

April 16, 2010

Plans for Implementing Pesticide NPDES Permitting under the Clean Water Act

1. **January, 2006...** EPA finalized a rule to clarify that pesticides applied **to, over, or near** waters of the U.S. are regulated under FIFRA (federal pesticide law) and do not require a National Pollutant Discharge Elimination System (NPDES) permit under the Clean Water Act (CWA).
2. **January, 2009...** 6th Circuit Court vacated the EPA rule, thus requiring NPDES permits for pesticide applications. Agricultural stormwater runoff is exempted from permitting under CWA.
3. **June, 2009...** Court granted two year stay of January, 2009 ruling to allow EPA (IDEM in the state of Indiana) time to develop and implement permitting program for pesticides.
4. **September, 2009...** EPA started developing model pesticide permitting program. Permits can be **individual** (one permit for one applicator) or **general** (one permit for many applications by many applicators).
5. **November, 2009...** Pesticide industry and user groups asked the U.S. Supreme Court to review lower court's determination.
6. **February , 2010 ...** Supreme Court determined not to review the lower court's action.
7. **February 16, 2010...** IDEM & OISC presented NPDES permit implementation plan to the Indiana Pesticide Review Board (IPRB).
8. **February & March, 2010...** IDEM & OISC made outreach presentations to potentially impacted pesticide user groups.
9. **April, 2010...** IDEM begins drafting implementation documents for Indiana permits.
10. **May 6, 2010...** IDEM & OISC to present updated status report to IPRB.
11. **May, 2010 (last week of month?)...** EPA expected to publish in the Federal Register for public comment their model draft PGP. Draft PGPs expected to require the following of applicators or party ordering the application:
 - (a) **Annual threshold levels** to determine who must file with IDEM. It is possible that threshold levels may not be published as part of EPA's draft

PGP but that EPA may ask for public input on what those levels should be for each type of application.

- (b) File **Notice of Intent** (NOI) with IDEM.
 - (c) Follow & document **IPM** practices including record keeping.
 - (d) Prepare a **Pesticide Discharge Management Plan**
 - (i) monitor site for adverse effects
 - (ii) ID pesticides to be used
 - (iii) develop spill response plan
 - (iv) develop equipment maintenance & calibration schedule
 - (v) etc.
 - (e) Submit an **annual report** to IDEM.
 - (f) Keep **records**.
12. **May, 2010...**IDEM in conjunction with OISC will initiate discussions with impacted Indiana pesticide user groups. Anticipated user groups include:
- (a) aquatic weed & algae control (*category 5 + homeowner assoc. + IDNR*);
 - (b) pest fish, lamprey & mussel control (*category 5 + IDNR*);
 - (c) mosquito control (*category 8+ Assoc. of Cities & Towns + ISDH*);
 - (d) area-wide pest control
 - (i) weeds on ditch banks leading to water (*category 6 + category 11 + INDOT + Assoc. of Indiana Counties*);
 - (ii) gypsy moth (*IDNR + category 11*);
 - (iii) forest pests (*category 2 + IDNR*)
13. **May, 2010...**IDEM in conjunction with OISC will begin to craft Indiana PGP. IDEM/OISC will coordinate with IDNR to see if there are any similarities between IDNR aquatic pesticide permits and the NPDES permits.
14. **Fall/Winter, 2010 (?)...** Indiana Pesticide Review Board will facilitate comment on the draft Indiana PGP at a Board meeting.
15. **Fall/Winter, 2010...**OISC & IDEM will continue to outreach at user group meetings & send a direct informational mailer to known impacted parties in current data bases.
16. **Winter, 2010...**IDEM and OISC will incorporate CWA/FIFRA permit compliance and enforcement coordination mechanisms into an agency Memorandum of Agreement.
17. **December, 2010...**EPA will finalize PGP in consideration of comments received.
18. **April, 2011...**NPDES permitting requirement for pesticide applications becomes effective. General permits will be valid for **5 years** from date of issue.