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Testimony of Philip Nelson
House Committee on Small Business –
Subcommittee on Agriculture, Energy and Trade

Good morning, I'm Philip Nelson, a fourth generation grain and livestock farmer from Seneca, Illinois, a small rural community about 75 miles southwest of downtown Chicago. I farm with my wife Carmen, son Kendall, and daughter Rachel and raise corn, soybeans, alfalfa, cattle and hogs.

I'd like to begin by thanking Chairman Tipton and Ranking Member Critz for holding this hearing, and I'd also like to acknowledge the excellent work on behalf of agriculture by the newest member of your panel. Thank you, Congressman Schilling for creating this opportunity for us today.

I've been asked to testify about the National Pollutant Discharge Elimination System (NPDES) Pesticide General Permit that went into effect on the first of November and to say a few words on the potential impacts of proposed dust regulations on agriculture. But before I do, I would like to point out that we shouldn't even be here today discussing a new NPDES pesticide permit because it should have never gone into effect.

Let me be clear: This new permit is a needless duplication of existing law. A bill sitting for the past seven months in the Senate recognizes this fact and would eliminate the need for such a permit.

With strong bipartisan support, the House of Representatives passed H.R. 872 back in March. I appreciate that several of you voted for H.R. 872, and it's regrettable that the bill needlessly spent this past spring, summer, and all of this fall languishing in the Senate, caught in a stranglehold by a couple of Senators upset—primarily over Senate committee jurisdiction--not over the substance of the bill. I understand that more than 60 Senators would vote today in favor of H.R. 872, if only given the chance. They should be given that chance.

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) has covered pesticide labeling and application very effectively since 1947. While the new permit process addresses pesticide applications in, over, and near waters of the United States, it duplicates FIFRA. EPA estimates that this new requirement will affect approximately 365,000 pesticide applicators nationwide that perform 5.6 million pesticide applications annually. It will cost $50 million and require over one million hours per year to implement.

We believe these estimates are low, for they do not include the compliance requirements added by the National Marine Fisheries Service (NMFS) for those waterbodies that include endangered or threatened species or federally-listed critical habitat. Nor do they include any potential requirements to be added by the US Fish & Wildlife Service (FWS), for EPA issued its permit before it completed its consultation with FWS. To be sure, the NMFS endangered-species requirements will not apply everywhere EPA's permit will apply, but where they do apply they will make it extremely difficult for anyone to use pesticides for control of pests. That includes not only farmers and ranchers, but irrigation canal operators, forest service agencies, mosquito control districts, utility rights-of-way managers and others responsible for pest control in those areas.

I don't have to tell you that states like Illinois have very limited resources as does the federal government. Spending precious resources for this purpose represents neither good public policy nor a wise use of taxpayer dollars. Furthermore, it doesn't make our food any safer, our water any cleaner, or provide one iota of environmental benefit above and beyond what we already achieve on our farms.

As president of Illinois Farm Bureau, I can speak for Illinois farmers, and I can tell you they're frustrated. Few farmers are aware the permit is even in effect. And even fewer can tell you today whether they will be required to get one, how to comply with it, or even where to go to get it. The time we spend thinking about it, is time away from what we do best. If time is money, then the new NPDES permit represents a waste of time and effort and fails any cost-benefit analysis.

The permitting process itself is complicated. The Illinois permit is 30-pages long and contains many layers of mandates. Most farms are operated by one person and requiring this permit on top of everything else a farmer must do is daunting. Then, if you take the time consuming paper work for little or no environmental benefits and couple it with the fact that farmers cannot pass along the cost involved with implementing the permit's mandates, that only adds to our frustration.

As a farmer, I can assure you I take my stewardship responsibilities seriously. Like all farm families, my wife and I breathe the air, drink the water, and raise our children on the land we farm. We handle and apply crop protection products safely and follow the directions on the label. Farmers are motivated to take care of the land, so the land will continue to take care of us, our children and future generations.

Frustrated? Yes. But what really keeps me lying awake at night is the potential out of this for more regulatory creep. Regulatory creep is a very real concern for farmers. It's as if we go to bed one night with one set of regulations and wake up the next morning facing a new set. Every moment that we spend fighting and and working to comply with needless, duplicative regulations takes us away from what we do best, produce food.

In the case of the new NPDES Pesticide General Permit (PGP), we have good reason to believe pesticide regulation could be expanded in the future to include other routine applications. If we

look at the history of similar rules that begin innocuously and later expand exponentially, then past actions give us great cause for concern with this new permit. At times, regulatory creep can be the result of changing interpretation of law or rules by the U.S. EPA on specific language where there had been years of common agreement on its meaning. For instance, U.S. EPA has chosen not to define what "water's edge" is in the new permit. How this is ultimately interpreted can drastically change how the PGP would impact agriculture. We are also concerned that other proposed laws, regulations, or guidelines on related issues may increase the scope of how the permit is implemented or who is impacted. One example of this is found of the U.S. EPA's Guidance Document that would greatly expand what waters are regulated under the Clean Water Act.

The last issue I want to raise is one that is perhaps the most troubling and that is the lawsuits that may occur because of the Pesticide General Permit. In recent years, we have witnessed an increasing number of lawsuits against farmers. In Illinois, farmers are being sued for discharges at livestock facilities that are still being constructed and where there are no livestock present. It doesn't take much imagination to see how this new permit opens the door to new legal challenges that are financially and emotionally draining Every dollar we spend needlessly defending our livelihoods in court is one we'll never be able to spend on our operations.

This PGP doesn't improve food safety, doesn't add any additional environmental protection or benefit for society, and does nothing to improve my bottom line. We need to focus on improving efficiencies and effectiveness of programs. We feel the current regulation of pesticides by FIFRA has remained current and is effective to the point we do not need this entirely new permit program. H.R. 872 remains relevant and Congress needs to complete what 292 members of the House supported and likely a strong majority in the Senate would like to see approved. The legislation would clarify there is no additional NPDES permit needed for pesticide applications and remove any confusion the Sixth U.S. Circuit Court of Appeals created in its ruling.

I would like to further comment on proposed dust regulations.

"Dust" is a way of life in rural areas of the country. It is raised by activities that are essential for most farm and ranch operations. For example, it is raised by driving on unpaved rural roads, working farm fields with tractors, or moving livestock, it is also generated by naturally occurring conditions, such as blowing winds and dry conditions. Unlike man-made emissions of smaller particulate matter (fine particulate matter), dust is comprised mostly of dirt and organic matter from grass and farm fields.

The Environmental Protection Agency (EPA) has regulated rural dust for many years. Coarse particulate matter (PM10), another name for rural dust, is part of the general category of "particulate matter" that is a criteria pollutant under the Clean Air Act. Under the Clean Air Act, EPA reviews NAAQS for criteria pollutants every five years. The NAAQS for particulate matter was last revisited in 2006, so EPA is undertaking its normal five-year review. We applaud the recent decision of the administrator to propose that the current standard for coarse PM be retained with no change, a decision that will help to prevent many other rural areas around the country from falling into non-attainment status for dust. It will not, however, help those farmers

in Arizona, California, New Mexico and other western and southwestern states whose operations are already being regulated because their areas cannot meet the current standard.

EPA also readily admits that it has little or no data on health impacts in rural areas. It states that "most PM10-2.5 epidemiological studies have been conducted in urban locations in the U.S., Canada, and Europe while a small number of studies have examined the health impacts of dust storm events." (id., 3-14) The applicability of these studies is limited. EPA staff concludes, "Effect estimates for PM10-2.5 were larger in the eastern U.S. than the western U.S., though this difference was not statistically significant (Peng et al., 2008)." (id. P. 3-13).

Given these and other factors, EPA concludes, "Although new studies have become available since the last review and have expanded our understanding of the association between PM10-2.5 and adverse health effects (see above and U.S. EPA, 2009a, Chapter 6), important uncertainties remain." (id, p. 3-15)

As a result, EPA can only "suggest" a causal link between the presence of rural dust and possible short-term health effects. It also admits that the evidence is "inconclusive" with respect to long-term health effects of dust in rural areas.

There are economic consequences associated with not being able to meet ambient air quality standards. An example will illustrate this point. My fellow Farm Bureau President from Arizona, Kevin Rogers, farms near Phoenix, which has not been able to meet current PM10 standards for several years. Part of the reason for being in non-attainment are the huge dust clouds that sweep down from the desert and blow through the Phoenix area. In the past three months, there have been four such naturally occurring storms.

As a result, the state developed the Governor's Agricultural Best Management Practices Committee to develop a general coarse PM permit to include controls on agricultural practices. The committee developed best management practices (BMP) in three different categories, and farmers were required to adopt one BMP in each category. The state law implementing this program was recently amended to require two BMPs from each category. All farmers and ranchers in the non-attainment areas are regulated for farm dust under the Clean Air Act. Farmers and ranchers who choose and accept to perform BMPs are covered under a general air permit. Those farmers and ranchers who do not participate in the BMP program must obtain individual air permits similar to those required of utilities and factories.

BMPs include practices such as: tillage based on soil moisture, not working fields in windy conditions, modifying equipment to prevent PM generation, speed limits on unpaved roads, planting windbreaks and permanent cover crops, to name a few.

Within the past few years, they have seen this program go from requiring one BMP per category to two for participating producers. EPA and the state say that more is needed. EPA is currently pushing for mandatory restrictions against working in fields when the wind reaches a certain speed. All of these activities have economic consequences attached to them and place restrictions on farming operations.

The current regulatory climate provides no certainty to farmers, ranchers and rural America. While we applaud the announcement by the EPA Administrator that EPA will not propose revisions to the current PM10 NAAQS, this does not provide rural America with the certainty that it needs to have normal activities free from regulation for naturally occurring dust. An example will illustrate the point.

A recent petition to EPA filed by WildEarth Guardians illustrates the threats farmers and ranchers in the West and Southwest face from the current regulatory scenario for naturally occurring rural dust. The group claims that data shows that certain areas are currently in violation of the dust standards, and EPA "must designate" these areas as being in non-attainment. States and local authorities are required to develop and implement plans to reduce dust in these areas. Failure to bring such areas back into compliance can result in loss of federal highway funds, among other consequences.

EPA maintains that its efforts on protection resulting from ambient air quality standards are focused on population centers and not rural areas. Yet, of the 15 areas that WildEarth Guardians claims "must be" declared in violation, nine are in areas where the population is less than 20,000 people. The petition wants EPA to clamp down on dust from Pagosa Springs (pop. 1,591), Alamosa (pop. 9000)), Lamar (pop. 8659) and Parachute (pop. 1006) in Colorado.
Other areas in violation include: Deming (pop. 14,116), Sunland Park (pop. 14,106), and Chaparral (pop. 14, 631)in New Mexico. Part of Sweetwater County, Wyoming near Rock Springs (pop. 18,000) and part of Jefferson County, Montana (pop. 11, 406 for the entire county, but near a mine) were also cited. These are hardly the population centers on which EPA says these standards are to focus. The regulations to reduce naturally occurring rural dust to acceptable levels will limit driving on unpaved roads, plowing in fields, and hoping the rain falls and the wind doesn't blow.

The lesson is clear: rural areas are one petition or one lawsuit away from EPA regulation of naturally occurring dust. Only legislation such as H.R. 1633, the Dust Regulation Prevention Act, can provide the certainty that farmers, ranchers and residents of rural areas need to ensure that their normal activities that are essential parts of their operations are not unduly regulated by a standard for which there is no proven benefit to human health. By excluding "nuisance dust" from regulation, the bill allows EPA to continue regulating man-made emissions of particulate matter, while at the same time not trying to regulate natural occurrences. The exclusion focuses EPA attention on things that EPA can control, instead of trying to regulate Arizona dust storms or arid conditions in rural areas.

As I cut soybeans this fall, I wondered like most farmers: How in the world would EPA even begin to regulate the dust flying off my combine? How would the agency prevent dust from flying when I dump my load of corn or beans at the local grain elevator? Fortunately, Administrator Lisa Jackson acknowledged the impracticality of regulating dust and announced there will be no dust regulations on agriculture. But it is truly amazing that a campaign had to be waged to get EPA to finally act. Like President Obama's response on his bus tour last August to the question posed by a fellow Illinois farmer, the administrator's words don't instill tremendous confidence in farmers. Again, that's why we support H.R. 1633.

I look forward to answering your questions.