

BENEFITS OF THE PESTICIDE GENERAL PERMIT (PGP) CITED BY EPA

At the annual AMCA Conference in Anaheim, an EPA official cited 6 purported benefits that will be realized from imposition of NPDES requirements on public health pesticide applications. At first glance, these may seem reasonable to individuals outside of the vector control community. A closer look, however, reveals some substantial flaws in their underlying reasoning. Be advised that these “benefits” are likely to be used by legislators or activists in support of the 6th Circuit Court of Appeals decision or by means of arguing that a legislative fix is unnecessary. AMCA disputes this rationale and is providing the following facts that call into question these benefits and their relevance to mosquito control operations. The benefits cited are:

1. Additional limitations on pesticide use in impaired waterbodies (303d) and outstanding national resource waters (Tier 3 waters)
2. Requires use of Integrated Pest Management (IPM) practices for larger applications.
3. Immediate notification of adverse effects and expanded scope for who must report adverse effects on aquatic ecosystems.
4. Mandatory equipment calibration and maintenance programs.
5. Annual pesticide reporting – quantities and locations available to the public.
6. Will be enforceable under the CWA as a permit violation.

The Real Story

1. Additional limitations on pesticide use in impaired waterbodies (303d) and outstanding national resource waters (Tier 3)

- a. Fact: Of the 71,363 causes of impairment for listed waters on the EPA website, pesticides account for only 1,866 or 2.6%. Furthermore, studies have not linked mosquito control pesticide applications to water impairments. Indeed, the active ingredients currently in use in mosquito control are substantially different from the legacy pesticides found and do not contribute to additional impairment.
- b. Fact: Many references are made to the USGS report “The Quality of Our Nation’s Waters – Pesticides in the Nation’s Streams and Ground Water, 1992-2001.” Selection of 83 closely bunched watersheds and basins within discrete regions of targeted states while many other agricultural regions and states were largely ignored biases the total percentage of “*agricultural detections*” in the study. In addition, the lead author notes that modern agricultural management practices probably account for the decline in detections over the course of the study – without the need for CWA permitting stipulations.
- c. Fact: The PGP states, “Except for discharges from pesticide applications made to restore or maintain water quality **or to protect public health or the environment that either do not degrade water quality or only degrade water quality on a short-term or temporary basis**, operators are not eligible for coverage under this permit for discharges to waters of the United States if the water is designated by a state or tribe as Tier 3 (Outstanding National Resource Waters) for antidegradation purposes under Title 40 of the *Code of Federal Regulations* (CFR) 131.12(a)(3).” Thus, there is no additional limitation proposed for public health mosquito control operations – the argument is erroneous.

- d. Fact: The Federal Register Notice for the PGP states that, “Except for certain temporary changes, water quality cannot be lowered in such (Tier 3) waters. In broad terms, EPA’s view of ‘temporary’ is weeks and months not years.” The current pesticides utilized in mosquito control generally exert their effects in the first few hours in the case of adulticides and potentially a few weeks in the case of larvicides. They are, by definition, “temporary” and should not factor into Tier 3 limitations. However, this interpretation of “temporary” could be challenged in court by environmental groups.
- e. Conclusion: *Provisions in the PGP do not provide any demonstrable increase in protection for impaired or Tier 3 waterbodies from mosquito control operations.*

2. Requires use of Integrated Pest Management practices for larger applications.

- a. Fact: All government mosquito control agencies, regardless of size, will be required to file an NOI and be required to keep and maintain records describing pest management measure(s) implemented prior to the first pesticide application. This is a tacit mandate for IPM regardless of entity size.
- b. Fact: This presupposes that IPM is not practiced at mosquito abatement districts and the PGP requirement would represent a manifest improvement over current practices. That is profoundly in error. Integrated Mosquito Management (IMM) activities were first proposed by A.F.A. King in 1883 and put into practice by J.B. Smith in New Jersey in 1905. In point of fact, the principles of IMM are an integral part of all public health applicator certification training nationwide and continue to form the basis for control operations to this day.
- c. Conclusion: *The PGP does not produce IPM benefits beyond those already practiced by districts nationwide.*

3. Immediate notification of adverse effects and expanded scope for who must report adverse effects on aquatic ecosystems.

- a. Fact: Issues such as what constitutes an adverse incident and its cause, specific survey/control/monitoring methodologies, action thresholds, etc. will serve as rich sources of litigation based solely on differences of opinion between control districts and activists or misinformed citizens, potentially severely compromising time-sensitive activities required for effective and efficient mosquito control.
- b. Fact: Reporting of supposed adverse pesticide application events or incidents from unreliable or biased witnesses could have substantial unintended and unforeseen detrimental consequences for applicators in local media and courts.
- c. Fact: The expanded scope could generate endless court injunctions at several points in the recognition, reporting, and remediation of adverse events or incidents whose confounders are not and cannot be known.
- d. Fact: Activists groups have stated that they intend to file citizen suits until all pesticide applications are permitted if even a remote possibility exists that the pesticide could come in contact with any “water,” that could possibly be a potential conveyance to a water of the U.S.
- e. Conclusion: *The proposal touted as a “benefit” is actually another opportunity for activists to unreasonably hamstring mosquito control operations.*

4. **Mandatory equipment calibration and maintenance programs.**

- a. Fact: Droplet size and application rate calibrations are already practiced at programs per label specifications and timetables. Smaller entities commonly have their equipment calibrated by manufacturers' representatives as a condition of their purchase.
- b. Fact: Required droplet spectra are usually delineated on the label for Ultra Low Volume (ULV) products, as are application rates. Thus, failure to ensure proper droplet size or application rate would be a FIFRA violation – with no need for further regulatory enforcement action. Furthermore, improper droplet spectra or application rate would compromise efficacy. Applicators understand proper calibration as the cornerstone of effective ULV control, regardless of regulatory oversight.
- c. Conclusion: *Applicators are trained in certification courses to view proper calibration and maintenance of equipment as a necessary prerequisite for effective control – and the law, if stated on the label.*

5. **Annual pesticide reporting – quantities and locations available to the public.**

- a. Fact: Pesticide usage is generally reported to the state agencies responsible for their regulation, and should be left to discretion of the states. The states should determine the need and/or value-added for such reporting in addition to its format and timeline. Additional federally-mandated reporting is not needed and would constitute an unnecessary administrative burden - with associated costs.
- b. Fact: Although making this information available to the public appears to be a welcome transparency, it will no doubt be used by activists, health scam and fraud perpetrators to leverage injunctive relief from applicators. The utility of this measure in light of potential litigation should be viewed with extreme caution.
- c. Conclusion: *This information will provide excellent fodder for media scares. There is no compelling reason that it should go beyond the state level.*

6. **Will be enforceable under the CWA as a permit violation.**

- a. Fact: Permit violations would already be punishable by fines under FIFRA at \$7500 per incident. This would provide significant deterrent to mosquito control programs already operating at slim fiscal margins. Adverse publicity associated with FIFRA violations and its effect on taxpayers constitutes a further deterrent.
- b. Fact: There is no evidence that additional fines under CWA would have prevented the Talent Irrigation misuse of aquatic herbicides. The application constituted a clear label violation under FIFRA and should have been duly enforced under that statute.
- c. Fact: Compliance with CWA will entail significant new expenses for applicators including filing and application fees, new monitoring, record-keeping and annual reporting requirements, and documentation of routine operational practices in the Pesticide Discharge Management Plan (PDMP).
- d. Conclusion: *FIFRA penalties are a sufficient deterrent to mosquito control programs operating on extremely tight (and shrinking) budgets and at the pleasure of the taxpayers or customers.*