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6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OW-2023-0268; FRL [10613-01-OW]

Draft National Pollutant Discharge Elimination System (NPDES) Pesticide General Permit for Point Source Discharges from the Application of Pesticides; Reissuance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of draft permit and request for public comment.

SUMMARY: All ten Environmental Protection Agency (EPA) Regions are proposing for public comment the draft 2026 National Pollutant Discharge Elimination System (NPDES) Pesticide General Permit (PGP)—the draft 2026 PGP. The draft 2026 PGP covers point source discharges from the application of pesticides to waters of the United States. Once finalized, the draft 2026 PGP will replace the existing permit, the 2021 PGP, which was issued for a five-year term in the *Federal Register* on October 31, 2021, and expires October 31, 2026, at midnight. The draft 2026 PGP largely has the same conditions and requirements as EPA's previously issued PGPs, and would authorize certain point source discharges from the application of pesticides to waters of the United States in accordance with the terms and conditions described therein. EPA proposes to issue this permit for five (5) years in all areas of the country where EPA is the NPDES permitting authority. EPA solicits public comment on all aspects of the draft 2026 PGP. This *Federal Register* document describes the draft 2026 PGP in general and seeks

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comment as described in Section III.C of this document. The Fact Sheet accompanying the permit contains supporting documentation. EPA encourages the public to read the Fact Sheet to better understand the draft 2026 PGP.

DATES: Written comments on the draft 2026 PGP must be received by **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may send comments, identified by Docket ID No. EPA-HQ-OW-2023-0268, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Mail: U.S. Environmental Protection Agency, EPA Docket Center, Office of Water Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- Hand Delivery or Courier: EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue, NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m. to 4:30 p.m., Monday through Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. EPA-HQ-OW-2023-0268. Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

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FOR FURTHER INFORMATION CONTACT: Contact the appropriate EPA

Regional office listed in Section I.D of this document, email PGP@epa.gov, or contact

Lauren Mosesso, EPA Headquarters, Office of Water, Office of Wastewater Management

(4203M), 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number:

202-564-1012; email address: mosesso.lauren@epa.gov. Electronic versions of the draft

2026 PGP and Fact Sheet are also available on EPA's NPDES website at

<https://www.epa.gov/npdes/pesticide-permitting>.

SUPPLEMENTARY INFORMATION:

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I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you apply pesticides under the use patterns in section III.B of this document that result in a discharge to waters of the United States in one of the geographic areas identified in section III.A of this document. Potentially affected entities, as categorized in the North American Industry Classification System (NAICS), may include, but are not limited to:

Category	NAICS	Examples of Potentially Affected Entities
Agricultural entities— General agricultural interests, farmers/producers, forestry, and irrigation.	111 Crop Production	Producers of crops mainly for food and fiber, including farms, orchards, groves, greenhouses, and nurseries that have irrigation ditches requiring pest control.
	113110 Timber Tract Operations	The operation of timber tracts for the purpose of selling standing timber.
	113210 Forest Nurseries Gathering of Forest Products	Growing trees for reforestation and/or gathering forest products, such as gums, barks, balsam needles, rhizomes, fibers, Spanish moss, ginseng, and truffles.
	221310 Water Supply for Irrigation	Operating irrigation systems.
Pesticide parties (includes pesticide manufacturers, other pesticide users/interests, and consultants).	325320 Pesticide and Other Agricultural Chemical Manufacturing.	Formulation and preparation of agricultural pest control chemicals.

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<p>Public health parties (includes mosquito or other vector control districts and commercial applicators that service these). Resource management parties (includes State departments of fish and wildlife, State departments of pesticide regulation, State environmental agencies, and universities).</p>	<p>923120 Administration of Public Health Programs</p> <p>924110 Administration of Air and Water Resource and Solid Waste Management Programs</p> <p>924120 Administration of Conservation Programs</p>	<p>Government establishments primarily engaged in the planning, administration, and coordination of public health programs and services, including environmental health activities.</p> <p>Government establishments primarily engaged in the administration, regulation, and enforcement of air and water resource programs; the administration and regulation of water and air pollution control and prevention programs; the administration and regulation of flood control programs; the administration and regulation of drainage development and water resource consumption programs; and coordination of these activities at intergovernmental levels.</p> <p>Government establishments primarily engaged in the administration, regulation, supervision and control of land use, including recreational areas; conservation and preservation of natural resources; erosion control; geological survey program administration; weather forecasting program administration; and the administration and protection of publicly and privately owned forest lands. Government establishments responsible for planning, management, regulation and conservation of game, fish, and wildlife populations, including wildlife management areas and field stations; and other administrative matters relating to the protection of fish, game, and wildlife are included in this industry.</p>
<p>Utility parties (includes utilities)</p>	<p>221 Utilities</p>	<p>Provide electric power, natural gas, steam supply, water supply, and sewage removal through a permanent infrastructure of lines, mains, and pipes.</p>

B. Public Participation

1. Written comments

Submit your comments, identified by Docket ID No. EPA-HQ-OW-2023-0268, at <https://www.regulations.gov> (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. EPA may publish any comment received to its public docket. Do not submit to EPA’s docket at <https://www.regulations.gov> any information you consider

to be Confidential Business Information (CBI), Proprietary Business Information (PBI), or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). Please visit <https://www.epa.gov/dockets/commenting-epa-dockets> for additional submission methods; the full EPA public comment policy; information about CBI, PBI, or multimedia submissions; and general guidance on making effective comments.

2. Will public hearings be held on this action?

EPA has not scheduled any public hearings to receive public comment concerning the draft 2026 PGP. However, interested persons may request a public hearing concerning the draft 2026 PGP pursuant to 40 CFR 124.12. Requests for a public hearing must be sent or delivered in writing to the same address as provided above for public comments prior to the close of the comment period. Requests for a public hearing must state the nature of the issues proposed to be raised in the hearing.

Pursuant to 40 CFR 124.12, EPA shall hold a public hearing if it finds, on the basis of requests, a significant degree of public interest in a public hearing on the draft 2026 PGP. If EPA decides to hold a public hearing, a public notice of the date, time, and place of the hearing will be made at least 30 days prior to the hearing. Any person may provide written or oral statements and data pertaining to the draft 2026 PGP at any such public hearing.

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C. Finalizing the Draft 2026 PGP

EPA intends to issue a final 2026 PGP on or prior to December 17, 2024, a condition of the Settlement Agreement in *Center for Biological Diversity v. EPA and FWS*, No. 21–71306 (9th Cir.). The final 2026 PGP will be issued after all public comments received during the public comment period have been considered and any appropriate changes are made to the draft 2026 PGP. EPA will include its response to significant comments received in the docket as part of the final permit decision. Once the final 2026 PGP becomes effective on October 31, 2026, eligible Operators may seek authorization under the new PGP as outlined in the permit. To ensure uninterrupted permit coverage from the 2021 PGP to the 2026 PGP, Operators who are required to submit a Notice of Intent (NOI) must submit their NOI for coverage under the new permit prior to discharge as outlined in the permit (e.g., no later than 10 or 30 days before discharge). See Part 1.2.4 of the draft 2026 PGP.

D. Who are the EPA Regional Contacts for this Draft Permit?

For EPA Region 1, contact George Papadopoulos at tel.: (617) 918-1579; or e-mail at papadopoulos.george@epa.gov.

For EPA Region 2, contact Sergio Bosques at tel.: (787) 977-5838 or bosques.sergio@epa.gov.

For EPA Region 3, contact Carissa Moncavage at tel.: (215) 814-5798; or e-mail at moncavage.carissa@epa.gov.

For EPA Region 4, contact Sam Sampath at tel.: (404) 562-9229; or e-mail at sampath.sam@epa.gov.

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For EPA Region 5, contact John Colletti at tel.: (312) 886-6106; or e-mail at colletti.john@epa.gov.

For EPA Region 6, contact William F. Cooper at tel.: (214) 665-6443 or e-mail at cooper.williamf@epa.gov.

For EPA Region 7, contact Alex Owutaka at tel.: (913) 551-7584 or e-mail at: owutaka.alex@epa.gov.

For EPA Region 8, contact Margaret Kennedy at tel.: (303) 312-6644 or e-mail at: kennedy.margaret@epa.gov.

For EPA Region 9, contact Prasad Gullapalli at tel.: (415) 972-3406 or e-mail at: Gullapalli.Prasad@epa.gov.

For EPA Region 10, contact Bilin Basu at tel.: (206) 553-0029 or e-mail at: basu.bilin@epa.gov.

II. Background

Section 301(a) of the CWA provides that “the discharge of any pollutant by any person shall be unlawful” unless the discharge is in compliance with certain other sections of the Act. 33 U.S.C. 1311(a). The CWA defines “discharge of a pollutant” as “(A) any addition of any pollutant to navigable waters from any point source and (B) any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft.” 33 U.S.C. 1362(12). A “point source” is any “discernible, confined and discrete conveyance” but does not include “agricultural stormwater discharges and return flows from irrigated agriculture.” 1362(14). The term “pollutant” includes among other things “garbage... chemical wastes, biological materials ...and industrial, municipal, and agricultural waste discharged into water.” 33

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U.S.C. 1362(6).

A person may discharge a pollutant without violating the Section 301 prohibition by obtaining authorization to discharge (referred to herein as “coverage”) under a Section 402 NPDES permit (33 U.S.C. 1342). Under Section 402(a), EPA may “issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding Section 1311(a)” upon meeting certain conditions required by the Act.

EPA issued the first Pesticide General Permit (“2011 PGP”) on October 31, 2011, in response to the United States Sixth Circuit Court of Appeals ruling vacating EPA’s 2006 Final Rule on Aquatic Pesticides. *National Cotton Council of America. v. EPA*, 553 F.3d 927 (6th Cir. 2009). EPA developed the PGP to control point source discharges of biological pesticides and chemical pesticides that leave a residue into waters of the United States. The PGP provides coverage for certain point source discharges of pollutants to waters of the United States in areas where EPA is the permitting authority. In 2016, EPA issued the second PGP (“2016 PGP”) and, in 2021, issued the third PGP (“2021 PGP”). In October 2021, the Center for Biological Diversity filed a petition in the U.S. Court of Appeals for the Ninth Circuit challenging EPA’s issuance of the 2021 PGP. The petition alleged that EPA failed to comply with the CWA in issuing the 2021 PGP, and that EPA and the U.S. Fish and Wildlife Service (FWS) failed to comply with the Endangered Species Act (ESA) in issuing the 2021 PGP. A Settlement Agreement in *Center for Biological Diversity v. EPA and FWS*, No. 21–71306 (9th Cir.) was finalized on July 25, 2023. The settlement agreement committed EPA (1) to initiate formal ESA consultation on the draft 2026 PGP by February 1, 2024; (2) to propose certain revisions to the monitoring and recordkeeping provisions for public comment when proposing the

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draft 2026 PGP; and (3) to issue the 2026 PGP on or before December 17, 2024.

III. Scope and Applicability

A. Geographic Coverage

EPA provides permit coverage for classes of point source discharges of pollutants that occur in areas where EPA is the NPDES permitting authority. The geographic coverage of the draft 2026 PGP is listed in Appendix C of the permit.

B. Categories of Pesticide Use-Patterns Covered

The draft 2026 PGP has largely the same requirements and conditions as the 2021 PGP and regulates the same discharges of pollutants to waters of the United States from the application of (1) biological pesticides, and (2) chemical pesticides that leave a residue.

The draft 2026 PGP applies to the following same pesticide use patterns:

- Mosquito and Other Flying Insect Pest Control
- Weed and Algae Pest Control
- Animal Pest Control
- Forest Canopy Pest Control

The scope of activities encompassed by these pesticide use patterns is described in greater detail in Part III.1.1 of the Fact Sheet for the draft 2026 PGP.

C. Summary of the Permit and Changes From the 2021 PGP

Once effective, the final 2026 PGP will replace the 2021 PGP, which became effective for a five-year term on October 31, 2021 (86 FR 51665), and expires October 31, 2026, at midnight. The draft 2026 PGP is largely similar to the 2021 PGP, and is structured in the same nine parts: (1) Coverage Under This Permit, (2) Technology-Based Effluent Limitations, (3) Water Quality-Based Effluent Limitations, (4) Monitoring, (5) Pesticide

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Discharge Management Plan, (6) Corrective Action, (7) Recordkeeping and Annual Reporting, (8) EPA Contact Information and Mailing Addresses, and (9) Permit Conditions Applicable to Specific States (including Territories) and Indian Country. Additionally, as with the 2021 PGP, the draft 2026 PGP includes nine appendices with additional conditions and guidance for permittees: (A) Definitions, Abbreviations, and Acronyms, (B) Standard Permit Conditions, (C) Areas Covered, (D) Notice of Intent (NOI) form, (E) Notice of Termination (NOT) form, (F) Pesticide Discharge Evaluation Worksheet (PDEW), (G) Annual Reporting Template, (H) Adverse Incident Report Template, and (I) Endangered Species Procedures.

The following is a summary of the draft 2026 PGP's proposed requirements:

- The PGP defines “Operator” (*i.e.*, the entity required to obtain NPDES permit coverage for discharges) to include any (a) *Applicator* who performs the application of pesticides or has day-to-day control of the application of pesticides that results in a discharge to waters of the United States, or (b) *Decision-maker* who controls any decision to apply pesticides that results in a discharge to waters of the United States. There may be instances when a single entity acts as both an Applicator and a Decision-maker.
- All Applicators are required to minimize pesticide discharges by using only the amount of pesticide and frequency of pesticide application necessary to control the target pest, maintain pesticide application equipment in proper operating condition, control discharges as necessary to meet applicable water quality standards, and monitor for and report any adverse incidents.
- All Decision-makers are required, to the extent not determined by the Applicator,

to minimize pesticide discharges by using only the amount of pesticide and frequency of pesticide application necessary to control the target pest. All Decision-makers are also required to control discharges as necessary to meet applicable water quality standards and monitor for and report any adverse incidents.

- Certain Decision-makers are required also to submit an NOI to obtain authorization to discharge and to implement pest management options to reduce the discharge of pesticides to waters of the United States. These Decision-makers are: agencies for which pest management for land resource stewardship is an integral part of the organization's operations; entities with a specific responsibility to control pests (*e.g.*, mosquito and weed control districts); local governments or other entities that apply pesticides in excess of specified annual treatment area thresholds; and entities that discharge pesticides to Tier 3 waters (Outstanding National Resource Waters, 40 CFR 131.12(a)(3)) or to waters of the United States containing Fish and Wildlife Service (FWS) Listed Resources of Concern and/or National Marine Fisheries Service (NMFS) Listed Resources of Concern.
- Within this group, certain large Decision-makers (any (1) public entity that serves a population greater than 10,000 or (2) private enterprise that exceeds the Small Business Administration size standard as identified in 13 CFR 121.201) must also develop a Pesticide Discharge Management Plan (PDMP), submit annual reports, and maintain detailed records. Whereas certain small Decision-makers (any (1) public entity that serves a population of 10,000 or less or (2) private enterprise that does not exceed the Small Business Administration size standard as identified

in 13 CFR 121.201) are required to complete a pesticide discharge evaluation worksheet for each pesticide application (in lieu of the more comprehensive PDMP), an annual report, and detailed recordkeeping.

- Deadlines for submittal of an NOI to be covered, if required, are provided in Part 1.2.3, Table 1-2, of the draft 2026 PGP.

EPA encourages the public to review and comment on all aspects and provisions in the draft 2026 PGP. The draft 2026 PGP is largely similar to the 2021 PGP but includes the changes listed below. See Part III of the draft 2026 PGP fact sheet for further discussion.

- (1) Adds Part 4.3, Documentation of Visual Monitoring, to reiterate the requirement to record visual monitoring as required under the Recordkeeping portions of the permit Parts 7.2, 7.3, and 7.4;
- (2) Adds Part 4.4, Additional Monitoring, to emphasize additional monitoring could be required by EPA to ensure compliance with PGP;
- (3) Requires Decision-makers to submit Pesticide Discharge Management Plan (PDMP) with NOI submission (Part 5);
- (4) Updates PDMP contents to include visual monitoring procedures (Part 5);
- (5) Adds that if visual monitoring was performed, the record must include the date, time, and location (Part 7);
- (6) Requires Decision-makers to submit visual monitoring records with an Annual Report (Part 7);
- (7) Adds a field for NAICS Code on the Notice of Intent form (Appendix D);
- (8) Adds a field for latitude and longitude of the Pest Management Area on the Notice of Intent form (Appendix D);

- (9) Adds the terms “Fish and Wildlife Service Listed Resources of Concern” and “Lands of Exclusive Federal Jurisdiction” to Appendix A, Definitions and Acronyms;
- (10) Updates Appendix C, Areas Covered, to add permit numbers for other areas of Indian Country and Lands of Exclusive Federal Jurisdiction.
- (11) Adds the term, “Fish and Wildlife Service (FWS) Listed Resources of Concern” where the permit already includes the term, “National Marine Fisheries Service (NMFS) Listed Resources of Concern” to reflect proposed permit changes to address listed species and designated critical habitats under the jurisdiction of FWS;
- (12) Notes in Part 1.1.2.4 that aerial image of the pest management area(s) may not be needed if EPA’s geospatial mapping tool is available to provide supporting documentation when selecting ESA eligibility Criterion A;
- (13) Directs Decision-makers who are required to submit an NOI to include activities resulting in a discharge to waters of the United States containing FWS Listed Resources of Concern on the NOI (Part 1.2.2), and updates the NOI form to reflect this change (Appendix D);
- (14) Updates Appendix I, Endangered Species Procedures, to clarify the procedures with a worksheet format to guide Operators through the ESA eligibility criteria.

IV. Cost Impacts of the Draft 2026 PGP

Based on the cost analyses performed for EPA’s previously issued PGPs, EPA expects the costs that covered entities, including small businesses, will bear to comply with this permit will be minimal. Since the draft 2026 PGP is largely similar to the 2021 PGP,

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EPA projects that the proposed changes will have minimal incremental cost impacts on regulated entities. Copies of EPA's economic analyses and cost impact analyses for EPA's previously issued PGPs are available in the docket for this permit. See Appendix D of the draft 2026 PGP Fact Sheet for further discussion of the potential incremental costs of the draft 2026 PGP.

V. Statutory and Executive Orders Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulations and Regulatory Review

The draft 2026 PGP is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations and Executive Order 14096: Revitalizing Our Nation's Commitment to Environmental Justice for All

EPA believes that the human health and environmental conditions that exist prior to this action is not likely to result in disproportionate and adverse effects on communities with EJ concerns. As part of the general permit development process, EPA reviews available information to evaluate whether issuance of a permit could affect overburdened communities. The information supporting this Executive Order review is contained in Appendix E of the draft 2026 PGP Fact Sheet.

C. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. It will neither impose substantial direct compliance costs on federally recognized tribal

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governments, nor preempt tribal law. EPA directly implements the NPDES Program, including the 2026 PGP when it is finalized, in Indian Country; therefore, in compliance with EPA Policy on Consultation and Coordination with Indian Tribes, EPA consulted with tribal officials early in the process to provide tribes an opportunity to have meaningful and timely input into the renewal of the PGP. To gain an understanding of, and where necessary, to address tribal implications of the draft 2026 PGP, EPA conducted the following activities:

- **August 22, 2023**—EPA emailed notification letters to tribal leaders initiating consultation and coordination on the renewal of the PGP. The initiation letter was also posted on EPA's Tribal Consultation Opportunities Tracking System (TCOTS) at <https://tcots.epa.gov/>.
- **September 19 and 21, 2023**—EPA held two informational webinars open to all tribal representatives and reserved the last part of each webinar for official consultation comments. Eighteen tribal representatives participated in the webinar. No official comments were received during the webinar. The presentation was posted on the tribal portal website at <http://tcots.epa.gov>.

EPA received one comment from tribes and tribal organizations during the consultation and coordination period. Records of the tribal informational webinar and a consultation summary are included in the docket for this proposed action (Docket ID No. EPA-HQ-OW-2023-0268). EPA has considered the comment received in the proposal. The Agency specifically solicits additional comment on this proposed permit during the public comment period. EPA also notes that as part of the finalization of this proposed permit, the Agency will complete the Clean Water Act section 401 certification procedures with

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all authorized tribes where this permit will apply.

Authority: Clean Water Act, 33 U.S.C. 1251 et seq.

David W. Cash,

Regional Administrator, EPA Region 1.

Javier Laureano,

Director, Water Division, EPA Region 2.

Carmen R. Guerrero-Pérez,

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Tera L. Fong,

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