

MARYLAND DEPARTMENT OF THE ENVIRONMENT

WATER AND SCIENCE ADMINISTRATION

1800 Washington Boulevard, Suite 455

Baltimore, MD 21230-1708

Response to Public Comments

Regarding

General Permit for Discharges from the Application of Pesticides

Discharge Permit Project No. 17PE0000

NPDES Permit No. MDG870000

Last Revised: January 15, 2020

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Introduction

The Maryland Department of the Environment (MDE), herein referred to as “Department”, has made a final determination to reissue the State/National Pollution Discharge Elimination System (NPDES) General Permit for Discharges from the Application of Pesticides (Maryland General Permit No. 17-PE) which authorizes the point source discharges of biological pesticides, and chemical pesticides that leave a residue, to waters of this State.

The Maryland General Permit No. 17-PE replaces the Maryland General Permit No. 11-PE, which expired on October 30, 2016.

A public notice on the tentative determination to reissue the permit was published on October 11, 2019 in the Maryland Register and in twenty-two newspapers throughout the state of Maryland during the weeks of October 22nd and October 30th, 2019. The Department held a public hearing concerning the tentative determination on Thursday, November 21, 2019 at 10am-12pm in the Terra Conference Room, located at 1800 Washington Blvd, Baltimore, MD 21230, and received comments on the draft permit through November 26, 2019. Over 10 people attended the public hearing and no one made comment on the tentative determination during the public hearing. Additionally written testimony was provided by over 4 individuals. This Final Determination was published in the Maryland Register on February 14, 2020, and will be effective April 15, 2020.

A categorized summary of comments and the Department's responses are listed below. The comments received on the draft permit and the associated responses have in some cases resulted in changes to the final permit. The changes to Tentative Determination (TD) are noted in this response.

Should there be any conflicts between this Response Document and the Fact Sheet, this document should be considered primary.

Summary of Changes Due to Comments

The comments were organized into 2 groupings, with a response specific to each grouping. As a result, there were 2 responses with 2 confirmed changes. The following table provides a brief synopsis of each of these items.

Response Number	Change Made?	Description
1	No	The objections to the “Limitations on Coverage”, regarding “Washing or Cleaning” discharges, were evaluated. The limitation is based on the language in COMAR for Toxic Material Discharges. However, it was determined that no changes were required. The types of herbicides the commenters were concerned with, where the method of application is directly to the water column, may be discharged as long as the applicator follows the label.
2	Yes	The objections to a) PDMP for all Large Entities and b) Annual Reporting for all Large Entities were evaluated. As a result, changes were made to ensure the triggers for required plans and reporting will be consistent with the 11PE.

Comments and Responses

Comment 1. Washing and Cleaning Limitations

“On page 4 item 2(d) Washing and Cleaning Limitations. It states that the cleaning of equipment may not result in a discharge of toxic substances to Waters of the State. The problem with this statement is that the standard operating procedure for all aquatic applicators in the United States is to wash the residue from the application tank into the treatment area. The permit will allow for application of toxic materials to Waters of the State; therefore, it is logical that residue from the application equipment should be placed in the permitted treatment area as well. Rinsing of equipment in the permitted treatment area is better than rinsing the equipment in a nonpermitted area as the application area is the intended target of the pesticide. I suggest that the following language be included following the first bullet point listed under item 2(d) on page 4. “except when the permit allows for discharge of pesticides to Waters of the State.” This statement will allow applicators to utilize Best Management Practices without violating the permit.”¹

“Page 4 Item #2.D: Washing and Cleaning limitations: With the current verbiage in the draft permit, it leads me to believe that the rinsate of the application/ product containers may not be discharged into the treatment area, a water of the state. Within our company, and our primary states of business, New Jersey and Pennsylvania, it is standard operating procedure to utilize the triple rinse-and-drain method to dispose of our products and residues in this fashion. Would this practice be acceptable if the current version of the

¹ William Kirkpatrick Jr., President Aquatic Environment Consultants, Inc., Scotland, PA.

permit is approved? Could the verbiage be amended to read along the following lines, "except when the permit allows for discharge into Waters of the State"? I think this would be a logical amendment as the permit allows for the application of toxic materials to Waters of the state currently."²

“Upon review of the final draft permit, there is one area of concern that should to be addressed to allow for Best Management Practices. On page 4, item 2(d), Washing and Cleaning Limitations, it states that cleaning of equipment may not result in a discharge of toxic substances to Waters of the State. The problem with this statement is that the standard operating procedure for all aquatic applicators in the United States is to wash the residue from the application tank into the treatment area. The permit will allow for application of toxic materials to Waters of the State; therefore, it is logical that residue from the application equipment should be placed in the permitted treatment area where application just took place. Rinsing of equipment in the permitted treatment area is better than rinsing the equipment in a non-permitted area, as the application area is the intended target of the pesticide.

I suggest that the following language be included following the first bullet point listed under item 2(d) on page 4. “*except when the permit allows for discharge of pesticides to Waters of the State.*” This statement will allow applicators to utilize Best Management Practices without violating the permit”³

Response 1. Washing and Cleaning Limitations

COMAR Sec. 26.08.03.02 B.2 states that:

“The mixing, handling, or transfer of toxic substances or the washing of or cleaning operations for toxic substance containers or equipment may not result in any way in:

- (a) Application to waters of this State;
- (b) Discharge to the waters of this State;
- (c) Deposition in the waters of this State”

This regulation suggests that the “standard operating procedure for all aquatic applicators in the United States [is] to wash the residue from the application tank into the treatment area” is in opposition to Code of Maryland Regulations. It is because of the regulation that this limitation cannot be removed from the 17-PE. However, the commenter’s concerns are addressed by the permit based on the type of application as described below.

While it is true that obtaining coverage under the permit will allow for application of toxic materials to waters of the State, it does not cover filling the storage container with water and pouring it out *unless* pouring and dumping is one of the approved treatment methods listed on the FIFRA label. Examples of this include the treatment of algae, aquatic animals or insects, or floating vegetation (FV) where direct water application is unavoidable (e.g. Water Lilies). If the FIFRA label and application method require that the product be sprayed directly to forest canopy or to upland vegetation such as phragmites, then washing of bottles or cleaning equipment in the receiving waters into the treatment area cannot be

² Joshua Burnside, Territory Manager, Black Lagoon Pond Management, Trenton, NJ.

³ Jon Gosselin, Technical Specialist, SePRO Corporation, Caramel, IN.

allowed. If the label lists pouring as one of the approved application methods, then the act of filling and dumping would still be considered an application of the pesticide and would be covered.

Comment 2. PDMP and Annual Report Requirements Impose Burden

“After reviewing the recordkeeping and reporting requirements of both 11-PE and 17-PE, MDOT SHA observed several differences that will increase the compliance efforts of a “large entity” permittee. These increased efforts could be burdensome to “large entities” and therefore, we request that MDE consider revising these requirements prior to ‘final determination’ of the permit:

1. Under 11-PE, a permittee may spray less than 20 linear miles at the water’s edge or 80 acres of treated area in water without developing a Pesticide Discharge Management Plan (PDMP). Under this permit guidance, some of

MDOT SHA’s permitted shops and construction projects would not require PDMPs as they don't meet the requirement for linear miles. However, under 17-PE, any decision-maker who is or will be required to submit an NOI and is a “large entity”, must prepare and maintain a PDMP. Under 17-PE those same aforementioned MDOT SHA shops or construction projects that didn’t require a PDMP under 11-PE, would now require a PDMP simply because of MDOT SHA’s designation as a "large entity."

2. Under 11-PE, a permittee applying pesticides that reports an adverse incident as described in Part III.F must submit an annual report to MDE no later than February 10th of the following year (and retain a copy for the operator's records). However, under 17-PE, any Decision-maker required to submit an NOI and is defined as a large entity in Appendix A, must create an annual report. Under 17-PE, all MDOT SHA permittees would be required to generate annual reports under normal circumstances, simply because of MDOT SHA’s designation as a "large entity." At this time, MDOT SHA does not develop any annual reports. Under the revised scenario, a large number of annual reports would be required from different administrative units of MDOT SHA.”⁴

Response 2. PDMP and Annual Report Requirements Impose Burden

The comment correctly identifies that the requirement had been expanded in the renewal.

SUMMARY OF CHANGES

Document	11PE	17PE
Annual Report	All large entities with over 20 linear miles or 80 square miles, that reports an adverse incident.	All Large Entities who file an NOI.
PDMP	All large entities with over 20 linear miles or 80 square miles.	All Large Entities who file an NOI.

The role was expanded in the renewal, not in direct response to address a compliance concern, but to simplify the permit triggering thresholds and requirements for plans and reporting. At this time the Department will heed the objection, as the unintended consequence by simplifying the permit language

⁴ Tim Madden, RLA, Assistant Division Chief, Landscape Programs Division, Maryland Department of Transportation, State Highway Administration, 707 N. Calvert Street, Baltimore, MD.

was to add burden on certain entities. The Final Determination re-adopts the 11PE language for thresholds and triggers requiring the specific plans and reports. The Department, in coordination with MDA and DNR, will plan compliance visits to facilities with and without the documents to determine if the PDMP or Annual Report do provide any environmental compliance benefits, so that we can reconsider the matter in the next renewal.