

TEXAS DEPARTMENT OF AGRICULTURE

TODD STAPLES
COMMISSIONER

March 27, 2009

The Honorable Lisa Jackson
Administrator
United States Environmental Protection Agency
Ariel Rios Federal Building
1200 Pennsylvania Avenue, N.W.
Room 3000
Washington, D.C. 20460

Dear Administrator Jackson:

I am writing to urge the United States Environmental Protection Agency (EPA) to request a rehearing on the recent decision by the 6th Circuit Court of Appeals to vacate EPA's final rule regarding aquatic pesticides declaring it an unreasonable interpretation of the Clean Water Act (CWA).

In the court's vacating of the rule, the panel held that if some pesticide enters water as a result of pesticide application, the application is a discharge of a pollutant. The panel extended its analysis to terrestrial applications and held that pesticide application is a discharge of a pollutant from a point source. Both findings are in direct conflict with the agriculture exemptions in the CWA. By extending the Court's decision to terrestrial applications, agricultural producers have been placed in legal jeopardy under the CWA's citizen-action provisions and will enter into future growing seasons with threats of legal action unless your agency takes appropriate legal action to appeal the decision.

A vibrant agriculture industry is vital to economic stability, the viability of rural communities and the sustainability of a safe and abundant food supply for the nation and world. The economic impact of agriculture in Texas exceeds \$100 billion, and it is a crucial part of the foundation of our economy. Texas producers have a longstanding reputation of being good stewards of the natural resources we are privileged to enjoy. The court's ruling will negatively impact many voluntary and regulatory efforts that have successfully provided agricultural producers the tools they need to sustain production while also ensuring the protection of water quality and public health. The success of these efforts is the reason no water resources in Texas have been impaired due to pesticide use.

If the court ruling stands, agricultural production in Texas will suffer tremendously at a time when the economic downturn and ongoing drought conditions already strain the



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viability of many producers. Public health will be at greater risk because of delays in permitting for pesticide applications that are needed to prevent or respond to infestations of mosquitoes that may carry or transmit diseases. Natural resources will be degraded due to additional regulatory burdens that hinder controlling invasive species that damage these valuable assets.

The current regulatory programs in Texas demonstrate that the use of pesticides in agriculture provides producers with the tools to combat weeds and pests without posing unreasonable risks to the environment. I am aware that EPA intends to propose a national permitting system for aquatic pesticides modeling permitting processes that exist in other states. I am opposed to any additional burden on pesticide applicators in our state. Further regulatory constraints will cause unnecessary delays and expense to both the state and to producers and will not add to the protection of the natural resources or public health.

Due to the potentially significant ramifications of this decision to the U.S. agriculture industry, I strongly urge you to file a petition for rehearing before an en banc panel of the 6th Circuit Court before the April 9 deadline. Thank you for your attention on this matter. Please do not hesitate to contact me if I can offer assistance in finding a resolution.

Sincerely yours,

A handwritten signature in black ink that reads "Todd Staples". The signature is written in a cursive style with a large, sweeping initial "T".

Todd Staples

TS/JB/lp