



United States Environmental Protection Agency
Office of Water, Office of Wastewater
Management Water Permits Division



September 2009

BACKGROUND

- On November 27, 2006, EPA issued a final rule to codify its interpretation of the CWA as not requiring NPDES permits for application of pesticides to, over, including near waters of the United States, if the applications are consistent with FIFRA requirements.
- Petitions for review of the final rule were filed in 11 Circuit Courts and on January 7, 2009, the 6th Circuit Court of Appeals ruled in *National Cotton Council, et al. v. EPA* that NPDES permits are required for all biological pesticide applications and chemical pesticide applications that leave a residue in water when such applications are made in or over, including near, waters of the U.S.
- On June 8, 2009, the Court granted DOJ's request for a two-year stay of the decision, until April 9, 2011, to provide EPA and states time to develop and issue NPDES permits and provide outreach to stakeholders on the implications of these actions. Until then, NPDES permits for applications of pesticides to or over, including near U.S. waters will not be required until after April 9, 2011.
- EPA estimates up to 5.6 million applications performed annually by 365,000 applicators using 500 different active ingredients will be potentially affected by the permit.

ACTION

- 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)
- EPA is collecting and analyzing data on pesticide labeling requirements, uses, and BMPs employed to minimize the impact of pesticides on water quality. EPA is also reviewing data on existing state water regulatory approaches to pesticides, including discharge permitting, water quality standards, and TMDLs.
- EPA will develop and issue a general permit for the states of MA, NH, AK, ID, NM, and the territories, tribal, and federal lands for which it has NPDES permitting authority.
- EPA will coordinate concurrently with the 45 NPDES authorized states as they develop their proposed and final general permits.
- EPA has organized a state workgroup including representatives from the Association of American Pest Control Officials and ASIWPCA for the purpose of sharing information and assisting with development of permit requirements. EPA has developed a draft NPDES prototype permit for the application of pesticides directly to, or over, including near waters of the United States. This prototype will be shared with the state workgroup in order to get a "reality check" from co-regulators regarding possible permit requirements. EPA will then share it with its Federal Advisory Committee, the Pesticide Program Dialogue Committee for additional stakeholder input. EPA is seeking early, informal input on the prototype. A formal public comment process will occur once the actual NPDES permit is proposed in April, 2010. The schedule for prototype outreach is below.
- State Dialogue
 - September 16 and 23 – Conference call with states
 - Sept 30 & Oct 1 - Face-to-face meeting (2 days) with state and EPA regional and headquarters representatives
- Stakeholder Review
 - October 7 - Webcast with Pesticide Program Dialogue Committee (PPDC) members (open to public) to present current general permit thoughts
 - October 14 - PPDC meeting to get feedback from committee on general permit information presented during webcast.

