

STAPPA / ALAPCO

STATE AND TERRITORIAL
AIR POLLUTION PROGRAM
ADMINISTRATORS

ASSOCIATION OF
LOCAL AIR POLLUTION
CONTROL OFFICIALS

S. WILLIAM BECKER
EXECUTIVE DIRECTOR

April 7, 2003

The Honorable Christine Todd Whitman
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Governor Whitman:

On behalf of the State and Territorial Air Pollution Program Administrators (STAPPA) and the Association of Local Air Pollution Control Officials (ALAPCO), we are writing to express our serious concerns regarding the policy direction the Administration is taking with respect to agricultural air emissions and to request a meeting to discuss this. In particular, we are concerned about (1) a "safe harbor" agreement between EPA and animal farming operations and (2) a policy that would deem most agricultural air emissions "fugitive" emissions, thus obviating the need for most large or medium-sized agricultural operations to obtain a Title V permit or comply with major or minor source control requirements. These two actions will impede the ability of states and localities to address agricultural air emissions, and also set troubling precedent in air quality regulation.

In spring 2002, staff officials in EPA's Office of Enforcement and Compliance Assurance (OECA) informed us that they had been approached by representatives of certain animal farming associations (which we will refer to as the "CAFO industry") about entering into an agreement under which large animal farming operations would agree to fund a monitoring program to obtain emission data in exchange for a safe harbor from enforcement of certain Clean Air Act and Comprehensive Environmental Response, Compensation and Liability Act requirements. OECA shared with us a draft of the CAFO industry proposal (see attached). While we had many concerns with the draft, we also saw the value of obtaining air emission data from these animal farming operations. Thus, we believed such an agreement might make sense if certain principles were met: (1) there must be a clear environmental benefit at the end of the program; (2) any waiver of enforcement (i.e., "safe harbor") must be narrowly drawn and for a limited timeframe; (3) work should be conducted under accelerated timelines; (4) there should be no backsliding from current regulatory requirements or practices, and (5) enforcement

waivers should be limited to participants in the agreement, with perhaps some consideration to exempting nonparticipating small farms.

It is our understanding that EPA is now prepared to enter into a safe harbor agreement with the CAFO industry (specifically, the associations representing dairy, egg, broiler chicken, turkey and swine growers). The major provisions of the contemplated agreement are almost identical to those contained in the CAFO industry proposal. The contemplated agreement conflicts with most of STAPPA/ALAPCO's principles. For example:

- participants receive a waiver that applies retroactively, during the period of agreement, and – potentially – forever;
- the waiver is too broadly defined: it covers New Source Review, Prevention of Significant Deterioration, and any provisions in a State Implementation Plan that concern source emissions;
- fewer than one percent of the farms covered by the safe harbor will be monitored, which severely limits the amount of data collected. Thus, there is no assurance that the limited data collected will be representative, or that it will advance the understanding and characteristics of emission sources or address the concerns on emission estimates highlighted by the National Research Council; and
- there is no requirement that participants adopt, or even test, any best management practices or technologies to reduce air emissions.

On a second matter – one that will permanently affect regulation of air emissions from agricultural operations – we understand that the agency is contemplating issuing a policy memorandum that would deem emissions from waste lagoons and barns fugitive emissions. Fugitive emissions do not count for purposes of determining whether a source is required to apply for a Title V permit or for the purposes of determining whether a source is a major or minor source and thus subject to applicable controls. Since barns and lagoons are the dominant sources of emissions from the CAFO industry, such a policy would exempt most agricultural operations from many provisions of the Clean Air Act. The result would be an evisceration of states' and localities' ability to address air quality problems emanating from agricultural operations.

Deeming barn and lagoon emissions fugitive emissions does not comport with Clean Air Act regulations and other determinations made by EPA as to which emissions are fugitive. EPA regulations define fugitive emissions as “those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.” EPA has determined that emissions from whiskey warehouses and paint manufacturing facilities are not fugitive emissions; thus, it is not clear why emissions from barns should be treated differently. Similarly, since landfills can be covered and vented, emissions from landfills are not considered fugitive, so it is not clear why emissions from waste lagoons – which can also be covered – should be treated differently. In addition to impacting the ability to regulate agricultural air emissions, this policy will create inequities in the application of the Clean Air Act: agricultural

operations will be exempt while similar operations in other industry sectors will not be exempt.

Based on these reasons, STAPPA and ALAPCO object to EPA entering into a safe harbor agreement with the CAFO industry and creating a policy that would deem most agricultural emissions fugitive emissions, thus exempting most agricultural operations from many provisions of the Clean Air Act. We will be following up with your staff to arrange a meeting with you. If we can provide any further information on these issues, please feel free to contact either of us or S. William Becker, Executive Director of STAPPA/ALAPCO.

Sincerely,



Lloyd L. Eagan
STAPPA President



Ellen Garvey
ALAPCO President

cc: Jeff Holmstead
encl.