

March 20, 2007

The Honorable John D. Dingell
Chairman
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Dear Representative Dingell:

We are writing in response to recent testimony provided by EPA Administrator Stephen Johnson before the House Energy and Commerce Committee regarding EPA's plan to exempt emissions of air pollutants from manure from reporting requirements under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Emergency Planning and Community Right to Know Act (EPCRA). Administrator Johnson indicated at a hearing held on March 8, 2007, that state and local officials implementing Title III of the Superfund Amendments and Reauthorization Act consulted by EPA did not object to eliminating the CERCLA and EPCRA reporting requirements for ammonia and hydrogen sulfide emissions from manure.

However, what Mr. Johnson failed to mention is that EPA staff also sought the input of state and local air pollution control agencies, who voiced a different view. During a conference call EPA's Office of Solid Waste and Emergency Response held with the National Association of Clean Air Agencies (NACAA) on November 9, 2006, we expressed several concerns to EPA about exempting from EPCRA and CERCLA the reporting of emissions of ammonia and hydrogen sulfide from manure, which we discuss below:

- Ammonia and hydrogen sulfide are air pollutants with demonstrated health effects. Human exposure to ammonia triggers respiratory problems, causes nasal and eye irritation and in large enough amounts can be fatal.¹ It also contributes directly to the formation of fine particulate matter (PM_{2.5}), which causes severe health effects in people, including death, heart attacks and increased severity of asthma attacks, as well as visibility impairment.² Hydrogen sulfide is a toxic air

¹ Schiffman, S.S., et al., *Health Effects of Aerial Emissions from Animal Production and Waste Management Systems*, available at http://www.cals.ncsu.edu/waste_mgt/natlcenter/summary.pdf and Agency for Toxic Substances and Disease Registry, "Public Health Statement for Ammonia" (September 2004), available at <http://www.atsdr.cdc.gov/toxprofiles/phs126.html#bookmark05>.

² EPA, "Review of the National Ambient Air Quality Standards for Particulate Matter: Policy Assessment of Scientific and Technical Information," (OAQPS Staff Paper) (December 2005), available at http://www.epa.gov/ttn/naaqs/standards/pm/data/pmstaffpaper_20051221.pdf.

pollutant that can cause severe health effects, even death, at high concentrations of exposure.³ As reported in the *Dayton Daily News*, “At least 24 people in the Midwest have died from inhaling hydrogen sulfide and methane from manure since the 1970s, including fifth-generation Michigan dairy farmer Carl Theuerkauf and four members of his family, who collapsed one by one in 1989 after breathing methane gas from a manure pit.”⁴

- Air emissions from animal farming operations (AFOs) are not trivial. AFO ammonia emissions represent *half* the U.S. ammonia emissions inventory.⁵ Monitoring conducted of Premium Standard Farms (PSF) by EPA (under a settlement agreement) in 2004 shows that PSF releases 3 million pounds of ammonia annually from barns and lagoons at its Somerset facility, making it the fifth largest industrial emitter of ammonia in the country.⁶ In Iowa, the greatest number of air complaints the state air agency receives concern emissions from manure storage pits. Iowa monitored ten homes for ammonia and hydrogen sulfide emissions and recorded high ammonia emissions on a regular basis and high hydrogen sulfide emissions periodically.⁷
- AFOs produce millions of tons of manure each year. According to EPA, AFOs generate approximately 500 million tons of waste each year, three times more raw waste than is generated yearly by people in the U.S.⁸ Thus, manure is not a minor source of air emissions.
- Given the paucity of monitors in rural states, CERCLA and EPCRA reports may be the only source of information to people affected by excessive air emissions from AFOs.
- EPA is currently conducting a monitoring study to collect information about the air emissions from AFOs and to determine whether air emissions from AFOs, including emissions from manure, warrant regulation. EPA should not consider a blanket exemption from reporting requirements for air pollutant emissions from manure while data on this very subject is being collected. (Farms participating in this monitoring study have already received a waiver from enforcement of

³ Agency for Toxic Substances and Disease Registry, “Public Health Statement for Hydrogen Sulfide” (July 2006), available at <http://www.atsdr.cdc.gov/toxprofiles/phs114.html>.

⁴ Wagner and Sutherly, “The supersizing of America’s livestock farms,” *Dayton Daily News* (December 1, 2002).

⁵ National Research Council, “Air Emissions from Animal Feeding Operations: Current Knowledge, Future Needs” (pre-publication copy released Dec. 12, 2002), at p. 42

⁶ Premium Standard Farms, *Air Emissions Monitoring Completion Report* (Nov. 17, 2004) and EPA, “Toxics Release Inventory” (2004), available at <http://www.epa.gov/triexplorer>.

⁷ Iowa Department of Natural Resources Ambient Air Monitoring Group, “Results of the Iowa DNR Animal Feeding Odor Study” (January 2006).

⁸ 68 *Federal Register* at pp. 7179-80.

CERCLA and EPCRA reporting provisions for air emissions of hydrogen sulfide and ammonia.)⁹

- We are also concerned about the precedent this action will set with respect to application of the Clean Air Act to air emissions from manure.

In our discussions with EPA, we suggested other means for reducing the perceived regulatory burden and uncertainty with respect to CERCLA and EPCRA: EPA could determine a size threshold for farms, based on animal units, below which a farm might reasonably assume its air emissions of ammonia and hydrogen sulfide were below CERCLA and EPCRA reporting thresholds. We do not believe a blanket exemption is warranted given the demonstrated health effects associated with ammonia and hydrogen sulfide, the amounts of manure produced by AFOs and the usefulness of the data contained in CERCLA and EPCRA reports to state and local air agencies and the people living near these facilities.

On a related issue, we understand that legislation has been introduced to exempt from CERCLA and EPCRA reporting of all air pollutant emissions from manure. We would oppose such a statutory exemption for the same reasons cited above. A legislative exemption is even more problematic because such an exemption would require legislative action to be reversed, as opposed to an EPA interpretation that could be changed administratively.

Please feel free to contact me at 202-624-7864 if you have any questions.

Sincerely,

A handwritten signature in black ink, consisting of a stylized initial 'S' followed by a long horizontal line extending to the right.

S. William Becker
Executive Director

⁹ 70 *Federal Register* at p. 4963. Specifically, EPA covenants not to sue participating AFOs – whether or not they are actually monitored – for “civil violations of CERCLA section 103 or EPCRA section 304 from air emissions of Hydrogen Sulfide (H₂S) or Ammonia (NH₃) that are not singular unexpected or accidental releases such as those caused by an explosion, fire or other abnormal occurrence.”