



Focus on State's Response to EPA Rule on Aquatic Pesticide Permitting

from Ecology's Water Quality Program

Washington will continue to use NPDES permits to control the use of aquatic pesticides in and around Washington State waters.

On November 21, 2006, EPA ruled that a pesticide applied according to its federal label is not a pollutant under the federal Clean Water Act and as such, is not subject to NPDES permitting. NPDES stands for National Pollutant Discharge Elimination System. States use NPDES permits to control pollution. To date, this rule has been appealed in 11 circuit courts throughout the country.

History

Prior to 2001, the Washington Department of Ecology (Ecology) regulated the use of aquatic pesticides through issuing administrative orders to licensed applicators of aquatic pesticides.

This regulatory process changed in 2001 after the Ninth Circuit Court of Appeals ruled in the *Headwaters Inc. v. Talent Irrigation District* case that the use of a pesticide according to its federal label did not exempt the pesticide applicator from Clean Water Act permitting. As a result of this court decision, Ecology began to develop a series of general and individual Clean Water Act permits geared towards the application of pesticides in or around water, thereby protecting water quality.

In 2002, Ecology issued four general NPDES permits to address the following types of controls:

- Mosquitoes
- Plants in irrigation canals
- Nuisance plants and algae
- Aquatic noxious weeds

Ecology also issued individual permits to deal with burrowing shrimp in oyster beds, unwanted fish in lakes and streams, and invasive moths. These permits currently implement both state and federal law. Washington was permitting many of these activities under state law prior to the 2001 *Talent* decision.

Decision-Making Process

In December 2006, Ecology met with interest groups representing each of the permit areas, as well as with agricultural and environmental groups. Ecology asked the groups for comments on which direction the state's permitting program should go. Ecology's comment period ran from December 20, 2006 to January 12, 2007. Ecology received many comments from permittees and interested parties. The majority of the commenters requested that the state continue its current permitting program, pending the outcome of the EPA rule appeal.



Decision

Ecology decided that Washington will continue to use NPDES permits to control the use of aquatic pesticides in and around Washington state waters until there is a ruling on the appeal. These permits help the state:

- Ensure those pesticides that have the lowest risk to human health and the environment are used.
- Reduce uses and amounts of pesticides.
- Track uses of pesticides.
- Assure that public notifications and postings occur when waters are treated.
- Monitor levels of pesticides in the water after treatment.

At this time, these permits provide the best protection of water quality, human health, and the environment. Ecology has taken steps to minimize the regulatory and administrative burden on permittees while ensuring that the permits comply with federal and state laws and court decisions. We will continue to follow the court proceedings surrounding the rule and make changes accordingly.

For more information

Please contact Kelly McLain, Aquatic Pesticide Specialist, at 360-407-6938 or kelm461@ecy.wa.gov.

If you need this publication in an alternate format, please call the Water Quality Program at 360-407-6401. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.