

NWCO vs DEPT. OF AG PERMITTING CLARIFICATIONS

The following information is meant to clarify when and if a NWCO operator licensed through the ODWC would ALSO require a Bird and Vertebrate Pesticide Applicator Permit and or a Predatory Species Pesticide Applicator Permit through the Department of Agriculture.

1. The Department of Agriculture regulates all pesticide companies when such companies employ products or devices as defined by Oklahoma Title 2. Agriculture §2-3-81(14): "Device" means any instrument subject to the United States Environmental Protection Agency REGULATION intended for trapping, destroying, repelling, or mitigating insects or rodents, or mitigating fungi, bacteria, or weeds, or other pests designated by the Board, but not including equipment used for the application of pesticides when sold separately
2. The EPA mandates that "some devices are not regulated. For example, any device that depends more upon the performance of the user than the performance of the device itself to be effective (such as a fly swatter) is not regulated. Also, traps for vertebrate animals are not regulated."
<https://www.epa.gov/safepestcontrol/pesticide-devices-guide-consumers#1>
3. This means that the Department of Ag does NOT regulate "vertebrate animal traps" as is used in NWCO operations when they abide by the following laws.
 - a. Traps as defined by Oklahoma Title 29 §2-144 are "vertebrate animal traps" which the EPA does not regulate. Title 29 §2-144 "Trap" or "trapping" is the use of traps, nets, snares, deadfalls or other devices used for the purpose of killing, capturing, netting or ensnaring any wildlife.
 - b. Traps which are defined as legal Nuisance Wildlife Control Operator traps, as defined by Oklahoma Title 800:25-37-5 (9), are also "vertebrate animal traps which the EPA does not regulate". Title 800:25-37-5 (9) The following are legal methods of control under a NWCO permit:
 - A. box or live trap;
 - B. smooth-jawed single spring or double spring offset steel leg-hold traps with a jaw spread of no more than eight inches;
 - C. body gripping style traps less than size 330, except size 330 may be used for water sets for beavers only;
 - D. shooting where permitted by law or by city ordinance;
 - E. snares which shall have a locking device that prevents the loop from closing to a circumference less than ten (10) inches if the snare is set on or just above ground level. If the snare is set in an attic or similar situation there is no loop restriction; and
 - F. enclosed trigger traps.

If you ONLY work as a NWCO and you ONLY use the traps as defined above in 3.a. and b., then you only need a NWCO license from ODWC. You do not need any additional permitting through the Dept. of Ag.

If you use any other trapping methods or combination of methods that may be employed by a pesticide company, or you use any method which is not listed as legal under NWCO laws, or you use non-natural baits or any other item regulated by the EPA for nuisance wildlife or any other vertebrate

animals you will likely need the Department of Ag Bird and Vertebrate Pesticide Applicator Permit and or a Predatory Species Pesticide Applicator Permit. If you are unsure if the EPA regulates a device or bait you are using, contact them for clarification at: pesticidequestions@epa.gov

The following is a list of common devices which are regulated by the EPA and would require the additionally mentioned permitting through the Department of Ag:

Devices Subject to Regulation:

In a Federal Register notice published on November 19, 1976 (Pest Control Devices and Device Producers), EPA stated that devices subject to FIFRA section 2(q)(1) and section 7 include, but are not limited to:



- certain ultraviolet light systems, ozone generators, water filters and air filters (except those containing substances), and ultrasonic devices for which claims are made to kill, inactivate, entrap, or suppress the growth of fungi, bacteria, or viruses in various sites;
- certain high frequency sound generators, carbide cannons, foils, and rotating devices for which claims are made to repel birds;
- black light traps, fly traps, electronic and heat screens, fly ribbons, and fly paper for which claims are made to kill or entrap certain insects; and
- mole thumpers, sound repellents, foils, and rotating devices for which claims are made to repel certain mammals.

Since that notice was issued, EPA has determined that products of the following types also fall within the definition of device:

- products that are claimed to control pests via electromagnetic and/or electrical emissions (e.g., hand held bug zappers, electric flea combs);
- products that are claimed to control burrowing animals via product-caused subterranean explosions;
- and products that work via principles indicated in the 1976 Federal Register Notice for one category of pest but are claimed to control pests of different types (e.g., sticky traps for rodents (without attractants), light or laser repellents for birds, etc.).

Important Note: In applying the definition of "device" in FIFRA section 2(h), EPA examines each individual product on a case-by-case basis. For instance, the public should be aware that EPA has reviewed a number of individual products that claim to provide pest control through the use of electromagnetic radiation and has found these products to be devices within the meaning of section 2(h). In addition, EPA has found that a silver ion generating washing machine marketed with claims that odor causing bacteria will be killed on laundry must be registered as a pesticide. **Bottom line, many things you may not think of could be EPA regulated.** <https://www.epa.gov/pesticide-registration/pesticide-registration-manual-chapter-13-devices#regulations>

Exclusion trap/device clarification:

 <p>One-Way Squirrel Exclusion Funnel</p>	<p>Exclusion Net/Screen Devices: Chengcheng Tan, Ph.D. (Agricultural Services Administrator, Environmental Program and Pesticide Registration, Oklahoma Department of Agriculture) and Yvette Hopkins (FIFRA Enforcement Liaison, Environmental Protection Agency) have clarified that this device only falls under Dept. of Ag permitting, if it is sold/bought and/or has claims on the device sold/bought. Homemade devices are only subject to Dept. of Ag permitting if they are made out of material such as window screens that have claims. According to Dr. Tan, “a homemade trap not being marketed or offered for sale with any claims, would not be subject to FIFRA as a device.” According to Ms. Hopkins, “We have explained to others that window screens would be subject to FIFRA as devices if they [the window screens] were sold with claims, but are not regulated if no claims are made.”</p>
	<p>Exclusion Traps: Both Dr. Tan and Ms. Hopkins have clarified that this is not a regulated device and therefore, would not be subject to Dept. of Ag permitting.</p>

If you have questions please contact:

ODWC NWCO Administrator:

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EPA (Environmental Protection Agency) Contact Information:

By Mail:
US EPA Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270

By Phone:
Call our Public Information Center:
(800) 887-6063 or
(214) 665-2760 if calling from outside Region 6 states (Arkansas, Louisiana, New Mexico, Oklahoma and Texas)

By Email:

pesticidequestions@epa.gov

Department of Ag:

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