

with all relevant requirements under FIFRA, EPA has determined that it is not a chemical waste or biological material and, therefore, is not a pollutant subject to NPDES permitting requirements. That coverage under the Act turns on the particular circumstances of its use is not remarkable. Indeed, when asked on the Senate floor whether a particular discharge would be regulated, the primary sponsor of the CWA, Senator Muskie (whose views regarding the interpretation of the CWA have been accorded substantial weight over the last four decades), stated:

I do not get into the business of defining or applying these definitions to particular kinds of pollutants. That is an administrative decision to be made by the Administrator. Sometimes a particular kind of matter is a pollutant in one circumstance, and not in another. Senate Debate on S. 2770, Nov. 2, 1971 (117 Cong. Rec. 38,838).

Here, to determine whether a pesticide is a pollutant under the CWA, EPA believes it is appropriate to consider the circumstances of how a pesticide is applied, specifically whether it is applied consistent with relevant requirements under FIFRA. Rather than interpret the statutes so as to impose overlapping and potentially confusing regulatory regimes on the use of pesticides, this interpretation seeks to harmonize the CWA and FIFRA.<sup>9</sup> Under this interpretation, a pesticide applicator is assured that complying with relevant requirements under FIFRA will mean that the activity is not also subject to the distinct NPDES permitting requirements of the CWA. However, like an unpermitted discharge of a pollutant, application of a pesticide in violation of relevant FIFRA requirements would be subject to enforcement under any and all appropriate statutes including, but not limited to, FIFRA and the CWA.

Please feel free to call us to discuss this memorandum. Your staff may call Louis Eby in the Office of Wastewater Management at (202) 564-6599 or

<sup>9</sup>EPA's *Talent* brief suggested that compliance with FIFRA does not necessarily mean compliance with the CWA, and pointed out one difference between CWA and FIFRA regulation, *i.e.*, individual NPDES permits could address local water quality concerns that might not be specifically addressed through FIFRA's national registration process. The position EPA is articulating in this memo would not preclude states from further limiting the use of a particular pesticide in accord with their authorities under 7 U.S.C. 136v(a) and *Wisconsin Public Intervenor v. Mortier*, 501 U.S. 597, 613-614 (1991), to the extent otherwise authorized by Federal and state law. Furthermore, under section 510 of the CWA, States and other governmental entities are not precluded from adopting more stringent requirements to address local water quality concerns.

William Jordan in the Office of Pesticide Programs at (703) 305-1049.

#### List of Subjects in 40 CFR Part 122

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous substances, Reporting and recordkeeping requirements, Water pollution control.

Dated: January 26, 2005.

**Stephen L. Johnson,**

*Deputy Administrator.*

For the reasons set forth in the preamble, chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

#### PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

1. The authority citation for part 122 continues to read as follows:

**Authority:** The Clean Water Act, 33 U.S.C. 1251 *et seq.*

#### Subpart A—[Amended]

2. Section 122.3 is amended by adding paragraph (h) to read as follows:

##### § 122.3 Exclusions.

\* \* \* \* \*

(h) The application of pesticides to waters of the United States consistent with all relevant requirements under FIFRA (*i.e.*, those relevant to protecting water quality), 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 the waters of the United States.

(2) The application of pesticides to control pests that are present over waters of the United States, including near such waters, that results in a portion of the pesticides being deposited to waters of the United States; 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, including near, water for control of adult mosquitos or other pests.

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 442

[OW-2004-11; FRL-7866-8]

RIN 2040-AE65

#### Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Transportation Equipment Cleaning Point Source Category

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to amend the Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Transportation Equipment Cleaning Point Source Category. This action proposes to correct a typographical error in the regulatory language of the Pretreatment Standards for New Sources in the existing regulation which refers to "any existing source" when it should say "any new source."

In the "Rules and Regulations" section of the **Federal Register**, we are amending the regulatory language of the Pretreatment Standards for New Sources in the existing regulation as a direct final rule without prior proposal because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this revision in the preamble to the direct final rule. If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

The regulatory text for the proposal is identical to that for the direct final rule published in the Rules and Regulations section of this **Federal Register**. For further supplementary information, see the direct final rule.

**DATES:** Written comments must be received by April 4, 2005.

**ADDRESSES:** Submit your comments, identified by Docket ID No. OW-2004-11, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- Agency Web site: <http://www.epa.gov/edocket>. EDOCKET, EPA's electronic public docket and comment

system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

- Mail: Water Docket, Environmental Protection Agency, Mailcode: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

- Hand Delivery: Water Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. OW-2004-11. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.epa.gov/edocket>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the federal regulations.gov Web sites are "anonymous access" systems, which

means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy

form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Water Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 to 4:30, Monday through Friday, excluding legal holidays. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Water Docket is (202) 566-2426.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jesse W. Pritts, Engineering and Analysis Division, Office of Water (4303T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 566-1038; fax number: (202) 566-1053; e-mail address: [pritts.jesse@epa.gov](mailto:pritts.jesse@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**What Entities Are Potentially Affected by This Final Rule?**

Entities potentially affected by this action include facilities that discharge wastewater from transportation equipment cleaning activities and include the following types:

Category	Examples of regulated entities	Examples of common North American Industry Classification System (NAICS) codes
Industry .....	Facilities that generate wastewater from cleaning the interior of tank trucks, rail tank cars, intermodal tank containers, tank barges, or ocean/sea tankers used to transport materials or cargos that come into direct contact with tank or container interior, except where such tank cleanings are performed in conjunction with other industrial, commercial, or POTW operations.	311613, 311711, 311712, 311222, 311223, 311225, 484121, 484122, 484210, 484230, 488390, 488490.

EPA does not intend the preceding table to be exhaustive, but rather it provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility is affected by this action, you should carefully examine the applicability criteria listed at 40 CFR 442.1. If you still have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

**Statutory and Executive Order Reviews**

For the various statutes and executive orders that require findings for rulemaking, EPA incorporates the

findings from the direct final rulemaking into this companion notice for the purpose of providing public notice and opportunity for comment.

**List of Subjects in 40 CFR Part 442**

Environmental protection, Barge cleaning, Rail tank cleaning, Tank cleaning, Transportation equipment cleaning, Waste treatment and disposal, Water pollution control.

Dated: January 26, 2005.  
**Stephen L. Johnson,**  
*Deputy Administrator.*  
 [FR Doc. 05-1861 Filed 1-31-05; 8:45 am]  
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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**RIN 1018-AE59**

**Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Salt Creek Tiger Beetle (*Cicindela nevadica lincolniiana*)**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to list the Salt Creek tiger beetle (*Cicindela nevadica lincolniiana*) as endangered under the authority of the Endangered Species Act of 1973, as amended (Act). The Salt Creek tiger beetle, a member of