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1200 Pennsylvania Avenue, NW  
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*Submitted via regulations.gov*

**RE: Draft National Pollutant Discharge Elimination System (NPDES) Pesticide General Permit (PGP) for Point Source Discharges from the Application of Pesticides; Reissuance; Docket ID # EPA-HQ-OW-2023-0268**

The Agricultural Retailers Association (ARA) appreciates the opportunity to comment on the U.S. Environmental Protection Agency's (EPA) draft National Pollutant Discharge Elimination System (NPDES) Pesticide General Permit (PGP) for Point Source Discharges from the Application of Pesticides (Docket ID # EPA-HQ-OW-2023-0268).

ARA is a not-for-profit trade association that represents America's agricultural retailers and distributors. ARA members provide goods and services to farmers and ranchers which include fertilizer, crop protection chemicals, seed, crop scouting, soil testing, custom application of pesticides and fertilizers, and development of comprehensive nutrient management plans. Retail and distribution facilities are scattered throughout all 50 states and range in size from small family-held businesses or farmer cooperatives to large companies with multiple outlets.

ARA does not believe NPDES PGPs should be legally required for the application of pesticides if they were made in accordance with the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) approved label. PGPS are redundant and unnecessary. Any additional Endangered Species Act (ESA) risk assessments will not add any additional protections as the pesticide applicator operating under the PGP is already required to comply with the approved EPA FIFRA label that was developed following an ESA risk assessment for the pesticide as part of the registration or re-registration review process. All pesticide uses on the label being applied by applicators are already approved by EPA Office of Pesticide Programs (OPP) as well as the state lead pesticide agencies before being eligible for application under the NPDES PGP program.

ARA agrees with the following statement made by Secretary of Agriculture Tom Vilsack in a letter to EPA on March 6, 2009 – "Subjecting FIFRA-compliance pesticides to additional regulatory regimes under the CWA (Clean Water Act) is duplicative and will not help protect the environment. FIFRA mandates that EPA approve and issue a registration for a pesticide product only after the EPA has determined that the product will not cause "unreasonable adverse effects on the environment." The pesticide registration and

re-registration process under FIFRA considers the effects on pesticides on both human health and aquatic resources. If the EPA has concluded that a pesticide satisfies FIFRA and will not have an “unreasonable adverse effect on the environment,” then it is reasonable to exclude the application of that pesticide from the permitting requirements of the CWA.”

ARA recommends EPA work with Congress to properly clarify that NPDES PGPs are not required for pesticide applications, which was the law of the land before the 2009 6<sup>th</sup> Circuit court decision (*National Cotton Council vs. EPA*). Pesticides are safely and effectively regulated by EPA’s Office of Pesticide Programs (OPP) and state pesticide control officials and are the most stringently regulated substance in the United States. The agency should focus on conducting proper ESA risk assessments during the pesticide registration and registration review process that uses peer-reviewed data and science to make decisions on the safe and approved sale, storage, handling, transportation, and use of pesticides.

ARA is concerned with any site monitoring and recordkeeping requirements that may be imposed as it will overburden agribusinesses and applicators with administrative tasks. In addition, it is unclear the length of time to maintain any of these potential additional records. Commercial pesticide applicators already are required to maintain records under FIFRA and the current system should be considered sufficient by the agency.

ARA urges EPA eliminate any joint and several liability provisions from the proposed NPDES PGP. The Clean Water Act (CWA) DOES NOT include a statutory provision for attaching joint and several liability to alleged CWA violations. When Congress intended for such provisions to be included, they expressly did so as can be clearly seen in other environmental statutes such as CERCLA. Therefore, EPA must eliminate joint and several liability provisions. ARA also recommends EPA provide further clarification that the NPDES PGP does not apply to agricultural stormwater discharges and runoff. ARA agrees with the comments submitted by the Pesticide Policy Coalition (PPC), which ARA is an active member.

ARA remains concerned with the lack of clarity on the definition of “waters of the United States” (WOTUS) under the CWA. This issue continues to be litigated in the federal courts with changes and lack of clarity of the WOTUS definition. An overly broad WOTUS definition may lead to potential restrictions of pesticide applications into, over, or near any ditch, wetland, or other bodies of waters on agricultural lands. EPA should provide additional notice and comment opportunities if the CWA jurisdictional definitions are further revised by the courts and / or agency. EPA should delay any changes to the NPDES PGP until this major issue is fully resolved.

Thank you for your review and consideration of our comments.

Sincerely,



Richard D. Gupton  
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