

Table 1. Comparison of the requirements in Subsection A of 20.6.4.16 NMAC - Planned Use of a Piscicide-with U.S. EPA's Pesticide General Permit (PGP) under the National Pollutant Discharge Elimination System (NPDES).

Subsection A, 20.6.4.16 NMAC		U.S. EPA PGP	
Section	Summary	PGP Section	Summary
20.6.4.16 Planned Use of A Piscicide – Applicability	Use of piscicide under (FIFRA), and NMPCA shall not be a violation of Subsection F of 20.6.4.13 NMAC if use approved by WQCC under procedures in this section.	Applicability *See Notes below about impaired waters or ONRW waters; these may require an individual NPDES permit.	Operator, decision maker or for-hire applicators of a point source discharge of pesticides and eligible for GP (under Part 1.1) and located in an area identified in Appendix C. Also see other categories in PGP.
20.6.4.16.A	User files written petition w/ WQCC and NMED (SWQB)	PGP Part 1.1	Operator meets eligibility requirements in Part 1.1.
		PGP Part 1.1.1.c.	Animal Pest Control (includes fish)
		PGP Part 1.2	Operator submits a Notice of Intent (NOI) in accordance with Part 1.2.
20.6.4.16.A (1)	Petitioner name and address	NOI form; Part B. 1 & 6 (see PGP, Appendix D)	Decision maker/operator name; mailing address; contact for management area if different from Decision maker.
20.6.4.16.A (2)	Piscicide + period of time (≤ 5 years) or # of applications for approval	Effective period of PGP is October 31, 2011 – midnight October 31, 2016 (≤ 5 years) for discharges included in the NOI.	
20.6.4.16.A (3)	FIFRA and NMPCA documentation for piscicide + certification to use in accordance w/ label and function.	PGP Part 1.5 See Notes below.	Requires application of piscicide in accordance with label and FIFRA or other state/federal requirements or could be violation of CWA.
20.6.4.16.A (4)	Identify target and non-target species in treated waters and adjacent riparian area, (includes T & E species).	PGP Part 2.2.3.b; **PGP monitoring requirements (see Notes below).	Identify target and non-target species; alternatives.
		PGP Part 1.1.2.4 ; Appendix I T & E Species and Critical Habitat Protection Requirements	Actions that result from ESA Section 7 consultation, Section 10 permit, or will affect T & E species or critical habitat.

Subsection A, 20.6.4.16 NMAC		U.S. EPA PGP	
Section	Summary	Section	Summary
20.6.4.16.A (5)	Document potential environmental impacts to treated waters, adjacent riparian + describe protocols to limit impacts.	Visual surveillance before and during application is recorded. PGP Part 6.4.3 Adverse incident reporting w/in 24 hours by phone; written report w/in 14 days + annually.	Adverse impacts to T & E species AFTER treatment must be reported in accordance w/ federal guidelines (and reporting must be followed specifically).
20.6.4.16.A (6)	Describe/identify surface water for treatment;	NOI form; Part C.6 (See PGP, Appendix D) Coverage area in cumulative annual area treated.	Receiving waters – describe coverage for specific water of the US for treatment. Must identify Tier 3 [±] and WQ impaired waters.
20.6.4.16.A (7)	Document pre-treatment survey results;	PGP Part 2.2.3.c.	Conduct surveillance prior to application to assess pest management area.
20.6.4.16.A (8)	Evaluate available alternatives/justification for piscicide use;	PGP Part 2.2.3.b	Identify pest management options.
20.6.4.16.A (9)	Post-treatment assessment monitoring protocol; and	**See notes below. PGP Part 9 for Indian Country requirements. Some circumstances may require post application analytical monitoring. Visual surveillance before and during application.	In NM – 4 tribes (including 5 miles north of Navajo country) must be notified and a management plan may be required. Tribes may require post treatment assessment monitoring protocols.
20.6.4.16.A (10)	Any other information required by the WQCC.	N/A	EPA may require further information.

Notes:

*Discharges of certain pesticides to impaired waters or certain discharges of pesticides to Outstanding National Resource Waters (ONRWs) are not eligible for coverage under the PGP but may require coverage under an NPDES permit (e.g., an NPDES individual permit).

** The PGP includes management measures, monitoring, planning, corrective action, and recordkeeping and reporting requirements that are designed to provide resource protection consistent with the statutory and regulatory provisions of the CWA. The U.S. EPA's NPDES permits are also required by regulation to include monitoring provisions to ensure compliance (40 C.F.R. 122.41(j), 122.44(i), and 122.48(b)). The monitoring requirements are applicable to the wide range of environments, situations, and targets to which pesticides may be applied. Additionally, the monitoring requirements provide the flexibility to respond to site-specific conditions to ensure proper pesticide applications and to detect any adverse incidents that may result from the discharge. Thus, monitoring for adverse effects is required during all applications and post application efficiency surveillance is required if this is conducted by the permittee as a matter of practice.

The permit imposes requirements for water quality protection beyond what is required under FIFRA (e.g., label requirements). The U.S. EPA believes the permit, coupled with FIFRA requirements, provides adequate protection

of water quality for all FIFRA registered products when used in compliance with these requirements. The PGP also requires that any adverse incidents be noted and reported to EPA. **Source:** EPA Response to Comments (i.e., Comment ID 556.001.002; Comment ID 240-cp.001.006).

Table 2. Comparison of the process requirements in Subsections B, C, D and E of 20.6.4.16 NMAC - Planned Use of a Piscicide with the U.S. EPA's Pesticide General Permit (PGP) process under the National Pollutant Discharge Elimination System (NPDES). Highlight identifies sections covered by current NM WQS requirements, but not addressed by NPDES PGP.

Subsections B, C, D and E, 20.6.4.16 NMAC		US EPA PGP	
Section	Summary	PGP Section	Summary
20.6.4.16.B	NMED reviews petition within 30 days; files recommendation w/ WQCC to grant, grant with conditions or deny (includes SOR). Copy of recommendation + SOR is sent to the petitioner by certified mail.	US EPA PGP Waiting Period for NOI Coverage EPA has provisions for federally declared emergencies (criteria are in Part 1.2.3, Table 1-3 of the PGP).	10-day waiting period from the date NOI receipt is posted on EPA's web page for discharges to waters of the United States without National Marine Fisheries Service (NMFS) Listed Resources of Concern.
20.6.4.16.C	WQCC reviews petition and NMED recommendation; holds public hearing in affected locality within 90 days (in accordance with Adjudicatory Procedures, 20.1.3 NMAC). In addition to the public notice requirements in Adjudicatory Procedures, 20.1.3 NMAC, the petitioner shall provide written notice to entities in 20.6.4.16.C.1-4.:		30-day waiting period from the date NOI receipt is posted on EPA's web page for discharges to waters of the United States with NMFS Listed Resources of Concern.
20.6.4.16.C (1)	Written notice to local political subdivisions;	US EPA PGP effective October 31, 2011 was subject to extensive public review and comment during its development. However, notification of local affected areas or individual application is not required.	NOIs may be reviewed by EPA and any interested parties at any time. EPA may delay authorization prior to a discharge being covered under the permit if the Agency determines, including based on information provided by other interested parties, that further review of Operator eligibility under the PGP is warranted.
20.6.4.16.C (2)	Written notice to local water planning entities;		
20.6.4.16.C (3)	Written notice to local conservancy and irrigation districts; and		
20.6.4.16.C (4)	Written notice to local media outlets (PN in newspaper in affected locality.		

Subsections B, C, D and E, 20.6.4.16 NMAC		US EPA PGP	
20.6.4.16.D Rebuttable presumptions D (1)-(5)	During hearing, FIFRA and NMPCA registrations are assumed valid – provides list of rebuttable presumptions.		In addition to NPDES permits, the user of the pesticide must follow the FIFRA label. The CWA and FIFRA requirements operate independently of each other and permit does not negate FIFRA requirements and its implementing regulations to use registered pesticides consistent with the product's labeling. Applications in violation of certain FIFRA requirements could also be a violation of the permit and therefore a violation of the CWA (e.g., exceeding label application rates). *See also note below.
20.6.4.16.D (1)	Pesticide composition warrants the claims for use;		
20.6.4.16.D (2)	Its labeling and other material submitted for registration comply with the requirements of FIFRA and NMPCA;		
20.6.4.16.D (3)	Functions without unreasonable adverse effects on the environment; and		
20.6.4.16.D (4)	When used according to FIFRA label will not generally cause “unreasonable adverse effects on the environment.”		
20.6.4.16.D (5) Note: Definition for “unreasonable risk” intended to be consistent w/ federal language.	FIFRA, 7 U.S.C. Section 136(bb): “any unreasonable adverse effects on the environment means unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.”	Definition of “unreasonable risk ...” is also considered in PGP.	According to US EPA, there's no specific federal definition under Toxic Substances Control Act (TSCA) but EPA considers “unreasonable risk” for both individual substances and groups of substances.
20.6.4.16.E	After a public hearing, WQCC may grant, grant with conditions or deny the petition in whole or in part. If petition is granted (in whole or part), post-treatment assessment monitoring is required; and PN in affected area + downstream before and during use.	Post application monitoring is not required except for certain circumstances. Annual reports due by February 15 each year from all NOI-submitting permittees. These reports are publicly available (online).	Except for applications on certain tribal lands, US EPA's PGP does not require pre-or post-application water quality testing unless there is an occurrence of 'adverse impacts'. Adverse impacts must be reported to US EPA (form is online).