NPDES General Permit for Pesticide Application Discharges OHG870001, Effective October 31, 2011

Q. Are all pesticide applications covered by this permit?

A. No. Only pesticide applications "in, over or near" surface waters are covered. Applications made strictly to land are not covered; nor are very small scale aerial applications that are not over water (spraying a tree that is not located near a surface water, for example). Surface waters include lakes, ponds, wetlands, rivers, streams and ditches that are connected to either other surface waters of the state or to ground water.

Note that even small-scale uses of pesticide are covered by the permit if the application meets the definition of "in, over or near" a surface water. The federal Clean Water Act and state laws do not exempt discharges that are small or minimal volume.

Q. What does "near" a surface water mean?

A. The federal court that required NPDES permits did not set a technical definition of "near". To the court, "near" means any application where pesticide is unavoidably deposited in a surface water. This includes spraying herbicide on ditch banks, but could conceivably include other types of applications. For example, spraying a tree within a few feet of a surface water would likely cause deposition of the pesticide on the water and would be covered by the permit.

Ohio EPA has not tried to set technical criteria for "near" waters because doing so would not limit an applicator's liability under the Clean Water Act. If Ohio EPA defined what is "near" waters in the permit's applicability, and a discharge outside that distance unavoidably deposited on a surface water, the applicator could face a citizen suit for discharging pesticide without a permit.

Because of this, Ohio EPA has used the federal court's conceptual definition of "near" in the permit. The Agency recommends that pesticide applicators meet the applicable permit conditions if they are applying pesticide that has any potential to deposit on surface waters.

Q. If pesticide drifts from a land application over water, is that covered by the permit?

A. No, but you should check to see if that is allowed under pesticide use regulations. Certain pesticides are permitted by the Ohio Department of Agriculture for land use, but not for water. If one of these pesticides enters the water by drift, you may be in violation of Agriculture Department rules.

In general, a good practice is to avoid spraying during windy conditions. It is more difficult to reach your target under these conditions, leading to a higher pesticide use and more cost.

Q. Could this permit apply to homeowners?

A. It would if applications occur "in, over or near" a surface water.

Q. Does this permit apply to farmers?

A. It could in rare circumstances. Ohio EPA believes that most pesticide use by farmers would not be subject to this permit. First, the Clean Water Act exempts agriculture from NPDES permits for pesticides in storm water or irrigation return water. Essentially if the pesticide is applied to land and runs off, it is not subject to the permit. However, if a farmer applies pesticide to a ditch, ditch bank, swale or wetland, those applications are covered by the permit (except that prior converted wetlands are not covered).

Q. Does my municipal separate storm sewer system (MS4) NPDES permit cover these discharges?

A. No. Your MS4 permit covers certain incidental pesticide discharges, such as pesticides in runoff from applications on land, but does not cover pesticide applications done "in, over or near" water. For example if a pesticide is applied to lawns or athletic fields, and traces of that pesticide or its residues run off into the MS4 system, those discharges are covered by the MS4 permit. In contrast, mosquito treatments, including fogging, would need coverage under the Pesticide General Permit because those applications cause pesticide to be deposited on surface water.

Q. How do I apply for permit coverage?

A. Most pesticide discharges covered by this permit do not need to apply. The permit covers them automatically – it works like a permit-by-rule. Activities not requiring an application include: mosquito fogging, spraying of ditch banks, most utility right-of-way spraying and invasive plant controls in parks, conservation areas and impact mitigation projects. For-hire applicators also do not need to submit applications.

Only people authorizing the following pesticide discharges need to submit a Notice-of-Intent (NOI) to be covered:

1. Pesticides applied directly to public water supply reservoirs;
2. Pesticides applied to very high quality waters (waters classified by Ohio EPA as Outstanding National Resource Waters, Outstanding State Waters, or Superior High Quality Waters other than Lake Erie);
3. Pesticides applied to waters to control non-native fish populations;

4. Pesticides applied to more than 80 acres of wetlands per year; and

5. Pesticides applied to forests or applied aerially to Lake Erie.

Q. Do you need to submit an NOI if you exceed a treatment area threshold?

A. Only if you exceed the 80-acre wetland acreage mentioned above. The treatment area thresholds mainly trigger additional documentation and reporting requirements in the permit. The treatment area thresholds are 6400 acres for mosquito/insect control and for forest pest control; 80 acres for wetland and lake applications; and 20 linear miles for stream/ditch bank applications or intrusive vegetation control.

Q. What documentation and reporting requirements are associated with exceeding an annual threshold?

A. All of these applications require an annual report to Ohio EPA. This is a short form that needs to be emailed or mailed to Ohio EPA at the end of a calendar year (beginning in 2012). Ohio EPA is still developing the form, but it will likely contain only the information required by the permit.

Most applications exceeding a threshold require a Pesticide Discharge Management Plan to document how the permittee is meeting the general limitations in Part III of the permit (invasive plant control in conservation and mitigation areas is exempt from this requirement). Some pesticide uses require Integrated Pest Management Practices – mosquito/insect control, forest pest control, weed and algae control and nuisance animal control.

Q. Suppose I exceed an area threshold in the first year of the permit and submit an annual report. If I do not exceed a threshold in subsequent years, do I need to submit an annual report?

A. Yes. You would need to submit annual reports for the remainder of the 5-year permit cycle. Ohio EPA will have a box on the annual report form where you can check off "Did not exceed area threshold". When the permit is reissued, you would not need to submit another annual report until you exceeded an area threshold again.

Q. I am a small business or a small public entity. Do I have to meet the same requirements as larger businesses and government units?

A. You do not need to meet all of the same requirements. There is significantly less paperwork and documentation if you are a smaller entity. In this permit, a small business is a private business that

employs fewer than 100 people and is independently owned; a small public entity is a government unit serving less than 10,000 people.

If you meet this definition, you do not have to do Integrated Pest Management; you do not have to prepare a Pesticide Discharge Management Plan even if you exceed a treatment area threshold.

You would still need to comply with the basic terms of the permit, and if you exceed a treatment area threshold, you would need to submit an annual report to Ohio EPA.

Q. Do I need to monitor the pesticide to show I can meet the MCL requirement for quarries, borrow pits and ponds over 5 acres?

A. No. You need to estimate the volume of the pond that you are applying pesticide to, and calculate a concentration for the entire pond. You would need to apply pesticide in a dose so that the entire pond mixed concentration meets the MCL.

Q. Do I have to report an adverse incident if it was caused by something other than the pesticide?

A. Yes. The permit requires reporting of any adverse incident. Reporting the incident is not admitting liability. Ohio EPA recognizes that impacts may occur that have nothing to do with the pesticide application.

Q. The permit prohibits foaming or alterations of the natural color of the water. Some pesticides cause changes in color or slight foaming. Are these violations of the permit?

A. If these effects occur in the treatment area – No. If toxicity or aesthetic violations occur outside of the treatment area, these would be violations of the permit.

Q. Are there any fees associated with this permit?

A. Only if you need to submit an NOI. There is a $200.00 application fee associated with the NOI application.