



National Grange ACTION ALERT

Contact Your U.S. Senator TODAY to Urge Their Support of H.R. 872

June 17, 2011

Status

Currently, the U.S. Senate has scheduled a hearing on H.R. 872 – Reducing Regulatory Burdens Act of 2011, which seeks to keep the regulation of insecticides, fungicides and rodenticides under the Federal Insecticide, Fungicide, and Rodenticide Act or FIFRA. H.R. 872 passed overwhelmingly in the U.S. House of Representatives with bi-partisan support and will now be heard in the Senate Agriculture Committee early next week.

Background

In early 1970s, Congress enacted both the CWA, to regulate federal waters, and the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) to regulate pesticide reviews, sales and use. Congressional intent as to the interaction of the two laws was clearly spelled out in the House Committee Report for FIFRA in 1971. However, in 2009 the 6th Circuit Court of Appeals overturned EPA's 2006 rule specifically exempting from Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) permitting of aquatic pesticide applications. EPA is now forced to develop an NPDES permitting system for aquatic pesticides. This one decision nearly doubles the population of entities permitted under CWA. Affected by these NPDES pesticide-use permits will be state agencies, city and county municipalities, parks and recreation managers, utility rights-of-way managers, railroads, roads and highway vegetation managers, mosquito control districts, water districts and managers of canals and other water conveyances, pesticide applicators, farmers, ranchers, forest managers, scientists, and many others.

Never under FIFRA or the CWA has the federal government required a permit to apply pesticides "to, over or near" waters of the U.S. for control of such pests as mosquitoes, forest canopy insects, algae, or invasive aquatic weeds and animals, like Zebra mussel.

The Problem

- **Unwarranted Decision** - The decision of the 6th Circuit was wrong. The U.S. government is on record agreeing that the 6th Circuit got it wrong in *National Cotton Council v. EPA*, and, in a brief to the Solicitor General, suggested that the court violated Supreme Court precedent by failing to provide proper due deference to an agency determination. The court agreed that pesticides when applied consistent with FIFRA label directions are not pollutants, and, as such, they shouldn't require NPDES permits. But, the court went on to rule that any residues that may remain after the beneficial use has been completed are pollutants, and, in order to control those residues, NPDES permits are necessary when the pesticides are initially applied. The court incorrectly reversed EPA's long-standing policy thus layering CWA regulations on top of established, rigorous FIFRA requirements.

- **Unnecessary Burden** - New requirements for monitoring and surveillance, planning, recordkeeping, reporting and other tasks will create significant delays, costs, reporting burdens and legal risks from citizen suits for hundreds of thousands of newly-minted permit holders without enhancing the environmental protections provided by FIFRA compliance. Even EPA itself conservatively estimates that the annual time burden and cost of permits for pesticide applications over or near water to be more than 1 million hours and nearly \$52 million.
- **Uncertain Liability** - To date, EPA's proposed general permit only covers applications of pesticides registered for aquatic use and applied to water or forest canopies into or over flowing or seasonal waters, and conveyances to those waters; it would not cover pesticide applications registered and intended for terrestrial use. However, activists indicate that they believe most pesticide applications should be permitted if there is even a chance that the pesticide could come in contact with any "water," either flowing water or seasonal drainage ditches that could be a conveyance to a water of the U.S. So, even though EPA may not currently cover farmland and rangeland pesticide applications, nothing in the CWA or the proposed permit protects against citizen suits against farmers for not obtaining a permit. This establishes an uncertain liability for farmers and ranchers, as well as users applying pesticides to golf courses and public utility rights of way, and private homes and businesses.

The Solution

H.R. 872, the Reducing Regulatory Burdens Act, would amend FIFRA and CWA to conclusively declare that, under both laws, no permit is required for the labeled use of any registered pesticide . It would instruct EPA and the courts that Congress did not intend other environmental laws to overtake FIFRA by creating duplicative regulatory burdens. On March 31, 2011, H.R. 872 passed the House. **The measure will now be heard in the Senate Agriculture Committee early next week.**

Action Needed

Please email your U. S. Senator and urge them to vote yes on H.R. 872. It is even more critical to contact your Senator if you live in the following states who have Senators sitting on the Agriculture Committee: Colorado, Iowa, Indiana, Kansas, Michigan, Minnesota, Montana, Nebraska, New York, Ohio, Pennsylvania, and Vermont.

Sample E-Letter:

June ____, 2011

Dear Senator _____,

I am writing to urge your support of H.R. 872, The Reducing Regulatory Burdens Act of 2011. As a Grange Member dedicated to a robust American agriculture, and a competitive rural America, I strongly urge you to support this measure which seeks a legislative fix to a series of bad court rulings and reestablishes the regulation of insecticides and pesticides under the Federal Insecticide, Fungicide and Rodenticide Act, where it belongs.

As a Granger, I am very aware of the regulatory burdens that our farmers and ranchers face each day and H.R. 872 is a common sense fix that will relieve one more undue burden to a large population of land management and agricultural professionals.

Based on a court ruling in the National Cotton Council v. EPA (6th Cir. 2009) case, the Environmental Protection Agency (EPA) and delegated states are required to establish permit programs under the federal Clean Water Act for aquatic pesticide applications. H.R. 872, the Reducing Regulatory Burdens Act of 2011, is a bill aimed at reducing the regulatory duplication posed by this Sixth Circuit Court mandate. The legislation recently passed the House of Representatives with strong bipartisan support, and is now up for a vote before the Senate Agriculture Committee.

Pesticides play an important role in protecting the nation's food supply, public health, natural resources, infrastructure and green spaces. They are used not only to protect crops from destructive pests, but also to manage mosquitoes and other disease carrying pests, invasive weeds and animals that can choke our waterways, impede power generation and damage our forests and recreation areas.

Since the inception of the Clean Water Act in 1972, water quality concerns from pesticide applications have been addressed during the registration and labeling process under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). Imposing a national pollutant discharge elimination system (NPDES) permit in addition to FIFRA regulation will not provide any identifiable additional environmental benefits.

The proposed permit means further unfunded mandates on already struggling governments, and it creates additional red tape, squeezing existing resources and threatening added legal liabilities. The permit's complex compliance requirements will impose tremendous new burdens on thousands of small businesses, farms, communities, counties and state and federal agencies legally responsible for pest control, and expose them to legal jeopardy through citizen suits over paperwork violations. Ultimately, the permit could jeopardize jobs, the economy and human health protections across America as regulators and permittees struggle to implement and comply with these permits.

We respectfully ask that you support passage of H.R. 872 in the Senate before the NPDES permits become final this year. Thank you for your time and consideration on this matter.

Sincerely,

Your name

Your Grange number

If you have any questions or comments regarding this Action Alert, please contact National Grange Program Assistance Grace Boatright by e-mail: gboatright@nationalgrange.org; or by phone 1-888-4GRANGE. Ext. 107.

Thank you for your grassroots participation in the National Grange Legislative Program.