

EPA's expanding regulation of agriculture

By Kerin Clark

The expanded regulation of agriculture by the Environmental Protection Agency (EPA) has a large impact on our industry. Kara Brighton, attorney and co-executive director of the Wyoming Conservation Alliance, discussed four main areas where the EPA's expansion of regulation is impacting agriculture. Air, water, energy and chemicals are the main Environmental Protection Agency regulatory areas impacting agriculture.

Air--GHG

GHGs--an acronym that has sparked much debate in the last several years. Mandatory reporting of green house gases (GHG) will begin in 2011 for 10,000 facilities.

Brighton explained that the EPA was sued by the state of Massachusetts to regulate GHG under the Clean Air Act. "The Bush administration issued a finding that GHG did not meet the definition of a pollutant, but the Supreme Court determined they do have to determine whether GHG are a pollutant," Brighton said. "So the EPA, under

the Obama administration, found that five GHG qualified as pollutants."

The manure management systems that were included are: beef cattle feedlots; dairy cattle and pig production facilities; hog and pig farms; chicken egg production facilities and turkey production.

"107 livestock facilities nationwide fall into this category," Brighton said. "EPA's 2010 Appropriations Act barred funds to implement mandatory GHG reporting of manure management facilities."

"Even when they go forward with reporting the EPA has said there will be no direct measurement of emissions," Brighton explained. "They recognize there isn't technology to do it and if there was it would be so expensive."

EPA has estimated it would cost \$300,000 a year to monitor and report 107 facilities. "That is EPA's number so we can assume that number is actually higher," She said.

"No agricultural sources are currently required to comply with the reporting rule," Brighton said.

The current EPA Animal Population thresholds are :

Beef	29,300
Dairy	3,200
Swine	34,100
Layers	723,600
Broilers	38,160,000
Turkeys	7,710,000

Air-GHG Emissions Tailoring Rule

In June 2010, the EPA issued the Tailoring Rule and set the GHG emission threshold at 75,000 tons. "Farms and small business are exempt for now, but there will be new rulemaking in 2013 and they will work to keep lowering the threshold," Brighton stated.

Air--Gas/Diesel Engines

In June 2004, the EPA set emission standards for the reduction of emissions of gasoline/diesel stationary engines. According to Brighton, the emissions during startup, shutdown and periods of malfunction were exempted. The agency was sued and in December 2008 a circuit court ruling remanded the rules to the EPA to consider startup, shutdown and malfunction

times.

The EPA divided the rules into two regulatory actions. On March 3, 2010 the existing diesel powered stationary engines rule became final and on Aug. 20, 2010 the existing stationary engines that burn gas or natural gas became final.

"Anything greater than 300 HP, they require best management practices," Brighton explained. "For example, they encourage you to change your oil regularly...I know you all need EPA to tell you to change your oil."

Air-particulate matter

EPA is expected to issue a final rule by July 29, 2011 proposing changes to the particulate matter standards of the National Ambient Air Quality Standards. "We see inching towards regulations when dust will come into this regulation," Brighton said. "Agriculture needs to keep an eye on the ozone and particulate matter changes."

Regarding ozone proposals, Brighton says the estimate is it will increase the number of counties

See 'EPA's expanding regulation' page 7

EPA's expanding regulation

From page 3

who fall into this category by 500 percent. "This isn't about emissions, it is about outdoor air quality," She explained.

Air-EPCRA and CERCLA reporting

EPCRA and CERCLA are reporting requirements that were passed in late 1970s. EPCRA stands for the Emergency Planning and Community Right-to-Know Act. CERCLA stands for Comprehensive Environmental Response, Compensation, and Liability Act; it is more commonly known as Superfund.

"They decided the EPA can't be in all places at all times, so we should have citizens help us look for polluters and they can initiate a citizen suit. The citizen's suit is what makes these regulations so dangerous," Brighton said. "There is a \$25,000 fine per violation per day. It is one thing to have the government review you, but it is another to add a citizen suit option."

In December 2008 the EPA issued a final rule exempting livestock operations from CERCLA and granting a partial exemption from EPCRA. "Both sides sued, agriculture asking for full exemption from EPCRA," Brighton explained. "In June 2010 the EPA asked the court to remand it back so it is back in the EPA's hands."

Water--CWA for CAFOS

"Most agricultural uses are exempt, but large CAFOS are defined as point sources," Brighton said. "The 2008 rule requires: 1) permits for those that may potentially discharge into the nation's water,

2) annual reports and 3) a plan for handling the waste water," Brighton explained. "The 2008 rule applies to 15,300 CAFOS; that is 74% of the 20,700 CAFOS operating in the United States."

In a positive ruling, the Fifth Circuit Court ruled that the permit is only required for those who actually discharge; it can't be a potential discharge.

Energy

"Agriculture is getting more involved in energy issues through fuel efficiency and biofuels," Brighton stated.

Chemicals--pesticide regulation

A 2009 amendment requires Clean Water Act (CWA) permits for pesticide application discharges into U.S. waters. The Court issued deadline for implementing this rule was extended to Oct. 31, 2011.

"This gets us through most pesticide applications for this year and there is legislation pending in Congress to remedy this issue," Brighton stated. "Estimates are the regulation would bring in 5.6 million applications annually. You should not have to worry about this on individual operations, permits will be needed for mosquito and other flying insect control and I'm finding with irrigation districts they are worried about aquatic weed and algae control."

Kara Brighton is a partner in Hageman & Brighton, P.C., a law firm in Cheyenne. Brighton spoke to members of the Wyoming Farm Bureau Young Farmer & Rancher Committee at their May 4 meeting.