

Animal Feeding Operations – Proposed Air Compliance Agreement Fact Sheet – September 23, 2003

Status

! A final agreement does not exist. *There has been no agreement with industry. The proposal is currently in discussion within EPA.*

! Industry representatives submitted a proposed agreement to EPA in Fall 2002. This proposal was incorrectly reported in the press as a final agreement.

! EPA and industry representatives met several times between Fall 2001 and Fall 2002 to discuss options for an industry-wide compliance agreement. STAPPA/ALAPCO was involved in these discussions through December 2002.

! EPA met with environmental and agricultural organizations in Spring 2003 to discuss the proposal.

Background

! Increased citizen complaints and growing concern regarding negative health effects of air emissions from AFOs have accompanied increases in the size and concentration of beef, poultry, swine and dairy operations over the last decade.

! A 2002 study by the National Academy of Sciences emphasized the need for more comprehensive data regarding AFO air emissions and methods of estimating such emissions.

! Some members of the regulated community assert that insufficient data on AFO emissions creates uncertainty regarding the applicability of certain CAA and CERCLA requirements.

! Individual AFO monitoring is expensive, in part, because seasonal fluctuations require at least nine months of monitoring.

Primary Goals of Compliance Agreement

! **Improve Compliance:** Use an industry-wide approach to ensure that AFOs across the nation comply with applicable Clean Air Act and CERCLA provisions

! **Reduce Pollution:** Reduce AFO pollution and associated impacts on health, welfare and the environment per EPA guidance or regulation

! **Evaluate AFO Emissions:** Gather additional data regarding AFO air emissions and address concerns raised in National Academy of Sciences study, including the need to improve emission estimating methodologies

! **Develop Methodologies for Estimating AFO Emissions:** Provide additional guidance to AFOs on methods for estimating annual air emissions

! **Control Emissions:** Ensure AFOs install all required emission controls per EPA guidance or regulation

Key Provisions in Current Draft Proposal

! Participating AFOs will be required to:

- Pay a small civil penalty
- Fund, together with other participating AFOs, a nationwide emissions monitoring program that will provide data for the development of emissions estimating methodologies
- Make facilities available for monitoring if necessary
- Apply for all applicable air permits (using emissions estimating methodologies published by EPA to identify applicable permit requirements)
- Apply for a PSD/NSR permit if the source exceeds the “major source” threshold
- Install any controls required by air permits and comply with all other permit conditions
- Report under CERCLA all releases of 100 lbs. per day or more of Ammonia (NH₃) and Hydrogen Sulfide (H₂S)

! AFOs that satisfy the above requirements will receive a covenant not to sue for potential violations of:

- Clean Air Act permitting requirements in Title V, and Title I Parts C & D (PSD/NSR), and State SIPs arising from emissions of Nitrogen Oxides (NO_x), Hydrogen Sulfide (H₂S), Volatile Organic Compounds (VOCs), and Particulate Matter (PM) from animal confinement structures and agricultural livestock waste lagoons
- CERCLA section 103 hazardous substance reporting requirements arising from releases of Ammonia (NH₃) and H₂S from animal confinement structures and agricultural livestock waste lagoons

! Conditions and Limits of the Covenant Not to Sue:

- The covenant not to sue will expire after a “cure period” following the monitoring program. During this period, participating AFOs must use the emissions estimating methodologies developed by EPA to identify and comply with all applicable Clean Air Act and CERCLA requirements
- EPA’s authority to prosecute cases that may present an imminent and substantial endangerment to human health or the environment will be undiminished

! State Law:

- The covenant not to sue will be nullified if participating AFOs fail to comply with state nuisance final orders arising from air emissions

! Nationwide Monitoring Program:

- 28 farms representing major animal groups (e.g. swine, dairy, and egg layers, and possibly broiler chickens and turkeys), different types of operations, and different geographic regions will be monitored.
- Monitoring will occur at selected lagoons and barns for approximately 22 months.
- Pollutants to be monitored include PM, H₂S, VOCs, NH₃ and NO_x.

! Additional Protections and Benefits:

- AFOs that install waste-to-energy systems will get additional time to apply for air permits
- The agreement will provide an opportunity for AFOs to remedy violations of fence-line ambient air quality standards
- Any agreement with AFOs in California will be tailored to the situation in that state

Next Steps

! Prepare counterproposal to industry’s proposed agreement with feedback from regions, states, and other federal agencies

! Negotiate agreement with industry representatives

! Publish draft agreement in Federal Register for public notice and comment

! Publish final agreement in Federal Register in Winter 2003/04

! Nationwide monitoring of AFOs from Spring 2004 through Winter 2006

! Develop emissions estimating methodology based on monitoring results and other available data

! AFOs apply for applicable air permits and submit required CERCLA reports per EPA guidance or regulation

EPA HQ Staff Contacts

Bruce Fergusson (202) 564-1261

Sonja Petersen (202) 564-4079

Sanda Howland (202) 564-5022

Myron Eng (202) 564-2276