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## Farmers May Dodge EPA Spray Permits

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Ethanol was in the headlines this last week. You probably did not read about another critical issue bubbling in Washington while ethanol was in the headlines. Sen. Pat Roberts, R-KS, introduced a bill to block EPA from requiring a Clean Water Act (CWA) NPDES permit for pesticide applications on your farm.

The Senate Agriculture Committee passed H.R. 872, the Reducing Regulatory Burdens Act of 2011, with a strong bipartisan vote. This legislation clarifies that National Pollutant Discharge Elimination System (NPDES) permits are not required when applying pesticides according to their EPA approved label. The House of Representatives passed this legislation in April.

EPA had issued a draft general permit for pesticide applications. Since 1972, it has been assumed that the CWA did not regulate the spraying of pesticides on your farm so long as the pesticide applications were compliant with the Federal Insecticide Fungicide Rodenticide Act ("FIFRA") labeling requirements.

On April 1, 2011, EPA published a draft pesticides general permit. On the same day the U.S. House of Representatives passed H.R. 872 which exempted farmers' pesticide spraying from EPA's CWA permit requirements.

EPA, to some extent, is being forced to establish controls on spraying pesticides. The requirement to obtain a CWA pesticide spraying NPDES permit stems from a decision called National Cotton Council, et al. v EPA. The United States Court of Appeals for the 6th Circuit vacated an EPA rule promulgated in 2006 which attempted to help farmers by not requiring CWA NPDES permits when applying pesticides "...to, over or near U.S. waters when in compliance with the FIFRA label."

EPA has now proposed a draft general permit for pesticide applications and it has triggered a firestorm of opposition from the House of Representatives. It is unclear how the Chairman of the Senate Agriculture Committee, Sen. Debbie Stabenow (D-MI) will react to the House passed exemption.

This effort by EPA and environmental groups is another attempt to regulate the crop protection operations of American farmers.

First, some good news. EPA's draft Pesticides General Permit will only apply in six states, Puerto Rico and all U.S. territories plus Indian Country lands nationwide. The bad news is EPA published the version of the permit on April 1, 2011, to give states the opportunity to develop their permitting programs for pesticide spraying. EPA has published a fact sheet ([http://www.epa.gov/npdes/pubs/pgp\\_faqs.pdf](http://www.epa.gov/npdes/pubs/pgp_faqs.pdf)) that every farmer should read.

States will be required to issue permits for pesticide application, and as EPA points out in question #27, "Nothing in the Clean Water Act precludes a state from adopting or enforcing requirements that may be more appropriate to address discharges in their state or are more stringent or more extensive than those required under the NPDES regulations while still meeting their obligations under the Clean Water Act."

The draft EPA regulation only regulates discharges from the application of any pesticide used to control pests for 4 specific pesticide use patterns. Those use patterns involve controlling mosquitoes, aquatic weeds, aquatic nuisance, and forest canopy pest control.

The danger for agriculture is that question #12 declares "...any use patterns not covered by this proposed draft permit would need to obtain coverage under an individual permit..." EPA's answer goes on to declare it is seeking comment on whether additional pesticide application activities may involve unavoidable point-source discharges to waters of the United States. (This means spray drift.)

EPA states in question #12 this new draft permit does not cover controlling pests on agricultural crops. If you have a point source discharge you will need a CWA permit!

The draft permit does provide some protection for agriculture in question #9 when it discusses the term "near" in the context of pesticide

discharges. EPA says it will interpret "near" as referring to "...the unavoidable discharge to waters of the U.S. in order to target pests in close proximity to water..." What happens if your spray drift lands in a ditch next to your field that drains into a water of the state?

Another protection for agriculture is that storm water runoff from farms which may contain pesticides will not be required to obtain CWA permits.

EPA claims in question #29 that it does not believe its permit requirements for pesticide application will have any economic impact or the impact will be minimal on farmers. EPA also relies on the CWA for agricultural storm water and irrigation return flows being exempted from the Act's permitting requirements.

The risk for farmers is spray drift deposition "near" waters of the U.S. EPA allows the states "...to incorporate additional requirements that they feel are necessary to adequately protect water quality." There will be no limit on a state permit writer because the writer may use his or her "best professional judgment ("BPJ") determination..." to determine if there should be monitoring of discharges occurring during pesticide applications.

Agricultural leaders in the House and Senate see EPA's proposed regulation of pesticide spraying as a major problem. They do not trust EPA and the states regulating farmers' pesticide applications. The issue for all farmers is to know what your state EPA agency may be planning in terms of permitting pesticide applications near waters of the state or the United States.

If EPA or the state believes you have a point-source discharge from the application of pesticides, you will be found in violation of the CWA and subject to penalties of up to \$37,500.00 a day. This should be enough to get your attention to find out what your state EPA is undertaking to regulate pesticide applications on your farm.

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### Comments

Posted by iowafarm on June 22 at 12::20 PM

The Clean Water Act does not regulate fracking chemicals which are arguable much more dangerous to humans and yet the EPA hones in on farmers growing corn. What hypocrits!