



FACT SHEET

For

**NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
SPDES GENERAL PERMIT
FOR POINT SOURCE DISCHARGES
TO SURFACE WATERS OF NEW YORK
from
PESTICIDE APPLICATIONS**

Permit No. GP-0-16-005

Issued Pursuant to Article 17, Titles 7, 8 and Article 70
of the Environmental Conservation Law

November 9, 2016

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INTRODUCTION

The New York State Department of Environmental Conservation (NYSDEC) is renewing, with modifications, the SPDES General Permit for Point Source Discharges to Surface Waters of New York from Pesticide Applications as GP-0-16-005. GP-0-16-005 will be effective on November 9, 2016. GP-0-16-005 will replace the previous general permit, GP-0-11-001, which expired on October 31, 2016.

Pursuant to Section 402 of the Clean Water Act (CWA), point source discharges to waters of the United States from the application of pesticides are unlawful unless they are authorized by a National Pollutant Discharge Elimination System (NPDES) permit or by a state permit program. New York's State Pollutant Discharge Elimination System (SPDES) is a NPDES-approved program with permits issued in accordance with the Environmental Conservation Law (ECL). The authority for a SPDES general permit is in ECL §70-0117(6). The Pesticide SPDES General Permit authorizes point source discharges to, in or over surface waters of New York State from the application of New York State registered pesticides labeled for aquatic uses. Authorization of such discharges under the Pesticide SPDES General Permit is required for operators applying pesticides for aquatic uses on or after the effective date of GP-0-16-005. Pursuant to ECL §17-0817(1) and 6 NYCRR Part 750-1.15, the Pesticide SPDES General Permit for discharges to surface waters of New York can be issued for a fixed term not to exceed five (5) years from the effective date of the permit. The Pesticide SPDES General Permit will expire on October 31, 2021.

MODIFICATIONS

Noted below are several of the changes to the Pesticide SPDES General Permit in GP-0-16-005; however, please note that other non-substantive changes, not identified below, have also been made in GP-0-16-005.

Modification of Part I.A. SPDES General Permit Eligibility: Language has been added to reflect language used in the EPA's 2016 Draft NPDES Pesticide General Permit regarding a chemical pesticide that leaves a residual. This is further explained in EPA's 2016 Draft NPDES Pesticide General Permit Fact Sheet. In The National Cotton Council of America, et al. v. United States EPA, the Sixth Circuit held that if a chemical pesticide leaves any excess or residue after performing its intended purpose, such excess or residue would be considered a pollutant under the CWA. EPA states that once a pesticide no longer provides any pesticidal benefit, any amount of the pesticide that remains in those waters is a "residual" and would require coverage by an NPDES permit. Based on field studies of pesticides applied to water, EPA expects that some portion of every application of a pesticide made into waters of the United States will leave a residual in those waters and thus assumes every application will trigger the requirement for a NPDES permit.

Modification of Part I.B. – Maintaining Water Quality: Language has been added from EPA's 2016 Draft NPDES Pesticide General Permit to identify that the operator must control discharges to meet applicable water quality standards and that corrective measures must be implemented, in accordance with the Pesticide SPDES General Permit, if the operator becomes aware of a violation. The Department expects that discharges covered by GP-0-16-005 will be controlled to meet applicable water quality standards where there is compliance with the conditions in the Pesticide SPDES General Permit, including referenced conditions of other Department-required permits (e.g., Pesticide label requirements, Article 15 permit, Article 24 permit), and based upon EPA pesticide studies and analyses under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Modification of Part I.C.1. – Discharges to Water Quality Impaired Waters: The most recent version (2014) of the NYS Section 303(d) List of Impaired/TMDL Waters is referenced in GP-0-16-005. That list of impaired waters can be found at the following web address: www.dec.ny.gov/chemical/31290.html. If this web address and the related links on that webpage cannot be reached, the same information can be obtained by contacting the Department's Division of Water.

Modification of Part II.A. Obtaining SPDES General Permit Coverage – Notice of Intent (NOI) Submittal: GP-0-16-005 has been modified to provide the operator the ability to submit an electronic NOI (eNOI). The eNOI is located on the Department's website (www.dec.ny.gov/chemical/70489.html), with directions provided to walk the

operator through the eNOI application. The paper version of the NOI also continues to be available.

Modification of Part II.B. Obtaining SPDES General Permit Coverage – SPDES General Permit Authorization: Previously, the operator was authorized to discharge five (5) business days after the Department received a complete and accurate NOI, unless the Department denied authorization or earlier written acknowledgement was provided to the operator. Due to process time associated with paper and electronic submittals, the authorization to discharge timeframes have been changed accordingly. Authorization to discharge following submittal of a complete and accurate eNOI will be five (5) business days after Department receipt of the eNOI. Authorization to discharge following submittal of a complete and accurate paper NOI will be increased from five to twenty (20) business days after Department receipt of the NOI.

Modification of Part II.C. Obtaining SPDES General Permit Coverage – Change of Operator or Change of Contact Information: Language has been added to provide the procedure for operators to inform the Department if the contact information in the NOI for the operator has changed. This procedural change will allow the Department to maintain accurate operator contact information.

Modification of Part III.B. Requirements for Operators - Pesticide Discharge Management Plan – Part 1.b – Pest Management Area Description: Added language to be more consistent with EPA's 2016 Draft NPDES Pesticide General Permit to document the source of the target pest and how the action threshold is determined for the Pest Management Area, as well as to identify the action threshold.

Modification of Part III.B. Requirements for Operators - Pesticide Discharge Management Plan - Part 1.c – Control Measures, Procedures and Schedules: Added language to identify procedures and notifications for spills and adverse incidents. Also, added that weather conditions in the treatment area are to be assessed to ensure the pesticide application is consistent with applicable State/Federal requirements.

Modification of Part III.B.2 Requirements for Operators - Pesticide Discharge Management Plan: Removed the outright exemption that operators who have an Article 15 permit do not need a PDMP. An exemption is provided in Part III.B.2, to rely on plans and procedures in other permits to meet, in part or whole, the objectives of the PDMP.

Modification of Part VII. Standard Permit Conditions – Part B. Continuation of the Expired SPDES General Permit: Modified language to identify that if a successor permit to GP-0-16-005 is not issued prior to the expiration of GP-0-16-005, and GP-0-16-005 is extended pursuant to Section 401(2) of the State Administrative Procedure Act, operators with coverage under GP-0-16-005 may continue to operate and discharge in accordance with the terms and conditions of GP-0-16-005 until a new SPDES general permit is issued. In addition, added language to clarify that a new NOI must be submitted by operators

seeking coverage under GP-0-16-005, even those operators who had coverage under GP-0-11-001.

Modification of Part VII. Standard Permit Conditions – Part F. Duty to Provide Information: Added language that the NOI and other records required in Parts III and IV are public documents that the operator must make available for review and copying within five (5) business days of the operator receiving a written request by any person to review these documents.