

Farmer's Privacy Act of 2012

The legislation provides, subject to specified exceptions, that the EPA may not conduct aerial surveillance of agricultural land when enforcing the Clean Water Act. The legislation provides that it cannot be interpreted as expanding or granting authority to conduct aerial surveillance.

'Agricultural lands' includes land used primarily for agricultural production, including cropland, grassland, prairie land, improved pastureland, rangeland, cropped woodland, marshes, and land used for agro-forestry or the production of livestock. 'Aerial surveillance' is defined as including any surveillance from the air, including surveillance conducted from fixed wing aircraft, helicopters, drones, and remote controlled aircraft; and the use of aerial or satellite images, regardless of whether the images are publicly available.

Exceptions to the prohibition on aerial surveillance include:

- If voluntary written consent has been obtained;
- If public notice has been given;
- If the EPA has obtained a certification of reasonable suspicion;

These exceptions ensure that the EPA has the flexibility it needs to conduct inspections.

Voluntary Written Consent

In order for aerial surveillance to be conducted pursuant to the exception provided in Section 2(b)(1) it must be in writing and voluntary. The consent may not be granted for a period to exceed one year, must specify the areas to be surveilled, and may contain limitations on the days and time of surveillance. The EPA may not threaten additional inspections, more detailed or thorough inspections, or otherwise coerce or entice the grantor of the consent.

Exception upon Public Notice

The EPA may conduct aerial surveillance if it provides notice to owners or operators of agricultural land not more than 10 days, nor fewer than 5 days, prior to the commencement of such surveillance. The public notice must be posted on the EPA's website and in a newspaper of general circulation in the surveilled area. After the surveillance is conducted the EPA must make the images available to the owners or operators of the surveilled agricultural land.

Exception upon Reasonable Suspicion

If the EPA has "reasonable suspicion" that a violation of the Clean Water Act is occurring then it may conduct aerial surveillance if it receives permission from the United States District Court for the District of Columbia. To provide "reasonable suspicion" the EPA must submit specific and articulable facts that would indicate to a reasonable person that a violation of the Clean Water Act is occurring. The court must find that the Administrator has shown reasonable suspicion that an owner or operator of the agricultural lands in the area to be surveilled has violated the Clean Water Act.