

Permits May Be Required at Installations that Apply Pesticides

New Requirement for the EPA National Pollutant Discharge Elimination System Program

AS OF 31 OCTOBER 2011, installations with point source discharges of pesticides to waters of the U.S. will be required to obtain a National Pollutant Discharge Elimination System (NPDES) permit under the Clean Water Act (CWA).

This requirement stems from a January 2009 6th Circuit Court of Appeals decision which vacated a 2007 U.S. Environmental Protection Agency (EPA) rule that said NPDES permits were not required for applications of pesticides in, over, or near U.S. waters when applied in compliance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The January 2009 decision determined that pesticides are pollutants.

The CWA prohibits discharges of pollutants from point sources to waters of the U.S. without a NPDES permit. Under FIFRA, EPA issues labels describing authorized pesticide uses, and pesticides must be used in this manner to comply with FIFRA. According to the 6th Circuit Court, discharges of pesticides, regardless of FIFRA compliance, are considered point source discharges whose use in,

near, or over waters of the U.S. will require a NPDES permit. CWA Section 301(a) defines point source discharges as “discrete conveyances including but not limited to any pipe, ditch, channel, or conduit from which pollutants are or may be discharged.”

The 6th Circuit Court’s determination spurred EPA to develop the Pesticide General Permit (PGP) for areas where

EPA is the NPDES permitting authority. This includes six states (Alaska, Idaho, Massachusetts, New Hampshire, New Mexico, and Oklahoma), the District of Columbia, all U.S. territories (except the U.S. Virgin Islands), most Indian Country lands, and federal facilities in four states (Colorado, Delaware, Vermont, and Washington). The remaining 44 states are responsible for developing and issuing their own



Pesticide applications to or near waters of the U.S. will need a NPDES permit.

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Installations whose pesticide usage meets requirements of the EPA's PGP will need to submit an NOI and prepare a PDMP.
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The CWA SSC & DENIX

THE CWA SSC was established to lead DoD in cost-effective implementation of CWA statutes and regulations and to help to achieve sustained compliance at DoD installations. Membership includes senior representatives of the Army, Navy, Marine Corps, Air Force, Defense Logistics Agency, and the Office of Secretary of Defense. Information on the CWA SSC can be found on the DENIX web site (at https://denix.osd.mil/denix_secure/cwassc) including DoD comments submitted to regulatory agencies, information papers, guidance, and training opportunities. Also included is a Pesticide Subcommittee web page (at https://denix.osd.mil/denix_secure/cwassc/pesticide.cfm) highlighting the Subcommittee's meeting minutes, EPA/State PGP updates, fact sheets, comments submitted to EPA, and HR 872. For additional information, contact Andrea Lamartin (andrea_lamartin@urscorp.com) or Lindsay Nehm.

state NPDES pesticide permits to meet the needs of their location. Many states have been developing PGPs to mirror EPA's; however, states have the ability to make permits more stringent than EPA's requirements. Installations must be aware of their state's requirements.

EPA's PGP includes requirements for such actions as:

- Reducing amounts of pesticides used
- Monitoring usage
- Maintaining equipment
- Submitting Notices of Intent (NOI) if necessary
- Implementing Integrated Pest Management (IPM) strategies
- Developing Pesticide Discharge Management Plans (PDMP)

The PGP provides coverage for four types of pesticide use patterns. Installations with pesticide usage that does not

CWA SSC Pesticide Subcommittee Recommendations

THE PESTICIDE SUBCOMMITTEE has established general guidelines for installations to ease pesticide permit implementation. Establishing and strengthening communication lines among personnel responsible for pest management or CWA compliance are central to the Subcommittee's recommendations. These installation personnel can refer to the following checklist of recommendations:


1. Determine pesticide usage within the four use types and calculate total areas of treatment.
2. Establish/Strengthen relationship between the installation's CWA and pest management offices to ensure both parties understand the requirements and their roles and responsibilities.
3. Contact the responsible state office to learn about specific state permit requirements.
4. Contact installation legal counsel if concerned or confused about the EPA or state's permit status or requirements.
5. Determine the need for an NOI and identify who is responsible for its submittal as well as any reporting requirements.
6. Ensure contracts are modified if necessary and contractors comply with pesticide permit requirements.
7. Submit funding requests for PDMPs or other permit requirements if necessary.
8. Ensure proper pesticide usage and other recordkeeping to aid in preparing required reports or plans.

fall under the four categories in, near or above waters of the U.S., must acquire an individual permit. An individual permit is a NPDES permit for a specific activity not covered by a general permit.

Discharges resulting from agricultural stormwater or irrigation return flow are exempt from NPDES permit requirements under the CWA.

In January 2011, the Clean Water Act Services Steering Committee (CWA SSC), including members of the Armed Forces Pest Management Board, formed a Pesticide Subcommittee to discuss strategies for implementation and implica-

tions that a NPDES pesticide permit would have on Department of Defense (DoD) installations. The Pesticide Subcommittee serves as a multidisciplinary communication interface to coordinate and resolve DoD issues, and provide guidance to installations if necessary. Subcommittee information can be found at https://denix.osd.mil/denix_secure/cwassc/pesticide.

It is important to note that proposed legislation could eliminate the need for the PGP. House Rule 872, titled the Reducing Regulatory Burdens Act of 2011, was passed by the House of Representatives on 31 March 2011. The bill will be debated by the Senate. EPA and the states will still be developing permits. Installations should operate under the assumption that a NPDES permit will be required as of 31 October 2011. For more information or updates, please contact Andrea Lamartin (andrea_lamartin@urscorp.com) or Lindsay Nehm. 

Disclaimer: The information contained in this article is based upon the pre-publication version of EPA's draft final PGP, and is subject to change upon finalization of the PGP. Check out the CWA SSC Pesticide Subcommittee web page for the most current information at https://denix.osd.mil/denix_secure/cwassc/pesticide.cfm.

Pesticide Use Patterns Covered under EPA's PGP

THE PGP COVERS the following four pesticide use patterns that result in point source discharges to waters of the U.S.:

- Mosquito and Other Flying Insect Pest Control
- Weed and Algae Pest Control
- Animal Pest Control
- Forest Canopy Pest Control

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