

7. BACKGROUND

The EPA regulates the sale, distribution and use of pesticides in the U.S. under the statutory framework of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) to ensure that when used in conformance with FIFRA labeling directions, pesticides will not pose unreasonable risks to human health and the environment. On November 27, 2006, EPA finalized a rule which exempted pesticide operators from needing a NPDES permit for discharging pesticides to waters of the U.S. This rule was subsequently vacated in a 2009 decision by the Sixth Circuit Court of Appeals in *National Cotton Council, et al, v. EPA*. In response to the Court's decision, the EPA issued its Pesticide General Permit on October 24, 2011 which became effective October 31, 2011.

DWWM issued a WV/NPDES pesticide general permit for point source discharges October 31, 2011. This general permit was modified on August 8, 2013, to allow for discharges to Tier 3 waters when those discharges will restore or maintain water quality or protect public health or the environment and do not degrade water quality except on a short-term or temporary basis. The 2017 reissuance of the general WV/NPDES permit will continue this coverage.

8. GENERAL INFORMATION

The Division of Water and Waste Management, through its permitting system, is responsible for ensuring that wastewaters are identified, receive adequate treatment and are disposed of in accordance with federal and state regulations. Usually this requires an individual permit based on a thorough review of the facility processes and the constituents of its waste stream. The issuance of an individual permit for any facility is a resource intensive and time-consuming process for both the permitting agency and the industry.

All parties recognize the immensity of the problem of issuing individual permits for the large number of anticipated new sites throughout the state; hence, such permitting is currently too resource intensive.

For these reasons, the Division of Water and Waste Management has decided to utilize a general WV/NPDES permit. The Division of Water and Waste Management assumed primacy for the NPDES Program from the EPA in 1982. Under 47CSR10-13.6 of the Legislative Rules, a general permit can be used to regulate either separate storm sewers or a category of point sources other than separate storm sewers if the sources all:

- a. Involve the same or substantially similar types of operations;
- b. Discharge the same types of wastes;
- c. Require the same effluent limitations or operating conditions;
- d. Require the same or similar monitoring; and
- e. In the opinion of the Director, are more appropriately controlled under a general permit than under individual permits.

9. ANTIDEGREDATION REQUIREMENTS

Coverage under this general permit is not available for discharges to waters of the State designated as Tier 3 for antidegradation purposes under 47 CSR 2, except for discharges from pesticide applications made to restore or maintain water quality or to protect public health or the

environment that either do not degrade water quality or only degrade water quality on a short-term or temporary basis.

10. COVERAGE UNDER THE GENERAL PERMIT

Who Should Apply for Permit Coverage?

All operators whose activities will result in a discharge and know or reasonable should have known that those activities will exceed one or more of the annual (i.e. calendar year) thresholds listed in Table 1.

Table 1. Annual Treatment Area Thresholds

| Pesticide Use | Annual Threshold |
|--|--|
| Mosquitoes and Other Flying Insect Pests | 6400 acres of treatment area |
| Aquatic Weed and Algae Control: | |
| -In Water | 80 acres of treatment area ¹ |
| -At Water's Edge: | 20 linear miles of treatment area at water's edge ² |
| Animal Pest Control: | |
| -In Water | 80 acres of treatment area ¹ |
| -At Water's Edge | 20 linear miles of treatment area at water's edge ² |
| Forest Canopy Pest Control | 6400 acres of treatment area |
| <p>1. Calculations should 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 should be counted as twenty acres of treatment area. 2. Calculations should include the linear extent 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 and each side of a linear water body as a separate activity or area. For example, treating both sides of a ten-mile ditch is equal to twenty miles of water treatment area.</p> | |

When to Apply for Permit Coverage?

State NPDES rules require permit applications to be filed at least 180 days prior to the commencement of the activity. The Agency is attempting, through this General Permit process, to streamline the permitting of this particular activity. Therefore:

1. Operators who know, or should reasonable known prior to the discharge beginning, that they will meet one or more of the annual treatment area thresholds must submit their permit registration application at least 90 days prior to their first pesticide application.

2. Operators who do not know or would not reasonably know that they will exceed an annual treatment area threshold before their pesticide applications begins, must submit their permit registration application at least 60 days prior to meeting the threshold.
3. If an operator is responding to a declared pest emergency situation that will cause them to exceed an annual threshold, then they must submit a permit registration application no later than 90 days after responding to the declared emergency situation.

Automatic coverage under the general permit is authorized beginning with the effective date of this permit for:

1. Eligible discharges that result from the application of a pesticide as part of pesticide research and development; and
2. Eligible discharges that will not exceed annual treatment area thresholds.

Who Does Not Need Permit Coverage?

Federal Rules 40 CFR 122.3 lists exclusions from the NPDES program. The exclusion list includes the introduction of pollutants from non-point source agricultural and silvicultural activities, including storm water runoff from orchards, cultivated crops and range lands and forest lands and return flows from irrigated agriculture. The discharge of pesticides from these activities do not require coverage under this general permit.

11. EFFLUENT GUIDELINES

EPA has not promulgated an effluent limitation guideline (ELG) for discharges associated with the application of pesticides. Biological pesticides generally do not contain conventional pollutants for which numeric limits can be established. In addition, it would be difficult to apply a numeric limit in the case of discharges from chemical pesticides, since the time at which a numeric effluent limitation would apply is not clear as a residue only comes into existence at some point after the actual discharge. Therefore, only narrative effluent limitations are proposed in the form of implementation of site-specific BMPs, referred to as pest management measures in the permit.

All permittees covered under the general permit must:

1. Use the lowest effective amount of pesticide
- 2 Perform regular maintenance activities to reduce leaks and spills
3. Calibrate and maintain pesticide application equipment

In addition, permittees who are required to submit a permit registration application must complete an annual process of planning and evaluation to ensure that the pest management measures selected and implemented will be efficient and effective means of controlling target pests while minimizing impacts to water quality and the environment.

12. SECTION E. MONITORING REQUIREMENTS

Permittees are required to self-monitor their pesticide application activities to ensure all pest management measures are implemented and are effective. Visual assessments are required during and after applications to monitor for adverse incidents and ensure efficacy.

13. SECTION F. PESTICIDE DISCHARGE MANAGEMENT PLAN (PDMP)

All permittees covered under this general permit, whether they submit a permit registration application, are required to develop and implement a PDMP. The PDMP is a site-specific document that must be maintained for the duration of permit coverage. The PDMP is submitted with the permit application and should be maintained along with all supporting documents at the location identified on the permit application and shall be made available to the Director upon request. The plan should be reviewed at a minimum of once per year and must be modified anytime there is a significant change, such as a change in pesticides used or treatment areas. The basic elements of the PDMP include listing the PDMP Team, a description of the pest management area, control measures implemented to meet effluent limitations and documentation of schedules and procedures.

14. SECTION G. RECORDKEEPING REQUIREMENTS

This section is self-explanatory. All permittees must keep documentation of their pest management measures, inspection, any observed adverse incidents and corrective actions that may have been required, along with documentation of all maintenance schedules, employee training, any changes to their PDMP.

15. SECTION H. OTHER CONDITIONS

Section H.1. This identifies situations in which the Director may require an operator covered by this permit to be covered by an individual permit or when such an operator may approach the Director on their own initiative to obtain coverage by an individual permit.

Section H.2. This paragraph provides notification that coverage under a individual permit may be required and delineates how that will transpire.

Section H.3. This paragraph contains the standard reopener clause for development of effluent limitations under the Clean Water Act subsequent to reissuance of the general permit.

Sections H.4. through H.12 are self-explanatory.

FACT SHEET

WV/NPDES Permit No. WV0116645

Page 6 of 6

The State of West Virginia, Department of Environmental Protection, Division of Water and Waste Management, has made a tentative decision for a State NPDES Permit as listed on this Fact Sheet. In order to provide public participation on the proposed issuance of the required permit, the following information is being supplied in accordance with Title 47, Series 10, Section 11.3.e.2 and 3, of the West Virginia Legislative Rules.

Any interested persons may submit written comments on the Draft Permit and may request a public hearing by addressing such to the Director of the DWWM within 30 days of the date of the public notice. Comments will be accepted until October 14, 2017. They should be addressed to:

Director, Division of Water and Waste Management
Department of Environmental Protection
601 57th Street, SE
Charleston, WV 25304
Attention: Lori Devereux
Phone: (304) 926-0499, Extension 1057
Fax: (304) 926-0496
E-mail: Lori.K.Devereux@wv.gov

All comments received within this period will be considered prior to acting on the Draft General Permit. Correspondence should include the name, address and telephone number of the writer and a concise statement of the nature of the issues being raised.

All applicable information concerning any permit application and the tentative decisions is on file and may be inspected, by appointment, or copies obtained, at a nominal cost, at the offices of the Division of Water and Waste Management, 601 57th Street, SE, Charleston, West Virginia 25304, Monday through Friday (except State holidays) between 8:00 a.m. to 4:00 p.m.

Requests for additional information should be directed to Lori Devereux at (304) 926-0499, Extension 1057.

**STATE OF WEST VIRGINIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF WATER & WASTE MANAGEMENT
601 57th Street SE
Charleston, WV 25304-2345**

**FACT SHEET ADDENDUM
FOR
WV/NPDES PESTICIDE GENERAL PERMIT
IN WEST VIRGINIA**

- 13. SECTION F. PESTICIDE DISCHARGE MANAGEMENT PLAN (PDMP) (revised)**
All permittees covered under this general permit who must submit a permit registration application, are required to develop and implement a PDMP. The PDMP is a site-specific document that must be maintained for the duration of permit coverage. The PDMP is submitted with the permit application and should be maintained along with all supporting documents at the location identified on the permit application and shall be made available to the Director upon request. The plan should be reviewed at a minimum of once per year and must be modified anytime there is a significant change, such as a change in pesticides used or treatment areas. The basic elements of the PDMP include listing the PDMP Team, a description of the pest management area, control measures implemented to meet effluent limitations and documentation of schedules and procedures.
- 14. SECTION G. RECORDKEEPING REQUIREMENTS (revised)**
This section is self-explanatory. All permittees must keep documentation of their pest management measures, inspection, any observed adverse incidents and corrective actions that may have been required, along with documentation of all maintenance schedules. Permittees required to submit a registration application must also maintain records for employee training, any changes to their PDMP and a copy of their application and the General Permit.