



## Fact Sheet on EPA's NPDES Pesticide General Permit

### Importance of the Aerial Application Industry

- Aerial applicators treat 127 million acres of cropland per year; 28% of the treated commercial cropland nationwide. In addition to the cropland acres, aerial applicators annually apply to 5.1 million acres of forest land, 7.9 million acres of pasture and rangeland, and 4.8 million acres for mosquito control and other public health concerns. Aerial applicators also fight fires and protect the environment from invasive species.
- Aerial application is often the only application method available to farmers to eradicate a pest before it destroys their crop. Aerial application is also the only method to treat crops that ground applicators can't get to, such as crops on rolling hills or crops after a rain, when the ground is too wet for ground applications. Furthermore, aerial application does not damage a standing cropland reduce yield like ground application does<sup>1</sup>.
- The aerial application industry is directly responsible for the production of 1.69 billion bushels of corn, 199 million bushels of wheat, 548 million pounds of cotton, 295 million bushels of soybean, and 3.33 billion pounds of rice annually that would be lost every year without the aerial application of pesticides. The value of the aerial application industry to farmers, input suppliers, processors, and agricultural transportation and storage industries for corn, wheat, cotton, soybean, and rice production in the U.S. is estimated to be about \$37 billion<sup>2,3</sup>.
- The aerial application of crop protection products results in greater harvest yields of crops. This in turn results in less land being used for agricultural production, preserving more wetlands for natural water filtration, forest ecosystems for carbon sequestration and habitat for threatened and endangered species. 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<sup>2</sup>.
- Aerial applicators seed 3.8 million acres of cover crops annually<sup>2</sup>, helping to sequester 1.9 million metric tons of CO<sub>2</sub> equivalent every year. According to the EPA this would be the equivalent of removing approximately 412,000 cars with carbon-combustion engines from the roads each year.

### Overview of the Clean Water Act and the National Pollutant Discharge Elimination System (NPDES)

- In 2009, the U.S. 6<sup>th</sup> Circuit Court of Appeals drastically expanded the enforcement reach of the Clean Water Act (CWA) into pesticide policy in *National Cotton Council, et al., v. EPA, et al.*
- The court ruling invalidated decades of precedent and an EPA regulation that had exempted pesticide applications made into, over, or near water from the numerous requirements of CWA's NPDES permits.
- The court ruled that such applications require compliance with NPDES discharge permits whenever they occur "into, over or near" one of the many types of "waters of the U.S" (WOTUS).
  - This, even though the Federal Insecticide Fungicide and Rodenticide Act (FIFRA) already regulates pesticide use to water. FIFRA requires, through years of extensive testing, demonstration that registered pesticides can be safely applied according to product labels in a manner that poses no unreasonable risk to humans or the environment. The pesticide registration process takes into account potential impacts of the product on drinking water, aquatic species and endangered species.
- In 2011 due to the 6th Circuit Court decision EPA implemented its NPDES Pesticide General Permit (PGP) for aquatic pesticide applications for control of mosquitoes, aquatic weeds, invasive aquatic animals, and forest canopy pest control. The permit has been renewed twice since its first issuance, most recently in 2021.

<sup>1</sup> Hanna, S., S. Conley, J. Santini, and G. Shaner. 2007. "Managing Fungicide Applications in Soybean." Purdue University Extension Soybean Production Systems SPS-103-W. <https://www.extension.purdue.edu/extmedia/sps/sps-103-w.pdf>

<sup>2</sup> 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. <https://www.agaviation.org/2020aatresearchpapers>

<sup>3</sup> National Agricultural Aviation Association. May 2019. "2019 NAAA Aerial Application Industry Survey: Operators." <https://www.agaviation.org/Files/Comments/NAAA%202019%20Operator%20Survey.pdf>

- These PGPs impose a gamut of unnecessary performance and recordkeeping requirements on applicators across the country who apply pesticides into, over, and near waters of the U.S.
- Additional burden falls on the backs of environmental agency officials.
- The PGPs also open the door to frivolous citizen suits and other environmental lawsuits authorized by the CWA. Legal costs associated with these lawsuits can bankrupt application businesses.
- The PGP could slow down 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.
- The CWA authorizes fines for civil violations of up to \$51,570 per day/per violation, and much greater fines for repeated or willful violations.

#### Overview of recent changes to the definitions of WOTUS

- On December 30, 2022, the Biden administration imposed a rule expanding the definition of waterways that the EPA and the Army Corp of Engineers have authority to regulate, seeking to clarify a decade-long effort of what the EPA's powers are under the Clean Water Act (CWA). The Biden-imposed rule comes before a pending Supreme Court case expected to be issued later this year that NAAA and other stakeholders had hoped the administration would take into account before prematurely imposing a rule. The new Biden-imposed rule returns the regulatory framework to something resembling its state in 2015 when the Obama administration significantly and controversially widened the scope of the Clean Water Act to cover even ephemeral streams and ponds.

#### The Impact of NPDES PGP Requirements

- Because of the paperwork, cost and threat of lawsuits associated with NPDES PGP requirements, numerous aerial applicators nationwide have shut down their mosquito and invasive species control efforts.
  - The paperwork cost alone was estimated by EPA to be \$50 million per year, and state and local officials advised EPA that the burden would be in far excess of that estimate.
- Mosquito control districts and those they protect have been severely impacted by this requirement. 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 the PGP requirements. The Gem County Mosquito Control District also had to spend \$450,000 to resolve a lawsuit, which was its entire budget for the year.

#### Congress Can Fix This

- Legislation has been introduced in the past, such as Former U.S. Rep. Bob Gibbs' (R-OH) "Reducing Regulatory Burdens Act" to end NPDES PGP requirements for applications of pesticides already determined by EPA to present no unreasonable risk to humans or the environment.

#### Bottom Line

- 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 2023 Farm Bill.

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.

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