



Dairy CARES Report

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To report or not to report: Sorting out the Bush Administration's EPCRA 'surprise'

There are often a few last-minute surprises with an outgoing administration, and the Bush Administration was no exception. With the clock running out, the U.S. Environmental Protection Agency on Dec. 18 published a new federal rule to allow an "administrative reporting exemption" for "air releases of hazardous substances from animal waste at farms."

Specifically, the new rule exempts livestock farms from reporting certain emissions such as ammonia under the federal law commonly called the "Superfund" law. Officially known as CERCLA, the Comprehensive Environmental Response, Compensation and Liability Act was adopted by Congress in 1980 following the infamous Love Canal toxic dumping disaster.

The CERCLA law was never intended to apply to farms, but was written in such a way that farms were not clearly exempt. The Dec. 18 publication was a good faith attempt by U.S. EPA to stop an unnecessary waste of time on the part of both farmers and government employees. Clearly natural air emissions from livestock waste are not toxic waste dumps. The Bush Administration correctly recognized that this was a requirement that benefitted no one, and diverted limited resources away from more important matters.

Exemption only partial

The Administration also appeared poised to exempt reporting of livestock waste emissions under another environmental law passed in 1986, known as EPCRA (Emergency Planning and Community-Right-to-Know Act). Again this law, which was passed shortly after a chemical plant explosion in Bhopal, India killed thousands of people, was never intended to apply to natural emissions from livestock waste. Instead it was focused on making sure communities and emergency responders knew about dangerous chemicals that were stored in their communities.

Unfortunately, U.S. EPA only granted a partial exemption to EPCRA reporting and **dairies with more than 700 cows** that also emit more than 100 pounds per day of ammonia (or other listed substances) are still required to submit EPCRA reports. Questions remain about how best to calculate these emissions, and the U.S. EPA has not adopted emission factors for ammonia from dairies so there are no "official" numbers.

Who should report and when

Failure to comply with EPCRA reporting can result in stiff fines and penalties, although the U.S. EPA just this week began to issue guidance on how to go about reporting (and some of this guidance remains unclear).

In 2005, CARES recommended that individual dairy producers strongly consider signing a consent agreement with the U.S. EPA that deferred EPCRA requirements until a National Air Emissions Study (NAEMS) was completed. The NAEMS study is ongoing and the consent

agreement remains in effect. Dairy producers who signed the agreement are not required to report emissions under EPCRA at this time.

All other dairy producers with more than 700 mature dairy cows (or more than 1,000 total bovine animals) wishing to reduce their potential liability should file EPCRA reports. The sooner the reports are filed, the lesser the liability.

How should a report be filed?

Initially, two phone calls are required: one to the California Emergency Management Agency at (800) 852-7550 and a second to your local Certified Unified Program Agency (CUPA). A list of local CUPAs and phone numbers (titled “California Dairy Contact List”), frequently asked questions, the federal rule published Dec. 18, and other information can be found <http://www.dairycares.com/reports/reports.html>, under “Producer Information Resources.” A suggested script to guide the dairy operator through the initial phone call is also included in the document “CARES questions and answers” at the same link.

What is the next step?

A written report containing estimations of ammonia emitted by the dairy must be submitted within 30 days of the initial phone calls. Currently, we understand that a form appropriate to California dairy producers is being developed. CARES will work with its member organizations to make sure the form is available to dairy producers as soon as possible. Meanwhile, dairy producers are advised to consult with their trade associations or milk processors for further assistance.

Final thought

No doubt there has been some confusion as a result of this last-minute, partial exemption. It would have been better if the exemption from these requirements was complete. After all, this layer of regulation is completely unnecessary – not only does the information reported serve no useful purpose, but dairies in California are already required to obtain air pollution permits that actually contain requirements for management practices and control technologies. Reporting under EPCRA adds nothing helpful.

CARES recommends full compliance with the law, but we also hope the new Administration will take steps, soon, to end this type of pointless and inefficient reporting.

CARES is a statewide coalition supporting economic and environmental sustainability for California's dairy industry. CARES members include the Alliance of Western Milk Producers, Bank of the West, Bar 20 Dairy Farms, California Dairies Inc., California Dairy Campaign, California Farm Bureau Federation, Dairy Farmers of America-California, Dairy Institute of California, Hilmar Cheese Co., HP Hood, Joseph Gallo Farms, Land O' Lakes, Milk Producers Council, Turlock Dairy & Refrigeration, Western United Dairymen, and others. For information about CARES, visit our web site at www.dairycares.com, write dairycares@aol.com or call 916-441-3318.