

Dear Governor:

I write to ask your assistance in a matter of critical importance to the public health of the citizens of _____.

Issue. A recent decision by the 6th Circuit Court of Appeals will result in public health pesticide applicators and state water regulatory agencies incurring significant additional financial and management obligations to remain in compliance with this new interpretation of the Clean Water Act. For all intents and purposes this constitutes an unfunded federal mandate upon state and local resources.

Background. In January of 2009, the Sixth Circuit Court of Appeals set aside an EPA rule formalizing a policy that had stood for more than 30 years (see NATIONAL COTTON COUNCIL OF AMERICA et al. v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, Case No. Nos. 06-4630 et al.). This policy recognized that the application of pesticides to waters of the United States for public health purposes did not constitute discharge of a pollutant waste requiring a National Pollutant Discharge Elimination System (NPDES) permit, as long as those products were applied in accordance with their labels issued by the Office of Pesticide Programs at EPA. These public health pesticides were specifically registered by EPA for use in, over or near aquatic habitats and were thus not considered pollutants requiring a permit per original congressional intent.

Discussion. EPA has publicly acknowledged that the Sixth Court's decision will significantly increase costs for nearly 300,000 applicators and businesses nationwide, which currently legally apply registered pesticides to, over or near waters of the United States.

Since the majority of the responsibility under the Clean Water Act is delegated to the states, the states will have to identify substantial additional financial and management support to implement the permit program as required by the decision. In _____, the responsible authority is _____.. Furthermore, NPDES permits will not provide any foreseeable increase in environmental protection to justify the increased costs.

Mosquito and vector control agencies in _____ will either be unable to effectively control mosquitoes while complying with the logistics of proposed permit conditions, and/or the costs of implementation will be enormous. In many instances, this cost could exceed the budgets of state and local public health agencies established by state law to protect the health and welfare of citizens from West Nile Virus and other problems caused by mosquitoes. In addition, uncontrolled mosquito populations will likely profoundly affect tourism. On a more ominous note, the resources required for compliance with this decision will not be available for rapid response to disease outbreaks, making timely action increasingly problematic.

The Sixth Circuit Court of Appeals decision is being appealed to the US Supreme Court by the affected end-users and is strongly supported by the mosquito control community. At best, permits will allow agencies to apply public health pesticides as before, but incurring enormous costs during a time of critical budget shortfalls – all without tangible benefit to the citizenry or

environment of the state of _____. Additionally, _____ strongly believes that there are legitimate legal grounds for overturning the Sixth Circuit's Decision.

Action requested. Because of the potential public health and financial impacts of this decision on the states, the _____ respectfully requests that the Governor's Office do the following:

- 1. File an amicus brief with the U.S Supreme Court, urging the Court to grant the appeal petition and highlighting the potential major impacts of the Sixth Circuit's decision on the state of _____ public health programs.**
- 2. Contact the White House and Attorney General and request that they lend their support for a Supreme Court review of this decision.**

A matter of this importance to the public health of the citizens of _____ and the nation should have the opportunity of being heard by the highest court in the land.

Thank you for the opportunity to express our concerns and bring your attention to this critical matter. We eagerly await your reply.