

USDA Forest Service Update

July 2011

SUBJECT: NPDES Permitting for Pesticide Use



Issue

New National Pollutant Discharge Elimination System (NPDES) permit requirements under the Clean Water Act for pesticide discharges to Waters of the United States are proposed to go into effect on October 31, 2011.

Background

The Forest Service and State agencies have enjoyed long-standing and mutually beneficial partnerships in the protection and management of native fish and wildlife populations on National Forest System lands, including activities to prevent and control invasive species threatening aquatic and terrestrial habitats. During these collaborative activities, the Forest Service has worked with State agencies and other partners to implement an integrated pest management approach; often utilizing chemical (pesticide) control techniques against these exotic invaders in or along lakes, streams, wetlands, and other aquatic areas. These activities can range from herbicide applications necessary for riparian habitat restoration, for wildfire risk reduction, or for piscicide applications to eradicate invasive fish populations.

In 2009, the Sixth Circuit Court of Appeals (*National Cotton Council, et al. v. EPA*) vacated EPA's 2006 Final Rule on Aquatic Pesticides that said NPDES permits were not required for applications of pesticides to U.S. waters. Under the 2006 rule, pesticide use previously was managed primarily under the provisions of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA, as amended). As a result of the court's decision, direct discharges to waters of the U.S. from the application of pesticides will now require NPDES permits under the provisions of the Clean Water Act (CWA). In response, EPA is developing an NPDES general permit, also known as the Pesticide General Permit (PGP), for application of pesticides into/on/over waters of the U.S. Pesticide use activities conducted on National Forests and Grasslands will be subject to the applicable requirements and provisions outlined in the PGP. Initially, this new NPDES permitting mandate was to take effect in April 2011; but, in March 2011, EPA was granted an extension by the court until October 31, 2011. At that time, EPA will establish, and begin implementation of, the NPDES permit program for pesticides.

In addition, State agencies delegated authority by EPA to issue NPDES permits are developing similar permitting programs which generally follow EPA's PGP requirements. Pesticide activities conducted on National Forest System lands may also be subject to these State NPDES permit provisions where applicable. However, until the October 31, 2011 deadline passes, the EPA Rule of November 2006 (i.e. 40 CFR 122.3 (h)) is still in effect, and it excludes FIFRA-compliant pesticide applications from the NPDES program. Therefore, until the October 31, 2011 deadline, States do not have the requisite delegation of CWA authority from EPA to apply NPDES permit requirements to Federal agencies for pesticide application upon Federal lands.

To meet our watershed stewardship obligations and legal mandates to protect lakes, streams, wetlands and other waters of the U.S. under the Clean Water Act, the Forest Service plans to issue national guidance on complying with EPA's PGP for pesticide discharges and related NPDES permit provisions at the State level where applicable.

CONTACTS

Steve Covell, USFS Pesticide Use Program Manager, 703-605-5342;
Mike Ielmini, NFS National Invasive Species Program Coordinator, 202-205-1049;
Anne Zimmermann, Director, WFWARP, azimmermann@fs.fed.us, 202-205-1671.