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2021 NPDES Pesticide General Permit for Point Source Discharges from the Application of Pesticides: U.S. Environmental Protection Agency Public Notice of Reissuance

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The United States Environmental Protection Agency ("EPA") published a September 16th Federal Register Notice announcing the reissuance (i.e., 2021) of the National Pollution Discharge Elimination System ("NPDES") Pesticide General Permit ("PGP"). See 86 Fed. Reg. 51665.

The PGP is a general permit (as opposed to an individual permit) utilized by EPA to address point source discharges from the application of pesticides to waters of the United States in accordance with certain requirements.

Litigation a number of years ago resulted in a decision that interpreted the Clean Air Act to require the regulation of discharges from certain pesticide applications. The original 2011 PGP was issued in response to the United States Circuit Court of Appeals ruling vacating EPA's 2006 final rule on aquatic pesticides. See *National Cotton of Council of America v. EPA*, 553 F. 3d 927.

In general, EPA has stated that point source discharges of biological pesticides and chemical pesticides that leave a residue in waters of the United States must comply with NPDES permit requirements. The PGP offers coverage for pesticide operators meeting its eligibility requirements.

EPA's PGP is utilized in states that do not have primacy for this permitting program.

EPA's final 2021 PGP is a reissuance of the prior permit. It is effective from October 31, 2021, through October 31, 2026. Permit coverage includes:

- Mosquito and other flying insect pest control
- Weed and algae pest control
- Animal pest control
- Forest canopy pest control

The 2021 PGP is generally similar to the prior 2016 PGP.

By way of summary, the revisions include:

- Remove an out-of-date Notice of Intent provision
- Replace the requirement to use EPA's eNOI System with EPA's NPDES eReporting Tool
- Update Appendix A to include certain terms

- Modification of Appendix B to ensure consistency with 40 C.F.R. 122.41
- Update Appendix C to reflect certain coverage changes
- Clarification of Part 1.1.2.4 of the PGP by changing the phrase “not likely to adversely affect” and clarify supporting documentation to be submitted with the Notice of Intent
- Correct Part 1.2.3 of the PGP by adding back the statement that Decision-makers may submit multiple Notice of Intents with different activities
- Clarify Part 1.6 by adding the term “as a result of a separate federal action”
- Update Part 2.2.3.b of the PGP to add cultural methods to the list of management options the Decision-maker must evaluate when developing Pest Management Measures for animal pest control
- Update Part 9.0 of the PGP to reflect state and tribal Clean Water Act Section 401 certifications
- Update definitions, abbreviations, and acronyms
- Update Appendix C of the PGP, Areas Covered, to remove tribes who denied coverage under the permit, and to remove Texas’ oil and gas activities
- Correct Appendix F by adding an introduction to the coversheet and updating instructions
- Update Appendix I, Endangered Species Procedures, to include a list of pesticides that National Marine Fishery Services’ biological opinion has determined the labeled use would jeopardize the continued existence of Endangered Species Act listed species and/or adversely modify designated critical habitat

Note that Arkansas has been authorized to administer the NPDES permitting program. As a result, the EPA 2021 PGP is not applicable in this state. Nevertheless, states with primacy often take into account to some extent EPA’s choices (i.e., in terms of permit conditions and limitations) in revising or reissuing their NPDES permits.

A copy of the Federal Register Notice can be downloaded [here](#).