



# National Milk Producers Federation

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Agri-Mark, Inc.  
Associated Milk Producers Inc.  
Bongards' Creameries  
California Dairies, Inc.  
Cayuga Marketing  
Cooperative Milk Producers Association  
Dairy Farmers of America, Inc.  
Ellsworth Cooperative Creamery  
FarmFirst Dairy Cooperative  
First District Association  
Foremost Farms USA  
Land O'Lakes, Inc.  
Lone Star Milk Producers  
Maryland & Virginia Milk Producers Cooperative Association  
Michigan Milk Producers Association  
Mount Joy Farmers Cooperative Association  
Northwest Dairy Association  
Oneida-Madison Milk Producers Cooperative Association  
Prairie Farms Dairy, Inc.  
Scioto Cooperative Milk Producers' Association  
Southeast Milk, Inc.  
Tillamook County Creamery Association  
United Dairymen of Arizona  
Upstate Niagara Cooperative, Inc.

February 15, 2024

United States Environmental Protection Agency (USEPA)  
Office of Land and Emergency Management (OLEM)  
1200 Pennsylvania Avenue, NW  
Mail Code 28221T  
Washington, DC 20460

**Re: Docket No. EPA-HQ-OLEM-2023-142, Potential Regulation for Emergency Release Notification Requirements for Animal Waste Air Emissions Under the Emergency Planning and Community Right-to-Know Act (EPCRA)**

The National Milk Producers Federation (NMPF), established in 1916 and based in Arlington, VA, develops and carries out policies that advance the well-being of dairy producers and the cooperatives they own. The members of NMPF's cooperatives produce the majority of the U.S. milk supply, making NMPF the voice of dairy producers on Capitol Hill and with government agencies.

NMPF is pleased to offer its views in response to EPA's request for comments on the Advanced Notice of Proposed Rulemaking (ANPR) for reconsideration of the exemption for the reporting of air emissions from animal waste under the Emergency Planning and Community Right-to-Know Act (EPCRA) which was finalized in 2019. We concurred with the proposal to exempt those air emissions and commended the Agency for putting it forth. We appreciate that EPA is not currently proposing to require the reporting of air emissions from animal waste under EPCRA, but we are not pleased that EPA has chosen to reconsider the exemption for reasons that are beyond the scope of EPCRA's original intent.

NMPF was disappointed with the April 11, 2017, United States Court of Appeals for the District of Columbia's vacatur of the December 18, 2008, rule which limited the scope of reporting air emissions from manure. Both EPCRA and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) statutes were designed to assist in identifying releases of hazardous substances and to facilitate remedial action. Requiring farmers to report air emissions from manure under either law is contrary to the purpose of those laws which were created to address emergencies, impedes the efforts to respond to actual emergency releases by creating massive paperwork backlogs, and exhausts resources that should be utilized for those emergencies. The

emergency response community is already on the record being opposed to receiving manure air emission reports under EPCRA. And the U.S. Coast Guard which receives hazardous release reports under CERCLA is also on the record in opposition to receiving manure air emission reports.

NMPF and other agriculture groups worked diligently in 2017 and 2018 to inform Congress of the ramifications of the Court's ruling and as a result, bipartisan support quickly materialized. The speed with which Congress acted and the volume of support from both parties sent a clear message that manure air emission reporting is unnecessary. In addition, the October 3, 1986, conference report on EPCRA made it clear that air emission reporting of these releases was unwarranted and contrary to what Congress intended. Specifically, page 285 of the Conference Reports (see attached excerpt) says:

On-site releases that do not extend off-site are exempt from the requirements. **In addition, releases which are continuous or frequently occurring and do not require reporting under CERCLA do not require reporting under this section [emphasis added].**

On March 13, 2018, the Congressional Research Service (CRS) issued a memorandum to the Senate Committee on Environment and Public Works regarding a supplemental analysis of the FARM Act (S. 2421), which was ultimately enacted into law as a division of P.L. 115-141. The CRS memo details three situations where reporting is required under Section 304 of EPCRA. The third situation described below is relevant.

In this third situation, releases of extremely hazardous substances listed under EPCRA would require notification under Section 304(a)(2), if the release:

- (A) is not a federally permitted release as defined in Section 101(10) of CERCLA;
- (B) is in an amount in excess of a reportable quantity that the U.S. Environmental Protection Agency (EPA) designated under Section 302 of EPCRA; and
- (C) "occurs in a manner" that would require notification under Section 103 of CERCLA.

Page 284 of the 1986 Conference Report (CR) specifically discussed the situation and explained when clause "C" applies. **"This requires notification where there is a release of an extremely hazardous substance that would require notice under section 103(a) of CERCLA but for the fact that the substance is not specifically listed under CERCLA as requiring such notice [emphasis added]."** Ammonia and hydrogen sulfide, the primary air emissions from manure, are specifically listed under CERCLA (see attached excerpt from

EPA List of Lists). Given that ammonia and hydrogen sulfide are listed, clause “C” is not satisfied and therefore no reporting obligation under EPCRA 304(a)(2) materializes.

NMPF concurs with the no reporting sentiment Congress expressed the CR in 1986.

NMPF also concurred with EPA’s proposed changes in 2019 and the language EPA utilized to effectuate the exemption and definition of “Animal Waste” and “Farm” as shown below.

§ 355.31

What types of releases are exempt from the emergency release notification requirements of this subpart?

\* \* \* \* \*

(g) Air emissions from animal waste (including decomposing animal waste) at a farm.

3. Amend § 355.61 by adding in alphabetical order the definitions “Animal waste” and “Farm” to read as follows:

§ 355.61

How are key words in this part defined?

Animal waste means feces, urine, or other excrement, digestive emission, urea, or similar substances emitted by animals (including any form of livestock, poultry, or fish). This term includes animal waste that is mixed or commingled with bedding, compost, feed, soil, or any other material typically found with such waste.

\* \* \* \* \*

Farm means a site or area (including associated structures) that—

(1) Is used for—

(i) The production of a crop; or

(ii) The raising or selling of animals (including any form of livestock, poultry, or fish); and

(2) Under normal conditions, produces during a farm year any agricultural products with a total value equal to not less than \$1,000.

In what we thought was the end to the flip-flopping on whether manure air emissions were reportable, or not, we were pleased with the bipartisan fix that Congress provided for CERCLA in the 2018 FARM Act and were pleased with EPA for finalizing an exemption under EPCRA on June 13, 2019.

### **Recent White House and EPA Actions and the Request for Additional Information**

On January 20, 2021, President Biden issued Executive Order (E.O.) 13990 which states that it is the policy of the new administration:

“to listen to the science, to improve public health, to improve the environment, to ensure access to clean air and water, to limit exposure to dangerous chemicals and pesticides, to hold polluters accountable, including those who disproportionately harm communities of color and low-income communities, to reduce greenhouse gas emissions, to bolster resilience to the impacts of climate change, to restore and expand our national treasures and monuments, and prioritize both environmental justice and the creation of well-paying union jobs necessary to deliver these goals”

This well-intentioned policy outlines many of the goals and actions that the U.S. dairy industry has been pursuing for over a decade, well before the release of E.O. 13990. So, we are in alignment with E.O. 13990, we just do not agree with its application to the EPCRA issue at hand.

EPA raises forty-eight questions in the ANPR- unfortunately, many of those questions cannot be answered. For questions that can be, we offer the below thoughts.

### **NAEMS:**

EPA has been working collaboratively with animal agriculture to establish air emissions estimating methodologies under the National Air Emissions Monitoring Study (NAEMS) that originated in 2005, nearly 20 years ago. Since then, EPA issued draft methodologies in 2012 which EPA's own Science Advisory Board determined needed additional work. Eight years later in 2020, EPA again introduced revised methodologies which were incomprehensible. EPA acknowledged this, and promised that when the final methodologies were released, they would be understandable and usable. It is 2024, and NMPF has not seen the final methodologies, leading to further skepticism that the

methodologies will in fact be comprehensible, useable, and accurate. Without seeing those methodologies and understanding them, we cannot answer many of the questions EPA has proposed in this ANPR.

In fact, we do not have any insight into what regulations or acts of Congress may be triggered when EPA finalizes those methodologies. We speculate that the Clean Air Act might be implicated, but a NMPF conversation with EPA scientists years ago in Research Triangle Park, NC, indicated that EPA scientists felt that few if any animal agriculture operations would have any regulatory burdens imposed on them for emissions associated with the methodologies. However, it is impossible to know as 15 years later we are still waiting for the models to be released.

### **Small Farms**

EPA raises several questions in the ANPR about an exemption for small farms and asks how such an exemption should be based, for example on animal numbers or some sort of farming practice. We think a small farm exemption as applied to dairy is nonsensical. We do not believe any dairy farm, small or large, will reach the EPCRA RQ for hydrogen sulfide and we believe it will take somewhere well over one thousand cows to reach the EPCRA RQ for ammonia. Given those numbers we find it hard to believe that EPA could justify a small farm exemption that would provide relief in a meaningful way for dairy farmers.

### **EPCRA is the Wrong Tool**

As EPA indicates on its website:

*The Emergency Planning and Community Right-to-Know Act (EPCRA), authorized by Title III of the Superfund Amendments and Reauthorization Act (SARA Title III), was passed in 1986 in response to concerns regarding the environmental and safety hazards posed by the storage and handling of toxic chemicals. These concerns were triggered by the 1984 disaster in Bhopal, India, caused by an accidental release of methylisocyanate. The release killed or severely injured more than two thousand people.*

Despite having EPCRA in place, chemical spills and accidents continue to occur. In fact, in a November 2023 report by Coming Clean and Environmental Justice Health Alliance for Chemical Policy Reform, a significant spill or accidental release occurs almost daily. The Coming Clean report states that over 825 hazardous chemical incidents have occurred in the U.S. since January 1, 2021.

- Over 150 incidents have resulted in injury, hospitalization, and/or reports of acute symptoms following a chemical exposure event.

- 191 communities were advised or required to evacuate.
- 101 communities were advised to shelter in place.
- 43 people lost their lives in the immediate aftermath of a hazardous
- chemical incident.

Those 825 incidents are precisely what EPCRA is for - the reporting of toxic chemicals which lead to environmental and safety hazards. NMPF does not believe that air emissions from dairy manure are anything like the 825 reports mentioned. They will not send people to the hospital, cause communities to evacuate or to shelter in place or cause people to lose their lives, nor should they be subject to regulation, especially EPCRA §304. EPCRA §304 says:

If a release of an Extremely Hazardous Substance is at or above its applicable Reportable Quantity, the facility must notify the State or Tribal Emergency Response Commission (SERC or TERC) and the Local or Tribal Emergency Planning Committee (LEPC or TEPC) for any area(s) likely to be affected by the release.

In that notification the following information must be provided:

- The chemical name.
- An indication of whether the substance is extremely hazardous.
- An estimate of the quantity released into the environment.
- The time and duration of the release.
- Whether the release occurred into air, water, and/or land.
- Any known or anticipated acute or chronic health risks associated with the emergency, and where necessary, advice regarding medical attention for exposed individuals.
- Proper precautions, such as evacuation or sheltering in place.
- Name and telephone number of contact person.

The facility must also provide a detailed follow-up written report as soon as practicable after the release. State or Tribal Emergency Response Commissions (SERCs or TERCs) and Local or Tribal Emergency Planning Committees (LEPCs or TEPCs) are required to make these reports available to the public.

When the initial notifications are made, the receiving party, SERC, TERC or the LEPC must figure out how to respond to such a notification which can, and will, result in dispatching local emergency responder resources, i.e., fire trucks and police vehicles to deal with and mitigate the emergency. In the case of a manure

report - an emergency does not exist – but the report will put a strain on local emergency responder resources.

EPA estimates that there are approximately 1.25 million farms with livestock on them that could be subject to EPCRA notifications if the exemption is withdrawn. EPA further estimates that approximately 37,891 farms will reach a reportable quantity and need to file a report each year. That is a thousand times as many reports as are currently being made. NMPF sees that as a huge number of tedious time-consuming unnecessary reports to drop into the hands of the emergency response community to have them figure out what to do in response to those nonsensical reports.

### **National Security, Privacy & Safety**

According to the Department of Homeland Security:

*“There are sixteen critical infrastructure sectors whose assets, systems, and networks, whether physical or virtual, are considered so vital to the United States that their incapacitation or destruction would have a debilitating effect on security, national economic security, national public health or safety, or any combination thereof. Presidential Policy Directive 21 (PPD-21): Critical Infrastructure Security and Resilience advances a national policy to strengthen and maintain secure, functioning, and resilient critical infrastructure.”*

The Food and Agriculture Sector is one of those sixteen presidentially identified sectors which dairy and other agriculture operations are part of. The food and agriculture sector, including farms, restaurants, and food manufacturing, processing, and storage facilities, is almost entirely privately-owned and our workers have been repeatedly identified by DHS-CISA as essential critical infrastructure workers. As critical infrastructure workers, they are given special consideration to go to and from work and work unfettered for the benefit of the nation and its national security. Our workers and our farms are vital to this nation, are vulnerable to exploitation and outright attacks from not-so-well-intentioned actors and must be protected.

NMPF is very much concerned about the safety and well-being of our nation’s farmers, their families and agriculture operations as animal rights activists, some of whom the FBI has designated as terrorists, will use any and all public information to target and attack those agriculture operations. EPA has in the past run into this problem when trying to release personally identifiable information about farms and farm workers. In this ANPR, EPA discusses

creating a national database and requiring numerous public disclosures of sensitive information which is troubling.

We again implore EPA to grasp that public release of the names and addresses of family farms is not appropriate and not in the interest of national security and not consistent with DHS's efforts to protect critical infrastructure and essential critical infrastructure workers.

Should EPA continue down this path of requiring manure air emission reporting from agriculture operations, NMPF would urge EPA to work with DHS and its Protected Critical Infrastructure Information (PCII) program which can protect sensitive information disclosures and require any disclosures to be protected under that program. NMPF staff have engaged in the PCII program in the past and would be happy to coordinate with DHS and EPA on this matter.

**Conclusion**

In conclusion, the record is clear, Congress, the U.S. Coast Guard, and Emergency Responders around the country all oppose reporting air emissions from manure. EPA should use common sense and retain the EPCRA exemption that was carefully considered in 2018 and 2019 and was based on sound science. Do not revoke the exemption. We appreciate the opportunity to share our views on this important topic and commend the agency for its diligence for the past years on this issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Clay Detlefsen". The signature is stylized with a large initial "C" and "D".

Clay Detlefsen  
Senior Vice President, Environmental and  
Regulatory Affairs & Staff Counsel





