

Frequently Asked Questions

Regulations Governing Discharges from the Application of Pesticides to Waters of the State

Summary

A recent decision from the Sixth Circuit Court has mandated the Environmental Protection Agency and all state environmental agencies to permit pesticide applications in/near water. In Delaware, this requirement will be regulated under the National Pollutant Discharge Elimination System (NPDES) program administered through the Delaware Department of Natural Resources and Environmental Control (DNREC). As a result, DNREC's Secretary signed a Secretary's Order to adopt emergency regulations, *Regulations Governing Discharges from the Application of Pesticides to Waters of the State* (pursuant to 29 Del. C. §10119).

What are Waters of the State?

Waters of the State” or “State Waters” means all water, on the surface and under the ground, wholly or partially within, or bordering the State, or within its jurisdiction including but not limited to:

1. waters which are subject to the ebb and flow of the tide including, but not limited to, estuaries, bays and the Atlantic Ocean;
2. all interstate waters, including interstate wetlands;
3. all other Waters of the State, such as lakes, rivers, streams (including intermittent and ephemeral streams), drainage ditches, tax ditches, creeks, mudflats, sand flats, wetlands, sloughs, or natural or impounded ponds;
4. all impoundments of waters otherwise defined as Waters of the State under this definition;
5. wetlands adjacent to waters (other than waters that are themselves wetlands) identified in the above four statements; and,
6. although waste and stormwater treatment systems or waste storage structures including, but not limited to, treatment ponds or lagoons designed to meet the requirements of the Clean Water Act (other than cooling ponds which otherwise meet the requirements of this definition) are not considered to be “Waters of the State”, coverage will be required if determined to discharge into Waters of the State.

Who needs to get a permit?

These operators include:

1. Private applicator who purchases and applies “restricted use” pesticides
2. A commercial applicator (for hire) who uses any pesticides on other's property in exchange for compensation; or,
3. A commercial applicator (not for hire) who uses any pesticides as part of their job duties

The pesticide certification classes that will apply include:

- Forestry (02)
- Aquatic (5A)
- Mosquito (5C)
- Right of Way (06)

Where do I get a permit?

Permit coverage can be obtained, free of charge, by filling out the one page form called a Notice of Intent (NOI). The form can be found by accessing the following website: <http://www.dnrec.delaware.gov/wr/Services/Pages/SurfaceWaterDischarges.aspx>

The form should be filled out by (1) Any entity who performs the application of pesticides; or (2) Any entity who has day-to-day control of the application (i.e., they are authorized to direct workers for hire to carry out those activities). NOI forms are required to be submitted between March 15, 2012 - June 15, 2012. Permit coverage is valid up to a period of five years. A new NOI must be submitted (within 30 days) if an operator who has previously submitted an NOI undergoes a name change or if there is a change in ownership. Changes in operations including the change in active ingredients for products used, or change in Pest Management Area, as indicated on the NOI, will require the submittal of a new NOI.

Who will need to develop a Pesticide Discharge Management Plan (PDMP)?

A Pesticide Discharge Management Plan (PDMP) must be developed for all state government entities, any operator that serves a population of more than 10,000, or a private enterprise that exceeds the Small Business administration size standard as identified at 13 CFR 121.201 (size standards set by North American Industry Classification System codes, varies by industry type). PDMPs must be developed by June 15, 2012, to be kept with the operator (not submitted to the Department). Please refer to the regulation in entirety for the mandated contents of the PDMP.

Who is required to keep records and how long should they be kept?

Operators must keep written records covered under this regulation for five years. Please refer to the entire regulation, sections 9.8.12.1 - 9.8.12.3 for the list of records.

Do I need to send anything to the Department?

Immediately notify the Department of spills and leaks by calling the Spill Notification 24-hour HOTLINE at (800) 662-8802. Within 30 days of a reportable adverse incident or health to humans or the environment, operators must provide a written report of the adverse incident to the Department. Please refer to the regulation, in full, to see the definition of Adverse Incident.

PDMPs are not to be submitted to the Department, but kept with the Operator. Only those Operators who are required to develop a PDMP will be required to submit annual reports. The annual report must be submitted no later than February 1 of the following year for all pesticide activities covered under this Subsection occurring during the previous calendar year.

For More Information

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