

POSITION
of the
WESTERN STATES WATER COUNCIL
regarding
PESTICIDE APPLICATIONS
and
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
DISCHARGE PERMITS
December 14, 2010

WHEREAS, the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) has long protected water quality from pesticide applications by requiring registration of pesticides, mandating detailed label instructions, limiting the number of pesticides available to the general public, restricting application of hazardous pesticides to certified applicators, and monitoring the distribution of restricted pesticides, among other measures; and

WHEREAS, the Environmental Protection Agency (EPA) has historically not required National Pollutant Discharge Elimination System (NPDES) permits for pesticide applications made in compliance with FIFRA; and

WHEREAS, in *National Cotton Council v. Environmental Protection Agency*, 553 F.3d 927 (6th Cir. 2009), the Sixth Circuit Court of Appeals vacated an EPA rule that exempted pesticide applications made in compliance with the FIFRA from the need to obtain NPDES permits; and

WHEREAS, the Sixth Circuit did not analyze FIFRA's water quality protections or its relationship with the Clean Water Act (CWA), but based its ruling on a technical finding that the statutory text of the CWA foreclosed EPA's rule; and

WHEREAS, the decision has national implications because it consolidated challenges to the rule filed in eleven circuits, and because the U.S. Supreme Court denied certiorari to review the decision in February 2010; and

WHEREAS, the Sixth Circuit stayed its decision until April 9, 2011,¹ after which time EPA and states with delegated NPDES authority must issue NPDES permits for all point source discharges to waters of the United States of biological and chemical pesticides that leave a residue even if the application is performed in compliance with FIFRA; and

WHEREAS, EPA estimates that the ruling will affect approximately 365,000 pesticide applicators nationwide who perform 5.6 million applications annually; and

WHEREAS, the ruling will create an unnecessary and duplicative level of regulation without providing clear environmental benefits; and

¹ Following the adoption of this position, the Sixth Circuit extended the stay of its decision until October 31, 2011.

WHEREAS, the burden of implementing NPDES programs to regulate pesticides will fall almost entirely on state water quality agencies, as most states have delegated NPDES authority; and

WHEREAS, implementing and operating programs to regulate pesticide applications under the NPDES program will require substantial site monitoring, record keeping, annual reporting, and other efforts that will impose significant costs upon states at a time when many are facing budget shortfalls and are struggling to provide other more important and necessary environmental services; and

WHEREAS, it is EPA's position that states with delegated NPDES authority are obligated to regulate applicable pesticide applications under the NPDES program even though no additional federal funding accompanies the mandate; and

WHEREAS, the preferred manner of resolving this issue is through future legislation that clarifies that pesticide applications applied in compliance with FIFRA are exempt from NPDES permitting, rather than creating a new permitting program.

NOW, THEREFORE, BE IT RESOLVED that the Western States Water Council declares that pesticide applications made in compliance with FIFRA should not trigger NPDES permitting requirements; and

BE IT FURTHER RESOLVED that the Council urges Congress to enact legislation that amends FIFRA and the CWA to clarify that pesticide applications performed in compliance with FIFRA are not subject to NPDES permitting.

Note: Oregon voted no and Washington opposed the position, but is a non-voting member.