In January 2009, the Sixth Circuit in National Cotton Council v. EPA struck down a Bush-era rule declaring that pesticide application to or over waters was exempt from the Clean Water Act's NPDES permit program, under which a permit is required for any discharge of pollutants to waters of the U.S. from a point source. The effect of that decision was later stayed until June 2011 to allow EPA time to respond. The agency has now issued a draft Pesticides General Permit which it expects to become effective in April 2011 and a detailed fact sheet explaining the basis for the terms of the draft permit. The permit will only apply in those areas of the country where EPA is responsible for NPDES implementation. States with NPDES authority will develop their own pesticide permit requirements, as some have already done. It seems likely that many will follow EPA's approach.

The use of a general permit means that each pesticide applicator does not need to apply for an individual permit. Coverage under the general permit will not be available for application to waters impaired by pesticides or their residues or to outstanding national resource waters. Notice must be provided to EPA ten days before spraying if the area treated exceeds thresholds specified in the draft general permit (640 acres for mosquito or forest canopy pest control, 20 acres for aquatic pest control, 20 linear miles for water's edge treatment).

The general permit mandates "best management practices" instead of setting numeric discharge standards, which EPA found would be infeasible. Permittees must minimize pesticide discharge by using the lowest effective dose and "optimum frequency" of application. Those whose pesticide use exceeds the thresholds requiring pre-spraying notice must also implement integrated pest management and develop a pesticide discharge management plan. That plan need not be submitted to EPA for approval, but it must be available for review by EPA and state authorities. Members of the public can request plans through EPA, which will scrub them of confidential business information before passing them along.

EPA is still consulting with the US Fish and Wildlife Service and National Marine Fisheries Service about how the general permit should deal with potential harm to endangered or threatened species. EPA has scheduled three public meetings, a hearing in Washington DC, and a webcast about the permit.