

**TESTIMONY OF
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U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE SUBCOMMITTEE ON
ENVIRONMENT AND HAZARDOUS MATERIALS
UNITED STATES HOUSE OF REPRESENTATIVES**

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Mr. Chairman and members of the Committee, I am Susan Parker Bodine, Assistant Administrator for the Office of Solid Waste and Emergency Response at the Environmental Protection Agency (EPA). Thank you for inviting me to appear today to discuss the requirements for notification of released hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Emergency Planning and Community Right-To-Know Act (EPCRA) and the Agency's proposed rule to exempt air releases of hazardous substances from animal waste at farms from those notification requirements.

BACKGROUND

Under the CERCLA section 103(a) notifications requirements, 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. A release is reportable if an RQ or more is released into the environment within a 24-hour period. This notification requirement serves as a trigger for informing 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.

The NRC is located at the United States Coast Guard headquarters and is the national communications center for the receipt of all pollution incident reporting. The NRC is continuously staffed for processing activities related to the receipt of the notifications. The NCP regulations require notifications of discharges and releases by telephone and authorize the NRC to immediately relay telephone notices of discharges (i.e., oil) or releases (i.e., hazardous substances) to the appropriate predesignated federal on-scene coordinator (OSC). The NRC receives an average of approximately 34,000 notifications of releases or discharges per year, 99 percent of which are relayed to EPA.

Under the EPCRA section 304(a) emergency notification requirements, three release scenarios require notification.

1. First, 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 Response Commission (SERC) of any State likely to be affected by the release.
2. EPCRA section 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:

- a. If the release is an extremely hazardous substance, but not subject to the notifications under section 103(a) of CERCLA.

- b. If the release is not an extremely hazardous substance and only subject to the notifications under section 103(a) of CERCLA.

EPCRA notification is given to the community emergency coordinator for each LEPC for any area that is likely to be affected by the release, and the SERC of any state that is likely to be affected by the release. Through these notifications, state and local officials can assess whether a response action to the release is appropriate. The EPCRA section 304 notification requirements apply only to releases that have the potential for off-site exposure and that are from facilities that produce, use or store a “hazardous chemical,” as defined by regulations promulgated under the Occupational Safety and Health Act of 1970 (OSHA)(29 CFR 1910.1200(c)) and section 311 of EPCRA.

Upon receipt of a notification from the NRC, EPA determines whether a response is appropriate. If it is determined that a response is appropriate, the NCP regulations describe the roles and responsibilities for responding to the release. To date, EPA has 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's PROPOSED RULE

On December 28, 2007, the Agency proposed an administrative reporting exemption from the CERCLA section 103 notification requirements and the EPCRA section 304 emergency notification requirements for air releases of hazardous substances from animal waste at farms. The scope of the proposed rule was limited to releases of hazardous substances to the air from animal waste at farms. Specifically, the Agency proposed an administrative reporting exemption from the CERCLA section 103 and EPCRA section 304 notification requirements as implemented in the Code of Federal Regulations (CFR).

However, nothing in the proposal changes the CERCLA section 103 or EPCRA section 304 notification requirements for releases of hazardous substances to the air from any source other than animal waste at farms, as well as releases of hazardous substances from animal waste to any other environmental media, such as water, or at any other facilities other than farms (e.g., meat processing plants, slaughter houses, or tanneries). Similarly, EPA did not propose to exempt ammonia releases from ammonia storage tanks at farms. Thus, CERCLA and EPCRA notification requirements remain if there is a release of stored animal waste into water (e.g., a lagoon burst). Notifications of a release to water would alert the government to an emergency situation that could pose serious environmental consequences if not immediately addressed. Because such releases are likely to result in a response action from Federal, state or local governments, releases to water were not included in the proposed rule and would remain reportable if such a release is at or above the RQ for the hazardous substance.

In addition, the proposal did not propose to limit the Agency's authority under CERCLA sections 104 (response authorities), 106 (abatement actions), 107 (liability), or any other provisions of CERCLA and EPCRA to address releases of hazardous substances from animal waste at farms.

The public comment period for the proposed rule lasted 90 days and closed on March 27, 2008. Through the public comment process, the Agency received approximately 12,900 comments. A substantial number of those comments (about 11,600) came in the form of 15 mass mail campaigns that either supported or opposed the proposed rule. EPA also received comments from persons on matters which were not proposed. For example, some commenters expressed general opposition to removing air quality and clean air standards; removing clean air protections; reducing pollution or emission standards; and allowing farms to emit more pollutants. As noted previously, the Agency's December 2007, proposal was limited to the notification requirements under CERCLA section 103 and EPCRA section 304.

EPA'S RATIONALE FOR THE PROPOSED RULE

EPA's rationale for the proposed rule is based on the purpose of notifying the NRC, and SERCs and LEPCs when a hazardous substance is released, and then the likelihood that a response to that release would be taken by any government agency. As discussed above, EPA has never 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.

Several states and localities have indicated that such response actions are unlikely to be taken as a result of a notification of air releases of hazardous substances from animal waste at farms. Specifically, EPA received 8 comment letters and a number of e-mail comments from state and/or local emergency response agencies in response to our proposed rule which agreed with the proposal to not require such notifications. The Agency also received 26 comment letters from state and/or local emergency response agencies in response to the December 2005, Federal Register notice that acknowledged receipt of a rulemaking petition from the National Chicken Council, the National Turkey Federation, and the U.S. Poultry and Egg Association which commented that certain notifications under CERCLA and EPCRA were unnecessary. Those commenters supported granting an exemption from CERCLA and EPCRA reporting requirements because they were aware of the operations in their jurisdictions, were concerned about the resource implications of receiving the notifications (i.e., having to process the notifications), and would not conduct a response as a result of the notifications.

In addition, the Agency received comments from 17 state agricultural departments in support of the proposed rule. EPA also received 5 comment letters from government officials and the National Association of SARA Title III Program Officials (NASTTPO) that the proposed rule was not appropriate, however, none of the officials suggested that a response action should or would be taken, as a result of emergency reporting.

Finally, notwithstanding EPA's experience regarding NRC notifications of hazardous substances released to the air from animal waste, 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. EPA wanted to consider such comments before developing a final rule. Several commenters expressed the belief that there are no conditions where manure related releases of emissions would trigger a response. Other commenters suggested that responses may be needed; however, they did not describe what an appropriate response would be.

CONCLUSION

EPA is currently evaluating comments received during the proposed rule's public comment period and will address and respond to certain comments as we proceed through the rulemaking process. EPA will develop a response-to-comment document that will respond to all of the comments received. The response-to-comment document will be available to the public through the Superfund Docket associated with the rulemaking. Let me assure you that EPA is actively working and will consider all of the comments received to ensure that any final rule is protective of human health and the environment, specifically regarding CERCLA and EPCRA notification requirements for releases of hazardous substances.