

# NAAA Checklist of Compliance Activities for Aerial Applicators To Meet Requirements of EPA's NPDES Pesticide General Permit

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The following NAAA checklist identifies compliance activities required of applicators (“any entity who performs the application of a pesticide or who has day-to-day control of the application, and are authorized to direct workers to carry out those activities, that result in a discharge to Waters of the U.S.”), *who are not also decision makers* under EPA’s NPDES Pesticide General Permit (PGP). If you are also a decision-maker (“any entity with control over the decision to perform pesticide applications, including the ability to modify those decisions that result in a discharge to Waters of the U.S.”), many other permit requirements will apply. If you are unsure as to whether a specific pesticide application requires an NPDES general permit, please see [EPA’s interactive decision-making tool](#). More specific requirements as to what differentiates applicators from decision-makers can be found in NAAA’s [comprehensive review](#) of the NPDES general permit. Additionally, NAAA has developed [sample contract language](#) for reference when preparing contract negotiation with clients delineating that the aerial applicator is not the decision-maker.

The following requirements apply to pesticide applications that result in discharges to waters of the U.S. for control of mosquitoes, aquatic weeds and algae, invasive aquatic animals, and forest canopy pests located in the states of MA, NH, NM, ID and the District of Columbia, as well as for pesticide applications that result in discharges to waters of the U.S. located on federal land (*e.g.*, national forests, national parks, military sites, other government facilities, Indian lands, and most U.S. territories), and discharges in Texas that are not under the authority of the Texas Commission on Environmental Quality, including activities associated with oil and gas exploration. Part 9 of EPA’s PGP contains a few additional requirements added by each of those four states to meet their own state water quality rules (see Part 9 at PGP available here: <https://www.regulations.gov/document?D=EPA-HQ-OW-2015-0499-0118>).

Beyond the requirements of the EPA NPDES PGP, for each of the other 46 states in which you may operate there will be similar, but often different, compliance requirements for pesticide applications that may result in discharges to waters of the state or waters of the U.S. – each of these state requirements vary. You may evaluate your compliance requirements for those other states by examining the chart of [state pesticide NPDES general permits](#) located on NAAA’s website. The chart is intended to highlight and compare key provisions of the states’ permits. You are encouraged to study the full details of the actual permits. Hyperlinks to the state permits are located in the NAAA chart.

## Aerial Applicator Compliance Requirement Checklist for EPA’s Permit\*

- To the extent not determined by your decision-making clients, document that you used only the amount of pesticide and frequency of pesticide application necessary to control the target pest, and that you used equipment and best management practices appropriate for this task;
- Document that you have minimized the discharge of pesticides to Waters of the United States from the application of pesticides, through the use of Pest Management Measures (GPS, GIS systems, AIMMS, smokers, etc.);<sup>1</sup>
- Maintain and fully document the maintenance of all pesticide application equipment you use in proper operating condition, including calibration, cleaning, and repair to prevent leaks, spills, misapplication or other unintended discharges;

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<sup>1</sup> “Any practice used to meet the effluent limitations of the permit that comply with manufacturer specifications, industry standards and recommended industry practices related to the application of pesticides, relevant legal requirements and other provisions that a prudent Operator would implement to reduce and/or eliminate pesticide discharges to waters of the United States.”

- Assess for each application and document the weather conditions (e.g., temperature, rainfall, wind speed, etc.) in the treatment area to ensure it is consistent with all applicable requirements;
  
- Record and retain on-site information on each application and treatment area to which pesticides are discharged to Waters of the United States, including:
  - Description of each treatment area, including the location and size (acres or linear feet) of treatment area and identification of any waters present, either by name or by location, to which pesticide(s) are discharged;
  - Pesticide use pattern(s) (i.e., mosquito and other flying insects, weeds and algae, animal pests, or forest canopy);
  - Name(s) of target pests;
  - Name of each pesticide product used including the EPA registration number;
  - Quantity of each pesticide product applied to each treatment area;
  - Pesticide application date(s); and
  - Whether or not visual monitoring was conducted during pesticide application and/or post-application; and if not, why not and whether monitoring identified any possible or observable adverse incidents caused by application of pesticides.
  
- Keep accurate and complete written records as required by the permit for all discharges covered. You may rely on records and documents developed for other obligations, such as requirements under FIFRA or FAA, and state or local pesticide programs, provided that all requirements of EPA's NPDES PGP are satisfied.
  
- Keep a copy of any corrective action documentation that is triggered by a situation requiring revision of your Pest Management Measures. If any of the following situations occur, you must review and, as necessary, change your procedures for pesticide discharges before, or if not practical, as soon as possible after the next pesticide application that results in a discharge:
  - An unauthorized release or discharge associated with the application of pesticides (e.g., spill, leak, or discharge to Waters of the U.S. not authorized by this or another NPDES permit) occurs;
  - You become aware, or EPA concludes, that your Pest Management Measures are not adequate/sufficient for the discharge to meet applicable water quality standards for the treated waterbody;
  - Any monitoring activities indicate failure to meet applicable technology-based effluent limitations, such as maintenance and calibration of equipment, avoidance of off-target applications, inappropriate application amounts, etc;
  - An inspection or evaluation of your activities by an EPA official, or local, state, or tribal entity, reveals that modifications to your Pest Management Measures are necessary to meet the effluent limitations of this permit;
  - Your client(s), you or one of your employees or associates observes or is otherwise made aware of an adverse incident as defined by the permit.

The occurrence of such a situation may constitute a violation of the permit. Correcting any situation identified below does not absolve you of liability for any original violation. However, failure to comply with the corrective action deadlines constitutes an additional permit violation. EPA will consider the appropriateness and promptness of corrective action in determining enforcement responses to permit violations. Significant corrective action changes may trigger EPA to impose additional requirements and schedules of compliance.

- Keep a copy of documentation of any spill and/or leak or other unpermitted release into Waters of the United States containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity in any 24-hour period, as established under either 40 CFR Part 110, 40 CFR Part 117, or 40

CFR Part 302. Please visit [EPA's PGP website](#) for more information on reportable quantities and requirements for reporting this to the National Response Center. State or local requirements may necessitate also reporting spills or leaks to local emergency response, public health, or drinking water supply agencies.

- Keep a copy of any Adverse Incident <sup>2</sup>Reports, as well as the rationale for any determination that reporting of an identified adverse incident is not required, consistent with the permit's allowances (an Operator is aware of facts that indicate that the adverse incident was not related to toxic effects or exposure from the pesticide application, or an Operator has evidence he has been notified by EPA that the reporting requirement has been waived for this incident or category of incidents). Should an adverse incident occur (you observe or are otherwise made aware of an adverse incident), you must document and report within 24 hours to the appropriate EPA Incident Reporting Contact the following information:
- The caller's name and telephone number;
  - Operator's (company owner) name and mailing address;
  - If covered under a Notice of Intent (NOI), the NOI NPDES permit tracking number assigned by EPA;
  - The name and telephone number of a contact person, if different from the person providing the 24-hour notice;
  - How and when the Operator became aware of the adverse incident;
  - Description of the location of the adverse incident;
  - Description of the adverse incident identified and the pesticide product, including EPA registration number, for each product applied in the area of the adverse incident;
  - Description of any steps the Operator has taken or will take to correct, repair, remedy, clean up, and/or otherwise address any adverse effects;
  - If known, the identity of any other Operators authorized for coverage under EPA's permit for discharges from the pesticide application activities that resulted in the adverse incident. Where multiple Operators are authorized for a discharge that results in an adverse incident, notification and reporting by any one of the Operators involved constitutes compliance for all of the Operators, provided a copy of the written report is also provided to all of the other authorized Operators within 30 days of the reportable adverse incident.

If an Operator is unable to notify EPA within 24 hours, the Operator must do so as soon as possible and also provide an appropriate rationale for why the Operator was unable to provide such notification within 24 hours.

In addition to the 24-hour adverse incident telephone report, you must also file a written report within 30 days of the adverse incident to the appropriate EPA Regional office and to the state lead agency for pesticide regulation (see <http://npic.orst.edu/state1.htm>). The written report must include at least the following information:

- The information provided also in the 24-hour telephone report;
- Date and time the Operator contacted EPA by telephone notifying the Agency of the adverse incident, who the Operator spoke with at EPA, and any instructions received from EPA;

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<sup>2</sup> "An unusual or unexpected incident that an Operator has observed upon inspection or of which the Operator otherwise becomes aware, in which: (1) There is evidence that a person or non-target organism has likely been exposed to a pesticide residue, and (2) the person or non-target organism suffered a toxic or adverse effect." This includes effects that occur within Waters of the U.S. on non-target plants, fish or wildlife that are unusual or unexpected (e.g., effects are to organisms not otherwise described on the pesticide product label or otherwise not expected to be present) as a result of exposure to a pesticide residue, and may include: distressed or dead juvenile and small fishes; washed up or floating fish; fish swimming abnormally or erratically; fish lying lethargically at water surface or in shallow water; fish that are listless or nonresponsive to disturbance; stunting, wilting, or desiccation of non-target submerged or emergent aquatic plants; other dead or visibly distressed non-target aquatic organisms (amphibians, turtles, invertebrates, etc.).

- Location of incident, including the names of any waters affected and appearance of those waters (sheen, color, clarity, etc);
- A description of the circumstances of the adverse incident including species affected, estimated number of individuals and approximate size of dead or distressed organisms;
- Magnitude and scope of the affected area (*e.g.*, aquatic square area or total stream distance affected);
- Pesticide application rate; intended use site (*e.g.*, on the bank, above the waters, or directly into the waters); method of application; and the name of pesticide product and EPA registration number;
- Description of the habitat and the circumstances under which the adverse incident occurred (including any available ambient water quality data for pesticides applied);
- If laboratory tests were performed, an indication of which test(s) were performed, and when; additionally, a summary of the test results must be provided within 5 days after they become available if not available at the time of submission of the 30-day report;
- Description of actions to be taken to prevent recurrence of adverse incidents; and
- Signature, date and certification of accuracy (see Appendix B, Subsection B. 11 of permit).

□ Immediately notify National Marine Fisheries Service (NMFS) or the U.S. Fish and Wildlife Service (FWS) (“the Services”) if an Operator becomes aware of an adverse incident affecting a federally listed threatened or endangered species or its federally designated critical habitat which may have resulted from a discharge from the Operator’s pesticide application. This notification must be made by telephone to the contacts listed on EPA’s website immediately upon the Operator becoming aware of the adverse incident, and must include at least the following information:

- The caller’s name and telephone number;
- Operator’s name and mailing address;
- The name of the affected federally-protected species;
- How and when the Operator became aware of the adverse incident;
- Description of the location of the adverse incident;
- Description of the adverse incident and the pesticide product, including the EPA pesticide registration number, for each product applied in the area of the adverse incident to federally-protected species; and
- Description of any steps the Operator has taken or will take to alleviate the adverse impact to the species.

In an adverse incident affecting federally listed threatened or endangered species or designated critical habitat, the Operator should leave the affected organisms alone, make note of any circumstances likely causing the death or injury, note the location and number or extent of aquatic organisms involved and, if possible, take photographs. In some circumstances, the Operator may be asked to carry out instructions provided by the Services to collect specimens or take other measures to ensure that evidence intrinsic to the specimen is preserved. Additional information on federally-listed threatened or endangered species and federally-designated critical habitat is available from NMFS ([www.nmfs.noaa.gov](http://www.nmfs.noaa.gov)) for anadromous or marine species, or FWS ([www.fws.gov](http://www.fws.gov)) for terrestrial or freshwater species.

### **Additional Compliance Requirements of State NPDES Permits**

Be sure to review any permit compliance requirements unique to the states in which you operate. Consult NAAA’s website for a list of state NPDES permit requirements.

\*All records required under the PGP as outlined above must be written and kept for at least 3 years AFTER coverage under this permit ends or coverage is terminated by the operator.