

Aquatic Pesticide SPDES General Permitting

by Kevin Roberts

In 2009, a federal court decision mandated that pesticides applied to the waters of the US had to be covered under the NPDES (National Pollutant Discharge Elimination System) permit system. This decision reversed a long standing US Environmental Protection Agency (EPA) rule that exempted pesticide applications from obtaining a NPDES permit. Even though pesticide applications to New York State waters have been regulated under the state's pesticide regulations, the NYS Department of Environmental Conservation (NYSDEC) decided to develop a SPDES (State Pollutant Discharge Elimination System) general permit to protect pesticide applicators from third party lawsuits under the federal Clean Water Act.

On December 22, 2010, NYSDEC released for public comment the draft general permit that would bring aquatic pesticide applications within the SPDES permitting program. The court required that the permits become effective no later than October 31, 2011. When the draft general permit becomes final, applications of pesticides labeled for aquatic uses to, in or over surface waters of New York will be required to obtain authorization through the pesticide SPDES general permit.

The typical pest control situations which are covered under the draft SPDES general permit include:



Pesticide control of invasive aquatic weeds, such as this hydrilla found in Long Island, may require coverage by the new SPDES general permit.



Photo courtesy of Song Lake Association

This lake shows a blue green algae bloom. The aquatic pesticides SPDES general permit also addresses algicides used to manage algae blooms.

- aquatic weed and algae control
- aquatic insect control (e.g., mosquito larvae and adults)
- aquatic nuisance animal control (e.g., invasive fish species)

Non-point sources of pesticides from agricultural or urban stormwater runoff are not required to be covered by the permit, consistent with the federal approach and the decision of the court. New York's draft pesticide SPDES general permit does not authorize discharges to surface waters from applications of pesticides that are not labeled for aquatic uses.

Many of the aquatic pesticide applications which will be required in order to obtain this new permit have long been necessary to obtain individual permits under New York's Pest Management Program (Article 15 permits) and Wetlands Program (Article 24 permits). The new pesticide permit does not alter the existing permit requirements of those programs. The new pesticide permit will be required for certain pesticide applications which are exempted from those Article 15 and 24 permits, such as mosquito adult control over surface waters and public water supply algae control. In drafting this new pesticide permit, NYSDEC seeks to leverage on existing pesticide regulations and eliminate duplicative requirements that have been implemented under the existing pesticide permit or wetland permit.

Currently, NYSDEC is reviewing comments received during the public comment period which ran from December 22, 2010 to January 23, 2011. The NYSDEC received 10 sets of comments and is considering revisions to the draft. New York plans to adopt a final pesticide SPDES general permit with an effective date of October 31, 2011. The aquatic pesticide application permit is being discussed by the US Congress for exemption under the Clean Water Act and NYSDEC is keeping its eye on the outcome of those discussions.

Links to the December 22, 2010 proposed draft of the pesticide SPDES general permit and associated documents will be located on the right side of the NYSDEC webpage at this address: <http://www.dec.ny.gov/chemical/70489.html>.

For further information regarding the pesticide SPDES general permit, contact Kevin Roberts in the Bureau of Water Permits in the NYSDEC Division of Water (see below).

Kevin Roberts is an engineering geologist with the Bureau of Water Permits of the New York State Department of Environmental Conservation in Albany, NY. He may be contacted at: kjrobert@gw.dec.state.ny.us or 518-402-8278.

Photo courtesy of Kathy Schauger