



Statement of the American Farm Bureau Federation

**TO THE
SUBCOMMITTEE ON CONSERVATION, ENERGY AND FORESTRY
HOUSE COMMITTEE ON AGRICULTURE
REGARDING: CHESAPEAKE BAY TOTAL MAXIMUM DAILY LOAD**

March 16, 2011

Presented by Carl Shaffer
President, Pennsylvania Farm Bureau
Member, Board of Directors, American Farm Bureau Federation

Mr. Chairman, my name is Carl Shaffer, and I have the privilege of serving on the Board of Directors of the American Farm Bureau Federation and as President of the Pennsylvania Farm Bureau. I own and operate a farm in Columbia County, Pennsylvania where I raise green beans for processing, corn and wheat. All the land I farm is in the Chesapeake Bay watershed, and most of the land is within sight of the Susquehanna River. I appreciate this opportunity to appear before you today and to provide testimony on behalf of farm and rural families that belong to Farm Bureau, the nation's largest general farm organization.

Let me begin by saying that farmers have never felt more challenged and more anxious about the future of their operations than they do today. This is because of the continuous onslaught of regulations, guidance and other requirements being issued by the Environmental Protection Agency (EPA). Some say EPA simply wants to control how individuals farm. EPA claims that is not the case. But whether or not this is EPA's intent, it clearly will be the result. The outcome of EPA's requirements will be to drive production costs so high that many farms face a heightened risk of going out of business. And although EPA promulgates regulations in the name of "environmental protection," we assert that very little real environmental gain will result.

Nowhere is the impact of EPA activity more obvious than in the Chesapeake Bay watershed (the Bay), where the recently finalized EPA-issued Chesapeake Bay Total Maximum Daily Load (TMDL) could push hundreds of thousands of acres of productive farmland out of cropland. EPA itself projects that roughly 20 percent of cropped land in the watershed (about 600,000 acres) will have to be removed from production and be converted to grassland or forest in order to achieve the required loading reductions.

EPA's focus on agriculture and its over-reaching restrictions are particularly troublesome because agriculture has worked successfully with the U.S. Department of Agriculture (USDA) to reduce our environmental impact on the Bay. Use of crop inputs is declining. No-till farming has reduced soil erosion and resulted in more carbon being stored in the soil. Milk today is produced from far fewer cows. Nitrogen use efficiency has consistently improved. Farmers are proud that their environmental footprint is dramatically smaller today than it was 50 years ago, and we are committed to continuing this progress.

In the Chesapeake Bay watershed, agricultural practice improvements to reduce nutrients are well documented. USDA's National Resource Conservation Service (NRCS) is in the process of completing its October 2010 draft report on the progress made by agriculture in conservation and natural resource improvements from 2003-2006.¹ In its draft report, NRCS reports that farmers were actively implementing erosion control practices on about 96 percent of the cropland acres in production in the watershed. These practices included various forms of erosion control involving no-till or minimum tillage, and structural and vegetation management practices like

¹ Natural Resource Conservation Service, Assessment of the Effects of Conservation Practices on Cultivated Cropland in the Chesapeake Bay Region (October 2010) ("NRCS 2010") (available at <http://www.regulations.gov/#!documentDetail;D=EPA-R03-OW-2010-0736-0482.2>)

contour farming, grass waterways and filter strips. As a result of these and other nutrient management practices, the NRCS draft report found that sediment contributions from cultivated cropland to the Bay's rivers and streams are reduced by 64 percent, nitrogen by 36 percent and phosphorus by 43 percent. The report also found that these practices are responsible for reducing total loads of sediment, nitrogen and phosphorus from all sources by 14 percent, 15 percent and 15 percent.

Ignoring the substantial effort and progress of recent years, EPA moved forward with an aggressive and unnecessarily inflexible new plan to regulate farming practices in the Chesapeake Bay watershed. In the last two years, EPA has set in motion a significant number of new regulations that will fundamentally alter the face of agriculture, not just in the Bay, but nationwide. These new regulations will determine how farmers raise crops and livestock and will increase the likelihood of expensive lawsuits filed by activist organizations.

Policies already in place, or those being contemplated by EPA, will greatly expand federal control over crop farmers and extend the scope of existing regulations to livestock producers, regardless of size or footprint. Some examples of how EPA is exerting its authority over livestock farms include:

- In 2010, EPA released a document, "Coming Together for Clean Water," that proposed new, more stringent regulations for livestock producers. In the document, EPA indicated that it will propose regulations to make it easier to designate small- or medium-sized livestock operations as Concentrated Animal Feeding Operations (CAFOs) regardless of whether a farm is actually discharging anything into water. This is in conflict with a 2005 ruling by the 2nd Circuit Court of Appeals which said that EPA could only regulate actual discharges, not potential discharges or CAFOs that do not discharge. It is a fact that complying with EPA regulations increases costs which we believe will force small- and medium-sized operations to get much bigger or go out of business just as many have done over the last 20 years.
- In addition to new aggressive regulations, EPA has entered into a number of settlement agreements with environmental plaintiffs that all but explicitly commit EPA to finalize additional regulations. One recent settlement agreement resulted in a guidance document that is being used to require permits for dust and feathers blown out of poultry house ventilation fans, regardless of the quantity. Another will allow EPA to collect and post on the Internet personal information about livestock operations, regardless of size. We believe it is wrong for EPA to be able to post livestock producers' personal information, and we question how the action will help improve the environment.
- EPA is also proposing regulations that will limit the use of manure nutrients and another to limit a farmer's ability to sell manure nutrient to crop farmers to use in lieu of petroleum-based fertilizers.
- Lastly, EPA has a multi-year enforcement strategy that targets livestock operations within the Chesapeake Bay watershed, regardless of their size or whether they contribute to the Bay's pollution.

Farm Bureau believes that EPA is intentionally working to circumvent Congress's deliberate decision to leave regulation of non-point sources to the states. We offer these examples:

- For years, EPA has been narrowing the scope of the agricultural storm water exemption. As part of the EPA-mandated Watershed Implementation Plans for each Bay state, EPA virtually eliminated the exemption by requiring that the states regulate farmers through enforcement controls.
- EPA has entered into settlement agreements with environmental plaintiffs in which EPA agreed to take regulatory actions that have enormous impact on agriculture. For example, EPA agreed to issue (and has now issued) numeric nutrient criteria in Florida that are unrealistic and unattainable. In another settlement agreement, EPA agreed to issue (and now has issued) a TMDL in the Chesapeake Bay watershed, threatening severe “backstop measures” to prohibit new and expanding Clean Water Act permits unless states force nutrient reductions from other permittees and sources, such as farmers.

While many of these regulatory changes are nationwide, one of the most extreme examples of EPA over-reaching its authority is in the Chesapeake Bay watershed. Farm Bureau believes so strongly that EPA has over-reached its statutory authority that the American Farm Bureau Federation has initiated a lawsuit against EPA. The outcome of this case will not only impact farming in the Bay watershed but across the nation, because EPA acknowledges that its strategy in the Bay is a template for other major watersheds across the nation, the Mississippi River watershed in particular.

Let me emphasize that our litigation is *not* about whether or not to clean up the Chesapeake Bay. Farmers in the Bay watershed have been working diligently for years, if not decades, with local and state governments and other organizations, including the Chesapeake Bay Foundation, to improve farming practices in order to clean up the Bay. Everyone wants a clean and healthy Bay and farmers want to continue to be part of the solution to improve water quality in the Chesapeake Bay region and across the country. AFBF’s lawsuit is about a *specific plan* for achieving clean water and EPA’s legal authority to develop and implement that *specific plan*.

EPA is imposing an incredibly complex and detailed prescription – what EPA calls a “pollution diet” – for a 64,000 square mile watershed. While we support the goal of clean water, we believe that goal has to be achieved within the confines of the law and should consider impacts on the economy.

Farm Bureau has three basic objections to EPA’s actions:

First, Farm Bureau believes EPA’s “pollution diet” unlawfully micromanages states, as well as the farmers, homeowners and businesses within the region. EPA’s plan imposes specific pollutant “allocations” on activities such as farming and homebuilding, sometimes down to the level of individual operations. The federal Clean Water Act does not authorize such binding allocations. Instead, the Clean Water Act requires that states decide how to improve water quality, including allocations of loading among sources, and to take into account economic and social impacts on local businesses and communities. EPA claims to be working in “partnership” with the states, but by including its own “allocations” in the TMDL, it is exercising control by unlawfully limiting the states’ flexibility to change and adapt their plans.

Second, EPA relied on wrong assumptions and on a scientific model that *EPA itself* admits was flawed. EPA failed to meet a basic level of scientific validity that the public expects and that the law requires.

Third, EPA failed to give the public a meaningful opportunity to review EPA's assumed facts. Law requires agencies to disclose their methodologies so that the public can review it and comment on its accuracy. EPA failed to provide critical information about how it determined pollution "allocations" and allowed the public only 45 days to digest and respond to incomplete, highly technical information. Because EPA did not allow meaningful public participation, the "diet" it produced is unlawful.

Lastly, EPA's TMDL wrongly establishes binding allocations and timelines *regardless of cost*. Clean Water Act and EPA regulations specifically allow states to consider economic consequences and to modify water quality goals when necessary to avoid substantial economic and social disruption. EPA asserts that the TMDL will restore jobs and help the Bay economy, but it has not provided any data to support these claims. The Bay states, however, estimate that implementation will cost billions of dollars (*e.g.*, \$7 billion for Virginia, \$3 billion to \$6 billion for New York). Farm Bureau believes the TMDL threatens the economic health of businesses, individuals and communities throughout the Chesapeake Bay watershed.

AFBF's suit seeks to restore the states' authority to decide how to achieve clean water and to consider economic and social harm in making those decisions. AFBF also seeks to affirm basic requirements for sound science and transparency with the public. AFBF's lawsuit does not seek to benefit agriculture at the expense of others in the watershed. The implementation of TMDLs typically involves the allocation of pollutant loading among sources. AFBF is not seeking any particular re-allocation of responsibilities or to shift clean-up burdens onto other sectors. The case is about whether the federal government or states set the allocations, who sets the timeline, and the basic requirement for valid science and public participation. While we all support the goal of clean water, Farm Bureau strongly believes that the manner in which EPA has determined and prescribed this "pollution diet" for the Chesapeake Bay watershed is unlawful and ignores the economic and social costs to the Bay community.

Farmers and ranchers across the nation, including those in the Chesapeake Bay watershed, want to continue to produce food and fiber and to do so in a way that has diminishing impacts on the environment. We are deeply concerned that the over-reacting environmental regulations issued by EPA for the Chesapeake Bay watershed threaten our businesses and circumvent the intent of Congress. We believe EPA should be held accountable to the laws that prescribe how it regulates production agriculture and that it should rely on sound science in its proceedings. The economic impact of how EPA is allowed to proceed in the Chesapeake Bay watershed is significant, and the repercussions will have a national impact on agriculture.

Mr. Chairman, I commend you for convening this hearing and for all your hard work on behalf of agriculture across the country. I will be pleased to respond to questions.

Carl T. Shaffer

Carl T. Shaffer was first elected president of the Pennsylvania Farm Bureau in November 2004 after serving as the organization's vice president since April, 1996. Re-elected to a fourth term in 2010, he leads an organization of more than 50,000 farm and rural families organized through 54 county Farm Bureaus.

Shaffer operates a 1,800-acre vegetable and crop farm in Mifflin Township, Columbia County, where he grows 1,200 acres of corn, 200 acres of wheat and 400 acres of snap beans. Among the many recognitions for leadership and achievement in agriculture, Shaffer was named as a Master Farmer in 1996, one of the highest honors awarded to farmers in the commonwealth.

Shaffer's grandfather and father were farmers, but Carl originally planned to go to college and pursue an off-farm career. However, an injury to his father changed his plans. As he stepped in to take over the 100-acre farm's grain and vegetable operation, Shaffer discovered he liked the farming business. But the farm was too small to support two incomes so, with his father as co-signer, Shaffer borrowed money to buy a truck to haul fertilizer by night and deliver vegetables in the fall while working on the farm by day. When his dad retired a few years later, Shaffer hired a truck driver and took over the farm, which had expanded to 250 acres. Over the years he has continued to expand crop acreage and he still maintains a trucking business.

He has served on the Pennsylvania State University Board of Trustees since 1997 and was elected to the Board of Directors of the American Farm Bureau Federation in January 2007. In 2008 he was appointed to the AFBF Foundation Board of Directors and was also elected to the AFBF Executive Committee. He also is a member of the Board of the Pennsylvania FFA Foundation and the Agricultural Law Resource and Reference Center at Dickinson College. In 2004, he was appointed by then-Governor Ed Rendell and confirmed by the state Senate to serve on the Pennsylvania Farm Show Commission. Earlier he chaired the Agriculture Advisory Committee to the state Department of Environmental Protection.

Shaffer also represents the insurance programs of Pennsylvania Farm Bureau members as a member of the Board Council of Nationwide Insurance. In addition, he is president of the Pennsylvania Friends of Ag Foundation, a charitable organization supported by the Pennsylvania Farm Bureau, which works to advance public understanding and support for agriculture and agribusiness.

Past Farm Bureau leadership roles includes two years as a state Board director and service as a county board member, vice president, president and legislative chairman of the Columbia County Farm Bureau.

Past leadership with other organizations includes service as chairman of the Farm Service Agency's Pennsylvania State Committee and as a founding member of the Columbia County Crop Improvement Association. He was also a member of his local County Extension Board of Directors.

**Committee on Agriculture
U.S. House of Representatives
Required Witness Disclosure Form**

House Rules* require nongovernmental witnesses to disclose the amount and source of Federal grants received since October 1, 2008.

Name: Carl T. Shaffer

Organization you represent (if any): American Farm Bureau Federation

- 1. Please list any federal grants or contracts (including subgrants and subcontracts) you have received since October 1, 2008, as well as the source and the amount of each grant or contract. House Rules do NOT require disclosure of federal payments to individuals, such as Social Security or Medicare benefits, farm program payments, or assistance to agricultural producers:**

Source: n/a **Amount:** \$0

Source: n/a **Amount:** \$0

- 2. If you are appearing on behalf of an organization, please list any federal grants or contracts (including subgrants and subcontracts) the organization has received since October 1, 2008, as well as the source and the amount of each grant or contract:**

Source: n/a **Amount:** \$0

Source: n/a **Amount:** \$0

Please check here if this form is NOT applicable to you: X

Signature: Carl T Shaffer

** Rule XI, clause 2(g)(4) of the U.S. House of Representatives provides: Each committee shall, to the greatest extent practicable, require witnesses who appear before it to submit in advance written statements of proposed testimony and to limit their initial presentations to the committee to brief summaries thereof. In the case of a witness appearing in a nongovernmental capacity, a written statement of proposed testimony shall include a curriculum vitae and a disclosure of the amount and source (by agency and program) of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by the witness or by any entity represented by the witness.*

PLEASE ATTACH DISCLOSURE FORM TO EACH COPY OF TESTIMONY.