

Time To Stop The EPA?

Approach To Chesapeake Bay May Serve As Model For Other Regions

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With near-record farm prices and surging export markets, the U.S. farm sector is one of the bright spots in an otherwise dreary U.S. economy. But there are also plenty of threats looming and the increased regulatory burden is

perhaps the biggest one for 2011, says American Farm Bureau Federation (AFBF) President Bob Stallman.

Stallman used his organization's 92nd annual meeting to "tee up" a major push back against the Environmental Protection Agency (EPA) and other regulators who he says are ready to "downsize American agriculture, mothball our productivity and out-source our farms." He says the group's message to the new Congress is: "It's time to stop the EPA" (Environmental Protection Agency).

"At the very time agriculture's environmental footprint is shrinking and productivity is on the rise, a litany of EPA regulations, from water and dust, to greenhouse gases and endangered species, has put agriculture in the crosshairs, Stallman adds.

The national farm organization filed a lawsuit in federal court on Jan. 10 to halt the Environmental Protection Agency's pollution regulatory plan for the Chesapeake Bay, a plan that many believe the agency will replicate in the Mississippi watershed and perhaps others across the country.

"We all want a clean and healthy Chesapeake Bay," said AFBF President Bob Stallman. "This lawsuit is about how we get there. Farm Bureau believes EPA's 'diet' for the Chesapeake is dangerous and unlawful."

AFBF says the agency is overreaching by establishing a Total Maximum Daily Load (TMDL) or so-called "pollution diet" for the 64,000 square mile area, regardless of cost. The TMDL dictates how much nitrogen, phosphorous and sediment can be allowed into the Bay and its tributaries from different areas and sources. The rules could result in strict new limits on how crop and livestock farmers operate.

Flawed data?

Just a few weeks earlier, Agricultural Nutrient Policy Council issued a report noting major differences between USDA and EPA data and modeling efforts for the Chesapeake. AFBF is a member of the Council.

"We are not saying one is right and one is wrong," says Tom Hebert, former USDA Deputy Under Secretary for Natural Resources and Environment during the Clinton Administration. "But with so much at stake, they should at least be on the same page."

The Council hired Limno Tech, a water sciences and environmental engineering consulting firm, to compare the results of the EPA Watershed Model with a recently released, draft estimate of loads within the Bay watershed by USDA. LimnoTech found that there are substantial differences between the USDA and EPA pollutant load estimates. Their report called for a "timeout" on the TMDL until the two federal agencies reconcile differences in:

- Land use and total acreage of the Bay watershed;
- Hydrology;
- Assumptions about conservation practices;
- Model frameworks; and
- Model results.

"The differences in land use alone are substantial," says Hebert, who is now a principal with the Bayard Ridge Group. In EPA's Water-

shed Model, there are 41.1 million acres, excluding water surface areas in the Chesapeake Bay and tidal tributaries. This is 1.39 million acres (2,171 square miles) less than USDA's estimate.

"This 3.4 percent difference is significant when EPA considers the Total Maximum Daily Load (TMDL) to be accurate to a single pound. For cropland, the differences are even more significant. EPA estimates 3.33 million acres (1.68 plus 1.65 million acres) are used for crops. USDA estimates that 4.38 million acres are in such use, a difference of 1.05 million acres, or approximately 32 percent," according to the report.

"With respect to cropland and tillage practices, EPA estimates that 50 percent of cropped acres are farmed using conservation tillage (no-till) and 50 percent are farmed using conventional tillage. USDA estimates that 88 percent of cropland is farmed using conservation tillage (no-till or mulch till); five (5) percent is between conservation tillage and conventional tillage; and seven (7) percent is in conventional tillage. These differences in assumptions about total acres, land use, and conservation tillage versus conventional are significant when predicting different loading estimates," the report notes.

Problems with rule

Farm Bureau has three basic objections to the TMDL rule, including:

- The rule unlawfully "micromanages" state actions and the activities of farmers, homeowners and businesses within the six-state Chesapeake Bay watershed. EPA's plan imposes specific pollutant allocations on activities such as farming and homebuilding, sometimes down to the level of individual farms. The Clean Water Act, the AFBF action contends, requires a process that allows states to decide how to improve water quality and take into account the economic and social impacts on businesses and communities in the states.

- To establish the TMDL, EPA relied on inaccurate assumptions and on a scientific model that EPA itself admits was flawed, AFBF noted. AFBF claims that the TMDL violates the Administrative Procedures Act's prohibition of "arbitrary and capricious" agency action.

- EPA violated the APA requirement that agencies allow meaningful public participation on new rules. The suit alleges that EPA failed to provide the public with critical information about the basis for the TMDL and allowed insufficient time (45 days) for the public to comment on the incomplete, but highly technical, information that EPA did provide.

"Our laws require agencies to show the public what their actions are based on, so that the public can tell the agencies if they are getting it wrong," Stallman added. "In this instance, EPA failed to provide critical information."

EPA finalized the TMDL on Dec. 29, after months of waiting for the states to take stronger action. The six states in the Chesapeake watershed (Delaware, Maryland, New York, Pennsylvania, Virginia and West Virginia) must now follow very detailed watershed plans, or else EPA could block necessary permits and cut federal funding to the states.

"Farmers and ranchers already are taking real, on-the-ground actions every day to improve water quality, actions that have been shown by USDA reports to reduce soil erosion and provide other environmental benefits," Stallman adds. "Those actions will continue, regardless of what happens with this lawsuit."

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