

# CAFO AND FARMS MAY HAVE TO COMPLY WITH ADDITIONAL EMISSIONS REPORTING REQUIREMENTS

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Under the Waterkeeper case the D.C. Circuit held that a 2008 rulemaking that exempted certain CAFO's and farms from emission reporting requirements under certain statutes was improper. Large animal farms and dairies will now be required to report more air pollution from animal waste after the D.C. Circuit April 11 vacated the Environmental Protection Agency rule (Waterkeeper Alliance v. EPA , 2017 BL 117866, D.C. Cir., No. 09-1017, 4/11/17 ).

There are several reporting requirements for the release of certain defined hazardous chemicals, including ammonia. The two statutes at issue are overlapping. For instance if there were a release from a covered facility of ammonia, there would have to be reporting under both statutes.

On December 18, 2008, the US EPA published a final rule that clarified which livestock facilities must report air emissions from their facilities. The two regulations covered by that publication include the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and EPCRA (Emergency Planning and Community Right to Know Act).

Animal agriculture was granted an administrative exemption from reporting air emissions that normally occur from raising farm animals under CERCLA. EPCRA Reporting exemption applied to dairies and Farms that are not large Concentrated Animal Feeding Operations (CAFOs) according to NPDES permitting rules. Without this exemption, much more wide-spread and rigorous reporting would be required.

Passage of the 2008 final rule provided a legal exemption that applies to most livestock operations and clarifies where the exemption does not apply – essentially for large CAFOs under EPCRA. EPCRA requires that, whenever there is a known release of a hazardous substance, the person in charge of a facility must notify state and local emergency responders.

The decision could affect the 15,500 CAFOs operating in the U.S., according to numbers from the EPA. A CAFO under the NPDES definition is a farm that confines more than a certain number of animals—for example, over 1,000 cattle, 2,500 hogs, or 125,000 chickens.

The EPA based its exemption on its view that reports of air releases from CAFOs and farms was unnecessary because a federal response to the releases is generally impractical and speculative. Environmental groups including the Waterkeeper Alliance challenged the rule as a violation of the Comprehensive Environmental Response, Compensation and Liability Act and the Emergency Planning and Community Right-to-Know Act.

Judge Williams, for the D.C. Circuit, found that the EPA did not have the statutory authority to grant the reporting exemptions under CERCLA and EPCRA. Although the EPA argued its exemptions were appropriate because CERCLA and EPCRA already contained other exemptions the Court held that it does not “give the agency carte blanche to ignore the statute whenever it decides the reporting requirements aren’t worth the trouble,”

The court pointed to examples where people have been injured by animal waste air releases and measures farms can take to reduce injuries. “The record therefore suggests the potentiality of some real benefits” from reporting hazardous substance releases, the court concluded. Regulation of CAFO reporting is to be based upon ‘good faith emissions estimates’. Thus dairies and other farming operations that have emissions over the reporting thresholds must report under both CERCLA and EPCRA. A limited number of approaches for obtaining estimates are available. For most types of animal feeding operations, ammonia emissions are likely to trigger a reporting requirement, with reporting of hydrogen sulfide being much less likely.

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