


Clean Water Act Permitting of Discharges from Pesticide Applications



Full SFIREG Meeting

December 8, 2009

NPDES Pesticide Permitting Topics to be Discussed

- ❑ Background
- ❑ Schedule
- ❑ Pesticide General Permit (PGP)
- ❑ Endangered Species Act Consultation
- ❑ For More Information
- ❑ Questions

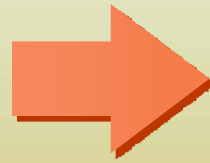
Background:

2006 Final Rule and Challenge to Rule

- ❑ EPA Rule published on 11/26/06 stating that the application of a pesticide directly to or over, including near, waters of the United States consistent with all relevant requirements under FIFRA does not require an NPDES permit.
- ❑ In December, 2006 petitions for review were filed in all 11 Circuit Courts. Petitions were consolidated in the 6th Circuit.
- ❑ On 01/07/09, the 6th Circuit vacated the 2006 Rule, stating that the rule was not a reasonable interpretation of the CWA.
- ❑ On 06/08/09, the 6th Circuit granted EPA's request and ordered a two-year stay of the mandate until **04/09/11**.
- ❑ On 08/03/09, the Court rejected industry's request for rehearing.
- ❑ On 11/03/09, industry petitioned the Supreme Court for Writ of Certiorari.

Background: NPDES CWA Statutory Framework

- All “point” sources
- “Discharging pollutants”
- Into “waters of the U.S.”



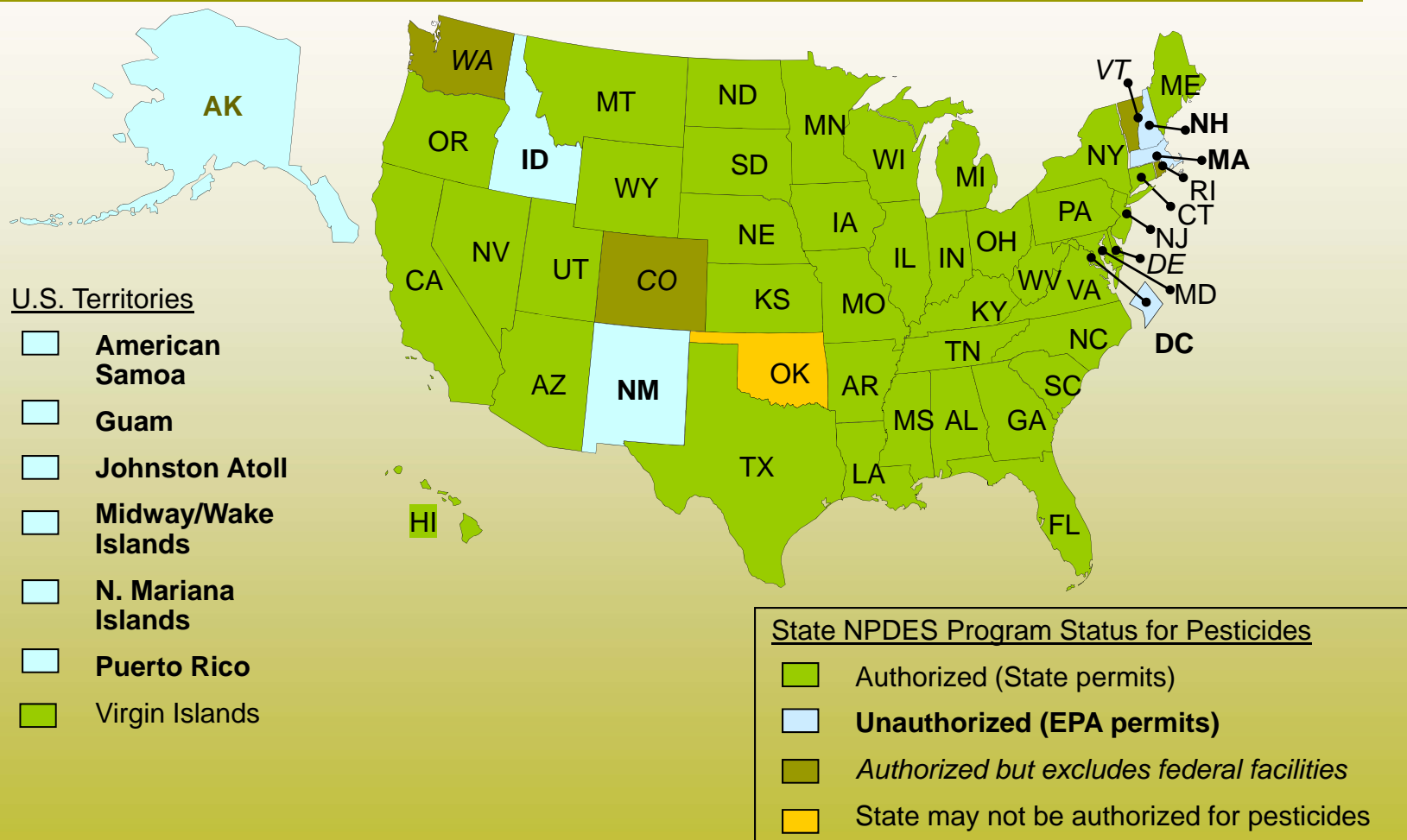
Must obtain NPDES permit coverage from EPA or an NPDES- authorized State

Background:

EPA as NPDES Permitting Authority

- ❑ EPA's Pesticide General Permit (PGP) will cover areas where EPA remains the NPDES permitting authority.
- ❑ During the stay, EPA will work closely with the NPDES authorized States to concurrently develop their permits.
- ❑ EPA and States will provide outreach and education to the regulated and environmental communities.

Background: NPDES Program Authorizations



Background:


NPDES General Permit Authority

- ❑ State-issued general permits must meet all CWA requirements that the Federally-issued permit must meet but can be more stringent.
- ❑ Permits are written based on a permit writer's best professional judgment.
 - Judgments may differ, so how each permit satisfies the CWA requirement may differ in some respects.
- ❑ EPA does maintain an oversight role.
 - If EPA determines that a specific state condition fails to satisfy a particular CWA requirement, EPA could object to that permit.
- ❑ Citizens have the right to challenge NPDES permits.

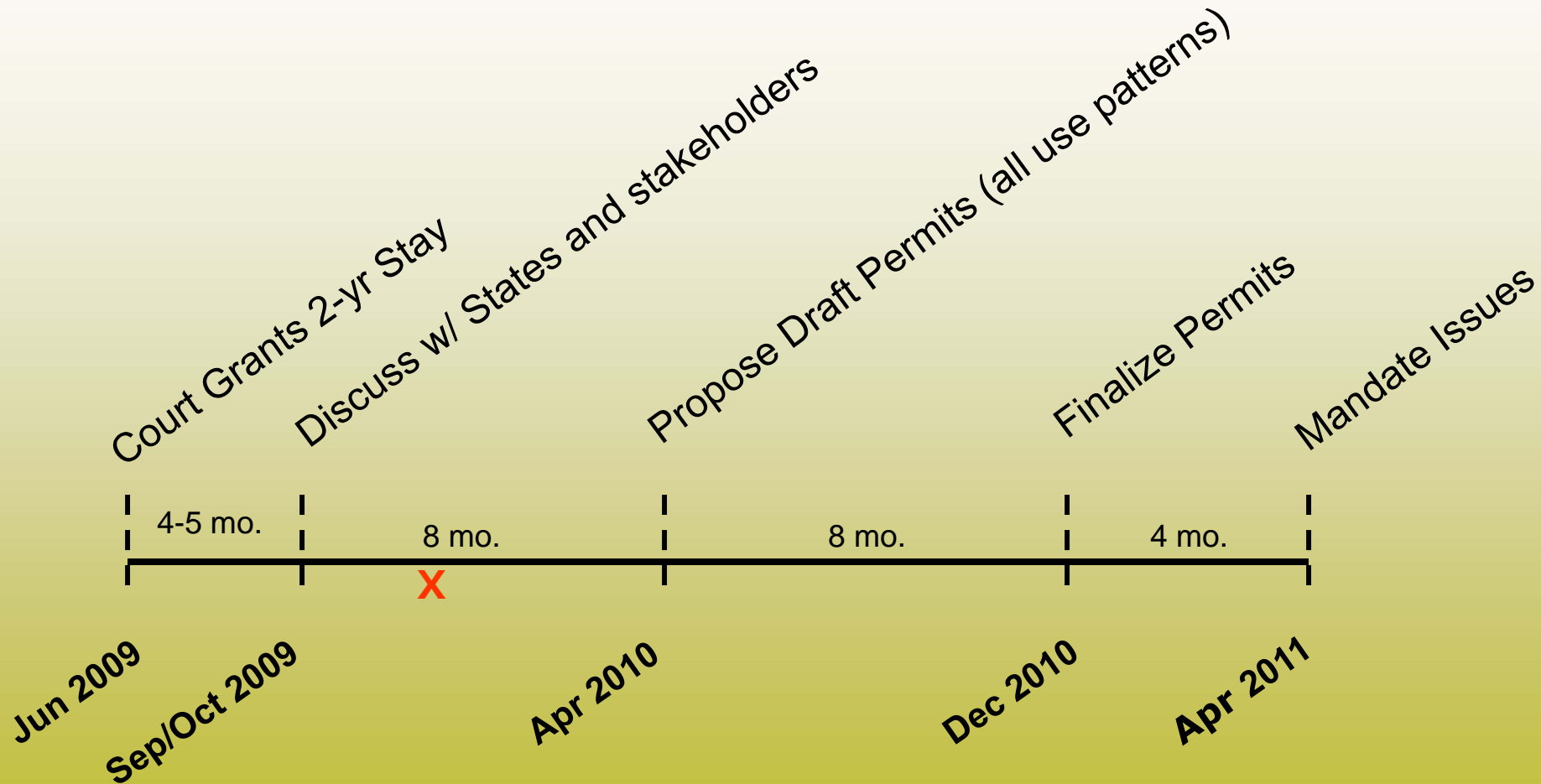
Background:

Types of NPDES Permits - General

□ General Permit (40 CFR 122.28)

- 1 permit issued  Notice of Intent (NOI) submitted by permittee to obtain permit coverage
- Permit must identify:
 - Areas where permit is available
 - Types of discharges covered
 - Other eligibility considerations
- NOI typical includes basic information on discharger, the type of discharges, and receiving water.
- NPDES regulations allow general permit coverage without submission of an NOI in certain instances.

Schedule: EPA Pesticides General Permit (PGP)



Schedule:

Efforts to Date

- ❑ Established State and Regional workgroups and have held regular conference calls with them
- ❑ Hosted webcast for stakeholders (over 1,200 participants) and met with Pesticides Program Dialogue Committee (Federal Advisory Committee)
- ❑ Established email listserv to promote EPA and state co-regulator dialogue
- ❑ Developed a prototype general permit and shared with States and Regions at a two-day face-to-face meeting in Kansas City (9/30-10/1)

Schedule:

Next Steps

- ❑ EPA Option Selection Meeting – Dec 8, 2009
- ❑ Face-to-face meeting w/ states - Jan 20-21, 2010
- ❑ Final Agency Review ~ Feb 2010
- ❑ Public Notice of Draft Permit – Apr 2010
 - Outreach/Webcast/Public Meetings
- ❑ Public Comment Period – Apr/May 2010
- ❑ Issuance of Final Permit – Dec 2010
- ❑ Effective date – April 9, 2011

Pesticide General Permit (PGP): Contents

- Scope
- Notice of Intent
- Effluent Limits
- Integrated Pest Management (IPM) Plans
- Monitoring
- Reporting and Recordkeeping

Pesticide General Permit (PGP): Scope

Current thinking:

- Pesticide uses for “in or over, including near” waters of the U.S. to be covered under PGP:
 - Mosquito Control and Other Aquatic Nuisance Insect Control
 - Aquatic Weed and Algae Control in and near Waters, including Irrigation Canals and Drainage Systems
 - Area Wide Pest Control and Forestry
 - Aquatic Nuisance Species Control in Waters.

- EPA considering if other pesticide uses should be in PGP.

- Nationwide ~5.6 mil. applications annually by 365,000 applicators using 433 different pesticides in ~3500 product labels.

Pesticide General Permit (PGP): Outside Scope

- Activities exempt from permitting under the Clean Water Act
 - Irrigation Return Flow
 - Agricultural Stormwater Runoff

- Discharges that will require coverage under an individual permit, such as:
 - Discharges of pesticides to waterbodies that are impaired under CWA §303(d) for that discharged pesticide
 - Discharges to Tier 3 waterbodies

- Discharges from other pesticide uses not specifically eligible for coverage.

Pesticide General Permit (PGP): Notice of Intent (NOI)

- In determining the NOI requirements for the Pesticide General Permit, EPA is taking the following considerations into account:
 - The usefulness of information in the NOI.
 - The burden on regulators and the regulated entities.
 - Avoiding duplicative submissions.

Pesticide General Permit (PGP): Who Has to File an NOI?

Current thinking:

- ❑ NOIs will be required for entities that exceed a pesticide application threshold.
- ❑ The NOI filer, in most cases, would be the entity responsible for deciding to conduct the pesticide applications, as opposed to the person performing the applications.
- ❑ However, any applicator would need to file an NOI, if it exceeds the application threshold for applications not already covered under another NOI.

Pesticide General Permit (PGP): Technology Based Effluent Limits

Current thinking:

- All permittees will implement Basic IPM Practices
- A subset of permittees will implement Comprehensive IPM Practices
 - Identify/assess pest problem
 - Assess effective pest management
 - Follow appropriate procedures for pesticide use.

Pesticide General Permit (PGP): Water-Quality Based Effluent Limits

- Considerations and challenges:
 - Regulation of pesticides under both FIFRA and CWA. The two statutes share the goal for protecting water quality, but have different requirements and legal standards.
 - Different risk assessment methodologies under the two statutes.

Pesticide General Permit (PGP): IPM Plan Development & Documentation

Current thinking:

- ❑ A subset of permittees required to implement Comprehensive IPM Practices will develop an IPM Plan and document activities performed.

- ❑ IPM Plan Contents, such as:
 - IPM Team
 - Problem Description
 - Control Measures
 - Pest Surveillance and Monitoring Procedures
 - Spill Prevention and Response and Adverse Incident Response Procedures
 - Signature Requirements

- ❑ Activity Documentation, such as:
 - Spill response
 - Maintenance/repairs and corrective action
 - Monitoring

Pesticide General Permit (PGP): Monitoring

- Permit will also include some type of monitoring for all permittees, and may include:
 - Visual monitoring for adverse effects
 - Monitoring of management practices
 - Ambient water quality monitoring

- EPA assessing how best to gather pesticide water quality data to evaluate permit effectiveness.

Pesticide General Permit (PGP): Reporting and Recordkeeping

Current thinking:

- Annual Reporting
 - Some permittees may be required to submit annual reports documenting pesticide application activities.

- Adverse Incident Reporting
 - Data will be used to identify possible permit violations and where permit may need modification to further protect water quality.

- Records
 - Depending on permittee, may include pesticide management logs, adverse incident reports, corrective action documentation, IPM plans, annual reports, etc.
 - Kept on-site and accessed by public through requests to EPA

Endangered Species Act Consultation: EPA Permit Issuance as Federal Action

- Endangered Species Act (ESA) requires EPA consultation with the Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) – i.e., the “Services.”
- EPA has commenced discussions with the Services on the PGP.
- Discussions may result in additional permit requirements.

Pesticide General Permit (PGP): NPDES Fact Sheet Components

- ❑ NPDES regulations require permits to include a fact sheet.
- ❑ Fact sheet will be public noticed along with draft permit.
- ❑ Fact sheet will include:
 - Principal facts and significant factual, legal, methodological, and policy questions considered in preparing the permit.
 - Description of types of activities covered.
 - Types of discharges covered.
 - Rationale for permit requirements, including calculations and analysis.
 - Brief summary of the basis for permit conditions.
- ❑ Complete list of contents available at 40 CFR 124.8 and 124.56.

For More Information: Online Training

Go to EPA's NPDES Training Website:

www.epa.gov/npdes/training

1. Archived NPDES Pesticides Webcast from 10/7/09 available by scrolling down to "Aquatic Pesticides" and then clicking on:

Clean Water Act Permitting of Discharges from Pesticide Applications

2. Also, background information on NPDES permitting available:

Click on "**NPDES Permit Writers Training**" and then look for the heading:

"Introduction to the NPDES Program"

This includes two 30-minute presentations (with audio):

- **Overview of the Clean Water Act and the NPDES Program**
- **Scope and Regulatory Framework of the NPDES Program**

For More Information: NPDES PGP Website

For more information:

www.epa.gov/npdes/agriculture

Questions

