

How does the Fair Agricultural Reporting Method (FARM) Act impact reporting of air emissions from animal waste under CERCLA Section 103 and EPCRA Section 304?

Farms do not need to report air emissions from animal waste at farms under either CERCLA or EPCRA.

On March 23, 2018, Congress signed into law the Consolidated Appropriations Act, 2018 (“Omnibus Bill”). Title XI of the Omnibus Bill, called the “Fair Agricultural Reporting Method Act” or “FARM Act,” expressly exempts “air emissions from animal waste (including decomposing animal waste) at a farm” from reporting under CERCLA section 103.

In line with the Agency’s prior statements interpreting EPCRA section 304(a)(2), air emissions from animal waste at farms do not need to be reported under EPCRA because these types of releases are now exempt from CERCLA. Under EPCRA section 304(a)(2), releases that are not subject to reporting under CERCLA section 103 need only be reported if the release:

- (a) is not federally permitted as defined in CERCLA,
- (b) exceeds the reportable quantity, and
- (c) occurs in a manner which would require notification under CERCLA section 103.

The release must meet all three criteria in order to be reported under EPCRA section 304(a)(2). As an initial matter, air emissions from animal waste at farms are generally not federally permitted and so would meet (a). For such emissions that exceed a reportable quantity (and thus meet (b)), the question then becomes whether the release “occurs in a manner which would require notification” under CERCLA. The FARM Act expressly excludes certain types of releases—air emissions from animal waste—from CERCLA reporting. Air emissions from animal waste thus do not “occur in a manner” which would require notification under CERCLA, and thus do not meet (c); therefore, these releases fall out of the reporting requirements of EPCRA section 304.

It is important to note that the FARM Act’s reporting exemption is tied to the nature or manner of these releases rather than to a specific substance. The FARM Act does not exempt substances typically associated with animal waste (such as ammonia and hydrogen sulfide) from reporting altogether; rather, it exempts from reporting only the release of these substances from animal waste *into the air*. Because air emissions from animal waste do not “occur in a manner” which would require notification under CERCLA, they do not meet the requirement under (c). As a result, the three requirements to trigger reporting under EPCRA section 304(a)(2) are not met and these releases do not need to be reported.

EPA’s interpretation based on the recent FARM Act is in line with prior statements the Agency has made to promote consistency between CERCLA and EPCRA release reporting. For example, in the 1987 final rule promulgating the EPCRA regulations, EPA cited to EPCRA section 304(a)(2) to adopt the reporting of continuous releases and exempt the application of registered pesticide products from EPCRA release reporting, noting: “Because such releases are not reportable under [CERCLA], they are also exempt from release reporting under [EPCRA]. . . . These releases, which include emissions from engine exhaust, certain nuclear material releases, and the normal application of fertilizer, are also excluded from release notification under [EPCRA].” *See 52 Federal Register 13384-13385 (April 22, 1987)*. Similarly, in a 1989 technical amendment to its EPCRA regulations, EPA excluded four categories of releases of radionuclides from EPCRA reporting which had been excluded from CERCLA reporting, stating: “Because of today’s exemptions of certain radionuclide releases from CERCLA notification requirements . . . such exempted releases also are exempt from the reporting requirements of section 304 of [EPCRA].” *See 54 Federal Register 22543 (May 24, 1989)*.

EPA intends to conduct a rulemaking to address the impact of the FARM Act on the reporting of air emissions from animal waste at farms under EPCRA.

How does the FARM Act impact reporting of other types of releases (i.e., those that are not air emissions from animal waste)?

The FARM Act applies only to the reporting of air emissions from animal waste. The Act does not exempt any other type of release at a farm from reporting. In other words, the FARM Act does not apply to releases of substances from animal waste into non-air environmental media, nor to releases into air from sources other than animal waste at farms. For example, a release from animal waste into water (e.g., a lagoon breach) or a release from an anhydrous ammonia storage tank into the air would trigger reporting requirements under CERCLA if they exceed reportable quantities.