



June 8, 2010

Dear WSSA Member,

On June 4th, EPA issued its proposed general permit governing the application of pesticides over or near water. The draft *National Pollutant Discharge Elimination System (NPDES) permit* for the application of pesticides over or near water is required because the 6th Circuit Court of Appeals overturned the EPA's earlier 2006 rule exempting pesticide applicators and now requires the regulation of both biological and chemical pesticides under the Clean Water Act (CWA).

The EPA has opened a 45-day public comment period that closes July 19, 2010 and maintains a goal of having the Final General Permit in place by December 2010 to meet the Court ordered timeline for full implementation by April 9, 2011. WSSA will be preparing comments for submission to EPA and does plan to provide the membership with additional information as soon as practical.

Who is directly impacted

- The Agency is developing a permit program (*Pesticide General Permit or PGP*) for only those uses specifically covered in the Court decision under the CWA, including mosquito and other flying insect pest control, aquatic weed and algae control, aquatic nuisance animal control and forest canopy pest control. At this time, NPDES permits are not required for terrestrial applications to agricultural crops or forest floors. However, any use patterns not covered by the general permit that results in discharges to water will still require an individual permit or an alternative general permit. EPA is seeking comment on whether other pesticide application activities may also involve unavoidable discharges to water and therefore should be covered.
- Operators covered by the general permit are defined as any entity involved in the application of a pesticide. That entity could be the actual applicator or a body with control over the financing or the decision to perform the application. Responsibility for complying with the requirements of the permit could be shared between these entities, with a decision-making body responsible for assessing the pest problem and the applicator responsible for calibrating equipment. EPA is seeking comment on whether such an approach is clear and logical.
- The general permit requires all operators to “minimize” pesticide discharges by using the lowest effective amount, preventing leaks and spills, and calibrating equipment, and to report any adverse incidents. Operators exceeding certain annual treatment thresholds must submit a “Notice of Intent” (NOI) detailing where applications are to be made, implement IPM practices, develop a pesticide discharge management plan (PDMP), submit annual reports and maintain records of pest control practices. All information would be available to any individual seeking it.
- The annual treatment threshold triggering a NOI submission for in-water aquatic weeds and algae management is 20 acres of total treatment area or 20 linear miles of treatment area at the water's edge. The annual treatment area for forest canopy treatment or mosquito and other flying insect control is 640 acres. EPA is seeking comments on whether these thresholds are appropriate and on the specifics of IPM practices.
- Failure to comply risks fines of up to \$37,500 a day under the CWA. Emergency applications can be made without an NOI, but one must be submitted within 30 days of treatment. PDMPs must normally be drawn up before the first pesticide application but in a declared emergency, a 90-day grace period for the PDMP is allowed.
- The EPA permits will cover the six states and territories, Indian Country lands and federal facilities where EPA has direct authority. The remaining 44 states will be required to accept and adopt the EPA program or develop their own which must be at least as stringent as the EPA's.
- The Agency estimates that this permit requirement, even limited to these uses, will affect approximately 365,000 pesticide applicators nationwide that perform 5.6 million pesticide applications annually.



Concerns

- Although currently limited to these specific uses, an obvious concern is that this opens the door to future legal challenges and permit requirements under the Clean Water Act for other uses that occur over or "near" water such as forestry floor applications, IVM applications, and even drift or runoff from crop applications. The Agency has repeatedly stated that other uses which result in discharges to water are not included in the current permit program, but are not exempted from the rules of the CWA just because they are not included. ***So, we have likely not seen the end of this with just these uses or just this permit program.***
- Overall, this program marks a pre-emption of FIFRA by another statute, the CWA, and as a result pesticide regulation enforcement in many states may fall under their state environmental agencies rather than the traditional pesticide regulatory agencies.
- Even for these limited uses, there is the challenge of implementation among the states due to the expected volume and complexity of the permitting process. The states are required to implement according to the same timeline (by April 9, 2011) and there is a very valid concern whether this is feasible given the resource requirements.

Citizen response

- This proposed program has strong opposition among many affected groups. In addition to the aquatic plant managers and those involved in invasive weed management in riparian corridors, commodity groups and other stakeholders, including the applicator associations, individual states and agencies such as mosquito control districts are raising serious challenges.

Public comment sought

During the public comment period EPA will hold three public meetings (Albuquerque, Boise, and Boston), a public hearing (Washington, D.C.), and a webcast to provide an overview of the PGP requirements, the basis for those requirements, and to answer questions about the draft permit and how the public can best assist EPA in the public comment process. The date, time and location of the public meetings and public hearing are as follows:

- Albuquerque, New Mexico: Monday, June 14, 2010, at the CNM Workforce - Training Center, Room 101, 5600 Eagle Rock Avenue NE, Albuquerque, New Mexico, from 12:00 p.m. to 3:00 p.m.
- Boise, Idaho: Wednesday, June 16, 2010, at the Bureau of Reclamation, Rooms 206 & 219, 1150 North Curtis Road, Boise, Idaho from 9:00 a.m. to 12:00 p.m.
- Boston, Massachusetts: Monday, June 21, 2010, at EPA Region 1, 5 Post Office Square - Suite 100, Conference Room 1529, Boston, MA 02109-3912, from 1:00 p.m. to 4:00 p.m.
- Washington, DC: Wednesday, June 23, 2010, at the EPA East Building, Room 1153, 1301 Constitution Avenue, NW, Washington, DC 20004, from 10:00 a.m. to 1:00 p.m.
- The webcast will be broadcast on June 17, 2010, from 1:00 p.m. to 3:00 p.m. Eastern Time (ET). For information on how to register and attend the webcast, see EPA's website at www.epa.gov/npdes/training.

More information on the NPDES requirements for discharges from pesticide applications is available at www.epa.gov/npdes/pesticides. Copies of the draft PGP, the PGP fact sheet and Federal Register notice can be downloaded from that site as well as details on how to provide public comment through EPA's website at www.regulations.gov (for docket number EPA-HQ-OW-2010-0257).

Sincerely,
John Jachetta, Ph.D.
Weed Science Society of America President