

**STATE OF GEORGIA
DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION DIVISION**

FACT SHEET

**PESTICIDE GENERAL PERMIT (PGP) FOR DISCHARGES FROM
APPLICATIONS TO OR OVER (INCLUDING NEAR) WATERS OF THE STATE
GENERAL PERMIT NO. GAG820000**

BACKGROUND OF COURT DECISIONS REGARDING THE NEED FOR A PGP

On November 26, 2006 the U.S. Environmental Protection Agency (EPA) issued an aquatic pesticide rule which states that a Clean Water Act (CWA) permit is not required for the application of pesticides directly to water in order to control pests or for the application of pesticides to control pests that are present over or near water, where a portion of the pesticide will unavoidably be deposited in the water in order to target the pests (i.e., spraying to control non-native plants growing on the water's edge because some of the pesticide would unavoidably enter the water). EPA argued that the CWA as it applies to pesticides is ambiguous and that pesticides applied according to the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) requirements are not pollutants and therefore are not subject to National Pollutant Discharge Elimination System (NPDES) permitting.

On January 26, 2007 this Rule became effective. However, on January 19, 2007, EPA received petitions for review of the Aquatic Pesticides rule from both environmental and industry groups. The case, National Cotton Council, et al, v. EPA, was assigned to the Sixth Circuit Court of Appeals.

On January 9, 2009 the U.S. Sixth Circuit Court of Appeals held in National Cotton Council, et al, v. EPA, that the final Aquatic Pesticides rule was not a reasonable interpretation of the CWA and vacated the Rule. **Reversing EPA's November 2006 Aquatic Pesticide Rule, the Sixth Circuit held that CWA permits are required for all biological and chemical pesticide applications that leave a residue in water when such applications are made in or over, including near, waters of the U.S.**

In response to this decision, on April 9, 2009, EPA requested a two-year stay of the mandate to provide the Agency time to develop general permits, to assist NPDES-authorized states to develop their NPDES permits, and to provide outreach and education to regulated communities. On June 8, 2009, the Sixth Circuit granted EPA the two-year stay of the mandate. The stay of the mandate expires on April 9, 2011. Then NPDES permits will be required for all point source dischargers to Waters of the U.S. of pesticides (biological and chemical) that leave a residue. Therefore, as of April 10, 2011, discharges to a water of the U.S. from pesticide applications will require coverage under an NPDES permit.

REGULATORY BACKGROUND

Clean Water Act

Section 301 (a) of the CWA provides that “the discharge of any pollutant by any person shall be unlawful” unless the discharge is in compliance with certain other sections of the Act [33 U.S.C. 1311(a)]. The CWA defines “discharge of a pollutant” as: (A) any addition of a pollutant to navigable waters from any point source, (B) any addition of any pollutant to the waters of the contiguous zone or the ocean from a point source other than a vessel or floating craft” [33 U.S.C.1362 (14)]. The term “pollutant” includes among other things, “garbage, chemical wastes, biological materials, and industrial municipal and agricultural waste discharged into water” [33 U.S.C.1362 (6)].

A person may discharge a pollutant without violating Section 301 of the CWA by obtaining authorization to discharge under Section 402 of the CWA - National Pollution Discharge Elimination System (NPDES). Under Section 402, except as provided in Sections 1328 and 1344 under Title 402 (a), EPD may, “after opportunity for public hearing issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding Section 1311(a) of this title”, upon meeting certain conditions of the CWA.

The CWA further requires that all point source discharges from existing facilities, or in this case, pesticide applications, meet technology-based effluent limitations representing the applicable levels of necessary control. The technology-based effluent limitations contained in the PGP are non-numeric and constitute the levels of control that reduce the area and duration of impacts caused by the discharge of pesticides to waters of the U.S. in a treatment area. In addition, these effluent limitations provide for protection of water quality standards, including protection of beneficial uses of the receiving waters inside the treatment area following completion of pest management activities.

These CWA provisions are reflected in the Georgia Rules and Regulations for Water Quality Control (The Rules) Chapter 391-3-6-.06(3) and (4) and also in O.C.G.A §12-5-29 and O.C.G.A §12-5-30.

NPDES permits

An NPDES permit authorizes the discharge of a pollutant or pollutants into a receiving water under certain conditions. The NPDES program relies on two types of permits: individual permits and general permits. An individual permit is a permit specifically tailored for an individual discharger for a specific time period (not to exceed five (5) years). A general permit covers multiple facilities, sites, and activities within a specific category for a specific time period (not to exceed five (5) years). Both types of permits are subject to public comment prior to permit issuance.

Georgia is a fully authorized state and administers its own NPDES program. The Georgia Environmental Protection Division (EPD) has developed General Pesticide Permit No. GAG820000 (which is a NPDES permit). This use of a general permit to cover pesticides applications is proposed due to the large number of pesticide applications that may require a NPDES permit coverage.

The Georgia Rules and Regulations for Water Quality Control Chapter, 391-3-6-.15, provides for the degree of waste treatment required and the uniform procedures and practices to be followed related to the application for issuance, modification, revocation and reissuance, and termination of general permits for the discharge of any pollutant into waters of the State.

Beginning April 9, 2011, NPDES permits will be required for all point source discharges to waters of the State for biological and chemical pesticides that leave a residue.

SUMMARY OF PERMIT CONDITIONS - GENERAL PERMIT NO. GAG820000

General Permit No. GAG820000 is being proposed to authorize point source discharges to waters of the State from the application of pesticides for the specific use patterns described below.

Coverage under this permit will be initiated by submitting a Notice of Intent (NOI) for some operators, while some operators will not be required to submit an NOI*. The NOI will include basic information about the operator and the specific waters of Georgia where the discharges occur. NOI forms will be available on EPD's website.

All discharges authorized by this general permit involve applications made directly to, over, or near waters of the State in order to control pests or in which pesticides will make unavoidable contact with the water. The general permit is structured by pesticide use patterns. These use patterns were developed to include discharges that are similar in type and nature and therefore represent the type of discharges and expected nature of the discharges covered under this permit.

Operators must comply with all applicable statutes, regulations, and other requirements including, but not limited to, requirements contained in the labeling of pesticide products approved under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). FIFRA is a federal law that set up the U.S. system of pesticide regulation to protect applicators, consumers, and the environment. Although the FIFRA labeling requirements are not effluent limitations, it is illegal to use a registered pesticide inconsistent with its labeling.

* An amendment to the Georgia Rules and Regulations for Water Quality Control, Chapter 391-3-6-.15(3)(b)(2)(i), Non-Storm Water General Permit Requirement, has been proposed by EPD. If approved, the Rule change will be consistent with 40 C.F.R. 122.28(b)(2)(v) and (b)(2)(vi) and Title 12, Article 2, O.C.G.A. §12-5-30(f), which states that at the discretion of the Director, certain dischargers may be authorized to discharge under a general permit without submitting an NOI or individual application. **Please note, until such time that the amendment to the Rule is approved, dischargers who are exempt from submitting an NOI under this general permit will be required to submit an NOI to be covered.**

PERMIT COVERAGE ELIGIBILITY

This permit is available to operators of discharges to waters of the State of Georgia from the application of biological and chemical pesticides which leave a residue (hereinafter collectively called "pesticides") for the following pesticide use patterns:

Mosquito and Other Nuisance Insect Pest Control

This use pattern includes the application, by any means, of chemical and biological insecticides and larvicides into or over water to control insects that breed or live in, over, or near water. Applications of this nature usually involve the use of ultra low volume sprays or granular larvicides discharged over large swaths of mosquito breeding habitat and may occur several times per year.

Aquatic Weed and Algae Control

This use pattern includes the application, by any means, of contact or systemic herbicides to control vegetation and algae in water and at water's edge, including irrigation ditches and/or irrigation canals. Applications of this nature may be single spot treatments of infestations or staged large scale treatments intended to clear several acres of waterway. Treatments may be singular or occur several times per year.

Aquatic Nuisance Animal Control

This use pattern includes the application, by any means, of chemicals into waters to control a range of animals for purposes such as fisheries management, invasive species eradication, or equipment maintenance. Applications of this nature are usually made over an entire waterbody as the target pests are mobile. Treatments are generally made several years apart.

Forest Canopy and Area-Wide Pest Control

This use pattern includes aerial pest control projects, in and over forest canopies where there are waters of the State below the canopy. Applications of this nature usually occur over large tracts of land, and are typically made in response to specific outbreaks. EPD understands that for this use pattern pesticides will be unavoidably discharged into waters in the course of controlling pests that are present near or over waters as a result of the aerial spraying (i.e., a point source discharge from a nozzle) over a forest canopy. These pests are not necessarily aquatic (e.g., airborne non-aquatic insects) but are detrimental to industry, the environment, and public health. Note: EPD recognizes that mosquito adulticides may be applied to forest canopies, in which case the application would be covered under the "Mosquito and Other Nuisance Insect Pest Control" use pattern.

INELIGIBILITY

This general permit does not apply to the application of pesticides to areas which do not require a NPDES permit, including:

- a. any introduction of pollutants from non-point source agricultural and silvicultural activities including storm runoff from orchards, cultivated crops, pastures, and forest lands
- b. return flows from irrigated agriculture.

Permittees are not eligible for coverage under this permit if any of the following apply:

- a. The water is identified as impaired by that pesticide or its degradates. Impaired waters are those which have been identified by the State or EPA pursuant to Section 303(d) of the CWA as not meeting applicable State water quality standards.
- b. Discharges currently covered under another NPDES permit.
- c. Discharges covered within five years prior to the effective date of this permit by an individual permit or alternative general permit where that permit established site-specific numeric water quality-based limitations.
- d. Discharges from activities where any NPDES permit has been or is in the process of being denied, terminated, or revoked by EPD (this does not apply to the routine reissuance of permits every five years).

NOTICE OF INTENT

NOI is the form used by a potential permittee to notify EPD, within a specified time, that they intend to be covered by a general permit if required. NOI forms will be available on EPD's website at the following web address: www.gaepd.org

The following operators are required to submit an NOI to obtain coverage under this general permit for discharges to waters of the State resulting from the application of pesticides:

- a. If you are in control of the financing for, or of the decision to perform pest control activities that will result in a discharge, and those activities will exceed one or more of the annual (i.e., calendar year) treatment area thresholds listed in Table 1 below for the treatment area.
- b. If you apply pesticides that result in a discharge and know that those activities will exceed one or more of the pesticide application annual (i.e., calendar year) treatment area thresholds listed in Table 1 below for the treatment area. To determine whether an entity's activities will exceed one or more of the annual treatment area thresholds, the entity should exclude from its calculation any pesticide application activities conducted under another entity's NOI required under (a) above.

ANNUAL TREATMENT AREA THRESHOLDS

Table 1 includes the annual treatment area thresholds that apply to designated use patterns.

TABLE 1 Annual Treatment Area Thresholds¹		
PGP Part	Pesticide Use	Annual Threshold
I.A.1.a.	Mosquitoes and Other Nuisance Insect Pests	6400 acres of treatment area
I.A.1.b.	Aquatic Weed and Algae Control:	
	- In Waters of the State	100 acres of treatment area ^{2,4}
	- At Water's Edge:	100 linear miles of treatment area at water's edge ^{3,4}
I.A.1.c.	Aquatic Nuisance Animal Control:	
	- In Waters of the State	100 acres of treatment area ^{2,4}
	- At Water's Edge	100 linear miles of treatment area at water's edge ^{3,4}
I.A.1.d.	Forest Canopy Pest Control Area-Wide Pest Control	6400 acres of treatment area

¹ Treatment area is defined as the area of land including any waters or linear distance along water's edge, to which pesticides are being applied. Multiple treatment areas may be located within a single "pest management area."

² Calculations should include the area of the applications made to waters of the State.

³ Calculations should include the linear extent of the application made at water's edge to waters of the State.

⁴ 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.

AUTHORIZATION TO DISCHARGE

To obtain authorization under this permit an operator must:

- a. Meet the eligibility requirements identified above.
- b. Operators that meet all the eligibility requirements to be covered under this general permit that do not meet or exceed an annual treatment area threshold in Table 1, are automatically covered under this general permit.
- c. Submit a complete and accurate NOI prior to the first pesticide application to be covered under this permit, if required by the general permit (i.e. meeting or exceeding an annual treatment area threshold in Table 1).
- d. Coverage under this permit is provided if the applicant does not receive a written response from EPD within 10 days of receipt of the NOI. EPD may deny coverage based on an incomplete or incorrect NOI submittal, past noncompliance by the applicant at similar facilities, or other factors.
- e. Operators commencing discharge in response to a declared pest emergency situation as defined in Part VI of the permit, are automatically covered under this general permit. An NOI shall be submitted no later than 30 days after

commencement of pesticide applications in response to any declared emergency situation, including those activities that do not exceed an annual treatment area threshold in Table 1.

DISCHARGE AUTHORIZATION DATE

Beginning April 9, 2011, operators must be covered under an NPDES permit for discharges to waters of the State as a result of the application of a pesticide.

Timing for the NOI submittal is based on when an operator is aware or reasonably should be aware through consideration of past experience, planned activities, planning, and other analyses, that the pesticide application will exceed an annual treatment area threshold during the calendar year, not on the time when the threshold is actually exceeded.

CONTINUATION OF THE PERMIT

NPDES permits have a fixed term not to exceed five (5) years. Upon expiration of the permit, a new permit may be issued by the Director of EPD in accordance with 391-3-6-.15(12)(a) of the Georgia Rules for Water Quality Control.

If the Director is unable, through no fault of the operator, to issue the new permit before the expiration of the existing permit, the Director shall extend the existing permit.

- a. Operators covered under this general permit that are not required to submit an NOI will automatically remain covered by this permit until the earliest of:
 - i. Authorization for coverage under a reissued permit or a replacement of this permit is granted;
 - ii. The processing of a Notice of Termination consistent with Part I.D. of the permit;
 - iii. A formal permit decision by EPD not to reissue this general permit, at which time EPD will identify a reasonable time period for covered dischargers to seek coverage under an alternative permit. Coverage under this permit will cease when coverage under another permit is granted/authorized; or
 - iv. EPD has informed the permittee that coverage under this general permit has been terminated.
- b. Operators covered under this general permit that are required to submit an NOI will remain covered by this permit if an NOI has been submitted within 180-days of the expiration of this permit and continuing until the earliest of:
 - i. Authorization for coverage under a reissued permit or a replacement of this permit is granted, following a timely and appropriate submittal of a complete NOI requesting authorization to discharge under the new permit and compliance with the requirements of the NOI;
 - ii. The processing of a Notice of Termination consistent with Part I.D.

- iii. A formal permit decision by EPD not to reissue this general permit, at which time EPD will identify a reasonable time period for covered dischargers to seek coverage under an alternative permit. Coverage under this permit will cease when coverage under another permit is granted/authorized; or
- iv. EPD has informed the permittee that coverage under this general permit has been terminated.

TERMINATING COVERAGE

Operators that are not required to submit an NOI are terminated from permit coverage when they no longer have a discharge from the application of pesticides or their discharges are covered under another NPDES permit.

Any owner or operator authorized under this general permit that is required to submit an NOI, including operators required to submit an NOI in response to a declared emergency situation, may request that coverage be terminated by submitting a written Notice of Termination (NOT) to EPD to terminate coverage. NOT forms will be available on EPD's website at the following web address: www.gaepd.org

ALTERNATIVE PERMITS

EPD may require coverage under an individual permit.

PROCEDURES FOR THE FORMULATION OF FINAL DETERMINATIONS

1. Comment Period

EPD proposes to issue a NPDES Pesticide General Permit subject to the effluent limitations and special conditions outlined above. These determinations are tentative.

Georgia Department of Natural Resources
Environmental Protection Division
Wastewater Regulatory Program
4220 International Parkway, Suite 101
Atlanta, Georgia 30354

Persons wishing to comment on or object to the determinations may write to EPD within 30 days of the public notice date. All comments received before that date will be considered in the formulation of final determinations regarding the permit. The permit number should be placed on the envelope next to EPD's address and also at the top of the first page of comments. For additional information contact: Jill Bingham, Wastewater Regulatory Program at (404) 362-2680.

2. Public Hearing

Any applicant, affected State or interstate agency, the Regional Administrator of EPA, or any other interested agency, person, or group of persons may request a

public hearing on a proposed permit, if the request is filed within 30 days following the date of the public notice for the permit. This request must indicate the interest of the party, the reasons why a hearing is requested, and those specific portions of the permit or information to be considered at the public hearing. The Director of EPD shall hold a hearing if it is determined that there is sufficient public interest. If a public hearing is held, notice shall be provided at least 30 days in advance of the hearing date.

The draft permit, comments received, and other information will be available for review at the Wastewater Regulatory Program, located at 4220 International Parkway, Suite 101, Atlanta, Georgia 30354 between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday.

If a public hearing is held, both oral and written comments will be accepted, however, for the accuracy of the record, written comments are encouraged. The Director or his designee reserves the right to fix reasonable limits on the time allowed for oral statements and such other procedural requirements as he deems appropriate.

Following a public hearing, the Director, unless it is decided to deny the permit, may make modifications in the terms and conditions of the proposed permit as may be appropriate and shall issue the permit. Notice of issuance or denial will be circulated to those persons or groups who participated at the hearing, to those persons or groups who submitted written comments to the Director on the proposed permit, and to all persons or groups included on EPD's mailing list.

3. Contested Hearings

Any person who is aggrieved or adversely affected by the issuance or denial of a permit by the Director may petition the Director for a hearing, if the petition is filed in the office of the Director within 30 days from the date of notice of permit issuance or denial. The hearing shall be held in accordance with EPD's Rules for Water Quality Control Section 391-3-6-.01.

Petitions for a contested hearing must include:

- a. The name and address of the petitioner;
- b. The grounds under which the petitioner alleges to be aggrieved or adversely affected by the issuance or denial of a permit;
- c. The reason or reasons why the petitioner takes issue with the action of the Director; and
- d. All other matters asserted by the petitioner which are relevant to the action in question.

4. Issuance of the Permit When No Public Hearing is Held

If no public hearing is held and, after review of the written comments received, the Director determines that a permit should be issued and that the determinations as set forth in the proposed permit are substantially unchanged,

the permit will be issued and will become final in the absence of a request for a contested hearing. Notice of issuance or denial will be circulated to those persons who submitted written comments to the Director on the proposed permit.

If no public hearing is held but the Director determines, after a review of the written comments received, that a permit should be issued but that substantial changes in the proposed permit are warranted, public notice of the revised determinations will be given. Written comments will be accepted as described pursuant to EPD Rules, Section 391-3-6-.06(7)(b). The Director shall provide an opportunity for public hearing on the revised determinations. The opportunity for public hearing and the issuance or denial of a permit shall be in accordance with the procedures stated here.