



PPC

PESTICIDE POLICY COALITION
A Coalition Working for Sound Pest Management Policies

March 15, 2021

Chelsea Durant
Office of Water
Office of Wastewater Management
Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, DC 20460

Re: Docket Number EPA-HQ-OW-2020-0005 - Draft 2021 National Pollutant Discharge Elimination System (NPDES) Pesticide General Permit (PGP)

Dear Ms. Durant:

The PPC is an organization of food, agriculture, forestry, pest management and related industries, including small businesses/entities, which are dependent on the availability of pest management tools. PPC members include nationwide and regional farm, commodity, specialty crop, and silviculture organizations; cooperatives; food processors and marketers; pesticide manufacturers, formulators and distributors; pest and vector-control applicators and operators; research organizations; equipment manufacturers and other interested stakeholders. PPC serves as a forum for the review, discussion, development and advocacy around pest management regulation and policy.

PPC members confront changing pest and disease threats introduced into the United States via weather, trade, and other factors. Pesticide manufacturers work diligently to make pest control products available through, among other entities, a web of seed, fertilizer, and pesticide distributors, transportation networks, and pesticide application services. These efforts help ensure farmers, ranchers, public health officials, and other pesticide applicators have the tools they need to continue to produce America's food, fiber, and biofuel and to protect our public health and infrastructure. Many of these participants are reliant on products being readily available to support American agricultural production, prevent vector-borne diseases, and control invasive species that threaten the environment. Members include many small businesses who face a continual maze of regulatory requirements across different federal agencies and programs.

PPC members appreciate the opportunity to comment on the Environmental Protection Agency (EPA) Draft 2021 National Pollutant Discharge Elimination System (NPDES) Pesticide General Permit (PGP).

For many years the PPC has been involved in the ongoing debate over whether PGPs should be legally required for applications of pesticides that are made in a manner fully consistent with EPA-approved label restrictions and the scientific parameters established for safe use of these products by the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), the Food Quality Protection Act (FQPA), and other existing state pesticide authorities. The Coalition agrees with many Congressional lawmakers; pest-control officials in federal, state, county, and municipal governments; and commercial and private interests that PGPs are duplicative, unwarranted burdens that do nothing to further environmental protection. Our comments on this proposed renewed PGP should in no way be considered an endorsement of the PGP, or the 2009 6th Circuit decision (*National Cotton Council v. EPA*) that overturned EPA's 2006 regulation clarifying NPDES permits were not required for such pesticide uses.

The PPC supports EPA's continued confidence in technology-based effluent limitations and acknowledgment that operator compliance with FIFRA labels may serve as the basis for satisfying the goals of the permit. There remains a concern, however, that EPA may consider additional water quality-based effluent limitations (WQBEL) and FIFRA label use practices obtained from some specific pesticide products as potential enforceable requirements of an updated PGP. The PPC does not agree that EPA should pursue such additional requirements.

These comments are brief given that EPA has made only changes described as minor to the current 2016 PGP. Nonetheless, the following comments relay concerns with certain aspects of the draft PGP and supporting materials, along with continuing concerns regarding the PGP since 2011.

1. The On-going WOTUS saga:

It is clear that the definition of "waters of the US (WOTUS)" remains controversial. In 2020 EPA announced that "EPA and the Army are providing much needed regulatory certainty and predictability for American farmers." The new Administration, however, has already announced that many policies and regulations issued by EPA over the past four years will be subject to "review." In effect, the new Administration has indicated an intent to change some current PGP-relevant regulations. If new EPA initiatives go back to some previous Clean Water Act (CWA) definitions and requirements, possible changes could lead to interpretations of PGP requirements to restrict pesticide applications into, over, or near any ditch, dry wash, wetland, or other waterbody. Potential permittees could be left to guess which applications would require a permit. This lack of clarity, and uncertainty if EPA continues to consider continually changing definitions, could make compliance more difficult and would likely lead to further challenges to EPA's definitional scheme.

Given that EPA is expected to attempt to change the current WOTUS framework, EPA should give additional PGP notice and comment opportunity if changes come into effect. If changes are made effective during the 2021 PGP period, EPA should delay changes until the next five-year cycle or allow a new notice and comment period on any relevant changes to the PGP.

2. Continued Endangered Species Act (ESA) Consultations

EPA's attempt to integrate its pesticide assessments compliant with FIFRA with ESA provisions remains controversial and subject to continual litigation. If the outcome of the either litigation or program decisions require changes to PGP requirements, EPA should incorporate any proposed changes only after providing an additional opportunity for notice and comment by the public.

3. Joint and Several Liability Provisions

The PPC continues to be concerned with PGP provisions that all involved Operators could be jointly and severally liable for any adverse incident or PGP violation, including any action or inaction of others that is beyond their control. The CWA does not include a statutory provision for attaching joint and several liability to CWA violations like the provision Congress expressly included in other environmental statutes (*e.g.*, Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)). While EPA enforcement may take into consideration the relative roles of each party, the PPC urges EPA to eliminate from the PGP any joint and several liability provisions.

4. Stormwater and Nonpoint Runoff

The Fact Sheet on pages 12-13 makes the point that agricultural return flows and agricultural stormwater runoff do not require an NPDES permit. It then notes that non-agricultural stormwater discharges with pesticides "is either: (a) already subject to NPDES permit requirements pursuant to section 402(p) of the CWA or (b) is a discharge for which NPDES permit coverage is not currently required under section 402(p)." The Fact Sheet should be clarified to confirm that the PGP does not apply to stormwater discharges that do not currently require an NPDES permit under section 402(p) nor to any diffuse runoff from nonpoint sources.

Thank you for considering our views, and we look forward to further improvements to EPA procedures and policies to meet the goals of protecting the environment, helping American farmers provide an abundant and affordable food supply, and public health can be protected from vector-borne disease.

Sincerely,



Steve Hensley
Chair, Pesticide Policy Coalition



Beau Greenwood
Vice Chair, Pesticide Policy Coalition