

Webcast Transcript:
Clean Water Act Permitting of Discharges from Pesticide Applications
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Overview of EPA's PGP and implications of that for pesticide applications. What many of you likely may find out is that the second half of the webcast which may be the one you are most interested in, is not necessarily going to answer some of your basic questions about what specific requirements apply to your activities. Hopefully my first half of the discussion will explain why that second half may not apply to you.

We will also take some breaks to answer some of your questions. There is -- you should see a block on the side of your screen that allows you to enter questions which I am not sure if we have received any yet. Yes, I guess I am getting a head nod that we are. We would love to be able to answer all of the questions. When we first started doing this that was our thought if we could not answer during the webcast we would answer them and send back our answers to people and we received over 700 questions on the first webcast and just really weren't able to get back to everybody in a timely fashion. We will answer some. I think the first webcast we probably answered about 10 or 15 questions but we have taken the remaining ones and we are in the process of developing a question and answer document that we will make available on our website. In the coming weeks that hopefully will provide folks with the information that they need to be able to comply with whatever it is that they have to do.

If you do have a question that we don't answer today and for which you need an immediate response you can send a question to our Pesticide General Permit group e-mail box which is PGP@EPA.gov and we will try and get back to you as soon as possible. We have told folks about that at the first webcast and I think we got about a dozen or so questions. We have not really broadcast that address yet but we've been getting a slew of e-mails through other channels, but again it is PGP@EPA.gov and hopefully we can get back to you as quickly as possible.

And then at the end of the webcast there is a short survey that we would like you to fill out if at all possible. Really some basic questions about the material we presented and for me at least the more important point is to try and find out what

additional guidance or outreach or webcasts that you would like for us to do to help you to better understand what your requirements are.

And so with that, let's get into the details of NPDES pesticide permitting. For many years pesticide applicator's had little reason to know about the Clean Water Act and its implications on pesticide application activities. That lack of awareness likely resulted from the fact that we at EPA had a long-standing interpretation of the Clean Water Act that pesticides applied consistent with federal insecticides, fungicide, and rodenticide act or different regulations did not require additional control under the Clean Water Act.

But in 2001, US Ninth Circuit Court of Appeals in *Headwaters vs. Talent* found that an applicator of herbicides was required to obtain a Clean Water Act permit for those applications. Similarly in 2002, the Ninth Circuit in *League of Wilderness Defenders vs. Forsgren* determined that the application of pesticides control [inaudible] also require a Clean Water Act permit. There were later additional court decisions that determined the Clean Water Act permits were not required for discharges from certain other pesticide applications.

We developed a couple of public statements clarifying our position but because of continuing uncertainty in 2006, we published a final rule in an attempt to clarify our interpretation of the Clean Water Act. That 2006 final rule specified that NPDES permits were not required when pesticides were applied consistent with FIFRA requirements in two specific instances. One, the application of pesticides directly to waters of the United States to control pests. Or number two, the application of pesticides to control pests that are present over waters of the US including near such waters where a portion of the pesticides will unavoidably be deposited to waters of the US to target the pests effectively.

In between 2006 and where we are today, the -- kind of what we said discharges to over including near, we really we ended up lumping those into four different types of pesticide uses. They include in this picture is a very crude depiction of those types of activities, but it's for the control of mosquitoes and other flying insect pests, the control of aquatic animal pests in or near waters, the control of forest canopy pests, and the control of aquatic weed and algae in or near waters. Remember that while these four use patterns identify those activities, the court generally identified as following under its decision the requirement only applies if there's actually a point source discharge of pollutants to waters of the US.

I will give you a brief explanation of some of those terms of point source discharge of pollutants to waters of the US in a little bit but, for example, a few applied pesticides to control weeds and there's not a discharge to waters, no permit is required.

As we do so often, we were sued under 2006 rule and this case in 11 different circuit courts which were then consolidated into the Sixth Circuit Court of Appeals as National Council vs. EPA. In January 2009, the court ruled against EPA finding that EPA's 2006 rule was not a reasonable interpretation of the Clean Water Act. And in fact the Clean Water Act does require permits for pesticide applications that result in discharges to waters of the US of -- and the terms were of biological pesticides or chemical pesticides that leave a residue. At our request the court stayed the decision until October 31st of this year to provide us with time to develop a program to permit this new universe of NPDES permittees and for people to have time to understand and comply with the court's finding.

To be clear, this extension until October 31st was the date when any subsequent discharges from these types of activities would require a Clean Water Act permit.

A number of bills have been drafted over the past couple of years generally looking to eliminate the Clean Water Act permit requirement as part of the executive branch. EPA, we administer the laws and don't necessarily take a position on the merits of those laws. So we -- through the 2 1/2 year period really moved forward and are continuing to work on getting a program in place and I guess as of now there has not been a bill that has been passed and signed that has changed the fact that NPDES permits are required as of October 31st. So for now NPDES permits are still required.

Since those court rulings we have spent a lot of time working with a range of stakeholders. We have worked with folks within EPA, our Office of Water, our Office of Pesticides Programs, our 10 regional offices and had regular communication with state regulatory and agricultural agencies as well as the effective regulatory community. Since the court decision in 2009, we have participated in more than 200 meetings with our stakeholders on this very issue which really, really has improved the overall quality of the permits that have been issued recently.

And with that what we are going to try to do is do a poll. And I think it is going to be posted on your webpage but basically the question is do you expect to need coverage under EPA's Pesticide General Permit? And the three choices are, yes/likely, unclear if eligible, and three, no. And I believe folks should be able to see the poll now. And people are responding. We will give a couple of seconds here to let people answer. This software is fantastic. You can see by the minute how many people have answered yes/no/in different. I think we are up to about 80% of you haven't voted. And interestingly -- I mean I think we will end up see the final tally but it is almost evenly split 1/3 said yes /likely, 1/3 said unclear and 1/3 said no.

So let's see has the poll moved on? Can you end the poll? Okay. So I'm not sure -- did the results post? The results didn't -- here we go. So as you can see 35% of you voted yes, 34% were unclear and 32% of you said no. So it looks like 2/3 of you are reasonably certain of what you are going to have to do. And hopefully we can fill in some of the blanks for you for the 1/3 of you that were uncertain hopefully we can do a decent job of helping you to understand your new expect -- new requirements.

So one of the challenges with the court's decision on our rule is that if forced pesticide people to have to understand water laws. The past 2 1/2 years since that court decision we have come to realize that one of the biggest obstacles in getting people to understand the court's decision is getting people who historically focused on FIFRA to now understand Clean Water Act terminology. So for the few of you or many of you that are new to the Clean Water Act I am going to spend just a few minutes describing some of the Clean Water Act permitting requirements and terminology. For those of you not new to the Clean Water Act hopefully again, I can fill in some blanks.

First, the Clean Water Act is the primary law that controls pollutant discharges to US waters. The Clean Water Act or CWA establishes the National Pollutant Discharge Elimination System or NPDES as the framework for permitting discharges of pollutants to waters of the United States. Many of you have likely heard or know the term NPDES permit. That is the term typically used when referring to Clean Water Act discharge permits. Also, use the term discharge. Discharging pollutants to US waters is not a right. In the NPDES program we issue NPDES permits to allow for point source discharges of pollutants to waters of the US. In essence, the Sixth Circuit Court found that in certain instances the application of pesticides are in fact point source discharges of pollutants and as such require coverage under an NPDES permit. The court said that biological pollutants, discharges to waters are pollutants and also chemical pesticides that leave a residue are pollutants. So while many folks talk about pesticide applications, the NPDES program is calling those pesticide discharges when they are made to water.

We also use the term waters of the United States or waters of the US when speaking about the types of discharges that require NPDES permit coverage. The Clean Water Act regulates discharges to navigable waters and the act then defining navigable waters as waters of the US including territorial seeds. EPA and NPDES regulations determine waters of the US and term to identify those waters for which NPDES permit coverage is required.

Section 402 of the Clean Water Act and 40 CFR Part 122 of the NPDES regulations specify that point source discharges of pollutants to waters of the US require NPDES permit coverage. Obtaining NPDES permit coverage provides the legal authority for those discharges to occur.

The term point source is defined in the regulations means any discernible confined and discrete conveyance including but not limited to any pipe, ditch, channel, tunnel, conduit, blah, blah, blah I don't need to go on. But the court had ruled that discharges from pesticide applications are in fact point sources such as when discharge from a hose or from an airplane.

The term discharge of pollutants means any addition of any pollutants or combination of pollutants to waters of the US or to waters of a contiguous zone or ocean from any point source. The term pollutant includes a long list of materials, two of which were chemical wastes and biological materials. In its ruling the Sixth Circuit found that biological pesticides are biological materials as included in the definition of pollutant and chemical wastes -- chemical pesticides. The residues of those are chemical wastes as used in the definition of pollutant. And as such, those types of discharges require NPDES permit coverage. The definition of the waters of the US is provided in 40 CFR Part 122 and is summarized on this slide. Many of you may know that the definition has been heavily litigated over the past several years making its way all the way to the State Supreme Court in disagreement over what is or is not a water of the US. Unfortunately, defining waters of the US is a larger issue and that is decided by the Sixth Circuit on pesticides. It is depicted in the definition waters of the US include a wide variety of topographic features. However, if you are uncertain if you're pesticide application results in discharges to waters of the United States EPA's Office of Water does maintain a waters of the US website for guidance and the latest happenings on this topic. And let me see if I can't quickly take you to that website. Actually, for those who probably know EPA's main website is www.EPA.gov and our Waters of the US Guidance is developed in our Office of Wetlands, Oceans and Watersheds or OWOW and so if you type www.EPA.gov/OWOW that takes you to our main Office of Wetlands, Oceans and Watersheds webpage and in the list of hot topics or quick finders you can see it says "Waters of the US Issues. And clicking on that page there is a host of guidance and information on the court decisions. My fingers are sticking here. Statements on waters on the US, legal background, regulatory definition, etc. As well as there was draft guidance that was put out for comments not too long ago.

And so unfortunately we would like to be able to provide clear guidance but by and large it is going to be a site specific determination. Some waters it's probably easy to figure out that they are waters of the US, others it may not be so clear. It is also important to realize that some waters of the US may not actually contain

water during the entire year. And however, if those are -- if pesticides are applied in those dry waters -- within the boundaries of the waters that actually still would be a discharge to waters of the US requiring NPDES permit coverage. We have gotten a lot of comments, I'm sure we have gotten questions on this already today. I can let you know that we actually are working -- going to be working with the Office of Wetlands, Oceans, and Watersheds to see if we can come out with some additional clarification for folks to help them figure out if the pesticides that they are applying if they are actually being applied to waters of the US such that permit coverage would be required.

There are actually a couple of exemptions from NPDES permitting in the Clean Water Act. Specifically irrigation, return flow, and agricultural stormwater runoff do not require NPDES permits so if your pesticide application reaches a water of the US because they are either in the irrigation return flow or because they are in runoff from precipitation events on those areas, the Clean Water Act exempts those discharges from the need to obtain an NPDES permit. In fact, we believe that many pesticides applied to farm fields meet these terms and as such are exempt from NPDES permitting.

Hopefully I provided a little light on how the Clean Water Act applies to pesticide discharges although I'm guessing a lot of you may still be confused. And so what I'm going to actually do is show you on our main NPDES webpage where you can go for some additional information. So on our main webpage, actually www.EPA.gov and then it is simply /NPDES and that actually takes folks to our main NPDES webpage and in the right-hand margin there is a box that has a lot of very useful information and really the two that I can show you now is there is a trainings and meetings link that if you click on that it actually takes you to a list. And you can see the first thing on that page is actually the announcement for this webcast. But the second thing is actually a self-paced web training on NPDES permitting and those are actually kind of like an archived webcast where there is multimedia that describes the basics of the NPDES program and really provides a lot of useful information that even when folks started EPA we try and get them to go through those materials to better understand the NPDES program.

And scrolling down there you see there is a section on pesticides. As we do additional webcasts or archives -- this webcast for example, that's where it will show up. There is also on that box on the right a contacts link and if you click on that we actually has contact information for EPA headquarters, EPA regional, and state NPDES contacts. So for example, and it is by NPDES program areas. So by clicking on NPDES program area and going to pesticides and searching it actually you can then find the list of state agency contacts. So if you are not -- as we will get into it later certain areas will be covered by state permits, certain areas will be covered by EPA's permits. So if you're in an area covered by a state

permit you can go on this website and find out who the contact is for more information.

We are in the process of updating the contacts and updating -- actually with the contacts for a lot of them there is actually a link to the state NPDES pesticide permitting webpage to the extent that that state has a webpage. So for example, here I just clicked on the state of Illinois link. And here they created a webpage. If you are in Illinois you should hopefully find out shortly that a permit issued by the state of Illinois applies to you rather than a permit issued by EPA. And this is where you can go to find out additional information on what requirements apply to you.

So that is my nickel tour of the NPDES website. That hopefully -- actually let me go back. Just one more. We have a link but www.EPA.gov/NPDES takes you to the main NPDES page. If you add a /pesticides to the end it takes you to actually our main NPDES pesticides page. And pretty much everything that we do at headquarters ends up on this page and we are in the process of expanding kind of the state specific information on this page. And so when we are talking about the permit you can come to this page and get the permit and the attachments and so forth. And eventually you will be able to come to this page and easily link to the state issued permits. So with that let me get back to the PowerPoint presentation. But that is really the page that if you need to follow along on NPDES pesticide permitting you should be the address to make it as your home page. Just kidding.

I am sure you have probably seen this before. We have our estimate of how many NPDES permittees there are nationwide. And there as you can see, as a result of the Sixth Circuit Court decision we went from about 600,000 permittees nationwide for all NPDES permits to now where it is close to 1 million permittees which equates to more than a 50% increase in the number of permittees so we fully understand the additional burden that has been placed on us, on the states, and on pesticide applicators, discharger's to comply with the requirements, but really we have no choice but to provide a permit and make a permit program that works for everybody.

And I think with that we are going to take a break and try and answer a few questions. And so I think the number of folks have been typing in questions and Hema, Prasad, and Jennifer have been formulating -- picking one's that are reasonable for us to answer. So let me go through a few of those now.

Hema Subramanian

Hi, this is Hema and I have been viewing the questions you've been submitting thus far and as Jack said we won't be able to get to all of your questions today,

but I am going to try and capture some that we have heard from -- we've heard to be popular. And if you don't hear your question answered at this point please keep in mind we may address it later in the presentation as well. So I am just going to try and pick out a few questions that sort of addressed the topics that came up in the presentation up to this point.

The first question comes from Terry and the question is whether electric utility applicators fall under requirements for NPDES permitting.

Jack Faulk

And actually I am going to say if you even want to add there is a second question that says I am a railroad right-of-way applicator non-aquatic, do I need an NPDES permit and if so why? So really what now requires an NPDES permit is where a pesticide is applied to a water of the US. And so if you are an electric utility applicator or a railroad right-of-way applicator and you are applying pesticides to your right of way and you don't cross a water of the US or don't get so near a water of the US that applying those pesticides you can avoid the water then you would not need an NPDES permit. We have gotten a lot of questions from folks having to do with rights of way or linear projects. And generally what happens is they do in fact have to cross a number of waters of the US. And so what we tell them is that if you can apply pesticides to a point where you are not going to be spraying those directly into the water to control the pest then you would not need a NPDES permit. If you are flying in an airplane for 25 miles along a right-of-way and not shutting off the nozzle and you are crossing even though it may be a small number of miles or feet of that 25-mile spread, if you are still applying such that those pesticides are being deposited directly into the water of the US, in that case you would need a NPDES permit. So kind of summarize it, if you can't apply those pesticides so that you are not applying them directly to the water of the US then you would not need a permit. If you can't avoid that then you would need a permit.

Hema Subramanian

Okay, thanks Jack. Second question is just a clarification regarding nonpoint versus point source discharges. Kenneth wrote it would appear that most transmission rights-of-way flows would be considered nonpoint discharges. What is the agency's position in that regard?

Jack Faulk

Yeah, in the definitions of point source and nonpoint source get pretty confusing so I tried not to explain it because I knew I would fail in doing so. But it probably is easier for this to think about basically runoff or a direct application and so if you are applying pesticide to the land and it then rains or there is snow melt and the pesticides reach the water because of that runoff, because of that nonpoint

source discharge to the stream that is not something that we would require a NPDES permit for. The simple answer having to do with stormwater is the Clean Water Act has different regulations for stormwater that were written in 1987 and we wrote regulations in 1990 and 1999 for stormwater and so if you had run off, you would have since 1999 or since 1990 in some instances have needed an NPDES permit. What the court decision did for pesticides for this issue does not add any additional nonpoint source discharges to the universe of NPDES permittees.

Hema Subramanian

The next question comes from -- please forgive me if I mispronounce your name. My name is hard to pronounce as well. Lehman I believe and the question is do you test water to determine if NPDES permits are required? And for the purpose of this question I will assume is the question is referring to whether operators need to test their water -- test the water of the US that pesticides are being applied in order to determine if a permit is required.

Jack Faulk

I will see if I can get this right but the way the court has made its decision they basically said if you apply a biological pesticide to any water of the US you need a NPDES permit. So it does not matter -- there would be no reason to test basically you need a permit because you discharged a pollutant i.e. a biological pesticide to a water. The court also said a residue of a chemical pesticide would need a NPDES permit and our understanding is that if you are applying a chemical pesticide directly to a water of the US there is a residual. The possibility could be that you are applying a chemical pesticide to a non-water of the US, say it is a stormwater pond or some retention basin that you could hold that water, treat it, hold the water long enough until there was no longer a residual of that pesticide and then discharge it. That actual -- that scenario where you are applying pesticides to a non-water of the US and discharging it also is not something that this court decision was evaluating. This decision is really I'm applying a pesticide to a water of the US and in that instance we are basically saying there will be a pollutant based on the way the court defined it thus an NPDES permit is needed and there is no need to test the water. We have -- let me add one tiny thing, I know we are kind of running a little behind, there is one possibility we left open the opportunity that if somebody believes they can make a demonstration that they apply a pesticide to a water of the US but there is no residual that they could reasonably not need an NPDES permit. That would work for chemical pesticides but not for biological pesticides.

Hema Subramanian

Okay, we are going to return back to the presentation now but we will break for questions in just a few minutes again, and we will have a couple more opportunities for questions.

Jack Faulk

Thanks [inaudible]. I going to probably try and pick up the pace a little bit. I am going to talk briefly about what goes into an NPDES permit. The term permit has a lot of different connotations depending on how it's used and I mentioned previously discharging into waters of the US is not a right and the NPDES permit is basically a license that allows someone to discharge pollutants into those waters provided certain conditions are met. Those conditions are then detailed in an NPDES permit.

We had -- some people actually wanted the NPDES permit to basically say if you comply with the FIFRA label you are in compliance with the Clean Water Act and basically the Clean Water Act and the NPDES framework would not allow such a simple interpretation to be considered in an NPDES permit. So an NPDES permit is actually a document that may be from 10 pages or less for some simpler operations to more than a couple hundred pages for say, a large municipality that is managing a wide variety of stormwater discharge permits or stormwater discharges. And the one thing that I think that is confusing to a lot of people is that they think a permit and they think of a building permit that is often a piece of paper posted on a window or posted outside a construction site that basically provides that authorization to be allowed to build. And NPDES permit actually includes all the applicable requirements that the discharger has to follow in order to be in compliance with the Clean Water Act. And regardless of the size of the permit, there are really five basic components that have to be in all NPDES permits. The first cover page generally describes who is issuing the permit, who the permit applies to, the regulatory authority under which the permit is being issued, and the effective date and expiration date.

The second component are the effluent limits. NPDES regs require that all permits contain effluent limits as a way to control pollutants in the discharges and those limits generally consist of two types, technology-based and water quality based. These limits are determined separately with the most stringent aspect of each being included in the final permit. Technology-based effluent limits are developed in one of two different ways. Either based on national effluent guidelines or on permit writer best professional judgment if those national guidelines do not exist. And developing national effluent guidelines can often be a five plus year effort for which the court decision on pesticides really did not give us enough time to develop national guidelines so our permit and the state

permits I will talk about briefly are basically technology based effluent limits based on permit writer, best professional judgment.

One important point, and again, all lot of people think of effluent limits they think of a number. The NPDES regulations provide that limits are to be expressed as numbers unless the permit writer determines that numeric limits are not feasible and in those instances the permit writer can establish effluent limits based on narrative best management practices. So for example, an effluent limit may say the permittee must identify the target weeds be seized prior to the first application of pesticides. In addition to the technology-based limits, NPDES permits also have to include any additional water quality based effluent limits needed where those text based limits don't adequately protect water quality but similar to the text based limits water quality based limits can also be narrative.

The third component of NPDES permits are monitoring and reporting requirements. These are used to characterize discharges and determine compliance with permit conditions. Again, based on permit writer best professional judgment.

The fourth component, special conditions are included as additional requirements to supplement effluent limits and may include a wide variety of requirements such as to develop a written plan for how a permittee tends to comply with the effluent limits. And then finally, standard conditions are regulations in 40 CFR Part 122.41 identify a list of standard conditions that all NPDES permits have to include. Generally, there's very little flexibility in the ability of the permit writer to modify those requirements and they include provisions such as the duty to comply with the permit, the duty to provide information, and signatory requirements for writing reports that have to be submitted. We will be describing our schedule for EPA permit later, but the basic procedure for NPDES permits is that the draft permit is developed and public notice for at least 30 days at which time the public provides comments and concerns with the permit and the permitting authority considers these comments and issues a final permit. Depending on the type of permit, permits may be appealed or challenged in court. Also, the Clean Water Act specified that NPDES permits can be issued for no longer than five years.

Historically, when people hear NPDES permit they think of an individual document issued to an individual discharge and for a long time that was the case. There is actually a second type of permit, a general permit, that has been used quite a bit more recently as a way to be able to permit many more discharges with less administrative resources for developing and managing those permits.

Briefly, in the case of an individual permit an entity planning to discharge pollutants has to submit an individual application with the detailed explanation of their activities and discharges. The permit writer then has 180 days to basically write a permit that has to be public notice, it has to be finalized, and then that permit applies to that one discharger. Needless to say, it is six months at least to get an individual permit issued generally. General permits, the second time, is primarily what the pesticide discharges are being covered under. And it basically -- a permit is developed and issued to no one in particular with then notices of intent being submitted by anybody that has eligible discharges under that permit which they then can be covered under some predetermined schedule after having submitted a Notice of Intent. And a Notice of Intent, unlike the individual permit application, is typically an eight page or two with very basic information on the discharger, where the discharger's are going to occur, and some type of certification statement and signature that the discharger meets the eligibility provisions of the permit.

There is actually an allowance in the NPDES regulations that say that we can cover people under general permits without them actually even having to submit a Notice of Intent. So, in fact, what that means and Prasad will talk about the permit briefly in a little bit, you can be covered under a general permit without actually having to submit any paperwork, any notification to EPA basically by the fact that you are performing an activity that is identified as one of the eligibility provisions of the permit you can be covered automatically.

To put general permits in perspective, there are tens of thousands of individual permits that have been issued in the US and it covers tens of thousands of permittees while there are hundreds of general permits in the US covering hundreds of thousands of dischargers. So individual one to one general permits there are general permits that cover -- have covered tens of thousands of permittees under one single document.

Along with permits, when they are issued there is a NPDES regulation that requires the permitting authority to develop either a statement of basis or fact sheet for every NPDES permit. For general permits, the regulations are that a facts sheet must be developed and the facts sheet is a document that sets the principal facts and legal mythological and policy questions that were considered in preparing the permit. The permit -- the facts sheet should also include the types of activities that will be covered under the permit as well as the types of discharges.

When the permit is published as a draft and finalized, the fact sheet really is what serves to explain to the public and stakeholders the rationale and assumptions used in deriving the permit conditions. Similar to permits, fact sheets may be

from a few pages to more than 100 pages depending on the complexity of the permit. So as we talk about these pesticide permits if you have conditions that you are unclear as to why they are in the permit or exactly what they may mean, the first place you would probably want to check is the permit facts sheet to see if there are any additional explanation of the basis for those requirements.

So now that I have told you kind of the basics of NPDES I am going to try and give you a brief discussion of what probably is one of the more important concepts that we are hearing out there, people are still confused about and that is the fact that the Clean Water Act allows states to issue NPDES permits rather than EPA. And in fact, about 90% of the NPDES permit issued in the US are issued by states rather than EPA. So while there has been quite a discussion recently about EPA's issuance of its PGP in fact, that permit only covers about 10% of the pesticide discharges required to be covered under the NPDES program. The other 90% are covered by state permits.

For a state to be able to issue a NPDES permit, that state, or a territory or tribe for that matter must demonstrate they have adequate legal, technical, and financial resources and adequate implementation and oversight procedures to administer the NPDES program. Documentation of that demonstration is provided to EPA who can then authorize that state, territory, or tribe to administer the program. And once authorized, EPA no longer issues permits in that state.

And so as shown in this slide, those states in blue are states where it is the state that issues the NPDES permits. States in light blue are where EPA issues NPDES permits and those states in green are where the states issue the NPDES permits except for federal facilities in those states. In those 4 states: Washington, Colorado, Vermont and Delaware EPA issues permits to federal facilities. And as you can see state permits cover the vast majority of the United States.

There are a number of caveats that rather than looking at this map I would put together a slide to try and provide a simpler view of who is responsible for issuing permits across the country. So there are six states: Alaska, Idaho, Massachusetts, New Hampshire, New Mexico, and Oklahoma where EPA issues permits for all activities in those states.

In Texas this is actually backwards. In Texas -- note in Texas its right. The state issues the permit except for oil, gas and geothermal related discharges. So any discharges in Texas related to oil, gas and geothermal EPA issues the permits for those. And then all territories accept the Virgin Islands and we use the term territory we include DC, Puerto Rico, America Samoa, etc., we actually, EPA, issues the permits in all those areas as well.

Well, EPA is also the permitting authority for discharges on Indian country lands across the country with one exception in Maine. The state of Maine actually is the NPDES permitting authority for Indian lands.

And so again, very, very important point, unless you have a discharge for which EPA is the NPDES permitting authority, the EPA PGP that you probably all heard plenty about really means next to nothing to you. For example, if you are in Pennsylvania, a state with no Indian country land, EPA's PGP has no relevance to you and your discharges. If you're in Washington State, EPA's PGP means nothing to you unless you are a federal facility or you are discharging on Indian country land.

While states may have used our permit as a guide to develop their own permit the state permit is issued is all that must be followed for NPDES. If you recall, the Sixth Circuit decision on EPA's 2006 rule merely said that NPDES permits are required for certain dischargers. It was then up to the EPA and the state NPDES permitting authorities to figure out how to permit all those discharges. Because there were so many, EPA and the states all opted to develop general permits to cover those.

So Congress did not change any laws, EPA did not change any regulations. So EPA and the states merely added to their existing NPDES authorities in developing these different Pesticide General Permits.

Since the majority of the discharges will be covered under state issued permits it's important to understand the expectations of those permits. State issued NPDES permits have to meet all Clean Water Act requirements that EPA issued permits must meet, although states are able to incorporate more stringent requirements than EPA where the state has authority to do so. As mentioned previously, a great deal of NPDES permits are based on permit writer best professional judgment. So a decision by an EPA permit writer may be different than the judgment of the state permit writer. So one permit writer may determine that it's appropriate to require quarterly reports while another permit writer may include provisions for annual reporting because that permit writer is in a state with regulations requiring some other type of pesticide reporting under FIFRA related provisions. In both those instances the permit could be considered to be of equal stringency both of which meet the requirements of the NPDES program.

We at EPA do maintain an oversight role for state NPDES programs and so we may in certain instances determine that specific state conditions fail to satisfy Clean Water Act requirements and we may object to that permit and either work with the state to develop more stringent requirements or in limited circumstances we can actually take over issuance of that permit in the state.

So you know states are required to submit draft general permits to the respected EPA regional offices for review prior to publication of those permits. Thus, state issued Pesticide General Permits should have all been reviewed by EPA. It's also useful to know that the public does have the right to challenge NPDES permits on the condition that the permit is inconsistent with Clean Water Act requirements.

So given that I real quickly want to just highlight the fact that we very briefly have gone through state permits here EPA and have identified a number of differences from EPA's permits all of which are generally based on the state permit writer having a best professional judgment on a different applicable requirement for their state. So for example, in Illinois, they require all discharges to submit an NOI rather than our permit which requires just a small subset to submit an NOI. Alabama actually sets different thresholds for how large of an area has to be treated than we at EPA said in our permit for who actually has to submit an NOI. Nebraska actually added an NOI requirement for discharges in proximity to public drinking water sources. Wisconsin actually decided to issue four separate Pesticide General Permits based on the different use patterns rather than the one permit that we issue. Texas actually added a fifth use pattern for area wide pest control rather than we – our permit considered area wide could fit under the specific -- whether it was aquatic, whether it was weeds or animals or forest canopy that it would meet one of those four use patterns. Vermont, just as an example, actually has fees for obtaining permit coverage that ranged depending on the types of activities; a lot of states do have NPDES permitting fees. EPA does not have permitting fees for getting coverage under its NPDES permit.

And then finally just three more. The state of Washington actually has certain ambient water quality requirements for aquatic weed control activities. The state of New York has no annual reporting requirements unlike our permit which requires certain folks to submit annual reports and North Dakota actually has requirements for controls for the storage and handling of the facilities of pesticides which is different than our permit that focuses solely on the actual application locations of those pesticides.

So really what these examples are trying to highlight is the fact that our EPA's permit and the corresponding state permits are not the same and for any given discharge only one of those permits will apply. Either those discharges are covered by EPA's permit or they are covered by a state permit. If it's a state permit, EPA's PGP has no regulatory significance to your discharge.

And so with that let's do another poll, it looks like it's a little bit after three. I apologize, we are a little bit behind and it is largely the same question that was

asked earlier kind of based on what you heard. The question is do you expect to need coverage under EPA's Pesticide General Permit? The question being yes, no, or unclear. And based on early returns I think what has changed it seems about the same percentage of you are saying yes. About 1/3 say yes. It looks like now almost 2/3 are saying no and only about 10% actually are still unclear. So it seems as though 20% of the folks that were unclear now maybe realize that they are covered under -- are not required to be covered under EPA's permit which maybe that means that they do have to be covered under a state issued permit. And so I think with that we are going to take a break and answer a few questions before Prasad gets into it. We kind of were going to wait if we had to until 3:00 o'clock to take a few callers. It looks like we are now up to about 420 people that have logged in to listen.

Hema Subramanian

Hi, this is Hema, again. I'm just going to go quickly over a couple of questions. One question is just regarding -- the question is I am going to combine a couple of questions. There's a few people that wrote in about this. The question was if you apply in multiple states would you need a permit for each state that is authorized under the NPDES program? And in your response Jack if you could just talk about how folks can find information on contacts for multiple states and also if they wanted to find a summary of different -- the different requirements for different states which is actually not something we have live on our website right now but just to answer folks questions that may be applying in states where EPA is not authorized for some clarification of how they can find out what the requirements are.

Jack Faulk

So one of the challenges I know for people is we do work in multiple states, do we need coverage under different permits? And unfortunately, the answer is yes. And this pesticide issue has actually complicated that a little bit in that probably more so than most other EPS discharges. There are a number of scenarios or activities actually are performed. The Forest Service, for example, actually may be applying pesticides for kind of one job that is going to cover multiple states and so unfortunately the way the NPDES program is set up they will have to comply with the different state permits for the different parts of that application. Hopefully if you are one of those scenarios you can talk to the different states and get them to work together to try and come up with something that still meets the requirements of the permit that allows you to kind of do things one way. Hema actually mentioned some of you were trying to figure out where to get more information on specific requirements of the NPDES state permits and again, I think as I have shown you on the NPDES website -- quickly here if you are anywhere on the NPDES website on the right margin there is a contacts list and clicking on that contacts list it will take you -- you can get regions, state, or

headquarters people and if you pick a state of Alabama pesticides you should get the state contacts and underneath their name there is a link to the NPDES pesticide information for that state. We are actually working to update that information now and we hope to actually have a table or some form more prominently displayed on our main NPDES page to help people more readily be able to access that. So probably by the end of the year we will have links and contact links to contacts that will make it easier for folks to find.

Hema Subramanian

And the other question comes from Sarah and the question is: if I'm an applicator who needs to treat invasive weeds in a femoral water of the US while the bed is dry do I need a NPDES?

Jack Faulk

If it's a water of the US the answer is, yes. It does not matter where the water is and there is a definition that kind of defines the observable high water mark and is kind of the boundaries of the water of the US. And so if they are applications made within those boundaries NPDES permit coverage is required whether there is water in that or not which was one of the confusing -- one of the differences when the pesticide folks register pesticides and things will be labeled for use in water or not and they were not considering use in waters of the US are not, use in water. So there are pesticides that are registered for use not in water that under FIFRA you could apply to that dry stream bed legally that you would still need a NPDES permit and you would not be violating a -- using an aquatic pesticide in a dry environment. So unfortunately, if it's a water of the US, yes.

Hema Subramanian

With that we are going to go onto the second part of our presentation. Prasad Chumble is going to go into more details about EPA's Pesticide General Permit so at that point we have provided a background on the court's ruling and the requirements of the NPDES program. If you are not located in a state or area where EPA is the authorized permitting authority for you this may be a good time to hop off the line. It is up do you but we are going to drill down into some details that only apply to EPA's General Pesticide Permit at this point. So with that I will hand the mic to Prasad Chumble

Prasad Chumble

Thanks, Hema. Again, I am Prasad Chumble and the second part of the webcast I will be -- sorry. Let me get that. So in the second part of the webcast I will be talking again, about the EPAs Pesticide General Permit and we'll walk through the different parts of the permit. But before I do that let me start off with a quick summary of the timeline of the PGP. On June 2nd, 2010 EPA's proposed the PGP and sought public comment. On April 1st of this year, EPA posted on its website a

copy of the draft final PGP. This version had a concluded interagency review, BiOP however it was not considered final agency action as EPA had not yet completed the ESA consultation with the services. This version was posted in order to assist states in developing their permits and to allow for regulated community to become familiar with the permits requirements. EPA requested an extension from the court in order to complete the Endangered Species Act Section 7 consultation and on October 31st of this year, EPA issued its final Pesticide General Permit. For those of you that have been keeping up with this permit, the final permit is nearly identical to the final draft version that we posted on our website six months on April 1st. The one noticeable difference between then and now is that the final permits contains additional requirements as a result of ESA Section 7 consultation with the National Marine Fisheries Service.

In the next couple slides I will briefly go over the Endangered Species Act Section 7 consultation requirements and our consultation with the National Marine Fisheries Service and the Fish and Wildlife Service.

EPA issued NPDES permits such as the PGP, are federal actions and as a result are required to consult with Fish and Wildlife Service and the National Marine Fisheries Service or under ESA Section 782. Consultation may be informal or formal and where the services determine that action is likely to jeopardize listed resources, they must provide a biological opinion and include reasonable and prevent alternatives or RPAs.

NMFS concluded that EPA's PGP would jeopardize the continued existence of some of their listed resources of concern and as a result developed a biological opinion and offered up RPA. EPA received NMFS file -- draft file BiOP on June 17th 2011 and sought public comment for 30 days on the RPA. On those RPAs. On October 14th of this year, EPA received the final BiOP and added conditions to the final permit that reflect the BiOP and ensure the protection of endangered and threatened species. I'll go over these conditions later in this presentation.

We were not able to complete consultation with the Fish and Wildlife Service before we issued the final PGP, although we believe our permit is adequately protective of their species and we continue to be in consultation with them. Should we determine that additional requirements are necessary based on that consultation we would public notice those changes for comments before making any changes to the Specified General Permit.

With that let's take a look at EPA's Pesticide General Permit. PGP includes nine parts including eligibility provisions, tech-based requirements, water quality-based requirements, monitoring, development of the pesticides discharge

management plan, corrective action, recordkeeping and reporting, and additional state specific permit requirements that are required under section 401 of the Clean Water Act. I will briefly go over all of these parts in the rest of this presentation.

Again, this PGP issued by EPA is not available to everyone everywhere in the country. It only applies to those areas where EPA is the permitting authority which includes 6 states, all territories except the Virgin Islands, all tribal lands and federal facilities in 4 states.

This permit is available for discharges of biological pesticides and chemical pesticides that leave a residue from the following four different pesticide use patterns. These are mosquito and other flying insect pest control, weed and algae control, animal pest control, and forest canopy pest control.

The PGP does not cover nor is permit coverage required for pesticide applications that do not result in a point source discharge to a water of the US such as terrestrial applications for the purposes of controlling pests on agriculture or crops, forest floors or rangeland. Again, agricultural runoff and irrigation return flow continue to be exempt from NPDES permitting therefore, the PGP does not apply nor is permit coverage required.

Any use patterns not covered by the PGP but involves pesticide application that results in point source discharge would need to be covered under an individual permit. However, to the extent that a permit is needed for discharges from pesticide applications to rangeland, forestry, rights-of-way, parkland, wetlands and other areas and the activity falls within one of the four use categories coverage can be granted under the PGP.

As Jack mentioned in the first part of this webcast, the NPDES program requires operators to obtain NPDES permit coverage. Our permit differentiates between operators who are decision makers and operators who are applicators. But define decision makers as the entity who has control over the decision to perform pesticide applications and applicators as those who have day-to-day control of or perform activities that are necessary to ensure compliance with the permit. We try to write the permits so that the entity is in the best position to meet certain terms of the permit would be the entity required to meet those terms. For example, the permit requires that pesticide application equipment be properly maintained and calibrated. That requirement applies specifically to applicators. On the other hand the permit requires certain operators to implement integrated pest management or IPM type practices which we are requiring that decision-makers to comply with those provisions.

Let's take a look at some examples to see how to differentiate between a decision maker and an applicator. For the first example, let's say you are entity X that is eligible for coverage under the PGP. You make the decision of what pesticide, how much, and at what rate they are to be used. However, you hire entity Y to make the application for you. In this case, entity X would be the decision-maker and entity Y would be the applicator.

In the second example, let's again say you are entity X and you provide just funds to entity Y which then makes all the decisions regarding the type and quantity of pesticides used. In this case entity Y would be considered both a decision-maker and the applicator.

Depending on whether you're an applicator, decision maker, or you would need to follow the conditions that would apply to you.

As mentioned earlier, EPA's PGP is a general permit and the vast majority of operators covered under the permit will be covered automatically without having to notify EPA and will only be required to notify EPA in the event of an adverse incident resulting from a pesticide application. So just to be clear if you are eligible under the PGP, we are not requiring notices of intent from you as we will discuss next. Then you do not need to submit anything to EPA to be covered. Also there is no fee associated with EPA PGP.

So who needs to follow a Notice of Intent? Well there are certain decision-makers who perform more significant pesticide applications that we are requiring NOI from in order to be covered under this permit. We estimate that about 3% of users under this permit will have to submit an NOI to be covered. So we are requiring NOI is from agencies for which pest management for land resource stewardship is an integral part of the organizations operations. These include the agencies such as the Bureau of Land Management, US National Park Service, US Forest Service and also the State Environmental Service.

We are requiring NOI's from all pest control districts such as mosquito control districts, irrigation districts, and weed control districts. Also, we are requiring NOIs from other entities that exceed an established annual treatment area thresholds which I will cover in the next slide.

And finally we are requiring NOI's from any decision-maker discharging to an outstanding national resource water or tier 3 waters. Or any decision-maker with any discharge to a water of the US containing NMFS listed resources of concern. Again, applicators would be covered under this permit automatically unless the applicators are also the decision-maker and identified as one that would need to submit an NOI.

So let's go to a poll question real quick. Will you need to file an NOI? Yes; maybe, depends on my activities; unclear of requirements; or no.

Okay. So -- almost there. 60% loaded. It seems -- okay, the poll is closed. It seems about 27% of you said yes, 22% says maybe, 14% of you guys still to seem to be unclear of the requirements and 37% are saying no. And hopefully the rest of the presentation will make it a little bit more clear.

Okay. So -- so besides those decision-makers that need to submit an NOI regardless of thresholds such as pest control districts and those that apply to tier 3 waters any decision-maker who expects to exceed the quality thresholds needs to submit an NOI. For mosquito and other flying pest controls and for forest canopy control if the decision makers treat greater than 6,400 acres per year they will need to submit a NOI. Note that you do not need to include larvacide when calculating the threshold. For weed and algae control or animal pest control thresholds are 20 linear miles or 80 acres per year.

Calculations are based on discharges directly to waters of the US and defer based on the use patterns. The annual treatment area threshold calculations for mosquito control and forest canopy pest control are based on the accumulation of multiple treatments. For example, let's say you are spraying 3,000 acres of forest canopy to control gypsy moths and you spray three times a year. Your total for the year would be 9,000 acres and you would be over the 6,400 acres per year threshold and thus you are required to submit an NOI. For the calculations for weed and algae and animal control those are based on the size of the area treated in the calendar year regardless of the number of applications to that area. So for example, if you treat 10 linear mile segments of a water of the US for weeds and you treat that same segment three times a year then your total area treated for the year is 10 miles. That would put you below the 20 linear mile threshold per year and you would not have to submit an NOI. For more information on calculating threshold see the definition of annual treatment area threshold in Appendix A of the permit.

As mentioned earlier, any decision-maker with any discharge to a water of the US containing NMFS listed resources of concern is required to submit an NOI. The resources of concern are limited to certain species of salmon, eulachon, and sturgeon and in areas in Idaho, Massachusetts, DC, New Hampshire, Washington, Oregon and California. Although there may be some overlap in those locations such resources of concern reside mainly in the middle third of Idaho, the Merrimac and Connecticut Rivers in Massachusetts and the Potomac River in DC. Due to the limited areas identified, we estimate that only about 2% of operators will have discharges that overlap with NMFS listed resources.

Let's take a minute to look at the NPDES pesticides website and see where you can find the maps of the areas identified and the location of those NMFS listed resources of concern. So if you go back to our website. NPDES -- so on our NPDES pesticides website if you go down to additional resources for permittees the first link will take you to the NMFS listed resources page that identifies the NMFS listed resources of concern and so for example, let's take Idaho and it will tell you the affected counties. It will tell you the affected counties and what species are located within those counties. There is also a general map of the area where these NMFS listed resources of concern are present. So in this case in Idaho it is about the middle 1/3 and lastly there is also a detailed list of waters and watersheds where the species are located. And there are also HUC 10 codes available in certain cases.

So if your discharges happen to be in these areas of overlap decision-makers need to submit an NOI and meet one of the five criteria is listed in part 1. -- 1.2.4 of the permit. So let's briefly go over these criteria. Again, these only apply to NMFS resources that are identified that they have identified in their biological opinion. These criteria do not apply to fish and wildlife resources. The final permit contains no additional conditions specific to fish and wildlife species.

So to meet criteria on the decision-maker must have already gone through ESA Section 7 consultation for those pesticide applications they are seeking coverage under the PGP. For example, most federal agencies would have already gone through ESA consultation and the selected criteria. To meet criterion C the services must have issued the decision-maker permits for take ESA Section 10. Decision-makers can choose criterion D. if their application is being made to declared pest emergency situation. To meet criterion E. the decision-maker would have had to have prior communication with NMFS regarding their pesticide activities and would be required to provide to EPA written correspondence from NMFS stating those activities would adequately protect NMFS listed resources of concern. And finally decision-makers can choose criterion F. if they do believe that the discharges would adversely affect NMFS listed resources -- would not adversely affect NMFS listed resources of concern. They would then be required to provide EPA with their documentation providing the basis for their finding. Decision makers who have overlap with NMFS listed resources should refer to Appendix I of the permit which provides a step-by-step guide to determining which criteria they would be eligible under.

Let's take another real quick poll question. Will your pesticide activities result in discharges to the waters of the US contain NMFS listed resources of concern? One, I will not be covered under EPA's PGP. Two, my activities are covered but do not occur in NMFS areas. Three, my activities are covered and likely occur in

NMFS areas. And lastly, I'm not sure if my activities will overlap with NMFS listed resources.

And it looks like most of you will not be discharging to waters with NMFS -- with any overlap. Some of you aren't sure if those activities will over -- about 23% of you are unsure. And it would be a good idea to go back to our pesticide permitting website and click that link and determine whether you fall under those areas which have been identified.

Let's take a look at the timing of permit coverage and if required to submit an NOI that timing of NOI filing. All operators with eligible discharges are automatically covered under this permit through January 12, 2012. Even those activities that would need an NOI do not require an NOI until January 12th, 2012. After January 12th, 2012 operators that do not need an NOI continue to be covered under this permit. Please note that although automatically covered all operators need to comply with the permit terms. After January 12th, 2012 operators that do not -- that do need to submit a NOI do need to do so according to the timeline identified in table 1-2 of the permit.

So let's take a brief look at these timelines. If you have overlap of NMFS listed resources then you would need to submit an NOI 30 days before any discharge. If you have been overlap of discharge due to a declared pest emergency then you would need to submit NOI 15 days after beginning to discharge. If you are required to submit an NOI and you have no overlap then you must submit an NOI 10 days before discharging or 10 days before exceeding any treatment threshold. If no overlap and you are discharging due to a pest emergency then you must submit an NOI 30 days after beginning discharge.

Let's take a look at some examples to help clarify the timings of the NOI filings. So if you are applying between today and January 12th next month you are not required to prepare or submit an NOI. If you plan to apply on January 13th of next year then you must submit an NOI January 3rd which is 10 days before and if it is to an area with NMFS listed resources then you would need to submit one on December 14th which is 30 days prior to discharge. Now let's say your first application will start on June 11th of next year then you would need to submit an NOI by June 1st for at least 30 days prior if you overlap with NMFS resources.

We have created an electronic NOI system to allow for decision-makers to submit their NOIs. NOIs must be filed utilizing the system unless the decision-maker requests a waiver because the use of the NOI would incur undue burden or expense. This NOI system will be made available any day now and you will find a link on our NPDES pesticide website that will take you to the NOI

page which will provide you with additional guidance on how to use the system and file an NOI.

At this point let's take a break and I will hand it over to Hema for some questions.

Hema Subramanian

Hi folks. This is Hema. For those of you who joined in the second part – portion of the presentation we are just taking a couple of breaks during the webcast to ask some questions. We can't answer all questions during the webcast itself but we will try and incorporate many of your questions into our upcoming questions and answers document as well as for future presentations and we will also try and answer some questions off-line. So the first question I'm going to ask came from Chad and the question was whether a permit is needed for each site and just to expand on that many of you may be wondering whether you need to separately file, analyze for each site that you apply pesticides on as well as whether you would need a separate PGP for every site. And I am going to turn that question to Jack.

Jack Faulk

Yeah actually you do need coverage for each site but the way the permit is setup you can submit one NOI and basically identified the area for which you are submitting your NOI that you need permit coverage and so for example, if you are in Idaho and you perform activities all across the state you can actually submit an NOI and say I perform activities all across the state. And so that NOI would cover all of your activities in that state. Conversely, you may have four different managers in the state that kind of want to deal with things on their own and you all may submit an individual NOI for your quarter or state and say I'm submitting an NOI for this quarter of the state and then you basically would be eligible to be covered under that NOI for that quarter of the state. And again, that one NOI would be good for the full five-year term of the permit.

Hema Subramanian

I'm going to ask two more questions. The first question I'm going to ask is -- I am going to combine two of your questions actually. Joe asked whether an entity that leases out its lands would be required to produce an NOI and/or inform their lessees what they should do for pest control matters. I sort of paraphrased your question there but just kind of what the relationship is if you are leasing out your land and then another question that sort of relates although it might go into a separate answer is if a facility discharges to a publicly owned treatment works that discharges to a local river is that facility responsible for the MPS permit or the POW? So it seems there are questions on who is responsible for discharges if I go through another entity. I am going to turn that question over to Jack.

Jack Faulk

Okay, thanks. Regarding the leased lands really who needs a permit we are basing it on who is actually making the decisions to apply pesticides so you lease lands to somebody and they are the ones that then decide I have a pest problem, I need to control pests, this is what I'm going to do, and you really are not dictating what they are doing or how they are doing it. You really have no responsibility under the PGP. It is the person that is actually making those pesticides application decisions. Regarding discharges to publicly owned treatment works actually any discharges to those POTW's or the local sewage treatment plant is actually covered under a completely different part of our NPDES program. It's called the Pretreatment Program and in those instances it really is actually the municipality who runs the plant who is responsible for getting permit coverage but if you are actually -- if you have a discharge that you are discharging to the POTW remember again, this permit is only for pesticide applications directly to waters of the United States so if you are applying to some type of water that has some discharge that contains pesticides that is really not what this permit is about so whether you are discharging to a POTW or to a water of the US itself that is not what this permit is covering.

Hema Subramanian

And the last question I'll ask is this is regarding how you define decision makers. If an applicator has the ability to turn off their nozzle and avoid discharging to a waters of the US would they be considered -- meaning that they have the ability to control the actual equipment to determine whether there is a discharge to the water of the US or not. Would that mean that they are a decision-maker? I will turn the question over to Prasad.

Prasad Chumble

So if you can avoid discharge to water the US then you would not need a NPDES permit and so the decision-maker definition, operator definition does not apply to you.

Jack Faulk

Maybe to add on to that though where a decision-maker is hiring an applicator merely the fact that the applicator can turn it on and off would not then make them the decision-maker as well. They would still just be an applicator.

Hema Subramanian

I hope that helps clarify. I am now going to now conclude the question section for this part of the presentation and turn it back to Prasad who will try and answer a couple more questions toward the end of the presentation. Thanks.

Prasad Chumble

Okay, so let's continue and talk about the requirements in the final permit. Part two of the permit contains technology-based effluent limitations. In this section we have a sign different responsibilities for applicators and decision-makers. In general, all operators are required to minimize discharges by using only the amount of pesticides in frequency necessary to control target pests. Applicator specific responsibilities include properly maintaining pesticide application equipment and assessing weather conditions. And decision makers who are required to submit an NOI must implement pest management measures based on integrated pest management principles found in part 2.2.1-2.2.4 of the permit. These principles comprised of first identifying or assessing pest problem, second assessing pest management alternatives such as considering the use of mechanical methods, biological control agents, or other cultural methods before utilizing pesticides. Also, in evaluating alternatives, the decision-maker must consider impact to water quality -- must consider water quality impacts to non-target organisms and sensibility and cost-effectiveness. Lastly, if pesticides are to be used, decision-makers must ensure that the appropriate measured procedures for the use of those pesticides are being followed such as meeting the action thresholds. We have found that these principles generally already are being practiced by most operators. It is also important to note that all FIFRA labeled instructions are not requirements of this permit, a violation of any water quality related aspects of the label is a Clean Water Act violation.

Similar to the tech-based effluent limitations, the PGP also includes a narrative water quality-based effluent limits in part three of the permit. EPA expects that compliance with FIFRA in addition to compliance with the conditions in the permit will control discharges as necessary to meet applicable water quality standards. The states, territories, and tribes were given the opportunity to add requirements to the permit to insure consistency with their water quality standards through the Clean Water Act Section 401 certification process which we shall discuss later on in the presentation.

Part four of the permit requires visual monitoring for adverse incidents caused by the application of pesticides including the anticipated death or distress of non-target organisms and disruption of wildlife habitats, recreational or municipal water use. This requirement to visually monitor applies to the applicator during any pesticide application as well as to any operator doing any post-application surveillance.

Any decision-maker who is required to submit an NOI and is a large entity is required to develop a Pesticides Discharge Management Plan. This can be found in part five of the permit. The large entity is either a local government that serves a population greater than 10,000 or a private enterprise that exceeds the Small

Business Administration size standards identified in 13 CFR 121.201. They have also provided a link on our website to the SBA site to determine whether the decision-maker is a small or large entity. Let me just go back to our pesticide website real quick and show you where that link can be found.

So again, on our pesticide home page, if you go down to additional resources for permittees there is a Small Business Administration definition of small entities which takes you out to the small business -- SBA.gov website and that provides guidance to determine if you are a small or a large entity.

So decision-makers that submit an NOI solely for discharges in response to declare test emergencies or because they are discharging to water the US containing NMFS listed resources of concern do not need to develop PDMP. The PDMP includes information such as problem identification, pest management options, evaluations, and response procedures which help document how discharges will be minimized and how the effluent limitations will be met. Decision-makers that are required to develop the PDMP must do so by the time the NOI is filed and keep a copy of this at the address provided on the NOI. They must also keep it up-to-date for the duration of the permit.

Operators who already have existing IPM plans can reference those documents rather than re-creating the same text in the PDMP and we have provided a template of the PDMP on our website.

Consistent with our other national general permits; part six of the permit includes a section on corrective action. This section provides requirements for operators when certain situations arise that require the operators to respond in some way to address that situation. For example, when an unauthorized discharge occurs where it is determined that existing controls are not adequately protecting water quality.

Also, in part six of the permit are requirements of documenting adverse incidents. When the operator becomes aware of an adverse incident which may have resulted from a discharge from the pesticide application, the operator is required to notify EPA within 24 hours or as soon as possible and provide a written report to the EPA within 30 days and as necessary take corrective action.

Recordkeeping and reporting requirements in the permit are found in part seven of the permit. Again, these requirements vary depending on the type of operator. So let's take a brief look at these requirements.

The PGP requires all operators to keep a copy of adverse incident reporting, corrective action documentation, or any spill or unpermitted discharge

documentation. For higher applicators are required to keep documentation of equipment calibration and information of each treatment area such as pesticide use pattern and the types of pest control in that area.

Decision-makers who are a small entity and are required to submit an NOI must also keep a copy of that NOI, a pesticides discharge evaluation worksheet which I will talk about later in this presentation, and they must also document equipment calibration if they are also the applicator.

Decision-makers who are a large entity and are required to submit an NOI must keep copies of the NOI and the PDMP.

And finally any decision-maker either large or small submits an NOI solely for discharges to areas with NMFS listed resources of concern must keep a copy and must submit an NOI and must also keep a copy of the annual report.

Part nine of the permit includes additional conditions as a result of Clean Water Act Section 401 certification -- section 401 certification. Clean Water Act 401 certification requires all states, territories, and tribes with treatment as a state that is to certify that the permit is consistent with their applicable water quality requirements.

Here is a list of states, tribes, and territories that provided additional conditions and therefore, one certification. So it is important that operators if they do apply to any of these locations refer to part nine of the permit and meet those conditions.

Let's take a quick look at some examples of what conditions were added. For example, the Bishop Paiute Tribe requires that copies of the NOI be submitted to the Environmental Management Office in addition to EPA. Massachusetts requires products containing 2,4-D must first receive written approval from the Massachusetts Department of Environmental Protection. And Guam has different treatment area thresholds for applications that occur in their territory.

Real quickly I will just go over some of the appendix D-H of the permit which includes forms. Again, they can be found on our website. And we will be conducting future webcasts where we plan to go over the forms in more detail.

Appendix D. again, contains a copy of the NOI form. It requests basic information and should be filed electronically through the NOI system.

Appendix E. is the Notice of Termination form. This is required to determine a coverage for those activities where an NOI was filed. Note that decision-makers are required to comply with the permit terms until authorization is terminated.

Appendix F. is the Pesticides Discharge Evaluation Worksheet. This is required for any decision-maker who is required to submit a NOI and is a small entity. This must be kept at the address provided on the NOI.

Appendix G. is the Annual Report Template. This is required for decision-makers who submit NOI's and are large entities or for those decision-makers who submit NOI's due to overlap of NMFS listed resources of concern.

And lastly, Appendix I -- Appendix H. contains the 30 Day Adverse Incident Reporting Template.

With that -- before we take questions let me briefly talk about our pesticide permit decision tool. It is an interactive tool we developed to allow operators to determine if they need an NPDES as permit and if so whether they are eligible for EPA's Pesticide General Permit. And if eligible, the tools also helps operators identify what is required of them. The tool can be found on our website. Again, we will click. If you go to the pesticides -- into our pesticides website under EPA's Final Pesticide General Permit and Related Documents the last link is to the interactive decision tool. And if you follow these steps you can determine whether you need an NPDES permit and if you are eligible under EPA's permit.

And so finally here is the link to our website. And our administrative record where you can find documents such as the biological opinion and our response to comment documents which contains a lot of -- a lot of answers to a lot of the questions you guys have been asking. And also you can send any questions you have to the PGP@EPA.gov e-mail. With that let me hand it over to Hema for any questions.

Hema Subramanian

Hi folks, this is Hema again. I am going to take -- it looks like we have a few minutes left. I am going to take a couple of questions here. The first question comes from James and the question is if only a portion of my applied area of affects waters of the US can I exclude the rest of my application area for calculation purposes? Because that exclusion may put my number under the threshold. And I'm going to ask that question to Jack.

Jack Faulk

All right. Yeah, it depends kind of which pesticide use pattern you are talking about. We have a definition in Appendix A. of the permit that describes annual

treatment area thresholds and how to do the calculations. For example, if you are treating water -- you are treating along the edge of waterways you may be treating a long period but it is really only the area where you are spraying that there is actually going to be discharges to waters you may be applying to a right away again it's only the areas where you are actually crossing waters of the US. Conversely, for example, the forest canopy pest control the way we set it up was really we based it on the total area treated. Kind of knowing that the challenges of trying to identify what the waters of the US may be underneath that canopy. So in that case we are basing it on the total area treated whereas on the other one it is really based on how much you are actually applying to the water.

Hema Subramanian

Okay, thanks, Jack. The next question comes from Christopher and the question is: is a discharge into a tributary of the waterway with species of concern included in the NMFS criteria requirements?

Jack Faulk

The way we agreed with NMFS it is really limited to the specifically named waters so there are some tributaries that actually are similarly identified as a NMFS listed resources of concern but if that tributary is not specifically identified then an application of pesticides to that tributary would not trigger the need to follow the NMFS related requirements.

Hema Subramanian

Okay, and the last question I'm going to ask for now is from Larry and the question is what if the state in question does not have any outstanding national water resources or also known as ONRW's designated?

Jack Faulk

Again, at least where we issue our permit I think the majority of states don't have outstanding national resource waters and in that case just no additional provisions would apply so it is really only where those outstanding waters exist are there additional requirements. So I guess you are lucky if you don't have any.

Hema Subramanian

Well with that we are going to conclude the questions portion of the webcast. Just so you know, we are planning some future webcasts and we are going to try now that we have covered some of the background on NPDES permits and the court decision and the background on the EPA's PGP we are going to try and drill down in some more detail in future webcasts. So keep an eye out for some invitations. We are going to do some webcasts tailored to tribes and documentation and some of the requirements of the PGP as well as we will be posting a questions and answers document in the near future and also some

facts sheets that are tailored specific sections of stakeholders. So we hope to answer a lot of your questions in these various ways.

Please stay on for another moment after we conclude the presentation. If you view your screen you will see a survey up here. It's not showing up right now but when we close the presentation it will show up and we would really like to hear your feedback. And as we mentioned before, we will be posting an archived version of this presentation in the near future. We are not sure exactly what day it is going to be posted because it will just depend of formatting how long it takes to do that but we will be posting one as well as we are going to have a transcription service transcribe what's been discussed here on the audio. So -- and we will send out notification for that via e-mail as well. So with that, I would like to conclude this webcast. Thank you again for joining us today and please do contact us at PGP@EPA.gov if you have any further questions. Thanks a lot.