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## EPA Incorporates Farm Air Emissions Reporting Exemption into Regulations

Four months after Congress enacted the Fair Agricultural Reporting Method (FARM) Act to exempt farms from reporting air emissions under a federal environmental cleanup statute, EPA has issued a rule incorporating the FARM Act into EPA regulations.

The direct final rule was published in the *Federal Register* today, August 1, 2018, and is effective immediately.

Harmonizing existing EPA regulations with the FARM Act likely closes the book on a farm's potential obligation to report releases of air emissions from animal wastes stored on farms under two related federal environmental laws: the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) and the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). "Farms do not need to report air emissions from animal waste at farms under either CERCLA or EPCRA," EPA wrote in an April factsheet discussing the FARM Act.

EPA's direct final rule relating to CERCLA reporting undertakes two tasks. Of foremost importance, the rule incorporates the FARM Act's reporting exemption for "air emissions from animal waste (including decomposing animal waste) at a farm" and adds definitions of "animal waste" and "farm" for these purposes. The rule also removes prior reporting exemptions applicable to agriculture that were struck down by a federal court last year.

Though the FARM Act only directly amended provisions of CERCLA, EPA has concluded that this amendment also eliminates any obligation a farm would have to report air emissions from animal waste under EPCRA. That's because EPCRA's reporting obligation is limited to releases that "occur[] in a manner which would require notification under CERCLA section 103." Because the FARM Act creates a CERCLA reporting exemption for farms based on the *manner* of the release (i.e., a release to the air), reporting would not be required for the same release under EPCRA.

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Even prior to the FARM Act's passage, EPA had cited an additional, independent basis for concluding that EPCRA did not require reporting of air emissions from manure stored on farms. In guidance issued in fall 2017, EPA announced its interpretation that EPCRA excludes air releases from substances "used in routine agricultural operations" from requiring a report under EPCRA. In EPA's view, if a farm only uses substances in "routine agricultural operations," the farm would not be a facility that produces, uses, or stores "hazardous chemicals," and would therefore not be within the universe of facilities which are subject to EPCRA release reporting. In sum, because animal wastes stored on a farm or applied as fertilizer are clearly "used in routine agricultural operations," EPA concluded that any air releases from these wastes are not covered by EPCRA.

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