalized will have an impact more quickly.

But one private-practice attorney believes EPA's announcement that it will start work on proposing to list four PFAS as "hazardous constituents" is enough to prompt plaintiffs to start pursuing cleanups of PFAS through RCRA under section 7002, the citizen suit provision.

EPA in its recently announced PFAS roadmap says it plans to propose the designation of two PFAS as Superfund "hazardous substances" next spring, while finalizing their designation in the summer of 2023.

Days after the roadmap's release, EPA partially granted a petition filed by New Mexico Gov. Michelle Lujan Grisham (D) to designate PFAS as "hazardous waste" as a class or individually and regulate the chemicals under RCRA.

In the letter, EPA Administrator Michael Regan says the agency plans to start a rulemaking process to propose listing four well-known PFAS — perfluorooctanoic acid (PFOA), perfluorooctane sulfonic acid (PFOS), perfluorobutane sulfonic acid (PFBS) and GenX — as RCRA hazardous constituents — which is a trigger for "corrective action" under the law and eventually for a broader listing as a "hazardous waste."

The agency also plans to launch a second rulemaking to clarify in its regulations "that the RCRA Corrective Action Program has the authority to require investigation and cleanup for wastes that meet the statutory definition of hazardous waste, as defined under RCRA section 1004(5)," the letter says.

"This modification would clarify that emerging contaminants such as PFAS can be cleaned up through the RCRA corrective action process," it says. New Mexico officials applauded the two moves — saying the actions will support New Mexico's position. The state is fighting the Defense Department in court over the latter's refusal to comply with state waste law permitting requirements for PFAS.

Longsworth says the bottom line is that the agency's announcement "confirms that it may move forward with RCRA regulation for at least [four] compounds, but until we see a proposed rule, there are just too many unknowns to opine on the real impacts on regulated entities," he says.

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Science-Based Path

Attorneys are also pointing to the science-based path EPA must follow to move ahead on the first step the agency has pledged to pursue — which is to propose listing four PFAS as "hazardous constituents." Such a listing is required before a substance can be classified as a RCRA "hazardous waste."

"I'm pleased to see that they haven't committed to a hazardous waste listing as I'm hopeful they will be relying on the science to guide that decision," one industry attorney says.

And another attorney, former Trump EPA waste office chief Peter Wright, now also with Barnes & Thornburg, says EPA's plans to propose four PFAS to the RCRA hazardous constituents list is "the first step of a necessary two-step process to regulate any of those chemicals as RCRA hazardous wastes."

He says as EPA has not committed to a specific schedule for the work, "there should be the opportunity for collection of data and dialogue about the possibility of regulation of any PFAS chemicals under RCRA," noting that a January 2020 advance notice of proposed rulemaking (ANPRM) for PFAS that the Trump EPA issued, but which was rescinded by the Biden administration, "did include a number of questions that could help shape the data collection and dialogue."

That ANPRM said EPA would consider the designation of two PFAS as hazardous substances under the Superfund law and assess the potential to identify them as RCRA hazardous waste. EPA in its recently released PFAS roadmap has moved ahead on the Superfund listing plans, saying it will propose listing two PFAS as hazardous substances in the spring.

Another industry attorney, James Votaw with Keller and Heckman, also notes the deliberative, scientific steps EPA must take to classify a substance as a RCRA hazardous constituent, before moving to the next step of designating it as a listed hazardous waste.

"EPA will need to complete a rulemaking demonstrating that the selected PFAS have been shown in scientific studies to have toxic, carcinogenic, mutagenic or teratogenic effects on humans or other life forms," he says.

He adds, if EPA does designate the substances as hazardous constituents, that move "may give authorized states significant authority to craft site-specific monitoring and remedial plans for the designated PFAS through permits and orders" for RCRA treatment, storage, or disposal facilities.

Further, Votaw notes that moving on to designate a substance as a hazardous waste "has to be done with a lot of forethought and planning to avoid significant practical disruption because it imposes significant waste analysis and waste storage, transport and disposal obligations on generators and other handlers that cannot be quickly or easily adopted.

"The waste management infrastructure needs to be in place before such designations are made, including a good understanding of the many affected communities and how they reasonably comply."

Citizen Suits

And the industry attorney source says EPA's actions "are geared towards RCRA Corrective Action so those subject to RCRA Corrective Action permits or orders can expect EPA to be more aggressive regarding remediating PFAS and all emerging contaminants at those sites even though the announcement makes clear EPA believes it already has the authority to require such action by relying on the statutory definition of hazardous waste."

This source adds, "It will be interesting to see if EPA lays out what type of showing would be required for proceeding under the statutory definition for contaminants that aren't listed or characteristic hazardous waste or listed constituents."

But one private-practice attorney says EPA's announcement that it plans to begin the process for listing the four PFAS as hazardous constituents under Appendix VIII of federal waste regulations could prompt RCRA section 7002 suits.

Larry Schnapf, a Superfund and brownfields attorney and adjunct professor at New York Law School, says he could foresee plaintiffs and property owners and others being prompted by this announcement to file section 7002 suits to force cleanups of PFAS at landfills, airports and other locations. That provision allows citizen suits against persons contributing to waste disposal, handling, storage, treatment or transportation that "may present an imminent and substantial endangerment to health or the environment."

Schnapf says such a move opens up the argument that the PFAS compound is a hazardous waste, even though it has not yet been designated as such. — *Suzanne Yohannan* (syohannan@iwpnews.com)

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"We all know that power plant emissions of both toxics and carbon pollution is damaging to our families and communities. . . . And the courts have repeatedly upheld the EPA's authority to regulate dangerous power plant pollution," she said.

McCarthy comments about toxics appears to refer to EPA's Mercury & Air Toxics Standards, for which the agency is soon expected to release a proposal to revise its threshold "appropriate and necessary" finding that the Trump administration revoked.

EPA Administrator Michael Regan also indicated the agency would continue its ongoing efforts to regulate power plants' GHG emissions despite the high court's decision to review the agency's authority.

"Power plant carbon pollution hurts families and communities, and threatens businesses and workers. The Courts have repeatedly upheld EPA's authority to regulate dangerous power plant carbon pollution," Regan tweeted shortly after the high court announced it would hear GOP state and industry challenges to EPA's authority.

In its Oct. 29 order in the consolidated case *West Virginia v. EPA*, the justices granted four petitions for writs of *certiorari* to hear challenges to a split decision from the U.S. Court of Appeals for the District of Columbia Circuit that rejected the Trump EPA's repeal of the Obama administration's Clean Power Plan (CPP) and vacated the prior administration's Affordable Clean Energy (ACE) rule.

The decision was a surprise given that there is no live rule at issue for them to review.

That is because the D.C. Circuit agreed to the Biden administration's request that it not revive the CPP so it could craft its own replacement rule under section 111(d) of the Clean Air Act.

But the court agreed to take the case to consider the scope of EPA's 111 authority as well as whether that threshold authority violates the "major questions" doctrine, which says Congress must specify clear statutory authority for "major" rules, an issue that could have much broader implications than just EPA's power plant rules.

In her comments, McCarthy underscored the suit's legal posture given the vacatur of the Trump rule.

"And so, I do know that the [D.C. Circuit] did strike down the ACE rule. So, we'll see what the Supreme Court might have in mind. But we're confident that the Supreme Court will confirm what those have before them, which is EPA has not just the right but the authority and responsibility to keep our families and communities safe from pollution."

And Regan also highlighted the D.C. Circuit's decision. "After the Court of Appeals for the District of Columbia struck down the ACE rule, EPA got to work and will continue to advance new standards to ensure that all Americans are protected from the power plant pollution that harms public health and our economy," he said.

Series Of Options

However, many are worried that the high court could issue a broad holding that undercuts agency regulatory authority in general, should the court rely on the major questions doctrine, or other legal doctrines, in issuing a final decision in this case, likely in June.

Nonetheless, sources expect EPA to continue to move forward internally developing a new 111(d) power sector GHG rule, but likely sectioning off various levels of ambition and making them severable from each other, due to the timing of this case.

Most expect EPA to avoid replicating the CPP, which declared the entire electricity sector as the best system of emission reduction (BSER), the mechanism the Obama EPA used to justify regulating beyond a power plant's fenceline.

For example, Jonathan Brightbill, the Justice Department's top environmental lawyer at the end of the Trump administration who defended ACE before the D.C. Circuit last year, says, "What they may end up doing is a series of options," similar to the Obama-era CPP which included four "building blocks" in the proposal that was limited to three in the final rule.

"You could similarly see them layer in some options that they could take final as part of a proposal depending on what the Supreme Court ultimately says is the scope of their power under 111(d)."

A second source says EPA cannot "afford to wait" until there is a ruling in this case before deciding a course of action on a new power plant GHG approach because it will be "running out of running room to issue a new rule. . . . My guess is they proceed with a rulemaking and craft it in such a way that the various components are severable."

Brightbill says if EPA is "looking to do something within the fenceline, then that is something that they can proceed with" confidently "because its authority there has not been disputed." But if the agency is looking to implement a rule resembling the CPP, the *cert* grant "will give them some pause."

He adds that EPA was likely waiting for a decision from the high court on whether to take the case. "Now that this petition is decided, I think we'll begin to hear indications of what direction they're going to" take.

The second source notes that the Biden EPA has already signaled it is not looking to regulate generation shifting in any power plant climate rule in part because the "industry has already been doing generation shifting on its own."

If EPA does move forward with an inside-the-fenceline rule, this source and others expect it would be far more demanding than the seven heat-rate improvement options contained in ACE and could include steps such as partial carbon capture and sequestration as BSER.

And while the high court could very well limit EPA's authority to actions within a power plant fenceline, one environmen-

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talist says, "That doesn't mean the work has to stop on developing proposals. . . . There are ways to structure a new rule" as an "inside-the-fenceline approach but with real pollution controls and not just cosmetic heat-rate improvements."

Legal Doctrines

Before the justices are likely to get to EPA's specific authority under one section of a statute, they'll have to get past the broader legal doctrines under consideration.

These include the major questions doctrine, which says courts should not defer to agency statutory interpretations in cases that have "vast political or economic" consequences; the non-delegation doctrine, which says Congress cannot delegate significant legislative power to agencies; or the clear statement rule, which instructs courts not to interpret a statute in a way that brings vast consequences unless it is unmistakably clear that is the intended result.

In accepting these types of arguments for review, "The court has left itself a whole lot of running room to go a whole bunch of different ways," the second source says.

For example, if the court decides that EPA lacks authority to regulate under 111(d) because Congress was not specific enough in determining how the agency should set standards, "the implications . . . are potentially profound because most of the Clean Air Act . . . as well as provisions under the Clean Water Act and other statutes don't have much more specificity than section 111 regarding what agencies are required to consider."

Boilerplate language that EPA should set standards to protect public health with an adequate margin of safety and cost consideration is "replete" in environmental laws, this source says.

"If 111(d) falls on that basis, it is hard to see the limits" of this decision, the source says, noting there are conservatives on the court who "don't believe in broad executive powers . . . and they're looking for a vehicle to scale this back."

The environmentalist acknowledges the possibility that the court "is looking at this case . . . as a way to announce" some new doctrine "in a way that would have very broad ramifications that take down dozens and dozens of statutes and programs by enunciating new limits on what Congress can tell agencies or by imposing a new test on how much detail must be spelled out, or say there are some things Congress simply cannot do. . . But that would be extremely radical and comes at a time when the public is looking askance at the radicalness of the Supreme Court across the board."

Further, the source says it is not at all clear "they intend to go that far . . . They could end up with a narrow ruling that says EPA can regulate carbon from power plants this way but not that way," which could be a win for the agency if it is left with room to achieve significant reductions under the Clean Air Act.

However, several sources note how unusual it was for the justices to take the case at all, given there is no underlying rule to assess, when the court is supposed to address live controversies that cause injury, not issue advisory opinions.

Further, a second environmentalist says it is difficult to argue that the CPP meets the major question doctrine threshold, given that the Trump administration found it had zero costs and zero benefits because the power sector achieved its goals without the rule ever taking effect.

This source argues there is no legal reason for the court to decide broader grounds "especially in the absence of a concrete regulation that will have real effects on society."

Richard Revesz, who runs the Institute for Policy Integrity at New York University, doubts that the court is "going to want to blow up all federal regulatory law. My guess is that if the court were to strike down the approach of the CPP, and I am not sure that they will, then they would rely on generation shifting/beyond-the-fenceline argument and not on something much broader than that."

He notes the court has already upheld EPA's authority to regulate GHGs under the air law twice and used those decisions to form the basis of *AEP v. Connecticut*, which held that EPA's statutory authority preempts common law GHG suits. "You'd be turning back the dial" on that prohibition as well, he says. — *Dawn Reeves* (dreeves@iwpnews.com)

Frey Wins Bipartisan Backing As ORD Head, Eyes PFAS As High Priority

Posted October 27, 2021

The Senate Environment and Public Works Committee (EPW) appears likely to approve Chris Frey's nomination as the first permanent head of EPA's Office of Research and Development (ORD) in almost a decade, after a hearing where he vowed to make toxicity testing, detection and other study of per- and polyfluoroalkyl substances (PFAS) a top priority.

During the panel's Oct. 27 hearing for Frey and Jennifer Clyburn Reed, tapped as federal co-chair of the Southeast Crescent Regional Commission, both EPW Chairman Tom Carper (D-DE) and Ranking Member Shelley Moore Capito (R-WV) praised the nominees, signaling an easy path to confirmation.

Capito praised Frey's qualifications to lead ORD but criticized the Biden administration for what she said is a lack of transparency on how it plans to meet its climate change commitments and for failing to name candidates for key posts like EPA's air office.

She delivered a similar message to Frey, saying the position for which he has been nominated requires him to play the role of "a scientist, not a policymaker or politician."

"The research conducted in the office is used to inform critical policy decisions made by the agency's regulatory

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offices. Establishing public trust requires that the scientific studies are developed in an open and transparent fashion — you and I talked about this — not hidden from robust public scrutiny."

Capito raised particular concern over Frey's work during the Trump administration, when, as a professor at North Carolina State University, he helped establish a group of academics to critique EPA's air quality standards.

If confirmed by the full Senate, Frey will be the first assistant administrator for ORD since Obama-era research chief Paul Anastas, who departed EPA in early 2012. Senate Republicans declined to confirm President Barack Obama's next nominee, Johns Hopkins University professor Tom Burke, and President Donald Trump never nominated anyone for the position.

A career academic, Frey has served as EPA's deputy assistant administrator for science policy since early February and previously held posts on several agency advisory panels — most prominently serving as chairman of its Clean Air Scientific Advisory Committee.

Carper's and Capito's questions for Frey on ORD work dealt mainly with its chemical analyses, especially its oversight of the Integrated Risk Information System (IRIS) program and its part in the PFAS "roadmap".

In response to a question from Carper on his priorities for the research office, Frey said the office will have a "front and center role" implementing the PFAS roadmap, and named three areas where he sees ORD as particularly vital.

Toxicity Testing

Key among those, Frey said, is determining "how to do toxicity testing so we can understand the human health and environmental impacts of PFAS" — a role that would necessarily overlap with the toxics office's new strategy for that testing, focused on use of Toxic Substances Control Act (TSCA) orders that will require industry to conduct new tests starting as soon as the end of this year.

He added that while there are thousands of known PFAS, "they're not all the same" — a key issue in not only the testing strategy but a host of other aspects of EPA's response to the chemicals.

Environmental groups have pressed the agency for a "class-based" approach that treats all perfluorinated substances equally, while industry insists that any study or regulation of PFAS must first divide them by toxicity, persistence and other characteristics that can vary for each.

The TSCA testing plan is based on such a grouping method, but ORD scientists recently told an advisory panel that the research office is still working on its own approach to categorizing PFAS for study.

Frey said ORD must also do more to craft PFAS detection methods — scientific models that can distinguish specific chemicals either in laboratory settings or the environment. "We need to develop more methods to measure PFAS in the environment. There are thousands of PFAS and we only have methods for a few dozen or so," Frey said.

Officials, lawmakers and environmentalists have all argued that more robust methods are needed to ensure scientists can identify the nature of any given instance of PFAS contamination, and potentially trace and address its source. "We have to measure it to be able to manage it," Frey said to Carper.

In addition to ORD's work developing such methods, there are several proposals to have the Office of Chemical Safety & Pollution Prevention (OCSPP) gather them directly from the companies that make or use particular PFAS, either through the proposed TSCA reporting rule for perfluorinated substances or under new statutory authority included in the House-passed defense authorization bill for fiscal year 2022.

Finally, he said he would continue ORD's work on technologies to remediate PFAS, including treatment methods for contaminated water and destruction techniques for PFAS-contaminated products or waste. "These are technologies that ORD is assessing and providing advice on."

Debates there have particularly centered on incineration, which has been widely used especially by the Defense Department but which critics say does not fully destroy the chemicals and instead releases them into the air. The House's FY22 defense bill would impose a moratorium on the practice.

IRIS Assessments

Capito asked Frey how he plans to "modernize" the IRIS program in response to past oversight of the office that has criticized it for lengthy delays in chemical assessments and "the lack of usefulness of some of those assessments."

Frey responded by praising what he said has been the program's overhaul in response to a landmark National Academy of Sciences peer review report in 2012 that called for systemic changes.

"Over the years IRIS has undergone a maturation as a result of the expert advice from the peer review of the academies," he said, and particularly praised steps by staff to "modernize" technical elements of the program like systematic evidence mapping and literature reviews.

He added that he would focus on coordinating IRIS with other programs, saying "we need to complement and not be duplicative of any other resource use in the agency."

In particular, he emphasized the process by which other offices can seek IRIS assessments of particular substances, to ensure that "when we do an assessment it's on a chemical for which they need information."

Neither he nor the lawmakers referenced specific IRIS assessments or the recent push to reinvigorate the program after the Trump administration downgraded it and shifted focus on chemical risk analysis to the TSCA office. Capito did note that IRIS will be responsible for some of EPA's work on PFAS — though without addressing the just-released assessment of the cluster of perfluorinated chemicals known as GenX. — *David LaRoss* (dlaross@iwpnews.com)

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They also asked the lower court to stay the vacatur in *Pascua Yaqui Tribe, et al. v. EPA, et al.*, pending the appeal, and outlined the issues they will raise on appeal.

Judge Rosemary Márquez, of the U.S. District Court for the District of Arizona, vacated the Trump-era definition, known as the Navigable Waters Protection Rule (NWPR), in an Aug. 30 ruling that cited 9th Circuit precedent for issuing remands with vacatur and the potential environmental harms from leaving the rule in place.

In response, EPA and the Army Corps of Engineers halted implementation of the Trump-era definition and returned to pre-2015 policies even though the legal question of whether a district court can vacate a national rule remains unsettled.

But the industry groups, which are intervenor-defendants in the litigation, argue in their Oct. 25 stay motion that Márquez should have carefully considered the merits of the challenge to the NWPR before granting six Native American tribes' request for vacatur.

"The Court has not found, and the Agencies have not conceded, that the NWPR is not in accordance with the [Clean Water Act (CWA)] or that the NWPR is arbitrary and capricious" under the Administrative Procedure Act (APA), the motion says. While EPA and the Army Corps of Engineers "submitted two extra-record declarations that show a clear bias against the NWPR and a desire to take a different regulatory approach to WOTUS, those declarations are not part of the administrative record before the Court and fall far short of a concession that the NWPR is illegal or outside the scope of the Agencies' authority," the motion adds.

At most, those extra-record declarations state that the Biden administration disagrees with the policy decisions made in the NWPR and is concerned that certain policy decisions in the NWPR were incorrect, without admitting any APA violations, the industry groups argue. Those declarations, therefore, cannot substitute for a ruling on the merits of the plaintiffs' challenges to the NWPR, they say.

"Even if the Court had found that the NWPR was contrary to the CWA or arbitrary and capricious, vacatur is improper because it places the regulated business community back on the regulatory roller coaster that severely disrupts their business operations," the industry groups argue, referencing declarations from their members.

"Businesses have been operating under the NWPR for more than a year and a return to the pre-2015 regime only to be followed by the new rule resulting from the current, ongoing rulemaking process would likely subject businesses to *three* different comprehensive regulatory regimes in a short amount of time," the motion continues.

Remand With Vacatur Justification

Márquez in her ruling said the seriousness of EPA's and the Corps' errors in enacting the NWPR, the likelihood that the agencies will alter the 2020 rule's WOTUS definition, "and the possibility of serious environmental harm if the NWPR remains in place upon remand, all weigh in favor of remand with vacatur."

She rejected the industry groups' arguments that a return to the pre-2015 regulatory regime would increase regulatory uncertainty, saying that "regulatory uncertainty typically attends vacatur of any rule and is insufficient to justify remand without vacatur."

"The pre-2015 regulatory regime is familiar to the Agencies and industry alike, and the Agencies have expressed an intent to repeal the NWPR and return to the pre-2015 regulatory regime while working on a new definition of 'waters of the United States,'" Márquez wrote. "The consequences of an interim change do not support the unusual remedy of remand without vacatur."

But in their stay motion, the groups argue that there has been no evidence presented of environmental harm, beyond mere speculation, that leaving the NWPR in place during the agencies' new rulemaking process would harm the plaintiffs' interests.

"To the contrary, robust federal regulatory jurisdiction still exists under the NWPR and, as the Agencies repeatedly made clear in the NWPR, States have the authority to fill any regulatory gap they may perceive," the industry groups say.

They add that "nationwide vacatur is improper because it provides relief far beyond what Plaintiffs have standing to obtain in the suit before this Court—nationwide vacatur is not needed to remedy any harms to the Plaintiffs in this action."

In addition to the Arizona Rock Products Association, the other industry groups involved in the case are National Stone, Sand and Gravel Association, Arizona Cattle Feeders Association, Home Builders Association of Central Arizona, Arizona Farm and Ranch Group, Arizona Farm Bureau, and Arizona Chapter Associated General Contractors.

In a footnote to their motion, they say that the national trade associations associated with the Arizona groups were involved as intervenors-defendants or *amici* in other cases challenging the NWPR, and because the vacatur effectively ended those cases, the national groups plan to support the appeal and motion to stay.

The national groups are National Mining Association, American Forest & Paper Association, National Association of Home Builders, American Farm Bureau Federation, National Pork Producers Council, and American Road and Transportation Builders Association. — *Lara Beaven* (lbeaven@iwpnews.com)

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EPA Will Reconsider Ozone Standards, Opening Door To Tougher Limits

Posted October 28, 2021

EPA has informed environmentalists and states suing the agency for tougher federal ozone standards that it will reconsider the Trump administration's December decision to retain current standards dating from 2015, opening the door to likely tougher ozone limits, with possibly sweeping implications for industry and public health.

"EPA's decision to reconsider the inadequate national limits on ozone pollution is good news for the nation's health. The science clearly shows that the current National Ambient Air Quality Standards [NAAQS] for this pollutant are too weak, allowing levels of ozone that endanger people's health, particularly the health of vulnerable groups like children, older adults and communities of color," said a coalition of groups including the American Academy of Pediatrics, the American Lung Association and the American Public Health Association in an Oct. 28 statement.

"For example, ozone pollution can exacerbate asthma in children and can lead to reduced lung function and even death among adults," the groups add.

One environmental source says EPA intends to complete its reconsideration by December 2023.

While tougher ozone limits may benefit public health, such standards would also bring substantial implementation costs for industry and could limit industrial development, especially in areas in "nonattainment" with the limits. Stronger standards would also further increase the pressure on EPA to tighten emissions standards for vehicles to curb ozone precursors such as nitrogen oxides.

The Trump EPA in December opted to retain both the "primary," or health-based, NAAQS, and the "secondary," welfare-based limit at 70 parts per billion (ppb) averaged over eight hours. Environmental and public health groups have long argued for a tougher limit between 60 ppb and 70 ppb, and even as low as 55 ppb, while the agency's science advisers have twice recommended a stricter limit between 60 ppb and 70 ppb.

However, during the just-concluded review, agency staff did not recommend a tougher limit, and the Clean Air Scientific Advisory Committee (CASAC), in a departure from its previous opinions, by a majority of its members backed retaining the limits unchanged.

The Biden administration has now replaced all but two of the Trump-era members of the seven-member CASAC, appointing a new chair, University of Washington environmental professor Elizabeth Sheppard, who was strongly critical of the Trump EPA's changes to the NAAQS review process. Sheppard disagreed, for example, with the Trump administration's decision to abolish specialized panels numbering up to 20 experts, who traditionally assist the chartered CASAC with oversight of NAAQS reviews.

The environmental groups urge the agency to move quickly to reconsider the ozone standards, and note the tendency EPA has identified for communities of color and low-income communities to suffer disproportionately from air pollution.

"The need is urgent for stronger standards that reflect what the science shows is necessary to protect public health, as the Clean Air Act requires. We welcome EPA's plan to listen to scientific experts and call on the agency to move as quickly as possible to propose, finalize and implement stronger limits on ozone," the groups say.

"Strengthening the ozone pollution standard is an opportunity for EPA to save lives and make meaningful strides to advance health equity and ensure healthy air for all to breathe."

Fast-Track Reconsideration

EPA's decision follows a similar move to reconsider the Trump EPA's decision to retain particulate matter (PM) NAAQS dating from 2012. In that case, EPA staff found that recent science justifies tightening the limits to protect public health, but the CASAC and then-Administrator Andrew Wheeler disagreed.

The agency has now launched a fast-track reconsideration of the PM standards using a supplement to the original science assessment prepared for the Trump-era PM NAAQS review. In a revised draft policy assessment document, agency staff says the updated science assessment reinforces its original conclusion that the agency should consider tightening a key annual limit for fine PM (PM2.5).

While EPA has not yet announced its decision to reconsider ozone standards to the public, it is likely to take a similar approach to the expedited PM review.

EPA has also revived the PM review special panel abolished by Wheeler, and will likely reconstitute a similar panel to assist with the ozone reconsideration as well.

Litigation over the Trump ozone NAAQS rule is consolidated as *State of New York, et al. v. EPA, et al.* in the U.S. Court of Appeals for the District of Columbia Circuit. In the case, New York and 14 other states, plus the District of Columbia and New York City, are seeking tougher ozone limits, as are environmental groups. Opposing any tightening of the limits are six states — Arkansas, Louisiana, Missouri, Mississippi, Montana and Texas — and several major industry associations including the U.S. Chamber of Commerce.

The Center for Biological Diversity, meanwhile, is bringing unique arguments in the case that the ozone NAAQS, like other NAAQS rules, is inadequate because EPA failed to properly evaluate its impact on endangered species, and to consult other government agencies on species impacts. The case remains in abeyance for the time-being. — *Stuart Parker* (sparker@iwpnews.com)

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figures it set for PFOA and PFOS in 2016 are subject to change because the agency is reviewing them.

"That's pretty telling," David Andrews, a senior scientist with Environmental Working Group (EWG), tells *Inside TSCA*. "It could have enormous implications in setting cleanup standards and drinking water standards." EPA's RfDs are commonly used by other programs, agencies and even private authorities to inform risk-management policies.

In particular, the agency's recently-released PFAS "roadmap" calls for final action on PFOA and PFOS drinking water standards by fall 2023, and those rulemakings are sure to rely heavily on the most current findings regarding safe exposure levels.

"Based on the approaches they have taken within this assessment and what we've seen in the scientific literature and from other regulatory agencies, boards and states, the expectation is that there is a reasonable probability that the chronic RfDs for PFOA and PFOA would be lowered" if EPA does reassess those chemicals, Andrews said.

And he added that while the results of a new assessment would depend on the scientific decisions EPA would make in crafting it and the types of data it prioritizes, tighter RFDs would fit the trend of increasingly strict state PFAS limits in drinking water and other media.

For instance, he pointed to an August 2020 journal article reviewing PFAS assessment values published in the journal *Environmental Toxicology & Chemistry* by Gloria Post, a toxicologist with New Jersey's environmental department who has long studied PFAS, as well as California's recently announced public health goal (PHG) for PFOA as "context of where the states have gone."

Post's journal article "summarized the last 20 years of PFOA and PFOS assessments and guidelines and established values by states. It shows decreasing values with respect to time," Andrews said. The article notes that several states have concluded that EPA's 70 nanogram/liter (ng/L) advisory levels "are not sufficiently protective" and have issued their own more-stringent limits for not only those specific chemicals but other PFAS.

Even outside of state agencies, Post writes, "the US Agency for Toxic Substances and Disease Registry (2018) and the European Food Safety Authority (2020) have developed toxicity factors for PFOA and PFOS that are approximately an order of magnitude lower than the USEPA's." And she notes that EPA's 2016 RfD for the two chemicals was itself a tightening of an existing risk value — namely a 400 ng/L interim figure that the agency set in 2009.

California's PHG

Andrews points in particular to California's proposed public health goals (PHGs) for the two chemicals, released in July, as another indicator that agencies at all levels have imposed more stringent limits on PFAS as they gain more information on the chemicals. California's environmental hazard office has proposed a PHG for PFOA of 7 parts per quadrillion (ppq) for PFOA, and 1 part per trillion, or ppt, for PFOS, starting multi-year rulemaking processes for each.

Andrews said that part of what drove those strict figures was regulators' "consideration and use of human epidemiology data, which is something that EPA has noted but really stayed away from in deriving that value." The human data is "an indication of how potentially toxic these chemicals are at very low concentrations," Andrews added. "Getting down to under 1 in 1 million cancer risk may involve" a standard at the ppq level.

Whether a future re-assessment of PFOA and PFOS follows the strict model set by the GenX RFD could depend on which studies EPA uses as the basis for its findings. "[T]he big question is how much EPA considers human epidemiology evidence as there are now multiple assessments relying on different human epidemiology studies and evidence of harm," Andrews said.

In its response to comments document for the GenX assessment, EPA signaled that such studies were not the decisive factor in its decision to tighten its final RfD to 3×10^-6 milligrams per kilogram bodyweight per day (mg/kg-day) — an order of magnitude stricter than the proposed value of 8×10^-6 mg/kg-day. This is likely because there is far less information available about the newer GenX than PFOA and PFOS.

Specifically, the agency wrote, the key was its decision to increase the assessment's uncertainty factors — multipliers of up to 10 that regulatory agencies use to increase the conservativism of RfDs to account for various types of uncertainty in their calculations. Regulators can use uncertainty factors to make up for unknowns due to limited data, or to represent the unknown differences in humans' and lab animals' responses to chemicals, among other issues.

EPA notes in its response to comments that Pennsylvania and Minnesota regulatory agencies and other environmental groups urged EPA to increase its database uncertainty factor (UFD) from 3 to 10, while the American Chemistry Council (ACC) urged EPA to reduce it from 3 to 1.

Other commenters, including Minnesota and New Jersey agencies, sought other increases, including to address the uncertainty surrounding conversion from subchronic data to a chronic RfD, which EPA also agreed with.

Those decisions have already prompted push-back from industry. A spokeswoman for Chemours, the company that manufactures GenX, tells *Inside TSCA* that company officials "are unaware of data that would support the conclusions drawn by the agency.

"We're reviewing the information for additional insight into the new review process used by the agency and the new data the agency utilized for the change from its 2018 draft assessment, including the application of revised uncertainty

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factors to reflect greater uncertainty even though the agency indicates there is additional data since the draft assessment."

And an ACC spokesman said officials at that group "are very concerned that all relevant data was not reviewed and applied to this assessment, and that there appears to be a lack of a consistent approach to these assessments when comparing to other chemistries," such as the PFAS known as PFBS and PFBA.

"Taken together this might indicate why in this assessment, EPA determined a chronic reference dose 25 times lower than what was in their 2018 draft and what [Michigan] developed in 2019, and 30 times lower than what [North Carolina] developed in 2018. We support strong, science based chemical regulation but believe the best available science needs to be applied consistently when assessing chemistries for health and environmental effects," the spokesperson said.

EPA explains in the response to comments document that it decided to increase the database uncertainty factor because it agreed with commenters that even though newer studies of GenX suggest it causes reproductive or developmental harms, there was no animal study across multiple generations that could confirm or deny those fears.

"The intended purpose of the UFD is to address the possibility that a lower reference value might result if additional data were available. EPA bases its decisions on the specific toxicity information that is lacking from the database at the time of the assessment," the agency writes. — *Maria Hegstad* (mhegstad@iwpnews.com)

Power Sector Urges EPA To Retain Trump Finding On ELG Treatment Method

Posted October 28, 2021

Power companies are urging EPA to maintain a Trump-era conclusion that Clean Water Act (CWA) effluent limits should not be based on membrane treatment technology, saying very little research has been done since the agency issued its 2020 effluent limitation guidelines (ELGs) for the sector to support a change.

The Utility Water Act Group (UWAG), an *ad hoc* coalition of electric power companies and national trade associations, "continues to have serious concerns about the availability and economic achievability of membrane technology for the steam electric category," the group says in Oct. 14 comments to EPA.

"UWAG members are concerned that membranes cannot be employed at many facilities based on problems managing the brine produced by membranes and the high costs of installing and operating such systems," the group continues in its comments on EPA's Preliminary Effluent Guidelines Program Plan 15.

Their concerns echo similar questions former Trump EPA water officials have raised over the Biden administration's interest in possibly requiring membrane technology in revamped power plant ELGs.

Dave Ross and Anna Wildeman, who led EPA's water office during the Trump administration, earlier this year questioned whether the Biden EPA's announcement that it planned to reconsider technology-based effluent limits for coal-fired power plants has predetermined that officials will require the use of membrane technology to curb toxic releases, which they say cannot be justified and violates statutory data and procedural rules.

But environmentalists are urging EPA to act swiftly to close loopholes and address weaknesses in the Trump EPA's 2020 rule, including by requiring use of membrane or similar technologies to eliminate bromide pollution, while state regulators are asking the agency to discuss the implications of any new requirements before finalizing a new ELG.

At issue is EPA's July announcement that it has concluded the 2020 Trump-era ELGs for power plants could be strengthened, and that it plans to propose a supplemental ELG in fall 2022.

In the draft ELG plan released in September, EPA sought feedback on both the July announcement and on the capabilities, performance, and costs of membrane treatment technologies.

But UWAG says it supports the 2020 rule and that its members are investing significant time and resources into analyzing and pursuing compliance options to meet the deadlines of that rule, which the Biden EPA has said will remain in effect for now, noting that it takes years for a facility to raise capital, plan, design, and procure equipment, construct, and test systems necessary to comply with the ELGs.

"If a facility proceeds through procurement and installs the best available technology economically achievable (BAT) to comply with the 2020 ELGs and upcoming deadlines, and then EPA revises the ELGs in a future rule to specify different requirements based on use of a different technology (e.g., membranes), the facility will be forced to expend additional resources to comply with the new requirements," UWAG says.

And in turn, the power company will seek electricity rate increases or seek to sell the electricity they generate at a higher price to cover the additional capital expenditures and operation and maintenance costs.

"Accordingly, UWAG requests that EPA consider ways to avoid the potential waste of those investments of time and money [to comply with the 2020 rule] as it considers its approach to a new proposed rule."

2020 Rule

EPA in the 2020 rule said the administrative record does not support establishing discharge limits based on membrane technology due, in part, to the costs, non-water quality environmental impacts, and lack of commercial-scale

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demonstration for managing the concentrated brine and solid waste generated by the membrane treatment process.

UWAG says it continues to support this assessment and that is has significant concerns about the availability and economic achievability of membrane technology in the steam electric context, including but not limited to the availability of proven, cost-effective methods for disposing the concentrated waste streams produced by membrane systems.

Very little research has been completed since the 2020 rulemaking on the efficacy of membrane filtration technology, particularly on brine management, and thus, significant data gaps and uncertainty remain, the group says.

Paste encapsulation is one process that is being evaluated; however, it is an emerging technology, and research has not demonstrated that it could be applied at the commercial scale nationwide, the comments say.

"Significant questions about paste encapsulation include, for example, the amount of fly ash necessary to encapsulate the facility's volume of brine (i.e., a site's material balance); how the encapsulated material will be mixed, transported, and placed; and whether the landfill can be managed to ensure long-term stability," UWAG says, referring to its comments on the 2020 rule that expanded on these concerns.

Facilities that currently sell fly ash will likely need to forgo all or a portion of that revenue to incorporate additional fly ash into the encapsulation mix, and other facilities may not produce enough fly ash during standard operations and may need to purchase supplemental fly ash, lime, or concrete, UWAG says.

EPA's conclusions in the 2020 rule that membrane filtration is not BAT for existing sources was correct, and UWAG urges EPA to carefully consider both the fitness of membrane filtration for flue gas desulfurization (FGD) wastewater and whether brine produced from membrane treatment systems can be safely and cost-effectively managed.

Zero Discharge

In their comments, environmentalists urge EPA to close the bottom ash loophole created by the 2020 rule and reaffirm that zero discharge for bottom ash transport water is required, with the Clean Water For All coalition saying in Oct. 14 comments that the majority of coal-fired power plants are already using dry handling or closed-loop systems for their bottom ash transport water.

The coalition also says EPA must establish a zero-discharge standard for FGD wastewater, saying only "membrane filtration or similar zero-discharge technology can eliminate bromide pollution, which is a threat to drinking water and human health."

The coalition calls on EPA to propose a supplemental power plant ELG earlier than fall 2022, saying the record before the agency in the "2020 rulemaking clearly showed that technologies to eliminate both bottom ash transport water and FGD wastewater are available, achievable, and affordable."

Requiring plants to use these technologies would eliminate more than a billion pounds of pollutants from entering water bodies every year, and provide hundreds of millions of dollars per year in public health and environmental benefits, the coalition says.

The 19-member coalition includes Clean Water Action, Environmental Working Group, Environment America Research & Policy Center, Natural Resources Defense Council, Sierra Club and Surfrider Foundation as well as other national and regional environmental groups.

The Association of Clean Water Administrators (ACWA), which represents state CWA regulators, says in Oct. 14 comments that states "agree that treatment system technology continues to rapidly evolve and understand that EPA may wish to incorporate the absolute latest technology as part of this rulemaking."

But ACWA adds that before EPA finalizes the supplemental rule, "states would like to further discuss the implications of these new technology requirements, including impacts to current deadlines, creation of new deadlines, likelihood of industry litigation, expectations for new permits and permit renewal, new data requirements for [the Integrated Compliance Information System], and other implementation related topics." — *Lara Beaven* (lbeaven@iwpnews.com)

Environmentalists Back NSR Review But Seek Quick Repeal Of Trump Guides

Posted October 27, 2021

Environmentalists are growing frustrated with the Biden EPA's failure so far to scrap a series of Trump-era guidance documents easing compliance with new source review (NSR) air permitting, even as they support the agency's recently announced review of the complex policy issue, sources say.

One environmental attorney says that while it makes sense for EPA to pursue a comprehensive approach, it does not make sense that the agency has yet to revoke Trump-era guidance documents, which are non-binding, but which remain in place for now.

"The place where there is some unease on our side" is the Trump EPA's NSR memos, which could be scrapped by the agency without time-consuming rulemaking procedures subject to judicial review.

Environmentalists are growing "impatient," the source adds.

The source's comments come in response to EPA Administrator Michael Regan's Oct. 12 letter, which denied a January petition by a number of groups to stay and reconsider the Trump EPA's Project Emissions Accounting Rule, which allows permit applicants to consider likely emissions decreases, as well as increases, of their "project" at the

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initial step of NSR permitting.

Previously, applicants could consider projected emissions decreases only at the second step of NSR analysis.

Environmentalists say the Trump rule can allow industry to evade NSR in-depth analysis and potentially tougher pollution controls.

Regan made his decision largely on procedural grounds, saying that the groups' petition did not meet the necessary criteria for mandatory reconsideration of a rule, but also added that EPA may choose to revise the rule in a future rulemaking, under its own timetable.

"EPA agrees that the petition raises concerns that warrant further consideration by the EPA in a separate rulemaking effort. The EPA, therefore, plans to initiate, at its own discretion, a rulemaking process to consider revisions to the NSR regulations to address the concerns raised by the petition for reconsideration," Regan said.

Regan's remarks raise hopes among environmental groups that the Biden administration will act to revise or scrap a series of policies on NSR adopted by the Trump EPA, which the groups say could allow industry to skirt NSR and avoid tougher pollution controls.

But many months into the Biden era, it remains unclear how EPA will approach the issue. Other major rulemakings have so far taken priority, and key officials such as EPA Deputy Administrator Janet McCabe have previously warned that NSR is a polarizing issue that requires high-level attention at the agency that may be in short supply.

As such, some sources believe that NSR is not a high priority for EPA, perhaps because of changes sweeping the electric generating sector that have seen coal-fired generation decline.

But sources caution that many coal-fired plants remain, with some that are uncontrolled for key pollutants, giving the NSR program enduring significance.

And EPA's recently-released draft strategic plan for fiscal years 2022 - 2026 does not mention NSR specifically, referring to the need to incorporate environmental justice considerations into air permitting in general, and to the need for continued permit enforcement.

Trump Policies

The Trump administration made a series of changes to NSR implementation following pressure to ease compliance with the program from various industry groups that viewed easier permitting as a priority. Several of these policy shifts were achieved through guidance, and others through rulemaking.

The project emissions accounting rule codified an earlier Trump-era guidance memo on the same topic, and Regan indicated the agency may revise or revoke that memo as well.

Other key memos include a "streamlining" memo issued by then-Administrator Scott Pruitt that established that EPA may not "second-guess" the conclusions of regulated industry regarding likely future emissions increases that would be "significant," and hence trigger full-blown NSR analysis.

That memo also established that NSR enforcement should be based on actual emissions post-construction of a project, not forecasts of likely emissions before construction begins. Environmentalists say this hampers enforcement and undermines the fundamental nature of NSR as a pre-construction permit program, while industry groups counter that it allows enforcement based on reality, not estimates of future emissions.

The Trump EPA also established new policies on related issues such as "aggregation" of sources for permitting purposes. Typically, aggregating, or combining, related activities as a single source makes it more likely that the source will qualify as a "major source" under NSR, and hence require analysis and potentially tougher controls.

Related issues covered by Trump-era memos include "adjacency" and "common control" by a single owner or operator, factors used in considering whether to aggregate a source or not.

Also, EPA acting air chief Ann Austin in August 2020 issued a guidance encouraging greater use by industry of Plantwide Applicability Limits (PALs), which are flexible permits that set an overall pollution cap for a facility, within which industry can increase pollution from one emissions point, so long as it does not exceed the overarching facility limit.

"A PAL represents a simplified NSR applicability approach that provides a source with the ability to manage physical and operational changes, and the impacts of those changes on facility-wide emissions, without triggering major NSR or the need to conduct project-by project major NSR applicability analyses," Austin wrote.

Increased use of PALs is one recommendation made recently by EPA's Clean Air Act Advisory Committee (CAAAC) in a report issued to mark the 50th anniversary of the Clean Air Act. The report says, "EPA should continue to encourage plant-wide applicability limits," and "should rationalize and reconcile NSR guidance documents," of which there are now thousands.

"Consistent with periods for public review, EPA should take steps to expedite both permits and applicability determinations," the report says. "EPA should study relative benefits of NSR permitting compared with costs and should explore public/private partnerships to support this effort," with a view to whether further streamlining is possible, the report says.

"It is right that the problems all need to be looked at," says the environmental attorney, noting that many aspects of NSR are interrelated and "they can't really hit those piecemeal." — *Stuart Parker* (sparker@iwpnews.com)

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to voting on the reconciliation package until it has been thoroughly reviewed.

"I will not support a bill that is this consequential without thoroughly understanding the impact it will have on our national debt, our economy and the American people," Manchin told reporters Nov. 1. "Every elected representative needs to know what they are voting for and the impact it has, not only on their constituents, but the entire country."

However, Great Lakes mayors who are part of the Great Lakes and St. Lawrence Cities Initiative called on Congress Oct. 31 "to take immediate action" on both bills.

"Passage of these bills is imperative to the environmental and economic health of our region," Detroit Mayor Mike Duggan said in a statement, noting the region's citizens depend on the Great Lakes, which represent close to 80 percent of North America's fresh surface water.

Among the provisions the mayors say are critical to their region are funding to replace lead service lines and funding to restore Great Lakes coastlines that have been devastated by rising waters and the impact of climate change.

However, many of the provisions have been scaled back, according to a Rules Committee bill released Oct. 28.

For example, provisions under the purview of the Energy and Commerce Committee reduce to $9 billion — down from $30 billion — funding for lead service line replacements beyond the $15 billion provided by the bipartisan Senate infrastructure bill.

And it drops entirely plans to provide an additional $10 billion in Superfund cleanup money for federal sites, which was originally intended to supplement $3.5 billion provided by the bipartisan bill.

Additionally, provisions under the authority of the Transportation and Infrastructure Committee (T&I) were also scaled back or eliminated.

T&I Sept. 14 approved a bill that authorized billions of dollars to municipalities and others to address a range of clean water projects, implement standards to address emerging contaminants, including per- and polyfluoroalkyl substances (PFAS), and take a series of other actions.

The T&I bill also authorized $2.5 billion for grants to states to implement the Clean Water Act and $40 billion in funding authorizations for the clean water state revolving fund over the next five years.

But the Rules Committee legislation includes funding for only a fraction of these items. Specifically, it provides $125 million to support investment in alternative water source projects; $1.85 billion in municipal grants for sewer overflow and stormwater reuse projects; and $150 million in grants to address domestic septic systems.

Tax Provisions

Meanwhile, a host of municipal and public utility groups are urging lawmakers to preserve the current tax exemption on municipal bonds, which are the primary mechanism through which state and local governments raise capital to finance a wide range of essential public projects, including drinking water and wastewater infrastructure.

The groups in a Nov. 1 letter to congressional leaders say they "were alarmed to see that section 138101, Corporate Alternative Minimum Tax (AMT), of the Rules Committee Print of the Build Back Better Act . . . would impose a 15 percent minimum tax on tax-exempt bond interest for purchasers that currently hold about one quarter (or just under $1 trillion) of outstanding tax-exempt municipal bonds."

The groups, which include the American Water Works Association, Association of Metropolitan Water Agencies, the National Association of Clean Water Agencies, the National League of Cities, U.S. Conference of Mayors, and Council of Infrastructure Financing Authorities, among others, say they are currently analyzing the effect of this provision.

But the Congressional Research Service has estimated that subjecting private activity bonds to the individual AMT has raised the interest cost of those bonds by 50 basis points, and while the groups say they do not know whether the same holds true for public bonds, they "can safely conclude that subjecting an even broader array of state and local government and non-profit bonds to this new tax will raise community borrowing costs."

"Considering the size of the municipal bond market — with over $4 trillion in debt outstanding — the costs will be significant and, again, will be borne by our communities, not by the holders of the bonds," the letter says.

Additionally, the groups say they are concerned that provisions that would improve municipal finance by increasing flexibility and decreasing costs were excluded from the Rules Committee's bill despite being approved by the House Ways and Means Committee earlier this year.

These include provisions to reinstate the ability to issue tax-exempt advance refunding bonds, to increase the small issuer exception from $10 million to $30 million, and to restore and expand the use of direct-pay bonds.

"It is inconceivable that neither of the two infrastructure bills currently being considered by Congress include provisions to improve infrastructure financing," the groups say.

They add, "Tax-exempt issuers will be your trusted partner in carrying out the policies proposed in Build Back Better, but these added costs will severely impact our ability to do so."

The groups urge the congressional leaders to remove the AMT provision and add back the flexibility provisions. — *Lara Beaven* (lbeaven@iwpnews.com)

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Democrats Cut Plan To Boost EPA Spending On Superfund, Lead Pipes

Posted October 29, 2021

House Democrats have scaled back their budget reconciliation plans for providing EPA with tens of billions of dollars in additional funds to replace lead service lines, clean up federal Superfund sites and bolster environmental justice spending beyond what is already provided in pending bipartisan infrastructure legislation.

In legislative text released by the House Rules Committee Oct. 28, lawmakers proposed to provide EPA with an additional $9 billion — down from $30 billion — for lead service line replacements beyond the $15 billion provided by the bipartisan Senate infrastructure bill.

They have also dropped entirely plans to provide EPA with an additional $10 billion in Superfund cleanup money for federal sites, which was originally intended to supplement $3.5 billion provided by the bipartisan bill.

Despite such cuts, many environmentalists and other Democratic-leaning groups are lining up to support the framework, especially the billions of dollars aimed at promoting clean energy and addressing climate change.

This is a "historic step forward in addressing the climate crisis and advancing environmental justice," Earthjustice said in a statement, touting, among other things the bill's provisions that "harness natural climate solutions, and invest directly in communities that have long borne the brunt of fossil fuels pollution and climate change."

The legislation, which was the subject of an Oct. 28 hearing, was released just hours after President Joe Biden announced a framework for a $1.75 trillion reconciliation deal with $555 billion in numerous climate and environment-related investments.

The precise path to passage of the deal — as well as the politically linked bipartisan infrastructure bill, which is stalled in the House — remains unclear as House Democrats remain deadlocked over how to sequence passage of the reconciliation bill and the bipartisan Senate measure.

In addition, Senate Democrats will still have to review, debate and amend whatever reconciliation package the House eventually approves.

But the draft legislation nonetheless provides new details on the viable elements of the Biden administration's broader economic agenda after weeks of behind-the-scenes negotiations between President Joe Biden and Sen. Joe Manchin (D-WV) that pared back a previous $3.5 trillion reconciliation plan.

As they worked to implement Biden's initial $3.5 trillion reconciliation plan, House Democrats on the Energy and Commerce Committee last month approved legislation that sought to provide $30 billion to replace lead drinking water pipes, a long-time priority for Democrats, as well as $10 billion for cleanups at federal sites listed on the Superfund National Priorities List (NPL).

The committee's bill also sought to spend tens of billions of dollars for reducing air pollution and climate emissions, including a $5 billion grant program for replacing heavy-duty vehicles with zero-emission vehicles (ZEVs) and a $3.5 billion fund for the purchase and installation of zero-emission equipment and technology at ports. And it sought to provide significant new spending on addressing environmental justice (EJ), such as a $5 billion community block grant program for EPA.

Spending Cuts

But much of that spending is significantly pared back or eliminated from the Rules Committee's draft text.

For example, in the hazardous materials section of the bill, the $30 billion for lead service line replacements would now provide EPA with $9 billion to create a grant program to replace lead service lines for drinking water in disadvantaged communities, install and maintain lead filtration stations and replace drinking water fountains in schools and childcare facilities, conduct lead remediation in buildings operated by entities that serve disadvantaged communities, and conduct compliance monitoring in disadvantaged communities.

It also drops entirely the planned $10 billion for federal cleanups.

The clean air section of the bill, meanwhile, revises plans for an EPA grant program for eligible entities to replace heavy-duty vehicles with ZEVs that serve communities in Clean Air Act nonattainment areas.

While the bill still appropriates $5 billion for replacing heavy-duty vehicles, it appears to earmark $2 billion of that for "recipients proposing to replace eligible heavy-duty vehicles serving communities located in nonattainment areas," according to a section-by-section summary.

The remaining funds are used to establish an EPA grant program "to replace Class 6 and Class 7 heavy-duty vehicles" with ZEVs, the summary adds.

The legislation also provides $2.5 billion — down from the original $3.5 billion — for rebates and grants to port authorities or other eligible entities to buy zero-emissions port equipment or technology for use at ports or pursue planning of permitting of such equipment or develop a detailed climate action plan to reduce greenhouse gas and air pollutant emissions at ports, or take other related measures.

However, the provision also would provide $875 million specifically for rebates and grants for zero-emission technologies in ports in nonattainment air quality areas.

The proposed environmental justice funds are also cut. The new bill text provides $2.8 billion for environmental and

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climate justice block grants, down from $5 billion, each of which would last up to three years. These could go to tribes, local governments, higher education institutions, and community groups to pay for "community-led air and other pollution monitoring, prevention, and remediation," and investments in low- and zero-emission and climate resilient technologies and related infrastructure as well as workforce development to help lower greenhouse gases and other air pollutants, it says.

Other Provisions

Other provisions in the legislation include:

- $150 million in funding for EPA grants to states, tribes and local governments to aid communities in developing plans to prepare for smoke from wildfires, reduce smoke exposure due to fires and mitigate the environmental and health effects from such smoke.
- $117.5 million for fenceline air monitoring, screening and other air toxics monitoring. It also includes other funding for air monitoring, including $50 million to expand the national ambient air quality monitoring network with new multipollutant monitoring stations and to replace or repair existing ones. And $3 million in grants would be available for operating air quality sensors in low-income and disadvantaged communities. Further, $15 million in grants would be available for testing and other activities to address emissions from wood heaters.
- The legislation also would authorize grant funding for new recycling grants initiatives. This would include $95 million for projects in disadvantaged communities that would go toward boosting market demand or manufacturing capacity for recovered, recyclable or recycled commodities, for lowering the amount of waste generated by manufacturing processes or in the disposal of consumer products, or for activities to reduce the amount of waste being sent to landfills.
- It also would provide $95 million for grants in disadvantaged communities for modernizing infrastructure for recycling or reuse of organic materials or measures to reduce food waste.
- And it includes $10 million in funds to EPA to aid in collecting data on recycling efforts in disadvantaged, low-income, and rural communities that lack access to recycling services.
- The legislation also includes $37. 5 million in EPA grants to address air pollution in schools, and it includes funding for grants for advanced biofuels and for EPA enforcement and compliance upgrades. Further, it includes $37 million to update EPA's compliance information system.
- The bill, in addition, includes $20 million for EPA to go toward efforts such as hiring of personnel and development of programmatic documents to enable permit reviews to be "efficient, accurate, and timely." — *Suzanne Yohannan* (syohannan@iwpnews.com)

D.C. Circuit Rejects GOP States' Bid To End Delay Of Lead Rule Changes

Posted October 27, 2021

A federal appellate court has denied a request from five Republican state attorneys general (AGs) to stay or vacate the Biden administration's measure delaying key deadlines in the Trump-era lead and copper drinking water rule (LCR), but is seeking additional briefing on EPA's motion to dismiss the litigation.

In an Oct. 27 *per curium* order in *Arizona, et al. v. EPA*, the U.S. Court of Appeals for the District of Columbia Circuit says the states' motion for stay or for summary vacatur is denied. "Petitioners have not satisfied the stringent requirements for a stay pending court review," the order says, citing the Supreme Court's 2009 ruling in *Nken v. Holder*, which reiterated the traditional four-factor test courts have long used for granting such stays.

Additionally, the merits of the parties' positions are not so clear as to warrant summary action, the order continues.

The GOP states, led by Arizona, filed the case seeking to temporarily block the Biden EPA's rule that delayed until Dec. 16 the effective date of the Trump-era LCR revisions and extended the compliance date for the rule until Oct. 16, 2024.

EPA in promulgating the delay rule said the extension is necessary to accommodate a thorough review of the underlying regulation and engage with a wide variety of stakeholders.

The agency has said it plans to make a final decision about the Trump-era rule by Dec. 16.

But the GOP states argue the delay will cause great permanent harm, especially to children, and is "profoundly unlawful."

While the states asked the court to stay the delay rule, they also said they "recognize that, given the timetable here, the effect of granting a stay pending review would be tantamount to a summary vacatur of the Delay Rule." Therefore, they said, the court "may prefer to consider their arguments formally as such, and respectfully request summary vacatur in the alternative."

Among the states' arguments was they "will suffer irreparable harm, both from permanent medical injuries to their residents and through irrecoverable financial harms, including Medicaid expenditures from those injuries and increased compliance costs from the Delay-Rule-imposed regulatory uncertainty."

But EPA urged the court to deny the states' stay request, arguing the states lack standing to sue because there is

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nothing stopping them from implementing the Trump-era LCR now even if the agency has extended the rule's deadlines.

While waiting until EPA makes a final decision about the Trump-era revisions would give states more clarity about the revisions' fate before changing their own programs, "waiting is not required. States are free to adopt and enforce the revisions now," EPA told the court.

The states, however, are seeking to undo the delay action rather than adopting the revisions on their own, EPA said in briefs to the court. "This scheme would have the Court strip Petitioners of the wait-and-see option and force them to adopt the revisions. They lack standing to ask the Court to fix this made-up problem. The Court should dismiss the petition for lack of jurisdiction."

But while the court agreed with EPA that the states have not met the burden for a stay or summary vacatur of the delay rule, the *per curium* order directs the agency's "motion to dismiss be referred to the merits panel to which this petition for review is assigned. The parties are directed to address in their briefs the issues presented in the motion to dismiss rather than incorporate those arguments by reference."

The three judges that have been assigned to hear the case are David Tatel, Neomi Rao and Justin Walker. — *Lara Beaven* (lbeaven@iwpnews.com)

FERC Urges 9th Circuit To Reject Bids To Expand CWA 401 Deadlines

Posted November 1, 2021

The Federal Energy Regulatory Commission (FERC) is urging a federal appeals court to reject efforts from California and environmentalists to find exceptions to a one-year Clean Water Act (CWA) limit for states to act on requests for water quality certifications, arguing the efforts are contrary to congressional intent and judicial precedent.

The outcome of the consolidated litigation *California State Water Resources Control Board (WRCB) v. FERC* pending in the U.S. Court of Appeals for the 9th Circuit could influence the Biden administration's rewrite of CWA section 401 regulations that a federal district court recently vacated.

In the 9th Circuit case, WRCB and environmentalists point to a recent ruling from the 4th Circuit, *North Carolina Department of Environmental Quality (NCDEQ) v. FERC*, to argue that CWA section 401's requirement for states to "act" on requests for water quality certifications within one year does not mean that states must always issue a certification or denial within one year.

Prior to the 4th Circuit's ruling, federal appeals courts had agreed, under different circumstances, that CWA section 401 gives states a bright-line, one-year deadline that cannot be extended or reset to determine whether a federally permitted or licensed project is protective of state water quality standards.

The 4th Circuit, however, considered a more flexible interpretation of section 401's deadlines before deciding on narrow, factual grounds that FERC erred in determining NCDEQ had waived its right to make a water quality certification.

And WRCB and environmental groups have urged the 9th Circuit to reach a similar conclusion in the consolidated challenge to FERC's finding that California waived its right to make 401decisions on the relicensing of four hydropower projects in the state.

But FERC in an Oct. 28 brief pushes back on WRCB and the environmental groups' arguments, saying that three circuit courts, including the 9th Circuit, "have long construed Section 401's reference to 'act' as meaning to 'grant or deny' a certification request."

And FERC says it followed that interpretation here. When WRCB failed to decide the project applicants' certification requests within one year of receipt, FERC, in line with the D.C. Circuit's 2019 decision in *Hoopa Valley Tribe v. FERC* "reasonably found that the Board waived its Section 401 certification power."

In *Hoopa Valley*, the D.C. Circuit said the CWA does not allow operators to avoid the one-year time limit by withdrawing and re-submitting their applications before the deadline arrives. And the Trump administration relied heavily on the *Hoopa Valley* ruling in the now vacated section 401 rule.

Rick Glick, a partner with Davis Wright Tremaine in Portland, OR, has said that while legal questions remain as to how broadly or narrowly *Hoopa Valley* can be applied, WRCB may have a difficult time succeeding in its arguments here because these hydropower cases involved multiple years of withdrawal and resubmittal, similar to the situation in *Hoopa Valley*.

FERC says WRCB and environmental groups attack the commission's "straightforward analysis" supporting waiver of the state's 401 authority from two directions: by redefining what it means to "act" under section 401, and by arguing that a withdrawal-and-resubmittal scheme saves WRCB from waiver.

But both arguments are flawed, FERC maintains.

No Limitation

As suggested in dicta by the 4th Circuit, the petitioners here interpret "act" to include pre-decisional steps that WRCB takes on a certification request, meaning the board need not grant or deny such a request by one year to "act" on it. The state could satisfy the one-year time limit, for example, by providing comments on a hydroelectric license

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application. This would allow the state to avoid both deciding a certification request within one year and avert wavier, FERC says.

But this interpretation violates Congress' intent by vitiating the effect of section 401's one-year deadline, FERC continues. The CWA allows FERC to issue a federal license only after a state either grants certification or waives its power to do so. So, if a state could avoid both certification or waiver after one year, then it would effectively wrest control of federal licensing away from FERC, the commission argues.

This would result in a situation where there would be no limitation on a state taking as much time as it saw fit to decide a certification request and the FERC license would languish in indefinite limbo. "Such an approach undermines Congress' statutory design by unlawfully 'usurp[ing] FERC's control over whether and when a federal license will issue,'" FERC says, quoting from the *Hoopa Valley* ruling.

WRCB and environmental groups also advance an alternative theory for defeating waiver, saying the withdrawal-and-resubmittal of certification requests freed WRCB to take as much time as it deemed necessary to review the certification requests while also avoiding waiver.

But FERC defends its rejection of the purported waiver-defeating effect of these actions, saying substantial record evidence supports its findings that WRCB played an affirmative role in implementing the scheme, executed with the aim of affording the state more than one year to decide the applicants' requests. Thus, withdrawal and resubmittal here reflect the state's failure or refusal to act on the requests within one, the condition stated in section 401(a)(1) as a precedent for waiver, the commission says.

FERC also takes issue with WRCB and environmentalists' arguments that even if the commission reasonably found waiver in these three matters, general equitable principles bar the Court from giving those determinations effect, saying equitable tolling is inappropriate where a statutory time period is mandatory. Here, Congress made explicit that waiver is the consequence of failing to act by a certain date, FERC says.

And FERC argues the "unclean hands doctrine" does not apply here, saying it is irrelevant whether the project applicants were responsible for delaying state-level reviews under the California Environmental Quality Act because the section 401 waiver provision does not turn on the status of state processes.

Finally, FERC says, the 9th Circuit should uphold the commission's decision to give immediate effect to its waiver determinations.

WRCB in its opening brief argues FERC erred by retroactively applying FERC's recent policy on if and when withdrawal-and-resubmittal of a certification request restarts section 401's one-year review period, as announced in FERC's post-*Hoopa Valley* waiver decisions. "Those decisions make clear FERC is announcing its own new policy, going well beyond the scope of *Hoopa Valley*, and reversing its longstanding policy that withdrawal-and-resubmittal always restarts the one-year waiver clock," WRCB says.

But FERC counters that this argument fails because the commission was bound to apply the *Hoopa Valley* decision, and even if that were not the case, the bases for bucking the strong presumption of retroactive application are absent here. No court has held that coordinated withdrawal and resubmittal could defeat waiver and EPA has refused to endorse the practice, FERC says. "Thus, any alleged detrimental reliance that might form the basis for prospective-only application of either the Court's opinion or the Commission's orders is dubious at best." — *Lara Beaven* (lbeaven@iwpnews.com)

Environmentalists Renew AFO Enforcement Push . . . begins on page 22

The bill, S. 1475, would amend the Clean Air Act to prohibit the EPA from issuing permits for any carbon dioxide, nitrogen oxide, water vapor, or methane emissions resulting from biological processes associated with livestock production. The measure has not advanced further, however.

Meanwhile, EPA is approaching the end of the series of studies it is undertaking to estimate the air emissions of AFOs raising different types of livestock, after years of delay. The current schedule for completion of the draft EEMs sets a May 2022 deadline, although the EEMs would then be subject to further public notice and comment. Finalization of all EEMs is still listed as 'to be determined' by EPA on its website.

The environmental groups say that the EEMs, however, are flawed, because they are based on a survey of too few AFOs under the National Air Emissions Monitoring Study (NAEMS).

"We support EPA efforts to develop state-of-the-art and accurate emissions estimating methodologies, but that process should never have been used to shield the industry from enforcement, and in any case, it is well past the time when the NAEMS and EEM process could justify a temporary suspension of applicable law," the groups write.

"In addition to a written response confirming the agency's rescission of the Air Consent Agreement, we petition EPA to act immediately to implement CAA permitting and reporting programs, prioritize enforcement actions against AFOs contributing to air pollution and related health impacts in environmental justice communities, and develop process-based models unbound from an unending license to pollute," the groups add. — *Stuart Parker* (sparker@iwpnews.com)

ED_013141A_00000265-00021

Environmentalists Renew Calls For EPA To Enforce Air Rules At AFOs

Posted October 29, 2021

Environmentalists are renewing their calls for EPA to begin enforcing air regulations at animal feeding operations (AFOs), asking officials in a new petition to scrap a Bush-era agreement with thousands of the largest such operations shielding them from Clean Air Act requirements that would otherwise apply.

In their Oct. 26 petition, a coalition of 25 local and national groups including Center for Biological Diversity, Earthjustice, Environmental Integrity Project and others asks EPA to rescind a 2005 agreement with the intensive animal farming industry that the agency would not enforce air law emissions control requirements against AFOs, pending a study of pollution from the sector.

To date, EPA has never completed the study and never curbed harmful pollutants such as ammonia and hydrogen sulfide, the groups say, and the result has been "undemocratic oppression and exploitation" of rural communities living close to the facilities.

"Over sixteen years ago, the Environmental Protection Agency (EPA), under the President George W. Bush administration, announced an Agreement and Final Order it had secretly negotiated with the National Pork Producers Council. In the agreement, EPA refrained from enforcing key air pollution control and public disclosure laws against any animal feeding operation (AFO) that agreed to pay a nominal penalty to fund a nationwide air monitoring program to establish Emission Estimating Methodologies (EEMs) for AFOs," the groups say.

"Nearly 14,000 AFOs signed up for this sweetheart deal, known as the Air Consent Agreement. By its own terms, this deal should have been completed over a decade ago, in 2010."

The agreement shields large AFOs from Clean Air Act "major source" permitting requirements under new source review (NSR) or the Title V operating permit program that could otherwise apply. It also provides immunity from applicable requirements for volatile organic compounds, ammonia, hydrogen sulfide and particulate matter that are found in state implementation plans for attaining national ambient air quality standards.

"As a result of EPA's protracted delay, thousands of the nation's largest AFOs continue to enjoy protection from EPA enforcement actions, even if their emissions exceed permit limits or reporting thresholds. EPA's implementation of the Air Consent Agreement over the past three presidential administrations demonstrates a complete, bipartisan abdication of EPA's enforcement authority," the groups say.

But a livestock industry source says, "it is a ludicrous petition to file at this point," with EPA poised to complete draft methodologies for estimating AFO emissions. "I doubt EPA takes it seriously," the source says, calling the groups filing the petition "pretty extreme," and "opposed to food production."

However, the source concedes that EPA has taken far too long to come up with its draft EEMs. The source says that EPA Administrator Michael Regan is well-versed in AFO issues, having grown up in rural North Carolina and then risen to be the state's top environmental official prior to his appointment to lead EPA. Regan is "very familiar with the actual facts on the ground," the source says.

Air Quality Impacts

In their petition, environmentalists note that AFOs are significant contributors to excess air pollution that can be directly dangerous to those exposed to it, but farming is also a big contributor to regional air pollution problems such as elevated particulate matter and ozone levels.

"Air pollution is the largest environmental mortality risk factor in the United States, and agriculture — particularly industrial animal production — is a major contributor to reduced air quality."

The groups cite a study published in the Proceedings of the National Academy of Sciences that found agricultural air pollution causes 17,900 U.S. deaths per year, with 15,900 deaths from food production and 2,000 deaths linked to nonfood products. "Of the 15,900 deaths from food production, 80 percent, or 12,700 deaths, are attributable to industrial animal production."

"EPA is culpable for many of these deaths and illnesses," the groups claim.

The organizations seek regulation of AFOs under the Clean Air Act, and reporting of their air emissions under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, or Superfund) and Emergency Planning and Community Right-to-Know Act (EPCRA).

But AFOs currently do not have to report emissions under CERCLA because Congress has prohibited EPA from issuing air emissions reporting rules under the Superfund law in a bipartisan action.

And the Trump EPA interpreted related provisions in the Superfund law and the Emergency Planning and Community Right-to-Know Act (EPCRA) to also bar AFO emissions reporting to local first responders under EPCRA.

Further, bipartisan opposition to air regulation of the sector remains, with Sens. John Thune (R-SD) and Kyrsten Sinema (D-AZ) in April reintroducing draft legislation to bar the agency from requiring the facilities to obtain air permits, a bipartisan measure similar to others that have won inclusion in annual appropriations laws for more than a decade.

continued on page 21

ED_013141A_00000265-00022

Appointment

From: Sullivan, Tim [Sullivan.Tim@epa.gov]
Sent: 7/19/2022 5:30:00 PM
To: Sullivan, Tim [Sullivan.Tim@epa.gov]; Cozzie, David [Cozzie.David@epa.gov]; Do, Bebhinn [Do.Bebhinn@epa.gov]; Schrock, Bill [Schrock.Bill@epa.gov]; Stahle, Susan [Stahle.Susan@epa.gov]; Snower, David [Snower.David@epa.gov]; Douglas, Mark [douglas.mark@epa.gov]
CC: Koslow, Karin [Koslow.Karin@epa.gov]; Klepp, Robert [Klepp.Robert@epa.gov]; Noggle, William [Noggle.William@epa.gov]; Jacob, Sicy [Jacob.Sicy@epa.gov]

Subject: Pre-Meeting: Petition to Rescind the AFO Air Compliance Agreement
Location: Microsoft Teams Meeting

Start: 7/25/2022 6:00:00 PM
End: 7/25/2022 6:50:00 PM
Show Time As: Busy

Required Attendees: Sullivan, Tim; Cozzie, David; Do, Bebhinn; Schrock, Bill; Stahle, Susan; Snower, David; Douglas, Mark
Optional Attendees: Koslow, Karin; Klepp, Robert; Noggle, William; Jacob, Sicy

---

Microsoft Teams meeting

Join on your computer or mobile app
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Or join by entering a meeting ID

Ex. 6 Personal Privacy (PP)

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Ex. 6 Personal Privacy (PP)

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Appointment

From: Klepp, Robert [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1857DAFCBCC441888C06A473F38D0D93-BKLEPP]
Sent: 7/25/2022 9:09:30 PM
To: Klepp, Robert [Klepp.Robert@epa.gov]; Sullivan, Tim [Sullivan.Tim@epa.gov]; Snower, David [Snower.David@epa.gov]

Subject: catch up -- Petition to Rescind the AFO Air Compliance Agreement
Location: Microsoft Teams Meeting

Start: 7/26/2022 8:15:00 PM
End: 7/26/2022 8:45:00 PM
Show Time As: Busy

Required Attendees: Sullivan, Tim; Snower, David

Microsoft Teams meeting

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Message

From: Koslow, Karin [Koslow.Karin@epa.gov]
Sent: 10/29/2021 5:20:20 PM
To: Starfield, Lawrence [Starfield.Lawrence@epa.gov]; Cozad, David [Cozad.David@epa.gov]; Berg, Elizabeth [Berg.Elizabeth@epa.gov]
CC: Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Denton, Loren [Denton.Loren@epa.gov]; Shiffman, Cari [Shiffman.Cari@epa.gov]; Sullivan, Tim [Sullivan.Tim@epa.gov]
Subject: Head's up - Petition filed challenging "inaction on farm factory air pollution"

https://whistleblower.org/press-release/press-release-legal-petition-challenges-epa-inaction-on-factory-farm-air-pollution/

Larry – we are reviewing the petition described in linked press release, that was submitted to the Agency by a coalition of NGOs. Ex. 5 AC/DP

Ex. 5 AC/DP

Thanks,
Karin

Karin Koslow | Pronouns: she/her
Deputy Director, Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Desk: (202) 564-0171 rolls over to cell: (202) 716-5645
WJC South Room 3142D

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Message

From: Koslow, Karin [Koslow.Karin@epa.gov]
Sent: 10/31/2021 3:29:33 PM
To: Starfield, Lawrence [Starfield.Lawrence@epa.gov]; Cozad, David [Cozad.David@epa.gov]; Berg, Elizabeth [Berg.Elizabeth@epa.gov]
CC: Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Denton, Loren [Denton.Loren@epa.gov]; Shiffman, Cari [Shiffman.Cari@epa.gov]; Sullivan, Tim [Sullivan.Tim@epa.gov]
Subject: Summary of Petition filed challenging "inaction on farm factory air pollution"
Attachments: AFO CAFO - Initial Summary of Petition to Rescind.docx

Larry:

Attached is an initial summary, prepared by Tim, of the petition asking that the agency rescind the Animal Feeding Operations (AFO) Air Compliance Agreement. Ex. 5 AC/DP

Ex. 5 AC/DP

Thanks,
Karin

Karin Koslow | Pronouns: she/her
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From: Koslow, Karin
Sent: Friday, October 29, 2021 1:20 PM
To: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Cozad, David <Cozad.David@epa.gov>; Berg, Elizabeth <Berg.Elizabeth@epa.gov>
Cc: Rosemarie Kelley (Kelley.Rosemarie@epa.gov) <Kelley.Rosemarie@epa.gov>; Denton, Loren <Denton.Loren@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
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Message

From: Starfield, Lawrence [Starfield.Lawrence@epa.gov]
Sent: 11/1/2021 1:00:32 PM
To: Koslow, Karin [Koslow.Karin@epa.gov]; Cozad, David [Cozad.David@epa.gov]; Berg, Elizabeth [Berg.Elizabeth@epa.gov]
CC: Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Denton, Loren [Denton.Loren@epa.gov]; Shiffman, Cari [Shiffman.Cari@epa.gov]; Sullivan, Tim [Sullivan.Tim@epa.gov]
Subject: RE: Summary of Petition filed challenging "inaction on farm factory air pollution"

Thanks, Karin. Yes, I would like to discuss the petition on Thursday. A few initial questions:

Ex. 5 AC/DP

Larry

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From: Koslow, Karin <Koslow.Karin@epa.gov>
Sent: Sunday, October 31, 2021 11:30 AM
To: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Cozad, David <Cozad.David@epa.gov>; Berg, Elizabeth <Berg.Elizabeth@epa.gov>
Cc: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Denton, Loren <Denton.Loren@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: Summary of Petition filed challenging "inaction on farm factory air pollution"

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Ex. 5 AC/DP

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Message

From: Koslow, Karin [Koslow.Karin@epa.gov]
Sent: 11/1/2021 4:15:31 PM
To: Starfield, Lawrence [Starfield.Lawrence@epa.gov]; Cozad, David [Cozad.David@epa.gov]; Berg, Elizabeth [Berg.Elizabeth@epa.gov]
CC: Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Denton, Loren [Denton.Loren@epa.gov]; Shiffman, Cari [Shiffman.Cari@epa.gov]; Sullivan, Tim [Sullivan.Tim@epa.gov]
Subject: RE: Summary of Petition filed challenging "inaction on farm factory air pollution"
Attachments: 2021.10.26-Petition-re-2005-Air-Consent-Agreement-1.pdf

Ex. 5 AC/DP

Thanks,
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From: Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Sent: Monday, November 01, 2021 9:01 AM
To: Koslow, Karin <Koslow.Karin@epa.gov>; Cozad, David <Cozad.David@epa.gov>; Berg, Elizabeth <Berg.Elizabeth@epa.gov>
Cc: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Denton, Loren <Denton.Loren@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
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BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

ANIMAL LEGAL DEFENSE FUND, BUFFALO RIVER WATERSHED ALLIANCE (ARKANSAS), CENTER FOR BIOLOGICAL DIVERSITY, CENTER FOR FOOD SAFETY, CENTER ON RACE, POVERTY, & THE ENVIRONMENT (CALIFORNIA), CLEAN WATER FOR NORTH CAROLINA (NORTH CAROLINA), EARTHJUSTICE, ENVIRONMENTAL INTEGRITY PROJECT, FARM AID, FRIENDS OF THE EARTH, FRIENDS OF FAMILY FARMERS (OREGON), FRIENDS OF TOPPENISH CREEK (WASHINGTON), FOOD ANIMAL CONCERNS TRUST, FOOD & WATER WATCH, GOVERNMENT ACCOUNTABILITY PROJECT, HUMANE SOCIETY OF THE UNITED STATES, IOWA CITIZENS FOR COMMUNITY IMPROVEMENT (IOWA), INSTITUTE FOR AGRICULTURE & TRADE POLICY, JOHNS HOPKINS CENTER FOR A LIVABLE FUTURE, NORTH CAROLINA CONSERVATION NETWORK (NORTH CAROLINA), PUBLIC JUSTICE, SOCIALLY RESPONSIBLE AGRICULTURE PROJECT, SOUTHERN ENVIRONMENTAL LAW CENTER, AND WATERKEEPER ALLIANCE

Petitioners,

v.

MICHAEL REGAN, ADMINISTRATOR,
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Respondent.

PETITION TO RESCIND THE AIR CONSENT AGREEMENT
AND ENFORCE CLEAN AIR LAWS AGAINST ANIMAL FEEDING OPERATIONS

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I. INTRODUCTION

Rural communities deserve a safe, prosperous, and plentiful food system rooted in dignity and respect. In this system, Black, Indigenous, Latino, Asian, and white communities enjoy clean land, air, and water where independent family farms and renewable energy build diversified, local, and thriving rural economies. Sadly, past administrations have prioritized the interests of corporate-controlled industrial agriculture over the well-being of rural communities. Corporate integrators, trade groups, and other powerful titans of industry, have flourished while communities and farmers have suffered through years of pollution, hollowed out Main Streets, and declining economic opportunities. This has led to what any neutral observer would decry as undemocratic oppression and exploitation. Our government has the duty and authority to protect the health and well-being of our communities by enforcing federal air pollution laws, which do not exempt this industrial system.

Over sixteen years ago, the Environmental Protection Agency (EPA), under the President George W. Bush administration, announced an Agreement and Final Order it had secretly negotiated with the National Pork Producers Council. In the agreement, EPA refrained from enforcing key air pollution control and public disclosure laws against any animal feeding operation (AFO) that agreed to pay a nominal penalty to fund a nationwide air monitoring program to establish Emission Estimating Methodologies (EEMs) for AFOs.[1] Nearly *14,000* AFOs signed up for this sweetheart deal, known as the Air Consent Agreement. By its own terms, this deal should have been completed over a decade ago, in 2010.[2] Yet, as of the date of this letter, EPA has yet to finalize *any* EEMs or end the Air Consent Agreement. As a result of EPA's protracted delay, thousands of the nation's largest AFOs continue to enjoy protection from EPA enforcement actions, even if their emissions exceed permit limits or reporting thresholds. EPA's implementation of the Air Consent Agreement over the past three presidential administrations demonstrates a complete, bipartisan abdication of EPA's enforcement authority.

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[1] Notice of Animal Feeding Operation Consent Agreement & Final Order, 70 Fed. Reg. 4957 (Jan. 31, 2005) [hereinafter 2005 Notice]; *see also id.* at 4962 Appendix 1: Air Consent Agreement [hereinafter 2005 Air Consent Agreement].

[2] EPA OIG, IMPROVING AIR QUALITY: ELEVEN YEARS AFTER AGREEMENT EPA HAS NOT DEVELOPED RELIABLE EMISSIONS ESTIMATION METHODS TO DETERMINE WHETHER ANIMAL FEEDING OPERATIONS COMPLY WITH CLEAN AIR ACT AND OTHER STATUTES, Report No. 17-P-0396, at 5 (Sept. 19, 2017) [hereinafter 2017 OIG REPORT], available at https://www.epa.gov/sites/default/files/2017-09/documents/_epaoig_20170919-17-p-0396.pdf.

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Pursuant to the right to petition the government provided in the First Amendment to the U.S. Constitution[3] and the Administrative Procedure Act,[4] Petitioners formally submit this petition to EPA to put an end to the enforcement amnesty. The Petitioners collectively represent millions of citizens from across the United States, including many individuals adversely impacted by CAFO air pollution in their communities.

We request your written response regarding this unacceptable dereliction of duty within **30 days** of receiving this Petition. We ask that you rescind the Air Consent Agreement, take all actions consistent with President Biden's executive orders to enforce all applicable laws against AFOs, and prioritize environmental justice in enforcement and climate actions. If you instead wish to continue the policies of the past three administrations, please set forth the reasons for refusing to grant this petition.

II. AIR POLLUTION FROM AFOs HAS SERIOUS HEALTH IMPACTS ON SURROUNDING COMMUNITIES.

Air pollution is the largest environmental mortality risk factor in the United States, and agriculture—particularly industrial animal production—is a major contributor to reduced air quality.[5] According to a recent study published in the Proceedings of the National Academy of Sciences of the United States (PNAS), air pollution from U.S. agriculture includes direct emissions of fine particulate matter ($PM_{2.5}$) and $PM_{2.5}$ precursors such as ammonia (NH_3), nitrogen oxides (NO_x), sulfur dioxide (SO_2), and volatile organic compounds (VOCs).[6] This pollution causes 17,900 U.S. deaths per year, with 15,900 deaths from food production and 2,000 deaths linked to nonfood products.[7] Of the 15,900 deaths from food production, 80 percent, or 12,700 deaths, are attributable to industrial animal production, with the remaining 20 percent

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[3] U.S. CONST. amend. I.
[4] 5 U.S.C. 553(e).
[5] J. Stanaway et al., *Global, Regional, & National Comparative Risk Assessment of 84 Behavioural, Environmental, & Occupational, And Metabolic Risks or Clusters of Risks For 195 Countries & Territories, 1990-2017*, 392 LANCET 1923 (2018), https://www.thelancet.com/action/showPdf?pii=S0140-6736%2818%2932225-6; J. Lelieveld et al., *The Contribution Of Outdoor Air Pollution Sources To Premature Mortality On A Global Scale*, 525 NATURE 367 (2015); S. Bauer et al., *Significant Atmospheric Aerosol Pollution Caused By World Food Cultivation*, 43 GEOPHYS. RES. LETT. 5394 (2016), https://agupubs.onlinelibrary.wiley.com/doi/epdf/10.1002/2016GL068354.
[6] N. Domingo et al., *Air Quality-Related Health Damages of Food*, 118 PNAS e2013637118, 1 (2021), https://www.pnas.org/content/pnas/118/20/e2013637118.full.pdf.
[7] *Id.*

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attributable to plant-based foods.[8] The majority of deaths—12,400 deaths each year—are attributable to ammonia acting as a $PM_{2.5}$ precursor.[9] The study noted that on-farm emission reduction interventions, such as improved livestock waste management and fertilizer application practices, combined with dietary shifts toward more plant-based foods, could dramatically reduce the number of mortalities caused by this industry.[10]

Another recent study found that poultry AFOs in Pennsylvania were a major risk factor for pneumonia.[11] The authors observed that "[e]xposure to air pollutants such as particulate matter . . . reduc[es] the lung's defenses against bacterial pathogens, thereby increasing susceptibility to respiratory infections."[12] In addition, the authors also noted that

> As a source of air pollution, industrial food animal production can compromise respiratory health. These large, homogeneous, densely packed livestock operations emit particulate matter, endotoxins, and other pollutants, which spread downwind through ventilation fans and emissions from decomposing manure. Adverse effects on lung function and increased respiratory symptoms have been reported among individuals living near [industrial food animal production], particularly among susceptible groups.

The study found a 66 percent increase in the odds of being diagnosed with community-acquired pneumonia among people living closest to high-density poultry operations, demonstrating that "residing closer to more and larger poultry operations was associated with [community-acquired pneumonia], a cause of significant morbidity and mortality."[13]

EPA is culpable for many of these deaths and illnesses. For nearly two decades, EPA's sustained approach of ignoring pollution generated by the AFO industry under the guise of the Air Consent Agreement has resulted in the emission of significant amounts of unchecked air pollution, including ozone, $PM_{2.5}$, nitrogen oxides, sulfur dioxide, and VOCs–pollutants that EPA is required to regulate under the Clean Air Act (CAA). To make matters worse, during this

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[8] *Id.* at 2.
[9] *Id.* at 1.
[10] *Id.*
[11] M. Poulsen et al., *High-Density Poultry Operations & Community-Acquired Pneumonia in Pennsylvania*, 2 ENV'T. EPIDEMIOLOGY e013 (June 2018), https://journals.lww.com/environepidem/Fulltext/2018/06000/High_density_poultry_operations_and.5.aspx.
[12] *Id.* at 1.
[13] *Id.* at 6.

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same period EPA moved to exempt the industry from having to comply with two critical pollution reporting statutes: the Emergency Planning and Community Right to Know Act (EPCRA), and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA),[14] resulting in reduced public access to the information that affected communities need to protect themselves, and likely in turn contributing to greater mortality in communities surrounding these operations.

In 2013, scientists at John Hopkins University analyzed the practical public health impacts of EPA's efforts to limit public access to information about pollution from AFOs.[15] As the authors summarized:

> Despite literature associating AFOs with compromised air quality and residential proximity to AFOs with adverse health outcomes, availability of information concerning AFO airborne hazardous releases ranged from limited to nonexistent across the states that we examined . . . . These data gaps compromise the ability of public health officials and scientists to characterize exposures and risks, and limit their ability to implement and evaluate interventions when appropriate. The lack of data also means that information on AFO hazardous releases is not available to residents of affected communities.[16]

EPA's failure to address harmful emissions, compounded by its efforts to keep citizens in the dark about AFO pollution, has contributed to serious public health impacts.

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[14] CERCLA/EPCRA Administrative Reporting Exemption for Air Releases of Hazardous Substances from Animal Waste at Farms, 73 Fed. Reg. 76,948 (Dec. 18, 2008) (exempting airborne hazardous releases from animal waste at farms (including AFOs) from CERCLA and EPCRA reporting requirements); *Waterkeeper Alliance v. EPA*, 853 F.3d 527, 537–38 (D.C. Cir. 2017) (vacating EPA's 2008 rule and rejecting EPA's argument that the reporting requirements serve no regulatory purpose); Vacatur Response—CERCLA/EPCRA Administrative Reporting Exemption for Air Releases of Hazardous Substances From Animal Waste at Farms; FARM Act Amendments to CERCLA Release Notification Requirements, 83 Fed. Reg. 37444 (Aug. 1, 2018) (incorporating revisions enacted by the FARM Act, which exempts farms from CERCLA release reporting requirements, despite the D.C. Circuit's vacatur of the 2008 final rule in *Waterkeeper Alliance v. EPA*); Amendment to Emergency Release Notification Regulations on Reporting Exemption for Air Emissions from Animal Waste at Farms; Emergency Planning and Community Right to Know Act 84 Fed. Reg. 27,533 (June 13, 2019) (adding the reporting exemption for air emissions from animal waste at farms provided in section 103(e) of CERCLA); *see also* EPA, *CERCLA & EPCRA Reporting Requirements for Air Releases of Hazardous Substances from Animal Waste at Farms*, EPA (last visited Oct. 21, 2021), https://www.epa.gov/epcra/cercla-and-epcra-reporting-requirements-air-releases-hazardous-substances-animal-waste-farms.

[15] T. Smith et al., *Availability of Information about Airborne Hazardous Releases from AFOs*, 8 PLOS ONE e85342 (2013), https://doi.org/10.1371/journal.pone.0085342.

[16] *Id.* at 7.

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III. THE AIR CONSENT AGREEMENT SHIELDS AFOs FROM EPA ENFORCEMENT ACTIONS.

A. Rather than Enforce the Law, EPA Worked with Industry to Craft the Air Consent Agreement.

In the early 2000s, after years of dereliction by AFO operators of their obligation to seek CAA permits and report emissions under CERCLA and EPCRA, EPA took a series of legal actions designed to bring delinquent AFOs into the CAA permitting program.[17] Those legal actions constitute the last time EPA meaningfully enforced the CAA against AFO polluters.

Instead of continuing to use litigation or other comparable methods to move AFOs into compliance with their obligations under the CAA, EPA spent three years crafting a backroom deal with representatives of the pork industry, egg producers, and other AFO industry groups for a "safe harbor" against enforcement in the form of a release and covenant not to sue for potential violations of the CAA, CERCLA, and EPCRA. As outlined in a memorandum sent to EPA officials in June 2002, industry representatives offered to fund a nationwide air emissions monitoring study to collect emissions data from AFOs in exchange for enforcement protection.[18] The industry's June 2002 safe harbor proposal formed almost verbatim the Air Consent Agreement that EPA published for voluntary enrollment in early 2005.[19]

Under the Agreement secretly negotiated with industry representatives, EPA promised not to sue AFOs for violating CAA permitting requirements or CERCLA/EPCRA reporting requirements in exchange for AFOs paying a nominal civil penalty to fund the nationwide air emissions monitoring study.

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[17] *See, e.g.*, Press Release, Dep't of Justice, Ohio's Largest Egg Producer Agrees to Dramatic Air Pollution Reductions from Three Giant Facilities (Feb. 23, 2004), https://www.justice.gov/archive/opa/pr/2004/February/04_enrd_105.htm; 2017 OIG REPORT at 17 ("[M]onitoring conducted as part of an EPA enforcement case in 2003 demonstrated . . . total PM emissions of 550 and 700 tons per year at two large egg-layer AFOs," significantly "exceed[ing] the 250-tons-per-year permitting threshold for PM emissions."); *see also* Press Release, Dep't of Justice, Government Reaches Settlements with Seaboard Foods and PIC USA (Sept. 15, 2006), https://www.justice.gov/archive/opa/pr/2006/September/06_crm_625.html; Press Release, Dep't of Justice, Nation's Second Largest Hog Producer Reaches Settlement With U.S. & Citizen's Group (Nov. 1, 2001), https://www.justice.gov/archive/opa/pr/2001/November/01_enrd_604.htm.

[18] 2002 Industry Safe Harbor Proposal.

[19] *See id.*; 2005 Notice at 4958.

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B. The Air Consent Agreement Provided a Safe Harbor from Enforcement of Federal Law Pending the Finalization of EEMs.

The Air Consent Agreement outlines two main sections: (1) the Consent Agreement, and (2) the Monitoring Fund. The Consent Agreement includes the main terms of the Agreement between participating AFOs and the government, including a safe harbor under which the government releases and covenants not to sue participating AFOs for civil violations of the CAA; section 103 of CERCLA; and section 304 of EPCRA.[20] In exchange for this enforcement forbearance from EPA, participating AFOs agreed to pay a nominal penalty, as well as a payment of $2,500 per facility, into a fund known as the Monitoring Fund, which was then to be used to finance the two-year National Air Emissions Monitoring Study (NAEMS).[21]

The Agreement's safe harbor provision covers two substantive Clean Air Act permitting programs, the Title V operating permit program, and applicable State Implementation Plan (SIP) requirements for VOC, ammonia, hydrogen sulfide, and particulate matter. First, it includes the requirements applicable to new and expanding major stationary sources under Parts C and D of Title I, Prevention of Significant Deterioration (PSD) and New Source Review (NSR).[22] Second, it includes operating permits required under Title V for major stationary sources.[23] Third, it includes any SIP requirements that regulate the rate, quantity, or concentration of the covered air pollutants.[24]

In all three permitting programs, the severity of the air pollution in a given air basin determines whether a stationary source exceeds a certain tons per year threshold and thus must obtain a permit under PSD, NSR, and Title V as a major stationary source. This threshold ranges from 10 tons per year in an extreme ozone nonattainment area to 250 tons per year in an area that attains the applicable National Ambient Air Quality Standard.

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[20] 2005 Air Consent Agreement at ¶¶ 7–23.
[21] *Id.* at ¶ 53.
[22] *Id.* at ¶ 26; 42 U.S.C. §§ 7470-7515.
[23] 2005 Air Consent Agreement at ¶ 26; 42 U.S.C. §§ 7661–7661f.
[24] 2005 Air Consent Agreement at ¶ 26.

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The Agreement's safe harbor provision covers two reporting requirements: section 103 of CERCLA,[25] and section 304 of EPCRA. EPCRA contains a general requirement that facilities that "release" more than a threshold quantity of an "extremely hazardous substance" must report that release to local emergency response agencies, and that those reports must be made available to the public.[26] Immediate release reporting under EPCRA provides local and state emergency responders with information critical to appropriately assessing and safely responding to citizen complaints of suspicious or noxious odors. EPA lists ammonia and hydrogen sulfide as "extremely hazardous substances" under EPCRA and lists a reportable quantity of 100 pounds per day. The Air Consent Agreement's safe harbor provision continues to exempt participating AFOs from EPA enforcement for failing to report these releases.

According to EPA, its reason for exchanging a safe harbor from enforcement of the CAA, CERCLA, and EPCRA for a two-year monitoring study was to timely "collect data and aggregate it with appropriate existing emissions data; analyze the monitoring results; and create tools (*e.g.,* tables and/or emission models) that AFOs could use to determine whether they emit pollutants at levels that require them to apply for permits under the CAA or submit notifications under CERCLA or EPCRA."[27] And further, because the monitoring study would be "designed to generate scientifically credible data to provide for the characterization of emissions from all major types of AFOs in all geographic areas where they are located," it would ultimately be used "to produce a scientifically sound basis for measuring and estimating air emissions from AFOs" through EEMs.[28] Thus, EPA provided that the reason for the Agreement was to ensure "the achievement of real environmental benefits to protect public health and the environment while supporting a sustainable agricultural sector."[29]

To that end, once the final EEMs are published the participating AFOs would have a defined amount of time to apply the EEMs to their operations and determine whether any CAA, CERCLA, or EPCRA statutory obligations apply, and, if so, bring their operations into

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[25] Subsequently, the Fair Agricultural Reporting Method (FARM) Act expressly exempted reporting of air emissions from animal waste at a farm from CERCLA section 103. *See* Pub. L. 115-141 § 1101-03 (codified at 42 U.S.C. § 9603(e) (2018)).
[26] 42 U.S.C. § 11004(a).
[27] 2005 Notice at 4960.
[28] *Id.*
[29] *Id.* at 4961.

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compliance with those requirements.[30] Once a participating AFO complies with each of those requirements, "the statute of limitations for all claims covered by the release and covenant not to sue . . . will be tolled from the date this Agreement is approved by the [Environmental Appeals Board] until . . . 120 days after Respondent files the required certification . . . or December 31, 2011," whichever is earlier.[31] In the alternative, if EPA determines that it cannot develop EEMs, then it should notify participants that the Air Consent Agreement, including its enforcement amnesty, will come to a close.[32] As the amnesty tolling provision suggests, EPA anticipated that the terms of the Air Consent Agreement would be met and the Agreement fulfilled before 2012 at the latest.[33]

The Air Consent Agreement embodies a highly unusual enforcement philosophy inconsistent with the Clean Air Act's enforcement scheme. EPA alleged violations prior to any investigation, assessed civil penalties without considering civil penalty factors, and invited participants to enter into the Agreement after it had already been negotiated for years with the industry. By its own terms, the Agreement deferred enforcement until the Agency developed EEMs, which EPA expected to complete within 18 months of completing NAEMS.

C. The Environmental Appeals Board and the D.C. Circuit Court of Appeals Allowed EPA to Implement the Air Consent Agreement.

To enter the Air Consent Agreement, an AFO owner or operator needed only to inform EPA of its election to participate and provide EPA with certain information regarding the size and number of AFOs that they designated for inclusion. In total, nearly 2,600 participants, representing 13,900 AFO facilities in 42 states, entered into the Air Consent Agreement.[34] "According to the EPA, these 13,900 AFOs comprise more than 90 percent of the largest AFOs in the United States," and included participants from across the broiler chicken, egg layer, hog, and dairy industries.[35]

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[30] 2005 Air Consent Agreement at ¶ 28.
[31] *Id.* ¶ 31.
[32] *Id.* ¶ 38.
[33] *Id.*; *see also* 2017 OIG REPORT at 5 (providing that "[b]ased on . . . original expectations, . . . AFOs would have obtained any necessary permits and installed emission controls by 2010").
[34] 2017 OIG REPORT at 6.
[35] *Id.*

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In 2006, EPA's Environmental Appeals Board (EAB) approved individual Consent Agreements in batches. In addition to ratifying the Agreements, EAB affirmed EPA's authority to enter into the Agreement as an administrative enforcement action.[36] The relevant penalties and monitoring funds were collected from individual participants as well as from the National Pork Board, which provided at least $6,000,000 towards payment of these fees on behalf of hog producers rather than the producers paying those fees themselves.[37] The NAEMS process then began in earnest in 2007—the year NAEMS monitoring should have been completed according to the original timeline. It continued for three years, rather than two, and "completed in early 2010, about 2 years later than originally expected."[38]

Several environmental and community groups challenged the Air Consent Agreement as a rulemaking that violated the CAA, CERCLA, EPCRA, and public notice and comment requirements. The D.C. Circuit Court of Appeals denied the groups' consolidated petitions for review, holding that the Agreement is an enforcement action not subject to judicial review.[39]

In its briefing before the D.C. Circuit, EPA took the legal position that the safe harbor was a "limited covenant not to sue" that would last approximately three and a half years until 2010.[40] The court took EPA at its word, concluding that the Agreement "merely defers enforcement" and a "limited deferral subject to enforcement conditions works no change in the agency's substantive interpretation or implementation of the Acts."[41] The court also rejected the

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[36] *See, e.g.*, *In re Consent Agreements & Proposed Final Orders for AFOs*, 2006 WL 478143 (EAB Jan. 27, 2006) (finding that first twenty Agreements were administrative penalty orders subject to Board review).

[37] Initially, the National Pork Board was enjoined from contributing $6,000,000 on behalf of producers because the contribution was found to violate the Pork Act and contravene public policy, but this decision was reversed by a second administrative law judge allowing the National Pork Board to pay farmer's fees associated with EPA's Air Emission Study. *See In re: McDowell*, 65 Agric. Dec. 795 (U.S.D.A. 2006) *rev'd*, *In re: McDowell*, 67 Agric. Dec. 1230, 1232 (U.S.D.A. 2008) ("revers[ing] the ALJ's Initial Decision [and granting Administrator's motion to dismiss] [because] Petitioners lack standing, the Second Amended Petition fails to state a legally cognizable claim, and the National Pork Board' s payment of the per-farm-fee associated with EPA's Air Emissions Study is in accordance with the Pork Act and the Pork Order").

[38] 2017 OIG REPORT at 11; 10 ("Based on the original expectations for completion of the tasks in the Notice, the NAEMS monitoring would have been completed in 2007, and the EPA would have begun publishing EEMs in 2009."); 12 (Figure 4) (comparing expected and actual NAEMS development timeline).

[39] *Ass'n of Irritated Residents v. EPA*, 494 F.3d 1027, 1031 (D.C. Cir. 2007).

[40] *See* EPA's Brief at 11-12, 23, 28, (D.C. Cir. Feb. 2, 2007).

[41] *Ass'n of Irritated Residents*, 494 F.3d. at 1033.

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groups' contention that EPA had abdicated its enforcement duty because the court believed the limited deferral "is part of the agency's attempt to ensure that AFOs comply with the Acts."[42]

Had the court understood that EPA would extend its "limited" deferral for over ten years to 2021 and beyond—straight through the Obama and Trump Administrations—then that unbound deferral would undoubtedly have affected the court's analysis.

D. EPA Has Relied On The Air Consent Agreement To Deny Petitions To Regulate Air Emissions from AFOs.

To make matters worse, in addition to using the Air Consent Agreement and EEM process as a shield against adequately enforcing the CAA or EPCRA against AFO polluters, EPA is using the Agreement as an excuse to deny or ignore every administrative petition related to AFO air pollution that has been filed with the Agency since 2005. EPA is also allowing AFOs to use the Agreement to keep citizens from enforcing EPCRA.

Since 2005, EPA has received several administrative rulemaking petitions to address AFO emissions, including a 2009 petition to list and regulate AFOs as a source category under CAA Section 111 (2009 CAFO Source Petition),[43] and a 2011 petition to regulate ammonia as a criteria pollutant under CAA Sections 108 and 109 (2011 Ammonia Petition).[44] According to a report by EPA's Office of the Inspector General (OIG), discussed further below, "EPA staff told [OIG] they did not plan to evaluate the need for additional regulations as laid out in these petitions until the EEMs are finalized."[45]

For the 2009 CAFO Source Petition, EPA's refusal to engage with the subject matter of the petition came in the form of a denial of the petition in 2017.[46] As noted in the denial signed by former EPA Administrator Scott Pruitt, EPA explicitly denied the petition not on the

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[42] *Id.* at 1035.
[43] The Humane Soc'y of the U.S., Petition to the U.S. EPA to List Concentrated Animal Feeding Operations Under CAA Section 111 (B)(1)(A) (Sep. 21, 2009).
[44] Environmental Integrity Project, Petition to the U.S. EPA for the Regulation of Ammonia as a Criteria Pollutant Under Clean Air Act Sections 108 and 109 (Apr. 6, 2011).
[45] 2017 OIG REPORT at 18.
[46] Denial of Petition to List Concentrated Animal Feeding Operations Under Clean Air Act, 82 Fed. Reg. 60,940 (Dec. 26, 2017).

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substance of the request,[47] but rather due to the "ongoing budgetary uncertainties" and EEM process.[48] Acknowledging the findings of the 2017 OIG Report, the denial letter then goes on to say that EPA will conduct a systematic planning process as identified in that report by April 2018 and establish milestones for issuing updated draft EEMs by July 2018.[49] A comprehensive set of draft or final EEMs still has yet to be issued, but EPA continues to use the EEM process as a convenient excuse not to take further action to *actually address* and limit air pollution from concentrated animal feeding operations (CAFOs), as this petition would have enabled.

With respect to the 2011 Ammonia Petition, EPA has failed to respond—even as the evidence of harm continues to mount.[50] As mentioned above, public health scientists have drawn clear connections between ammonia from animal production and thousands of annual PM-related deaths, and have also shown that living in close proximity to AFOs is associated with pneumonia.[51] Another study found significant associations between Pennsylvania CAFOs and asthma.[52] The authors of the ammonia study noted that industrial food animal production facilities "are a source of odors and several air pollutants, including particulate matter, hydrogen sulfide, and ammonia," and "these air pollutants and odors have been associated with asthma exacerbations."[53] The role of ammonia in exacerbating water quality impairments has also become more clear over time. It now appears that AFOs emit more ammonia—and more ammonia deposits closer to the source of emissions than previously thought.[54] This means that

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[47] Letter from E. Scott Pruitt, Administrator, EPA, to Tom Frantz, President, Ass'n of Irritated Residents, at 2 (Dec. 15, 2017) ("This denial is not based on a determination as to whether CAFOs meet the requirements for listing under CAA section 111(b)(1)(A).").
[48] *Id.* at 1–2.
[49] *Id.* at 8–9.
[50] Although the petitioners challenged EPA's failure to respond in 2015 (re-filed in 2016), petitioners voluntarily dismissed the complaint in 2017. *See* Notice of Voluntary Dismissal, *Environmental Integrity Project et al. v. EPA*, Case No. 16-cv-02203-ABJ (D.D.C. Jan. 17, 2017).
[51] *See supra* Part II.
[52] S. Rasmussen et al., *Proximity to Industrial Food Animal Production & Asthma Exacerbations in Pennsylvania, 2005-2012*, 14 INT'L J. ENV'T. RESH. PUB. HEALTH 362 (2017).
[53] *Id.*
[54] *See, e.g.*, ENV'T INTEGRITY PROJECT , AMMONIA EMISSIONS FROM POULTRY INDUSTRY MORE HARMFUL TO CHESAPEAKE BAY THAN PREVIOUSLY THOUGHT (2018), https://environmentalintegrity.org/wp-content/uploads/2017/02/Ammonia-Report.pdf; *see also* ENV'T INTEGRITY PROJECT, POULTRY INDUSTRY POLLUTION IN THE CHESAPEAKE REGION (2020), https://environmentalintegrity.org/wp-content/uploads/2020/04/EIP-Poultry-Report.pdf; J. Baker et al., *Modeling & Measurements of Ammonia from Poultry Operations: Their Emissions, Transport, & Deposition in the Chesapeake Bay*, 706 SCI. TOTAL ENVIRONMENT 135290 (Mar. 2020), https://www.sciencedirect.com/science/article/pii/S0048969719352829.

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ammonia is a central contributor to algae blooms, dead zones, and other impairments in large estuaries like the Chesapeake Bay.

In addition, EPA continues to allow AFOs to use the Air Consent Agreement and EEM development process to keep citizens from enforcing statutes such as EPCRA[55] against AFOs.[56] Although EPA can prevent the Agreement from being used as an affirmative defense in EPCRA citizen enforcement suits, the agency has opted not to do so. As a result, EPA is allowing this Agreement to stand in the way of effective enforcement of this statute against AFO polluters, regardless of the amount or persistence of that pollution.

IV. EPA'S MONITORING STUDY WAS FLAWED, UNDERMINING EPA'S ABILITY TO DEVELOP VALID EEMs.

A. EPA Limited the Size and Geographic Scope of its Study, Despite the Entry of Nearly 14,000 AFOs into the Agreement.

In announcing the Air Consent Agreement and NAEMS Protocol, EPA claimed that "[m]onitoring will occur at facilities across the country to get a representative sample of the facility types," and the NAEMS "protocol will provide sufficient data to get a valid sample that is representative of the vast majority of the participating AFOs."[57] EPA intended to use the results of this monitoring study "to generate scientifically credible data to provide for the characterization of emissions from all major types of AFOs in all geographic areas where they are located."[58] However, the study fell far short of achieving this goal for a variety of reasons,

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[55] In 2019, EPA finalized a rule exempting AFOs from their reporting obligations under EPCRA section 304. *See* Amendment to Emergency Release Notification Regulations on Reporting Exemption for Air Emissions From Animal Waste at Farms; Emergency Planning and Community Right-to-Know Act, 84 Fed. Reg. 27,533 (June 13, 2019). That rulemaking has been challenged in federal court by a coalition of environmental and environmental justice groups, including many of the signatories here. *Rural Empowerment Association for Community Help, v. EPA*, Case No. 18-02260-TJK (D.D.C. 2019). Following the D.C. Circuit's decision in *Waterkeeper Alliance v. EPA*, 853 F.3d 527, 537–38 (D.C. Cir. 2017), we expect the court to overturn EPA's 2019 rule, and therefore believe that AFOs may use the Air Consent Agreement to hamper citizen suit enforcement of EPCRA.

[56] *See, e.g., Humane Soc'y of the United States v. Hanor Company of Wisconsin*, LLC, 289 F. Supp. 3d 692 (E.D. N.C. 2018).

[57] 2005 Notice at 4960; *see also id.* at 4968 (Attach. B to App. 1: NAEMS Protocol).

[58] *Id.* at 4960.

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including the industry's role in selecting sites, the small number of selected sites, and EPA's flawed site selection methodology.[59]

From the onset, the design and implementation of the study was limited because industry exerted significant control on the pool of potential study sites. Although "EPA acknowledged that emissions data should be collected for every type of animal feeding operation and practice," EPA officials concluded that the industry should be responsible for site selection,[60] deferring to industry yet again.

Records obtained by the Environmental Integrity Project under the Freedom of Information Act confirm that AFO owners and operators played a major role in selecting the sites in NAEMS.[61] For example, Perdue broiler facilities did not participate in the Air Consent Agreement. Perhaps as a direct consequence, NAEMS did not include a single broiler site in the Mid-Atlantic, despite incredible industry concentration in the region.[62] Further, Tyson Foods, one of the largest meat producers in the United States, directly sponsored the data collection at its broiler sites in Kentucky.[63]

Moreover, despite almost 14,000 AFOs receiving enforcement protection under the Agreement, the NAEMS study itself only included 27 sites at 20 AFOs in 10 states.[64] The small

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[59] *See* GAO, CONCENTRATED ANIMAL FEEDING OPERATIONS: EPA NEEDS MORE INFORMATION & A CLEARLY DEFINED STRATEGY TO PROTECT AIR & WATER QUALITY FROM POLLUTANTS OF CONCERN37–39 (2008) https://www.gao.gov/assets/gao-08-944.pdf ("[T]he National Air Emissions Monitoring Study may not provide the data that EPA needs to develop comprehensive protocols for quantifying air emissions from [AFOs] for a variety of reasons.") [hereinafter 2008 GAO Report]; *see also id.* at 7 ("[A]s currently structured, the study may not provide the scientific and statistically valid data it was intended to provide and that EPA needs to develop air emissions protocols.").

[60] *Id.* at 38–39 ("According to EPA officials, the industry identified those monitoring sites that they believed best represented the type of operations and manure management practices that are in their various animal sectors.").

[61] Letter from Tarah Heinzen, Env't Integrity Project, to EPA Docket Center, (June 11, 2012) (citing email from Heber to Nizich (Aug. 9, 2006) (stating that "the National Milk Producers Federation approved these site selections for the NAEMS")).

[62] *See* PEW, *Big Chicken: Pollution & Industrial Poultry Production in America* (July 26, 2011), https://www.pewtrusts.org/en/research-and-analysis/reports/2011/07/26/big-chicken-pollution-and-industrial-poultry-production-in-america; *see also* EPA, *2012 Monitored AFOs*, https://archive.epa.gov/airquality/afo2012/web/html/index.html.

[63] IOWA STATE UNIV. & UNIV. OF KENTUCKY, FINAL PROJECT REPORT ON SOUTHEASTERN BROILER GASEOUS & PARTICULATE MATTER EMISSIONS MONITORING (Dec. 2009) (describing emissions monitoring results of two Tyson broiler production houses located on two separate farm sites in western Kentucky), https://archive.epa.gov/airquality/afo2012/web/pdf/ky1bsummaryreport.pdf.

[64] *See* 2017 OIG REPORT at 7; *see also 2012 Monitored AFOs*, https://archive.epa.gov/airquality/afo2012/web/html/index.html.

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number of sites selected led the Government Accountability Office (GAO) to raise concerns in 2008, before the completion of NAEMS, that "the study did not include a sufficient number of monitoring sites to establish a statistically valid sample."[65] As explained in GAO's report, "[w]ithout such a sample . . . EPA will not be able to accurately estimate emissions for all types of operations."[66]

EPA also failed to select geographically representative sites. When designing NAEMS, EPA purportedly intended to study a statistically significant number of representative sites and generate "scientifically credible data to provide for the characterization of emissions from all major types of AFOs in all geographic areas where they are located."[67] Yet the study design fell far short of anything capable of achieving this. Primary Investigators for the sites were selected before the NAEMS sites themselves, limiting the role of representativeness in the site selection process since investigators needed to be proximately located to NAEMS sites.[68] As GAO observed:

> [T]he monitoring study does not include the 16 combinations of animal types and geographic regional pairings recommended by EPA's expert panel. The panel recommended this approach so that the study sample would be representative of the vast majority of participating animal feeding operations, accounting for differences in climatic conditions, manure-handling methods, and density of operations. However, EPA approved only 12 of the 16 combinations recommended by the expert panel, excluding southeastern broiler, eastern layer, midwestern turkey, and southern dairy operations.[69]

Atmospheric conditions, facility age and design, feed, and other variables may significantly impact air emissions.[70] Therefore, a statistically significant study should include multiple sites representing as many different sets of climate and geographic conditions as possible. This was simply not possible with such a small number of sites.

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[65] 2008 GAO Report at 7, 38–39.
[66] *Id.*
[67] 2005 Notice at 4960; *see also* 2008 GAO Report at 36.
[68] Letter from Tarah Heinzen, Env't Integrity Project, to EPA Docket Center, (June 11, 2012) (citing Heber, "Site Selection Procedure" (Jun. 10, 2005)).
[69] 2008 GAO Report at 37–38.
[70] *See* 2005 Notice at 4977 (listing several "influences on emissions" provided by producer, rather than collected by study).

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B. EPA Failed to Generate Adequate Data to Develop EEMs.

In response to the initial announcement of the Agreement and NAEMS, experts and community groups raised concerns about the protocol, even before EPA had selected sites or initiated monitoring.[71] While the study was ongoing, GAO again warned EPA that NAEMS may not "provide data of sufficient quantity and quality" to establish the planned EEMs.[72] But EPA ignored those concerns. Consequently, EPA's NAEMS study did not generate the data needed to develop comprehensive protocols for quantifying air emissions from AFOs. In 2013, years after EPA concluded the monitoring study, EPA's Scientific Advisory Board (SAB) confirmed the concerns raised by GAO in 2008 regarding the small number of sites in the study and the quality of the data.[73]

In reviewing EPA's draft EEMs, which the SAB ultimately found unsuitable for national use, SAB panel members noted that the California broiler data sets for Total Suspended Particles and $PM_{2.5}$ had less than 10 percent completeness, while that entire site had only 20 percent completeness during the fall.[74] EPA also had problems receiving data from contractors and excluded data due to changes in monitoring method. Short monitoring periods at certain sites in combination with missing or invalidated data has resulted in a much smaller than anticipated dataset from which to develop EEMs.

Moreover, EPA's unnecessarily restrictive data completeness requirements further limited the availability of usable data. The NAEMS protocol required 75 percent of any hour's data to be valid to accept the hour's data, and 75 percent of any day's hours to accept the day's data.[75] The 2013 SAB Report noted the study's low data completeness rates, questioning EPA's

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[71] Many of the signatories submitted comments regarding EPA's flawed 2005 Air Consent Agreement and NAEMS Protocol. *See, e.g.,* Comments by B. Newell et al., Center on Race, Poverty & the Environment et al., EPA-HQ-OAR-2004-0237-0476 (Mar. 1, 2005).
[72] 2008 GAO Report at 7.
[73] EPA SCI. ADVISORY BD., REVIEW OF EEMS FOR BROILER AFOS AND FOR LAGOONS & BASINS AT SWINE & DAIRY AFOS 2 (Apr. 19, 2013), available at https://yosemite.epa.gov/sab%5CSABPRODUCT.NSF/08A7FD5F8BD5D2FE85257B52004234FE/$File/EPA-SAB-13-003-unsigned%20.pdf, [hereinafter 2013 SAB REPORT] ("In summary, the SAB concludes that the EPA has developed statistical models based on combined data sets and predictor variables which have limited the ability of the models to predict emissions beyond the small number of farms in the dataset.").
[74] *Id.*
[75] *Id.*

decision to require a "too stringent and unnecessary" 75 percent completeness despite the study's frequent failure to meet that goal.[76]

Though EPA has acknowledged the problems with its completeness criteria,[77] it has failed to rectify the issue. When issuing the August 2020 draft swine EEMs, EPA conceded that completeness requirements for its open area/source data should be lowered, but only to 52 percent.[78] However, EPA then released draft poultry EEMs in August 2021 that retained the 75 percent completeness requirement for all data sources.[79] The completeness criteria for swine barn emission data have also remained unchanged, and EPA maintains that "the potential need to revise this value for barn source emissions will be assessed at a later date, if appropriate."[80] Yet no such assessment has taken place.

The more EPA evaluates the data, the more problems it uncovers. For instance, in the draft swine EEMs released in August 2020, EPA discovered new issues with ventilation and moisture interference, resulting in the invalidation and removal of numerous ammonia, hydrogen sulfide, and particulate matter measurements from the dataset.[81] The revision included the removal of all open source ammonia emissions data from one of only four monitoring sites.[82] This continued reduction of the dataset, which is already too small to provide a complete representative sample, only further compromises EPA's ability to establish accurate EEMs.

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[76] *Id.* at 26.
[77] *See* EPA, QUALITY ASSURANCE PROJECT PLAN: DEVELOPMENT OF EEMS FOR AIR EMISSIONS FROM AFOS 15 (Mar. 13, 2018) [hereinafter 2018 QAPP], available at https://www.epa.gov/sites/default/files/2018-03/documents/final_eem_qapp_v0.0_for_web_0.pdf. .
[78] *Id.* EPA, DEVELOPMENT OF EEMS FOR SWINE BARNS & LAGOONS, DRAFT 3-1 to3-4. (Aug. 2020), [hereinafter 2020 Draft EEMs for Swine Barns & Lagoons] available at https://www.epa.gov/sites/default/files/2020-08/documents/development_of_emissions_estimating_methodologies_for_swine_barns_and_lagoons.pdf.
[79] EPA, DEVELOPMENT OF EEMS FOR BROILER OPERATIONS, DRAFT 5-3 to 5-4 (Aug. 2021) [hereinafter 2021 Draft EEMs for Broilers], available at https://www.epa.gov/sites/default/files/2016-06/documents/afobroilereemreport2012draft.pdf; DEVELOPMENT OF EEMS FOR EGG-LAYING HOUSES & MANURE SHEDS, DRAFT 2-2 (Aug. 2021) [hereinafter 2021 Draft EEMs for Poultry Houses & Manure Sheds], https://www.epa.gov/system/files/documents/2021-08/development_of_emissions_estimating_methodologies_for_egg_layer_houses_and_manure_sheds.pdf.
[80] 2018 QAPP at 15.
[81] 2020 Draft EEMs for Swine Barns & Lagoons at 3-2 and 4-2.
[82] *Id.* at 3-16 and 3-17.

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C. EPA Failed to Finalize EEMs Following the Completion of NAEMS.

Following the completion of NAEMS in 2010, three years later than expected, the initial terms of the Air Consent Agreement provided that EPA had 18 months to evaluate the data collected through the study and publish emission unit-specific estimating methodologies.[83] In 2012, EPA published draft EEMs for 8 of the 36 emission sources and pollutants described in the Agreement.[84] Those draft EEMs, which covered broiler AFOs and lagoons and basins at swine and dairy AFOs, were noticed for public comment and submitted to the agency's Scientific Advisory Board (SAB) for review and feedback.[85]

The response to the draft EEMs from both the public and EPA's own SAB was highly critical and called into question NAEMS design and methodology, the data generated, EPA's statistical approach, its treatment of the available data, and the agency's ability to use the draft to accurately estimate air pollution from facilities not otherwise included in the study itself.[86] The SAB lambasted EPA for its approach to the NAEMS process and the data collected, concluding—among other things—that the draft EEMs developed by EPA should not be applied on a national scale because "EPA has developed statistical models based on combined data sets and predictor variables which have limited the ability of the models to predict emissions beyond the small number of farms in the dataset."[87]

The SAB recommended that "EPA not apply the current versions of the statistical and modeling tools for estimating emissions beyond the farms in EPA's data set," and provided "recommendations for how the agency may expand the data set and the applicability of the

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[83] 2005 Air Consent Agreement at ¶ 32 ("EPA will publish [EEMs] within 18 months of the conclusion of the monitoring period . . . .").

[84] *See* 2017 OIG REPORT at 11; EPA, DEVELOPMENT OF EEMS FOR LAGOONS & BASINS AT SWINE & DAIRY AFOS, DRAFT (Feb. 2012) [hereinafter 2012 Draft EEMs for Swine & Dairy AFOs], available at https://yosemite.epa.gov/sab/SABPRODUCT.NSF/81e39f4c09954fcb85256ead006be86e/AE6639DD6B79360E852579A4004E5529/$File/PDF+for+Development+of+Emissions+Estimating+Methodologies+for+Lagoons+and+Basins+at+Swine+and+Dairy+Animal+Feeding+Operation.pdf; EPA, DEVELOPMENT OF EEMS FOR BROILER OPERATIONS, DRAFT (Feb. 2012) [hereinafter 2012 Draft EEMs for Broilers], available at https://www.epa.gov/sites/default/files/2016-06/documents/afobroileeemreport2012draft.pdf..

[85] Notice of Availability: Draft Documents Related to the Development of EEMs for Broiler AFOs and Lagoons & Basins for Swine & Dairy AFOs, 77 Fed. Reg. 14716 (Mar. 13, 2012); *see also* Comments Submitted in Response to Notice of Availability, https://www.regulations.gov/document/EPA-HQ-OAR-2010-0960-0015/comment.

[86] Many of the signatories submitted comments regarding EPA's flawed 2012 Draft EEMs. *See, e.g.,* Comments Submitted by R. Lawrence, Center for a Livable Future, EPA-HQ-OAR-2010-0960-0037 (Jun. 11, 2012); T. Heinzen, Environmental Integrity Project et al., EPA-HQ-OAR-2010-0960-0026 (Jun. 11, 2012).

[87] 2013 SAB REPORT at 2.

models."[88] For example, SAB recommended that EPA expand its dataset by collecting data from monitoring efforts outside of the NAEMS, and using NAEMS data that were initially excluded due to EPA's data completeness criteria.[89]

The SAB also advocated for a process-based modeling approach to EEM development, noting that "[p]rocess-based models would be more likely to be successful in representing a broad range of conditions than the current models because [they] represent the chemical, biological and physical processes and constraints associated with emissions."[90]

In short, the SAB told EPA to go back to the drawing board and revise its process for developing EEMs based on the data gathered through NAEMS. EPA has responded to some of SAB's concerns, but not all. As a result, EPA has yet to finalize any EEMs or bring any participating parties into compliance with the CAA, CERCLA, and EPCRA. Nor has EPA revoked the safe harbor provision established in the Air Consent Agreement.

D. EPA Has Failed to Consider Available Information from Peer-Reviewed Studies.

Given the clear flaws in NAEMS design and implementation, which yielded non-representative and incomplete data, it was incumbent upon EPA to expand the scope of AFO emission data it relied on to ensure accurate EEMs. However, the draft EEMs continue to rely exclusively on the limited NAEMS data, rather than incorporating findings from numerous peer-reviewed AFO emissions studies. The small number of sites in each livestock sector and the data gaps and technical problems experienced during NAEMS heighten the importance of outside research. EPA's decision to limit available information will result in inadequate EEMs.

From 2007 to 2010, EPA collected emissions data at 27 sites across 20 AFOs. The data were originally published in 2011 and finalized in 2012. EPA relied exclusively on these data to develop the 2012 draft EEMs for broilers and lagoons/basins at swine and dairy AFOs, as well as the 2020 and 2021 draft EEMs for swine and poultry AFOs. However, the Air Consent

[88] *Id.*
[89] *Id.* at 1.
[90] *Id.* at 2.

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Agreement requires that EPA consider *all* relevant information when developing EEMs, not just the data collected at a small sample of AFOs during the monitoring study:

> The term "Emissions-Estimating Methodologies" means those procedures that will be developed by EPA, based on data from the national air emissions monitoring study *and any other relevant data and information*, to estimate daily and total annual emissions from individual Emission Units and/or Sources.[91]

Although the Agreement clearly provides that EPA must consider "relevant data and information" *other* than the monitoring data, EPA has elected to interpret this term so narrowly as to exclude all information not derived from NAEMS. In 2011, EPA asked the public to submit information relating to the agency's development of draft EEMs for broiler confinement facilities and lagoons/basins at swine and dairy AFOs.[92] Despite receiving several relevant, peer-reviewed emissions studies in response to the call for information, EPA ultimately concluded that none of the studies were relevant to the EPA's draft EEMs.[93]

In an attempt to justify EPA's narrow reading of the Air Consent Agreement and exclusion of outside data, the 2012 draft EEMs for Swine and Dairy AFOs state that "none of the articles previously obtained by the EPA to support emissions factor development used remote sensing techniques to measure lagoon emissions."[94] This explanation is inadequate. EPA did not explain why it preferred remote sensing techniques over other techniques. Nor did it explain why the techniques used in the outside studies were incompatible with the remote sensing data. Similarly, in the 2012 draft EEMs for Broilers, EPA disregarded peer-reviewed poultry emissions studies solely because the researchers used different methods.[95]

Since the publication of the 2012 draft EEMs, EPA has reaffirmed its commitment to relying exclusively on NAEMS data. In 2018, after nearly a decade of delay and inaction, EPA decided to put off any investigation into the "potential need for additional non-NAEMS data"

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[91] 2005 Air Consent Agreement at ¶10 (emphasis added); *see also* 2005 Notice at 4960 ("EPA will use the data generated from the monitoring *and all other available, relevant data* to develop [EEMs]") (emphasis added).
[92] *See* Call for Information Related to the Development of EEMs for AFOs, 76 Fed. Reg. 3060 (Jan. 19, 2011); *see also Comments Submitted in Response to Call for Information*, https://www.regulations.gov/document/EPA-HQ-OAR-2010-0960-0001/comment.
[93] 2012 Draft EEMs for Swine & Dairy AFOs Table 3-3, 2012 Draft EEMs for Broilers Table 3-14 (Feb. 2012).
[94] 2012 Draft EEMs for Swine & Dairy AFOs at 3-14.
[95] 2012 Draft EEMs for Broilers at 4-13 to 4-23.

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until a "later stage" in the project "if appropriate."[96] The 2020 draft EEMs for Swine AFOs used peer-reviewed studies only to inform the selection of possible model parameters.[97] But the Air Consent Agreement requires EPA to use available data to *develop* the EEMs.[98]

EPA's continued exclusion of clearly relevant data from the EEM development process violates the Air Consent Agreement and confirms that continuing the already protracted EEM development process would be futile. Moreover, EPA cannot develop adequate EEMs based exclusively on the outdated and incomplete NAEMS monitoring data collected from 2007 to 2010 because the industry has changed considerably since the monitoring study concluded over a decade ago.[99] Furthermore, new studies regarding air emissions from AFOs have been published in recent years, revealing important insights about the emissions generated from various AFO sources and their impacts on local communities.[100] Without the addition of recent outside studies, any EEMs developed by EPA will fail to accurately estimate emissions from AFOs.

E. The 2017 OIG Report Urged EPA to Either Finalize the EEMs or End the Agreement.

In 2017, six years after all EEMs were supposed to be finalized, OIG released a report on EPA's actions to evaluate air emissions from AFOs, focusing on the Air Consent Agreement and NAEMS.[101] As with the SAB, OIG was highly critical of EPA's extreme delay in developing EEMs following the completion of NAEMS, noting that "competing priorities [have] resulted in the EPA's Office of Air and Radiation putting the EEM effort largely on hold" to the extent that "the EPA stopped funding the contract for NAEMS analysis."[102] OIG also expressed concern

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[96] 2018 QAPP at 14.
[97] 2020 Draft EEMs for Swine Barns & Lagoons at 13-1 to 13-2.
[98] 2005 Notice at 4960.
[99] Over the past nine years alone, significant changes to the hog, dairy, broiler, and egg-laying industries can be observed in particular state CAFO expansion trends. For instance, the number of CAFOs operating in Iowa, a state dominated by the hog industry, has increased by 136 percent since 2011. There are 43 percent more CAFOs operating in Wisconsin, where the dairy industry is most prevalent, than what existed in 2011. In Delaware, a broiler-focused state, the CAFO industry has grown by 838 percent. And Ohio, a state dominated by egg-laying operations, has seen a 33 percent increase. *See* EPA, NPDES CAFO Rule Implementation Status – National Summary, Endyear 2011 (Dec. 31, 2011), https://www.epa.gov/sites/default/files/2015-08/documents/npdes_cafo_rule_implementation_status_-_national_summary_endyear_2011_0.pdf; EPA, NPDES CAFO Rule Implementation Status – National Summary, Endyear 2020 (May 11, 2021), https://www.epa.gov/sites/default/files/2021-05/documents/cafo_status_report_2020.pdf.
[100] *See* discussion, *supra* Part I.
[101] 2017 OIG REPORT at 1.
[102] *Id.* at 10.

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about the lack of EPA agricultural air expertise and committed resources, noting that the agency "did not have staff with combined expertise in agricultural emissions, air quality[,] and statistical analysis."[103]

Although EPA completed NAEMS in early 2010, EPA has yet to finalize the EEMs to make CAA and CERCLA/EPCRA compliance determinations under the terms of the Air Consent Agreement. OIG expressed concern that although the civil enforcement protections were initially planned to expire in 2012, all 14,000 AFOs that participated in the Agreement continue to enjoy civil enforcement protections, and EPA has put several important actions on hold pending development of the EEMs.[104] In short, as OIG concluded, "EPA's ability to characterize and address AFO air emissions is unchanged since its 2005 Agreement with the AFO industry intended to produce reliable emissions estimation methods."[105]

To continue moving the EEM process forward, OIG recommended that EPA conduct adequate systematic planning—something that the agency should have done *before* conducting NAEMS or preparing the draft EEMs.[106] "Based on the results of systematic planning," EPA should "determine and document the decision as to whether the EPA is able to develop scientifically and statistically sound emission estimating methodologies for each originally planned emission source and pollutant combination."[107] After conducting those reviews, OIG recommended that EPA should "[f]or the emission source and pollutant combinations for which the Office of Air and Radiation determines it can develop scientifically and statistically sound emission estimating methodologies, establish public milestone dates for issuing each draft emission estimating methodology" and "[f]or any emission source and pollutant combinations for which the Office of Air and Radiation determines it cannot develop emission estimating methodologies, notify Air Consent Agreement participants of this determination, and that the release and covenant not to sue for those emission sources and pollutant types will expire in accordance with paragraph 38 of the 2005 Air [Consent] Agreement."[108]

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[103] *Id.* at 16.
[104] *Id.*
[105] *Id.* at 18.
[106] *Id.* at 22.
[107] *Id.* at 23.
[108] *Id.*

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Since the OIG report was published in 2017, EPA has continued to drag its feet regarding EEM development, despite the clear course correcting path that OIG laid out for the Agency. While EPA maintains that it has timely implemented all OIG recommended actions,[109] in reality, the only action that EPA has completed in good faith is the very first on the list—publishing a planning document to guide future EEMs development.[110] As for the remaining four OIG recommendations, EPA has either failed to comply altogether or implemented them in such a half-hearted way so as to undermine their whole purpose, namely, to prevent any further delay.

According to OIG's corrective action timeline, based on the results of EPA's systematic planning, EPA was to "document the decision" as to which EEMs could be developed and which could not no later than June 30, 2018.[111] Yet when the June deadline came, all EPA had decided was that, "for now,"[112] it would move forward with developing EEMs for all pollutants and all source categories, even while holding out the possibility that "emission source categories might be revised during subsequent stages of EEM development" upon further investigation.[113] In other words, instead of making any real effort to narrow the scope of feasible EEMs, as OIG intended, the Agency simply made a placeholder determination to proceed as originally planned to check an item off its OIG to-do list. Conveniently, this also allowed EPA to hold off on implementing another OIG action—ending enforcement amnesty for affected Air Consent Agreement participants—since only a finalized decision to abandon certain EEMs could trigger this requirement.[114] However, this did not stop the Office of Enforcement and Compliance Assurance from certifying that this action, which has yet to occur, was "complete."[115]

Moreover, because EPA opted to move forward with the development of all originally planned EEMs, EPA was required to "set public milestone dates" for issuance of all draft EEMs

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[109] *See* Memorandum from W. Wehrum, Assistant Administrator, *OAR-18-000-9472 - Certification Memo for Office of Inspector General (OIG) Report No. 17-P-0396* (July 30, 2018) ED_004549_00036447-00001 (certifying completion of OAR corrective actions); M. Badalamente, *Certification of Performance Audit* (Apr. 2, 2019) ED_004549_00036462-00001 (certifying completion of OECA corrective action) [hereinafter OECA Certification Memo].
[110] *See* 2018 QAPP at 14.
[111] 2017 OIG REPORT at 23.
[112] Email from Tim Sullivan to Lauren Kabler Re: 2017 OIG Report, ED_005459-00036448-00003 (Sep. 20, 2018).
[113] 2018 QAPP at 16.
[114] 2017 OIG REPORT at 23.
[115] OECA Certification Memo at 1-2 (paradoxically stating OECA's action is "complete" because OECA stands ready to implement it "within 60 days of OAR finalizing its determination").

and to keep the public informed of the status of EEM development.[116] While EPA did set publicly available issuance dates (yet another box checked), it has made no effort to meet these self-imposed deadlines. In fact, every time a deadline nears, the Agency updates the schedule to give itself more time. In the agency's revised schedule for developing EEMs, EPA committed to issuing draft EEMs beginning in September 2019 and ending no later than November 2020.[117] However, after revising the schedule more than five times in just two years, with the most recent schedule slide occurring just this past August, EPA now lists the date for issuing all draft EEMs as May 2022.[118] While OIG required EPA to "set public milestone dates," it surely did not intend for EPA to push back the dates whenever the agency failed to meet an upcoming deadline. The purpose of the updated schedule was to prevent continued delay and uncertainty regarding EPA's development process. As of the date of this letter, EPA continues to delay the EEMs and fall behind its own updated timeline.

V. EPA SHOULD TERMINATE THE AIR CONSENT AGREEMENT BECAUSE EPA HAS FAILED TO PRODUCE VALID EEMs.

A. EPA Should Abandon the Fundamentally Flawed NAEMS and EEMs Development Process in Favor of Existing Models.

As discussed above, EPA cannot rely on the NAEMS data collected at 20 AFOs from because these data are not representative of current emissions from AFOs across the country. At this stage in the EEM development process, EPA cannot correct the flaws in NAEMS and EEM design or implementation. And although EPA has acknowledged the issues limiting the applicability of the data and affecting its current efforts to establish legitimate EEMs, it has failed to sufficiently address those issues. Moreover, EPA already has process-based models and emissions factors that it can use for the purposes of estimating emissions from AFOs and making compliance determinations. Where such methods are available, EPA should immediately adopt the methods as the default EEMs.

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[116] 2017 OIG REPORT at 23.
[117] *See* Archived EPA Webpage: *National Air Emissions Monitoring Study* (Jul. 3, 2018), http://web.archive.org/web/20180703144202/https://www.epa.gov/afos-air/national-air-emissions-monitoring-study.
[118] *See* EPA, National Air Emissions Monitoring Study (last visited 10/22/2021) https://www.epa.gov/afos-air/national-air-emissions-monitoring-study.

In 2013, nearly a decade ago, EPA's Science Advisory Board recommended that the EPA "consider developing EEMs at a variety of levels of complexity to provide options for producers with different levels of data availability."[119]

> Models of varying complexity should be developed based on the level of input provided by a given producer (e.g., one model may be developed considering the composition of a feed ration, while a less complex model using default industry values could be used if a producer does not wish to or cannot disclose information regarding feed rations).[120]

This SAB recommendation is critical. As discussed above, data limitations often make the implementation of EEMs impractical or impossible. To implement the 2020 and 2021 draft EEMs for swine and poultry AFOs, AFO operators would essentially have to run multiple statistical models for each emissions source, each day of the year, using actual daily data points, like animal inventory, average animal weights, ambient air temperature, and wind speed, to estimate annual emissions.[121] This is problematic in at least two ways. First, it would be difficult for potential sources and regulators to acquire and process the large amount of data required to generate annual emissions estimate. Second, since the draft EEMs require actual input data, they cannot readily be used to estimate future emissions from proposed (or existing) sources.

The current forms of the EEMs are thus inconsistent with the CAA, which asks proposed and existing sources to provide emissions estimates in the form of annual emission potential (an upper-bound estimate that does not require daily model iterations).[122] EPA therefore needs EEMs that utilize default assumptions. The SAB strongly recommended this approach, but EPA unfortunately continues to ignore it.[123]

EPA has also recommended this simplified approach in other contexts. For example, in 2019, EPA published guidance for estimating animal waste emissions for purposes of complying

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[119] 2013 SAB REPORT at 2, 4.
[120] *Id.* at 14
[121] *Id.*
[122] If implemented, the 2020 Draft EEMs for Swine AFOs would not produce Potential to Emit (PTE) estimates. These estimates provide critical information in determining how the CAA applies at a given facility, and if a facility is a "major source." The draft EEMs instead prescribe the use of actual animal inventories and will not determine if facilities are "major sources" as required.
[123] 2013 SAB REPORT at 14 ("The EPA should create a modeling approach that can be defined using default parameters that can be simply attained and that would reflect the heterogeneity of AFOs.").

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with CERCLA and EPCRA.[124] Some of the methods recommended in this guidance were simple emissions factors (e.g., pounds per animal per day).[125] Other recommended methods were in the form of worksheets that used a combination of site-specific information (e.g., animal housing type and maximum permitted capacity) and default parameters (e.g., animal-specific nitrogen excretion rates and ammonia loss factors). The worksheets are notable for two reasons. First, the worksheets generate "peak" pollutant emissions, based on maximum/permitted animal capacity, which is consistent with CAA "potential to emit" requirements. Second, the worksheets are easy to implement with limited data because they incorporate default parameters.

In sum, EPA already estimates emissions, and recommends that others do so, using methods that are consistent with the CAA and SAB guidance and are easy to implement. Yet it continues to insist on developing flawed EEMs that fail all of these criteria. This is flagrantly arbitrary and unreasonable, and only serves one purpose—to continue to protect a large source of air pollution from regulation.

B. EPA Overstates the Difficulty of Developing Process-Based Models, Which the Agency Is Already Using in Other Contexts.

Since the beginning of the EEM development process, the scientific community has recommended that EPA pursue a process-based approach. In 2003, the National Academies of Sciences (NAS) concluded that the "use of process-based modeling will help provide scientifically sound estimates of air emissions from AFOs for use in regulatory and management programs."[126] Ten years later, in 2013, EPA's Science Advisory Board made the same recommendation.[127] Today, nearly two decades after the NAS first recommended a process-based approach, and despite the fact that EPA is already using process-based models in other contexts, EPA maintains that it cannot yet develop process-based EEMs.

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[124] EPA, *CERCLA & EPCRA Reporting Requirements for Air Releases of Hazardous Substances from Animal Waste at Farms*, EPA (last visited Aug. 27, 2021), https://www.epa.gov/epcra/cercla-and-epcra-reporting-requirements-air-releases-hazardous-substances-animal-waste-farms.
[125] *See, e.g.*, EPA, Calculation Worksheet: Ammonia and Hydrogen Sulfide from Dairy Operations (2009) available at https://www.michigan.gov/documents/deq/deq-ess-cafo-worksheet-dairyemissions_266406_7.pdf.
[126] NAT'L RSCH. COUNCIL, AIR EMISSIONS FOR ANIMAL FEEDING OPERATIONS: CURRENT KNOWLEDGE, FUTURE NEEDS, 103 (2003).
[127] 2013 SAB REPORT at 10-13.

EPA concedes that its statistical approach is flawed, and now describes the statistical approach as an "interim" solution until more reliable process-based models can be developed.[128] EPA suggests that this approach "follow[s] the expert recommendations and [is] consistent with the Air [Consent] Agreement."[129] This is simply not true—EPA is *not* following the Air Consent Agreement or the SAB recommendations, both of which emphasize the need for data from outside of NAEMS. The SAB reminded EPA that process-based models would require the Agency to consider outside information:

> Developing a rigorous process-based EEM will require extensive data beyond the range of values, conditions, and types of farms available in the NAEMS data set. To address this data gap the EPA should consider using data collected through mechanisms outside the consent agreement, including data published in peer-reviewed literature, raw data from key studies, data that support key literature, and additional data that the EPA has collected since receiving data in response to the Call for Information on AFOs and emissions.[130]

EPA has not done this. The delay in developing process-based EEMs is almost entirely due to EPA's failure to collect or consider the necessary data.

More broadly, it is important to consider EPA's track record. EPA's chosen course of action, developing interim statistical models, has already taken more than 16 years and is *still* not complete. If this is EPA's *interim* solution, how many more decades will it take before EPA can meet its "long term" goals of developing process-based EEMs? At this rate, the industry is changing faster than the EEM development process, and whatever EPA develops will immediately be outdated. Given EPA's history of protracted delay, it makes no sense to continue developing flawed "interim" EEMs while EPA contemplates a plan for someday, maybe developing legitimate EEMs. The problem of air pollution from AFOs deserves actual solutions, not more wheel-spinning.

Developing process-based models will not require more time than completing its flawed statistical models. EPA is already using process-based models (and other models) to estimate AFO emissions and has acknowledged that process-based models accurately predict NAEMS

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[128] *See, e.g.*, 2020 Draft EEMs for Swine Barns & Lagoons at 1-8 to 1-9.
[129] *Id.* at 1-8.
[130] 2013 SAB REPORT at 14.

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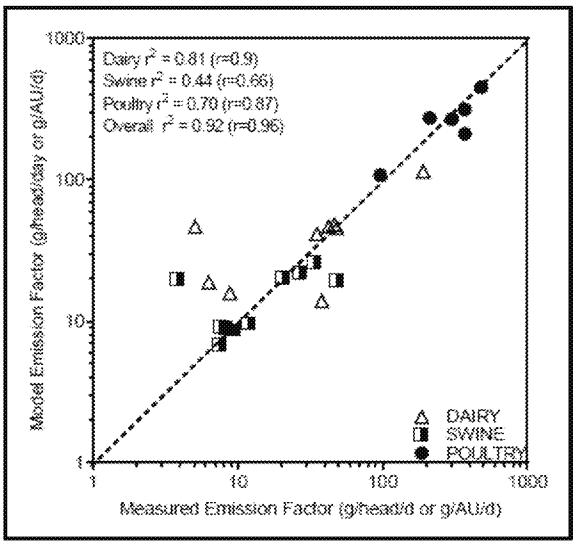
emissions based on NAEMS input data. Ironically, although EPA claims to be interested in any "suitable model[s] available in literature to use,"[131] it ignores the high-quality process-based model being used *by EPA* in its National Emissions Inventory (NEI).

As part of its NEI, the Agency estimates ammonia emissions from dairy, beef, poultry, and swine operations using a process-based model developed by Carnegie-Mellon University (CMU).[132] This model has been evaluated against NAEMS monitoring data, and one author observed that "the process-based [Farm Emissions Models] perform reasonably well in predicting the magnitude of ammonia emissions, their seasonal cycle, and farm-to-farm variability."[133] It is particularly noteworthy that the CMU model "was able to differentiate between farms and practice," as shown in the figure below.[134]

Figure 1: Comparison of Process-Based Model Predictions and NAEMS Monitoring Data



[131] 2018 QAPP at 19.
[132] EPA, 2017 NATIONAL EMISSIONS INVENTORY: JANUARY 2021 UPDATED RELEASE, TECHNICAL SUPPORT DOCUMENT 4-61 (2021); A. McQuilling & P. Adams, *Semi-Empirical Process-Based Models For Ammonia Emissions From Beef, Swine, & Poultry Operations In The United States*, 120 ATMOS. ENVTL. 127 (Nov. 2015).
[133] A. McQuilling, *Ammonia Emissions from Livestock in the United States: From Farm-Level Models to a New National Inventory,* at 51 (Jan. 2, 2016) (Ph.D dissertation Carnegie Mellon University), https://kilthub.cmu.edu/articles/thesis/Ammonia_Emissions_from_Livestock_in_the_United_States_From_Farm-Level_Models_to_a_New_National_Inventory/6714665.
[134] *Id.* at 75, 80.

As explained by the author, "this result shows the model's skill in capturing big picture emissions as well as the ammonia emissions variability driven by practices in addition to meteorology which has been shown in both seasonal and daily evaluations."[135]

Another model that EPA at least acknowledges is the U.S. Department of Agriculture's Farm Systems Model, which includes process-based models for estimated ammonia and hydrogen sulfide emissions from dairy operations. The model has even been shown to accurately predict ammonia emissions from NAEMS dairy barns and manure storage structures.[136]

If these models are good enough for EPA's emissions inventory and do a reasonable job of predicting NAEMS emissions, then they should be good enough for estimating emissions from AFOs for the purpose of applying for CAA permits or reporting qualifying releases. For example, if the question is whether a facility emits more than a certain threshold, such as 10 or 100 tons of ammonia per year,[137] then the CMU model is sufficient. This is particularly true where we already know that many AFOs emit well above the higher threshold.[138]

EPA's foot-dragging is based on the deeply flawed premise that the Agency won't know how much pollution AFOs emit until after the agency's planned EEMs are complete. This premise is false. EPA has a variety of options for estimating emissions, and these options are in fact better than the EEMs—they are more consistent with CAA requirements and SAB recommendations, and they are accurate enough to provide the kinds of information that the industry, regulators, and residents need to comply with the law. EPA has no legitimate basis for dragging this process out any longer.

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[135] *Id.* at 80.
[136] 2018 QAPP at 19; *see also* C. Rotz et. al., *Ammonia emission model for whole farm evaluation of dairy production systems*, 43 J. ENV'T. QUAL. 1143 (2014).
[137] *See, e.g.*, 42 U.S.C. §§ 7412(a)(1) (definition of "major source" of hazardous air pollutants); § 7479(1) (definition of "major emitting facility"); § 7602(j) (definition of "major emitting facility").
[138] *See, e.g.*, Notice of Lodging of Consent Decree Under CERCLA, 69 Fed. Reg. 11,649 (Mar. 11, 2004). The company subject to this Consent Decree, Buckeye Egg Farm L.P., reported ammonia emissions of over 800 tons per year from one facility, over 375 tons per year from a second facility, and "nearly 275" tons per year from a third facility. *Id.* at 11,649–50.

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VI. IF EPA DECIDES TO PROCEED WITH THE FLAWED EEM DEVELOPMENT PROCESS, IT MUST IMMEDIATELY RESCIND THE SAFE HARBOR PROVISION.

As explained above, EPA's failure to regulate air pollution from AFOs causes both significant health impacts and a dearth of information available to impacted individuals about pollutant releases and impacts. Additionally, AFO air pollution and the resulting odors are diminishing the quality of life and depressing property values in communities across the nation.[139] EPA must immediately rescind the enforcement protections granted to AFOs. In addition, EPA must rely on external sources and public input when developing any draft EEMs based on the agency's inherently flawed monitoring data and development process.

A. EPA Should Immediately Rescind the Safe Harbor Provisions of the Air Consent Agreement.

Although EPA has the authority to rescind the safe harbor provisions of the Air Consent Agreement at any time, it has refused to do so, choosing instead to grant extended immunity to AFOs that emit significant air pollution and cause adverse public health impacts in surrounding communities. EPA's continued refusal to enforce the law against AFOs is an abdication of its enforcement authority. It contradicts congressional intent and strips affected communities of their legal and procedural remedies to address increased air emissions from AFOs. Thus, EPA should take immediate action to rescind the safe harbor provisions of the Air Consent Agreement.

B. EPA Should Not Finalize Any EEMs Without Robust Public Participation.

If EPA proceeds with its protracted EEM development process, it must prioritize public participation. During the decades-long process of developing the EEMs, the Agency has primarily engaged the AFO industry. EPA intends to hold a "stakeholder review period" once new draft EEMs are available but the timing of this review period is currently unknown.[140] It is

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[139] *See, e.g.*, Y. HONG & P. EBNER, PURDUE ANIMAL SCIENCES, IMPACT OF CFO ODOR & ODOR SETBACK MODELS, (JAN. 2017), https://ag.purdue.edu/cfo/Documents/ID-485_CFO_2017.pdf; ROMAN KEENEY, PURDUE EXTENSION, COMMUNITY IMPACTS OF CAFOS: PROPERTY VALUES (2008), https://www.extension.purdue.edu/extmedia/ID/ID-363-W.pdf.

[140] *See* EPA, *National Air Emissions Monitoring Study: Timeline for the Release of AFO Emission Models*, (last visited Oct. 25, 2021), https://www.epa.gov/afos-air/national-air-emissions-monitoring-study.

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unclear who EPA considers "stakeholders" in this process, but presumably this "stakeholder review period" involves EPA releasing all EEMs simultaneously for a 30-day public comment period. This would be a wholly inadequate means to engage the public, especially in comparison to the extensive influence that industry groups have had throughout the EEMs process. A robust notice and comment opportunity is necessary to meaningfully engage *all* stakeholders and ensure that the EEMs do not exacerbate health impacts and inequalities.

Rural communities experiencing the detrimental effects of AFOs lack access to complete information about the impacts and regulation of AFOs, and rarely are provided with a forum to voice their concerns and seek remedies from the government. Rather, EPA has frequently used the EEMs process as a shield to avoid meaningfully responding to and acting on AFO air pollution concerns raised with the Agency. A transparent and accessible notice and comment period for the EEMs will provide a necessary—albeit much-delayed—opportunity for the Agency to hear from the stakeholders most impacted by EPA's decisions regarding EEMs.

Furthermore, the complexity and abstract nature of environmental modeling presents unique and significant barriers to full public participation.[141] EPA should take steps to overcome and mitigate these barriers. For example, a comment period of 90 days would provide impacted communities and advocacy groups the time needed to assess the impacts of the EEMs and engage in outreach to ensure that all interested parties are aware and informed. The complex nature of the EEMs also means that groups and members of the public likely will need to engage experts to review the EEMs and develop technical comments, necessitating a longer comment period. EPA should also hold public listening sessions with content aimed at meaningfully engaging the public in EEMs development, such as layperson explanations of the process of developing the EEMs and the EEMs' impacts and limitations. Similarly, EPA should ensure members of the public are able to hear each other's comments.

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[141] *See generally* J. Fine & D. Owen, *Technocracy & Democracy: Conflicts Between Models & Participation in Environmental Law & Planning*, 56 HASTINGS L.J. 901 (2005), https://repository.uchastings.edu/cgi/viewcontent.cgi?article=3590&context=hastings_law_journal.

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Robust public participation in the finalization of any EEMs is also necessary for EPA to comply with the President's Executive Orders pertaining to environmental justice.[142] AFO air pollution is an environmental justice issue—"people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality" are far more likely to be exposed to AFO air pollution and suffer the health, quality of life, and financial consequences.[143] The Biden Administration has pledged to make environmental justice a priority and directed EPA to "assess whether, and to what extent, its programs and policies perpetuate systemic barriers to opportunities and benefits for people of color and other underserved groups."[144] Agencies are further tasked with "evaluat[ing] opportunities, consistent with applicable law, to increase coordination, communication, and engagement with community-based organizations and civil rights organizations."[145] The finalization of the EEMs is an important opportunity for EPA to advance these objectives, and the failure of EPA to ensure meaningful public participation in the EEMs would contravene the Administration's directives.

The petitioners, as well as many other groups that work with rural communities impacted by AFOs, also could provide EPA with valuable information and context. Two petitioners are environmental justice organizations, which work with communities adversely affected by AFO air pollution, including in North Carolina and California. Many of the petitioners have sought to engage with EPA on the issue of air pollution from AFOs for well over a decade, including challenging the Agreement at the EAB and in the D.C. Circuit, submitting the 2009 CAFO Source Petition, and submitting the 2011 Ammonia Petition. The petitioners have also extensively worked with, and represented in legal actions, members of communities directly

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[142] *See* Exec. Order No. 13985, Advancing Racial Equity & Support for Underserved Communities Through the Federal Government, 86 Fed. Reg. 7009 (Jan. 25, 2021), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1817697/pdf/ehp0115-000317.pdf.

[143] *See id. See also* 2017 OIG REPORT at 3, *see also* K. Donham et al., *Community Health & Socioeconomic Issues Surrounding Concentrated Animal Feeding Operations*, 115 ENV'T. HEALTH PERSPECTIVES (2007).

[144] Exec. Order No. 13985; *see also* Exec. Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 Fed Reg. 7629 (Feb. 16, 1994) ("[E]ach Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations. . . .").

[145] Exec. Order No. 13985.

impacted by AFO pollution. Therefore, the petitioners possess extensive expertise that would be valuable in the process of finalizing the EEMs.

VII. CONCLUSION

The Air Consent Agreement has been an unmitigated failure. During EPA's extended amnesty and fundamentally inadequate NAEMS process, jurisdictions like California have estimated emissions and permitted AFOs with readily available data.[146] The SAB has demonstrated that EPA's NAEMS and EEM development processes reflect the principle of "garbage in, garbage out." EPA has blown far past its 2007 "limited" deferral representation to the D.C. Circuit and its 2017 response to the OIG, landing rural communities in a purgatory of legalized air pollution. Further delay only demonstrates EPA's abdication of its enforcement responsibility and will not yield a better outcome.

We support EPA efforts to develop state-of-the-art and accurate emissions estimating methodologies, but that process should never have been used to shield the industry from enforcement, and in any case, it is well past the time when the NAEMS and EEM process could justify a temporary suspension of applicable law. The reality is that facts and science change over time, and emissions assumptions will also change over time. There is no end to that process. However, EPA can, and routinely does, estimate emissions from many sources of air pollution, including AFOs, using the best science available. The Agency must do the same here. EPA must end the Air Consent Agreement, immediately publish the best currently available emissions methods or emissions factors for each pollutant, and enforce the CAA.

The petitioners therefore petition EPA to rescind the Air Consent Agreement granting enforcement protections to nearly 14,000 AFOs. In addition to a written response confirming the agency's rescission of the Air Consent Agreement, we petition EPA to act immediately to implement CAA permitting and reporting programs, prioritize enforcement actions against AFOs contributing to air pollution and related health impacts in environmental justice communities, and develop process-based models unbound from an unending license to pollute.

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[146] EPA, based on its CAA oversight, has actual knowledge of jurisdictions like California, including the San Joaquin Valley Unified Air Pollution Control District, with AFO permitting programs and State Implementation Plan programs applicable to such facilities.

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Date: October 26, 2021

Respectfully Submitted,

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On behalf of Petitioners

ED_013141A_00000292-00035

Message

From: Starfield, Lawrence [Starfield.Lawrence@epa.gov]
Sent: 11/1/2021 5:03:10 PM
To: Koslow, Karin [Koslow.Karin@epa.gov]; Cozad, David [Cozad.David@epa.gov]; Berg, Elizabeth [Berg.Elizabeth@epa.gov]
CC: Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Denton, Loren [Denton.Loren@epa.gov]; Shiffman, Cari [Shiffman.Cari@epa.gov]; Sullivan, Tim [Sullivan.Tim@epa.gov]
Subject: RE: Summary of Petition filed challenging "inaction on farm factory air pollution"

Sounds good. Thank you.

Larry

From: Koslow, Karin <Koslow.Karin@epa.gov>
Sent: Monday, November 1, 2021 12:16 PM
To: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Cozad, David <Cozad.David@epa.gov>; Berg, Elizabeth <Berg.Elizabeth@epa.gov>
Cc: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Denton, Loren <Denton.Loren@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: RE: Summary of Petition filed challenging "inaction on farm factory air pollution"

Ex. 5 AC/DP

Thanks,
Karin

Karin Koslow | Pronouns: she/her
Deputy Director, Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Desk: (202) 564-0171 rolls over to cell: (202) 716-5645
WJC South Room 3142D

OECA strives to be a diverse, welcoming, and inclusive workplace. Our success will require all of us to work together as we continue the OECA ED&I Program's implementation. For more information, or if you have questions about OECA's ED&I program, please email OECA_EDI@epa.gov

From: Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Sent: Monday, November 01, 2021 9:01 AM

To: Koslow, Karin <Koslow.Karin@epa.gov>; Cozad, David <Cozad.David@epa.gov>; Berg, Elizabeth <Berg.Elizabeth@epa.gov>
Cc: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Denton, Loren <Denton.Loren@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: RE: Summary of Petition filed challenging "inaction on farm factory air pollution"

Thanks, Karin. Yes, I would like to discuss the petition on Thursday. A few initial questions:

Ex. 5 AC/DP

Larry

This message is CONFIDENTIAL, and may contain legally privileged information. If you are not the intended recipient, or believe you received this communication in error, please delete it immediately, do not copy, and notify the sender. Thank you.

From: Koslow, Karin <Koslow.Karin@epa.gov>
Sent: Sunday, October 31, 2021 11:30 AM
To: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Cozad, David <Cozad.David@epa.gov>; Berg, Elizabeth <Berg.Elizabeth@epa.gov>
Cc: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Denton, Loren <Denton.Loren@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: Summary of Petition filed challenging "inaction on farm factory air pollution"

Larry:

Attached is an initial summary, prepared by Tim, of the petition asking that the agency rescind the Animal Feeding Operations (AFO) Air Compliance Agreement. Ex. 5 AC/DP

Ex. 5 AC/DP

Ex. 5 AC/DP Please let us know if you'd like to discuss during Thursday's OCE Weekly.

Thanks,
Karin

Karin Koslow | Pronouns: she/her
Deputy Director, Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
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From: Koslow, Karin
Sent: Friday, October 29, 2021 1:20 PM
To: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Cozad, David <Cozad.David@epa.gov>; Berg, Elizabeth <Berg.Elizabeth@epa.gov>
Cc: Rosemarie Kelley (Kelley.Rosemarie@epa.gov) <Kelley.Rosemarie@epa.gov>; Denton, Loren <Denton.Loren@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: Head's up - Petition filed challenging "inaction on farm factory air pollution"

https://whistleblower.org/press-release/press-release-legal-petition-challenges-epa-inaction-on-factory-farm-air-pollution/

Larry – we are reviewing the petition described in linked press release, that was submitted to the Agency by a coalition of NGOs. Ex. 5 AC/DP

Ex. 5 AC/DP

Thanks,
Karin

Karin Koslow | Pronouns: she/her
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OECA strives to be a diverse, welcoming, and inclusive workplace. Our success will require all of us to work together as we continue the OECA ED&I Program's implementation. For more information, or if you have questions about OECA's ED&I program, please email OECA_EDI@epa.gov

Message

From: Sullivan, Tim [Sullivan.Tim@epa.gov]
Sent: 10/28/2021 9:28:04 PM
To: Koslow, Karin [Koslow.Karin@epa.gov]; Denton, Loren [Denton.Loren@epa.gov]
CC: Sullivan, Tim [Sullivan.Tim@epa.gov]
Subject: FW: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Ex. 5 AC/DP

Thanks again for your support on this one—it is appreciated.

Tim

Timothy J. Sullivan
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From: Dunkins, Robin <Dunkins.Robin@epa.gov>
Sent: Thursday, October 28, 2021 3:03 PM
To: Sullivan, Tim <Sullivan.Tim@epa.gov>; Do, Bebhinn <do.bebhinn@epa.gov>
Cc: Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Tim,

Ex. 5 AC/DP

Ex. 5 AC/DP

Let's talk about that tomorrow if you're in.

Robin Dunkins, Group Leader
Natural Resources Group
OAR/OAQPS/SPPD Mail Code: E143-03
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From: Sullivan, Tim <Sullivan.Tim@epa.gov>
Sent: Thursday, October 28, 2021 4:46 PM
To: Do, Bebhinn <do.bebhinn@epa.gov>
Cc: Schrock, Bill <Schrock.Bill@epa.gov>; Dunkins, Robin <Dunkins.Robin@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Thanks for sharing, Bebhinn.

I have included some suggested edits and comments in the document at its original file location. Please let me know if you have any questions or want to discuss anything.

Ex. 5 AC/DP

Thanks –

Tim

Timothy J. Sullivan
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1595 Wynkoop Street (MC 8MSU)
Denver, Colorado 80202

Phone: 303.312.6196 | Email: sullivan.tim@epa.gov

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Cc: Schrock, Bill <Schrock.Bill@epa.gov>; Dunkins, Robin <Dunkins.Robin@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>
Subject: FW: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Tim,

Ex. 5 AC/DP

Please let me know if you have any problems accessing it.

Bebhinn

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Subject: Re: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Bill can you share with Tim

Robin Dunkins, Group Leader
Natural Resources Group
USEPA OAR/OAQPS
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919-541-5335 office
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R8 Ag Advisor | U.S. Environmental Protection Agency
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Message

From: Koslow, Karin [Koslow.Karin@epa.gov]
Sent: 10/29/2021 4:04:40 PM
To: Sullivan, Tim [Sullivan.Tim@epa.gov]; Denton, Loren [Denton.Loren@epa.gov]
CC: Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]
Subject: elevation happening quickly re CAFO petition - Factory Farm Air Pollution

Importance: High

Tim – thank you for updating us. Ex. 5 AC/DP

Ex. 5 AC/DP

Thanks,
Karin

Karin Koslow | Pronouns: she/her
Deputy Director, Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Desk: (202) 564-0171 rolls over to cell: (202) 716-5645
WJC South Room 3142D

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Sent: 10/29/2021 4:47:44 PM
To: Koslow, Karin [Koslow.Karin@epa.gov]
CC: Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Denton, Loren [Denton.Loren@epa.gov]; Sullivan, Tim [Sullivan.Tim@epa.gov]
Subject: RE: elevation happening quickly re CAFO petition - Factory Farm Air Pollution

'Will do. Ex. 5 AC/DP

Ex. 5 AC/DP

Thanks –

Tim

Timothy J. Sullivan
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Office of Enforcement and Compliance Assurance
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Sent: Friday, October 29, 2021 10:05 AM
To: Sullivan, Tim <Sullivan.Tim@epa.gov>; Denton, Loren <Denton.Loren@epa.gov>
Cc: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>
Subject: elevation happening quickly re CAFO petition - Factory Farm Air Pollution
Importance: High

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Ex. 5 AC/DP

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Karin

Karin Koslow | Pronouns: she/her
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Rebecca Perrin
R8 Ag Advisor | U.S. Environmental Protection Agency
DL: 303-312-6311

Message

From: Koslow, Karin [Koslow.Karin@epa.gov]
Sent: 10/29/2021 4:57:26 PM
To: Sullivan, Tim [Sullivan.Tim@epa.gov]
CC: Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Denton, Loren [Denton.Loren@epa.gov]
Subject: RE: elevation happening quickly re CAFO petition - Factory Farm Air Pollution

Later today will be fine – thank you.

Thanks,
Karin

Karin Koslow | Pronouns: she/her
Deputy Director, Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Desk: (202) 564-0171 rolls over to cell: (202) 716-5645
WJC South Room 3142D

OECA strives to be a diverse, welcoming, and inclusive workplace. Our success will require all of us to work together as we continue the OECA ED&I Program's implementation. For more information, or if you have questions about OECA's ED&I program, please email OECA_EDI@epa.gov

---

From: Sullivan, Tim <Sullivan.Tim@epa.gov>
Sent: Friday, October 29, 2021 12:48 PM
To: Koslow, Karin <Koslow.Karin@epa.gov>
Cc: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Denton, Loren <Denton.Loren@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: RE: elevation happening quickly re CAFO petition - Factory Farm Air Pollution

'Will do. Ex. 5 AC/DP

Ex. 5 AC/DP

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

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From: Koslow, Karin <Koslow.Karin@epa.gov>
Sent: Friday, October 29, 2021 10:05 AM
To: Sullivan, Tim <Sullivan.Tim@epa.gov>; Denton, Loren <Denton.Loren@epa.gov>
Cc: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>
Subject: elevation happening quickly re CAFO petition - Factory Farm Air Pollution
Importance: High

Tim – thank you for updating us. Ex. 5 AC/DP

Ex. 5 AC/DP

Thanks,
Karin

Karin Koslow | Pronouns: she/her
Deputy Director, Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Desk: (202) 564-0171 rolls over to cell: (202) 716-5645
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---

From: Sullivan, Tim <Sullivan.Tim@epa.gov>
Sent: Thursday, October 28, 2021 5:28 PM
To: Koslow, Karin <Koslow.Karin@epa.gov>; Denton, Loren <Denton.Loren@epa.gov>

Cc: Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: FW: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Ex. 5 AC/DP

Thanks again for your support on this one—it is appreciated.

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

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From: Dunkins, Robin <Dunkins.Robin@epa.gov>
Sent: Thursday, October 28, 2021 3:03 PM
To: Sullivan, Tim <Sullivan.Tim@epa.gov>; Do, Bebhinn <do.bebhinn@epa.gov>
Cc: Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Tim,

Ex. 5 AC/DP

Ex. 5 AC/DP Let's talk about that tomorrow if you're in.

Robin Dunkins, Group Leader
Natural Resources Group
OAR/OAQPS/SPPD Mail Code: E143-03
U.S. Environmental Protection Agency
Research Triangle Park, NC 27711
919-541-5335 office
919-605-1178 mobile
dunkins.robin@epa.gov

From: Sullivan, Tim <Sullivan.Tim@epa.gov>
Sent: Thursday, October 28, 2021 4:46 PM
To: Do, Bebhinn <do.bebhinn@epa.gov>
Cc: Schrock, Bill <Schrock.Bill@epa.gov>; Dunkins, Robin <Dunkins.Robin@epa.gov>; Banner, Shannon

<banner.shannon@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Thanks for sharing, Bebhinn.

I have included some suggested edits and comments in the document at its original file location. Please let me know if you have any questions or want to discuss anything.

Ex. 5 AC/DP

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)
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From: Do, Bebhinn <do.bebhinn@epa.gov>
Sent: Thursday, October 28, 2021 1:37 PM
To: Sullivan, Tim <Sullivan.Tim@epa.gov>
Cc: Schrock, Bill <Schrock.Bill@epa.gov>; Dunkins, Robin <Dunkins.Robin@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>
Subject: FW: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Tim,

Ex. 5 AC/DP

Please let me know if you have any problems accessing it.

Bebhinn

From: Dunkins, Robin <Dunkins.Robin@epa.gov>
Sent: Thursday, October 28, 2021 2:35 PM
To: Schrock, Bill <Schrock.Bill@epa.gov>
Cc: Do, Bebhinn <do.bebhinn@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>
Subject: Re: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Bill can you share with Tim

Robin Dunkins, Group Leader
Natural Resources Group
USEPA OAR/OAQPS
Research Triangle Park, NC 27711
919-541-5335 office
919-605-1178 mobile
dunkins.robin@epa.gov

On Oct 28, 2021, at 2:26 PM, Schrock, Bill <Schrock.Bill@epa.gov> wrote:

Ex. 5 Deliberative Process (DP)

From: Do, Bebhinn <do.bebhinn@epa.gov>
Sent: Thursday, October 28, 2021 9:57 AM
To: Dunkins, Robin <Dunkins.Robin@epa.gov>; Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Ex. 5 Deliberative Process (DP)

BD

From: Mills, Kathy <Mills.Kathy@epa.gov>
Sent: Thursday, October 28, 2021 7:19 AM
To: Dunkins, Robin <Dunkins.Robin@epa.gov>; Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>; Do, Bebhinn <do.bebhinn@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Ex. 5 Deliberative Process (DP)

Kathy "KB" Mills ~ SPPD ~ U. S. EPA, OAQPS ~ 919-541-1599

From: Dunkins, Robin <Dunkins.Robin@epa.gov>
Sent: Wednesday, October 27, 2021 6:02 PM
To: Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>; Do, Bebhinn <do.bebhinn@epa.gov>; Mills, Kathy <Mills.Kathy@epa.gov>
Subject: FW: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Robin Dunkins, Group Leader
Natural Resources Group
OAR/OAQPS/SPPD Mail Code: E143-03
U.S. Environmental Protection Agency
Research Triangle Park, NC 27711
919-541-5335 office
919-605-1178 mobile
dunkins.robin@epa.gov

From: Dunkins, Robin
Sent: Wednesday, October 27, 2021 6:00 PM
To: Perrin, Rebecca <Perrin.Rebecca@epa.gov>; Snyder, Rodney <Snyder.Rodney@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Ex. 5 Deliberative Process (DP)

I have the RMNP meeting on my calendar. I was going to listen in on some of that meeting but let me know if I should stay on for the entire call.

Robin Dunkins, Group Leader
Natural Resources Group
OAR/OAQPS/SPPD Mail Code: E143-03
U.S. Environmental Protection Agency
Research Triangle Park, NC 27711
919-541-5335 office
919-605-1178 mobile
dunkins.robin@epa.gov

From: Perrin, Rebecca <Perrin.Rebecca@epa.gov>
Sent: Wednesday, October 27, 2021 5:54 PM
To: Dunkins, Robin <Dunkins.Robin@epa.gov>; Snyder, Rodney <Snyder.Rodney@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Thanks! I have a steering committee meeting for RMNP tomorrow, **Ex. 5 Deliberative Process (DP)**
Ex. 5 Deliberative Process (DP)

Rebecca Perrin

U.S. Environmental Protection Agency
DL: 303-312-6311

From: Dunkins, Robin <Dunkins.Robin@epa.gov>
Sent: Wednesday, October 27, 2021 3:52 PM
To: Perrin, Rebecca <Perrin.Rebecca@epa.gov>; Snyder, Rodney <Snyder.Rodney@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Thanks Rebecca. We received the petition/notification thru CMS today. However, I informed OAR that this should be assigned to OECA. OAR is responsible for the NAEMS and the EEMS but OECA is responsible to the consent agreement itself. Stay tuned.

Robin Dunkins, Group Leader
Natural Resources Group
OAR/OAQPS/SPPD Mail Code: E143-03
U.S. Environmental Protection Agency
Research Triangle Park, NC 27711
919-541-5335 office
919-605-1178 mobile
dunkins.robin@epa.gov

From: Perrin, Rebecca <Perrin.Rebecca@epa.gov>
Sent: Wednesday, October 27, 2021 5:48 PM
To: Snyder, Rodney <Snyder.Rodney@epa.gov>; Dunkins, Robin <Dunkins.Robin@epa.gov>
Subject: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

FYI... https://whistleblower.org/press-release/press-release-legal-petition-challenges-epa-inaction-on-factory-farm-air-pollution/

Rebecca Perrin
R8 Ag Advisor | U.S. Environmental Protection Agency
DL: 303-312-6311

Message

From: Sullivan, Tim [Sullivan.Tim@epa.gov]
Sent: 10/30/2021 1:11:37 AM
To: Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Koslow, Karin [Koslow.Karin@epa.gov]; Denton, Loren [Denton.Loren@epa.gov]
CC: Sullivan, Tim [Sullivan.Tim@epa.gov]
Subject: RE: Head's up - Petition filed challenging "inaction on farm factory air pollution"

Sullivan, Tim has shared a OneDrive for Business file with you. To view it, click the link below.

AFO CAFO - Initial Summary of Petition to Rescind.docx

ATTORNEY-CLIENT AND DELIBERATIVE-PROCESS PRIVILEGED COMMUNICATION

Good evening.

I finished reviewing the petition. Ex. 5 AC/DP

Ex. 6 Personal Privacy (PP)

Ex. 5 AC/DP

Thanks –

Tim

Ex. 5 AC/DP

Ex. 5 AC/DP

******

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

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From: Koslow, Karin <Koslow.Karin@epa.gov>
Sent: Friday, October 29, 2021 11:20 AM
To: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Cozad, David <Cozad.David@epa.gov>; Berg, Elizabeth <Berg.Elizabeth@epa.gov>
Cc: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Denton, Loren <Denton.Loren@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: Head's up - Petition filed challenging "inaction on farm factory air pollution"

https://whistleblower.org/press-release/press-release-legal-petition-challenges-epa-inaction-on-factory-farm-air-pollution/

Larry – we are reviewing the petition described in linked press release, that was submitted to the Agency by a coalition of NGOs. Ex. 5 AC/DP

Ex. 5 AC/DP

Thanks,
Karin

Karin Koslow | Pronouns: she/her
Deputy Director, Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Desk: (202) 564-0171 rolls over to cell: (202) 716-5645
WJC South Room 3142D

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Message

From: Koslow, Karin [Koslow.Karin@epa.gov]
Sent: 10/31/2021 3:23:57 PM
To: Sullivan, Tim [Sullivan.Tim@epa.gov]; Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Denton, Loren [Denton.Loren@epa.gov]
Subject: RE: Head's up - Petition filed challenging "inaction on farm factory air pollution"

Tim – Ex. 6 Personal Privacy (PP)

Ex. 5 AC/DP

Thanks,
Karin

Karin Koslow | Pronouns: she/her
Deputy Director, Office of Civil Enforcement
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---

From: Sullivan, Tim <Sullivan.Tim@epa.gov>
Sent: Friday, October 29, 2021 9:12 PM
To: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Denton, Loren <Denton.Loren@epa.gov>
Cc: Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: RE: Head's up - Petition filed challenging "inaction on farm factory air pollution"

ATTORNEY-CLIENT AND DELIBERATIVE-PROCESS PRIVILEGED COMMUNICATION

Good evening.

I finished reviewing the petition. Ex. 5 AC/DP

Ex. 6 Personal Privacy (PP)

Ex. 5 AC/DP

Ex. 5 AC/DP

Thanks –

Tim

Ex. 5 AC/DP

******

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

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Sent: Friday, October 29, 2021 11:20 AM
To: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Cozad, David <Cozad.David@epa.gov>; Berg, Elizabeth <Berg.Elizabeth@epa.gov>
Cc: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Denton, Loren <Denton.Loren@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: Head's up - Petition filed challenging "inaction on farm factory air pollution"

https://whistleblower.org/press-release/press-release-legal-petition-challenges-epa-inaction-on-factory-farm-air-pollution/

Larry – we are reviewing the petition described in linked press release, that was submitted to the Agency by a coalition of NGOs. Ex. 5 AC/DP

Ex. 5 AC/DP

Thanks,
Karin

Karin Koslow | Pronouns: she/her
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Message

From: Sullivan, Tim [Sullivan.Tim@epa.gov]
Sent: 11/1/2021 2:20:42 PM
To: Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Koslow, Karin [Koslow.Karin@epa.gov]; Denton, Loren [Denton.Loren@epa.gov]
CC: Sullivan, Tim [Sullivan.Tim@epa.gov]
Subject: RE: Summary of Petition filed challenging "inaction on farm factory air pollution"

Ex. 5 AC/DP

Thanks –

Tim

Timothy J. Sullivan
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From: Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Sent: Monday, November 1, 2021 7:01 AM
To: Koslow, Karin <Koslow.Karin@epa.gov>; Cozad, David <Cozad.David@epa.gov>; Berg, Elizabeth <Berg.Elizabeth@epa.gov>
Cc: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Denton, Loren <Denton.Loren@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: RE: Summary of Petition filed challenging "inaction on farm factory air pollution"

Thanks, Karin. Yes, I would like to discuss the petition on Thursday. A few initial questions:

Ex. 5 AC/DP

Ex. 5 AC/DP

Larry

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From: Koslow, Karin <Koslow.Karin@epa.gov>
Sent: Sunday, October 31, 2021 11:30 AM
To: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Cozad, David <Cozad.David@epa.gov>; Berg, Elizabeth <Berg.Elizabeth@epa.gov>
Cc: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Denton, Loren <Denton.Loren@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: Summary of Petition filed challenging "inaction on farm factory air pollution"

Larry:

Attached is an initial summary, prepared by Tim, of the petition asking that the agency rescind the Animal Feeding Operations (AFO) Air Compliance Agreement. Ex. 5 AC/DP

Ex. 5 AC/DP

Ex. 5 AC/DP Please let us know if you'd like to discuss during Thursday's OCE Weekly.

Thanks,
Karin

Karin Koslow | Pronouns: she/her
Deputy Director, Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Desk: (202) 564-0171 rolls over to cell: (202) 716-5645
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To: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Cozad, David <Cozad.David@epa.gov>; Berg, Elizabeth <Berg.Elizabeth@epa.gov>
Cc: Rosemarie Kelley (Kelley.Rosemarie@epa.gov) <Kelley.Rosemarie@epa.gov>; Denton, Loren <Denton.Loren@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: Head's up - Petition filed challenging "inaction on farm factory air pollution"

https://whistleblower.org/press-release/press-release-legal-petition-challenges-epa-inaction-on-factory-farm-air-pollution/

Larry – we are reviewing the petition described in linked press release, that was submitted to the Agency by a coalition of NGOs. Ex. 5 AC/DP

Ex. 5 AC/DP

Thanks,
Karin

Karin Koslow | Pronouns: she/her
Deputy Director, Office of Civil Enforcement
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Message

From: Sullivan, Tim [Sullivan.Tim@epa.gov]
Sent: 11/4/2021 2:07:00 AM
To: Koslow, Karin [Koslow.Karin@epa.gov]
CC: Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Denton, Loren [Denton.Loren@epa.gov]; Sullivan, Tim [Sullivan.Tim@epa.gov]
Subject: RE: Summary of Petition filed challenging "inaction on farm factory air pollution"

Hi, Karin.

Ex. 5 AC/DP

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

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Sent: Monday, November 1, 2021 10:16 AM
To: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Cozad, David <Cozad.David@epa.gov>; Berg, Elizabeth <Berg.Elizabeth@epa.gov>
Cc: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Denton, Loren <Denton.Loren@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: RE: Summary of Petition filed challenging "inaction on farm factory air pollution"

Ex. 5 AC/DP

Thanks,
Karin

Karin Koslow | Pronouns: she/her
Deputy Director, Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
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To: Koslow, Karin <Koslow.Karin@epa.gov>; Cozad, David <Cozad.David@epa.gov>; Berg, Elizabeth <Berg.Elizabeth@epa.gov>
Cc: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Denton, Loren <Denton.Loren@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: RE: Summary of Petition filed challenging "inaction on farm factory air pollution"

Thanks, Karin. Yes, I would like to discuss the petition on Thursday. A few initial questions:

Ex. 5 AC/DP

Larry

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Sent: Sunday, October 31, 2021 11:30 AM
To: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Cozad, David <Cozad.David@epa.gov>; Berg, Elizabeth <Berg.Elizabeth@epa.gov>
Cc: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Denton, Loren <Denton.Loren@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: Summary of Petition filed challenging "inaction on farm factory air pollution"

Larry:

Attached is an initial summary, prepared by Tim, of the petition asking that the agency rescind the Animal Feeding Operations (AFO) Air Compliance Agreement. Ex. 5 AC/DP

Ex. 5 AC/DP

Thanks,
Karin

Karin Koslow | Pronouns: she/her
Deputy Director, Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Desk: (202) 564-0171 rolls over to cell: (202) 716-5645
WJC South Room 3142D

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Sent: Friday, October 29, 2021 1:20 PM
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Cc: Rosemarie Kelley (Kelley.Rosemarie@epa.gov) <Kelley.Rosemarie@epa.gov>; Denton, Loren <Denton.Loren@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: Head's up - Petition filed challenging "inaction on farm factory air pollution"

https://whistleblower.org/press-release/press-release-legal-petition-challenges-epa-inaction-on-factory-farm-air-pollution/

Larry – we are reviewing the petition described in linked press release, that was submitted to the Agency by a coalition of NGOs. Ex. 5 AC/DP

Ex. 5 AC/DP

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Karin Koslow | Pronouns: she/her

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Message

From: Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]
Sent: 11/4/2021 2:35:55 AM
To: Sullivan, Tim [Sullivan.Tim@epa.gov]; Koslow, Karin [Koslow.Karin@epa.gov]
CC: Denton, Loren [Denton.Loren@epa.gov]
Subject: RE: Summary of Petition filed challenging "inaction on farm factory air pollution"

Ex. 5 AC/DP

From: Sullivan, Tim <Sullivan.Tim@epa.gov>
Sent: Wednesday, November 03, 2021 10:07 PM
To: Koslow, Karin <Koslow.Karin@epa.gov>
Cc: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Denton, Loren <Denton.Loren@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: RE: Summary of Petition filed challenging "inaction on farm factory air pollution"

Hi, Karin.

Ex. 5 AC/DP

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

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To: Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Koslow, Karin [Koslow.Karin@epa.gov]
CC: Denton, Loren [Denton.Loren@epa.gov]; Sullivan, Tim [Sullivan.Tim@epa.gov]
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Ex. 5 AC/DP

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Air Enforcement Division
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1595 Wynkoop Street (MC 8MSU)
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Phone: 303.312.6196 | Email: sullivan.tim@epa.gov

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To: Sullivan, Tim <Sullivan.Tim@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>
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Ex. 5 AC/DP

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Message

From: Sullivan, Tim [Sullivan.Tim@epa.gov]
Sent: 11/9/2021 7:34:28 PM
To: Koslow, Karin [Koslow.Karin@epa.gov]
CC: Denton, Loren [Denton.Loren@epa.gov]; Sullivan, Tim [Sullivan.Tim@epa.gov]
Subject: AFO Petition - Legal Issues
Attachments: AFO-CAFO - Petition to Rescind.pdf; AFO CAFO - Initial Summary of Petition to Rescind_To Larry.docx

Karin:

Ex. 5 AC/DP

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

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From: Sullivan, Tim <Sullivan.Tim@epa.gov>
Sent: Tuesday, November 9, 2021 11:39 AM
To: Stahle, Susan <Stahle.Susan@epa.gov>
Cc: Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: RE: Propose a different time for your meeting?

Hi, Sue.

It's been a while—hope you are well. I'll work on finding a new time for tomorrow.

Ex. 5 AC/DP

Thanks, and stay tuned for a new meeting invite.

Tim

Timothy J. Sullivan
Air Enforcement Division
Office of Civil Enforcement
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Tim –

I apologize – I was trying to propose a new time for your meeting and I think I just rejected it altogether! Aaah, not my intention!

Is it possible for us to talk tomorrow on this? Was thinking maybe 9:30 am?

Susan Stahle
Air and Radiation Law Office
Office of General Counsel
(202) 564-1272

Message

From: Koslow, Karin [Koslow.Karin@epa.gov]
Sent: 11/9/2021 8:16:39 PM
To: Sullivan, Tim [Sullivan.Tim@epa.gov]
CC: Denton, Loren [Denton.Loren@epa.gov]
Subject: RE: AFO Petition - Legal Issues

Ex. 5 AC/DP

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Cc: Denton, Loren <Denton.Loren@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
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Karin:

Ex. 5 AC/DP

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Ex. 5 AC/DP

Ex. 5 AC/DP I will send you a scheduler for 4:30 pm est tomorrow.

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From: Stahle, Susan <Stahle.Susan@epa.gov>
Sent: Tuesday, November 9, 2021 11:29 AM
To: Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: Propose a different time for your meeting?

Tim –

I apologize – I was trying to propose a new time for your meeting and I think I just rejected it altogether! Aaah, not my intention!

Is it possible for us to talk tomorrow on this? Was thinking maybe 9:30 am?

Susan Stahle

Air and Radiation Law Office
Office of General Counsel
(202) 564-1272

Message

From: Koslow, Karin [Koslow.Karin@epa.gov]
Sent: 11/9/2021 8:50:26 PM
To: Sullivan, Tim [Sullivan.Tim@epa.gov]
CC: Denton, Loren [Denton.Loren@epa.gov]
Subject: RE: AFO Petition - Legal Issues

Perfect – tnx.

Ex. 5 AC/DP

Thanks,
Karin

Karin Koslow | Pronouns: she/her
Deputy Director, Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Desk: (202) 564-0171 rolls over to cell: (202) 716-5645
WJC South Room 3142D

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---

From: Sullivan, Tim <Sullivan.Tim@epa.gov>
Sent: Tuesday, November 09, 2021 3:49 PM
To: Koslow, Karin <Koslow.Karin@epa.gov>
Cc: Denton, Loren <Denton.Loren@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: RE: AFO Petition - Legal Issues

Thanks, Karin.

Ex. 5 AC/DP

Ex. 5 AC/DP I will send you a scheduler for 4:30 pm est tomorrow.

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

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From: Koslow, Karin <Koslow.Karin@epa.gov>
Sent: Tuesday, November 9, 2021 1:17 PM
To: Sullivan, Tim <Sullivan.Tim@epa.gov>
Cc: Denton, Loren <Denton.Loren@epa.gov>
Subject: RE: AFO Petition - Legal Issues

Ex. 5 AC/DP

Let's try to connect briefly on this – I can meet tomorrow at 4:30 EST if that works for you.

Thanks,
Karin

Karin Koslow | Pronouns: she/her
Deputy Director, Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Desk: (202) 564-0171 rolls over to cell: (202) 716-5645
WJC South Room 3142D

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---

From: Sullivan, Tim <Sullivan.Tim@epa.gov>
Sent: Tuesday, November 09, 2021 2:34 PM
To: Koslow, Karin <Koslow.Karin@epa.gov>
Cc: Denton, Loren <Denton.Loren@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: AFO Petition - Legal Issues

Karin:

Ex. 5 AC/DP

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

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From: Sullivan, Tim <Sullivan.Tim@epa.gov>
Sent: Tuesday, November 9, 2021 11:39 AM
To: Stahle, Susan <Stahle.Susan@epa.gov>
Cc: Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: RE: Propose a different time for your meeting?

Hi, Sue.

It's been a while—hope you are well. I'll work on finding a new time for tomorrow.

Ex. 5 AC/DP

Thanks, and stay tuned for a new meeting invite.

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

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From: Stahle, Susan <Stahle.Susan@epa.gov>
Sent: Tuesday, November 9, 2021 11:29 AM
To: Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: Propose a different time for your meeting?

Tim –

I apologize – I was trying to propose a new time for your meeting and I think I just rejected it altogether! Aaah, not my intention!

Is it possible for us to talk tomorrow on this? Was thinking maybe 9:30 am?

Susan Stahle
Air and Radiation Law Office
Office of General Counsel
(202) 564-1272

Message

From: Sullivan, Tim [Sullivan.Tim@epa.gov]
Sent: 11/10/2021 9:30:18 PM
To: Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Koslow, Karin [Koslow.Karin@epa.gov]; Denton, Loren [Denton.Loren@epa.gov]
CC: Sullivan, Tim [Sullivan.Tim@epa.gov]
Subject: FW: Response to your October 26, 2021 Petition to Rescind the Air Consent Agreement and Enforce Clean Air Laws Against Animal Feeding Operations
Attachments: AFOs - Petition To Rescind_Response (Nov. 10 2021).pdf

For your reference.

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

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From: Julian, Jaime <Julian.Jaime@epa.gov>
Sent: Wednesday, November 10, 2021 2:04 PM
To: eamiller@fwwatch.org; hconnor@biologicaldiversity.org; theinzen@fwwatch.org; bnewell@publicjustice.net; abel russ <aruss@environmentalintegrity.org>; AvanSaun@CenterforFoodSafety.org; cstella@aldf.org; lliebmann@aldf.org
Cc: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Goffman, Joseph <Goffman.Joseph@epa.gov>; Breen, Barry <Breen.Barry@epa.gov>; Prieto, Jeffrey <Prieto.Jeffrey@epa.gov>; Snyder, Rodney <Snyder.Rodney@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>; Julian, Jaime <Julian.Jaime@epa.gov>
Subject: Response to your October 26, 2021 Petition to Rescind the Air Consent Agreement and Enforce Clean Air Laws Against Animal Feeding Operations

Petitioners,

Please find attached the Environmental Protection Agency's response to your October 26, 2021 Petition to Rescind the Air Consent Agreement and Enforce Clean Air Laws Against Animal Feeding Operations, signed by Larry Starfield, the Acting Assistant Administrator of EPA's Office of Enforcement and Compliance Assurance.

Thank you for bringing your concerns to our attention.

Sincerely,

Jaime Julian, Special Assistant
Office of Enforcement and Compliance Assurance

U.S. Environmental Protection Agency
Office: 202-564-3217 | Mobile: 202-815-7105
Pronouns: she/her

Message

From: Sullivan, Tim [Sullivan.Tim@epa.gov]
Sent: 7/1/2022 5:30:50 PM
To: Koslow, Karin [Koslow.Karin@epa.gov]
CC: Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Denton, Loren [Denton.Loren@epa.gov]; Klepp, Robert [Klepp.Robert@epa.gov]; Fried, Gregory [Fried.Gregory@epa.gov]; Sullivan, Tim [Sullivan.Tim@epa.gov]
Subject: Meeting Request from 2021 Animal Feeding Operation Petitioners
Attachments: AFO-CAFO - Petition to Rescind.pdf; AFOs - Petition To Rescind_Response (Nov. 10 2021).pdf; AFO CAFO - Initial Summary of Petition to Rescind_To Larry.docx

Hi, Karin.

The group of environmental NGOs who petitioned the Administrator in October 2021 to rescind the Animal Feeding Operation Air Compliance Agreement recently contacted Joe Goffman and Tomas Carbonell to schedule a meeting to discuss the substance of their petition. (For reference, I have attached the petition, Larry's initial response acknowledging receipt of the petition, and a high-level summary of the petition.)

Ex. 5 AC/DP

Thanks, and I hope everyone has a great holiday weekend.

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

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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.

Message

From: Koslow, Karin [Koslow.Karin@epa.gov]
Sent: 7/6/2022 12:33:29 PM
To: Sullivan, Tim [Sullivan.Tim@epa.gov]
CC: Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Denton, Loren [Denton.Loren@epa.gov]; Klepp, Robert [Klepp.Robert@epa.gov]; Fried, Gregory [Fried.Gregory@epa.gov]
Subject: RE: Meeting Request from 2021 Animal Feeding Operation Petitioners

Tim – thanks for reaching out. You and I can attend the meeting for OECA Ex. 5 AC/DP

Ex. 5 AC/DP

Ex. 5 AC/DP Bob, you are welcome to join as well.

Thanks,
Karin

Karin Koslow | Pronouns: she/her
Deputy Director, Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Desk: (202) 564-0171 rolls over to cell: (202) 716-5645
WJC South Room 3142D

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---

From: Sullivan, Tim <Sullivan.Tim@epa.gov>
Sent: Friday, July 01, 2022 1:31 PM
To: Koslow, Karin <Koslow.Karin@epa.gov>
Cc: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Denton, Loren <Denton.Loren@epa.gov>; Klepp, Robert <Klepp.Robert@epa.gov>; Fried, Gregory <Fried.Gregory@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: Meeting Request from 2021 Animal Feeding Operation Petitioners

Hi, Karin.

The group of environmental NGOs who petitioned the Administrator in October 2021 to rescind the Animal Feeding Operation Air Compliance Agreement recently contacted Joe Goffman and Tomas Carbonell to schedule a meeting to discuss the substance of their petition. (For reference, I have attached the petition, Larry's initial response acknowledging receipt of the petition, and a high-level summary of the petition.)

Ex. 5 AC/DP

Ex. 5 AC/DP

Thanks, and I hope everyone has a great holiday weekend.

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

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Message

From: Sullivan, Tim [Sullivan.Tim@epa.gov]
Sent: 7/6/2022 5:32:35 PM
To: Koslow, Karin [Koslow.Karin@epa.gov]
CC: Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Denton, Loren [Denton.Loren@epa.gov]; Klepp, Robert [Klepp.Robert@epa.gov]; Fried, Gregory [Fried.Gregory@epa.gov]; Sullivan, Tim [Sullivan.Tim@epa.gov]
Subject: RE: Meeting Request from 2021 Animal Feeding Operation Petitioners

Thanks for the feedback, Karin. I will provide OAR with our updated participant list.

Ex. 5 AC/DP

Thanks –

Tim

Timothy J. Sullivan
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
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From: Koslow, Karin <Koslow.Karin@epa.gov>
Sent: Wednesday, July 6, 2022 6:33 AM
To: Sullivan, Tim <Sullivan.Tim@epa.gov>
Cc: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Denton, Loren <Denton.Loren@epa.gov>; Klepp, Robert <Klepp.Robert@epa.gov>; Fried, Gregory <Fried.Gregory@epa.gov>
Subject: RE: Meeting Request from 2021 Animal Feeding Operation Petitioners

Tim – thanks for reaching out. You and I can attend the meeting for OECA Ex. 5 AC/DP
Ex. 5 AC/DP
Ex. 5 AC/DP Bob, you are welcome to join as well.

Thanks,

Karin

Karin Koslow | Pronouns: she/her
Deputy Director, Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Desk: (202) 564-0171 rolls over to cell: (202) 716-5645
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---

From: Sullivan, Tim <Sullivan.Tim@epa.gov>
Sent: Friday, July 01, 2022 1:31 PM
To: Koslow, Karin <Koslow.Karin@epa.gov>
Cc: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Denton, Loren <Denton.Loren@epa.gov>; Klepp, Robert <Klepp.Robert@epa.gov>; Fried, Gregory <Fried.Gregory@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: Meeting Request from 2021 Animal Feeding Operation Petitioners

Hi, Karin.

The group of environmental NGOs who petitioned the Administrator in October 2021 to rescind the Animal Feeding Operation Air Compliance Agreement recently contacted Joe Goffman and Tomas Carbonell to schedule a meeting to discuss the substance of their petition. (For reference, I have attached the petition, Larry's initial response acknowledging receipt of the petition, and a high-level summary of the petition.)

Ex. 5 AC/DP

Thanks, and I hope everyone has a great holiday weekend.

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

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Message

From: Sullivan, Tim [Sullivan.Tim@epa.gov]
Sent: 8/4/2022 3:50:03 PM
To: Starfield, Lawrence [Starfield.Lawrence@epa.gov]
CC: Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Koslow, Karin [Koslow.Karin@epa.gov]; Denton, Loren [Denton.Loren@epa.gov]; Klepp, Robert [Klepp.Robert@epa.gov]; Sansevero, Christine [Sansevero.Christine@epa.gov]; Fried, Gregory [Fried.Gregory@epa.gov]; Sullivan, Tim [Sullivan.Tim@epa.gov]
Subject: AFO Petition Meeting Follow-Up

ATTORNEY-CLIENT AND DELIBERATIVE PROCESS PRIVILEGED COMMUNICATION – DO NOT RELEASE

Larry:

We write to let you know that on August 2nd we participated in a meeting with several of the environmental NGOs who submitted a petition to the Administrator in October 2021 requesting that the agency rescind the Animal Feeding Operation (AFO) Air Compliance Agreement (Agreement). OECA, OAR, OGC, and OLEM staff and managers represented the agency at the meeting. The meeting's main discussion topics are summarized below.

Ex. 5 AC/DP

Thanks –

Tim

Ex. 5 AC/DP

Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
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Denver, Colorado 80202

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Message

From: Koslow, Karin [Koslow.Karin@epa.gov]
Sent: 10/27/2021 4:29:19 PM
To: Denton, Loren [Denton.Loren@epa.gov]; Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]
Subject: IO - CMS New Assignment - AX-22-000-0451

Ex. 5 AC/DP

Thanks,
Karin

Karin Koslow | Pronouns: she/her
Deputy Director, Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Desk: (202) 564-0171 rolls over to cell: (202) 716-5645
WJC South Room 3142D

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From: Belser, Evan <Belser.Evan@epa.gov>
Sent: Wednesday, October 27, 2021 11:43 AM
To: Greene, Mary <Greene.Mary.E@epa.gov>; Caballero, Kathryn <Caballero.Kathryn@epa.gov>; Fried, Gregory <Fried.Gregory@epa.gov>; Brahmbhatt, Roshni <brahmbhatt.Roshni@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Denton, Loren <Denton.Loren@epa.gov>; Ortega, Kellie <Ortega.Kellie@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: RE: CMS New Assignment - AX-22-000-0451

I somehow forgot to include Tim on this.

From: Belser, Evan
Sent: Wednesday, October 27, 2021 10:44 AM
To: Greene, Mary <Greene.Mary.E@epa.gov>; Kathryn Caballero (Caballero.Kathryn@epa.gov) <Caballero.Kathryn@epa.gov>; Gregory Fried (Fried.Gregory@epa.gov) <Fried.Gregory@epa.gov>; Brahmbhatt, Roshni <brahmbhatt.Roshni@epa.gov>; Karin Koslow (Koslow.Karin@epa.gov) <Koslow.Karin@epa.gov>; Loren Denton (Denton.Loren@epa.gov) <Denton.Loren@epa.gov>; Kellie Ortega (Ortega.Kellie@epa.gov) <Ortega.Kellie@epa.gov>
Subject: FW: CMS New Assignment - AX-22-000-0451

Hello everyone,

Ex. 5 AC/DP

Evan

From: Sullivan, Tim <Sullivan.Tim@epa.gov>
Sent: Wednesday, October 27, 2021 10:31 AM
To: Belser, Evan <Belser.Evan@epa.gov>; Caballero, Kathryn <Caballero.Kathryn@epa.gov>; Fried, Gregory <Fried.Gregory@epa.gov>
Cc: Brahmbhatt, Roshni <brahmbhatt.Roshni@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: FW: CMS New Assignment - AX-22-000-0451

Ex. 5 AC/DP

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

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-----Original Message-----
From: Schrock, Bill <Schrock.Bill@epa.gov>
Sent: Wednesday, October 27, 2021 5:44 AM
To: Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: FW: CMS New Assignment - AX-22-000-0451

Tim-The petition was assigned to us for response. Ex. 5 Deliberative Process (DP) Also, it sounds like you're kinda busy right now so not sure you need anything else on your plate unfortunately. Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

-----Original Message-----
From: Hunt, Virginia <Hunt.Virginia@epa.gov>
Sent: Wednesday, October 27, 2021 7:03 AM
To: Dunkins, Robin <Dunkins.Robin@epa.gov>; Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>; Ma, Cyrus <Ma.Cyrus@epa.gov>
Cc: Mills, Kathy <Mills.Kathy@epa.gov>; Gmyr, Joanna <Gmyr.Joanna@epa.gov>; Hall, Deshelia <Hall.DeShelia@epa.gov>
Subject: FW: CMS New Assignment - AX-22-000-0451

Control AX-21-000-0451 has been delegated to SPPD. The attached control slip and incoming letter regarding a petition to rescind the Air Consent Agreement and enforce clean air laws against animal feeding operations are attached for your review and assignment within your group. The final response must be uploaded into CMS by November 10. The following steps will be helpful to you:

Ex. 5 Deliberative Process (DP)

For response examples, please visit the Comms Team archive:
Ex. 6 Personal Privacy (PP)

Thank you,

Virginia L. Hunt
Administrative Specialist
OAQPS SPPD RCG
109 T.W. Alexander Drive
RTP, NC 27711
Hours 6am -2:30pm EST M-F
ba
-----Original Message-----
From: cmsadmin@epa.gov <cmsadmin@epa.gov>
Sent: Tuesday, October 26, 2021 3:18 PM
To: eck.janet@epa.gov; South, Peter <South.Peter@epa.gov>; Hunt, Virginia <Hunt.Virginia@epa.gov>; Brown, Annette <Brown.Annette@epa.gov>; Joseph, Wanda <joseph.wanda@epa.gov>; Gates, Adrian <gates.adrian@epa.gov>; Gmyr, Joanna <Gmyr.Joanna@epa.gov>; Mills, Kathy <Mills.Kathy@epa.gov>; Crowley, Kate <crowley.kate@epa.gov>
Subject: CMS New Assignment - Blanche Scott - AX-22-000-0451

Control AX-22-000-0451 has been assigned to your office on 10/26/2021 3:17:55 PM by Blanche Scott. Please go to the CMS webpage to view the details of the control.

Summary Information -
Control Number: AX-22-000-0451
Control Subject: Reading File - Petition to Rescind the Air Consent Agreement and Enforce Clean Air Laws Against Animal Feeding Operations

From: Miller, Emily; Stella, Cristina; Connor, Hannah M.M.; Saun, Amy van; Russ, Abel; Heinzen, Tarah; Newell, Brent

Note: This Email was automatically generated. Please do not attempt to respond to it. You can access this control at

Ex. 6 Personal Privacy (PP)

Message

From: Sullivan, Tim [Sullivan.Tim@epa.gov]
Sent: 10/27/2021 6:21:50 PM
To: Koslow, Karin [Koslow.Karin@epa.gov]; Denton, Loren [Denton.Loren@epa.gov]
CC: Sullivan, Tim [Sullivan.Tim@epa.gov]
Subject: RE: CMS New Assignment - AX-22-000-0451

Hi, Karin and Loren.

Ex. 5 AC/DP

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

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From: Belser, Evan <Belser.Evan@epa.gov>
Sent: Wednesday, October 27, 2021 9:43 AM
To: Greene, Mary <Greene.Mary.E@epa.gov>; Caballero, Kathryn <Caballero.Kathryn@epa.gov>; Fried, Gregory <Fried.Gregory@epa.gov>; Brahmbhatt, Roshni <brahmbhatt.Roshni@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Denton, Loren <Denton.Loren@epa.gov>; Ortega, Kellie <Ortega.Kellie@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: RE: CMS New Assignment - AX-22-000-0451

I somehow forgot to include Tim on this.

From: Belser, Evan
Sent: Wednesday, October 27, 2021 10:44 AM
To: Greene, Mary <Greene.Mary.E@epa.gov>; Kathryn Caballero (Caballero.Kathryn@epa.gov) <Caballero.Kathryn@epa.gov>; Gregory Fried (Fried.Gregory@epa.gov) <Fried.Gregory@epa.gov>; Brahmbhatt, Roshni <brahmbhatt.Roshni@epa.gov>; Karin Koslow (Koslow.Karin@epa.gov) <Koslow.Karin@epa.gov>; Loren Denton (Denton.Loren@epa.gov) <Denton.Loren@epa.gov>; Kellie Ortega (Ortega.Kellie@epa.gov) <Ortega.Kellie@epa.gov>
Subject: FW: CMS New Assignment - AX-22-000-0451

Hello everyone,

Ex. 5 AC/DP

Evan

From: Sullivan, Tim <Sullivan.Tim@epa.gov>
Sent: Wednesday, October 27, 2021 10:31 AM
To: Belser, Evan <Belser.Evan@epa.gov>; Caballero, Kathryn <Caballero.Kathryn@epa.gov>; Fried, Gregory <Fried.Gregory@epa.gov>
Cc: Brahmbhatt, Roshni <brahmbhatt.Roshni@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: FW: CMS New Assignment - AX-22-000-0451

Ex. 5 AC/DP

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

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-----Original Message-----
From: Schrock, Bill <Schrock.Bill@epa.gov>
Sent: Wednesday, October 27, 2021 5:44 AM
To: Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: FW: CMS New Assignment - AX-22-000-0451

Tim-The petition was assigned to us for response. Ex. 5 Deliberative Process (DP) Also, it sounds like you're kinda busy right now so not sure you need anything else on your plate unfortunately. Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

-----Original Message-----
From: Hunt, Virginia <Hunt.Virginia@epa.gov>
Sent: Wednesday, October 27, 2021 7:03 AM
To: Dunkins, Robin <Dunkins.Robin@epa.gov>; Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>; Ma, Cyrus <Ma.Cyrus@epa.gov>
Cc: Mills, Kathy <Mills.Kathy@epa.gov>; Gmyr, Joanna <Gmyr.Joanna@epa.gov>; Hall, Deshelia <Hall.DeShelia@epa.gov>
Subject: FW: CMS New Assignment - AX-22-000-0451

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Ex. 5 Deliberative Process (DP)

For response examples, please visit the Comms Team archive:
Ex. 6 Personal Privacy (PP)

Thank you,

Virginia L. Hunt
Administrative Specialist
OAQPS SPPD RCG
109 T.W. Alexander Drive
RTP, NC 27711
Hours 6am -2:30pm EST M-F
ba
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From: cmsadmin@epa.gov <cmsadmin@epa.gov>
Sent: Tuesday, October 26, 2021 3:18 PM
To: eck.janet@epa.gov; South, Peter <South.Peter@epa.gov>; Hunt, Virginia <Hunt.Virginia@epa.gov>; Brown, Annette <Brown.Annette@epa.gov>; Joseph, Wanda <joseph.wanda@epa.gov>; Gates, Adrian <gates.adrian@epa.gov>; Gmyr, Joanna <Gmyr.Joanna@epa.gov>; Mills, Kathy <Mills.Kathy@epa.gov>; Crowley, Kate <crowley.kate@epa.gov>

Subject: CMS New Assignment - Blanche Scott - AX-22-000-0451

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Summary Information -
Control Number: AX-22-000-0451
Control Subject: Reading File - Petition to Rescind the Air Consent Agreement and Enforce Clean Air Laws Against Animal Feeding Operations
From: Miller, Emily; Stella, Cristina; Connor, Hannah M.M.; Saun, Amy van; Russ, Abel; Heinzen, Tarah; Newell, Brent

Note: This Email was automatically generated. Please do not attempt to respond to it. You can access this control at

Ex. 6 Personal Privacy (PP)

Message

From: Koslow, Karin [Koslow.Karin@epa.gov]
Sent: 10/27/2021 7:30:04 PM
To: Sullivan, Tim [Sullivan.Tim@epa.gov]; Denton, Loren [Denton.Loren@epa.gov]
Subject: RE: CMS New Assignment - AX-22-000-0451

Tim – that's fine.

Ex. 5 AC/DP

Thanks,
Karin

Karin Koslow | Pronouns: she/her
Deputy Director, Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Desk: (202) 564-0171 rolls over to cell: (202) 716-5645
WJC South Room 3142D

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Sent: Wednesday, October 27, 2021 2:22 PM
To: Koslow, Karin <Koslow.Karin@epa.gov>; Denton, Loren <Denton.Loren@epa.gov>
Cc: Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: RE: CMS New Assignment - AX-22-000-0451

Hi, Karin and Loren.

Ex. 5 AC/DP

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

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Hello everyone,

Ex. 5 AC/DP

Evan

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Cc: Brahmbhatt, Roshni <brahmbhatt.Roshni@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: FW: CMS New Assignment - AX-22-000-0451

Ex. 5 AC/DP

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Tim

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Subject: FW: CMS New Assignment - AX-22-000-0451

Tim-The petition was assigned to us for response. **Ex. 5 Deliberative Process (DP)** Also, it sounds like you're kinda busy right now so not sure you need anything else on your plate unfortunately. Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

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From: Hunt, Virginia <Hunt.Virginia@epa.gov>
Sent: Wednesday, October 27, 2021 7:03 AM
To: Dunkins, Robin <Dunkins.Robin@epa.gov>; Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>; Ma, Cyrus <Ma.Cyrus@epa.gov>
Cc: Mills, Kathy <Mills.Kathy@epa.gov>; Gmyr, Joanna <Gmyr.Joanna@epa.gov>; Hall, Deshelia <Hall.DeShelia@epa.gov>

Subject: FW: CMS New Assignment - AX-22-000-0451

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Ex. 6 Personal Privacy (PP)

Thank you,

Virginia L. Hunt
Administrative Specialist
OAQPS SPPD RCG
109 T.W. Alexander Drive
RTP, NC 27711
Hours 6am -2:30pm EST M-F
ba
-----Original Message-----
From: cmsadmin@epa.gov <cmsadmin@epa.gov>
Sent: Tuesday, October 26, 2021 3:18 PM
To: eck.janet@epa.gov; South, Peter <South.Peter@epa.gov>; Hunt, Virginia <Hunt.Virginia@epa.gov>; Brown, Annette <Brown.Annette@epa.gov>; Joseph, Wanda <joseph.wanda@epa.gov>; Gates, Adrian <gates.adrian@epa.gov>; Gmyr, Joanna <Gmyr.Joanna@epa.gov>; Mills, Kathy <Mills.Kathy@epa.gov>; Crowley, Kate <crowley.kate@epa.gov>
Subject: CMS New Assignment - Blanche Scott - AX-22-000-0451

Control AX-22-000-0451 has been assigned to your office on 10/26/2021 3:17:55 PM by Blanche Scott. Please go to the CMS webpage to view the details of the control.

Summary Information -
Control Number: AX-22-000-0451
Control Subject: Reading File - Petition to Rescind the Air Consent Agreement and Enforce Clean Air Laws Against Animal Feeding Operations
From: Miller, Emily; Stella, Cristina; Connor, Hannah M.M.; Saun, Amy van; Russ, Abel; Heinzen, Tarah; Newell, Brent

Note: This Email was automatically generated. Please do not attempt to respond to it. You can access this control at
Ex. 6 Personal Privacy (PP)

Message

From: Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]
Sent: 10/28/2021 1:05:04 AM
To: Koslow, Karin [Koslow.Karin@epa.gov]; Denton, Loren [Denton.Loren@epa.gov]
Subject: RE: IO - CMS New Assignment - AX-22-000-0451

Ex. 5 AC/DP

From: Koslow, Karin <Koslow.Karin@epa.gov>
Sent: Wednesday, October 27, 2021 12:29 PM
To: Denton, Loren <Denton.Loren@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>
Subject: IO - CMS New Assignment - AX-22-000-0451

Ex. 5 AC/DP

Thanks,
Karin

Karin Koslow | Pronouns: she/her
Deputy Director, Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Desk: (202) 564-0171 rolls over to cell: (202) 716-5645
WJC South Room 3142D

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From: Belser, Evan <Belser.Evan@epa.gov>
Sent: Wednesday, October 27, 2021 11:43 AM
To: Greene, Mary <Greene.Mary.E@epa.gov>; Caballero, Kathryn <Caballero.Kathryn@epa.gov>; Fried, Gregory <Fried.Gregory@epa.gov>; Brahmbhatt, Roshni <brahmbhatt.Roshni@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Denton, Loren <Denton.Loren@epa.gov>; Ortega, Kellie <Ortega.Kellie@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: RE: CMS New Assignment - AX-22-000-0451

I somehow forgot to include Tim on this.

From: Belser, Evan
Sent: Wednesday, October 27, 2021 10:44 AM
To: Greene, Mary <Greene.Mary.E@epa.gov>; Kathryn Caballero (Caballero.Kathryn@epa.gov)

<Caballero.Kathryn@epa.gov>; Gregory Fried (Fried.Gregory@epa.gov) <Fried.Gregory@epa.gov>; Brahmbhatt, Roshni <brahmbhatt.Roshni@epa.gov>; Karin Koslow (Koslow.Karin@epa.gov) <Koslow.Karin@epa.gov>; Loren Denton (Denton.Loren@epa.gov) <Denton.Loren@epa.gov>; Kellie Ortega (Ortega.Kellie@epa.gov) <Ortega.Kellie@epa.gov>
Subject: FW: CMS New Assignment - AX-22-000-0451

Hello everyone,

Ex. 5 AC/DP

Evan

From: Sullivan, Tim <Sullivan.Tim@epa.gov>
Sent: Wednesday, October 27, 2021 10:31 AM
To: Belser, Evan <Belser.Evan@epa.gov>; Caballero, Kathryn <Caballero.Kathryn@epa.gov>; Fried, Gregory <Fried.Gregory@epa.gov>
Cc: Brahmbhatt, Roshni <brahmbhatt.Roshni@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: FW: CMS New Assignment - AX-22-000-0451

Ex. 5 AC/DP

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

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To: Sullivan, Tim <Sullivan.Tim@epa.gov>
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Cc: Mills, Kathy <Mills.Kathy@epa.gov>; Gmyr, Joanna <Gmyr.Joanna@epa.gov>; Hall, Deshelia <Hall.DeShelia@epa.gov>
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Administrative Specialist
OAQPS SPPD RCG
109 T.W. Alexander Drive
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Hours 6am -2:30pm EST M-F
ba
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Sent: Tuesday, October 26, 2021 3:18 PM
To: eck.janet@epa.gov; South, Peter <South.Peter@epa.gov>; Hunt, Virginia <Hunt.Virginia@epa.gov>; Brown, Annette <Brown.Annette@epa.gov>; Joseph, Wanda <joseph.wanda@epa.gov>; Gates, Adrian <gates.adrian@epa.gov>; Gmyr, Joanna <Gmyr.Joanna@epa.gov>; Mills, Kathy <Mills.Kathy@epa.gov>; Crowley, Kate <crowley.kate@epa.gov>
Subject: CMS New Assignment - Blanche Scott - AX-22-000-0451

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Summary Information -
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Control Subject: Reading File - Petition to Rescind the Air Consent Agreement and Enforce Clean Air Laws Against Animal Feeding Operations
From: Miller, Emily; Stella, Cristina; Connor, Hannah M.M.; Saun, Amy van; Russ, Abel; Heinzen, Tarah; Newell, Brent

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Ex. 6 Personal Privacy (PP)

Message

From: Sullivan, Tim [Sullivan.Tim@epa.gov]
Sent: 10/28/2021 1:18:52 AM
To: Koslow, Karin [Koslow.Karin@epa.gov]
CC: Denton, Loren [Denton.Loren@epa.gov]; Sullivan, Tim [Sullivan.Tim@epa.gov]
Subject: RE: CMS New Assignment - AX-22-000-0451

Thanks, Karin—I appreciate the flexibility and offer of support.

Ex. 5 AC/DP

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

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Subject: RE: CMS New Assignment - AX-22-000-0451

Tim – that's fine.

Ex. 5 AC/DP

Thanks,

Karin

Karin Koslow | Pronouns: she/her
Deputy Director, Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
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Desk: (202) 564-0171 rolls over to cell: (202) 716-5645
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Hi, Karin and Loren.

Ex. 5 AC/DP

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Tim

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Cc: Mills, Kathy <Mills.Kathy@epa.gov>; Gmyr, Joanna <Gmyr.Joanna@epa.gov>; Hall, Deshelia <Hall.DeShelia@epa.gov>
Subject: FW: CMS New Assignment - AX-22-000-0451

Control AX-21-000-0451 has been delegated to SPPD. The attached control slip and incoming letter regarding a petition to rescind the Air Consent Agreement and enforce clean air laws against animal feeding operations are attached for your review and assignment within your group. The final response must be uploaded into CMS by November 10. The following steps will be helpful to you:

Ex. 5 Deliberative Process (DP)

For response examples, please visit the Comms Team archive:
Ex. 6 Personal Privacy (PP)

Thank you,

Virginia L. Hunt
Administrative Specialist
OAQPS SPPD RCG
109 T.W. Alexander Drive
RTP, NC 27711
Hours 6am -2:30pm EST M-F
ba
-----Original Message-----
From: cmsadmin@epa.gov <cmsadmin@epa.gov>
Sent: Tuesday, October 26, 2021 3:18 PM
To: eck.janet@epa.gov; South, Peter <South.Peter@epa.gov>; Hunt, Virginia <Hunt.Virginia@epa.gov>; Brown, Annette <Brown.Annette@epa.gov>; Joseph, Wanda <joseph.wanda@epa.gov>; Gates, Adrian <gates.adrian@epa.gov>; Gmyr, Joanna <Gmyr.Joanna@epa.gov>; Mills, Kathy <Mills.Kathy@epa.gov>; Crowley, Kate <crowley.kate@epa.gov>
Subject: CMS New Assignment - Blanche Scott - AX-22-000-0451

Control AX-22-000-0451 has been assigned to your office on 10/26/2021 3:17:55 PM by Blanche Scott. Please go to the CMS webpage to view the details of the control.

Summary Information -
Control Number: AX-22-000-0451
Control Subject: Reading File - Petition to Rescind the Air Consent Agreement and Enforce Clean Air Laws Against Animal Feeding Operations
From: Miller, Emily; Stella, Cristina; Connor, Hannah M.M.; Saun, Amy van; Russ, Abel; Heinzen, Tarah; Newell, Brent

Note: This Email was automatically generated. Please do not attempt to respond to it. You can access this control at

Ex. 6 Personal Privacy (PP)

Message

From: Koslow, Karin [Koslow.Karin@epa.gov]
Sent: 10/28/2021 2:03:32 AM
To: Sullivan, Tim [Sullivan.Tim@epa.gov]
CC: Denton, Loren [Denton.Loren@epa.gov]
Subject: RE: CMS New Assignment - AX-22-000-0451

Sounds good – thanks.

Thanks,
Karin

Karin Koslow | Pronouns: she/her
Deputy Director, Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Desk: (202) 564-0171 rolls over to cell: (202) 716-5645
WJC South Room 3142D

OECA strives to be a diverse, welcoming, and inclusive workplace. Our success will require all of us to work together as we continue the OECA ED&I Program's implementation. For more information, or if you have questions about OECA's ED&I program, please email OECA_EDI@epa.gov

From: Sullivan, Tim <Sullivan.Tim@epa.gov>
Sent: Wednesday, October 27, 2021 9:19 PM
To: Koslow, Karin <Koslow.Karin@epa.gov>
Cc: Denton, Loren <Denton.Loren@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: RE: CMS New Assignment - AX-22-000-0451

Thanks, Karin—I appreciate the flexibility and offer of support.

Ex. 5 AC/DP

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

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From: Koslow, Karin <Koslow.Karin@epa.gov>
Sent: Wednesday, October 27, 2021 1:30 PM
To: Sullivan, Tim <Sullivan.Tim@epa.gov>; Denton, Loren <Denton.Loren@epa.gov>
Subject: RE: CMS New Assignment - AX-22-000-0451

Tim – that's fine.

Ex. 5 AC/DP

Thanks,
Karin

Karin Koslow | Pronouns: she/her
Deputy Director, Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Desk: (202) 564-0171 rolls over to cell: (202) 716-5645
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---

From: Sullivan, Tim <Sullivan.Tim@epa.gov>
Sent: Wednesday, October 27, 2021 2:22 PM
To: Koslow, Karin <Koslow.Karin@epa.gov>; Denton, Loren <Denton.Loren@epa.gov>
Cc: Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: RE: CMS New Assignment - AX-22-000-0451

Hi, Karin and Loren.

Ex. 5 AC/DP

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

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From: Belser, Evan <Belser.Evan@epa.gov>
Sent: Wednesday, October 27, 2021 9:43 AM
To: Greene, Mary <Greene.Mary.E@epa.gov>; Caballero, Kathryn <Caballero.Kathryn@epa.gov>; Fried, Gregory <Fried.Gregory@epa.gov>; Brahmbhatt, Roshni <brahmbhatt.Roshni@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Denton, Loren <Denton.Loren@epa.gov>; Ortega, Kellie <Ortega.Kellie@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: RE: CMS New Assignment - AX-22-000-0451

I somehow forgot to include Tim on this.

From: Belser, Evan
Sent: Wednesday, October 27, 2021 10:44 AM
To: Greene, Mary <Greene.Mary.E@epa.gov>; Kathryn Caballero (Caballero.Kathryn@epa.gov) <Caballero.Kathryn@epa.gov>; Gregory Fried (Fried.Gregory@epa.gov) <Fried.Gregory@epa.gov>; Brahmbhatt, Roshni <brahmbhatt.Roshni@epa.gov>; Karin Koslow (Koslow.Karin@epa.gov) <Koslow.Karin@epa.gov>; Loren Denton (Denton.Loren@epa.gov) <Denton.Loren@epa.gov>; Kellie Ortega (Ortega.Kellie@epa.gov) <Ortega.Kellie@epa.gov>
Subject: FW: CMS New Assignment - AX-22-000-0451

Hello everyone,

Ex. 5 AC/DP

Evan

From: Sullivan, Tim <Sullivan.Tim@epa.gov>
Sent: Wednesday, October 27, 2021 10:31 AM
To: Belser, Evan <Belser.Evan@epa.gov>; Caballero, Kathryn <Caballero.Kathryn@epa.gov>; Fried, Gregory <Fried.Gregory@epa.gov>
Cc: Brahmbhatt, Roshni <brahmbhatt.Roshni@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: FW: CMS New Assignment - AX-22-000-0451

Ex. 5 AC/DP

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

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-----Original Message-----
From: Schrock, Bill <Schrock.Bill@epa.gov>
Sent: Wednesday, October 27, 2021 5:44 AM
To: Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: FW: CMS New Assignment - AX-22-000-0451

Tim-The petition was assigned to us for response. Ex. 5 Deliberative Process (DP) Also, it sounds like you're kinda busy right now so not sure you need anything else on your plate unfortunately. Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

-----Original Message-----
From: Hunt, Virginia <Hunt.Virginia@epa.gov>
Sent: Wednesday, October 27, 2021 7:03 AM
To: Dunkins, Robin <Dunkins.Robin@epa.gov>; Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>; Ma, Cyrus <Ma.Cyrus@epa.gov>
Cc: Mills, Kathy <Mills.Kathy@epa.gov>; Gmyr, Joanna <Gmyr.Joanna@epa.gov>; Hall, Deshelia <Hall.DeShelia@epa.gov>
Subject: FW: CMS New Assignment - AX-22-000-0451

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Ex. 6 Personal Privacy (PP)

Thank you,

Virginia L. Hunt
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OAQPS SPPD RCG
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Hours 6am -2:30pm EST M-F
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From: cmsadmin@epa.gov <cmsadmin@epa.gov>
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Subject: CMS New Assignment - Blanche Scott - AX-22-000-0451

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Summary Information -
Control Number: AX-22-000-0451
Control Subject: Reading File - Petition to Rescind the Air Consent Agreement and Enforce Clean Air Laws Against Animal Feeding Operations

From: Miller, Emily; Stella, Cristina; Connor, Hannah M.M.; Saun, Amy van; Russ, Abel; Heinzen, Tarah; Newell, Brent

Note: This Email was automatically generated. Please do not attempt to respond to it. You can access this control at

Ex. 6 Personal Privacy (PP)

Message

From: Schrock, Bill [Schrock.Bill@epa.gov]
Sent: 10/28/2021 6:56:08 PM
To: Do, Bebhinn [do.bebhinn@epa.gov]
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Bebhinn-If I forward this to Tim will he be able to open?

From: Do, Bebhinn <do.bebhinn@epa.gov>
Sent: Thursday, October 28, 2021 9:57 AM
To: Dunkins, Robin <Dunkins.Robin@epa.gov>; Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Ex. 5 Deliberative Process (DP)

BD

From: Mills, Kathy <Mills.Kathy@epa.gov>
Sent: Thursday, October 28, 2021 7:19 AM
To: Dunkins, Robin <Dunkins.Robin@epa.gov>; Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>; Do, Bebhinn <do.bebhinn@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Ex. 5 Deliberative Process (DP)

Kathy "KB" Mills ~ SPPD ~ U. S. EPA, OAQPS ~ 919-541-1599

From: Dunkins, Robin <Dunkins.Robin@epa.gov>
Sent: Wednesday, October 27, 2021 6:02 PM
To: Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>; Do, Bebhinn <do.bebhinn@epa.gov>; Mills, Kathy <Mills.Kathy@epa.gov>
Subject: FW: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Robin Dunkins, Group Leader
Natural Resources Group
OAR/OAQPS/SPPD Mail Code: E143-03
U.S. Environmental Protection Agency
Research Triangle Park, NC 27711
919-541-5335 office
919-605-1178 mobile
dunkins.robin@epa.gov

From: Dunkins, Robin
Sent: Wednesday, October 27, 2021 6:00 PM
To: Perrin, Rebecca <Perrin.Rebecca@epa.gov>; Snyder, Rodney <Snyder.Rodney@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Ex. 5 Deliberative Process (DP)

I have the RMNP meeting on my calendar. I was going to listen in on some of that meeting but let me know if I should stay on for the entire call.

Robin Dunkins, Group Leader
Natural Resources Group
OAR/OAQPS/SPPD Mail Code: E143-03
U.S. Environmental Protection Agency
Research Triangle Park, NC 27711
919-541-5335 office
919-605-1178 mobile
dunkins.robin@epa.gov

From: Perrin, Rebecca <Perrin.Rebecca@epa.gov>
Sent: Wednesday, October 27, 2021 5:54 PM
To: Dunkins, Robin <Dunkins.Robin@epa.gov>; Snyder, Rodney <Snyder.Rodney@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Thanks! I have a steering committee meeting for RMNP tomorrow, **Ex. 5 Deliberative Process (DP)**
Ex. 5 Deliberative Process (DP)

Rebecca Perrin
U.S. Environmental Protection Agency
DL: 303-312-6311

From: Dunkins, Robin <Dunkins.Robin@epa.gov>
Sent: Wednesday, October 27, 2021 3:52 PM
To: Perrin, Rebecca <Perrin.Rebecca@epa.gov>; Snyder, Rodney <Snyder.Rodney@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Thanks Rebecca. We received the petition/notification thru CMS today. However, I informed OAR that this should be assigned to OECA. OAR is responsible for the NAEMS and the EEMS but OECA is responsible to the consent agreement itself. Stay tuned.

Robin Dunkins, Group Leader
Natural Resources Group
OAR/OAQPS/SPPD Mail Code: E143-03
U.S. Environmental Protection Agency
Research Triangle Park, NC 27711
919-541-5335 office
919-605-1178 mobile
dunkins.robin@epa.gov

From: Perrin, Rebecca <Perrin.Rebecca@epa.gov>
Sent: Wednesday, October 27, 2021 5:48 PM
To: Snyder, Rodney <Snyder.Rodney@epa.gov>; Dunkins, Robin <Dunkins.Robin@epa.gov>
Subject: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

FYI... https://whistleblower.org/press-release/press-release-legal-petition-challenges-epa-inaction-on-factory-farm-air-pollution/

Rebecca Perrin
R8 Ag Advisor | U.S. Environmental Protection Agency
DL: 303-312-6311

Message

From: Schrock, Bill [Schrock.Bill@epa.gov]
Sent: 10/28/2021 7:34:15 PM
To: Do, Bebhinn [do.bebhinn@epa.gov]
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

If you don't mid forwarding it that would be great-then any comments will be in one document-unless I'm misunderstanding reattach (which is highly likely)! thx

---

From: Do, Bebhinn <do.bebhinn@epa.gov>
Sent: Thursday, October 28, 2021 3:32 PM
To: Schrock, Bill <Schrock.Bill@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

No. if you reattach it he should.

I can forward, if you want.

BD

From: Schrock, Bill <Schrock.Bill@epa.gov>
Sent: Thursday, October 28, 2021 2:56 PM
To: Do, Bebhinn <do.bebhinn@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Bebhinn-If I forward this to Tim will he be able to open?

From: Do, Bebhinn <do.bebhinn@epa.gov>
Sent: Thursday, October 28, 2021 9:57 AM
To: Dunkins, Robin <Dunkins.Robin@epa.gov>; Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Ex. 5 Deliberative Process (DP)

BD

From: Mills, Kathy <Mills.Kathy@epa.gov>
Sent: Thursday, October 28, 2021 7:19 AM
To: Dunkins, Robin <Dunkins.Robin@epa.gov>; Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>; Do, Bebhinn <do.bebhinn@epa.gov>
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Ex. 5 Deliberative Process (DP)

Kathy "KB" Mills ~ SPPD ~ U. S. EPA, OAQPS ~ 919-541-1599

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Subject: FW: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Robin Dunkins, Group Leader
Natural Resources Group
OAR/OAQPS/SPPD Mail Code: E143-03
U.S. Environmental Protection Agency
Research Triangle Park, NC 27711
919-541-5335 office
919-605-1178 mobile
dunkins.robin@epa.gov

From: Dunkins, Robin
Sent: Wednesday, October 27, 2021 6:00 PM
To: Perrin, Rebecca <Perrin.Rebecca@epa.gov>; Snyder, Rodney <Snyder.Rodney@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Ex. 5 Deliberative Process (DP)

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Robin Dunkins, Group Leader
Natural Resources Group
OAR/OAQPS/SPPD Mail Code: E143-03
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From: Perrin, Rebecca <Perrin.Rebecca@epa.gov>
Sent: Wednesday, October 27, 2021 5:54 PM
To: Dunkins, Robin <Dunkins.Robin@epa.gov>; Snyder, Rodney <Snyder.Rodney@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

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Ex. 5 Deliberative Process (DP)

Rebecca Perrin

U.S. Environmental Protection Agency
DL: 303-312-6311

From: Dunkins, Robin <Dunkins.Robin@epa.gov>
Sent: Wednesday, October 27, 2021 3:52 PM
To: Perrin, Rebecca <Perrin.Rebecca@epa.gov>; Snyder, Rodney <Snyder.Rodney@epa.gov>
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Thanks Rebecca. We received the petition/notification thru CMS today. However, I informed OAR that this should be assigned to OECA. OAR is responsible for the NAEMS and the EEMS but OECA is responsible to the consent agreement itself. Stay tuned.

Robin Dunkins, Group Leader
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Rebecca Perrin
R8 Ag Advisor | U.S. Environmental Protection Agency
DL: 303-312-6311

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ENVIRONMENTAL INTEGRITY PROJECT 1000 Vermont Avenue NW, Suite 1100 Washington, DC 20005, FOOD & WATER WATCH 1616 P St. NW, Suite 300 Washington, DC 20036 CENTER FOR FOOD SAFETY 660 Pennsylvania Avenue SE, Suite 302 Washington, DC 20003, HUMANE SOCIETY OF THE UNITED STATES 1255 23rd Street NW Washington, DC 20037, CLEAN WISCONSIN 634 West Main Street, #300 Madison, WI 53703, IOWA CITIZENS FOR COMMUNITY IMPROVEMENT 2001 Forest Avenue Des Moines, IA 50311, and ASSOCIATION OF IRRITATED RESIDENTS 29389 Fresno Ave Shafter, CA 93263 *Plaintiffs*, v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY and REGINA McCARTHY, in her official capacity as Administrator, 1200 Pennsylvania Ave. NW Washington, DC 20460 *Defendants*.	Case No. **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF** Clean Air Act, 42 U.S.C. § 7604 and Administrative Procedure Act, 5 U.S.C. § 702

COMPLAINT

Plaintiffs Environmental Integrity Project (EIP), Food & Water Watch (FWW), Center for Food Safety (CFS), The Humane Society of the United States (HSUS), Iowa Citizens for Community Improvement (ICCI), Association of Irritated Residents (AIR), and Clean Wisconsin (collectively, Plaintiffs), on behalf of themselves and their members, allege as follows:

I. NATURE OF ACTION

1. This is an action for injunctive and declaratory relief under the Clean Air Act (CAA) citizen suit provision, 42 U.S.C. §§ 7604(a), and section 702 of the Administrative Procedure Act (APA), challenging the unreasonable delay on the part of the United States Environmental Protection Agency (EPA or "the Agency") in responding to Plaintiffs' 2011 legal petition. That petition requested that EPA use its authority under the CAA to find that ammonia gas pollution (NH_3) endangers public health and welfare, to designate ammonia as a CAA "criteria pollutant" under CAA § 108 and to establish National Ambient Air Quality Standards (NAAQS) for ammonia in the ambient air to protect public health and welfare with an adequate margin of safety under CAA § 109.

2. Ammonia gas harms public health and welfare in numerous ways, including directly causing acute and chronic respiratory health impacts; mixing with other pollutants to form fine particulate matter ($PM_{2.5}$) that causes, *inter alia*, respiratory symptoms, decreased lung function, aggravated asthma symptoms, heart disease, and premature death; decreasing quality of life in rural communities; polluting water and soil through deposition; creating regional haze that reduces visibility in parks and other scenic places; and decreasing property values. Large livestock operations are the leading source of ammonia gas emissions in the U.S.

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3. Despite the significant and growing body of scientific research demonstrating that ambient ammonia pollution emitted by animal feeding operations (AFOs), concentrated animal feeding operations (CAFOs), and other sources cause and contribute to air pollution that endangers public health and welfare, EPA has not acted to directly regulate this pollutant under the CAA. As a result, thousands of sources continue to emit ammonia pollution unabated. CAFOs are not currently required to meet any testing, performance, or emission standards under the CAA.

4. Accordingly, on April 5, 2011, EIP and twenty other national, regional, and community-based organizations (collectively, "Petitioners") submitted a formal petition to EPA to make an endangerment finding for ammonia and to establish health and welfare-based ambient pollution standards ("2011 Petition" or "Petition"). *See* Ex. A. Plaintiffs were among the signatories to the Petition. The Petition detailed the ways in which ambient ammonia air pollution endangers public health and welfare and the reasons it meets the CAA requirements for listing as a criteria pollutant.

5. Over five years have passed since EPA received the 2011 Petition. However, EPA has not formally responded or taken any meaningful action on the Petition, in violation of the CAA and the APA. Records obtained by Plaintiffs in pursuant to a July 2013 Freedom of Information Act (FOIA) request indicate that EPA is not actively considering the Petition or moving toward a final determination on the Petition, but rather has yet to take the matter under any meaningful consideration.

6. As EPA lags, evidence of ammonia air pollution's health and welfare impacts continues to amass, supporting swift action to regulate the pollutant under the CAA. Accordingly, we respectfully request that the Court declare that EPA's failure to respond to

ED_013141A_00000423-00003

Plaintiffs' 2011 Petition within a reasonable time violates the CAA; order EPA to make a final decision on the 2011 Petition within 90 days; and retain jurisdiction over this matter until EPA has fulfilled its legal obligations, as set forth in this complaint.

II. JURISDICTION AND VENUE

7. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 (federal question) and 1346 (United States as Defendant).

8. The relief requested is authorized pursuant to 28 U.S.C. §§ 2201 and 2202 (declaratory relief). An actual, justiciable controversy exists between Plaintiffs and EPA, within the meaning of 28 U.S.C. § 2201 (declaratory judgments).

9. Plaintiffs have a right to bring this action in federal district court pursuant to the CAA, 42 U.S.C. § 7604(a), and the APA, 5 U.S.C. § 702.

10. Venue is properly vested in this Court pursuant to 28 U.S.C. § 1391(e), because one or more Plaintiffs reside in this District.

III. PARTIES

Plaintiffs

11. Plaintiff EIP is a national nonprofit organization headquartered in Washington, D.C. EIP is dedicated to advocating for more effective enforcement of environmental laws, including the CAA. Since 2002, EIP has worked to improve federal and state regulation of AFOs and CAFOs and to improve air and water quality in areas significantly impacted by these facilities' pollution, focusing in the Upper Midwest and the Mid-Atlantic. EIP advocates for application of clean air laws to AFOs nationwide, because these operations endanger public health and welfare with their unrestricted pollution emissions. EIP also works to gather and analyze pollution data and provide this information to the public, and has been actively engaged

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in EPA's ongoing process, now stalled, to develop accurate tools to estimate AFO air pollution. EIP has a strong organizational interest in strengthening the CAA's regulation of AFO ammonia pollution and is therefore injured by EPA's failure to respond to the 2011 Petition.

12. Plaintiff FWW is a national nonprofit membership organization working to ensure that the food, water, and fish we consume is safe, accessible, and sustainably produced. So that all consumers can enjoy and trust in the food and drink they eat and drink, FWW helps people take charge of where food comes from; keep clean, affordable, public tap water flowing freely to homes; protect the environmental quality of oceans; ensure that the government does its job protecting citizens; and educate about the importance of keeping the global commons – shared resources – under public control. FWW has approximately 76,000 members and 900,000 supporters nationwide. Increasing EPA regulation of factory farm pollution is one of FWW's priorities, and FWW has expended significant resources to educate its membership and the general public about the need for increased EPA oversight, including through its report, *Factory Farm Nation: How America Turned its Livestock Farms into Factories*. FWW believes that regulating ammonia emissions from factory farms would benefit public health in rural communities and make our food supply safer and more sustainable.

13. Plaintiff CFS is a national nonprofit membership organization dedicated to protecting human health and the environment by curbing the proliferation of harmful food production technologies, such as AFOs, and instead promoting sustainable agriculture. CFS represents 750,000 farmer and consumer members throughout the country who support safe, sustainable agriculture. CFS's mission is to protect the public's right to know how their food is produced. CFS utilizes regulatory actions, citizen engagement, legislation, and when necessary, litigation, to promote transparency and accountability in the factory farm industry. CFS believes

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that EPA must regulate ammonia and other pollutants from factory farms in order to protect human health and the environment and create a healthier, safer food supply.

14. Plaintiff HSUS is a nonprofit organization headquartered in the District of Columbia and incorporated in the State of Delaware. HSUS is the largest animal protection organization in the United States, representing millions of members and constituents. Since its establishment in 1954, HSUS has advocated against the inhumane treatment of animals raised for food. To that end, HSUS actively advocates for better laws to protect animals and the environment; conducts mission-specific campaigns; and advocates against practices that injure, harass or otherwise harm animals, including farm animals and wildlife. Specifically, with its mission to create a humane and sustainable world for all animals—including people and communities—HSUS endeavors to ensure that its members are aware of and not injured by hazardous substances, including ammonia, released by CAFOs. HSUS has actively campaigned to regulate air pollutants being emitted by CAFOs through efforts with the EPA, in Congress, and in the Courts. A member of HSUS in the Lathrop, California community teamed up with HSUS to bring a suit against a large chicken CAFO that emitted toxic levels of ammonia into their neighborhood, and HSUS has petitioned the EPA to list and regulate CAFOs as stationary sources under the Clean Air Act. In the course of HSUS cases, experts documented ambient ammonia levels above recommended health limits in the local community. HSUS brings this action on behalf of itself and its members.

15. Plaintiff ICCI is a nonprofit organization that works to empower and unite grassroots Iowans of all ethnic backgrounds to take control of their communities; involve them in identifying problems and needs and in taking action to address them; and be a vehicle for social, economic, and environmental justice. ICCI's thousands of members work to protect rural

communities from factory farm air and water pollution at the state and national level. Many ICCI members live, farm, and recreate in rural Iowa, and are directly and adversely affected by AFO ammonia emissions.

16. Plaintiff AIR is a California non-profit corporation that advocates for air quality and environmental health in the San Joaquin Valley, with members living in Kern, Kings, Tulare, Fresno, and Stanislaus counties. Members of AIR live, raise their families, work, and recreate in the San Joaquin Valley. They are adversely affected by exposure to levels of air pollution that exceed the health-based $PM_{2.5}$ air quality standards. The adverse effects of such pollution include actual or threatened harm to their health, their families' health, their professional, educational, and economic interests, and their aesthetic and recreational enjoyment of the environment in the San Joaquin Valley. On the basis of air quality issues, AIR has fought the growth of local dairy CAFOs in the San Joaquin Valley. For many years, AIR has requested that the San Joaquin Valley Air Pollution Control District regulate ammonia as a precursor to $PM_{2.5}$ because it forms ammonium nitrate in the winter. Wintertime $PM_{2.5}$ levels in Kern County, at the southern end of the San Joaquin Valley, are the worst in the nation.

17. Plaintiff Clean Wisconsin protects Wisconsin's clean water and air and advocates for clean energy by being an effective voice in the state legislature and by holding elected officials and polluters accountable. Clean Wisconsin's mission is to protect the special places that make Wisconsin such a wonderful place to live, work and play.

18. The environmental, health, aesthetic, economic, informational, and recreational interests of Plaintiffs' members have been and will continue to be adversely affected by EPA's continued failure to act on this Petition.

Defendants

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19. Defendant EPA is tasked with implementing the federal CAA and regulating air pollution to protect the nation's public health and welfare by, among other things, establishing national air quality standards for pollutants that threaten public health or welfare. 42 U.S.C. §§ 7408, 7409.

20. Defendant Regina McCarthy is sued in her official capacity as the Administrator of the EPA. As EPA Administrator, Ms. McCarthy is responsible for EPA's actions to address the Petition.

21. Administrator McCarthy and EPA are collectively referred to herein as EPA, the Agency, or Defendant.

IV. LEGAL BACKGROUND

Clean Air Act

22. Congress enacted the CAA in 1970 to "protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population," CAA § 101(b)(1), 42 U.S.C. § 7401(b)(1), and to "encourage or otherwise promote reasonable Federal, State, and local governmental actions . . . for pollution prevention." *Id.* § 7401(c). EPA is charged with implementing the CAA, and is responsible for administering federal air pollution programs and delegating authority for state air pollution programs.

23. One of the CAA's primary programs is the criteria pollutant program, under which EPA regulates common air pollutants by establishing National Ambient Air Quality Standards, or NAAQS, to protect public health and welfare by limiting the concentration of criteria pollutants in the ambient air. EPA has regulated six air pollutants under the criteria pollutant program: particulate matter (PM) 10 microns or less in diameter (both PM_{10} and the smaller $PM_{2.5}$ fraction), carbon monoxide, nitrogen oxides, sulfur oxides, ground-level ozone, and lead.

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24. Section 108 of the CAA establishes the requirements for listing new criteria pollutants under the NAAQS program. The provision requires the EPA Administrator to publish and periodically revise a list that "includes each air pollutant: (A) emissions of which, in h[er] judgment, cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare; (B) the presence of which in the ambient air results from numerous or diverse mobile or stationary sources; and (C) for which air quality criteria had not been issued before December 31, 1970, but for which [s]he plans to issue air quality criteria under this section." 42 U.S.C. § 7408(a)(1).

25. The CAA defines "air pollutant" broadly as "any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive . . . substance or matter which is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term 'air pollutant' is used." 42 U.S.C. § 7602(g). EPA defines the ambient air as "that portion of the atmosphere, external to buildings, to which the general public has access." 40 C.F.R. § 50.1(e).

26. Once EPA lists a pollutant as a criteria pollutant under Section 108, the listing triggers non-discretionary duties under Section 109 to establish primary and secondary standards sufficient to protect public health and welfare. 42 U.S.C. § 7409. The primary standards must protect public health, including the health of sensitive populations. The secondary standards must protect public welfare, "which includes, but is not limited to, effects on soils, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility, and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being, whether caused by transformation, conversion, or

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combination with other air pollutants." 42 U.S.C. § 7602(h). These standards are referred to collectively as NAAQS.

27. Section 109 requires EPA to review the NAAQS at least every five years and "promulgate such new standards as may be appropriate in accordance with section [108]," providing that the Agency "may review and revise criteria or promulgate new standards earlier or more frequently." 42 U.S.C. § 7409(d).

28. Once EPA establishes a NAAQS, states must develop plans to reduce emissions in areas with air quality that violates the NAAQS ("nonattainment areas") and to attain the standard by the applicable deadline, and must incorporate these plans into State Implementation Plans (SIPs). To ensure compliance with the NAAQS, states must implement permitting programs applicable to stationary sources in nonattainment areas (New Source Review) and in areas that meet the standard (Prevention of Significant Deterioration).

29. All stationary sources that meet "major" source thresholds for emissions of a criteria pollutant or other regulated pollutant must obtain a preconstruction New Source Review or Prevention of Significant Deterioration permit and a CAA operating permit, known as a Title V Permit. Title V permits include all SIP requirements and all other applicable CAA requirements, including those necessary to bring the airshed into compliance with, or to maintain compliance with, the NAAQS.

30. The CAA citizen suit provision permits any person to bring a civil action against the EPA "where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator" and to "compel . . . agency action unreasonably delayed." 42 U.S.C. § 7604(a).

Administrative Procedure Act

31. Under the APA, agencies must "give an interested person the right to petition for the issuance, amendment, or repeal of a rule." 5 U.S.C. § 553(e). A "rule" is "the whole or part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy." *Id.* § 551(4).

32. The APA requires that "[w]ith due regard for the convenience and necessity of the parties or their representatives and within a reasonable time, each agency shall proceed to conclude a matter presented to it." *Id.*. § 555(b). If an agency denies a petition in whole or in part, it must provide "[p]rompt notice" to the petitioner. *Id.* § 555(e).

33. Although the above-described duty to timely respond to Plaintiffs' Petition derives from the APA, this Court recently held – in an order dismissing Plaintiffs' first attempt to compel EPA to respond to their Petition – that an action alleging unreasonable delay in responding to a petition for CAA rulemaking must be brought as a CAA citizen suit. *Envtl. Integrity Project v. EPA*, 160 F. Supp. 3d 50 (D.D.C. 2015).

V. FACTUAL BACKGROUND

Sources of Ammonia Emissions

34. Numerous industries contribute to the nation's ammonia gas emissions, including fertilizer plants, coal plants, sewage treatment plants, petroleum refineries, and paper mills. However, EPA has described livestock operations as a "dominant" contributor. EPA, *Estimating Ammonia Emissions from Anthropogenic Nonagricultural Sources – Draft Final Report* 1 (Apr. 2004). U.S. livestock production itself is dominated by AFOs and CAFOs. U.S. Department of Agriculture, National Agricultural Statistics Service (2012).

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35. AFOs and CAFOs are facilities that confine livestock in buildings or feedlots without vegetation, storing the large quantities of waste generated in pits, lagoons, or stockpiles before disposal, typically via application to crop land. CAFOs are the subset of the largest AFOs, and can house hundreds, thousands, or even millions of animals in confinement conditions. EPA recently estimated that there are approximately 20,000 CAFOs nationwide. National Pollutant Discharge Elimination System ("NPDES") Concentrated Animal Feeding Operation ("CAFO") Reporting Rule, 76 Fed. Reg. 65,431, 65,445 (Oct. 21, 2011).

36. AFO and CAFO waste contains organic nitrogen compounds, which produce ammonia and ammonium (NH_4^+) as byproducts of the microbial decomposition process during storage and application. As a result, AFOs emit ammonia gas from all areas containing waste, including livestock confinement buildings and their ventilation systems, feedlots, liquid and solid animal waste storage facilities, and land application fields.

37. These emissions have both short- and long-range impacts, and have a typical transport time ranging from one to five days.[1] Because "[p]recipitation readily removes most reactive nitrogen compounds, such as ammonia and nitrogen oxides, from the atmosphere,"[2] a significant percentage of volatilized ammonia can re-deposit within these first few days. Deposition comprising up to 20% of the volatilized gas occurs within several hundred meters of the emissions source.[3] Ammonia that stays in the atmosphere may react with acidic compounds such as nitrogen oxides and sulfur dioxide, forming small particles of ammonium nitrate and ammonium sulfate known as ammonium aerosols.[4] Ammonia that converts to ammonium

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[1] Viney P. Aneja et al., *Ammonia Assessment from Agriculture: U.S. Status and Needs*, 37 Envtl. Quality 515, 516 (2008) [hereinafter Aneja].
[2] U.S. Department of the Interior, U.S. Geological Survey (USGS), *Atmospheric Deposition Program of the U.S. Geological Survey: Fact Sheet FS-112-00* at 2 (Dec. 2000), *available at* http://bqs.usgs.gov/AcidRain/program.pdf.
[3] Shabtai Bittman & Robert Mikkelsen, *Ammonia Emissions from Agricultural Operations: Livestock*, 93 Better Crops through Plant Food 1, 29 (2009).
[4] *Id.*

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aerosol particles rather than depositing directly has a much longer average transport time, ranging from one to fifteen days, and these particles may travel thousands of kilometers before re-depositing.[5]

Public Health Impacts of Ammonia

38. Exposure to ammonia alone or in combination with other pollutants can cause a broad range of acute and chronic health impacts, including eye, nose, throat, and chest irritation, headache, dizziness, urge to cough, and general discomfort. EPA and peer-reviewed research demonstrates ammonia's toxicity; prolonged exposure to low concentrations of ammonia can cause long-term health impacts, while short-term exposure to extremely high concentrations can be fatal.

39. Several federal government agencies have established public exposure recommendations and worker exposure limits and regulations for ammonia gas due to its proven health and safety risks. However, with the exception of the Occupational Safety and Health Administration's limited workplace exposure limits, which assume exposures of no more than 40 hours per week, these are recommendations based on exposure research, rather than enforceable limits. Moreover, these various health benchmarks and exposure limits were established considering exposure to ammonia in isolation. AFOs and CAFOs emit ammonia in combination with numerous other air pollutants, including hydrogen sulfide, particulate matter, methane, volatile organic compounds (VOCs) and endotoxins. These ammonia emissions contribute to a mix of air pollution that poses a greater public health threat than ammonia gas alone, and communities living near AFOs have documented adverse health effects as a result of these mixed exposures.

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[5] Aneja, *supra*, at 516.

40. Researchers who have studied the health impacts of ammonia air pollution, alone and in combination with these other AFO air emissions, have recommended that EPA regulate ammonia under the CAA. In 2002, Iowa State University and the University of Iowa issued a comprehensive study that compiled and analyzed significant published research on the human health effects of ammonia gas exposure from CAFOs. This study found that exposure to very low levels of ammonia can cause adverse health effects and that peer-reviewed research has linked exposure to CAFO emissions to an increased prevalence of respiratory symptoms. As a result, the Universities recommended that EPA regulate ammonia under the CAA NAAQS program and establish a health-based ambient ammonia limit of 0.15 ppm.[6]

41. In 2008, the Pew Commission on Industrial Farm Animal Production (Commission), an independent project of Johns Hopkins Bloomberg School of Public Health and the Pew Charitable Trusts, released another comprehensive report on the impacts of industrial livestock production. This report, "Putting Meat on the Table: Industrial Farm Animal Production in America,"[7] compiled the published literature on a wide range of CAFO impacts, including ammonia and other air emissions, and their effects on public health. Among its recommendations, the Commission concluded that "EPA should enforce all provisions of . . . the [CAA] that apply to [industrial livestock operations] and "should develop a standardized approach for regulating air pollution" from CAFOs under the CAA.[8] The Commission also noted the complicated health effects of the mixed air pollutants found in CAFO emissions and the importance of considering these mixed exposures when assessing health risks.

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[6] Iowa State Univ. & Univ. of Iowa Study Group, *Iowa Concentrated Animal Feeding Operations Air Quality Study* 9 (2002).
[7] Pew Commission on Industrial Farm Animal Production, *Putting Meat on the Table: Industrial Farm Animal Production in America* (2008).
[8] *Id.* at 75.

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42. In addition to the established health effects of ammonia itself, the gas is also a precursor to the formation of $PM_{2.5}$, which causes a distinct set of health threats. *See, e.g.*, Clean Air Fine Particle Implementation Rule, 72 Fed. Reg. 20586, 20589 (Apr. 25, 2007) ("The main precursor gases associated with fine particle formation are SO_2, NOx, volatile organic compounds (VOC), and ammonia"); *Natural Resources Def. Council v. EPA*, 706 F.3d 428, 435 n. 7 (D.C. Cir. 2013) ("Ammonia is a precursor to fine particulate matter"). Ambient ammonia pollution that reacts with other compounds forms ammonium aerosol particles that are smaller than 2.5 microns in diameter, and are therefore $PM_{2.5}$. Such extremely small particles are inhalable and can lodge deeply in the lungs and even enter the bloodstream. $PM_{2.5}$ causes a suite of significant public health impacts, including respiratory symptoms, decreased lung function, aggravated asthma symptoms, chronic bronchitis, irregular heartbeat, heart attacks, and premature death.

43. Research indicates that ammonia emissions are a significant driver of seasonal $PM_{2.5}$ formation in certain geographic regions, and that reductions in ammonia emissions are an effective way to reduce $PM_{2.5}$ concentrations, particularly in winter.[9] One study estimated that ammonia comprises 47% of the $PM_{2.5}$ in the Eastern U.S.[10] Another study conservatively estimates that ammonia emissions from livestock specifically lead to the formation of 9-11% of total $PM_{2.5}$ in the U.S., and up to 20% of winter $PM_{2.5}$ in the Upper Midwest.[11] Ammonium

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[9] R. W. Pinder et al., *Environmental Impact of Atmospheric NH_3 Emissions Under Present and Future Conditions in the Eastern United States*, 35 Geophysical Res. Letters L12808, 1 (June 2008).
[10] Natalie Anderson et al., *Airborne Reduced Nitrogen: Ammonia Emissions from Agriculture and Other Sources*, 29 Env't Int'l 277 (2003).
[11] Alexander N. Hristov, Associate Professor of Dairy Nutrition, Penn State Department of Dairy and Animal Science, *Livestock Contribution to Fine Particulate Matter (PM2.5) in the U.S.*, 3 (Feb. 16, 2009).

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nitrate in the San Joaquin Valley ranges between 54% and 65% of total $PM_{2.5}$ mass during peak winter days.[12]

44. With respect to major stationary sources, Subpart 4 of Part D of Title I of the CAA establishes a rebuttable presumption that precursors to PM_{10} and $PM_{2.5}$ are significant contributors to nonattainment. 42 U.S.C. § 7513a(e).[13] States must either regulate major stationary sources of $PM_{2.5}$ precursor pollutants, including ammonia, in nonattainment areas, or rebut the presumption that the precursors significantly contribute to the nonattainment. CAA § 189(e).

45. This presumption, however, does not ensure that states will regulate ammonia emissions. There is no requirement to address ammonia in attainment areas. In nonattainment areas, states may seek to rebut the presumption that they must regulate major stationary sources of ammonia, and there is no requirement to address ammonia in attainment areas. *See, e.g., Ass'n of Irritated Residents v. U.S. Envtl. Prot. Agency*, 423 F.3d 989, 996-97 (9th Cir. 2005).

Public Welfare Impacts of Ammonia

46. AFO ammonia emissions negatively impact public welfare in several ways. Ammonia emissions re-deposit in water and on land, contributing to nitrogen pollution in waterways and to the acidification of soils and forests. Nitrogen deposition in waterways leads to nutrient overloading, or eutrophication, that causes algae blooms, harms the aquatic ecosystem, and leads to the creation of "dead zones" where fish and other aquatic life cannot survive. Terrestrial ammonia nitrogen deposition decreases soil quality and cropland productivity, harms vegetation, and degrades the health of forest ecosystems.

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[12] San Joaquin Valley Air Pollution Control District, *2012 PM2.5 Plan* at 2-10, 2-11 (Dec. 20, 2012), http://www.valleyair.org/Air_Quality_Plans/PM25Plan2012/CompletedPlanbookmarked.pdf.

[13] Although 40 C.F.R. § 51.1002(c) suggests the opposite presumption – that ammonia is not a precursor – this "Subpart 1" provision will expire in October, 2016, and the D.C. Circuit has stated that "Subpart 4 expressly governs precursor presumptions." *Natural Resources Def. Council*, 706 F.3d 437 n. 10.

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47. Ammonia air pollution and the ammonium aerosol particles it creates contribute to the formation of regional haze by scattering and absorbing light particles. In addition to the health impacts to humans and wildlife resulting from particulate matter, haze harms public welfare by degrading visibility in wilderness areas, areas of cultural significance, and other scenic areas, such as the Grand Canyon, Yosemite National Park, Sequoia National Park, Shenandoah National Park, and the Columbia Gorge National Scenic Area. Haze has also been associated with impacts to climate and changes in precipitation.

48. Of immediate concern to those living near AFOs, AFO ammonia emissions contribute to nuisance odors in rural communities, in turn threatening personal comfort and well-being. Research has demonstrated that exposure to AFO emissions, including ammonia, can adversely affect mood and increase rates of anger, tension, fatigue, confusion, and depression. These emissions further decrease quality of life by making it unpleasant for rural citizens to spend time outdoors.

49. Economic researchers and courts have recognized that ammonia air pollution, in combination with other AFO air emissions and AFO quality of life impacts, also contributes to a documented decline in property values near AFOs. Missouri researchers calculated that every Missouri CAFO lowered surrounding property values by approximately $2.68 million.[14] The Supreme Court of Nebraska has held that a tax board acted arbitrarily when it failed to adjust a home's value downward due to its proximity to a large cattle feedlot. *Darnall Ranch, Inc. v. Banner Co. Bd. of Equal.*, 753 N.W.2d 426 (Neb. 2008).

EPA's National Air Emissions Monitoring Study

[14] Mubarak, H., T.G. Johnson, & K.K. Miller, *The Impacts of Animal Feeding Operations on Rural Land Values*, Report R-99-02, College of Agriculture, Food and Natural Resources, University of Missouri–Columbia, 8 (1999).

50. Despite these numerous public health and welfare impacts from ammonia and the $PM_{2.5}$ it forms in the atmosphere, EPA has not used its authority under the CAA or other air pollution statutes that it administers to quantify, control, or reduce ambient ammonia pollution. In fact, EPA has set no requirements for AFOs to restrict air emissions of any pollutants under the CAA or other air pollution laws.[15] Although EPA initiated a process to develop methods for estimating air emissions from AFOs in 2005, that process was never completed.

51. In recognition that a lack of emissions estimates for AFOs has hindered EPA from effectively regulating AFOs under the CAA and other statutes it administers, EPA entered into an Air Compliance Agreement with thousands of AFO operators in 2005 to obtain information necessary to develop emissions estimating methodologies (emission factors). These AFOs paid for a two-year National Air Emissions Monitoring Study (NAEMS) and agreed to participate in air emissions monitoring. In exchange, EPA granted them safe harbor from EPA enforcement for past civil violations of the permitting provisions of the CAA and the ammonia emissions reporting requirements of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Emergency Planning and Community Right-to-Know Act (EPCRA).

52. NAEMS involved monitoring emissions of ammonia, hydrogen sulfide, VOCs, and particulate pollution at 24 AFO sites between 2007 and 2009. The study only monitored emissions from confinement areas and waste storage systems, and did not address land application of waste, a major source of ammonia emissions. Within 18 months of the conclusion of NAEMS data collection, EPA was to evaluate the data collected and publish unit-specific emission factors. Under the Air Compliance Agreement, once EPA published the final emission factors, participating AFOs would have been required to apply the factors to their facilities to

[15] *See* discussion of potential future regulation of ammonia as a $PM_{2.5}$ precursor, *infra*.

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calculate their emissions; assess whether their facilities are in compliance with the CAA, CERCLA, and EPCRA; and either bring their facilities into compliance with the statutes or certify to the EPA that no federal statutory requirements apply to their facilities' emissions, based on the emission factors provided.

53. EPA issued two draft emission factors, addressing the broiler chicken sector and hog and dairy open waste storage systems, for public comment in March 2012. Subsequently, EPA's Science Advisory Board Animal Feeding Operation Emission Review Panel issued a report highly critical of the NAEMS methodology, the data generated, and the initial draft emission factors. EPA has not issued any additional or revised draft emission factors since.

54. EPA's limited actions to establish AFO emission factors do not bring EPA closer to a determination on the 2011 Petition. The emission factors that EPA may eventually establish for AFO ammonia emissions could play a role in state agency efforts to reduce ambient ammonia levels to comply with the health and welfare limits Petitioners seek through their Petition. However, the emission factor development process is fundamentally distinct from an EPA process to determine whether ambient ammonia pollution from AFOs and all other sources may cause or contribute to an endangerment to public health and welfare. The determination that existing ammonia exposures endanger health and welfare must be made based on evidence of the risk of health and environmental impacts from ammonia from all sources, and does not depend on any particular industry sector's contribution to ambient ammonia pollution. Moreover, the establishment of emission factors cannot lead to any CAA regulation of ambient ammonia pollution absent separate EPA action granting the 2011 Petition. Thus EPA cannot rely on the Air Compliance Agreement and NAEMS process to justify the Agency's delay in responding to

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the 2011 Petition or to take the place of substantive action to abate the public health threat from this pollutant.

The 2011 Petition

55. EPA is charged with designating criteria pollutants, establishing NAAQS for those pollutants that are protective of public health and welfare, and reviewing the NAAQS at least every 5 years. CAA §§ 108, 109. Scientific research demonstrates that ammonia emissions from AFOs and other sources cause and contribute to pollution that may endanger public health and welfare. However, despite this evidence, EPA has failed to designate ammonia as a criteria pollutant.

56. Petitioners submitted the Petition to EPA on April 5, 2011, and in that document Petitioners summarized evidence demonstrating that ammonia emissions from AFOs and other sources harm public health and welfare and necessitate an endangerment finding by EPA. EPA sent a letter to EIP acknowledging receipt of the Petition on May 9, 2011. The Petition also provided a legal roadmap for EPA's necessary actions, laying out the Agency's authorities and obligations to take certain actions in response to the endangerment posed by ambient ammonia air pollution.

Post-Petition Events

57. On July 9, 2013, EIP convened a teleconference with EPA staff overseeing consideration of the 2011 Petition to determine its status. EPA stated that it was considering the Petition in conjunction with a separate 2009 petition to list CAFOs as a source category under CAA § 111 and establish performance standards for CAFO air emissions, including, but not limited to, ammonia. EPA also indicated it planned to complete the NAEMS process and establish AFO EEMs prior to addressing these two petitions.

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58. On this call EIP also requested that EPA open a public docket for documents related to the Petition, such as public input and scientific research about the adverse health and welfare impacts of ammonia air pollution. ("A docket serves as the repository for documents or information related to a particular EPA activity. Agencies, such as EPA, most commonly use dockets for rulemaking actions, but dockets may also be used for various non-rulemaking activities." EPA Docket Center, http://www.epa.gov/dockets/faqs.htm.) The Agency declined to open a docket.

59. On July 22, 2013 EIP submitted a FOIA request for, *inter alia*, "[a]ll records, including all external and internal communications, shared or otherwise maintained by EPA, related to the April 5, 2011 Environmental Integrity Project et al. petition for the regulation of ammonia as a criteria pollutant under Clean Air Act sections 108 and 109."

60. In 2014 and 2015, EPA provided documents responsive to EIP's July 2013 FOIA request related to the 2011 Petition. None of the disclosed records indicate that EPA has taken any meaningful, substantive actions with regard to the Petition or had made any progress towards making a final determination on the Petition.

61. On August 5, 2013, EIP submitted an indexed compilation of 63 scientific studies, reports, and other documents to EPA in support of, and in aid of the Agency's consideration of, the Petition. These studies and reports include both works referenced in the 2011 Petition and additional studies and research, including studies published since the filing of the Petition. On May 28, 2014, EIP submitted an additional recent study on the health impacts of agricultural ammonia emissions to EPA, to aid in the Agency's consideration of the Petition.[16]

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[16] Jacob, D. & Paulot, F., *Hidden Cost of U.S. Agricultural Exports: Particulate Matter from Ammonia Emissions*, 48 ENVIRONMENTAL SCIENCE & TECHNOLOGY 903 (2014), *available at* http://acmg.seas.harvard.edu/publications/2014/paulot_export_2014.pdf.

62. On January 28, 2015, Plaintiffs filed a complaint with this Court to compel EPA to respond to the 2011 Petition. The 2015 complaint, unlike the current complaint, was filed under the APA. This Court dismissed the 2015 complaint on jurisdictional grounds, holding that Plaintiffs' right to sue derives not from the APA, but from the CAA. *Envtl. Integrity Project,* 160 F. Supp. 3d 50.

63. More than five years have passed since Petitioners filed their legal Petition urging EPA to take action to address ammonia air pollution under the CAA, yet EPA still has not formally responded to, or even begun a significant review of, the 2011 Petition. EPA's denial of EIP's request to open a public docket as a repository for related information further indicates the agency's failure to consider the substance and merits of the Petition in a meaningful way.

Harm to Plaintiffs

64. EPA's unlawful delay in responding to the 2011 Petition injures Plaintiff organizations by, *inter alia*, denying them vital information about EPA's plan to address ammonia air pollution from AFOs, CAFOs, and other sources. By denying Plaintiffs the essential information that a Petition response would contain, EPA's failure to respond to the 2011 Petition has violated Plaintiffs' procedural and substantive rights under the APA and the CAA. Additionally, EPA's failure to act on the Petition directly harms Plaintiffs' concrete organizational interests by impeding their abilities as public interest nonprofit organizations to facilitate public involvement in governmental decision-making, and by foreclosing the statutory right that allows for public participation through petitioning for rulemaking. As such, EPA's failure to act has effectively negated Plaintiffs' right to petition a federal agency for rulemaking. Further, EPA's continued failure to respond to the 2011 Petition deprives Plaintiffs of a decision

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on the Petition's merits, and, if necessary, the opportunity to seek judicial review of EPA's final decision.

65. All of the Plaintiff organizations are adversely affected by EPA's continued failure to respond to the 2011 Petition, because this delay prevents Plaintiffs from pursuing clean air protections central to their organizational missions and has required Plaintiff organizations to expend significant resources they could have spent elsewhere to obtain an EPA determination on the Petition.

66. Plaintiffs FWW, HSUS, CFS, ICCI, AIR, and Clean Wisconsin also have members whose concrete interests in their health, environmental protection, and quality of life are being and will be adversely affected by EPA's continued failure to respond to the 2011 Petition. These Plaintiffs' members are suffering and will suffer an ongoing threat to their health and welfare and the health and welfare of their environment as long as ammonia air pollution goes unaddressed by EPA. Specifically, Plaintiffs have members throughout the country who live near AFOs and CAFOs and routinely breathe the ammonia air pollution that these facilities emit. These members have experienced, and continue to experience, physical and mental harm due to unregulated ammonia emissions, including burning of the eyes, nose, and throat, other respiratory symptoms, headaches, nausea, and other chronic health problems. These members have been forced to curtail outdoor activities due to ammonia air pollution, including ammonium nitrate and ammonium sulfate, reducing their ability to use and enjoy their property. EPA's failure to address the 2011 Petition has prevented Plaintiffs and their members from obtaining relief from these concrete harms.

67. The requested relief will redress these harms by requiring EPA to respond to the 2011 Petition, which will result either in a response that fulfills EPA's statutory duty to protect

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public health and welfare from ammonia air pollution, or a final agency action that Plaintiffs may challenge if they disagree with EPA's response, in whole or part. Both results would provide Plaintiff organizations and their members with the information to which they are entitled pursuant to the APA and the CAA, and also secure their procedural right to receive a timely response to a legal petition for rulemaking.

VI. CLAIM FOR RELIEF

68. Plaintiffs incorporate paragraphs 1 through 64, *supra*, by reference.

69. EPA is an "agency" for purposes of the APA. *See* 5 U.S.C. §§ 551(1), 701(b)(1).

70. The CAA is a federal environmental statute designed to prevent and regulate air pollution for the protection of the nation's air quality and the public health and welfare. 42 U.S.C. § 7401.

71. The APA requires agencies to "give an interested person the right to petition for the issuance, amendment, or repeal of a rule." *Id.* § 553(e); *see also id.* § 551(4) (defining "rule" as "the whole or part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy"). The APA right to petition encompasses the right to petition for a new, revised, or final rule concerning EPA regulation of ammonia under the CAA criteria pollutant program. *See id.* §§ 551, 553(e).

72. Upon receiving a petition submitted pursuant to the APA, EPA has a duty to provide a timely response to the petitioners. *Id.* § 555(b) (a federal agency must, "within a reasonable amount of time . . . conclude a matter presented to it"); *Id.* § 555(e) ("Prompt notice shall be given of the denial in whole or in part of a written application, petition, or other request of an interested person . . . ."). This response must be substantive and must either grant or deny the petition.

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73. The CAA citizen suit provision permits any person to bring a civil action against the EPA "where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator" and to "compel … agency action unreasonably delayed." 42 U.S.C. § 7604(a).

74. Where, as here, the EPA has failed to respond to a petition for CAA rulemaking, the CAA citizen suit provision provides the waiver of sovereign immunity and cause of action for a claim that the EPA unreasonably delayed the action required under the APA. *Envtl. Integrity Project*, 160 F. Supp. 3d at *4. Plaintiffs do not concede that the APA does not provide a cause of action for situations involving EPA inaction under the CAA and reserve the right to file such APA unreasonable delay claims in this Court or other district courts involving other EPA failures to act.

75. The CAA requires 180 days' notice prior to commencing CAA citizen suits alleging unreasonable delay. 42 U.S.C. § 7604(a). Plaintiffs notified Defendants of their intent to sue on March 1, 2016. *See* Ex. B. EPA has not responded to Plaintiffs' notice, and more than 180 days have elapsed since Plaintiffs provided notice.

VII. REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

(1) Declare that EPA has violated the CAA and the APA by failing to provide a timely response to the 2011 Petition;

(2) Declare that EPA continues to be in violation of the CAA and the APA by failing to respond to the 2011 Petition;

(3) Order EPA to respond to the 2011 Petition within 90 days;

(4) Retain jurisdiction over this action to ensure compliance with this Court's decree;

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(5) Award Plaintiffs attorneys' fees and all other reasonable expenses incurred in pursuit of this action; and

(6) Grant such further relief as the Court deems just and proper.

Respectfully submitted this 4th day of November, 2016,

/s/ Abel Russ
Abel Russ
(District of Columbia Bar No. 1007020)
Environmental Integrity Project
1000 Vermont Avenue NW, Suite 1100
Washington, DC 20005
(802) 482-5379
aruss@environmentalintegrity.org
Attorney for Plaintiffs Environmental Integrity Project, Iowa Citizens for Community Improvement, and Clean Wisconsin

Tarah Heinzen
(District of Columbia Bar No. 1019829)
Food & Water Watch
1616 P street NW, Suite 300
Washington, DC 20036
202-683-2457
theinzen@fwwatch.org
Attorney for Food & Water Watch

Paige M. Tomaselli (*Pro Hac Vice pending*)
Center for Food Safety
303 Sacramento Street, Second Floor
San Francisco, CA 94111
(415) 826-2770 x303
(415) 826-0507 (facsimile)
ptomaselli@centerforfoodsafety.org
Attorney for Plaintiff Center for Food Safety

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(District of Columbia Bar No. 1001756)
Peter Brandt
(District of Columbia Bar No. 982936)
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(202) 778-6134 (facsimile)
htempleton@humanesociety.org
pbrandt@humanesociety.org
Attorneys for The Humane Society of the United States

Brent Newell (District of Columbia Bar No. CA210312)
Center on Race, Poverty & the Environment
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Oakland, CA 94612
(415) 346-4179 x304
(415) 346-8723 (facsimile)
bnewell@crpe-ej.org
Attorney for the Association of Irritated Residents

ED_013141A_00000423-00026

CIVIL COVER SHEET

JS-44 (Rev. 7/16 DC)

I. (a) PLAINTIFFS

Environmental INtegrity Project; Food & Water Watch; Humane Society of the United States; Center for Food Safety; Iowa Citizens for Community Improvement; Clean Wisconsin; Association of Irritated Residents

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF 11001
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

United States Environmental Protection Agency; Regina McCarthy, in her official capacity as Administrator of the Environmental Protection Agency

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Abel Russ, Environmental Integrity Project
1000 Vermont Ave. NW, Suite 1100
Washington , DC 20005
802-482-5379

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION
(PLACE AN x IN ONE BOX ONLY)

- ○ 1 U.S. Government Plaintiff
- ○ 3 Federal Question (U.S. Government Not a Party)
- ◉ 2 U.S. Government Defendant
- ○ 4 Diversity (Indicate Citizenship of Parties in item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) **FOR DIVERSITY CASES ONLY!**

	PTF	DFT		PTF	DFT
Citizen of this State	○ 1	○ 1	Incorporated or Principal Place of Business in This State	○ 4	○ 4
Citizen of Another State	○ 2	○ 2	Incorporated and Principal Place of Business in Another State	○ 5	○ 5
Citizen or Subject of a Foreign Country	○ 3	○ 3	Foreign Nation	○ 6	○ 6

IV. CASE ASSIGNMENT AND NATURE OF SUIT

(Place an X in one category, A-N, that best represents your Cause of Action and one in a corresponding Nature of Suit)

○ **A. *Antitrust***

- ☐ 410 Antitrust

○ **B. *Personal Injury/ Malpractice***

- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Medical Malpractice
- ☐ 365 Product Liability
- ☐ 367 Health Care/Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Product Liability

◉ **C. *Administrative Agency Review***

- ☐ 151 Medicare Act

Social Security
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

Other Statutes
- ☐ 891 Agricultural Acts
- ☒ 893 Environmental Matters
- ☐ 890 Other Statutory Actions (If Administrative Agency is Involved)

○ **D. *Temporary Restraining Order/Preliminary Injunction***

Any nature of suit from any category may be selected for this category of case assignment.

(If Antitrust, then A governs)

○ **E. *General Civil (Other)*** OR ○ **F. *Pro Se General Civil***

Real Property
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent, Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

Personal Property
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

Bankruptcy
- ☐ 422 Appeal 27 USC 158
- ☐ 423 Withdrawal 28 USC 157

Prisoner Petitions
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Conditions
- ☐ 560 Civil Detainee – Conditions of Confinement

Property Rights
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

Federal Tax Suits
- ☐ 870 Taxes (US plaintiff or defendant)
- ☐ 871 IRS-Third Party 26 USC 7609

Forfeiture/Penalty
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

Other Statutes
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 430 Banks & Banking
- ☐ 450 Commerce/ICC Rates/etc.
- ☐ 460 Deportation
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions
- ☐ 470 Racketeer Influenced & Corrupt Organization
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Satellite TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes
- ☐ 890 Other Statutory Actions (if not administrative agency review or Privacy Act)

○ G. *Habeas Corpus/ 2255* ☐ 530 Habeas Corpus – General ☐ 510 Motion/Vacate Sentence ☐ 463 Habeas Corpus – Alien Detainee	○ H. *Employment Discrimination* ☐ 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation) *(If pro se, select this deck)*	○ I. *FOIA/Privacy Act* ☐ 895 Freedom of Information Act ☐ 890 Other Statutory Actions (if Privacy Act) *(If pro se, select this deck)*	○ J. *Student Loan* ☐ 152 Recovery of Defaulted Student Loan (excluding veterans)
○ K. *Labor/ERISA (non-employment)* ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Mgmt. Relations ☐ 740 Labor Railway Act ☐ 751 Family and Medical Leave Act ☐ 790 Other Labor Litigation ☐ 791 Empl. Ret. Inc. Security Act	○ L. *Other Civil Rights (non-employment)* ☐ 441 Voting (if not Voting Rights Act) ☐ 443 Housing/Accommodations ☐ 440 Other Civil Rights ☐ 445 Americans w/Disabilities – Employment ☐ 446 Americans w/Disabilities – Other ☐ 448 Education	○ M. *Contract* ☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholder's Suits ☐ 190 Other Contracts ☐ 195 Contract Product Liability ☐ 196 Franchise	○ N. *Three-Judge Court* ☐ 441 Civil Rights – Voting (if Voting Rights Act)

V. ORIGIN

◉ 1 Original Proceeding ○ 2 Removed from State Court ○ 3 Remanded from Appellate Court ○ 4 Reinstated or Reopened ○ 5 Transferred from another district (specify) ○ 6 Multi-district Litigation ○ 7 Appeal to District Judge from Mag. Judge ○ 8 Multi-district Litigation – Direct File

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)
Clean Air Act, 42 U.S.C. 7604, action to compel agency action unreasonably delayed.

VII. REQUESTED IN COMPLAINT CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND $** **JURY DEMAND:** Check YES only if demanded in complaint YES ☐ NO ☒

VIII. RELATED CASE(S) IF ANY (See instruction) YES ☐ NO ☒ If yes, please complete related case form

DATE: 11/4/2016 SIGNATURE OF ATTORNEY OF RECORD

INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

I. COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.

III. CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.

IV. CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.

VI. CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.

VIII. RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk's Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ENVIRONMENTAL INTEGRITY PROJECT 1000 Vermont Avenue NW, Suite 1100 Washington, DC 20005, FOOD & WATER WATCH 1616 P St. NW, Suite 300 Washington, DC 20036 CENTER FOR FOOD SAFETY 660 Pennsylvania Avenue SE, Suite 302 Washington, DC 20003, HUMANE SOCIETY OF THE UNITED STATES 1255 23rd Street NW Washington, DC 20037, CLEAN WISCONSIN 634 West Main Street, #300 Madison, WI 53703, IOWA CITIZENS FOR COMMUNITY IMPROVEMENT 2001 Forest Avenue Des Moines, IA 50311, and ASSOCIATION OF IRRITATED RESIDENTS 29389 Fresno Ave Shafter, CA 93263 *Plaintiffs*, v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY and REGINA McCARTHY, in her official capacity as Administrator, 1200 Pennsylvania Ave. NW Washington, DC 20460 *Defendants*.	Case No. **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF** Clean Air Act, 42 U.S.C. § 7604 and Administrative Procedure Act, 5 U.S.C. §§ 702, 706

CERTIFICATE RULE LCvRule 7.1

I, the undersigned counsel of record for the Environmental Integrity Project, Iowa Citizens for Community Improvement, and Clean Wisconsin, certify that to the best of my knowledge and belief, the Plaintiffs in this matter have no parent companies, subsidiaries, or affiliates with any outstanding securities in the hands of the public.

These representations are made in order that the judges of this Court may determine the need for recusal.

DATED: 11/4/2016

By: _____

Abel Russ (District of Columbia Bar No. 1007020)
Environmental Integrity Project
1000 Vermont Avenue NW, Suite 1100
Washington, DC 20005
(802) 482-5379
(202) 296-8822 (facsimile)
aruss@environmentalintegrity.org
Attorney for Plaintiffs Environmental Integrity Project, Iowa Citizens for Community Improvement, and Clean Wisconsin

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

ENVIRONMENTAL INTEGRITY PROJECT, et al.	)	
Plaintiff(s)	)	
v.	)	Civil Action No.
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, et al.	)	
Defendant(s)	)	

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* U.S. ENVIRONMENTAL PROTECTION AGENCY
1200 PENNSYLVANIA AVE., NW
WASHINGTON, DC 20460

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Abel Russ
Environmental Integrity Project
1000 Vermont Ave. NW, Suite 1100
Washington, DC 20005

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____ was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____ , a person of suitable age and discretion who resides there, on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is designated by law to accept service of process on behalf of *(name of organization)* _____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

Print Save As... Reset

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

ENVIRONMENTAL INTEGRITY PROJECT, et al.	)	
Plaintiff(s)	)	
v.	)	Civil Action No.
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, et al.	)	
Defendant(s)	)	

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* REGINA MCCARTHY, ADMINISTRATOR OF THE US ENVIRONMENTAL PROTECTION AGENCY
1200 PENNSYLVANIA AVE., NW
WASHINGTON, DC 20460

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Abel Russ
Environmental Integrity Project
1000 Vermont Ave. NW, Suite 1100
Washington, DC 20005

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____ was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____ , a person of suitable age and discretion who resides there, on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is designated by law to accept service of process on behalf of *(name of organization)* _____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

Print Save As... Reset

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

ENVIRONMENTAL INTEGRITY PROJECT, et al.	)	
Plaintiff(s)	)	
v.	)	Civil Action No.
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, et al.	)	
Defendant(s)	)	

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* LORETTA E. LYNCH
ATTORNEY GENERAL OF THE UNITED STATES
U.S. DEPARTMENT OF JUSTICE
950 PENNSYLVANIA AVE., NW
WASHINGTON, DC 20530

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Abel Russ
Environmental Integrity Project
1000 Vermont Ave. NW, Suite 1100
Washington, DC 20005

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____ was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____ , a person of suitable age and discretion who resides there, on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is designated by law to accept service of process on behalf of *(name of organization)* _____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

Print Save As... Reset

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

ENVIRONMENTAL INTEGRITY PROJECT, et al.	)	
Plaintiff(s)	)	
v.	)	Civil Action No.
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, et al.	)	
Defendant(s)	)	

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* CHANNING D. PHILLIPS
UNITED STATES ATTORNEY FOR THE DISTRICT OF COLUMBIA
UNITED STATES ATTORNEY'S OFFICE
555 4TH STREET, NW
WASHINGTON, DC 20530

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Abel Russ
Environmental Integrity Project
1000 Vermont Ave. NW, Suite 1100
Washington, DC 20005

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____ was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____ , a person of suitable age and discretion who resides there, on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is designated by law to accept service of process on behalf of *(name of organization)* _____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

Print Save As... Reset

Exhibit A

BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

ENVIRONMENTAL INTEGRITY PROJECT, ASSOCIATION OF IRRITATED RESIDENTS, CABALLO CONCERNED CITIZENS GROUP, CENTER FOR FOOD SAFETY, CITIZENS FOR PENNSYLVANIA'S FUTURE, CLEAN WISCONSIN, CRAWFORD STEWARDSHIP PROJECT, ENVIRONMENTALLY CONCERNED CITIZENS OF SOUTH CENTRAL MICHIGAN, FOOD & WATER WATCH, THE HUMANE SOCIETY OF THE UNITED STATES, ILLINOIS CITIZENS FOR CLEAN AIR AND WATER, IOWA CITIZENS FOR COMMUNITY IMPROVEMENT, JOHNS HOPKINS CENTER FOR A LIVABLE FUTURE, MIDWEST ENVIRONMENTAL ADVOCATES, NORTHWEST ENVIRONMENTAL DEFENSE CENTER, RIO VALLE CONCERNED CITIZENS, SIERRA CLUB, SOCIALLY RESPONSIBLE AGRICULTURAL PROJECT, SUSTAIN RURAL WISCONSIN NETWORK, VERNON COUNTY ALLIANCE CONCERNED WITH ENVIRONMENTAL SAFETY, AND WATERKEEPER ALLIANCE,

Petitioners

v.

LISA P. JACKSON, ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,

Respondent.

PETITION FOR THE REGULATION OF AMMONIA AS A CRITERIA POLLUTANT UNDER CLEAN AIR ACT SECTIONS 108 AND 109

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1. Ammonia emissions endanger public health 9

i. EPA should regulate ammonia under the CAA because ammonia exposure causes significant adverse health effects 10

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d. CAFOs emit vast quantities of ammonia and are often concentrated geographically 33

i. CAFOs emit vast quantities of ammonia 33

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I. EXECUTIVE SUMMARY

Congress enacted the Clean Air Act (CAA) to protect public health from diverse sources of air pollution, and empowered the Environmental Protection Agency (EPA) to establish regulations for different pollutants as scientific knowledge evolves, and the dangers they pose to human health and welfare become apparent. As this petition will establish, ambient ammonia pollution currently endangers human health and welfare, and EPA has an affirmative obligation to exercise its authority to regulate sources of ammonia emissions.

Ammonia gas, an air pollutant emitted in vast quantities by Concentrated Animal Feeding Operations (CAFOs), meets the criteria for listing as a CAA criteria pollutant, because ammonia emissions from numerous CAFOs and other sources "cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare." CAA § 108. The predominantly rural nature of this pollution does not limit EPA's authority to regulate; in fact, courts have made clear that even localized, site-specific, and infrequent ambient air pollution may create a public health risk that meets the § 108 standard and therefore warrants CAA regulation.

Several federal agencies, including EPA, have documented ammonia's acute and chronic adverse health effects. Numerous peer-reviewed studies further demonstrate that ambient ammonia pollution in some rural communities near CAFOs currently exceeds recommended exposure levels, and citizens living near CAFOs experience adverse health effects from CAFO air pollution, including ammonia. Ammonia gas also reacts with other gases to form ammonium aerosols, inhalable small particles that further endanger public health.

This petition will also establish that ambient ammonia pollution endangers public welfare, which the CAA defines broadly to include quality of life, economic, aesthetic, and environmental values. Ammonia emissions detract from quality of life and decrease personal comfort and well-being in rural areas. Airborne ammonia re-deposits in and near waterways, adding nitrogen to ecosystems overloaded with nutrient pollution, reduces property values, and impairs visibility in scenic areas. The petitioners respectfully request that EPA issue a timely response to this petition, make an endangerment finding for ammonia, designate ammonia as a criteria pollutant, and establish primary and secondary National Ambient Air Quality Standards (NAAQS) to protect public health and welfare with an adequate margin of safety.

II. INTRODUCTION

The Environmental Integrity Project, Association of Irritated Residents, Caballo Concerned Citizens Group, Center for Food Safety, Citizens for Pennsylvania's Future, Clean Wisconsin, Crawford Stewardship Project, Environmentally Concerned Citizens of South Central Michigan, Food & Water Watch, the Humane Society of the United States, Illinois Citizens for Clean Air and Water, Iowa Citizens for Community Improvement, Johns Hopkins Center for a Livable Future, Midwest Environmental Advocates, Northwest Environmental

Defense Center, Rio Valle Concerned Citizens, Sierra Club, Socially Responsible Agricultural Project, Sustain Rural Wisconsin Network, Vernon County Alliance Concerned with Environmental Safety, and Waterkeeper Alliance (petitioners) hereby petition the EPA to regulate air emissions of ammonia (NH_3) as a criteria pollutant under the CAA, sections 108 and 109.[1] Ammonia meets the legal standard for listing as a criteria pollutant because numerous stationary sources currently emit ammonia, an air pollutant, into the ambient air at levels which may reasonably be anticipated to endanger public health and welfare.

Ammonia qualifies as a pollutant that endangers public health and welfare. Exposure to airborne ammonia can cause both short-term and chronic respiratory health effects, and the chemical is lethal at sufficiently high concentrations. In addition, ammonia re-deposits onto soils and into sensitive waterways, resulting in soil acidification and eutrophication, which are destructive to both terrestrial and aquatic ecosystems. The small particles ammonia forms in combination with other pollutants contribute to regional haze and further threaten public health, and ammonia"s odor adversely affects quality of life and property values.

While ammonia sources that exceed certain thresholds must report emissions under federal "right to know" laws,[2] the CAA currently does not meaningfully regulate ammonia emissions from the nation"s most significant sources. The CAA, EPA"s most appropriate and effective tool for regulating air emissions, does not include ammonia on either its list of hazardous air pollutants, established in § 112, or its list of criteria pollutants, established pursuant to §§ 108 and 109; nor does it establish New Source Performance Standards under § 111 for CAFOs, the industry sector responsible for the majority of U.S. ammonia emissions.

The health and welfare harms caused by ambient ammonia warrant EPA"s increased scrutiny and regulation. Although additional CAA programs likely apply to ammonia and other CAFO emissions, EPA should regulate ammonia as a criteria pollutant, because short-term and chronic ambient ammonia pollution threatens public health and welfare in rural communities throughout the U.S. Due to ammonia"s toxicological profile and the human health and ecological threats it poses, the petitioners submit this petition to EPA, requesting that the agency list ammonia as a criteria pollutant and issue primary and secondary NAAQS to protect public health and public welfare from ammonia pollution.

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[1] 42 U.S.C. §§7408, 7409.

[2] EPA recently limited these emissions reporting requirements as well. Under EPA"s 2008 CERCLA/EPCRA Administrative Reporting Exemption for CAFOs, only the Emergency Planning and Community Right to Know Act (EPCRA) still requires reporting of ammonia and hydrogen sulfide emissions from CAFOs, and only by large CAFOs as defined under the Clean Water Act. *See* CERCLA/EPCRA Administrative Reporting Exemption for Air Releases of Hazardous Substances From Animal Waste at Farms, 73 Fed. Reg. 76,948, 76,951 (Dec. 18, 2008).

III. PETITIONERS

The petitioners are the Environmental Integrity Project, Association of Irritated Residents, Caballo Concerned Citizens Group, Center for Food Safety, Citizens for Pennsylvania"s Future, Clean Wisconsin, Crawford Stewardship Project, Environmentally Concerned Citizens of South Central Michigan, Food & Water Watch, the Humane Society of the United States, Illinois Citizens for Clean Air and Water, Iowa Citizens for Community Improvement, Johns Hopkins Center for a Livable Future, Midwest Environmental Advocates, Northwest Environmental Defense Center, Rio Valle Concerned Citizens, Sierra Club, Socially Responsible Agricultural Project, Sustain Rural Wisconsin Network, Vernon County Alliance Concerned with Environmental Safety, and Waterkeeper Alliance.

The Environmental Integrity Project (EIP) is a nonpartisan, nonprofit organization established in March of 2002 by former EPA enforcement attorneys to advocate for more effective enforcement of environmental laws. CAFO pollution, one of EIP"s focal issues, contributes a controlling share of the total ammonia air emissions in the United States. EIP has an interest in protecting the environment from ammonia emissions released from CAFOs and other sources, as these emissions threaten human health and welfare, air quality, and water quality.

The Association of Irritated Residents (AIR) is an unincorporated non-profit with members throughout the San Joaquin Valley (SJV). On the basis of air quality issues, AIR has fought the local growth in dairy CAFOs in the SJV. For many years AIR has requested that the San Joaquin Valley Air Pollution Control District regulate ammonia as a precursor to $PM_{2.5}$ or ammonium nitrate. Wintertime $PM_{2.5}$ levels in Kern County, at the southern end of the SJV, are the worst in the nation.

Caballo Concerned Citizens Group (CCCG) is a grassroots community group of more than 1,000 New Mexicans. CCCG formed in response to a mega-dairy that attempted to locate in a region with shallow groundwater and vulnerable artesian wells, and within dangerous proximity to the Caballo Reservoir, the Rio Grande River, and pristine state parks. CCCG members living near animal factories cannot drink water from their wells or breathe the air in their homes due to these facilities" unregulated pollution, including ammonia.

Established in 1997, The Center for Food Safety (CFS) is a non-profit, membership organization that works to protect human health and the environment by curbing the proliferation of harmful food production technologies and by promoting organic and other forms of sustainable agriculture. CFS represents over 160,000 members throughout the country that are concerned about the impacts of factory farming on human health, animal welfare, and the environment. CFS believes that EPA must regulate ammonia and other pollutants from factory farms in order to protect human health and the environment and create a healthier, safer food supply.

Citizens for Pennsylvania's Future (PennFuture) works for a healthy environment, clean energy, and a sound economy. PennFuture litigates and advocates sound statewide policies to reduce air pollution from all sources, including agriculture.

Clean Wisconsin protects Wisconsin"s clean water and air and advocates for clean energy by being an effective voice in the state legislature and by holding elected officials and polluters accountable. Clean Wisconsin"s mission is to protect the special places that make Wisconsin such a wonderful place to live, work and play.

Crawford Stewardship Project is a grassroots community organization that works to protect the environment of Crawford County, Wisconsin from threats such as those posed by CAFOs and to promote sustainable land use, local control of natural resources, and environmental justice.

Environmentally Concerned Citizens of South Central Michigan (ECCSCM) supports vanguard, responsible agriculture, farming that looks ahead to the next generations, preserves biodiversity, raises animals in a healthy environment, does no harm to its neighbors, enhances the natural assets of living communities, and protects our natural resources – air, soils, groundwater, streams, and lakes. As family farmers and neighbors, ECCSCM believes agriculture must take responsibility for its actions in rural communities. CAFOs have failed us. They have damaged our farming communities, degraded our natural resources, and polluted our watersheds. ECCSCM believes that ammonia must be regulated to protect our communities, young and old.

Food & Water Watch is a national nonprofit advocacy organization that advocates for common sense policies that will result in healthy, safe food and access to safe and affordable drinking water. The issue of industrialized livestock production is a core part of Food & Water Watch"s work. Food & Water Watch has worked since 2005 to change federal and state policy on CAFOs and also works to educate the public on the variety of impacts these facilities have on public health and the environment.

The Humane Society of the United States (HSUS) is a national and international non-profit charitable organization that works to reduce suffering and improve the lives of all animals. The HSUS maintains its headquarters in Washington, D.C., and has offices, affiliates, or staff in 25 states, the District of Columbia, and five foreign countries. Through its policy, legislative, litigation, and grass-roots activities, the HSUS has become the nation"s largest and most effective animal protection organization, with more than 11 million members and constituents. The HSUS actively advocates against practices that harm all animals, including practices that result in unhealthy levels of pollutants being discharged into farm animal and wildlife habitats. HSUS has actively campaigned to regulate air pollutants being discharged by CAFOs through efforts with the EPA, in Congress, and in the Courts. Members of HSUS in the Lathrop, California community teamed up with the HSUS to bring a suit against a large chicken CAFO

that emits toxic levels of ammonia into their neighborhood and HSUS has petitioned the EPA to list and regulate CAFOs under the Clean Air Act. In the course of HSUS cases, experts have documented ambient ammonia levels above recommended health limits in the local community.

Illinois Citizens for Clean Air and Water (ICCAW) is a state-wide coalition of family farmers and community groups advocating for sound policies and practices that protect the environment, human health, and rural quality of life from the impacts of large-scale, industrialized livestock production facilities in Illinois. A majority of its members are family farmers and rural residents that live near large-scale livestock facilities that have been adversely impacted by the problems they create. The regulation of ammonia emissions from CAFOs is of particular concern to ICCAW because of the human health risks neighbors experience from exposure.

Iowa Citizens for Community Improvement (Iowa CCI) is a 36-year-old statewide non-profit grassroots organization. Iowa CCI has led the fight against factory farms in Iowa for the past 15 years and has pushed for better environmental and permitting laws for factory farms on the state and national level – including the first clean air standards established for ammonia and hydrogen sulfide in the state of Iowa.

The Johns Hopkins Center for a Livable Future, based at the Bloomberg School of Public Health, conducts and funds research that increases knowledge about the complex interactions among diet, health, food production and the natural environment. The Center has over a decade of experience researching the public health impacts of industrial food animal production. Research has provided strong evidence that the complex mixtures of AFO air pollutants impact health of surrounding communities. The release of ammonia from these facilities and from land applied animal waste contributes to population exposures. Given this, there is strong justification for EPA to add ammonia as a criteria pollutant and develop ambient standards aimed at protecting public health.

Midwest Environmental Advocates (MEA) is a non-profit environmental law center, founded in 1999, which provides legal services for the under-represented and advocates for the public"s right to clean air, land and water. MEA represents communities negatively affected by air and water pollution, including ammonia pollution, from CAFOs. MEA"s clients have experienced many of the health impacts associated with ammonia including respiratory problems, dizziness, nausea, and burning eyes.

The Northwest Environmental Defense Center (NEDC) is an independent, nonprofit organization working to protect the environment and natural resources of the Pacific Northwest. NEDC has an interest in protecting the region"s air quality and water quality from CAFO ammonia pollution. For example, NEDC has worked to protect the environment of the Columbia River Gorge, where ammonia emissions from CAFOs have contributed to haze.

Rio Valle Concerned Citizens (RVCC) is a community group organized by citizens in 2010, and is part of a New Mexico Dairy Coalition that works to protect the state"s groundwater from dairy pollution. As a community living near a CAFO, RVCC has an interest in bringing ammonia pollution down to a safe level. RVCC believes that CAFOs should monitor the amount of ammonia they emit and the health effects our community residents are living with because of ammonia pollution, and be responsible for reducing ammonia pollution to a safe level.

Since 1892, the Sierra Club has been working to protect communities, wild places and the planet. With 1.4 million members and supporters, it is the largest grassroots environmental organization in the United States. The Sierra Club has long been involved in public education, advocacy and litigation to reduce pollution from CAFOs.

Socially Responsible Agricultural Project (SRAP) is a unique organization dedicated to assisting rural communities facing economic strife to help them discover local solutions which will help them thrive once again. Established in 1997, this nonprofit organization has assisted over 750 communities and groups in the United States and Canada that have been impacted by the negative effects of industrial agriculture.

Sustain Rural Wisconsin Network (SRWN) is a statewide coalition of organizations and individuals working together to understand and influence impacts of CAFOs on rural Wisconsin communities. SRWN supports actions to promote environmentally sound, socially responsible farming practices that assure clean air and water and safe local food production for the future. SRWN also works to encourage the diversity and vitality of Wisconsin"s rural family farms and communities.

Vernon County Alliance Concerned with Environmental Safety (ACES) successfully organized to protect its community from a 3,200 head factory dairy proposed by an out-of-state developer. ACES" mission is to ensure that the environment, economy, and health are preserved and protected in the design and location of business and industry in Vernon County, Wisconsin.

Waterkeeper Alliance is an international nonprofit organization representing the interests of its nearly 200 member watershed groups. Waterkeeper, along with each of its member groups, is dedicated to the preservation and protection of waterbodies and their neighboring communities. Aligned with this mission, Waterkeeper is concerned with the impacts of concentrated animal production on public health and the environment, and it seeks to reduce these impacts by actively advocating for the control of animal waste pollution, and for the promotion of sustainable agriculture.

IV. LEGAL AUTHORITY FOR REGULATING AMMONIA

The CAA provides EPA with the legal authority required to regulate ammonia. Congress directed EPA to designate pollutants that endanger public health or welfare as criteria pollutants, and to establish protective primary and secondary National Ambient Air Quality Standards for these pollutants, under §§ 108 and 109 of the CAA.

Section 108 sets out the requirements for establishing and regulating criteria pollutants:

(a) Air Pollutant List; publication and revision by Administrator; issuance of air quality criteria for air pollutants

(1) For the purpose of establishing national primary and secondary ambient air quality standards, the Administrator shall within 30 days after December 31, 1970, publish, and shall from time to time thereafter revise, a list which includes each air pollutant---

(A) emissions of which, in his judgment, cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare;

(B) the presence of which in the ambient air results from numerous or diverse mobile or stationary sources; and

(C) for which air quality criteria had not been issued before December 31, 1970, but for which he plans to issue air quality criteria under this section.

This petition will demonstrate that ammonia meets all of the CAA statutory requirements for regulation under § 108 because: 1) it is a pollutant, 2) emissions of which may reasonably be anticipated to endanger public health and welfare, 3) the presence of which results from numerous stationary sources (primarily CAFOs), and 4) for which no air quality criteria have been issued.

Once EPA lists a pollutant under § 108, the listing triggers § 109, which sets the schedule for promulgating NAAQS[3] and requires EPA to establish primary and secondary standards sufficient to protect public health and welfare. EPA has only designated six criteria pollutants: 1) carbon monoxide, 2) nitrogen dioxide, 3) ozone, 4) lead, 5) sulfur dioxide, and 6) particulate matter (both $PM_{2.5}$ and PM_{10}). However, the wording of § 109(d), which requires EPA to review the NAAQS every five years and "promulgate such new standards as may be appropriate in accordance with section 7408 [108]," makes clear that Congress anticipated the list should evolve as new scientific studies emerge and new pollutants qualify for listing. Furthermore,

[3] Section 109 states "[n]ot later than December 31, 1980, and at five-year intervals thereafter, the Administrator shall complete a thorough review of the criteria published under section 7408 of this title and the national ambient air quality standards promulgated under this section and shall make such revisions in such criteria and standards and promulgate such new standards as may be appropriate in accordance with section 7408 of this title and subsection (b) of this section. The Administrator may review and revise criteria or promulgate new standards earlier or more frequently than required under this paragraph." CAA § 109(d)(1).

courts have established that § 109(d) gives rise to a mandatory duty for EPA to regulate a pollutant once it satisfies the statutory requirements of § 108.[4]

Under §109(d), the Administrator and independent scientific review committee must re-evaluate both the list of criteria pollutants and the NAAQS in five-year intervals, but may promulgate new standards more frequently in its discretion. Due to ammonia‟s ongoing adverse effects on public health and welfare, the petitioners urge EPA to take prompt action in response to this petition.

V. EPA SHOULD REGULATE AMMONIA AS A CRITERIA POLLUTANT UNDER CAA SECTION 108

EPA should make an endangerment finding and designate ammonia as a criteria pollutant, because it meets the statutory requirements for regulation. Ammonia is a pollutant, emissions of which endanger public health and welfare, the presence of which results from numerous stationary sources (CAFOs), and for which no air quality criteria have been issued.

A. Ammonia meets the CAA definition of an air pollutant

CAA section 108(a)(1) only applies to the regulation of air pollutants. Ammonia clearly meets the CAA § 302(g) definition of an air pollutant: "any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term „air pollutant‟ is used."

The term "air pollutant" has been given a broad and "sweeping" interpretation by the Supreme Court.[5] Ammonia gas meets the CAA‟s definition because, as this petition will establish, it causes harm to public health and the natural environment when numerous stationary sources, including CAFOs, steel mills, and refineries, emit it into the ambient air. EPA currently regulates airborne ammonia under CERCLA as a hazardous substance, and under EPCRA as an extremely hazardous substance,[6] and the Agency for Toxic Substances and Disease Registry (ATSDR) characterizes ammonia as a toxin because exposure to airborne ammonia can result in severe respiratory effects. EPA also recognizes ammonia‟s role as a fine particulate matter

[4] *See* discussion *infra* Section VIII.

[5] *Massachusetts v. EPA*, 549 U.S. 497 (2007) at 527. The court places emphasis on the use of the word "any" air pollutant.

[6] 40 C.F.R. §§ 302.4–302.5, 355.40, App. A to § 355 (2008).

precursor pollutant.[7] Thus ambient ammonia gas is air pollution, and ammonia emitted into the air is an air pollutant under the CAA.

B. Ammonia emissions cause and contribute to air pollution which may reasonably be anticipated to endanger both public health and welfare

Under CAA § 108(a)(1)(A), to qualify as a criteria pollutant, ammonia must cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare. This petition presents extensive evidence to support a finding that ammonia endangers both public health and public welfare, and that ammonia emissions from numerous stationary sources currently give rise to ambient ammonia concentrations harmful to human health and quality of life, soil and water quality, visibility, and property values.

1. Ammonia emissions endanger public health

The CAA requires EPA to establish NAAQS for an air pollutant if the agency determines that the pollutant can be reasonably anticipated to endanger public health. Although the CAA and its implementing regulations do not define public health, the Supreme Court has affirmed its broad and common sense meaning, declaring it as simply "the health of the public."[8] The World Health Organization has also established a widely accepted definition of health as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity."[9] In addition, Black"s Law Dictionary (8th ed. 2004) defines both health: it defines health – "the state of being sound or whole in body, mind, or soul" and "freedom from pain or sickness" – and public health – "the health of the community at large."

Ammonia pollution threatens public health in numerous ways encompassed by these broad definitions. Threats to public health from ambient ammonia include increased risk of respiratory symptoms, eye and nose irritation, and other physical discomfort, as well as more severe health effects. Ammonia also contributes to the health effects of the mixture of gases in CAFO air emissions, which studies have linked to respiratory symptoms as well as headaches, nausea, and increased incidence of infant mortality. If certain communities face a disproportionate and substantial risk of adverse health effects from airborne ammonia, EPA may – and should – find that ammonia warrants regulation as a criteria pollutant. Extensive research conducted on both human and animal subjects over several decades establishes that ammonia emissions endanger human health. Indeed, several federal agencies, including EPA, have recognized this threat by establishing health standards or recommended exposure limits to protect workers and others exposed to airborne ammonia. CAFO emissions research further shows that airborne ammonia levels in some communities currently exceed relevant health benchmarks, demonstrating that ammonia is reasonably anticipated to endanger public health.

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[7] *See* discussion *infra* Section V.B.1.iii.e.
[8] *Whitman v. American Trucking Ass'n*, 531 US 457, 466 (2001).
[9] World Health Organization (1948), http://www.who.int/about/definition/en/print.html.

i. EPA should regulate ammonia under the CAA because ammonia exposure causes significant adverse health effects

Ammonia"s health effects have been thoroughly documented by the ATSDR, part of the Department of Health and Human Services, as well as the National Academy of Sciences, universities, and other federal agencies. ATSDR assessed "all relevant [ammonia] toxicologic testing and information that has been peer-reviewed" in drafting its Toxicological Profile for Ammonia.[10] EPA employs a similarly thorough review of ammonia health research, the National Academy of Sciences" Acute Exposure Guideline Levels (AEGL) report for ammonia.[11] The National Advisory Committee established to draft this report was tasked to "identify, review, and interpret relevant toxicologic and other scientific data" and establish acute exposure guidelines for ammonia and other "high-priority, acutely toxic chemicals."[12] Two Iowa universities have also compiled significant published research on the human health effects of ammonia gas exposure, which they reported in the 2002 Iowa CAFO Air Quality Study.[13] These three peer-reviewed documents compile and evaluate decades of accidental ammonia exposure case studies as well as human and animal irritation, exposure, and lethality studies.[14]

Depending on the concentration, duration of exposure, and sensitivity of the individual exposed, ammonia exposure causes a range of effects including odor detection, nasal, throat, and eye irritation, burns, scarring, and even death. The AEGL report for ammonia summarizes existing acute exposure research in the following chart.[15]

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[10] ATSDR, *supra* note 6.
[11] Acute Exposure Guideline Levels for Selected Airborne Chemicals, Vol. 6, Committee on Acute Exposure Guideline Levels, Committee on Toxicology, Nat"l Research Council of the National Academies of Sciences, *available at* http://www.epa.gov/oppt/aegl/pubs/ammonia_final_volume6_2007.pdf [hereinafter Ammonia AEGL Report].
[12] Ammonia AEGL Report at 4.
[13] IOWA STATE UNIV. & UNIV. OF IOWA STUDY GROUP, IOWA CONCENTRATED ANIMAL FEEDING OPERATIONS AIR QUALITY STUDY (2002) at 123 [hereinafter Iowa Study], *available at* http://www.public-health.uiowa.edu/ehsrc/CAFOstudy.htm. *See also* discussion of Iowa Study *infra* Section V.B.1.ii.d.
[14] ATSDR at 102; Ammonia AEGL Report at 59; Iowa Study at 123-24.
[15] Excerpted from Ammonia AEGL Report, Table 2-5, at 77-78.

SUMMARY OF NONDISABLING AND REVERSIBLE EFFECTS OF INHALED AMMONIA IN HUMANS		
Concentration	**Duration of Exposure**	**Effect**
5 ppm	3 hours, with rest and exercise for 1.5 hours each	Subjective rating of eye discomfort and smell, headache, dizziness, and "feeling of intoxication" significantly greater than of controls; sensory adaptation to odor; no exposure-related change in pulmonary function, increase in nasal cells, no increase in exhaled NO, and no alteration in bronchial response to methacholine.
25 ppm	3 hours, with rest and exercise for 1.5 hours each	Subjective rating of eye, upper respiratory, and throat irritation, smell, headache, dizziness, and "feeling of intoxication" significantly greater than of controls; no sensory. Adaptation to odor; no exposure-related change in pulmonary function, increase in nasal cells, no increase in inhaled NO, and no alteration in bronchial response to methacholine.
30 ppm	10 minutes	Odor was moderately intense to highly penetration; irritation was faint or not detectable.
32 ppm	5 minutes	Nasal Dryness.
50 ppm	5 minutes	Nasal Dryness.
50 ppm	10 minutes	Highly penetrating odor; moderate irritation.
50 ppm	30 minutes	Moderately intense odor; moderate irritation to eyes and nose; mild irritation to throat and chest; slight urge to cough; slight general discomfort.
50 ppm	1 hour	Highly intense odor; moderate irritation to eyes, nose, throat, and chest; mild urge to cough; slight general discomfort.
50 ppm	2 hours	Offensive odor; moderate irritation to eyes, nose, throat, and chest, mild urge to cough; mild general discomfort.
72 ppm	5 minutes	Nasal, eye, and throat irritation.
80 ppm	30 minutes	Highly intense odor; highly intense eye and nose irritation; moderate throat and chest irritation; mild urge to cough; moderate general discomfort.
80 ppm	1 hour	Highly intense odor; moderate eye, nose, throat, and chest irritation; mild urge to cough; moderate general discomfort.

80 ppm	2 hours	Highly intense odor; highly intense eye, nose, throat, and chest irritation; highly intense urge to cough; and moderate general discomfort.
100 ppm	5-30 seconds	Significant increase in nasal airway resistance, but atopic subjects, including asthmatics, responded similarly to the nonatopic subjects.
100 ppm	2-6 hours/day, 5 weeks	No adverse effects on respiratory function and no increase in frequency of eye, nose, or throat irritation.
110 ppm	30 minutes	Highly intense odor, highly intense eye, nose throat, and chest irritation, mild urge to cough; moderate general discomfort.
110 ppm	1 hour	Highly intense odor; highly intense eye, nose, throat, and chest irritation; moderate urge to cough, moderate general discomfort
110 ppm	2 hours	Highly intense odor; highly intense eye and nose irritation; urge to cough; general discomfort
140 ppm	30 minutes	Highly intense odor; unbearable eye, nose, throat, and chest irritation; mild urge to cough; moderate general discomfort.
140 ppm	1 hour	Highly intense odor; unbearable eye, nose, throat, and chest irritation; moderate urge to cough; moderate general discomfort.
140 ppm	2 hours	Highly intense odor; unbearable eye and nose irritation; highly intense throat and chest irritation; highly intense urge to cough; unbearable general discomfort
143 ppm	5 minutes	Nose, eye, throat, and chest irritation; lacrimation.
500 ppm	15-30 minutes	Nose and throat irritation; nasal dryness and stuffiness; excess lacrimation; hyperventilation; unbearable.
570 ppm	Single Breath	Threshold for reflex glottis closure, 21 to 30-year-old subjects.
1000 ppm	Single Breath	Threshold for reflex glottis closure, 60-year-old subjects.
1000 ppm	NR	Immediate urge to cough.
1790 ppm	Single Breath	Threshold for reflex glottis closure, 86 to 90-year-old subjects.

Humans detect ammonia odor at concentrations ranging from 5 to 53 parts per million (ppm), and the odor can become "highly penetrating" at 50 ppm after 10 minutes of exposure.[16] One third of the volunteers in one human exposure study experienced irritation after just 10 minutes of exposure to 30 ppm ammonia.[17] The same study showed that eye, nose, throat, and chest irritation become moderate after a 30-minute exposure to 50 ppm and can become "highly intense" after a 30-minute exposure to 80 ppm.[18] At concentrations of 50 ppm, ammonia exposure can lead to throat irritation, mucous production, and cough.[19] At heightened concentrations, ammonia"s effects exceed odor and irritation, and cause actual damage to the respiratory system. This damage may include tracheal and nasopharyngeal burns, and bronchiolar/alveolar swelling.[20]

Non-fatal effects of acute exposures to high concentrations of ammonia can be long-lasting, and even permanent. One case study considered in ATSDR"s Toxicological Profile monitored the health effects on three men who had been acutely exposed to ammonia gas; the men subsequently reported several symptoms, including burning of the skin, eyes, and throat.[21] The men also showed signs of stressed airways as evidenced by wheezing and cough. More than two years later, the researchers re-evaluated the men and found continuing symptoms of restrictive lung disease.[22] Another case study considered by ATSDR followed a man who, 12 years after exposure to ammonia gas, still suffered from recurrent bronchial infections as well as cough and exertional dyspnea, or shortness of breath while exercising.[23]

The Toxicological Profile also documents accidents involving exposure to ammonia that resulted in neurological impacts such as blurred vision, muscle weakness, decreased deep tendon reflexes, and loss of consciousness.[24] Due to ammonia"s solubility in water, ocular effects such as inflammation of the eyes and swelling of the eye-lids can occur with exposure to airborne ammonia.[25] Ammonia"s solubility also allows it to quickly absorb into the upper airways, where it can damage the epithelial cells.[26]

In addition, ammonia inhalation can cause fatal burns and infections.[27] According to ATSDR, ammonia becomes acutely lethal at concentrations of 5,000-10,000 ppm.[28] These levels

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[16] Ammonia AEGL Report at 59-60.
[17] *Id.* at 60.
[18] *Id.*
[19] *Id. See also* Iowa Study at 123.
[20] ATSDR at 16.
[21] *Id.* at 48.
[22] *Id.*
[23] *Id.*
[24] *Id.* at 55.
[25] *Id.* at 73.
[26] Iowa Study at 123.
[27] ATSDR at 25.
[28] *Id.*

of exposure often result in chemical burns and swelling of the skin, eyes, and respiratory tract.[29] At such high levels, studies have found that the ammonia actually scorches those exposed from the inside out, causing extensive internal damage such as swelling and congestion of the lungs, the stripping off of the epithelial lining of the bronchial wall, and ammonia burns across the upper body, face, and mouth.[30]

Ammonia"s health impacts persist even as it undergoes chemical transformations in the ambient air. Once in the air ammonia reacts to form ammonium aerosols;[31] both ammonia and these aerosol particles can have devastating effects on cardiovascular and hematological systems. Various non-human studies show that exposure to high concentrations of these compounds can cause high blood pressure, elevated pulse, bradycardia,[32] and even cardiac arrest.[33]

Specific health effects of acute ammonia exposure incidents depend on several factors, but these ammonia inhalation and exposure studies and literature reviews together document a scientifically accepted correlation between exposure to airborne ammonia and adverse respiratory and other health effects. These studies also consistently report odor, irritation, cough, and other respiratory symptoms for some individuals exposed to ammonia concentrations of approximately 30 ppm even over short periods of time.

Research further indicates that which symptoms a person experiences and which parts of the respiratory tract are affected depend not only on the concentration of ammonia, but also on whether exposure is acute or chronic. Acute exposures to low levels of ammonia affect the upper respiratory tract, whereas exposure to higher concentrations over longer periods of time affect both the upper and lower respiratory tracts and the alveolar capillaries in the lungs.[34] At sufficiently high concentrations, ammonia will bypass the upper airways and directly affect the lungs, causing inflammation of the lower lungs and pulmonary edema, or swelling.[35]

Although less research exists documenting the health effects of chronic ammonia exposures than of acute exposures, ATSDR based its long-term exposure recommendation on a 12-year case study of occupational exposure, from which the agency derived a no observable adverse effect level (NOAEL) of 9.2 ppm.[36] This petition will discuss additional studies of health and welfare effects from long-term ammonia exposure near CAFOs.

In short, ammonia released into the air causes both acute health effects and chronic diseases. However, though ammonia may be reasonably anticipated to endanger public health, EPA currently does not regulate airborne ammonia to protect the health of the general public.

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[29] *Id.*
[30] *Id.*
[31] *Id.* at 34.
[32] Slow heart beat; *see* Mayo Clinic, Bradycardia at http://www.mayoclinic.com/health/bradycardia/ds00947.
[33] ATSDR at 52.
[34] *Id.*
[35] Iowa Study at 123.
[36] *Id.* at 40.

The only enforceable ammonia standards currently in effect apply exclusively to workers; but as this petition will establish, non-workers near CAFOs and other ammonia sources also require protection from unsafe ambient levels of ammonia. The NAAQS program provides the best mechanism for this protection.

ii. Ammonia is widely recognized as a health threat

Based on ammonia"s well-documented and life-threatening health effects, EPA, ATSDR, the Occupational Safety and Health Administration (OSHA), and the National Institute for Occupational Safety and Health (NIOSH) have taken steps to protect workers from dangerous exposures to ammonia and inform the public of the potential risks of exposure. Moreover, groups of experts have considered the health effects of ammonia from CAFOs in particular, and have recommended that EPA regulate ammonia under the CAA based on existing research. This section introduces several relevant health benchmarks, and discusses the merits and limitations of each with regard to assessing the health risk of ambient ammonia. It then discusses the Iowa Study of CAFO emissions and the Pew Commission report on industrial livestock production and their recommendations to protect communities from the health effects of ambient ammonia. This petition will analyze several studies of ammonia emissions from CAFOs, using these various existing and proposed health thresholds as indicators for the risk posed by current ammonia levels at the CAFO vent and in the ambient air.

a. Acute Exposures: EPA's Acute Exposure Guideline Levels

EPA has already adopted both short- and long-term ammonia heath guidelines. The first is a system of short-term pollution exposure limits, known as Acute Exposure Guideline Levels (AEGLs), established to guide response actions when people experience a rare – even "once-in-a-lifetime" – short-term, accidental exposure to a toxic chemical.[37] The National Advisory Committee reviewed relevant studies and data, then used these studies to establish threshold exposure limits "below which adverse health effects are not likely to occur."[38]

EPA divides the AEGLs into three levels: AEGL-1, the concentration above which the public, including susceptible individuals, could experience irritation or discomfort but no lasting effects; AEGL-2, the concentration above which the general public, including susceptible individuals, could experience permanent, serious adverse health effects and an inability to escape from the chemical threat; and AEGL-3, the concentration above which the general public, including susceptible individuals, could experience life-threatening adverse health effects or death.[39] EPA established several AEGL concentrations for each level, correlated with different exposure durations. The AEGL-1 for each of several acute-duration exposure times is 30 ppm,

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[37] EPA, Acute Exposure Guideline Level Program, http://www.epa.gov/oppt/aegl/index.htm (last visited Mar. 18, 2011).
[38] Ammonia AEGL Report at 4.
[39] *Id.* at 4-5.

indicating that after as few as ten minutes, individuals may experience temporary, but adverse, health effects from breathing 30 ppm ammonia.[40] The following chart shows EPA's AEGLs for ammonia.[41]

Ammonia 7664-41-7 (Final)					
ppm					
	10 min	30 min	60 min	4 hr	8 hr
AEGL 1	30	30	30	30	30
AEGL 2	220	220	160	110	110
AEGL 3	2,700	1,600	1,100	550	390

The AEGLs provide one of the most comprehensive and scientifically rigorous reviews of existing human and animal research on the effects of ammonia exposure. Moreover, these guidelines consider the health effects on high-risk populations, rather than considering only effects on worker health as some other agency standards do. The AEGLs also demonstrate that EPA already recognizes ammonia's short-term health effects, even at moderate concentrations. Consequently, these guidelines provide a strong foundation from which EPA can establish short-term NAAQS that will protect public health and welfare from short-term elevations in ambient ammonia levels from sources such as CAFOs.

Although the AEGLs provide EPA with a comprehensive review of scientific research with which to regulate, ammonia NAAQS must be more protective than the AEGLs. These levels are set to protect the public from a *once-in-a-lifetime* exposure to ammonia, while many rural citizens breathe elevated CAFO ammonia emissions for varying time periods on a frequent basis for years, or even decades. Thus, while the AEGLs provide a useful starting point for CAA regulation, they do not provide adequate ambient air quality standards.

b. Ambient Exposures: EPA's Reference Concentration and ATSDR's Minimal Risk Levels

EPA has also considered and assessed the chronic effects of ammonia inhalation, and established a Reference Concentration (RfC) of 0.14 ppm to indicate a safe level of ammonia to breathe over the long term. EPA derived the RfC from the results of a long-term worker exposure study, which it then adjusted with uncertainty factors to better protect sensitive individuals and account for the lack of a robust data set.[42] This chronic exposure RfC provides a useful starting point for EPA to use in establishing a one-year or other long-term ambient standard that will protect public health from continuous low-level ammonia emissions.

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[40] EPA, Acute Exposure Guideline Levels Ammonia Results, http://www.epa.gov/oppt/aegl/pubs/results88.htm (last visited Mar. 18, 2011).
[41] *Id.*
[42] ATSDR at 163.

As discussed above, ATSDR has also reviewed existing research on the effects of ammonia exposure on both humans and animals and has established health thresholds called Minimal Risk Levels (MRLs) for both acute and chronic inhalation exposure to ammonia.[43] Much like EPA"s RfC, in determining MRLs for different substances, ATSDR considered the most susceptible individual and estimated "the daily human exposure to a hazardous substance that is likely to be without appreciable risk of adverse noncancer health effects over a specified duration of exposure."[44] Thus, ATSDR established the MRLs to identify the level above which daily exposure to airborne ammonia, in the absence of other pollutants, poses a health risk.

Based on its review of all available ammonia exposure research, ATSDR set its acute MRL for ammonia at 1.7 ppm for inhalation exposure of 14 days or fewer,[45] and set the chronic MRL at 0.1 ppm for inhalation exposure of 365 days or more.[46] Both threshold MRLs provide relevant points of reference when determining whether a specific ambient ammonia concentration could create a public health hazard. As this petition will discuss, studies provide evidence that citizens may be exposed to ammonia levels that exceed the MRLs in areas near even a single large CAFO. Moreover, ATSDR has observed respiratory health impacts from a single livestock facility work shift exposure to 7.9 ppm ammonia, but to isolate the effects of ammonia ATSDR specifically excluded this research when establishing the MRLs.[47] EPA should instead account for the increased health effects from mixed-pollutant exposures when considering safe ambient ammonia levels.

Some of the studies referenced in this petition, such as the Iowa Study discussed below, use the ATSDR"s old chronic MRL of 0.3 ppm as the relevant ambient health threshold. As a result they may not conclude that observed ambient ammonia levels above 0.1 ppm pose a health threat. However, in 2004 ATSDR acknowledged that the study on which it had based the prior chronic MRL did not adequately represent all vulnerable populations and could not account for the lack of developmental and reproductive studies. To take this data gap into account, ATSDR used a modifying factor of three and adopted the current 0.1 ppm chronic MRL.[48] Thus, EPA should re-examine research conclusions based on the under-protective past MRL, with the new MRL in mind.

Between its own and ATSDR"s established health thresholds, EPA already has much of the research necessary to establish protective NAAQS for acute, intermediate, and long-term ammonia exposure. However, research focused on CAFO emissions – the source of the majority of ammonia emissions in the U.S, but also a source of hydrogen sulfide, particulates, and hundreds of volatile organic compounds – indicates that adequately protective standards must

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[43] ATSDR at 18-20.
[44] ATSDR, Minimal Risk Levels (MRLs) for Hazardous Substances, http://www.atsdr.cdc.gov/mrls/index.html (last visited Mar. 18, 2011).
[45] *Id.*
[46] *Id.* at 19.
[47] *Id.* at 18.
[48] *Id.* at 20.

also account for the additive or synergistic adverse health effects of multiple-pollutant exposures. EPA should consider multiple-pollutant effects when deciding whether and how to regulate ammonia under the CAA.

c. Worker Exposures: NIOSH's Recommended Exposure Limits and OSHA's Permissible Exposure Limit

The NIOSH, part of the Centers for Disease Control and Prevention, has established recommended exposure limits (RELs) for workers breathing ammonia pollution in the workplace. Similarly, OSHA has established a health standard for ammonia in the workplace. NIOSH recommends that employers should not expose workers to more than 25 ppm of ammonia averaged over a ten-hour period or 35 ppm averaged over a 15-minute period.[49] OSHA permissible exposure limits (PELs) are similar to NIOSH recommendations in that they are meant to protect workers. However, in the case of ammonia OSHA adopted a less stringent benchmark; its enforceable ammonia standard limits worker exposure to a maximum ammonia concentration of 50 ppm, averaged over an 8-hour time period.

NIOSH and OSHA based these exposure levels, unchanged since 1974, on a NIOSH literature review that included both human and animal ammonia exposure studies that were primarily conducted between the 1940s and mid-1960s.[50] This criteria document noted that at the time of publication, few or no studies on agricultural ammonia exposure existed.[51] When compared to ATSDR"s and the National Academy of Sciences" findings of health effects at low exposure levels, it becomes clear that NIOSH did not seek to avoid all adverse health impacts or ammonia irritation when recommending occupational exposure standards. Rather, the report sought to identify "exposure levels at which no employee will suffer impaired health or functional capacities or diminished life expectancy as a result of his work experience."[52] OSHA is not required to provide workers protection equal to that EPA must provide the public through its CAA authority.

The agencies recognized in 1989 that the OSHA PEL for ammonia did not adequately protect worker health and sought to adopt a more stringent PEL. The amended standard would have set a 15-minute short-term exposure level of 35 ppm through a "generic" rulemaking that covered more than 400 hazardous chemicals. However, the 11th Circuit vacated this rule on procedural grounds unrelated to the need for a more protective ammonia standard, holding that OSHA had failed to adequately support and explain each new standard in its record.[53] OSHA has not acted to strengthen the ammonia PEL since its rule was vacated. Thus, even OSHA has

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[49] NIOSH, Pocket Guide to Chemical Hazards, http://www.cdc.gov/niosh/npg/npgd0028.html (last visited Mar. 18, 2011).
[50] *Criteria for a Recommended Standard…Occupational Exposure to Ammonia*, HEW Publication No. (NIOSH) 74-136 (1974), *available at* http://www.cdc.gov/niosh/74-136.html (last visited Mar. 18, 2011).
[51] *Id.* at 60-62.
[52] *Id.* at 22.
[53] *See AFL-CIO v. OSHA*, 965 F.2d 962 (11th Cir., 1992).

recognized that ammonia creates a greater threat to worker health and safety than its current PEL reflects.

Though some of these health benchmarks are under-protective and were never intended to protect the general population from ammonia exposure, and none take multiple pollutant exposures into account,[54] each can help EPA interpret existing data on ammonia air emissions from stationary sources such as CAFOs and establish safe ambient standards for airborne ammonia. Because ATSDR and EPA's health thresholds address health threats to the general public from both acute and chronic ammonia exposure, they serve best to analyze monitoring of ambient air near residences and public places. Conversely, because the NIOSH and OSHA exposure levels address health threats over shorter periods of time and with only workers in mind, they can provide a frame of reference for monitoring data collected at the source, such as CAFO vents, but have little value in assessing the public health threat posed by ambient ammonia.

d. Iowa's Joint University CAFO Air Quality Study

At the request of then-Iowa Governor and current U.S. Secretary of Agriculture Tom Vilsack, Iowa State University and the University of Iowa completed a significant joint report (the Iowa Study) on air emissions from CAFOs in 2002.[55] The Iowa Study reviewed and analyzed peer-reviewed studies on various aspects of these emissions, including the volume and nature of CAFO air emissions, the toxicology of pollutants released from CAFOs, and the community health and social impacts of CAFO emissions. The state tasked the study group with answering specific questions about CAFO air emissions; among them, the study set out to answer: "[b]ased on an analysis of peer-reviewed, duplicated, legitimate, and published scientific research, what would you recommend as Iowa or National consensus standards for any proposed substances to be regulated as emissions from CFOs?"[56]

The Study's authors answered this question with a significant recommendation; based on their review of credible CAFO emissions research, they concluded that EPA should regulate certain substances released from CAFOs – namely ammonia, hydrogen sulfide, and odor – under the CAA NAAQS program.[57] Based on this emissions research, as well as state ammonia standards, ATSDR and EPA recommendations, and research on the additive or synergistic effects of multiple pollutants in CAFO emissions, the Study recommends that protective

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[54] Regardless whether EPA has considered additive effects of multiple-pollutant exposures in establishing NAAQS for criteria pollutants to date, the CAA requires EPA to list criteria pollutants if they "cause *or contribute to*" pollution that may endanger public health. CAA § 108(a)(1)(A). Thus EPA should consider the health effect of CAFO emissions as a whole when determining a safe level of ambient ammonia exposure.
[55] IOWA STATE UNIV. & UNIV. OF IOWA STUDY GROUP, IOWA CONCENTRATED ANIMAL FEEDING OPERATIONS AIR QUALITY STUDY (2002) at 123 [hereinafter Iowa Study], *available at* http://www.public-health.uiowa.edu/ehsrc/CAFOstudy.htm (last visited Mar. 18, 2011).
[56] Iowa Study at 8. The study uses the Iowa regulatory term "CFO" interchangeably with CAFO. *Id.* at 5.
[57] *Id.* at 8.

ammonia one-hour averages should not exceed 500 ppb (0.5 ppm) at the CAFO property line or 150 ppb (0.15 ppm) in residential and public use areas.[58]

While this ambient level very nearly matches EPA"s RfC for ammonia, the Study recommends 0.15 ppm as a one-hour average limit, rather than a long-term limit, due to the complex effects of breathing numerous pollutants simultaneously. Thus, as a result of studying CAFO emissions specifically, and not simply examining ammonia gas in isolation, the Iowa Study emphasized the most typical route for ambient ammonia exposure and its researchers proposed a far more protective standard than any federal agency to date. EPA should consider the Iowa Study"s peer-reviewed recommendations and findings when reviewing this petition.

e. Pew Commission Report on Industrial Farm Animal Production

In 2008, the Pew Commission on Industrial Farm Animal Production (PCIFAP), an independent project of Johns Hopkins Bloomberg School of Public Health and the Pew Charitable Trusts, released a similarly comprehensive report on the impacts of industrial livestock production. This report – "Putting Meat on the Table: Industrial Farm Animal Production in America"[59] (the Pew Commission Report) – compiled the published literature on a wide range of CAFO impacts, including air emissions and their effects on public health.

Among its recommendations, the Pew Commission Report concluded that "EPA should develop a standardized approach for regulating air pollution" from CAFOs under the CAA.[60] The Report also noted the complicated effects of mixed air pollutants found in CAFO emissions and the importance of considering these mixed exposures.[61] The Pew Commission Report analyzed the most current and comprehensive CAFO emissions and health research from across the globe, and EPA should consider its findings and recommendations when reviewing this petition.

The Pew and Iowa reports fill large information gaps left by federal agencies that have assessed ammonia"s health impacts, both by focusing on ammonia"s primary source – CAFOs – and by considering ammonia"s effects when mixed with other hazardous pollutants. Moreover, both reports conclude that EPA should use the CAA to address the public health threats posed by ammonia and other CAFO emissions.

Taken together these standards, guidelines, and expert recommendations demonstrate that ammonia is a recognized toxic air pollutant that requires CAA regulation to protect the public

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[58] *Id.* at 176.
[59] PEW COMMISSION ON INDUSTRIAL FARM ANIMAL PRODUCTION, PUTTING MEAT ON THE TABLE: INDUSTRIAL FARM ANIMAL PRODUCTION IN AMERICA (2008) [hereinafter Pew Commission Report], *available at* http://www.ncifap.org/ (last visited Mar. 18, 2011).
[60] *Id.* at 75.
[61] *Id.* at 69.

health. Even at low levels, acute and chronic exposures to ammonia gas pose significant health threats, and EPA should use this collective evidence base to establish protective NAAQS.

iii. EPA should regulate ammonia under the CAA because unsafe ambient levels of ammonia currently threaten public health

EPA should regulate ammonia under the Clean Air Act because studies show that CAFOs emit ammonia into the air at levels exceeding EPA and ATSDR benchmarks in the ambient air and exceeding NIOSH and OSHA benchmarks at the source, thereby threatening public health in certain areas. Though a limited number of peer-reviewed emissions studies exist, those available found dangerous ammonia concentrations that require regulation to protect nearby residents.

a. CAFO emissions generate ambient ammonia concentrations that exceed EPA's RfC and ATSDR's MRLs

EPA should regulate ambient ammonia because CAFOs emissions give rise to ambient ammonia concentrations that exceed EPA"s chronic exposure RfC and ATSDR"s acute and chronic MRLs, and that therefore may reasonably be anticipated to endanger public health. The agencies derived these benchmarks to identify the threshold level below which long-term exposure is thought to be safe, but above which uncertainty remains. Thus, when ambient ammonia levels exceed these thresholds, those exposed face a possible risk of adverse health effects. This threat can most appropriately be addressed through the NAAQS program.

To date, the most significant studies of ambient ammonia levels from CAFO emissions showed that some CAFOs do in fact cause unsafe ambient ammonia levels, even at significant distances from the facility. While researchers have conducted numerous studies of the health symptoms experienced due to CAFO emissions, and EPA has studied ammonia levels at the CAFO vent, very few studies have actually measured ammonia levels in the ambient air. Two significant studies discussed in this petition are ATSDR"s study of a Missouri hog CAFO and the University of Georgia"s study of a Georgia broiler CAFO.

<u>Missouri Hog CAFO Study</u>

In August of 2003, the ATSDR and the Missouri Department of Health and Senior Services (DHSS) released a CAFO ammonia emissions Health Consultation, reporting the results of an ammonia Exposure Investigation (EI) conducted by ATSDR and DHSS in a community near a large swine CAFO.[62] The agencies conducted the study in response to complaints by

[62] U.S. Department of Health and Human Services, Public Health Service, Agency for Toxic Substances and Disease Registry, Division of Health Assessment and Consultation, prepared by the Missouri Department of Health and Senior Services Section for Environmental Public Health, Health Consultation: Final Report on Exposure Investigation Findings, Valley View Concentrated Animal Feeding Operations (Aliases: Concentrated Animal Feeding Operations and Confined Animal Feeding Operations), Green Castle, Sullivan County, Missouri (2003) [hereinafter Missouri Health Consultation].

residents that the air emissions from the CAFO were adversely affecting respiratory health and quality of life.[63]

The investigation focused on ammonia emissions downwind from the Premium Standard Farms Valley View swine CAFO, which at the time had a permit to house 123,648 hogs.[64] Investigators sampled ammonia levels at 6 houses, which they selected based on the proximity of the house to the CAFO, the location of the house downwind from the CAFO, and the willingness of the homeowner to participate in the investigation.[65] The investigators monitored one outdoor and one indoor location at each house.[66] They placed sampling equipment at breathing zone height and monitored each location continuously for no less than 3 consecutive days during the 12 day study.[67] EPA and the Missouri Department of Natural Resources (MDNR) took concurrent samples at the same outside locations, as well as 12-hour time-weighted averages inside the homes, to compare with ATSDR"s results.[68] The study measured ammonia concentration in ppm and reported results as 24-hour maximum discrete measurements (each monitor"s highest measurement each day) and 24-hour averages.[69] ATSDR also surveyed 77 homes within a one-mile radius, and 39 homes between one and two miles from the CAFO, to evaluate residents" perceptions of odors and health symptoms.[70]

In the Health Consultation, ATSDR compared monitoring results with its former acute and chronic MRLs. This discussion will instead use the current MRLs, which ATSDR revised in 2004, as more pertinent benchmarks for possible health impacts.[71] Monitoring from all six of the studied houses resulted in ammonia levels of concern. 41 out of 46 of the study"s maximum discrete measurements, which were reported daily at each house both inside and outside, exceeded the chronic MRL of 0.1 ppm.[72] Daily maximum samples from inside houses 1032 and 1110 also exceeded the acute MRL of 1.7 ppm. Monitors in house 1032 recorded maximum discrete measurements of approximately 4.3 ppm, 2.0 ppm, and 2.0 ppm for Day 1, Day 2, and Day 3 respectively.[73] At 1.9 ppm, the maximum discrete measurement taken inside of house 1110 on Day 1 also exceeded the acute MRL.[74]

The results from the 24-hour averages also give cause for concern. While this study lasted only three days at each home, and ATSDR"s chronic MRL sets a health effects benchmark for exposure exceeding a year, 24-hour averages most closely indicate the amount of ammonia

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[63] Missouri Health Consultation at 1.
[64] *Id.* at 2.
[65] *Id.* at 3.
[66] *Id.*
[67] *Id.*
[68] *Id.* at 2-3.
[69] *Id.* at 5-6.
[70] *Id.* at 3.
[71] *See* discussion *supra* Section V.B.1.ii.b.
[72] Missouri Health Consultation at 3.
[73] *Id.* at 6.
[74] *Id.*

these residents breathe on a daily basis. Thus, these averages can most meaningfully be compared with the chronic MRL and the RfC. All of the average measurements inside of houses 1028, 1032, and 1110 during the three-day period exceeded the chronic MRL.[75] In the absence of a longer-term study, all evidence indicates that residents downwind from large CAFOs may suffer health impacts from chronic low-level ammonia exposure.

Three factors in this study indicate that it under-represents the ammonia concentrations and risk faced by this and other rural communities. First, ATSDR acknowledges that the "downwind" homes studied were actually only downwind of the CAFO during approximately 10 percent of the monitoring period, and the Health Consultation also points out that ammonia concentrations were "significantly higher when wind was directed from the site to the monitor."[76] Though Valley View houses an enormous number of hogs, these residents experienced direct emissions only a small percent of the time and lived as far as a mile from the site; communities with CAFOs on multiple sides and that have CAFOs very nearby will likely face elevated ammonia concentrations more often. Second, ATSDR states that land application of manure took place during less than half of the monitoring period, and thus "the maximum period of exposure is not believed to have been attained during this EI."[77] Third, as EPA pointed out in its comments on the draft consultation, ammonia levels increase as wind speed decreases. The study did not take place during the season with lowest wind speeds, thus residents likely breathe higher ambient concentrations during much of the year.[78]

These limitations on the study, limits on the general applicability of ATSDR"s MRLs, and ATSDR"s use of a less protective and since-replaced chronic MRL in its study, likely contributed to the Health Consultation"s conclusion that no apparent public health hazard existed near the houses at the time of the EI. However, as noted previously, EPA commented on the draft report and came to the *opposite* conclusion. In a memorandum written by EPA"s Stationary Source Enforcement Branch of the Air Enforcement Division to the Director of the Missouri DHSS, EPA weighed in to "better inform the conclusions in the final report."[79]

EPA"s memo acknowledged the complexity of CAFO air emissions, and contrasted the Valley View study with the 2002 Iowa Study.[80] EPA further suggested that the Iowa recommendations apply a more comprehensive analysis than the ATSDR MRLs alone because the Iowa Study considered numerous studies in addition to those relied on by ATSDR, including studies of the aggregate effect that mixed exposures can have on public health.[81] Consequently,

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[75] *Id.* at 5.
[76] *Id.* at 8.
[77] *Id.*
[78] EPA, Office of Enforcement and Compliance Assurance, Memorandum from Mario Jorquera to Scott Clardy, Comments on the Valley View Health Consultation, (Dec. 2002) [Hereinafter EPA Memo].
[79] EPA Memo at 1.
[80] *See* discussion *supra* Section V.B.1.ii.d.
[81] EPA Memo at 2. Note that this letter"s discussion of the MRLs refers to the MRLs established in the 1990 ATSDR toxicological profile for ammonia, which predated the more protective chronic MRL adopted in 2004.

the memo emphasized the fact that, "during the Valley View field investigation, the [ATSDR] monitors recorded 60 occurrences of one-hour ammonia concentrations ranging from 153 ppb to 875 ppb, well in excess of the Iowa Study's recommended limit."[82] EPA pointed out that house 1032 was exposed to 10 of these high readings over a 20 hour period and that, in fact, every house studied reported elevated exposures.[83] As a result, EPA found that "the conclusion could be drawn that a *public health hazard* did exist at the time the Valley View data was acquired"[84] (emphasis in original).

EPA's emphasis on the one-hour concentrations measured outside and inside of the studied homes, as well as its adoption of the Iowa Study's far more protective recommendations, demonstrates that the agency understands ammonia's short-term, localized, and additive health effects. The results of the Valley View Health Consultation indicate potential health threats from both short-term and long-term exposure to CAFO ammonia emissions.

EPA should consider the results of the Missouri health consultation and draw on the findings in its own memo, which concluded that ambient ammonia emissions from a single Premium Standard Farms hog CAFO may have created a public health hazard for residents as far as a mile away. The fact that the Valley View CAFO exposed neighbors to ammonia concentrations above the ammonia MRLs and above the recommended exposure limit of the Iowa Report weighs heavily in favor of creating ambient standards for this pollutant, particularly in light of EPA's analysis of multiple pollutant effects, spikes in emissions at certain times of year, the effect of wind directions, and the scientific foundations of the Iowa Report.

Georgia Broiler CAFO Study

In 2009, researchers from the University of Georgia, Athens, released the results of the first study of measured ammonia concentrations in the ambient air near poultry houses.[85] The researchers compared their data with OSHA's and EPA's odor threshold values, as opposed to the health-based MRLs or RfC, which limits the value of the study's conclusions. However, when compared to the more relevant MRLs, RfC, and the Iowa Study's recommendations, the ammonia data collected indicate potential adverse health effects near large poultry facilities.

The researchers set out to measure ammonia concentrations at varying distances from one broiler operation, and to determine the effects of wind speed and direction on ambient ammonia levels.[86] The broiler CAFO studied had four houses, each with approximately 23,500 birds.[87] Monitors measured ammonia concentrations once per minute at various distances from the

[82] *Id.* at 2.
[83] *Id.*
[84] *Id.*
[85] B. D. Fairchild et. al, *Ammonia concentrations downstream of broiler operations*, 18 J. Appl. Poultry Res. 630 (2009), *available at* http://japr.fass.org/cgi/content/full/18/3/630 (last visited Mar. 18, 2011).
[86] *Id.* at 631.
[87] *Id.* at 631-32.

ventilation fans, from 100 to 500 feet, and reported results as 15-minute averages. Measurements were taken over two monitoring periods: a three-week period with measurements at 100-, 200-, and 300-foot distances; and a one-week period with measurements at 100-, 300-, and 500-foot distances. The latter study period included the farther-away monitoring location to account for increased emissions as the birds grew larger, producing more emissions and necessitating higher ventilation rates that create greater total air flow.[88]

Unsurprisingly, the highest ammonia concentrations were strongly correlated with proximity to the broiler houses as well as with times when the monitors were directly downwind of the ventilation fans. The monitors also recorded elevated concentrations during times of low wind speed.[89] After averaging 1,135 15-minute averages over the four-week study, the ammonia concentration at 100 feet from the facility was approximately 0.5 ppm for each study period, and the overall average at 300 feet exceeded 0.3 ppm for each study period. The final week of monitoring recorded an overall average concentration of approximately 0.25 ppm at 500 feet.[90]

While the researchers failed to discuss potential health impacts of their findings, instead comparing the data to EPA's odor threshold limit of between 5 and 50 ppm, all of these overall averages exceed the chronic MRL, the RfC, and the Iowa Study's recommended one-hour average limit – some by several times. Moreover, during the study the maximum 15-minute averages exceeded 2 ppm at all but the 500-foot monitor.[91] This study indicates that just one broiler CAFO with fewer than 100,000 birds can cause ambient ammonia levels to exceed chronic and acute health exposure limits, despite variations in wind direction and ventilation practices. As far as the petitioners could determine no published studies to date have measured ambient ammonia concentrations near multiple poultry CAFOs, but multiple CAFOs would increase total ammonia emissions as well as the amount of time that a given residence or public use location would be downwind from emission vents.

The Missouri and Georgia studies both demonstrate that just one CAFO can produce enough ammonia emissions to exceed chronic and acute health thresholds, even without taking the heightened effects of multiple-pollutant exposures into account. Citizens living near one or more large CAFOs require protection from this demonstrated public health threat.

b. The results of EPA's National Air Emissions Monitoring Study show that ammonia emissions may significantly exceed NIOSH and OSHA safety thresholds

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[88] *Id.* at 632-33.
[89] *Id.* at 635-37.
[90] *Id.* at 633.
[91] *Id.* at 635.

EPA has recognized the need to study and potentially regulate airborne ammonia from CAFOs, the leading source of U.S. ammonia emissions. From 2007 to 2009 EPA contracted with Purdue University to conduct the National Air Emissions Monitoring Study (NAEMS), which measured emissions of airborne ammonia and other pollutants at 24 CAFO sites in the United States.[92] EPA is currently reviewing the study results to establish emission estimating methodologies for CAFO air emissions.[93] A preliminary assessment of the results from the study, which Purdue presented as a series of 24-hour average values compiled from minute-by-minute monitoring results, shows that most of the monitored CAFOs emit levels of ammonia that exceed OSHA"s PEL and both NIOSH RELs at the emission vent on certain days during the study, and that ammonia emissions fluctuate significantly on a daily and seasonal basis.[94]

The NAEMS study measured ammonia emissions at the vent and at inlet points adjacent to confinement buildings, rather than in the ambient air at a distance from the CAFOs, because the study seeks to establish emissions rates for different types of CAFOs and thereby enable estimates of total CAFO emissions. Due to the nature of the NAEMS data, the petitioners compared these ammonia concentrations with NIOSH and OSHA worker health exposure levels, rather than ATSDR"s or EPA"s exposure recommendations. At-the-vent measures relate most directly to worker health benchmarks, while the ATSDR and EPA health thresholds, intended for the general population, will provide a superior frame of reference for establishing protective NAAQS.

As previously discussed, NIOSH recommends a worker exposure limit of 25 ppm of ammonia averaged over a ten-hour period and 35 ppm averaged over a 15-minute period,[95] while OSHA limits worker exposure to a maximum average ammonia concentration of 50 ppm over an 8-hour time period. Emissions approaching these benchmarks threaten the health and well-being of CAFO workers and also of nearby residents who breathe lower levels of ambient ammonia, but cannot leave the polluted air behind at the end of the work day.

To meaningfully incorporate data measuring emissions at the source into a consideration of whether likely public health threats exist from ammonia in the ambient air, EPA should consider several factors. First, the general public includes populations significantly more sensitive to ammonia than most workers, and thus even if they were protective of worker health, the NIOSH and OSHA standards would not protect public health even for short-term exposures.

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[92] EPA, Air Emissions Monitoring Study, http://www.epa.gov/oecaagct/airmonitoringstudy.html (last visited Mar. 18, 2011); Purdue University, National Air Emissions Monitoring Study Frequently Asked Questions, https://engineering.purdue.edu/~odor/NAEMS/faqs.htm (last visited Mar. 18, 2011). EPA will analyze the results of a Tyson monitoring study in Kentucky as a 25th site when reviewing the NAEMS data. *See* http://www.epa.gov/airquality/agmonitoring/data.html (last visited Mar. 18, 2011).
[93] *See* EPA, Agriculture – Air Monitoring, http://www.epa.gov/airquality/agmonitoring/.
[94] *See* Environmental Integrity Project, *Hazardous Emissions from Factory Farms*, (March 2011), *available at* http://www.environmentalintegrity.org/03_09_2011.php [hereinafter Hazardous Emissions from Factory Farms] (last visited Mar. 18, 2011).
[95] NIOSH, Pocket Guide to Hazardous Chemicals, http://www.cdc.gov/niosh/npg/npgd0028.html.

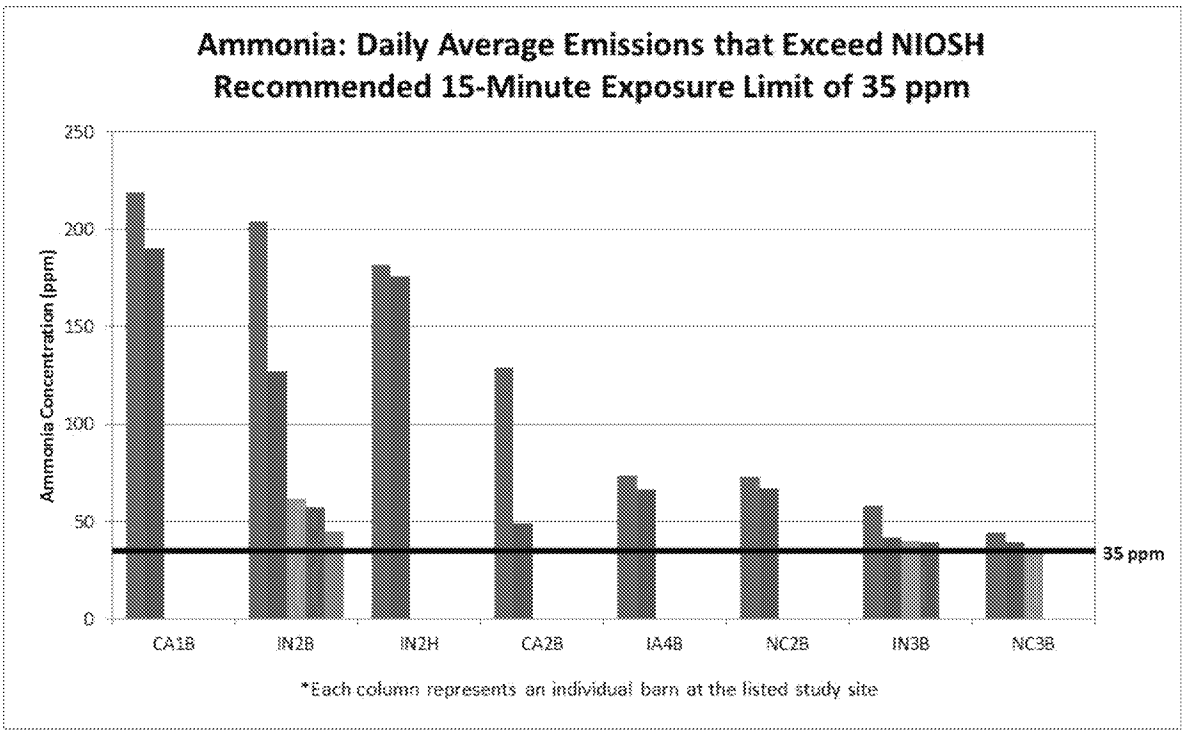
Second, NIOSH and OSHA standards do not consider health effects resulting from continuous intermediate or long-term exposures. Third, the NAEMS data reflect only emissions from a certain part of a CAFO, such as confinement buildings, rather than all emissions sources at or near the site. Finally, many areas contain numerous CAFOs whose emissions mix in the area"s ambient air, and consequently one cannot make the assumption that ambient ammonia levels will dissipate to safe levels near the source. Whether emissions that exceed NIOSH recommendations or OSHA standards at the vent will also exceed levels that may cause adverse effects – either alone or in combination with other CAFO emissions – and thus may reasonably be anticipated to endanger public health, will vary on a site-to-site basis.

On March 9, 2011, EIP released a report analyzing the data for the 15 confinement sites in NAEMS,[96] which included comparisons of monitoring results with the NIOSH 15-minute REL of 35 ppm. The daily averages can also easily be compared to the 10-hour REL of 25 ppm and the OSHA 8-hour PEL of 50 ppm.[97] Preliminary results from the NAEMS study suggest that CAFO emissions at certain sites commonly exceed both of the NIOSH RELs and even OSHA"s significantly under-protective 8-hour standard. In fact, 7 of 15 sites had entire days averaging above the OSHA standard, 9 of 15 sites had entire days averaging above the NIOSH 10-hour standard, and as shown below, 8 of 15 sites had entire days averaging above the NIOSH 15-minute standard.[98]

[96] Hazardous Emissions from Factory Farms, supra note 94. The confinement building monitoring sites reviewed in EIP"s report are CA1B, CA2B, CA5B, IA4B, IN2B, IN2H, IN3B, IN5B, NC2B, NC3B, NC4B, NY5B, OK4B, WA5B, and WI5B.

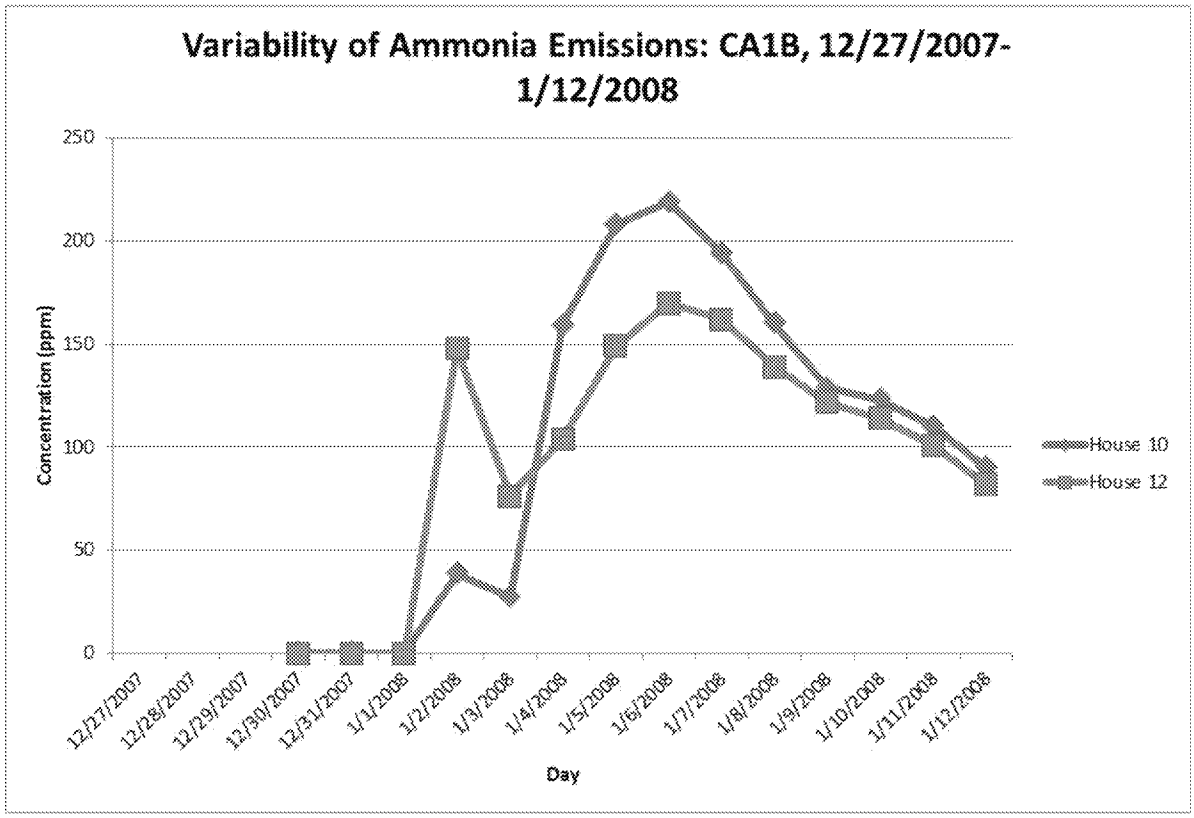
[97] EIP initially sought to compare averages from the monitoring study to the NIOSH RELs and the OSHA PEL by determining the number of 15-minute, 10-hour, and 8-hour exceedances, respectively. However, due to the unavailability of the raw data from the second year of the study, EIP was unable to compile these averages and instead simply identified 24-hour periods during which emissions exceeded the standards. As a result, EIP was also unable to identify very short-term spikes in emissions that may have taken place.

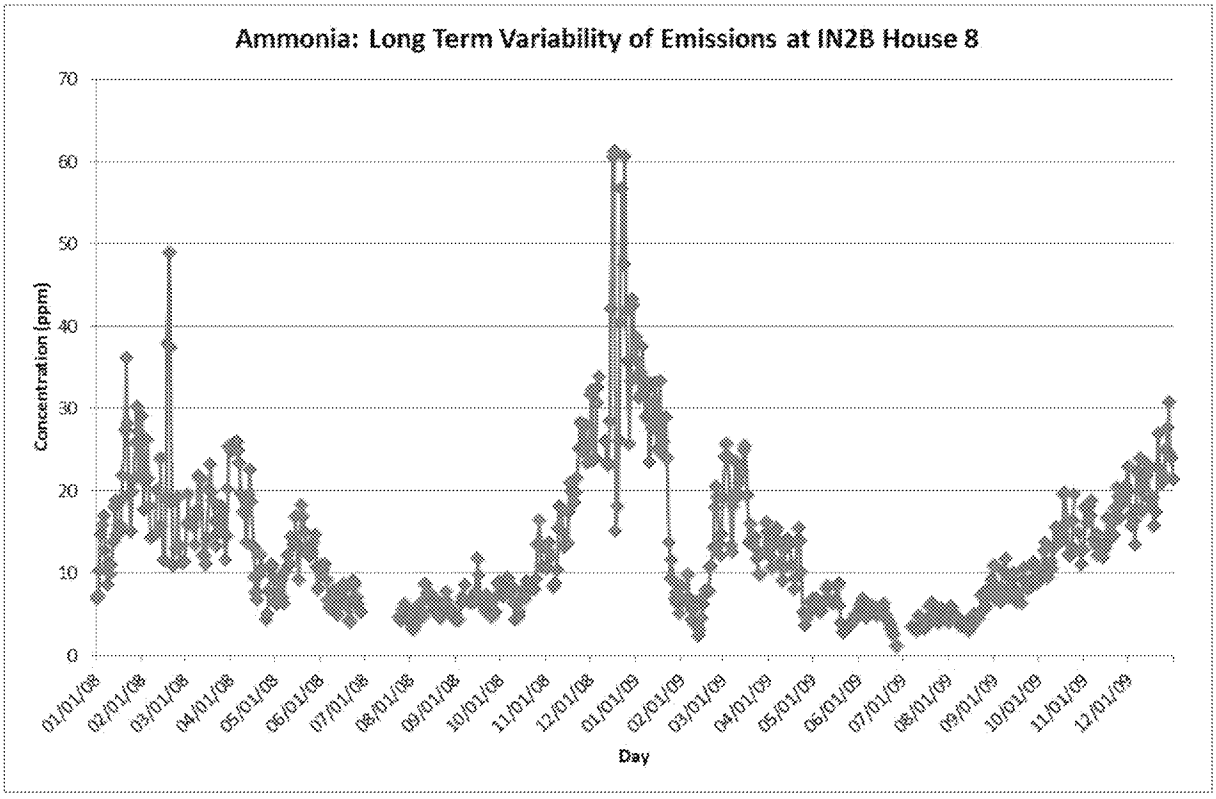
[98] *See* Summary Reports at http://www.epa.gov/airquality/agmonitoring/ and Hazardous Emissions from Factory Farms at 15-16.



In addition to finding numerous exceedances of these time-weighted averages, EIP found that ammonia emissions vary significantly over days and seasons.[99] The following charts, derived from NAEMS data for a California broiler chicken site and an Indiana layer hen site, show both high average concentrations of ammonia on-site and large fluctuations in emissions.[100]

[99] *See* Hazardous Emissions from Factory Farms at 13-15.
[100] *Id.* at 15.


Variability of Ammonia Emissions: CA1B, 12/27/2007-1/12/2008
Concentration (ppm)
250
200
150
100
50
0
12/27/2007
12/28/2007
12/29/2007
12/30/2007
12/31/2007
1/1/2008
1/2/2008
1/3/2008
1/4/2008
1/5/2008
1/6/2008
1/7/2008
1/8/2008
1/9/2008
1/10/2008
1/11/2008
1/12/2008
Day
House 10
House 12


Ammonia: Long Term Variability of Emissions at IN2B House 8
Concentration (ppm)
70
60
50
40
30
20
10
0
01/01/08
02/01/08
03/01/08
04/01/08
05/01/08
06/01/08
07/01/08
08/01/08
09/01/08
10/01/08
11/01/08
12/01/08
01/01/09
02/01/09
03/01/09
04/01/09
05/01/09
06/01/09
07/01/09
08/01/09
09/01/09
10/01/09
11/01/09
12/01/09
Day

This initial assessment suggests that EPA"s representative CAFOs emit ammonia at levels significantly above worker health benchmarks. The petitioners urge EPA to promptly complete its independent review of Purdue"s study and the NAEMS data, and establish emission estimating methodologies that will enable EPA to accurately inventory CAFO ammonia emissions nationwide.

Although these at-the-vent measures cannot be directly translated into ambient ammonia levels, the NAEMS study"s findings still bear on EPA"s consideration of ammonia"s public health impacts. As this petition discusses in the following section, because many regions and communities contain high concentrations of CAFO facilities, EPA cannot assume that at-the-vent measures do not affect ambient ammonia levels. Moreover, because the NAEMS data show that CAFO ammonia emissions are not stable in quantity and rate, but rather spike to high levels for short durations and vary significantly throughout the year, EPA cannot discount at-the-vent measures under the assumption that all emissions will dissipate to safe levels before impacting nearby residents. EPA should consider the NAEMS data when assessing the public health threat of ambient ammonia from CAFOs.

c. Ammonia in CAFO emissions contributes to documented adverse health impacts on nearby residents

Studies of public health in communities near CAFOs indicate that air emissions from these operations, including ammonia emissions, adversely affect respiratory health of residents breathing ambient air near CAFOs. Although these studies examine the health effect of combined air pollutants from livestock operations, rather than attempting to isolate the effects of ammonia emissions, the CAA requires EPA to list as criteria pollutants those pollutants that "*contribute to* air pollution which may reasonably be anticipated to endanger public health" (emphasis added) § 108(a)(1)(A). Ammonia is a known toxin and respiratory irritant emitted by CAFOs in vast quantities, and therefore clearly "contributes to" the air pollution causing known health impacts near these facilities.

The 2002 Iowa Study reviewed research on both occupational and community exposures to CAFO air emissions and their documented health impacts. Though occupational exposures have been more extensively researched, the Study authors found "experimental and epidemiological evidence that very low levels of exposures to ammonia…may result in adverse health effects among healthy volunteers and community residents."[101] Despite the relatively small number of peer-reviewed studies of community health impacts that existed at the time, the Iowa Study concluded that the research base was sufficient to "support a conclusion that CAFO air emissions constitute a public health hazard."[102]

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[101] Iowa Study at 138.
[102] *Id.*

One sociological study considered by the Iowa Study authors involved a survey of 18 Iowa residents who lived within 2 miles from a 4,000 head sow confinement operation.[103] The study compared self-reported answers from the hog CAFO neighbors with those of a control group that did not live near significant livestock production,[104] and separated health impacts into four categories of symptoms commonly experienced by CAFO workers: 1) cough, sputum, shortness of breath, chest tightness, and wheezing; 2) dizziness, weakness, fainting, and nausea; 3) plugged ears and headaches; 4) scratchy throat, runny nose, and burning eyes.[105] The study found an increase in all four groups of symptoms among residents in the hog CAFO community.[106]

Another study considered both health effects and quality of life impacts of living near CAFOs. Researchers interviewed 155 residents from three North Carolina communities: one near two industrial cattle facilities, one near a 6,000 head hog CAFO, and one without any CAFOs nearby.[107] The study asked questions about rural health, rather than the livestock operations, to avoid bias. Residents near the hog CAFO reported higher rates of several respiratory and other symptoms compared to the control group, including headaches, coughing, sore throat, burning eyes, diarrhea, and runny nose.[108]

New research further supports the Iowa Study"s findings. In March 2011, Schinasi, et al. published an epidemiological study correlating air pollution from hog CAFOs in North Carolina with self-reported health effects among community residents.[109] The study examined associations between monitored air pollutants and physical symptoms among 16 communities living within 1.5 miles of hog operations.[110] Although monitored pollutants did not include ammonia, participants also reported overall odor levels. The researchers found that "[i]rritation symptoms were elevated in association with odor"[111] and concluded that "pollutants near hog operations cause acute physical symptoms, particularly upper respiratory symptoms and irritation of the nose and eyes."[112]

The Pew Commission report also reviewed research on the public health effects of CAFOs, and similarly found that living in close proximity to CAFOs has documented adverse health effects. In particular, studies have shown respiratory health impacts from CAFO air

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[103] Thu et al., *A Control Study of the Physical and Mental Health of Residents Living Near a Large-Scale Swine Operation*, 3 J. of Agric. Safety and Health (1997).
[104] *Id.*
[105] *Id.*
[106] *Id.* Cluster 4 showed a slight prevalence in the hog community (with the exception of the "other" symptoms in cluster 4, which did not show a difference between the two communities studied).
[107] Steve Wing and Susanne Wolf, *Intensive Livestock Operations, Health and Quality of Life Among Eastern North Carolina Residents*, 108 Envt'l Health Perspectives (March 2000).
[108] *Id.* at 237.
[109] Schinasi, et al., *Air Pollution, Lung Function, and Physical Symptoms in Communities Near Concentrated Swine Feeding Operations*, 22 Epidemiology 2 (March 2011) [hereinafter Schinasi].
[110] *Id.* at 1.
[111] *Id.* at 5.
[112] *Id.* at 7.

emissions; primary respiratory effects included increased incidence of asthma among both children and adults. The Commission identified four "large epidemiological studies" that found "strong and consistent" links between CAFO pollution and asthma,[113] concluding that communities near CAFOs "are subject to air emissions that, although lower in concentration [than worker exposures], may significantly affect certain segments of the population."[114]

A 2005 study simulated the health effects of short-term exposure to hog CAFO emissions, by diluting hog CAFO air and exposing 24 healthy adults (12 male, 12 female) for one hour at a time on two separate occasions.[115] The researchers exposed a control group of 24 healthy adults to clean air for the same time period. The study measured objective health indicators, such as blood pressure, and participants also self-reported symptoms such as headaches and nausea and completed a Profile of Mood States survey.[116] The diluted hog confinement air had an ammonia concentration of 817 ppb (0.817 ppm)[117] – well below levels observed in the ambient air near some CAFOs, yet several times the 150 ppb one-hour standard recommended in the Iowa Study. After just an hour of exposure, those exposed to the hog confinement air were four times as likely to report headaches, six times more likely to report eye irritation, and nearly eight times as likely to report nausea than the control group.[118]

Another recent study compared nation-wide, county-level data on infant mortality rates and causes with geographic shifts in the livestock industry over two decades, in order to assess the impacts of living in proximity to livestock on infant mortality and the probable mechanisms for any impact observed.[119] After controlling for numerous variables and potential sources of bias, the author found that "a 100,000 animal unit increase [at the county level] corresponds to 123 more infant deaths per 100,000 births," with about 80% of these occurring during first 28 days of life.[120] Given the robustness of the data set, this demonstrates a "statistically significant correlation between livestock and infant death."[121] Of these mortalities, only respiratory and perinatal causes of death were affected, "suggesting an air pollution mechanism."[122] Of the many constituents of livestock air emissions, the study cites ammonia and hydrogen sulfide as

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[113] Pew Commission Report at 17.
[114] *Id.*
[115] Susan S. Schiffman et al., *Symptomatic Effects of Exposure to Diluted Air Sampled from a Swine Confinement Atmosphere on Healthy Human Subjects*, 113 Envt'l Health Perspectives 5 (May 2005).
[116] *Id.* at 568-70.
[117] *Id.* at 568.
[118] *Id.* at 573.
[119] S. Sneeringer, *Does Animal Feeding Operation Pollution Hurt Public Health? A National Longitudinal Study of Health Externalities Identified by Geographic Shifts in Livestock Production*, 91 Amer. J. of Agric. Econ. 1 (Feb. 2009).
[120] *Id.* at 129.
[121] *Id.*
[122] *Id.* at 125.

the "main gases in question," because both have been linked to respiratory infections and distress in infants, perinatal disorders, and spontaneous abortion.[123]

d. CAFOs emit vast quantities of ammonia and are often concentrated geographically

i. CAFOs emit vast quantities of ammonia

EPA should regulate ambient ammonia because estimated CAFO ammonia emission rates indicate that these facilities release vast quantities of ammonia into the ambient air, creating a heightened health threat to communities near numerous and/or very large CAFOs. CAFOs are leading contributors to the nation"s ammonia inventory; by one EPA estimate livestock account for approximately 80 percent of total emissions.[124] CAFOs also emit a disproportionately large share of the ammonia in certain states and communities. One striking example is Threemile Canyon dairy farm near Boardman, Oregon, which reported ammonia emissions as high as 15,500 pounds per day in 2005 – more than the nation"s number one manufacturing source of the pollutant.[125] Two studies – the Tyson Broiler Report and the Purdue NAEMS Layer Site study – measured the emission rates of ammonia released from broiler houses and layer barns, respectively. EIP used these emission rates to roughly estimate poultry CAFO ammonia emissions on a much broader scale, and found that poultry CAFOs in several states release an overwhelming majority of those states" ammonia emissions.

In May 2007, Iowa State University and the University of Kentucky released the "Tyson Broiler Ammonia Emission Monitoring Project: Final Report."[126] The report, which Tyson agreed to participate in pursuant to a settlement with the Sierra Club,[127] summarized a study in which university researchers measured ammonia emissions from two broiler houses in Western Kentucky with Mobile Air Emissions Monitoring Units (MAEMUs) attached to each house.[128] Each house had a series of six flocks of broiler chickens, with growing periods of just over 50 days each and several days in between flocks, during the approximately 13-month continuous study.

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[123] *Id.* at 126.
[124] MICHIEL R.J. DOORN ET AL., EPA, REVIEW OF EMISSIONS FACTORS AND METHODOLOGIES TO ESTIMATE AMMONIA EMISSIONS FROM ANIMAL WASTE HANDLING 1 (2002), *available at* http://www.epa.gov/nrmrl/pubs/600r02017/600sr02017.pdf (last visited Mar. 18, 2011).
[125] Michele M. Merkel, Senior Counsel, Envtl. Integrity Project, N.Y. State Bar Association presentation at Albany Law School: The Use of CERCLA to Address Agricultural Pollution, at 1 (Sept. 15, 2006), *available at* http://www.environmentalintegrity.org/pdf/publications/The_Use_Cercla.pdf (last visited Mar. 18, 2011).
[126] Iowa State University and the University of Kentucky, *Tyson Broiler Ammonia Emission Monitoring Project: Final Report*, p. 1-34 (May 1 2007) [hereinafter Tyson Broiler Report].
[127] *See* Sierra Club, *Grassroots Stories*, http://www.sierraclub.org/grassroots/stories/00027.asp (last visited Mar. 18, 2011).
[128] Tyson Broiler Report at 2.

The MAEMUs measured ammonia concentration every 30 seconds from three locations inside of the houses and every two hours at one location just outside of the houses.[129] The researchers converted the raw ammonia concentration data into emission rates, in pounds of ammonia per day per house (lb/d-house).[130] This resulted in a 12-flock mean emission rate of 30.8 +/- 20.0 lb/d-house.

A 2007 Purdue study conducted as part of EPA"s NAEMS study, discussed above in section (b), shows that laying hen operations also emit vast quantities of ammonia. Purdue released a site report for an Indiana NAEMS site, which measured ammonia concentrations and emissions rates inside two barns (Barns 6 and 7) housing laying hens. The report analyzed monitoring results collected between May 12 and June 30, 2007.[131] The monitors recorded the concentration of ammonia in ppm, and then converted those data into emission rates. The researchers calculated average daily mean ammonia emission rates of 252 +/- 99 and 308 +/- 63 kg/day for barns 6 and 7 respectively.[132]

In December of 2009, EIP finalized a report entitled "A Holiday Gift for Big Poultry: Bush Administration Rushes Emissions Reporting Exemption," which extrapolates from these two studies" emission rates.[133] Using the number of broiler chickens and egg laying hens per state,[134] EIP calculated an estimate of the total pounds of ammonia released by the top ten poultry producing states in 2007 and the total pounds of ammonia released in the top ten states for each type of poultry CAFO.

EIP"s report found that, according to these studies" emission factors, poultry operations in just the top ten states released an estimated 700 million tons of ammonia into the air in 2007. These 10 states emit more ammonia from poultry facilities than all other non-agricultural

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[129] *Id.* at 8.

[130] *Id.* at 1. The results varied significantly between the two houses, primarily due to different manure handling methods: one house received new rice hull bedding and had litter removed mid-way through the study, while the other had the same bedding and no litter de-caking during the study. The house that received new litter after several flocks had significantly lower emissions while the houses had birds in them, but significantly higher average emissions during the downtime between flocks, possibly due to the de-caking activity releasing ammonia. *Id.* at 21. These results underscore the importance of considering waste management practices, emissions from litter stockpiles, and emissions from land application of waste, when evaluating the public health impacts of CAFO ammonia emissions. Thus, even the ammonia emissions estimates in EIP"s study, summarized below, do not include all emissions from litter removed from poultry houses.

[131] Purdue University, *National Air Emissions Monitoring Study Data from Layer Site IN2H, May 12 to June 30 2007* at 1, 10, Figure 4 [hereinafter Purdue Study].

[132] Purdue Study at 15.

[133] Environmental Integrity Project, *A Holiday Gift for Big Poultry: Bush Administration Rushes Emissions Reporting Exemption*, (Corrected December 2009), *available at* http://environmentalintegrity.org/news_reports/Bush_administration.php. [Hereinafter EIP Report] (last visited Mar. 18, 2011).

[134] As provided by the U.S. Department of Agriculture"s *Poultry-Production and Value 2007 Summary*, released April 2008, and the U.S. Department of Agriculture"s *Chicken and Eggs*, released November 21, 2008.

industries in the entire U.S. emit combined.[135] Looking at the two types of poultry production individually, broiler chicken operations in the top ten states[136] emitted an estimated 481,764,049 pounds of ammonia in 2007, which is greater than eight times the amount of ammonia emissions reported to the Toxic Release Inventory (TRI) by all industrial sources in those ten states combined.[137] Egg laying operations in the top ten states[138] emitted an estimated 221,551,888 pounds of ammonia per year.[139] These emissions approximately triple the amount that all industrial sources in those states combined reported to the TRI.[140]

As indicated above, industrial sources must report their ammonia emissions to the TRI under the Emergency Planning and Community Right-to-Know Act (EPCRA).[141] The TRI program does not require CAFOs to report emissions, however, even though they emit the dominant share of total ammonia emissions. Consequently, the TRI ammonia totals reported by industries in the top ten states for broilers and egg laying operations bear little relation to the total volume of ammonia released into the air in these states. For instance Georgia, the nation"s number one producer of broiler chickens, emitted an estimated 97,618,755 pounds of ammonia from CAFOs in 2007, yet the state"s industrial sources combined reported only 11,936,373 pounds of ammonia to the TRI.[142] Similarly Iowa, the nation"s number one producer of eggs, emitted an estimated 53,012,347 pounds of ammonia into the air from its layer hen CAFOs, while the state"s industrial sources reported only 9,425,300 pounds to the TRI.[143]

Hog CAFOs also emit large quantities of ammonia. The Iowa Study researchers evaluated several peer-reviewed studies of hog CAFO ammonia emissions, establishing a range of emission factors for various stages of hog maturity, including nursery pigs and finishing pigs.[144] These studies indicate that many factors, such as ventilation system, animal maturity, waste storage system, season, and outside temperature significantly affect ammonia emission rates.[145] The highest measured emission rate for a hog nursery included in the Iowa Study, 160 g ammonia per animal unit per day,[146] translates to a daily emission of 353 pounds of ammonia for a facility at the Large CAFO threshold size.[147] The highest reported emissions from a hog finishing facility, 311 g ammonia per animal unit per day during summer,[148] translates to a daily

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[135] EIP Report at 1.
[136] Georgia, Arkansas, Alabama, Mississippi, North Carolina, Texas, Kentucky, Maryland, Virginia, and Delaware.
[137] EIP Report Attachment A.
[138] Iowa, Ohio, Indiana, Pennsylvania, Georgia, Texas, California, Arkansas, North Carolina, and Florida.
[139] EIP Report Attachment A.
[140] *Id.*
[141] *See* EPA, What is the Toxics Release Inventory Program, at http://www.epa.gov/TRI/triprogram/whatis.htm (last visited Mar. 18, 2011).
[142] EIP Report, Attachment A.
[143] *Id.*
[144] Iowa Study at 48-49.
[145] *Id.*
[146] *Id.* at 49.
[147] 40 C.F.R. §122.23(b)(4).
[148] Iowa Study at 49.

emission of 686 pounds of ammonia for a facility at the Large CAFO threshold size. These studies demonstrate that, particularly during summer, hog CAFOs emit vast quantities of ammonia. Though Iowa leads the nation in hog production, it is not the only state of concern. According to the North Carolina Department of Environment and Natural Resources" 1995 estimates, North Carolina sources released an enormous 355 million pounds of ammonia into the air that year, of which hog operations alone released 166 million pounds.[149]

EIP"s analysis of EPA"s NAEMS data also indicates that most CAFOs monitored emit more than the reportable quantity – 100 pounds – of ammonia on a typical day, and some facilities studied emit thousands of pounds on a typical day.[150] As discussed previously, ammonia emissions also vary significantly over both the short and long term, such that large CAFOs can emit many thousands of pounds of ammonia on certain days. Although NAEMS did not measure ambient ammonia levels in communities near these operations, the sheer volume of total ammonia emissions from CAFOs – particularly poultry CAFOs – creates cause for concern that those living or working near numerous or very large CAFOs may breathe unsafe levels of ammonia in the ambient air.

CAFOs emit the majority of ammonia emissions but remain largely unaccountable for their air pollution. Despite the gap in emissions knowledge EPA"s limited TRI reporting system and livestock exemption from CERCLA reporting have created, available emissions research and EIP"s analysis of the Tyson and Purdue studies demonstrate the need to regulate CAFO ammonia emissions commensurate with their controlling contribution to total ammonia pollution. EPA should consider these studies" findings as to the enormous quantities of ammonia CAFOs currently emit in certain regions when deciding whether to list ammonia as a criteria pollutant.

ii. CAFOs are geographically concentrated

This vast quantity of airborne ammonia emitted by CAFOs does not exist at equal concentrations throughout the U.S. or throughout certain agricultural states; rather, CAFOs and the ammonia they release are concentrated in certain geographic regions, creating areas with an elevated risk of ammonia-related health effects for nearby rural populations. Many rural communities breathe the emissions from not just one or two CAFO barns, but from many CAFOs, each of which contains numerous barns.

Concentration of CAFOs in certain geographic areas has increased dramatically in recent years, and exists on a far more localized scale than the state-level concentration demonstrated in EIP"s poultry emissions report. The Government Accountability Office (GAO) discussed this trend in its 2008 report "Concentrated Animal Feeding Operations: EPA Needs More Information and a Clearly Defined Strategy to Protect Air and Water Quality from Pollutants of

[149] North Carolina Department of Environment and Natural Resources Division of Air Quality, *Status Report on Emissions and Deposition of Atmospheric Nitrogen Compounds from Animal Production in North Carolina*, Table 1 (June 1999), *available at* http://daq.state.nc.us/monitor/projects/nstatusreport.pdf (last visited Mar. 18, 2011).
[150] Hazardous Emissions from Factory Farms at 12-13.

Concern."[151] In its report, GAO concludes that CAFOs are "increasingly clustered within specific geographic areas within a state,"[152] and cites several alarming examples of communities besieged by CAFOs housing many millions of confined animals in small areas.

One such area, comprised of five contiguous counties in North Carolina, alone housed more than 7.5 million hogs and produced as much as 15.5 million tons of manure in 2002.[153] This increased concentration is not limited to the hog industry. GAO also highlights two California counties in the San Joaquin Valley that contained 535,433 cows in 2002, producing approximately 13.6 million tons of manure that year.[154] Similarly, in Arkansas just two counties had amassed broiler chicken CAFOs housing 14,264,828 chickens in 2002, producing more than 471,000 tons of manure that year.[155]

Yet another example of intense livestock concentration is the Delmarva Peninsula, where contract producers raise approximately 568 million broiler chickens per year, generating an estimated 1.1 billion pounds of chicken litter.[156] This averages more than a staggering 104,000 chickens per square mile on the 5,450 square mile peninsula. Experts have raised concerns that such incredible quantities of waste cannot be applied to the surrounding area"s available cropland at agronomic rates;[157] for similar reasons, the emissions from these quantities of manure and numbers of livestock confinements should raise concerns that ambient concentrations of ammonia and other emitted pollutants will exceed safe levels.

Rural residents throughout the U.S. live in close proximity to CAFO production areas and manure application fields – some in areas that contain numerous CAFOs in close proximity to one another, whose ammonia emissions mix in the ambient air and cause significant local re-deposition.[158] EPA should consider the aggregate effects of ammonia emissions on ambient air concentrations in these rural communities and the commensurately higher impact emissions have on public health in these areas with high concentrations of CAFOs.

The growing body of CAFO ammonia emissions research, which includes monitoring both at the source and at nearby residences, collectively compels the conclusion that ambient ammonia air pollution currently surpasses established health benchmarks and thus may reasonably be anticipated to endanger public health. To designate ammonia as a CAA criteria

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[151] GAO, *Concentrated Animal Feeding Operations: EPA Needs More Information and a Clearly Defined Strategy to Protect Air and Water Quality from Pollutants of Concern* (Sept. 2008) [hereinafter GAO Report].
[152] GAO Report at 5.
[153] *Id* at 21.
[154] *Id.* at 22.
[155] *Id.*
[156] Karen Gardner, *Farmer: Chesapeake Bay cleanup requires unity*, FREDERICK NEWS POST, Dec. 3, 2010, *available at* http://www.fredericknewspost.com/sections/news/display.htm?storyid=113253 (last visited Mar. 18, 2011).
[157] GAO Report at 22.
[158] *See* discussion of ammonia transport and fate, *infra* Section V.B.2.ii.

pollutant, EPA does not need to find that all Americans currently breathe unsafe levels of ammonia, or even that residents near CAFOs and other ammonia sources are suffering life-threatening or permanent health effects. On the contrary, the CAA gives EPA significant discretion to enact health protections even if it lacks absolute scientific certainty about the nature or extent of the threat and even if the entire population is not affected.[159]

e. Ammonia is a significant precursor to $PM_{2.5}$, and endangers public health by contributing to violations of the fine particulate NAAQS

The CAA requires EPA to consider criteria pollutant precursors as well as criteria pollutants themselves, by defining "air pollutant" to include "any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term "air pollutant" is used." CAA § 302(g). EPA has identified ammonia as a precursor pollutant to small particulate matter ($PM_{2.5}$), but does not currently require states to regulate ammonia as a precursor pollutant "unless the State or EPA makes a technical demonstration that emissions of ammonia from sources in the State significantly contribute to $PM_{2.5}$ concentrations in a given nonattainment area."[160]

Although some airborne ammonia will re-deposit close to the emission source, ammonia gas reacts readily with acidic compounds in the air, such as nitric acid, hydrochloric acid, and sulfuric acid, forming small particles known as ammonium aerosols."[161] These particles of ammonium nitrate and ammonium sulfate have diameters smaller than 2.5 microns, and thus qualify as $PM_{2.5}$ – a regulated CAA criteria pollutant. EPA has recognized the health impacts of particulate pollution, and $PM_{2.5}$ in particular, for decades, so this petition will not address them in detail. EPA"s current NAAQS for $PM_{2.5}$ are meant to protect the public health and welfare from the respiratory symptoms, decreased lung function, aggravated asthma symptoms, chronic bronchitis, irregular heartbeat, heart attacks, and premature death associated with small particle pollution.[162] These NAAQS do not require ammonia regulation, however, despite recent research indicating that ammonia contributes significantly to $PM_{2.5}$.

One recent study clarifies the role ammonia plays in $PM_{2.5}$ formation and seasonal $PM_{2.5}$ variations.[163] Researchers used the Community Multiscale Air Quality chemical transport model[164] to predict the environmental impact of ammonia emissions in $PM_{2.5}$ non-attainment

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[159] *See* discussion of EPA"s Sulfur Dioxide Rule, *infra* Section VI.
[160] Rich Damberg, EPA Office of Air Quality Planning and Standards, *Policies for Addressing PM2.5 Precursor Emissions* (June 20, 2007) at Slide 8.
[161] Aneja at 516.
[162] EPA, Particulate Matter: Health and Environment, http://www.epa.gov/pm/health.html (last visited Mar. 18, 2011).
[163] R. W. Pinder et al., *Environmental Impact of Atmospheric NH_3 Emissions Under Present and Future Conditions in the Eastern United States*, 35 Geophysical Res. Letters (June 2008) at 2 [hereinafter Pinder].
[164] *See* EPA, Atmospheric Modeling and Analysis Division, Community Multiscale Air Quality (CMAQ), http://www.epa.gov/AMD/CMAQ/ (last visited Mar. 18, 2011).

areas, considering future scenarios in which EPA's recently amended regulations have reduced emissions of oxides of nitrogen (NO_x) and sulfur oxides (SO_x). The authors explain that although ammonia can react with either NO_x or SO_2 to form small particulates, in the absence of ammonia NO_x will stay in gaseous form, while SO_2 can readily react with other compounds to form other small particles. Because in winter a higher proportion of $PM_{2.5}$ is ammonium nitrate (formed from ammonia and NO_x) than in summer, the "sensitivity of $PM_{2.5}$ to ammonia emissions reductions" is greatest in winter[165] and thus reductions in winter ammonia emissions may significantly reduce $PM_{2.5}$. This conclusion supports findings in previous studies that under certain circumstances winter ammonia emissions reductions can be an even "more effective and less costly control strategy for $PM_{2.5}$ than reductions in NO_x and SO_2."[166] The modeling further suggests that "NH_3 emission controls will continue to be an effective strategy to achieve further reductions in winter $PM_{2.5}$, even considering the planned reductions in NO_x and SO_2 emissions."[167]

Other studies have estimated ammonia's contribution to $PM_{2.5}$ and the contribution of ammonia from livestock in particular. One study looked at the constituents and sources of $PM_{2.5}$ in the eastern U.S., concluding that "ammonia comprises a significant portion of the $PM_{2.5}$ mass" in the region – 47 percent.[168] Penn State researchers have looked specifically at livestock's contribution to ammonium nitrate formation. Using the conservative estimate that livestock contribute only 51 percent of total ammonia emissions, the study found that livestock ammonia emissions lead to the formation of 9 to 11 percent of total U.S. $PM_{2.5}$, while in winter in the Upper Midwest this contribution may be as high as 20 percent.[169] EPA's failure to consider ammonia's localized and seasonal effects on $PM_{2.5}$ concentrations, and to require state regulation of ammonia sources in $PM_{2.5}$ non-attainment areas, contravenes current research.

The evidence provided in this petition demonstrates that ammonia clearly meets the CAA criteria pollutant standard: ammonia emissions cause or contribute to air pollution – both ammonia itself and $PM_{2.5}$ – that may reasonably be anticipated to endanger public health. EPA should make an endangerment finding, designate ammonia as a criteria pollutant, and establish primary NAAQS that will protect public health with an adequate margin of safety.

2. Ammonia emissions endanger public welfare

CAA § 109(b)(2) requires EPA to establish secondary NAAQS for criteria pollutants, set at levels that protect the public welfare "from any known or anticipated adverse effects

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[165] Pinder et al. at 2.
[166] *Id.* at 1.
[167] *Id.* at 4.
[168] Natalie Anderson et al., *Airborne Reduced Nitrogen: Ammonia Emissions from Agriculture and Other Sources*, 29 Env't Int'l (2003) at 277.
[169] Alexander N. Hristov, Associate Professor of Dairy Nutrition, Penn State Department of Dairy and Animal Science, *Livestock Contribution to Fine Particulate Matter (PM2.5) in the U.S.*, 16 February 2009, *available at* http://www.das.psu.edu (search "particulate matter") (last visited Mar. 18, 2011).

associated with [the criteria pollutant] in the ambient air." Public welfare has many dimensions, which include environmental and economic impacts as well as psychological health and quality of life.

CAA §302(h) defines "welfare" broadly and non-exclusively:

> "[a]ll language referring to effects on welfare includes, but is not limited to, effects on soils, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility, and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being, whether caused by transformation, conversion, or combination with other air pollutants."

This open-ended definition demonstrates Congress" understanding that air pollution has numerous and complex adverse effects, and its intent that EPA should exercise its broad regulatory authority to mitigate any and all of them. This section will provide evidence of the public welfare impacts of ammonia emissions, alone and in combination with other CAFO emissions, on personal comfort and well-being, water and soil quality, property values, and visibility.

i. Ammonia emissions threaten personal comfort and well-being

Airborne ammonia most obviously impacts a person"s personal comfort and well-being through odor. Airborne ammonia has a pungent, unpleasant smell often associated with urine. Indeed, many complaints from communities that live close to CAFOs concern the effects of the odor emanating from the CAFOs on their daily lives.[170] These nuisance effects of ammonia odor on important aspects of public welfare exist independent of the public health effects from more elevated ambient concentrations. The odor released from CAFOs typically includes a mixture of hydrogen sulfide (H_2S), volatile organic compounds (VOCs), ammonia, and other gases.[171] However, although airborne ammonia is only one component of the cumulative odor emitted from CAFOs, they release it in vast quantities.

Moreover, though many pollutants from CAFO emissions combine to cause the nuisance odors that impact several aspects of public welfare, this does not lessen EPA"s obligation to address ammonia"s public welfare impacts. Congress anticipated this scenario when drafting the CAA, and specifically included effects "caused by…combination with other air pollutants" in its definition of welfare. CAA § 302(h). Ammonia is a primary pollutant in CAFO air emissions, emitted in large quantities from CAFOs housing all types of livestock, and EPA should act to

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[170] *See, e.g.,* Iowa Study at 71.

[171] EPA, Animal Feeding Operations Air Agreements, http://www.epa.gov/compliance/resources/agreements/caa/cafo-agr.html (last visited Mar. 18, 2011). *See also* Schiffman, et al., *Quantification of odors and odorants from swine operations in North Carolina*, 108 Agric. and Forest Meteorology (2001).

mitigate the community well-being and public welfare impacts of ammonia in combination with other CAFO air pollution.

The 2008 Pew Commission Report surveyed research on the social and community impacts of CAFO emissions. The Commission concluded that residents near CAFOs "are subject to air emissions that, although lower in concentration [than worker exposures], may significantly affect certain segments of the population."[172] After reviewing existing research, the Commission identified community physical and mental health effects such as respiratory symptoms and neurobehavioral effects such as depression.[173] The Commission also considered the effect of CAFO odor compounds on mood, and determined that due to the toxicity and odor of ammonia and other CAFO emissions it is "not surprising" that existing studies have shown "increased rates of neurobehavioral symptoms such as depression."[174]

The North Carolina study previously discussed evaluated quality of life factors in addition to health symptoms.[175] The study evaluated quality of life indicators by calculating the number of days that the community members had to stay inside or keep windows closed during good weather. Because those living near the hog CAFO had to stay indoors significantly more often than the other groups, the study concluded that proximity to the hog CAFO reduced this community"s quality of life.[176]

Another North Carolina study used a "Profile of Mood States" test to compare the psychological state of 44 community members living close to a large swine confinement to the psychological state of community members who did not live close to the swine confinement.[177] The study showed that members living close to the swine confinement experienced more anger, tension, and depression than the control group; they also suffered physical effects, experiencing more fatigue and confusion than the control group.[178]

The Iowa Study also reviewed numerous polls and surveys of the nuisance effects of livestock operations, including odors and air pollution. The Study found that rural residents find livestock odors a major nuisance, and that odors, rather than traffic, noise, dust, flies, or other problems, create the significant majority of the nuisance issues arising from CAFOs in close proximity. Moreover, those surveyed reported that larger farms were a greater nuisance than smaller ones.[179]

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[172] Pew Commission Report at 17.
[173] *Id.*
[174] *Id.*
[175] Steve Wing and Susanne Wolf, *supra* note 107.
[176] *Id.* at 236; Iowa Study at 150.
[177] Iowa Study at 137, *citing* Schiffman et al., *The Effect of Environmental Odors Emanating from Commercial Swine Operations on the Mood of Nearby Residents*, 17 Brain Res. Bulletin (1995).
[178] *Id.*
[179] Iowa Study at 149-50.

These studies detail some of the difficult-to-quantify effects of CAFO ammonia emissions on personal comfort and well-being. Emotions such as depression, anger, and fatigue play a central role in personal well-being, and therefore in public welfare. Similarly, the degree to which rural residents may open their windows, go outside, and otherwise enjoy their property directly affects both comfort and well-being. When rural citizens lack these basic rights and comforts – things most Americans take for granted – the public welfare suffers. The authors of the Iowa Study drew a similar conclusion, reporting that CAFO neighbors often hesitate to make social plans at their houses because they have no control over what the air quality will be like on a certain day, and as a result, CAFOs reduce social capital.[180]

The Iowa Study and Pew Commission Report also found correlations between increased size and industrialization of livestock operations and overall social and economic decline. One such study noted by both the Iowa and Pew reports contrasted family farm and industrial agricultural areas in 98 counties across several states, concluding that farm size and mechanization "significantly predict declining community conditions not merely at the local agricultural community level, but in the entire county."[181] The Iowa Study"s review of Midwest CAFO research also found "tendencies of economic decline in communities with greater concentration of CAFOs."[182] While these studies do not attempt to discern the share of these impacts attributable directly to ammonia and other air emissions, these emissions cause demonstrated adverse welfare impacts and clearly contribute to the observed trends of social decline. Because numerous peer-reviewed studies demonstrate that ammonia emissions from CAFOs decrease personal comfort as well as social and economic well-being, ammonia meets the CAA definition of a pollutant which can reasonably be anticipated to endanger public welfare.

ii. Ammonia emissions re-deposit, polluting waterways and acidifying soils

The CAA definition of welfare impacts specifically includes impacts to water, vegetation, and soil. CAA § 302(h). Ammonia emissions have far-reaching environmental impacts, and affect public welfare by polluting water and land as well as air. While transport distances vary based on numerous environmental and climate factors, airborne ammonia eventually leaves the atmosphere, either as ammonia or after conversion to ammonium aerosol particles, through the processes of either dry or wet deposition.[183] Dry deposition occurs when the ammonia falls to earth without the presence of precipitation, while wet deposition occurs when ammonia returns

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[180] *Id.* at 150.
[181] *Id.* at 148, *quoting* MacCannell D. Industrial agriculture and rural community degradation. In Swanson LE, ed. Agriculture and community change in the U.S.: The Congressional research reports at 63 (pp. 15-75). Boulder, CO: Westview Press (1988). *See also* Pew Commission Report at 42-43.
[182] Iowa Study at 148.
[183] U.S. Department of the Interior, U.S. Geological Survey (USGS), *Atmospheric Deposition Program of the U.S. Geological Survey: Fact Sheet FS-112-00 p. 1-6*, (December 2000) at 1, *available at* http://bqs.usgs.gov/AcidRain/program.pdf [hereinafter USGS Fact Sheet] (last visited Mar. 18, 2011).

to the earth via rain, snow, sleet, or fog.[184] This deposition can add nitrogen directly to waterways, or can add nitrogen to land areas, acidifying soils and ultimately adding to water pollution through surface runoff.

Ammonia gas emissions have a typical transport time ranging from one to five days.[185] Because "[p]recipitation readily removes most reactive nitrogen compounds, such as ammonia and nitrogen oxides, from the atmosphere,"[186] a significant percentage of volatilized ammonia can re-deposit within these first few days. Ammonia that converts to ammonium aerosol particles rather than depositing directly has a much longer average transport time, ranging from one to fifteen days.[187] As a result, the rate of conversion from ammonia gas to ammonium aerosol particles will significantly affect deposition patterns, as ammonium aerosols may travel thousands of kilometers before re-depositing.[188]

Additional factors also affect ammonia conversion, transport and deposition – including the prevalence of NO_x and SO_2 in the atmosphere, temperature, and precipitation patterns – making models and predictions of ammonia deposition impacts extremely complex.[189] However, existing research demonstrates that ammonia emissions, particularly in areas with high concentrations of CAFOs, can have severe local and regional effects on water quality. Watersheds in regions with numerous sources of ammonia emissions, such as the Chesapeake Bay, North Carolina, and the Mississippi River Corridor, receive high levels of overall nitrogen and ammonium deposition.[190]

When ammonia re-deposits into surface water, it endangers public welfare by polluting the water with excess nitrogen. The eutrophication process occurs when excess nutrients, in this case nitrogen in ammonia, enter surface water, thereby upsetting the nutrient balance of the waterway and contributing to increased algal growth.[191] Due to the nutrient overload in the water, algae initially flourish, but as these algae die off, the decomposition process depletes the water of its oxygen content.[192] Extreme cases of eutrophication lead to hypoxic "dead zones," such as the more than 15,000 square kilometer area in the Gulf of Mexico devoid of aquatic life.[193] Due in large part to increased nutrient loads from changed agricultural practices in the

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[184] USGS Fact Sheet at 1.
[185] Viney P. Aneja et al., *Ammonia Assessment from Agriculture: U.S. Status and Needs*, 37 Envtl. Quality, 2008, at 516 [hereinafter Aneja].
[186] USGS Fact Sheet at 2.
[187] Aneja at 516.
[188] Aneja at 515-16.
[189] *See generally* Pinder, *supra* note 163.
[190] USGS Fact Sheet at 3, *see* Figure 5; *See also* National Atmospheric Deposition Program, 2009 ammonium ion wet deposition map, http://nadp.sws.uiuc.edu/ (last visited Mar. 18, 2011).
[191] USGS Fact Sheet at 2.
[192] *Id.*
[193] Mississippi River/Gulf of Mexico Watershed Nutrient Task Force, *Moving Forward on Gulf Hypoxia Annual Report 2009*, 4 (2009), *available at* http://www.epa.gov/msbasin/implementation.htm (last visited Mar. 18, 2011).

Mississippi River watershed over the past 50 years, this dead zone is currently the largest in the U.S. and the second largest in the world.[194]

Though all sources of nitrogen and other nutrients contribute to eutrophication of waterways, in some watersheds, nitrogen deposition comprises a significant fraction of the total nitrogen load. One study of nutrient pollution sources found that coastal areas that export large amounts of nitrogen via water received 18 percent of that nitrogen from deposition – even more than the 15 percent from livestock waste runoff.[195] In the Chesapeake Bay, one of the United States" most recreationally, culturally, and economically significant water bodies, EPA has estimated that more than a third of the total nitrogen pollution entering the Bay comes from air deposition.[196] Areas with the highest concentrations of CAFOs see even greater impacts from nitrogen deposition; for example, research indicates that "[a]tmospheric deposition of nitrogen compounds may contribute as much as 35 to 60% of total nitrogen loading to North Carolina coastal waters."[197]

Re-deposited airborne ammonia also comprises a significant fraction of total nitrogen deposition in areas with ammonia emission sources; studies demonstrate that ammonia sources significantly affect overall nitrogen deposition on a local and regional scale. Pinder et al. used EPA"s Community Multiscale Air Quality (CMAQ) chemical transport model to map nitrogen deposition, and found that total nitrogen deposition near ammonia sources increases 10 to 40 percent.[198] Another study collected precipitation and measured its ammonium concentration, then used regression modeling to analyze the impact of ammonia sources on regional deposition.[199] The researchers found that areas with densely grouped CAFOs "will have a local impact" on both ammonia and ammonium aerosol deposition, and "may have a regional influence" on ammonium deposition.[200] The study found that CAFO emissions caused increases in ammonium deposition as far as 80 kilometers away.[201]

Despite an atypically small dead zone in 2009, the most recent five-year average size of the Gulf dead zone was 15,650 square kilometers. *Id.*

[194] EPA, *Hypoxia in the Northern Gulf of Mexico, an Update by the EPA Science Advisory Board*, EPA-SAB-08-003, 10-12 (Dec. 2007), available at: http://yosemite.epa.gov/sab/SABPRODUCT.NSF/C3D2F27094E03F90852573B800601D93/$File/EPA-SAB-08-003complete.unsigned.pdf (last visited Mar. 18, 2011).

[195] Robert W. Howarth et al., *Sources of Nutrient Pollution to Coastal Waters in the United States: Implications for Achieving Coastal Water Quality Goals*, 25 Estuaries 656, 668 (Aug. 2002) [hereinafter Sources of Nutrient Pollution].

[196] EPA, Office of Enforcement and Compliance Assurance, Chesapeake Bay Compliance and Enforcement Strategy at 2 (May 2010) [hereinafter Chesapeake Enforcement Strategy], *available at* http://www.epa.gov/oecaerth/civil/initiatives/chesapeake-strategy-enforcement.pdf (last visited Mar. 18, 2011).

[197] Aneja at 517.

[198] Pinder at 1.

[199] John T. Walker et al., *Atmospheric Transport and Wet Deposition of Ammonium in North Carolina*, 34 Atmospheric Env't., 2000.

[200] *Id.* at 3408.

[201] *Id.* at 3416.

The National Atmospheric Deposition Program"s data lend support to these findings, showing that ammonium deposition has been heavily concentrated in the livestock-intensive Upper Midwest over the past decade and is increasing in concentration in the region.[202] EPA"s own findings in the Chesapeake Bay also show the regional influence of ammonia on Bay water quality. Despite the thousands of point sources discharging nitrogen directly to the Bay via surface waters, the agency"s Office of Enforcement and Compliance Assurance (OECA) has recently estimated that six percent of the total nitrogen loadings in the Bay come from deposition of emissions from livestock manure and fertilized soil.[203]

Moreover, the results of the CMAQ modeling study suggest that increased regulation of NO_x and SO_2 will increase both ambient ammonia concentrations and localized nitrogen deposition near ammonia sources in the future. Increased CAA controls on NO_x and SO_2 will reduce ambient levels of these pollutants, which will reduce conversion of ammonia into ammonium aerosols that have greater transport potential.[204] Ammonia emissions are also expected to rise due to projected increases in livestock production and concentration. As a result of both factors, more ammonia will re-deposit within a shorter distance from emissions sources.[205] Specifically, the modeling indicated that "the total nitrogen deposition decreases in the future, except near ammonia emission sources. The largest future increases in total nitrogen deposition can be found in and around areas of high ammonia emissions, including the Delmarva Peninsula, eastern North Carolina, and northeastern Georgia."[206]

Additional studies have linked those areas where ammonia deposition plays a significant role in nitrogen loadings with areas near intensive animal production,[207] indicating again that much volatilized ammonia re-deposits within a small range of its source and has a considerable effect on water quality. Moreover, it is not only animal numbers and proximity, but also livestock production methods, that affect nitrogen deposition; the use of CAFO livestock production systems increases the total amount of ammonia volatilized from livestock, and therefore the amount that eventually re-deposits in waterways. Nutrient researchers have found that keeping cows on pasture, as opposed to in barns, reduces volatilization of ammonia by more than half.[208] These studies indicate that protecting water quality from nutrient pollution requires EPA to consider and regulate ammonia emissions from CAFOs.

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[202] National Atmospheric Deposition Program, Map Viewer, http://nadp.sws.uiuc.edu/maps/ (view Network: NTN, Map Type: Deposition, Analyte: NH_4) (last visited Mar. 18, 2011).
[203] Chesapeake Enforcement Strategy at 9. An additional 17 percent of the Bay"s total nitrogen load comes from animal manure directly via water. *Id.*
[204] Pinder at 1.
[205] *Id.* at 3.
[206] *Id.* at 4.
[207] Donald F. Boesch, *Challenges and Opportunities for Science in Reducing Nutrient Over-enrichment of Coastal Ecosystems*, 25 American Scientist 896 (Aug. 2002).
[208] Sources of Nutrient Pollution at 663.

Ammonia deposition onto land also degrades soil quality. According to the National Atmospheric Deposition Program, "[w]hen an ammonium ion deposits to a soil surface, it can increase soil acidity through nitrification reactions, releasing hydrogen ions and converting ammonium to nitrate."[209] Acidified soil provides poor growing conditions for vegetation by depleting calcium and other nutrients from the soil, mobilizing inorganic aluminum, and increasing the accumulation of nitrogen and sulfur in the soil.[210] High levels of aluminum can be toxic to plants, fish, and other organisms.[211] In addition, when nitrogen deposits onto soil it benefits species that need a large supply of nitrogen, resulting in these species overtaking those adapted to a limited nitrogen supply.[212] Thus nutrient enrichment can degrade terrestrial ecosystems just as eutrophication devastates aquatic ecosystems. Recent studies suggest that acidic deposition has played a part in the decrease in tree species such as red spruce and sugar maple in the eastern United States.[213]

In accordance with the CAA"s broad mandate to protect against threats to public welfare, this petition requests that EPA consider the entire nitrogen cycle when regulating ammonia. Public welfare encompasses the social benefits derived from protecting clean water, healthy and productive soils, natural vegetation, and the enjoyment of natural resources. Ammonia deposition significantly degrades water quality, and in doing so diminishes use, enjoyment, and economic value of surface waters for fishing, recreation, and municipal use. Ammonia deposition also harms soil quality, which lowers cropland productivity as well as the diversity, health, and recreational value of forest ecosystems. Regulating ammonia as a criteria pollutant would reduce total ammonia air emissions and the resulting deposition of ammonia into surface waters in the most polluted areas. Adequate regulation through the implementation of protective secondary NAAQS would benefit both air and water quality, thereby furthering EPA"s mission to protect public welfare from air pollution.

iii. Ambient ammonia reduces property values

Ammonia emissions also harm public welfare by causing damage to and deterioration of property and economic values. CAA § 302(h). Much of this harm to property value and rural economies stems from the quality of life issues already discussed. CAFOs may adversely affect quality of life and property value nearby in several ways, such as air pollution, water pollution, noise, dust, flies, and increased traffic. But as discussed previously, the Iowa Study found that

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[209] National Atmospheric Deposition Program, Passive Ammonia Monitoring Network http://nadp.sws.uiuc.edu/nh3Net/ (last visited Mar. 18, 2011).
[210] Driscoll, Charles, et. al. *Effects of acidic deposition on forest and aquatic ecosystems in New York State*. Environmental Pollution 123 (2003) 327–336 [hereinafter Driscoll], *available at* http://www.esf.edu/hss/HF%20Ref%20PDF/EvnPol.123.327.336.pdf (last visited Mar. 18, 2011).
[211] *Id.*
[212] Dep"t of Environment, Food & Rural Affairs, *Ammonia in the UK* 25 (2002), *available at* http://www.defra.gov.uk/environment/quality/air/airquality/publications/ammonia/documents/ammonia-in-uk.pdf (last visited Mar. 18, 2011).
[213] Driscoll at 327–336.

citizens near CAFOs have identified odor and air pollution as the leading CAFO nuisances contributing to decreased quality of life.[214] In many rural communities, homeowners living near CAFOs find themselves unable to sell their homes and relocate because CAFO air pollution, including ammonia emissions, makes their home undesirable, thereby dramatically lowering its market value. Both case law and academic research reflect a growing acceptance of the fact that CAFOs have an adverse economic impact on nearby residences. Odor and air pollution have a negative effect on quality of life, and therefore significantly affect the amount a buyer will be willing to pay.

In one recent case, *Darnall Ranch, Inc. v. Banner County Board of Equalization*, the Supreme Court of Nebraska held that the state tax board acted unreasonably and arbitrarily in failing to adjust Darnall"s home value downward due to its proximity to a large cattle feedlot.[215] Discussing a prior hog CAFO case, the Court stated plainly that "[n]o reasonable fact finder could conclude that in the real estate marketplace, a potential buyer would not notice, and react economically, to having a large hog facility very nearby while living in a remote location."[216] In 2002, an Iowa District Court similarly held that the construction of a large hog CAFO reduced one neighbor"s property value by $50,000, and awarded $100,000 in damages.[217]

Economic studies have also found that CAFOs reduce the value of nearby property. One Missouri study found that every Missouri CAFO lowered surrounding property values by approximately *$2.68 million*.[218] This translated to an average value loss of 6.6 percent within a three-mile radius, and an average value loss of more than 88 percent for those properties within a quarter mile of the CAFO.[219] The Union of Concerned Scientists roughly extrapolated this finding, concluding that if every CAFO had a similar impact, CAFOs cost the United States as much as *$26 billion* in lowered property values.[220]

The Appraisal Journal has also addressed how CAFOs impact property values; a 2001 article on the issue advised that appraisers should consider the effects of nearby CAFOs on use and enjoyment of property when evaluating rural homes. The author reviewed published research and several case studies on the effects of CAFOs on property value, concluding that "diminished marketability, loss of use and enjoyment, and loss of exclusivity can result in a

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[214] Iowa Study at 149-50.
[215] *Darnall Ranch, Inc. v. Banner Co. Bd. of Equal.*, 753 N.W.2d 819 (Neb. 2008).
[216] *Id.* at 831, quoting *Livingston v. Jefferson Cty. Bd. of Equal.*, 640 N.W.2d 426 at 437 (2002).
[217] *Judge awards Iowa couple $100,000 in hog lot lawsuit*, AMARILLO GLOBE NEWS, Jan. 12, 2002, *available at* http://www.pmac.net/AM/hoglot_lawsuit.html (last visited Mar. 18, 2011). For additional cases finding devaluation of property from nearby CAFOs, *see* http://www.factoryfarmtaxprotest.org/cases.htm.
[218] Mubarak, H., T.G. Johnson, and K.K. Miller. 1999. *The impacts of animal feeding operations on rural land values*. Report R-99-02. College of Agriculture, Food and Natural Resources, University of Missouri–Columbia.
[219] *Id.*
[220] Union of Concerned Scientists, *CAFOs Uncovered: The Untold Costs of Confined Animal Feeding Operations* (April 2008) at 5.

diminishment ranging from 50% to nearly 90% of otherwise unimpaired value."[221] A Pennsylvania study has since found that the prices of homes adjacent to CAFOs decrease once the total live weight of confined animals exceeds 200,000 pounds.[222]

A community located in Princess Anne, Maryland puts property value impacts into perspective. As has happened in rural communities throughout the U.S., homeowners purchased houses on a rural residential street, and large poultry CAFOs subsequently moved in and surrounded the homes at close proximity. As this photograph shows, formerly desirable homes are now, among other things, exposed to ammonia pollution from all directions.[223] Common sense dictates that such a community transformation, with accompanying air and water pollution, traffic, dust, noise, and flies, will affect the price any potential buyer would be willing to pay. CAFO air pollution, including ammonia, plays a central role in decreased property values, thereby harming public welfare.

Princess Ann, Maryland, February 5, 2009

[221] J.A. Kilpatrick, *Concentrated Animal Feeding Operations and Proximate Property Values*, 39 The Appraisal J. 3 (2001) at 306.
[222] R.C. Ready and C.W. Abdalla, *The Amenity and Disamenity Impacts of Agriculture: Estimates from a Hedonic Pricing Model*, 87 Am. J. of Agric. Econ. 2 (2005) at 314-326.
[223] Princess Anne, MD on February 5, 2009, photograph from the Assateague Coastal Trust and the Assateague COASTKEEPER.

iv. Ambient ammonia impairs visibility in pristine areas

Ammonia emissions also harm public welfare by impairing visibility and damaging property and economic values in scenic areas. EPA has assessed the impact of air pollution on visibility, finding that "[i]n our nation's scenic areas, the visual range has been substantially reduced by air pollution. In eastern parks, average visual range has decreased from 90 miles to 15-25 miles. In the West, visual range has decreased from 140 miles to 35-90 miles."[224] Ammonia has significantly contributed to this damage. Emissions research has established that the reactive nitrogen in ammonia "has a variety of environmental consequences including acidification and eutrophication, photo-chemical air pollution [and] reduced visibility.[225] As discussed, ammonia gas reacts with nitrous oxides and sulfur dioxide to form small aerosol particles harmful to human health; these same light-scattering aerosol particles do further damage by forming the regional haze that limits visibility in many of the nation's scenic and wild places.[226]

For example, the Oregon Department of Environmental Quality has identified ammonia emissions – specifically emissions from the region's dairy CAFOs – as a significant contributor to regional haze and impaired visibility in the Columbia Gorge National Scenic Area.[227] State officials also recognize that ammonia's contribution to acid rain in the Gorge threatens cultural and natural resources.[228] EPA must consider these impacts when assessing ammonia's effects on public welfare, and should establish secondary NAAQS that will protect visibility in wilderness and culturally significant areas for enjoyment by all Americans.

C. Ammonia in the ambient air results from numerous stationary sources

To qualify for listing as a criteria pollutant, ammonia must exist in the air as a result of "numerous or diverse mobile or stationary sources." CAA § 108(a)(1)(B). Ammonia meets these threshold requirements, because CAFOs qualify as stationary sources, and numerous CAFOs emit ammonia into the ambient air.

1. CAFOs are stationary sources

Section 302(z) of the CAA defines stationary sources broadly, stating "[t]he term "stationary source" means generally any source of an air pollutant except those emissions

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[224] EPA, Visibility: Basic Information, *available at* http://epa.gov/oar/visibility/what.html (last visited Mar. 18, 2011).
[225] Aneja at 517.
[226] Or. Dep't of Envtl. Quality, Fact Sheet: Columbia Gorge Air Quality Strategy Report (2008), *available at* http://www.deq.state.or.us/aq/factsheets/08aq002_gorge.pdf (last visited Mar. 18, 2011).
[227] *Id.*
[228] *Id.*

resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in section 7550 of this title."

CAFOs clearly meet the definition of stationary source: they emit ammonia, an air pollutant, into the air and are not internal combustion engines, nonroad engines, or nonroad vehicles. Under the statute, "any" other source of an air pollutant qualifies as a stationary source. Thus, the CAA's broad language indicates that the law does not limit the term "stationary source" to any particular sector, and CAFOs qualify as stationary sources under CAA § 302(z).

2. CAFOs are numerous

Many thousands of CAFOs contribute to air pollution throughout the United States. Though the CAA does not set a threshold number for "numerous" sources and case law does little to clarify this standard,[229] these facilities exist in thousands of rural communities throughout the U.S., and do not only affect a small area or specific group of people. EPA's Final CAFO Rule identified an estimated total of 20,685 CAFOs nationwide in 2008.[230] In contrast, EPA regulates SO_2 as a criteria pollutant, 73 percent of which comes from the nation's 5,400 power plants.[231] Under any consistent interpretation of the term, CAFOs are numerous and therefore meet the CAA "numerous or diverse sources" requirement for stationary sources of designated criteria pollutants.

D. EPA has not yet issued air quality criteria for ammonia

Ammonia also satisfies the final CAA § 108(1)(C) requirement for listing as a criteria pollutant because EPA has not yet issued air quality criteria for the pollutant and did not do so before December 31, 1970.[232]

Ammonia therefore meets all of the legal requirements for listing under §108 of the CAA: ammonia is a pollutant as defined by the CAA, emissions of which cause or contribute to air pollution which may reasonably be anticipated to endanger both public health and public

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[229] In *NRDC v. Train*, 545 F.2d 320 (2nd Cir. 1976), EPA conceded that lead-emitting automobiles were "numerous or diverse mobile or stationary sources," and thus the court did not have to address the issue and did not set a threshold for numerous sources. *Id.* at 324. No other case petitioners are aware of clarifies the requirement that sources be numerous.

[230] Revised National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitations Guidelines for Concentrated Animal Feeding Operations in Response to the Waterkeeper Decision: Final Rule, 40 C.F.R. Parts 9, 122, 412 (2008); 73 Fed. Reg. 70418 at 70469-70470.

[231] EPA, Fact Sheet: Revisions to the National Ambient Air Quality Standard, Monitoring Network, and Data Reporting Requirements for Sulfur Dioxide, *available at* http://www.epa.gov/air/sulfurdioxide/pdfs/20100602fs.pdf (last visited Mar. 18, 2011); U.S. Energy Information Administration, Frequently Asked Questions, http://www.eia.doe.gov/ask/electricity_faqs.asp#coal_plants (last updated Jan. 24, 2011).

[232] As discussed *infra* Section VII, an EPA "plan" to issue air quality criteria for a pollutant is not a requirement for listing; once EPA makes findings under CAA § 108(a)(1)(A) and (B), listing becomes mandatory.

welfare, the emissions are present in the ambient air as the result of numerous stationary sources, including CAFOs, and EPA has yet to issue air quality criteria for ammonia.

VI. EPA CURRENTLY REGULATES SIMILAR EXPOSURES UNDER THE NAAQS PROGRAM

EPA"s existing NAAQS already regulate sulfur dioxide (SO_2), a criteria pollutant with characteristics similar to ammonia, and which requires standards similar to those that are necessary to protect public health and welfare from ammonia pollution. As with brief exposures to SO_2, acute ammonia exposures pose a public health threat. And similar to SO_2, which EPA has found does not affect the entire U.S. public but rather impacts pockets of the population near major sources, ammonia emissions primarily impact geographically discrete rural communities throughout the U.S.

EPA has regulated SO_2 as a criteria pollutant since 1971.[233] To protect public health from exposure to SO_2 emitted by power plants and industrial facilities, EPA initially set a 24-hour standard of 140 ppb and a one-year standard of 30 ppb.[234] However, subsequent research on the health effects of SO_2 led EPA to determine that short-term exposures – between 5 minutes and 24 hours – pose the most significant health threats, and therefore primary NAAQS should protect health from short-term spikes in SO_2 concentrations. These acute SO_2 exposures can worsen asthma symptoms and cause respiratory effects such as narrowing of the airways.[235] To better protect vulnerable citizens from short-term SO_2 exposures, EPA recently revoked both the 24-hour and the one-year primary NAAQS and replaced them with a one-hour primary NAAQS of 75 ppb.[236]

EPA"s new one-hour SO_2 NAAQS reflects a growing understanding of the acute risks posed by certain toxic emissions, and provides the necessary framework to similarly regulate ammonia. EPA"s own ammonia AEGLs document the risks of acute ammonia exposures; the agency"s research reports the potential for adverse health effects at concentrations of 30 ppm after as few as 10 minutes.[237] Moreover, EPA"s NAEMS data show that ammonia emissions from CAFOs fluctuate significantly, exposing nearby residents to short-term spikes in ammonia concentrations that exceed both levels and durations of concern.[238] EPA should evaluate available ammonia emissions data, considering both existing health-based exposure standards and heightened health effects of mixed-pollutant exposures, and establish a standard that will protect the public from the acute ammonia health effects it determines are likely to occur near

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[233] Primary National Ambient Air Quality Standard for Sulfur Dioxide; Final Rule, 75 Fed. Reg. 35,520 at 35,522 (June 22, 2010) [hereinafter Primary SO_2 NAAQS].
[234] Primary SO_2 NAAQS at 35,521, 35,524.
[235] EPA, Fact Sheet: Revisions to the Primary National Ambient Air Quality Standard, Monitoring Network, and Data Reporting Requirements for Sulfur Dioxide, 2, *available at* http://www.epa.gov/air/sulfurdioxide/pdfs/20100602fs.pdf.
[236] Primary SO_2 NAAQS at 35,520.
[237] EPA, Ammonia Acute Exposure Guideline Levels, http://www.epa.gov/opptintr/aegl/pubs/results88.htm.
[238] *See* discussion of EPA"s NAEMS data, *supra* Section V.B.1.iii.b.

CAFOs. In addition, because much of the existing research on ambient ammonia levels near CAFOs involves time-averaged data, EPA should consider the fact that spikes in ambient ammonia levels have not been thoroughly documented when establishing an adequate margin of safety in its standards.

EPA"s SO_2 rulemaking also sets a precedent for regulating pollutants whose health effects are significant, but not ubiquitous. The new standard resulted from a challenge to the agency"s 1997 decision not to modify the SO_2 NAAQS, despite its finding that short-term exposures below the previous standards posed a health threat to asthmatics. EPA had determined that a more stringent five-minute health standard was not necessary when it considered SO_2 "from a national perspective," finding that the health threat was not adequately ubiquitous and the likelihood that a susceptible individual would suffer adverse health effects was low.[239] The American Lung Association and the Environmental Defense Fund successfully challenged this decision in the District of Columbia Circuit, which held that "nothing in the Final Decision explains away the possibility that „localized," „site-specific," or even „infrequent" events might nevertheless create a public health problem, particularly since, in some sense, all pollution is local and site-specific…."[240]

EPA should apply this analysis to ammonia, which primarily affects rural residents near CAFOs. While ambient ammonia levels likely do not pose a significant health threat in most urban areas, and therefore may not affect the majority of the public, the D.C. Circuit made clear that even localized, site-specific, and infrequent ambient air pollution may create a public health risk that meets the standard in § 108 and therefore requires CAA regulation. In its final SO_2 rule, EPA further pointed out that "in selecting primary standards that include an adequate margin of safety, the Administrator is seeking not only to prevent pollution levels that have been demonstrated to be harmful but also to prevent lower pollutant levels that may pose an unacceptable risk of harm, even if the risk is not precisely identified as to nature or degree."[241] EPA should adopt the same cautious approach regulating ambient ammonia, the adverse health effects of which have been documented but which has not been rigorously studied by EPA, particularly in combination with other air pollutants. And as with the SO_2 rule, EPA should require ambient air monitoring for ammonia in areas with an "increased coincidence of people and [ammonia] emissions."[242]

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[239] *Id.* at 35,522.
[240] *Id.* at 35,523, quoting *American Lung Ass'n v. EPA*, 134 F.3d 388, 392 (D.C. Cir. 1998).
[241] *Id.* at 35,521.
[242] *Id.*

VII. EPA SHOULD CONSIDER ENVIRONMENTAL JUSTICE CONCERNS WHEN DECIDING WHETHER TO REGULATE AMMONIA

EPA must consider environmental justice concerns regarding ammonia emissions when deciding whether to regulate ammonia. Executive Order 12,898 directs all agencies to consider environmental justice concerns during the decision-making process.[243] EPA has acted to effectively implement this Order through its recently issued Interim Guidance regarding environmental justice.[244] The Interim Guidance sets out two primary environmental justice concerns for the agency: ensuring fair treatment and enabling meaningful involvement of those impacted by EPA actions.[245] Fair treatment requires that "no group of people should bear a disproportionate burden of harms and risks," including the "negative environmental consequences" of governmental policies.[246] To achieve meaningful involvement by impacted communities, those potentially affected must have an appropriate role in decisions that may affect their environment or health.[247] Simply permitting input does not satisfy this obligation; EPA decision-makers have committed to actively "seek out and facilitate the involvement of those potentially affected."[248]

EPA"s decision whether to regulate ammonia from factory farms involves an environmental justice concern, because certain communities are disproportionately impacted by the pollution from these operations and have been excluded from meaningful participation in decisions regarding their siting and regulation. In addition, EPA"s response to this petition will constitute an "action that involves an environmental justice concern," because it "present[s] opportunities to address existing disproportionate impacts on minority, low-income, or indigenous populations that are addressable through the action."[249] CAFO ammonia pollution implicates nearly all of the primary factors EPA"s Interim Guidance identifies as consideration factors for decision-making processes: (1) proximity and exposure to environmental hazards, (2) susceptible populations, (3) unique exposure pathways, (4) multiple and cumulative effects, and (5) ability to participate in the decision-making process.[250] As discussed throughout this petition, CAFOs are the largest source of ammonia emissions in the US, and thus the environmental justice analysis EPA conducts when reviewing this petition must address communities impacted by CAFO air pollution.

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[243] Exec. Order 12,898 (1994).
[244] EPA, EPA"s Action Development Process: Interim Guidance on Considering Environmental Justice During the Development of an Action (July 2010).
[245] *Id.* at 3.
[246] *Id.*
[247] *Id.*
[248] *Id.*
[249] *Id.* at 6.
[250] *Id.* at 7-8.

Peer-reviewed sociological studies have shown that CAFOs are disproportionately located in communities with low socioeconomic status and frequently in predominantly African-American communities. One 2006 study of seventh and eighth grade students in North Carolina found an association between economic disadvantage and "proximity to the nearest hog CAFO and with strength of the odor."[251] The study found two other troubling correlations: populations already vulnerable to asthma and other illnesses are more likely to be exposed to CAFO emissions such as ammonia,[252] and schools with a high non-white population and a low socioeconomic status were more likely than other schools to have hog CAFOs nearby.[253] A 2011 study of 16 North Carolina communities concluded that in general, "[i]ndustrial hog operations in North Carolina are disproportionately located in low-income communities of color."[254]

Another study looked at placement and expansion of large hog CAFOs in 17 states, including three states where large-scale production had been rapidly expanding: North Carolina, Iowa, and Minnesota. In these three states, the researchers found disproportionate siting and expansion of large hog CAFOs in African-American communities in the 1980s and 1990s, and concluded that as hog production shifts from small-scale to large-scale, racial inequity in CAFO siting intensifies.[255]

Yet another study investigated hog CAFO siting in Mississippi, looking both state-wide and specifically in the counties with hog production, to determine whether hog CAFOs sited disproportionately in areas with higher poverty or higher percentages of African-American residents.[256] The study found three times as many hog CAFOs in (1) high African-American, low poverty and (2) high poverty, low African-American communities as compared to a control.[257]

EPA should consider the combined effects of the increasing geographic concentration of CAFOs, the adverse effect CAFOs have on nearby property values, and the disproportionate siting of CAFOs in low-income and minority communities when assessing the environmental justice impact of CAFO ammonia emissions. These factors exacerbate existing inequity, as low-income residents who already have the lowest mobility will become even less able to escape pollution as property values decline and more CAFOs move into an area. Citizens who live close to CAFOs and who breathe ammonia pollution every day frequently will not have the

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[251] Maria C. Mirabelli, Steve Wing, Stephen W. Marshall & Timothy C. Wilcosky, *Race, Poverty, and Potential Exposure of Middle-School Students to Air-Emissions from Confined Swine Feeding Operations* 114 Envtl. Health Persp. 591, 593 (April 2006).
[252] *Id.* at 591, 594.
[253] *Id.* at 595.
[254] Schinasi, *supra* note 109 at 7.
[255] Jeremy Arney, Janice E. Johnston, & Paul B. Stretesky, *Environmental Inequity: An Analysis of Large-Scale Hog Operations in 17 States, 1982-1997* 68 Rural Sociology 231, 244 (2003).
[256] Sacoby M. Wilson, et al., *Environmental Injustice and the Mississippi Hog Industry*, 110 Envt'l Health Perspectives 2 (April 2002).
[257] *Id.* at 199.

means to uproot their lives and families to move to a safer, less polluted community – nor should they have to.

The petitioners request that EPA recognize the environmental justice issues that underlie regulation of ammonia and make environmental justice a primary goal when determining whether to regulate it. This consideration should involve targeted outreach to communities near large or numerous CAFOs and active solicitation of public input from these stakeholders. EPA should base its determination of what constitutes protective regulation and fair treatment on the most adversely impacted communities and the most susceptible individuals, rather than simply assessing average ammonia concentrations in all rural communities.

VIII. EPA HAS A DUTY TO MAKE AN ENDANGERMENT FINDING AND REGULATE AMMONIA

In *Massachusetts v. EPA*,[258] the Supreme Court clarified EPA's obligations to make endangerment findings for air pollutants under the CAA.[259] In its discussion of EPA's discretion to determine, in the administrator's judgment, whether to make an endangerment finding for an air pollutant, the Court noted that "the use of the word "judgment" is not a roving license to ignore the statutory text." Rather, the exercise of this judgment "must relate to whether an air pollutant „cause[s], or contribute[s] to, air pollution which may reasonably be anticipated to endanger public health or welfare.'"[260] When EPA issues its response to a petition for rulemaking "its reasons for action or inaction must conform to the [CAA]," and EPA can only decline to act if it either finds that no endangerment exists or "provides some reasonable explanation as to why it cannot or will not exercise its discretion" to make an endangerment finding one way or another.[261]

Ammonia is a known and extensively researched toxin, for which "sufficient information exists to make an endangerment finding."[262] EPA and other federal agencies, as well as numerous peer-reviewed studies, have extensively documented ammonia's adverse health and welfare impacts, and EPA lacks the requisite "scientific uncertainty…so profound that it precludes EPA from making a reasoned judgment"[263] as to endangerment. Similarly, EPA lacks reasonable grounds on which to make a finding that ammonia does not endanger public health or

[258] *Massachusetts v. EPA*, 549 U.S. 497 (2007).
[259] Though the Court addressed the endangerment language in § 202(a), emissions standards for new motor vehicles, the language is substantially identical to the endangerment language in § 108(a). The Court's reasoning relied on the plain language of the statute, and therefore also applies to endangerment findings under § 108(a). EPA has not interpreted these provisions as having significantly different meanings, and thus the "normal rule of statutory construction that identical words used in different parts of the same act are intended to have the same meaning" applies. *Gustafson v. Alloyd Co., Inc.*, 513 U.S. 561, 569 (1995) (internal quotation marks and citations omitted).
[260] *Mass v. EPA* at 532-33.
[261] *Id.* at 533.
[262] *Id.* at 534.
[263] *Id.*

welfare. Consequently, a failure to initiate a rulemaking that proposes an endangerment finding for ammonia would be arbitrary and capricious.

If EPA makes an endangerment finding for ammonia, the finding will trigger a mandatory duty to list ammonia as a criteria pollutant. CAA § 108(a)(1) requires that the EPA Administrator "shall" list pollutants that meet the previously discussed requirements of (A) and (B), and "for which air quality criteria had not been issued before December 31, 1970, but for which [s]he plans to issue air quality criteria under this section." CAA § 108(a)(1)(C). In *NRDC v. Train*, the Second Circuit clarified that the latter provision of part (C) does not give EPA discretion to choose not to list a pollutant for which it made an endangerment finding because it has no "plans" to do so.[264] Rather, the court found conclusively that "[o]nce the conditions of §§ 108(a)(1)(A) and (B) have been met, the listing of [the pollutant] and the issuance of air quality standards for [the pollutant] become mandatory."[265]

Because ammonia meets the legal requirements above, the petitioners request that EPA review the scientific data regarding ammonia, make an endangerment finding, and determine that it must list ammonia as a criteria pollutant. The petitioners further request that EPA then establish both primary and secondary NAAQS for ammonia under §109 of the CAA for the protection of public health and public welfare with an adequate margin of safety.

IX. CONCLUSION

This petition requests that EPA regulate ammonia as a criteria pollutant under the CAA. Ammonia meets all of the legal requirements for listing as a criteria pollutant, and numerous peer-reviewed studies show that ambient ammonia endangers both public health and public welfare. CAA § 109(d)(1) gives EPA authority to re-evaluate the criteria and promulgate new standards for pollutants at its discretion, provided it completes a thorough review every five years, and the petitioners respectfully request that EPA undertake a review of ammonia without delay. An unreasonable delay responding to this petition, an arbitrary and capricious denial of this petition, or a scientifically unsubstantiated failure to make an endangerment finding will subject EPA to judicial review under Administrative Procedure Act[266] (APA) § 706(1), APA § 706(2)(A), or CAA § 304(a)(2).

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[264] *NRDC v. Train*, 545 F.2d 320 (2nd Cir. 1976).

[265] *Id.* at 328. EPA recently questioned this 34-year old precedent in its *Advanced Notice of Proposed Rulemaking: Regulating Greenhouse Gas Emissions Under the Clean Air Act*, 73 Fed. Reg. 44,354 at 44,477 FN 229 (2008). Although EPA has postulated that the subsequent establishment of *Chevron* deference could lead to a different outcome than under the NRDC court, that court used an analysis that would now clearly fall under *Chevron* "step 1," in finding that the statute"s plain language, structure, and legislative history "leave no room for interpretation" and impose a mandatory duty on EPA. *NRDC v. Train*, 545 F.2d at 328. Thus, an effort to overturn this precedent would likely fail.

[266] Administrative Procedure Act, 5 U.S.C. §§ 551-559; 701-706 (2006).

As previously discussed, the petitioners assert that the scientific record on ammonia"s threat to public health gives rise to an affirmative duty by EPA to make an endangerment finding and regulate ambient ammonia. Thus, the petitioners will deem a failure by EPA to make such a finding and initiate a rulemaking to designate ammonia as a criteria pollutant a "failure…to perform any act or duty…which is not discretionary," which is subject to judicial review under the citizen suit provision of the CAA. CAA § 304(a)(2).

The petitioners request that EPA respond to this petition in a timely manner by making an endangerment finding for ammonia and determining that it will regulate ammonia under CAA §§108 and 109 for the protection of public health and public welfare. The APA provides the petitioners with the right to petition EPA for a rulemaking to list ammonia as a criteria pollutant, and also obligates EPA to respond "with due regard for the convenience and necessity of the parties" and "within a reasonable time…proceed to conclude a matter presented to it." APA § 555(b). CAFOs have escaped regulation for their air emissions for decades, and rural citizens whose health have been and continue to be harmed by airborne ammonia require swift action by EPA. Therefore, in determining what constitutes a reasonable time for response to this petition, the petitioners urge EPA to consider that "human health and welfare are at stake."[267]

Respectfully Submitted,

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[267] *See In Re. American Rivers & Idaho Rivers United, Petitioners*, 372 F.3d 413, 418 (D.C. Cir. 2004).

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Exhibit B

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March 1, 2016

Via Certified Mail

Ms. Gina McCarthy
Administrator
U.S. Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Notice of Intent to Sue for Unreasonable Delay in Responding to a Petition for the Regulation of Ammonia as a Criteria Pollutant

Dear Administrator McCarthy,

We are writing on behalf of Iowa Citizens for Community Improvement, Clean Wisconsin, Center for Food Safety, The Humane Society of the United States, the Association of Irritated Residents, Food & Water Watch, and the Environmental Integrity Project ("Plaintiffs") to provide you with notice of our intent to file suit against the U.S. Environmental Protection Agency (EPA) and you, in your official capacity as Administrator of EPA, for unreasonable delay in responding to our April 5, 2011 "Petition for the Regulation of Ammonia as a Criteria Pollutant Under Clean Air Act Sections 108 and 109" ("Petition," Attachment A).

Our 2011 Petition specifically requested that EPA use its authority under the federal Clean Air Act (CAA), 42 U.S.C. §§ 7401 *et seq*., to find that ammonia endangers public health and welfare, to designate ammonia as a CAA "criteria pollutant" under CAA § 108, and to establish National Ambient Air Quality Standards (NAAQS) for ammonia in the ambient air to protect public health and welfare with an adequate margin of safety under CAA § 109. Attachment A, at 1.

As explained in the Petition, ammonia gas harms public health and welfare in numerous ways, including directly causing acute and chronic respiratory health impacts; mixing with other pollutants to form fine particulate matter, which causes respiratory symptoms, decreased lung function, aggravated asthma symptoms, heart disease, and

premature death; decreasing quality of life in rural communities; polluting water and soil through deposition; creating regional haze that reduces visibility in parks and other scenic places; and decreasing property values. Large livestock operations are the leading source of ammonia gas emissions in the U.S.

Despite the significant and growing body of scientific research demonstrating that ambient ammonia pollution emitted by animal feeding operations (AFOs), concentrated animal feeding operations (CAFOs), and other sources cause and contribute to air pollution that endangers public health and welfare, EPA has not acted to directly regulate this pollutant under the CAA, and, as a result, thousands of sources continue to emit ammonia pollution unabated. CAFOs are not currently required to meet any testing, performance, or emission standards under the CAA.

Nearly five years have passed since EPA received the 2011 Petition. EPA has not formally responded or taken any meaningful action on the Petition. Records obtained in May 2014 pursuant to a July 2013 Freedom of Information Act request indicate that EPA is not actively considering the Petition or moving toward a final determination on the Petition, but rather has yet to take the matter under any meaningful consideration. *See* Attachment B.

On January 28, 2015, Plaintiffs filed a complaint under the Administrative Procedure Act to remedy EPA's unreasonable delay in responding to the Petition. *Envtl. Integrity Project v. United States Envtl. Prot. Agency*, No. 15-0139 (ABJ), 2015 WL 7737307, at *1 (D.D.C. Dec. 1, 2015). The Court dismissed the case after finding that the CAA's citizen suit provision "provides the cause of action" for an unreasonable delay claim, that the citizen suit provision requires plaintiffs to notify the EPA 180 days before filing suit, and that Plaintiffs had not provided notice. *Id.* at *10.

Accordingly, Plaintiffs are hereby providing notice of their intent to sue to remedy EPA's unreasonable delay under the CAA.[1] Section 304 of the CAA provides that the "district courts of the United States shall have jurisdiction to compel (consistent

[1] Plaintiffs do not concede that an Administrative Procedure Act claim is improper, nor do they waive the right to bring suit under both the CAA and the Administrative Procedure Act in the future. Plaintiffs The Humane Society of the United States, the Association of Irritated Residents, Center for Food Safety, and the Environmental Integrity Project are parties to another unreasonable delay suit involving a separate rulemaking petition submitted to EPA, which seeks the listing and regulation of CAFOs as stationary sources under the CAA. *See Humane Soc'y of the United States v. United States Envtl. Prot. Agency*, No. 15-141 (D.D.C. filed Jan. 28, 2015). This letter also does not in any way concede that the Administrative Procedure Act claim regarding that petition is improper.

with paragraph (2) of this subsection) agency action unreasonably delayed,"[2] and requires that citizen litigants provide notice to EPA 180 days before commencing an action for unreasonable delay. 42 U.S.C. § 7604(a). Under § 304(a), this letter serves to notify you that Plaintiffs intend to file suit against you in federal district court any time beginning 180 days from the postmarked date of this letter to cure the unreasonable delay discussed above. *See* 40 C.F.R. § 54.2 (a), (d).

Plaintiffs include the following organizations:

Plaintiff Environmental Integrity Project (EIP) is a national nonprofit organization headquartered in Washington, D.C. EIP is dedicated to advocating for more effective enforcement of environmental laws, including the CAA. EIP advocates for application of clean air laws to AFOs nationwide, because these operations endanger public health and welfare with their unrestricted pollution emissions. EIP also works to gather and analyze pollution data and provide this information to the public, and has been actively engaged in EPA's ongoing process, now stalled, to develop accurate tools to estimate AFO air pollution.

Plaintiff Center for Food Safety (CFS) is a national nonprofit membership organization dedicated to protecting human health and the environment by curbing the proliferation of harmful food production technologies, such as AFOs, and instead promoting sustainable agriculture. CFS represents over 700,000 farmer and consumer members throughout the country who support safe, sustainable agriculture. CFS's mission is to protect the public's right to know how their food is produced. CFS utilizes regulatory actions, citizen engagement, legislation, and when necessary, litigation, to promote transparency and accountability in the factory farm industry. CFS believes that EPA must regulate ammonia and other pollutants from factory farms in order to protect human health and the environment and create a healthier, safer food supply. CFS is located at 303 Sacramento St., 2nd Floor, San Francisco, CA 94111, and can be reached at (415) 826-2770.

Plaintiff The Humane Society of the United States (HSUS) is a nonprofit organization headquartered in the District of Columbia and incorporated in the State of Delaware. HSUS is the largest animal protection organization in the United States, representing millions of members and constituents. Since its establishment in 1954, HSUS has advocated against the inhumane treatment of animals raised for food. To that end, HSUS actively advocates for better laws to protect animals and the environment;

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[2] Paragraph (2) provides that any person may commence a civil action "against the Administrator where there is an alleged failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator." 42 U.S.C. § 7604(a)(2).

conducts mission-specific campaigns; and advocates against practices that injure, harass or otherwise harm animals, including farm animals. Specifically, with its mission to create a humane and sustainable world for all animals—including people and communities—HSUS endeavors to ensure that its members are aware of and not injured by hazardous substances, including ammonia, released by AFOs. HSUS has actively campaigned to regulate air pollutants emitted by AFOs through efforts with the EPA, in Congress, and in the Courts.

Plaintiff Iowa Citizens for Community Improvement (ICCI) is a nonprofit organization that works to empower and unite grassroots Iowans of all ethnic backgrounds to take control of their communities; involve them in identifying problems and needs and in taking action to address them; and be a vehicle for social, economic, and environmental justice. ICCI's thousands of members work to protect rural communities from factory farm air and water pollution at the state and national level. Many ICCI members live, farm, and recreate in rural Iowa, and are directly and adversely affected by AFO ammonia emissions. ICCI is located at 2001 Forest Avenue, Des Moines, Iowa 50311, and can be reached at 515-282-0484.

Plaintiff Association of Irritated Residents (AIR) is a California non-profit corporation that advocates for air quality and environmental health in the San Joaquin Valley, with members living in Kern, Kings, Tulare, Fresno, and Stanislaus counties. Members of AIR live, raise their families, work, and recreate in the San Joaquin Valley. They are adversely affected by exposure to levels of air pollution that exceed the health-based $PM_{2.5}$ air quality standards. The adverse effects of such pollution include actual or threatened harm to their health, their families' health, their professional, educational, and economic interests, and their aesthetic and recreational enjoyment of the environment in the San Joaquin Valley. On the basis of air quality issues, AIR has fought the growth of local dairy CAFOs in the San Joaquin Valley. For many years, AIR has requested that the San Joaquin Valley Air Pollution Control District regulate ammonia as a precursor to $PM_{2.5}$ because it forms ammonium nitrate in the winter. Wintertime $PM_{2.5}$ levels in Kern County, at the southern end of the San Joaquin Valley, are the worst in the nation. AIR is located at 29389 Fresno Avenue, Shafter, CA 93263, and can be reached at 661-910-7734.

Plaintiff Clean Wisconsin protects Wisconsin's clean water and air and advocates for clean energy by being an effective voice in the state legislature and by holding elected officials and polluters accountable. Clean Wisconsin's mission is to protect the special places that make Wisconsin such a wonderful place to live, work and play. Clean Wisconsin is located at 634 W. Main St. #300, Madison, WI 53703, and can be reached at 608-251-7020.

Plaintiff Food and Water Watch (FWW) is a national, non-profit consumer advocacy organization with its headquarters in Washington, D.C. and offices throughout the United States. FWW works to ensure safe food and clean water, advocating for safe, wholesome food produced in a humane and sustainable manner and the public, rather than private, control of water resources. For several years, FWW has advocated for stronger regulation of pollution from industrial livestock operations.

If you have any questions regarding this notice, or would like to discuss this matter further, please contact Abel Russ at the number or email address below.

Respectfully submitted,

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Attachment A:

April 5, 2011 Petition for the Regulation of Ammonia as a Criteria Pollutant Under Clean Air Act Sections 108 and 109

BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

ENVIRONMENTAL INTEGRITY PROJECT, ASSOCIATION OF IRRITATED RESIDENTS, CABALLO CONCERNED CITIZENS GROUP, CENTER FOR FOOD SAFETY, CITIZENS FOR PENNSYLVANIA'S FUTURE, CLEAN WISCONSIN, CRAWFORD STEWARDSHIP PROJECT, ENVIRONMENTALLY CONCERNED CITIZENS OF SOUTH CENTRAL MICHIGAN, FOOD & WATER WATCH, THE HUMANE SOCIETY OF THE UNITED STATES, ILLINOIS CITIZENS FOR CLEAN AIR AND WATER, IOWA CITIZENS FOR COMMUNITY IMPROVEMENT, JOHNS HOPKINS CENTER FOR A LIVABLE FUTURE, MIDWEST ENVIRONMENTAL ADVOCATES, NORTHWEST ENVIRONMENTAL DEFENSE CENTER, RIO VALLE CONCERNED CITIZENS, SIERRA CLUB, SOCIALLY RESPONSIBLE AGRICULTURAL PROJECT, SUSTAIN RURAL WISCONSIN NETWORK, VERNON COUNTY ALLIANCE CONCERNED WITH ENVIRONMENTAL SAFETY, AND WATERKEEPER ALLIANCE,

Petitioners

v.

LISA P. JACKSON, ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,

Respondent.

PETITION FOR THE REGULATION OF AMMONIA AS A CRITERIA POLLUTANT UNDER CLEAN AIR ACT SECTIONS 108 AND 109

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I. EXECUTIVE SUMMARY

Congress enacted the Clean Air Act (CAA) to protect public health from diverse sources of air pollution, and empowered the Environmental Protection Agency (EPA) to establish regulations for different pollutants as scientific knowledge evolves, and the dangers they pose to human health and welfare become apparent. As this petition will establish, ambient ammonia pollution currently endangers human health and welfare, and EPA has an affirmative obligation to exercise its authority to regulate sources of ammonia emissions.

Ammonia gas, an air pollutant emitted in vast quantities by Concentrated Animal Feeding Operations (CAFOs), meets the criteria for listing as a CAA criteria pollutant, because ammonia emissions from numerous CAFOs and other sources "cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare." CAA § 108. The predominantly rural nature of this pollution does not limit EPA's authority to regulate; in fact, courts have made clear that even localized, site-specific, and infrequent ambient air pollution may create a public health risk that meets the § 108 standard and therefore warrants CAA regulation.

Several federal agencies, including EPA, have documented ammonia's acute and chronic adverse health effects. Numerous peer-reviewed studies further demonstrate that ambient ammonia pollution in some rural communities near CAFOs currently exceeds recommended exposure levels, and citizens living near CAFOs experience adverse health effects from CAFO air pollution, including ammonia. Ammonia gas also reacts with other gases to form ammonium aerosols, inhalable small particles that further endanger public health.

This petition will also establish that ambient ammonia pollution endangers public welfare, which the CAA defines broadly to include quality of life, economic, aesthetic, and environmental values. Ammonia emissions detract from quality of life and decrease personal comfort and well-being in rural areas. Airborne ammonia re-deposits in and near waterways, adding nitrogen to ecosystems overloaded with nutrient pollution, reduces property values, and impairs visibility in scenic areas. The petitioners respectfully request that EPA issue a timely response to this petition, make an endangerment finding for ammonia, designate ammonia as a criteria pollutant, and establish primary and secondary National Ambient Air Quality Standards (NAAQS) to protect public health and welfare with an adequate margin of safety.

II. INTRODUCTION

The Environmental Integrity Project, Association of Irritated Residents, Caballo Concerned Citizens Group, Center for Food Safety, Citizens for Pennsylvania's Future, Clean Wisconsin, Crawford Stewardship Project, Environmentally Concerned Citizens of South Central Michigan, Food & Water Watch, the Humane Society of the United States, Illinois Citizens for Clean Air and Water, Iowa Citizens for Community Improvement, Johns Hopkins Center for a Livable Future, Midwest Environmental Advocates, Northwest Environmental

Defense Center, Rio Valle Concerned Citizens, Sierra Club, Socially Responsible Agricultural Project, Sustain Rural Wisconsin Network, Vernon County Alliance Concerned with Environmental Safety, and Waterkeeper Alliance (petitioners) hereby petition the EPA to regulate air emissions of ammonia (NH_3) as a criteria pollutant under the CAA, sections 108 and 109.[1] Ammonia meets the legal standard for listing as a criteria pollutant because numerous stationary sources currently emit ammonia, an air pollutant, into the ambient air at levels which may reasonably be anticipated to endanger public health and welfare.

Ammonia qualifies as a pollutant that endangers public health and welfare. Exposure to airborne ammonia can cause both short-term and chronic respiratory health effects, and the chemical is lethal at sufficiently high concentrations. In addition, ammonia re-deposits onto soils and into sensitive waterways, resulting in soil acidification and eutrophication, which are destructive to both terrestrial and aquatic ecosystems. The small particles ammonia forms in combination with other pollutants contribute to regional haze and further threaten public health, and ammonia"s odor adversely affects quality of life and property values.

While ammonia sources that exceed certain thresholds must report emissions under federal "right to know" laws,[2] the CAA currently does not meaningfully regulate ammonia emissions from the nation"s most significant sources. The CAA, EPA"s most appropriate and effective tool for regulating air emissions, does not include ammonia on either its list of hazardous air pollutants, established in § 112, or its list of criteria pollutants, established pursuant to §§ 108 and 109; nor does it establish New Source Performance Standards under § 111 for CAFOs, the industry sector responsible for the majority of U.S. ammonia emissions.

The health and welfare harms caused by ambient ammonia warrant EPA"s increased scrutiny and regulation. Although additional CAA programs likely apply to ammonia and other CAFO emissions, EPA should regulate ammonia as a criteria pollutant, because short-term and chronic ambient ammonia pollution threatens public health and welfare in rural communities throughout the U.S. Due to ammonia"s toxicological profile and the human health and ecological threats it poses, the petitioners submit this petition to EPA, requesting that the agency list ammonia as a criteria pollutant and issue primary and secondary NAAQS to protect public health and public welfare from ammonia pollution.

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[1] 42 U.S.C. §§7408, 7409.

[2] EPA recently limited these emissions reporting requirements as well. Under EPA"s 2008 CERCLA/EPCRA Administrative Reporting Exemption for CAFOs, only the Emergency Planning and Community Right to Know Act (EPCRA) still requires reporting of ammonia and hydrogen sulfide emissions from CAFOs, and only by large CAFOs as defined under the Clean Water Act. *See* CERCLA/EPCRA Administrative Reporting Exemption for Air Releases of Hazardous Substances From Animal Waste at Farms, 73 Fed. Reg. 76,948, 76,951 (Dec. 18, 2008).

III. PETITIONERS

The petitioners are the Environmental Integrity Project, Association of Irritated Residents, Caballo Concerned Citizens Group, Center for Food Safety, Citizens for Pennsylvania"s Future, Clean Wisconsin, Crawford Stewardship Project, Environmentally Concerned Citizens of South Central Michigan, Food & Water Watch, the Humane Society of the United States, Illinois Citizens for Clean Air and Water, Iowa Citizens for Community Improvement, Johns Hopkins Center for a Livable Future, Midwest Environmental Advocates, Northwest Environmental Defense Center, Rio Valle Concerned Citizens, Sierra Club, Socially Responsible Agricultural Project, Sustain Rural Wisconsin Network, Vernon County Alliance Concerned with Environmental Safety, and Waterkeeper Alliance.

The Environmental Integrity Project (EIP) is a nonpartisan, nonprofit organization established in March of 2002 by former EPA enforcement attorneys to advocate for more effective enforcement of environmental laws. CAFO pollution, one of EIP"s focal issues, contributes a controlling share of the total ammonia air emissions in the United States. EIP has an interest in protecting the environment from ammonia emissions released from CAFOs and other sources, as these emissions threaten human health and welfare, air quality, and water quality.

The Association of Irritated Residents (AIR) is an unincorporated non-profit with members throughout the San Joaquin Valley (SJV). On the basis of air quality issues, AIR has fought the local growth in dairy CAFOs in the SJV. For many years AIR has requested that the San Joaquin Valley Air Pollution Control District regulate ammonia as a precursor to $PM_{2.5}$ or ammonium nitrate. Wintertime $PM_{2.5}$ levels in Kern County, at the southern end of the SJV, are the worst in the nation.

Caballo Concerned Citizens Group (CCCG) is a grassroots community group of more than 1,000 New Mexicans. CCCG formed in response to a mega-dairy that attempted to locate in a region with shallow groundwater and vulnerable artesian wells, and within dangerous proximity to the Caballo Reservoir, the Rio Grande River, and pristine state parks. CCCG members living near animal factories cannot drink water from their wells or breathe the air in their homes due to these facilities" unregulated pollution, including ammonia.

Established in 1997, The Center for Food Safety (CFS) is a non-profit, membership organization that works to protect human health and the environment by curbing the proliferation of harmful food production technologies and by promoting organic and other forms of sustainable agriculture. CFS represents over 160,000 members throughout the country that are concerned about the impacts of factory farming on human health, animal welfare, and the environment. CFS believes that EPA must regulate ammonia and other pollutants from factory farms in order to protect human health and the environment and create a healthier, safer food supply.

Citizens for Pennsylvania's Future (PennFuture) works for a healthy environment, clean energy, and a sound economy. PennFuture litigates and advocates sound statewide policies to reduce air pollution from all sources, including agriculture.

Clean Wisconsin protects Wisconsin"s clean water and air and advocates for clean energy by being an effective voice in the state legislature and by holding elected officials and polluters accountable. Clean Wisconsin"s mission is to protect the special places that make Wisconsin such a wonderful place to live, work and play.

Crawford Stewardship Project is a grassroots community organization that works to protect the environment of Crawford County, Wisconsin from threats such as those posed by CAFOs and to promote sustainable land use, local control of natural resources, and environmental justice.

Environmentally Concerned Citizens of South Central Michigan (ECCSCM) supports vanguard, responsible agriculture, farming that looks ahead to the next generations, preserves biodiversity, raises animals in a healthy environment, does no harm to its neighbors, enhances the natural assets of living communities, and protects our natural resources – air, soils, groundwater, streams, and lakes. As family farmers and neighbors, ECCSCM believes agriculture must take responsibility for its actions in rural communities. CAFOs have failed us. They have damaged our farming communities, degraded our natural resources, and polluted our watersheds. ECCSCM believes that ammonia must be regulated to protect our communities, young and old.

Food & Water Watch is a national nonprofit advocacy organization that advocates for common sense policies that will result in healthy, safe food and access to safe and affordable drinking water. The issue of industrialized livestock production is a core part of Food & Water Watch"s work. Food & Water Watch has worked since 2005 to change federal and state policy on CAFOs and also works to educate the public on the variety of impacts these facilities have on public health and the environment.

The Humane Society of the United States (HSUS) is a national and international non-profit charitable organization that works to reduce suffering and improve the lives of all animals. The HSUS maintains its headquarters in Washington, D.C., and has offices, affiliates, or staff in 25 states, the District of Columbia, and five foreign countries. Through its policy, legislative, litigation, and grass-roots activities, the HSUS has become the nation"s largest and most effective animal protection organization, with more than 11 million members and constituents. The HSUS actively advocates against practices that harm all animals, including practices that result in unhealthy levels of pollutants being discharged into farm animal and wildlife habitats. HSUS has actively campaigned to regulate air pollutants being discharged by CAFOs through efforts with the EPA, in Congress, and in the Courts. Members of HSUS in the Lathrop, California community teamed up with the HSUS to bring a suit against a large chicken CAFO

that emits toxic levels of ammonia into their neighborhood and HSUS has petitioned the EPA to list and regulate CAFOs under the Clean Air Act. In the course of HSUS cases, experts have documented ambient ammonia levels above recommended health limits in the local community.

Illinois Citizens for Clean Air and Water (ICCAW) is a state-wide coalition of family farmers and community groups advocating for sound policies and practices that protect the environment, human health, and rural quality of life from the impacts of large-scale, industrialized livestock production facilities in Illinois. A majority of its members are family farmers and rural residents that live near large-scale livestock facilities that have been adversely impacted by the problems they create. The regulation of ammonia emissions from CAFOs is of particular concern to ICCAW because of the human health risks neighbors experience from exposure.

Iowa Citizens for Community Improvement (Iowa CCI) is a 36-year-old statewide non-profit grassroots organization. Iowa CCI has led the fight against factory farms in Iowa for the past 15 years and has pushed for better environmental and permitting laws for factory farms on the state and national level – including the first clean air standards established for ammonia and hydrogen sulfide in the state of Iowa.

The Johns Hopkins Center for a Livable Future, based at the Bloomberg School of Public Health, conducts and funds research that increases knowledge about the complex interactions among diet, health, food production and the natural environment. The Center has over a decade of experience researching the public health impacts of industrial food animal production. Research has provided strong evidence that the complex mixtures of AFO air pollutants impact health of surrounding communities. The release of ammonia from these facilities and from land applied animal waste contributes to population exposures. Given this, there is strong justification for EPA to add ammonia as a criteria pollutant and develop ambient standards aimed at protecting public health.

Midwest Environmental Advocates (MEA) is a non-profit environmental law center, founded in 1999, which provides legal services for the under-represented and advocates for the public"s right to clean air, land and water. MEA represents communities negatively affected by air and water pollution, including ammonia pollution, from CAFOs. MEA"s clients have experienced many of the health impacts associated with ammonia including respiratory problems, dizziness, nausea, and burning eyes.

The Northwest Environmental Defense Center (NEDC) is an independent, nonprofit organization working to protect the environment and natural resources of the Pacific Northwest. NEDC has an interest in protecting the region"s air quality and water quality from CAFO ammonia pollution. For example, NEDC has worked to protect the environment of the Columbia River Gorge, where ammonia emissions from CAFOs have contributed to haze.

Rio Valle Concerned Citizens (RVCC) is a community group organized by citizens in 2010, and is part of a New Mexico Dairy Coalition that works to protect the state"s groundwater from dairy pollution. As a community living near a CAFO, RVCC has an interest in bringing ammonia pollution down to a safe level. RVCC believes that CAFOs should monitor the amount of ammonia they emit and the health effects our community residents are living with because of ammonia pollution, and be responsible for reducing ammonia pollution to a safe level.

Since 1892, the Sierra Club has been working to protect communities, wild places and the planet. With 1.4 million members and supporters, it is the largest grassroots environmental organization in the United States. The Sierra Club has long been involved in public education, advocacy and litigation to reduce pollution from CAFOs.

Socially Responsible Agricultural Project (SRAP) is a unique organization dedicated to assisting rural communities facing economic strife to help them discover local solutions which will help them thrive once again. Established in 1997, this nonprofit organization has assisted over 750 communities and groups in the United States and Canada that have been impacted by the negative effects of industrial agriculture.

Sustain Rural Wisconsin Network (SRWN) is a statewide coalition of organizations and individuals working together to understand and influence impacts of CAFOs on rural Wisconsin communities. SRWN supports actions to promote environmentally sound, socially responsible farming practices that assure clean air and water and safe local food production for the future. SRWN also works to encourage the diversity and vitality of Wisconsin"s rural family farms and communities.

Vernon County Alliance Concerned with Environmental Safety (ACES) successfully organized to protect its community from a 3,200 head factory dairy proposed by an out-of-state developer. ACES" mission is to ensure that the environment, economy, and health are preserved and protected in the design and location of business and industry in Vernon County, Wisconsin.

Waterkeeper Alliance is an international nonprofit organization representing the interests of its nearly 200 member watershed groups. Waterkeeper, along with each of its member groups, is dedicated to the preservation and protection of waterbodies and their neighboring communities. Aligned with this mission, Waterkeeper is concerned with the impacts of concentrated animal production on public health and the environment, and it seeks to reduce these impacts by actively advocating for the control of animal waste pollution, and for the promotion of sustainable agriculture.

IV. LEGAL AUTHORITY FOR REGULATING AMMONIA

The CAA provides EPA with the legal authority required to regulate ammonia. Congress directed EPA to designate pollutants that endanger public health or welfare as criteria pollutants, and to establish protective primary and secondary National Ambient Air Quality Standards for these pollutants, under §§ 108 and 109 of the CAA.

Section 108 sets out the requirements for establishing and regulating criteria pollutants:

(a) Air Pollutant List; publication and revision by Administrator; issuance of air quality criteria for air pollutants

(1) For the purpose of establishing national primary and secondary ambient air quality standards, the Administrator shall within 30 days after December 31, 1970, publish, and shall from time to time thereafter revise, a list which includes each air pollutant---

(A) emissions of which, in his judgment, cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare;

(B) the presence of which in the ambient air results from numerous or diverse mobile or stationary sources; and

(C) for which air quality criteria had not been issued before December 31, 1970, but for which he plans to issue air quality criteria under this section.

This petition will demonstrate that ammonia meets all of the CAA statutory requirements for regulation under § 108 because: 1) it is a pollutant, 2) emissions of which may reasonably be anticipated to endanger public health and welfare, 3) the presence of which results from numerous stationary sources (primarily CAFOs), and 4) for which no air quality criteria have been issued.

Once EPA lists a pollutant under § 108, the listing triggers § 109, which sets the schedule for promulgating NAAQS[3] and requires EPA to establish primary and secondary standards sufficient to protect public health and welfare. EPA has only designated six criteria pollutants: 1) carbon monoxide, 2) nitrogen dioxide, 3) ozone, 4) lead, 5) sulfur dioxide, and 6) particulate matter (both $PM_{2.5}$ and PM_{10}). However, the wording of § 109(d), which requires EPA to review the NAAQS every five years and "promulgate such new standards as may be appropriate in accordance with section 7408 [108]," makes clear that Congress anticipated the list should evolve as new scientific studies emerge and new pollutants qualify for listing. Furthermore,

[3] Section 109 states "[n]ot later than December 31, 1980, and at five-year intervals thereafter, the Administrator shall complete a thorough review of the criteria published under section 7408 of this title and the national ambient air quality standards promulgated under this section and shall make such revisions in such criteria and standards and promulgate such new standards as may be appropriate in accordance with section 7408 of this title and subsection (b) of this section. The Administrator may review and revise criteria or promulgate new standards earlier or more frequently than required under this paragraph." CAA § 109(d)(1).

courts have established that § 109(d) gives rise to a mandatory duty for EPA to regulate a pollutant once it satisfies the statutory requirements of § 108.[4]

Under §109(d), the Administrator and independent scientific review committee must re-evaluate both the list of criteria pollutants and the NAAQS in five-year intervals, but may promulgate new standards more frequently in its discretion. Due to ammonia"s ongoing adverse effects on public health and welfare, the petitioners urge EPA to take prompt action in response to this petition.

V. EPA SHOULD REGULATE AMMONIA AS A CRITERIA POLLUTANT UNDER CAA SECTION 108

EPA should make an endangerment finding and designate ammonia as a criteria pollutant, because it meets the statutory requirements for regulation. Ammonia is a pollutant, emissions of which endanger public health and welfare, the presence of which results from numerous stationary sources (CAFOs), and for which no air quality criteria have been issued.

A. Ammonia meets the CAA definition of an air pollutant

CAA section 108(a)(1) only applies to the regulation of air pollutants. Ammonia clearly meets the CAA § 302(g) definition of an air pollutant: "any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term „air pollutant" is used."

The term "air pollutant" has been given a broad and "sweeping" interpretation by the Supreme Court.[5] Ammonia gas meets the CAA"s definition because, as this petition will establish, it causes harm to public health and the natural environment when numerous stationary sources, including CAFOs, steel mills, and refineries, emit it into the ambient air. EPA currently regulates airborne ammonia under CERCLA as a hazardous substance, and under EPCRA as an extremely hazardous substance,[6] and the Agency for Toxic Substances and Disease Registry (ATSDR) characterizes ammonia as a toxin because exposure to airborne ammonia can result in severe respiratory effects. EPA also recognizes ammonia"s role as a fine particulate matter

[4] *See* discussion *infra* Section VIII.

[5] *Massachusetts v. EPA*, 549 U.S. 497 (2007) at 527. The court places emphasis on the use of the word "any" air pollutant.

[6] 40 C.F.R. §§ 302.4–302.5, 355.40, App. A to § 355 (2008).

precursor pollutant.[7] Thus ambient ammonia gas is air pollution, and ammonia emitted into the air is an air pollutant under the CAA.

B. Ammonia emissions cause and contribute to air pollution which may reasonably be anticipated to endanger both public health and welfare

Under CAA § 108(a)(1)(A), to qualify as a criteria pollutant, ammonia must cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare. This petition presents extensive evidence to support a finding that ammonia endangers both public health and public welfare, and that ammonia emissions from numerous stationary sources currently give rise to ambient ammonia concentrations harmful to human health and quality of life, soil and water quality, visibility, and property values.

1. Ammonia emissions endanger public health

The CAA requires EPA to establish NAAQS for an air pollutant if the agency determines that the pollutant can be reasonably anticipated to endanger public health. Although the CAA and its implementing regulations do not define public health, the Supreme Court has affirmed its broad and common sense meaning, declaring it as simply "the health of the public."[8] The World Health Organization has also established a widely accepted definition of health as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity."[9] In addition, Black"s Law Dictionary (8th ed. 2004) defines both health: it defines health – "the state of being sound or whole in body, mind, or soul" and "freedom from pain or sickness" – and public health – "the health of the community at large."

Ammonia pollution threatens public health in numerous ways encompassed by these broad definitions. Threats to public health from ambient ammonia include increased risk of respiratory symptoms, eye and nose irritation, and other physical discomfort, as well as more severe health effects. Ammonia also contributes to the health effects of the mixture of gases in CAFO air emissions, which studies have linked to respiratory symptoms as well as headaches, nausea, and increased incidence of infant mortality. If certain communities face a disproportionate and substantial risk of adverse health effects from airborne ammonia, EPA may – and should – find that ammonia warrants regulation as a criteria pollutant. Extensive research conducted on both human and animal subjects over several decades establishes that ammonia emissions endanger human health. Indeed, several federal agencies, including EPA, have recognized this threat by establishing health standards or recommended exposure limits to protect workers and others exposed to airborne ammonia. CAFO emissions research further shows that airborne ammonia levels in some communities currently exceed relevant health benchmarks, demonstrating that ammonia is reasonably anticipated to endanger public health.

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[7] *See* discussion *infra* Section V.B.1.iii.e.
[8] *Whitman v. American Trucking Ass'n*, 531 US 457, 466 (2001).
[9] World Health Organization (1948), http://www.who.int/about/definition/en/print.html.

i. EPA should regulate ammonia under the CAA because ammonia exposure causes significant adverse health effects

Ammonia"s health effects have been thoroughly documented by the ATSDR, part of the Department of Health and Human Services, as well as the National Academy of Sciences, universities, and other federal agencies. ATSDR assessed "all relevant [ammonia] toxicologic testing and information that has been peer-reviewed" in drafting its Toxicological Profile for Ammonia.[10] EPA employs a similarly thorough review of ammonia health research, the National Academy of Sciences" Acute Exposure Guideline Levels (AEGL) report for ammonia.[11] The National Advisory Committee established to draft this report was tasked to "identify, review, and interpret relevant toxicologic and other scientific data" and establish acute exposure guidelines for ammonia and other "high-priority, acutely toxic chemicals."[12] Two Iowa universities have also compiled significant published research on the human health effects of ammonia gas exposure, which they reported in the 2002 Iowa CAFO Air Quality Study.[13] These three peer-reviewed documents compile and evaluate decades of accidental ammonia exposure case studies as well as human and animal irritation, exposure, and lethality studies.[14]

Depending on the concentration, duration of exposure, and sensitivity of the individual exposed, ammonia exposure causes a range of effects including odor detection, nasal, throat, and eye irritation, burns, scarring, and even death. The AEGL report for ammonia summarizes existing acute exposure research in the following chart.[15]

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[10] ATSDR, *supra* note 6.
[11] Acute Exposure Guideline Levels for Selected Airborne Chemicals, Vol. 6, Committee on Acute Exposure Guideline Levels, Committee on Toxicology, Nat"l Research Council of the National Academies of Sciences, *available at* http://www.epa.gov/oppt/aegl/pubs/ammonia_final_volume6_2007.pdf [hereinafter Ammonia AEGL Report].
[12] Ammonia AEGL Report at 4.
[13] IOWA STATE UNIV. & UNIV. OF IOWA STUDY GROUP, IOWA CONCENTRATED ANIMAL FEEDING OPERATIONS AIR QUALITY STUDY (2002) at 123 [hereinafter Iowa Study], *available at* http://www.public-health.uiowa.edu/ehsrc/CAFOstudy.htm. *See also* discussion of Iowa Study *infra* Section V.B.1.ii.d.
[14] ATSDR at 102; Ammonia AEGL Report at 59; Iowa Study at 123-24.
[15] Excerpted from Ammonia AEGL Report, Table 2-5, at 77-78.

SUMMARY OF NONDISABLING AND REVERSIBLE EFFECTS OF INHALED AMMONIA IN HUMANS		
Concentration	**Duration of Exposure**	**Effect**
5 ppm	3 hours, with rest and exercise for 1.5 hours each	Subjective rating of eye discomfort and smell, headache, dizziness, and "feeling of intoxication" significantly greater than of controls; sensory adaptation to odor; no exposure-related change in pulmonary function, increase in nasal cells, no increase in exhaled NO, and no alteration in bronchial response to methacholine.
25 ppm	3 hours, with rest and exercise for 1.5 hours each	Subjective rating of eye, upper respiratory, and throat irritation, smell, headache, dizziness, and "feeling of intoxication" significantly greater than of controls; no sensory. Adaptation to odor; no exposure-related change in pulmonary function, increase in nasal cells, no increase in inhaled NO, and no alteration in bronchial response to methacholine.
30 ppm	10 minutes	Odor was moderately intense to highly penetration; irritation was faint or not detectable.
32 ppm	5 minutes	Nasal Dryness.
50 ppm	5 minutes	Nasal Dryness.
50 ppm	10 minutes	Highly penetrating odor; moderate irritation.
50 ppm	30 minutes	Moderately intense odor; moderate irritation to eyes and nose; mild irritation to throat and chest; slight urge to cough; slight general discomfort.
50 ppm	1 hour	Highly intense odor; moderate irritation to eyes, nose, throat, and chest; mild urge to cough; slight general discomfort.
50 ppm	2 hours	Offensive odor; moderate irritation to eyes, nose, throat, and chest, mild urge to cough; mild general discomfort.
72 ppm	5 minutes	Nasal, eye, and throat irritation.
80 ppm	30 minutes	Highly intense odor; highly intense eye and nose irritation; moderate throat and chest irritation; mild urge to cough; moderate general discomfort.
80 ppm	1 hour	Highly intense odor; moderate eye, nose, throat, and chest irritation; mild urge to cough; moderate general discomfort.

80 ppm	2 hours	Highly intense odor; highly intense eye, nose, throat, and chest irritation; highly intense urge to cough; and moderate general discomfort.
100 ppm	5-30 seconds	Significant increase in nasal airway resistance, but atopic subjects, including asthmatics, responded similarly to the nonatopic subjects.
100 ppm	2-6 hours/day, 5 weeks	No adverse effects on respiratory function and no increase in frequency of eye, nose, or throat irritation.
110 ppm	30 minutes	Highly intense odor, highly intense eye, nose throat, and chest irritation, mild urge to cough; moderate general discomfort.
110 ppm	1 hour	Highly intense odor; highly intense eye, nose, throat, and chest irritation; moderate urge to cough, moderate general discomfort
110 ppm	2 hours	Highly intense odor; highly intense eye and nose irritation; urge to cough; general discomfort
140 ppm	30 minutes	Highly intense odor; unbearable eye, nose, throat, and chest irritation; mild urge to cough; moderate general discomfort.
140 ppm	1 hour	Highly intense odor; unbearable eye, nose, throat, and chest irritation; moderate urge to cough; moderate general discomfort.
140 ppm	2 hours	Highly intense odor; unbearable eye and nose irritation; highly intense throat and chest irritation; highly intense urge to cough; unbearable general discomfort
143 ppm	5 minutes	Nose, eye, throat, and chest irritation; lacrimation.
500 ppm	15-30 minutes	Nose and throat irritation; nasal dryness and stuffiness; excess lacrimation; hyperventilation; unbearable.
570 ppm	Single Breath	Threshold for reflex glottis closure, 21 to 30-year-old subjects.
1000 ppm	Single Breath	Threshold for reflex glottis closure, 60-year-old subjects.
1000 ppm	NR	Immediate urge to cough.
1790 ppm	Single Breath	Threshold for reflex glottis closure, 86 to 90-year-old subjects.

Humans detect ammonia odor at concentrations ranging from 5 to 53 parts per million (ppm), and the odor can become "highly penetrating" at 50 ppm after 10 minutes of exposure.[16] One third of the volunteers in one human exposure study experienced irritation after just 10 minutes of exposure to 30 ppm ammonia.[17] The same study showed that eye, nose, throat, and chest irritation become moderate after a 30-minute exposure to 50 ppm and can become "highly intense" after a 30-minute exposure to 80 ppm.[18] At concentrations of 50 ppm, ammonia exposure can lead to throat irritation, mucous production, and cough.[19] At heightened concentrations, ammonia"s effects exceed odor and irritation, and cause actual damage to the respiratory system. This damage may include tracheal and nasopharyngeal burns, and bronchiolar/alveolar swelling.[20]

Non-fatal effects of acute exposures to high concentrations of ammonia can be long-lasting, and even permanent. One case study considered in ATSDR"s Toxicological Profile monitored the health effects on three men who had been acutely exposed to ammonia gas; the men subsequently reported several symptoms, including burning of the skin, eyes, and throat.[21] The men also showed signs of stressed airways as evidenced by wheezing and cough. More than two years later, the researchers re-evaluated the men and found continuing symptoms of restrictive lung disease.[22] Another case study considered by ATSDR followed a man who, 12 years after exposure to ammonia gas, still suffered from recurrent bronchial infections as well as cough and exertional dyspnea, or shortness of breath while exercising.[23]

The Toxicological Profile also documents accidents involving exposure to ammonia that resulted in neurological impacts such as blurred vision, muscle weakness, decreased deep tendon reflexes, and loss of consciousness.[24] Due to ammonia"s solubility in water, ocular effects such as inflammation of the eyes and swelling of the eye-lids can occur with exposure to airborne ammonia.[25] Ammonia"s solubility also allows it to quickly absorb into the upper airways, where it can damage the epithelial cells.[26]

In addition, ammonia inhalation can cause fatal burns and infections.[27] According to ATSDR, ammonia becomes acutely lethal at concentrations of 5,000-10,000 ppm.[28] These levels

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[16] Ammonia AEGL Report at 59-60.
[17] *Id.* at 60.
[18] *Id.*
[19] *Id. See also* Iowa Study at 123.
[20] ATSDR at 16.
[21] *Id.* at 48.
[22] *Id.*
[23] *Id.*
[24] *Id.* at 55.
[25] *Id.* at 73.
[26] Iowa Study at 123.
[27] ATSDR at 25.
[28] *Id.*

of exposure often result in chemical burns and swelling of the skin, eyes, and respiratory tract.[29] At such high levels, studies have found that the ammonia actually scorches those exposed from the inside out, causing extensive internal damage such as swelling and congestion of the lungs, the stripping off of the epithelial lining of the bronchial wall, and ammonia burns across the upper body, face, and mouth.[30]

Ammonia"s health impacts persist even as it undergoes chemical transformations in the ambient air. Once in the air ammonia reacts to form ammonium aerosols;[31] both ammonia and these aerosol particles can have devastating effects on cardiovascular and hematological systems. Various non-human studies show that exposure to high concentrations of these compounds can cause high blood pressure, elevated pulse, bradycardia,[32] and even cardiac arrest.[33]

Specific health effects of acute ammonia exposure incidents depend on several factors, but these ammonia inhalation and exposure studies and literature reviews together document a scientifically accepted correlation between exposure to airborne ammonia and adverse respiratory and other health effects. These studies also consistently report odor, irritation, cough, and other respiratory symptoms for some individuals exposed to ammonia concentrations of approximately 30 ppm even over short periods of time.

Research further indicates that which symptoms a person experiences and which parts of the respiratory tract are affected depend not only on the concentration of ammonia, but also on whether exposure is acute or chronic. Acute exposures to low levels of ammonia affect the upper respiratory tract, whereas exposure to higher concentrations over longer periods of time affect both the upper and lower respiratory tracts and the alveolar capillaries in the lungs.[34] At sufficiently high concentrations, ammonia will bypass the upper airways and directly affect the lungs, causing inflammation of the lower lungs and pulmonary edema, or swelling.[35]

Although less research exists documenting the health effects of chronic ammonia exposures than of acute exposures, ATSDR based its long-term exposure recommendation on a 12-year case study of occupational exposure, from which the agency derived a no observable adverse effect level (NOAEL) of 9.2 ppm.[36] This petition will discuss additional studies of health and welfare effects from long-term ammonia exposure near CAFOs.

In short, ammonia released into the air causes both acute health effects and chronic diseases. However, though ammonia may be reasonably anticipated to endanger public health, EPA currently does not regulate airborne ammonia to protect the health of the general public.

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[29] *Id.*
[30] *Id.*
[31] *Id.* at 34.
[32] Slow heart beat; *see* Mayo Clinic, Bradycardia at http://www.mayoclinic.com/health/bradycardia/ds00947.
[33] ATSDR at 52.
[34] *Id.*
[35] Iowa Study at 123.
[36] *Id.* at 40.

The only enforceable ammonia standards currently in effect apply exclusively to workers; but as this petition will establish, non-workers near CAFOs and other ammonia sources also require protection from unsafe ambient levels of ammonia. The NAAQS program provides the best mechanism for this protection.

ii. Ammonia is widely recognized as a health threat

Based on ammonia"s well-documented and life-threatening health effects, EPA, ATSDR, the Occupational Safety and Health Administration (OSHA), and the National Institute for Occupational Safety and Health (NIOSH) have taken steps to protect workers from dangerous exposures to ammonia and inform the public of the potential risks of exposure. Moreover, groups of experts have considered the health effects of ammonia from CAFOs in particular, and have recommended that EPA regulate ammonia under the CAA based on existing research. This section introduces several relevant health benchmarks, and discusses the merits and limitations of each with regard to assessing the health risk of ambient ammonia. It then discusses the Iowa Study of CAFO emissions and the Pew Commission report on industrial livestock production and their recommendations to protect communities from the health effects of ambient ammonia. This petition will analyze several studies of ammonia emissions from CAFOs, using these various existing and proposed health thresholds as indicators for the risk posed by current ammonia levels at the CAFO vent and in the ambient air.

a. Acute Exposures: EPA's Acute Exposure Guideline Levels

EPA has already adopted both short- and long-term ammonia heath guidelines. The first is a system of short-term pollution exposure limits, known as Acute Exposure Guideline Levels (AEGLs), established to guide response actions when people experience a rare – even "once-in-a-lifetime" – short-term, accidental exposure to a toxic chemical.[37] The National Advisory Committee reviewed relevant studies and data, then used these studies to establish threshold exposure limits "below which adverse health effects are not likely to occur."[38]

EPA divides the AEGLs into three levels: AEGL-1, the concentration above which the public, including susceptible individuals, could experience irritation or discomfort but no lasting effects; AEGL-2, the concentration above which the general public, including susceptible individuals, could experience permanent, serious adverse health effects and an inability to escape from the chemical threat; and AEGL-3, the concentration above which the general public, including susceptible individuals, could experience life-threatening adverse health effects or death.[39] EPA established several AEGL concentrations for each level, correlated with different exposure durations. The AEGL-1 for each of several acute-duration exposure times is 30 ppm,

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[37] EPA, Acute Exposure Guideline Level Program, http://www.epa.gov/oppt/aegl/index.htm (last visited Mar. 18, 2011).
[38] Ammonia AEGL Report at 4.
[39] *Id.* at 4-5.

indicating that after as few as ten minutes, individuals may experience temporary, but adverse, health effects from breathing 30 ppm ammonia.[40] The following chart shows EPA's AEGLs for ammonia.[41]

Ammonia 7664-41-7 (Final)					
ppm					
	10 min	30 min	60 min	4 hr	8 hr
AEGL 1	30	30	30	30	30
AEGL 2	220	220	160	110	110
AEGL 3	2,700	1,600	1,100	550	390

The AEGLs provide one of the most comprehensive and scientifically rigorous reviews of existing human and animal research on the effects of ammonia exposure. Moreover, these guidelines consider the health effects on high-risk populations, rather than considering only effects on worker health as some other agency standards do. The AEGLs also demonstrate that EPA already recognizes ammonia's short-term health effects, even at moderate concentrations. Consequently, these guidelines provide a strong foundation from which EPA can establish short-term NAAQS that will protect public health and welfare from short-term elevations in ambient ammonia levels from sources such as CAFOs.

Although the AEGLs provide EPA with a comprehensive review of scientific research with which to regulate, ammonia NAAQS must be more protective than the AEGLs. These levels are set to protect the public from a *once-in-a-lifetime* exposure to ammonia, while many rural citizens breathe elevated CAFO ammonia emissions for varying time periods on a frequent basis for years, or even decades. Thus, while the AEGLs provide a useful starting point for CAA regulation, they do not provide adequate ambient air quality standards.

b. Ambient Exposures: EPA's Reference Concentration and ATSDR's Minimal Risk Levels

EPA has also considered and assessed the chronic effects of ammonia inhalation, and established a Reference Concentration (RfC) of 0.14 ppm to indicate a safe level of ammonia to breathe over the long term. EPA derived the RfC from the results of a long-term worker exposure study, which it then adjusted with uncertainty factors to better protect sensitive individuals and account for the lack of a robust data set.[42] This chronic exposure RfC provides a useful starting point for EPA to use in establishing a one-year or other long-term ambient standard that will protect public health from continuous low-level ammonia emissions.

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[40] EPA, Acute Exposure Guideline Levels Ammonia Results, http://www.epa.gov/oppt/aegl/pubs/results88.htm (last visited Mar. 18, 2011).
[41] *Id.*
[42] ATSDR at 163.

As discussed above, ATSDR has also reviewed existing research on the effects of ammonia exposure on both humans and animals and has established health thresholds called Minimal Risk Levels (MRLs) for both acute and chronic inhalation exposure to ammonia.[43] Much like EPA"s RfC, in determining MRLs for different substances, ATSDR considered the most susceptible individual and estimated "the daily human exposure to a hazardous substance that is likely to be without appreciable risk of adverse noncancer health effects over a specified duration of exposure."[44] Thus, ATSDR established the MRLs to identify the level above which daily exposure to airborne ammonia, in the absence of other pollutants, poses a health risk.

Based on its review of all available ammonia exposure research, ATSDR set its acute MRL for ammonia at 1.7 ppm for inhalation exposure of 14 days or fewer,[45] and set the chronic MRL at 0.1 ppm for inhalation exposure of 365 days or more.[46] Both threshold MRLs provide relevant points of reference when determining whether a specific ambient ammonia concentration could create a public health hazard. As this petition will discuss, studies provide evidence that citizens may be exposed to ammonia levels that exceed the MRLs in areas near even a single large CAFO. Moreover, ATSDR has observed respiratory health impacts from a single livestock facility work shift exposure to 7.9 ppm ammonia, but to isolate the effects of ammonia ATSDR specifically excluded this research when establishing the MRLs.[47] EPA should instead account for the increased health effects from mixed-pollutant exposures when considering safe ambient ammonia levels.

Some of the studies referenced in this petition, such as the Iowa Study discussed below, use the ATSDR"s old chronic MRL of 0.3 ppm as the relevant ambient health threshold. As a result they may not conclude that observed ambient ammonia levels above 0.1 ppm pose a health threat. However, in 2004 ATSDR acknowledged that the study on which it had based the prior chronic MRL did not adequately represent all vulnerable populations and could not account for the lack of developmental and reproductive studies. To take this data gap into account, ATSDR used a modifying factor of three and adopted the current 0.1 ppm chronic MRL.[48] Thus, EPA should re-examine research conclusions based on the under-protective past MRL, with the new MRL in mind.

Between its own and ATSDR"s established health thresholds, EPA already has much of the research necessary to establish protective NAAQS for acute, intermediate, and long-term ammonia exposure. However, research focused on CAFO emissions – the source of the majority of ammonia emissions in the U.S, but also a source of hydrogen sulfide, particulates, and hundreds of volatile organic compounds – indicates that adequately protective standards must

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[43] ATSDR at 18-20.
[44] ATSDR, Minimal Risk Levels (MRLs) for Hazardous Substances, http://www.atsdr.cdc.gov/mrls/index.html (last visited Mar. 18, 2011).
[45] *Id.*
[46] *Id.* at 19.
[47] *Id.* at 18.
[48] *Id.* at 20.

also account for the additive or synergistic adverse health effects of multiple-pollutant exposures. EPA should consider multiple-pollutant effects when deciding whether and how to regulate ammonia under the CAA.

c. Worker Exposures: NIOSH's Recommended Exposure Limits and OSHA's Permissible Exposure Limit

The NIOSH, part of the Centers for Disease Control and Prevention, has established recommended exposure limits (RELs) for workers breathing ammonia pollution in the workplace. Similarly, OSHA has established a health standard for ammonia in the workplace. NIOSH recommends that employers should not expose workers to more than 25 ppm of ammonia averaged over a ten-hour period or 35 ppm averaged over a 15-minute period.[49] OSHA permissible exposure limits (PELs) are similar to NIOSH recommendations in that they are meant to protect workers. However, in the case of ammonia OSHA adopted a less stringent benchmark; its enforceable ammonia standard limits worker exposure to a maximum ammonia concentration of 50 ppm, averaged over an 8-hour time period.

NIOSH and OSHA based these exposure levels, unchanged since 1974, on a NIOSH literature review that included both human and animal ammonia exposure studies that were primarily conducted between the 1940s and mid-1960s.[50] This criteria document noted that at the time of publication, few or no studies on agricultural ammonia exposure existed.[51] When compared to ATSDR"s and the National Academy of Sciences" findings of health effects at low exposure levels, it becomes clear that NIOSH did not seek to avoid all adverse health impacts or ammonia irritation when recommending occupational exposure standards. Rather, the report sought to identify "exposure levels at which no employee will suffer impaired health or functional capacities or diminished life expectancy as a result of his work experience."[52] OSHA is not required to provide workers protection equal to that EPA must provide the public through its CAA authority.

The agencies recognized in 1989 that the OSHA PEL for ammonia did not adequately protect worker health and sought to adopt a more stringent PEL. The amended standard would have set a 15-minute short-term exposure level of 35 ppm through a "generic" rulemaking that covered more than 400 hazardous chemicals. However, the 11th Circuit vacated this rule on procedural grounds unrelated to the need for a more protective ammonia standard, holding that OSHA had failed to adequately support and explain each new standard in its record.[53] OSHA has not acted to strengthen the ammonia PEL since its rule was vacated. Thus, even OSHA has

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[49] NIOSH, Pocket Guide to Chemical Hazards, http://www.cdc.gov/niosh/npg/npgd0028.html (last visited Mar. 18, 2011).
[50] *Criteria for a Recommended Standard...Occupational Exposure to Ammonia*, HEW Publication No. (NIOSH) 74-136 (1974), *available at* http://www.cdc.gov/niosh/74-136.html (last visited Mar. 18, 2011).
[51] *Id.* at 60-62.
[52] *Id.* at 22.
[53] *See AFL-CIO v. OSHA*, 965 F.2d 962 (11th Cir., 1992).

recognized that ammonia creates a greater threat to worker health and safety than its current PEL reflects.

Though some of these health benchmarks are under-protective and were never intended to protect the general population from ammonia exposure, and none take multiple pollutant exposures into account,[54] each can help EPA interpret existing data on ammonia air emissions from stationary sources such as CAFOs and establish safe ambient standards for airborne ammonia. Because ATSDR and EPA's health thresholds address health threats to the general public from both acute and chronic ammonia exposure, they serve best to analyze monitoring of ambient air near residences and public places. Conversely, because the NIOSH and OSHA exposure levels address health threats over shorter periods of time and with only workers in mind, they can provide a frame of reference for monitoring data collected at the source, such as CAFO vents, but have little value in assessing the public health threat posed by ambient ammonia.

d. Iowa's Joint University CAFO Air Quality Study

At the request of then-Iowa Governor and current U.S. Secretary of Agriculture Tom Vilsack, Iowa State University and the University of Iowa completed a significant joint report (the Iowa Study) on air emissions from CAFOs in 2002.[55] The Iowa Study reviewed and analyzed peer-reviewed studies on various aspects of these emissions, including the volume and nature of CAFO air emissions, the toxicology of pollutants released from CAFOs, and the community health and social impacts of CAFO emissions. The state tasked the study group with answering specific questions about CAFO air emissions; among them, the study set out to answer: "[b]ased on an analysis of peer-reviewed, duplicated, legitimate, and published scientific research, what would you recommend as Iowa or National consensus standards for any proposed substances to be regulated as emissions from CFOs?"[56]

The Study's authors answered this question with a significant recommendation; based on their review of credible CAFO emissions research, they concluded that EPA should regulate certain substances released from CAFOs – namely ammonia, hydrogen sulfide, and odor – under the CAA NAAQS program.[57] Based on this emissions research, as well as state ammonia standards, ATSDR and EPA recommendations, and research on the additive or synergistic effects of multiple pollutants in CAFO emissions, the Study recommends that protective

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[54] Regardless whether EPA has considered additive effects of multiple-pollutant exposures in establishing NAAQS for criteria pollutants to date, the CAA requires EPA to list criteria pollutants if they "cause *or contribute to*" pollution that may endanger public health. CAA § 108(a)(1)(A). Thus EPA should consider the health effect of CAFO emissions as a whole when determining a safe level of ambient ammonia exposure.
[55] IOWA STATE UNIV. & UNIV. OF IOWA STUDY GROUP, IOWA CONCENTRATED ANIMAL FEEDING OPERATIONS AIR QUALITY STUDY (2002) at 123 [hereinafter Iowa Study], *available at* http://www.public-health.uiowa.edu/ehsrc/CAFOstudy.htm (last visited Mar. 18, 2011).
[56] Iowa Study at 8. The study uses the Iowa regulatory term "CFO" interchangeably with CAFO. *Id.* at 5.
[57] *Id.* at 8.

ammonia one-hour averages should not exceed 500 ppb (0.5 ppm) at the CAFO property line or 150 ppb (0.15 ppm) in residential and public use areas.[58]

While this ambient level very nearly matches EPA"s RfC for ammonia, the Study recommends 0.15 ppm as a one-hour average limit, rather than a long-term limit, due to the complex effects of breathing numerous pollutants simultaneously. Thus, as a result of studying CAFO emissions specifically, and not simply examining ammonia gas in isolation, the Iowa Study emphasized the most typical route for ambient ammonia exposure and its researchers proposed a far more protective standard than any federal agency to date. EPA should consider the Iowa Study"s peer-reviewed recommendations and findings when reviewing this petition.

e. Pew Commission Report on Industrial Farm Animal Production

In 2008, the Pew Commission on Industrial Farm Animal Production (PCIFAP), an independent project of Johns Hopkins Bloomberg School of Public Health and the Pew Charitable Trusts, released a similarly comprehensive report on the impacts of industrial livestock production. This report – "Putting Meat on the Table: Industrial Farm Animal Production in America" [59] (the Pew Commission Report) – compiled the published literature on a wide range of CAFO impacts, including air emissions and their effects on public health.

Among its recommendations, the Pew Commission Report concluded that "EPA should develop a standardized approach for regulating air pollution" from CAFOs under the CAA.[60] The Report also noted the complicated effects of mixed air pollutants found in CAFO emissions and the importance of considering these mixed exposures.[61] The Pew Commission Report analyzed the most current and comprehensive CAFO emissions and health research from across the globe, and EPA should consider its findings and recommendations when reviewing this petition.

The Pew and Iowa reports fill large information gaps left by federal agencies that have assessed ammonia"s health impacts, both by focusing on ammonia"s primary source – CAFOs – and by considering ammonia"s effects when mixed with other hazardous pollutants. Moreover, both reports conclude that EPA should use the CAA to address the public health threats posed by ammonia and other CAFO emissions.

Taken together these standards, guidelines, and expert recommendations demonstrate that ammonia is a recognized toxic air pollutant that requires CAA regulation to protect the public

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[58] *Id.* at 176.
[59] PEW COMMISSION ON INDUSTRIAL FARM ANIMAL PRODUCTION, PUTTING MEAT ON THE TABLE: INDUSTRIAL FARM ANIMAL PRODUCTION IN AMERICA (2008) [hereinafter Pew Commission Report], *available at* http://www.ncifap.org/ (last visited Mar. 18, 2011).
[60] *Id.* at 75.
[61] *Id.* at 69.

health. Even at low levels, acute and chronic exposures to ammonia gas pose significant health threats, and EPA should use this collective evidence base to establish protective NAAQS.

iii. EPA should regulate ammonia under the CAA because unsafe ambient levels of ammonia currently threaten public health

EPA should regulate ammonia under the Clean Air Act because studies show that CAFOs emit ammonia into the air at levels exceeding EPA and ATSDR benchmarks in the ambient air and exceeding NIOSH and OSHA benchmarks at the source, thereby threatening public health in certain areas. Though a limited number of peer-reviewed emissions studies exist, those available found dangerous ammonia concentrations that require regulation to protect nearby residents.

a. CAFO emissions generate ambient ammonia concentrations that exceed EPA's RfC and ATSDR's MRLs

EPA should regulate ambient ammonia because CAFOs emissions give rise to ambient ammonia concentrations that exceed EPA"s chronic exposure RfC and ATSDR"s acute and chronic MRLs, and that therefore may reasonably be anticipated to endanger public health. The agencies derived these benchmarks to identify the threshold level below which long-term exposure is thought to be safe, but above which uncertainty remains. Thus, when ambient ammonia levels exceed these thresholds, those exposed face a possible risk of adverse health effects. This threat can most appropriately be addressed through the NAAQS program.

To date, the most significant studies of ambient ammonia levels from CAFO emissions showed that some CAFOs do in fact cause unsafe ambient ammonia levels, even at significant distances from the facility. While researchers have conducted numerous studies of the health symptoms experienced due to CAFO emissions, and EPA has studied ammonia levels at the CAFO vent, very few studies have actually measured ammonia levels in the ambient air. Two significant studies discussed in this petition are ATSDR"s study of a Missouri hog CAFO and the University of Georgia"s study of a Georgia broiler CAFO.

<u>Missouri Hog CAFO Study</u>

In August of 2003, the ATSDR and the Missouri Department of Health and Senior Services (DHSS) released a CAFO ammonia emissions Health Consultation, reporting the results of an ammonia Exposure Investigation (EI) conducted by ATSDR and DHSS in a community near a large swine CAFO.[62] The agencies conducted the study in response to complaints by

[62] U.S. Department of Health and Human Services, Public Health Service, Agency for Toxic Substances and Disease Registry, Division of Health Assessment and Consultation, prepared by the Missouri Department of Health and Senior Services Section for Environmental Public Health, Health Consultation: Final Report on Exposure Investigation Findings, Valley View Concentrated Animal Feeding Operations (Aliases: Concentrated Animal Feeding Operations and Confined Animal Feeding Operations), Green Castle, Sullivan County, Missouri (2003) [hereinafter Missouri Health Consultation].

residents that the air emissions from the CAFO were adversely affecting respiratory health and quality of life.[63]

The investigation focused on ammonia emissions downwind from the Premium Standard Farms Valley View swine CAFO, which at the time had a permit to house 123,648 hogs.[64] Investigators sampled ammonia levels at 6 houses, which they selected based on the proximity of the house to the CAFO, the location of the house downwind from the CAFO, and the willingness of the homeowner to participate in the investigation.[65] The investigators monitored one outdoor and one indoor location at each house.[66] They placed sampling equipment at breathing zone height and monitored each location continuously for no less than 3 consecutive days during the 12 day study.[67] EPA and the Missouri Department of Natural Resources (MDNR) took concurrent samples at the same outside locations, as well as 12-hour time-weighted averages inside the homes, to compare with ATSDR"s results.[68] The study measured ammonia concentration in ppm and reported results as 24-hour maximum discrete measurements (each monitor"s highest measurement each day) and 24-hour averages.[69] ATSDR also surveyed 77 homes within a one-mile radius, and 39 homes between one and two miles from the CAFO, to evaluate residents" perceptions of odors and health symptoms.[70]

In the Health Consultation, ATSDR compared monitoring results with its former acute and chronic MRLs. This discussion will instead use the current MRLs, which ATSDR revised in 2004, as more pertinent benchmarks for possible health impacts.[71] Monitoring from all six of the studied houses resulted in ammonia levels of concern. 41 out of 46 of the study"s maximum discrete measurements, which were reported daily at each house both inside and outside, exceeded the chronic MRL of 0.1 ppm.[72] Daily maximum samples from inside houses 1032 and 1110 also exceeded the acute MRL of 1.7 ppm. Monitors in house 1032 recorded maximum discrete measurements of approximately 4.3 ppm, 2.0 ppm, and 2.0 ppm for Day 1, Day 2, and Day 3 respectively.[73] At 1.9 ppm, the maximum discrete measurement taken inside of house 1110 on Day 1 also exceeded the acute MRL.[74]

The results from the 24-hour averages also give cause for concern. While this study lasted only three days at each home, and ATSDR"s chronic MRL sets a health effects benchmark for exposure exceeding a year, 24-hour averages most closely indicate the amount of ammonia

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[63] Missouri Health Consultation at 1.
[64] *Id.* at 2.
[65] *Id.* at 3.
[66] *Id.*
[67] *Id.*
[68] *Id.* at 2-3.
[69] *Id.* at 5-6.
[70] *Id.* at 3.
[71] *See* discussion *supra* Section V.B.1.ii.b.
[72] Missouri Health Consultation at 3.
[73] *Id.* at 6.
[74] *Id.*

these residents breathe on a daily basis. Thus, these averages can most meaningfully be compared with the chronic MRL and the RfC. All of the average measurements inside of houses 1028, 1032, and 1110 during the three-day period exceeded the chronic MRL.[75] In the absence of a longer-term study, all evidence indicates that residents downwind from large CAFOs may suffer health impacts from chronic low-level ammonia exposure.

Three factors in this study indicate that it under-represents the ammonia concentrations and risk faced by this and other rural communities. First, ATSDR acknowledges that the "downwind" homes studied were actually only downwind of the CAFO during approximately 10 percent of the monitoring period, and the Health Consultation also points out that ammonia concentrations were "significantly higher when wind was directed from the site to the monitor."[76] Though Valley View houses an enormous number of hogs, these residents experienced direct emissions only a small percent of the time and lived as far as a mile from the site; communities with CAFOs on multiple sides and that have CAFOs very nearby will likely face elevated ammonia concentrations more often. Second, ATSDR states that land application of manure took place during less than half of the monitoring period, and thus "the maximum period of exposure is not believed to have been attained during this EI."[77] Third, as EPA pointed out in its comments on the draft consultation, ammonia levels increase as wind speed decreases. The study did not take place during the season with lowest wind speeds, thus residents likely breathe higher ambient concentrations during much of the year.[78]

These limitations on the study, limits on the general applicability of ATSDR"s MRLs, and ATSDR"s use of a less protective and since-replaced chronic MRL in its study, likely contributed to the Health Consultation"s conclusion that no apparent public health hazard existed near the houses at the time of the EI. However, as noted previously, EPA commented on the draft report and came to the *opposite* conclusion. In a memorandum written by EPA"s Stationary Source Enforcement Branch of the Air Enforcement Division to the Director of the Missouri DHSS, EPA weighed in to "better inform the conclusions in the final report."[79]

EPA"s memo acknowledged the complexity of CAFO air emissions, and contrasted the Valley View study with the 2002 Iowa Study.[80] EPA further suggested that the Iowa recommendations apply a more comprehensive analysis than the ATSDR MRLs alone because the Iowa Study considered numerous studies in addition to those relied on by ATSDR, including studies of the aggregate effect that mixed exposures can have on public health.[81] Consequently,

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[75] *Id.* at 5.
[76] *Id.* at 8.
[77] *Id.*
[78] EPA, Office of Enforcement and Compliance Assurance, Memorandum from Mario Jorquera to Scott Clardy, Comments on the Valley View Health Consultation, (Dec. 2002) [Hereinafter EPA Memo].
[79] EPA Memo at 1.
[80] *See* discussion *supra* Section V.B.1.ii.d.
[81] EPA Memo at 2. Note that this letter"s discussion of the MRLs refers to the MRLs established in the 1990 ATSDR toxicological profile for ammonia, which predated the more protective chronic MRL adopted in 2004.

the memo emphasized the fact that, "during the Valley View field investigation, the [ATSDR] monitors recorded 60 occurrences of one-hour ammonia concentrations ranging from 153 ppb to 875 ppb, well in excess of the Iowa Study's recommended limit."[82] EPA pointed out that house 1032 was exposed to 10 of these high readings over a 20 hour period and that, in fact, every house studied reported elevated exposures.[83] As a result, EPA found that "the conclusion could be drawn that a *public health hazard* did exist at the time the Valley View data was acquired"[84] (emphasis in original).

EPA's emphasis on the one-hour concentrations measured outside and inside of the studied homes, as well as its adoption of the Iowa Study's far more protective recommendations, demonstrates that the agency understands ammonia's short-term, localized, and additive health effects. The results of the Valley View Health Consultation indicate potential health threats from both short-term and long-term exposure to CAFO ammonia emissions.

EPA should consider the results of the Missouri health consultation and draw on the findings in its own memo, which concluded that ambient ammonia emissions from a single Premium Standard Farms hog CAFO may have created a public health hazard for residents as far as a mile away. The fact that the Valley View CAFO exposed neighbors to ammonia concentrations above the ammonia MRLs and above the recommended exposure limit of the Iowa Report weighs heavily in favor of creating ambient standards for this pollutant, particularly in light of EPA's analysis of multiple pollutant effects, spikes in emissions at certain times of year, the effect of wind directions, and the scientific foundations of the Iowa Report.

Georgia Broiler CAFO Study

In 2009, researchers from the University of Georgia, Athens, released the results of the first study of measured ammonia concentrations in the ambient air near poultry houses.[85] The researchers compared their data with OSHA's and EPA's odor threshold values, as opposed to the health-based MRLs or RfC, which limits the value of the study's conclusions. However, when compared to the more relevant MRLs, RfC, and the Iowa Study's recommendations, the ammonia data collected indicate potential adverse health effects near large poultry facilities.

The researchers set out to measure ammonia concentrations at varying distances from one broiler operation, and to determine the effects of wind speed and direction on ambient ammonia levels.[86] The broiler CAFO studied had four houses, each with approximately 23,500 birds.[87] Monitors measured ammonia concentrations once per minute at various distances from the

[82] *Id.* at 2.
[83] *Id.*
[84] *Id.*
[85] B. D. Fairchild et. al, *Ammonia concentrations downstream of broiler operations*, 18 J. Appl. Poultry Res. 630 (2009), *available at* http://japr.fass.org/cgi/content/full/18/3/630 (last visited Mar. 18, 2011).
[86] *Id.* at 631.
[87] *Id.* at 631-32.

ventilation fans, from 100 to 500 feet, and reported results as 15-minute averages. Measurements were taken over two monitoring periods: a three-week period with measurements at 100-, 200-, and 300-foot distances; and a one-week period with measurements at 100-, 300-, and 500-foot distances. The latter study period included the farther-away monitoring location to account for increased emissions as the birds grew larger, producing more emissions and necessitating higher ventilation rates that create greater total air flow.[88]

Unsurprisingly, the highest ammonia concentrations were strongly correlated with proximity to the broiler houses as well as with times when the monitors were directly downwind of the ventilation fans. The monitors also recorded elevated concentrations during times of low wind speed.[89] After averaging 1,135 15-minute averages over the four-week study, the ammonia concentration at 100 feet from the facility was approximately 0.5 ppm for each study period, and the overall average at 300 feet exceeded 0.3 ppm for each study period. The final week of monitoring recorded an overall average concentration of approximately 0.25 ppm at 500 feet.[90]

While the researchers failed to discuss potential health impacts of their findings, instead comparing the data to EPA"s odor threshold limit of between 5 and 50 ppm, all of these overall averages exceed the chronic MRL, the RfC, and the Iowa Study"s recommended one-hour average limit – some by several times. Moreover, during the study the maximum 15-minute averages exceeded 2 ppm at all but the 500-foot monitor.[91] This study indicates that just one broiler CAFO with fewer than 100,000 birds can cause ambient ammonia levels to exceed chronic and acute health exposure limits, despite variations in wind direction and ventilation practices. As far as the petitioners could determine no published studies to date have measured ambient ammonia concentrations near multiple poultry CAFOs, but multiple CAFOs would increase total ammonia emissions as well as the amount of time that a given residence or public use location would be downwind from emission vents.

The Missouri and Georgia studies both demonstrate that just one CAFO can produce enough ammonia emissions to exceed chronic and acute health thresholds, even without taking the heightened effects of multiple-pollutant exposures into account. Citizens living near one or more large CAFOs require protection from this demonstrated public health threat.

b. The results of EPA's National Air Emissions Monitoring Study show that ammonia emissions may significantly exceed NIOSH and OSHA safety thresholds

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[88] *Id.* at 632-33.
[89] *Id.* at 635-37.
[90] *Id.* at 633.
[91] *Id.* at 635.

EPA has recognized the need to study and potentially regulate airborne ammonia from CAFOs, the leading source of U.S. ammonia emissions. From 2007 to 2009 EPA contracted with Purdue University to conduct the National Air Emissions Monitoring Study (NAEMS), which measured emissions of airborne ammonia and other pollutants at 24 CAFO sites in the United States.[92] EPA is currently reviewing the study results to establish emission estimating methodologies for CAFO air emissions.[93] A preliminary assessment of the results from the study, which Purdue presented as a series of 24-hour average values compiled from minute-by-minute monitoring results, shows that most of the monitored CAFOs emit levels of ammonia that exceed OSHA"s PEL and both NIOSH RELs at the emission vent on certain days during the study, and that ammonia emissions fluctuate significantly on a daily and seasonal basis.[94]

The NAEMS study measured ammonia emissions at the vent and at inlet points adjacent to confinement buildings, rather than in the ambient air at a distance from the CAFOs, because the study seeks to establish emissions rates for different types of CAFOs and thereby enable estimates of total CAFO emissions. Due to the nature of the NAEMS data, the petitioners compared these ammonia concentrations with NIOSH and OSHA worker health exposure levels, rather than ATSDR"s or EPA"s exposure recommendations. At-the-vent measures relate most directly to worker health benchmarks, while the ATSDR and EPA health thresholds, intended for the general population, will provide a superior frame of reference for establishing protective NAAQS.

As previously discussed, NIOSH recommends a worker exposure limit of 25 ppm of ammonia averaged over a ten-hour period and 35 ppm averaged over a 15-minute period,[95] while OSHA limits worker exposure to a maximum average ammonia concentration of 50 ppm over an 8-hour time period. Emissions approaching these benchmarks threaten the health and well-being of CAFO workers and also of nearby residents who breathe lower levels of ambient ammonia, but cannot leave the polluted air behind at the end of the work day.

To meaningfully incorporate data measuring emissions at the source into a consideration of whether likely public health threats exist from ammonia in the ambient air, EPA should consider several factors. First, the general public includes populations significantly more sensitive to ammonia than most workers, and thus even if they were protective of worker health, the NIOSH and OSHA standards would not protect public health even for short-term exposures.

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[92] EPA, Air Emissions Monitoring Study, http://www.epa.gov/oecaagct/airmonitoringstudy.html (last visited Mar. 18, 2011); Purdue University, National Air Emissions Monitoring Study Frequently Asked Questions, https://engineering.purdue.edu/~odor/NAEMS/faqs.htm (last visited Mar. 18, 2011). EPA will analyze the results of a Tyson monitoring study in Kentucky as a 25th site when reviewing the NAEMS data. *See* http://www.epa.gov/airquality/agmonitoring/data.html (last visited Mar. 18, 2011).
[93] *See* EPA, Agriculture – Air Monitoring, http://www.epa.gov/airquality/agmonitoring/.
[94] *See* Environmental Integrity Project, *Hazardous Emissions from Factory Farms*, (March 2011), *available at* http://www.environmentalintegrity.org/03_09_2011.php [hereinafter Hazardous Emissions from Factory Farms] (last visited Mar. 18, 2011).
[95] NIOSH, Pocket Guide to Hazardous Chemicals, http://www.cdc.gov/niosh/npg/npgd0028.html.

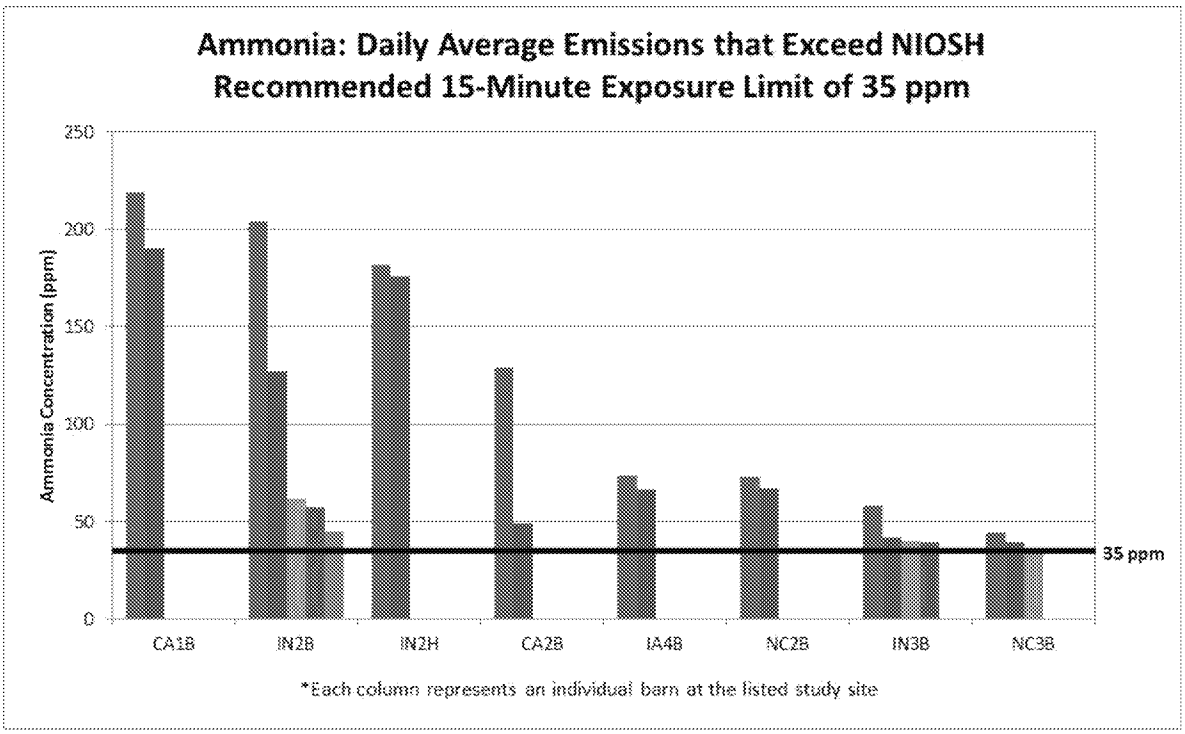
Second, NIOSH and OSHA standards do not consider health effects resulting from continuous intermediate or long-term exposures. Third, the NAEMS data reflect only emissions from a certain part of a CAFO, such as confinement buildings, rather than all emissions sources at or near the site. Finally, many areas contain numerous CAFOs whose emissions mix in the area"s ambient air, and consequently one cannot make the assumption that ambient ammonia levels will dissipate to safe levels near the source. Whether emissions that exceed NIOSH recommendations or OSHA standards at the vent will also exceed levels that may cause adverse effects – either alone or in combination with other CAFO emissions – and thus may reasonably be anticipated to endanger public health, will vary on a site-to-site basis.

On March 9, 2011, EIP released a report analyzing the data for the 15 confinement sites in NAEMS,[96] which included comparisons of monitoring results with the NIOSH 15-minute REL of 35 ppm. The daily averages can also easily be compared to the 10-hour REL of 25 ppm and the OSHA 8-hour PEL of 50 ppm.[97] Preliminary results from the NAEMS study suggest that CAFO emissions at certain sites commonly exceed both of the NIOSH RELs and even OSHA"s significantly under-protective 8-hour standard. In fact, 7 of 15 sites had entire days averaging above the OSHA standard, 9 of 15 sites had entire days averaging above the NIOSH 10-hour standard, and as shown below, 8 of 15 sites had entire days averaging above the NIOSH 15-minute standard.[98]

[96] Hazardous Emissions from Factory Farms, supra note 94. The confinement building monitoring sites reviewed in EIP"s report are CA1B, CA2B, CA5B, IA4B, IN2B, IN2H, IN3B, IN5B, NC2B, NC3B, NC4B, NY5B, OK4B, WA5B, and WI5B.

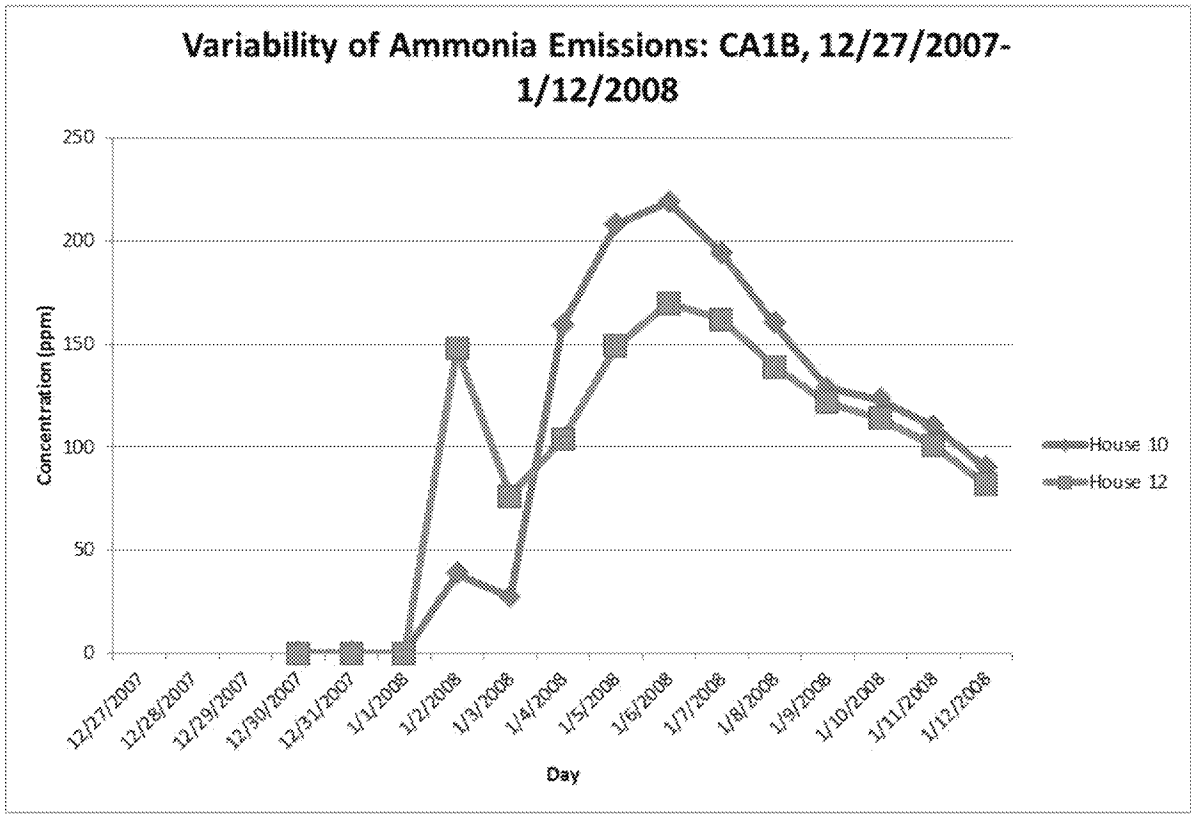
[97] EIP initially sought to compare averages from the monitoring study to the NIOSH RELs and the OSHA PEL by determining the number of 15-minute, 10-hour, and 8-hour exceedances, respectively. However, due to the unavailability of the raw data from the second year of the study, EIP was unable to compile these averages and instead simply identified 24-hour periods during which emissions exceeded the standards. As a result, EIP was also unable to identify very short-term spikes in emissions that may have taken place.

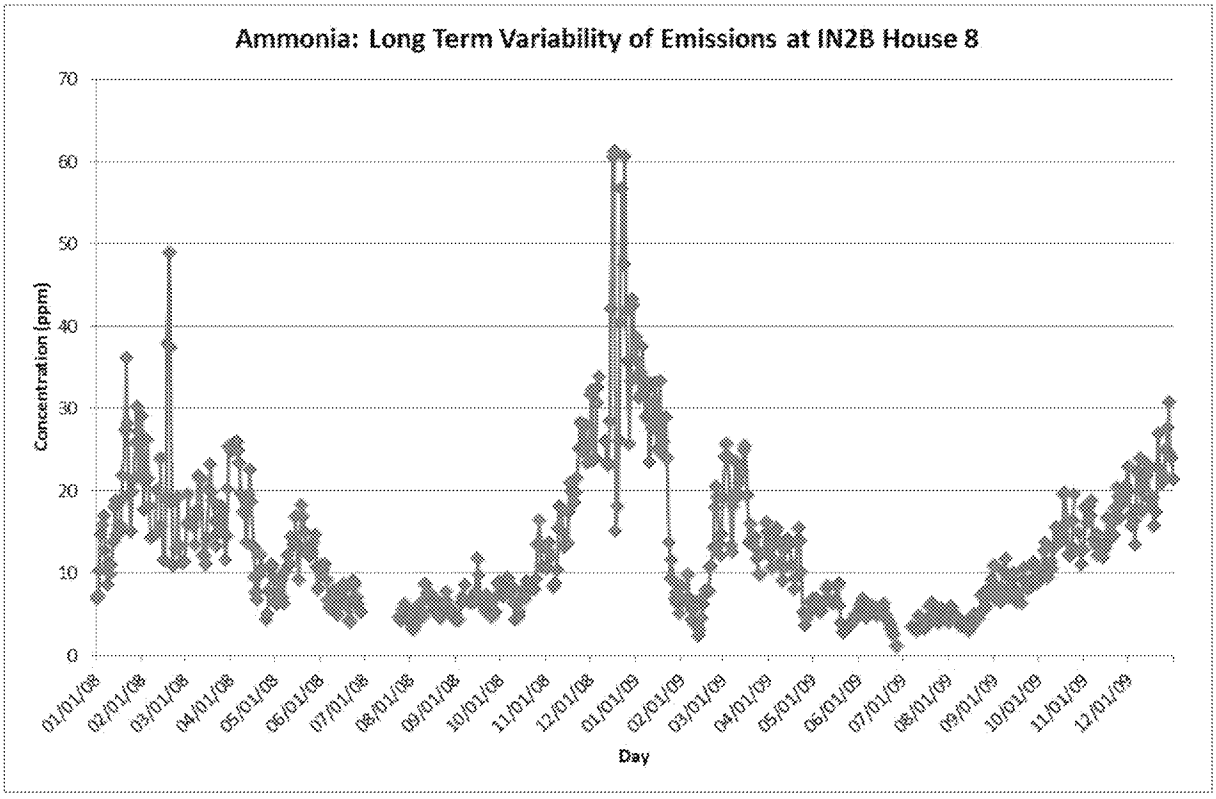
[98] *See* Summary Reports at http://www.epa.gov/airquality/agmonitoring/ and Hazardous Emissions from Factory Farms at 15-16.



In addition to finding numerous exceedances of these time-weighted averages, EIP found that ammonia emissions vary significantly over days and seasons.[99] The following charts, derived from NAEMS data for a California broiler chicken site and an Indiana layer hen site, show both high average concentrations of ammonia on-site and large fluctuations in emissions.[100]

[99] *See* Hazardous Emissions from Factory Farms at 13-15.
[100] *Id.* at 15.


Variability of Ammonia Emissions: CA1B, 12/27/2007-1/12/2008
Concentration (ppm)
250
200
150
100
50
0
12/27/2007
12/28/2007
12/29/2007
12/30/2007
12/31/2007
1/1/2008
1/2/2008
1/3/2008
1/4/2008
1/5/2008
1/6/2008
1/7/2008
1/8/2008
1/9/2008
1/10/2008
1/11/2008
1/12/2008
Day
House 10
House 12


Ammonia: Long Term Variability of Emissions at IN2B House 8
Concentration (ppm)
70
60
50
40
30
20
10
0
01/01/08
02/01/08
03/01/08
04/01/08
05/01/08
06/01/08
07/01/08
08/01/08
09/01/08
10/01/08
11/01/08
12/01/08
01/01/09
02/01/09
03/01/09
04/01/09
05/01/09
06/01/09
07/01/09
08/01/09
09/01/09
10/01/09
11/01/09
12/01/09
Day

This initial assessment suggests that EPA"s representative CAFOs emit ammonia at levels significantly above worker health benchmarks. The petitioners urge EPA to promptly complete its independent review of Purdue"s study and the NAEMS data, and establish emission estimating methodologies that will enable EPA to accurately inventory CAFO ammonia emissions nationwide.

Although these at-the-vent measures cannot be directly translated into ambient ammonia levels, the NAEMS study"s findings still bear on EPA"s consideration of ammonia"s public health impacts. As this petition discusses in the following section, because many regions and communities contain high concentrations of CAFO facilities, EPA cannot assume that at-the-vent measures do not affect ambient ammonia levels. Moreover, because the NAEMS data show that CAFO ammonia emissions are not stable in quantity and rate, but rather spike to high levels for short durations and vary significantly throughout the year, EPA cannot discount at-the-vent measures under the assumption that all emissions will dissipate to safe levels before impacting nearby residents. EPA should consider the NAEMS data when assessing the public health threat of ambient ammonia from CAFOs.

c. Ammonia in CAFO emissions contributes to documented adverse health impacts on nearby residents

Studies of public health in communities near CAFOs indicate that air emissions from these operations, including ammonia emissions, adversely affect respiratory health of residents breathing ambient air near CAFOs. Although these studies examine the health effect of combined air pollutants from livestock operations, rather than attempting to isolate the effects of ammonia emissions, the CAA requires EPA to list as criteria pollutants those pollutants that "*contribute to* air pollution which may reasonably be anticipated to endanger public health" (emphasis added) § 108(a)(1)(A). Ammonia is a known toxin and respiratory irritant emitted by CAFOs in vast quantities, and therefore clearly "contributes to" the air pollution causing known health impacts near these facilities.

The 2002 Iowa Study reviewed research on both occupational and community exposures to CAFO air emissions and their documented health impacts. Though occupational exposures have been more extensively researched, the Study authors found "experimental and epidemiological evidence that very low levels of exposures to ammonia…may result in adverse health effects among healthy volunteers and community residents."[101] Despite the relatively small number of peer-reviewed studies of community health impacts that existed at the time, the Iowa Study concluded that the research base was sufficient to "support a conclusion that CAFO air emissions constitute a public health hazard."[102]

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[101] Iowa Study at 138.
[102] *Id.*

One sociological study considered by the Iowa Study authors involved a survey of 18 Iowa residents who lived within 2 miles from a 4,000 head sow confinement operation.[103] The study compared self-reported answers from the hog CAFO neighbors with those of a control group that did not live near significant livestock production,[104] and separated health impacts into four categories of symptoms commonly experienced by CAFO workers: 1) cough, sputum, shortness of breath, chest tightness, and wheezing; 2) dizziness, weakness, fainting, and nausea; 3) plugged ears and headaches; 4) scratchy throat, runny nose, and burning eyes.[105] The study found an increase in all four groups of symptoms among residents in the hog CAFO community.[106]

Another study considered both health effects and quality of life impacts of living near CAFOs. Researchers interviewed 155 residents from three North Carolina communities: one near two industrial cattle facilities, one near a 6,000 head hog CAFO, and one without any CAFOs nearby.[107] The study asked questions about rural health, rather than the livestock operations, to avoid bias. Residents near the hog CAFO reported higher rates of several respiratory and other symptoms compared to the control group, including headaches, coughing, sore throat, burning eyes, diarrhea, and runny nose.[108]

New research further supports the Iowa Study"s findings. In March 2011, Schinasi, et al. published an epidemiological study correlating air pollution from hog CAFOs in North Carolina with self-reported health effects among community residents.[109] The study examined associations between monitored air pollutants and physical symptoms among 16 communities living within 1.5 miles of hog operations.[110] Although monitored pollutants did not include ammonia, participants also reported overall odor levels. The researchers found that "[i]rritation symptoms were elevated in association with odor"[111] and concluded that "pollutants near hog operations cause acute physical symptoms, particularly upper respiratory symptoms and irritation of the nose and eyes."[112]

The Pew Commission report also reviewed research on the public health effects of CAFOs, and similarly found that living in close proximity to CAFOs has documented adverse health effects. In particular, studies have shown respiratory health impacts from CAFO air

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[103] Thu et al., *A Control Study of the Physical and Mental Health of Residents Living Near a Large-Scale Swine Operation*, 3 J. of Agric. Safety and Health (1997).
[104] *Id.*
[105] *Id.*
[106] *Id.* Cluster 4 showed a slight prevalence in the hog community (with the exception of the "other" symptoms in cluster 4, which did not show a difference between the two communities studied).
[107] Steve Wing and Susanne Wolf, *Intensive Livestock Operations, Health and Quality of Life Among Eastern North Carolina Residents*, 108 Envt'l Health Perspectives (March 2000).
[108] *Id.* at 237.
[109] Schinasi, et al., *Air Pollution, Lung Function, and Physical Symptoms in Communities Near Concentrated Swine Feeding Operations*, 22 Epidemiology 2 (March 2011) [hereinafter Schinasi].
[110] *Id.* at 1.
[111] *Id.* at 5.
[112] *Id.* at 7.

emissions; primary respiratory effects included increased incidence of asthma among both children and adults. The Commission identified four "large epidemiological studies" that found "strong and consistent" links between CAFO pollution and asthma,[113] concluding that communities near CAFOs "are subject to air emissions that, although lower in concentration [than worker exposures], may significantly affect certain segments of the population."[114]

A 2005 study simulated the health effects of short-term exposure to hog CAFO emissions, by diluting hog CAFO air and exposing 24 healthy adults (12 male, 12 female) for one hour at a time on two separate occasions.[115] The researchers exposed a control group of 24 healthy adults to clean air for the same time period. The study measured objective health indicators, such as blood pressure, and participants also self-reported symptoms such as headaches and nausea and completed a Profile of Mood States survey.[116] The diluted hog confinement air had an ammonia concentration of 817 ppb (0.817 ppm)[117] – well below levels observed in the ambient air near some CAFOs, yet several times the 150 ppb one-hour standard recommended in the Iowa Study. After just an hour of exposure, those exposed to the hog confinement air were four times as likely to report headaches, six times more likely to report eye irritation, and nearly eight times as likely to report nausea than the control group.[118]

Another recent study compared nation-wide, county-level data on infant mortality rates and causes with geographic shifts in the livestock industry over two decades, in order to assess the impacts of living in proximity to livestock on infant mortality and the probable mechanisms for any impact observed.[119] After controlling for numerous variables and potential sources of bias, the author found that "a 100,000 animal unit increase [at the county level] corresponds to 123 more infant deaths per 100,000 births," with about 80% of these occurring during first 28 days of life.[120] Given the robustness of the data set, this demonstrates a "statistically significant correlation between livestock and infant death."[121] Of these mortalities, only respiratory and perinatal causes of death were affected, "suggesting an air pollution mechanism."[122] Of the many constituents of livestock air emissions, the study cites ammonia and hydrogen sulfide as

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[113] Pew Commission Report at 17.
[114] *Id.*
[115] Susan S. Schiffman et al., *Symptomatic Effects of Exposure to Diluted Air Sampled from a Swine Confinement Atmosphere on Healthy Human Subjects*, 113 Envt'l Health Perspectives 5 (May 2005).
[116] *Id.* at 568-70.
[117] *Id.* at 568.
[118] *Id.* at 573.
[119] S. Sneeringer, *Does Animal Feeding Operation Pollution Hurt Public Health? A National Longitudinal Study of Health Externalities Identified by Geographic Shifts in Livestock Production*, 91 Amer. J. of Agric. Econ. 1 (Feb. 2009).
[120] *Id.* at 129.
[121] *Id.*
[122] *Id.* at 125.

the "main gases in question," because both have been linked to respiratory infections and distress in infants, perinatal disorders, and spontaneous abortion.[123]

d. CAFOs emit vast quantities of ammonia and are often concentrated geographically

i. CAFOs emit vast quantities of ammonia

EPA should regulate ambient ammonia because estimated CAFO ammonia emission rates indicate that these facilities release vast quantities of ammonia into the ambient air, creating a heightened health threat to communities near numerous and/or very large CAFOs. CAFOs are leading contributors to the nation"s ammonia inventory; by one EPA estimate livestock account for approximately 80 percent of total emissions.[124] CAFOs also emit a disproportionately large share of the ammonia in certain states and communities. One striking example is Threemile Canyon dairy farm near Boardman, Oregon, which reported ammonia emissions as high as 15,500 pounds per day in 2005 – more than the nation"s number one manufacturing source of the pollutant.[125] Two studies – the Tyson Broiler Report and the Purdue NAEMS Layer Site study – measured the emission rates of ammonia released from broiler houses and layer barns, respectively. EIP used these emission rates to roughly estimate poultry CAFO ammonia emissions on a much broader scale, and found that poultry CAFOs in several states release an overwhelming majority of those states" ammonia emissions.

In May 2007, Iowa State University and the University of Kentucky released the "Tyson Broiler Ammonia Emission Monitoring Project: Final Report."[126] The report, which Tyson agreed to participate in pursuant to a settlement with the Sierra Club,[127] summarized a study in which university researchers measured ammonia emissions from two broiler houses in Western Kentucky with Mobile Air Emissions Monitoring Units (MAEMUs) attached to each house.[128] Each house had a series of six flocks of broiler chickens, with growing periods of just over 50 days each and several days in between flocks, during the approximately 13-month continuous study.

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[123] *Id.* at 126.
[124] MICHIEL R.J. DOORN ET AL., EPA, REVIEW OF EMISSIONS FACTORS AND METHODOLOGIES TO ESTIMATE AMMONIA EMISSIONS FROM ANIMAL WASTE HANDLING 1 (2002), *available at* http://www.epa.gov/nrmrl/pubs/600r02017/600sr02017.pdf (last visited Mar. 18, 2011).
[125] Michele M. Merkel, Senior Counsel, Envtl. Integrity Project, N.Y. State Bar Association presentation at Albany Law School: The Use of CERCLA to Address Agricultural Pollution, at 1 (Sept. 15, 2006), *available at* http://www.environmentalintegrity.org/pdf/publications/The_Use_Cercla.pdf (last visited Mar. 18, 2011).
[126] Iowa State University and the University of Kentucky, *Tyson Broiler Ammonia Emission Monitoring Project: Final Report*, p. 1-34 (May 1 2007) [hereinafter Tyson Broiler Report].
[127] *See* Sierra Club, *Grassroots Stories*, http://www.sierraclub.org/grassroots/stories/00027.asp (last visited Mar. 18, 2011).
[128] Tyson Broiler Report at 2.

The MAEMUs measured ammonia concentration every 30 seconds from three locations inside of the houses and every two hours at one location just outside of the houses.[129] The researchers converted the raw ammonia concentration data into emission rates, in pounds of ammonia per day per house (lb/d-house).[130] This resulted in a 12-flock mean emission rate of 30.8 +/- 20.0 lb/d-house.

A 2007 Purdue study conducted as part of EPA"s NAEMS study, discussed above in section (b), shows that laying hen operations also emit vast quantities of ammonia. Purdue released a site report for an Indiana NAEMS site, which measured ammonia concentrations and emissions rates inside two barns (Barns 6 and 7) housing laying hens. The report analyzed monitoring results collected between May 12 and June 30, 2007.[131] The monitors recorded the concentration of ammonia in ppm, and then converted those data into emission rates. The researchers calculated average daily mean ammonia emission rates of 252 +/- 99 and 308 +/- 63 kg/day for barns 6 and 7 respectively.[132]

In December of 2009, EIP finalized a report entitled "A Holiday Gift for Big Poultry: Bush Administration Rushes Emissions Reporting Exemption," which extrapolates from these two studies" emission rates.[133] Using the number of broiler chickens and egg laying hens per state,[134] EIP calculated an estimate of the total pounds of ammonia released by the top ten poultry producing states in 2007 and the total pounds of ammonia released in the top ten states for each type of poultry CAFO.

EIP"s report found that, according to these studies" emission factors, poultry operations in just the top ten states released an estimated 700 million tons of ammonia into the air in 2007. These 10 states emit more ammonia from poultry facilities than all other non-agricultural

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[129] *Id.* at 8.

[130] *Id.* at 1. The results varied significantly between the two houses, primarily due to different manure handling methods: one house received new rice hull bedding and had litter removed mid-way through the study, while the other had the same bedding and no litter de-caking during the study. The house that received new litter after several flocks had significantly lower emissions while the houses had birds in them, but significantly higher average emissions during the downtime between flocks, possibly due to the de-caking activity releasing ammonia. *Id.* at 21. These results underscore the importance of considering waste management practices, emissions from litter stockpiles, and emissions from land application of waste, when evaluating the public health impacts of CAFO ammonia emissions. Thus, even the ammonia emissions estimates in EIP"s study, summarized below, do not include all emissions from litter removed from poultry houses.

[131] Purdue University, *National Air Emissions Monitoring Study Data from Layer Site IN2H, May 12 to June 30 2007* at 1, 10, Figure 4 [hereinafter Purdue Study].

[132] Purdue Study at 15.

[133] Environmental Integrity Project, *A Holiday Gift for Big Poultry: Bush Administration Rushes Emissions Reporting Exemption*, (Corrected December 2009), *available at* http://environmentalintegrity.org/news_reports/Bush_administration.php. [Hereinafter EIP Report] (last visited Mar. 18, 2011).

[134] As provided by the U.S. Department of Agriculture"s *Poultry-Production and Value 2007 Summary*, released April 2008, and the U.S. Department of Agriculture"s *Chicken and Eggs*, released November 21, 2008.

industries in the entire U.S. emit combined.[135] Looking at the two types of poultry production individually, broiler chicken operations in the top ten states[136] emitted an estimated 481,764,049 pounds of ammonia in 2007, which is greater than eight times the amount of ammonia emissions reported to the Toxic Release Inventory (TRI) by all industrial sources in those ten states combined.[137] Egg laying operations in the top ten states[138] emitted an estimated 221,551,888 pounds of ammonia per year.[139] These emissions approximately triple the amount that all industrial sources in those states combined reported to the TRI.[140]

As indicated above, industrial sources must report their ammonia emissions to the TRI under the Emergency Planning and Community Right-to-Know Act (EPCRA).[141] The TRI program does not require CAFOs to report emissions, however, even though they emit the dominant share of total ammonia emissions. Consequently, the TRI ammonia totals reported by industries in the top ten states for broilers and egg laying operations bear little relation to the total volume of ammonia released into the air in these states. For instance Georgia, the nation"s number one producer of broiler chickens, emitted an estimated 97,618,755 pounds of ammonia from CAFOs in 2007, yet the state"s industrial sources combined reported only 11,936,373 pounds of ammonia to the TRI.[142] Similarly Iowa, the nation"s number one producer of eggs, emitted an estimated 53,012,347 pounds of ammonia into the air from its layer hen CAFOs, while the state"s industrial sources reported only 9,425,300 pounds to the TRI.[143]

Hog CAFOs also emit large quantities of ammonia. The Iowa Study researchers evaluated several peer-reviewed studies of hog CAFO ammonia emissions, establishing a range of emission factors for various stages of hog maturity, including nursery pigs and finishing pigs.[144] These studies indicate that many factors, such as ventilation system, animal maturity, waste storage system, season, and outside temperature significantly affect ammonia emission rates.[145] The highest measured emission rate for a hog nursery included in the Iowa Study, 160 g ammonia per animal unit per day,[146] translates to a daily emission of 353 pounds of ammonia for a facility at the Large CAFO threshold size.[147] The highest reported emissions from a hog finishing facility, 311 g ammonia per animal unit per day during summer,[148] translates to a daily

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[135] EIP Report at 1.
[136] Georgia, Arkansas, Alabama, Mississippi, North Carolina, Texas, Kentucky, Maryland, Virginia, and Delaware.
[137] EIP Report Attachment A.
[138] Iowa, Ohio, Indiana, Pennsylvania, Georgia, Texas, California, Arkansas, North Carolina, and Florida.
[139] EIP Report Attachment A.
[140] *Id.*
[141] *See* EPA, What is the Toxics Release Inventory Program, at http://www.epa.gov/TRI/triprogram/whatis.htm (last visited Mar. 18, 2011).
[142] EIP Report, Attachment A.
[143] *Id.*
[144] Iowa Study at 48-49.
[145] *Id.*
[146] *Id.* at 49.
[147] 40 C.F.R. §122.23(b)(4).
[148] Iowa Study at 49.

emission of 686 pounds of ammonia for a facility at the Large CAFO threshold size. These studies demonstrate that, particularly during summer, hog CAFOs emit vast quantities of ammonia. Though Iowa leads the nation in hog production, it is not the only state of concern. According to the North Carolina Department of Environment and Natural Resources" 1995 estimates, North Carolina sources released an enormous 355 million pounds of ammonia into the air that year, of which hog operations alone released 166 million pounds.[149]

EIP"s analysis of EPA"s NAEMS data also indicates that most CAFOs monitored emit more than the reportable quantity – 100 pounds – of ammonia on a typical day, and some facilities studied emit thousands of pounds on a typical day.[150] As discussed previously, ammonia emissions also vary significantly over both the short and long term, such that large CAFOs can emit many thousands of pounds of ammonia on certain days. Although NAEMS did not measure ambient ammonia levels in communities near these operations, the sheer volume of total ammonia emissions from CAFOs – particularly poultry CAFOs – creates cause for concern that those living or working near numerous or very large CAFOs may breathe unsafe levels of ammonia in the ambient air.

CAFOs emit the majority of ammonia emissions but remain largely unaccountable for their air pollution. Despite the gap in emissions knowledge EPA"s limited TRI reporting system and livestock exemption from CERCLA reporting have created, available emissions research and EIP"s analysis of the Tyson and Purdue studies demonstrate the need to regulate CAFO ammonia emissions commensurate with their controlling contribution to total ammonia pollution. EPA should consider these studies" findings as to the enormous quantities of ammonia CAFOs currently emit in certain regions when deciding whether to list ammonia as a criteria pollutant.

ii. CAFOs are geographically concentrated

This vast quantity of airborne ammonia emitted by CAFOs does not exist at equal concentrations throughout the U.S. or throughout certain agricultural states; rather, CAFOs and the ammonia they release are concentrated in certain geographic regions, creating areas with an elevated risk of ammonia-related health effects for nearby rural populations. Many rural communities breathe the emissions from not just one or two CAFO barns, but from many CAFOs, each of which contains numerous barns.

Concentration of CAFOs in certain geographic areas has increased dramatically in recent years, and exists on a far more localized scale than the state-level concentration demonstrated in EIP"s poultry emissions report. The Government Accountability Office (GAO) discussed this trend in its 2008 report "Concentrated Animal Feeding Operations: EPA Needs More Information and a Clearly Defined Strategy to Protect Air and Water Quality from Pollutants of

[149] North Carolina Department of Environment and Natural Resources Division of Air Quality, *Status Report on Emissions and Deposition of Atmospheric Nitrogen Compounds from Animal Production in North Carolina*, Table 1 (June 1999), *available at* http://daq.state.nc.us/monitor/projects/nstatusreport.pdf (last visited Mar. 18, 2011).
[150] Hazardous Emissions from Factory Farms at 12-13.

Concern."[151] In its report, GAO concludes that CAFOs are "increasingly clustered within specific geographic areas within a state,"[152] and cites several alarming examples of communities besieged by CAFOs housing many millions of confined animals in small areas.

One such area, comprised of five contiguous counties in North Carolina, alone housed more than 7.5 million hogs and produced as much as 15.5 million tons of manure in 2002.[153] This increased concentration is not limited to the hog industry. GAO also highlights two California counties in the San Joaquin Valley that contained 535,433 cows in 2002, producing approximately 13.6 million tons of manure that year.[154] Similarly, in Arkansas just two counties had amassed broiler chicken CAFOs housing 14,264,828 chickens in 2002, producing more than 471,000 tons of manure that year.[155]

Yet another example of intense livestock concentration is the Delmarva Peninsula, where contract producers raise approximately 568 million broiler chickens per year, generating an estimated 1.1 billion pounds of chicken litter.[156] This averages more than a staggering 104,000 chickens per square mile on the 5,450 square mile peninsula. Experts have raised concerns that such incredible quantities of waste cannot be applied to the surrounding area"s available cropland at agronomic rates;[157] for similar reasons, the emissions from these quantities of manure and numbers of livestock confinements should raise concerns that ambient concentrations of ammonia and other emitted pollutants will exceed safe levels.

Rural residents throughout the U.S. live in close proximity to CAFO production areas and manure application fields – some in areas that contain numerous CAFOs in close proximity to one another, whose ammonia emissions mix in the ambient air and cause significant local re-deposition.[158] EPA should consider the aggregate effects of ammonia emissions on ambient air concentrations in these rural communities and the commensurately higher impact emissions have on public health in these areas with high concentrations of CAFOs.

The growing body of CAFO ammonia emissions research, which includes monitoring both at the source and at nearby residences, collectively compels the conclusion that ambient ammonia air pollution currently surpasses established health benchmarks and thus may reasonably be anticipated to endanger public health. To designate ammonia as a CAA criteria

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[151] GAO, *Concentrated Animal Feeding Operations: EPA Needs More Information and a Clearly Defined Strategy to Protect Air and Water Quality from Pollutants of Concern* (Sept. 2008) [hereinafter GAO Report].
[152] GAO Report at 5.
[153] *Id* at 21.
[154] *Id.* at 22.
[155] *Id.*
[156] Karen Gardner, *Farmer: Chesapeake Bay cleanup requires unity*, FREDERICK NEWS POST, Dec. 3, 2010, *available at* http://www.fredericknewspost.com/sections/news/display.htm?storyid=113253 (last visited Mar. 18, 2011).
[157] GAO Report at 22.
[158] *See* discussion of ammonia transport and fate, *infra* Section V.B.2.ii.

pollutant, EPA does not need to find that all Americans currently breathe unsafe levels of ammonia, or even that residents near CAFOs and other ammonia sources are suffering life-threatening or permanent health effects. On the contrary, the CAA gives EPA significant discretion to enact health protections even if it lacks absolute scientific certainty about the nature or extent of the threat and even if the entire population is not affected.[159]

e. Ammonia is a significant precursor to $PM_{2.5}$, and endangers public health by contributing to violations of the fine particulate NAAQS

The CAA requires EPA to consider criteria pollutant precursors as well as criteria pollutants themselves, by defining "air pollutant" to include "any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term "air pollutant" is used." CAA § 302(g). EPA has identified ammonia as a precursor pollutant to small particulate matter ($PM_{2.5}$), but does not currently require states to regulate ammonia as a precursor pollutant "unless the State or EPA makes a technical demonstration that emissions of ammonia from sources in the State significantly contribute to $PM_{2.5}$ concentrations in a given nonattainment area."[160]

Although some airborne ammonia will re-deposit close to the emission source, ammonia gas reacts readily with acidic compounds in the air, such as nitric acid, hydrochloric acid, and sulfuric acid, forming small particles known as ammonium aerosols."[161] These particles of ammonium nitrate and ammonium sulfate have diameters smaller than 2.5 microns, and thus qualify as $PM_{2.5}$ – a regulated CAA criteria pollutant. EPA has recognized the health impacts of particulate pollution, and $PM_{2.5}$ in particular, for decades, so this petition will not address them in detail. EPA's current NAAQS for $PM_{2.5}$ are meant to protect the public health and welfare from the respiratory symptoms, decreased lung function, aggravated asthma symptoms, chronic bronchitis, irregular heartbeat, heart attacks, and premature death associated with small particle pollution.[162] These NAAQS do not require ammonia regulation, however, despite recent research indicating that ammonia contributes significantly to $PM_{2.5}$.

One recent study clarifies the role ammonia plays in $PM_{2.5}$ formation and seasonal $PM_{2.5}$ variations.[163] Researchers used the Community Multiscale Air Quality chemical transport model[164] to predict the environmental impact of ammonia emissions in $PM_{2.5}$ non-attainment

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[159] *See* discussion of EPA's Sulfur Dioxide Rule, *infra* Section VI.
[160] Rich Damberg, EPA Office of Air Quality Planning and Standards, *Policies for Addressing PM2.5 Precursor Emissions* (June 20, 2007) at Slide 8.
[161] Aneja at 516.
[162] EPA, Particulate Matter: Health and Environment, http://www.epa.gov/pm/health.html (last visited Mar. 18, 2011).
[163] R. W. Pinder et al., *Environmental Impact of Atmospheric NH_3 Emissions Under Present and Future Conditions in the Eastern United States*, 35 Geophysical Res. Letters (June 2008) at 2 [hereinafter Pinder].
[164] *See* EPA, Atmospheric Modeling and Analysis Division, Community Multiscale Air Quality (CMAQ), http://www.epa.gov/AMD/CMAQ/ (last visited Mar. 18, 2011).

areas, considering future scenarios in which EPA's recently amended regulations have reduced emissions of oxides of nitrogen (NO_x) and sulfur oxides (SO_x). The authors explain that although ammonia can react with either NO_x or SO_2 to form small particulates, in the absence of ammonia NO_x will stay in gaseous form, while SO_2 can readily react with other compounds to form other small particles. Because in winter a higher proportion of $PM_{2.5}$ is ammonium nitrate (formed from ammonia and NO_x) than in summer, the "sensitivity of $PM_{2.5}$ to ammonia emissions reductions" is greatest in winter[165] and thus reductions in winter ammonia emissions may significantly reduce $PM_{2.5}$. This conclusion supports findings in previous studies that under certain circumstances winter ammonia emissions reductions can be an even "more effective and less costly control strategy for $PM_{2.5}$ than reductions in NO_x and SO_2."[166] The modeling further suggests that "NH_3 emission controls will continue to be an effective strategy to achieve further reductions in winter $PM_{2.5}$, even considering the planned reductions in NO_x and SO_2 emissions."[167]

Other studies have estimated ammonia's contribution to $PM_{2.5}$ and the contribution of ammonia from livestock in particular. One study looked at the constituents and sources of $PM_{2.5}$ in the eastern U.S., concluding that "ammonia comprises a significant portion of the $PM_{2.5}$ mass" in the region – 47 percent.[168] Penn State researchers have looked specifically at livestock's contribution to ammonium nitrate formation. Using the conservative estimate that livestock contribute only 51 percent of total ammonia emissions, the study found that livestock ammonia emissions lead to the formation of 9 to 11 percent of total U.S. $PM_{2.5}$, while in winter in the Upper Midwest this contribution may be as high as 20 percent.[169] EPA's failure to consider ammonia's localized and seasonal effects on $PM_{2.5}$ concentrations, and to require state regulation of ammonia sources in $PM_{2.5}$ non-attainment areas, contravenes current research.

The evidence provided in this petition demonstrates that ammonia clearly meets the CAA criteria pollutant standard: ammonia emissions cause or contribute to air pollution – both ammonia itself and $PM_{2.5}$ – that may reasonably be anticipated to endanger public health. EPA should make an endangerment finding, designate ammonia as a criteria pollutant, and establish primary NAAQS that will protect public health with an adequate margin of safety.

2. Ammonia emissions endanger public welfare

CAA § 109(b)(2) requires EPA to establish secondary NAAQS for criteria pollutants, set at levels that protect the public welfare "from any known or anticipated adverse effects

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[165] Pinder et al. at 2.
[166] *Id.* at 1.
[167] *Id.* at 4.
[168] Natalie Anderson et al., *Airborne Reduced Nitrogen: Ammonia Emissions from Agriculture and Other Sources*, 29 Env't Int'l (2003) at 277.
[169] Alexander N. Hristov, Associate Professor of Dairy Nutrition, Penn State Department of Dairy and Animal Science, *Livestock Contribution to Fine Particulate Matter (PM2.5) in the U.S.*, 16 February 2009, *available at* http://www.das.psu.edu (search "particulate matter") (last visited Mar. 18, 2011).

associated with [the criteria pollutant] in the ambient air." Public welfare has many dimensions, which include environmental and economic impacts as well as psychological health and quality of life.

CAA §302(h) defines "welfare" broadly and non-exclusively:

> "[a]ll language referring to effects on welfare includes, but is not limited to, effects on soils, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility, and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being, whether caused by transformation, conversion, or combination with other air pollutants."

This open-ended definition demonstrates Congress" understanding that air pollution has numerous and complex adverse effects, and its intent that EPA should exercise its broad regulatory authority to mitigate any and all of them. This section will provide evidence of the public welfare impacts of ammonia emissions, alone and in combination with other CAFO emissions, on personal comfort and well-being, water and soil quality, property values, and visibility.

i. Ammonia emissions threaten personal comfort and well-being

Airborne ammonia most obviously impacts a person"s personal comfort and well-being through odor. Airborne ammonia has a pungent, unpleasant smell often associated with urine. Indeed, many complaints from communities that live close to CAFOs concern the effects of the odor emanating from the CAFOs on their daily lives.[170] These nuisance effects of ammonia odor on important aspects of public welfare exist independent of the public health effects from more elevated ambient concentrations. The odor released from CAFOs typically includes a mixture of hydrogen sulfide (H_2S), volatile organic compounds (VOCs), ammonia, and other gases.[171] However, although airborne ammonia is only one component of the cumulative odor emitted from CAFOs, they release it in vast quantities.

Moreover, though many pollutants from CAFO emissions combine to cause the nuisance odors that impact several aspects of public welfare, this does not lessen EPA"s obligation to address ammonia"s public welfare impacts. Congress anticipated this scenario when drafting the CAA, and specifically included effects "caused by…combination with other air pollutants" in its definition of welfare. CAA § 302(h). Ammonia is a primary pollutant in CAFO air emissions, emitted in large quantities from CAFOs housing all types of livestock, and EPA should act to

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[170] *See, e.g.,* Iowa Study at 71.

[171] EPA, Animal Feeding Operations Air Agreements, http://www.epa.gov/compliance/resources/agreements/caa/cafo-agr.html (last visited Mar. 18, 2011). *See also* Schiffman, et al., *Quantification of odors and odorants from swine operations in North Carolina*, 108 Agric. and Forest Meteorology (2001).

mitigate the community well-being and public welfare impacts of ammonia in combination with other CAFO air pollution.

The 2008 Pew Commission Report surveyed research on the social and community impacts of CAFO emissions. The Commission concluded that residents near CAFOs "are subject to air emissions that, although lower in concentration [than worker exposures], may significantly affect certain segments of the population."[172] After reviewing existing research, the Commission identified community physical and mental health effects such as respiratory symptoms and neurobehavioral effects such as depression.[173] The Commission also considered the effect of CAFO odor compounds on mood, and determined that due to the toxicity and odor of ammonia and other CAFO emissions it is "not surprising" that existing studies have shown "increased rates of neurobehavioral symptoms such as depression."[174]

The North Carolina study previously discussed evaluated quality of life factors in addition to health symptoms.[175] The study evaluated quality of life indicators by calculating the number of days that the community members had to stay inside or keep windows closed during good weather. Because those living near the hog CAFO had to stay indoors significantly more often than the other groups, the study concluded that proximity to the hog CAFO reduced this community"s quality of life.[176]

Another North Carolina study used a "Profile of Mood States" test to compare the psychological state of 44 community members living close to a large swine confinement to the psychological state of community members who did not live close to the swine confinement.[177] The study showed that members living close to the swine confinement experienced more anger, tension, and depression than the control group; they also suffered physical effects, experiencing more fatigue and confusion than the control group.[178]

The Iowa Study also reviewed numerous polls and surveys of the nuisance effects of livestock operations, including odors and air pollution. The Study found that rural residents find livestock odors a major nuisance, and that odors, rather than traffic, noise, dust, flies, or other problems, create the significant majority of the nuisance issues arising from CAFOs in close proximity. Moreover, those surveyed reported that larger farms were a greater nuisance than smaller ones.[179]

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[172] Pew Commission Report at 17.
[173] *Id.*
[174] *Id.*
[175] Steve Wing and Susanne Wolf, *supra* note 107.
[176] *Id.* at 236; Iowa Study at 150.
[177] Iowa Study at 137, *citing* Schiffman et al., *The Effect of Environmental Odors Emanating from Commercial Swine Operations on the Mood of Nearby Residents*, 17 Brain Res. Bulletin (1995).
[178] *Id.*
[179] Iowa Study at 149-50.

These studies detail some of the difficult-to-quantify effects of CAFO ammonia emissions on personal comfort and well-being. Emotions such as depression, anger, and fatigue play a central role in personal well-being, and therefore in public welfare. Similarly, the degree to which rural residents may open their windows, go outside, and otherwise enjoy their property directly affects both comfort and well-being. When rural citizens lack these basic rights and comforts – things most Americans take for granted – the public welfare suffers. The authors of the Iowa Study drew a similar conclusion, reporting that CAFO neighbors often hesitate to make social plans at their houses because they have no control over what the air quality will be like on a certain day, and as a result, CAFOs reduce social capital.[180]

The Iowa Study and Pew Commission Report also found correlations between increased size and industrialization of livestock operations and overall social and economic decline. One such study noted by both the Iowa and Pew reports contrasted family farm and industrial agricultural areas in 98 counties across several states, concluding that farm size and mechanization "significantly predict declining community conditions not merely at the local agricultural community level, but in the entire county."[181] The Iowa Study"s review of Midwest CAFO research also found "tendencies of economic decline in communities with greater concentration of CAFOs."[182] While these studies do not attempt to discern the share of these impacts attributable directly to ammonia and other air emissions, these emissions cause demonstrated adverse welfare impacts and clearly contribute to the observed trends of social decline. Because numerous peer-reviewed studies demonstrate that ammonia emissions from CAFOs decrease personal comfort as well as social and economic well-being, ammonia meets the CAA definition of a pollutant which can reasonably be anticipated to endanger public welfare.

ii. Ammonia emissions re-deposit, polluting waterways and acidifying soils

The CAA definition of welfare impacts specifically includes impacts to water, vegetation, and soil. CAA § 302(h). Ammonia emissions have far-reaching environmental impacts, and affect public welfare by polluting water and land as well as air. While transport distances vary based on numerous environmental and climate factors, airborne ammonia eventually leaves the atmosphere, either as ammonia or after conversion to ammonium aerosol particles, through the processes of either dry or wet deposition.[183] Dry deposition occurs when the ammonia falls to earth without the presence of precipitation, while wet deposition occurs when ammonia returns

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[180] *Id.* at 150.
[181] *Id.* at 148, *quoting* MacCannell D. Industrial agriculture and rural community degradation. In Swanson LE, ed. Agriculture and community change in the U.S.: The Congressional research reports at 63 (pp. 15-75). Boulder, CO: Westview Press (1988). *See also* Pew Commission Report at 42-43.
[182] Iowa Study at 148.
[183] U.S. Department of the Interior, U.S. Geological Survey (USGS), *Atmospheric Deposition Program of the U.S. Geological Survey: Fact Sheet FS-112-00 p. 1-6*, (December 2000) at 1, *available at* http://bqs.usgs.gov/AcidRain/program.pdf [hereinafter USGS Fact Sheet] (last visited Mar. 18, 2011).

to the earth via rain, snow, sleet, or fog.[184] This deposition can add nitrogen directly to waterways, or can add nitrogen to land areas, acidifying soils and ultimately adding to water pollution through surface runoff.

Ammonia gas emissions have a typical transport time ranging from one to five days.[185] Because "[p]recipitation readily removes most reactive nitrogen compounds, such as ammonia and nitrogen oxides, from the atmosphere,"[186] a significant percentage of volatilized ammonia can re-deposit within these first few days. Ammonia that converts to ammonium aerosol particles rather than depositing directly has a much longer average transport time, ranging from one to fifteen days.[187] As a result, the rate of conversion from ammonia gas to ammonium aerosol particles will significantly affect deposition patterns, as ammonium aerosols may travel thousands of kilometers before re-depositing.[188]

Additional factors also affect ammonia conversion, transport and deposition – including the prevalence of NO_x and SO_2 in the atmosphere, temperature, and precipitation patterns – making models and predictions of ammonia deposition impacts extremely complex.[189] However, existing research demonstrates that ammonia emissions, particularly in areas with high concentrations of CAFOs, can have severe local and regional effects on water quality. Watersheds in regions with numerous sources of ammonia emissions, such as the Chesapeake Bay, North Carolina, and the Mississippi River Corridor, receive high levels of overall nitrogen and ammonium deposition.[190]

When ammonia re-deposits into surface water, it endangers public welfare by polluting the water with excess nitrogen. The eutrophication process occurs when excess nutrients, in this case nitrogen in ammonia, enter surface water, thereby upsetting the nutrient balance of the waterway and contributing to increased algal growth.[191] Due to the nutrient overload in the water, algae initially flourish, but as these algae die off, the decomposition process depletes the water of its oxygen content.[192] Extreme cases of eutrophication lead to hypoxic "dead zones," such as the more than 15,000 square kilometer area in the Gulf of Mexico devoid of aquatic life.[193] Due in large part to increased nutrient loads from changed agricultural practices in the

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[184] USGS Fact Sheet at 1.
[185] Viney P. Aneja et al., *Ammonia Assessment from Agriculture: U.S. Status and Needs*, 37 Envtl. Quality, 2008, at 516 [hereinafter Aneja].
[186] USGS Fact Sheet at 2.
[187] Aneja at 516.
[188] Aneja at 515-16.
[189] *See generally* Pinder, *supra* note 163.
[190] USGS Fact Sheet at 3, *see* Figure 5; *See also* National Atmospheric Deposition Program, 2009 ammonium ion wet deposition map, http://nadp.sws.uiuc.edu/ (last visited Mar. 18, 2011).
[191] USGS Fact Sheet at 2.
[192] *Id.*
[193] Mississippi River/Gulf of Mexico Watershed Nutrient Task Force, *Moving Forward on Gulf Hypoxia Annual Report 2009*, 4 (2009), *available at* http://www.epa.gov/msbasin/implementation.htm (last visited Mar. 18, 2011).

Mississippi River watershed over the past 50 years, this dead zone is currently the largest in the U.S. and the second largest in the world.[194]

Though all sources of nitrogen and other nutrients contribute to eutrophication of waterways, in some watersheds, nitrogen deposition comprises a significant fraction of the total nitrogen load. One study of nutrient pollution sources found that coastal areas that export large amounts of nitrogen via water received 18 percent of that nitrogen from deposition – even more than the 15 percent from livestock waste runoff.[195] In the Chesapeake Bay, one of the United States" most recreationally, culturally, and economically significant water bodies, EPA has estimated that more than a third of the total nitrogen pollution entering the Bay comes from air deposition.[196] Areas with the highest concentrations of CAFOs see even greater impacts from nitrogen deposition; for example, research indicates that "[a]tmospheric deposition of nitrogen compounds may contribute as much as 35 to 60% of total nitrogen loading to North Carolina coastal waters."[197]

Re-deposited airborne ammonia also comprises a significant fraction of total nitrogen deposition in areas with ammonia emission sources; studies demonstrate that ammonia sources significantly affect overall nitrogen deposition on a local and regional scale. Pinder et al. used EPA"s Community Multiscale Air Quality (CMAQ) chemical transport model to map nitrogen deposition, and found that total nitrogen deposition near ammonia sources increases 10 to 40 percent.[198] Another study collected precipitation and measured its ammonium concentration, then used regression modeling to analyze the impact of ammonia sources on regional deposition.[199] The researchers found that areas with densely grouped CAFOs "will have a local impact" on both ammonia and ammonium aerosol deposition, and "may have a regional influence" on ammonium deposition.[200] The study found that CAFO emissions caused increases in ammonium deposition as far as 80 kilometers away.[201]

Despite an atypically small dead zone in 2009, the most recent five-year average size of the Gulf dead zone was 15,650 square kilometers. *Id.*

[194] EPA, *Hypoxia in the Northern Gulf of Mexico, an Update by the EPA Science Advisory Board*, EPA-SAB-08-003, 10-12 (Dec. 2007), available at: http://yosemite.epa.gov/sab/SABPRODUCT.NSF/C3D2F27094E03F90852573B800601D93/$File/EPA-SAB-08-003complete.unsigned.pdf (last visited Mar. 18, 2011).

[195] Robert W. Howarth et al., *Sources of Nutrient Pollution to Coastal Waters in the United States: Implications for Achieving Coastal Water Quality Goals*, 25 Estuaries 656, 668 (Aug. 2002) [hereinafter Sources of Nutrient Pollution].

[196] EPA, Office of Enforcement and Compliance Assurance, Chesapeake Bay Compliance and Enforcement Strategy at 2 (May 2010) [hereinafter Chesapeake Enforcement Strategy], *available at* http://www.epa.gov/oecaerth/civil/initiatives/chesapeake-strategy-enforcement.pdf (last visited Mar. 18, 2011).

[197] Aneja at 517.

[198] Pinder at 1.

[199] John T. Walker et al., *Atmospheric Transport and Wet Deposition of Ammonium in North Carolina*, 34 Atmospheric Env't., 2000.

[200] *Id.* at 3408.

[201] *Id.* at 3416.

The National Atmospheric Deposition Program"s data lend support to these findings, showing that ammonium deposition has been heavily concentrated in the livestock-intensive Upper Midwest over the past decade and is increasing in concentration in the region.[202] EPA"s own findings in the Chesapeake Bay also show the regional influence of ammonia on Bay water quality. Despite the thousands of point sources discharging nitrogen directly to the Bay via surface waters, the agency"s Office of Enforcement and Compliance Assurance (OECA) has recently estimated that six percent of the total nitrogen loadings in the Bay come from deposition of emissions from livestock manure and fertilized soil.[203]

Moreover, the results of the CMAQ modeling study suggest that increased regulation of NO_x and SO_2 will increase both ambient ammonia concentrations and localized nitrogen deposition near ammonia sources in the future. Increased CAA controls on NO_x and SO_2 will reduce ambient levels of these pollutants, which will reduce conversion of ammonia into ammonium aerosols that have greater transport potential.[204] Ammonia emissions are also expected to rise due to projected increases in livestock production and concentration. As a result of both factors, more ammonia will re-deposit within a shorter distance from emissions sources.[205] Specifically, the modeling indicated that "the total nitrogen deposition decreases in the future, except near ammonia emission sources. The largest future increases in total nitrogen deposition can be found in and around areas of high ammonia emissions, including the Delmarva Peninsula, eastern North Carolina, and northeastern Georgia."[206]

Additional studies have linked those areas where ammonia deposition plays a significant role in nitrogen loadings with areas near intensive animal production,[207] indicating again that much volatilized ammonia re-deposits within a small range of its source and has a considerable effect on water quality. Moreover, it is not only animal numbers and proximity, but also livestock production methods, that affect nitrogen deposition; the use of CAFO livestock production systems increases the total amount of ammonia volatilized from livestock, and therefore the amount that eventually re-deposits in waterways. Nutrient researchers have found that keeping cows on pasture, as opposed to in barns, reduces volatilization of ammonia by more than half.[208] These studies indicate that protecting water quality from nutrient pollution requires EPA to consider and regulate ammonia emissions from CAFOs.

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[202] National Atmospheric Deposition Program, Map Viewer, http://nadp.sws.uiuc.edu/maps/ (view Network: NTN, Map Type: Deposition, Analyte: NH_4) (last visited Mar. 18, 2011).
[203] Chesapeake Enforcement Strategy at 9. An additional 17 percent of the Bay"s total nitrogen load comes from animal manure directly via water. *Id.*
[204] Pinder at 1.
[205] *Id.* at 3.
[206] *Id.* at 4.
[207] Donald F. Boesch, *Challenges and Opportunities for Science in Reducing Nutrient Over-enrichment of Coastal Ecosystems*, 25 American Scientist 896 (Aug. 2002).
[208] Sources of Nutrient Pollution at 663.

Ammonia deposition onto land also degrades soil quality. According to the National Atmospheric Deposition Program, "[w]hen an ammonium ion deposits to a soil surface, it can increase soil acidity through nitrification reactions, releasing hydrogen ions and converting ammonium to nitrate."[209] Acidified soil provides poor growing conditions for vegetation by depleting calcium and other nutrients from the soil, mobilizing inorganic aluminum, and increasing the accumulation of nitrogen and sulfur in the soil.[210] High levels of aluminum can be toxic to plants, fish, and other organisms.[211] In addition, when nitrogen deposits onto soil it benefits species that need a large supply of nitrogen, resulting in these species overtaking those adapted to a limited nitrogen supply.[212] Thus nutrient enrichment can degrade terrestrial ecosystems just as eutrophication devastates aquatic ecosystems. Recent studies suggest that acidic deposition has played a part in the decrease in tree species such as red spruce and sugar maple in the eastern United States.[213]

In accordance with the CAA"s broad mandate to protect against threats to public welfare, this petition requests that EPA consider the entire nitrogen cycle when regulating ammonia. Public welfare encompasses the social benefits derived from protecting clean water, healthy and productive soils, natural vegetation, and the enjoyment of natural resources. Ammonia deposition significantly degrades water quality, and in doing so diminishes use, enjoyment, and economic value of surface waters for fishing, recreation, and municipal use. Ammonia deposition also harms soil quality, which lowers cropland productivity as well as the diversity, health, and recreational value of forest ecosystems. Regulating ammonia as a criteria pollutant would reduce total ammonia air emissions and the resulting deposition of ammonia into surface waters in the most polluted areas. Adequate regulation through the implementation of protective secondary NAAQS would benefit both air and water quality, thereby furthering EPA"s mission to protect public welfare from air pollution.

iii. Ambient ammonia reduces property values

Ammonia emissions also harm public welfare by causing damage to and deterioration of property and economic values. CAA § 302(h). Much of this harm to property value and rural economies stems from the quality of life issues already discussed. CAFOs may adversely affect quality of life and property value nearby in several ways, such as air pollution, water pollution, noise, dust, flies, and increased traffic. But as discussed previously, the Iowa Study found that

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[209] National Atmospheric Deposition Program, Passive Ammonia Monitoring Network http://nadp.sws.uiuc.edu/nh3Net/ (last visited Mar. 18, 2011).
[210] Driscoll, Charles, et. al. *Effects of acidic deposition on forest and aquatic ecosystems in New York State*. Environmental Pollution 123 (2003) 327–336 [hereinafter Driscoll], *available at* http://www.esf.edu/hss/HF%20Ref%20PDF/EvnPol.123.327.336.pdf (last visited Mar. 18, 2011).
[211] *Id.*
[212] Dep"t of Environment, Food & Rural Affairs, *Ammonia in the UK* 25 (2002), *available at* http://www.defra.gov.uk/environment/quality/air/airquality/publications/ammonia/documents/ammonia-in-uk.pdf (last visited Mar. 18, 2011).
[213] Driscoll at 327–336.

citizens near CAFOs have identified odor and air pollution as the leading CAFO nuisances contributing to decreased quality of life.[214] In many rural communities, homeowners living near CAFOs find themselves unable to sell their homes and relocate because CAFO air pollution, including ammonia emissions, makes their home undesirable, thereby dramatically lowering its market value. Both case law and academic research reflect a growing acceptance of the fact that CAFOs have an adverse economic impact on nearby residences. Odor and air pollution have a negative effect on quality of life, and therefore significantly affect the amount a buyer will be willing to pay.

In one recent case, *Darnall Ranch, Inc. v. Banner County Board of Equalization*, the Supreme Court of Nebraska held that the state tax board acted unreasonably and arbitrarily in failing to adjust Darnall"s home value downward due to its proximity to a large cattle feedlot.[215] Discussing a prior hog CAFO case, the Court stated plainly that "[n]o reasonable fact finder could conclude that in the real estate marketplace, a potential buyer would not notice, and react economically, to having a large hog facility very nearby while living in a remote location."[216] In 2002, an Iowa District Court similarly held that the construction of a large hog CAFO reduced one neighbor"s property value by $50,000, and awarded $100,000 in damages.[217]

Economic studies have also found that CAFOs reduce the value of nearby property. One Missouri study found that every Missouri CAFO lowered surrounding property values by approximately *$2.68 million*.[218] This translated to an average value loss of 6.6 percent within a three-mile radius, and an average value loss of more than 88 percent for those properties within a quarter mile of the CAFO.[219] The Union of Concerned Scientists roughly extrapolated this finding, concluding that if every CAFO had a similar impact, CAFOs cost the United States as much as *$26 billion* in lowered property values.[220]

The Appraisal Journal has also addressed how CAFOs impact property values; a 2001 article on the issue advised that appraisers should consider the effects of nearby CAFOs on use and enjoyment of property when evaluating rural homes. The author reviewed published research and several case studies on the effects of CAFOs on property value, concluding that "diminished marketability, loss of use and enjoyment, and loss of exclusivity can result in a

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[214] Iowa Study at 149-50.
[215] *Darnall Ranch, Inc. v. Banner Co. Bd. of Equal.*, 753 N.W.2d 819 (Neb. 2008).
[216] *Id.* at 831, quoting *Livingston v. Jefferson Cty. Bd. of Equal.*, 640 N.W.2d 426 at 437 (2002).
[217] *Judge awards Iowa couple $100,000 in hog lot lawsuit*, AMARILLO GLOBE NEWS, Jan. 12, 2002, *available at* http://www.pmac.net/AM/hoglot_lawsuit.html (last visited Mar. 18, 2011). For additional cases finding devaluation of property from nearby CAFOs, *see* http://www.factoryfarmtaxprotest.org/cases.htm.
[218] Mubarak, H., T.G. Johnson, and K.K. Miller. 1999. *The impacts of animal feeding operations on rural land values*. Report R-99-02. College of Agriculture, Food and Natural Resources, University of Missouri–Columbia.
[219] *Id.*
[220] Union of Concerned Scientists, *CAFOs Uncovered: The Untold Costs of Confined Animal Feeding Operations* (April 2008) at 5.

diminishment ranging from 50% to nearly 90% of otherwise unimpaired value."[221] A Pennsylvania study has since found that the prices of homes adjacent to CAFOs decrease once the total live weight of confined animals exceeds 200,000 pounds.[222]

A community located in Princess Anne, Maryland puts property value impacts into perspective. As has happened in rural communities throughout the U.S., homeowners purchased houses on a rural residential street, and large poultry CAFOs subsequently moved in and surrounded the homes at close proximity. As this photograph shows, formerly desirable homes are now, among other things, exposed to ammonia pollution from all directions.[223] Common sense dictates that such a community transformation, with accompanying air and water pollution, traffic, dust, noise, and flies, will affect the price any potential buyer would be willing to pay. CAFO air pollution, including ammonia, plays a central role in decreased property values, thereby harming public welfare.

Princess Ann, Maryland, February 5, 2009

[221] J.A. Kilpatrick, *Concentrated Animal Feeding Operations and Proximate Property Values*, 39 The Appraisal J. 3 (2001) at 306.
[222] R.C. Ready and C.W. Abdalla, *The Amenity and Disamenity Impacts of Agriculture: Estimates from a Hedonic Pricing Model*, 87 Am. J. of Agric. Econ. 2 (2005) at 314-326.
[223] Princess Anne, MD on February 5, 2009, photograph from the Assateague Coastal Trust and the Assateague COASTKEEPER.

iv. Ambient ammonia impairs visibility in pristine areas

Ammonia emissions also harm public welfare by impairing visibility and damaging property and economic values in scenic areas. EPA has assessed the impact of air pollution on visibility, finding that "[i]n our nation's scenic areas, the visual range has been substantially reduced by air pollution. In eastern parks, average visual range has decreased from 90 miles to 15-25 miles. In the West, visual range has decreased from 140 miles to 35-90 miles."[224] Ammonia has significantly contributed to this damage. Emissions research has established that the reactive nitrogen in ammonia "has a variety of environmental consequences including acidification and eutrophication, photo-chemical air pollution [and] reduced visibility.[225] As discussed, ammonia gas reacts with nitrous oxides and sulfur dioxide to form small aerosol particles harmful to human health; these same light-scattering aerosol particles do further damage by forming the regional haze that limits visibility in many of the nation"s scenic and wild places.[226]

For example, the Oregon Department of Environmental Quality has identified ammonia emissions – specifically emissions from the region"s dairy CAFOs – as a significant contributor to regional haze and impaired visibility in the Columbia Gorge National Scenic Area.[227] State officials also recognize that ammonia"s contribution to acid rain in the Gorge threatens cultural and natural resources.[228] EPA must consider these impacts when assessing ammonia"s effects on public welfare, and should establish secondary NAAQS that will protect visibility in wilderness and culturally significant areas for enjoyment by all Americans.

C. Ammonia in the ambient air results from numerous stationary sources

To qualify for listing as a criteria pollutant, ammonia must exist in the air as a result of "numerous or diverse mobile or stationary sources." CAA § 108(a)(1)(B). Ammonia meets these threshold requirements, because CAFOs qualify as stationary sources, and numerous CAFOs emit ammonia into the ambient air.

1. CAFOs are stationary sources

Section 302(z) of the CAA defines stationary sources broadly, stating "[t]he term "stationary source" means generally any source of an air pollutant except those emissions

[224] EPA, Visibility: Basic Information, *available at* http://epa.gov/oar/visibility/what.html (last visited Mar. 18, 2011).
[225] Aneja at 517.
[226] Or. Dep"t of Envtl. Quality, Fact Sheet: Columbia Gorge Air Quality Strategy Report (2008), *available at* http://www.deq.state.or.us/aq/factsheets/08aq002_gorge.pdf (last visited Mar. 18, 2011).
[227] *Id.*
[228] *Id.*

resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in section 7550 of this title."

CAFOs clearly meet the definition of stationary source: they emit ammonia, an air pollutant, into the air and are not internal combustion engines, nonroad engines, or nonroad vehicles. Under the statute, "any" other source of an air pollutant qualifies as a stationary source. Thus, the CAA's broad language indicates that the law does not limit the term "stationary source" to any particular sector, and CAFOs qualify as stationary sources under CAA § 302(z).

2. CAFOs are numerous

Many thousands of CAFOs contribute to air pollution throughout the United States. Though the CAA does not set a threshold number for "numerous" sources and case law does little to clarify this standard,[229] these facilities exist in thousands of rural communities throughout the U.S., and do not only affect a small area or specific group of people. EPA's Final CAFO Rule identified an estimated total of 20,685 CAFOs nationwide in 2008.[230] In contrast, EPA regulates SO_2 as a criteria pollutant, 73 percent of which comes from the nation's 5,400 power plants.[231] Under any consistent interpretation of the term, CAFOs are numerous and therefore meet the CAA "numerous or diverse sources" requirement for stationary sources of designated criteria pollutants.

D. EPA has not yet issued air quality criteria for ammonia

Ammonia also satisfies the final CAA § 108(1)(C) requirement for listing as a criteria pollutant because EPA has not yet issued air quality criteria for the pollutant and did not do so before December 31, 1970.[232]

Ammonia therefore meets all of the legal requirements for listing under §108 of the CAA: ammonia is a pollutant as defined by the CAA, emissions of which cause or contribute to air pollution which may reasonably be anticipated to endanger both public health and public

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[229] In *NRDC v. Train*, 545 F.2d 320 (2nd Cir. 1976), EPA conceded that lead-emitting automobiles were "numerous or diverse mobile or stationary sources," and thus the court did not have to address the issue and did not set a threshold for numerous sources. *Id.* at 324. No other case petitioners are aware of clarifies the requirement that sources be numerous.

[230] Revised National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitations Guidelines for Concentrated Animal Feeding Operations in Response to the Waterkeeper Decision: Final Rule, 40 C.F.R. Parts 9, 122, 412 (2008); 73 Fed. Reg. 70418 at 70469-70470.

[231] EPA, Fact Sheet: Revisions to the National Ambient Air Quality Standard, Monitoring Network, and Data Reporting Requirements for Sulfur Dioxide, *available at* http://www.epa.gov/air/sulfurdioxide/pdfs/20100602fs.pdf (last visited Mar. 18, 2011); U.S. Energy Information Administration, Frequently Asked Questions, http://www.eia.doe.gov/ask/electricity_faqs.asp#coal_plants (last updated Jan. 24, 2011).

[232] As discussed *infra* Section VII, an EPA "plan" to issue air quality criteria for a pollutant is not a requirement for listing; once EPA makes findings under CAA § 108(a)(1)(A) and (B), listing becomes mandatory.

welfare, the emissions are present in the ambient air as the result of numerous stationary sources, including CAFOs, and EPA has yet to issue air quality criteria for ammonia.

VI. EPA CURRENTLY REGULATES SIMILAR EXPOSURES UNDER THE NAAQS PROGRAM

EPA"s existing NAAQS already regulate sulfur dioxide (SO_2), a criteria pollutant with characteristics similar to ammonia, and which requires standards similar to those that are necessary to protect public health and welfare from ammonia pollution. As with brief exposures to SO_2, acute ammonia exposures pose a public health threat. And similar to SO_2, which EPA has found does not affect the entire U.S. public but rather impacts pockets of the population near major sources, ammonia emissions primarily impact geographically discrete rural communities throughout the U.S.

EPA has regulated SO_2 as a criteria pollutant since 1971.[233] To protect public health from exposure to SO_2 emitted by power plants and industrial facilities, EPA initially set a 24-hour standard of 140 ppb and a one-year standard of 30 ppb.[234] However, subsequent research on the health effects of SO_2 led EPA to determine that short-term exposures – between 5 minutes and 24 hours – pose the most significant health threats, and therefore primary NAAQS should protect health from short-term spikes in SO_2 concentrations. These acute SO_2 exposures can worsen asthma symptoms and cause respiratory effects such as narrowing of the airways.[235] To better protect vulnerable citizens from short-term SO_2 exposures, EPA recently revoked both the 24-hour and the one-year primary NAAQS and replaced them with a one-hour primary NAAQS of 75 ppb.[236]

EPA"s new one-hour SO_2 NAAQS reflects a growing understanding of the acute risks posed by certain toxic emissions, and provides the necessary framework to similarly regulate ammonia. EPA"s own ammonia AEGLs document the risks of acute ammonia exposures; the agency"s research reports the potential for adverse health effects at concentrations of 30 ppm after as few as 10 minutes.[237] Moreover, EPA"s NAEMS data show that ammonia emissions from CAFOs fluctuate significantly, exposing nearby residents to short-term spikes in ammonia concentrations that exceed both levels and durations of concern.[238] EPA should evaluate available ammonia emissions data, considering both existing health-based exposure standards and heightened health effects of mixed-pollutant exposures, and establish a standard that will protect the public from the acute ammonia health effects it determines are likely to occur near

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[233] Primary National Ambient Air Quality Standard for Sulfur Dioxide; Final Rule, 75 Fed. Reg. 35,520 at 35,522 (June 22, 2010) [hereinafter Primary SO_2 NAAQS].
[234] Primary SO_2 NAAQS at 35,521, 35,524.
[235] EPA, Fact Sheet: Revisions to the Primary National Ambient Air Quality Standard, Monitoring Network, and Data Reporting Requirements for Sulfur Dioxide, 2, *available at* http://www.epa.gov/air/sulfurdioxide/pdfs/20100602fs.pdf.
[236] Primary SO_2 NAAQS at 35,520.
[237] EPA, Ammonia Acute Exposure Guideline Levels, http://www.epa.gov/opptintr/aegl/pubs/results88.htm.
[238] *See* discussion of EPA"s NAEMS data, *supra* Section V.B.1.iii.b.

CAFOs. In addition, because much of the existing research on ambient ammonia levels near CAFOs involves time-averaged data, EPA should consider the fact that spikes in ambient ammonia levels have not been thoroughly documented when establishing an adequate margin of safety in its standards.

EPA"s SO_2 rulemaking also sets a precedent for regulating pollutants whose health effects are significant, but not ubiquitous. The new standard resulted from a challenge to the agency"s 1997 decision not to modify the SO_2 NAAQS, despite its finding that short-term exposures below the previous standards posed a health threat to asthmatics. EPA had determined that a more stringent five-minute health standard was not necessary when it considered SO_2 "from a national perspective," finding that the health threat was not adequately ubiquitous and the likelihood that a susceptible individual would suffer adverse health effects was low.[239] The American Lung Association and the Environmental Defense Fund successfully challenged this decision in the District of Columbia Circuit, which held that "nothing in the Final Decision explains away the possibility that „localized," „site-specific," or even „infrequent" events might nevertheless create a public health problem, particularly since, in some sense, all pollution is local and site-specific…."[240]

EPA should apply this analysis to ammonia, which primarily affects rural residents near CAFOs. While ambient ammonia levels likely do not pose a significant health threat in most urban areas, and therefore may not affect the majority of the public, the D.C. Circuit made clear that even localized, site-specific, and infrequent ambient air pollution may create a public health risk that meets the standard in § 108 and therefore requires CAA regulation. In its final SO_2 rule, EPA further pointed out that "in selecting primary standards that include an adequate margin of safety, the Administrator is seeking not only to prevent pollution levels that have been demonstrated to be harmful but also to prevent lower pollutant levels that may pose an unacceptable risk of harm, even if the risk is not precisely identified as to nature or degree."[241] EPA should adopt the same cautious approach regulating ambient ammonia, the adverse health effects of which have been documented but which has not been rigorously studied by EPA, particularly in combination with other air pollutants. And as with the SO_2 rule, EPA should require ambient air monitoring for ammonia in areas with an "increased coincidence of people and [ammonia] emissions."[242]

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[239] *Id.* at 35,522.
[240] *Id.* at 35,523, quoting *American Lung Ass'n v. EPA*, 134 F.3d 388, 392 (D.C. Cir. 1998).
[241] *Id.* at 35,521.
[242] *Id.*

VII. EPA SHOULD CONSIDER ENVIRONMENTAL JUSTICE CONCERNS WHEN DECIDING WHETHER TO REGULATE AMMONIA

EPA must consider environmental justice concerns regarding ammonia emissions when deciding whether to regulate ammonia. Executive Order 12,898 directs all agencies to consider environmental justice concerns during the decision-making process.[243] EPA has acted to effectively implement this Order through its recently issued Interim Guidance regarding environmental justice.[244] The Interim Guidance sets out two primary environmental justice concerns for the agency: ensuring fair treatment and enabling meaningful involvement of those impacted by EPA actions.[245] Fair treatment requires that "no group of people should bear a disproportionate burden of harms and risks," including the "negative environmental consequences" of governmental policies.[246] To achieve meaningful involvement by impacted communities, those potentially affected must have an appropriate role in decisions that may affect their environment or health.[247] Simply permitting input does not satisfy this obligation; EPA decision-makers have committed to actively "seek out and facilitate the involvement of those potentially affected."[248]

EPA"s decision whether to regulate ammonia from factory farms involves an environmental justice concern, because certain communities are disproportionately impacted by the pollution from these operations and have been excluded from meaningful participation in decisions regarding their siting and regulation. In addition, EPA"s response to this petition will constitute an "action that involves an environmental justice concern," because it "present[s] opportunities to address existing disproportionate impacts on minority, low-income, or indigenous populations that are addressable through the action."[249] CAFO ammonia pollution implicates nearly all of the primary factors EPA"s Interim Guidance identifies as consideration factors for decision-making processes: (1) proximity and exposure to environmental hazards, (2) susceptible populations, (3) unique exposure pathways, (4) multiple and cumulative effects, and (5) ability to participate in the decision-making process.[250] As discussed throughout this petition, CAFOs are the largest source of ammonia emissions in the US, and thus the environmental justice analysis EPA conducts when reviewing this petition must address communities impacted by CAFO air pollution.

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[243] Exec. Order 12,898 (1994).
[244] EPA, EPA"s Action Development Process: Interim Guidance on Considering Environmental Justice During the Development of an Action (July 2010).
[245] *Id.* at 3.
[246] *Id.*
[247] *Id.*
[248] *Id.*
[249] *Id.* at 6.
[250] *Id.* at 7-8.

Peer-reviewed sociological studies have shown that CAFOs are disproportionately located in communities with low socioeconomic status and frequently in predominantly African-American communities. One 2006 study of seventh and eighth grade students in North Carolina found an association between economic disadvantage and "proximity to the nearest hog CAFO and with strength of the odor."[251] The study found two other troubling correlations: populations already vulnerable to asthma and other illnesses are more likely to be exposed to CAFO emissions such as ammonia,[252] and schools with a high non-white population and a low socioeconomic status were more likely than other schools to have hog CAFOs nearby.[253] A 2011 study of 16 North Carolina communities concluded that in general, "[i]ndustrial hog operations in North Carolina are disproportionately located in low-income communities of color."[254]

Another study looked at placement and expansion of large hog CAFOs in 17 states, including three states where large-scale production had been rapidly expanding: North Carolina, Iowa, and Minnesota. In these three states, the researchers found disproportionate siting and expansion of large hog CAFOs in African-American communities in the 1980s and 1990s, and concluded that as hog production shifts from small-scale to large-scale, racial inequity in CAFO siting intensifies.[255]

Yet another study investigated hog CAFO siting in Mississippi, looking both state-wide and specifically in the counties with hog production, to determine whether hog CAFOs sited disproportionately in areas with higher poverty or higher percentages of African-American residents.[256] The study found three times as many hog CAFOs in (1) high African-American, low poverty and (2) high poverty, low African-American communities as compared to a control.[257]

EPA should consider the combined effects of the increasing geographic concentration of CAFOs, the adverse effect CAFOs have on nearby property values, and the disproportionate siting of CAFOs in low-income and minority communities when assessing the environmental justice impact of CAFO ammonia emissions. These factors exacerbate existing inequity, as low-income residents who already have the lowest mobility will become even less able to escape pollution as property values decline and more CAFOs move into an area. Citizens who live close to CAFOs and who breathe ammonia pollution every day frequently will not have the

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[251] Maria C. Mirabelli, Steve Wing, Stephen W. Marshall & Timothy C. Wilcosky, *Race, Poverty, and Potential Exposure of Middle-School Students to Air-Emissions from Confined Swine Feeding Operations* 114 Envtl. Health Persp. 591, 593 (April 2006).
[252] *Id.* at 591, 594.
[253] *Id.* at 595.
[254] Schinasi, *supra* note 109 at 7.
[255] Jeremy Arney, Janice E. Johnston, & Paul B. Stretesky, *Environmental Inequity: An Analysis of Large-Scale Hog Operations in 17 States, 1982-1997* 68 Rural Sociology 231, 244 (2003).
[256] Sacoby M. Wilson, et al., *Environmental Injustice and the Mississippi Hog Industry*, 110 Envt'l Health Perspectives 2 (April 2002).
[257] *Id.* at 199.

means to uproot their lives and families to move to a safer, less polluted community – nor should they have to.

The petitioners request that EPA recognize the environmental justice issues that underlie regulation of ammonia and make environmental justice a primary goal when determining whether to regulate it. This consideration should involve targeted outreach to communities near large or numerous CAFOs and active solicitation of public input from these stakeholders. EPA should base its determination of what constitutes protective regulation and fair treatment on the most adversely impacted communities and the most susceptible individuals, rather than simply assessing average ammonia concentrations in all rural communities.

VIII. EPA HAS A DUTY TO MAKE AN ENDANGERMENT FINDING AND REGULATE AMMONIA

In *Massachusetts v. EPA*,[258] the Supreme Court clarified EPA's obligations to make endangerment findings for air pollutants under the CAA.[259] In its discussion of EPA's discretion to determine, in the administrator's judgment, whether to make an endangerment finding for an air pollutant, the Court noted that "the use of the word "judgment" is not a roving license to ignore the statutory text." Rather, the exercise of this judgment "must relate to whether an air pollutant „cause[s], or contribute[s] to, air pollution which may reasonably be anticipated to endanger public health or welfare.'"[260] When EPA issues its response to a petition for rulemaking "its reasons for action or inaction must conform to the [CAA]," and EPA can only decline to act if it either finds that no endangerment exists or "provides some reasonable explanation as to why it cannot or will not exercise its discretion" to make an endangerment finding one way or another.[261]

Ammonia is a known and extensively researched toxin, for which "sufficient information exists to make an endangerment finding."[262] EPA and other federal agencies, as well as numerous peer-reviewed studies, have extensively documented ammonia's adverse health and welfare impacts, and EPA lacks the requisite "scientific uncertainty…so profound that it precludes EPA from making a reasoned judgment"[263] as to endangerment. Similarly, EPA lacks reasonable grounds on which to make a finding that ammonia does not endanger public health or

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[258] *Massachusetts v. EPA*, 549 U.S. 497 (2007).
[259] Though the Court addressed the endangerment language in § 202(a), emissions standards for new motor vehicles, the language is substantially identical to the endangerment language in § 108(a). The Court's reasoning relied on the plain language of the statute, and therefore also applies to endangerment findings under § 108(a). EPA has not interpreted these provisions as having significantly different meanings, and thus the "normal rule of statutory construction that identical words used in different parts of the same act are intended to have the same meaning" applies. *Gustafson v. Alloyd Co., Inc.*, 513 U.S. 561, 569 (1995) (internal quotation marks and citations omitted).
[260] *Mass v. EPA* at 532-33.
[261] *Id.* at 533.
[262] *Id.* at 534.
[263] *Id.*

welfare. Consequently, a failure to initiate a rulemaking that proposes an endangerment finding for ammonia would be arbitrary and capricious.

If EPA makes an endangerment finding for ammonia, the finding will trigger a mandatory duty to list ammonia as a criteria pollutant. CAA § 108(a)(1) requires that the EPA Administrator "shall" list pollutants that meet the previously discussed requirements of (A) and (B), and "for which air quality criteria had not been issued before December 31, 1970, but for which [s]he plans to issue air quality criteria under this section." CAA § 108(a)(1)(C). In *NRDC v. Train*, the Second Circuit clarified that the latter provision of part (C) does not give EPA discretion to choose not to list a pollutant for which it made an endangerment finding because it has no "plans" to do so.[264] Rather, the court found conclusively that "[o]nce the conditions of §§ 108(a)(1)(A) and (B) have been met, the listing of [the pollutant] and the issuance of air quality standards for [the pollutant] become mandatory."[265]

Because ammonia meets the legal requirements above, the petitioners request that EPA review the scientific data regarding ammonia, make an endangerment finding, and determine that it must list ammonia as a criteria pollutant. The petitioners further request that EPA then establish both primary and secondary NAAQS for ammonia under §109 of the CAA for the protection of public health and public welfare with an adequate margin of safety.

IX. CONCLUSION

This petition requests that EPA regulate ammonia as a criteria pollutant under the CAA. Ammonia meets all of the legal requirements for listing as a criteria pollutant, and numerous peer-reviewed studies show that ambient ammonia endangers both public health and public welfare. CAA § 109(d)(1) gives EPA authority to re-evaluate the criteria and promulgate new standards for pollutants at its discretion, provided it completes a thorough review every five years, and the petitioners respectfully request that EPA undertake a review of ammonia without delay. An unreasonable delay responding to this petition, an arbitrary and capricious denial of this petition, or a scientifically unsubstantiated failure to make an endangerment finding will subject EPA to judicial review under Administrative Procedure Act[266] (APA) § 706(1), APA § 706(2)(A), or CAA § 304(a)(2).

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[264] *NRDC v. Train*, 545 F.2d 320 (2nd Cir. 1976).

[265] *Id.* at 328. EPA recently questioned this 34-year old precedent in its *Advanced Notice of Proposed Rulemaking: Regulating Greenhouse Gas Emissions Under the Clean Air Act*, 73 Fed. Reg. 44,354 at 44,477 FN 229 (2008). Although EPA has postulated that the subsequent establishment of *Chevron* deference could lead to a different outcome than under the NRDC court, that court used an analysis that would now clearly fall under *Chevron* "step 1," in finding that the statute"s plain language, structure, and legislative history "leave no room for interpretation" and impose a mandatory duty on EPA. *NRDC v. Train*, 545 F.2d at 328. Thus, an effort to overturn this precedent would likely fail.

[266] Administrative Procedure Act, 5 U.S.C. §§ 551-559; 701-706 (2006).

As previously discussed, the petitioners assert that the scientific record on ammonia"s threat to public health gives rise to an affirmative duty by EPA to make an endangerment finding and regulate ambient ammonia. Thus, the petitioners will deem a failure by EPA to make such a finding and initiate a rulemaking to designate ammonia as a criteria pollutant a "failure…to perform any act or duty…which is not discretionary," which is subject to judicial review under the citizen suit provision of the CAA. CAA § 304(a)(2).

The petitioners request that EPA respond to this petition in a timely manner by making an endangerment finding for ammonia and determining that it will regulate ammonia under CAA §§108 and 109 for the protection of public health and public welfare. The APA provides the petitioners with the right to petition EPA for a rulemaking to list ammonia as a criteria pollutant, and also obligates EPA to respond "with due regard for the convenience and necessity of the parties" and "within a reasonable time…proceed to conclude a matter presented to it." APA § 555(b). CAFOs have escaped regulation for their air emissions for decades, and rural citizens whose health have been and continue to be harmed by airborne ammonia require swift action by EPA. Therefore, in determining what constitutes a reasonable time for response to this petition, the petitioners urge EPA to consider that "human health and welfare are at stake."[267]

Respectfully Submitted,

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[267] *See In Re. American Rivers & Idaho Rivers United, Petitioners*, 372 F.3d 413, 418 (D.C. Cir. 2004).

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Attachment B:

May 13, 2014 EPA Response to Freedom of Information Act Request EPA-HQ-2013-008469

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
RESEARCH TRIANGLE PARK, NC 27711

MAY 13 2014

OFFICE OF
AIR QUALITY PLANNING
AND STANDARDS

Ms. Tarah Heinzen, Esq.
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RE: Freedom of Information Act Request EPA-HQ-2013-008469

Dear Ms. Heinzen:

Thank you for your July 22, 2013, Freedom of Information Act (FOIA) request (HQ-2013-008469). Your FOIA request contains seven parts that, in general, ask for records pertaining to the U.S. Environmental Protection Agency's (EPA or Agency) National Air Emissions Monitoring Study (NAEMS) and emissions estimating methodology (EEM) process for animal feeding operations (AFOs), as well as records related to two pending citizen petitions. One petition requests the Agency to regulate ammonia as a criteria pollutant under Clean Air Act (CAA) sections 108 and 109. The other petition requests the Agency to list concentrated AFOs under CAA section 111(b)(1)(A) and promulgate standards of performance under CAA sections 111(b)(1)(B) and 111(d).

Accompanying this letter are the records relevant to the two pending citizen petitions. The EPA continues to search and review our records and, if we find any additional records pertinent to these two petitions we will release those documents to you on a rolling basis. The EPA is still searching and compiling documents responsive to the NAEMS and EEM development process. Our goal is to submit the next group of documents by June 17, 2014. We will also inform you if our search finds no additional records.

You may appeal this response to the National Freedom of Information Officer, U.S. EPA, FOIA and Privacy Branch, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, D.C. 20460 (U.S. Postal Service Only), Fax: (202) 566-2147, E-mail: hq.foia@epa.gov. Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue, N.W. If you are submitting your appeal via hand delivery, courier service or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, NW., Room 6416J, Washington, D.C. 20001. Your appeal must be made in writing, and it must be submitted no later than 30 calendar days from the date of this letter. The Agency will not consider appeals received after the 30 calendar day limit. The appeal letter should include the request FOIA request number listed above. For quickest possible handling, the appeal letter and its envelope should be marked "Freedom of Information Act Appeal."

Again, thank you for your request. I appreciate the opportunity to be of service and trust the information provided is helpful to you.

Sincerely,

Jennifer Noonan Edmonds

Jennifer Noonan Edmonds
Director
Policy Analysis and Communications Staff

Enclosures

EPA United States Environmental Protection Agency

EPA Updates for AAQTF Presentation

Washington D.C.
June 9, 2011

EPA United States Environmental Protection Agency

Topics

- PM NAAQS - Scott Jenkins
- Ozone NAAQS – Susan Stone
- PM Monitoring – Bob Vanderpool
- PM_{10} Outreach Sessions – Bill Harnett/Ally Mayer
- Solid Waste/Incineration Rules – Amy Hambrick
- Fire Policy – Bill Harnett/Larry Elmore
- NAEMS – Larry Elmore/Ally Mayer
- Black Carbon Report to Congress – Erika Sasser
- Biogenics/Biofuels for GHGs – Ally/Carole Cook
- Petitions – Ally Mayer
  - Listing Ammonia as Criteria Pollutant (Karen Martin)
  - Listing Hydrogen Sulfide as a HAP (Elineth Torres)
  - Listing CAFOs as a source category (Larry Elmore)

EPA United States Environmental Protection Agency

Ozone NAAQS Update

- Reconsideration of the 2008 Decision on the Ozone NAAQS
  - Proposal published in Federal Register
    - January 19, 2010, Volume 75, Number 11
  - Final decision expected end of July 2011

- Ozone NAAQS review initiated in 2008
  - CASAC Review of the Integrated Science Assessment and Scope and Methods Plan for Exposure and Risk Assessment occurred May 19-20, 2011
  - Schedule for review may be found in the Integrated Review Plan (p 2-2) at: http://www.epa.gov/ttn/naaqs/standards/ozone/data/2011_04_OzoneIRP.pdf

EPA United States Environmental Protection Agency

PM NAAQS Review Process to Date

- Current review initiated in 2007; includes review of primary (health-based) and secondary (welfare-based) standards for fine and coarse particles
- Review is thorough and extensive, with many opportunities for CASAC and public comment; final documents take into consideration CASAC and public comments on multiple draft documents
  - **Integrated Science Assessment:** final document issued December 2009
    - Synthesis and assessment of most policy-relevant science
  - **Risk/Exposure Assessments:** final documents issued June/July 2010
    - Quantitative Health Risk Assessment; Urban-Focused Visibility Assessment
    - Focus on fine particles and did not assess risks associated with coarse particles
  - **Policy Assessment:** final document issued April 2011
    - Staff conclusions address adequacy of current standards and potential alternative standards appropriate to consider
    - Discusses broadest range of policy options supported by the available scientific evidence, quantitative assessments, and air quality analyses

➢ All documents available at: http://www.epa.gov/ttn/naaqs/standards/pm/s_pm_index.html

EPA United States Environmental Protection Agency

Final Policy Assessment Conclusions and CASAC Advice

Primary (health-based) $PM_{2.5}$ Standards

- **Staff and CASAC** conclude it is appropriate to consider **revising** the standards to provide **increased public health protection**
- Consider **revising annual standard level** within a range of **13-11 µg/m³** (current standard is 15 µg/m³)
  - Staff concludes that evidence most strongly supports range of 12 -11 µg/m³
- Consider **retaining or revising 24-hour** standard level within a range of **35-30 µg/m³** (current standard is 35 µg/m³)

Primary (health-based) PM_{10} standards

- **Staff** concludes scientific evidence and associated uncertainties could provide support for **either retaining or revising** the current primary 24-hour PM_{10} standard (150 µg/m³)
  - To the extent consideration is given to revising the standard, staff concludes it would be appropriate to consider a 98th percentile form in conjunction with a level within a range of 85 to 65 µg/m³
- **CASAC** does not support retaining the current PM_{10} standard; **recommends revising** form and level in order to **increase public health protection**
  - CASAC recommends a 98th percentile form in conjunction with a level within a range of 75 to 65 µg/m³

Secondary (welfare-based) PM standards

- **Staff and CASAC** agree that it is appropriate to consider setting a distinct secondary $PM_{2.5}$ standard to address visibility impairment primarily in urban areas; considering options for structuring such a secondary standard distinct from the primary $PM_{2.5}$ standards, in terms of:
  - Alternative indicators, averaging times, and forms
  - Selecting alternative standard levels that reflect appropriate degree of public welfare protection

➢ **No decisions have been made at this time**

- EPA anticipates issuing a proposal for public review and comment later this year

EPA United States Environmental Protection Agency

PM Monitoring

- Will receive this slide by Friday from Bob Vanderpool

EPA United States Environmental Protection Agency

PM_{10} Outreach Meetings

- Schedule
  - February 17: Washington, D.C.
  - February 23: Kansas City (Region 6 &7 states)
  - February 25: Des Moines (Regions 5 & 7 states)
  - March 2: Riverside CA (Region 9 states)
  - March 9: Spokane (Region 10 states)
  - March 10: Denver (Region 8 states)
- Summary of Comments
  - Current PM10 standard should not be revised
  - If tighter standards are chosen, some farms will have to close
  - Stakeholders believe there are problems with the way EPA considers exceptional/natural events

EPA United States Environmental Protection Agency

Solid Waste Combustion and Incineration

- Federal Register
  - March 21, 2011, Volume 76 Number 54
    - CISWI rules
    - SSI rules
    - Area Source Industrial, Commercial and Institutional Boilers
    - Major Source Industrial, Commercial and Institutional Boilers
    - Non-Hazardous Solid Waste Definition
- Regulations
  - The definition of "solid waste" determines if a source will be subject to CAA sections 112 or 129 by identifying which materials are solid wastes when burned in combustion units
    - 112 – Boiler, Cement
    - 129 – CISWI, SSI, OSWI, HMIWI, MWC

EPA United States Environmental Protection Agency

CISWI/Boilers Reconsiderations

- Federal Register
  - March 21, 2011, Volume 76 Number 54
    - EPA announced it will voluntarily "reconsider" certain aspects of the CISWI and Boiler rules. SSI is not part of the reconsideration
  - Publication Pending: May 16, 2011 (signature)
    - EPA issued a "Stay" on the CISWI/Boilers final rules
- Basis of reconsideration
  - CISWI and Boilers reflect reasonable approaches consistent with the requirements of the CAA. However, some of the issues identified in the comments on our April 2010 proposal raised difficult technical issues that the Agency believes would benefit from additional public involvement
- EPA has also received multiple petitions from interested parties for reconsideration
  - These petitions identify specific items for EPA to reconsider
- Next Steps
  - EPA will issue a notice of proposed reconsideration of each rule that identifies specific issues or issues raised in the petitions which the Agency is granting reconsideration
    - EPA will consider any additional data or information submitted by the public
    - EPA requests that if the public does submit any additional data, it do so by July 15, 2011 to allow the Agency time to fully consider it

EPA United States Environmental Protection Agency

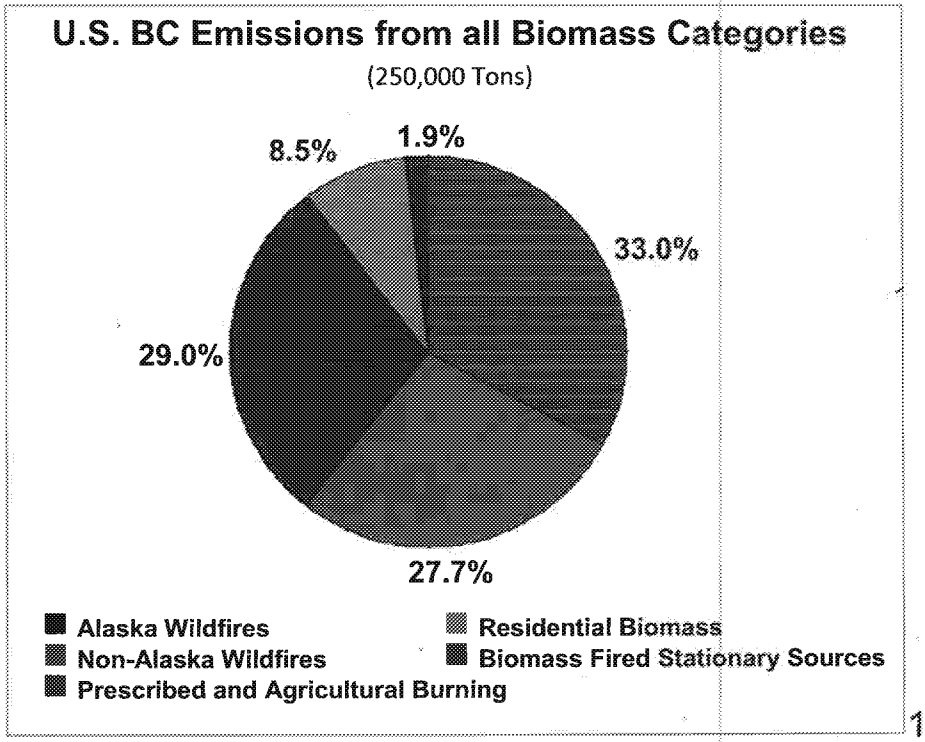
Black Carbon Report to Congress

- October 2009 Interior Appropriations bill: required EPA to issue a report on the climatic and public health effects of black carbon, domestic and global emissions inventories, and cost-effective mitigation approaches
- External peer review draft of the report issued March 18, 2011
  - Available at EPA's Science Advisory Board Website: http://yosemite.epa.gov/sab/sabpeople.nsf/WebCommittees/COUNCIL
- Peer review panel meeting held in Washington D.C., April 18-19, 2011
  - Final letter containing Black Carbon Review Panel's advice and recommendations expected by end of July
  - Final report planned for release in Fall 2011
- Earlier draft was reviewed informally by other federal agencies, including USDA.
  - USDA provided valuable input on inventories and mitigation approaches for open biomass burning, including agricultural burning

EPA United States Environmental Protection Agency

Biomass Burning in Report to Congress on BC

- Biomass burning ~ 39% of domestic black carbon inventory
  - 90% of this is "open biomass burning", which is dominated by wildfire (68%), followed by prescribed fire (26%) and agricultural burning (6%)
  - Biomass burning also leads to high emissions of organic carbon (OC), which exerts a cooling influence on climate. Therefore, mitigation efforts may be less effective for climate than controls on other sectors dominated by BC, such as mobile diesel
- Available $PM_{2.5}$ emissions reduction techniques for open biomass burning may reduce BC
  - Substantial uncertainty remains, especially given diverse, site-specific burning conditions.
- Appropriate mitigation measures depend on timing /location of burn, resource management objectives, vegetation type, and available resources.

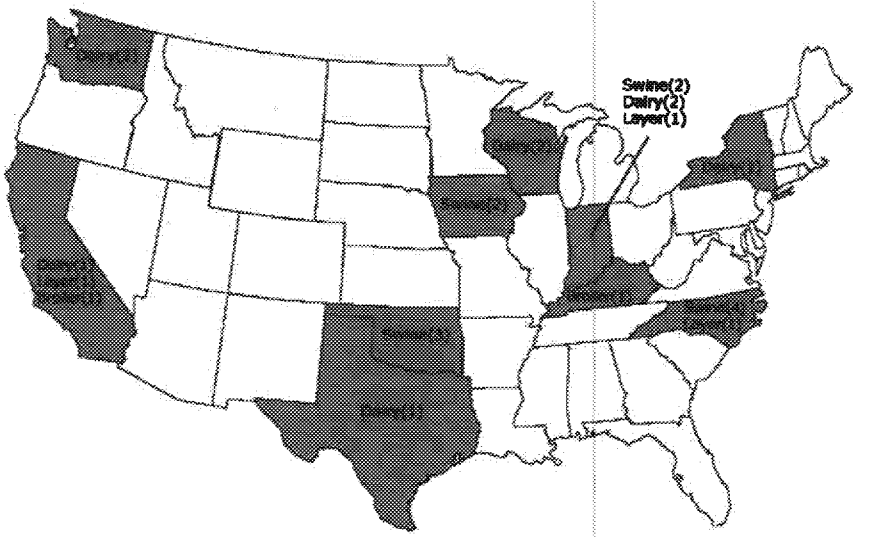


EPA United States Environmental Protection Agency

National Air Emissions Monitoring Study

- Background
  - 2 year, industry-funded study coordinated by Purdue University with EPA oversight
  - 24 sites in 10 states were monitored from 2007-2010
  - Study gathered emissions data for PM (PM_{10}, $PM_{2.5}$, TSP), NH_3, H_2S, and VOCs
  - Data will be used to develop emission estimating methodologies (EEMs) for broiler, egg layer, swine, and dairy AFOs
  - NAEMS data and summary reports were made public on January 13, 2011: http://www.epa.gov/airquality/agmonitoring/
  - January 19, 2011: EPA issued a Call for Information

Monitoring Site Locations



EPA United States Environmental Protection Agency

National Air Emissions Monitoring Study

- Schedule
  - Draft EEMs will be released for public review and comment on a rolling basis in the following order:
    - Broilers, Swine, Egg-layers, Dairy
  - Broiler draft anticipated to be released in June 2011
  - All EEMs are scheduled to be finalized by June 2012
  - Extensive outreach to all stakeholders during public review process
    - Webinars, conference calls, face-to-face meetings
- USDA collaboration
  - 2 NRCS and 2 ARS members will take part in the development of the methodologies

EPA United States Environmental Protection Agency

Fire Policy

EPA United States Environmental Protection Agency

Biogenics/Biofuels for GHGs

- Proposed deferral rule – deferral of applicability for CO_2 emissions from bioenergy/biogenic sources under PSD and Title V programs (proposed March 21, 2011)
- Interim guidance was also issued to help permitting authorities determine how to treat biogenic CO2 emissions until the deferral rule is final
- During 3 year deferral period, EPA is conducting a detailed examination of the science associated with accounting for biogenic CO2 emissions from stationary sources
- EPA is currently reviewing the submitted comments (comment period closed May 5, 2011)
- After the examination is complete: follow-on rulemaking to explain how biogenic CO2 emissions should be treated and accounted for in PSD and Title V programs

EPA United States Environmental Protection Agency

Requests and Petitions

- Ammonia
  - April 2011 petition to regulate NH_3 as a criteria pollutant under CAA sections 108 and 109
    - Major Petitioners: EIP, Assoc. of Irritated Residents, Food & Water Watch, HSUS, Johns Hopkins Center for a Livable Future, Sierra Club, Waterkeeper Alliance
- CAFOs
  - September 2010 petition to list CAFOs under CAA section 111(B)
    - Pollutants of concern: GHGs (CH_4, N_2O), H_2S, NH_3, PM, VOCs
    - Major Petitioners: HSUS, Assoc. of Irritated Residents, CRPE, EIP, Sierra Club, Waterkeeper Alliance
- Hydrogen Sulfide
  - March 2009 request to list H_2S as a HAP under CAA section 112(B)
    - Major Petitioners: Sierra Club along with Earthjustice, EIP

From: Randy Waite
To: Kathleen Deener
Cc: Anne Rea; Audrey Galizia; Bill Schrock; Bryan Hubbell; Chris Sarsony; Christine Davis; Dale Evarts; David Schmeltz; Elizabeth Corona; Ginger Tennant; John Vandenberg; JTravis Smith; Karen Hammerstrom; Karen Martin; Kelly Birner; Kris Novak; Lydia Wegman; Lynn Flowers; Margaret Zawacki; Mary Reilley; Paul White; Randy Waite; Richard Haeuber; Robin Dunkins; Rosalina Rodriguez; Samantha Jones; Sarah Mazur; Susan Rieth; Tara Greaver; Vincent Cogliano
Subject: Re: Briefing on draft IRIS ammonia assessment
Date: 08/01/2012 01:16 PM
Attachments: PETITIONS.docx

Hi Kacee,
You mentioned to me that you would be interested to hear a little about the two petitions we have received related to ammonia. Attached is a short description of the two petitions for your perusal. I am looking forward to the call this afternoon.
Thanks,
Randy

Randy Waite
Air-Water Program Manager
Health and Environmental Impacts Division
Office of Air Quality Planning and Standards
US Environmental Protection Agency
919-541-5447

From: Waite, Randy
To: Waite, Randy
Subject: Ammonia Petition
Date: Thursday, May 01, 2014 1:33:08 PM
Attachments: Ammonia Petition.msg

Subject: Ammonia Petition

Location: RTP-OAQPS-541-4486-SPPD/Phone-Line/RTP-OAQPS-BLDG-C; RTP-OAQPS-E141B/RTP-OAQPS-BLDG-E

Start: Tue 4/16/2013 1:30 PM

End: Tue 4/16/2013 2:00 PM

Recurrence: (none)

Meeting Status: Accepted

Organizer: Dunkins, Robin

Required Attendees: Schrock, Bill; Waite, Randy; Harnett, Bill; Igoe, Sheila; hannon, john

Optional Attendees: Tennant, Ginger

Schrock, Bill

From: Schrock, Bill
Sent: Friday, November 01, 2013 8:08 AM
To: 'Hannah Connor'
Subject: RE: HSUS 2009 Petition to List CAFOs as Stationary Sources under the Clean Air Act
Attachments: HSUS Petition Update_103113.pdf

Hannah-Attached is a letter summarizing our recent conversations. Let me know if you need anything else. Thanks

Bill Schrock
U.S. EPA
RTP, NC 27709
(919) 541-5032
(919) 541-3470 (fax)

From: Hannah Connor [mailto:hconnor@humanesociety.org]
Sent: Wednesday, September 25, 2013 3:03 PM
To: Dunkins, Robin; Schrock, Bill
Cc: theinzen@environmentalintegrity.org
Subject: RE: HSUS 2009 Petition to List CAFOs as Stationary Sources under the Clean Air Act

Robin,

Thank you for your and Larry Elmore's presentation during the Environmental Justice Community Conference Call this afternoon. I found it quite interesting. In particular, during the call (and in response to specific stakeholder concerns about ongoing problems related to releases of air pollutants from CAFOs into communities and the environment), you stressed the HSUS and EIP petitions for regulating CAFOs under the Clean Air Act, and provided that the Agency is in the process of analyzing and making a determination on the regulatory requests contained therein. This seems to me to be different from the position taken by the Agency during our August meeting (as partially summarized below); but since I have not yet received a summary letter from the Agency on that meeting, perhaps it has since decided to alter or otherwise revise its approach and estimated timeline for responding to these petitions. If the Agency has revised its approach and/or estimated timeline for determination, we would be very interested in discussing those changes with you. If it has not, please provide the status update and encapsulation letter, as promised during the August 20 meeting.

Thank you,

Hannah Connor
Staff Attorney
The Humane Society of the United States
Animal Protection Litigation

2100 L Street NW Washington, DC 20037
t 202.676.2354 f 202.676.2357
hconnor@humanesociety.org
humanesociety.org/litigation

THE HUMANE SOCIETY OF THE UNITED STATES
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From: Hannah Connor
Sent: Thursday, September 05, 2013 12:11 PM
To: 'Dunkins, Robin'; 'schrock.bill@epa.gov'
Cc: Laura Schierhoff
Subject: RE: HSUS 2009 Petition to List CAFOs as Stationary Sources under the Clean Air Act

Ms. Dunkins and Mr. Schrock,

Thank you again for meeting with Laura Schierhoff, Tarah Heinzen, and me on August 20. During that meeting, we discussed the 2008 Humane Society petition to the U.S. EPA to list concentrated animal feeding operations (CAFOs) as a category of sources under section 111(B)(1)(A) of the Clean Air Act, and to promulgate standards of performance for new CAFOs ("HSUS petition"), and you provided us with an update on the Agency's consideration of that petition. At the end of the meeting, you agreed that the EPA would provide the HSUS with a letter summarizing our conversation. As discussed, the letter was to address, at a minimum, the following points:

1. A confirmation that the Agency will not, at this time, open a docket for this request;
2. A summary of the Agency's position that it does not intend to consider the HSUS petition until after the Air Compliance Agreement and related Emissions Estimating Methodologies are finalized and the terms of the Agreement are completed, and the Agency's related reasoning;
3. An estimated timeline for when the Agency believes that it will consider and substantively respond to the HSUS petition; and
4. A confirmation that the EPA has not yet assigned a tracking number to this petition.

I have not yet received such an encapsulation a letter from the Agency, but am hopeful that the Agency has merely not had the opportunity to complete the request. Can you please provide me with an estimate of when you think I should expect to see the discussed letter? I want to make sure it doesn't get lost in the shuffle.

Thank you, again.

Sincerely,

Hannah Connor
Staff Attorney
The Humane Society of the United States
Animal Protection Litigation

2100 L Street NW Washington, DC 20037
t 202.676.2354 f 202.676.2357
hconnor@humanesociety.org
humanesociety.org/litigation

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From: Dunkins, Robin [mailto:Dunkins.Robin@epa.gov]
Sent: Thursday, June 06, 2013 6:09 PM
To: Hannah Connor
Cc: Laura Schierhoff
Subject: RE: HSUS 2009 Petition to List CAFOs as Stationary Sources under the Clean Air Act

Ms. Connor, my apologies for not getting back to you sooner. I've been in and out of the office this past month. I will call you or Laura Schierhoff next week to set up some time to discuss a status update.

Thank you,
Robin Dunkins

From: Hannah Connor [mailto:hconnor@humanesociety.org]
Sent: Monday, May 13, 2013 3:48 PM
To: Dunkins, Robin
Cc: Laura Schierhoff
Subject: HSUS 2009 Petition to List CAFOs as Stationary Sources under the Clean Air Act

Ms. Dunkins,

I am writing to request that the EPA provide a status update on its consideration of the pending Humane Society of the United States petition to list concentrated animal feeding operations ("CAFOs") as stationary sources and to promulgate all commensurate standards of performance under the Clean Air Act. The petition was submitted to the Agency in September of 2009.

I would also like to formally request for the EPA to open a docket on this petition, if it has not done so already.

My predecessor's notes list you as the primary agency contact on this petition. If that is not accurate, I respectfully request that you please direct this inquiry to the correct contact, and that you provide me with that party's contact information.

I look forward to hearing from you on this matter at your earliest convenience.

Thank you,

Hannah Connor
Staff Attorney
The Humane Society of the United States
Animal Protection Litigation

2100 L Street NW Washington, DC 20037
t 202.676.2354 f 202.676.2357
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Schrock, Bill

From: Dunkins, Robin
Sent: Thursday, August 08, 2013 4:25 PM
To: Elmore, Larry; Schrock, Bill
Cc: Igoe, Sheila
Subject: FW: Documents in support of pending AFO air emissions petitions
Attachments: Index of Works in Support of AFO Air Emissions Petitions Aug. 2013.pdf

Fyi...

From: Tarah Heinzen [mailto:theinzen@environmentalintegrity.org]
Sent: Tuesday, August 06, 2013 9:24 AM
To: Waite, Randy; Dunkins, Robin
Subject: Documents in support of pending AFO air emissions petitions

Dear Mr. Waite and Ms. Dunkins,

The Environmental Integrity Project has compiled numerous studies and reports in support of two pending citizen petitions to regulate air emissions from animal feeding operations under the Clean Air Act: Environmental Integrity Project, et al. v. U.S. Environmental Protection Agency, Petition for the Regulation of Ammonia as a Criteria Pollutant under Clean Air Act Sections 108 and 109 (submitted April 2011); and The Humane Society of the U.S., et al. v. U.S. Environmental Protection Agency, Petition to List Concentrated Animal Feeding Operations under Clean Air Act Section 111(B)(1)(A) of the Clean Air Act, and to Promulgate Standards of Performance under Clean Air Act Sections 111(B)(1)(B) and 111(D) (submitted September 2009).

Yesterday EIP sent a CD of the documents and hard copies of the journal articles to you by registered mail. I've attached an index of the studies. Please let me know if you would like us to send you the files electronically as well, or if you have any questions.

Best,

Tarah Heinzen
Attorney
Environmental Integrity Project
One Thomas Circle NW, Suite 900
Washington, D.C. 20005
(202) 263-4441 (office)
(202) 297-7808 (cell)
theinzen@environmentalintegrity.org

Schrock, Bill

From: Schrock, Bill
Sent: Tuesday, August 06, 2013 3:12 PM
To: Elmore, Larry
Subject: Accepted: Environmental Integrity Project's FOIA request

Schrock, Bill

From: Elmore, Larry
Sent: Tuesday, August 06, 2013 2:34 PM
To: Howland, Sanda; Sullivan, Tim; Beasley, Lynn; Igoe, Sheila; Hanlon, Edward; Nugent, Angela; Schrock, Bill; Merrill, Raymond; Myers, Ron; Thompson, Rhonda; Bereznicki, Sarah; Benedict, Kristen; Walker, John; Thoma, Eben; Danny Greene; Dunkins, Robin
Cc: Russell, Sherry
Subject: FOIA - Environmental Integrity Project Animal Feeding Operation Emission Estimating Methodology
Attachments: Heinzen Rqst - EPA-HQ-2013-008469.pdf

I want to make you aware of a FOIA for which you may have response documents. EPA recently received the attached FOIA for the Environmental Integrity Project (EIP) requesting information related to:

1. Our effort to develop emission estimating methodologies (EEMs) for animal feeding operations (AFO);
2. EIP's petition to regulate ammonia as a criteria pollutant; and
3. Humane Society's petition to list concentrated AFOs under the Clean Air Act

My plan is to schedule a teleconference for early next week to discuss submission of the requested information. Prior to our call, I will contact EIP to negotiate are revised schedule to submit the requested data. With regard to the AFO EEM information, I envision it taking until mid October to compile, convert and review the requested material. If you disagree with my proposed schedule, please let me know as soon as possible.

With regards to the AFO EEM request, if you are no longer your office's contact for this project, please let me know who has been assigned as your replacement.

Robin – in addition to yourself, whom should I add to this distribution list for items 2 & 3 of EIP's request?

Danny – please coordinate this FOIA within ERG and your subcontractor(s).

Thanks!!
Larry Elmore
US EPA
Office of Air Quality Planning & Standards
919/541-5433 (phone)
919/541-3470 (fax)

Schrock, Bill

From: Dunkins, Robin
Sent: Tuesday, August 06, 2013 2:27 PM
To: Schrock, Bill
Subject: Fw: HSUS 2009 Petition

From: Laura Schierhoff <lschierhoff@humanesociety.org>
Sent: Tuesday, August 06, 2013 10:38:49 AM
To: Dunkins, Robin
Subject: HSUS 2009 Petition

Good morning Robin,

I was hoping to touch base with you on our petition submitted in 2009. Any availability you may have to have a short discussion on the status would be really appreciated. Please let me know if you are not the contact person for this petition any longer.

Thank you!

Laura Schierhoff
Regulatory Specialist, Federal Affairs
lschierhoff@humanesociety.org
t 202.955.3670 f 202.676.2301

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To support The Humane Society of the United States, please make a monthly donation, or give in another way, via a gift donation or memorial donation or donating your vehicle. You can also volunteer for The HSUS, and see our 55 ways you can help animals.

The HSUS is rated a 4-star charity (the highest possible) by Charity Navigator, approved by the Better Business Bureau for all 20 standards for charity accountability, voted by Guidestar's Philanthropedia experts as the #1 high-impact animal protection group, and named by Worth Magazine as one of the 10 most fiscally responsible charities.

Schrock, Bill

From: Waite, Randy
Sent: Tuesday, July 09, 2013 10:36 AM
To: Tarah Heinzen
Cc: Schrock, Bill; Eric Schaeffer
Subject: RE: EIP 2011 Petition to list ammonia as a CAA criteria pollutant

Hi Tarah,
The call in number for today's call at 3:00 EDT will be 919-541-4376. If by chance you call and get an error message, it just means that we haven't opened the line yet, but will shortly.
Thanks,
Randy

From: Tarah Heinzen [mailto:theinzen@environmentalintegrity.org]
Sent: Wednesday, July 03, 2013 9:36 AM
To: Waite, Randy
Cc: Schrock, Bill; Eric Schaeffer
Subject: RE: EIP 2011 Petition to list ammonia as a CAA criteria pollutant

Hi Bill,
July 9th at 3:00 works for me and Eric to discuss the status of EIP's ammonia petition. Please let me know if there will be a call in number.
Thanks,
Tarah

Tarah Heinzen
Attorney
Environmental Integrity Project
One Thomas Circle NW, Suite 900
Washington, D.C. 20005
(202) 263-4441 (office)
(202) 297-7808 (cell)
theinzen@environmentalintegrity.org

From: Waite, Randy [mailto:Waite.Randy@epa.gov]
Sent: Thursday, June 27, 2013 1:52 PM
To: Tarah Heinzen
Cc: Schrock, Bill
Subject: RE: EIP 2011 Petition to list ammonia as a CAA criteria pollutant

Hi Tarah,
I am out of the office from July 1 through July 8 and will not have email contact. A co-worker, Bill Schrock will be in on July 2. If you can send him an email with times that you and Eric are free, he will be happy to schedule the meeting for us. It looks like July 9 between 3:00 and 4:00 might be the best time for us.
Thanks,
Randy

From: Tarah Heinzen [mailto:theinzen@environmentalintegrity.org]
Sent: Wednesday, June 19, 2013 2:02 PM
To: Waite, Randy
Subject: RE: EIP 2011 Petition to list ammonia as a CAA criteria pollutant

Hi Randy,

We would appreciate a status call. Our Executive Director, Eric Schaeffer, is out without email access until July 2nd, and I would like to schedule the call for a time when he can join. I'll check in with him about his schedule when he returns – in the meantime, if there are any good times on July 3rd or the week of the 8th, please let me know.

Thanks,

Tarah Heinzen
Attorney
Environmental Integrity Project
One Thomas Circle NW, Suite 900
Washington, D.C. 20005
(202) 263-4441 (office)
(202) 297-7808 (cell)
theinzen@environmentalintegrity.org

From: Waite, Randy [mailto:Waite.Randy@epa.gov]
Sent: Wednesday, June 19, 2013 8:38 AM
To: Tarah Heinzen
Subject: RE: EIP 2011 Petition to list ammonia as a CAA criteria pollutant

Hi Tarah,
We would like to have a call to discuss the status of the petition with you. What are some good times for you, possibly later this week or next?
Thanks,
Randy

From: Tarah Heinzen [mailto:theinzen@environmentalintegrity.org]
Sent: Monday, June 10, 2013 2:39 PM
To: Waite, Randy
Subject: RE: EIP 2011 Petition to list ammonia as a CAA criteria pollutant
Importance: High

Hi again Randy,
I am following up on the emails I have sent you over the past several months. Please let me know the status of this 2011 petition, and if the EPA contact for the petition has changed, please direct me to the appropriate contact. Again, EIP requests that EPA open a docket for the petition as soon as possible.
Best,

Tarah Heinzen
Attorney
Environmental Integrity Project
One Thomas Circle NW, Suite 900
Washington, D.C. 20005
(202) 263-4441 (office)
(202) 297-7808 (cell)
theinzen@environmentalintegrity.org

From: Tarah Heinzen
Sent: Monday, April 29, 2013 10:59 AM
To: 'Waite, Randy'
Subject: RE: EIP 2011 Petition to list ammonia as a CAA criteria pollutant

Hi Randy,
I'm just following up on this email from several weeks ago. Please let me know the petition's status and when EPA will be able to open a docket at your earliest convenience.
Best,

Tarah Heinzen
Attorney
Environmental Integrity Project
One Thomas Circle NW, Suite 900
Washington, D.C. 20005
(202) 263-4441 (office)
(202) 297-7808 (cell)
theinzen@environmentalintegrity.org

From: Waite, Randy [mailto:Waite.Randy@epa.gov]
Sent: Tuesday, April 09, 2013 2:32 PM
To: Tarah Heinzen
Subject: RE: EIP 2011 Petition to list ammonia as a CAA criteria pollutant

Dear Ms. Heinzen,

I wanted to acknowledge receipt of your request and to let you know that I am looking into the status of the petition. I will be in touch as soon as I have gathered the pertinent information.

Thanks,
Randy Waite

From: Tarah Heinzen [mailto:theinzen@environmentalintegrity.org]
Sent: Friday, March 22, 2013 1:26 PM
To: Waite, Randy
Subject: EIP 2011 Petition to list ammonia as a CAA criteria pollutant

Dear Mr. Waite,

I am writing to request a status update on EPA's consideration of the Environmental Integrity Project's pending April 5, 2011 petition to list ammonia under section 108 of the Clean Air Act as a criteria pollutant, and to request that EPA open a docket on the petition.

A copy of EPA's petition acknowledgement letter is attached. I would be happy to discuss the petition and request for a docket at your convenience.

Best,

Tarah Heinzen
Attorney
Environmental Integrity Project
One Thomas Circle NW, Suite 900

Washington, D.C. 20005
(202) 263-4441 (office)
(202) 297-7808 (cell)
theinzen@environmentalintegrity.org

Subject: RE: EIP 2011 Petition to list ammonia as a CAA criteria pollutant

Hi Tarah,
I am out of the office from July 1 through July 8 and will not have email contact. A co-worker, Bill Schrock will be in on July 2. If you can send him an email with times that you and Eric are free, he will be happy to schedule the meeting for us. It looks like July 9 between 3:00 and 4:00 might be the best time for us.
Thanks,
Randy

From: Tarah Heinzen [mailto:theinzen@environmentalintegrity.org]
Sent: Wednesday, June 19, 2013 2:02 PM
To: Waite, Randy
Subject: RE: EIP 2011 Petition to list ammonia as a CAA criteria pollutant

Hi Randy,

We would appreciate a status call. Our Executive Director, Eric Schaeffer, is out without email access until July 2nd, and I would like to schedule the call for a time when he can join. I'll check in with him about his schedule when he returns – in the meantime, if there are any good times on July 3rd or the week of the 8th, please let me know.

Thanks,

Tarah Heinzen
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theinzen@environmentalintegrity.org<mailto:theinzen@environmentalintegrity.org>

From: Waite, Randy [mailto:Waite.Randy@epa.gov]
Sent: Wednesday, June 19, 2013 8:38 AM

To: Tarah Heinzen
Subject: RE: EIP 2011 Petition to list ammonia as a CAA criteria pollutant

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We would like to have a call to discuss the status of the petition with you. What are some good times for you, possibly later this week or next?
Thanks,
Randy

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Sent: Monday, June 10, 2013 2:39 PM
To: Waite, Randy
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Importance: High

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(202) 297-7808 (cell)
theinzen@environmentalintegrity.org<mailto:theinzen@environmentalintegrity.org>

From: Tarah Heinzen
Sent: Monday, April 29, 2013 10:59 AM
To: 'Waite, Randy'
Subject: RE: EIP 2011 Petition to list ammonia as a CAA criteria pollutant

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To: Tarah Heinzen
Subject: RE: EIP 2011 Petition to list ammonia as a CAA criteria pollutant

Dear Ms. Heinzen,

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Randy Waite

From: Tarah Heinzen [mailto:theinzen@environmentalintegrity.org]
Sent: Friday, March 22, 2013 1:26 PM
To: Waite, Randy
Subject: EIP 2011 Petition to list ammonia as a CAA criteria pollutant

Dear Mr. Waite,

I am writing to request a status update on EPA's consideration of the Environmental Integrity Project's pending April 5, 2011 petition to

list ammonia under section 108 of the Clean Air Act as a criteria pollutant, and to request that EPA open a docket on the petition.

A copy of EPA's petition acknowledgement letter is attached. I would be happy to discuss the petition and request for a docket at your convenience.

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Schrock, Bill

From: Laura Schierhoff [lschierhoff@humanesociety.org]
Sent: Monday, July 08, 2013 1:42 PM
To: Dunkins, Robin
Cc: Schrock, Bill
Subject: RE: HSUS 2009 Petition to List CAFOs as Stationary Sources under the Clean Air Act

Hi Robin,

I wanted to check in with you about this meeting and whether you received my last email with our availability. I have been having problems with my email, so you may not have received it. If we could meet sometime in the next couple weeks, that would be great.

Thank you,
Laura Schierhoff

From: Dunkins, Robin [mailto:Dunkins.Robin@epa.gov]
Sent: Tuesday, June 25, 2013 9:48 AM
To: Hannah Connor
Cc: Laura Schierhoff; Schrock, Bill
Subject: RE: HSUS 2009 Petition to List CAFOs as Stationary Sources under the Clean Air Act

Hannah,

I'm checking to see your availability the early part of the week of July 8. Please advise.

Thanks
Robin Dunkins

From: Hannah Connor [mailto:hconnor@humanesociety.org]
Sent: Thursday, June 06, 2013 6:15 PM
To: Dunkins, Robin
Cc: Laura Schierhoff
Subject: RE: HSUS 2009 Petition to List CAFOs as Stationary Sources under the Clean Air Act

That would be great.

Sincerely,

Hannah Connor
Staff Attorney
The Humane Society of the United States
Animal Protection Litigation

2100 L Street NW Washington, DC 20037
t 202.676.2354 f 202.676.2357
hconnor@humanesociety.org
humanesociety.org/litigation

THE HUMANE SOCIETY OF THE UNITED STATES

Celebrating Animals | Confronting Cruelty

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From: Dunkins, Robin [mailto:Dunkins.Robin@epa.gov]
Sent: Thursday, June 06, 2013 6:09 PM
To: Hannah Connor
Cc: Laura Schierhoff
Subject: RE: HSUS 2009 Petition to List CAFOs as Stationary Sources under the Clean Air Act

Ms. Connor, my apologies for not getting back to you sooner. I've been in and out of the office this past month. I will call you or Laura Schierhoff next week to set up some time to discuss a status update.

Thank you,
Robin Dunkins

From: Hannah Connor [mailto:hconnor@humanesociety.org]
Sent: Monday, May 13, 2013 3:48 PM
To: Dunkins, Robin
Cc: Laura Schierhoff
Subject: HSUS 2009 Petition to List CAFOs as Stationary Sources under the Clean Air Act

Ms. Dunkins,

I am writing to request that the EPA provide a status update on its consideration of the pending Humane Society of the United States petition to list concentrated animal feeding operations ("CAFOs") as stationary sources and to promulgate all commensurate standards of performance under the Clean Air Act. The petition was submitted to the Agency in September of 2009.

I would also like to formally request for the EPA to open a docket on this petition, if it has not done so already.

My predecessor's notes list you as the primary agency contact on this petition. If that is not accurate, I respectfully request that you please direct this inquiry to the correct contact, and that you provide me with that party's contact information.

I look forward to hearing from you on this matter at your earliest convenience.

Thank you,

Hannah Connor
Staff Attorney
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Schrock, Bill

From: Tarah Heinzen [theinzen@environmentalintegrity.org]
Sent: Wednesday, July 03, 2013 9:36 AM
To: Waite, Randy
Cc: Schrock, Bill; Eric Schaeffer
Subject: RE: EIP 2011 Petition to list ammonia as a CAA criteria pollutant

Hi Bill,
July 9th at 3:00 works for me and Eric to discuss the status of EIP's ammonia petition. Please let me know if there will be a call in number.
Thanks,
Tarah

Tarah Heinzen
Attorney
Environmental Integrity Project
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From: Waite, Randy [mailto:Waite.Randy@epa.gov]
Sent: Thursday, June 27, 2013 1:52 PM
To: Tarah Heinzen
Cc: Schrock, Bill
Subject: RE: EIP 2011 Petition to list ammonia as a CAA criteria pollutant

Hi Tarah,
I am out of the office from July 1 through July 8 and will not have email contact. A co-worker, Bill Schrock will be in on July 2. If you can send him an email with times that you and Eric are free, he will be happy to schedule the meeting for us. It looks like July 9 between 3:00 and 4:00 might be the best time for us.
Thanks,
Randy

From: Tarah Heinzen [mailto:theinzen@environmentalintegrity.org]
Sent: Wednesday, June 19, 2013 2:02 PM
To: Waite, Randy
Subject: RE: EIP 2011 Petition to list ammonia as a CAA criteria pollutant

Hi Randy,

We would appreciate a status call. Our Executive Director, Eric Schaeffer, is out without email access until July 2nd, and I would like to schedule the call for a time when he can join. I'll check in with him about his schedule when he returns – in the meantime, if there are any good times on July 3rd or the week of the 8th, please let me know.

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Schrock, Bill

From: Tarah Heinzen [theinzen@environmentalintegrity.org]
Sent: Thursday, June 27, 2013 2:04 PM
To: Waite, Randy
Cc: Schrock, Bill
Subject: RE: EIP 2011 Petition to list ammonia as a CAA criteria pollutant

Thanks Randy and Bill,
I'll be in touch about availability when Eric is back next week. Hopefully the 9th will work for us as well.
Best,
tarah

Tarah Heinzen
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Schrock, Bill

From: Laura Schierhoff [lschierhoff@humanesociety.org]
Sent: Tuesday, June 25, 2013 1:13 PM
To: Dunkins, Robin; Hannah Connor
Cc: Schrock, Bill
Subject: RE: HSUS 2009 Petition to List CAFOs as Stationary Sources under the Clean Air Act

Hi Robin,

Thanks so much for getting back to us regarding our petition. I spoke with Hannah and we both have afternoons free on Thursday the 11th and Friday the 12th. We are looking forward to discussing the status of our petition with you and please let me know if these days/times do not work for you.

Thanks,
Laura Schierhoff

From: Dunkins, Robin [mailto:Dunkins.Robin@epa.gov]
Sent: Tuesday, June 25, 2013 9:48 AM
To: Hannah Connor
Cc: Laura Schierhoff; Schrock, Bill
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Hannah,

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Subject: HSUS 2009 Petition to List CAFOs as Stationary Sources under the Clean Air Act

Ms. Dunkins,

I am writing to request that the EPA provide a status update on its consideration of the pending Humane Society of the United States petition to list concentrated animal feeding operations ("CAFOs") as stationary sources and to promulgate all commensurate standards of performance under the Clean Air Act. The petition was submitted to the Agency in September of 2009.

I would also like to formally request for the EPA to open a docket on this petition, if it has not done so already.

My predecessor's notes list you as the primary agency contact on this petition. If that is not accurate, I respectfully request that you please direct this inquiry to the correct contact, and that you provide me with that party's contact information.

I look forward to hearing from you on this matter at your earliest convenience.

Thank you,

Hannah Connor
Staff Attorney
The Humane Society of the United States
Animal Protection Litigation

2100 L Street NW Washington, DC 20037
t 202.676.2354 f 202.676.2357
hconnor@humanesociety.org
humanesociety.org/litigation

THE HUMANE SOCIETY OF THE UNITED STATES
Celebrating Animals | Confronting Cruelty

This is intended to be a confidential communication only to the person or persons to whom it is addressed, and may contain legally privileged and/or confidential information. If you are not the intended recipient(s), or the employee or agent responsible for delivery of this message to the intended recipient(s), you are hereby notified that any dissemination, distribution or copying of this e-mail message is strictly prohibited. If you have received this message in error, please immediately notify the sender and delete this e-mail message from your computer.

Schrock, Bill

From: Dunkins, Robin
Sent: Monday, May 13, 2013 3:51 PM
To: Harnett, Bill; Culligan, Kevin; Fruh, Steve; Schrock, Bill; Elmore, Larry
Cc: Igoe, Sheila; Zenick, Elliott; Ginsburg, Eric; McLamb, Marguerite
Subject: FW: HSUS 2009 Petition to List CAFOs as Stationary Sources under the Clean Air Act

fyi

From: Hannah Connor [mailto:hconnor@humanesociety.org]
Sent: Monday, May 13, 2013 3:48 PM
To: Dunkins, Robin
Cc: Laura Schierhoff
Subject: HSUS 2009 Petition to List CAFOs as Stationary Sources under the Clean Air Act

Ms. Dunkins,

I am writing to request that the EPA provide a status update on its consideration of the pending Humane Society of the United States petition to list concentrated animal feeding operations ("CAFOs") as stationary sources and to promulgate all commensurate standards of performance under the Clean Air Act. The petition was submitted to the Agency in September of 2009.

I would also like to formally request for the EPA to open a docket on this petition, if it has not done so already.

My predecessor's notes list you as the primary agency contact on this petition. If that is not accurate, I respectfully request that you please direct this inquiry to the correct contact, and that you provide me with that party's contact information.

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Thank you,

Hannah Connor
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Dear Mr. Waite,

I am writing to request a status update on EPA's consideration of the Environmental Integrity Project's pending April 5, 2011 petition to list ammonia under section 108 of the Clean Air Act as a criteria pollutant, and to request that EPA open a docket on the petition.

A copy of EPA's petition acknowledgement letter is attached. I would be happy to discuss the petition and request for a docket at your convenience.

Best,

Tarah Heinzen
Attorney
Environmental Integrity Project
One Thomas Circle NW, Suite 900
Washington, D.C. 20005
(202) 263-4441 (office)
(202) 297-7808 (cell)
theinzen@environmentalintegrity.org

Message

From: Mills, Kathy [Mills.Kathy@epa.gov]
Sent: 10/29/2021 5:51:05 PM
To: Do, Bebhinn [do.bebhinn@epa.gov]
CC: Dunkins, Robin [Dunkins.Robin@epa.gov]; Schrock, Bill [Schrock.Bill@epa.gov]; Banner, Shannon [banner.shannon@epa.gov]
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Thanks Bebhinn. Ex. 5 Deliberative Process (DP)
Ex. 5 Deliberative Process (DP) Let me know when this can go to PACS.
KB

Kathy "KB" Mills ~ SPPD ~ U. S. EPA, OAQPS ~ 919-541-1599

From: Do, Bebhinn <do.bebhinn@epa.gov>
Sent: Friday, October 29, 2021 11:53 AM
To: Mills, Kathy <Mills.Kathy@epa.gov>
Cc: Dunkins, Robin <Dunkins.Robin@epa.gov>; Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

KB,

Draft desk statement attached. Ex. 5 Deliberative Process (DP) I thought you could start a review in the meantime.

I'll have that by Monday.

BD

From: Mills, Kathy <Mills.Kathy@epa.gov>
Sent: Thursday, October 28, 2021 7:19 AM
To: Dunkins, Robin <Dunkins.Robin@epa.gov>; Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>; Do, Bebhinn <do.bebhinn@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Ex. 5 Deliberative Process (DP)

Kathy "KB" Mills ~ SPPD ~ U. S. EPA, OAQPS ~ 919-541-1599

From: Dunkins, Robin <Dunkins.Robin@epa.gov>
Sent: Wednesday, October 27, 2021 6:02 PM
To: Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>; Do, Bebhinn <do.bebhinn@epa.gov>; Mills, Kathy <Mills.Kathy@epa.gov>
Subject: FW: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Robin Dunkins, Group Leader
Natural Resources Group
OAR/OAQPS/SPPD Mail Code: E143-03

U.S. Environmental Protection Agency
Research Triangle Park, NC 27711
919-541-5335 office
919-605-1178 mobile
dunkins.robin@epa.gov

From: Dunkins, Robin
Sent: Wednesday, October 27, 2021 6:00 PM
To: Perrin, Rebecca <Perrin.Rebecca@epa.gov>; Snyder, Rodney <Snyder.Rodney@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Ex. 5 Deliberative Process (DP)

I have the RMNP meeting on my calendar. I was going to listen in on some of that meeting but let me know if I should stay on for the entire call.

Robin Dunkins, Group Leader
Natural Resources Group
OAR/OAQPS/SPPD Mail Code: E143-03
U.S. Environmental Protection Agency
Research Triangle Park, NC 27711
919-541-5335 office
919-605-1178 mobile
dunkins.robin@epa.gov

From: Perrin, Rebecca <Perrin.Rebecca@epa.gov>
Sent: Wednesday, October 27, 2021 5:54 PM
To: Dunkins, Robin <Dunkins.Robin@epa.gov>; Snyder, Rodney <Snyder.Rodney@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Thanks! I have a steering committee meeting for RMNP tomorrow, Ex. 5 Deliberative Process (DP)
Ex. 5 Deliberative Process (DP)

Rebecca Perrin
U.S. Environmental Protection Agency
DL: 303-312-6311

From: Dunkins, Robin <Dunkins.Robin@epa.gov>
Sent: Wednesday, October 27, 2021 3:52 PM
To: Perrin, Rebecca <Perrin.Rebecca@epa.gov>; Snyder, Rodney <Snyder.Rodney@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Thanks Rebecca. We received the petition/notification thru CMS today. However, I informed OAR that this should be assigned to OECA. OAR is responsible for the NAEMS and the EEMS but OECA is responsible to the consent agreement itself. Stay tuned.

Robin Dunkins, Group Leader
Natural Resources Group
OAR/OAQPS/SPPD Mail Code: E143-03

U.S. Environmental Protection Agency
Research Triangle Park, NC 27711
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919-605-1178 mobile
dunkins.robin@epa.gov

From: Perrin, Rebecca <Perrin.Rebecca@epa.gov>
Sent: Wednesday, October 27, 2021 5:48 PM
To: Snyder, Rodney <Snyder.Rodney@epa.gov>; Dunkins, Robin <Dunkins.Robin@epa.gov>
Subject: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

FYI... https://whistleblower.org/press-release/press-release-legal-petition-challenges-epa-inaction-on-factory-farm-air-pollution/

Rebecca Perrin
R8 Ag Advisor | U.S. Environmental Protection Agency
DL: 303-312-6311

Message

From: Sullivan, Tim [Sullivan.Tim@epa.gov]
Sent: 10/28/2021 9:21:06 PM
To: Dunkins, Robin [Dunkins.Robin@epa.gov]
CC: Schrock, Bill [Schrock.Bill@epa.gov]; Banner, Shannon [banner.shannon@epa.gov]; Do, Bebhinn [do.bebhinn@epa.gov]; Sullivan, Tim [Sullivan.Tim@epa.gov]
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Sounds good—I'll plan to connect with you once I'm online in the morning (probably between 9:30 and 10 am eastern).

Ex. 5 AC/DP

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

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From: Dunkins, Robin <Dunkins.Robin@epa.gov>
Sent: Thursday, October 28, 2021 3:03 PM
To: Sullivan, Tim <Sullivan.Tim@epa.gov>; Do, Bebhinn <do.bebhinn@epa.gov>
Cc: Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Tim,

Ex. 5 AC/DP

Ex. 5 AC/DP

Let's talk about that tomorrow if you're in.

Robin Dunkins, Group Leader
Natural Resources Group
OAR/OAQPS/SPPD Mail Code: E143-03
U.S. Environmental Protection Agency
Research Triangle Park, NC 27711
919-541-5335 office
919-605-1178 mobile

dunkins.robin@epa.gov

From: Sullivan, Tim <Sullivan.Tim@epa.gov>
Sent: Thursday, October 28, 2021 4:46 PM
To: Do, Bebhinn <do.bebhinn@epa.gov>
Cc: Schrock, Bill <Schrock.Bill@epa.gov>; Dunkins, Robin <Dunkins.Robin@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>; Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Thanks for sharing, Bebhinn.

I have included some suggested edits and comments in the document at its original file location. Please let me know if you have any questions or want to discuss anything.

Ex. 5 AC/DP

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

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From: Do, Bebhinn <do.bebhinn@epa.gov>
Sent: Thursday, October 28, 2021 1:37 PM
To: Sullivan, Tim <Sullivan.Tim@epa.gov>
Cc: Schrock, Bill <Schrock.Bill@epa.gov>; Dunkins, Robin <Dunkins.Robin@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>
Subject: FW: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Tim,

Ex. 5 AC/DP

Ex. 5 AC/DP A linked copy of the draft is attached.
Please let me know if you have any problems accessing it.

Bebhinn

From: Dunkins, Robin <Dunkins.Robin@epa.gov>
Sent: Thursday, October 28, 2021 2:35 PM
To: Schrock, Bill <Schrock.Bill@epa.gov>
Cc: Do, Bebhinn <do.bebhinn@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>
Subject: Re: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Bill can you share with Tim

Robin Dunkins, Group Leader
Natural Resources Group
USEPA OAR/OAQPS
Research Triangle Park, NC 27711
919-541-5335 office
919-605-1178 mobile
dunkins.robin@epa.gov

On Oct 28, 2021, at 2:26 PM, Schrock, Bill <Schrock.Bill@epa.gov> wrote:

Ex. 5 Deliberative Process (DP)

From: Do, Bebhinn <do.bebhinn@epa.gov>
Sent: Thursday, October 28, 2021 9:57 AM
To: Dunkins, Robin <Dunkins.Robin@epa.gov>; Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Ex. 5 Deliberative Process (DP)

BD

From: Mills, Kathy <Mills.Kathy@epa.gov>
Sent: Thursday, October 28, 2021 7:19 AM
To: Dunkins, Robin <Dunkins.Robin@epa.gov>; Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>; Do, Bebhinn <do.bebhinn@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Ex. 5 Deliberative Process (DP)

Kathy "KB" Mills ~ SPPD ~ U. S. EPA, OAQPS ~ 919-541-1599

From: Dunkins, Robin <Dunkins.Robin@epa.gov>
Sent: Wednesday, October 27, 2021 6:02 PM
To: Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>; Do, Bebhinn <do.bebhinn@epa.gov>; Mills, Kathy <Mills.Kathy@epa.gov>
Subject: FW: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Robin Dunkins, Group Leader
Natural Resources Group
OAR/OAQPS/SPPD Mail Code: E143-03
U.S. Environmental Protection Agency
Research Triangle Park, NC 27711
919-541-5335 office
919-605-1178 mobile
dunkins.robin@epa.gov

From: Dunkins, Robin
Sent: Wednesday, October 27, 2021 6:00 PM
To: Perrin, Rebecca <Perrin.Rebecca@epa.gov>; Snyder, Rodney <Snyder.Rodney@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Ex. 5 Deliberative Process (DP)

I have the RMNP meeting on my calendar. I was going to listen in on some of that meeting but let me know if I should stay on for the entire call.

Robin Dunkins, Group Leader
Natural Resources Group
OAR/OAQPS/SPPD Mail Code: E143-03
U.S. Environmental Protection Agency
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919-605-1178 mobile
dunkins.robin@epa.gov

From: Perrin, Rebecca <Perrin.Rebecca@epa.gov>
Sent: Wednesday, October 27, 2021 5:54 PM

To: Dunkins, Robin <Dunkins.Robin@epa.gov>; Snyder, Rodney <Snyder.Rodney@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Thanks! I have a steering committee meeting for RMNP tomorrow, Ex. 5 Deliberative Process (DP)
Ex. 5 Deliberative Process (DP)

Rebecca Perrin
U.S. Environmental Protection Agency
DL: 303-312-6311

From: Dunkins, Robin <Dunkins.Robin@epa.gov>
Sent: Wednesday, October 27, 2021 3:52 PM
To: Perrin, Rebecca <Perrin.Rebecca@epa.gov>; Snyder, Rodney <Snyder.Rodney@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Thanks Rebecca. We received the petition/notification thru CMS today. However, I informed OAR that this should be assigned to OECA. OAR is responsible for the NAEMS and the EEMS but OECA is responsible to the consent agreement itself. Stay tuned.

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From: Perrin, Rebecca <Perrin.Rebecca@epa.gov>
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To: Snyder, Rodney <Snyder.Rodney@epa.gov>; Dunkins, Robin <Dunkins.Robin@epa.gov>
Subject: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

FYI... https://whistleblower.org/press-release/press-release-legal-petition-challenges-epa-inaction-on-factory-farm-air-pollution/

Rebecca Perrin
R8 Ag Advisor | U.S. Environmental Protection Agency
DL: 303-312-6311

Message

From: Mills, Kathy [Mills.Kathy@epa.gov]
Sent: 11/1/2021 12:10:36 PM
To: Do, Bebhinn [do.bebhinn@epa.gov]
Subject: FW: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Gonna be a busy week so starting off with a – "where are we on this" and let me know when I can move it to PACS.
Thx,
KB

Kathy "KB" Mills ~ SPPD ~ U. S. EPA, OAQPS ~ 919-541-1599

From: Mills, Kathy
Sent: Friday, October 29, 2021 1:51 PM
To: Do, Bebhinn <Do.Bebhinn@epa.gov>
Cc: Dunkins, Robin <Dunkins.Robin@epa.gov>; Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Thanks Bebhinn. Ex. 5 Deliberative Process (DP)
Ex. 5 Deliberative Process (DP) Let me know when this can go to PACS.
KB

Kathy "KB" Mills ~ SPPD ~ U. S. EPA, OAQPS ~ 919-541-1599

From: Do, Bebhinn <do.bebhinn@epa.gov>
Sent: Friday, October 29, 2021 11:53 AM
To: Mills, Kathy <Mills.Kathy@epa.gov>
Cc: Dunkins, Robin <Dunkins.Robin@epa.gov>; Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

KB,

Draft desk statement attached. Ex. 5 Deliberative Process (DP) I thought you could start a review in the meantime.

I'll have that by Monday.

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Ex. 5 Deliberative Process (DP)

Kathy "KB" Mills ~ SPPD ~ U. S. EPA, OAQPS ~ 919-541-1599

From: Dunkins, Robin <Dunkins.Robin@epa.gov>
Sent: Wednesday, October 27, 2021 6:02 PM
To: Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>; Do, Bebhinn <do.bebhinn@epa.gov>; Mills, Kathy <Mills.Kathy@epa.gov>
Subject: FW: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Robin Dunkins, Group Leader
Natural Resources Group
OAR/OAQPS/SPPD Mail Code: E143-03
U.S. Environmental Protection Agency
Research Triangle Park, NC 27711
919-541-5335 office
919-605-1178 mobile
dunkins.robin@epa.gov

From: Dunkins, Robin
Sent: Wednesday, October 27, 2021 6:00 PM
To: Perrin, Rebecca <Perrin.Rebecca@epa.gov>; Snyder, Rodney <Snyder.Rodney@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Ex. 5 Deliberative Process (DP)

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Natural Resources Group
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Research Triangle Park, NC 27711
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dunkins.robin@epa.gov

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Sent: Wednesday, October 27, 2021 5:54 PM
To: Dunkins, Robin <Dunkins.Robin@epa.gov>; Snyder, Rodney <Snyder.Rodney@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Thanks! I have a steering committee meeting for RMNP tomorrow, **Ex. 5 Deliberative Process (DP)**
Ex. 5 Deliberative Process (DP)

Rebecca Perrin
U.S. Environmental Protection Agency
DL: 303-312-6311

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To: Perrin, Rebecca <Perrin.Rebecca@epa.gov>; Snyder, Rodney <Snyder.Rodney@epa.gov>
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FYI... https://whistleblower.org/press-release/press-release-legal-petition-challenges-epa-inaction-on-factory-farm-air-pollution/

Rebecca Perrin
R8 Ag Advisor | U.S. Environmental Protection Agency
DL: 303-312-6311

Message

From: Mills, Kathy [Mills.Kathy@epa.gov]
Sent: 11/2/2021 3:19:07 PM
To: Do, Bebhinn [do.bebhinn@epa.gov]
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Any update?

Kathy "KB" Mills ~ SPPD ~ U. S. EPA, OAQPS ~ 919-541-1599

From: Do, Bebhinn <do.bebhinn@epa.gov>
Sent: Monday, November 01, 2021 11:26 AM
To: Mills, Kathy <Mills.Kathy@epa.gov>
Cc: Dunkins, Robin <Dunkins.Robin@epa.gov>; Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

KB,
No worries on the tracking. It happens.

Ex. 5 Deliberative Process (DP) So it's done from my side.

Ex. 5 Deliberative Process (DP)

BD

From: Mills, Kathy <Mills.Kathy@epa.gov>
Sent: Monday, November 1, 2021 8:11 AM
To: Do, Bebhinn <do.bebhinn@epa.gov>
Subject: FW: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

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Thx,
KB

Kathy "KB" Mills ~ SPPD ~ U. S. EPA, OAQPS ~ 919-541-1599

From: Mills, Kathy
Sent: Friday, October 29, 2021 1:51 PM
To: Do, Bebhinn <Do.Bebhinn@epa.gov>
Cc: Dunkins, Robin <Dunkins.Robin@epa.gov>; Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

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Ex. 5 Deliberative Process (DP) Let me know when this can go to PACS.
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Sent: Friday, October 29, 2021 11:53 AM
To: Mills, Kathy <Mills.Kathy@epa.gov>
Cc: Dunkins, Robin <Dunkins.Robin@epa.gov>; Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

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Sent: Thursday, October 28, 2021 7:19 AM
To: Dunkins, Robin <Dunkins.Robin@epa.gov>; Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>; Do, Bebhinn <do.bebhinn@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Ex. 5 Deliberative Process (DP)

Kathy "KB" Mills ~ SPPD ~ U. S. EPA, OAQPS ~ 919-541-1599

From: Dunkins, Robin <Dunkins.Robin@epa.gov>
Sent: Wednesday, October 27, 2021 6:02 PM
To: Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>; Do, Bebhinn <do.bebhinn@epa.gov>; Mills, Kathy <Mills.Kathy@epa.gov>
Subject: FW: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Robin Dunkins, Group Leader
Natural Resources Group
OAR/OAQPS/SPPD Mail Code: E143-03
U.S. Environmental Protection Agency
Research Triangle Park, NC 27711
919-541-5335 office
919-605-1178 mobile
dunkins.robin@epa.gov

From: Dunkins, Robin
Sent: Wednesday, October 27, 2021 6:00 PM
To: Perrin, Rebecca <Perrin.Rebecca@epa.gov>; Snyder, Rodney <Snyder.Rodney@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

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Rebecca Perrin
U.S. Environmental Protection Agency
DL: 303-312-6311

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Rebecca Perrin

R8 Ag Advisor | U.S. Environmental Protection Agency
DL: 303-312-6311

Message

From: Dunkins, Robin [Dunkins.Robin@epa.gov]
Sent: 11/2/2021 6:43:15 PM
To: Do, Bebhinn [do.bebhinn@epa.gov]
Subject: Re: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Ex. 5 Deliberative Process (DP)

Robin Dunkins, Group Leader
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USEPA OAR/OAQPS
Research Triangle Park, NC 27711
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919-605-1178 mobile
dunkins.robin@epa.gov

On Nov 2, 2021, at 2:27 PM, Do, Bebhinn <Do.Bebhinn@epa.gov> wrote:

Do, Bebhinn has shared a OneDrive for Business file with you. To view it, click the link below.

<image00001.png> PetitionDeskStatements.docx

Desk statements are ready. Ex. 5 Deliberative Process (DP)

BD

From: Do, Bebhinn
Sent: Monday, November 1, 2021 11:26 AM
To: Mills, Kathy <Mills.Kathy@epa.gov>
Cc: Dunkins, Robin <Dunkins.Robin@epa.gov>; Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

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Ex. 5 Deliberative Process (DP)

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Ex. 5 Deliberative Process (DP)

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R8 Ag Advisor | U.S. Environmental Protection Agency
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Message

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Sent: 11/2/2021 7:18:37 PM
To: Do, Bebhinn [do.bebhinn@epa.gov]
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Ex. 5 Deliberative Process (DP)

Kathy "KB" Mills ~ SPPD ~ U. S. EPA, OAQPS ~ 919-541-1599

From: Do, Bebhinn <do.bebhinn@epa.gov>
Sent: Tuesday, November 02, 2021 3:02 PM
To: Mills, Kathy <Mills.Kathy@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Robin is good for it to go to PACS.

Ex. 5 Deliberative Process (DP)

BD

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Any update?

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R8 Ag Advisor | U.S. Environmental Protection Agency
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To: Do, Bebhinn [do.bebhinn@epa.gov]
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Ummmm....you're the bomb.com....thank you!!!

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Ex. 5 Deliberative Process (DP)

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I just reviewed the latest version of desk statement and I'm ok with all edits

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I refined the language Jenny noted as awkward and am Ok with the other edits.

BD

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Robin Dunkins, Group Leader
Natural Resources Group
OAR/OAQPS/SPPD Mail Code: E143-03
U.S. Environmental Protection Agency
Research Triangle Park, NC 27711
919-541-5335 office
919-605-1178 mobile
dunkins.robin@epa.gov

From: Perrin, Rebecca <Perrin.Rebecca@epa.gov>
Sent: Wednesday, October 27, 2021 5:48 PM
To: Snyder, Rodney <Snyder.Rodney@epa.gov>; Dunkins, Robin <Dunkins.Robin@epa.gov>
Subject: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

FYI... https://whistleblower.org/press-release/press-release-legal-petition-challenges-epa-inaction-on-factory-farm-air-pollution/

Rebecca Perrin
R8 Ag Advisor | U.S. Environmental Protection Agency
DL: 303-312-6311

Message

From: Dunkins, Robin [Dunkins.Robin@epa.gov]
Sent: 11/3/2021 8:10:58 PM
To: Do, Bebhinn [do.bebhinn@epa.gov]
CC: Schrock, Bill [Schrock.Bill@epa.gov]; Banner, Shannon [banner.shannon@epa.gov]
Subject: Re: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Can you send me clean copy not sharpoint link

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Do, Bebhinn has shared a OneDrive for Business file with you. To view it, click the link below.

<image00001.png> PetitionDeskStatements.docx

Ex. 5 Deliberative Process (DP)

From: Dunkins, Robin <Dunkins.Robin@epa.gov>
Sent: Wednesday, November 3, 2021 3:26 PM
To: Do, Bebhinn <do.bebhinn@epa.gov>; Mills, Kathy <Mills.Kathy@epa.gov>
Cc: Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>
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To: Noonan, Jenny <Noonan.Jenny@epa.gov>
Cc: Dunkins, Robin <Dunkins.Robin@epa.gov>; Schrock, Bill <Schrock.Bill@epa.gov>; Do, Bebhinn <do.bebhinn@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>
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Hi Jenny,

Ex. 5 Deliberative Process (DP)

KB

Kathy "KB" Mills ~ SPPD ~ U. S. EPA, OAQPS ~ 919-541-1599

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Sent: Wednesday, October 27, 2021 6:02 PM
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Robin Dunkins, Group Leader
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Sent: 11/3/2021 8:31:06 PM
To: Do, Bebhinn [do.bebhinn@epa.gov]
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

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From: Do, Bebhinn <do.bebhinn@epa.gov>
Sent: Wednesday, November 03, 2021 4:14 PM
To: Dunkins, Robin <Dunkins.Robin@epa.gov>
Cc: Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Attached!
BD

From: Dunkins, Robin <Dunkins.Robin@epa.gov>
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To: Do, Bebhinn <do.bebhinn@epa.gov>
Cc: Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>
Subject: Re: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

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Ex. 5 Deliberative Process (DP)

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DL: 303-312-6311

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R8 Ag Advisor | U.S. Environmental Protection Agency
DL: 303-312-6311

Message

From: Mills, Kathy [Mills.Kathy@epa.gov]
Sent: 11/23/2021 11:44:54 AM
To: Do, Bebhinn [do.bebhinn@epa.gov]
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Please resend me the correct version – apologies lazy or too busy to look for it. Ex. 5 Deliberative Process (DP)
Ex. 5 Deliberative Process (DP)
KB

Kathy "KB" Mills ~ SPPD ~ U. S. EPA, OAQPS ~ 919-541-1599

From: Do, Bebhinn <do.bebhinn@epa.gov>
Sent: Monday, November 22, 2021 1:13 PM
To: Mills, Kathy <Mills.Kathy@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

KB,

Ex. 5 Deliberative Process (DP)

BD

From: Mills, Kathy <Mills.Kathy@epa.gov>
Sent: Thursday, November 4, 2021 7:16 AM
To: Dunkins, Robin <Dunkins.Robin@epa.gov>; Do, Bebhinn <do.bebhinn@epa.gov>
Cc: Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>
Subject: RE: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Good news! Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

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R8 Ag Advisor | U.S. Environmental Protection Agency
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Sent: 11/23/2021 6:42:43 PM
To: Do, Bebhinn [do.bebhinn@epa.gov]
Subject: FW: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

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PetitionDeskStatements.docx

Apologies now because I won't be able to keep up with this. Ex. 5 Deliberative Process (DP)
Ex. 5 Deliberative Process (DP) Need anything from me? Let me know.

Kathy "KB" Mills ~ SPPD ~ U. S. EPA, OAQPS ~ 919-541-1599

From: Mills, Kathy
Sent: Tuesday, November 23, 2021 1:42 PM
To: South, Peter <South.Peter@epa.gov>; Cozzie, David <Cozzie.David@epa.gov>; Hunt, Virginia <Hunt.Virginia@epa.gov>
Cc: Dunkins, Robin <Dunkins.Robin@epa.gov>; Do, Bebhinn <do.bebhinn@epa.gov>; Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>; Gmyr, Joanna <Gmyr.Joanna@epa.gov>; Joseph, Wanda <joseph.wanda@epa.gov>
Subject: Press release: Legal Petition Challenges EPA Inaction on Factory Farm Air Pollution

Ex. 5 Deliberative Process (DP)

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Kathy "KB" Mills ~ SPPD ~ U. S. EPA, OAQPS ~ 919-541-1599

Message

From: Mills, Kathy [Mills.Kathy@epa.gov]
Sent: 10/28/2021 11:18:33 AM
To: Dunkins, Robin [Dunkins.Robin@epa.gov]; Schrock, Bill [Schrock.Bill@epa.gov]; Banner, Shannon [banner.shannon@epa.gov]; Do, Bebhinn [do.bebhinn@epa.gov]
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Message

From: Schrock, Bill [Schrock.Bill@epa.gov]
Sent: 10/28/2021 1:03:29 PM
To: Do, Bebhinn [do.bebhinn@epa.gov]
Subject: RE: CMS New Assignment - AX-22-000-0451

Ex. 5 Deliberative Process (DP)

-----Original Message-----
From: Do, Bebhinn <do.bebhinn@epa.gov>
Sent: Thursday, October 28, 2021 9:01 AM
To: Schrock, Bill <Schrock.Bill@epa.gov>
Subject: RE: CMS New Assignment - AX-22-000-0451

Ex. 5 Deliberative Process (DP)

-----Original Message-----
From: Schrock, Bill <Schrock.Bill@epa.gov>
Sent: Wednesday, October 27, 2021 7:27 AM
To: Do, Bebhinn <do.bebhinn@epa.gov>
Subject: FW: CMS New Assignment - AX-22-000-0451

-----Original Message-----
From: Hunt, Virginia <Hunt.Virginia@epa.gov>
Sent: Wednesday, October 27, 2021 7:03 AM
To: Dunkins, Robin <Dunkins.Robin@epa.gov>; Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>; Ma, Cyrus <Ma.Cyrus@epa.gov>
Cc: Mills, Kathy <Mills.Kathy@epa.gov>; Gmyr, Joanna <Gmyr.Joanna@epa.gov>; Hall, Deshelia <Hall.DeShelia@epa.gov>
Subject: FW: CMS New Assignment - AX-22-000-0451

Control AX-21-000-0451 has been delegated to SPPD. The attached control slip and incoming letter regarding a petition to rescind the Air Consent Agreement and enforce clean air laws against animal feeding operations are attached for your review and assignment within your group. The final response must be uploaded into CMS by November 10. The following steps will be helpful to you:

Ex. 5 Deliberative Process (DP)

For response examples, please visit the Comms Team archive:

Ex. 6 Personal Privacy (PP)

Thank you,

Virginia L. Hunt
Administrative Specialist
OAQPS SPPD RCG
109 T.W. Alexander Drive
RTP, NC 27711
Hours 6am -2:30pm EST M-F
ba
-----Original Message-----
From: cmsadmin@epa.gov <cmsadmin@epa.gov>
Sent: Tuesday, October 26, 2021 3:18 PM
To: eck.janet@epa.gov; South, Peter <South.Peter@epa.gov>; Hunt, Virginia <Hunt.Virginia@epa.gov>; Brown, Annette <Brown.Annette@epa.gov>; Joseph, Wanda <joseph.wanda@epa.gov>; Gates, Adrian <gates.adrian@epa.gov>; Gmyr, Joanna <Gmyr.Joanna@epa.gov>; Mills, Kathy <Mills.Kathy@epa.gov>; Crowley, Kate <crowley.kate@epa.gov>
Subject: CMS New Assignment - Blanche Scott - AX-22-000-0451

Control AX-22-000-0451 has been assigned to your office on 10/26/2021 3:17:55 PM by Blanche Scott.
Please go to the CMS webpage to view the details of the control.

Summary Information -

Control Number: AX-22-000-0451
Control Subject: Reading File - Petition to Rescind the Air Consent Agreement and Enforce Clean Air Laws Against Animal Feeding Operations
From: Miller, Emily; Stella, Cristina; Connor, Hannah M.M.; Saun, Amy van; Russ, Abel; Heinzen, Tarah; Newell, Brent

Note: This Email was automatically generated. Please do not attempt to respond to it. You can access

Ex. 6 Personal Privacy (PP)

Message

From: Kennedy, John [Kennedy.John@epa.gov]
Sent: 7/20/2022 7:16:23 PM
To: Schrock, Bill [Schrock.Bill@epa.gov]; Do, Bebhinn [do.bebhinn@epa.gov]
Subject: Monday July 25th Petition to Rescind AFO Air Compliance Pre-Meeting

Good afternoon,

I hope you both are doing well today. KB made me aware of a meeting that is happening next week with OECA regarding the petition to rescind the Air Compliance Agreement.

Ex. 5 Deliberative Process (DP)

Thanks so much, and have a great afternoon!

Best,
Jake Kennedy (He/Him)
U.S. EPA
PSG-SPPD-OAQPS-OAR
Office: 919-541-1548

Message

From: Do, Bebhinn [do.bebhinn@epa.gov]
Sent: 7/20/2022 7:47:52 PM
To: Kennedy, John [Kennedy.John@epa.gov]; Schrock, Bill [Schrock.Bill@epa.gov]; Do, Bebhinn [do.bebhinn@epa.gov]
Subject: RE: Monday July 25th Petition to Rescind AFO Air Compliance Pre-Meeting

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP) I'll keep you posted

Best,
Bebhinn

Bebhinn Do (she/her/hers)
OAR/OAQP/SPPD/NRG
(919) 541-0573 | do.bebhinn@epa.gov

From: Kennedy, John <Kennedy.John@epa.gov>
Sent: Wednesday, July 20, 2022 3:16 PM
To: Schrock, Bill <Schrock.Bill@epa.gov>; Do, Bebhinn <do.bebhinn@epa.gov>
Subject: Monday July 25th Petition to Rescind AFO Air Compliance Pre-Meeting

Good afternoon,

I hope you both are doing well today. KB made me aware of a meeting that is happening next week with OECA regarding the petition to rescind the Air Compliance Agreement.

Ex. 5 Deliberative Process (DP)

Thanks so much, and have a great afternoon!

Best,
Jake Kennedy (He/Him)
U.S. EPA
PSG-SPPD-OAQPS-OAR
Office: 919-541-1548

Message

From: Kennedy, John [Kennedy.John@epa.gov]
Sent: 7/20/2022 7:55:55 PM
To: Do, Bebhinn [do.bebhinn@epa.gov]; Schrock, Bill [Schrock.Bill@epa.gov]
Subject: RE: Monday July 25th Petition to Rescind AFO Air Compliance Pre-Meeting

Bebhinn,

Thank you very much for the context & update! That all sounds great.

Have a great day,
Jake K.

From: Do, Bebhinn <do.bebhinn@epa.gov>
Sent: Wednesday, July 20, 2022 3:48 PM
To: Kennedy, John <Kennedy.John@epa.gov>; Schrock, Bill <Schrock.Bill@epa.gov>; Do, Bebhinn <do.bebhinn@epa.gov>
Subject: RE: Monday July 25th Petition to Rescind AFO Air Compliance Pre-Meeting

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP) I'll keep you posted

Best,
Bebhinn

Bebhinn Do (she/her/hers)
OAR/OAQP/SPPD/NRG
(919) 541-0573 | do.bebhinn@epa.gov

From: Kennedy, John <Kennedy.John@epa.gov>
Sent: Wednesday, July 20, 2022 3:16 PM
To: Schrock, Bill <Schrock.Bill@epa.gov>; Do, Bebhinn <do.bebhinn@epa.gov>
Subject: Monday July 25th Petition to Rescind AFO Air Compliance Pre-Meeting

Good afternoon,

I hope you both are doing well today. KB made me aware of a meeting that is happening next week with OECA regarding the petition to rescind the Air Compliance Agreement.

Ex. 5 Deliberative Process (DP)

Thanks so much, and have a great afternoon!

Best,
Jake Kennedy (He/Him)
U.S. EPA
PSG-SPPD-OAQPS-OAR
Office: 919-541-1548

Message

From: Cozzie, David [Cozzie.David@epa.gov]
Sent: 6/30/2022 6:37:29 PM
To: Sullivan, Tim [Sullivan.Tim@epa.gov]; Jordan, Scott [Jordan.Scott@epa.gov]; Hogan, Stephanie [Hogan.Stephanie@epa.gov]
Subject: FW: Meeting regarding October 2021 Animal Feeding Operation petition

Tim, Scott and Stephanie,

EIP reached out to Joe and Tomás regarding their 2021 Petition on the Air Consent Agreement and AFO EEMs. Ex. 5 AC/DP

Ex. 5 AC/DP

Thanks,

David

From: Moeller, Njeri <Moeller.Njeri@epa.gov>
Sent: Thursday, June 30, 2022 2:11 PM
To: Cozzie, David <Cozzie.David@epa.gov>; Schrock, Bill <Schrock.Bill@epa.gov>
Cc: Smith, Korbin <smith.korbin@epa.gov>
Subject: RE: Meeting regarding October 2021 Animal Feeding Operation petition

Ex. 5 Deliberative Process (DP)

Thanks,

Njeri Moeller (she/her/hers)
U.S. Environmental Protection Agency
OAR/OAQPS IO Special Assistant – Detail
109 TW Alexander Drive
Research Triangle Park, NC 27711
Phone: 919-541-1380 |Email: Moeller.njeri@epa.gov

From: Moeller, Njeri
Sent: Monday, June 27, 2022 1:36 PM
To: David Cozzie (Cozzie.David@epa.gov) <Cozzie.David@epa.gov>; Schrock, Bill <Schrock.Bill@epa.gov>
Cc: Smith, Korbin <smith.korbin@epa.gov>
Subject: FW: Meeting regarding October 2021 Animal Feeding Operation petition

David/Bill,

Ex. 5 Deliberative Process (DP)

Thanks,

Njeri Moeller (she/her/hers)
U.S. Environmental Protection Agency
OAR/OAQPS IO Special Assistant – Detail

109 TW Alexander Drive
Research Triangle Park, NC 27711
Phone: 919-541-1380 |Email: Moeller.njeri@epa.gov

From: Dunkins, Robin <Dunkins.Robin@epa.gov>
Sent: Monday, June 27, 2022 12:58 PM
To: Lassiter, Penny <Lassiter.Penny@epa.gov>; Cozzie, David <Cozzie.David@epa.gov>; South, Peter <South.Peter@epa.gov>; Schrock, Bill <Schrock.Bill@epa.gov>
Cc: Koerber, Mike <Koerber.Mike@epa.gov>; Moeller, Njeri <Moeller.Njeri@epa.gov>; Smith, Korbin <smith.korbin@epa.gov>
Subject: FW: Meeting regarding October 2021 Animal Feeding Operation petition

Heads up. **Ex. 5 Deliberative Process (DP)**

Robin Dunkins, Senior Advisor
Office of Air Quality Planning and Standards
U.S. Environmental Protection Agency
109 T.W. Alexander Drive
Research Triangle Park, NC 27711
O: 919-541-5335 M: 919-605-1178
dunkins.robin@epa.gov
(she/her/hers)

From: Abel Russ <aruss@environmentalintegrity.org>
Sent: Monday, June 27, 2022 11:44 AM
To: Carbonell, Tomas <Carbonell.Tomas@epa.gov>; Goffman, Joseph <Goffman.Joseph@epa.gov>; Dunkins, Robin <Dunkins.Robin@epa.gov>
Cc: Emily A. Miller <eamiller@fwwatch.org>
Subject: Meeting regarding October 2021 Animal Feeding Operation petition

Hello all – I am writing on behalf of the October 26, 2021 petitioners (petition attached) to inquire about a meeting to discuss the substance of our petition. I know it can be difficult to schedule meetings over the summer, so I was hoping to start with your availability before coordinating with the larger group of petitioners.

Please let us know if you would be available to meet at some point in July or early August.

Thank you,
Abel

Abel Russ
Director, Center for Applied Environmental Science
Senior Attorney
Environmental Integrity Project
1000 Vermont Ave. NW
Washington DC 20005
802-482-5379

Message

From: Kennedy, John [Kennedy.John@epa.gov]
Sent: 7/27/2022 8:13:47 PM
To: Koerber, Mike [Koerber.Mike@epa.gov]; Smith, Korbin [smith.korbin@epa.gov]; Mozingo, Kristal [Mozingo.Kristal@epa.gov]
CC: Dunkins, Robin [Dunkins.Robin@epa.gov]; South, Peter [South.Peter@epa.gov]; Cozzie, David [Cozzie.David@epa.gov]; Gates, Adrian [gates.adrian@epa.gov]; McLamb, Marguerite [McLamb.Marguerite@epa.gov]; Schrock, Bill [Schrock.Bill@epa.gov]; Do, Bebhinn [do.bebhinn@epa.gov]; Mills, Kathy [Mills.Kathy@epa.gov]; Crowley, Kate [crowley.kate@epa.gov]; Gmyr, Joanna [Gmyr.Joanna@epa.gov]; Joseph, Wanda [joseph.wanda@epa.gov]
Subject: Internal Informational Pager for Review: Center for Applied Science Meeting on August 2 - Petition to Rescind the AFO Air Compliance Agreement

Kennedy, John has shared a OneDrive for Business file with you. To view it, click the link below.

Informational OAR Pager for Meeting with Petitioners to Rescind AFO Agreement_072722_SPPD.docx

Good afternoon,

Attached is an internal document for your review. Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Thank you all so much, and please let us know if you have any questions.

Wishing you all the best,

Jake Kennedy (He/Him)
U.S. EPA
PSG-SPPD-OAQPS-OAR
Office: 919-541-1548

Message

From: Schrock, Bill [Schrock.Bill@epa.gov]
Sent: 8/10/2022 7:27:54 PM
To: Cozzie, David [Cozzie.David@epa.gov]
CC: Do, Bebhinn [do.bebhinn@epa.gov]
Subject: RE: Q re response to community group

Ex. 5 Deliberative Process (DP)

From: Cozzie, David <Cozzie.David@epa.gov>
Sent: Wednesday, August 10, 2022 2:59 PM
To: Schrock, Bill <Schrock.Bill@epa.gov>
Subject: FW: Q re response to community group

Ex. 5 Deliberative Process (DP)

From: Smith, Korbin <smith.korbin@epa.gov>
Sent: Wednesday, August 10, 2022 2:34 PM
To: Cozzie, David <Cozzie.David@epa.gov>
Subject: FW: Q re response to community group

David,

Ex. 5 Deliberative Process (DP)

-Korbin

From: Dunkins, Robin <Dunkins.Robin@epa.gov>
Sent: Wednesday, August 3, 2022 6:34 PM
To: Koerber, Mike <Koerber.Mike@epa.gov>; Collin, Robin <Collin.Robin@epa.gov>; Snyder, Rodney <Snyder.Rodney@epa.gov>
Cc: Willis, Sharnett <Willis.Sharnett@epa.gov>; Motilall, Christina <Motilall.Christina@epa.gov>; Smith, Korbin <smith.korbin@epa.gov>; Welch-White, Venus <WelchWhite.Venus@epa.gov>
Subject: RE: Q re response to community group

Looping Rod into the email chain.

Robin Dunkins, Senior Advisor
Office of Air Quality Planning and Standards
U.S. Environmental Protection Agency
109 T.W. Alexander Drive
Research Triangle Park, NC 27711
O: 919-541-5335 M: 919-605-1178
dunkins.robin@epa.gov
(she/her/hers)

From: Dunkins, Robin
Sent: Tuesday, August 02, 2022 4:01 PM
To: Koerber, Mike <Koerber.Mike@epa.gov>; Collin, Robin <Collin.Robin@epa.gov>
Cc: Willis, Sharnett <Willis.Sharnett@epa.gov>
Subject: RE: Q re response to community group

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP) Can we schedule something in the upcoming week?

Robin Dunkins, Senior Advisor
Office of Air Quality Planning and Standards
U.S. Environmental Protection Agency
109 T.W. Alexander Drive
Research Triangle Park, NC 27711
O: 919-541-5335 M: 919-605-1178
dunkins.robin@epa.gov
(she/her/hers)

From: Koerber, Mike <Koerber.Mike@epa.gov>
Sent: Wednesday, June 22, 2022 1:02 PM
To: Collin, Robin <Collin.Robin@epa.gov>; Dunkins, Robin <Dunkins.Robin@epa.gov>
Cc: Willis, Sharnett <Willis.Sharnett@epa.gov>
Subject: RE: Q re response to community group

Sounds good. Thanks, Robin. Please include Robin Dunkins, who is extremely knowledgeable on this topic.

Mike

Mike Koerber
o. 919-541-5557
c. 919-450-6478
he/him/his

From: Collin, Robin <Collin.Robin@epa.gov>
Sent: Wednesday, June 22, 2022 12:09 PM
To: Koerber, Mike <Koerber.Mike@epa.gov>
Cc: Willis, Sharnett <Willis.Sharnett@epa.gov>
Subject: Q re response to community group

Hello Mike,
I am the new (4months old) Senior Advisor to the Administrator on EJ. Ex. 5 Deliberative Process (DP)
Ex. 5 Deliberative Process (DP)
Ex. 5 Deliberative Process (DP) Might you have time

for a quick (20 minutes or less) talk? I will loop my scheduler Sharnett Willis in on this message, and I look forward to meeting you.
Thanks,

Message

From: Schrock, Bill [Schrock.Bill@epa.gov]
Sent: 10/27/2021 11:27:21 AM
To: Do, Bebhinn [do.bebhinn@epa.gov]
Subject: FW: CMS New Assignment - AX-22-000-0451
Attachments: AX-22-000-0451control slip.pdf; AX-22-000-0451 ltr.pdf

-----Original Message-----
From: Hunt, Virginia <Hunt.Virginia@epa.gov>
Sent: Wednesday, October 27, 2021 7:03 AM
To: Dunkins, Robin <Dunkins.Robin@epa.gov>; Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>; Ma, Cyrus <Ma.Cyrus@epa.gov>
Cc: Mills, Kathy <Mills.Kathy@epa.gov>; Gmyr, Joanna <Gmyr.Joanna@epa.gov>; Hall, Deshelia <Hall.DeShelia@epa.gov>
Subject: FW: CMS New Assignment - AX-22-000-0451

Control AX-21-000-0451 has been delegated to SPPD. The attached control slip and incoming letter regarding a petition to rescind the Air Consent Agreement and enforce clean air laws against animal feeding operations are attached for your review and assignment within your group. The final response must be uploaded into CMS by November 10. The following steps will be helpful to you:

Ex. 5 Deliberative Process (DP)

For response examples, please visit the Comms Team archive:

Ex. 6 Personal Privacy (PP)

Thank you,

Virginia L. Hunt
Administrative Specialist
OAQPS SPPD RCG
109 T.W. Alexander Drive
RTP, NC 27711
Hours 6am -2:30pm EST M-F
ba
-----Original Message-----
From: cmsadmin@epa.gov <cmsadmin@epa.gov>
Sent: Tuesday, October 26, 2021 3:18 PM
To: eck.janet@epa.gov; South, Peter <South.Peter@epa.gov>; Hunt, Virginia <Hunt.Virginia@epa.gov>; Brown, Annette <Brown.Annette@epa.gov>; Joseph, Wanda <joseph.wanda@epa.gov>; Gates, Adrian <gates.adrian@epa.gov>; Gmyr, Joanna <Gmyr.Joanna@epa.gov>; Mills, Kathy <Mills.Kathy@epa.gov>; Crowley, Kate <crowley.kate@epa.gov>
Subject: CMS New Assignment - Blanche Scott - AX-22-000-0451

Control AX-22-000-0451 has been assigned to your office on 10/26/2021 3:17:55 PM by Blanche Scott. Please go to the CMS webpage to view the details of the control.

Summary Information -
Control Number: AX-22-000-0451
Control Subject: Reading File - Petition to Rescind the Air Consent Agreement and Enforce Clean Air Laws Against Animal Feeding Operations
From: Miller, Emily; Stella, Cristina; Connor, Hannah M.M.; Saun, Amy van; Russ, Abel; Heinzen, Tarah; Newell, Brent

Note: This Email was automatically generated. Please do not attempt to respond to it. You can access

Ex. 6 Personal Privacy (PP)

Message

From: Sullivan, Tim [Sullivan.Tim@epa.gov]
Sent: 11/5/2021 3:51:25 PM
To: Dunkins, Robin [Dunkins.Robin@epa.gov]; Do, Bebhinn [do.bebhinn@epa.gov]; Schrock, Bill [Schrock.Bill@epa.gov]
CC: Sullivan, Tim [Sullivan.Tim@epa.gov]
Subject: Petition to Rescind the Air Compliance Agreement - Draft Initial Response

Sullivan, Tim has shared a OneDrive for Business file with you. To view it, click the link below.

AFOs - Petition To Rescind_Initial Response_Draft.docx

Happy Friday.

A draft of the initial response to the petition to rescind the Air Compliance Agreement is attached for your review. Please let me know if you have any edits, questions, or concerns. I plan to share this with my management later today.

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

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http://www.epa.gov/compliance/complaints/index.html

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Message

From: Schrock, Bill [Schrock.Bill@epa.gov]
Sent: 11/5/2021 4:05:23 PM
To: Sullivan, Tim [Sullivan.Tim@epa.gov]; Dunkins, Robin [Dunkins.Robin@epa.gov]; Do, Bebhinn [do.bebhinn@epa.gov]
Subject: RE: Petition to Rescind the Air Compliance Agreement - Draft Initial Response

Tim-I do not have any edits or concerns with your response. thx

---

From: Sullivan, Tim <Sullivan.Tim@epa.gov>
Sent: Friday, November 5, 2021 11:51 AM
To: Dunkins, Robin <Dunkins.Robin@epa.gov>; Do, Bebhinn <do.bebhinn@epa.gov>; Schrock, Bill <Schrock.Bill@epa.gov>
Cc: Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: Petition to Rescind the Air Compliance Agreement - Draft Initial Response

Happy Friday.

A draft of the initial response to the petition to rescind the Air Compliance Agreement is attached for your review. Please let me know if you have any edits, questions, or concerns. I plan to share this with my management later today.

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

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Message

From: Dunkins, Robin [Dunkins.Robin@epa.gov]
Sent: 11/5/2021 5:18:22 PM
To: Sullivan, Tim [Sullivan.Tim@epa.gov]; Do, Bebhinn [do.bebhinn@epa.gov]; Schrock, Bill [Schrock.Bill@epa.gov]
Subject: RE: Petition to Rescind the Air Compliance Agreement - Draft Initial Response

Ex. 5 AC/DP

Robin Dunkins, Group Leader
Natural Resources Group
OAR/OAQPS/SPPD Mail Code: E143-03
U.S. Environmental Protection Agency
Research Triangle Park, NC 27711
919-541-5335 office
919-605-1178 mobile
dunkins.robin@epa.gov

From: Sullivan, Tim <Sullivan.Tim@epa.gov>
Sent: Friday, November 05, 2021 11:51 AM
To: Dunkins, Robin <Dunkins.Robin@epa.gov>; Do, Bebhinn <do.bebhinn@epa.gov>; Schrock, Bill <Schrock.Bill@epa.gov>
Cc: Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: Petition to Rescind the Air Compliance Agreement - Draft Initial Response

Happy Friday.

A draft of the initial response to the petition to rescind the Air Compliance Agreement is attached for your review. Please let me know if you have any edits, questions, or concerns. I plan to share this with my management later today.

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

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Message

From: Sullivan, Tim [Sullivan.Tim@epa.gov]
Sent: 11/5/2021 5:22:43 PM
To: Dunkins, Robin [Dunkins.Robin@epa.gov]; Do, Bebhinn [do.bebhinn@epa.gov]; Schrock, Bill [Schrock.Bill@epa.gov]
CC: Sullivan, Tim [Sullivan.Tim@epa.gov]
Subject: RE: Petition to Rescind the Air Compliance Agreement - Draft Initial Response

Thanks for the review, Bill and Robin; **Ex. 5 AC/DP**

Have a nice weekend.

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

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From: Dunkins, Robin <Dunkins.Robin@epa.gov>
Sent: Friday, November 5, 2021 11:18 AM
To: Sullivan, Tim <Sullivan.Tim@epa.gov>; Do, Bebhinn <do.bebhinn@epa.gov>; Schrock, Bill <Schrock.Bill@epa.gov>
Subject: RE: Petition to Rescind the Air Compliance Agreement - Draft Initial Response

Ex. 5 AC/DP

Robin Dunkins, Group Leader
Natural Resources Group
OAR/OAQPS/SPPD Mail Code: E143-03
U.S. Environmental Protection Agency
Research Triangle Park, NC 27711
919-541-5335 office
919-605-1178 mobile
dunkins.robin@epa.gov

From: Sullivan, Tim <Sullivan.Tim@epa.gov>
Sent: Friday, November 05, 2021 11:51 AM
To: Dunkins, Robin <Dunkins.Robin@epa.gov>; Do, Bebhinn <do.bebhinn@epa.gov>; Schrock, Bill

<Schrock.Bill@epa.gov>
Cc: Sullivan, Tim <Sullivan.Tim@epa.gov>
Subject: Petition to Rescind the Air Compliance Agreement - Draft Initial Response

Happy Friday.

A draft of the initial response to the petition to rescind the Air Compliance Agreement is attached for your review. Please let me know if you have any edits, questions, or concerns. I plan to share this with my management later today.

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.

Message

From: Schrock, Bill [Schrock.Bill@epa.gov]
Sent: 10/27/2021 11:36:38 AM
To: Do, Bebhinn [do.bebhinn@epa.gov]
Subject: RE: CMS New Assignment - AX-22-000-0451

Yea I heard Tim say that. Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

-----Original Message-----
From: Do, Bebhinn <do.bebhinn@epa.gov>
Sent: Wednesday, October 27, 2021 7:34 AM
To: Schrock, Bill <Schrock.Bill@epa.gov>
Subject: RE: CMS New Assignment - AX-22-000-0451

Thanks.

Tim mentioned this one the call yesterday. Not sure if you were there for that part.

BD

-----Original Message-----
From: Schrock, Bill <Schrock.Bill@epa.gov>
Sent: Wednesday, October 27, 2021 7:27 AM
To: Do, Bebhinn <do.bebhinn@epa.gov>
Subject: FW: CMS New Assignment - AX-22-000-0451

-----Original Message-----
From: Hunt, Virginia <Hunt.Virginia@epa.gov>
Sent: Wednesday, October 27, 2021 7:03 AM
To: Dunkins, Robin <Dunkins.Robin@epa.gov>; Schrock, Bill <Schrock.Bill@epa.gov>; Banner, Shannon <banner.shannon@epa.gov>; Ma, Cyrus <Ma.Cyrus@epa.gov>
Cc: Mills, Kathy <Mills.Kathy@epa.gov>; Gmyr, Joanna <Gmyr.Joanna@epa.gov>; Hall, Deshelia <Hall.DeShelia@epa.gov>
Subject: FW: CMS New Assignment - AX-22-000-0451

Control AX-21-000-0451 has been delegated to SPPD. The attached control slip and incoming letter regarding a petition to rescind the Air Consent Agreement and enforce clean air laws against animal feeding operations are attached for your review and assignment within your group. The final response must be uploaded into CMS by November 10. The following steps will be helpful to you:

Ex. 5 Deliberative Process (DP)

For response examples, please visit the Comms Team archive:

Ex. 6 Personal Privacy (PP)

Thank you,

Virginia L. Hunt
Administrative Specialist
OAQPS SPPD RCG
109 T.W. Alexander Drive
RTP, NC 27711
Hours 6am -2:30pm EST M-F
ba
-----Original Message-----
From: cmsadmin@epa.gov <cmsadmin@epa.gov>
Sent: Tuesday, October 26, 2021 3:18 PM
To: eck.janet@epa.gov; South, Peter <South.Peter@epa.gov>; Hunt, Virginia <Hunt.Virginia@epa.gov>; Brown, Annette <Brown.Annette@epa.gov>; Joseph, Wanda <joseph.wanda@epa.gov>; Gates, Adrian <gates.adrian@epa.gov>; Gmyr, Joanna <Gmyr.Joanna@epa.gov>; Mills, Kathy <Mills.Kathy@epa.gov>; Crowley, Kate <crowley.kate@epa.gov>
Subject: CMS New Assignment - Blanche Scott - AX-22-000-0451

Control AX-22-000-0451 has been assigned to your office on 10/26/2021 3:17:55 PM by Blanche Scott.
Please go to the CMS webpage to view the details of the control.

Summary Information -
Control Number: AX-22-000-0451
Control Subject: Reading File - Petition to Rescind the Air Consent Agreement and Enforce Clean Air Laws Against Animal Feeding Operations
From: Miller, Emily; Stella, Cristina; Connor, Hannah M.M.; Saun, Amy van; Russ, Abel; Heinzen, Tarah; Newell, Brent

Note: This Email was automatically generated. Please do not attempt to respond to it. You can access

Ex. 6 Personal Privacy (PP)