

Pesticide NPDES General Permits



**John Thorne, PhD
Sr. Policy Advisor
Crowell & Moring, LLP
Washington, DC**



Aquatic Pesticide Regulation

- **In 2009, the 6th Circuit ruled that it is a violation of the Clean Water Act to apply pesticides into or over waters of US without an NPDES permit**
- This overturned 60+ years of federal pesticide policy:
 - In 1947, Congress enacted FIFRA to regulate pesticides
 - In 1972, Congress enacted the NPDES program in the CWA but chose not to regulate aquatic pesticides
 - In 1987, Congress exempted agricultural stormwater runoff and irrigation return flows from NPDES permits
 - In 2006, EPA exempted pesticides from NPDES permits when used in compliance with FIFRA labels
 - **In 2009, the 6th Circuit decision vacated EPA's policy**

EPA's Pesticide NPDES General Permit

- Court granted 2-year stay while EPA and States develop and implement NPDES general permits
 - 2006 EPA rule is in effect during the stay
 - EPA will finalize a general permit for 6 states in January, 2011 -- this serves as a template for many states
- 44 states are developing their own permits, but must quickly complete them, get EPA approval
 - Legislative & regulatory schedules can delay completion
 - Implementation and communications with stakeholders are essential to allow time for compliance
- Enforcement is to begin April 9, 2011 (unless delayed)

Scope of EPA's Permit

- **Covered pesticide uses:**

- Control of mosquitoes and other insects
- Control of aquatic weeds and algae
- Control of pests in forest canopies
- Control of aquatic nuisance animals

- **Thresholds:**

- All Federal & State government with pest control function
- All pest control districts
- All irrigation districts
- Others exceeding:
 - 6,400 acres or more/year of forest or aduenticides treatment
 - 20 linear miles/80 acres or more/year of aquatic weed or animal treatment

Regulated Entities

- All state & federal agencies with pest control roles
- Municipal, county or regional agencies that do pest control
- Mosquito control districts & health departments
- Water resources control boards (weed control)
- Irrigation or drinking/sanitary water canal operators
- Railroad, highway and road maintenance organizations
- Electrical and pipeline utility rights of way managers
- Owners of forests and irrigated farms, rangeland, orchards
- For-hire pesticide applicators servicing dozens of clients may have to comply with multiple States' permits



Compliance Burdens

- Submission of NOIs that anticipate treatment areas, waterbodies encountered, pesticides used, pests targeted, ESA species/habitat, etc.
- IPM Responsibilities (scouting, threshold development, monitoring, alternative considerations, habitat modification, records)
- Pesticide Discharge Management Plan development, performance standards for pesticide handling, equipment maintenance, calibration
- Staff supervision, surveillance, monitoring, compliance
- Recordkeeping, adverse incident monitoring, mitigation, reporting
- Annual reporting, adverse incident reporting, other

EPA's Estimate of Cost Burdens

- **EPA believes this will not pose significant costs**
- **EPA's estimate of permitting-authority burden:**
 - 44 States will spend a total of 45,809 hours and \$1.7 million annually to implement the program
 - this translates to 1,041 hours and \$38,636 per State
- **EPA's estimate of business-permittee burden:**
 - 5.7 million aquatic pesticide applications made to more than 100 million acres annually
 - 365,000 permittees will spend a total of 987,904 hours and \$50 million annually
 - this translates to 2.7 hr/yr and \$50 for each permittee

Another View of Likely Costs

- **Costs could exceed \$1 billion in first year**
 - Identification of compliance requirements across states
 - Communications with staff, regulators, clients, others
 - Research to collect data to complete NOIs, PDMPs
 - Filing NOIs, maintaining PDMPs, writing reports
 - Staff recruitment and training about permit compliance
 - Endangered species / habitat protection
 - Equipment upgrades, calibration, maintenance
 - IPM considerations, actions, recordkeeping
 - Monitoring, surveillance, compliance assurance
 - Possible adverse incident mitigation, annual reporting
 - Business insurance, possible legal costs

Path Forward

- EPA will finalize its permit in early January for ID, NH, NM, MA, OK, AK
- EPA is in consultation with States & Services
- 44 States working on draft permits for EPA review
- EPA and States need to conduct extensive outreach
- April 9, 2011 enforcement deadline – unless delayed
- Permittees will likely have \pm 1 month to comply
 - Study permit(s), submit NOI(s), develop PDMP(s), train employees, adjust procedures, develop records, etc.
 - An enforcement delay may be essential

Any Questions?

