

EPA Air Quality Compliance Agreement and Final Order
for
Animal Feeding Operations:
*A Dairy Industry Executive Summary*¹

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On January 21, 2005, the U. S. Environmental Protection Agency (EPA) announced the “Air Quality Compliance Agreement” for Animal Feeding Operations (www.epa.gov/compliance). Previous working drafts had been referred to as “Consent Agreement,” “Safe Harbor Agreement,” and “AFO-CAFO Agreement.”

The Air Quality Compliance Agreement (Agreement) is a **voluntary** agreement between EPA and animal feeding operations (AFOs). The Agreement will become officially available when it is published in the Federal Register, a publication of legal notices for the Federal Government. The anticipated publication date is February 1, 2005. Following official publication, there will be a 30-day public comment period concurrent with a 90-day sign-up window for producers to voluntarily execute and return the agreement to EPA. This means that dairy producers, along with swine and poultry producers, will have until about May 1, 2005, to decide whether or not to participate and if so, to return paperwork to EPA. After the 90-day sign-up period expires, EPA will not accept any new participants.

By way of background, a 2002 report by the National Academy of Sciences indicated that more data is required to properly quantify air emissions from AFOs. The gap in data makes it difficult for EPA to enforce existing clean air laws. This also makes it difficult for dairy producers to determine if they are out of compliance and should seek the protections offered by the Agreement. Comparison of estimates from three separate sources suggests that dairy farms of medium and large CAFO size, and perhaps somewhat smaller operations, should carefully evaluate the Agreement.

The Agreement offers producers protection from EPA enforcement of air emissions violations from livestock housing and manure storages that occurred before as well as during the Agreement period. Air emissions from field application of manure are not part of the agreement. All participating dairy producers may need to contribute as much as \$2,500 per farm to fund a nationwide, two-year, dairy air emissions monitoring study. The funding can come from individual producers who sign up or presumably other industry sources. EPA recommends monitoring in four U.S. regions: the Midwest, Northeast, West and South. EPA will require a minimum number of farms monitored, perhaps a total of 3 to 4 nationwide. Dairy can elect to monitor additional farms if desired.

¹This summary document was written for general information purposes only and is not to be considered as engineering or legal advice, nor is endorsement of the Agreement express or implied.

Emissions monitoring will be performed by independent scientists, and the collected data will be forwarded to EPA for development of improved "Emissions-Estimating Methodologies" (EEMs). After the study is completed, EPA will post EEM's on its web site for producer's use to estimate daily and total annual air emissions from their farms. Posting is projected to occur in 2008. Producers can use these estimations to more clearly determine their federal clean air law compliance status.

While the Agreement does not exempt producers from applicable state clean air laws, it does address civil liability for certain potential violations of federal law: Clean Air Act (CAA), Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), and/or the Emergency Planning and Community Right-to-Know Act (EPCRA).

The Agreement requirements can be broken into three areas: those that must be met by EPA, by dairy producers, and by the monitoring scientists. The general obligations of EPA are:

1. To provide releases and covenants not to sue a participating dairy producer for violations of:
 - A. CAA permitting and review requirements and state implementation plans arising from emissions of Volatile Organic Compounds (VOCs), Hydrogen Sulfide (H₂S), Particulate Matter (TSP, PM₁₀, and PM_{2.5}), and Ammonia (NH₃).
 - B. CERCLA section 103 or EPCRA section 304 for failure to notify authorities of H₂S or NH₃ emissions that exceed hazardous substance reporting requirements.
2. To publish EEMs within 18 months of the conclusion of the monitoring period and to publish methodologies as soon as they are developed.
3. To notify the producer if EPA has determined that EEMs cannot be developed for any emission unit identified by the producer.
4. To adhere to normal and customary biosecurity measures for dairy operations if EPA representatives visit monitored farms.

However, the Agreement allows EPA to take action in cases that may present an imminent and substantial endangerment to public health, welfare, or the environment.

The following is a partial list of the obligations a dairy producer has under the Agreement:

1. Pay a \$200 penalty for each farm that has less than 700 cows or 1,000 heifers; \$500 if between 700 and 7,000 cows or between 1,000 and 10,000 heifers; or \$1,000 if more than 7,000 cows or 10,000 heifers, within 30 days of receipt of an executed agreement from EPA.

2. Identify and disclose to EPA the emission units (barns, manure storages, etc.) on their farm.
3. Notify the National Response Center (NRC) and relevant local and state emergency response authorities within 180 days of receiving an executed copy of the agreement from EPA that the farm may generate routine air emissions of NH₃ in excess of 100 pounds in any 24-hour period. (This requirement is only for dairy farms with more than 7,000 cows or 10,000 dairy heifers).
4. Submit the appropriate payment to fund the monitoring study.
5. Allow air emissions monitoring to be performed on their farm, if selected by the independent monitoring contractor and approved by EPA, and permit EPA access to the farm to verify suitability and observe monitoring.
6. Accept the air emission study protocols and the data developed by the study.
7. Waive any right to claim any privilege with respect to the monitoring data collected.
8. Provide written certification to EPA, if applicable, within 60 days after EPA publishes the EEMs for the emission unit(s) at their farm, that no CAA requirements or CERCLA, or EPCRA notifications are required to be made.
9. Submit all CAA permit applications required, if applicable, for their farm based on results established by use of EEMs within 120 days of their publication.
10. Report all qualifying releases of H₂S and NH₃ in accordance with CERCLA and EPCRA, if applicable, within 120 days after EPA publishes EEMs for emission units at the producer's farm.
11. Install all emission control equipment, if use of the EEMs determines that equipment is needed, in a timely fashion and to notify EPA in writing that such installations have been made.

Producers may want to seek legal advice to better understand the terms and conditions of the Agreement.

Producers who choose not to take part in the Agreement will be subject to potential enforcement by EPA for any CAA, CERCLA, or EPCRA violations, as will any producer who signs the Agreement but later drops out by not complying with the terms of the Agreement.

An unofficial version of the Air Quality Compliance Agreement can be accessed at: www.epa.gov/compliance/resources/agreements/caa/cafo-agr-0501.html. (Click on "Agreement.") The official version will be available upon its publication in the Federal Register at www.access.gpo.gov/su_docs/aces140.html. Additional information and updates on the agricultural air emission issue can be found at www.pro dairy facilities.cornell.edu. (Click on "air emissions".) In the coming weeks, information will be distributed that can be used to assist dairy producers in making their decision.