

WASHINGTON UPDATE

By Lee Van Wychen

April 2009

Weed Science Society Presidents Ask EPA to Pursue Rehearing

On March 30, 2009, the presidents of the Weed Science Society of America (WSSA), the Aquatic Plant Management Society (APMS) and the four regional weed science societies (NCWSS, NEWSS, SWSS, WSWs) asked EPA Administrator Lisa Jackson that her agency request a rehearing of the Sixth Circuit Court of Appeals decision that invalidated EPA's 2006 Final Rule that held that National Pollutant Discharge Elimination System (NPDES) permits from the Clean Water Act (CWA) were **not** required as long as pesticides were **sprayed in compliance** with the **Federal Insecticide, Fungicide, and Rodenticide Act** (FIFRA). The WSSA ardently supported this rule. The following is selected text from the weed science society presidents to EPA (the letter is available at <http://www.wssa.net/>)

Our science societies fully support government regulation of pesticide use. In fact, we believe FIFRA represents a significant government success story. Thanks to the extensive research and risk assessments that FIFRA requires, we've been able to safely improve crop yields, hold down food costs, reduce tillage and erosion, protect natural habitats and keep our drinking water safe.

If the Court of Appeals ruling stands, though, we run the risk of unraveling the more than 60 years of progress we've made under FIFRA. Here are a few points we ask you to consider:

- *Any pesticide marketed in the U.S. has undergone an extensive, science-based risk assessment and carries a very specific label governing its safe and effective use.*
- *A new permitting system would impact tens of thousands of growers and gardeners and leave them open to legal action – without offering any additional protective value.*
- *A new permit system will be an unfunded mandate that places an unfair and costly burden on the states further eroding our economy at a time when they can least afford it.*
- *The new permits could delay effective treatment times and allow invasive plants to spread like a biological wildfire that could reduce crop yields, clog irrigation ditches, overrun bodies of water and impact millions of acres of federally managed natural habitats that have been protected for future generations.*

Ultimately, we believe this new process holds the potential to derail our longstanding, science-based successes in weed and invasive plant management – negatively impacting

U.S. agriculture, our food and water supply and our nation's economy. We strongly urge you to file a petition for rehearing before the April 9 deadline.

The WSSA, the USDA (Secretary Vilsack), the Senate Agriculture Committee (Chairman Harkin and Ranking Member Chambliss), the National Association of State Departments of Agriculture (NASDA) and many other groups strongly advised that EPA request a rehearing of the Sixth Circuit Court decision by the April 9, 2009 deadline. Unfortunately, EPA, through the Department of Justice, did not petition for a rehearing.

Instead, EPA has submitted a request to the court for a 24 month stay in the court's decision to vacate the 2006 EPA rule. EPA estimates that it needs until **April 9, 2011** before the rule is vacated to develop, propose, and take final action to issue an NPDES general permit that would be consistent with and satisfy the CWA requirements. The following information was presented to the Sixth Circuit Court on April 8, 2009 in a statement to "stay the mandate" by James Hanlon, Director of the Office of Wastewater Management in EPA's Office of Water:

*EPA has determined that the Court's decision clearly impacts the following point source discharges to, over or near waters of the United States: discharges of chemical pesticides that leave a residual or excess and discharges of all biological pesticides. My staff has also worked with the EPA Office of Pesticide Programs (OPP) to clarify what pesticide use patterns **will trigger a requirement** to obtain an NPDES permit. **At least** the following large categories are covered when sprayed to, over, or near waters of the United States:*

- *Mosquito larvicides*
- *Mosquito adulticides*
- *Herbicides used to control weeds in lakes and ponds*
- *Herbicides used to control weeds in irrigation systems and other waterways*
- *Herbicides used to control weeds along ditch banks in agricultural drainage systems*
- *Insecticides used in wide-area insect suppression programs*
- *Herbicides used in wide-area control programs directed at aquatic invasive plant species*
- *Herbicides, insecticides and other pesticides used in forestry programs when applied over waters of the United States.*

Using available information sources, EPA OPP estimated the number of pesticide applicators and applications for the identified use patterns identified above. OPP estimates that these categories represent approximately 365,000 applicators and 5.6 million applications a year.

Again, the above statements by EPA were some of the reasons EPA gave to support its request for a 2 year delay in the court's decision to provide enough time for the Agency to write and publish a rule under the Clean Water Act for a national general permit by regulation addressing aquatic applications or applications of pesticides made on/over/near water.

At the same time on April 9, 2009, CropLife America, the American Farm Bureau Federation, the National Cotton Council, and other groups filed a petition for a rehearing before the entire 24-member U.S. Court of Appeals for the Sixth Circuit. The petitioners challenged that the 3-judge panel's interpretation of the Clean Water Act statutes and that the court misconstrued the reach of the NPDES program and "could impose permitting on virtually any nozzle, tailpipe, or garden hose."

What does all of this mean?

I've received panicked calls from a number of weed managers across the country. The Sixth Circuit Court arguably broadened the scope of the Clean Water Act to include virtually all pesticide applications. The WSSA wants to ensure that FIFRA remains the **preeminent federal law for pesticide regulation that protects both people and the environment**. The extensive research and science-based risk assessments required by FIFRA should not be jeopardized by politics or "environmentalist" lawyers who don't know the difference between hand-weeding and horseweed.

As of mid-April, 2009, **EPA's 2006 Final Rule will stand as is** until such time as all appeals/ stays/re-hearings are settled. Again, that rule says that NPDES permits are not required for pesticides sprayed to, over, or near waters of the United States as long as those pesticides are sprayed in compliance with FIFRA. In other words, we are a long way from the end of this.

USDA-ARS National Program Leader for Weed Science

The USDA is re-advertising the position for the Agricultural Research Service (ARS) National Program Leader for Weed Science because the applicant pool was "not sufficiently diverse". This is very disheartening since we have been working with the USDA-ARS leadership for over a year to get this extraordinarily important position for our discipline filled. Details are as follows:

SALARY RANGE: 102,721.00 - 153,200.00 USD per year

OPEN PERIOD: Monday, March 23, 2009 to Tuesday, May 26, 2009

SERIES & GRADE: GS-0408,0430,0401-14/15

POSITION INFORMATION: Full-Time Permanent

PROMOTION POTENTIAL: GS-15

DUTY LOCATIONS: vacancy(s) in one of the following locations: 1 vacancy - Throughout Maryland

WHO MAY BE CONSIDERED: Applications will be accepted from United States citizens and nationals.

JOB SUMMARY:

Find Solutions to Agricultural Problems that Affect Americans Every Day, From Field to Table. This is a re-advertisement of announcement number ARS-X8E-0027. Candidates who have applied under the previous announcement do not need to reapply.

The Agricultural Research Services, National Program Staff, Crop Production and Protection Unit is seeking a highly qualified individual to serve as a national authority and expert in the programmatic area of weed science research.

2009 Omnibus Public Land Management Act Becomes Law

On April 2, 2009, the Omnibus Public Land Management Act became Public Law 111-11. The law extends wilderness protections to 2.1 million acres of federal lands and elevates dozens of additional natural areas to new prominence within the public lands sphere.

The bill established the National Landscape Conservation System (NLCS), a 26-million-acre patchwork of ecologically and historically valuable lands owned by the Bureau of Land Management (BLM).

The omnibus also authorizes 15 new or expanded wilderness areas, constituting the largest expansion of the National Wilderness Preservation System since 1994.

In Title IV of the lands bill, language from Sen. Bingaman and former Sen. Pete Domenici establishes a "forest landscape restoration program" to prioritize and fund fire-suppression and other beneficial ecological treatments for forests under the jurisdiction of the BLM and Forest Service. Federal land managers would work with state and local authorities to identify parcels of at least 50,000 acres of mainly National Forest System lands needing active ecosystem restoration and authorizes \$40 million in funds to be appropriated for each of fiscal years 2009 through 2019.

USDA Secretary Tom Vilsack Lists Top Six Priorities

* Combating childhood obesity and enhancing health and nutrition, indicating that the Department should play a key role in the public health debate and that nutrition programs should be seen as an opportunity to both alleviate hunger and prevent health care problems.



* Advancing research and development and pursuing opportunities to support the development of biofuels, wind power, and other renewable energy sources, saying that USDA needs to make sure that the biofuels industry has the necessary support to survive recent market challenges while promoting policies that will accelerate the development of next-generation biofuels that have the potential to significantly improve our energy independence.

* Making progress on major environmental challenges, including climate change. Vilsack said it's important

that farmers and ranchers play a role with USDA in efforts to promote incentives for management practices that provide clean air, clean water, and wildlife habitat, and help farmers participate in markets that reward them for sequestering carbon and limiting greenhouse gas emissions.

* Supporting the profitability of farmers and ranchers by providing a safety net that works for all of agriculture, including independent producers and local and organic agriculture, and enforcing the Packers and Stockyards Act.

* Quickly implementing the 2008 Farm Bill; modernizing the food safety system; and investing in programs that alleviate hunger and suffering overseas and support long-term agriculture development.

* Restoring the mission of the Forest Service as a protector of clean air, clean water, and wildlife habitat; a provider of recreation opportunities; a key player in reducing greenhouse gas emissions and carbon sequestration. Vilsack indicated that it is important that we appropriately budget for wildfires so that the Forest Service has the resources it needs for both wildfires and its other missions.

USDA Unveils Updated Research, Education and Economics Information System

USDA Secretary Tom Vilsack unveiled an updated version of USDA's Research, Education and Economics Information System (REEIS), which allows the public to measure the impact and effectiveness of USDA's research, education and extension programs. The latest version adds additional data sources, opens data to Google Search and provides for extended data analysis.

REEIS version 5.0 includes the following new features:

- Project information will now include data from 2007 Accomplishment Reports from the Plan of Work System, and active and recently completed projects in the Current Research Information System (CRIS) database;
- More than 40,000 new and recently completed research projects and more than 1,000 planned programs are now easily accessible through Google Search; and
- Extended data analytics provide new reports and charts that focus on formula grant rankings and project trends by state, region, institution and knowledge area.

Since its initial development in 2002, REEIS has grown and expanded its data repository. REEIS currently houses information from several government agencies, including the Agricultural Research Service, CSREES, Economic Research Service, National Agricultural Statistics Service and U.S. Forest Service.

REEIS offers information ranging from agricultural and forestry research projects, to state accomplishment reports, statistics on funding, publications, institutions, faculties and students. For more information on REEIS, visit www.reeis.usda.gov

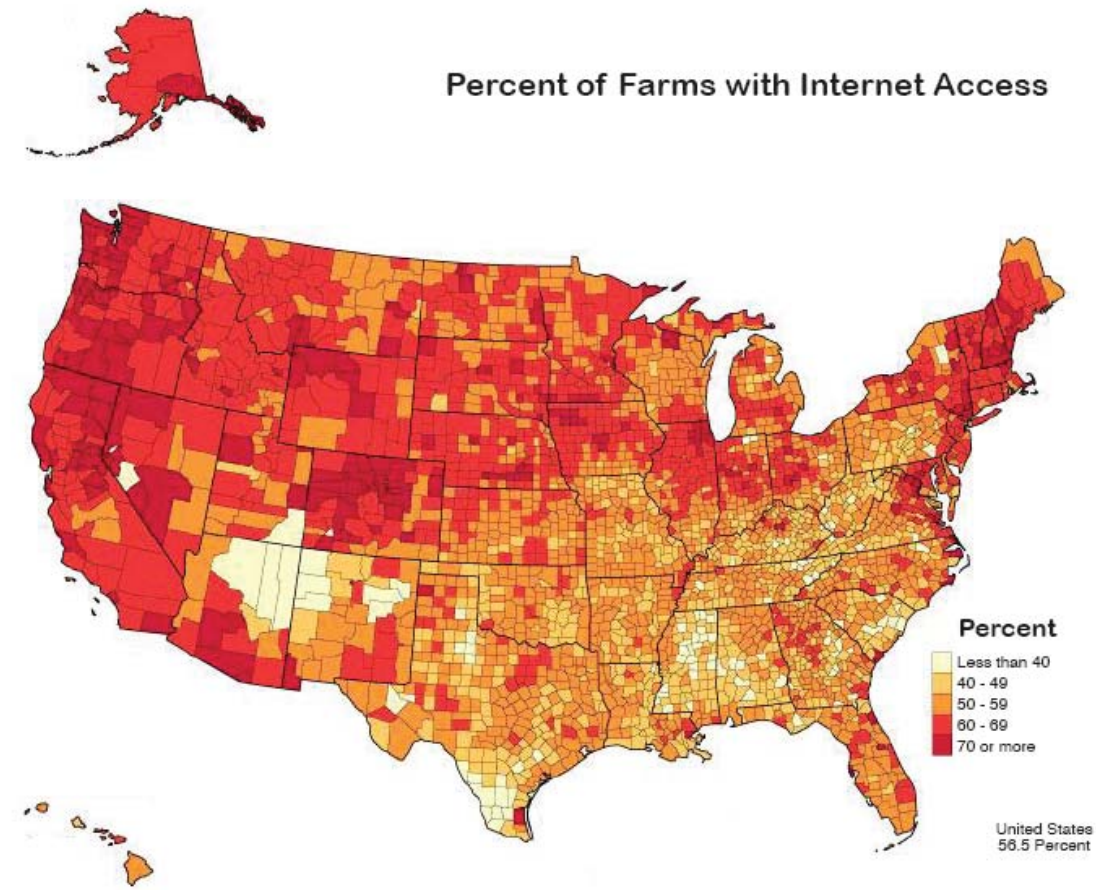
NSF Stimulus Money Will Be Used to Increase Grant Success Rate

The National Science Foundation (NSF) is using its \$2 billion windfall from the American Recovery and Reinvestment Act to fund more proposals already in the pipeline. NSF Director Arden Bement said that Congress asked the NSF to boost success rates with the overall goal to create or preserve jobs. Currently, about one in four grant proposals are funded. With the stringent tracking requirements attached to the stimulus money, this approach will definitely get the money out the door quickest and reduce the necessary paperwork.

The majority of proposals eligible for the \$2 billion Recovery Act funding include those that are already in-house at NSF and will be reviewed and/or awarded prior to **September 30, 2009**. NSF also will consider proposals declined on or after October 1, 2008.

USDA 2007 Census of Agriculture Is Available

USDA released the entire 2007 Census of Agriculture data on February 9, 2009. The National Agricultural Statistics Service (NASS) counted 2,204,792 farms in the US in 2007. The larger farms, over \$500,000 in sales increased in number as did the small



farms, less than \$2,500 in sales. The farms in between declined in number. There are

some excellent farm demographics throughout the report. For example, the 2007 Census shows both internet access and high-speed internet access at the county level for the first time. The 2007 Census of Agriculture is available at www.agcensus.usda.gov/Publications/2007/index.asp Enjoy!

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