



"Working for Nebraska beef producers - pasture to plate."

NEW Air Emissions Reporting Requirements

Background:

In 1980, Congress passed the Comprehensive Emergency Response, Compensation, and Liability Act (CERCLA) in response to serious environmental and health risks posed by hazardous waste disposal. CERCLA, more commonly known as Superfund, holds polluters financially responsible for the cleanup of sites contaminated with hazardous substances.

In 2008, the EPA under President George W. Bush exempted all agricultural operations from CERCLA emission reporting requirements. The Bush administration argued that low-level continuous emissions of ammonia and hydrogen sulfide from animal waste are not "releases" that Congress intended to limit.

In 2009, a New York-based environmental group with a long history of citizen suits against hog and poultry producers sued the EPA over the exemption. The Obama administration spent eight years defending the Bush exemption, arguing that Congress never intended for continuous emissions of agricultural operations to fall into the realm of regulation.

Unfortunately, on April 11, 2017, the D.C. Circuit issued an opinion in *Waterkeeper v. EPA* that invalidated the 2008 exemption. As a result, any facility emitting over 100 pounds per day of ammonia or hydrogen sulfide via animal waste (roughly 208 head) will be subject to CERCLA reporting requirements beginning on **November 14, 2017**.

EPA recently published guidance to assist farmers and ranchers on CERCLA reporting requirements: <https://www.epa.gov/epcra/cercla-and-epcra-reporting-requirements-air-releases-hazardous-substances-animal-waste-farms>. Additionally, EPA has petitioned the D.C. Circuit to delay the November 14 compliance date to give producers time to prepare. **It is important to remember there is no liability until the mandate in the case goes into effect on November 14, and it is possible the court will further delay the mandate.**

Issues:

The cost and time associated with coming into compliance with CERCLA reporting requirements could be prohibitive to smaller operators. Additionally, there is significant concern these reports will overburden the National Response Center and waste federal, state, and local resources designated for emergency response programs.

Ultimately, the greatest concern identified from the D.C. Circuit's decision is that federal reporting requirements may expose producers to citizen lawsuits. Environmental groups could use CERCLA reports to bring lawsuits under the Clean Water Act, as well as compile a national clearinghouse of producer information. Activists could also use the reported data to compel EPA to craft emissions regulations for animal agriculture under the Clean Air Act. There is growing speculation that these consequences may have been the environmentalists' goals all along.



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Congressional Response and Solutions:

NC Director of Legal & Regulatory Affairs Jessie Herrmann has briefed federal delegation staff on the harm this decision will inflict on Nebraska's livestock industry. At NC's urging, Senators Deb Fischer and Ben Sasse recently signed a letter to EPA, asking that Administrator Scott Pruitt challenge the D.C. Circuit's decision in *Waterkeeper*. NC is working with the National Cattlemen's Beef Association and other industry groups on a congressional fix to delay or prohibit agency enforcement.

NC's Natural Resources & Environment Committee is planning to discuss this issue in depth at its committee meeting during annual convention. Please consider attending if you would like to see a mock report. For more information contact Jessie Herrmann, NC's Director of Legal & Regulatory Affairs, at 402-475-2333 or jherrmann@necattlemen.org.

How to report a continuous release report for livestock:

Step 1: Initial telephone call to the National Response Center.

- Identify your reportable release as an "initial continuous release notification" and provide the following information: (1) Name and location of operation (city and state are sufficient); (2) Name(s) of the hazardous substance(s) released (most likely ammonia and hydrogen sulfide).

National Response Center (NRC): 1-800-424-8802

Step 2: Within 30 days of your telephone call, submit written notification by mail or email to your EPA Regional Office.

Mail: U.S. EPA
Region 7
11201 Renner Blvd.
Lenexa, KS 66219

Email: hoard.christine@epa.gov

Step 3: One year later, submit an additional follow-up written notification by mail or email to the EPA Regional Office identified in Step 2.

*EPA recognizes that it will be challenging for producers to report releases from animal waste because there is no generally accepted methodology for estimating emission quantities. EPA advises that producers report in broad ranges and estimate emissions using past release data, engineering estimates, your knowledge of the facility's operation and release history, or your best professional judgment. Monitoring data is not required.

**Producers in compliance with their Animal Feeding Operation Air Compliance Agreement are not expected to report air emissions from animal waste under CERCLA. Per their agreement, participants must report air emissions when EPA completes the National Air Emissions Monitoring Study.