

## **Frequently Asked Questions on EPA's draft NPDES Pesticides General Permit (PGP)**

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

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

### **2. Why is EPA requiring NPDES permits for discharges from pesticide applications?**

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

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

No. A pesticide user must comply with all applicable Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) requirements contained in pesticide product labels. The PGP, when issued, will include additional requirements that are not inconsistent with pesticide product labels (nor does the permit override any existing FIFRA labeling requirements).

### **4. Is EPA's PGP available nationwide?**

No. Although the Court's decision applies nationally, EPA's PGP is effective only in areas where EPA is the NPDES permitting authority (i.e., six states – AK, ID, MA, NH, NM, and OK; Washington, DC, Puerto Rico, and all U.S. territories (except the Virgin Islands); Indian Country lands nationwide; and federal facilities in four states – CO, DE, VT, WA. States and the Virgin Islands, as the authorized NPDES permitting authority, are responsible for issuing NPDES permits for pesticide discharges in their respective jurisdictions. A complete listing of areas where EPA's PGP is available for use is provided in Appendix C of EPA's draft PGP.

### **5. Which pesticide applications are covered under EPA's PGP?**

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

**6. What if my pesticide application is not included within the 4 categories provided in the PGP? Does this mean I do not need an NPDES permit for my application?**

No, Any use patterns not covered by this proposed draft permit would need to obtain coverage under an individual permit or alternative general permit if they involve pesticide applications that result in point source discharges to waters of the United States.

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

No, the proposed draft permit does not authorize coverage for (1) point source discharges of pesticides or their degradates to waters already impaired by those specific pesticides or degradates (Tier 2 waters) or (2) discharges to outstanding national resource waters (also known as Tier 3 waters). These discharges will require coverage under individual NPDES permits. Also outside the scope of this permit are terrestrial applications to control pests on agricultural crops or forest floors. And, any use patterns not covered by this proposed draft permit would need to obtain coverage under an individual permit or alternative general permit if they involve pesticide applications that result in point source discharges to waters of the United States. Specific eligibility provisions are detailed in Part 1.1 of EPA's PGP.

**8. Are specific pesticides regulated under the PGP?**

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

**9. Does the PGP cover discharges from pesticide applications near waters of the U.S. and how does EPA define the term "near"?**

Yes. Although the Court did not define the term "near" in the context of pesticide discharges, EPA interprets this term to refer to the unavoidable discharge to waters of the U.S. in order to target pests in close proximity to water, for example, treating weeds along the bank of a ditch through which water is flowing.

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

Stormwater runoff that may contain pesticides is not required to obtain NPDES permit coverage unless it was already required to do so exclusive of *National Cotton Council, et al. v. EPA*. Existing NPDES stormwater permits for runoff from construction, industrial activities, and municipal separate storm sewers (MS4s) already consider pesticides as part of the permit development process.

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

No. In 1987, Congress amended the Clean Water Act to exempt agricultural stormwater and irrigation return flow from NPDES permitting requirements. The Court's ruling does not affect these exemptions.

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

No. This permit does not cover terrestrial (land based) applications for the purpose of controlling pests on agricultural crops or forest floors. However, any use patterns not covered by this proposed draft permit would need to obtain coverage under an individual permit or alternative general permit if they involve pesticide applications that result in point source discharges to waters of the United States. EPA is seeking comment on whether additional pesticide application activities may involve unavoidable point-source discharges to waters of the United States. EPA is requesting comment on whether this general permit should provide coverage for any such activities. If, after considering comments, EPA expands coverage of this permit, the effluent limitations for the additional use patterns would likely be similar to what is being proposed in this draft permit.

**13. Who is an "operator" that EPA's PGP identifies as the entity responsible for permit coverage?**

Consistent with the NPDES regulations at 40 CFR §122.2 EPA's PGP defines operator as any entity involved in the application of a pesticide that results in a discharge to waters of the U.S. that meets either or both of the following two criteria:

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

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

General permits do not require that operators "apply" for coverage; rather general permits rely on the submission of a document called a Notice of Intent (NOI) to be covered by a general permit. Additionally, some general permits provide for automatic coverage (i.e., without submission of an NOI) provided certain eligibility criteria are met. For EPA's PGP, operators that know or reasonably should have known that their activities will exceed one or more of the annual (calendar year) treatment area thresholds, as described in Part 1.2.2 of the PGP, must submit an NOI for permit coverage. Other operators who meet the eligibility provisions are automatically authorized to discharge after April 9, 2011 without submission of an NOI. However, operators authorized without submission of an NOI who later know or reasonably should have known that their activities will exceed one or more of the annual treatment area thresholds must submit an NOI at least 10 days prior to exceeding an annual treatment area threshold.

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

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

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

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

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

**16. How do I submit an NOI?**

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

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

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

**18. When can I begin discharging after submitting the NOI?**

An operator who has submitted an NOI after determining they will exceed an annual treatment area threshold will be authorized to discharge no later than 10 days after EPA has posted its confirmation of receipt of the NOI on the Internet. An operator who is discharging pesticides in response to a declared pest emergency situation is covered immediately (although the operator has up to 30 days after the emergency discharge has occurred to submit an NOI). Any operator who is eligible to discharge without submission of an NOI (e.g., the operator will treat less than any of the annual treatment area thresholds) is authorized to discharge in compliance with the terms of the permit immediately commencing on the effective date of the permit.

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

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

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

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

**21. What does the PGP require of operators?**

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

**22. What are "integrated pest management practices"?**

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

assessing pest management alternatives, and following appropriate procedures for pesticide use.

**23. What are “adverse incidents”?**

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

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

No. Although the PGP does not currently require operators to conduct monitoring of ambient water quality, all permittees are required to conduct visual monitoring for adverse effects during application and during any post-application surveillance. Operators are also required to monitor their management practices. EPA will be evaluating the effectiveness of the PGP and may determine that additional monitoring is warranted. EPA is requesting comment on the value, feasibility and safety of visual monitoring during application and of post application surveillance monitoring. EPA is considering having the largest of the large applicators provide ambient sampling data.

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

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

**26. Will the public have an opportunity to comment on EPA’s PGP before it is issued?**

Yes. All NPDES permits, including general permits, require draft permits to be public noticed for comment for at least 30 days. EPA then takes these comments into account when developing the final permit and prepares responses to those comments for inclusion in the permit administrative record. All public comments will be publically available in the Agency's public docket along with the Agency's responses. The public is invited to submit comments to the EPA docket during the public comment period, identified by Docket Identification Number "EPA-HQ-OW-2010-0257," by one of the following methods:

- (1) [www.regulations.gov](http://www.regulations.gov);
- (2) E-mail: [ow-docket@epa.gov](mailto:ow-docket@epa.gov); or
- (3) Mail to: Water Docket, U.S. Environmental Protection Agency, Mail Code: 2822T, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, Attention: Docket ID No. EPA-HQ-OW-2010-0257.

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

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

**28. What are the repercussions of pesticide applicators not complying with the law or the permit?**

Operators failing to comply with the CWA (such as for failure to obtain NPDES permit coverage) or for violating specific provisions of the permit risk being found in violation of the CWA and subject to penalties of up to \$37,500 a day (in addition to any possible FIFRA penalties). Also, the CWA provides for citizens to file suit.

**29. Is this going to be a huge burden to farmers and others?**

EPA performed a draft economic impact analysis for the PGP and found the economic impact on covered entities, including small businesses, to be minimal. EPA is asking for additional information during the public notice of the draft permit and will update the

analysis as appropriate for the final permit. Also, the burden to farmers is expected to be minimal in that the CWA exempts agricultural stormwater and irrigation return flow from NPDES permitting requirements.