

National Pork Producers Council
**Comprehensive Environmental Response,
Compensation, and Liability Act of 1980-Emergency
Planning and Community Right to Know Act of 1986
Fact Sheet
(CERCLA-EPCRA)
January 2009**

SUMMARY:

The U.S. Environmental Protection Agency has determined in a final rule published in December, 2008 that all large CAFOs, including operations with 2,500 head of finishing swine or more, must notify state and local emergency response officials about ammonia and hydrogen sulfide emissions from their operations if they emit 100 pounds or more of these substances during any 24 hour period. The new rule's reporting requirement becomes effective January 20, 2009, and *pork producers whose operations are not currently participating in the EPA Air Consent Agreement should seriously consider initiating the reporting process on this date by making a telephone call to your state emergency response authority and also your local emergency response authority.* A written report must be submitted within 30 days after the telephone call was made. Failure to make the telephone call by January 20, 2009 or submit a follow-up written report may subject producers to severe penalties of \$25,000 per day, as well as potential criminal liability for knowingly failing to report. Producers who have signed an EPA Air Consent Agreement need not submit reports until that National Air Emissions Monitoring Study (NAEMS) is completed, on or about January 1, 2010. Smaller swine operations below this 2,500 finishing animal threshold are not required to submit notifications.

FINAL RULE REQUIRES LIMITED REPORTING:

Last month, the U.S. Environmental Protection Agency published a final rule agreeing with NPPC that air emissions from concentrated animal feeding operations (CAFOs) did not need to be reported under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA). However, EPA did require that large CAFOs (swine facilities with 2,500 or more animals of 55 pounds, or 10,000 head or more animals of less than 55 pounds), must notify state and local emergency response officials about ammonia and hydrogen sulfide emissions from their operations under the Emergency Planning and Community Right to Know Act of 1986 (EPCRA).

AIR CONSENT AGREEMENT PARTICIPANTS NEED NOT REPORT AT THIS TIME:

NPPC played the instrumental role in negotiating with EPA the Air Emissions Consent Agreement (ACA) between the livestock sector and the U.S. government. Under the ACA, pork and other livestock sectors are conducting a two-year National Air Emissions Monitoring Study (NAEMS) of the air emissions from livestock and poultry operations across the country. Approximately 1,900 hog operations have signed up to participate in the voluntary agreement. The agreement includes the National Air Emissions Monitoring Study (NAEMS) of 20 representational livestock and poultry operations, five of which are

hog operations focusing on confinement systems and six focusing on manure management systems. The study began in the summer of 2007. NPPC pursued the ACA and NAEMS after a 2002 report by the National Academy of Sciences found that scientifically credible methodologies for estimating emissions from animal feeding operations needed to be developed. Over the subsequent three years, EPA met with agricultural industry representatives, state and local government officials, environmental organizations and citizens groups to develop a way to determine if operations were in violation, the nature and extent of any violations and the best practices to control industry-wide emissions. NAEMS findings will allow EPA to set scientifically based emissions standards for farms. Of key relevance to the new CERCLA/EPCRA reporting requirement, under the ACA any participating pork producer has legal protections for any past emissions that may have occurred, and these producers need not report their current emissions until the NAEMS concludes on or about January 1, 2010. All ACA participants will be subject to the subsequent regulatory policies.

DO MY OPERATION'S EMISSIONS MEET OR EXCEED THE REPORTING THRESHOLD?

Until the ACA's NAEMS is completed and EPA's has completed their air emissions factor development process, there will be no generally agreed to air emissions estimates from livestock and poultry facilities. Because no officially adopted emission factors are currently available to use for this purpose, the final rule allows reports to reflect "good faith estimates". Since current research indicates that it takes at least 10,000 pigs under one roof at a time to generate sufficient hydrogen sulfide to trigger this reporting requirement, for the purpose of this particular "good faith estimate" reporting requirement, you may use the "Emissions Estimator" worksheet for ammonia that is included in the attachment, developed by the University of Nebraska's Extension researchers, working in cooperation with the USDA's Agricultural Research Service, and Extension researchers at Iowa State University, University of Missouri, North Carolina State University, and Washington State University. If you do have specific and reliable good faith estimates for your operation that indicate you do emit more than 100 pounds of hydrogen sulfide in a day, we recommend that you submit those estimates as part of your report.

This particular "EPCRA" reporting requirement allows for "continuous release reporting" estimates that produce a "lower bound" and an "upper bound" estimated emission levels. The attached "Emissions Estimator" provides for lower and upper bound percentages in the calculations and you may use those to generate your lower and upper bound estimates for this purpose.

BASIC PROCEDURES:

If your good faith estimate indicates that your operation meets or exceed the reporting threshold, taking the following steps will fulfill a producers reporting requirement under the new rulemaking.

1. Make a telephone call by January 20, 2009, to your state emergency response committee (SERC) and your local emergency planning committee (LEPC). You may find your state emergency response committee's phone number on the following EPA website:

http://www.epa.gov/oem/content/epcra/serc_contacts.htm

You may find your local emergency response committee's phone number by using the search tool on the following EPA website:

<http://yosemite.epa.gov/oswer/lepcdb.nsf/SearchForm?OpenForm>

The following script could be helpful to you in making this call:

"Hello, this is [your name]. I am the person in charge of [name of feeding operation]. I am calling to make an initial continuous release notification report under Section 304 of the Emergency Planning and Community Right to Know Act for an animal feeding operation, pursuant to the EPA Final Rule effective January 20, 2009. The name and location of this facility is [name and address]. Its corporate affiliation [if any] is [name] and address is [address]. The hazardous substances I am reporting are ammonia and hydrogen sulfide. A written report will be submitted to you within 30 days from today."

Make a notation in your daily journal, on your calendar, or elsewhere, that this call was made and the date, time, telephone number and if available, the name of the official you spoke with, when you made your initial report.

2. Complete and Send a Written Notification, within 30 days after the above telephone calls (on or before February 19, 2009 if telephone calls were made on January 20, 2009), to the same state and local emergency planning officials as you called. Maintain a record of the mailing so that you can verify the report was sent (certified mail return receipt requested, UPS, FedEx, etc). The attachment includes a suggested cover letter and reporting form that may be used for the Written Notification. You also may use the "Emissions Estimator" worksheet in the attachment to generate your good faith estimates of your emission levels.

3. Annually review your operations to determine whether there are any changes which would increase emissions above the upper bound range that you submitted in the Written Notification described above. If so, you will need to report a statistically significant increase in emissions. Also, if you become aware of information during the year before the annual review that would increase your emissions above the upper bound estimate, you would need to report that immediately as a statistically significant increase. Any statistically significant increase in emissions would require telephone and written notification of the same entities listed above. An example of a type of activity that would cause an emission increase is an increase in the maximum number of animals on your operation.