ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2010–0257; FRL–9487–9]

RIN 2040–ZA08

Final National Pollutant Discharge Elimination System (NPDES) Pesticide General Permit for Point Source Discharges From the Application of Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final permit.

SUMMARY: This notice announces the NPDES general permit for point source discharges from the application of pesticides to waters of the United States, also referred to as the Pesticide General Permit (PGP). A draft PGP was published on June 4, 2010 for public comment. 75 FR 31775. All ten EPA Regions today are issuing the final NPDES PGP, which will be available in those areas where EPA is the NPDES permitting authority. This action is in response to the Sixth Circuit Court's ruling that vacated an EPA regulation that excluded discharges of biological pesticides and chemical pesticides that leave a residue from the application of pesticides to, or over, including near waters of the United States from the need to obtain an NPDES permit if the application was done in accordance with other laws. EPA requested and was granted a stay of the Court's mandate to provide time to draft and implement the permit noticed today. The stay of the mandate expires on October 31, 2011; after which, NPDES permits will be required for such point source discharges to waters of the United States.

DATES: This action is effective on October 31, 2011.

FOR FURTHER INFORMATION CONTACT: For further information on this final NPDES general permit, contact the appropriate EPA Regional Office listed in Section I.F, or contact Jack Faulk, EPA Headquarters, Office of Water, Office of Wastewater Management at tel.: (202) 564–0768 or email: *faulk.jack@epa.gov.*

SUPPLEMENTARY INFORMATION: This supplementary information section is organized as follows:

Table of Contents

I. General Information
- A. Does this action apply to me?
- B. How can I get copies of this document and other related information?
- C. Who are the EPA regional contacts for this final permit?

II. Statutory and Regulatory History
- A. Clean Water Act
- B. NPDES Permits
- C. History of Pesticide Application Regulations Under FIFRA
- D. Court Decisions Leading to the CWA Regulation Concerning Pesticide Applications
- E. 2006 Agency Rulemaking Excluding Discharges from Pesticide Applications From NPDES Permitting
- F. Legal Challenges to the 2006 NPDES Pesticides Rule and Resulting Court Decision
- G. Publication of the Draft NPDES Pesticide General Permit

III. Scope and Applicability of This NPDES Pesticide General Permit
- A. Geographic Coverage
- B. Categories of Facilities Covered
- C. Summary of Permit Terms and Requirements

IV. Economic Impacts of the Pesticide General Permit

V. Executive Orders 12866 and 13563

I. General Information

A. Does this action apply to me?

You may be affected by this action if your application of pesticides, under the use patterns in Section III.B., results in a discharge to waters of the United States in one of the geographic areas identified in Section III.A. 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 THIS PERMIT

Category	NAICS	Examples of potentially affected entities
Agriculture parties—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 113210 Forest Nurseries Gathering of Forest Products.	The operation of timber tracts for the purpose of selling standing timber. 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.

TABLE 1—ENTITIES POTENTIALLY REGULATED BY THIS PERMIT—Continued

Category	NAICS	Examples of potentially affected entities
	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. How can I get copies of this document and other related information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. EPA–HQ–OW–2010–0257. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. Although all documents in the docket are listed in an index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. EPA policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Publicly available docket materials are available in hard copy at the EPA Docket Center Public Reading Room, open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the United States government on-line source for federal regulations at *http://www.regulations.gov.*

Electronic versions of this final permit and fact sheet are available on EPA's NPDES Web site at *http://www.epa.gov/npdes/pesticides.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.regulations.gov* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the Docket Facility identified in Section I.A.1.

C. Who are the EPA regional contacts for this final permit?

For EPA Region 1, contact George Papadopoulos at USEPA Region 1, 5 Post Office Square—Suite 100, Boston, MA 02109–3912; or at tel.: (617) 918–1579; or email at *papadopoulos.george@epa.gov.*

For EPA Region 2, contact Maureen Krudner at USEPA Region 2, 290 Broadway, New York, NY 10007–1866; or tel.: (212) 637–3874; or email at *krudner.maureen@epa.gov.*

For EPA Region 3, contact Peter Weber at USEPA Region 3, 1650 Arch Street, Mail Code: 3WP41, Philadelphia, PA 19103–2029; or at tel.: (215) 814–5749; or email at *weber.peter@epa.gov.*

For EPA Region 4, contact Sam Sampath at USEPA Region 4, 61 Forsyth Street SW., Atlanta, CA 30303–8960; or at tel.: (404) 562–9229; or email at *sampath.sam@epa.gov.*

For EPA Region 5, contact Morris Beaton at USEPA Region 5, 77 West Jackson Boulevard, Mail Code: WN16J, Chicago, IL 60604–3507; or at tel.: (312) 353–0850; or email at *beaton.morris@epa.gov.*

For EPA Region 6, contact Jenelle Hill at USEPA Region 6, 1445 Ross Avenue, Suite 1200, Mail Code: 6WO, Dallas, TX 75202–2733; or at tel.: (214) 665–9737 or email at *hill.jenelle@epa.gov.*

For EPA Region 7, contact Kimberly Hill at USEPA Region 7, 901 North Fifth Street, Mail Code: XX, Kansas City, KS 66101; or at tel.: (913) 551–7841 or email at: *hill.kimberly@epa.gov.*

For EPA Region 8, contact David Rise at USEPA Region 8, Montana Operations Office, Federal Building, 10 West 15th Street, Suite 3200, Mail Code: 8MO, Helena, MT 59626; or at tel.: (406) 457–5012 or email at: *rise.david@epa.gov.*

For EPA Region 9, contact Pascal Mues, USEPA Region 9, 75 Hawthorne Street, Mail Code: WTR–5, San Francisco, CA 94105; or at tel.: (415) 972–3768 or email at: *mues.pascal@epa.gov.*

For EPA Region 10, contact Dirk Helder, USEPA Region 10 Idaho Operations Office, 1435 North Orchard Street, Boise, ID 83706 or at tel.: (208) 378–5749 or email at: *helder.dirk@epa.gov.*

II. Statutory and Regulatory History

A. Clean Water Act

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, (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).

One way a person may discharge a pollutant without violating the section

301 prohibition is by obtaining authorization to discharge (referred to herein as "coverage") under a section 402 National Pollutant Discharge Elimination System (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.

B. NPDES Permits

An NPDES permit authorizes the discharge of a specified amount of a pollutant or pollutants into a receiving water under certain conditions. The NPDES program relies on two types of permits: Individual and general. An individual permit is a permit specifically tailored for an individual discharger. Upon receiving the appropriate permit application(s), the permitting authority, *i.e.*, EPA or a state or territory, develops a draft individual permit for public comment for that particular discharger based on the information contained in the permit application (*e.g.*, type of activity, nature of discharge, receiving water quality). Following consideration of public comments, a final individual permit is then issued to the discharger for a specific time period (not to exceed 5 years) with a provision for reapplying for further permit coverage prior to the expiration date.

In contrast, a general permit covers multiple facilities/sites/activities within a specific category for a specific period of time (not to exceed 5 years). For general permits, EPA, or a state authorized to administer the NPDES program, develops and issues the general permit with dischargers then obtaining coverage under the already issued general permit, typically through submission of a Notice of Intent (NOI). A general permit is also subject to public comment, as was done for this permit on June 4, 2010, and is developed and issued by a permitting authority (in this case, EPA).

Under 40 CFR 122.28, general permits may be written to cover categories of point sources having common elements, such as facilities that involve the same or substantially similar types of operations, that discharge the same types of wastes, or that are more appropriately regulated by a general permit. Given the vast number of pesticide applicators requiring NPDES permit coverage and the discharges common to these applicators, EPA believes that it makes administrative sense to issue this general permit, rather than issuing individual permits to each applicator. Entities still have the ability to seek individual permit coverage. The general permit approach allows EPA to allocate resources in a more efficient manner and to provide more timely coverage. As with any permit, the CWA requires the general permit to contain technology-based effluent limitations, as well as any more stringent limits when necessary to meet applicable state water quality standards. Courts have approved of the use of general permits. See *e.g.*, *Natural Res. Def. Council v. Costle*, 568 F.2d 1369 (DC Cir. 1977); *EDC* v. *U.S. EPA*, 344 F.3d 832, 853 (9th Cir. 2003).

C. History of Pesticide Application Regulation Under FIFRA

EPA regulates the sale, distribution and use of pesticides in the United States under the statutory framework of FIFRA to ensure that, when used in conformance with FIFRA labeling directions, pesticides will not pose unreasonable risks to human health and the environment. All new pesticides must undergo a rigorous registration procedure under FIFRA during which EPA assesses a variety of potential human health and environmental effects associated with use of the product. Under FIFRA, EPA is required to consider the effects of pesticides on the environment by determining, among other things, whether a pesticide "will perform its intended function without unreasonable adverse effects on the environment," and whether "when used in accordance with widespread and commonly recognized practice [the pesticide] will not generally cause unreasonable adverse effects on the environment." 7 U.S.C. 136a(c)(5). In performing this analysis, EPA examines, among other things, the ingredients of a pesticide, the intended type of application site and directions for use, and supporting scientific studies for human health and environmental effects and exposures. The applicant for registration of the pesticide must submit data as required by EPA regulations.

When EPA approves a pesticide for a particular use, the Agency imposes labeling restrictions governing such use. Compliance with the labeling requirements ensures that the pesticide serves an intended purpose and avoids unreasonable adverse effects. It is illegal under Section 12(a)(2)(G) of FIFRA to use a registered pesticide in a manner inconsistent with its labeling. States have primary authority under FIFRA to enforce "use" violations, but both the States and EPA have ample authority to prosecute pesticide misuse when it occurs.

D. Court Decisions Leading to the CWA Regulation Concerning Pesticide Applications

Over the past ten years, several courts addressed the question of whether the CWA requires NPDES permits for pesticide applications. These cases resulted in some confusion among the regulated community and other affected citizens about the applicability of the CWA to pesticides applied to waters of the United States. In 2001, the U.S. Court of Appeals for the Ninth Circuit held in *Headwaters, Inc.* v. *Talent Irrigation District* (*Talent*) that an applicator of herbicides was required to obtain an NPDES permit under the circumstances before the court. 243 F.3rd 526 (9th Cir. 2001).

In 2002, the Ninth Circuit in *League of Wilderness Defenders et al.* v. *Forsgren* (*Forsgren*) held that the application of pesticides to control Douglas Fir Tussock Moths in National Forest lands required an NPDES permit. 309 F.3d 1181 (9th Cir. 2002). The court in *Forsgren* did not analyze the question of whether the pesticides applied were pollutants, because it incorrectly assumed that the parties agreed that they were (in fact, the United States expressly reserved its arguments on that issue in its brief to the District Court. Id. at 1184, n.2). The court instead analyzed the question of whether the aerial application of the pesticide constituted a point source discharge, and concluded that it did. Id. at 1185).

Since *Talent* and *Forsgren*, California, Nevada, Oregon, and Washington, all of which are within the Ninth Circuit, have issued permits for the application of certain types of pesticides (*e.g.*, products to control aquatic weeds and algae and products to control mosquito larvae). Other States have continued their longstanding practice of not issuing permits to people who apply pesticides to waters of the United States. These varying practices reflected the substantial uncertainty among regulators, the regulated community, and the public regarding how the CWA applies to pesticides that have been properly applied and used for their intended purpose.

Additionally, the Second Circuit Court of Appeals addressed the applicability of the CWA's NPDES permit requirements to pesticide applications. In *Altman* v. *Town of Amherst* (*Altman*), the court vacated and remanded for further development of the record a District Court decision holding that the Town of Amherst was not required to obtain an NPDES permit to spray mosquitocides over waters of the United States. 47 Fed. Appx. 62, 67

(2nd Cir. 2002). The United States filed an amicus brief setting forth the Agency's views in the context of that particular case. In its opinion, the Second Circuit stated that "[u]ntil the EPA articulates a clear interpretation of current law—among other things, whether properly used pesticides released into or over waters of the United States can trigger the requirement for NPDES permits * * *—the question of whether properly used pesticides can become pollutants that violate the CWA will remain open." Id. at 67.

In 2005, the Ninth Circuit again addressed the CWA's applicability to pesticide applications. In *Fairhurst* v. *Hagener*, the court held that pesticides applied directly to a lake to eliminate non-native fish species, where there are no residues or unintended effects, are not "pollutants" under the CWA because they are not chemical wastes. 422 F.3d 1146 (9th Cir. 2005).

Recently, the Second Circuit reaffirmed the recent Sixth Circuit decision in ruling that trucks and helicopters that sprayed pesticides should be considered point sources under the CWA. *Peconic Baykeeper Inc.* v. *Suffolk County*, 600 F.3d 180 (2nd Cir. 2010).

E. 2006 Agency Rulemaking Excluding Discharges From Pesticide Applications from NPDES Permitting

On November 27, 2006 (71 FR 68483), EPA issued a final rule (hereinafter called the "2006 NPDES Pesticides Rule") clarifying two specific circumstances in which an NPDES permit is not required to apply pesticides to or over, including near water provided that the application is consistent with relevant Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) requirements. They are: (1) The application of pesticides directly to water to control pests; and (2) the application of pesticides to control pests that are present over, including near, water where a portion of the pesticides will unavoidably be deposited to the water to target the pests.

F. Legal Challenges to the 2006 NPDES Pesticide Rule and Resulting Court Decision

On January 19, 2007, EPA received petitions for review of the 2006 NPDES Pesticides Rule from both environmental and industry groups. Petitions were filed in eleven circuit courts with the case, *National Cotton Council, et al*, v. *EPA*, assigned to the Sixth Circuit Court of Appeals. On January 9, 2009, the Sixth Circuit vacated EPA's 2006 NPDES Pesticides Rule under a plain language reading of the CWA. *National Cotton Council of America* v. *EPA*, 553 F.3d 927 (6th Cir. 2009). The Court held that the CWA unambiguously includes "biological pesticides," and "chemical pesticides" that leave a residue within its definition of "pollutant." Specifically, the application of chemical pesticides that leaves no residue is not a pollutant. The Court also found that the application of pesticides is from a point source. Thus, point source discharges of biological pesticides and chemical pesticide residues to Waters of the United States require an NPDES permit. This also means (as also supported by other court cases) that point source discharges to waters of the United States from pesticides applied for forest pest control activities need to obtain an NPDES permit (see Section III.1 of the Fact Sheet for further discussion).

Based on the Court's decision, chemical pesticides that leave no residue do not require an NPDES permit. However, EPA assumes for purpose of this permit that all chemical pesticides have a residue, and, therefore would need a permit unless it can be shown that there is no residual. Unlike chemical pesticides (where the residual is the pollutant), the Court further found that biological pesticides are pollutants regardless of whether the application results in residuals and such discharges need an NPDES permit.

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 a general permit, to assist NPDES-authorized states to develop their NPDES permits, and to provide outreach and education to the regulated community and other stakeholders. On June 8, 2009, the Sixth Circuit granted EPA the two-year stay of the mandate until April 9, 2011. On November 2, 2009, Industry Petitioners of the Sixth Circuit Case petitioned the Supreme Court to review the Sixth Circuit's decision. On February 22, 2010, the Supreme Court issued its decision denying petitions to review the Sixth Circuit decision.

As a result of the Court's decision on the 2006 NPDES Pesticides Rule, at the end of the two-year stay, NPDES permits will be required for point source discharges to waters of the U.S. of biological pesticides, and of chemical pesticides that leave a residue. Until April 9, 2011, the rule remains in effect and NPDES permits are not required.

In response to the Court's decision, EPA is issuing this final general permit for four specific pesticide use patterns with an effective date of April 9, 2011, *i.e.*, the date upon which NPDES permits are required for discharges from the application of pesticides. The specified use patterns may not represent every pesticide application activity for which a discharge requires NPDES permit coverage; however, the Agency believes these four use patterns represent a significant portion of those activities for which permit coverage is now required and is consistent with the use patterns EPA contemplated in the 2006 NPDES Pesticides Rule.

Neither the Court's ruling nor EPA's issuance of this general permit affects the existing CWA exemptions for irrigation return flow and agricultural stormwater runoff, which are excluded from the definition of a point source under Section 502(14) of the CWA and do not require NPDES permit coverage.

G. Publication of the Draft NPDES Pesticide General Permit

EPA worked closely with states and other stakeholders to develop the PGP. Because 44 states are required to develop their own permits, EPA held three face-to-face meetings and regular conference calls with environmental and agricultural agencies in each state, in order to share information and ideas on how to permit this new class of NPDES permittees. EPA also conducted or attended approximately 150 meetings with industry experts, environmental interest groups, and other interested stakeholders.

EPA published the draft NPDES Pesticide General Permit and accompanying fact sheet in the **Federal Register** on June 4, 2010 (75 FR 31775) soliciting comments on that permit, and accepted public comments through July 19, 2010. In addition, EPA held three public meetings, a public hearing, and three national webcasts to further educate stakeholders on the conditions included in the draft permit and to get feedback on specific areas for which EPA sought additional information to support finalization of the permit. EPA also conducted formal consultation with the Tribes. EPA received over 750 written comment letters on the draft permit from a variety of stakeholders, including industry; federal, state, and local governments; environmental groups; academia; and individual citizens. EPA considered all comments received during the comment period in preparing the final general permit. EPA responded to all significant comments in the Response to Comment Document which is available as part of the docket to this permit.

H. Posting of the Draft Final NPDES Pesticide General Permit

On April 1, 2011, EPA posted a pre-publication version of its draft final Pesticide General Permit for discharges of pesticide applications to U.S. waters. This draft final permit was not considered a "final agency action," and the Agency did not solicit public comment on this draft final permit. EPA provided a preview of the draft final permit to assist states in developing their own permits and for the regulated community to become familiar with the permit's requirements before it was to become effective. This reflected EPA's commitment to transparency and responding to the needs of stakeholders. The draft final permit posted on April 1, 2011 contains largely identical requirements to the final permit being published today. The principal change is the addition of conditions to protect listed species as a result of consultation with the National Marine Fisheries Service (NMFS) under the Endangered Species Act (ESA). There have also been changes to the timing of NOI submission deadlines and some additional clarifying changes, but these do not alter the intent of the pre-publication version posted in April.

III. Scope and Applicability of the NPDES Pesticide General Permit

A. Geographic Coverage

The PGP will provide permit coverage for discharges in areas where EPA is the NPDES permitting authority. The geographic coverage of today's final permit is listed below. Where this permit covers activities on Indian Country lands, those areas are as listed below within the borders of that state:

EPA Region 1

- Massachusetts, including Indian Country lands within Massachusetts
- Indian Country lands within Connecticut
- New Hampshire
- Indian Country lands within Rhode Island
- Federal Facilities within Vermont

EPA Region 2

- Indian Country lands within New York
- Puerto Rico

EPA Region 3

- The District of Columbia
- Federal Facilities within Delaware

EPA Region 4

- Indian Country lands within Alabama
- Indian Country lands within Florida
- Indian Country lands within Mississippi
- Indian Country lands within North Carolina

EPA Region 5

- Indian Country lands within Michigan
- Indian Country lands within Minnesota, excluding Sokaogon Chippewa Community
- Indian Country lands within Wisconsin, excluding Lac du Flambeau Band of Lake Superior Chippewa Indians and Fond du Lac Reservation

EPA Region 6

- Indian Country lands within Louisiana
- New Mexico, including Indian Country lands within New Mexico, except Navajo Reservation Lands (see Region 9) and Ute Mountain Reservation Lands (see Region 8)
- Oklahoma, including Indian Country lands
- Discharges in Texas that are not under the authority of the Texas Commission on Environmental Quality (formerly TNRCC), including activities associated with the exploration, development, or production of oil or gas or geothermal resources, including transportation of crude oil or natural gas by pipeline, including Indian Country lands within Texas

EPA Region 7

- Indian Country lands within Iowa
- Indian Country lands within Kansas
- Indian Country lands within Nebraska, except Pine Ridge Reservation lands (see Region 8)

EPA Region 8

- Federal Facilities within Colorado, including those on Indian Country lands within Colorado as well as the portion of the Ute Mountain Reservation located in New Mexico
- Indian Country lands within the State of Colorado, as well as the portion of the Ute Mountain Reservation located in New Mexico
- Indian Country lands within Montana
- Indian Country lands within North Dakota
- Indian Country lands within South Dakota, as well as the portion of the Pine Ridge Reservation located within Nebraska (see Region 7)
- Indian Country lands within Utah, except Goshute and Navajo Reservation lands (see Region 9)
- Indian Country lands within Wyoming

EPA Region 9

- American Samoa
- Indian Country lands within Arizona as well as Navajo Reservation lands within New Mexico (see Region 6) and Utah (see Region 8), excluding for Hualapai Reservation
- Indian Country lands within California
- Guam
- Johnston Atoll
- Midway Island and Wake Island and other unincorporated U.S. possessions
- Northern Mariana Islands
- Indian Country lands within Nevada, as well as the Duck Valley Reservation within Idaho, the Fort McDermitt Reservation within Oregon (see Region 10) and the Goshute Reservation within Utah (see Region 8)

EPA Region 10

- Alaska, including Indian Country lands
- The State of Idaho, including Indian Country lands within Idaho, except Duck Valley Reservation lands (see Region 9), excluding Puyallup Tribe Reservation
- Indian Country lands within Oregon, except Fort McDermitt Reservation lands (see Region 9)
- Federal Facilities in Washington, including those located on Indian Country lands within Washington, excluding Puyallup Tribe Reservation

B. Categories of Facilities Covered

The final general permit regulates discharges to waters of the United States from the application of (1) biological pesticides, and (2) chemical pesticides that leave a residue for the following four 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 final general permit.

C. Summary of Permit Terms and Requirements

The following is a summary of the final PGP's 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.

• Coverage under this permit is available only for discharges and discharge-related activities that are not likely to adversely affect species that are federally-listed as endangered or threatened ("listed") under the Endangered Species Act (ESA) or habitat that is federally-designated as critical under the ESA ("critical habitat"), except for certain cases specified in the permit involving prior consultation with the Services and Declared Pest Emergencies. The permit contains several provisions addressing listed species, including for certain listed species identified in the permit as NMFS Listed Resources of Concern, that Decision-makers whose discharges may affect these resources certify compliance with one of six criteria which together ensure that any potential adverse effects have been properly considered and addressed. These NMFS Listed Resources of Concern for the PGP are identified in detail on EPA's Web site at *http://www.epa.gov/npdes/pesticides.* These provisions were added as a result of consultation between EPA and the National Marine Fisheries Service (NMFS), as required under Section 7 of the Endangered Species Act. Other requirements that address protection of listed species include the waiting periods between submission of an NOI and authorization to discharge, and specific permit conditions requiring compliance with the results of any ESA Section 7 consultation with the Services, or ESA Section 10 permit issued by the Services.

• 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 or to Waters of the United States containing NMFS Listed Resources of Concern) are required to also submit a Notice of Intent (NOI) to obtain authorization to discharge and implement pest management options to reduce the discharge of pesticides to Waters of the United States. Certain large Decision-makers must also develop a Pesticide Discharge Management Plan (PDMP), submit annual reports, and maintain detailed records. Certain small Decision-makers 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.

Permit conditions take effect as of October 31, 2011; however, Operators with eligible discharges are authorized for permit coverage through January 12, 2010 without submission of an NOI. Thus, for any discharges commencing on or before January 12, 2012 that will continue after this date, an NOI will need to be submitted no later than January 2, 2012 to ensure uninterrupted permit coverage, and for any discharge occurring after January 12, 2012, no later than 10 days before the first discharge occurring after January 12, 2012.

The following is a summary of permit terms and requirements modified from the draft PGP public noticed on June 4, 2010:

• Expanded the forest canopy pest control use pattern to also include pesticide application activities performed from the ground;

• Expanded eligibility provisions to provide for coverage for discharges to Tier 3 waters from pesticide applications made to restore or maintain water quality or to protect public health or the environment that either do not degrade water quality or that only degrade water quality on a short-term or temporary basis;

• Eliminated the requirement for certain Applicators to submit NOIs;

• Revised annual treatment area thresholds (which trigger the need for NOI submission and implementation of more comprehensive Pest Management Measures and documentation);

• Delayed discharge date for which NOIs are required for a little more than two months after permit issuance;

• Refined definitions of "Operator," "Applicator," and "Decision-maker," for purposes of delineating responsibilities under the permit between Applicators and Decision-makers based on EPA's expectation for these two groups of Operators;

• Added requirement for Applicators to assess weather conditions in the treatment area to ensure pesticide application is consistent with all federal requirements;

• Added requirement for certain Operators to document visual monitoring activities, Provided different responsibilities for small Decision-makers to complete a pesticide discharge evaluation worksheet in lieu of a more comprehensive PDMP, annual report, and detailed recordkeeping; and

• Added specific permit conditions for states and Tribes in accordance with CWA section 401 certifications.

IV. Economic Impacts of the Pesticide General Permit

As a result of the Sixth Circuit Court decision on EPA's 2006 NPDES Pesticides Rule, operators of discharges to waters of the U.S. from the application of pesticides now require NPDES permits for those discharges. EPA expects that costs associated with complying with the effluent limitations under this general permit will be similar to costs under individual permits for similar activities; however, administrative costs for both EPA as the permitting authority and operators as permittees are expected to be lower under this general permit than under individual permits. In other words, the general permit itself can be expected to reduce rather than increase costs for permittees as compared to the baseline of individual permitting.

EPA expects the economic impact on covered entities, including small businesses, to be minimal. EPA requested additional information during

the public notice of the draft permit and updated the analysis as appropriate for the final permit. A copy of EPA's economic analysis, titled, "Economic Analysis of the Pesticide General Permit (PGP) for Point Source Discharges from the Application of Pesticides" is available in the docket for this permit. The economic impact analysis indicates that the PGP will cost approximately $10.0 million dollars annually for the 35,200 operators in the areas for which EPA is the permitting authority. Knowing that most applicators and decision-makers are small businesses, EPA conducted a small entity economic analysis. Based on available data, this permit will not have a significant economic impact on a substantial number of small entities. The economic impact analysis is included in the administrative record for this permit.

V. Executive Orders 12866 and 13563

Under Executive Order (EO) 12866 (*58 FR 51735* (October 4, 1993)) this action is a "significant regulatory action." Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action.

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

Dated: October 31, 2011.
H. Curtis Spalding,
Regional Administrator, EPA, Region 1.

Dated: October 31, 2011.
Ariel Iglesias,
Deputy Director, Division of Environmental Planning and Protection, EPA Region 2.

Dated: October 31, 2011.
Carl-Axel P. Soderberg,
Division Director, Caribbean Environmental Protection Division, EPA, Region 2.

Dated: October 31, 2011.
Jon M. Capacasa,
Director, Water Division, EPA Region 3.

Dated: October 31, 2011.
Gail Mitchell,
Acting Director, Water Protection Division, EPA, Region 4.

Dated: October 31, 2011.
Tinka G. Hyde,
Director, Water Division, EPA Region 5.

Dated: October 31, 2011.
William K. Honker,
Acting Director, Water Quality Protection Division, EPA Region 6.

Dated: October 31, 2011.
Karen A. Flournoy,
Acting Director, Water, Wetlands, and Pesticides Division, EPA Region 7.

Dated: October 31, 2011.
Stephen S. Tuber,
Assistant Regional Administrator, Office of Partnerships and Regulatory Assistance, EPA Region 8.

Dated: October 31, 2011.
Alexis Strauss,
Director, Water Division, EPA Region 9.

Dated: October 31, 2011.
Michael A. Bussell,
Director, Office of Water and Watersheds, EPA Region 10.

[FR Doc. 2011–28770 Filed 11–4–11; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by the Office of Management and Budget (OMB)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Federal Communications Commission has received Office of Management and Budget (OMB) approval for the following public information collection(s) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number, and no person is required to respond to a collection of information unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection contact Leslie Haney, *Leslie.Haney@fcc.gov*, (202) 418–1002.

SUPPLEMENTARY INFORMATION: The FCC obtained approval of this revision to the previously approved information collection to establish a voluntary electronic method of complying with the reporting that EAS participants must complete as part of their participation in the national EAS test.

OMB Control Number: 3060–0207.
OMB Approval Date: 10/14/2011.
Effective Date: 10/17/2011.
OMB Expiration Date: 04/30/2012.
Title: Part 11—Emergency Alert System (EAS).
Form No.: Not applicable.
Estimated Annual Burden: 82,008 hours.
Obligation to Respond: Voluntary. Statutory authority for this collection of information is contained in 47 U.S.C. sections 154(i) and 606.
Nature and Extent of Confidentiality: The Commission will treat submissions pursuant to 47 CFR 11.61(a)(3) as confidential.
Needs and Uses: On March 10, 2010, OMB authorized the collection of information set forth in the Second FNPRM in EB Docket No. 04–296, FCC 09–10. Specifically, OMB authorized the Commission to require entities required to participate in EAS (EAS Participants) to gather and submit the following *52663 information on the operation of their EAS equipment during a national test of the EAS: (1) Whether they received the alert message during the designated test; (2) whether they retransmitted the alert; and (3) if they were not able to receive and/or transmit the alert, their 'best effort' diagnostic analysis regarding the cause or causes for such failure. OMB also authorized the Commission to require EAS Participants to provide it with the date/time of receipt of the EAN message by all stations; and the date/time of receipt of the EAT message by all stations; a description of their station identification and level of designation (PEP, LP–1, etc.); who they were monitoring at the time of the test, and the make and model number of the EAS equipment that they utilized.

In the Third Report and Order in EB Docket No. 04–296, FCC 09–10, the Commission adopted the foregoing rule requirements. In addition, the Commission decided that test data will be presumed confidential and disclosure of test data will be limited to FEMA, NWS and EOP at the Federal level. At the State level, test data will be made available only to State government emergency management agencies that have confidential treatment protections at least equal to FOIA. The process by which these agencies would receive test data will comport with those used to provide access to the Commission's NORS and DIRS data. We seek comment on this revision of the approved collection.

In the Third Report and Order, the Commission also indicated that it would establish a voluntary electronic reporting system that EAS test participants may use as part of their participation in the national EAS test. The Commission noted that using this system, EAS test participants could input the same information that they were already required to file manually via a web-based interface into a confidential database that the Commission would use to monitor and assess the test. This information would include identifying information such as station call letters, license identification number, geographic coordinates, EAS assignment (LP, NP, etc), EAS monitoring assignment, as well as a 24/7 emergency contact for the EAS Participant. The only difference, other