



Florida Farm Bureau Issue Brief

Agricultural Policy Division

PO Box 147030

Gainesville, FL 32614

(352) 374-1544

Clean Air Act/Green House Gas Regulation

March 2011

Issue

The U.S. Environmental Protection Agency (EPA) has initiated a program to regulate greenhouse gases (GHGs) as “air pollutants” under the Clean Air Act.

Background

In April 2007, the Supreme Court ruled that EPA had the authority to regulate GHG emissions from new cars under the Clean Air Act if it determined that GHG emissions endanger public health or welfare.

Under the Clean Air Act, once the GHG emission rules become final, certain provisions are automatically triggered that are expected to impose potentially costly and burdensome requirements on agriculture, small businesses and the economy in general. Title V of the act requires “major sources” (defined by statute to mean entities that emit more than 100 tons of the pollutant per year) to obtain permits to continue operating. Similarly, New Source Review (NSR)/Prevention of Significant Deterioration (PSD) building permit requirements automatically apply to new construction or renovation of structures for operations emitting more than 250 tons per year. A significant number of agricultural operations not previously regulated under the Clean Air Act could thus come under regulation.

With regard to the Title V permit requirements, the USDA in comments to the EPA stated, “Even very small agricultural operations would meet a 100-tons-per-year emissions threshold. For example, dairy facilities with over 25 cows, beef cattle operations of over 50 cattle, swine operations with over 200 hogs, and farms with over 500 acres of corn may need to get a Title V permit.” According to the USDA publication “Farms, Land in Farms, and Livestock Operations, 2007 Summary” National Agricultural Statistics Survey, (Feb. 2008) this covers 96.8 percent of hog inventory.

Regulation of GHGs under the Clean Air Act could also have impacts for farmers and ranchers seeking to build new structures or renovate existing ones. The NSR and PSD permitting

requirements can impose costly and burdensome permit requirements for sources falling under those programs, a situation that could well arise for certain agricultural operations.

EPA recognizes that the economic impacts will be substantial and that permitting authorities will be overwhelmed by the increased number of entities subject to GHG permit requirements. In response, the EPA has finalized a rule to “tailor” the regulations and phase in permitting requirements. The so-called “tailoring rule” would administratively raise the threshold limits for those needing permits from the statutory levels of 100/250 tons per year to those entities emitting more than 50,000 tons per year. The tailoring rule would not exempt those entities emitting less than 75,000 tons per year, but would re-evaluate whether and when to extend permit requirements to smaller emitters.

Because of the manner in which the tailoring rule deals with explicit statutory requirements, the rule is deemed by many legal experts as violating the Clean Air Act.

On Jan. 2, 2011, EPA regulation of GHG became applicable to stationary sources. On July 1, 2011, entities emitting only GHG will be required to obtain permits under the Clean Air Act.

Legislative Status

The House Energy and Commerce Committee has indicated that one of its top priorities is to stop EPA regulation of GHGs. The committee plans to introduce legislation in the very near future to accomplish this.

In the Senate, Sen. John Barrasso (R-Wyo.) introduced legislation that would remove authority for EPA to regulate GHG for stationary sources and would also bar lawsuits for damages or injunctive relief arising out of any potential or actual emission of GHG. Sen. John Rockefeller (D-W.Va.) also re-introduced his bill to delay implementation of GHG regulation of stationary sources for two years.

Regulatory History

In order for Title V and NSR/PSD to be triggered, two regulatory actions have to occur. First, EPA must make a finding that GHGs endanger public health and/or welfare (completed Dec. 6, 2009). Second, EPA must finalize regulation of those gases for any sector of the economy (completed April 1, 2010). EPA has also issued its tailoring rule to phase in regulatory requirements.

GHG regulation became effective Jan. 2, 2011. Farms, ranches and other stationary sources that emit GHGs and do not currently have Clean Air Act permits will be required to obtain Title V and PSD permits as of July 1, 2011.

EPA has taken one other regulatory action that may influence regulation of farms and ranches under the Clean Air Act. In late 2009, EPA published a final rule that would require manure management systems that emit more than 25,000 tons of GHGs per year to report those emissions to EPA under a rigorous scheme that includes monitoring and verification of such emissions. EPA estimates that this rule will only affect about 110 dairy, beef and swine operations, but poultry operations may be more vulnerable to reporting requirements. These reporting requirements will take effect next year.

Farm Bureau Policy

AFBF Policy:

Farm Bureau opposes regulation of greenhouse gases under the Clean Air Act.

FFBF Policy:

We oppose the regulation of greenhouse gas emissions through a mandatory cap and trade system or regulatory enforcement.

Emission offsets that sequester carbon through soil, forestry and other agricultural offsets are just as effective in reducing atmospheric carbon as are emission reductions and should be fully recognized in any cap and trade system.