



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



**Pesticide General Permit
November 2011**

Background

On October 31, 2011, the Environmental Protection Agency (EPA) issued a final National Pollutant Discharge Elimination System (NPDES) Pesticide General Permit (PGP) for point source discharges from the application of pesticides to waters of the United States. This action was in response to a 2009 decision by the U.S. 6th Circuit Court of Appeals in *National Cotton Council, et al. v. EPA*, which found that point source discharges of biological pesticides, and chemical pesticides that leave a residue, into waters of the U.S. were pollutants under the Clean Water Act (CWA). As a result of the Court's decision, NPDES permits are required for these discharges beginning on October 31, 2011.

EPA's PGP covers discharges in areas where EPA is the NPDES permitting authority, which 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. EPA has worked closely with those states since the Court decision and to date most of the authorized states have reported that their general permits either are or will be finalized by October 31, 2011.

In areas where EPA's PGP applies, all eligible Operators will be covered under the PGP automatically until January 12, 2012 without having to submit a Notice of Intent (NOI). For any discharges that occur beyond January 12, 2012, Operators who are required to submit NOIs (as identified in the PGP) will need to submit those NOIs at least 10 days prior to discharge (or 30 days prior to discharge to National Marine Fisheries Service (NMFS) Listed Resources of Concern). This means that an Operator required to submit an NOI who has a discharge occurring on January 13, 2012 would need to submit an NOI by January 3, 2012 (or December 14, 2011 for discharges to NMFS Listed Resources of Concern) to ensure uninterrupted permit coverage. The Agency encourages those Operators who are required to submit NOIs to do so as early as possible. EPA developed an electronic NOI (eNOI) system to simplify NOI submission.

The provisions of the PGP are designed to improve protection of our nation's water quality by minimizing discharges of pesticides to waters of the U.S. EPA's final permit covers discharges of biological pesticides, and chemical pesticides that leave a residue, from the following pesticide use patterns:

- Mosquito and other flying insect pest control,
- Weed and algae control,
- Animal pest control, and
- Forest canopy pest control.

The final PGP requires additional protective measures beyond Federal Insecticide, Fungicide and Rodenticide (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 submit NOIs prior to beginning to discharge and implement integrated pest management (IPM)-like practices, 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. Many of the revisions reflected in the final permit are designed to streamline the requirements as well as incorporate flexibility and reduce burdens on small entities.

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 NMFS Listed Resources of Concern. EPA's website (www.epa.gov/npdes/pesticides/) includes information on these resources, including their geographic locations. Operators with discharges to waters of

the United States containing NMFS Listed Resources of Concern must determine their eligibility for coverage through additional ESA-related criteria outlined in the permit and submit an NOI and annual reports and implement IPM-like practices.

The PGP does not cover, nor is permit coverage required for, pesticide applications that do not result in point source discharge to waters of the U.S., such as terrestrial applications for the purpose of controlling pests on agricultural crops, forest floors, or range lands. Also, agricultural runoff and irrigation return flows continue to be exempt from permitting, as provided under the CWA.

EPA developed this general permit to provide an option for Operators to comply with the CWA permit requirements. Without a general permit, entities applying pesticides would have to obtain coverage under individual permits to legally discharge these pesticides to waters of the U.S. Individual permits generally take longer to obtain and typically are more burdensome than general permits. Additionally, the purpose of the permit is to provide coverage for discharges of pesticides to waters of the U.S. and, provided all of the permit requirements are met, shield the permittee from liability from citizen lawsuits.

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 species.

History

In developing the PGP, EPA conducted extensive outreach and participated in more than 200 meetings with stakeholders between the Court's 2009 decision and issuance of the final permit. A draft permit was proposed on June 4, 2010, for public comment, and on April 1, 2011, EPA posted online a pre-publication version of the draft final permit to assist states in developing their own permits and for the regulated community to become familiar with the permit's requirements before it became effective. EPA's final PGP is nearly identical to that posted in April, except that requirements have been added to protect endangered species and additional state-, territory-, and tribe-specific water quality requirements applicable to discharges in those areas.

During ESA consultation with EPA, NMFS determined that certain NMFS-listed species of salmonids, eulachon and sturgeon were resources of concern based on its review of EPA's biological evaluation of the effect of discharges to be covered under the permit. EPA expects that a small percentage (approximately 2%) of pesticide discharges covered under the permit will occur to waters of the U.S. that contain NMFS-listed species and their critical habitat. These ESA-provisions were considered only for areas for which EPA's permit applies. The 44 NPDES-authorized states are not bound by the same ESA consultation requirement under the federal NPDES program, and, thus, the 44 states are not necessarily obligated to adopt similar ESA provisions for listed species in their areas.

State-, territory-, and tribe-specific requirements are the result of CWA Section 401 certification requirements that provide those states, territories, and tribes with an opportunity to add conditions to EPA's permit to ensure that discharges covered under EPA's permit are consistent with any state specific water quality requirements.

For More Information

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

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