



**DEPARTMENT OF THE NAVY  
OFFICE OF THE ASSISTANT SECRETARY  
(INSTALLATIONS AND ENVIRONMENT)  
1000 NAVY PENTAGON  
WASHINGTON, D.C. 20350-1000**

**OCT 14 2003**

**Water Docket  
Environmental Protection Agency  
Mail Code 4101T  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460  
Attention: Docket ID No. OW-2003-0063**

**SUBJECT INTERIM STATEMENT AND GUIDANCE ON APPLICATION OF PESTICIDES  
TO WATERS OF THE UNITED STATES IN COMPLIANCE WITH FIFRA; 68 FR  
48385; 13 AUGUST 2003; DOCKET NUMBER OW-2003-0063**

**Dear Sir/Madam:**

The Department of Defense (DoD) Clean Water Act Services Steering Committee (CWASSC), which represents the Departments of the Navy, Air Force, and Army, as well as several other Defense components and agencies, supports the Environmental Protection Agency's "Interim Statement and Guidance on Application of Pesticides to Waters of the United States in Compliance with FIFRA," published in the Federal Register on August 13, 2003 (68 Fed. Reg. 48385). We believe that the guidance will reduce the litigative risk for public agencies and make it easier for them to protect public health and the environment through the appropriate application of pesticides in compliance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

We recommend one change to the interim guidance memo—that EPA delete footnote 4. Footnote 4 raises the issue of whether (and if so, when) there comes a point, after application, that a pesticide becomes a waste rather than a product used for its intended purpose. Addressing this issue is unnecessary to a clear understanding of the interim guidance, as the guidance merely identifies two sets of circumstances under which application of a pesticide to a water of the United States does not constitute the discharge of a pollutant. The more complex issue of when a pesticide may become a waste should be reserved for a future storm water or wastewater regulation.

Overall, however, we support the guidance. Without EPA's policy, it will be more difficult for public agencies to address pest problems. This could lead to independent action by untrained individuals, who may be less familiar with the appropriate use of pesticides. Since 1956, DoD has maintained an Armed Forces Pest Management Board (AFPMB), which, among other things, coordinates pest management activities in DoD, implements DoD's plan for certification of pesticide applicators, develops comprehensive training guidance for DoD pest management personnel, and maintains manuals and other guidance necessary to implement the technical requirements of FIFRA. DoD is proud of its pest management program, which maximizes the use of non-chemical or least toxic chemical techniques to control pests and disease vectors. In short, we believe that the environmental benefits of the guidance, which will allow organizations such as the AFPMB to operate without fear of violating the Clean Water Act, will outweigh any alleged environmental harm from not also requiring a National Pollutant Discharge Elimination System (NPDES) permit.

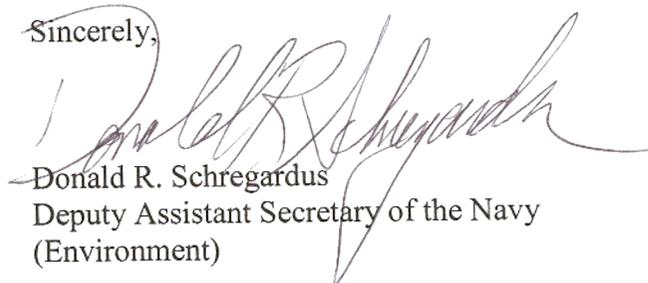
While we do not have specific estimates for the cost of obtaining NPDES permits for each instance in which pesticides are applied by DoD to water, the cost would be considerable. Moreover, such costs would be a significant burden for DoD because an NPDES permit generally includes associated monitoring and reporting. DoD already monitors and reports its pesticide use under its pest management program, and NPDES monitoring and reporting would add a burden with no resulting environmental benefit. There would also be a cost to public health and the environment during the period that the NPDES permit was pending. For example, emergency vector control programs in response to outbreaks of diseases such as West Nile Virus are time-sensitive. The NPDES permitting process could delay pesticide application, potentially resulting in illness or death, with no associated environmental benefit.

We believe that the strongest legal argument behind EPA's guidance document is that Congress never intended the Clean Water Act to address materials that are applied to water when used for their intended purpose. We agree with the holding of the U.S. Court of Appeals for the Ninth Circuit in Association to Protect Hammersley, Eld, and Totten Inlets v. Taylor Resources, 299 F.3d 1007, 1016 (9<sup>th</sup> Cir. 2002), which applied the canon of statutory interpretation, *ejusdem generis*, to conclude that the term "biological materials" must be understood in the context in which it is used. As the Hammersley court noted, "[u]nder that doctrine, 'when a statute contains a list of specific items and a general item, we usually deem the general item to be of the same category or class as the more specifically enumerated items.'" With respect to the definition of "pollutant" under the Clean Water Act, it appears to describe waste materials (or, as noted in Hammersley, "waste material of a human or industrial process") and not biological or other materials used for their intended purpose.

As a general rule, we also favor statutory interpretations that limit the overlapping of legal requirements under separate regimes. If Congress provides for regulation of the effects from a particular activity under one statute, such as FIFRA, it is a waste of resources, in many instances, to regulate those same effects under another statute as well. Before approving the application of pesticides to water under FIFRA, EPA has given due consideration to the effects of the pesticide on the surrounding environment. Interpreting the Clean Water Act not to require additional permitting of such pesticide use is similar to EPA's policy that notice and comment rulemaking is, in many instances, the functional equivalent of the public participation process under the National Environmental Policy Act (NEPA) and does not require a duplication of effort under that statute.

Thank you for providing an opportunity for comment on the interim statement and guidance. If you have any questions, our point of contact is Mr. Scott Trembly, 202/685-9315.

Sincerely,



Donald R. Schregardus  
Deputy Assistant Secretary of the Navy  
(Environment)

Copy to:  
ODUSD(I&E)/E  
OAGC(I&E)  
CNO N45  
HQMC-LEL  
ODEP  
DAJA-EL  
USAEC  
SAF/GCN  
AFLSA/JACE  
DLA (DSS-E)