

OVERVIEW OF CERCLA AND EPCRA

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly known as the Superfund law, was enacted in 1980, with the primary goal of cleaning up abandoned hazardous waste sites. The worry was that the hazardous chemicals in those sites would eventually come into contact with the public, through either drinking water, air, or some other means. CERCLA requires reporting when any “facility” releases more than a “reportable quantity” of a hazardous substance.

The Emergency Planning and Community Right-To-Know Act (EPCRA), enacted in 1986, intends to protect the public from releases of extremely hazardous substances. EPCRA requires that owners or operators notify the proper authorities when certain amounts of these substances are released into the environment.

These laws were originally passed in order to control pollution being created and dumped by heavy industry. However, recent court decisions have applied these laws to agriculture.¹ In some cases, there will not be enough emissions released on farms to trigger possible liability under either CERCLA or EPCRA. However, even if liability can be imposed under CERCLA or EPCRA, farmers should be able to easily meet the notice and reporting requirements.

Role of EPA Monitoring Study

The 24-month air emission monitoring program of livestock farms and the subsequent rulemaking should tell us definitively if and which Iowa livestock operations need to report under CERCLA or EPCRA. The study is needed to determine what types of facilities and what sizes of operations may have emissions exceeding the reporting requirements of EPCRA and CERCLA. This data will be used to decide whether farms, regardless of whether they sign the air emission consent agreement, will have to report air emissions under CERCLA and EPCRA.

Effect of the EPA Consent Agreement on CERCLA/EPCRA Reporting Requirements

Signing the agreement gives participants some limited legal protections without admitting any guilt or liability for possible past emissions’ violations. EPA will release participants from liability and promise not to sue the producer for past and current violations of the federal air laws until the new regulations are adopted. Specifically, the protections extend to potential civil violations of CERCLA and EPCRA reporting requirements (other than a single, unexpected/accidental release such as from fire, explosion, etc.). If a farmer chooses to file these reports instead of participating in the agreement, the EPA will have access to the information from the National Response Center where the reports are filed. Therefore, each farmer must weigh the benefits and risks of the agreement and make a personal decision about whether to participate.

What is a reportable quantity of a hazardous substance?

A list of hazardous substances whose releases must be reported can be found in the Code of Federal Regulations.² This list also contains the “reportable quantities,” the amount of a substance release that requires reporting. All emissions, including “fugitive” emissions (uncontrolled, e.g. from fields and open areas), are reportable if they exceed the reportable quantity, which is 100 pounds in any 24-hour period.

Chemicals on this list that could be of concern for livestock farmers include ammonia and hydrogen sulfide. Other substances, such as some VOCs, are also listed, but because the reportable quantities are very high for these substances, it is unlikely the individual volatile organic compound (VOC) thresholds would be

¹ See *Sierra Club v. Tyson Foods, Inc.*, 299 F.Supp.2d 693 (W.D. Kentucky 2003); *Sierra Club v. Seaboard Farms Inc.*, 387 F.3d 1167 (10th Circ. 2004).

² 40 CFR 302.4 appendix A (July 1, 2004).

exceeded. If your livestock operation emits more than 100 pounds in a day of either ammonia (NH₃) or hydrogen sulfide (H₂S), you are required to report that release under CERCLA and EPCRA.

What is a facility?

Currently, the courts are tending towards defining a “facility” as a combination of all structures within an operation. However, it is uncertain whether the reporting requirement applies to quantities measured from individual barns, lagoons, and ponds on an operation, or the combined emissions from these structures on the entire operation.

Basic Mechanics of Reporting under CERCLA and EPCRA

The parts of CERCLA and EPCRA that are being applied to agriculture deal with reporting releases of hazardous substances. CERCLA requires that a release exceeding a reportable quantity be reported to the U.S. Coast Guard National Response Center at 800-424-8802 or 202-267-2675. The National Response Center will then call you back with an identification number which will be used on the reporting forms. CERCLA Reports may be filed online at <http://www.nrc.uscg.mil/report.html>. Other options include faxing (202-267-2165) or mailing the report. Additional information may be found at <http://www.nrc.uscg.mil/nrchp.html>.

EPCRA requires that the release be reported to both State Emergency Response Centers (SERC) and Local Emergency Response Centers (LERC). The SERC in Iowa is the Iowa DNR Spill Response Center. Their phone number is 515-281-8694. A list of the LERCs is available. The National Response Center, the SERC and the LERC must receive a copy of the CERCLA written report for the continuous release within 30 days after the initial calls. In addition to the contact information above for the National Response Center, the continuous release report should be sent to DNR at 401 SW 7th St. Suite I, Des Moines, IA 50309.

Continuous Release Reporting

To achieve compliance with CERCLA and EPCRA, a farm that releases more than a “reportable quantity” will need to file a report of each release as it occurs or file a continuous release report. Both CERCLA and EPCRA allow for an annual continuous release report for operations rather than a report for an individual release. A farmer would qualify for filing a continuous release report if the farm emits these substances at threshold levels either constantly or are routine, anticipated, and intermittent.³

An initial report of the release must be made, followed by a one year anniversary report. This one year anniversary report is identical to the initial report, except that actual gas emissions must be reported, as opposed to the emissions estimations that were reported in the initial release report. No other reports are required after the first anniversary report, but records of operation emissions must be kept by the farmer and EPA.

Establishing a release as continuous or intermittent can be accomplished several different ways. Actual release data, engineering estimates, knowledge of operating procedures, or the best professional judgment of the owner/operator the farm can establish a release as being continuous. Additionally, reporting the release to the National Response Center for a period sufficient to establish the continuity and stability of the release can also qualify a release as continuous.

³ 40 CFR 302.8 (July 1, 2004). Additional information on continuous release reporting can be found in the EPA publication, *Reporting Requirements for Continuous Releases of Hazardous Substances, A Guide for Facilities and Vessels on Compliance*. This guide contains all of the necessary forms needed for establishing the continuous release at a hog farm or any other livestock operation, as well as instructions on how those forms should be completed and submitted. This guide can be found at: <http://www.epa.gov/superfund/resources/release/faciliti.htm>.