



FACT SHEET

Interpretive Statement and Proposed Rule on the Application of Pesticides to Waters of the U.S. in Compliance with FIFRA

EPA has published an interpretive statement outlining circumstances under which National Pollutant Discharge Elimination System (NPDES) permits are not required to apply pesticides to waters of the United States. EPA is also proposing to codify the interpretive statement in regulation. The public may comment on this proposed regulation for a period of 60 days after publication in the Federal Register.

Background

In recent years, courts have been faced with the question of whether the Clean Water Act requires an NPDES permit for pesticide applications (e.g. *Headwaters, Inc. v. Talent Irrigation District*). As a result, public health authorities, natural resource managers, and others who rely on pesticides, have expressed to EPA their concern and confusion about whether they have a legal obligation to obtain an NPDES permit (under the Clean Water Act) when pesticides are applied to or over waters of the United States. They were also concerned about the impact such a requirement would have on their ability to accomplish their missions. The interpretive statement and proposed rule are intended to address these concerns and clarify jurisdictional issues between the Clean Water Act and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) pertaining to the application of pesticides. EPA solicited public comment on an interim statement and guidance in a *Federal Register* Notice published on August 13, 2003 and received more than 400 comments expressing a wide range of views.

What do the interpretive statement and proposed rule say?

The application of a pesticide to waters of the United States consistent with all relevant requirements under FIFRA does not constitute the discharge of a pollutant that requires an NPDES permit in the following two circumstances:

1. The application of pesticides directly to waters of the United States in order to control pests. Examples of such applications include applications to control mosquito larvae, aquatic weeds or other pests that are present in the waters of the United States.
2. The application of pesticides to control pests that are present over waters of the United States, including near such waters, that results in a portion of the pesticides being deposited to waters of the United States. Examples include aerial applications of insecticides to a forest canopy where waters of the United States may be present below the canopy or applications of pesticides over or near water for control of adult mosquitos or other pests.

Why is this action by EPA important?

Clarification of these issues is important because doubt over a requirement to obtain an NPDES permit could impede the ability of local officials to quickly control pests, such as mosquitos, that may carry communicable diseases like West Nile virus or invasive species that may damage natural resources. EPA believes that the existing regulatory requirements for pesticides under FIFRA adequately safeguard human health and the environment without imposing undue burden on local governments and others that rely on pesticides.

How to Get Additional Information

Copies of the Federal Register notice that contains the interpretive statement and proposed rule are available on EPA's website at www.epa.gov/npdes/agriculture. You can also get copies of the Federal Register notice by contacting EPA's Water Resource Center, Mail Code 4101T, 1200 Pennsylvania Avenue NW, Washington, DC 20460, 202-566-1729, or via email center.water.resource@epa.gov.