

Threats to Animal & Tillage Agriculture

Legislative Agricultural Chairs Summit VIII

January 15-17, 2010

Orlando, Florida

Gary H. Baise, Attorney at Law

Olsson Frank Weeda Terman Bode Matz P.C.

Washington, DC

Challenges

- *American Farm Bureau Federation vs. EPA*, Feb. 24, 2009
 - Challenge to EPA retention of PM¹⁰ indicator for coarse PM
 - Appeals Court allows EPA to regulate rural dust – Court chose to disregard lack of scientific support

Challenges - PM¹⁰

- Present standard is 150 ug/m³ – 24 hours
- EPA considering 12-15 ug/m³
- This would shut down midwestern and western tillage practices
- PM¹⁰ – farm dust = 10 microns
- 1 Grain of sand = 90 microns

Challenges – Greenhouse Gas (GHG) Reporting

- EPA proposed rule – report CO₂ & equivalents
- EPA estimates 50 dairies may need to report
 - Disagreement – exemption
- 25,000 m. tons require reporting to EPA

History - Cases

- *U.S. v. Tropical Fruit, SE, et al 2001*

Complaints from local residents – video taping of drift
EPA issued order to stop applying pesticides if there is
drift into neighborhoods

Negative health effects

Workers not given proper safety information

Operators did not follow label instructions

DOJ & EPA filed civil action

History - Cases

- Results: Consent Decree
 - Prevent drift
 - Plant vegetative barriers of trees near homes
 - Remove fruit trees or other crops along perimeter
 - Establish 173 ft. buffer next to vegetative barrier & no spraying in this zone

History - Cases

- Results (continued):
 - Must remove all crops in no spray zone
 - Buy new equipment to measure wind speed before & during application
 - Notify EPA 72 hrs. in advance of all pesticide & fertilizer applications
 - Hire an EPA monitor to track agreement for 3 years

History - Cases

- *U.S. v. Wabash Valley Service Co.*,
Case No. 05-CR-40029-JPG(March 16, 2006)
U.S. District Court for the So. District of Illinois
 1. Criminal case against company & employee
 2. Neighbor videotaped spray drift – Hamilton Co, IL
 3. Applying pesticides impregnated on fertilizer pellets
 4. DOJ & EPA claimed wind speed at 20 mph

History - Cases

- *U.S. v. Wabash Valley Service Co.*, Case No. 05-CR-40029-JPG(March 16, 2006)
- 5. Spraying Atrazine – label states “Do not apply under windy conditions.”
 - Cannot contact workers or others either directly or through drift
 - Criminal penalties for failure to comply

Latest Case

- *The National Cotton Council of America v. EPA* No. 06-4630 (6th Circuit, January 7, 2009)
 1. EPA general rule has been pesticides not generally pollutants
 - Cannot discharge directly into waters of U.S. or “near” waters
 - Court: pesticide residual is a waste and subject to NPDES permitting
 - Court: pesticides “biological materials” under Clean Water Act

Latest Case

The National Cotton Council v. EPA

- 2. Court: pesticides applied above or near waterways at some point will find way to waters of U.S.
 - “Excess”, “discarded” or “superfluous” chemical meets Clean Water Act definition of “chemical waste”.
 - Petition to U.S. Supreme Court filed

EPA Position

1. Opposed rehearing of decision
2. EPA estimates 365,000 applicators impacted
 - 5.6 million pesticide applications annually
 - “CLEAN WATER ACT PERMITTING OF DISCHARGES FROM PESTICIDE APPLICATIONS” (www.epa.gov/npdes)

Challenge - Waxman-Markey Bill

Title VII - Global Warming Pollution Reduction Program

- In 2005, emissions of 7,206,000,000 tons of Greenhouse Gases in U.S.
- Allocates 4,627,000,000 allowances in 2012
- Allocates 1,035,000 in 2050 & thereafter

Challenge - Waxman-Markey Bill

Title VII - Global Warming Pollution Reduction Program

- Covered sources reduce GHG levels:
 - 97% of 2005 level by 2012
 - 83% by 2020
 - 58% by 2030
 - 17% by 2050

Challenge - Waxman-Markey Bill

Title VII - Global Warming Pollution Reduction Program

- China & India emit more GHGs than rest of world
- U.S. emit zero GHGs in 2030 & world will still emit 7 billion tons more than 2005

Challenge - Waxman-Markey Bill

Subtitle C, Part B – Mobile Sources

- Emission standards for greenhouse gas emissions by 2010
 - New heavy duty vehicles & engines
 - Non road vehicles & engines by 12/31/2012
 - Aircraft & aircraft engines by 12/31/2012
 - Greatest degree achievable

Challenge - Waxman-Markey Bill

Greenhouse Gases (GHGs)

- CO₂, methane, nitrous oxide (N₂O), sulfur hexafluoride, hydrofluorocarbons
- Emission allowances
 - EPA establishes an annual tonnage limit
 - EPA establishes allowances equal to tonnage limit

Challenge - Waxman-Markey Bill

Part D – Offsets

- Eligible Offset Projects: Ag, grassland & range land sequestration
 - Reduce nitrogen use
 - Reduce flooding of rice paddies
 - Reduce carbon emissions from soils
 - Reduce deforestation

Challenge - Waxman-Markey Bill

Section 333 – Black Carbon

- Abatement report within one year of enactment
 - Diesel retrofit
 - Abate black carbon emissions in foreign countries
 - Diesel engines emit less or no black carbon

Monsanto Losses

- APHIS – regulates GE plants for experimental testing & commercial production
- Bentgrass & Bluegrass case (*ICTA v. Johnson*)
- NEPA – EIS statement required
- Fear of gene flow, enhanced weediness & increase in use of other herbicides

Monsanto v. Geerston Seed Farm

- Alfalfa
 - Organic & commercial growers
 - Challenged APHIS' deregulating GE (Roundup Ready) alfalfa
 - EA prepared
 - APHIS found no significant impact
 - Geerston – need EIS
 - Monsanto filed appeal in U.S. Supreme Court

Center for Food Safety, et. al v. Vilsack, et. al.

- Monsanto sugar beet loss - 9/22/09
- Could lead to ban on planting GE beets
- APHIS cannot deregulate GE sugar beets
- Need EIS
- Now in remedy phase

EPA Jan 2010 proposal to regulate ozone

- 0.060-0.070 parts per million (ppm)
- Regulate volatile organic compounds (VOCs), carbon monoxide and methane
- New secondary standard called W126
 - Cumulative effects of ozone on sensitive vegetation
 - 3 mo. of year when ozone highest

BMP Control of Cultivation

- Till alternate rows for weed management
- Reduce number of passes on fields
- Organic practices
- Precision farming
- Fallowing land

BMP Control of Cultivation

- Night harvesting
- Hand harvesting
- Permanent crops
- Speed limits on dirt roads
- Gravel all dirt roads

Thank you

Questions?