

NPDES Final Permit Issued Nov. 16 - THIS MAY IMPACT YOU!

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MPCA finalized the 4 separate National Pollutant Discharge Elimination System (NPDES)/State Disposal System (SDS) Pesticide General Permits on November 16, 2011. Coverage under this permit is automatic for anyone discharging a biological pesticide or a chemical pesticide that leaves a residue to a water of the state until April 30, 2012. After April 30, 2012, entities that exceed a Threshold are required to submit an application for permit coverage – known as a Notice of Intent (NOI) – and pay an application fee. Those that do not exceed the Threshold are not required to submit an NOI or an application fee, but are automatically covered by the permit and must comply with basic permit requirements.

Q: What is the National Pollutant Discharge Elimination System (NPDES) Program?

A: The National Pollutant Discharge Elimination System (NPDES) is a federal permitting program under the authority of the Clean Water Act (CWA) that establishes controls on point source discharges of pollutants to waters of the United States. Point sources are defined as discrete conveyances including but not limited to any pipe, ditch, channel, or conduit from which pollutants are or may be discharged. In 1974, the Minnesota Pollution Control Agency was given authorization from EPA to issue NPDES permits. Therefore, MPCA is the NPDES permitting authority in Minnesota. MPCA has a responsibility to protect waters of the state under Minn. Stat. § 115.03 and is therefore regulating and permitting discharges to waters of the state.

Q: Why is MPCA requiring NPDES permits for discharges from pesticide applications?

A: The requirement to obtain NPDES permits for point source discharges from pesticide applications to waters of the state stems from a recent decision by the Sixth Circuit Court of Appeals. In its ruling on National Cotton Council, et al. v. EPA the Court vacated EPA's 2006 rule that said NPDES permits were not required for applications of pesticides to, over or near U.S. waters when in compliance with the FIFRA label. Thus, discharges to waters of the U.S. from the application of pesticides will require NPDES permits when the court's mandate takes effect beginning on April 10, 2011.

Q: Which pesticide applications are covered under MPCA's Pesticide Permits?

A: MPCA's Pesticide Permits authorizes discharges to waters of the state from the application of (1) biological pesticides, and (2) chemical pesticides that leave a

residue for the following pesticide Use Patterns: Mosquitoes and Other Flying Insect Pests, Forest Canopy Pests, Aquatic Nuisance Animals, and Vegetative Pests and Algae.

Q: Do the Pesticide General Permits cover discharges from pesticide applications near waters of the state, as described in the Court decision?

A: Yes. Because the Court did not define the term "near" in the context of pesticide discharges, both EPA and MPCA interprets this term to refer to the unavoidable discharge to waters of the state in order to target pests in close proximity to water. The MPCA is relying on Permittees to determine if the discharge to waters is "unavoidable." If so, a permit is required. If the Permittee determines the discharge is "avoidable," then he or she must avoid the discharge to a water of the state and no permit will be required.

Q: What if I apply pesticides adjacent to water bodies?

A: If you determine that a discharge is unavoidable, either because of slope, distance, or some other variable, then a permit is needed. If you determine the discharge is avoidable, then avoid the discharge and a permit is not needed. If in doubt, follow the requirements of the permit.

Q: What are the Thresholds for Nuisance Aquatic Animal Control?

A: The Threshold for aquatic nuisance animal control is 20 acres of treatment area in lakes or 20 linear miles of treatment area in flowing waters. The MPCA assumes that control of nuisance aquatic animals' means the discharge will be directly to water, and has set Thresholds to reflect this. This is a cumulative Threshold and based on a calendar year total. For example, if you apply pesticides in the spring and fall to an eleven-acre lake in a calendar year, you must submit a NOI because you are above 20 acres of treatment area. In the case of a stream or river, if calculating the treatment area, count each pesticide application activity and each side of a linear water body as a separate activity. For example, if treating both sides of a 10-mile stream, that is considered 20 miles of treatment area. Also, if applying to both sides of a 10-mile stream three times in a calendar year, that would be considered 60 miles. Also, the treatment area is the area where the pesticide application is intended to have pesticidal benefits. For example, when applying to a stream or river, the area downstream that will be impacted by the pesticide should be used in calculating the Threshold.

Q: What are the Thresholds for Vegetative Pests and Algae Control?

A: MPCA's intent when setting the Threshold for vegetative pests and algae was to be as consistent as possible with the Department of Natural Resources' Aquatic Plant Management program. The Threshold applies to lakes 20 acres or greater. If you wish to treat greater than 15% of vegetative pests in the littoral zone (where the depth of water is 15 feet or less), you have exceeded the Threshold. If controlling the whole lake for algae in a lake 20 acres and greater, you have exceeded the Threshold and must submit a NOI. Control of algae can occur over the whole lake or parts of the lake, such as bays. Regardless of the area that is applied to, if treating a lake 20 acres and greater, you must submit a NOI.

The Threshold for treating vegetative pests and algae in all other waters of the state is 1,200 acres. This includes all other waters of the state not already mentioned. Some examples of 'waters of the state' where pesticides discharges will occur are road side ditches, drainage ditches, streams, rivers, wetlands, and other waters in Rights-of-Way. In order to address all pesticide applications throughout the state, the MPCA developed the 1,200 acre calendar year cumulative Threshold. For the purposes of this permit, 'waters of the state' do not include curb and gutter. If aerially applying the pesticide, all waters of the state under that area should be added to the "treatment area." If spot spraying and a discharge to waters of the state is unavoidable, then the area that receives application should be added to the calendar year total to determine if the Threshold is exceeded. This Threshold is cumulative and based on a calendar year total. NOTE: If you are treating an area that is intermittently wet, count it toward the threshold total only when visible or standing water is present. MPCA acknowledges that 'waters of the state' is a broad definition. In order to address all pesticide applications throughout the state, the MPCA developed the 1,200 acre calendar year cumulative Threshold.

Q: What about spot spraying? Do I have to include that in the Threshold?

A: Yes. You should calculate the Thresholds using all methods of treatment. If aerially applying the pesticide, all waters of the state under that area should be added to the "treatment area." If spot spraying and unable to avoid a discharge, then the area that receives application should be added to the calendar year total to determine if the Threshold is exceeded.

(Editor's Note: For more information about this program, contact Elise Doucette at 651-757-2316.)