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Water Docket

U.S. Environmental Protection Agency  
Mail Code: 2822T  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

**Attention: EPA Water Docket ID No. EPA-HQ-OW-2010-0257**

The U.S. Canola Association (USCA) appreciates the opportunity to comment on EPA's National Pollutant Discharge Elimination System's (NPDES') proposed general permit for point source discharges due to the application of pesticides. As a non-profit commodity organization, the USCA promotes and encourages the establishment and maintenance of conditions favorable to the production, marketing, processing and use of canola in the United States.

The USCA supports the current NPDES general permit's exclusion of pesticides that may directly or indirectly come in contact with wetlands, ditches or other waters of the U.S. as a result of farm applications. However, the proposed general permit questions whether "additional activities" should be included in the final permit and the EPA expects that "there would not be a need to re-propose the general permit to cover such additional activities in the final permit." The USCA strongly opposes an expansion of activities covered under the permit without the opportunity to submit comments on another draft of the permit.

Further, the USCA strongly opposes the inclusion of farm applications in the NPDES general permit as it would circumvent the authority of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and intent of Congress in passing it. Pesticide use labels required by FIFRA contain language that sufficiently addresses the issues set forth in the current NPDES general permit:

*"For terrestrial uses, do not apply directly to water, or to areas where surface water is present or to inter-tidal areas below the mean high water mark. Do not apply when weather conditions favor drift from target areas. Do not contaminate water when cleaning equipment or disposing of equipment wash-waters."*

Requiring individual producers to apply for an NPDES general permit for farm applications would not only conflict with FIFRA, but would also be impractical and virtually impossible for state regulatory agencies to enforce. In fact, subjecting these agencies to the added burden of enforcing pesticide laws could hinder their ability to enforce regulations that are more crucial to the protection of the environment and public.

The USCA is also concerned that vague language in the current draft of the NPDES general permit could pose a legal risk for producers. While individuals are not eligible for the NPDES general permit under the current draft, it states: "Any point source discharge of pollutants to waters of the United States not covered by this or another general permit will need coverage under an individual permit." Effectively, this language holds producers responsible if pesticides used for farm applications enter ditches, swales, nuisance or seasonal wetlands or other U.S. waters and puts them in legal jeopardy. As a result, the USCA adamantly requests that agricultural lands and water within these lands that could be encountered by farm applications, such as ditches, swales and nuisance or seasonal wetlands, not be subject to the final NPDES general permit or the Clean Water Act and that this exemption be clearly specified in the final permit. If the EPA fails to specifically exempt agricultural lands in the final general permit, burdensome and time-consuming citizen lawsuits could be filed against individual farmers, forcing some out of business.

Thank you for opportunity to express our concerns.

Respectfully yours,



Doug Scoville  
President  
U.S. Canola Association