

National Pollution Discharge Elimination System

Background



Both Congress and the U.S. Environmental Protection Agency (EPA) never intended to subject the application of pesticide products to the Clean Water Act's (CWA) National Pollution Discharge Elimination System

(NPDES) permit requirements. Rather, all sources of exposure in the environment, including water and air, from either direct application, runoff or spray drift of pesticides have been effectively regulated by the EPA under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). Under FIFRA, Congress empowered the EPA to set nationwide safety standards for agricultural pesticide applications that protect both the environment and public health. These comprehensive federal requirements cover all applications of pesticides across the country.

The CWA and its NPDES permit requirements have been in effect since 1972, and millions of pesticide products are applied annually. No government agency has ever concluded that the ordinary application of a pesticide requires an NPDES permit, including aquatic mosquito and weed control, as well as terrestrial uses that may result in incidental spray drift entering water.

In 2001, the U.S. Court of Appeals for the 9th Circuit (Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, Guam, and the Northern Mariana Islands), in what has become known as the "Talent" decision, ruled that NPDES permits were required for the use of aquatic herbicides to control weeds in waterways. In November 2002, the 9th Circuit ruled in *League of Wilderness Defenders v. Forsgren* that an airplane used for the application of moth control products in the forest canopy was a "point source" and aerial spraying of pesticides required an NPDES permit under the CWA. There have also been two lawsuits threatened against blueberry growers in Maine for applying pesticides without an NPDES permit; however, these farmers could not afford a protracted court battle, so they ceased aerial applications in order to avoid the lawsuits.

During the 109th Congress, two bipartisan bills were introduced to address this issue. The "Pest Management and Fire Suppression Flexibility Act" (H.R. 1749 and S.1269) sought to clarify the relationship between FIFRA and the Clean Water Act by affirming that NPDES permits are not required under any circumstances when pesticides are applied according to their FIFRA label. While the legislation did not pass either chamber of Congress, the bill did garner 80 cosponsors in the House and 15 in the Senate, and a successful hearing was held by the House Transportation and Infrastructure Subcommittee on Water Resources in which a diverse group of stakeholders emphasized the importance of adopting the legislation.

After considering two rounds on public comment, EPA issued a final rule on November 21, 2006 clarifying two specific circumstances in which a Clean Water Act NPDES permit is not required for pesticide applications: when pesticides are applied directly to water to control pests, including mosquito larvae, aquatic weeds and other pests in the water; and when pesticides are applied to control pests that are present over or near water where a portion of the pesticide will unavoidably be deposited to the water in order to target pests effectively. CLA has taken the position that this rule's scope is too limited. On December 13, 2006 a number of industry and agricultural groups, including CLA, filed a legal challenge seeking to broaden the scope of the EPA rule in order to exempt all legal pesticide applications from NPDES permit requirements. This case was consolidated in the Sixth Circuit and is being referred to as *National Cotton Council v. EPA*.

Position

CropLife America believes that Clean Water Act NPDES permits should not be required when pesticides are applied according to the FIFRA label, which already contains rigorous water quality safeguards during the pesticide registration process.