

National Pollutant Discharge Elimination System

General Permit Fact Sheet for

Hawaii Administrative Rules Chapter 11-55, Appendix M

Authorizing Discharges from the Application of Pesticides

- (1) A brief description of the type of facility or activity which is the subject of the draft permit.

This general permit covers point source discharges from the application of pesticides (including insecticides, herbicides, fungicides, rodenticides, and various other substances to control pests) to State waters.

- (2) The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged.

This general permit covers the discharge of pesticides (biological pesticides and chemical pesticides which leave a residue) to State Waters resulting from the following use patterns: (1) Mosquito and Other Flying Insect Pest Control; (2) Weed and Algae Control; (3) Animal Pest Control; and (4) Forest Canopy Pest Control.

The PGP excludes pesticide applications that result in discharges of any pesticide to (1) waters impaired for that pesticide or a degradate of such an active ingredient, except for discharges from pesticide applications made in response to a declared pest emergency situation or as determined by the director or (2) any "class 1, inland waters," "class AA, marine waters," and areas restricted in accordance with the State's "No Discharge" policy except for discharges from pesticide applications made in response to a declared pest emergency situation or as determined by the director; or to protect public health or the environment that either do not degrade water quality or only degrade water quality on a short-term basis, or to maintain water flow in agricultural irrigation ditches and canals if the pesticide application is for the activity covered in 1(a)(2) (i.e., weed and algae pest control) or is for the activity covered in 1(a)(3) (i.e., animal pest control) in flooded agricultural fields.

This permit requires Operators to control discharges as necessary to meet applicable water quality standards. When the Operator, the State or EPA determines a discharge will cause or contribute to an excursion above any WQS, including failure to protect and maintain existing designated uses of receiving waters, the Operator must take corrective action to ensure that the situation is eliminated and will not be repeated in the future. (See Section 6). If additional Pest

Management Measures are required, the State and EPA expects the Operator to vigilantly and in good-faith follow and document, as applicable, the process for Pest Management Measure selection, installation, implementation and maintenance, and cooperate to eliminate the identified problem within the timeframe stipulated in Section 6 of the permit.

For a PSD permit, the degree of increment consumption expected to result from operation of the facility or activity.

Not applicable.

- (3) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record required by §124.9 (for EPA-issued permits).

The Hawaii Department of Health, Clean Water Branch administers the NPDES Permit Program through Title 11 of the Hawaii Administrative Rules, Chapter 55 (HAR Chapter 11-55) – Water Pollution Control. Under 40 CFR 122.28, general permits may be written to cover categories of point sources having comment elements, such as this Pesticide General Permit.

The General Permit is divided into the following sections:

1. *Coverage under this General Permit [Revised]*
2. *Technology-Based Effluent Limitations [Revised]*
3. *Water Quality-Based Effluent Limitations*
4. *Monitoring*
5. *Pesticide Discharge Management Plan (PDMP)*
6. *Corrective Action*
7. *Recordkeeping and Annual Reporting [Revised]*
8. *Notice of Intent Requirements [Revised]*
9. *Administrative Extension [New]*

Sections 1 through 9 are basic requirements necessary to the General Permit.

Basis for Discharge Limitations and Monitoring Requirements

The CWA requires point source dischargers to control the amount of conventional, non-conventional, and toxic pollutants that are discharged into the waters of the United States. The control of pollutants discharged is established through effluent limitations and other requirements in National Pollutant Discharge Elimination System (NPDES) permits. NPDES regulations establish two (2) principal bases for effluent limitations. At 40 CFR 122.44(a), permits are required to include applicable technology-based limitations (TBELs) and standards; and at 40 CFR 122.44(d), permits are required to include water quality-based effluent limitations (WQBELs) to attain and maintain applicable numeric and narrative water quality

criteria to protect the beneficial uses of the receiving water. When both TBELs and WQBELS for a parameter exist, then the more protective effluent limitation is selected.

There are no effluent guidelines promulgated for discharges resulting from point source discharges from the application of pesticides. The general permit requirements are based on Hawaii Administrative Rules (HAR), Chapter 11-54, Water Quality Standards, and the determination that most discharges are one-time or intermittent, of short duration, of relatively small volume, and result in de minimis impacts.

The Director of Health determined that:

- 1) The conditions and discharge limitations established in the proposed general permit ensure that the existing beneficial uses and quality of state waters will be maintained and protected; and
- 2) Discharges regulated in the general permit should not lower receiving water quality if the terms and conditions of the general permit are met.

Additional parameters that may require monitoring are based on the pollutants that may be present and disclosed on the Notice of Intent (NOI). Effluent limitations for these parameters are based on applicable water quality criteria in HAR Section 11-54-4.

The discharges covered by the general permit shall comply with the Standard Permit Conditions of HAR Chapter 11-54, Appendix A.

Section 1(c)(1)

Original: This general permit becomes effective ten days after filing with the office of the lieutenant governor.

Revised: This general permit becomes effective ten days after filing with the office of the lieutenant governor and shall expire five years after the effective date, unless amended earlier.

Rationale:

This revision is to make this subsection consistent with the general permit term specified at the beginning of the general permit. The previous language only specified when the general permit term began, and not when it expired. This is a minor change for completeness and consistency and has no functional impact on any permit requirements.

Section 1(c)(2)

Original: A notice of general permit coverage under this general permit expires:

- (A) Five years after the effective date of this general permit;
- (B) When the notice of general permit coverage specifies; or
- (C) When amendments to section 11-55-34.02(b)(5) are adopted,

Whichever is earliest, unless the notice of general permit coverage is administratively extended under section 11-55-34.09(d).

Revised: Unless otherwise specified on the notice of general permit coverage, a notice of general permit coverage granted under this general permit prior to the expiration of this general permit shall expire five years after the effective date of this general permit, unless it is administratively extended in accordance with section 1(c)(3) of this general permit.

Rationale:

Previously, to maintain coverage under this general permit in instances where the general permit is going to expire prior to its reissuance, permittees would need to submit a renewal NOI prior to the general permit's expiration date. The previous section 1(c)(3) specified that the Notice of General Permit Coverage (NGPC) expires in the identified 3 scenarios in accordance with this renewal procedure. The Clean Water Branch is now revising the renewal procedures for general permits to no longer require a renewal NOI and administrative extension prior to the expiration of the general permit. Under the new procedure, unless otherwise specified on the notice of general permit coverage, the notice of general permit coverage expires five years after the effective date of the general permit, unless it is administratively extended under the new section 1(c)(3). This revision is necessary to be consistent with the new renewal process. More information explaining this change in the renewal process is provided in the rationale for the new section 1(c)(3).

Section 1(c)(3) [New]

Original: (NEW)

Revised: If the department is unable to reissue this general permit prior to its expiration, a notice of general permit coverage granted under this general permit shall be automatically administratively extended, unless otherwise specified on the notice of general permit coverage. This administrative extension shall expire sixty days after the effective date of the new general permit unless:

- (A) A notice of intent for coverage under the new general permit is submitted within sixty days after the effective date of the new general permit. The administrative extension shall thus expire on the effective date of the notice of general permit coverage authorizing the existing discharge under the new general permit;

(B) An application for an individual NPDES permit coverage is submitted within sixty days after the effective date of the new general permit. The administrative extension shall thus expire on the effective date of the individual NPDES permit authorizing the existing discharge; or

(C) A notice of cessation is submitted where the administrative extension shall expire on the date that the discharge ceased.

Rationale:

Previously, to maintain coverage under this general permit in instances where the general permit is going to expire prior to its reissuance, permittees would need to submit a renewal NOI prior to the general permit's expiration date. This procedure created a situation where a permittee is required to submit an NOI to request coverage under the reissued general permit prior to the reissued permit being finalized and adopted. In essence, permittees would be required to submit an NOI to apply for coverage under a general permit that has not been finalized, or at worst, has not had a draft public noticed yet, and therefore, permittees would not even be aware of what the new general permit's requirements would potentially be. To avoid this situation, the renewal process for general permit coverage has been revised. This new section now specifies that when the department is unable to reissue the general permit prior to its expiration, NGPCs granted under the general permit prior to its expiration are administratively extended until 60 days after effective date of the reissued general permit, unless one of 3 actions are taken by the permittee. In the new process, permittees would have 60 days to submit an NOI to request coverage under the reissued general permit, before their administrative extension expires. This will allow permittees to determine if they are able to comply with the new general permit and provide any newly required information in the NOI to request coverage under the reissued general permit.

Section 1(f)

Original: All Operators with eligible discharges are authorized for permit coverage up until 60 calendar days from the effective date of the permit without submission of an NOI. Hereinafter, the 60-calendar day timeframe provided after the effective date of the permit shall be referred to as the "adjustment period." After the adjustment period, all Operators with eligible discharges for which an NOI is not required also are automatically covered under this permit. By the adjustment period, all Decision-makers with eligible discharges for which an NOI is required are required to submit an NOI consistent with the earliest applicable due date identified in Table 2. Decision-makers may submit multiple NOIs with different activities on each of those already covered within the same treatment area under another NOI.

Decision-makers who are required to submit an NOI must begin complying with Section 2(b) when section 11-55-34.02(b)(12) becomes effective ten days after filing with the office of the lieutenant governor.

Revised:

All Decision-makers with eligible discharges for which an NOI is required are required to submit an NOI consistent with the earliest applicable due date identified in Table 1-2. Decision-makers may submit multiple NOIs with different activities on each of those NOIs such that discharges from different activities are authorized at different times

Rationale:

This revision is to be consistent with the 2021 EPA PGP

Section 2(b)(3)(B)

Original:

- (i) No action
- (ii) Prevention
- (iii) Mechanical or physical methods
- (iv) Biological control agents'
- (v) Pesticides

Revised:

- (i) No action
- (ii) Prevention
- (iii) Mechanical or physical methods
- (iv) Biological control agents
- (v) Pesticides
- (vi) Cultural Methods

Rationale:

Added "cultural methods" to the list of pest management options for animal pest control to clarify that cultural methods can be used as a pest management option for animal pest control.

Section 7(g)(2) and 7(g)(3)

Original: The operator or its duly authorized representative shall;

Revised: *The permittee or its duly authorized representative shall;*

Rationale:

Previously, the term “operator” was used interchangeably with “permittee”, which potentially caused confusion as the owner is not always the permittee (the permittee may also be the operator of the project/facility). This section was revised to provide clarity and avoid confusion.

Section 8(a),(b), & (c)

Original: *The owner or duly authorized representative shall;*

Revised: *The owner or operator shall;*

Rationale:

The previous text specified that the owner or its authorized representative shall submit the notice of intent. As an NPDES permittee may be either the owner or operator of a facility or activity, the term “operator” was added to this section. Further, while the owner or operator’s certifying person or duly authorized representative must sign the notice of intent as applicable, the requirement to submit the notice of intent is still the owner or operator’s responsibility and is separate from notice of intent signatory requirements. To provide clarity, the duly authorized representative language is removed from this section.

Section 9 [New]

Any notice of general permit coverage issued under the general permit dated July 13, 2018, shall be automatically administratively extended. This administrative extension shall expire sixty days after the effective date of this general permit unless:

(a) A notice of intent for coverage under this general permit is submitted within sixty days after the effective date of this general permit. The administrative extension shall thus expire on the effective date of the notice of general permit coverage authorizing the existing discharge under this general permit; or

(b) An application for an individual NPDES permit coverage is submitted within sixty days after the effective date of this general permit. The administrative extension shall thus expire on the effective date of the individual NPDES permit authorizing the existing discharge.

Rationale:

Previously, to maintain coverage under this general permit in instances where the general permit is going to expire prior to its reissuance, permittees would

need to submit a renewal NOI prior to the general permit's expiration date. This procedure created a situation where a permittee is required to submit an NOI to request coverage under the reissued general permit prior to the reissued permit being finalized and adopted. In essence, permittees would be required to submit an NOI to apply for coverage under a general permit that has not been finalized, or at worst, has not had a draft public noticed yet, and therefore, permittees would not even be aware of what the new general permit's requirements would potentially be. To avoid this situation, the renewal process for general permit coverage has been revised. In the new process, permittees would have 60 days to submit an NOI to request coverage under the reissued general permit, before their administrative extension expires. This will allow permittees to determine if they are able to comply with the new general permit and provide any newly required information in the NOI to request coverage under the reissued general permit.

- (4) Reasons why any requested variances or alternatives to required standards do or do not appear justified;

Not applicable.

- (5) A description of the procedures for reaching a final decision on the draft permit including:
- (i) The beginning and ending dates of the comment period under 40 CFR §124.10 and the address where comments will be received;
 - (ii) Procedures for requesting a hearing and the nature of that hearing; and
 - (iii) Any other procedures by which the public may participate in the final decision.

Refer to HAR Section 11-1-51 procedures for adopting rules. The proposed NPDES General Permit is issued as Appendix M within HAR Chapter 11-55, Water Pollution Control.

- (6) Name and telephone number of a person to contact for additional information.

*Mr. Darryl Lum
Engineering Section Supervisor
Clean Water Branch
Department of Health
Ph. (808) 586-4309*

- (7) For NPDES permits, provisions satisfying the requirements of 40 CFR §124.56.

The CWA requires that discharges from existing facilities, at a minimum, must meet technology-based effluent limitations reflecting, among other things, the technological capability of permittees to control pollutants in their discharges.

Water quality-based effluent limitations are required by CWA Section 301(b)(1)(C). Both technology-based and water quality-based effluent limitations are implemented through NPDES permits.

For this permit, the effluent limits are based on Hawaii's water quality standards because no effluent limitation guidelines apply.

- (8) Justification for waiver of any application requirements under 40 CFR §122.21(j) or (q) of this chapter.

Not applicable.