NOT FOR PUBLICATION

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CENTER FOR BIOLOGICAL DIVERSITY, a non-profit organization,

Petitioner,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, a United States Government Agency; LEE ZELDIN, in his official capacity as EPA ADMINISTRATOR,

Respondents.

No. 25-2738

Agency No. EPA-HQ-OW-2023-0268
Environmental Protection Agency

MEMORANDUM*

On Petition for Review of an Order of the
Environmental Protection Agency

Argued and Submitted August 12, 2026
Anchorage, Alaska

Before: CALLAHAN, BEA, and BUMATAY, Circuit Judges.

The Clean Water Act grants the Environmental Protection Agency (EPA) authority to issue permits authorizing the discharge of pollutants into the Nation's waters. 33 U.S.C. § 1342(a); *see* 40 C.F.R. §§ 122.22, 122.28. EPA may issue

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

individual permits or general permits. 40 C.F.R. §§ 122.21, 122.28. General permits "authoriz[e] a category of discharges under the CWA within a geographical area." *Id.* § 122.2. Pursuant to that authority, EPA issued the 2026 Pesticide General Permit (PGP), which allows the discharge of certain pesticides for four specified "use patterns." 89 Fed. Reg. 102134. The Center for Biological Diversity petitions for review of the 2026 PGP. We have jurisdiction under 33 U.S.C. § 1369(b)(1)(F). We deny the petition for review.

We must "hold unlawful and set aside agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). Our review of the PGP is "highly deferential, presuming the agency action to be valid and affirming the agency action if a reasonable basis exists for its decision." *Ctr. for Biological Diversity v. Bureau of Land Mgmt.*, 833 F.3d 1136, 1146 (9th Cir. 2016) (internal quotation omitted).

1. The Center argues that EPA unlawfully exempted most pesticide dischargers covered by the PGP from compliance with an EPA regulation providing that "[o]nce a general permit has been issued, an entity seeking coverage generally must submit a notice of intent to discharge pursuant to the permit." *See Alaska Cmty. Action on Toxics v. Aurora Energy Servs., LLC*, 765 F.3d 1169, 1171 (9th Cir. 2014) (citing 40 C.F.R. § 122.28(b)(2)). A notice of intent (NOI)

"embod[ies] each discharger's agreement to abide by the terms of the general permit." *Env't Def. Ctr., Inc. v. EPA*, 344 F.3d 832, 853 (9th Cir. 2003). EPA acknowledges that, consistent with past versions of the PGP, it exempted all covered dischargers from the 2026 PGP's NOI requirement except those the agency views as "significant discharger[s]." The Center does not challenge the regulation allowing the agency to make such exemptions but simply contests its application here. We find none of the Center's arguments persuasive.

First, EPA did not run afoul of 40 C.F.R. § 122.28(b)(2)(v), which states that the agency may exercise its "discretion" to allow covered dischargers "to discharge under a general permit without submitting a notice of intent where [EPA] finds that [such] a notice of intent requirement would be inappropriate." In exercising that discretion here, EPA considered each of the relevant factors identified by the regulation. *See id.* The agency ultimately concluded that "requiring an NOI from all dischargers would be a large burden of little value for permitting authorities and permittees alike."

The Center disputes EPA's evaluation of one such factor, the potential toxicity of the pollutants in permitted discharges. But how the agency weighed this factor against other relevant factors (i.e., the expected volume of the discharges, other means of identifying discharges covered by the permit, and the estimated number of discharges) represents a "technical, scientific issue where deference to agency technical expertise is at its apogee." *See id.*; *Cascadia Wildlands v. U.S. Bureau of Land Mgmt.*, 153 F.4th 869, 906 (9th Cir. 2025). In our view, the record shows that EPA weighed each of the relevant regulatory factors and reasonably explained the conclusions that it reached. *See id.*

Second, EPA provided sufficient justification for its reliance on an "Annual Treatment Area Threshold" as a basis for exempting some covered dischargers from the NOI requirement. As explained by EPA, the agency used its "best professional judgment" to "develop[] annual treatment area thresholds [for each pesticide use pattern] that establish NOI requirements for [pesticide] applications to larger areas, which are believed to have the greatest potential for impact to waters of the United States."

In deciding to adopt annual treatment area thresholds for NOI submission purposes, "EPA's Office of Water, Office of Chemical Safety and Pollution Prevention and the ten EPA Regional Offices engaged in discussions with USDA, states as co-regulators, and representatives from industry including pesticide registrants, applicators, and land managers." The record also shows that EPA's decision was based on comments received during the notice and comment period for former PGPs, dating back to the 2011 PGP, which supported the area size-based approach. And EPA further explained its decision by noting that its area thresholds for each respective pesticide use pattern were calculated to capture either all relevant pesticide dischargers or specifically those whose discharges are of concern to the agency.

EPA's choice of methodology represents a classic line-drawing exercise, based on technical expertise, to which our "deference to the agency is at its highest." *See San Luis & Delta-Mendota Water Auth. v. Locke*, 776 F.3d 971, 994 (9th Cir. 2014). Because the PGP's Annual Treatment Area Threshold "bears [some] rational relationship to the characteristics of the data to which it is applied," *id.* (citation modified), we find that it is not arbitrary or capricious.

Third, EPA reasonably addressed the possible consequences of its NOI exemption determination. Although the Center argues that the NOI exemption fails adequately to respond to earlier concerns raised by the National Marine Fisheries Service and the Forest and Wildlife Service, that argument is not supported by the record. Indeed, EPA expressly addressed the Services' concerns by requiring the submission of an NOI by any entity that has a discharge or discharge-related activity that overlaps with any Endangered Species Act listed threatened or endangered species or critical habitat. EPA also committed to developing a geospatial mapping tool that the PGP requires dischargers to use in determining whether their discharges or related activity will overlap with any pertinent species or habitat in such a manner. Nothing in the record suggests that EPA will not follow through on this commitment, and thus EPA was entitled to rely on the Services' approval of this arrangement. *See Nat. Res. Def. Council v. Haaland*, 102 F.4th 1045, 1055 (9th Cir. 2024) (agencies can implement the Services' proposed "reasonable and prudent alternatives" "to avoid jeopardizing" an endangered or threatened species or such species' habitat).

The Center's alternative argument that exempting dischargers from the PGP's NOI requirement also exempts dischargers from the PGP's other terms lacks merit. The NOI section, specifically the provision exempting some dischargers from the NOI submission requirement, does not claim to exempt dischargers from any of the PGP's other terms.

2. The Center next argues that the PGP's NOI form is unlawful because it fails to solicit sufficient information about proposed discharges. We respectfully disagree.

An EPA regulation states that "[t]he contents of the [NOI] shall be specified in the general permit and shall require the submission of information necessary for adequate program implementation." 40 C.F.R. § 122.28(b)(2)(ii). The regulation provides that, "at a minimum," NOIs should collect "the legal name and address of the owner or operator, the facility name and address, type of facility or discharges, the receiving stream(s), and other [] data elements" as required by other regulation. *Id.* "[T]he NOI represents no more than a formal acceptance of terms elaborated elsewhere" in the PGP, *see Env't Def. Ctr., Inc.*, 344 F.3d at 853, and thus the PGP uses the NOI form *solely* to determine baseline information relevant to specific dischargers' "eligibility to discharge pollutants under this permit."

The PGP's NOI form solicits all information required by the governing regulation and more. Additionally, the PGP allows EPA to request further information from any covered discharger as may later become necessary. We thus reject the Center's challenge to the PGP's NOI informational requirements as insufficient to ensure discharger eligibility.

3. The Center asserts that the PGP does not sufficiently "require permittees to monitor their effluent discharges and report on them to demonstrate compliance" with the PGP, allegedly in violation of the Clean Water Act and EPA regulations. We conclude that this claim also fails.

EPA must require dischargers under the PGP to "make such reports," and "install, use, and maintain such monitoring equipment or methods" as the agency deems "reasonably" necessary to ensure compliance with the PGP's effluent limitations and standards. 33 U.S.C. §1318(a)(A); *see also id.* § 1342(a)(2) (EPA "shall prescribe conditions for [the PGP] to assure compliance" with effluent limitations and standards as the agency "deems appropriate"). EPA has issued regulations implementing this requirement. *See, e.g.*, 40 CFR §§ 122.41(j)(1), 122.44(i)(1), 122.48(b).

The PGP's visual monitoring requirements satisfy EPA's statutory and regulatory mandate. The PGP requires covered dischargers to "use" a "method" of monitoring and it specifies the "type, intervals, and frequency" of monitoring required. *See* 40 CFR §§ 122.44(i)(1), 122.48(b). And we have held that visual monitoring requirements such as the PGP's can be "sufficient to ensure compliance" with permit conditions. *Food & Water Watch v. EPA*, 20 F.4th 506, 515–16 (9th Cir. 2021); *see also Nat. Res. Def. Council, Inc. v. EPA*, 863 F.2d 1420, 1433–34 (9th Cir. 1988). The record before us shows that EPA considered the issue, including alternative monitoring options, and explained why the PGP's monitoring provisions were appropriately "tailored to accommodate the unique situations related to pesticide applications." EPA has significant "discretion … in crafting appropriate monitoring requirements for each" of its permits, *Food & Water Watch*, 20 F.4th at 515, and we see no issue with those that EPA crafted here.

Similarly, the PGP's reporting requirements satisfy our deferential review. The PGP contains multiple reporting requirements, including time-bound reporting requirements for adverse incidents, annual reporting for significant dischargers, and annual reporting for discharges implicating an endangered or threatened species or such species' habitat. In our view, these provisions are reasonable and consistent with EPA's discretionary authority.

4. The Center further claims that the PGP fails to enforce applicable water

quality standards. Again, we disagree.

"[I]t is the EPA's independent statutory obligation under the CWA to ensure compliance with water quality standards, and its power to impose additional permit conditions necessary to meet that end." *Nat. Res. Def. Council v. EPA*, 279 F.3d 1180, 1188 (9th Cir. 2002) (internal citations omitted); *see, e.g.*, 33 U.S.C. §§ 1311(b)(1)(C), 1313(c)(2)(A), 1342(a)(2); 40 C.F.R. § 122.4(d). However, the Center's argument is primarily that the PGP does not generate sufficient information to enforce water quality standards, which simply repeats its arguments as to the NOI exemptions, NOI informational requirements, and monitoring and reporting provisions. The argument fails for the same reasons as detailed above.

To the extent that the Center asserts new arguments, we find them unpersuasive. Its contention that the PGP collects inadequate information to enforce State-specific requirements fails because States bear the responsibility to add any additional monitoring requirements to the PGP that they deem necessary. *See* 33 U.S.C. § 1341(d); 40 C.F.R. § 124.55(d). And the Center's assertion that EPA failed to "analyze or address public health concerns" in preparing the 2026 PGP is not tied to any specific statutory or regulatory text directing such analysis. Nonetheless, the record demonstrates several instances of EPA's discussion of specific public health and safety concerns. Although the Center raises questions as to the merits of EPA's discussions, none of these questions lead us to conclude that the PGP fails adequately to "ensure compliance" with relevant water quality standards.

5. We also reject the Center's argument that the PGP unlawfully provides "liability coverage to roughly 14,000 permittees to discharge pesticides into waterbodies but secur[es] no effective means to enforce the Permit's terms." This argument essentially asserts that the PGP's failure to solicit sufficient information about permittees and their activities (through NOIs and monitoring and reporting requirements) effectively precludes both EPA and private parties from bringing a credible enforcement action, should a discharger be in violation of the PGP. The viability of this argument turns on whether the PGP's NOI informational requirements, NOI exemptions, and monitoring and reporting requirements are lawful. Because we reject the Center's challenge on each of those issues, we also reject its challenge here.

The petition for review is **DENIED.**