

# **Environmental Perspectives in Defining Agricultural Air Quality Terms**



**Barclay Rogers  
Fogleman & Rogers  
West Memphis, Arkansas**

# Rise of Industrial Agriculture

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- ❑ Small, family-run livestock farms giving way to massive, corporate-run CAFOs.
- ❑ CAFOs are industrialized operations that confine thousands of animals at a single location, often inside completely closed buildings.
- ❑ CAFOs are concentrated in distinct geographic areas, and livestock production is beginning to be dominated by a few, large agribusinesses.

# Community Resistance

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- ❑ Many rural residents are deeply upset by the changes in animal agriculture, and environmental groups are zeroing in on CAFOs as a large, unchecked pollution source.
- ❑ These aggrieved individuals and environmental organizations are turning to the courts for relief.

# CERCLA/EPCRA Court Decisions

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- Focus on CERCLA and EPCRA cases, and not discuss CAA or CWA developments
- Two primary cases:
  - Sierra Club v. Seaboard Farms, 387 F.3d 1167 (10th Cir. 2004)
  - Sierra Club v. Tyson Foods, 299 F.Supp.2d 693 (D. Ky. 2003)

# CERCLA/EPCRA Court Decisions

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- ❑ Ammonia is a hazardous substance that is dangerous to human health and can lead to the formation of particulates in the atmosphere.
- ❑ Ammonia gas is released from animal waste as it decomposes and is often directly expelled from waste containment structures into the environment without any treatment.

# CERCLA/EPCRA Court Decisions

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- ❑ CERCLA section 103 requires reporting to the federal government of ammonia releases from a facility in excess of 100 pounds per day.
- ❑ EPCRA section 304 requires reporting to state and local governments of ammonia releases that must be reported to the federal government under CERCLA section 103.

# CERCLA/EPCRA Court Decisions

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- ❑ Sierra Club argued that the entire CAFO, including all confinement buildings on a single site, is a facility under CERCLA and EPCRA.
- ❑ Seaboard and Tyson contended that the individual buildings, not the CAFO as a whole, was the facility, and that they were not obligated to report the releases because the emissions from the individual confinement buildings did not exceed the 100 pound threshold.

# CERCLA/EPCRA Court Decisions

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- CERCLA defines facility as follows:
  - (A) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or (B) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel.

# CERCLA/EPCRA Court Decisions

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- EPCRA defines facility as follows:
  - “all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with, such person).”

# CERCLA/EPCRA Court Decisions

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- Seaboard and Tyson courts held that the CAFOs as a whole were facilities under CERCLA.
- Tyson court held that the CAFOs as a whole were facilities under EPCRA.

# CERCLA/EPCRA Court Decisions

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- ❑ Subsection (B) of CERCLA definition of facility provided a “catch-all.”
- ❑ As Seaboard court explained, “[s]imply put, the term 'facility' includes every place where hazardous substances come to be located.”

# CERCLA/EPCRA Court Decisions

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- ❑ CERCLA case law supports broad definition of facility, and the courts found no reason to deviate from these cases simply because these were cleanup, not reporting, cases.
- ❑ Broad definition of facility serves CERCLA's remedial purpose.
- ❑ Courts disregarded the EPA's "ruminations" on the meaning of facility for reporting purposes.

# Animal Feeding Operations Consent Agreement and Final Order

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- ❑ Basic Deal: Immunity from prosecution in exchange for funding nationwide monitoring study.
- ❑ Reactions: Mixed reviews from CAFO industry; opposition from environmental community.

# Animal Feeding Operations Consent Agreement and Final Order

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- ❑ Environmental groups file lawsuit on May 27, 2005.
- ❑ Grounds for opposition:
  - Air monitoring program scientifically unsound
  - Legislative rule in disguise
  - Fails to meet minimum requirements for enforcement proceedings
  - Fails to adhere to the EPA's penalty policies
  - Exempts CAFOs from statutory requirements
  - Shields CAFOs from state and citizen enforcement
  - Excludes sources covered by the Clean Air Act, CERCLA, and EPCRA

# Conclusion

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- ❑ Animal agriculture is moving toward industrial model.
- ❑ Opening the final frontier of environmental law as aggrieved individuals begin employing environmental laws to address pollution from large livestock operations.