

Pesticide NPDES General Permits Status Report

**Clean Water Act
permits for FIFRA-
regulated pesticide
applications in and
around water bodies**

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Pesticide NPDES Permits – Overview

- **EPA's PGP: October 31, 2011**
 - For 6 states, federal lands, territories
 - For applications into, over or near "Waters of the U.S."
 - Mosquitoes; aquatic weeds & algae; forests; invasive animals
 - ESA certification & NMFS review
- **44 States also issued PGPs:**
 - States with CWA delegated authority (including AK in 2013)
 - Many modeled after EPA's PGP
 - State PGPs vary considerably
 - Many for "Waters of the State"
- **EPA's PGP focuses on "Decision Makers:"**
 - Federal, state and local government agencies responsible for pest control
 - Mosquito control districts, irrigation districts, natural resource management groups,
 - Utilities and transportation groups with ROW management, forest owners/managers
 - Other entities > annual thresholds
- **EPA PGP: for-hire applicators are generally automatically covered and have fewer requirements, unless they become decision makers**

Pesticide General Permits – State Concerns

- Approvals, monitoring, paperwork, reporting cause delays & siphon off worker time and funds
- Fears of legal jeopardy offset pest control decisions, manpower scheduling and budgeting
- Duplication of existing state & FIFRA requirements
- PGP requirements add no environmental benefits



Farmers, Ranchers Can Be Subject to PGPs

- If they treat weeds in or along irrigation canals, ponds, creeks, wetlands, rivers, or drainage ditches
- If they treat seasonally-dry conveyances
- If their applications to crops, pasture or range lands overlap “waters”
- If they are “decision makers” for applications



Brief Comparison of State PGPs versus EPA's

| State | Waters | EPA Comparison | Key Characteristics |
|-------|--------------|-------------------------|--|
| HI | State waters | Much more stringent | No coverage for DW source waters & all tributaries w/o permission |
| CA | Waters of US | Much more stringent | No automatic coverage; monitoring & reporting; limits products |
| NY | State waters | Much more stringent | No automatic coverage; all requirements apply to everyone |
| WA | State waters | Much more stringent | No automatic coverage; public notice; monitoring; limits products |
| NE | State waters | More stringent | Some automatic, others submit PDMP & NOI; verify US citizenship |
| ID | Waters of US | EPA's PGP applies | Non-delegated state; implements EPA's PGP (also NH, NM, MA, OK) |
| IA | Waters of US | A little less stringent | Automatic coverage for all operators if below annual thresholds |
| FL | State waters | Less stringent | Automatic coverage, except agencies: IPM, PDMP, monitor, reports |
| NC | State waters | Less stringent | Automatic coverage if below very large annual thresholds |
| SD | State waters | Less stringent | Automatic coverage for all; annual reports if over annual thresholds |
| ND | State waters | Much less stringent | Automatic coverage for all; notify state 20 days before application |
| AR | State waters | Much less stringent | Automatic coverage for all; keep some records; no routine reporting |

Potential Legal Risks

- Paperwork mistakes; missed record-keeping or incident reporting deadlines; inaccurate records
- Equipment maintenance mistakes; equipment failures; procedural errors; adverse incidents; spills
- Unknowing (unpermitted) discharges to protected waters (impaired, special, ESA, drinking water source)
- Violations if for-hire applicators become decision-makers without knowing it and don't meet much-expanded PGP requirements
- Citizen suits alleging any of the above

Conclusions

- NPDES permits add costs, burdens and risks, without adding environmental benefits over existing FIFRA and state rules
- EPA's permit and the 44 state NPDES permits vary widely in compliance requirements
- Unless overturned by Congress, the dual requirement for CWA permits and FIFRA registration/label compliance could remain permanently
- Pesticide NPDES general permits expire every 5 years, providing many future opportunities for EPA and states to add further compliance requirements
- CWA permit violations can be very costly; potential for citizen suits exists also

Legislative Efforts to Overturn PGP

■ 112th Congress – 2011:

- House passed H.R. 872 in March 2011 with bipartisan support
- Senate Ag Committee passed H.R. 872, but Sens. Boxer & Cardin put holds on it; and despite broad bipartisan support, Sen. Reid withheld a floor vote
- Unsuccessful efforts in 2011 by Sens. Stabenow & Roberts to negotiate a 2-year moratorium with Sen. Boxer

■ 112th Congress – 2012:

- Unsuccessful efforts by Sens. Hagan and Crapo to include H.R. 872 as amendment to 2012 Senate farm bill

■ 113th Congress – 2013:

- HR 872 expired on Dec. 31st

- Support continues for a legislative fix in Congress: S. 135; H.R. 935

Summary

- EPA's permit was used as a model by 44 states, but the requirements of those state NPDES permits vary widely
- Permits expire every 5 years, giving EPA and states many opportunities to change the requirements
- Requirements for "decision makers" are more stringent than for "applicators;" it's important to know the difference
- CWA brings substantial penalties, citizen suits into play
- Congress continues its efforts to overturn the 6th Circuit decision