

Clean Water Act Permitting of Discharges from Pesticide Applications Webinar

Transcript

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[Note: The webinar recording begins shortly after the start of the webinar. One or two sentences maybe omitted from the archive.]

Throughout the webcast there are, I guess, three poll questions that we are going to ask and when those come up we are really looking for you to provide your feedback and get some pretty general information about how this permit applies to you or your goal and if you can answer those questions and share the results of those and you can see kind of how the other folks on the line are responding. And then finally at the end of the webcast when you leave, there is a short survey. I believe there are five questions and really kind of asking how this worked for you and for me anyway, it's more importantly if you have any other outstanding issues or there are other things for which you would like additional guidance or assistance on. So again, we appreciate it when we get to the end of this if you can fill out that form.

So what I am going to try and talk to you about today is this pesticide permitting requirement. I will talk a little bit about the background, how the Clean Water Act permitting works and then the responsibilities under that permit program and then I'll talk about EPA's final – or actually Prasad will talk about EPA final PGP which stands for Pesticide General Permit. And then at the end talk about where to go for help.

So the way this whole thing started in the early 70s the Clean Water Act was enacted and it had been EPA's interpretation that the Clean Water Act did not apply to pesticide applications when those applications were made consistent with the Federal Insecticide, Fungicide, and Rodenticide Act or more commonly known as FIFRA. When a pesticide is used there is a label on that product that identifies the FIFRA requirement that applies to its use and EPA had historically said where the pesticide is used consistent with that FIFRA label the Clean Water Act permit was not required.

In the past 10-15 years though there have been a number of lawsuits across the country that resulted in conflicting decisions as to whether the Clean Water Act permitting program applied to pesticide applications or not. As a result of this conflicting decisions, in 2006 EPA wrote a rule clarifying that pesticides applied consistent with the FIFRA label do not require coverage under the Clean Water Act permitting program.

We were sued on that 2006 rule and in early 2009 the court ruled against EPA and basically the result of that court decision was that the Clean Water Act permits are in fact required for certain discharges from the application of pesticides.

The decision was in early 2009, as I mentioned, between then and just about the next 2 1/2 years -- well we asked the court for additional time to be able to develop a permit program to be able to regulate this new universe of discharges. And during that time we worked to develop that program as well as to educate and work with stakeholders to make everybody aware that this new requirement was going to take effect. And in October of last year, EPA issued its Pesticide General Permit that is the mechanism that will provide for certain people to be able to comply with the new requirement as a result of that court decision. And I will talk a little bit about -- later about why this pesticide General Permit we are talking about doesn't necessarily apply to everybody or all the discharges and what else may apply. But really the court decision was that as of October 31st, discharges to waters of the United States from the application of pesticide required a Clean Water Act permit.

And basically this is the language as to the type of activities that require a permit. The basic requirement of the Clean Water Act is that any point source discharge of pollutants to waters of the United States must be controlled under an NPDES permit. NPDES stands for National Pollutant Discharge Elimination System and it's basically the Clean Water Act permit that allows for discharges of pollutants. In essence, discharging pollutants to waters of the United States is not a right. And as such, discharges can only be made legally under the terms and conditions established in a NPDES permit.

The definition, if you look on the left side, there are definitions of the term point source and discharge of pollutants that the courts -- previously court decisions pretty much identified for us that applications of pesticides are considered point source discharges of pollutants. So by and large those terms can be long and confusing but the court made it easy for these types of activities and they said yes, those are the types of activities for which an NPDES permit is needed.

The only remaining question is whether those discharges are to waters of the United States or not. I will provide a little additional discussion on waters of the United States in a few moments though.

And so this is in essence what the court decided when we wrote a 2006 rule we identified the types of pesticide applications that we were talking about that resulted in discharges to waters of the United States. And we were talking about applications over waters where some portion of that pesticide would be

deposited to waters. We are talking about applications of pesticide directly to waters so if you look on the pictures their applications into the water to control aquatic animals and then down in the right hand corner there are applications of pesticides directly to the water to control weeds in the water.

And then in the picture there is kind of bottom center it also is talking about applications of pesticides near the water such that in order to control the pests it's unavoidable that pesticides would be sprayed to the water of the US. And so that in essence is not a pest in the water, but it is so near the water that in order to target it some portion of that pesticide will be applied to the water. And then the last category of a type of discharge is in the left bottom corner and that -- what the picture is trying to show is that where there are pesticides applied over a forest canopy that it may be difficult to tell exactly where the waters of the United States are underneath that canopy. But if there are waters of the United States and those pesticides are applied, those are the types of activities that require an NPDES permit.

The Clean Water Act does have a couple exemptions from NPDES permitting requirements, namely irrigation return flow and agricultural stormwater runoff are exempt from the need to obtain an NPDES permit. More simply, pesticides are applied to terrestrial crops and pesticides end up in a water of the US because of runoff be it from irrigation or precipitation, an NPDES permit is not required for those types of activities.

And so kind of one of the more challenging questions is what is a water of the United States? So if you make an application that does not result in discharge to waters of the US you do not need a permit. The question then is well what is a water of the United States? And this slide shows just a summary of the definition. On the east coast where we live there -- a water of the United States are often a lot easier to identify because they have water in them year round. As you get further west, often waters of the US don't have waters in them year round. It becomes more of a challenge to identify. The definition is a term that applies to the entire Clean Water Act. It applies to all types of NPDES permits. We have been issuing permits since the '70s and so this question of what is or is not a water of the US is not unique to pesticide permitting and in fact has raised a lot of questions over the years. There have been a number of court decisions all the way up to the Supreme Court trying to clarify what is or is not a water of the United States. I could provide a little clarification hopefully as to how we are interpreting that term for purposes of this permit.

First, it is identical to how we define the term for all other NPDES permits. We have a definition in our EPA Pesticide General Permit is the same definition in our regulations, the same definition that is used for anybody to define what is a

water or not a water of the US.

One of the nuances that really has come to light with this permit is that where pesticides are discharged to a water of the United States, they need an NPDES permit. But there may not actually be water in that water of the US at the time of the pesticide application. And so this is a general statement regarding where the bondable water of the US are but generally it includes discharges of pesticides within the ordinary high water mark of waters of the United States whether those areas are wet or dry at the time of pesticide application.

We actually -- after there was a Supreme Court decision that actually the Supreme Court ruled for and won so they could not come up with a majority decision on the definition of waters of the US. But we were able to extract pieces of their opinion and put together guidance with the help of the Army Corps of Engineers who also has responsibilities for identifying waters of the US that provide some additional clarification if you do have concerns or questions about whether your activities are to waters of the United States. And this is just a summary table from the first page of that guidance. You see the sources identified and at the end of this webcast we can show you a link to get to our main NPDES pesticides page and on that page you can click on this link and it will take you to that guidance and provide some additional insight into where you are making an application. Is that a water of the US or not?

So I talked about what would be the discharge of pesticides to waters of the United States you need a NPDES permit. And our NPDES permit program has two types of permits available. I'm going to talk about individual permits briefly and then we are going to spend the majority of our time talking about a general permit, the PGP. By and large we expect the overwhelming majority of discharges will be covered under the general permit. I think on Indian Country lands I'll show you a little bit that there may be instances where individual permits are necessary so I will spend a little time talking about the two types of permits first and then a brief discussion of individual permits, and then the majority of the talk will be general permits.

So when we talk about an individual permit, that is really a scenario where it is one person that has a discharge, they prepare, they complete a permit application, they submit that permit application to a permitting authority. I will show you who that is. Generally it's the EPA or a state. That application -- then a permit writer develops a permit, it gets public notice for comment, the permitting authority reviews those comments, revises the permit as necessary. And then issues a final permit that applies to that one specific application -- applicator discharger based on the information they had submitted on their application. The application includes detailed information on the operator, on

the types of activities that they intend to perform and it typically takes about six months from the time an individual permit application is submitted until that person receives a final permit and can begin discharging.

General permits really are a mechanism that allows EPA to permit a lot more activities in less amount of time. So in instances where there are a lot of activities that are similar, we can write what is called a general permit, issue that permit, and then multiple people that meet the eligibility conditions of that permit basically can be covered and comply with the terms of that permit rather than having to get an individual permit. And the way the general permit works is the EPA drafts a permit, public notice the permit, and then issues the general permit to nobody in particular. So the Pesticide General Permit that we issued on October 31st of last year, we issued it and at that instance it was then available and people could then get covered under that permit. Some people could get covered automatically and Prasad will talk about that in a little bit. Other people have to submit what is called a Notice of Intent before they could be covered under the permit and it's kind of a simple permit application but it really allows us to get a lot of people covered quickly and in a much less burdensome way. And unlike the individual permit that may take up to six months for someone to be eligible to begin discharging under a general permit, people can be covered in as little as no time or an immediate coverage and we will talk in a little more detail later about for this EPA Pesticide General Permit how that works.

But just a little more on the applications for an individual permit. So at the end of this discussion today you find out that you need an individual permit, there are actually two forms that have to be prepared and submitted. One is EPA form one and there is a link to it on our website. And it is basic information on who you are, your contact, location. Basic information on the type of activity and then a map of where those activities are and then certifying that that information is accurate and then there is a second form, Form 2C, that includes very basic information on your type of activity that you intend to perform that will result in a discharge. And then a requirement that you provide affluent data summarizing the nature of those discharges and if this is a new discharge then the expectation is that you would provide estimates of the types of pollutants that would end up being discharged as a result of that pesticide application activity.

And so this is the individual permit application process. You would submit this via Form 1 or Form 2C. A permit would be drafted, public notice, and issued and expect that to generally take about six months. We expect very few people to have to go that route and if you do find out that you need an individual permit you can talk to us or Prasad will show you some contacts to help walk you through the process. So with that, really the majority of our focus today is going

to be on general permits. Our NPDES regulations though when it says what has to be in a permit does not really differentiate between an individual or a general permit and this is the basic framework. We have folks tell us after the court decision well just write a permit that says follow the FIFRA label. That will be adequate to comply with the court decision. And we said well, the way the Clean Water Act works, the way our NPDES regulations work, we have specific elements that have to be considered when we issue a permit that have to be included in the permit so we put simply include a very simple follow the FIFRA label and expect them to comply with our own requirements for what has to be in a permit.

Prasad is going to walk through the majority of the information that is on this page. The one thing that we don't talk about is at the bottom you see it says standard conditions and our NPDES regulations has about six pages of standard conditions that every NPDES permit that gets issued has to include. It talks about things like your duty to comply with the permit terms, your duty to provide information if EPA asks -- requests information from you, kind of procedures for how you have to sign and certify different documents and so forth. And so even if we wanted to write a very simple permit, at a minimum there are still these six pages or so of standard conditions that get included in every permit.

So why tribes and EPA have a special relationship as opposed to states. When EPA -- when the Clean Water Act was written, the Clean Water Act basically said if states or territories or tribes can demonstrate that they have adequate legal, financial, technical resources to be able to administer this NPDES permit program they can come in to us, make that demonstration, and then we will authorize that state, territory, or tribe to administer the program. And in essence, they would then be writing the permits, not EPA.

This map shows the blue -- dark blue states are states that have actually come into EPA. EPA said states you have all the information. You also notice the Virgin Islands have the adequate resources and so forth and they now actually issue the permits. The states that are either light blue -- states and territories that are light blue and you will note at the bottom of the list on the left it is also Indian Country lands or areas that have not come in to us and requested that they be the one to administer the NPDES program. And so in those areas EPA is still the NPDES permitting authority and we write the permits, we oversee the permits, and as it has played out, EPA is actually the NPDES permitting authority on all Indian Country lands with the one exception that in Maine, the state of Maine is actually authorized to permit activities on Indian Country lands within their state boundaries. And so we really wanted to make sure that we had a webcast with the tribal representatives since it really is our permit that you are required to follow and so -- and there are some tribal specific issues that get

included in these permits. And so hopefully today we can really focus on your needs and interests as to responsibilities under this Pesticide General Permit.

So when we talk about kind of where EPA's permit applies, the way that our program is set up is we use the term Indian Country lands and there is the definition of Indian Country that we use and so I know I have heard that there have been lawsuits and disagreements and so forth as to what is or is not Indian Country and kind of similar to waters of the US for purposes of this permit. It is really an issue that goes way beyond the Pesticide General Permit. And so hopefully for you it's easy to identify which activities are within those Indian Country boundaries because then those are the activities for which EPA's permit applies.

I'm going to show you the next slide here that kind of shows how that may play out where you have activities that might be on Indian Country land as well as outside Indian Country land but just be clear that this is the definition that EPA uses when identifying Indian Country.

So this kind of lays out where you are doing some type of pesticide activity that results in a discharge to waters of the United States where it is on Indian Country land, this EPA Pesticide General Permit that we are going to talk about is what applies to you or you might find out I might need to get an individual permit that would be issued by EPA as well. The one exception I mentioned that in Maine -- actually the state of Maine permits activities on Indian Country land within their boundaries.

If you do a -- if there is a pesticide application activity though that say part of it is on Indian Country land and part of it is on state land, it really depends on who the permitting authority is on the state land as to what requirements have to be followed.

I showed the map that identified like New Mexico as a state where EPA is the NPDES permitting authority and so if it is an area where EPA is the permitting authority on state lands and Indian Country lands then the same permit basically applies to you. So this PGP in New Mexico applies whether it is on Indian Country land or state land. If it say in Arizona, Arizona has been authorized to issue permits in their state so if you have a pesticide application that part of it is on Indian Country land in Arizona and part of it is on state lands in Arizona, you actually -- the activities within Indian Country land have to follow EPA's permit and the activities outside of Indian Country land would actually have to follow Arizona's permit program. And the states have by and large issued their own general permits that apply to these types of activities so some of them are very similar to the permit we are going to talk about today. Some of them are slightly

different. But just be clear where there are activities being performed outside of Indian Country land the determination really has to be made as to whether that is an area that state permits or EPA permits.

And then one last clarification that I know we have had a lot of confusion but the Clean Water Act says that when EPA issues a permit in a state, territory or tribal lands that that state, territory, or tribe has the authority to certify that the EPA issued permit adequately protects water quality. But the section of the Clean Water Act that provides for that is section 401 so this is often called 401 Certification. Tribes have a provision that is called Treatment As a State or TAS status that basically tribes that have that TAS status have the authority to certify you to do this 401 certification. And simply all this is not exactly accurate, simply tribes that have their own tribal water quality standards are generally the tribes that have that treatment as a state status and where the tribes that before EPA issued this permit last October, we gave those tribes and states and territories where this permit is known to apply, the ability to certify that the permit is adequate to protect the water quality.

The tribes, states, and territories in doing that certification can certify that it is protective. They can deny certification in which case the permit would not be available in those areas. Or they can provide additional conditions that say this permit can be used in our area provided these additional permit terms are added to the permit. And Prasad at the end of the presentation is going to show some examples of the types of additional conditions that were added for certain Indian Country land through this 401 certification process. Those additional conditions are in part 9 of the permit. And you will see at the bottom of the slide there is a link to kind of the provisions, procedures for treatment as state status. So if do have questions as to the applicability of that 401 certification you can go to that website.

I'm sorry there was supposed to be one more slide here. I think Prasad is going to talk about -- I guess a few tribes actually denied certification for certain types of activities. And so towards the end you may find a couple of tribes -- tribal areas, Indian Country lands where the Pesticide General Permit is not available. But for that, let us move on and see if there are questions. And I mentioned that there are two ways to submit questions either in writing or by raising your hand. And fortunately, I don't think anybody has raised their hand. And it doesn't look like as of yet anybody has asked a question. Let me just remind you when you look on your dashboard, there is an option that says questions. And you can just type in that box if you have a question. And we will move on, we have a couple more breaks. So once we get into the specifics you might want to ask questions.

Again, I recommend the text rather than the audio raising your hand button. If you just type your text into that box then we will be able to hopefully answer your question for you.

And so I think with that what I'm going to do is pass the microphone over to Prasad Chumble who works here at EPA headquarters on this permit program and he is going to walk through EPA's Pesticide General Permit. There was actually just a question posted now about why were those tribe's permits denied. And in essence the way the 401 certification process works is that we give a copy of the draft permit to the tribes and then the tribes basically tell us yes this is acceptable for use on our tribal lands or no it is not. Or no it is not unless you add these additional provisions. We basically then take those additional provisions or take that certification or that denial and put it verbatim into our EPA issued permit. So I am not quite sure of the reasons why some of the tribes denied certification. There is actually -- we have documents that are available in our public record that detail that. But in general the take would have been that the tribes did not feel the permit was adequately protective of water quality on Indian Country. And so they denied certification. We talked to them and made that clear to them what that meant and basically incorporated that provision into the permit.

So with that I'm going to pass it onto Prasad to walk through the Pesticide General Permit.

Prasad Chumble

Thanks, Jack. So in the second part of the webcast I'll be talking about EPA's general permit and we will be walking you through the different parts of the permit.

Before I do that let's again start off with a quick summary of the timeline of EPA's PGP. On January 7th the court ruled that an NPDES permit is required for point source discharges to waters of the US for pesticides that leave [inaudible]. On June 2nd, 2010 EPA proposed a PGP and sought public comment. On April 1st, 2011 EPA posted on its website a copy of the draft final PGP. This version had included interagency review by OMB. However, it does not the clear final agency action as EPA had not yet completed the SA consultation for the services. This version was posted in order to assist states into developing their permit and to allow for the regulated community to become familiar with the permits requirements. EPA subsequently requested an extension from the court in order to complete the Endangered Species Act Section 7 consultation and on October 31st, 2011 EPA issued its final PGP. The final PGP is nearly identical to the draft final version posted on April 1st except for some additional requirements as a result of the consultation.

With that, let's take a look at the contents of EPA's Pesticide General Permit. The PGP includes nine parts including eligibility provisions, technology-based requirements, water quality based requirements, monitoring, developing of the pesticide discharge management plan, corrective action, recordkeeping and reporting, and additional state specific requirements that are required under part -- under section 401 of the Clean Water Act. And I will briefly be going over all these parts in the rest of the presentation.

Let me quickly mention that an interactive tool that EPA has developed for potential permittees. And EPA has developed a tool for potential permittees. This is found on our PGP website and will help you determine one, do you need a NPDES permit. Two, can you be covered under EPA's Pesticide General Permit. And three, what are the requirements under EPA's Pesticide General Permit. We encourage you to take a look at this tool as it has turned out to be incredibly valuable and generally all the questions are answered just by walking through the tool.

So let's begin with the scope of the permit. The Pesticide General Permit is available for discharges -- discharger's of biological pesticides and chemical pesticides authorized under FIFRA and that leads to the following for pesticide use patterns. One, mosquito and other flying insect pest control. Two, weed and algae control. Three, animal pest control. And four, forest canopy pest control.

The PGP does not cover nor is permit coverage required for pesticide applications that do not result in a point source discharge to waters of the US such as terrestrial applications for the purposes of controlling pests not agricultural crops, forest floors, or range lands. Agricultural runoff, irrigation return flow continues to be exempt from NPDES permitting. Therefore, the PGP does not apply nor is permit coverage required. Any use pattern not covered by the PGP but involves pesticide application that results in a point source discharge would need to be covered under an individual permit. However, to the extent that a permit is needed for discharges for pesticide applications to range land, forestry, rights of way, park land, wetland, and other areas, and the activity falls within one of the four use categories then coverage can be granted under the PGP.

Also, as part 1.5 of the permit states the PGP requires that all applicable federal or state laws and regulations that pertain to the application of pesticides must be complied with. For example, the permit does not negate the requirements under FIFRA and it's implementing correct regulations to the use registered pesticides -- to use registered pesticides that is consistent with the products labeling.

So if we were to use the pesticide product called let's say Navigate containing the active ingredient 2,4-D you would also have to comply with this product's FIFRA label which include additional conditions for applications to drinking water such as specific application rates and setback distances.

Let's take a quick poll question to see how many of you expect that you will need coverage under EPA's Pesticide General Permit based on our discussion on the scope of the permit thus far.

So do you expect to need coverage under EPA's PGP? Select A if you are likely. Two, B, if you are unclear if you're eligible. And C, if you don't expect you need coverage under the PGP -- under EPA's PGP.

And the poll should be popping up. And they are getting the results. Just another second. About 2/3 of folks have voted so far. We are going to wait until we get a few more votes to respond and then we will show you the results.

Okay, and it looks like about half of you will need to get coverage under EPA's Pesticide General Permit. 20% are unclear and 26% don't believe they will need coverage under EPA's PGP. And for those folks that are unclear, hopefully the rest of the presentation will help clarify.

Now that we know that what types of activities this permit is available to, let's look at who must obtain an NPDES permit. As Jack mentioned in the first part of the webcast, the NPDES program requires operators to obtain NPDES permit coverage. Our permit differentiates between operators who are decision makers and operators who are applicators. We define decision-makers as the entity who has control over the decision to perform pesticide applications. And applicators as those who have day-to-day control of or performs activities that are necessary to ensure compliance with the permit. The permit also further breaks down decision-makers into large and small entities and adds different requirements for these. So if you are a large entity you are required to do a pesticide discharge management plan which I will discuss later in the presentation. We try to write the permit so that the entity in the best position to meet certain terms of the permit would be the entity required to meet those terms. For example, the permit requires that pesticide application equipment be properly maintained and calibrated. That requirement applies specifically to applicators. On the other hand, the permit requires certain operators to implement integrated pest management type practices which we are requiring the decision-makers to comply.

EPA's PGP is a general permit and the vast majority of operators covered under

this permit will be covered automatically without having to notify EPA. And will only be required to notify EPA in the event of an adverse incident resulting from the pesticide application. So just to be clear, if you are eligible under the PGP and if we are not requiring Notices of Intent from you, as I will discuss in the next couple of slides then you do not need to submit anything to the EPA to be covered and you are covered under this permit through October 31st, 2016. However, note that although you are automatically covered you still have to meet all the other conditions of the permit.

So what are NOIs? A Notice of Intent is a document submitted by the decision-maker to notify EPA of their intent for their eligible discharges to be covered under a general permit. It includes basic information on the discharger, the types of discharge, in to which water bodies the discharges occur.

So who needs to file a Notice of Intent? Well the decision-makers who perform more significant pesticide applications that we are requiring NOIs from in order to be covered under this permit. We estimate about 3% of users under this permit will have to submit an NOI to be covered. We are requiring NOIs from agencies for which pest management for land resource stewardship is an integral part of the organization operation. Requiring pest-control districts regardless of the size of areas treated, NOIs are required from decision-makers that apply to outstanding national resource waters also known as Tier 3 waters. We also are requiring NOIs from a decision-maker with any discharge to a water of the US containing NMFS listed resources of concern. I will talk about that later. And lastly, we are requiring NOIs from any other entity such as tribal governments that exceed established annual treatment area thresholds. I will be going over all of these in the next couple of slides. Again, applicators would be covered under this permit automatically unless the applicator is also the decision-maker and identified as one that would need to submit an NOI.

So we are -- as I mentioned we are requiring NOIs from any state or federal agency for which pest management for land resource stewardship is an integral part of their organization's operations. These include federal agencies such as the Bureau of Land Management, US Forest Service, and state agencies such as the State Department of Transportation or the State Department of Natural Resources. EPA expects that in most cases, these entities will exceed one or more of the annual treatment thresholds and would need to submit an NOI. We do recognize, however, that in some cases certain agencies might perform pest-control and we do not require an NOI from them. For example, the Social Security Administration might do pest control that is incidental to the operation of the facility but it is not an integral part of the organization's operations.

We are also requiring NOIs from special-purpose districts such as mosquito

control districts, weed control districts, and irrigation districts regardless of the size of the area treated. Generally these districts treat large areas that exceed EPA's annual treatment area threshold and pest control is a primary function of their organization.

If applications are made to Tier 3 waters, you are required to submit annual NOIs regardless of size of the area treated. Coverage under the PGP for discharges Tier 3 waters is only available for those applications that are made to restore or maintain water quality or to protect public health or the environment that either do not degrade water quality or only degrade water quality on a short-term or temporary basis. Decision makers will need to provide a rationale in the NOI on why the discharge is necessary to protect water quality. The PGP website contains a list of Tier 3 waters.

As a result of the ESA consultation with the National Marine Fisheries Service, any decision-maker with any discharge to a water of US containing NMFS listed resources of concern is required to submit an NOI. The resources of concern are limited to certain species of salmon, eulachon, and sturgeon in areas in Idaho, Massachusetts, DC, New Hampshire, Washington, Oregon, and California. Note that this permit only covers tribal lands and federal facilities in Washington and tribal lands in Oregon and California.

Although there may be some overlap in those locations, such resources of concern rely mainly in the middle third of Idaho, the Merrimack and Connecticut Rivers in Massachusetts, and the Potomac River in Washington, DC. Due to the limited areas identified, we estimate that only 2% of operators will have discharges that overlap with NMFS listed resources. So if you're discharges happen to be in these areas of overlap decision-makers need to submit an NOI and meet one of the five criteria listed in part 1.1.2.4 of the permit. Again, these only apply to NMFS resources that NMFS identified in the biological opinion and you can find specific location maps where these species are located on our PGP website. Decision-makers who have overlapped with NMFS listed resources should refer to appendix I of the permit which provides a step by step guide to determine which criteria they would be eligible under.

So besides those decision-makers that need to submit an NOI regardless of thresholds such as pest control districts and those that apply to Tier 3 or NMFS listed -- areas of NMFS listed resources of concern, any decision maker expects to exceed the following thresholds needs to submit an NOI. For mosquito and other flying pest control and for forest canopy control if the decision-maker treats greater than 6,400 acres per year they will need to submit an NOI. Note that you do not need to include larvacide activities when calculating this threshold. For weed and algae control or animal pest control thresholds are 20 linear miles

or 80 acres. Calculations are based on discharges directly to waters of the US and are slightly based on the use pattern.

The annual treatment area threshold calculation for mosquito control and forest canopy pest control are based on the cumulation of multiple treatments. So for example, say you are spraying 3,000 acres of forest canopy to control gypsy moths and you spray three times a year. Your total for the year would be 9,000 acres and you would be over the 6,400 acres per year threshold. That does require you to submit an NOI. The calculations for weed and algae and animal control are based on the size of the area treated in a calendar year regardless of the number of applications of the area. So for example, if you treated 10 linear mile segment of a water of the US for weeds and you treat that same segment three times a year than your total area treating for the year is 10 miles. That would put you below the 20 linear mile threshold and you would not have to submit an NOI.

Now let's take a look at when the NOIs need to be filed and when authorization begins for those entities that are required to file an NOI. In most cases an NOI must be filed at least 10 days prior to giving the pesticide applications or at least 10 days prior to exceeding the threshold. You would be authorized to discharge after 10 days of filing the NOI. If you are in an area with an overlapping NMFS listed resources as I mentioned earlier then you would have to submit an NOI at least 30 days prior to discharges. For a declared pest emergency situation you can begin discharging immediately. However, an NOI must be filed within 30 days of beginning to discharge. Note that if you have overlap with NMFS listed resources then that NOI is required within 15 days of beginning to discharge. If you're covered under the PGP and are not required to submit an NOI then you may begin discharging immediately.

EPA has developed an electronic system which allows decision-makers to submit an NOI. The use of the electronic system has several advantages. It allows for faster NOI processing, it provides faster permit coverage. It's less burdensome to operators and EPA and also there is less of a chance to make a mistake while filling out the NOI. There is no fee to submit EPA's NOI. And you only need to submit an NOI once during the lifetime of the permit which expires October 31st, 2016. You may at any time make updates once an NOI is filed. Also, you may choose to submit one NOI to cover all applications per state by listing multiple pest management areas within that NOI or you may choose to submit multiple NOIs.

Decision-makers must file the NOI electronically unless they request a waiver with reasoning as to why submitting an NOI through the electronic system would cause an undue burden or expense. Our NPDES website under trainings and

meetings there is a presentation on the filing of the PGP NOI and this presentation guides decision-makers on how to file the NOI using the eNOI system.

Before we take a break to answer some questions let's take a couple of poll questions. So the second poll question we would like to know how many of you think you might need to submit an NOI for coverage under the PGP. So if you do, choose A, yes, you believe you need to file an NOI. B, you might need to depending on your activity. C, if you are unclear of the requirement. And D, if you don't believe you need to file an NOI. And about half of you have voted. Give me a couple more seconds to load. And it looks like -- another minute or so. Okay. Okay. So it looks like about 30% -- 30% of you know you don't need to submit an NOI. And 30% might depending on your activities, and 22% of you are still unclear of the requirements, and 17 are sure you need to file an NOI.

Let me take another poll question in which we would like to know how many of you have tried using the eNOI system and what was your experience. The choices are A, yes, you have submitted an NOI and it was relatively easy. B, you have submitted an NOI but it was relatively difficult. C, you have yet to submit an NOI but you need to submit one. D, not yet but you expect you might need to. And lastly, no you don't expect the need to submit an NOI. We have about 15% voted. And -- it looks like almost 60% of you do not expect the need to submit an NOI. And 30% have not yet done so and might need to. Okay.

So let's take some questions for those that are still confused on whether they need to submit an NOI or any questions regarding the eNOI system let's take some questions on those.

Jack Faulk

Yeah, this is Jack. One person has raised their hands and so we are going to try the audio question first and it is Laura Lynn Hall. You raised your hand that you wanted to ask a question, your phone should now be off mute so if you want to ask your question let's see if we can hear it.

Questioner

Hi, this is Jason Meachem (ph) with Southern Ute and Lorelyn Hall. Can you hear me? We have a couple of questions regarding the NOI. First one, do contractors working on the reservation, do they need to file an NOI in addition to the tribe's NOI or are they covered under ours? We do a lot of hiring for oil and gas work where various operators are coming onto the reservation, they are spraying on federal trust land for different companies and there is a handful, I'd say there's a dozen operators. Does each one of those guys have their

separate NOI for those projects or are they protected under our NOI as a general permit?

Jack Faulk

Yeah, the way the permit is sent up, the way Prasad has kind of laid it out is if you are an operator so whether you are a decision-maker or an applicator or a for hire applicator, the permit applies to you. The only question is do you have to submit a Notice of Intent to be covered or are you covered basically automatically without having to submit that piece of paper. And what we try to do is make it so that we would not have more than one person having to submit a Notice of Intent for any specific activity and so we picked the decision-maker as the person that has to submit the Notice of Intent. So kind of if it's the tribe that is making that decision who is hiring the contractor to come on the property, the tribe is the one that has to submit the Notice of Intent. That for hire applicator still is going to have to comply with other parts of the permit but they don't have to submit a Notice of Intent for those activities.

Questioner

Okay, great. Thanks. And leading off of that is the second question. How detailed does our NOI have to be because the type of the project, the location, and the size vary greatly within the reservation where it's 75 miles long, 15 miles deep. You know, in one project we might be spraying [inaudible] in the thermal drainage and another project we might be spraying 25 miles irrigation canals. When we submit our NOI and I haven't looked at it [inaudible] yet, does it say something just like the tribe has to express its intent to apply pesticides to jurisdictional waters within [inaudible] and you guys just get a block map of the whole reservation or do we have to have each project footprint outlined?

Jack Faulk

The way it is set up you can in essence identify where you want permit coverage and if it's for the entire tribal area you can identify that and basically the NOI unless you are discharging to an area with names NMFS listed resources of concern, as Prasad mentioned, then there you actually have to provide more specific details, but otherwise you basically can say here is a description of the area where in the next five years I may be treating, here is the use pattern that I need coverage for so it is for control of weeds, mosquitoes, animals, forest canopy, one or more of those, and then it asks to which waters you discharge and we set it up so you can either say I am going to be discharging to this specific water so you are going to name those stream or the lake or you can say I am going to discharge -- I want coverage for every water in this entire tribal area bounded by the boundaries of the tribe. Or three, I want coverage for all the waters in this area except for one water and it might be because it is the Tier 3 water and it would have its special provisions and you don't have any intention of

applying to that area so you can say I want coverage for everything except that one water because I am not going to be applying to that. So it can be very generic knowing that when you submit your NOI say this year, you are going to be covered for five years and so you can provide basically a request for that entire area that you are authorized to potentially having to discharge.

Questioner

Okay, great. Sorry to monopolize all the time but I've two more questions still. If we file an NOI under the general permit, the tribal membership is less than 10,000 so does that make us a small entity? And under such requirements, are we exempt from the annual report as a small entity?

Jack Faulk

You said you serve less than 10,000 people?

Questioner

Yes. The tribal membership is less than 2,000. And that who basically the lands we work for the tribe, the tribe owns the property, it is held in trust as part of [inaudible] but the membership is less than 10,000 so are we a small entity?

Jack Faulk

I believe the answer is yes. I don't want to say 100% certain but let me ask this. Based on what you are saying, if you are a small entity then you would -- you will not be submitting an annual report but you will need to fill in a pesticide worksheet [inaudible] we will discuss later in the presentation and keep at your site record.

Questioner

That is correct.

Male Speaker

And include detailed pesticide application.

Questioner

Correct, that would be all of our spray logs and everything. But we would require no annual submittal to the EPA as a small entity, is that correct?

Male Speaker

Yes.

Questioner

Okay, I guess final question. Say the Colorado Department of Transportation

has numerous right of ways or highways through the reservation and the local County as well. Now they serve more than 10,000 people but their right of ways go through the reservation. So when they come on to say tribal property they are still on their right of way but they are surrounded by tribal land and our Notice of Intent will cover them and then for that section of road are they not required to submit an annual report? There has been a question posed to us by the local DOT office. And I didn't have an answer for them.

Jack Faulk

Yeah, I believe in those areas if there is a federal or state Department of Transportation the way we have set up the permit, federal and state don't have a small versus large designation. They are all automatically in essence large, so they would have to submit a Notice of Intent. They would have to submit an annual report.

Questioner

So in that case they are going to have to submit their own Notice of Intent even if they're right away is being sprayed through the reservation. We will have ours but they will have to have theirs as well because their right-of-way goes far beyond the reservation [inaudible]

Jack Faulk

Yes.

Questioner

Okay. Well that's what I will relay to them.

Jack Faulk

Okay.

Questioner

That answers the question. Thank you.

Jack Faulk

Now let me just go through some of the written questions that we have received. Again, if we don't answer your question today we will get back to you with an e-mail to try and provide more detailed response. But I guess let me see here. I will try and go in order. There are a couple of questions having to do with whether a certain area is considered Indian Country land or not and truthfully those questions are beyond kind of our discussion. I know there was questions about land that tribes purchased and acquired title to. There was another thing about dependent communities within the definition of Indian Country and we really are not prepared to answer those today. But we can certainly follow up

with you and provide any additional insight that we can get from talking to our counterparts here and within our American Indian Office. So we are going to pass on those.

I guess there is a question about after EPA receives an NOI, are there requirements for EPA to notify the tribal authorities and Prasad is going to mention that a little bit. The way we set up our permit, we did not require people to have to submit that notice to the tribe. Some tribes through that 401 certification process have asked that where there are activities within their boundaries that the NOI also be submitted to them. And so in part 9 of our permit there are a couple of tribes that in those areas they would receive a Notice of Intent but as a general requirement we did not include that for everybody.

I guess there is a question about weed control in the 20 mile threshold. If it is accumulation of very small segments of -- or a solid unbroken 20 mile line and it is 20 miles cumulatively whether that is one long unbroken area that is treated or a 21 mile segments or 1,000 smaller segments that cumulatively make up the 20 miles. So again, you are not counting the same area more than once but in each area you treat it -- cumulatively that adds up to 20 miles or 80 acres in a calendar year you have to submit a Notice of Intent.

Similarly there's a question about if the 80 acres includes spot treatments or if you are referring to 80 solid acres being treated. Again, if the spot treatments cumulatively are more than 80 acres, you have to submit a Notice of Intent. Less than 80 acres, you would not.

There is a question about irrigation districts having to obtain coverage under the PGP and if this includes irrigation districts that fall below that threshold, annual treatment area thresholds and again, does the threshold only applies to whether or not a Notice of Intent has to be submitted. So if you have a discharge to waters of the United States you need permit coverage, you need to comply with the terms of the permit. You only have to submit a Notice of Intent if you meet one of the criteria. One of the criteria is irrigation control districts. So regardless of the size of the area that the irrigation control district treats they have to submit a Notice of Intent. The thresholds are applied to everybody else that it does not automatically have to submit a Notice of Intent. So irrigation districts, the thresholds don't mean anything because they all have to submit notices of intent.

And I am going to answer one more question. Actually two more questions. One was asking if there are GIS layer maps available of Tier 3 waters, impaired waters, waters of the United States to help simplify figuring out if your activities are in those areas or not. And unfortunately there are not such maps available.

A lot of the information we have on our website specific to this permit. So you can click on a link on our webpage for Tier 3 waters and it will show you all the list of the Tier 3 waters in all the tribal areas, state areas, federal, or territory areas where there are Tier 3 waters and similarly for impaired waters and that kind of is as good as it gets regarding waters of the US. Unfortunately, there is not a layer that is 100% accurate. There are some topographic maps. There are some online GIS tools that identify some waters but not necessarily all waters. So unfortunately, it would be great and maybe in the future there will be such maps available but there aren't as of right now.

And then I guess the last question that kind of deviates a little bit. We didn't talk much about federal facilities. Federal facilities are treated differently and only four states in the country. Four states that have got the authority to issue NPDES permits didn't have the authority to regulate federal activities in their state so EPA kept that permit implementation authority and it is Washington, Colorado, Delaware, and Vermont. And so in those four states, federal facility actually means something because if it is a federal facility, EPA issues the permit. If it is not, the state issues the permits. In the whole rest of the country, whether or not it's a federal facility does not really matter because EPA is the permitting authority or the state is the permitting authority. So for example, in Pennsylvania, the state is the permitting authority for everything except that there are tribal boundaries. In Florida, the state as the permitting authority for everything except if they are on Indian Country land. So just those four states where well if it is federal facilities in Washington then EPA issues the permit. And to clarify, the term federal facility really is talking about federal activity. The federal facility name is kind of a remnant of the NPDES program and so when the NPDES permits were first starting to be issued in the '70s we were talking about facilities, chemical plants, wastewater treatment plants. Over time we have now started to permit stormwater discharges from municipalities and pesticide applications where the term facility does not really mean as much anymore. And so it is more closely related to say they are federal activities and federal lands and again, because something is a federal land for example, the feds leased land to a private entity who then say builds a ski resort and uses pesticides on that federal land but the federal agency really has no role in that activity, it is not considered a federal facility under our permit. So the federal facility meaning really if there is a federal role in the pesticide application activity and it is really only in those 4 states where that really matters. And so the question -- original our national parks and forests considered federal facilities and I guess the answer is to the extent that federal agencies are involved, are the decision makers, are the applicators in those activities then they are federal facilities. If there is no federal role and it just happens to be on federal lands then those generally are not considered federal facilities. So hopefully that provided some clarity and we didn't confuse too many people.

I think with that we will move on. It does not look like anyone else raised their hands and if we did not answer your question we will definitely get back to you.

Prasad Chumble

Alright. Thanks, Jack. So let's continue to talk about the requirements in the final permit. Part 2 of the permit contains technology based effluent limitations. In this section we assign different responsibilities for applicators and decision-makers. In general, all operators are required to minimize discharges using only the amount of pesticides and frequency necessary to control target pests. Applicators specific responsibilities include properly maintaining pesticide application equipment and accessing weather conditions.

Decision-makers who are required to submit an NOI must implement pest management measures based on integrated pest management principles found in part 2.2.1 through 2.2.4 of the permit. These principles comprise of first identifying or assessing pest problems, second, assessing pest management alternatives such as considering the use of mechanical methods, biological control agents or other cultural methods before utilizing pesticides. Also, evaluating these alternatives, the decision maker must consider impacts to water quality on -- must consider impact to -- water quality impacts to non-target organisms and sensibility and cost-effectiveness of those alternatives. Lastly, if pesticides are to be used, decision-makers must ensure that the appropriate procedures for use of those pesticides are being followed such as meeting the action thresholds. We have found that these principles are generally already being practiced by most operators.

In some cases in which you are a decision-maker that is required to submit an NOI and you are a large entity, as I mentioned earlier in the presentation, you are required to develop a Pesticide Discharge Management Plan under section 5 of the permit. Decision makers who submit an NOI solely for discharges in response to a declared pest emergencies or because there are discharges to waters of the US containing NMFS listed resources do not need to develop a Pesticide Discharge Management Plan.

The Pesticide Discharge Management Plan includes information such as problem identification, pest management options evaluation, and response procedures which helps documents how discharges will be minimized and how the effluent limitations will be met. Decision makers that are required to develop a PDMP must do so by the time the NOI is filed and keep a copy of this at the address provided on the NOI. You must also keep it up-to-date for the duration of the permit coverage.

Operators who already have an existing IPM -- existing IPM plans can reference those documents rather than recreate the same text in the PDMP. We've also provided a template of the PDMP on our pesticide website.

Similar to the text based effluent limitations, the PGP also includes a narrative, a water quality based effluent limit in part three of the permit. EPA expects that compliance with FIFRA in addition to compliance with the conditions of the permit will control discharges as necessary and meet applicable water quality standards. The territories and tribes were given an opportunity to add requirements to the permit to make sure consistency with their water quality standards through the Clean Water Act section 401 certification process.

Part 4 of the permit requires regional monitoring for adverse incidents caused by the application of pesticides including the anticipated death or distress of non-target organisms and destruction wildlife habitat, recreational, municipal water use. This requirement to regionally monitor applies to the applicator during any pesticide application as well as to any operator during any post application surveillance.

If you do become aware of an adverse incident, part 6 of the permit includes a section on corrective action. This section provides requirements for operators when certain situations arise that require the operators to respond in a way to address that situation such as when an unauthorized discharge occurs or it is determined those existing controls are not adequate to protecting water quality.

When the operator becomes aware of an adverse incident which may have resulted from discharge from the pesticide application, the operator is required to notify EPA within 24 hours or as soon as possible and provide a written report to the EPA within 30 days. And as necessary, take corrective action. Forms for reporting adverse incidents can be found in appendix H of the permit.

Recordkeeping and reporting requirements in the permit are found in part 9 of the permit. Again, these requirements vary depending on the type of operator. Let's briefly take a look at these requirements. The PGP requires all operators to keep a copy of any adverse incident reporting, corrective action documentation, or any spill or unpermitted discharge documentation.

For higher applicators are required to keep documentation of equipment calibration, and information of each treatment area such as pesticide use pattern and the type of pests to be controlled.

Decision-makers who are a small entity and that are required to submit an NOI must also keep a copy of that NOI, a pesticide discharge evaluation worksheet

must be kept on site and they must also document the equipment calibration if they are also the applicator. And decision-makers who are a large entity are then required to submit an NOI must keep copies of the NOI and the PDMP. Note that any decision-maker either large or small who submits an NOI solely for discharge to areas with NMFS resources of concern must keep a copy and submit an NOI and must also keep a copy and submit an annual report.

We have included a template for the pesticides discharge evaluation worksheet in appendix F of the permit for small entities and a template of the annual report in appendix G of the permit.

Finally, part 9 of the permit includes additional conditions as a result of the Clean Water Act section 401 certification. It's important that operators if they apply to these locations refer to part 9 of the permit and meet those conditions. For example, Navajo Nation requires that a copy of the NOI must be submitted to them. Ute Mountain Ute Tribe requires that discharges to Tier 3 waters must apply for an individual permit. And also that Pueblo Sandia will send a letter authorizing discharge and operators must receive this letter before any applications can begin. Section 9 also identifies certain tribes that deny certification and as a result, an individual permit is required and the PGP does not apply in those areas.

For any additional information on the Pesticide General Permit or to file an NOI please visit the PGP website links provided here. You can also send any questions to PGP@EPA.gov.

Also, if you would like a certificate for completing this webcast you can follow this link. With that let's take some questions. But before I hand it over to Jack, please take a moment to complete the survey which will pop up after you leave the webcast. This will help us develop any further guidance as necessary.

Jack Faulk

Yeah folks let me just say we've actually have gotten two questions and one actually is the person that asked it has since left but there was a question about there are federally listed bull trout in rivers on the reservation near where weed control will be done but there aren't any bull trout requirements under the NMFS requirements for the permit. And the question is how do we proceed with that species of concern and when we issue the permit we had completed consultation with National Marine Fisheries Service, they actually are not the ones responsible for managing bull trout. It is the US Fish and Wildlife Service who manages those and we actually are still in consultation with Fish and Wildlife Service on this permit that at some point we may end up proposing additional conditions to the permit if we determine -- if Fish and Wildlife determines a need

if additional protections are needed. As it now stands though there aren't any additional conditions and so the expectation is that applications are made consistent with the specific Endangered Species Act provision that they apply to take the expectation is you would take species and EPA and Fish and Wildlife Service decide if additional controls are necessary for these activities. I mentioned we would propose those. We would take public comments and the permit would be modified based on the results of that effort. So for now there is nothing specific for that or any other Fish and Wildlife managed species.

There is another question as an applicator is filed a Notice of Intent to treat specific areas within a watershed, does the tribe hiring the contractor need to file a separate Notice of Intent? Do tribal lands fall under the watershed listed by [inaudible] in their Notice of Intent? And again, it is where those activities -- one, who is the decision-maker? And two, where are those activities being performed? If a tribe hires a contractor, the contractor is never going to be the one who has to submit a Notice of Intent. It is going to be the tribe. If the tribe needs whatever the criteria are for having to submit a Notice of Intent. Again, it is specific to the actual -- where the discharge is being made. If it's in tribal land or not or in Indian Country or not as to whether this permit applies. So hopefully that helps kind of a confusing question. But again, it is really the decision-maker who is doing the hiring of someone that is responsible for submitting the Notice of Intent if a Notice of Intent is required.

I see actually somebody raised their hand. Sarah Zaniewski. So if you are on the phone, we are taking you off mute if you want to ask your question hopefully we can hear you.

Questioner

Hi. Can you hear me?

Jack Faulk

Yes.

Questioner

Okay, I was actually the one that asked that question because I was not asking about the Notice of Intent because I believe that question was asked earlier. It was about the general permit. I am working with a conservation district who I am going to be hiring to spray on tribal lands. And if they are in the process, if they file for the general permit because it looks like us as a tribe will not need to file an NOI if they filed -- if they file their own general permit, do we as the tribe also need to file a general permit or can we fall underneath their general permit if they specifically outline our watershed on their permit? Does that make more sense?

Jack Faulk

A little bit. I guess the confusing part is that people don't really file a permit. It is the permit -- we issued the permit that is out there and people either have to comply with it automatically or they submit a Notice of Intent that basically then after some time frame they are authorized to discharge and so if you are hiring someone, you are the decision-maker for those activities. They may be hired by other people who those other people would also be decision makers. The for-hire applicator would not have been the one who had to submit a Notice of Intent to be covered under the permit. And so your activity really needs to be looked at for you as the decision-maker and whatever they do for anybody else does not really factor in that decision. I don't know if that helps.

Questioner

Okay, thanks.

Jack Faulk

Sure. I guess there is -- there is a question about notices of intent as well as notices of misuse or accidents and if they go to EPA and if there is any responsibility of EPA to notify the tribe. And I guess let me be clear that when we write an NPDES permit, we establish conditions that apply to the permittee. We don't write a permit that establishes requirements of us. And so our permit really set out requirements for permittees. The expectation is that if we got -- what Prasad had mentioned an adverse incident report in a -- on Indian Country land we would notify the tribe of that incident. The NOI actually are all publicly available as they get submitted and entered into the system. And so the question about would the tribe receive a Notice of Intent, I guess the answer is everyone that comes to us gets automatically posted on our website so it is publicly available and there are search tools to allow you to go in and to check to see if there are any NOIs that have been submitted for -- in your tribal area. Again, we did not impose those requirements on us. We expect where there are issues to notify the tribes of those issues but it is not a permit condition.

Prasad Chumble

Let me just answer that. There are however, some tribes as part of their 401 certification -- add conditions for the permittees that they need to -- also, any kind of correspondences is sent to EPA they also require a copy of that correspondence. So --

Jack Faulk

So it doesn't look like there are any more questions. On the slide -- next to last slide, Prasad had shown you there is an e-mail PGP@EPA.gov that you send a question; there are a handful of us here that can answer that and get back to

you. The couple of questions that were raised that we did not answer specific to that kind of definition of Indian Country lands, the people that asked those questions we will get back to you with any additional clarification that we can provide.

And I think with that, since there are no more questions and we are done with what we have to do we will end the webcast. We really appreciate everybody joining us today and when you leave there will be a survey posted asking some basic questions about what additional info that you would want to help you better understand or implement the requirements and so I'll say that some time it might not pop up instantly to give it a few seconds and it should pop up. So I guess with that I will thank everyone and say this ends the webcast. Bye.