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November 25, 2008

Air and Radiation Docket and Information Center,
Environmental Protection Agency, Mailcode: 2822T
1200 Pennsylvania Ave., NW.
Washington, DC 20460.

RE: Docket ID No. EPA-HQ-OAR-2008-0318

To Whom It May Concern:

The Texas Farm Bureau appreciates this opportunity to comment on the Advance Notice of Proposed Rulemaking (ANPR) for regulating greenhouse gases (GHG) under the Clean Air Act. The proposal presents many complex issues for public comment, several of which directly and adversely impact agriculture. The present comments will focus on one issue that is of immediate and direct concern.

This action is taken as a result of the Supreme Court decision in *Massachusetts v. EPA*, which dealt with a petition to regulate automobile emissions. In order to trigger the regulation of automobile emissions under the Clean Air Act, the EPA must first make a finding that any or all of the GHG endanger public health or welfare.

If an endangerment finding is made, EPA cannot restrict its regulations only to emissions from automobiles. Rather, a number of other provisions of the Clean Air Act are automatically triggered, and these provisions would certainly have an impact on other entities and other sectors of the economy. An endangerment finding would have wide-ranging repercussions and result in outcomes that would go well beyond those targeted in *Massachusetts v. EPA*.

One program that would automatically come into play, that will harshly impact agriculture as a result of an endangerment finding, is the Title V permit program. Title V requires that any entity that emits, or has the potential to emit, one hundred tons of a regulated pollutant must acquire a permit in order to continue to operate. The requirement for a permit is mandatory and always results in the imposition of a fee by the government. Therefore, for all practical purposes, it represents a tax.

For pollutants that already fall under regulation, a 100-ton threshold is high enough to exclude most emitters. As a consequence, only large emitters tend to be covered. For greenhouse gases, however, the situation poses different challenges. There are literally thousands of entities that emit more than 100 tons of greenhouse gases that would be required to obtain permits. Virtually every segment of the economy would be required to obtain permits.

Animal agriculture would be adversely affected by this approach. Unlike other sectors, cattle (including dairy) and hog productions emit relatively more methane and nitrous oxide than carbon dioxide, both of which are alleged to be more potent than carbon dioxide. As a result, on a weighted scale, it takes fewer emissions of either to produce the equivalent of one ton of carbon dioxide.

The U.S. Department of Agriculture, in comments to the Office of Management and Budget prior to release of the ANPR, stated that any operation with more than 25 dairy cows, 50 beef cattle or 200 hogs emits more than 100 tons of carbon equivalent. As a result, operations of this small size would have to obtain a permit under Title V in order to be able to continue to operate, if greenhouse gases were regulated as envisioned by the ANPR. USDA statistics for 2007 indicate that these thresholds would cover about 99 percent of total dairy production, over 90 percent of beef production, and over 95 percent of all hog production in the United States. The resulting Title V fee structure would function effectively as a tax on the dairy, beef and pork sectors. Thus, as a result of litigation aimed at regulating automobile emissions, the Environmental Protection Agency would wind up taxing dairy and beef cows, as well as pigs.

Title V is administered by the states, and permit fees vary from state to state. EPA sets a “presumptive minimum rate” for these fees, or taxes, and that rate is \$43.75 per ton for 2008-2009. Utilizing the EPA data and the statistics published by USDA, the impact on agriculture becomes very clear: for states charging the presumptive minimum rate, the tax for dairies would be \$175 per cow per year, for beef \$87.50 per head per year, and the tax on hogs would be a little more than \$20 per hog per year.

Since marketing of agricultural commodities causes farmers to be price “takers,” not price “makers,” farmers will not be able to pass along such costs. For many farmers the imposition of taxes of this magnitude would force them out of business. For sectors of agriculture vulnerable to foreign imports, the result may very well be that large parts of these industries would move overseas so that American consumers would be purchasing and consuming less domestically produced product and more foreign-produced product. Such an outcome would be particularly ironic, because if one accepts the premise that animal agriculture contributes to the accumulation of GHG, it must do so everywhere. Thus, while American producers will be pressured economically by a higher cost structure, foreign producers would benefit by the economic crisis imposed on the American farmer.

The ultimate outcome could be that the United States would be importing more dairy, beef and pork products, and the costs associated with these products might well rise, while any reduction of GHG emissions from increased offshore production of dairy, beef and pork would be negligible or possibly increased.

The economic costs to producers from taxing livestock would be great, but the environmental benefits intended from such regulation are speculative at best. The Clean Air Act is designed to regulate air pollutants that are local in nature and are emitted from sources that are easily ascertained. These factors allow for effective regulation and reduction of the pollutant, because they are within the control of the regulating agency.

Greenhouse gases are global in scope and distributed evenly across the planet. A ton of GHG emitted in Texas has the same impact worldwide as a ton emitted in China. Regulation of that ton emitted in Texas will have no environmental impact unless the regulation can also prevent an additional ton from being emitted in China or anywhere else in the world. Unlike traditional regulated pollutants, there are millions of sources of GHG emissions around the world.

The net effect of this proposed policy would be to impose severe penalties on livestock producers in the United States without effectively reducing greenhouse gas levels in the atmosphere.

One other factor makes imposition of this tax futile. Most emissions from cows and hogs are from natural or biological processes. Enteric fermentation is a large source of these emissions, and there is no known technology to prevent or mitigate such emissions.

For these reasons, the Clean Air Act is not an appropriate mechanism for regulating greenhouse gases. An endangerment finding under one section of the Act automatically triggers regulation under other provisions of the Act. This leads to many unintended consequences, such as a regulation intended to address automobile emissions leading to the mandatory imposition of taxes on cattle and hogs. The statute does not allow flexibility, and agency attempts to provide administrative flexibility have been overturned by the courts. The mandatory statutory thresholds that work effectively for traditional air pollutants lead to unintended regulation of agriculture.

We thank you for the opportunity to address this important issue currently facing our state's farmers and ranchers.

Sincerely,



Ned Meister, Director
Commodity and Regulatory Activities

NM:dp