



Focus on Aquatic Pesticide Permits

from Ecology's Water Quality Program

The purpose of this message is to clarify the Department of Ecology's (Ecology) position on permitting requirements for the use of aquatic pesticides.

In *Headwaters v. Talent Irrigation District*, a 2001 decision by the United States Court of Appeals for the Ninth Circuit, the Court concluded that the Clean Water Act requires National Pollutant Discharge Elimination System (NPDES) permits for the use of aquatic pesticides. The Ninth Circuit reached the same conclusion in 2002 in *League of Wilderness Defenders v. Forsgren*. These rulings apply in Washington which is part of the 9th Circuit.

The Environmental Protection Agency (EPA) recently issued an opinion and released draft rules that would allow the application of aquatic pesticides without an NPDES permit as long as the user follows the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) rules and label requirements. However, the types of actions that were taken by EPA can't overturn or change a court decision — only a new court case or Congressional action can change the court decision. Consequently, at this time Ecology will continue to issue these permits as we have in the past.

We strongly encourage users to continue to obtain permit coverage. Permit coverage provides a strong defense against lawsuits filed by third parties. These lawsuits can result in fines of \$25,000 per day, per violation, plus attorney fees. Permits also help Ecology track the use of different pesticides. Last year, this information was used to support the on-going registration of 2,4-D.

To find out how to apply for a permit, or for further information, visit Ecology's website at www.ecy.wa.gov/programs/wq/pesticides, or contact Kelly McLain at 360-407-6938 or <mailto:kelm461@ecy.wa.gov>.

Please note that there are certain chemicals that can't be used in Washington State, even with a permit. For a list of active ingredients approved for aquatic use, please see: http://www.ecy.wa.gov/programs/wq/pesticides/final_pesticide_permits/registered_pesticides.html.

Sincerely,

A handwritten signature in black ink, appearing to read "David C. Peeler".

David C. Peeler
Water Quality Program Manager

If you need this information in an alternate format, please contact us at 360-407-6401. If you are a person with a speech or hearing impairment, call 711 or 800-833-6388 for TTY.