CERCLA/EPCRA Administrative Reporting Exemption for Air Releases of Hazardous Substances from Animal Waste at Farms

Final Rule

Please note:
This regulation *does not* create any new regulatory requirements or reporting deadlines.

The final rule, "CERCLA/EPCRA Administrative Reporting Exemption for Air Releases of Hazardous Substances from Animal Waste at Farms," is an *exemption* from the existing notification requirements in the 1984 final rule on the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) notification requirements. The exemption became effective on January 20, 2009. The final rule *exempts* all farms that release hazardous substances from animal waste to the air that meet or exceed their reportable quantity (RQ) from reporting under CERCLA section 103. The final rule also *exempts* farms that release hazardous substances from animal waste to the air that meet or exceed their RQ from reporting under the Emergency Planning and Community Right to Know Act (EPCRA) section 304 if they stable or confine *fewer* than the following number of animal species:

1. 700 mature dairy cows, whether milked or dry
2. 1,000 veal calves
3. 1,000 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs
4. 2,500 swine each weighing 55 pounds or more
5. 10,000 swine each weighing less than 55 pounds
6. 500 horses
7. 10,000 sheep or lambs
8. 55,000 turkeys
9. 30,000 laying hens or broilers, if the farm uses a liquid manure handling system
10. 125,000 chickens (other than laying hens), if the farm uses other than liquid manure handling system
11. 82,000 laying hens, if the farm uses other than a liquid manure handling system
12. 30,000 ducks (if the farm uses other than a liquid manure handling system)
13. 5,000 ducks (if the farm uses a liquid manure handling system)

For purposes of this rule:

Animal Waste means manure (feces, urine, and other excrement produced by livestock), digestive emissions, and urea. The definition includes animal waste when mixed or commingled with bedding, compost, feed, soil and other typical materials found with animal waste.

Farm means a facility on a tract of land devoted to the production of crops or raising of animals, including fish, which produced and sold, or normally would have produced and sold, $1,000 or more of agricultural products during a year.

Note: For the purposes of this rule, EPA considers animals that reside primarily outside of an enclosed structure (i.e., a barn or a feed lot) and graze on pastures, not to be stabled or confined.

Those farms that stable or confine greater than the number of animal species identified above are still required to submit the appropriate reports to State and local officials pursuant to EPCRA section 304 if they release hazardous substances to the air that meet or exceed their RQ. That is, the reporting requirement under EPCRA section 304 in this rule does not create a new regulatory requirement.

Farms that *are required* to report their air releases of hazardous substances from animal waste under EPCRA should follow the requirements at 40 CFR 355.32, "Which emergency release notification requirements apply to continuous releases?" For these notifications you are *not* required to call the National Response Center. Your initial telephone notification should be directed to the community emergency coordinator for the Local Emergency Planning Committee (LEPC) for any area likely to be affected by the release and to the State Emergency Response Commission (SERC) of any State likely to be affected by the release. You will then submit the written notification to those LEPCs and SERCs as appropriate.

Finally, the exemption created by the rule does not impact EPA's authority to respond to citizen complaints or requests for assistance from State or local government agencies to investigate and respond to those releases of hazardous substances from farms. Nor does this rule limit any of the Agency's other authorities under CERCLA (e.g., liability) or EPCRA.

Background

CERCLA section 103 notification requirements call for immediate notification to the National Response Center (NRC) when the person in charge of a facility has knowledge of a release of a hazardous substance equal to or greater than the RQ established by EPA for that substance.

EPCRA section 304 emergency notification requirements call for notification to be given to the community emergency coordinator for each LEPC for any area likely to be affected by the release, and the SERC of any State likely to be affected by the release. Through this notification, State and local officials can assess whether a response action to the release is appropriate. EPCRA section 304 notification requirements apply only to releases that have the potential for off-site exposure and that are from facilities that produce, use, or store a "hazardous chemical," as defined by regulations promulgated under the Occupational Safety and Health Act of 1970 (OSHA) (29 CFR 1910.1200(c)) and by section 311 of EPCRA.

You Are Not Required to Report If:

- You have reported continuous releases in the past and your continuous release report is up to date and on file with the appropriate SERC and LEPC; or
- Your releases are less than the RQ.

Moreover, EPA does not expect farms participating in the Agency's Animal Feeding Operation Air Compliance Agreement (70 *Fed. Reg.* 4958), and that are in compliance with the terms of the Agreement, to report at this time.

For continuous release reporting, to establish the continuity and stability of the release, you may use:

- Prior release data;
- Knowledge of operating procedures; or
- Best professional judgment.

Look for Updates

As the Agency receives additional questions that are generally applicable to a wide audience, we will update this fact sheet on the web with those questions and answers.

EPA is working on developing emission estimating methodologies based in part on the data collected in the National Air Emissions Monitoring Study, which is scheduled for completion at the end of 2009 with the final report to be complete in 2011. For more information on the Air Compliance Agreement and the Air Emissions Monitoring Study, please visit: http://www.epa.gov/compliance/resources/agreements/caa/cafo-agr.html.