


CERCLA/EPCRA Administrative Reporting Exemption for Air Releases of Hazardous Substances from Animal Waste

Air Toxics Summit 2008

Boise, ID

August 5, 2007



CERCLA Notification Requirements



- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Notification Requirements -
 - CERCLA §103(a), requires that the person in charge of a vessel or facility from which a CERCLA hazardous substance has been released into the environment in a quantity that equals or exceeds its reportable quantity (RQ) must immediately notify the National Response Center (NRC) of the release.
 - The reporting requirement informs the Federal government of a release so that Federal personnel can evaluate the need for a response in accordance with the National Contingency Plan (NCP) and undertake any necessary response action in a timely fashion.



CERCLA Notification Requirements



- The NRC is located at the United States Coast Guard (USCG) headquarters and is the national communications center for the receipt of all pollution incidents reporting.
- The NRC receives an average of 34,000 [1] notifications per year.
 - Of those notifications approximately 33,700 [2] discharge or release notifications are relayed to EPA each year.

[1] Average number of notifications from years 2000-2006, NRC statistics available at, <http://www.nrc.uscg.mil/incident97-02.html>.

[2] Average number of notifications made to EPA from years 2000-2006, NRC statistics available at, <http://www.nrc.uscg.mil/epa97-02.html>.



EPCRA Notification Requirements



- Emergency Planning and Community Right-To-Know Act (EPCRA) Notification Requirements -
 - EPCRA §304(a) identifies three release scenarios that require notification.
 - If a release of an extremely hazardous substance occurs from a facility at which a hazardous chemical is produced, used, or stored, and such release requires a notification under section 103(a) of CERCLA, the owner or operator of a facility shall immediately provide notice to the community emergency coordinator for the local emergency planning committees (LEPC) for any area likely to be affected by the release and to the State emergency planning commission (SERC) of any State likely to be affected by the release.
 - EPCRA §304(a) also requires the owner or operator of the facility to immediately provide notice under EPCRA section 304(b) for either of the following *two* scenarios:
 - If the release is an extremely hazardous substance, but not subject to the notifications under CERCLA §103(a).
 - If the release is not an extremely hazardous substance and only subject to the notifications under CERCLA §103(a).



EPCRA Notification Requirements



- EPCRA notifications are to be given immediately after release to the Local Emergency Planning Committee (LEPC) for any area and the State Emergency Response Commission (SERC) of any State, likely to be affected by the release.
 - State and local officials assess whether a response action to the release is appropriate.



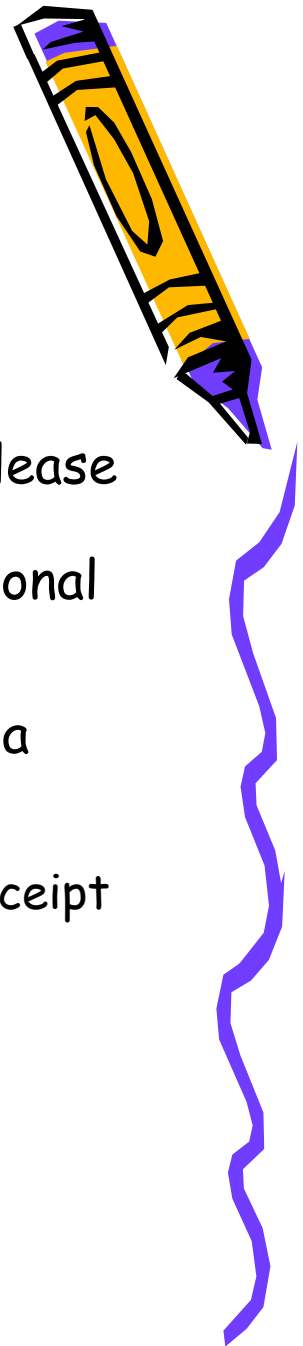
EPCRA Notification Requirements



- EPCRA Right-to-Know Provisions
 - EPCRA §304(c) requires that if an emergency notification under EPCRA §304(a) is made then as soon as practicable after that release, a written follow up emergency notice is required.
 - EPCRA §324(a) requires that the follow up emergency notice(s) be made available to the general public by the appropriate SERC or LEPC.
 - If emergency notifications are not required, then follow up emergency notices are not required.



Background - Clarifying Reporting Regulations



- In December 2003, EPA a letter from the National Cattlemen's Beef Association asking EPA to address release reporting under CERCLA and EPCRA.
- In August 2005, EPA received a petition from the National Chicken Council, National Turkey Federation, and U.S. Poultry & Egg Association, seeking an exemption from CERCLA and EPCRA reporting requirements for ammonia releases from poultry operations.
 - The Agency published a notice in the Federal Register on December 27, 2005 (70 FR 76452) that acknowledged receipt of the petition and requested public comment.
 - The comment period for the petition closed on March 27, 2006.



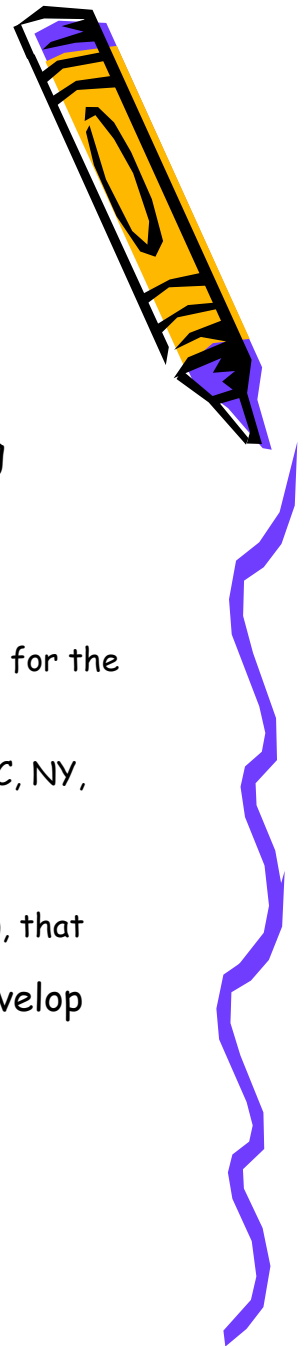
Background - Clarifying Reporting Regulations



- In 2004 and 2005, EPA received a number of communications from Congress requesting that EPA clarify regulations on the extent to which reporting requirements in CERCLA and EPCRA cover emissions from poultry, dairy, or livestock operations.
 - The communications include congressional committee reports (Senate Report 108-353, September 21, 2004, House Report 109-80, May 13, 2005 and Senate Report 109-80, June 10, 2005), as well as individual congressional correspondence.
- The Agency continues to receive periodic communications from Congress related to this matter.



Background - Clarifying Reporting Regulations



- In January 2005, EPA offered the owners and operators of animal agricultural operations an opportunity to sign up for an air monitoring study. (See Jan. 31, 2005, 70 FR 4958)
 - To develop emissions estimating methodologies for all animal agricultural operations.
 - Over 2600 animal feeding operations, representing over 14,000 farms, signed up for the study.
 - Study began in the spring of 2007.
 - 25 representative sites (lagoons or barns) on 21 different farms in 10 states (NC, NY, IA, WI, CA, KY, TX, WA, IN, and OK).
 - Sites will be monitored for two years
 - Allows the Agency to account for emissions variability by season, and
 - For the effect of any seasonal operational changes (such as pumping out lagoons), that could have an effect on emission levels.
 - Study data along with any other relevant, available data will be used to develop emissions estimating methodologies.
 - Results will be publicly available within 18 months of the study's conclusion.



CERCLA/EPCRA Reporting Exemption



- In December 2007, EPA proposed to exempt certain releases *to the air* hazardous substances from the notification requirements of CERCLA and EPCRA.
 - Those emitted *to the air* from animal waste at farms.
 - Ammonia and hydrogen sulfide are the most recognized hazardous substances that are emitted from animal waste.



CERCLA/EPCRA Reporting Exemption



- Scope & Details of Proposed Rule
 - Releases of hazardous substances *to the air* from animal waste at farms.
 - Releases of hazardous substances from all other sources (i.e., ammonia storage tanks) are still reportable if they meet or exceed the RQ; and,
 - Releases of hazardous substances to all other media (i.e., water, soil) are still reportable if they meet or exceed the RQ.
 - Releases of hazardous substances, in all situations, *remain* subject to all other provisions of CERCLA and EPCRA.
Including, but not limited to:
 - CERCLA 104 (response authorities)
 - CERCLA 106 (abatement actions)
 - CERCLA 107 (liability)
 - EPCRA 303 (emergency response planning)



CERCLA/EPCRA Reporting Exemption



- Basis for the Proposed Rule
 - EPA looked at the purpose of notifying the NRC, SERCs, and LEPCs when a hazardous substance is released.
 - EPA looked at the likelihood that a response to that release would be taken by any government agency.
 - EPA had not initiated a response to any NRC notifications of ammonia, hydrogen sulfide, or any other hazardous substances released to the air where animal waste at farms is the source of that release.
 - EPA did not foresee a situation where the Agency would take any future response action as a result of such notification of releases of hazardous substances from animal wastes at farms.
 - EPA does not need to receive such notifications in order to enforce applicable CWA, CAA, RCRA, and/or other applicable CERCLA and EPCRA regulations at farms.



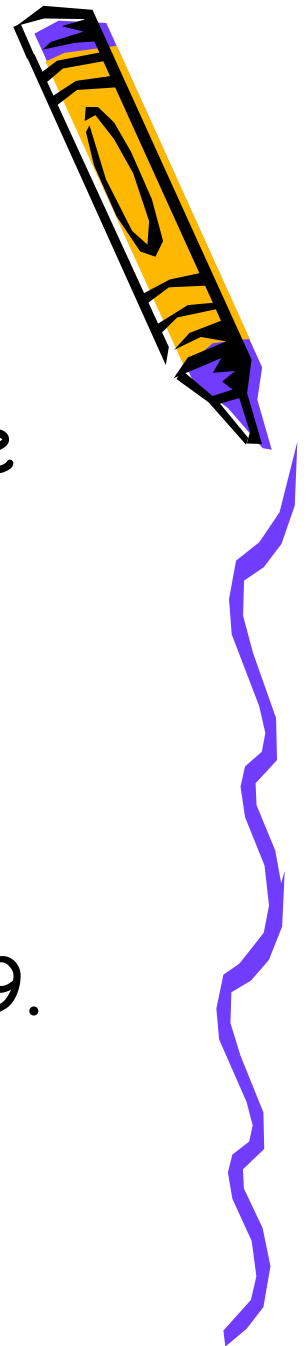
CERCLA/EPCRA Reporting Exemption



- Basis for Proposed Rule (cont.)
 - The Agency does not need to receive such notifications in order to enforce applicable CWA, CAA, RCRA, and/or other applicable CERCLA and EPCRA regulations at farms.
 - EPA retains those enforcement authorities to address threats to human health and the environment.
 - The Agency solicited comment on whether there might be a situation where a response would be triggered by such a notification of the release of hazardous substances to the air from animal waste at farms, and if so, what an appropriate response would be.
 - We received a few mixed comments that are responsive to this request.
 - We are currently evaluating those comments.



CERCLA/EPCRA Status & Schedule

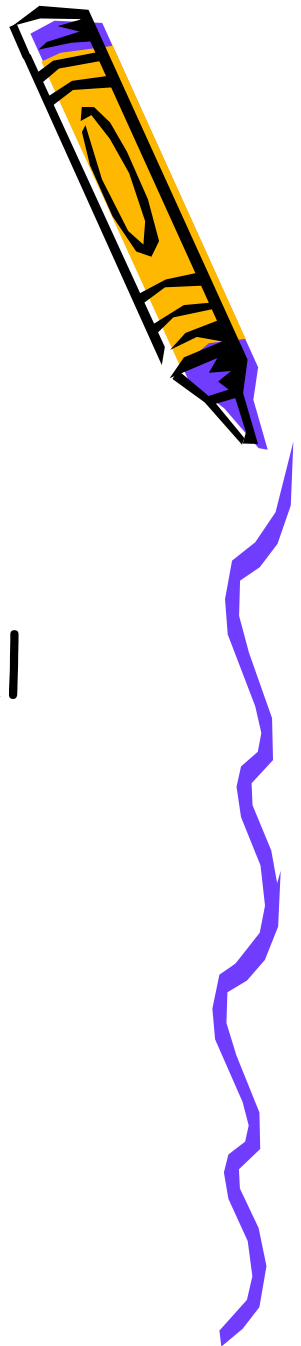


- The public comment period for the proposed rule closed on March 27, 2008.
- Public comments are available at www.regulations.gov
 - Search: EPA-HQ-SFUND-2007-0469.



CERCLA/EPCRA Status & Schedule

- The Agency is reviewing public comments.
- The Agency expects to have a final action published in the Federal Register by early November 2008.



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