

This information is being passed on to you by John Scott, Pesticide Program Manager, Colorado Department of Agriculture.

Subject: Pesticide Permit News

From the BNA Daily Environment Report this morning.

Sens. Boxer, Cardin Place Hold on Bill To Exempt Pesticides From Water Permits

Sens. Barbara Boxer (D-Calif.) and Benjamin Cardin (D-Md.) have placed a hold on legislation that would exempt pesticide applications from the Clean Water Act's permitting process, a spokeswoman for Cardin's office said June 27.

The Reducing Regulatory Burdens Act (H.R. 871) was approved by the Senate Committee on Agriculture, Nutrition, and Forestry June 21. It would prevent the Environmental Protection Agency from implementing a court order requiring certain pesticide applications to be covered by Clean Water Act discharge permits ([120 DEN A-12, 6/22/11](#)).

Neither Boxer nor Cardin's office has yet issued a statement on the hold, but according to the Association of State & Interstate Water Pollution Control Administrators, environmental groups wrote to the Senate encouraging opposition to the bill when the Senate Agriculture Committee approved it. Boxer is chairman of the Senate Environment and Public Works Committee. Cardin is chairman of the Environment and Public Works Subcommittee on Water and Wildlife.

The House passed the bill, sponsored by Rep. Bob Gibbs (R-Ohio), on March 31. Specifically, it would exempt pesticide applications from the Clean Water Act's National Pollutant Discharge Elimination System permitting process if the pesticide is used for its intended purpose and the use complies with pesticide labeling requirements. Gibbs is chairman of the Water Resources and Environment Transportation and Infrastructure Subcommittee ([63 DEN A-6, 4/1/11](#)).

The requirement for NPDES permits for pesticide applications was mandated in a January 2009 decision by the U.S. Court of Appeals for the Sixth Circuit. The court order requires applicators of pesticides to obtain Clean Water Act discharge permits before they apply pesticides into, over, or near bodies of water. The decision vacated an EPA rule authorizing permit exemptions for farmers, public health officials, and ranchers who apply pesticides into, over, or near water bodies to control mosquitoes and other pests.

In March, the Sixth Circuit granted EPA a six-month extension through Oct. 31 for implementing the order (*National Cotton Council v. EPA*, 6th Cir., No. 06-4630, 3/28/11; [60 DEN A-9, 3/29/11](#)).

State Officials Support Legislation

Alexandra Dunn, executive director of the Association of State and Interstate Water Pollution Control Administrators, told BNA, "We still would very much like the bill to move and be passed into law and we only have until October 31. ... We remain supportive of a legislative fix.

"If legislation is not passed" she said, the pesticide vacature would go into effect "and we would have to start permitting."

The impact on states would be significant, she said, noting EPA has estimated that 360,000 additional water sources would have to be permitted.

Nathan Bowen, manager of legislation and regulatory affairs for the National Association of State Departments of Agriculture, said NASDA is concerned that if the bill does not pass, state resources would be diverted from controlling mosquitoes, which could lead to public health problems.

Bowen called the bill one of NASDA's top legislative priorities. If H.R. 872 is not passed, he said, "the impacts would be very detrimental to state programs and state department of agriculture regulations."

Many states administer mosquito control programs that would now need to issue permits, he said.

"If we don't see legislation before the end of October it would have a significant impact on state government."

But Bowen added NASDA is "hopeful the Senate will pass the bill."

The National Association of State Foresters told BNA June 27 in an e-mail, "If there is no action by the Senate by October 31, thousands of small businesses and public health entities will bear the burden of new permitting requirements at the expense of other important water quality responsibilities. State Foresters support existing state and federal laws that already provide for enforcement against pesticide misuse and view additional permitting requirements under the Clean Water Act as duplicative."

Gibbs, told BNA June 27 in an e-mail, "Time is running out to approve this common sense legislation and avoid throwing up another unnecessary barrier to job creation."

The permit is for areas where EPA is the permitting authority—Alaska, Idaho, Massachusetts, New Hampshire, New Mexico, Oklahoma, Washington, D.C., and several U.S. territories. The majority of states issue their own NPDES permits, and state water officials say they plan to use the EPA permit as a model for developing their own permits.

By [Linda Roeder](#)