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October 27, 2003

Mr. G. Tracy Mehan
Assistant Administrator for Water
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Mr. Mehan:

The National Association of State Departments of Agriculture (NASDA) is providing the following comments supporting the Environmental Protection Agency's (EPA) recent "*Interim Statement and Guidance on Application of Pesticides to Waters of the United States in Compliance with FIFRA*" (Interim Guidance). We encourage the agency to take additional steps to formalize this importance policy in a formal rulemaking.

NASDA formally submitted comments to Water Docket ID No. OW-2003-0063 on October 14, 2003 as a member of the Implementation Working Group (IWG). In addition, we support the comments submitted by our affiliate organization, the Association of American Pesticide Control Officials (AAPCO) and the State FIFRA Issues Research and Evaluation Group (SFIREG). We greatly appreciate EPA's cooperative efforts to resolve the issues related to CleanWater Act (CWA) permits and pesticides with state lead agencies and agricultural stakeholders.

We believe the Interim Statement and Guidance is a reasonable interpretation and application of federal regulatory authority under the Clean Water Act (CWA). Specifically, NASDA strongly agrees that a National Pollutant Discharge Elimination System (NPDES) permit is not required in situations where pesticides are applied to or near waters of the United States when such applications are consistent with a Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) label.

Our members are especially concerned about the continued availability of safe and effective agricultural products that are critical to producers and the farm economy. EPA's Interim Statement and Guidance harmonizes and integrates the FIFRA and CWA statutory authorities and, most importantly, clarifies the circumstances of when a NPDES permit is required for aquatic and aerial pesticide applications. Imposing NPDES permit requirements for all aquatic applications would jeopardize programs designed to control mosquitos, control forest insect outbreaks, prevent irrigation canal blockages, and other pest control programs which provide significant public benefits.

NASDA encourages EPA to issue a formal rulemaking that adopts the positions outlined in the Interim Statement and Guidance so that in future legal challenges the courts will be required to give deference to the agency position. We believe a rulemaking will bring further clarity and efficiency to the overlapping programs under FIFRA and the CWA, as well as ensure that pesticide use does not cause unreasonable adverse effects to human health and the environment. As partners in the regulation of pesticides, the state departments of agriculture stand ready to continue to work with the agency on this important matter.

Sincerely yours,

Don Ament
Chair, Natural Resources and Pesticide Management Committee
Commissioner, Colorado Department of Agriculture



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NASDA is a nonprofit association of public officials comprised of the Commissioners, Secretaries, and Directors of agriculture in the fifty states and four territories