

Colorado Department of Agriculture, DPI

Title 35 Article 10
Pesticide Applicators' Act
and its
Associated Rules and Regulations

NPDES



NPDES

- CDA's roll and goals:
 - Provide general overview of NPDES requirements, answer the questions we can
 - Facilitate information to applicators via mailings and our website
 - Provide resource contacts to answer questions
 - Collect questions, find answers, and relay back to industry

NPDES

- Colorado's Permit:
 - 8 "Parts" to the permit
 - Appendix A – definitions
 - Appendix B – explains permit conditions (additional clarification on what an applicator must do to ensure they are in compliance with the permit. I.e.: must maintain records for 3 years, required to furnish information upon request, etc.)

Part 1 - Who Must Comply? Who is Covered?

- This permit covers any Operator (Applicator or Decision Maker) that is "associated" with the application of pesticides to surface waters of the State.
 - Applicator: Any entity who performs the application of a pesticide or who has day-to-day control of the application;
 - Decision Maker: Any entity with the control over the decision to perform pesticide applications (Compliance Certifications may apply)

Part 1.1 of the Permit: Eligibility – Activities Covered

- **a. Mosquito and Other Flying Insect Pest Control**—to control public health/nuisance and other flying insect pests that develop or are present during a portion of their life cycle in or above standing or flowing water. Public health/nuisance and other flying insect pests in this use category include mosquitoes and black flies.
- **b. Weed and Algae Pest Control**—to control weeds, algae, and pathogens that are pests in water and at water's edge, including ditches and/or canals.

Eligibility – Activities Covered

- **c. Animal Pest Control**—to control animal pests in water and at water's edge. Animal pests in this use category include fish, lampreys, insects, mollusks, and pathogens.
- **d. Forest Canopy Pest Control**—application of a pesticide to a forest canopy to control the population of a pest species (e.g., insect or pathogen) where, to target the pests effectively, a portion of the pesticide unavoidably will be applied over and deposited to water.

Obtaining “Authorization”

- If you do any of the previously listed types of applications – you are automatically and immediately authorized by the permit to discharge pesticides to those areas.
- Part 1.1.2.: There are limitations on what the permit covers:
 - Impaired waters (with same a.i. or degradate)
 - *Outstanding waters – maintain water quality
 - Covered under another permit
 - Part 1.3: Alternative permit requirements

Part 7.6 - Compliance Certification or NOI

- CC provides a written notice to CDPHE that the Decision maker is operating in accordance with the permit. Submission requirements are:
 - Operator name
 - Operator type
 - Operator representatives and contact info.
 - Applicator name, representatives and contact
 - Pest management areas and related info.

Part 2 – Technology-Based Effluent Limitations

- Applies to all applicators
- TBEL = minimize discharges of pesticides to surface waters when applying pesticides through Pest Management Measures (PMM)

Part 2.1 – Applicator TBEL

- TBEL PMM for applicators:
 - Amount = use only amount needed and application procedures to control target pest.
 - Maintenance = maintain, calibrate equipment, etc.
 - Federal Requirements = follow label and any other applicable requirements (wind, precipitation, temperature)

Part 2.1 – Applicator TBEL

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Part 2.2 – Decision Maker’s TBEL

- TBEL PMM for all Decision makers:
 - Same as applicators +
 - PMM defined in “Appendix A” = follow industry standards/practices, manufacture specs, follow the label
 - AND Parts 2.2.1 – 2.2.4
 - Outlines additional PMM for those Decision makers that must submit a CC
 - Requirements for each application type are covered

Part 2.2.1 – 2.2.4: Decision Maker’s TBEL

- Mosquito, Weed & Algae, Animal and Forest Canopy Pest Control:
 - Identify the Problem: Target pest, densities and action thresholds, factors causing, etc.
 - Pest Management Options: Consider no action, prevention, mechanical, cultural, biological and lastly...pesticides
 - Pesticide Use: Conduct surveillance to verify thresholds met prior to application to reduce impact on environment

Part 3 - Water Quality-Based Effluent Limitations

- Control your pesticide discharge to ensure you don’t exceed any water quality standards
- If you become aware that your application has exceeded the standard, you must take “corrective action”, explained in Part 6 of the permit.

Part 4 – Monitoring Must Dos

- Applicators: During the application visually assess for possible “adverse incidents”
 - Look for hazards
 - Consider potential non-target exposures (human, animal, environmental) and avoid
 - Look for signs of unintended injury, etc. (dead fish, distressed non-targets)

Part 4 - Monitoring Must Dos

- Operators: Post-application visually assesses any possible “adverse incidents” that occurred as a result of the pesticide application
 - Where there any non-target exposures (human, animal, environmental)
 - Do you see any signs of unintended injury, etc. (dead fish, distressed non-targets)

Part 5 – Pesticide Discharge Management Plan (PDMP)

- Required for all Decision-makers that must submit a Compliance Certification
 - Only applies to large entities and municipalities serving a population over 10K
 - Must be in place when you file the CC
 - PDMP may reference other documents that meet the PDMP requirements (i.e.: application records required by PAA)

Part 5 –PDMP Elements

- Pesticide discharge management team
- Problem identification
- Pest management options evaluation
- Response procedures (spills/adverse incidents)
- Document eligibility (type of application)
- Signature requirements

Part 5 –PDMP Elements

- Pesticide discharge management team
 - Identify all persons that compose team and responsibilities
 - Person managing pests
 - Person who developed/revises PDMP
 - Person who develops/implements corrective actions and other effluent limitation requirements

Part 5 –PDMP Elements

- Problem identification
 - Pest problem description (from Part 2)
 - Action threshold: Data used and method
 - General location map: Geographic boundaries where the plan applies and location of surface waters of the State
 - Water Quality Standards: Document any Outstanding Waters or impaired

Part 5 –PDMP Elements

- Pest management options evaluation
 - Document how you evaluated your pest management options (no action, prevention, mechanical, etc.)
 - The evaluation must consider impact to water quality, non-targets, feasibility, cost effectiveness and any other relevant PMMs

Part 5 –PDMP Elements

- Response procedures (spills/adverse incidents)
 - Document spill response procedures
 - Employees must be trained in procedures (should be listed on PDMP Team)
 - Notification procedures – company, emergency and regulatory agencies
 - Adverse incident response procedures:
 - Procedures to respond
 - Procedures to notify those listed

Part 5 –PDMP Elements

- Signature requirements
 - Decision maker must sign, date and certify the PDMP
 - This is the responsible corporate officer, partner or ranking official
 - Certification statement, found in Appendix B.11, must be on PDMP.
 - "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure..."

Part 5 –PDMP Modification and Availability

- Modifications: Must be made prior to or no later than 90 days after any “significant” change in the plan (areas, type or quantity discharged)
- Availability: Decision maker must retain copies of the current PDMP and provide upon request to CDPHE, EPA or SLA.
 - This information becomes public record
 - CBI must be asserted and documented

Part 6 – Corrective Action

- PMMs (From Part 2) need revisions
- Corrective action deadlines
- Effect of corrective action
- Adverse incident documentation and reporting
- Other corrective action documentation

Part 6 – Corrective Action

- PMMs (From Part 2) need revisions
 - Spills or discharges not authorized by permit
 - You or CDPHE becomes aware you PMM aren’t adequate to meet water quality standard
 - Monitoring indicates a failure in your plan
 - An inspection or review by regulatory authorities shows PMM needs modifications to meet TBEL
 - Observations of an adverse incident

Part 6 – Corrective Action

- Corrective action deadlines
 - Changes to the PMM must be made
 - Identified changes must be made before next application is made, OR;
 - As soon as possible after the next pesticide application

Part 6 – Corrective Action

- Effect of corrective action
 - Even though you fix your PMM, still may be a violation
 - Failure to change PMM per the deadline, an additional violation
 - CDPHE can impose additional requirements and schedules to comply more stringent than this permit

Part 6 – Corrective Action

- Adverse incident documentation and reporting
 - 24 hour notification required
 - Name and phone #
 - Operator name and address
 - Name and contact person’s phone #
 - How and when Operator became aware of AI
 - Description of AI and pesticide product, EPA #, for each product used
 - Steps already taken to correct
 - Identity of any other Operators

Part 6 – Corrective Action

- Adverse incident documentation and reporting not required
 - AI not related to your application
 - CDPHE has informed Operator reporting not required for this “category or incidents”
 - Operator knows AI report false (complaint your application harmed something there is no possibility that it could)
 - AI affected similar target pest allowed on the label

Part 6 – Corrective Action

- Adverse incident documentation
 - Thirty day AI Written Report
 - All information phoned in must be provided +
 - Date when you initially notified CDHPE, who you spoke to, and instruction received
 - Location and names of waters affected. Description of what they look like
 - Describe what happened and what species was affected
 - Magnitude and scope of the affected area

Part 6 – Corrective Action

- Written report – cont.
 - Application rate, site of application, method of application, name of the product and EPA Reg. #
 - Description of area (habitat) and what happened
 - What lab tests, if any, were performed and the results. Test results must be provided to CDPHE within 5 days after they become available
 - Actions taken to prevent a reoccurrence
 - Sign, date and certify
- Multiple Operators – report needed from only one, copies to all within 30 days

Part 6 – Corrective Action

- Other corrective action documentation, other than when an AI occurs
 - ID what triggered the need for change
 - Brief description of situation
 - Date identified
 - Description of how problem was identified
 - Summary of corrections taken, date initiated/completed
 - Measures to avoid reoccurrence

Part 7 - Recordkeeping

- All Operators
- All Operators - For hire
- Decision makers who must submit a CC – small entities
- Decision makers who must submit a CC – large entities
- Retention of records – all Operators

Part 7 - Recordkeeping

- All Operators
 - AI reports
 - Documented reason why an AI is exempt from reporting
 - Any corrective action documentation

Part 7 - Recordkeeping

- All Operators - For hire, beginning January 12, 2012
 - Documentation of equipment calibration
 - Description of treatment area (size, linear ft) and ID waters by name or location
 - Which use pattern (Mosq, weed/algae, etc)
 - Visual monitoring conducted; pre or post, if not...why not. Any observations of AI
 - PAA recordkeeping requirements cover the rest (target pest, name of product, EPA, date)

Part 7 - Recordkeeping

- Decision makers – small entity
 - Same as for hire Operators +
 - Copy of CC
- Small Business
 - < 500 employees
 - < \$ 7 Million annual receipts

Part 7 - Recordkeeping

- Decision makers – large entities
 - Same as for hire Operators +
 - Copy of CC
 - Copy of PDMP

Part 7 - Recordkeeping

- Retention of records – all Operators
 - Records must be documented within 14 days
 - Retained for 3 years AFTER the permit expires
 - Must make available to Division all records kept and provide copies upon request

Part 7.6 Compliance Certification or NOI

- CC is required to be submitted to CDPHE no later than July 1, 2013. (Only for those entities that must comply with this provision).

Do I Need to Submit a CC

- “Any agency for which pest management for land resource stewardship is an integral part of the organizations operations”
- Mosquito, irrigation and weed control districts
- Regardless of area you treat, you must submit a CC

Do I Need to Submit a CC

- Local governments and other entities that exceed the following thresholds must submit a CC
 - 6400 acres during a calendar year (mosquito or forest canopy)
 - 20 linear miles or 80 acres of water (weed, algae and animal pest control)

Part 7.6 Compliance Certification or NOI

- Submissions must be received:
 - Emergency applications: 30 days after pesticide application
 - All other: 10 days before discharge or exceeding treatment thresholds

Part 8 – Division Contacts

- Oral and written notifications

Compliance Assurance Section
Water Quality Control Division,
CDPHE WQCD-WQP-B2
4300 Cherry Creek Drive South
Denver, CO 80246-1530
303-692-3500

NPDES

CDPHE contact information
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Thank You

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- How long is this permit good for: 2 yr permit
- Ag, Run off? In the field only. Ditches too and from, flowing to waters of the state are not exempt or considered Ag, run off.
- **Ditches** Questions have been received regarding how ditches are addressed under this permit. In accordance with the Colorado Water Quality Control Act, a permit is not required for any flow or return flow of irrigation water into state waters except as may be required by the federal act or regulations. Therefore, the scope of the state permit for discharges of pesticides contained in the flow or return flow of irrigation water is consistent with the permit scope of the federal permit. EPA's Scope Essay in the EPA permit response to comments document is the best source of information on this topic. **The Division recommends that Decision Makers include areas of application to ditches, even if they are dry at the time of application, in their calculations for determining if they meet thresholds for submittal of a compliance certification to the extent those ditches are within the scope of the federal permit**
- State to tribal land = two permits may be required, state and federal
 - State permit will cover applications on federal lands – if Decision maker already covered w/state
- Spot treatment vs. continuous applications
 - accumulative applications can be counted and added up to the total linear miles.
- Decision maker vs. applicator –
 - Landowner is decision maker – albeit, they may not know any aspect of what must be done, so must count on applicator to be "decision maker"
 - Applicator becomes "decision" maker.