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FUMIGATION PRACTICAL

The last Fumigation Practical for 2011 will be held September 27 in Stillwater at the Stored Product Research Educational Center (SPREC). Participants must pass the core exam plus the written Fumigation (7C) exams before taking the practical. Cost of the practical is $200. To enroll for the Fumigation Practical please go to http://pested.okstate.edu/practical.htm. (OSU PSEP)

FUMIGATION WORKSHOP

A Fumigation Workshop will be held September 14 in Stillwater at the Stored Products Research and Education Center (SPREC) from 8 a.m. to 4 p.m.. The registration cost is $75 by September 7 and then goes to $100 after September 7 or on-site. CEU's are pending. For more information contact Dr. Carol Jones at 405-744-6667. Or go to http://pested.okstate.edu/practical.htm. enroll on -line (PSEP)

EPA ISSUES STOP SALE ORDER TO DUPONT ON SALE AND DISTRIBUTION OF IMPRELIS HERBICIDE

The U.S. Environmental Protection Agency (EPA) today issued an order to E.I. DuPont de Nemours (DuPont) directing the company to immediately halt the sale, use or distribution of Imprelis, an herbicide marketed to control weeds that has been reported to be harming a large number of trees, including Norway spruce and white pine. The order, issued under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), requires DuPont to stop the sale and distribution of Imprelis in the U.S. and outlines specific conditions to ensure that the removal of Imprelis from the market meets legal requirements.

This action follows EPA's investigation into why a large number of evergreens and other trees have been harmed following the use of the herbicide. In its evaluation, EPA is investigating whether these incidents are the result of product misuse, inadequate warnings and use directions on the product's label, persistence in soil and plant material, uptake of the product through the root systems and absorbed into the plant tissue, environmental factors, potential runoff issues or other possible causes.

On June 17, 2011, DuPont issued a letter to professional applicators cautioning against the use of Imprelis where Norway spruce or white pine trees are present on, or in close proximity to, the property being treated. On July 27, 2011, DuPont acknowledged to the EPA that there has been damage to trees associated with Imprelis use and the company had developed an internet web page to provide information and updates concerning Imprelis use.

On August 4, 2011, DuPont voluntarily suspended sales of Imprelis and announced that it will soon conduct a product return and refund program.

FIFRA is a federal law that requires the registration of pesticide products and pesticide-production facilities, and the proper labeling of pesticides. This requirement protects public health and the environment by ensuring safe production, handling, and application of pesticides and by preventing false or misleading product claims.

Information about today's order: www.epa.gov/compliance/resources/cases/civil/fifra/dupontimprelis.html (EPA August 11, 2011)

GRASS CLIPPINGS TREATED AND TREES INJURED BY HERBICIDE IMPRELIS SHOULD NOT BE USED FOR COMPOSTING OR MULCHING

As part of EPA's efforts to minimize injury to trees following use of the herbicide Imprelis, EPA is reminding people that grass clippings that have been treated with Imprelis should not be used for composting or mulching, and trees that may have been injured from Imprelis should also not be used for compost or mulch. This is because clippings from grass treated with Imprelis or mulch from trees injured by Imprelis could continue to cause non-target plant damage.

Specifically, the Imprelis label has the following restrictions on mulch and compost:

Do not use grass clippings from treated areas for mulching or compost, or allow for collection to composting facilities. Grass clippings must either be left on the treated area, or, if allowed by local yard waste regulations, disposed of in the trash. Applicators must give verbal or written notice to property owner/property manager/residents to not use grass clippings from treated turf for mulch or compost.

On August 11, EPA issued an order to immediately stop sale, use and distribution of the herbicide Imprelis and DuPont is voluntarily implementing a product return program. While these steps are focused on stopping future sale and use of the product, it is important that plant material from areas that have already been treated with Imprelis not be used for composting or mulching.

Imprelis is an herbicide that was sold by DuPont to licensed lawn care professionals, was used on residential, industrial and institutional lawns and on

golf courses. The active ingredient in Imprelis is aminocyclopyrachlor. EPA has received numerous reports of injury to trees, including the Norway spruce and white pine related to the use of Imprelis. In response, EPA has taken a number of steps to provide federal oversight to help eliminate any further damage to trees. (EPA August 16, 2011)

More information is available at:
http://www.epa.gov/pesticides/regulating/imprelis.html

EPA DENIES REQUEST TO REVOKE TOLERANCES FOR 13 PESTICIDES USED IN FOREIGN COUNTRIES

On August 10, 2011, EPA published a notice of its denial of a July 23, 2009, petition from the American Bird Conservancy (ABC) requesting that the agency revoke over three dozen tolerances for 13 pesticide active ingredients for which there is no corresponding use registered in the U.S. ABC argued that EPA should revoke the tolerances, using its authority under the Federal Food, Drug and Cosmetic Act (FFDCA) to be in compliance with the Endangered Species Act and Executive Order 13186. The executive order directs any federal agency engaging in certain actions to develop a Memorandum of Understanding with the Fish and Wildlife Service that promotes conservation of migratory birds. EPA denied the petition primarily because the FFDCA, as a food safety statute, does not provide the legal authority to address the protection of migratory or endangered birds. The FFDCA only gives the EPA the authority to set tolerances for the purpose of ensuring the safety food in the U.S.

The 13 active ingredients included in the petition are cadusafos, cyproconazole, diazinon, dithianon, diquat, dimethoate, fenamiphos, mevinphos, methomyl, naled, phorate, terbufos, and dichlorvos (DDVP). The tolerances cover commodities grown in Mexico and Central America that are often imported to the U.S., such as coffee, bananas, other fruits, and vegetables.

ABC suggested that the use of these pesticides may harm migratory birds that travel to and feed in fields where the crops are grown. ABC further suggested that because the commodities covered by these tolerances are often imported to the U.S., the existence of the tolerances encourages the use of these pesticides on crops grown in Central America. ABC did not document that these pesticides have caused harm to migratory birds or that the pesticides are used when the migratory birds are present. (EPA August 10, 2011)
http://epa.gov/oppfead1/cb/csb_page/updates/2011/revoke-tol.html

DUPONT SUSPENDS SALE OF IMPRELIS

DuPont is voluntarily suspending the sale of Imprelis, which EPA and the company are investigating regarding a potential link between the herbicide and damage to certain evergreen trees, particularly Norway spruce and white pine trees. The agency says it is considering issuing a stop sale, use or removal order, noting in an Aug. 3 letter to the company it has reason to believe - based on DuPont data and information collected during EPA and state investigations - that the directions for use and/or warning or caution statements on Imprelis are inadequate to protect non-target plant species.

A source familiar with the matter reportedly told *Reuters* EPA is in fact preparing an SSURO, the news service reported Aug. 4.

In an Aug. 5 letter to turf management product distributors, DuPont announced the voluntary suspension as well as plans to conduct a product return and refund program for Imprelis. DuPont says the action is consistent with ongoing discussions with EPA.

EPA notes on its website that it has received reports from "numerous states" that Imprelis, which contains the active ingredient aminocyclopyrachlor, is injuring evergreen trees. The agency says it is working closely with state agencies to determine the cause of the reported damage and is in contact with DuPont.

"We are requiring the company to expedite submission to the agency of detailed information about incidents, and are also requiring DuPont to determine what is causing the injuries," EPA says on its website.

In the Aug. 3 letter, the agency notes concerns with "the sweeping nature" of confidential business information claims DuPont has made for submitted studies. EPA is evaluating whether they warrant such treatment and "strongly encourages DuPont to reconsider CBI claims for these studies, especially for the phytotoxicity studies related to effects on trees.

EPA and DuPont are advising that Imprelis not be used where Norway spruce or white pine trees are present or nearby. DuPont has also taken a number of actions to make it easier to report and resolve problems with Imprelis. DuPont is engaging 20 arborist companies to work on and evaluate claims, and the company has launched a website, *imprelis-facts.com*, with the latest information about Imprelis. It has also established a toll-free hotline, 866-796-4783, to handle all reports of problems and answer questions.

EPA conditionally registered aminocyclopyrachlor in August 2010, finding the active ingredient poses low risk to humans and non-target organisms, except for plants.

"In roughly 400 efficacy and phytotoxicity field trials that the manufacturer, DuPont, conducted in their development of the chemical, they reported to EPA that they did not observe adverse effects to trees," the agency notes on its website.

Aminocyclopyrachlor is related to other herbicides that have caused plant damage - but not significant damage to trees - when present in compost or manure due to their use on turf grass or pasture grass. EPA required labeling restrictions to reduce these risks.

Three companies sued DuPont last month in the U.S. District Court for the District of Delaware for allegedly misrepresenting the safety of Imprelis and concealing or omitting the fact that it seriously damages trees. They contend applications of the pesticide were followed within weeks by lethal damage to mature evergreen trees (see *P&CP* July 22, Page 9). At least 14 additional lawsuits have been filed against DuPont in the past three weeks, *Courthouse News* reports. (Pesticide & Chemical Policy, August 8 2011, Volume: 39 Issue: 35)

EPA MOVES ONE STEP CLOSER TO END OF ATRAZINE RE-EVALUATION

With the conclusion of a recent FIFRA Scientific Advisory Panel meeting, EPA is wrapping up the human health component of its scientific re-evaluation of atrazine - expecting to decide whether to revise the current human health risk assessment of the herbicide after reviewing the ensuing SAP report, which is expected in about 90 days.

But while the human health component of EPA's scientific re-evaluation of atrazine is coming to a close, EPA will ask the FIFRA SAP to review updated scientific analyses concerning the herbicide's potential effects on aquatic ecosystems, including amphibians. That review is expected to take place in 2012.

EPA has been investigating potential refinements to the human health assessment, such as relying on a new critical study, since 2009 when it launched the atrazine re-evaluation, and building on the recommendations of three SAPs that convened in 2010. The July 26-28 SAP meeting, the first on atrazine in 2011, further addressed these refinements - none of which, industry stakeholders say, changes their belief that current limits on

atrazine in drinking water are protective of human health.

EPA sought input from last month's SAP on various aspects of its re-evaluation - the agency maintains suppression of the luteinizing hormone (LH) surge is the critical effect of atrazine, which if avoided will avert all adverse effects. Suppression of the LH surge can lead to adverse reproductive effects.

EPA continues to propose relying on a new rat study (Cooper) to revise its point of departure (PoD), from which a safe level of human exposure is derived. The study suggests LH surge suppression occurs after a much shorter duration of exposure than the current study EPA has relied on to derive the PoD. The agency has also completed further work showing young animals are not more sensitive to atrazine than adults.

In addition, the agency says the weight of evidence continues to support its conclusion that atrazine is not likely to be carcinogenic to humans, and EPA has further refined its pharmacokinetic approach to determine what happens to atrazine once it enters an organism's body and then extrapolate those results to humans. The agency has also further refined approaches to characterize uncertainty in atrazine exposure estimates for humans from water monitoring data.

Atrazine registrant Syngenta provided an overview of its own research during a public comment period at the meeting, contending the dosing mechanism in the study from which EPA aims to derive a PoD is not relevant to how humans are exposed to atrazine, as people are exposed to far less atrazine in drinking water than rats who are exposed to a single, large dose through a feeding tube. In addition, scientists presenting on behalf of the company noted pulsatile LH secretion is a more relevant endpoint for humans because its mechanism in rats and humans is similar while the LH surge mechanism is different.

This additional information, along with water monitoring data that consistently finds atrazine occurs at very low levels, shows that EPA's current short and longer term exposure levels of concern are protective of human health and extremely conservative, according to Syngenta Principal Scientist Tim Pastoor.

SAP comments

Pastoor, who attended the SAP meeting, tells *Pesticide & Chemical Policy* that the panel discussed atrazine's mode of action, dosing via a feeding tube versus distributing doses through food, and the effects on LH. One member, he says, "very quickly grasped" that occasional exposures to low levels of atrazine are not going to affect LH. But the panel did not address the appropriateness of the study EPA is considering using to derive a revised PoD.

Jim Lamb, director of consulting firm Exponent's Center for Toxicology and Mechanistic Biology, tells *P&CP* the panel discussed whether suppression of the LH surge was an adverse effect meaningful to human health.

Lamb provided comments at the meeting on behalf of the Triazine Network, which supports the continued registration of atrazine, highlighting concerns with the Cooper rat study's design in terms of utility in risk assessment and questioning the relevance of LH surge suppression to humans. Lamb noted the Cooper study was designed to investigate atrazine's mode of action, not to set a point of departure for risk assessment.

"If EPA is going to regulate on such an unusual study, it needs to be replicated," he told the panel. There is certainly time for such replication, he continued, noting both Syngenta and EPA say margins of exposure to atrazine are sufficient.

Lamb tells *P&CP* he doesn't believe relying on the Cooper study makes any difference in terms of the safety of atrazine. "But if you go to all the trouble of doing a scientific assessment, pick the right study and the right endpoint."

In terms of enhanced sensitivity to atrazine in the young, Pastoor says the panel "is seeing it in the same way" as EPA.

The agency found none of the studies on the impact of prenatal, perinatal, prepubertal and adult exposure to atrazine done since 2003 identified increased sensitivity among the young. When asked by an SAP member about the agency's conclusion regarding the appropriateness of retaining the Food Quality Protection Act safety factor, Elizabeth Mendez, a senior scientist in the Health Effects Division of EPA's Office of Pesticide Programs, did not specifically address using the safety factor for children, but she noted that "from a hazard standpoint, it doesn't seem like we have any sensitivity in the young."

Pastoor notes EPA has said uncertainty factors are a matter of policy, but the research implies a children's safety factor is not needed.

EPA must use the FQPA factor, which considers hazard and exposure, to offer an additional 10-fold margin of safety for infants and children, unless reliable data show the exposure - after removing or replacing the factor - would be safe for infants and children.

Cancer and pharmacokinetics

EPA has found that available experimental toxicology and epidemiology data do not support an association between atrazine exposure and prostate cancer, breast cancer, ovarian cancer, thyroid cancer, lymphohematopoietic cancer and other cancers.

However, epidemiologists on the SAP were cautious, noting in particular a single study observing a positive association between atrazine exposure and thyroid cancer. The issue presented an interesting debate between epidemiologists and toxicologists, Pastoor notes.

"You need to have a plausible reason to believe that a particular organ or tissue would be affected and therefore you'd see [the effect] in the human population. That evidence doesn't exist [for the thyroid and atrazine]," he says. But epidemiologists maintained they need only concern themselves with the human population.

Pastoor says the debate showcased the whole concept of how to bring together epidemiological evidence and biological plausibility - a concept with which EPA has been struggling.

As for pharmacokinetics - which addresses how a substance is absorbed, metabolized and eliminated by the body - Pastoor says the simplified approach EPA has used for atrazine can be refined and improved with the physiologically based pharmacokinetic (PBPK) model Syngenta has developed. EPA is still reviewing Syngenta's PBPK model, but the panel "was very receptive to the additional information we're offering on kinetic modeling," he says.

Lamb concurs, telling *P&CP* the panel appreciated what EPA did with the data they had but would like the agency to use the PBPK model.

Pastoor says the SAP was also appreciative of Syngenta's and EPA's statistical approaches to estimating atrazine levels in water in between sampling days. Syngenta conducts weekly monitoring of vulnerable community water systems during the growing season and biweekly monitoring the rest of the year.

Monitoring frequency

But Pastoor notes the frequency of drinking water monitoring was not addressed - an issue that has been lingering since the launch of the atrazine re-evaluation. EPA has previously noted the necessary frequency of monitoring is related to the timing of atrazine's critical effect. A longer duration of concern requires less frequent monitoring, while a shorter duration of concern may require more frequent monitoring because short-term peak exposures are more likely to be missed with less frequent monitoring.

Currently, EPA derives a PoD from a study observing LH surge attenuation after four to five months of exposure. But the Cooper study observed this effect after four days of exposure to rats, raising questions about drinking water monitoring frequency.

EPA is attempting to translate that 4-day time period for humans, identifying 4, 14 and 28 days as possible durations of exposure for LH surge attenuation in humans. Pastoor notes the panel said the exposure duration of concern might exist in that particular range.

If EPA relies on the Cooper study to derive a PoD and comes to grips with exactly what that 4-day duration means for humans, the frequency of monitoring could be affected, Pastoor says. The time span over which average exposure to atrazine is estimated from monitoring data could change, Pastoor explains.

"Activist clamor"

Short-term peak water exposures were a key issue in a 2009 report from the Natural Resources Defense Council on widespread atrazine contamination in watersheds and drinking water. NRDC, which has long advocated for atrazine's ban, criticized existing monitoring systems and EPA's oversight of the herbicide, suggesting it was overlooking evidence that concentrations can spike to levels far exceeding the federal drinking water standard of 3 ppb.

EPA actually cited the NRDC report when it announced its impending re-evaluation of atrazine - a fact that incensed some who subsequently labeled the review as politically motivated. But NRDC senior scientist Jennifer Sass, who commented at all three 2010 SAP meetings, tells *P&CP* the re-evaluation hasn't been a huge priority for her because nothing has come out of it so far. Sass did not attend last month's meeting.

"It shouldn't take so many SAPs to evaluate a chemical. It's ridiculous," she tells *P&CP*. "To be honest, it's not clear to me what [EPA is] lining up for from a policy perspective."

But Jere White, chairman of the Triazine Network, believes "much of the activist clamor" leading to the re-evaluation "has been properly vetted out" by EPA and the SAP. "We're moving on," he told the July panel during the public comment period.

(Pesticide & Chemical Policy, August 8 2011, Volume: 39 Issue: 35)

COURT REJECTS SYNGENTA'S GENERIC METOLACHLOR CHALLENGE

A federal judge has rejected Syngenta's challenge to the me-too registrations obtained by three companies for the herbicide metolachlor, asserting EPA did not rely on Syngenta's studies for the alternative s-metolachlor in making its decision on the me-too metolachlor registrations.

Judge N. Carlton Tilley Jr., of the U.S. District Court for the Middle District of North Carolina, on Wednesday granted various motions for dismissal and summary judgment filed by EPA and the generic metolachlor registrants - Sipcam Agro, Makhteshim Agan of North America (MANA) and Drexel Chemical - involved in the case.

According to David Weinberg, a partner at Wiley Rein who represented MANA in the case, the lawsuit, filed more than nine years ago, was a piece of patent extension strategy Syngenta pursued to eliminate use of metolachlor and replace it with s-metolachlor, a more efficient and thus more environmentally friendly version of metolachlor.

But this week's ruling "probably discourages some of the more creative patent extension strategies," Weinberg notes.

Syngenta argued that the generic registrants cited a couple of studies to support their me-too metolachlor registrations that Syngenta had submitted in support of its s-metolachlor registration. Syngenta argued these studies were covered by FIFRA's exclusive use protections.

In granting the me-too registrations, Syngenta argued that EPA acted arbitrarily and capriciously, in violation of the Administrative Procedure Act, and denied the company equal protection under the law, in violation of the U.S. Constitution.

In particular, Syngenta argued that EPA unlawfully delayed the company's requested cancellation of metolachlor, thus allowing the generic manufacturers to pursue their registrations as a follow-on to the existing registration, rather than having to start over, which would have been necessary if Syngenta's registration had been cancelled. EPA issued the me-too registrations to Cedar Chemical, Sipcam and Drexel prior to cancelling Syngenta's technical metolachlor registration. Cedar ultimately sold its metolachlor registration to MANA.

Syngenta sought a court order mandating the cancellation of the me-too registrations, among other remedies.

But Tilley found EPA's actions to be within the agency's discretion and that it hadn't treated the company differently than others.

"Although EPA admittedly delayed cancelling Syngenta's technical metolachlor registration while the Metolachlor Registrants' me-too applications were pending, EPA did not act arbitrarily and capriciously in doing so," the Aug. 9 ruling states.

FIFRA "does not require that EPA act within any period of time, nor does the statute require EPA to approve the cancellation at all," the ruling continues, adding, "EPA determined that delaying cancellation of Syngenta's technical metolachlor registration was consistent with FIFRA ... [and] deference is given to EPA's interpretation of the purpose of the voluntary cancellation procedures."

Tilley ruled Syngenta lacks standing to pursue its equal protection claim because, by its own admittance, it failed to allege an injury to itself in relation to the claim - a requirement for standing - but rather challenged the legality of EPA's actions in refusing to cancel Syngenta's registration while the me-too applications were pending.

But even if Syngenta had standing, its equal protection claim would fail, Tilley asserts, because in the only other comparable example - where EPA delayed granting a voluntary cancellation request for naled while it evaluated a pending me-too application - EPA treated the registrant in that situation, Sergeant, similar to how it treated Syngenta.

Tilley further agreed with EPA's contention that it did not rely on Syngenta's s-metolachlor studies in deciding on the me-too metolachlor registrations and did not act arbitrarily and capriciously in granting those registrations.

Syngenta says it disputes the ruling and is evaluating its options. (Pesticide & Chemical Policy, August 12 2011, Volume: 39 Issue: 36)

GROUPS PRESS SENATE LEADERS TO EXEMPT PESTICIDES FROM CLEAN WATER ACT PERMIT REQUIREMENTS

Citing scarce resources and public health concerns, the heads of five state organizations wrote to Senate Majority Leader Harry Reid (D-Nev.) and Senate Minority Leader Mitch McConnell (R-Ky.) Aug. 12, urging the Senate to move forward on legislation that would exempt FIFRA-compliant pesticide applications from Clean Water Act (CWA) permitting requirements. The requirements were mandated by a January 2009 federal court decision that is due to go into effect Oct. 31.

"Unless Congress intervenes, state CWA permitting authorities - already operating under severely constrained budgets and with limited staff - will be required to regulate 365,000 new sources under the CWA despite the fact that another federal environmental statute has regulated these pesticide uses for decades," the letter states.

This represents a 60% increase in the size of the NPDES program, which "is not a mere paperwork exercise," but requires states to process permit applications, ensure compliance and conduct outreach, the letter notes.

The letter was signed by Chuck Andrews, president of the Association of American Pesticide Control Officials, Tyler Koschnick, president of the Aquatic Plant Management Society, Walter Baker, president of the Association of State and Interstate Water Pollution Control Administrators, Leonard Blackham, president of the National Association of State Departments of Agriculture, and Jeff Jahnke, president of the National Association of State Foresters.

The additional costs and duplicative regulatory requirements will negatively impact the ability of state and local agencies to deal with public health and economic threats from invasive species as well as threats from mosquito-borne diseases like West Nile Virus, they assert, adding that states can address pesticide concerns themselves.

"States can - and have - enacted state pesticide permitting programs to address pesticide-related issues specific to individual states," the letter states.

Legislation (H.R. 872) exempting FIFRA-compliant pesticide applications from CWA permitting requirements was approved by the House March 31 by a 292-130 margin. The bill also was approved by the Senate Agriculture Committee. But Sens. Ben Cardin (D-Md.) and Barbara Boxer (D-Calif.) have put a hold on it. Boxer chairs the Environment and Public Works Committee while Cardin heads its Water and Wildlife Subcommittee.

In remarks on the Senate floor July 19, Cardin said FIFRA only protects against general environmental concerns and not issues with specific waterways, as CWA does (see *P&CP* July 22, Page 1). He rejects the argument that obtaining a CWA permit would merely duplicate FIFRA requirements.

Cardin is particularly concerned with pesticide pollution in the Chesapeake Bay and says it has been linked to fish kills and abnormalities.

Senate Majority Leader Reid has told Agriculture Committee Chair, Sen. Debbie Stabenow (D-Mich.), that he does not plan to circumvent the hold and bring the bill to the floor for a vote unless the differences with Cardin and Boxer can be resolved.

A spokesperson for Sen. Cardin says Cardin "believes there is common ground to be found." But while the staffs of the agriculture and environment committees have met to discuss a way forward, there has been no concrete progress in addressing the senator's concerns, sources tell *Pesticide & Chemical Policy*. (Pesticide & Chemical Policy, August 26 2011, Volume: 39 Issue: 38)

EPA OFFICIAL DOWNPLAYS ESA REQUIREMENTS IN PESTICIDE GENERAL PERMIT, SAYS AGENCY SHOULD MEET OCTOBER DEADLINE

EPA is on track to finalize its Pesticide General Permit by the court-ordered Oct. 31 deadline and does not currently plan to add significant new requirements related to protection of threatened and endangered species, a top official within the agency's Office of Water official told members of the American Water Works Association (AWWA) on Wednesday.

The agency believes the Endangered Species Act provisions it will put in the permit "will not cause substantial impacts on permittees," said Allison Wiedeman, head of the Office of Water's Rural Branch.

"We are moving forward as quickly as possible to finalizing the permit and giving industry certainty on those requirements," she said.

Wiedeman's comments - made during an AWWA-sponsored webinar - indicate EPA is unlikely to follow all the recommendations the National Marine Fisheries Service (NMFS) has suggested are necessary for protecting endangered and threatened species.

At issue is the PGP being developed under the Clean Water Act's National Pollutant Discharge Elimination System program to cover certain pesticide applications to, over or near water.

The permit will be used primarily in six states where EPA is the permitting authority - Alaska, Idaho, Massachusetts, New Hampshire, New Mexico and Oklahoma. The remaining 44 states will issue their own permits, although many of these look likely to use EPA's PGP as a basis for their permits.

Wiedeman noted covered applications include four primary activities: control of mosquitoes and other aquatic insect pests; weed and algae control; animal pest control; and forest canopy/pest control.

"A general permit is the easiest way to cover the potentially hundreds of thousands of operators out there," she said.

EPA unveiled its draft PGP in April but noted it would need more time to consult with federal wildlife agencies on the permit's potential impacts on endangered species. In May the 6th Circuit Court of Appeals granted EPA's request for more time to develop the permit, extending the stay of its ruling from April 9 to Oct. 31.

NMFS released its biological opinion (BiOp) on the permit in June, concluding the permit is likely to jeopardize 33 endangered and threatened species or their habitat and outlined several recommendations - called reasonable and prudent alternatives (RPAs) - to address those concerns (see *P&CP* July 1, Page 1).

The "most complex" part of the RPAs recommends EPA set up a framework for approving the use of pesticides within the range of listed species only under certain conditions, Wiedeman explained, and give NMFS a 30-day window to determine if operators are eligible for PGP coverage.

The RPAs also call for additional reporting and monitoring requirements and recommend EPA conduct water quality monitoring.

Wiedeman noted that the BiOp shows NMFS is "concerned only with three species - salmon, sturgeon and eulachon," and only three of the states where EPA has permitting authority - Idaho, New Hampshire and Massachusetts - are likely to be affected.

The RPAs are recommendations to EPA about what the wildlife agency thinks should be done in order not to jeopardize species, Wiedeman added, and are "not necessarily" what EPA would actually require in its permit.

"The final part of the consultation with NMFS will be to negotiate something that we both believe would work," she said.

But Wiedeman was mute on the issue of whether EPA is working with the U.S. Fish and Wildlife Service (FWS) on any requirements to protect other listed species. Earlier this month an FWS spokesperson declined to specify whether the wildlife agency was indeed working on a biological opinion for the PGP (see *P&CP* Aug. 12, Page 1).

The lingering doubt over the issue should be of concern to stakeholders, according to John Thorne, a senior policy adviser with the law firm Crowell & Moring.

Thorne, who joined Wiedeman for the AWWA webinar, said an array of freshwater species under the purview of FWS in the states permitted by EPA could potentially be affected by the PGP.

"I don't think we've had any input from the FWS on this - this just adds to the confusion," he said.

Muddy waters

Thorne pointed to another key area of potential confusion for affected stakeholders - namely the ongoing effort by EPA and the U.S. Army Corps of Engineers to redefine which waters are protected by the Clean Water Act.

This could be worrisome for permittees down the road, Thorne said, as the draft guidance released by the agencies would expand the waters and wetlands that fall under the jurisdiction of the statute.

"It could well be that people would go forward thinking they understand fully the scope of the

enforcement aspects and legal aspects of this Pesticide General Permit, only to find they have overlooked some jurisdictional waters - whether they are culverts on the side of the road or ditches with water in them only after a big storm - that currently may not now be considered waters of the U.S. but could be under a future definition," he explained.

The shifting landscape regarding the waters protected under the Clean Water Act is only one of several potential legal headaches that could trouble the PGP community, Thorne said.

The array of paperwork requirements outlined in the PGP - including the need to write a pesticide discharge management plan - could prove particularly problematic for permit holders, he said.

"There is lots of potential for paperwork failures through the first year or so until people understand what is expected of them," Thorne said. "Each of these paperwork failures could well be a violation of the permit and could trigger citizen suit enforcement if not regulatory enforcement. And many of these documents will be public documents, and the paperwork failures will be open to scrutiny."

Thorne also cautioned that stakeholders may have difficulty navigating the "patchwork of state permits," noting that states are crafting permits with differing requirements.

"There is a wide range of types of these kinds of permits," said Thorne, who noted that most states are waiting for EPA to finalize its permit before implementing their own.

Many states and stakeholders are still holding out hope that Congress will intervene and make the whole issue disappear, Thorne added.

"While Congress is working very, very hard to overturn this … the outcome of that is hard to know," Thorne said. "But it is clear this whole area has been controversial from the beginning." (Pesticide & Chemical Policy, August 26 2011, Volume: 39 Issue: 38)

KHAPRA BEETLES TURNING UP AT U.S. POINTS OF ENTRY

The khapra beetle, a highly invasive pest that feeds on dry grains, was eradicated from the United States thanks to a costly and coordinated effort by the government in the 1950s and '60s.

But the khapra beetle has been turning up more frequently at U.S. points of entry, including the Port of New York and New Jersey, where U.S. Customs and Border Protection reported finding the beetles in two shipments of rice from Pakistan less than a month apart.

The shipments were not allowed to enter the country, and the importer was given the choice of destroying the rice or shipping it back to Pakistan, the agency said.

Anthony Bucco, a spokesman for the customs agency, declined to identify the importer involved in either shipment.

In both incidents, the customs agency said the tiny brown beetles, which measure 2-3 millimeters long, were found on the outside of plastic and burlap sacs full of rice.

The more recent incident involved two dead beetle larvae said to have been found amid a Pakastani rice shipment on Friday. The earlier incident, on July 26, involved what the agency said was a dead khapra beetle larva and one cast skin

Source: http://www.nj.com/news/index.ssf/2011/08/invasive_beetle_species_reappe.html

PARK REMOVES PESTICIDE BAN

Illinois: The Park District of Highland Park, which banned pesticides on its playing fields four years ago, this month decided to again allow chemicals after its integrated pest management program failed to adequately control invasive weeds at several parks, the *Chicago Sun-Times* reported Aug. 21.

In-State CEU Meetings

Date: September 8 2011
Title: OAAA FlyIn
Location: El Reno, OK
Contact: Sandy Wells (405) 341-3548
Course #: OK-11-089

CEU's:	Category(s):
2	A
2	10

Date: September 14 2011
Title: OSU Fumigation Workshop
Location: SPREC Stillwater OK
Contact: Dr. Carol Jones 405-744-6667
Course #: Pending

CEU's:	Category(s):
Pending	7A
Pending	7C
Pending	10

Date: September 20-21 2011
Title: OKVMA Training & Trade Show
Location: Hard Rock Hotel Catoosa OK

Contact: Joe Osborne 918-256-9302
Course #: OK-11-078

CEU's:	Category(s):
4	Aerial
5	3A
4	5
6	6
6	10

ODAFF Approved Online CEU Course Links

Wood Destroying Organism Inspection Course
www.nachi.org/wdocourse.htm

All Star Pro Training
www.allstarce.com

CTN Educational Services Inc
http://ctnedu.com/oklahoma_applicator_enroll.html

Pest Network
http://www.pestnetwork.com/

Univar USA
http://www.pestweb.com/

Southwest Farm Press Spray Drift Mgmt
http://www.pentonag.com/nationalsdm

SW Farm Press Weed Resistance Mgmt in Cotton
http://www.pentonag.com/CottonWRM

Western Farm Press ABC's of MRLs
http://www.pentonag.com/mrl

Western Farm Press Biopesticides Effective Use in Pest Management Programs
http://www.pentonag.com/biopesticides

Western Farm Press Principles & Efficient Chemigation
http://www.pentonag.com/Valmont

For more information and an updated list of CEU meetings, click on this link:
http://www.state.ok.us/~okag/cps-ceuhome.htm

ODAFF Test Information

Pesticide applicator test sessions dates and locations for September/October 2011 are as follows:

September		October	
7	Altus	10	OKC
8	Tulsa	13	Tulsa
12	OKC	19	Altus
22	Tulsa	24	OKC
28	OKC	27	Tulsa

Altus: Western OK State College
2801 N Main, Room A23

Enid: Garfield County Extension Office,
316 E. Oxford.

Goodwell: Okla. Panhandle Research &
Extension Center, Rt. 1 Box 86M

Hobart: Kiowa County Extension Center
Courthouse Annex, 302 N. Lincoln

Lawton: Great Plains Coliseum, Annex Rm.
920 S. Sheridan Road.

McAlester: Kiamichi Tech Center on
Highway 270 W of HWY 69

OKC: Oklahoma County Extension Office,
930 N. Portland.

Tulsa: NE Campus of Tulsa Community
College, (Apache & Harvard)
Large Auditorium

Pesticide Safety
Education Program