

# Threatened Waters

Congressional assault on our environmental laws

By Nichelle Harriott and Jay Feldman

Industry special interest groups have been hard at work on Capitol Hill these past few months lobbying lawmakers to negate a court order decree that provides protections for U.S. waterways from pesticide discharges. The court finding upholds a requirement for pesticide use permits under the *Clean Water Act* (CWA) when pesticides are used over or near waterways. These special interests groups and those they represent argue that any restrictions on using pesticides near waterways are burdensome to farmers and fall under the jurisdiction of the *Federal Insecticide, Fungicide and Rodenticide Act* (FIFRA), which establishes the pesticide registration system and resulting pesticide product label restrictions. Industry argues that farmers must not be made to fill out relevant paperwork that would document and monitor the types and amounts of pesticides they use on their farms. Environmental and sustainability advocates maintain that having such information, not collected under FIFRA, is important to evaluating local conditions and preventing adverse effects to waterways, aquatic organisms, and the health of surrounding communities. In fact, the permit is designed for only a narrow range of uses including mosquito spraying, aquatic weed and algal control, situations resulting in pesticide deposition into waterways, and is not applicable to terrestrial agricultural



spraying, which accounts for the vast majority of pesticide use.

So far, pro-pesticide industry groups like the American Farm Bureau Federation have successfully pushed the Republican-controlled U.S. House of Representatives to pass the *Reducing Regulatory Burdens Act* (HR 872), by a vote of 292-130, which effectively blocks the U.S. Environmental Protection Agency (EPA) from requiring permits for pesticide discharges in waterways under CWA. Following the passage of HR 872, industry turned its focus to U.S. Senate. More than 30 pesticide and agriculture lobbying groups descended on Capitol Hill in May 2011 to get pesticide safeguards revoked. In June 2011, under the leadership of Senator Stabenow (D-MI), HR 872 was reported out of the Senate Agriculture Committee with only two Senators opposing, Senators Leahy (D-VT) and Gillibrand (D-NY). Should the industry be successful in the full Senate, it may trigger a ‘race to the bottom’ by industry and states to dismantle other environmental laws. In July, the HR 872 language was attached to the appropriations bill for the Department of the Interior by the House of Representatives.

## Pesticides in Our Waters

Concentrations of pesticides and other toxic chemicals make their way into our waterways, and even into our drinking water supply year round as a result of agricultural use, mosquito spraying, aquatic weed management, residential use, and other uses.

- There are over 40,000 impaired waterways in the U.S. that are contaminated by a variety of agents including pathogens, pesticides, heavy metals, PCBs, dioxins, and other types of organic and inorganic pollutants.
- The most frequently detected herbicides that are used mainly in agriculture –atrazine, metolachlor, cyanazine, alachlor, and acetochlor– are generally detected most often and at the highest concentrations in water samples from streams in agricultural areas with their greatest use, particularly in the Corn Belt.
- Atrazine shows consistent patterns of increased levels in U.S. waterways, especially in the Northeast, South, and Midwest regions of the U.S.
- Streams located in the Corn Belt (Illinois, Indiana, Iowa, Nebraska, Ohio, and parts of adjoining States) and the Mississippi River Valley account for most pesticide concentrations that exceed aquatic benchmarks.
- Urban streams have concentrations that exceed one or more benchmarks at 83 percent of sampled sites –mostly by the insecticides diazinon, chlorpyrifos, and malathion.
- Banned chemicals, such as DDT and chlordane, can still be detected in waterways, due to their persistent and bioaccumulative nature.



In a further attempt to weaken CWA, the House of Representatives passed the *Clean Water Cooperative Federalism Act* (H.R. 2018) in July 2011, which transfers powers of enforcement and clean water standard setting from EPA to the states. President Obama has indicated that he opposes this bill and would likely veto it if passed by the Senate.

### Congress to Overturn Federal Court Rule

In January 2009, the Sixth Circuit Court of Appeals ruled in *National Cotton Council v. U.S. Environmental Protection Agency* that pesticide applications are required to be ‘permitted’ under the CWA’s National Pollutant Discharge Elimination System (NPDES). The provision is intended to supplement the less protective label requirements under FIFRA, which does not evaluate the unique characteristics, local conditions, and specific sensitivities associated with pesticide discharges into surface waters. CWA’s “zero discharge” standard requires a permit for any discharge, no matter how small.

After the court order, EPA drafted proposed rules in 2010 outlining

the applicability of the permits for pesticide usage. The permit rules were scheduled to go into effect in Spring 2011, however on March 28, 2011, the agency was granted its request for an extension, pushing the effective date to October 31, 2011. For its part, EPA, even though it is moving forward with the drafting of pesticide permit regulations, maintains that FIFRA not CWA should be utilized to safeguard waterways. The agency takes this position despite a history of criticism for its lax oversight and enforcement of FIFRA regulations.

### Permits Are a Small Price to Pay for Clean Water - A Valuable Resource

Pesticides and other chemicals are ubiquitous in U.S. waterways and drinking water. According to data by the U.S. Geological Survey (USGS), pesticide compounds, including many of the most heavily used herbicides and insecticides, and one or more pesticides or their degradates, are detected in water more than 90 percent of the time during the year in agricultural streams, urban streams, and mixed-land-use streams. Low concentrations of pesticides (0.1-15 parts per billion), like those that could result from

#### Number of Polluted Waterways by State

U.S. EPA. *National Summary of Impaired Waters and TMDL Information*. Office of Water, Washington DC.

| State | # of impaired streams | # impaired by pesticides | State | # of impaired streams | # impaired by pesticides |
|-------|-----------------------|--------------------------|-------|-----------------------|--------------------------|
| AL    | 200                   | 7                        | MT    | 665                   | 2                        |
| AK    | 32                    | -                        | NE    | 260                   | 24                       |
| AZ    | 84                    | 12                       | NV    | 181                   | -                        |
| AR    | 224                   | -                        | NH    | 1089                  | 4                        |
| CA    | 691                   | 164                      | NJ    | 745                   | 137                      |
| CO    | 198                   | -                        | NM    | 187                   | 2                        |
| CT    | 408                   | 2                        | NY    | 528                   | 55                       |
| DE    | 101                   | 8                        | NC    | 902                   | 1                        |
| DC    | 27                    | -                        | ND    | 214                   | na                       |
| FL    | 828                   | -                        | OH    | 267                   | 5                        |
| GA    | 215                   | 2                        | OK    | 243                   | 8                        |
| HI    | 311                   | 4                        | OR    | 1397                  | 19                       |
| ID    | 1057                  | 3                        | PA    | 6957                  | 66                       |
| IL    | 1058                  | 94                       | RI    | 141                   | na                       |
| IN    | 1836                  | 1                        | SC    | 1060                  | na                       |
| IA    | 434                   | -                        | SD    | 168                   | na                       |
| KS    | 1387                  | 175                      | TN    | 900                   | 13                       |
| KY    | 1089                  | -                        | TX    | 651                   | na                       |
| LA    | 250                   | -                        | UT    | 118                   | na                       |
| ME    | 206                   | 6                        | VT    | 131                   | na                       |
| MD    | 501                   | -                        | VA    | 2534                  | 17                       |
| MA    | 837                   | 24                       | WA    | 2419                  | 103                      |
| MI    | 2352                  | 53                       | WV    | 981                   | na                       |
| MN    | 1144                  | 5                        | WI    | 593                   | na                       |
| MS    | 197                   | -                        | WY    | 106                   | na                       |
| MO    | 204                   | 2                        |       |                       |                          |

small applications, impact aquatic communities and are routinely detected in streams. Water quality standards and guidelines have been established for only about half of the pesticides measured in the USGS' National Water-Quality Assessment Program (NAWQA) water samples. Currently, EPA has set water quality criteria for the protection of aquatic life and human health in surface water for approximately 150 pollutants, of which a limited number (less than 20) are pesticides, out of thousands on chemicals currently used in the U.S. Further, as NAWQA states, current standards and guidelines do not completely eliminate risks posed by pesticides in waterways because: (i) values are not established for many pesticides; (ii) mixtures and breakdown products are not considered; (iii) the effects of seasonal exposure to high concentrations have not been evaluated; and, (iv) some types of potential effects, such as endocrine disruption and unique responses of sensitive individuals, have not yet been assessed.

Studies link increased seasonal concentration of pesticides in surface water with birth defects in infants conceived during the spring and summer months, when pesticide use increases and high concentrations of pesticides are found in surface waters. Low birth weights, breast cancer, and low sperm counts have all been linked to pesticide-contaminated water. Prenatal exposure to the herbicide atrazine is linked to small head circumference and fetal growth restriction. Atrazine has been found to act as an endocrine disruptor that can cause complete sex reversal in male frogs below levels allowed in the environment by EPA.

### **We Must Take Action Now!**

Without a hearing, the Senate Agriculture Committee voted on June 21, 2011 to strip states and EPA of their fundamental responsibility to protect our nation's waters from toxic pesticides. HR 872 amends the *Clean Water Act* (CWA) and federal pesticide law to prohibit authorities from requiring a permit for the discharge of pesticides in waterways. Having already passed in the House of Representatives, the fate of our nation's waters rests in the hands of the Senate.



*Tell your Senators what you think of HR 872, the pesticide industry's latest move in their assault on environmental laws. Call your Senators (look up your Senators' phone numbers at <http://www.senate.gov>) and use Beyond Pesticides' online action form to automatically send emails. For more information and to take action, visit <http://bit.ly/CWA-Pesticides>.*

### **Sample letter**

Please consider modifying this sample text for greater impact.

*It is with grave concern that I am writing to your office. As HR 872 is being considered, we urge you to take a second look at this piece of legislation. This legislation will limit badly needed protection of our nation's waterways from pesticide contamination that I rely on to keep my family and my community safe from*

*pesticide pollution.*

*Contrary to representations made by proponents of HR 872, the NPDES general permit will have no significant effect on agricultural practices. Regulating pesticide discharges to water under the NPDES permitting scheme is surely necessary. Despite current regulation by Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), pesticides are and will continue to impair our waterways in significant quantities, and have caused real harm to public health and ecosystems.*

*For decades, our nation's waterways have been polluted with hazardous pesticides and their degradates, which impact aquatic populations of animals and plants, and decrease drinking water quality. Many of these pesticides accumulate in fish and other organisms, making their way up the food chain to eventually be consumed by my family and the American public at large.*

*It is important for me, my family and the American public to have confidence in its laws and stewards of the law. In this political climate, it is also important that Americans believe that their best interests are being served by Congress and not being eroded by industry interests. I hope, following good counsel, that you oppose HR 872.*