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DOCKET ID No. EPA-HQ-SFUND-2007-0469

DATE: March 27, 2008

Superfund Docket
Environmental Protection Agency
1299 Pennsylvania Avenue NW, Mail Code [2822T]
Washington, DC 20460

SUBJECT:

Proposed Rule: CERCLA/EPCRA Administrative Reporting Exemption
for Air Releases of Hazardous Substances from Animal Waste
Docket ID No. EPA-HQ-SFUND-2007-0469
[FRL-8511-4; RIN 2050-AG37]
Federal Register: December 28, 2007, pp. 73700-73708

SUMMARY

The Society of Environmental Journalists (SEJ) opposes changing the CERCLA/EPCRA administrative requirements to exempt air releases of hazardous substances from animal waste, 40 CFR Parts 302 and 355, as proposed by EPA in the Federal Register of Dec. 28, 2007 [EPA-HQ-SFUND-2007-0469; FRL-8511-4] RIN 2050-AG37. SEJ is not taking a position on the appropriate level of any particular air contaminant exposure limit. Our comments express our opposition to proposed changes in the existing reporting requirements for the animal production and related agricultural industries.

BACKGROUND ON SEJ

Founded in 1990, the Society of Environmental Journalists (SEJ) is the world's largest (more than 1,300 members) and oldest organization of individual working journalists, educators and students dedicated to improving the quality, accuracy and visibility of environmental reporting. In addition to SEJ Awards for Reporting on the Environment, SEJ programs and services include annual and regional conferences; daily *EJToday* news service; quarterly *SEJournal*; biweekly *TipSheet*; diversity program including Latin America initiative; members-only listservs; mentoring program; gatekeeper project and other special initiatives. Working through its First Amendment Task Force and WatchDog Program, SEJ addresses freedom of information, right-to-know and other news-gathering

Improving the Quality, Accuracy and Visibility of Environmental Reporting



issues of concern to journalists reporting on environmental topics.

DETAILED COMMENTS

Our interest in this issue centers on the harm which will be caused by exempting agriculture operations which generate animal waste from the existing public notification requirements for airborne contaminant releases. Unless reports of such events are required, the public may be subjected to adverse health, economic and other consequences without information about the source or content of the hazard. If information about airborne contaminant releases is no longer reported, the community right-to-know principle is made sterile, leaving the public no information and thus no recourse to hold the source of the hazardous emissions accountable.

We oppose the proposed changes to Title 40, Part 302, Section 302.6 (under the Emergency Planning and Community Right-to-Know Act) which would exempt from public reporting any “releases to the air of any hazardous substance from animal waste at farms.” Under current law, animal production operations (e.g., CAFOs) are required to report releases of hazardous substances emitted or created by animal waste, to the National Response Center (NRC), if the release is at or above a reportable quantity over a 24 hour period. A reportable quantity of ammonia (NH₃) or hydrogen sulfide (H₂S), for example, is 100 pounds (or 45.4 kg).

In a case that extended over several years, Buckeye Egg Farms in Ohio, at three facilities capable of housing over 12 million chickens, may have emitted over 550 tons/year (TPY) of particulate matter at its Croton facility and approximately 700 TPY at each of its other two facilities in Marseilles and Mt. Victory, according to a Justice Department release.ⁱ Ambient air monitoring conducted by U.S. EPA has also detected ammonia concentrations above 1,500 parts per billion (ppb) as a three hour rolling average up to a kilometer downwind of the Croton facility. As a comparison, in a report prepared jointly by Iowa State University and the University of Iowa, the recommended maximum concentration of ammonia at a residence or public use area was 150 ppb as a three hour rolling average.ⁱⁱ Ammonia is also a precursor in the formation of fine PM known as PM_{2.5}.

The U.S. Department of Agriculture’s National Agricultural Statistics Service estimated that 10.45 billion food animals were raised on around two million farms across the country, in every state, in 2006.

Given the potential adverse consequences to public health and welfare from a release of this magnitude, it is baffling for the EPA to suggest “this administrative reporting exemption is protective of human health and the environment.”ⁱⁱⁱ The Agency unconvincingly suggests that emergency response resources are being diverted from local communities because local emergency planning committees (LEPC) are responding unnecessarily to required air emission notifications from farms. Not surprising, this is the same argument made by the National Chicken Council, National Turkey Federation, and U.S. Poultry & Egg Association in the 2005 petition.^{iv} EPA fails to provide any data to support this assertion, and a simple analysis of 2007 NRC data indicates that the majority (66 percent) of notifications concern vessels, pipelines, storage tanks, aircraft, mobile sources, and unknown sheen, not fixed locations like agricultural operations. One might actually wonder why there aren’t more reports in the NRC system if CAFOs are complying with the current notification requirements. Moreover, it is difficult to reconcile EPA’s assertion that the exemption would save 3.431 million hours in paperwork burden for the affected industry, while on the other hand, input provided to EPA by State Emergency Planning Commissions (SERCs) and local Emergency Planning Committees (LEPCs) indicate they do not routinely receive air emission notifications from livestock production operations.^{v,vi,vii}

We also oppose any proposed change to Title 40, Part 302, Section 302.8 which would exempt “continuous releases” of hazardous substances. Emissions generated or the result of amassed animal waste would meet this definition, as it “occurs without interruption or abatement or that is routine, anticipated, and intermittent and incidental to normal operations or treatment processes.”^{viii} The right-to-know provisions embodied in CERCLA and EPCRA were designed to give citizens critical information about hazardous (and potentially hazardous)

substances in their community. Individuals who live or work near agricultural operations, such as animal production plants, are entitled to know what is being emitted into the environment, whether those emissions occur in an unplanned burst, or as a routine, steady flow. The potential for harm exists under both exposure scenarios.

We also oppose the proposed change to Title 40, Part 355, Section 355.40 which would exempt from public reporting any “releases to the air of a hazardous substance from animal waste at farms.” Under current law, agricultural operations, such as CAFOs, are required to immediately notify local emergency response coordinators of releases of hazardous substances. One of the key objectives pursued by Congress in these right-to-know laws was to give local communities access to information which would assist in planning and responding to emergencies involving hazardous materials. Residents, as well as emergency responders, had a **right** to information about what kinds and quantities of chemical substances were stored, produced or were otherwise assembled in their community. In the event of an emergency, whether a catastrophic event or a public health investigation, data about potential chemical contaminants would be available and accessible.

EPA’s Office of Science Policy acknowledges the value of hazard emissions reporting and the data’s potential for improving public health and welfare: “Science provides the foundation for credible decision-making. Only through adequate knowledge about risks to human health and ecosystems, and innovative solutions to prevention pollution and reduce risk, can we continue to enjoy a high quality of life.”^{ix}

The principles of right-to-know and community emergency preparedness are embodied in CERCLA and EPRCA. These principles will be void for the hundreds of thousands of individuals who live near animal production plants—which generate millions of pounds of animal waste each year—if EPA creates an exemption from emissions reporting for these agricultural operations.

Concentrated Animal Feeding Operations (CAFOs) may house tens of thousands of animals for eventual meat production, and accumulate huge quantities of animal waste into open-air pits.^x Small, integrated farms do not have the number of animals that could result in emission of a reportable quantity of any of these hazardous substances. The large confinement operations of factory farms are the source of reportable quantities and are the primary entities that would be responsible for reporting emissions.

Numerous studies have been published in the peer-reviewed scientific literature on the association between occupational exposure to airborne contaminants in animal feeding operations and adverse health effects,^{xi,xii,xiii,xiv,xv} and a new body of literature is emerging on residential exposures and public health impacts.^{xvi,xvii,xviii,xix} The potential health effects described in these studies include bronchoconstriction, pulmonary edema, asthma, hypersensitivity, pneumonitis, bronchitis, headaches, sore throats, coughing, diarrhea, and burning eyes. Moreover, because CAFOs are disproportionately located in “communities of color and regions of poverty” the potential health effects from airborne emissions are intertwined with other health determinants which may make the population more susceptible to harm.^{xx}

Recognizing the vulnerability of children to environmental contaminants created by industrial animal production facilities, the American Public Health Association (APHA) adopted in 2003 a policy calling for a moratorium on new CAFOs “until scientific data on the attendant risks to public health have been collected and uncertainties resolved.” The organization noted: “that children suffer disproportionately from asthma; while fetuses, infants and children are more vulnerable to adverse impacts from bacterial and antimicrobial-resistant infections, as well as from exposure to neurotoxins, all health impacts to which existing science suggests that emissions from CAFOs may contribute.” The Michigan State Medical Society and the Canadian Medical Association, as well as local boards of health, have also called for moratoria on new concentrated animal feeding operation construction.

Just last year, in November 2007, the American Public Health Association adopted a policy which opposes federal or state efforts to exempt agricultural sites from regulations and enforcement, including those related to airborne emissions. Moreover, the APHA policy calls for improvements in “data collection on food animal

production emissions and waste” as well as monitoring and control technologies.^{xxi} At a time when public health organizations are calling for more data and more scientific evidence on contaminants emitted from CAFOs, the EPA is proposing to exempt this exact kind of information from its existing reporting requirements.

The hazardous air pollutants emitted from CAFO buildings and waste pits include ammonia, hydrogen sulfide, carbon dioxide, methane, fungi, particulate matter, residues of veterinary antibiotics, and endotoxins.^{xxii,xxiii,xxiv} The descriptions below about emissions of ammonia, hydrogen sulfide and microorganisms illustrate the potential public health impact of the volume of these contaminants and the role journalists can take in communicating these risks to individuals living and working in communities adjacent to CAFOs.

Ammonia Emissions

The livestock sector produces roughly 73 percent of all ammonia emissions nationwide. Some of the largest facilities produce staggering quantities of ammonia gas – comparable to pollution from the nation’s largest manufacturing plants. For example, Threemile Canyon Farms in Boardman, Oregon, reported that its 52,300-dairy-cow operation emits 15,500 pounds of ammonia per day, more than 5,675,000 pounds per year. That is 75,000 pounds more than the nation’s number one manufacturing source of ammonia air pollution (CF Industries of Donaldson, Louisiana). Buckeye Egg Farm’s facility in Croton, Ohio, reported ammonia emissions of over 4,300 pounds per day – 43 times the reporting threshold under CERCLA and EPCRA.

Human exposure to ammonia triggers respiratory problems, causes nasal and eye irritation and, in extreme circumstances, is fatal. CAFOs expose downwind neighbors to elevated ammonia levels as well as other pollutants. For example, the Missouri Department of Health and Senior Services documented ambient ammonia levels downwind of a swine operation ranging from 153 to 875 ppb. The EPA submitted comments on the Missouri study, comparing the ambient ammonia levels to recommended limits and noted that “the conclusion could be drawn that a public health hazard did exist at the time the ...data was acquired.”^{xxv}

Ammonia also contributes to the development of fine particulate matter. Fine particulate matter causes significant health problems, including aggravated asthma, difficult or painful breathing, chronic bronchitis, decreased lung function and premature death. Fine particulate matter has been linked to increased hospital admissions and emergency room visits for people with heart and lung disease and decreased work and school attendance.

Hydrogen Sulfide Emissions

Hydrogen sulfide is also listed by the EPA as a hazardous pollutant under CERCLA. High-level exposures of hydrogen sulfide, an asphyxiant, can cause loss of consciousness, coma and, at 500 ppm, death. At least 19 CAFO workers have died from sudden hydrogen sulfide exposure during liquid manure agitation. Chronic exposure to sub-lethal concentrations produce progressive effects such as increased respiratory rate, pulmonary edema and histopathological changes in the nose and lungs. Epidemiological studies of communities exposed to hydrogen sulfide reported symptoms such as asthma, chronic bronchitis, shortness of breath, eye irritation, nausea, headaches and loss of sleep.

Microorganism emissions

Endotoxins, glucans (water-insoluble cell wall components of fungi, bacteria and plants) and microorganisms are significant components of the bioaerosols associated with CAFOs. Inhaling them can cause respiratory effects such as airway constriction, obstructive breathing pattern, inflammatory tissue responses and lung infections. Scientists are expressing concern for antibiotic-resistant microorganisms, resulting from antibiotics in the feed at CAFOs, that may be present in the air.

In summary, then, EPA's assertion in the proposed rulemaking that "This administrative reporting exemption is

protective of human health and the environment" is factually untrue and contradicted by available scientific evidence.

Public Value of Records Generated by EPCRA and CERCLA Reporting Requirements

CERCLA (1980) has two main policy objectives: First, Congress intended to give the federal government the necessary tools for a prompt and effective response to problems of national magnitude resulting from hazardous waste sites. Second, Congress intended that the polluters bear the costs and responsibility for remedying the harmful conditions that they created. In 1986, when the law was amended by the EPCRA, the fundamental concept of "community right-to-know" was embedded in the statute. These right-to-know provisions not only empower government but also citizens. In EPA's own words: "This law is designed to help local communities protect public health, safety, and the environment from chemical hazards."

How then will communities access information and protect themselves if certain sources of toxic emissions are no longer required? According to EPA's own estimates, the number of CAFOs in the U.S. is at least 20,000 ^{xxvi}; that's 20,000 communities affected by toxic emissions from animal waste which will no longer have information on the number and content of releases that potentially affect the health of local residents. The present reporting requirements which apply to animal waste on farms should be maintained. Information about chemical releases enables citizens to hold companies and local governments accountable in terms of how toxic chemicals are managed. Transparency also often spurs companies to focus on their chemical management practices, since they are being measured and made public. Moreover, the news media's ability to access information on air releases provides another mechanism for the public to be informed of potential health risks.

There are countless examples of journalists using records required by EPA and other statutes to inform the public of health and safety hazards. The role of journalists serving small communities (such as those where CAFO's exist) is especially crucial because local authorities may not have the resources to serve as adequate watchdogs. SEJ and other professional journalistic organizations have recognized the most outstanding achievements, such as "Toxic Legacy" published by *The Record* of Bergen County, N.J. in 2006, reported by Jan Barry, Alex Nussbaum, Mary Jo Layton, Lindy Washburn, Tom Troncone, Thomas E. Franklin, Barbara Williams, Debra Lynn Vial, and Tim Nostrand, and "The Right to Answers" published by *Riverfront Times*, St. Louis, Missouri in 2001, reported by Jeannette Batz.

EPA erroneously and misleadingly suggests that the sole value of emissions reporting is to initiate a response by a Local Emergency Planning Committee or the National Contingency Plan (NCP). The fact that previous NCP notifications to EPA have not resulted in a response reflects the state of EPA's resources and priorities, not the potential public value of these notifications. The fact that certain local emergency response agencies claim that they do not currently respond to emission notifications from CAFOs is not a sufficient justification to remove the reporting requirement. Individuals living near CAFOs are entitled to information about toxic emissions which are emitted into their local environment, and the only way such information is provided is through the CERCLA/EPCRA reporting requirements, and accessing the data through the Toxics Release Inventory. In many cases, individuals, families and community leaders rely on journalists to investigate, analyze and serve as messengers of such information, to learn what is polluting their air and who is responsible.

Without these required reports, that trail of information will no longer exist. SEJ urges you to continue to require these operations to report hazardous substance emissions to the air. We oppose the proposed changes offered by EPA and recommend that the current reporting requirements in Title 40, Sections 302.6, 302.8 and 355.40 be maintained.

We thank you for the opportunity to submit these comments.

Sincerely,

Timothy Wheeler, President
Society of Environmental Journalists

Ken Ward Jr., Chairman
SEJ First Amendment Task Force

**ⁱ Department of Justice, #634: 11-19-03 U.S.
Files Complaint Against Buckeye Egg Farm of Ohio,
http://www.usdoj.gov/opa/pr/2003/November/03_enrd_634.htm.**

ⁱⁱIowa Concentrated Animal Feeding Operations Air Quality Study, February 2002.

ⁱⁱⁱU.S. Environmental Protection Agency. CERCLA/EPCRA Administrative Reporting Exemption for Air Releases of Hazardous Substances from Animal Waste. Proposed rule, 72 *Federal Register* 73700, December 28, 2007.

^{iv}National Chicken Council, National Turkey Federation, and U.S. Poultry & Egg Association. Petition to U.S. EPA for Exemption from EPCRA and CERCLA Reporting Requirements, August 5, 2005.

^vHunton J, Chairman, Washington County, Arkansas, LEPC. Letter to Lynn Beasley, U.S. EPA, March 24, 2006.

^{vi}Dozier S, Chairman, Arkansas State Emergency Response Commission. Letter to Lynn Beasley, U.S. EPA, April 6, 2006.

^{vii}Couch C, Commissioner, Georgia State Emergency Response Commission. Letter to Lynn Beasley, U.S. EPA, March 30, 2006.

^{viii}Title 40, Part 302, Section 302.8

^{ix}U.S. Environmental Protection Agency. Role of Science at EPA. Available at: <http://www.epa.gov/osp/science.htm>, Accessed February 19, 2008.

^xNational Research Council, Ad Hoc Committee on Air Emissions from Animal Feeding Operations. Air Emissions from Animal Feeding Operations: Current Knowledge, Future Needs. Washington DC: National Academies Press, 2003.

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- ^{xxiii}Mirabelli MC, Wing S, Marshall SW, Wilcosky TC. Race, Poverty, and Potential Exposure of Middle-School Students to Air Emissions from Confined Swine Feeding Operations. *Environmental Health Perspectives*. 2006; 114(4): 591-596.
- ^{xxiv}Iowa State University and the University of Iowa Study Group. Iowa Concentrated Animal Feeding Operations, Air Quality Study, Final Report, 2002.
- ^{xxv}U.S. Environmental Protection Agency. Memorandum from Mario Jorquera, Chief, Stationary Source Enforcement Branch, Air Enforcement Division, U.S. EPA, to Scott Clardy, Director, Missouri Department of Health and Senior Services, Section for Environmental and Public Health, SUBJECT: Comments on the Valley View Health Consultation, December 2, 2002.
- ^{xxvi}U.S. Environmental Protection Agency. Fact Sheet on Wet Weather Discharges. Available at: <http://www.epa.gov/compliance/civil/cwa/wetweather.html>