AERF NEWS
Aquatic Ecosystem Restoration Foundation
Restoration
Research
Regulatory
JUNE 2018
No. 17
David Petty, Editor

Message from the President

Tyler Koschnick

This time of year, everyone is likely putting in long hours. Hopefully you will be able to find a few minutes to peruse the newsletter that Dave Petty diligently works to get out to the membership.

The Board of Directors recently met in Cadillac, MI and continues to advance the Foundation's strategic objectives. Transition still continues.

First, some congratulations and thanks are in order for Dr. Rob Richardson (North Carolina State University) and Dr. Jay Ferrell (University of Florida). Dr. Richardson will be working with the US Environmental Protection Agency (EPA) as the aquatic subject matter expert. As most of you are probably aware, Dr. Kurt Getsinger served in this capacity for many years with aquatics having the first such representation at EPA. Rob and Kurt recently spent a week in Washington DC, making introductions and gaining a better understanding of some of the issues. Dr. Ferrell will be working with AERF as the Scientific Advisory Committee Chair, taking over the role from Dr. Bill Haller who recently retired. With some of the new initiatives, we look forward to Dr. Ferrell's leadership and technical input to the Foundation.

On a related note, AERF, in collaboration with University of Florida, South Florida Water Management District, Lee County Hyacinth Control District, US Army Engineers, Lee County Mosquito Control District, Texas Aquatic Harverster, Applied Aquatic Management and Florida Fish and Wildlife Conservation Commission, recently hosted USEPA personnel on a field tour. They had the opportunity to observe and discuss management of lygodium, hyacinth, Brazilian pepper, melaleuca, hydrilla, and other species. AERF is also planning additional tours with federal agencies in the Midwest (possibly in 2018, as well as 2019) and assessing the possibility of going out West in 2020. This opportunity for informational exchange and observation of the impacts of invasive plant species, as well as the effective management thereof, has proven to be very educational for all involved in the tours. Stay tuned for future reports on the tour(s), and thanks for all those involved in making the tour a success.

During the busy management season, as you work with stakeholders and others interested in aquatic plant management, if any opportunities arise where you believe AERF may be able to assist, please don't hesitate to contact us. On behalf of the Board of Directors, thanks for your continued support. We hope to see many of you in Buffalo for the annual meeting of the Aquatic Plant Management Society.

Message from the Executive Director

Carlton Layne

The More Things Change, the More Things Stay the Same

It's been a while since our last Newsletter and a lot has happened. Yet much has remained the same.

On the NPDES front, Representative Gibbs (R-OH) again introduced his Reducing Regulatory Burdens Act in the House of Representatives and again it passed with bipartisan support. This bill would remove the legal use of pesticides from the jurisdiction of the Clean Water Act and thus remove the NPDES requirement for pesticide applications in, near or over Waters of the United States (WOTUS). A similar Senate bill with bipartisan sponsorship and support currently languishes along with Rep. Gibb's bill in the Senate Environment and Public Works Committee. An amendment to the Farm Bill was passed by the House that would have done the same thing, but the Farm Bill failed to muster enough votes to get past the House. So, the NPDES requirement for aquatic plant management and mosquito control remains firmly in place. A lot has happened, but…

On the Waters of the United States Rule front, the Supreme Court has determined the proper jurisdiction for WOTUS is in the district courts, so the stay imposed by the 6th Circuit Court of Appeals has been withdrawn. Stays from district courts in North Dakota and Georgia have been reinstated for approximately 31 states. But no matter, because the Environmental Protection Agency (EPA) and the Army Corps of Engineers (CoE) have withdrawn the old onerous rule and promulgated a decision that the WOTUS rule cannot be enforced until 2020, by which time a new rule that would have made Justice Antonin Scalia proud will have been written and published and transparently put in place as decreed by President Trump. Meanwhile, the previous definition of WOTUS that has been in place since 2006 and which was the cause of the Rapanos litigation we've talked about over the years is what the EPA and the CoE are using now until a new, better, and much improved rule replaces it. Are you following this? I'd feel better if this were being diagramed on a white board. A lot has happened, but…

On the Endangered Species Act (ESA) front, the Act still has not been formally reauthorized by Congress since the early nineties, but it continues to be funded. The heads of the EPA, the Department of Commerce and the Department of Interior have all said they're going to fix whatever's wrong with the process, but there hasn't been much visible progress in any direction. The pesticide consultation process between the Services and the EPA continues at its grueling and barely noticeable pace much to the disappointment of nearly everyone. Un-vetted computer models are being used for regulatory decision-making seemingly in spite of internal prohibitions to the contrary. Contacts and relationships are being formed and developed, but there's still not much to report. I did get a draft of a Chapter on the ESA submitted by the National Marine Fisheries Service and vetted by the Fish and Wildlife Service for the upcoming 4th edition of the AERF's BMP. So, we're talking and working together as opportunities present themselves. Meanwhile several States have begun to flex their ESA muscles and are having a negative impact on aquatic plant management operations around the country. A lot has happened, but…

The AERF and the APMS have been nurturing a relationship with B.A.S.S. and were recognized in February by B.A.S.S. as the longest continuing supporters of the Conservation Directors biannual meeting. Over the years we have sponsored symposia, speakers, luncheons, dinners and seminars galore. We're working on a Plant Camp-like program for high school B.A.S.S. coaches in Tennessee. We have cosponsored Jeff Holland, a professional bass fisherman and aquatic plant manager in Florida, and he has conducted dockside training and impromptu explanations of aquatic plant management procedures and practices. He has blogged and Facebooked and U-Tubed and recently filmed videos in cooperation with Alabama Power. Even so, as this is being written, a

Continued Next Page

Make your Donations and Sponsorship Payments Using PayPal

We have established a PayPal account for donations and annual sponsorship payments, for those who prefer to pay by credit card. Payments may be made through our website, or directly with Carlton, who has been equipped with a card reader.

vicious, slanderous fear mongering campaign underway around Watts Bar Lake in the TVA system is protesting applications of aquatic herbicides. The allegations are anti "grass" killing, alleging wholesale medical problems, and, well, you get the picture. This bass fisherman-generated assault may be the worst I have ever seen in my long career. Pockets of anti-aquatic plant management activities by bass fisherman and duck hunters wax and wane but we are definitely waxing now. A lot has happened, but…

I suppose all we can do is be vigilant and be ready to respond to calls for action as circumstances and events dictate. We do try not to bother you unnecessarily with requests to notify your Congresspersons and State and local elected officials. When your support or action is requested, however, please try to respond accordingly. We wouldn't ask if we didn't need your involvement.

I'm blessed to be the Executive Director of the AERF and I am constantly heartened by your emails and calls with comments and questions. Keep them coming. And thank you for your continued financial support of the Foundation. Your money goes to support things like the EPA Tour and Plant Camp that are featured elsewhere in this Newsletter.

Plant Camp 2018

Dehlia Albrecht , Univ Florida

The UF/IFAS Center for Aquatic and Invasive Plants (CAIP) Education Initiative was created in 2006 to provide educators with the information and resources needed to teach students about the harmful impacts of invasive plants on our natural areas and neighborhoods. The Education Initiative has offered top-notch workshops, lesson plans, and educational resources for teachers and non-formal educators throughout the state of Florida.

One of the primary components of the Education Initiative is Plant Camp, an annual 5-day educator workshop, which focuses on introducing educators to the topics of invasive plants and their management, and providing them with the curriculum, information from experts, and hands-on experience they need to teach about invasive species with confidence. In addition to providing curriculum and knowledge, pre- and post-test results from the annual workshop suggest that the training is raising awareness and acceptance of invasive plant management methods among participants. Thanks to our sponsors (including AERF), presenters, and participants, another successful Plant Camp was held from June 11-15th, 2018 with 26 participants in attendance. This was the 13th such workshop put on by the joint efforts of the UF/IFAS Center for Aquatic and Invasive Plants (CAIP) and the Florida Fish and Wildlife Conservation Commission (FWC). Over 325 educators have attended the workshops who, in turn, have taught approximately 200,000 students over the last 12 years!

In addition to their generous Plant Camp sponsorship, AERF also sponsored a participant from New York, Sonja Wixom, to attend the workshop this year. The goal is for out-of-state participants to take information back to establish invasive species and natural resource management outreach efforts in their home state, using Plant Camp as a model.

For more information about the Center for Aquatic and Invasive Plants Education Initiative, please see the website at plants.ifas.ufl.edu/education or send an email to caip-education@ufl.edu. Be sure to look for more information about Plant Camp in the next AERF newsletter!

Waters of the United States

RISE President Aaron Hobbs

As EPA continues working to repeal and replace WOTUS, District Courts around the country continue to make their rulings.

Currently, their are 24 states that have been granted a preliminary injunction against imposition of the 2015 WOTUS rule.

As you know, EPA has issued a regulation stating that WOTUS can not be implemented until 2020, when a final rule replacement will be ready for implementation.

We will continue to follow the legal, regulatory and Congressional actions involving the rule.

11 STATES WIN WOTUS INJUNCTION: A federal judge granted a preliminary injunction on Friday evening against the Obama administration's Waters of the U.S. rule to 11 states. Judge Lisa Godbey Wood for U.S. District Court for the Southern District of Georgia, a George W. Bush appointee, ruled that the states have a substantial likelihood of winning at least some of their claims against the 2015 rule, also called the Clean Water Rule. She singled out two of the states' claims as particularly strong: that the Obama rule violated the Clean Water Act with its sweeping coverage of wetlands and streams high up in the tributary network, and that it violated the Administrative Procedures Act by making significant changes between the proposed and final versions of the rule.

A nation divided: The Georgia court's injunction covers the states of Georgia, Alabama, Florida, Indiana, Kansas, North Carolina, South Carolina, Utah, West Virginia,

Wisconsin and Kentucky. That puts the rule on hold in half the country, with a North Dakota district court judge having granted a preliminary injunction to 13 states shortly after the rule was finalized in 2015.

But does it matter? Not immediately, since the Trump administration has already finalized a rule delaying the effective date for WOTUS until 2020. But environmental groups and blue states are challenging that delay rule in court; if they win, that could kick the 2015 rule back into effect. But perhaps more important than the practical consequences is the signal the ruling sends: Friday's preliminary injunction is the first major ruling on the Obama rule since the Supreme Court kicked the fight down to district courts, and it suggests that opponents of the rule, who have a number of suits filed across the country, including a nationwide injunction request in a Texas district court, may have more wins ahead.

California Aquatic Weed School 2018

The University of California-Davis will host the 2018 Aquatic Weed School on September 5-6, 2018 at the Bowley Plant Science Teaching Center. The Aquatic Weed School is an intensive two-day course focusing on issues associated with developing weed management strategies in a variety of aquatic ecosystems. The course provides a rare opportunity for professionals to efficiently update their understanding of aquatic weeds and interact with experts in this field. The Aquatic Weed School is designed for those involved in consulting, research, and management of aquatic weed systems throughout the western United States. The topics are presented in lecture, laboratory, and demonstration formats. Each attendee will receive a course notebook with lecture summaries and related materials. CEUs for California pesticide certification will be available. Registration is already open, and more information and the agenda are available on the webpage at http://wric.ucdavis.edu/events/aquatic_weed_school_2018.htm

ProcellaCOR® Receives Registration by US EPA

SePRO Corporation

Over 15 years ago, a desired herbicide target was identified by researchers based on management needs. The goal was to find a systemic herbicide with short-term exposure requirements, allowing for spot treatments, that dissipated quickly and controlled hydrilla. Furthermore, the product had to be selective to desirable native species.

The project started approximately 8 years ago. Through its ongoing technology screening program as part of the Procella™ Water Resource Solutions discovery platform, SePRO identified a candidate compound. It had a level of activity and potency on hydrilla, milfoil, and other species that had never been seen before. Research was quickly scaled up to test more species, understand exposure times, evaluate selectivity, and assess at larger scales. Shortly thereafter, the decision was made to begin regulatory studies to support the registration of this new active ingredient for aquatics uses.

First, ProcellaCOR® was classified as reduced risk by the US EPA. Then, in February of 2018, ProcellaCOR received its aquatic registration. This is significant considering there has only been one other herbicide that received its aquatic use as a first registration (Sonar® in 1986). The majority of times, the aquatic use is added to a product after it has a major agricultural use, such as soybeans or corn, that can support the overall registration cost.

Procellacor is now registered in 48 states. This spring, SePRO initiated a PRO Certification program to ensure proper use and stewardship of this advanced technology, including an introduction to a novel dosing system called Prescription Dose Units™ (or PDU™ for short). Please contact SePRO at michaels@sepro.com for more information.

Two weeks after application of ProcellaCOR.

*Photo provided by SOlitude Lake Management®

ProcellaCOR and Sonar are registered trademarks of SePRO Corporation.
Procella, Prescription Dose Unit, PDU, and Procella Water Resource Solutions are trademarks of SePRO Corporation.

EPA First-Hand Tour of Aquatic Plant Management Control Sites

Jeff Schardt

On June 4-8, 2018 the Aquatic Ecosystem Restoration Foundation (AERF) led a tour of aquatic and wetland systems in Florida to provide insight for pesticide regulatory personnel at the U.S. Department of Environmental Protection (EPA) into conditions faced by aquatic plant and mosquito control managers when applying EPA-registered pesticides. EPA representatives toured natural and highly managed areas, observed pesticide applications, and spoke directly with managers and field personnel. Especially important was conveying unintended consequences that may result when pesticide label language that is pertinent to large-scale crop management is written to include small-scale, preemptive, or preventive measures in aquatic plant and mosquito control.

The 5-day tour started with classroom presentations on aquatic plant problems, available tools, and strategies employed by various entities involved with aquatic plant management. The rest of the week included field trips and first-hand discussions with plant, mosquito, and flood control managers along with aquatic-registered herbicide applicators. Aerial tours provided an overview of the magnitude of the resources and the scale of the problems. Airboat excursions allowed for the viewing of floating plant maintenance control and large-scale submersed plant applications in several different venues to give EPA personnel a sense of the complexities of aquatic plant management and the need for multiple herbicide modes of action to address different management scenarios.

Ninth Circuit Holds That Indirect Discharges Require NPDES Permits

Beveridge & Diamond, PC.

On February 1, the Ninth Circuit issued a decision that has the potential to sweep regulated groundwater discharges that reach surface waters, and similarly remote-in-place discharge situations, into the Clean Water Act's (CWA) NPDES permitting program. In *Hawai'i Wildlife Fund v. County of Maui*, --- F. 3d ---, 2018 WL 650973 (9th Cir. 2018), the court held that the County of Maui violated the CWA by discharging pollutants from wastewater injection wells that release pollutants indirectly to the ocean via groundwater without a National Pollutant Discharge Elimination System (NPDES) permit. The court determined that the CWA does not require pollutants to directly enter a navigable water from a point source in order to be regulated under the statute. By holding that such "indirect" discharges require NPDES permits, this decision has the potential to expand the scope of CWA liability and the NPDES program.

The case arose from the operation of the Lahaina Wastewater Reclamation Facility, a municipal treatment plan serving West Maui. The plant disposed of fully treated wastewater—3 to 5 million gallons per day—in a set of four injection wells that were already regulated under Safe Drinking Water Act (SDWA) permits. A study that used tracer dye showed that groundwater carried some of the constituents disposed of in the underground wells into the Pacific Ocean. In two separate orders, the district court below found that the wells were discharging in violation of the CWA. *Haw. Wildlife Fund v. Cnty. of Maui*, No. 12-00198, 2015 WL 328227 (D. Haw. Jan. 23, 2015); *Haw. Wildlife Fund v. Cnty. of Maui*, 24 F. Supp. 3d 980 (D. Haw. 2014).

A Traceability Standard

The County of Maui, which operated the plant, had argued that it was not liable under the CWA because discharges from its wells did not directly reach the ocean. The court rejected the county's argument, holding that the ability to "trace back" pollutants from a surface water body to specific point sources—the wells—is sufficient, in and of itself, to establish a discharge from a point source requiring a permit. The court examined the Ninth Circuit's definition of unregulated nonpoint source pollution, which "is not traceable to any single discrete source." *Hawai'i Wildlife Fund.*, slip op. at 10 (quoting *Ecological Rights Found v. PG&E*, 713 F.3d 502, 508 (9th Cir. 2013)). Point source pollution is thus the converse, according to the court: if the presence of pollutants can be traced

to identifiable sources rather than diffuse ones, an NPDES permit is required.

The court distinguished the wells from nonpoint sources, such as runoff from roadways or utility poles, based on the wells' role in collecting wastewater. The court reasoned that the underground injection wells effectively conveyed treated wastewater, via release to groundwater and then natural transport of the groundwater to the ocean, to a navigable water. *See id*. at 11. Although releases from the wells did not directly reach the ocean, they could—unlike runoff—be ascribed to specific point sources. The Ninth Circuit found this connection sufficient to impose CWA liability and thus trigger the requirement to obtain an NPDES permit.

Regulating Indirect Discharges

The Ninth Circuit assumed for the purposes of its decision that groundwater was neither a point source nor a navigable water. This move permitted the court address whether the CWA extends to releases of pollutants that *indirectly* reach navigable waters. By framing the issue before it this way, the court avoided addressing longstanding statutory and regulatory distinctions between surface water direct and indirect dischargers.

The panel concluded "indirect" discharges as defined by the court are regulated by the CWA. The

Continued next page

court examined its holdings in *Trustees for Alaska v. EPA*, 749 F.2d 549 (9th Cir. 1984), and *Greater Yellowstone Coalition v. Lewis*, 628 F.3d 1143 (9th Cir. 2010), and concluded that neither case distinguished between indirect and direct discharges. In both cases, the scope of liability under the CWA instead turned on "whether there was a point source *from which* the defendant discharged pollutants." *Hawai'i Wildlife Fund*, slip op. at 14 (emphasis in original).

The court also looked to its sister circuits for support "that an indirect discharge from a point source … suffices for CWA liability to attach." *Id*. The panel read *Concerned Area Residents for Environment v. Southview Farm*, 34 F.3d 114 (2d Cir. 1994), to have recognized liability for indirect discharges where manure flowed to navigable waters through fields. The court also concluded that two cases addressing aerial pesticide spraying had recognized that indirect discharges through the air are regulated by the CWA. *See Hawai'i Wildlife Fund*, slip op. at 16 (discussing *Peconic Baykeeper, Inc. v. Suffolk County*, 600 F.3d 180, 188 (2d Cir. 2010), and *League of Wilderness Defenders/Blue Mountains Biodiversity Project v. Forsgren*, 309 F.3d 1181 (9th Cir. 2002).

The panel finally drew on the statute itself and Justice Scalia's plurality opinion in *Rapanos v. United States*, 547 U.S. 715 (2006). The court observed that Justice Scalia had recognized how the CWA does not prohibit the "'addition of any pollutant *directly* to navigable waters from any point source,' but rather the 'addition of any pollutant *to* navigable waters." *Hawai'i Wildlife Fund*, slip op. at 17 (quoting *Rapanos*, 547 U.S. at 743 (emphasis in original)). Based on this observation in the plurality opinion, the Ninth Circuit found that limiting the CWA only to "direct" discharges would read into the statute a term that Congress had not included. *See id*. at 18.

In announcing this rule, the Ninth Circuit did recognize that there could be instances where "the connection between a point source and a navigable water is too tenuous to support liability under the CWA." *Id*. at 19. The panel declined to address this question, leaving EPA, the states, dischargers, and lower courts to grapple with precisely what factual nexus is required between a point source and regulated water in order for this court-defined "indirect" discharge CWA to apply.

The Prospect of Broader CWA Liability

The Ninth Circuit's holding that the requirement to obtain an NPDES permit extends to releases that indirectly reach navigable waters has the potential pose difficult compliance questions and to expand the range of activities covered by the CWA. Without limiting the NPDES program to direct surface water discharges, determining whether an activity requires a permit becomes more challenging. For example, it may not be obvious before an underground disposal well comes online or material is stockpiled for disposal whether water from these sources will, ultimately, through groundwater or other indirect means, reach a navigable water.

Under the Ninth Circuit's reasoning, operations that disperse materials to land or in the air may have less comfort that these releases are unregulated. Weather conditions or other forces may cause these released materials ultimately to reach navigable waters. The court's opinion in *Hawai'i Foundation* suggests that these releases—so long as they can be ascribed to their original source—would require NPDES permits.

Don't forget, you can also provide support to the AERF by doing your Amazon shopping through their Smile site. AmazonSmile is the same Amazon you know. Same products, same prices, same service. Amazon donates 0.5% of the price of your eligible AmazonSmile purchases to the charitable organization of your choice. Just select the Aquatic Ecosystem Restoration Foundation as your charitable organization.

Devices: Are they regulated by the EPA?

Carlton Layne

As most of you know, I worked for the Environmental Protection Agency for 30 years. Most of that time, I was an Enforcement Officer in the Pesticides and Toxic Substances Branch in Region 4 covering the southeastern U.S. Part of what we did was investigate and prosecute manufacturers and sellers of violative pesticides and devices. In my current life as Executive Director of the AERF, I attend aquatic plant management and vegetation management meetings around the country and I am encountering an increasing number of devices in the exhibit areas. Recently I've even seen papers presented at professional and society meetings which tout the efficacy of the presenters' particular devices. I also receive emails and calls asking if devices are legal, per se. It seems appropriate, therefore for me to provide some information to AERF's constituents about devices.

If the labeling of the device makes a claim to trap, destroy, repel, control, mitigate, etc., a pest, the device is considered to be a pesticide device under the law (FIFRA) and is regulated by the EPA. The claims may either expressed or implied. While most pesticide devices are designed to control insects, rodents and other mammals, many are being marketed with claims to control aquatic vegetation, algae, cyanobacteria, bacteria and other microorganisms. Devices are as diverse as the designer's imaginations. They may be mechanical or use ultraviolet light, ultrasound, ozone, or the like to effect the "control," and include air and water filters.

Pesticides, that is chemicals and mixtures of chemicals whose labeling makes claims to destroy, repel, mitigate or control a pest, must be registered with the EPA. Unlike with pesticides, however, no EPA registration of devices is required. But, the manufacturer/distributor cannot make any false or misleading claims as defined in the regulations or the product is misbranded. This is a legal term that defines a set of violations of federal and state pesticide laws. EPA's regulation, at 40 CFR 156.10(a)(5) provides examples of statements that are considered to make a pesticide or device misbranded; such as:

►A false or misleading statement concerning the effectiveness of the product as a pesticide or device;

[In other words, if a device claims to destroy, mitigate or otherwise control a pest, such as vascular plants, algae, or cyanobacteria, then it must do what it claims or else it is making false or misleading claims and is thus misbranded.]

►A false or misleading comparison with other pesticides or devices;

► Any statement directly or indirectly implying that the pesticide or device is recommended or endorsed by an agency of the Federal Government;

►A true statement used in such a way to give a false or misleading impression to the purchaser; and

►Label disclaimers or warranty statements which negate or detract from labeling statements required under FIFRA and EPA's regulations;

In addition, each pesticide device production facility must be registered by the EPA and be issued an EPA Establishment Number. That number must be displayed on the device itself or the label as it enters the channels of trade. Failure of the company to display the EPA Establishment Number on the label or the device also makes the product misbranded.

Continued next page

I've noticed some devices are manufactured outside the United States. No pesticide or pesticide device may legally enter the United States from an unregistered foreign producing establishment. All methods of entry are regulated: ship, plane car, truck, foot, postal service, UPS, FedEx, etc. Prior to importation, a completed Notice of Arrival form must be submitted by a broker to the EPA Regional Office of jurisdiction for approval. The broker will then notify the U.S. Customs Service by proving a copy of the signed approval. This all is accomplished electronically these days. Each noncompliant importation would constitute a minimum of two violations of the Federal Pesticide Law (FIFRA). Further distribution within the United States would add additional violations.

At least eight states in the U.S. have product registration requirements for devices prior to distribution or sale within their borders. Two states, Indiana and New Mexico, require the submission of the actual devices for efficacy testing by their laboratories prior to the granting of state registrations. And, while the feds do not require product registration for devices, they may ask the manufacturer to prove their claims.

The violations occur when the devices are simply "offered for distribution or sale." Each sale of a device without the EPA Establishment Number affixed or while making false or misleading statements on the labeling or website constitutes separate and distinct violations. Violators are subject to up to $7,500 in penalties per count. The Statute of Limitations for federal pesticide violations is five years.

You may ask **"What if I purchased and used a violative pesticide device in ignorance? Am I liable too?"** No, provided no further distribution or sale occurs, you cannot be prosecuted. You might not want to advertise your error to too broad an audience though.

"Why is the EPA allowing potentially violative devices to exist in the marketplace?" Neither the EPA nor the state Pesticide Enforcement Officers regularly attend our meetings and most sales are directly to customers. So, absent tips or complaints, it's rare for inspectors to encounter them in the marketplace where most violative pesticides and devices are documented. Pesticide Enforcement Officers are currently authorized to spend time scanning the internet in search of unregistered or otherwise misbranded pesticides and devices. So, it's mostly a matter of time.

"Is my Frotis (throw this) rake a device? What about harvesters and cookie cutters and suction dredges?" The regulation for devices also provides examples of those types of devices that are not subject to regulation under FIFRA:

- Devices that depend for their effectiveness more upon the performance of the person using the device than on the performance of the device itself; and
- Devices that operate to entrap vertebrate animals.

Products generally falling within these two categories include rat and mousetraps, fly swatters, tillage equipment for weed control, and fish traps. Most mechanical devices are likely exempt, but UV, ultrasonic, magnetic field generators, and the like are definitely in the regulated category. When in doubt, send me an email.

It is neither expensive nor difficult for manufacturers of pesticide devices to come into compliance with EPA requirements. When pesticide devices are encountered in the marketplace, ask the appropriate questions to determine the compliance status of the company and the products. Ask for their EPA number. If they don't know what you're talking about, move on. The federal requirements are not new.

Continued next page

They've been around in statute since 1972 and in regulations since 1976. Ignorance of the law is no excuse in FIFRA cases since it is a general intent statute. The position of the federal government is if you're in the pesticide or pesticide device business, then you need to make it your business to know what your legal obligations are.

If you have any more questions regarding pesticide devices, please email me at clayne@aquatics.org or call me at 678-773-1364.

Registered vs Unregistered

Carlton Layne

I often receive inquiries regarding aquatic use products in regard to their EPA registration status. Often the questions revolve around why some products have EPA registration numbers and seemingly identical products do not. Chapter 12 of the EPA Pesticides Label Review Manual addresses many of these products.

For certain aquatic use products, claims to reduce sludge and unpleasant odors in water or claims to clean, clarify or deodorize ponds and lakes are not considered to be pesticide claims; nor are claims regarding the reduction of nutrients and organic matter in water pesticide claims, per se -- **provided no claim is directly made or implied that the reductions will result in reduced pest populations**. The claims "Reduces critical nutrients for cleaner, clearer ponds", "Ponds with algae need to reduce nutrients", and "Bacterial Product to Control Excess Nutrients for Clear, Clean Ponds" imply pesticide activity therefore require registration.

Slime and odor control agents and other products expressly claiming control of microorganisms of economic or aesthetic significance are pesticides that require EPA registration and thus should bear accurate pesticide labeling claims. Registrants are responsible for ensuring that these products perform as intended by developing efficacy data, which must be kept on file by the registrant.

EPA's policy does not permit the use of the terms "natural", or "naturally" in the labeling of any registered product, including biopesticide products, both microbials and biochemicals. These terms cannot be well defined, and thus may possibly be misconstrued by consumers as a safety claim.

There are lots of dyes on the market. Dyes marketed for use in water strictly for aesthetic purposes do not require EPA registration **provided no claim is directly made or implied that the product's use will result in reduced pest (plants, algae, or cyanobacteria) populations.** There are dyes for use in aquatic sites that do make overt pesticide claims and which are registered.

In all cases, make sure the labels of the products you buy match your intended use. If the label does not state the results you expect to see, you may want to consider another product.

Welcome to Our Newest Gold Sponsor

SOLitude Lake Management is dedicated to making water a more healthy and beautiful part of our world. In that pursuit, SOLitude offers sustainable solutions that improve water quality, enhance beauty, preserve natural resources and reduce our environmental footprint.

SOLitude's highly-trained team of scientists, biologists, ecologists and aquatic resource management professionals specializes in the development and execution of customized lake, pond, wetland and fisheries management programs that include water quality testing and restoration, nutrient remediation, algae and aquatic weed control, installation and maintenance of fountains and aeration systems, bathymetry, mechanical harvesting and hydro-raking, lake vegetation studies, biological assessments, habitat evaluations, and invasive species management.

Reflection of my time at Plant Camp for the Aquatic Ecosystem Restoration Foundation

Sonja Wixom

I was given the privilege to attend the 2018 session of Plant Camp, created and hosted by University of Florida and the University of Florida's Institute for Food and Agricultural Sciences (UFIAFS), through funding provided by the Aquatic Ecosystem Restoration Foundation (AERF). During my week spent in Gainesville, I learned from and got to meet experts in the field of Florida's plant sciences. Each day started with hands on exploring and concluded with course materials and corresponding lectures. Among these hands-on activities I experienced several firsts; a few of my favorites included riding on an airboat, planting and preparing specimens for herbicide research, and holding a biological control species, *Lilioceris cheni.*

Throughout my master's coursework I've developed a strong knowledge of ecology, limnology, botany, management techniques, and invasive species; but I still learned new things. I was taught how to use different approaches for teaching a variety of topics in environmental science by utilizing subjects like art, math, and language. These different ways of teaching are designed to engage and inspire a wider student base inside the classroom. During the week participants had plenty of time to reflect on activities and lessons, as well as sharing ideas for personal applications of information.

In addition to what I have learned, University of Florida and UF IFAS has provided me with many, many lesson plans and is sending me a teachers kit filled with items used during the week and so much more. I cannot express my gratitude and excitement enough for the opportunity to attend Plant Camp and my future in teaching. I valued my time at Plant Camp highly and can see many advantages resulting from creating a similar experience for New York and North Eastern outdoor educators and teachers. I will be speaking more about my thesis study and specific applications of plant camp in July at the upcoming Aquatic Plant Management Society meeting in Buffalo, NY.

Breaking WOTUS Legislation News

On June 21, the Senate voted 62-34 to table an amendment by Sen. Mike Lee (R-UT) to the Energy and Water Development appropriations bill that would have repealed the 2015 water rule. In comments on the Senate floor, Lee said, "It is not unusual to have policy in an appropriations bill" and that the 2015 rule represents "some of the worst kind of lawmaking that occurs here in the swamp," in which Congress "sets forth a very broad, vague standard and an executive branch agency figures out the rest, sometime with disastrous consequences." Lee also pointed to the bipartisan support for a Congressional Review Act resolution of disapproval. Speaking before Lee, Senate Majority Leader Mitch McConnell (R-KY) contended that the water rule is "on the way to the ash heap of history right now under this administration, so this is not about waters of the United States or whether we are for or against it. This is about whether we want to get away from annual omnibus appropriation bills, and this is the first test here."

Meanwhile, the House voted 213-211 on June 21 to approve the Agriculture and Nutrition Act, which included the amendment by Rep. Jim Banks (R-IN) permanently repealing the 2015 water rule. Banks said in a statement, "WOTUS gave unelected bureaucrats at the EPA the power to broadly interpret what is a navigable waterway in a way where even a puddle could be subject to federal regulation. This rule has been harmful across all industries in our country and it is time we remove the regulation once and for all." Rep. Kevin Cramer (R-ND) praised the bill in a statement for repealing "the onerous Waters of the U.S. rule." The Natural Resources Defense Council issued a press release criticizing the farm bill's "harmful provisions," and the first one listed is: "Repeals the Clean Water Rule's safeguards for critical water bodies, including streams that help supply one-third of Americans with drinking water."

Your AERF Sponsorship is key to:

►maintaining critical efforts in education and outreach
►expanding partnerships with regulatory agencies
►building partnerships
►supporting high quality research
►attracting graduate students
►expanding an aleady diverse membership
►being a source for resource management agencies

To donate, join or renew your Sponsorship in the AERF **please send the completed application form and payment to Treasurer, AERF, 1860 Bagwell Street, Flint, MI 48503-4406.**

Date: _____ Name: _____ Company: _____

Address: _____

Phone: _____ Fax: _____

Web Address: _____ Email: _____

For more information contact:
Carlton R. Layne, Executive Director, AERF
3272 Sherman Ridge Drive
Marietta, GA 30064
Phone: 678-773-1364
Fax 770-499-0158
Email clayne@aquatics.org.

☐ Check here if you are an applicator company, so we can include you on our applicator pages.

☐ Check here if you would like to receive a free copy of the BMP with your membership.

Please use the following as a guide in the selection of the desired level of Sponsorship:

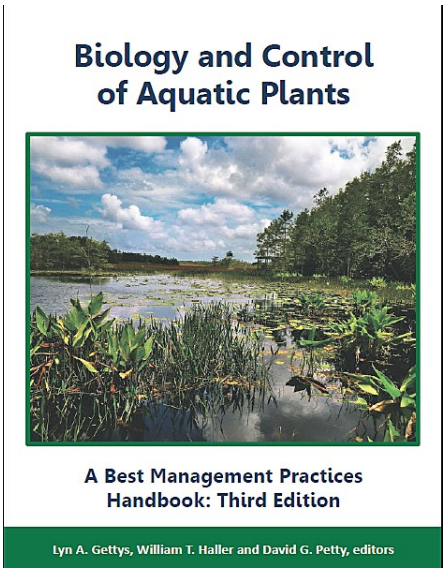
Of course, you are welcome to join AERF at any level and additional donations are appreciated.

☐ **Gold** is recommended for manufacturers and registrants	$15,000
☐ **Silver** and above is recommended for formulators	$5,000
☐ **Bronze** and above is recommended for distributors	$2,500
☐ **Affiliate** and above is recommended for consultant and application companies, equipment manufacturers/resellers and biological producers/resellers	$1,000
☐ **Associate** and above is recommended for societies, federal and state agencies, aquatic resource management associations, applicators and consultants	$250
☐ **Individual** and above is recommended for individual members	$50
☐ **Student** and above is recommended for students	$0

AERF
Carlton Layne, Executive Director
3272 Sherman Ridge Dr.
Marietta, GA 30064

Phone: 678-773-1364
Fax: 770-499-0158
E-mail: clayne@aquatics.org

WWW.AQUATICS.ORG



Sponsorship

The AERF respectfully requests that you consider sponsorship. AERF will continue to work on your behalf, and as a member, you will greatly benefit from our work on regulatory and research aspects of aquatic plant management. With changes in the regulatory environment now and in the future, it is essential to be involved and to support all the hard work of your AERF associates.

Please contact Carlton Layne for information on how you can best participate.

The AERF Mission

The Aquatic Ecosystem Restoration Foundation is committed to sustainable water resources through the science of aquatic ecosystem management in collaboration with industry, academia, government and other stakeholders.

Strategic Goals

- Provide the public information concerning the benefits and value of conserving aquatic ecosystems including the aquatic use of herbicides and algaecides in the aquatic environment.
- Provide information and resources to assist regulatory agencies and other entities making decisions that impact aquatic plant management.
- Fund research in applied aquatic plant management at major universities.

Upcoming Events

APMS	Jul 15-18 Buffalo, NY
CA Aq Weed School	Sep 5-6 David, CA
SCAPMS	Oct 3-5 North Myrtle Beach, NC
FAPMS	Oct 13-18 Daytona Beach, FL
MSAPMS	Nov 5-7 Chattanooga, TN

Contacts

Carlton Layne	clayne@aquatics.org
Dave Petty	dpetty@aquatics.org

2018 Officers

President	Tyler Koschnick, SePRO
Executive Director	Carlton Layne
Past President	Jim Schmidt
Vice President	Gerald Adrian, United Phosphorus
Treasurer	Richard Hinterman, Cygnet Enterprises
Directors	Carl Della Torre, Alligare
	Bill Ratajczyk, Applied Biochemists a Lonza Co.
	Joel Fruendt, Clarke
	Dave Barnekow, Dow AgroSciences
	Clark Boyd, Nufarm
	Kevin Tucker, SOLitude Lake Management
	Craig Jakubek, Syngenta
EPA Liaison	Rob Richardson, NCSU
SAC Chair	Jay Ferrell, U.F.
Editor	David Petty, NDR Research