

## GREEN HOUSE GAS REGULATION, THE CLEAN AIR ACT AND POTENTIAL IMPLICATIONS FOR PRODUCTION LIVESTOCK

### **Background**

In July, 2008, EPA issued an Advance Notice of Proposed Rulemaking (ANPR) seeking comment on the potential impact of regulating greenhouse gas (GHG) emissions under the Clean Air Act. The lengthy ANPR was not a proposed regulation but a preliminary notice seeking informed comments from affected parties on what the impacts of such a comprehensive regulatory approach might be.

As part of the ANPR, EPA included comments from several government agencies, including USDA. USDA remarks included the following:

*“If GHG emissions from agricultural sources are regulated under the Clean Air Act, numerous farming operations that currently are not subject to the costly and time-consuming Title V permitting process would, for the first time, become covered entities. 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.”*

**Federal Register, page 44377**

### **AFBF Comments**

In its comments to EPA on the ANPR, AFBF took USDA’s observations and carried them a step further to assist EPA in understanding the potential consequences of comprehensive regulation of agricultural GHGs. AFBF drew out one possible scenario:

- If EPA were to regulate GHGs under the Clean Air Act, it probably could not limit such regulation only to mobile sources (such as cars) and carbon (which were the original targets of the lawsuit that led to the ANPR). It is likely that methane, a GHG associated with livestock production, would also be regulated in some form; and
- If, as a result, farms (such as dairies or feedlots) were defined as a ‘major source’ under the Clean Air Act and were required to apply for and receive Title V permits under the Clean Air Act (as USDA indicated); and
- If permit fees imposed on these agricultural operations were calculated in a manner similar to current regulatory practices...
- Then, under this scenario, such an outcome would result in an identifiable cost-per-animal.

### **‘Cow Tax’ Methodology**

For the ‘per-ton’ fee, AFBF utilized EPA’s “presumptive minimum fee” (see [http://www.epa.gov/air/oaqps/permits/pdfs/fee70\\_2009.pdf](http://www.epa.gov/air/oaqps/permits/pdfs/fee70_2009.pdf)) of \$43.75 per ton of emission. (NOTE: Each state sets its own fees, and a given state’s fee may be higher or lower.) For the emission rate of each animal, AFBF utilized the Simplified Emissions Inventory Tool developed as part of the Voluntary

Reporting of Greenhouse Gases Program at the US Department of Energy (1605b program), which is apparently the method used by USDA. (See [www.eia.doe.gov/oiaf/1605/rrfi/excel/SEIT%20Draft%20Nov2006.xls](http://www.eia.doe.gov/oiaf/1605/rrfi/excel/SEIT%20Draft%20Nov2006.xls).) The formula thus was:

$$(\text{EPA fee}) \times (\text{DOE emission rate}) = \text{cost per animal}$$

This formula produced the following costs:

1. For dairy cows  
\$43.75/ton (EPA figure) x 4 tons/cow (USDA figure) = \$175/cow
2. For beef cattle  
\$43.75/ton (EPA figure) x 2 tons/cattle (USDA figure) = \$87.50/head
3. For hogs  
\$43.75/ton (EPA figure) x .5 tons/hog (USDA figure) = \$21.87/hog

***Current status  
and likely  
outcome***

We do not know what direction EPA might take in any final proposal. AFBF felt it was important, however, to postulate the potential consequences of one type of overreaching regulation to help inform EPA policymaking efforts. AFBF comments were predicated on the idea that, under the Clean Air Act, EPA would most likely be required, either politically or legally, to regulate beyond the cars and carbon that were the subject of the *Massachusetts* lawsuit. Taking USDA's warning as a predicate, AFBF commented that, under such a scenario, GHGs associated with agriculture could result in certain types of agricultural production being swept up in a regulatory regime in ways not previously contemplated. While some may argue that such an approach is pure speculation, it should be noted that:

- When Congress passed Superfund in 1980, no one envisioned that animal manure might be considered a hazardous substance under the statute.
- EPA, in its initial PM<sub>10</sub> proposal, proposed exempting agricultural sources yet failed to include this provision in the final rule.

Thus, while some claim a cow 'tax' or 'fee' is hypothetical or speculative, that does not make the possible outcome any less real.

***How much of  
agriculture  
would be  
covered?***

The USDA publication "Farms, Land in Farms, and Livestock Operations, 2007 Summary" National Agricultural Statistics Survey, (Feb. 2008) indicates that dairy operations with more than 30 cows comprise 98.8% of milk production, beef operations over 50 head comprise 89.4% of beef inventory, and hog operations over 500 hogs comprise 96.8% of hog inventory.