

# Pesticides, Chemical Regulation, and Right-to-Know Committee Newsletter

Vol. 5, No. 2

March 2004

## FROM THE CHAIR

### *Kipp Coddington*

Planning for 2004 is well underway. It promises to be a busy year.

Ken Weinstein reports that the next pesticide program is scheduled for Tuesday, March 23, 2004, at 1:00 p.m. at Latham & Watkins' offices in Washington, D.C. U.S. Environmental Protection Agency (EPA) General Counsel Lisa Jaeger has been invited to speak on a variety of topics, so please mark your calendars.

### **33rd Annual Conference on Environmental Law (Keystone, Colorado, March 2004)**

We are co-sponsoring, with the Agricultural Management Committee, a program at the 33rd Annual Conference on Environmental Law (Keystone) (Saturday, March 10 at 10:30 a.m.). The panel is entitled "Potential Environmental Liability for 21st Century Agricultural Operations." Agricultural interests face a variety of challenges related to potential third-party impacts associated with the application and use of pesticides and technology. Similarly, some agricultural operations – such as concentrated animal feeding operations (CAFO) – face claims related to the off-site migration of airborne contaminants and odors.

The panel will explore these issues in the context of three cutting-edge issues. The first issue to be discussed is the survival of nuisance claims based on pesticide drift and FIFRA preemption in cases where the grower was adequately warned. Second, the panel will look at CAFO odors and airborne toxics, and discuss the possible tort liability of CAFO owners and operators. Third, the panel will review issues associated with pollen drift and potential off-site liabilities associated with the approved or unapproved use of genetically modified crops. Thomas Redick is chairing the panel. Our committee will be represented by Hank Bates of Cauley Geller (Little Rock, Arkansas). The other panelists are: (1) J. Thomas Carrato, Associate General Counsel – Global Regulatory Law, Monsanto Company (St. Louis, Missouri); (2) Darrell Hanavan, Executive Director, Colorado Association of Wheat Growers (Englewood, Colorado); and (3) David Hegwood, Counsel to the Secretary of Agriculture, U.S. Department of Agriculture (Washington, D.C.).

### **ABA Annual Meeting (Atlanta, Georgia, August 2004)**

The ABA recently accepted our program idea that a hazmat topic be presented at the ABA's 2004 Annual Meeting in Atlanta (August 5-10, 2004). The topic is "Government Initiatives to

**Pesticides, Chemical Regulation, and  
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*Lynn L. Bergeson, Editor*

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Environment, Energy, and Resources, and reports on  
the activities of the committee. All persons interested in  
joining the Section or one of its committees should  
contact the Section of Environment, Energy, and  
Resources, American Bar Association, 750 N. Lake  
Shore Drive, Chicago, IL 60611.



Secure the Transport of Hazardous Materials from Acts of Terrorism.” The program will be held on Sunday afternoon, August 8. More details to follow.

**12th Section Fall Meeting (San Antonio, Texas, October 2004)**

We are sponsoring two programs at the 12th Section Fall Meeting. The first program is entitled “The Expanding Jurisdiction of the Clean Water Act Permit Program: Implications for Agriculture and Irrigation.” It will be co-sponsored by the Agricultural Management, Water Quality & Wetlands, and Water Resources Committees. Most agricultural and irrigation activities traditionally have been exempt from the permitting requirements of the Clean Water Act’s National Pollutant Discharge Elimination System (NPDES). Recent court decisions interpreting the jurisdictional requirements for NPDES permitting, however, have expanded the interpretation of what is a “point source” subject to the NPDES permitting program such that agricultural activities – including pesticide and fertilizer application – arguably could become subject to NPDES permitting, at least in certain jurisdictions.

At the same time, in 2004 the U.S. Supreme Court will likely decide the case of *Miccokuskee Tribe v. South Florida Water Management District*, 280 F.3d 1364 (11th Cir. 2002), *cert. granted* (June 27, 2003), a case involving what constitutes the addition of a pollutant to waters, a jurisdictional threshold to the requirement for an NPDES permit. The decision in the case may result in routine irrigation activities being subjected to NPDES permitting requirements, further expanding the scope of the NPDES program. This program would discuss the recent court developments and evaluate their implications for agricultural activities and irrigation.

The second program is entitled "Security-Related Spill Response & Environmental Clean-up Jurisdictional Issues Related to the Regulation of the Chemical Industry." In the aftermath of the events of 9/11, it is no longer clear which federal and/or state agencies have the lead in security-related spill response and environmental clean-up. At the federal level, both EPA and the U.S. Department of Homeland Security (DHS) claim some responsibility, although the division of responsibility between these two agencies is uncertain, at best, under existing law.

For example, DHS has issued draft guidance related to clean-up standards for radioactive material dispersal events (*see Protective Action Guides and Operational Guidelines for Radiological Dispersal Device and Improvised Nuclear Device Incidents*), an area that traditionally was addressed by EPA and other agencies, such as the Department of Energy (DOE) and the Nuclear Regulatory Commission. In *APWU, AFL-CIO v. Potter*, the United States Court of Appeals for the Second Circuit recently extended to security-related clean-ups long-standing limits on court jurisdiction over EPA clean-up decisions, providing a boost to Bush Administration efforts to shift clean-up authority over such matters to DHS. This panel will examine these and related issues.

**PESTICIDE, CHEMICAL  
REGULATION AND RIGHT-TO-KNOW  
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**EPA AND FDA SIGN MOU ON R&D AND  
EMERGENCY RESPONSE EFFORTS  
FOR HOMELAND SECURITY**

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**Charles A. Cortinovis**

On Jan. 22, 2004, the U.S. Environmental Protection Agency (EPA) and the U.S. Food and Drug Administration (FDA) entered into a Memorandum of Understanding (MOU) to establish a framework for collaborative research and development (R&D) and emergency response efforts on the subject of Homeland Security between the two agencies. 69 Fed. Reg. 3148. The MOU is intended to expedite R&D of new methods and technologies that can be used to support Homeland Security efforts by public and private entities to avert and/or mitigate the effects of terrorist activities in the United States. The main focus of these efforts will be safe buildings, water security, food safety, and rapid risk assessment. EPA and FDA believe that the MOU will minimize duplication, more effectively use the agencies' resources, and accelerate technology development in this area.

Under the MOU, EPA and FDA will meet annually to discuss areas of R&D and emergency response involving Homeland Security activities. EPA and FDA will also participate in joint technical activities such as inspections, workgroups, and scientific or engineering panels to provide technical advice and guidance on Homeland Security issues. In special cases, the agencies may work together to address the R&D and emergency response activities of a third party, either public or private.

In addition to establishing this collaborative framework, the MOU sets the stage for future, more detailed Interagency Agreements (IAGs) between specific EPA laboratories and centers and one or more FDA laboratories for specific projects. These specific projects could include issues such as early detection of impending

terrorist attacks or dealing with the aftermath of terrorist attacks. Each IAG or activity will have a Technical Lead, who will perform various duties, including supervising technical information exchange between the agencies, evaluating progress under the IAG, organizing and participating in technical workshops, and recommending improvements for MOU activities. EPA and FDA will also meet semi-annually to discuss technical progress for each IAG or activity.

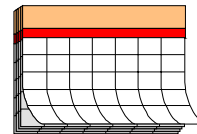
The activities of the MOU will be reviewed on an annual basis. FDA's Coordinator of Counter Terrorism Laboratory Response Development/Office of Regulatory Affairs is responsible for organizing the planning and annual meetings. The IAGs developed under this MOU will provide mechanisms for the coordination, handling, and public disclosure of information. Each agency will expend its own funds, and will assume its responsibilities based on its budget. The MOU will be effective for seven years, and can be cancelled with 90 days notice by either agency. It will be reviewed annually for any proposed changes, and is not binding on either agency.

While the MOU itself does not address specific regulatory actions to be taken by EPA and FDA, it does establish a framework for regular meetings and joint activities between the research arms of both agencies to facilitate cooperation on Homeland Security R&D issues. This opens up the potential for research into items such as vaccines, disinfectants, and decontaminant agents to prevent against or to deal with terrorist attacks. A main focus of the MOU is ensuring a safe food and water supply, so Homeland Security technologies in these subjects are likely to be preferred areas for research.

*For more information about the FDA/EPA MOU, please contact Charles Cortinovis at Keller and Heckman LLP at 202/434-4139 or cortinovis@khlaw.com.*

## AMERICAN BAR ASSOCIATION SECTION OF ENVIRONMENT, ENERGY, AND RESOURCES

### *Calendar of Section Events*



#### **33rd Annual Conference on Environmental Law**

March 11-14, 2004  
Keystone, Colorado

#### **Eastern Water Resources: Law, Policy and Technology**

May 6-7, 2004  
Hollywood, Florida

#### **Wetlands Law and Regulation**

May 19-24, 2004  
Washington, D.C.  
(Co-sponsored with ALI-ABA and ELI, for  
information call 800/253-6397)

#### **ABA Annual Meeting**

August 5-11, 2004  
Atlanta, Georgia

#### **12th Section Fall Meeting**

October 6-10, 2004  
San Antonio, Texas

***For more information, see  
the Section Web site at  
<http://www.abanet.org/environ>  
or contact the Section  
at 312/988-5724.***



## CONGRESS PASSES PESTICIDE FEES LEGISLATION

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### Lynn L. Bergeson

On Jan. 23, 2004, Congress passed the Consolidated Appropriations Bill, which incorporates the text of the "Pesticide Registration Improvement Act of 2003" (Act) (S. 1664). The Act was introduced in the Senate on Sept. 25, 2003, by Sens. Thad Cochran (R-MS) and Tom Harkin (D-IA) with 21 co-sponsors. The legislation is the culmination of considerable negotiation among the U.S. Environmental Protection Agency (EPA), industry, and activist groups on the issue of whether new user fees should be imposed to fund pesticide registration and reregistration activities. In essence, the legislation is intended to provide more stable funding for EPA and, as a result, greater predictability for industry with regard to the timing of reviews of their applications and products. Pesticide registrants will pay increased maintenance fees and new registration fees, and EPA will be subject to deadlines for the completion of reviews of certain pesticide products. Rep. Frank Lucas (R-OK) introduced identical legislation (H.R. 3188) in the House on Sept. 25, 2003. The House bill has five co-sponsors.

Discussed below are the major provisions of the Act as passed in the Consolidated Appropriations Bill.

- The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) is amended to allow EPA to set and collect "registration fees" for new registrations. EPA must publish the schedule that appeared in the Sept. 17, 2003, *Congressional Record*, listing and implementing the new fees within 30 days of the bill's effective date. These new fees are expected to raise \$18 million per year.

The Biopesticide and Pollution Prevention Division (BPPD) will review applications for new active ingredients for non-food uses in 12 months in fiscal years (FY) 2004-2008 and the application fee will be \$15,000; the Antimicrobial Division (AD) will review applications for new active ingredients for non-food, indoor, FIFRA Section 2(mm) uses in 24 months in FYs 2004-2008 and the application fee will be \$50,000; and the Registration Division (RD) will review applications for new active ingredients for non-food, outdoor uses in 32 months in FY 2004, 28 months in FY 2005, and 21 months in FYs 2006-2008, and the application fee will be \$330,000. The BPPD will review applications for new "me-too" products in six months in FYs 2004-2005 and in four months in FYs 2006-2008, and the application fee will be \$4,000; the AD will review applications for new "me-too" products for non-food, indoor, FIFRA Section 2(mm) uses in 6 months in FYs 2004-2008 and the application fee will be \$4,000; and the RD will review applications for new "me-too" products in 10 months in FY 2004, eight months in FY 2005, and six months in FYs 2006-2008, and the application fee will be \$4,000.

- EPA is subject to a schedule for reviewing pesticide product registration applications. The decision review periods are included on the registration fee schedule.
- There is oversight of EPA's registration efforts through an annual audit by EPA's Inspector General, who must report the findings and recommendations of the audit to the Administrator and to the appropriate committees of Congress.
- Judicial review is available to applicants if EPA fails to make a determination on an application for registration of a new active ingredient or new use for which a

registration service fee is paid. Prior to filing a lawsuit, an applicant must request a meeting with EPA to set an acceptable alternative time frame. An applicant must wait two years from the date on which the decision time review period for the application ends before obtaining judicial review of EPA's failure to make a determination within the decision time review period.

- Current registration maintenance fee limits have been increased as noted below, with the greatest increases during the first three years of the proposal and then declining in the last two years. The increases are expected to increase the current revenues from these fees to \$26 million from the current \$21.5 million in FY 2004, and to \$27 million in FYs 2005 and 2006, followed by declines to \$21 million in FY 2007 and to \$15 million in FY 2008.

- ▶ For registrants holding 50 or fewer registrations:
  - FY 2004: A maximum of \$84,000 (up from the current maximum of \$55,000);
  - FYs 2005 and 2006: \$87,000;
  - FY 2007: \$68,000; and
  - FY 2008: \$55,000.
- ▶ For registrants holding more than 50 registrations:
  - FY 2004: A maximum of \$145,000 (up from the current maximum of \$95,000);
  - FYs 2005 and 2006: \$151,000;
  - FY 2007: \$117,000; and
  - FY 2008: \$95,000.
- ▶ Under the legislation, "small businesses" is defined as those with global gross pesticide revenue at or below \$60 million, and a lower fee schedule applies for small businesses holding 50 or fewer registrations:
  - FY 2004: \$59,000;
  - FYs 2005 and 2006: \$61,000;
  - FY 2007: \$48,000; and
  - FY 2008: \$38,500.

- ▶ For small business registrants holding more than 50 registrations, the following schedule applies:
  - FY 2004: \$102,000;
  - FYs 2005 and 2006: \$106,000;
  - FY 2007: \$82,000; and
  - FY 2008: \$66,500.

- Fees now charged by EPA to set tolerances are eliminated through Sept. 30, 2008.
- The funds collected pursuant to the bill's provisions go directly to EPA. EPA is to use them largely for registration, although a percentage will go to other programs, including:
  - ▶ Between \$750,000 and \$1 million per year will go to worker protection research and regulatory programs.
  - ▶ Up to \$500,000 per year could be used by EPA to review inert ingredients in pesticide mixtures.
- The legislation provides baseline budget protection for the Office of Pesticide Programs (OPP) for FYs 2004, 2005, and 2006. During this time period, EPA may not assess registration service fees unless the appropriation for OPP is equal to or greater than the amount appropriated for OPP in FY 2002. This is intended to ensure that revenue collected from pesticides fees will not be offset by a decrease in Congressional appropriations for either EPA or OPP.

In the past, a majority in industry felt that they did not want to pay additional fees of any kind, although a solid core indicated that they might be willing to pay additional fees if the fee structure were equitable and there was greater assurance of decisions being made within fixed periods of time. Generally speaking, there was more support for maintenance fees than there is for registration fees. This legislation reflects the interests of both the

industry and the activist community as both want the program to have sufficient resources to do its job. By providing deadlines for EPA registration decisions, the legislation provides industry more stability in determining how long it will take new products to be approved for market. The legislation also provides EPA a dependable stream of funding for OPP to ensure it can meet those deadlines. Whether this legislation will meet these goals will be better revealed as EPA acts to implement it.

## Implications

The successful implementation of the new law is critical to ensuring that EPA's OPP has the necessary resources to make consistent, high quality, timely registration decisions. It creates economic incentives for industry to practice sound science and submit quality applications. Activists hope that the law will ensure the completion of the reregistration program, while industry hopes that it will result in greater assurance of timely action on registration actions. EPA must balance these somewhat competing interests with the reality of the budget process, ensuring that it has both adequate and experienced staff as well as access to qualified contractors that support the review of scientific studies.

An industry-sponsored implementation team is already in place to design and divine the policies and practices necessary for its successful implementation. Therefore, it is particularly important for affected companies to become knowledgeable about the basic requirements of the law, and to understand many of its potential issues and implications. There are, for example, a number of process-related issues, including:

- when the time clock starts ticking;
- how and when the checks will be deposited and cleared;

- how and where registrants will be able to track the progress of their application submissions; and
- how and when registrants can challenge a failure by EPA to make decisions within the prescribed time frames.

Policy issues abound, including how EPA will treat applications already in the system, and how and when the monies directed to inerts and worker protection programs will be used. Key elements of the bill that have policy implications and that will be discussed during the conference include: baseline protection, registration timelines, judicial review, small business exemptions, use of maintenance fees, and process reforms.

Registrants will need to consider the practical and strategic decisions that the legislation presents. On the practical side, it is very important to read and understand the law and its implementation policies and practices, and to ensure that each submission fits within the definitions provided for each registration category. It is inevitable that some registrants will drop some of their current registrations as a result of the increase in fees, creating market opportunities for those willing to fill the gaps. Companies will need to make strategic decisions as to whether and when they send in checks for pending applications to ensure that they get decision dates.

The new law is important, and EPA's implementation of it every bit as important. Practitioners are urged to monitor this development carefully to ensure your company's and/or clients' interests are protected.

# New from ABA Publishing and The Section of Environment, Energy, and Resources

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## **Issues of Legal Ethics in the Practice of Environmental Law by Irma S. Russell**

This new book is an essential guide for every environmental lawyer on representing industrial clients, government agencies, individuals, and public interest groups. It focuses primarily on the rules of ethics that raise significant concerns for the environmental practitioner. A proactive approach to ethics helps lawyers avoid problems by making reasoned decisions before ethical problems arise in urgent or complicated context. This book helps you anticipate and analyze these difficult ethics issues. This book also examines the American Bar Association's Model Rules of Professional Conduct (Model Rules), judicial decisions, formal and informal ABA Opinions, and opinions of state boards of professional responsibility. Contents Include:



- Regulation of Lawyers
- The Duty of Competence and the Lawyer's Duty of Diligence
- The Lawyer-Client Relationship
- Confidentiality
- Conflicts Concerns in Environmental Law
- Imputed Conflicts
- Duty of Candor
- The Lawyer's Duties to Non-Clients
- Alternative Dispute Resolution
- The Anti-Contact Rule
- Multi-Disciplinary Practice
- Multijurisdictional Practice
- Pro Bono Representations
- Lawyer Advertising
- Lawyer's Fees
- The Lawyer's Role in Working with Consultants
- The Lawyer Role in Working in Use of the Media
- Termination and Withdrawal from Representation

2003 6 x 9 480 pages

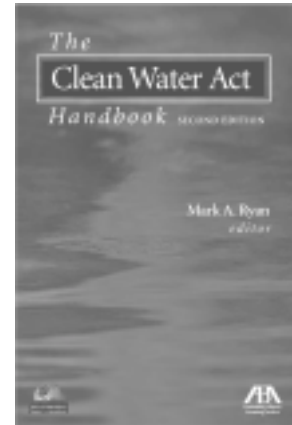
Product Code: 5350097

Price: Section of Environment, Energy, and Resources members \$64.95; Regular \$79.95

# **The Clean Water Act Handbook, Second Edition**

## **Mark A. Ryan, editor**

This updated guide is the definitive resource to the provisions and complexities of the federal Clean Water Act and how it continues to evolve. Recent court rulings and the change of administration have resulted in significant changes that dramatically affect practitioners working in the area. This new edition provides detailed explanations of these changes and considers the impact of recent court decisions, including the Supreme Court's decision in *SWANCC* and the Court of Appeals decisions in *American Mining Assoc.*, *Talent Irrigation*, and *Forsgren*, among others. Beginning with an overview of the law's provisions and pertinent regulation and enforcement issues, the subsequent chapters address specific issues, such as:



- NPDES permits
- Control of publicly owned treatment works
- Requirements applicable to indirect discharges
- The regulation of wetlands and the impact of recent judicial decisions
- Oil and hazardous substance spills
- Enforcement options under Section 309
- Judicial review

Chapters begin with a section on applicability and scope. Within each fully annotated chapter, clear explanations of specific statutory and regulatory provisions and court decisions applicable to the issue are presented in the order needed for full and accurate analysis – a virtual checklist of requirements and considerations. Making this new edition more useful than ever, the authors reference URL addresses for quick, up-to-the-minute information on government documents that are often difficult to locate.

2003 6 x 9 336 pages

Product Code: 5350099

Price: Section of Environment, Energy, and Resources members \$79.95; Regular \$95.00

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## AGRICULTURAL PESTICIDE APPLICATIONS AND THE CLEAN WATER ACT PERMIT PROGRAM

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**Kenneth W. Weinstein**  
**Claudia M. O'Brien**  
**Latham & Watkins**

Most agricultural and irrigation activities traditionally have been exempt from the permitting requirements of the Clean Water Act's (CWA) National Pollutant Discharge Elimination System (NPDES). Although the CWA and NPDES permit requirements have been in effect since 1972, no court or government agency has ever concluded that the ordinary application of a pesticide to agricultural crops, resulting in incidental runoff or spray drift entering a water body, is an activity which requires an NPDES permit. Rather, the purpose of the NPDES program was and is to ensure that industrial facilities and wastewater treatment plants treat their wastewaters to levels that reflect the best current technology and ensure protection of water quality.

Recent court decisions interpreting the jurisdictional requirements for NPDES permitting, however, have expanded the scope of NPDES program jurisdiction such that agricultural activities – including pesticide and fertilizer application – arguably could become subject to NPDES permitting. See, e.g., *League of Wilderness Defenders v. Forsgren*, 309 F.3d 1181 (9th Cir. 2002) (holding silvicultural aerial spraying of insecticide over forest was a “point source”); *Headwaters, Inc. v. Talent Irrigation District*, 243 F.3d 526 (9th Cir. 2001) (requiring NPDES permit for direct application of an aquatic herbicide in irrigation canal); *No Spray Coalition, Inc., v. City of New York*, 2003 WL 22888944 (2d Cir. 2003) (holding FIFRA does not preempt CWA NPDES permitting requirements).

Yet agricultural application of a pesticide product (including insecticides and herbicides)

in accordance with FIFRA requirements and the pesticide's approved label was never intended to be subject to the CWA's NPDES permit requirements. Pesticides may reach water bodies either through incidental runoff or spray drift. Neither results in a large amount of pesticides reaching water bodies, but between the two, runoff accounts for far greater loadings than spray drift. Congress, however, expressly exempted agricultural runoff from NPDES jurisdiction by defining it as a nonpoint source. An NPDES permit is required only where the following four criteria are met: (1) a pollutant (2) is discharged (3) from a point source (4) into waters of the United States. 40 C.F.R. § 122.1(b)(1). If agricultural runoff is a nonpoint source, what then about spray drift?

The same logic that exempts pesticides that enter water bodies via runoff from NPDES requirements as a nonpoint source should apply to pesticides that enter water bodies via spray drift. Indeed, if spray drift is subject to NPDES jurisdiction while runoff is not, then the exact same pesticide application must constitute both a point source and a nonpoint source at the same time. Such a construction of the statute and regulations is inherently inconsistent and illogical. Congress's exemption from NPDES requirements for runoff as a nonpoint source thus necessitates an equivalent exemption for spray drift.

An equally problematic result would flow from considering the truck or aircraft applying the pesticide to be a point source. If the nozzle on an airplane or truck applying pesticides that drift into water bodies is a point source, then by the same logic the vast majority of air emissions also could be brought within the purview of the CWA NPDES program – a result that is obviously contrary to Congressional intent and longstanding EPA interpretation. Indeed, the intent behind the NPDES permitting scheme cannot be served by applying it to pesticide application. NPDES

permits are intended to impose restrictions to reduce the impact on water bodies. Not only would such an exercise be duplicative, where such restrictions are already imposed as part of the FIFRA-required pesticide label, but requiring permit writers to develop site-specific permit requirements for each application of a pesticide product on each individual agricultural land would impose such staggering administrative burdens on EPA and the states that it would cripple the implementation of the NPDES program – exactly the concern that Congress raised when it chose to exempt agricultural runoff from NPDES jurisdiction.

Fortunately, the language of the Act does not mandate such a result; there is nothing in the CWA that would force the regulation of agricultural spray drift while exempting agricultural runoff. To the contrary, CWA Section 304(f), which requires state identification and evaluation of *nonpoint* sources, specifically identifies “agricultural and silvicultural activities, *including* runoff from fields and crop and forest lands.” 33 U.S.C. § 1314(f)(2)(A) (emphasis added). The use of the language “including” suggests that Congress envisioned that there would be agricultural and silvicultural activities other than runoff that also would be considered nonpoint source activities. It is reasonable to conclude that spray drift – the diffuse settling of air particles onto water – is one such activity. Furthermore, the language of the Act supports the conclusion that agricultural spray application is not a “pollutant” nor a “discharge,” precluding application of NPDES requirements. A pesticide being applied to crops for pest control purposes is a beneficial pesticide product, not a pollutant, and spray application of a pesticide into the air is not “discharged” to a water body.

Notwithstanding the forgoing logic, the recent court rulings suggest that it is now time for EPA, as the agency delegated the

responsibility for implementing both FIFRA and the CWA, to issue a thoughtful analysis and policy concerning this issue. While no court has yet been called upon to squarely rule on the question of whether the routine application of a pesticide to agricultural crops requires an NPDES permit, the rulings referenced above raise questions as to whether some courts have misinterpreted Congress’s intent regarding the proper scope of CWA jurisdiction. If these rulings were extended to the every-day application of pesticides to crops, the result would be catastrophic for agriculture. EPA should act now – before any court has occasion to rule on this issue – to avoid a decision that would cause the administrative workings of the NPDES program, as well as this nation’s agriculture industry, to grind to a halt because of a requirement to issue individual NPDES permits on each of the perhaps millions of pesticide applications that occur every year.

### LIKE TO WRITE?

The Pesticides, Chemical Regulation and Right-to-Know Committee welcomes the participation of members who are interested in preparing this Newsletter.

If you would like to lend a hand by writing, editing, identifying authors, or identifying issues, please contact the editor, Lynn Bergeson, at 202/557-3801 or [lbergeson@lawbc.com](mailto:lbergeson@lawbc.com).

### BACK ISSUES

Back issues of this Newsletter can be viewed on the Pesticides, Chemical Regulation and Right-to-Know Committee Web page at <http://www.abanet.org/envirom/committees/pesticides/newsletter/archive.html>.

# SAVE THE DATE!

## **EASTERN WATER RESOURCES: LAW, POLICY AND TECHNOLOGY**

**MAY 6-7, 2004**

### **WESTIN DIPLOMAT RESORT AND SPA HOLLYWOOD, FLORIDA**

Given the myriad issues evolving in eastern water law, the Section has developed a new program – Eastern Water Resources: Law, Policy and Technology – to provide practitioners with the most current information and perspectives. It will be one of the first major conferences to focus solely on water resources issues in the eastern United States.

Plenary sessions will include:

- an introduction to eastern water law issues highlighting current laws affecting water allocation in the East and recent trends among eastern states to modify their laws;
- a panel featuring the latest precedent-setting cases, including the recent U.S. Supreme Court decision in the water rights fight between Maryland and Virginia and key cases being litigated in a number of lower courts;
- a session on lessons to be learned from the western states;
- a session focusing on the increasing interplay between water quantity/water quality/endangered species issues featuring the recent Missouri River controversy; and
- a panel on the problems/permitting issues involved in trans-basin movement of water focusing on the litigation in the *Miccosukee* case currently before the Supreme Court and the *Trout Unlimited* case that has the potential to severely impact the provision of water to New York City.

There will also be a luncheon presentation on the everglades restoration project, one of the largest public works projects ever undertaken by the Army Corps.

Break-out sessions topics will include:

- legal issues involved in the everglades project;
- privatization of water supplies;
- watershed management;
- eastern compacts and interstate agreements; and
- ethics.

For more information about these programs, please visit the Section Web site:  
<http://www.abanet.org/enviro/> or contact the Section at 312/988-5724 or  
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