



Pesticides, NPDES Permits and Waters of the United States

The requirement to obtain a National Pollutant Discharge Elimination System (NPDES) permit is a result of a 2009 U.S. Sixth Circuit Court of Appeals decision in *Nat'l Cotton Council v. EPA*. The court determined that under the Clean Water Act (CWA) discharges of pollutants (chemical pesticides) into or near Waters of the United States (WOTUS) require an NPDES permit. The ruling came despite U.S. Environmental Protection Agency's (EPA) opposition and argument that pesticides applied in accordance with the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) are and should be exempt from CWA's permitting requirements.

Use patterns relevant to the structural pest management industry that may require an NPDES permit include:

- **Mosquito and Other Flying Insect Pest Control**—to control public health/nuisance and other flying insect pests that develop or are present during a portion of their life cycle in or above standing or flowing water. Public health/nuisance and other flying insect pests in this use category include mosquitoes and black flies.
- **Animal Pest Control**—to control animal pests in water and at water's edge. Animal pests in this use category include fish, lampreys, insects, mollusks, and pathogens.

Even more onerous requirements are triggered if annual applications of pesticides to WOTUS exceed a predetermined threshold level. For the mosquito/flying insects use pattern, the annual threshold is 6,400 acres, and for both weed/algae and animal pest control, the threshold is 20 linear miles or 80 acres. Once the threshold is reached, additional reporting requirements become mandatory, including filing a Notice of Intent (NOI) with the appropriate agency, recordkeeping of all applications to WOTUS and annual reporting.

Under FIFRA, human health and environmental impacts are reviewed on all pesticides that are registered for use with strict directions for use on the EPA approved product label. A thorough review and accounting of impacts to water quality and aquatic species is included in every EPA registration and registration-review decision. Requiring water permits for pesticide applications is redundant and provides no additional environmental benefit. In addition, prior efforts by EPA to expand the definition of WOTUS would have resulted in an unnecessary expansion of NPDES permitting and reporting. It remains unclear how the current administration or future administrations will ultimately define what constitutes a WOTUS.

In the summer of 2016, a private citizen brought a lawsuit against a mosquito abatement district in Ohio claiming a violation of the CWA and infractions for not properly complying with procedures and thresholds of the NPDES permit.

In the Senate, the Sensible Environmental Protection Act of 2017 (S. 340) has been assigned to the Committee on Environment and Public Works (EPW) awaiting further action. Last week the Senate EPW Committee held a hearing on the Agriculture Creates Real Employment (ACRE) Act which includes the language of S. 340 in section 6 of the ACRE Act. In the House, the Reducing Regulatory Burdens Act of 2017 (H. 953) has passed the Committee on Agriculture with bipartisan support and is now in the House Transportation and Infrastructure Committee.

Position: Compliance with unnecessary NPDES water permits imposes duplicative resource burdens on thousands of pest management professionals, with no commensurate environmental benefits. Pest management professionals are tasked with protecting public health from deadly diseases transmitted by mosquitos and other pests throughout the nation. NPMA urges Congressional action on The ACRE Act, S. 340, and H. 953 to eliminate NPDES permits for lawful pesticide applications.