

Part 1. Coverage

Comment - Who is legally liable if more than one operator may actually be responsible for compliance? If “contractors, subcontractors and other agents” are covered under the NOI of an “operator”, can all or any portion thereof be held legally liable

Part 1. A.2.a. Discharges to Water Quality Impaired Waters.

Comment - The Federal Register Notice states that, “Tier 3 waters are identified as outstanding national resource waters and generally include the highest quality waters of the U.S. Except for certain temporary changes, water quality cannot be lowered in such waters. In broad terms, EPA’s view of ‘temporary’ is weeks and months not years.” This would imply that degradation of Tier 3 waters is allowed for periods of weeks or months under special circumstances. Detections of Ultra Low Volume adulticide depositions are measured in hours or, at most, a few days. Larvicides are generally targeted for brood hatch and are also detectable for a few days prior to degradation to inert metabolites. There are some slow release formulations active for up to 3 months, but they are not widely used in organized programs.

The AMCA considers protection of public health to constitute a “temporary change” exception. Requiring individual permits for applications whose residues fall far below an EPA LOC and can only be measured in terms of hours is unduly burdensome and offers no commensurate measure of environmental protection to the state of Florida. Such applications should fall under the Florida permit.

Part 1.B.2, Table 1. Operators required to submit NOIs

Comment – Since thresholds are not mentioned, are MCDs the only entities required to submit NOIs? What about pest control operators conducting mosquito control operations, regardless of scope, for customers? As currently worded, this would promote the use of homeowner mosquito control, despite the requirement for those not needing to file an NOI to adhere to IPM principles (labels?). The state does not have the resources to enforce this provision.

Part 1.B.2, Table 2. Discharge Authorization Date

Comment - While it can be argued that permittees should apply well before mosquito season as a matter of course, weather anomalies could make this problematic. Review could also represent significant delays, particularly in the early years of permitting. Furthermore, lead times presuppose that applications can be accurately scheduled a minimum of 30 days in advance, a practice that is expressly discouraged by Integrated Mosquito Management doctrine. Although allowances are made for emergencies, the threat of civil lawsuits in the absence of an approved NOI places control programs on a precarious footing in having to defend anomalous operations.

Legal defense would entail further use of scarce resources, regardless of legal outcome. This doesn't fall into the emergency category, but a statement is needed regarding unusual environmental events exempting entities from the 30-day discharge authorization date and time needed for state review of the NOI.

Part II. A.1. Minimize Pesticide Discharges to Surface Waters of the State. “All operators, regardless of whether they are required to submit an NOI, shall minimize the discharge of pollutants resulting from the application of pesticides. In doing so, all operators shall use the lowest effective amount of pesticide product per application and optimum dose of pesticide applications necessary to control the target pest, consistent with reducing the potential for development of pesticide resistance by the pest.”

Comment – How is this to be determined and enforced?

“Also, it shall ensure that the equipment is calibrated (e.g., flow rate, droplet size) to deliver the precise quantity of pesticide needed to achieve greatest efficacy against the target pest.”

Comment – The term “precise” is problematic and allows for significant differences of opinion which will promote litigation.

Part II. A.2. (B). Pest Management: “...the operator shall evaluate, select and implement one or more of the following management strategies that successfully minimizes discharges of pesticides, while considering effectiveness and efficiency, impact to water quality, impact to non-target organisms, pesticide resistance by the pest, feasibility, and cost effectiveness:

- (1) No action
- (2) Prevention
- (3) Mechanical or physical methods, such as tillage, entrapment, protective barriers
- (4) Cultural methods, such as destruction of food source and habitat for pest, timing of pesticide application
- (5) Biological control agents such as predators, parasites or diseases of the pest
- (6) Pesticide application

Comment – Must effectiveness and efficiency, impact to water quality, impact to non-target organisms, pesticide resistance by the pest, feasibility, and cost effectiveness be evaluated and documented for each use pattern, and for subsets of the courses of action such as “tillage”, “entrapment, etc? What is meant in real terms that can resist legal challenge by “such as”?

Comment – How are TBELs to be monitored/enforced for those not required to submit an NOI?

Part III. Pesticide Discharge Management Plan. “Permittees shall prepare a PDMP for each pest management area covered under this permit. The PDMP plan shall be kept up-to-date thereafter for the duration of coverage under this permit.”

Comment – Can a pest management area be an entire county?

“The PDMP documents how to implement the effluent limitations in Part II of this permit, including an evaluation and selection of control measures to meet those effluent limitations and minimize discharges. In the PDMP, an operator may incorporate by reference any procedures or plans in other documents that meet the requirements of this permit...”

Comment – Do procedures or plans that can be referenced have to conform to TBELs and/or Best Management Practices on a one-to-one basis?

Part III. A. 4. Schedules and Procedures.

“The operator shall document the following schedules and procedures in the PDMP:

- (a) Pertaining to control measures used to comply with the effluent limitations, the following shall be documented in the PDMP:
 - (1) Application rate and frequency procedures for determining the optimum amount of pesticide product per application and the optimum frequency of pesticide applications necessary to control the target pest, consistent with reducing the potential for development of pesticide resistance in the pest;

Comment – This appears to be overly prescriptive if required to be documented in the PDMP. Furthermore, how will this actually be accomplished and how much deference will be provided best professional judgment of the operator.

Part IV. A. Monitoring Requirements. The operator shall monitor the amount of pesticide applied to ensure that the lowest amount is used to effectively control the pest, consistent with reducing the potential for development of pesticide resistance in the pest.

Comment – How is this to be specifically accomplished? Clarify.

Part V. B. All operators shall keep the following records:

Comment – It seems that the inclusion of the PDMP, which is meant to document how the operator conforms to the TBELs, already covers most of the other records included in this section. It seems redundant.

Appendix A

A.1. DEFINITIONS

Action Threshold – The point at which pest populations or environmental conditions can no longer be tolerated necessitating that pest control action be taken based on economic, human health, aesthetic, or other effects. Sighting a single pest does not always mean control is needed. Action thresholds help determine both the need for control actions and the proper timing of such actions.

Comment – Who will determine the action thresholds?

Adverse Incident – means an incident that the operator has observed upon inspection or of which otherwise becomes aware, in which:

- (1) A person or non-target organism is likely to have been exposed to a pesticide residue,
- (2) The person or non-target organism suffered a toxic or adverse effect.

Comment – The term “likely” is ambiguous and will generate litigation.

“The phrase, “toxic or adverse effects,” also includes any adverse effects to humans (e.g., skin rashes) or domesticated animals that occur either directly or indirectly from a discharge of pollutants to surface waters of the state that are temporally and spatially related to exposure to a pesticide residue (e.g., vomiting, lethargy).”

Comment – Delete the term “indirectly”.