



EPA's NPDES Pesticide General Permit

Important Role of Commercial Applicators in U.S. Agricultural Industry

Agricultural retailers employ commercial pesticide applicators that receive extensive education and training to apply pesticide products in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) laws and regulations. Ground pesticide applicators treat about 80% of all U.S. commercial cropland while aerial applicators treat just under 20%. Certified commercial pesticide applicators participate in EPA financially supported state training programs that cover Best Management Practices (BMPs) for safe pesticide use as well as environmental issues such as endangered species, human health, and water quality protection.

Overview of the Clean Water Act and the National Pollutant Discharge Elimination System (NPDES)

In 2009, the U.S. 6th Circuit Court of Appeals drastically expanded the enforcement reach of the Clean Water Act (CWA) into pesticide policy in *National Cotton Council, et al., v. EPA, et al.* The court ruling invalidated decades of precedent and an EPA regulation that had exempted pesticide applications made into, over, or near water from the numerous requirements of CWA's NPDES permits. The court ruled that such applications require compliance with NPDES discharge permits whenever they occur "into, over or near" one of the many types of "waters of the U.S." This, even though the FIFRA already regulates pesticide use. FIFRA requires, through years of extensive testing, demonstration that registered pesticides can be safely applied according to product labels in a manner that poses no unreasonable risk to humans or the environment.

EPA implemented the court decision in 2011 when it began enforcing its NPDES Pesticide General Permit (PGP) for aquatic pesticide applications for control of mosquitoes, aquatic weeds, invasive aquatic animals, and forest canopy pest control. These PGPs impose a gamut of performance and recordkeeping requirements on applicators across the country who apply pesticides into, over, and near waters of the U.S. Additional burden falls on the backs of environmental agency officials. The PGPs also open the door to citizen suits and other environmental lawsuits authorized by the CWA. Legal costs associated with these lawsuits can bankrupt application businesses. The CWA authorizes fines for civil violations of up to \$51,570 per day/per violation, and much greater fines for repeated or willful violations.

Overview of the Waters of the U.S. (WOTUS) Rule

In 2015, EPA released its new definition of WOTUS, which determines where the NPDES permits are required. The rule extends the geographic area of WOTUS and likely would require NPDES PGPs for all agricultural applications. Nearly 30 states decided to take WOTUS to court. On Oct. 9, 2015, the U.S. Court of Appeals for the Sixth Circuit issued a stay on the WOTUS rule, which remains in place pending the outcome of the litigation. In February 2016, the Sixth Circuit ruled that it had jurisdiction to review the rule, but many challengers assert that the rule should first be reviewed at the federal district court level. In January 2017, the Supreme Court agreed to review the decision and resolve the jurisdictional issue of whether the Sixth Circuit has the authority to be the first court to hear WOTUS lawsuits, instead of district courts.

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The Impact of NPDES PGP Requirements

Numerous aerial applicators nationwide have shut down their mosquito and invasive species control efforts due to the paperwork cost and threat of lawsuits associated with the NPDES PGP requirements. EPA estimated the paperwork costs alone to be \$50 million per year. State and local officials advised EPA that the costs would far exceed that estimate. Currently, mosquito control programs are vulnerable to lawsuits for simple paperwork violations of the CWA where fines may be up to \$35,000 per day for activities that do not involve harm to the environment. In order to attempt to comply with this potential liability, these governmental agencies must divert scarce resources to CWA monitoring. In some cases, smaller applicators have simply chosen not to engage in vector control activities. Requiring NPDES permits for the discharges of mosquito control and other pesticide products provides no additional environmental protections beyond those already listed on the pesticide label, yet the regulatory burdens are potentially depriving the general public of the economic and health benefits from the use of important pest control products.

Bipartisan Legislative Proposals

Rep. Bob Gibbs (R-OH) has introduced the “*Reducing Regulatory Burdens Act*” (H.R. 953) to end NPDES PGP requirements for applications of pesticides already determined by EPA to present no unreasonable risk to humans or the environment. Senators Crapo and McCaskill have introduced its companion, the “*Sensible Environmental Protection Act*” (S. 340). In the 114th Congress, a version of Congressman Gibbs’ bipartisan bill passed the U.S. House of Representatives by an overwhelming margin, marking the third time the elimination of NPDES PGP requirements received bipartisan support in the House. That same Congress, the Crapo-McCaskill proposal passed the Senate EPW Committee by voice vote.

ARA Request to Congress

Support bipartisan legislation (H.R. 953 / S. 340) to exempt pesticide applications from requiring NPDES pesticide general permits for the use of EPA FIFRA approved pesticide products.