

JULY 1, 2020 | PUBLICATION

## Client Alert: CAFOs: Protect Against Future Liability; Make Continuous Release Report on November 15

On **November 15**, the ruling of the U.S. Court of Appeals for the D.C. Circuit that invalidated the U.S. EPA's rule exempting hog, chicken, dairy cow and other concentrated animal feeding operations (CAFOs) from reporting air emissions under CERCLA and EPCRA will become effective.

To proactively prevent potential future failure to report liability, all Ohio CAFO operators should take the following three steps set out by the U.S. EPA's guidance on reporting:

1. On **November 15**, call the National Response Center (NRC) at 1-800-424-8802 and inform the NRC that you are making an "initial continuous release notification."
2. On **November 15**, submit a one-sentence follow up written notification stating: "Please take notice that the [INSERT NAME] facility located at [INSERT ADDRESS OF THE FACILITY] hereby is providing this initial continuous release notification in compliance with applicable law." Send this written notification to the following address:

U.S. EPA  
Region 5  
Attention: James Entzminger (SC-6C)  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3507

3. On November 15, create a reminder on your email calendar for one year later on **November 15, 2018**, to submit an additional follow-up written notification stating: "Please take notice that the [INSERT NAME] facility located at [INSERT ADDRESS OF THE FACILITY] hereby is providing this follow-up

### INDUSTRY SECTOR

Environmental & Energy

### SERVICE LINE

Corporate, Tax and  
Transactions  
Environmental and Energy

### MEDIA CONTACT

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If for some reason you do not follow these steps on November 15, 2017, the duty to report is a continuing duty so take the steps and make the report as soon as possible. This is a one-time duty to report and a failure to report can be corrected by making a report after the November 15, 2017 effective date.

If you have any additional questions about reporting or need any assistance with reporting or any other agricultural law matter, please contact Kevin P. Braig at (614) 628-4433 or [kbraig@shumaker.com](mailto:kbraig@shumaker.com).