

NPDES One Year Later

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How We Got Here

- **2001-10 Lawsuits**
 - **Headwaters v. Talent Irrigation District**
 - **League of Wilderness Defenders v. Forsgren**
 - **Altman v. Town of Amherst**
 - **No Spray Coalition v. New York**
 - **National Cotton Council v. EPA**

National Cotton Council v. EPA – 2009 6th Cir. Decision



- Vacated 2006 EPA ruling
- NPDES permit required?
 - **Adulticide – Yes if excess or residual pesticide enters waters of U.S.**
 - **Biological larvicide – Yes if applied to waters of U.S.**
 - **Chemical larvicide – Yes if excess or residual pesticide remains in water of U.S. after completion of intended purpose**

NPDES Environmental Benefits

- **Mandatory equipment calibration**
- **Annual reporting – quantity and location**
- **Enforceable under CWA as a permit violation**
- **Additional limits on impaired/tier 3 waters**
- **Requires IPM**
- **Immediate notification of adverse incidents**

Environmental Group Objections

- **Lack of numeric effluent limitations**
- **Inadequate degradation analyses**
- **Allows pesticide discharge to impaired waterbodies**
- **Lack of mixing zone studies**
- **BMPs not stringent enough**
- **Should require monitoring before/after pesticide application**

Negative Impacts

- **National Pollutant Discharge Elimination System (NPDES) regulatory requirements are forcing programs to redirect control resources to comply with the increased costs resulting from their imposition.**
 - Rationale: Every dollar or man-hour needed to meet CWA requirements is a dollar not being put toward protecting the citizen's health.

Benton County Washington

ADMIN COSTS	
Original state permit	\$5,000
Securing Federal Permit	\$3,060
Weekly report to Corps of Engineers	\$643
Update mapping	\$257
Field employee for federally permitted lands	\$16,846
Maintaining state permit	\$612
Sentinel record software	\$6,000
WA Dept of Ecology Permit fee	\$360
Aerial adutlitcide due to larvicide delay	\$4,778
	\$37,556

Benton County Washington

What \$37,334 Could Buy	
Seasonal Field Worker - \$11,500	3
Bti larvicide	25,926 lbs
Aerial larvicide app acres	1,900
Ground larvicide	2,593
WNV RAMP (in house)	1,928
WNV tests (OSU)	424
30 second radio PSA	186-933
Aerial adulticide acres	20,290
Evening ground ULV	94

Negative Impacts

- **Commercial applicators historically serving rural communities and small municipalities are increasingly opting to cancel their programs out of fear of increased liability.**
- Rationale. This represents a profound social injustice to those rural poor most in need of these services.

Negative Impacts

- In some states, preventive mosquito control strategies such as comprehensive larviciding are being curtailed in order to redirect resources toward increased administrative and water monitoring costs.
- Rationale: This pushes districts toward more extensive use of adulticides to provide the same measure of control.

Negative Impacts

- **Liability fears from adulticide applications are effectively pushing them farther down the control algorithm or eliminating them entirely.**
- Rationale: Liability fears are fueling pressures to forego consideration of preventive adulticiding until human cases have presented, allowing for transmission to take place while diseases are incubating in the human population. This effectively makes humans disease sentinels.

Negative Impacts

- Mosquito-borne disease victims alleging that responsible entities did not provide adequate public health protection have filed lawsuits.
- Rationale: Districts scaling back control operations to meet NPDES costs risk citizen suits and litigation costs.

Negative Impacts

- Federal and State agencies are expending vital funds to initiate and maintain NPDES programs governing mosquito control applications.
- Rationale: There is no longer slack in government budgets at any level to absorb NPDES program maintenance costs

Negative Impacts

- **Water monitoring costs now being levied from California districts, if writ nationwide, would close many districts in other states.**
- Rationale: In the absence of a public health exception to NPDES, there will eventually be increased pressure for other states to adopt California's monitoring policies.

The California Experience

- **PHYSICAL MONITORING**
 - **Temperature, DO, EC, pH and turbidity**
 - **Wide Range of Results (as expected!)**
 - **Natural Daily Variation (temperature, DO)**
 - **Wide Range of Station Types**
 - **Questionable Value to Protection of WOTUS**

The California Experience

- CHEMISTRY

- 18 SAMPLES PER CONSTITUENT
- 2 SAMPLES PER EVENT-PRE AND POST
- $13 \times 18 \times 2 = 468$ SAMPLES @ \$500 EACH = \$234,000

- TOXICITY

- 18 SAMPLES PER CONSTITUENT
- 2 SAMPLES PER EVENT-PRE AND POST
- $13 \times 18 \times 2 = 468$ SAMPLES @ \$1000 EACH = \$468,000

TOTAL LABORATORY COST =
\$702,000

The California Experience

- LABORATORY COSTS \$702,000
- COST OF PROGRAM MANAGER \$300,000
- VISUAL/PHYSICAL MONITORING \$50,000
- FUTURE INVESTIGATION COSTS UNKNOWN
- ADMINISTRATIVE UNKNOWN
 - TRACKING
 - DATABASE
 - REPORTING
 - QUALITY CONTROL
 - COMMUNICATION

\$1 MILLION PLUS



Endangered Species Act

The New Challenge?

- § 7 – federal agency must consult with USFWS & NMFS to ensure agency action is not likely to jeopardize continued existence of endangered or threatened species or adversely modify critical habitat
- Consultation is lengthy process resulting in BiOp with incidental take authorization and conditions

National Research Council

- **Best available scientific data and information.**
- **Sub-lethal, indirect, and cumulative effects.**
- **Mixtures and Inerts.**
- **Models.**
- **Interpretation of Uncertainty**
- **Geospatial Information and Datasets.**

Legislative Relief – Past Legislation

- **S.3735 - Senate Agriculture Committee**
 - **S.3605: Restoring Effective Environmental Protection Act of 2012**
 - **Sponsor: Sen Kay Hagan [D-NC] (introduced 9/20/2012)**
 - **12 co-sponsors – including Vitter (R-LA)**
- **H.R. 6087 - House Committee on Agriculture**
 - **Frank Lucas (R-OK) - ranking Republican member**
 - **Amend Section 3(f) of FIFRA (7 U.S.C. 136a(f))**
 - **Additional permits not required for pesticide applications made in accordance with FIFRA**

HR 872

Reducing Regulatory Burdens Act of 2012

- Joe Gibbs (R-OH) - passed House on bipartisan vote
- HR 872 passed out of Senate Agriculture Committee
 - Pending final vote by the full Senate
 - Senate Majority leader determined no vote to be scheduled on bill
- Senate Majority Leader Reid did not schedule for floor vote
 - Principally due to the objections of Senator Boxer, Chairwoman of the Senate Environment and Public Works Committee.
- Bi-partisan request by 25 in December, 2012 to schedule a vote failed to persuade Sen. Reid (D-NV)

The Fate of HR 872

- **Senator Stabenow - HR 872 with "Environmental Riders" considered but rejected for inclusion in the minibus appropriation bill (HR 3671) approved in the Senate.**
 - **Not rejected on merits - Senate leadership wanted to exclude riders**
 - **Exception was made to include a delay for NPDES permits associated with certain forestry activities particularly logging roads - heavily pushed by Senator Wyden from Oregon, among others.**

HR 935 –Bob Gibbs (R-OH)

Reducing Regulatory Burdens Act of 2013

- **Notwithstanding any other law, no permit shall be required for—**
 - ‘ ‘(A) the use of a pesticide that is registered or otherwise authorized for use under this Act, if that use is in accordance with this Act; or
 - ‘ ‘(B)(i) the use of a biological control organism (as defined in section 403 of the Plant Protection Act (7 U.S.C. 7702)) for the prevention, control, or eradication of a plant pest or noxious weed, if that use is in accordance with that Act (7 U.S.C. 7701 et seq.); or
 - ‘ ‘(ii) the conduct of any other plant pest, noxious weed, or pest control activity under that Act, if that activity is conducted in accordance with that Act.’ ’ .

Other Legislation

- **Roberts (R-KS)/Johanns (R-NE)**
 - **SB 175**
 - **FIFRA-based**

- **Hagan (D-NC)/Crapo (R-ID)**
 - **Similar to HR 935, await end of Easter recess**
 - **May go to conference**
 - **2 year study seeks harmonization of FIFRA/CWA**
 - **Analyze nature and extent of pesticide residues**
 - **Data call in to eliminate data gaps**
 - **Analyze benefits from reducing discharges to water**
 - **Analyze efficacy of registration at protecting water quality**

Quo Vadis?

- **Extended Farm Bill expires 30 Sept**
 - **Thad Cochran (R-MS)**
 - AG Ranking Member
 - HR 935 onto Farm Bill – possible
 - **Obtain enough support to force action by Reid**
 - **62-67 Senators supported HR 872**

Strategy

- Frame debate in terms of protecting public health
 - NPDES does not contribute to that in any meaningful way
- Unnecessary expenditures and diversion of resources
- Unnecessarily places public health entities in danger of lawsuits
- Lessens protection of environment from zoonoses
- Environmental concerns fully vetted as a condition of registration