

# NPDES Permits for the Application of Pesticides to Waters of the United States



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# Outline

- **Overview of EPA's National Pollutant Discharge Elimination System (NPDES) Pesticides Rule**
- **6<sup>th</sup> Circuit Court's decision**
- **Plans to develop General Permits for Aquatic Pesticide applications**



# Application of Pesticides to Waters of the United States in Compliance with FIFRA – Final Rule November 27, 2006

- The application of a pesticide to waters of the United States consistent with all relevant requirements under FIFRA does not constitute the discharge of a pollutant that requires an NPDES permit in the following two circumstances:
  1. The application of pesticides **directly to** waters of the United States in order to control pests. Examples of such applications include applications to control mosquito larvae, aquatic weeds, or other pests that are present in waters of the United States; and
  2. The application of pesticides to control pests that are present **over** waters of the United States, **including near** such waters, where a portion of the pesticides will unavoidably be deposited to waters of the United States in order to target the pests effectively; for example when insecticides are aerially applied to a forest canopy where waters of the United States may be present below the canopy or when pesticides are applied over or near water for control of adult mosquitoes or other pests.



## Litigation on Final Rule

- **Petitions for review were filed in 11 Circuit Courts.**
  - **The petitions were consolidated in the 6<sup>th</sup> Circuit Court of Appeals (*National Cotton Council, et al. v. EPA*).**

**On January 7, 2009 the 6<sup>th</sup> Circuit Court issued a decision.**



## 6<sup>th</sup> Circuit's Decision

- **January 7, 2009 the Court held that:**
  - **The final rule was not a reasonable interpretation of the CWA and vacated the rule.**
- **The Court held that NPDES permits are required for:**
  - (1) All biological pesticide applications that are made in or over, including near waters of the U.S.**
  - (2) Chemical pesticide applications that leave a residue or excess pesticide in water when such applications are made in or over, including near waters of the U.S.**



## Response to Court's Decision

- **On April 9<sup>th</sup> the U.S. Government filed a Motion for Stay of the Mandate for a period of two years.**
  - **The Court has granted EPA's request to stay until April 2011**
    - **The two years will provide EPA time to develop, propose and issue final NPDES general permits for unauthorized NPDES states, territories and tribes for pesticide applications covered under the decision and to provide outreach and education to the regulated and environmental communities.**
    - **During the stay, EPA will work closely with NPDES authorized States to develop their general permits concurrent with the development of EPA's general permits to expedite implementation.**



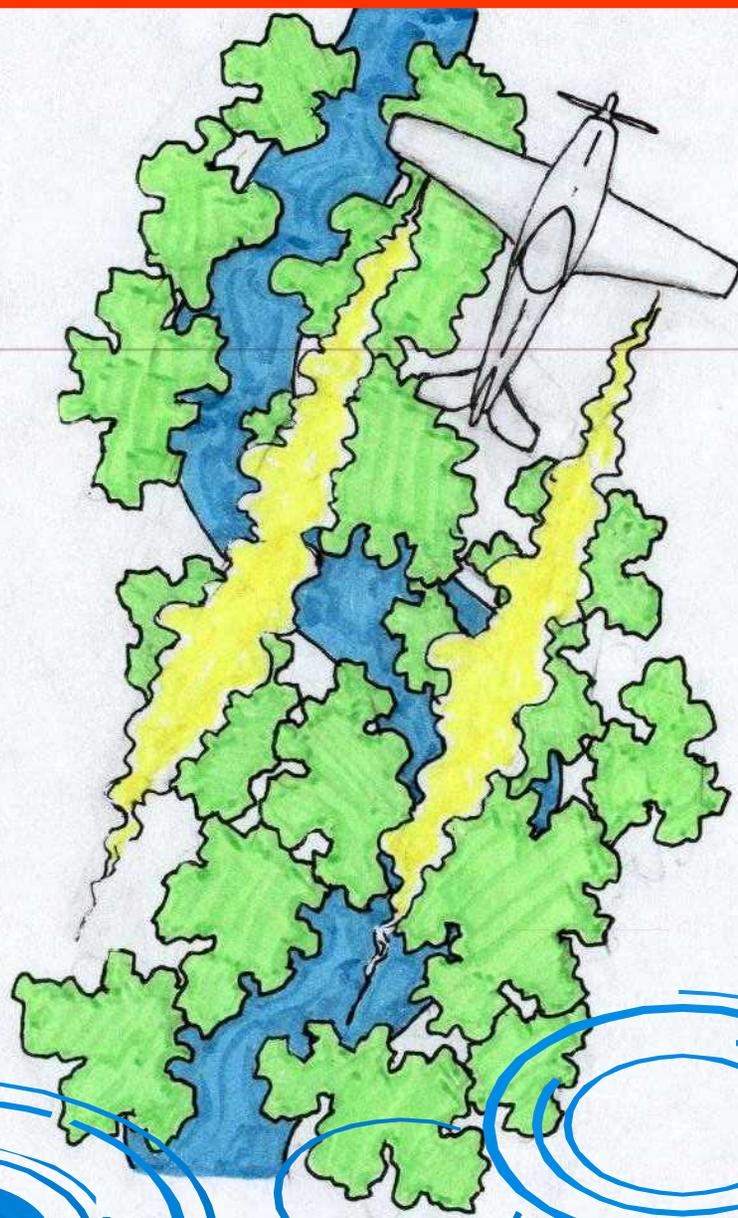
# Implications of 6<sup>th</sup> Circuit's Decision

- Irrigation return flows and agricultural runoff will not require NPDES permits as they are specifically exempted from the CWA.
- At least the following large categories are covered by Court's decision when sprayed to, over, or near waters of the U.S:
  - 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 U.S.
  - Products applied to kill fish, mussels, or other invasive aquatic species

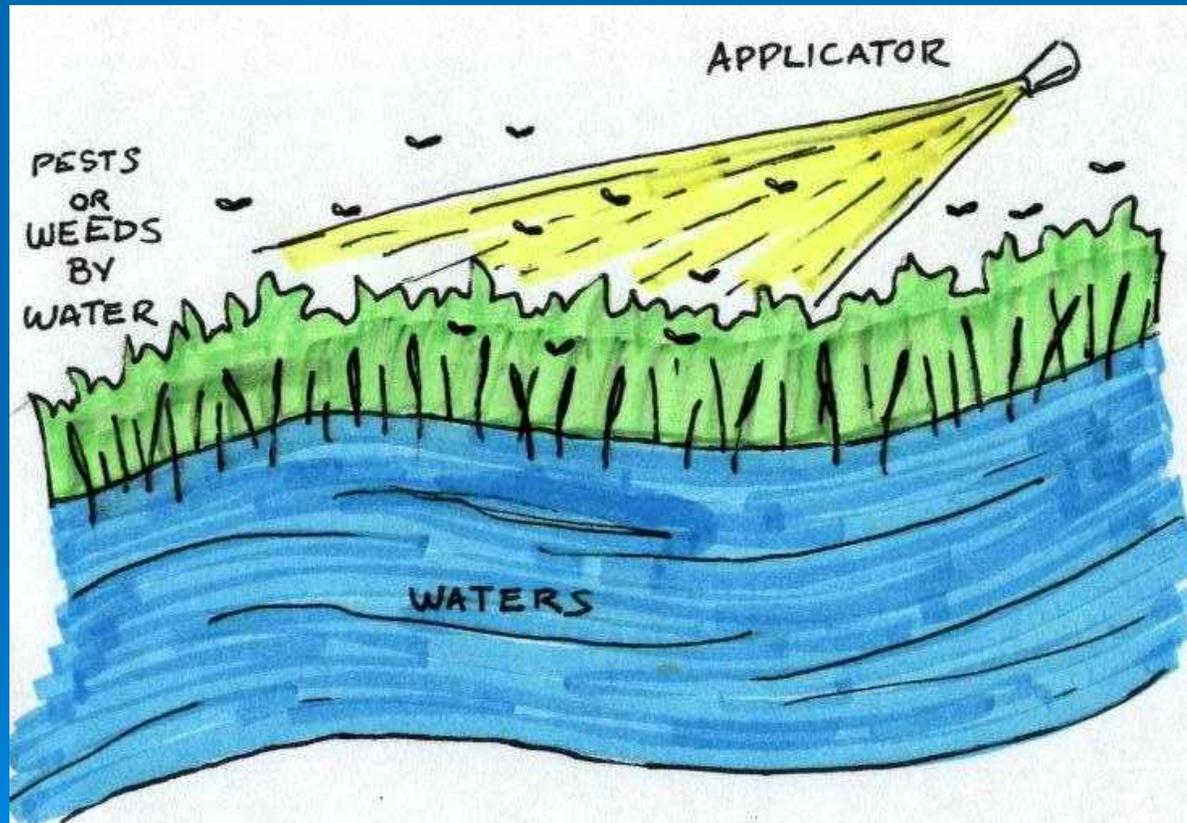


## Example: Aerial Mosquito Control

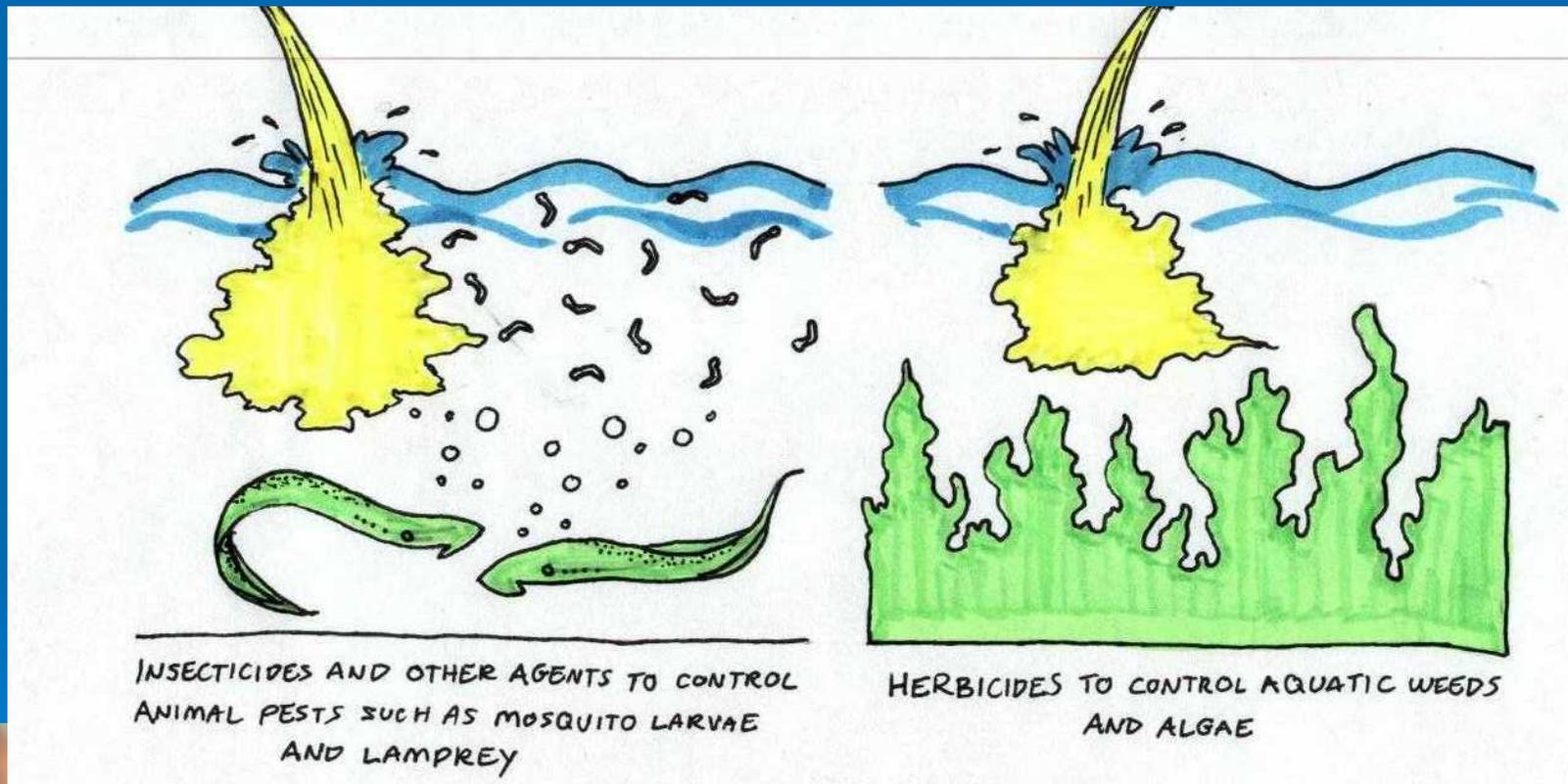
AERIAL SPRAY OVER FOREST CANOPY,  
WATERS BENEATH



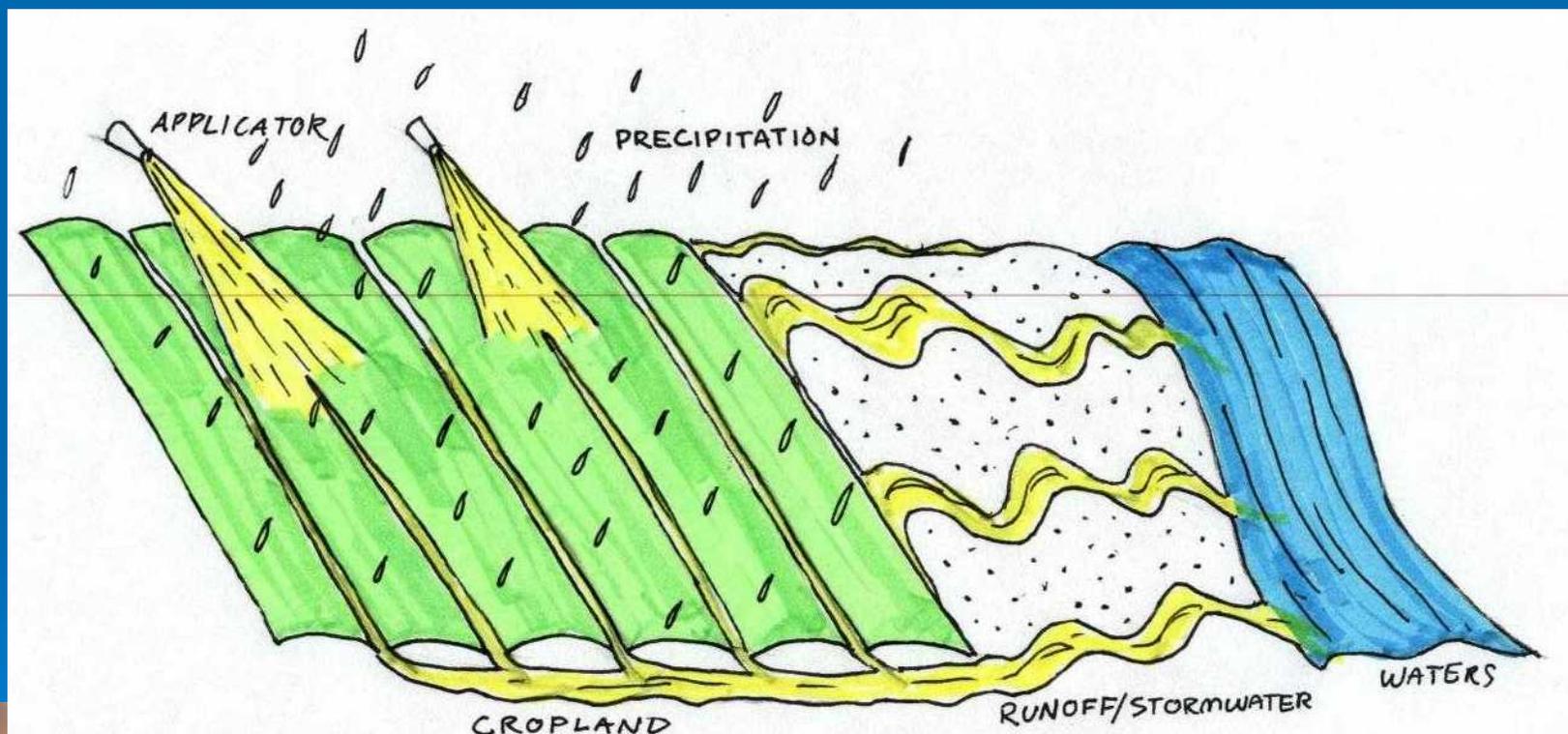
Example: Weed and Insect Control Near Water



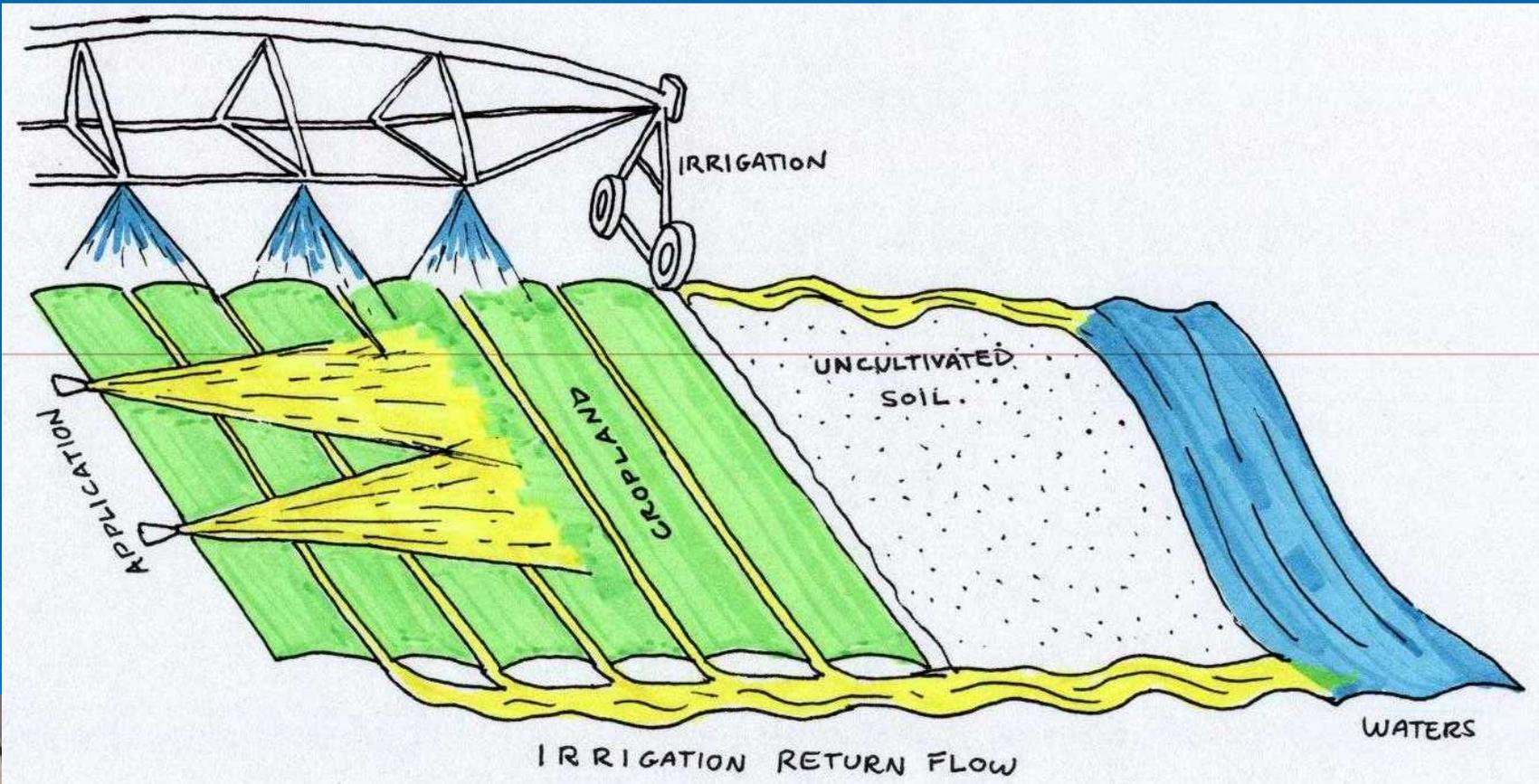
## Example: Direct Application to Water for Aquatic Pests



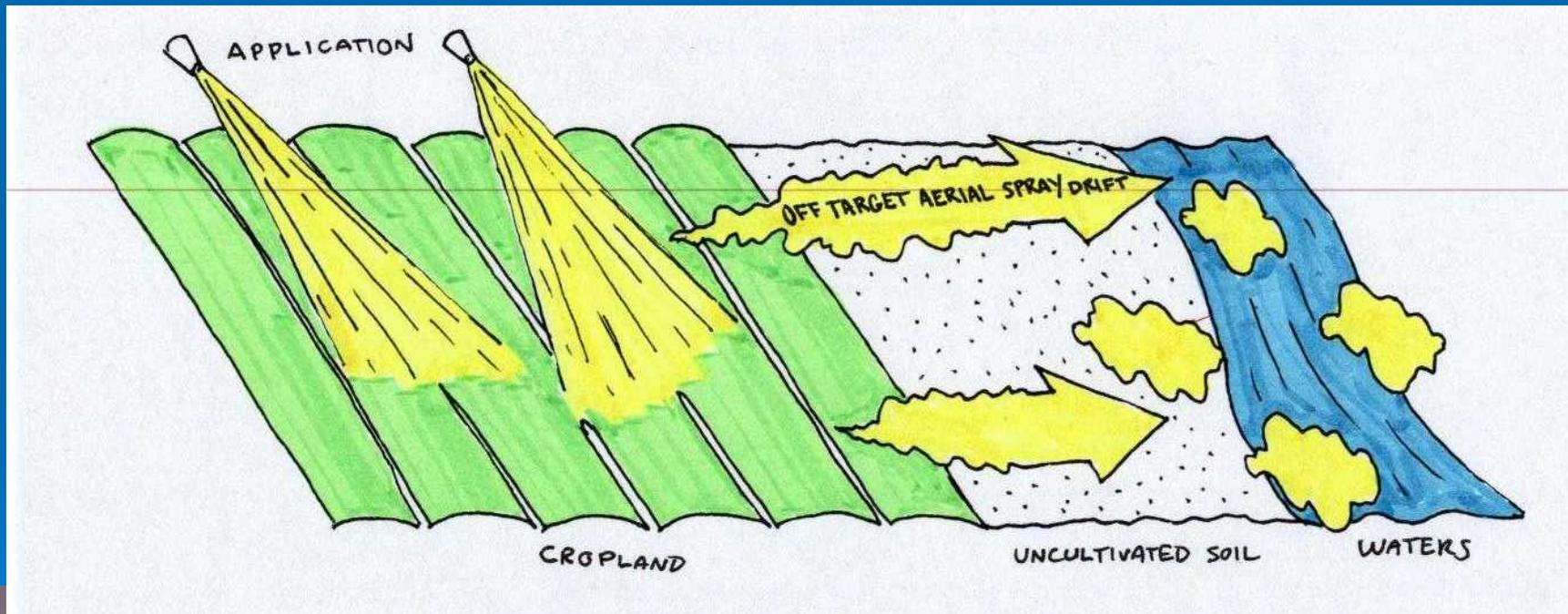
# Agricultural Stormwater; Exempt by Statute



# Irrigation Return Flow; Exempt by Statute



Example: Off-Target Spray Drift. Not covered by 2006 Rule



## Implications of 6<sup>th</sup> Circuit's Decision

- **OPP estimates that approximately 5.6 million such applications annually are performed by 365,000 applicators for these types of pesticide uses.**
  - **500 different pesticide active ingredients are contained in approximately 3,700 product labels.**



# Implementation

- EPA's General Permit will cover pesticide applications in AK, MA, ID, NH, and NM
- During the stay, EPA will work closely with the 46 NPDES authorized States to concurrently develop their general permits.
- Will provide outreach and education to the regulated and environmental communities.
- Since the court decision, EPA has been reviewing the 23 existing state pesticide application permits, initiated data gathering, scoped out a road map for developing the NPDES permits.

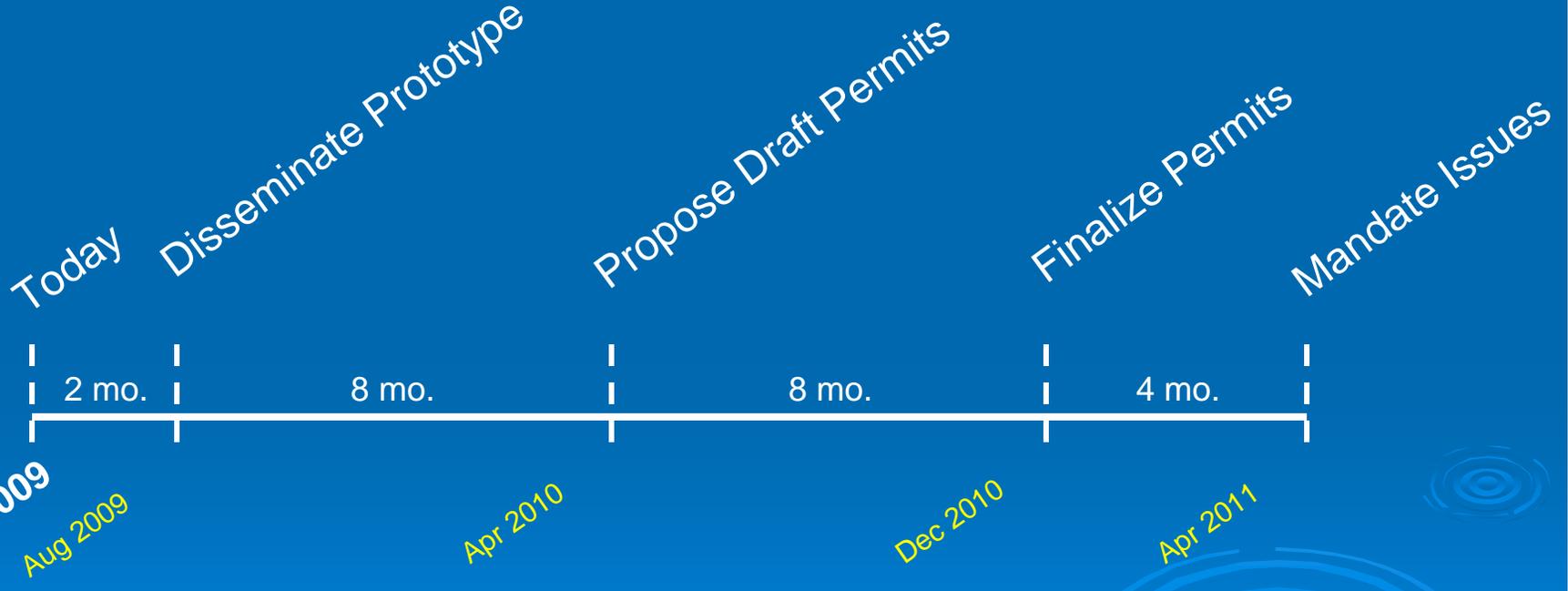


# State Regulatory Workgroup

- **Purpose:** To exchange information during the permit development processes, and to facilitate simultaneous general permit development for EPA and the states
- **Members:** Reps from the Association of State and Interstate Water Pollution Control Agencies (ASIWPCA) and the American Association of Pesticide Control Officials (AAPCO)
- **Meet via conference call every 4 – 6 weeks**



# Schedule



# General Permit Prototype

- **Purpose:** “reality check” prior to formal proposal
- **For:** One for mosquitocides, and one for herbicides to lakes and ponds
- **When:**
  - Available to state WG in late summer, 2009
  - Available to PPDC (EPA FACA) in October, 2009
- **How:** No formal public comment or response, rather will receive input to improve the proposal
- **Next Steps:** will apply lessons learned to remaining 6 pesticide use categories



# General Permits

- **General Permit**

- **1 permit issued per state**  **submitted**  
**many applications**
- **Appropriate where**
  - **multiple, similar sources (e.g., same category or similar process) within the same geographic area require permit coverage**
  - **sources have similar discharges and would require the same or similar permit conditions**



# Process for GP Coverage

- **Permittee must complete an electronic form called “Notice of Intent” (NOI)**
- **Information required in an NOI**
  - **Area of coverage**
  - **Sources covered**
  - **Address of permittee**
- **Submit NOI and coverage begins**
- **Covered for 5 years**



# Issues to be Considered

- Who must apply for the Pesticides permit?
- What will be required in a permit?
  - Effluent Limitations ?
  - Water Quality Standards?
  - Monitoring?
  - Reporting?

- Others?



# Questions ?

