WASHINGTON REPORT
October 2009
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Sign up to Attend NISAW by December 10, 2009

Yes, you are reading that correctly…. NIWAW has expanded to NISAW. The first ever National Invasive Species Awareness Week (**NISAW**) will replace and expand upon the successes of 10 years of National Invasive Weeds Awareness Week. NISAW will be held earlier too. PLEASE mark your calendars for **January 10-14, 2010** in Washington, DC. The all-taxa event will be organized around three themes: Climate Change, Energy, and the 'Green' Economy.

NISAW is being organized by a national, bi-partisan coalition of groups representing private citizens, local and state natural resource and agricultural agencies, academia, professional scientific societies, environmental organizations, and businesses such as nurseries and the pet industry that are affected by invasive species.

The headquarters hotel for NISAW is the Four Points by Sheraton Hotel, 1201 K Street NW, Washington, DC. **Room reservations** for $159 per night are available until **December 10, 2009.** Please make your room reservations for the NISAW room block via the web at: http://www.starwoodmeeting.com/StarGroupsWeb/booking/reservation?id=0907293577&key=E9630

Early registration for NISAW is $150. The cut-off date for **early registration** is **December 10, 2009.** Registration after that date will be $200. Please register via the **NISAW website** at: www.nisaw.org

NISAW Facebook page (become a fan!):
http://www.facebook.com/search/?q=NISAW&init=quick#/pages/National-Invasive-Species-Awareness-Week/144139698606

Status of National Pollutant Discharge Elimination System (NPDES) Permits

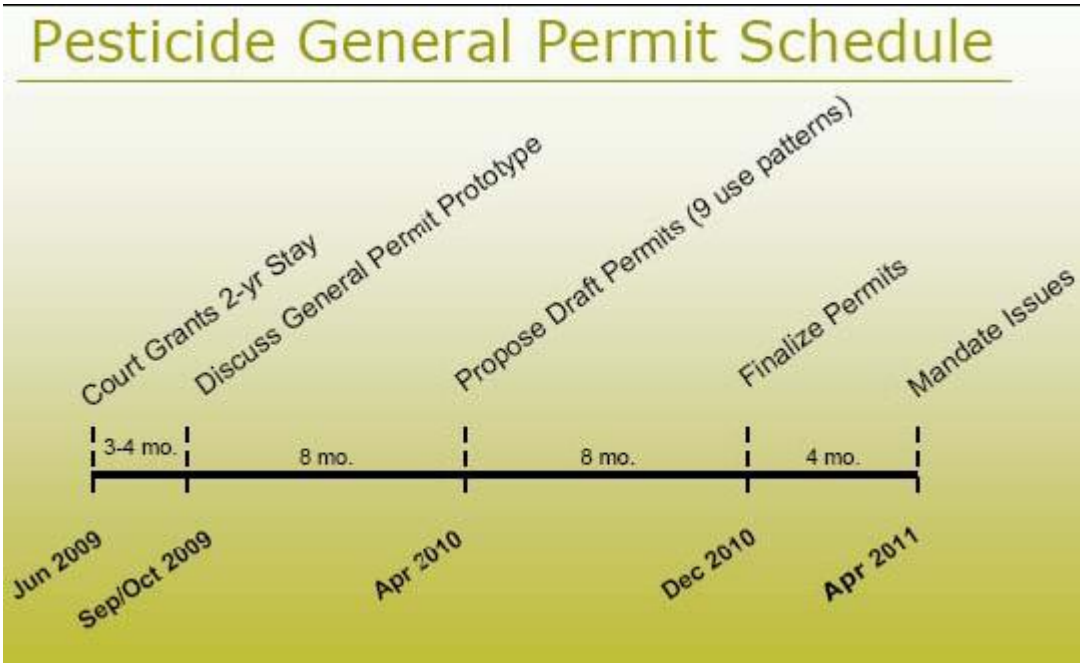
Since the passage of the Clean Water Act (CWA) in 1972, EPA has not required a NPDES permit to apply pesticides in, over, or near water as long as these applications comply with the Federal Insecticide, Fungicide, and Rodenticide Act (**FIFRA**). In the past decade however, that boundary has been challenged by environmentalists in the 9th Circuit Court in San Francisco. In 2006, EPA issued a final rule to codify its interpretation of the CWA as not requiring NPDES permits for application of pesticides to, over, or near waters of the United States, if the applications are consistent with FIFRA requirements. However, in January of this year the 6th Circuit Court vacated (i.e. rescinded, revoked, threw out) EPA's 2006 rule. Going forward, **pesticide applicators** will need to obtain an **NPDES permit** for any application in, over, or NEAR water starting in 2011.

After **April 9, 2011**, ALL **biological pesticide applications** and **chemical pesticide applications** that leave a residue in water when such applications are made **in, over, or near**

waters of the US will require a **NPDES permit.** April 2011 seems like a long way away, but the time to act is NOW.

During the next several months, we will have a number of opportunities to provide input to EPA and State permit writers. EPA estimates up to **5.6 million applications** performed annually by **365,000 applicators** using 500 different active ingredients will be potentially affected by this ruling and could require an NPDES permit.

EPA expects to propose its general permit by April 2010 and issue a final permit by December 2010. The remaining four months until the Court's mandate takes effect will be used to provide outreach and education to the regulated community. (See chart below)



<u>Your Input is Needed on NPDES General Permits</u>

Below are a few of the issues that you, as a WSSA member, should give consideration to as EPA works with States to develop **general NPDES permits** for pesticide applications in, over, or near waters of the U.S. Our science and expertise is needed more than ever and the WSSA Science Policy Committee would appreciate your comments and feedback on the following topics ASAP:

1. **Making a "showing that an application is needed"** -- Some existing mosquitocide NPDES permits require a permittee to demonstrate the presence of above a threshold number of insects before spraying. State's may opt to be more restrictive, e.g., California has a 6-step pollution prevention approach in which the first step is to determine whether an application is necessary, but EPA doesn't have the authority to require such a showing. The WSSA has consistently supported the use of economic threshold and IPM principles for weed management. **Should herbicide applicators be denied a NPDES permit if they cannot demonstrate their weed population is above a certain threshold?** What factors do you consider on whether or not a herbicide application is needed?

2. **Pollution Prevention planning** -- It is common for general NPDES permits to include a requirement for permittees to develop a pollution prevention plan that demonstrates to regulators that the applicator knows what he/she's doing, reveals to the regulator the locations, products and methods he/she plans to use, and could become a criteria for enforcing a NPDES permit? What have been your experiences with such plans?

3. **"What's in an NOI"** -- the role of the Notice of Intent (NOI) to be covered by the general NPDES permit is critically important. Issues include: (a) are applicators below a threshold size automatically covered like in the aquatic vessel permit? (b) how long a period would the NOI cover? (c) How big is the area to be treated? (d) What products are to be used? (e) What "waters of the U.S." might be affected?

   I think it's critical that we avoid requiring herbicide applicators to obtain an NOI for every single herbicide application in, over, or near waters of the U.S. If you file an NOI to obtain an NPDES permit to spray your weeds, how long should that NOI be good for? A single herbicide application? Any herbicide application to that site for a year? Three years? Five years? Do you need to file an NOI for a spot application? A field? A farm? What factors should be considered, beyond the label requirements already enforced under FIFRA, to obtain an NOI?

4. **How much "public notice" or "public approval"?** – If your herbicide application is consistent with the FIFRA-approved label and established general NPDES permit, what type of public approval should be further required? What are your experiences with public notification for pesticide applications and what suggestions do you have regarding this issue?

5. **Post application monitoring and reporting** -- Some FIFRA labels currently require ambient water quality monitoring shortly after pesticide application to make sure that no unexpected adverse effects occurred. Ambient pesticide monitoring also is required in some circumstances in certain State-issued NPDES permits; for example, some aquatic invasive weed control permits require either chemical or biological monitoring. The costs and problems associated with ambient water quality monitoring and reporting could overwhelm small applicator businesses, and could generate data that hamstrings later applications by both small and large applicators. We should evaluate the extent to which post-application ambient monitoring currently exists under pesticide permits, and document any burden this has added. Who should pay for post application monitoring? Requirements for reporting detections or adverse effects could pose other, legal and policy problems. Experiences from California, Washington and other states with aquatic pesticide permits would be helpful – what observations and cautions can you provide?

6. **"Who is the permittee"** -- this dramatically affects the economics of the rule. For aquatic weed control, almost every private pesticide application company is very small, less than 15 people and the two largest application companies in the country have about 125 employees. Thus, costs of the rulemaking will be a critical consideration. Permittees could be individual applicators, the companies they work for or own, the farmer or landowner, states or state agencies (health agency, roadside and rights of way maintenance, water boards responsible for aquatic invasive weed control), or federal

agencies (USDA Forest Service for treatment of national forests for insects). The challenge will be in demonstrating how our preferred class(es) of permittees satisfies the federal requirement that all "operators" (i.e., those in control) hold permits. Given that EPA intends to issue general permit(s) for many different types of applications, what input can you provide on this issue?

Please think through these points and consider possible approaches and ideas. If you have or can get specific anecdotes or economic impact data on any of these, that would be very helpful. Please call me at 202-746-4686 or send me an email at Lee.VanWychen@wssa.net

USDA-ARS Selects John Lydon as Weed Science NPL

In September, the USDA-Agricultural Research Service (ARS) selected Dr. John Lydon as the new National Program Leader (NPL) for Weed Science. John's main work will occur in USDA-ARS Crop Protection and Quarantine (NP 304), which represents about 10% of ARS's total net research budget of about $1.1 billion. The goal of NP 304 is to conduct fundamental and applied research that will result in improved strategies for the cost-effective management and control of native and invasive insect, mite, and weed pests, while minimizing impacts on the environment and human health.

Dr. Lydon has degrees from the University of Massachusetts, University of Hawaii and the University of Maryland. He joined ARS in 1986 as Research Associate at the Southern Weed Science Laboratory in Stoneville, Mississippi. He continued his career at ARS as a plant pathologist in the Crop Science Research Laboratory in Mississippi State, Mississippi, and the Tropical Plants Research Laboratory and the Weed Science Laboratory in Beltsville, Maryland. John can be reached at 301-504-6470 or john.lydon@ars.usda.gov. The WSSA is pleased to hear of John's selection and looks forward to working with him.

Greek Shipping Company Fined $2.7 Million for Invasive Species Violation

On October 1, Polembros Shipping LTD., a ship management company headquartered in Greece, pleaded guilty to one count of violating the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (NANPCA) in a New Orleans federal court. This is the first prosecution ever under NANPCA. The company's fleet of 20 ships has been barred from trading in US waters for three years and has paid a $2.7 million fine. The company will pay another $100,000 to fund invasive species research at the Smithsonian Research Centre.

The Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (P.L. 101-646) established a Federal program to prevent introduction of and to control the spread of introduced aquatic nuisance species and the brown tree snake. The U.S. Fish and Wildlife Service, the U.S. Coast Guard, the EPA, the Army Corps of Engineers, and NOAA all were assigned responsibilities, including membership on an Aquatic Nuisance Species Task Force established to develop a program of prevention, monitoring, control, and study.

Apply for a AAAS Fellowship at USDA, EPA

For 35 years, the American Association for the Advancement of Science (AAAS) **Science & Technology Policy Fellowships** have provided scientists and engineers with a unique opportunity to apply their knowledge and skills to national and international issues in the federal policy realm, while learning first-hand about establishing and implementing policy.

There will be 30-40 Fellows selected for the Energy, Environment, Agriculture and Natural Resources area and they will work at USDA, EPA, Dept. of Energy, NOAA or NSF. Fellows will engage in projects, policies, risk assessment, evaluation, and outreach initiatives to:

* Protect animal, plant and environmental health
* Address ecosystem degradation, pollution, and biological threats
* Tackle challenges and opportunities in agriculture, fisheries, climate change, and energy
* Safeguard air, water, land, wildlife, and natural resources

This is a year-long opportunity, beginning September 1 and ending August 31. Fellows have ranged in age from late 20s to early 70s. They represent a spectrum of career stages, from recent PhD graduates to faculty on sabbatical to retired scientists and engineers. Fellows also come from a range of sectors, including academia, industry, non-profit organizations, and government labs. AAAS also serves as the "umbrella" organization for other scientific societies that sponsor a Fellow, such as the American Society of Agronomy.

Fellows receive a stipend up to $92,000 for the year. Relocation expenses of up to $4,000 are also provided. The deadline for applications for the 2010-2011 Fellowship class is December 15, 2009. Full details at http://fellowships.aaas.org

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