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## Barnyard ACA Questions

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**To** Fried, Gregory (he/him/his) <fried.gregory@epa.gov>; Schrock, Bill <Schrock.Bill@epa.gov>; Do, Bebhinn (she/her/hers) <do.bebhinn@epa.gov>; Rodney Snyder <Snyder.Rodney@epa.gov>; Venus Welch-White <WelchWhite.Venus@epa.gov>

**Cc** Tom Hebert <tom.hebert@bayardridge.com>

EPA friends,

On behalf of the "barnyard" group, thank you for meeting with us a few weeks back regarding the Air Consent Agreement. As promised, the following are some questions we have at this moment. We look forward to working with you on this issue.

Thank you,

Lauren Lurkins

o Logistics

- After almost 20 years, some producers may not be able to locate their ACAs. Is there a process where they could, independently or through a representative, get a copy of the agreement in EPA's file?
- How will EPA verify the identify of those asking for the information?
- How will EPA protect confidential business information?
- How will EPA handle the ACAs with agreements covering several facilities?
- How will EPA handle the various changes of ownership and management of contract facilities throughout the past 17 years?
- What if the original respondent no longer owns the farm/emission unit that was included in Attachment A?
- Can EPA notify all ACA holders prior to the issuance of final emission factors that, once those final factors are issued, the ACA holders are relived of their obligation to notify EPA in writing that using the factors, their facilities do not trigger CAA, CERCLA or EPCRA permitting or reporting requirements?

- For facilities that do determine CAA requirements are triggered, what can the agency do to allow flexibility on the 120-day deadlines?
  - How will EPA notify respondents if EPA determines that it cannot develop EEM for any emission units? They need to ID (individually or by category) emission units, sources or facilities for which EEM cannot be developed. Is there a way to do this by US Mail in a way that can be streamlined?
- o Outreach
- Can guidance be provided at the point of EEM proposal and finalization with regard to the ties to the ACA and the deadlines therein?
  - What guidance has been, or will be given, to state and local air permitting authorities about this? What about Regional EPA offices?
- o Substance
- We note that the ACA defines the term “permitting authority” to mean “the local, State or Federal government entity with jurisdiction to require compliance with the permitting requirements of the Clean Air Act.” Just to confirm, in those states where the state agency is responsible for CAA implementation and permitting, an ACA holder looking to understand their CAA permitting obligations in light of their estimated emissions should look to that state authority and their implementing measures to determine if the ACA holder has a permitting obligation in that state, correct?
  - What are the permitting requirements? The ACA language contemplates both construction and operating permits.
  - For operating permits, what is the “federally enforceable limit or conditions that limits PTE”?
    - For construction permits, what is Best Achievable Control Technology (BACT) or Lowest Achievable Emissions Reduction (LAER)?
  - What if modifications were made to facilities in the past two decades?
    - What if those changes involved a new animal housing and manure/air management system? What if no emissions factors corresponding to that new system were developed by EPA?
    - What if the system largely stayed the same, but increased emissions?
    - What if the system largely stayed the same, but decreased emissions?
    - What if the facility was torn down and an entirely new facility was constructed at the location?

- What if facilities changed ownership?
- What if the facility is no longer in operation?
- What if the emission units have changed?
- Annual emissions from source are to be determined on respondent's "current operating methods" and based on max number of animals housed at source at any time over the 24 months prior to EPA's publication of applicable EEM. What is the Agency's guidance to facilities on this calculation?
- At this time, there are no reporting obligations for air emissions from animal waste at farms under either CERCLA or EPCRA. If, however, EPA promulgates a EPCRA reporting requirement, would the new deadline to report under EPCRA (in paragraph 28(C)(ii)) be 120 days from the effective date of a new EPCRA rule or some other date?
- When is an EEM "published" for purposes of triggering the deadlines in paragraph 28? When a final EEM is posted on EPA's website? When a notice of a final EEM is published in the Federal Register?
- What would EPA's intention be to "publish methodologies on rolling basis as soon as developed"?
- EPA noted (70 FR at 4959) that an important issue under the CAA is whether emissions from different areas at AFOs should be treated as fugitive or nonfugitive. EPA says it plans to issue regulations or guidance on this issue after the conclusion of the monitoring study. Is there a current guidance doc or regulation setting forth EPA's interpretation? If not, does EPA intend to define "fugitive emissions" differently than it has previously under the NSR program?
- The ACA does not define the scope of the term "source" as it relates to animal agriculture and farm activities, though EPA said (70 FR at 4959) that it would provide guidance on this issue at the conclusion of the monitoring study. Are there existing guidance documents or applicability determinations that EPA plans to rely on in further defining/interpreting the term "source"? Or does EPA intend to issue new guidance in conjunction with finalizing EEMs?
- What can ag trade associations to help?
  - o Most of the trade associations have lists of the initial parties that signed the ACA. We could cross-reference those lists with the EAB information and EPA's list to make sure our lists are complete.
  - o We could communicate with our respective trade associations of the existence of that list (given turnover, etc), the fact that it has been validated by EPA, and then help with next steps.
  - o We could continue to work with EPA to develop processes for growers to access their file.

- o We could continue to work with EPA to develop processes to batch scenarios for farms – those who are no longer covered by the agreement, those who do not have EEMs that cover their operations, those who do not trigger requirements when the EEMs are run, those who do trigger requirements when EEMs are run.
- o Continue to communicate questions from producers to EPA.
- o Continue to help communicate the process to our producers.

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