

House Fails to Gain Two-Thirds Majority Needed to Pass Pesticide Permit Exemption

BNA Snapshot

The Reducing Regulatory Burdens Act of 2013

Key Development: House fails to obtain two-thirds majority needed to approve legislation (H.R. 935) that would exempt pesticide spraying near water from Clean Water Act permitting requirements.

Impact: Permitting requirements have increased financial and administrative burdens without offering additional environmental protection, according to the bill's author, Rep. Bob Gibbs (R-Ohio).

By *Patrick Ambrosio*

July 28 — The House on July 28 failed to pass legislation ([H.R. 935](#)) that would exempt pesticide applications near navigable waters from Clean Water Act permitting requirements.

On a vote of 253-148, lawmakers rejected a motion to suspend the rules and approve the Reducing Regulatory Burdens Act of 2013, which would prohibit the Environmental Protection Agency and state environmental agencies from requiring National Pollutant Discharge Elimination System permits for the spraying of registered pesticides near or over waters. House leadership attempted to pass the bill under suspension of the rules, which requires a two-thirds majority vote.

Rep. Bob Gibbs (R-Ohio), speaking July 28 on the House floor in advance of the vote, said the legislation would “clarify” Congress' intent to regulate pesticide applications under the Federal Insecticide, Fungicide and Rodenticide Act and remove a “new and redundant layer” of regulation under the Clean Water Act. Gibbs, the chairman of the House Transportation and Infrastructure Subcommittee on Water Resources and Environment, introduced H.R. 935 in March 2013.

Pesticide applicators, including public health agencies, farmers and ranchers, have been subject to Clean Water Act permitting requirements since 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 that ruling overturned a “longstanding” EPA principle that pesticide applications made in accordance with FIFRA aren't considered pollutant discharges requiring an NPDES permit. The ruling “substantially increased” the number of entities that must acquire an NPDES permit, increasing “financial and administrative burdens” without offering any additional environmental protection, according to Gibbs.

He noted that the EPA provided technical assistance in drafting H.R. 935 to ensure that it fully addressed the Sixth Circuit ruling.

Democrats Critical of Proposal

Rep. Peter DeFazio, ranking member of the House Natural Resources Committee, was critical of House leadership for bringing H.R. 935 to the floor.

DeFazio, speaking on the House floor, described the bill as “pretend legislation that isn't going anywhere in the Senate” and criticized House Republican leadership for failing to vote on legislation that would provide emergency funding for wildfire fighting efforts. He noted that the House approved a bill that was identical to H.R. 935 in 2011 and incorporated the language into House versions of the farm bill, but have not yet been successful in getting the proposal through the Senate.

Companion legislation to H.R. 935, known as the Sensible Environmental Protection Act of 2013 (S. 802), was introduced in April 2013 by Sens. Kay Hagan (D-N.C.) and Mike Crapo (R-Idaho), but has not been acted on.

Rep. Elizabeth Esty (D-Conn.), also speaking on the House floor, said that while Congress was warned that the NPDES permitting requirement would cause agricultural, forestry and public health related pesticide spraying to “grind to a halt,” those effects haven't been seen since the permitting requirements went into effect in 2011.

“The sky has not fallen,” she said.

Esty said current regulations require applicators to comply with “sensible requirements” of FIFRA and the Clean Water Act. She noted that those two statutes have a different intended focus, with FIFRA focusing on the national registration of pesticides and the Clean Water Act focusing on maintaining local water quality.

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For More Information

Text of H.R. 935, the Reducing Regulatory Burdens Act of 2013, is available at <https://beta.congress.gov/113/bills/hr935/BILLS-113hr935rh.pdf>.