

EPA Will Be Inspecting Wisconsin Dairy Farms

If EPA Visits Your Farm, Know Your Rights.

The return of warmer weather means lots of things on a dairy farm. Unfortunately, it also means the return of Environmental Protection Agency (EPA) inspectors. For the last several years, these inspections have been centered on CAFO operations in northeastern Wisconsin. However, EPA has made it clear that the inspections will not be limited to large farms or that region. With that in mind, it is important that you know your rights should EPA inspectors show up at your farm.

The following information was prepared by attorneys at Michael Best & Friedrich. For more information, feel free to reach out to Attorneys Dave Crass (dacrass@michaelbest.com or 608-283-2267) and/or Thomas Janczewski (tajanczewski@michaelbest.com of 414-277-3447).

Although exceptions exist, administrative agencies, including the EPA, gain access to private property in one of two ways: (1) by getting the consent of the business; or (2) by going to a magistrate judge and obtaining an administrative search warrant.

The EPA will typically first try to gain access the easy way, by getting a farmer to consent to EPA's inspection. If denied voluntary consent, the EPA may then decide to go to court and attempt to obtain an administrative search warrant. As a word of caution, a government inspector does not need the consent of the owner of private property in order to enter, but can obtain consent from any person that the inspector "reasonably believes" is authorized to provide consent to enter. In the case of EPA inspections, inspectors are directed to first ask for the owner of the premises, and if the owner is unavailable, EPA inspectors are directed to make a "good faith effort" to determine who is "in charge" at the time of the inspection. Accordingly, farms must make sure that their workers are properly trained on how to respond to the EPA's (or any government agency's) request to inspect the operation.

If EPA inspectors appear at your farm, you should immediately contact your lawyer before answering any questions or allowing the inspectors onto the nonpublic areas of your property.

- Unless the inspectors have a warrant you have the right to refuse the inspection

and ask the inspectors to leave. The inspectors will then have two options, either negotiate a convenient time to conduct the search with you (and ideally your lawyer) or turn to the courts to attempt to obtain a search warrant. In all likelihood, denying consent will only delay the search. Nevertheless, you should not allow the inspection to go forward until you have had an opportunity to consult with your lawyer regarding your rights and obligations. You should also not consent to a search at a time when you are likely to be distracted by the day-to-day operations of your farm, where there maybe safety or biosecurity concerns present or where you cannot otherwise devote undivided attention to the inspection. You may need time, for example, to be prepared to take photographs or split samples.

- You can withdraw your consent to inspection at anytime. Even if you initially grant consent to an inspection, you can change your mind and ask the inspectors to leave. The inspectors then have the same two options: negotiate a convenient time to resume the search or go to court to obtain a search warrant.
 - You can refuse consent to inspect certain areas of your property. The inspection, whether by consent or under a search warrant, should be focused only on those areas necessary for the EPA to determine compliance with the Clean Water Act. Even under a search warrant, an agency cannot conduct a "wall-to-wall" search, but must search only those areas specified by the warrant. However, if you consent to the search of an area where no animals or feed are located, you have little recourse if the EPA gathers evidence against you for alleged violations of other unrelated environmental laws.
 - You may have the right to "quash" a search warrant. If inspectors appear with a search warrant, you have less ability to deny entry unto your property. However, you should immediately contact your lawyer to determine whether you have a basis to "quash" (or have the court throw out) the warrant. For example, if you can demonstrate that you have less than 1,000 animal units at your farm, your farm will typically not be subject to the Clean Water Act permitting regulations. Other defenses can be asserted as well to challenge a warrant. Under those circumstances, you may be able to convince a court to quash an administrative warrant and stop the EPA's inspection in its entirety.
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