

**Department of Environmental Conservation
Response to Comments**

For

**Alaska Pollutant Discharge Elimination System (APDES)
Pesticide General Permit**

APDES Permit No. AKG870000

**Public Noticed
August 2, 2016 – November 18, 2016**

February 24, 2017



**Alaska Department of Environmental Conservation
Wastewater Discharge Authorization Program
555 Cordova Street
Anchorage, AK 99501**

1.0 Introduction

1.1 Summary of Facility / Permit

The Department of Environmental Conservation (DEC) has reissued an Alaska Pollutant Discharge Elimination System (APDES) general permit to regulate point source discharges of pollutants associated with the application of biological pesticides or chemical pesticides that leave a residue. This permit is commonly called the Pesticide General Permit (PGP). The APDES PGP applicability is statewide except for lands within the Metlakatla Indian Reserve and the Denali National Park Reserve.

The APDES PGP covers point source discharges of pollutants associated with the application of biological pesticides or chemical pesticides that leave a residue from the following use patterns: 1) mosquito and other flying insect pest control; 2) aquatic weed and algae control; 3) aquatic nuisance animal control; and 4) forest canopy pest control. The 2017 APDES PGP remains largely unchanged from the 2011 APDES PGP that was previously issued by the Environmental Protection Agency (EPA). Alaska assumed responsibility to administer the PGP in October 2012 as part of the APDES program. The 2011 APDES PGP expired on October 31, 2016 and was administratively continued until the permit is reissued.

1.2 Opportunities for Public Participation

To ensure public, agency, and tribal notification and opportunities for participation, the Department:

- identified the permit on the annual Permit Issuance Plan posted online at: <http://dec.alaska.gov/water/wwdp/index.htm>
- notified potentially affected tribes and local governments that the Department would be working on this permit via letter, fax and/or email
- posted a preliminary draft of the permit on-line for a 10-day applicant review *July 7, 2016* and notified tribes, local governments and other agencies
- formally published public notice of the draft permit in Alaska Dispatch News (July 29, 2016), Juneau Empire (July 31, 2016), Fairbanks Daily News-Miner (August 4, 2016) and posted the public notice on the Department's public notice web page
- held public meetings on the draft permit from 6:00 pm to 7:30 pm on November 9, 2016 in Petersburg at the Petersburg Indian Association, 15th N. Twelfth Street, Petersburg, Alaska 99833, and November 10, 2016 at the Haines Public Library, 111 3rd Avenue S.; Haines, Alaska 99827
- posted the proposed final permit on-line for a 5-day applicant review (February 13 – 21, 2017)
- sent email notifications via the APDES Program List Serve when the preliminary draft, draft, and proposed final permits were available for review

The Department received comments from 21 interested parties on the draft permit and supporting documents. The Department also requested comment from the Departments of Natural Resources (DNR), Fish and Game (ADF&G), the National Marine Fisheries Service, the U.S. Fish and Wildlife Service (USFWS), and EPA. ADF&G did provide comment on the draft documents.

The Department received two comments during the Proposed Final – five-day notice for applicant review. No changes to the permit or fact sheet were made based on those comments.

This document summarizes the comments submitted and the justification for any action taken or not taken by DEC in response to the comments.

1.3 Final Permit

The final permit was adopted by the Department on February 24, 2017. There were changes from the public noticed permit.

2.0 General Opposition for the Permit

2.1 Comment Summary

The Department received several comments of general opposition to the permit.

Response:

This comment did not address a specific term or condition of the draft permit. No changes were made to the permit documents based on this comment.

2.2 Comment Summary

How are pesticides permitted within the DEC?

Response

Two Divisions within DEC regulate pesticides in the State of Alaska; the Division of Environmental Health (EH) – Pesticide Control Program, and the Division of Water – Wastewater Discharge Authorization Program. The Division of Water – Wastewater Discharge Authorization Program regulates the point source discharges of pollutants associated with the application of biological pesticides or chemical pesticides that leave a residue in waters of the United States through the APDES PGP under 18 AAC 83. This general permit is issued from the Division of Water Wastewater Discharge Authorization Program.

DEC EH Pesticide Control Program, by contrast, regulates the use, sale, and distribution of pesticides in Alaska. Entities proposing to conduct pesticide applications to a water body, including creeks, rivers, ponds, wetlands, and swamps, regardless of who owns the surrounding lands, are required to obtain a Pesticide Use Permit (18 AAC 90.500-540) through the DEC EH Pesticide Control Program. This would be required prior to securing a wastewater discharge authorization from Division of Water Wastewater Discharge Authorization Program. The EH permitting process requires detailed information about the specifics of the proposed pesticide use. Once all the required information is submitted, the application is

opened to a public comment and review period that may include a public hearing. Once the public review period is complete, DEC EH conducts a thorough review of the proposed project and determines whether or not to issue an EH-Pesticide Use Permit. If a Pesticide Use Permit is issued, it does not become valid until after a 40-day waiting period, to allow time for potential appeal of the decision. More information on the EH Pesticide Control Program can be found at <http://dec.alaska.gov/eh/pest/Index.htm>.

It is important to note that the EH and the Division of Water processes are two distinct processes governed under separate laws. No changes were made to the permit documents based on this comment.

2.3 Comment Summary

The General Permit should be replaced with an individual permit that allows for public notice, hearing, comments, and appeal for each pesticide application.

Response

Section 301(a) of the Clean Water Act (CWA) and Alaska Administrative Code (AAC) 18 AAC 83.015 provide that the discharge of pollutants to waters of the United States is unlawful except in accordance with an APDES permit. Although such permits are often issued to individual discharges, DEC regulation also authorizes the issuance of general permits (18 AAC 83.205) to categories of discharges when a number of point sources are:

- Located within the same geographic area and warrant similar pollution control measures;
- Involve the same or substantially similar types of operations;
- Discharge the same types of wastes;
- Require the same effluent limits or operating conditions;
- Require the same or similar monitoring requirements; and
- In the opinion of the DEC, are more appropriately controlled under a general permit than under individual permits.

The permit provides coverage for any Operator of a point source discharge of pollutants (i.e., discharge) to waters of the United States resulting from the application of pesticides and eligible for permit coverage under Part 1.1 of the permit and located within the State of Alaska (except lands within the Metlakatla Indian Reservation and Denali National Park Preserve). The general permit approach allows DEC to allocate resources in a more efficient manner, to provide more timely coverage and streamline the permitting process for the majority of pesticide dischargers. As with any permit (i.e., general or individual), the CWA requires the general permit to contain technology-based effluent limitations, as well as any more stringent limits when necessary to meet applicable water quality standards. DEC maintains that adequate controls are included in the general permit to adhere to federal and state requirements.

The permit process for public notice and comment, hearing on permit, and issuance of a final permit is outlined in 18 AAC 83.120. Actions to date are provided in the above response to comments Section 1.2, Opportunities for Public Participation, and the public process for the general permit was outlined in the Fact Sheet, Section “Public Comment”. Permit authorizations issued that are in-effect under an APDES general permit are available by the Division of Water’s Water Permit Search webpage at <http://dec.alaska.gov/Applications/Water/WaterPermitSearch/Search.aspx>.

No changes were made to the permit documents based on this comment.

2.4 Comment Summary

The PGP should restrict the use of pesticides in waters of the U.S. in Alaska to those that are target-specific and non-toxic to all other aquatic organisms.

Response:

The Division of Water has previously conferred with the DEC EH Pesticides Control Program on this recommendation. EH already regulates the use of pesticides for invasive species control through its own permits. EH determined that such a condition would have a potential non-intended consequence for ADF&G invasive species control. For example, the use of rotenone is typically used by ADF&G to kill invasive pike. If this proposed PGP condition is included, in the specific example where rotenone is used to kill invasive pike, the target would be the pike. Rotenone will also kill other gilled fish, such as trout and salmon. While it is understood that this will be an expected consequence of the action, these are not the target species. The proposed condition in the PGP would make it impossible to perform the activity. DEC will have the opportunity to review all ADF&G pesticide applications through the EH program and can make site-specific recommendations at the time to the pesticide use permit issued through EH-Pesticide Control Program.

No changes were made to the permit documents based on this comment.

2.5 Comment Summary

Several commenters expressed concern for overspray or airborne drift – the airborne movement of pesticide sprays away from the target application site into waters of the U.S. – or terrestrial applications of pesticides where runoff from storm water discharges into waters of the U.S. (e.g., along a right-of-way) with concern for non-target consequences such as entering the food chain and subsistence use.

Response:

Consistent with the 2006 NPDES Pesticides Rule and the 2011 APDES PGP, the 2017 APDES PGP does not cover spray drift resulting from pesticide applications. Off target spray drift and discharges to waters impaired for the pesticide being discharged are activities that are outside the scope of the PGP. Agricultural runoff and irrigation return flows continue to be exempt from permitting under the CWA.

All applicators must implement measures to minimize the discharge of pesticides to waters of the United States from the application of pesticides. This includes using only the amount of pesticide and frequency of pesticide application necessary to control the target pest, using equipment and application procedures appropriate for the task; maintaining application equipment in proper operating condition, and to assess weather conditions (e.g., temperature, precipitation, and wind speed) in the treatment area to ensure application is consistent with all applicable federal requirements (Permit Part 2.1). Operators are to reduce the impact on the environment and non-target organisms by evaluating site restrictions, application timing, and application method in addition to applying the pesticide only when the action threshold(s) has been met (Permit Part 2.2). Provisions in the permit also require monitoring and reporting to visually assess the area to and around where pesticides are applied for possible and observable adverse incidents caused by application of pesticides, including the unanticipated death or distress of non-target organisms and disruption of wildlife habitat, recreational or municipal water use.

This permit authorizes discharges associated with four categories of pesticide application activities: mosquito and other flying insect pest control, weed and algae pest control, animal pest control, and forest canopy pest control. Only point source discharges of pollutants to waters of the United States require a permit, and DEC is not identifying all specific activities that do or do not require a permit. However, to the extent that activities that fall within the four covered categories require a permit, they can be authorized by this general permit if all eligibility requirements are met. For example, two of the categories, weed and algae pest control and animal pest control, the permit specifies that covered activities include applications to control pests “in water and at water’s edge.” DEC intends for the phrase “at water’s edge” to allow coverage of activities targeting pests that are not necessarily “in” the water but are near the water such that control of the pests may unavoidably involve a point-source discharge of pesticides to waters of the United States.

Compliance with the 2017 APDES PGP (18 AAC 83) in conjunction with use of registered pesticides, following label directions, and compliance with other pesticide regulations (18 AAC 90) are adequate to ensure that pesticide use does not result in unreasonable adverse effects to water resources. Additional discussion of drift is presented in the Fact Sheet, Section 3.1.1 Eligibility.

No changes were made to the permit documents based on this comment.

2.6 Comment Summary

Several commenters provided comments that DEC should eliminate the minimum annual threshold criteria and compel all pesticide users to file a NOI.

Response

As with the 2011 APDES PGP, DEC has continued the minimum annual threshold criteria to submit an NOI based on the basic principles that only pesticide applications of larger size, from more significant Operators, and to sensitive waterbodies be required to submit NOIs. In the development of the 2011 PGP, EPA worked with states and other stakeholders throughout a multi-year process of developing the final 2011 PGP to evaluate different approaches and selected an appropriate approach for identifying the types of dischargers that are required to submit NOIs. Operators that are not required to submit NOIs are still required to comply with the terms and conditions of the permit such as: minimizing discharges to waters of the United States resulting from the application of pesticides, meeting applicable water quality standards, and for monitoring and reporting adverse incidents. Further discussion of minimum annual thresholds and NOI submission is addressed in the Fact Sheet, Section 3.1.2 Authorization to Discharge under the permit.

No changes were made to the permit documents based on this comment.

2.7 Comment Summary

Several commenters expressed concern that the issuance of the APDES PGP will promote the use of pesticides.

Response

The APDES PGP does not promote the use of pesticides. The APDES PGP is issued in compliance with the CWA. Permit Part 2 Technology-Based Effluent Limits identifies responsibilities and actions for all applicators and decision-makers to minimize the discharge of pesticides to waters of the United States.

No changes were made to the permit documents based on this comment.

2.8 Comment Summary

Some commenters were skeptical of EPA's approval of pesticides with the belief that EPA's approval process relies on the manufacturer's studies that may be biased, not independently tested, or peer reviewed and does not take into effect the active and "inert" ingredients and surfactants.

Response

Commenters general observations were not directed towards any legal or technical argument associated with the draft permit. Nevertheless, DEC provides the following analysis.

EPA regulates the sale, distribution and use of pesticides in the United States under the statutory framework of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) to ensure that when used in conformance with FIFRA labeling directions, pesticides will not pose unreasonable risks to human health and the environment. The registration and use of pesticides in Alaska is implemented by the Division of Environmental Health – Pesticide Control Program and is regulated under 18 AAC 90 – Pesticide Control.

Pesticide products must undergo rigorous testing and evaluation prior to registration approval. EPA scientists and analysts carefully review data to determine whether to register a pesticide product, and whether specific restrictions are necessary. EPA uses internal and external reviews involving peers and the public through a comment process when conducting these evaluations.

The scientific data requirements for product registration are very detailed. Required data includes characterizations of the pesticide's chemistry and manufacturing process; mammalian and eco-toxicology; environmental fate; residues in or on human and livestock food or feed crops; applicator, occupational, and bystander exposures; product efficacy; and incident reports. Registrants can be required to conduct and submit up to 100 or more individual scientific studies for the registration of a new pesticide.

By definition, all pesticides are toxic to some degree. The level of risk from a pesticide depends on how toxic or harmful the substance is, and the likelihood of people coming into contact with it. Uncertainty factors are built into the risk assessment. These factors create an additional margin of safety for protecting people who may be exposed to the pesticides.

In order for a pesticide to be registered, EPA must determine that the product can be used as labeled without causing unreasonable adverse effects to humans or the environment. If risks or concerns are

identified, appropriate risk mitigation measures are required. These are implemented through product label requirements, which may include reductions in application rates, restrictions to approved sites or commodities, advisory statements, implementation of specific management practices, and other restrictions or limitations designed to mitigate risk.

The proposed product label must provide the active pesticide ingredients, application directions, use restrictions, and warnings. This label information is based on the underlying scientific data and conclusions about potential hazards, exposures, and risks from use according to the label.

EPA also conducts regular reassessments of currently registered pesticides. Through this re-registration program, EPA assesses new scientific studies and information about registered products. If there is new evidence documenting unreasonable risk to human health and the environment, the allowed usage is modified and the label changed. When EPA identifies data gaps, new studies are required and reviewed.

If new information or studies show that a pesticide represents an unreasonable risk even after a change of allowable usage, EPA has the authority to cancel registration of products containing that pesticide. Whenever EPA determines there are urgent human and environmental risks from pesticide exposures that require prompt attention, EPA will take appropriate regulatory action, regardless of the registration review status of that pesticide.

EPA's extensive analyses of each pesticide product, and incorporation of new scientific data regarding safety and use of existing products, is sufficient to protect human health and the environment from unreasonable adverse effects. EPA's evaluation and registration process is sufficient to ensure no unreasonable adverse effects should be expected from labeled use of registered pesticides.

DEC EH – Pesticide Control Program regulates the use, sale, and distribution of pesticides in Alaska. Although perception of risk varies widely between different individuals, determination of actual risk must be based on scientific data. The EPA label review process does a thorough, science-based analysis of risk, and is the best available tool for determining how pesticides can be safely used.

For point source discharges from the application of pesticides, compliance with the 2017 APDES PGP (18 AAC 83) in conjunction with use of registered pesticides, following label directions, and compliance with other pesticide regulations (18 AAC 90) are adequate to ensure that pesticide use does not result in unreasonable adverse effects to water resources.

No changes were made to the permit documents based on this comment.

2.9 Comment Summary

A commenter inquired if the PGP provides a blanket authorization for all chemicals to be used statewide.

Response:

No, the 2017 APDES PGP only provides authorization for point-source discharges to waters of the United States from the application of pesticides for the identified four use patterns and is issued in accordance with 18 AAC 83. The registration and use of pesticides in Alaska is managed separately through the DEC's EH – Pesticide Control Program in accordance with 18 AAC 90.

No changes were made to the permit documents based on this comment.

2.10 Comment Summary

A commenter inquired if the Alaska Department of Transportation and Public Facilities (ADOT&PF) get its authorization to use chemicals through this permit.

Response:

ADOT&PF gets its authorization to use pesticides in accordance with 18 AAC 90 through the DEC EH – Pesticide Control Program.

No changes were made to the permit documents based on this comment.

2.11 Comment Summary

USFWS recommend the use of the Information for Planning and Conservation (IPaC) website (<https://ecos.fws.gov/ipac>) for use to determine listed species and habitat information in Alaska.

Response

Permit Part 1.6 Federally Listed Endangered and Threatened Species and Designated Critical Habitat directs the permittee to the USFWS's website, and the website is also included in the Fact Sheet, Section 3.1.6 which provides the addresses for their websites and interactive maps.

In DEC's review of Permit Part 1.6 and the requirements for those who are required to submit an NOI in *Table 1.1 Decision-makers Required to Submit NOIs and Annual Treatment Area Thresholds* it was noticed that the corresponding requirement was not included in Table 1.1. The requirement to submit an NOI for any discharge from any of the four use patterns identified in Permit Part 1.1.1 that may impact Federally Listed Endangered and Threatened Species and Designated Critical Habitat is now included in Table 1.1 and is consistent with Permit Part 1.6.

2.12 Comment Summary

USFWS recommended the inclusion of Migratory Bird info that applications be done outside of migratory bird windows and should be planned outside of migratory bird breeding windows to help protect nesting birds in Alaska and to avoid unintentional violation of the Migratory Bird Treaty Act.

Response

Comment noted. No changes were made to the permit documents based on this comment.

2.13 Comment Summary

A commenter indicated that there are no specific requirements to identify the type of pesticide, EPA registration number, formulation, active and "inert" ingredients, surfactants, water bodies, water courses, private drinking water sources, sensitive waterways, drinking water sources, fish and wildlife habitat, or public health.

Response

As stated in Permit Part 1.2.2, the Notice of Intent (NOI) form included in Appendix D delineates the information required for the permittee to satisfy the requirements of the permit, which in part includes the following: Operator information, operator type, location of the discharge, pesticide applicator information, pesticide use pattern, targeted pest, pesticide product and EPA registration number; and information on the receiving water coverage, if the discharge is to a Tier 3 water, or to an impaired water. Permit Part 1.6 specifies requirements for federally listed endangered and threatened species and designated critical habitat.

No changes were made to the permit documents based on this comment.

2.14 Comment Summary

One commenter indicated that there should be a clear and defined process for applying pesticides for every discrete location.

Response

For point source discharges from the application of pesticides, compliance with the 2017 APDES PGP (18 AAC 83) in conjunction with use of registered pesticides, following label directions, and compliance with other pesticide regulations (18 AAC 90) are adequate to ensure that pesticide use does not result in unreasonable adverse effects to water resources.

No changes were made to the permit documents based on this comment.

2.15 Comment Summary

Comments were received that recommended a pesticide spraying plan should be provided for each authorization.

Response

Any Decision-maker who is or will be required to submit an NOI, as required in Part 1.2.2 and is a large entity as defined in Appendix C, must prepare a Pesticide Discharge Management Plan (PDMP) by the time the NOI is filed with the exception (for which a PDMP is not required to be developed) for any application made in response to a Declared Pest Emergency Situation, as defined in Appendix C.

Any Decision-maker required to submit an NOI that is defined as a small entity is not required to develop a comprehensive PDMP, but is required to keep a more basic record set of information as stipulated in Permit Part 7.3. A worksheet for documenting this information on each treatment area is provided in Appendix D, Pesticide Discharge Evaluation Worksheet.

For point source discharges from the application of pesticides, compliance with the 2017 APDES PGP (18 AAC 83) in conjunction with use of registered pesticides, following label directions, and compliance with other pesticide regulations (18 AAC 90) are adequate to ensure that pesticide use does not result in unreasonable adverse effects to water resources.

No changes were made to the permit documents based on this comment.

2.16 Comment Summary

A commenter indicated that consideration of the pesticide toxicity be considered in deciding whether to approve, deny, or approve with conditions for each authorization.

Response

DEC reviews each NOI for completeness prior to each authorization. Per Permit Part 6.1 if an Operator becomes aware, or DEC concludes that the pest management measures are not adequate/sufficient for the point source discharge to meet applicable water quality standards, the Operator must review, and as necessary, revise their evaluation and selection of pest management measures. Additionally, if the discharge is to potentially impact federally listed endangered and threatened species and designated critical habitat, the applicant is to provide any water quality-based recommendations from the Service to DEC when submitting their NOI, per Permit Part 1.6.

For point source discharges from the application of pesticides, compliance with the 2017 APDES PGP (18 AAC 83) in conjunction with use of registered pesticides, following label directions, and compliance with other pesticide regulations (18 AAC 90) are adequate to ensure that pesticide use does not result in unreasonable adverse effects to water resources.

No changes were made to the permit documents based on this comment.

2.17 Comment Summary

General concern for the fish and seafood industry and that the application of pesticides will harm the state's tourism and commercial fishing by damaging the perception of Alaska as a pristine environment.

Response:

For point source discharges from the application of pesticides, compliance with the 2017 APDES PGP (18 AAC 83) in conjunction with use of registered pesticides, following label directions, and compliance with other pesticide regulations (18 AAC 90) are adequate to ensure that pesticide use does not result in unreasonable adverse effects to water resources.

No changes were made to the permit documents based on this comment.

2.18 Comment Summary

DEC should establish a publicly available list of pesticides that are included under the general permit.

Response

The general permit is designed to address the discharge of biological pesticides and chemical pesticides that leave a residue to waters of the U.S. for specified use patterns and to ensure such discharges meet APDES requirements developed to protect water quality, including but not limited to technology-based and water quality-based (numeric and narrative) requirements. This general permit does not specify pesticides, herbicides, or other "pollutant" components covered; rather, the permit requirements address use patterns that result in the discharge of pesticides to waters of the United States and include limitations, best management practices, monitoring, planning, corrective action, and recordkeeping and reporting

requirements that are designed to provide natural resource protection consistent with the provisions of the CWA while allowing continued pesticide usage.

No changes were made to the permit documents based on this comment.

2.19 Comment Summary

A commenter stated that they support organic farming to reduce family exposure to pesticides.

Response

Comment noted. No changes to the permit documents were made based on this comment.

3.0 Comments on Effluent Limits

3.1 Comment Summary

The permit should limit the use of pesticides as much as possible.

Response:

The permit establishes technology-based effluent limitations (Permit Part 2) that requires all Operators to minimize the discharge to pesticides to waters of the United States from the application of pesticides and to use only the amount of pesticide and frequency of application necessary to control the target pest. Prior to the first pesticide application covered under this permit that will result in a point-source discharge to waters of the United States, any Decision-maker who is or will be required to submit a NOI must select and implement efficient and effective means of pest management measures that minimize discharges resulting from the application of pesticides. In developing the pest management measures for each pest management area, the Decision-maker must evaluate the following management options, including a combination of these management options, considering impact to water quality, impact to non-target organisms, feasibility, and cost effectiveness: no action, prevention, mechanical or physical methods, cultural methods, biological control agents, and pesticides.

No changes were made to the permit documents based on this comment.

3.2 Comment Summary

For pest management options listed under the technology-based effluent limits, the permit should use mechanical means as the first option.

Response:

Technology-based effluent limits listed in Permit Part 2, identify a number of pest management options for the four use patterns for permit coverage to minimize the discharge of pesticides to waters of the United States. These include options of no action, prevention, mechanical or physical methods, cultural methods, biological control agents, and pesticides. In developing the pest management measures for each pest management area, the Decision-maker must evaluate the above listed options, including a combination of the management options, the impact to water quality, impact to non-target organisms,

feasibility, and cost effectiveness, that minimizes discharges resulting from application of pesticides to control pests. As a result of the evaluation of these options, the choice of no action or prevention may be sufficient to control the particular pest in the pest management area. The prescriptive use of mechanical means as the first option may not be the most effective selection of options to control the pest to minimize the discharge of pesticides to waters of the United States.

No changes were made to the permit documents based on this comment.

3.3 Comment Summary

Several commenters commented DEC should establish a “no spray buffer” for pesticides around waters of the United States, to include sources of drinking water and anadromous fish bearing streams.

Response

DEC acknowledges the commenter’s concern regarding no-spray buffers around waters of the United States; however, this would be outside the scope of the permit. As a result of the Court’s decision to vacate the 2006 NPDES Pesticides Rule, NPDES and by extension APDES permits are required for discharges to waters of the United States of biological or chemical pesticides that leave a residue. As such, the PGP is for the application of pesticides where it results in a point source discharge to waters of the United States. Applications of pesticides to control terrestrial pests were to control such pests discharges to waters of the United States are avoidable (e.g., such as through the use of stream buffers) are not covered under the PGP. Additionally, the PGP does not cover pesticide discharges resulting from runoff or spray drift.

No changes were made to the permit documents based on this comment.

3.4 Comment Summary

DEC should promote the concept of least-toxic pest management, to promote and advance the use of alternatives other than the use of pesticides.

Response

The PGP does promote the concept of least-toxic pest management. All Operators (Applicators and Decision-makers) must minimize the discharge of pesticides to waters of the United States from the application of pesticides, through the use of pest management measures. The technology-based effluent limits listed in Permit Part 2, identify a number of pest management options for the four use patterns for permit coverage to minimize the discharge of pesticides to waters of the United States. These include options of no action, prevention, mechanical or physical methods, cultural methods, biological control agents, and pesticides. In developing the pest management measures for each pest management area, the Decision-maker must evaluate the above listed options, including a combination of the management options, the impact to water quality, impact to non-target organisms, feasibility, and cost effectiveness, that minimizes discharges resulting from application of pesticides to control pests.

No changes were made to the permit documents based on this comment.

3.5 Comment Summary

A commenter indicated the general permit does not require analysis of the drainage capacity of soils in the treatment area and impact to drinking water sources.

Response

The protection of surface water occurs primarily through the development, adoption, and implementation of water quality standards and the use of water quality standards in APDES permits. The water quality standards designate specific uses for which water quality must be protected. Alaska water quality standards designate seven uses for fresh waters for which drinking water is one of the seven uses (drinking water; agriculture; aquaculture; industrial; contact recreation; non-contact recreation; and growth and propagation of fish, shellfish, other aquatic life, and wildlife).

The APDES PGP is designed to address the point-source discharge of biological pesticides and chemical pesticides that leave a residue in waters of the U.S. for specified use patterns and to ensure such discharges meet APDES requirements developed to protect water quality, including but not limited to technology-based and water quality-based requirements. During the development of the 2011 PGP, EPA's analyses of pesticide concentrations in water bodies across the country show relatively few detections of pesticides at concentrations that exceeded the most stringent applicable national water quality criteria or aquatic life benchmarks from the types of pesticide applications eligible for coverage under the PGP. EPA noted that the available water quality data generally reflects pesticides from several sources, including agriculture storm water runoff and irrigation return flow, both of which are exempt from permitting requirements under the CWA. As with the 2011 EPA PGP, DEC intends and expects that the 2017 APDES PGP will minimize unnecessary discharges of pesticides to the aquatic environment via technology-based and water-quality effluent limitations, monitoring, reporting, and recordkeeping requirements with minimal burden to applicators and decision-makers.

Entities proposing to conduct pesticide applications to a water body, including creeks, rivers, ponds, wetlands, and swamps, regardless of who owns the surrounding lands, are required to obtain a Pesticide Use Permit (18 AAC 90.500-540) through the DEC EH Pesticide Control Program which evaluates the drainage capacity of soils in the treatment area, which would be required prior to securing a wastewater discharge authorization from WDAP.

Compliance with the 2017 APDES PGP (18 AAC 83) in conjunction with use of registered pesticides, following label directions, and compliance with other pesticide regulations (18 AAC 90) are adequate to ensure that pesticide use does not result in unreasonable adverse effects to water resources.

No changes were made to the permit documents based on this comment.

4.0 Comments on Reporting and Record Keeping

4.1 Comment Summary

A commenter indicated they support the reporting and record keeping requirements in the APDES PGP.

Response

Comment noted. No changes were made to the permit documents based on this comment.

4.2 Comment Summary

A commenter indicated that the NOI, PDMP, annual reports, monitoring, and record keeping for each application should be available for public access, and that proprietary business information should not be used to deny access.

Response

Permit Part 7.0 requires that Operators must keep records as required in the permit for all discharges covered and available to representatives of DEC at the time of an on-site inspection or upon request. Permit Part 5.3 indicates that DEC may provide copies of the PDMP or other information related to this permit that it has in its possession to members of the public. Confidential Business Information (CBI) may be withheld from the public, but may not be withheld from DEC. If a member of the public wishes to have access to the non-CBI portions of the permittee's PDMP, they must first contact DEC. DEC may require that a copy be sent to DEC so that it can be provided to the requestor. The mechanism for providing DEC with a copy of the PDMP is at the discretion of the permittee (e.g., web-based, hard copy), though DEC strongly encourages that PDMPs be provided electronically.

No changes were made to the permit documents based on this comment.

5.0 Comments Not Directly Related to the Permit

The Department received a number of comments not directly related to the permit.

5.1 Comment Summary:

Several commenters commented on the 2013 regulatory changes to 18 AAC 90.

Response

These comments are outside of the scope of the permit. No changes were made to the permit documents based on these comments.

5.2 Comment Summary

To ensure that people are notified of pesticide applications, DEC should:

- Post the notice on the DEC website,
- Maintain an email list of interested parties, and contact them any time spraying will be conducted,
- Require direct notification by telephone or mail to all residents near the application area,
- Maintain a RSS feed to provide updates to changes on websites related to pesticide application, and
- Require radio announcements about pesticide applications.
- Post a written notice prior to and during pesticide application within the application area.

Response:

Notification requirements regarding pesticide use and applications is provided in 18 AAC 90 and is managed by the DEC EH – Pesticide Control Program, (see <http://dec.alaska.gov/eh/pest/Index.htm>).

For a point source discharge resulting from the application of pesticides authorized by the APDES PGP (18 AAC 83), the general permit authorizations that are in-effect are available on the Division of Water, Water Permit Search website (see <http://dec.alaska.gov/Applications/Water/WaterPermitSearch/Search.aspx>).

No changes were made to the permit documents based on this comment.

5.3 Comment Summary

A comment was received regarding the public noticing requirements of pesticide applications in 18 AAC 90.640(b). The requirement that *the agency applying a pesticide must publish two consecutive notices of the pesticide application in a newspaper of general circulation in the affected area* the commenter recommends it to be changed to “a local newspaper of general circulation...”. The commenter stated that while a newspaper of general circulation meets legal requirements for public notification, it may not necessarily provide notification because “a newspaper of general circulation” in Petersburg could be the Alaska Dispatch News, which the commenter considers is not a local paper nor believes is widely read in Petersburg.

Response:

This comment is not directly related to the APDES PGP. The notification requirements for pesticide use applications are stipulated in 18 AAC 90 and the implementation is managed by the Division of EH – Pesticide Control Program.

No changes were made to the permit documents based on this comment.

5.4 Comment Summary

Several commenters indicated on the 2013 regulatory changes to 18 AAC 90 regarding pesticide-use permits and integrated pest management plans on state owned lands and rights-of-ways.

Response

These comments are outside the scope of the APDES PGP. No changes were made to the permit documents based on this comment.

5.5 Comment Summary

A commenter proposed a strict prohibition on application of pesticides near schools and public facilities.

Response

This comment is outside the scope of the APDES PGP. No changes were made to the permit documents based on this comment.

5.6 Comment Summary

DEC should consult directly with the Alaska Department of Health and Social Services, ADF&G, as well as impacted landowners and municipal entities, on any application of pesticide in Alaska.

Response

As part of the development of the APDES PGP, DEC notified local tribes and local governments of the proposed reissuance of the PGP along with the general public. The Department also requested comment from DNR, ADF&G, the National Marine Fisheries Service, the USFWS, and the EPA.

No changes were made to the permit documents based on this comment.

5.7 Comment Summary

Several commenters indicated that additional notification to the general public be implemented beyond what is required by 18 AAC 83 and 18 AAC 90 to protect drinking water sources.

Response

DEC believes the current permit complies with existing regulatory and statutory requirements and adequately protects drinking water sources such that additional notification is unnecessary. Pesticides, as part of the FIFRA registration and reregistration process, are evaluated for potential effects on drinking water sources and FIFRA label may contain additional requirements, as necessary, to protect those sources. In addition, water quality standards are developed and implemented such that compliance with standards also provides protection of drinking water sources.

For point source discharges from the application of pesticides, compliance with the 2017 APDES PGP (18 AAC 83) in conjunction with use of registered pesticides, following label directions, and compliance with other pesticide regulations (18 AAC 90) are adequate to ensure that pesticide use does not result in unreasonable adverse effects to water resources.

No changes were made to the permit documents based on this comment.

5.8 Comment Summary

A commenter indicated on the 2013 regulatory changes to 18 AAC 90, requesting that pesticide management plans be presented to the public in an open forum – the where's, why's, and how's of pesticide applications.

Response

This comment is outside the scope of the APDES PGP. No changes were made to the permit documents based on this comment.

6.0 Comments on the Public Process

6.1 Comment Summary

Several commenters requested an extension to the public comment period.

Response

The draft permit comment period was extended twice, with a public notice period from August 2, 2016 to November 18, 2016.

6.2 Comment Summary

Several commenters requested a public hearing.

Response

DEC reviewed the requests and in the Department's discretion, determined that a public meeting would better serve the public's need with the meeting being interactive, providing information, and answering questions regarding the permit.

No changes were made to the permit documents based on this comment.