

## **Hema Subramanian**

Hello, everyone and welcome to the US EPA's webcast on the final National Pollutant Discharge Elimination System or NPDES Pesticide General Permit. This presentation will focus upon the filing of notices of intent also known as NOIs under the PGP. And this is a repeat of the webcast that was given on March 1st although some topics covered today may expand a bit upon those that were covered on March 1st.

Thank you for joining us. We are going to give a few minutes for folks to join in. But in the meantime, I will go over some housekeeping matters.

If you experience trouble with viewing or hearing the presentation, just check that your setup meets the system requirements for using Go-To Webinar that was listed in your invitation and confirmation e-mail. You may also check with your network administrator to make sure they don't have any firewalls. We've heard in the past that attendees have had some success by logging out and logging back in.

On the right side of your screen, you will see a dashboard, which can be expanded. You can send us an instant message through that dashboard and we will monitor if there appear to be widespread difficulties. All attendees will be muted for the duration of the webcast but we will be able to see comments and questions that you send in through the dashboard feature on the right side of your screen.

Just so you know, this webcast is being recorded and an archived version will be posted to the PGP training's website with a copy of the PowerPoint, audio and transcripts within two weeks. It takes a couple of weeks just so that we can format everything to be posted onto the web.

Today's presentation will be formatted as follows. We will have a PowerPoint presentation given by me, Hema Subramanian and then Prasad Chumble with Jack Faulk assisting with questions. We will pause at points to read aloud some of the popular questions that have come in. Although we won't be able to get all questions taken on the air, we will try to answer some directly through the messaging feature and we will keep a record of all of your questions to help make our future presentations, outreach documents, and a Q&A document we are developing more useful.

We will try to be as responsive as possible in addressing the issues that we hear need clarifications regarding the PGP.

There will also be some polls in this webcast where you will be able to give a sure input and we will read aloud the results live on the air. These polls will also help us in how we discuss the items that are in the webcast. At the end of the webcast as you are leaving there will also be a survey, which will be really helpful for us if you could fill out.

Again today's topic is on notices of intent under the PGP. This is just one topic we are planning to feature in a series of webcasts. We previously hosted two webcasts on the general background of NPDES permitting of pesticides and EPA's PGP and the archive of that general broadcast is located on the PGP website. If you click on trainings and meetings on the right side menu of [www.EPA.gov/NPDES/pesticides](http://www.EPA.gov/NPDES/pesticides) that's the trainings website. Then you can just click on pesticides under training resources-webcast and that presentation has an archived copy and that website.

Today's presentation is intended for audiences who are already familiar with the basics of PGP and are in a geographic area covered by EPA's PGP and who are eligible for the PGP. We will present briefly some background however, we would strongly recommend that you view the archive of the previous presentation on the general NPDES of pesticide discharges prior to today's webcast if you have not already. And today and again today's archive will be posted to the web within two weeks.

So with that let's begin. Today we are going to cover several topics regarding NOIs. Just a moment. First, we will cover some background and then we will cover what is an NOI. We will cover who must submit an NOI. The timing of NOI submissions, what is included in an NOI and finally how to submit an NOI.

Just to cover some background, in 2006 EPA published a rule, which clarified EPA's long-standing interpretation that discharges from pesticide applications did not require NPDES permit coverage. EPA was subsequently sued on that rule and lost. As a result of the 2009 decision by the US Sixth Circuit Court of Appeals, *The National Cotton Council et al versus EPA* the determination that point source discharges of biological pesticides and chemical pesticides that leave a residue are pollutants under the Clean Water Act. These discharges therefore, need to be covered under an NPDES permit. On October 31st, 2011, EPA issued its final Pesticide General Permit that provides a mechanism for certain dischargers to comply with this new requirement.

There are areas where EPA is the NPDES permitting authority. As you can see on your screen, EPA covers all discharges including from federal facilities from six states. Those states are Alaska, Idaho, Massachusetts, New Hampshire, New Mexico and Oklahoma. EPA also covers the discharges solely for oil and

gas and geothermal related discharges in Texas. And the EPA covers discharges in Washington DC and all territories except the Virginia Islands and most tribal lands across the country.

In all other states, EPA does not issue the permits. There are 44 states that are authorized to issue their own permits as well as the Virgin Islands.

In four of those 44 states, Colorado, Delaware, Vermont and Washington, EPA does issue the permit for federal facilities.

And for Indian Country Lands EPA issues the permits for all of them except those in Maine.

There is something to note here. Alaska and Oklahoma while EPA issues the permits currently for those states, the state environmental agencies will be taking over the pesticide discharge permitting in Alaska it will be phased in however. In Oklahoma the state DEQ is authorized for NPDES permits but not to regulate pesticide activity.

And just to expand a bit on federal facilities a bit because there seems to have been some confusion lately. Essentially EPA permits all the discharges in the six states and the territories that I just mentioned however the states permit the discharges for all discharges except the federal facilities in 4 states that I just noted. In those 4 states, EPA will issue the permits for the federal facilities. The federal facilities are more of an acting party rather than a geographic or physical place. There may be pesticide applications made by private parties or state governments on federal lands, for example. And the federal agency in these cases may not have any involvement in those activities. In such cases, those pesticide applications may need permit coverage to be issued by the state permitting authority. Conversely there may be private lands where a federal agency manages that. If a federal agency is making decisions regarding the pesticide treatments on an area then the area treated may be considered a federal facility. So in Colorado, Delaware, Vermont and Washington, EPA would issue the permits for these federal activities. One way to look at this is to look at who the decision-maker is. If the decision-maker is a federal agency, then the EPA may issue the permits for those activities within those 4 states. We will go a bit more into what decision-makers are in just a moment.

But in states that are not covered by EPA, states will issue general permits and individual permits and those permits must meet all Clean Water Act requirements that the federally issued permit must meet but they can be more stringent. A directory of state NPDES agencies is available on the EPA PGP website at the link that appears on your screen.

Now we are going to pause for moment and just take a poll. Our first poll is under which permits will your discharges be covered. Based on the information I just presented, do you believe that your discharges would be covered under EPA's permit, a state permit, both EPA and state permits, neither or are you unsure? And so now we will open -- the poll should be open and when we get a good critical mass of responses I will read aloud what the responses were. Just a moment.

We have about two-thirds of the responses in and 42% believe that you would be covered under EPA's permit. Now you should be able to actually see the results on your screen actually. About 30% of you feel that you will be covered under a state permit, 22% of you feel that you will be under both an EPA and a state permit, 1% say neither and about 5% of you are unsure.

Just to reiterate if you are going to be covered under a state agency permit, you may wish to go to the state agency's website or contact your state agency to find out the requirements that are specific to your permitting because the information covered today will only address the NOI requirements for EPA's Pesticide General Permit.

Just to go over the types of NPDES permits that are available. There are individual permits and there are general permits. You may have heard both of those terms used before. Individual permits come into play when one application is submitted and one permit is issued. A single permit will be written specific to that one permittee. However, general permits there is one permit that is issued and many NOIs are submitted by many permittees so a single permit is written for a class of permittees.

EPA expects the majority of discharges from pesticide applications to be covered under general permits. Without a general permit entities applying pesticides would need to obtain individual permits in order to legally discharge pesticides to waters of the US under the Clean Water Act and individual permits are typically a bit more burdensome in terms of time for both the operator and the agency. So as you can see, general permits like the PGP are intended to reduce burdens.

Regarding the scope of EPA's Pesticide General Permit, our general permit covers point source discharges to waters of the US from the application of biological pesticides and chemical pesticides that leave a residue. The PGP covers the following four use patterns: mosquitoes and other flying insect pests, weed and algae, animal pests, forest canopy pests.

Very important to note, agricultural run-off and irrigation return flow continue to be exempt under the Clean Water Act and do not require a permit. Other stormwater discharges containing pesticides will only require a permit to the extent that these discharges require permit coverage independent of the Sixth Circuit Court decision.

So just to go a bit into what waters of the US are. Waters of the US are defined in Appendix A of the PGP. And the definition is consistent with NPDES regulations, which means that the definition is the same as for all other NPDES permits. Guidance to identify waters of the US is available on the EPA's PGP website under a section titled additional resources for permittees. Generally waters of the US include discharges of pesticides within the ordinary high water mark of waters of the US. It is key to note that this is whether the areas are wet or dry at the time of application. For example, if you are applying pesticides to an irrigation canal which in itself is a jurisdictional water of the US, whether the canal is wet or dry at the time of application you may be eligible for coverage under the PGP as the PGP covers discharges to waters of the US, whether they are wet or dry at the time of application.

So now we are going to go into what is an NOI. A Notice of Intent is a document submitted by an operator to notify a permitting authority of their intent for their eligible discharges to be covered under a general permit. NOIs are not applications per se but are similar to permit applications in that they notify the permitting authority of the discharge requiring permit coverage. NPDES regulations require NOIs to include basic information on the discharger, types of discharges and receiving water. NOIs cover discharges for the life of the permit but may be modified or terminated. No fee is required to submit EPA's NOI or obtain coverage under EPA's PGP. This may differ in the states that authorize their own permits. Per federal regulation, in certain instances discharges can be covered under a general permit without submission of an NOI. So as you'll see later in the webcast there will be operators that do not need to submit an NOI under EPA's PGP.

How do we define operator? The PGP defines operator as any entity associated with an application of pesticide, which results in a discharge to the waters of the US. Types of operators for the PGP are decision-makers, applicators or for hire applicators. EPA's PGP only require certain decision-makers to submit NOIs. All other operators under the EPA's PGP will be covered automatically without an NOI.

Just to further clarify between decision-makers, applicators and for hire applicators. Decision-makers are operators who have control over the decision to perform pesticide applications. Operators or those who have day-to-day

control or perform activities that are necessary to ensure compliance with the permit. And further for hire applicators are a subset of applicators who make contractual pesticide applications for which they or their employer receives compensation. For example, lawn care firms or pest control companies.

Here are some examples. If a local park department determines that a specific pesticide is to be applied in a specific location at a certain rate but then hires an applicator to actually apply the pesticide then the Park Department would be considered a decision-maker. However, if a federal agency funds the pest control activities of another entity which manages land but the funding agency does not actually make the decisions as to the type of, quantity of, or method by which pesticides will be applied then the funding agency is actually not a decision-maker. The funded entity, which makes those decisions, is the decision-maker. That entity may in turn hire applicators to apply the pesticides. If the entity both makes the decisions and applies the pesticide that entity can be both the decision-maker and the applicator.

So here is our next poll. We would like to know who you represent. Are you federal government? State government? Tribal government? Local government? Or a for hire applicator/other?

It appears that actually the poll may not include tribal government in the poll answer option. I apologize for that. We tried to fix that at the last moment but we did not get it in. If you could -- if you are from a tribe, if you can click other. We will be hosting a Tribal webcast in the near future to address your concerns specifically.

So at this point, we have over 50% who have voted. It looks like we actually have about 90% of the vote in. You should see your poll results on the screen. The majority of you are actually from another category, which could be Tribes. About 21% of you are either -- 21% of you are from federal government, 21% are state government. 17% are from local government and 8% are for hire applicators. That helps us as we go along and describe the requirements here.

So now just to go over the criteria for who must submit an NOI. Certain decision-makers that EPA has identified must submit an NOI. The idea here was to capture the decision-makers who are performing more significant pesticide applications. So these categories include any Federal or State agency for which pest management for land resource stewardship is an integral part of the organization's operations. Another category is special-purpose districts with a specific responsibility to control pests such as mosquito or weed control districts or irrigation districts. The third category is entities discharging to Tier 3 water bodies also known as Outstanding National Resource Waters. Fourth

category is entities discharging to waters of the US containing National Marine Fisheries Service Listed Resources of Concern. Also known as NMFS resources of concern. And finally, and we will go a bit into who that is in a moment. And finally the category of decision-makers that would need to submit an NOI is any other decision-maker who applies pesticides in excess of a specified annual treatment area threshold.

Now we will expand in each of these. First, any agency for which pest management for land resource stewardship is an integral part of the operations. These include federal agencies, which is BLM, Fish and Wildlife Service, state agencies such as state DOTs or Departments of Natural Resources. Most pest control activities performed by these agencies would trigger the requirement to submit an NOI. Examples of agency activities that do not trigger the requirement to submit an NOI include federal Social Security Administration controlling mosquitoes just on its property on site or a state DMV controlling weeds around its customer service center.

The next category of special-purpose districts; mosquito control, weed control, irrigation districts, other special-purpose districts with pest control as a critical component of the district's operation would fall into this category.

The next category is Tier 3 water. The PGP is available for discharges to Tier 3 waters in our permitting areas. But only for applications that are made to either restore, maintain water quality or to protect public health or the environment in a manner that does not degrade water quality or only degrades the water quality on a short-term or temporary basis. A list of Tier 3 waters in geographic areas covered under the PGP is available on EPA's website.

So for the category of decision-makers discharging to waters of the US containing NMFS Listed Resources of Concern, just a bit of background. EPA consulted with NMFS and the US Fish and Wildlife Service on the PGP as required under the Endangered Species Act. Permittees do not need to undergo Endangered Species Act consultation in order to obtain coverage under the PGP. EPA takes care of that and then permittees can just follow the requirements in their NPDES permit. General permits, as you can see, are less burdensome in this way as well than individual permits because just one permit, the general permit undergoes ESA consultation. As a result of ESA consultation completed with NMFS, the PGP does offer coverage for operators who discharge to waters of the US that contain Listed Resources of Concern, but -- NMFS Listed Resources of Concern but include some additional requirements for discharges with certain overlaps. Those overlaps include discharges that may affect either the species or habitat of salmon, sturgeon or Eulachon. And the locations we are talking about are Idaho, Washington, Oregon, California, Massachusetts and

Washington DC. There are maps available on EPA's PGP website if you look under additional resources.

It's important to note that EPA expects us to affect a very small percentage of discharges covered under the PGP, only about 2%. And EPA continues to be in consultation with Fish and Wildlife Service on the PGP. However, the PGP includes no additional protections for species managed by Fish and Wildlife Service at the time.

So if you are a decision-maker discharging to waters of the US containing NMFS Listed Resources of Concern, in order to be eligible for the PGP you have to meet one of five criteria, which are outlined in part 1.1.2.4 in the permit. Now you must -- for these discharges you must have previously concluded ESA section seven consultation previously or you must have a previously issued ESA section 10 permit for those pesticide applications. Or the applications must be made only for declared pest emergency situations or you must have prior written correspondence from NMFS that your discharges are unlikely to affect these resources. And finally, you may be eligible if you can demonstrate that your discharges are unlikely to adversely affect resources or that the pest actually poses a greater threat to the species than the pesticide.

Please note that Appendix I of the PGP outlines procedures for decision-makers to determine which of these five criteria apply to them.

If you are eligible for the PGP, decision-makers with overlap need to follow a few requirements. They must submit an NOI, submit annual reports and implement IPM like practices.

If you are a decision-maker, but do not fit into one of the previous categories mentioned, meaning you are not a federal or state agency with pest management as an integral part of your operations, a special purpose district discharging to Tier 3 waters or discharging to waters with NMFS listed resources you may still need to submit an NOI if you are applying above certain annual thresholds. The idea here is again to capture some of the more significant operations. Here are the thresholds. For mosquito and other flying insect pest control, if you treat about 6400 acres in a calendar year only counting adulticiding toward this calculation then you need to submit an NOI. For forest canopy, pest control is also treat over 6400 acres per calendar year. Weed and algae control or animal pest control treat over 20 linear miles along the water's edge or over 80 acres of water. Remember even if you do apply below these thresholds although you may not need to submit an NOI, you may still need to have permit coverage and comply with NPDES requirements and these thresholds are only applicable to the NOI requirements for EPA's PGP. States may vary in their requirements.

Before we talk about how to calculate your totals, let's just go over some definitions so we are all speaking the same language.

Pest management area is an entire area including land and water for which an operator is responsible and authorized to conduct pest management activities. For example a pest management area for an operator who is a mosquito control district is the total area of the district. Within that, the treatment area is an entire area over land or water where pesticides are being applied and intended to provide benefits within the pest management area. In some instances the treatment area will be larger than the area where the pesticides are actually applied. For example, treatment area into a stationary drip treatment into a canal includes the entire width and length of the canal over which the pesticide is intended to control weeds. And finally, an annual treatment area threshold is an area in acres or linear distance, which would be miles, where a decision-maker authorizes or performs pesticide applications that are covered during a calendar year.

Now to calculate your annual treatment areas. If you are mosquito or forest canopy control, count each application to a treatment area as separate area treated. Count all of the areas where pesticides are applied within the treatment area including portions where the pesticides are applied to land. Although there must be discharges to waters of the US within the overall treatment area in order to be covered. For example, applying pesticides three times in a year to the same 3,000 acres would be calculated as 9,000 acres total. So we could call this cumulative for mosquito or forest canopy pest control. For weed and allergy or animal control, you count the treatment area -- each treatment area only once regardless how many times you go over that area with pesticides in the year. For example, treating the same 10-mile area three times in the year is only calculated as 10 miles total. If you are treating multiple pest management areas within a state, you need to calculate the total treatment area separately for each use pattern as outlined above within all of the pest management areas in the state. Check if you are exceeding a threshold for any of those four use patterns within the state. If you are exceeding a threshold for one of those use patterns the decision-maker would be required to submit an NOI. However, the good news is to streamline things only one NOI needs to be submitted by a decision maker to cover all the applications in a state. Because you may list multiple pest management areas within one NOI just within a state.

So if you have some questions about who must submit an NOI or actually about any of the requirements under the PGP, we have developed an interactive tool to help you determine all of your questions from whether you need an NPDES permit for pesticide applications, are you going to be eligible for EPA's PGP, and

if so, then what would be required of you. If you go to the EPA PGP website, on your screen you will see that under the permit is a link to our interactive decision-making tool.

Although this webcast is focusing on NOIs, please note that we will hold future webcasts on other areas of requirements such as record keeping and documentation.

You may be wondering when you need to submit your NOI. Here is a table that summarizes when they need to be filed and how long it takes before the discharges are authorized after you file them. The key thing here is that deadlines vary based on just two factors. Whether there is a NMFS listed resource that is involved and whether there is a declared pest emergency. PGP does make provisions for emergencies. The typical deadline for submitting an NOI if there are no NMFS listed resources or emergency is 10 days before discharging. The discharge will be authorized no earlier than 10 days after EPA receives the complete and accurate NOI, which we will post a receipt of on the eNOI website.

If you are submitting an NOI because you are expecting to exceed a threshold then your deadline is 10 days before you exceed that threshold. However, if there are NMFS listed resources involved you do need to submit your NOI earlier, 30 days prior to discharge. And your authorization will take a bit more review period, typically no earlier than 30 days after EPA's receipt unless there was a previous agreement with NMFS for that discharge.

If you are applying in discharge to a declared pest emergency you can actually start applying without submitting an NOI. You will be authorized immediately. You will just need to submit your NOI within 30 days. If there are NMFS listed resources and it's an emergency, you do need to submit your NOI a bit sooner, within 15 days; however, you can start applying immediately. Your automatic authorization period may also be restricted a bit. You will have it for at least 60 days however.

And now we will move to our third poll question. If you do need to submit an NOI for EPA's PGP, under which criteria do you need to submit an NOI? Are you an agency with responsibilities to control pests, a special-purpose district responsible for controlling pests, discharging to a Tier 3 water, discharging to areas with NMFS Listed Resources or will you exceed an annual treatment area threshold. For this question you can actually check off multiple, if that applies to you.

Okay, it looks like this one is a bit trickier for some of you to figure out or to

respond. We have received a question, if I could define NMFS again. NMFS is National Marine Fisheries Service. It's one of the federal resource agencies that EPA consulted with on the Pesticide General Permit just to ensure that we were not endangering protected species or their habitats. And so if you are not discharging to an area with a NMFS Listed Resource or you are unsure if you will be, you don't need to check off that you are submitting an NOI for that reason. There are special requirements for NMFS Listed Resources that are impacted by discharges. So again you can go to the EPA PGP website and there is a section that helps you determine whether you are discharging to areas with NMFS Listed Resources.

At this time we have roughly 57% who have responded. 40% of you are from an agency with the responsibility to control pests. 37% of you will be submitting an NOI because you will exceed an annual treatment area threshold, just 10% of you are from a special purpose district responsible for controlling pests, 5% of you will be discharging to a Tier 3 water, but 8% of you feel you will probably discharge to areas with NMFS Listed Resources. Good to know.

At this point, we are going to pause and take some questions. After Jack Faulk takes some questions and goes over a few of the popular questions that have come in, Prasad Chumble will proceed with the presentation and we will go into NOIs a little bit more in detail on what's required within them and how to submit them using our eNOI system. So please hold for a moment and Jack Faulk will take the line.

### **Jack Faulk**

Thank you Hema. Thanks everyone. So we have received a number of questions and I will try and go through a number of those that seemingly apply to a wider audience and then we will take a couple of more breaks throughout. So if you have additional questions certainly you will have another opportunity to hopefully have us respond.

The first question is if the definition of federal facility includes national forest lands. And just to be clear, federal facilities for this really means federal activity and so where there is a federal role in that pesticide decision-making application that's where the federal facility applies. I think kind of the easy example is if you are a ski resort leasing land that happens to be on national forest lands and you are managing your property and applying pesticides, unless that lease agreement has some details how pests are to be controlled, the ski resort really would be the decision-maker. So even though it's on national forest lands, they still wouldn't be considered a federal facility for purposes of coverage under the PGP.

Another person asked if applications are made both on Indian lands and off, would they need 2 permits. And so it depends to a certain extent where you are located. So if you are on Tribal lands within one of those six states where we permit. So say if you are in Idaho and you are applying pesticides on Tribal lands as well as off Tribal lands, you would still be covered under the PGP for both those activities. But if you were in Montana for example, Montana actually permits activities other than on Tribal lands within the state so you would actually have to get a permit from EPA and from the state. I think if you are in that situation it's definitely worth talking to one or both of the agencies to hopefully work out an approach that avoids any conflicting requirements.

Someone also asked about whether EPA will assert jurisdiction on all lands within Indian reservation boundaries or just on Tribal lands within the boundaries. And Hema mentioned we will have another webcast specific to Tribal activities. I guess what I can say is that our permit covers activities on Indian Country land. And how that fits within the terms Indian reservations or Tribal lands, I am not familiar with here. I know that there is some further discussion of that elsewhere. So for us, we are really looking at it as EPA's permit applies on Indian Country lands.

Someone asked about whether state permits have the same NOI categories as EPA's permits and the simple answer is no. Generally they don't. There may be some states out there that have adopted our identical requirements, but I think by and large states have tinkered to some extent with those requirements even from the range as some states require all operators to submit NOIs, other states require no operators to submit NOIs. But I would say the majority of states have similar, but not necessarily identical NOI requirements.

Someone else asked about whether our use pattern for weeds applies to just aquatic plants and the answer to that is no. That whether it's an aquatic weed or a terrestrial weed where it's an application of pesticides made that results in a discharge to waters of the US, our permit does cover those activities.

Someone asked if a wetland qualifies as a water of the US. And I guess the answer to that is it depends. There is, like Hema mentioned, there has been a lot of legal action on what the definition is. There's ongoing work by the agency for developing guidance or rulemaking to better define waters of the US and so each wetland really has to be evaluated on an independent basis. And the website that we will show you the link to it at the end, but it's our main NPDES pesticides page has a link to EPA's latest guidance on basically what is or is not a water of the US including how wetlands fit into that decision-making.

And then I guess there's a question really kind of applies more broadly than the

question and we are a large farm operation that farms in many areas in the state. How is the annual treatment area calculated, farm by farm or the state as a whole? And the answer to that is really at what level the decision-making is occurring for the control of pesticides. And so if the farm operations really are being managed at a state level, then those annual treatment areas should be calculated for the state activities as a whole. If you have independent farm activities where the decisions on how and what and when pesticide applications need to be made on a farm specific level, then that is the level for which the calculation of area treated should be determined.

And there is one other question that a -- what -- what if separate parts of the operation do not exceed the threshold but combined they do. What are the geographic boundaries? And that really kind of gets at the same issue of again is that the level that decisions are being made is the level for which the threshold should be or the area treated should be calculated. And so if those levels exceed the threshold then you would have to submit an NOI, and if not, you wouldn't.

And I think for now, I'm going to pause. Keep your questions coming. We will try and answer them later. And now, Prasad is going to provide info on the NOI form and eNOI.

### **Prasad Chumble**

Okay. Thanks, Jack. So in the second part of the webcast I will be talking about EPA's Notice of Intent. Specifically I'll go over what information is to be included in the NOI and how to file an electronic NOI to be covered under EPA's Pesticide General Permit.

Let's first start off by going over the different sections of the NOI and there content. There are five components to the NOI, which basically identify the type of decision-maker and contact information, location of discharges, endangered species, protection information and finally certification. The screenshots of the different sections I will be showing are from our paper NOI form in Appendix B of the permit. However the electronic eNOI system has been developed to capture similar information.

Note that the 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. The use of the electronic system has several advantages. It allows for faster NOI processing and provides faster permit coverage. It is less burdensome to operators and EPA and also there is less of a chance to make a mistake while filling out the NOI. If, however, you were to choose to submit a paper NOI you will need to fill

in the electronic submission waiver section of the paper NOI and provide your reasoning. Here is what that section looks like in the instructions for the paper NOI form in Appendix D. You will find information on where to submit the paper form.

Section A of the NOI I've displayed here is more relevant to those that submit the paper NOI. Operators in this case would have to identify whether their submission is a new NOI or if they are making changes to a prior NOI. If making updates to a prior NOI, operators would need to identify their assigned NPDES tracking number, which they would have received once they submitted their original NOI.

Section B. of the NOI form asks information about the operator. Note that the operator name in this case is not the name of the person filling out the NOI. It refers to the entity that is the decision-maker. So for example, this could be a particular federal agency like BLM or Fish and Wildlife Service, a city or a county, a tribe, or a Mosquito Weed Control District. We have received several NOIs where this information was not submitted correctly.

Number two, ask for the IRS employer ID which can be included if applicable. You can then select operator in number three. Again note that the operator in this case refers to the decision-maker. In number four, you have to identify whether the decision-maker is a large or small entity. The definition for a large or small entity is available in Appendix A. of the permit. The NPDES home page also contains a link to the Small Business Administration website, which has guidance on how to determine whether you are a large or small entity. If you are a large entity, this simply informs you that certain large entities are required to develop a pesticide discharge management plan and submit annual reports. Finally, identify the mailing address and contact information of the decision maker.

Section C. of the NOI asks information regarding the pest management area. This includes information such as a description of the management area, the type of use patterns, whether or not the applicators -- applications occur on Indian Country land or federal facilities and whether the management area includes Tier 3 waters or impaired waters.

Please note that the address and contact information in four, should be completed if the contact for this pest management area is different than the contact for the entire NOI. For example, you might submit multiple pest management areas in one NOI and could have different people in charge of these separate pest management areas.

Again for the pest management areas, decision-makers can also choose to submit one or multiple pest management under one NOI. Again, for example, if you are a weed control district, your pest management area could include all water bodies within the boundaries of your district or you may choose to identify specific water bodies. If applications are made to Tier 3 waters, you will have to identify those waters and provide a rationale for why the discharge is necessary to protect water quality. You can identify whether you are discharging to a Tier 3 water by going to the NPDES pesticides website, which contains a list of Tier 3 waters. The PGP does not provide coverage for discharges to water of the US if those waters are identified as being impaired for that active ingredient being used, unless you provide documentation that the waters are no longer impaired for that active ingredient. A list of the impaired waters can be found on our PGP website.

Section D. of the NOI deals with endangered species protections specifically criteria B. through F. only apply to areas with National Marine Fisheries Service Listed Resources of Concern as a result of section seven endangered species consultation. The specific list of species and the areas where they are located are again identified on our NPDES pesticides website. If you are not located in these areas, you would select criterion A.

And finally, section E. of the NOI is regarding certification. By signing the certification the decision-maker certifies that the discharge identified in the NOI meets all eligibility conditions of the permit. Although the NOI can be prepared by anyone such as field staff or other hired personnel, the NOI must be certified by a person in a managerial position who performs decision-making functions. This could be the superintendent, district manager or a director of operations. Signatory requirements are found in part B 11 of Appendix B in the permit.

So those were all the sections in the NOI and all the information that's required when submitting an NOI. In the next part I will over the electronic NOI system and do a quick walk-through of how to submit an NOI. But before I do that let's take a break and let me hand it over to Jack for some questions.

### **Jack Faulk**

Thanks Prasad. Well, it does not seem like there were too many questions specific to the NOI forms so I'm going just spend a little bit of time answering some of the other questions that we got. I'm going to just put the NOI in general.

Somebody asked if this permit was limited to just restricted use pesticides only and the answer to that is no. And I would add that in fact, this is not even limited to just registered pesticides. Any application of chemical or biological materials used to control pests that result in a discharge to waters of the US is something

that our permit covers.

There were also a number of questions on what kind of what near means and how close to waters this -- you need a permit for and how drift factors into the decision of whether or not permit coverage is needed and to be clear, near really does not have a meaning for purposes of this permit. Any application where there's a discharge to waters where it's unavoidable in treating pests near the water that you will end up with a discharge to waters is eligible for coverage under the permit.

Our permit does not cover spray drift, which is different than overspray where you are targeting a pest in a certain area but spraying at some distance beyond where that pest is located. But if it is spray drift we've continued to let folks know that our permit does not include those. One clarification is that when folks are talking about mosquito control and talking about how the ULV applications basically create a fog and those drift with the purpose of the mosquitoes contacting them, we really call that more on target drift than off target drift. And the off target drift we have said -- I mean there is an intentional application to looking at expected location of that fog and those are activities for which discharges to waters would be covered.

Someone asked how we would provide a signature for certification on the electronic submission form. And Prasad is going to kind of walk people through the electronic submission form. But just to be clear, the signator for the NOI form has to be an authorized representative of the decision maker. And there is a description in Appendix B.-- Appendix A. of the -- Appendix B. of the permit that describes who that authorized representative is. And that's a position that cannot be delegated. So if it is a facility manager or someone that actually is the authorized representative he does not have the ability to designate somebody else. For some of the other reports there is actually an ability to designate.

So I think with that there actually were a number of other questions on things not directly related to the form but more related to the permit in general or NOIs in general and I'm going to hold off on answering any of those to let Prasad kind of go through the electronic NOI portion and then at the end, we can kind of take -- answer questions on other topics if there is time. So here is Prasad.

**Prasad Chumble**

Thanks, Jack.

So let's take a quick poll question to see how many of you have tried or -- tried to or will be submitting an NOI through our electronic NOI system. If you have submitted one we would also like to know how easy or difficult it was for you to

submit one. So if you have tried -- so the question is have you tried using EPA's eNOI system to submit an NOI for the PGP yet? Yes, I've submitted NOI and it was relatively easy. Yes, I've submitted a NOI but it was relatively difficult. Yes, but I have not yet completed submitting the NOI. Not yet, but I will need to. And lastly, no, and I don't expect to and need to.

And -- yes -- so the poll should be up. Give me a second. So this will help us in our Q&A document to make sure people do -- people can access the eNOI system and submit an NOI without difficulty.

So -- so you might not be able to -- okay, so you should now have the poll in front of you and please select one of the questions -- answers. And it looks like about -- 66% have voted. Just one more minute there. And so far it looks like about most of you have not yet submitted an NOI or -- and the other half don't think they will need to submit an NOI. So about 70% have voted. So yeah, so about almost 50% of you will need to submit an NOI but have not yet done so and the others do not expect to submit an NOI. So for those that did have difficulty or will be submitting an NOI hopefully the rest of the presentation will clarify the process and make it easier to do so.

So the following basic steps, which I will be going over, will allow you to submit your NOI and receive coverage under the PGP. Basically it starts with registering and logging into Central Data Exchange. Entering the information in the electronic NOI system. Certifying the NOI with the certification key and finally submitting the NOI to the EPA.

To start the NOI submission process you will first need to go to our NPDES pesticides website and click on the pesticides eNOI link on the left side of the page. That link will bring you to the pesticides eNOI page and you can click the eNOI logo button to begin the process. You will first need to register with Central Data Exchange in order to submit NOIs. CDX is a point of entry on the Environmental Information Exchange Network for environmental data submission to EPA. It allows you to submit data instantaneously and it reduces costs and offers a centralized point of access.

Before I get into the registration process in CDX let me quickly go over the two roles that are important when submitting an NOI as this has been causing a lot of confusion. The NOI system allows anyone to prepare the NOI. For example, the field staff or applicators can prepare the NOI however the certification can only be done by an authorized representative of the decision-maker. Again such as a superintendent or operations manager. We require that both the preparer and the certifier register with CDX. However, if the certifier and preparer are the same person then only one registration is needed.

So to start the CDX registration process, you first log into the system. So you would have to click register with CDX. That will bring you to the privacy statement. Read the statement and click continue. Next, you will be taken to the terms and conditions page. Read and accept terms and conditions to continue. Here you will fill out the user information, password and secret question and answer in case you happen to lose your password or don't remember. Then you will need to fill out your organization information and click next. You will then be taken to the program selection page. Make sure you choose Electronic Notice of Intent. Click next. For the program ID, fill in the following: under role select a submitter. Note that this is the only option you can select so even if you are a certifier, choose submitter. Under the program ID, select PGP. In the facility ID box enter your two letter state abbreviation. And for the submission method select web form and click finish.

Now you can click on my CDX tab to the left side to which -- which will take you to the my CDX homepage. So that's the my CDX homepage. Again this registration is a one-time process to be completed by the certifier and if a different preparer also -- and if there is a different preparer, also by that person. When you first log in to CDX as a registered user you will be taken to this CDX homepage. So in order to get to the PGP NOI submission homepage, click on the eNOI PGP under available account profiles.

Then click on pesticides general permit NOI and this will take you to the PGP eNOI homepage. This is where you can create a new NOI, check on the status of your submitted NOIs and also certify NOIs.

Now let's create a new NOI and go through the process of NOI submission.

So once you create -- once you click create NOI, you will be taken to a page that asks information regarding which state your pesticide applications occur and whether you apply on tribal lands or federal facilities. Note that if you pick yes for tribal lands you will be required to submit -- to choose the reservation or enter one if not listed. Click submit.

Next you will be asked to provide operator information. Again this refers specifically to the entity that is the decision-maker. So in this sample NOI, it is XYZ Mosquito Control District.

Note the asterisks identify information that is required. So in this case the IRS employer identification number is optional. The mailing address is also that of the decision maker and note that you will be assigned a permit number in red. And click next.

Next you will need to provide information on the pest management area. Identify the pest management area by name and provide a description at the top. The mailing

address here can be the same as the one entered previously or if there is a different manager for this particular pest management area then include that person's contact information. If applications are made to Tier 3 waters you are required to include additional information, which will come up, and you'll have to name the Tier 3 water and the rationale for why you are discharging to Tier 3.

And if you are applying to waters that are impaired for pesticides with specific active ingredients, although you have evidence that the waters being applied are no longer impaired for active ingredients then make sure to attach evidence below. And click next.

Here you can enter a map of the pesticide -- pest management area. Make sure to provide a name to the image. Also make sure the format of the map file is in JPEG, PNG, GIF or BMP format. Note that you cannot upload PDF files of the map. So once you choose -- and also make sure that once you choose the file click save. And next. Once you have uploaded a map you can choose to upload another map. Or click next to proceed.

This section asks information regarding endangered species protection. Again criteria B. through F. specific only applies to areas where there are listed NMFS Listed Resources of Concern. Most of you will select criteria A -- criterion A.

If you do up apply to areas with NMFS Resources of Concern and select criteria B. or F., you are required to submit additional information. And that will show up if you do select either B. or F. Once you select the criteria you have two options either to add another pest management area or you can click next to proceed.

In this section enter the certifier and preparer information. Make sure that the CDX registration e-mail matches the e-mail that is provided under the certifier information. That is given here. This is very important, as the certification key, which I will talk about later, will be set to this e-mail. If the certifier and the preparer are the same person then enter the same information for both and click next.

At this point you can view the whole NOI and review and make edits as necessary. You can also click on the generate PDF of NOI to view the whole NOI in a PDF format. Once -- once you are sure all the information is accurate and complete, go to the bottom of the page and click submit. Note that when you click submit, the NOI is not yet sent to EPA. It is sent to the certifier for certification.

At this point let me -- let me -- so click submit and let me proceed to the next slide to show you what happens. So once you click submit the preparer will be sent an e-mail notifying that an NOI has been submitted for certification. And the certifier will be set an e-mail with a key to certify the NOI in order to be submitted to EPA. If the preparer and the certifier are the same person they will both -- they will receive the same two e-mails. Again if the certifier does not have a CDX account at this point they will need to register with CDX making sure that the e-mail during registration is identical to the one where the certifier e-mail is sent.

The certifier will then need to log into the PGP NOI home page using CDX, as described

previously. On the homepage you will be able to see which NOIs have been submitted to be certified. And the status will be pending certification. On the homepage, on the left side you can see -- click on the add certification key link.

Copy and paste the certification key from the e-mail that the certifier received and click it. And then from the eNOI PGP home page you can select the eNOI and then certify. Once you click on the certify button, you will be -- you will again have the opportunity to review the NOI and make additional edits to any sections, if needed. After reviewing, you can accept the NOI and click submit. Note that this time as a certifier you also have the option to postpone or reject the NOI that was submitted by the preparer. Once you click submit this time, the NOI will be sent to EPA. The certifier will also receive an e-mail confirming that submission of the NOI to EPA and the date on which coverage under the PGP begins.

To provide some clarity and -- let me just quickly go over what the different statuses mean. When the NOI is being prepared its status is draft. Once the preparer completes the NOI and submits the NOI, then the status is pending certification. It has not yet gone to the EPA. Once it is certified by the certifier using the key, then at that point it is sent to EPA and an e-mail is sent with the date on which coverage begins. Note that the date might change and the certifier will be notified if the EPA finds issues with the NOI. In most cases on the date identified, the NOI status will be changed to active and the operator will be covered under this NOI through October 31st, 2016. Once your NOI is active, you need to log back into your eNOI system, select the active NOI, click on the generate PDF button on the top and print out a copy for your records. Once an NOI is active you may make edits by clicking on the activate edit button. Note that changes to an active NOI will restart the review period. You will still be covered under the original NOI until the edited NOI becomes active. Although you can check the status of your NOI in the NOI system -- eNOI system homepage, we have created a public NOI search tool where you can also check the status. It can be accessed from our NPDES pesticides homepage by clicking again on the pesticide eNOI link on the left side of the column and then the eNOI search link under table of contents. You can narrow the search by permit number, state, city or the date submitted.

If you have problems registering with CDX, you can call or e-mail the contact identified here. If you have eNOI specific issues, such as trouble with loading maps or if you have trouble certifying NOIs here is the contact information for our eNOI processing center.

So with that, let me now hand it back over to Hema to finish up the presentation and take questions.

### **Hema Subramanian**

Hi folks. Thanks for staying with us. I hope that this presentation has been helpful just giving you some background on the NOI requirements and how you would proceed to submit your NOI.

For more information on the PGP, be sure to visit our PGP website at

EPA.gov/NPDES/pesticides. If you need to view the archive of our previous webcast, which provided a background on NPDES permitting and pesticide discharges and the Pesticide General Permit, click on -- go to that website and click on trainings and meetings on the right side menu and then click on pesticides. Our archive of this webcast will also be posted to that website. As I mentioned before, it may take us up to two weeks to be able to post the archive. We will try get the PowerPoint posted as soon as possible, however. We know it's really useful for all of you.

If you want to know the direct link to the NOI homepage -- the eNOI homepage go to EPA.gov/NPDES/pesticides/eNOI. Also please send any Pesticide General Permit questions to PGP@EPA.gov. We are still becoming familiar with this software and I understand there have been a couple little glitches such as on the poll question, I think there was one where you could not select multiple answers. We will look into that for our next presentation. Also you may notice that my name is actually the one that has been showing as the presenter the entire time whereas Prasad and Jack also spoke. That is because we were using a single connection. However, in the future we will try to expand our ability with the software. But if you had any technical difficulties or any other suggestions for this webcast please send them to PGP@EPA.gov.

And now we are at the end of the webcast. Before you leave, just note that there is a quick survey we have included in the webcast that you will see once you are exiting this webcast. Also many of you have asked about certificates. We do actually offer certificates for the time you spent viewing the webcast. However, we may need to process and send them to you individually. If you can send an e-mail to PGP@EPA.gov after this webcast, just let us know that you need the certificate. We are getting them developed right now and so we will actually have certificates for the prior webcasts as well as this one available. We just need to start e-mailing them hopefully next week.

Also this webcast and the archive of it will be posted to the website. We will try and send an e-mail out to the PGP listserv to let you know it's been posted. And we will also notify you of future PGP webcast topics in the future.

I think we actually have a couple of minutes for some more questions. So I'm going to give the phone to Jack Faulk before we leave the webinar just to see if we can cover a couple more issues that came up. Just a moment.

### **Jack Faulk**

Thanks Hema. I'll see if I can get through. I have about 10 questions. Let me just add that there were several questions that we received that were I guess kind of multipart complicated that I guess I wasn't or we really didn't feel

comfortable answering too much on the fly without kind of reading them and talking about them. So if we did not answer your question today, I know we have mentioned our group e-mail box. But if you still do have a question, definitely send it to us that PGP@EPA.gov. And you will definitely get a response if you send it in there. So again I apologize if we didn't answer your questions here today. But let me just go through a few of those.

Someone asked about whether there was some bill on the Hill that Congress was trying to pass to do away with this permit requirement and there was. It is actually called HR 872 and it was introduced into the House last year. It has circulated. It actually was I think voted in the Senate. It passed the House Ag Committee. It hasn't actually made it through. It's been I think laboring at the Hill for quite a while now. And so our take has been that for now permits are required. Failure to get a permit you would be in violation of the Clean Water Act. So at some point that may become law in which case permits would not be necessary because as it now stands that is just a draft bill that has been circulating.

So another question someone asked what it means when we say along water's edge and really what we're talking about is where you are treating pests that are near enough to the water such that when you apply pesticides that it's unavoidable that you will be spraying into the water so those pests may not actually be in the water of the US. They might be so close though say on a bank that to actually be able to treat those weeds, you will be having to apply some pesticide into the water. And so that is really what we are talking about at water's edge.

Someone asked if a weed district is the same as a private weed contractor. And I assume that is kind of referring to determining whether or not an NOI has to be submitted and the answer to that is no, that a weed district is as we talk about, is really a government entity, a special-purpose district that has been established specifically for the management of weeds. Private weed contractors I assume we are talking about a for hire pesticide applicator who we said has not -- or is not required to have to submit an NOI.

Someone asked that if they don't have to submit an NOI does that mean that they don't have to submit an annual report. And the answer is yes, that is true. No NOI, no annual report. Some people that do submit an NOI also don't have to submit an annual report. Those being the entities that are defined as small entities in our permit. So again it's only folks that submit an NOI and our large entities that have to submit an annual report.

Another question, the permit only includes additional conditions specific to NMFS

species and the question is should we anticipate additional requirements for fish and wildlife species in areas that contain those species. And at this point we are continuing our consultation with Fish and Wildlife. How that plays out really is anybody's guess. I don't know where it may end up. I would say now if you are obtaining coverage there are no additional requirements for addressing fish and wildlife species under our permit. So if we would add additional or need to add additional requirements, those would be public noticed and likely anybody that had submitted an NOI we would also send a separate e-mail to just to let them know that was going on. So at this point, nothing. Whether we add some requirements at a later date, to be determined.

Someone else asked if they can't get covered under the PGP can they get covered under an individual permit. And the answer to that is yes. There is an NPDES individual permit application form that they would submit and a permit would be developed and public noticed and so forth and issued specifically to you. So, if you are one of the folks say that discharges to an impaired water and wants to use a pesticide for which the water is impaired, I guess there is an option that you could potentially get covered under an individual permit for that pesticide.

A question does only one NOI need to be submitted for example, if the decision maker applies for coverage then the for hire applicator does not need to apply. And that is true. So again for any given activity we are only looking for one NOI at the most and again in certain instances no NOI would be required. Someone asked -- sorry about the random nature of these. I'm trying to go through. We are now back to waters of the US. Someone asked if there are maps that specifically outline the boundaries for the waters of the US. And unfortunately the answer is no. There are at some level USGS maps that identify some known waters of the US but it does not necessarily include other features that are actually waters of the US. So if you do have a question whether or not a certain area is a waters of the US, there is guidance that's available on our website. And if you contact the state or EPA with specifics, they may be able to help you make that designation.

Someone asked if these are annual permits. And actually the way this general permit works, the Clean Water Act says we can't issue permits for longer than five years. And so generally we issue permits for the maximum length of time, five years. This Pesticide General Permit was issued in October of 2011 and it is effective through October 2016. So if you submit an NOI now for coverage, your coverage that one NOI actually covers you through October 2016 for any activities you identified on your NOI. If you should change, if you should go beyond say you submit an NOI and say I'm doing weed control and then you later want to do mosquito control, you would have to update your NOI for that

additional practice. Or if you say I am going to be controlling weeds in the southwest corner of the state and then you expand to control weeds in the southeast corner of the state. You have to submit an updated NOI. But again that NOI covers you for the duration of the permit. If at any point you are done applying and no longer need permit coverage, you can submit a notice of termination at which point the requirements would no longer apply to you assuming that your discharges has ceased.

And I think that is the extent of questions. I'm just trying to look here at the last minute. I guess there is a question saying they were told that waters of the US are on USGS quadrangles topo map 7.5 minutes, 24,000 scale and generally that will help -- again help you identify what is a water, but not necessarily what is not a water. There are definitely waters of the US that are not identified as such on those maps. So sorry, it would be great and maybe in the future we will have maps that will do that for us.

And I believe that is it. Again, I apologize if we did not answer your question. If it is something that we were not able to answer during the webcast, feel free to send it to us that PGP@EPA.gov. And with that I think we will end it. And thank you all for participating. Goodbye.