



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL

OFFICE OF THE
SECRETARY

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SECRETARY'S ORDER

Pursuant to 29 Del. C. §10119

Order No. 2012-W-0006

Re: Adoption of emergency regulation: *Regulations Governing the Discharges from the Application of Pesticides to Waters of the State*

AUTHORITY AND FINDINGS:

The Department of Natural Resources and Environmental Control (DNREC) is authorized, pursuant to *29 Del. C. §10119*, to adopt emergency regulations if an agency determines that an imminent peril to human health, safety, or welfare requires adoption, amendment, or repeal of a regulation with less than the notice required by *29 Del. C. §10115*. I hereby find that there is evidence of an imminent peril to human health, safety, and welfare that requires adoption of these emergency regulations.

The proposed regulatory revision of Section 9.0, *Del. C., Chapter 60, General Permit Program*, to add Subsection 9.8, *Regulations Governing the Discharges from the Application of Pesticides to Waters of the State*, is being promulgated as a result of the 2009 decision by the Sixth Circuit Court of Appeals (Court) that the application of biological pesticides and chemical pesticides with residuals to waters regulated under the provisions of the federal Clean Water Act must be regulated by a National Pollutant Discharge Elimination Program (NPDES) permit.

In 2009, the Court [*National Cotton Council, et al. v. Environmental Protection Agency (EPA)*] vacated EPA's 2006 Final Rule on Aquatic Pesticides, which determined that NPDES permits were not required for applications of pesticides to U.S. waters. As a result of the court's decision, discharges to waters of the U.S. from the application of pesticides will require NPDES permits when the court's mandate takes effect. On March 28, 2011, the Court granted EPA's request for an extension to allow more time for pesticide operators to obtain permits for pesticide discharges into U.S. waters from April 9, 2011, to October 31, 2011.

The State of Delaware has delegated authority from EPA for administration of the NPDES and issuance of the State's own NPDES permits. Delaware must, therefore, promulgate regulations to address the new NPDES permitting requirement for the application of pesticides on or near water bodies of the state.

Delaware's Good Nature depends on you!

The DNREC Division of Water (DW) has been working to draft regulations to address the new NPDES permitting requirements. However, the required court date of October 31, 2011, was not met by Delaware due to the time-intensive nature of the undertaking combined with staff shortages/turnover in addition to EPA's final rule not having been completed prior to the October 31 deadline. Therefore, DNREC currently is in violation of the federal requirements to have an NPDES program in place for the application of aquatic pesticides in or near Delaware waters.

The emergency *Regulations Governing the Discharges from the Application of Pesticides to Waters of the State* will allow pesticide applicators to obtain the required NPDES permits for applying aquatic pesticides from March–September 2012. Much of the aquatic pesticide spraying during this timeframe is concentrated on eliminating mosquito populations, which are a significant risk to human health and welfare due to their ability to transmit diseases and other blood-borne vectors.

The best known mosquito-borne diseases are West Nile Virus, Malaria, and Yellow Fever. Others, such as Dengue Fever and Encephalitides, are common within America but not as well-known throughout the general populous. Historically, mosquito-borne diseases have been at very low levels as the result of our nation's progressive and intensive mosquito-control effort; however, for the first time in nearly 50 years, endemic cases of Dengue Fever and Malaria have been documented in the United States, mostly as a direct result of the declining vector control programs combined with an increase in immigrants who transport such blood-borne diseases into the U.S. (http://www.mda.state.md.us/plants-pests/mosquito_control/mosquito_info/mosquitoes_disease/index.php; and <http://www.cdc.gov/ncidod/dvbid/westnile/index.htm>).

For this reason, it is vital to promulgate such emergency regulations within Delaware to not allow the lapse in Delaware's Mosquito Control Program offered through DNREC's Division of Fish and Wildlife. The DNREC's DW will continue to work with stakeholders toward completion of the full regulations through the normal regulatory process with a target promulgation of September 2012. Additionally, pursuant to 29 Del. C. §10119(4), DW will receive, consider, and respond to petitions by any interested person(s) for the reconsideration or revision of this emergency order.

EFFECTIVE DATE OF ORDER

This emergency order shall take upon promulgation in the *Delaware Register* and shall remain in effect for 90 days from date of publication or until regulations are implemented that eliminate the need for the emergency order.

ORDER

It is hereby ordered that the above-referenced emergency regulation is adopted pursuant to 29 Del. C. §10119.

Date: 2/7/12



Collin P. O'Mara
Secretary