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cc  
bcc  
Subject EPA-HQ-OAR-2008-0318

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

On behalf of The Kentucky Cattlemen's Associations more than 9,200 member families and 38,000 Kentucky Beef producing farm families appreciate the opportunity to comment on the Advance Notice of Proposed Rulemaking (ANPR) for regulating greenhouse gases (GHG) under the Clean Air Act.

We understand the ANPR was published in response to 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. Such an approach is not straightforward, and once an endangerment finding is made EPA cannot restrict its regulations only to emissions from automobiles. Herein lies the problem. Automatically triggered requirements have wide-ranging repercussions and unintended consequences on all types of businesses including agriculture.

My concern is that one such program that would automatically come into play as a result of an endangerment finding is the Title V program. This program 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. A permit would be mandatory always resulting in the imposition of a fee by the government which for all practical purposes represents an added tax.

For pollutants that already fall under regulation, a 100-ton threshold is high enough to exclude most emitters. However, for greenhouse gases, the situation poses different challenges. There are literally hundreds of thousands of entities worldwide that emit more than 100 tons of greenhouse gases who would be required to obtain permits. This would affect virtually every segment of the economy.

The Kentucky Beef Industry is the largest farm industry in Kentucky. We are particularly concerned the potentially devastating impact such an endangerment finding that triggers Title V would have on livestock production. Since the Tobacco Master Settlement Agreement Kentucky has used part of their funds to encourage farmers to shift from a tobacco-based economy to more diversified operations namely livestock based production because we have excellent forage production. Investments of settlement funds have been made in livestock genetics and infrastructure resulting not only in numerical growth, but quality growth. Kentucky is the largest beef cattle state east of the Mississippi River with over 1.2 million head of cattle, 23rd nationally in dairy with 93,000 milk cows and 20<sup>th</sup> in hog production with over 300,000 head.

The U.S. Department of Agriculture stated in comments to the Office of Management and Budget prior to the release of the ANPR that any operation with more than 25 dairy cows, 50 beef cattle or 200 hogs emits more than 100 tons of carbon equivalent, and as a result, would have to obtain a permit under Title V in order to continue operation if greenhouse gas regulations as envisioned by the ANPR went into effect. In Kentucky this would affect virtually every dairy and hog operations and a majority of beef operations. The resulting Title V fee structure would function effectively as a tax on dairy, beef and pork producers.

EPA has set a “presumptive minimum rate” for Title V permit fees, or taxes, with that rate being \$43.75 per ton for 2008-2009. Utilizing the EPA data and the statistics published by USDA, the potential impact on agriculture is startling. 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 slightly over \$20 per hog per year.

Farmers are generally unable to pass along such increases in costs and with taxes of this magnitude many would be forced out of business. Production could be forced overseas resulting in American consumers purchasing and consuming less domestically produced product and more foreign produced product. According to the UN’s report “Livestock’s Long Shadow,” the American system of livestock production emits less GHG than production anywhere else in the world. The report also acknowledges that U.S. production practices are better able to manage manure and capture methane than “free range” production around the world. Therefore, the argument could be made that by taxing the livestock industry in the United States through regulation as contemplated in the ANPR, the actual result could be more GHG emitted. Another more ominous possibility is the result could place the U.S. consumer’s food supply in jeopardy.

While economic costs to consumers and livestock producers from taxing livestock would be great, the environmental benefits intended from such regulations 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 much different. They are global in scope and distributed evenly across the planet. A ton of GHG emitted in Kentucky has the same impact worldwide as a ton emitted in China. Regulation of the ton emitted in Kentucky 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. It cannot. As mentioned earlier, these proposed regulations could very well shift production to other countries where emissions would actually increase per unit production. And, unlike traditional regulated pollutants, there are millions of sources of GHG emissions around the world.

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

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 leading to many unintended consequences. Regulations intended to address automobile emissions would very likely lead to the mandatory imposition of taxes on cattle and hogs. This statute does not allow flexibility, and agency attempts to provide administrative flexibility in the past have been overturned by the courts. The mandatory statutory thresholds that work effectively for traditional air pollutants will lead to the unintended regulation of agriculture.

On behalf of Kentucky's Beef Producers, and the tremendous investments that have been made in our state's livestock production infrastructure, I urge you to reject the sweeping regulatory impacts contemplated by the ANPR. The Kentucky Cattlemen's Association supports reasonable environmental protection programs, including air quality protection programs that are based on sound science.

Thank you for the opportunity to comment on this very important issue, and we ask for your serious consideration be given to our concerns over the unintended consequences this proposed regulatory change could have on American agriculture.

Sincerely,

Billy Glenn Turpin  
President, Kentucky Cattlemen's Association