

Clean Water Act Permitting of Discharges from Pesticide Applications



Background

Result of Court Actions

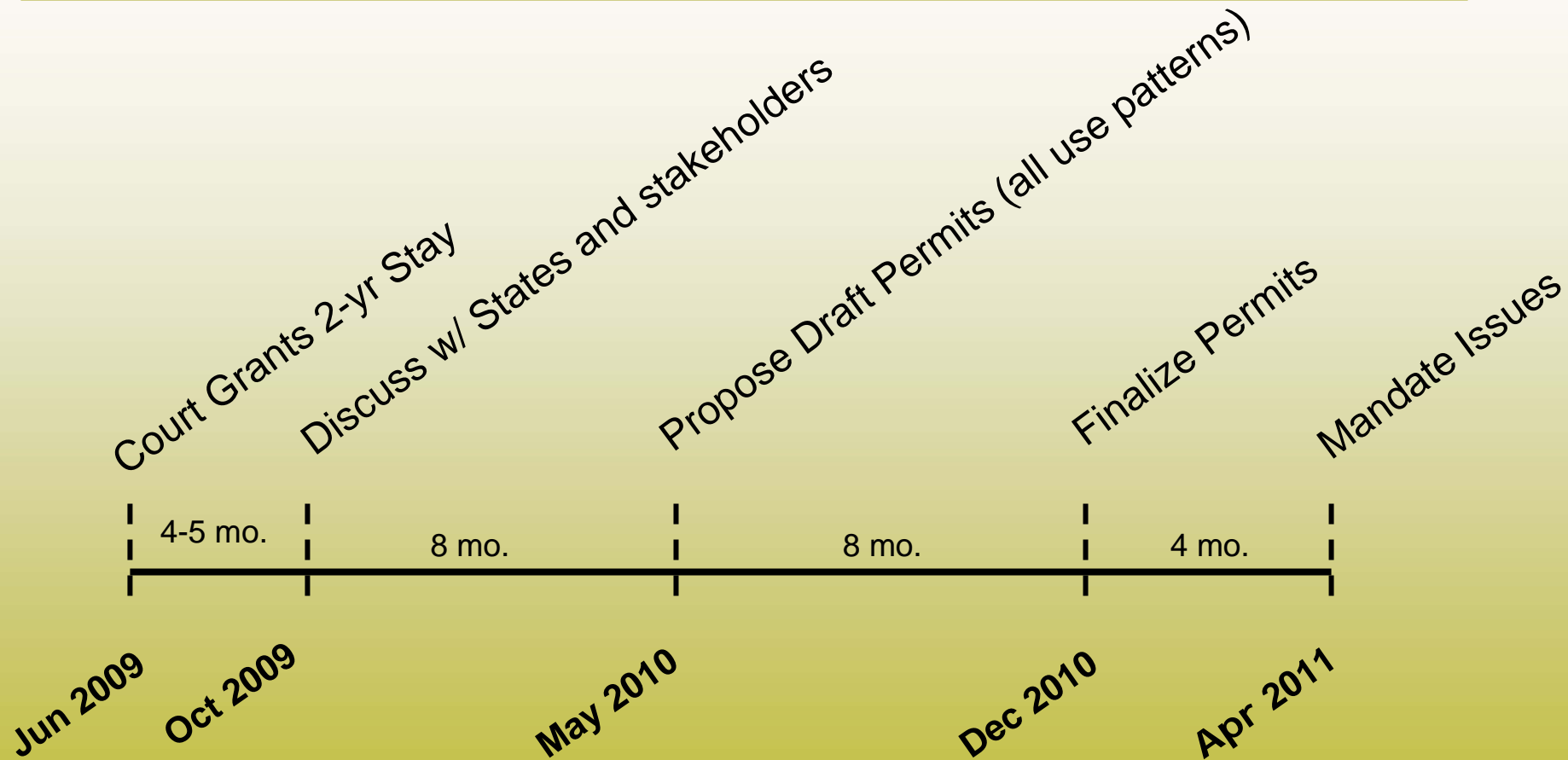
- ❑ Bottom Line: EPA's rule stating that NPDES permits are not required for pesticide applications applied to or over, including near waters of the U.S., remains in effect until April 9, 2011.
- ❑ As of April 10, 2011, discharges into a water of the U.S. from pesticide applications will require coverage under an NPDES permit.

Note: In November 2009, industry petitioned the *Writ of Certiorari* which was denied by the Supreme



Schedule

EPA Pesticides General Permit (PGP)



Schedule

From Here to Proposal

- ❑ Federal Register Publication: End of May, 2010
- ❑ Public comment Period: End May – End June, 2010
- ❑ 3 Public Meetings in June: Boston, Albuquerque, Boise
- ❑ 1 Public Hearing: Washington, DC
- ❑ Public Webcasts: June, 2010



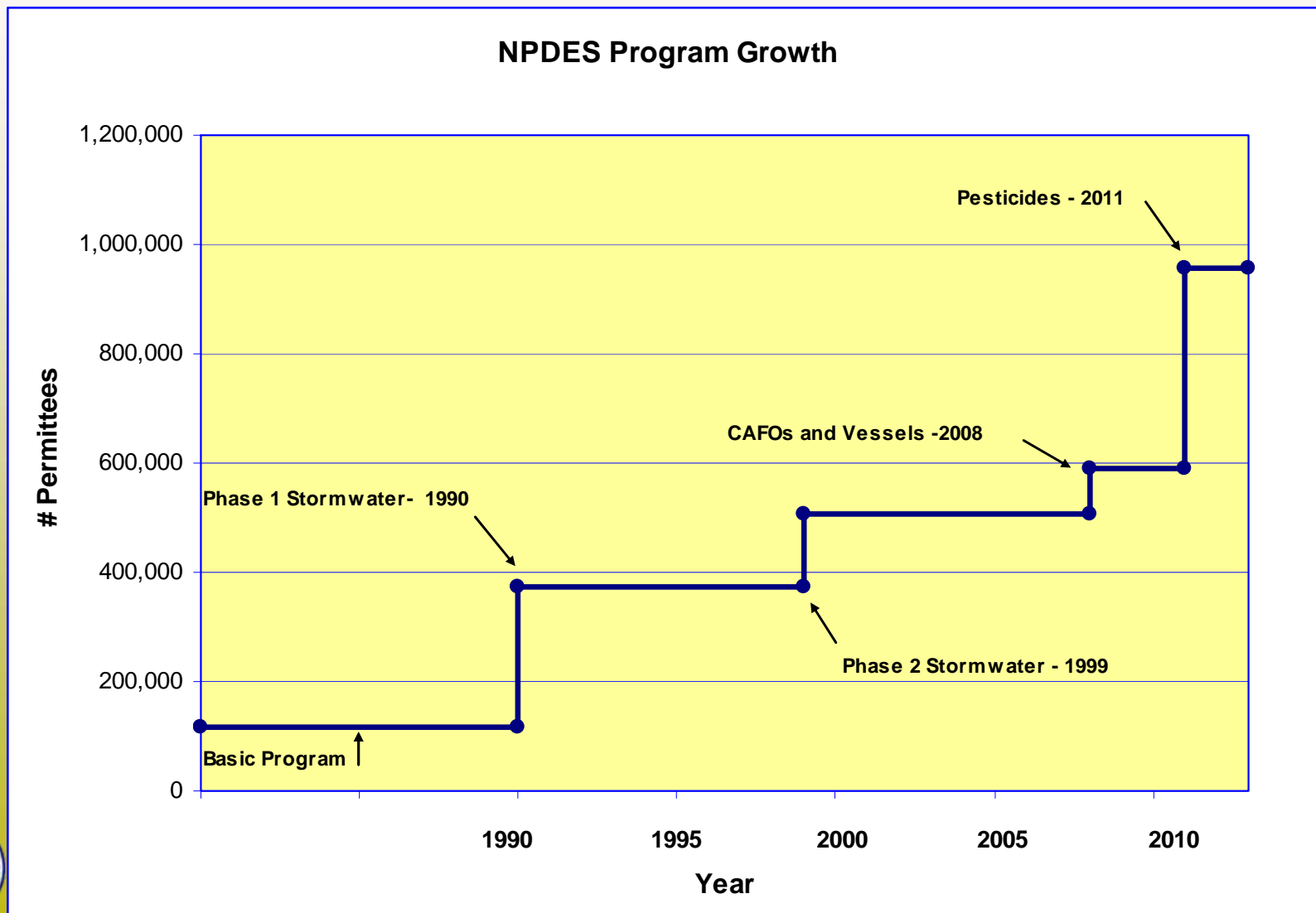
Schedule

Efforts to Date

- ❑ Established State and Regional workgroups and have held regular conference calls with them
- ❑ Participated in numerous “listening sessions” with industry and environmental groups
- ❑ Developed a prototype general permit and shared with States and Regions at two face-to-face meetings in Kansas City (9/30-10/1/09) and Dallas (1/20-1/21/10)
- ❑ Hosted webcasts (10/09; 1/10) for stakeholders (over 1,500 participants) and met with Pesticides Program Dialogue Committee (Federal Advisory Committee)
- ❑ Established email listserv to promote EPA and state co-regulator dialogue



NPDES Permittees



Challenges – State Outreach

- While EPA normally builds time onto the end of the general permit process to enable states to model their general permits on EPA's, in this case EPA must expedite the permitting process so that states can simultaneously work on their general permits.
- EPA and states need to educate pesticide applicators and allow them to come into compliance with the terms of the new general permit.



State-Issued NPDES Permits

- ❑ State-issued general permits must meet all CWA requirements that the Federally-issued permit must meet but can be more stringent.
- ❑ Permits are written based on a permit writer's best professional judgment.
 - Judgments may differ, so how each permit satisfies the CWA requirement may differ in some respects.
- ❑ EPA does maintain an oversight role.
 - If EPA determines that a specific state condition fails to satisfy a particular CWA requirement, EPA could object to that permit.
- ❑ Citizens have the right to challenge NPDES permits.



Pesticide General Permit (PGP)

Contents

- Scope
- Notice of Intent (NOI)
- Technology-based Effluent Limits
- Water Quality Effluent Limits
- Monitoring
- Reporting and Recordkeeping



Pesticide General Permit (PGP)

Scope

- Pesticide uses to be covered under PGP:
 - Mosquito and Other Flying Insect Pest Control
 - Aquatic Weed and Algae Control
 - Aquatic Nuisance Animal Control
 - Forest Canopy Pest control

- EPA considering if other pesticide uses should be in PGP.

- Nationwide ~5.6 mil. applications annually by 365,000 applicators using 400+ different pesticides in ~3500 product labels (Note: EPA's permit will cover about 10% of these applications)



Pesticide General Permit (PGP)

Outside Scope

- ❑ Activities exempt from permitting under the Clean Water Act
 - Irrigation Return Flow
 - Agricultural Stormwater Runoff

- ❑ Discharges to Tier 3 waterbodies

- ❑ Discharges to impaired waterbodies for a particular pesticide that is being applied

- ❑ Terrestrial applications on row crops or forest floors

- ❑ Spray Drift



Pesticide General Permit (PGP)

Who Has to File an NOI?

- ❑ NOIs will be required for entities that exceed a pesticide application threshold.
 - The entity responsible for deciding to conduct the pesticide applications
 - An applicator if it exceeds the application threshold for applications not already covered under another NOI.



Pesticide General Permit (PGP) Technology Based Effluent Limits

- ❑ **All** permittees must minimize discharges
 - Use lowest amount possible
 - Prevent leaks and spills
 - Calibrate and maintain equipment

- ❑ For permittees that submit NOIs, implement IPM Practices
 - Identify/assess pest problem
 - Assess pest management alternatives
 - Follow appropriate procedures for pesticide use



Pesticide General Permit (PGP)

Water-Quality Based Effluent Limits

- ❑ The permit will include a narrative WQBEL, “Your discharge must be controlled as necessary to meet applicable water quality standards (WQS).”
- ❑ EPA expects that compliance with FIFRA plus compliance with permit conditions will generally control discharges as necessary to meet applicable water quality standards.



Pesticide General Permit (PGP) Monitoring

- Permit will also include some type of monitoring for all permittees.
 - Visual monitoring for adverse effects
 - Monitoring of management practices

- EPA assessing how best to gather pesticide water quality data to evaluate permit effectiveness.



Pesticide General Permit (PGP)

Reporting and Recordkeeping

- Annual Reporting
 - Permittees submitting NOIs are required to submit annual reports documenting pesticide application activities.

- Adverse Incident Reporting
 - All permittees are required to report adverse incidents which will help EPA to identify possible permit violations and where permit may need modification to further protect water quality.

- Records
 - PDMP: Permittees submitting NOIs are required to develop a **Pesticide Discharge Management Plan**
 - Permittees submitting NOIs are required to keep pesticide management records for PDMP, adverse incident reports, corrective action documentation, and annual reports
 - Kept on-site and accessed by public through requests to EPA



For More Information NPDES PGP Website

For more information:

www.epa.gov/npdes/agriculture



Public Comment Documents

- Federal Register Notice
 - Actually published in FR
 - Brief description of Permit
 - Specific Questions for which EPA soliciting comment

- Pesticide Discharge NPDES General Permit
 - Contains actual permit requirements
 - Referenced in FR notice
 - Available on EPA website and regulations.gov

- Permit Fact Sheet
 - Provides rationale for permit requirements
 - Referenced in FR notice
 - Available on Epa website and regulations.gov



Questions in Federal Register Notice

- ❑ The type, size, and number of entities that are applying pesticides to US waters
- ❑ The appropriateness of entities not submitting an NOI
- ❑ The best way to cover entities where each are partially responsible for meeting permit requirements
- ❑ The type, size and number of entities that are already practicing IPM
- ❑ Other pesticide use patterns that should be covered under this permit
- ❑ The appropriateness of the threshold sizes
- ❑ The appropriateness of ambient water quality sampling and who should be required to do this



Questions

