

Meeting on NPDES – April 28, 2009

Bill Jordan met with us on the NPDES issue – present were Kurt Getsinger (US Corp of Engineers/APMS rep to EPA), Angela Poovey (US Corp of Engineers), Bill Jordan (Special Assistant to Debbie Edwards/OPP), Dan Kenny (EPA/OPP/RD), and Jill Schroeder (WSSA rep to EPA). Bill began by outlining the current situation and status of current rule, which is still in effect.

Regarding U.S. Court of Appeals for the 6th Circuit – *National Cotton Council et al. v. EPA*, there are two motions pending before the court:

1. Industry (Crop Life and others) petitioned the court to rehear the case in front of the entire court (ca. 16 judges of the 6th Circuit). On April 27, the court sent an order directing the environmental petitioners to respond to the petition from industry. This response is due on May 8.

2. The government filed a motion to stay issuance of the mandate (to vacate EPA's rule exempting pesticide application from National Pollutant Discharge Elimination System (NPDES)). The basis of the motion was that the agency will need a system in place to grant these petitions. They felt that they need 2 years to develop and implement the permitting process.

B. Jordan felt that the court will decide on both motions at the same time (soon after May 8). If the court does not grant a rehearing (motion 1), they can issue a mandate effective immediately. If the court accepts the motion requested by EPA, the current rule will remain in effect for 2 years – time for EPA to develop the permitting process. If either motion is denied, the petitioners do have the option of appealing the case to the Supreme Court; however, B. Jordan felt that it was not likely that the court would hear the case.

IMPACTS:

- 1- Terrestrial weed management – impact is not clear; the regulation that was vacated by the court applied specifically to pesticides applied in/over/near water and does not cover spray drift. In addition, irrigation return/runoff is not considered a point source pollutant so would also not be covered by the rule.

- 2- Aquatic weed management (and mosquito control) is impacted by the rule. The court ruled that pesticide spraying amounted to a point source discharge. EPA estimates that the ruling will apply to ca. 5.6 million annual applications performed by 365,000 applicators.

The EPA/OPP and Office of Water are working on how to implement the court ruling – the Office of Water is the lead agency with the Office of Pesticide Program (OPP) taking a supporting role. The agency is receiving questions from stakeholders and contacting states that have current permitting requirements for aquatic applications (information provided to EPA/OPP by Kurt Getsinger). EPA is planning to develop a narrow clean water general permit for pesticide spraying activities in states and tribal areas that do not have delegated permit authority, leaving most states with broad discretion to adopt stricter requirements than EPA (but not less strict). The NPDES general permit would apply to the states of Massachusetts, Idaho, New Mexico, New Hampshire, as well as the tribal areas and territories – these states and tribal areas are currently under the general NPDES permit for point source discharges; other states have their own permitting process. The agency will develop the permit and proposal process and post for

public comments prior to revision and issuance of the final rule. The rule will include a time line for states to come into compliance. The public comment will also include the opportunity for input on breadth/scope of the permit (spray drift or other applications beyond aquatic uses).

Other discussion topics:

1- Bill Jordan asked about the contact list of states that required permits currently for aquatic applications. We said that this information had been provided by Kurt Getsinger (through Lee Van Wychen) to Debbie Edwards and offered to send it to Bill as well.

2- Bill Jordan asked about the field trip for EPA staff; we told him the dates and participants.

3- Kurt offered that Federal Interagency Committee for the Management of Noxious and Exotic Weeds (FICMNEW) is a committee made up of representatives from federal agencies charged with managing invasive species; this may be a good resource for EPA as they develop the permitting process. Kurt also offered the expertise of the U.S. Army Corp of Engineers to this process.