

Clean Water Act Permitting of Discharges from Pesticide Applications

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Background

- 2001 Talent Irrigation Decision: The 9th Circuit Court of Appeals ruled that irrigation canals fall under the definition of “Waters of the United States” and herbicide applications must be authorized by CWA permits

Background

- November 27, 2006-U.S. EPA issues final rule to codify its interpretation: NPDES Permits are not required under the CWA if pesticide applications are consistent with FIFRA requirements.

Background (Continued)

- Petitions for review of the final rule were filed in 11 Circuit Courts in 2006. On January 7, 2009, the 6th Circuit Court of Appeals vacated the EPA rule.
- NPDES permits are required for all pesticides that leave a residue in water when applications are made over or near “Waters of the United States”.

Background (Continued)

- On June 8, 2009, the circuit court granted a two year stay of the decision, until April 9, 2011, to provide EPA and states time to develop and issue NPDES permits and to provide outreach to stakeholders on the implications of this action.
- Permits will not be required until after April 9, 2011.

Background (Continued)

- On November 2, 2009, agriculture groups filed a petition asking the U.S. Supreme Court to hear the case.
- On February 22, 2010, it was determined that Supreme Court would not review the case.

Actions

- EPA expects to propose its general permit by April 2010 and issue a final permit by December 2010.

Permits

- EPA will work closely with NPDES authorized states to concurrently develop their permit.
- The Nevada Division of Environmental Protection is the CWA authorized permitting authority in the State of Nevada

Permits (Continued)

- State issued NPDES permits must meet all CWA requirements, but can be more stringent.
- The NDEP has asked the Nevada Department of Agriculture to assist in developing permitting requirements.
- Citizens have the right to challenge permits.

Permits: Who Must File?

- Any federal, state, or local government agency
- Any entity tasked with managing property (i.e. homeowner's associations)
- Any commercial business not part of a small business enterprise (defined by SBA)

Permits: Notice of Intent (NOI)

- Mosquito and other aquatic nuisance insects
- Aquatic weeds
- Area-wide pests (ditch bank and forestry)
- Aquatic nuisance species

Permits: Treatment Thresholds

- 160 acres (surface water): mosquitoes, nuisance pests, aquatic weeds (waters of the U.S.), forestry/area wide spray programs
- 50 miles of irrigation system (count both sides): irrigation systems and ditch banks
- 10 miles: waters of the U.S.
- 640 land acres: mosquitoes, nuisance pests, forestry, area wide spray programs

Permits: Provisions

- Life of the permit is 5 years
- Emergency applications can be performed in advance of NOI submission
- Violation of a FIFRA label will be interpreted as a CWA violation

Provisions: Permit Holders

- Use the lowest effective amount of pesticide
- Perform regular equipment maintenance
- Calibrate
- Must implement IPM measures
- Monitor compliance with permit conditions
- Keep records
- Report annually

Pesticide Discharge Management Plan

- Pesticide discharges must be controlled to meet applicable state water quality standards
- Any permit holder who exceeds any pesticide use threshold must develop a PDMP
- The PDMP must be immediately available to EPA, the state agency, or member of the public upon request

PDMP: Contents

- Problem description
- Control measure description
- Pest surveillance procedures
- Spill prevention, response, and incident reporting procedures
- Equipment maintenance procedures
- Pesticide monitoring procedures
- Corrective action plan

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