



VIA E-MAIL TO: a-and-r-Docket@epa.gov

Attn: Ms. Lisa Jackson, Administrator
United States Environmental Protection Agency
EPA Docket Center (EPA/DC)
Mail Code 6102T
Docket ID No. EPA-HQ-OAR-2008-0508
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: EPA's Proposed Rule for Mandatory Greenhouse Gas Reporting (Docket ID No. EPA-HQ-OAR-2008-0508)

Dear Ms. Jackson:

On behalf of Dairy Cares, we submit the following comments regarding the U.S. Environmental Protection Agency's (EPA's) above-referenced Proposed Rule for Mandatory Greenhouse Gas Reporting (proposed rule).

Dairy Cares is a coalition of California's dairy producer and processor associations, including the state's largest producer trade associations (*Western United Dairymen, California Dairy Campaign* and *Milk Producers Council*) and the largest milk processing companies and cooperatives (including *California Dairies, Inc., Dairy Farmers of America-Western Area Council, Hilmar Cheese Company, Joseph Gallo Farms, Producers Bar 20 Dairy* and *Land O' Lakes*). Formed in 2001, Dairy Cares is dedicated to promoting the long-term sustainability of California dairies.

Our coalition members appreciate the critical role the EPA plays in protecting the environment and human health. We support your Agency in its mission to protect our nation's air and water, our population's health, and your developing mission of mitigating the role of human activity in climate change. As such, we are pleased to provide our comments on the Proposed Rule and hope they will be helpful to your Agency as you move toward final adoption of the rule.

I. Dairy Cares opposes mandatory Greenhouse Gas reporting for livestock operations

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Our coalition has carefully reviewed the proposal to require mandatory reporting of Greenhouse Gas (GHG) emissions from certain manure storage and treatment facilities at livestock operations at the level of 25,000 tons annual emissions carbon dioxide equivalents (CO₂e), as well as other potential thresholds. We concur with the comments of the National Milk Producers Federation (NMPF) and other stakeholders that such a requirement will provide little or no useful data to EPA, while imposing significant costs and liability to those livestock facilities required to report. Dairy Cares agrees with NMPF and other commenters that:

- Even at the 25,000-ton CO₂e threshold level, it is likely that **significantly more than 50 livestock operations would be required to report** nationwide.
- The data provided by **reporting from large livestock operations would not improve the overall national inventory of livestock GHG emissions**, because:
 - Doing so focuses on only a tiny fraction of the overall GHG inventory from livestock, and a vanishingly small fraction of the national inventory.
- The **cost of reporting is likely to greatly exceed EPA's estimates** (see our technical analysis below), imposing a burden on those facilities reporting without improving the emissions inventory or providing any useful pathway to mitigation.
- The reporting requirement exposes livestock facilities to **significant civil liability** because of provisions allowing enforcement through third-party citizens lawsuits, combined with **significant uncertainty and complexity** in the reporting process.

As such, Dairy Cares does not support site-by-site reporting of GHG emissions from livestock facilities at this time. Livestock facilities are not “smokestack” operations. Rather, they are complex open-air sources and as such the process of estimating emissions from manure storage is an inexact science at best.

II. Preferred option: Regional inventories combined with incentives

Because of the inherent uncertainties related to measuring GHG emissions from highly variable sources (variations can occur seasonally, diurnally, geographically and by differences in manure management), Dairy Cares believes that regional livestock GHG inventories based on a more general survey of the operating and climate conditions – much as EPA has utilized to date – provide more useful data for policy decisions. In fact, the ongoing National Air Emissions Study (NAEMS), a groundbreaking multi-year study of various livestock facilities across the nation and under the oversight of EPA, promises to soon deliver data and methodologies needed for improved regional GHG estimates.

The policy objective of reducing GHG emissions from livestock operations is best served by creating financial incentives for capturing methane biogas from manure management containment structures and utilizing the gas as a source of renewable energy. An incentive system that scales rewards for doing so based on the volume of biogas destroyed will have three important benefits:

- It will send the appropriate signal to the market that the larger the amount of biogas converted to renewable energy, the larger the financial reward, and
- It will **combine reporting requirements, costs and burdens with the financial incentives for renewable energy**, rather than requiring operations to report even

if they have no immediate plans or prospects to pursue a biogas-to-energy project. Thorough validation of emissions produced and subsequently reduced only makes sense once a biogas-to-energy project is actually in place. Thus, claimed emissions reductions are subjected to an appropriate validation process.

- This approach does not limit biogas production/energy generation to a class of operations above or below a certain threshold, but instead allows any operation to pursue projects that make financial sense.

III. Any livestock reporting requirement should be simple, transparent, inexpensive and incur less potential liability

While Dairy Cares opposes mandatory reporting of GHG emissions for livestock operations, we recognize that EPA may choose to move forward with such a proposal. In such an event, we strongly suggest that EPA refine its approach to reporting with a simpler, more transparent and less costly approach. Specifically:

- EPA should develop a plain English, simple screening tool (and solicit comment from stakeholders on the adequacy of the tool) that may be used by a dairy or other livestock operator to determine whether a reporting threshold is exceeded, using easily available and verifiable data from the operation itself (such as herd size, retention pond dimensions, etc.). **It should not be necessary to hire or compensate a third-party consultant or other outside expert simply to determine whether reporting is required.**
- If a reporting threshold is triggered via the screening tool, the requirements imposed for livestock operations should be greatly simplified. Livestock operators should be able to fill out an EPA-approved questionnaire or other simplified reporting tool for submittal to EPA. If in some cases additional information is needed, EPA could on a case-by-case basis request it.
- Requirements for site monitoring, Quality Assurance Program Plans (QAPPs), environmental sampling and testing and similar requirements are excessive and provide no benefit. As such, those livestock operations that are required to report should be required only to submit information that can be gathered and verified by the business operator and his or her employees, without requiring payments to outside consultants, or other third parties.
- EPA should use great care in developing reporting requirements for existing biogas digester projects and in contemplating future biogas digester reporting requirements. These monitoring requirements should be limited to what is needed to verify emission reductions for the purposes of banking reduction credits. Further burdensome reporting could dis-incentivize biogas-to-energy projects.
- Detailed technical emissions monitoring should be reserved only for installation of new or expanded biogas-to-energy projects, as a condition for incentive funding or other project incentives.

Additional technical comments

While the comments above capture the general scope of Dairy Cares concerns, below we have included some additional details and potential suggestions for addressing the issues raised.

Determining Applicability

1. The proposed rule requires that monitoring be conducted to measure inputs for the calculation methodology in order to make an applicability determination (i.e., a determination of whether a facility has to report GHG emissions under the proposed rule). As a result, facilities may be subject to a financial burden arising from costs associated with monitoring, even in cases where the facility is not subject to the proposed rule. EPA is seeking comment on whether to implement an alternative method to determine applicability, such as a screening tool.
 - a. We recommend that EPA develop and implement a screening tool that uses published default values for total volatile solids (TVS) and percent of nitrogen present in the manure (N_{manure}) (i.e., as opposed to monitoring) to make an initial applicability determination. Default values can be found in the 2006 IPCC Guidelines. If the screening tool indicates that a facility is close to the reporting threshold, then more refined calculations based on monitoring data can be required. Using default values will save costs for those facilities that are close to but below the reporting threshold.
 - b. Additionally, we suggest that EPA provide a public comment period or a similar public process to accept input before implementing this screening tool.
 - c. We suggest that EPA provide an estimate of the potential cost to farmers who would be required to perform monitoring but subsequently are not subject to the proposed rule. We anticipate that such an analysis will show that the cost related to developing and implementing this screening tool will be less than the monitoring costs for farmers who are not subject to the proposed rule.
2. We are strongly concerned that the rule, as proposed, requires that if a facility is ever subject to reporting that it must continue to report even if its emissions drop below the threshold. This is a burdensome requirement since many dairies may reduce the number of cows due to economic constraints and current herd-reduction efforts. We request that this requirement be removed for dairies (e.g., manure management).

Monitoring Requirements

3. EPA's proposed rule has a monitoring component to determine inputs required to estimate GHG emissions from manure management. Discrepancies in the cost per facility were identified in the various documents published by EPA in support of the proposed rule. Based on a review of the "Guide for Agriculture Livestock Sectors" document published by EPA, the cost per facility is estimated to be \$900. However, based on a review of the Regulatory Impact Analysis (RIA) and the Preamble to the Proposed Rule, EPA estimates the cost per facility to be approximately \$4,800 per facility. There seem to be discrepancies between EPA's assessment of the costs. Furthermore, based on a review of the RIA, the monitoring costs are estimated to be \$40 per month. Based on our own review of the analytical cost for total volatile solids (TVS) using Method 160.4 and total Kjeldahl nitrogen (TKN), the percent of nitrogen present in the manure, using Method 351.3, monthly analytical costs will range from \$92 to \$123. This results in an annual analytical testing cost of \$1,100 to \$1,500. Based on a review of the cost breakdown tables in the RIA (Tables 4-64, 4-65a, and 4-65b), it does not appear that the analytical costs were included. Therefore, the real cost per facility is closer to \$5,900 to \$6,300 (\$4,800 + \$1,100 or \$4,800 + \$1,500). This estimated total cost does not appear to be included in the cost breakdown in the RIA. These costs result in a substantial burden on the dairies that are subject to the reporting rule, not to mention those dairies that will be required to perform the monitoring just to determine that they are below the 25,000 MT CO₂e threshold and not subject to the reporting rule.
4. Based on a review of the RIA, "the SUSB data does not provide establishment information for agricultural NAICS codes (e.g., NAICS 112 which covers manure management). However, the per-entity costs are small (less than \$1,000 per year) and EPA believes the ultimate parent companies of the entities covered are not small businesses." This statement contradicts with the cost estimate of \$4,800 indicated in another section of the RIA (as discussed in Comment 3 above). In fact, the actual analytical laboratory cost alone for dairies without digesters is between \$1,100 and \$1,500. Therefore, the financial burden to small businesses is more significant than what EPA is asserting in the RIA, particularly if dairies that are close to the reporting threshold are required to perform monitoring to demonstrate whether they are subject or not subject to the proposed rule. In general, not enough is known about the impact of this proposed rule on small businesses and, therefore, the proposed rule could result in a significant burden on the resources of small businesses.
5. It is our understanding that EPA may be in the process of replacing EPA Method 351.3 with Standard Method 4500-N. If this is the case, EPA may wish to list this Standard in §98.364(c) so that dairies will be in compliance with the proposed rule if the laboratory analytical method changes in the near future.

Emission Calculation Methodology

6. The methodology set forth in the proposed rule appears to be the same as the methodology used by Intergovernmental Panel on Climate Change (IPCC). Methodologies to calculate GHG emissions can change over time based on information gleaned from new studies. For example, ongoing research may indicate that the maximum CH₄ production potential (B₀) values are too conservative¹. Currently, the proposed rule explicitly defines the calculation methodologies and default values. Instead, we recommend that the EPA include the methodologies and default values in a separate document that is referenced in the EPA rule. We believe that this approach will ensure that the most recent calculations and default values (i.e., good science) are used. Additionally, this approach will avoid the need to amend the rule every time the calculations or default values need to be updated. Alternatively, we recommend that the IPCC methodology be referenced in the proposed rule. That way, when the IPCC methodology is updated, the calculation methodology in the proposed rule will also be updated by reference.
7. The proposed rule uses global warming potentials (GWPs) of 21 and 310 for CH₄ and N₂O, respectively, which are based on the IPCC's Second Assessment Report (SAR). EPA should explain why the more up-to-date GWPs in the IPCC's Third Assessment Report (TAR) were not used in the proposed rule. We recommend that if the IPCC calculation methodology is used, the most up-to-date GWPs be used for consistency. Therefore, similarly to Comment 3 above, we recommend that EPA includes the GWPs in the reference document, which can be updated to reflect the most recent GWPs or that the EPA references the current IPCC GWPs.
8. The methodology included in the proposed rule does not include all animal types present on a farm (e.g., calves). However, the technical support document released by the EPA includes emissions from calves. We recommend that default value tables (i.e., Table JJ-1) be modified to include information from all animals from which the EPA will ultimately require emissions to be reported.

General

9. The proposed rule accounts for the destruction of CH₄ due to combustion in a flare or engine. However, the calculation methodology does not appear to account for other beneficial uses of the biogas, such as injection in a natural gas pipeline (i.e., it appears that a facility cannot reduce its CO₂eq emissions by routing gas from an anaerobic lagoon to a pipeline). The rule language should be broadened to include the removal of CH₄ from the dairy through pipelines or other means for off-site uses.
10. We agree with the proposed rule language that CO₂ emissions from combustion devices using digester gas should not included in the reporting methodology.

¹ On-going Frank Mitloehner research, University of California, Davis.

According to the Technical Support Document, "CO₂ resulting from the combustion of digester CH₄ is not accounted as an anthropogenic emissions under international accounting guidance."

On behalf of Dairy Cares, we once again thank EPA for the opportunity to comment on this Proposed Rule.

Sincerely,

A handwritten signature in black ink, appearing to read 'J.P. Cativiela', with a large loop at the end.

J.P. Cativiela
Dairy Cares Program Coordinator

C: William C. Van Dam, Chairman, Dairy Cares
Dr. Julia Lester, ENVIRON