

**TO THE RURAL AMERICA SOLUTIONS GROUP FORUM**

**The EPA's Assault on Rural America: How New Regulation and Proposed  
Legislation are Stifling Job Creation and Economic Growth; Chesapeake Bay**

**September 29, 2010**

**Presented By:**

**Wilmer N. Stoneman, III**

Associate Director of Governmental Relations

Virginia Farm Bureau Federation

My name is Wilmer Stoneman; I am the Associate Director of Governmental Relations with the Virginia Farm Bureau Federation, and I am pleased to offer this testimony on behalf of our 39,000 producer members and farmers across the nation.

Farmers and their way of life and livelihood have never felt more challenged or threatened than they do today by the continuous onslaught of regulations and requirements from the Environmental Protection Agency (EPA). It appears that the EPA is intent on being a controlling partner all farms in the Chesapeake Bay watershed. They claim that's not the case. But regardless of their intent, that will almost certainly be the result of their regulation and pending legislation.

In just the last year and a half, EPA has set in motion a significant number of new regulations or legislation that will fundamentally alter the face of American agriculture. Bureaucrats, most of whom know nothing about agriculture, will determine how we raise our crops and feed our livestock. Environmentalists will have greater capacity to sue us if they don't agree with us. It appears that agriculture is facing the tip of EPA's spear, and we frankly don't understand why. If you look at agriculture today, our environmental footprint is much smaller than it was years and decades ago – and it's far smaller than in virtually every other nation in the world. And yet the policies EPA is promoting encourage the outsource of more of our food production. 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 Chesapeake Bay watershed have consistently improved. The agriculture 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 mandatory regulation to all of livestock agriculture. "Buy Local "is heard throughout the bay watershed; yet EPA is now targeting the once-protected small farmers, especially dairies and cattle operations. Their proposals will drive costs so high that small, local farmers simply cannot keep up. To cope we have 3 choices: (1) go into niche markets; (2) get bigger in order to absorb higher regulatory

costs; or (3) choose another way of life. 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 conservation practices and measures. We are proud of our accomplishments; unfortunately those efforts have gone unreported or unaccounted for in so-called “state-of-the-art computer models”.

As you have recognized the following current slate of initiatives now being promoted by EPA and the challenges they present to farmers:

1. 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 bay watershed they want to replicate nationwide. That means taking away 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. 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 narrow the agricultural stormwater exemption – in fact, in the Chesapeake Bay they want to do away with it entirely. They have entered into a settlement agreement with environmental advocates to adopt unrealistic and unattainable numeric nutrient criteria. 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 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 programs that will limit farmers’ and ranchers’ productivity and efficiency in virtually every watershed in the nation. The Agency has been supportive of proposed legislation,

such as, S. 1816 by Senator 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 began regulating greenhouse gasses; once again S. 1816 is proposed, and EPA is already implementing its approach in the Chesapeake Bay and Illinois River watersheds. These issues deserve oversight to prevent EPA's overreach.

2. Last year, EPA failed to defend its own regulation when it could have sought an *en banc* hearing in the 6<sup>th</sup> 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 the 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 United States. 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. This path 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 indicated 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.
3. In 2005, EPA lost a decision in the 2<sup>nd</sup> 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-size livestock operations as CAFOs. It is a fact that complying with EPA regulations will increase the operational cost that we believe will force small- and medium-size 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.

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.

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. 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.

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