

**Written Testimony Submitted by the Honorable Glenn English
Chief Executive Officer
National Rural Electric Cooperative Association**

**U.S. House of Representatives
Committee on Small Business
Subcommittee on Agriculture, Energy and Trade**

**Hearing:
Adrift in New Regulatory Burdens and Uncertainty:
A Review of Proposed and Potential Regulations on Family Farmers**

November 29, 2011



**National Rural Electric
Cooperative Association**

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Thank you for the opportunity to offer this written statement for the hearing record on the impacts of new National Pollutant Discharge Elimination System (NPDES) permit requirements under the Clean Water Act (CWA) for the application of pesticides and other chemicals registered under the Federal Insecticide, Rodenticide and Fungicide Act (FIFRA).

NRECA is the not-for-profit national service organization representing over 900 not-for-profit, member-owned electric cooperatives. The great majority of these cooperatives are distribution cooperatives, which provide retail service to over 42 million consumers in 47 states. Kilowatt-hour sales by electric cooperatives account for approximately 12 percent of total electricity sales in the United States. NRECA's members also include 67 generation and transmission (G&T) cooperatives, which supply wholesale power to their distribution cooperative owner-members.

Cooperatives average fewer than seven customers per mile of electric distribution line, the lowest density in the electric utility industry. Electric cooperatives own and maintain 2.5 million miles, or 42 percent, of the nation's electric distribution lines covering three quarters of the nation's land mass, traversing vast, remote stretches of often rugged terrain. Low population densities and expansive distribution networks present unique economic and engineering challenges for electric cooperatives. Despite these challenges, electric cooperatives have a long and successful track record in fulfilling their mission to provide affordable and reliable power to electric cooperative members.

The effort to ensure safe and reliable electric service never ceases and this effort is complicated by service interruptions and outages caused when power lines come into contact with trees or other vegetation. This can occur when vegetation grows or falls on power lines, or when lines sag into nearby vegetation under conditions of high loads or high temperatures. Tree contacts with distribution lines are the top cause of service interruptions and have the greatest impact on service reliability. A loss of electric service is not only costly and inconvenient, but can be life threatening to people on life support systems and can pose safety and health concerns as a result of a loss of heating or air conditioning.

An essential component to keeping electricity safe and reliable is maintaining transmission and distribution line rights-of-way (ROW). The control of vegetation in and along a cooperative's ROW constitutes a major expense. Currently, electric cooperatives implement systematic vegetation management cycles to reduce tree related outages and to expedite service restoration during storms and inclement weather.

In contrast to current practices, early efforts at ROW clearing were reactive and relied heavily on mechanical controls such as mowing and cutting. Such practices had higher costs, were less effective and had a negative impact on wildlife habitat and the environment. Moreover, mechanical controls are a short term fix because after cutting, brush will re-sprout into many more stems than were originally cut, leading to even denser brush that shades and crowds out desirable plants.

Current vegetation management practices at electric cooperatives incorporate the targeted use of specifically selected herbicides, using aerial spraying or ground based applications. Direct exposure to humans and animals is negligible and any herbicide residue not absorbed by the targeted plant is rapidly biodegraded by soil microorganisms or light. Chemical controls result in a dramatic reduction in stem density and reduced maintenance, which leads to significantly lower maintenance costs for the cooperative.

By incorporating the use of chemical controls, some cooperatives have reduced their mowing and ROW clearing budgets by up to 70 percent. The use of herbicides is environmentally favorable due to the resulting growth of low-growing, non-woody plants that do not interfere with power lines and provide natural habitat to the benefit of a variety of wildlife. Employing advanced vegetation management practices is also essential for worker safety, and NRECA evaluates these practices when considering the cooperative's safety accreditation.

The electric utility industry is subject to strict reliability standards under state and federal law. For example, the North American Electric Reliability Corporation (NERC) is a self-regulatory organization that is subject to the oversight of the Federal Energy Regulatory Commission (FERC). NERC is responsible for developing reliability standards applicable to the bulk power system, including a vegetation management standard. FERC has the authority to review and approve the vegetation management standards developed by NERC for large interstate transmission facilities as well as certain other facilities critical to the reliability of the wholesale bulk-power system.

In 2007, NERC issued "FAC-003-1 Vegetation Management," requiring owners of transmission to control vegetation in transmission line ROW. Companies that violate reliability standards such as FAC-003-1 may be fined up to \$1 million a day per violation. NERC has authority over higher voltage transmission lines that are integral to the national grid. Lower-voltage distribution lines are regulated by the state regulatory commissions that have the authority to establish and enforce vegetation management standards for distribution systems. The use of herbicides on utility ROW is essential for

maintaining the reliability of electric transmission and distribution systems and for maintaining compliance with strict state and federal reliability requirements.

The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) is the federal regulatory statute that governs the sale and use of pesticides, including herbicides, through registration and labeling requirements. The purpose of FIFRA is to protect human health and the environment from unreasonable adverse effects of pesticides, while taking the cost and benefits of the product into account. The Environmental Protection Agency (EPA) evaluates the risks of exposure associated with the pesticides, and then specifies the approved uses and conditions required to be displayed on the product label.

Federal law prohibits the use of a pesticide in a manner that is inconsistent with the product label guidelines and instructions. Congress clearly established FIFRA as the comprehensive regulatory framework for addressing pesticides, and did not intend for pesticides to be subject to the National Pollutant Discharge Elimination System (NPDES) permitting requirements set forth in the federal Clean Water Act (CWA). In 2006, EPA promulgated a rule to clarify that pesticide applications that comply with FIFRA are not subject to the jurisdiction of the CWA. However, that rule was vacated by the 6th Circuit Court of Appeal's 2009 decision in *National Cotton Council v. EPA*. The end result being that effective October 31, 2011, many activities that involve pesticide applications are now subject to the requirements of the NPDES program.

Subsequently, EPA issued a federal pesticide general permit (PGP) that took effect November 1, 2011. The PGP has significantly expanded the NPDES permitting program by virtually doubling the number of entities subject to its requirements. In addition to placing a duplicative regulatory burden on electric cooperatives, the PGP imposes unnecessary cost and complexity for compliance. Whereas before, electric cooperative personnel were compliant so long as they faithfully abided by the instructions on the pesticide label, the PGP now requires the filing of a Notice of Intent to comply with the PGP along with the familiarity and adherence to the permit's conditions and restrictions. The most unfortunate aspect to all of this is that while dramatically adding to the regulatory compliance burden and costs of small businesses like electric cooperatives, the PGP will result in little to no environmental benefit.

Fortunately, a broad bipartisan majority of the United States House of Representatives has expressed support for this position by voting to pass H.R. 872, the Reducing Regulatory Burdens Act of 2011. H.R. 872 is common sense legislation that will relieve pesticide applicators from the duplicative regulatory requirement imposed by the *National Cotton Council* decision by removing the redundancy of CWA regulations over pesticides. H.R. 872 is essential to providing regulatory certainty for pesticide applicators like electric cooperatives to focus on providing reliable electric service while maintaining diligent compliance with FIFRA. NRECA applauds the House for quick adoption of H.R. 872 and urges the United States Senate to also pass legislation to address this problem.