

Clean Water Act NPDES Permit Impacts on Mosquito Control Programs

Issue: Mosquito Control Programs (MCP's) are required to have NPDES permits under the Clean Water Act (CWA) for mosquito control pesticide applications (including both biological pesticides and chemical pesticides) occurring over, near or in waters of the US. However, these permits are redundant since the pesticide product use has already been reviewed and approved by EPA. Furthermore, the failure to obtain or operate in accordance with a NPDES permit exposes MCPs to substantial CWA penalties including Citizen Suit litigation. These NPDES permit requirements provide little or no environmental benefit, and can have a chilling effect on the ability of MCPs to protect the public from mosquitoes and mosquito-borne diseases.

Background: Due to a 2009 court ruling, commencing October 31, 2011, EPA and the states instituted NPDES permit requirements regulating the application of mosquito control pesticides, including both biological pesticides and chemical pesticides where a pesticide residue may potentially affect a water of the US. EPA expects that some portion of every pesticide applied to waters of the United States will leave a residual in those waters. EPA also assumes that every application of chemical pesticides to waters of the United States will trigger the requirement for an NPDES permit. The failure to obtain or comply with the permit can subject MCPs to costly litigation, including those instituted under the citizen suit provisions of the CWA and can result in CWA penalties of up to \$37,500 per day

Discussion: While the American Mosquito Control Association worked with EPA and authorized states to craft NPDES pesticide general permits that minimize potential impacts on MCP's public health mission, those permits have resulted in scarce public funds being spent on unnecessary and duplicative regulatory requirements. Pesticides are already effectively regulated under the registration process required by the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). Under FIFRA, EPA requires a wide range of different scientific studies and tests. These encompass toxicity studies to determine potential impacts on water quality and aquatic species, including, for example, a suite of data and studies on ecological effects (e.g., freshwater fish toxicity, acute toxicity freshwater invertebrates, estuarine and marine organisms, fish early-life stage, fish lifecycle, bioavailability, biomagnification and whole sediment toxicity,) environmental fate (e.g., hydrolysis, photodegradation in water, photodegradation in soil, aerobic and anaerobic aquatic metabolism, volatility, absorption and desorption, groundwater monitoring), and residue chemistry. EPA has established test guidelines for applicants to follow to ensure studies are conducted with consistent scientific rigor.

EPA has broad powers to require additional information and does so where necessary to ensure that it thoroughly understands a pesticide's risks. EPA will only approve a registrant application when it is confident that based on the data, there is reasonable certainty the intended use of the product will not cause unreasonable adverse effects on man or the environment.

The regulation of public health pesticides should continue under FIFRA and duplicative regulation under the CWA is inefficient, costly, and burdensome and should be terminated. Enactment of H.R.897 will help ensure that scarce valuable resources are not wasted and public health missions are not compromised by duplicative regulations such as the NPDES Pesticide Permits for mosquito control.

Needed Action: We urge Congress to pass legislation consistent with the goals and objectives of H.R. 897 clarifying that pesticide applications for mosquito control in accordance with label requirements are regulated under FIFRA and not the Clean Water Act NPDES permit program.