



Statement of

Billy Pirkle  
Senior Director EHS  
Crop Production Services

On behalf of the Agricultural Retailers Association

before the

U.S. House of Representatives  
Committee on Oversight and Government Reform

“Continuing Oversight of Regulatory Impediments to Job  
Creation: Job Creators Still Buried by Red Tape”

July 19, 2012

Thank you, Chairman Issa and Ranking Member Cummings. I appreciate the opportunity to appear before this Committee. My name is Billy Pirkle, and I am here to testify on behalf of the Agricultural Retailers Association (ARA), a trade association which represents America's agricultural retailers and distributors of crop inputs, equipment and services. ARA members are scattered throughout all 50 states and range in size from small family-held businesses or farmer cooperatives to large companies with multiple outlets.

I am the Senior Director for Environmental, Health, and Safety for Crop Production Services (CPS). In this role I work with staff and management to give direction for the regulatory support and oversight of regulatory programs for the company's retail operations.

CPS is headquartered in Loveland, Colorado. The company was established in 1983, but predecessor companies began operating as early as 1859. CPS continues to grow by being an innovative, full-service agriculture retailer with a vision. At CPS our mission statement is: *"We are committed to being the leading provider of agricultural inputs in each of our markets. We will attract and retain outstanding employees by motivating and rewarding them for their accomplishments in providing exceptional service to our valued customers."*

I would like to explain the important role that agricultural retailers play in feeding the nation and the rest of the world. Agricultural retailers provide farmers with crop input products like seed, fertilizer, crop protection products and equipment. Agricultural retailers also provide their farmer customers with crop consulting and custom application services. Agricultural retailers perform soil sampling so that the right kind and amount of fertilizer is applied in the right place; thus, preventing leaching. Also, agricultural retailers perform approximately 45 percent of crop pesticide application. Agricultural retailers are trained and certified to perform these activities.

ARA is concerned with several regulatory actions by the U.S. Environmental Protection Agency (EPA) that we believe are unnecessary, causing financial burden on the industry, and in several instances contrary to the agency's statutory authority.

### **Emergency Planning and Community Right-to-Know Act (EPCRA) Regional Interpretation of the Fertilizer Retail Exemption:**

Several years ago the U.S. Environmental Protection Agency's (EPA) Region 4 office began issuing citations to agricultural retail facilities for failure to report under the Emergency Planning and Community Right-to-Know Act (EPCRA) when fertilizer was blended at the retail facility. However, the EPCRA statute specifically exempts "fertilizer held for sale by a retailer to the ultimate consumer".

When EPA headquarters was asked to clarify the exemption, EPA sided with Region 4, saying that custom blending is manufacturing fertilizer, so the exemption does not apply. This exemption is longstanding in the industry. Nearly all agricultural retailers custom blend types of fertilizer at the retail site for farmer customers because farmers do not have equipment to blend in the field. Furthermore, blending fertilizer is a different process than manufacturing fertilizer. On October 15, 1987 in the *Federal Register*, EPA correctly articulated the following interpretation of Congressional intent regarding the fertilizer retail exemption:

Because the general public is familiar with the application of agricultural chemicals as part of common farm, nursery, or livestock production activities, and the retail sale of fertilizers, there is no community need for reporting of the presence of these chemicals.

In other words, EPA concluded in 1987 that Congress' intent was to exempt a retail facility from these provisions because the community was well aware of the retail sale and application of fertilizers, not because these fertilizers are present in small quantities or because of any activities performed on the fertilizers at the facility.

On March 22, 2012, Senate Environment & Public Works Committee Ranking Member James Inhofe (R-OK) at a full committee hearing entitled, "Environmental Protection Agency Fiscal Year 2013 Budget Hearing" stated the following to EPA Administrator Lisa Jackson:

“Rural America has been hit especially hard by EPA's regulatory overreach. Fourteen years ago, EPA tried to regulate propane dealers under the Emergency Planning and Community Right-to-Know Act (EPCRA) even though they didn't meet the definition of the program. In response, I introduced legislation which was signed into law to stop it. Now, under the same program, you are trying to force the Ag Retailers to comply with the reporting requirement under Section 312 of EPCRA, even though the law currently exempts them. EPA is proposing that the simple mixing of fertilizers to meet customer's specifications for their soil negates the current exemption that they have under EPCRA. Does EPA expect to require farmers to now go to Wal-Mart or Target for their fertilizer needs? Maybe EPA doesn't understand rural America but I do. If EPA continues down this road they will be imposing additional costs on hundreds of small businesses and farmers in rural America. I would ask that you rethink your approach. If you won't apply this exemption to the Ag Retailers, I will not hesitate to work with Chairman Lucas from Oklahoma to make sure the exemption is applied.”

ARA strongly agrees with the statement made by Senator Inhofe and questions submitted to EPA Administrator Jackson. The consequences of letting this interpretation stand are increased costs of reporting fertilizer under EPCRA, the risk of regulatory enforcement on other retailers seemingly working under the exemption, and the additional consequences of defining an agricultural retailer as a “manufacturer”. This would change the regulatory requirements for retailers under other environmental laws. For example, it would pull retailers into the storm water runoff permitting requirements, Clean Air Act requirements, and Toxics Release Inventory reporting. If a retailer bundled all of these permits together with one engineering firm, a retailer could probably obtain a total EHS service for around \$30,000 initial with a \$6,000 annual update cost.

### **Pesticide Spray Drift Guidance:**

It is ARA's understanding that EPA plans to release pesticide spray drift guidance sometime in 2012 in order to help standardize pesticide labels and to help regulators have clarity. In November 2009, EPA proposed new spray drift label guidance that used language like, “could cause harm” or “may cause adverse effects” as the standard for liability. However, the Federal

Insecticide, Fungicide and Rodenticide Act (FIFRA) has a science-based, risk-benefit standard of “no unreasonable adverse effects”. When EPA proposed to diverge from this standard to an essentially zero-tolerance spray drift standard, the agriculture industry quickly commented to EPA that this standard is unworkable and it is not in line with FIFRA and opens industry up to endless citizen suits. The proposed standard would also not encourage technology adoption or applicator training. Congress should see that EPA does not try to change the legal standard found in FIFRA through a guidance document.

### **Clean Water Act Pesticide Permits:**

EPA developed a general National Pollutant Discharge Elimination System (NPDES) permit in response to the 6<sup>th</sup> Circuit Appeals Court decision in *National Cotton Council v. EPA*, which struck down an EPA rule that exempted certain pesticide applications from Clean Water Act (CWA) point source permitting. The court gave EPA and industry until October 2011 to develop and adopt a NPDES permitting system for pesticide applications. Since this court imposed deadline, pesticide applicators are being required to obtain an NPDES CWA permit to conduct any aquatic applications.

The issue is that pesticides are already thoroughly evaluated by EPA under FIFRA. The pesticide label, which includes use instructions for different crops, geographic regions and weather conditions, is approved by EPA, and the instructions are based on mountains of health and environmental data. Thus, this new NPDES permitting system will result in little to no environmental benefit but will cost the industry millions of dollars to comply with these new requirements and leave commercial applicators and their farmer customers vulnerable to citizen suits. Legislation has been introduced called “the Reducing Regulatory Burdens Act” (HR 872) that would explicitly exempt FIFRA-compliant pesticide applications from Clean Water Act (CWA) permitting requirements. HR 872 is supported by the agricultural industry, state departments of agriculture, mosquito control officials, and a wide range of other impacted industries. The House of Representatives passed HR 872 convincingly on March 31, 2011 by a vote of 292 to 130. In the Senate, HR 872 easily passed out of the Committee on Agriculture and Forestry on June 21, 2011 and has bi-partisan support of well over 60 Senators. However, it continues to be held up for consideration primarily by one Senator - Senate Environment & Public Works Committee Chairman Barbara Boxer (D-CA). ARA supports the Federal Agriculture Reform and Risk Management Act (FARRM) of 2012 (H.R. 6083) or 2012 Farm Bill sponsored by House Agriculture Committee Chairman Frank Lucas (R-OK) and Ranking Member Collin Peterson (D-MN). HR 6083, which was approved by the House Agriculture Committee on July 11, 2012 by a bi-partisan vote of 35 to 11, includes HR 872 and other key regulatory reform provisions. ARA believes it is imperative the U.S. House of Representatives take action on the 2012 Farm Bill prior to the upcoming August recess in order to allow enough time to complete negotiations with the Senate on a final conference agreement.

### **Clean Water Act Jurisdictional Guidance**

In May 2011, EPA put out for comment a draft guidance document to clarify the jurisdiction of the Clean Water Act by interpreting the term “waters of the US”. ARA is concerned that EPA is making large legal changes through a guidance document which has the lowest bar to getting approved. Also, the Guidance represents a significant rewrite of the current regulations, guidance and agency policy that governed jurisdictional determinations for the history of the

regulatory program. The Guidance expands the universe of waters that will be considered “traditional navigable waters” by including for the first time ever, all waters that support one-time recreational use. In addition, the Guidance gives new and expanded regulatory status to “interstate waters,” equating them with traditional navigable waters, and in addition, making it easier to find jurisdiction for adjacent wetlands, tributaries and other waters judged by a newly crafted significant nexus test.

ARA is concerned that the Guidance has serious legal implications, and will open America’s custom applicators and farmers up to CWA citizen and third-party lawsuits through other policies like the NPDES permits for pesticide application and spray drift. ARA joined the Waters Advocacy Coalition (FB, TFI, CLA, Homebuilders and others are members) in submitting detailed comments on the legal implications and economic consequences of finalizing this guidance. In August 2011, EPA told ARA that they were still reviewing comments and trying to decide what to do next and may decide to put it out as a proposed rule so that it would have legal impact. However, in early 2012, EPA decided to send their guidance to OMB in form of final. The final guidance may be released sometime later this summer. House Transportation & Infrastructure Committee Chairman John Mica (R-FL) and Ranking Member Nick Rahall (D-WV) have introduced a bi-partisan companion bill (HR 4965) in the House to block EPA’s actions and re-assert Congress’ authority in this area. This guidance document is an attempt to expand the jurisdiction of the CWA without obtaining the necessary statutory changes or going through the required formal rulemaking process.

#### **Numeric Nutrient Criteria in Florida:**

Pursuant to a January 2009 Clean Water Act determination and a consent decree with Florida Wildlife Federation to settle a 2008 lawsuit, EPA proposed numeric nutrient water quality standards for lakes and flowing waters in Florida in January 2010, and established final standards in November 2010. The model used to define impaired waters is scientifically flawed, and will result in 50 percent more impaired waters than would be defined as “impaired” if a biological component were added. EPA did not have the legal basis to set criteria for Florida. As a result of this rule, the Florida agriculture industry will be severely hurt in terms of jobs, monetary cost of compliance, and agricultural production. It is estimated that 44 states have some form of numeric nutrient criteria in development. EPA should not be able to enter states and force the state to adopt numeric nutrient criteria which are not scientifically based or attainable.

ARA joined a federal lawsuit with other national and state agribusiness organizations to sue EPA in an effort to stop the agency from taking similar action in other states. In February 2012, a federal judge ruled that the EPA has the authority under the CWA to establish numeric nutrient criteria if a state fails to act and upheld the proposed lakes and streams criteria. The federal judge did strike the EPA’s proposed streams criteria due to inadequate modeling and stated that the agency failed to use sound-science. The state of Florida has submitted proposed numeric nutrient criteria, which is pending review at the EPA. The EPA is currently under a court order to propose additional federal NNC for coastal waters and South Florida canals by July 20. EPA has requested the court extend this deadline until early 2013 to allow the agency more time to review the state proposal.

### **Mississippi River Basin Watershed Numeric Nutrient Criteria Lawsuit:**

Environmental advocacy groups recently sued EPA in federal district court in Louisiana. The Gulf Restoration Network, Sierra Club, Natural Resources Defense Council, and others assert that EPA wrongly denied a July 2008 petition requesting the establishment of numeric nutrient water quality criteria and a nutrient TMDL for the Mississippi River Basin and northern Gulf of Mexico. The complaint asserts that EPA's July 2011 denial of the petition constitutes an abuse of discretion under the U.S. Administrative Procedures Act.

If EPA loses or settles this case, the result would likely be federal rulemakings establishing numeric water quality criteria for Total Nitrogen and Total Phosphorus throughout the Mississippi River Basin as well as EPA-promulgated nutrient TMDL(s) for the River and Northern Gulf of Mexico. The nutrient criteria and TMDLs stemming from a negative judicial ruling would be translated into nutrient water quality based effluent limitations in NPDES permits and TMDL load and waste load allocations. In other words, local governments, industry, and agriculture in the Mississippi River Basin states could have new limits placed on the amounts of nitrogen and phosphorus they discharge or allow to runoff into the river system.

The economic impact of numeric nutrient criteria and nutrient TMDLs on the Mississippi River Basin states would likely be enormous. By way of comparison, EPA's recent numeric nutrient criteria rules for Florida freshwater systems are estimated to carry a Florida-wide implementation price tag of \$298 million to \$4.7 billion per year. Another study calculated that Florida sewer utility bills would have to increase \$570 to \$990 per year to fund the substantial capital projects required to achieve EPA's nutrient water quality criteria. ARA and a coalition of national and state agricultural organizations have been granted the right to intervene in this case by the federal court.

### **Chesapeake Bay TMDL's- Nutrient and Sediment Pollution Diet:**

The agricultural community supports protecting and improving water quality in the Chesapeake Bay and its tributaries, however the final phosphorus, nitrogen and sediment total maximum daily loads (TMDLs) are clearly based on a flawed model that will cost the agriculture industry. Farmers have taken voluntary action throughout the Bay region to responsibly manage the nutrients from fertilizer and manure used to produce crops, and to prevent or minimize soil loss from farmland. Conservation and agronomic measures adopted by farmers in the Bay watershed have resulted in significant reductions in nutrient and sediment loss to the Bay over the past 25 years. The agricultural community has more to do to fulfill its commitment to improving water quality in the Bay, and is eager to work with the Bay states, other stakeholders and the Environmental Protection Agency (EPA) to continue to improve its management of all nutrient sources.

The agricultural sector is struggling to accept this TMDL, either substantively or as a matter of economics, and is questioning the wisdom of EPA's insistence to move forward with these policies at this time. The agricultural community believes that the approach EPA is taking in the Bay TMDL is entirely wrong and counterproductive, for the following reasons:

- EPA has adopted thoroughly unachievable goals for water quality in the Bay region, given the population that lives there and the environmental impact of supporting and employing a growing number of residents.
- EPA followed the setting of these impossibly high expectations by issuing poor and incomplete information about water quality in the Bay region and the real cost of achieving the goals it has set.
- One of the reasons for this impossibly flawed information is that EPA is relying upon an untested and highly imperfect model of the Bay, including incomplete and incorrect information about agricultural practices in the region and their water quality performance. Despite these serious concerns, most of that model's operations and assumptions are not reviewable by the public.
- EPA is further undermining confidence in this effort by using means and measures that are absolutely contrary to the law.

### **Clean Air Act:**

#### **Dust regulation:**

Under the Clean Air Act, EPA periodically reviews National Ambient Air Quality Standards (NAAQS). EPA has traditionally regulated small particulate matter because it is known to cause health problems, like cigarette smoke. However, ARA remains concerned that EPA may still consider regulating coarse particulate matter (PM) or dust, at levels that would be impossible for some places like the West to achieve. There is no conclusive evidence that PM causes health problems. EPA Administrator Jackson has told Congress that she will not move forward with changes to the dust standard. Rep. Kristi Noem (R-SD) introduced legislation (HR 1633) that would prevent EPA from offering changes to the standard for a year. HR 1633 passed the House on December 8, 2011 and is pending in the U.S. Senate. If EPA is ever allowed to go forward with regulating PM at very low levels of occurrence, the agriculture industry will be severely limited in many parts of the U.S.

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

EPA's greenhouse gas "endangerment finding" has triggered the regulation of greenhouse gas emissions under the Clean Air Act. Since greenhouse gasses occur naturally and are necessary for life, it is clear that the Clean Air Act is an inappropriate vehicle for regulating greenhouse gas emission. EPA has issued a "Tailoring Rule" to help small emitters adjust and to shelter certain emitters from the requirements of the Clean Air Act. This proposal has been challenged in federal court. On June 26, 2012 the United States Court of Appeals for the District of Columbia affirmed the EPA's findings and upheld the rule. ARA and other segments of the agricultural industry strongly disagree with the court's ruling and continue to believe that the Clean Air Act is not an appropriate vehicle to regulate greenhouse gases. We believe the EPA proposal goes against Congressional Intent. Our industry is concerned with agricultural retailers' suppliers' costs of compliance that will be passed along to the retailer. Furthermore, retailers fear that their farm and ranch customers and their businesses will be disproportionately impacted through substantially higher electricity, feed, and fuel costs. In an industry that operates on very thin margins (approximately 2%), uncertainty can play a large part of a retailer's economic failure or success.

**Conclusion**

In summary, ARA asks Congress to continue to hold regular oversight hearings regarding federal agency regulatory and enforcement activities. ARA also asks Congress to take necessary legislative action to prevent the EPA from over-reaching its statutory authorities in the areas highlighted in our testimony here today. ARA and our members are strong stewards of the environment and continue to operate in an environmentally safe manner. We look forward to working with the Committee, Congress, and EPA to provide any needed statutory clarifications and improve these regulations.



Committee on Oversight and Government Reform  
Witness Disclosure Requirement - "Truth in Testimony"  
Required by House Rule XI, Clause 2(g)(5)

Name:

1. Please list any federal grants or contracts (including subgrants or subcontracts) you have received since October 1, 2009. Include the source and amount of each grant or contract.

Crop Production Services - Timberland  
receives/awarded approximately 5mm service  
contracts from Department of Defense and Interior

2. Please list any entity you are testifying on behalf of and briefly describe your relationship with these entities.

ARA - Agricultural Retailers Association Chairman  
CPS - Crop Production Services - Senior Director

3. Please list any federal grants or contracts (including subgrants or subcontracts) received since October 1, 2009, by the entity(ies) you listed above. Include the source and amount of each grant or contract.

None to my knowledge

I certify that the above information is true and correct.

Signature:

*J. Billy Turle*

Date:

7-17-2012

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# J. Billy Pirkle

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## CAREER PROFILE

Progressive management background, focused in Regulatory Compliance and Governmental Relations. Management style is "energetic" with a strong commitment to quality control and customer service. Broad management experience includes purchasing, production, quality control and environmental, health, and safety. Consistently use leadership and analytical abilities to develop and maintain a high performance organization.

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## PROFESSIONAL EXPERIENCE

2006 – Present     **Agrium Retail** – Loveland, Colorado  
Senior Director, Environmental, Health and Safety  
(\$7.2 Billion Revenue, 7,864 Employees)

Directed the compliance efforts of 1050+ facilities with a talented team of professional.

- Evaluated and implemented organization change during several major acquisitions.
- Facilitated the development of bilingual compliance programs and materials.
- Benchmarked organization's Key Performance Indicator (KPI) as industry leader.

1999 – 2006       **Royster-Clark, Inc.** – Collinsville, Illinois  
Managing Director, Environmental, Health and Safety  
(\$1.2 Billion Revenue, 2,300 Employees)

Directed and Managed the compliance needs of organization while staffing a proactive team that produced the desired regulatory effort while transforming the image of the department to a Resource rather than the Police.

- Merged new organization compliance cultures; while reducing staffing requirements and facility cost by \$1.8 million. Total compliance savings generated in excess of \$1.9 million annually.
- Workers compensation initiatives created an industry leading mod-rate of .61.
- Automated compliance programs using technology for 2300 Employees.
- Benchmarked organization's Key Performance Indicator (KPI) as industry leader.
- As member of senior management, gave direction to corporate vision and management strategy creating a cost-effective solution oriented business model.

1990 – 1999       **IMC Global** – Americus, Georgia  
Environmental Administrator  
(\$3.2 Billion Revenue, 4,800 Employees)

Served as environmental manager in the southeast, managing remedial projects, property transfers and community relations.

- Developed and implemented air permits exemption solution for 258 retail units.
  - Completed Title V FESOP's for 4 granulation facilities.
  - Maintained permit compliance status through stack testing and communication with state agencies.
  - Facilitated an effective Safety program, which reached several milestones; 2 million man-hours without a lost-time incident, 15 years without lost-time incident.
  - Directed quality control efforts through team meetings, process improvements and material formulations.
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# J. Billy Pirkle

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1988 – 1990      **Simplex Nails** – Americus, Georgia  
Plant Manager  
(\$4.6 Million Revenue, 42 Employees)

Revitalized an aging manufacturing company by expanding product lines and increasing sales (\$ 2.8 million in 1988 to \$4.6 million in 1990).

- Managed production cost areas to allow an increase of gross margins to 38%.
- Rejuvenated workforce through use of interpersonal skills and implementation of employee retention program.

1986 – 1988      **Interface Flooring** – LaGrange, Georgia  
Department Manager • Vinyl Compounding • QA/QC  
(\$800 Million Revenue, 340 Employees)

Conceived and implemented a production plan while company was experiencing 200% growth. Plan utilized both internal staff and consultant firms to maintain product cost at or below budget.

- Managed annual purchases of raw materials in excess of \$25 Million.
- In 1988 negotiated a \$1.2 Million dollar saving on existing purchases.
- Created a quality control documentation system that passed audits used in obtaining Government contracts.

1981 – 1986      **Combustion Engineering – Mulcoa Plant** Andersonville, Georgia  
Laboratory Manager QA/QC  
(\$340 Million Revenue, 76 Employees)

Instrumental in implementation of SQC program used in product sizing, this program was required to bid on International contracts. Further development of the program into SQC/SPC realized lower product complaints and increased overall quality.

- Generated savings through process control ranged from \$.5 to 1.0 million annually.
  - Designed lab to increase volume of analytical tests performed to meet growth needs of production and exploration.
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## EDUCATION

GEORGIA SOUTHWESTERN UNIVERSITY Americus, Georgia  
Bachelor of Science; Chemistry

## PROFESSIONAL ASSOCIATIONS – CERTIFICATIONS

- Certified Safety Professional
  - Certified Hazardous Material Manager
  - ARA – Ag Retailer Association – Board of Director
  - TFI – The Fertilizer Institute – Committee member
  - NAEHSS – National Agronomics Environmental Health and Safety School – Past President & Board of Director
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***J. Billy Pirkle*** currently serves Crop Production Services, Inc. as Senior Director of Environmental, Health and Safety he began this role in June 2006. Previously Billy worked with IMC Fertilizer, Inc. (1990-1996), IMC Agribusiness, Inc. (1996 -1999) and Royster-Clark, Inc (1999 – 2006).

Pirkle is actively involved in the agricultural industry and currently serves on three Boards of Directors; Ag Retailers Association, Asmark Institute and the Agronomic Environmental Health & Safety School.

Terri, his wife, and Billy enjoy their three children. On the weekend you might find Billy in the kitchen or by the grill as he enjoys pampering the family with a full breakfast or cooking a new recipe.