

## RESOLUTION # 32

### PESTICIDE USAGE IN OR NEAR WATERS OF THE UNITED STATES

1           **WHEREAS**, pesticides, when applied by knowledgeable farmers or their designated  
2 licensed applicators, have proven to be a safe and invaluable tool for decreasing pest  
3 pressures on crops and thereby increasing yields, allowing farmers to use less land to  
4 produce more marketable crops and feed an ever-growing population; and

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

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

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

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

22           **WHEREAS**, this change requires NJPDES permits for pesticide applications made to  
23 or near the “Waters of the State,” meaning the ocean and its estuaries, all springs, streams  
24 and bodies of surface or ground water and wetlands, whether natural or artificial, within the  
25 boundaries of the State of New Jersey or subject to its jurisdiction, and this would place

26 additional burdens on applicators, impact crops in fields, pastures and forest lands adjacent  
27 to farm ponds or wetlands, ditches, streams or rivers, and interfere with the timely application  
28 of pesticides to control pests and diseases, and to control mosquitoes which may vector  
29 diseases of humans or horses and other livestock; and

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

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

37 **NOW, THEREFORE, BE IT RESOLVED**, that we, the delegates to the 108<sup>th</sup> State  
38 Agricultural Convention, assembled in Atlantic City, New Jersey, on February 8-9, 2023, do  
39 hereby urge the New Jersey Congressional Delegation to support an effort to amend the  
40 Clean Water Act to make it clear that pesticides applied in accordance with their labels are  
41 not considered pollutants under the Act.

42 **BE IT FURTHER RESOLVED**, that we urge the New Jersey Congressional  
43 Delegation to support an effort to amend the Clean Water Act to make it clear that pesticides  
44 applied in accordance with their labels are not considered pollutants under the Act.

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

49 **BE IT FURTHER RESOLVED**, that we urge Congress to remedy this situation,  
50 including adding corrective language addressing it in the upcoming five-year Farm Bill.

51 **BE IT FURTHER RESOLVED**, that, failing such action, we urge the New Jersey  
52 Congressional Delegation to support efforts to ensure that the resources required to process

53 these new permits are covered by federal funds and do not strain the already scarce  
54 resources of state regulatory agencies or of New Jersey's hard-working farmers.