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Legal, environmental hot button issues that impact U.S. farmers.

Pollution Diets For Farmers

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Virginia's Farm Bureau sent me a postcard which claims the U.S. Senate will soon be considering legislation which "...has the potential to be one of the worst pieces of federal legislation for farmers in recent memory." The proposed legislation "Gives the federal government "genuine authority" to regulate virtually all farming activity statewide."

These are serious allegations. The legislation in question is the Chesapeake Clean Water and Ecosystem Restoration Act of 2009 (S.1816).

To get a flavor of this debate, I refer you back to my discussion of controlling runoff from your farm (www.farmfutures.com/blogs.aspx/control/runoff/from/your/farm/or/else/1091).

Since that article appeared, the states and the Chesapeake Bay Watershed have submitted the first draft of their "watershed implementation plans" which detail how and where pollution cuts of nutrients flowing into the Bay will be made.

These plans were turned into the federal government on September 1, 2010. Many commentors are calling EPA's action a "pollution diet". On September 24, 2010, a draft of the "pollution diet" will be released for public comment.

EPA's plans and the proposed Senate legislation have a common goal and that is to control three pollutants that are discharged into the water of the Chesapeake Bay: nitrogen, phosphorus and sediment. The EPA and Senate proposals take dead aim at all agriculture.

EPA has the ability to control point source dischargers through a permit program. EPA has less control over non-point sources but is attempting to control stormwater runoff from urban and suburban areas. If a waterway is not meeting water quality standards, states must identify such waters within its boundaries where technology-based controls are not stringent enough to implement state water quality standards.

Under the Clean Water Act (CWA) states are then required to develop total maximum daily loads (TMDLs). TMDL is the maximum amount of pollutants allowed into a stream without exceeding water quality standards.

A TMDL is what some are calling a "pollution diet." This is a major concern to the Virginia Farm Bureau and should be a concern to all in agriculture production.

The TMDL will provide specific numeric limitations on the amount of nitrogen, phosphorus and sediment that will be allowed into the Chesapeake Bay. EPA is leading the effort to set new pollution limits and create what is called a Bay-wide pollution diet and seeks to clean up the Bay's water by 2025. EPA will finalize a TMDL for the Chesapeake Bay by the end of December, 2010, which will impact all of the states in the Chesapeake Bay watershed.

According to EPA, states that do not meet their overall "pollution diet" will face consequences such as loss of federal funds and denial of new permits.

EPA says that nitrogen, phosphorus, and sediment come from farm and lawn fertilizer, sewage plants, septic systems, air pollution, and stormwater runoff from urban and suburban areas.

If EPA does not get the job done, the proposed senate legislation attempts to attain the same goals. The Senate bill declares that in the Chesapeake Bay watershed, "...the largest single-sector source of nitrogen, phosphorus and sediment pollution is agriculture."

Setting limits The legislation uses the TMDL section of the CWA to set limits on nitrogen, phosphorus and sediment. Management strategies required under the bill "shall insure" that nutrient goals are achieved and maintained.

The legislation is very clear that there will be waste load allocations for the three substances for nonpoint sources including agriculture and runoff sources. There can be no net increase of nitrogen, phosphorus or sediment going into the Bay from concentrated animal feeding operations, transportation systems and septic systems.

The bill requires that reduction targets be set, and schedules developed to limit runoff from agricultural operations, point sources and nonpoint sources.

What really may be dangerous to agriculture is that the limitations shall be

implemented pursuant to a tributary cap load agreement numbered EPA 903-R-03-007 December 2003 which is entitled "Setting and Allocating the Chesapeake Bay Basin Nutrient and Sediment Loads" (I have not been able to read this document, but I suspect it is worth reading.)

What may be more dangerous is some language tucked in to the "Issuance of Permits" section. I have written before that EPA and others are attempting to overturn Section 502 (14) of the Clean Water Act which establishes that agricultural stormwater runoff is exempt from EPA's permitting authority.

The Senate legislation appears to me to nullify the agricultural stormwater runoff exemption that congress previously passed.

You be the judge.

Here's the Senate language: "ISSUANCE OF PERMITS - Notwithstanding any other provision of this Act (including any exclusion or exception contained in a definition under section 502), for the purpose of achieving the nitrogen, phosphorus, and sediment reductions required under a watershed implementation plan, a Chesapeake Bay State may issue a permit in accordance with section 402 for any pollution source..."

As I said, this appears to do away with the agriculture stormwater runoff exemption; it could mean producers in the Chesapeake Bay watershed will be required to have Clean Water Act permits.

Your "pollution diet" may be coming sooner than you think!

This may be why Virginia Farm Bureau is calling S. 1816 one of the "worst pieces of legislation for farmers in recent memory." *Read more on this topic in the October, 2010 issue of Farm Futures*

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