

Cardin Vows To Block Farm Bill Push To Kill EPA Pesticide Spray

Sen. Ben Cardin (D-MD), chairman of the Senate environment committee's clean water panel, says that he and environment committee Chairman Barbara Boxer (D-CA) would raise jurisdictional challenges to the Farm Bill if the agriculture panel kills EPA's pesticide spray permit in the version of the bill it is slated to begin marking up April 25.

"Our committee has jurisdiction over it, so it's the wrong committee" to be taking action on the issue, Cardin told Inside EPA April 24. "Our view on that is, it's yesterday's news. We're moving forward," he said.

His comments come as pesticide manufacturers are said to be pushing to get the Senate agriculture committee to include language in the Farm Bill to block EPA's Clean Water Act (CWA) discharge permit for pesticide applications -- the latest industry push on the issue -- though EPA officials say the permit application process is going smoothly and has not resulted in burdens for industry.

In addition to Cardin's opposition, environmentalists are said to have rejected a proposed offer from agriculture committee leaders to agree to the pesticide permit language in exchange for the conservation funding provisions activists are seeking to include in the Farm Bill, according to a source tracking the issue.

EPA issued the final general permit last year in response to a 2009 decision from the 6th Circuit in *National Cotton Council, et al. v. EPA*, but significantly narrowed its scope and eased its requirements for applicators after industry raised strenuous objections to the draft measures in the permit. Although the final permit was issued Oct. 31, 2011, the agency did not begin enforcing the permit requirements until last month to allow a "phase-in" period.

But industry groups have long raised concerns that the underlying ruling sets a dangerous precedent regulating pesticides under laws other than the pesticide law. They have been pushing H.R. 872 -- a House-passed bill that would clarify that pesticides are subject to regulation under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), not the water law.

While the Senate agriculture committee has approved the bill, it is strongly opposed by Boxer and Cardin. During an earlier industry push to pass the legislation as part of the fiscal year 2012 appropriations cycle, Boxer, Cardin and other Senate leaders offered a compromise to delay the permit for two years while EPA studied the issue.

But Senate Republican rejected the proposal, saying such a moratorium only provides a temporary fix, not the permanent CWA exemption for pesticides they are seeking.

New Industry Push

Now industry groups are said to be launching a new push to attach the language to the 2012 Farm Bill, which is generally expected consolidate a host of agriculture programs and cut spending by eliminating duplicative programs, fund incentives for advancing bio-based engineering, expand export opportunities for farmers and a slew of other policies.

Environmentalists April 23 issued a statement raising concerns that pesticide manufacturers and other industry interest groups are urging agriculture committee leaders to include language in a managers' amendment that would eliminate the need for EPA's controversial permit.

The Center for Biological Diversity (CBD), in an effort to thwart industry attempts to keep plans for the legislation under the radar, says in its statement that pesticide lobbyists are planning a push to slip H.R. 872 into the Senate farm bill. "Attaching this poison pill to the unrelated Farm Bill will create controversy and bog down the farm bill."

Environmentalist says that the bill appears to be "in play" and that the congressional sources have indicated that the farm bill may be ripe for policy rider. "If something bad is going to happen in the Senate . . . the next month is the big window for deals to be made," the source says.

One such potential deal is already said to be on the table: the offer would include -- without opposition -- a host of conservation measures into the Farm Bill in exchange for an agreement to accept H.R. 872. However, the group declined the offer, the source tracking the issue says.

The source says the proposed deal shows that industry and GOP plans to pass H.R. 872 could still have "potential legs" even though environmentalists have rejected the offer.

Environmentalists are also concerned that if industry's push on the pesticide permit issue is successful, it could set a dangerous precedent for congressional agriculture panels adopting other measures seeking to preempt EPA policies under the CWA, rather than the committees of jurisdiction, one source says. An environmentalist says that activists are increasingly worried about the Senate agriculture panel taking up such legislation, such as S. 2245, a bill introduced by Sen. John Barrasso (R-WY) and other GOP senators to block the agency's pending CWA jurisdiction guidance.

They are also concerned that the Farm Bill could be a potential vehicle for H.R. 1837, California water reallocation legislation that preempts state environmental quality reviews. The bill, which passed the House, is being championed by Rep. Devin Nunes (R-CA), but Sens. Dianne Feinstein (D-CA) and Barbara Boxer (D-CA) have vowed to block in the Senate. "Any moving bill is going to be a magnet for" pushing industry-friendly measures through the Senate, an environmentalist says.

EPA Implementation

Meanwhile, EPA officials say implementation of the permit is proceeding smoothly without significant burdens for regulated entities. Jack Faulk, of EPA's water office, told a meeting of state pesticide officials April 23 in Arlington, VA, that while press reports had raised concerns that the agency would quickly move to take enforcement actions once the 120-day phase-in period was over, that was never EPA's intention.

In creating the phase-in period, "we just said that we expect people to have a period of time to figure out what they had to do" to comply with the new permit, Faulk said. "Once March came and went I think people realized that EPA isn't out en masse" pushing for enforcement, and their concerns were eased.

But despite Faulk's remarks on the application process, industry is turning up pressure on Senate Republican leadership on the agriculture panel, given that if H.R. 872 is not included in the Farm Bill, supporters of the bill may not get another chance until the lame duck session. "If the Senate is going to move anything, this is the window where its going to happen," the environmentalist says.

The environmentalist echoes Faulk's comments, however, saying that the permit process is not a burdensome or resource-draining one, and that "it's a joke to consider it onerous."