



## **Clean Water Act**

*January 2010*

Three regulatory efforts under the authority of the Clean Water Act (CWA) have intensified over the last year, prompting fear in the countryside of burdensome and duplicative regulation over basic agricultural operations. NAWG is working to ensure policy makers on Capitol Hill and in the Obama Administration understand how producers use crop protection products, and how important it is to producers that their operations minimize environmental impact.

### **Chesapeake Bay Program**

Both the House and Senate are in the process of considering bills that would reauthorize the Chesapeake Bay Program under the CWA and codify a May 2009 executive order directing the Environmental Protection Agency and other federal agencies to undertake broad and undefined new authorities in the region. Among other things, this would codify Total Maximum Daily Load (TMDL) requirements, to which NAWG is firmly opposed.

NAWG and other agricultural groups with growers in the region are very concerned that these bills could force some producers in the Bay area out of business and incentivize others to sell land to housing developers. And, as Rep. Bob Goodlatte of Virginia noted at a recent House Agriculture hearing, these new regulations may eventually spread to watersheds across the country.

*The Chesapeake Bay Program should be reauthorized without substantive changes to allow time to see the effects of 2008 Farm Bill initiatives in the region.*

The reality is that there is much to be studied before changes can be made to the Chesapeake Bay Program in a responsible way. The 2008 Farm Bill included significant resources to help farmers, ranchers and forest landowners improve the health of the Chesapeake Bay by reducing runoff and improving water quality, and the achievements due to these programs are still in their infancy.

NAWG urges all Members to support reauthorization of the Chesapeake Bay Program without substantive changes in order to devote adequate time and science to develop creative ways for economic recovery and growth to coexist with water quality goals and initiatives. NAWG also encourages Members to avoid major policy changes to the Bay Program until the effects of initiatives included in the 2008 Farm Bill are clear.

### **Clean Water Restoration Act**

A number of Supreme Court rulings in recent years have complicated the definition of the "navigable waters of the United States," over which the Environmental Protection Agency and the Corps of Engineers have authority under the Clean Water Act.

To clarify this – and remove the term "navigable," expanding regulatory jurisdiction potentially beyond the original intent of the CWA – Sen. Russ Feingold introduced the Clean Water

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*NAWG is opposed to removing the word “navigable” from the term “navigable waters of the United States” in Clean Water Act language.*

Restoration Act, S. 787. In June, the Senate Environment and Public Works Committee approved this bill after accepting an amendment from Sen. Max Baucus clarifying that the bill could not expand the jurisdiction of the Clean Water Act beyond the scope originally intended by Congress. Baucus’ amendment would also codify the exemption for prior converted cropland, which now exists only in federal rules; ensure that the existing permitting exemptions for agriculture in the CWA remain intact; and require that any rulemaking be completely consistent with the traditional scope of the statute.

In a June letter, NAWG expressed preference for the Baucus amendment over the original bill language, but NAWG remains opposed to removing the term “navigable” from Clean Water Act language, a position held by many mainstream agricultural organizations.

### **Sixth Circuit Case**

In January 2009, the Sixth Circuit Court of Appeals handed down the first U.S. court ruling that pesticide discharge is a point source of pollution subject to additional regulation and permitting under CWA, even if the product is used within existing label requirements. The impact of this decision, made in the case of *National Cotton Council of America v U.S. Environmental Protection Agency (EPA)*, could be vast, requiring producers to obtain National Pollutant Discharge Elimination System (NPDES) permits or some other type of permit for each and every pesticide application.

EPA estimates this ruling will affect approximately 365,000 pesticide applicators that perform 5.6 million pesticide applications annually. To tackle this administrative burden of massive proportions, EPA is working to develop a comprehensive permit that could be applied for on annual basis. But, even with a two-year stay of the decision issued by the Sixth Circuit in June, the administrative burden of reviewing and issuing all of those permits is vast, and EPA and state regulators have been open about the fact that they are not prepared to deal with it.

*Congress should act to avoid an immense regulatory burden on producers and administrative burden on EPA and local governments under the Sixth Circuit case.*

NAWG and other agricultural groups unsuccessfully petitioned the Sixth Circuit asking for a rehearing en banc of the decision. Now, the only appeal option is the U.S. Supreme Court – or legislative action that overturns the ruling.

NAWG encourages all Members to learn more about this issue and carefully consider what legislative vehicles could clarify that applications done under Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) guidelines should be exempt.

### **Learn More**

Much more about these urgent environmental issues facing wheat producers, including coalition letters to Members in both chambers, is available online at [www.wheatworld.org/environmentalissues](http://www.wheatworld.org/environmentalissues).

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