

The Impact of National Pollutant Discharge Elimination System Permits on Pesticide Use

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Jay Ellenberger
Office of Pesticide Programs
US EPA



NPDES Pesticide Permitting Topics to be Discussed

- The Issue
- EPA's Approach & Schedule
- Pesticide General Permit
- Challenges/Benefits.



What's the Issue?

- As a result of a court decision . . .

Beginning April 9, 2011 certain pesticide applications must meet standards of the Clean Water Act, namely coverage under a NPDES permit

- How will this affect pesticide users, government agencies, the public and,
- What are EPA's actions to address this?



Why is this happening?

- Clean Water Act Pesticides Rule (2006) in response to a lawsuit (Talent case)
 - Pesticides legally applied directly to or over/near water do not require a NPDES permit
 - Mosquito larvicides, aquatic herbicides
 - Forestry aerial application

- Sued again and lost.



. . . Why is this happening?

- Court threw out 2006 Rule (Jan 2009)
 - “Biological materials” and “chemical wastes” (pesticides) are pollutants under CWA
 - 2006 Rule remains in effect until April 2011
 - Then, discharges into water from pesticide applications will require coverage under a NPDES permit.



Who does this affect?

- Certain applicators, growers, other entities who make pesticide application decisions
 - EPA estimates 365,000 applicators providing over 5 million applications a year will be covered under the permit
- States, EPA
- Public.



What's EPA's course of action?

- ❑ EPA is developing a **Pesticide General Permit** (PGP) to cover areas where EPA remains the NPDES permitting authority
- ❑ EPA is working closely with the NPDES authorized states to concurrently develop their permits.



What has EPA done so far?

Communicated with other feds, states, ag-sector, public --

- ✓ Held numerous “listening sessions” with industry and environmental groups
- ✓ Hosted webcasts for stakeholders (over 1,500 participants)
- ✓ Met with EPA’s Pesticides Program Dialogue Committee
- ✓ Established email listserv to promote EPA and state co-regulator dialogue

Developed a prototype general NPDES permit

- ✓ Shared with states at two meetings (Kansas City, Dallas).



EPA's Next Steps

- ❑ Provide draft General Permit this April for public comment
- ❑ Public Comment Period (likely 30 – 60 ? days)
- ❑ Public meetings and webinar this spring
- ❑ Consider comments, make revisions
- ❑ Issue Final Permit December 2010
- ❑ Permit effective April 9, 2011.



Pesticide General Permit (PGP)

What are the components?

- Scope
- Notice of Intent
- Effluent Limits
- Discharge Management Plans
- Monitoring
- Reporting/Recordkeeping.



Background: NPDES Permitting

Considerations in Permit Development

- ❑ Provides environmental protection
- ❑ Complies with statutory and regulatory requirements
- ❑ Builds on experience from states and programs
- ❑ Consists of an efficient and effective process
- ❑ Uses resources effectively
- ❑ Is transparent and understandable.



Pesticide General Permit Scope

Current thinking

□ Pesticide uses covered under PGP:

- Mosquito and Other Aquatic Nuisance Insect Control
- Aquatic Weed and Algae Control
- Aquatic Nuisance Animal Control
- Area Wide Pest Control
- Possibly other pesticide uses



□ Pesticide uses Not covered:

- Activities exempt from NPDES permitting
- Discharges requiring an individual permit
- Other pesticide uses not eligible for PGP.



Pesticide General Permit Notice of Intent (NOI)

Current thinking

- ❑ A NOI to make a pesticide application, if it meets the threshold
- ❑ Describes the intended application
- ❑ Filed with the state by those who decide to make pesticide applications
- ❑ Once every 5 years.



Pesticide General Permit

Effluent Limits--Technology Based

Current thinking

- ❑ All permittees would use BMPs
 - Minimize discharges
 - Calibrate and maintain equipment

- ❑ A subset of permittees would use IPM practices
 - Identify/assess pest problem
 - Assess effective pest management
 - Follow appropriate procedures for pesticide use.



Pesticide General Permit

Water-Quality Based Effluent Limits

Current thinking

- ❑ The permit will include a narrative WQBEL:
 - “Your discharge must be controlled as necessary to meet applicable water quality standards.”

- ❑ Compliance with pesticide label and permit conditions should control discharges to meet water quality standards.



Pesticide General Permit Plan Development & Documentation

Current thinking

- ❑ Some permittees, likely the largest applicators, will be required to develop a written pesticide discharge management plan
- ❑ Plan includes problem description, control measures description, pest surveillance, spill control, adverse incident response
- ❑ Activity Documentation
 - Includes information such as significant spills, maintenance, monitoring, corrective action.

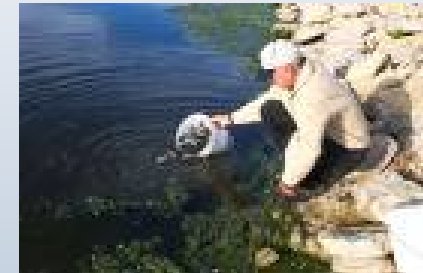


Pesticide General Permit Monitoring

Current thinking

- ❑ Permit will include monitoring for all permittees, such as:
 - 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

Reporting and Recordkeeping

Current thinking

- ❑ Annual Reporting of pesticide application
- ❑ Reporting adverse incidents
- ❑ Keeping records of the above
 - Kept on-site and accessed by public through requests to EPA.



Pesticide General Permit

NPDES Fact Sheet

- ❑ General permits must have a fact sheet
 - Principal facts, legal, and policy issues considered in preparing the permit
 - Description of types of activities covered
 - Types of discharges covered
 - Rationale for permit requirements
 - Basis for permit conditions

- ❑ Fact sheet and draft permit will be available public.



Pesticide General Permit

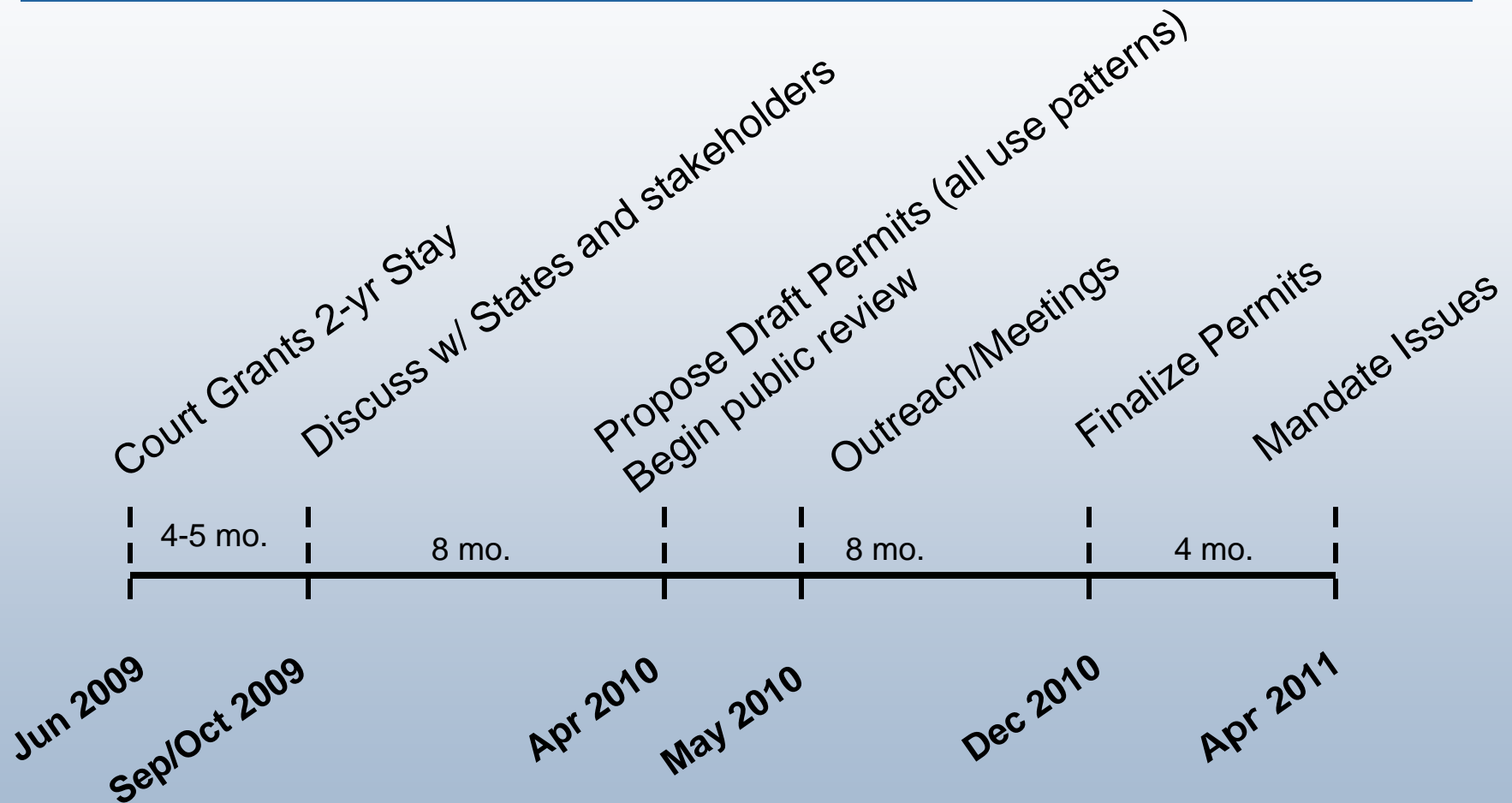
Endangered Species Act Consultation

- ❑ EPA is discussing PGP approach with FWS and NMFS relative to endangered species protection
- ❑ Discussions may result in additional permit requirements.



Schedule

EPA Pesticide General Permit



Challenges

- ❑ Expediting the permitting process so states can simultaneously work on their general permits
- ❑ Educating pesticide applicators about new requirements and allow them to come into compliance
- ❑ Liability and pest control concerns of applicators.



Pesticide General Permit

Environmental Benefits

- ✓ **Mandatory equipment calibration and maintenance**
- ✓ **Required use of IPM practices**
- ✓ **Limitations on pesticide use in impaired waters (303d) and outstanding national resource waters**
- ✓ **Post-application surveillance and immediate notification of adverse effects and expanded scope for who must report**
- ✓ **Annual pesticide reporting – quantities and locations, available to the public**
- ✓ **Enforceable under the CWA as a permit violation.**



For More Information

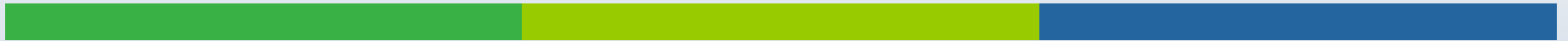
NPDES PGP Website

For more information:

www.epa.gov/npdes/agriculture



Thank you

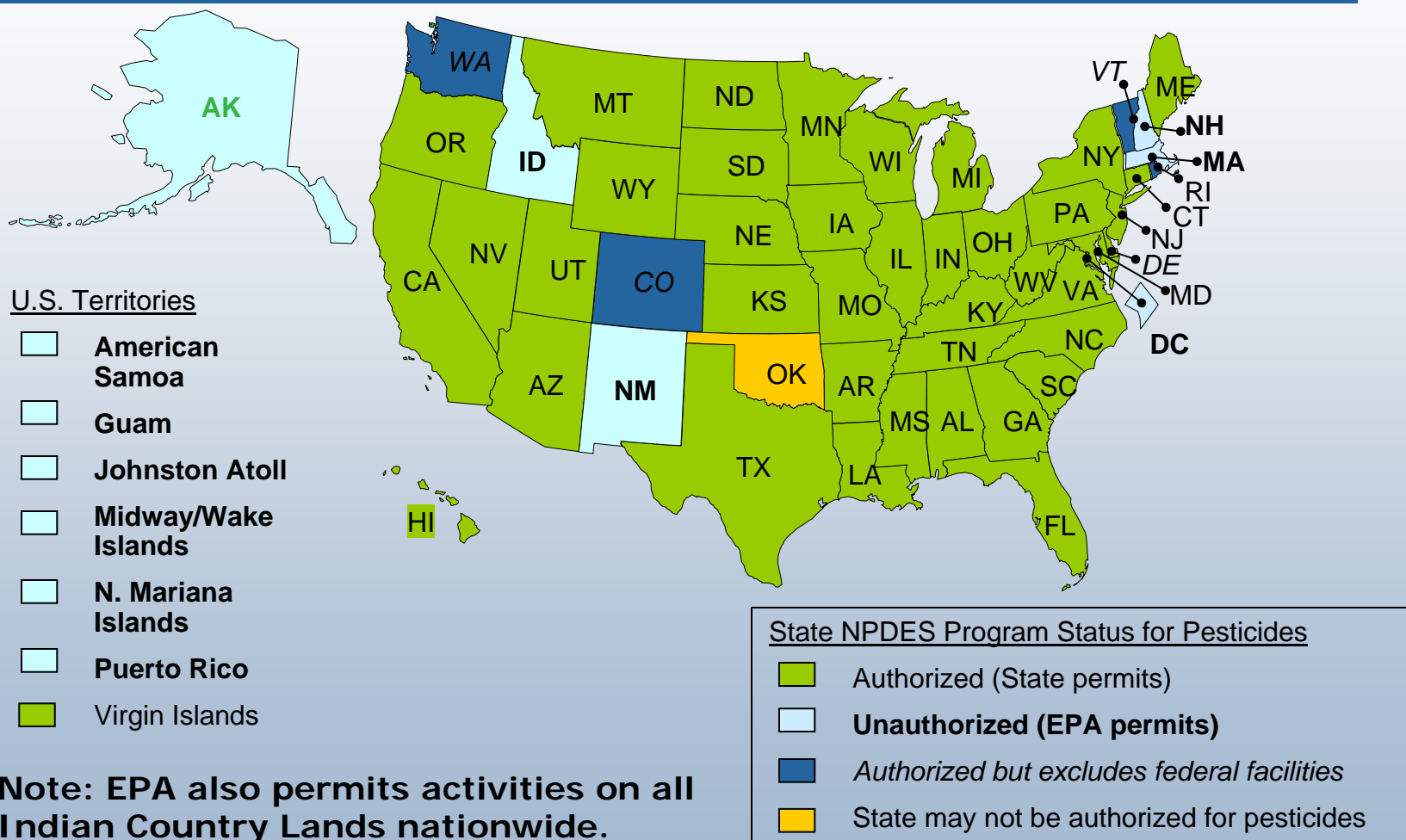


Questions?



Background

NPDES Program Authorizations (PGP)



Background

State-Issued NPDES Permits

- ❑ 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.

