

Clean Water Act Permitting of Discharges from Pesticide Applications

U.S. EPA, Office of Water

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Webcast: December 8, 2011



Part 1: Pesticide Permitting Overview Topics

- Background
- Clean Water Act Permitting
- EPA and State Permitting Responsibilities
- Coverage Under a Permit
- Differences Between EPA and State Permits
- Where to Go for Help



Part 1: NPDES Pesticide Permitting

Precursor to 2006 Rule on Application of Pesticides in Compliance with FIFRA

- Litigation
 - *Headwaters v. Talent* (9th Circuit, 2001)
 - *League of Wilderness Defenders v. Forsgren* (9th Circuit, 2002)
 - *Altman v. Town of Amherst* (2nd Circuit, 2002)
 - *Fairhurst v. Hagener* (9th Circuit, 2005)
- Interim Statement issued (August 13, 2003)
 - *Clarified EPA's Position*
 - *Solicited Public Comment*
- Interpretive Statement issued (February 1, 2005)
 - *Finalized Interim Statement*
- Proposed Rule published (February 1, 2005)
 - *Proposed to Codify Substance of Interpretive Statement*
 - *Solicited Public Comment*
- Final Rule published (November 27, 2006)



Part 1: NPDES Pesticide Permitting

EPA 2006 Rule

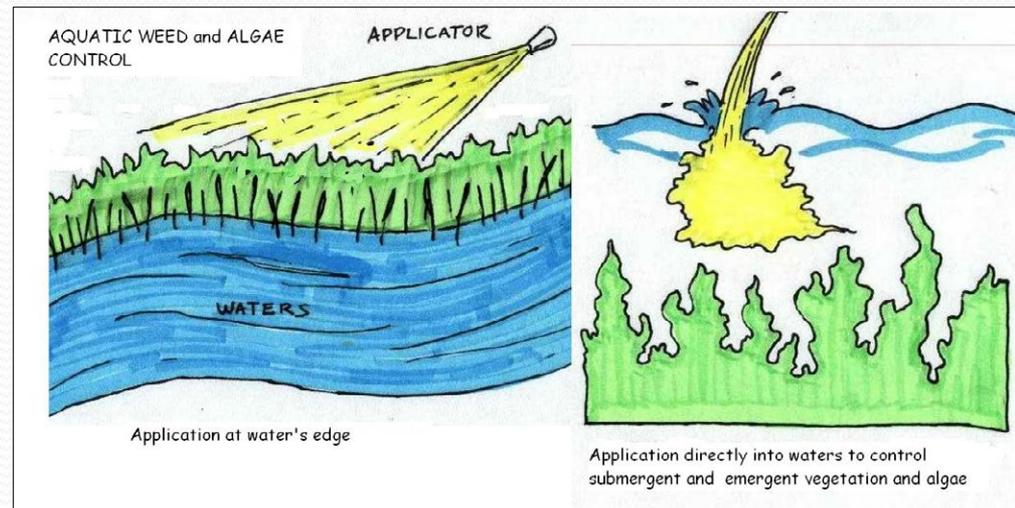
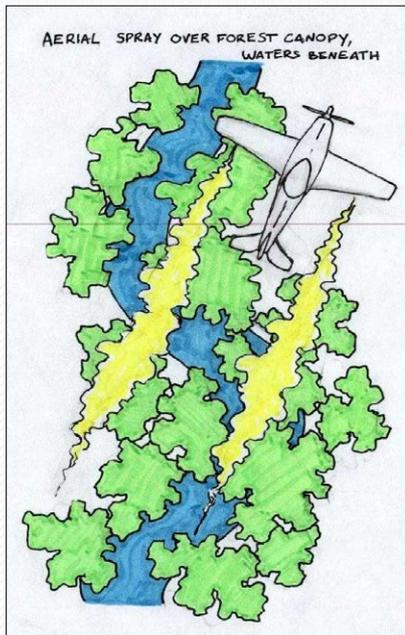
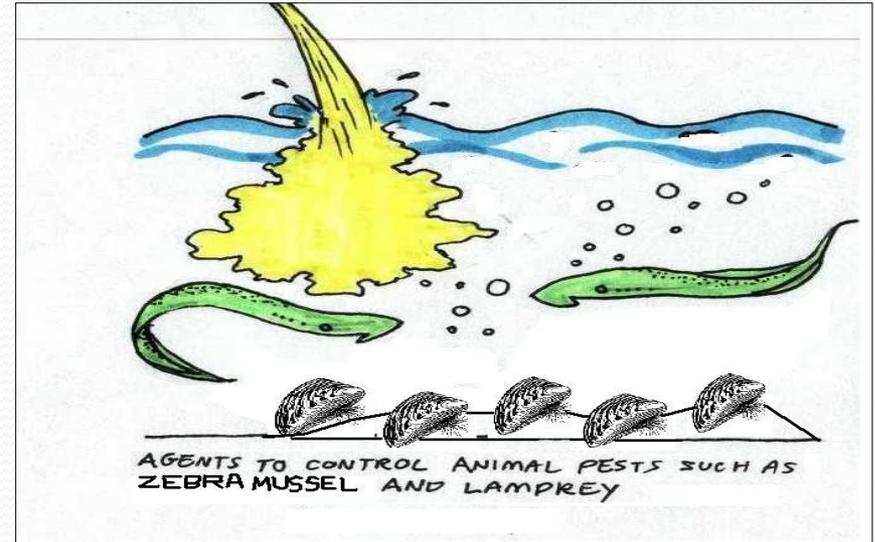
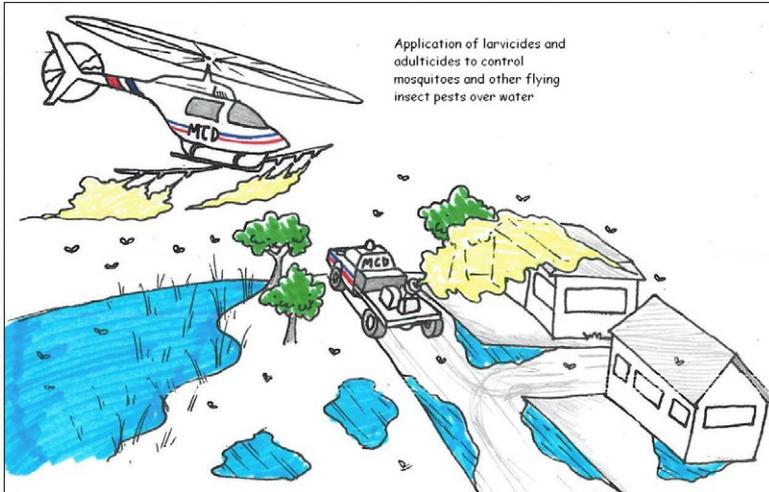
Final CWA Pesticides Rule, November 27, 2006:

“The application of a pesticide to waters of the United States consistent with all relevant requirements under FIFRA does not constitute the discharge of a pollutant that requires an NPDES permit in the following two circumstances:

1. The application of pesticides ***directly to waters of the US*** 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 US; and
2. The application of pesticides to control pests that are present **over** waters of the US, **including near** such waters, where a portion of the pesticides will ***unavoidably be deposited to waters of the US*** to target the pests effectively; for example when insecticides are aerially applied to a forest canopy where waters of the US may be present below the canopy or when pesticides are applied over or near water for control of adult mosquitoes or other pests.”



Pesticide Use Patterns



Part 1: NPDES Pesticide Permitting

Post 2006 Pesticide Rule

- In December, 2006, petitions for review were filed in all 11 Circuit Courts. Petitions were consolidated in the 6th Circuit Court of Appeals.
- In January 2009, the 6th Circuit vacated the CWA pesticides rule, stating that the rule was not a reasonable interpretation of the CWA.
- In June 2009, the 6th Circuit granted EPA's request for extension and ordered a two-year stay of the mandate until April 9, 2011.
- In March 2011, the 6th Circuit granted EPA's second request for extension resulting in a stay of the mandate from April 9, 2011 until October 31, 2011.
- On October 31, 2011, EPA issued its Pesticide General Permit.



Part 1: NPDES Pesticide Permitting

EPA Efforts in Response to Sixth Circuit Ruling

- State and Regional workgroups
- Prototype general permit - shared with States/Regions
- Met with Pesticides Program Dialogue Committee (Federal Advisory Committee)
- Email listserv for EPA and states
- Over 200 meetings with various groups (industry and environmental) to discuss permit concepts
- Webcasts for stakeholders
- Draft and draft final EPA pesticide general permit



Poll Question #1

- Do you expect to need coverage under EPA's PGP?
 - Yes/likely
 - Unclear if eligible
 - No



Part 1: NPDES Pesticide Permitting

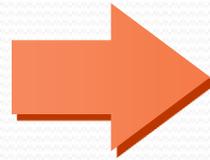
Clean Water Act Terminology

- National Pollutant Discharge Elimination System (NPDES)
- NPDES Permit
- Point Source Discharge of Pollutants
- Waters of the United States
- General Permits vs. Individual Permits
- Notices of Intent vs. Permit Applications
- Pesticide General Permit (or PGP)
- NPDES Permitting Authority



NPDES CWA Statutory Framework

- Any “point” source”
- “discharge of a pollutant”
- to “waters of the U.S.”



Must obtain NPDES permit coverage

(provides legal authority for those discharges of pollutants to waters of the U.S.)

Part 1: NPDES Pesticide Permitting

CWA NPDES Statutory Framework (cont.)

40 CFR 122.2 defines “**point source**” as:

- Any discernible, confined, and discrete conveyance, including but not limited to:
 - Any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged.

The court ruled that discharges from pesticide applications are point sources (e.g., from a hose or an airplane).



Part 1: NPDES Pesticide Permitting

CWA NPDES Statutory Framework (cont.)

40 CFR 122.2 defines “**discharge of a pollutant**” as:

- (a) Any addition of any “pollutant” or combination of pollutants to “waters of the United States” from any “point source,” or
- (b) Any addition of any pollutant or combination of pollutants to the waters of the “contiguous zone” or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
- This definition includes additions of pollutants into waters of the U.S. from:
 - surface runoff which is collected or channeled by man;
 - discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and,
 - discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works.
- This term does not include an addition of pollutants by any “indirect discharger.”

The court ruled that “biological pesticides” and “chemical pesticides that leave a residue” are pollutants.



Part 1: NPDES Pesticide Permitting

CWA NPDES Statutory Framework (cont.)

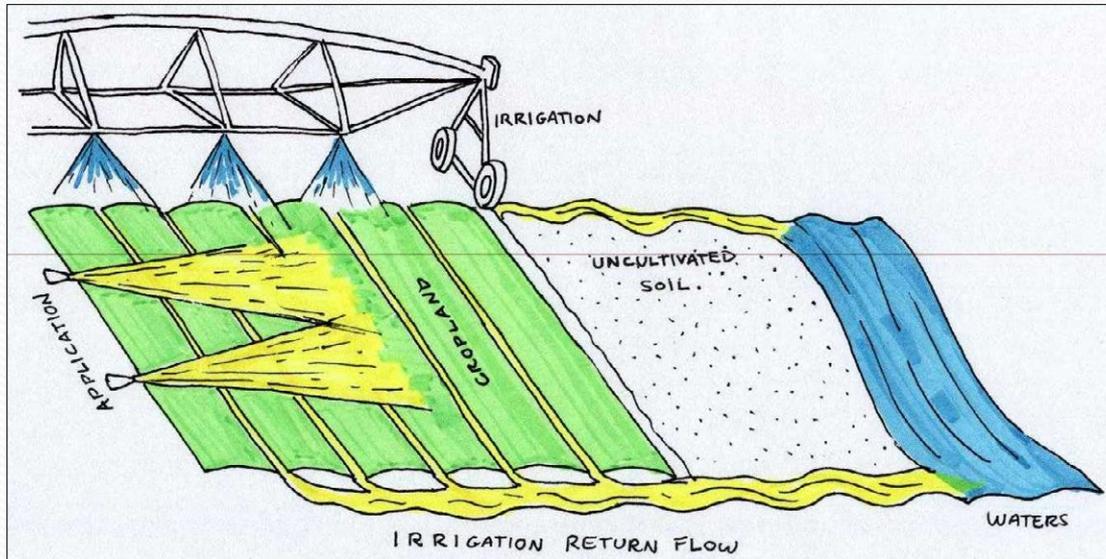
40 CFR 122.2 defines "**Waters of the United States**" or "**waters of the U.S.**" as:

- a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
- b) All interstate waters, including interstate "wetlands;"
- c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce;
- d) All impoundments of waters otherwise defined as waters of the United States under this definition;
- e) Tributaries of waters identified in paragraphs (a) through (d) of this definition;
- f) The territorial sea; and
- g) "Wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition.

More information about "waters of the U.S." can be found in EPA Guidance:
(<http://water.epa.gov/lawsregs/guidance/wetlands/CWAwaters.cfm>).



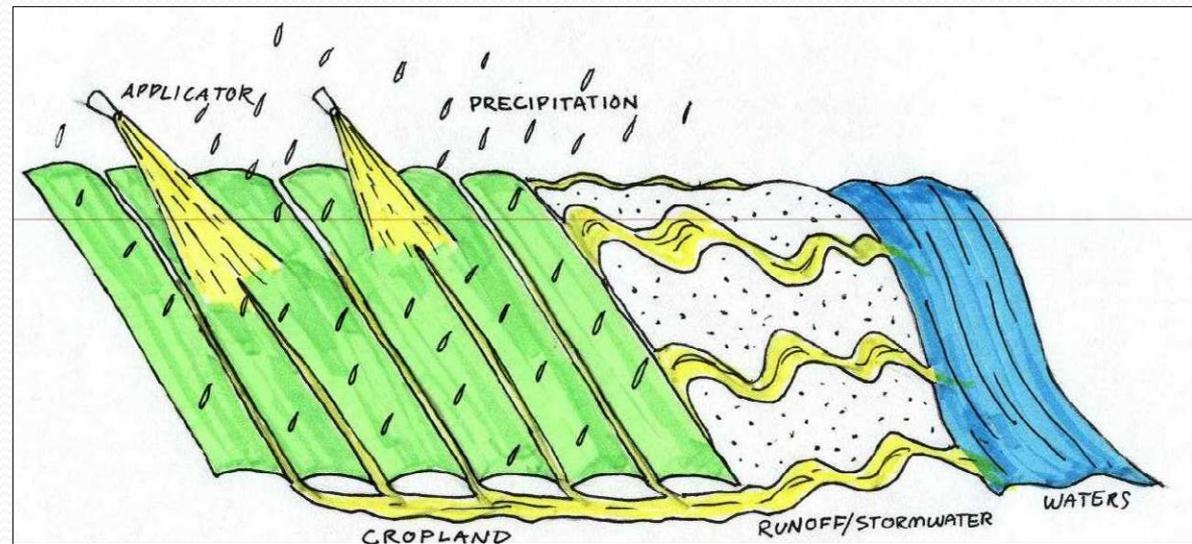
Clean Water Act Exemptions from NPDES Permitting



Irrigation Return Flow:
Generally Exempt by
Statute

CWA §502(14)

Agricultural Stormwater:
Generally Exempt by
Statute

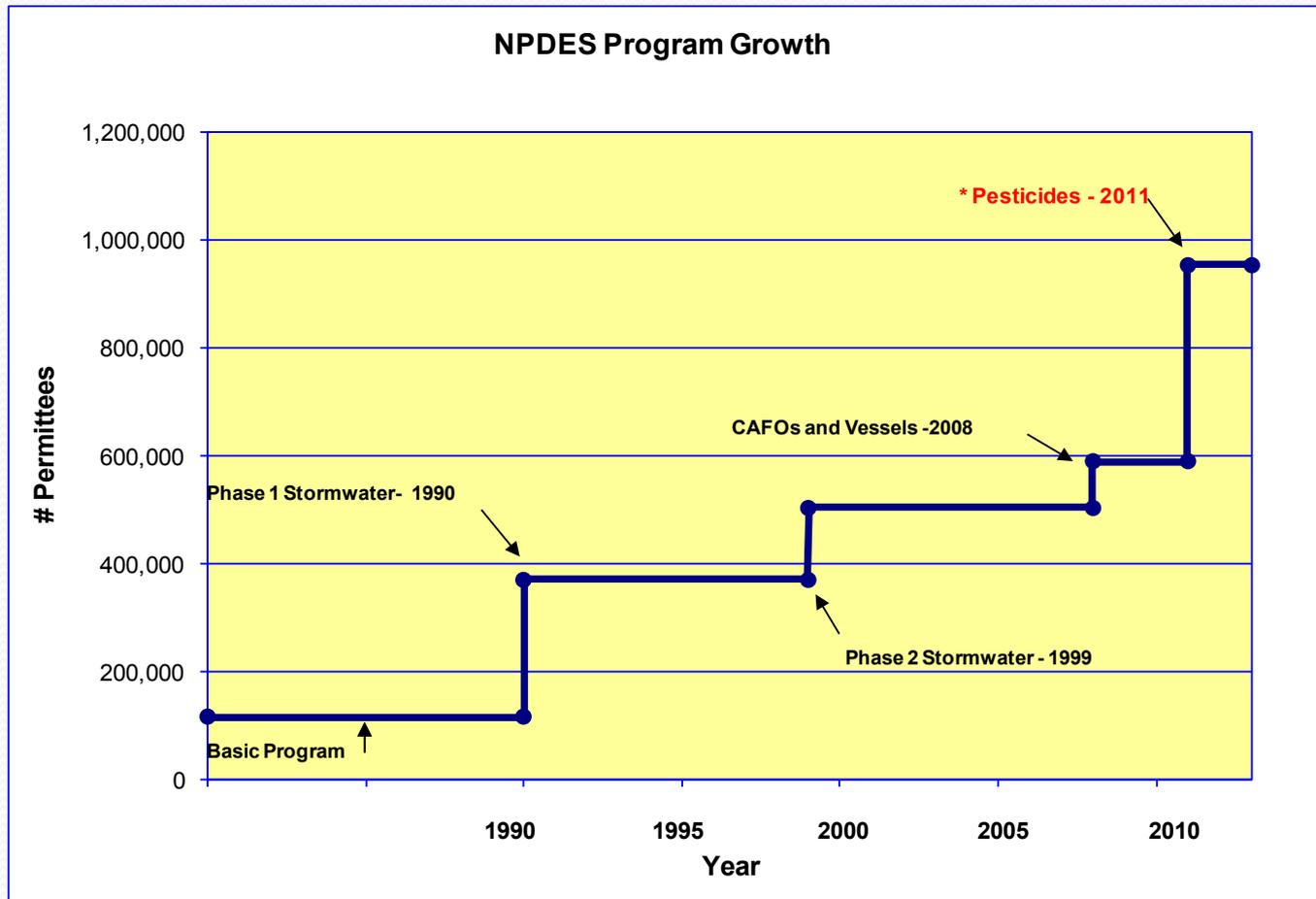


CWA §502(14)



Part 1: NPDES Pesticide Permitting

Universe of NPDES Permittees



*EPA estimates 365,000 pesticide permittees.

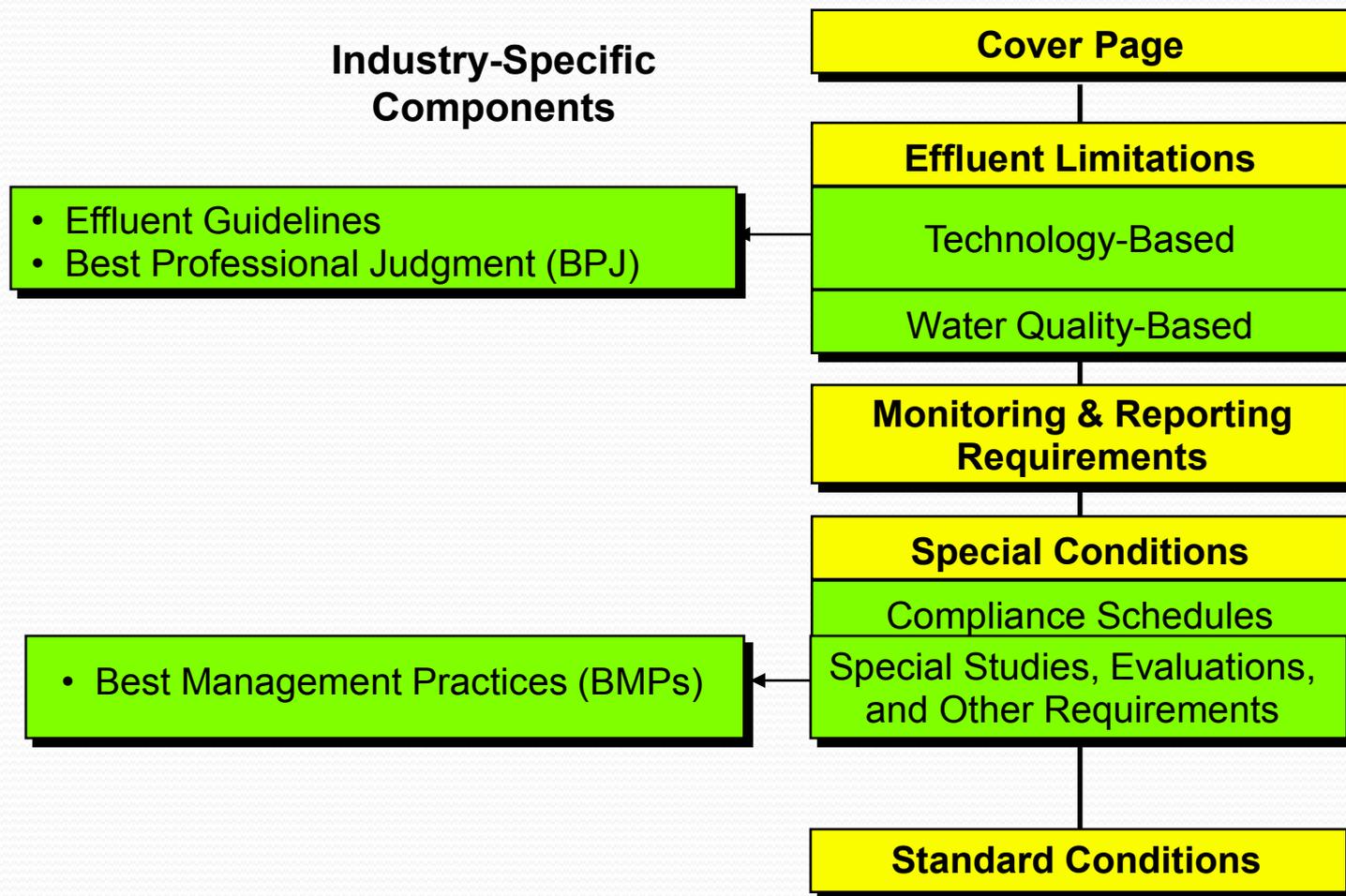


Questions



Part 1: NPDES Pesticide Permitting

NPDES Permit Components



* Clean Water Act specifies an NPDES permit may not be issued for more than five years.



Part 1: NPDES Pesticide Permitting

Types of NPDES Permits

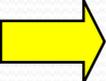
- Permitting Authorities use both Individual Permits and General Permits to control point source discharges of pollutants to waters of the U.S.
 - Individual Permits
 - General Permits



Part 1: NPDES Pesticide Permitting

Individual Permits vs. General Permits

- Individual Permit

- 1 application submitted  1 permit issued
- Application includes detailed information describing the specific discharges to be covered under the permit, including the nature and concentration of discharges

- General Permit

- 1 permit issued  Many NOIs submitted by many permittees
- General Permits must identify:
 - area of coverage
 - sources covered
 - other information
- NOIs typically include basic information on discharger, the type of discharges, and receiving water.
- Federal regulations provide that in certain instances discharges can be covered under a general permit without submission of an NOI.



Part 1: NPDES Pesticide Permitting

NPDES Fact Sheet Components

- NPDES regulations require many permits, including all general permits, to include a “fact sheet”
- What type of information is contained in a general permit fact sheet?
 - Principal facts and significant factual, legal, methodological, and policy questions considered in preparing the permit.
 - Brief description of types of activities covered.
 - Types of discharges covered.
 - Rationale for permit requirements, including calculations and analysis.
 - Brief summary of the basis for permit conditions.

Complete list of contents available at 40 CFR 124.8 and 124.56.



Part 1: NPDES Pesticide Permitting

NPDES Permitting Authority

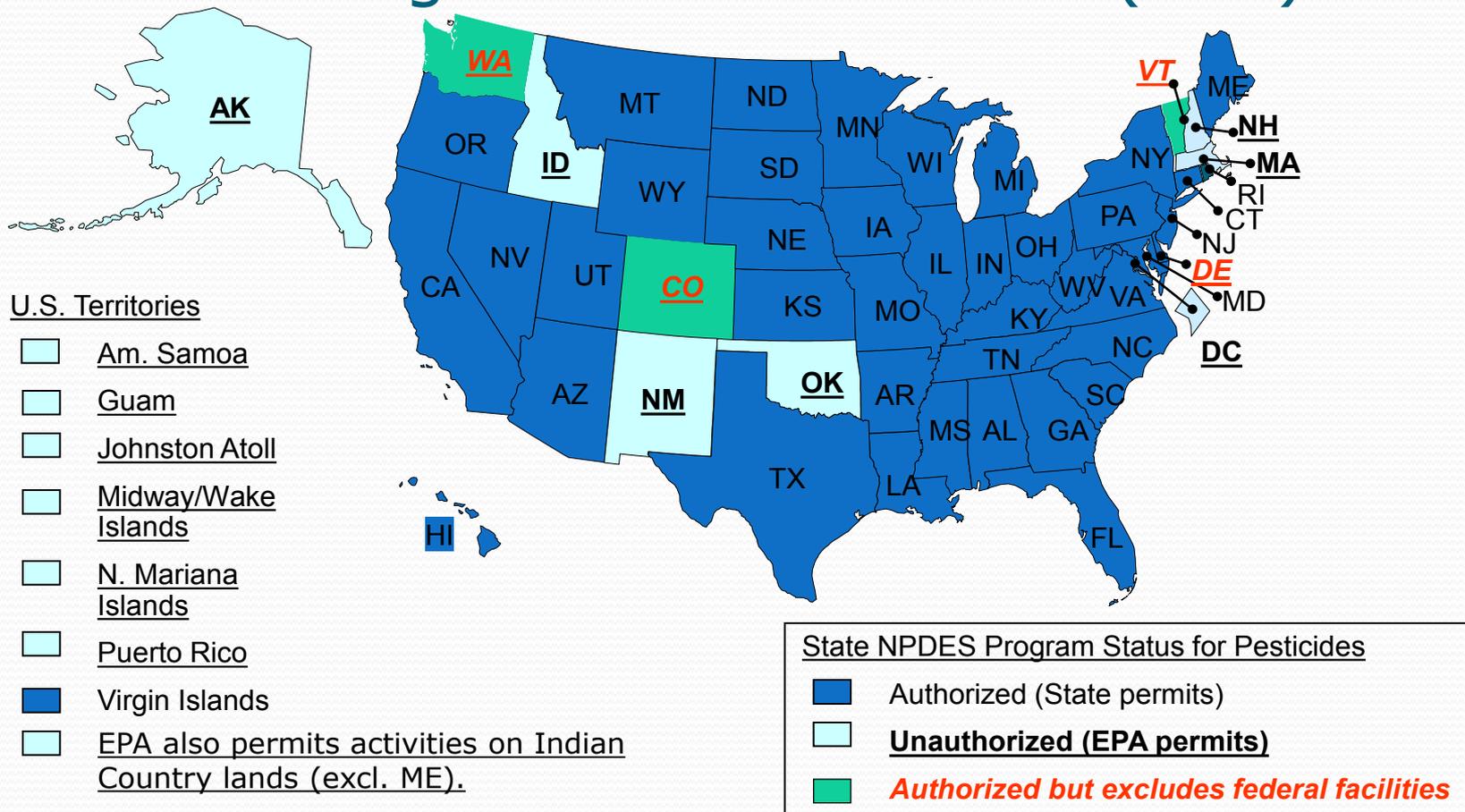
Any State that seeks to administer the NPDES program must demonstrate adequacy to EPA in the following areas:

- Scope, structure, coverage and processes of the State program.
- Organization and structure of the State agency or agencies which will have responsibility for administering the program:
 - (1) State agency staff who will carry out the State program.
 - (2) Estimated costs of establishing and administering the program.
 - (3) Sources and amounts of funding.
- Applicable State procedures, including permitting procedures and any State administrative or judicial review procedures;
- Copies of the permit form(s), application form(s), and reporting form(s) the State intends to employ in its program.
- Description of the State's compliance tracking and enforcement program.



Part 1: NPDES Pesticide Permitting

NPDES Program Authorizations (PGP)



Notes:

- Oil, gas, and geothermal activities in Texas are permitted by EPA.
- In certain instances, EPA may authorize a state to administer a portion of the NPDES program but not the entire program. For example, OK issues most non-pesticide permits in the state.



Part 1: NPDES Pesticide Permitting

Areas Where EPA is the NPDES Permitting Authority for Pesticides

- **All discharges, including from Federal facilities:**
 - States: AK, ID, MA, NH, NM, OK
 - State: TX (for oil, gas, and geothermal related discharges only)
 - Territories/Other: All, except VI
- **Discharges from Federal facilities only:**
 - CO, DE, VT, WA
- **Discharges on Indian Country lands:**
 - All, except in ME
- **Notes:**
 - AK DEC recently authorized but program to be phased in for pesticides.
 - OK DEQ authorized but not to regulate pesticide activities.



Part 1: NPDES Pesticide Permitting

State-Issued NPDES Permits

- State-issued general permits must meet all CWA requirements that the Federally-issued permit must meet but can be more stringent.
- Permits are written based on a permit writer's best professional judgment.
 - Judgments may differ, so how each permit satisfies the CWA requirement may differ in some respects.
- EPA does maintain an oversight role.
 - If EPA determines that a specific state condition fails to satisfy a particular CWA requirement, EPA could object to that permit. No pesticide state permit has been objected to by EPA to date.
- The 44 NPDES-authorized states and the VI have developed or are developing their permits. EPA issued permits do not cover operators in these areas (except in those limited circumstances described earlier).
- Citizens have a right to challenge EPA and state NPDES permits.



Part 1: NPDES Pesticide Permitting

Example State PGP Requirements

- **Illinois** – requires all dischargers to submit an NOI (rather than EPA’s approach where a majority of activities are covered without submission of an NOI).
- **Alabama** – NOI thresholds for aquatic weeds and aquatic animal pests are 100 miles or 100 acres (not EPA’s thresholds of 20 miles or 80 acres).
- **Nebraska** – requires NOIs for discharges within 250 feet of a surface water intake for public drinking water.



Part 1: NPDES Pesticide Permitting

Example State PGP Requirements (cont'd)

- **Wisconsin** – Issued four separate “WPDES” general permits, one for each use pattern (rather than one permit for all four as EPA did)
- **Texas** – “TPDES” general permit includes a fifth pesticide use pattern for area wide pest control (rather than incorporating these activities into the other four as EPA did)
- **Vermont** – Fees range from \$35 to \$500 for permit coverage (no fee for coverage under EPA permit)



Part 1: NPDES Pesticide Permitting

Example State PGP Requirements (cont'd)

- **Washington** – requires ambient water quality sampling for certain aquatic weed control activities (unlike EPA's permit that requires no ambient water quality sampling).
- **New York** – does not require any permittees to submit annual reports (unlike EPA permit that requires some to do so).
- **North Dakota** – requires additional controls for storage and handling facilities (that are not addressed in EPA's permit)



Poll Question #2

- Now do you expect to need coverage under EPA's PGP?
 - Yes/likely
 - Unclear if eligible
 - No



Questions



**For more information on NPDES
Pesticide permitting:**

www.epa.gov/npdes/pesticides



Administrative Record for permit available at:

www.regulations.gov (docket ID: EPA-HQ-OW-2010-0257)

Send any pesticide general permit related questions to:

pgp@epa.gov



Part 2 of Webcast

EPA Pesticide General Permit



Part 2: EPA's Final PGP

PGP Timeline

- June 2, 2010 – EPA Proposed PGP
- April 1, 2011 – EPA Posted Draft Final PGP
- October 31, 2011 – EPA issued Final PGP
 - Additional conditions as a result of Endangered Species Act (ESA) Section 7 Consultation with National Marine Fisheries Service (NMFS)
 - 401 Certifications (Part 9)
 - Forms (Appendices D – H)



Part 2: EPA's Final PGP

Summary of ESA Consultation

- Under ESA § 7(a)(2), EPA is required to consult with the FWS & NMFS (together the Services) to ensure that any federal action is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat.
- EPA issued NPDES permits, such as EPA's PGP, are federal actions that must undergo consultation.
- Consultation may be informal and/or formal
 - Informal consultation can be used if EPA believes the action is not likely to adversely affect any listed species/critical habitat.
 - Formal consultation must be used if EPA determines the action is likely to adversely affect any listed species/critical habitat.
- Where the Services determine the action is likely to jeopardize listed species or critical habitat, the Services must provide a biological opinion (BiOp) which must include reasonable and prudent alternatives (RPA), if any.



Part 2: EPA's Final PGP

ESA Consultation with NMFS

- EPA Received NMFS' Draft BiOp on June 17, 2011.
 - Draft BiOp concluded PGP likely to jeopardize continued existence of endangered & threatened species.
 - NMFS offered Reasonable and Prudent Alternative with 3 elements to ensure PGP does not jeopardize continued existence of listed species and critical habitat.
- EPA sought public comment for 30 days on the Reasonable and Prudent Alternative (RPA) in NMFS' draft BiOp.
- On October 14, 2011 NMFS provided EPA with the Final BiOp. The final permit reflects the revisions to the April, 2011, draft final permit as a result of consultation and in order to ensure the protection of endangered & threatened species and their critical habitat.



Part 2: EPA's Final PGP

ESA Consultation with FWS

- EPA continues to be in consultation with FWS.
- EPA will modify this permit should the Agency find that the consultation demonstrates that different permit limits or additional conditions to protect listed resources are warranted.
- Any such modifications would require public notice and an opportunity for comment.



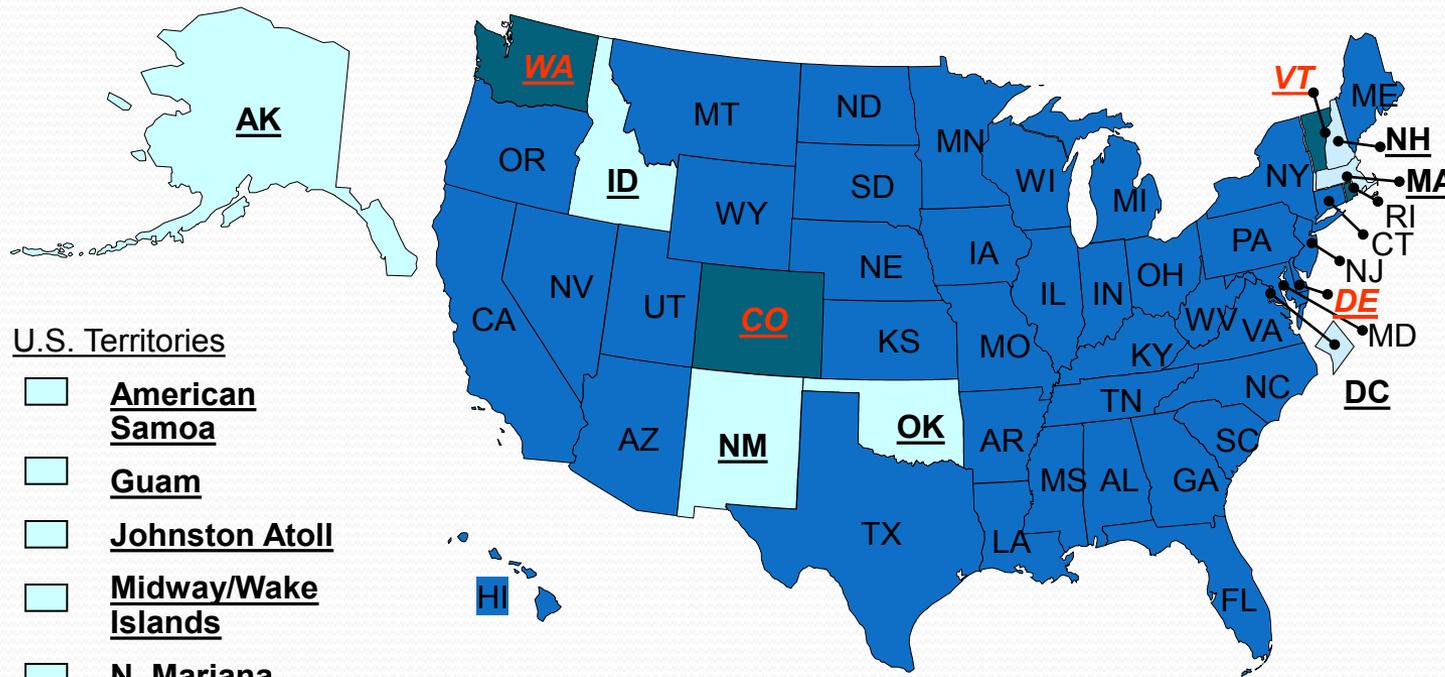
Part 2: EPA's Final PGP

Contents

- Eligibility (Part 1)
 - Scope
 - Notice of Intent (NOI)
- Effluent Limits
 - Technology-Based (Part 2)
 - Water Quality-Based (Part 3)
- Monitoring (Part 4)
- Pesticide Discharge Management Plan (Part 5)
- Corrective Action (Part 6)
- Recordkeeping and Reporting (Part 7)
- CWA Section 401 Certifications (Part 9)
- Forms (Appxs D-H)



NPDES Program Authorizations (PGP)



U.S. Territories

-  American Samoa
-  Guam
-  Johnston Atoll
-  Midway/Wake Islands
-  N. Mariana Islands
-  Puerto Rico
-  Virgin Islands

 **Note: EPA also permits activities on Indian Country lands.**

State NPDES Program Status for Pesticides

-  Authorized (State permits)
-  Unauthorized (EPA permits)
-  *Authorized but excludes federal facilities*



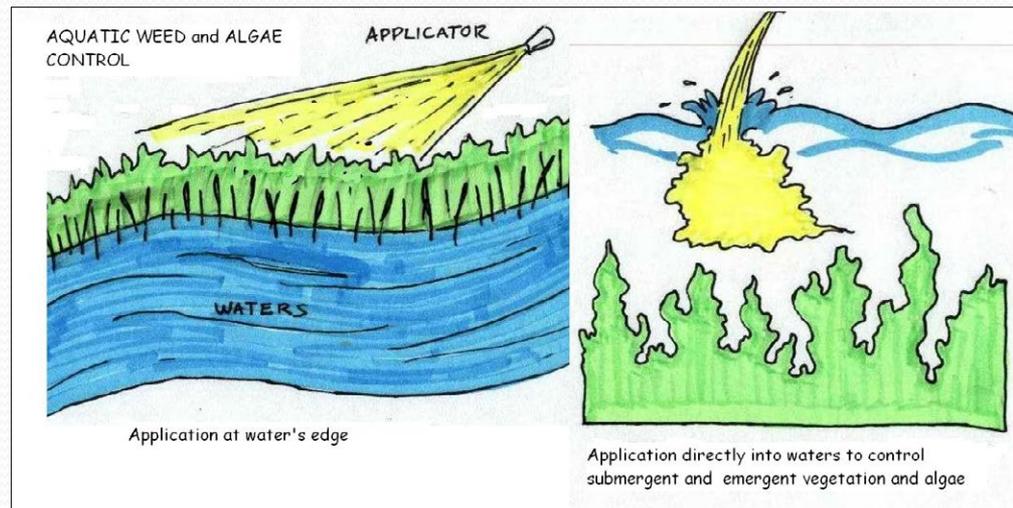
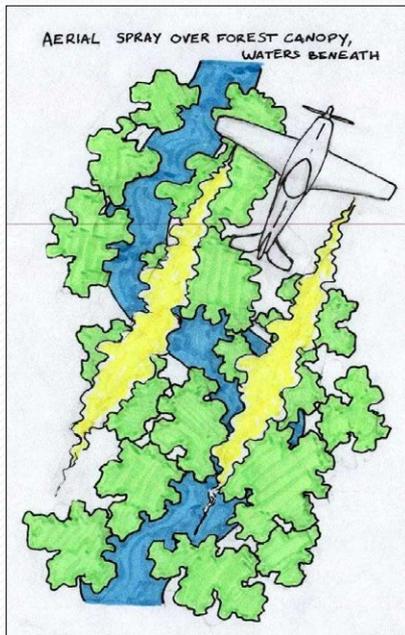
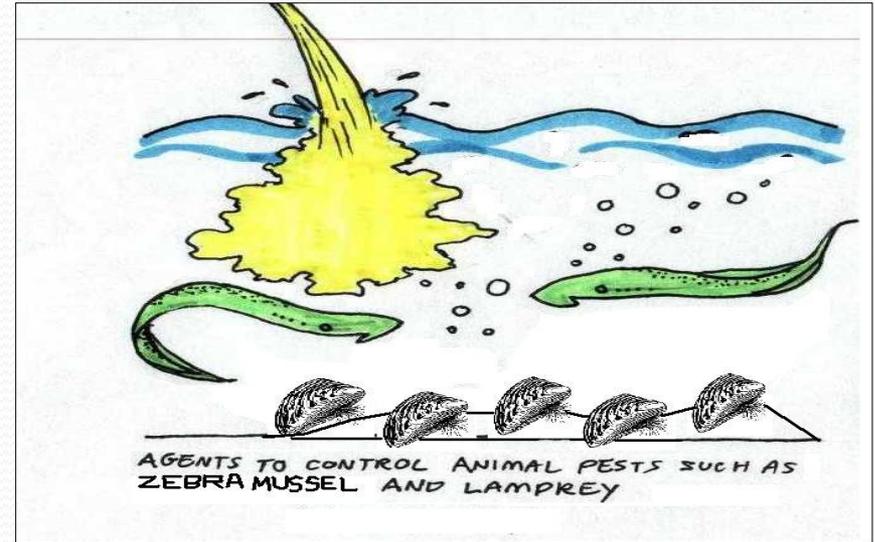
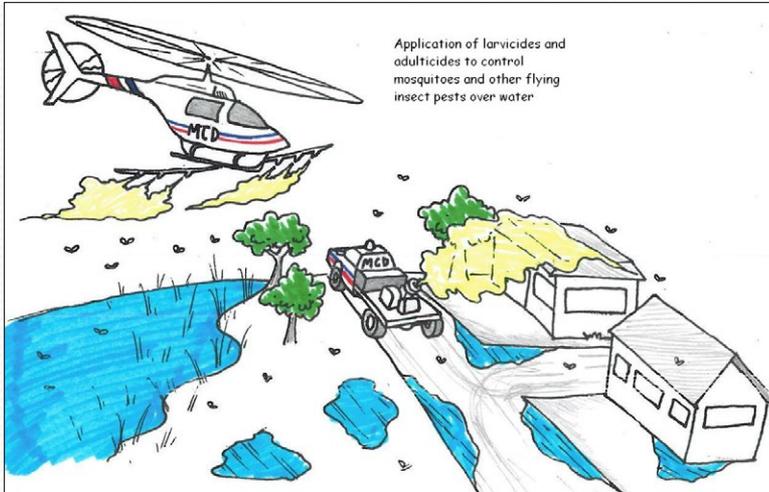
Part 2: EPA's Final PGP

Scope

- The PGP covers pesticides authorized for use under FIFRA, and generally includes pesticide applications covered by the 2006 Rule.
- The PGP covers the following pesticide use patterns (with discharges to waters of the U.S.):
 - Mosquitoes and Other Flying Insect Pests
 - Weed and Algae
 - Animal Pests
 - Forest Canopy Pest



Pesticide Use Patterns



Part 2: EPA's Final PGP

Eligibility - Scope

- **Who is an Operator?**

- The PGP defines “operator” as any entity associated with an application of a pesticide which results in a discharge to waters of the U.S.
- Operators are entities that meet either or both of the following two criteria:
 - (1) Are a “**Decision-maker**” who has control over the decision to perform pesticide applications.
 - (2) Are an “**Applicator**” who has day-to day control of or performs activities that are necessary to ensure compliance with the permit.



Part 2: EPA's Final PGP

Decisionmaker vs Applicator

EXAMPLE	
An " <u>Entity X</u> " that makes a determination that pesticide A is to be applied in location B at a rate of C but hires a " <u>Entity Y</u> " to actually apply pesticides.	Entity X = Decisionmaker Entity Y = Applicator
An " <u>Entity X</u> " provides funds to a " <u>Entity Y</u> " for pest control and does not make any decision as to how to apply the pesticides. " <u>Entity Y</u> " makes those decisions.	Entity Y= Decisionmaker and Applicator



Part 2: EPA's Final PGP

Eligibility – Notice of Intent (NOI)

- **Vast majority of Operators covered automatically**
- **No fee associated with EPAs PGP**
- **Who Has to File an NOI?**
 - Certain **Decision-makers** who perform more significant pesticide applications will be required to submit an NOI to obtain authorization to discharge:
 - Any Agency for which pest management for land resource stewardship is an integral part of the organization's operations.
 - Other types of entities with a specific responsibility to control pests (e.g., mosquito and weed control districts, irrigation districts)
 - Other entities that apply pesticides in excess of specified annual treatment area thresholds
 - Dischargers to Tier 3 waterbodies
 - Dischargers to Waters of the U.S. containing NMFS Listed Resources of Concern



Poll Question #3

- Will you need to file an NOI?
 - Yes
 - Maybe, depends on my activities
 - Unclear of requirements
 - No



Part 2: EPA's Final PGP

Thresholds for Decision-makers required to submit NOI

Mosquito and Other
Flying Insect Pest Control,
Forest Canopy Pest Control:

treat > 6,400 acres/calendar year*

Weed and Algae Pest Control,
Animal Pest Control:

treat > 20 linear miles OR 80 acres

- Note: For mosquito control, larvaciding activities not included in the total.
- Refer to the definition of Annual Treatment Area Threshold in Appendix A of the permit to determine how to calculate annual treatment areas.



Part 2: EPA's Final PGP

Thresholds for Decision-makers required to submit NOI

- Mosquito + Forest Canopy Pests Control – Count each pesticide application activity to a treatment area as a separate area treated.
 - Example: applying pesticides 3x/year to same 3,000 acres = 9,000 acres total
- Weed & Algae and Animal Control – Count each treatment area only once, regardless of the number of pesticide application activities performed in a given year.
 - Example: treating same 10 miles treatment area 3x/year = 10 miles total



Part 2: EPA's Final PGP

Decision-makers required to submit NOI as a result of discharges to Waters of the U.S. containing NMFS Listed Resources of Concern

- Limited to:
 - NMFS Species/Habitat – Salmon, Sturgeon, Eulachon
 - Locations – ID, WA, OR, CA, NH, MA & DC
 - Maps available at <http://www.epa.gov/npdes/pesticides>
 - EPA expects that less than 2% of the total number of Operators under this permit who will need to meet additional ESA requirements.
- Decision-makers must meet at least one of the criteria (B-F) in Part 1.1.2.4 of the Permit to be eligible.
 - B & C – existing Section 7 consultation or Section 10 permit
 - D – declared pest emergency situations
 - E – prior written correspondence from NMFS
 - F – demonstration that pesticide activities are not likely to adversely affect NMFS Listed Resources of Concern

Note – Appendix I outlines procedures to determine under which criteria a Decision-maker may qualify.



Poll Question #4

- Will your pesticide activities result in discharges to waters of the U.S. containing NMFS Listed Resources of Concern?
 - I will not be covered under EPA's PGP
 - My activities are covered but do not occur in NMFS areas
 - My activities are covered and likely occur in NMFS areas
 - I am not sure if my activities will overlap with NMFS Listed Resources of Concern.



Part 2: EPA's Final PGP

Timing of NOI Filing

- All Operators with eligible discharges are authorized for permit coverage through Jan 12, 2012 without submitting an NOI.
- After Jan 12, 2012, all Operators with eligible discharges for which an NOI is not required are also automatically covered under this permit.
- After Jan 12, 2012, all Decision-makers with eligible discharges for which an NOI is required, are required to submit NOIs consistent with the earliest due date identified in Table 1-2 of the permit.



Part 2: EPA's Final PGP

Timing of NOI Filings

Operator Type	NOI Submission Deadline
Any Decision-maker with any discharge to Waters of the United States containing NMFS Listed Resources of Concern, except for those discharges in response to a Declared Pest Emergency Situation.	At least <u>30 days before</u> any discharge
Any Decision-maker with a discharge in response to a Declared Pest Emergency for which that activity triggers the NOI requirement identified in Part 1.2.2, except for any discharges to Waters of the United States containing NMFS Listed Resources of Concern.	At least <u>30 days after</u> beginning discharge.
Any Decision-maker with any discharge to Waters of the United States containing NMFS Listed Resources of Concern, in response to a Declared Pest Emergency Situation.	Within <u>15 days after</u> beginning to discharge
Any Decision-maker that exceeds any annual treatment area threshold.	At least <u>10 days before</u> exceeding an annual treatment area threshold.
Any Decision-maker otherwise required to submit an NOI as identified in Table 1-1 (i.e., Tier 3 waters)	At least <u>10 days before</u> any discharge for which an NOI is required.



Part 2: EPA's Final PGP

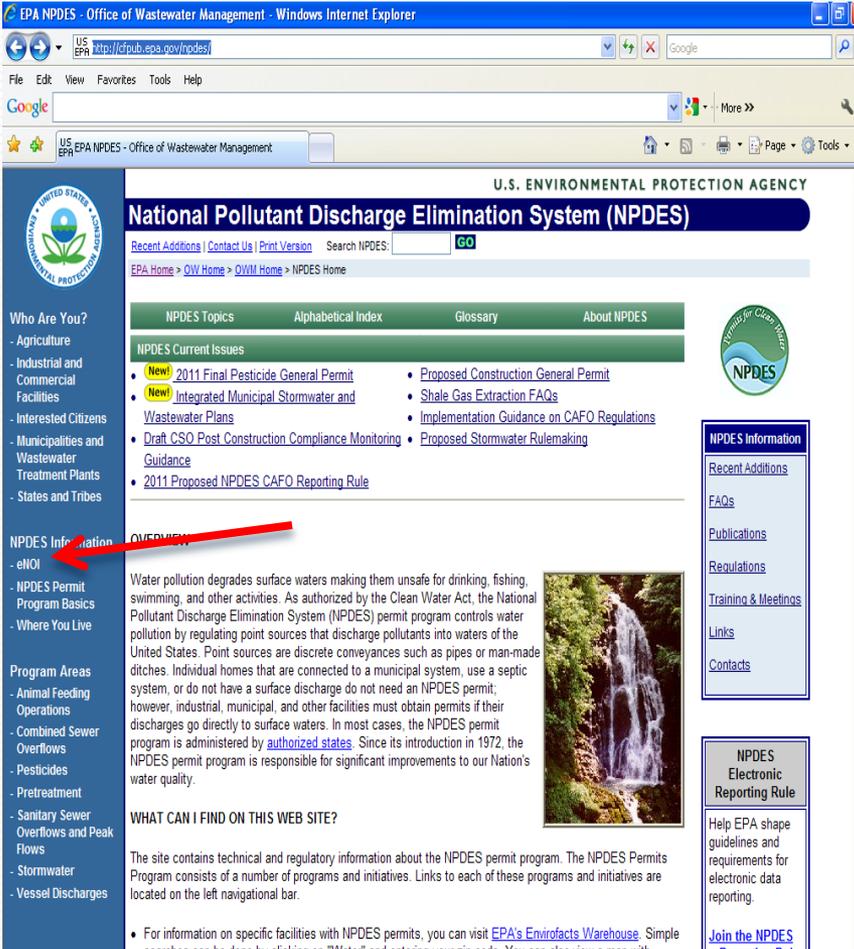
Timing of NOI Filings

Example date of discharge	Deadline to submit NOI
December 8, 2011-January 12, 2012	None, <u>no</u> NOI required.
January 13, 2012	January 3, 2012 (10 days prior to discharge) for most applications; or December 14, 2011 (30 days prior to discharge) for areas that overlap with NMFS Listed Resources of Concern
June 11, 2012 and onwards	- 10 days prior to discharge for most applications (by June 1, 2012); or -30 days prior to discharge for areas that overlap with NMFS Listed Resources of Concern -Emergency Discharges –after 30 days or after 15 days if to waters containing NMFS Listed resources of Concern



Part 2: EPA's Final PGP Electronic NOI Submission (eNOI)

- Decision-makers must file an eNOI unless requesting a waiver because the use of eNOI would incur undue burden or expense (will need to provide reason in paper NOI).
- Website will include guidance on how to use eNOI system.



The screenshot shows the EPA NPDES website interface. The main header includes the EPA logo and the text "U.S. ENVIRONMENTAL PROTECTION AGENCY National Pollutant Discharge Elimination System (NPDES)". Below the header is a search bar and a navigation menu with links for "Recent Additions", "Contact Us", "Print Version", and "GO". The main content area is divided into several sections: "NPDES Topics", "Alphabetical Index", "Glossary", and "About NPDES". Under "NPDES Current Issues", there are several bullet points, including "2011 Final Pesticide General Permit", "Integrated Municipal Stormwater and Wastewater Plans", "Draft CSO Post-Construction Compliance Monitoring Guidance", "2011 Proposed NPDES CAFO Reporting Rule", "Proposed Construction General Permit", "Shale Gas Extraction FAQs", and "Implementation Guidance on CAFO Regulations". A sidebar on the left contains "Who Are You?" (Agriculture, Industrial and Commercial Facilities, Interested Citizens, Municipalities and Wastewater Treatment Plants, States and Tribes), "NPDES Information" (eNOI, NPDES Permit Program Basics, Where You Live), "Program Areas" (Animal Feeding Operations, Combined Sewer Overflows, Pesticides, Pretreatment, Sanitary Sewer Overflows and Peak Flows, Stormwater, Vessel Discharges), and "NPDES Information" (eNOI, NPDES Permit Program Basics, Where You Live). A red arrow points to the "eNOI" link in the "NPDES Information" sidebar. On the right side, there is a "NPDES Information" sidebar with links for "Recent Additions", "FAQs", "Publications", "Regulations", "Training & Meetings", "Links", and "Contacts". Below this is another "NPDES Electronic Reporting Rule" sidebar with the text "Help EPA shape guidelines and requirements for electronic data reporting." and a link to "Join the NPDES Reporting Rule". At the bottom, there is a "WHAT CAN I FIND ON THIS WEB SITE?" section with a paragraph of text and a list of links for more information.



QUESTIONS?



Part 2: EPA's Final PGP

Effluent Limits – Technology-Based Effluent Limits (TBELs)

- **All** Operators must minimize discharges by (part 2.0):
 - Using only the amount of pesticide and frequency of application necessary to control the target pest
- Applicators must (Part 2.1):
 - Maintain pesticide application equipment in proper operational condition
 - Assess weather conditions
- Certain Decision-makers (i.e., Federal and state agencies, other entities with responsibility to control pests, and other entities that apply pesticides in excess of specified annual treatment area thresholds) must implement pest management measures based on IPM principles (Part 2.2.1 – 2.2.4):
 - Identify/assess pest problem
 - Assess pest management alternatives
 - Follow appropriate procedures for pesticide use



Part 2: EPA's Final PGP

Effluent Limits – Water Quality-Based Effluent Limits (WQBELs)

- The permit includes a narrative WQBEL, “Your discharge must be controlled as necessary to meet applicable numeric and narrative state, territorial, or tribal water quality standards (WQS).”
- EPA expects that compliance with FIFRA in addition to compliance with the conditions in the permit will control discharges as necessary to meet applicable water quality standards.
- Under Section 401 of CWA, all EPA permits are required to obtain certification from states. Some states added requirements to EPA's PGP during this process to ensure consistency with State WQS.
- During the life of the permit, EPA may determine, after reviewing new information, that additional control measures are warranted.



Part 2: EPA's Final PGP

Monitoring

- Applicator Responsibility (part 4.1):
 - Must conduct “visual monitoring” to detect observable adverse incidents that may be related to the pesticide discharge.
- All Operators (Part 4.2)
 - If any post-application surveillance, must conduct “visual monitoring” to detect observable adverse incidents that may be related to the pesticide discharge.



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Pesticide Discharge Management Plan (PDMP)

- Any Decision-maker who is required to develop an NOI and is a *Large Entity* (public: serves >10,000; private: exceeds Small Business Administration standard) is required to develop a PDMP (**Part 5.0**).
- **Not** required if Decision-maker is submitting an NOI solely for;
 - Discharges in response to a Declared Pest Emergency Situation; or
 - Discharges to Waters of the US containing NMFS Listed Resources of Concern
- PDMP documents how discharges will be minimized and effluent limitations will be met
- Decision-makers must develop the PDMP by the time the NOI is filed.
- Permittee may choose to reference other documents, such as a pre-existing IPM plan or spill prevention and response plan, in the PDMP rather than recreating the same text in the PDMP.



Part 2: EPA's Final PGP

Pesticide Discharge Management Plan (PDMP)

- Content of the PDMP includes
 - pesticide discharge management team information,
 - problem identification,
 - Pest management options evaluation,
 - Response Procedures:
 - Spill Response Procedures
 - Adverse Incident Response Procedures
 - Documentation to support eligibility considerations under other federal laws
- Decision-makers must keep a copy of the current PDMP at the address provided on the NOI.
- PDMP must be kept up-to-date for duration of permit coverage.



Part 2: EPA's Final PGP

Corrective Action

- The permit specifies situations that require Operators to review and revise their pest management measures. For example:
 - An unauthorized release or discharge occurs
 - Existing pest management measures don't meet applicable WQS
- Corrective Action Deadlines
 - Changes to pest management measures must be made before the next pesticide application that results in a discharge or as soon as practicable.
 - A schedule is included in the permit to ensure that any condition prompting the need for repair and improvement is not allowed to persist indefinitely.



Part 2: EPA's Final PGP

Corrective Action

- Adverse Incident Documentation and Reporting
 - If an operator becomes aware of an adverse incident which may have resulted from your discharge, this triggers: notification and reporting, and as necessary, corrective action.
 - Notify EPA Regional contact by telephone within 24 hours or as soon as possible of your discovery of the incident.
 - Provide a more detailed written report within 30 days of your discovery.



Part 2: EPA's Final PGP

Recordkeeping and Reporting

- All Operators:
 - Copy of any Adverse Incident Reporting
 - Copy of any corrective action documentation
 - Copy of any spill and leak or other unpermitted discharge documentation
- For- Hire Applicators:
 - Documentation of equipment calibration
 - Information of each treatment area
- Decision-maker who are required to submit an NOI and who is a Small Entity:
 - Submit and retain a copy of the NOI
 - Pesticide Discharge Evaluation Worksheet
 - Documentation of equipment calibration if also an Applicator



Part 2: EPA's Final PGP

Recordkeeping and Reporting

- Decision-maker who are required to submit an NOI and who is a Large Entity;
 - Submit and retain copy of the NOI
 - Copy of PDMP
 - Submit and retain copies of Annual Reports
 - Documentation of equipment calibration if also an Applicator
- Any Decision-maker who submits an NOI solely for discharges to WOUS containing NMFS Listed Resources of Concern
 - Submit and retain copy of the NOI
 - Submit and retain copies of Annual Reports



Part 2: EPA's Final PGP

CWA §401 Certification

- CWA § 401, requires all states, territories, and tribes (with TAS designation) to certify permits are consistent with applicable water quality requirements.
- Part 9.0 of the Final PGP includes additional requirements resulting from the 401 certification process with those states, territories, and tribes.
- States are not required to perform similar 401 certification process to issue their permits.



Part 2: EPA's Final PGP

CWA §401 Certification

- STATES:
 - MA, OK, AK, ID, WA
- TERRITORIES:
 - American Samoa, Guam
- TRIBES:
 - Bad River Band of Lake Superior Tribe of Chippewa Indians
 - Grand Portage Band of Lake Superior Chippewa
 - Ohkay Owingeh
 - Pueblo of Isleta
 - Pueblo of Sandia
 - Taos Pueblo
 - Ute Mountain Ute Tribe
 - Confederated Salish & Kootenai Tribes
 - Navajo Nation
 - White Mountain Apache Tribe
 - Bishop Paiute Tribe
 - Confederated Tribes of the Warm Springs Reservation of Oregon



Part 2: EPA's Final PGP

CWA §401 Certifications (Examples)

- Bishop Paiute Tribe:
 - Copies of NOI for proposed discharges affecting Bishop Paiute Tribe water shall be submitted to the Environmental Management Office for review and comment by the TEPA Board.
- Massachusetts:
 - Use of Products Containing 2,4-D: Prior to each use of any product containing 2,4-D, applicants must request and receive written approval from the Massachusetts Department of Environment Protection.
- Guam:

Table 9-1. Annual Treatment Area Thresholds

PGP Part	Pesticide Use	Annual threshold
2.2.1	Mosquitoes and Other Flying Insect Pests	5 acres of treatment area
2.2.2	Aquatic Weed and Algae	
	• In Water	2 acres of treatment area
	• At Water's Edge	1 linear mile of treatment area at water's edge
2.2.3	Aquatic Nuisance Animal Control	
	• In Water	5 acres of treatment area
	• At Water's Edge	1 linear mile of treatment area at water's edge
2.2.4	Forest Canopy Pest Control	2 acres of treatment



Part 2: EPA's Final PGP

Forms

- Notice of Intent
- Notice of Termination
- Pesticide Discharge Evaluation Worksheet
- Annual Reporting Template
- Adverse Incident Reporting Template



Part 2: EPA's Final PGP

Forms – Notice of Intent

- The NOI should identify the responsible entity and provide the following basic information:
 - Contact information: address, phone, email
 - Description of entity: (e.g., federal, state or local government agency, public utility, homeowner's assn., commercial/business establishment)
 - Type of discharges: (pesticide use patterns)
 - Receiving water(s)
- The decision-maker would be required to submit updated information to perform operations different than those identified in the NOI.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY WASHINGTON, DC 20460		Form Approved OMB No. 2040-NEW
		
NOTICE OF INTENT (NOI) OF COVERAGE UNDER THE PESTICIDE GENERAL PERMIT (PGP) FOR DISCHARGES FROM THE APPLICATION OF PESTICIDES		
<small>Submission of this completed Notice of Intent (NOI) constitutes notice that the Operator identified in Section B intends to be authorized to discharge pollutants to Waters of the United States within the pest management area identified in Section C under EPA's Pesticide General Permit. Submission of this NOI constitutes notice that the party identified in Section B of this form has read, understands, and meets the eligibility conditions of Part 1 of the permit; agrees to comply with all applicable terms and conditions of the permit; and understands that continued authorization under the permit is contingent on maintaining eligibility for coverage. To be granted coverage, all information required on this form must be completed. Please read and make sure you comply with all permit requirements, including the requirement for large entities to prepare a Pesticide Discharge Management Plan (PDMP) prior to NOI submittal. Refer to the instructions at the end of this form to complete your NOI.</small>		
Electronic Submission Waiver (skip if submitting through EPA's eNOI system)		
<input type="checkbox"/> I hereby acknowledge my waiver request from the use of EPA's electronic Notice of Intent system (eNOI) because my use of eNOI will incur undue burden or expense over my use of this paper NOI form.		
Briefly describe the reason why use of the electronic system causes undue burden or expense. _____ _____		
A. Notice of Intent Status		
1. Mark whether this is the first time you are requesting coverage under the Pesticide General Permit or if this is a change of information for a discharge already covered under the Pesticide General Permit. If this is a change of information, supply the NPDES permit tracking number for the discharge.		
a. <input type="checkbox"/> Original NOI Submission		
b. <input type="checkbox"/> NOI Change of Information: _____ (NPDES Permit Tracking Number)		
Please note: When selecting A.1 b please fill out Section B (Operator Name and Mailing Address) and the fields of the NOI that need to be modified.		
B. Operator Information		
1. Operator Name: _____		
2. IRS Employer Identification Number (EIN): _____		
3. Operator Type (check one):		
a. <input type="checkbox"/> Federal government		
b. <input type="checkbox"/> State government		
c. <input type="checkbox"/> Local government		
d. <input type="checkbox"/> Mosquito control district (or similar)		
e. <input type="checkbox"/> Irrigation control district (or similar)		
f. <input type="checkbox"/> Weed control district (or similar)		
g. <input type="checkbox"/> Other: If other, provide brief description of type of operator: _____		
4. Are you a large entity as defined in Appendix A of the permit? (check one):		
<input type="checkbox"/> Yes <input type="checkbox"/> No		
Please note: If you answer "Yes" to question 4 you are required to develop a Pesticide Discharge Management Plan (PDMP) and submit an Annual Report reflecting all pesticide uses for which you are requesting permit coverage under this NOI.		
5. In which state are your pest management areas located? Please specify only one state per NOI: _____		
6. Mailing Address:		
a. Street: _____		
b. City: _____ c. State: _____ d. ZIP Code: _____-____		
e. Telephone: _____-____-____ Ext. _____ f. Fax: _____-____-____		
g. Contact Name: _____		
h. E-mail: _____		



Part 2: EPA's Final PGP

Forms – Pesticide Discharge Evaluation Worksheet

- Required for any Decision-maker required to submit an NOI and who is a small entity.
- Must retain at the address provided on the NOI.
- Report includes:
 - Decision-maker and applicator information
 - NPDES permit tracking number(s)
 - Contact person name, title, email address, and phone number
 - Locations and pesticide product use information.

		UNITED STATES ENVIRONMENTAL PROTECTION AGENCY WASHINGTON, DC 20460	Form Approved OMB No. 2040-NEW
PESTICIDE DISCHARGE EVALUATION WORKSHEET FOR THE PESTICIDE GENERAL PERMIT (PGP) FOR DISCHARGES FROM THE APPLICATION OF PESTICIDES			
This worksheet is for any Operator who is also a Decision-maker required to submit a Notice of Intent (NOI) and is a small entity, as defined in Appendix A of the Pesticide General Permit (PGP). The information on this worksheet must be retained for each pesticide application activity.			
A. General Information			
1. Operator Name: _____			
2. Worksheet Preparer Name: _____			
3. Pest Management Area: # ___ of ## ___			
4. Pest Management Area Name: _____			
5. Indicate the pesticide use pattern for the Pest Management Area:			
a. <input type="checkbox"/> Mosquito and Other Flying Insect Pests b. <input type="checkbox"/> Weed and Algae Pests c. <input type="checkbox"/> Animal Pests d. <input type="checkbox"/> Forest Canopy Pests			
6. For each treatment area (use additional pages for each treatment area):			
a. Provide a description of the treatment area within this Pest Management Area, including location description: _____			
b. Size of treatment area (in acres or linear feet): _____ acres or _____ linear feet.			
c. Name or location of any Waters of the United States to which discharges occurred: _____			
B. Pest Evaluation			
1. Identify the target pest(s) and explain why pest control is needed: _____ _____ _____			
2. Describe Pest Management Measure(s) implemented before the first pesticide application: _____ _____ _____			
C. Pesticide Application			
1. Name and contact information for pesticide applicator(s):			
Company Name: _____			
Street: _____			
City: _____ State: [] [] Zip Code: [] [] [] - [] [] []			
Contact Name: _____			
Phone: [] [] - [] [] [] - [] [] [] Ext [] [] []			
E-mail: _____			



Part 2: EPA's Final PGP

Forms – Adverse Incident Template

- 30-day Adverse Incident Report
- Includes Operator name/telephone number/mailing address; date/location of adverse incident; description of the adverse incident identified including EPA registration number of product used and description of steps taken or will take to contain any adverse effects.

	UNITED STATES ENVIRONMENTAL PROTECTION AGENCY WASHINGTON, DC 20460	Form Approved OMB No. 2040-NEW
	THIRTY (30)-DAY ADVERSE INCIDENT WRITTEN REPORT FOR THE PESTICIDE GENERAL PERMIT (PGP) FOR DISCHARGES FROM THE APPLICATION OF PESTICIDES	
<p>This form is for Operators required to submit a written report of any reportable adverse incidents to the appropriate EPA Regional office and to the state lead agency for pesticide regulation. Where multiple Operators are authorized for a discharge that results in an adverse incident, reporting by any one of the Operators constitutes compliance for all of the Operators, provided a copy of this report is also provided to all of the other authorized Operators within 30 days of the reportable adverse incident.</p>		
A. Reportable Adverse Incident. Is the adverse incident reportable? Reporting of adverse incidents is not required under the PGP in the following situations: (a) An Operator is aware of facts that indicate that the adverse incident was not related to toxic effects or exposure from the pesticide application; (b) An Operator has been notified by EPA, and retains such notification, that the reporting requirement has been waived for this incident or category of incidents; (c) An Operator receives information of an adverse incident, but that information is clearly erroneous; or (d) An adverse incident occurs to pests that are similar in kind to potential target pests identified on the FIFRA label.		
<input type="checkbox"/> Yes. You must complete this report and submit it to the appropriate EPA Regional office and to the state lead agency for pesticide regulation. <input type="checkbox"/> No. STOP. You are not required to complete this report. However, you may consider using this form to document the incident and your rationale for why reporting of the adverse incident is not required. This information may be useful to support your rationale should you be questioned on such.		
B. Information from the 24-Hour Adverse Incident Notification When an Operator observes or is otherwise made aware of an adverse incident, which may have resulted from a discharge from a pesticide application, the Operator must immediately notify the appropriate EPA Incident Reporting Contact, as identified at www.epa.gov/npdes/pesticides . This notification must be made by telephone within 24 hours of the Operator becoming aware of the adverse incident. Operators must include in the written report the information provided to EPA in the 24-hour adverse incident notification (PGP Part 6.4.1.1). Attach additional information if necessary.		
1. Caller's Contact Information:		
a. Name: _____		
b. Telephone Number: _____-_____-_____] Ext. _____		
2. Operator Information:		
a. Operator Name: _____		
b. Mailing Address:		
Street: _____		
City: _____ State: _____ ZIP Code: _____-_____-_____		
3. NOI NPDES Permit Tracking Number: _____ (Enter "NA" if not applicable)		
4. Contact person, if different than the person providing the 24-hour notice under item 1 above:		
a. Name: _____		
b. Telephone Number: _____-_____-_____] Ext. _____		
5. Describe how and when the Operator became aware of the adverse incident: _____ _____		
6. Describe the location of the adverse incident: _____ _____		

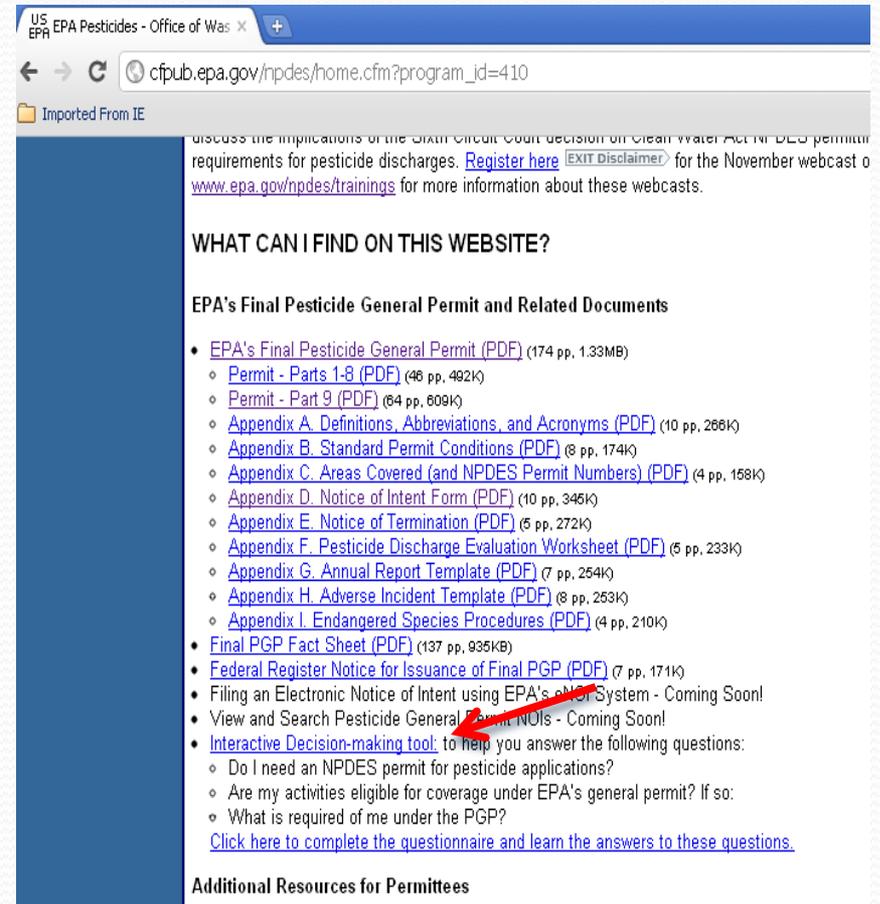


Part 2: EPA's Final PGP

Pesticides Permit Decision Tool

EPA has developed an interactive tool for potential permittees to guide them step-by-step through questions to help them:

- Determine if an NPDES permit will be needed for their pesticide application when the requirement for a permit takes effect;
- For those who determine they need a permit, determine if they are eligible for coverage under EPA's PGP; and
- If they are eligible for coverage under EPA's PGP, understand what their requirements will be under the PGP.



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discuss the implications of the Sixth Circuit Court decision on Clean Water Act NPDES permit requirements for pesticide discharges. [Register here](#) [EXIT Disclaimer](#) for the November webcast or www.epa.gov/npdes/trainings for more information about these webcasts.

WHAT CAN I FIND ON THIS WEBSITE?

EPA's Final Pesticide General Permit and Related Documents

- [EPA's Final Pesticide General Permit \(PDF\)](#) (174 pp, 1.33MB)
 - [Permit - Parts 1-8 \(PDF\)](#) (46 pp, 492K)
 - [Permit - Part 9 \(PDF\)](#) (64 pp, 609K)
 - [Appendix A. Definitions, Abbreviations, and Acronyms \(PDF\)](#) (10 pp, 266K)
 - [Appendix B. Standard Permit Conditions \(PDF\)](#) (8 pp, 174K)
 - [Appendix C. Areas Covered \(and NPDES Permit Numbers\) \(PDF\)](#) (4 pp, 168K)
 - [Appendix D. Notice of Intent Form \(PDF\)](#) (10 pp, 346K)
 - [Appendix E. Notice of Termination \(PDF\)](#) (5 pp, 272K)
 - [Appendix F. Pesticide Discharge Evaluation Worksheet \(PDF\)](#) (5 pp, 233K)
 - [Appendix G. Annual Report Template \(PDF\)](#) (7 pp, 254K)
 - [Appendix H. Adverse Incident Template \(PDF\)](#) (8 pp, 253K)
 - [Appendix I. Endangered Species Procedures \(PDF\)](#) (4 pp, 210K)
- [Final PGP Fact Sheet \(PDF\)](#) (137 pp, 935KB)
- [Federal Register Notice for Issuance of Final PGP \(PDF\)](#) (7 pp, 171K)
- Filing an Electronic Notice of Intent using EPA's eNOC System - Coming Soon!
- View and Search Pesticide General Permit NOLs - Coming Soon!
- [Interactive Decision-making tool](#), to help you answer the following questions:
 - Do I need an NPDES permit for pesticide applications?
 - Are my activities eligible for coverage under EPA's general permit? If so:
 - What is required of me under the PGP?
- [Click here to complete the questionnaire and learn the answers to these questions.](#)

Additional Resources for Permittees



**For more information on NPDES
Pesticide permitting:**

www.epa.gov/npdes/pesticides



Administrative Record for permit available at:

www.regulations.gov (docket ID: EPA-HQ-OW-2010-0257)

Send any pesticide general permit related questions to:

pgp@epa.gov



End of Part 2 of Webcast

Time for Questions and a Survey

