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GCSAA Supports Passage of the NPDES Pesticide Permit Fix

Protect Human Health, Limit Liability and Reduce Red Tape

GCSAA supports passage of **S. 340, the Sensible Environmental Protection Act of 2017,** sponsored by Senator Mike Crapo (R-ID), and **H.R. 953, the Reducing Regulatory Burdens Act of 2017**, sponsored by Congressman Bob Gibbs (R-OH-7), which would negate the need for federal Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) permits for chemical spraying activities made in accordance with the Federal, Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Pesticides are already highly regulated under FIFRA. Products used for aquatic plant management are already subjected to an intensive approval process by the EPA before they can be registered. FIFRA already requires that the EPA ensure that pesticides cause 'no unreasonable adverse effect' to humans or the environment – including water quality and aquatic species - and that use labels are crafted to protect these resources. The label is the law: *users who do not follow the pesticide label are in violation of federal law even without a water permit.*

Litigation forced EPA to permit many types of pesticide applications under the CWA despite the fact that pesticides are strictly regulated under FIFRA. Activist lawsuits against the EPA, as well as agricultural and non-farm users, have compelled Congress to seek to clarify that the CWA was not intended to permit pesticide applications.

Why is the CWA NPDES Pesticide General Permit a problem?

- States are using money and man-hours implementing and enforcing a permit *that regulators believe does nothing to further protect water quality*. Paraphrasing a state regulator's comments, 'the permit doesn't add any real protection… registration and labeling of the pesticides already does as much as the permit. Regulators and users are left with a paperwork exercise.'

- Paperwork violations can lead to significant fines (upwards of $26,000 per day).

- The CWA is specifically designed to encourage citizen suits against farmers or other users of pesticides for alleged violations of the permit. There is no limit on the liability for farmers, ranchers, golf courses, public utility rights of way, private homeowners and businesses. When activists think that an application should be permitted under the CWA, that user will get sued by the activists in order to expand the reach of the CWA…it's not a matter of if, just when the lawsuits begin.

- New monitoring and surveillance, planning, recordkeeping, and reporting requirements create significant delays, costs, and reporting burdens.

- Future expansion of the permit is of concern. User liability is further confounded by the permit trigger – **applying a pesticide "over, to or near a water of the US"** – since the new EPA Clean Water Rule expands the jurisdiction of what waters will now be considered federal (WOTUS). This regulatory expansion also increases the universe of applications potentially subject to permitting.

Passage of S. 340 and H.R. 953 would clarify in a bi-partisan manner Congressional intent that CWA permits are not required for lawful pesticide applications and shield pesticide users from activist lawsuits. GCSAA urges the Senate and House to re-establish the legal primacy of FIFRA over pesticide uses.