

2018 in Retrospect – What’s New at USEPA

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By Ann O’Brien

2018 saw a flurry of activity at the United States Environmental Protection Agency (USEPA). It was a year of many regulatory amendments and policy changes. Those changes that directly affect agricultural operations are summarized below.

Emergency release reporting: Two environmental laws, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Emergency Planning and Community Right-to-Know Act (EPCRA), require reporting of releases of hazardous substances that meet or exceed reportable quantities within a 24-hour period. The purpose of the notification is for federal, state, tribal, and local officials to evaluate the need for an emergency response to mitigate the effects of a release to the community.

On November 14, 2018, the USEPA proposed a rule to amend the emergency release notification regulations under EPCRA to make clear that reporting of air emissions from animal waste at farms is not required under EPCRA. USEPA does not want regulated parties and first responders to lose sight of the purpose of EPCRA reporting – to assist localities and communities in safely responding to unexpected releases of hazardous substances. USEPA concluded that air emissions from animal waste at farms is not an unexpected release for which an emergency responder needs to receive notice. The comment period on the proposed rule ended December 14, 2018, and USEPA has not issued any notice of when the regulated community can expect the proposed rule to be adopted.

On March 23, 2018, the Consolidated Appropriations Act (Omnibus Bill) was signed into law. Title XI of Division S of the Omnibus Bill, known as the Fair Agricultural Reporting Method Act (FARM Act), amended CERCLA section 103(e) to exempt air emissions from animal waste at a farm from reporting under CERCLA. Due to the FARM Act’s legislative amendments to CERCLA, “air emissions from animal waste at a farm” are exempt from reporting under CERCLA. Accordingly, on August 1, 2018, USEPA published a final rule revising the CERCLA reporting regulations to incorporate the FARM Act’s amendments to CERCLA.

Waters of the United States: In December 2018, USEPA and the Department of the Army proposed a

revised definition for the Waters of the United States (WOTUS). The proposal is a two-step rulemaking process to review and revise the definition of WOTUS, which will essentially serve to reduce the number of types and categories of waterways that are subject to federal oversight and, instead, put these waterways under the management of the states. Specifically, the first step proposes to rescind a 2015 WOTUS rule and its definition. Additionally, it will recodify the pre-existing rules regarding what waters of the United States would fall under the jurisdiction of the federal Clean Water Act. The 2015 WOTUS rule attempted to clarify which wetlands and waterways are covered by the Clean Water Act (the “Act”). For farmers and ranchers, however, the 2015 rule provided no clarity or certainty. Instead, through broad definitions of terms such as “tributary,” “adjacent,” and “significant nexus,” the 2015 rule made it extremely difficult for a farmer or rancher to know whether a federal regulator would ultimately determine water features on his or her farm to be covered by the Act. The 2015 rule would also require additional federal permits and increase costs for farmers, ranchers, and others. The second step of the proposed rule will consist of the agencies going back to the drawing board to develop a WOTUS definition that protects water quality without asserting federal regulatory power over some water bodies on farms and ranches.

Renewable fuel: The Renewable Fuel Standard (RFS) is a federal program that requires transportation fuel sold in the United States to contain a minimum volume of renewable fuels. It originated with the Energy Policy Act of 2005 and was expanded and extended by the Energy Independence and Security Act of 2007. The RFS requires renewable fuel to be blended into transportation fuel in increasing amounts each year, escalating to 36 billion gallons by 2022. Each renewable fuel category in the RFS must emit lower levels of greenhouse gases relative to the petroleum fuel it replaces. In 2018, USEPA approved a variety of pathways for renewable fuel derived from sorghum to be used as a feedstock for transportation fuel. Ethanol plants that extract oil from grain sorghum can now sell that oil to biodiesel producers, and they can use it to produce biodiesel and satisfy the requirements of the Renewable Fuel Standard. This new feedstock is estimated to immediately produce around 21 million gallons, providing flexibility in meeting volume standards of the RFS program.

For more information or help navigating regulatory requirements - new or old - contact Ann O'Brien (aobrien@scsengineers.com) or Cheryl Moran (cmoran@scsengineers.com) at SCS Engineers in Madison, WI.

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