

# PPC

## PESTICIDE POLICY COALITION

A Coalition Working for Sound Pest Management Policies

**January 12, 2023**

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Office of Water  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

*Submitted via regulations.gov*

**Re: Draft National Pollutant Discharge Elimination System: Pesticide General Permit for Point Source Discharges from the Application of Pesticides; Reissuance, Docket ID #: EPA- EPA-HQ-OW-2023-0268.**

The Pesticide Policy Coalition (PPC) respectfully submits comments on Environmental Protection Agency's (EPA or the Agency) Draft 2026 National Pollutant Discharge Elimination System (NPDES): Pesticide General Permit (PGP) for Point Source Discharges from the Application of Pesticides.

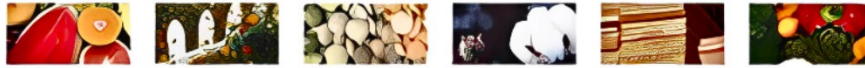
The PPC represents agriculture, food, fiber, public health, pest management, landscape, environmental, and related industries, including small businesses/entities, which depend on the availability of pesticides. Our coalition supports the development and implementation of public policies and laws that utilize the best available science and technology to protect human health and the environment.

PPC members include national and regional trade associations; 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; state departments of agriculture; equipment manufacturers; and other interested stakeholders. The PPC serves as the unifying voice for the review, discussion, development, and advocacy of pest management regulation and policy based on the best available science.

The PPC and its members are actively involved in the ongoing debate over whether PGPs should be legally required for pesticide applications, which are regulated by the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), the Food Quality Protection Act (FQPA), and state pesticide authorities. Our comments on the Draft 2026 PGP should not 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.

We agree with the Agency's recognition that operator compliance with FIFRA labels satisfy NPDES permits' requirement of technology-based effluent limitations. PPC members caution the Agency against implementing additional water quality-based effluent limitations (WQBEL) for pesticide applications as they would not provide any environmental benefits.

The PPC understands the 2026 Draft PGP will only cover areas where EPA is the permitting authority. However, we expect that the other forty-seven states with their own NPDES program will adopt all new requirements the national permit finalizes and will impact all pesticide applicators.



# PPC

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The following comments relay the coalition's concerns with the 2026 Draft PGP and supporting materials, and continued concerns regarding the PGP since 2011.

### **Additional Site Monitoring and Recordkeeping**

PPC supports robust recordkeeping and processes that help ensure products are used as intended. Part of the legal settlement that EPA entered with the Center for Biological Diversity in July 2023<sup>1</sup> regarding the 2021 NPDES PGP lawsuit included requiring additional visual monitoring and recordkeeping. The draft 2026 PGP requires further site and visual monitoring for each application site, and the addition of those findings into the records, that they will keep for an undetermined period.

PPC members are concerned that these additional site monitoring and recordkeeping requirements will overburden businesses and applicators with administrative tasks. The Agency must clarify the length of record retention and when edits to application plans can be made, as planned applications can be changed based on weather conditions or moving pest threats.

### **Endangered Species Act (ESA) Consultations**

The PPC understands that the Agency is working towards compliance with ESA. The Settlement's fast-tracked timeline through formal consultation processes with the Services is concerning, and there must be public transparency on those decisions. The expedited consultation process should not impact the public's ability to offer comments on the draft Biological Opinion.

The Agency acknowledges in Appendix I of the Draft 2026 NPDES Permit that the primary pesticide regulatory framework is the rigorous registration process at the Office of Pesticide Programs (OPP). While the PPC supports the Agency in achieving ESA compliance, these products are already undergoing consultation through OPP and would duplicate actions being taken. Considering the backlog of ESA consultations, the Agency should streamline efforts where possible.

### **Joint and Several Liability Provisions**

The PPC urges EPA to eliminate any joint and several liability provisions from the PGP. Provisions that state all involved Operators could be jointly and severally liable for any adverse incident or PGP violation, including any action or inaction of others beyond their control, are a concerning precedent for our activities. The Clean Water Act (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 consider each party's relative roles, the Agency must eliminate joint and several liability provisions.

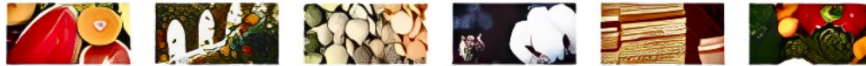
### **Stormwater and Nonpoint Runoff**

In the Draft 2026 Permit's Fact Sheet, the Agency clarifies that agricultural return flows and agricultural stormwater runoff do not require an NPDES permit.<sup>2</sup> Furthermore, the Agency specifies that non-

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<sup>1</sup> [EPA-HQ-OGC-2023-0247](#)

<sup>2</sup> [Draft 2026 PGP Fact Sheet](#), Background: Clean Water Act, pg. 2



# PPC

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agricultural stormwater discharges with pesticides are either already subject to NPDES permit requirements under section 402(p) of the CWA or is a discharge for which NPDES permit coverage is not currently required under section 402(p).

The PPC requests that EPA include clarification 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.

### **Definition of WOTUS**

The PPC recognizes that the definition of “waters of the United States” (WOTUS) remains controversial, as we have seen rulemakings and court decisions over the past few years, with states implementing the current EPA rule or using the pre-2015 regulations. Changes and confusion over the definition of WOTUS could lead to interpretations of PGP requirements to restrict pesticide applications into, over, or near any ditch, dry wash, wetland, or other waterbody. Individuals would be left to guess if an application would require a permit.

This lack of clarity and uncertainty, if EPA continues to consider continually changing definitions, could complicate compliance efforts and would likely lead to further challenges to EPA’s definitional scheme.

Considering the frequent modifications to the WOTUS framework and the ongoing litigation, EPA should provide additional notice and comment opportunities on the PGP if changes are to occur. If modifications become effective during the 2026 PGP period, EPA should either delay changes until the following five-year permit or allow a new notice and comment period on any relevant changes to the PGP.

### **Conclusion**

The PPC thanks the Agency for the opportunity to comment on the Draft 2026 Permit, and our membership looks forward to engaging in upcoming stakeholder engagement and comment opportunities before the 2026 final permit. If the PPC can assist in any way, or if you have questions, please contact me at [shensley@cotton.org](mailto:shensley@cotton.org) or (703) 475-7716.

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