

**Michigan Department of Environmental Quality
Pesticide Application General Permit (PGP)
-Frequently Asked Questions-**

Q: What is the definition of a pesticide “residue”?

A: That portion of a pesticide application that is discharged from a point source to surface waters of the state and no longer provides pesticidal benefits. It also includes any degradates of the pesticide.

Q: Would like additional clarification on what “near” to waters means

A: Although the court did not define the term “near” in the context of pesticide discharges, the EPA interprets this term to refer to the unavoidable discharge to waters of the U.S. in order to target pests in close proximity to water. Moreover, the EPA stated in their June 24, 2010 Webcast that they do not consider the term “near” to be the character that needs to be described or defined. The true issue is whether or not there is actual contact with the water. If there is an application of pesticides near to waters of the United State (or state) the applicator should be able to determine if the pesticide is actually coming into contact with the water. The proximity of the application from the water body, be it 5, 10, 50 ft is irrelevant. Comments have been submitted to the EPA requesting further clarification of this point.

Q: Will conditions of MDEQ PGP apply to waters of the U.S. as stated in the court ruling or will protection of waters of the state be enforced?

A: The Michigan PGP will enforce protection of the waters of the state of Michigan.

Q: Are agricultural pesticide applications to water for activities such as cranberries and rice going to be regulated under the PGP?

A: The Clean Water Act (CWA) specifically excludes from the definition of point source, “agricultural storm water discharges and return flow from irrigated agriculture.” Nothing in the proposed EPA PGP (or any state PGP) changes the effect of those statutory exemptions.

Q: What does 10 days mean, is it calendar days or business days?

A: Calendar days.

Q: Who will be responsible for determining what the Pest Action Threshold is and when it has been reached?

A: The permittee is responsible for establishing the density of pest populations to serve as an action threshold for implementing pest management strategies. These action thresholds must be developed by the permittee prior to the first pesticide application covered under their permit and must be re-evaluated at least once each calendar year. The EPA defines an action threshold as a point at which pest populations or environmental conditions indicate that pest control action must be taken. Action thresholds help

determine both the need for control actions and the proper timing of such actions. It is a predetermined pest level that is deemed to be unacceptable.

Q: Has the EPA provided a Model Pesticide Discharge Management Plan (PDMP) prepared for permittees to use?

A: The EPA does not intend to provide any guidance documents for development of IPMs or PDMPs. The MDEQ is working with stakeholders to determine an appropriate format for these documents.

Q: Has the EPA developed a procedure by which a permittee can demonstrate a pesticide application will not leave a residue?

A: No. EPA assumes all chemical pesticides leave a residue.

Q: Does the MDEQ have the capacity (staffing/administration/compliance) to issue and oversee the required permits?

A: The Department will implement the efficiencies of the general permit program to minimize the amount of staff time and involvement required. However, the department remains concerned about how this may affect the program in the future.

Q: What will be the process for submitting and reviewing annual reports...is it expected this will be done through an on-line format?

A: The Department will require permittees who are required to apply for and obtain a certificate of coverage under the PGP to submit annual reports that contain basic information on their pesticide discharges to waters of the state. The Department will be working with the stakeholder group regarding document format and the procedure for submittal and review of these reports.

Q: What are the Water Quality Standards that will apply to pesticide application discharges?

A: The water quality standards that will apply to pesticide applications are contained in the Part 4 Rules, of Public Act 451 of 1994, as amended. A copy of the Part 4 Rules is available on the DEQ website at the following address: <https://www.michigan.gov/egle/about/Organization/Water-Resources/npdes/rules-and-regulations>

Q: The public notice requirements of the EPA PGP may be too cumbersome, is the MDEQ considering implementing the Notice of Intent (NOI) approach?

A: No. The MDEQ does not currently possess the legal authority to implement an NOI process for the Pesticide General Permit Program in Michigan. At present, it would require legislative action to amend our current administrative rules to obtain the necessary authority to implement this approach. Given the mandate of the 6th the Circuit Court that all pesticide application be covered by a PGP by April 9, 2011, the probability of accomplishing the necessary rule changes within that timeframe is remote. Consequently, the Department is proposing to proceed under our existing authority to develop general permits and issue individual certificates of coverage under the general permit.

Q: What will be the fee structure for the Michigan PGP?

A: The fee structure for the PGP will be the same as for other general permit authorization. Currently, it is being proposed that these activities will be classified as EPA minor Industrial/Commercial facilities with low-flow discharges. The fees associated with these types of discharges are a \$75 application fee and \$150 annual permit fee. If an application requires an individual permit, the application fee would be \$400 and the annual permit fee would be \$1650. These fees would be in addition to any fees required for permits for any other existing state program.

Q: Does the MDEQ have the authority to establish alternate thresholds? Could established thresholds change over time?

A: Yes, the MDEQ believes it has the authority to establish alternate thresholds for the state of Michigan. The EPA has stated that the proposed thresholds in the draft EPA PGP are not a mandate but what was determined to capture the majority of the “significant” applications without burdening smaller applicators and private residents. Whether the Department establishes its thresholds or adopts the thresholds developed by the EPA, it is not anticipated that they would change during the term of the issued general permit.

Q: How will public comments be handled, will they hold up the permitting process?

A: All public comments will be considered in accordance with established procedures. Comments submitted by the deadline will be considered in the final decision to issue the permit. If significant issues are raised that cannot be resolved through a responsiveness summary, then a public hearing may be required. The Department is working to establish timeframes for the submittal of permit applications and will adhere to established deadlines for permit processing to ensure that applicators have approval to perform their pest control activities as needed.

Q: Who will need to apply for the permits?

A: According to the EPA, any entity involved in the application of a pesticide that results in a discharge to surface waters of the state that exceeds established thresholds and meets either or both of the following two criteria:

(i) the entity has control over the financing for, or the decision to perform pesticide application that result in discharges, including the ability to modify those decisions; or

(ii) the entity has day-to-day control of or performs activities that are necessary to ensure compliance with the permit (e.g., they are authorized to direct workers to carry out activities required by the permit or perform such activities themselves).

Q: Are aerial (pesticide) applications for agriculture required to get this permit?

A: Terrestrial applications to control pests on agricultural crops and forest floors, and off-target spray drift are outside the scope of the Michigan PGP. These activities will not be required to obtain an NPDES permit.

Q: Where can stakeholders find/match-up federally- vs. state-listed endangered species

A: The Michigan Natural Features Inventory (MNFI) website contains a comprehensive list of endangered plants and animals in the State of Michigan. The tables of information contain State, Federal and Global status rankings for each species listed with additional links to abstracts and maps of last observed sites in the state. The lists are contained under the MNFI Data Resources tab and are titled 'Michigan's Special Animals' and "Michigan's Special Plants". The following link will take you directly to the data resources webpage. This link will also be included on the Pesticide Control website.

<https://mnfi.anr.msu.edu/species>

Q: Will the MDEQ consider existing regulations for the Michigan PGP?

A: Yes, the Department is currently working with stakeholder subgroups to evaluate existing programs that may be covered under the PGP in whole or in part and how to best comply with the court ruling while at the same time working to eliminate or reduce duplicate requirements. The Department understands that there are well established practices and regulations for some of the activities proposed to be covered by the PGP and we are making every effort to recognize them in the Michigan PGP and minimize the potential for duplicity and over regulation.

Q: Will the Michigan PGP require permittees to duplicate the reporting requirements in MDA Rules 636 & 637?

A: No.