



**Department of
Environmental
Conservation**

RESPONSIVENESS SUMMARY

For

Public Comments Received

On the

**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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BACKGROUND

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”).

GP-0-16-005 is issued pursuant to Article 17 (“Water Pollution Control”) Titles 7, 8 and Article 70 (“Uniform Procedures”) of the *ECL* and will replace the current SPDES General Permit for Point Source Discharges to Surface Waters of New York from Pesticide Applications, GP-0-11-001. GP-0-16-005 is effective on November 9, 2016 and will expire October 31, 2021.

An *operator* must obtain coverage under GP-0-16-005 by submitting a complete Notice of Intent (“NOI”) to the New York State Department of Environmental Conservation (“Department”). Copies of GP-0-16-005 and the NOI for New York are available by calling any of the Department’s regional offices (see Appendix B). They are also available on the Department’s website at:

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

A draft of GP-0-16-005 was published for public review and comment in the Environmental News Bulletin (ENB) on April 20, 2016, and in the Binghamton Press and Sun, Buffalo News, Rochester Democrat and Chronicle, Syracuse Post Standard, Newsday, NY Post, Glen Falls Post Star, and Albany Times Union between April 20, 2016 and April 26, 2016. The comment period closed on May 26, 2016. Minor changes and clarifications were made from the draft to the final GP-0-16-005. These include i) changing the title of Part II.C. from ‘Change of Operator or Change of Address’ to ‘Change of Operator or Change of Contact Information’ to reflect the content of that portion of the GP-0-16-005, and ii) clarifying that an operator may complete a Notice of Termination (NOT) electronically (eNOT).

This responsiveness summary addresses all relevant comments received on the proposed renewal of the Pesticide SPDES General Permit, GP-0-16-005.

Commenters on the Draft General Permit
GP-0-16-005
Public Noticed on May 20, 2016

Organization		Name	Date Comment Submitted
1	Empire State Consumer Project, Inc. (ESCP)	Carol Chittenden	4/23/16
2	NYS Federation of Lake Associations, Inc. (NYSFOLA)	Nancy Mueller, Manager	5/20/16
		Dean Long	

Comment 1: A comment was submitted questioning if neighborhood notification is required before discharging pesticides to NYS waters. The commenter requested that a notification component be added to GP-0-16-005 if no documents currently require notification before discharging pesticides to NYS waters.

DEC Response: *GP-0-16-005 does not itself require notification to the public before discharging pesticides to NYS waters. Article 15 of the New York State Environmental Conservation Law requires notification in writing if there is more than one riparian owner, or vested riparian users, and if there will be outflow of treated waters, which have a water use restriction, through lands owned by someone other than the sole water body riparian owner. The purpose of GP-0-16-005 is to authorize point source discharges to, in, or over waters of the state of any registered pesticide that is labeled for aquatic uses. The majority of those with coverage under GP-0-16-005 also have an Article 15 permit.*

Comment 2: A comment was made in reference to application of 2,4 D, which has a working dose greater than the drinking water standard. Concern was expressed that using this product at the effective dose rate may not be feasible since it will directly or indirectly violate a water quality standard.

DEC Response:

The chemical pesticide is not a pollutant until its intended purpose is completed and the “residual” of the chemical pesticide is left. Under this permit, which only regulates pollutants, the chemical pesticide “residual” is what must comply with applicable water quality standards.

Comment 3: A comment was submitted regarding the difficulty in quickly establishing a treatment plan in order to get authorization to discharge, in the event there is a need to address an invasive species, such as mosquitos carrying the Zika virus.

DEC Response: *The Department can issue an Emergency Authorization (New York State Environmental Conservation Law §70-0116 and 6 NYCRR Part 621.12) which*

provides for an activity to be carried out in response to an emergency, which is defined in NYS ECL §70-0105.

Comment 4: A comment was made that some of the modifications made to GP-0-11-001 are requirements that are already required by the NYS pesticide treatment plan.

DEC Response: The preparation of an Integrated Pest Management (IPM) Evaluation and Pest Discharge Management Plan (PDMP) will help to ensure there is a sufficient understanding of the pest, its cause, and the application of a pesticide treatment, in addition to the particular control measures that will be in place. Some of this information may be a component of information required by an Article 15 permit. Please note that if the owner/operator under GP-0-16-005 has a document that was created as a component of its Article 15 permit that fulfills all or part of the requirements of the IPM Evaluation or the PDMP, those documents may be used to meet the requirements, in part or in full, of Part III.A.5(c) and Part III.B.2 of GP-0-16-005.

Comment 5: In Part IV.D.2 (Thirty Day Incident Written Report), a request was made to extend the 30 day period for a Final Report. The commenter suggested a draft report be instead submitted within 30 days to provide additional time to collect and submit final data.

DEC Response: GP-0-16-005 has been modified to provide an additional 30 days for submission of the Adverse Incident Report, provided a written request is submitted detailing the basis for the time extension request, within 14 days of the time the operator became aware of the adverse incident

Comment 6: The commenter noted that the term “incident” is used in Part IV.D. of GP-0-16-005 but “adverse incident” is defined. The commenter also suggested a revision to the definition of an “adverse incident” to include a threshold. The commenter recommends that the Department consider the pesticide used and the sensitivity of non-target species.

DEC Response: In Part IV.D. of GP-0-16-005, “incident” has been changed to “adverse incident” for clarity. Adverse Incident is defined in Appendix A of GP-0-16-005 and no changes were made to the definition that was publicly noticed. If downstream concentrations of a pesticide are detected but there is no damage to non-target species, that would not be considered an adverse incident. The adverse incident definition in Appendix A provides several examples of a toxic or adverse effect, which is a component of identifying if an adverse incident has occurred. An adverse incident may be detected through visual monitoring or sampling. If something is observed following a pesticide application that the operator is unsure if it fits into the category of an adverse incident, the Regional Water Engineer may be contacted to discuss the findings to identify if an adverse incident has occurred.