

Pesticide Case Merits Supreme Court's Attention

By John Hart

Not every legal dispute merits the attention of the U.S. Supreme Court. Only the most serious and far reaching issues tend to make it to the highest court in the land.

A case that should be considered is titled "National Cotton Council v. the U.S. Environmental Protection Agency." The American Farm Bureau filed a petition with the U.S. Supreme Court on Nov. 2 seeking a review of the Sixth Circuit Court of Appeals' ruling on that case. The lower court's decision forces pesticide users, such as farmers, to secure an additional permit to apply pesticides "on, over or near water."

At issue is a clear overstepping of federal regulations by the lower court that will impact farmers, ranchers and others who safely use approved pesticides. If the Supreme Court does not reverse the lower court decision, production agriculture will face an EPA permitting requirement that could strangle the use of crop protection products.

The problem stems from a January 2009 ruling by the U.S. Sixth Circuit Court of Appeals. That ruling struck down a 2006 EPA rule that said the Clean Water Act did not regulate pesticide applications near water, as long as the pesticide use complied with EPA-approved label restrictions.

In practical terms, allowing the lower court ruling to stand would pose serious challenges to farmers battling pests. An important part of every farmer's job is to carefully inspect crops for pests that rob yields and steal profits. When a farmer finds pests and determines the application of pesticides is needed, time is of the essence. A lengthy permitting requirement for products that are already approved as long as label restrictions are followed would be disastrous. By the time federal regulators approve the application, it may be too late and the pest damage would be done.

The case is complicated because EPA views "waters of the United States" very broadly, which means wetlands and even some ditches are considered "waters of the United States." This broad interpretation means the misguided Sixth Circuit Decision could impact hundreds of thousands of farmers in all 50 states. This is an unnecessary regulatory burden that farmers and ranchers should not be required to bear.

The Supreme Court is expected to decide whether to hear the case by the end of the year. Relief from costly and time-consuming pesticide permitting for America's farmers and ranchers now awaits the consideration of nine justices. We must hope wisdom and common sense prevail, and the lower court decision will be reversed.