National Pollutant Discharge Elimination System (NPDES) Pesticide General Permit (PGP)

The National Pollutant Discharge Elimination System (NPDES) permit program, created in 1972 by the Clean Water Act (CWA), regulates the discharge pollutants to waters of the United States (WOTUS). Under the CWA, the Environmental Protection Agency (EPA) authorizes the NPDES permit program to most state governments, enabling them to perform the permitting, administrative and enforcement aspects of the program.

The Federal Insecticide Fungicide and Rodenticide Act (FIFRA) pesticide registration process already requires products to be extensively evaluated for environmental impacts, including to aquatic ecosystems. However, since 2011, EPA has additionally required a separate NPDES permit for pesticides, the Pesticide General Permit (PGP), for applications made into, over or near WOTUS. This is duplicative, unnecessary regulation that burdens pesticide applicators with costly paperwork requirements and risks of frivolous lawsuits.

Federal Policy Background

For decades, the Federal Insecticide Fungicide and Rodenticide Act (FIFRA) has regulated (amongst many other things) pesticide application into, over and near water. Products registered under FIFRA require years of extensive testing to demonstrate that they can be safely applied according to their labeling in a manner which does not pose an unreasonable risk to humans or the environment. Specifically, the product registration process considers potential impacts to drinking water in addition to aquatic and endangered species.

In 2009, the enforcement reach of the CWA was expanded into pesticide policy[1], invalidating decades of precedent exempting pesticide applications made into, over or near WOTUS from the numerous requirements of NPDES permits. This resulted in the EPA's 2011 implementation of the NPDES PGP for aquatic pesticide applications for control of mosquitos, aquatic weeds, invasive aquatic animals and forest canopy pest control.

EPA's 2011 PGP was renewed in 2016 and 2021, with requirements remaining largely the same. The 2026 PGP was issued December 14, 2024, with the effective date of October 31, 2026, when the current PGP expires.

Adjacent Federal Policy: Waters of the United States (WOTUS)

The CWA does not define WOTUS; since the 1970's, the EPA and Army have defined it by regulation. Four Supreme Court decisions addressed the definition over the years. The 2015 Clean Water Rule wholly redefined WOTUS but was repealed by a 2019 Rule which reinstated the prior regulations, implemented consistent with the Supreme Court decisions and applicable guidance. However, the 2019 Rule was replaced with the Navigable Waters Protection Rule (NWPR) in 2020, which itself had implementation halted in 2021 due to other litigation.

The "Revised Definition of 'Waters of the United States'" rule took effect on March 20, 2023 being codified in place of the NWPR. However, effective September 8, 2023, the EPA amended this rule to conform to a Supreme Court decision[2] invalidating the "significant nexus standard" test to identify waters that, either alone or in combination with similarly situated waters in the region significantly affect traditional navigable/interstate waters.

[1] *National Cotton Council of America, et al. v. EPA, et al.* (6th Cir. 2009)
[2] *Sackett, et ux. v. EPA, et al.* (S. Ct. 2023)

Impacts to Aerial Applicators

PGPs impose a gamut of unnecessary performance and recordkeeping requirements on applicators across the country who apply pesticides into, over and near WOTUS. This redundant burden can obstruct the decision-making process around when to apply products that are needed to protect human lives and infrastructure, such as applications to control mosquitoes that vector disease or to fight forest fires. This has been exacerbated by decades of regulatory musical chairs around the definition of WOTUS.

The compliance cost in paperwork alone was estimated by EPA to be $50M per year, and state and local officials advised EPA that the burden would be far more than that estimate. As an example, Gem County Mosquito Abatement District in Idaho and Benton County Mosquito Control in Washington have each had to spend 20 percent of their budgets to comply with PGP.

The financial exposure to litigation associated with PGPs must also be recognized. Legal costs to fight frivolous citizen lawsuits for things like paperwork violations authorized by the CWA can bankrupt application businesses. As a reference, the Gem County Mosquito Abatement District in Idaho had to spend $450,000 to resolve a lawsuit related to NPDES permitting, its entire budget for the year.

The cost and complexity of paperwork, in addition to the threat of lawsuits associated with PGPs, have caused numerous aerial applicators nationwide to shut down their mosquito and invasive species control efforts. This, clearly, is not in the public's best interest.

Congress Can Fix This

Legislation has been introduced in the pastto end NPDES PGP requirements for applications of pesticides already determined by EPA to present no unreasonable risk to humans or the environment. Last year the U.S. House of Representatives' Committee on Transportation and Infrastructure marked up H.R. 5089, the Reducing Regulatory Burdens Act that would exempt pesticide applications, already registered for use over water and tested for water safety per the Federal Insecticide Fungicide and Rodenticide Act (FIFRA), from the NPDES PGP. The legislation was introduced by U.S. Representatives Rouzer (R-NC) and LaMalfa (R-CA). The language was included in the House Agriculture Committee's Farm Bill that was successfully marked up out of Committee last year, again, via an amendment from U.S. Representative David Rouzer (R-NC).

To protect the public's health, and to protect farmers from unnecessary and burdensome regulations stymying them from producing food, fiber, and biofuel, NAAA urges Congress to exempt applications of EPA-approved pesticides from the NPDES pesticide general permit requirements. This regulatory relief should be included in the next Farm Bill.

About NAAA

The National Agricultural Aviation Association (NAAA) represents the interests of the 1,560 aerial application industry owner/operators and 2,028 non-operator agricultural pilots throughout the United States licensed as commercial applicators that use aircraft to enhance food, fiber and bio-energy production, protect forestry, and control health-threatening pests. Furthermore, through its affiliation with the National Agricultural Aviation Research & Education Fund (NAAREF), NAAA contributes to research and education programs aimed at enhancing the efficacy and safety of aerial application.

Contact Andrew D. Moore, NAAA's Chief Executive Officer, at admoore@agaviation.org or (202) 546-5722 with any questions regarding this issue, or any other related to the aerial application industry. Find more information at agaviation.org

Importance of the Aerial Application Industry

Aerial applicators **annually treat**:

- 127 million acres of cropland (28% of the treated commercial cropland nationwide)
- 5.1 million acres of forest land
- 7.9 million acres of pasture and rangeland
- 4.8 million acres for public health and mosquito control

Aerial application is often the **only tool** to:

- Expeditiously eradicate a pest before it destroys a crop.
- Treat crops on rolling hills or in fields with soil too wet for ground applications.

The aerial application industry represents **$37 billion in value** to farmers, input suppliers, processors and agricultural transportation and storage industries.

Without the aerial application of pesticides, the US would see annual losses of:

- 1.69 billion bushels of corn
- 199 million bushels of wheat
- 548 million pounds of cotton
- 295 million bushels of soybeans
- 3.33 billion pounds of rice

The total area of cropland needed to replace the yield lost if aerial application was not available for corn, wheat, soybean, cotton, and rice production is **27.4 million acres**, an area roughly the size of Tennessee.

Aerial applicators seed 3.8 million acres of cover crops annually[2], **sequestering over 2 million tons of CO_2**. According to the EPA this would be the equivalent of removing approximately 412,000 cars with carbon-combustion engines from the roads each year.

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[3] National Agricultural Aviation Association. May 2019. "2019 NAAA Aerial Application Industry Survey: Operators." agaviation.org/2019-naaa-operator-survey

[4] Dharmasena, S. 2020. "How Much is the Aerial Application Industry Worth in the United States?" Research presented at the 2020 Ag Aviation Expo, Savannah, GA. agaviation.org/aat-expo-presentations