



## MEMORANDUM

TO: Jess Byrne, Director, Department of Environmental Quality

THROUGH: Mary Anne Nelson, Administrator, Surface and Wastewater Division

FROM: Troy Smith, IPDES Bureau Chief

DATE: 10/13/2021

SUBJECT: Administrative Continuance and No Action Assurance for the Pesticide General Permit from the Application of Pesticides (IDG870000)

The current Idaho Pollutant Discharge Elimination System (IPDES) Pesticide General Permit (referred to as the "2016 PGP") that was issued by the U.S. Environmental Protection Agency will expire at midnight on October 31, 2021, where the Idaho Department of Environmental Quality (DEQ) is the permitting authority outside of Tribal boundaries in Idaho. The succeeding permit (referred to as the "New IPDES PGP") is still in progress and will likely be available for public comment in late 2021.

- Pesticide applicators with coverage under the 2016 PGP will automatically be granted administrative continuance of permit coverage and are required to continue to comply with the 2016 PGP after its expiration.
- New pesticide applicators beginning operations after October 31, 2021 that have not submitted a Notice of Intent (NOI) to be covered by the 2016 PGP prior to its expiration will not be able to obtain general permit coverage until the New IPDES PGP is issued.

In areas within Idaho where DEQ is the IPDES permitting authority, DEQ is providing a No Action Assurance for operators who have not submitted an NOI to be covered by the 2016 PGP and who intend to commence activities between October 31, 2021, and the effective date of the New IPDES PGP.

This No Action Assurance establishes that DEQ may exercise its enforcement discretion to not pursue a civil or administrative enforcement action against new applicators for violations of the Clean Water Act's prohibition against the discharge of pollutants except in conformance with an NPDES permit, 33 U.S.C. § 1311, if the operator satisfies the conditions of the 2016 PGP.

DEQ believes that a No Action Assurance would not have an adverse impact on public health and the environment because new facilities covered by the No Action Assurance are required to

meet all permit conditions under the 2016 PGP.

This exercise of enforcement discretion extends only to new operators that commence activities on or after November 1, 2021, but prior to the effective date of the New IPDES PGP, and that have not submitted an NOI for coverage under the 2016 PGP prior to its expiration.

Operators that commence activities after the effective date of the New IPDES PGP will not be covered by this No Action Assurance and must submit an NOI under the New IPDES PGP.

**No Action Assurance Conditions**

This exercise of enforcement discretion is subject to the following conditions:

1. **Eligibility**: Any new operator must meet the 2016 PGP eligibility criteria (Part 1 of the permit);
2. **Prior Notification to DEQ**: Prior to commencing activities, the new operator must provide DEQ 30-days advance notice of their status and their intention to operate in accordance with the 2016 PGP by submitting to DEQ a completed 2016 PGP NOI to:

Troy Smith  
IPDES Bureau Chief  
Idaho Department of Environmental Quality  
1410 North Hilton  
Boise, Idaho 83706-1255

3. **Compliance**: Any new operator must satisfy all requirements of the 2016 PGP, except for submittal of an NOI before November 1, 2021.
4. **Obtain Coverage**: An operator covered by this No Action Assurance that intends to continue activities after the effective date of the new IPDES PGP must submit a NOI to be covered by the New IPDES PGP within 90 days of its effective date (which will provide permit coverage 30 days after submission of the NOI).

This No Action Assurance does not apply to criminal violations or situations where circumstances exist that may cause serious harm or that may present an imminent and substantial endangerment to public health or the environment. DEQ also reserves the right, at any time, to exercise its discretion to address a specific discharge should circumstances warrant. This No Action Assurance will terminate at 11:59 PM Mountain Time 120 days after the effective date of the new IPDES PGP.

APPROVAL:

  
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Jess Byrne, Director  
Department of Environmental Quality

10/21/2021  
Date