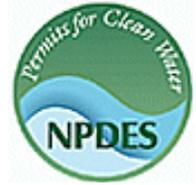




United States Environmental Protection Agency
Office of Water, Office of Wastewater Management
Water Permits Division



April 2010

NPDES General Permit for Pesticides Discharges

On November 27, 2006, EPA issued a final regulation to codify its interpretation of the Clean Water Act (CWA) as not requiring National Pollutant Discharge Elimination System (NPDES) permits for application of pesticides to or over, including near, waters of the United States, if the applications are consistent with relevant Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) requirements. After the rule was published, petitions for review were filed in 11 Circuit Courts. On January 7, 2009, the Sixth Circuit Court of Appeals ruled in *National Cotton Council, et al. v. EPA* to vacate the CWA Pesticides Rule. On June 8, 2009 the Court granted the Department of Justice's (DOJ) request for a two-year stay of the decision, until April 9, 2011, to provide EPA and states time to develop and issue NPDES permits and provide outreach to stakeholders on the implications of these actions.

I. Background:

The 2006 Rule identified two specific circumstances in which NPDES permits are not required:

- (1) The application of pesticides **directly to** waters of the United States in order to control pests. Examples of such applications include applications to control mosquito larvae, aquatic weeds, or other pests that are present in waters of the United States; and
- (2) The application of pesticides to control pests that are present **over waters** of the United States, **including near** such waters, where a portion of the pesticides will unavoidably be deposited to waters of the United States in order to target the pests effectively; for example when insecticides are aerially applied to a forest canopy where waters of the United States may be present below the canopy or when pesticides are applied over or near water for control of adult mosquitoes or other pests.

II. Current Status:

For the past year EPA has collected and analyzed data on pesticide applications (including labeling requirements, pesticide uses, best management practices employed to minimize the impact of pesticides on water quality, and existing state water quality standards for pesticides). EPA has drafted an NPDES Pesticides General Permit (PGP) that it will issue for areas where EPA remains the NPDES permitting authority. Although EPA's draft general permit is expected to cover the pesticide uses identified above, the Agency will request comments from the public on whether other types of pesticide applications have discharges that should also be eligible for coverage under the PGP.

EPA estimates that the Sixth Circuit's ruling will affect approximately 365,000 pesticide applicators nationwide that perform 5.6 million pesticide applications annually and that the Court's decision covers, at a minimum, the following pesticide uses:

- Mosquito and other flying insect pest control
- Aquatic weed and algae control
- Aquatic nuisance animal control
- Forest canopy pest control

Outside the scope of this permit are:

- Discharges that will require coverage under an individual permit, such as discharges of pesticides to waterbodies that are impaired under CWA § 303(d) for that discharged pesticide; discharges to Tier 3 waterbodies
- Terrestrial applications to control pests on agricultural crops or forest floors
- Discharges of materials that are not pesticides

Exemptions to CWA NPDES Permitting

- Activities exempt from permitting under the CWA (irrigation return flow, agricultural stormwater runoff)

EPA has been actively working with NPDES-authorized states to support their similar permit writing effort. This coordination includes having held regular conference calls, two webcasts, and two face-to-face meetings with states to discuss how best to draft these NPDES permits to control such discharges.

As currently drafted, the PGP includes a narrative water-quality based effluent limitation, “any discharge that causes or contributes to an excursion of any applicable numeric or narrative EPA-approved state, territory, or tribal or EPA-promulgated water quality standard is prohibited and is a violation of this permit.” EPA expects that compliance with FIFRA plus compliance with permit conditions will generally control discharges as necessary to meet applicable water quality standards.

The PGP would require all operators to minimize pesticide discharges (including prevention of leaks and spills and calibration of equipment), and report any adverse incidents. In addition, the PGP would require operators to accomplish the following if they exceed specific annual pesticide use thresholds: submit NOI for coverage, implement integrated pest management (IPM) practices to minimize the discharge of pesticides to waters of the U.S., develop Pesticide Discharge Management Plans, report any adverse incidents (and perform corrective action as necessary), submit annual reports, and maintain records of pesticide usage.

III. Next Steps:

EPA intends to public notice the draft general permit for comment in late May 2010. In June, 2010, EPA intends to host a webcast and four public meetings (tentatively in Boston, Boise, Albuquerque, Washington, D.C.) to present the proposed requirements of the permit and the basis for those requirements as well as to answer questions concerning the proposed permit. EPA intends to issue a final general permit in December, 2011.

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