

**Dairy Policy Notes 01-2005****EPA's Air Quality Compliance Agreement  
Also known as the Animal Feeding Operations Monitoring Study**

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Dairy, hog, and poultry farms are Animal Feeding Operations (AFOs) and are subject to federal air quality laws and regulations. These laws have been on the books for many years but only now is EPA enforcing them. However, better information is needed on air emissions from AFOs, along with better tools to determine compliance. EPA has agreed to conduct the proposed two-year monitoring study to help provide information on four aspects of air quality: ammonia, hydrogen sulfide, particulates of a certain size, and volatile organic compounds (VOCs). Note that these compounds are generally NOT related to odor problems. The monitoring will take place at animal housing and manure storage sites and will be conducted by an independent contractor, not EPA.

The proposed monitoring study raises very serious issues that concern both the entire dairy industry and individual producers, who must decide whether or not to participate. However, industry actions may influence an individual producer's decision about participation, as discussed below. Time is short; the public comment period on the EPA proposal ends May 2, 2005 and the deadline for operators of AFOs to sign an agreement is July 1, 2005.

The EPA's proposal has three components of interest to individual producers. Operators of AFOs who enter into a consent agreement with EPA agree:

1. To pay a penalty, in return for which EPA agrees not to sue for certain past violations of air quality laws. Potential fines that could be levied for violations of these laws are sizable. The producer does not admit guilt. Penalties range from \$200 for a small farm to \$1,000 for large operations with multiple AFOs (such as integrated hog operations).
2. To pay into a fund to finance the collection of air quality data at a rate that is the lesser of a pro-rated share of the total cost or \$2,500 per farm.
3. To be one of the monitoring sites if selected. The number of sites selected will be small and if many producers sign up that will reduce the chances of being selected.

This EPA initiative raises many concerns for individual producers and for the dairy industry as a whole. Industry concerns include:

- The proposed methodology for collecting data from dairy farms. The current proposal is for as few as four dairy farms in the entire US and this is considered by most as being far too few to represent the diversity of dairy farms across the country and provide reliable data upon which to regulate.
- The difficulty of measuring air quality attributes in the open sided barns that are used on most dairy farms (in contrast, say, to totally enclosed hog houses).

- The cost of the research and how to fund this as an industry so the burden does not fall on individual producers. The hog and poultry industry is proposing to use check off money but dairy is not allowed to do this under the terms of the dairy check off program.
- Low participation by dairy producers because if few sign up it may not be possible to conduct the research on farms that are representative of major production systems or regions.
- Low participation by dairy producers because if few sign up EPA may reject dairy industry participation and develop rules for dairy farms based on other information that is more restrictive and less favorable to the industry.

A National Milk Producers Federation task force is working to identify and assess options.

Producer issues include:

- The financial cost of participating.
- The loss of anonymity once a farm is on EPA's list of potential participants.
- The disruption to the farm operation if the farm is selected as a monitoring site and the possibility that the farm will be found out of compliance based on the data collected.
- The immunity granted by the consent agreement could forestall serious financial penalties but the amount and probability of incurring a penalty is unknown.
- The potential loss of immunity if a producer expands herd size during the period of the monitoring study.

The consent agreement is a legal contract and, as such, producers are advised to seek qualified legal advice.

The specific air quality laws that apply are the Clean Air Act (CAA); the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and the Emergency Planning & Community Right to Know Act (EPCRA). The Clean Air Act places limits on emissions, with penalties for exceeding these limits and procedures for coming into compliance. Certain businesses may require permits. CERCLA and EPCRA require reporting of certain emissions if they exceed threshold levels in a 24-hour period. The intent of these laws is to protect public health.

### **Resources:**

1. Animal Feeding Operations Monitoring Study Frequently Asked Questions  
[http://www.epa.gov/air/oagps/airlinks/afo\\_monitoringqa.html](http://www.epa.gov/air/oagps/airlinks/afo_monitoringqa.html) Contact person: Sharon Nizich, EPA's Office of Air Quality Planning and Standards, (919) 541-2825.
2. Air Quality Agreement with Animal Feeding Operations  
<http://www.epa.gov/compliance/resources/agreements/caa/cafo-agr-0501.html>
3. Animal Feeding Operations Air Quality Compliance Agreement Fact Sheet  
<http://www.epa.gov/compliance/resources/agreements/caa/cafo-fcsht-0501.html>
4. Text of the Compliance Agreement  
<http://www.epa.gov/compliance/resources/agreements/caa/cafo-agr-050121.pdf>
5. The Plain English Guide to the Clean Air Act, EPA-400-K-93-001, April 1993.  
[http://www.epa.gov/oar/oagps/peg\\_caa/pegcaain.html](http://www.epa.gov/oar/oagps/peg_caa/pegcaain.html)
6. For more information about the agreement and how to submit comments  
<http://www.epa.gov/airlinks/afohowtocomment.html>
7. Two fact sheets from the University of Missouri Commercial Agriculture Program:  
<http://agebb.missouri.edu/commag/epa.htm>
8. National Milk Producers Federation: <http://www.nmpf.org/govissues/index.cfm>
9. Article in Hoard's Dairyman magazine, March 25, 2005 issue, page 218