

# What's Happening in Washington?

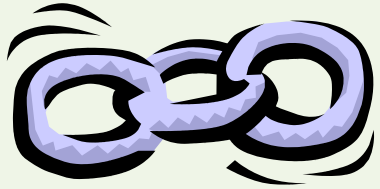
2011 NATIONAL AGRONOMIC ENVIRONMENTAL HEALTH & SAFETY SCHOOL



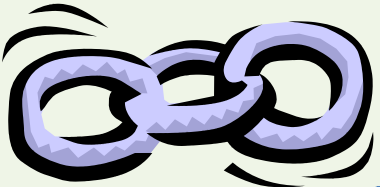
**Richard Gupton, VP, Legislative Policy & Counsel**  
**Agricultural Retailers Association**  
**[richard@aradc.org](mailto:richard@aradc.org) / (202) 457-0825**

# WHAT EXACTLY DO WE DO?

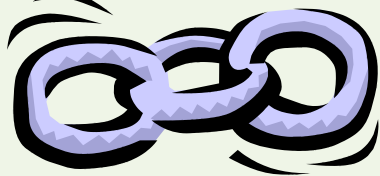
Manufacturers  
& Suppliers



Distribution



Retailers



Growers



# Current EPA / Environmental Issues

- FL Numeric Nutrient Criteria
- Chesapeake Bay TMDL
- NPDES
- Spray Drift
- SPCC
- Pesticide Container & Containment Rules



# FLORIDA NUMERIC NUTRIENT CRITERIA

- In July 2008, environmental groups filed a citizen's suit against the EPA, claiming it had failed to issue numeric nutrient limitations for phosphorus and nitrogen present in Florida's surface waters.
  - Under the CWA, the states are responsible for controlling water quality, but the EPA has the discretion to implement additional standards if the Administrator determines that a revised or new standard is necessary for the state to remain in compliance with the Act.
- Responding to these allegations, in January 2009, the Administrator made a formal determination that specific numeric criteria for phosphorus and nitrogen were necessary to assure that levels of these pollutants in Florida waters did not violate the CWA.
- As a settlement of the 2008 lawsuit, the EPA executed a consent decree in August 2009, establishing deadlines for it to issue a rule limiting the concentrations of nitrogen and phosphorus in the streams and lakes of Florida.



# FLORIDA NUMERIC NUTRIENT CRITERIA

- December 6, 2010 - Final Rule issued for lakes and streams which would replace the narrative nutrient criteria which were already being applied by Florida's Department of Environmental Protection (DEP) with arbitrary standards.
- In 2011, EPA plans to issue a final rule for NNC for Florida's estuarine and marine waters, under the consent decree.
- December 7, 2010 – State of Florida files suit against the EPA proposal
- December 8, 2010 – The Fertilizer Institute (TFI) files lawsuit against EPA challenging the Dec. 6<sup>th</sup> Final Rule and the necessity determination. In February 2011, ARA, FFAA, & Farm Bureau join lawsuit.
  - Case was sent to the United States District Court for the Northern District of Florida Pensacola Division and consolidated with other plaintiffs.
  - Judge is expected to hear arguments in January 2012.



## FLORIDA NNC CONT.

- EPA's Final Rule is unlawful and should be vacated because it establishes water quality criteria that ignore causation, regulate water bodies that are achieving their designated use, and restrict nutrients that do not cause impairment;
- By using simple and overly broad statistical principles EPA's rule will classify a certain percentage of water bodies as impaired when they in fact are not;
- EPA's new criteria usurp Florida's statutory authority to develop standards and are fundamentally in conflict with Florida's existing efforts to implement narrative water quality standard for nutrients;
- EPA unlawfully ignored the requirements that water quality criteria be based on true biological impairment and instead established numeric criteria for nitrogen and phosphorus in water bodies where they would not actually cause such an imbalance;
- EPA's shortcut numeric criteria are not based on sound scientific rationale or scientifically defensible methods because: 1) They would unlawfully restrict nitrogen and phosphorus in lakes, streams and springs that are not impaired; 2) In other instances, where the lakes, streams or springs *are impaired*, EPA's standards will unlawfully regulate nutrients that are *not causing the* impairment;
- EPA's regulation wrongly assumes that nitrogen and phosphorus levels above EPA's numeric criteria will cause algal growth and thus impairment; and
- EPA has ignored its own Science Advisory Board and set nitrogen standards when in fact nitrogen is not limiting (and thus not responsible) for impairment in fresh water bodies.

# EPA CHESAPEAKE BAY TMDL



# WHAT IS A TOTAL MAXIMUM DAILY LOAD (TMDL)?

A Clean Water Act (CWA) statutory requirement for impaired waters:

- A calculation of the maximum amount of a pollutant that a water body can receive and still meet water quality standards
- The sum of the allowable loads from all point and non-point sources, plus a margin of safety and considering seasonality
- A pollution diet:
  - In Chesapeake Bay, for phosphorus, nitrogen and sediment.
  - The TMDL sets Bay watershed limits of 185.9 million pounds of nitrogen, 12.5 million pounds of phosphorus and 6.45 billion pounds of sediment per year – a 25 percent reduction in nitrogen, 24 percent reduction in phosphorus and 20 percent reduction in sediment.

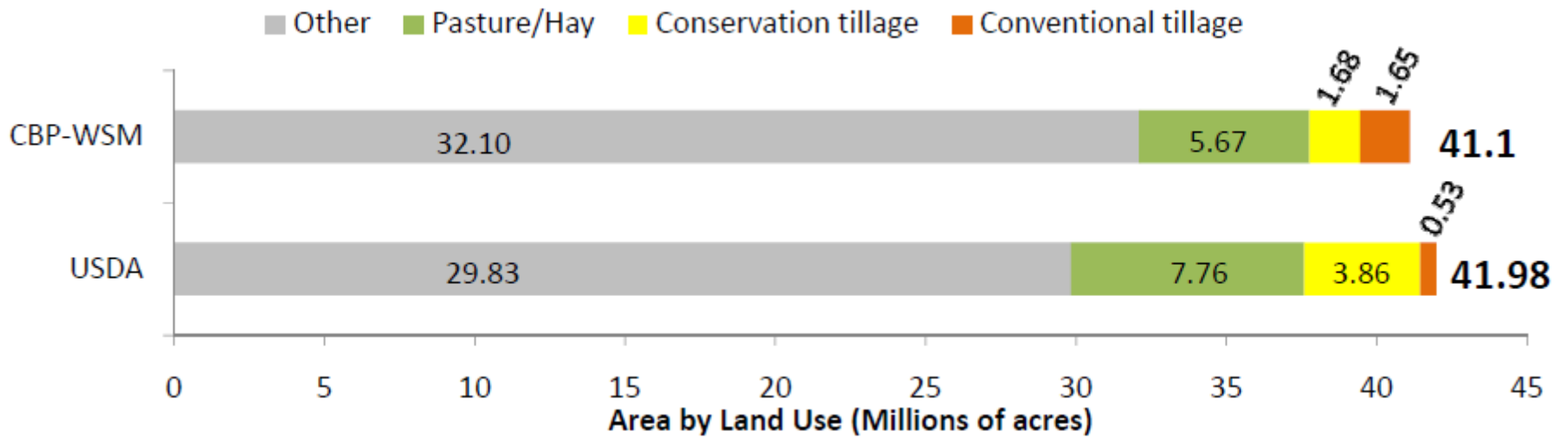


# EPA CHESAPEAKE BAY TMDL

- EPA issued Bay TMDL on Dec. 29, 2010 in response to consent decrees from the 1990s, President Obama's Executive Order that the Bay is a National Treasure, and because the Bay Program has been working to clean the Bay for 25 years and perceived need for Federal intervention to clean the Bay.
- States are being forced to implement TMDL by EPA's threat of lost funding to the states.
- Questions remain regarding accuracy of EPA's modeling for load allocations and how much credit agriculture is receiving for conservation practices already adopted.
- Some counties are reporting that they cannot make the TMDL even if all conservation practices are followed by all farmers in the county. Uncertain what the result will be- land taken out of production?
- EPA is also being sued by agricultural groups over Bay TMDL Rule.



Figure 1. Comparison of Land Uses in the EPA and USDA Model Frameworks



**Figure 2. Differences in Estimates of Current Delivered Loads to the Chesapeake Bay, All Sources**

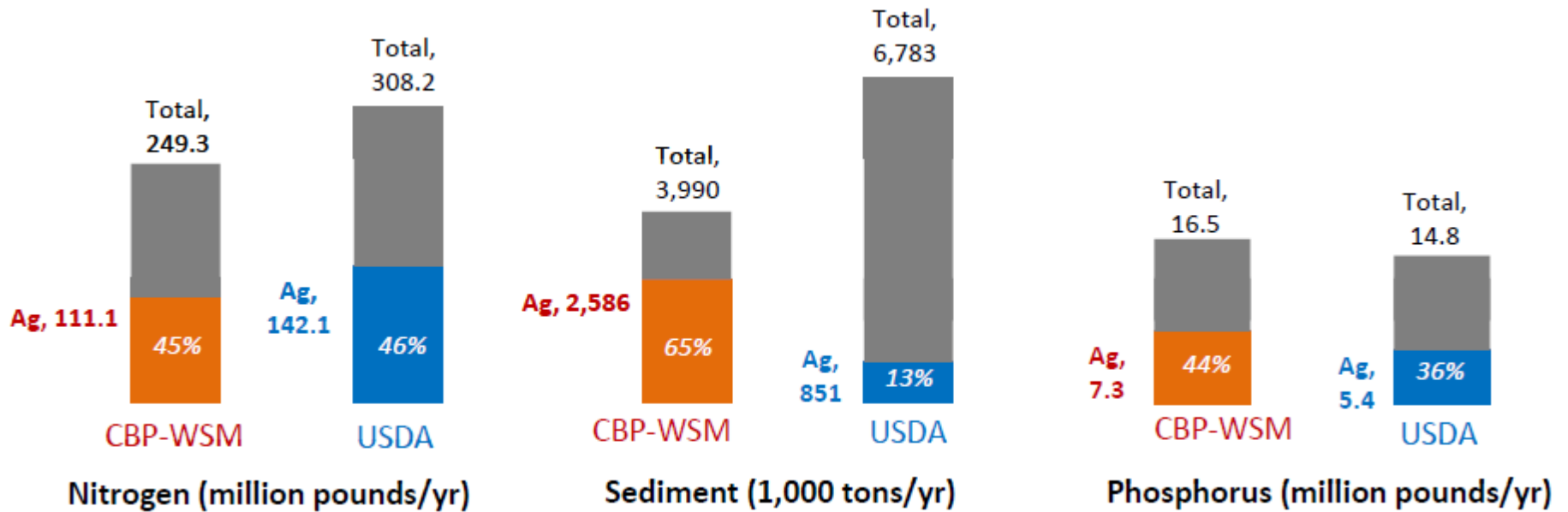
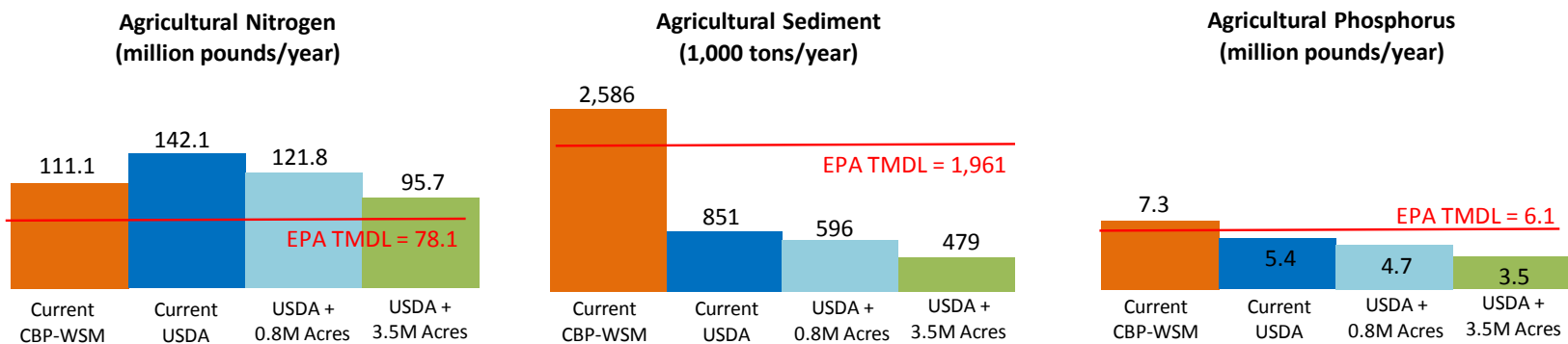


Figure 4. Comparison of USDA Estimates of Delivered Loads to the TMDL



# TRANSPORTATION

**HOURS OF SERVICE AG EXEMPTION**

**IMPLEMENT OF HUSBANDRY**



# HOS AG EXEMPTION

- Exemption allows for the timely and efficient movement of agricultural commodities and farm supplies during “planting and harvesting” season as defined by the state
- Limited to 100 air-mile radius from the source of the commodities or distribution point of the farm supplies
- Current Issue with Federal Motor Carrier Safety Administration (FMCSA) relates to movement of farm supplies from terminal / port to Ag retail location
- FMCSA has enacted a 2-year waiver of the hours of service rules for the movement of anhydrous ammonia (NH<sub>3</sub>) from terminal to retail location.
- ARA supports a permanent solution that covers the movement of all farm supplies throughout distribution system
- All movements from Retail location to farm remain covered by HOS ag exemption, first established by Congress in 1995



# IMPLEMENT OF HUSBANDRY / AGRICULTURAL EQUIPMENT GUIDANCE



- Aug. 10, 2011 - FMCSA issued new guidance on the applicability of CMV regulations to farm equipment
- Implements of Husbandry should not be considered a CMV so distinction of Intrastate vs. Interstate Commerce is unnecessary – FMCSA will review on case by case basis
- State definitions of Implement of Husbandry vary – FMCSA determined uniform guidance would be difficult so will also handle on case by case basis
- ARA submitted comments to FMCSA on Aug. 1, 2011



# IMPLEMENT OF HUSBANDRY / AG EQUIPMENT

## GUIDANCE CONT.

### **ARA recommend definition:**

*An implement of husbandry is “a vehicle designed and adapted exclusively for the primary function of serving agricultural, horticultural or livestock operation. This includes self-propelled application type vehicles, farm wagons, farm trailers or like equipment used to transport products necessary to agricultural production so long as the implements are operated within a 150 air mile radius of the source of the supply or the farm field. Placarded quantities of hazardous materials necessary for agricultural production are limited to: (1) diesel fuel in quantities of 3,785 liters (1,000 gallons) or less; (2) liquid fertilizers including anhydrous ammonia in quantities of 11,355 liters (3,000 gallons) or less; and (3) solid fertilizers that are not transported with any organic substance.”*





# CHEMICAL FACILITY ANTI-TERRORISM STANDARDS (CFATS)

- Based on risk, facilities separated into 4 DHS tiers
- DHS currently reviewing 4,200 Site Security Plans (SSPs)
- Approximately 600 requests for “Redetermination”
- Since program inception approximately 1,246 facilities have been completely removed their chemicals of interest (COI)
- Farm operations continue to operate under an “indefinite extension”
- IST mandate or citizen enforcement provisions remain areas of concern; Same for ASPs, Mixtures and PSP proposal



# CFATS CONT.

- HR 901 sponsored by Rep. Dan Lungren (R-CA) approved by House Homeland Security and HR 908 sponsored by Rep. Tim Murphy (R-PA) approved by House Energy & Commerce Committee earlier this year.
- S. 423 sponsored by Senators Susan Collins (R-MA), Mark Pryor (D-AR), Mary Landrieu (D-LA) and Rob Portman (R-OH) approved by Senate Homeland Security & Governmental Affairs Committee.
- Bills are pending for consideration on House and Senate floors.
- Both House bills extend CFATS authorization for an additional 7 years
- Senate bill extends authorization for 3 years.
- None of the proposals include an IST requirement or allow for third party lawsuits.



# OTHER SECURITY ISSUES

- HR 1690 – Modern Security Credentials Act sponsored by Rep. Mike Rogers (R-AL)
- DHS Ammonium Nitrate Security Program Proposal – Comment Deadline is Dec. 1, 2011



# UPCOMING TAX ISSUES

- **Agricultural Chemicals Security Credit**

- Included in the 2008 Farm Bill as a way to defer additional security costs related to increased security regulations
- 30% tax credit on security measures for agribusinesses, up to \$2 million per company per year and up to \$100k per site location over the life of the credit (5 years)
- Expires with the 08 Farm bill on January 1, 2013
- Confident it will be extended in the next Farm Bill (Roberts)

- **Agricultural Equipment Depreciation Legislation**

- S. 700 (Klobuchar, Moran) & HR 1747 (Herger, Kind)
- Language would lower the depreciation schedule on agricultural off-road diesel equipment from 7 years to 5 years
- Allow retailers to be better stewards of the land by upgrading to newer equipment with the best technology.



# OTHER ISSUES

- OSHA
- Immigration / Ag Labor / E-verify (HR 2164 / S 1196)
  - Biotech Seed (EATS Act - HR 2031)
    - Sustainable Agriculture





# Thank You

## Questions?

Richard Gupton  
richard@aradc.org/ (202) 457-0825