

Questions & Answers on New Jersey Department of Environmental Protection's Draft Pesticide General Permit

- 1. What is the New Jersey Discharge Elimination System (NJPDES) Permit?**
The New Jersey Pollutant Discharge Elimination System (NJPDES) is the State's permitting program under the authority of the New Jersey Water Pollution Control Act (NJWPCA) that establishes controls on point source discharges of pollutants to waters of the State. 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 NJDEP requiring NJPDES permits for discharges from pesticide applications?**
Effective April 9, 2011, based on a ruling by the 6th Circuit Court of Appeals made on January 7, 2009 in *National Cotton Council, et al v. EPA*, applications of biological and chemical pesticides that leave a residue in water, when such applications are made in, over, or near surface waters of the State, will require a NJPDES permit. This requirement applies to all states, including New Jersey.
- 3. Isn't NJDEP already regulating pesticide applications to surface waters of the State?**
Pesticide applications are regulated by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). In New Jersey, the Pesticide Control Program (PCP) in NJDEP issues aquatic pesticide permits and certain mosquito/fly control permits for applications of pesticides to surface waters of the State. In addition, the above court ruling requires NPDES permits be obtained to comply with Clean Water Act.
- 4. Do the requirements of this new permit contradict or conflict with FIFRA product label requirements?**
No. A pesticide user must comply with all applicable FIFRA requirements contained on pesticide product labels.
- 5. How is this new permit issued by the NJDEP?**

 1. This new permit is issued as a general permit - Pesticide General Permit (PGP).
 2. The master PGP is valid up to a maximum of five (5) years.
 3. The eligible applicants, upon submission of a complete application, are issued an authorization under this master PGP.
- 6. Which pesticide applications are covered under the NJPDES PGP?**
NJDEP's PGP authorizes discharges to waters of the State from the application of (1) biological pesticides, and (2) chemical pesticides that leave a residue for the following five pesticide use patterns: mosquito and other flying insect pest control; aquatic weed and algae control; aquatic nuisance animal control; forest canopy pest control; and aquatic agricultural activities.
- 7. Are all pesticide discharges to waters of the State for the five use patterns eligible for coverage? If not, how do those discharges obtain coverage?**

No, the proposed draft PGP does not authorize coverage for point source discharges of pesticides or their degradates to surface waters already impaired by those specific pesticides or degradates. If the operator chooses to continue to use those pesticides, then he/she would need to obtain coverage under an individual permit.

8. Is NJPDES permit coverage now required for stormwater runoff that contains pesticides?

No, the ruling on the *National Cotton Council, et al v. EPA* does not change any exemptions from NJPDES permit coverage provided for in the NJWPCA, including stormwater runoff that is not already being regulated.

9. Will agricultural runoff and/or irrigation return flows that contain pesticides require a NJPDES permit?

No. Irrigation return flows and agricultural stormwater runoff do not require NJPDES permits, even when they contain pesticides or pesticide residues since the Clean Water Act and the NJWPCA specifically exempts these categories of discharges from requiring NJPDES permit coverage.

10. Are specific pesticides regulated under the PGP?

No. The PGP regulates discharges from the application of any pesticide used to control pests for the five use patterns identified above. The permit does not include any requirements that apply only to a specific pesticide or type of pesticide. However, the PGP will only authorize the discharge of pesticides that are identified in the permit authorization, which are based on the information provided on the application form.

11. Who is the “operator” that NJDEP identifies as the person responsible to apply for the permit?

The NJDEP defines operator as the person involved in the application of a pesticide that results in a discharge to waters of the State that meet the following criteria:

- (1) The person who 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
- (2) The person who has day to day control of or performs activities that are necessary to ensure compliance with the permit (e.g., he/she has the authority to direct workers to carry out activities required by the permit or perform such activities himself/herself).

12. How do you obtain authorization to discharge under the PGP?

- 1. Those below the threshold values (see Table below) are automatically covered.
- 2. Those above the threshold values and/or those discharging to Pinelands and FW1 waters will need to apply for this permit

13. What are the threshold values?

Pesticide Use	Annual Threshold
Mosquitoes and Other Flying Insect Pests	640 acres of treatment area ¹
In Water: Aquatic Weeds and Algae	20 acres of treatment area ¹

At Waters Edge: Aquatic Weeds and Algae	20 linear miles of treatment area at water's edge ²
In Water: Aquatic Nuisance Animals	20 acres of treatment area
At Waters Edge: Aquatic Nuisance Animals	20 linear miles of treatment area at water's edge ²
Forest Canopy	640 acres of forest canopy ¹
Aquatic Agricultural Activities	100 acres of treatment area ¹
<p>¹ Calculations shall include the area of the applications made to: (1) waters of the State and (2) conveyances with a hydrologic surface connection to waters of the State at the time of pesticide application. For calculating annual treatment area totals, count each pesticide application activity as a separate activity. For example, applying pesticides twice a year to a ten acre site shall be counted as twenty acres of treatment area.</p> <p>² Calculations shall include the area of the application made at water's edge adjacent to: (1) waters of the State and (2) conveyances with a hydrologic surface connection to waters of the State at the time of pesticide application. For calculating annual treatment totals, count each pesticide application activity as a separate activity. For example, treating both sides of a ten mile ditch is equal to twenty miles of water treatment area.</p>	

- 14. When should I submit an application?**
Operators shall submit an application no later than 30 days prior to commencement of discharge in order to provide NJDEP time to process the application.
- 15. When can I begin discharging after submitting the application?**
The operator can begin discharging on the effective date of the general permit authorization that will be issued by the NJDEP after review and approval of a complete and accurate application.
- 16. What does the PGP require of operators who are under the threshold values and do not need to submit an application?**
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), maintain records, and monitor for and report adverse incidents.
- 17. What does the PGP require of operators that need to submit an application (above the threshold values and/or discharging to FW1 or Pinelands waters)?**
In addition to the requirements applicable to all operators mentioned above, the PGP requires the implementation of integrated pest management practices to further minimize the discharge of pesticides to waters of the State, development of a Pesticide Discharge Management Plan, visual monitoring of the treatment area when applicable, submission of annual reports if appropriate, and maintenance of records of pest control practices.
- 18. 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. These practices include identifying and assessing the pest problem, assessing pest management alternatives, and following appropriate procedures for pesticide use.

19. What is a Pesticide Discharge Management Plan?

A Pesticide Discharge Management Plan (PDMP) must be prepared by operators who are required to submit an application. The PDMP documents the implementation (including inspection, maintenance, monitoring, and corrective action) of control measures being used to comply with the conditions of the permit. The purpose of the PDMP is to ensure that operators have (1) taken steps to identify the pest problem, (2) evaluated pest management options, and (3) appropriate control measures to control pesticide discharges.

20. What are adverse incidents?

The PGP requires operators to notify the NJDEP of certain adverse incidents 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:

- (1) A person or non-target organism may have been exposed to a pesticide residue, and
- (2) The person or non-target organism suffered a toxic or adverse effect.

The phrase “toxic or adverse effects” includes effects that occur within a water of the State 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:

- Distressed or dead juvenile and small fishes
- Washed up or floating fish
- Fish swimming abnormally or erratically
- Fish lying lethargically at water surface or in shallow water
- Fish that are listless or nonresponsive to disturbance
- Stunting, wilting, or desiccation of non-target submerged or emergent aquatic plants
- 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 State which are temporally and spatially related to exposure to a pesticide residue (e.g., vomiting, lethargy).

21. Does the PGP require ambient water quality monitoring?

No. The PGP does not require operators to conduct monitoring of ambient water quality. However, all operators are required to conduct visual monitoring for adverse effects during application, if feasible, and during any required post application monitoring.

22. Will the public have an opportunity to comment on the PGP before it is issued?

Yes, all NJPDES permits, including general permits, require draft permits to be public noticed for comment for at least 30 days. Written comments must be submitted to the

Bureau of Surface Water Permitting at the address specified in Part IV. Section I of the PGP by the close of the public comment period.

In addition, the NJDEP will hold a non-adversarial public hearing by the close of the public comment period to afford the public an opportunity to be heard on this proposed action. The hearing shall be held before a Hearing Officer designated by the NJDEP. The applicant and other interested persons will have the opportunity to present and submit information on the proposed action. The Department will extend the public comment period to the close of public hearing. The location, date, and time of the public hearing will be public noticed in various newspapers throughout the State and in the Division of Water Quality's website.

The NJDEP will respond to all significant and timely comments upon issuance of the final permit. Each person who has submitted comments will receive notice of the NJDEP's final permit decision.

23. What are the repercussions if operators do not obtain a NJPDES permit by April 2011?

Any operator with a discharge to waters of the State, resulting from the application of pesticides, will be in violation of the NJWPCA if the discharge is not covered by a NJPDES permit as of April 9, 2011. Violation of the NJWPCA is subject to fines and penalties.