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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

RICHARD M. RUSSELL, MAJORITY STAFF DIRECTOR
MARY FRANCES REPKO, MINORITY STAFF DIRECTOR

May 25, 2018

The Honorable Scott Pruitt
Administrator
Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington DC 20004

Dear Administrator Pruitt:

We write to you today regarding guidance recently published by the Environmental Protection Agency with respect to air emissions reporting requirements under Section 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA). We believe the guidance you have issued is legally flawed and is based on an erroneous interpretation of the law with implications beyond reporting of releases from animal waste. We ask you to rescind this guidance immediately.

The FARM Act, which was enacted in March of this year as part of the Consolidated Appropriations Act, 2018 (P.L. 115-141), exempted farms from reporting requirements for releases of hazardous substances under Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) that arise from animal waste and that are released into the air. On April 27, 2018 EPA issued guidance regarding farms' reporting obligations under CERCLA and EPCRA.¹ In that guidance, EPA states, "[A]ir emissions from animal waste at farms do not need to be reported under EPCRA because these types of releases are now exempt from CERCLA." The guidance goes on to state: "Because air emissions from animal waste do not 'occur in a manner' which would require notification under CERCLA... the three requirements to trigger reporting under EPCRA section 304(a)(2) are not met and these releases do not need to be reported." This interpretation has no legal basis in statute, is starkly contradicted by the FARM Act's legislative history, and is inconsistent with EPA's decades-long implementation of EPCRA.

The text of the FARM Act in Title XI of Division S of Consolidated Appropriations Act, 2018 is identical to the text of S. 2421, which was introduced on February 13, 2018, and which was referred to the Senate Committee on Environment and Public Works (the Committee). As part of the Committee's consideration of the FARM Act, the Committee asked the Congressional Research Service to analyze the potential effects of these amendments to CERCLA. In response, the Congressional Research Service produced two memoranda which were made part of both

¹ https://www.epa.gov/sites/production/files/2018-04/documents/cercla_epcra_q_and_a_farm_act_4-28-18.pdf

hearing records. CRS notes: “In implementation, EPA has treated the phrase “occurs in a manner” in EPCRA Section 304(a)(2)(C) to mean the nature of the release in terms of how a substance enters the environment, not that reporting *is* required under Section 103 of CERCLA. Otherwise, Section 304(a)(2) would be rendered meaningless in covering releases of extremely hazardous substances that do not require reporting as hazardous substances under CERCLA.”² (emphasis in original). Indeed, EPA has designated hundreds of substances as “extremely hazardous substances” under EPCRA but which are not designated as “hazardous substances” under CERCLA.³ Releases of such substances are not subject to the reporting requirements under CERCLA Section 103. If EPA’s April 27 guidance were valid, such substances would never be subject to reporting under EPCRA. Obviously, this is inconsistent with longstanding EPA policy with respect to such substances.

EPA’s April 27 guidance is also inconsistent with clear Congressional intent with respect to the FARM Act and its unambiguous legislative history. The Committee held two legislative hearings on this language, first on March 8, 2018,⁴ and then on March 14, 2018.⁵ At both hearings, witnesses testified in response to questions from members that enacting the FARM Act would have no impact on reporting requirements under EPCRA, and the bill sponsors stated repeatedly that the language under consideration makes no changes to EPCRA reporting for farms.⁶ None of the hearing statements of the Committee members, witnesses, or materials entered into either the Committee record or the Congressional Record at the time of the FARM Act’s passage support EPA’s new interpretation of EPCRA Section 304. To the contrary, EPA’s legal analysis is at odds with the legislative record.

EPA is required to faithfully execute the laws as passed by Congress. It is clear that your April 27 guidance changes EPCRA reporting policies in ways that exceed EPA’s statutory authority and countermands Congressional intent. We ask again that you rescind it immediately.

Sincerely,



Thomas R. Carper
Ranking Member

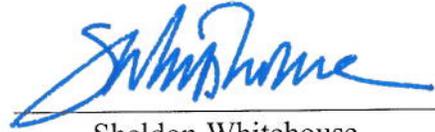


Benjamin L. Cardin
United States Senator

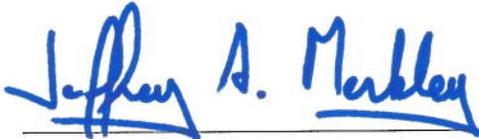
² Congressional Research Service memorandum to Senate Committee on Environment and Public Works, “Supplemental Analysis: Fair Agricultural Reporting Method Act/FARM Act (S. 2421),” March 13, 2018, pp. 3-4.
³ https://www.epa.gov/sites/production/files/2015-03/documents/list_of_lists.pdf
⁴ <https://www.epw.senate.gov/public/index.cfm/hearings?ID=E0663FDD-1020-4DA3-AD29-960C3E31652D>
⁵ <https://www.epw.senate.gov/public/index.cfm/hearings?ID=270F9E69-740C-46D8-9D03-7CFAB6581FEE>
⁶ See “Legislative Hearing on S. 2421, the Fair Agricultural Reporting Method Act,” transcript, p. 10; p. 17-18; p. 65; and “Legislative hearing on “S. ___, the Agriculture Creates Real Employment (ACRE) Act,”” transcript, pp. 49-50.



Bernard Sanders
United States Senator



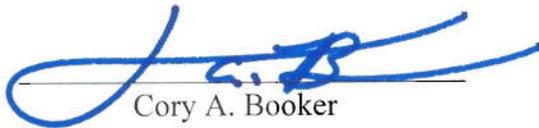
Sheldon Whitehouse
United States Senator



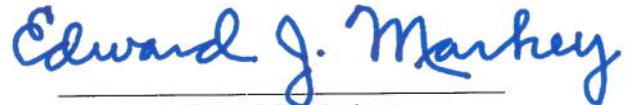
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Kirsten Gillibrand
United States Senator



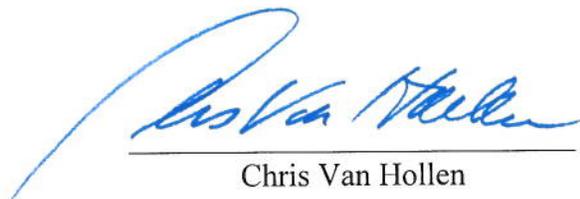
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Tammy Duckworth
United States Senator



Chris Van Hollen
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