



NPDES Permit for Pesticide Application – Illinois

Who Needs a Permit?

How to Apply for a Permit

Recordkeeping Requirements

On November 1, 2011 the federal requirement for a NPDES permit for certain pesticide applications went into effect. Illinois EPA is the lead agency on the NPDES permit process. You can view the NPDES permit at <http://www.epa.state.il.us/water/permits/pesticide/index.html> IFCA recommends you print the permit and read the parameters and definitions. This is a new federal regulation brought about by a lawsuit. A federal court ruled that pesticides applied to water may be regulated under the Clean Water Act in addition to being regulated by FIFRA (Federal Insecticide, Insecticide, Fungicide & Rodenticide Act).

IFCA and other ag organizations met with IEPA staff on November 8, 2011 to review the requirements of the NPDES permit program as it relates to pesticide application activities in the agricultural sector. We are attempting to explain this complex program in simple terms so that our members can determine if the permit may be required for their pesticide application activities. IEPA will be presenting the permit program and answering questions on January 18, 2012 at the IFCA Convention in Peoria, Illinois.

Who Needs a NPDES Permit?

The NPDES permit applies to the following pesticide application categories when the pesticides are applied to waters of the State for the following:

1. Mosquito and Other Insect Control
2. Weed and Algae Pest Control
3. Animal Pest Control
4. Forested Areas Pest Control
5. Other Pest Control Activities

IEPA will only issue a NPDES for pesticides that are labeled for aquatic use and thus are applied in a matter where they may leave a residue on water. You cannot obtain a NPDES permit to apply a pesticide to water that is NOT labeled for aquatic use. Such an application would be a violation of FIFRA.

The person actually applying the pesticide may apply for the NPDES permit, or a person who is control of hiring an applicator to perform the operations may apply. For IFCA members, we would recommend that the company entity obtain the permit rather than the actual applicator; then all applicators working for the company would have coverage under the NPDES permit.

- If you have an aquatic, mosquito, or rights of way category on your pesticide license and you intend to apply pesticides labeled for aquatic use, you will need to obtain a NPDES permit.
- If you are an aerial applicator and may perform pesticide applications over forested areas and pesticides may be deposited to water below the forest canopy, you will need to obtain a NPDES permit. This could also apply to applications to kill nuisance trees in water, such as willows, etc.
- If you apply pesticides to standing water to treat for mosquitos, you will need to obtain a NPDES permit.

- If you apply pesticides to water, such as to drainage ditches, ponds with an overflow outlet, streams, groundwater or other waters of the state, you will need to obtain a NPDES pesticide permit. Private landowners are not exempt from obtaining a permit if they themselves apply pesticides to such waters even on their own private property.

Q: If I own a pond, and the pond has an overflow that may discharge water to another body of water that is within the state or flows within the state, and I want to treat my pond with a pesticide for weeds, do I need a NPDES permit?

A: Yes. In this case, the pond is considered a water of the state because it has a hydrologic connection that would lead to a water that flows within or through the state.

Q: Who has to get the permit, the pond owner or the pesticide applicator?

A: Either the person who orders the pesticide application needs the NPDES permit, or the person who applies the pesticide (for hire) needs the NPDES permit. It makes most sense to hire a person to make the application and ensure that the company you hire has a NPDES permit. Private ponds that have no overflow outlet do not require a NPDES permit for pesticide application. If pesticides are applied to drainage ditches, streams or any such water that flows, a NPDES permit is required. If a pesticide is applied to water, and no NPDES permit is obtained, both the landowner and the applicator may be held liable for a violation of the Clean Water Act.

How to Apply for a Permit

Notice of Intent: Entities or operators who wish to apply for a NPDES permit may go to the IEPA website at <http://www.epa.state.il.us/water/permits/pesticide/index.html> and submit a “Notice of Intent” to apply for a NPDES permit. You will check the categories for which you will be applying pesticides to water, and describe where in the state (county, territory) you will be applying these pesticides. IEPA will post the name of the applicant on their website for 14 days after the date of application. Within 30 days of receiving a NOI, IEPA will issue the permit.

Endangered Species: You must consult with the IL Department of Natural Resources to determine if any endangered species exist within the area you intend to apply pesticides as identified in your NOI. Go to www.dnrecocat.state.il.us/ecopublic to access a website to determine presence of endangered aquatic species. DNR will evaluate your application and notify you if endangered species are present or not. You must keep a record of the DNR notifications, but these records do not need to be provided to IEPA.

NPDES permits are good for five years. There is currently no fee for a NPDES pesticide permit.

Recordkeeping

IEPA has defined thresholds that trigger recordkeeping requirements for the NPDES permit.

Generally, if an aquatic treatment is made to less than 6,400 acres of treatment area in a year, or less than 80 linear miles of a stream in a year, then abiding by the requirements of the pesticide label for rate, equipment used, etc. are the only requirements. If you exceed these thresholds, then you must also complete a written Pesticide Discharge Management Plan (PDMP). An “application” for threshold purposes means the application of a certain type or mix of pesticide. If the type or mix does not change, then subsequent applications to the same treatment area are not counted again toward the threshold. However, if you change pesticide mixes and treat the same area a 2nd time, that counts as an additional treatment toward the threshold amount.

For Example: You treat a 10 acre pond with Pesticide A. 10 acres is counted toward the threshold amount for that treatment site. If you treat the pond again with a different pesticide within a year of the first application, you now have 20 acres toward your annual threshold limit. But if you treat the pond a second time with the exact same pesticide, the 2nd application does not count toward the threshold limit. Each treatment site gets its own threshold amount, you do not add up the total number of acres or stream miles treated by the applicator.

IEPA has a sample PDMP posted on the website for applicators to use who go over the threshold amounts.

The person or entity who holds the NPDES permit must retain all the required records. Entities that are not small businesses, and who exceed the annual threshold amounts for application, must also submit an annual report to IEPA. You must refer to the Small Business Administration rules at 13 CFR 121.201 to determine if you are a small business.

Adverse Incident Reporting: If the permit holder experiences an adverse incident related to a pesticide applied to water, they must report the incident to the IL Emergency Management Agency (IEMA) immediately and submit an Adverse Incident Report to IEPA within 15 days.

Things to Keep in Perspective

- The NPDES permit only applies to pesticide applications that will be made to water, or at the water's edge. For most agricultural pesticide applications, a NPDES permit will not apply.
- Spray drift and runoff of pesticides from a field of application to a water of the state is NOT subject to a NPDES permit.
- If a government entity issues a "declared pest emergency" that requires a pesticide application that would meet the requirements for a NPDES permit, the application may commence immediately, and the pesticide operator or entity may apply for the NOI no later than 30 days after the emergency application began.
- You must modify your NPDES to add additional categories or treatment areas at least 14 days prior to beginning the pesticide applications.
- Obtaining a NPDES general permit for pesticide applications to water provides protection from being sued under the Clean Water Act. If you believe you have any circumstance where you will be applying pesticides to water, treating for mosquitos or applying pesticides to forest canopy areas or to a water's edge, you should apply for the general permit and secure protection from legal action under the Clean Water Act. Violations of the Clean Water Act can be up to \$28,000 per day.
- IFCA members who have an aquatic, mosquito or rights of way category on their pesticide license should carefully review the NPDES permit (it is 35 pages) and determine if your activities after November 1, 2011 subject you to the permit.
- Please contact IFCA at (309) 827-2774 if you have questions. You may also contact Leslie Lowry or Darin LeCrone at IEPA with questions. They can be reached at (217) 782-0610.
- This fact sheet attempts to highlight the main points of the NPDES permit process and its applicability to persons working in the agricultural sector. It is not inclusive of all the requirements or nuances of the permit process.