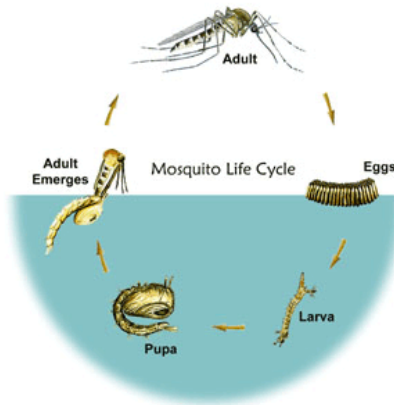


National Pollutant Discharge Elimination System (NPDES)

Status Report

Protecting our Nation's waters???



Rosmarie Kelly
GDPH
21 Oct 2001

- In January, 2009, a consolidated case heard by the 6th Circuit Court of Appeals (MI, OH, KY, TN), with national implications, determined that pesticide applications constituted a POINT SOURCE OF POLLUTION. An NPDES permit would be required.
- EPA requested, and was granted a 2 year stay to develop a permit; Expired April 9, 2011.
- A second Draft Pesticide General Permit has been issued, but EPA expected to release the final Pesticide General Permit by July 30, 2011.

They didn't.

Background



Current Status

- GA EPD intends to closely follows the Pesticide General Permit issued by the EPA.
- What progress has been made in Georgia?
 - EPD had issued a draft permit and posted it on their website
 - The first draft has now been removed from the website
 - EPD has stated that no second draft or final document will be issued until the EPA issues their final permit.
- Is the project currently ahead of schedule, on track, or delayed?
 - Delays, delays, delays
 - NPDES confusion reigns supreme in Georgia (and everywhere else)

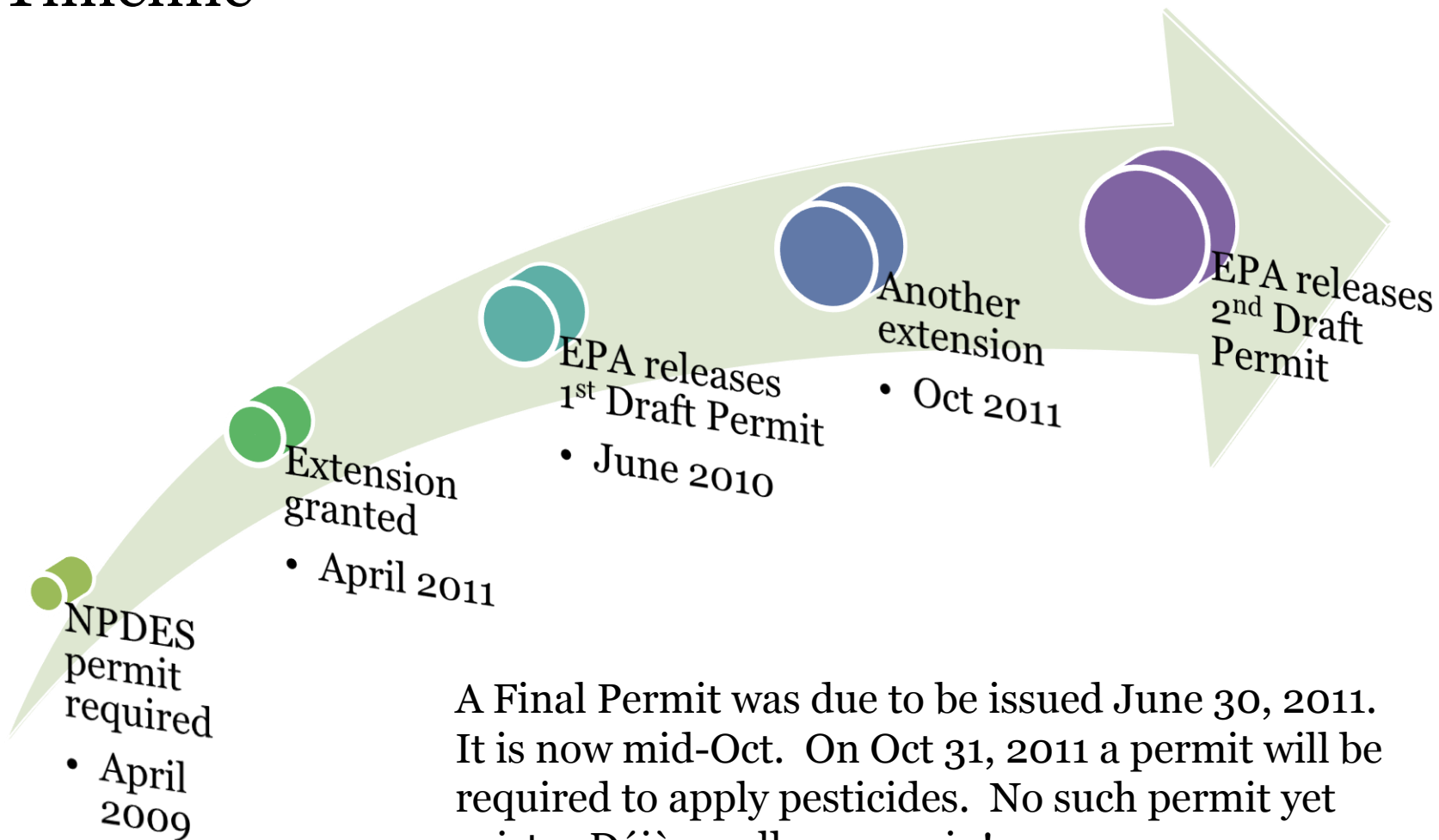




BREAKING NEWS

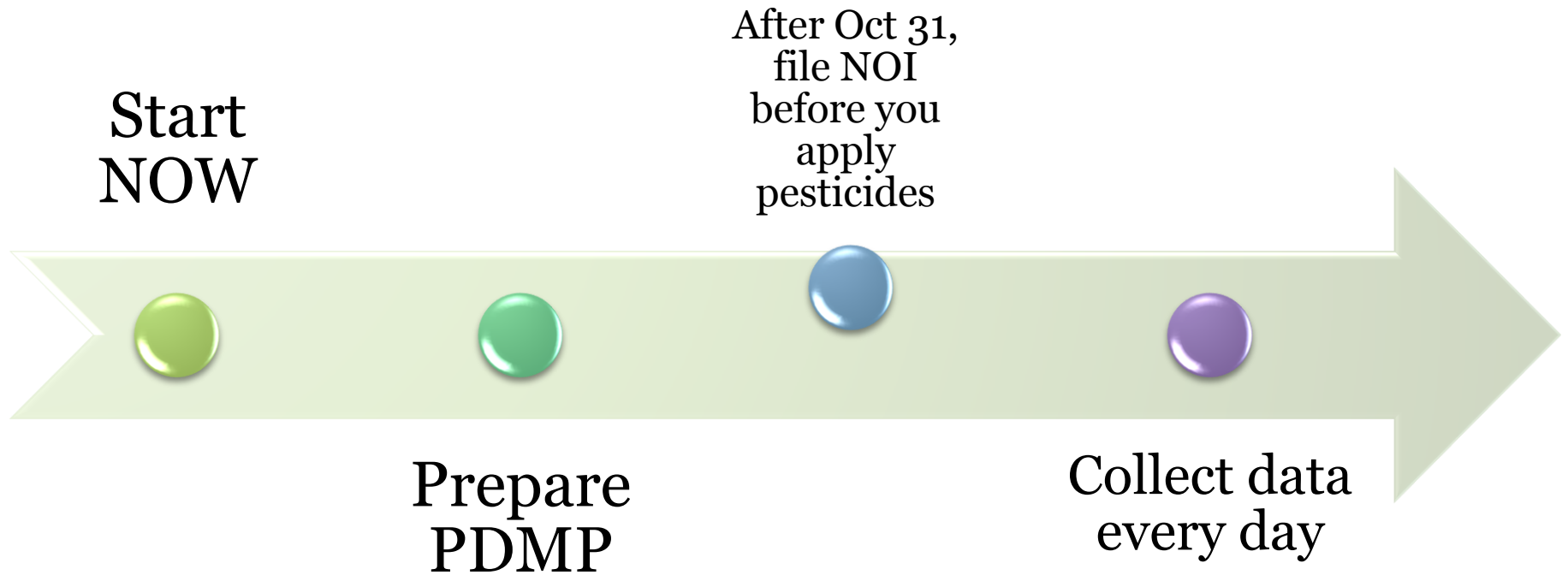
GA EPD plans to release their final NPDES permit on **Oct 28, 2011**. They have stated that NOIs do not need to be submitted for one month. Since most everyone will not be doing pesticide applications at that point, this needs additional clarification.

Timeline



A Final Permit was due to be issued June 30, 2011. It is now mid-Oct. On Oct 31, 2011 a permit will be required to apply pesticides. No such permit yet exists. Déjà vu all over again!

Timeline – What You Need to Do to Be Ready



Looking Ahead

- An NPDES permit will be required on Oct 31, 2011
- According to the current EPA draft, all Federal or State agencies and mosquito control districts will be required to submit an NOI
- Known risks and issues
 - Right now there is no EPA final permit
 - So, right now there is no EPD permit and won't be one until the EPA final permit is approved
 - After Oct 31 you can not apply pesticides without a permit, even if no permit exists



EPA Permit Info: http://cfpub.epa.gov/npdes/home.cfm?program_id=410

What Happens if You Just Ignore This NPDES Permit? Does it Go Away?

Criminal Penalties

- **Negligent Violation** – fines of \$2500 to \$25000 per day or one year of jail or both
- **Knowing Violation** – fines of \$5000 to \$50000 per day or 3 years of jail or both
- **Knowing Endangerment** – fines of up to \$250000 per day or 15 years of jail or both
- **False Statement** - fines of up to \$10000 per day or 2 years of jail or both

There are also a list of civil penalties and administrative penalties. Plus, citizens can sue you.



What

Home

About GMCA

**Annual Meeting
Information**

Newsletter

**Mosquito
Information**

**Surveillance
Links**

**Organizational
Links**

Job Notices

**Upcoming
Events**

NPDES Update

*** examples**

Sample Forms

Site Information

Update

NPDES (National Pollution Discharge Elimination System) and the Clean Water Act

- Check here for PDMP and NOI Examples

Georgia EPD

Please keep in mind that any proposed changes that EPD makes to the draft permit (see link below) will have to be sanctioned by the EPA.

- [PDF](#) EPD Draft Pesticide General Permit - First Draft
- [PDF](#) Pesticide General Permit Fact Sheet - First Draft
- [PDF](#) Draft Notice of Intent - First Draft
- [PDF](#) Notes from NPDES meeting with EPD

Or go to <http://www.gaepd.org/Documents/NPDES-Pesticide.html>.

Information from the EPA

The EPA has put out their second or "final" draft. Check out http://cfpub.epa.gov/npdes/home.cfm?program_id=410

Proposed Legislative Fix

INFO on House Bill HR 872

n
available

nd

Check

and NOIs



For what do you need to plan?

- ✦ Post-spray analyses
 - Efficacy
 - Non-target effects (fish kills)
- ✦ Adverse incident reports
 - File as required
 - Meet deadlines
- ✦ Document corrective action when needed
 - Changes to your PDMP
 - Adverse incidents, spills, non-targets, etc.
- ✦ Compile a biennial report

Is there a regulatory fix?



- The House
 - After weeks of effort, the House passed HR 872: The Reducing Regulatory Burdens Act of 2011.
 - This would eliminate the need to work under the Pesticide General Permit.
- The Senate
 - Senator Pat Roberts (Kansas) introduced Senate Bill, S 718. This is NOT exactly a companion bill to HR 872, but a partial fix, and a means to begin seriously debating this issue.
 - HR 872, which passed in the House, is stalled in the Senate.

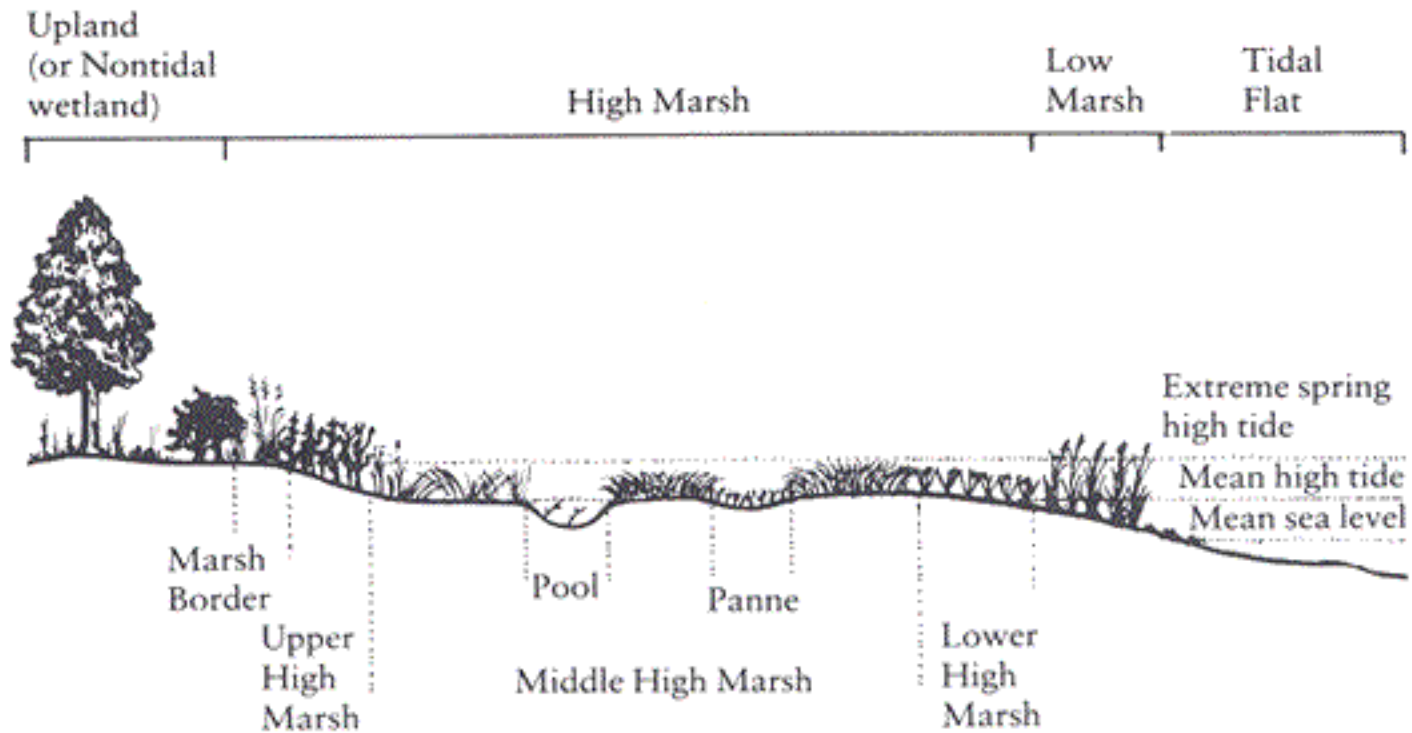
Will this pass before Oct 31st? Have you seen what is happening in our government lately?



Update Update Update – HR 872

- There is no way that Senator Boxer is going to release her hold on HR 872
- The ad hoc coalition is willing to push for a legislative extension of the status quo to stay the October 31, 2011 effective date.
- The principals for such an approach include:
 - A multi-year stay.
 - The stay would preclude the administrative requirement of filing for a permit as well as the ability for a plaintiff to have a legitimate basis for filing a citizen suit during such period.
 - The continued ability to press for adoption of 872. This could include for example, including it as part of the regulatory reform section of the Farm Bill, assuming there will be a Farm Bill.
- Whatever happens will have to go to the House for approval as well.

Some Specifics



Notice of Intent (NOI) - Basics

- Notice of Intent Status - New
- Operator Information
- Pesticide Use Pattern – for each type of pesticide use (Mosquito Control)
 - Location
 - Receiving Waters
 - **Endangered Species/Habitat**
 - http://www.fws.gov/athens/endangered/counties_endangered.html
 - <http://www.georgiawildlife.org/node/1370>
 - <http://warnell.forestry.uga.edu/service/library/index.php3?docID=105&docHistory%5B%5D=5>
 - <http://www.epa.gov/espp/georgia/georgia.htm>
- Signature of Official

This could change! Like everything else about this permit.

Pesticide Discharge Management Plan Elements

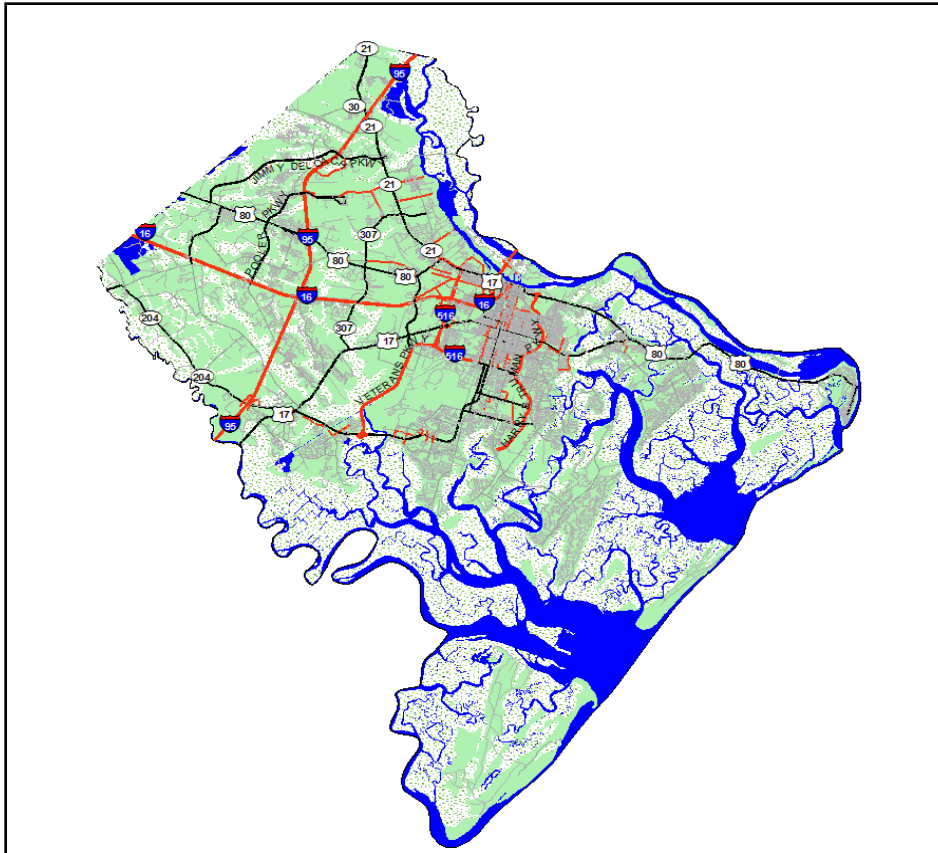
✦ Identify your PDMP team

- ◆ Responsible decision maker/manager
- ◆ Who develops and maintains the PDMP
- ◆ Who is responsible for corrective actions and effluent limitations
- ◆ Individuals that apply pesticides



Pesticide Discharge Management Plan Elements

✦ **Pest Management Area Description**



Can be general -
including an entire
county

example – Chatham County

Pesticide Discharge Management Plan Elements

★ Pest Management Area Description (with common species)

- ◆ Natural environments
 - River floodplains
 - Coastal islands
 - Hammocks
 - Woodland pools
 - Tree holes
 - Burrows

- ◆ Man-made environments
 - Ditches
 - Clear cut areas
 - Pastures
 - Storm drain catch basins
 - Dredge spoil areas



Pesticide Discharge Management Plan Elements

★ Pest Management Area Description

- ◆ Pest problem description – Give a short paragraph for each of the mosquito species that are important as disease carriers or a nuisance mosquito.

EXAMPLE: *Culex quinquefasciatus*, the southern house mosquito, is our region's primary WNV vector. It prefers somewhat stagnant or polluted water conditions as larval habitat, and can be a common species in storm drain systems, especially in drainage lines equipped with sumps in the catch basins that tend to hold water on a permanent basis.

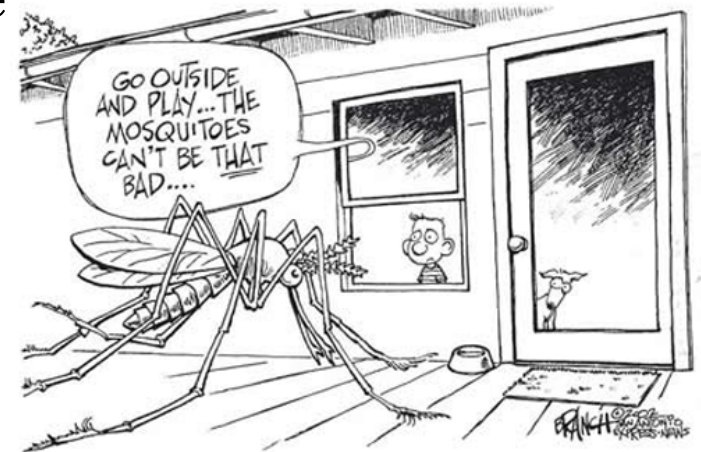


Pesticide Discharge Management Plan Elements

✦ Pest Management Area Description

Action thresholds - example

- a. ≥ 300 *Culex quinquefasciatus* from any trap site prior to detection of WNV in the county.
- b. ≥ 200 *Culex quinquefasciatus* from any trap site after detection of WNV in the county.
- c. ≥ 100 *Culex quinquefasciatus* from any trap site where WNV has been detected during the season.



Pesticide Discharge Management Plan Elements

- ✦ Pest Management Area Description
 - ◆ Impaired Waters (do not meet certain water quality standards)
 - ◆ Cannot apply pesticides to waters impaired by the product you are applying
 - ◆ At this point in time, no mosquito control pesticides are on this list



<http://www.gaepd.org/Documents/305b.html>

Pesticide Discharge Management Plan Elements

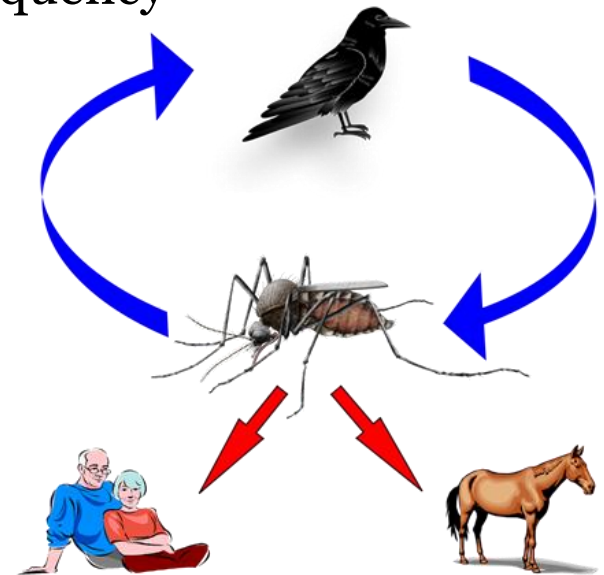
★ Control Measure Description

- ◆ Meeting and evaluating water- and technology-based effluent limitations
- ◆ ID the problem, establish densities, contributing factors
- ◆ Control discharges to meet water-quality standards
 - No action
 - Prevention: physical and cultural methods
 - Biological control agents
 - Pesticides
- ❖ Minimize pesticide use and their discharge into waters of the US

Pesticide Discharge Management Plan Elements

★ **Control Measure Description** - How we meet, and evaluate, technology-based or water-quality based effluent limitations

- ◆ Application rates, schedules, and frequency
- ◆ Pesticide resistance considerations
- ◆ Spill prevention procedures
- ◆ Equipment - ground and aerial
 - Calibration
 - Maintenance
- ◆ Pest surveillance
- ◆ Disease Surveillance
- ◆ Assessing environmental conditions
 - Climate/weather
 - Marshes, schools, hospitals, bee hives



Pesticide Discharge Management Plan Elements

★ Control Measure Description

- Spill response
 - Procedures for stopping and containing releases
 - Notification procedures – 24 hrs/5 day/30 days
 - Adverse incident response
 - emergency action plan and reporting
 - annual training
 - spill kits on vehicles and around compound

- Monitoring



Record Keeping

★ For Non-Commercial Operators (NOI Filed)

- ◆ Copy of the NOI
- ◆ Surveillance
 - methods
 - dates of surveillance
 - results of surveillance
- ◆ Target pests
- ◆ Pest density prior to pesticide application
- ◆ Company/agency name and contact information
- ◆ Pesticide application dates
- ◆ Treatment area description



Record Keeping - Continued

- ✦ For Non-Commercial Operators (NOI Filed)
 - ◆ Name of pesticide
 - ◆ Quantity of pesticide
 - ◆ Concentration of active ingredient (AI)
 - ◆ Concentration of AI in final formulation
 - ◆ Observed non-target effects
 - ◆ Documentation of cleaning, calibration, repair
 - ◆ Copy of PDMP, including any modifications



Biennial Reporting

- ✦ Name of Operator
- ✦ Name of contact person
- ✦ For each treatment area
 - Waters of GA in the treatment area
 - Pesticide use patterns (mosquitoes, aquatic weeds, forest canopy)
 - Target pests
 - Company/Agency name
 - Applicator names and contact information
 - Total amount of pesticide, EPA registration number, application method
 - Whether pest control activity was addressed in the PDMP
 - Annual report of adverse incidents
 - Description of corrective actions, including spills



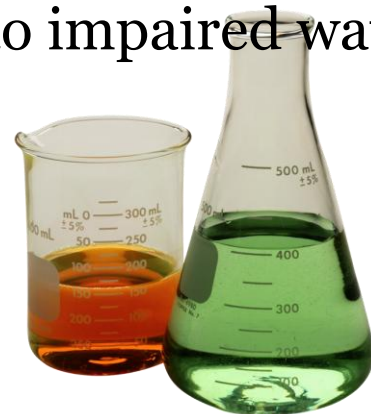
Other Considerations in EPA's Draft Pesticide General Permit

- ✦ Corrective action
 - Unauthorized release
 - Fail to meet technology-based standards
 - Fail to meet water quality-based standards
 - Observe an adverse incident
- ✦ Violations may be involved for the improper action, but also for not taking corrective action
- ✦ Adverse incident notification
 - Verbal report within 24 hours
 - Written report within 30 days



Conclusion – EPA Stated Benefits

- ✦ Minimize pesticide use
- ✦ Report and correct adverse incidents/situations
- ✦ Provide detailed information on pesticide use
- ✦ Impose mandatory use of IPM/IMM
- ✦ Limit the introduction of pesticides into impaired waters



Conclusion – User Concerns

- ✦ Duplicate legislation
- ✦ No added benefits
- ✦ Extensive administrative burden
- ✦ Added costs to state programs
- ✦ Creates compliance complexity
 - Waters of the US or State
- ✦ Creates citizen trap suits that can disrupt operations
 - Miss administrative deadline
 - Alter operations from PDMP
 - Conflicts in professional judgment or legal interpretation



Summary

- ✦ The 6th Circuit Court of Appeals decision remains in effect.
- ✦ Pesticide applications to waters of the US are considered point sources of pollution that fall under the Clean Water Act.
- ✦ An attempt to develop a regulatory fix is ongoing, but its fate is uncertain. HR 872 was passed by the Senate Ag. Committee and is on the Senate calendar, but “on hold.”
- ✦ On October 31, 2011, pesticide applications to waters of the US must be made under an NPDES Permit.
- ✦ STAND BY! The situation ~~may~~ will change!

Contacts

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Questions?

