

February 15, 2024

Mr. William Noggle
United States Environmental Protection Agency
Office of Emergency Management
1200 Pennsylvania Avenue NW
Mail Code 28221T
Washington, DC 20460

Submitted via: www.regulations.gov

Subject: Comments on the U.S. Environmental Protection Agency's (EPA) Advance Notice of Proposed Rulemaking (ANPRM) Regarding the Potential Development of Regulations to Reinstate the Reporting of Animal Waste Air Emissions at Farms under the Emergency Planning and Community Right-to-Know Act (EPCRA), Docket ID No. EPA-HQ-OLEM-2023-0142

Dear Mr. Noggle:

The undersigned state and national agricultural organizations appreciate the opportunity to comment on EPA's ANPRM regarding the potential development of regulations to reinstate the reporting of animal waste (otherwise referred to as manure) air emissions at farms under EPCRA. Our organizations have, as their members, most of the farmers, ranchers, and companies in the United States raising animals to produce eggs, milk, or meat and poultry for consumers.

As a policy matter, EPCRA's goal to give communities the information they need to protect their public health, safety, and welfare from potential environmental risks is warranted. The goal is also fully addressed through other existing means that do not create unnecessary liabilities for livestock producers. Given the nature of animal agriculture and the facts surrounding these emissions, such reporting is not consistent with the purposes and mission of EPCRA. EPCRA was created "in response to concerns regarding the environmental and safety hazards posed by the storage and handling of toxic chemicals. These concerns were triggered by the 1984 disaster in Bhopal, India, caused by an accidental release of methylisocyanate" and in order to "reduce the likelihood of such a disaster in the United States..." EPCRA helps "increase the public's knowledge and access to information on chemicals at individual facilities, their uses, and releases into the environment. States and communities, working with facilities, can use the information to improve chemical safety and protect public health and the environment." (See <https://www.epa.gov/epcra/what-epcra>.)

Farmers, ranchers, and others involved in animal agriculture hold there is no legitimate reason for requiring them to report to state and local emergency response authorities estimates of the amount of air emissions from their animals' manure. In general, the following factual and policy considerations weigh heavily against EPA creating an EPCRA reporting requirement for air emissions from animal manure at farms:

- It is exceedingly rare for a local emergency response authority or fire department not to know of the existence of livestock farms within their jurisdiction, and it is common for a livestock farm to have an active information-sharing program with the local authority.

- Congress enacted legislation in 2018 called the Fair Agricultural Reporting Method (FARM) Act, which excluded air emissions from animal manure from the reporting requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for the very reasons noted herein. Emissions reports under CERCLA are submitted to the Coast Guard's Emergency Response Center. CERCLA and EPCRA statutory construction generally provides for excluding any substance from EPCRA reporting if it is excluded from CERCLA.
- Beyond the fact that the existence and location of livestock farms is public knowledge in the communities, there is also considerable information from the U.S. Department of Agriculture (USDA) about the numbers and types of farm animals in U.S. counties. This information is gathered and publicly reported regularly by USDA's National Agricultural Statistics Service (NASS). NASS provides accurate and up-to-date census and survey data on the number of livestock farms that are present in the vast majority of U.S. counties. The NASS county-specific information can and does serve as foundational information for many efforts to understand the nature of animal agriculture across sectors. Additionally, state departments of agriculture are also sources of detailed knowledge of production systems within their respective states. Given the wealth of information already publicly available, members of communities with questions related to animal agriculture and public health and safety are fully able, without EPCRA reporting, to educate themselves and decide how best to respond to the occurrence of emissions from animal manure.
- It is also quite common in rural communities for the owners or staff of a livestock or poultry farm to be actively part of their local fire department or other emergency response systems (they commonly serve as local fire chiefs, volunteer fire fighters or EMS technicians, serve on their oversight boards, or contribute substantial funds above and beyond any public levies to support their operations).
- While there may be de minimis and continuous releases of air emissions from animal manure, this fact is widely known to occur at every livestock farm. As such, there is absolutely no need to report this to a state or local emergency response authority in order for the surrounding community to know this is happening.
- If reporting were required, farmers and ranchers could do no better at estimating this amount than anyone else in the community could do because they would all be using the same publicly available average emissions. Anyone in the community wanting to know what the air emissions are likely to be can estimate it as the farmer would.
- The National Association of SARA Title III Program Officials (NASTTPO) is on record stating that state and local emergency response agencies do not need or want EPCRA Section 304 notifications for air emissions from animal manure at farms. Specifically, a July 1, 2007 letter to EPA from Timothy Gablehouse, then-President of NASTTPO, stated: "We have had experience with EPCRA emergency release reports as well as CERCLA continuous release reports from farms primarily regarding ammonia from animal manure management. These reports are of no particular value to LEPCs and first responders and they are generally ignored because they do not relate to any particular event." NASTTPO adds that "the most important thing to LEPCs and first responders are not detailed regulatory requirements for a facility's relationship to these groups, but rather the simple act of open dialog and coordination... . NASTTPO believes that open dialog and coordination can be more effective than release reporting for farms that do not

handle quantities of EPCRA EHS chemicals but are nevertheless expected to report regarding animal manure management.”

- Despite nearly two decades of work, EPA has yet to finalize reliable, scientifically sound emissions estimating methodologies that accurately represent the air emissions from animal manure at modern livestock farms using best management practices. Such work is expected to continue throughout 2024, and EPA has publicly stated that additional refinement of the effort will need to continue through the next decade. Without sound methodologies, it is irresponsible policymaking to require farms to submit information that is inaccurate and unreliable. Equally important, the public has no need for emissions estimates that are inaccurate and unreliable. Thus, even if public disclosure were a relevant purpose behind EPCRA Section 304 — which it is not in EPA’s own view — that purpose would **not** be served here.
- Farmers are already on the receiving end of threatening and harassing calls from activist groups seeking to put them out of business. A likely consequence of adding an EPCRA reporting requirement for air emissions from animal manure would be increased harassment of farmers, all due to inaccurate and unreliable estimates.
- In addition to the threat of harassment, EPCRA reporting would create considerable liabilities for farmers that are not commensurate with the reports’ marginal benefits. These liabilities arise from the potential for civil penalties or litigation that could result from differing interpretations of the information called for in the reports, given EPA’s direction that the reporter use “best professional judgment.” Also, EPA would likely require extensive follow-up reporting over multiple years. This will inevitably lead to technical errors that could serve as the grounds for citizen lawsuit enforcement that, while not relevant to the information needs of the community, can prove enormously costly to producers. Given the lack of benefits to the communities from farmers’ EPCRA reports of emissions from manure, and the liabilities associated with having to file the reports, as a matter of policy, requiring these reports is not warranted or sensible.

Specifically, in the ANPRM, EPA is soliciting comments under five specific categories. The undersigned state and national agricultural organizations have the following concerns, comments and questions in two key categories:

1. Health impacts; (#1, Section IV.A)

EPA’s Technical Support Document included in the above-referenced docket discusses a literature review of 21 studies reporting health effects associated with air emissions from livestock farms. It does so and then proceeds to make bold – and inaccurate conclusions – based on the same.

To more accurately reflect the current scientific understanding of the health effects associated with air emissions from livestock farms, EPA should consider “Systematic Reviews for Animals & Food – A Research Group Providing Resources Like Health, Welfare, Safety, and Production” (SYREAF). See <https://syreaf.org/>.

At SYREAF, researchers focus on systematic reviews and reporting guidelines to improve the utility of research in veterinary science, agriculture, and food production. The systematic reviews are intended to help professionals across multiple subject areas to understand vast volumes of scientific research. One such effort is the “Living Systematic Review of Effects of Animal Production on the Health of Surrounding Communities. The living systematic review is frequently updated to incorporate new evidence as it

becomes available. The term means that rather than being a static publication in a peer-reviewed journal, the review is housed on the website linked above, allowing for more timely updates and more accessible information. The review question associated with the review housed at the link above is “What is the association between animal feeding operations and the health events and states of individuals living near animal feeding operations but not engaged in livestock production?” EPA should consider the full body of knowledge contained in the living review in order to make accurate conclusions that have serious policy consequences.

2. Implementation challenges; (Section IV.B.)

As noted above, there are numerous implementation challenges associated with EPCRA reporting if it were to be applied to animal manure air emissions at livestock farms, including the following:

- With regard to #6 - *Accuracy of Reported Release Quantity: Should the calculator include a disclaimer that the emissions are estimates of uncontrolled emissions, and may not reflect actual emissions due to differences in each farm operation and applications of controls?* Yes. Without such a disclaimer, the general public will completely misunderstand the information created by the models. Not only would a disclaimer be necessary to minimize the chance of such misunderstanding, additional work on the part of EPA to document the impact of best management practices on controlling emissions should be completed. Such information is critical to understanding the true emissions from any livestock farm.
- EPA acknowledges that many current production practices across species are not represented in the National Air Emissions Monitoring Study (NAEMS) data. Specifically, EPA says: “For example, cage-free egg laying houses were not prevalent in the industry when the NAEMS was conducted, and no data were collected to support method development. In those cases, farms would need to use other information to estimate the air emissions, if EPCRA reporting is reinstated.” What other information is EPA envisioning? What about other, more current production practices across other species? Because the models do not behave correctly outside of the NAEMS data, implementation challenges and confusion exist for other sizes and types of operations across multiple species.
- Model input terminology can lead to incorrect and inconsistent results. For example, confusion will result from EPA’s use of “number of animals” as the cutoff for reporting. That terminology is not the same as the terminology used for model inputs. The models use “live animal weight,” not “number of animals.” Does EPA’s use of “number of animals” mean animal inventory, animal spaces or animals marketed? EPA should consider using “animal unit” or “live animal weight” instead of “number of animals.”
- The webtool, in order to be utilized to its full extent, should clearly disclose all underlying assumptions. For example, animal growth rates have evolved since the models used in the early 1980s. What growth rate is being used?

Thank you again for the opportunity to provide these comments. We would welcome the opportunity to answer any questions you might have about these comments or if further clarification is needed.

Sincerely,

Alabama Farmers Federation
Alabama Pork Producers
American Farm Bureau Federation
American Horse Council
Arizona Pork Council
Association of California Egg Farmers
California Pork Producers Association
Colorado Pork Producers Council
Dairy Producers of New Mexico
Delmarva Chicken Association
Florida Poultry Federation
Idaho Pork Producers Association
Illinois Pork Producers Association
Indiana Pork
Indiana State Poultry Association
Iowa Pork Producers Association
Kansas Pork Association
Kentucky Pork Producers Association
Kentucky Poultry Federation
Louisiana Pork Producers Association
Michigan Pork Producers Association
Minnesota Pork Producers Association
Missouri Pork Association
Montana Pork Producers Council
Nebraska Pork Producers Association Inc
New York Pork Producers
North Carolina Pork Council
North Central Poultry Association
North Dakota Pork Council
National Cattlemen's Beef Association
National Chicken Council
National Council of Farmer Cooperatives
National Pork Producers Council
National Milk Producers Foundation
National Turkey Federation

Ohio Pork Council
Ohio Poultry Association
Oregon Pork Producers Association
Pacific Egg and Poultry Association
Pennsylvania Pork Strategic Investment Program
South Dakota Pork Producers Council
Tennessee Pork Producers Association
Texas Pork Producers Association
Texas Poultry Federation
United Egg Producers
Utah Pork Producers Association
Virginia Pork Council, Inc.
Wisconsin Pork Association