

PROPOSED AgPDES GENERAL PERMIT FACT SHEET 2023-2028

AgPDES General Permit OKG87A000 Fact Sheet

Oklahoma Agricultural Pollutant Discharge Elimination System (AgPDES) General Permit Fact Sheet for the Application of Pesticides into or Near Waters of the State.

AGENCY: Oklahoma Department of Agriculture, Food, and Forestry (ODAFF)
Agricultural Environmental Management Services Division (AEMS)

ACTION: Issuance of an AgPDES General Permit for Pesticide Application

SUMMARY: ODAFF is proposing to reissue General AgPDES Permit No. OKG87A000 for discharges from pesticide application. This permit was originally issued by Environmental Protection Agency (EPA) Region 6 on December 20, 2012, with an expiration date of October 31, 2016, and reissued June 1, 2017, with an expiration date of May 31, 2022. The current proposal reflects the requirements contained in the Federal Clean Water Act (CWA), 33 U.S.C. 1251 et seq., Oklahoma Agriculture Pollutant Discharge Elimination System Act §2-2A-1 et seq., and Oklahoma Agriculture Environmental Permitting Act §2-2A-21 et seq.

ADDRESSES: Comments to this proposed permit should be sent to ODAFF / AEMS Division, PO Box 522804, OKC OK 73152-8804 or email AEMS.AgPDES@ag.ok.gov. The proposed general permit and this fact sheet may be found on the internet at <https://ag.ok.gov/divisions/agricultural-environmental-management/>.

A. Activities Covered

The purpose of this AgPDES general permit is to authorize discharges associated with the application of pesticides to waters of the state, as defined in Title 2 O.S. § 2A-2(17), either directly or indirectly. There are four use categories covered under this permit that are defined in Part I.A. 1 of the permit. The use categorizations include:

1. Mosquito and Other Flying Insect Pest Control - to control public health/nuisance and other flying insect pests that develop or are present during a portion of their life cycle in or above standing or flowing water. Public health/nuisance and other flying insect pests in this use category include, but are not limited to, mosquitoes and black flies;
2. Aquatic Weed and Algae Control - to control invasive or other nuisance weeds and algae in water and at water's edge, including irrigation ditches and/or irrigation canals;

3. Aquatic Nuisance Animal Control - to control invasive or other nuisance animals in water and at water's edge. Aquatic nuisance animals in this use category include, but are not limited to fish, lampreys, and mollusks;
4. Forest Canopy Pest Control - aerial application of a pesticide over a forest canopy to control the population of a pest species (e.g., insect or pathogen) where to target the pests effectively a portion of the pesticide unavoidably will be applied over and deposited to water.

Facilities which handle or use pesticides are authorized to discharge storm water runoff from the facility, granted that the facility handles and stores the pesticides in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) instructions specified on the container label. All spills or leaks must be cleaned up for the facility to be authorized to discharge. Storm water coverage under this permit is not applicable to facilities which qualify for coverage under the Multi-Sector General Permit OKR05.

Activities covered under this permit may include those associated with a declared pest emergency, in which the federal, state, or local government declares a pest problem that is determined to require control through application of a pesticide beginning less than ten (10) days after identification of the need for pest control. These activities may require submission of a Notice of Intent (NOI) based on NOI requirements identified in Part I.B.2 of the permit. NOI requirements are explained further in Section B of this fact sheet.

The permit does not authorize other discharges (such as treated sanitary waste water, equipment wash water, or wash water from cleaning storage or mixing tanks) from facilities which handle or use pesticides.

The permit does not apply to the application of pesticides in the following areas:

1. Discharges from agricultural and silvicultural activities including storm water runoff from orchards, cultivated crops, pastures, range lands, and forest lands; or
2. Return flows from irrigated agriculture. The permit shall not apply to:
 - a. Discharges which have limits assigned to them in the Oklahoma Water Quality Standards (WQS);
 - b. Discharges containing pesticides to waterbodies which have suspected causes of impairments listed which include that pesticide or its degradate as identified in the 303(d) list;
 - c. Discharges containing restricted use pesticides to waterbodies which have suspected causes of impairments listed which include any pesticide or its degradate as identified in the 303(d) list;
 - d. discharges which are likely to have unauthorized adverse effects upon threatened or endangered species, or on the critical habitat for these species as determined in conjunction with the U.S. Fish and Wildlife Service (USFWS);

- e. Discharges which adversely affect properties listed or eligible for listing in the National Register of Historic Places, unless they are in compliance with requirements of the National Historic Preservation Act and any necessary activities to avoid or minimize impacts have been coordinated with the Oklahoma State Historic Preservation Office (for questions, the operator should contact the Section 106 Review Coordinator at 405-521-6381);
- f. Discharges, as indicated by evidence, indicating the reasonable potential to cause or contribute to a violation of a water quality standard;
- g. Discharges in which the discharges are covered by another AgPDES permit or the discharges were included in a permit that within the last 5 years has been or is in the process of being denied, terminated, or revoked; and
- h. Discharges of pesticides to Outstanding Natural Resource Waters (ONRWs) as described in the Oklahoma WQS. However, there may be unusual situations where pesticide application may be allowed in order to maintain use and status of the water body. An example of this would include application of a pesticide to control an invasive aquatic plant species that is having a deleterious effect on the dissolved oxygen and other parameters of the ONRW. Other examples would include application of a pesticide for the protection of human health and safety.

B. Obtaining Coverage

All dischargers that fall into one or more of the use categorizations defined in Section A above are eligible for coverage under the permit. Certain dischargers may be required to submit an NOI according to the guidelines given in Tables 1-3 of Part I.B.3 of the permit. Discharge authorization dates for those required to submit an NOI are given in Table 2 and Table 3 of Part I.B.3 of the permit. Those not required to submit an NOI who fall into one or more of the use categorizations defined in Section A above are automatically covered upon the effective date of the permit. All operators who discharge pesticides to waters of the state are required to maintain all records and information required under the permit and Oklahoma Administrative Code (OAC) 35:30-17-21.

Electronic Notice of Intent (eNOI) requirements take effect on December 21, 2025. Dischargers required to submit an NOI on or after December 21, 2025, must prepare and submit the NOI using ODAFF's eNOI system that will be available on ODAFF's website. Operators may request a waiver from the eNOI requirement, given that they certify on the NOI paper copy that use of eNOI will incur undue burden or expense compared to using the paper NOI form.

C. Discharge Description

The discharge of pollutants from any point source into waters of the state without a water discharge permit is prohibited by AgPDES rules. This general permit is intended to target any application of a pesticide and any storm water runoff from areas where pesticides are handled, used, or applied. Both of these situations constitute a point source as federal court rulings have determined the application of pesticides results in the discharge of pollutants from a point source.

AgPDES rules allow for the issuance of general permits for common and routine permit applications. The permit authorizes the use of pesticides that have been approved under FIFRA and are considered necessary for society (i.e., management of insects related to human health). Quick response in the control of undesirable pests and vegetation is critical in mitigating negative affects to society as well as minimizing the amount of pesticides used. Due to the common and routine nature of the application for coverage of pesticide applications that discharge to waters of the state, as well as the need for expedition of the permitting process to facilitate pesticide application with regards to the needs of society, the control of the application of pesticides will be done under a general permit rather than individual permits.

D. Permit Rationale

The section below summarizes the permit's equivalency with federal requirements and EPA's general permit.

- 1. Coverage under this Permit** - ODAFF's 2023-2028 draft permit has the same four (4) categories of authorization for coverage under the permit: Mosquito and Other Flying Insect Pest Control, Aquatic Weed and Algae Control, Aquatic Nuisance Animal Control, and Forest Canopy Pest Control. These coincide with EPA's use patterns given in EPA's general permit.

ODAFF'S permit does not allow for discharge of a pesticide to any waters of the state if that water is identified in the 303(d) as being impaired for that pesticide or a degradate of that pesticide.

There are no Tier 3 waterbodies within the boundaries of Oklahoma nor does ODAFF expect any waters of the state to be designated at Tier 3. In order to avoid confusion for those covered under or applying for coverage under ODAFF's general permit, Tier 3 waterbody restrictions are not a part of ODAFF's draft permit. The general permit may be reevaluated and modified in the event a waterbody within Oklahoma's boundaries becomes designated as Tier 3.

Similar to EPA's permit, ODAFF's draft permit does not cover those facilities which have coverage under another AgPDES permit.

ODAFF's draft permit also follows the same method as EPA's general permit for obtaining authorization as well as determining who must submit an NOI and when. ODAFF may require a discharger to apply for authorization under an AgPDES individual permit or alternative AgPDES general permit instead of this draft permit. Severability is addressed in Part II Section K of the draft permit.

- 2. Technology-Based Effluent Limitations** - Part I Section C of ODAFF's draft permit addresses technology-based limitations. FIFRA is incorporated as a best available technology measure for the use of pesticides. The permit also incorporates Oklahoma pesticide laws and rules by reference (Oklahoma Statutes Title 2, Sections 3-81 through 3-86 and OAC 35:30-17-1 through OAC 35:30-17-99).

3. **Water Quality-Based Effluent Limitations** - Water quality-based limitations are also addressed in Part I Section C of ODAFF's draft permit. These, along with Oklahoma laws and rules, are similar to EPA's general permit.
4. **Site Monitoring** - Similar to EPA's permit, Part I Section C addresses monitoring requirements.
5. **Pesticide Discharge Monitoring Plan** - ODAFF's draft permit incorporates Oklahoma pesticide laws and rules which establishes guidelines for discharge monitoring, similar to EPA's general permit.
6. **Corrective Action** - ODAFF's AgPDES program collaborates with ODAFF'S Pesticide Section. The ODAFF Pesticide Section handles any adverse incident or spill documentation and reporting in conjunction with the Oklahoma Department of Environmental Quality (ODEQ). Adverse incident and spill reports and documentation are made available to the AgPDES program.
7. **Recordkeeping and Annual Reporting** - similar to EPA's general permit, ODAFF's draft permit requires recordkeeping and reporting as described in Part I Section C. All reporting documents must be kept by the discharger for a minimum of two (2) years and be made available to the Board or its designated inspectors within seven (7) working days when requested by mail or in person.

E. Effluent Limitations

1. Technology-Based Limitations

Rules promulgated at OAC 35:44-3-5 requires technology-based effluent limitation to be placed in AgPDES permits based on industry category or pollutant guidelines applicable to the applicant's industry. Best Professional Judgement applies if there are no industry category or pollutant guidelines applicable to the applicant's industry. For the covered discharges, no effluent limitation guidelines have been promulgated so limitations are determined by Best Professional Judgement. FIFRA is incorporated by reference as a Best Available Technology and the incorporated Oklahoma laws and rules have best management practice type requirements. The AgPDES Director has made the determination that the application of pesticides in accordance with controls required by state laws and rules and FIFRA laws and regulations represent the Best Available Technology.

2. Water Quality-Based Limitations

The AgPDES Director has made the determination that the application of pesticides in accordance with controls required by ODAFF and the FIFRA label will comply with Oklahoma Water Quality Standards (OAC 785:45). However, any application of a pesticide which results in a long-term or permanent impact on a designated water use will be subject to enforcement action and/or individual permit action under the Oklahoma Water Quality Standards.

3. Monitoring

Dischargers are required to conduct visual inspection or monitoring before, during, and after the application of any pesticide to identify if an adverse incident has occurred due to the application of the pesticide. "Adverse incident" is defined within the draft permit.

Dischargers are subject to inspection by ODAFF of records, storage, handling, application, and discharge of pesticides given reasonable cause or complaint from a citizen. ODAFF also conducts inspections on pesticide applicators on a revolving basis. Site-specific monitoring plans may be developed and implemented on a case-by-case basis when deemed necessary by ODAFF.

4. Record Keeping

Every commercial and noncommercial applicator is required to keep intact records at the principal business location for at least two (2) years. Copies of records shall be made available to any authorized agent of the State Board of Agriculture within seven (7) working days of written or in person request. The information to be retained in the records is given in the draft permit as well as OAC 35:30-17-21.

5. Reporting

Routine or annual reporting is not required by the draft permit. Uncontained spills that exceed the thresholds given in Part I.C.3 of the draft permit must be reported within twenty-four (24) hours by telephone and within three (3) days by written notice to ODEQ and ODAFF Pesticide Section.

F. Public Notices

Upon publication of the public notice, a public comment period shall begin on the date of publication and last for at least thirty (30) days thereafter. During this period, any interested person may submit written comments on the permit. Any interested person may also submit a written request for clarification of issues related to the content of the general permit or the permit issuance process. Interested persons may also submit written requests for notification of the final permit decision or to request a public hearing to clarify issues involved in the permit decision. A request for a public hearing shall state the nature of the issues proposed to be raised in the hearing. The public notice specifies that written comments and/or written requests shall be submitted to ODAFF Agricultural Environmental Management Services (AEMS) Division and that written comments and/or written requests must be received by ODAFF by a specific deadline.

Public notice will be published in: The Oklahoman and the ODAFF AEMS Division web page at <https://ag.ok.gov/divisions/agricultural-environmental-management/>.

The draft permit and fact sheet will be available for review on the website noted above as well as at ODAFF AEMS Division, 2800 N Lincoln Blvd, Oklahoma City, OK 73105, during the hours of 8:30 a.m. to 4:30 p.m., Monday through Friday (except holidays).

The AEMS division will send notification of the final permit decision to each person who has submitted written comments or a written request for notification of the final decision.

G. Fees

The fees associated with authorization to discharge under this general permit are as follows:

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| 1. Renewal or change of permittee or co-permittee electronically (if available) | \$75 |
| 2. Renewal or change of permittee or co-permittee by paper | \$100 |
| 3. Application for a new authorization | \$350 |
| 4. Applications for significant expansions | \$350 |
| 5. Annual fee during the term of the permit | \$800 |

H. Schedule of Compliance

Dischargers shall be in compliance with the permit limitations and conditions as of the date of coverage under the general permit.

I. Final Determination

On the basis of preliminary staff review, the Oklahoma Department of Agriculture, Food, and Forestry has made a tentative determination to issue the permit for the discharges described in the general permit OKG87A000.