

Appendix C
Response to Comment

Comments Summary and Responses to Comments

Information Collection Request for National Pollutant Discharge Elimination System (NPDES) Permits for Point Source Discharges from the Application of Pesticides to Waters of the United States [Regulations.gov Docket ID: EPA-HQ-OW-2010-0852].

EPA received 13 sets of comments for the proposed PGP ICR. Below is a summary of the main topics covered by these comments and a summary of EPA's responses. In some cases multiple comments addressed the same issue. For these, a single "issue" response was developed (see end of this document) and referenced when appropriate.

Comment EPA-HQ-OW-2010-0852-0003 [Anonymous public comment]

Summary: general opposition to the regulation requiring NPDES permits for pesticide discharges.

Response: EPA issued a final rule (2006 NPDES Pesticides Rule) clarifying two specific circumstances in which an NPDES permit was not required to apply pesticides to or around water. On January 7, 2009, the Sixth Circuit vacated EPA's 2006 NPDES Pesticides Rule and held that the CWA unambiguously includes "biological pesticides" and "chemical pesticides" with residuals within its definition of "pollutant." *National Cotton Council of America v. EPA*, 553 F.3d 927 (6th Cir., 2009). As a result of the Court's decision to vacate the 2006 NPDES Pesticides Rule, on October 31, 2011, NPDES permits will be required for discharges to Waters of the United States of biological pesticides, and of chemical pesticides that leave a residue. In response to the Court's decision, EPA has decided to issue this NPDES Pesticide General Permit (PGP) to cover certain discharges resulting from pesticide applications. EPA recognizes that FIFRA provides a range of environmental protection for the use of pesticides, and FIFRA requirements remain applicable. However, the CWA imposes distinct requirements to protect water quality (e.g., technology and water quality based effluent limitations, monitoring and reporting requirements, standard and special conditions, etc.) and, as explained in the Fact Sheet, the PGP implements NPDES program requirements in a reasonable manner to address the specific pesticide applications covered. EPA notes that in the final permit the Agency has revised the applicability of certain permit requirements to better correlate these requirements with decision-making responsibility and the potential to impact to surface waters. These changes will reduce the burden on numerous entities while complying with the CWA. For example, thresholds levels for the submittal of an NOI have increased in the final permit, and, in general, For-Hire Applicators who are not Decision-makers as defined in Appendix A of the permit, are not

required to submit NOIs. In addition, under the final PGP only a Decision-maker required to submit an NOI and who is a Large Entity is subject to annual reporting and PDMP requirements. Overall, EPA estimates that the annual costs of the final permit are approximately half of the costs of the proposed permit. The PGP protects water quality and through its tiered structure it will continue to allow for the proper use of pesticides in and around aquatic settings, which will serve both pesticide-related businesses and consumers. General permits streamline numerous aspects of the permitting process.

Comment EPA-HQ-OW-2010-0852-0004 [Clarke]

Summary: Draft ICR ignores annual reporting requirements in its estimates. Also, EPA underestimates the number of respondents (affected entities) in the ICR and the Agency's burden estimates for certain activities are too low.

Response: The annual reporting requirements are discussed in sections 4(b)(iv)(1) and 6(a)(iv) of the final ICR. See responses to Issues 2 and 3 below.

Comment EPA-HQ-OW-2010-0852-0005 [Aquascape Environmental]

Summary: EPA should change the threshold and modify the requirements. The estimates in the proposed PGP ICR are too burdensome to small business and small entities. The requirements are too burdensome and would require the hiring of additional qualified staff.

Response: See response to Issue 1.

Comment EPA-HQ-OW-2010-0852-0006 [NC Mosquito & Vector Control Association]

Summary: The proposed regulation would require facilities in North Carolina to hire mosquito biologist. Adulticiding and Larviciding affected entities (both from Appendix B of the ICR) are underestimated.

Response: EPA is no longer requiring Decision-makers to identify the pest species; the new requirement is to identify the target pest(s). EPA notes that the pesticide general permit (PGP) is not a regulation, and applies only to dischargers in states and territories where EPA has NPDES permitting authority for pesticide discharges. States with NPDES permitting authority, including North Carolina, are or will be developing separate permits. However, to estimate the burdens under the Paperwork Reduction Act, EPA must calculate the burden to the total universe (365,000 entities). In the ICR, EPA assumed all permitting authorities will develop a general permit similar to PGP. See responses to Issues 1 and 2 below.

Comment EPA-HQ-OW-2010-0852-0007 [Brunswick County Mosquito Control]

Summary: Comment is a subset of the comments in EPA-HQ-OW-2010-0852-0006.

Response: See response to comment EPA-HQ-OW-2010-0852-0006.

Comment EPA-HQ-OW-2010-0852-0008 [Northeast Tree, Pond & Turf Services, Inc.]

Summary: EPA's regulation is in some cases duplicative of what Connecticut has in place. EPA's estimate of 0.8 hours per response does not match the time the commenter spends for permit applications in CT.

Response: EPA notes that the pesticide general permit (PGP) is not a regulation, and applies only to dischargers in areas where EPA has NPDES permitting authority for pesticide discharges. This ICR represents EPA's burden estimate for the entire country, including both EPA's PGP and NPDES-authorized state issued permits, with EPA's PGP used as a model for the Agency to estimate the overall national burden. The use of EPA's permit to model state burden is consistent with how EPA has estimated other NPDES burdens and also generally consistent with the requirements that states are planning to implement in their state-issued NPDES permit for discharges from pesticide applications. This ICR is intended to identify information collection activities for general permits for pesticide discharges nationwide; the ability to collect information for individual permits is addressed under the ICR for the base NPDES program (EPA ICR No. 2040-0004). Also, the commenter is mistaken in his interpretation of the 0.8 hours reported in the draft PGP ICR. This is an average burden across all respondents and all responses. EPA's estimate for NOI preparation and submittal is 2 hours per notice, which is the same estimate suggested by the commenter.

Comment EPA-HQ-OW-2010-0852-0009 [AMCA]

Summary: AMCA considers the Agency's Economic Analysis to have grossly underestimated costs associated with filing a Notice of Intent (NOI); documenting monitoring, maintenance and control strategy rationale; reporting; and costs from the potential impacts on mosquito control services. AMCA offers burden estimates of its own. AMCA thinks hidden costs have not been accounted. AMCA offers estimates on the numbers of affected entities.

Response: See response to Issues 1, 2 and 3 below. Based on the mandate of the Paperwork Reduction Act the ICR should account for the recordkeeping and reporting burden. Other costs not related to these activities, may be included in the Economic Analysis, but are not part of the ICR.

Comment EPA-HQ-OW-2010-0852-0010 [USA Rice]

Summary: The ICR should not have been developed for the draft PGP but for the final. Most other issues are the same as in Response to Comment ID 424. EPA underestimates the burden for certain activities. In the Economic Analysis, EPA justifies its low estimate of costs on the regulated community by asserting that many of the requirements of the PGP are already

required under FIFRA. In contrast, in support of this ICR EPA asserts that the overlap between the information collected under of FIFRA and the information to be collected under the proposed ICR “is negligible.” See PGP ICR Burden Statement at 6. EPA cannot have it both ways.

Response: EPA is required to provide an ICR for EPA’s PGP and NPDES-authorized states’ general permits. An updated ICR is provided as part of the draft final PGP. EPA notes that the Economic Analysis includes cost associated with the technology-based effluent limitation, which EPA believes many applicators are implementing. In the ICR, the costs are associated with paperwork burdens which some applicators may be required to collect by existing pesticide program. Where there is overlap, the PGP allows Operators to reference existing documents to meet the permit requirements. See response to Issue 3 below.

Comment EPA-HQ-OW-2010-0852-0011 [J. Godron]

Summary: EPA's original estimate of 10% respondents is too low (based on threshold). EPA's burden estimates are too low

Response: See response to Issues 1, 2 and 3 below.

Comment EPA-HQ-OW-2010-0852-0012 [RISE]

Summary: Impacts on small business is underestimated based on threshold. EPA underestimates the burden assumptions for some of the activities.

Response: See response to Issues 1 and 3 below.

Comment EPA-HQ-OW-2010-0852-0013 [CropLife America]

Summary: The ICR should not have been developed for the draft PGP but for the final, after the considerations for small business were considered. EPA underestimates the burden for certain activities.

Response: EPA is required to provide an ICR for the EPA’s PGP and NPDES-authorized states’ general permit. An updated ICR is provided as part of the draft final PGP. See response to Issues 1 and 3 below.

Comment EPA-HQ-OW-2010-0852-0014 [Aquatic Control, Inc.]

Summary: NPDES regulations will have significant impacts on the commenter’s operation and small business in general, particularly impacts on for-hire applicators. The requirements to disclose the names of the waterbodies will essentially force applicators to disclose the names of their clients.

Response: See response to Issue 1. EPA notes that the pesticide general permit (PGP) is not a regulation, and applies only to dischargers in states and territories where EPA has NPDES permitting authority for pesticide discharges. As part of the ICR, EPA included cost estimates for States with NPDES permit authority to show a more comprehensive impact if these

States draft similar permits to the PGP. However, States with complete NPDES permitting authority, including Indiana, Kentucky Illinois and Missouri, are developing their own NPDES permits that are not necessarily identical to EPA's PGP. In EPA's final permit, pesticide applicators are not required to submit names of the waterbodies to which they intend to discharge. They must keep records of where they discharge although this may be a general location rather than a specifically named waterbody. Also, only certain Operators are required to submit annual reports and provide names of the waterbodies into which they discharged.

Comment EPA-HQ-OW-2010-0852-0015 [National Agricultural Aviation Association]

Summary: Comment is essentially the same as EPA-HQ-OW-2010-0852-0013

Response: See response to comment EPA-HQ-OW-2010-0852-0013.

Issue 1

EPA should change the threshold and modify the requirements. The estimates in the proposed PGP ICR are too burdensome to small business and small entities. The requirements are too burdensome and would require the hiring of additional qualified staff.

Response: EPA acknowledges the commenter's concern about administrative burdens and impacts to small businesses and communities. In the final permit, EPA has clarified the requirements and reduced the paperwork burden to applicators and small entities based on comments received. Based on the final burden estimates, including burden to small entities, EPA believes the permit will not be too burdensome to small businesses and small entities.

Issue 2

EPA underestimates the number of respondents (affected entities) in the ICR.

Response: There is no one central source of data to identify potentially affected entities. EPA therefore relied on information available from the unauthorized areas. Where specific information was not available, EPA made assumptions based on other available data to estimate the number or types of likely affected entities. However, in the absence of better data, EPA's analysis represents a rough estimate of the number and types of potentially affected entities. See Appendix B for EPA's approach for estimating the universe of potentially affected entities. Based on comments received from the proposed PGP, EPA has revised the Annual Treatment Area Thresholds and clarified who must submit NOI. EPA's revised permit now estimates that only about 2.5 percent of the permitted entities would be required to submit NOIs (based on EPA's PGP permitting approach).

Issue 3

EPA's burden estimates for certain activities are too low.

Response: EPA's estimates are based on information and data estimates used for similar activities in other NPDES-related ICRs and on the Economic Analysis developed for the PGP.