



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI
GOVERNOR

Beth Nagusky
ACTING COMMISSIONER

December 3, 2010

TO: INTERESTED PARTIES

RE: Proposed Maine Department of Environmental Protection General Permit for
Indirect Discharges of Terrestrial Pesticides for Emergency Uses
Maine Pollutant Discharge Elimination System (MEPDES) Permit #MEG200000
Maine Waste Discharge License (WDL) #W-009061-5Y-A-N

Dear Sir or Madame:

We are sending this letter to update you on a draft General Permit (GP) being developed by the Maine Department of Environmental Protection (DEP) with the assistance of the Maine Board of Pesticides Control (BPC). This draft GP will allow for application of pesticides near waters of the State (rivers, streams, brooks, wetlands, lakes and bays, etc.) under specific conditions. It is being developed as a result of the US Sixth Circuit Court of Appeals decision on *National Cotton Council, et al. v. EPA* (January 7, 2009) that the discharge of pesticides to waters of the United States must be regulated under the US Clean Water Act (CWA). The court granted the US Environmental Protection Agency (USEPA) until April 2011 to implement a program to regulate such activities in all states and territories in which USEPA administers the CWA. In Maine, the CWA is administered by the Maine DEP under the MEPDES permitting program. Both the 2009 court decision and the 2011 deadline for implementation of a regulatory program also apply to Maine¹.

The USEPA issued its version of a draft GP in June for its use and to provide an example for states to develop their own programs. The Maine DEP believes that we can develop a program better suited to Maine and has been working with the Maine BPC to do so. Concerns surround any occasion in which pesticides contact waters of the State. Through our experiences with Maine DEP's existing program for aquatic pesticide applications and Maine BPC's program for terrestrial pesticide applications, we believe the majority of pesticide applicators exercise caution through material selection, application methods, equipment, timing, and site-specific practices that avoid or minimize pesticide discharges to waters of the State. Our goal in Maine's GP approach is to ensure protection of Maine water quality and natural resources, while also providing a legal means for well designed and well conducted pesticide treatment / management programs. Maine DEP and Maine BPC are working together to develop best management practices (BMPs) and minimum critical distances (MCDs) from natural resources. When implemented, the BMPs and MCDs are anticipated to prevent contact with surface waters and remove the need for Maine DEP approval in the absence of a pollutant discharge.

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 624-6550 FAX: (207) 624-6024
RAY BLDG., HOSPITAL ST.

BANGOR
106 HOGAN ROAD
BANGOR, MAINE 04401
(207) 941-4570 FAX: (207) 941-4584

PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769-2094
(207) 764-6477 FAX: (207) 764-1507

web site: www.maine.gov/dep

For those emergency uses that cannot meet the BMPs and MCDs, Maine's GP will provide the opportunity for application of terrestrial pesticides to reduce significant risks to public health and safety or risks of widespread economic harm, provided that methods and materials protective of non-target organisms and resources are utilized to the extent practicable and that any contact with water will be incidental, unintended, and unavoidable. Maine DEP's existing regulatory program, which includes General Permits for the direct discharge of certain aquatic pesticides and the opportunity for individual permits, when applicable, will still be available as well.

Maine DEP plans to issue a draft general permit for public review and comment in the next few months. Public input is both welcome and requested in this effort. The Proposed (public) Draft General Permit will be provided electronically to all interested parties. Maine DEP is aware that legislation has been introduced in the US Congress that would revise applicable federal laws and negate the need for CWA approval of pesticide discharges. If such legislation is enacted in a timely manner, Maine DEP will withdraw its proposal in favor of the current regulatory structure shared by DEP and BPC.

If you have any questions regarding this matter, please feel free to contact Bob Stratton at (207) 215-1579 or Robert.D.Stratton@maine.gov or Henry Jennings at (207) 287-7543 or Henry.Jennings@maine.gov.

Sincerely,

Robert D. Stratton
Division of Water Quality Management
Bureau of Land and Water Quality
Me Dept. of Environmental Protection

Henry Jennings
Director
Board of Pesticides Control
Me Dept. of Agriculture, Food and Rural Resources

¹ Additional information on this issue can be found at USEPA's website at:
<http://cfpubl.epa.gov/npdes/index.cfm>