



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-0021**

Re: Sixty- (60) day renewal to Order No. 2012-W-0006 enacting emergency regulations,  
*Regulations Governing the Discharges from the Application of Pesticides to Waters of the State*

**AUTHORITY AND FINDINGS**

Secretary's Order No. 2012-W-0006 was adopted in February 2012 to temporarily enact a new regulatory requirement, *Regulations Governing the Discharges from the Application of Pesticides to Waters of the State* under revision of Section 9.0, *Del. c., Chapter 60*. This notification acts to renew Order No. 2012-W-0006 for an additional 60 days after the initial 120-day effective period pursuant to *29 Del. C. §10119 (3)*.

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 National Pollutant Discharge Elimination System (NPDES) permits were not required for applications of pesticides to United States' (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.

The Department of Natural Resources and Environmental Control's (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. Development of the final regulation is currently underway; however, it is unlikely the final regulations will be promulgated prior to the expiration of the emergency regulations. Without

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the 60-day extension of the emergency regulations, DNREC will be 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, *Regulations Governing the Discharges from the Application of Pesticides to Waters of the State*, has allowed pesticide applicators to obtain the required NPDES permits to apply aquatic pesticides from March-June where extension of such regulations will allow for such coverage until September 2012.

Much of the aquatic pesticide spraying during this timeframe is concentrated on eliminating mosquito populations, which pose 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 Encephalitis, are common within America but not as well-known throughout the general populous. Historically, such 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, such diseases have been documented in the U.S. 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.

For this reason, it is vital to renew emergency regulations under Order No. 2012-W-0006 within Delaware to not allow the lapse in Delaware's Mosquito Control Program offered through the 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 Secretary's Order will renew the above-referenced order No. 2012-W-0006 and emergency regulations for an additional 60 days after the initial 120-day effective period pursuant to 29 Del. C. §10119. This emergency order shall take effect upon publication in the *Delaware Register* and shall remain in effect for 60 days from date of publication.

#### **ORDER**

It is hereby ordered that the *Regulations Governing the Discharges from the Application of Pesticides to Waters of the State* under the original Secretary's Order No. 2012-W-0006 remain in effect for an additional 60 days pursuant to 29 Del. C. §10119(3).

Date: 6/15/2012



Collin P. O'Mara  
Secretary