



**U.S. House Committee on Agriculture**

**RE: Examining the Consequences of EPA's Actions on American Agriculture**

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**Submitted by:**

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**Plant Agriculture and Pesticide Regulation Policy Committee Chair**

Good afternoon and thank you Chairman Thompson and Ranking Member Scott for the opportunity to testify today on such an important and timely topic.

**I. Introduction**

My name is Chris Chinn and I have served as the Director of the Missouri Department of Agriculture (MDA) since 2017. I am a fifth-generation farmer, managing my family's farrow-to-finish hog operation, our feed mill, operating a small cow-calf herd, and raising corn, soybean, and hay. For more than 15 years, I have held leadership positions on the local, state, and national level, working to move my state's agriculture industry forward.

In addition to my role as Director of MDA, I also serve on the Board of Directors for the National Association of State Departments of Agriculture (NASDA). NASDA is a nonpartisan, nonprofit association representing the elected and appointed commissioners, secretaries, and directors of the departments of agriculture in all fifty states and four U.S. territories. Speaking on behalf of this unified voice, NASDA grows and enhances American agriculture through policy, partnerships, and public engagement that is beneficial for all regions, people, and environments.

As state regulators and co-regulators alongside federal agencies, NASDA members work to ensure the safety of an abundant food supply; protect animal and plant health; implement a variety of conservation programs; and promote the vitality of both rural and urban communities who rely on our nation's feed, fuel, and fiber supply.

## *Missouri Agriculture*

I take great pride in representing Missouri agriculture and the critical role our producers play in the strength of our nation's agriculture industry. Agriculture runs deep within our state's history; the top of our state capitol building features a statue of Ceres, the goddess of grain, watching over our land. Today, farms cover nearly two-thirds of this land. We are home to the second largest number of farms in the nation, with over 87,000 farms – 90% of which are family owned. Missouri farmers and ranchers produce a wide range of high-quality crops and livestock products - from soybeans, corn, poultry, cattle, and hog products, reaching the tables of local families, our schools, and numerous markets overseas. From our lush forests in the Ozarks to the fertile soil producing cotton and rice in the Bootheel region, "Missouri Grown" truly means strength derived from the diversity of our farms. Through the dedication and resilience of our farm and ranch families, Missouri's number one industry remains strong, contributing 94 billion dollars to our state's economy and supporting the jobs of 460,000 Missourians. In a dynamic and changing food system, Missouri agriculture looks to the future by preserving and protecting our agricultural community of the present. Through new initiatives, such as our "MORE" strategic initiative to protect Missouri agriculture for both farmers and consumers, we hope to ensure that our farm families thrive for generations to come.

Across the country, America's farmers and ranchers are facing growing economic and environmental pressures, including threats from pests, military conflicts, rising input costs, land loss, and global supply chain inefficiencies. As agriculturalists prepare for the important task of feeding more than 9 billion people by 2050, it is more critical than ever that the federal regulatory environment protects human health and our natural resources, while enabling the food and agriculture industry to flourish.

### **II. Co-regulatory challenges**

State departments of agriculture stand at a unique nexus because while they advocate for agriculture, they are also responsible for regulating programs within their states. This nexus allows NASDA as the unified voice of the state departments of agriculture to share an important perspective on the impact of federal regulations throughout the entire food supply chain.

Regulations must be based on the best available, sound, validated, and peer-reviewed science and rely on science-based risk assessment. Moreover, regulatory agencies must ensure that in situations where the science is not fully formed or understood, that policymakers not misuse or inappropriately apply science that is not validated or related. To achieve this goal, the federal government must embrace states' co-regulatory role – lifting them up as true partners in the regulatory process, not simply stakeholders. Often states have a wealth of data, experience,

and expertise that would help federal agencies better implement regulatory programs. As such, NASDA calls on EPA to uphold a renewed commitment to Cooperative Federalism. As the EPA issues new regulations, states are responsible for translating and educating producers on new obligations, while at the same time implementing, administering, and enforcing these new regulations. The issue is compounded when the new regulations are overly burdensome and costly and threaten our nations' food security. Consistent with the objectives of cooperative federalism, and to ensure that rules are feasible, state co-regulators must be involved early and thoroughly throughout the regulatory process.

NASDA wants to see the EPA reprioritize their co-regulatory partners and acknowledge that it is only through meaningful cooperation that we can come together to secure positive outcomes for agriculture, public health, and the environment.

### **III. Pesticides**

#### *a. Endangered Species Act*

One of NASDA's top policy priorities for 2024 is pesticide regulation. In 43 states and Puerto Rico, the state department of agriculture is a co-regulatory partner with EPA. States are tasked with the administration, implementation, and enforcement of rules governing the production, labeling, distribution, sale, use, and disposal of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

It is because of this co-regulatory relationship, and the importance of pesticide products for agricultural, residential, commercial, and public health uses that our membership has prioritized this critical topic.

A recent study by the University of Arkansas found that without the use of pesticides, the yields of corn, cotton, and soybeans show declines of up to 70%; the cultivation of these commodities without pesticides would also result in three times more land, water, energy use, and greenhouse gas emissions. This study shows that the availability and responsible use of crop protection inputs can play a major role in positive environmental outcomes.

The importance of these products necessitates a scientifically sound development, review, registration, and re-registration process that allows for transparent, meaningful collaboration amongst co-regulators and impacted communities. Unfortunately, in part due to substantial legal challenges, NASDA members are concerned that the EPA Office of Pesticide Programs has produced regulations and frameworks that will have substantial negative impacts on our nation's farmers and ranchers.

Beginning in 2021, prompted by the escalating legal challenges of fulfilling their obligations under the Endangered Species Act for pesticide decisions, the EPA began developing a comprehensive, long-term plan to ensure compliance. This plan was further outlined in the November 2022 ESA Workplan Update, through which the Agency attempted to take a holistic approach to protecting species and regulating pesticides. To date, the Agency has released two strategies under this workplan – the Vulnerable Species Pilot Project (VSPP) and the Herbicide Strategy.

Throughout this workplan, the programmatic frameworks that have been released, and the updates that the Agency has provided since its initial draft, NASDA remains deeply concerned that the proposed strategies are overly burdensome and unworkable for both pesticide applicators and state enforcement agencies. Even more concerning is that both VSPP and the Herbicide Strategy were developed and announced with no consultation or co-regulatory process with the state lead agencies. In response to this concern, the Agency has stated that these draft documents were intended to serve as a starting place for broad stakeholder conversation thereby ignoring the unique role and responsibilities states play as co-regulators.

At a time when general farm input costs are elevated, failure on EPA's part to fully consider costs and benefits of their proposed actions is likely to result in mandates that are likely to drive many farms out of business. NASDA appreciates the EPA taking initial steps to try and address the substantial concerns the Agency received from the agriculture community. However, this work should have been completed far before the strategy was released, and state agencies, agricultural and non-agricultural organizations have been left scrambling to compile data, suggest alternate solutions to achieve species protection, and find a workable path forward before the looming finalization deadline.

*b. Dicamba*

This February, both agriculture and the EPA were faced with a court decision to vacate over-the-top dicamba registrations. This decision came after producers had already made purchasing decisions for the year, and caused an immediate flurry of uncertainty that could have rocked our nation's supply chain. In a reaction to this court decision, NASDA members immediately called for the EPA to issue an existing stocks order for the 2024 growing season, and to work expeditiously with registrants to secure a registration for the 2025 growing season.

NASDA applauded the EPA for issuing an existing stocks order, which gave state regulators and growers alike needed assurances for their upcoming season. However, our membership is concerned that at their current pace, the Agency will not successfully complete a robust review and registration in time for the 2025 growing season.

In response to stakeholders calling for the Agency to prioritize this registration, the EPA made the point that its ability to meet statutory deadlines for pesticide actions is limited by its budget. Representing state agencies who rely on both federal and state funding for regulatory activities, NASDA empathizes with the challenges brought by budgetary constraints, and calls for additional funding from Congress to meet the minimum appropriation level specified in PRIA 5. However, just as states are not exempt from meeting their statutory requirements for implementation, enforcement, and inspection activities when funding is tight, the EPA should also be held accountable to continue its work.

#### **IV. Waters of the United States (WOTUS)**

There is perhaps no better example of co-regulatory challenges than the broken cycle of rulemakings and legal challenges over the longstanding issue of Waters of the United States, or WOTUS. In 2023, the EPA and the Army Corps of Engineers rescinded the Navigable Waters Protection Rule, which narrowed the scope of the definition of WOTUS and provided clear, certain rules to the regulated community – including farmers and ranchers. In its place, the EPA and Army Corps of Engineers promulgated new, overly burdensome regulations which have been subsequently enjoined in more than half the country. The Clean Water Act is built on the concept of cooperative federalism. By acknowledging states' role in providing clean water and using federal regulations as a framework, the Clean Water Act should be a prime example of cooperative federalism. Through the cooperative efforts of states and our federal partners, we can continue to secure a healthy environment, including clean air and water, which is necessary for the agriculture industry. Unfortunately, EPA and the Army Corps have continually missed the mark and either disregarded, or in some cases undermined state authority and jurisdiction over these issues.

EPA's 2023 WOTUS rule significantly expanded the jurisdiction of the federal government over wetlands and private property – and marked the third time in eight years that the federal government attempted to define WOTUS. Then, last spring, the Supreme Court issued its decision in *Sackett v. EPA*, which confirmed limits on federal jurisdiction and affirmatively recognized the role of states in regulating non-navigable waters and was seen by most observers as a clear victory for farmers, ranchers, and landowners who have long sought clarity and certainty. Following the *Sackett* decision, EPA and the Army Corps issued a revised rule, making “surgical changes” to their 2023 WOTUS rule, attempting to comply with the Supreme Court's decision. Not only did the agencies not accept public comment or input in this revision process, but the revised WOTUS rule also failed to acknowledge and uphold state authority in regulating waterways.

The regulated community, now one-year post-*Sackett*, is still waiting for the agencies to fully implement the court's decision into their WOTUS rule. As a result of ongoing litigation, more than half of the states are currently adhering to the pre-2015 WOTUS regulatory regime, while 23 states have implemented the final conforming rule that went into effect last fall. The agencies' inaction and inability to clearly and transparently define WOTUS is deeply troubling

for all stakeholders and holds states in limbo with a patchwork of litigation and regulation. This makes it incredibly difficult for state departments of agriculture, their state agency counterparts, and ultimately, farmers to move forward with confidence and ensure they comply with the law.

Earlier this year, EPA and the Army Corps held listening sessions for stakeholders in a multitude of communities. While NASDA appreciated the opportunity to participate in those sessions, the agencies lacked the transparency and clarity normally associated with meaningful stakeholder engagement. The sessions were held virtually, questions were to be submitted in advance, and each speaker was given 3 minutes to pose their questions. No answers were provided during the listening sessions, nor were any of the stakeholder concerns addressed. Agricultural stakeholders were, once again, held in limbo with no meaningful progress or clarity.

NASDA remains concerned that EPA and the Army Corps, despite public assertions by the agencies that they would adequately and fairly address WOTUS, have failed to do so. As state regulators, NASDA members serve as a resource to farmers, ranchers, and landowners who have been facing WOTUS challenges for decades, and yet today, have no greater clarity or certainty that they can adequately comply with the law.

## **V. Animal Agriculture**

NASDA represents the interests of all sectors of agriculture and is keenly focused on the success of the livestock sector in states - supporting state programs that safeguard animal and human health while implementing a fair balance between production agriculture and environmental health. NASDA members work hand in hand with producers, state natural resource and environmental counterparts, and industry to ensure that all parties are successful in protecting resources and agriculture in a complementary fashion.

Reducing nutrient loss in waterways is a top priority for state departments of agriculture and their livestock producers. One example of a successful partnership in this space is the Hypoxia Task Force, a federal-state partnership of states. This collaborative relationship, from NASDA's perspective, should be replicated and provide a forum for solution-driven discussion. It is an example of co-regulators working at the state and federal levels toward a common goal.

In my home state of Missouri, processing capacity is a limiting factor for the success of our livestock sector. Increased processing capacity provides jobs and offers a safe and local food option for our rural communities. There has been increased local and national attention and focus on small and mid-sized meat and poultry processing capacity to spur competition in the marketplace, including interest from members of the House and Senate Agriculture Committees. The EPA's proposed rule amending effluent limitation guidelines could have devastating impacts on the success of those efforts, and ultimately, an increased cost to

processors, producers, and consumers. NASDA urges EPA to carefully consider the stakeholder input and the demonstrated commitment of both the producer and processor communities to significantly reduce their nutrient loss and protect the natural resources that they too depend on.

NASDA is encouraged by the EPA's formation of the Animal Agriculture and Water Quality Federal Advisory Committee Subcommittee, which includes representation from state departments of agriculture and state resource agencies. We hope the subcommittee can find meaningful solutions to support the efforts of farmers and ranchers to protect water quality and serve as a model for collaboration that EPA relies on in the future. Maintaining a good coregulatory dialogue is key to meeting our changing needs and opportunities at the intersection of animal agriculture and the environment.

In addition to this specific subcommittee, NASDA commends the EPA for its recent formation of the Office of Agriculture and Rural Affairs (OARA) to expand its ability to meaningfully engage with rural and agricultural stakeholders. This provides the Agency the opportunity to seriously consider the feedback, concerns, and opportunities from agricultural stakeholders who provide a vibrant and productive agricultural system.

## **VI. Conclusion**

Our nation's agricultural producers, environment, and communities of every size rely on regulatory decisions from the Environmental Protection Agency that are based on science, collaboration, and transparency at each step of the process. It is not enough to only consider one piece of the elaborate landscape that makes up a healthy environment and make unilateral decisions from the federal government. Instead, it is time to invite agriculture generally, and state departments of agriculture specifically into discussions early and often to find solutions that can lift up both environmental protections and production agriculture.

We look forward to improved cooperative relationships between the EPA and state departments of agriculture.