

National Pollution Discharge Elimination System (NPDES):

A New Direction for Mosquito
Control Maybe?

What Key Federal Laws and Acts Do We Follow in Mosquito Control?

- **The Federal Insecticide, Fungicide, and Rodenticide Act of 1947 (FIFRA):**
 - Regulates the application, mixing, loading, registration of insecticides to ensure safety and efficacy.
 - Administered by the EPA, Office of Pesticide Programs and has been amended several times (1972, 1996).

What Key Federal Laws and Acts Do We Follow in Mosquito Control?

- **The Federal Clean Water Act (CWA, 1972):**
 - Established thresholds for acceptable levels of pollution.
 - To be a pollutant, must have a point source and must leave a residue.
 - NPDES permits are administered by the EPA, Office of Water.

Here is the Conflict

- **Headwaters, Inc. v. Talent Irrigation District (2001)**
 - A misapplication of a registered aquatic herbicide resulted in a fishkill of 92,000 steelhead salmon downstream and outside of the irrigation canals.
 - Appeals court rules that application involved introduction of a pollutant into waters of the U.S. and therefore required an NPDES permit.

More Bad News

- **League of Wildlife Defenders vs Forsgren (November 2002)**
 - US Forestry Service conducts aerial spray to tree tops to control insect damage to Douglas Fir caused by the D.F. Tussock Moth.
 - Plaintiffs said that insecticides were incidentally falling into aquatic streams
 - 9th Circuit considered the insecticide applications to be from a point source (aircraft) and were a pollutant under the CWA.

Finally Some Good (Sensible?) News

- **EPA Final Rule: EPA issues a statement titled *“Application of Pesticides to Waters of the U.S. in Accordance with FIFRA”* (November 2006)**
 - **FIFRA-compliant applications to waters of the US**
 - **Specifically exempted mosquito control applications**

The Environmentalists Were Not Happy with the EPA Final Rule

- **Eleven cases were brought against the EPA in 11 of the 12 US Circuit Courts; Courts consolidated into 1 Court, the 6th Circuit Court**
- The 6th Circuit made several findings.
- The 6th Circuit granted EPA a “stay” on the effective date of this ruling for 24 months to allow EPA to develop NPDES permits for pesticide discharges.
- EPA is developing several general permits for the discharge of pesticides including aquatic plant, larval and aerial mosquito control and intends to issue the permits in April 2011. (MAYBE???)
- Several pesticide end users appealed to the US Supreme Court but refused to hear the case.
- State of FL issues our Permit

The 6th Circuit Findings

- **Permit not required when:**
 - *Chemical pesticide is intentionally applied to water for a beneficial purpose*
 - *leaves no waste or residue after performing its intended purpose*
- **Permit required if:**
 - *The pesticide application leaves a “residue” that finds its way into waters of the US*
 - *Residue is considered waste*
- **Invalidated EPA rule**

What Does NPDES Mean to Mosquito Control?

- **Open to Citizen Lawsuits**
- **Major fines from EPA - \$37,500/day/incident**
- **The EPA delegated responsibility of drafting and implementing a NPDES permit to the Florida DEP.**
- **This permit is not completed yet and is unclear if it will be completed by April 9, 2011.**

So What is Now Required of the Mosquito Control Community to be NPDES-Compliant ?

- **Need to improve records on:**
 - **Chemical inventories**
 - **Chemical application sites and volumes applied**
 - **Calibration Records of all spray equipment**
 - **Post Spray Analysis**
 - **Specific areas treated**

Record Requirements

- Need to have a copy of NOI on file (easy!)
- Need to have a copy of the PDMP and all material referenced in the PDMP (easy to do but generally a PITA to complete!)
- Have a written and filed record of **ALL** equipment calibrations. (you are already do this anyway)

Record Requirements

- Document the Pre and post application densities per the PDMP
- Collect post-spray data and make adverse incident reports ... if any at all per the State NPDES Permit.
- Establish corrective action documentation

Record Requirements cont.

- Annual report as part of the NPDES Reporting???
- The Annually submitted DACS report is OK although some basic additional information may need to be submitted.