



# EPA Pesticide GP and Silviculture

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## Extent of Silvicultural Pesticide use

# Annual Applications by NAFO's Four Largest Members

<b>Ownership</b>	<b>18 million Acres</b>
<b>Annual Acres Treated</b>	<b>900,000+ (5%)</b>
<b>Number of Sites Treated</b>	<b>12,000+</b>
<b>Average Site Size</b>	<b>77 acres</b>
<b>Aerial</b>	<b>53%</b>
<b>Ground</b>	<b>47%</b>
<b>Herbicides</b>	<b>98 % of acres treated</b>

## **Current Environmental Protection**

**FIFRA Label**

**State Forestry BMPs**

**State Regulations**

**Internal Procedures**

**Technology**

**Forest Certification (large landowners)**

## EPA Pesticide GP

**EPA regulations define four activities as silvicultural point sources.**

- Pest control is not one of them.

**In 2003 EPA reaffirmed their decades-long interpretation that silvicultural pest and fire control, in addition to a number of other activities, are non-point sources (Silvicultural Exemption).**

## **EPA Pesticide GP**

**The 6<sup>th</sup> Circuit, in the National Cotton Council Case, found that pesticides and pesticide residuals are pollutants.**

**As a result EPA is developing a general permit for pesticide application over or near waters.**

## From the EPA GP Fact Sheet

**EPA understands that prior to initiating the 2006 NPDES Pesticides Rule the Agency had interpreted the Clean Water Act and its implementing regulations as not requiring a NPDES permit for forest pest control activities. .....**

**EPA therefore now requires all dischargers of pesticide pollutants, including dischargers in and over forest canopies where there are waters of the U.S. below the canopy, to obtain NPDES permits.**

## Exemption Status

**Silvicultural exemption was not before the Court in National Cotton.**

**A statement in the GP Fact Sheet should not suffice to change long-standing EPA policy.**

**We believe states can develop permits that exempt forestry and agriculture.**

# Draft Permit Requirements

## Notice of Intent

## Pesticide Discharge Management Plan

## Integrated Pest Management

- Consider non-chemical alternative
- Minimize Pesticide Discharges
- Site assessment trigger pest concentration

## 303(d)listed waters and Tier 3 waters not covered

## Monitoring

## Adverse Incident Reporting

## Record Keeping

## Annual reporting

## Permit Requirements – States Can Tailor Them

Only mandatory elements are:

**Effluent limitations** – possible to incorporate existing state requirements that go beyond the label.

**Water-quality standards** – exclude GP coverage for impaired waters and certain Tier III waters.

**Monitoring** – could be limited to visual.

## Concerns – Exposure to 3<sup>rd</sup> Party Intervention

### **Intervention in permit issuance.**

- Delays
- Conditions

### **Inappropriate use of site information.**

- Trespass/vandalism
- Protest

### **Lawsuits alleging non-compliance.**

## Concerns - Jurisdiction

### Wetlands

- Very productive pine sites with little/no water present
- But they are “Waters of US” – either have to get permit (even for hand application) or do expensive delineation.

### Ditches (many abandoned)

- Lots of them – which ones are jurisdictional?

## Expanding definition of Waters of US

### How near is ‘Near’?

## Concerns - Administrative

**Exposure to NOVs for “paperwork” issues.**

**Administrative resources.**

- Staff time
- Fees

**Glitch = NOV**

## Concerns - Operational

**A rigid Notice of Intent requirement could limit ability to respond to changing circumstances.**

**A rigid Integrated Pest Management requirement could force the use of less effective, more costly and more impactful practices.**

**Delays that cause us to miss the application window are very costly.**

## Conclusion

**Permit for silvicultural pesticide application doesn't make anything "better".**

**Permit creates legal exposure.**

**Permit will be costly.**

**Permit creates jurisdictional uncertainty.**

**Permit could cause delays and use of alternative practices impacting forest productivity and financial return.**

**Worrisome erosion of the silvicultural exemption.**