Consent Decree

Questions and Answers

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?
    - **Setup email box**.
- How will EPA verify the identify of those asking for the information?
    - **EPA will only mail agreements to the address included in signup and only for those participants that request the information.**
- How will EPA protect confidential business information?
    - **Full agreements (including CBI) will be mailed only to the address/entity that signed up, per request.**
- How will EPA handle the ACAs with agreements covering several facilities?
    - **If the entity signed up multiple facilities it will receive (if requested) all Attachment A's included in the signup.**
- How will EPA handle the various changes of ownership and management of contract facilities throughout the past 17 years?
    - **EPA can set up an email inbox to respond to inquiries regarding change of ownership issues, keeping in mind that volume and CBI concerns may limit our ability to respond to provide adequate and timely responses.**
- What if the original respondent no longer owns the farm/emission unit that was included in Attachment A?
    - **Similar to our response above, OECA can set up an email inbox to address individual requests relating to changes in ownership.**
- 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?
    - **We need to look into the feasibility of sending out paper mailings given the volume of participants. We would also consult with OAR to determine if there are email addresses associated the farms that we could send electronic notifications.**
- For facilities that do determine CAA requirements are triggered, what can the agency do to allow flexibility on the 120-day deadlines?
    - **The ability to provide flexibility, if at all, will be determined on a case-by-case basis.**
- 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?

- **As part of the final EEM issuance, EPA will make any determinations that they could not develop an EEM for a particular source.**

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?
  - **Yes.**
- What guidance has been, or will be given, to state and local air permitting authorities about this? What about Regional EPA offices?
  - **Guidance will be given to state/locals on the Agreement requirements.**

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?
  - **Correct. If the permitting authority has questions they will follow up with EPA Regions/Headquarters.**
- What are the permitting requirements? The ACA language contemplates both construction and operating permits.
  - **Potentially both. ACA holders are required to submit all required Clean Air Act permit applications within 120 days after EPA has published the applicable EEMs. This potentially includes both construction and operating permit applications.**
- For operating permits, what is the "federally enforceable limit or conditions that limits PTE"? It varies by area of the country (attainment status) and pollutant.
  - **A facility's permitting authority will be able to confirm this information but generally it is 100 tpy of an air pollutant, e.g., particulate matter, including precursors, and volatile organic compounds. Lower thresholds apply in certain nonattainment areas.**
- For construction permits, what is Best Achievable Control Technology (BACT) or Lowest Achievable Emissions Reduction (LAER)?
  - **BACT and LAER are a case-by-case decision made by state or local permitting authorities.**
- What if modifications were made to facilities in the past two decades?
  - **A facility's permit status must be determined based on its current configuration and not simply the units signed up for the ACA.**
- 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?
  - **Similar to the previous answer, a facility's permit requirements must be based on all units at the facility, if new emission units were added that were**

not covered by the original ACA the facility must make their best effort to estimate emissions.

- What if the system largely stayed the same, but increased emissions?
  - **Increased their emissions from what? Need more info to answer.**
- What if the system largely stayed the same, but decreased emissions?
  - **Decreased their emissions from what? Need more info to answer.**
- What if the facility was torn down and an entirely new facility was constructed at the location?
  - **EPA would consider the facts of each particular case to evaluate whether the new source requirements apply.**
- What if facilities changed ownership?
  - **EPA would consider ownership changes on a case-by-case basis.**
- What if the facility is no longer in operation?
  - **Again, we would consider this on a case-by-case basis and would need additional information as to whether the facility was permanently shut down.**
- What if the emission units have changed?
  - **An answer cannot be provided without specific information. As stated above, a facility is required to include all emission units in a permit determination regardless of whether those units were included in the ACA Attachment A.**
- 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?
  - **This doesn't seem unclear-maybe the question could be re-worded.**
- 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?
  - **This would depend on the timing of the EPCRA rulemaking. If the effective date for the EPCRA rulemaking is before the final EEMs are published, then I believe the 120 days after the final EEMs are published or when the EPCRA rulemaking requires-whichever is later. If the EPCRA rulemaking is effective after the EEMs are finalized, then the reporting timeline would be whatever is required in the EPCRA rulemaking.**
- 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?
  - **The Agency has not determined if the final published deadline will be a Federal Register notice or just a webpage update. Either way, Agency outreach will attempt to ensure all parties are aware of the final issuance.**
- What would EPA's intention be to "publish methodologies on rolling basis as soon as developed"?
  - **When the Agency crafted the ACA, it was envisioned that the EEMs would possibly be rolled out as they were completed. As the EEM development has progressed only the draft EEMs have been published on a rolling basis. It is now expected that all the EEMs will be finalized at the same time.**

- 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 Agency is developing a guidance document to help answer these types of questions. We are not planning on changing our regulatory framework for deciding whether emissions are fugitive or non-fugitive. The guidance will simply illustrate how this existing framework could apply to different types of ag operations.**

- 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?
  - **This information is part of the guidance document referred to in the previous question. We are not planning on changing our regulatory framework for source definition. The guidance will simply illustrate how this existing framework could apply to different types of ag operations.**

What can ag trade associations to help?

- 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.
  - **The EAB list is public but doesn't include number of facilities signed up so not sure of exactly how helpful this would be.**
- 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.
  - **The EAB list is public so if they want to communicate this info that is OK by EPA.**
- We could continue to work with EPA to develop processes for growers to access their file.
  - **Yes.**
- 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.
  - **Unclear what is meant by batch scenarios.**
- Continue to communicate questions from producers to EPA.
  - **Yes.**
- Continue to help communicate the process to our producers.
  - **Yes.**