

**\* Center on Race, Poverty & the Environment \* Environmental Integrity Project \* Natural Resources Defense Council \* Sierra Club \***

**\*\*\*\*EMBARGOED UNTIL THURSDAY, SEPTEMBER 25\*\*\*\***

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**Factory Farm Polluters' Amnesty Deal in Brief:**

Under the leaked amnesty deal, EPA “covenants not to sue” huge animal factories, often referred to as “concentrated animal feeding operations” or “CAFOs,” for violations of the Clean Air Act the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA” or “Superfund” law). In exchange for EPA’s commitment not to sue, CAFOs will pay \$500 in penalties and will contribute \$2,500 toward a monitoring fund. Any CAFO (or smaller animal feeding operation) may achieve immunity from EPA prosecution by paying these monies.

Using the money paid into the monitoring fund, CAFOs will establish a nationwide monitoring program designed to create methodologies to estimate emissions from CAFOs. An unspecified number of operations will be selected for on-site testing under the monitoring program, and EPA will use data from the site testing to create emissions estimates for other CAFOs. The agreement bars EPA from bringing enforcement actions for past, ongoing and future violations until the agency develops methodologies for estimating emissions from CAFOs.

**Problems with Amnesty Deal:**

**1. Free Ride Forever**

- The open-ended amnesty agreement lacks an expiration date and would allow CAFOs to pollute indefinitely without fear of prosecution.
  - The “covenant not to sue” lasts until the end of a nationwide monitoring program; however, there is no termination date for the monitoring program, nor is there a definite timeline for EPA to develop the envisioned emissions estimates.
  - This “covenant not to sue” follows an EPA self-imposed moratorium on Clean Air Act enforcement against CAFOs that leaves citizens unprotected.

**2. Disappearing Pollution Controls (Now you see them, now you don't)**

- The agreement does not require CAFOs to reduce pollution.
  - The amnesty deal will not guarantee air pollution controls at *any* CAFO in the country, whereas *all* CAFOs are eligible to pay minimal amounts to secure indefinite Clean Air Act amnesty.

### **3. Fox Guarding the Hen House**

- CAFOs control the monitoring program.
  - Under the agreement, CAFOs contribute a mere \$2,500 per operation to a fund controlled by an entity created by the CAFOs.
  - CAFOs propose the sites to be monitored, determine who the monitor will be, and pay the monitor's bills.
  - Emissions estimates of CAFO air pollution will be based on data collected by the monitor selected by the CAFOs.

### **4. Paying to Pollute at Bargain Basement Prices**

- The miniscule penalties are nothing more than a payment to pollute.
  - CAFOs will pay a mere \$500 in penalties, a trifling amount when compared to the penalties of \$27,500 *per day* available to EPA under the Clean Air Act and CERCLA.
  - For \$3,000 (\$500 penalty plus \$2,500 for the fund), companies can buy immunity with no requirement to control their pollution.

### **5. Back Door Wide Open**

- CAFOs are free to back out of the deal at anytime, and EPA would be in no better position than it is today.
  - If CAFOs decide to drop out of the amnesty deal or if the monitoring program never gets off the ground, EPA would be required to initiate enforcement proceedings, which is the exact position EPA is in today.

### **6. Door Closed to Citizen Enforcement**

- The agreement, by implication, purports to curtail citizen enforcement rights, something EPA may not do.
  - The agreement states that it “resolves the liability for alleged violations of the Clean Air Act and CERCLA.” Through its broad waiver of liability, the agreement creates a high hurdle for citizens trying to protect themselves from CAFO pollution in the courts.