

GCSAA Continues Fight Against Federal Pesticide Ruling

GCSAA has taken a substantial stand against a recent federal court ruling that would fundamentally change the way pesticides are regulated in the U.S. and will determine when superintendents and other pesticide applicators are required to obtain National Pollutant Discharge Elimination System (NPDES) permits prior to pesticide applications.

GCSAA's most recent effort has been to partner with 22 agriculture and non-agriculture organizations in the filing of an amicus "friend of the court" brief to the U.S. Court of Appeals for the Sixth Circuit in support of a rehearing of the National Cotton Council v. U.S. EPA case.

EPA has never before required NPDES permits for pesticide applications. The NPDES permit process can be time-consuming, costly and requires public notice. Because of this, golf course superintendents may in the future be subject to new red tape to apply pesticides at the facility.

EPA administers the Clean Water Act (CWA) which prohibits the discharge of pollutants into navigable waters from any point source without an NPDES permit. EPA also regulates the registration, sale, distribution and use of pesticides under the Federal

Insecticide Fungicide and Rodenticide Act (FIFRA). The interplay between CWA and FIFRA law is at the heart of the National Cotton Council case, and since 2000, anti-pesticide interest groups have gone to court under the CWA to stop pesticide applications.

In the National Cotton Council case, a three judge panel from the Sixth Circuit Court overturned a 2006 EPA Aquatic Pesticides final rule that concluded that pesticides applied in accordance with FIFRA labels were exempt from the Clean Water Act's NPDES permitting requirements. Specifically under the rule, if pesticides were used in accordance with FIFRA, no permit would be required for pesticide applications in, over or near waters of the U.S. (40 CFR 230.3).

The Sixth Circuit Court decision concluded that sprayers and nozzles are point source conveyances and that all residues and excesses of chemical pesticides that remain in water after the beneficial use is completed are "pollutants" under the CWA. Further, all biological pesticides are "pollutants" under the CWA. The court's ruling also opened the door to addressing terrestrial pesticide applications. The ruling described how pesticides, as pollutants, find their way into water and trigger the NPDES permit requirement, which

arguably erases the distinction between point and non-point source pollution.

The amicus brief argues that the court's decision misconstrued the elements that must be present to trigger permit requirements. As such, GCSAA and fellow petitioners have called for a rehearing of the whole case by the full panel of 15 judges in the Sixth Circuit Court to include the broad perspective of the 22 industries affected by the Court's decision.

Rehearing petitions were due April 9, and the government (EPA and the U.S. Department of Justice) chose not to seek this option. DOJ instead filed a motion to stay issuance of the Court's mandate for two years to provide EPA time to develop, propose and issue a final NPDES general permit for pesticide applications, for States to develop permits, and to provide outreach and education to the regulated community. To be clear, this mandate is not effective until all appeals are exhausted.

GCSAA will be vigilant as to the development of any rule and seek to discuss this with EPA and other affected groups once the time for appeal has passed.

(Editor's Note: For more information, contact Chava McKeel at 800-472-7878, ext. 3619 or cmmckeel@gcsaa.org.)



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