

application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. In general, grantees must comply with applicable reporting requirements in 34 CFR parts 75 and 80. In addition, grantees will be required to provide periodic performance and financial reports, as specified in individual grant award conditions and 34 CFR 222.195. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to <http://www.ed.gov/fund/grant/apply/appforms/appforms.html>.

4. *Performance Measures:* The Department has established the following performance measure for this program: an increasing percentage of LEAs receiving Impact Aid Construction funds will report that the overall condition of their school buildings is adequate. Data for this measure will be reported to the Department on Table 10 of the application for Impact Aid Section 8003 Basic Support Payments.

## VII. Agency Contact

*For Further Information Contact:* Kristen Walls-Rivas, Impact Aid Program, U.S. Department of Education, 400 Maryland Avenue, SW., room 3C155, Washington, DC 20202-6244. Telephone: (202) 260-3858 or by e-mail: [Impact.Aid@ed.gov](mailto:Impact.Aid@ed.gov).

If you use a TDD, call the FRS, toll free, at 1-800-877-8339.

## VIII. Other Information

*Accessible Format:* Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotope, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

*Electronic Access to This Document:* You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/fedregister>.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about

using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.gpoaccess.gov/nara/index.html>.

Dated: June 1, 2010.

**Thelma Meléndez de Santa Ana,**

*Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. 2010-13491 Filed 6-3-10; 8:45 am]

**BILLING CODE 4000-01-P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-9159-2]

### Draft National Pollutant Discharge Elimination System (NPDES) Pesticide General Permit for Point Source Discharges From the Application of Pesticides

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of draft permit and notice of public meetings.

**SUMMARY:** All ten EPA Regions today are proposing a draft NPDES general permit for point source discharges from the application of certain pesticides to waters of the United States. Once finalized, this permit will be available to operators in those areas where EPA is the NPDES permitting authority. This action is in response to the Sixth Circuit Court's ruling that vacated an EPA regulation that excluded discharges from the application of pesticides to or over, including near waters of the United States from the need to obtain an NPDES permit if the application was done in accordance with other laws. EPA requested and was granted a two-year stay of the Court's mandate to provide time to draft and implement the permit noticed today. The stay of the mandate expires on April 9, 2011; where after, NPDES permits will be required for all point source discharges to waters of the United States of biological pesticides, and chemical pesticides that leave a residue.

This **Federal Register** notice briefly summarizes the requirements in this draft general permit for pesticides applications to waters of the U.S. EPA is soliciting public comment on all aspects of the draft NPDES permit. This **Federal Register** notices also includes a list of specific issues about which the

Agency is particularly asking for comment. Supporting documentation to the permit is contained in an accompanying fact sheet. The public is encouraged to read this fact sheet to better understand the permit requirements. The fact sheet and permit can be found at <http://www.epa.gov/npdes/pesticides>.

**DATES:** Comments on the draft general permit must be received on or before July 19, 2010.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OW-2010-0257, by one of the following methods:

1. <http://www.regulations.gov>: Follow the online instructions for submitting comments.

2. *E-mail:* [ow-docket@epa.gov](mailto:ow-docket@epa.gov).

3. *Mail to:* Water Docket, U.S.

Environmental Protection Agency, Mail Code: 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention: Docket ID No. EPA-HQ-OW-2010-0257.

4. *Hand Delivery:* EPA Docket Center, EPA West Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004, Attention: Docket ID No. EPA-HQ-OW-2010-0257. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-HQ-OW-2010-0257. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov) your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. 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. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**Docket:** All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at a docket facility. The Office of Water (OW) Docket Center is open from 8:30 until 4:30 p.m., Monday through Friday, excluding legal holidays. The OW Docket Center telephone number is (202) 566-2426, and the Docket address is OW Docket, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. The 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.

**Public meetings and public hearing:** EPA will hold three (3) public meetings in: Albuquerque, New Mexico on June 14, 2010; Boise, Idaho on June 16, 2010; Boston, Massachusetts on June 21, 2010; and a public hearing in Washington, DC on June 23, 2010. The focus of each meeting/hearing is to present the draft general permit and the basis for the draft permit requirements, and to answer questions concerning the draft permit. At these meetings, any person may provide written or oral statements and data pertaining to the draft permit. The date, time and location of the public meetings and public hearing are as follows:

- *Albuquerque, New Mexico:* Monday, June 14, 2010, at the CNM Workforce Training Center, Room 101, 5600 Eagle Rock Avenue, NE, Albuquerque, New Mexico, from 12 p.m.–3 p.m.
- *Boise, Idaho:* Wednesday, June 16, 2010, at the Bureau of Reclamation, Rooms 206 & 219, 1150 North Curtis Road, Boise, Idaho from 9 a.m. to 12 p.m.

- *Boston, Massachusetts:* Monday, June 21, 2010, at EPA Region 1, 5 Post Office Square—Suite 100, Conference Room 1529, Boston, MA 02109-3912, from 1 p.m. to 4 p.m.

- *Washington, DC:* Wednesday, June 23, 2010, at the EPA East Building, Room 1153, 1301 Constitution Avenue, NW., Washington, DC 20004, from 10 a.m. to 1 p.m.

If you would like to present a statement at the public hearing in Washington, DC, please contact Virginia Garelick at 202-564-2316 to register your intent to provide a public statement. Speakers will be given up to three minutes (or as time allows) to provide their comments on a first come first served basis. Any additional comments will need to be provided in writing. EPA will consider all comments received and will include copies of such in the Administrative Record.

EPA encourages interested and potentially affected stakeholders to attend one of the scheduled public meetings and provide oral or written comments. Please note that the public meetings may close early if all business is finished. Oral or written comments received at the public meetings will be entered into the Docket for this permit. If you are unable to attend, you may submit comments to the EPA Water Docket at the address identified in the **ADDRESSES** section listed above.

More information on these meetings will be available on the Internet at <http://www.epa.gov/npdes/pesticides>, including any additional dates and locations if scheduled. Due to limited seating, those wishing to attend EPA's public meetings are asked to please send an e-mail message containing their name, telephone number and organization to Virginia Garelick at [garelick.virginia@epa.gov](mailto:garelick.virginia@epa.gov). An e-mail message is not required, however. Anyone wishing to may attend provided space is available. If you need a sign language interpreter at any of these meetings, you should notify Ms. Garelick of such at least ten business days prior to the meetings so that appropriate arrangements can be made. For further information, including registration information, please refer to the following Web site: <http://www.epa.gov/npdes/pesticides>.

**Webcast:** EPA has scheduled a Webcast to provide information on this draft permit and to answer questions for interested parties that are unable to attend the public meetings or hearing. The webcast will be broadcast on June

17, 2010, from 1 p.m. to 3 p.m. Eastern Standard Time (EST). For information on how to register and attend the webcast, see EPA's Web site at <http://www.epa.gov/npdes/training>.

**FOR FURTHER INFORMATION CONTACT:** For further information on this draft NPDES general permit, contact the appropriate EPA Regional Office listed in Section I.F, or contact Jack Faulk, EPA Headquarters, Office of Water, Office of Wastewater Management at tel.: 202-564-0768 or e-mail: [faulk.jack@epa.gov](mailto:faulk.jack@epa.gov).

**SUPPLEMENTARY INFORMATION:** This supplementary information section is organized as follows:

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### I. General Information

#### A. Does this action apply to me?

You may be affected by this action if your application of pesticides, under the use patterns in Section III.B., results in a discharge to waters of the United States in one of the geographic areas identified in Section III.A. Potentially affected entities, as categorized in the North American Industry Classification System (NAICS), may include, but are not limited to:

TABLE 1—ENTITIES POTENTIALLY REGULATED BY THIS PERMIT

Category	NAICS	Examples of potentially affected entities
Agriculture parties—General agricultural interests, farmers/producers, forestry, and irrigation.	111 Crop Production .....	Producers of crops mainly for food and fiber including farms, orchards, groves, greenhouses, and nurseries that have irrigation ditches requiring pest control.
	113110 Timber Tract Operations .....	The operation of timber tracts for the purpose of selling standing timber.
	113210 Forest Nurseries Gathering of Forest Products.	Growing trees for reforestation and/or gathering forest products, such as gums, barks, balsam needles, rhizomes, fibers, Spanish moss, ginseng, and truffles.
Public health parties (includes mosquito or other vector control districts and commercial applicators that service these).	221310 Water Supply for Irrigation .....	Operating irrigation systems.
	923120 Administration of Public Health Programs.	Government establishments primarily engaged in the planning, administration, and coordination of public health programs and services, including environmental health activities.
Resource management parties (includes State departments of fish and wildlife, State departments of pesticide regulation, State environmental agencies, and universities).	924110 Administration of Air and Water Resource and Solid Waste Management Programs.	Government establishments primarily engaged in the administration, regulation, and enforcement of air and water resource programs; the administration and regulation of water and air pollution control and prevention programs; the administration and regulation of flood control programs; the administration and regulation of drainage development and water resource consumption programs; and coordination of these activities at intergovernmental levels.
	923120 Administration of Public Health Programs.	Government establishments primarily engaged in the planning, administration, and coordination of public health programs and services, including environmental health activities.
Public health parties (includes mosquito or other vector control districts and commercial applicators that service these).	924120 Administration of Conservation Programs.	Government establishments primarily engaged in the administration, regulation, supervision and control of land use, including recreational areas; conservation and preservation of natural resources; erosion control; geological survey program administration; weather forecasting program administration; and the administration and protection of publicly and privately owned forest lands. Government establishments responsible for planning, management, regulation and conservation of game, fish, and wildlife populations, including wildlife management areas and field stations; and other administrative matters relating to the protection of fish, game, and wildlife are included in this industry.
	221 Utilities .....	Provide electric power, natural gas, steam supply, water supply, and sewage removal through a permanent infrastructure of lines, mains, and pipes.

*B. 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. EPA-HQ-OW-2010-0257. 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/DC) EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. Although all documents in the docket are listed in an index, some information is not publicly available,

*i.e.*, CBI or other information whose disclosure is restricted by statute. EPA 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. Publicly available docket materials are available in hard copy at the EPA Docket Center Public Reading Room, 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 the telephone number for the Water Docket is 202-566-2426.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the United States government on-line source for Federal regulations at <http://www.regulations.gov>.

Electronic versions of this draft permit and fact sheet are available on EPA's NPDES Web site at [www.epa.gov/npdes/pesticides](http://www.epa.gov/npdes/pesticides).

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.regulations.gov> to 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. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>. 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.

### C. What should I consider as I prepare my comments for EPA?

#### 1. Submitting CBI

Do not submit this information to EPA through [regulations.gov](http://www.regulations.gov) or e-mail. Clearly mark all of the information that you claim to be CBI. For CBI information on computer discs mailed to EPA, mark the surface of the disc as CBI. Also identify electronically the specific information contained in the disc that you claim is CBI. In addition to one complete version of the specific information claimed as CBI, you must submit a copy that does not contain the information claimed as CBI for inclusion in the public document. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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 in paper form 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.

#### 2. Tips for Preparing Your Comments

When submitting comments, remember to:

- Identify this permit by docket number and other identifying information (subject heading, **Federal Register** date, and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a section or part of this permit.
- Explain why you agree or disagree, suggest alternatives, and suggest substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible.
- Make sure to submit your comments by the comment period deadline identified.

#### D. Finalizing This Permit

After the close of the public comment period on this draft, EPA will issue a final permit. That final permit will be issued after all public comments received during the public comment period have been considered and appropriate changes made to this permit. EPA's response to comments received will be included in the docket as part of the final permit decision.

#### E. Who are the EPA regional contacts for this draft permit?

For EPA Region 1, contact George Papadopoulos at USEPA Region 1, 5 Post Office Square—Suite 100, Boston, MA 02109-3912; or at tel.: (617) 918-1579; or e-mail at [papadopoulos.george@epa.gov](mailto:papadopoulos.george@epa.gov).

For EPA Region 2, contact Maureen Krudner at USEPA Region 2, 290 Broadway, New York, NY 10007-1866; or tel.: (212) 637-3874; or e-mail at [krudner.maureen@epa.gov](mailto:krudner.maureen@epa.gov).

For EPA Region 3, contact Peter Weber at USEPA Region 3, 1650 Arch Street, Mail Code: 3WP41, Philadelphia, PA 19103-2029; or at tel.: (215) 814-5749; or e-mail at [weber.peter@epa.gov](mailto:weber.peter@epa.gov).

For EPA Region 4, contact Sam Sampath at USEPA Region 4, 61 Forsyth Street, SW., Atlanta, CA 30303-8960; or at tel.: (404) 562-9229; or e-mail at [sampath.sam@epa.gov](mailto:sampath.sam@epa.gov).

For EPA Region 5, contact Morris Beaton at USEPA Region 5, 77 West Jackson Boulevard, Mail Code: WN16J, Chicago, IL 60604-3507; or at tel.: (312) 353-0850; or e-mail at [beaton.morris@epa.gov](mailto:beaton.morris@epa.gov).

For EPA Region 6, contact Phillip Jennings at USEPA Region 6, 1445 Ross Avenue, Suite 1200, Mail Code: 6WO, Dallas, TX 75202-2733; or at tel.: (214) 665-7538 or e-mail at [jennings.phillip@epa.gov](mailto:jennings.phillip@epa.gov).

For EPA Region 7, contact Kimberly Hill at USEPA Region 7, 901 North Fifth Street, Mail Code: XX, Kansas City, KS 66101; or at tel.: (913) 551-7841 or e-mail at: [hill.kimberly@epa.gov](mailto:hill.kimberly@epa.gov).

For EPA Region 8, contact David Rise at USEPA Region 8, Montana Operations Office, Federal Building, 10 West 15th Street, Suite 3200, Mail Code: 8MO, Helena, MT 59626; or at tel.: 406-457-5012 or e-mail at: [rise.david@epa.gov](mailto:rise.david@epa.gov).

For EPA Region 9, contact Pascal Mues, USEPA Region 9, 75 Hawthorne Street, Mail Code: WTR-5, San Francisco, CA 94105; or at tel.: (415) 972-3768 or e-mail at: [mues.pascal@epa.gov](mailto:mues.pascal@epa.gov).

For EPA Region 10, contact Dirk Helder, USEPA Region 10 Idaho Operations Office, 1435 North Orchard Street, Boise, ID 83706 or at tel.: 208-378-5749 or e-mail at: [helder.dirk@epa.gov](mailto:helder.dirk@epa.gov).

## II. Statutory and Regulatory History

### A. Clean Water Act

Section 301(a) of the Clean Water Act (CWA) provides that "the discharge of any pollutant by any person shall be unlawful" unless the discharge is in compliance with certain other sections of the Act. 33 U.S.C. 1311(a). The CWA defines "discharge of a pollutant" as "(A) any addition of any pollutant to navigable waters from any point source, (B) any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft." 33 U.S.C. 1362(12). A "point source" is any "discernible, confined and discrete conveyance" but does not include "agricultural stormwater discharges and return flows from irrigated agriculture." 33 U.S.C. 1362(14).

The term "pollutant" includes, among other things, "garbage \* \* \* chemical wastes, biological materials \* \* \* and industrial, municipal, and agricultural waste discharged into water." 33 U.S.C. 1362(6).

A person may discharge a pollutant without violating the section 301 prohibition by obtaining authorization to discharge (referred to herein as

“coverage”) under a section 402 National Pollutant Discharge Elimination System (NPDES) permit (33 U.S.C. 1342). Under section 402(a), EPA may “issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding section 1311(a)” upon certain conditions required by the Act.

#### B. NPDES Permits

An NPDES permit authorizes the discharge of a specified amount of a pollutant or pollutants into a receiving water under certain conditions. The NPDES program relies on two types of permits: individual and general. An individual permit is a permit specifically tailored for an individual discharger. Upon receiving the appropriate permit application(s), the permitting authority, *i.e.*, EPA or a state or territory, develops a draft permit for public comment for that particular discharger based on the information contained in the permit application (*e.g.*, type of activity, nature of discharge, receiving water quality). Following consideration of public comments, a final permit is then issued to the discharger for a specific time period (not to exceed 5 years) with a provision for reapplying for further permit coverage prior to the expiration date.

A general permit covers multiple facilities/sites/activities within a specific category for a specific period of time (not to exceed 5 years). For general permits, EPA or a state or territory develops and issues the permit with dischargers then obtaining coverage under the permit, typically through submission of a Notice of Intent (NOI). A general permit is also subject to public comment, as is being done under this **Federal Register** notice, and is developed and issued by a permitting authority (in this case, EPA).

Under 40 CFR 122.28, general permits may be written to cover categories of point sources having common elements, such as facilities that involve the same or substantially similar types of operations, that discharge the same types of wastes, or that are more appropriately regulated by a general permit. Given the vast number of pesticide applicators requiring NPDES permit coverage and the discharges common to these applicators, EPA believes that it makes administrative sense to issue this general permit, rather than issuing individual permits to each applicator. Entities still have the ability to seek individual permit coverage. Courts have approved of the use of general permits. *See e.g., Natural Res. Def. Council v. Costle*, 568 F.2d 1369 (DC Cir. 1977); *EDC v. U.S. EPA*, 344

F.3d 832, 853 (Ninth Cir. 2003). The general permit approach allows EPA to allocate resources in a more efficient manner and to provide more timely coverage. As with any permit, the CWA requires the general permit to contain technology-based effluent limitations, as well as any more stringent limits when necessary to meet applicable state water quality standards.

#### C. History of Pesticide Application Regulation Under FIFRA

EPA regulates the sale, distribution and use of pesticides in the United States under the statutory framework of FIFRA to ensure that, when used in conformance with FIFRA labeling directions, pesticides will not pose unreasonable risks to human health and the environment. All new pesticides must undergo a rigorous registration procedure under FIFRA during which EPA assesses a variety of potential human health and environmental effects associated with use of the product. Under FIFRA, EPA is required 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.” 7 U.S.C. 136a(c)(5). In performing this analysis, EPA examines, among other things, the ingredients of a pesticide, the intended type of application site and directions for use, and supporting scientific studies for human health and environmental effects and exposures. The applicant for registration of the pesticide must submit data as required by EPA regulations.

When EPA approves a pesticide for a particular use, the Agency imposes labeling restrictions governing such use. Compliance with the labeling requirements ensures that the pesticide serves an intended purpose and avoids unreasonable adverse effects. It is illegal under Section 12(a)(2)(G) of FIFRA to use a registered pesticide in a manner inconsistent with its labeling. States have primary authority under FIFRA to enforce “use” violations, but both the States and EPA have ample authority to prosecute pesticide misuse when it occurs.

#### D. Court Decisions Leading to the CWA Regulation Concerning Pesticide Applications

Over the past ten years, several courts addressed the question of whether the CWA requires NPDES permits for

pesticide applications. These cases resulted in some confusion among the regulated community and other affected citizens about the applicability of the CWA to pesticides applied to waters of the United States. In 2001, the U.S. Court of Appeals for the Ninth Circuit held in *Headwaters, Inc. v. Talent Irrigation District (Talent)* that an applicator of herbicides was required to obtain an NPDES permit under the circumstances before the court. 243 F.3d 526 (Ninth Cir. 2001).

In 2002, the Ninth Circuit in *League of Wilderness Defenders et al. v. Forsgren (Forsgren)* held that the application of pesticides to control Douglas Fir Tussock Moths in National Forest lands required an NPDES permit. 309 F.3d 1181 (Ninth Cir. 2002). The court in *Forsgren* did not analyze the question of whether the pesticides applied were pollutants, because it incorrectly assumed that the parties agreed that they were (in fact, the United States expressly reserved its arguments on that issue in its brief to the District Court. *Id.* at 1184, n.2). The court instead analyzed the question of whether the aerial application of the pesticide constituted a point source discharge, and concluded that it did. *Id.* at 1185.

Since *Talent* and *Forsgren*, California, Nevada, Oregon, and Washington, all of which are within the Ninth Circuit, have issued permits for the application of certain types of pesticides (*e.g.*, products to control aquatic weeds and algae and products to control mosquito larvae). Other States have continued their longstanding practice of not issuing permits to people who apply pesticides to waters of the United States. These varying practices reflected the substantial uncertainty among regulators, the regulated community, and the public regarding how the CWA applies to pesticides that have been properly applied and used for their intended purpose.

Additionally, the Second Circuit Court of Appeals addressed the applicability of the CWA’s NPDES permit requirements to pesticide applications. In *Altman v. Town of Amherst (Altman)*, the court vacated and remanded for further development of the record a District Court decision holding that the Town of Amherst was not required to obtain an NPDES permit to spray mosquitocides over waters of the United States. 47 Fed. Appx. 62, 67 (Second Cir. 2002). The United States filed an amicus brief setting forth the Agency’s views in the context of that particular case. In its opinion, the Second Circuit stated that “[u]ntil the EPA articulates a clear interpretation of

current law—among other things, whether properly used pesticides released into or over waters of the United States can trigger the requirement for NPDES permits \* \* \* —the question of whether properly used pesticides can become pollutants that violate the CWA will remain open.” Id. at 67.

In 2005, the Ninth Circuit again addressed the CWA’s applicability to pesticide applications. In *Fairhurst v. Hagerer*, the court held that pesticides applied directly to a lake to eliminate non-native fish species, where there are no residues or unintended effects, are not “pollutants” under the CWA because they are not chemical wastes. 422 F.3d 1146 (Ninth Cir. 2005).

Recently, the Second Circuit reaffirmed the recent Sixth Circuit decision in ruling that trucks and helicopters that sprayed pesticides should be considered point sources under the CWA. *Peconic Baykeeper Inc. v. Suffolk County*, 2nd Cir., No. 09–97–cv, 3/30/10.

#### *E. 2006 Agency Rulemaking Excluding Discharges From Pesticides From NPDES Permitting*

On November 27, 2006 (71 FR 68483), EPA issued a final rule (hereinafter called the “2006 NPDES Pesticides Rule”) clarifying two specific circumstances in which an NPDES permit is not required to apply pesticides to or over, including near water provided that the application is consistent with relevant Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) requirements. They are: (1) The application of pesticides directly to water to control pests; and (2) the application of pesticides to control pests that are present over, including near, water where a portion of the pesticides will unavoidably be deposited to the water to target the pests.

#### *F. Legal Challenges to the 2006 NPDES Pesticides Rule and Resulting Court Decision*

On January 19, 2007, EPA received petitions for review of the 2006 NPDES Pesticides Rule from both environmental and industry groups. Petitions were filed in eleven circuit courts with the case, *National Cotton Council, et al. v. EPA*, assigned to the Sixth Circuit Court of Appeals (Sixth Circuit). On January 9, 2009, the Sixth Circuit vacated EPA’s 2006 NPDES Pesticides Rule under a plain language reading of the CWA. *National Cotton Council of America v. EPA*, 553 F.3d 927 (Sixth Cir. 2009). The Court held that the CWA unambiguously includes “biological pesticides,” and “chemical

pesticides” that leave a residue within its definition of “pollutant.” Specifically, the application of chemical pesticides that leaves no residue is not a pollutant. The Court also found that the application of pesticides is from a point source.

Based on the Court’s decision, chemical pesticides that leave no residue do not require an NPDES permit. However, EPA assumes for purpose of this permit that all chemical pesticides have a residue, and, therefore would need a permit unless it can be shown that there is no residual. Unlike chemical pesticides (where the residual is the pollutant), the Court further found that biological pesticides are pollutants regardless of whether the application results in residuals and such discharges need an NPDES permit.

In response to this decision, on April 9, 2009, EPA requested a two-year stay of the mandate to provide the Agency time to develop general permits, to assist NPDES-authorized states to develop their NPDES permits, and to provide outreach and education to the regulated community and other stakeholders. On June 8, 2009, the Sixth Circuit granted EPA the two-year stay of the mandate until April 9, 2011. On November 2, 2009, Industry Petitioners of the Sixth Circuit Case petitioned the Supreme Court to review the Sixth Circuit’s decision. On February 22, 2010, the Supreme Court issued its decision denying petitions to review the Sixth Circuit decision.

As a result of the Court’s decision on the 2006 NPDES Pesticides Rule, at the end of the two-year stay, NPDES permits will be required for point source discharges to waters of the U.S. of biological pesticides, and of chemical pesticides that leave a residue. Until April 9, 2011, the rule remains in effect and NPDES permits are not required.

In response to the Court’s decision, EPA is proposing this draft general permit for four specific pesticide use patterns. The specified use patterns may not represent every pesticide application activity for which a discharge requires NPDES permit coverage. The four use patterns included in this draft permit are generally consistent with what was addressed in the 2006 NPDES Pesticides Rule.

Neither the Court’s ruling nor EPA’s issuance of this general permit affects the existing CWA exemptions for irrigation return flow and agricultural stormwater runoff, which are excluded from the definition of a point source under Section 502(14) of the CWA and do not require NPDES permit coverage.

### **III. Scope and Applicability of This NPDES Pesticides General Permit**

#### *A. Geographic Coverage*

EPA will provide permit coverage for classes of discharges where EPA is the NPDES permitting authority. The geographic coverage of today’s draft permit is listed below. Where this permit covers activities on Indian Country lands, those areas are as listed below within the borders of that state:

#### **EPA Region 1**

- The Commonwealth of Massachusetts, including Indian Country lands
- Indian Country lands within the State of Connecticut
- The State of New Hampshire
- Indian Country lands within the State of Rhode Island
- Federal Facilities in the State of Vermont

#### **EPA Region 2**

- Indian Country lands within the State of New York
- The Commonwealth of Puerto Rico

#### **EPA Region 3**

- The District of Columbia
- Federal Facilities in the State of Delaware

#### **EPA Region 4**

- Indian Country lands within the State of Alabama
- Indian Country lands within the State of Florida
- Indian Country lands within the State of Mississippi
- Indian Country lands within the State of North Carolina

#### **EPA Region 5**

- Indian Country lands within the State of Michigan
- Indian Country lands within the State of Minnesota
- Indian Country lands within the State of Wisconsin

#### **EPA Region 6**

- Indian Country lands within the State of Louisiana
- The State of New Mexico, including Indian Country lands within the State of New Mexico, except Navajo Reservation Lands (*see* Region 9) and Ute Mountain Reservation Lands (*see* Region 8)
- The State of Oklahoma, including Indian Country lands
- Discharges in the State of Texas that are not under the authority of the Texas Commission on Environmental Quality (formerly TNRCC), including activities associated with the exploration, development, or production of oil or gas

or geothermal resources, including transportation of crude oil or natural gas by pipeline

- Indian Country lands within the State of Texas

#### EPA Region 7

- Indian Country lands within the State of Iowa
- Indian Country lands within the State of Kansas
- Indian Country lands the State of Nebraska, except Pine Ridge Reservation lands (*see* Region 8)

#### EPA Region 8

- Federal Facilities in the State of Colorado, except those located on Indian Country lands
- Indian Country lands within the State of Colorado, as well as the portion of the Ute Mountain Reservation located in New Mexico
- Indian Country lands within the State of Montana
- Indian Country lands within the State of North Dakota
- Indian Country lands within the State of South Dakota, as well as the portion of the Pine Ridge Reservation located in Nebraska (*see* Region 7)
- Indian Country lands within the State of Utah, except Goshute and Navajo Reservation lands (*see* Region 9)
- Indian Country lands within the State of Wyoming

#### EPA Region 9

- The Island of American Samoa
- Indian Country lands within the State of Arizona as well as Navajo Reservation lands in New Mexico (*see* Region 6) and Utah (*see* Region 8)
- Indian Country lands within the State of California

- The Island of Guam
- The Johnston Atoll
- The Midway Island and Wake Island

- The Commonwealth of the Northern Mariana Islands
- Indian Country lands within the State of Nevada, as well as the Duck Valley Reservation in Idaho, the Fort McDermitt Reservation in Oregon (*see* Region 10) and the Goshute Reservation in Utah (*see* Region 8)

#### EPA Region 10

- The State of Alaska, including Indian Country lands
- The State of Idaho, including Indian Country lands within the State of Idaho, except Duck Valley Reservation lands (*see* Region 9)
- Indian Country lands within the State of Oregon, except Fort McDermitt Reservation lands (*see* Region 9)
- Federal Facilities in the State of Washington, including those located on

Indian Country lands within the State of Washington

#### B. Categories of Facilities Covered

Today's draft general permit regulates discharges to waters of the United States from the application of (1) biological pesticides, and (2) chemical pesticides that leave a residue for the following pesticide use patterns:

- 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 pests in this use category include but are not limited to mosquitoes and black flies.
- Aquatic Weed and Algae Control—to control weeds and algae in water and at water's edge.
- Aquatic Nuisance Animal Control—to control invasive or other nuisance species in water and at water's edge. Aquatic nuisance animals in this use category include, but are not limited to fish, lampreys, and mollusks.
- Forest Canopy Pest Control—aerial application of a pesticide over a forest canopy to control the population of a pest species (*e.g.*, insect or pathogen) where to target the pest effectively a portion of the pesticide unavoidably will be applied over and deposited to water.

The scope of activities encompassed by these pesticide use patterns is described in greater detail in Part 2.2 of this draft general permit.

#### C. Summary of Permit Terms and Requirements

##### Coverage Under This Permit

This permit will be available to operators of discharges to waters of the U.S. from the application of (1) biological pesticides, and (2) chemical pesticides that leave a residue for the following pesticide use patterns: mosquito and other flying insect pest control; aquatic weed and algae control; aquatic nuisance animal control; and forest canopy pest control. Not eligible for coverage under this permit are discharges to waters of the U.S. identified as impaired for the specific pesticide or its degradates being applied and any discharges to outstanding national resource waters (*i.e.*, Tier 3 waters under anti-degradation regulations). To obtain authorization under this permit an operator must meet the eligibility requirements identified above and if the operator knows or reasonably should have known that its activities will exceed any annual treatment area threshold described in

Part 1.2.2 of the permit, then an NOI must be submitted for permit coverage.

#### Threatened and Endangered Species and Critical Habitat

Section 7(a)(2) of the Endangered Species Act (ESA) requires that EPA consult with the U.S. Fish and Wildlife Service and U.S. National Marine Fisheries Service (collectively called the "Services") to ensure that the permit is not likely to jeopardize the continued existence of any threatened or endangered species or adversely affect its critical habitat. Consultation between EPA and the Services is currently ongoing with the results of that action to be included in the final permit. As a result of these consultations, EPA may need to consider adding conditions to the permit to further protect listed species and critical habitat. These requirements may include additional effluent limitations, monitoring, planning, recordkeeping, and/or reporting. A more detailed discussion of the permit conditions that may be considered is provided in Part III.10.F. of the permit fact sheet. Based on consultation to date, EPA included language in the draft general permit that would require:

- Any operator that is required to submit an NOI to indicate in that NOI whether threatened and endangered species and/or its critical habitat are present in the area where permit coverage is being requested;
- Where a pre-existing ESA Section 7 or Section 10 action already addresses discharges from activities also covered under this permit, that the conditions and/or requirements of those actions are incorporated as enforceable conditions of this general permit; and
- All operators to notify the Services if they become aware of any adverse incident to a Federally-listed threatened or endangered species or its critical habitat, that may have resulted from a discharge from their pesticide application.

EPA requests comment on appropriate measures to protect endangered and threatened species, including the possible measures discussed in Part III.10.F of the draft Permit Fact Sheet.

#### Technology-Based Effluent Limitations

The draft permit, in Part 2, requires all operators to minimize pesticide discharges into waters by doing the following: (1) Use the lowest effective amount of pesticide product per application and optimum frequency of pesticide applications necessary to control the target pest; (2) perform

regular maintenance activities to reduce leaks, spills, or unintended discharges of pesticides associated with the application of pesticides covered under this permit; and (3) maintain application equipment in proper operating condition by calibrating and cleaning/repairing such equipment on a regular basis to ensure effective pesticide application and pest control. Operators that exceed an annual treatment area threshold must also implement Integrated Pest Management (IPM) practices that require these operators to: (1) Identify and assess the pest problem; (2) evaluate effective pest management; and (3) follow appropriate procedures for pesticide use.

It is important to note that although the FIFRA labeling is not an effluent limitation, if the permittee is found to have applied a pesticide in a manner inconsistent with the relevant water-quality related FIFRA labeling requirements, EPA will presume that the effluent limitation to minimize pesticides entering the Waters of the United States has been violated under the NPDES permit. Therefore, use inconsistent with certain FIFRA labeling requirements could result in the permittee being held liable for CWA violation as well as a FIFRA violation.

#### Water Quality-Based Effluent Limitations

In addition to the technology-based effluent limitations, the operator is required to control its discharge as necessary to meet applicable water quality standards. In general, EPA expects that compliance with the technology-based effluent limitations and other terms and conditions in this permit will meet the water-quality effluent limitation. Part 3 contains permit conditions to prohibit any discharges that causes or contributes to an excursion of any applicable numeric or narrative EPA-approved State, territory, or tribal or EPA promulgated water quality standard.

#### Site Monitoring

Part 4 requires entities to monitor to assess compliance with this permit. Permittees must monitor for observable adverse incidents in the treatment area and where pesticides are discharged to waters of the United States. Specifically operators are required to visually monitor for adverse impacts (as defined in the permit) during application, or during post application surveillance that is conducted as a regular part of doing business.

#### Pesticide Discharge Management Plan

An operator who is subject to Part 2.2 of this permit (*i.e.*, one who is required to submit an NOI) must prepare a pesticide discharge management plan (PDMP) for its pest management area. Operators who know or should have reasonably known prior to commencement of discharge, that they will exceed an annual treatment area threshold identified in Part 1.2.2 for that year, must develop a PDMP prior to first pesticide application covered under this permit. Operators who do not know or would reasonably not know until after commencement of discharge, that they will exceed an annual treatment area threshold identified in Part 1.2.2 for that year, must develop a PDMP prior to exceeding the annual treatment area threshold. Operators commencing discharge in response to a *declared pest emergency situation* as defined in Appendix A, that will cause the operator to exceed an annual treatment area threshold, must develop a PDMP no later than 90 days after responding to the declared pest emergency. The PDMP must include information on the pesticide discharge management team, pest management area, control measure, including evaluation and selection of pest management, and schedules and procedures for pest surveillance, equipment maintenance, application rate and frequency, assessing environmental conditions, spill prevention, spill response, adverse incident response, and pesticide monitoring. The PDMP, together with the additional documentation requirements in Part 7, document the practices the operator is implementing to meet the effluent limitations in this permit.

#### Corrective Action

Part 6 outlines situations that require operators to review and revise their control measures. Changes to control measures must be made before the next pesticide application that results in a discharge or, if not possible, as soon as practicable. This draft permit also outlines the procedures for notification, reporting, and documentation of corrective actions for adverse incidents, spills and leaks and other situations triggering the need for such actions.

#### Recordkeeping and Annual Reporting

In Part 7, operators required to submit an NOI are required to keep certain records of their pesticide discharges to demonstrate compliance with the permit conditions. This draft permit specifies which records must be kept and the timeframe for record retention.

In addition, any operator who is required to submit an NOI must submit an annual report to EPA. The draft permit specifies the information that must be included in the annual report and the timeframe for submission.

#### D. Key Permit Provisions for Which EPA Is Soliciting Comment

EPA seeks comment on all aspects of this draft general permit and the accompanying fact sheet; however, in particular, EPA is soliciting comments on the following aspects of this permit:

##### Number of Entities Covered Under This Permit

This general permit provides coverage for the following four use patterns: mosquito and other flying insect pest control; aquatic weed and algae control; aquatic nuisance animal control; and forest canopy pest control. To gain a better understanding of the universe of permittees that would be covered under this permit, EPA is soliciting information on the numbers, types and sizes of entities that conduct pesticide application for each use pattern. Entities include those who decide that application of pesticides is necessary (for example, mosquito control districts, counties, irrigation control districts and other local governments) as well as those entities that apply the pesticides (for example, for-hire commercial applicators).

##### Activities Covered

This general permit provides coverage for the following four use patterns: mosquito and other flying insect pest control; aquatic weed and algae control; aquatic nuisance animal control; and forest canopy pest control.

EPA believes that these four use patterns would encompass the majority of pesticide applications that would result in point source discharges to waters of the U.S. This draft permit would not provide coverage for other pesticide use patterns; however, EPA is still exploring whether other use patterns should be included. Specifically, EPA has not included most use patterns that target land-based pests and flying pests that are not near or over water. EPA is seeking comment on whether certain pesticide application activities targeting such pests may involve unavoidable point-source discharges to waters of the United States. EPA is also requesting comment on whether this general permit should provide coverage for any such activities, and if so, which activities should be covered. If, after considering comments, EPA expands coverage of this permit, the effluent limitations for the

additional use patterns would likely be similar to what is being proposed in this draft permit. Due to the likely similarities between such additional activities and the associated effluent limitations, EPA expects that there will not be a need to re-propose the general permit to cover such additional activities in the final permit. In this case, entities in the newly included use pattern(s) could seek coverage under this general permit. Any point source discharges of pollutants to waters of the United States not covered by this or another general permit will need coverage under an individual permit. EPA also requests comments on how the effluent limitations provided in this permit could apply to the additional activities and whether there are additional or different effluent limitations that might be appropriate for such activities. EPA is also soliciting comments on whether it should exclude from coverage under the general permit all discharges to waters that are impaired generally for "pesticides" rather than only excluding from coverage those discharges to waters that are impaired for the specific pesticide being applied or its degradates.

#### Limitations on Coverage

This permit does not authorize coverage for certain discharges to pesticide-impaired waters and Tier 3 waters. Specifically, this permit does not authorize discharges of pesticides or their degradates to waters impaired for those specific pesticides or degradates. Additionally, this permit does not authorize discharges to outstanding national resource waters (Tier 3 waters). EPA would like input on whether it is appropriate to exclude these discharges from coverage under the general permit or if there are conditions that could be added to the general permit that could adequately address these situations.

#### Sharing of Responsibilities

This permit establishes requirements to control discharges from the application of pesticides that are specific to the discharge regardless of who is defined as the "operator" of the discharge. An "operator" is defined as that entity required under the NPDES program to obtain permit coverage for point source discharges of pollutants to waters of the United States. As written, this permit acknowledges that in many instances, the entity making the decision to apply pesticides is different than the entity that actually applies the pesticides (for example, a mosquito control district may decide that a pesticide application is needed and enter into a contract with a for-hire

commercial applicator to perform the application). EPA, however, defines both of these entities as "operators." EPA drafted this permit with the intent of clarifying which entity is expected to implement which permit conditions with the goal of minimizing duplication of effort while still providing flexibility for multiple operators to decide how compliance with permit conditions will be achieved. Generally, the entity making the decision to apply pesticides is responsible for complying with provisions of the permit leading up to the actual application of the pesticide (such as IPM identifying and assessing the pest problem) and any activities after application of the pesticide. The applicator of the pesticide, if different, is responsible for those permit requirements that occur during or directly related to the actual application of the pesticide (such as maintaining and calibrating equipment). EPA is interested in whether the approach in this draft general permit is clear and if it provides a logical approach to the expected sharing of responsibilities.

#### Notices of Intent

In general, as set forth in 40 CFR 122.28(b)(2), dischargers seeking coverage under a general permit must submit a notice of intent (NOI) to be covered by the permit. However, 40 CFR 122.28(b)(2)(v) provides EPA the authority to cover entities under a general permit without requiring the submission of an NOI. In Part 1.2.2 of this permit, EPA proposes annual treatment area thresholds for the submission of NOIs. EPA is proposing this NOI framework to: (1) Obtain NOIs from the largest dischargers, (2) eliminate duplicative reporting by multiple operators for an individual discharge, and (3) clarify the type of entity responsible for submitting the NOI. Operators that do not exceed an annual treatment area threshold are covered automatically under this permit without the need to submit an NOI. EPA is interested in feedback on whether this NOI framework strikes an appropriate balance between capturing information on discharges from the largest pesticide application activities and avoiding the imposition of unreasonable burdens on operators whose pesticide application activities affect smaller areas. EPA is also interested in information on whether the size of the thresholds is appropriate, and whether they result in obtaining NOIs from an appropriately targeted set of large dischargers.

If an NOI is required, it must contain either a map or narrative description of the area and the waters of the United States and the pesticide use patterns for

which permit coverage is being requested for the duration of the permit. Operators can identify specific waters or request coverage for all waters within the area for which they are requesting permit coverage. EPA is interested in feedback on whether this approach adequately captures the areas and associated waters of the United States for which permit coverage is being requested.

#### Technology-Based Effluent Limitations

This draft permit contains narrative technology-based effluent limitations for the class and scope of activities and operators covered under this permit. After much research and discussion with experts, EPA determined that the effluent limitations identified in Part 2 of the permit, including IPM practices for operators that will exceed an annual treatment area threshold (*i.e.*, those who must submit an NOI) should be included in this general permit. Since this is the first general permit for these types of discharges, EPA specifically requests comments on this section for the following questions:

1. What types of government agencies/departments have the responsibility or are mandated to perform pest control? Are they already required to implement IPM? What specific IPM practices do they already perform?

2. Are there private commercial entities that apply pesticides below the threshold that should be expected to implement IPM? If so, who are these and what IPM practices should they be required to implement? Are any private commercial entities that apply pesticides below the threshold currently implementing IPM practices? Is the use of annual treatment area thresholds an appropriate mechanism for establishing technology-based effluent limitations and if so, are the thresholds provided in the draft general permit appropriate?

3. Are there more specific IPM procedures that we can incorporate into this permit to better define IPM expectations of permittees above or below the threshold? Would an EPA-developed IPM template be practical and help? If so, what should be included? Are there industry-specific templates already available?

4. Will requiring IPM of small public or private entities not already required to implement IPM under this draft general permit force them to go out of business or choose not to spray at the expense of public health or the environment?

5. How much do the IPM procedures required in this permit cost?

6. Are entities above the thresholds already doing these practices? If not, what would be the consequences/costs of these requirements?

#### Water Quality Based Effluent Limitations

EPA is soliciting comment on the water quality based effluent limitations in this proposed permit, and whether other parameters or narrative requirements would be appropriate.

#### Monitoring

EPA is requesting comment on the value, feasibility and safety of visual monitoring during application and of post application surveillance monitoring.

EPA is considering having the largest of the large applicators provide ambient sampling data. How large would be appropriate for such a requirement? Should these data be used to enhance the cycle of information EPA will use in assessing the selected BMPs rather than compliance? What types of monitoring requirements are appropriate for each of the four pesticide use categories covered under this permit? What would be the cost of monitoring? What are the best monitoring methodologies when sampling for the residues of chemical pesticides? What sampling approaches accommodate issues of safety and accessibility? What timing and frequencies are best in these situations?

#### Annual Reports

Any operator required to submit an NOI is also required to submit an annual report that contains, among other things, a compilation of pesticides applied, quantities applied, locations where pesticide applications were made during the previous calendar year, and information on any adverse incidents or corrective actions resulting from discharges covered under this permit. The Agency is interested in comment on the scope of operators required to submit annual reports and the type, level of detail, and practical utility of the information being requested.

#### E. Permit Appeal Procedures

Within 120 days following notice of EPA's final decision for the general permit under 40 CFR 124.15, any interested person may appeal the permit in the Federal Court of Appeals in accordance with Section 509(b)(1) of the CWA. Persons affected by a general permit may not challenge the conditions of a general permit as a right in further Agency proceedings. They may instead either challenge the general permit in court, or apply for an individual permit as specified at 40 CFR 122.21 (and

authorized at 40 CFR 122.28), and then petition the Environmental Appeals Board to review any conditions of the individual permit (40 CFR 124.19 as modified on May 15, 2000, *65 FR 30886*). See also 40 CFR 23.12 for filing notice of judicial review requirements.

#### IV. Economic Impacts of the Pesticides General Permit

As a result of the Sixth Circuit Court decision on EPA's 2006 NPDES Pesticides Rule, operators of discharges to waters of the U.S. from the application of pesticides now require NPDES permits for those discharges. EPA expects that costs associated with complying with the effluent limits under this general permit will be similar to costs under individual permits for similar activities; however, administrative costs for both EPA as the permitting authority and operators as permittees are expected to be lower under this general permit than under individual permits. In other words, the general permit itself can be expected to reduce rather than increase costs for permittees as compared to the baseline of individual permitting.

EPA expects the economic impact on covered entities, including small businesses, to be minimal. Since EPA is developing a general permit in the absence of existing national Effluent Limitations Guidelines or Best Professional Judgment (BPJ) effluent limitations in other NPDES-issued permits, the Agency performed an economic impact analysis of the Pesticides General Permit for the purpose of examining the economic achievability of complying with the technology-based effluent limitations embodied in the permit. The economic impact analysis is included in the administrative record for this permit. Based on that analysis, EPA expects that there will be minimal burden on entities, including small businesses, covered under the general permit. EPA is asking for additional information during the public notice of the draft permit and will update the analysis as appropriate for the final permit.

#### V. Executive Order 12866

Under Executive Order 12866 (*58 FR 51735* (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of

the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. It has been determined that this is a significant regulatory action under the terms of EO 12866 and it was therefore submitted to OMB for review. A summary of substantive changes made during OMB review, including an identification of those made at the suggestion of OIRA, is included in the docket.

**Authority:** Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: May 26, 2010.

#### Ira W. Leighton,

*Deputy Regional Administrator, EPA, Region 1.*

Dated: May 26, 2010.

#### Kevin Bricke,

*Acting Director, Division of Environmental Planning and Protection, EPA Region 2.*

Dated: May 27, 2010.

#### Carl-Axel P. Soderberg,

*Division Director, Caribbean Environmental Protection Division, EPA Region 2.*

Dated: May 26, 2010.

#### Jon M. Capacasa,

*Director, Water Protection Division, EPA Region 3.*

Dated: May 26, 2010.

#### James D. Giattina,

*Director, Water Protection Division, EPA, Region 4.*

Dated: May 26, 2010.

#### Tinka G. Hyde,

*Director, Water Division, EPA Region 5.*

Dated: May 26, 2010.

#### William K. Honker,

*Deputy Director, Water Quality Protection Division, EPA Region 6.*

Dated: May 26, 2010.

#### Glenn Curtis,

*Chief, Wastewater and Infrastructure Management Branch, EPA Region 7.*

Dated: May 27, 2010.

#### Stephen S. Tuber,

*Assistant Regional Administrator, Office of Partnerships and Regulatory Assistance, EPA Region 8.*

Dated: May 26, 2010.

**Alexis Strauss,**

Director, Water Division, EPA Region 9.

Dated: May 26, 2010.

**Michael A. Bussell,**

Director, Office of Water and Watersheds, EPA Region 10.

[FR Doc. 2010-13468 Filed 6-3-10; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-8990-7]

### Environmental Impacts Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information (202) 564-1399 or <http://www.epa.gov/compliance/nepa/>.

Weekly receipt of Environmental Impact Statements.

Filed 05/24/2010 through 05/28/2010. Pursuant to 40 CFR 1506.9.

#### Notice

In accordance with Section 309(a) of the Clean Air Act, EPA is required to make its comments on EISs issued by other Federal agencies public. Historically, EPA has met this mandate by publishing weekly notices of availability of EPA comments, which includes a brief summary of EPA's comment letters, in the **Federal Register**. Since February 2008, EPA has been including its comment letters on EISs on its Web site at: <http://www.epa.gov/compliance/nepa/eisdata.html>. Including the entire EIS comment letters on the Web site satisfies the Section 309(a) requirement to make EPA's comments on EISs available to the public. Accordingly, on March 31, 2010, EPA discontinued the publication of the notice of availability of EPA comments in the **Federal Register**.

*EIS No. 20100201, Draft EIS, FHWA, 00, Southeast High Speed Rail Richmond-Raleigh Project, Addresses the 162 mile Segment between Richmond, VA to Raleigh, NC, Comment Period Ends: 08/30/2010, Contact: John Winkle 202-493-60607.*

*EIS No. 20100202, Draft EIS, USFS, TX, Comal County Regional Habitat Conservation Plan, Application for Incidental Take Permit, Comal County, TX, Comment Period Ends: 07/28/2010, Contact: Bill Seawell 512-490-0057.*

*EIS No. 20100203, Draft Supplement, USFS, AK, Programmatic EIS—Exxon Valdez Oil Spill Restoration Plan DOI/DOC, New Circumstances Bearing on the Council's Restoration*

*Effort, Implementation, Prince William Sound, Gulf of Alaska, AK, Comment Period Ends: 07/19/2010, Contact: Laurel Jennings 206-526-4525.*

*EIS No. 20100204, Final EIS, USN, GU, Mariana Islands Range Complex (MIRC), To Address Ongoing and Proposed Military Training Activities, Mariana Islands, GU, Wait Period Ends: 07/06/2010, Contact: Nora Macariola-See 808-472-1402.*

*EIS No. 20100205, Draft Supplement, USFS, CA, Beaverslide Timber Sale and Fuel Treatment Project, Additional Analysis and New Information, Six Rivers National Forest, Mad River Range District, Trinity County, CA, Comment Period Ends: 07/19/2010, Contact: Thomas Hudson 707-574-6233.*

*EIS No. 20100206, Draft EIS, FHWA, OR, Newberg Dundee Bypass Project, Proposal to Build a Four Lane Expressway and Reduce Congestion on OR 99W, from OR 99W/OR 8 to the top of Rex Hill, USACE 404/Removal Fill Permits, Funding, Yamhill and Washington Counties, OR, Comment Period Ends: 07/19/2010, Contact: Michelle Eraut 503-587-4716.*

*EIS No. 20100207, Draft EIS, USFS, SD, Nautilus Project Area, Multiple Resource Management Actions, Implementation, Black Hills National Forest, Northern Hills Ranger District, Lawrence, Meade and Pennington, SD, Comment Period Ends: 07/19/2010, Contact: Chris Stores 605-642-4622.*

#### Amended Notices

*EIS No. 20100189, Final EIS, NPS, AK, Legislative—Glacier Bay National Park Project, Authorize Harvest of Glaucous-Winged Gull Eggs by the Huna Tlingit, Implementation, AK, Wait Period Ends: 06/28/2010, Contact: Cherry Payne 907-697-2230.*

*Revision to FR Notice Published 5/28/2010: Correction to Lead Agency from BLM to NPS.*

*EIS No. 20100193, Final EIS, FRA, CA, Adoption—March 2004 Transbay Terminal/Caltrain Downtown Extension/Redevelopment Program (Transbay Program) Phase 1, San Francisco, San Mateo and Santa Clara, CA, Wait Period Ends: 06/28/2010, Contact: David Valenstein 202-493-6368.*

*Revision to FR Notice Published 05/28/2010: Correction to Contact Person Name and Telephone.*

Dated: June 1, 2010.

**Robert W. Hargrove,**

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2010-13458 Filed 6-3-10; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2010-0421; FRL-8826-1]

### Pesticide Products; Registration Applications

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has received applications to register pesticide products containing Fluxapyroxad, an active ingredient not included in any previously registered pesticide product. Pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

**DATES:** Comments must be received on or before July 6, 2010.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2010-0421, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

*Instructions:* Direct your comments to docket ID number EPA-HQ-OPP-2010-0421. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business