



NPDES Permits for Pesticide Application: A Summary for Illinois Applicators

Pesticide Safety Education Program

On November 1, 2011 the federal requirement for an NPDES permit for certain pesticide applications went into effect. Illinois EPA (IEPA) is the lead agency on the NPDES permit process. You can view the NPDES permit at <https://www2.illinois.gov/epa/topics/forms/water-permits/pesticide/Pages/default.aspx>. It is recommended that you print the permit and read the parameters and definitions. A federal court ruled that pesticides applied to, over, or near water are now regulated under the Clean Water Act in addition to being regulated by FIFRA (Federal Insecticide, Insecticide, Fungicide & Rodenticide Act).

In an attempt to explain this complex program in simple terms, IFCA (Illinois Fertilizer and Chemical Association) has created a short summary which we have modified slightly and featured here. Pesticide applicators can use this to determine if a permit may be required for their pesticide application activities.

When are NPDES Permits Required?

The NPDES permit applies to the following pesticide application use patterns when the pesticides are applied to or over waters of the US or at water's edge 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.

“Water of the U.S.” are defined as:

- All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
- All interstate waters, including interstate “wetlands;”
- All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sand flats, “wetlands,” sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters: (a) Which are or could be used by interstate or foreign travelers for recreational or other purposes; (b) From which fish

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- or shellfish are or could be taken and sold in interstate or foreign commerce; or (c) Which are used or could be used for industrial purposes by industries in interstate commerce;
- All impoundments of water otherwise defined as waters of the United States under this definition;
- Tributaries of waters identified in paragraphs above;
- The territorial seas;

IEPA will issue coverage under the General NPDES permit for pesticide applications directly to, over or at water's edge for waters of the US, using products that are labeled for aquatic use and thus are applied in a manner where they may leave a residue on water. (You cannot obtain an NPDES permit to apply a pesticide directly to water that is NOT labeled for aquatic use. Such an application would be a violation of FIFRA.) The application of non-aquatic use pesticides to ditch banks, or at water's edge, also requires NPDES permit coverage and is eligible for coverage under the General Permit.

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.

Example Situations Which Require a Permit:

- If you apply pesticides labeled for aquatic use to water, you will need to obtain an NPDES permit.
- If you are an aerial applicator and will perform pesticide applications over forested areas where pesticides may be deposited to water below the forest canopy, you will need to obtain an 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 an NPDES permit.
- If you apply pesticides to water, such as to drainage ditches, streams, or other waters of the US you will need to obtain an 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.
- If you apply pesticides to a pond with an overflow outlet, you will need to obtain an NPDES pesticide permit. Private ponds that have no overflow outlet or are not otherwise hydrologically connected to waters of the US do not require an NPDES permit for pesticide application. A pond with an overflow outlet has a hydrologic connection to water that flows within or throughout the US. Again, private landowners are NOT exempt from obtaining a permit if they themselves apply pesticides to such waters even on their own private property.

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Who Should Obtain a Permit?

The person actually applying the pesticide may apply for the NPDES permit, or a person who is in control of hiring an applicator to perform the operations may apply for the permit. Companies or state agencies are recommended to obtain the permit rather than the actual applicator; then all applicators working for the company would have coverage under the NPDES permit. For landowners, it may be simplest to hire a person or company to both obtain an NPDES permit and make the application.

How Do I Apply for a Permit?

- **File a Notice of Intent (NOI):** Entities or operators who wish to apply for an NPDES permit may go to the IEPA website at <https://www2.illinois.gov/epa/topics/forms/water-permits/pesticide/Pages/default.aspx> and submit a “Notice of Intent” to apply for coverage under the General NPDES permit. You will check the use patterns for which you will be applying pesticides to water (or at water’s edge), and describe where in the state (county, territory) you will be applying these pesticides. The complete and accurate NOI will then be posted on the Agency’s web site for a period of 14 days. IEPA will mail a letter of coverage at the end of the 14 day posting. If you do not receive a letter AND if you are not notified by the Agency to submit additional information, you will be automatically authorized to discharge under the terms and conditions of the permit 30 days after the date the NOI is received by the Agency. Plan accordingly. The NOI is due at least 14 days prior to making the pesticide application. You could have to wait as much as 30 days to apply your pesticide. If you receive a coverage letter, you can apply sooner.
- **Consult about Endangered Species:** You must consult with the IL Department of Natural Resources (IDNR) to determine if any endangered species exist within the area you intend to apply pesticides as identified in your NOI. Go to <https://www2.illinois.gov/dnr/programs/EcoCAT/Pages/default.aspx> to access a website to determine the presence of endangered aquatic species. IDNR will evaluate your application and notify you if endangered species are present or not. You must keep a record of the IDNR notifications, but these records do not need to be provided to IEPA.

What do permits cost?

There is currently no fee for an NPDES pesticide permit.

How long are permits good for?

The General NPDES permit is issued for a period of five years.

Is anything else needed besides the permit itself?

- **Adverse Incident Reporting** is required. If the permit holder experiences an adverse incident related to a pesticide application covered under the General NPDES permit, they must report the incident to the IL Emergency Management Agency (IEMA) immediately and submit an Adverse Incident Report to IEPA within 15 days.

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- Recordkeeping may be required. IEPA has defined annual treatment area thresholds that trigger recordkeeping and other requirements in the NPDES permit. These annual treatment area thresholds shown here are taken from Section 2.2, Table 3 of the NPDES permit. IEPA has also included several exemptions from some of the permit requirements. These exemptions are found in Sections 5.0 and 7.0 of the NPDES permit.

Section	Pesticide Use	Annual Threshold
2.2.1	Mosquito and Other Insect Pest Control	
	- Adult Mosquitoes and Other Insect Pests	6,400 acres of treatment area
	- Mosquito and Other Insect Aquatic Larviciding	80 acres of treatment area (i.e. surface area)
2.2.2	Weed and Aloae Pest Control	
	- In Water	80 acres of treatment area /i.e. surface area)
	- At Water's Edge	20 linear miles of treatment area
2.2.3	Animal Pest Control	
	- In Water	80 acres of treatment area (i.e. surface area)
	- At Water's Edge	20 linear miles of treatment area
2.2.4	Forested Areas Pest Control	6,400 acres of treatment area
2.2.5	Other Pest Control Activities	
	- Ground or Aerial	6,400 acres of treatment area
	- In Water	80 acres of treatment area (i.e. surface area)
	- At Water's Edge	20 linear miles of treatment area

If you exceed the annual treatment area thresholds and do not meet one of the other exemptions, 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. Ten 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. The area treated at each separate site by a permittee, is added together and counts towards the annual treatment area threshold for each use pattern.

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

The person or entity holding the NPDES permit must retain all the required records. Permittees who do not meet the definition of a small entity, and who exceed the annual treatment area threshold amounts for application, must also submit an annual report to IEPA. Small entity is defined in the permit and includes, but is not limited to small businesses which meet the Small Business Administration criteria at 13 CFR 121.201.

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Things to Keep in Perspective

- You cannot obtain an NPDES permit to apply a pesticide directly to water that is NOT labeled for aquatic use.
- The General NPDES permit only applies to pesticide applications that will be made directly to or over water, or at the water's edge. For most agricultural pesticide applications, an NPDES permit will not apply.
- Applications made to dry ditches, which discharge to waters of the US, may also require general NPDES permit coverage.
- Off target spray drift and stormwater runoff, which may contain pesticides or residues from an application to a farm field or home lawn, to waters of the US is NOT subject to an NPDES permit.
- If a government entity issues a “declared pest emergency” that requires a pesticide application that would meet the requirements for an 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 file an updated Notice of Intent to modify your NPDES permit coverage to add additional use patterns or treatment areas at least 14 days prior to beginning the pesticide applications.
- Obtaining NPDES general permit coverage for pesticide applications directly to or over water or at water's edge provides protection 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 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 \$32,500 per day.
- Those 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.

This summary attempts to highlight the main points of the NPDES permit process and its applicability to pesticide applicators in Illinois. It is not inclusive of all the requirements or nuances of the permit process.

If you have general questions, please contact Michelle Wiesbrook at (217) 244-4397. For questions that relate directly to the permitting process, you should contact the IEPA Division of Water Pollution Control Permit Section at (217) 782-0610.

