

on June 6, 2003, and we received it on June 6, 2003.

EPA has conducted its review of New York's submission to prohibit mixing zones for BCCs in the Great Lakes System in accordance with the requirements of Section 118(c)(2) of the CWA and 40 CFR part 132. Section 118 requires that States adopt policies, standards and procedures that are "consistent with" the Guidance. EPA has interpreted the statutory term "consistent with" to mean "as protective as" the corresponding requirements of the Guidance. Thus, the Guidance gives States the flexibility to adopt requirements that are not the same as the Guidance, provided that the State's provisions afford at least as stringent a level of environmental protection as that provided by the corresponding provision of the Guidance. In making its evaluation, EPA has considered the language of the State's standards, policies and procedures, as well as any additional information provided by New York clarifying how it interprets or will implement its provisions.

In this proceeding, EPA has reviewed New York's submission to determine its consistency only with respect to Appendix F, Procedure 3.C of 40 CFR part 132. EPA has not reopened part 132 in any respect, and today's action does not affect, alter or amend in any way the substantive provisions of part 132. To the extent any members of the public commented during this proceeding that any provision of part 132 is unjustified as a matter of law, science or policy, those comments are outside the scope of this proceeding.

With regard to the element of the State's regulation submitted for EPA approval, EPA is approving this provision as a revision to the State's water quality standards under Section 303 of the CWA. EPA is also approving this submission under Section 118 of the CWA. EPA's approval is based on the fact that the State regulations require that the provisions of each issued SPDES permit ensure compliance with the requirements of 40 CFR part 132. The State's submission satisfies the requirements of part 132 by directly incorporating these requirements into the State regulations by reference. While New York does not explicitly require wasteload allocations (WLAs) in total maximum daily loads (TMDLs) to be consistent with part 132, the State does require that all water quality-based effluent limitations (WQBELs) must comply with the BCC mixing zone ban by operation of the new SPDES regulation at 750-1.11(a)(5)(i), regardless of what the TMDL says. This

is sufficient for EPA approval because, under EPA's regulations at 40 CFR .122.44(d)(1)(vii), WQBELs must always be based on whichever is more stringent: (A) limitations that are derived from and comply with water quality standards (in this case, the BCC mixing zone ban); or (B) limitations that are consistent with the requirements and assumptions of an approved TMDL. By requiring limitations "necessary to meet water quality standards, guidance values, effluent limitations or schedules of compliance established pursuant to any state law or regulation consistent with Section 510 of the Act, or the requirements of 40 CFR part 132 (see section 750-1.24 of this part)," the state ensures that water quality-based effluent limitations will comply with the BCC mixing zone ban. In addition, EPA expects that TMDLs for BCCs will be consistent with the BCC mixing zone ban because this requirement is part of the state's water quality standards, and all TMDLs must be calculated at levels necessary to implement the applicable water quality standards. EPA is taking no action at this time with respect to other revisions that New York may have made to its NPDES program or water quality standards in areas not addressed by the Guidance or applicable outside of the Great Lakes System.

William Muszynski,

Acting Regional Administrator, Region 2.

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ENVIRONMENTAL PROTECTION AGENCY

[OW-2003-0063; FRL-7542-9]

Interim Statement and Guidance on Application of Pesticides to Waters of the United States in Compliance with FIFRA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice and request for comment.

SUMMARY: In a July 11, 2003, memorandum, the Environmental Protection Agency (EPA) issued, as an Interim Statement and Guidance, an interpretation of the Clean Water Act (CWA) to resolve jurisdictional issues pertaining to pesticides regulated under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) that are applied to waters of the United States. The interpretation addresses two sets of circumstances for which EPA believes that the application of a pesticide to waters of the United States consistent with all relevant requirements of FIFRA

does not constitute the discharge of a pollutant that requires a National Pollutant Discharge Elimination System (NPDES) permit under the Clean Water Act: the application of pesticides directly to waters of the United States in order to control pests (for example mosquito larvae or aquatic weeds that are present in the water) and the application of pesticides to control pests that are present over waters of the United States that results in a portion of the pesticide being deposited to waters of the United States (for example when insecticides are aerially applied to a forest canopy where waters of the United States may be present below the canopy or when insecticides are applied for control of adult mosquitoes). EPA issued this statement pursuant to its authority under Section 301 of the Clean Water Act. EPA is soliciting and will consider comment on this interim statement and guidance before determining a final Agency position.

DATES: Comments on this notice must be received or postmarked on or before midnight October 14, 2003.

ADDRESSES: Public comments regarding this notice may be submitted electronically, by mail, or through hand delivery/courier. Comments may be submitted by mail to: Water Docket, Environmental Protection Agency, Mail Code 4101T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. OW-2003-0063. For additional information on other ways to submit comments, see **SUPPLEMENTARY INFORMATION**, How May I Submit Comments?

FOR FURTHER INFORMATION CONTACT: For additional technical information contact Louis Eby, Office of Wastewater Management, at (202) 564-6599, or Arty Williams, Office of Pesticide Programs, at (703) 305-5239.

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. OW-2003-0063. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and

for the telephone number for the Water Docket is (202) 566-2426.

2. **Electronic Access.** You may access this **Federal Register** document electronically through the EPA Internet under the "Federal Register" listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in section I.A.1.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public

docket along with a brief description written by the docket staff.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. **Electronically.** If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. **EPA Dockets.** Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at <http://www.epa.gov/edocket/>, and follow the online instructions for submitting comments. (To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets.") Once in the system, select "search," and then key in Docket ID No. OW-2003-0063. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. **E-mail.** Comments may be sent by electronic mail (e-mail) to ow-docket@epa.gov, Attention Docket ID No. OW-2003-0063. In contrast to

EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. **Disk or CD ROM.** You may submit comments on a disk or CD ROM that you mail to the mailing address identified in section I.B.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. **By Mail.** Please submit an original and three copies of your written comments and enclosures to: Water Docket, Environmental Protection Agency, Mailcode: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OW-2003-0063.

3. **By Hand Delivery or Courier.** Deliver your comments to: EPA Docket Center, EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC, 20004, Attention Docket ID No. OW-2003-0063. Such deliveries are only accepted during the Docket's normal hours of operation as identified in section I.A.1.

C. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Text of the Memorandum

The text of the Memorandum follows:

MEMORANDUM

SUBJECT: Interim Statement and Guidance on Application of Pesticides to Waters of the United States in Compliance with FIFRA

FROM: G. Tracy Mehan, III (signed and dated, July 11, 2003) Assistant Administrator for Water (4101) Stephen L. Johnson (signed and dated, July 11, 2003) Assistant Administrator for Prevention, Pesticides and Toxic Substances (7101) TO: Regional Administrators, Regions I–X

The Environmental Protection Agency (EPA) is issuing this interpretation of the Clean Water Act (CWA) to address jurisdictional issues under the CWA pertaining to pesticides regulated under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) that are applied to waters of the United States. This Memorandum is issued, in part, in response to a statement by the U.S. Court of Appeals for the Second Circuit in *Altman v. Town of Amherst* that highlighted the need for EPA to articulate a clear interpretation of whether National Pollutant Discharge Elimination System (NPDES) permits under section 402 of the CWA are required for applications of pesticides that comply with relevant requirements of FIFRA. EPA will solicit comment on this interim statement through the **Federal Register** prior to determining a final agency position. Until that position is made final, however, the application of pesticides in compliance with relevant FIFRA requirements is not subject to NPDES permitting requirements, as described in this statement.

EPA will continue to review the variety of circumstances in which questions have been raised about whether applications of pesticides to waters of the U.S. are regulated under the CWA. As EPA determines the appropriate response to these circumstances, we will develop additional guidance. This memorandum addresses two sets of circumstances for which EPA believes that the application of a pesticide to waters of the United States consistent with all relevant requirements of FIFRA does not constitute the discharge of a pollutant that requires an NPDES permit under the Clean Water Act:

(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 or aquatic weeds 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 that results in a portion of the pesticides being deposited to waters of the United States; for example, when insecticides are aerially applied to a forest canopy where waters of the United States may be present below the canopy or when insecticides are applied over water for control of adult mosquitoes.

It is the Agency's position that these types of applications do not require NPDES permits under the Clean Water Act if the pesticides

are applied consistent with all relevant requirements of FIFRA. Applications of pesticides in violation of the relevant requirements of FIFRA would be subject to enforcement under any and all appropriate statutes including, but not limited to FIFRA and the Clean Water Act. This interpretation also does not preclude or nullify any existing authority vested with States or Tribes to impose additional requirements on the use of pesticides to address water quality issues to the extent authorized by federal, state or tribal law.

Background and Rationale

In this interim statement and guidance, the Agency construes the Clean Water Act in a manner consistent with how the statute has been administered for more than 30 years. EPA does not issue NPDES permits solely for the direct application of a pesticide to target a pest that is present in or over a water of the United States, nor has it ever stated in any general policy or guidance that an NPDES permit is required for such applications.

In *Headwaters, Inc. v. Talent Irrigation District*, the U.S. Court of Appeals for the Ninth Circuit held that an applicator of herbicides was required to obtain an NPDES permit under the circumstances before the court. 243 F.3d 526 (9th Cir. 2001).¹ The Talent decision caused public health authorities, natural resource managers and others who rely on pesticides great concern and confusion about whether they have a legal obligation to obtain an NPDES permit when applying a pesticide consistent with FIFRA and, if so, the potential impact such a requirement could have on accomplishing their own mission of protecting human health and the environment. Since Talent, only a few States have issued NPDES permits for the application of pesticides. Most state NPDES permit authorities have opted not to require applicators of pesticides to obtain an NPDES permit. In addition, state officials have continued to apply pesticides for public health and resource management purposes without obtaining an NPDES permit. These varying practices reflect the substantial uncertainty among regulators, the regulated community and the public regarding how the Clean Water Act applies to the use of pesticides.

There has been continued litigation and uncertainty following the Talent decision. One such case is *Altman v. Town of Amherst* (Altman), which was brought against the Town of Amherst for not having obtained an NPDES permit for its application of pesticides to wetlands as part of a mosquito control program. In September 2002, the Second Circuit remanded the Altman case for further consideration and issued a Summary Order that stated, "Until the EPA articulates a clear interpretation of current law among other things, whether properly used

¹ In an *amicus* brief filed by the United States in the Talent case, EPA stated that compliance with FIFRA does not necessarily mean compliance with the Clean Water Act. However, the government's Talent brief did not address the question of how pesticide application is regulated under the Clean Water Act or the circumstances in which pesticides are "pollutants" under the CWA.

pesticides released into or over waters of the United States can trigger the requirement for an NPDES permit [or a state-issued permit in the case before the court] the question of whether properly used pesticides can become pollutants that violate the Clean Water Act will remain open." 46 Fed. Appx. 62, 67 (2d Cir. 2002).

This Memorandum provides EPA's interpretation of how the CWA currently applies to the two specific circumstances listed above. Under those circumstances, EPA has concluded that the CWA does not require NPDES permits for a pesticide applied consistent with all relevant requirements of FIFRA. This interpretation is consistent with the circumstances before the Ninth Circuit in Talent and with the brief filed by the United States in the Altman case.²

Many of the pesticide applications covered by this memorandum are applied either to address public health concerns such as controlling mosquitos or to address natural resource needs such as controlling non-native species or plant matter growth that upsets a sustainable ecosystem. Under FIFRA, EPA is charged to consider the effects of pesticides on the environment by determining, among other things, whether a pesticide "will perform its intended function without unreasonable adverse effects on the environment," and whether "when used in accordance with widespread and commonly recognized practice [the pesticide] will not generally cause unreasonable adverse effects on the environment." FIFRA section 3(c)(5).

The application of a pesticide to waters of the U.S. would require an NPDES permit only if it constitutes the "discharge of a pollutant" within the meaning of the Clean Water Act.³ The term "pollutant" is defined in section 502(6) of the CWA as follows:

The term "pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.

EPA has evaluated whether pesticides applied consistent with FIFRA fall within any of the terms in section 506(2), in particular whether they are "chemical wastes" or "biological materials." EPA has concluded that they do not fall within either

² While the court's analysis in Talent did not turn on whether the pesticide application at issue was consistent with the requirements of FIFRA, the factual situation described in the court's opinion constitutes a violation of the applicable FIFRA label because the pesticide applicator failed to contain the herbicide-laden water for the requisite number of days. In its *amicus* brief in the Altman case, EPA described factors relevant to the determination whether a pesticide may be subject to the CWA, and those factors are consistent with the analysis and interpretation of the Act described below.

³ This Memorandum addresses circumstances when a pesticide is not a "pollutant" that would be subject to NPDES permit requirements when discharged into a water of the United States. It does not address the threshold question of whether these or other types of pesticide applications constitute "point source" discharges to waters of the United States.

term. First, EPA does not believe that pesticides applied consistent with FIFRA are "chemical wastes." The term "waste" ordinarily means that which is "eliminated or discarded as no longer useful or required after the completion of a process." *The New Oxford American Dictionary* 1905 (Elizabeth J. Jewell & Frank Abate eds., 2001); see also *The American Heritage Dictionary of the English Language* 1942 (Joseph P. Pickett ed., 4th ed. 2000) (defining waste as "[a]n unusable or unwanted substance or material, such as a waste product"). Pesticides applied consistent with FIFRA are not such wastes; on the contrary, they are EPA-evaluated products designed, purchased and applied to perform their intended purpose of controlling target organisms in the environment.⁴ Therefore, EPA concludes that "chemical wastes" do not include pesticides applied consistent with FIFRA.

EPA also interprets the term "biological materials" not to include pesticides applied consistent with FIFRA. We think it unlikely that Congress intended EPA and the States to issue permits for the discharge into water of any and all material with biological content.⁵ With specific regard to biological pesticides, moreover, we think it far more likely that Congress intended not to include biological pesticides within the definition of "pollutant." This interpretation is supported by multiple factors.

EPA's interpretation of "biological materials" as not including biological pesticides avoids the nonsensical result of treating biological pesticides as pollutants even though chemical pesticides are not. Since all pesticides applied in a manner consistent with the requirements of FIFRA are EPA-evaluated products that are intended to perform essentially similar functions, disparate treatment would, in EPA's view, not be warranted, and an intention to incorporate such disparate treatment into the statute ought not to be imputed to Congress.⁶ Moreover, at the time the Act was adopted in 1972, chemical pesticides were the predominant type of pesticide in use. In light of this fact, it is not surprising that Congress failed to discuss whether biological pesticides were covered by the Act. The fact that more biological pesticides have been developed since passage of the 1972 Act does not, in EPA's view, justify expanding the Act's reach to include such pesticides when there is no evidence that Congress intended them to be covered by the statute in a manner different from chemical pesticides. Finally, many of the biological pesticides in use today are reduced-risk products that produce a more narrow range of potential adverse environmental effects than many chemical pesticides. As a matter of policy, it makes

little sense for such products to be subject to CWA permitting requirements when chemical pesticides are not. Caselaw also supports this interpretation. *Ass'n to Protect Hammersley, Eld, and Totten Inlets v. Taylor Resources*, 299 F.3d 1007, 1016 (9th Cir. 2002) (application of the *ejusdem generis* canon of statutory interpretation supports the view that the CWA "supports an understanding of * * * 'biological materials,' as waste material of a human or industrial process").⁷

Under EPA's interpretation, whether a pesticide is a pollutant under the CWA turns on the manner in which it used, *i.e.*, whether its use complies with all relevant requirements of FIFRA. That coverage under the Act turns on the particular circumstances of its use is not remarkable. Indeed, when asked on the Senate floor whether a particular discharge would be regulated, the primary sponsor of the CWA, Senator Muskie (whose views regarding the interpretation of the CWA have been accorded substantial weight over the last four decades), stated: I do not get into the business of defining or applying these definitions to particular kinds of pollutants. That is an administrative decision to be made by the Administrator. Sometimes a particular kind of matter is a pollutant in one circumstance, and not in another. Senate Debate on S. 2770, Nov. 2, 1971 (117 Cong. Rec. 38,838).

Here, to determine whether a pesticide is a pollutant under the CWA, EPA believes it is appropriate to consider the circumstances of how a pesticide is applied, specifically whether it is applied consistent with relevant requirements under FIFRA. Rather than interpret the statutes so as to impose overlapping and potentially confusing regulatory regimes on the use of pesticides, this interpretation seeks to harmonize the CWA and FIFRA.⁸ Under this interpretation,

⁷ EPA's interpretation of section 502(6) with regard to biological pesticides should not be taken to mean that EPA reads the CWA generally to regulate only wastes. EPA notes that other terms in section 502(6) may or may not be limited in whole or in part to wastes, depending on how the substances potentially addressed by those terms are created or used. For example, "sand" and "rock" can either be discharged as waste or as fill material to create structures in waters of the U.S., and Congress created in section 404 of the Act a specific regulatory program to address such discharges. See 67 FR 31129 (May 9, 2002) (subjecting to the section 404 program discharges that have the effect of filling waters of the U.S., including fills constructed for beneficial purposes). The question in any particular case is whether a discharge falls within one of the terms in section 502(6), in light of the factors relevant to the interpretation of that particular term. As discussed above, the factors critical to EPA's interpretation concerning biological pesticides are consistency with section 502(6)'s treatment of chemical pesticides and chemical wastes, and how the general term "biological materials" fits within the constellation of other, more specific terms in section 502(6), which to a great extent focuses on wastes.

⁸ EPA's *Talent* brief suggested that compliance with FIFRA does not necessarily mean compliance with the CWA, and pointed out one difference between CWA and FIFRA regulation, *i.e.*, individual NPDES permits could address local water quality concerns that might not be specifically addressed through FIFRA's national

a pesticide applicator is assured that complying with environmental requirements under FIFRA will mean that the activity is not also subject to the distinct NPDES permitting requirements of the CWA. However, like an unpermitted discharge of a pollutant, application of a pesticide in violation of relevant FIFRA requirements would be subject to enforcement under any and all appropriate statutes including, but not limited to, FIFRA and the CWA.

Solicitation of comment on this Interim Statement and Guidance

In the near future, the Agency will seek public comment on this interim statement and guidance in the **Federal Register**. The Agency will review all comments and determine whether changes or clarifications are necessary before issuing final interpretation and guidance.

Please feel free to call us to discuss this memorandum. Your staff may call Louis Eby in the Office of Wastewater Management at (202) 564-6599 or Arty Williams in the Office of Pesticide Programs at (703) 305-5239.

Dated: August 5, 2003.

G. Tracy Mehan, III,

Assistant Administrator, Office of Water.

Dated: August 5, 2003.

Susan B. Hazen,

Principal Deputy Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

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FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

August 5, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a)

registration process. The position EPA is articulating in this memo would not preclude state or tribal authorities from further limiting the use of a particular pesticide to address any unique and geographically limited water quality issue to the extent authorized by Federal, State, or tribal law.

⁴ Where, however, pesticides are a waste, for example when contained in stormwater regulated under section 402(p) of the CWA or other industrial or municipal discharges, they are pollutants and require a permit when discharged to a water of the U.S.

⁵ Taken to its literal extreme, such an interpretation could arguably mean that activities such as fishing with bait would constitute the addition of a pollutant.

⁶ Further, some pesticide products may elude classification as strictly "chemical" or "biological."