Clean Water Act

- Enacted in 1972
- Goals embodied in the Act
  - Eliminating releases of high amounts of toxic substances into water
  - Eliminating additional water pollution by 1985
  - Ensuring that surface waters would “fishable and swimmable” by 1983
- Major Amendments in 1977 and 1987

Point Source Program

- National Pollution and Discharge Elimination System (NPDES)
- Evolution from Traditional Point Sources to include the following:
  - Biosolids (Sewage Sludge)
  - Stormwater
  - Smaller, mobile, and temporary discharges
  - Vessels
  - Pesticides
Additional Point Sources

Biosolids

Vessels

Pesticide

NPDES Pesticide Permitting Post EPA 2006 Pesticide Rule

- In December, 2006, petitions for review were filed in all 11 Circuit Courts. Petitions were consolidated in the 6th Circuit Court of Appeals.
- In January 2009, the 6th Circuit vacated the CWA pesticides rule, stating that the rule was not a reasonable interpretation of the CWA.
- In June 2009, the 6th Circuit granted EPA's request for extension and ordered a two-year stay of the mandate until April 9, 2011.
- In March 2011, the 6th Circuit granted EPA's second request for extension resulting in a stay of the mandate from April 9, 2011 until October 31, 2011.

Colorado’s Position

- Prior to 2009, CO followed EPA’s interpretation that a NPDES permit was not needed.
- Spring 2009 (following 6th circuit decision), CO position was that no permit would be developed without statutory change and direction to collect fees and obtain resources necessary to implement a state permitting program.
- April 2010, in response to requests from pesticide operators, the CO position was changed to issue a short term permit to provide time for the authority and resources to be obtained. No application would be required and no compliance assistance or compliance assurance would be provided.
- December 2010, CO supports urging federal legislation to exempt pesticides from NPDES permitting.
- June 2011, Governor Hickenlooper joins other western governors in asking the Senate to adopt legislation to exempt pesticides from NPDES permitting.

Permit Scope: Pesticide Use Patterns

- The PGP covers the following pesticide use patterns:
  - Mosquitoes and Other Flying Insect Pests
  - Weed and Algae
  - Animal Pests
  - Forest Canopy Pest

Permit Construct: Operators

Who is an Operator? The PGP defines "operator" as any entity associated with an application of a pesticide which results in a discharge to surface waters of the State.

Operators are entities that meet either or both of the following two criteria:
- (1) Are a “Decision-maker” who has control over the decision to perform pesticide applications.
- (2) Are an “Applicator” who has day-to-day control of or performs activities that are necessary to ensure compliance with the permit.

Decisionmaker vs Applicator

EXAMPLE
- An “Entity X” that makes a determination that pesticide A is to be applied in location B at a rate of C but hires a “Entity Y” to actually apply pesticides.
  - Entity X = Decisionmaker
  - Entity Y = Applicator
- An “Entity X” provides funds to a “Entity Y” for pest control and does not make any decision as to how to apply the pesticides. “Entity Y” makes those decisions.
  - Entity X= Decisionmaker and Applicator
Compliance Certification

- Majority of Operators will not meet thresholds to submit
- Who Has to File a Compliance Certification? Certain Decision-makers who perform more significant pesticide applications will be required to submit a compliance certification:
  - Any Agency for which pest management for land resource stewardship is an integral part of the organization's operations.
  - Other types of entities with a specific responsibility to control pests (e.g., mosquito and weed control districts, irrigation districts)
  - Other entities that apply pesticides in excess of specified annual treatment area thresholds
  - Dischargers to Outstanding Waters (only to monitor or maintain)

Compliance Cert Due Dates

- July 1, 2013 – for discharges triggering the requirement in 2012.
- For declared pest emergencies – Within 30 days of beginning discharge
- For DMs that exceeds any annual treatment threshold – At least 10 days prior to exceeding the threshold
- For DMs otherwise required to submit a compliance certification as identified in Part 7 of the permit – At least 10 days prior to any discharge that will require a compliance certification.

Small vs Large Entity

- Small Entity
  - Any public entity that serves a population of 10,000 or less
  - Any private enterprise that does not exceed the Small Business Administration size standard (approx. 100-1,000 employees or $700k - $20M annually)

- Large Entity
  - Any public entity that serves a population greater than 10,000 or exceeds the SBA size standard
  - Sba.gov/contractingopportunities/officials/size/table/index.html

Threshholds for Decision-makers required to submit Compliance Certification

- Mosquito and Other Flying Insect Pest Control, Forest Canopy Pest Control: treat > 6,400 acres/calendar year
- Weed and Algae Pest Control, Animal Pest Control: treat > 20 linear miles OR 80 acres

Compliance Certificate Contents

- Operator Name
- Operator Type (e.g. Decision Maker, Large Entity)
- Operator Representatives and Contact Info
- Applicator Name, Representatives, Contact Info
- Pest Management Areas / Related Info
  - Special Conditions (e.g. T&E waters)
  - Other

Effluent Limits – Technology-Based Effluent Limits (TBEIs)

- All Operators must minimize discharges by:
  - Using only the amount of pesticide and frequency of application necessary to control the target pest
- Applicators must:
  - Maintain pesticide application equipment in proper operational condition
  - Assess weather conditions
- Certain Decision-makers (i.e., Federal and state agencies, other entities with responsibility to control pests, and other entities that apply pesticides in excess of specified annual treatment area thresholds) must implement pest management measures based on IPM principles
  - Identify/Assess pest problem
  - Assess pest management alternatives
  - Follow appropriate procedures for pesticide use
Monitoring

- **Applicator Responsibility:**
  - Must conduct "visual monitoring" to detect observable adverse incidents that may be related to the pesticide discharge.

- **All Operators**
  - If any post-application surveillance, must conduct "visual monitoring" to detect observable adverse incidents that may be related to the pesticide discharge.

Corrective Action

The permit specifies situations that require Operators to review and revise their pest management measures. For example:

- An unauthorized release or discharge occurs
- Existing pest management measures don’t meet applicable Water Quality Standards

Adverse Incident Documentation and Reporting

- If an operator becomes aware of an adverse incident which may have resulted from your discharge, this triggers notification and reporting, and as necessary, corrective action.
- Notify WQCD by telephone within 24 hours or as soon as possible of your discovery of the incident.
- Provide a more detailed written report within 30 days of your discovery.

Planning

- **Pesticide Discharge Management Plan (PDMP)**
  - Any decisionmaker who is required to submit a compliance certification and is a large entity (public: serves > 10,000; private exceeds small business administration standard)
  - PDMP documents how discharges will be minimized and effluent limitations will be met

Recordkeeping and Reporting

- **All Operators:** Copy of any Adverse Incident Reporting
  - Copy of any corrective action documentation
  - Copy of any spill and leak or other unpermitted discharge documentation

- For-Hire Applicators:
  - Documentation of equipment calibration
  - Information of each treatment area

- **Decision-makers who are required to submit a Compliance Certification and who is a Small Entity:**
  - Submit and retain a copy of the compliance certification
  - Information on treatment area (see permit Part 7.3)
  - Documentation of equipment calibration if also an Applicator

- **Decision-maker who are required to submit a Compliance Certification and who is a Large Entity:**
  - Submit and retain copies of Annual Reports (Federal)
  - Documentation of equipment calibration if also an Applicator