

The EPA Air Emissions Compliance Agreement for Animal Feeding Operations: Why should dairy producers pay attention?

What is this all about? The U.S. Environmental Protection Agency (EPA) has said it will be broadly regulating dust, ammonia, hydrogen sulfide, and other compound emissions from housing and manure storage areas on animal agricultural farms, including dairy operations. However, a lack of information about these emissions is a problem for both EPA and farm owners. It is difficult for EPA to regulate with little information and for producers to know how to comply with existing laws. This problem has escalated for producers since environmental groups and EPA started winning lawsuits against farms.

What's the problem with ammonia or dust emissions? Ammonia and hydrogen sulfide are regulated because they are considered hazardous chemicals and can impact human health. Airborne dust contributes to haze, a major problem in some regions. Also, fine dust particles can cause human respiratory problems.

What do the existing Federal laws require? Generally, if emissions of ammonia or hydrogen sulfide exceed 100 pounds in *any* 24-hour period, then the operation must report the emission(s) to local, state and federal authorities. If a business is a "heavy emitter", then the laws require a permit and may also require reducing emissions. Failure to meet either set of laws can make a business vulnerable to lawsuits and possibly stiff fines for current and *past* emissions. Our best guess is that there are few, if any, dairies in rural areas of the Northeast that are large enough at this time to trigger the heavy emitter threshold, but more information is needed to make an accurate determination. However, there is evidence that suggests many dairies may trigger reporting requirements, especially those around 150 cows or more.

Ag blindsided. Producers are being held responsible for emissions they did not know about by existing laws they were unaware of. Further, even if emissions are quantified today, and producers start to comply with the laws, they are still open to lawsuits for emissions up to 5 years prior.

What has been done about this? As the swine and poultry industries started losing lawsuits over the past several years, they approached EPA with an idea to meet at the middle so as to reduce the threat and impact of painful lawsuits for individual farms. The result is a legal document called the "Air Emission Compliance Agreement"; it was officially made available to animal agriculture by EPA in late January of 2005. In a nutshell, EPA agrees not to sue participating producers for current or *past* emissions in return for paying a modest "penalty" (that may provide additional legal protection) and financially contributing to a monitoring project that will measure emissions from different operations. Participation in the Agreement is voluntary and is only offered until May 1, 2005. The Agreement offers protection that the industry can get no other way: it protects from liability for past emissions if the new monitoring information indicates that an operation was out of compliance and may reduce the risk of other lawsuits.

So, where does dairy stand? Each livestock industry must have enough producers sign-up and raise sufficient money to pay for monitoring. At this time, the Northeast Dairy Producers Association and their legal counsel has recommended that all dairy producers learn more about this situation and participate in the Agreement. Fines range from \$200-\$1,000 per individual farm and the monitoring assessment will not exceed \$2,500 per farm. Outside funding for monitoring is a possibility.

The bottom line: EPA officials have indicated that the existing clean air laws will be enforced for emissions from animal agriculture. Obviously, all 70,000 dairies in the U.S. cannot be sued, but if the dairy industry does not participate, the focus of environmental lawsuits may swing its way since many large players in the swine and poultry industry have indicated their intention to participate in the Agreement. Whether individual producers end up participating or not is their decision, but they owe it to themselves, their business and the dairy industry to make an informed decision by learning more about this situation. See: www.prodairyfacilities.cornell.edu and click on "air emissions".