UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RURAL EMPOWERMENT ASSOCIATION FOR COMMUNITY HELP, *et al.*,

Plaintiffs,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, *et al.*,

Defendants,

and

NATIONAL CATTLEMEN'S BEEF ASSOCIATION, *et al.*,

Intervenor-Defendants.

Civ. No. 18-cv-02260-TJK

INTERVENOR-DEFENDANTS' CROSS MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM OF LAW IN SUPPORT OF SUMMARY JUDGMENT AND IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES *

Page(s)

Cases

* Authorities chiefly relied upon are marked with an asterisk.

Statutes

Regulations

Rulemakings

Legislation and Legislative History

Intervenor-Defendants National Cattlemen's Beef Association, National Pork Producers Council, American Farm Bureau Federation, and U.S. Poultry & Egg Association, respectfully submit this cross motion for summary judgment and memorandum of law and authority in support of the cross motion and in opposition to Plaintiffs' motion for summary judgment. *See* Pls' Mot., ECF No. 83; Pls' Mem., ECF No. 83-1.

INTRODUCTION

This is a case of pure statutory interpretation arising from the interwoven emergency release reporting requirements under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") and the Emergency Planning and Community Right-to-Know Act ("EPCRA"). The question presented is simple: when Congress amends CERCLA to exempt the reporting of air emissions from animal waste on farms, does that amendment exempt the same reporting under EPCRA?

The text, structure, and history of EPCRA all confirm EPA's nearly 40-year interpretation that when Congress exempts reporting of releases from CERCLA section 103(a)'s notification requirements, 42 U.S.C. § 9603(a), that exemption applies equally to EPCRA section 304(a)'s notification requirements, *id.* § 11004(a). Congress enacted CERCLA in 1980 with reporting provisions (as relevant here) that require immediate notification to federal authorities of releases of certain substances over certain quantities so as to enable efficient emergency responses to such releases. Six years later, in 1986, Congress enacted EPCRA with reporting provisions to provide state and local authorities with the same information for the same purposes. In so doing, Congress closely tied EPCRA's and CERCLA's reporting provisions together. Roughly contemporaneous with EPCRA's enactment, EPA promulgated regulations in 1987, interpreting the two statutes in tandem to mean that a statutory exemption under CERCLA effectively creates an exemption under EPCRA. Those regulations have remained largely unchanged to this day.

In this case, Petitioners challenge a rule by EPA applying precisely the same reasoning following Congress's enactment of the FARM Act in 2018. In that legislation, Congress amended CERCLA section 103(e) by exempting air emissions from animal waste at farms from reporting. Congress made clear that animal waste air emissions do not fall within the scope of CERCLA reporting because they are *not* chemical emergencies, but simply the everyday result of normal animal agricultural operations. EPA then promulgated a rule to apply this exemption to EPCRA using the same rationale and basic principles of statutory interpretation it has applied since 1987. EPA's rationale follows from a plain reading of the statutory text and context, is confirmed by EPCRA's legislative history, is consistent with EPCRA's purpose, and is entitled to *Skidmore* respect by this Court. Moreover, because EPA was merely implementing Congress's command in promulgating the challenged rule, there was no basis to apply the National Environmental Policy Act's ("NEPA") requirements to the rule.

Contrary to Plaintiffs' characterization, the factual circumstances of animal agricultural operations and their relationship to human health are not at issue.[1] Rather, the sole issue is the interplay between CERCLA section 103 and EPCRA section 304. As explained more fully below, the Court should grant Defendants' and Intervenor-Defendants' motions for summary judgment.

STATUTORY AND REGULATORY BACKGROUND

A. Congress Closely Linked Reporting Requirements and Exemptions Under CERCLA and EPCRA.

Under CERCLA section 103(a), persons in charge of covered facilities must immediately notify the National Response Center of any "release" of a "hazardous substance" from a facility

[1] While Intervenor-Defendants strongly disagree with Plaintiffs' allegations about the health and environmental effects of air emissions from farm animal waste, Intervenor-Defendants do not address them here because EPA took no position on the issue, specifically noting in its Response to Comments that such alleged impacts were outside the scope of its rulemaking. *See* Pls' App. Ex. 4 at 18-19.

where the release exceeds an EPA-established "reportable quantity" for the particular substance within a 24-hour period. 42 U.S.C. § 9603(a). Congress defined "hazardous substance" in 42 U.S.C. § 9601(14), and the full list of CERCLA "hazardous substances" is set forth in 40 C.F.R. § 302.4. When Congress enacted CERCLA in 1980, *see* Pub. L. No. 96-510, 94 Stat. 2767 (1980), it included numerous exemptions from section 103 reporting. First, CERCLA's definition of "release" expressly *excludes* releases that (A) result in exposure to persons solely within a workplace, (B) originate from certain engine exhaust sources, (C) originate from a nuclear incident, or (D) result from the normal application of fertilizer. 42 U.S.C. § 9601(22). Because only "release[s]" are subject to section 103 reporting, there is no need to report any of the foregoing four activities under CERCLA. *See id.* § 9603(a).

Congress created additional exemptions from section 103(a) reporting elsewhere in section 103. For instance, there is no need to provide immediate notification of "the application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act ["FIFRA"] . . . or the handling and storage of such a pesticide[.]" *Id.* § 9603(e)(1)(A) (formerly § 9603(e)). Likewise, there is no need to provide immediate notification of the "release of a hazardous substance . . . which is a continuous release, stable in quantity and rate," because such continuous releases must be reported annually and only when there is a "statistically significant increase" from prior annual reports. *Id.* § 9603(f)(2).

"Once CERCLA required the reporting of releases of hazardous substances to the federal government, questions arose as to whether federal law also should require reporting of the same information directly to state and local governments to help facilitate their emergency response capabilities." S. Hrg. 115-237, at 68-69 (Mar. 7, 2018) (citing Sen. Comm. on Env't and Pub. Works, *A Legislative History of the Superfund Amendments and Reauthorization Act of 1986*

(Public Law 99-499), prepared by Congressional Research Service, 101st Cong., 2nd sess., 1990, S. Prt. 101-120 (1990)). Thus, Congress enacted EPCRA in 1986, tying each of its reporting requirements to CERCLA's. *See* Pub. L. No. 99-499, 100 Stat. 1613 (1986); *see also* 42 U.S.C. § 11004(a).

EPCRA reporting is required under section 304(a) under one of three scenarios: *first*, under section 304(a)(1), one must report the release of any "extremely hazardous substance" if "such release requires a notification under [CERCLA] section 103(a)[.]" 42 U.S.C. § 11004(a)(1). EPA designates "extremely hazardous substances" for EPCRA purposes under section 102(a). *See id.* § 11002(a). EPA's list of "extremely hazardous substances" under EPCRA is set forth in the Appendices to 40 C.F.R. part 355. Importantly, that list is *not* identical to the list of CERCLA "hazardous substances." There are substances that appear on only one list, so the lists of "extremely hazardous substances" (under EPCRA) and "hazardous substances" (under CERCLA) overlap like a Venn diagram.[2] If a substance appears on both lists, and a release of that substance does not qualify for any of CERCLA's statutory exemptions (*i.e.*, it requires notification under CERCLA section 103(a)), such release also requires notification under EPCRA section 304(a)(1).

Second, under EPCRA section 304(a)(3), one must report the release of a substance that is *not* designated as an "extremely hazardous substance" under EPCRA if "such release requires notification under [CERCLA] section 103(a)." 42 U.S.C. § 11004(a)(3). Thus, if a substance appears only on the CERCLA list of "hazardous substances," but not the EPCRA list of "extremely hazardous substances," a release of that substance must still be reported under EPCRA section

[2] *See* Consolidated List of Lists, EPA (last updated May 13, 2024), https://www.epa.gov/epcra/consolidated-list-lists (cross-indexing substances listed under CERCLA, EPCRA, and other statutes).

304(a)(3) if it requires notice under CERCLA section 103(a), meaning none of the CERCLA exemptions apply.

Third, EPCRA section 304(a)(2) applies to any "extremely hazardous substance" that is "not subject to the notification requirements under" CERCLA section 103(a). The legislative history of EPCRA section 304(a)(2) makes clear that section only applies in the limited situation where there is a release of a substance designated as an "extremely hazardous substance" under EPCRA that is not also designated as a "hazardous substance" under CERCLA: "This requires notification where there is a release of an extremely hazardous substance that would require notice under section 103(a) of CERCLA *but for the fact that the substance is not specifically listed under CERCLA as requiring such notice*." H.R. Conf. Rep. No. 99-962, 284, *reprinted in* 1986 U.S.C.C.A.N. 3276, 3377 (emphasis added). Thus, under section 304(a)(2), if a substance is an "extremely hazardous substance" under EPCRA, but it is *not* a "hazardous substance" under CERCLA, a release of that substance need only be reported if it satisfies three requirements: (1) it is not a federally permitted release within the meaning of CERCLA section 101(10), 42 U.S.C. § 9601(10); (2) the release is in an amount in excess of the reportable quantity determined by EPA; and (3) the release "occurs in a manner which would require notification under section 103(a) of CERCLA." *Id.* § 11004(a)(2). As to the third requirement, a release "occurs in a manner which would require notification under section 103(a) of CERCLA" if it is *not*: (i) excluded from CERCLA's definition of "release," which is narrower than EPCRA's definition of "release" because of several statutory exclusions, *compare* 42 U.S.C. § 9601(22) (CERCLA) *with id.* § 11049(8) (EPCRA); (ii) statutorily exempt from reporting by CERCLA section 103(e), 42 U.S.C. § 9603(e); or (iii) statutorily exempt from reporting by CERCLA section 103(f), 42 U.S.C. § 9603(f).

B. EPA Promulgated Contemporaneous Rules Harmonizing CERCLA's and EPCRA's Reporting Requirements.

Contemporaneous with EPCRA's enactment, EPA promulgated a rule interpreting and clarifying the connection between the two acts' reporting exemptions. *See* 52 Fed. Reg. 13378 (Apr. 22, 1987) ("1987 Rule"). In the 1987 Rule, EPA carried over three exemptions under CERCLA and applied them to EPCRA reporting:

First, EPA addressed a discrepancy in the statutory definitions of "release." EPCRA's definition of "release" mirrors only the first part of CERCLA's definition. *Compare* 42 U.S.C. § 11049(8) *with* 42 U.S.C. § 9601(22). Although the statutory exclusions from CERCLA's definition of "release" do not appear in the EPCRA definition, the 1987 Rule exempted from EPCRA reporting any releases from engine exhaust, nuclear incidents, and the normal application of fertilizer. 52 Fed. Reg. at 13384-85.

Second, EPA applied CERCLA's statutory reporting exemption for the application, handling, or storage of pesticides registered under FIFRA by agricultural producers. *See* 42 U.S.C. § 9603(e)(1)(A) (formerly § 9603(e)). The 1987 Rule expressly exempted those same activities from EPCRA's reporting requirements. Although EPA first intended to promulgate this exemption under EPCRA in 1987, it inadvertently omitted regulatory text codifying the exemption in the final 1987 Rule; EPA remedied that omission by issuing a technical amendment in 1989. *See* 54 Fed. Reg. 22543 (May 24, 1989); 40 C.F.R. § 355.31(c) (formerly 40 C.F.R. § 355.40(iv)).

Third, EPA applied CERCLA's statutory reporting exemption for continuous releases to EPCRA reporting. *See* 42 U.S.C. § 9603(f)(2); *see also* 52 Fed. Reg. at 13381. EPA further clarified this exemption in 1990 by codifying definitions of "continuous" and "statistically significant increase." 55 Fed. Reg. 30166, 30179 (July 24, 1990). EPA added those definitions to

"clarify the meaning of the statutory phrase [from EPCRA], 'occurs in a manner which would require notice under CERCLA section 103(a).'" *Id.*

As EPA explained in the 1987 Rule, these exemptions simply clarified exemptions from EPCRA reporting requirements as applied through section 304(a)(2): none of these three categories of releases "occur in a manner" that would require immediate notification under that CERCLA section 103(a). *See* 52 Fed. Reg. at 13384-85. Thus, they would also be exempt under EPCRA section 304(a)(2).

C. After the D.C. Circuit Invalidated EPA's Initial Attempt to Promulgate Reporting Exemptions for Air Emissions from Animal Waste, Congress Enacted the FARM Act in 2018.

On December 18, 2008, EPA issued a rule exempting all farms from having to report releases of hazardous substances emitted to the air from animal waste under CERCLA and exempting small farms from having to report releases of extremely hazardous substances under EPCRA. *See* 73 Fed. Reg. 76,948 (Dec. 18, 2008) ("2008 Rule"). EPA explained that reports on farm animal waste air emissions "are unnecessary because, in most cases, a federal response is impractical and unlikely (i.e., [the EPA] would not respond to them since there is no reasonable approach for the response)." *Id.* at 76,956. The D.C. Circuit ultimately invalidated the 2008 Rule in *Waterkeeper Alliance v. EPA*, 853 F.3d 527 (D.C. Cir. 2017).

In response, Congress passed the Fair Agricultural Reporting Method Act ("FARM Act") as Title XI of the Consolidated Appropriations Act of 2018. Pub. L. No. 115-141, §§ 1101-1103, 132 Stat. 348, 1147-48 (2018). The FARM Act amended CERCLA section 103(e) to exempt all farms from reporting requirements for air emissions from animal waste. *See id.* The FARM Act's exemption is codified at 42 U.S.C. § 9603(e)(1)(B).

D. Following Its Longstanding Interpretation, EPA Applied the FARM Act Exemption to EPCRA Reporting.

In the wake of the FARM Act's passage, EPA issued a guidance document titled, "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?" *See* 84 Fed. Reg. 27533, 27541 (June 13, 2019) ("Final Rule"). The document noted that "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." *Id.* A few months later, EPA published a proposed rule applying the FARM Act's CERCLA reporting exemption to EPCRA through EPA's regulations at 40 C.F.R. part 355. *See* 83 Fed. Reg. 56791 (Nov. 14, 2018) ("Proposed Rule"). The preamble to the Proposed Rule noted that it was "not constrained by the D.C. Circuit's decision in *Waterkeeper*" because the Proposed Rule was not an administrative reporting exemption arising out of EPA's general rulemaking authority; rather, it was "rooted in EPCRA section 304 and its relationship with CERCLA section 103 and as informed by EPCRA section 304's statutory text, framework and legislative history." *Id.* at 56795-96.[3]

EPA promulgated the Final Rule at issue in this case in June 2019. *See* 84 Fed. Reg. 27533. The Final Rule amended 40 C.F.R. § 355.31 by adding paragraph (g) to exempt from EPCRA reporting "[a]ir emissions from animal waste (including decomposing animal waste) at a farm." *Id.* at 27542. This language is identical to the FARM Act's CERCLA exemption. *Compare* 42 U.S.C. § 9603(e)(1)(B) *with* 40 C.F.R. § 355.31(g). The Final Rule also added definitions for

[3] Contrary to Plaintiffs' contentions, therefore, the Final Rule is not an "agency action that changes prior policy." *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 514 (2009); *see* Pls' Br. at 20.

"animal waste" and "farm" that are identical to the FARM Act's definitions for the CERCLA exemption. *Compare* 42 U.S.C. § 9603(e)(2) *with* 40 C.F.R. § 355.61.

Notably, the preamble to the Final Rule mentioned that, in June 2017, members of the National Association of SARA Title III Program Officials ("NASTTPO") wrote to EPA about EPCRA reporting for concentrated animal feeding operations ("CAFOs"). 84 Fed. Reg. at 27538.[4] This letter "indicated that the release reports for air emissions from animal waste at farms provide little value to local agencies and first responders, and are generally ignored. NASTTPO states that open dialogue and coordination among farms and local agencies can be more effective than release reporting to address animal waste management at farms." *Id.* NASTTPO, which had "opposed broad exemptions from air release reporting obligations years ago," posted a comment in support of the Proposed Rule, stating that "[l]itigation and legislation have intervened and now it is clear that relief from air release reporting obligations under EPCRA for animal wastes produced by the animal agriculture sectors of the economy are appropriate." Timothy R. Gablehouse, President, NASTTPO, *Comment On Emergency Release Notification Regulations on Reporting Exemption for Air Emissions from Animal Waste at Farms* (Dec. 14, 2018), EPA-HQ-OLEM-2018-0318-0238, attached as Exhibit 2 (internal citations omitted).

STANDARD OF REVIEW

"[C]ourts, not agencies, will decide '*all* relevant questions of law' arising on review of agency action." *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244, 2261 (2024) (quoting 5 U.S.C. § 706)). It is therefore the duty of the courts, not agencies, to "independently interpret the statute and effectuate the will of Congress[.]" *Id.* at 2263. Nonetheless, *Skidmore* respect continues to

[4] The letter is available at https://www.epa.gov/epcra/letter-national-association-sara-title-iii-program-officials-cafos-and-emergency-release and is attached as Exhibit 1.

apply: "the interpretations and opinions of the relevant agency, made in pursuance of official duty and based upon ... specialized experience, constitute[] a body of experience and informed judgment to which courts and litigants [could] properly resort for guidance, even on legal questions." *Id.* at 2259 (quoting *Skidmore v. Swift & Co.*, 323 U.S. 134, 139-40 (1944) (internal quotation marks omitted)).

"In addressing a question of statutory interpretation, [courts] begin with the text." *Eagle Pharms., Inc. v. Azar*, 952 F.3d 323, 330 (D.C. Cir. 2020) (quoting *City of Clarksville, Tenn. v. FERC*, 888 F.3d 477, 482 (D.C. Cir. 2018)). Moreover, "[i]t is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 666 (2007) (internal quotation marks and citation omitted). Finally, "exhaust[ing] the traditional tools of statutory construction" includes "examining the statute's legislative history to shed new light on congressional intent, notwithstanding statutory language that appears superficially clear." *Azar*, 952 F.3d at 338 (quoting *Sierra Club v. EPA*, 551 F.3d 1019, 1027 (D.C. Cir. 2008) (internal quotation marks omitted)).

ARGUMENT

I. BECAUSE CONGRESS EXEMPTED AIR EMISSIONS FROM ANIMAL WASTE AT FARMS FROM CERCLA RELEASE REPORTING, THEY ARE ALSO EXEMPT FROM EPCRA REPORTING.

A. The "Automatic" Reporting Link Between CERCLA and EPCRA Is Clear from the Statutory Text and Structure.

EPCRA section 304(a) requires release reporting under three distinct scenarios. As the sub-headings of that section reflect, a key inquiry is whether the substance is an "11002(a) substance" or a "non-11002(a) substance." *See* 42 U.S.C. § 11004(a)(1)-(3). An "11002(a) substance" is one that is published on EPA's list of "extremely hazardous substances." 42 U.S.C. § 11002(a); *see*

also 40 C.F.R. part 355 Appendices A & B. Congress made it clear in EPCRA sections 304(a)(1) and 304(a)(3) that if the "release requires notification under section 103(a) of CERCLA," then notification is also required under EPCRA *regardless* of whether the substance is an "11002(a) substance" or a "non-11002(a) substance." 42 U.S.C. § 11004(a)(1), (a)(3). As discussed above, a release only requires notification under CERCLA section 103(a) if it involves a "hazardous substance" (within the meaning of CERCLA) *and* none of the exemptions from CERCLA section 103(a) reporting apply (*i.e.*, the release is not statutorily excluded from the definition of "release" in CERCLA section 101(22), 42 U.S.C. § 9601(22); the release is not exempt from reporting by CERCLA section 103(e), 42 U.S.C. § 9603(e); and the release is not exempt from reporting by CERCLA section 103(f), 42 U.S.C. § 9603(f)). There is no dispute here that air emissions from animal waste at farms do *not* require notification under either EPCRA sections 304(a)(1) or (a)(3) because they do not require notification under CERCLA section 103(a).

That leaves only EPCRA section 304(a)(2), which applies to releases of "other 11002(a) substance[s]," *i.e.*, substances listed as "extremely hazardous substances" under EPCRA. If the release of an "extremely hazardous substance" is "not subject to the notification requirements under section 103(a) of CERCLA," the owner or operator of a covered facility must still report under EPCRA section 304(a)(2), but only if three requirements are met: (1) the release is not a federally permitted release; (2) the release is in excess of an EPA-determined reportable quantity; and, most relevant here, (3) the release "occurs in a manner which would require notification under section 103(a) of CERCLA." *Id.* § 11004(a)(2).

Congress did not spell out in EPCRA section 304(a) what it means to be "not subject to the notification requirements" under CERCLA section 103(a). *See id.* § 11004(a)(2). But the most natural reading of that phrase is that it refers to when CERCLA section 103(a) notification is not

required because a substance is not listed as a "hazardous substance" under CERCLA. Indeed, if the release of an "extremely hazardous substance" were "not subject to" CERCLA section 103(a) notification because it is exempt from reporting by some other provision of CERCLA, it makes no sense to consider whether that exempted release "occurs in a manner which would require notification under section 103(a)." Put simply, if Congress exempts a release from CERCLA section 103(a) reporting, then it would never require notification under section 103(a). By contrast, if the release of an "extremely hazardous substance" is "not subject to" CERCLA section 103(a) notification because that substance is not listed as a "hazardous substance" under CERCLA, it *does* make sense to ask (for EPCRA purposes) whether a release of that substance "occurs in a manner which would require notification under [CERCLA] section 103(a)" *if* that substance were also listed as a "hazardous substance" under CERCLA. This latter interpretation is the one that Congress intended, as the legislative history makes clear (*see infra* Part I.B). Moreover, that is how EPA has interpreted EPCRA section 304(a)(2) since 1987 (*see infra* Part I.C).

Here, of course, air emissions from animal waste at farms are statutorily exempt from reporting by CERCLA section 103(e)(1)(B), 42 U.S.C. § 9603(e)(1)(B). Thus, even assuming there is the release of an "extremely hazardous substance" from such animal waste that is not also listed as a "hazardous substance" under CERCLA, that release would not require reporting under CERCLA section 103(a) because of the recently enacted exemption. This is the only sensible reading of the relevant statutory text. Congress wanted to align reporting under both provisions as much as possible such that even if a substance is listed under EPCRA (but not CERCLA), any CERCLA exemptions would override the fact that a substance is listed as "extremely hazardous" but not as "hazardous."

To summarize, each EPCRA reporting scenario adheres closely to reporting requirements under CERCLA. And because CERCLA now expressly exempts reporting of air emissions from animal waste, the Final Rule's exemption of those emissions from EPCRA reporting is consistent with EPCRA's plain text. This is precisely how the D.C. Circuit interpreted the two statutory reporting provisions in *Waterkeeper*: "[i]n drafting the EPCRA reporting requirements, Congress expressly tied them to CERCLA's. . . . *Thus all of EPCRA's reporting mandates are piggybacked on the CERCLA mandates in one form or another*." 853 F.3d at 533 (emphasis added). The court further described the link between the two statutes as "automatic": "The [2008 Rule], by cutting back on CERCLA reporting requirements, had the *automatic effect* of cutting back on EPCRA reporting and disclosure requirements." *Id.* at 534 (emphasis added). The FARM Act's amendment to CERCLA section 103(e) automatically cut back on EPCRA reporting here, and that is the end of the matter.

Due to the "automatic" nature of CERCLA requirements triggering EPCRA requirements, it matters that Congress amended only CERCLA when it amended the FARM Act. Had Congress truly wanted the exemption for air emissions of animal waste to apply *only* to CERCLA reporting, it would have had to amend both CERCLA and EPCRA. This may sound counterintuitive, but it is because EPCRA reporting piggybacks entirely on CERCLA reporting such that, if Congress did *not* intend for a CERCLA exemption to automatically create an EPCRA exemption, it should have specifically amended EPCRA to decouple the two statutes. Congress did not do that.

Plaintiffs' alternative reading of EPCRA makes no sense. They contend that section 304(a)(2)'s use of the definite phrase, "*is not subject* to the notification requirements [of CERCLA]," cannot be conflated with section (a)(2)(C)'s use of the hypothetical phrase, "occurs in a manner *which would require* notification [under CERCLA]." 42 U.S.C. § 11004(a)(2)

(emphasis added). Plaintiffs explain that "would" means a "counterfactual" or "speculati[ve]" notification requirement, as opposed to a definite notification requirement. Pls' Br. at 14-15. So, under their reading, EPCRA reporting is required under section 304(a)(2) if a release is *definitely* not required under CERCLA but nevertheless *hypothetically* required under CERCLA. The result is absurd; it would be impossible to determine when the hypothetical is ever operative. Indeed, Plaintiffs' analysis of why "AFO emissions do, in fact, occur in a manner that *would* require notification under CERCLA" appears to suggest that animal waste emissions are subject to CERCLA notification *but for* the sole fact that they were exempted under the FARM Act. *See id.* at 12-13 (analyzing animal waste emissions solely according to definite conditions under CERCLA section 103). This would mean *all* CERCLA reporting exemptions, including the pesticide exemption discussed below, are still subject to EPCRA reporting under its hypothetical "would" prong. Such an absurd result is plainly inconsistent with how the statute operates and has operated for decades.

B. EPCRA's Legislative History Reinforces What the Statutory Text Makes Clear.

While the text of EPCRA section 304(a)(2) is clear for the reasons discussed above, the legislative history from EPCRA's enactment in 1986 leaves no doubt that the reporting of air emissions from animal waste at farms is *not* required under EPCRA now that Congress exempted such releases from reporting under CERCLA. The Conference Report's summary of section 304(a) tracks the statutory text (including headings) by focusing first on whether the release is of an EPCRA "extremely hazardous substance." Regardless of whether a substance is designated as "extremely hazardous" under EPCRA, one must report under EPCRA if a release requires notice under CERCLA section 103(a). *See* H.R. Conf. Rep. No. 99-962, 284, 1986 U.S.C.C.A.N. 3276, 3377 (describing sections 304(a)(1) and (a)(3)). The conference report then clarifies that EPCRA

section 304(a)(2), which is the only potentially relevant provision in this case, "requires notification where there is a release of an extremely hazardous substance that would require notice under section 103(a) of CERCLA *but for the fact* that the substance is not specifically listed under CERCLA as requiring such notice." *Id.* (emphasis added).

The legislative history thus confirms what the text makes clear: section 304(a)(2) only applies to substances that are "extremely hazardous" under EPCRA, but are not "hazardous" under CERCLA. And even as to those substances, reporting is only required under EPCRA if reporting would be required under CERCLA section 103(a) *assuming* those substances were listed as "hazardous" under CERCLA. *See id.* at 285 (explaining that "releases which are continuous or frequently recurring and do not require reporting under CERCLA are not required to be reported under this section").

The Final Rule fits neatly alongside this legislative history. Because "the FARM Act amendment does not exempt specific substances typically associated with animal waste (such as ammonia and hydrogen sulfide) from reporting," 84 Fed. Reg. at 27535, air emissions *generally* from animal waste might otherwise fall into a gap not covered by section 304(a)(1) and (a)(3) for lack of specific listing under CERCLA. The FARM Act amendment exempted these air emissions (rather than the substances themselves) by creating a statutory paragraph to address them. And because the amendment "exempts from reporting releases of any substance from animal waste at a farm *into the air*," such releases do not "'occur[] in a manner' that would require notification under CERCLA section 103(a)" and are logically exempt under EPCRA. *Id.* (emphasis added).

Plaintiffs ignore the 1986 Conference Report and instead hang their hat on the legislative history of the FARM Act, but that 2018 history sheds little light on the interpretive question in this case for two reasons: (1) the FARM Act amended CERCLA, not EPCRA, and the latter is the

primary statute under consideration by this Court; and (2) "[i]n all cases, the views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one . . . and have very little, if any, significance." *PDK Labs. Inc. v. U.S. DEA*, 362 F.3d 786, 794-95 (D.C. Cir. 2004) (internal quotation marks and citations omitted). EPA correctly explains that, to the extent *any* legislative history has relevance to this Court's inquiry, it would be the legislative history of *EPCRA*, not of the FARM Act. EPA Br. 13-14. Indeed, nothing in the FARM Act's history illuminates the 1986 Congress's intent when it enacted EPCRA.

Even if the Court considers the FARM Act's legislative history, it is at best neutral. During debate on the FARM Act, Senators inconsistently articulated the relationship between CERCLA and EPCRA. Because the FARM Act effectively overrode the *Waterkeeper* court's invalidation of the 2008 Rule, Senators introduced the FARM Act in that context. However, some incorrectly described the 2008 Rule as exempting *only* from CERCLA the reporting of air emissions from animal waste. *See* S. Hrg. 115-237, at 2 (Mar. 8, 2018) ("in 2008 the [EPA] released a rule exempting animal waste at agricultural operations from CERCLA reporting"); *id.* at 8 (same); *id.* at 9 (same). Other Senators, however, correctly described it as exempting such reporting from *both* CERCLA and EPCRA. *See id.* at 3 ("EPA attempted to exempt all CAFOs from having to report their emissions under CERCLA, and also attempted to exempt all but the largest CAFOs from reporting under EPCRA."); *id.* at 6 (same). This inconsistency underscores that the views of the 2018 Congress "have very little, if any, significance" when it comes to inferring the intent of prior rules or statutes. *PDK Labs.*, 362 F.3d at 794-95.

Plaintiffs nevertheless emphasize the floor debate statement of one legislator in the course of the FARM Act's enactment (amending *CERCLA*) as reflecting Congress's collective interpretation of *EPCRA*. Pls' Br. 16-17. But that statement cannot bear the weight Plaintiffs place

on it. *See Garcia v. United States*, 469 U.S. 70, 76 (1984) (explaining Court's having "eschewed reliance on the passing comments of one Member [of Congress], and casual statements from the floor debates") (citations omitted). *Cf. Landgraf v. USI Film Prods.*, 511 U.S. 244, 262 (1994) (explaining that "partisan statements about the meaning of the [statute] … cannot plausibly be read as reflecting any general agreement"); *see also id.* at 262 n.15 ("[A] court would be well advised to take with a large grain of salt floor debate and statements placed in the Congressional Record which purport to create an interpretation for the legislation that is before us.") (quoting Senator Danforth, 137 Cong. Rec. S15325 (Oct. 29, 1991)). While Senator Carper's statements may have reflected his (and possibly his partisan colleagues') interpretation of EPCRA, that says little about Congress's intent when EPCRA was passed several decades prior. *PDK Labs.*, 362 F.3d at 794-95. Nor did Congress writ large have any duty to "respond[]to Senator Carper's statements" as Plaintiffs suggest (at 17) by changing the FARM Act. That *he* misunderstood the interplay between CERCLA and EPCRA reporting cannot change EPCRA's plain meaning and the clear 1986 history discussed above. To the contrary, "Congress is presumed to preserve, not abrogate, the background understandings against which it legislates." *United States v. Wilson*, 290 F.3d 347, 356 (D.C. Cir. 2002).

Moreover, the Senate Committee on Environment and Public Works commissioned two memoranda from the Congressional Research Service ("CRS"), both of which were entered into the hearing record. *See* S. Hrg. 115-237, at 65-79. Both memoranda make clear that the FARM Act's amendment to CERCLA would automatically have an impact on EPCRA. The first memorandum stated: "S. 2421 would not amend EPCRA. However, exempting releases of hazardous substances in air emissions from animal waste at farms from reporting under Section 103 of CERCLA would have the effect of exempting such releases from reporting to state and

local officials under Section 304(a)(1) and Section 304(a)(3) of EPCRA." *Id*. at 75. The memorandum left open to interpretation whether reporting would also be exempt under section 304(a)(2): "An exemption from CERCLA [] may not necessarily apply to separately listed extremely hazardous substances covered under Section 304(a)(2) of EPCRA." *Id.* The second memoranda was requested to further clarify the first, noting: "An air release of an extremely hazardous substance emitted by animal waste at a farm would be subject to Section 304(a)(2) if all three statutory criteria for reporting were met. . . . The applicability of this provision [(a)(2)] to a particular release *would depend on whether all three statutory criteria outlined above are met*." *Id*. at 78-79 (emphasis added).

While these memoranda stopped short of drawing conclusions as to the FARM Act's exact effect on EPCRA section 304(a)(2), they nonetheless reflect that creating any exemptions under CERCLA would necessarily impact EPCRA reporting. The memoranda made that certain as to section 304(a)(1) and (a)(3), and *did not fully analyze* whether that would also be true under section 304(a)(2).[5] Because these memoranda were drafted at the request of Congress and entered into the hearing record, Congress was at least aware that by creating an exemption under CERCLA, such reporting could result in an automatic exemption for the same under EPCRA.

Therefore, the Final Rule is not inconsistent with the intent of the 2018 Congress that enacted the FARM Act—inasmuch as that intent is relevant or even intelligible. Again, the FARM Act only amended CERCLA, so legislative testimony as to its effect *on EPCRA* was at most

[5] Plaintiffs claim the second CRS memorandum explains "[a]n air release of an extremely hazardous substance emitted by animal waste at a farm would be subject to [EPCRA's reporting requirement]," Pls' Br. at 17 (quoting S. Hrg. 115-237, at 78), but omit the end of the quoted sentence: "if all three statutory criteria for reporting were met." S. Hrg. 115-237, at 78. Plaintiffs' characterization of the memoranda as "conclud[ing] that AFO emissions would continue to be subject to EPCRA's reporting requirements", Pls' Br. at 17, thus misstates memorandum's actual conclusions.

speculative legal analysis, and moreover says nothing about the intent of the 1986 Congress that enacted EPCRA in the first place.

C. Regulations Promulgated Contemporaneously with EPCRA Likewise Recognize that Reporting Exemptions Under CERCLA Apply to EPCRA.

"Courts may consider nonbinding agency interpretations of statutes to be persuasive authority." *United States v. Jenkins*, 50 F.4th 1185, 1195-96 (D.C. Cir. 2022) (citing *Skidmore*, 323 U.S. at 139-40). "The weight of such a judgment in a particular case . . . would depend upon the thoroughness evident in [an agency's] consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control." *Loper Bright*, 144 S. Ct. at 2247 (quoting *Skidmore*, 323 U.S. at 140 (internal quotation marks omitted)). Here, EPA's interpretation of EPCRA section 304(a)(2) is entitled to respect by this Court because it is well reasoned and consistent with the Agency's contemporaneous, decades-old interpretation of the interplay between CERCLA section 103 and EPCRA section 304. Because EPA explained all this in its preamble to the Final Rule, and Plaintiffs failed to acknowledge or address any of it in their brief, they have forfeited any arguments to the contrary.

The Final Rule mirrors EPA's original interpretations of the interplay between EPCRA and CERCLA reporting, most notably, EPA's regulations issued contemporaneously with EPCRA's enactment. In the 1987 Rule, EPA clarified that CERCLA's reporting exemptions applied equally to EPCRA. EPA explained why that result follows from section 304(a)(2)'s phrase "occurs in a manner which would require notification under section 103(a)." For example, "'continuous' releases as defined under section 103(f) do not require immediate release reporting under section 103(a) except for 'statistically significant increases.' Because such releases do not 'occur in a manner' which requires immediate release reporting under section 103(a) of CERCLA, they are

also not reportable under section 304 of SARA [*i.e.*, EPCRA]." 52 Fed. Reg. at 13384. Similarly, in 1990, EPA promulgated another rule to further clarify definitions of "continuous" and "statistically significant increase" for purposes of the continuous release exemption, reiterating that "[t]o the extent that releases are continuous and stable in quantity and rate as defined by CERCLA section 103(f)(2) and today's final rule, they *do not occur in a manner* that requires notification under CERCLA section 103(a)." 55 Fed. Reg. at 30179 (emphasis added).

EPA adopted the same rationale in the 1987 Rule with respect to "[t]he application of a registered pesticide generally in accordance with its purpose . . . under section 103(e) of CERCLA. Because such releases are not reportable under section 103(a) of CERCLA, they are also exempt from release reporting under section 304(a) of [EPCRA]." 52 Fed. Reg. at 13385. As discussed above, the fact that the FARM Act enacted the air emissions from animal waste exemption in the same statutory provision as the pesticide reporting exemption further supports EPA's approach in the Final Rule. Just as with air emissions from animal waste, the pesticide exemption does not exempt a specific hazardous (or extremely hazardous) substance; rather, it is specific to the *application* (or handling or storage) of a pesticide that has been *registered* under FIFRA. Importantly, demonstration of the proper application of such pesticides would generally be subject to documentation of their use. *See* 7 U.S.C. §§ 136a-136y. Here, again, the key is the "manner" in which a release occurs, and so the *air emissions* from animal waste are properly exempt under section 304(a)(2) of EPCRA.

Finally, and "[s]imilarly, section 101(22) of CERCLA excludes several types of releases from the definition of 'release' and thus from release reporting under CERCLA section 103(a). 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 section 304 of [EPCRA]." 52 Fed. Reg. at 13385.

The Final Rule follows the same rationale as the exemptions promulgated in the 1987 Rule: "the FARM Act amendment does not exempt specific substances typically associated with animal waste (such as ammonia and hydrogen sulfide) from reporting; rather, it exempts from reporting releases of any substance from animal waste at a farm *into the air*. Because air emissions from animal waste do not 'occur[] in a manner' that would require notification under CERCLA section 103(a)," they are logically exempt under EPCRA. 84 Fed. Reg. at 27535 (emphasis added). The Final Rule further explains how EPCRA section 304(a)(2) "contemplates scenarios where releases not subject to reporting under CERCLA may still need to be reported under EPCRA, such as releases of [extremely hazardous substances] under EPCRA but not as hazardous substances under CERCLA." *Id.* at 27535-36. To use an example, trimethylchlorosilane is listed as an "extremely hazardous substance" under EPCRA, but not as a "hazardous substance" under CERCLA. *Id.* at 27536. A release of that substance that is not federally permitted and that exceeds the reportable quantity would need to be reported under EPCRA section 304(a)(2) if it "occurs in a manner" that would require notification under CERCLA section 103(a). *Id.* Following the rationale in the 1987 Rule, the Final Rule explains that "a release of trimethylchlorosilane 'occurs in a manner' that would require notification under CERCLA section 103(a) where it is not one of the excluded or exempted types of releases described in CERCLA sections 101(22), 103(e), or 103(f)." *Id.*

Yet another relevant consideration here is that Congress demonstrated its awareness of EPA's practice—*viz*., linking EPCRA exemptions to CERCLA exemptions through its regulations—when Congress requested CRS memoranda on precisely this question. The first CRS memorandum explicitly referenced EPA's history applying section 304(a)(2), noting that "the

phrase 'occurs in a manner' generally has been implemented over time to mean the nature of the release in terms of how the substance enters the environment," and referencing as an example EPA's regulations that reflect CERCLA's statutory definition of "release." S. Hrg. 115-237, at 70 & n.40 (citing 40 C.F.R. § 355.61). The CRS memoranda were entered into the hearing record for the FARM Act, and represent Congress's acknowledgment of EPA's interpretation of section 304(a)(2). *Cf. In Def. of Animals v. Salazar*, 675 F. Supp. 2d 89, 101-02 (D.D.C. 2009) (finding Congressional acknowledgment in Senate committee materials discussing agency practice).

It bears emphasis that Plaintiffs have forfeited any arguments challenging EPA's decades-old interpretation. *See Huntsman Petrochemical LLC v. EPA*, __ F.4th __, No. 23-1045, 2024 WL 3763355, at *8 (D.C. Cir. Aug. 13, 2024) (finding petitioners "forfeited any challenge to" EPA's specific rationales in preamble to promulgated rule because they "fail[ed] to address" or acknowledge those explanations until reply). Here, the Final Rule presented EPA's regulatory history in detail. *See* 84 Fed. Reg. at 27537-38. But Plaintiffs neither acknowledge, let alone rebut the validity of those regulations. The regulatory history directly refutes Plaintiffs' claim that EPA's interpretation of EPCRA is impermissible because "the FARM Act did not alter CERCLA's definition of 'release' to exclude 'air emissions from animal waste,' as Congress has done for other releases." Pls' Br. at 13 n.22 (citing 42 U.S.C. § 9601(22)). As demonstrated above, a statutory carveout from the definition of "release" is just one way, but not the only way, that a CERCLA reporting exemption has been transposed as an EPCRA exemption. And most importantly, Plaintiffs completely fail to address the CERCLA exemption for FIFRA-registered pesticides, which shares a statutory subsection with the exemption for air emissions from animal waste, and which EPA has long exempted under EPCRA using the very rationale it applied in the Final Rule. *See* 42 U.S.C. § 9603(e); 40 C.F.R. § 355.31(c). At most, Plaintiffs argue that the Final Rule is an

arbitrary and capricious change in agency position from the 2008 Rule. *See* Pls' Br. at 20. However, Congress's intervening passage of the FARM Act obviates any argument that the Final Rule is an "agency action that changes prior policy." *Fox Television Stations, Inc.*, 556 U.S. at 514. In all events, it is the 2008 Rule's failed attempt to establish a regulatory exemption that is the true outlier in EPA's decades of administering CERCLA's and EPCRA's emergency notification provisions.

II. REQUIRING REPORTS OF AIR EMISSIONS FROM ANIMAL WASTE DOES NOT ADVANCE EPCRA SECTION 304'S PURPOSE OF FACILITATING EMERGENCY RESPONSES BASED ON IMMEDIATE RELEASE NOTIFICATIONS.

As EPA explained in the Final Rule: "The basic purpose of emergency release notification requirements under EPCRA section 304 is for facilities to inform state and local agencies of accidental releases *so that these agencies can exercise the local emergency response plan if necessary*." 84 Fed. Reg. at 27538 (emphasis added); *see also Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 86 (1998) (EPCRA serves "to provide for emergency response in the event of health-threatening release."). CERCLA, too, is a "regulatory scheme intended to protect the public health and safety" with a reporting requirement that "insures the Government's ability to move quickly to check the spread of a hazardous release." *United States v. Laughlin*, 10 F.3d 961, 966 (2d Cir. 1993) (internal quotation marks and citation omitted).

Requiring reports of air emissions from animal waste at farms does not advance this purpose. As explained in a 2017 letter from NASTTPO, an association of state and local emergency response officials, "release reports for air emissions from animal waste at farms provide little value to local agencies and first responders, and are generally ignored." 84 Fed. Reg. at 27538. Such releases are not emergency scenarios requiring emergency response. *See id.* (some

commenters noted that "EPCRA was never intended to govern agricultural operations, where emissions from livestock are a part of everyday life and are certainly not emergency situations").

The FARM Act's history likewise contains several opening statements clarifying that CERCLA's emergency reporting requirements could not sensibly encompass air emissions from animal waste on farms. *See, e.g.*, S. Hrg. 115-237, at 1 ("Congress never intended normal agricultural operations and American farmers to be subject to the reporting requirements under these laws. . . . It is unlikely Federal officials would be required to respond to an emergency release at a cattle operation or a poultry farm, particularly one resulting from animal waste or emissions."); *id.* at 8 ("When CERCLA was enacted, Congress never intended the law to affect normal production agricultural practices. Instead, the law is meant to address dangerous industrial pollution, chemical plant explosions, and the release of hazardous materials into the environment."). The same rationale applies to EPCRA's emergency reporting requirements. In fact, not only does requiring reports of such releases not fulfill EPCRA's purpose, it may have the *opposite* effect by inundating local and community offices with useless information and hindering their capacity to coordinate with emergency responders for true chemical emergencies.

Plaintiffs emphasize the right-to-know aspect of EPCRA, but they do not explain how EPCRA reporting would meaningfully lead to emergency responses to air emissions from animal waste, which are not accidental or one-off discharges, but continuous releases that are well known. *See* Pls' Br. at 4-5 & nn. 2-15 (describing ongoing day-to-day experience with odors from large animal agriculture operations). The Final Rule adequately explained why "[t]he natural breakdown of livestock manure does not constitute an emergency release" of the kind EPCRA was enacted to address, 84 Fed. Reg. at 27538, and Congress has also given its final word as to CERCLA by enacting the FARM Act. In short, the Final Rule is consistent with the purpose of EPCRA, whereas

the converse—requiring reports of the emissions the Final Rule exempts—contravenes the purpose of EPCRA Section 304 reporting.[6]

III. NEPA DOES NOT APPLY TO THE FINAL RULE.

The Final Rule is not subject to NEPA's requirements for all of the reasons set forth in EPA's brief. *See* EPA Br. 19-21. Intervenor-Defendants write separately only to emphasize that NEPA does not apply unless an agency has discretion to incorporate the information learned through a NEPA analysis into its decision-making process. *Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752 (2004). In *Public Citizen*, the applicable statute required the agency to allow foreign motor carriers to provide cross-border services so long as they complied with certain rules. *See id.* at 758-59. The Supreme Court reasoned that, because the agency had no authority to prevent cross-border motor operations based on NEPA analysis of their impact, none could be required. *Id.* at 768-70. Similarly, here, because Congress's exemption of air emissions from animal waste at farms from CERCLA reporting necessarily means the same emissions are exempt from EPCRA reporting, EPA lacked discretion to consider the results of any NEPA analysis to try to reach a contrary result.

CONCLUSION

For the foregoing reasons, Defendant's and Intervenor-Defendants' motions for summary judgment should be granted.

---

[6] EPCRA section 313, by contrast, does contain a more general reporting provision. *See* 42 U.S.C. § 11023(a), (h). The Conference Report's comparison of sections 304 and 313 explains that "section [313] establishes requirements for annual reporting on releases of certain toxic chemicals to the environment. This reporting covers releases that occur as a result of normal business operations, *as distinct from abnormal, emergency releases which must be reported under section 304*." H.R. Conf. Rep. No. 99-962, 292, 1986 U.S.C.C.A.N. 3276, 3385 (emphasis added).

Dated: October 8, 2024

Respectfully submitted,

/s/ David Y. Chung

David Y. Chung (D.C. Bar #500420)
Elizabeth B. Dawson (D.C. Bar #230818)
CROWELL & MORING LLP
1001 Pennsylvania Avenue, NW
Washington, DC 20004
dchung@crowell.com
edawson@crowell.com

Attorneys for National Cattlemen's Beef Association, National Pork Producers Council, American Farm Bureau Federation, and U.S. Poultry & Egg Association

CERTIFICATE OF SERVICE

I hereby certify that on October 8, 2024 I filed the foregoing using the Court's CM/ECF system, which will electronically serve all counsel of record registered to use the CM/ECF system.

/s/ David Y. Chung
David Y. Chung

EXHIBIT 1

National Association of SARA Title III Program Officials
Concerned with the Emergency Planning and Community Right-to-Know Act

June 1, 2017

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Mail Code: 1101A
Washington, DC 20460

Re: CAFOs and Emergency Release Reporting

Dear Administrator Pruitt:

I am writing on behalf of the National Association of SARA Title III Program Officials (NASTTPO), which is made up of members and staff of State Emergency Response Commissions (SERCs), Tribal Emergency Response Commissions (TERCS), Local Emergency Planning Committees (LEPCs), various federal, state and local agencies, private industry and the vast number of volunteers that perform emergency planning and emergency response activities for their communities. Our membership is dedicated to working together with regulated facilities, transportation entities and communities at large to improve community preparedness for emergency events including hazardous materials releases.

NASTTPO over the past several years has had the opportunity to work with various industry groups on emergency preparedness related rulemaking programs at EPA. These experiences have taught us that the most important thing to LEPCs and first responders is not detailed regulatory requirements for a facility's relationship to these groups, but rather the simple act of open dialog and coordination. Following the DC Circuit decision in Waterkeeper Alliance v EPA, we have had meaningful and encouraging discussions with the U.S. Poultry and Egg Association along these lines. NASTTPO believes that open dialog and coordination can be more effective than release reporting for farms that do not handle quantities of EPCRA EHS chemicals but are nevertheless expected to report regarding animal manure management.

We have had experience with EPCRA emergency release reports as well as CERCLA continuous release reports from farms primarily regarding ammonia from animal manure management. These reports are of no particular value to LEPCs and first responders and they are generally ignored because they do not relate to any particular event. (This should be contrasted to the few farms that utilize gas chlorine for water treatment where emergency release reports are useful because they are event specific.)

LEPCs and first responders do not need more generic data. They need information that is locally relevant and upon which they can act. This goal is best obtained by a program that promotes coordination between the regulated facilities and these local groups. Recent discussions suggest that such a program involving farms may be achievable.

We are in favor of reducing regulatory burdens if coordination on the information needs of LEPCs and first responders occurs. The information we want from farms is community-specific. Only the LEPC and local first responders can determine what information they need from a farm as part of their emergency planning process. What we really need is coordination between the farm and local responders and LEPCs. We want them to talk to each other.

Thank you.

Timothy R Gablehouse
President
410 17th St, Ste 275
Denver CO 80202
(303) 572-0050

EXHIBIT 2

National Association of SARA Title III Program Officials
Concerned with the Emergency Planning and Community Right-to-Know Act

Electronically Submitted – Regulations.gov

December 14, 2018

Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington DC 20460

Re: Emergency Release Notification Regulations on Reporting Exemption for Air Emissions from Animal Waste at Farms. Proposed Rule published at 83 FR 56791
Docket ID No. EPA-HQ-OLEM-2018-0318; FRL-9986-40-OLEM

Dear EPA:

The National Association of SARA Title III Program Officials (NASTTPO) is made up of members and staff of State Emergency Response Commissions (SERCs), Tribal Emergency Response Commissions (TERCs), Local Emergency Planning Committees (LEPCs), various federal agencies, and private industry. Members include state, tribal, or local government employees as well as private sector representatives with Emergency Planning and Community Right-to-Know (EPCRA) program responsibilities, such as health, occupational safety, first response, environmental, and emergency management. The membership is dedicated to working together to prepare for possible emergencies and disasters involving hazardous materials regardless of the cause.

We opposed broad exemptions from air release reporting obligations years ago. Litigation[1] and legislation[2] have intervened and now it is clear that relief from air release reporting obligations under EPCRA for animal wastes produced by the animal agriculture sectors of the economy are appropriate.

[1] *Waterkeeper Alliance v EPA*, 853 F 3d 527, (D.C.Cir. 2017)
[2] Fair Agricultural Reporting Method Act, Public Law 115-141, sections 1101-1103 (2018)

In the proposed rule, EPA has crafted a narrow and specific exemption from the reporting of releases from animal waste from farms. We support the definitions and the resulting exemption from release reporting.

For the sake of clarity, it is important that we are clear that release reporting of other chemical products is important and must continue. For example, the accidental release of water treatment chemicals is important to emergency planners and responders.

As they are important participants in their communities, our expectation is that farms will coordinate and cooperate with emergency planning and emergency response organizations in community-specific processes to evaluate the nature of risks presented by the farms, if any, the chemicals they handle and the processes they employ. Doing so will enhance cooperation and coordination between the facilities, local responders and the community generally.

Thank you.

Timothy R Gablehouse
President
410 17th St, Ste 275
Denver CO 80202
(303) 572-0050

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RURAL EMPOWERMENT ASSOCIATION FOR COMMUNITY HELP, *et al.*,

Plaintiffs,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, *et al.*,

Defendants,

and

NATIONAL CATTLEMEN'S BEEF ASSOCIATION, *et al.*,

Intervenor-Defendants.

Civ. No. 18-cv-02260-TJK

[PROPOSED] ORDER

Having considered Plaintiffs' motion for summary judgment, Defendants' cross motion for summary judgment, Intervenor-Defendants' cross motion for summary judgment, as well as all other submissions and arguments in opposition and support, the Court hereby GRANTS Defendants' and Intervenor-Defendants' cross motion for summary judgment, denies Plaintiffs' motion for summary judgment, and, pursuant to Federal Rule of Civil Procedure 56, enters judgment in favor of Defendants and Intervenor-Defendants. It is further ORDERED that the case is dismissed.

SO ORDERED.

Dated:_____, 2024

_____
Hon. Timothy J. Kelly
United States District Judge