

**TO THE SENATE COMMITTEE ON AGRICULTURE, NUTRITION and
FORESTRY**

Hearing Examining Impact of EPA Regulation on Agriculture

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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.