

U.S. House of Representatives

Testimony Before the Committee on Oversight and Government Reform

Hearing on Regulatory Impediments to Job Creation:

Assessing the Cumulative Impact of EPA Regulation on American's Farmers

Testimony of:

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Chairman Issa, Congressman Farr, thank you for this opportunity to testify before the House Oversight and Government Reform Committee as you address the issue of EPA regulations and their impact on agriculture. It is a pleasure to be here to give my perspective on an issue that America's agriculture producers face on a daily basis.

My name is Jim Bogart and I serve as President and General Counsel of The Grower-Shipper Association which is an agricultural trade association representing over 300 members throughout Monterey, San Benito, Santa Cruz and Santa Clara counties who grow and ship the abundant fruits and vegetables grown in this region of the United States. We are dedicated to providing new opportunities, programs and services to our members. Our ability to do so is directly impacted by the laws passed by Congress and how they are implemented through the regulatory process. I'm pleased to share my thoughts about fundamentals of the regulatory process at EPA as well as comments on some of EPA's regulatory activities that are currently of the greatest concern to my members and their partners in the industry.

First, some comments about fundamental issues for the agency to consider as it initiates regulatory activity relevant to agriculture. Mr. Chairman, California is the number one agriculture state as measured by gross receipts, we grow over 400 different crops, and exports are a critical part of our industry. Being able to keep input costs down is critical to our business, as well as our ability to compete in global markets--particularly given the increased energy costs we are experiencing. One of the concerns I hear the most from farmers and others in California agriculture, relative to the EPA, is that they really have a lack of understanding of the impact their regulations have on our industry. One of the greatest shortcomings of the EPA's regulatory approach, whether it be related to air, water, dust, etc., is a lack of thorough cost-benefit analysis during the development of regulations impacting agriculture. It is vitally important from a public policy perspective to have EPA thoroughly explain the costs, as well as any potential benefits, of their proposed regulatory actions, before they take them. Therefore, I would urge this Committee to require EPA to consult with the Office of the Chief Economist at USDA on any regulatory matter that will greatly impact agriculture. And to allow all of us in the industry an opportunity to comment on the analysis before any rule becomes final. I believe that a more clear, vigorous approach by EPA to conduct a cost-benefit analysis would be extremely helpful to averting regulatory activities that are overly burdensome or duplicative.

In terms of EPA regulatory activity that many in the agriculture community see as burdensome and duplicative and which is particularly timely, is the issue of National Pollution Discharge Elimination System (NPDES) permits. EPA is at the heart of implementing the NPDES permitting system. As you know, Mr. Chairman and I believe you will hear others refer to this morning, court decisions in recent years have put pesticide applicators on a path to being required to obtain NPDES permits for applications made into, over or near waters of the United States, even though such applications are already regulated by the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). I have heard, as have others, that in the development of a permit to comply with the courts' decisions that EPA has not conducted thorough outreach to the industry and to growers; effectively sought input from the regulated industry or state governments; relied on the best scientific information; clearly defined the waters that would require NPDES permits (and those that would not); considered the practical implementations of proposals on products used, labels, etc.; or considered the economic impacts of the permitting process or completed its consultation with other key federal agencies. With the deadline for issuance of the permit requirements coming this Fall and with an impact that even EPA admits will affect hundreds of thousands of applicators and millions of pesticide applications, the uncertainty and apparent lack of consideration in EPA's efforts is very troubling to my membership,

particularly when it also far from clear that an additional permit would provide significant additional protection to the environment. I am aware that the House of Representatives recently passed legislation to clarify that such permits are duplicative and unnecessary; I commend that action and urge the Senate to follow suit. However, I also hope that Congress will do everything it can to make EPA's efforts to develop a permit transparent, based on sound science and with much-needed input from the ag community.

Another federal regulatory effort that has cause a great deal of concern among the industry here and throughout the region is EPA's proposal to restrict crop protection products based on biological opinions (BiOps) issued by the National Marine Fisheries Service (NMFS), about the impact of those products on the habitat of endangered species. The BiOps on which EPA's proposals use data that are, in many respects, not current and not based on an accurate scientific assessment of species habitat. The data used has often been based on an unrealistic representation of pesticide use and models that don't represent the environment in which species live. In some cases, NMFS did not take into account the safe, long-time use of certain pesticides. It is clear to many in the agriculture community that the process for doing key assessments which form the basis for regulation of crop protection products is flawed and needs to be reformed. If it is not reformed, and EPA is forced to go forward with product use restrictions, including no-use buffer zones, it is estimated that nearly a third of California's total land area will be impacted. Similar or greater impacts could be felt in other parts of the western United States. Action by this committee and the rest of Congress is needed to ensure that critical decisions about agriculture inputs truly reflect the product's real-life use and impact.

The Office of Pesticide Programs (OPP) has also attempted to revise their required label language for spray drift. While intended to make things more clear, these ongoing efforts have only introduced further uncertainty, and may open users to litigation without providing any substantive guidance to reducing drift itself, or to making use restrictions so onerous as to make these vital tools unavailable. Without pest control in our fields, fruit and vegetable production will not meet the quality standards demanded by consumers. Our losses will not only be economic, but will cause production to shift to those areas where pest control products can be used to meet quality and cost considerations determined by the marketplace.

In an action that is particularly important to the fruit and vegetable sector of agriculture, EPA is seeking comment on a policy to restrict the access of the IR-4 Program, a cooperative effort between growers, USDA and State Land-Grant Universities, to reduced fees and expedited reviews of registrations that extend the use of existing pest control products into fruits and vegetables. Because these markets are often small, these crops are often overlooked due to economic considerations. This severely restricts the options for pest control available to domestic growers. Without new tools, growers are often dependent on older products that may be lost due to ongoing registration reviews. The IR-4 Program has provided a valuable service to fruit and vegetable growers, but EPA appears to be poised to jeopardize such a worthwhile, collaborative effort.

In addition to pesticide issues, EPA regulatory efforts impacting agriculture have also included attempts to regulate coarse particulate matter, better known as "dust" or PM₁₀, which in an agricultural context comes from vehicles driving on dirt roads, or from performing plowing and other field work in agricultural fields. EPA was asked to better define which forms of coarse PM were of concern, but the science is so uncertain that they could not accurately describe the chemical composition, unlike most other regulated air pollutants. Lacking sound science and definition of what they want to regulate, EPA could impose severe burdens on growers in an attempt to eliminate "dust".

Providing adequate plant nutrients in a timely fashion is critical to growing fruits and vegetables. Restrictions that do not account for the variable, and often unpredictable nature of agriculture, could be devastating to produce growers. EPA's Office of Water is currently pursuing multiple efforts to regulate crop nutrients from agriculture and other sources. Congress provided a key distinction for the different natural circumstances experienced by agricultural operations when it defined runoff from agricultural fields as not being a point-source; however, EPA appears to be working towards regulating field practices through indirect means as Congress did not provide them authority to regulate runoff directly. These actions have taken the form of numeric nutrient criteria, total maximum daily limits (TMDLs), and other watershed or regional programs to reduce nutrient levels in rivers and streams. While growers support sensible efforts to reduce nutrient loadings, we remain concerned that EPA is ignoring the realities of improvements in crop production practices while relying on modeling results.

Mr. Chairman, thank you again for allowing me the opportunity to share these comments. I want to emphasize that agricultural producers are not asking Congress to eliminate all regulations, we are simply asking that the regulatory agencies engage in a transparent process including all stakeholders throughout the process of developing new regulations. I and the Grower-Shipper Association stand ready to assist you and other policymakers in crafting agriculture policy that protects the environment and meets the needs of agriculture producers as they strive to meet America and the world's food, feed and fiber needs. I'll be glad to take any questions, thank you.