

Testimony of Congresswoman Kristi Noem  
Before the Energy and Commerce Committee's Energy and Power Subcommittee  
October 25, 2011

Thank you Mr. Chairman, Ranking Member, and Members of the Committee. I appreciate the opportunity to testify before the Committee today in support of H.R. 1633, the Farm Dust Regulation Prevention Act of 2011. I introduced this common sense bill on April 15<sup>th</sup> of this year with my colleagues Representatives Robert Hurt, Leonard Boswell, and Larry Kissell because of the regulatory uncertainty facing rural America. My bill is a bipartisan approach to ending the Environmental Protection Agency's (EPA) regulation of farm dust in rural America, while still maintaining the protections of the Clean Air Act to the public's health and welfare. This is not a Republican or Democratic issue. There is broad bipartisan support in both the House and Senate for this bill. Over 100 of my colleagues from both sides of the aisle have signed on as cosponsors and, as the Committee will see in the record, more than 100 agriculture and resource-based organizations have written in support of this bill.

**Background on regulations**

As this Committee knows, there is a growing concern that excess regulations are hampering economic growth and job creation across the country. In my home state of South Dakota, this is a huge concern for farmers, ranchers, and small business owners who are struggling to stay afloat in an already stressed economy. One of the most overwhelming concerns I hear about from farmers and ranchers back home is the overbearing regulations coming out of the EPA, including the regulation of farm dust. Their concern is not unwarranted.

Under the Clean Air Act, the EPA is responsible for setting the National Ambient Air Quality Standards (NAAQS) for certain pollutants. This includes particulate matter, which is broken down into both fine and coarse particulate matter, commonly known as dust. The Administrator of the EPA, Lisa Jackson, must set the NAAQS that states must meet or be designated as "nonattainment" areas. Specific sources must also meet the standard at their property line, or will be subject to a fine. The goal of these

standards is to protect the public from harmful pollutants like industrial soot and car emissions common in urban areas, which I support. The EPA measures the amount of particulate matter, or dust, in the air through monitoring devices placed throughout the country. At least every five years, the Administrator must review the standards and decide if they want to keep the current standard, or potentially adopt a more stringent standard. As this Committee is aware, the EPA is currently in the midst of a review.

Under current law, the EPA's standards include all types of dust, including dust generated from agricultural activities and the dust that is typical of rural areas. This type of dust is naturally occurring and includes soil, windblown dust, and dust coming from dirt roads. I call it farm dust. This is completely different than the type of dust typical in urban areas which has been shown to have adverse health effects. I want to be clear that we are not talking about areas where there may be health concerns related to particulate matter. My legislation specifically focuses on rural dust and allows the standard to apply unchanged to urban areas. Farm dust is a fact of life in rural America and, unlike urban dust, has not been shown to be of a significant health concern. Including farm dust in the NAAQS regulations causes great concern and uncertainty for farmers and other resource based industries in rural America.

### **Impact of current regulations**

I'd like to clear up the myth that EPA currently does NOT regulate farm dust. Farmers and ranchers that are already subject to the standard for dust in "nonattainment" areas like Arizona know its impact on businesses. In Arizona, it can cost some producers over \$1,000 per day to comply with dust standards. A September 17<sup>th</sup>, 2011 article from the [Des Moines Register](#) tells the story of Kevin Rogers, a farmer outside of Phoenix, Arizona. If the wind is blowing too much, he must park his tractors and combines for the day so he doesn't kick up dust. As a lifelong farmer and rancher, I know what kind of impact this can have when you have a job to do and a business to run. As Rogers put it, "It's a difficult thing when the government is in the middle of everything we're doing". We need to put an end to regulation of farm dust and prevent its expansion in the future.

### **Future expansion of the issue**

Regulation of farm dust is a problem today and will only cause more of an issue as the EPA continues to have opportunities to make more stringent standards in the future. EPA's own policy assessment (Policy Assessment for the Review of the Particulate Matter National Ambient Air Quality Standards) from April of this year includes a recommendation to revise the current standard for Coarse Particulate Matter (PM<sub>10</sub>) to a much stricter level, which would put numerous rural communities across the country into "nonattainment" status subjecting more farmers and ranchers to fines. While the EPA has since said they are "prepared to propose to keep the current standard", it does nothing to exclude farm dust from the regulations or provide certainty to rural America to stop more stringent standards in the future.

The inclusion of farm dust in the EPA's NAAQS will continue to be a problem until legislation is enacted to ensure that farm dust is treated differently. Assistant Administrator Gina McCarthy stated in a letter I received on May 10, 2011 that the NAAQS "are not focused on any specific category of sources or any particular activity (including activities related to agriculture and rural roads)." In other words, the EPA is well aware that it cannot, under current law, differentiate between dust coming from rural areas or urban areas. While officials in the EPA continue to say that they have no intention of regulating "farm dust", based on their correspondence and current law, the EPA DOES regulate farm dust and has no plan to exempt naturally occurring farm dust from their regulations.

### **This bill provides a solution**

H.R. 1633 provides the EPA with that ability because it differentiates between naturally occurring rural dust and that typical of urban areas. According to the EPA's May 10<sup>th</sup> letter, they "remain committed to common sense approaches to improving air quality across the country without placing undue burden on agricultural and rural communities". If the EPA truly believes that statement to be true, then the EPA should support this bill. Here is why:

- a) First, it provides immediate relief to farmers and rural areas by preventing any changes to the current dust standard for one year from date of enactment.
- b) Secondly, it provides flexibility for states, localities, and tribes to regulate farm dust, or “nuisance dust”. Nuisance dust is defined in the bill to exclude the type of dust typical of rural areas (such as unpaved roads and dust resulting from agricultural activities) from the National Ambient Air Quality Standards (NAAQS) regulation targeted at harmful air pollutants. If the state, tribal, or local government chooses to regulate nuisance dust, these regulations would supersede the federal standard. If there are no local regulations in place, the EPA must find that the specific type of dust causes adverse health effects and that the benefits of applying the EPA’s standard to that area outweigh the costs to the local communities, including economic and employment impacts, before they can enforce the regulations.

This legislation is necessary because despite numerous opportunities, the EPA continues to treat farm dust and urban dust the same. In 2006, the EPA proposed to exempt agriculture dust from the NAAQS standards. But in the end, the EPA pulled that exemption in the final rule which left rural America in uncertainty. Our farmers and ranchers deserve a final, definitive answer and this legislation would provide that.

**This is a bipartisan, rural issue with lots of support**

The regulation of farm dust is not a partisan issue. It is a rural issue. We cannot continue to burden our farmers and ranchers with a “one size fits all” approach to regulation. The organizations writing in support of this legislation represent thousands of farmers across America who understand the effects of over burdensome regulation. The Chairman of the House Agriculture Committee, Congressman Frank Lucas, along with all of the Chairmen of the Agriculture Subcommittees are cosponsors of this bill. While the EPA might not understand how their regulations impact rural America, we certainly do.

Regulatory uncertainty harms rural America. As the EPA officials try to assure us that they aren't trying to harm rural America, the facts tell a different story. The EPA says they have no plans to further regulate farm dust, but those words are empty promises until backed up by real action. If Administrator Lisa Jackson is serious about bringing regulatory certainty to farmers and ranchers, she should help me get this bill through Congress and signed into law by President Obama. I would also welcome the President's support since he announced in his Wall Street Journal op-ed on January 18<sup>th</sup>, 2011 that he issued a new executive order to "root out regulations that conflict, that are not worth the cost, or that are just plain dumb." Well, Mr. Chairman, regulating farm dust IS just plain dumb. And may I remind the Committee that the President pledged during his State of the Union address that "when we find rules that put an unnecessary burden on businesses, we will fix them."

As the EPA is still in the midst of reviewing current regulations for dust, they still do not have the ability under current law to differentiate between urban and rural dust when enforcing their standards. At least every five years, the EPA has more opportunities to enforce stricter regulations and subject more and more rural communities to regulations for dust that is a part of their everyday lives. Even if we simply take the EPA Administrator at her word today, there is nothing stopping her agency from further regulating farm dust tomorrow except this bill. Farmers in Arizona already know the impact this has on their business because there is nothing in the current law that provides clarity on how the EPA should treat naturally occurring dust typical in rural America. This legislation would require the EPA to distinguish between urban and rural dust and provide ironclad certainty to the agriculture community so they can continue to provide a reliable, safe food supply in the United States and meet the world's food needs.

Thank you Mr. Chairman and Members of the Committee. I look forward to answering any questions you may have.