

Congress of the United States
Washington, DC 20515

July 19, 2010

The Honorable Lisa Jackson
Administrator
Environmental Protection Agency
Ariel Rios Federal Building
1200 Pennsylvania Avenue, NW
Room 3000
Washington DC 20460

Dear Administrator Jackson:

We are keenly aware that 2009 action by the 6th Circuit Court of Appeals has vacated EPA's 2007 rule that exempted certain pesticide applications that are compliant with FIFRA from the NPDES provisions of the Clean Water Act (CWA). After review of the NPDES Draft General Permit issued by your staff, there are numerous concerns about the content in the draft and we trust you will continue working with the regulated community to address these issues.

As you are aware, the 6th Circuit Court of Appeal's decision marks a national pre-emption of FIFRA by the CWA for the first time in the history of either statute. To the strict use requirements of product labels, EPA would now add numerous planning, performance, recordkeeping and reporting requirements to the workload of professional applicators and decision-making organizations ("operators") during their busiest times of the year. By making such burdensome paper-work procedures public, EPA would expose operators to unnecessary legal risks from citizen suits. In addition, the requirement that every pesticide application covered by this permit employ Integrated Pest Management (IPM) planning, surveillance and recordkeeping procedures will delay timely pesticide applications, create needless costs for operators, and increase the cost of pest control. We believe EPA has much work to do in the remainder of 2010 to tailor the permit into a workable, affordable, and legally-defensible final version. Providing consistency with the requirements of product labels and reducing needless paperwork would be important steps in the right direction.

However, each user group must determine for itself if the conditions of its pesticide applications would be subject to the CWA and warrant their seeking permit protection and accompanying compliance obligations. There are numerous different terrestrial pesticide uses in municipal, residential, recreational, agricultural, horticultural, silvicultural, utility rights-of-way and transportation areas, or other settings in Georgia and across the country, and each is likely to have different factors to consider.

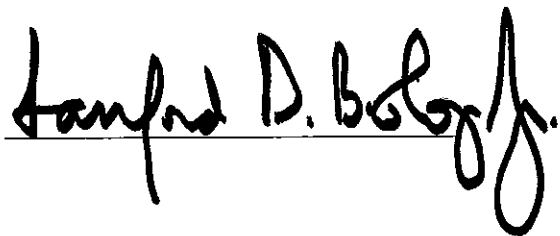
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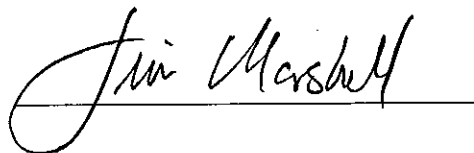
The term "near" regarding water pesticide applications is defined in the draft permit only in terms of the four pesticide use categories: Mosquito and other flying insect pest control applications "*in or above standing or flowing water*"; Aquatic weed and algae control applications "*in water or at water's edge, including irrigation ditches and/or irrigation canals*"; Aquatic nuisance animal control applications "*in water and at water's edge*"; and forest canopy pest control applications made "*over a forest canopy where ... a portion of the pesticide unavoidably will be applied over and deposited to water below.*" The term "near," varies significantly in each of these situations. A clear understanding of "near" and how that definition could affect the legal vulnerability of the operators is sorely needed.

Unfortunately, the two-year stay by the 6th Circuit of its 2009 decision ends on April 9, 2011, when the permits must be available to pesticide applicators and operators in all 50 states. We are concerned these permits will not be finished by the Court deadline, and that operators making legal pesticide applications on April 8th to and over, including "near," waters of the US will overnight face legal jeopardy if they lose the protections of EPA's 2006 rule and have no access to state permits. We urge EPA to seek a commitment from the Court for further extension should it appear in early 2011 that the April 9 deadline will not be met.


This is a major issue for agricultural producers in Georgia. As a result, they are at risk due to the decision of the courts and they want to work with EPA to see that the general NPDES permits are protective of their rights to apply pesticides under the registration and use provisions of FIFRA. Your consideration of our request and action to address these concerns is appreciated.

Sincerely,









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Jack Kingston

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