

February 10, 2025

The Honorable Lee Zeldin
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Mr. Zeldin,

On behalf of the American Farm Bureau Federation (AFBF), we write to congratulate you on your appointment as Administrator of the Environmental Protection Agency (EPA). We proudly supported your nomination before the U.S. Senate and stand ready to be a resource on the many EPA policies that impact agriculture.

AFBF is the Voice of Agriculture® representing the farmers and ranchers across this country who produce the food, fiber and renewable fuel that all Americans rely on. Our Farm Bureau members care deeply about the health of our environment. Farmers' and ranchers' livelihoods depend on healthy soil and clean water. However, we continue to have concerns about troubling regulations such as the definition of Water of the United States, liability issues for farmers and ranchers related to perfluoroalkyl and polyfluoroalkyl substances (PFAS) contamination and pesticide workplans that fail to comply with the Endangered Species Act, just to name a few.

These issues are critically important to our industry, and, therefore, we would like to request a meeting with you and your staff to discuss our policy priorities and ways we can improve unnecessarily onerous regulations.

We look forward to the opportunity to meet with you and your staff. Please feel free to contact Courtney Briggs at 202.406.3667 or courtneyb@fb.org.

Best regards,



Zippy Duvall
President

Attachment: Overview of EPA issues of concern

Waters of the United States (WOTUS): The Clean Water Act (CWA) authorizes the U.S. Army Corps of Engineers (Corps) and Environmental Protection Agency (EPA) to federally regulate “navigable waters,” defined in the Act as the “waters of the United States (WOTUS), including the territorial seas.” All other waters generally remain under the protection of state and local governments. For decades, confusion surrounding the CWA’s reach has led to widespread regulatory uncertainty, costly litigation, and stifled economic growth.

Farmers, ranchers and the regulated community at large want a clear definition that respects Congressional intent, upholds the Supreme Court’s decision in *Sackett v. EPA* and affords state governments a role in protection our nation’s waters. The *Sackett* decision injected more certainty into the definition of WOTUS, however the Biden Administration left important concepts undefined in order to expand their jurisdictional reach. It is imperative that landowners have a better understanding of what is or is not a WOTUS, as the civil and criminal penalties for non-compliance are significant—\$64,000 per day or jail time. Additionally, the Biden Administration has frustrated our members by only providing cryptic implementation guidance, forcing landowners to connect the dots with our livelihoods on the line. We urge the Trump Administration to:

- Immediately address these implementation challenges so industry sectors can more efficiently navigate the CWA permitting process, which will allow for economic development and job creating projects to move forward.
- Make necessary changes to the Biden Administration’s WOTUS decision that provide a clearer understanding of WOTUS that more faithfully upholds the *Sackett* decision.

Pesticides: EPA is the central federal agency responsible for the registration of new pesticide products and the regular review of existing registrations. Agricultural chemicals are among the farmer’s suite of critical crop protection tools to grow a safe and sustainable food supply. Farm families are committed to continuing the use of agricultural chemicals safely and carefully to protect the health and safety of farmers and farm employees, our families and communities, and our environment.

In 2022, following litigation prompted by environmental NGOs, EPA announced a new workplan for compliance with the Endangered Species Act (ESA) when evaluating and registering new pesticide active ingredients. Under this policy, before EPA registers any new conventional active ingredient (AI), the Agency will evaluate the potential effects of the AI on federally threatened or endangered (listed) species, and their designated critical habitats, and initiate ESA consultation with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (the Services), as appropriate. The workplan describes different strategies EPA will utilize in conducting work related to ESA and FIFRA. The workplan outlines expected challenges and policy changes that EPA plans to implement as part of this effort, as well as the release of strategies across classes of pesticides (herbicides, insecticides, fungicides, rodenticides) to address ESA compliance.

AFBF supports EPA’s legal compliance, but farmers and ranchers have consistently expressed major concerns, privately and publicly, to EPA throughout the developmental process of these

plans due to the cost, complexity, and unworkability of the strategies. Those criticisms include uncertainty of grower responsibility, complexity of the drafted and finalized strategies, costs of implementing runoff/erosion or spray drift mitigations, and EPA's disregard for the burden of implementation and enforcement. In light of these challenges facing EPA and U.S. agriculture, the new administration should consider and pursue the following reforms:

- Seriously reconsider EPA's approach toward ESA compliance in favor of improved feasibility, flexibility, simplicity, and compliance for farmers and ranchers;

Continuous pursuit and implementation of additional flexibilities for U.S. farm families to select mitigations that best match their geography, topography, crop profile, farm size, and pest pressures;

- Consideration of actual use data in EPA's risk assessment process to support pesticide registrations and avoid decisions based on worst case assumptions;
- Recognition of state-based or voluntary conservation programs as options for growers to receive credit toward ESA compliance;
- Improved efficiencies and outcomes in the EPA's Office of Pesticide Programs (OPP) that address the backlogs and delays of pesticide registration review; and,
- Enhanced coordination and cooperation with USDA's Office of Pest Management Policy (OPMP) throughout the pesticide registration process.

Per- and polyfluoroalkyl substances (PFAS): PFAS are a large group of man-made, fluorinated organic chemicals used in many consumer goods and firefighting foam and are the main components of water, oil, and stain repellants. They are used in products such as Teflon, Goretex, and Scotchguard. Recent science shows that these compounds do not breakdown in water and are persistent in the environment – they are referred to as the “forever chemicals.” Due to their inability to break down, these chemicals have been identified as a source of water contamination. Unfortunately, some health studies suggest exposure to PFAS chemicals are associated with cancer diagnoses, infant development disorders, endocrine and cholesterol disorders. The Biden Administration and many state governments are now attempting to create an extensive regulatory regime to limit human exposure.

The agricultural community does not produce PFAS however, these chemicals can be found in the water producers provide to their livestock and crops. In certain areas of the country, PFAS levels have risen in milk, beef and row crops. Another source of PFAS contamination on our nation's farms comes from soil amendments (biosolids, paper byproducts). For decades, farmers have been encouraged to use biosolids to support their soil health and as a result, may have been unknowingly spreading PFAS onto their property. As regulatory actions are developed, it is imperative that agricultural producers not be held liable for passively receiving PFAS chemicals.

Last year, the EPA finalized a rulemaking that would designate PFOA and PFOS as “hazardous materials” under Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). Also known as the Superfund law, CERCLA assigns liability to potentially

responsible parties to pay for remediation and cleanup of hazardous materials. In addition to this final rule, the EPA released an enforcement discretion policy which states that the agency will not take any enforcement actions against farmers. However, we remain concerned with this rulemaking and how it could unintentionally harm farmers and ranchers because it does not provide any protections against third party liability. We hope that the agency will re-evaluate this rulemaking and take steps within your authority to properly protect our innocent farmers and ranchers.

Emergency Planning and Community Right-to-Know Act (EPCRA):

EPCRA was enacted by Congress to ensure that proper notice is given to relevant emergency authorities in cases of accidental spills, chemical plant explosions, and release of hazardous chemical from sinking ships and train derailments. However, environmental organizations believe that EPCRA requirements should apply to normal odors from animal agriculture operations.

In 2008, EPA finalized a rule to exempt manure odors from Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and EPCRA reporting requirements. This exemption was defended in court by the Obama administration, arguing that Congress never believed low-level livestock manure odors were the kind of releases they intended to manage with these laws. However, in 2017, the U.S. Court of Appeals for the D.C. Circuit vacated this CERCLA and EPCRA reporting exemption. The following year Congress responded in strong bipartisan fashion by passing the Fair Agricultural Reporting Method (FARM) Act. This law amended CERCLA to expressly exempt reporting of air emissions from animal waste at farms but failed to weigh in on EPCRA reporting requirements. However, in 2019, EPA finalized a parallel reporting exemption under EPCRA. This rule comports with the statutory text, framework, and legislative history, as well as EPA's previous regulatory actions. But once again, in response to this rulemaking, the environmental groups sued EPA which forced the agency to consider developing a rule that would require odor reporting under EPCRA. The Biden EPA collected comments in an Advanced Notice of Proposed Rulemaking and never completed a final rulemaking on the issue. We encourage you to look through these comments, as you will find organizations such as the National Association of State and Tribal Traffic Officers and Public Officials objecting to this reporting requirement. It is an unnecessary burden on our producers, and we hope that any action from the agency will reflect this notion.

CAFO Permitting: Livestock provides an important value-added food product for rural communities and enables farmers to enhance their ability to live, work and provide for their families. There is great diversity in the types of livestock farms across the country and the markets they serve. Animal agriculture operations that meet the federal definition of a CAFO must operate under a CWA NPDES permit. Some environmental advocacy groups have argued that all operations, regardless of size, must obtain an NPDES permit.

Due to ongoing litigation pressures from the environmental community, the EPA agreed to collect data and compile research to determine whether the agency needs to make changes to the federal CAFO rule. EPA announced that they would be undertaking two separate actions: 1.)

collecting data and scientific information as part of the effluent limitation guidelines evaluation and 2.) assembling an advisory group of stakeholders to discuss any potential changes to the federal CAFO rule (Animal Agriculture Water Quality Advisory Committee). We appreciate the opportunity to be a part of these conversations, however we remain frustrated by the environmentalist's insistence that there be a presumption of discharge from any animal operation and their attempts to discredit the statutory agriculture stormwater exemption.

Air Emissions Estimating Methods for Animal Feed Operations: As a follow-on to agreements in 2005 among EPA and thousands of livestock farmers to enable the study of emissions from animal feeding operations (the "Air Consent Agreements"), EPA in November 2024 issued draft EEMs and requested comments on an accelerated timeline. Despite its tight response deadline, EPA has not meaningfully responded to questions raised by livestock farmers in April and May 2024 (both in person and in writing) regarding EPA's plans to finalize and implement the EEMs and, more generally, the Air Consent Agreements. Importantly, farmers do not have a clear understanding of the obligations they will face following adoption of the EEMs and have not been advised of how EPA intends to provide notice to parties who may face legal obligations under the nearly 20-year-old Air Consent Agreements. AFBF requests EPA respond to livestock farmers' questions on these and other subjects relevant to the EEMs and Air Consent Agreements before requiring comments and before taking any further action to implement and release the final EEMs.

Renewable Fuel Standard: The Renewable Fuel Standard (RFS) is a cornerstone policy that bolsters the agricultural economy by ensuring a robust market for renewable biofuels such as ethanol and biodiesel, which are derived from crops like corn and soybeans. For farmers, the RFS provides a reliable source of demand, stabilizing crop prices and creating opportunities for rural economic growth. By incentivizing the production and use of renewable fuels, RFS has transformed agricultural commodities into key components of the nation's energy strategy, offering farmers a vital role in addressing energy needs while diversifying their revenue streams. This market certainty not only supports farming operations but also benefits the broader rural economy by sustaining jobs in biofuel production, transportation, and associated industries.

In addition to its economic benefits, a strong RFS enhances energy independence and national security by reducing reliance on foreign oil. By increasing the use of domestically produced renewable fuels, the policy mitigates the risks associated with volatile global oil markets and strengthens the U.S. position as a leader in clean energy innovation. Renewable fuels also contribute to environmental goals by lowering greenhouse gas emissions compared to traditional fossil fuels, aligning agricultural production with sustainability objectives. Maintaining a robust RFS is essential for ensuring a stable and resilient energy future while empowering American farmers to play a pivotal role in the nation's energy and environmental strategies.

By statute, EPA is required to finalize volumes 14 months before the start of the compliance year; for 2026, that deadline has come and passed. The White House Office of Management and Budget released the Spring 2024 Unified Agenda of Regulatory and Deregulatory Actions, setting out a timeline for EPA to propose the 2026 RFS volumes by March 2025 and finalize the rule by December 2025. EPA has a responsibility to publish these volumes on time which is has

consistently failed to do. In addition, EPA should increase volume obligations across RIN categories requiring refiners to blend more biofuels into the nation's fuel supply. This boosts demand for corn, soybeans, and other feedstocks used in ethanol and biodiesel production, providing a reliable and growing market for farmers.

And while allowing E15 to be sold year-round is an issue squarely for Congress to resolve, it is imperative that EPA is ready to implement whatever Congress gets passes by this year's summer driving season. E15 year round would create a consistent, expanded demand for ethanol, which in turn supports higher and steadier prices for corn.

EPA Agriculture Advisor and Office of Agriculture and Rural Affairs: AFBF has been very fortunate to have established productive working relationships with EPA's Agriculture Advisors across many Administrations. Considering the long list of policy items reflected in this document, it remains imperative that the agriculture community have the communication pipeline, through the agriculture advisor, directly to the Administrator. Additionally, AFBF strongly supported the creation of EPA's Office of Agriculture and Rural Affairs, which has been instrumental in facilitating the work of the Farm, Ranch, and Rural Communities Federal Advisory Committee and the Animal Agriculture Water Quality Advisory Committee. We strongly recommend that the structure of these positions remain intact, as they serve as the primary liaison between agriculture and rural stakeholders and the agency.