

US EPA and Colorado Departments of Agriculture

Agriculture Smart Sectors Meeting

Greeley, CO

Tuesday, July 24, 2018

Meeting Summary

Welcome and Introductions

Environmental Protection Agency (EPA) Regional Administrator Doug Benevento welcomed attendees and invited the attendees to introduce themselves and offer their ideas for EPA reforms.

Stakeholder Input

Participants introduced themselves and provided the following comments organized by environmental statute:

Clean Water Act:

- WOTUS – One participant voiced his support for WOTUS as written. He did not think that it was difficult to interpret or implement. Another participant voiced her difficulty implementing WOTUS as written with the intermittent stream definition of most concern.
- WOTUS – Participants expressed concern that ag is not exempt in WOTUS. Participants asked for clarity on this exemption.
- SDWA – CAFO's are required to meet the same SDWA water quality and facility design standards as municipal water systems (25 or more users) but CAFO have difficulty affording the cost to build their approved systems. Participants suggested that EPA should either give businesses (CAFO's) access to the same SDWA grants as municipal water systems or tailor/scale the facility design requirements to CAFO's.
- SDWA – Participants who do business in multiple states expressed difficulty and increased cost in complying with "slightly" different SDWA rules state-by-state.
- NPDES PGP (Pesticide General Permit) – No aerial applicators will take mosquito or Tamarisk abatement jobs in Colorado because of high insurance premiums and the threat of EPA fines. NPDES PGP is duplicative of FIFRA.
- Participants questioned if EPA has considered reviewing NPDES PGP along with WOTUS review. Regional Administrator Benevento suggested that EPA, CDA and CDPHE work together on this question.

- Water storage projects are important to Colorado. Could the permitting process be streamlined? Could permit processes from multiple agencies be processed concurrently to reduce approval time?
- EPA should tailor SDWA requirements for small rural communities which have difficulty affording and meeting SDWA requirements. Municipal water systems in these communities are often staffed with volunteers and the communities have no retail tax base to fund the water system upgrades.
- Participants asked that Clean Water Act non-point source pollution program remain a voluntary program for agriculture. Farmers need flexibility to make decisions.
- Thanked EPA for their support of funding BMP work and stated their help working with the agricultural community during lean times is appreciated.

Clean Air Act:

- EPA and Colorado are working together on the Rocky Mountain National Park report. This is a good example of positive cooperation.
- RFS – Participants are alarmed by the waivers granted to small refineries. It is very important to the ag community and to the country to reduce reliance on foreign sources of energy. US produced ethanol accomplishes this. Participants asked for EPA’s diligence to create certainty for the ethanol industry.
- Participants expressed difficulty complying with natural occurrence air emission releases. Wildfires happen in the West but EPA makes agriculture make up the air emission difference with their operations. This is not fair. This issue is occurring in another Region. Regional Administrator Benevento said that EPA is working to streamline the “exceptional events” compliance process using LEAN.

FIFRA:

- Colorado Agriculture Commissioner Don Brown illustrated the need for changes to the Application Exclusion Zone (AEZ).
- Application Exclusion Zone (100 feet) – EPA forgot to consider aerial application when setting the 100-foot limit. The rules seem to be written for ground applications. It is difficult to gauge 100 feet from an airplane. An additional challenge in Northern Colorado is the proximity of crops to roads. Crops in Northern Colorado are planted close to the road and roads are heavily traveled by oil trucks and farm workers, thus limiting the time crops can be sprayed from a plane. The AEZ regulation duplicates FIFRA, which does not allow drift of products.
- Participants appreciated EPA’s work on California Proposition 65 and Glyphosate.
- Participants expressed a desire for EPA to help pesticide aerial applicators “decode” differing state licensing requirements. This is a national discussion within the aerial applicator community. Rebecca Perrin will follow up with Jessica Freeman.
- Participants want EPA to make pesticide registry decisions based on science and not politics to create certainty in the pesticide industry. Fewer companies are offering tools

.to fight pests thus it is important for EPA staff to have a close relationship with agriculture to help make informed risk management decisions.

- Pollinators – When pesticides are misused EPA needs to allow states to act against the party which violated label use guidelines v. creating a new Federal regulation.
- Pollinators and planes – Aerial applicators told of challenges with hobbyist bee keepers moving and hiding hives in application zones to be purposely killed by pesticide applicators to make the agricultural industry look bad.
- Pesticide applicator exam – After 2023 EPA is requiring the exam be administered by a proctor. This will take farmers off work for a day, costing time and money. Additionally, EPA is proposing new licensing categories on top of existing licenses. Participants asked EPA to develop the national exams and guides because states don't have the resources to develop these materials.
- Participants asked that the EPA "grandfather/exempt" existing applicators doing this work already from complying with the new licensing categories.
- Participants cautioned EPA about changing pesticide regulations because every change requires states to open and amend state pesticide acts. The fear is losing the Colorado Pesticide Applicator Act.
- Pesticide Registration Improvement Renewal Act (PRIA) money - Participants asked for more money for the State Pesticide Safety Education Programs.
- Participants asked to "revive" the Certification and Training Assessment Group (CTAG).
- Colorado does not have a Dicamba problem because of the climate. Onerous certification regulations are driving away applicators.
- Participants appreciate that pesticide labels are easier to read.
- Would like to have further discussions with EPA regarding "the re-registration process for pesticides and for the issuance of special local needs labels. Most vegetables are very small in acreage in Colorado and their contribution to the Risk cup is small because we normally only have a single crop per season. Often time we look to work done in other states."

Compliance/Enforcement:

- EPA has a reputation for fining first. Compliance assistance will reverse this reputation. Colorado's environmental ag program convenes annual meetings with producers to discuss compliance challenges, so regulated community can learn. EPA could follow this model.
- EPA inspectors have a reputation for not giving a straight answer to ag producers. Participants said if 5 different EPA inspectors looked at a facility, the producer will get 5 different answers. EPA inspectors need to be trained to be consistent and decisive to provide certainty to the ag regulated community.
- EPA regulations and guidance don't always match, making it difficult for ag to know which one to follow.

Miscellaneous/Communications/Another Federal agency:

- What is EPA doing to help educate the public about the good environmental protection work agriculture is doing?
- The state of Colorado has a department providing compliance assistance to small and medium businesses. Maybe EPA needs to do the same.
- EPA can improve its relationship with the ag community by having regional ag advisors in every region. Another good example is the Animal Agriculture Discussion Group. EPA works with national animal ag associations to work through compliance challenges. Training videos have been produced because of this cooperation. The Animal Ag Discussion group at EPA HQ is helpful to improving dialogue.
- Participants told of experiencing personal bias from EPA animal facility inspectors (not region 8). "When EPA inspectors don't believe in meat production do the producers get hit with extra requirements or fines?"
- Participants appreciate the EPA talking with the agriculture community.
- The most common complaint participants hear about the EPA is too much regulation.
- Regulations should be made easy to understand. Not useful if only lawyers can understand.

Next Steps

EPA staff will follow up on the various ideas suggested during the meeting and respond to individual concerns in a timely manner.