

Congressman Hall's Proposed Amendments to CERCLA & EPCRA H.R. 4341--Key Provisions & Impacts

Summary of Key Provisions:

1. The amendment exempts manure from the definition of “hazardous substance” and “pollutant or contaminant” under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA).
2. The amendment defines manure as including digestive emissions, feces, urine, urea and other excrement from livestock and any associated bedding, compost, or materials commingled with such excrement and any byproducts, any process water associated with these items and any byproducts, constituents, or substances contained in, originating from, or emissions relating to these items.
3. The amendment prevents EPA from using CERCLA to authorize clean up of releases of hazardous substances from manure, or issuing an order to a facility to clean up un-permitted releases of hazardous waste.
4. The amendment eliminates CERCLA and Emergency Planning and Community Right to Know Act (EPCRA) notification and reporting requirements for all releases associated with manure, including ammonia and hydrogen sulfide air releases.

Impacts:

The proposed legislation exempts “manure” from coverage of CERCLA by amending section 118 of the Superfund Amendments and Reauthorization Act of 1986 (SARA) to provide that manure is not included within the meaning of “hazardous substance” under section 101(14) or “pollutant or contaminant” under section 101(33) of CERCLA. By excluding manure from these definitions, releases or threatened releases of hazardous components of manure would not be covered by CERCLA or EPCRA, including the following key provisions:

- Notification (Section 103 of CERCLA and 304 of EPCRA): This amendment would eliminate the requirement to report hazardous releases of toxic chemicals associated with manure, including ammonia and hydrogen sulfide, from CERCLA and EPCRA. This would prevent local, state and federal emergency responders from having critical information about potentially dangerous releases that could affect communities.
- Response Authorities (Section 104): This amendment would prevent EPA or a state from using CERCLA to respond to hazardous substances released from manure (e.g. investigations or clean-up) that threaten the environment, welfare or public health.
- Abatement Actions (Section 106): This amendment would prevent EPA from taking action, including issuing abatement orders, in situations where there is an imminent and substantial endangerment to the public health, welfare or environment.
- Liability provisions (Section 107): The amendment would include an exemption from liability for response costs incurred by EPA or a state. Agricultural operations would also

be exempt from any natural resource damages that may result from a release of a hazardous substance. Therefore, the financial burden for clean-up and the cost to restore natural resources would fall on the public rather than the polluter.

In addition to exempting agricultural operations from the reporting and liability provisions of CERCLA and EPCRA, this amendment will undermine EPA's Air Compliance Agreement (ACA). Under the ACA, participants receive a covenant not to sue for CERCLA, EPCRA and Clean Air Act violations in return for participation in a national air quality study. A variety of operations will be monitored over the next two years. EPA's Office of Air and Radiation will then develop emission-estimating methodologies for animal feeding operations. Twenty-seven hundred participants have signed up for this agreement.

A primary motivation for participation in the ACA is EPA's covenant not to sue for CERCLA and EPCRA violations. Because many respondents signed up primarily based on the belief that they may currently trigger CERCLA and EPCRA ammonia emission reporting requirements, an elimination of reporting requirements may prompt requests by many to withdraw from the ACA. This would hamper EPA's ability to obtain data regarding air emissions and to ensure that emissions do not exceed harmful levels.

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