

1. Why is Texas Commission on Environmental Quality (TCEQ) requiring Texas Pollutant Discharge Elimination System (TPDES) permit for discharges from pesticide applications when the Texas Department of Agriculture (TDA) and Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) are already regulating pesticide applications in the state?

Based on a ruling by the 6th Circuit Court of Appeals made on January 7, 2009 in *National Cotton Council, et al v. EPA*, applications of biological pesticides and chemical pesticides that leave a residue in water will require a TPDES permit when such applications are made in, over, or near waters of the United States. This requirement is effective on October 31, 2011. The court ruling requires National Pollutant Discharge Elimination System (NPDES) permit be obtained to comply with Clean Water Act.

2. Are the requirements in this permit contradictory or conflicting with FIFRA label requirements?

No. A pesticide user must comply with all applicable FIFRA requirements contained on pesticide product labels. The permit includes additional requirements that are not inconsistent with pesticide product labels and does not override any existing FIFRA labeling requirements.

3. Which pesticide applications are covered under the TPDES pesticide permit?

The permit authorizes discharges to waters of the U.S. from the application of biological pesticides and chemical pesticides that leave a residue in water for the following pesticide use patterns: Mosquito and other insect pests control, vegetation and algae control, animal pest control, area-wide pest control and forest canopy pest control.

4. What if my pesticide application is not included within the 5 categories provided in the Pesticides General Permit (PGP)? Does this mean I do not need a TPDES permit for my application?

No. Any use patterns not covered by this permit that will result in point source discharges to waters of the United States of a biological pesticide or chemical pesticide in, over or at water's edge of waters of the U.S would need to obtain coverage under an individual permit or alternative general permit.

5. Are specific pesticides regulated under this permit?

Specific pesticides are not regulated in this permit. However, pesticides toxicity levels have been used to make a distinction between the different levels of operators based on the type of pesticide used and the type of access (public or private) so as to give maximum protection to both human health and the environment.

6. Does this permit cover discharges from pesticide applications near waters of the U.S. and how does TCEQ define the term "near"?

This permit covers discharges from pesticide applications near waters of the U.S. EPA explains the term "near" as the unavoidable discharge to waters of the U.S. in order to target pests in close proximity to water. In the TPDES permit, the term water's edge is used to mean the same as near, and water's edge is defined as "The surface area of the channel that is not covered by water during low flow conditions immediately bordering: (1) waters of the U.S., or (2) a conveyance to waters of the U.S. along which water (e.g., runoff, irrigation waters, or floodwaters) flows."

7. Is TPDES permit coverage now required for runoff that contains pesticides?

Stormwater runoff that may contain pesticides is not required to obtain TPDES permit coverage unless it was already required to do so prior to *National Cotton Council, et al. v. EPA*. Existing TPDES stormwater permits for runoff from construction, industrial activities, and municipal separate storm sewers (MS4s) already consider pesticides as part of the permit development process.

8. Will agricultural runoff and/or irrigation return flows that contain pesticides require a TPDES permit?

No. In 1987, Congress amended the Clean Water Act to exempt agricultural stormwater and irrigation return flow from NPDES permitting requirements. The Court's ruling does not affect these exemptions.

9. Does this permit cover discharges from terrestrial applications for the purpose of controlling pests on agricultural crops or forest floors?

This permit is not intended to and does not require discharge authorization for any pesticide application beyond that required by the CWA. The proposed use patterns adequately represent the practices of pesticide applications which may result in the incidental discharge to waters of the U.S.

10. Who is an "operator" that TCEQ identifies as the entity responsible for permit coverage?

The person (in the context of the permit, person could be an entity such as county or city or a real person) who controls the timing, location, method and means of pest management activities resulting in the discharge of pesticides to waters of the U.S. Employees, agents and for-hire commercial applicators are not operators but, if hired by an operator covered under the general permit, such employees, agents and for-hire commercial applicators will be authorized and covered under the general permit without the need to obtain individual coverage. However, for-hire commercial applicators, acting on their own accord without consultation with the landowner, are operators for purposes of this general permit if they are legally responsible for pest management activities and must individually seek coverage under the general permit as operators.

For example:

- a) Question: The City of X has three departments which use products that may make them subject to this permit for the control of Animal pests and mosquitoes, may use Restricted Use (RU) pesticides, State Limit Use (SLU) pesticides (Level IA), Golf Course - uses General Use pesticides (GU) (Level IB) and Parks Dept - uses General Use (GU) (Level IB). Is the City considered a single operator which would have to permit at Level IA since they have at least one department at that level?

Answer: The City is the operator- legally responsible for pest management activities since they control the timing, location, method, and means of pest management. The city will not be required to have a multiple notice of intents (NOIs). The pest management area is the city limits. The mayor has signatory authority so he is acting on behalf of the city to sign the NOI but the city is the operator. The City is level IA since it is qualified as level IA for one of the use patterns under its control. However, the city will only prepare and keep an annual report for the use pattern that places the city in Level IA.

- b) Question: A City crosses county lines. The City hires the County to spray for mosquito in the part of the City which is in that county. The County has it's own NOI. Would the City be required to "count" that part of the City which will be hired out to the permitted County in calculating it's NOI?

Answer: Yes. Since the city "hired" the county, then the city is the operator legally responsible for the pest control activities. The city will have to comply with the permit.

- c) Question: If a public or private entity manages lands that are owned by other entities, makes decisions about pest management and the cost of pesticide treatments is shared by the public or private entity and the landowners. The public or private entity either conducts the treatments itself or contracts with applicators. Who is the permittee in this instance?

Answer: The public or private entity is the operator since they make the decision for pest control activities. At this instance, the land owner is not the operator.

11. What are the annual treatment area thresholds that trigger the requirement to submit a NOI?

Mosquito and other insect pest control – 6,400 acres or more of pest management area;

Vegetation and Algae Control – 100 acres of surface water and 200 linear miles at water's edge of waters of the U.S.;

Animal Pest Control – 100 acres of surface water and 200 linear miles at water's edge of waters of the U.S.;

Area-wide Pest control – 6,400 acres or more of pest management area; and

Forest Canopy Pest control – 6,400 acres or more of pest management area.

12. Will operators have to stop applying pesticides if they cannot obtain TPDES permits by October 31, 2011?

Operators required to submit a NOI or Self Certification Form to the TCEQ have 90 day provisional coverage after the effective date (November 2, 2011) of this permit to do so.

13. Are multiple applications to the same acres in the same calendar year counted as one time or are the applications to the same acre additive.

Multiple applications to the same acres in the same calendar year are neither additive nor cumulative.

14. Can we have an additional use pattern for exterior ground treatments for general pest control of fire ants, brown recluse spiders, scorpions and other pests not currently covered?

No. The permit authorizes only pesticide applications that are made into, over or near waters of the U.S. Any use patterns not covered by this general permit will be authorized under an individual permit if the pesticides application is for treating pests in close proximity to waters of the U.S. where unavoidably the chemicals will get into the water.

15. How is the treatment area determined for vegetation and algae control and animal pest control?

To calculate the surface acres treated, at least one treatment area must meet or exceed 100 acres. So, if a Pest Management Area (PMA) has two separate lakes that are being treated, the

PMA would have two treatment areas. Suppose Lake A is 50 acres and Lake B is 150 acres. The operator treats 20 acres in Lake A and 70 acres in Lake B so the treatment would be 20 acres and 70 acres, respectively. Neither treatment area meets or exceeds the 100 acre threshold so the operator would not be in Level I, regardless of the number of times these acres are treated. However, if the operator treated 125 acres in Lake B this would exceed the annual threshold, putting the operator in Level I.

Another example is if an operator will be treating a stream or river that is 170 miles long and 5 feet wide, the acreage will be the length (170 miles) of the area that will be treated multiplied by the width (5 feet) which will give approximately 103 acres of treatment area. The Operator will have to submit a NOI to obtain coverage under this permit.

To calculate the linear miles at water's edge, the calculation should include the linear extent of the application made at water's edge within each treatment area, regardless of whether the operator is treating both sides of the river or stream. For example, if each side of a river is treated and the operator treats 12 river miles, the treatment area remains 12 miles, regardless of whether they are treating one side or both sides of the river or stream. At least one treatment area must meet or exceed 200 linear miles. Another example, if an operator has a linear PMA such as a right-of-way that is 100 yards wide, which crosses three (3) waters of the U.S., the operator will have 3 treatment areas, each 100 yards in length. None of the treatment areas meet or exceed the 200 linear miles. The three treatment areas are not added together.

16. Edwards Aquifer Recharge Zone and Highland Lakes- Is an operator required to get an Individual Permit?

No. Chapters 213 and 311 have been revised to allow the application of pesticides to continue within the Highland Lakes or Edwards Aquifer recharge contributing and transition zones for the protection of human health and the environment as long as it is done in accordance with the permit requirements.

17. A Homeowners Association owns several private lakes that are maintained by application of various herbicides and weed control chemicals using for-hire commercial licensed applicator. The Association will be treating a stretch of Oyster Creek that flows through the community for water borne weeds and weeds along the banks. Do we need a permit for such applications?

Since the chemicals will be applied directly into water and at water's edge, then the use pattern is under the purview of this pesticide general permit. If the Association meets the annual threshold listed in Number 11 of this document, then you will be required to submit a NOI to obtain authorization.

18. If an operator has more than one pest management area (PMA) or treatment area (TA), is the operator required to submit an annual report for all PMAs or TAs whether they meet the annual thresholds or not?

No. Operators will prepare and keep onsite only annual report for the PMAs or TAs that meet or exceed the annual threshold and make it available to the TCEQ when requested.

19. Pesticide Discharge Management Plan (PDMP)—Can an operator use an already in use guidance document and standard operating procedures?

Yes. However, the referenced material must be documented in the PDMP.

20. Is pond dye considered a pollutant?

Certain pond dyes are considered as pollutants in water. However, pond dye is not regulated either by the EPA or Texas pesticides general permit. Though dye application without a permit is allowed, abuse of dye use in state waters may be a violation of water quality standards: Chapter 307.04 (b)(5) of the Texas Surface Water Quality Standards states: "Waste discharges must not cause substantial and persistent changes from ambient conditions of turbidity or color."

21. Are rubber lined ponds waters of the U.S.?

The pesticides general permit applies to waters of the United States only. If the pond is isolated - meaning that it is a private pond that has no inlet or outlet - then it is not considered a waters of the U.S. However, if the pond is not an isolated waterbody and an operator will be applying biological pesticides or chemical pesticides that leave a residue in water, then the permit applies.

22. Could the TCEQ provide clarification on the definition of Waters Edge? How does it apply to floodwaters; for example, the 2 year floodplain?

Permit conditions are usually based on normal environmental conditions. In developing this permit, we assumed that all rivers will have a bed and banks and there is no flooding. So we defined the water's edge as: The surface area of the channel that is not covered by water during low flow conditions immediately bordering the waters of the U.S. or conveyances to waters of the U.S. along which water (e.g., runoff, irrigation waters, or floodwaters) flows. The examples in parentheses (runoff, irrigation waters, or floodwaters) only describe the type of water being conveyed in the conveyances into waters of the U.S., and limits the receiving water to waters of the U.S only and not into any other type of water bodies. The definition is intended to describe the scope of "near" waters of the U.S.

During any catastrophic event such as hurricane (high flow condition) when the banks are full, pesticide applications will be into and over waters, which are still covered by this permit. The water's edge near wetlands during such catastrophic events will be as high as the highest level where there is evidence of wetland vegetation or rising waters, and for lakes, the water's edge will include up to the full pool level for any reservoir.

23. If an operator fills and submits the self certification form (Level IB) or fills and keeps onsite (Level II), can the operator add new PMAs? Will the additional PMA trigger a requirement of a NOI?

According to Part I. of the permit, Pest Management Area is defined as A contiguous area of land, including any waters of the U.S., where the permittee is responsible for and is authorized to conduct pest management activities as covered by this permit (e.g., for an operator who is a mosquito control district, the pest management area is the total area of the district).

If a new PMA(s) is added – then the operator will update the records and Self Certification Form and submit or keep onsite (as the case may be). However, if the additional PMA(s) makes any existing PMA contiguous thereby causing the operator to exceed the annual threshold for the use pattern, then the operator will have to submit a Notice of Intent (Level

IA) to be authorized if they will be applying any restricted Use Pesticide.

24. How does the Annual Water Quality Fees apply to Multiple Pest Management Areas?

Annual water quality fees as stated in Part II.D.5.(b) of the permit:

If a permittee has one (1) pest management area - the permittee will pay \$100 annual water quality fee.

If a permittee has up to Five (5) pest management areas - the permittee will pay up to \$500 annual water quality fee.

If a permittee has six (6) or more pest management areas within the same county (county-wide permit) - the permittee will pay \$500 annual water quality fee.

If a permittee has ten (10) pest management area within the state he will pay (\$1000) annual water quality fee.

If a permittee has eleven (11) or more pest management areas within the state (state wide permit) - the permittee will pay \$500 annual water quality fee.

Note:

- Single PMA authorization requires one (1) PMA.
- County-wide single PMA authorization requires one (1) PMA. This authorization is available to a county government entity whose PMA is the same as its jurisdictional boundary.
- County-wide multiple PMA authorization requires at least six(6) PMAs. This authorization is available to a public or private entity with greater than five (5) PMAs within a single county.
- Statewide Authorization requires at least eleven (11) PMAs. This authorization is available to public or private entities with more than ten (10) PMAs within the state.

25. Does the TCEQ have the resources necessary to follow up on the violations and monitoring of this permit?

The TCEQ Office of Compliance and Enforcement (OCE) is responsible for monitoring and enforcing compliance with the state's environmental laws. The OCE includes 16 regional offices located throughout the state. Regional staff have the responsibility of conducting investigations for compliance and developing enforcement action referrals for any violations identified during investigations. The OCE also has an Enforcement Division that is responsible for reviewing the violations of state environmental laws that are referred by the regional staff and for pursuing enforcement actions, which include penalties and technical requirements for corrective action.

26. What happens if an operator violates this permit?

Violations are usually addressed through a notice of violation letter that allows the operator a specified period of time within which to correct the problem. The violation is considered resolved upon timely corrective action. A formal enforcement referral will be made if the cited problem is not timely corrected, if the violation is repeated, or if a violation is causing substantial impact to the environment or neighbors. In most cases, formal enforcement results in an agreed enforcement order including penalties and technical requirements for

corrective action. The Texas Water Code authorizes TCEQ to administer fines of up to \$25,000 per day for each violation; however, penalties are calculated using the TCEQ's Enforcement Penalty Policy, which takes into account several factors, including the severity and duration of the violation, the permittee's compliance history, and economic benefit. Violations are maintained on file and are included in the calculation of a facility and a person's compliance history. Compliance history ratings are considered during permit application reviews.