



**Illinois Fertilizer &
Chemical Association**
Supply • Service • Stewardship

NPDES Permit for Pesticide Application – Illinois

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On October 31, 2011 the federal requirement for a NPDES permit for certain pesticide applications went into effect. Illinois EPA is the lead agency on the NPDES permit process. You can view the NPDES permit at <http://www.epa.state.il.us/water/permits/pesticide/index.html>. IFCA recommends you print the permit and read the parameters and definitions. This is a new federal regulation brought about by a lawsuit. A federal court ruled that pesticides applied to, over, or near water are now regulated under the Clean Water Act in addition to being regulated by FIFRA (Federal Insecticide, Insecticide, Fungicide & Rodenticide Act).

We are attempting to explain this complex program in simple terms so that our members can determine if the permit may be required for their pesticide application activities. IEPA has reviewed this fact sheet.

Who Needs a NPDES Permit?

The General NPDES permit applies to the following pesticide application use patterns when the pesticides are applied to or over waters of the US or at water's edge for the following:

1. Mosquito and Other Insect Control
2. Weed and Algae Pest Control
3. Animal Pest Control
4. Forested Areas Pest Control
5. Other Pest Control Activities

“Water of the U.S.” are defined as:

- 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;
- All interstate waters, including interstate “wetlands;”
- All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sand flats, “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 including any such waters: (a) Which are or could be used by interstate or foreign travelers for recreational or other purposes; (b) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or (c) Which are used or could be used for industrial purposes by industries in interstate commerce;
- All impoundments of water otherwise defined as waters of the United States under this definition;
- Tributaries of waters identified in paragraphs above;

- The territorial seas;

IEPA will issue coverage under the General NPDES permit for pesticide applications directly to or over waters of the US, using products that are labeled for aquatic use and thus are applied in a manner where they may leave a residue on water. You cannot obtain a NPDES permit to apply a pesticide directly to water that is NOT labeled for aquatic use. Such an application would be a violation of FIFRA. The application of non-aquatic use pesticides to ditch banks that may be connected to waters of the US, or at water's edge, requires NPDES permit coverage and is eligible for coverage under the General Permit.

The person actually applying the pesticide may apply for the NPDES permit, or the person who has control of hiring an applicator to perform the operations may apply. For IFCA members, we would recommend that the company obtain permit coverage rather than the actual applicator; then all applicators working for the company would have coverage under the NPDES permit. Some examples include:

- If you have an aquatic, mosquito, or rights of way category on your pesticide license and you intend to apply pesticides directly to or over water, or at water's edge, you will need to obtain a NPDES permit.
- If you are an aerial applicator and may perform pesticide applications over forested areas and pesticides may be deposited to water below the forest canopy, you will need to obtain a NPDES permit. This could also apply to applications to kill nuisance trees in waters of the US, such as willows, etc.
- If you apply pesticides to standing water to treat for mosquitos, you will need to obtain a NPDES permit.
- If you apply pesticides to water, such as to drainage ditches, ponds with an overflow outlet, streams, or other waters of the US, you will need to obtain a NPDES pesticide permit. Private landowners are not exempt from obtaining a NPDES permit if they themselves apply pesticides to such waters even on their own private property.

Q: If I own a pond, and the pond has an overflow that may discharge water to another body of water or stream, and I want to treat my pond with a pesticide, do I need a NPDES permit?

A: Yes, if the pond is hydrologically connected (has an overflow) that discharges to a water of the US, you must obtain NPDES permit coverage. Pesticide applications to ponds with no overflows do NOT need a NPDES permit.

Q: Who has to get the permit, the pond owner or the pesticide applicator?

A: Either the person who orders the pesticide application needs the NPDES permit, or the person who applies the pesticide (for hire) needs the NPDES permit. It makes most sense to hire a person to make the application and ensure that the company you hire has NPDES permit coverage. Private ponds that have no overflow outlet or are not otherwise hydrologically connected to waters of the US do not require a NPDES permit for pesticide application. If pesticides are applied to drainage ditches, streams or any such water of the US, a NPDES permit is required. If a pesticide is applied to waters of the US, and no NPDES permit is obtained, both the landowner and the applicator may be held liable for a violation of the Clean Water Act.

How to Apply for a Permit

Notice of Intent: Entities or operators who wish to apply for NPDES permit coverage may go to the IEPA website at

<http://www.epa.state.il.us/water/permits/pesticide/index.html> and submit a “Notice of Intent” to apply for coverage under the General NPDES permit. You will check the use patterns for which you will be applying pesticides to water (or at water’s edge), and describe where in the state (county, territory, etc...) you will be applying these pesticides. IEPA will post the name of the applicant on their website for 14 days after the date of application. Within 30 days of IEPA receiving a NOI, if you have not received a Notice of Incompleteness, you are deemed automatically covered. IEPA will mail a letter of coverage at that point.

The General NPDES permit is issued for a period of five years. The current five year permit period began October 31, 2011 and will expire October 31, 2016, at which point you must re-apply for the next five year period. There is currently no fee for the NPDES pesticide permit

Endangered Species: You must consult with the Illinois Department of Natural Resources to determine if any endangered species exist within the area you intend to apply pesticides as identified in your NOI. Go to www.dnrecocat.state.il.us/ecopublic to access the EcoCat website to determine if any listed species or protected natural areas are present within your treatment area. IDNR will evaluate your application and notify you if endangered species are present or not. You must keep a record of the IDNR notifications, but these records do not need to be provided to IEPA.

Recordkeeping

IEPA has defined annual treatment area thresholds that trigger recordkeeping and other requirements in the NPDES permit. These annual treatment area thresholds are found in Section 2.2, Table 3 of the NPDES permit. IEPA has also included several exemptions from some of the permit requirements. These exemptions are found in Section 5.0 and 7.0 of the NPDES permit.

If you exceed the annual treatment area thresholds and do not meet one of the other exemptions, then you must also complete a written Pesticide Discharge Management Plan (PDMP). An “application” for threshold purposes means the application of a certain type or mix of pesticide. If the type or mix does not change, then subsequent applications to the same treatment area are not counted again toward the annual treatment area threshold. However, if you change the pesticide mix and treat the same area a second time that treatment counts as an additional treatment toward the annual treatment area threshold.

For Example: If you treat a 10 acre pond with Pesticide A. 10 acres is counted toward the annual treatment area threshold amount. If you treat the same 10 acre pond again with a different pesticide within a year of the first application, you now have 20 acres toward your annual treatment area threshold limit. But if you treat the same 10 acre pond a second time with the exact same pesticide, the second application does not count toward the annual treatment area threshold limit. The area treated at each separate site by a permittee, is added together and counts towards the annual treatment area threshold for each use pattern.

IEPA has a sample format for a PDMP posted on their website for applicators to use who exceed the annual treatment area threshold amounts.

The person or entity who holds the NPDES permit must retain all the required records. Permittees that do not meet the definition of a small entity and who exceed the annual treatment area threshold amounts for application must also submit an annual report to IEPA. A small entity is defined in the permit and includes, but is not limited to small businesses which meet the Small Business Administration criteria at 13 CFR 121.201.

Adverse Incident Reporting: If the permittee experiences an adverse incident related to a pesticide application covered under the General NPDES, they must report the incident to the Illinois Emergency Management Agency (IEMA) immediately and submit an Adverse Incident Report to IEPA within 15 days.

Things to Keep in Perspective

The General NPDES permit only applies to pesticide applications that will be made directly to or over waters of the US, or at water's edge. For most agricultural pesticide applications, a NPDES permit will not apply.

Off target spray drift and agricultural storm water runoff which may contain pesticides from an application to a farm field, to a water of the state is NOT subject to a NPDES permit.

If a government entity issues a "declared pest emergency" that requires a pesticide application that would meet the requirements for a NPDES permit, the application may commence immediately, and the pesticide operator or entity may apply for coverage under the General Permit no later than 30 days after the emergency application began.

You must file an updated Notice of Intent to modify your NPDES permit coverage to add additional use patterns or treatment areas at least 14 days prior to beginning the pesticide applications.

Summary

Obtaining NPDES general permit coverage for pesticide applications directly to or over water of the US or at water's edge provides protection from being sued under the Clean Water Act. If you believe you have any circumstance where you will be applying pesticides directly to water, treating for mosquitos or applying pesticides to forest canopy areas or at water's edge, you should apply for coverage under the General permit and secure protection from legal action under the Clean Water Act. Violations of the Clean Water Act can be up to \$28,000 per day.

IFCA members who have an aquatic, mosquito or rights of way category on their pesticide license should carefully review the General NPDES permit (it is 35 pages) and determine if your activities after October 31, 2011 subject you to the NPDES permit.

The permit and application process can be accessed at <http://www.epa.state.il.us/water/permits/pesticide/index.html>

This fact sheet attempts to highlight the main points of the NPDES permit process and its applicability to persons working in the agricultural sector. It is not inclusive of all the requirements or nuances of the permit process.

If you need assistance in evaluating your need for a NPDES permit, please contact IFCA at (309) 827-2774. You can also contact the IEPA Division of Water Pollution Control Permit Section at (217) 782-0610.