



Matt Mead, Governor

# Department of Environmental Quality

*To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.*



John Corra, Director

Friday, January 28, 2011

## STATE OF WYOMING PUBLIC NOTICE

### Purpose of Public Notice

The Wyoming Pollutant Discharge Elimination System (WYPDES) Program regulates the discharge of pollutants from point sources into surface waters of the state. Operators of point source discharges are required to receive coverage under a WYPDES discharge permit. The permit contains limitations and conditions that will assure that the state's surface water quality standards are protected. As a result of a recent lawsuit against the Environmental Protection Agency, certain pesticide activities are now considered to be activities that require coverage under a WYPDES permit. The WYPDES Program has developed two general permits to cover these activities.

The purpose of this notice is to invite your comments on these proposed permits before they are issued. Questions regarding any of the proposed permits may be directed to Leah Coleman (307-777-7093). Copies of the proposed permits will be available on our website at <http://deq.state.wy.us>. To object to any of the proposed permits, submit your comments in writing to Leah Coleman, DEQ/WQD, Herschler Bldg. - 4W, Cheyenne, WY 82002 by the date shown below. If no objection to a permit is received by the date shown below, the permit will be issued as proposed. Upon request, a copy of the draft permit, fact sheet, and other pertinent information is available at the address listed above.

Any interested person may submit written comments on a proposed permit and may request a public meeting. A request for a public meeting shall be in writing and shall indicate the interest of the party and the reasons why a meeting is warranted. If the administrator finds that there is a significant degree of public interest in holding such a meeting he may request that the Wyoming Environmental Quality Council (EQC) facilitate such a public meeting. The DEQ/WQD will consider all comments when making the final decision of issuance or denial of the permit and this decision is appealable to the EQC. All comments must be received in writing or fax copies of written comments by 5:00 pm on the date listed below. Comments received by email will not be accepted.

All Comments must be received by Thursday, March 3, 2011.

### General Permit for Major Pesticide Discharges (PGP)

### [Draft Permit](#)

#### **BACKGROUND:**

For many years pesticide uses were regulated by the Environmental Protection Agency (EPA) under the statutory framework of the Federal Insecticide, Fungicide, and Rodenticide Act (**FIFRA**). EPA regulated the sale, distribution and use of pesticides in the United States (U.S.) with FIFRA labeling to assure that the use would not pose unreasonable risks to human health and the environment. In the past 10 years several courts have addressed the question of whether the Clean Water Act (CWA) requires National Pollutant Discharge Elimination System (NPDES) permits for pesticide applications. After several different circuit court decisions on pesticide use over a number of years, EPA on November 27, 2006, issued a final rule clarifying that pesticide use did not require a NPDES permit when applying to or over, including near water, provided that the application of the pesticide is consistent with the FIFRA labeling and where a portion of the pesticide will unavoidably be deposited to the water to target pests.

On January 19, 2007, EPA received petitions for review of their final ruling concerning pesticide uses. Petitions were ultimately filed in all eleven circuit courts, with the National Cotton Council, et al. vs. EPA assigned to the Sixth Circuit Court of Appeals in Cincinnati, Ohio. The Court held that the CWA unambiguously includes biological and chemical pesticides that leave a residue within it's (the CWA) definition of "pollutant." The Court also found that the application of pesticides is considered a point source and thus required to be regulated under the NPDES program. On April 9, 2009 EPA requested a two year stay of the mandate to provide EPA time to develop general permits for pesticide use.

The Wyoming Department of Environmental Quality, Water Quality Division (DEQ/WQD) administers the NPDES program within the boundaries of the state (WYPDES program). This general permit is being established to meet the court ordered mandate for pesticide applications to “waters of the U.S.” in Wyoming.

**APPLICABILITY:**

This general permit for major pesticide applications applies to pesticide applications that exceed the size thresholds established for the various pesticide use categories. This permit does not apply to pesticide applications on waters impaired for a specific pesticide or its degradates, however, the permit may be used for the application of other types of pesticides with different degradates than those listed in the impairment. The effluent limits established in this permit are based upon Chapters 1, 2, and 4 of the *Wyoming Water Quality Rules and Regulations*.

**SUMMARY OF PERMIT CONDITIONS:**

The general permit for pesticide discharges currently authorizes the discharge of both biological and chemical pesticides to “waters of the U.S.” within Wyoming associated with: **Mosquito and Other Flying Insect Pest Control, Weed and Algae Control, Nuisance Animal Control, and Forest Canopy Pest Control. In addition, the permit contains an “Opt Into” Permitting (Opt-In) category to address pesticide use patterns not specifically addressed above.** Authorizations are granted based upon minimum thresholds for each of the above categories and are granted to applicators only. An applicator may be a for-hire applicator (see Appendix A for definition of applicator) or a property owner, land owner, or land decision maker who applies their own pesticides.

The permit includes narrative conditions rather than numerical limits. All limits are based upon Best Management Practices (BMP) for pesticide use and reference the FIFRA label instructions. Site specific control measures are required and the lowest effective pesticide amount must be utilized at each site. Maintenance, regular calibration, and cleaning of equipment are also required. Operating logs are to be kept current. A Pesticide Pollution Prevention Plan (P4) is also a requirement of this permit. Annual reporting is required under all general permit authorizations.

In order to obtain coverage under the general permit for major pesticide discharges, the applicant must complete and submit a “Notice of Intent to Discharge Pesticides” (NOI). The DEQ/WQD will review the NOI and determine if the proposed activity is eligible for coverage under this permit or if the activity must be covered under an individual permit or if it is covered under the minor pesticide discharge general permit. If the proposed activity is eligible for the coverage under this permit, the DEQ/WQD will provide written authorization that coverage has been granted. An NOI is required to be submitted by applicators that know, or reasonably should have known, that the planned application(s) would exceed one or more of the thresholds in Table 1 below. Applicators are required to meet the thresholds by individual annual contract, not in annual accumulation; however only one NOI must be submitted and records must be maintained for any future contracts that may exceed a threshold:

<b>Treatment Area Thresholds</b>		
<b>PGP PART</b>	<b>Pesticide Use Pattern</b>	<b>Threshold<sup>1</sup></b>
Part I, Section 1.1.1 Part I, Section 3.4.2	<b>Mosquitoes and Other Flying Insect Pests:</b>	640 acres of treatment area (larvacide)  6400 acres of treatment area (adulticide)
Part I, Section 1.1.1 Part I, Section 3.4.2	<b>In Water: Weeds and Algae</b>  <b>At Waters Edge: Weeds and Algae</b>	80 acres of treatment area <sup>2</sup>  20 linear miles of treatment area at water’s edge <sup>3</sup>
Part I, Section 1.1.1 Part I, Section 3.4.2	<b>In Water: Nuisance Animals</b>  <b>At Waters Edge: Nuisance Animals</b>	80 acres of treatment area <sup>2</sup>  20 linear miles of treatment area at water’s edge <sup>3</sup>
Part I, Section 1.1.1 Part I, Section 3.4.2	<b>Forest Canopy:</b>	6400 acres of forest canopy
Part I, Section 1.1.1 Part I, Section 3.4.2	<b>Opt-In:</b> Any entity or individual not otherwise eligible or who have a use category not fitting in the five use patterns listed above may Opt-In to permitting for pesticides discharges.	There are no minimum thresholds; all are required to submit an NOI.

1. All pesticide discharges to Class 1 waters of the state are required to submit an NOI regardless of the size of the area.
2. Calculations should include the area of the applications made to: (1) “waters of U.S” within Wyoming, and (2) conveyances with a hydrologic surface connection to “waters of the U.S” within Wyoming at the time of pesticide application.
3. Calculations should include the length of the application made at water’s edge adjacent to: (1) “waters of the U.S.” within Wyoming and (2) conveyances with a hydrologic surface connection to a “water of the U.S.” within Wyoming at the time of pesticide application.

A Notice of Termination (NOT), along with the annual report for the year of the NOT must be received by DEQ/WQD and a letter of acknowledgement accepting the NOT be sent to the permittee before the NOT is effective. Notice of Transfers and Acceptance’s (NOTA) are also required to be received, with any current and outstanding annual reports and a letter of acknowledgement sent to both parties, before the new applicator is allowed to discharge pesticides to “waters of the U.S.” within Wyoming.

#### **PERMIT FEES:**

All WYPDES general permit authorizations are subject to a \$100 annual permit fee for as long as the authorization is active or until the general permit expires. The annual billing cycle is based on the state’s fiscal year from July 1 to June 30. See the Wyoming Environmental Quality Act §35-11-312 for further information.

The General Permit for Major Pesticide Discharges is scheduled to expire on December 31, 2015.

### **General Permit for Minor Pesticide Discharges (PGP)**

### **Draft Permit**

#### **BACKGROUND:**

For many years pesticide uses were regulated by the Environmental Protection Agency (EPA) under the statutory framework of the Federal Insecticide, Fungicide, and Rodenticide Act (**FIFRA**). EPA regulated the sale, distribution, and use of pesticides in the United States (U.S.) with FIFRA labeling to assure that the use would not pose unreasonable risks to human health and the environment. In the past 10 years several courts have addressed the question of whether the Clean Water Act (CWA) requires National Pollutant Discharge Elimination System (NPDES) permits for pesticide applications. After several different circuit court decisions on pesticide use over a number of years, EPA on November 27, 2006, issued a final rule clarifying that pesticide use did not require a NPDES permit when applying to or over, including near water, provided that the application of the pesticide is consistent with the FIFRA labeling and where a portion of the pesticide will unavoidably be deposited to the water to target pests.

On January 19, 2007, EPA received petitions for review of their final ruling concerning pesticide uses. Petitions were ultimately filed in all eleven circuit courts, with the National Cotton Council, et al. vs. EPA assigned to the Sixth Circuit Court of Appeals in Cincinnati, Ohio. The Court held that the CWA unambiguously includes biological and chemical pesticides that leave a residue within it’s (the CWA) definition of “pollutant.” The Court also found that the application of pesticides is considered a point source and thus required to be regulated under the NPDES program. On April 9, 2009 EPA requested a two year stay of the mandate to provide EPA time to develop general permits for pesticide use.

The Wyoming Department of Environmental Quality, Water Quality Division (DEQ/WQD) administers the NPDES program within the boundaries of the state (WYPDES program). This general permit is being established to meet the court ordered mandate for pesticide applications to “waters of the U.S.” in Wyoming.

#### **APPLICABILITY:**

This general permit for minor pesticide applications applies to pesticide applications that do not exceed the size thresholds established for the various pesticide use categories (Table 1, Page 2 of the PGP Fact Sheet). Those who discharge pesticides under this permit do not have to submit a Notice of Intent (NOI), nor do they have to submit annual reports.

This permit does not apply to pesticide applications on waters impaired for a specific pesticide or its degradates, however, the permit may be used for the application of other types of pesticides with different degradates than those listed in the impairment. The effluent limits established in this permit are based upon Chapters 1, 2, and 4 of the *Wyoming Water Quality Rules and Regulations*.

The general permit for pesticide discharges currently authorizes the discharge of both biological and chemical pesticides to “waters of the U.S.” within Wyoming associated with: **Mosquito and Other Flying Insect Pest Control, Weed and Algae Control, Nuisance Animal Control, and Forest Canopy Pest Control**. An applicator may be a for-hire applicator (see Appendix A for definition of applicator) or a property owner, land owner, or land decision maker who applies their own pesticides

The permit includes narrative conditions rather than numerical limits. All limits are based upon Best Management Practices (BMP) for pesticide use and reference the FIFRA label instructions. Site specific control measures are required and the lowest effective pesticide amount must be utilized at each site. Maintenance, regular calibration, and cleaning of equipment are also required.

In order to obtain coverage under this general permit for minor pesticide discharges, the applicant must print off this permit from the Wyoming DEQ website and follow the limits established therein.

The annual thresholds table below is provided for an applicator to determine if they need to submit an NOI for coverage under the General Permit for Major Pesticide Discharges. If an applicator has reasonable belief that they will exceed any one of the thresholds below, then the applicator should contact DEQ/WQD for a copy of the NOI to submit for coverage under the major pesticide discharges general permit. Applicators are required to meet the thresholds by individual annual contract, not in annual accumulation:

<b>Treatment Area Thresholds for Major Pesticide Dischargers</b>		
<b>PGP PART</b>	<b>Pesticide Use Pattern</b>	<b>Threshold<sup>1</sup></b>
Part I, Section 1.1.1 Part I, Section 3.4.2	<b>Mosquitoes and Other Flying Insect Pests:</b>	640 acres of treatment area (larvacide)  6400 acres of treatment area (adulticide)
Part I, Section 1.1.1 Part I, Section 3.4.2	<b>In Water: Weeds and Algae</b>  <b>At Waters Edge: Weeds and Algae</b>	80 acres of treatment area <sup>2</sup>  20 linear miles of treatment area at water's edge <sup>3</sup>
Part I, Section 1.1.1 Part I, Section 3.4.2	<b>In Water: Nuisance Animals</b>  <b>At Waters Edge: Nuisance Animals</b>	80 acres of treatment area <sup>2</sup>  20 linear miles of treatment area at water's edge <sup>3</sup>
Part I, Section 1.1.1 Part I, Section 3.4.2	<b>Forest Canopy:</b>	6400 acres of forest canopy

1. All pesticide discharges to Class 1 waters of the state are required to submit an NOI and receive coverage under the Major Pesticide Discharge General Permit regardless of the size of the area. Appendix B has a list of all Class 1 waters in Wyoming.
2. Calculations should include the area of the applications made to: (1) "waters of U.S." within Wyoming, and (2) conveyances with a hydrologic surface connection to "waters of the U.S." within Wyoming at the time of pesticide application.
3. Calculations should include the length of the application made at water's edge adjacent to: (1) "waters of the U.S." within Wyoming and (2) conveyances with a hydrologic surface connection to a "water of the U.S." within Wyoming at the time of pesticide application.

The General Permit for Minor Pesticide Discharges is scheduled to expire on December 31, 2015.

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