Legislative Watch

Issues important to today's dairy farmers

EPA Grants CERCLA Exemption to Livestock Operations

Livestock producers received an early Christmas present from the EPA when the agency announced on Dec. 18 that the CERCLA Superfund law doesn't apply to them.

EPA published a final rule entitled "CERCLA/EPCRA Administrative Reporting Exemption for Air Releases of Hazardous Substances from Animal Waste at Farm." This rule, effective on Jan. 20, 2009, excludes all livestock operations from having to report their emissions to the air under CERCLA. CERCLA reports are sent to the National Coast Guard Response Center, and the EPA had reasoned that reporting livestock air emissions to this center were unnecessary and burdensome in light of the fact that EPA had never and would never have an emergency response to such a report.

While the proposed rule had excluded all livestock facilities from having to report their air emissions to state and local emergency response authorities under the EPCRA law, which is distinct from CERCLA, the final rule modified this exclusion so that large concentrated animal feeding operations (CAFOs) must continue to do so. In the case of dairy farms, facilities with a capacity of greater than 700 dairy cows would need to report their air emissions under EPCRA. Operations smaller than 700 dairy cows would not have to submit a report.

EPA reasoned that the community right-to-know provisions of EPCRA are best met by continuing these reporting requirements for larger operations so as to ensure state and local emergency response authorities know where these facilities are located.

While large CAFOs must submit reports under EPCRA, EPA in the final rule made clear that such operations are eligible to submit their reports consistent with the approach spelled out for "continuous releases" under existing rules. Under these "continuous release reporting" rules, a CAFO provides the state and local emergency response authorities with a one-time report of the operation's "normal range" of emissions. No further report is required unless the operation has emissions that will be occurring "above the upper bound of the reported normal range."

Dairy operations that are participating in the EPA Air Consent Agreement need not submit these reports to state and local emergency response authorities until after the Air Consent Agreement and the associated National Air Emissions Monitoring Study, is completed. Other dairy operations should submit the required EPCRA reports.

MILC Sign-Up Begins

The USDA's Farm Service Agency (FSA) began accepting applications for the Milk Income Loss Contract (MILC) Program in late December 2008. To sign up for the program, dairy producers must submit a MILC payment contract application with their local FSA office for the current fiscal year. Those who do not enroll will not receive a payment even if they had participated in past MILC Programs.

The general rules are that the initial start month must either be the month the new MILC contract is submitted or some later month. For example, producers who sign up by the end of February may choose to receive payments beginning with February. In subsequent fiscal years, changes in the start month may be made as long as the designation is made by the 14th of the month proceeding the new start month. Additional signup details are available at local FSA offices.

Based on the futures markets, National Milk Producers Federation predicts there will be MILC payments throughout most of 2009, and encourages dairy producers to sign up for the MILC Program. NMPF updates their monthly MILC payment predictions periodically. Those price projections can be found on MMPA's Web site, www.mimilk.com, as well as NMPF's site, www.nmpf.org

NMPF Halts Third-Party Auction of USDA Stores of Nonfat Dry Milk

In December, National Milk Producers Federation successfully prevented the U.S. Department of Agriculture from allowing, through private auction, the sale of nonfat dry milk powder at prices below the level specified in the Farm Bill. USDA, facing legal action brought by NMPF, agreed not to submit any of the product for auction, and subsequently agreed not to go forward with any such sale in the future.

NMPF had sought a Temporary Restraining Order (TRO) Dec. 8 against the USDA to block the agency from allowing The Seam, a private marketing entity, from auctioning off nonfat dry milk at prices that are below the congressionally-mandated minimum level.

At issue was the Dairy Product Price Support Program provision of the newly adopted 2008 Farm Bill, which stated that USDA cannot sell nonfat dry milk stocks at less than 110 percent of the price at which it purchased the product. Under this rule, USDA is forbidden to sell the milk powder back to the market at less than 88 cents/lb., in order to keep prices from being further driven down. Since the price received by dairy farmers reflects commercial dairy product prices, the auction scheduled by USDA would have resulted in a reduction in dairy producer income.