

# Frequently Asked Questions (FAQ) NYS SPDES Pesticide General Permit (PGP) GP-0-16-005

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**Note: A separate FAQ document is available on the PGP website providing additional details on completing the Notice of Intent and related items.**

## A. Who Must File the Notice of Intent (NOI)?

An *operator* (defined below and in the PGP) must file a complete Notice of Intent (NOI) to obtain coverage under the SPDES Pesticide General Permit (PGP). To apply electronically, go to the NYS Department of Environmental Conservation webpage:

<http://www.dec.ny.gov/chemical/70489.html>, and click on the large blue button labeled “On-line Forms Log-in”. For additional information read the PGP NOI FAQ document.

PGP coverage is specifically required for point source discharges by operators from the application to, in, or over *surface waters of the State* (defined below and in the PGP) of any New York State registered pesticide that is *labeled for aquatic uses* (defined below and in the PGP).

Any application of a pesticide that is not labeled for aquatic uses is ineligible for coverage under the PGP.

**PGP coverage is required even if the same pesticide application may be addressed by another permit (e.g., Article 15 pesticide permit or Article 24 wetlands permit).**

**PGP coverage is required for aquatic pesticide applications, even if Article 15 or Article 24 permits might not be required for those pesticide applications. Examples include:**

- The use of copper sulfate for algae control by or on behalf of a water supply agency in its water supply reservoir

- Mosquito adult control pesticide applications directly over surface waters of the State (includes wetlands)
- The application of pesticides labeled for aquatic uses to surface waters to control organisms which cause “swimmer’s itch”.
- The application of pesticides labeled for aquatic uses to surface waters to control snails, leeches and eels.

**PGP coverage is required where a pesticide application is directly to, in, or over surface waters of the State of New York, as specifically defined in this PGP.**

**Exceptions to the above when a PGP coverage and NOI submittal are not required, include:**

- Aquatic pesticide applications to a small pond, of one acre or less in size, which has no outlet, or has a controllable outlet, to a surface water of the State and which lies wholly within the boundaries of lands privately owned or leased by the individual authorizing the pesticide treatment.

A controllable outlet, for purposes of this General Permit, is one where a pond (of one acre or less in size) has a mechanical device, such as an overflow pipe or spillway, which would allow excess water to leave the pond to prevent damage to the pond structure from overflow, and under normal weather conditions, outflow does not occur.

The issue is not the presence of the outlet device, rather the movement of pesticide treated waters "to other waters" or "to surface waters". Therefore, in order to assure consistency associated with this exemption, if the treated pond water can be held or otherwise prevented from leaving the pond during the pesticide application and during the duration of the treatment, the pond should be viewed as having a controllable outlet, and not having an outlet "to other waters" (6 NYCRR Part 327.1(c)) or "to surface waters" (Article 15-0313.4.a)., and thus meets the SPDES Pesticide General Permit exemption criteria.

The duration of the treatment, and subsequent water-holding requirements and/or water use restrictions will be indicated on the pesticide label. If water can be held in the pond, for the duration of the treatment, with a dam or some other device such as by sandbagging, or lowering the water level, this will satisfy the requirements associated with the exemption. Again, this "outlet" interpretation is only associated with ponds one acre or less in size.

In effect, pesticide applications to small ponds which do not require Article 15 permits also do not require PGP coverage or NOI submittal. These small ponds are excluded from the definition of surface waters applicable to the PGP.

- Aquatic pesticide applications to storm sewers or conveyances (e.g., road side ditches), unless they are mapped in 6 NYCRR Parts 800 to 941 or continuously flowing. These are also excluded from the definition of surface waters applicable to the PGP.

- Discharges from pesticide applications to land or areas adjacent to surface waters of the State (as defined in the PGP), including areas adjacent to wetlands. These may include mosquito adult control directly over land areas (which exclude any wetlands or any other surface waters) and many typical structural, right-of-way, or agricultural uses of pesticides which are not directly to, in, or over surface waters. Pesticide applications that are addressed by an Article 24 permit which are exclusively limited to the areas adjacent to a wetland, but not within or over the wetland, are not covered by the PGP.

Discharges from aquatic pesticide applications within Indian Country lands that lie within New York State are not eligible for coverage under the New York PGP, but may be required to obtain coverage under the Federal NPDES PGP. The New York State PGP coverage is applicable to other federal facilities within New York State (e.g., military facilities). For Indian Country lands, information on the federal permit can be obtained at the following website: [www.epa.gov/npdes/pesticides](http://www.epa.gov/npdes/pesticides).

### **Operator Definition (for this PGP)**

- There shall be a single entity identified as the operator which meets one of the following criteria:
  - The entity with control over the decision to perform pesticide applications eligible for coverage under this SPDES general permit, including the ability to modify those decisions, that results in a discharge to surface waters of the State: or
  - The entity who performs the application of a pesticide eligible for coverage under this SPDES general permit or who has day-to-day control of the application (i.e., they are authorized to direct workers to carry out those activities) that results in a discharge to surface waters of the State.
- The operator under this SPDES general permit must be the same as the permittee for an Article 15 or 24 permit addressing the same discharge, where applicable.

In nearly all cases, the operator that obtains coverage under the PGP will be in the first category above, the “decision maker” that employs a pesticide applicator. For all situations where a pesticide application is also addressed by an Article 15 or 24 permit, this will be the case. For other situations it will often be most practical for the “decision maker” to be the operator, though the permit may allow a pesticide applicator or entity who has day-to-day control of the applications to be the operator for this limited number of cases.

### **Surface Water Definition (for this PGP)**

- *Surface Waters of the State*, as defined in the PGP, means lakes, bays, sounds, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic ocean within the territorial seas of the state of New York and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters that do not combine or effect a junction with natural surface

or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction. Waters of the state are further identified in 6 NYCRR Parts 800 to 941. For this SPDES general permit, storm sewers or conveyances (e.g., road side ditches) are not surface waters of the state unless they are mapped in 6 NYCRR Parts 800 to 941 or continuously flowing. For this SPDES general permit, surface waters of the State do not include a pond of one acre or less in size which has no outlet to a surface water of the State and which lies wholly within the boundaries of lands privately owned or leased by a person.

### **Labeled for Aquatic Use Definition (for this PGP)**

- *Labeled for Aquatic Uses*, as defined in the PGP, means that the New York State accepted pesticide label for the pesticide, including both biological pesticides and chemical pesticides, indicates that the pesticide is labeled for direct application to, in or over surface water.

## **B. Can a Single NOI Cover Multiple Pesticide Applications?**

A single NOI may cover discharges from the application of more than one pesticide.

A single NOI may also cover multiple discharges and locations if they (a) lie within right-of-way easements held by the operator; or (b) lie within the jurisdiction of a governmental agency identified as the operator; or (c) are within contiguous locations owned by a single owner.

Typical cases where a single NOI can cover multiple pesticide applications may include operators who manage governmental agency operations (town, county or state programs), larger properties (such as golf courses with multiple ponds), or right-of way areas (such as utility or transportation corridors).

A single NOI may cover control of more than one target pest, if the target pests are considered similar. For the purpose of single NOI coverage, “similar target pests” would include all grouped species that may be associated with each separate category of Article 15 permits (e.g., Part 327 – all aquatic vegetation and algae; Part 328 – all nuisance fish; Part 329 – all aquatic insects). An operator may address all species associated within any of these three principal categories in a single NOI if the criteria cited above are satisfied. For example, a single NOI would ***not*** be permitted to cover control of both aquatic vegetation ***and*** mosquitoes, but would allow control of all algae and aquatic vegetation species included within Part 327 Article 15 permits.

A single NOI may provide coverage over a time period that includes multiple Article 15 or 24 permits (which may be annual permits for shorter time periods than the PGP period of coverage). The NOI provides coverage for the entire period of PGP coverage (through October 31, 2021).

All pesticides for which PGP coverage is sought during the entire period of PGP coverage shall be identified on the NOI. The NOI may identify pesticides not included in a current year Article 15 or 24 permit, but authorization to discharge under the PGP is only provided where all other

applicable permits (e.g. Article 15 and Article 24 permits) have been obtained, and is limited to the specific pesticide applications authorized by those other permits.

A single NOI which satisfies the above criteria may also cover pest control operations which include activities regulated by multiple Article 15 or 24 permits, and activities not regulated by Article 15 or 24 permits. Examples may include a comprehensive county mosquito control program that includes multiple Article 15 permitted mosquito larvae control activities and mosquito adult control activities (not regulated by Article 15 permits), or a right-of-way vegetation control program which includes activities regulated by Article 24 wetlands permits and vegetation control activities in unregulated wetlands.

Submitting a new NOI during the period of PGP coverage (through October 31, 2021) is not required, unless the discharge(s) described in the NOI change (e.g., pesticide type), or the operator changes. For example, a new NOI is not required for each renewal of an annual Article 15 permit if conditions in the original NOI have not changed. However, authority to discharge (apply pesticides) under the NOI is not provided until any required Article 15 or 24 permits have been obtained for each year of coverage.

If the pesticide type and operator described on the original NOI do not change, the operator may be able to modify certain other sections of the NOI (pesticide products, target pests and contact information for example).

## **C. What are the Fees Associated With Permit Coverage?**

An annual fee of \$110 will be separately billed to the operator identified on the NOI.

The annual fee of \$110 is assessed for each calendar year, or any portion of a calendar year, for which the operator has obtained coverage under each NOI.

**Operators should not send any fee payments with their NOI submittal.** A separate bill will be sent to the operator named on the NOI, or to the billing contact if provided in the NOI. A separate \$110 annual fee is billed for each separate NOI, even where the same operator is named on the NOIs. It may be advantageous for the operator to cover multiple activities under a single NOI, where eligible (see Part B above).

The annual fees will be terminated for subsequent calendar years after coverage under the PGP is terminated by filing a Notice of Termination (NOT, see Part G below). Fees are not pro-rated or partially refunded if the NOT is filed part way into a calendar year. Discharges may not continue once an NOT form is filed, unless a new complete NOI is filed.

## **D. How Does the Operator Complete the Notice of Intent?**

A separate Frequently Asked Questions (FAQ) document has been prepared to assist operators in completing the Notice of Intent. This document, titled “**Frequently Asked Questions – NOI Completion**” is located, along with other documents related to the PGP, in a link on the webpage:

<http://www.dec.ny.gov/chemical/70489.html>

Operators and certified pesticide applicators that provide services to operators are recommended to review that document prior to completing the NOI.

## **E. Where Does the Operator Submit the Notice of Intent?**

Electronic submittals of the NOI (eNOI) are recommended and can be entered on-line by going to the website: <http://www.dec.ny.gov/chemical/70489.html>, and clicking the large blue button labeled “On-line Forms Log-in”.

A paper copy, with the certification signature of the operator, of the complete NOI must be sent to the following address (also indicated on the NOI form).

Notice of Intent  
NYS DEC, Bureau of Water Permits  
625 Broadway, 4<sup>th</sup> Floor  
Albany, New York 12233-3505

**A complete NOI must be submitted prior to the next eligible pesticide application under the PGP. The NOI is not submitted together with any Article 15 or 24 permit application to another office or DEC Region.** Authorization to discharge may be delayed by incomplete or misdirected NOI submittals.

PGP coverage is effective five (5) business days from the date the Department receives the complete eNOI, or twenty (20) days for paper NOIs.

The Department will send letters acknowledging receipt of the NOI to the operator identified in the Certification Statement (Section IV of the NOI) at the operator’s address identified in Section I of the NOI. The operator is recommended to maintain this letter with their records. The acknowledgement letter is not required to be in the possession of pesticide applicators conducting pesticide applications.

If the listing of target pests (Section II-D of the NOI), or pesticide product names (Section II-E of NOI) require additional space, the operator may include an attachment to the NOI for either paper or electronic NOIs. If the application of mosquito larvicides is made at stormwater catch basins, and requires a PGP, a map of the catch basin locations may be substituted for the Waterbody/Pest Management Area Coordinates requested in Section III. These are the only maps that should be attached or submitted with the NOI.

**No additional documents (e.g., IPM evaluation, PDMP, maps) or fee payments should be attached to or transmitted with the NOI.**

## **F. What are the Other PGP Requirements for Operators?**

The PGP requirements related to Integrated Pest Management (IPM) evaluation are described in Part III.A.5 of the PGP, and are discussed in Section II-B of the companion FAQ document “Frequently Asked Questions – NOI Completion” (referenced in Part D, above).

The PGP requirements related to the Pesticide Discharge Management Plan (PDMP) documentation are described Part III.B of the PGP, and are discussed in Section II-C of the companion FAQ document “Frequently Asked Questions – NOI Completion”.

The PGP requirements for the operator to maintain records are described in detail in Part VI of the PGP. Most of the required records represent typical records that pest control managers already maintain for their activities. In addition, the key required records that the operator named on the NOI must maintain for the PGP include:

- A copy of the NOI
- Copies of any Adverse Incident Reports
- A copy of the Integrated Pest Management (IPM) evaluation, where required.
- A copy of the Article 15 and/or Article 24 permit(s) addressing the same pesticide use, where it is applicable
- A copy of the PDMP (and PDMP updates), as required. The PDMP includes additional records.

It is recommended that the operator also maintain in the operator’s records any correspondence from the Department, including any letters acknowledging receipt of completed NOIs, and NOTs (see Section G below).

Other PGP requirements are described in detail in Part III (operator requirements), and Part IV (corrective measures and incident reporting) of the PGP.

Part III places emphasis on compliance with the pesticide label, and other existing NYS pesticide regulations and applicable permits.

In addition, Part III.A.4 requires operators to minimize leaks, spills or other unintended discharges of pesticides associated with the application of pesticides covered under the PGP.

Part III.C also requires operators to ensure that visual monitoring for possible adverse incidents to non-target species is conducted in and around the area where pesticide applications are made under this PGP.

Part IV.D of the PGP requires operators to report three types of incidents to the DEC Regional Water Engineer (oral notification within 24 hours; written notification report within 30 days):

- Pesticide discharges to waters of the state that are not authorized by this SPDES general permit (e.g., not covered by the Notice of Intent);
- Adverse incidents, in which a person or non-target organisms (including fish, plants amphibians, invertebrates or other animals) may have been exposed to a pesticide and

suffered a toxic or adverse effect that may have resulted from a discharge from a pesticide application under this PGP; and

- Any activity has occurred or will occur that would result in an adverse incident to a State or federally-listed threatened or endangered species or its State or federally designated critical habitat, that may have resulted from a discharge from a pesticide application under this PGP

## **G. How does the Operator Terminate Permit Coverage?**

The Notice of Termination (NOT) form is located in a weblink on the PGP webpage at: <http://www.dec.ny.gov/chemical/70489.html>.

Coverage under the PGP may be terminated if no additional discharges will occur. A new complete NOI may be submitted in the event that a new discharge is planned. This may be an advantage to operators who anticipate no future aquatic pesticide applications, or pesticide use that is only within some longer time frame. Fees are applied for each calendar year of coverage for each NOI, and frequent termination and renewal within a year or consecutive years may lead to higher total fees.

An operator may continue coverage throughout the period of PGP coverage (ending October 31, 2021) even if no additional discharges may occur, rather than terminating and re-applying for PGP coverage. Operators are not required to notify the Department that pesticide applications have ended, nor are operators required to terminate coverage under the PGP. However, termination of coverage through filing a Notice of Termination (NOT) will eliminate annual fees in the calendar year ***following*** NOT submittal.

Although some Article 15 and Article 24 permits may provide a shorter period of coverage under those permits, the PGP coverage associated with a single NOI may continue through several separate periods of coverage under other permits. However, authorization to discharge under the PGP is only provided in cases where other required permits have been obtained.

## **H. Where Can the Operator Obtain Forms and Other Information?**

The complete NYS SPDES Pesticide General Permit (PGP) and all associated documents and forms can be located in links on the upper right hand side of the following NYS Department of Environmental Conservation webpage:

<http://www.dec.ny.gov/chemical/70489.html>

Further questions on the PGP may be directed to the following e-mail and telephone number:

[dowinfo@gw.dec.state.ny.us](mailto:dowinfo@gw.dec.state.ny.us)

Phone: (518) 402 -8111