

RESOLUTION # 28

PESTICIDES

1 **WHEREAS**, the Clean Water Act (CWA) controls water pollution by regulating point
2 sources that discharge pollutants in and around waters of the United States through the
3 National Pollutant Discharge Elimination System (NPDES) permit program; and

4 **WHEREAS**, the federal Environmental Protection Agency (EPA) has never required
5 NPDES permits for the application of pesticides for agricultural crop protection, mosquito
6 control, invasive aquatic weed control, forest canopy insect control, or other registered uses
7 of pesticides when properly applied following FIFRA-approved label directions; and

8 **WHEREAS**, a January 2009 U.S. Court of Appeals for the Sixth Circuit decision, in
9 the matter of *National Cotton Council of America et al. v. United States Environmental*
10 *Protection Agency*, vacated an EPA Rule which exempted certain pesticide applications
11 made in, over, or near “waters of the United States” in accordance with the Federal
12 Insecticide, Fungicide, and Rodenticide Act (FIFRA) from the federal Clean Water Act’s
13 permitting requirements; and

14 **WHEREAS**, the Court granted EPA a two-year stay of its decision, during which time
15 EPA was to develop a general permit for four aquatic pesticide uses in the states and
16 territories without delegated CWA authority, and states which have assumed CWA authority
17 may use this permit as a model in developing general permits for their states; and

18 **WHEREAS**, this change requires NJPDES permits for pesticide applications made to
19 or near the “Waters of the State,” meaning the ocean and its estuaries, all springs, streams
20 and bodies of surface or ground water and wetlands, whether natural or artificial, within the
21 boundaries of the State of New Jersey or subject to its jurisdiction, and this would place
22 additional burdens on applicators, impact crops in fields, pastures and forest lands adjacent
23 to farm ponds or wetlands, ditches, streams or rivers, and interfere with the timely application
24 of pesticides to control pests and diseases, and to control mosquitoes which may vector
25 diseases of humans or horses and other livestock; and

26 **WHEREAS**, various attempts to have Congress remedy this situation, including
27 urging Congress to add corrective language to the most recent five-year Farm Bill, were not
28 successful, meaning the new permitting requirement remains in place; and

29 **WHEREAS**, the New Jersey Department of Agriculture, New Jersey Farm Bureau
30 and New Jersey Department of Environmental Protection and commodity representatives
31 worked collaboratively to arrive at favorable interpretations for farmers should the permitting
32 requirement be applied broadly to include agricultural modified wetlands areas.

33 **NOW, THEREFORE, BE IT RESOLVED**, that we, the delegates to the 106th State
34 Agricultural Convention, assembled through a virtual platform hosted in Trenton, New
35 Jersey, in accordance with COVID-19 pandemic recommendations, on February 17, 2021,
36 do hereby urge the New Jersey Congressional Delegation to support an effort to amend the
37 Clean Water Act to make it clear that pesticides applied in accordance with their labels are
38 not considered pollutants under the Act.

39 **BE IT FURTHER RESOLVED**, that we urge the New Jersey Congressional
40 Delegation to support all efforts in Washington to exempt agricultural operations and efforts
41 to control or eradicate invasive species and mosquitoes from NPDES permitting
42 requirements for applications of pesticides when applied in accordance with their labels.

43 **BE IT FURTHER RESOLVED**, that, failing such action, we urge the New Jersey
44 Congressional Delegation to support efforts to ensure that the resources required to process
45 these new permits are covered by federal funds and do not strain the already scarce
46 resources of state regulatory agencies or of New Jersey's hard-working farmers.