

INTER-OFFICE COMMUNICATION

TO: Stationary Sources Staff and Local Agencies

FROM: Dave Ouimette

DATE: June 8, 1998
First Revision March 1, 2000
Second Revision April 28, 2003

RE: Agricultural Activities Exemption – Memo PS98 - 02

The purpose of this memo is to clarify what activities may be considered to be agricultural when determining if an APEN or permit is needed, or if a regulation applies.

Regulatory History

Since February 1972, Regulation No. 3 has contained language that exempts some agricultural activities from APEN requirements. The current language in Regulation No. 3, Part A, Section II.D.1.g. was adopted in July 2002 and exempts:

“Agricultural operations such as farming, cultivating, harvesting, seasonal crop drying, grain handling operations that are below New Source Performance Standards de minimis levels (including milling and grain elevator operations), and animal feeding operations that are not housed commercial swine feeding facilities as defined in Regulation No. 2, Part B. This exemption does not apply to an agricultural operation that: (1) is a major stationary source (Regulation No. 3 Part A, section I.B.59; (2) meets or exceeds the storage capacity thresholds of a federal New Source Performance Standard (Regulation No. 6, Part A); or (3) participates in the early reduction program of the Federal Act, section 112. Ancillary operations such as fueling stations located at farms or ranches are not exempt from Air Pollutant Emission Notice and permit requirements unless otherwise below the de minimis emission levels contained in this regulation, and are not exempt from other applicable regulation promulgated by the commission.”

This language replaced the previous APEN exemption, which had been in place since 1980 and exempted:

“Agricultural operations normally conducted at the farm or ranch including, for example, cultivating and harvesting. This shall not include grain elevator operations, feed mill operations or other post-harvesting activities normally not conducted on the farm or ranch.”

In 1992 the Colorado legislature revised the state law to include an exemption from air pollution control laws for emissions resulting from agricultural production. In November 1998, the voters of Colorado approved Amendment 14, which further revised the state law. Amendment 14 required large hog farms (also known as housed commercial swine feeding operations) to meet odor control requirements. The hog farm regulations were approved by the Air Quality Control Commission in April 1999 and are contained in Regulation No. 2, Part B. Consequently the hog

farm provisions contained in Regulation No. 2 override the agricultural exemption. Hog farms must submit permit applications for odor sources and hog carcass incinerators. The current language in Colorado Revised Statutes, Section 25-7-109(8) states:

“Notwithstanding any other provision of this section, the commission shall not regulate emissions from agricultural production such as farming, seasonal crop drying, animal feeding operations that are not housed commercial swine feeding operations as defined in section 25-8-501.1 (2)(b), and pesticide application; except that the commission shall regulate such emissions if they are "major stationary sources", as that term is defined in 42 U.S.C. sec. 7602 (j), or are required by Part C (prevention of significant deterioration), Part D (nonattainment), Title V (minimum elements of a permit program), or are participating in the early reductions program of section 112 of the federal act, or is not required by section 111 of the federal act, or is not required for sources to be excluded as a major source under this article.”

The statute makes no differentiation between types of agricultural operations; consequently the exemption appears to apply to all types of operations, including family farms and large commercial farms. The statute also identifies specific operations that are not to be regulated including seasonal crop drying, animal feeding, and pesticide application. This means that all feedlots regardless of size and all pesticide applications are exempt from regulatory requirements (unless the feedlot or pesticide application qualifies as a major source). Ancillary activities not typically considered agricultural (*e.g.*, service stations located at a country cooperative) would still be regulated.

The statute overrides the pre-1992 requirements of Regulation No. 1, Sections II.A. (opacity requirements), III.C. (process weight requirements for alfalfa dehydrators), and III.D.2.k. (livestock confinement operations). Consequently there are no opacity standards for any exempt agricultural activity, no process weight particulate matter standards for alfalfa dehydrators, and no particulate control requirements for livestock confinement operations, including feedlots. Modeling of feedlots may be considered in situations where a feedlot is in the vicinity of a source (*i.e.*, a commercial feed mill) that required a permit. Rather than estimate emissions and model the feedlot, a background ambient air concentration will be developed, considering the feedlot, which will be added to the impact from the new source to ensure that the NAAQS will not be violated.

The statute states that the exemptions would not apply if the source would be a major source for PSD, nonattainment New Source Review, or operating permits (see PS Memo 96-01); or if the source was subject to a NSPS, or applying for an early reduction under the hazardous air pollutant (HAP) program. This means that the source would need to have a potential to emit (PTE) which exceeds 100 tons per year for a criteria pollutant, which is the trigger for operating permits or have a PTE, which exceeds 250 tons per year for a PSD permit (considering that TSP is still a regulated pollutant for PSD purposes only). Fugitive emissions would only be counted for the listed source categories contained in the definition of major stationary source (see Regulation No. 3, Part A, I.B.59 and PS Memo 99-04). The operating permit major source levels of 10/25 tons per year for HAPs could also nullify the exemption. The HAPs would include fugitive emissions since they must be counted for operating permit major source status. Major source calculations do not consider controls that are not enforceable when determining potential

emissions.

The following activities are not directly related to agricultural production and thus do not appear to be eligible for the agricultural exemption: grain elevators that are above *de minimis* levels contained in New Source Performance Standards (NSPS), synthetic minor feed mills, food processing plants, poultry waste dryers, and rendering plants. These activities would require APENs and permits if the emissions are above *de minimis* levels. Grain elevators that are major sources or are subject to NSPS would also be subject to specific standards such as the process weight limits for particulate contained in Regulations No. 1 or No. 6, Part B. (See PS Memo 99-005). Feed mills located on farms where the feed is produced and consumed on site do not need to submit APENs or apply for permits. Feed mills that produce feed for sale that are not located on a farm (i.e., in town) are not exempt and must submit APENs and apply for permits.

The following table summarizes which activities associated with agricultural production may be considered exempt. Each source must be considered individually in view of the applicable statutes, regulations, and circumstances presented. Questions regarding specific sources should be directed to the Construction Permit Unit Leader.

This memo has identified agricultural sources that are exempt from regulatory requirements. There will be some situations where the applicability of regulations to a source is not clear. Those situations will be handled on a case by case basis.

References

U.S. Environmental Protection Agency, *Calculating Potential to Emit (PTE) and Other Guidance for Grain Handling Facilities*, Research Triangle Park, North Carolina, November 14, 1995.

Memo History

March 1, 2000, revision: The memo clarified the exemption status for grain elevators, feed mills, and hog farms.

November, 2002 revisions: The memo further clarifies the exemption status for feed mills and alfalfa dehydrators and revises the exemption status for grain elevators.

AGRICULTURAL ACTIVITIES EXEMPTION SUMMARY ^{1,2}

Activity	Exempt
Grain Terminal Elevators This covers grain elevators, which are classified as “grain terminal elevators” under the federal NSPS, even if they are not subject to NSPS due to their construction date. These have a permanent storage capacity > 2.5 million bushels and are not located at facilities manufacturing animal food, pet food, or cereal or at breweries or livestock feedlots.	NO
Grain Storage Elevators This covers grain elevators, which are classified as “grain storage elevators” under the federal NSPS. These have a permanent storage capacity ≥ 1.0 million bushels and are located at wheat flour mills, wet corn mills, dry corn mills for human consumption, rice mills, or soybean oil extraction plants)	NO
All other grain elevators (grain elevators that are generally smaller, seasonally dependent, and serve a local area)	YES
Feed mills ³ where: <ol style="list-style-type: none"> 1. the feed mill is located on a farm or ranch; or 2. is owned by a farmers cooperative, and 3. the operation is a true minor source. 	YES
Food and beverage processing plants, including pet food manufacturing and associated elevators.	NO
Poultry Waste Dryers	NO
Rendering Plants	NO
Boilers exceeding NSPS <i>de minimis</i> levels	NO
Alfalfa dehydration plant drum dryers (a.k.a. alfalfa dehydrators)	YES
Field cultivating and harvesting	YES
Pesticide Application and storage	YES
Fertilizer Application and storage	YES
Fuel Storage and dispensing occurring on a farm or ranch	YES
Fuel Storage and dispensing not occurring on a farm (i.e., at a cooperative)	NO
Animal feeding and confinement (including animal feed distribution) ⁴	YES
Crop Drying	YES
Open Burning for agricultural purposes	YES
Odors (except odors occurring at housed commercial swine feeding operations)	YES
All roads and haul trucks on a farm or ranch (not including city or county roads)	YES
Engines used for irrigation pumping ⁵	YES
Engines used to power electrical generators where the power is only used on site ⁵	YES
Housed commercial swine feeding operations	NO

1. Exemptions are not allowed if the operation would be a major source for criteria or hazardous air pollutants, or if the operation is subject to a federal NSPS.
2. Exemption means: no APEN, no permit, no dispersion modeling, no Regulation 1 requirements (opacity, process weight, or fugitive particulate control plans) and no fees.
3. A cooperative may include a grain elevator, a feed mill that includes a separate elevator, and a fueling operation. The grain elevator may be exempt, but the fueling operation may not be exempt. Commercial milling operations will be decided on a case by case basis.

4. Except for Housed Commercial Swine Feeding Operations (Hog Farms), which are subject to Regulation No. 2 permitting and odor requirements.
5. The listed activity must occur solely on a ranch or farm.