

Federal Court Strikes Down EPA Farm Exemption Reporting Rule

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Farms formerly exempt from certain federal, environmental reporting regulations now will have to go through the reporting process after a federal court decision earlier this month erased the Environmental Protection Agency (EPA) Farm Exemption Reporting Rule.

A U.S. district court [struck down an EPA rule](#) that exempted farms from reporting certain air releases under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) and many farms from reporting under the Emergency Planning and Community Right-to Know Act of 1986 (EPCRA). Under the court's ruling, animal feeding operations are now required to report certain air emissions, including releases of hazardous materials - such as ammonia or hydrogen sulfide - which are typically released from manure impoundments.

The EPA issued the rule in 2008, exempting certain reporting requirements because they would be difficult to measure and because the EPA was unlikely to pursue enforcement actions.

The EPA asserted that there was ambiguity in whether CERCLA and EPCRA required reporting of air releases from farms, particularly those smaller farms not regulated as a concentrated animal feeding operation (CAFO). The court held that there was no ambiguity in the acts relative to reporting requirements.

The court's decision goes into effect immediately and requires farms that release air emissions of hazardous materials in excess of the regulatory thresholds to provide the required reports. Farms that fall within the reporting requirements may be able to calculate the volume of their releases as a "continuous release" and submit an annual report.

Farmers would be well-advised to contact their consultants to determine a plan to calculate their air releases of hazardous materials and to implement a process to comply with the reporting requirements under CERCLA and EPCRA, with potentially high civil penalties for violations. In addition, both CERCLA and EPCRA contain citizen suit provisions which would allow private rights of action by individuals or environmental groups for alleged violations of those acts.

If you have questions on the court case, don't hesitate to reach out to [Barley Snyder's Food & Agribusiness Industry Group](#).

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