John Salazar

Colorado Commissioner of Agriculture

Governor John Hickenlooper appointed John Salazar as Commissioner of Agriculture in 2011.

A sixth-generation farmer and rancher, Salazar served three terms representing Colorado's 3rd Congressional District and was a member of the House Agriculture Committee. Before his time in Congress, Salazar served in the Colorado General Assembly for two years.

"A thriving agriculture sector is critical to Colorado's economic recovery," Hickenlooper said. "Farmers and ranchers are also leading the way as business innovators. Their prosperity helps build a foundation for all of Colorado. And no one has been a more passionate champion for agriculture and rural communities than John Salazar. We are fortunate to have his leadership at the helm of the Department of Agriculture."

Salazar's advocacy in Congress earned him recognition for outstanding service by the American Farm Bureau and the Golden Triangle Award from the National Farmers Union. He played a key role in passing the historic farm bill of 2008 and authored the rural broadband and specialty crop provisions. With a seat on the powerful House Appropriations Committee in his third term, Salazar worked on national energy issues, jobs creation and the economy.

Salazar was raised on a San Luis Valley farm, where he and his five siblings shared a bedroom and had no electricity or running water. His experience influenced his public career. He served on the Rio Grande Water Conservation District, the Colorado Agricultural Leadership Forum and the Colorado Agricultural Commission before being elected as a state Representative in 2002.

He was one of only a handful of active farmers in Congress after he was first elected in 2004. A veteran, Salazar served on the House Veterans Affairs Committee, and was a proud member of the fiscally conservative Democratic Blue Dog congressional coalition.

Salazar earned a bachelor's degree in business administration from Adams State College after serving three years in the U.S. Army.

Joint Hearing to Consider Reducing the Regulatory Burden Posed by the Case
National Cotton Council v. EPA
Committee on Agriculture Subcommittee on Nutrition and Horticulture
Committee on Transportation and Infrastructure Subcommittee on Water Resources and Environment

February 16, 2011

Statement of the Honorable John Salazar
Commissioner, Colorado Department of Agriculture
On behalf of the National Association of State Departments of Agriculture

Chairwoman Schmidt, Chairman Gibbs, Ranking Member Baca and Ranking Member Bishop, thank you for holding this important joint hearing today to examine the ramifications of the 6th Circuit's decision in *National Cotton Council v. EPA*.

It is good to be back with all of you. During my time in Congress I served on both the Agriculture and Transportation and Infrastructure Committees and was recently appointed by Governor John Hickenlooper to lead the Colorado Department of Agriculture. I look forward to discussing this very important issue with you today. A little over a year ago I joined many of you and a bipartisan group of other lawmakers asking the U.S. Supreme Court to intervene in this decision. Because the Court declined to act, we are now in a situation where the only remedy is for Congress to intervene.

I am testifying today on behalf of the National Association of State Departments of Agriculture as well as the Colorado Department of Agriculture. NASDA represents the commissioners, secretaries, and directors of the state departments of agriculture in all fifty states and four territories. State departments of agriculture are responsible for a wide range of programs including food safety, combating the introduction and spread of plant and animal diseases, and fostering the economic vitality of our rural communities. Environmental protection and conservation are also among our chief responsibilities.

Forty-three of NASDA's members are co-regulators with EPA under the state primacy provisions of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). Our agencies are the lead state agencies responsible for administering, implementing and enforcing the laws regulating pesticide labeling, distribution, and use in our states.

In addition to our pesticide regulatory responsibilities, state departments of agriculture are significant users of pesticides as administrators of state mosquito control programs, other wide-area pest suppression activities, and invasive-species control programs. Most of these activities will require NPDES permitting in the wake of the 6th Circuit's ruling.

This ruling, if not remedied by Congress, will require pesticide applicators to be permitted under the Clean Water Act's National Pollutant Discharge Elimination System (NPDES) for pesticide applications made in, over, or near waters of the U.S.

It is important to understand that FIFRA established a comprehensive and effective regulatory web to provide pesticide-related environmental and public health protection through requirements for pesticide registration, labeling, and use that are the end result of an extensive pre-market approval process. This registration process requires products to meet strict safety guidelines and includes rigorous examination of environmental fate data and health exposure assessments.

Shortly after passing the Clean Water Act, Congress also passed major amendments to FIFRA in 1972. It is clear from FIFRA's legislative record that Congress intended FIFRA to be the controlling statute to regulate the registration, sales and use of pesticide products. Moreover, it is clear from the House Committee Report on these FIFRA amendments that Congress contemplated the impacts of pesticides on interstate and navigable waters and intended these issues to be addressed by FIFRA, not the Clean Water Act.

However, the 6th Circuit's ruling has forced us into a situation that contradicts the original intent of Congress. It will require EPA and the states to expend significant resources to issue permits under the Clean Water Act for activities that are already regulated by FIFRA and state pesticide laws.

It is no secret that states across the country face dire budget situations and many have had to close state parks, cancel transportation projects and cut funding to higher education. It is very difficult to justify diverting even more resources to manage paperwork for a permit that is duplicative of other regulatory programs and has no appreciable environmental benefits.

For example, in the State of Colorado, the Department of Public Health and Environment (CDPHE), the regulatory authority for NPDES, estimates a 25 percent increase in permit applications because of these new requirements and as many as seven FTEs to cover the additional workload. EPA has estimated that the reporting and record keeping associated with these requirements alone will cost state permitting authorities approximately $1.7 million a year. However, if Colorado's estimates are reflective of the situation in other states, the true costs to states will quickly outstrip EPA's estimates.

While the brunt of the costs to states will be borne by our counterparts in state water and environmental agencies, state departments of agriculture will also be forced to divert resources away from legitimate regulatory activities, such as worker protection and enforcement programs, many of which have important and quantifiable environmental benefits. State departments of agriculture will have to devote significant resources to coordinating with other state agencies on permit design and implementation activities. Also, our departments are expending significant resources conducting outreach to pesticide applicators licensed by our departments and will, in a number of states, play a role in enforcing certain provisions of state permits.

States and state departments of agriculture will also face enormous costs as permittees in the wake of the 6th Circuit's ruling.

Many state departments of agriculture and other state agencies are responsible for extensive mosquito control activities and programs to combat invasive and economically devastating pests such as the gypsy

moth and mountain pine beetles. A very real concern is whether states will continue to have the flexibility and resources to manage these pests appropriately.

The likelihood of receiving increased funding to deal with these new requirements is virtually zero. We will, therefore, be forced to spend our scarce resources on filling out paperwork for a duplicative permit instead of treating invasive species, controlling for mosquitos, or keeping our waterways free of vegetation that restricts the flow of water. Diverting resources from these important activities is irresponsible and will have very real public health and economic impacts across the country.

The public health consequences of this cannot be emphasized enough. West Nile Virus, Dengue Fever, and Encephalitis are all very real public health concerns, the mitigation of which depends on the use of pesticides to control mosquito populations. Since 2003 Colorado has experienced ninety-one deaths associated with West Nile Virus (WNV). In 2003, Colorado led the nation with sixty-three deaths from WNV. However, in 2004 wide spread mosquito programs were initiated statewide that have kept annual deaths under seven fatalities per year since. These vital public health activities will be threatened if Congress does not act.

Moreover, the vital programs states administer to control invasive species could suffer significantly because of these permit requirements. For example, treatments that are needed in order to prevent pest infestations in trees and our forests could be unable to be made because of resource constraints or permitting delays. The resulting defoliation could actually increase the temperature of streams that depend upon these trees to maintain appropriate water temperature and conditions. Ironically, these Clean Water Act permits could lead to the impairment of our nation's waterways.

Counties, municipalities, public utilities, water districts, mosquito control districts, commercial applicators, farmers, ranchers, and forest managers will also be significantly impacted by costs associated with managing and documenting the permit requirements.

The State of Colorado estimates that a either half or full time employee will be required for businesses and other permittees to manage all of these elements to ensure the entity remains in compliance with the NPDES permit requirements. Colorado projects that if this employee were paid at our state's minimum wage, it would cost a business on average over $15,000 annually for one full time employee to manage the elements of the permit. It is important to point out that this is figured at the minimum wage and may not reflect the actual average wage for each employee. In addition, it does not account for materials and supplies needed, additional insurance or workman's compensation expenses the entity must absorb.

At a minimum, the combined estimated annual costs for Colorado municipalities and the commercial industry for NPDES implementation is over $21 million. In reality, it is likely this cost will be significantly higher. Because this is new and there are so many uncertainties about jurisdiction, we don't know how much this will cost fully. It is important to emphasize that EPA has estimated that nationwide it will cost permittees $50 million annually to comply with just the information collection requirements of this permit. Again, if the State of Colorado's estimate is reflective of the costs in other states, permittees will most assuredly face costs several orders of magnitude greater than this EPA estimate. Additionally,

many states have been required by state statute to include "Waters of the State" as additional waterways covered by the permit. This, in many cases, dramatically expands the number of applications and pesticide users covered and will significantly increase the costs associated with the 6th Circuit's ruling.

Because of this ruling, a huge number of applicators will have to comply with NPDES permitting requirements to which they have never before been subjected. It is not unreasonable to expect that a number of these permittees could find themselves in situations where even minor paperwork violations that have no actual impact on environmental protection will lead to significant penalties under the Clean Water Act. Currently those penalties are $37,500 per day per violation. While some of the original targets of NPDES permit requirements may be able to bear the burden of these penalties and other costs associated with NPDES permits, the small businesses and public health entities that represent the majority of those required to obtain permits under this decision will face significant financial difficulties.

Additionally, and perhaps most significantly for the many small businesses and other users of pesticides, is the threat of lawsuits under the Clean Water Act's citizen action provisions. There is still significant confusion and uncertainty about what pesticide applications fall under the 6th Circuit's mandate and could, therefore be left vulnerable to lawsuits. If Congress does not act, I fear agricultural producers and other pesticide users will be forced to defend themselves against litigation. I might also add that this uncertainty would likely increase the costs to state regulators because agricultural producers may decide to err on the side of caution and apply for coverage under this permit, even though they would neither need permit coverage, nor be eligible for coverage. States would be left in a situation where we would have to expend resources dealing with these kinds of issues.

Finally, we must be mindful of the unintended consequences of these permitting requirements. Depending on the increase in the cost of an application service or the difficulty to comply with all elements of the permit, there may be those who choose to not make pesticide applications at all. Failure to make necessary applications may result in a domino effect that could result in additional negative impacts. For example, this could lead to a situation where noxious weeds spread into new areas. Or, in Colorado the failure to control noxious weeds in water ways may result in decreased water flow to agricultural production and downstream states that depend on water from Colorado.

Congress must act to clarify that pesticides applied in accordance with FIFRA are not subject to NPDES permitting requirements under the CWA.