

March 18, 2008

The Honorable Stephen L. Johnson
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20036

Dear Administrator Johnson:

On December 28, 2007, the Environmental Protection Agency (EPA) issued a notice of proposed rulemaking and requested comments on a proposed reporting exemption for air releases of hazardous substances from animal waste under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, and the Emergency Planning and Community Right-to-Know Act (EPCRA). According to the December 28, 2007, Federal Register Notice, the EPA had received a petition from the National Chicken Council, National Turkey Federation, and U.S. Poultry and Egg Association in 2005 seeking an exemption from CERCLA and EPCRA reporting requirements for ammonia emissions from poultry operations.

As a major part of its justification for the proposed exemption, EPA points to 26 comment letters from State and/or local emergency response agencies that supported granting the poultry petition – that is, exempting poultry operations from CERCLA and EPCRA reporting requirements for ammonia emissions. The Congressional Research Service (CRS), however, has found that of the 26 comments, 17 from the local emergency planning commissions (LEPCs) and one from a State emergency response commission (SERCs) were essentially identical in text. Two other comments provided general information about responses to release notifications from poultry operations but did not specifically take a position on the poultry petition and one other comment asked for more information.

Overall, according to the CRS “the 26 represent only a small fraction of the 4,491 LEPCs and SERCs that are included in EPA’s database.” In fact, the 26 represent only .6 percent of the total LEPCs and SERCs.

Curiously, the EPA continues to ignore the opposition of State and local air pollution control agencies to the proposed exemption for Animal Feeding Operations (AFO) (attached letter dated March 20, 2007, from Executive Director S. William Becker to Representative Dingell). The March 20, 2007, letter from Mr. Becker on behalf of these agencies stated:

We do not believe a blanket exemption is warranted given the demonstrated health effects associated with ammonia and hydrogen sulfide, the amounts of

manure produced by AFOs and the usefulness of the data contained in CERCLA and EPCRA reports to State and local air agencies and the people living near these facilities.

In proposing this exemption for ammonia and hydrogen sulfide, the EPA is turning a blind eye to the very real health effects that can be caused by air releases of these two hazardous substances.

On October 17 and 18, 2007, the EPA issued a press release in two separate cases where penalties were assessed for failure to report a release of ammonia that exceeded the reportable quantity of 100 pounds. In the press release the EPA described the health consequences as follows:

Exposure to high concentrations of ammonia can cause severe burns on the skin, eyes, throat and lungs. Breathing low levels of ammonia can cause coughing, as well as nose and throat irritation. Ammonia also plays a role in the formation of particulate air pollution, which has been linked to numerous health problems, including chronic bronchitis and lung disease.

Some animal feeding operations have reported ammonia emissions at levels that far exceed the reporting threshold of 100 pounds/day such as 15,500 pounds (Three Mile Canyon Farms), 710 pounds/day (Desert Rose Dairy), 250 pounds/day (Seaboard Farms, Dorman Dow facility), 5,700 pounds/day (Premium Standard Farms Somerset Facility).

EPA scientists have also examined potential acute health effects from hydrogen sulfide emissions from feedlot wastewater lagoons. In 2004, EPA scientists reported that the assumed 100 pounds/day hydrogen sulfide emission rate appears likely to create downwind concentrations that substantially exceed the threshold for mild adverse effects. The EPA analysis indicated that acute respiratory irritation and effects to the central nervous system could be caused in downwind receptor populations to a distance of 0.6 to 1.8 kilometers. (See attached Memorandum from Roy L. Smith dated February 19, 2004.)

On February 29, 2008, a panel of experts from the Pew Commission on Industrial Farm Animal Production informed Congress that “the vast amounts of animal waste and byproducts from such facilities pose significant risks to human health and the environment, requiring greater – not lesser – scrutiny.” The expert panel stated that “the toxic gas emissions can be harmful – and even fatal – to farm workers and surrounding communities.” According to the panel, “studies of residents living near industrial food animal production facilities have documented increased rates of neurobehavioral and neuropsychiatric abnormalities.” The two year investigation of AFOs led the panel to conclude as follows:

Monitoring is a basic component of strategies to protect the public from harmful effects resulting from contamination or disease yet monitoring systems in

industrial food animal production are inadequate – a situation that makes mandatory reporting of toxic emissions even more important.

The reporting requirements of CERCLA and EPCRA are the only source of information providing emissions data for significant releases of ammonia and hydrogen sulfide. There are no specific Federal regulations under the Clean Air Act (CAA) that limit or control emissions of hydrogen sulfide from AFOs; and ammonia is not a regulated pollutant. There are no nationally applicable Federal regulations restricting emissions of ammonia from AFOs.

We also note that in 2006, EPA entered into the Animal Feeding Operations Air Compliance Agreement with approximately 13,900 farms in 42 States. This Air Compliance Agreement was challenged in the case of *Association of Irrigated Residents, et al vs. Environmental Protection Agency*, 494 F. 3d 1027 (U.S. Court of Appeals for the District of Columbia, July 17, 2007.) In its brief to the Court of Appeals, EPA stated that the consent agreements provide that the AFO will determine their emissions using the appropriate methodology and come into compliance with all applicable CAA, CERCLA, and EPCRA requirements once EPA publishes emissions methodologies. The agreements granted participating AFOs a covenant not to sue and release from liability for certain potential past and ongoing CAA, CERCLA, and EPCRA violations. EPA further assured the Court of Appeals that “the release and covenant are contingent on the participating AFOs full compliance with the consent agreement, including undertaking whatever actions may be required to come into compliance with any applicable statutory requirements.”

Now, EPA is proposing to eliminate the statutory reporting requirements under EPCRA and CERCLA. This raises extremely disturbing questions about whether the agency gave these animal feeding operations immunity from enforcement to allow time for the agency to move forward with a blanket exemption from the very reporting requirements under CERCLA and EPCRA that were the subject of the Animal Feeding Operation Air Compliance Agreement.

For all of the above reasons, the proposed reporting exemption for air releases from farms appears ill-considered and contrary to the public interest. To assist us in better understanding the basis for the proposed rule, we request responses pursuant to Rules X and XI of the Rules of the House of Representatives to the following questions by close of business March 27, 2008.

1. The original 2005 petition submitted by the National Chicken Council, National Turkey Federal, and U.S. Poultry and Egg Association sought an exemption only for ammonia emission reporting. It did not include hydrogen sulfide.

Has EPA received any petitions from other persons, companies or industries seeking a reporting exemption for hydrogen sulfide air releases from farms? If so, please provide any such petition or communication. If not, please

explain the basis upon which EPA expanded the scope of the original petition to propose an expanded exemption that includes hydrogen sulfide and other hazardous substances.

2. On December 27, 2005, EPA acknowledged receipt of the petition from the National Chicken Council, et al, and requested public comment. Has the EPA ever requested public comment prior to issuing the proposed exemption on the merits of exempting hydrogen sulfide and other hazardous substances from the CERCLA and EPCRA reporting requirements? If so, explain when and how this was done and provide the comments received.
3. If the EPA finalizes exemptions from CERCLA and EPCRA reporting requirements, what prevents an AFO, or all the participating AFOs, from opting out of the agreement?
4. In reference to ammonia and hydrogen sulfide and other pollutants emanating from AFOs, the Court of Appeals for the District of Columbia has stated that “generally, an AFO emits these pollutants in proportion to its size; the more animals it houses, the more it pollutes.”

If burden reduction was a factor in EPA’s proposed rule, why didn’t EPA consider limiting the exemption to small family farms rather than providing an exemption for large corporate concentrated animal feeding operations?

5. Is EPA aware of any small farm operations, as opposed to large-scale industrial AFOs, that have triggered the reporting requirements for ammonia and hydrogen sulfide? If so, please provide a description of the reported emissions.
6. Does an episodic release notification for ammonia or hydrogen sulfide require anything other than a telephone call to the National Response Center? If so, please explain what else is required?
7. Are the emissions of hydrogen sulfide and ammonia from farms, and particularly large concentrated animal feeding operations, within the range of typical background concentrations in the air? If so, please explain in detail how you arrive at this conclusion.
8. Can EPA estimate how many animals would produce emissions of hydrogen sulfide and ammonia that would be expected to exceed the reporting requirement of 100 pounds/day?
9. Has any EPA employee or contractor hired by EPA conducted any analysis of the health effects from ammonia and hydrogen sulfide emissions from AFOs subsequent to the analysis conducted by Dr. Roy L. Smith of EPA’s Office of

Air Quality Planning and Standards on February 19, 2004? If so, please provide any such analysis, review, or report.

10. By what date does EPA expect to publish its methodologies for estimating emissions from AFOs that are being developed pursuant to the Air Compliance Agreement?
11. Has the EPA investigated the circumstances under which six local jurisdictions and/or local emergency response authorities (Luray, Virginia; Clinton, NC; Leesport, PA; Elizabethtown, NC; Dover, DE; Washington, AR) in five different States filed the identical comments under the name of six different officials? If not, please indicate whether EPA intends to investigate the circumstances of the identical nature of these comments in determining how much weight is given to each individual comment.
12. Until the EPA publishes the methodologies for estimating emissions, how is it able to determine whether there would be a significant number of notifications from the animal feeding operation sector? If EPA is able to currently make such a determination please provide the detailed basis for such determination for poultry, pork, and cattle livestock.
13. Did the Kentucky District Court in *Sierra Club Inc. vs. Tyson Foods*, 299 F. Supp. 2d.693 (W.D.Ky. 2003) hold that larger companies that contract with bird growers for bird production may be liable for compliance with CERCLA and EPCRA reporting requirements at contract grower facilities?
14. How many poultry farmers participated in the Air Compliance Agreement? Of the total numbers of participating poultry farmers how many are small family-owned farms and how many are larger companies?
15. Under the terms of the Air Compliance Agreement, participating AFOs agreed to pay a civil penalty, to be responsible for the payment of funds to the national air emissions monitoring study, and make certain farms available for monitoring.

Did every participating AFO make a payment to support the national air emissions monitoring study? If so, what was the average payment and the total collected?

Sincerely,

s/John D. Dingell
Chairman
Committee on
Energy and Commerce

s/Albert R. Wynn
Chairman
Subcommittee on
Environment
Hazardous Materials

s/Hilda L. Solis
Vice Chair
Subcommittee on
Environment
and Hazardous Materials

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable John B. Shadegg, Ranking Member
Subcommittee on Environment and Hazardous Materials