


Defending Agriculture

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

Control Your Dust - or Else

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EPA has not given up on regulating dust from your farm. On July 8, 2010, EPA released its new Policy Assessment for the Review of the Particulate Matter (PM) National Ambient Air Quality Standard: Second External Review Draft.

EPA is building the case to further regulate farm dust, or what the agency calls a standard for Thoracic Coarse Particles, otherwise known as PM10. For background, I refer you back to my posting on November 23, 2009 -- EPA to Regulate Your Farm Dust (<http://www.farmfutures.com/blogs.aspx/epa/to/regulate/your/farm/dust/963>).

EPA staff says that there are significant uncertainties regarding the science of health impacts of farm dust. The agency can either retain the present PM (dust) standard or make it more stringent. The present PM standard for dust is 150 µg/m³ for 24 hours. EPA staff suggests a new standard of 65-85 µg/m³ for 24 hours.

A number of agricultural organizations are suggesting, based on their review, that such a new standard "would be devastating for agricultural and other resource-based operations..."

One must ask why does EPA desire to regulate agricultural dust? The agency claims studies "suggest" there may be health problems that must be addressed in certain populations.

Remember that EPA put out a rule controlling PM10 particles in 2006. The court upheld the agency's rule against a number of challenges from agricultural organizations. The court also refused to accept arguments that the evidence clearly showed no risk from exposure "to non-urban coarse PM," or in other words, farm dust. The court also declared EPA had a reasonable basis not to set separate standards for urban and non-urban dust.

Remarkable Statements

In reviewing the PM standard in 2009, the court made a remarkable statement which you need to think about. The statement means EPA really doesn't need much evidence to regulate farm dust. The court said:

"Although the evidence of danger from coarse PM is, as EPA recognizes, "inconclusive," (71 FR 61193, October 17, 2006), the agency need not wait for conclusive findings before regulating a pollutant it reasonably believes may pose a significant risk to public health. The evidence in the record supports the EPA's cautious decision that "some protection from exposure to thoracic coarse particles is warranted in all areas: Id. As the court has consistently reaffirmed, the CAA permits the Administrator to "err on the side of caution" in setting NAAQS. 559 F. 3d at 533."

This language from the court allows EPA virtually unlimited discretion to regulate farm dust.

Back in 2006, EPA recommended that urban coarse particles in the size range of 10-2.5 micrometers should be regulated and proposed that dust from "high-density traffic on paved roads and/or by industrial and construction sources" be controlled. EPA said then it was not going to regulate rural windblown dusts and soils and mining sources.

Opposing comments flowed into the agency from environmental groups, and EPA, of course, rejected its own position and decided to regulate both urban and non-urban dust. (So much for relying on science.)

In 2006, EPA concluded that a PM dust standard "afforded requisite protection with an ample margin of safety..." and regulated farm dust.

EPA staff now concludes that the Clean Air Act (CAA) does not require standards to be set at a zero risk level. This sounds reasonable. However, staff also asserts that EPA must set standards which will keep the public from being exposed to "unacceptable health risks."

As a result, EPA staff claims "consideration should be given to new PM10 standard levels from 85 µg/m³ down to about 65 µg/m³." Staff further suggests "standard levels as low as 65 µg/m³ should be considered..."

Keep in mind that in 2006, EPA indicated it was only concerned about possible health effects from dust in urban areas. There was virtually no evidence showing that rural dust was a cause for concern. Even EPA's preamble to the

rule said evidence of health effects from rural dust was weak, in fact relying on only one study, which was questionable.

Now it appears that because EPA is relying on what is called the precautionary principle, it wants to regulate more stringently our farm dust produced by tilling, harvesting, using unpaved roads, and feeding of livestock.

This is another major example of EPA moving to control as many aspects of farm life as possible. So far, I see no participation or input from USDA.

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Dust from tillage, harvesting, even feedlots, could be regulated.

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