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POLICY**  
Highlights

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## 2023 PUBLIC POLICY Highlights

### Regulation of Animal Operations

In 2019, the Department of Environmental Quality (DEQ) renewed the General Permits for swine and dairy farms. DEQ enacted several new requirements for animal operations including groundwater monitoring, phosphorus-based land application limits, and annual reports. NCFB appealed the permits in order to prevent these additional unneeded regulations, and address future sue-and-settle litigation attempts. The three conditions are currently on hold while the case proceeds to the State Court of Appeals. Meanwhile, the Draft 2024 General Permits are already under consideration by DEQ and stakeholders, with the public comment period set to expire in November. This includes the General Permits for farms with Digesters for methane capture and energy production. The three conditions that are under consideration by the Court of Appeals are currently in the Draft 2024 Permits. NCFB continues to represent the interests of swine and dairy farmers in permit negotiations, court cases, and other regulatory matters.

### Shellfish Aquaculture

Oyster production in North Carolina is increasingly dependent on aquaculture systems in place of production from oyster beds. Because this farming activity takes place in water, oyster growers often struggle to be recognized by regulatory agencies as conducting an agricultural activity. North Carolina's Coastal Resources Commission (CRC) regulates development in the coastal counties of the State. Agriculture has a statutory exemption from regulation by the CRC because it is not a development activity. The State's Division of Marine Fisheries instead issues leases and operating permits for oyster farming. The CRC has taken the position that some oyster growing equipment is development activity similar to a dock, pier, or permanent houseboat, and that it should require expensive permits, or in some cases be prohibited altogether. The CRC's attorney went so far as to say that oyster farming is not an agricultural activity in order to justify their regulatory approach. NCFB is concerned for our oyster growers, but also about a regulatory agency deciding on their own how to interpret the definition of agriculture. This could

lead to future interpretations harmful to our members. NCFB has fought these unnecessary rules at the Rules Review Commission by arguing that the CRC does not have authority to regulate oyster production. The Rules Review Commission has agreed, and the rules are currently on hold.

### Biden Administration's WOTUS Rule

The definition of "Waters of the United States" (WOTUS) defines what land and water falls under federal regulatory jurisdiction. On January 18, 2023, the Biden Administration's substantial revision of the WOTUS definition was published. The new definition repealed most of the favorable provisions of the Navigable Water Protection Rule and contained many additional restrictions on farmers' land and water use that were opposed by Farm Bureau.

In May, the U.S. Supreme Court ruled on a case that would affect the newly adopted rule. The case, *Sackett v. EPA*, was about a finding of federal jurisdiction on a privately-owned property. NCFB along with 19 other state Farm Bureaus filed a friend-of-the-court brief in the case, as did AFBF. On May 25, 2023, the Supreme Court ruled in favor of the Sacketts and also found that several provisions included in the Biden rule violated the Clean Water Act. All nine Supreme Court Justices agreed that EPA's so-called "significant nexus" test—one of the tools used to assert more authority over private land—was an overreach. The Court also more clearly described which wetlands qualified for federal jurisdiction. This precedent-setting court decision was a clear victory for farmers and landowners. The Biden Administration was forced to amend its WOTUS rule to comply with the Supreme Court's *Sackett* decision and on September 9, 2023, the amended rule was issued and immediately became effective. Unfortunately, EPA chose to amend only a part of the rule related to the "significant nexus" test. The updated rule leaves in place much of the overreach that Farm Bureau opposes. NCFB continues to pursue legislative, regulatory, and legal actions to ensure that the WOTUS definition is revised to be consistent with the Clean Water Act, Supreme Court precedent, Constitutional limits, and Congressional intent.

### State Wetlands and Waters Rules

The NC Environmental Management Commission (EMC) adopted temporary rules, effective May 28, 2021, that expanded the existing state permitting program to include many of the wetlands and waters not under federal regulation. On January 13, 2022, the EMC adopted a set of permanent rules that would have regulated even more wetlands, and submitted those rules to the NC Rules Review Commission (RRC) for approval. NCFB and other groups submitted comments to the RRC questioning the need for the rules and the authority of the EMC to adopt them. The RRC voted not to approve the permanent rules. On June 27, 2023, the NC Farm Act became law. The Act requires the state wetlands definition to be the same as the federal "Waters of the United States" definition when implementing the state wetlands program. The EMC will have to revise its regulations to comply with the Farm Act and NCFB will continue to work on this issue throughout the rulemaking process to protect farmers' interests.

### EPA Proposed Herbicide Strategy

In an attempt to bring into compliance their pesticide registration regulations with the Endangered Species Act, the EPA has proposed a streamlined and expedited approach to assess risks and propose risk mitigation measures for herbicides. Farm Bureau joined other state and federal organizations in commenting to EPA about the importance of agricultural herbicide uses, while highlighting concerns with the complexity of the proposal; the lack of compliance options for producers/applicators; the financial cost of proposed conservation practices; the anticipated harm the proposal will inflict on producers, agricultural communities, and the environment; as well as ESA and FIFRA statutory concerns with the proposal. The letter also advises EPA to use better data upfront as opposed to relying on overly conservative assumptions, which would help alleviate jeopardy risk concerns for species, so that the agency may better work with stakeholders to develop more reasonable solutions for those species genuinely of concern. EPA also is proposing its vulnerable species pilot program. The program identifies 27 species throughout the US that EPA alleges are uniquely vulnerable to pesticide exposures and aims to put in place stringent restrictions on nearly all pesticide use to protect those endangered species and their habitat. Pesticide use in such areas would be prohibited unless users coordinate with local Fish and Wildlife Service, adopt at least four identified conservation practices (such as reducing application rate), and comply with drift reduction requirements. If adopted, this program is expected to expand to other species in the coming months. None of the 27 species are located in North Carolina, however NCFB is concerned about the precedent this program would set and the impact on

our state in the future. NCFB joined other commodity and agriculture organizations in sending a letter to EPA stating objections to this program.

### Farm Bill Listening Sessions

NCFB, in cooperation with our congressional delegation, facilitated a Senate and House Farm Bill Listening Session. Farmers and commodity associations were able to provide input related to farm bill priorities for upcoming legislation. Both events were well attended and allowed elected officials to exchange ideas and updates.

### AFBF Farm Bill Working Group

NCFB serves on the AFBF Farm Bill Working Group. The Farm Bill Working Group develops strategies and messaging related to the expected 2023 Farm Bill. Accomplishing AFBF policy priorities is a complex undertaking that requires proper messaging and legislative efforts. The Farm Bill Working Group collaborates with AFBF board and staff to help shape the process and accomplish policy objectives.

### Establishment of a Voluntary Assessment for Grade "A" Dairy Producers

For more than 15 years, the NC Dairy Producer Association (NCDPA) and NC Dairy Advantage (NCDA) have operated to connect farmers with their industry partners, policy makers, and consumers in order to support viable dairy operations and sustain the supply of high quality, nutritious dairy products for North Carolinians and beyond. These two organizations are in the process of consolidating to create a single, strategic support organization. To financially support the new initiative, a voluntary assessment for Grade "A" Dairy Producers was authorized by the General Assembly in the 2023 NC Farm Act, if approved during the producer referendum. The referendum will be conducted in the coming months and all Grade "A" producers are eligible to vote. NCFB will continue to work closely with industry partners on efforts to sustain a viable dairy industry into the next generation.

### Endowing a future for NC apiculture

NCFB's Beekeeper, Pollination and Honey Advisory Committee led coordination with county Farm Bureaus to raise funds working with the NC State Beekeepers Association to endow a professorship at NC State University. The endowed professorship would ensure the perpetuation of an apiculture program leader at NC State University into the future. More than 40 county Farm Bureaus donated funds to the endowment, triggering a match from the state Farm Bureau Federation.