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OVERSIGHT HEARING TO EXAMINE THE IMPACT OF EPA REGULATION ON AGRICULTURE

HEARING

BEFORE THE

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

UNITED STATES SENATE

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OVERSIGHT HEARING TO EXAMINE THE IMPACT OF EPA REGULATION ON AGRICULTURE

Thursday, September 23, 2010

UNITED STATES SENATE,
COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY,
Washington, DC

The Committee met, pursuant to notice, at 2:44 p.m., in Room SR328A, Russell Senate Office Building, Hon. Blanche Lincoln, Chairman of the Committee, presiding.

Present or submitting a statement: Senators Lincoln, Conrad, Stabenow, Nelson, Klobuchar, Chambliss, Roberts, Johanns, and Thune.

STATEMENT OF HON. BLANCHE L. LINCOLN, U.S. SENATOR FROM THE STATE OF ARKANSAS, CHAIRMAN, COMMITTEE ON AGRICULTURE, NUTRITION AND FORESTRY

Chairman LINCOLN. Good afternoon. The Senate

Committee on Agriculture, Nutrition and Forestry will now come to order.

I am pleased to hold this hearing, examining the impact of the Environmental Protection Agency's regulation of farmers and ranchers.

As always I am delighted to be joined by my good friend and ranking member Senator Chambliss who I know had other things he has been at and may have to leave for as well but I am so proud that he is here today and grateful for his sharing of my passion and commitment for farmers, ranchers and certainly rural America. He serves us all well. I am glad he is here.

Several excellent witnesses will provide testimony today, and I would like to first extend a special thanks to fellow Arkansan, Mr. Rich Hillman. To be here with us today Rich is missing the first day of a two-day meeting of the Board of Directors of the Arkansas Farm Bureau.

So, Rich, I appreciate you for being here.

We will also hear from Mr. Jay Vroom, who is the President and Chief Executive Officer of Croplife America; and, of course, Mr. Jere White, who is Executive Director of the Kansas Corn Growers Association.

Finally, a very special thanks to you, Administrator Lisa Jackson, from the Environmental Protection Agency for coming before us and appearing before the Committee today.

Administrator Jackson, I know you and your team have been extremely busy in these last several months as we mentioned back here, responding to this spill in the Gulf of Mexico. We appreciate that, and we appreciate you making time to be with us today.

As a farmer's daughter I learned first-hand from farmers and ranchers and foresters who are the best stewards of our land. I have never known a better conservationist than my dad who had a tremendous respect for the land and a great love for it as well.

It provided for us with the safest, most abundant, and most affordable supply of food and fiber in the world, and they have done it for generations.

This could not happen without the careful stewardship of their land. In fact, much of the conservation gains that have been made over the past half century have been achieved through voluntary, incentive-based cost sharing programs, many of which were developed on a bipartisan basis by members of this Committee both past and present. Truly remarkable improvements have been made in reduced soil erosion, improved water and air quality, and wildlife habitat restoration.

To my point I would suggest that any of you all that might think about it pick up a copy of the Worst Hard Times. It is a story about the dust bowl days to really get a sense of where we have been and where we are today thanks to a collaborative effort between farmers, ranchers, and those who really understand production agriculture in Congress.

As one who has been a part of this progress, it has been my experience and it is certainly my judgment that the carrot has time and time again proved mightier than the stick when it comes to advancing important conservation and environmental objectives on farms, ranches, and forest land.

Unfortunately farmers and ranchers in rural Arkansas and all over on our Nation are increasingly frustrated and bewildered by vague, overreaching and unnecessarily burdensome EPA regulations. Farmers face so many unknowns, so many that many of us just take for granted. The last thing they need is regulatory uncertainty.

Producers are subject to the whims of the commodity markets and the weather, just to name a few. A sudden shift in price or a wet summer can devastate a farmer and drive him out of business.

In the face of these stark realities, our farmers, ranchers and foresters need clear, straightforward, and predictable rules to live by that are not burdensome, duplicative, costly, unnecessary or, in some cases, just plain bizarre.

Farmers and ranchers do not have an army of environmental engineers, lawyers, and regulatory compliance specialist on their speed dial.

I do not know but I spent a great deal of time in a pickup truck with my dad who had a small binder up above the visor on his car or his truck, and that is how he kept up. He did not have a computer. Many farmers still do not have computers on board with them in those trucks and cars to be able to figure out what it is that is being asked of them and try to decipher it on their own without a tremendous number of engineers or lawyers or others.

Compliance obligations that may seem simple to a career

bureaucrat in Washington, DC, are often complex, they are ambiguous, and in the end leave farmers and ranchers feeling tremendously uncertain and exposed to steep fines they simply cannot afford in this economic environment.

I urge everyone to give thought to the following. Right now at a time when every American feels anxious about his or her own economic future and the economic future of the country, our farmers, ranchers, and foresters are facing at least a dozen, a dozen new regulatory requirements, each of which will add to their cost making it harder for them to compete in a world that is marked by stiff and usually unfair competition.

And most, if not all, of these regulations rely on dubious rationales, and as a consequence, will be of questionable benefit to the overall goal of conservation and environmental protection.

There is no question that our farmers and ranchers want to do what is best for the environment. They ask that you do not lower your expectations of them but simply give them goals that they can reach and still continue to produce a safe and affordable and abundant supply of food and fiber.

They ask that you work together with agriculture community to set these common sense goals instead of using the command and control top down approach that this Administration has relied on so far.

In a moment I will talk about two issues that are prime examples of this Administration's overreaching approach to regulation. But I would be remiss if I did not mention several other issues that really do concern me.

EPA's recent proposed spray drift guidance, as I have indicated in a letter to the Administrator, was vague, unenforceable, and would have left producers uncertain about whether they were complying within the law when they sprayed.

I was initially informed that EPA decided to reconsider the proposed spray drift guidance. Though more recently I have now heard that EPA plans to stick with its initial proposal. This troubles me because, as I stated before, the proposed standard is completely unworkable.

Now as chair of the Senate Committee on Agriculture, Nutrition, and Forestry, I do not know what to expect or to understand or to encourage growers across this Nation as to what they can expect. You can imagine the concern and the confusion among our farmers and ranchers and foresters in this country not knowing what it is they can anticipate.

I am also concerned about EPA's recent practice of settling Clean Water Act lawsuits while only allowing environmental groups a seat at the table. I believe, as I always have, in whatever issue we are dealing with all stakeholders should have a seat at the table when so much is on the line.

Also the Administrator's goal of expanding the use of renewable energy is being undermined by EPA's proposed boiler MACT which would inhibit the use of biomass by subjecting new facilities to needlessly expensive emission controls. This regulation would also impose new costs on the Nation's paper industry which currently relies on biomass for two thirds of its energy.

Then there is EPA's proposed ambient air quality standards for particulate matter which could lead to stringent regulations of dust on farms. Folks, dust is a fact of life in rural and agricultural areas of the United States. Trucks, combines, livestock, they all kick up dust during the course of normal farming operations. EPA must use common sense when setting these types of standards.

Finally, I flat out disagree with EPA's regulation of greenhouse gases. Because the legal foundation for the tailoring is shaky at best probably, I fear that federal courts will order EPA to regulate small sources of greenhouse gases. This could mean unnecessary regulation for thousands of farms all around the country.

We cannot allow this to happen, and as I have said time and again, it should be Congress, not unelected bureaucrats, who should be writing the laws to regulate greenhouse gases.

Now, just to talk about two issues in greater detail, the first involves EPA's development of Clean Water Act permit requirements for pesticide applications.

What is most frustrating to me about this development is that the pesticide applications will unnecessarily regulate twice, once under FIFRA and again under the Clean Water Act.

I firmly believe that as long as a FIFRA registered product is applied in accordance with its label and any other conditions, then we should not be requiring unnecessary, duplicative regulatory burdens.

The Clean Water Act requirements for pesticide applications have also created incredible uncertainty and concern for producers, especially rice producers in our State of Arkansas.

Growers are suddenly forced to make a choice between either potentially seeking an expensive permit that requires onerous record keeping and other obligations and yet does nothing for the environment that FIFRA does not already do for spraying without a permit and be potentially subject to Clean Water Act citizen suits and enormous civil penalties. It is simply a choice that our farmers and ranchers and foresters should not have to make.

For these reasons, Ranking Member Chambliss and I introduced S. 3735, a bill that would clarify that a Clean Water Act permit is not required if a pesticide is applied in accordance with FIFRA. It is my hope that we could find a way to pass this legislation as soon as possible.

Second issue, one unique to my home State of Arkansas, and I appreciate the Committee bearing with me, is EPA's rush to establish a total maximum daily load for the Illinois River before the State of Oklahoma revisits its phosphorous standards for the river. Common sense would seem to suggest that Oklahoma should revisit its phosphorus standards before EPA takes action.

I am also concerned by multiple reports from poultry farmers in the northwest part of our State indicating a lack of clarity regarding their obligation under the Clean Water Act. I cannot emphasize enough that poultry farmers are not power plants or large manufacturing facilities. They do not have lawyers and engineers on staff. They do not sit around sipping coffee, parsing and debating the finer points of the Clean Water Act or the Supreme Court jurisprudence on the meaning of the term "waters of the US". They

need guidance and a clear set of expectations, and it is EPA's job to provide it.

As we work to create jobs and put our economy back on track, I know, I hope and believe that with all of our objectives here working together we must give folks in rural America the certainty they need to be successful. Overreaching, burdensome regulations from the EPA create huge uncertainties for our farmers and ranchers and put our Nation's food supply at risk.

I hope that we can use today's hearing to discuss how we can create a more collaborative relationship between the EPA and American agriculture.

I again want to thank you all for being here. I appreciate Administrator Jackson for being here and look forward to being able to work to find some kind of common ground here that makes sense to people in rural America and those that do produce for us the safest, most abundant, and affordable supply of food and fiber in the world.

So I will now turn to our Ranking Member, Senator Chambliss, for his opening statement.

STATEMENT OF HON. SAXBY CHAMBLISS, U.S. SENATOR FROM THE STATE OF GEORGIA

Senator CHAMBLISS. Thank you very much, Madam Chairman, and let me just say at the outset that after what your Razorbacks did to my Bull Dogs last Saturday——

Chairman LINCOLN. I was not going to mention that. You brought that up.

Senator CHAMBLISS. I have every reason to be upset with everybody in Arkansas.

[Laughter.]

Senator CHAMBLISS. Since we do not play you all for two more years, it is going to take me two years to get over it.

[Laughter.]

Chairman LINCOLN. We went pretty easy on you.

Senator CHAMBLISS. If you did not care who won, it was an exciting football game.

Thanks for your comments and likewise you are a great partner here and with all the complex and difficult issues that face American agriculture, we have had a great working relationship and we are continuing down the road on this very sensitive issue, and for that I thank you for holding this hearing on this important and timely topic.

Administrator Jackson, I thank you for coming before the Committee today. I realize that your time obviously is very valuable.

I hope that I, along with my colleagues on both sides of the aisle and from every region of the country, can impress upon you just how serious our concerns are with the Environmental Protection Agency. Really all of rural America is concerned.

As we open this discussion, let me say from the outset that I am not here to complain that agriculture is being unfairly or is being picked on or unfairly targeted by this Administration. However, I do think it is fair to say that we are here to talk about an approach to government regulation and several specific regulations that will

have a pivotal impact on the future of the agricultural sector in America.

A few weeks ago, Secretary Vilsack unveiled two USDA reports that show that the U.S. agriculture sector is improving and exports are growing. After declining more than 20 percent in 2009, farm sector earnings have experienced a rapid rebound in 2010 and are forecasted to rise even higher by the end of this year.

The secretary also announced that agricultural exports are projected to reach $107.5 billion with an $11 billion increase over this year. These figures make 2010 the second highest year on record. That is great news for agriculture. I wish it were true for the rest of our economy.

But as we think about this news, the question we then ask is what impact are EPA's regulatory plans going to have on future opportunities for growth. Specifically, will the regulations help or hinder these opportunities and the jobs, investment, and income that come with them.

Given the regulatory issues before us, particularly the one cited by the Chairman, I believe along with many of my colleagues around this table that the agency's plans will hinder growth in agriculture in rural America.

By my count there are more than 20 different efforts underway at EPA that affect agriculture and the farmers, ranchers, foresters, agribusinesses and rural communities of this country.

Let me just list a few of them for you. Clean Water Act permits for pesticide applications. Next April EPA will impose a completely unnecessary paperwork burden on pesticide users by requiring a national pollutant discharge elimination system permit for pesticide applications. This requirement will add zero protection for the environment.

Under this framework, more than 5.6 million pesticide applications will need to be permitted because the agency refused to defend its well considered 30-year-old policy in this area.

Next, atrazine. Last year EPA decided to re-review atrazine. This was shocking since there was no scientific reason for it, especially since EPA had finished a comprehensive review of atrazine in 2006 and is scheduled to begin the re-registration process in 2013. EPA's own Scientific Advisory Panel has questioned the agency's motive for a second review.

Next, numeric nutrient criteria. EPA's plan to set criteria for Florida's streams, rivers, and lakes is astonishingly expensive. In fact, the estimated initial cost just for agriculture is anywhere from $855 million to more than $3 billion. This effort has been highly criticized for lack of correlation between the proposed criteria and the desired condition of these waters.

But this is not just about Florida. This precedent set in Florida will affect the entire country. EPA has one chance to get it right.

Next, CAFOs. EPA will begin to expand the Concentrated Animal Feeding Operation program next summer to require permits for all small and medium operations and to develop more aggressive nutrient management plans for all sizes of farms. This expansion is due to a settlement agreement with an environmental litigant which is a very poor way to set policy and is based upon a questionable interpretation of the law.

Next, greenhouse gas regulations. The EPA suite of regulations would drive up costs for all energy users, bring large and small agribusinesses into a permitting program, and within a few years require large farms to obtain air permits.

In addition, EPA's treatment of biomass emissions in its tailoring rule contradicts long-standing US policy. The uncertainty created by this rule is sidelining investment in biomass power something this Administration has made a priority in its green energy agenda—and threatening the viability of existing biomass energy production facilities.

Next, risk assessment for dioxin. Exposure to dioxin has declined by 90 percent over the past two decades. This is a victory. Unbelievably at the very same time, however, EPA is contemplating setting a standard lower than every other developed nation. This would mean that no food, which is the primary source of dioxin exposure, would be safe. This defies rational science and all common sense.

Why does all of this matter? Because we need American agriculture not just to feed Americans but to feed the world. The Food and Agriculture Organization, FAO, recently projected the world population will rise from 6.8 billion today to 9.1 billion people by 2050.

In short, the world will need to produce 70 percent more food to feed an additional 2.3 billion people. Nearly all of the population growth will occur in developing countries. At the same time, food producing nations like the United States will need to take a leadership role in combating poverty and hunger using scarce natural resources more efficiently and adapting to a changing climate.

While the FAO is cautiously optimistic about the world's potential to feed itself by 2050, I seriously question whether anyone has made the connection between the central role that America must play to solve this challenge and the regulations that EPA has put forth for agriculture, the very industry that will be responsible for the solution.

No one disputes the need or desire for clean air and water, bountiful habitat, and healthy landscapes. We all believe in that. But at some point, which I believe we are getting dangerously close to, regulatory burdens on farmers and ranchers will hinder rather than help them become better stewards of the land and more bountiful producers of food, fiber, and fuel.

Administrator Jackson, you as the leader of EPA, are the one to make this connection along with Secretary Vilsack. It is you that must take this to your colleagues in the Administration and ask the hard questions about this approach to agriculture. I hope this hearing helps motivate you to do exactly that.

In a spirit of cooperation, let me close with this final thought. These issues are not going away. They must be addressed in a reasonable manner. We have a choice. The agriculture community can fight regulation by regulation or we, Congress, the Administration, and the agricultural sector can work together on a sensible approach that harnesses the innovation, productive capability, and natural resource base of America to improve the future of our country and our neighbors around the world. It is my hope that this hearing will open the door to do just that.

Thank you again, Madam Chairman, for holding this timely hearing, and I look forward to the Administrator's testimony.

Chairman LINCOLN. Thank you. I appreciate your closing comments, and in the good spirit of what we did on nutrition is a great opportunity in this Committee to work in a bipartisan way and with the Administration and the industry to really find those kind of common sense solutions to the problems that we might face. So I thank the Senator for reminding us where we have come from and where we have to go.

We have two panels that we are anxious to hear from today. In the interest of time, any Senator I would hope that you all would, if you want to just submit your opening statements for the record, I know people are wanting to get out of town too so we will move on.

We would like to welcome EPA Administrator Lisa Jackson. Before becoming EPS's Administrator, Ms. Jackson served as Chief of Staff to New Jersey Governor Jon Corzine and commissioner of the State's Department of Environmental Protection.

Prior to joining DEP, she worked for 16 years as an employee of the U.S. EPA. She has been working tirelessly in the Gulf and I know that is certainly something of great importance to her as I believe you were born or raised in New Orleans so it is hometown territory for you and I know it is work that you hated to have to do but enjoyed being there to be able to see all the things that you could accomplish in reviving the Gulf.

Administrator Jackson, we look forward to your remarks. Your written testimony will be submitted for the record and I ask that you keep your remarks hopefully to as close to five minutes as you can. Thank you.

STATEMENT OF HON. LISA P. JACKSON, ADMINISTRATOR, U.S. ENVIRONMENTAL PROTECTION AGENCY, WASHINGTON, DC

Ms. JACKSON. Thank you.

Chairwoman Lincoln, Ranking Member Chambliss, members of the Committee, thank you very much for inviting me to testify.

I am pleased to talk with you about EPA's mission to protect human health and the environment and the interaction with the agriculture community. Farmers and ranchers are an essential part of the American economy. They provide us with food, fiber, and fuel. The agriculture community should be credited with taking significant steps to protect the environment while finding innovative ways to feed millions of people.

I recognize that there are concerns in the agriculture community about EPA's activities. Two weeks ago I was in Americus, Georgia, where I heard directly from local farmers about the challenges they and their families face and how they are attempting to deal with environmental issues.

The slim margins on which farmers operate, the inability to pass along the cost of environmental improvements, and their vulnerability in a difficult economy was obvious and a critical considerations in working with agriculture.

At the same time that we are hearing concerns from farmers, they are also expressing their willingness to engage with us on environmental challenges. American farmers have made substantial

contributions to protecting the environment from practices that reduce risk from pesticide use in fruit orchards and vegetable fields to conservation efforts to protect water quality in regions such as the Chesapeake Bay. While much has been accomplished, too much remains to be done to protect our air and water as the population and development increases.

As EPA Administrator I made a commitment to protect the air we breathe, the water we drink and use to irrigate our land and to protect the land that is our heritage and our children's inheritance.

I pledged to uphold the law, use the best available science, and be transparent in our decision-making at EPA. A recent example of EPA's commitment to those principles came during the RFS2 rule making. Congress directed EPA to conduct a life cycle analysis for biofuels. EPA's initial proposal in the spring of 2009 was based on science as we knew it at that time.

We opened our analysis to comments from the public and industry as well as an independent science review, and I sent senior staff to Iowa so that they could meet with farmers and researchers.

Based on the vast amount of new information received and analyzed, we came to a substantially different conclusion than our initial proposal. Throughout that process we demonstrated our willingness to engage with the public to carry out our responsibilities, to make complex decisions under the law, and to ensure that we follow the current science.

Taking the time to solicit ideas directly from farmers and listening to their concerns is major priority for me. I have co-hosted a series of meetings with Secretary Vilsack at which we met with producers and their representatives from the commodity, livestock, and specialty crops sectors.

These meetings were candid and wide-ranging conversations with farmers and ranchers where I heard their concerns firsthand. I also heard about the remarkable things they and their neighbors are doing across the country in large and small operations to protect our land, water, and air.

As a product of what we learned in those meetings, I have asked my staff to initiate two important discussions with agricultural stakeholders.

First, I am asking our Office of Air and Radiation to carry out an extensive effort to solicit information about the issues associated with PM10, the dust issue, and its implication for rural communities and agriculture before we make any proposal on this issue.

Second, I am asking our Office of Enforcement and Compliance Assurance to convene a discussion with agricultural and other stakeholders to foster better understanding and communication around EPA's enforcement operations and to discuss options for increasing the ability of agriculture to protect the environment. By providing these opportunities, I hope to demonstrate EPA's commitment to engaging directly with the agriculture and rural communities.

EPA has also been making direct and substantial investment in the farm communities' efforts to find and implement environmentally sound practices.

During my time so far at EPA, the agency has provided approximately $190 million in grants in direct support for critical agricultural projects across the United States. Our investment is as diverse as the range of issues that farmers must grapple with.

For instance, we have provided grants to states for work to protect Lake Champlain's watershed, to reduce insect resistance for crops in the southwest United States, to help farmers adapt variable rate technologies in Ohio.

In many of these efforts, EPA funds have been used along with USDA funds such as EPA's seed grant in south Georgia which helped leverage a substantial investment from USDA to assist limited resource and disadvantaged farmers to implement best management practices.

Admittedly EPA's financial resources are only one part of the larger picture of support. While in many places they are a catalyst and a complement to the much more significant resources that USDA brings to communities, the immense private investment by farmers and their communities are the major driver.

If there is one message I want to send today, it is that I recognize that the most effective course for protecting our environment is an active partnership between EPA and USDA and farmers and their communities.

We will continue to face complex and difficult issues in carrying out the responsibilities that Congress has given us. I am encouraged by my conversations with farmers that there is a path forward on the issues ahead. Just as important, my conversations with the agricultural community have reinforced my belief and commitment that a healthy farm economy and a health environment can and should go hand in hand.

Thank you. I am pleased to answer your questions.

[The prepared statement of Ms. Jackson can be found on page 54 in the appendix.]

Chairman LINCOLN. Thank you so much, Administrator for your testimony. Just a few questions.

In my opening statement I stated that it makes no sense for pesticide application to be subject to both FIFRA and the Clean Water Act. FIFRA takes into account environmental considerations so additional Clean Water Act regulation is certainly an unnecessary burden not only to applicators but also to state regulatory authorities. And States like Arkansas are underfunded and struggle to keep up with existing laws and regulations and do not need to spend their time enforcing regulations that do not improve the environment.

Your agency is not scheduled to finish the general permit it is developing until December 2010. I have heard that it may be pushed back to January 2011. States are supposed to implement their permitting programs by April 2011.

I am frankly amazed that your agency expects states to implement that general permit into law in a mere four months' time. Do you think it is reasonable for a state to implement, that it is going to be reasonable for a state to implement a complicated permitting system between January 2011 and April 2011?

I guess would you consider asking the Sixth Circuit to extend the compliance deadline beyond April 2011 giving states additional

time to implement the permitting requirement; and if they cannot meet it, if states cannot meet it by April 2011 deadline due to the lack of resources and the lack of time, what do you suggest that they do? What are you going to suggest to them that they do?

And I guess how about applicators in our states that do not meet the deadline either. What are you going to recommend that they do?

Ms. JACKSON. Thank you, Chairman.

From the beginning, EPA has worked to craft a proposed general permit with the states and with stakeholders that meet the court's direction but minimize the burden to states and to the regulated community.

The idea of a general permit was, a general permit is probably the least intrusive regulatory method. I realize that a preference within the Ag community is no permit but the general permit was intended to be the least intrusive way of providing notification required through the court decision.

We have worked quite closely with states. I am certainly not representing that we are there. The permit is out for comment. That is why we are in a comment period where that work continues.

We will finalize it as expeditiously as possible and we will continue what has already begun which is extensive outreach that will morph into training. The states will be the ones to implement that permit, and we are very well aware of that fact.

Chairman LINCOLN. I would just say that we are at the end of September here, and the possibilities of being able to see that happen in that time frame become more and more bleak, and I would just consider that I think probably one of the most frustrating things to Americans right now is the lack of certainty and the lack of predictability coming out of Washington, and I would hate for this to be yet one more thing.

If states are not capable of implementing that in that time frame, it is going to be very difficult for applicators and for the states to be able to meet some of those deadlines.

So I hope that you will be prepared to provide the kind of guidance that is going to be needed to be there if, in fact, they cannot meet that. I would certainly suggest that we actually try to reach out and see if we cannot do something about a compliance deadline, moving that deadline to a more reasonable time.

I have also been touring my State of Arkansas extensively this year, and recently I heard an up tick in farmers voicing their concerns about EPA coming on to their farms to inspect their poultry operations.

I also know that EPA has identified the Illinois River watershed in Oklahoma and Arkansas as a priority watershed. I know that you are doing I think two watersheds in each of the regional districts.

It is my understanding that this could lead to enforcement measures against Arkansas poultry and cattle farms. As I mentioned in my opening statement, my farmers do not get paid full-time to sit around and think about environmental compliance.

What efforts has your agency made to reach out to farmers in this watershed regarding their compliance efforts? And you know if it is true that EPA is starting to come on to their farms, I think

that EPA has sent out something to each and every poultry farm, some sort of guidance document to help them through this process.

Does EPA have a document that can help farmers in the Illinois watershed understand, what is expected of them by you all at the agency?

Ms. JACKSON. Thank you, Chairman.

It is my hope and intention that they have a clear understanding of what EPA's compliance visits are meant to achieve. If that is not the case, then I am happy to work with you and your office to ensure that your constituents, that there is no mystery around compliance visits.

Compliance visits do not assume nor do they presume nor do they necessarily result in any kind of an enforcement action. They are a visit which is intended to help farmers understand what their compliance obligations are under law.

We have had some successful models in several watersheds. I am familiar with one in the Shenandoah watershed where we were very clear that we were going to conduct these visits. We try not to surprise people. We try to give them information ahead of time so that they will understand why we are there. But we also acknowledge that oftentimes working with the state or with elected officials is a good way to get information out to the community because there is a lack of trust there.

Chairman LINCOLN. I certainly know that you would want to say that you have tried. I guess the key here is for the uncertainty that exists and the concern that these farmers and poultry growers have about what kind of fines and repercussions and consequences they are going to suffer from that visit is enormous.

I do not hear from them that they getting information. That is why I am asking if you are sending out that kind of information. I realize that you know you may think of this as just a visit. But to be honest with you, it is not something that is pleasurable for them to go through, not knowing what the consequences could be particularly in these economic times.

I have seen some outrageous fines. I have seen some outrageous circumstances when you get a lot of people that normally sit behind a computer or from a regulatory standpoint coming out onto a farm or to a poultry growers operation and they are seeing things for the first time. It is enormously alarming to those farmers that you know they do not know what is going to happen, what is going to be the consequences nor have they been given any kind of heads up or information in terms of what the expectations are of them.

So I hope that some of that information can be more forthcoming and I hope that there will be a greater partnership built in terms of those visits and what the expectations really are.

Just one last issue I would like to raise. I have heard that EPA is providing two different interpretations of how it views dust and feathers emitted from a poultry house fan.

One view is that it is a Clean Water Act discharge. The other view is that it is not. I would sure hope that EPA will clarify complications like these before they proceed.

When a fan blows in a chicken house, if any of you all have been in one, I have been in many, there is a real difference. So I hope that we can see more clarification.

It is truly the uncertainty and unpredictability that comes out of Washington that is going to fail us in trying to put our economy back on track and put people back to work if we do not provide a greater certainty to growers.

So thank you. I will turn to the ranking member now for his questions.

Senator CHAMBLISS. Thank you, Madam Chairman. I certainly would associate myself with your remarks there. We have got to have some certainty in these regulations.

Administrator Jackson, the Georgia Department of Agriculture requested a Section 18 emergency use exemption on the behalf of Georgia vegetable growers for the fungicide Manzate on March 18, 2010.

The usual turnaround time for an emergency use exemption is 50 days. The Georgia Department of Agriculture, the University of Georgia, George chemical distributors, and Georgia growers have provided EPA with all of the information needed to make a decision on that date.

Can you give me a updated status on that and when we might expect the decision to be made?

Ms. JACKSON. Yes, sir, Senator.

As I recall, I am trying to find my note as we speak but it is not happening. So let me do it from memory and I will get you more information if I can.

The original information was certainly extensive but there were still safety risks. The concern was that there were still residual levels that did not comply with the law. And EPA did not believe that there was sufficient basis to grant the exemption.

Now, I think that there is still an opportunity. We did not deny it but we did not grant it, and that was quite purposeful. The idea was that we believe there is still a way to work together to look at the risks and residue issues to try to find circumstances with the agricultural community in Georgia where there may be some opportunity for that exemption to be granted.

That is a fairly common process, sir, is my understanding. There is a bit of back and forth in trying to find the right spot in-between these exemptions being granted. But the work continues.

When I was in Georgia recently, we talked about the need to make sure that we are aggressively pursuing an alternative or a potentially approvable request.

Senator CHAMBLISS. Okay. Well, it has been six months. I just appreciate your folks staying in touch with our local folks on the ground in Georgia to make sure there is an opportunity to work together. We look forward to doing that but it needs to be moving forward.

Ms. JACKSON. Yes, sir, if I can just interrupt. My staffer found the note, and it says later this fall we expect some resolution.

Senator CHAMBLISS. In July EPA requested critical use applications for methyl bromide for 2013. In that request the agency announced it was appropriate at this time to consider a year in which the agency will stop requesting applications for critical use exemptions.

Georgia growers have done an outstanding job transitioning away from methyl bromide. In fact, Dr. Stanley Culpepper from the

University of Georgia Cooperative Extension Service tonight will receive EPA's Montreal Protocol Award for his work on methyl bromide alternatives.

However, I have serious reservations about EPA's preference to stop requesting critical use exemptions in 2015. I would like to ask you to include the House and Senate Agriculture Committees in the agency's deliberations on this issue and get a commitment from you that you would be willing to do that.

Ms. JACKSON. To work with the Committees on these issues?

Senator CHAMBLISS. To incorporate the House and Senate Ag Committees in the deliberations on methyl bromide's discontinuance, on those exemptions.

Ms. JACKSON. Absolutely, sir, within any confines of the law we are happy to include both Committees. We would value your expertise and information and input on those issues.

Senator CHAMBLISS. Well, I would like for it to be stronger than that, Administrator Jackson. I mean you all have been doing some things off the cuff down there that have been delineated here this afternoon that are going to have a hugely negative impact on agriculture in America.

What I would like to know is, are you telling us today that when it comes to methyl bromide and these exemptions that you are going to work with the House and Senate Ag Committees before any decisions are made in the future?

Ms. JACKSON. Yes, sir.

Senator CHAMBLISS. Very good.

In the government's brief which was prepared in response to agriculture's petition for Supreme Court review of the National Cotton Council versus EPA case, the agency stated that it believed that the Sixth Circuit reached the wrong conclusion in that case and that EPA's rule was justified.

I believe EPA made the wrong decision not to defend its rule and instead develop a general permit for pesticide applications. As you know, EPA plans to finalize the general permit by December of this year, and EPA and the states will begin enforcing it beginning in April of 2011.

This is an extremely short period of time especially as it requires the agency and states to issue 38,000 new permits. If the agency will not change its position, I believe it needs to ask the court for more time, specifically for at least an additional year.

Would your agency be willing to do that?

Ms. JACKSON. Sir, I cannot commit to that today. I think it is important that, right now it is important for folks to understand that EPA is working awfully hard with stakeholders to try to get compliance with the court's judgment and decision.

If, as we move closer to the date, we decide we simply cannot get there, then so be it. But we have been working very hard with the permitting authorities, each of the states, to implement a general permit that is workable and that is a minimal additional burden to applicators who already have to get permits for these pesticides in many states. States run those permit programs.

Senator CHAMBLISS. Again just like with my previous question, I would hope that you would have an open dialogue between the agency and the Committees on both the House and Senate side on

this issue because it again is just one of those critical issues for the cotton industry that is going to have a huge impact on the bottom line for our farmers and at the end of the day we want to have a quality product. We want to make sure that air and water is pure and clean. But we have got to have that certainty and that understanding between farmers, ranchers, and the EPA. And that means between the House Ag Committee and the Senate Ag

Committee on issues like this.

I would simply encourage you that if you want to have a desired resolution of all of these issues, you just stay in touch with us.

Ms. JACKSON. Thank you, sir.

RM. Thank you, Madam Chairman.

Chairman LINCOLN. Senator Johanns.

Senator JOHANNS. Madam Chair, thank you.

Let me start out and just thank the chair for holding this hearing. I think we all feel it is a very important hearing.

Administrator, I suspect that if you sat down with every Senator here today in anticipation of this hearing, they would tell you that they have received a letter from one or more farm groups in their state, to be blunt about it, attacking your agency. I have a letter here and they refer to what you are doing is a nonstop regulatory assault on agriculture. That is a direct quote.

You see, there is a feeling out in the country that you walked in, the President walked in, and every idea for more regulation was dusted off and cut loose, and agriculture is under attack, and that is how people feel.

I hear you say you were out there, and you have listened to farmers, and that you have been with Secretary Vilsack. I just would say to you it is one thing to listen; it is another thing to hear.

It just seems like you pay lip service and then go on. Let me give you an example. A group of us, a group of Senators wrote you a letter, and let me quote for you a piece of federal law. It says this.

"The Administrator," that being you, "shall conduct continuing evaluation of potential loss or shifts of employment which may result from the administration or enforcement of the provision of this chapter and applicable implementation plans including, where appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such administration or enforcement." Unquote. It comes right out of the Clean Air Act.

So our question to you was are you doing that, and your response to us, and it is a longer response but there are three sections that jump right out at me.

Again I am quoting from your letter. Quote. "EPA has not interpreted Section 321 to require EPA to conduct employment investigations in taking regulatory actions. Secondly, EPA has not conducted a Section 321 investigation of its greenhouse gas actions. Third, we are not undertaking a Section 321 analysis of PSD tailoring rule."

Now, how does Congress get more clear with you? "Shall" seems to be quite obvious to me. You know we debate these laws. We battle each other. We fight these things out. We finally get a law passed, and it is like nobody is paying any attention. You are just

kind of out there doing your thing, whatever your thing of the day is.

But here is the point I want to make to you. You are hammering the little guy. The big guy that can get capital and loans and access that will somehow find a way to deal with what you are requiring even thought it is enormously onerous. And even when you exempt or we exempt the smaller operator, they still feel the ripple effects of what you are doing.

And you are just causing agriculture to consolidate more and more and more at a time when quite honestly that is the last thing we need is more consolidation in agriculture.

So my question to you is this. When you have such a clear direction from Congress as you have got in Section 321, how could you possibly reach a conclusion that an employment analysis does not need to be done on something so important, so fundamental, so job impacting as what you are doing in this area? How can you ignore that?

Ms. JACKSON. Senator, the concern in the countryside that I have heard when I have gone out either with the Secretary here in Washington or gone out myself is that EPA somehow has it in for the agriculture sector.

My assurance is that we have nothing of the kind. I have no personal agenda. I believe that we cannot be a strong country without a strong agricultural sector, that we cannot be prosperous if we cannot feed ourselves.

From an environmental perspective, importing food with the huge carbon footprint that means is much less preferable than being able to look at food miles and get our food locally, nutritious homegrown food.

So first I just want to get it because it is so important to Americans to understand that any belief that there is an agenda that somehow targets that sector would be the furthest thing from who I am, what my priority is as EPA Administrator.

I did check because I have seen the allegations. The year before I became Administrator EPA put out about 120, somewhere between 120, 125 regulations. Last year we did 94.

So there is no huge blowup in the number of regulations but there is a huge regulatory backlog, much of it driven by court cases which compel the agency to follow the law. I took an oath to follow the laws of the land.

With respect to economic analysis of our rule making, one of those 94 regulation was the tailoring rule which specifically exempts agriculture and small businesses from having to face any greenhouse gas regulation until at least 2016 when it is my fervent hope that by then there will be legislation to govern those issues.

It was an attempt to give further assurance to those sectors that they are not where we are looking for greenhouse gas reductions. That being said, any rule we do has a full regulatory impact analysis associated with it, and part of my response to that letter I believe, I do not have to right in front of me, references the fact that we take very seriously our responsibility to put forth costs, benefits, and many of our rules, we do our own review, and then we have independent review at the White House, and then we go on to the public comment and solicit further information.

I guess I want to end where I began which is that EPA understands that we can have a clean and healthy environment. We are working against ourselves if, at the end of the day, that means that we are individually harming the agriculture sector. It is not our intention.

Chairman LINCOLN. Senator Conrad.

Senator CONRAD. Well, I am going to start with a different message. My message is thank you, thank you very much for what you have just done in North Dakota to change the sulfate standard in the Upper Sheyenne to allow greater discharges of water to try to prevent an uncontrolled release of water from Devil Lake. It is very significant what you and your agency did to change the standard of 450 parts per million of sulfate to 750 in the Upper Sheyenne.

We have this situation in North Dakota that is unlike anything anywhere else in the country. We have a lake called Devil Lake and the lake is now three times the size of the District of Columbia. It has gone up nearly 30 feet in the last 17 years.

The Federal Government also at the end of this year spent $900 million dealing with this crisis. $900 million in my State is a lot of money. We have raised dikes. We have raised roads. We have taken a whole series of steps to try to deal with this crisis.

We have an outlet running 250 CFS to try to relieve pressure on that lake. We had a town that is about to be engulfed. The town of Minnewaukan.

I had federal officials a number of years ago come out and say why did they build the town so close to the lake? Well, they were actually referencing the high school. Why did they build it so close? When they built it, it was eight miles from the lake.

This is the most incredible thing happening anywhere in the country with a runaway lake. We are very appreciative that you have changed the standard in a reasonable way to protect health, to protect safety. And at the same time recognize there is a much bigger threat to the environment if we have an uncontrolled release out of the east end of the lake rather than to have controlled releases out of the west end because the water quality on the east end of the lake is five times worse than the water quality in the west end.

It is a very unusual lake. It has a flow to it. The water comes in the northwest and the lake flows east. And as it flows east, it picks up sulfates.

So if we are going to reduce the risk of uncontrolled release, and now we are within six feet of an uncontrolled release, it is imperative that we move water and move more of it. We are very appreciative that you and your agency recognized that fact and changed the standard. That sent an important signal.

We now need to go to the next step and adjust standards in the Lower Sheyenne, and we are hopeful that we can make that case in as persuasive a way as we did on the Upper Sheyenne.

Let me go to an issue that had been raised by my farmers, and it is the number one issue with EPA in my State other than Devil Lake. That is the question of the oil spill control issue with aboveground storage, below ground storage. And producers in my State are very concerned. I just had a Farmers Union fly in. This was the number one issue on their list.

One of my concerns was the requirement that a professional engineer must certified an oil spill plan. Is there a possibility that could be adjusted so that if they are following the basic design standards provided by the Extension Service and/or the Natural Resources Conservation Service, that that would be acceptable without having an engineer certify it?

I raised this because, number one, it costs a lot of money to get an engineer. Number two, in my State it is very hard to find additional engineering time because of the oil boom that is going on in North Dakota. So farmers are deeply concerned, number one, about the cost. Number two, how are they going to get an engineering firm to come and do certification of a plan on their property when they are completely overwhelmed with the demands of the oil industry?

Ms. JACKSON. Sir, I am happy to look into the specifics. Those are under the SPCC rule making I believe.

Senator CONRAD. That is correct.

Ms. JACKSON. And as you know, we right now I believe have two rules out there, one that extends the compliance date, and that is probably shortly going to be finalized because we are out for comment and we need to finalize that rule.

That was an intention to work with the industry within the confines of, of course, the other imperative which is we have to be, prevention is extraordinarily important when it comes to oil. I like Thad Allen's remark that nothing good happens after oil hits the water. After that, everything is really just trying to minimize bad. So we need to balance that. But I think that extension is intended to give us time to deal with some of these issues on implementation.

I am not sure if, as written, the regs would preclude your suggestion, but I am happy to work with you.

Senator CONRAD. I would be very interested to pursue that.

Second, just quickly if I could, is there anyway for EPA to more accurately identify which producers are required to comply by giving mapping areas where waters of the United States are likely to be impacted or those places where they are unlikely to be impacted? It seems like a common sense measure that there might be some broad guidance given as to those places that are especially vulnerable and those places that have very low risk of movement into waterways.

Ms. JACKSON. I am happy to work with your office of that suggestion, sir.

Senator CONRAD. A final if I could, the recommendation came back from my farmers that the EPA take advantage of each states cooperative extension service by working with them to design an implementation and outreach strategy.

Cooperative extension in my State, and I think it is true of almost all rural states, is out there in every county, have an ongoing relationship with producers, and an education effort I think would be enormously beneficial. Also kind of lower the heat and the temperature on this issue.

Ms. JACKSON. Thank you for that suggestion. We are happy to incorporate that. That is a great idea. And, Senator, thank you for your leadership on Devil Lake in particular.

Senator CONRAD. It is absolutely the most incredible experience that we have had, this lake that just keeps going up and up. We know in 4,000 years of history three times it has had an uncontrolled release, only in those days very sparsely populated. If we have an uncontrolled release now out of the east side, it will be an unmitigated disaster.

Chairman LINCOLN. Thank you, Senator Conrad.

In Senator Nelson's absence, we go to Senator Klobuchar.

Senator KLOBUCHAR. Thank you very much, Madam Chair, and welcome Administrator Jackson. I think I am one of the few members on the Committee that also serves on the Environment and Public Works Committee so we have done work together before, and I appreciate your hard work and candid nature. I also appreciate some of the work you did down in the Gulf during the oil spill. Thank you for that.

Speaking of oil, a number of us had a meeting with you, and I am glad you came to it. That was good you were there to talk about the ethanol blend and the delays there. I just want say we continue to be concerned. I know that EPA will soon be ready to announce its decision on a waiver but I encourage you to make that decision as soon as possible.

I see Senator Thune over there. A number of us have States where we are waiting on biofuels. As I said at that meeting, it is not a biofuel plant that blew up in the middle of a corn field. That is a good fuel and we think it is part of our energy future as we go forward.

We can talk about that in a minute. The second thing is the dust issue which I think that has been covered so I am not going to go on about that.

Another thing I wanted to raise is Senator Lugar and I are putting a bill out that looks at, I have been trying to figure out with all the good intentions how we keep cracking up against each other on some of these agriculture issues. I really think that sometimes people while they are trying to do good work at EPA do not think about the repercussions on our farmers and what it will mean, whether it is the dust issue, whether it is in the manure issue, whether it is the milk issue. There have been a number of things lately.

I do not think it is because they are trying to hurt these farmers but I think it sometimes has that effect.

So Senator Lugar and I came up with one idea. It will not solve everything. I know you have been getting feedback. But looking at the Science Advisory Board that is headed by a Minnesotan which is great but we realize that none of the people on there really have an agriculture background and there is something like 50 people on there.

So we are putting together a bill that we call Representation for Farmers Act, to see if some of those people, we are suggesting three, could be appointed by the USDA so that we can try it to get some of that input from the agriculture community.

We have run it by, it is supported by the Farmers Union, the Farm Bureau, the Corn Growers Association, the National Council of Farmer Coops, the National Milk Producers Federation, wheat growers, and we have just been doing it for three days.

So I just want you to consider it and we would love to have your support. I think it could go a long way just on the front end. And I do not think it is going to solve everything. There is always going to be some tension but I think it is something that we will want to look at.

I wanted to ask you about what is going on with the E-15. And do you anticipate an announcement very soon regarding at least the 2007 and newer vehicles and what is happening with the waivers?

Ms. JACKSON. Thank you, Senator, and I look forward to taking a look at your forthcoming legislation. So thank you.

On E-15, as you know, we have been awaiting test results. The tests are done by our partners and friends over at the Department of Energy on a number of vehicles. We have most of the results back. They are being QA/QCed and reviewed by my staff. I am optimistic having seen the results so far for 2007 and newer vehicles, Tier 2 vehicles essentially.

We are waiting one last set of results. They are tear down test results. I spoke to Secretary Chu yesterday and he confirmed that he intends and believes they are on track to get us those results by September 30.

Given that, we are prepared to render our waiver decision within two weeks following receipt of those tests, and in fact, have obviously been working on this issue for quite some time.

Senator KLOBUCHAR. I understand. And then there is going to be another series of tests after that or this is the first grouping of tests and then is there another grouping?

Ms. JACKSON. Correct. There are other tests that have already been begun but they are taking a bit longer on other vehicles. And through many discussions and the one you and I were both present at, it was decided that one of the things that would help the industry and the petitioner would be to get at least a decision on that which we had complete data for.

So for 2007 these are really the tier two vehicles but the shorthand is 2007 and later. The brief was that we should get the information we have and make a decision there.

There are also other issues that will affect ethanol and E–15. To the extent that they touch EPA, we have been coordinating those. Some of them do not affect EPA at all.

Senator KLOBUCHAR. Okay. Just again I want to urge as we did at that meeting, the sooner we can go forward with this the better. I just think the science is on our side on this end.

I am also concerned about various labels. I have said this. We just have to make sure that we do this as quickly as possible.

Another thing. The EPA recently announced it would exempt dairy farmers from the Spill Prevention, Control and Countermeasures Act. I have cosponsored legislation to make sure that this policy is put into place as soon as possible. What is the status of implementing EPA's decision to exempt dairy farmers from this law that was intended to prevent oil spills?

I do not mean to keep bringing up oil spills but I will just do it.

Ms. JACKSON. It is quite all right. The exemption for milk, for containers, is expected to be completed by February but the news is that the containers would be regulated come November of this

year unless we extended the deadline. That extension will likely be final in mid October. So within weeks.

So they will not be regulated and then the exemption, the full exemption for milk will be following in February.

Senator KLOBUCHAR. I am running out of time so I am just going to put on the record some of the questions that I have on atrazine as well as the boiler MACT rule. There is concern, a lot of concern about that in my State and some of the other things. Thank you very much.

Ms. JACKSON. Thank you very much, Senator.

Chairman LINCOLN. Thank you, Senator Klobuchar.

Senator STABENOW.

Senator STABENOW. Thank you, Madam Chair, and welcome, Administrator Jackson.

Let me first say I also thank you for joining us in a very tragic situation with the Kalamazoo River with the oil spill that occurred a while ago and I appreciate your willingness to come out as quickly as you did and the efforts that are going on are very important that we make sure this is cleaned up as quickly as possible and does not happen again.

As a preface to my question, I have been involved in agriculture committees for a long time and have been working on pesticide issues actually a long time. I would urge you to really take the time necessary to bring all parties to the table to work out a balanced approach going forward on this.

When I was in the statehouse, I led an effort that took about a year to bring all the players together from farmers and environmentalists and agricultural business community. Everybody. We had everybody.

It took a while but we came up with something that made sense and it was science-based and it was something in the end that was embraced by everyone to go forward because it was certainty because it was science-based but it was also addressing the broader goals and so on.

I would strongly urge you to take whatever time is necessary to do that because this is an incredibly important and impactful issue for us in agriculture.

On to my questions. When we look at a state like mine that has great diversity of crops, more diversity of crops than any other state except California, one that the prescriptive rule is not going to apply across the board to all of our different producers, I have concerns about what appears to be gray areas here in this permitting process. You have talked about some. But as I understand the rule that has been proposed in the Clean Water Act general permit, outside of the four areas specified, agriculture activities are not included.

This would suggest that producers may be liable in that they would have to apply for an individual permits. As I am sure is the case in a lot of places, I know producers in Michigan that could apply pesticides which drift or by drift or accidental application could flow to waters of the United States such as our beautiful Great Lakes, that could happen.

But while I imagine permitting for the hundreds of thousands of farms is not practical, is EPA planning to address any agricultural applications of pesticides not outlined in the general permit?

Ms. JACKSON. Let me make sure, Senator, I am answering your question. We do not cover terrestrial applications in the general permit. That is something that we worked very hard to ensure we were clear on.

Senator STABENOW. Yes. Are you saying that is exempt, those agricultural practices?

Ms. JACKSON. Our proposal, we do not cover terrestrial applications of pesticides and does not cover spray drift, does not alter existing provisions in the Clean Water Act that provide exemptions for irrigation return flows or agricultural storm water runoff.

So those are already features that we worked into our discussions on the general permit as it already stands. I think your question had more to do with other potential opportunities. There are some places where pesticides are applied over water, certain producers

Senator STABENOW. Or near.

Ms. JACKSON. Or near, yes. If it is just drift issue, that is not covered. We would welcome the opportunity and we continue discussions with those. It is a fairly small number of cases where the question is they know that they apply to water and they are looking at the general permit and wondering if that can cover them.

We probably are not ready yet to make a final determination. That is something that has come out during public comment but we welcome the opportunity to discuss it further.

Senator STABENOW. Thank you. The Clean Water Act clearly states also in the definition of point source that agriculture storm water discharges and return flows from irrigated agriculture are excluded.

How may this limit a producer's liability in regards to any type of permit?

Ms. JACKSON. So they are exempt activities under the Clean Water Act so they would not then be regulated activities under this permit, meaning that those activities would not require a permit as was proposed. I should caveat by saying we have a proposed permit. We do not have a final at this point.

Senator STABENOW. Then if I might just quickly on integrated pest management plans which are so important. Michigan State University has been involved in working on many of those working with experts on techniques for decades.

The plans are broad in scope. They cover more than just pesticide use. They also guide growers in reporting and record keeping. How does the EPA work with USDA to consider growers' work with integrated pest management plans and are such plans helpful to prevent future redundancy and paperwork?

Ms. JACKSON. Integrated pest management is a win-win for everyone. I mean pesticides cost money so growers love when they can minimize the use of pesticides, and they certainly do not to run it off into water because that is not working. The leadership that USDA has shown, the leadership that your State has shown, Senator, in running a wetlands, in thinking these issues through and

in its regulatory program is very important to our work so thank you.

Senator STABENOW. Thank you, Madam Chairman.

Chairman LINCOLN. Senator Thune.

Senator THUNE. Madam Administrator, thank you for being with us today.

I want to associate myself with the comments that were made by the Senator from Nebraska. The Environmental Protection Agency has become public enemy number one of our farmers and ranchers, and over the August break I had the opportunity to meet with corn growers, wheat growers, soybean growers, cattle producers, pork producers. I am sure lots of others.

But each of these groups have issues that were specific to their industry but they all have one common concern, and that was the overreaching EPA regulations and the harm that they are doing to their industry in the rural areas. That comes in lots of areas.

It is greenhouse gas regulations. It is threats to regulate dust. The band of atrazine. It just seems like ag producers are in the cross hairs of the EPA.

And in every case there are actions that drive up costs, drive down the profits of family farms and ranches. It just seems to me that we are losing our way when you have people in rural America asking the Federal Government not for help but just to stop hurting our rural communities.

And at the same time we got decisions that could be helpful such as the E–15 issue which the Senator from Minnesota mentioned that remain undecided. I am pleased to hear that process is moving forward.

But our ag produces are the best stewards of our land and of our environment. They go to work each day just not to make a living but to feed the world and to preserve the land for future generations.

They are very frustrated, and I just want to read you a quote from the panel that will follow you from Mr. Rich Hillman, who is a rice, soybean, and wheat producer, and he states that farmers have never felt more challenged and more threatened in their livelihood than they do today from the continuous onslaught regulations and requirements from the EPA.

He goes on to say, "The EPA proposals are overwhelming to farmers and ranchers, and they are creating a cascade of costly requirements that are likely to drive individual farmers to the tipping point. In addition to driving up the cost of producing food, fiber, and fuel, these proposals highlight EPA's goal of controlling land use and water supplies. In many cases they will bring citizen suit enforcement and judicial review of individual farming practices." End quote.

I will tell you that is what I heard. That is what I heard from the agricultural groups, individual produces all across South Dakota. I know at times that out here what seems to make sense just really does not in the rural areas of our country. I make that as an observation and express the frustration that I heard from individual produces during the August break.

I do want to come back to the E–15 issue. As I heard it, we are looking at probably final data in the end of this month and then

shortly after that, a couple of weeks perhaps, a decision on E–15. That is just with regard to 2007 vehicles and newer.

How about 2001 to 2007 vehicles?

Ms. JACKSON. For 2001 to 2007 that testing is also ongoing. It is taking a bit longer. I believe those test results are due to begin by the end of the year, the calendar year. And EPA will be in a position to make a determination as we see the data obviously.

But we will again strive to be expeditious in our decision making and review of the test data.

Senator THUNE. Just coming back to making two announcements on E–15, does not in some way two announcements actually create more consumer confusion on the status of E–15?

Ms. JACKSON. Certainly I guess that is one way to look at it but we were asked and have talked to the applicant who requested E–15 about whether some signal, we heard lots of concerns about their needing to be a signal that this was not going to be forbidden, this blend.

As we started to get the data back, what we committed to and what we talked about was moving quickly in pieces admittedly but in an attempt to give that signal.

Senator THUNE. We are right now 10 months past the statutory deadline for a decision on that. The 2007 and newer vehicles decision seems to me again that when you create this sort of a bifurcated approach to this that you in some respects create even more confrontation than maybe perhaps already exists.

But let me ask you with regard to the Department of Energy's testing on E–15. Are you aware of any driveability or parts compatibility issues with 2001 and new vehicles that are directly related to the use of E–15?

Ms. JACKSON. Sir, I am not aware of them but we have not received that information so that probably is not a complete answer because we do not have the data.

Senator THUNE. Are you aware of any evidence that E–15 would damage vehicles older than 2001? In other words, vehicles manufactured before 2001?

Ms. JACKSON. I am not personally aware of any data or any test that has actually been——

Senator THUNE. You are saying you do not think they are testing vehicles that are older than 2001?

Ms. JACKSON. I do not believe so, sir.

Senator THUNE. I hope we get this resolved as quickly as possible because this is one thing, and you were right about the signal. This is an important signal to the industry. It is important to agriculture to get this issue settled.

It seems like—I visited Oak Ridge. I visited NREL. The testing has been going on for an awfully long time. It seems they would have more than adequate data to get this issue settled and I would hope that they would be able to at least for 2001 vehicles forward approve it, and hopefully soon so that we do not create even more uncertainty than we already have.

I have another question, Madam Chair. I see my time has expired, that I can submit for the record. I will say one of the things again that it really concerned me about some of the things that are happening over at your agency, the more recent one of these is

dust. There is a tremendous amount of concern about that proposed legislation as well which I got an earful about while I was traveling during the month of August.

Thank you, Madam Chair.

Ms. JACKSON. There is no proposed regulation. So perhaps we can get the word out there that EPA has proposed no regulation on dust and I committed earlier to doing some listening sessions before we even undertake such actions.

Chairman LINCOLN. Thank you.

Senator ROBERTS.

Senator ROBERTS. I am sorry. I missed that. Was that dust, there would be no regulations on dust?

Ms. JACKSON. What I said, Senator, in my statement is that there is no proposal on dust. We have a recommendation from one of our scientists——

Senator ROBERTS. I wish you could stop it. We just had a heck of a dust storm out in Kansas.

Ms. JACKSON. I am sorry, sir.

Senator ROBERTS. I think you used to call it rural fugitive dust. I will have more to say on that topic in just a minute.

How are you doing?

Ms. JACKSON. I am fine. Thank you, sir. Sorry about the dust storm.

Senator ROBERTS. Thank you for coming out to Kansas. Actually you sent a team of experts out to Kansas. We would have welcomed you to see that rather remarkable sight in Treece. I think you remember that. They did good work.

And the State of Kansas stepping up and the citizens of Treece will soon be able to move where financially they could not before, and that was a terrible waste site. It was very dangerous and you did a good job on that and I want to thank you for that.

Pretty much everything that needs to be said has been said especially Senator Johanns and Senator Thune, the Chairman, everybody here, also on the other side of the aisle.

How many people know that Devil Lake is named after Senator Conrad.

[Laughter.]

Senator ROBERTS. It is the same thing as Senator Thune just said. I mean I cannot go to an agricultural meeting with any commodity group, any farm organization without them saying what on earth is going back there. It is usually a you-guys thing. What are you guys doing back there? Guys is not gender related.

I say I am an us-guys. I am not a you-guy. And probably 8 times out of 10, it comes down to the EPA and what we think is questionable in challenged science is doing in regards more to agriculture and our national economy and our national security because agriculture does affect that.

88 percent of the land in Kansas is utilized for some form of agriculture production with 61 percent of the total in crop land, 34 percent pasture land, very similar to the Dakotas, Nebraska.

Having an abundance of productive farm ground allows Kansas to rank in the top five nationally in the exports of wheat, grain, sorghum, sunflowers, live animals and meats, as well as hides and skins.

One in five of our folks out there are involved in agriculture in one way or another. So that is really just stating the obvious, and I am stating the obvious again and again. I apologize for doing that. It is a terribly important and I think it is reflective of all of agriculture all across the country.

Animal feeding operators, custom harvesters, chemical applicators, flour millers, even public health officials influence the environment. Some activities do actually create dust—I will come back to that in a minute—while others do use chemicals, pesticides, fertilizers to grow the food and fiber.

It really keeps us from starvation and malnutrition around the world. I always put out in Southern Command there are 31 nations down south. The average age of the folks down there which is 14. They are malnourished.

If all of a sudden you have a disaster that hits like in Haiti and other places in the world, we have the ability and the farmer has the capability of this production miracle to immediately step forward and provide help and assistance.

So the thing I would like to point out too is in order to turn a profit, they must protect the land and water. They do not have a choice. So it is not only that we all want to see clean air and clean water, that is the "While I" speech, while we want clean air and clean water, let me point out that this is not the way to do it in terms of the regulatory means that we do this.

The farmer would never put the seed in the ground if he or she was not an optimist. But they are not as optimistic today about how they will comply with the laundry list of regulations that the Senator has just mentioned, Senator Thune.

They are not as optimistic about how they can continue with this kind of situation. The list goes for everything from expanding the definition of waters of the United States to tightening the national ambient air quality standards for particulate matter to lowering the threshold for inorganic arsenic in the ground water to opening up an unscheduled review of atrazine.

I have the head of the Kansas corn producers to speak to that, and he has a unique tale to tell about what happened after he stood before the Scientific Advisory Panel and probably even testifying before us, Madam Chairman.

Are you still there? Great. I expect a couple "Amens" from you but any rate.

[Laughter.]

Senator ROBERTS. Very unusual circumstance and he will testify to that and it is a very worrisome thing about a chilling effect on people in any farm organization willing to talk about these things.

Then you want to regulate the range burning on the Flint Hills which has been a tradition for many years and then to also regulating dioxin below naturally occurring background levels. All of that has Kansans concerned.

It is the third time around for me. I was a bucket totter for my predecessor in the Congress, a staffer. I was administrative assistant, and finally he got so upset about this business back in the 1970s about rural fugitive dust and it became almost a laughing matter until farmers figured out that the EPA was serious.

So I tried to track down the person who actually was in the business to promulgate, that is a great word, to promulgate in the Federal Register what was going to happen to rural fugitive dust. It took me three days.

Finally I found this very nice lady in EPA who was from Massachusetts. Where else? I agreed with her because she said, "Do you realize how many gravel road you have out there in Kansas?" I said, "Yes, ma'am, I have been down about everyone of them."

"Do your realize how much dust you are creating in regards to cattle trucks or grain trucks or pickups or whatever?" "Yes, ma'am," I said, "Do you realize what we have done in terms of conservation, the Great Plains conservation program, and all?" I listed all the things we have done for the dirty 30s.

Finally I said, "What do you want us to do? What is your suggestion? How can we get away from you putting the EPA sights on us out here for rural fugitive dust which I found rather unique?"

She said, "Well, why do you not just send out water trucks at 10 o'clock in the morning and then again at 3 o'clock in the afternoon and spray down those roads?" Pause. "It is a great idea. Could you provide the trucks and the water?" Pause. "No."

That was sort of a standoff. Then it sort of, like other dust, settled. I do not think we ever got in the business of fining farmers or locking them up or whatever it is if they decided to go in a pickup to town down a gravel road.

And then in the 1980s it was back. I do not know why you do these things. I mean you are supposed to be digital now. Throw all those files the way. They dug out the files and brought the thinking back. I do not know what happened when you all came in first.

You probably said, "Well, let us take a look at what we have done in the past and what we need to do in the future." Now by golly we have rural fugitive dust back again.

Are you going to tell me we are going to have to get more water and water trucks and do that in the morning and the afternoon? One other thing.

Navigable waters. Applicable to farm ponds where our critters go into cool off. We do not swim in those farm ponds. We do not drink any water out of those farm ponds. Most of the time they dry up, and no self-respecting duck would ever land on those farm ponds, and yet they could be declared navigable waters.

Then that sort of faded away and it is back and it is like Lucy and Charlie Brown kicking the football, and I cannot remember now, I think in the little circle of what he said in the cartoon it was A–A-R–R-G–H-H! I do not know how to pronounce that. Some farmers do.

But instead of picking up the football, I think it is sort of like an anvil down there, switching it, and boom he hits right into things like rural fugitive dust and navigable waters.

Those are the ones that you can point to with some degree of, it is not levity. It is just to illustrate the point. But Jere White is here. He is from the Kansas Corn Growers. He has quite an experience to tell about atrazine. It actually takes the place of multiple pesticides, fungicides, rodenticides, whatever that it is kind of used for at levels that we think are safe. And he has really paid a price for it.

So here is my suggestion.

Chairman LINCOLN. You need to wrap it up at this point.

Senator ROBERTS. Yes, I am five minutes over but there is nobody here except you, Madam Chairman.

[Laughter.]

Senator ROBERTS. You did not recognize me first so you got to pay for it at the end.

[Laughter.]

Senator ROBERTS. You told me to come here off the floor and raise hell so that is what I am trying to do here.

[Laughter.]

Senator ROBERTS. Historically the Department of Agriculture and the Food and Drug Administration, the EPA, and Health and Human Services, even the Department of Labor, and yes, even the CIA—I used to be chairman of intelligence because of the importance of our food supply and safety of our food supply, et cetera, et cetera, they worked together on many projects to help protect our Nation's food supply, environmental quality, and the economic viability of production agriculture.

How can the American public be sure that your agency is protecting scientific integrity through a risk-based approach rather than a precautionary stance to regulate dust, water, pesticides, chemicals?

Is there any sort of cost benefit yardstick that all agencies should sort of agree on, and say, look, this is not the old testament. This is the new testament with all of the scientific means that we have today in a parts per trillion scientific world.

I mean there is a little bit of something in everything. I am just wondering if all the agencies could not get together and say, look, to prevent the civil suits that are popping all over the countryside and which, as Mr. White can testify to and how he got dragged into it is rather amazing, but at any rate, could there not be some yardstick that we would all agree on and say, okay, from a stability standpoint instead of changing the rules every decade and coming back to rural fugitive dust for the fourth time when the administration changes next, it is regardless of whether it is Republican or Democrat, but at any rate can we not have some kind of a common measuring thing on it? This is what we are going to do and we are going to do it in a unified way and a regular way. Please.

Administrator Jackson. At the risk of going further, why do I not simply answer, sir, by saying that, first, there are no fugitive dust rules. We have a scientific group, a Federal Advisory Committee, who have recommended particulate matter health-based standards.

Senator ROBERTS. Can you send them out during harvest? That would be a good deal. Just send them out during harvest and they can drive the grain truck.

Ms. JACKSON. But what I committed to is that we are not going to propose any rules or change any rules without embarking on a process to work with the agricultural community. The rules are not for agriculture. Particulate matter comes out of trucks, comes out of diesel, and are a huge concern around ports. There are plenty areas in this country where PM10 emissions are killers.

Senator ROBERTS. I know the lawn mowers play a big part of that in the Kansas City area around August which is another problem but I am not going to get into that.

What about a common yardstick? And the other thing is, certainly mentioned by the Chairman and the Ranking Member you know keep us posted and we can have a good dialogue but, man, if you could just get all these alphabet soup agencies together and say here is where we think we are. These are acceptable levels. That may change I mean if there is some terrible circumstance but it would certainly give us some stability.

Ms. JACKSON. Yes, sir. Senator, I am happy, one thing I take from this hearing is the need to stay close to this Committee. There were several requests that the Committee have much more information and consideration of what we are doing and we are happy to do that, and we have and I have worked very hard with Secretary Vilsack to ensure that the most important department with respect to these issues that we work very closely. I will redouble those efforts. I am happy to do that.

Senator ROBERTS. Thank you.

Ms. JACKSON. Thank you, sir.

Chairman LINCOLN. Thank you, Senator Roberts.

Thank you, Administrator Jackson. I will just reiterate what I think most of the members here have all expressed, and that is, when we go home to our district, we talk to the people that we represent. And I will be honest with you. I am going to make no apologies whatsoever for standing up for the hard-working farm families across this country that really do work hard day in and day out to provide the safest and abundant and affordable supply of food and fiber but they do it with great passion, Madam Administrator.

They do it with a great passion towards not only what they are doing but how they are doing it. It is with great care and great compassion for the land and for the environment, and I think often times they feel like when they hear things from Washington that they are not doing anything right or that they are constantly being asked to do things that are impossible.

So I would just say if there is anything, we would like to ask that there is communication. I know they want to be included. I think they feel like that they have had no role in these settlement agreements, that EPA has worked with other groups, the NGOs, the environmental groups, and yet agriculture does not feel like they have had a seat at the table.

So I would ask of you to engage with them. Try to put yourself in their shoes and better understand what their challenges are.

I tour the state frequently, and whether it is talking to farmers or educators or anybody else, small businesses and others across our State, when they look at Washington, they say do not lower your expectations of us. We want to do the best that we can possibly do, whether it is teaching children or growing food and fiber, whether it is creating jobs or whatever. But give us goals that we can reach.

I think that the frustration in so many ways is that they feel like that the goals and the parameters that are being sent for them are things they cannot reach.

With the slim margins that they are already facing and the fact that day to day the variables that they face could cause them really to go out of business, and regulations and other things on top of that just exacerbate that problem.

So we certainly ask you to work with us. It is great to work with Secretary Vilsack. He is a good man, and the Department of Agriculture is great.

For those of us that are out there in the field with our constituents, it is so critical for them to have a seat at the table. We just really would like to ask you to hopefully help us make that happen.

Thank you for joining us today. We appreciate it. We look forward to working with you.

I would like to ask the witnesses on the second panel to come forward and be seated.

Our panel includes Rich Hillman, who is the Vice President of the Arkansas Farm Bureau. Jay Vroom, who is President and Chief Executive Officer of Croplife America. And Jere White, who is the Executive Director of the Kansas Corn Growers Association.

Senator Roberts will be back so do not worry, Mr. White, he is not going anywhere.

Gentleman, your written testimonies will be submitted for the record so I would like to ask you to try to keep your remarks within that five minute rule. We are very grateful that you are here.

It is my pleasure to welcome a fellow Arkansan and a good friend of mine, Rich Hillman, somebody I know who has had a pair of boots on and knows what it is like out there in the field.

Mr. Hillman has been a rice, soybean, and wheat farmer since 1983 in Lonoke County, Arkansas. He served on the Arkansas Farm Bureau Board of Directors since 2001. He is a leader in the agriculture community in my home State, and we are fortunate that he is here with us today to share his insight into running a farming operation and the effects of EPA regulations. We are grateful to have you.

I also want to thank Jay Vroom. It is a pleasure to have him also on our witness panel. Mr. Vroom is president and CEO of Croplife America where he has been since 1989. He has been a lifelong advocate of U.S. agribusiness trade associations.

Mr. Vroom was born and raised on a grain and livestock farm in north central Illinois which he owns to this day. So we are grateful not only for Jay's understanding of the agribusiness trade arena but also his understanding of what goes on a farm on a day-to-day basis.

It is also our pleasure to have with us today Jere White. Mr. White is a fifth generation livestock producer in Garnett, Kansas. He serves on several board of directors for various agricultural organizations and has been Executive Director of Kansas Corn since 1988.

Today he provides testimony as chairman of the Triazine Network which represents atrazine and related triazines which farmers use of herbicides.

So we will start with Mr. Hillman and go down the line. Senator Roberts will be back shortly.

Thank you.

STATEMENT OF RICH HILLMAN, VICE PRESIDENT, ARKANSAS FARM BUREAU, CARLISLE, ARKANSAS

Mr. HILLMAN. Madam Chair and members of the Committee, my name is Rich Hillman. I am a fifth-generation rice, wheat, soybean the farmer from Carlisle, Arkansas. I am vice president of the Arkansas Farm Bureau and I am pleased to offer this testimony on behalf of our members across our great State.

Let me begin by saying that farmers and ranchers have never felt more challenged and more threatened concerning their livelihood than they do today from the continuous onslaught of regulations and requirements from the Environmental Protection Agency. I hope my testimony today somehow represents the frustration that Arkansas farmers and ranchers are feeling.

Over the past few decades agriculture has worked with USDA to make enormous strides in its environmental performance by adopting a range of practices and measures. We are proud of our accomplishment and believe that our overall environmental footprint is smaller today than it was 50 years ago. Incidentally in that same time period we have seen to double our production.

Chairman Lincoln, as you stated in your opening comments, there are many regulatory issues facing farmers and ranchers that are very concerning. I would like to expand on a few.

Currently in Arkansas all farmers and ranchers are required to have a restricted-use pesticide license. Chairman Lincoln, in your opening statement also mentioned FIFRA and the Clean Water Act and the current efforts of the EPA to require a pesticide general permit, an additional permit. This would mean not only additional expense but it would also place a burden on the farmer, rancher to apply for and to receive a permit every time we had to treat our crop. When insects attack, they usually come with a vengeance. In the matter of hours, they can destroy our postures and other crops.

Madam Chairman, we greatly appreciate your leadership and work on this matter and we strongly support your legislation, Senate Bill 3735. I would like to take this opportunity to ask the other members of the Senate Agricultural Committee to join with you and Senator Chambliss in cosponsoring that Senate Bill 3735. Agriculture needs your help now.

In Arkansas for over 20 years, we have had a permitting program in place requiring all animal feeding operations with liquid manure systems to obtain no discharge permits. The Farm Bureau was a key supporter in the creation of this permitting process.

EPA recently announced that the Illinois River watershed in Arkansas had been selected as one of its priority watersheds. This has resulted in two noticeable events. The first, the announcement of a TMDL study and increased inspections and enforcement of AFOs.

At the same time EPA has insisted Arkansas State agencies start a process of developing a methodology to establish numerical standards for nutrients and developing a confined animal feeding operations CAFO permit.

The potential to discharge language in CAFO was very vague and confusing. It does not clearly define who must apply. We believe this is intentional and it is an attempt to avoid the court's ruling that only those actual discharges must obtain a permit.

Chairman Lincoln, as you well know poultry producers in Arkansas are struggling. Their profit margins are razor thin. They are good stewards of the land, and additional regulations add additional expenses which they can simply not afford.

Spill prevention, control, and countermeasures is another thorn in agriculture's side. EPA wants us, farmers and ranchers, to build the retaining walls around fuel tanks in the middle of our fields and pastures. This would cost us thousands of dollars to mitigate what? EPA is attempting to address a problem that simply is not there.

In closing, the farms and ranches across our Nation are privately held land that are coveted and cared for. They have provided not only a living for hundreds of thousands of farm families but have secured our Nation by feeding it.

Year after year through floods, droughts, we have provided. Why would anyone want to keep us from doing that? Why would any agency try and change what we do best? And that is to feed this great Nation and the rest of the world.

Madam Chairman, I commend you for hosting this hearing and for all of your work on behalf of agriculture in Arkansas and across this great country. I would be glad to entertain any questions at this time. Thank you.

[The prepared statement of Mr. Hillman can be found on page 47 in the appendix.]

Chairman LINCOLN. Thank you, Rich, and I know you are missing the first day of the conference in Arkansas so if you need me to write an excuse for you just see me after the hearing.

Mr. HILLMAN. I would appreciate that. They are watching incidentally by internet so that put a little additional pressure on me but I thank you again.

[Laughter.]

Chairman LINCOLN. We are glad you are here.

Mr. Vroom.

STATEMENT OF JAY VROOM, PRESIDENT AND CHIEF EXECUTIVE OFFICER, CROPLIFE AMERICA, WASHINGTON, DC

Mr. VROOM. Thank you, Madam Chairman, Mr. Roberts and other members of the Committee so much for convening this hearing to look at the entire landscape of environmental regulation facing the American farm families.

I am indeed here today representing Croplife America, the trade association, as you indicated, that represents those companies that provide virtually all of the crop protection materials used by American farmers but I am also personally held accountable by another authority which is that group of family members who are at home in Illinois trying to harvest right now.

In fact, I spoke with one of my brother-in-laws this morning who was gracious enough when I told him I was coming up here to visit with the Committee that he said, wait a minute, let me stop and shut the engine off. We need to talk. So I barely made it up here in time.

So I do feel a personal responsibility to this as well as a professional one. I will speak about those regulatory matters, some of which have already been delved into quite extensively already here

this afternoon with regard to crop protection materials and EPA's regulation of those materials as well as those pesticide materials that are used in non- agricultural activities. I will talk specifically about one of those as presented by our partner association, RISE.

But as I have listened so far, the one thing that really has struck me is, oh, my goodness, is it any wonder that the American public is upset? The news media repeats this for us everyday, especially as we are anticipating the upcoming elections, that the American public are fed up and

sick and tired of business as usual here Washington, DC.

And as I think about it with respect to the things that we know best in the crop protection space and the interface with EPA, it really is a tale of three conflicting laws, three conflicting and out of touch and redundant federal agencies and the two offices within one of those federal agencies that just cannot quite get it right.

We talk to those federal agencies a lot, of course, and with regard to, for instance, NPDS Clean Water Act issue that has already been talked about a good bit, we do think that we are at a point where the proposal that you and Senator Chambliss have made with regard to the Senate bill that Mr. Hillman just described and endorsed, and we did too, is timely because without that kind of assistance from Congress we fear that we do have a train wreck ahead of us.

With all due respect to Administrator Jackson's explanation of the fact a few minutes ago, sitting in this chair, that the application of pesticides by farmers near water are not intended to be captured by this predatory regime and permitting, we all know that farmers farm near water.

Most farmers hope they are near water and that water comes to help the crop grow. It is essential. So the NPDS regulatory and legal experts that we have retained as we have tried to work through this have told us with regard to decades of experience in the Clean Water Act and NPDS permitting, prior to this moment when it is now going to be applied to pesticides because of the Sixth Circuit decision, they have never seen an NPDS permit standstill or be adjusted to become more reasonable.

It is always mission creep day after day after day. So it is clear to us that the American farmer should be concerned about this arriving on his or her doorstep, not only in terms of regulatory burden but also in terms of the fact that it creates so much additional liability, and farmers including my brother-in-law who reminded me again this morning, sitting on the combine, are concerned about that liability.

The Endangered Species Act, another place where we need help from Congress. Can you pass a law perhaps or at least help provide more guidance and instruction to EPA and those other conflicting laws and regulatory agencies, the National Marine Fisheries Service and the Fish and Wildlife Service who keep just talking past each other.

I just read a report a couple days ago about the spotted owl. We remember that our friends in forestry endured a terrific calamity decades ago when it was decided by a federal court that old growth harvesting needed to stop in order to protect the spotted owl, an endangered species.

Yet this most recent report says that the populations of the spotted owl have continued to decline even though we have stopped harvesting in those old growth areas.

The forestry industry is also an important customer of the pesticide industry and one that is going to be directly impacted by this NPDS permitting.

Lastly, spray drift policy. Madam Chairman, you mentioned earlier in your opening remarks very serious concern and one where the agency just has not been able to focus on the clear and plain language in the statute of FIFRA that says that the risk standard is no unreasonable adverse effect.

I would encourage you to guide, instruct the agency to make sure that when and if they do go about publishing a policy or regulation to govern spray drift that they always keep it connected to that risk standard that is in your statute.

Thank you very much and I look forward to responding to your questions.

[The prepared statement of Mr. Vroom can be found on page 66 in the appendix.]

Chairman LINCOLN. Thank you.

Mr. WHITE.

STATEMENT OF JERE WHITE, EXECUTIVE DIRECTOR, KANSAS CORN GROWERS ASSOCIATION, BARNETT KANSAS

Mr. WHITE. Thank you, Madam Chairman, members of the Committee and Mr. Roberts for his attendance this afternoon.

My name is Jere White, and I am the Executive Director of the Kansas Corn Growers Association and I do that role for Kansas Grain Sorghum as well. I appear today also as chairman of Triazine Network. The Triazine Network is not merely a coalition of agricultural groups but one that represents over 30 crops grown in over 40 states. Those crops include corn, citrus, tree fruit, sorghum, vegetables, grapes, sugar cane, macadamia nuts. If it is grown, there is a chance that it is touched by our organization.

Atrazine is a herbicide that American farmers have used for weed control for more than 50 years. It has been found to be safe by the governments of Great Britain, Australia, and many countries including the U.S. EPA.

This morning I learned that the World Health Organization has adopted a new water quality standard, drinking water quality standard, and that new standard is over 33 times the current U.S. standard, 33 times.

Atrazine is one of the most steady molecules on earth. On multiple occasions over the last decade, EPA has declared the product safe after rigorous scientific review using the highest quality data, and even as recently as last July.

However, within weeks of last summer's positive report posted on their website, something happened, something that undermined all this deliberation, all this science.

By the end of August of last year, a raft of spurious ecological epidemiology studies began to appear. They were promoted by trial attorneys, advanced by environmental groups with anti-agricultural agendas and their well-heeled PR advisors, and certainly

picked up and ran by scare articles in the New York Times and also the Huffington Post.

Trial lawyers joined forces with environmental activists and sought to regulate through the courts what science could not support within the EPA regulatory process way back in 2004.

For instance, the EPA began to make their determination that atrazine was safe to continue to use in an interim registration decision that was published in 2003. The first trial lawyer lawsuit was filed in Illinois in 2004.

But this is a different game now. Last fall they found the EPA very receptive to take the bate. Media frenzy prompted the EPA to announce the new comprehensive scientific re-review of atrazine with a break pace of four SAPs between November of 2009 and just simply two weeks ago. Two more are scheduled quickly to follow in 2011.

Amazingly EPA actually cited the media and activist reports for re-opening a scientific review process they just put to rest. EPA was not scheduled to review atrazine again until 2013 as part of their scheduled review of all pesticides.

In February an SAP considered the very studies EPA referenced to initiate this rush to re-review atrazine. Scientists at the SAP conclude that the overall quality of these studies was relatively, and certainly had the agency followed its own process of internal data evaluation prior to taking it to an SAP, it would have known that the studies were not useful in the regulatory process.

This is just one way in which the agency's rushed re- review does not align with the processes that have up until now confirmed the EPA reliance on the best quality data available.

Growers and associations which have provided comments in support of atrazine are now being targeted by the activist trial attorneys. Subpoenas are being issued for massive, expensive, and time-consuming production of records unrelated to any litigation.

We are being harassed, even bullied, for daring to defend ourselves. The message is clear, if you stand up for atrazine you best be prepared to pay a price.

I testified in support of atrazine at last week's SAP, sharing our concerns over trial attorney harassment of stakeholders as part of my comments. The very next day activist attorneys sought and obtained subpoenas against Kansas Corn, Kansas Grain Sorghum, and me personally.

These subpoenas, not only do they intend to come into my offices on the 30th without any prior discussion whether my office might be available, they require me to be a Garnett, Kansas on the 30th at 10 o'clock as well as Olathe, Kansas on the 30th at 10 o'clock, depending on which hat I am wearing I guess that day. Fortunately I will be in the Ukraine on the 30th at 10 o'clock.

Most farmers live next to their fields. They raise their children in these environments; and if there was any real harm in atrazine, the American farmer would have been the first to notice and certainly the first to care.

They value atrazine because it is effective and it is safe. That is why well over half of U.S. corn, two-thirds of sorghum, and about 90 percent of sugar cane is protected from weeds by the use of atrazine.

For the farmer, however, atrazine is not a matter of politics. It is a matter of staying in business in what is still a rough economy.

EPA estimated in 2006 that atrazine provides a $28 per acre benefit for corn, and while significant, we believe that number is actually much larger today.

While environmental activists demonize atrazine, farmers know that atrazine enables an enormously productive benefit for the environment called conservation tillage. In 2008, for example, 64 percent of atrazine used in corn supported conservation agriculture practices that help sequester carbon, reduce fuel consumption, and improve a farm's overall carbon footprint as well as reduce soil erosion.

I realize the members of this distinguished body have many important issues before you today. EPA's treatment of atrazine may not sound like a high priority but it is a matter of great importance to the farm economy.

EPA at the highest levels needs to provide guidance to ensure that years of scientific review conducted under both Republican and Democratic administrations is not undermined. In addition, I believe our elected agricultural leaders must help EPA to understand the implications of their failure to do so.

Thank you.

[The prepared statement of Mr. White can be found on page 75 in the appendix.]

Chairman LINCOLN. Thank all of you gentlemen for your testimony and we appreciate you coming before us today.

Mr. Hillman, a few minutes ago you mentioned several concerns regarding the increased regulatory burden that farmers are facing these days and there is no doubt, as you mentioned, the margins are slim and really quite frankly as I mentioned so many times today the uncertainty and unpredictability of what you are up against whether it is regulation, weather, trade, price volatility, just a whole host of things.

Of course, our State is diverse. In terms of farming operations, we have row crops in the east. We have forest in the south, and poultry and livestock throughout the State, and I know that all of our farmers all over the State are concerned about EPA's aggressive regulatory approach.

What in your view are the major EPA regulatory issues facing the producers in Arkansas if you had to just pick the two top ones? I know we have mentioned a lot here today. But what would you say are those top two for Arkansas?

Mr. HILLMAN. Chairman Lincoln, I think that you did mention that the whole State would be affected by any and all. But I think at the top of the list, two, CAFO, the poultry industry, if this is enacted, if their feathers fall out of their house, or the dust, even in the ditch, not even in water, they will be regulated like they have never been before, certainly northwest Arkansas and also southwest Arkansas, and I mentioned in my testimony that the profit margin that these folks are having right now is actually razor thin. An additional expense, and make no mistake about it, the expense is going to be there.

The second would be the FIFRA. I think that would not only affect me as a row crop farmer, it would certainly affect the delta but it would affect the whole state as well.

As I stated in my testimony, we currently already use and have and applying for and are trained for a restricted use license. We do that on the State level. Incidentally, we work well with all of our State agencies that oversee what we do for a living. This really would affect us. It would affect the whole State. You are talking about a whole new avenue of permitting.

I know you said two but the spill prevention. You know for a smaller farmer having to go out there and build containment walls to the specs that the engineering firms deem necessary, I say again I do not know that there is a great problem with that whatsoever.

So I guess that would be my comments.

Chairman LINCOLN. Well, I just note your second issue there on the FIFRA. I remember as a child my dad taking great care in terms of what applications he made and how he made them, studying for the testing to be able to get that permit, not because he just wanted to pass because he wanted to do the right thing.

I think often times when we find people here, bureaucrats in the regulatory agencies who have not walked in those boots they do not really understand the sense of pride and dedication that farm families all across this country have in producing a good quality crop with great respect to the environment and doing all that they can.

We appreciate that.

Mr. Vroom, you have had some insightful testimony regarding the history and the background of pesticide regulation.

This Committee does have direct jurisdiction over FIFRA. It has served its purpose for many years in protecting both the environment and applicators.

As you have noted, new developments under the Endangered Species Act and the Clean Water Act along with proposed spray drip guidance are threatening our FIFRA effective regulatory scheme.

What are some of the specific instances where delays in that Endangered Species Act biological opinions will prohibit producers who utilize crop protection products?

And I have to say you also mentioned the aerial applicators better known as crop dusters. When I was in high school, I learned how to fly from a crop duster who served his country in Vietnam as a pilot. They do a tremendous job.

If you have ever been out there in those fields, as we have, and you know what happens when those planes come in and out over the fields, thinking about spray drift and other things like that it boggles your mind to think that you are going to be able to do what it is that they wanted you to do.

Mr. VROOM. Well, so I think specific to your question it is really in the holistic context these different laws that are not designed to work together and now you know we have had them on the books like the Endangered Species Act and FIFRA together for more than 35 years.

For most of the time, there were not complex but extremist, activist organizations with very smart lawyers found favorable court-

houses to go to and bring litigation that suddenly started to create this collision.

Then out-of-court settlements that you have alluded to earlier where not all of the parties including our industry got to participate at the table for settlement discussions and you get outcomes that take valuable tools away from farmers which do not necessarily result in any benefit to the endangered species, a la, the spotted owl and old-growth timber that I mentioned earlier.

So do we really want to look up and be 10 or 20 years down the road and have lost lots of important technology and still not benefiting those endangered species and suddenly 10 or 20 years from now or maybe even sooner the United States of America is a net food importer.

I have had the opportunity, because a lot of our member companies are headquartered in Europe, to be there a lot this year, and I have heard over and over again the European Union is a net 35 billion euro, that is more dollars than euros, food importer.

Do we really want the United States of America to be there in a few years? And it is largely because of the precautionary principle of regulation of technology that has either been taken away from the European farmer or, in the case of biotechnology, has never been even made available to the European farmer.

The American farmer is supplying some of that need through the production of soybeans that we export to the European Union but very little corn and corn products because again of that biotechnology restriction.

So I think you need to really put it in that kind of context, and for those Americans who are not engaged in agriculture directly, in production agriculture, those of us need to understand that $100 billion plus that Senator Chambliss mentioned of agricultural exports do not just go directly into the pocket of the American farmer.

It is generating enormously powerful, great number of jobs at the docks loading the ships, in plants manufacturing food to you know higher values for export, all matter of great employment that adds in ripple effect to our economy.

Again I think it needs to be put into holistic context. I am not here to just kind of whine about you know EPA and FIFRA and pesticide regulation but to ask that you know the country think about this and the Senate in particular think about the ability to encourage EPA to work with us.

I honestly believe that Administrator Jackson does want to do the right thing. She has very personal ties with agriculture. She has a lot on her plate as you mentioned with the oil spill in the Gulf of Mexico and many other important issues.

So if she can be encouraged along with her team to work more closely with all us in the agriculture community as you have been suggesting on both sides of the aisle here this afternoon, I think we can get back to the table and make that kind of progress to preserve the technologies the American farmer needs and ensure that we continue to be leaders in the world's food and fiber and renewable production.

Chairman LINCOLN. That is great. I think finding common ground and working together is going to be the critical part of this,

and you are exactly right. We need to work with the Administrator to reach that.

Mr. White, we certainly appreciate your comments in the importance of atrazine to the production agriculture and certainly the vast body of scientific studies regarding that impact. It is critical for us to look at the science-based information that is there.

If farmers lost their ability to use atrazine, how would it impact their farming operations, their costs, and those tilling practices that you mentioned? That would be I guess where I would want your input.

Mr. WHITE. Thank you, Madam Chairman.

Really there are a couple of issues. There is a financial cost, and certainly if you use what I consider a conservative number by EPA, we are talking $28 an acre for corn. Less analysis has been done by the agency for grain sorghum and sugarcane.

But beyond then when you look at the fact that atrazine is a produce that is used not necessarily very much today as a primary herbicide but it is an additive herbicide to a lot of the new technologies.

So it has not been unusual at all when different companies introduce a new technology for controlling weeds, the next thing they do is introduce a new formulation that includes some atrazine in it, you know may be at a lower rate.

So it is not just about the cost. It is about being able to control the weeds. It is about dealing with weed resistance issues with some of the more popular technologies that are out there.

But the bigger question really, if there is anything bigger than atrazine and I have devoted a lot of my life the last 16 years to this issue, is the fact that with the 50 years of safe use, with literally 6,000 plus studies being a part of the database that has led EPA to arrive to the safety determination they have today, if you cannot defend atrazine, what product is it that we will be able to use?

What product is out there that has that body of science today or will have in the future that the companies will invest you know tens of billions of dollars to defend?

Quite frankly if this process goes the way it is going and the award for stakeholders to step up and support it is to get beat down by trial attorneys, how many are going to be willing to do that in the future?

Chairman LINCOLN. That is exactly right. Thank you.

Senator ROBERTS. Thank you, Madam Chairman. More especially in regards to this panel I thank the panel for taking the time. I know your time is very valuable.

Pesticides like atrazine are subject to regular review. In fact, atrazine was re-registered in 2006, not scheduled for re-review until 2013. That is under the banner of stability and predictability. Always something could happen why you could have a special advisory, pardon me, a Scientific Advisory Panel meeting.

But in October of last year, EPA scheduled an unprecedented four Scientific Advisory Panel meetings. Madam Chairman, everything is an acronym here. Those are called SAPs. So there were four SAPs within 11 months.

Since 2000, EPA reviews have included more than 16 opportunities for public comment including six SAP meetings convened under the Federal Insecticide, Fungicide, and Rodenicide Act, FIFRA.

I hate to admit this but I was a staffer for my predecessor in the House when FIFRA was first passed and he assigned me to go cover it one time because our agricultural assistant was sick.

I attended the meeting. I had no idea what they were talking about and came back and told the congressmen, Keith Sebelius of the big First District of Kansas, do not ever assign me to that again, only to be assigned when I became a member of Congress to the subcommittee dealing with FIFRA and dealing with George Brown of California at that time who knew more about it than anybody, and I was ranking member.

Chairman LINCOLN. You were sapped there.

Senator ROBERTS. Yes. This SAP suddenly became known as Mr. FIFRA, and people there can testify that is the case, Mr. Vroom especially.

And it is amazing what you can get acquainted with if you just have good staff that print things in large letters on cards and get you to read them.

Here is what the situation is with Jere White, who is a great friend and takes his time and effort to represent the Kansas Corn Growers.

You stated now in your oral and written testimony that you have recently been served a subpoena and you believe it to be because, as a leader of the Kansas Corn Growers Association, Kansas Corn Commission, and the Kansas Grain Sorghum Producers Association, you have been an active participant in promoting the beneficial uses of atrazine.

The Chairman just asked you the question. You just responded. You are here in Washington today at your expense. Because you testified before the EPA Scientific Advisory Panel on atrazine, the plaintiff's attorney from Holiday Shores Sanitary Distinct in the State of Illinois court case has asked for you to provide all correspondence, memoranda, notes, studies, and surveys to and from Jere White, Kansas Corn and Kansas Grain Sorghum Commission with regard to atrazine.

I got this subpoena. I mean I did not get the subpoena but we may if this continues. I do not know the difference between appearing before a Scientific Advisory Panel then having some trial lawyer send you a subpoena from another state, a man who farms in one state then gets a subpoena from somebody from another state simply because he has the courage and the leadership to head up a farmer organization that stood before a Scientific Advisory Panel, what the heck is the difference between that and coming to the Congress to testify.

Maybe you are going to get a subpoena because you came here and testified before us. Maybe the Chairman and I will get a subpoena. That is something to think about. I had not really thought about that until right now.

Then if you look at this, Madam Chairman. Let me get back to this. This is what he is supposed to be deposed on in two separate places at the same time. I do not think they are going to go to the

Ukraine. They might. This is more reflective of the Soviet Union than it is I think America.

All correspondence to and from the relative parties, Kansas Corn Growers Association, et cetera, et cetera, et cetera. All e-mails from copying, blind copying, so on and so forth, a blind copying. Sending blind copies. If they are blind, how can—no, never mind.

All internal memoranda and notes concerning atrazine. All studies relating to atrazine, conducted, authorized, sponsored or supervised by the Kansas Corn Growers; all raw data of atrazine studies, all notes, reports, analysis or other documents, any source of information, other documents relied upon, any surveys received from corn growers and/or farmers.

Jere, hello, how you doing, e-mails. What are you doing on the atrazine thing, well, let me tell you what is happening on my farm. Sorry, got to put that in there.

All reports, articles, other documents written by the Kansas Corn Growers, any source information or other documents, all documents related to presentation here today, all documents related to persons present in any presentation.

I guess I am going to have to submit something. Any documents evidencing monetary contributions or compensation. Oh. Any documents relating to training, how you going to get anything, in contribution, well, never mind. I am not going to get into that.

Any documents relating to training offered to Kansas Corn Growers Association, all phone logs, notes, other documents reflecting phone conversations, all calendar entries, reports.

This just goes on and on and on even to the point if he talks to his secretary that could be deposed. My question is. You have given your life to the Kansas Corn Growers and you have got a great farming operation.

If we are going to get into anything under the jurisdiction of FIFRA where somebody stands before a Scientific Advisory Panel and gives their point of view or this Committee or any other public place, how does this interaction and judicial activism affect those who may want to serve on farmer or commodity organizations, wheat growers, corn growers, cotton growers, sorghum growers, livestock association, pork producers?

It seems to me this has a terrible chilling affect and some of it comes back to the fact that the EPA decided to have six SAPs in god knows how many days, giving them the opportunity then to say, okay, here is a straw man out here, pardon me, a corn man out here, a corn husk out here, that they can go after.

I do not know how anybody wants to serve in a capacity of leadership within any farm organization if that is the case. This is a very bad situation.

Mr. WHITE. Well, Senator, they are certainly getting at our right to associate. I think it is a fundamental principle of what trade associations do. You know they are even getting at our right to associate within our office.

As we discussed earlier, many times things that we put out for public consumption gets battered around just as it would in your office. Not all the ideas that are floated certainly rise to the top or sometimes you write back to your coworker what are you thinking but a lot of times today we write. We do not necessarily talk.

All those discussions are part of the subpoena. The interaction with board members. It does. It gets at the very core of what we are able to do as we develop our policies, our positions, our thoughts, and I think it is intended to do that. I truly do.

Can I say with certainty that I received these subpoenas because I was at the SAP last week? No, I do not know the thought process of the trial attorneys. But I can tell you that the Holiday Shores Sanitary District has no reason to think that I know anything about what goes on when they sell water to people in Holiday Shores. And I do not.

But we are talking literally, I have been following the atrazine saga since 1994. Within the State of Kansas, I have been working on the atrazine issue since 1989. We are talking tens of thousands of documents, thousands of e- mails. We are talking things that are stuck away in the attic, in storage sheds, and things like that.

A tremendous burden, and I know it is of no value. Admittedly, the trial attorneys may say, well, we do not know that. But again what right do they have to harass me. And the only reason they know I exist is because of the activities that you talked about.

I stuck my head up out of the weeds and welcome to our world. I can tell you that you know if it is meant to intimidate, it had the wrong impact on me. I originally was not able to attend this hearing because of some conflicts. I did everything I could to work them out to be here after getting the subpoenas on Monday night. And if they are coming after me, as we might say Kansas occasionally, they need to bring a lunch because they are going to be at it a while.

Senator ROBERTS. Madam Chairman, I think we have one heck of a problem on our hands or a challenge on our hands. This has the effect, a chilling effect as it relates to anybody that takes their time and effort to serve in leadership in behalf of any farmer organization, any commodity group or for that matter any group, and I would like to ask unanimous consent that these three subpoenas be made part of the record if that is appropriate.

Chairman LINCOLN. Without objection.

[The information can be found on page 82 in the appendix.]

Senator ROBERTS. I thank you for having the hearing. Jere, I am sorry you having to go through this and we will keep meeting and see if we can find some answer to this because this is simply not right and I appreciate your coming.

Mr. WHITE. Thank you, Senator.

Mr. VROOM. Madam Chairman, could I add something? I think what Jere is working on with regard to bringing information forward, scientific and benefits information about atrazine, the same thing that is going on with regard to a number of other older compounds which are also important, all of which get regular review by EPA, and in the case of all of these like atrazine, like carbofuran, endosulfan, aldicarb and the list goes on.

We have seen risk mitigation over the years, certainly the 20 plus years that I have been with this association and yet farmers still depend on these and yet now in the last few months we have seen what we feel like are knee jerk and unexpected kind of new process or the departure from regular process procedures in threatening or forcing cancellation of some of these products.

But also there is a chilling effect on our members who are inventing the newer products to go along with the older product. A great example is one of our members who has a methyl bromide replacement product, methyl iodide. EPA registered it several years ago and it is still waiting for regulatory approval in California.

Extremist activist organizations have challenged that in California and now have petitioned EPA to rethink their registration of methyl iodide. So that has to make those member companies of ours who are investing $20-, $30 million a month, and usually it is upwards of $300 million cost before they ever get a new product to market, to wonder is it really worth the price of continuing to take the risk to innovate.

So there is a chilling effect everywhere you look, and it is because we have lost our way with regard to regular order, the rule of law, science and transparency which the Administrator has said she supports and is committed to, and I believe with your help she will return to.

Chairman LINCOLN. There is no doubt that transparency and you know science-based evidence and science-based research is critical to what we need to see happen here. I think you are right that we just need to make sure we are continuing to move forward and to encourage that in a common sense way and to also ask everybody to be at the table when things are being decided.

I think several things have come out of this and I am certainly appreciative to this panel and all of our witnesses today. One of the most important is that if we do not like importing oil we are really not going to like importing our food.

And we have a lot of really hard working farm families and ranchers across the State, across this country that do a great job, and I think that you know so many of the other things that we have seen, whether it is what we can use, what the tools are that our agricultural producers have that allow them to be competitive and to continue to do what they do, taking those tools away from them not only unfortunately may shift us into requiring our dependence on imported food but it is importing food from countries that grow crops and products with the very things that we are outlawing now.

So I think it is so important for us to work through these issues and I will look forward to working with all of you all as well as the EPA Administrator and others and certainly my colleagues to come up with some of these solutions so we can keep those hard-working farm families doing what we need to do best.

So thank you all for being with us today.

The record will remain open for five business days for members who could not attend to submit their questions in

writing and that would mean that the Committee on Agriculture, Nutrition, and Forestry is adjourned.

[Whereupon, at 5:06 p.m., the Committee was adjourned.]

A P P E N D I X

SEPTEMBER 23, 2010

Senator Chuck Grassley
September 23, 2010

"Oversight Hearing to Examine the Impact of EPA Regulation on Agriculture"

Opening Statement

Thank you for coming today Administrator Jackson.

We here in the Agriculture Committee have a responsibility to represent America's farmers and ranchers. It's a difficult challenge, as each new generation gets further away from the farm. Working family farmers are a minority in the Senate, and I'm proud to be one of them. I make it my personal business to make sure that rural and agricultural interests are represented here in Washington.

That's why I invited you to come out to Iowa in September 2009 to tour a real working family farm operation and discuss issues that EPA was examining in its rulemaking process. If officials at EPA don't understand agriculture, then producers are going to face real hardships and economic challenges. I sincerely appreciated hosting Gina McCarthy, Assistant Administrator for the Office of Air and Radiation, and Margo Oge (*O-gay*), Director of the Office of Transportation and Air Quality. I want to continue to extend my invitation to you to come out and visit a family farm in Iowa at any time.

While we discussed many important issues on that tour, more have developed in the last 12 months. I'd like to ask you a few questions in that regard.

TO THE SENATE COMMITTEE ON AGRICULTURE, NUTRITION and FORESTRY

Hearing Examining Impact of EPA Regulation on Agriculture

September 23, 2010

Presented By:
Rich Hillman
Vice President
Arkansas Farm Bureau

Madame Chairwoman and members of the Committee, my name is Rich Hillman. I am the vice president of the Arkansas Farm Bureau, and I am pleased to offer this testimony, on behalf of the Arkansas Farm Bureau Federation.

Let me begin by saying that farmers have never felt more challenged and more threatened in their livelihood than they do today from the continuous onslaught of regulations and requirements from the Environmental Protection Agency (EPA). Some claim EPA simply wants to control how individuals farm. EPA claims that's not the case. But whether or not that is their intent, when you look at the impact of their regulations, that will almost certainly be the result.

In just the last year and a half, EPA has set in motion a significant number of new regulations that will fundamentally alter the face of American agriculture. Bureaucrats, most of whom know nothing about agriculture, will determine how we raise our crops. Environmentalists will have greater capacity to sue us if they don't agree with us. From where many of us sit, agriculture appears to be at the tip of EPA's spear, and we frankly don't understand why. If you look at agriculture today, our environmental footprint is much less than it was years and decades ago – and it's far less than virtually every other nation in the world. And yet the climate change policies EPA is promoting wants to outsource more of our food production. In fact, the legislation passed last year by the House could have put tens of millions of acres of productive farmland out of business. Now, EPA says it wants to regulate greenhouse gases under the *Clean Air Act*, and that statute mandates that they regulate major sources that emit 100 or 250 tons. That could mean quite a lot of farms. Our use of crop inputs is declining. No-till farming has lessened soil erosion and stored carbon in the soil. We produce more milk today from far fewer cows. Nitrogen use efficiencies in the Mississippi watershed has consistently improved. In state after state, our track record is one everyone should be proud of. Unfortunately, it's not enough for EPA.

The changes many of us see coming, whether intended or not, will bring far more mandatory pressures to bear on row crop agriculture and extend and deepen the reach of the mandatory regulation to all of livestock agriculture. One of the ironies is that activists keep saying, "Buy Local." Yet the EPA is driving costs so high that small, local farmers simply cannot keep up

with these costs. They have 3 choices: (1) they can go into niche markets; (2) they can get bigger in order to absorb higher regulatory costs; or (3) they can go out of business. The reality is that smaller, local farms face a heightened risk of going out of business.

Over the last few decades, agriculture has worked with the United States Department of Agriculture (USDA) to make enormous strides in its environmental performance by adopting a range of practices and measures. We are proud of our accomplishments and believe that our overall environmental footprint is smaller today than it was 50 years ago.

By contrast, let me share with the committee the current slate of initiatives now being promoted by EPA and the challenges they present to farmers:

1. Last year, EPA failed to defend its own regulation when it could have sought an *en banc* hearing in the 6th Circuit and failed to seek relief before the Supreme Court. What has the agency done instead? Now they want to require *Clean Water Act* permits for normal pesticide applications. Never in the 62 years of Federal Insecticide Fungicide Rodenticide Act (FIFRA) or 38 years of the CWA has the federal government required a permit to apply pesticides "to, over or near" waters of the U.S. This is literally unprecedented – and, in our view, completely unnecessary. We believe the time is now for Congress to act to correct the path we are on. The path we are on has lead EPA to propose a Pesticide General Permit that offers permit coverage for only specific types of pesticide use that EPA believes will result in "unavoidable discharges": (1) aquatic weed and algae control, (2) mosquito and other flying insect pest control, (3) aquatic nuisance animal control, and (4) forest canopy pest control. Any other regulated pesticide discharges would require coverage under an individual permit. The EPA PGP is stringent, imposing numerous recordkeeping, reporting, and use restrictions on covered pesticide use. Permit requirements can be enforced by EPA or citizens through lawsuits in federal court with substantial potential penalties. Activists have already indicate that they believe most pesticide applications should be subject to a permit if there is even a chance that the pesticide could come in contact with any water. So, even though EPA may not currently cover farm applications, nothing in the CWA or the proposed permit protects farmers from citizen suits

for not obtaining a permit. Madame Chairman, we greatly appreciate all your work on this matter and we strongly support your legislation, S.3735, the *FIFRA Paperwork Reduction Act*, to clarify that permits are not required for pesticides applied in compliance with FIFRA. We will do everything we can to help you enact this bill into law. I would like to ask all the members of this committee to co-sponsor the legislation. In addition, we understand time is short, but the April 2011 deadline is just a few short months away, therefore we encourage this committee mark this legislation during this session of Congress.

2. In 2005, EPA lost a decision in the 2nd Circuit that says they were wrongly requiring Concentrated Animal Feed Operations (CAFOs) to obtain a *Clean Water Act* permit on the grounds that they had a 'potential' to discharge. The court told EPA that Congress had limited their authority to permit only actual discharges. What is the agency's response? Now they are attempting to do indirectly exactly what the Court told them they couldn't do. EPA just released a document, "Coming Together for Clean Water," that proposes new, more stringent regulations for livestock producers. Within this document the agency has proposed regulations to make it easier to designate small- or medium-sized livestock operations as CAFOs. It is a fact that complying with EPA regulations will increase the operational cost which we believe will force small- and medium-sized operations to get much bigger or go out of business. In addition to this aggressive regulatory push, EPA has entered into a number of secret settlement agreements with environmental advocates – one agreement will require permits for dust and feathers from poultry house ventilation fans. Another will provide EPA with the authority to collect information on our farms - private information on where we and our families live – and post that information on the internet for everyone to see. EPA is also proposing regulations that will limit the use of manure nutrients and another to limit a farmer's ability to sell manure nutrient to crop farmers. Lastly, EPA has a multi-year enforcement strategy that places a big target on every livestock operation regardless of size.

3. EPA is also pushing the limits of their regulatory authority to regulate and permit non-point sources. In this arena EPA is pushing their authority to 1) narrow the agricultural stormwater exemption – in fact, in the Chesapeake Bay they want to do away with it entirely; 2) they have entered into a settlement agreement with environmental advocates to adopt unrealistic and unattainable numeric nutrient criteria; 3) they have entered into a settlement agreement to mandate Total Maximum Daily Loads that prohibits new and expanding permits without binding and otherwise enforceable permits for farmers and ranchers; and 4) even though farmers will need to produce more food in the next 40 years than has been produced in the history of mankind, EPA is proposing changes to water quality standards program that will limit the productivity and efficiency of farmers and ranchers in virtually every watershed in the nation. The Agency has been supportive of proposed legislation, such as, S 1816 by Sen Cardin (D-MD), which authorizes states to issue federal permits under section 402 of the Clean Water Act to nonpoint sources, even sources that are currently exempt from permitting such as agricultural stormwater and irrigation return flows. It seems EPA is in the process of again legislating through regulation and getting the cart before the horse. Two examples; as climate change legislation (Waxman/Markey) struggled to make it through Congress, EPA begin regulating greenhouse gasses, once again S. 1816 is proposed, and EPA is already implementing its approach in the Chesapeake Bay and Illinois River watershed. These issues deserve oversight to prevent EPA's overreach.

4. Even though agriculture has absolutely no history of oil spills, farms are now being asked to come up with expensive spill prevention control and countermeasure (SPCC) plans. Many farm organizations have been working with EPA on this matter and have repeatedly asked them to come up with a sensible regulation that recognizes the low threat from farms and provides farmers enough time to comply. Arkansas Farm Bureau has even been aggressive in finding expert professional help for our members. Unfortunately, it does not appear the agency will accommodate requests for more time or greater flexibility.

5. Regarding wetlands, even though the Clinton Administration finalized a regulation protecting a landowner's ability to use prior converted croplands, EPA now wants to undo that protection and limit our ability to use our land.

6. EPA has mounted an aggressive campaign on farming in the Chesapeake Bay Watershed – even though agriculture is a declining factor in land use. As if this were not bad enough, the agency has been candid in stating that what they do in the Chesapeake Bay they want to replicate nationwide. That means taking away the states' authority to oversee nonpoint programs under Section 319 of the *Clean Water Act*, getting rid of the agricultural stormwater exemption, and having federally enforced TMDL limits, with the overall effect of making it harder and harder to make a living at farming. Lastly, regarding sound science, even though atrazine just went through a rigorous re-examination and was re-registered in accordance with FIFRA in 2006, EPA has bowed to environmental activists and re-opened the case. People are betting that it will ultimately be banned.

The overwhelming number of proposed regulations on the nation's food system is unprecedented and promises profound effects on both the structure and competitiveness of the entire industry. The trend of the past 2 years has been toward greater EPA regulatory control over agriculture. It should surprise no one that regulatory compliance drives the need for significant investment. The EPA proposals are overwhelming to farmers and ranchers and they are creating a cascade of costly requirements that are likely to drive individual farmers to the tipping point. We haven't even talked about EPA's use of the concept of "indirect land use" to discourage ethanol, or so far their inability to identify a higher blend rate. In addition to driving up the cost of producing food, fiber and fuel, these proposals highlight EPA's goal of controlling land use and water supplies. In many cases they will bring citizen suit enforcement and judicial review of individual farming practices.

The economic implications of these proposals will be staggering. The cost they represent will impact the economy as a whole and this committee should not be surprised when our economy contracts and jobs are lost to foreign competition.

Madame Chairman, I commend you for convening this hearing and for all your hard work on behalf of agriculture in Arkansas and across the country. I will be pleased to respond to questions.

TESTIMONY OF
LISA P. JACKSON
ADMINISTRATOR
U.S. ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE
COMMITTEE ON AGRICULTURE, NUTRITION AND FORESTRY
UNITED STATES SENATE

September 23, 2010

Chairman Lincoln, Ranking Member Chambliss, and members of the Committee, thank you for the opportunity to testify on the impact of U.S. Environmental Protection Agency's (EPA's) programs on agriculture and to focus on specific areas where our pesticide, water, and other programs affect agriculture and farmers.

EPA'S Role in Regulating Pesticides

One of EPA's missions is to protect human health and the environment from potential risks associated with pesticide use. When used properly, pesticides provide significant benefits, such as controlling disease causing organisms and fostering a safe and abundant food supply. EPA has numerous aspects to our registration process that help ensure pesticides in the U.S. are registered, sold, distributed, and used in a way that is protective of public health and the environment. As we carry out these various programs, I want to assure you that EPA is committed to working with Congress, our state and federal regulatory partners, the agricultural community, nongovernmental organizations, the general public, and all of our stakeholders on these important issues in an open and transparent manner.

The primary statutes regulating pesticide use in the United States are the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA) as amended by the Food Quality Protection Act (FQPA). FIFRA gives EPA the authority to regulate the registration (licensing) and use of pesticides and FFDCA governs the establishment of tolerances (also known as maximum residue limits) on food and animal feed. For a pesticide to be registered under FIFRA, it must be demonstrated that the pesticide's use will not cause unreasonable adverse effects on human health or the environment. FIFRA provides EPA with authority to make pesticide regulatory decisions necessary to ensure the safe use of pesticides and to require the submission of any data that the Agency determines is needed to reach those decisions. FIFRA also requires the periodic review of existing registrations to ensure pesticides continue to meet the most current scientific and regulatory standards.

The second statute, FFDCA, governs the establishment of tolerances (maximum allowable residue limits in food or animal feed) and requires that these levels are sufficient to ensure a reasonable certainty of no harm from exposure. When establishing or modifying a tolerance, EPA must consider: available information about infants and children; cumulative effects of exposure (not just to the pesticide being considered for the tolerance but to other pesticides with a common mechanism of toxicity); and, aggregate exposure from other nonoccupational possible routes of exposure. Additionally, FQPA requires EPA to apply an additional safety factor when establishing tolerances for foods consumed by children, unless reliable data indicate a lesser factor would be protective. Overall, EPA is committed to: using the best available science when reaching regulatory decisions; finding ways to effectively

communicate those decisions; developing educational and training opportunities to help pesticide users make informed choices; and, ensuring proper implementation of pesticide statutes.

Atrazine

Consideration of scientific information will always drive all EPA actions, including EPA's decision to conduct an assessment of the scientific issues associated with atrazine's potential human health and environmental effects. In 2003, EPA completed a comprehensive review of atrazine and determined, based on the science available at the time, that it is not likely to adversely impact human health or have unreasonable impacts on the environment when used consistent with new labeling restrictions. As a condition for continued registration, EPA implemented programs to confirm the effectiveness of risk mitigation measures to protect drinking water resources and aquatic life by extensive monitoring of community drinking water systems and vulnerable waterways. While Atrazine was initially reregistered in 2003, the Agency conditioned registrations at that time with a requirement that the atrazine registrants conduct water monitoring for approximately 150 community water systems to ensure that levels of atrazine do not reach EPA's level of concern. These water systems have been monitored on a weekly basis during the peak atrazine use season and biweekly during the rest of the year.

In the more than seven years since the reregistration decision, more than one hundred new studies have been conducted on human health effects of atrazine. There are also a variety of data sources that document the presence of atrazine in both drinking water sources and other bodies of water, including the monitoring discussed above. The Agency determined it appropriate to consider the new research and to ensure that our regulatory decisions about

atrazine reflect the best available science and continue to protect public health. This thorough assessment will be based on transparency and sound science, including independent scientific peer review. The forum of the Scientific Advisory Panel ensures all studies can be carefully considered in the re-evaluation process. It is also important to recognize that the assessment is not in and of itself a regulatory action, but rather a critical part of the scientific process the Agency uses to inform sound regulatory decisions.

Prior to the October 2009 announcement of EPA's atrazine assessment, EPA had convened a number of FIFRA Scientific Advisory Panels (SAPs) to review new atrazine research concerning cancer, amphibians, and aquatic ecosystems. EPA has taken a similar approach in evaluating other pesticides. Since the announcement of the atrazine re-evaluation, EPA has had four public meetings with the independent SAP. A brief timeline follows:

- November 3, 2009, EPA presented its plan for the atrazine re-evaluation to the SAP. In 2010, EPA held three public SAP meetings to invite peer review on atrazine;
- February 2-4, 2010 – EPA presented and sought scientific peer review of its proposed plan for incorporating epidemiology studies into the atrazine risk assessment;
- April 26-29, 2010 – EPA presented and sought scientific peer review of its evaluation of atrazine effects based on experimental laboratory studies, and the sampling design currently used to monitor drinking water in community water systems; and
- September 14-17, 2010 – EPA presented and sought peer review of its evaluation of atrazine non-cancer effects based on experimental laboratory studies and epidemiology studies. This review included new experimental laboratory data since the April 2010 SAP meeting.

Also underway is an epidemiological Agricultural Health Study being conducted by the National Cancer Institute that is evaluating the potential association between atrazine and cancer risk. When the results are available, likely in 2011, in keeping with guidance provided by the SAP, EPA will schedule another peer review on the Agricultural Health Study findings as well as other studies concerning cancer. The 2011 SAP review will also address EPA's progress on recommendations received in the 2010 reviews. Typically, SAP reports are available 90 days after the public meeting is completed. The reports from the February and April meetings are available.

At the conclusion of EPA's assessment of atrazine's human health effects, EPA will ask the SAP to review atrazine's potential effects on amphibians and aquatic ecosystems. EPA will continue to closely track new scientific developments and will determine whether a change in our current human health and ecological risk assessment for atrazine is warranted based on the best peer reviewed science available.

Pesticides and the Endangered Species Act

As you may know, Section 7 of the Endangered Species Act (ESA) requires that federal agencies ensure the actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of listed species or destroy or adversely modify designated critical habitat. When an action, such as a pesticide registration, "may affect" a listed species or its habitat, the federal agency is generally required to consult with the Department of Interior's Fish and Wildlife Service (FWS), or the National Oceanic and Atmospheric Administration's (NOAA)

National Marine Fisheries Service (NMFS) (jointly referred to as the Services) who share responsibility for implementing the ESA.

As a result of lawsuits against the EPA for not evaluating impacts of pesticides to threatened or endangered species, the Agency is subject to court mandated schedules to make effects determinations and consult, as appropriate, on over a hundred different pesticides. For the many ESA consultations we face, our goal with the Services and stakeholders is to ensure our assessments are scientifically sound, that the process is transparent, and that decisions are timely. To promote these goals, there is a senior level workgroup involving EPA, NOAA, and the Department of the Interior, focused on improving the scientific and regulatory coordination that is necessary to comply with the ESA.

We are also focusing our ESA compliance efforts on the Registration Review program. That is the statutorily required program to systematically reevaluate all pesticides on a 15 year cycle for compliance with federal pesticide laws. In establishing the Registration Review process, EPA has established, by rule, multiple opportunities for public input on preliminary risk assessments and potential risk mitigation measures. This process also facilitates public participation on endangered species assessments undertaken by EPA. EPA is committed to furthering a credible and transparent process that fulfills its responsibilities under the law, facilitates opportunities for registrant, grower and public involvement, and provides viable risk mitigation measures.

We are working to develop consensus between EPA and the Services on scientific methodologies needed to successfully implement this program. While we move forward in that effort, the Agency will continue to be guided by sound science and transparency, while also not placing unnecessary burdens on agriculture and other pesticide users.

EPA's Pesticide General Permit

The Environmental Protection Agency intends to issue a National Pollutant Discharge Elimination System (NPDES) Pesticide General Permit (PGP) for point source discharges from the application of pesticides to waters of the United States. This action is in response to a January 7, 2009, decision by the U.S 6th Circuit Court of Appeals which vacated EPA's 2006 rulemaking that certain pesticide applications to U.S. waters did not require NPDES permits if they were used in accordance with the label. As a result of the Court's decision, NPDES permits will be required by April 9, 2011, for pesticide application discharges directly to waters of the United States to control pests.

EPA provided public notice of the draft PGP on June 4, 2010, for the control of discharges to waters of the U.S. for the following four pesticide use patterns:

- Mosquito and other flying insect pest control;
- Aquatic weed and algae control;
- Aquatic nuisance animal control; and
- Forest canopy pest control.

The Agency plans to issue its final PGP in December 2010. Once issued, the PGP will be implemented in states, territories, Indian Country lands and federal facilities where EPA is the NPDES permitting authority. In the other 44 states and the Virgin Islands, the state or territory as the NPDES permitting authority will issue permits similar to the one currently under development at EPA. The Agency has been working closely with those states to concurrently develop their NPDES permits for pesticide discharges.

The Agency has conducted an intensive outreach effort to the agricultural community including attending more than 140 meetings with stakeholder organizations such as Crop Life America, the National Association of Conservation Districts, the National Corn Growers Association, the Potato Council, the Cranberry Institute, and the American Cranberry Growers Association.

Additionally, we worked with both our state environmental protection counterparts, as well as each of the state Departments of Agriculture. EPA conducted regular conference calls open to all states and provided face to face meetings and a webcast where we provided draft permit prototypes for review and discussion. In this way, we were able to develop a common-sense, workable permit for regulators as well as the application industry. We plan to hold one more face to face meeting with state officials prior to promulgation of this permit.

Finally, EPA held four public meetings around the country to educate farmers and the public about the requirements in the proposed permit so that attendees would be able to provide more knowledgeable comments during the comment period. We also held two national webcasts

open to the general public. We have received approximately 750 individual comment letters, many from agricultural interest groups, that we will consider as the permit is finalized.

America's Great Water Bodies – Progress Through Partnership

In addition to our role in regulating pesticide use, EPA acts to protect and restore water quality. Some examples include our partnerships to help protect and restore the Gulf of Mexico, the Chesapeake Bay, and the Great Lakes.

Gulf of Mexico

EPA's work in the Mississippi and Atchafalaya River Basin is built on longstanding partnerships EPA has established with states, federal agencies, local governments and other stakeholders. We are working with the U.S. Department of Agriculture (USDA) to coordinate funding and effective conservation practice implementation through EPA's section 319 program and the Natural Resources Conservation Service Mississippi River Basin Initiative. EPA also chairs the Hypoxia Task Force, a partnership of federal and state agricultural and environmental agencies, which collaborates to identify the most effective federal and state activities to accelerate nutrient reductions and leverage and strengthen efforts. The Task Force mission is to understand causes and effects of hypoxia in the Gulf of Mexico and coordinate activities to reduce its extent and ameliorate its effects. The revised 2008 Gulf Hypoxia Action Plan lays out eleven Key Actions, including the development and implementation of comprehensive state specific nutrient reduction strategies to reduce the most significant loadings in the state and

Basin and to the Gulf. Other actions include advancing the science, tracking progress, and raising public awareness.

Chesapeake Bay

Likewise, EPA's work to protect and restore the Chesapeake Bay involves working with the Chesapeake Bay states, federal partners, local governments and stakeholders. In 2009, President Obama signed EO 13508, directing Federal agencies to restore the Chesapeake Bay. Additionally, the Chesapeake Executive Council, comprised of EPA, the governors of the Chesapeake Bay states, the Mayor of the District of Columbia, and the Chesapeake Bay Commission, a tri-state legislative body, committed to establish all of the controls and management practices needed to restore the Bay by 2025. Together with Federal partners, EPA is working closely with the states to help achieve this important goal. EPA believes that steady progress towards this long term goal will demonstrate to the public that the Bay cleanup is indeed underway while, at the same time, allowing states and sources of pollution to make the necessary investments incrementally and efficiently. EPA greatly appreciates the pivotal work USDA is doing to help Bay states and farmers make important progress towards restoring water quality and, at the same time, advance other vital social goals, such as: preserving farming as a way of life in the Chesapeake Region, preserving open space, protecting and restoring fish and wildlife habitat, and contributing to a bountiful food supply.

We expect to release a draft Total Maximum Daily Load (TMDL) for the Chesapeake Bay on September 24, 2010. A TMDL is a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards. This action is a product of

more than 2 years of extensive work among scientists and other federal and state agencies. It is rooted in a commitment made ten years ago by the states and the federal government. Specifically, the signatories to the 2000 Chesapeake Bay Agreement pledged to develop a TMDL if the actions of the last decade were not successful in achieving water quality standards in Bay waters.

The draft TMDL builds upon the strategies submitted by the states to EPA earlier this month. Together with the states, we will conduct a thoughtful public engagement process throughout the watershed over the next two months, including 18 public meetings and more than 40 smaller meetings with various stakeholder groups. We are committed to finalizing the TMDL by the end of the year to satisfy our statutory and court ordered obligations to implement a TMDL for these impaired waters.

Great Lakes

EPA is committed to partnering with USDA as part of the federal Interagency Task Force implementing the Great Lakes Restoration Initiative (GLRI. Many places around the Great Lakes – such as the Western Basin of Lake Erie – are suffering from runoff-related problems such as:

- Eutrophication and harmful algal blooms that can degrade nearshore water quality;
- Green algae Cladophora that rots and causes beach closings;
- Avian botulism that kills birds; and
- Sedimentation that smothers fish habitat, among other impacts.

Under the GLRI, EPA, USDA, and other federal agencies are taking action to attack these and related water quality and environmental problems. Under the GLRI Action Plan released in February, the agencies must achieve a 4.5 % reduction in soluble reactive phosphorus loadings over five years and an annual reduction of 1 million cubic yards of sediment deposited into Great Lakes waters. In FY 2010, EPA has provided $51.5 million in GLRI funding to USDA. EPA is also using over $13 million in GLRI grants to conservation districts and others to address these issues.

EPA will continue to implement our programs and work with our partners and stakeholders to support agriculture and America's farmers. We look forward to continuing our work with this Committee, our fellow agencies, our stakeholders, and the public to ensure a healthy and prosperous America.

Thank you again for inviting me to testify here today, and I look forward to answering your questions.

Senate Committee on Agriculture, Nutrition & Forestry
Oversight Hearing to Examine the Impact of EPA Regulation on Agriculture
September 23, 2010

Testimony of Jay Vroom
President, CropLife America

Thank you, Chairman Lincoln and Ranking Member Chambliss, for the opportunity address the Committee on behalf of CropLife America and its members, as well as their customer the American farmer. CropLife America is the leading trade association representing the U.S. crop protection industry and our members supply virtually all of the crop protection products used by American farmers. CropLife America's member companies, and members of our counterpart association at RISE[1], proudly discover, manufacture, register and distribute crop protection products for American agriculture, and specialty use products such as those used to protect public health and safety.

CropLife members work with farmers, ranchers and growers everyday to ensure that crop protection tools are registered properly and used correctly. As a matter of fact, America's abundant, affordable food supply depends on the availability of safe, effective crop protection products. Significant portions of the $100 billion in US farm exports each year are made possible due to the careful use of crop protection products. CropLife America members support modern agriculture by looking forward: each year the crop protection industry spends hundreds of millions of dollars on research and development, with much of that investment going into producing data that meets or exceeds the Environmental Protection Agency's (EPA) information requirements and requests for pesticides.

CropLife America has a long history of working cooperatively with EPA and the U.S. Congress on issues affecting crop protection, human health and the environment. But, recently, the businesses that support American agriculture have seen serious deviations from the regular order, transparency and scientific integrity of EPA's pesticide review process. We hope that today's hearing will put EPA and agriculture back on a path to a more productive dialogue that leads to reasonable, timely, and consistent solutions to our shared concerns.

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[1] Responsible Industry for a Sound Environment (RISE) – www.pestfacts.org

First, and most significantly, CropLife brings to the Committee's attention the new regulations for the Clean Water Act (CWA) permitting of aquatic pesticide applications. Never in the 62 years of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) nor 38 years of the CWA has the federal government required a permit to apply pesticides "to, over or near" waters of the U.S. for control of such pests as mosquitoes, forest canopy insects, algae, or invasive aquatic weeds and animals, like Zebra mussel. As a matter of fact, Congress specifically omitted pesticides in 1972 when it enacted the CWA, and despite major rewrites since, never looked beyond FIFRA for the regulation of the regular, label-approved uses of pesticides.

Nonetheless, last year, the U.S. 6th Circuit Court of Appeals overturned EPA's 2006 rule which specifically exempted from CWA National Pollutant Discharge Elimination System (NPDES) permitting of aquatic pesticide applications. Agriculture and the rest of the pesticide user community are still baffled by the federal government's choice not to more rigorously defend the 2006 rule. Especially since the government, in a brief to the Solicitor General, stated that the 6th Circuit got it wrong in *National Cotton Council v. EPA*, and, went so far as to suggest that the circuit court violated earlier Supreme Court precedent by failing to provide proper due deference to an agency determination.

CropLife America believes the 6th Circuit got it wrong, and EPA should have done more to defend its previous rule. The court agreed that pesticides when applied consistent with FIFRA label directions are not pollutants, and, as such, should not require NPDES permits. But, the court went on to rule that any residues that may remain after the beneficial use has been completed are pollutants, and, in order to control those residues, NPDES permits are necessary when the pesticides are initially *applied.* We believe that the court incorrectly reversed EPA's long-standing policy thus layering CWA regulations on top of established, rigorous FIFRA requirements.

We understand that EPA now hopes to finalize its NPDES general permit for certain pesticide uses in December 2010. EPA and the states would then begin implementing and enforcing the permit program starting in April 2011. We are very skeptical about this overly optimistic timetable. Even if things go smoothly, for the Federal government and individual

states to get all this work done well before April--and then for the regulated community to have time to get up to speed on compliance--seems nearly impossible to achieve. We have also heard EPA talk openly about the fact that this permit will require Endangered Species Act (ESA) "consultation" with either or both of the ESA authorities in the U.S. Departments of Commerce and Interior. That step alone seems impossible given the court deadline.

The permit will add performance, recordkeeping and reporting requirements to an estimated 1.5 million pesticide applications per year, and preempt the science-based ecological review of pesticides and label requirements for uses regulated under the FIFRA. And, this one decision overnight will nearly doubles the population of entities requiring permits under CWA and affects state agencies, local municipalities, recreation , utility rights-of-way, railroads, roads and highways, mosquito control districts, water districts, canals and other water conveyances, commercial applicators, farm, ranches, forestry, scientists, and many, many others. This is an enormous burden--and we see no related benefit to protection of humans or the environment.

Many of the businesses impacted by the permit are small businesses. The permit will threaten their economic survival, either due to the cost of obtaining a permit or due to their vulnerability to citizen law suits under CWA. New requirements for monitoring and surveillance, planning, recordkeeping, reporting and other tasks will create significant delays, costs, reporting burdens and legal risks from citizen suits for hundreds of thousands of newly-minted permit holders without enhancing the environmental protections already provided by FIFRA compliance. We have one example from an aquatic weed management company treating a marina in Washington State, showing a $1,500.00 permit is required to apply $350.00 worth of pesticides. A copy of this invoice is attached to this testimony.

To date, EPA's proposed general permit only covers applications of pesticides registered for aquatic use and applied to water or forest canopies into or over flowing or seasonal waters, and conveyances to those waters; it would not cover pesticide applications registered and intended for terrestrial use. However, activists indicate that they believe most pesticide applications should require a permit if there is even a chance that the pesticide could come in contact with any "water," either flowing water or seasonal drainage ditches that *could be a conveyance* to a water of the US. So, even though EPA may not currently cover farmland and

rangeland pesticide applications, nothing in the CWA or the proposed permit protects against citizen suits against farmers for not obtaining a permit. This establishes an uncertain, increased level of liability for farmers and ranchers, as well as users applying pesticides to golf courses and public utility rights of way, and private homes and businesses.

Madame Chairman and Senator Chambliss, it is clear that you understand the serious nature of the 6th Circuit's ruling and EPA subsequent actions. We commend you on the introduction of S. 3735, the FIFRA Paperwork Reduction Act. CropLife America fully supports the bill's intent to clarify that permits (specifically, water permits) are not required for pesticides applied in compliance with FIFRA. Along with so many other stakeholders, we believe that the legislation would re-establish the legal primacy of FIFRA over all pesticide use, as well as instruct EPA and the courts that Congress did not intend other environmental laws to overtake FIFRA and thereby creating duplicative regulatory burdens.

The next issue I would like to discuss is commonly referred to as spray drift -- which is the de minimus deposition of pesticide particles onto non-target areas during routine applications. EPA and state pesticide policies have long acknowledged that small amounts of pesticide drift are unavoidable and, when used according to the product's label, does not pose 'unreasonable adverse effects'(the risk standard in FIFRA) to humans or the environment. EPA's risk assessment and registration process include spray drift considerations, and label requirements include drift reduction management considerations. Despite these protections, anti-pesticide litigation and activists' policy pressures are pushing EPA and the states to consider zero-drift policies. And, in response, some state pesticide enforcement officials have indicated a need for more clear guidance on enforcement as relates to spray drift.

Therefore, in late 2009 EPA proposed new spray drift policy--that would result in new label language on the order of: "*Do not apply this product in a manner that results in spray [or dust] drift that could cause an adverse effect to people or any other non-target organism.*" This precautionary-based proposal would have effectively replaced the FIFRA risk-benefit standard with a new zero-risk standard. We understand that EPA may still be planning to apply this new spray drift language to both professional and consumer product labels for uses commonly

performed by hired personnel, including, orchards, vineyards, farms, forests, golf courses, parks, roadway and other rights-of-way, and residential lawns and gardens.

EPA's new zero-drift language would abandon FIFRA's science-based risk-benefit standard of "no unreasonable adverse effect" and put the precautionary principle into practice. Applicators could *not* apply registered pesticides if spray or dust drifts *could* cause an adverse effect to people or any other non-target organism. They would have to anticipate and avoid potential situations, and be ready to promptly shut down operations depending on meteorological or ecological situation changes (e.g., the wind gusts, or birds fly nearby). This scenario would make it nearly impossible for farmers to protect their crops, and, opens the door to frivolous law suits and enforcement actions against farmers and other applicators, forces state regulators to become assessors of theoretical risks, and puts applicators at legal risk every time they go to work. EPA's proposed label language is unachievable, for both the applicator and the regulator. There is near universal agreement that, even in the most ideal circumstance, eliminating off-target spray drift is simply not possible.

CropLife America believes that EPA's proposed changes to labels are based on an unreasonable and unattainable new standard of no drift. Potential spray drift effects are already taken into account in EPA's risk assessment and assignment of registration restrictions and product label language. By changing the Spray Drift policy and label language, EPA would overlook the safety risk factors already built into product-use restrictions, as well as the additional protections of advanced drift-reduction technologies, such as Global Positioning System (GPS), guided shutoff nozzles; low-drift spray tips; large droplet/low pressure application equipment; drift-reduction product formulations, foaming agents and adjuvants; and on-board sensors and drift software that transmit prevailing wind conditions and real-time corrections to the pilot to limit spray drift at application height. This change in policy would unnecessarily eliminate from use many pest control products. Moreover, many state agencies, including the National Association of State Departments of Agriculture, commented that EPA's proposal does not lend to better guidance on enforcement, but only further confuses the issue.

CropLife America urges EPA to officially withdraw its recent policy proposal, and again seek input from legitimate stakeholders in order to craft a reasonable policy for drift that fully

incorporates use of drift-reduction technologies and is consistent with FIFRA standards. Congress could further help by making even more explicit that spray drift policy and regulation can and must reflect the risk standard of FIFRA.

Lastly, I would like to discuss agriculture's ongoing struggles regarding pesticide review under the Endangered Species Act (ESA). Several court decisions and out-of-court settlements related to the failure of federal agencies to strictly comply with the procedural consultation process required by the ESA have resulted in forcing the EPA, National Marine Fisheries Service (NMFS), and Fish & Wildlife Service (FWS) to conduct hasty consultations oftentimes based on outdated and/or incomplete information. Most recently, as a result of a court decision stemming from the *Washington Toxics Coalition vs. EPA* lawsuit, NMFS issued a Biological Opinion (BiOp) that was the basis upon which EPA made a precedent-setting decision to impose harsh restrictions on the use of critical crop protection products. These restrictions will essentially prohibit their use in public health vector control programs and food production in large areas of Washington, Oregon, California and Idaho. If the decision making process proceeds as-is, agriculture can expect similar restrictions stemming from the lawsuit on the use of a total of 37 active ingredients found in many commonly used products.

In 2004, the federal government first attempted a cure for this lack of consultations on FIFRA actions by taking advantage of the regulatory authority allowing counterpart ESA § 7 rules that were more tailored to an individual program.[2] Joint FWS/NMFS ESA § 7 counterpart rules for the FIFRA program were adopted at 69 Fed. Reg. 47732 (Aug. 5, 2004). Those counterpart rules relied more heavily on EPA's expertise to assess the effects of a given pesticide on listed species and wildlife generally.

The counterpart rules were challenged by environmental groups. On August 24, 2006, the U.S. District Court for the Western District of Washington largely overturned the counterpart rules. The court set aside key provisions in light of an adverse administrative record that suggested widespread dissatisfaction in the Services and their staff with EPA effects determinations that would be the basis for managing consultation under the counterpart rules.[3]

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[2] 50 C.F.R. § 402.04.
[3] *Washington Toxics Coalition v. U.S. Dep't of Interior*, 457 F. Supp. 2d 1158 (W.D. Wash. 2006).

The court let stand an "optional formal consultation" process in which the Service(s) can adopt EPA effects determinations as their own in preparing of their separate biological opinions.

Since this time, EPA and the Services have been unable to cooperatively develop and implement a workable process that would result in the timely completion of accurate consultations. This is largely because the Services and EPA disagree on fundamental legal and science policy matters, and have dramatically different views on approaches to assessing and managing risk.

The process required by the ESA that directs EPA to consult with the FWS or the NMFS regarding the effect of pesticides on endangered species is broken. This issue will have nationwide consequences. In January 2010, the Center for Biological Diversity filed a Notice of Intent to sue the EPA that could negatively affect the use of nearly 400 crop protection compounds across the entire United States.

The law requires that the best available science and data be used to create BiOps. However, the Services apparently do not have the resources or experience to properly compile and evaluate data used to render a valid BiOp as evidenced by the fact that the current BiOps were created *without*: (1) input from stakeholders in the affected areas regarding agricultural management practices and protective measures already in place; (2) input from experts in the state governments of Washington, Oregon, California and Idaho; (3) using the best available scientific data that show current use restrictions for products already protect fish as the amounts of products in the water are already below harmful levels; (4) statutorily-mandated analysis of the economic impact to agriculture resulting from the restrictions; (5) realizing that the definition of waters to be protected is so overly broad and ambiguous that it includes areas where there is no salmonid habitat; and, (6) considering whether the proposed changes regarding product use and labeling within the mandated timeframe can be implemented in a practical and timely manner.

In the short-term regarding where the BiOps already or about to be issued, CropLife America urges the Administration to delay or halt implementation of the bulletin restrictions until NMFS re-does the current BiOps using best available science. In the long-term regarding

the consultation process, we urge the Administration to reinstitute a revised form of the Counterpart Regulations that was issued jointly by the Services and EPA in 2004 that made the consultation process more efficient and timely.

Further, we ask consideration of the following to help facilitate agency action: (1) request a GAO report focused on the immense resources needed for pesticide consultations. The last GAO report, *Endangered Species: More Federal Management Attention Is Needed to Improve the Consultation Process* (GAO-04-93) was released more than six years ago (March 2004) and recommended that the Services improve the data regarding time and efforts on the consultation process; (2) continued Congressional oversight to provide a formal process by which Congress could determine whether the Services and the EPA have upheld their respective legal and regulatory ESA obligations; (3) establish an intervening third party mechanism to assist in resolving the key issues and areas of dispute may require a new approach in the form of an open, third-party mechanism that allows for participation by all stakeholders (e.g., a "Keystone Center-like" Committee mediated process; a review and report from a Committee of the National Research Council (NRC) of the National Academies of Sciences; a new Federal Advisory Committee; or a negotiated rulemaking process); (4) consider enacting legislation directing the Administration to adopt one of these approaches. This and previous Administrations have had the discretion to initiate any one of these strategies to resolve outstanding issues, and each failed to exercise its authority to do so. Consequently, the train wreck that is the ESA consultation process for pesticides continues unabated.

We in the agribusiness industry exist for one reason – the American Farmer. American agriculture depends on the responsible use of crop protection products to feed, clothe and power our nation and the world. The topics I have discussed here today are only a sample of our challenges with EPA: we have serious concerns on many other important issues[4]. Much is as stake. CropLife America knows that the oversight and action of this Committee may well determine whether the pesticide program descends further into disarray - regulating based on

[4] Other EPA concerns, include:

- Serious process concerns relating the recent review, assessment and/or regulatory action on atrazine, aldicarb, carbofuran, endosulfan, methyl iodide and other active ingredients.
- Current and future activity relating to PRIA.
- Recent label-related actions on "false & misleading pesticide product brand names" and web-based labeling.

unsupported science, activism and politics - or whether you can thoughtfully guide EPA back to the order of FIFRA's transparent, science-based review and rigorous process. Again, thank you to Committee for allowing CropLife America to share our perspective, and I am happy to answer any questions you may about this testimony.

U.S. Senate Committee on Agriculture, Nutrition and Forestry

Oversight Hearing to Examine the Impact of EPA Regulation on Agriculture

Testimony of Jere White
Executive Director, Kansas Corn Growers Association Chairman, Triazine Network

September 23, 2010

I am the executive director of the Kansas Corn Growers Association and Kansas Grain Sorghum Producers. Today I also appear as Chairman of the Triazine Network, which represents atrazine and related triazines that farmers use as herbicides in the growing of corn, citrus, tree fruit, sorghum, vegetables, grapes and sugar cane.

Our network came about when we joined agricultural producers in 1995 to work for a science-based outcome of the EPA Special Review of Triazine Herbicides. Our network is a national coalition of farmers and agricultural groups who raise more than thirty crops in forty states.

Atrazine is a herbicide that American farmers have used for weed control for more than fifty years. Atrazine has been found to be safe to use by the governments of Great Britain, Australia and many other countries including the US EPA. While activists will tell you it is "banned" by the EU—the reality is that atrazine is not used in Europe today because the manufacturer did not seek approval to continue its registration there. What activists won't tell you is that the Europeans do perform weed control with another triazine that is very close in composition to atrazine. That product, terbuthylazine, is not registered for use in the United States.

Atrazine is one of the most studied molecules on Earth. Please consider the following recent highlights:

- A June, 2000, Scientific Advisory Panel (SAP) overseen by Clinton EPA Administrator Carol Browner found that atrazine is not likely to cause cancer in humans.
- A further review concluded in October, 2003, conducted principally under EPA Administrator Christine Todd Whitman, found a reasonable certainty of no harm.
- A cumulative risk assessment in June, 2006—drawing data from files that contain more than 6,000 studies—also found a reasonable certainty of no harm associated with the cumulative use of triazines, including atrazine, in accordance with EPA guidelines—both for human health and environmental effects.
- Regarding amphibians, a 2003 SAP focused on reports of atrazine's effect on amphibian reproductive development and found the evidence insufficient. In 2007, after the conclusion of extensive research performed under EPA guidance and review, the Agency concluded that it was reasonable to reject the 2003 hypothesis that atrazine exposure can affect amphibian gonadal development. EPA also determined that there was no reason to pursue additional testing.

Last July EPA reported, "Based on the review of available scientific studies, EPA has determined that atrazine is not likely to cause cancer in humans," the agency's stock description of a substance that does not trigger concerns over cancer. This determination, the agency said, was based upon "the best scientifically available data,

and allowed preeminent independent scientists to ensure that the Agency was using the highest quality data" in its decision-making process.

Within weeks, something happened—something that undermined all this deliberation, all of this science.

Wealthy trial lawyers, seeing enormous class-action potential in demonizing atrazine, began to make claims years ago. Teamed up with environmental activists, they sought to regulate through the courts what science didn't support further regulation at EPA. By August of last year a raft of spurious "ecological epidemiology" studies began to appear, advanced by the environmental groups with anti agriculture agendas and well-heeled PR advisors, along with scare articles that ran in *The New York Times* and the Huffington Post.

This iron triangle of trial lawyers, activists and fear selling media prompted EPA to announce a new, comprehensive, scientific re-review of atrazine, with the break-neck pace of four SAPs between November 2009 and September 2010, and two more to quickly follow in 2011. Amazingly, EPA actually cited the media and activist reports for re-opening a scientific review process they'd just put to rest. EPA was not scheduled to review atrazine again until 2013, as part of the scheduled review of all pesticides.

In February, an SAP considered the very studies EPA referenced to initiate this rushed re-review of atrazine – many of the same studies the activists were touting. The scientists of the SAP concluded that "the overall quality of these studies was relatively low, thus limiting their applicability . . ."

Had the agency followed its own process of internal data evaluation prior to taking it to an SAP, it would have known that the studies were not useful in a regulatory

decision-making process. This is just one way in which the agency's rushed re-review does not align with processes that have, up until now, confirmed EPA's reliance on the best quality data available.

Given atrazine's half-century of safe use, what is the basis for this rush? Why were farmers and growers, now in the middle of harvest, given only 13 business days to react to a new 677-page EPA white paper? Why were we given so little time between the posting of questions on EPA's website and its SAP, and even less time than that to meet written comment submission requirements? Real transparency and stakeholder involvement requires sufficient time to respond.

What new fact, other than discredited and discarded studies, is forcing EPA to throw its processes, finely honed under FIFRA, to the wind? In fact, it has become confusing to track which process and authority the EPA claims to be under from one day to the next.

Growers and associations like ours that have provided comments and support for atrazine are now being targeted by the activist trial attorneys. We've been hit with subpoenas for massive, expensive and time-consuming production of records unrelated to any litigation. We are being harassed, even bullied, for daring to defend ourselves. The message is clear: If you stand up for atrazine, you'd best be prepared to pay a price.

I testified in support of atrazine at last week's SAP, sharing our concerns over trial attorney harassment of stakeholders. The very next day, activist attorneys sought and obtained subpoenas against Kansas Corn, Kansas Grain Sorghum, and me personally.

Meanwhile, in Washington, this re-review barrels on like a runaway train and farmers are left to conclude that what we are witnessing here is not science driven, but merely politics, in a manner I have not witnessed in sixteen years of bird dogging this issue for my members. For the farmer, however, atrazine is not a matter of politics. It is a matter of staying in business in what is still a rough economy.

Most farmers live next to their fields. They raise their children in these environments. They live in the same communities that the trial lawyers are targeting. If there were any real harm in atrazine, the American farmer would have been the first to notice, and the first to care. They value atrazine because it is effective and it is safe. That's why well over half of all U.S. corn acres, two-thirds of U.S. sorghum acreage and about 90 percent of sugarcane is protected from weeds by the use of atrazine.

EPA estimated in 2006 that atrazine can save corn growers as much as $28 an acre. More recently, University of Chicago economist Don Coursey came up with a higher number than that—and found that the loss of atrazine, either by being banned by EPA or by EPA giving trial lawyers an excuse to force it off the market—would destroy almost 50,000 jobs and cost the U.S. economy as much as $5 billion.

And that cost is just related to corn production. Add to that the effect on sorghum and sugar cane growers in the United States and the number would be much higher.

Grain and sugar growers aren't the only ones who will feel the pain. The damage will radiate out through the American rural economy. Consider the multiplier effects on local tax revenues, hurting impacting social and other services in rural communities, as well as the gamut of small businesses in town who serve farm families.

While environmental activists demonize atrazine, farmers know better. Farmers know that atrazine enables an enormously productive benefit for the environment called conservation, or no-till, agriculture. In 2008, 64 percent of atrazine used in corn supported no-till or conservation agriculture—practices that help sequester carbon, reduce fuel usage and improve a farm's overall carbon footprint.

I know that members of this distinguished deliberative body have many important issues before you. The treatment of atrazine by activists and trial lawyers may not sound like one of them, hopefully the treatment by US EPA is. It is a matter of great importance to the farm economy.

We are a non-partisan organization that is grateful to leaders of both parties for leadership on agricultural issues. Farmers know the lay of the land and can distinguish natural disasters from man-made disasters. The scenario unfolding today very well could turn into one of the worst man-made disasters in American agriculture. If fifty years of safe use and sound science cannot allow atrazine to prevail, which technology can? Other less studied herbicides? Why would anyone believe that?

EPA, at the highest levels, needs to provide guidance to ensure that years of scientific review conducted under both Republican and Democratic Administrations is not undermined.

In addition, I believe our elected agricultural leaders must help EPA to understand the implications of their failure to do so.

Thank you.

DOCUMENTS SUBMITTED FOR THE RECORD

SEPTEMBER 23, 2010

Served 9/20/10

IN THE DISTRICT COURT OF ANDERSON COUNTY, KANSAS

HOLIDAY SHORES SANITARY DISTRICT, individually and on behalf of all others similarly situated,	
Plaintiff,	CASE NO. 10MV12
vs.	
SYNGENTA CROP PROTECTION, INC. and GROWMARK, INC.	
Defendants.	

SUBPOENA *DUCES TECUM*

TO:

Jere L. White
1 East Street #1
Garnett, KS 66032-1314

YOU ARE HEREBY COMMANDED to appear at the Best Western Olathe Hotel & Suites, 1580 S. Hamilton Cricle, Olathe, KS 660061-5377, on Thursday, September 30, 2010 at 10:00 a.m., and so on, from day to day until discharged, for the purpose of taking your deposition in the above matter.

YOU ARE FURTHER COMMANDED to produce, and bring with you, the documents listed on Exhibit "A" contained in the attached copy of Illinois Subpoena Duces Tecum incorporated herein by reference.

WITNESS my signature and the seal of said Court at Garnett, Kansas,

this 20th day of September, 2010

Clerk of the District Court,
Anderson County, Kansas

By: Kara S. Reynolds

Subpoena Requested By:
BARON & BUDD, PC
SCOTT SUMMY, pro hac vice
CARLA BURKE, pro hac vice
CELESTE EVANGELISTI, pro hac vice
CARY MCDOUGAL, pro hac vice
3102 Oak Lawn Avenue, Suite 1100
Dallas, TX 75129-3605
Pone: 214.521.3605
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Attorneys for Plaintiffs

SUBPOENA DUCES TECUM

IN THE CIRCUIT COURT FOR THE THIRD JUDICIAL CIRCUIT OF ILLINOIS,
MADISON COUNTY, EDWARDSVILLE, ILLINOIS

STATE OF ILLINOIS)
)ss.
COUNTY OF MADISON)

The People of the State of Illinois

to the Sheriff of said County--Greeting

WE COMMAND YOU TO SUMMON Jere L. White, 1 Easy St. 1, Garnett, KS 66032-2159 if he shall be found in your County, personally to be and appear on the 30th day of September, A.D. 2010 , before a notary public, Best Western Olathe Hotel & Suites, 1580 S. Hamilton Circle, Olathe, KS 66061-5377, and to bring with him/her and produce at the time and place aforesaid, to be used as evidence true and complete copies of any and all documents and tangible things sought in ATTACHED EXHIBIT A., then and there to testify, and the truth to speak, concerning all and singular those things of which s/he may have knowledge, or the said instrument of writing doth import of, and concerning certain suit now pending and undetermined in the said Third Judicial Circuit, Madison County, Illinois Court wherein HOLIDAY SHORES SANITARY DISTRICT, individually and on behalf of all others similarly situated, are Plaintiffs and SYNGENTA CROP PROTECTION, INC., and GROWMARK, INC. are Defendants, in the plea of Plaintiffs on the part of the said Third Judicial Circuit Court and this s/he shall in nowise omit, under penalty of what the law directs; and have you then and there this writ, with an endorsement thereon in what manner you shall have executed the same.

WITNESS
Clerk of our Said Third Judicial Circuit Court, and the Seal thereof.
At Edwardsville this _____ day of September, AD 2010.

LIST OF PARTIES &
ATTORNEYS OF RECORD
IN CASE NO. 04-L-710

Plaintiff

Holiday Shores Sanitary District, Individually and on behalf of all others similarly situated

Defendants

Syngenta Crop Protection, Inc., and Growmark, Inc.

Attorneys of Record

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EXHIBIT "A"
INSTRUCTIONS AND DEFINITIONS

Request. Pursuant to Supreme Court Rule 204(a)(4), Jere L. White is requested to produce the documents specified in this Exhibit "A" that are in the possession or control of Jere L. White.

Responsibility for production of documents. This request for documents is addressed to Jere L. White. For purposes of document production, documents in the possession of Jere L. White's agents, employees, attorneys, experts, and consultants are considered to be in the control of Jere L. White and shall be produced. If the requested documents are known by Jere L. White to exist, but are not in the possession or control of Jere L. White, Jere L. White shall produce documents or information calculated to lead to the discovery of the whereabouts of the requested documents.

"Document" defined. "Document" is to be interpreted broadly to include, but not be limited to, writings, records, files, correspondence, reports, memoranda, calendars, diaries, minutes, notes, research material, electronic messages, voicemail, e-mail, telephone message records or logs, computer and network activity logs, hard drives, backup data, removable computer storage media such as USB devices, hard drives, CD/DVD media, and memory storage devices, Web pages, databases, presentations, spreadsheets, software, books, ledgers and journals, orders, invoices, bills, drawings, images, photographs, video, and digital recordings. Information that serves to identify, locate, or link such material, such as file inventories, file folders, indices, and metadata, is also included in this definition.

"Syngenta" defined. "Syngenta" means Syngenta Crop Protection, Inc. and any of its merged, consolidated, or acquired predecessors, divisions, subdivisions, foreign subsidiaries, foreign subsidiaries of predecessors, domestic or foreign corporate parents, and/or affiliates including, but not limited to J.R. Geigy Limited, Ciba Crop Protection, Zeneca Agrochemicals, Ciba-Geigy Limited, and Novartis Agribusiness. This definition includes present or former officers, directors, agents, representatives, employees, and all other persons acting or purporting to act on behalf of Syngenta Crop Protection, Inc., or its predecessors, subsidiaries, and/or affiliates. "Predecessors" means any business firm, whether or not incorporated, which had all or some of its assets purchased or acquired by Syngenta Crop Protection, Inc., whether by merger, consolidation, or otherwise. "Subsidiaries" further means any business firm, whether or not incorporated, which is or was in

any way owned or controlled, in whole or in part, by Syngenta Crop Protection, Inc., or its predecessors. Representative means any partner, agent, employee, consultant, attorney, accountant, or anyone else acting or purporting to act for, at the direction of, or on behalf of another.

"Atrazine" defined. "Atrazine" should be understood to mean Atrazine, Atrazine-containing products, and any of their degradants. Degradants should be understood to refer to any of the chemicals into which Atrazine or Atrazine-containing products breaks down. Degradants include, but are not limited to, chlorotriazines and hydroxyl triazines. Chlorotriazines include, but are not limited to, deethylAtrazine, deisopropylAtrazine and diaminoAtrazine. Hydroxyl triazine breakdown products, include, but not limited to, ammeline, ammelide, cyanuric acid, hydroxyAtrazine, hydroxydeisopropylAtrazine, and hydroxydeethylAtrazine. Degradants also include, but are not limited to, chemical compounds formed from reactions between Atrazine and chemicals commonly found in water resources, such as N-nitrosoAtrazine. Degradants also include any other compounds formed by the transformation of Atrazine by chemical, photochemical, or biological reactions.

EXHIBIT "A"

1. All correspondence to and from Jere L. White concerning Syngenta and/or Atrazine.

2. All emails to, from, copying, or blind copying Jere L. White concerning Syngenta and/or Atrazine.

3. All internal memoranda and notes concerning Syngenta and/or Atrazine.

4. All studies relating to Atrazine conducted, authorized, sponsored, or supervised by Jere L. White.

5. Any raw data of the Atrazine studies identified in Request No. 4.

6. All notes, reports, analyses, or other documents relating to the Atrazine studies identified in Request No. 4.

7. Any source information or other documents relied upon by Jere L. White in the studies identified in Request No. 4.

8. Any surveys received from growers and/or farmers regarding their Atrazine or Atrazine containing product use on land in Illinois.

9. All reports, articles, or other documents written by Jere L. White concerning Atrazine or Syngenta.

10. Any source information or other documents relied upon by Jere L. White in the documents identified Request No. 9.

11. All documents related to presentations made by Jere L. White concerning Atrazine or Syngenta.

12. All documents related to persons present at any presentation made by Jere L. White concerning Atrazine or Syngenta.

13. Any documents evidencing monetary contributions or compensation made to Jere L. White by Syngenta.

14. Any documents relating training offered to Jere L. White by Syngenta.

15. All phone logs, notes, or other documents reflecting phone conversations between Jere L. White and Syngenta or concerning Atrazine.

16. All calendar entries reflecting meetings with Syngenta concerning Atrazine.

17. Reports disclosing lobbying on behalf of Syngenta or on legislation or regulation relating to Atrazine, filed under the Lobbying Disclosure Act, and all documents related to such lobbying.

18. All documents related to the Triazine Network, The Kansas Corn Growers Association, The Kansas Grain Sorghum Producers Association, and Crop Life America.

19. All written complaints and/or statements made concerning Syngenta and/or Atrazine.

20. All documents, handouts or flyers regarding Atrazine and/or Syngenta.

QUESTIONS AND ANSWERS

SEPTEMBER 23, 2010

Senate Committee on Agriculture, Nutrition & Forestry
"Oversight Hearing to Examine the Impact of EPA Regulation on Agriculture"
Questions for the Record
Administrator Jackson
September 23, 2010

Senator Blanche L. Lincoln

Inorganic arsenic

1. There have been concerns raised about the current IRIS (Integrated Risk Information System) process at EPA for evaluating a number of different elements, many that are naturally occurring in the environment, such as arsenic. I am concerned that in moving forward with IRIS assessments that EPA take great care to ensure the most up to date data and scientific research available will be used to inform these decisions. I would expect that this process would be open and transparent and allow for significant industry input and a comprehensive peer review process to be sure EPA gets the science right. Can you assure me that you will pause and take a fresh look at the arsenic risk assessment to ensure that you have addressed all of the concerns spelled out by peer review and that all the available science will be reviewed and evaluated prior to this assessment being finalized?

Clean Water Act

2. A growing area of concern for farmers is whether or not EPA has revised its definition of a discharge under the Clean Water Act. Is it EPA's position that one feather or livestock hair, released onto the ground around a farm is a potential to discharge under the CWA thus requiring a CWA permit? Are you aware that EPA officials from various regions have been telling farmers that this is EPA's position?

3. I have heard reports that EPA has routinely met with NGOs and environmental groups to discuss actions that should be taken against farms. At the same time, I consistently hear from my agricultural constituents that they have not been engaged by the agency - in other words they are not being treated as true stakeholders. In a number of recent court cases, including Chesapeake Bay TMDL litigation and the litigation involving nutrient criteria for Florida waters, EPA has entered into settlement agreements with environmental groups that will substantially impact farming practices. Yet agriculture had no role in those settlement agreements. Why were agriculture groups not included in these settlement agreements? How can EPA better ensure that the agriculture community is treated as a true stakeholder in these policymaking processes?

4. EPA has identified the Illinois River Watershed in Oklahoma and Arkansas as a "priority watershed." It is my understanding that this could lead to enforcement measures

against Arkansas poultry and cattle farms. What efforts has your agency made to reach out to farmers in this watershed regarding their compliance efforts? If it is true that EPA is starting to come on farms, I would think that EPA has sent each and every poultry farm some sort of guidance document to help them through this process. Does EPA have a document that can help farmers in the Illinois watershed understand what is expected of them by EPA? Will you provide something like this before having inspectors go on the farm to inspect a facility?

Pesticides - False/Misleading Product Brand Names

5. I am concerned about EPA's draft Pesticide Registration Notice (PR Notice) 2010-X entitled *False or Misleading Pesticide Product Brand Names*. The proposal would require registrants of consumer pesticide products to change trademarked brand names if they contain words that EPA now considers to be misleading such as "pro" or "green" even though the agency has previously approved these names. These products have been thoroughly evaluated through EPA's rigorous pesticide registration process and many of these products have been on the market for decades.

   Consumers do not seem to be claiming to be confused by pesticide product brand names. What evidence does EPA have to suggest that consumers find product brand names confusing?

   In releasing this proposal, what type of economic analysis has EPA done on the economic impacts to pesticide manufacturers, garden centers, retail stores and other businesses that sell pesticide products?

   Can EPA provide the Committee with assurances that it will refrain from requiring registrants to change existing product brand names through the registration process until a formal policy is finalized?

Pesticides - ESA

6. In 1988, Congress passed a provision in the amendments to the Endangered Species Act designed to "*minimize the impacts to persons engaged in agricultural food and fiber commodity production and other affected pesticide users and applicators.*" This provision known as "Section 1010" required – and continues to require – EPA provide the public with notice of, and opportunity for comment on a series of elements related to potential restrictions on pesticides that might result from compliance with ESA. In November 2005, when EPA announced changes to its Endangered Species Protection Program, the Agency acknowledged that Section 1010 "*provided a clear sense that Congress desires that EPA should fulfill its obligation to conserve listed species, while at the same time considering the needs of agriculture and other pesticide users.*" EPA made a commitment at that time that it would provide opportunity for public input during three phases of an assessment: prior to a "may affect determination" by EPA in

identifying potential mitigation; and prior to issuance of a Biological Opinion to EPA by the Services. Despite a statutory requirement and a 2005 commitment by the Agency to include stakeholders in its decision making, EPA has never established procedures to do so. I noticed that on your website, you state that the process for public input is "*under development*" and that "*EPA will publish specific details of this [public input] process on its Web site as they are developed and refined.*" ...but this was last updated several years ago. I read in the press this week that several grower organizations have just petitioned you to develop such procedures. Given you statements on transparency and inclusion of the public in decision making, I would have thought that this would be a priority for EPA. When can we expect the details on a public input process to be developed and published?

Tailoring Rule

7. I remain very concerned about the uncertainty created by the Tailoring Rule, which is undermining the Administration's own efforts to promote renewable energy and the green jobs that come with it. What actions will you take to address the Tailoring Rule's treatment of forest biomass emissions before the rule takes effect in 3.5 months? When will you make a decision regarding requests made by certain groups to stay implementation of the tailoring rule?

Boiler MACT

8. I joined 39 of my colleagues in expressing concerns about the potential impact of the Boiler MACT rule on existing and potential future users of biomass energy. How will you go about addressing concerns that I've heard from industries who say that the standards being proposed cannot be met by the best performing units in the real world? Also, have you worked with those using biomass for energy to determine how brand new, purpose built biomass plants can avoid being designated as "waste incinerators" under the boiler MACT rules?

Senator Saxby Chambliss

1. I am concerned about EPA's risk assessments for arsenic and dioxin. A full, complete and transparent assessment using the best and most complete science should be EPA's standard practice. While I understand the desire to complete these assessments in a timely fashion, EPA appears to be rushing to judgment and making decisions using questionable science. How is EPA assessing the significant costs associated with setting unnecessarily restrictive standards? Has EPA considered the negative impact that standards that are far more stringent than those followed by the rest of the world will have on U.S. agriculture? Has EPA worked with the U.S. Department of Agriculture and the U.S. Trade Representative to address the trade ramifications of its decisions? Please

describe EPA's plan to ensure that full, complete and transparent assessments are conducted for arsenic and dioxin.

2. As you can appreciate, farmers and ranchers need a certain and consistent regulatory environment in which to operate. In addition to the concerns that many of our producers have about EPA's expanding regulatory role in agriculture, inconsistency in approach and enforcement across EPA's regional offices is exacerbating such concern with confusion. I often hear that certain regional offices are more aggressive than others. What is EPA doing to ensure that its regional offices are implementing a consistent policy message and enforcement program for the agriculture sector?

3. It is my understanding that EPA requires companies developing biotechnology crops to seek registration of varieties with multiple traits even when the individual traits have already been reviewed by the agency. What is the policy rationale for this requirement? What is the justification for this additional step given EPA's limited resources as well as differing policies at the U.S. Department of Agriculture and the Food and Drug Administration?

4. EPA is concerned about grower compliance with its Insect Resistance Management refuge requirements for Bt crops. Biotech crop developers have attempted to address this concern by including seeds from their registered Bt crop with non-Bt seeds in a single package. It is my understanding that EPA is requiring that this "refuge in a bag" be registered as a new product – a step which adds additional cost in an amount that is approximately 50 percent of the original Bt crop registration. What is the scientific rationale for this policy?

5. I am concerned about EPA's development of numeric nutrient criteria (NNC) for Florida. This will affect Georgians and set precedent across the country. For Florida's agriculture sector, the initial cost of implementing the proposed criteria is estimated to be between $855 million and $3 billion. Further, once implemented, compliance with these criteria will cost anywhere from $902 million to $1.6 billion each year. This means more than 14,500 full and part time jobs will be lost. How does EPA plan to address the enormous cost and basic scientific questions raised by the NNC for Florida? What alternatives is EPA considering to setting these unattainable standards?

Senator Ben Nelson

Question 1

E15: Administrator Jackson, I was hoping you could provide my colleagues and I an update EPA's approval of E15.

Additionally, while this falls more under DOE's purview, I wanted to gain a better understanding as to why DOE is only testing E15 and E20 on tiers – 2007 and newer which you said should be completed by the end of this month and 2001-2006 in November.

Are there plans to test vehicles prior to 2000?

Question 2
EPA Numeric Nutrient Criteria (See below for Background):

Administrator Jackson, I have begun hearing concerns back home regarding EPA's development of Clean Water Act numeric nutrient criteria in Florida and the effects these criteria, stringency, and costs could potentially mean to states like Nebraska.

My understanding is the estimated cost for numeric nutrient criteria for Florida is in the range of $1 to $1.6 billion annually.

Can you please tell me if EPA has done a national and state-by-state analysis of the costs to the regulated community, to agriculture, and to the economy of EPA's movement towards using numeric nutrient criteria to implement the Clean Water Act?

If so, can you tell me what this analysis found?

If not, can you tell me why not and when, if ever, we might be able to see such analysis from EPA?

The reason I am interested if EPA has done any further analysis is it is my understanding that groups who pushed for the lawsuit in Florida that lead to EPA's NNC there are exploring other lawsuits and that states like Nebraska could anticipate having to develop NNC similar to those for Florida in the near future if those efforts prove successful.

Could you please describe for me the safeguards that exist to make sure that Nebraska can maintain the integrity and autonomy over our Clean Water Act standards that have an enormous and direct effect on land-use and economic activity in the state?

Question 3 Atrazine:

I have heard from a number of Nebraska commodity groups regarding EPA's re-review of the herbicide atrazine.

There is concern that this re-review is politically motivated by the environmental community and would result in the ban of atrazine.

This could be a major economic blow to agricultural community, particularly in Nebraska, where 69 percent of field corn and 69 percent of sorghum is treated with atrazine, or products containing atrazine.

According to the EPA's own analysis – in 2003 I believe – when it deemed atrazine environmentally acceptable it analyzed the potential economic impact to the corn industry if atrazine were made unavailable. The analysis found that growers would incur an average loss of 9 bushels per acre (nationwide corn yield averaged 138 bushels per acre in 2001), as well as an increased cost for a replacement herbicide.

With EPA's recent review of atrazine, why is the Agency devoting its time and resources to this re-review considering the product has been commonly used in Nebraska and across the country for over 50 years?

Considering the wide use and the economic impact that would occur if EPA were to ban atrazine, what information does EPA have on alternatives that would replace atrazine if atrazine is not available, and has EPA evaluated the environmental, human health, and economic consequences of using those replacements if atrazine is not available?

Question 4
NPDES Permit Exemption:

Historically, irrigation districts using herbicides to manage weeds in canals, laterals, and drains fall under the statutory irrigation return flow exemption afforded by the Clean Water Act which considers return flows to be 'non-point' sources of pollutants.

However, in June, EPA announced its intention to impose new permit requirements on users of certain aquatic pesticides, including those using aquatic herbicides to maintain irrigation systems. EPA's proposal was issued in response to a 2009 Federal Appeals Court decision that pesticides administered in water be considered "pollutants" requiring a permit under the National Pollutant Discharge Elimination System (NPDES) as governed by the Clean Water Act.

The proposed general permit threatens to bring irrigation district herbicide use under the NPDES umbrella even though the court's decision focused on the definition of a 'pollutant' and not on the term 'point source.'

Is EPA reconsidering its draft permit language to ensure irrigation district herbicide use is exempt from the NPDES process as a non-point source activity based on the statutory return flow exemption?"

Question 5
Dust Rule: An EPA proposal that has caused some of the greatest anxiety from my producers back home is EPA's proposal to cut **coarse particulate matter** standard in half to from **150 micrograms per cubic meter to** 65-85 micrograms per cubic meter.

As anyone who has worked in a feed yard, combined a corn field, or driven in to town on a dirt road knows; dust is a daily occurrence in rural America.

My concern is by decreasing this standard without sound scientific support this stands to dramatically hurt all aspects of agricultural production from transporting crops to livestock in pens.

What scientific health evidence supports decreasing the 150 micrograms per cubic meter standard for coarse particulate matter?

Question 6
Greenhouse Gas Emission Reporting for Livestock Operations:

Administrator Jackson, last year, my colleagues and I placed a restriction on EPA from implementing a mandatory green house gas emissions requirement for livestock operations emitting over 25,000 metric tons of green house gases.

However, the monitoring and reporting requirements are still law and livestock operations are required to submit their first round of reports in 2011.

However, I am told there has been no guidance from EPA on this.

What is the status of EPA's implementation of Subpart JJ of the mandatory green house gas emissions reporting for livestock operations?

Question 7
EPA Plans for CERCLA and EPCRA:

Administrator Jackson, on January 20, 2009, EPA issued its rules on CERCLA and EPCRA regarding animal wastes from farms. Those that were not classified as CAFOS were exempted from EPCRA reporting requirements.

However, this exemption has been challenged in a lawsuit against EPA. On July 7, 2010, EPA requested that the case be remanded while they revise their final rule on this issue.

What are the plans for revision of the animal waste exemption from CERCLA and EPCRA now that you have requested remand of the lawsuit involving the exemption?

Question 8
Inorganic Arsenic:

Administrator Jackson, eleven months ago I wrote you regarding my concerns with the EPA Office of Research and Development's (ORD) ongoing IRIS Assessment of inorganic arsenic, which would increase the "cancer slope" (i.e. the cancer potency factor) by 17 fold from what is currently being used for environmental risk assessments.

The consequences of this IRIS Assessment are staggering – particularly when one considers the normal dietary daily intake of naturally occurring arsenic from food and water.

New EPA Drinking Water standards – which would be required by the IRIS Assessment – would mean that the vast majority of water systems in my State of Nebraska would be in non-compliance. Most soils in Nebraska would exceed EPA's targeted risk range and Food Safety Advisories would likely be placed on several crops and commodities.

I am concerned that we get the science correct. Dr. Samuel Cohen at the University of Nebraska whose work I cited in my letter – one of the leading cancer researchers in the country – and many other scientists – strongly disagree with the IRIS Assessment's conclusions. Many EPA scientists have also expressed their disagreement.

My concern is that ORD still plans to finalize this controversial Assessment this fall.

Yet given the enormous potential consequences of this ruling would the agency commit to re-examining the diversity of scientific opinion and to fully understanding the potential impact on U.S. agriculture before any plans are made to finalize the IRIS Assessment of inorganic arsenic?

Senator Kirsten E. Gillibrand

1) I have been hearing from New York farmers about the difficulty of having varied definitions of "renewable biomass" from one piece of legislation to another. The 2008 Farm Bill recognizes that virtually all forest and agricultural biomass is inherently renewable, where as the 2007 Energy Independence and Security Act's definition limits biomass crops to those grown on active farmland, meaning those grown on idle farmland are ineligible. This inconsistency in the federal definition makes it very difficult for farmers to begin this form of production because they are not able to plan accordingly with how they will fit in with the relevant federal programs. Do you support a consistent definition of "renewable biomass" across all federal energy programs? If so, do you support a broad definition which will allow our farmers to engage in growing biomass crops to help our country attain energy independence, as well as producing a green, recycled carbon form of energy?

2) The Clean Air Act Tailoring Rule published by EPA last June regulates emission from the combustion of biomass in the same manner as emissions from the combustion of fossil fuels. Since the process of growing biomass crops sequesters carbon, new energy produced from biomass is a form of recycling carbon. Would you consider revising the

EPA's approach to biomass emissions to factor in other national objectives of energy independence and carbon sequestration to mitigate climate change?

3) In recent meetings with farmers from across New York, I have heard concerns about EPA's proposed Spray Drift regulations. The concern is that the new regulations treat "no drift" as an option to farmers, who tell me that drift is unavoidable. They do, however, use modern technologies and best professional judgment to minimize drift. Have you considered engaging the agriculture community into the process of rule-making surrounding spray drift regulations to ensure best practice is employed but recognizing that 'de minimus' levels of spray drift is unavoidable?

Senator Mitch McConnell

Over the past eighteen months, U.S. Environmental Protection Agency (EPA) has dramatically stepped up the pace and scope of regulatory activity. Under your leadership, the Administration has pushed sweeping rules to regulate greenhouse-gas emissions, challenged coal companies over their mining practices, and questioned the methods farmers are using to plant and harvest their crops. EPA has demonstrated that politics are more important than following well established, congressionally approved procedures. From talking to many farmers in Kentucky, let me assure you, there is a feeling in some agriculture circles that an aggressive EPA has set out to make U.S. agriculture obsolete. If various EPA regulations being considered were imposed, they would raise the price of everything from electricity, to gasoline, to fertilizer, to food on our supermarket shelves. These are just a few questions and concerns that my constituents have raised with regard to the arbitrary actions taken by EPA.

Question # 1: In Kentucky, Atrazine herbicide is used to treat 78% of the state's corn crop, and 98% of our sorghum crop. As I understand it, Atrazine is used in over 50 different herbicide formulations. According to EPA's own estimates, it would cost $28 dollars per acre across the United States to replace Atrazine, which is the difference between making a crop profit and losing one's shirt. Since EPA's new review is predicated on what appears to be an anti-pesticide, activist-driven agenda, how can you assure Kentucky farmers that your Agency will not deprive them of one of their most important crop input tools especially considering this nation's fragile economy?

Question #2: Coal Ash is on the brink of being deemed a hazardous waste by your Agency. The mining industry has been proactive in finding ways to reuse coal ash in mine reclamation projects, which has been previously recognized both by the National Academy of Sciences and the EPA as desirable in appropriate circumstances. Despite the jobs and innovation that the beneficial reuse industry has created, EPA is proposing to classify coal ash as hazardous waste without ~~further~~ adequately investigating the implications of the classification on the coal industry. In preparing regulations, EPA has also not considered the implications of a hazardous waste designation on the small farmers across rural

areas. What specifically does EPA aim to accomplish from proposing a hazardous waste designation that would cripple so many industries at once, when an equally environmentally protective regulatory framework can be implemented under Subtitle D of RCRA?

Question #3: Your Agency recently released stringent water quality requirements for mountaintop mining that may eliminate at least one quarter of new Central Appalachian coal production. EPA's guidance, which is aimed mostly at surface mining operations that make up the bulk of mountaintop mining, attributes adverse impacts on water quality to mining practices. As you know, other industries, such as agriculture or construction, in their day-to-day operations can contribute to runoff in surface waters. If the purpose of your guidance is to greater protect aquatic life and fresh water streams in central Appalachia, will you look to expand your guidance to include other industries that also contribute to runoff in surface waters? Will any proposed changes to the guidance be subject to scientific peer review and public comment?

Question #4: Your Agency is searching for scientifically sound evidence to support a need for tighter regulations on PM-10 dust, or farm dust. However, some experts say there is no evidence that farm dust leads to long-term respiratory problems, and farm dust is not classified as a pollutant. How does the Agency justify grouping farm dust with industrial pollution and car fumes in this set of regulations? Additionally, further limitations on farm dust are especially burdensome to small farmers who struggle to compete with large agribusinesses. What steps does the agency plan to take to find an effective and economic way for farmers to reduce dust?

Question #5: Your Agency has issued a guidance proposal for new pesticide labels, which would prompt higher costs and (potentially) debilitating legal fees. I am greatly concerned that the new regulations proposed by the EPA National Pollutant Discharge Elimination System Permit (NPDES) Pesticide General Permit (PGP) would negatively impact businesses and many people in the farming community. What additional benefits would this regulation provide to the environment or public health that is not already established through various regulatory agencies and the FIFRA label requirements?

Question #6: As you know, your Agency is proposing Boiler MACT emissions limits of air pollutants for industrial, commercial and institutional incinerators, boilers and process heaters. A recent study suggests that for every $1 billion in compliance costs, 16,000 jobs will be put in jeopardy. Overall, 337,000 jobs are projected to be jeopardized with the new emissions standards fully in place. With such a huge national deficit, and record high unemployment rates, how does your Agency propose to save these jobs, which, if lost, could forfeit over $67.4 billion in industry sales, and $5.7 billion in lost tax revenue?

Senator Pat Roberts

1. I understand that EPA will soon issue preliminary remediation goals for dioxin. Has EPA considered the negative impacts on production agriculture of setting a dioxin standard below the rest of the world and even below normal background levels? How might these standards disadvantage exports of agriculture products?

2. Administrator Jackson, in the past, EPA has worked with USDA and FDA to compile a comprehensive Question and Answer report on dioxin. However, I am aware that this document does not appear to have been updated to take into account the National Academy of Sciences (NAS) review, EPA's response to that review, or any comments by a number of the experts that were on the NAS review panel that have questioned some of EPA's conclusions. Can you assure me that before EPA takes any action on dioxin that you will work with USDA and HHS to fully review the Question and Answer document?

3. Additionally, will you fully vet the dioxin report with agriculture and food industry experts to prevent negative public perceptions to our nation's food supply?

4. Administrator Jackson, your regional office in Kansas City, many farm organizations in Kansas and a number of incorporated communities have begun discussing options to address specific regions that are in ozone non-attainment due to the annual, prescribed burning of the Flint Hills. The Flint Hills region is the world's largest undisturbed prairie ecosystem largely due in part to natural, early springtime range fires that have occurred for centuries. How can your agency work with both urban centers and rural ranchers to ensure that range burning occurring on one or two days in early April does not result in urban centers accruing ozone non-attainment days?

Senator Mike Johanns

1. Right now, our farmers and ranchers are looking at regulation of greenhouse gases; no clear answer on E15; EPA regulating milk the same way it regulates oil; EPA regulation of dust; significantly expanded EPA regulation of pesticides; just to name a few.

   Do you know how much any one of those proposed regulations would cost the average farmer or rancher? Has any cost assessment been done on any of the proposed rules that would apply to agriculture? Please provide an accounting for each rule mentioned.

2. When proposing new rules and regulations, does EPA consider the impact it will have on agriculture? Can you explain all the steps taken by EPA to ensure proposals will not negatively impact agriculture?

3. When does EPA intend to make a decision regarding E15?

4. When does EPA expect to announce a decision to exempt milk storage from SPCC regulations?

5. EPA's draft policy assessment for the review of the air quality standard for dust indicated that EPA could consider regulating dust at a level as stringent as 65 to 85 micrograms per cubic meter. According to EPA's monitoring data for dust levels in Nebraska, many areas of my state exceed this threshold and would be designated as "nonattainment areas" if this were the standard adopted.

   Won't this place a significant administrative burden on states when "nonattainment areas" are designated? Won't states with "nonattainment areas" be required to develop state implementation plans to control dust levels? What type of dust control measures can be included in these plans? Additional permit requirements? Tillage restrictions?

6. Historically, irrigation districts using herbicides to manage weeds in canals, laterals, and drains fall under the statutory irrigation return flow exemption afforded by the Clean Water Act, which considers return flows to be 'non-point' sources of pollutants. However, the proposed general permit threatens to bring irrigation district herbicide use under the NPDES umbrella even though the court's decision focused on the definition of a 'pollutant' and not on the term 'point source.'

   Is EPA reconsidering its draft permit language to ensure irrigation district herbicide use is exempt from the NPDES process as a non-point source activity based on Congress' clear statutory intent?

7. Nebraska has a significant number of small electric cooperatives and municipal utilities that rely on coal-fired generation, so I am particularly concerned about what EPA believes its proposal to regulate coal combustion residues as a hazardous waste will do to small entities. As you know, EPA has the obligation to assure that the proposal takes into consideration its economic impacts on small business and minimizes the burden on small entities to the extent feasible while still meeting applicable statutory obligations.

   How has the agency met this goal? What are the results of EPA's economic analysis of the impacts of this rule on small entities, including electric cooperatives and municipal utilities?

Senator Chuck Grassley

Pesticide Spray Drift

An issue that leaves legal uncertainty for producers and pesticide applicators is spray drift. I think everyone here acknowledges that even in the most ideal weather and ground conditions, a small level of spray drift is inevitable.

However, late last year, due to pressure from environmentalists, EPA proposed new spray drift label language, which essentially disallows application if drift "could cause" an adverse effect. So basically it comes down to no-drift, or opening yourself up to potential litigation.

(1) Do you believe that a zero tolerance policy is attainable? Is it fair to farmers? Is it reasonable to assume that this could open the door to legal uncertainty for producers who could potentially be in violation if they apply pesticides that drift and then it floats somewhere coming into contact with people? Even if those people are not harmed and the pesticide doesn't pose an "unreasonable adverse effect?"

Atrazine

I've been farming for over 50 years, and I've probably been using Atrazine products in one way or another on my corn for just about as long. I believe something like 2/3 of all corn grown in the U.S. has Atrazine applied to it. It's frustrating to me to hear that environmentalists can just walk in the door at EPA and say "we don't like X chemical" and suddenly EPA is conducting a re-evaluation of a herbicide that we've already seen over 6000 studies on. But it's underway, so there isn't much we can do about that.

(2) Atrazine was just reviewed in 2006 and rescheduled for a re-review just 3 years from now. Is there a formal process that EPA goes through to determine whether a re-evaluation of a chemical is warranted before the scheduled review? If so, please describe this approach and how EPA determines which chemicals need re-review prior to a scheduled review. If not, why not?

(3) Just like everyone here, I want our citizens and environment to be protected from harmful effects, but if Atrazine is banned I also recognize that increased costs on our family farmers for alternatives could have a large impact on their bottom line. It's my understanding that about 7 years ago EPA estimated that replacement costs for atrazine for corn growers would run about $28/acre. Is EPA considering updating these numbers for 2010? I think we all realize that input costs have risen drastically in the last 5 years so I think a re-review of the potential economic impacts would be warranted.

Dust

For years, I've been advocating that the EPA hasn't been taking into account the needs of rural America and farmers in a common sense way when it comes to dust. Instead, we are continually challenged with potentially more and more stringent guidelines on dust.

I and 21 of my bi-partisan Senate colleagues, including many on this Committee, recently wrote to you about our concerns with the Clean Air Scientific Advisory Committee draft Policy Assessment. You had Assistant Administrator McCarthy respond on your behalf. I'd like to put copies of both letters in the record please Madam Chairwoman.

I want to point out something from the EPA response we received. *Quote:* "I want to note a correction with regard to your statement that '[a] coarse Particulate Matter National Ambient Air Quality Standards of 65-85 $\mu g/m^3$ would be twice as stringent as the current standard.' This is incorrect. According to EPA's draft Policy Assessment, it would be appropriate to consider this range of alternative PM10 numerical levels only in conjunction with a significant change in the method used to calculate whether an area attains the standard. Such a change in the calculation could provide more flexibility than the current standard and greater year-to-year stability for the states." *Unquote*.

(4) The EPA claims that the current standard of 150 $\mu g/m^3$ with a 99th percentile form, which means the standard can be violated an average of one time per year over a three year period and still remain in compliance, is actually *equivalent* to a standard in the range of 65-85 $\mu g/m^3$ with a 98th percentile form which in essence means the standard can be violated an average of 7 times per year over a three year period and still remain in compliance.

While your assertion may be correct in non-dusty eastern urban areas of the US, it certainly does not hold true in more rural, dusty, agricultural areas of the country where much more dust is typically generated. I think it is pretty clear that the likelihood of agriculture violating a low dust National Ambient Air Quality Standard of 65-85 micrograms per cubic meter more than 7 times per year is pretty high. In fact, such a tightened standard is likely to directly affect rural, agricultural areas much more than urban, non-dusty areas.

This reality is perplexing since you may recall that the preamble to the 2006 dust rule states that EPA should not focus dust control efforts on rural areas, but instead should focus on urban dust since it is contaminated with pollutants generated by high traffic volume. If EPA's main concern is urban areas, why are you proposing changes to a regulation that would cause great economic harm in rural areas?

Combined Animal Feeding Operations (CAFOs)

In 2005 the Second Circuit Court of Appeals ruled that EPA was wrongly requiring under a 2003 rule that CAFOs *("K-foes")* obtain a Clean Water Act permit. The Waterkeeper decision stated that CAFOs who simply have a "potential to discharge" cannot be required to get a federal permit because the Clean Water Act regulates discharges.

As a result, the 2003 rule had to be modified to make it clear that only CAFOs that discharge or propose to discharge are required to apply for a permit. While CAFOs that do not discharge nor intend to do so can apply for and receive a permit, it is the CAFOs decision to make. Hence the 2008 rule. However because of settlements with private environmental groups, suddenly the EPA is going further than the 2005 decision. The most concerning aspect is the proposal that several major amendments are coming down the pike on the 2008 rule. I want to remind everyone the 2008 rule only became final late last year.

(5) Why is EPA already looking at making changes to the 2008 CAFO rule, when we barely have it in place? How has EPA determined what amendments are appropriate without full knowledge of how the current rule is working?

Climate Change

As you know, agriculture is an energy intensive industry and family farmers are very vulnerable to any increases in their input costs. Therefore, many farmers are very nervous about how any climate change regulations might affect them, directly or indirectly.

EPA has now issued an endangerment finding for carbon dioxide that has triggered a cascade of other regulations under the Clean Air Act. The initial legislation that became the Clean Air Act predates me, but I was in Congress when we passed much of what is now in the Clean Air Act and I can tell you that we never intended to regulate greenhouse gasses the same way as traditional air pollution.

As you well know, the fact that you are using a tool designed for different purposes leaves room for many unintended consequences, including the possibility of animal agriculture being labeled an emissions source. I know you've attempted to address some of these unintended consequences with the so called "tailoring rule," but some have questioned whether EPA has the legal authority to waive the statutory thresholds in the Act. So, EPA is trying to solve problems created by the fact that it is using a law in a way Congress never intended by essentially rewriting inconvenient parts of that law through regulation.

I am reminded of Congressman Dingell's prediction that EPA regulations of greenhouse gasses would be "a glorious mess."

(6) My question to you is whether, at any point when EPA was contemplating issuing the endangerment finding, you were personally concerned about the fact that, the Supreme Court ruling notwithstanding, Congress never intended the Clean Air Act to be used in this way. Did that give you pause at all?

(7) Also, the very fact that Congress was debating whether and how to regulate CO2 should also have made you stop and think about whether it is appropriate for EPA to act without clear authorization from Congress. To what extent is your decision-making on this and other issues guided by a desire to carry out the intent of Congress or a motivation to pursue what you and your staff feel is the right policy?

Senate Committee on Agriculture, Nutrition & Forestry
"Oversight Hearing to Examine the Impact of EPA Regulation on Agriculture"
Questions for the Record
Administrator Jackson
September 23, 2010

Senator Blanche L. Lincoln

Lincoln 1. There have been concerns raised about the current IRIS (Integrated Risk Information System) process at EPA for evaluating a number of different elements, many that are naturally occurring in the environment, such as arsenic. I am concerned that in moving forward with IRIS assessments that EPA take great care to ensure the most up to date data and scientific research available will be used to inform these decisions. I would expect that this process would be open and transparent and allow for significant industry input and a comprehensive peer review process to be sure EPA gets the science right. Can you assure me that you will pause and take a fresh look at the arsenic risk assessment to ensure that you have addressed all of the concerns spelled out by peer review and that all the available science will be reviewed and evaluated prior to this assessment being finalized?

Answer: The development process for human health assessments in EPA's IRIS program is a model for openness, transparency, scientific integrity, and scientific quality. IRIS assessments are subject to rigorous, open, and independent external peer review. In addition, for every IRIS assessment, there are opportunities for public review and comment. Whether the public comments are from environmental groups, industry groups, the public health community, or individual citizens, this public input step is an integral and important part of the process.

EPA's inorganic arsenic assessment for cancer effects that may result from chronic exposure, initiated in 2003, has been developed in an open and transparent process with multiple opportunities for public review and comment. EPA's 2005 External Review Draft Toxicological Review of Ingested Arsenic[1] underwent a comprehensive and independent external peer review by an expert panel convened by EPA's Science Advisory Board (SAB). The SAB's review included six opportunities for public comment since 2005. EPA received the SAB's final peer review report in 2007. EPA revised the draft assessment based on the peer review and public comments. Because the arsenic assessment is a high profile activity, in February 2010, EPA took the extra step, not generally included in the IRIS assessment development process, of going back to the SAB for another review. EPA asked the SAB Arsenic Work Group to review EPA's implementation of the SAB's 2007 recommendations and included an additional opportunity for public review and comment. The SAB Arsenic Work Group recently completed its review of the 2010 External Review Draft "Toxicological Review of Inorganic Arsenic (cancer)."[2] EPA is currently considering their conclusions and recommendations, in addition to the public comments, as the Agency moves to complete this assessment.

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[1] http://oaspub.epa.gov/eims/eimscomm.getfile?p_download_id=494513
[2] http://cfpub.epa.gov/ncea/iris_drafts/recordisplay.cfm?deid=219111

Lincoln 2. A growing area of concern for farmers is whether or not EPA has revised its definition of a discharge under the Clean Water Act. Is it EPA's position that one feather or livestock hair, released onto the ground around a farm is a potential to discharge under the CWA thus requiring a CWA permit? Are you aware that EPA officials from various regions have been telling farmers that this is EPA's position?

Answer: EPA wants to assure the agriculture community that it has not revised its definition of "discharge" under the Clean Water Act. We are working to provide farmers a fair, flexible and environmentally effective approach for implementing the requirements of the statute and the agency's regulations. It is not EPA's position that a single feather or livestock hair released onto the ground around a farm is a discharge under the CWA that requires a CWA permit. Moreover, it is important to emphasize that proposed Clean Water Protection Guidance released in April by EPA and the U.S. Army Corps of Engineers does not change any existing exemptions for agricultural activities under the CWA. EPA Headquarters communicates regularly with its Regional offices to ensure consistent national policy on these issues. EPA will continue its outreach to the agricultural community to clarify and correct any mischaracterizations of current requirements.

Lincoln 3. I have heard reports that EPA has routinely met with NGOs and environmental groups to discuss actions that should be taken against farms. At the same time, I consistently hear from my agricultural constituents that they have not been engaged by the agency - in other words they are not being treated as true stakeholders. In a number of recent court cases, including Chesapeake Bay TMDL litigation and the litigation involving nutrient criteria for Florida waters, EPA has entered into settlement agreements with environmental groups that will substantially impact farming practices. Yet agriculture had no role in those settlement agreements. Why were agriculture groups not included in these settlement agreements? How can EPA better ensure that the agriculture community is treated as a true stakeholder in these policymaking processes?

Answer: EPA is committed to providing an effective opportunity for input from all stakeholders in shaping strategies to protect our nation's water bodies, including input from the agricultural community. EPA routinely meets with agriculture industry representatives, including a regular monthly meeting between agriculture stakeholders and the Assistant Administrator for Water in Washington, D.C. EPA has found these monthly discussions a valuable opportunity to keep agricultural stakeholders informed about agency initiatives and to get feedback from them on these issues. The Agency often solicits industry views on EPA's efforts to promote clean water and willingly accepts invitations to meet. EPA will continue to promote opportunities to engage and inform all stakeholder groups, including those representing agriculture.

Lincoln 4. EPA has identified the Illinois River Watershed in Oklahoma and Arkansas as a "priority watershed." It is my understanding that this could lead to enforcement measures against Arkansas poultry and cattle farms. What efforts has your agency made to reach out to farmers in this watershed regarding their compliance efforts? If it is true that EPA is starting to come on farms, I would think that EPA has sent each and every poultry farm some sort of guidance document to help them through this process. Does EPA have a document that can help farmers in the Illinois watershed understand what is expected of them by EPA? Will you provide

something like this before having inspectors go on the farm to inspect a facility?

Answer: One of the factors the Agency's national guidance recommends that EPA regions consider in selecting concentrated animal feeding operations (CAFOs) for Clean Water Act (CWA) compliance evaluation is proximity to surface waters impaired by pollutants (such as nutrients and bacteria) found in animal wastes. For example, EPA is examining compliance of CAFOs in the Illinois River Watershed because the State of Arkansas and the State of Oklahoma have formally listed several segments of the Illinois River and several of its tributaries as "impaired" due to the presence of pollutants such as phosphorus and E. coli, which are associated with and can result from animal agriculture.

EPA is taking a diverse set of actions to address nutrient and pathogen pollution in the Illinois River Watershed in an effort to protect human health and the environment. Such compliance activities range from informal activities such as informational stakeholder outreach meetings and compliance assistance, as well as more formal compliance inspections, and, if necessary, formal enforcement actions.

Lincoln 5. I am concerned about EPA's draft Pesticide Registration Notice (PR Notice) 2010-X entitled False or Misleading Pesticide Product Brand Names. The proposal would require registrants of consumer pesticide products to change trademarked brand names if they contain words that EPA now considers to be misleading such as "pro" or "green" even though the agency has previously approved these names. These products have been thoroughly evaluated through EPA's rigorous pesticide registration process and many of these products have been on the market for decades.

Consumers do not seem to be claiming to be confused by pesticide product brand names. What evidence does EPA have to suggest that consumers find product brand names confusing?

In releasing this proposal, what type of economic analysis has EPA done on the economic impacts to pesticide manufacturers, garden centers, retail stores and other businesses that sell pesticide products?

Can EPA provide the Committee with assurances that it will refrain from requiring registrants to change existing product brand names through the registration process until a formal policy is finalized?

Answer: EPA is aware of registrants' concerns about the draft PR Notice 2010-X concerning false or misleading pesticide product brand names. As background, for a registrant to lawfully sell and distribute a pesticide in the United States, the product cannot be "misbranded" as defined in the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) [see FIFRA section 12(a)(1)(E)]. FIFRA defines "misbranded," in part, as having labeling that "bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular" [see FIFRA section 2(q)(1)(A)]. Therefore, if a brand name or product name that appears on a product's labeling is false or misleading, it would be a violation of FIFRA to sell or distribute the product. In addition, EPA could not grant a registration to a product that would be misbranded [see FIFRA section 3(c)(5)(B)].

Regarding your question about consumers, EPA misbranding decisions consider but are not based solely on complaints from consumers. EPA considers all available information in reaching its decisions, which reflect EPA's overall judgments about whether any part of a product's labeling, such as a product's name is "false or misleading in any particular."

Regarding an economic analysis, one was not done since the guidance does not impose any new requirements on the Agency, applicants, or registrants.

Finally, during the process of developing the final guidance, EPA will continue its current product review process. EPA's purpose in issuing guidance is to bring greater clarity and certainty for registrants and the public concerning the legal requirements for false and misleading claims. EPA will consider all comments received on the draft PR Notice.

Lincoln 6. In 1988, Congress passed a provision in the amendments to the Endangered Species Act designed to "minimize the impacts to persons engaged in agricultural food and fiber commodity production and other affected pesticide users and applicators." This provision known as "Section 1010" required – and continues to require – EPA provide the public with notice of, and opportunity for comment on a series of elements related to potential restrictions on pesticides that might result from compliance with ESA. In November 2005, when EPA announced changes to its Endangered Species Protection Program, the Agency acknowledged that Section 1010 "provided a clear sense that Congress desires that EPA should fulfill its obligation to conserve listed species, while at the same time considering the needs of agriculture and other pesticide users." EPA made a commitment at that time that it would provide opportunity for public input during three phases of an assessment: prior to a "may affect determination" by EPA in identifying potential mitigation; and prior to issuance of a Biological Opinion to EPA by the Services. Despite a statutory requirement and a 2005 commitment by the Agency to include stakeholders in its decision making, EPA has never established procedures to do so. I noticed that on your website, you state that the process for public input is "under development" and that "EPA will publish specific details of this [public input] process on its Web site as they are developed and refined." ...but this was last updated several years ago. I read in the press this week that several grower organizations have just petitioned you to develop such procedures. Given you statements on transparency and inclusion of the public in decision making, I would have thought that this would be a priority for EPA. When can we expect the details on a public input process to be developed and published?

Answer: EPA is committed to providing opportunities for all interested stakeholders to participate in its decision-making via an open and transparent process. In fact, the Agency's registration review process, developed in collaboration with a broad spectrum of stakeholders, provides multiple opportunities for public involvement at several stages in the review process – at the problem formulation stage in the beginning of the review; at the point when the Agency has completed a preliminary risk assessment; and at the point where the Agency proposes a registration review decision, including any necessary mitigation. The registration review public comment periods are also used to invite comment on endangered species-related issues of concern.

Concerning Biological Opinions, while EPA has faced challenges under the court-ordered deadlines resulting from litigation, the Agency is committed to more actively soliciting stakeholder input as we consider implementation of Reasonable and Prudent Alternatives (RPAs) coming out of Biological Opinions resulting from the litigation. Any public process for Endangered Species Act (ESA) consultations on pesticides must necessarily include input from EPA, other federal agencies, and the stakeholder community. In September 2010, EPA and NOAA's National Marine Fisheries Service (NMFS) prepared a plan for increased stakeholder involvement related to the remaining ESA consultations relevant to the Pacific Northwest salmon lawsuit. To further facilitate our public comment process on that lawsuit, EPA has posted to its web site (http://www.epa.gov/oppfead1/endanger/litstatus/effects/) the schedule for the remaining draft Biological Opinions and public comment periods on those documents. EPA will continue to remind stakeholders proactively to participate during those periods.

Additionally, EPA, NMFS, and FWS have agreed to participate in a Minor Crop Farmer Alliance (MCFA) workshop to improve opportunities for grower involvement during ESA consultations. This workshop was held during the week of May 23, 2011, and a summary of the meeting will be available in approximately four weeks. This may be the first of several workshops. Such workshops will provide a platform for information exchange with growers and help determine the types of information growers can provide to inform and refine Biological Opinions and EPA risk assessments.

Several grower organizations in the western U.S. known collectively as the Growers for ESA Transparency (GET), recently submitted a petition for EPA rulemaking to establish procedures consistent with the notice and comment provisions of Section 1010 of the 1988 amendments to the ESA. EPA published the GET coalition petition for public comment in December 2010. The comment period closed in late February, 2011. Comments are being evaluated and EPA expects to respond to the petition later this year.

Lincoln 7. I remain very concerned about the uncertainty created by the Tailoring Rule, which is undermining the Administration's own efforts to promote renewable energy and the green jobs that come with it. What actions will you take to address the Tailoring Rule's treatment of forest biomass emissions before the rule takes effect in 3.5 months? When will you make a decision regarding requests made by certain groups to stay implementation of the tailoring rule?

Answer: In the final Tailoring Rule, we recognized that the treatment of biomass combustion and biogenic CO2 emissions is an issue that requires further analysis, particularly on the issue of how best to address biogenic emissions of carbon dioxide under EPA's air permitting programs. As a result, on July 15, 2010, we solicited views from stakeholders and the public on the subject by issuing a formal Call for Information (CFI) on the issues surrounding the treatment of biomass-related GHG emissions under the tailoring rule. In addition, on August 3, 2010, the National Alliance of Forest Owners (NAFO) submitted to EPA a Petition for Reconsideration of the tailoring rule. In their petition, NAFO specifically identified the issue of treatment of biomass-related emissions under the tailoring rule. We received a large number of comments in response to the CFI and based on this information and considerations of the petitioner's arguments, we have determined that this issue is complex enough that further consideration is warranted.

On January 12, 2011, EPA announced in letters to Members of Congress and NAFO a number of steps the Agency will be taking to address the issues associated with biomass-related GHG emissions from stationary sources. The steps EPA outlined in that letter are:

- Granting the Petition for Reconsideration filed by NAFO on August 3, 2010, related to the PSD and Title V Greenhouse Gas Tailoring Rule (75 FR 31514, June 3, 2010) ("Tailoring Rule").
- Rulemaking to defer for three years the application of the PSD and Title V permitting requirements to biogenic CO_2 emissions from stationary sources.
- Concurrently issuing interim guidance on how biogenic CO_2 emissions from stationary sources should be treated by permitting authorities until final decisions are made.
- Undertaking a detailed examination of the science associated with biogenic CO_2 emissions from stationary sources, including engaging with an independent scientific panel to consider technical issues.
- Developing a final rule on how biogenic CO2 emissions should be treated and accounted for in PSD and Title V permitting based on the feedback from the scientific and technical review.

In granting NAFO's petition for reconsideration of the tailoring rule we determined that only the portions of the petition dealing with biomass-related GHG emissions warranted granting and that staying implementation of the tailoring rule is not practicable, because the rule is critical for making overall implementation of the PSD program feasible. Furthermore, an administrative stay of the statements in the preamble of the tailoring rule that describe EPA's initial determination not to exempt emissions of CO2 from biomass would not provide the requested relief of excluding emissions of CO2 from biomass from application of the PSD and title V permitting programs. Once greenhouse gas emissions from motor vehicles became regulated, the Act—not the Tailoring Rule—required that the PSD and Title V programs also cover greenhouse gas emissions. The Tailoring Rule serves to limit the number of sources that would otherwise be subject to these programs if EPA had not taken this action. The effect of a stay of this or any other aspect of the tailoring rule would be to return the legal regime that existed before EPA's issuance of a final rule. As no exemption for emissions of CO2 from biomass existed prior to the final rule, an administrative stay would not result in an exemption from the requirements of the PSD and title V permitting programs.

EPA completed the first three steps described above in March 2011. During the proposed three year deferral period, EPA intends to conduct a detailed examination of the science associated with biogenic CO2 emissions from stationary sources. EPA intends to engage with an independent scientific panel, and consider technical issues that the Agency must resolve in order to account for biogenic CO2 emissions in ways that are scientifically sound and also manageable in practice.

Lincoln 8. I joined 39 of my colleagues in expressing concerns about the potential impact of the Boiler MACT rule on existing and potential future users of biomass energy. How will you go about addressing concerns that I've heard from industries who say that the standards being proposed cannot be met by the best performing units in the real world? Also, have you worked

with those using biomass for energy to determine how brand new, purpose built biomass plants can avoid being designated as "waste incinerators" under the boiler MACT rules?

Answer: Based on public comment and additional data provided during the comment period, EPA made significant changes to the rules. The rules still achieve significant public health protections through reductions in toxic air emissions, including mercury and soot, but the cost of implementation was cut by about 50 percent from a version of the proposals issued last year. One of the changes made in the final rule was to combine coal and biomass fired boilers into a single subcategory, with the effect that owners and operators of biomass boilers will be able to comply more easily and at lower cost than was envisioned in the proposed rule. Also, as the result of the final rule defining nonhazardous solid waste, boilers burning clean biomass, or secondary biomass material generated through other processes that nonetheless is similar to clean biomass will not be reclassified as solid waste combustors. In addition, wood residuals were removed from the definition of non-hazardous solid waste, which provides additional fuel flexibility for biomass boilers. Finally, owners of biomass boilers may submit case by case requests for other types of materials to qualify as fuels (and, if they qualify, be permitted to be combusted by units subject to the boiler major or area source standards rather than the incinerator standards).

Many biomass boilers are located at area sources of hazardous air pollutants. Area sources are typically smaller industrial or commercial operations/facilities. Significant changes were made to the area source requirements for biomass units. Under the final rule, existing biomass boilers are subject to a periodic tune-up requirement rather than the emission limits that were proposed. New biomass boilers are subject to emission limits for particulate matter that are reflective of readily available, proven, cost effective technologies that will not harm the economics of new projects at area sources.

EPA believes further public review is required because the final standards significantly differ from the proposals. Therefore, EPA has announced that it intends to reconsider certain aspects of the final standards under the Clean Air Act process for reconsideration, which allows the agency to seek additional public review and comment to ensure full transparency. This process will enable us to conduct further analysis of issues presented during and after the public comment period for the recently adopted rule, including any further information that the public and affected source owners choose to provide EPA. As part of the reconsideration process, EPA will issue a stay postponing the effective date of the standards for major source boilers and commercial and industrial solid waste incinerators. EPA will accept additional data and information regarding reconsideration of these standards until July 15, 2011. On those issues that EPA reconsiders, the Agency will provide further opportunity for public comment.

Senator Saxby Chambliss

Chambliss 1. I am concerned about EPA's risk assessments for arsenic and dioxin. A full, complete and transparent assessment using the best and most complete science should be EPA's standard practice. While I understand the desire to complete these assessments in a timely fashion, EPA appears to be rushing to judgment and making decisions using questionable science. How is EPA assessing the significant costs associated with setting unnecessarily restrictive standards? Has EPA considered the negative impact that standards that are far more

stringent than those followed by the rest of the world will have on U.S. agriculture? Has EPA worked with the U.S. Department of Agriculture and the U.S. Trade Representative to address the trade ramifications of its decisions? Please describe EPA's plan to ensure that full, complete and transparent assessments are conducted for arsenic and dioxin.

Answer: EPA's dioxin reassessment began in 1991. Over the course of the 20 year history of the development of this assessment, the draft report has been subjected to multiple rounds of interagency review, multiple rounds of public review and comment, and multiple rounds of independent external peer review.

The draft report entitled "EPA's Reanalysis of Key Issues Related to Dioxin Toxicity and Response to NAS Comments"[3] is in the process of independent external peer review by an expert panel convened by the Agency's Science Advisory Board (SAB). The public comment period ended on September 20, 2010, and on February 9, 2011, the SAB released their draft report on the Reanalysis. On March 1-2, 2011, the SAB Dioxin Review Panel evaluated its draft report during two public teleconferences. Based on these teleconferences, the SAB panelists are currently revising their draft report. Once that report is finalized, EPA will review the SAB's comments and recommendations, as well as the public comments, and complete the reassessment of dioxin health effects as expeditiously as possible. Prior to completion of the dioxin reassessment, the revised draft "EPA's Reanalysis of Key Issues Related to Dioxin Toxicity and Response to NAS Comments", as well as the draft IRIS Summary, will be sent for Interagency Science Discussion and final Agency review. When this is complete, EPA will move as quickly as possible to post the final IRIS summary and the supporting documentation on IRIS.

EPA's inorganic arsenic assessment for cancer effects began in 2003. This draft human health assessment has also been developed in an open and transparent process with many opportunities for public review and comment. EPA's 2005 External Review Draft Toxicological Review of Ingested Arsenic underwent a comprehensive and independent external peer review by an expert panel convened by EPA's Science Advisory Board (SAB). The SAB's review included six opportunities for public comment since 2005. EPA received the SAB's final peer review report in 2007. EPA revised the draft assessment based on the peer review and public comments. Because the arsenic assessment is a high profile activity, in February 2010, EPA took the extra step, not generally included in the IRIS assessment development process, of going back to the SAB for another review. EPA asked the SAB Arsenic Work Group to review EPA's implementation of the SAB's 2007 recommendations and included an additional opportunity for public review and comment. This assessment, which began more than 7 years ago, has included multiple opportunities for public input as well as two expert scientific peer reviews.

The SAB Arsenic Work Group recently completed its review (March 2011) of the 2010 External review Draft "Toxicological Review of Inorganic Arsenic (cancer)". EPA is currently revising the draft assessment based upon the 2011 SAB final peer review report and public comments. Upon completing revisions to the draft assessment EPA will perform a final round of Agency review as well as an interagency science discussion prior to posting the final assessment on the IRIS database, which is anticipated to be in later this year (Summer 2011).

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[3] http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=222203

The development process for human health assessments in EPA's IRIS program is a model for openness, transparency, scientific integrity, and scientific quality. IRIS assessments include rigorous independent external peer review. In addition, for every IRIS assessment there are opportunities for public review and comment. Whether the public comments are from environmental groups, industry groups, the public health community, or individual citizens, this public input step is an integral and important part of the process. EPA's IRIS assessment development process also includes multiple opportunities for interagency science discussion and other federal agencies have availed themselves of the review and comment steps on both the draft arsenic and dioxin assessments. EPA will continue to coordinate with our colleagues in other Federal agencies as we complete these human health assessments.

It is important to remember that an IRIS human health assessment is a science based assessment. In the risk assessment/risk management paradigm, an IRIS assessment is on the risk assessment side of the paradigm providing information on Step 1: Hazard Identification and Step 2: Dose-Response Assessment, of the four part risk assessment process (NAS, Risk Assessment in the Federal Government: Managing the Process, 1983). Combined with specific exposure information (Step 3: Exposure Assessment), government and private entities can use IRIS to help characterize (Step 4: Risk Characterization) public health risks of chemical substances in site specific situations. The supporting science, statutory and legal considerations, risk management options, public health considerations, cost/benefit considerations, economic factors, social factors, and other considerations are weighed to begin management of the risk after the four steps of risk assessment are concluded (and not during the development of the IRIS assessment).

Thus, the scientific human health assessments being developed for arsenic and dioxin will be only part of the information evaluated by the Agency when the Agency embarks on any regulatory decisions associated with these two chemicals. It is during these risk management considerations that the Department of Agriculture and the U.S. Trade Representative could discuss with the Agency any trade ramifications of potential EPA decision making. EPA is the Agency responsible for conducting the science assessment. After completing its scientific assessment, EPA confers with other U.S. agencies, including USTR, to consider potential concerns and possible ramifications of any policy decisions that EPA is considering. EPA decisions must be consistent with our international obligations.

Finally, to reiterate, the development process for EPA's human health assessments for arsenic and dioxin have been full, complete, and transparent, and as EPA moves forward toward completion of these two important assessments, the remainder of the process will be held to these same high standard.

Chambliss 2. As you can appreciate, farmers and ranchers need a certain and consistent regulatory environment in which to operate. In addition to the concerns that many of our producers have about EPA's expanding regulatory role in agriculture, inconsistency in approach and enforcement across EPA's regional offices is exacerbating such concern with confusion. I often hear that certain regional offices are more aggressive than others. What is EPA doing to ensure that its regional offices are implementing a consistent policy message and enforcement program for the agriculture sector?

Answer: EPA strives to deliver a consistent national message about the importance of Clean Water Act compliance in the agricultural sector, while allowing EPA Regions flexibility in prioritizing work to address Region specific concerns. Some Regions are more active than others because they have higher concentrations of livestock and poultry operations.

Because of ongoing environmental and human health concerns associated with inadequate manure management and illegal discharges from concentrated animal feeding operations (CAFOs), CAFOs have been identified as a Clean Water Act National Initiative for EPA's Office of Enforcement and Compliance Assurance (OECA). Through this national initiative, EPA Regions are provided with guidance, including common goals, performance measures, and factors to consider in prioritizing compliance and enforcement actions. EPA Regions are encouraged to focus compliance activities on areas with water quality impairments and/or where vulnerable communities are threatened due to pollutants associated with CAFOs. Additionally, EPA encourages and expects its Regions to use the full range of compliance activities – compliance assistance and outreach efforts as well as compliance inspections and enforcement actions – where necessary to promote Clean Water Act compliance.

Finally, EPA has developed mandatory, standardized training courses and guidance for EPA enforcement officers and CAFO inspectors. EPA assists states by conducting some joint oversight inspections, sharing guidance documents, and, where possible, allowing interested states to participate in inspector training courses. EPA reviews state consistency in NPDES compliance and enforcement program implementation as part of its State Review Framework effort. EPA Headquarters holds monthly conference calls with EPA Regional compliance and enforcement staff to discuss issues and share information. Through these efforts, EPA helps ensure that its Regional offices have sufficient resources to design enforcement programs that maintain national consistency while reflecting region-specific conditions.

Chambliss 3. It is my understanding that EPA requires companies developing biotechnology crops to seek registration of varieties with multiple traits even when the individual traits have already been reviewed by the agency. What is the policy rationale for this requirement? What is the justification for this additional step given EPA's limited resources as well as differing policies at the U.S. Department of Agriculture and the Food and Drug Administration?

Answer: Products genetically engineered to incorporate multiple trait genes into the genome may not necessarily behave physiologically the same as products containing the single traits. . Therefore, in addition to relying on its evaluation of the single trait PIPs contained in the product, EPA conducts an in-depth analysis that considers several factors for multiple trait PIPs These include (1) whether the structure of the inserted genetic material has been conserved in the combined trait product; (2) whether the expression levels of the pesticidal substances in the multiple trait PIP are consistent with the single trait PIP(s); (3) whether there are synergistic effects between the different pesticidal substances being produced in the multiple PIP trait product; and (4) whether the use pattern of the multiple trait PIP is different than the single trait PIP. Should there be changes to the genetic insert, pesticidal substance expression, or use pattern; or if there is a synergistic effect among the pesticidal substances – the Agency's findings

under the Federal Insecticide Fungicide and Rodenticide Act and the Federal Food Drug and Cosmetic Act for the single trait PIP may not be valid for the multiple trait PIP.

Chambliss 4. EPA is concerned about grower compliance with its Insect Resistance Management refuge requirements for Bt crops. Biotech crop developers have attempted to address this concern by including seeds from their registered Bt crop with non-Bt seeds in a single package. It is my understanding that EPA is requiring that this "refuge in a bag" be registered as a new product – a step which adds additional cost in an amount that is approximately 50 percent of the original Bt crop registration. What is the scientific rationale for this policy?

Answer: From a scientific standpoint it is important to note that the refuge-in-a-bag products that have been registered and are under consideration employ differing refuge strategies than products requiring an external refuge. For currently registered Bt corn products, EPA requires that registrants maintain contracts with farmers to plant a 20% external refuge. None of the refuge-in-a-bag products incorporates a 20% refuge. Therefore, these products must undergo separate evaluation to assess the ability of their refuge deployment to forestall the development of resistance. At present, EPA has registered two refuge-in-a-bag product that blend Bt seeds efficacious against particular pests with non-Bt seeds. The insect resistance management use instructions for the refuge-in-a-bag products are different from the instructions for these products when planted with external refuges. EPA considers it important to be able to link the registration of a pesticide to what is actually distributed in commerce. Including two compositionally distinct commercial products with different use instructions under one registration is incompatible with this linkage.

The fee for the registration application is consistent with the Pesticide Registration Improvement Act and the available fee categories, but it can be adjusted should the applicant request a partial fee waiver based on the actual amount of work required by the Agency to review the application.

Chambliss 5. I am concerned about EPA's development of numeric nutrient criteria (NNC) for Florida. This will affect Georgians and set precedent across the country. For Florida's agriculture sector, the initial cost of implementing the proposed criteria is estimated to be between $855 million and $3 billion. Further, once implemented, compliance with these criteria will cost anywhere from $902 million to $1.6 billion each year. This means more than 14,500 full and part time jobs will be lost. How does EPA plan to address the enormous cost and basic scientific questions raised by the NNC for Florida? What alternatives is EPA considering to setting these unattainable standards?

Answer: EPA estimates of the impact of the criteria are lower than those mentioned in this question: in the analysis of the final criteria, we estimated the rule may result in an additional annual cost of $135.5 – 206.1 million. [4] EPA's Economic Analysis is a representation of the

[4] Economic Analysis of Final Water Quality Standards for Nutrients for Lakes and Flowing Waters in Florida. November 2010, Exhibit ES-5, page ES-11. http://water.epa.gov/lawsregs/rulesregs/upload/florida_econ.pdf.

difference in estimates of the potential costs with and without EPA's rule.[5] EPA recognizes that this represents a substantial financial commitment toward ensuring healthy waterways for Floridians. To address concerns about the cost of implementing the criteria, EPA has initiated an independent review of the compliance costs by the National Academy of Sciences.

Completion of these criteria is only the first step of a process toward ensuring healthy waterways. The rule provides for a site-specific criteria adjustment process and preserves Florida's ability to redesignate uses, grant variances, and establish load allocations in TMDLs. EPA's Economic Analysis is an assessment of the potential cost of the rule taking into account these flexibilities with respect to technologies and other controls that may be used to meet the criteria in waters newly identified as impaired as a result of this rule.

EPA has made every effort to ensure that its approach is firmly grounded in the best available science. The process for deriving these criteria has been built upon transparency, public comment, stakeholder engagement, and independent scientific peer review. EPA's work relies upon data from the Florida Department of Environmental Protection, and EPA extensively consulted with local experts to derive the criteria. The underlying methodologies for the Agency's proposed numeric nutrient criteria for Florida's rivers, streams, and lakes, also underwent scientific peer review by EPA's Science Advisory Board (SAB). In addition, EPA followed the procedures outlined in its Peer Review Handbook by subjecting the methods used in its proposal to peer review by an independent, external review panel. This independent, external peer review was completed in July 2009 and the results were made publicly available. By following this transparent scientific process, EPA has relied upon best available science to set standards in Florida that protect people's health and preserve waterbodies used for drinking, swimming, fishing, and tourism.

EPA recognizes that achieving protective levels of water quality to support safe use and enjoyment of Florida's waters will pose significant challenges to entities that are sources of nutrient pollution. It will also pose implementation challenges in developing pollutant discharge permits, designing pollutant reduction strategies, and conducting water quality assessment. However, ensuring that Florida's waters are healthy and that they support valuable human uses will have significant benefits.

EPA expects that its action will serve to facilitate and expedite the establishment and implementation of appropriate controls and best management practices to reduce nitrogen and phosphorus pollution. EPA believes that this approach will be quicker and less cumbersome than the existing case by case, site by site nature of Florida's narrative nutrient criterion implementation approach, leading to more timely and predictable outcomes.

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[5] Actual economic impacts will depend on the particular implementation strategy pursued by FDEP, such as requiring specific technologies and management practices to control sources or taking advantage of the flexibilities afforded under the CWA and existing Florida regulations (e..g., variances, site-specific alternative criteria, load allocations in TMDLs, and refining designated uses).

Senator Ben Nelson

Nelson 1. Administrator Jackson, I was hoping you could provide my colleagues and I an update EPA's approval of E15.

Additionally, while this falls more under DOE's purview, I wanted to gain a better understanding as to why DOE is only testing E15 and E20 on tiers – 2007 and newer which you said should be completed by the end of this month and 2001-2006 in November.

Are there plans to test vehicles prior to 2000?

Answer: EPA issued a partial waiver decision on October 13, 2010, to allow use of up to 15 volume percent ethanol (E15) in model year 2007 and newer light-duty motor vehicles, and an additional waiver for model year 2001 to 2006 vehicles on January 21, 2011. In 2011, there are more than 150 million MY2001 and newer passenger vehicles that can utilize E15, representing more than 74 percent of gasoline consumption. In the October 13 decision, EPA denied the waiver request for introduction into commerce of E15 for use in MY2000 and older light-duty motor vehicles, as well as heavy-duty gasoline highway engines and vehicles (e.g., delivery trucks), on and off-highway motorcycles, and all nonroad engines, vehicles and equipment. There is little data about the emissions impact of E15, and there are engineering reasons to be concerned that E15 might result in emission increases in these older engines, vehicles and equipment that would violate standards. We are not aware of any plans to test MY2000 and older vehicles.

Nelson 2. Administrator Jackson, I have begun hearing concerns back home regarding EPA's development of Clean Water Act numeric nutrient criteria in Florida and the effects these criteria, stringency, and costs could potentially mean to states like Nebraska.

My understanding is the estimated cost for numeric nutrient criteria for Florida is in the range of $1 to $1.6 billion annually.

Can you please tell me if EPA has done a national and state-by-state analysis of the costs to the regulated community, to agriculture, and to the economy of EPA's movement towards using numeric nutrient criteria to implement the Clean Water Act?

If so, can you tell me what this analysis found?

If not, can you tell me why not and when, if ever, we might be able to see such analysis from EPA?

The reason I am interested if EPA has done any further analysis is it is my understanding that groups who pushed for the lawsuit in Florida that lead to EPA's NNC there are exploring other lawsuits and that states like Nebraska could anticipate having to develop NNC similar to those for Florida in the near future if those efforts prove successful.

Could you please describe for me the safeguards that exist to make sure that Nebraska can maintain the integrity and autonomy over our Clean Water Act standards that have an enormous and direct effect on land-use and economic activity in the state?

Answer: EPA has not undertaken a national scale economic analysis of the cost of implementing numeric nutrient criteria. The Agency has concentrated its resources and efforts on developing the underlying science to support establishing protective levels so States can develop their own numeric nutrient criteria to address the significant nutrient pollution problems they face. EPA is working with States and the public to promote public partnerships, collaboration, better science, and improved tools to reduce nutrient pollution. Virtually every State and Territory in America is impacted by nutrient related degradation of its waterways, and numeric nutrient criteria are an essential tool for mitigating the adverse effects of nutrient pollution. Any estimate of overall costs of implementing numeric nutrient criteria would also require a concurrent evaluation of how implementing such criteria would reduce the impacts of nutrient pollution upon a State's waterways, thereby making them healthier and more suitable for human uses, such as drinking, fishing, swimming, and tourism. In addition, EPA disagrees with the cost estimate in the question. EPA estimates that the rule may result in costs of $135.5 – 206.1 million per year for upgrades to wastewater treatment plants and for addressing additional impairments as a result of this rule. To address concerns about the cost of implementing the criteria, EPA has initiated an independent review of the compliance costs by the National Academy of Sciences.

EPA sent a memo entitled *Recommended Elements of a State Nutrients Framework*[6] to our regions in March that builds on our commitment to build partnerships with states and collaboration with stakeholders on this issue. The Agency will use this memorandum as the basis for discussions with interested and willing states about how to move forward on tackling this issue, recognizing that there is no one size fits all solution. The Agency strongly believes that states should address phosphorus and nitrogen pollution through standards they develop and supports these critical state efforts. At this time, EPA is not working on any federal standards for phosphorus and nitrogen for any states other than ongoing efforts in Florida, but we are ready to provide support and technical assistance as states work to tackle this serious water pollution problem.

States like Nebraska continue to have the primary authority for establishing water quality standards for their waters. However, the Clean Water Act requires EPA to review and approve State water quality standards, assuring that they are based on the best available science and are protective of designated uses. In addition, the Clean Water Act gives the Agency authority to promulgate federal water quality standards for States if the Administrator determines they are necessary. If outside organizations believe EPA is not fulfilling its responsibilities under the Act in a particular state, outcomes of third party lawsuits can require EPA to promulgate water quality standards for that state.

Nelson 3. I have heard from a number of Nebraska commodity groups regarding EPA's re-review of the herbicide atrazine. There is concern that this re-review is politically motivated by the environmental community and would result in the ban of atrazine. This could be a major

[6] http://water.epa.gov/scitech/swguidance/standards/criteria/nutrients/upload/memo_nitrogen_framework.pdf.

economic blow to agricultural community, particularly in Nebraska, where 69 percent of field corn and 69 percent of sorghum is treated with atrazine, or products containing atrazine. According to the EPA's own analysis – in 2003 I believe – when it deemed atrazine environmentally acceptable it analyzed the potential economic impact to the corn industry if atrazine were made unavailable. The analysis found that growers would incur an average loss of 9 bushels per acre (nationwide corn yield averaged 138 bushels per acre in 2001), as well as an increased cost for a replacement herbicide.

With EPA's recent review of atrazine, why is the Agency devoting its time and resources to this re-review considering the product has been commonly used in Nebraska and across the country for over 50 years?

Considering the wide use and the economic impact that would occur if EPA were to ban atrazine, what information does EPA have on alternatives that would replace atrazine if atrazine is not available, and has EPA evaluated the environmental, human health, and economic consequences of using those replacements if atrazine is not available?

Answer: EPA's current scientific evaluation of atrazine is based on our commitment to using the best available science and follows regular open and transparent processes, including our process to obtain independent, external peer review of important science issues. The Agency reregistered atrazine in 2003, which was the last major regulatory decision specifically for this herbicide. Given the substantial new scientific information generated since the 2003 reregistration decision and improved data on the documented presence of atrazine in both drinking water sources and other bodies of water collected as a condition of the reregistration, the Agency is reviewing the new research to ensure that our regulatory decisions regarding atrazine are based on the best available science and protect public health and the environment. Since EPA concluded its last evaluation of atrazine in 2003, the Agency has evaluated close to 150 newly published studies investigating a wide array of effects potentially relevant to human health risk assessment.

Over the last seven years since the atrazine reregistration decision was completed, the Agency has convened a number of Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panels to review new atrazine research and methods to assess its risks. Moreover, the Agency has received an extensive amount of drinking water and ambient surface water monitoring data submitted by the registrant, as a condition of reregistration. EPA continuously reviews these data and has added into the program over 25 new community water systems that warranted closer scrutiny and removed 51 others consistent with the reregistration requirements. In addition, the 1994 Atrazine Special Review remains open, highlighting the Agency's historical and ongoing focus on atrazine and its potential health effects from drinking water exposures.

EPA's science-based review process relies on a rigorous examination of the relevant scientific data. As part of this process, to be certain that the best available science is used to inform its atrazine human health risk assessment, and to ensure transparency, the Agency is seeking advice on key aspects of the science evaluation from the independent FIFRA Scientific Advisory Panel (SAP). EPA presented its plan for the atrazine reevaluation to the SAP in November 2009, and

the Agency held three SAP meetings in 2010 to address new atrazine studies and related issues. One additional SAP meeting is planned for summer 2011, to obtain scientific peer review of new data that EPA expects to receive from the epidemiological Agricultural Health Study (AHS) conducted by the National Cancer Institute at the National Institutes for Health. EPA expects to receive a report from the SAP including its recommendations about 90 days after the summer 2011 SAP meeting and will carefully consider this scientific input. At the conclusion of this evaluation of atrazine's human health effects, EPA will ask the SAP to review atrazine's potential effects on amphibians and aquatic ecosystems.

At this point in time, no single chemical is a complete alternative to atrazine. Atrazine is often used in tank mixes with other herbicides to control grasses and broadleaf weeds. Alternatives to atrazine involve different combinations of multiple herbicides. The most likely alternative herbicides for field corn would be: metolachlor, acetachlor, dicamba, alachlor, and nicosulfuron. For sorghum, the likely alternatives would be dicamba, 2,4-D, bromoxynil, and prosulfuron.

The human health and environmental effects of acetochlor and nicosulfuron were assessed as part of EPA's registration process, and their health effects through diet were assessed as part of EPA's tolerance reassessment process under Food Quality Protection Act (FQPA). The human health and environmental effects of metolachlor, alachlor, and dicamba were assessed as part of EPA's reregistration process. Metolachlor's health effects through diet were also assessed as part of EPA's tolerance reassessment process under FQPA. Registration review is expected to commence in 2012 for nicosulfuron, in 2014 for dicamba, and in 2016 for metolachlor, acetochlor, and alachlor.

The human health and environmental effects of prosulfuron were assessed as part of EPA's registration process. The human health and environmental effects of 2,4-D, and bromoxynil were assessed as part of EPA's reregistration process. Human health and environmental effects will be re-assessed for each of these chemicals during their respective registration review processes. Registration review is expected to commence in 2012 for prosulfuron, and in 2013 for 2,4-D and bromoxynil.

EPA considers all relevant information when making pesticide decisions under both FIFRA and the FFDCA. Tolerance actions under the FFDCA, and FIFRA regulatory decisions involving dietary risks that do not meet the FFDCA "reasonable certainty of no harm" standard, must be made without consideration of benefits. All other regulatory decisions under FIFRA are made under a risk-benefit standard. When making these risk benefit decisions, EPA uses the best and most up-to-date available information concerning the economic impacts associated with use of a pesticide.

Nelson 4. Historically, irrigation districts using herbicides to manage weeds in canals, laterals, and drains fall under the statutory irrigation return flow exemption afforded by the Clean Water Act which considers return flows to be 'non-point' sources of pollutants. However, in June, EPA announced its intention to impose new permit requirements on users of certain aquatic pesticides, including those using aquatic herbicides to maintain irrigation systems. EPA's proposal was issued in response to a 2009 Federal Appeals Court decision that pesticides administered in water be considered "pollutants" requiring a permit under the National Pollutant Discharge Elimination

System (NPDES) as governed by the Clean Water Act. The proposed general permit threatens to bring irrigation district herbicide use under the NPDES umbrella even though the court's decision focused on the definition of a 'pollutant' and not on the term 'point source.'

Is EPA reconsidering its draft permit language to ensure irrigation district herbicide use is exempt from the NPDES process as a non-point source activity based on the statutory return flow exemption?"

Answer: EPA's Pesticide General Permit (PGP) does not affect the irrigation return flow exemption in the Clean Water Act. Irrigation return flow (which includes runoff from a crop field due to irrigation of that field) does not require a Clean Water Act permit. Clean Water Act permits are required, however, for point source discharges from the application of biological pesticides and chemical pesticides that leave a residue, which includes applications of herbicides, into waters of the United States (including irrigation ditches and canals that are waters of the United States). The Sixth Circuit Court of Appeals in *National Cotton Council, et al. v. EPA*, decided that pesticide discharges (either from biological or chemical pesticides that leave a residue) are point source discharges of pollutants and require Clean Water Act permits.

The Sixth Circuit Court's decision has been stayed until October 31, 2011. Prior to the decision becoming effective, EPA will issue and we anticipate authorized states will issue a pesticide general permit that entities discharging pesticides to water of the U.S. may receive coverage under allowing them to apply pesticides in compliance with the Clean Water Act.

Nelson 5. An EPA proposal that has caused some of the greatest anxiety from my producers back home is EPA's proposal to cut coarse particulate matter standard in half to from 150 micrograms per cubic meter to 65-85 micrograms per cubic meter. As anyone who has worked in a feed yard, combined a corn field, or driven in to town on a dirt road knows; dust is a daily occurrence in rural America. My concern is by decreasing this standard without sound scientific support this stands to dramatically hurt all aspects of agricultural production from transporting crops to livestock in pens.

What scientific health evidence supports decreasing the 150 micrograms per cubic meter standard for coarse particulate matter?

Answer: EPA has not yet issued a proposed decision regarding whether or not to revise the national ambient air quality standards (NAAQS) for coarse particulate matter (PM10). In April 2011, EPA released a second final Policy Assessment prepared by Agency technical staff. This document discusses a range of policy options which, in the view of EPA staff, could be supported by the available scientific evidence. The policy options put forward in the Policy Assessment would not result in "cutting the coarse particulate standard in half." Rather, the alternatives discussed include an option to retain the current PM10 standard, as well as options that would change both the level of the standard and its form (the way that areas calculate whether they meet the standard) simultaneously. It is important to understand that, under the options included in the Policy Assessment, any change in the level of the standard would be accompanied by a change in the way EPA calculates attainment. This may have benefits to rural areas, because more of them will likely be in attainment with this plan. Thus, EPA has identified

options in the technical staff assessment that could change the level of the standard without changing the stringency of the standard.

EPA's panel of external science advisors, the Clean Air Scientific Advisory Committee (CASAC), supports revising both the level and the form of the PM10 standard in order to increase public health protection, relative to that provided by the current standard. This conclusion was based in large part on health studies that have reported associations between coarse particles and mortality, hospital admissions, and emergency department visits in locations that met the current PM10 standard during the study period. In addition, CASAC concluded that supporting evidence comes from studies that have reported that exposure of human volunteers to coarse particles can cause changes in heart rate variability and can increase markers of lung inflammation. In addition, changing the way attainment is calculated, as discussed in the second Draft Policy Assessment and recommended by CASAC, could provide more flexibility for the States than the current standard by ensuring that relatively rare events that may result in short term spikes in PM10 concentrations will not by themselves cause an area to be in nonattainment.

In evaluating the range of options included in the draft Policy Assessment, it is important to remember that this is not a decision document; the final decision will be made by EPA. At present, we are still in the process of reviewing the current NAAQS for PM10 and no decisions have been made on whether the standard should be revised. If revised, there will also be ample opportunity for public input following any proposed rule EPA issues based on these recommendations. We remain committed to common sense approaches to improving air quality across the country without placing undue burden on farmers.

Nelson 6. Administrator Jackson, last year, my colleagues and I placed a restriction on EPA from implementing a mandatory green house gas emissions requirement for livestock operations emitting over 25,000 metric tons of green house gases. However, the monitoring and reporting requirements are still law and livestock operations are required to submit their first round of reports in 2011. However, I am told there has been no guidance from EPA on this.
What is the status of EPA's implementation of Subpart JJ of the mandatory green house gas emissions reporting for livestock operations?

Answer: EPA is not implementing Subpart JJ of Part 98 due to a Congressional restriction prohibiting the expenditure of funds for this purpose.

Nelson 7: Administrator Jackson, on January 20, 2009, EPA issued its rules on CERCLA and EPCRA regarding animal wastes from farms. Those that were not classified as CAFOS were exempted from EPCRA reporting requirements. However, this exemption has been challenged in a lawsuit against EPA. On July 7, 2010, EPA requested that the case be remanded while they revise their final rule on this issue. What are the plans for revision of the animal waste exemption from CERCLA and EPCRA now that you have requested remand of the lawsuit involving the exemption?

Answer: On July 20, 2010, EPA filed a Motion for Voluntary Remand with the United States Court of Appeals for the District of Columbia Circuit Court so that the Agency could reconsider the rule. On October 19, 2010, the D.C. Circuit granted EPA's motion. The Court did not

impose a schedule or timetable as to when the rule should be reconsidered.

EPA is currently reevaluating the final rule, "CERCLA/EPCRA Administrative Reporting Exemption for Air Releases of Hazardous Substances from Animal Waste at Farms" (73 FR 76948, Dec. 18, 2008), consistent with our stated intent to review the results of the National Air Emissions Monitoring Study and consider if the threshold for the EPCRA exemption is appropriate. EPA is reconsidering the final rule in its entirety based on issues that were raised by petitioners to the lawsuit during the mediation process and related discussions.

Nelson 8. Administrator Jackson, eleven months ago I wrote you regarding my concerns with the EPA Office of Research and Development's (ORD) ongoing IRIS Assessment of inorganic arsenic, which would increase the "cancer slope" (i.e. the cancer potency factor) by 17 fold from what is currently being used for environmental risk assessments. The consequences of this IRIS Assessment are staggering – particularly when one considers the normal dietary daily intake of naturally occurring arsenic from food and water. New EPA Drinking Water standards – which would be required by the IRIS Assessment – would mean that the vast majority of water systems in my State of Nebraska would be in non-compliance. Most soils in Nebraska would exceed EPA's targeted risk range and Food Safety Advisories would likely be placed on several crops and commodities.

I am concerned that we get the science correct. Dr. Samuel Cohen at the University of Nebraska whose work I cited in my letter – one of the leading cancer researchers in the country – and many other scientists – strongly disagree with the IRIS Assessment's conclusions. Many EPA scientists have also expressed their disagreement.

My concern is that ORD still plans to finalize this controversial Assessment this fall. Yet given the enormous potential consequences of this ruling would the agency commit to re-examining the diversity of scientific opinion and to fully understanding the potential impact on U.S. agriculture before any plans are made to finalize the IRIS Assessment of inorganic arsenic?

Answer: The development process for human health assessments in EPA's IRIS program is a model for openness, transparency, scientific integrity, and scientific quality. IRIS assessments include rigorous independent external peer review. In addition, for every IRIS assessment there are opportunities for public review and comment. Whether the public comments are from environmental groups, industry groups, the public health community, or individual citizens, this public input step is an integral and important part of the process.

EPA's inorganic arsenic assessment for cancer effects that may result from chronic exposure has been developed in an open and transparent process with many opportunities for public review and comment. EPA's 2005 External Review Draft Toxicological Review of Ingested Arsenic underwent a comprehensive and independent external peer review by an expert panel convened by EPA's Science Advisory Board (SAB). The SAB's review included several opportunities for public comment. EPA received the SAB's final peer review report in 2007. EPA revised the draft assessment based on the peer review and public comments.

Because the arsenic assessment is a high profile activity, in February 2010, EPA took the extra step, not generally included in the IRIS assessment development process, of going back to the SAB for another review. EPA asked the SAB Arsenic Work Group to review EPA's implementation of the SAB's 2007 recommendations and included an additional opportunity for public review and comment. The SAB Arsenic Work Group recently completed its review (March 2011) of the 2010 External review Draft "Toxicological Review of Inorganic Arsenic (cancer)".

EPA is currently revising the draft assessment based upon the 2011 SAB final peer review report and public comments. Upon completing revisions to the draft assessment EPA will perform a final round of Agency review as well as an interagency science discussion prior to posting the final assessment on the IRIS database, which is anticipated to be in later this year (Summer 2011).

It is important to remember that an IRIS human health assessment is a science based assessment. In the risk assessment/risk management paradigm, an IRIS assessment is on the risk assessment side of the paradigm providing information on Step 1: Hazard Identification and Step 2: Dose-Response Assessment, of the four part risk assessment process (NAS, Risk Assessment in the Federal Government: Managing the Process, 1983). Combined with specific exposure information (Step 3: Exposure Assessment), government and private entities can use IRIS to help characterize (Step 4: Risk Characterization) public health risks of chemical substances in site-specific situations The supporting science, statutory and legal considerations, risk management options, public health considerations, cost/benefit considerations, economic factors, social factors, and other considerations are weighed to begin management of the risk after the four steps of risk assessment are concluded. Thus, the scientific human health assessments being developed for arsenic would be only part of the information evaluated by the Agency if the Agency embarks on any further regulatory decisions associated with this chemical.

Senator Kirsten E. Gillibrand

Gilibrand 1. I have been hearing from New York farmers about the difficulty of having varied definitions of "renewable biomass" from one piece of legislation to another. The 2008 Farm Bill recognizes that virtually all forest and agricultural biomass is inherently renewable, where as the 2007 Energy Independence and Security Act's definition limits biomass crops to those grown on active farmland, meaning those grown on idle farmland are ineligible. This inconsistency in the federal definition makes it very difficult for farmers to begin this form of production because they are not able to plan accordingly with how they will fit in with the relevant federal programs. Do you support a consistent definition of "renewable biomass" across all federal energy programs? If so, do you support a broad definition which will allow our farmers to engage in growing biomass crops to help our country attain energy independence, as well as producing a green, recycled carbon form of energy?

Answer: EPA strongly supports expanded use of advanced biofuels, especially cellulosic biofuels, which under the Energy Independence and Security Act must achieve at least a 60 percent reduction in lifecycle greenhouse gases compared to the 2005 baseline average gasoline or diesel fuel that it replaces. We implement the Renewable Fuel Standard using the definition

of "renewable biomass" as Congress directed in EISA and have not taken a position on a new definition for renewable biomass.

Gilibrand 2. The Clean Air Act Tailoring Rule published by EPA last June regulates emission from the combustion of biomass in the same manner as emissions from the combustion of fossil fuels. Since the process of growing biomass crops sequesters carbon, new energy produced from biomass is a form of recycling carbon. Would you consider revising the EPA's approach to biomass emissions to factor in other national objectives of energy independence and carbon sequestration to mitigate climate change?

Answer: The Agency is committed to working with stakeholders to examine appropriate ways to treat biomass combustion emissions, and to assess the associated impacts on the development of policies and programs that recognize the potential for biomass to reduce overall GHG emissions and enhance U.S. energy security. In the final Tailoring Rule, we recognized that the treatment of biomass combustion and biogenic CO2 emissions is an issue that requires further analysis, particularly on how we might address emissions of biogenic carbon dioxide under EPA's air permitting programs. As a result, on July 15, 2010, we solicited views from stakeholders and the public on the subject by issuing a formal Call for Information (CFI) on the issues surrounding the treatment of biomass related GHG emissions under the tailoring rule. In addition, on August 3, 2010, the National Alliance of Forest Owners (NAFO) submitted to EPA a Petition for Reconsideration of the tailoring rule. In their petition, NAFO specifically identified the issue of treatment of biomass related emissions under the tailoring rule. We received a large number of comments in response to the CFI and based on this information and considerations of the petitioner's arguments, we have determined that this issue is complex enough that further consideration is warranted.

As a result, EPA has granted NAFO's petition for reconsideration and proposed a rule to defer for a period of three years, the application of the PSD and Title V permitting requirements to CO2 emissions from bioenergy and other biogenic stationary sources (biogenic CO2). During the proposed three year deferral period, EPA intends to conduct a detailed examination of the science associated with biogenic CO2 emissions from stationary sources. EPA intends to engage with an independent scientific panel, and consider technical issues that the Agency must resolve in order to account for biogenic CO2 emissions in ways that are scientifically sound and also manageable in practice.

Gillibrand 3. In recent meetings with farmers from across New York, I have heard concerns about EPA's proposed Spray Drift regulations. The concern is that the new regulations treat "no drift" as an option to farmers, who tell me that drift is unavoidable. They do, however, use modern technologies and best professional judgment to minimize drift. Have you considered engaging the agriculture community into the process of rule-making surrounding spray drift regulations to ensure best practice is employed but recognizing that 'de minimus' levels of spray drift is unavoidable?

Answer: EPA has repeatedly made clear that it is not proposing a "no drift" policy. Off-target pesticide drift is a difficult and controversial problem. There is much support for EPA to address the issue, but there is no consensus on what action to take. EPA developed the proposed new

spray drift language following a process that involved several years of consultation with multiple stakeholder groups, input from a broad array of organizations through our Federal Advisory Committee, the Pesticide Program Dialogue Committee (PPDC) including pesticide registrants and growers, as well as extensive advice from state regulators.

Rather than prohibiting all drift or setting a zero risk standard, EPA recognizes that some level of spray drift is unavoidable and is only a concern if it poses an unacceptable risk.

About 600 distinct comments were received in response to the draft Pesticide Registration Notice along with letters and over 33,000 signatures from several write in campaigns that expressed both support and strong concern. Some comments expressed concern that the proposed labeling was ambiguous, could be interpreted to result in a "zero drift" standard, and was not consistent with the language used in the FIFRA statutory standard. In addition comments suggested EPA look at state drift laws and regulations. EPA is fully considering all aspects of this important issue and is in the process of carefully responding to all stakeholder comments on the Pesticide Registration Notice and the related supporting documents.

In response to the comments received, EPA has put forward new language that is similar to that in current state drift regulations. The original proposed statement and tentative revised statements for commercial applicators are listed below with the pertinent phrases underlined.

Proposed general drift statement

"...do not apply this product in a manner that results in spray [or dust] drift that could cause an adverse effect to people or any other non-target organism or site."

Tentative revised general drift statement

"...do not apply this product in a manner that results in spray [or dust] drift that harms people or any other non-target organism or site."

EPA convened a stakeholder meeting in February 2011, to receive feedback on the tentative revised drift statement. Most groups expressed concerns with the proposed revision. NGOs believe the revision moves away from a "no drift" standard while registrants and grower groups believe that better instruction should be included on labels. In subsequent meetings with State officials, there appears to be general support for the revised approach and they seem to regard the alternative statement as implementable and enforceable. EPA is working to issue a Final Drift Pesticide Registration Notice, along with responding to the comments received, later in 2011.

The Agency encourages pesticide applicators to use all feasible means available to them to minimize off-target drift. To support this goal, EPA has been working with applicators, agricultural extension agents, registrants, environmental groups, and other interested stakeholders to collect and develop information on best management practices (BMPs) to reduce off-target drift for specific application methods and crop sector combinations (such as airblast application to orchard crops).

For many years EPA has contributed funding to support education and training programs on drift management. EPA provides annual funds to states to support pesticide applicator training

programs, many of which include educational material on drift management. In addition, EPA contributed to the development of the National Coalition on Drift Minimization educational video and CD-Rom, and supported the development of the National Pesticide Applicator Certification Core Manual, which contains a module on minimizing spray drift. EPA also has provided funds for the past five years to the National Agricultural Aviation Association's Professional Aerial Applicator Support System (PAASS) to support their training and education programs to reduce drift incidents. The PAASS has developed specific educational programs that enhance the commercial aerial applicator profession by improving the understanding of human factors, enhancing critical aeronautical decision making skills, and inducing positive behavioral change.

Senator Mitch McConnell

McConnell 1: In Kentucky, Atrazine herbicide is used to treat 78% of the state's corn crop, and 98% of our sorghum crop. As I understand it, Atrazine is used in over 50 different herbicide formulations. According to EPA's own estimates, it would cost $28 dollars per acre across the United States to replace Atrazine, which is the difference between making a crop profit and losing one's shirt. Since EPA's new review is predicated on what appears to be an anti-pesticide, activist-driven agenda, how can you assure Kentucky farmers that your Agency will not deprive them of one of their most important crop input tools especially considering this nation's fragile economy?

Answer: EPA's current scientific evaluation of atrazine is based on our commitment to using the best available science and follows regular open and transparent processes, including our process to obtain independent, external peer review of important science issues. The Agency will decide whether any steps are necessary to better protect health and the environment, based on this scientific evaluation. The Agency reregistered atrazine in 2003, which was the last major regulatory decision specifically for this herbicide. Given the substantial new scientific information generated since the 2003 reregistration decision and improved data on the documented presence of atrazine in both drinking water sources and other bodies of water collected as a condition of reregistration, the Agency is reviewing the new research to ensure that our regulatory decisions regarding atrazine are based on the best available science and protect public health and the environment. Since EPA concluded its last evaluation of atrazine in 2003, the Agency has evaluated close to 150 newly published studies investigating a wide array of effects potentially relevant to human health risk assessment.

EPA is committed to an open, transparent, and science based review process that relies on rigorous examination of the relevant scientific data. As part of this process, to be certain that the best available science is used to inform its atrazine human health risk assessment, and to ensure transparency, the Agency is seeking advice on key aspects of the science evaluation from the independent FIFRA Scientific Advisory Panel (SAP). EPA presented its plan for the atrazine reevaluation to the SAP in November 2009, and the Agency held three SAP meetings in 2010 to address new atrazine studies and related issues. One additional SAP meeting is planned for summer 2011, to obtain scientific peer review of new data that EPA expects to receive from the epidemiological Agricultural Health Study (AHS) conducted by the National Cancer Institute at the National Institutes for Health. EPA expects to receive a report from the SAP including its

recommendations about 90 days after the summer 2011 SAP meeting and will carefully consider this scientific input. At the conclusion of this evaluation of atrazine's human health effects, EPA will ask the SAP to review atrazine's potential effects on amphibians and aquatic ecosystems.

McConnell 2: Coal Ash is on the brink of being deemed a hazardous waste by your Agency. The mining industry has been proactive in finding ways to reuse coal ash in mine reclamation projects, which has been previously recognized both by the National Academy of Sciences and the EPA as desirable in appropriate circumstances. Despite the jobs and innovation that the beneficial reuse industry has created, EPA is proposing to classify coal ash as hazardous waste without further adequately investigating the implications of the classification on the coal industry. In preparing regulations, EPA has also not considered the implications of a hazardous waste designation on the small farmers across rural areas. What specifically does EPA aim to accomplish from proposing a hazardous waste designation that would cripple so many industries at once, when an equally environmentally protective regulatory framework can be implemented under Subtitle D of RCRA?

Answer: In June 2010, EPA proposed and sought comment on two alternative approaches for regulating the disposal of coal combustion residuals (CCRs) – one under Subtitle C of the Resource Conservation and Recovery Act (RCRA) and one under subtitle D of RCRA. The purpose of the proposed rulemaking is to provide for safe management and disposal of CCRs as well as to prevent future catastrophic releases that may threaten human health and the environment.

Under each of these regulatory options, the beneficial use of CCRs would remain exempt from federal regulation, although EPA solicited comments and additional information on the beneficial use of CCRs, especially unencapsulated uses. We also requested information and data on how regulating "the disposal" of CCRs under Subtitle C of RCRA would impact its beneficial use.

EPA's proposal explicitly stated that the proposal did not apply to the placement of CCRs in mines or non-mine uses at coal mines; the Agency would expect to address this activity in a later action, working closely with the Department of the Interior. The comment period for the proposal ended on November 19, 2010. EPA is evaluating all of the comments and additional information received. Once we complete our analysis, we will then determine the appropriate regulatory course of action.

EPA prepared a "Regulatory Impact Analysis" to estimate the potential nationwide costs and benefits associated with the two regulatory options. This analysis focused on the potential increase in the cost of disposal of coal ash that could result from the regulatory options—that is, a Subtitle C regulatory approach and a Subtitle D regulatory approach that EPA considered in the proposal, and the impacts of those potential increases. Based on the analysis, EPA concluded that any additional costs that could result from the rule were not significant enough to result in measurable employment impacts. EPA estimated that increases in electricity prices would not exceed one percent as a result of either of the disposal options that were proposed by EPA. Given that demand for electricity changes very little based upon changes in price, electricity production would not be expected to change much, if at all, as a result of the proposed rule.

Therefore, EPA anticipates there would be little, if any, impact on jobs associated with electricity production under either regulatory option.

In addition, as part of the RIA, EPA conducted an analysis on the potential ancillary impact on coal ash beneficial use industries. Please note, since the proposed rule retained the Bevill exclusion regarding the beneficial use of CCRs, the proposed rule would not require that CCRs beneficially used be subject to any federal regulation. However, because of concerns that were raised regarding the "stigma" of calling CCRs hazardous wastes, the 2010 RIA conducted an analysis that estimated three alternative future scenarios involving an increase in the beneficial use of CCRs, a decrease in the beneficial use of CCR, and no change in the beneficial use of CCR by other industries. Respectively, the RIA estimated the future possible change in the annual market cost of these three scenarios on continued future use of CCR, compared to the alternative market cost to the other industries for purchasing substitute raw materials. EPA would expect that an increase in the beneficial use of CCRs might result in an increase in jobs related to CCR beneficial use industries, although it could result in a decrease in jobs related to raw material supply industries for which CCR would be a substitute material, while a decrease in the beneficial use of CCRs might result in a decrease in jobs related to CCR beneficial use industries, but might lead to an increase in jobs in industries related to the use of substitute materials for CCR. In each beneficial use scenario, EPA anticipates an increase in jobs associated with the pollution control equipment and services for compliance with the rule. The RIA for the proposed rule did not include specific estimates of the magnitude or net effects of these jobs impacts associated with beneficial use. EPA specifically solicited comment on market costs and employment, and will consider those comments as we develop a final rule.

McConnell 3: Your Agency recently released stringent water quality requirements for mountaintop mining that may eliminate at least one quarter of new Central Appalachian coal production. EPA's guidance, which is aimed mostly at surface mining operations that make up the bulk of mountaintop mining, attributes adverse impacts on water quality to mining practices. As you know, other industries, such as agriculture or construction, in their day-to-day operations can contribute to runoff in surface waters. If the purpose of your guidance is to greater protect aquatic life and fresh water streams in central Appalachia, will you look to expand your guidance to include other industries that also contribute to runoff in surface waters? Will any proposed changes to the guidance be subject to scientific peer review and public comment?

Answer: EPA's interim final guidance, issued on April 1, 2010, applies best available science and the law to inform EPA's reviews of surface coal mining projects in Appalachia to better ensure protection of communities and their environment. The guidance applies existing legal requirements and does not create any new legal requirements. EPA's guidance was developed in order to provide enhanced clarity and consistency to EPA's Regions in their permit reviews. EPA recognizes the significant benefits that coal and coal mining provide to Appalachia and to our nation and EPA's guidance is not designed to eliminate Appalachian surface coal production.

This guidance informs EPA's permit reviews for surface coal mining operations in six Appalachian states. This focus was a result of the significant scientific evidence of environmental harm caused by these operations in the Appalachian region, which operate at a uniquely large scale and have disproportionately significant environmental impacts. At this time,

EPA is not aware of scientific studies demonstrating similar water quality impacts associated with other industry sectors in Appalachia. However, EPA has a responsibility to ensure compliance with the Clean Water Act for all industry sectors in Appalachia and across the United States, and works to ensure that Clean Water Act permits for all facilities are consistent with best available science and the law.

Concurrent with release of the interim final guidance, EPA sought public comment on the document (through December 1, 2010) and committed to issuing final guidance in 2011. EPA's revised guidance will reflect the significant public input we received, lessons learned in guidance implementation since April 1, 2010, and the final results of the Science Advisory Board's independent peer review of two EPA draft scientific reports on mountaintop mining. Following completion of interagency review, EPA anticipates releasing final guidance later this spring.

McConnell 4: Your Agency is searching for scientifically sound evidence to support a need for tighter regulations on PM-10 dust, or farm dust. However, some experts say there is no evidence that farm dust leads to long-term respiratory problems, and farm dust is not classified as a pollutant. How does the Agency justify grouping farm dust with industrial pollution and car fumes in this set of regulations? Additionally, further limitations on farm dust are especially burdensome to small farmers who struggle to compete with large agribusinesses. What steps does the agency plan to take to find an effective and economic way for farmers to reduce dust?

Answer: The National Ambient Air Quality Standards (NAAQS) are set to protect public health from outdoor air pollution, and are not focused on any specific category of sources or any particular activity (including activities related to agriculture). The NAAQS are based on consideration of the scientific evidence and technical information regarding health and welfare effects of the pollutants for which they are set.

As part of its review of the PM standards, EPA has concluded that existing evidence is insufficient to draw quantitative distinctions in toxicity based on composition and has noted that recent studies have reported that PM from different sources is associated with adverse health effects. The Clean Air Scientific Advisory Committee (CASAC) has also agreed with the conclusions of EPA staff that PM from many different sources has been linked with adverse health effects, including PM from crustal and soil sources.

We appreciate the importance of NAAQS decisions to rural and agricultural communities, and we remain committed to common sense approaches to improving air quality across the country without placing undue burden on agricultural and rural communities. EPA also recognizes that the U.S. Department of Agriculture (USDA) has been working with the agricultural community to develop conservation systems and activities to control coarse particle emissions. These USDA-approved conservation systems and activities have proven to be effective in controlling these emissions in areas where coarse particles emitted from agricultural activities have been identified as a contributor to violations of the NAAQS. EPA believes that where USDA approved conservation systems and activities have been implemented, these systems and activities could satisfy the Clean Air Act's reasonably available control measure and best available control measure requirements. EPA will continue to work with USDA to prioritize the development of new conservation systems and activities; demonstrate and improve, where

necessary, the control efficiencies of existing conservation systems and activities; and ensure that appropriate criteria are used for identifying the most effective application of conservation systems and activities.

McConnell 5: Your Agency has issued a guidance proposal for new pesticide labels, which would prompt higher costs and (potentially) debilitating legal fees. I am greatly concerned that the new regulations proposed by the EPA National Pollutant Discharge Elimination System Permit (NPDES) Pesticide General Permit (PGP) would negatively impact businesses and many people in the farming community. What additional benefits would this regulation provide to the environment or public health that is not already established through various regulatory agencies and the FIFRA label requirements?

Answer: EPA and authorized states are developing pesticide general permits in response to the Sixth Circuit Court of Appeals decision in *National Cotton Council, et al. v. EPA*. The court decided that pesticide discharges (either from biological or chemical pesticides that leave a residue) are pollutants and the point source discharge requires a NPDES permit.

In terms of additional benefits, EPA's Pesticide General Permit (PGP) will require some operators to go beyond the requirements of their pesticide label requiring the use of management practices that will further minimize discharges of pesticides to waters of the United States. Reducing the amount of pesticides entering waterbodies will help those waterbodies meet their water quality standards.

McConnell 6: As you know, your Agency is proposing Boiler MACT emissions limits of air pollutants for industrial, commercial and institutional incinerators, boilers and process heaters. A recent study suggests that for every $1 billion in compliance costs, 16,000 jobs will be put in jeopardy. Overall, 337,000 jobs are projected to be jeopardized with the new emissions standards fully in place. With such a huge national deficit, and record high unemployment rates, how does your Agency propose to save these jobs, which, if lost, could forfeit over $67.4 billion in industry sales, and $5.7 billion in lost tax revenue?

Answer: First, EPA made significant changes when we finalized the boiler MACT rule. These changes maintained benefits but reduced costs by 50 percent. The CIBO analysis of the proposal is not applicable to the final rule. Second, EPA's initial review of the study referred to above (from the Congress of Industrial Boilers (CIBO)) indicates that the CIBO study significantly overstates the negative impact of these rules by assuming much higher compliance costs than we believe is reasonable, and by ignoring the potential for these rules to improve public health and create jobs. For instance, EPA analyzed a subset of the potential impacts of the rulemaking on job creation, and concluded that the net impact due to the imposition of these regulations was much smaller than the numbers presented in the CIBO analysis.

EPA believes further public review is required, because the final standards significantly differ from the proposals. Therefore, EPA has announced that it intends to reconsider certain aspects of the final standards under the Clean Air Act process, for reconsideration, which allows the agency to seek additional public review and comment to ensure full transparency. This process will enable us to conduct further analysis of issues presented during and after the public

comment period for the recently adopted rule, including any further information that the public and affected source owners choose to provide EPA. As part of the reconsideration process, EPA will issue a stay postponing the effective date of the standards for major source boilers and commercial and industrial solid waste incinerators. EPA will accept additional data and information regarding reconsideration of these standards until July 15, 2011. On those issues that EPA reconsiders, the Agency will provide further opportunity for public comment.

Senator Pat Roberts

Roberts 1: I understand that EPA will soon issue preliminary remediation goals for dioxin. Has EPA considered the negative impacts on production agriculture of setting a dioxin standard below the rest of the world and even below normal background levels? How might these standards disadvantage exports of agriculture products?

Answer: EPA's interim soil dioxin preliminary remediation goals (PRGs) are not designed for use in cropland or range land where dioxin uptake in agriculture products is a concern. Thus, they are expected to have no impact on the U.S. export of agriculture products. The proposed draft interim PRGs of 72 ppt for residential land and 970 ppt for commercial/industrial land are not below the rest of the world's levels and are not below background levels. Of the 27 states, territories, and tribes that have established residential soil dioxin levels, 18 of them are more stringent than the proposed draft interim PRG of 72 ppt (11 have soil levels 10 ppt or less and 7 have soil levels between 11 and 72 ppt).[7]

The proposed draft recommends interim PRGs that generally should be considered, once finalized, by EPA Regions in cleanup decision until the Agency issues its final dioxin reassessment. PRGs are not intended to act as site specific cleanup levels; rather they are intended to serve as initial guidelines for use in scoping characterization and remediation alternatives at Superfund, RCRA, federal facility, and Brownfields sites. Final site cleanup levels typically would be developed by supplementing the PRGs with site specific information, e.g., exposure frequency or acceptable cancer risk levels. Currently, EPA utilizes existing interim PRGs for dioxin in soils developed in 1998. However, EPA in the proposal identified attributes of the current PRGs for dioxin in soil that are not consistent with the best available science on dioxin and therefore has proposed new recommended interim PRGs for dioxin in soils. These values have not yet been finalized.

Roberts 2: Administrator Jackson, in the past, EPA has worked with USDA and FDA to compile a comprehensive Question and Answer report on dioxin. However, I am aware that this document does not appear to have been updated to take into account the National Academy of Sciences (NAS) review, EPA's response to that review, or any comments by a number of the experts that were on the NAS review panel that have questioned some of EPA's conclusions. Can you assure me that before EPA takes any action on dioxin that you will work with USDA and HHS to fully review the Question and Answer document?

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"Review of State Soil Cleanup Levels for Dioxin" (EPA 2009), *oaspub.epa.gov/eims/eimscomm.getfile?p_download_id=494084*

Answer: The *Questions and Answers about Dioxins*, prepared by the Department of Health and Human Services, the Department of Agriculture, the Department of Veterans Affairs, the Environmental Protection Agency, the Department of Defense, the Department of State, and the Executive Office of the President, were posted on the Food and Drug Administration's Web site in January 2003. They were updated in October 2003, October 2004, July 2006, September 2008, and May 2010. The May 2010 update includes information on the NAS review of the 2003 draft dioxin reassessment, as well as the current review of the draft report entitled "EPA's Reanalysis of Key Issues Related to Dioxin Toxicity and Response to NAS Comments" by an expert panel convened by EPA's Science Advisory Board. The May 2010 updated questions and answers can be found at:
http://www.fda.gov/Food/FoodSafety/FoodContaminantsAdulteration/ChemicalContaminants/DioxinsPCBs/ucm077524.htm.
EPA will seek input from other federal agencies as additional public outreach materials are developed related to dioxin in PRGs.

Roberts 3: Additionally, will you fully vet the dioxin report with agriculture and food industry experts to prevent negative public perceptions to our nation's food supply?

Answer: The agriculture and food industries have availed themselves of the many opportunities to submit comment to the Agency on the multiple iterations of the dioxin reassessment that have been offered for public review and comment. These groups have also appeared at public meetings to offer oral public comment during the several independent external peer reviews to which the dioxin assessment has been subjected. Whether the public comments are from environmental groups, industry groups, the public health community, or individual citizens, this public input step is an integral and important part of the process.

EPA will continue to work closely and coordinate with colleagues in both the Department of Health and Human Services, including the Food and Drug Administration, and the Department of Agriculture as the Agency moves toward completion of the reassessment.

Roberts 4: Administrator Jackson, your regional office in Kansas City, many farm organizations in Kansas and a number of incorporated communities have begun discussing options to address specific regions that are in ozone non-attainment due to the annual, prescribed burning of the Flint Hills. The Flint Hills region is the world's largest undisturbed prairie ecosystem largely due in part to natural, early springtime range fires that have occurred for centuries. How can your agency work with both urban centers and rural ranchers to ensure that range burning occurring on one or two days in early April does not result in urban centers accruing ozone non-attainment days?

Answer: EPA is committed to working closely with stakeholders to address issues associated with prescribed burning of the prairies in the Flint Hills region. Over the past year, EPA worked with the Flint Hills Smoke Management Advisory Committee, comprised of representatives from various agriculture, state and local agencies, and public organizations, to develop a Smoke Management Program (SMP) for the Flint Hills region. The voluntary SMP represents a positive first step towards reducing the impacts of fire on air quality in downwind areas. The SMP communications strategy includes outreach to local media and educating the public to understand

health impacts of these planned burns and how to change personal behavior to avoid exposure to smoke. This strategy also calls for early notification of the planned burns. This SMP includes contingency measures to be evaluated for potential adoption in the event that further actions are needed. If the area is following the SMP as designed and a burn causes a violation of the NAAQS, the state may decide to utilize the provisions of the Exceptional Events Rule to seek relief. EPA's 2007 Exceptional Events Rule (EER) allows states to seek regulatory relief in cases where exceptional events, whether natural or man-made, cause violations of the NAAQS.

Senator Mike Johanns

Johanns 1. Right now, our farmers and ranchers are looking at regulation of greenhouse gases; no clear answer on E15; EPA regulating milk the same way it regulates oil; EPA regulation of dust; significantly expanded EPA regulation of pesticides; just to name a few.

Do you know how much any one of those proposed regulations would cost the average farmer or rancher? Has any cost assessment been done on any of the proposed rules that would apply to agriculture? Please provide an accounting for each rule mentioned.

Answer: Regarding E15, waiver decisions under section 211(f)(4) of the Clean Air Act must be based on a determination that the fuel will not cause or contribute to a failure of any emission control device or system (over the useful life of the motor vehicle, motor vehicle engine, nonroad engine or nonroad vehicle in which such device or system is used) to achieve compliance by the vehicle or engine with the emission standards. Costs associated with expanded use of any given fuel or fuel additive are not a criterion for the decision under the statute. However, these waivers will ultimately expand the market for ethanol which should be beneficial to farmers.

Regarding milk, EPA proposed to exempt certain milk containers from the Spill Prevention, Control and Countermeasure (SPCC) rule in January, 2009. On April 12, 2011, EPA amended the SPCC rule to exempt milk and milk product containers, associated piping and appurtenances. EPA believes that certain specific construction and sanitation standards and requirements address the prevention of oil discharges in quantities that may be harmful. EPA estimates that dairy farms will incur an average annualized savings of $133 million and milk product manufacturing plants an average annualized savings of $13 million (estimates based on 2009 dollars and a 7 percent discount rate). In aggregate, the total annualized savings is estimated at $146 million.

Regarding dust from agricultural activities, EPA does not directly regulate dust from agricultural activities under the national ambient air quality standards (NAAQS) for coarse particles (PM10). EPA sets the NAAQS, and states develop strategies for meeting those standards. Under the Clean Air Act, EPA's decisions regarding the NAAQS must be based solely on an evaluation of the evidence as it pertains to health and environmental effects: EPA is prohibited from considering costs or ease of implementation in setting these standards. However, pursuant to the requirements of Executive Order 12866, EPA does conduct a regulatory impact analysis as part of the rulemaking process to illustrate potential costs and benefits of strategies states may develop for meeting revised standards. In the review of the PM10 standard which is currently

underway, EPA has not yet issued a proposal with regard to whether or not to revise the standard, or analyzed potential costs to states of meeting any revised standard.

Under the pesticide law, FIFRA, EPA considers risks and the benefits of pesticides, including the potential impact of the decision on agricultural producers that may use the pesticide. EPA's pesticide program works closely with pesticide users to develop impact analyses that assess both the costs and benefits of proposed regulations, as well as whether regulation might necessitate alternative pest control approaches. EPA's overall goal is to ensure that the benefits of the intended actions under FIFRA justify the costs.

Johanns 2: When proposing new rules and regulations, does EPA consider the impact it will have on agriculture? Can you explain all the steps taken by EPA to ensure proposals will not negatively impact agriculture?

Answer: As part of the development of each new regulation issued by the Agency; including those that impact agriculture, there is generally an examination of the potential economic consequences. The Agency follows the requirements of Executive Order 12866 (September 30, 1993) and examines the costs and benefits of all significant regulatory actions. E.O. 12866 orders Federal Agencies to assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. In choosing among alternative regulatory approaches, Agencies are to generally select those approaches that maximize net benefits. However, for some regulations, statutory provisions govern EPA's consideration of the economic impact in decisions. Certain statutory provisions prohibit the Agency from making decisions based on cost while other provisions may require it. For example, in establishing National Ambient Air Quality Standards under section 109 of the Clean Air Act, the Administrator must select a primary standard, based on the science in the air quality criteria, that is requisite to protect the public health with an adequate margin of safety. In setting those standards, however, the EPA Administrator may not consider implementation costs.

Johanns 3. When does EPA intend to make a decision regarding E15?

Answer: EPA issued a partial waiver on October 13, 2010 to allow use of up to 15 volume percent ethanol (E15) in model year 2007 and newer light-duty motor vehicles. On January 21, 2011, EPA issued another partial waiver decision allowing E15 use in model year 2001 to 2006 light-duty motor vehicles. Taken together, the partial waiver decisions allow use of E15 in model year 2001 and newer light-duty motor vehicles. In the October 13 decision, EPA denied the waiver request for se in MY2000 and older light-duty motor vehicles, heavy-duty gasoline engines, on and off-highway motorcycles, and all nonroad engines, vehicles and equipment.

Johanns 4. When does EPA expect to announce a decision to exempt milk storage from SPCC regulations?

Answer: On April 12, 2011, EPA amended the SPCC rule to exempt milk and milk product containers, associated piping and appurtenances.

Johanns 5. EPA's draft policy assessment for the review of the air quality standard for dust indicated that EPA could consider regulating dust at a level as stringent as 65 to 85 micrograms per cubic meter. According to EPA's monitoring data for dust levels in Nebraska, many areas of my state exceed this threshold and would be designated as "nonattainment areas" if this were the standard adopted.

Won't this place a significant administrative burden on states when "nonattainment areas" are designated? Won't states with "nonattainment areas" be required to develop state implementation plans to control dust levels? What type of dust control measures can be included in these plans? Additional permit requirements? Tillage restrictions?

Answer: At present, we are still in the process of reviewing the current National Ambient Air Quality Standard (NAAQS) for particles smaller than 10 microns (PM10). No decisions have been made on whether the standard should be revised, nor has EPA even proposed such a standard. The NAAQS are set to protect public health from outdoor air pollution, and are not focused on any specific category of sources or any particular activity (including activities related to agriculture). The NAAQS are based on consideration of the scientific evidence and technical information regarding health and welfare effects of the pollutants for which they are set.

We remain committed to common sense approaches to improving air quality across the country without placing undue burden on agricultural and rural communities. We will continue discussing our options with the public. This is all part of the open and transparent rulemaking process that provides Americans with many opportunities to offer their comments and thoughts.

In the event that the standard is revised and areas are designated as nonattainment, States will be required to assess the sources within the affected nonattainment area(s) and submit a State Implementation Plan (SIP). The Clean Air Act (CAA) assigns important roles to States in terms of implementing NAAQS. States have the primary responsibility for developing and implementing SIPs that contain measures designed to achieve the NAAQS. EPA assists States by providing technical tools and guidance, including information on the potential control measures.

For areas where farm emissions are a concern, the U.S. Department of Agriculture (USDA) has been working with the agricultural community to develop conservation systems and activities to control coarse particle emissions. These USDA approved conservation systems and activities have proven to be effective in controlling these emissions in areas where coarse particles emitted from agricultural activities have been identified as a contributor to violation of the NAAQS. EPA believes that where USDA approved conservation systems and activities have been implemented, these systems and activities could satisfy the Clean Air Act's reasonably available control measure and best available control measure requirements. EPA will continue to work with USDA to prioritize the development of new conservation systems and activities; demonstrate and improve, where necessary, the control efficiencies of existing conservation systems and activities; and ensure that appropriate criteria are used for identifying the most effective application of conservation systems and activities.

States use the SIP development process to identify the emissions sources that contribute to the nonattainment problem in a particular area, and to select the emissions reduction measures most

appropriate for the particular area in question. Under the CAA, SIPs must ensure that areas reach attainment as expeditiously as practicable, but by no later than the statutory attainment date that is set for the area.

Johanns 6. Historically, irrigation districts using herbicides to manage weeds in canals, laterals, and drains fall under the statutory irrigation return flow exemption afforded by the Clean Water Act, which considers return flows to be 'non-point' sources of pollutants. However, the proposed general permit threatens to bring irrigation district herbicide use under the NPDES umbrella even though the court's decision focused on the definition of a 'pollutant' and not on the term 'point source.'

Is EPA reconsidering its draft permit language to ensure irrigation district herbicide use is exempt from the NPDES process as a non-point source activity based on Congress' clear statutory intent?

Answer: EPA's Pesticide General Permit (PGP) does not affect the irrigation return flow exemption in the Clean Water Act. Irrigation return flow (which includes runoff from a crop field due to irrigation of that field) does not require a Clean Water Act permit. Clean Water Act permits are required, however, for point source discharges from the application of biological pesticides, and chemical pesticides that leave a residue, which includes applications of herbicides, into waters of the United States (including irrigation ditches and canals that are waters of the United States). The Sixth Circuit Court of Appeals in *National Cotton Council, et al. v. EPA*, decided that pesticide discharges (either from biological or chemical pesticides that leave a residue) are point source discharges of pollutants and require Clean Water Act permits.

The Sixth Circuit Court's decision has been stayed until October 31, 2011. Prior to the decision becoming effective, EPA will issue and we anticipate authorized states will issue a pesticide general permit that entities discharging pesticides to waters of the U.S. may receive coverage under allowing them to apply pesticides in compliance with the Clean Water Act.

Johanns 7. Nebraska has a significant number of small electric cooperatives and municipal utilities that rely on coal-fired generation, so I am particularly concerned about what EPA believes its proposal to regulate coal combustion residues as a hazardous waste will do to small entities. As you know, EPA has the obligation to assure that the proposal takes into consideration its economic impacts on small business and minimizes the burden on small entities to the extent feasible while still meeting applicable statutory obligations.
How has the agency met this goal? What are the results of EPA's economic analysis of the impacts of this rule on small entities, including electric cooperatives and municipal utilities?

Answer: For purpose of complying with the Regulatory Flexibility Act (RFA), EPA completed a small business impact analysis for this proposed rule, and included that analysis as Section 7B in EPA's April 2010 "Regulatory Impact Analysis" document, which is available to the public as document ID nr. EPA-HQ-RCRA-2009-0640-0003 at http://www.regulations.gov. Out of the 495 total electric utility plants owned by a total of 200 owner entities which may be subject to the proposed rule, EPA determined that 52 of the plants are owned by 51 small entities, consisting of small municipal governments (33 plants), small companies (12 plants), small

cooperatives (6 plants), and a small county government (1 plant). EPA compared the estimated average annualized regulatory compliance costs for each small entity which will be subject to the requirements of the proposed rule (including electric cooperatives and municipal utilities), to the estimated annual electricity sales revenues for each entity, for the two regulatory options EPA co-proposed—one alternative would regulate coal combustion residuals (CCRs) under Subtitle C of the Resource Conservation and Recovery Act (RCRA), while the other alternative would regulate CCRs under subtitle D of RCRA. EPA determined that for the Subtitle C option, 90 percent of the small entities would incur an annual compliance cost of less than one percent of annual revenues, and for the Subtitle D option, 98 percent would incur a cost of less than the one percent level of annual revenues. In addition, the analysis indicated that none of the small entities would incur a compliance cost above the three percent level of annual revenues for either the Subtitle C option or the Subtitle D option. Therefore, the remaining ten percent of small entities under the Subtitle C option, and the remaining two percent of small entities under the Subtitle D option would likely experience a cost between the one percent and three percent threshold level. Thus, EPA determined that the proposal, under either option, would not have a "significant economic impact on a substantial number of small entities." However, EPA specifically solicited comment on these estimates, and will consider those comments as it determines the appropriate regulatory course to take.

Senator Chuck Grassley

Grassley 1. An issue that leaves legal uncertainty for producers and pesticide applicators is spray drift. I think everyone here acknowledges that even in the most ideal weather and ground conditions, a small level of spray drift is inevitable.

However, late last year, due to pressure from environmentalists, EPA proposed new spray drift label language, which essentially disallows application if drift "could cause" an adverse effect. So basically it comes down to no-drift, or opening yourself up to potential litigation.

Do you believe that a zero tolerance policy is attainable? Is it fair to farmers? Is it reasonable to assume that this could open the door to legal uncertainty for producers who could potentially be in violation if they apply pesticides that drift and then it floats somewhere coming into contact with people? Even if those people are not harmed and the pesticide doesn't pose an "unreasonable adverse effect?"

Answer: EPA has repeatedly made clear that it is not proposing a "no drift" policy. Off-target pesticide drift is a difficult and controversial problem. There is much support for EPA to address the issue, but there is no consensus on what action to take. EPA developed the proposed new spray drift language following a process that involved several years of consultation with multiple stakeholder groups, input from a broad array of organizations through our Federal Advisory Committee, the Pesticide Program Dialogue Committee (PPDC) including pesticide dealers and growers, as well as extensive advice from state regulators. EPA recognizes that some level of spray drift is unavoidable and is only a concern if it poses an unacceptable risk. In developing the language in the Pesticide Drift Pesticide Registration Notice, the Agency attempted to distinguish between drift that may lead to harm, and drift that may not.

The proposed drift labeling statement contains a performance standard for drift management based on a drift event that could cause adverse effects. This would include drift that causes actual adverse effects and drift that has the potential to cause adverse effects. A performance based, adverse effects standard is consistent with the approach a number of states have adopted in regulations addressing off-target deposition of spray drift. The states that have adopted such a standard report that it allows them to pursue those cases where adverse effects have occurred while providing the applicator with a clear understanding of the behavior that is expected.

As EPA proceeds with reviewing the comments, we will continue to use an open and transparent approach. We are committed to further discussions with stakeholders to work out a practical solution for making the improvements in spray drift labeling we all recognize as necessary. Our outreach will include dialogue with all the interested parties, such as state lead agencies, agricultural and environmental groups.

Grassley 2. I've been farming for over 50 years, and I've probably been using Atrazine products in one way or another on my corn for just about as long. I believe something like 2/3 of all corn grown in the U.S. has Atrazine applied to it. It's frustrating to me to hear that environmentalists can just walk in the door at EPA and say "we don't like X chemical" and suddenly EPA is conducting a re-evaluation of a herbicide that we've already seen over 6000 studies on. But it's underway, so there isn't much we can do about that.

Atrazine was just reviewed in 2006 and rescheduled for a re-review just 3 years from now. Is there a formal process that EPA goes through to determine whether a re-evaluation of a chemical is warranted before the scheduled review? If so, please describe this approach and how EPA determines which chemicals need re-review prior to a scheduled review. If not, why not?

Answer: EPA's current scientific evaluation of atrazine is based on our commitment to using the best available science and follows regular open and transparent processes, including our process to obtain independent, external peer review of important science issues. The Agency re-registered atrazine in 2003, which was the last major regulatory decision specifically for this herbicide. Given the new scientific information generated since the 2003 reregistration decision and improved data on the documented presence of atrazine in both drinking water sources and other bodies of water collected as a condition of reregistration, the Agency is reviewing the new research to ensure that our regulatory decisions regarding atrazine are based on the best available science and protect public health and the environment. Since EPA concluded its last evaluation of atrazine in 2003, the Agency has evaluated close to 150 newly published studies investigating a wide array of effects potentially relevant to human health risk assessment.

Over the last seven years since the atrazine reregistration decision was completed, the Agency has convened a number of Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panels to review new atrazine research and methods to assess its risks. Moreover, the Agency has received an extensive amount of drinking water and ambient surface water monitoring data submitted by the registrant, as a condition of reregistration. EPA continuously reviews these data and has added into the program over 25 new community water systems that warranted closer scrutiny and removed 51 others consistent with the reregistration requirements. In addition, the 1994 Atrazine Special Review remains open, highlighting the

Agency's historical and ongoing focus on atrazine and its potential health effects from drinking water exposures.

EPA's science-based review process relies on a rigorous examination of the relevant scientific data. As part of this process, to be certain that the best available science is used to inform its atrazine human health risk assessment, and to ensure transparency, the Agency is seeking advice on key aspects of the science evaluation from the independent FIFRA Scientific Advisory Panel (SAP). EPA presented its plan for the atrazine reevaluation to the SAP in November 2009, and the Agency held three SAP meetings in 2010 to address new atrazine studies and related issues. One additional SAP meeting is planned for summer 2011, to obtain scientific peer review of new data that EPA expects to receive from the epidemiological Agricultural Health Study (AHS) conducted by the National Cancer Institute at the National Institutes for Health. EPA expects to receive a report from the SAP including its recommendations about 90 days after the summer 2011 SAP meeting and will carefully consider this scientific input. At the conclusion of this evaluation of atrazine's human health effects, EPA will ask the SAP to review atrazine's potential effects on amphibians and aquatic ecosystems.

At this point in time, no single chemical is a complete alternative to atrazine. Atrazine is often used in tank mixes with other herbicides to control grasses and broadleaf weeds. Alternatives to atrazine involve different combinations of multiple herbicides. The most likely alternative herbicides for field corn would be: metolachlor, acetachlor, dicamba, alachlor, and nicosulfuron. For sorghum, the likely alternatives would be dicamba, 2,4-D, bromoxynil, and prosulfuron.

The human health and environmental effects of acetochlor and nicosulfuron were assessed as part of EPA's registration process, and their health effects through diet were assessed as part of EPA's tolerance reassessment process under Food Quality Protection Act (FQPA). The human health and environmental effects of metolachlor, alachlor, and dicamba were assessed as part of EPA's reregistration process. Metolachlor's health effects through diet were also assessed as part of EPA's tolerance reassessment process under FQPA. Registration review is expected to commence in 2012 for nicosulfuron, in 2014 for dicamba, and in 2016 for metolachlor, acetochlor, and alachlor.

The human health and environmental effects of prosulfuron were assessed as part of EPA's registration process. The human health and environmental effects of 2,4-D, and bromoxynil were assessed as part of EPA's reregistration process. Human health and environmental effects will be re-assessed for each of these chemicals during their respective registration review processes. Registration review is expected to commence in 2012 for prosulfuron, and in 2013 for 2,4-D and bromoxynil.

EPA considers all relevant information when making pesticide decisions under both FIFRA and the FFDCA. Tolerance actions under the FFDCA, and FIFRA regulatory decisions involving dietary risks that do not meet the FFDCA "reasonable certainty of no harm" standard, must be made without consideration of benefits. All other regulatory decisions under FIFRA are made under a risk-benefit standard. When making these risk-benefit decisions, EPA uses the best and most up-to-date available information concerning the economic impacts associated with use of a pesticide.

Grassley 3. Just like everyone here, I want our citizens and environment to be protected from harmful effects, but if Atrazine is banned I also recognize that increased costs on our family farmers for alternatives could have a large impact on their bottom line. It's my understanding that about 7 years ago EPA estimated that replacement costs for atrazine for corn growers would run about $28/acre. Is EPA considering updating these numbers for 2010? I think we all realize that input costs have risen drastically in the last 5 years so I think a re-review of the potential economic impacts would be warranted.

Answer: In 2003 EPA estimated that without the availability of atrazine for field corn production, average net revenue loss (yield loss + increased herbicide costs) for field corn growers would be about $28.31 per acre. EPA agrees that it is critical to use the most up to date information when considering economic impacts and will update these estimates accordingly when making future determinations.

EPA considers all relevant information when making pesticide decisions under both FIFRA and the FFDCA. Tolerance actions under the FFDCA, and FIFRA regulatory decisions involving dietary risks that do not meet the FFDCA "reasonable certainty of no harm" standard, must be made without consideration of benefits. All other regulatory decisions under FIFRA are made under a risk benefit standard. When making these risk benefit decisions, EPA uses the best and most up to date available information concerning the economic impacts associated with use of a pesticide.

Grassley 4. For years, I've been advocating that the EPA hasn't been taking into account the needs of rural America and farmers in a common sense way when it comes to dust. Instead, we are continually challenged with potentially more and more stringent guidelines on dust.

I and 21 of my bi-partisan Senate colleagues, including many on this Committee, recently wrote to you about our concerns with the Clean Air Scientific Advisory Committee draft Policy Assessment. You had Assistant Administrator McCarthy respond on your behalf. I'd like to put copies of both letters in the record please Madam Chairwoman.

I want to point out something from the EPA response we received. Quote: "I want to note a correction with regard to your statement that '[a] coarse Particulate Matter National Ambient Air Quality Standards of 65-85 $\mu g/m^3$ would be twice as stringent as the current standard.' This is incorrect. According to EPA's draft Policy Assessment, it would be appropriate to consider this range of alternative PM10 numerical levels only in conjunction with a significant change in the method used to calculate whether an area attains the standard. Such a change in the calculation could provide more flexibility than the current standard and greater year-to-year stability for the states."

The EPA claims that the current standard of 150 $\mu g/m^3$ with a 99th percentile form, which means the standard can be violated an average of one time per year over a three year period and still remain in compliance, is actually equivalent to a standard in the range of 65-85 $\mu g/m^3$ with a 98th

percentile form which in essence means the standard can be violated an average of 7 times per year over a three year period and still remain in compliance.

While your assertion may be correct in non-dusty eastern urban areas of the US, it certainly does not hold true in more rural, dusty, agricultural areas of the country where much more dust is typically generated. I think it is pretty clear that the likelihood of agriculture violating a low dust National Ambient Air Quality Standard of 65-85 micrograms per cubic meter more than 7 times per year is pretty high. In fact, such a tightened standard is likely to directly affect rural, agricultural areas much more than urban, non-dusty areas.

This reality is perplexing since you may recall that the preamble to the 2006 dust rule states that EPA should not focus dust control efforts on rural areas, but instead should focus on urban dust since it is contaminated with pollutants generated by high traffic volume. If EPA's main concern is urban areas, why are you proposing changes to a regulation that would cause great economic harm in rural areas?

Answer: EPA remains committed to common sense approaches to improving air quality across the country without placing undue burden on our farmers. At present, we are in the process of reviewing the current National Ambient Air Quality Standard (NAAQS) for particles smaller than 10 microns (PM10). No decisions have been made on whether the standard should be revised. In general, if the Agency were to change the form of the PM10 standard, it would most likely affect urban areas, where the majority of monitors are located, and would not likely adversely impact rural areas. Available air quality monitoring data suggest that a change in the form and level of the standard to provide at least equivalent public health protection as that afforded by the current standard may result in some areas that exceed the current standard coming into attainment, including areas where PM10 mass is comprised largely of dust, and some areas currently in attainment becoming out of attainment.

EPA has not yet issued a proposed decision regarding whether or not to revise the national ambient air quality standards (NAAQS) for coarse particulate matter (PM10). In June 2010, EPA released a second draft Policy Assessment prepared by Agency technical staff. This document discusses a range of policy options which, in the view of EPA staff, could be supported by the available scientific evidence.

The options for changing the form and level of the PM10 standard discussed in the Policy Assessment document prepared by EPA's technical staff would actually allow more exceedances each year, thereby providing more flexibility for states than the current standard provides by ensuring that relatively rare events that may result in short-term spikes in PM10 concentrations will not by themselves cause an area to be in nonattainment. EPA has noted that, as compared to the one-expected-exceedance form of the current standard, a concentration-based 98th percentile form is more reflective of the health risks posed by elevated pollutant concentrations and provides a stable regulatory target, facilitating the development of stable implementation programs. Specifically, a concentration-based form better compensates for missing data and less than daily monitoring. This is a particularly important consideration in the case of PM10 because, depending on ambient PM10 concentrations, the frequency of PM10 monitoring differs across locations, which can result in attainment status in some locations being based on the

number of days per year that the standard level is expected to be exceeded (e.g., in locations with less than daily monitoring), rather than actual counts of the number of exceedances. The extent to which the number of expected exceedances reflects the actual number of exceedances becomes more uncertain as the monitoring frequency decreases. A better balance can be achieved by not using the most extreme statistics, and by averaging pollutant concentrations over three years, which is the approach discussed by EPA staff in the draft Policy Assessment.

In evaluating the range of options included in the Policy Assessment, it is important to remember that this is not a decision document and there will be ample opportunity for public input following the proposal. We remain committed to common sense approaches to improving air quality across the country without placing undue burden on farmers.

Grassley 5. In 2005 the Second Circuit Court of Appeals ruled that EPA was wrongly requiring under a 2003 rule that CAFOs ("K-foes") obtain a Clean Water Act permit. The Waterkeeper decision stated that CAFOs who simply have a "potential to discharge" cannot be required to get a federal permit because the Clean Water Act regulates discharges.

As a result, the 2003 rule had to be modified to make it clear that only CAFOs that discharge or propose to discharge are required to apply for a permit. While CAFOs that do not discharge nor intend to do so can apply for and receive a permit, it is the CAFOs decision to make. Hence the 2008 rule. However because of settlements with private environmental groups, suddenly the EPA is going further than the 2005 decision. The most concerning aspect is the proposal that several major amendments are coming down the pike on the 2008 rule. I want to remind everyone the 2008 rule only became final late last year.

Why is EPA already looking at making changes to the 2008 CAFO rule, when we barely have it in place? How has EPA determined what amendments are appropriate without full knowledge of how the current rule is working?

Answer. The 2008 CAFO rule has been in place for more than two years. As a result of its experience in implementing the 2008 Rule, EPA is identifying potential changes to its CAFO regulations. In addition, EPA is working with States in the Chesapeake watershed to reduce nutrients and sediment from all sources, including CAFOs and some or all of the provisions of proposed changes to the CAFO regulations may address Chesapeake Bay. EPA expects to propose a new rule in 2012 and to take final action on the proposal by 2014. EPA plans to actively engage with CAFO owners and operators and the agriculture stakeholders in developing a regulatory proposal.

Since the questions were submitted, the Fifth Circuit Court of Appeals has vacated in part and upheld in part the 2008 CAFO rule in National Pork Producers Council, et al. v. EPA, 635 F.3d 738. EPA is considering the implications of the decision and how best to address it.

Grassley 6 and 7. As you know, agriculture is an energy intensive industry and family farmers are very vulnerable to any increases in their input costs. Therefore, many farmers are very nervous about how any climate change regulations might affect them, directly or indirectly.

EPA has now issued an endangerment finding for carbon dioxide that has triggered a cascade of other regulations under the Clean Air Act. The initial legislation that became the Clean Air Act predates me, but I was in Congress when we passed much of what is now in the Clean Air Act and I can tell you that we never intended to regulate greenhouse gasses the same way as traditional air pollution.

As you well know, the fact that you are using a tool designed for different purposes leaves room for many unintended consequences, including the possibility of animal agriculture being labeled an emissions source. I know you've attempted to address some of these unintended consequences with the so called "tailoring rule," but some have questioned whether EPA has the legal authority to waive the statutory thresholds in the Act. So, EPA is trying to solve problems created by the fact that it is using a law in a way Congress never intended by essentially rewriting inconvenient parts of that law through regulation.

I am reminded of Congressman Dingell's prediction that EPA regulations of greenhouse gasses would be "a glorious mess."

My question to you is whether, at any point when EPA was contemplating issuing the endangerment finding, you were personally concerned about the fact that, the Supreme Court ruling notwithstanding, Congress never intended the Clean Air Act to be used in this way. Did that give you pause at all?

Also, the very fact that Congress was debating whether and how to regulate CO2 should also have made you stop and think about whether it is appropriate for EPA to act without clear authorization from Congress. To what extent is your decision-making on this and other issues guided by a desire to carry out the intent of Congress or a motivation to pursue what you and your staff feel is the right policy?

Answer 6 and 7: My concern as Administrator is to faithfully execute the laws of the United States including the Clean Air Act. I know of no other way to fulfill the intent of Congress or of the Supreme Court's directive in this case other than to make sure that I properly administer the laws that Congress enacts. The Supreme Court made clear that the Clean Air Act covers greenhouse gases, and further made clear that we were obligated to determine whether their emissions endanger public health or welfare. The science is clear that they do. It is my view that it is not my role to ignore the clear decisions of the Supreme Court; nor is it my role to ignore the overwhelming scientific evidence before me.

Senate Committee on Agriculture, Nutrition & Forestry
"Oversight Hearing to Examine the Impact of EPA Regulation on Agriculture"
Questions for the Record
Mr. Jere White
September 23, 2010

Senator Roberts

1. Mr. White, did I understand you correctly that the plaintiffs' attorney in Holiday Shores Sanitary District vs. Syngenta Crop Protection, Inc. and Growmark, Inc. sought the subpoenas the day after you made public comments at an EPA Scientific Advisory Panel public hearing?

2. What were your comments at this public forum, generally speaking? At what location were the comments made?

3. Did I understand you correctly at the hearing that these three subpoenas stem from a State of Illinois court case?

4. Is there a reason you would be issued a subpoena for a court case in Illinois?

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1. **Mr. White, did I understand you correctly that the plaintiffs' attorney in Holiday Shores Sanitary District vs. Syngenta Crop Protection, Inc. and Growmark, Inc. sought the subpoenas the day after you made public comments at an EPA Scientific Advisory Panel public hearing?**

   That is correct. I testified on September 15, 2010 during the public comment session at the SAP. The next day, September 16, 2010, the request was received and processed by the Clerk of the District Court, Anderson County, Kansas.

2. **What were your comments at this public forum, generally speaking? At what location were the comments made?**

   My comments were supportive of the SAP's work over the sixteen years that the triazine herbicides have been under Special Review but critical of recent deviations in process at US EPA regarding the review of atrazine, one of the triazine herbicides. I also pointed out to the SAP that several stakeholders in the agricultural community who had commented at previous SAPs in support of atrazine had recently been targeted by trial lawyers with subpoenas seeking massive documents over unlimited years.

3. **Did I understand you correctly at the hearing that these three subpoenas stem from a State of Illinois court case?**

   Yes, the case is in the Circuit Court for the Third Judicial Circuit of Illinois, Madison County, Edwardsville, Illinois.

4. **Is there a reason you would be issued a subpoena for a court case in Illinois?**

   As I understand the case, I have nothing to offer any party regarding the case. I have not been asked to appear on behalf of any party regarding the case. I believe that I, and others, are being subpoenaed as straight out harassment and/or to somehow temper our willingness to participate in the public process.

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