



# Statement of the New York Farm Bureau

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**To the House Committee on Oversight and Government Reform  
Subcommittee on Regulatory Affairs, Stimulus Oversight  
and Government Spending**

**“Regulatory Impediments to Job Creation in the Northeast”**

**Presented by Jonathan Taylor, Board Member;  
New York Farm Bureau**

**Wednesday, April 20, 2011**

Thank you for inviting me to testify before you today. My name is Jonathan Taylor and I address you as a dairy farmer and Board Member of the New York Farm Bureau, the state's largest general farm organization. New York Farm Bureau represents nearly 30,000 family farm members and I represent the members of the Finger Lakes region, including orchards, vineyards and wineries, vegetable growers and other dairies.

I'm a fourth-generation farmer and agriculture has fundamentally changed from my father's generation. More than ever, family farms, like where I work, must recognize and adapt to my generation's new realities – volatility in the global marketplace, increasing energy costs, and a relentless regulatory burden being placed on the farm community. Whether as a blunt sledgehammer or micromanaging guardian, overzealous regulation is killing our family farms, depriving it of any potential for growth and eroding our local food infrastructure.

Without question, producers of all sizes and sectors identify the myriad of regulatory stresses from the federal and state level as the #1 obstacle to business growth, profitability, and in some cases, business survival. Government mandates have become a tangible barrier to our farm families being able to pass their business on to future generations as they compete with foreign competitors who do not have to tolerate such rigorous and expensive regulations. No one wants lesser quality food from questionable sources, like China, but with the diminishing number of farms in New York State due to a hostile regulatory climate, who will be left standing to fill in the food gap? If food security, public health and accessibility to local, nutritious, high quality foods are federal priorities, then something must be done to reign in the many regulations that demand extremely high compliance costs from family farms with very little environmental, public health or any other beneficial gain.

New York's family farms are experiencing an unprecedented level of federal regulatory and agency oversight in the sectors of environmental management, labor and food safety. Much of this regulatory activity is being seen in the form of broad-based mandates that do not take into account existing federal and state regulatory and voluntary programs and, most importantly, do not take into account their success record on the ground. While simplistic in theory and implementation, such mandates are counterproductive in providing effective solutions for each specific state and waste the limited resources of farmers, taxpayers and government agencies. For example, the original draft Chesapeake Bay TMDL would have discounted the progressive best management practices (BMPs) farmers have installed under the State's Agricultural Environmental Management program and replaced them with less effective and more expensive protocols that work against NY's unique landscape and agricultural traits. In cases like these, farmers think government should follow the common-sense adage, "If it's not

broken, don't fix it."

In the last six months alone, NYFB has invested a great deal of time and resources on a number of regulatory and agency policies that comprehensively will drive New York family farms, particularly smaller farms, out of business:

- Chesapeake Bay TMDL
- NRCS Nutrient Management Practice Standard Code 590
- Greenhouse Gas Regulation
- Duplicative pesticide permitting under the Clean Water Act
- FDA Milk Residue Sampling Assignment
- Web based pesticide labeling
- Protection of dairy product identity
- Exclusion of certain vegetables from the school lunch program

I will not comment on all of these, but I will highlight a few of the more urgent issues.

### **ENVIRONMENTAL MANAGEMENT**

The Environmental Protection Agency has brought the agriculture industry under intense scrutiny for its environmental sustainability. NYFB's family farm members, like me, have a significant and continued interest in any efforts and actions that impact the environmental and economic sustainability of New York's farmland. Continually improving water quality and environmental conservation is a paramount priority of New York farmers. While we support the Environmental Protection Agency's intent of improving water quality in New York and across the nation, we do feel that their reasoning and methodology in development and implementation of certain regulations lack a foundation in sound science and ignore inherent state-specific factors that will influence compliance (i.e. seasonality, topography, etc.). These regulations also fail to produce any environmental gain outside of what can already be achieved through alternate, less costly means that have proven to be equally effective. I offer the following examples.

#### ***Chesapeake Bay TMDL***

To improve and restore water quality in the Chesapeake Bay, which provides the drinking water for Washington D.C. and Baltimore, the EPA developed a regulatory framework requiring reductions in nitrogen, phosphorous and sediment from six states, including New York, whose waters feed into the Chesapeake Bay and comprise the Chesapeake Bay watershed. This regulation, the Chesapeake Bay Total Maximum Daily Load (TMDL), laid out EPA's strategy to assess, plan and execute nutrient load reductions in order to meet EPA's final water quality goals for the Bay.

The EPA's draft TMDL was inequitable, unattainable and threatened the livelihood of all 900 farms within New York's portion of the Chesapeake Bay watershed without markedly improving water quality for the Chesapeake Bay. EPA's proposed TMDL imposed disproportionately stringent restrictions and requirements on NY's farm industry at a cost of billions of dollars in order to help other states meet their overall TMDL goal. Most glaring was EPA's lack of accreditation that New York's water within its boundaries of the Bay watershed was proven to be clean according to water chemistry testing by the US Geological Survey. These distortions can be attributed to several factors, including lack of consideration for New York's progressive agricultural environmental conservation programs and their proven track record for over a decade, lack of consultation with state academic and professional experts, but most of all it was the EPA's lack of understanding of New York agriculture and its inherent uniqueness (i.e. soil types, topography, seasonality, etc.) that made the TMDL a counterproductive mandate for New York. (NYFB's detailed response to the EPA's draft TMDL is available on our website or upon request).

If intervention was not made by NYFB, other partners and our Congressional delegation, the farm community would have seen small farms put out of business and very large increases in business costs, staff time and red tape for the remaining farms to comply with a one-size-fits-all federal regulation that is poorly-suited to New York agriculture, ignored the successful conservation programs that already existed and elevated other state's interests at the expense of our farm community. In late December 2010, the EPA accepted New York's Watershed Implementation Plan (WIP), the on-the-ground strategy to reduce nutrients in agricultural runoff in New York's portion of the Chesapeake Bay watershed. Because of NYFB's efforts, this documented strategy commits agriculture to continue in the State's aggressive agricultural conservation programs with no new federal requirements being made of New York's farms.

This does not mean that the farm community is safe from further damage from this federal mandate. Substantial funding is needed for the State's agricultural conservation programs to continue to serve in the needed, expanded capacity. EPA continues to have the authority to discount the significant investments and achievements New York farmers have already made to improve water quality, well beyond the investments and management practices implemented in other states and absent any federal mandate. NYFB continues to be vigilant as Phase II of the TMDL is currently being carried out which focuses on implementation. NYFB will be working closely with EPA, NYS DEC and other partners to ensure that family farms continue to be held harmless from further regulatory consequences if NYS continues to honor their WIP commitments.

Lastly, to contest EPA's overreach, our national organization, the American Farm Bureau Federation (AFBF) is challenging EPA's TMDL authority under the Clean Water Act in a Pennsylvania district court. EPA's TMDL sets a dangerous precedent that EPA may establish the Chesapeake Bay TMDL and TMDLs in other areas of the country without Congress' legislative authority, which is contrary to the legislative intent of the CWA. This lawsuit does not stall or disrupt the current TMDL from moving forward and all Chesapeake Bay watershed jurisdictions, including New York State, are moving ahead with implementing their WIP. It is expected that court proceedings will progress throughout 2011.

### ***NRCS Nutrient Management Practice Standard Code 590***

NRCS Practice Standards provide the suite of tools for farm-site specific solutions for sustainable environmental management. In the past, these guidance documents were usually founded on practical, science-based approaches that do not place undue burden on farm families. NRCS stepped away from that philosophy with several policy revisions that abandon scientific justification in place of a one-size-fits-all mandate that potentially contradicts effective environmental sustainability for New York agriculture. Particularly, NYFB strenuously opposes NRCS' proposal to implement a national calendar ban on nutrient spreading for farms of all sizes and management levels. A one-size-fits-all federal practice standard cannot replicate nutrient use efficiencies, optimum crop response and environmental gain that Cornell University on-farm research and trial results have provided to New York farmers to inform their farm management and business planning decisions. Secondly, the agriculture industry will more readily and quickly adopt proven practices with demonstrable environmental and economic benefits than a minimal federal requirement designed to accommodate the worst offender. NYFB requests that the Committee intervene with NRCS to withdraw this overreaching policy.

### ***Greenhouse Gas Regulation***

EPA is also using the authority of the Clean Air Act to regulate greenhouse gases. Because of the thresholds detailed in the Clean Air Act, EPA will be regulating farms, ranches, small businesses, hospitals, schools and even large homes which emit 100 tons of carbon dioxide or nitrogen a year.

Dairy farms with as few as 25 cows will be considered a "major source" of emissions and forced to pay an annual permitting fee which is expected to be a \$175 tax per cow. The average dairy size in New York is 100 cows, so more than 3,300 dairies alone will be impacted. EPA itself estimates that more than 37,000 farms in the U.S. will be paying an average permitting fee of \$23,000 annually. However, some New York dairies will be paying more than \$300,000 annually.

It's really difficult—if not impossible—for farmers to control the amount of “emissions” from their animals, a natural process, so this regulation is equivalent to a cow tax, a penalty just for growing food.

The Clean Air Act was never meant to regulate such common gases as carbon dioxide or methane, which are distributed around the globe. Instead, Congress is the appropriate body to formulate the nation's policy on greenhouse gases, not EPA, as a coordinated world policy is the only way to truly impact greenhouse gases and climate change.

This kind of regulation by EPA on farms is not going to provide a positive impact on greenhouse gases in this country. Instead, it is going to be another barrier and another expense for farmers like myself that are just trying to put milk—and other food—on the table.

### ***Duplicative Pesticide Permits***

Another barrier our farmers are facing is the duplicative pesticide permitting structure that EPA has been forced into by court decision. This ruling forces applicator to get a National Pollutant Discharge Elimination System (NPDES) permit under the Clean Water Act (CWA) in addition to the usual Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).

Previously, pesticides governed by FIFRA were exempt from regulation under the CWA because they go through extensive testing before they are allowed on the market and applicators must receive thorough training and follow label guidelines before they can apply pesticides. Farmers complying with FIFRA were never intended to be required to receive duplicative permits—it's like asking someone to get two driver's licenses in the same state. This duplicative pesticide permit only adds cost and bureaucratic burden on the farmer, opens them up to citizen lawsuits, and there are no additional environmental benefits. In New York, there isn't even a NPDES permit available that farmers could receive to be in compliance.

A bill to correct this problem, H.R. 872, has already passed the House of Representatives, but we must ensure that this actually becomes law to protect farmers from this perversion of the Clean Water Act.

### **CLOSING**

NYFB does believe that there are opportunities for regulatory and agency policy to bolster the farm community such as USDA finally requiring dairy importers to pay a promotion assessment that domestic producers are already compelled to pay. Before this action, U.S. producers were

paying to market their competitor's milk and dairy products. These proactive, common sense regulations that bring parity to the marketplace are to be encouraged.

Going forward, as Congress takes up environmental, labor, food safety and financial/tax legislation, please be judicious in your consideration and hold our farm businesses harmless from overreaching policy. If my children choose to carry on as the fifth generation in our family to produce food, I hope that together, we can help them have the opportunity to do that.

NYFB looks forward to working with you and Committee staff on what I know is a common objective: ensuring the stability and long-term viability of agriculture here in New York and nationwide.

Thank you for giving me the opportunity to speak to you today. We appreciate your immediate attention and concrete actions to assist our farm families. I would be happy to answer any questions you may have at this time.

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