

NPDES...It's coming Soon

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On June 2nd, 2010 the U.S. Environmental Protection Agency (EPA) released a proposed pesticide general permit requirement that, in their words, is designed to decrease the amount of pesticides discharged to our nation's waters and protect human health and the environment. This action is in response to an April 9, 2009 Sixth Circuit court decision that found that pesticide discharges to U.S. waters were pollutants, thus requiring a National Pollutant Discharge Elimination System ("NPDES") permit.

The EPA proposed Pesticide General Permit ("PGP") currently covers the following pesticide uses: (1) mosquito and other flying insect pest control; (2) aquatic weed and algae control; (3) aquatic nuisance animal control; and (4) forest canopy pest control. EPA is soliciting public comment on whether additional use patterns should be covered by this general permit.

The permit, if enacted, may have far reaching consequences and should be taken seriously by all individuals, agencies or businesses that practice mosquito control. Non-compliance with the Clean Water Act can result in fines of up to \$37,500.00 a day. Complying with the permit requirements, such as developing a Pesticide Discharge Management Team, a Pest Management Area Description, and a Control Measure Description does not exempt the permit holders from outside interpretation that could result in citizen lawsuits. For example, mosquito control programs will be required to develop

procedures for determining the lowest effective amount of pesticide product per application and the optimum frequency of pesticide applications necessary to control the target pest. In addition, procedures for documenting any observed impacts to non-target organisms resulting from your pesticide discharge will be required. Both of these requirements are fairly standard procedures for mosquito control programs but they are subject to broad interpretation and could very likely result in litigation to many mosquito control programs from anti-pesticide activists. It is extremely important to let EPA know these concerns and how they may impact the ability to control mosquitoes and protect the public.

EPA will be holding three public meetings, a public hearing, and a webcast to present the proposed requirements of the permit, the basis for those requirements and to answer questions. The EPA plans to broadcast the webcast on June 17, 2010, from 1:00 p.m. to 3:00 p.m. Eastern Standard Time (EST). If you were unable to see the webcast or attend any of the the meetings, you can still provide written comments. EPA will accept written comments on the draft permit for 45 days after publication in the Federal Register (through July 19th, 2010).

EPA intends to issue a final general permit by December 2010. Once finalized, the PGP will be implemented in the six states, territories, Indian Country lands and federal facilities where EPA is the NPDES permitting authority. In the other 44 states, the state NPDES authorities will issue the

permits. EPA has been working closely with these states to concurrently develop their permits. Currently two states, Washington and California, have developed or drafted their own NPDES permits. If you have not been working with your state to identify how they will comply with the current law, you need to do so immediately!

All permits will need to be in effect by April 9, 2011.

The AMCA currently believes it will take an act of Congress to legislatively clarify the distinction between public health pesticides and pollutants to allow mosquito control programs to deliver vital public health services, in a manner free from citizen lawsuits challenging the use of permitted pesticides, and free from excessive and unjustified regulatory burdens and costs. Until that happens, however, it is imperative that every mosquito control program work with their state NPDES authority to ensure they can still protect the constituents they serve from mosquitoes while remaining in compliance with the Clean Water Act.

For more information, please contact David Brown, AMCA Legislative and Regulatory Chair. He can be reached at: dabrown@fightthebite.net