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Court Cancels EPA Clean Water Act Exemption for Pesticides

CINCINNATI, Ohio, January 7, 2009 (ENS) - Environmental groups today celebrated their victory as an appeals court vacated a U.S. Environmental Protection Agency rule that has allowed pesticides to be applied to U.S. waters without a Clean Water Act permit.

On November 27, 2007, the EPA issued the final rule, which states that pesticides applied in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act, or FIFRA, are exempt from the Clean Water Act's permitting requirements.

The Clean Water Act regulates the discharge of pollutants into the nation's waters by, among other things, requiring entities that emit pollutants to obtain a National Pollutant Discharge Elimination System, NPDES, permit.

For nearly 30 years before adoption of the rule, pesticide labels issued under the FIFRA were required to contain a notice stating that the pesticide could not be "discharged into lakes, streams, ponds, or public waters unless in accordance with an NPDES permit."

Two different groups of petitioners, one representing environmental interest groups and the other representing industry interest groups, for different reasons opposed the rule as exceeding the EPA's interpretive authority.

The EPA defends the rule by arguing that the terms of the Clean Water Act are ambiguous and that the rule is a reasonable construction of the Clean Water Act.

In their decision, a three-judge panel of the 6th Circuit Court of Appeals wrote, "We cannot agree. The Clean Water Act is not ambiguous. Therefore, we hold that the EPA's Final Rule

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is not a reasonable interpretation of the Act and vacate the Final Rule."



This farmer sprays his vegetables with pesticide from a boat. (Photo by the [Guo Project](#))

"The decision today is a victory for clean water, and for fish and wildlife," declared Charlie Tebbutt, Western Environmental Law Center attorney and lead counsel for the environmental organizations and organic farms that challenged the rule.

The organizations bringing the case include Baykeeper, National Center for Conservation Science and Policy, Oregon Wild, Saint John's Organic Farm, Californians for Alternatives to Toxics, California Sportfishing Protection Alliance, Waterkeeper Alliance, Environment Maine, Toxics Action Center, Peconic Baykeeper and Soundkeeper.

"This decision is another in a long line of rebukes to the Bush administration policies that overstepped their statutory authority and to the chemical manufacturers who peddle their poisons without concern to the effect on human health and the environment," said Tebbutt. "We look forward to working with the new EPA to protect the environment rather than the chemical industry."

The industry petitioners were the Agribusiness Association of Iowa, BASF Corporation, Bayer CropScience, CropLife America, Delta Council, Eldon C. Stutsman, Inc., FMC Corporation, Illinois Fertilizer & Chemical Association, The National Cotton Council of America, Responsible Industry for a Sound Environment, Southern Crop Production Association, and Syngenta Crop Protection, Inc.

With the intention of broadening the EPA exemption, they argued that the EPA rule is

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"arbitrary and capricious" because it treats pesticides applied in violation of the FIFRA as pollutants, while it treats the very same pesticides used in compliance with the FIFRA as non-pollutants.

The court denied their claim and ruled that pesticide residues and biological pesticides constitute pollutants under federal law and therefore must be regulated under the Clean Water Act in order to minimize the impact to human health and the environment.

"This decision will help ensure, in communities across the country, that aquatic pests are addressed in ways that protect both water quality and the public health," said Chuck Caldart of the National Environmental Law Center, one of the attorneys representing the plaintiffs.

"We're thrilled by the court's decision - particularly in providing clarity on the aerial applications of pesticides over navigable waters for mosquito control," said Peconic Baykeeper Kevin McAllister. "Ensuring that the required discharge permits have been obtained provides for greater protection of our water resources."

"Time and again during these past eight years EPA has walked into federal courts and tried to defend absolutely indefensible rules like the one vacated today," said Waterkeeper Alliance Legal Director Scott Edwards. "And time and again they've been sent back to the drawing board to rewrite these unlawful rules. Hopefully, EPA's days of pandering to industry and other polluters and wasting taxpayers dollars in illegal rulemaking are drawing to a welcome close."

"This is a significant victory for our nation's waters. More than eight million pounds of pesticides are applied each year in the Bay Area alone," said Sejal Choksi, program director for San Francisco Baykeeper. "These toxic chemicals enter our creeks harming numerous species of fish, frog and other aquatic life and will now be regulated under the Clean Water Act."

"Pesticides have been documented as the most pervasive group of toxic pollutants in our waterways. This decision is a significant step forward in protecting and restoring our seriously degraded fisheries," said Bill Jennings, chairman and executive director of

the California Sportfishing Protection Alliance.

Steve Pedery, Oregon Wild conservation director, said, "When it comes to toxic pesticides and their effects on our rivers and salmon, we need to be certain that good science is being used and those resources are protected. This ruling is a victory for clean water and fish, and a victory for Americans who care about healthy rivers and streams."

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