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## EPA exempts farms from most toxic air release reports

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On Friday Dec. 12, as part of a last-minute rush of regulatory rule changes, the federal Environmental Protection Agency issued a new rule to exempt most livestock operators from reporting requirements “for air releases of hazardous substances from animal waste at farms.” The exemption marks the latest round in a long-fought battle. It may not be the final round since the new rule will take effect Jan. 16, just four days before Barack Obama becomes President on January 20<sup>th</sup> – leaving the possibility that the new administration will reverse the EPA’s changes in the new rule, “CERCLA/EPCRA Administrative Reporting Exemption for Air Releases of Hazardous Substances from Animal Waste at Farms.”

The American Farm Bureau Federation led the fight for the exemption, maintaining that Congress “never intended to regulate manure under the Comprehensive Environmental Recovery, Compensation & Liability Act (CERCLA) or the Environmental Protection & Community Right-to-Know Act (EPCRA).” Farm Bureau and other farm groups warned that under CERCLA (also known as Superfund) and EPCRA “virtually any agricultural operation producing, storing and/or using animal manure could be held liable.”

In earlier rounds of the battle:

- In March 2007, Senators Blanche Lincoln (D-AR), Pete Domenici (R-NM), Mark Pryor (D-AR), Saxby Chambliss (R-GA), Chuck Grassley (R-IA), Larry Craig (R-ID), Ben Nelson (D-NE), Mary Landrieu (D-LA), and Chuck Hagel (R-NE) introduced S. 807, the “Agricultural Protection and Prosperity Act of 2007,” which proposed “To amend the Comprehensive Environmental Response Compensation and Liability Act of 1980 to provide that manure shall not be considered to be a hazardous substance, pollutant, or contaminant.”
- In December 2007, the federal Environmental Protection Agency (EPA) proposed to exempt “releases of hazardous substances from animal waste at farms” from the requirements of CERCLA (the Comprehensive Environmental Response Compensation and Liability Act) and EPCRA (the Emergency Planning and Community Right-To-Know Act).

- On Sept. 24, 2008, the House Subcommittee on Environment and Hazardous Materials held hearings to consider both the EPA exemption proposal and a Government Accountability Office (GAO) report on “Concentrated Animal Feeding Operations” (CAFOs), subtitled “EPA Needs More Information and a Clearly Defined Strategy to Protect Air and Water Quality from Pollutants of Concern.”

Among its findings, the GAO report concluded that:

- Some CAFOs (Concentrated Animal Feeding Operations) generate more raw waste than U.S. cities produce annually.
- EPA has not yet assessed the extent to which air and water pollution from CAFOs may be impairing human health and the environment because it lacks key data on the amount of pollutants that CAFOs are discharging.
- EPA’s proposed rule to exempt animal feeding operations from reporting emissions of ammonia and hydrogen sulfide above 100 pounds per day is premature because EPA “has not yet completed its data collection effort and does not yet know the extent to which animal feeding operations are emitting these pollutants.”
- “To more effectively regulate CAFOs, GAO recommends that EPA complete its inventory of permitted CAFOs, reassess the current nationwide air emissions monitoring study, and establish a strategy and timetable for developing a process-based model for measuring CAFO air emissions.”

Despite the GAO recommendation to postpone regulatory changes, in the Sept. 24<sup>th</sup> hearing Assistant Administrator Susan Parker Bodine of EPA’s Office of Solid Waste and Emergency Response said that EPA would not wait to gather more information before finalizing its exemption rule.

EPA’s Dec. 12 announcement of the new rule explained that “This rule will enable response authorities to better focus their attention on hazardous substance releases that require a response, while reducing reporting burdens on America’s farms. Notifications must still be made to response authorities when hazardous substances are released to the air from sources other than animal waste (e.g., ammonia tanks), and when hazardous substances are released to soil and water.”

The reporting exemption is a full exemption from CERCLA/Superfund rules. It is a partial exemption under EPCRA. The EPA announcement explained that “The limited exemption under EPCRA resulted from EPA receiving comments on the proposed rule from state and local officials indicating that, although they did not expect to respond to notifications of air releases of hazardous substances from animal waste at farms, some still wished to receive notifications from large concentrated animal feeding operations (CAFOs). EPA has addressed these comments by requiring large CAFOs to continue submitting emergency notification reports under EPCRA.”

EPA’s 45-page Final Rule is available in pdf format at:

[http://www.epa.gov/emergencies/docs/chem/CERCLA\\_EPCRA\\_final\\_rule\\_unsigned.pdf](http://www.epa.gov/emergencies/docs/chem/CERCLA_EPCRA_final_rule_unsigned.pdf)