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Water Pollution

Legislation Banning NPDES Permits For Pesticide Spraying Passed by House

By Amena Saiyid

July 31 — Legislation prohibiting Clean Water Act Discharge permits for pesticide application near or directly on federally protected waters was finally passed July 31 by the House on a 267-161 vote. Three days earlier, the House Republican leadership was unsuccessful in obtaining a two-thirds vote to secure passage of this bill through suspension of normal rules, a procedure that generally is reserved for noncontroversial bills ([145 DEN A-18, 7/29/14](#)). Thirty-seven Democrats joined 230 Republicans in voting for the Reducing Regulatory Burdens Act of 2013 (H.R. 935), which would amend the Clean Water Act and the Federal Insecticide, Fungicide and Rodenticide Act to disallow the use of National Pollutant Discharge Elimination System permits for any applications near or directly on waters of pesticides already authorized for registration, sale or use. The bill will now head to the Senate, where it faces opposition from Sen. Barbara Boxer, chairwoman of the Senate Environment and Public Works Committee, and support from the Senate Agriculture, Nutrition and Forestry Committee.

Absent the enactment of this legislation, the NPDES permit on pesticide spraying will continue to apply to 365,000 pesticide users—including state agencies, cities, counties, mosquito control districts, pesticide applicators, farmers, ranchers, forest managers, scientists and everyday citizens, according to the House committee. H.R. 935, which had 61 co-sponsors on the day of its passage, was introduced in March 2013 by Rep. Bob Gibbs (R-Ohio), chairman of the House Transportation and Infrastructure Subcommittee on Water Resources and Environment. Gibbs, who also is a member of the House Agriculture Committee, has been pushing for legislation that would permanently ban the Environmental Protection Agency from requiring NPDES permits since an appellate ruling made pesticide applicators, including public health agencies, farmers and ranchers, subject to Clean Water Act permits, starting Oct. 31, 2011.

The U.S. Court of Appeals for the Sixth Circuit in January 2009 vacated an EPA regulation that exempted those parties from NPDES permitting requirements for pesticide applications in or near water (*Nat'l Cotton Council v. EPA*, 553 F.3d 927, 68 ERC 1129, 2009 BL 1441 (6th Cir. 2009); [05 DEN A-3, 1/9/09](#)). Gibbs said the bill clarifies congressional intent that pesticide use is governed by FIFRA, "and that duplicative regulatory hurdles under the Clean Water Act adds an unnecessary layer of red tape with no substantial benefits." Moreover, in a statement following the bill's passage, he said, "This bill reverses an ill-advised circuit court ruling that does nothing to enhance existing environmental protections, but makes it more expensive for state and local governments, farmers, ranchers, and others to continue complying with pesticide regulations."

An attorney with the Natural Resources Defense Council wrote a blog post the day the House unsuccessfully attempted to pass H.R. 935 as a noncontroversial bill by suspending the rules. Mae Wu, NRDC program attorney, wrote July 28 that the bill was a "waste of time" because the EPA isn't requiring permits for pesticide spraying on land or for irrigation runoff. "The EPA's pesticide office has even said that they have received ZERO complaints about the permit or enforcement of the permit. Nothing from the states. Nothing from the applicators. Nothing. The sky isn't falling," she wrote.

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For More Information

The text of "Reducing Regulatory Burdens Act of 2013 (H.R. 935)" is available at <https://beta.congress.gov/113/bills/hr935/BILLS-113hr935rh.pdf>.

The NRDC blog on H.R. 935 is available at http://switchboard.nrdc.org/blogs/mwu/secret_spraying_-_will_the_hou.html.