

**Frequently Asked Questions on
EPA's Draft NPDES Pesticides General Permit (PGP)
EPA Region 9, July 2010**

1. What is the National Pollutant Discharge Elimination System (NPDES) Program?

The National Pollutant Discharge Elimination System (NPDES) is a federal permitting program under the Clean Water Act (CWA) that establishes controls on point source discharges of pollutants to waters of the United States. Point sources are defined as discrete conveyances including but not limited to any pipe, ditch, channel, or conduit from which pollutants are or may be discharged.

2. Where can I get more information about this permit?

The best place to find information about the permit is this website: <http://www.epa.gov/npdes/pesticides>. If you cannot access the website or have other questions, please contact Pascal Mues at EPA Region 9 (415-972-3768) or by e-mail at mues.pascal@epa.gov.

3. Why is EPA requiring NPDES permits for discharges from pesticide applications?

The requirement to obtain NPDES permits for discharges from pesticide applications to waters of the U.S. stems from a recent decision by the Sixth Circuit Court of Appeals. In its ruling on *National Cotton Council, et al. v. EPA*, the court vacated EPA's 2006 rule that said NPDES permits were not required for applications of pesticides to waters of the U.S. Thus, discharges to waters of the U.S. from the application of pesticides will require NPDES permits when the court's mandate takes effect beginning on April 10, 2011.

4. Will agricultural runoff and/or irrigation return flows that contain pesticides require an NPDES permit?

No. In 1987, Congress amended the Clean Water Act to exempt agricultural stormwater and irrigation return flow from NPDES permitting requirements. The Sixth Circuit Court's ruling does not affect these exemptions. The PGP should not affect normal pesticide use in agricultural production.

5. Do the requirements of the PGP contradict or conflict with product labels? (e.g. spray frequency or timing, spray droplet size, rate of application, etc)?

No. A pesticide applicator must comply with all applicable Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) requirements contained in pesticide product labels. The PGP, when issued, will include additional requirements that are consistent with pesticide product labels; the permit complements and does not override any existing FIFRA labeling requirements.

6. Is EPA's PGP available nationwide?

No. Although the Court's decision applies nationally, EPA's PGP is effective only in areas where EPA is the NPDES permitting authority (i.e., six states – AK, ID, MA, NH, NM, and OK; Washington, DC, Puerto Rico, and all U.S. territories except the Virgin Islands; Indian Country lands nationwide; and federal facilities in four states – CO, DE, VT, WA). States and in one instance, the Virgin Islands, as the authorized NPDES

permitting authority, are responsible for issuing NPDES permits for pesticide discharges in all other areas of the country. These other NPDES permitting authorities are in the process of developing similar NPDES permits for pesticide discharges. A complete listing of areas where EPA's PGP is available for use is provided in Appendix C of EPA's draft PGP.

In EPA Region 9, the EPA PGP will apply in Indian Country and the territories of American Samoa, CNMI, and Guam. The State of California has adopted or is in the process of adopting permits that will meet the requirements of the Court's decision. The States of Arizona, Hawaii, and Nevada are also in the process of developing permits consistent with the Court's decision.

7. Which pesticide applications can be covered under EPA's PGP?

EPA's PGP regulates discharges to waters of the U.S. from the application of (1) biological pesticides, and (2) chemical pesticides that leave a residue for the following pesticide use patterns: mosquito and other flying insect pest control; aquatic weed and algae control; aquatic nuisance animal control; and forest canopy pest control.

8. Are all pesticide discharges to waters of the U.S. for the four use patterns identified in EPA's PGP eligible for coverage?

No, most notably, this permit does not authorize coverage for (1) discharges of pesticides or their degradates to waters already impaired by those specific pesticides or degradates (for more information on impaired waters in Region 9, see this website- <http://www.epa.gov/region9/water/tmdl/303d.html>) or (2) discharges to outstanding national resource waters (also known as Tier 3 waters, e.g. Lake Tahoe). These discharges will require coverage under an individual NPDES permit. Specific eligibility provisions are detailed in Part 1.1 of EPA's PGP.

9. Are specific pesticides regulated under the PGP?

No. The PGP regulates discharges from the application of all pesticides used to control pests for four specific pesticide use patterns. Specifically, as written, the permit does not include any requirements that apply only to a specific pesticide or type of pesticide.

10. Does the PGP cover discharges from pesticide applications near waters of the U.S.?

EPA interprets the Sixth Circuit Court decision to apply to the unavoidable discharge to waters of the U.S. in order to target pests in, or in close proximity to, water, for example, treating weeds along the bank of a ditch through which water is flowing.

The PGP is available for pesticide applications near waters of the U.S. where the pesticide necessarily must enter the water for the application to achieve its intended purpose. Thus, the pesticide application must first be intended to control pests near a water of the U.S. Second, it must be unavoidable that the pesticide enters the water to target such pests effectively.

11. Is NPDES permit coverage now required for runoff that contains pesticides?

Stormwater runoff that may contain pesticides does not require NPDES permit coverage unless it was already required to obtain such coverage without the Sixth Circuit Decision in *National Cotton Council, et al. v. EPA*. Existing NPDES stormwater permits for

runoff from construction, industrial activities, and municipal separate storm sewer systems (MS4s) already consider pesticides as part of the permit development process.

12. Does EPA’s PGP cover discharges from terrestrial applications for the purpose of controlling pests on agricultural crops or forest floors?

No. This permit does not cover terrestrial applications for the purpose of controlling pests on agricultural crops or forest floors. However, discharges from any pesticide use patterns that do not fall within the four use patterns covered by this permit may require coverage under some other NPDES permit if those pesticide applications result in point source discharges to waters of the U.S. EPA is requesting comment on this issue in the *Federal Register* notice accompanying the draft permit. EPA will consider the comments and decide whether to either expand the final general permit to include additional use patterns or potentially to issue a separate general permit for these additional activities.

13. Who is an “operator” that EPA’s PGP identifies as the entity responsible for permit coverage?

The NPDES regulations specify that an “operator” of a discharge is the person responsible for obtaining NPDES permit coverage. EPA’s PGP defines operator as any entity involved in the application of a pesticide that results in a discharge to waters of the U.S. that meets either or both of the following two criteria:

- (i) The entity has control over the financing for or the decision to perform pesticide applications that result in discharges, including the ability to modify those decisions; or
- (ii) The entity has day-to-day control of or performs activities that are necessary to ensure compliance with the permit (e.g., they are authorized to direct workers to carry out activities required by the permit or perform such activities themselves).

14. Who is required to apply for coverage under EPA’s PGP?

General permits do not require that operators “apply” for coverage; rather general permits require operators to submit a Notice of Intent (NOI) to be covered by a permit or, in some instances, general permits provide for automatic coverage provided certain eligibility criteria are met. For EPA’s PGP, operators that expect to exceed an annual (calendar year) treatment area threshold, as described in Part 1.2.2 of the permit must submit an NOI for permit coverage. Operators who meet the eligibility provisions but do not expect to exceed the annual treatment area thresholds are automatically authorized to discharge after April 9, 2011 without submission of an NOI. However, to maintain coverage under the PGP, these operators must submit an NOI at least 10 days prior to exceeding an annual treatment area threshold if they anticipate they will exceed an applicable annual treatment area threshold during any time in a given calendar year of the permit cycle.

15. What is an NOI? Who is required to submit an NOI and what does submittal of an NOI mean?

A Notice of Intent for a general permit is similar to a permit application, in that it is notice to the NPDES permitting authority (i.e., EPA in this instance) of an operator’s intent to be covered under a general permit. An NOI typically contains basic information about the proposed discharge. For EPA’s PGP, the NOI filer is one of two different types of operators:

- (1) The entity responsible for deciding to conduct pesticide applications that expect to exceed an annual treatment area threshold, as opposed to the person performing the applications, if different, or
- (2) The entity performing the pesticide applications under contract from any other parties that in total expect to exceed an annual treatment area threshold but excluding from the total any applications covered under another NOI.

For-hire applicators are required to submit an NOI when their total treatment area, but only for those areas not accounted for in another NOI, exceed an annual treatment area threshold.

By signing and submitting the NOI, the operator is certifying that the information submitted is true, accurate, and complete. A fraudulent or erroneous NOI invalidates permit coverage. An incomplete NOI delays permit coverage until such time as the NOI has been completed.

16. How do I submit an NOI?

Operators required to submit an NOI under EPA's PGP will be required to do so using EPA's online electronic Notice of Intent system, or eNOI, that will be accessible from the NPDES Pesticides General Permit homepage at www.epa.gov/npdes/pesticides.

17. What type of information must be submitted in an NOI?

The types of information required to be included in the NOI for EPA's PGP are listed in Appendix D of the permit. In general, the NOI is to contain basic contact information for the operator and an overview of activities and locations, including waters of the U.S., for which permit coverage is being requested.

18. When am I covered after submitting the NOI?

An operator who has submitted an NOI after determining they will exceed an annual treatment area threshold will be authorized to discharge no later than 10 days after EPA has posted its confirmation of receipt of the NOI on the Internet. An operator who is discharging pesticides in response to a declared pest emergency situation is covered immediately (although the operator has up to 30 days after the emergency discharge has occurred to submit an NOI).

19. What are the annual treatment area thresholds that trigger the requirement to submit an NOI?

The annual treatment area threshold for controlling mosquitoes and other flying insect pests and for forest canopy pest control activities is 640 acres of treatment area. The annual treatment area threshold for aquatic weed and algae control and aquatic nuisance animal control is 20 acres of treatment area in water or 20 linear miles of treatment area at water's edge. For calculating annual treatment area totals, each pesticide application activity is counted as a separate activity. For example, applying pesticides twice a year to a 10-acre site should be counted as 20 acres of treatment area. Treating both sides of a 10-mile ditch is equal to 20 miles of water treatment area. For-hire applicators only count the treatment areas not accounted for in another NOI in their total annual treatment area.

20. Will the obligation to obtain NPDES permit coverage hinder an applicator's ability to perform emergency pesticide applications to address an imminent public health issue or a new invasive species?

No. EPA developed the PGP such that these emergency pesticide applications can be performed without delay. If a pesticide application is required in response to a declared pest emergency situation, an applicator can perform its pest control activities without having to submit an NOI or wait for EPA approval for the application. For any of these activities that require submission of an NOI, the operator has up to 30 days after performing an emergency pesticide application to submit that NOI. These applicators are still required to comply with the other provisions of the permit during emergency pesticide applications, although the Agency does not believe compliance with these activities will interfere with the ability to address the situation in a timely manner.

21. What does the PGP require of operators?

In general, the PGP requires all operators to minimize pesticide discharges (by using the lowest effective amount of pesticide, preventing leaks and spills, and calibrating equipment) and monitor for and report any adverse incidents. Operators who exceed the annual treatment area threshold must also submit an NOI for coverage, implement integrated pest management practices to minimize the discharge of pesticides to waters of the U.S., develop a Pesticide Discharge Management Plan, submit annual reports, and maintain records of pest control practices.

22. What are "integrated pest management practices"?

Integrated Pest Management (IPM) is an effective and environmentally sensitive approach to pest management that relies on a combination of common-sense practices. IPM uses current, comprehensive information on the life cycles of pests and their interaction with the environment. This information, in combination with available pest control methods, is used to manage pest damage by the most economical means and with the least possible hazard to people, property, and the environment. The EPA's PGP requires operators to implement IPM practices to reduce pesticide discharges. These practices include identifying and assessing the pest problem, assessing pest management alternatives, and following appropriate procedures for pesticide use.

23. What are "adverse incidents"?

EPA's PGP requires operators to immediately notify the Agency of any adverse incident related to the application of pesticides covered under the permit. As defined in Appendix A of the PGP, an adverse incident is an incident that the operator observes upon inspection or otherwise became aware, in which: a person or non-target organism may have been exposed to a pesticide residue, and the person or non-target organism suffered a "toxic or adverse effect." The phrase "toxic or adverse effects" includes effects that occur within waters of the U.S. on non-target plants, fish, or wildlife that are unusual or unexpected (e.g., effects are to organisms not otherwise described on the pesticide product label or otherwise not expected to be present) as a result of exposure to a pesticide residue, and may include any of a number of observations such as distressed or dead juvenile and small fishes; washed up or floating fish; fish that are listless or nonresponsive to disturbance; stunting, wilting, or desiccation of non-target submerged or emergent aquatic plants; or other dead or visibly distressed non-target aquatic organisms

(amphibians, turtles, invertebrates, etc). The phrase, “toxic or adverse effects,” also includes any adverse effects to humans (e.g., skin rashes) or domesticated animals that occur either directly or indirectly from a discharge to waters of the U.S. that are temporally and spatially related to exposure to a pesticide residue (e.g., vomiting, lethargy).

24. Does EPA’s PGP require monitoring of ambient water quality?

No. Although the PGP does not currently require operators to conduct monitoring of ambient water quality, all permittees are required to conduct visual monitoring for adverse effects during application and during any post-application surveillance. Operators are also required to monitor their management practices. EPA will be evaluating the effectiveness of the PGP and may determine that additional monitoring is warranted. Should EPA decide to impose additional monitoring requirements, either during the five-year duration of the PGP or as part of reissuance of the PGP, EPA is obligated to public notice these additional requirements.

25. Will operators have to stop applying pesticides if they can not obtain NPDES permits by April 2011?

Any operator with a point source discharge resulting from the application of pesticides will be in violation of the Clean Water Act if those discharges are not covered under an NPDES permit as of April 10, 2011. If a pesticide applicator is required to have an NPDES permit, but does not have permit coverage for any reason, the applicator could face a difficult choice. Choosing to apply the pesticide from which there is a discharge, the operator risks being found in violation of the Clean Water Act and subject to penalties of up to \$37,500 a day. Alternatively, an applicator could decide not to apply a pesticide.

26. Do state-issued permits have to be the same as the EPA-issued permits for discharges from the application of pesticides?

No. Nothing in the federal regulations precludes a state from adopting or enforcing requirements that are appropriate to address discharges in their state or are more stringent or more extensive than those required under the NPDES regulations. In fact, the Clean Water Act is meant to serve as a baseline for state environmental protection. The Clean Water Act and corresponding NPDES regulations require that permits, at a minimum, include the requirements detailed in 40 CFR Part 122.44. States are free to incorporate additional requirements that they feel are necessary to adequately protect water quality. Similarly, how EPA and states interpret information from which permit requirements are developed may differ. For example, one permit writer may make a best professional judgment (BPJ) determination that monitoring of discharges reasonably should occur during pesticide application while a second permit writer may make a BPJ determination that monitoring of discharges should reasonably be performed after pesticide application. In that instance, the regulations, as written at 122.44(i) specify that monitoring requirements be included to assure compliance with permit limitations. It is reasonable that the two different permit writers may come to different conclusions about how best to incorporate this requirement into the permit.