



ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OW-2020-0005; FRL-10018-41-OW]

Draft National Pollutant Discharge Elimination System (NPDES) Pesticide General Permit for Point Source Discharges from the Application of Pesticides; Reissuance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of draft permit and request for public comment.

SUMMARY: All ten Environmental Protection Agency (EPA) Regions are proposing for public comment the draft 2021 National Pollutant Discharge Elimination System (NPDES) pesticide general permit (PGP) – the draft 2021 PGP. The draft 2021 PGP covers point source discharges from the application of pesticides to waters of the United States. Once finalized, the draft 2021 PGP will replace the existing permit, the 2016 PGP, which was issued for a five-year term in the *Federal Register* on October 31, 2016, and expires October 31, 2021, at midnight. The draft 2021 PGP has the same conditions and requirements as the 2016 PGP and would authorize certain point source discharges from the application of pesticides to waters of the United States in accordance with the terms and conditions described therein. EPA proposes to issue this permit for five (5) years in all areas of the country where EPA is the NPDES permitting authority. EPA solicits public comment on all aspects of the draft 2021 PGP. This Federal Register document describes the draft 2021 PGP in general and seeks comment as described in Section III.C, of this document. The Fact Sheet accompanying the permit contains supporting documentation. EPA encourages the public to read the Fact Sheet to understand the draft 2021 PGP better.

DATES: Comments on the draft 2021 PGP must be received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OW-2020-0005, to the *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. EPA-HQ-OW-2020-0005. Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information, see the “Public Participation” heading of the SUPPLEMENTARY INFORMATION section of this document. Out of an abundance of caution for members of the public and our staff, EPA Docket Center and Reading Room are closed to the public with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via <https://www.regulations.gov> or email, as there may be a delay in processing mail and faxes. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: EPA Regional Office listed in Section I.D. of this document, or you can send an email to pgp@epa.gov. You may also contact Chelsea Durant, EPA Headquarters, Office of Water, Office of Wastewater Management at tel.: 202-564-2290 or e-mail: durant.chelsea@epa.gov. Electronic versions of the draft 2021 PGP and Fact Sheet are also available on EPA’s NPDES website at <https://www.epa.gov/npdes/pesticide-permitting>.

SUPPLEMENTARY INFORMATION: This section is organized as follows:

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I. General Information

A. Does This Action Apply to Me?

You may be affected by this action if you apply pesticides under the use patterns in Section III.B of this document that result in a discharge to waters of the United States in one of the geographic areas identified in Section III.A of this document. Potentially affected entities, as categorized in the North American Industry Classification System (NAICS), may include, but are not limited to:

Table 1. - Entities Potentially Regulated by the Draft 2021 PGP		
Category	NAICS	Examples of Potentially Affected Entities
Agricultural entities— General agricultural interests, farmers/producers, forestry, and irrigation.	111 Crop Production	Producers of crops mainly for food and fiber, including farms, orchards, groves, greenhouses, and nurseries that have irrigation ditches requiring pest control.
	113110 Timber Tract Operations	The operation of timber tracts for the purpose of selling standing timber.
	113210 Forest Nurseries Gathering of Forest Products	Growing trees for reforestation and/or gathering forest products, such as gums, barks, balsam needles, rhizomes, fibers, Spanish moss, ginseng, and truffles.
	221310 Water Supply for Irrigation	Operating irrigation systems.
Pesticide parties (includes pesticide manufacturers, other pesticide users/interests, and consultants).	325320 Pesticide and Other Agricultural Chemical Manufacturing.	Formulation and preparation of agricultural pest control chemicals.
Public health parties (includes mosquito or other vector control districts and commercial applicators that service these).	923120 Administration of Public Health Programs	Government establishments primarily engaged in the planning, administration, and coordination of public health programs and services, including environmental health activities.

Resource management parties (includes State departments of fish and wildlife, State departments of pesticide regulation, State environmental agencies, and universities).	924110 Administration of Air and Water Resource and Solid Waste Management Programs	Government establishments primarily engaged in the administration, regulation, and enforcement of air and water resource programs; the administration and regulation of water and air pollution control and prevention programs; the administration and regulation of flood control programs; the administration and regulation of drainage development and water resource consumption programs; and coordination of these activities at intergovernmental levels.
	924120 Administration of Conservation Programs	Government establishments primarily engaged in the administration, regulation, supervision and control of land use, including recreational areas; conservation and preservation of natural resources; erosion control; geological survey program administration; weather forecasting program administration; and the administration and protection of publicly and privately owned forest lands. Government establishments responsible for planning, management, regulation and conservation of game, fish, and wildlife populations, including wildlife management areas and field stations; and other administrative matters relating to the protection of fish, game, and wildlife are included in this industry.
Utility parties (includes utilities)	221 Utilities	Provide electric power, natural gas, steam supply, water supply, and sewage removal through a permanent infrastructure of lines, mains, and pipes.

B. Public Participation

1. Written Comments

Submit your comments, identified by Docket ID No. EPA-HQ-OW-2020-0005, at <https://www.regulations.gov>. Once submitted, comments cannot be edited or removed from the docket. EPA may publish any comment received to its public docket. Do not submit to EPA's docket at <https://www.regulations.gov> any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional

submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

EPA is temporarily suspending its Docket Center and Reading Room for public visitors, with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via <https://www.regulations.gov> as there may be a delay in processing mail and faxes. Hand deliveries or couriers will be received by scheduled appointment only. For further information and updates on EPA Docket Center services, please visit us online at <https://www.epa.gov/dockets>.

EPA continues to monitor information carefully and continuously from the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID-19.

2. Will Public Hearings be Held on This Action?

EPA has not scheduled any public hearings to receive public comment concerning the draft 2021 PGP. However, interested persons may request a public hearing concerning the draft 2021 PGP pursuant to 40 CFR 124.12. Requests for a public hearing must be sent or delivered in writing to the same email address (PGP@epa.gov) as provided above for public comments prior to the close of the comment period. Requests for a public hearing must state the nature of the issues proposed to be raised in the hearing. Pursuant to 40 CFR 124.12, EPA shall hold a public hearing if it finds, on the basis of requests, a significant degree of public interest in a public hearing on the draft 2021 PGP. If EPA decides to hold a public hearing, a public notice of the date, time, and place of the hearing will be made at least 30 days prior to the hearing. Any person may provide written or oral statements and data pertaining to the draft 2021 PGP at any such public hearing.

To facilitate robust opportunities for public participation in the permitting process during any interruptions caused by COVID-19, EPA intends to utilize and encourages the use of electronic and telephonic means of communication to the maximum extent possible under the law. EPA will issue public notices and solicit comments on permit actions via on-line tools and/or email. If public hearings are requested, EPA will seek to conduct those hearings utilizing remote capabilities via telephone and the internet.

C. Finalizing the Draft 2021 PGP

EPA intends to issue a final 2021 PGP on or prior to October 31, 2021 (the expiration date of the 2016 PGP). The final 2021 PGP will be issued after all public comments received during the public comment period have been considered and any appropriate changes are made to the draft 2021 PGP. EPA will include its response to significant comments received in the docket as part of the final permit decision. Once the final 2021 PGP becomes effective, eligible Operators may seek authorization under the new PGP as outlined in the permit. To ensure uninterrupted permit coverage from the 2016 PGP to the 2021 PGP, Operators who are required to submit a Notice of Intent (NOI) must submit their NOI for coverage under the new permit prior to discharge as outlined in the permit (no later than 10 or 30 days before discharge). See Part 1.2.4 of the draft 2021 PGP.

D. Who Are the EPA Regional Contacts for This Draft Permit?

For EPA Region 1, contact George Papadopoulos at tel.: (617) 918-1579; or e-mail at papadopoulos.george@epa.gov.

For EPA Region 2, contact Stephen Venezia at tel.: (212) 637-3856; or e-mail at venezia.stephen@epa.gov. For Puerto Rico, contact Sergio Bosques at tel.: (787) 977-5838 or bosques.sergio@epa.gov.

For EPA Region 3, contact Carissa Moncavage at tel.: (215) 814-5798; or e-mail at moncavage.carissa@epa.gov.

For EPA Region 4, contact Sam Sampath at tel.: (404) 562-9229; or e-mail at sampath.sam@epa.gov.

For EPA Region 5, contact John Colletti at tel.: (312) 886-6106; or e-mail at colletti.john@epa.gov.

For EPA Region 6, contact William F. Cooper at tel.: (214) 665-6443 or e-mail at cooper.williamf@epa.gov.

For EPA Region 7, contact Alex Owutaka at tel.: (913) 551-7584 or e-mail at: owutaka.alex@epa.gov.

For EPA Region 8, contact Amy Clark at tel.: (303) 312-7014 or e-mail at: clark.amy@epa.gov.

For EPA Region 9, contact Pascal Mues at tel.: (415) 972-3768 or e-mail at: mues.pascal@epa.gov.

For EPA Region 10, contact Bilin Basu at tel.: (206) 553-0029 or e-mail at: basu.bilin@epa.gov.

II. Background

Section 301(a) of the Clean Water Act (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 any pollutant to navigable waters from any point source and (B) any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft.” 33 U.S.C. 1362(12). A “point source” is any “discernible, confined and discrete conveyance” but does not include “agricultural stormwater discharges and return flows from irrigated agriculture.” 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 the Section 301 prohibition by obtaining authorization to discharge (referred to herein as “coverage”) under a Section 402

NPDES permit (33 U.S.C. 1342). Under Section 402(a), EPA may “issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding Section 1311(a)” upon certain conditions required by the Act.

EPA issued the first Pesticide General Permit (“2011 PGP”) on October 31, 2011, in response to the United States Sixth Circuit Court of Appeals ruling vacating EPA’s 2006 Final Rule on Aquatic Pesticides. *National Cotton Council of America. v. EPA*, 553 F.3d 927 (6th Cir. 2009). EPA developed the PGP to control point source discharges of biological pesticides and chemical pesticides that leave a residue into waters of the United States. The PGP provides coverage for certain point source discharges of pollutants to waters of the United States in areas where EPA is the NPDES permitting authority. In 2016, EPA issued the second PGP (“2016 PGP”). The 2016 PGP will expire at midnight on October 31, 2021.

III. Scope and Applicability

A. Geographic Coverage

EPA provides permit coverage for classes of point source discharges of pollutants that occur in areas where EPA is the NPDES permitting authority. The geographic coverage of the draft 2021 PGP is listed in Appendix C of the draft permit.

B. Categories of Pesticide Use-Patterns Covered

The draft 2021 PGP has the same requirements and conditions as EPA’s 2016 PGP and regulates the same discharges of pollutants to waters of the United States from the application of (1) biological pesticides, and (2) chemical pesticides that leave a residue. The draft 2021 PGP applies to the following same pesticide use patterns:

- **Mosquito and Other Flying Insect Pest Control** - to control public health/nuisance and other flying insect pests that develop or are present during a portion of their life cycle in or above standing or flowing water. Public health/nuisance and other flying insect pests in this use category include mosquitoes and black flies.

- **Weed and Algae Pest Control** - to control weeds, algae, and pathogens that are pests in water and at water's edge, including ditches and/or canals.
- **Animal Pest Control** - to control animal pests in water and at water's edge. Animal pests in this use category include fish, lampreys, insects, mollusks, and pathogens.
- **Forest Canopy Pest Control** – application of a pesticide to a forest canopy to control the population of a pest species (*e.g.*, insect or pathogen) where, to target the pests effectively, a portion of the pesticide unavoidably will be applied over and deposited to water.

The scope of activities encompassed by these pesticide use patterns is described in greater detail in Part III.1.1 of the Fact Sheet for the draft 2021 PGP.

C. Summary of the Permit and Changes from the 2016 PGP

Once issued, the final 2021 PGP will replace the 2016 PGP, which was issued for a five-year term in the *Federal Register* on October 31, 2016 (81 FR 75816), and expires October 31, 2021, at midnight. The draft 2021 PGP is similar to the 2016 PGP, and is structured in the same nine parts: (1) Coverage under This Permit, (2) Technology-Based Effluent Limitations, (3) Water Quality-Based Effluent Limitations, (4) Monitoring, (5) Pesticide Discharge Management Plan, (6) Corrective Action, (7) Recordkeeping and Annual Reporting, (8) EPA Contact Information and Mailing Addresses, and (9) Permit Conditions Applicable to Specific States (including Territories) and Indian Country. Additionally, as with the 2016 PGP, the draft 2021 PGP includes nine appendices with additional conditions and guidance for permittees: (A) Definitions, Abbreviations, and Acronyms, (B) Standard Permit Conditions, (C) Areas Covered, (D) Notice of Intent (NOI) form, (E) Notice of Termination (NOT) form, (F) Pesticide Discharge Evaluation Worksheet (PDEW), (G) Annual Reporting Template, (H) Adverse Incident Report Template, and (I) Endangered Species Procedures.

The following is a summary of the draft 2021 PGP's proposed requirements:

- The PGP defines "Operator" (*i.e.*, the entity required to obtain NPDES permit coverage for discharges) to include any (a) *Applicator* who performs the application of pesticides

or has day-to-day control of the application of pesticides that results in a discharge to waters of the United States, or (b) *Decision-maker* who controls any decision to apply pesticides that results in a discharge to waters of the United States. There may be instances when a single entity acts as both an Applicator and a Decision-maker.

- All Applicators are required to minimize pesticide discharges by using only the amount of pesticide and frequency of pesticide application necessary to control the target pest, maintain pesticide application equipment in proper operating condition, control discharges as necessary to meet applicable water quality standards, and monitor for and report any adverse incidents.
- All Decision-makers are required, to the extent not determined by the Applicator, to minimize pesticide discharges by using only the amount of pesticide and frequency of pesticide application necessary to control the target pest. All Decision-makers are also required to control discharges as necessary to meet applicable water quality standards and monitor for and report any adverse incidents.
- Certain Decision-makers [*i.e.*, any agency for which pest management for land resource stewardship is an integral part of the organization's operations, entities with a specific responsibility to control pests (*e.g.*, mosquito and weed control districts), local governments or other entities that apply pesticides in excess of specified annual treatment area thresholds, and entities that discharge pesticides to Tier 3 waters (Outstanding National Resource Waters, 40 CFR 131.12(a)(3)) or to waters of the United States containing National Marine Fisheries Service (NMFS) Listed Resources of Concern] are required also to submit an NOI to obtain authorization to discharge and to implement pest management options to reduce the discharge of pesticides to waters of the United States. Within this group, certain large Decision-makers (any (1) public entity that serves a population greater than 10,000 or (2) private enterprise that exceeds the Small Business Administration size standard as identified in 13 CFR 121.201) must also develop a

Pesticide Discharge Management Plan (PDMP), submit annual reports, and maintain detailed records. Certain small Decision-makers (any (1) public entity that serves a population of 10,000 or less or (2) private enterprise that does not exceed the Small Business Administration size standard as identified in 13 CFR 121.201) are required to complete a pesticide discharge evaluation worksheet for each pesticide application (in lieu of the more comprehensive PDMP), an annual report, and detailed recordkeeping.

- Deadlines for submittal of a Notice of Intent to be covered, if required, are provided in Part 1.2.3, Table 1-2, of the draft 2021 PGP.

EPA encourages the public to review and comment on all aspects and provisions in the draft 2021 PGP. The draft 2021 PGP is similar to the 2016 PGP but includes minor changes which are listed below. See the Fact Sheet accompanying the draft 2021 PGP for further discussion.

- (1) Removes the out of date NOI provision that provided automatic coverage for all Operators until January 12, 2017.
- (2) Replaces the requirement to use EPA's eNOI system with EPA's NPDES eReporting Tool (NeT) when preparing and submitting NOIs, NOTs, and annual reports.
- (3) Updates Appendix A, Definitions, Abbreviations, and Acronyms to include the terms "Pesticide discharges to waters of the United States from pesticide application" and "pesticide residue," as defined in 40 CFR 122.2.
- (4) Modifies Appendix B, Standard Permit Conditions, to ensure consistency with 40 CFR 122.41.
- (5) Updates Appendix C, Areas Covered, to add Indian Country within Virginia and Indian Country within Indiana, and to remove the State of Idaho.

IV. Cost Impacts of the Draft 2021 PGP

Based on the cost analyses performed for the 2011 PGP and 2016 PGP, EPA expects the costs that covered entities, including small businesses, will bear to comply with this permit will be minimal. Since the draft 2021 PGP is similar to the 2016 PGP, EPA projects that the draft

2021 PGP will have no incremental cost impacts on regulated entities. Copies of EPA's cost impact analyses for the 2011 PGP and 2016 PGP are available in the docket for this permit. See the Fact Sheet accompanying this draft permit for further discussion.

V. Executive Orders 12866 and 13563

The draft 2021 PGP is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

VI. Executive Order 13175: Consultation and Coordination with Indian Tribal

Governments

This action does not have tribal implications as specified in E.O. 13175. It will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. EPA directly implements the NPDES Program, including the 2021 PGP when it is finalized, in Indian Country; therefore, in compliance with EPA Policy on Consultation and Coordination with Indian Tribes, EPA consulted with tribal officials early in the process to permit tribes to have meaningful and timely input into the renewal of the PGP. To gain an understanding of, and where necessary, to address tribal implications of the draft 2021 PGP, EPA conducted the following activities:

- May 8, 2020 - EPA emailed notification letters to tribal leaders initiating consultation and coordination on the renewal of the PGP. The initiation letter was also posted on EPA's Tribal Consultation Opportunities Tracking System (TCOTS) at <https://tcots.epa.gov/>.
- June 9, 2020 - EPA held an informational webinar open to all tribal representatives and reserved the last part of the webinar for official consultation comments. Fourteen tribal representatives participated in the webinar. No official comments were received during the webinar. The presentation was posted on the tribal portal website at <http://tcots.epa.gov>.

EPA received no comments from tribes and tribal organizations during the formal consultation period. Records of the tribal informational webinar and a consultation summary are included in the docket for this proposed action (Docket ID No. EPA-HQ-OW-2020-0005).

Authority: Clean Water Act, 33 U.S.C. 1251 et seq.

Dated: December 14, 2020.

Dennis Deziel,

Regional Administrator, EPA Region 1.

Dated: December 14, 2020.

Javier Laureano,

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[FR Doc. 2021-00834 Filed: 1/14/2021 8:45 am; Publication Date: 1/15/2021]