

9. WATER POLLUTION:

Use agriculture rules, not environmental regs to curb farm runoff -- report

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Congress and the Department of Agriculture could reduce water pollution from farms by requiring large crop producers to take basic steps to reduce runoff as a requirement for subsidies, the Environmental Law Institute says in a report released today.

The report also recommends that large farms be required to disclose to the federal government the quantity, type and timing of the fertilizers used annually, much as heavy industries must do with releases of toxic chemicals.

"What these large-scale farms are doing -- people essentially externalize the cost of production," said Linda Breggin, an ELI senior attorney and an author of the report. "Water pollution causes huge problems, not just to recreational but to the fishing industry. ... What's happening is they are not held accountable for that. The public is absorbing that cost. This is a way to get them to take responsibility."

The study focuses on farms with at least \$500,000 in annual sales. They make up 6 percent of all U.S. farms and account for 60 percent of all sales in corn, wheat and soybeans. They receive more than half of federal commodity subsidies.

Nitrogen and phosphorus washing into waterways from farms are a major source of water pollution and contribute to estuarine "dead zones" -- areas where low levels of dissolved oxygen smother marine life, the report says. The bulk of that problem comes from the fact that crops aren't taking up all the fertilizer that is applied on lands, leading to runoffs into surface waters and groundwaters.

The report cites data from several federal studies, including the 2009 USDA Agricultural Resources Management Survey.

Environmental laws have failed to adequately address nutrient runoff, instead providing exemptions and loopholes, the report says. The Clean Water Act, for example, exempts agricultural activities from its national pollutant discharge permit program and from a permitting program designed to protect wetlands.

"I call it 'environmental law giving a safe harbor to agriculture,'" said J.B. Ruhl, an environmental law professor at Vanderbilt Law School in Nashville, Tenn., who reviewed the ELI study before its release.

"It really comes down to politics," he added. "These exemptions have persisted through many, many administrations. They seem to be impervious to any kind of reopening. Democrats support them, Republicans support them. It has to do with the political influence of agriculture."

The report looks to address nutrient pollution through farm legislation, rather than environmental laws.

It recommends that large-scale farm subsidy recipients be required to take baseline measures to reduce nutrient pollution, which ELI defines as a "set of management practices appropriate to the crop, geography, climate and other circumstances of the particular operation."

The idea of conditional federal assistance is not new. The 2009 stimulus law, for example, required states to ensure that energy-efficient building codes would be adopted in exchange for federal funds. Farm commodity subsidies given to farms on highly erodible land have also been linked to soil conservation requirements since 1985.

Breggin and co-author Bruce Myers said requiring large farms to adopt baseline nutrient reduction measures wouldn't be much of an extra burden and would come with exceptions and technical assistance. It would be up to USDA to determine whether to allow farms to self-certify or to carry out detailed inspections of farms, they said.

"One of the biggest questions or concerns that we would get is, would this require a big new expensive administrative program, and are we creating new regulation for farmers?" said Myers, also a senior attorney at ELI. "I think the answer is no."

Farm Bureau faults report

The report also recommends that farmers report the quantity, type and timing of fertilizer applications and make that information available to the public. That would create what Ruhl proposes, a Farm Release Inventory, modeled after U.S. EPA's Toxics Release Inventory.

Eventually, the report says, disclosure could also include pesticide application.

The report authors acknowledged that it is likely too late in the process for their recommendations to be included in the 2012 farm bill, but they said ELI is hoping to begin a longer-term dialogue over the ideas.

Large farms "are incredibly productive and efficient at producing food. I think they can also be very efficient at protecting the water," Breggin said. "It's just a responsibility that they should be willing to take on if they're also willing to accept federal dollars. I hope people will view this as a very reasonable proposal."

Don Parrish, senior director of regulatory relations for the American Farm Bureau Federation, defended large-scale commodity crop operations, saying they have had massive gains in efficiency and environmental stewardship over recent decades.

Citing some data used in the ELI study, he said in written comments on the report that agriculture now uses less land, energy and water than it did over the last 50 to 100 years.

"The premise -- frankly, it amounts to a prejudice -- that large-scale commodity crop production is environmentally destructive is flat out wrong," Parrish wrote in comments prepared before the report's release. "The data cited for this paper shows that agriculture's environmental footprint is smaller today than any historical period on record."

He also opposed the disclosure of fertilizer information, saying it could endanger the food supply, reveal sensitive business information and violate privacy.

Despite a narrow vote by the Senate last week to tie those conservation requirements to crop insurance premium subsidies, congressional agriculture leaders have also continuously opposed tying any extra requirements to crop insurance premium subsidies.

"I've not been one of the enthusiastic supporters of that," House Agriculture Chairman Frank Lucas (R-Okla.) said yesterday. "If it's an insurance program, if the resources reflect the production, if you're paying a premium partially subsidized -- if you're paying a premium, then tying those extra strings to it seems to deviate from the purpose."

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