

NPDES Permits for Pesticide Applications

Support H.R. 872

In 2009 the Sixth Circuit Court ruled in *National Cotton Council v. EPA* that National Pollutant Discharge Elimination System (NPDES) permits under the Clean Water Act (CWA) are required for pesticide applications to waters of the U.S. EPA and state regulators are currently developing NPDES permits to comply with the decision.

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) established an effective and comprehensive regulatory web to provide pesticide-related environmental and public health protection. FIFRA created an extensive pre-market approval process that includes rigorous examination of environmental data and health exposure assessments for pesticide products. Because this process specifically examines the product's potential impact on water, additional permitting requirements under the CWA are duplicative and will entail significant costs for state permitting authorities and pesticide users.

NASDA Position: Congress never intended to require NPDES permits under the CWA for pesticides that have been reviewed and approved by EPA under FIFRA. Quite the contrary, Congress clearly intended for FIFRA—not the CWA—to regulate pesticide use and even explicitly contemplated FIFRA's role in protecting the quality of our nation's waters. In most states, NASDA members are responsible under FIFRA for administering and enforcing the laws regulating the labeling, distribution, and use of pesticides. Additionally, most state water agencies have delegated authority under the CWA to administer NPDES permitting programs in their states. Because of these responsibilities under federal law, NASDA members and other state regulatory agencies will be significantly impacted by this decision.

Congress must act to clarify that pesticides applied in accordance with FIFRA are not subject to NPDES permitting requirements under the CWA. If Congress fails to act, public health agencies, local governments, pesticide applicators, and agricultural producers will be significantly impacted:

- **Serious public health consequences:** Instead of providing environmental protection, the costly and burdensome permit requirements could actually deprive the public of vital mosquito control activities and invasive species control programs. If localities are impeded from controlling mosquitos for example, public health consequences such as increased West Nile Virus-related deaths could result.
- **Unfunded mandates and stress on state resources:** The resources required to process these new permits will strain the already scarce resources of state regulatory agencies. Conservative estimates from EPA predict that over 365,000 applicators making at least 5.6 million pesticide applications would fall under the new permitting requirements, representing a significant workload increase for state regulators.
- **Unrealistic Timing:** Currently, EPA and the states have until April 9, 2011 to finalize permits. In most cases, state permits will not be able to be finalized until *after* EPA's permit is final. In some instances, state legislatures may even have to change state statute in order for the state to comply with the court's decision. Even after permits are finalized, time will be needed to implement requisite applicator outreach and training prior to the beginning of the spring growing season.
- **Increased costs and threat of lawsuits:** The compliance and record keeping costs for pesticide users will be significant. EPA estimates that these costs could easily top \$50 million a year. By extending CWA requirements to activities already regulated by other federal and state laws, the court has placed farmers and other pesticide users in legal jeopardy under the CWA's citizen-action provisions.
- **Uncertainty on the scope of the permit:** Permitting pesticide applications under the CWA is further complicated by uncertainties over the extent of jurisdiction of the CWA. In addition, state law in some states requires state-issued permits to cover "waters of the state," dramatically expanding the scope of the NPDES permitting requirements.