

## Pest Control WPDES Questions & Answers (10 Feb 2012)

**Q:** What has changed for the 2012 treatment season for pest control pollutant discharges into water?

**A:** On October 31, 2011, the 6<sup>th</sup> circuit court “Cotton Council” decision went into effect after a 2 ½ year delay. This decision clarified that coverage under a Clean Water Act Permit (WPDES in Wisconsin) is required for a pest control pollutant discharge. The existing requirements to follow the EPA pesticide registration & label, and to obtain a Wisconsin aquatic organism management permit (as specified in NR 107, Wis. Adm. Code) have not changed from previous years.

**Q:** What specifies the requirements for **use** of a pest control product within a wet treatment area?

**A:** Within a wet treatment area, the EPA pesticide label and a Wisconsin aquatic organism management permit (if required under NR 107, Wis. Adm. Code) specify the requirements for use of a pest control product.

**Q:** What is considered to be a “pest control pollutant discharge”?

**A:** A pest control pollutant discharge occurs when a point source (spray nozzle, granular application, or other method of mixing a pest control product into water) causes: (1) a biological pollutant discharge to a water of the state, (2) a chemical residual in a water of the state after the treatment project is completed, or (3) a chemical concentration in a water of the state located beyond the pest treatment area.

**Q:** What is the overall plan for management of pest control pollutants in Wisconsin waters?

**A:** The overall plan is to integrate the Clean Water Act protections with the EPA label requirements and the existing Wis. NR 107 Wis. Adm. Code aquatic organism management permit program to minimize pest control pollutants in waters of the state and prevent exceedences of Wisconsin water quality standards.

**Q:** What are the primary main goals for the 4 Wisconsin general WPDES permits for pest control pollutants?

**A:** The Wisconsin WPDES general permits have two main goals: (1) that the permittee minimize any pest control pollutant **residue** (after completion of the pest control project) in a water of the state and any such residue concentration not exceed Wisconsin water quality standards, and (2) that the permittee minimize any pest control pollutant **discharge** to a water of the state located **beyond the treatment area**, and such pollutant discharge (beyond the treatment area) not exceed Wisconsin water quality standards. The 4 general permits specify best management practices to minimize pollutant discharges to waters of the state and prevent exceedence of water quality standards.

**Q:** Where can I find the Wisconsin Water Quality Standards?

**A:** The Wisconsin water quality standards for surface waters are contained in NR 102, NR 103, NR 105 and NR 207, Wis. Administrative Code. The Wisconsin water quality standards for groundwater are contained in NR 140, Wis. Administrative Code.

**Q:** Is WPDES permit coverage needed when a pest control product used in a storm water pond or a wet storm water drainage system is moved via flowing water to a water of the state located beyond the treatment area boundary?

**A:** Yes, pest control products applied to wet areas of a storm water drainage system would be considered pollutants if water flow moves the pollutants beyond the treatment area boundary and into a water of the state. Aquatic labeled pest control products would normally be required by the EPA pesticide label in this case. WPDES permit coverage would be needed and integrated pest management practices should be utilized to minimize any pest control pollutant discharge. An entity required to have a storm water WPDES permit under NR 216, Wisconsin Administrative Code could also be covered under a pest control pollutant WPDES general permit until the appropriate pest control pollutant discharge requirements could be added to the NR 216 storm water discharge permit.

**Q:** Are there WPDES requirements for pest control products that are labeled for terrestrial use only?

**A:** When the EPA label or Wisconsin product registration specifies that the pest control product shall not be applied to water, FIFRA requires that the product not be sprayed, drift or otherwise be directly applied to waters of the state. A WPDES permit can not authorize the direct discharge (via spray or other application method) of a product to a water of the state when the FIFRA label prohibits the application to surface waters. When a product is labeled for use in a seasonally dry wetland that doesn't contain aquatic life, the label needs to be carefully followed to ensure that there would be no resulting pest control pollutant residual when the area would contain water again. The use of an aquatic labeled product should be strongly considered if it is likely that return of water to the wetland area will result in a pest control pollutant discharge to a water of the state.

**Q:** Is WPDES permit coverage needed for the possibility that an incidental concentration of a pest control pollutant could be moved by storm water runoff from an upland area into a water of the state?

**A:** The Clean Water Act exempts agricultural storm water runoff and irrigation return flows from needing WPDES permit coverage. For other types of pest control activities in upland areas, the pest control product design (rapid absorption into the target species, product degradation, etc.), improved spray nozzle design, and the EPA label requirements are expected to be equivalent to the best management practices needed to minimize or prevent the storm water runoff of pest control pollutants from upland areas. NR 216, Wisconsin Administrative Code specifically lists municipal, transportation, construction and industrial activities that require coverage under a WPDES storm water discharge permit. Activities not specifically listed in ch. NR 216 are not currently required to obtain coverage under a WPDES storm water discharge permit. However, the Department has authority under s. 283.33 Wis. Statutes to require WPDES coverage in the future for a facility or activity when the department determines that the discharge of storm water contaminants either contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the state.

**Q:** What is a water of the state?

**A:** Section. 283.01(20) of the Wis. Statutes has a specific definition for a water of the state. Any wet area below the ordinary high water mark of a surface water (marsh, creek, stream, river, pond, lake, etc.) is considered to be a water of the state. A wet area with wetland vegetation would normally be considered to be a water of the state. Also, water in channels and tributaries that drains to wetlands or surface waters is included in the waters of the state definition. Water in ponds, depressions or ditches that is entirely confined and retained completely on the private property of a person is not considered to be a WPDES water of the state.

**Q:** Who needs WPDES permit coverage for a pest control pollutant discharge, both the sponsor and the applicator?

**A:** Only one entity needs to have WPDES permit coverage for any pollutant discharge to a water of the state. That entity could be either the sponsor or the applicator. If the pesticide contract applicator does not have permit coverage, the sponsor would need to apply for WPDES permit coverage for any pest control pollutant discharge to a water of the state (residue or discharge beyond the treatment area).

**Q:** How do I apply for coverage under a WPDES pest control pollutant discharge permit?

**A:** There are two ways to apply for WPDES permit coverage for pest control pollutant discharges: (1) apply for both the NR 107 Aquatic Plant Management permit and the WPDES permit at the same time, or (2) mail in the paper WPDES permit request form 3400-202 that can be found on the Wisconsin aquatic pesticide pollutant WPDES internet site. The 3400-202 form can be used to request WPDES permit coverage for an applicator entity or business to have a pest control pollutant discharge at multiple future Wisconsin treatment sites (with one WPDES coverage request) for the term of the WPDES permit (expiration date September 30, 2016). The Department's goal is to provide WPDES coverage similar to the NR 107 permit (within 14 business days after receiving the application). The Department is providing outreach for with aquatic pesticide applicators to help them understand the requirements of the WPDES permit for the variety pest control treatments they undertake. The combined NR 107/WPDES internet based application should be operational in March 2012.

**Q:** What is needed to meet the Notice of Intent submittal requirement specified in part 1.3 of the general WPDES permit?

**A:** The WPDES general permit request for coverage form 3400-202 and the chemical aquatic plant control request form 3200-004 (with WPDES coverage addressed in section VII) meet the Notice of Intent submittal requirement contained in part 1.3 of the pest control pollutant WPDES general permits.