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EPA Denies Petition Seeking Regulation of CAFOs under the Clean Air Act

In the closing days of 2017, the U.S. Environmental Protection Agency (EPA) denied a petition from environmental and animal rights groups calling for EPA to list large farms as “stationary sources” under the Clean Air Act (CAA) and implement stricter controls on air emissions.

In a December letter, EPA Administrator E. Scott Pruitt announced that his agency would deny a petition lodged in 2009 by the Humane Society of the United States (HSUS) and other environmental and citizen groups. Among other requests, the petitioners asked EPA to include concentrated animal feeding operations (CAFOs) as a category of stationary sources listed under section 111 of the CAA. Listing CAFOs as a category of source would have set in motion a regulatory process in which EPA would have been required to develop new source performance standards (NSPS) applicable to new or modified CAFOs and state-implemented “emissions guidelines” for existing CAFOs.

Federal law provides interested persons the right to petition agencies to engage in rulemaking. In their petition, the groups specifically asked EPA to:

- Find that hydrogen sulfide and ammonia constitute air pollution that endangers U.S. public health or welfare;
- Announce the EPA Administrator’s judgment that emissions of methane, nitrous oxide, hydrogen sulfide, ammonia, volatile organic compounds, and particulate matter contribute significantly to air pollution that is reasonably anticipated to endanger public health and welfare;
- List CAFOs as a category of stationary sources pursuant to CAA section 111; and
- Promulgate standards of performance for air emissions of methane, nitrous oxide, hydrogen sulfide, ammonia, volatile organic compounds, and

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particulate matter from new and existing CAFOs under CAA sections 111(b) and 111(d).

While EPA denied the groups' petition, it did not decide whether CAFOs should or should not be listed as a category of source under section 111. Instead, EPA elected to stay the course on its current approach to regulating CAFO emissions, leaving a listing decision for another day. In his letter, Administrator Pruitt wrote that the EPA's current strategy for addressing CAFO air emissions includes additional studies of air emissions from CAFOs, developing improved emissions estimation methodologies, and gathering more information on the magnitude of CAFO air emissions and control technologies before honing in on a regulatory response.

EPA's letter noted that air emissions from CAFOs are "interactive and highly complex" and come from many on-farm sources, leading to a need for new, more reliable methodologies for estimating emissions before EPA can consider an appropriate regulatory strategy. EPA also found shortcomings in the data relied upon by the petitioners, explaining that "historic emissions measurement techniques" do not accurately characterize aggregate emissions from CAFOs because these techniques have been found to be highly variable and site-specific.

While EPA's denial represents its final word on the groups' petition, the petitioners may seek review of EPA's decision in federal court. The groups have until February 26 to ask the D.C. Circuit, a prominent federal appeals court, to review EPA's conclusions. In general, courts are hesitant to displace an agency's decision about how best to allocate limited regulatory resources. EPA's denial letter specifically addresses limited agency resources and competing priorities to justify its current approach to CAFO air emissions.

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