

Pesticide Regulatory Update

Patti Lesky
Amador County
Department of Agriculture

NPDES Permits

- September 9, 2005
- U.S. Ninth Circuit Court of Appeals
- New ruling
- Result of a citizen lawsuit against Montana Department of Fish and Wildlife
- Treatment of a lake with an EPA registered aquatic pesticide to remove undesirable fish

"A chemical pesticide applied intentionally, in accordance with a FIFRA label and with **no residue or unintended effect** is not "waste" and thus not a "pollutant" for purposes of the Clean Water Act."

NPDES Permits

- Differs from Headwaters/Talent case
- EPA label prohibited the discharge of this aquatic herbicide from the canals to fish bearing waters.
- A discharge did occur
- Therefore it was a violation of FIFRA

As the Clean Water Act requires an NPDES permit when a pollutant is discharged from a point source to waters of the US...

...and aquatic pesticides are not to be considered pollutants when used according to label with **no unintended** consequences...

...those of us in the Ninth Circuit States that rely on these products should no longer be subject to the need for an NPDES permit.

State Water Board

- Statement to define regulatory requirements as a result of the ruling
- When a pesticide is applied in accordance with FIFRA label, **but the pesticide remains in the water following its intentional and beneficial function**, an NPDES permit is required

State Water Board

- Application of court's rules is neither simple nor straightforward
- Developed matrix describing various pesticides, their toxicity, environmental degradation , and residual effects
- Cannot conclusively be stated when permits are required for aquatic pesticides

In Summary

- You might not need an NPDES permit
- But then again you might
- If in doubt as to whether the pesticide you plan to use will remain in the water following its intentional and beneficial function, contact the State Water Board

www.waterboards.ca.gov

DPR

Enforcement Response Policy

- Currently is only policy
- Expected to be put into formal regulations that carry the force of law
- Standardizes local enforcement penalties
- Helps counties set enforcement priorities

DPR

Enforcement Response Policy

- Violation classification system
- Enforcement response procedure
 - Consistent
 - Progressive
- Must be considered every time there is a violation to determine the appropriate response or action

DPR

Enforcement Response Policy

- Zero tolerance attitude toward pesticide violations that hurt people
- All such violations carry mandatory fines
- Encourages consideration of all options including district attorney referrals

Non Occupational Pesticide Injuries (SB 391)

IF

- You violate the law while applying a pesticide

AND

- Someone other than a worker is injured or made ill

THEN

- You are liable for medical expenses

Non Occupational Pesticide Injuries (SB 391)

- The County Agricultural Commissioner is responsible
 - For conducting an investigation
 - Taking appropriate action on a violation
 - Providing notice to the violator about reimbursement requirements
- The County Agricultural Commissioner is not responsible for overseeing reimbursement process

Non Occupational Pesticide Injuries (SB 391)

- Refusing to comply will result in additional enforcement actions by DPR

Fumigation Management Plans Burrowing Pests

- Updated labels for aluminum phosphide and magnesium phosphide in 2004
- All phosphine labels now require a fumigation management plan
- Plan is developed and followed by certified applicator

Fumigation Management Plans

Burrowing Pests

- Intended to ensure the safety
 - Applicators
 - Site employees
 - Surrounding community
 - Environment
- Designed to ensure
 - Legal fumigation
 - Effective fumigation

Fumigation Management Plans Burrowing Pests

- Organized, written description of the required steps that will be taken for fumigation
- Provides specific information to help characterize the fumigation site
 - Logistical
 - Performance
 - Contact

Fumigation Management Plans Burrowing Pests

- Follow the “Guidance for Preparing of a Fumigation Management Plan” contained in Applicator’s Manual that comes with label
- Prepare the plan after reviewing label and Applicator’s Manual
- Weevil-cide product manual has a draft plan that you can use as a template

The background is a smooth blue gradient, transitioning from a lighter blue at the top to a darker blue at the bottom. On the left side, there is a bright, glowing area that resembles a sun or moon reflecting on water, creating a shimmering effect. The overall mood is serene and calm.

Thank you