



National Alliance of Forest Owners
Investing in the Future of America's Forests

July 19, 2010

Water Docket
U.S. Environmental Protection Agency
Mail Code: 2822T
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Attention Docket ID No. EPA-HQ-OW-2010-0257

To Whom It May Concern:

**Re: Draft National Pollutant Discharge Elimination System (NPDES)
Pesticide General Permit for Point Source Discharges From the Application
of Pesticides, 75 Fed. Reg. 31,775 (June 4, 2010)**

The National Alliance of Forest Owners (“NAFO”) submits the following comments on the *Draft National Pollutant Discharge Elimination System (NPDES) Pesticide General Permit for Point Source Discharges From the Application of Pesticides*, 75 Fed. Reg. 31,775 (June 4, 2010) (“PGP”). We appreciate the opportunity to submit these comments on behalf of our members.

National Alliance of Forest Owners

NAFO is a growing alliance of U.S. private forest owners, managers, and organizations dedicated to protecting and enhancing the environmental and economic values of privately owned forests. NAFO represents over 55 member companies and associations, and a total of over 75 million acres of private forestland located throughout the United States. NAFO and its members work to support public policies that shape environmental regulations, taxes, land use decisions, and timber and non-timber markets in ways that protect and grow forest values.

NAFO members engage in a variety of pesticide application activities to manage their forest lands. The vast majority of silvicultural pesticide use involves herbicides,

which in general are less toxic than insecticides and other pesticides. Much of silvicultural pesticide use is terrestrial and targeted toward competing vegetation. Vegetation management, particularly in immature tree stands, is a vital silvicultural tool, both to control non-native and invasive species and to reduce vegetative competition (similar to herbicide use on agricultural crops). Tree growth lost to competition early in the life of a forest stand persists throughout the timber rotation, the economic effect of which lasts decades. Silvicultural pesticide use adheres to both the EPA-approved label requirements and to State-specific best management practices designed to prevent the unintended application of pesticides to waters. In addition, many forest landowners participate in third-party certification programs, such as the Sustainable Forestry Initiative and Forest Stewardship Council, which include pesticide application requirements that are subject to third party audits.

Summary of Major Comments

- Silvicultural pesticide use is currently defined and regulated as nonpoint source activity that does not require National Pollutant Discharge Elimination System (“NPDES”) permitting;
- The PGP and its supporting documents need to explicitly recognize the existing legal requirements and agency interpretations on silvicultural pesticide use, including 40 C.F.R. §§ 122.3(e) and 122.27(b)(1);
- The *National Cotton Council* decision requires NPDES permits for point source discharges of pesticides. The Sixth Circuit did not hold or in any way indicate that EPA’s long-standing interpretation of forest pest control as a nonpoint source activity is invalid or otherwise require EPA to change its interpretation;
- There is no basis in *National Cotton Council* for EPA to now redefine forest pest control as a point source activity, and so EPA should explicitly affirm that forest pest control is nonpoint source activity that does not require NPDES permit coverage;
- EPA should make clear in the PGP and Fact Sheet that terrestrial forest pest control continues to be considered nonpoint source activity pursuant to 40 C.F.R. §§ 122.27 and 122.3(e) and eliminate the ambiguity in the draft PGP and Fact Sheet on this issue;

- EPA cannot redefine terrestrial forest herbicide use as point source activity with no analysis of the substantial economic impacts; and
- Any proposed expansion of pesticide uses covered by the PGP that includes terrestrial forest pest control requires a new opportunity to comment for various reasons.

Detailed Comments

EPA's Regulations Clearly Define Silvicultural Pest Control As A Nonpoint Source Activity Not Subject to Clean Water Act NPDES Permitting

For over thirty years, EPA has considered forest pesticide use to be nonpoint source activity not subject to NPDES permitting. See, e.g., 40 C.F.R. §§ 122.3(e), 122.27(b)(1); EPA General Counsel Memorandum, *Interpretive Statement and Guidance Addressing the Effect of Ninth Circuit Decision in League of Wilderness Defenders v. Forsgren on Application of Pesticides and Fire Retardants, Robert E. Fabricant, General Counsel* (Sept. 3, 2003) (“2003 Interpretive Statement”); 41 Fed. Reg. 24,709, 24,710 (June 18, 1976). The PGP and its accompanying supporting materials (e.g. the Fact Sheet, Federal Register Notice, and Frequently Asked Questions) appear to cast doubt on this longstanding EPA interpretation by either ignoring or glossing over its key legal foundations. NAFO requests that EPA modify the draft PGP and supporting documents to ensure consistency with existing legal requirements and agency interpretations, and also to confirm the totality of underlying authority for CWA regulation of forest pest control, as set forth below.

Section 301(a) of the CWA prohibits the “discharge of any pollutant by any person” into waters of the United States unless, *inter alia*, the discharge is authorized by an NPDES permit issued under CWA § 402. See 33 U.S.C. §§ 1311(a) and 1342. The CWA defines “discharge of a pollutant” as “any addition of any pollutant to navigable waters from any *point source*.” *Id.* § 1362(12) (emphasis added). Thus, in the absence of a point source, no NPDES permit is required, even where such nonpoint source

activities result in the introduction of pollutants into waters of the United States. See *Nat'l Wildlife Fed'n v. Gorsuch*, 693 F.2d 156, 165 (D.C. Cir. 1982); *Nat'l Wildlife Fed'n v Consumer Power Co.*, 862 F.2d 580, 587 (6th Cir. 1988).

EPA has promulgated a specific definition for “silvicultural point source” in its NPDES regulations to include only four silvicultural activities. That definition specifically excludes silvicultural “pest control” from the definition of point source:

Silvicultural point source means any discernible, confined and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into waters of the United States. The term does not include non-point source silvicultural activities such as nursery operations, site preparations, reforestation and subsequent cultural treatment thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural runoff.

40 C.F.R. § 122.27(b)(1) (2009) (underlined emphasis added) (hereinafter “silvicultural rule”). In the 1976 preamble to this regulation, EPA explained that “only discharges from four activities related to silviculture enterprises, rock crushing, gravel washing, log sorting and log storage facilities, are considered point sources and thus subject to the NPDES permit program.” 41 Fed. Reg. 24,709, 24,710 (June 18, 1976); see also 40 C.F.R. § 122.3(e) (2009) (“The following discharges do not require NPDES permits: . . . Any introduction of pollutants from non point-source agricultural and silvicultural activities . . . but not discharges from . . . silvicultural point sources as defined in § 122.27.”).

EPA affirmed its regulatory definition in 2003, explaining that its silvicultural rule is “clear on its face” in that it identifies an exclusive list of the four silvicultural activities that are considered “point sources.” 2003 Interpretive Statement at 3 (listing rock

crushing, gravel washing, log sorting, and log storage facilities which are operated in connection with silvicultural activities). The 2003 Interpretative Statement explained “that where a definition declares what it ‘means,’ *it excludes any meaning not stated.*” *Id.*, quoting *Colautti v. Franklin*, 439 U.S. 379, 393 n.10 (1979) (emphasis added). In addition to § 122.27, the 2003 Interpretative Statement explained that 40 C.F.R. § 122.3(e) “makes it clear that discharges from forest lands do not require NPDES permits except ‘silvicultural point sources’ as defined by 40 C.F.R. § 122.27.” *Id.* at 3. Finally, the 2003 Interpretive Statement noted that “Congress expressly delegated to EPA the power to define ‘nonpoint source’ in the context of silviculture in order to address the appropriate pollutant controls for silvicultural activities.” *Id.* at 4, citing 33 U.S.C. §§ 208(b)(2)(F) and 304(f)(A). In sum, the 2003 Interpretive Statement concluded that “EPA intends to continue to follow its long-standing interpretation of 40 C.F.R. § 122.27 as excluding silvicultural pest and fire control activities from the definition of point source under the Act. Therefore, such activities will not require a NPDES permit.” *Id.*

The PGP, Fact Sheet, Federal Register Notice, and Questions and Answers nowhere mention or cite the silvicultural rule, the 2003 Interpretative Statement, or 40 C.F.R. § 122.3(e). Such authorities are critical to harmonizing the PGP with forest pest control activities, which EPA has clearly excluded from NPDES permit requirements for over three decades. No court has directed EPA to modify this long-standing regulation or the 2003 Interpretative Statement,¹ most certainly not the Sixth Circuit in *National*

¹ NAFO fully expects, however, that EPA would maintain its fealty to the *League of Wilderness Defenders v. Forsgren* decision as explained in the 2003 Interpretive Statement, i.e. that within the states in the Ninth Circuit, NPDES permits are required for aerial spraying of pesticides directly over and into navigable waters, including forestry aerial applications, because the Ninth Circuit held that such activity is a point source discharge. In the 2003 Interpretive Statement, EPA disagreed with the Ninth Circuit and believed that the court misinterpreted 40 C.F.R. § 122.27(b)(1). To the extent that the PGP and its

Cotton Council v. EPA, 553 F.3d 927 (6th Cir. 2009), as discussed below. EPA's silence produces unnecessary regulatory uncertainty for those engaged in forest pest control, and EPA should stand by its existing regulations and interpretations and clarify forestry's status in the PGP – that forest pest control is a nonpoint source activity and therefore not subject to NPDES permitting requirements, including those requirements in the PGP.

National Cotton Council Provides No Basis For EPA To Modify Its Silvicultural Rule And Corresponding Definition Of Forest Pest Control As A Nonpoint Source

The PGP and its Fact Sheet are not clear on the interaction of the PGP's permitting requirements and EPA's longstanding interpretation of silvicultural pest control, as explained above. Indeed, some statements could be read to indicate that EPA is abandoning its 30+ year interpretation, and that such change is demanded by *National Cotton Council*. For example –

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. The rule stated that pesticides applied consistently with FIFRA do not require an NPDES permit in certain circumstances, including the aerial application of insecticides to a forest canopy. 71 Fed. Reg. at 68,482. Vacating the 2006 NPDES Pesticides Rule, the Sixth Circuit Court of Appeals held that “dischargers of pesticide pollutants are subject to the NPDES permitting program in the Clean Water Act.” *National Cotton Council*, 553 F.3d 927, 940. EPA therefore now requires all dischargers of pesticide pollutants, including dischargers in and over forest canopies where there are

supporting documents attempt to extend NPDES permit requirements for forestry aerial application of pesticides to states outside of the Ninth Circuit, NAFO requests that EPA limit such requirements to only those states subject to the *Forsgren* decision, to maintain consistency with existing legal requirements and EPA interpretations. The PGP and all accompanying documents are silent with respect to EPA's response to the *Forsgren* decision as applied to forest pest control, and such silence only produces further regulatory uncertainty for those engaged in forestry activities. NAFO requests confirmation of the nonpoint source status of forest pest control activities, other than those activities in states subject to *Forsgren*.

waters of the U.S. below the canopy, to obtain NPDES permits.

Fact Sheet at 19. To the extent that EPA is conveying in the above statement that it no longer interprets its silvicultural rule to define forest pest control as a nonpoint source activity, and that *National Cotton Council* requires this change in interpretation, EPA is relying on an erroneous analysis of the Sixth Circuit's decision. While that decision requires NPDES permits for *point source discharges of pesticides*, the Sixth Circuit did not hold or in any way indicate that EPA's long-standing interpretation of forest pest control as a nonpoint source activity is invalid, or otherwise require EPA to change its interpretation, as set forth in detail below.

In *National Cotton Council*, the Sixth Circuit addressed a challenge to EPA's 2006 aquatic pesticide regulation interpreting the term "pollutant" to exclude the application of pesticides to, over, or near waters of the United States when the pesticide application is in compliance with Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"). See EPA, *Application of Pesticides to Waters of the United States in Compliance With FIFRA*, 71 Fed. Reg. 68,483 (Nov. 27, 2006). The Sixth Circuit rejected EPA's attempt to exclude pesticides from NPDES permitting requirements when such pesticides were used in accordance with their FIFRA labels. The court held that biological pesticides and chemical pesticide residuals are "pollutants" within the CWA's definition of that term (found at 33 U.S.C. § 1362(6)), and that point source discharges of such pollutants would be subject to NPDES permit requirements.

National Cotton Council did not consider or in any way address the silvicultural rule or the statutory basis for that rule. As described above, the 2006 rule before the Sixth Circuit hinged on EPA's interpretation of the statutory definition of "pollutant," and did not implicate the issues underlying 40 C.F.R. § 122.27 and EPA's long-standing

interpretations of that rule, i.e. that nonpoint source discharges like forest pest control are exempt from NPDES permitting. Indeed, the preamble to the 2006 rule expressly recognized EPA's definition of silvicultural point source and made clear that the issues raised in the 2003 Interpretive Statement regarding silvicultural pest control were "different" from those issues addressed by the 2006 rule and later analyzed by the Sixth Circuit. See 71 Fed. Reg. at 68,489 and n.3. Nothing in the 2006 rule suggested EPA was in any way abandoning its prior interpretation of the silvicultural rule, and therefore the issues related to 40 C.F.R. §§ 122.27 and 122.3(e) and the 2003 Interpretive Statement were not before the Sixth Circuit. In fact, EPA confirmed this very point in its brief before the Sixth Circuit: "The Final Rule offers no interpretation of point source or nonpoint source and so does not address the issue addressed in *Forsgren*." Respondent's Brief, *National Cotton Council v. EPA*, No. 06-4630, at 32 (Dec. 19, 2007).

Accordingly, there is no basis in *National Cotton Council* for EPA to now redefine forest pest control as a point source activity.² The Fact Sheet is vague on EPA's precise intent on this issue. In the interest of regulatory certainty, non-arbitrary agency action, and consistency with *National Cotton Council* (the sole and explicit legal driver of the PGP), EPA should avoid any indication that it is revising its decades-long interpretation of "point source" as applied to silviculture and explicitly affirm that forest pest control, outside of the narrow set of issues addressed in *Forsgren* (see n.1, *supra*), is nonpoint source activity that does not require NPDES permit coverage.

² Indeed, EPA could not revise such a long-established interpretation without engaging in notice and comment rulemaking pursuant to the Administrative Procedure Act, 5 U.S.C. § 553, and fully analyzing the economic impact of such a dramatic change in interpretation.

The PGP And Fact Sheet Should Confirm That Terrestrial Forest Herbicide Use Is Nonpoint Source Activity.

The PGP proposes permitting requirements for four specific use patterns – mosquito and other flying insect pest control, aquatic weed and algae control, aquatic nuisance animal control, and forest canopy control – which together according to EPA “would encompass the majority of pesticide applications that would result in point source discharges to waters of the U.S.” 75 Fed. Reg. at 31,782. Although silvicultural forest canopy use is apparently encompassed within the last category (although such use designation should be limited to the states within the Ninth Circuit, for the reasons discussed in n.1, *supra*), the PGP and accompanying Fact Sheet are mostly silent regarding significant categories of routine and essential silvicultural uses of herbicide, such as terrestrial forest pest control targeting competing vegetation at recently harvested sites and immature tree stands. Because NAFO assumes that EPA would not impose wide-ranging NPDES requirements on forest herbicide use through silence, particularly for uses that were not at issue in *National Cotton Council*, NAFO requests that EPA make clear in the PGP and Fact Sheet that forest pest control of competing vegetation continues to be considered nonpoint source activity pursuant to 40 C.F.R. §§ 122.27 and 122.3(e).

There are multiple examples in the Fact Sheet where EPA indicates that only point source pesticide discharges are now subject to NPDES permitting requirements in the wake of *National Cotton Council*, but the Fact Sheet is not a model of clarity on whether EPA is maintaining long-standing interpretations on nonpoint source activity, such as forest herbicide use against competing vegetation. For example, “any pesticide application activities that do not fall within the four use patterns covered by this permit will require coverage under some other NPDES permit if those activities result in *point*

source discharges to waters of the U.S.” Fact Sheet at 15 (emphasis added); see also *id.* at 5 (“chemical pesticide residuals are pollutants as applied if they are discharged from a point source for which NPDES permits are required”); *id.* at 15 (the draft PGP “does not cover discharges that, by law, are not required to obtain NPDES permit coverage”); *id.* at 6 (“[w]hile other use patterns are not covered by this general permit, the existence of this general permit does not, by definition, obviate the possibility that an individual permit would be necessary if other types of pesticide applications result in point source discharges to waters of the U.S.”).³ Because terrestrial forest herbicide use is currently defined by regulation and EPA interpretation as nonpoint source activity, NAFO assumes, and EPA should make clear, that such activity continues to fall outside of NPDES permitting requirements imposed by *National Cotton Council*.⁴

Other Fact Sheet statements add to the ambiguity, such as when EPA states that the covered use patterns in the PGP do not include “silvicultural terrestrial pests that are routinely controlled . . . in forestry operations,” Fact Sheet at 15, but EPA fails to make the next logical statement consistent with codified regulations that such pest control uses are nonpoint source activities. Further, EPA states that the PGP “does not cover terrestrial applications for the purpose of controlling pests on agricultural crops or forest floors. This fact sheet does not address whether these activities would need an NPDES permit” *Id.* at 6. The two examples in this statement, however, each relate to nonpoint source activity – pesticide application to agricultural crops implicates the statutory exemption from the definition of “point source” for agricultural storm water and

³ Similarly, EPA’s Frequently Asked Questions on the PGP denotes the need for a *point source* discharge in four separate responses (see Nos. 2, 6, 7, and 12).

⁴ In addition, EPA needs to add the “point source” qualifier to the following statement in the Fact Sheet (at 19), as noted: “EPA therefore now requires all [point source] dischargers of pesticide pollutants, including [point source] dischargers in and over forest canopies where there are waters of the U.S. below the canopy, to obtain NPDES permits.”

return flows from irrigated agriculture, 33 U.S.C. § 1362(14), and pest control on forest floors is defined by 40 C.F.R. § 122.27 as nonpoint source activity. There is nothing in the PGP, Fact Sheet, or other supporting documentation indicating that EPA is revising 40 C.F.R. § 122.27 and its related authority, and therefore EPA should address directly that terrestrial forest herbicide use, particularly the routine and essential practice of targeting competing vegetation, will continue to be regulated as nonpoint source silvicultural activity.

EPA Cannot Redefine Terrestrial Forest Herbicide Use As Point Source Activity With No Analysis Of The Substantial Economic Impacts

Given the multiple statements in the Fact Sheet properly limiting NPDES requirements to point source discharges and the absence of any EPA statements specifically revising 40 C.F.R. §§ 122.27, 122.3(e), or the 2003 Interpretive Statement, surely EPA is not, through silence, converting widespread silvicultural activity that has been treated as nonpoint source activity for decades to point source activity requiring individual NPDES permits. Not only are the PGP and Fact Sheet silent on such a dramatic change affecting a routine and essential forestry activity to control competing vegetation in forest stands, but, even more importantly, the PGP's accompanying economic analysis is also completely mute as to the economic impacts of defining silvicultural pest control activities as "point sources," other than those (incidentally) included as part of the "forest canopy pest control" use pattern included in the PGP. The economic analysis EPA has performed with regard to the effects of its proposed PGP addressed only the four use patterns to be covered under the permit, and does not address at all the economic impact of requiring *individual permits* for forest pest control, as all point source pesticide discharges not covered by the PGP must obtain individual

permit coverage. See *Economic Analysis of the PGP for Point Source Discharges From the Application of Pesticides*, at 10-24 (May 26, 2010); Fact Sheet at 15.

Such economic impacts on forest lands would be substantial, likely dwarfing the impacts on entities covered by the PGP itself that EPA has concluded will be “minimal.” See 75 Fed. Reg. at 31,784.⁵ The reasons for such impacts are briefly described below:

- Although infrequent on any given tract of land, herbicide application to control competing vegetation is essential to the economic regeneration of forest land;
- On a given tract, there is a critical time window for control of competing vegetation. The burdens and delays associated with NPDES permitting, particularly individual NPDES permits, would impose unreasonable costs on the landowner, undermine the economic viability of working forests, and increase the conversion of forest lands to development and other uses, thus eliminating the benefits to water quality that forests provide;
- NPDES permitting requirements that impair or preclude the effective control of competing vegetation would carry additional costs beyond the direct cost of permitting and permitting compliance. Any tree growth that is lost to competition early in the life of a forest stand persists throughout

⁵ EPA intimates that an appropriate baseline for economic comparison of the effects of its PGP is “the baseline of individual permitting,” apparently because permits for point source applications of pesticides to waters of the United States are now required by the *National Cotton Council* decision. 75 Fed. Reg. at 31,784. As a threshold matter, EPA’s suggested “baseline” is meaningless and at best distracting. EPA must consider the economic impact associated with all new permitting, not just a theoretical difference between individual permitting (which has not been required prior to *National Cotton Council*) and the requirements imposed by the PGP. Moreover, as explained above, *National Cotton Council* does not require a change in EPA’s long-standing interpretation of the silvicultural rule, so any comparison to such a baseline in support of the PGP is inapposite for any economic impacts resulting from new permit requirements for terrestrial herbicide use by forestry operations.

the tree rotation at great economic cost, to the point of rendering forest management impractical; and

- Because of the prevalence of wetlands and ditches in the southern United States, where roughly 125 million acres of forest is owned by more than 3 million families, regulating terrestrial forest herbicide use as a “point source” discharge and requiring individual NPDES permits would impose new and substantial costs on millions of private forest owners, reduce the productivity of some of the nation’s most productive forest lands, and further weaken an important segment of the regional economy.

Accordingly, NAFO must assume that EPA is not “hid[ing] elephants in mouseholes,” see *Whitman v. American Trucking Associations*, 531 U.S. 457, 468 (2001), and attempting to regulate entirely new classes of economic activity through silence or vague, indirect implication. Rather, NAFO will read the PGP and Fact Sheet as not affecting EPA’s long-standing interpretation at 40 C.F.R. § 122.27 – recognized by EPA in 2003 as “clear on its face” – which defines forest pest control such as terrestrial herbicide use to combat competing vegetation as nonpoint source activity. To provide certainty to the regulated community, EPA should reinforce and confirm that silvicultural pest control (other than the uses covered by the PGP and applicable in the Ninth Circuit), including the terrestrial use of herbicides, will continue to be treated as a nonpoint source activity and not subject to NPDES permitting requirements.

NAFO Reserves The Right To Comment If EPA Adds Additional Use Patterns

In its Federal Register Notice for the draft PGP, EPA suggests that if it later decides to expand the coverage of the permit to include use patterns in addition to the four covered in the PGP as currently proposed, the Agency does not intend to offer

additional opportunity to comment on the PGP in light of such additions. See 75 Fed. Reg. at 31,782-83 (“Due to the likely similarities between such additional activities and the associated effluent limitations, EPA expects that there will not be a need to re-propose the general permit to cover such additional activities in the final permit”). NAFO disagrees that an expansion of coverage would not require a new opportunity to comment, and respectively reserves the full extent of its rights to comment, consistent with the APA, on any expansion of the coverage or other change to the PGP that impacts its members. Should EPA decide to cover any additional use patterns, the economic impact of that expansion will not have been specifically addressed in EPA’s economic analysis of the impacts of the PGP. See, *supra*, Section 4. More particularly, NAFO will seek to comment on any expansion of CWA permitting requirements for herbicide or other forestry pesticide use if EPA proposes to modify the silvicultural rule, and on the additional economic analysis that would be necessitated by such a change.

Discharges To Ditches and Canals Are Only Regulated Under the CWA If They Are Waters of the United States

EPA states in the Fact Sheet that, as a result of the *National Cotton Council* decision, “discharges from the application of pesticides to irrigation ditches and canals that are *either* waters of the U.S. *or* convey to waters of the U.S. now require NPDES permit coverage.” Fact Sheet at 15 (emphasis added). The Fact Sheet overstates the scope of EPA’s jurisdiction under the CWA. The CWA only prohibits the (unpermitted) discharge of pollutants to waters of the United States. See 33 U.S.C. §§ 1311(a), 1362(12) (defining “discharge of a pollutant” to mean “any addition of any pollutant to navigable waters from any point source”), and 1362(7) (defining “navigable waters” to mean “the waters of the United States”). Thus, EPA only has authority under CWA §§ 301(a) and 402 to regulate the discharge of pollutants – including that from point source

applications of certain pesticides or resulting residuals – *to* ditches and canals that are *themselves* waters of the United States.⁶ It does not have jurisdiction to regulate “discharges” to ditches and canals that are not. EPA should rewrite the referenced sentence in the Fact Sheet to accurately reflect the scope of its jurisdiction by removing the words “either . . . or convey to waters of the U.S.”

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We appreciate the opportunity to provide written comments on behalf of NAFO and thank you in advance for your consideration. If you have any questions concerning these comments or if you would like additional information, please do not hesitate to contact us.

Sincerely,

William R. Murray
Vice President for Policy & General Counsel

⁶ Discharges of pollutants *from* ditches and canals that convey silvicultural storm water to waters of the United States are not regulated under CWA § 402(p) or EPA’s storm water rules, and as EPA recognizes, neither the *National Cotton Council* decision nor the proposed PGP change the existing status of whether certain types of stormwater require permit coverage. Fact Sheet at 5-6; see also 40 C.F.R. §§ 122.26 and 122.27.