



WYOMING AG-BUSINESS ASSOCIATION

# Legal Perspective NPDES and Pesticides

How did we get where we're at?

# Previous EPA Action

- ▶ November 27, 2006, adoption of Final Rule
  - 1<sup>st</sup> public comment period, August 13, '03
  - 2<sup>nd</sup> public comment period, February 1, '05
- ▶ Court challenges of Final Rule
  - Appeals of Final Rule filed in 11 different circuits
  - Cases consolidated, jurisdiction chosen by 'lottery'
- ▶ Decision January 7, '09, vacating Final Rule
  - Mandate stayed by 6<sup>th</sup> Circuit until April 9, 2011
- ▶ USSCT denies writ of certiorari, February '10



# Results of Decision

- ▶ NPDES Permit or state equivalent required for:
  - All applications of biological pesticides ‘in, on or near Waters of the U.S.’; and,
  - Any application of chemical pesticide that results in a residue or degradate remaining ‘in, on or near a Water of the U.S.’
- ▶ EPA draft NPDES Pesticide General Permit (PGP)
  - Issued June 4, ‘10, comment closed July 19, ‘10
- ▶ 45 State with NPDES permitting authority
  - Wyoming DEQ issues drafts for public comment January 28, ‘11, comment closed March 3, ‘11



# Where We're At Now – Courts?

- ▶ EPA was granted request to extend stay of mandate until October 31, '11
  - Unless you are applying to Tier 3 water, NOI is required by January 9, 2012
- ▶ The 'draft final' PGP from EPA is available
  - 1) All public entities in the four permitted areas must file NOI, regardless of threshold(s)
    - includes irrigation districts, weed control districts, and mosquito control districts
  - 2) For other decision-makers, the thresholds are 6400 acres for aduaticides, and forest canopy; 20 miles or 80 surface acres for weed and algae, and animal.



# Where We're At Now – Congress?

- ▶ H.R. 872 – ‘Reducing Regulatory Burdens Act’
  - Bill clarifies that FIFRA has sole jurisdiction over pesticide applications
  - Passed House 292–130, with 10 not voting
- ▶ When Senate will consider the bill?
  - Senator Pat Roberts has introduced S. 718
    - Senators Enzi and Barrasso are prime co-sponsors
- ▶ Passing this bill into Federal statute would eliminate need for NPDES PGP



# Where We're At Now – Wyoming

- ▶ WYDEQ is addressing public comments
  - Whether another comment draft is necessary is unknown
    - Will depend on Court and Congressional timing
- ▶ Since the permit will not be required until October 31, 2011, the permit will likely be issued by September 1, 2011, so that those needing permit(s) for pesticide applications after October 31 can continue legally.
- ▶ This is the entire reason to conduct training now.



# What Permits Will You Need?

## ▶ In Wyoming

- Generally a WYPDES PGP (Minor or Major), and/or
  - USEPA Region 8 PGP, within boundaries of Wind River Reservation
    - Check with DEQ for exact boundaries
  - Your specific application will determine if either regulatory agency might require an individual permit
  - If you will need USEPA permit coverage, here is Region 8 website
- ▶ <http://www.epa.gov/region8/water/npdes/index.html>



# What Permits Will You Need?

## ▶ Nebraska

- NE permit: <http://www.deq.state.ne.us/WaterPer.nsf/pages/npdes>
- USEPA Region 7: <http://www.epa.gov/region7/water/index.htm>

## ▶ Colorado

- CO permit: <http://www.cdphe.state.co.us/wq/PermitsUnit/index.html>
- USEPA Region 8 (will also include some applications in New Mexico)

## ▶ Utah

- UT permit: [http://www.waterquality.utah.gov/UPDES/updes\\_f.htm](http://www.waterquality.utah.gov/UPDES/updes_f.htm)
- USEPA Region 8

## ▶ Idaho – only USEPA Region 10: <http://1.usa.gov/f7tHqq>

## ▶ Montana

- MT permit: <http://www.deq.mt.gov/wqinfo/mpdes/default.mcp>
- USEPA Region 8

## ▶ South Dakota

- SD permit: <http://denr.sd.gov/des/sw/NPDES.aspx>
- USEPA Region 8?



# What Permits Will You Need?

## State NPDES Program Authority



# Since you have questions...

Realize that if NPDES pesticide permits are required, which permit(s) you need is(are) depended upon the jurisdiction(s) in which you are operating, Wyoming, Wind River Reservation, other states, and/or other EPA Regions.

