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112TH CONGRESS, 1st Session | HOUSE OF REPRESENTATIVES | REPT. 112–43 Part 2

REDUCING REGULATORY BURDENS ACT OF 2011

MARCH 29, 2011.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. LUCAS, from the Committee on Agriculture, submitted the following

REPORT

[To accompany H.R. 872]

[Including cost estimate of the Congressional Budget Office]

The Committee on Agriculture, to whom was referred the bill (H.R. 872) to amend the Federal Insecticide, Fungicide, and Rodenticide Act and the Federal Water Pollution Control Act to clarify Congressional intent regarding the regulation of the use of pesticides in or near navigable waters, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Reducing Regulatory Burdens Act of 2011".

SEC. 2. USE OF AUTHORIZED PESTICIDES.

Section 3(f) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136a(f)) is amended by adding at the end the following:

"(5) USE OF AUTHORIZED PESTICIDES.—Except as provided in section 402(s) of the Federal Water Pollution Control Act, the Administrator or a State may not require a permit under such Act for a discharge from a point source into navigable waters of a pesticide authorized for sale, distribution, or use under this Act, or the residue of such a pesticide, resulting from the application of such pesticide.".

SEC. 3. DISCHARGES OF PESTICIDES.

Section 402 of the Federal Water Pollution Control Act (33 U.S.C. 1342) is amended by adding at the end the following:

"(s) DISCHARGES OF PESTICIDES.—

"(1) NO PERMIT REQUIREMENT.—Except as provided in paragraph (2), a permit shall not be required by the Administrator or a State under this Act for a discharge from a point source into navigable waters of a pesticide registered under the Federal Insecticide, Fungicide, and Rodenticide Act, or the residue of such a pesticide, resulting from the application of such pesticide.

"(2) EXCEPTIONS.—Paragraph (1) shall not apply to the following discharges containing a pesticide or pesticide residue:

"(A) A discharge resulting from the application of a pesticide in violation of a provision of the Federal Insecticide, Fungicide, and Rodenticide Act that is relevant to protecting water quality, if—

"(i) the discharge would not have occurred but for the violation; or

"(ii) the amount of pesticide or pesticide residue contained in the discharge is greater than would have occurred without the violation.

"(B) Stormwater discharges regulated under subsection (p).

"(C) Municipal or industrial discharges regulated under this section, including—

"(i) manufacturing or industrial effluent;

"(ii) treatment works effluent; and

"(iii) discharges incidental to the normal operation of a vessel, including a discharge resulting from ballasting operations or vessel biofouling prevention.".

BRIEF EXPLANATION

The Reducing Regulatory Burdens Act of 2011, H.R. 872, amends the Federal Insecticide, Fungicide, and Rodenticide Act and the Federal Water Pollution Control Act to clarify Congressional intent regarding the regulation of application of pesticides or residue of pesticides in or near navigable waters.

PURPOSE AND NEED FOR LEGISLATION

The Federal Insecticide, Fungicide, and Rodenticide Act

The Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA") is a regulatory statute that governs the sale and use of pesticides in the United States through the registration and labeling of such products. Its objective is to protect human health and the environment from unreasonable adverse effects of pesticides, taking into account the costs and benefits of various product uses. Pesticides regulated under FIFRA include insecticides, herbicides, fungicides, rodenticides, and other designated substances. The Environmental Protection Agency ("EPA") reviews scientific data submitted by chemical manufacturers on toxicity and behavior in the environment to evaluate risks and exposure associated with a product's use.

FIFRA prohibits the sale of any pesticide unless it is registered and labeled indicating approved uses and restrictions. It is a violation of Federal law to use such a chemical in a manner that is inconsistent with the label instructions. If a registration is granted, EPA makes a finding that the chemical "when used in accordance with widespread and commonly recognized practice it will not generally cause unreasonable adverse effects on the environment." (7 U.S.C.136a(c)(5)(D).) EPA then specifies the approved uses and conditions of use of the pesticide, and this is required to be explained on the product label.

The Clean Water Act

The objective of the Federal Water Pollution Control Act (commonly known as the "Clean Water Act" or the "CWA") is to restore and maintain the chemical, physical, and biological integrity of the nation's waters. The primary mechanism for achieving this objective is the CWA's prohibition on the discharge of any pollutant without a National Pollutant Discharge Elimination System ("NPDES") permit. EPA has the authority to regulate the discharge

of pollutants either through general permits or through individual permits. NPDES permits specify limits on what pollutants may be discharged from point sources and in what amounts. Under the CWA, 47 states and territories have been authorized to implement NPDES permits and enforce permits. EPA manages the Clean Water Act program in the remaining states and territories.

NPDES permits are the basic regulatory tool of the CWA. EPA or an authorized state may issue compliance orders, or file civil suits against those who violate the terms of a permit. In addition, in the absence of Federal or state action, individuals may bring a citizen suit in United States district court against those who violate the terms of an NPDES permit, or against those who discharge without a valid permit.

Litigation

In over 30 years of administering the CWA, EPA had never required an NPDES permit for the application of a pesticide, when the pesticide is applied in a manner consistent with FIFRA and its regulations. While the CWA contains a provision granting citizen suits against those who violate permit conditions or those who discharge without an NPDES permit, FIFRA has no citizen suit provision. As a result, beginning in the late 1990s, a series of citizen lawsuits were filed by parties, contending that an NPDES permit is necessary when applying a FIFRA-regulated product over, into, or near waterbodies. These cases generated several Court of Appeals decisions that created confusion and concern among pesticide users regarding the applicability of the CWA with regard to pesticide use.

As the litigation continued, concern and confusion grew among farmers, forest landowners, and public health officials, prompting EPA to issue interim, and later final, interpretive guidance in August 2003 and January 2005, and then to undertake a rulemaking to clarify and formalize the Agency's interpretation of the CWA as it applied to pesticide use. The EPA rule was finalized in November 2006 (71 Fed. Reg. 68483 (Nov. 27, 2006)), and was the culmination of a three year participatory rulemaking process that began with the interim interpretive statement in 2003 and involved two rounds of public comment.

The 2006 EPA rule codified EPA's long-standing interpretation that the application of chemical and biological pesticides for their intended purpose and in compliance with pesticide label restrictions is not a discharge of a "pollutant" under the CWA, and therefore, that an NPDES permit is not required. The rule clearly defined specific circumstances in which the use of pesticides in accordance with all relevant requirements under FIFRA is not a CWA "discharge of a pollutant," explaining in detail the rationale for the Agency's interpretation.

When the rule was finalized, environmental groups, as well as farm and pesticide industry groups, filed petitions for review of the rule in several Federal Circuit Courts of Appeal. The petitions were consolidated in the Sixth Circuit. The Sixth Circuit ultimately vacated the rule on January 7, 2009 in *National Cotton Council* v. *EPA* (553 F.3d 927; hereinafter, National Cotton Council), concluding that the final rule was not a reasonable interpretation of the CWA's permitting requirements. The court rejected EPA's con-

tention that, when pesticides are applied over, into, or near waterbodies to control pests, they are not considered pollutants as long as they comply with FIFRA, and held that NPDES permits are required for all pesticide applications that may leave a residue in water.

EPA estimated that the ruling would affect approximately 365,000 pesticide applicators that perform some 5.6 million pesticide applications annually. The court's decision, which would apply nationally, was to be effective seven days after the deadline for rehearing expired or seven days after a denial of any petition for rehearing. Parties had until April 9, 2009 to seek rehearing.

On April 9, 2009, the government chose not to seek rehearing in the National Cotton Council case. The government instead filed a motion to stay issuance of the court's mandate for two years to provide EPA time to develop an entirely new NPDES permitting process to cover pesticide use. As part of this, EPA needed to propose and issue a final NPDES general permit for pesticide applications, for states to develop permits, and for EPA to provide outreach and education to the regulated community. Industry groups filed a petition seeking en banc review, asking the full Sixth Circuit to reconsider the decision from the three-judge panel.

On June 8, 2009, the Sixth Circuit granted EPA a two-year stay of the court's mandate, in response to their earlier request. The Sixth Circuit denied the industry groups' petition for rehearing in August 2009. The court-ordered deadline for EPA to promulgate a new permitting process for pesticides under the Clean Water Act was April 9, 2011. On March 3, 2011, EPA filed another request for an extension with the court. On March 28, 2011, the Sixth Circuit granted an extension through October 31, 2011. The Court's extension only temporarily postpones the need for an NPDES permit for pesticide use, and does not obviate the need for this legislation.

Two petitions were filed with the U.S. Supreme Court in December 2009 by representatives of the agriculture community and the pesticide industry, requesting that the U.S. Supreme Court review the National Cotton Council case. A number of parties, including numerous Members of Congress, filed amicus briefs with the U.S. Supreme Court, in support of or opposition to the petitions. On February 22, 2010, the U.S. Supreme Court denied the petitioners' request without comment.

EPA development of a new permitting process to cover pesticide use

EPA continues to move ahead with developing a new NPDES permitting process to cover pesticide use. The permit covers four pesticide uses: (1) mosquito and other flying insect pest control; (2) aquatic weed and algae control; (3) aquatic nuisance animal control; and (4) forest canopy pest control. It does not cover terrestrial applications to control pests on agricultural crops or forest floors, and does not cover activities exempt from permitting under the CWA (irrigation return flow, agricultural stormwater runoff) and discharges that will require coverage under an individual permit, such as discharges of pesticides to waterbodies that are considered impaired under CWA § 303(d) for that discharged pesticide.

Implications

The Committee has received testimony and other information on the implications of the Sixth Circuit's holding in the National Cotton Council case, and the new permitting process that EPA has to develop under the CWA as a result of that holding, on state and local agencies, mosquito control districts, water districts, pesticide applicators, agriculture, forest managers, and other stakeholders. On February 16, 2011, the Subcommittee on Water Resources and Environment of the House Committee on Transportation and Infrastructure held a joint hearing with the Nutrition and Horticulture Subcommittee of the House Committee on Agriculture to consider means for reducing the regulatory burdens posed by the case, *National Cotton Council* v. *EPA* (6th Cir. 2009), and to consider related draft legislation.

Despite being limited to four categories of pesticide uses, EPA's new general permit for covered pesticides stands to be the single greatest expansion of the permitting process in the history of the NPDES program. EPA has estimated that it can expect approximately 5.6 million covered pesticide applications per year by approximately 365,000 applicators—virtually doubling the number of entities currently subject to NPDES permitting. (U.S. EPA, Fact Sheet for 2010 Public Notice of: Draft National Pollutant Discharge Elimination System (NPDES) Pesticides General Permit (PGP) for Discharges from the Application of Pesticides to or over, including near Waters of the U.S., at 14, available at *http://www.epa.gov/npdes/pubs/proposed_pgp_fs.pdf*.)

With this unprecedented expansion comes real and tangible burdens for EPA and the states that will have to issue the permits, those whose livelihoods depend on the use of pesticides, and even everyday citizens going about their daily lives.

EPA has said that it will be able to conform its current process to meet the Sixth Circuit's mandate. Even so, much of the responsibility of developing and issuing general permits falls on the states. Forty-five states (and the Virgin Islands) will face increased financial and administrative burdens in order to comply with the new permitting process. In a time when too many states are being forced to make difficult budgetary cuts, the nation cannot afford to impose more financial burdens.

The expanded permitting process also imposes enormous burdens on pesticide users who encompass a wide range of individuals from state agencies, city and county municipalities, mosquito control districts, water districts, pesticide applicators, farmers, ranchers, forest managers, scientists and others. The new and duplicative permitting process will increase both the administrative difficulty and costs for pesticide applicators to come into compliance with the law. Compliance will no longer mean simply following instructions on a pesticide label. Instead, applicators will have to navigate a complex process of identifying the relevant permit, filing with the regulatory authority a valid notice of intent to comply with the permit and having a familiarity with all of the permit's conditions and restrictions. Along with increased administrative burdens comes an increased monetary burden. Estimates are that the cost associated with the EPA permit scheme to small businesses could be as high as $50,000 per business, annually.

In addition to the costs of coming into compliance, pesticide users will be subject to an increased risk of litigation and exorbitant fines. Applicators not in compliance face fines of up to $37,500 per day per violation, not including attorney's fees. Given the fact that a large number of applicators have never been subject to NPDES and its permitting process, even a good faith effort to be in compliance could fall short. Moreover, the CWA allows for private actions against individuals who may or may not have committed a violation. Thus, while EPA may exercise its judgment and refrain from prosecuting certain applicators, they remain vulnerable to citizen suits. Unless Congress acts, hundreds of thousands of farmers, foresters, and public health pesticide users will go into the next season under threat of lawsuits once the Sixth Circuit's April 9, 2011 deadline passes.

It is not only pesticide regulators and applicators who will be affected by new permitting requirements. Rather, the Sixth Circuit's decision will affect everyday citizens, who rely on the benefits provided by pesticides and their responsible application. Pesticide use is an essential part of agriculture. Imposing a burdensome and duplicative permitting process on our nation's farmers threatens their ability to continue to provide the country with a safe and reliable food supply. Many family farmers and small applicators lack the resources to ensure compliance with a cumbersome and detailed permit scheme. Moreover, for those farmers who are able to comply, delays that are inherent in permitting schemes are ill-suited for prompt pest control actions necessary in agriculture. Failure to apply a pesticide soon after a pest is first detected could result in recurring and greater pest damage in subsequent years if a prolific insect were to become established in plant hosts. The Secretary of Agriculture, Hon. Thomas J. Vilsack, has said that a permitting system under the CWA for pesticide use "is ill-suited to the demands of agricultural production." (Letter, Hon. Thomas J. Vilsack, Secretary of Agriculture, to Hon. Lisa P. Jackson, Administrator, U.S. Environmental Protection Agency, Subject: *The National Cotton Council of America, et al.,* v. *United States Environmental Protection Agency* (Mar. 6, 2009)).

Forest landowners also will suffer under the new permit scheme. EPA's permit scheme will result in a reduction in the use of forest pest control as a forest management tool, resulting in the acceleration of tree mortality and general decline in overall forest health. It will also erect barriers for the control of pests, such as Gypsy Moth and Forest Tent Caterpillar. This may result in a higher incidence of preventable tree kills and defoliated landscapes.

Finally, the Sixth Circuit's holding could have significant implications for public health. The National Centers for Disease Control officially recognizes the following as a partial list of mosquito-borne diseases—Eastern Equine Encephalitis, Japanese Encephalitis, La Crosse Encephalitis, St. Louis Encephalitis, West Nile Virus, Western Equine Encephalitis, Dengue Fever, Malaria, Rift Valley Fever, and Yellow Fever. (Centers for Disease Control and Prevention, *http://www.cdc.gov/ncidod/diseases/list_mosquitoborne.htm.*) EPA's permit program poses the possibility of critical delays in emergency responses to insect and disease outbreaks and will divert resources from controlling environmental pests to litigation and administrative burdens.

Development of legislation in response to the Sixth Circuit decision

As a result of concerns raised by Federal, state, local, and private stakeholders regarding the interrelationship between FIFRA and the CWA and the concerns posed by the new and duplicative permitting process under the CWA, the House Committee on Transportation and Infrastructure and House Committee on Agriculture sought technical assistance from EPA to draft very narrow legislation targeted only at addressing the Sixth Circuit's holding in *National Cotton Council* and return the state of pesticide regulation to the status quo—before the courts got involved. H.R. 872 is based on the technical assistance that EPA provided to the Committees, and is intended to be consistent with EPA's final rule from November 2006. The bill amends FIFRA and the CWA to eliminate the requirement of an NPDES permit for applications of pesticides authorized for sale, distribution, or use under FIFRA.

SUMMARY OF THE LEGISLATION

Section 1. Short title

Section 1 of the bill designates the title of the bill as the "Reducing Regulatory Burdens Act of 2011."

Section 2. Use of registered pesticides

Section 2 of the bill amends section 3(f) of FIFRA (7 U.S.C. 136a(f)) by adding at the end a new paragraph (5). Paragraph (5) provides that, except as provided in section 402(s) of the Federal Water Pollution Control Act (the CWA), the Administrator or a state may not require a permit under the CWA for a discharge from a point source into navigable waters of a pesticide registered under FIFRA, or the residue of such a pesticide, resulting from the application of such pesticide. The exceptions provided in section 402(s) of the CWA are provided in new subsection (s)(2), discussed further below.

The net effect of this provision is to exempt, from the CWA's NPDES permitting process, a discharge from a point source into navigable waters of a pesticide registered under FIFRA, or the residue of such a pesticide, resulting from the application of the pesticide, where the pesticide is used for its intended purpose and the use is in compliance with pesticide label requirements.

The Committee has received testimony on how EPA uses its full regulatory authority under FIFRA to ensure that pesticides do not cause unreasonable adverse effects on human health and the environment, including our nation's water resources. The regulatory restrictions imposed by EPA under FIFRA directly control the amount of pesticide available for transport to navigable waters, either by reducing the absolute amount of pesticide applied, or by changing application conditions to minimize transport and make transport of applied pesticide less likely.

As long as a pesticide is authorized for sale, distribution, or use under FIFRA, the pesticide is used for its intended purpose, and the use is in compliance with pesticide label requirements, there is no need to require the user of the pesticide to apply for and obtain an NPDES permit for that use. The Committee believes that requiring an NPDES permit in such circumstances is unnecessary

and would impose duplicative and wasteful regulatory burdens on EPA and state permitting agencies, and on pesticide users.

It is the intent of the Committee that, regarding biological pesticides including those produced by plants, H.R. 872 shall not apply to plants because they are not a point source. The exemption under FIFRA requires a discharge from a point source.

Section 3. Discharges of pesticides

Section 3 of the bill amends section 402 of the Federal Water Pollution Control Act (33 U.S.C. 1342) by adding at the end a new subsection (s).

New subsection (s)(1) provides that, except as provided in paragraph (2) of subsection (s), the Administrator or a state shall not require a permit under the CWA for a discharge from a point source into navigable waters of a pesticide authorized for sale, distribution, or use under FIFRA, or the residue of such a pesticide, resulting from the application of such pesticide. This provision is aimed at mirroring the provision added to FIFRA under section 2 of the bill.

This provision, like that in section 2 of the bill, is intended to exempt from the CWA's NPDES permitting process, subject to the exceptions in paragraph (2), a discharge from a point source into navigable waters of a pesticide authorized for sale, distribution, or use under FIFRA, or the residue of such a pesticide, resulting from the application of the pesticide, where the pesticide is used for its intended purpose and the use is in compliance with pesticide label requirements.

As noted earlier, as long as a pesticide is authorized for sale, distribution, or use under FIFRA, the pesticide is used for its intended purpose, and the use is in compliance with pesticide label requirements, then the Committee sees no need to require the user of the pesticide to apply for and obtain an NPDES permit for that use. The Committee believes that requiring an NPDES permit in such circumstances is unnecessary and would impose duplicative and wasteful regulatory burdens on EPA and state permitting agencies, and on pesticide users.

The Committee adopted a technical change to the language of paragraph (1) in a Committee meeting held on March 9, 2011, to clarify that any pesticide authorized for sale, distribution, or use under FIFRA is covered by this exemption.

Paragraph (2) of new subsection (s) provides certain exceptions to the exemption from NPDES permitting provided in paragraph (1). The categories of discharges listed in paragraphs (2)(A) and (B) are not exempted and therefore require an NPDES permit if those discharges contain a pesticide or residue of a pesticide. None of the exceptions in paragraph (2) are intended to expand the permitting authority of EPA or a state to require a permit under the CWA or to narrow or negate the exemption in paragraph (1) from the CWA's NPDES permitting process of a discharge from a point source into navigable waters of a pesticide authorized for sale, distribution, or use under FIFRA, or the residue of such a pesticide resulting from the application of the pesticide, where the pesticide is used for its intended purpose and the use is in compliance with pesticide label requirements.

The exception in subparagraph (A) of paragraph (2) applies to circumstances where there has been an application of a pesticide in violation of a provision of FIFRA relevant to protecting water quality, and as a result of that application of the pesticide in violation of FIFRA, there has been a discharge of a pesticide or residue of a pesticide that either would not have occurred but for the violation of FIFRA, or the amount of pesticide or residue of a pesticide contained in the discharge is greater than would have occurred without the violation of FIFRA. A violation of FIFRA is considered to be relevant to protecting water quality only if that violation results in the occurrence of a discharge of a pesticide or residue of a pesticide from an application of the pesticide, and that discharge either would not have occurred but for the violation, or the amount of pesticide or residue of a pesticide contained in the discharge is greater than would have occurred without the violation.

Hence, a violation of FIFRA not involving or affecting a discharge into navigable waters of a pesticide or residue of a pesticide from an application of the pesticide (e.g., a violation of a FIFRA requirement that a person mixing a pesticide must wear protective clothing) does not trigger permitting requirements under the CWA and is not a violation of the CWA. Similarly, a violation of FIFRA, where a discharge of a pesticide or residue of a pesticide did not occur even with the FIFRA violation, or the amount of pesticide or residue of a pesticide contained in the discharge is not increased as compared to what would have occurred without the FIFRA violation, does not trigger permitting requirements under the CWA and is not a violation of the CWA. Enforcement under the CWA under the circumstances presented in paragraph (2)(A)(i) or (ii) would require proof of both a CWA violation and a FIFRA violation.

It is the intent of the Committee that, regarding biological pesticides including those produced by plants, H.R. 872 shall not apply to plants because they are not a point source. The exemption requires a discharge from a point source. Moreover, section 402 of the CWA only requires an NPDES permit for a point source discharge.

The bill is not intended to exempt from NPDES permitting under CWA section 402 certain discharges of waste streams merely because they may contain a pesticide or residue of a pesticide as a component in them. Therefore, the exceptions in subparagraphs (B) and (C) of paragraph (2) identify those types of discharges that remain subject to NPDES permitting under CWA section 402, even if those discharges may contain in them a pesticide or residue of a pesticide as a component. The categories of discharges described in subparagraphs (B) and (C) are intended to encompass all of the types of discharges, which, if they do contain as a component a pesticide or residue of a pesticide, would continue to require an NPDES permit.

The exception in subparagraph (B) of paragraph (2) applies to stormwater discharges regulated under subsection (p) of CWA section 402. Discharges regulated under subsection (p) include stormwater discharged from certain municipal storm-water systems, certain areas associated with industrial activity, certain construction sites, and certain other impervious areas.

The exception in subparagraph (C) of paragraph (2) applies to the following other discharges regulated under subsection (p) of CWA section 402: manufacturing or industrial effluent; treatment

works effluent; and discharges incidental to the normal operation of a vessel, including a discharge resulting from ballasting operations or vessel biofouling prevention.

"Manufacturing or industrial effluent" under subparagraph (C)(i) is intended to cover point source discharges of wastewater from facilities with manufacturing or industrial processes, where those discharges contain pollutants that are pesticides. This may include wastewater discharges containing pesticides from pesticide and other agricultural chemical manufacturing and formulating facilities, and facilities, including utilities that use biocides to prevent fouling of lines, mains, pipes, or cooling towers.

"Treatment works effluent" under subparagraph (C)(ii) is intended to cover point source discharges of wastewater from treatment works, where those discharges contain pollutants that are pesticides. The term "treatment works" is defined in section 212 of the CWA.

"Discharges incidental to the normal operation of a vessel, including a discharge resulting from ballasting operations or vessel biofouling prevention" under subparagraph (C)(iii) is intended to cover point source discharges from vessels that are subject to permitting under EPA's NPDES vessels program that regulates incidental discharges from the normal operation of vessels, where those discharges contain pollutants that are pesticides. The vessels currently subject to permitting under the NPDES vessels program consist of all non-recreational, non-military vessels of 79 feet or greater in length which discharge into navigable waters.

Recreational vessels as defined in section 502(25) of the CWA are exempted from NPDES permitting in section 402(r) of the CWA. It is the Committee's intent to leave undisturbed this exemption from NPDES permitting for recreational vessels in section 402(r). In addition, vessels of the Armed Forces, as defined in section 312(a)(14) of the CWA, are not subject to permitting under the NPDES vessels program. With the exception of ballast water discharges, nonrecreational vessels less than 79 feet in length, and all commercial fishing vessels, regardless of length, currently are not subject to permitting under the NPDES vessels program, although they may be in the future when a moratorium from regulation established by Public Law 111–215 ends on December 18, 2013.

The intent of the Committee is for sections 2 and 3 of the bill to address the Sixth Circuit's holding in the National Cotton Council case and return the state of pesticide regulation to the status quo, before any courts ruled on the applicability of the CWA to pesticide applications regulated under FIFRA. The bill H.R. 872 eliminates the requirement of an NPDES permit for the application of pesticides authorized for sale, distribution, or use under FIFRA.

COMMITTEE CONSIDERATION

I. HEARINGS

The Subcommittee on Nutrition and Horticulture of the Committee on Agriculture and the Subcommittee on Water Resources and Environment of the Committee on Transportation and Infrastructure held a public joint hearing on February 16, 2011 to consider reducing the regulatory burdens posed by the case *National*

Cotton Council v. *EPA* (6th Cir. 2009) and to review related draft legislation.

Members of the Subcommittees heard testimony and considered draft legislation targeted at addressing the 6th Circuit Court ruling under which, pesticide users would have to obtain a duplicate permit under the Clean Water Act for the use of pesticides. Pesticides are used by farmers, ranchers, forest managers, mosquito control districts, and water districts. Pesticide applications are highly regulated under the Federal Insecticide, Fungicide, Rodenticide Act. The order of the court would require pesticide applications that are not covered by a National Pollutant Discharge Elimination System (NPDES) permit to be subject to a fine of up to $37,500 per day per violation. In addition to the costs of compliance, pesticide users will be subject to an increased risk of litigation under the citizen suit provision of the CWA. During the hearing, testimony was heard from six witnesses on two panels.

II. FULL COMMITTEE

The Committee on Agriculture met, pursuant to notice, with a quorum present, on March 9, 2011, to consider H.R. 872, the Reducing Regulatory Burdens Act of 2011. Mr. Lucas offered an opening statement, as did Ranking Member Peterson, Mrs. Schmidt, Mr. Baca, and Mr. Gibbs.

The bill, H.R. 872 was placed before the Committee for consideration and without objection a first reading of the bill was waived and it was opened for amendment at any point. The Chairman offered an Amendment in the Nature of a Substitute to the bill, H.R. 872 and counsel provided a brief explanation of that amendment.

There being no further amendments, the Peterson motion to approve the Amendment in the Nature of a Substitute to H.R. 872, was adopted by a voice vote.

By a voice vote, the Peterson motion to report the bill H.R. 872, as amended favorably to the House with the recommendation that it do pass was adopted.

Chairman Lucas then advised Members that pursuant to the rules of the House of Representatives that Members have 2 calendar days to file such views with the Committee. No Members came forth with intent to file additional views.

Without objection, staff was given permission to make any necessary clerical, technical or conforming changes to reflect the intent of the Committee.

Chairman Lucas thanked all the Members and adjourned the meeting subject to the call of the chair.

REPORTING THE BILL—ROLLCALL VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, H.R. 872 was reported by voice vote with a majority quorum present. There was no request for a recorded vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Agriculture's oversight findings and recommendations are reflected in the body of this report.

BUDGET ACT COMPLIANCE (SECTIONS 308, 402, AND 423)

The provisions of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a)(1) of the Congressional Budget Act of 1974 (relating to estimates of new budget authority, new spending authority, new credit authority, or increased or decreased revenues or tax expenditures) are not considered applicable. The estimate and comparison required to be prepared by the Director of the Congressional Budget Office under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and sections 402 and 423 of the Congressional Budget Act of 1974 submitted to the Committee prior to the filing of this report are as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 11, 2011.

Hon. FRANK D. LUCAS,
Chairman, Committee on Agriculture,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 872, the Reducing Regulatory Burdens Act of 2011.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susanne S. Mehlman.

Sincerely,

DOUGLAS W. ELMENDORF,
Director.

Enclosure.

H.R. 872—Reducing Regulatory Burdens Act of 2011

H.R. 872 would prohibit the Environmental Protection Agency (EPA) and states authorized to issue National Pollutant Discharge Elimination System (NPDES) permits from requiring a permit for some discharges of pesticides authorized for use under the Federal Insecticide, Fungicide, Rodenticide Act (FIFRA). Under the bill, public and private entities would no longer need to obtain an NPDES permit for discharges of pesticides from point sources except in cases where the application of the pesticide would not fall under FIFRA, or in cases where the discharge is regulated as a stormwater, municipal, or industrial discharge under the Clean Water Act. Under a recent court ruling, the requirement to obtain an NPDES permit will become effective on April 9, 2011; at that time, pesticide applications not covered by an NPDES permit will be subject to a fine.

Based on information from EPA, CBO estimates that enacting this legislation would have no significant impact on the federal budget. Any administrative savings to EPA that might result from issuing fewer permits would be negligible because EPA has delegated the authority to issue most NPDES permits to states.

Pay-as-you-go procedures do not apply to H.R. 872 because the bill would not affect direct spending or revenues.

H.R. 872 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Susanne S. Mehlman. This estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

PERFORMANCE GOALS AND OBJECTIVES

With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goals and objectives of this legislation are to amend the Federal Insecticide, Fungicide, and Rodenticide Act and the Federal Water Pollution Control Act to clarify Congressional intent regarding the regulation of the use of pesticides in or near navigable waters, and for other purposes.

CONSTITUTIONAL AUTHORITY STATEMENT

The Committee finds the Constitutional authority for this legislation in Article I, section 8, clause 18, that grants Congress the power to make all laws necessary and proper for carrying out the powers vested by Congress in the Constitution of the United States or in any department or officer thereof.

COMMITTEE COST ESTIMATE

Pursuant to clause 3(d)(2) of rule XIII of the Rules of the House of Representatives, the Committee report incorporates the cost estimate prepared by the Director of the Congressional Budget Office pursuant to sections 402 and 423 of the Congressional Budget Act of 1974.

ADVISORY COMMITTEE STATEMENT

No advisory committee within the meaning of section 5(b) of the Federal Advisory Committee Act was created by this legislation.

APPLICABILITY TO THE LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act (Public Law 104–1).

FEDERAL MANDATES STATEMENT

The Committee adopted as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act (Public Law 104–4).

EARMARK STATEMENT REQUIRED BY CLAUSE 9 OF RULE XXI OF THE RULES OF HOUSE OF REPRESENTATIVES

H.R. 872 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of rule XXI of the Rules of the House of Representatives.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill,

as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT

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SEC. 3. REGISTRATION OF PESTICIDES.

(a) * * *

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(f) MISCELLANEOUS.—

(1) * * *

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(5) USE OF AUTHORIZED PESTICIDES.—Except as provided in section 402(s) of the Federal Water Pollution Control Act, the Administrator or a State may not require a permit under such Act for a discharge from a point source into navigable waters of a pesticide authorized for sale, distribution, or use under this Act, or the residue of such a pesticide, resulting from the application of such pesticide.

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FEDERAL WATER POLLUTION CONTROL ACT

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TITLE IV—PERMITS AND LICENSES

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NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

SEC. 402. (a) * * *

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(s) DISCHARGES OF PESTICIDES.—

(1) NO PERMIT REQUIREMENT.—Except as provided in paragraph (2), a permit shall not be required by the Administrator or a State under this Act for a discharge from a point source into navigable waters of a pesticide registered under the Federal Insecticide, Fungicide, and Rodenticide Act, or the residue of such a pesticide, resulting from the application of such pesticide.

(2) EXCEPTIONS.—Paragraph (1) shall not apply to the following discharges containing a pesticide or pesticide residue:

(A) A discharge resulting from the application of a pesticide in violation of a provision of the Federal Insecticide, Fungicide, and Rodenticide Act that is relevant to protecting water quality, if—

(i) the discharge would not have occurred but for the violation; or

(ii) the amount of pesticide or pesticide residue contained in the discharge is greater than would have occurred without the violation.

(B) Stormwater discharges regulated under subsection (p).

(C) Municipal or industrial discharges regulated under this section, including—

(i) manufacturing or industrial effluent;

(ii) treatment works effluent; and

(iii) discharges incidental to the normal operation of a vessel, including a discharge resulting from ballasting operations or vessel biofouling prevention.

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