

CERCLA-EPCRA Final Rule Fact Sheet
National Milk Producers Federation
January 15, 2009

SUMMARY OF RECOMMENDATION: NMPF believes that potential federal legal liabilities dictate that a dairy producer of the relevant size and with emissions possibly over the thresholds should seriously consider initiating on or before January 20th, 2009 an effort to comply with the EPCRA reporting requirement. A phone call to your state and local emergency response authorities is needed to initiate compliance. The fact that these authorities are giving conflicting and confusing responses when this effort is being made is discouraging to producers, but this should not stop any producer potentially covered by this regulation from trying to comply with the requirement. Below is information as to how you get the phone numbers for your state and local emergency response authorities, and also provided is a script that you can use when making these calls. Shortly after January 20th, 2009 NMPF will be in communication with you as to how you should proceed with the submission of a short, follow-up written report, if at all. We will work with US EPA and the other animal agriculture groups to clarify what must be done and get that information to you.

BACKGROUND: The EPA published a final rule in December, 2008 that exempted all large CAFOs from any federal reporting responsibility under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The same final rule continues, with a significant and helpful clarification, what EPA has always considered to be a previously existing reporting requirement under the Emergency Planning and Community Right-to-Know Act (EPCRA). Under this final rule all large CAFOs (including operations with 700 or more mature dairy cows) still must notify state and local emergency response officials about ammonia or hydrogen sulfide emissions from their operations if they emit 100 pounds or more of these substances during any 24 hour period. The EPCRA change under the final rule makes clear that the reporting CAFO should first notify the state and local authority with a phone call that they intend to submit a written report of their emissions, and then within the next 30 days submit a one-time written report that provides a “good faith estimate” of the lower and upper bounds of the range of emissions that could occur from their operation. No further report is needed unless a change in the operation would lead to a statistically significant change in these bounds, or if better data become available that indicate a different good faith estimate is more accurate.

While the new rule becomes effective January 20, 2009, there is disagreement in EPA and the agricultural legal community if the January 20th date is of any significance as far as a reporting deadline under EPCRA. Furthermore, several producers have already attempted to make the initial phone call to their state and local emergency response authorities and have been given confusing and conflicting responses, including being told that they:

- Should not be reporting to them;
- Do not need to report;
- Should be reporting this to another agency;
- Can report these emissions but nothing will be done with the information.

Calls to EPA headquarters and Regional offices by producers and producer groups has not yielded any clear assistance or guidance. To say the least, this is confusing and infuriating for those trying their best to comply with the law.

It is important to note that any dairy producer participating in the EPA Air Emissions Consent Agreement (ACA) need not report their current emissions under EPCRA until the NAEMS concludes on or about January 1, 2010. All ACA participants will be subject to the subsequent regulatory policies¹. Throughout this period EPA's enforcement authorities have made it fully clear to all of animal agriculture that any operation NOT participating in the ACA has had a legal responsibility to report ammonia or hydrogen sulfide emissions above the thresholds and that failure to do so could lead to enforcement action.

INITIATE COMPLIANCE WITH THE NEW RULE BY MAKING THE PRELIMINARY PHONE CALL: Despite the fact that state and local emergency response authorities are giving such conflicting responses, NMPF believes that the potential legal liabilities here dictate that a dairy producer of the relevant size and with emissions possibly over the thresholds should seriously consider initiating compliance with the EPCRA requirement. To do so, the basic step of calling the state and local emergency response authority is required.

Make the telephone calls by January 20, 2009, to your state emergency response committee (SERC) and your local emergency planning committee (LEPC). You may find your state emergency response committee's phone number on the following EPA website:

http://www.epa.gov/oem/content/epcra/serc_contacts.htm

You may find your local emergency response committee's phone number by using the search tool on the following EPA website:

<http://yosemite.epa.gov/oswer/lepddb.nsf/SearchForm?OpenForm>

SUBMITTING THE FOLLOW-UP REPORT: Normally under EPCRA, written notification is made within 30 days after the above telephone calls to the same state and local emergency planning officials as you called. Shortly after January 20th, 2009 NMPF will be in communication with you as to how you should proceed at this time, if at all, with the submission of your follow up written report. We will work with US EPA and the other animal agriculture groups to clarify what must be done and get that information to you.

¹ NMPF has been an active participant with EPA on the ACA between the livestock sector and the U.S. government. Under the ACA, dairy and other livestock sectors are conducting a two-year National Air Emissions Monitoring Study (NAEMS) of the air emissions from livestock and poultry operations across the country. NMPF pursued the ACA and NAEMS after a 2002 report by the National Academy of Sciences found that scientifically credible methodologies for estimating emissions from animal feeding operations needed to be developed. NAEMS findings will allow EPA to set scientifically based emissions standards for farms.

The following script could be helpful to you in making this call (keep this sheet for your records):

Date: _____

Time: _____

SERC Contact Number: _____

LEPC Contact Number: _____

“Hello, this is [your name]. I am the person in charge of [name of dairy operation]. I am calling to make an initial continuous release notification report under Section 304 of the Emergency Planning and Community Right to Know Act for an animal feeding operation, pursuant to the EPA Final Rule effective January 20, 2009.

The name and location of this facility is [name and address]. Its corporate affiliation [if any] is [name] and address is [address]. The hazardous substance I am reporting is ammonia.

A written report will be submitted to you within 30 days from today.”

If you are not successful in contacting your SERC and LEPC by telephone, make a copy of this page and send by fax or certified mail to the SERC and LEPC.