



NAWG works with wheat farmers and agricultural industry partners to ensure policy makers understand the on-farm impacts of regulatory proposals and laws.



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Environmental Regulations

The Impact on Agricultural Producers

Like the owners of other small businesses, agricultural producers are tasked to comply with a wide variety of federal regulations. Since farmers are typically landowners or caretakers of land on behalf of their landlords, many of the regulations they interact with are related to our nation's natural resources – soil, air, water and wildlife habitats.

Farmers are quite conscious of what happens on their land – after all, they make their living on the land, they live on the land, they feed their families from the land and most hope their children will someday have the opportunity to continue the operations they have grown.

Agricultural producers have a serious stake in the quality of our environment, but they also know the costs that come with duplicative regulations and new initiatives that would force them to change practices with dubious return on the investment.

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Did You Know?

Under current law, to receive farm program payments, farmers are required to maintain approved conservation plans for all highly erodible land they own or operate.

NAWG Policy Priorities

NAWG has an interest in many environmental regulatory issues, working with Members of Congress, U.S. Department of Agriculture, Environmental Protection Agency and others. NAWG's top priorities in this area are:

- Congressional clarification that applications of crop protection products do not constitute point sources of pollution under the Clean Water Act when applied in accordance with legally-registered EPA labels.
- An Endangered Species Act consultation process for pesticide registration that works for all stakeholders.
- Ensuring farmers have a clear understanding of which waters are regulated under the Clean Water Act

Want to Know More?

Visit www.wheatworld.org/environmentalregulation for more information about NAWG's work on these regulatory issues. Visit www.epa.gov/oecaagct for more on EPA's regulations related to agricultural operations. Visit www.usda.gov for more on USDA's work with environmental and conservation issues.

ESA CONSULTATION PROCESS

Under the Endangered Species Act (ESA), the Environmental Protection Agency (EPA) is required to complete a consultation process with wildlife agencies in addition to its review under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). For several years, EPA and the National Oceanic and Atmospheric Administration (NOAA) the National Marine Fisheries Service have not been able to agree on the underlying scientific data needed to reach the standard for a full consultation. This has created an opening for pesticide opponents to sue based on the consultation process itself versus alleging harm to the endangered species.

EPA, USDA and the Services are now crafting a new consultation process based on recommendations from a National Academy of Sciences study. However, we must ensure that the new process is streamlined, transparent, open to stakeholder input and, most importantly,

based on the best available science.

WATERS OF THE UNITED STATES DEFINITION

Decades of court decisions and administrative actions related to the Clean Water Act (CWA) have left the legal definition of the “waters of the United States” unclear. The most recent Supreme Court case, *Rapanos v. the U.S.*, found the standard to determine jurisdictional waters of the U.S. to be whether a water or wetland possessed a “significant nexus” to waters that are navigable or that could reasonably become navigable. This means that seemingly unrelated waters or potential conveyances could be regulated if they could possibly affect some other, covered water.

Continued regulation with such an unclear definition of what should be regulated could mean farmers and other land managers face increased costs and increased vulnerability to frivolous lawsuits. There needs to be a clear definition of “waters of the United

States” to protect farmers from these uncertainties.

However, EPA’s proposed regulation on waters of the U.S. released in March 2014 does not provide any clarity to farmer regarding the CWA jurisdiction. Instead it creates greater confusion, does not include key definitions, requires case-by-case determinations, and potentially broadens the jurisdiction of the CWA. The related Interpretive Rule (IR) regarding certain Natural Resources Conservation Service conservation practice standards is equally as concerning for growers. The “IR” raises more questions than it answers, leaving uncertainty about long-standing exemptions for normal farming activities. The EPA needs to reconsider both of these proposals.

NPDES PERMITS

In January 2009, the Sixth Circuit Court of Appeals ruled for the first time that applications of pesticides are subject to regulation under the Clean Water Act (CWA), which typically involves obtaining National Pollutant Discharge Elimination

System (NPDES) permits. As of November 2011, pesticide applicators intending to apply crop protection products over water are covered by an EPA pesticide general permit in addition to FIFRA rules. Land-based applicators, like farmers, however, are not covered by the new general permit but could still be found liable under CWA if their applications do come into contact with water.

The EPA has estimated the ruling will affect approximately 365,000 pesticide applicators that perform 5.6 million pesticide applications annually. Farmers and others found not to be in compliance could be fined more than \$37,000 a day, quickly putting many out of business. The ruling also means farmers will face new liability concerns even if they are following long-standing FIFRA labels.

This issue can be resolved with a legislative fix to clarify the regulatory oversight of pesticide application and eliminate the duplicative regulations from CWA that resulted from the Sixth Circuit Court’s decision.

HOW REGULATIONS COME ABOUT

Regulations are ultimately written and issued by an administrative agency – in the case of environmental regulations, generally the Environmental Protection Agency (EPA), the Department of Commerce, the Department of the Interior or USDA.

But before an agency can create a regulation, it must be mandated by Congress via legislation or by a court ruling. In the case of environmental regulations, many challenges are coming through the courts under broad environmental laws.

Other regulations come about from periodic reviews by administrative agencies themselves. These changes are generally to ensure existing policies are up to date, but sometimes dramatically broaden the agency’s regulatory power – or dramatically increase the regulatory burden faced by stakeholders.

