

## Pesticide Permitting Frequently Asked Questions and Answers

**1. Why does DENR require Surface Water Discharge permits for discharges from pesticide applications?**

The requirement to obtain Surface Water Discharge permits for point source discharges from pesticide applications to waters of the state stems from a decision by the Sixth Circuit Court of Appeals. In its ruling on *National Cotton Council, et al. v. EPA* the Court vacated EPA's 2006 rule that said permits were not required for applications of pesticides to, over or near U.S. waters when in compliance with the Federal Insecticide, Fungicide and Rodenticide Act label. Thus, discharges to waters of the state from the application of pesticides require Surface Water Discharge permits when the court's mandate took effect on October 31, 2011.

**2. What do I have to do to be covered by the Pesticide General Permit?**

Anyone who performs one of the five types of pesticides applications covered by the permit (see question 3 below) to waters of the state in South Dakota is automatically covered by this General Permit. No one will have to ask DENR for this permit or fill out an application form to be covered. Note that this General Permit does have requirements that must be followed; to see the general permit and determine if any of the requirements apply to your pesticide applications, please call (605) 773-3351, or visit DENR's webpage: <http://denr.sd.gov/des/sw/PesticidePermit.aspx>.

**3. Which pesticide applications are covered under DENR's General Permit?**

DENR's Pesticide General Permit authorizes discharges to waters of the state from the application of (1) chemical pesticides that leave a residue and (2), biological pesticides. There are five types of pesticide application covered under this general permit: Mosquito and other flying insect pest control; Weed and algae control; Aerial pest control; Ditch and stream bank pest control; and for Publicly declared pest emergencies.

**4. Does this Pesticide General Permit cover the application of pesticides to control aquatic nuisance animals?**

No. If you want to manage invasive or other nuisance pests including, but not limited to fish, lampreys, and mollusks, then you must contact DENR and request an individual permit. Individual permits are developed on a case-by-case basis and are available for public comment prior to becoming effective. If you believe you may need to be covered by an individual permit for the control of aquatic nuisance animals, please contact Kyle Doerr at (605) 773-3351, or email at [Kyle.doerr@state.sd.us](mailto:Kyle.doerr@state.sd.us)

**5. I apply pesticides to control weeds in road ditches, how does this permit effect me?**

Road ditches are considered waters of the state and applying pesticides into ditches requires converge under a permit. However, the requirements in the permit are applicable only if there is water present at the time of application. If there is no water present at the time of a pesticide application, then that application is not subject to the requirements in this General Permit.

6. **Are specific pesticides regulated under the Pesticide General Permit?**

No. The Pesticide General Permit regulates discharges from the application of any pesticide used to control pests for the five specific pesticide activities. Specifically, as written, the permit does not include any requirements that apply only to a specific pesticide or type of pesticide.

7. **Will agricultural runoff and/or irrigation return flows that contain pesticides require a Surface Water Discharge permit?**

No. In 1987, Congress amended the Clean Water Act to exempt agricultural storm water and irrigation return flow from permitting requirements. The Court's ruling does not affect these exemptions.

8. **Does DENR's Pesticide General Permit cover discharges from land based applications for the purpose of controlling pests on agricultural crops or forest floors?**

It depends whether or not the pesticide gets into waters of the state. Pesticides that are applied to land for the purpose of controlling pests on agricultural crops or forest floors are not required to be covered by the Pesticide General Permit. However, any pesticide applications that result in discharges into waters of the state must be covered by this permit.

9. **What is considered "Waters of the State"?**

Waters of the state is defined in South Dakota Codified Law **SDCL 34A-2-2(12)** as the following:

All waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, situated wholly or partly within or bordering upon the state.

10. **I am a certified pesticide applicator; do I still need to follow the requirements in this General Permit?**

Yes. This General Permit is separate from any other state or federal requirements.

11. **Do I have to pay to have coverage under this General Permit?**

No. At this time there is no fee to be covered by this General Permit.

12. **What do I need to include in the Annual Report?**

- a. The permittee's name;
- b. South Dakota Certified Pesticide Applicator number if applicable;
- c. The total surface water treatment area in acres or linear miles as appropriate for each pesticide use category;
- d. Whether or not the permittee applied pesticides because of a declared pest emergency. If yes, then list the dates and times this occurred, the target pest, and what government entity declared the pest emergency.
- e. For each threshold that was exceeded list the target pest(s) and pesticides used.

13. **What are the treatment area thresholds that trigger the requirement to submit an annual report as part of this General Permit?**

- a. If you apply pesticide because of a declared pest emergency, you will be required to submit an annual report.
- b. If you apply pesticide for controlling mosquitoes and other flying insect pests, the treatment area threshold is 6,400 acres of surface water treatment area per year.<sup>1</sup>
- c. If you aerially apply pesticide to controlling pests, the treatment area threshold is 6,400 acres of surface water treatment area per year.<sup>1</sup>
- d. If you apply pesticide for controlling weed and algae, the treatment area threshold is 80 acres of treated surface water area or 20 linear miles of treatment area at water's edge.<sup>2</sup>
- e. If you apply pesticide for controlling ditch and stream bank pests, the treatment area threshold is 80 acres of treated surface water area or 20 linear miles of treatment area at water's edge.<sup>2</sup>

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<sup>1</sup> For calculating annual treatment area totals, each pesticide application activity is counted as a separate activity. For example, applying pesticides twice a year to a 5,000-acre site should be counted as 10,000 acres of treatment area and the applicator would be required to fill out an annual report.

<sup>2</sup> The thresholds for weed and algae control, and the thresholds for ditch and stream bank pest control are not cumulative and are determined simply by the surface water acres receiving pesticides, regardless of the number of applications in a calendar year. For example, if the permittee applies pesticides to the same 40 surface water acres (and water is present) five times in a calendar year, the threshold has not been exceeded and an annual report is not required.

#### 14. Does DENR require standard report forms?

No, DENR does not require the use of a standard annual report form. However DENR has a sample annual report form and a daily record form on its website for applicators if they want to use it.

If you have any other questions, please contact Kyle Doerr at (605) 773-3351, or email at [Kyle.doerr@state.sd.us](mailto:Kyle.doerr@state.sd.us) or visit our website at <http://denr.sd.gov/des/sw/PesticidePermit.aspx>. Thank you for your interest in South Dakota's Pesticide General Permit.

