

Farmers Prevail in Court Decision on EPA Livestock Rules

WASHINGTON, D.C., March 16, 2011—In a major court victory for the American Farm Bureau Federation and other farm organizations, a unanimous federal court of appeals has ruled that the Environmental Protection Agency cannot require livestock farmers to apply for Clean Water Act permits unless their farms actually discharge manure into U.S. waters. The ruling was welcomed by the American Farm Bureau Federation, National Pork Producers Council and several other agriculture groups that filed suit against EPA in the U.S. Court of Appeals for the Fifth Circuit.

“For the second time, a U.S. Court of Appeals has ruled that EPA’s authority is limited by the Clean Water Act to jurisdiction over only actual discharges to navigable waters, not potential discharges,” said AFBF President Bob Stallman. “We are pleased that the federal courts have again reined in EPA’s unlawful regulation of livestock operations under the Clean Water Act. The court has affirmed that EPA, like other federal agencies, can only regulate where it has been authorized by Congress to do so.”

In the ruling, issued March 15, the Fifth Circuit concluded “The CWA provides a comprehensive liability scheme and the EPA’s attempt to supplement this scheme is in excess of its statutory authority.”

According to the ruling, non-discharging CAFOs (confined animal feeding operations) do not need permit coverage. In addition, CAFOs cannot face separate liability for “failure to apply” for permit coverage, as EPA’s rule provided. Instead, where a CAFO does not seek permit coverage, the Clean Water Act imposes liability only for discharges that occur from the unpermitted CAFO.

AFBF legal analysts are continuing to review the ruling to determine how it will affect livestock farmers and ranchers, including those currently engaged in lawsuits with EPA. It's uncertain at this time what EPA's next steps will be now that major provisions of its CAFO regulations issued in 2003 have been vacated by the court.