



# NOR' EASTER

The Newsletter of the Northeast Aquatic Plant Management Society

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Spring 2005

## President's Message

*Amy Smagula*

Spring is finally here. Our waterbodies have shed their icy shroud, and aquatic plants are poking up through the sediments, no doubt with invasive species leading the way. Our winter respite (was there one?) ended, and many of us are jumping or diving back into the lakes and ponds beginning a new season of aquatic plant management.

Unfortunately, I am sad to report that we will begin this new season without one of our members. Chandler Smith of Aquatic Control Technology, Inc. passed away this winter, shortly following our annual meeting. Many of you knew Chan and worked with him on lake projects over the years. His contributions to the field are valued and he will be missed by many. On behalf of NEAPMS, I would like to express our deepest sympathy to Gerry Smith, Chan's brother and one of our Past Presidents, and to the rest of their family.

Over this past winter, we held a very successful annual meeting in Saratoga Springs, New York. The presentations were excellent, topics timely, and membership and attendance were at an all time high. Thanks to all that coordinated, contributed, and attended.

Already this spring the NEAPMS Board of Directors has been hard at work for you submitting commentary on proposed processes that can affect the way we do business. There is continued scrutiny on the national level as to whether National Pollution Discharge Elimination System (NPDES) permits are needed for aquatic applications of herbicides or pesticides. The Environmental Protection Agency (EPA) proposed a new regulation that states that an EPA registered pesticide does not require an NPDES Clean Water Act permit for applications into, over, on or near water if you follow the label; however, EPA stopped short of including that EPA permits are not required for all FIFRA registered and legal applications. NEAPMS, several other regional APMS chapters, National APMS, and RISE have voiced their opinions on this very important issue through written commentary submitted to the EPA, asking the agency to formally adopt and include in the final rule that application of all agricultural and other pesticides in accordance with label directions shall not be subject to NPDES permitting requirements. NEAPMS will continue to follow this issue, and to keep you apprised of any new events, or to inform you if there is opportunity for your input to help steer policy development.

As members of this Society, if you come across any topic or issue that you think that NEAPMS should be aware of, like NPDES or other regulatory issues, please forward them to me or any of the NEAPMS Directors so that we may evaluate the issue and provide commentary, as may be appropriate. This is just one of the services that our society can offer to our members. The next six or seven months will be busy for our membership as we go about our daily work activities, but please remember that your knowledge and input is valuable to the society and its members. I invite you to share your professional experiences with your fellow NEAPMS members in a presentation either at our next annual meeting or through an article or short update in our semi-annual newsletter. You are also welcome to put your name in for a future Director position, or to become active on one of the many working committees we have established to carry out Society business. We value your involvement!

I have posted information on NEAPMS Scholarship monies on our website. Those of you that are involved with academia, or know of students pursuing higher degrees in a field of aquatic plant management should visit the NEAPMS website for details, and forward the information on to those that may be interested in receiving scholarship funds from our Society. I wish you an enjoyable and productive field season. Stay in touch, and please continue to visit our website for updates about our joint annual meeting with the Northeast Weed Science Society from January 3-6, 2006, and for other important updates as they come along.

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**\* Scholarship Info \***



Chandler Smith

NEAPMS member Chandler Smith of Douglas, MA died unexpectedly on Feb. 15th in Vermont. He was 61. Chan joined his brother Gerry Smith at Aquatic Control Technology around 1978, where he worked as the company's Operations Manager for the past 27 years. Chan was incredibly talented when it came to equipment design, fabrication and maintenance. His design and fabrication of the equipment used for deep-water alum treatments at Lake Morey (VT), Kezar Lake (NH) and Cochnewagen Lake (ME) in the mid-1980's, contributed significantly to the success of those projects. He was instrumental in advancing the technology and design of aquatic plant harvesting machinery. Chan logged thousands of hours operating and supervising hundreds of mechanical, invasive plant management projects, most notably Lake Champlain in VT/NY and Lake Cidra in Puerto Rico. Most of all, Chan will be remembered for his smile and warm greeting when he met you. Chan leaves his five children, eight grand-children, three brothers and his long-time companion, Pixie Caney of Benson, VT.

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## NEAPMS 2005 ANNUAL CONFERENCE HIGHLIGHTS

### NEAPMS 2005 Conference Review

Ken Wagner

NEAPMS returned to Saratoga Springs, NY and the Gideon Putnam Inn within Saratoga State Park for a re-prise of the 2004 conference, and both the location and the conference lived up to expectations – again! We began with an evening reception for those arriving the day prior to the actual start of the conference, sponsored by BASF and providing a chance for old friends and new ones to catch up on professional and personal developments.



Stories and refreshments were shared at the opening reception sponsored by BASF

On Tuesday, January 18<sup>th</sup> the conference opened with a focus on plant monitoring, including a panel discussion of volunteer efforts in northeastern states, an example of detailed volunteer monitoring in a milfoil control project in Suncook Lake, NH (E. Neister), and three papers on cost-effective monitoring approaches (P. Lord, C. Love, A. Modjeksi) that can provide sufficient data to plan and track plant management programs. These were followed by talks on genetic identification of variable milfoil (R. Thum) and a review of invasive aquatic plants in the northeast (B. Hellquist), which set the stage for our very popular plant and algae identification workshop (R. Johnson, P. Lord, K. Wagner).



A fine suite of speakers held audience attendance and imparted a lot of wisdom





Out-going President Bo Burns introducing Incoming President Amy Smagula

We also accomplished our annual business meeting before adjourning for the annual banquet. The banquet was sponsored by SePRO, and started with a cocktail party featuring Bo Bucks – free drink coupons bearing the likeness of President Bo Burns. After dinner, Bob Johnson received the annual award as Outstanding Scientist and Paul Lord received the Member of the Year Award for service to the society, making it an all-Cornell affair.



Bob Johnson receives the 2005 Outstanding Scientist Award from Committee Co-chairs and Past Presidents Gerry Smith and Charles Gilbert



Paul Lord displays his well-earned Member of the Year Award.

We recognized outgoing and incoming Board members and heard updates from the National APMS and AERF. Sparing no expense, professional game show host Pimp Daddy Wags was flown in to lead a spirited game of Plant Family Feud. Thanks to the computer wizardry of Wendy Corbin Gendron and the A/V skills of Paul Lord, it was the funniest game show yet in our series. Negotiations have begun for a reality show in 2006 (Total Pond Makeover?).

## ANNUAL CONFERENCE HIGHLIGHTS con't Ken Wagner

We got back to business on Wednesday, January 19<sup>th</sup> with a session on herbicide advances (B. Burns, K. Wagner, M. Netherland) and another on hand harvesting experiences (M. Martin, L. Lyman and D. Worden/D. Meringolo) before another decadent lunch at the Gideon Putnam. We finished with a fascinating potpourri session featuring an economic analysis of milfoil control results (M. Mongin), an evaluation of 2,4-D effects on fish (S. Johnson), an overview of plant-fish interactions focused on the importance of stakeholder involvement and goal setting (C. Horton), and an update on New York's plant management permitting program (A. Lamanno).



Attendees appreciated the range and caliber of presentations

Throughout the conference, attendees could check out a great variety of exhibits and participate in raffles supporting aquatic research scholarships. There was ample opportunity for networking, and a great atmosphere for interchange and learning.



Feedback was overwhelmingly positive, but we received a few constructive criticisms and good ideas for future conferences, and will, as always, strive to make the next conference even better. It gets harder every year, as we keep raising the bar, but with the input and participation of a deeply interested and committed membership, we keep finding ways to improve. Note that next year we meet jointly with the Northeastern Chapter of the Weed Science Society of America, expanding our horizons and putting yet another twist on our always exciting annual meeting.

Lunch in the Arches Room was another fine dining experience



# Herbicide Applications and NPDES Permits

## Herbicide Applications and NPDES Permits- The Saga Continues Amy P. Smagula, NEAPMS President

Many of us in the Society have been following the progression of this issue regarding NPDES permitting and aquatic applications for a few years now. The issue was first brought to light, for many of us, as a result of the Talent Irrigation District case in 2001. Since then, the Board of Directors has tried to relay information to our members pertaining to the status of this issue.

Beth Card, Director of Water Quality Programs for the New England Interstate Water Pollution Control Commission prepared an update on this issue for a NEIWPC publication. Beth has agreed to share that article with our Society to provide further updates and some more history and case law surrounding this issue.

*"The material in the following article first appeared in Interstate Water Report, the newsletter of the New England Interstate Water Pollution Control Commission. It is reprinted with the permission of both the author and NEIWPC."*

## **Blueberries, Bugs, and Beyond: An Overview of Challenges Made to Aerial Spraying Without a NPDES Permit: by Beth Card**

This past August, a group of environmental organizations, including the National Environmental Law Center, Toxics Action Center, Environment Maine, Beyond Pesticides, and the Sierra Club provided notice to Cherryfield Foods, Inc., of their intent to sue. The group claimed that Cherryfield Foods, Maine's largest blueberry grower and processor, had engaged in aerial spraying of pesticides without first obtaining a NPDES permit to do so. The group cited aerial spray discharge studies to support their allegation that this practice was in essence the direct discharge of a pollutant through a point source into waters of the United States.

This question in Maine had the potential to grow into a serious debate. But before the parties put on their battle gear, a letter from Cherryfield Foods to the National Environmental Law Center indicated that the blueberry grower planned to cease the aerial spraying and use ground applications instead. Now the two sides are talking and the pending suit is on hold.

This is not the first time that the question of whether aerial spraying of pesticides requires a NPDES permit has been raised, and if the citizen enforcement suit had proceeded, the attorneys on both sides would have had plenty of material to review and use to support their arguments. The four cases summarized below have set the stage for future rulings on aerial spraying, whether it be pesticides, herbicides, or fire retardants. The cases also address when citizen enforcement suits are allowable and how the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) plays a part.

## **No Spray Coalition et al., Inv. V. City of New York**

**U.S. Court of Appeals, 2<sup>nd</sup> Circuit, 2001**

**Background:** In response to a break-out of viral encephalitis (West Nile) virus in 1999, New York City deployed trucks and helicopters to spray pesticides designed to kill adult mosquitoes. The spraying continued for several seasons. A coalition of environmental groups and individuals (the No Spray Coalition, Inc.) brought a citizen suit to stop the spraying, which they argued constituted discharge of point source pollution without a NPDES permit. The District Court determined that the spraying had been done in accordance with FIFRA, which, unlike the Clean Water Act, does not have a provision for citizen enforcement suits.

**2<sup>nd</sup> Circuit Holding:** Citizen suits on the issue of whether permits are needed for mosquito control efforts cannot be barred. Congress intended the CWA's citizen suit provision to operate regardless whether the claimed violation of CWA also violated FIFRA. The issue of whether a NPDES permit is required in this case was remanded to the District Court. Cross motions for summary judgment were filed this past summer, but so far no decision has been issued.

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## Herbicide Applications and NPDES Permits con't

### Headwaters, Inc. v. Talent Irrigation District

U.S. Court of Appeals, 9<sup>th</sup> Circuit, 2001

**Background:** The Talent Irrigation District (TID) operates a system of irrigation canals in Jackson County, Oregon. To control the growth of aquatic weeds and vegetation in their canals, TID applies an aquatic herbicide (Magnacide H) by using a hose from a truck every two weeks. Headwaters, Inc., and Oregon National Resources Council filed a citizen suit alleging that TID had violated the Clean Water Act by applying the herbicide to its canals without obtaining a NPDES permit. TID argued, and the District Court agreed, that it did not need a permit because the Magnacide H label, which was approved by EPA under FIFRA, did not specify a permit requirement.

**9<sup>th</sup> Circuit Holding:** Registration and labeling of Magnacide H under FIFRA does not preclude the need for a NPDES permit under the Clean Water Act. The label's failure to specify that a permit is required does not mean that the Clean Water Act does not apply to the discharge. The Court concluded that a NPDES permit is required for the application of herbicides in the circumstances that were before the Court.



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**Altman v. Town of Amherst** U.S. District Court, Western District of N.Y., 2001, vacated by U.S. Court of Appeals, 2d Circuit, 2002.

**Background:** The Altmans, residents of the Town of Amherst, N.Y., alleged that the town's mosquito control spraying program, which involved aerial spraying of pesticides without a permit, constituted a violation of the Clean Water Act. The spraying took place over federal wetlands that the Altman's considered navigable waters. The District Court considered whether pesticides, as used in the manner for which they were intended, constitute pollutants for the purposes of the Clean Water Act. Review and consideration was given to a New York State Department of Environmental Conservation declaratory ruling and U.S. EPA correspondence indicating that EPA has "no specific policy under the NPDES program on the spraying of pesticides to control mosquitoes where the pesticide is discharged directly to waters of the United States." The District Court held that no permit was required.

**2<sup>nd</sup> Circuit Holding:** The Appellate Court remanded the case to the District Court for further proceedings and determined that more information was needed. It instructed the lower court to engage in discovery on the following questions:

1. Was the pesticide spraying from a point source?
2. Were pesticides discharged into navigable waters?
3. Are pesticides considered pollutants subject to the CWA?

Perhaps more important than the remand itself was the discussion in the 2<sup>nd</sup> Circuit's opinion regarding the impact of EPA's "ambiguous stance" and failure to clearly interpret the connection between FIFRA and the Clean Water Act. The Appellate Court further instructed the District Court to consider language in EPA's amicus brief in the Altman case, which suggested there were times when the application of pesticides would require a NPDES permit. The District Court has not yet issued a decision.

**League of Wilderness Defenders v. Forsgren** U.S. Court of Appeals, 9<sup>th</sup> Circuit, 2002

**Background:** The League of Wilderness Defenders alleged that Harv Forsgren, in his official capacity as Regional Forester, Pacific Northwest Region, and the U.S. Forest Service implemented a program of annual aerial insecticide spraying over 628,000 acres of national forest lands in Washington and Oregon. The spray was aimed at controlling a predicted outbreak of the Douglas Fir Tussock Moth, which kills Douglas Fir Trees. The League of Wilderness and seven other environmental groups argue that a NPDES permit is required for this type of spraying.

**9<sup>th</sup> Circuit Holding:** Aerial spraying of pesticides by the Forest Service is point source pollution and requires a NPDES permit.

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## Watch for Summer Call for Papers !!!!!

### 2006 NEWSS & NEAPMS JOINT CONFERENCE

Preparations are finalized between NEWSS (The Northeastern Weed Science Society), and NEAPMS for the 2006 Conference.

This joint conference will be the 60th Annual Meeting of the NEWSS and the 7th Annual Conference of the NEAPMS.

This conference will be held **January 3rd through the 6th in Providence, RI, at the Westin Hotel.** Make sure to save this date in your calendar! More information to come late summer. For further inquiry about this event please contact Amy Smagula, president of NEAPMS at 603-271-2248 or [asmagula@des.state.nh.us](mailto:asmagula@des.state.nh.us).

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#### GRADUATE RESEARCH ASSISTANT POSITION ANNOUNCEMENT

A Graduate Research Assistant position is available beginning the summer of 2005, for students pursuing either an M.S. or Ph.D. in Weed Science through the Department of Plant and Soil Sciences at Mississippi State University. This position will undertake research in the ecology and management of invasive aquatic plants, including quantification by remote sensing and field techniques, ecological modeling of invasive and native aquatic plants, and management by chemical and nonchemical methods. The qualified applicant will have at a minimum a B.S. or equivalent in weed science, biology, or natural science field for a M.S. student, or a M.S. in a natural science field for a Ph.D. student. Previous experience working with invasive aquatic plants is preferable, but not required. Interested and qualified persons should submit a letter of application briefly outlining qualifications and pertinent experience along with a resume, copies of transcript(s) and contact information for references to:

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## Proposal on Pesticides

In an attempt to offer clarification and guidance on the multiple court opinions issued on the application of pesticides over or near waters of the United States, EPA published a notice in the Federal Register in August 2003. It solicited public comments on an Interim Statement and Guidance to address issues pertaining to coverage under the Clean Water Act of pesticides regulated under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Review of the docket where comments are kept shows there was plenty of reaction to the guidance, both positive and negative.

The interim guidance suggested that the pesticides applied in accordance with FIFRA are not to be considered “pollutants” as defined in the CWA and as a result those applications would not require a NPDES permit. Those who commented in favor of the guidance agreed that this was the best interpretation of the term “pollutant” and concurred that this would be the best way to facilitate the application of pesticides consistently with relevant FIFRA requirements. Non-supporters, however, expressed concerns about the environmental effects of pesticides applied to waters of the United States as well as concern that EPA’s position had changed from when the Agency initially filed amicus briefs in earlier pesticide cases. (EPA’s General Counsel addressed the concern about its earlier positions in a memorandum titled “Analysis of Previous Federal Government Statements on Application of Pesticides to Waters of the United States in Compliance with FIFRA.” This memorandum is available on line at [www.epa.gov/edocket](http://www.epa.gov/edocket).)

EPA considered the comments, and also considered the relevant case law (discussed earlier in this article) before releasing a proposed rule on February 1, 2005.

*The proposal, which is consistent with the August 2003 version, identifies two instances where pesticide applications consistent with relevant FIFRA requirements do not require a NPDES permit. They are:*

*Application of pesticides directly to waters of the United States to control pests (for example, mosquito larvae or aquatic weeds that are present in the water.*

*Application of pesticides to control pests that are present over waters of the United States that results in a portion of the pesticide being deposited into those waters.*

In the February 2005 Federal Register notice, EPA also proposed revising NPDES permit regulations to incorporate the Interpretive Statement so that application of pesticides in the two scenarios described above would be excluded from NPDES requirements.

The proposed rules were available for public comment until April 4, 2005.

*Beth Card ([bcard@neiwppcc.org](mailto:bcard@neiwppcc.org)) is NEIWPPCC’s Director of Water Quality Programs. She is also a licensed attorney in Massachusetts.*

EPA’s new proposed water rule states that EPA-registered pesticides do not require National Pollution Discharge Elimination System Clean Water Act permits for pest control applications into, over, on or near water if label restrictions are followed. Unfortunately, EPA stops short of ensuring that CWA permits are not required for all registered and legal applications. NEAPMS, in our commentary, has asked that EPA formally adopt and include in the final rule that: *the application of all agricultural and other pesticides in accordance with label directions shall not be subject to NPDES permitting requirements.*

## Too Many Weeds Spoil the Fishing



Exotic invasive aquatic plants such as Hydrilla, Eurasian Water Milfoil, Curlyleaf Pondweed, Water Chestnut and Water Hyacinth can be detrimental to a healthy fishery in lakes across the country.

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## Mission Statement

The Purpose of the Society shall be to assist in the management of aquatic vegetation, to provide for the scientific and educational advancement of members, to encourage scientific research in all facets of aquatic plant management, to promote and exchange of information among members and to extend and develop public understanding in the discipline.

Check out our website:

<http://www.neapms.net>



## Northeast Aquatic Plant Management Society

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