United States Environmental Protection Agency
Office of Water, Office of Wastewater Management
Water Permits Division

Information on the Pesticide General Permit for Agricultural Stakeholders
December 2011

The Clean Water Act (CWA) controls pollution in America's waters through the National Pollutant Discharge Elimination System (NPDES) permitting program. Anyone wanting to discharge pollutants from point sources to U.S. waters (such as rivers, streams, and wetlands) must first obtain an NPDES permit from the U.S. Environmental Protection Agency (EPA) or an authorized state. Although pesticides traditionally have been regulated under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), in 2009, the U.S. 6th Circuit Court of Appeals ruled in *National Cotton Council, et al. v. EPA* that any point source discharge of biological pesticides, or chemical pesticides that leave a residue, into waters of the U.S. are pollutants under the CWA. As a result of that court decision, beginning on October 31, 2011, NPDES permits are required for point source discharges from applications of pesticides. Some examples of pesticide applications that now require NPDES permit coverage are applications made to control aquatic weeds or fish, flying insects above U.S. waters, or pests present near these waters, such that it is unavoidable that pesticides will be deposited to these waters during application. NPDES permits establish conditions under which discharges may legally occur. Provided that an operator meets the conditions of their permit, the operator may be shielded from CWA-related citizen suits.

The 2009 court decision did not affect the existing CWA permitting exemptions for agricultural runoff and irrigation return flow, both of which may contain pesticides, but do not require NPDES permits. Also, pesticide applications to land that do not result in point source discharges of pesticides to waters of the U.S. (such as for controlling pests on agricultural crops, forest floors, or range lands) do not require NPDES permit coverage. **Therefore, many farms are not affected by the Court's decision and do not need NPDES permits for their pesticide applications.** This permit offers coverage for certain crops, such as cranberries, where the crops are grown directly in U.S. waters and pesticides are applied to those crops.

On October 31, 2011, the EPA issued a final NPDES Pesticide General Permit (PGP) for most pesticide discharges in areas where EPA is the NPDES permitting authority. These areas include six states (Alaska, Idaho, Massachusetts, New Hampshire, New Mexico, and Oklahoma), Washington, D.C., all U.S. territories except the Virgin Islands, most Indian Country lands, and federal facilities in four additional states (Colorado, Delaware, Vermont, and Washington). The remaining 44 states and the Virgin Islands are authorized to develop and issue their own NPDES pesticide permits. To date, most of these states have finalized their own general permits that establish requirements for pesticide discharges in their areas. Without coverage under an NPDES pesticide general permit, any pesticide discharge to a water of the U.S. must be controlled under an NPDES individual permit. EPA and the authorized states also develop and issue those individual permits; however, an individual permit generally takes longer to obtain and typically is more administratively burdensome than a general permit. Anyone discharging in areas not covered under EPA's PGP should contact their state environmental regulatory agency for more information on applicable permit requirements. A directory of state agencies for NPDES pesticide permits is available at: www.epa.gov/npdes/pesticides/statecontacts.

The information which follows is only applicable for the geographic areas where EPA is the permitting authority as described in the paragraph above. Farmers in other areas should contact their state environmental regulatory agency for information on their permit requirements.

EPA's final PGP covers pesticide discharges from the following pesticide use patterns: (1) mosquito and other flying insect pest control; (2) weed and algae control; (3) animal pest control; and (4) forest canopy pest control. Operators whose pesticide applications do not fall into one of these use patterns (or do not qualify for EPA's general permit for other reasons) may still need a permit, and may apply for individual permit coverage.

The NPDES regulations specify that "Operators" of discharges are required to obtain permit coverage for these discharges. In areas where EPA's PGP is available, all Operators who fall into one of the four categories above will be automatically authorized to discharge for any pesticide applications that occur before January 12, 2012. For any discharges that occur after January 12, 2012, certain Operators are required to submit Notices of Intent (NOI) to continue being covered under EPA's PGP; these Operators must submit their NOIs at least 10 days prior to discharge. As a result of consultation with federal resource agencies as required by the Endangered Species

Act (ESA), the permit includes additional requirements for certain Operators who discharge to waters of the U.S. containing National Marine Fisheries Service (NMFS) Listed Resources of Concern; these Operators are required to submit NOIs in certain instances at least 30 days prior to discharge. Part 1.2 of the PGP contains a description of which Operators are required to submit NOIs. Operators who are not required to submit NOIs are still required to follow the other PGP requirements applicable to them.

EPA developed an electronic NOI (eNOI) system to simplify the NOI submission process, and the Agency encourages Operators who are required to submit NOIs to do so as early as possible. Deadlines for submission of NOIs are exemplified in the following table.

Example date of discharge	Deadline to submit NOI
Any discharges between October 31, 2011 and January 12, 2012	None, no NOI required.
Discharge on January 13, 2012	January 3, 2012 (10 days prior to discharge) for most applications; or December 14, 2011 (30 days prior to discharge) for areas that overlap with NMFS Listed Resources of Concern
Discharge on any date after January 13, 2012	10 days prior to any discharge after January 13, 2012 for most applications; or 30 days prior to any discharge after January 13, 2012 for areas that overlap with NMFS Listed Resources of Concern
Discharge in December, 2011 and then again beginning on March 15, 2012 (with no overlap with NMFS Listed Resources of Concern)	None needed for discharge in December, 2011. Submit NOI by March 5, 2012 for discharge that begins March 15.

In the first 120 days after the effective date of the PGP, as the Agency does with many newly established regulatory and permits programs, EPA will focus on compliance assistance and education of the permit requirements and obligations, rather than on enforcement actions. The Agency will continue to conduct outreach with permittees, with a focus on small entities affected by this permit, particularly in areas with NMFS-listed threatened and endangered species.

The final PGP provides additional water quality protections beyond FIFRA pesticide label requirements. Specifically, the final permit requires permittees to minimize pesticide discharges through the use of pest management measures and monitor for and report any adverse incidents. Some permittees are also required to implement integrated pest management (IPM)-like practices for more significant applications, which should reduce the amount of pesticides discharged to waters of the U.S. Record-keeping and reporting requirements in the permit will provide valuable information to EPA and the public regarding where, when, and how much pesticides are being discharged to waters of the U.S. Details of the most significant pesticide applications covered under the PGP are to be reported to EPA on an annual basis.

The permit includes additional requirements for certain Operators who discharge to waters of the U.S. containing NMFS Listed Resources of Concern. EPA's website (www.epa.gov/npdes/pesticides/) includes information on these resources, including their geographic locations. EPA expects that a small percentage (approximately 2 percent) of pesticide discharges covered under the PGP will be made to these types of waters. Operators with discharges to these waters must determine their eligibility for coverage through additional ESA-related criteria outlined in the permit, submit an NOI and annual reports, and implement IPM-like practices.

EPA's PGP also includes State-, territory-, and tribe-specific requirements, as required under CWA Section 401 to ensure that discharges covered under the PGP are consistent with any state, territory, or tribal water quality requirements; see Part 9 of the PGP for these requirements.

For More Information

More information on NPDES requirements for discharges from pesticide applications, including EPA's final PGP, accompanying PGP fact sheet, and an interactive tool to help potential permittees determine their permitting requirements, are available at: www.epa.gov/npdes/pesticides.

Contact: pgp@epa.gov.