

Water Resource News

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NPDES Permit Necessary for Pesticides

In 2009 the Sixth Circuit Court ruled in *National Cotton Council v. EPA* that National Pollutant Discharge Elimination System (NPDES) permits under the Clean Water Act (CWA) are required for pesticide applications to waters of the U.S. EPA and state regulators are currently developing NPDES permits to comply with the decision.

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) established an effective and comprehensive regulatory web to provide pesticide-related environmental and public health protection. FIFRA created an extensive pre-market approval process that includes rigorous examination of environmental data and

health exposure assessments for pesticide products. Because this process specifically examines the product's potential impact on water, additional permitting requirements under the CWA are duplicative and will entail significant costs for state permitting authorities and pesticide users.

The draft permit states that application of herbicide or insecticide near water, over water, or to the water will need to obtain a permit from EPA. Terrestrial application of pesticide (normal spraying of agriculture fields) does not qualify for a permit. However spraying of man-made ditches (drainage ditches-road ditches) will

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Federal Legislation Introduced to end NPDES Permit for Pesticides

Congress never intended to require NPDES permits under the CWA for pesticides that have been reviewed and approved by EPA under FIFRA. Quite the contrary, Congress clearly intended for FIFRA-not the CWA-to regulate pesticide use and even explicitly contemplated FIFRA's role in protecting the quality of our nation's waters.

Congress must act to clarify that pesticides applied in accordance with FIFRA are not subject to NPDES permitting requirements under the CWA. If Congress fails to act, public health agencies, local governments, pesticide applicators, and agricultural producers will be significantly impacted:

- **Serious public health consequences:** Instead of providing environmental protection, the costly and burdensome permit requirements could actually deprive the public of vital mosquito control activities and invasive species control programs. If localities are impeded from controlling mosquitos for example, public health consequences such as increased West Nile Virus-related deaths could result.
- **Unfunded mandates and stress on state resources:** The resources required to process these new permits will strain the

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NPDES Permit continued

require a permit.

The Court set a deadline of April 9, 2011 for U.S. EPA and the states to finalize permits. In most cases, state permits will not be able to be finalized until *after* U.S. EPA's permit is final. In some instances, state legislatures may even have

to change state statute in order for the state to comply with the court's decision. Even after permits are finalized, time will be needed to implement requisite applicator outreach and training prior to the beginning of the spring growing season.

As a result of this impossible deadline and lack of guidance to

the states, Agriculture groups requested that the U.S. EPA ask the courts for the extension. On March 28, the Court granted an extension and establish an October 28, 2011 deadline.

An act of Congress that amends both the FIFRA and Clean Water Act is necessary to end EPA NPDES Pesticide Permit requirement.

Iowa Bill on water-quality programs gets split reaction

A bill that would shift water-quality programs from the Iowa Department of Natural Resources to the state agriculture department has triggered a debate between environmentalists who call the move a conflict of interest and supporters who say it will make government more efficient and improve work to clean waterways

The Iowa Department of Agriculture and Land Stewardship's mission is to nourish farming and other segments of agribusiness. Critics, though, say farms are the primary source for what ails rivers and streams: silt, fecal bacteria and nitrates.

Mark Langgin, executive director of the According to the Register, the debate is a political power struggle as farm groups try to fight off regulations that would clamp down on farm runoff. It also reflects distrust between many Iowa farmers and environmental regulators, and farmers' preference for voluntary programs versus requirements.

Proponents of the change think participation in voluntary programs to reduce runoff might increase if Agriculture Secretary Bill Northey were leading them. Northey said he believes he can ensure that more money goes to cleanup projects and less to administration.

Gov. Terry Branstad supports the shift of water duties. So do the Iowa Farm Bureau Federation, which supported Branstad's campaign; DNR director Roger Lande, who was appointed by Branstad; and Northey and his department.

Some environmentalists, including members of the Iowa Citizens for Community Improvement, fret that shifting clean-water programs to the agriculture department would make it harder to live up to the federal Clean Water Act.

Branstad said he plans to have the DNR, which is charged with protecting the health of Iowa's environment and its resident, lead the work to comply

with the Clean Water Act.

Wayne Gieselmann, who directs the agency's environmental protection efforts, declined to comment about the critics' view that the agriculture department has a conflict of interest that would prevent it from effectively protecting the environment. He noted that the clean-water programs to be transferred are not just about farming. The programs also have paid to protect trout streams from siltation and for urban projects to control storm water runoff.

Rick Robinson, who follows environmental issues for the Iowa Farm Bureau Federation, said the change would let farmers talk primarily with one agency, and one led by someone they trust -- Northey. He has become a leader in efforts to reduce runoff that causes a dead zone in the Gulf of Mexico, and has strongly advocated for voluntary programs in which farmers can enroll to help.

Northey said his department already has done the on-the-

AAW Applauds the House passage of H.R. 872

The House of Representatives has passed H.R. 872, the Reducing Regulatory Burdens Act of 2011, by a vote of 292 to 130. H.R. 872 states that National Pollutant Discharge Elimination System (NPDES) permits are not required when applying pesticides according to their EPA approved label.

American Agri-Women (AAW) President Chris Wilson said that AAW supported the passage of this legislation and commended the House of Representatives for its

bipartisan support of the bill, signaling the understanding that NPDES permits could be burdensome and unnecessary. Historically, pesticide applications have been regulated under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), rather than NPDES permits under the federal Clean Water Act. A court decision was the reason that NPDES permits would be required in addition. H.R. 872 amends both the Clean Water Act and FIFRA in or-

der to restore the previous regulatory framework.

"AAW was pleased to join with other farm organizations in support of this important measure, and we hope the Senate will move quickly to pass this bill."

H.R. 872 will move to the Senate. AAW members are asked to begin talking with U.S. Senators.

Legislation continued

already scarce resources of state regulatory agencies. Conservative estimates from EPA predict that over 365,000 applicators making at least 5.6 million pesticide applications would fall under the new permitting requirements, representing a significant workload increase for state regulators.

- Increased costs and threat of lawsuits:** The compliance and record keeping costs for pesticide users will be significant. EPA estimates that these costs could easily top \$50 million a year. By extending CWA requirements to activities already regulated by other federal and state laws, the court has placed farmers and other pesticide users in legal jeopardy under the CWA's citizen-action provisions.

- Uncertainty on the scope of the permit:** Permitting pesticide applications under the CWA is further complicated by uncertainties over the extent of jurisdiction of the CWA. In addition, state law in some states requires state-issued permits to cover "waters of the state," dramatically expanding the scope of the NPDES permitting require

Therefore, U.S. Representative Bob Gibbs [OH] introduced H.R. 872, the Reducing Regulatory Burdens Act of 2011.

H.R. 872

[http://
thomas.loc.gov/
cgi-bin/thomas](http://thomas.loc.gov/cgi-bin/thomas)

Did You Know?

You can use the Grassroots Advocacy Center on the AAW's Website to Contact your U.S. Congressmen

www.americanagriwomen.org

One drought ends but another never does

By Calif. Farm Bureau

As Gov. Brown declared an end to the state's drought emergency today, California Farm Bureau Federation President Paul Wenger said the state must improve its water system to end chronic water shortages that still confront many Californians.

"By one measure, the California drought certainly has ended. By another, it never ends," Wenger said.

"Even with all this rain and snow, farmers in parts of the Central Valley still face water shortages because of conflicts over endangered species fish protection and other restrictions. The federal Central Valley Project is offering only two-thirds of contract supplies this

year to many of its farm customers, and supplies from the State Water Project will be only slightly better. In Southern California, soaring water prices force farmers to cut down productive avocado trees.

Farmers have made significant improvement in water efficiency—producing 'more crop per drop'—and that will continue. But continued shortages force many farmers into tough decisions about whether they can sustain their crops and their businesses."

Wenger noted that much of the water swelling California rivers and streams this spring represents "a lost opportunity."

"All of us will wish we had that water available when we have our next dry winter. That could be next year, or the year after, but we know

drought will come again, probably soon," he said.

"It's up to us to do something to prevent the chronic water shortages some of us face now and the severe shortages all of us face when rain and snow falls short," Wenger said.

"California needs more reservoirs to capture more of these flood flows when they occur, so we can both lessen the chances for catastrophic floods and bank that water for the dry years we know will come."

Now that Gov. Brown has declared an end to the drought, Wenger said, "we hope he will push for passage of the 2012 water bond. To meet the new water demand from urban growth and for environmental restoration, California must begin the investments needed to improve and modernize our water system."

Kansas May Reopen Water Suit

Kansas appears to have grabbed the momentum in its long-running legal dispute with Nebraska over flows in the depleted Republican River.

On Monday, the U.S. Supreme Court agreed to reopen Kansas' lawsuit with Nebraska, and allow lawyers from the Jayhawk State to present arguments that Nebraska used more water than allowed during the years 2005 and 2006.

The ruling opens the way for Kansas to seek millions of dollars in damages from Nebraska taxpayers and to seek tougher restrictions on irrigators in the Republican River.

It comes after the two states, as well as Colorado, had reached a settlement of most of their water issues in 2003. It also follows an arbitrator's non-binding ruling two years ago that concluded that Kansas had proven only nominal monetary damages -- not the \$70 million in losses its experts were claiming.

Monday's ruling by the nation's highest court is not good news for Nebraska, said Mike Jess, a former Nebraska state water czar and now a private consultant.

"It's clearly saying that there's a live issue here," Jess said.

"Unlike Nebraska would like, (this dispute) is just not going to go away. It says, in all likelihood that Nebraska needs to do more."

Use of the Republican River's water is governed by a 1943 compact between Colorado, Kansas and Nebraska. In the 1990s, Kansas officials began to complain that Nebraska was taking too much water.

Nebraska was in compliance with the settlement from 2007 through 2009.

FEMA Agrees to end “Without Levees” Policy in Modernizing Flood Mapping

U.S. Senators Dick Durbin (D-IL), Mark Kirk (R-IL), Thad Cochran (R-MS), Mark Pryor (D-AK) and Roger Wicker (R-MS) today praised the Federal Emergency Management Agency (FEMA)’s decision to end its current policy of disregarding some levees and flood control structures in its process of update Flood Insurance Rate Maps (FIRMs).

In correspondence delivered to Senators today, Fugate announced that has directed FEMA staff to end the use of the “without levee” standard, agreeing with the Senators that his agency has the technical ability to affordably and efficiently produce more accurate flood maps.

“In order to increase the credibility of our Flood Insurance Rate Maps in areas where levees are not accredited, I have directed my staff to replace the ‘without levee’ modeling approach with a suite of methodologies that are technically-sound, credible and cost-effective,” Fugate wrote. “The approach will better meet the needs of our citizens while providing more precise results that better reflect the flood risk in

areas impacted by levees.”

Fugate also indicated that FEMA “will temporarily withhold issuing final determinations for those communities whose levees do not meet accreditation requirements and would clearly benefit from this new approach.”

FEMA indicated that mapping will be delayed by a matter of months in these situations as it determines the methodologies and policies it will have to put in place to replace the “without levees” approach.

The FEMA Administrator’s decision addresses the concerns raised by the Senators, who argued that discounting the existence of uncertified levees and flood control structures ignored actual flood protection and could require prop-

erty owners in those areas to purchase National Flood Insurance Program policies unnecessarily.

If FEMA determines an area has a 1 percent annual chance of flood, property owners in that area are required to purchase National Flood Insurance Program coverage to protect against such hazards if their mortgage is backed by the federal government. Communities across the country have complained that FEMA and the Army Corps of Engineers have disregarded locally-funded flood control projects and repairs that may provide some level of actual protection in the development of the new flood maps.



Voluntary Conservation is working in Chesapeake Region

by American Farm Bureau Federation

The Environmental Protection Agency's plan to dictate how states in the Chesapeake Bay watershed are to regulate water pollution and the American Farm Bureau Federation's legal challenge to that plan have gotten a lot of attention in the news media.

What has not received as much attention is a USDA report, released March 15, showing that the conservation practices farmers have adopted voluntarily in the bay watershed are already working to reduce water pollution.

AFBF filed suit challenging the Chesapeake Bay pollution limits plan

Nearly all acres planted to crops in the Chesapeake Bay region have some kind of voluntary conservation practice in place, according to USDA's Conservation Effects Assessment Project (CEAP) report, which is based on data and observations collected from 2003 to 2006. Those practices result in less runoff of sediments, nitrogen, phosphorous and pesticides.

The report says that conservation practices in the region have reduced edge-of-field losses of sediment by 55 percent, nitrogen

in surface runoff by 42 percent, nitrogen in subsurface flow by 31 percent and phosphorous by 40 percent compared to what would be the case if those practices were not in place.

None of that is a surprise to Pat Langenfelder, Maryland Farm Bureau president and a grain and swine producer from Kent County on Maryland's Eastern Shore—a strip of land on the eastern side of Chesapeake Bay. Her family has invested in several best management practices over the years.

The Langenfelders have used cost-share funds from USDA and the state of Maryland to build manure storage under their sow barns so that rain doesn't wash manure off into the bay. In their fields, the collected manure is injected six inches into the soil to fertilize crops while preventing nutrient loss. They have installed special gutters and downspouts on the sow barns to direct rainwater runoff to grassed swales. They have given several acres of fertile cropland over to grassed buffers to filter sediments and protect nearby streams from erosion.

Langenfelder says her family isn't alone. Most farmers in the region have installed conservation practices, spending thousands of their own money as well as government cost-share funds, and they get frustrated with the perception that they aren't doing their part to protect the bay. A voluntary, "carrots" approach works better at getting farmers and ranchers to engage in conservation than does the "stick," or mandates that will be imposed if EPA has its way, she says.

"Maryland farmers have made a great deal of progress over the

last 20 years using voluntary, incentive-based programs," Langenfelder said. "However, when compliance becomes too cumbersome and the hurdles too high, family farmers will be forced to quit in exasperation."

The most common conservation practice in the region is what's known as conservation tillage, a fancy way of saying that farmers don't till the soil much, or at all. That keeps the soil and any nutrients or pesticides it may contain from washing off. An impressive 88 percent of the region's cropland meets criteria for no-till (48 percent) or mulch till (40 percent) where crop residues are mixed into or laid on top of the soil. All but 7 percent of the surveyed acres had evidence of some kind of reduced tillage on at least one crop.

Langenfelder says that her state leads the nation in no-till farming. Almost 90 percent of fields in Maryland are planted using this method, she says. Maryland offers a tax deduction to encourage farmers to purchase the equipment needed to practice no-till farming. The USDA report also found that structural practices for controlling water erosion—things like terraces, buffer strips, grassed waterways and filter strips—are in use on 46 percent of cropped acres in the six-state Chesapeake Bay watershed. The percentage is higher, 63 percent, on land that is particularly susceptible to erosion.

There are opportunities to further improve water quality in the bay, according to the report, by targeting conservation practices to acres that need them the most or acres that have not had much conservation treatment.

Chuck Fry, a milk and turkey producer in Frederick County, Md.,

Chesapeake Region *continued*

west of the bay, says one thing to keep in mind is that a mandated practice could erase the benefits of another conservation practice the farmer is doing and which is already benefitting water quality.

For example, Fry is proud to be an early adopter of no-till, which he instituted as soon as he came back to the farm in 1981 after graduating from college and being a teacher. He is concerned that if EPA or the state environmental agency tells him that he has to inject cow manure into the soil, it could conflict with his well-established no-till practices.

Manure injection reduces the potential for runoff and surface water pollution, but it can be a challenge for no-till farmers, who want little to no disturbance of the soil. It can also be difficult to get injectors through the layer of crop residues on top of the soil.

One of the first things that Fry did back in the early '80s was install storage for the manure from his then 70 cows and put together a nitrogen management plan. "That's the best thing I've ever done," he said. He estimates he has spent \$250,000 of his own money on voluntary conservation practices.

The farmer or rancher needs flexibility to decide on the best mix of conservation practices for his or her own operation, according to Fry.

"How far can you go? How do you get there? How do you leave the land in the best condition for the next generation?" These are questions that the farmer or rancher is in the best position to answer, he says.

The CEAP report shows a different picture than that painted by computer models that EPA used in developing its Chesapeake Bay water pollution limits, or Total Maximum Daily Loads (TMDL)

in the parlance of the regulatory and agriculture communities.

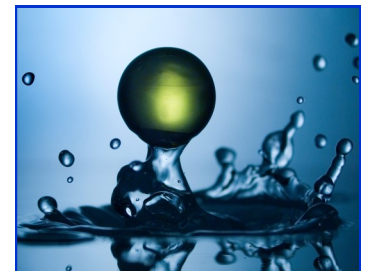
For example, EPA's plan assumes that only 50 percent of the crop acres in the bay region are under conservation tillage. EPA also underestimated the total amount of cropland in the region, relative to USDA's analysis. These and other discrepancies have raised questions about whether EPA has been feeding its various computer models the right information, and whether the resulting mandates would improve water quality in the bay.

Rep. Bob Goodlatte (R-Va.), a member and former chairman of the House Agriculture Committee, sponsored a rider to a federal spending bill that would force EPA to put the brakes on plans to add federal backstops to existing state implementation plans. The rider would also withhold funds for the agency to implement its pollution limits until later this year. If the rider survives a Senate vote, the president would have to weigh the impact of letting it go through compared to the practical and political havoc that would be caused by vetoing a bill to fund the entire federal government.

AFBF on Jan. 10, 2011, filed a lawsuit in federal court challenging EPA's Chesapeake Bay pollution limits plan. AFBF says the plan unlawfully micromanages state actions and imposes specific pollution limits on farming and other important economic activity, sometimes down to the level of individual operations. AFBF also said EPA relied on inaccurate assumptions and a scientific model that the agency itself admitted was flawed. Those problems,

coupled with the lack of public availability of EPA's modeling framework and other key information, result in a stringent regulatory program that not only hurts farmers and ranchers, but also runs afoul of some of the basic legal principles that limit EPA regulatory authority, AFBF says.

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American Agri Women

Cheryl Day,
Water Resource Management Chair
3509 N E County Line Rd
Cerro Gordo, IL 61818

Farm Phone: 217-763-9907
Work Phone: 217-763-6300
Fax: 217-763-6010
E-mail: cday@iadd.info



The Newsletter was created by AAW Water Resource Management Chair, Cheryl Day, to better inform AAW members on water issues. The articles in the newsletter is based from media outlets and information submitted to Cheryl Day. All AAW members are invited to submit information on water issues to Cheryl. If your Affiliate has a Water Resource Chair or a member who follows water issues please have them contact Cheryl Day. In order to best serve AAW, it is important to establish a network across the membership.

If you have any questions about the information appearing in this newsletter or on AAW Water Policies in general please feel free to contact Cheryl Day.

We're on the web!

www.americanagriwomen.org

IOWA continued

ground work for years under a contract with the DNR. The proposed difference is that his department would take the lead in administration, and he thinks it can cut costs.

Opponents of the legislation have asked for data to show the benefits of the change.

"I have seen no study or assessment that shows this move will create efficiencies, save money or provide better protection for our water quality," said Marian Riggs Gelb, executive director of the Iowa Environmental Council, a nonprofit coalition.

There is a House and Senate version of the bill. The House passed its bill on March 23. The Senate version hasn't reached the floor yet.

Information from: *The Des Moines Register*, <http://www.desmoinesregister.com>

