



STATE OF NEVADA

Department of Conservation & Natural Resources

DIVISION OF ENVIRONMENTAL PROTECTION

Brian Sandoval, Governor

Leo M. Drozdoff, P.E., Director

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General National Pollutant Discharge Elimination System Permit FACTSHEET (pursuant to NAC 445A.236)

PERMIT TYPE:

National Pollutant Discharge Elimination System General Permit - NPDES - to authorize qualifying **operators** to discharge pesticides, fungicides, herbicides, rodenticides and insecticides to **Waters of the U.S.** provided that they comply with all permit conditions.

PERMIT DESIGNATION: **NVG870001**

PERMIT OBJECTIVE:

The purpose of **NVG870001** is to provide timely authorization for discharges of pesticides to **Waters of the U.S.** pursuant to Nevada Revised Statutes **NRS 445A.465**; this regulation prohibits discharge of pollutants from a point source without a permit.

BACKGROUND:

The Clean Water Act provides that the discharge of pollutants to **Waters of the United States** from any point source is prohibited, unless the discharge is in compliance with an NPDES permit. **NVG870001** was developed in response to a decision by the Sixth Circuit Court of Appeals (*National Cotton Council, et al. v. EPA*); this decision designated the application of pesticides a "point source". This decision vacated the EPA's 2006 policy stating that NPDES permits were not required for applications of pesticides to **Waters of the U.S.**; this Court's decision also established that pesticide discharges to **Waters of the U.S.** requires a NPDES permit.

The federal regulations allow Nevada, a delegated State, to issue General Permits to regulate discharges of pollutants to **Waters of the U.S.**; General Permit **NVG870001** will regulate these discharges and will be valid throughout Nevada, except on Tribal Lands. Monitoring requirements are intended to ensure there is no adverse impact to **Waters of the U.S.** The court's mandate will take effect on **October 31st, 2011**.

All **Operators** engaged in pesticide application activities described in **Section A.3.** will automatically receive coverage under permit **NVG870001**, for a period of **180 days** starting with the date of permit issuance.

NVG870001 does not authorize discharges of pesticides or their degradates to waters already impaired by these specific pesticides or their degradates.

Terrestrial applications to control pests on agricultural crops or forest floors are exempted and thus not covered by this permit.

Electronic Submissions:

The Nevada pesticide permitting program is designed for electronic Notice of Intent (**NOI**) submissions. All **Operators** engaged in the pesticide application practices defined in **Section A.3.** shall apply for coverage under permit **NVG870001** electronically - unless a written waiver for an alternate format is requested in writing and granted by the Division.

DESCRIPTION OF DISCHARGE:

Unless authorized by a different National Pollutant Discharge Elimination System (NPDES) permit, any discharge(s) to **Waters of the U.S.** from the following pesticide application categories are required to obtain coverage under this permit prior to any pesticide application activity:

Category 1 - Mosquito and Other Flying Insect Pest Control - Pesticide discharges 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 but are not limited to mosquitoes and black flies.

Category 2 - Weed and Algae Control - Pesticide discharges to control to control weeds, algae, and pathogens that are pests in water and at water's; this includes irrigation ditches and/or irrigation canals.

Category 3 - Animal Pest Control - Pesticide discharges to control animal pests in water and at water's edge. Animal pests in this use category include, but are not limited to, fish, lampreys, insects, mollusks, and pathogens.

Category 4 - Forest Canopy Pest Control - Aerial and terrestrial pesticide discharges 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 will be unavoidably applied over and deposited to water.

Area Wide Discharge Permitting: This refers to aerial and ground application of a pesticide to control the population of target pests where control technologies over large areas are most effective to avoid substantial and widespread economic or social impact.

This involves pesticide applications to areas that include a wide range of diverse habitats such that a portion of the pesticide applied will unavoidably be applied over and deposited into **Waters of the U.S.** to target the pests effectively. Examples include, but are not limited to, pesticide application for cricket control, pesticide application for the control of nuisance and disease borne mosquitoes, pesticide application for the maintenance of rights-of-ways, drainage ditches, and other governmental infrastructure, urban landscaping, treating orchard pests, or controlling fruit flies

Pursuant to **Section A.5.**, NDEP may provide **NVG870001** coverage for a pesticide application entity, such as a mosquito control group, weed control group, a Nevada County or a similar entity as a working group. In order to qualify for working group permitting, a pesticide application entity must engage in a single pesticide discharge category defined in **Section A.3.**

Automatic Permit Coverage: All **Operators** engaged in pesticide application activities described in **Section A.3.** will automatically receive coverage under permit **NVG870001**, for a period of **180 days** starting with the date of permit issuance. Qualified operators must submit **NOI** within a **180 day** period starting on the date of permit issuance - **October 31st, 2011** and ending on **April 30th, 2012.**

DISCHARGES NOT COVERED BY NVG870001 INCLUDE, BUT ARE NOT LIMITED TO:

Discharges to Water Quality Impaired Waters - Operators are not eligible for coverage under this permit for any discharges from a pesticide application to **Waters of the U.S.** identified as impaired for that pesticide or its derivatives. For the purpose of this permit, impaired waters are those that have been identified by a State, Territory, Tribe or Environmental Protection Agency (EPA) pursuant to **Section 303(d) of the CWA** as not meeting applicable State, Territorial, or Tribal water quality standards. Impaired waters within the State of Nevada are listed in this permit.

Operators are not eligible for coverage under this permit if any of the following circumstances apply:

- a.** Pesticide discharges covered by another NPDES permit; or
- b.** Pesticide discharges were included in a permit that within the last five years has been or is in the process of being denied, terminated, or revoked by NDEP or the EPA (this does not apply to the routine reissuance of permits every five years); or
- c.** Terrestrial pesticide applications to control pests on agricultural crops or forest floors; or
- d.** Other discharges not authorized under this permit.

PERMIT REQUIREMENTS & RATIONALE:

NDEP has determined that pesticide discharge categories included in this general permit can be effectively regulated under general permit. This permit intends to control and reduce pollution to **Waters of the State of Nevada** from pesticide discharges. This permit requires **NOI** submittal, installation of BMPs and annual reporting to ensure the approved

pesticide activity is carried out in a manner which minimizes water pollution and protects public health and the environment.

Pesticide **operators** shall not discharge until the Division has issued written authorization to discharge under permit **NVG870001**. Existing **operators** who are covered under a current NDEP permit may continue to discharge until the valid permit expires. New qualifying dischargers may request inclusion under general permit by completing and submitting a Notice of Intent (NOI) application to the Division along with appropriate permit fees. Pesticide discharges which are not granted coverage under this general NPDES permit because of the nature of the proposed pesticide discharge, may apply for an individual NPDES permit.

NOTICE OF INTENT (NOI) REQUIREMENTS:

Pesticide **operators** are required to submit a **Notice of Intent (NOI)** and the appropriate fee to obtain coverage under **NVG870001** for discharges to **Waters of the U.S.** resulting from the discharge of pesticides:

- a. If they are in control over the financing, or over the decision to perform pest control activities that will result in a discharge and know or reasonably should have known that those activities will exceed one or more of the annual (i.e., calendar year) treatment area thresholds listed in **subsection d. - Table 1** below for the **“Annual Treatment Area Threshold,”** as defined in **Section c. & d.** below or
- b. If they are **operators** that apply pesticides that result in a discharge, and know or reasonably should have known that those activities will exceed one or more of the pesticide application annual (i.e., calendar year) treatment area thresholds listed in **Section d. - Table 1** below for the **“Annual Treatment Area Threshold,”** or
- c. **Annual Treatment Area Thresholds** - use **Section d.** below - **Table 1** below to determine whether an operator’s pesticide application activities will exceed one or more of the annual treatment area thresholds. **Operators** may exclude from its calculation any pesticide application activities conducted under another entity’s **NOI**.

Table 1. Annual Treatment Area Thresholds

PGP Part	Pesticide Use	Annual Threshold
A.16.1.	Mosquitoes and Other Flying Insect Pests	6,400 acres of treatment area
A.16.2.	Aquatic Weed and Algae Control:	
	- In Water	80 acres of treatment area ¹
	- At Water’s Edge:	50 linear miles of treatment area at water’s edge ²
A.16.3.	Aquatic Nuisance Animal Control:	
	- In Water	80 acres of treatment area ¹
	- At Water’s Edge	50 linear miles of treatment area at water’s edge ²
A.16.4.	Forest Canopy Pest Control	6,400 acres of treatment area

Area Threshold Calculations should include the area of the applications made to: (1) Waters of the U.S. and (2) conveyances with a hydrologic surface connection to Waters of the U.S. at the time of pesticide application. For calculating annual treatment area totals, count each pesticide application activity as a separate activity. For example, applying pesticides twice a year to a ten acre site should be counted as twenty acres of treatment area.

Lineal Threshold Calculations should include the linear extent of the application made at water's edge adjacent to: (1) Waters of the U.S. and (2) conveyances with a hydrologic surface connection to Waters of the U.S. at the time of pesticide application. For calculating annual treatment totals, count each pesticide application activity and each side of a linear water body as a separate activity or area. For example, treating both sides of a ten mile ditch is equal to twenty miles of water treatment area.

DISCHARGE LIMITATIONS, REQUIREMENTS & CONDITIONS:

All **operators** covered under this permit shall minimize the discharge of pollutants resulting from the application of pesticides. All operators shall also do the following:

- a. Use the lowest effective amount of pesticide product per application and optimum frequency of pesticide applications necessary to control the target pest, consistent with reducing the potential for development of pest resistance;
- b. Perform regular maintenance activities to reduce leaks, spills, or other unintended discharges of pesticides associated with the application of pesticides covered under this permit; and
- c. Maintain pesticide application equipment in proper operating condition by adhering to any manufacturer's conditions and industry practices, and by calibrating, cleaning, and repairing such equipment on a regular basis to ensure effective pesticide application and pest control. Operators shall ensure that the equipment's rate of pesticide application is calibrated to deliver the precise quantity of pesticide needed to achieve greatest efficacy against the target pest.

Operators are required to develop and implement a written **Pesticide Discharge Management Plan (PDMP)** to document measures taken to meet the effluent limits and general pesticide application practices. **PDMPs**, shall include the following elements:

- a. Pesticide discharge management team;
- b. Control measures used to comply with the discharge limitations; and
- c. Other actions necessary to minimize discharges.

Operators are required to implement all actions necessary to minimize discharges; the following shall be documented in the **PDMP**:

- a. Pest problem description;
- b. Action Threshold(s) ;
- c. General location map;
- d. Water quality standards - if any;
- e. Application Rate and Frequency;

- f. Spill Prevention;
- g. Pesticide Application Equipment;
- h. Pest Surveillance;
- i. Assessing Environmental Conditions;
- j. Spill Response Procedures;
- k. Adverse Incident Response Procedures; and
- l. Pesticide Monitoring Schedules and Procedures.

Operators are required to conduct spot checks in the area to and around which pesticides are applied for possible and observable adverse incidents, caused by application of pesticides. This includes, but is not limited to, the unanticipated death or distress of non-target organisms and disruption of wildlife habitat, recreational or municipal water use. Visual assessments of the pesticide application site shall be performed.

Annual monitoring results obtained pursuant to **Section B.** of the permit are due each **January 28th, (following the 4th Quarter)** of the applicable calendar year. If permit coverage is terminated, the **operator** shall submit an annual report for the portion of the year when pesticide were applied; this final report is due no later than 45 days after your pesticide application termination date.

PROPOSED DETERMINATION:

On the basis of preliminary review of the requirements of the Nevada Revised Statutes, as amended and implementing regulations, and The Clean Water Act, the Administrator proposes to issue a General National Pollutant Discharge Elimination System (NPDES) Permit **NVG870001** for a five (5) year period, subject to the limitations as described above.

PROCEDURES FOR PUBLIC COMMENT:

The Notice of the Division's intent to issue a general NPDES permit authorizing the Permittee to discharge to Waters of the State subject to the conditions contained within the permit, is being sent to the **Reno Gazette-Journal, Nevada Appeal, Las Vegas Review Journal, Elko Daily Free Press, Battle Mountain Buggle, Humboldt Sun, Eureka Sentinel, Ely Times, Lahontan Valley News, Mineral County Independent News, The Record Courier, Lincoln County Record, Mason Valley News, Tonopah Times, and the Lovelock Review Miner** for publication. The notice is being electronically mailed to interested persons on our public notification list. Anyone wishing to comment on the proposed permit can do so in writing until 5:00 P.M. **March 18th, 2011**, a period of 30 days following the date of the public notice. The comment period can be extended at the discretion of the Administrator.

A public hearing on the proposed determination can be requested by the applicant, any affected State, any affected interstate agency, the Regional Administrator of EPA Region IX or any interested agency, person or group of persons. The request must be filed within the comment period and must indicate the interest of the person filing the request and the

reasons why a hearing is warranted. Any public hearing determined by the Administrator to be held must be conducted in the geographical area of the proposed discharge or any other area the Administrator determined to be appropriate. All public hearings must be conducted in accordance with [NAC 445A.238](#).

The final determination of the Administrator may be appealed to the State Environmental Commission pursuant to [NRS 445A.238](#).

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