

MARYLAND DEPARTMENT OF THE ENVIRONMENT

WATER MANAGEMENT ADMINISTRATION

1800 Washington Boulevard, Suite 455

Baltimore, MD 21230-1708

Response to Public Comments

Regarding

General Permit for Discharge from the Application of Pesticides

State Discharge Permit Application No. 11-PE

NPDES Permit No. MDG87

April 7, 2011

The Department is proposing to issue **General Discharge Permit No. 11PE (federal NPDES Permit No. MDG87)** for discharges to waters of the State from the application of (1) biological pesticides or (2) chemical pesticides that leave a residue (hereinafter collectively “pesticides”), when the pesticide application is for one of the following pesticide use patterns: mosquito and other flying insect pest control; aquatic weed and algae control; aquatic nuisance animal control; and forest canopy pest control. This general permit is for operators that apply pesticides in or near water. The permit regulates discharges from pesticides applied directly to surface waters to control pests, or applied to control pests that are present in or over, including near, surface waters.

The Department received written comments on the tentative determination during the public comment period. The Department is also proposing changes based on new information and anticipated changes in the content of the federal general permit. A summary of the significant comments, the Department's responses and explanation of Department generated changes are listed below.

1. COMMENT

The commenter requested clarification on how the annual treatment tallies (used to determine who develops a pesticide management plan) are determined in situations where multiple parties are involved in applications.

RESPONSE

The intent of the thresholds is to limit the burden of pesticide management plan development to large operators. This can include decision makers, applicators, or person who are both. Therefore, each party shall maintain its own tally, regardless of whether they involve an application to the same area. For example, if a company hires an applicator, who in turn uses a subcontractor to apply pesticides to an acre, each party shall add one acre to its tally. Condition I.H. has been modified to clarify this.

2. COMMENT

How does one tally upland applications? How does the department define “near the water’s edge?”

RESPONSE

The only upland applications regulated are for flying pest control and forest canopy spraying. For those, the tally is based on the total treatment area, not just that which is over water. For other types of applications performed for a species infestation that covers both upland areas and

water areas, for example phragmites, Japanese knotweed, or devils tear thumb, the permit regulates only application to areas in or near State waters.

The Department considers “near” as meaning banks of streams, ditches, and shorelines. The edge of a delineated wetland would be considered to be its “bank.” Although State waters include 100-year floodplains, the Department interprets the NPDES authority to apply to apply only to those portions of the floodplain that are inundated at the time of application. If an application is to banks sufficiently high that they would not be considered State waters, the near shall be quantified as linear miles, not acres.

3. COMMENT

What are the requirements for pesticide applications to areas regulated by State discharge permits or water quality certifications? The questions pertained specifically to dredged material containment areas.

RESPONSE

This permit, and the court decision responsible for it, applies to direct application of pesticides to waters of the United States. Therefore, algae or aquatic weed control inside the containment dikes is not regulated by this permit (but should be regulated by the individual State permits). Aerial spraying of mosquitoes is regulated, as is treatment to outside (waterfront) edges of these facilities.

4. COMMENT

Must a pesticide management plan be approved before applications may begin?

RESPONSE

The permit requires that a plan be submitted only on request. Deadlines for completion of a plan are listed in Table 2 of the permit.

5. COMMENT

What is the property owner’s responsibility?

RESPONSE

The property owner's responsibility is to comply with the terms of the permit and assure that any other persons involved with an application, such as the applicator, comply with the permit. Compliance may include the written delegation of any or all responsibilities to the applicator or an intermediate party.

The following changes were made in response to new information received or from further internal review. Unless otherwise stated, these changes were made to conform to the anticipated final version of EPA's general permit. This section shall serve to amend the permit fact sheet.

1. CHANGE

Scope/Eligibility: In Part I. B.4, changed scope of forest canopy spraying to include ground applications. Removed the word "aquatic" from weed and animal control use patterns, and added pathogen control.

2. CHANGE

Thresholds for Pesticide Management Plan: In Part I. H, clarified that for flying insect and forest canopy control, each application counts toward the total. But for animal and weed control, each area shall be counted once only. For animal and weed control, changed the threshold from 20 acres to 80 acres. For linear waterways larger than ditches, each side counts separately.

3. CHANGE

Part III.A.2: Removed the term "integrated pest management" and substitute with "pest management measures that minimize pesticide discharges to State waters."

4. CHANGE

Part III.F.2: Adverse incident reports are due within 30 days rather than five days.

5. CHANGE

Effective Date: Permit effective date changed to October 31, 2011.