



Testimony of
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On behalf of
The U.S. Rice Industry
Before the
Committee on Small Business
Subcommittee on Agriculture, Energy and Trade
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Introduction

Mr. Chairman, ranking member, and other members of the subcommittee, I appreciate the opportunity to appear before the House Small Business Subcommittee on Agriculture, Energy and Trade to discuss important regulatory issues facing rice farmers and others in the agricultural industry. My name is Ray Vester and I am a rice producer from Stuttgart, Arkansas and Chairman of the USA Rice Federation's Environmental Regulatory Subcommittee which oversees work on environmental and regulatory issues facing rice farmers.

The USA Rice Federation (USA Rice) is the global advocate for all segments of the U.S. rice industry with a mission to promote and protect the interests of producers, millers, merchants and allied businesses. USA Rice members are active in all major rice-producing states: Arkansas, California, Florida, Louisiana, Mississippi, Missouri and Texas. The USA Rice Producers' Group, USA Rice Council, USA Rice Merchants' Association and the USA Rice Millers' Association are members of the USA Rice Federation.

Rice Industry Overview

Rice is planted on an average of three million acres annually located on approximately 9,000 farms in 10 states: Arkansas, California, Louisiana, Mississippi, Missouri, and Texas as well as Florida, Illinois, Kentucky, and Tennessee. The U.S. rice industry is unique in its ability to produce all types of rice, from long grain, medium grain, and short grain, to aromatic and specialty varieties. Rice production, milling, marketing, and allied segments in the U.S. generate \$34 billion in economic activity, and contribute to 128,000 jobs, many of which are critical to the

economic health of rural communities. The U.S. rice industry produces more than 20 billion pounds of rice each year, approximately half of which supplies the domestic market and half is exported. Although the U.S. produces less than two percent of the world's rice, it ranks among the top four rice exporting nations.

Rice is vitally important to food security for the nation and the rest of the world. To meet the increasing demand for rice and compete in the global market, rice growers must implement effective pest management strategies. Insect pests attack all portions of the rice plant and all stages of plant growth. These insect pests include: (1) root feeders, (2) stem borers, (3) leafhoppers and plant hoppers, (4) defoliators, and (5) grain sucking insects. Some insects vector diseases that impact yield or create injury sites that allow colonization of diseases at the feeding site. The most common diseases that impact rice include sheath blight, rice blast, and kernel smut. These diseases occur during the reproductive growth stage and must be controlled with fungicides applied during this time. Weed control is critical to producing rice. While the shallow flood does serve to reduce weed infestations, this is not adequate alone. There are several weed pests that grow and thrive in rice production and while flooded conditions inhibit some weed species, these conditions tend to promote others. In the U.S., approximately 30 percent of the rice crop is lost annually to pests, but this would inflate to 50-100 percent of the crop lost without post-flood pesticide applications. Hence, controlling pests through proper use of pesticides is important to ensuring optimum production and efficiency.

The production cycle of rice is 115-160 days (February to November) depending upon region, variety and planting date. The harvest season also varies by region.

Rice is produced in either a water-seeded culture, in which a shallow flood is maintained from seeding until maturity or in a dry-seeded culture, in which a flood is established at about the 4-5 leaf growth stage and maintained until maturity. Many fields are shaped to a uniform grade to facilitate efficient flood irrigation and field drainage prior to harvest. Either before or after planting, levee (soil berms) locations are laser surveyed and marked at set elevation intervals. The levees are established on the contour, except where precision leveling has been conducted to facilitate straight levees.

National Pollutant Discharge Elimination System Permit

When the U.S. Environmental Protection Agency (USEPA) first announced their plans to create a National Pollutant Discharge Elimination System (NPDES) permit for pesticide use in water, there was confusion within the agency as to how rice is grown. Thus began a long process of trying to educate agency staff within the Office of Water about modern rice farming practices to ensure that rice farming was not included in the permit despite being statutorily exempt under the Irrigation Return Flows¹ section of the Clean Water Act (CWA).

Plant protectants are usually applied in-season based on integrated pest management programs although there are some pre-plant options. These applications are outside the regulatory authority

¹ Clean Water Act exemptions for irrigation return flow and agricultural stormwater runoff, which are excluded from the definition of a point source under Section 502(14) of the CWA and do not require NPDES permit coverage.

of EPA. To be subject to NPDES permitting programs, a site must discharge a pollutant through a point source to a water of the U.S. Rice fields; however, are not waters of the U.S. Therefore, pesticide applications to rice fields do not result in any “discharge into waters of the U.S.” Finally, water leaving rice fields is considered either an irrigation return flow or agricultural stormwater runoff, both of which are excluded from the definition of the term “point source.” Accordingly, in our opinion rice growers are not required to obtain NPDES permits under the CWA.

Like many producers, rice farmers utilize ditches to drain water from their fields. These ditches are not relatively permanent bodies of water. They hold water when they are being used to drain agricultural stormwater or irrigation return flows. Some of these ditches may be connected to a river or stream or may be connected to irrigation canals that may be connected to a river or stream. Other ditches drain water to an on-site pond or reservoir and the water does not leave the rice farmer’s property. These ditches must be maintained to provide adequate drainage capacity and functionality. Frequently, ditch maintenance will involve mechanical removal of weeds or the use of herbicides when the ditches are dry. Occasionally, weeds may be controlled when the ditches contain some water. In the Draft NPDES Permit, EPA appears to recognize that dry ditches are not waters of the U.S.

However, the Draft NPDES Permit was ambiguous about the regulatory status of ditches when they are wet or being used for drainage. Even if water is present in a drainage ditch, it is not a water of the U.S. and the use of herbicides in those ditches is not regulated under the CWA which the Supreme Court noted in their *Rapanos* decision. Even USEPA recognized both in 2002 and 2006 that these ditches are conveyances that have been excluded by Congress from the definition of point source under the CWA. But now with the new permit we are faced with uncertainty about whether or not our ditches are going to be regulated as waters of the U.S. and need a permit for weed control.

Adding to our concerns are the citizen suit provisions of the CWA. These provisions have been misused before by groups threatening legal action against even legally permitted businesses. Most rice producers will have limited resources to respond to, much less fight, an onslaught of litigation brought about by the expansion of the NPDES program to farming. Nothing in the CWA or the permit protects *against* citizen suits aimed at farmers or terrestrial applicators for not obtaining a permit. This establishes an uncertain liability for farmers. In addition, in the Draft NPDES Permit, USEPA attempted to micromanage pesticide applications by using language that will leave producers and applicators open to lawsuits. For example, the agency stated that an entity must use the “lowest effective amount” based on an “optimum frequency” that will “deliver the precise quantity of pesticide needed to achieve the greatest efficacy against the target pest.” Without defining these terms they leave it open to interpretations in court.

It’s also important to note that registration and labeling of pesticides under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) requires that EPA ensure that the use of a pesticide result in ‘no unreasonable adverse effect’ to humans or the environment, including water quality, and labels are crafted to minimize impacts. For farmers and applicators, the FIFRA label is the law: users who do not follow the label are in violation of federal law. This simple requirement to read and follow the individual labels of each pesticide product makes

compliance for farmers and applicators fall within a reasonable burden and cost. When concerns are noted with a pesticide product, the label can be changed to reflect any new data. When someone violates the label, they can be held accountable under the law. Permits have not been needed for this in the past and are not needed now.

Adding this permit program over top of our existing, protective regulations will not enhance human and environmental protection. It will add paperwork and fees to farming thereby reducing resources that can better be focused on efficiently producing crops. This is a paperwork exercise, pure and simple, but one which will add costs and delays to a program that currently works.

Make no mistake; permits granted under the CWA do not prevent discharges into our waterways. The NPDES is in fact a permit to discharge. In the case of pesticides, it's a permit to discharge an approved product that is already evaluated and regulated by EPA for use in, and impacts to, water. To my knowledge no other permitted discharge is double regulated by EPA.

Furthermore, in the delegated states (those states that have been delegated authority from EPA to run their own water permit programs) confusion has been created over which agency should run this new NPDES program (normally run by an environmental agency) for agriculture (normally overseen by an "ag" department). The permits these states have now are based on the draft Federal permit because EPA delivered their Final Permit on the court-ordered deadline date; too late for states to make significant changes. In addition the endangered species consultation requirements from the Federal wildlife services were not properly vetted in public so there has been confusion in some rice states as to their responsibility to include Federal endangered species permit requirements. Added to these issues of course are the additional costs involved to designing and running a new permit program that will in some respects re-regulate existing Federal and State pesticide programs.

Lastly I would like to point out that when a pest is discovered in a field or irrigation conveyance, the opportunity to successfully control that pest is often very limited by time and weather. But in the Draft NPDES Permit, EPA proposed to allow pesticide applications only when "pest conditions can no longer be tolerated." Micromanagement at this level but without clear policy may delay necessary applications and is inviting outside parties to interpret the meaning and place their own judgment above that of the farmer and applicator in a lawsuit. Adding a cumbersome paperwork procedure such as this permit into the system will cause delays in responding to pests.

Rural Dust Issues

EPA has been considering a change in both the format and stringency of the Coarse Particulate Matter (coarse PM) National Ambient Air Quality Standards (NAAQS).

EPA has discussed a possible change in the format of the coarse PM NAAQS from a PM₁₀, 24-hour average of 150 microgram per cubic meter ($\mu\text{g}/\text{m}^3$) format to a PM₁₀ concentration of 85 $\mu\text{g}/\text{m}^3$ format.

EPA has evaluated the stringency of the existing and potentially revised NAAQS based only on the limited data provided by the PM10 ambient air monitoring network. Only 12% of the counties in the U.S. have a PM10 monitor and the majority of these monitors are located in urban areas. EPA has not evaluated the stringency of the existing and potentially revised Coarse PM NAAQS in localized areas around fugitive dust sources in rural based operations such as farms and unpaved roads. However, once set, these revised Coarse PM NAAQS-based limits must be met regardless of the cost or availability of technically feasible controls.

If Coarse PM (dust) is regulated at the property line, this can and does impose serious production and economic limits on farms that need to come into compliance with Coarse PM NAAQS, whether those standards are decided by actual air monitors or EPA computer models.

And all this does is regulate rural dust, which are normally heavier particles that settle quickly to the ground after being stirred up. The fact is that in the normal course of producing food for the United States and the world, dust is going to be created no matter how many best management practices are thought up or fines are imposed on producers. Some U.S. farm practices are already regulated by the EPA for such things as wind speeds and direction. Beyond that, farm practices are regulated by the weather. We **MUST** do certain things at certain times in a certain order to comply with the dictates of Mother Nature. For example, we cannot harvest rice at night to reduce fugitive dust with heavier humidity and moisture precisely because the humidity makes the moisture content of the rice too high to properly harvest the crop and prevent spoilage.

For all intents and purposes, a revised standard as suggested by the agency, which **CANNOT** be met in rural America, will impose fines, penalties and punishments on producers and others living in rural areas for such things as plowing fields, driving down dirt roads, and livestock moving across dry areas.

Having to comply with an “air permit” will only add to our costs and decrease efficiency or drive more of the producers out of business. It is clear that as more permits, guidance documents, fees, fines and taxes are imposed, small businesses such as family farmers have less capacity to survive and deal with such an expensive and time consuming system. This has been proven time and again in other industries and is being repeated in the agricultural industry.

I thank you for your time, your service, and for inviting me here today to discuss these important issues. I am happy to respond to any questions.