



# Statement of the American Farm Bureau Federation

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**TO THE  
HOUSE COMMITTEE ON ENERGY AND COMMERCE  
SUBCOMMITTEE ON ENVIRONMENT AND THE ECONOMY  
REGARDING: REGULATORY CHAOS: FINDING LEGISLATIVE  
SOLUTIONS TO BENEFIT JOBS AND THE ECONOMY**

**July 14, 2011**

Presented by Kevin Rogers  
President, Arizona Farm Bureau Federation  
Testifying on Behalf of the American Farm Bureau Federation

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**Summary Statement of Testimony of  
Kevin Rogers, President, Arizona Farm Bureau Federation**

- **Farmers and Ranchers are faced with an increasing array of federal environmental regulations.**
  
- **These regulations cover a broad range of elements, including:**
  - **Clean Air Act requirements;**
  - **Clean Water Act permitting and other requirements;**
  - **Restrictions on pesticides and other farm in-puts; and**
  - **Regulatory burdens involving both crops and livestock operations.**
  
- **While not all such regulations can be quantified, some are substantial.**
  - **For example, greenhouse gas regulations alone could potentially impose as much as \$866 million in costs to the sector.**
  
- **Congress can and should take action to alleviate these regulatory burdens.**
  - **H.R. 2458, referred to the Energy & Commerce Committee, would provide a more realistic (i.e., 10-year) interval for updating national ambient air quality standards (NAAQS).**
  - **The House should adopt language in the House Interior Appropriations bill that incorporates the provisions of H.R. 910, a bill adopted earlier by the Energy & Commerce Committee and the full House of Representatives to allow Congress, not EPA, to determine how to regulate greenhouse gases.**
  - **Congress should adopt language to be offered to the House Interior Appropriations bill that would prevent EPA from regulating agricultural dust, forcing many rural areas into non-attainment status.**

**Written Testimony of**  
**Kevin Rogers, President, Arizona Farm Bureau Federation**

Mr. Chairman and Members of the Subcommittee:

My name is Kevin Rogers. I am a fourth generation farmer and work over 7,000 acres of land in Arizona with other members of my family. We produce cotton, alfalfa, wheat, barley and corn. I am president of the Arizona Farm Bureau Federation, having previously served on the Board of Directors of the American Farm Bureau Federation, and I also have the privilege of serving on the United States Department of Agriculture (USDA) Air Quality Task Force, which advises the Secretary of Agriculture on federal clean air policies that affect farmers. I am pleased to provide this testimony on behalf of the American Farm Bureau Federation on “Regulatory Chaos: Finding Legislative Solutions to Benefit Jobs and the Economy” and to provide members of the subcommittee the perspective of farmers and ranchers who have to deal with an increasing array of federal regulations.

At the outset, I would like to commend the chairman and members of the subcommittee for conducting this hearing. It could not come at a more important time, and it is no exaggeration to say that the onslaught of federal regulations now confronting farmers and ranchers across America is truly overwhelming. I would like to give the subcommittee some perspective about the breadth and extent of the significant regulatory challenges currently facing America’s farmers and ranchers. While some of these issues fall outside this committee’s jurisdiction, a farmer trying to manage his land and his crops isn’t really concerned about committee

jurisdiction or which agency is overseeing his operations. He only knows that the federal government is making it tougher and tougher to make a living from the land. At the end of my testimony, I will attempt to highlight some legislative solutions that would help the agricultural community.

## **Greenhouse Gases**

In response to a question at the USDA Agricultural Air Quality Task Force meeting in Sept. 2010, Environmental Protection Agency (EPA) staff stated that emissions of methane (a greenhouse gas) from livestock operations are not categorized as fugitive emissions, and, thus, would be required to obtain a permit. This raises the potential of the agency imposing permit fees on dairy and other operations that could effectively impose millions of dollars of costs on the agriculture sector.

EPA began regulating stationary sources (including farms and ranches) of greenhouse gas (GHG) emissions on Jan. 2, 2011. Such sources could be required to obtain pre-construction permits and operating permits if they emit, or have the potential to emit, more than 100 or 250 tons of GHG per year, depending on the program. Although EPA claims it has the authority to phase in these limits, that authority is being challenged in court. EPA estimates over 37,000 agricultural facilities will be covered, at an average cost of more than \$23,200 per permit, resulting in costs of over \$866 million to producers.

## **Coarse Particulate Matter (Dust)**

EPA is in the process of reviewing its National Ambient Air Quality Standard (NAAQS) for coarse particulate matter (PM<sub>10</sub>). PM<sub>10</sub>, which is essentially dust, is more common in rural areas than urban areas, yet EPA acknowledges it has very little data on health impacts in rural areas. Despite the fact that some rural areas already have difficulty meeting current standards, EPA is considering cutting the allowable ambient level in half.

## **Pesticides**

For the first time in the 38-year history of the Clean Water Act, EPA will require Section 402 permits for normal and routine applications of pesticides in certain situations. This permitting scheme is the result of what many feel to be a flawed court ruling. Unfortunately, when it had the opportunity, the current EPA leadership failed to defend the agency's own regulation. The House of Representatives passed H.R. 872 by an overwhelming majority earlier this year to remedy this problem, but the measure is currently stalled in the Senate and time is growing short.

The Section 7 consultation process required by the Endangered Species Act (ESA) poses tremendous problems for crop protection chemicals. Recently, EPA made a precedent-setting decision to impose harsh restrictions on the use of three critical crop protection products that will essentially prohibit their use in public health sector control programs and food production in large areas of Washington, Oregon, California and Idaho. Additional restrictions on other inputs appear probable.

In an action that is unprecedented, in 2009, the EPA re-opened its consideration of atrazine, one of the most important crop protection inputs for corn, sorghum and other crops. This pesticide had been re-registered in 2006, but due to a campaign by environmental activists, EPA is reconsidering farmers' access to this important crop protection tool.

### **Concentrated Animal Feeding Operations (CAFOs)**

EPA is aggressively working to impose new regulations on livestock:

- Under a settlement agreement reached with environmental activists, EPA has agreed to propose a new regulation to collect detailed information about farms and post that information on the Internet.
- EPA is increasingly changing which activities constitute discharges. For example, in many parts of the country, EPA treats small amounts of dust and feathers blown out of poultry house ventilation fans as regulated discharges, forcing farmers to obtain permits.
- EPA has issued a total maximum daily load (TMDL) in the Chesapeake Bay that limits the ability of CAFOs to obtain new permits or expand operations.
- EPA is expected to propose regulations that would make it easier for the agency to designate small and medium sized livestock operations as CAFOs, thus increasing their regulatory burden.
- EPA is in the process of developing additional regulations that would limit the use of manure as a valuable crop nutrient and limit a farmer's ability to sell manure nutrients to crop farmers.

- EPA is also considering a petition to declare ammonia emitted from CAFOs as a “criteria pollutant” under the Clean Air Act.
- EPA is weighing the option of reinstating reporting requirements for ammonia and hydrogen sulfide emissions for CAFOs under Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)/Emergency Planning and Community Right to Know Act (EPCRA).

### **Non-point Source Regulation**

Even though Section 319 of the Clean Water Act explicitly leaves regulation of non-point source regulation and land-use decisions to the states, EPA is seeking to claim jurisdiction:

- As part of planned regulations covering animal feeding operations, the agency is attempting to narrow the statutory agricultural storm-water exemption that farmers have historically relied on. In the Chesapeake Bay, EPA has required states to impose mandatory controls on non-point sources.
- EPA has entered into a settlement agreement with environmental activists to adopt unrealistic and unattainable numeric nutrient criteria in Florida.
- EPA is also in the process of increasing its oversight and requiring more stringent water quality standards nationwide. Key among EPA’s proposals are measures to pressure states into issuing numeric nutrient standards, to tighten rules over point and non-point sources and give environmental activists greater ability to challenge livestock operations and land use activities of farmers and ranchers.

## **Spill Prevention**

Even though the agriculture community has repeatedly asked EPA for additional time to inform farmers and ranchers about their obligations under the Spill Prevention, Control and Countermeasures (SPCC) rule, the agency has declined to do so.

## **Federal EPA Jurisdiction**

EPA has proposed “guidance” which it intends to use to inform its regulatory decisions on all Clean Water Act programs. The agency is doing this despite being admonished by the U.S. Supreme Court that it should proceed under a thorough, formal rulemaking under the Administrative Procedure Act as to how it regulates navigable waters of the United States. EPA’s proposal could give it jurisdiction not only over isolated wetlands and waters, but also over dry land features such as ditches on farm land. This is an enormous expansion of authority by the agency.

## **Prior Converted Cropland (PCC)**

EPA is attempting to undo a 1993 regulation that stipulates that PCC remains PCC even when the use of the land changes. The effect will be to seriously erode farmers’ investments in their land.

I now would like to focus on two critically important items with pending legislative proposals that merit quick action, which fall under the jurisdiction of the Energy and Commerce Committee. The first is the issue of agricultural dust – coarse particulate matter or PM<sub>10</sub>. The second is the issue of greenhouse gas regulation.

Earlier this year, before the House Committee on Agriculture, Lisa Jackson, the Administrator of the EPA, provided testimony in which she sought to dispel five “myths” about how EPA is targeting the agricultural community for increased regulation. One of those “myths” related to agricultural dust. In her oral statement, Administrator Jackson said:

Another mischaracterization is the claim that EPA is attempting to expand regulation of dust from farms. We have no plans to do so, but let me also be clear. The Clean Air Act passed by Congress mandates that the Agency routinely review the science of various pollutants, including Particulate Matter, which is directly responsible for heart attacks and premature deaths. EPA’s independent science panel is currently reviewing that science, and at my direction EPA staff is conducting meetings to engage with and listen to farms and ranchers well before we even propose any rule.<sup>1</sup>

In her statement, the Administrator said that the agency has “no plans” to expand regulation of dust from farms but went on to say that the Agency must “routinely review the science of various pollutants, including Particulate matter.” In fact, the Clean Air Science Advisory Committee (CASAC) has been meeting extensively on the question of changing the NAAQS for PM<sub>10</sub>. The

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<sup>1</sup> Statement of Administrator Lisa Jackson delivered to the House Committee on Agriculture, March 10, 2011.

latest EPA Draft Policy Assessment for coarse PM stated: “available evidence could support either revising the current PM<sub>10</sub> standard...or retaining the current standard.” The revised standards discussed by EPA in the assessment would lower the allowable levels of PM<sub>10</sub> and would result in more areas coming into non-attainment, most of them in rural areas. This includes farms and ranches.

Coarse particulate matter is much more prevalent in rural areas due to unpaved roads, working farm fields and wind. With very little evidence of adverse health impacts from PM<sub>10</sub> (and virtually no evidence from rural areas), EPA is proceeding to consider revising its standards. While EPA has said that it is justified in retaining the current standard, all indications are that it will reduce the current allowable levels of PM<sub>10</sub> by half. Such a change will not have much impact in urban areas, but will cause significant economic concerns in rural areas that are already having difficulty in meeting the current standard. Reducing the standard will cause many rural areas to go into non-attainment, and bring more restrictions and controls on production. The effect will be to raise costs and reduce profitability for agriculture.

There is a legislative solution to this problem. We hope that the Interior Appropriations bill will include language sponsored by Rep. Jeff Flake (R-Ariz.) that states the following:

None of the funds made available by this Act may be used to modify the national primary ambient air quality standard or the national secondary ambient air quality standard applicable to coarse particulate matter (generally referred to as “PM<sub>10</sub>”) under section 109 of the Clean Air Act (42 U.S.C. 7409).

If, as Administrator Jackson testified, the agency has “no plans” to regulate agricultural dust, then this amendment should not be at all problematic. Farm Bureau strongly supports the Flake amendment and hopes it will be adopted by the House. We also support H.R. 2458, also introduced by Rep. Flake. That legislation would change the frequency of review of air quality criteria under Section 108 of the Clean Air Act and national primary and secondary ambient air quality standards under Section 109 of the act from 5- to 10-year intervals.

The second issue on which a legislative solution is imperative is that of greenhouse gases.

EPA began regulating greenhouse gas emissions at stationary sources (including farms and ranches) on Jan. 2, 2011. The Clean Air Act requires that any such sources that emit, or have the potential to emit, 100 or 250 tons of GHGs per year obtain both Title V operating permits and pre-construction permits before building or renovating any structures. EPA, under its “tailoring” rule, has claimed it has the authority to phase in these limits, starting at levels as high as 100,000 tons per year (tpy) – a level a thousand times above that explicitly set by Congress in the law. EPA’s greenhouse gas emission authority is being challenged in court. EPA estimates that when fully implemented, there will be over 37,000 farms and ranches subject to Title V operating permits alone, at an average cost of over \$23,200 per permit. In addition, EPA has stated that methane emissions from livestock are not classified as fugitive emissions, and, thus, would be required to obtain such permits. If so, this would affect over 90 percent of the livestock production in the United States.

On April 7 of this year, on a vote of 255-172, the House of Representatives adopted H.R. 910, the *Energy Tax Prevention Act of 2011*. That legislation effectively puts the policy decision about regulating greenhouse gases where it belongs – in Congress, not in the federal bureaucracy. This is a critical legislative initiative that must be pursued.

As I mentioned earlier, EPA itself admits as many as 37,000 farms and ranches could be subject to Title V Clean Air Act operating permits if the agency moves forward on its agenda. This is the genesis of reports about a “cow tax,” which EPA sought to dispel as a myth in its testimony before the House Agriculture Committee. It is gratifying to know that this committee and the House of Representatives agree with our view that such a regulatory scheme is nothing more than tax. Unless Congress acts, it is clear that this burden will be felt by farmers and ranchers.

In her testimony, Administrator Jackson said, “The truth is – EPA is proposing to reduce greenhouse gas emissions in a responsible, careful manner and we have even exempted agricultural sources from regulation.” Mr. Chairman, we have looked at the Clean Air Act very carefully, and we have not found any place in the law where the committee gave the administrator the authority to exempt agricultural sources. We are not confident that the exemption exists, either in fact or in statute. We are greatly concerned that the agency feels it can effectively do what it likes, irrespective of the law. If they are allowed to exempt agriculture where they don’t have the authority, perhaps another place they might include agriculture where Congress didn’t intend. That is a frightening prospect for farmers and ranchers.

We urge this committee to continue to work for enactment of H.R. 910. It is our understanding that the language of this bill will be incorporated in the text of the Interior Appropriations bill. We hope the committee will support adoption of that language and do everything possible to have it enacted into law.

In order to give farmers and ranchers greater certainty, additional legislation is needed. Recently, the U.S. Supreme Court ruled unanimously in *American Electric Power v. Connecticut* that there was no federal common law right of action for emission of greenhouse gases. The decision, however, left unanswered the questions whether plaintiffs could maintain standing to sue, and whether suits could be maintained under state law. Legislation is necessary to clarify that there is no common law action under either state or federal law for emissions of greenhouse gases.

Mr. Chairman and members of the subcommittee, I appreciate this opportunity to testify this morning and will be pleased to respond to any questions.