

MONTANA DEPARTMENT OF
ENVIRONMENTAL QUALITY
(DEQ)

GENERAL PERMIT

For

PESTICIDE APPLICATION
TO OR OVER SURFACE WATER

Permit No.: MTG870000

AUTHORIZATION TO DISCHARGE UNDER THE
MONTANA POLLUTANT DISCHARGE ELIMINATION SYSTEM (MPDES)


In compliance with Montana Water Quality Act, Title 75, Chapter 5, Montana Code Annotated (MCA), and the federal Water Pollution Control Act (the "Clean Water Act"), 33 U.S.C. 1251 *et. seq.*, applicants issued an authorization letter under this Pesticide General Permit, are permitted to discharge wastewater to state waters in accordance with effluent limitations, monitoring requirements and other conditions set forth herein.

A copy of this General Permit and a written authorization letter from DEQ must be available on site at all times. The General Permit is not valid without a current authorization letter from DEQ.

This permit shall become effective on **November 1, 2016**.

This permit and the authorization to discharge shall expire at midnight, **October 31, 2021**.

FOR THE MONTANA DEPARTMENT
OF ENVIRONMENTAL QUALITY



Jon Kenning Chief
Water Protection Bureau

Issuance Date: September 15, 2016

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I. COVERAGE UNDER THIS GENERAL PERMIT

A. Coverage Area

The Pesticide General Permit (PGP) applies to all areas of the State of Montana, except within the boundaries of Indian Reservations.

B. Activities Eligible for Coverage under this General Permit

Any person who applies pesticides to, over, or near state surface waters (such that pesticide is unavoidably discharged into state surface water) must have permit coverage either under the PGP or through an individual Montana Pollutant Discharge Elimination System (MPDES) permit. *Any* pesticide application to state surface waters in any amount requires MPDES permit coverage.

Pesticide application to state surface water that requires permit coverage includes either biological pesticides or chemical pesticides that leave a residue (collectively “pesticides”). The PGP is available to any owner/operator who applies pesticide either (1) directly into or over state surface waters in order to control pests in or over the water, or (2) near water in which pesticides will make unavoidable contact with the water. The application must fall under one of six pesticide use patterns: Piscicides and Other Nuisance Animals, Weeds and Algae, Aerial Pest Control, Mosquito and other Flying Insect Pests, Research & Development, or Other not Classified.

C. Activities Ineligible for Coverage under this General Permit.

The following activities are ineligible for coverage under the PGP:

1. The PGP does not allow authorization of pesticide that is not labeled for use in water by the Federal Insecticide, Fungicide, Rodenticide Act (FIFRA).
2. The PGP does not authorize the use of a pesticide that is not labeled for use to control the target pest.
3. The PGP does not allow authorization of pesticide application to water that is impaired for that specific pesticide or breakdown products of that pesticide. Impaired waters are those which have been identified pursuant to Section 303(d) of the Clean Water Act as not meeting applicable water quality standards.

In addition, DEQ may deny a PGP request for discharge including:

- a. The specific source applying for authorization appears unable to comply with the following requirements:
 - effluent limits or other terms and conditions of the permit;
 - water quality standards including standards established in Circular DEQ-7; or
 - discharges that the EPA Region VIII regional administrator has objected to in writing.
- b. The discharge is different in degree or nature from discharges reasonably expected from sources or activities within the pesticide use patterns described in the PGP.
- c. An MPDES permit or authorization for the same operation has previously been denied or revoked.

- d. The discharge is also included within an application or is subject to review under the Major Facility Siting Act, 75-20-101, et seq., MCA.
- e. The discharge will be located in an area of unique ecological or recreational significance.

D. Renewing Coverage for Existing Sources

All existing authorizations under the 2011 PGP expire upon the permit's expiration date of October 31, 2016, and to continue coverage the owner/operator must submit a complete renewal request by this date. An existing permittee is authorized to discharge under the 2016 General Permit, beginning its' effective date of November 1, 2016, after submitting a complete renewal application package, consisting of:

- Completed form NOI-87 (revised 2016); and
- Fee (renewal permit fee).

If there are deficiencies with the NOI package, DEQ may deny authorization under the permit or contact the applicant for additional information necessary to ensure the application package meets requirements. If the request is denied, DEQ may process the request as an individual permit (with additional fees); the applicant may withdraw the request; or the applicant may modify the operation to meet the conditions of the 2016 PGP and re-apply for coverage under the General Permit with a new application fee.

After receipt of a complete renewal application package, DEQ will issue an authorization letter to these facilities confirming coverage under the 2016 General Permit beginning November 1, 2016. The owner/operator is required to comply with all requirements contained in the PGP until they are required to renew or they request to modify or terminate their PGP authorization.

E. New Dischargers seeking coverage under the PGP.

A new discharger, including a discharger who allowed previous coverage to lapse, must submit a complete NOI package for coverage under the 2016 PGP prior to the discharge of any pesticide. The owner/ operator is immediately authorized to discharge under the 2016 General Permit, after its effective date of November 1, 2016, after submitting a complete application package consisting of:

- Completed form NOI-87 (revised 2016); and
- Fee (includes both permit application fee and first annual fee).

If there are deficiencies with the NOI package, DEQ may deny authorization under the permit or contact the applicant for additional information necessary to ensure the application package meets requirements. If the request is denied, DEQ may process the request as an individual permit (with additional fees); the applicant may withdraw the request; or the applicant may modify the operation to meet the conditions of the 2016 PGP and re-apply for coverage under the General Permit with a new application fee.

After receipt of a complete application package, DEQ will issue an authorization letter to these facilities confirming coverage under the 2016 General Permit. The owner/operator is required to comply with all requirements contained in the PGP until they are required to renew or they request to modify or terminate their authorization.

F. Termination of Permit Coverage

Once covered, permittees are authorized to operate for the duration of the 2016 PGP (until the General Permit has expired) or until DEQ receives a request to terminate coverage. To terminate coverage, the permittee must submit a Notice of Termination (NOT) form indicating the pesticide activity has ceased and they no longer require permit coverage. The written request must be signed and certified by the responsible signatory.

After the first year, annual fees will be invoiced in arrears for an authorization open during any part of the previous calendar year. To avoid the accrual of inappropriate annual fees, the permittee should request to terminate coverage once the pesticide activity has been completed.

In addition to the ability to request a termination, the owner or operator of a facility covered under the PGP may request to be excluded from coverage under this General Permit by applying for and obtaining an individual MPDES permit. If an individual MPDES permit is issued to the owner or operator of the facility, coverage under this General Permit is terminated on the effective date of the final individual MPDES permit.

G. Transfer of Coverage

Upon request, DEQ may transfer a pesticide authorization to a new owner or operator in conformance Part V.M of the 2016 General Permit. To request a transfer of permit coverage, the permittee must submit a complete Permit Transfer Notification (PTN) Form to DEQ, including the PTN fee.

The PTN constitutes written notice to the DEQ that the new owner or operator assumes responsibility and liability for all the terms and conditions in the permit, including permit fees. The PTN form may not be used to transfer permit coverage to a new or different site or to modify the terms and conditions of the permit.

II. EFFLUENT LIMITS, MONITORING REQUIREMENTS & OTHER CONDITIONS

A. Annual Treatment Area Thesholds

An owner/operator requesting coverage under the PGP must determine whether or not any of their permitted activity's total annual treatment area will be above the annual threshold for any given Pesticide Use Pattern (see **Table 1**), and will be required to meet the applicable PGP requirements specified in this permit:

- Universal Requirements for all owner/operators (Tier I).
- Additional requirements for owner/operators that apply pesticides to an area greater than the 'treatment area annual threshold' or otherwise identified below (Tier II).

Table 1: Pesticide Use Pattern – Tier II Annual Thresholds		
#	Pesticide Use Pattern	Tier II Treatment Area Annual Threshold ^{1,2}
1.	Piscicides and Other Nuisance Animals	10 acres
2.	Weeds and Algae	100 acres
3.	Aerial Pest Control	1000 acres
4.	<i>Mosquito and Other Flying Insect Pests</i>	
4a.	Larval Chemical Control	100 acres
4b.	Chemical Adulticide	1000 acres
4c.	Biological Control	6,400 acres
5.	Research & Development	10 acres
6.	Other not classified	10 acres
<p>1. Calculations should include the area of the applications made to state surface waters <i>that contain water at the time of pesticide application</i> and conveyances with a hydrologic surface connection to state surface water <i>at the time of pesticide application</i>. For calculating annual treatment area totals, count each pesticide application activity as a separate activity. For example, applying pesticides twice a year to a ten acre site should be counted as twenty acres of treatment area.</p> <p>2. Any pesticide discharge into waterbodies classified A-closed or Outstanding Resource Waters is automatically subject to Tier II requirements.</p>		

B. Effluent Limits

1. *Universal Requirements for All Owner/Operators (Tier I)*

Upon the effective date of this permit, and lasting for the duration of the permit, all owner/operators of pesticide applications authorized under this PGP must:

- a. Control the discharge as necessary to meet applicable numeric and narrative water quality standards by complying with this permit; and
- b. Apply pesticides within labeled rates and/or in accordance with pesticide use directions under FIFRA and other state pesticide requirements. The pesticide must be labeled for use in water and designated for controlling the target pest.

2. *Additional Requirements for 'Greater than Threshold' Owner/Operators (Tier II)*

In addition to the universal requirements in Part II.B.1, a permittee that is greater than the threshold level for any Pesticide Use Pattern in **Table 1** must also achieve the following Tier II requirements:

- a. Ensure pesticide application equipment is maintained in proper operating condition by inspecting, cleaning, and repairing such equipment on a regular basis.
- b. Ensure pesticide application equipment is calibrated in order to have effective pesticide application and pest control by adhering to any manufacturer's conditions and industry practices.

C. Monitoring

1. *Universal Requirements for All Owner/Operators (Tier I)*

All owner/operators must:

- a. Document the rationale for determining the type and amount of pesticide to be used for their specific application. This is satisfied by having the pesticide label available; and
- b. Maintain a log of each pesticide application, including county, pesticide use pattern, date, and acreage treated.

2. *Additional Requirements for 'Greater than Threshold' Owner/Operators (Tier II)*

In addition to the universal monitoring requirements in Part II.C.1, a permittee that is greater than the threshold level for any Pesticide Use Pattern in **Table 1** must also conduct the following in accordance with their Pesticide Discharge Management Plan (PDMP), and maintain a log of each activity:

- a. Ensure the integrity of application equipment by inspecting, cleaning, and repairing equipment on a regular basis;
- b. Ensure the effectiveness of application by calibrating the pesticide equipment on a regular basis; and
- c. Conduct appropriate visual monitoring in the area pesticides are applied to, or may impact, in order to determine if any pesticide use practices covered under this permit are causing avoidable adverse impacts and need to be revised.

D. Pesticide Discharge Management Plan

Additional Requirement for 'Greater than Threshold' Owner/Operators (Tier II)

In addition to the effluent limits in Part II.B and monitoring requirements in Part II.C, a permittee that is greater than the threshold level for any Pesticide Use Pattern in **Table 1** must also develop, maintain, and implement a written Pesticide Discharge Management Plan (PDMP). The PDMP includes, among other requirements, the specifications for maintaining and calibrating pesticide application equipment. The PDMP also includes the permittee's plans for conducting appropriate visual monitoring to determine if any pesticide use practices need to be revised, and to ensure that avoidable adverse impacts to

the environment do not occur. To the extent that an owner/operator follows an existing plan (i.e., IPM, weed control, mosquito control) which already contains the information required for the PDMP, the owner/operator need only reference the existing plan.

The PDMP must be developed in accordance with the following timelines, which are based on when the owner/operator knows that the annual treatment for any given year will exceed an annual treatment area threshold in **Table 1**:

- Owner/operators who know or should have reasonably known prior to commencement of discharge, that they will exceed an annual treatment area threshold for that year, must develop a PDMP prior to the first pesticide application covered under this permit.
- Owner/operators who do not know or would reasonably not know until after commencement of discharge, that they will exceed an annual treatment area threshold for that year, must develop a PDMP prior to exceeding the annual treatment area threshold.
- Owner/operators commencing discharge in response to a declared pest emergency situation as defined in the PGP, that will cause the owner/operator to exceed an annual treatment area threshold, must develop a PDMP no later than 90 days after responding to the declared pest emergency.
- Owner/operators that were previously authorized as Tier II should have an up-to-date plan when they submit the NOI for renewal.

Once an owner/operator meets the requirement to prepare a PDMP based on the above timelines for development, they must maintain the plan thereafter for the duration of their coverage as a Tier II facility. The owner/ operator must evaluate their plan(s) at least once per calendar year and update as necessary, and record the dates and personnel involved in the plan review and plan update.

At a minimum, the PDMP must include:

1. Pesticide management team. The PDMP must include an identification of an individual or group of individuals (names or titles) that are the pest management “team” and outline specific responsibilities.
2. Description of the pest problem. The PDMP must provide a framework for the pest problem:
 - *pest identification* – identification of each target pest(s) that are in or over state surface water;
 - *general location map* – the map must identify the geographic boundaries of the entire area to which the plan applies. Additionally, the map (or a separate description) should include any sensitive resources in the area, such as drinking water supplies or critical habitats; and
 - *action thresholds* – the plan must include the level of pest prevalence (pest densities) or other trigger that will cause the owner/operator to initiate action to reduce the pest problem.

3. Description of control measures. The PDMP must include a description of control measures, which are actions (including processes, procedures, schedules of activities, prohibitions on practices and other management practices) for the applicable pesticide project designed to prevent or reduce water pollution. The PDMP must include documentation on the evaluation and implementation of any pest management tools (no action, prevention, mechanical/physical methods, cultural methods, biological control agents, and pesticides) that could feasibly be taken to minimize pesticide discharge into state surface waters.
4. Planning. The PDMP must include responsibilities, planning, and program information. The PDMP must also clarify the recordkeeping required. Various agreements for some or all of the following requirements may be needed between responsible parties (such as decision-makers and for-hire applicators) and are the responsibility of the owner/operator:
 - *Pesticide application equipment preventative maintenance* – the plan shall include the identification of who (name or title) is responsible for inspecting, cleaning, and repairing the application equipment prior to use and the frequency and description of the preventative maintenance, as well as the recordkeeping required.
 - *Pesticide application equipment calibration* – the plan shall include the identification of who (name or title) is responsible for calibrating the application equipment, the calibration methods used, and how often the equipment will be calibrated, as well as the recordkeeping required.
 - *Pesticide application rate and frequency* – the plan shall include who will determine, and what is, the desired pesticide concentration and number of applications necessary to control each target pest. The application rate and frequency must meet pesticide label requirements.
 - *Pre-application pest monitoring* – the plan shall include a description of how the pest treatment area will be assessed before treatment to determine when the action threshold(s) are met, and in what geographical area. The plan must include who (employer and name or title) will make the determination, what basis they will use, and what recordkeeping is required.
 - *Assessment of environmental conditions* – the plan shall include a description of who will assess and make the decision whether environmental conditions are satisfactory for pesticide application, and what factors will be used (wind speed, expected rain, temperature, etc.) as well as the recordkeeping required.
 - *Post-application monitoring* – the PDMP shall include a description of the process for post-pesticide application monitoring, if any. The PDMP should include determining the location and timing of any visual monitoring during or after the pesticide application, who will conduct the monitoring, and procedures for documenting any observed impacts to non-target organisms, as well as the recordkeeping required. Post-application monitoring is not required if it is not part of expected business practice or if conditions make it infeasible or dangerous.
 - *Adverse incident response procedures* – the plan must identify and document the course of action or response to any potential adverse incident that might be

attributed to the pesticide application including the requirements in Part II.G. It must include the identification of responsibilities for complying with notification requirements. The plan must include a list of the chain of command notification both internally and externally, contact agencies and phone numbers, identification and contact information for nearest emergency medical facility and nearest hazardous chemical responder (including police and fire department).

- *Spill prevention program* – The PDMP must identify and document the course of action or response to any spills or releases that are part of the activities covered by this PGP. The plan must document procedures for expeditiously stopping, containing, and cleaning up leaks, spills, and other releases. It must include documentation of the procedures for notification for appropriate facility personnel, emergency response agencies, and regulatory agencies. The response to any spills or leaks that occur while covered under the PGP must be documented.

The plan should also address any areas and activities that typically pose a high risk for spills during the preparation for and implementation of pesticide applications covered under this PGP. It should address appropriate material handling procedures, storage requirements, and containment or diversion equipment that will minimize the potential for spills, or in the event of a spill enable proper and timely response.

5. Plan Updates. Owners/operators must review and, as necessary, revise the PDMP at least once a year and maintain records of the review/revisions including the date and name of the reviewer. In addition, the plan must be reviewed and, as necessary, revised whenever any of the following triggering conditions occur:
 - an unauthorized release or discharge;
 - the permittee becomes aware, or DEQ determines, that control measures are not stringent enough for the discharge to meet applicable water quality standards;
 - an inspection or evaluation by a DEQ representative determines that modifications are necessary to meet the effluent limits; or
 - the permittee observes or is otherwise made aware (e.g., a third party notification) of an adverse incident for which symptoms are unusual or unexpected during the normal course of treatment.

The owner/operator must take follow-up actions to assess and correct problems including the above triggering conditions. Corrective action must be completed before the next pesticide application that results in a discharge, if practicable, or if not, as soon as practicable thereafter. The owner/operator must document what steps were taken to eliminate the problem.

6. Certification. The PDMP must be signed and certified by the responsible official or duly authorized representative, in accordance with the signatory requirements in the PGP. The signature requirement includes an acknowledgment that there are significant penalties for submitting false information.

E. Recordkeeping

All records required by this PGP must be prepared as soon as possible, but no later than 14 days following completion of the associated activity. Copies of these documents must be available upon request, and must be maintained for a period of at least three years, or in the case of the PGP, three years from the date the permittees' coverage under this permit expires or is terminated.

1. Universal Requirements for All Owner/Operators (Tier I)

All owner/operators must maintain the following records:

- a. A copy of the 2016-PGP (electronic access is sufficient);
- b. A copy of the NOI submitted to DEQ, any correspondence exchanged with DEQ specific to coverage under the 2016-PGP, and a copy of the DEQ authorization letter assigning the NOI number (MTG87xxxx); and
- c. Annual records on the acres treated with pesticide for each pesticide use pattern, by county.

2. Additional Requirements for 'Greater than Threshold' Owner/Operators (Tier II)

In addition to the universal recordkeeping requirements in Part II.E.1, a permittee that is greater than the threshold level for any Pesticide Use Pattern in **Table 1** must also maintain the following records:

- a. The current PDMP, including any modifications made to the plan during the term of this permit and records of the review and revision dates. Other existing plans (such as Integrated Pest Management (IPM), weed control, or mosquito control plans) can satisfy this requirement as long as all of the components for a PDMP required in this PGP (see Part II.D) are met and the other plans are clearly referenced in the PDMP;
- b. Information on pesticide applications, including copies of, or access to, the following required pesticide records:
 - Description of treatment area including: name of county, identification of waters treated, size of area treated (acres of water), pesticide trade name, and pesticide use pattern;
 - Pesticide applicator company or individual name;
 - Pesticide application equipment information, including equipment inspection, repair, and calibration records (required to be maintained by the entity performing the pest management activity on behalf of self or client); and
- c. Pre- and post-application monitoring including date(s) and time(s) of any pre-application site monitoring, assessment of environmental conditions; and post-application visual or other monitoring. Post-application records must include any monitoring that resulted in unusual or unexpected findings, and a description of such effects identified to non-target organisms. Records must also include a summary of actions taken to address any adverse incidents observed; and a summary of any spill or leak responses.

As some of this information may be available on another record, it does not have to be duplicated, but the location of the record needs to be referenced and it must be available.

F. Reporting

1. Universal Requirements for All Owner/Operators (Tier I)

There are no routine reporting requirements for Tier I owner/operators unless an adverse incident is observed (see Part II.G).

2. Additional Requirements for 'Greater than Threshold' Owner/Operators (Tier II)

In addition to the adverse incident reporting requirement for all owner/operators, a permittee that is greater than the threshold level for any Pesticide Use Pattern in **Table 1** must submit annual reports that contain basic information on their pesticide discharges to state surface waters. The annual report form (AR-3) can be found on DEQ's website at: <http://deq.mt.gov/Water/WPB/mpdes/pesticides>.

The annual report must be postmarked by January 28th of each year, regardless of whether the owner/operator made any pesticide applications. It must include information for the previous calendar year, with the first annual report required to include activities for the portion of the calendar year after the effective date of the authorization. When an owner/operator terminates permit coverage, they must submit an annual report for the portion of the year up through the date of the termination. The annual report must be postmarked no later than 30 days after the termination date, or January 28th of the following year, whichever is earlier.

The AR-3 annual report is a summary of the pest control activities for the previous year. The annual report must contain the following information:

- Date that the PDMP was reviewed and, if necessary, updated;
- Annual pesticide application information, including the county, trade name of the pesticide used, size of area treated (acres of water); and identification of waters treated *for each pesticide use pattern*;
- Summary of pesticide application equipment information, including the name of the pesticide applicator company or individual; the most recent date that each pesticide application equipment was inspected, cleaned, and repaired; the most recent date that each pesticide application equipment was calibrated; and confirmation that the frequencies met the specifications in the PDMP;
- Confirmation that the pesticide application rate and frequency, pre-application pest monitoring, assessment of environmental conditions, and post-application monitoring was conducted according to the PDMP and either implemented successfully or the PDMP was revised;
- Summary of actions taken to address any adverse incidents observed; and
- Summary of any spill or leak responses.

G. Adverse Incident Requirements

Adverse Incident Assessment, Documentation, and Reporting (Universal Requirement)

The PGP requires all permittees (both Tier I and Tier II) to take specific actions in response to observed adverse incidents which may have resulted from the permittee's pesticide

application. *Adverse incident* is generally defined as any effect of a pesticide's use that is unexpected or unintended (see Definitions in Part V). This includes effects that occur within state surface waters on non-target plants, fish or wildlife that are unusual or unexpected (e.g., effects are to organisms not otherwise described on the pesticide product label or otherwise not expected to be present) as a result of exposure to a pesticide residue. Unexpected effects could also include any adverse effects to humans (e.g., skin rashes) or animals that occur either directly or indirectly from a discharge to state surface waters that are temporally and spatially related to exposure to a pesticide residue.

The following actions are required for all owner/operators in the case of observations made during or after the pesticide application:

1. Adverse Incident Assessment. Owner/operators are required to use their best professional judgment in determining the extent to which non-target effects appear to be abnormal or indicative of an unforeseen problem associated with an application of pesticides.
2. Adverse Incident Documentation. Observations must be noted unless they are deemed not to be aberrant (for example, distressed non-target fish are to be expected when conducting a treatment with rotenone and non-target vegetation will be stressed near the target of contact herbicides). Records of all visual inspections, even for situations that do not require reporting, must be kept on site with the permittee.
3. Adverse Incident Reporting. In addition to other notifications that may be required, such as to the National Response Center (NRC), owners/operators are required to provide notice to DEQ. The PGP requires oral notice to DEQ within 24 hours and then follow-up with a written report within five days of becoming aware of an adverse incident.

Oral Notice

The owner/operator is required to call the DEQ Water Protection Bureau as soon as possible at (406) 444-3080, but no later than 24 hours of any identified adverse incident. Required information to be reported includes the date of the finding, a general discussion of the incident, and a review of the necessity for corrective action. The owner/operator must document the verbal notification information, including the date, time, and person notified and a description of any deviations from notification requirements based on nuances of the adverse incident. For example, a permittee may decide to notify multiple contacts because of the severity of the adverse incident.

Written Notice

The owner/operator is also required to provide a written report of the adverse incident to DEQ within five (5) days of discovery, to the following address:

Montana Department of Environmental Quality
Water Protection Bureau
P.O. Box 200901
Helena, Montana 59620-0901

The adverse incident report must include the following information:

- Date, time, and person(s) (including Department(s)) to whom you orally reported the adverse incident;
- Responsible Party information;

- Location of incident, including the names and locations (latitude/longitude) of any waters affected and appearance of those waters (sheen, color, clarity, etc.);
- Date, time, and duration of incident;
- Pesticide involved (Product name, manufacturer, and EPA ID#), pesticide application rate, intended use site (e.g., banks, above, or direct to water), and method of application;
- A description of the circumstances of the incident including species affected, number of individuals and approximate size of dead or distressed organisms;
- Magnitude of the effect (e.g., aquatic square area or total stream distance affected);
- Description of the habitat and the circumstances under which the incident occurred (including any available ambient water data for pesticides applied); and
- Actions taken immediately to remediate the incident and actions to be taken to prevent recurrence of the incident.

Photo documentation is strongly recommended, when possible. Reporting of adverse incidents is not required under this permit in any of the following situations: facts are available that clearly establish that the adverse incident was not related to toxic effects or exposure from the pesticide application; notification has been received in writing from DEQ that the reporting requirement has been waived for this incident or category of incidents; the information regarding the adverse incident is clearly erroneous; or an adverse incident occurred to pests that are similar in kind to pests identified as potential targets on the FIFRA label

H. Obligation to Obtain Other Permits

Authorization under the PGP does not waive obligations to obtain other permits that may be required (e.g., DEQ Storm Water authorization or the Montana Natural Streambed and Land Preservation Act (310) permit). In addition, authorizations do not waive the responsibility to comply with the federal Endangered Species Act.

Any pesticide applicator must ensure pesticide use is in conformance with the requirements of the Montana Pesticides Act. That act authorizes the Montana Department of Agriculture (MDA) to adopt rules incorporating regulations adopted by EPA under FIFRA, which generally prescribe methods of registration, application, and the sale or use of pesticides.

III. STANDARD CONDITIONS

A. Reporting Requirements

All annual reports shall be sent to DEQ (see address below), postmarked no later than the 28th day of January following the reporting year.

Montana Department of Environmental Quality
Water Protection Bureau
P.O. Box 200901
Helena, Montana 59620-0901
Phone: (406) 444-3080

B. Monitoring and Recording of Results

For monitoring requirements of this permit the permittee shall record visual observations as required. Monitoring must be conducted according to test procedures approved under Part 136 Title 40 of the Code of Federal Regulations, unless other test procedures have been specified in this permit.

C. Additional Monitoring by Permittee

If the permittee monitors any pollutant at the location(s) designated herein more frequently than required by this permit the results of such monitoring shall be included in the monitoring report. Such increased frequency shall be indicated.

D. Record Retention

All records and information resulting from the monitoring activities required by this permit shall be retained for a minimum of three (3) years, or longer if requested by DEQ.

E. Noncompliance Notification

If for any reason, the permittee does not comply with or will be unable to comply with any effluent limitation specified in this permit, the permittee shall notify as soon as possible by phone and provide with the following information, in writing, within five (5) days of becoming aware of such condition:

1. A description of the discharge and cause of noncompliance; and
2. The period of noncompliance including exact dates and times, or if not corrected, the anticipated time the noncompliance is expected to continue, and steps being taken to reduce, eliminate and prevent recurrence of the non-complying discharge.

F. Inspection and Entry

The permittee shall allow the head of DEQ or the Regional Administrator, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and,
4. Sample, or monitor at reasonable times for the purpose of assuring permit compliance, any substances or parameters at any location.

IV. COMPLIANCE RESPONSIBILITIES

A. Duty to Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application. The permittee shall give DEQ advance notice of any planned changes at the permitted facility or of an activity, which may result in permit noncompliance.

B. Penalties for Violations of Permit Conditions

The Montana Water Quality Act provides that any person who violates a permit condition of the Act is subject to civil or criminal penalties not to exceed \$25,000 per day of such violation. Any person who willfully or negligently violates permit conditions of the Act is subject to a fine of not more than \$50,000 per day of violation, or by imprisonment for not more than 2 years, or both.

C. Need to Halt or Reduce Activity not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

D. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit, which has a reasonable likelihood of adversely affecting human health or the environment.

E. Toxic Pollutants

The permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Act for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

F. Changes in Discharge of Toxic Substances

Notification shall be provided to DEQ as soon as the permittee knows of, or has reason to believe:

1. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels:"
 - a. One hundred micrograms per liter (100 $\mu\text{g}/\text{l}$);
 - b. Two hundred micrograms per liter (200 $\mu\text{g}/\text{l}$) for acrolein and acrylonitrile; five hundred micrograms per liter (500 $\mu\text{g}/\text{l}$) for 2,4-

- dinitrophenol and for 2-methyl-4, 6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;
- c. Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or,
 - d. The level established by DEQ in accordance with 40 CFR 122.44(f).
2. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following “notification level:”
- a. Five hundred micrograms per liter (500 $\mu\text{g/l}$);
 - b. One milligram per liter (1 mg/l) for antimony;
 - c. Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or,
 - d. The level established by DEQ in accordance with 40 CFR 122.44(f).

V. GENERAL REQUIREMENTS

A. Planned Changes

The permittee shall give notice to DEQ as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when the alteration or addition could significantly change the nature or increase the quantity of pollutant discharged. This notification applies to pollutants, which are not subject to effluent limitations in the permit.

B. Anticipated Noncompliance

The permittee shall give advance notice to DEQ of any planned changes in the permitted facility or activity, which may result in noncompliance with permit requirements.

C. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

D. Duty to Reapply

If the permittee wishes to continue an activity regulated by this permit after the expiration date of the permit, the permittee must apply for and obtain new permit coverage thirty (30) days before this permit expires.

E. Duty to Provide Information

The permittee shall furnish to DEQ, within a reasonable time, any information which DEQ may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to DEQ, upon request, copies of records required to be kept by this permit.

F. Other Information

When the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or any report to DEQ, it shall promptly submit such facts or information.

G. Signatory Requirements

All applications, reports or information submitted to DEQ shall be signed and certified.

1. All permit applications shall be signed as follows:
 - a. For a corporation: by a responsible corporate officer;
 - b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively;
 - c. For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official.

2. All reports required by the permit and other information requested by DEQ shall be signed by a person described above or by a duly authorized representative of that person. A person is considered a duly authorized representative only if:
 - a. The authorization is made in writing by a person described above and submitted to DEQ, and,
 - b. The authorization specified either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.)
3. Changes to authorization. If an authorization under Part V.G.2 of this permit is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part V.G.2 of this permit must be submitted to DEQ prior to or together with any reports, information, or applications to be signed by an authorized representative.
4. Certification. Any person signing a document under this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

H. Penalties for Falsification of Reports

The Montana Water Quality Act provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction be punished by a fine of not more than \$25,000 per violation, or by imprisonment for not more than six months per violation, or by both.

I. Availability of Reports

Except for data determined to be confidential under 40 CFR Part 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of DEQ. As required by the Clean Water Act, permit applications, permits and effluent data shall not be considered confidential.

J. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Clean Water Act.

K. Property Rights

The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges.

L. Severability

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

M. Transfers

Permit coverage is not transferable to any person except after notice is given to DEQ and a transfer fee is paid. Notice of transfer must be completed on the form provided by DEQ and must be received by DEQ at least 30 days prior to the anticipated date of transfer. The form must be signed by both the existing owner/operator and the new owner/operator following the signatory requirements of Part V.G of this General Permit.

N. Fees

The permittee is required to submit payment of an annual fee as set forth in ARM 17.30.201. If the permittee fails to pay the annual fee within 90 days after the due date for payment, DEQ may:

1. Impose an additional fee assessment plus interest computed at the rate established under ARM 17.30.201, or
2. Suspend the processing of the application for a permit or authorization or, if the nonpayment involves an annual permit fee, suspend the permit, certificate, license or other authorization for which the fee is required. DEQ may lift the suspension at any time up to one year after the suspension occurs if the holder has paid all outstanding fees, including all penalties, assessments and interest imposed under this subsection.

O. Reopener Provisions

This permit may be reopened and modified (following proper administrative procedures) to include the appropriate effluent limitations (and compliance schedule, if necessary), or other appropriate requirements if one or more of the following events occurs:

1. Water Quality Standards: The water quality standards of the receiving water(s) to which the permittee discharges are modified in such a manner as to require different effluent limits than contained in this permit.

2. TMDL or Wasteload Allocation: TMDL requirements or a wasteload allocation is developed and approved by DEQ and/or EPA for incorporation in this permit.
3. Water Quality Management Plan: A revision to the current water quality management plan is approved and adopted which calls for different effluent limitations than contained in this permit.
4. Toxic Pollutants: A toxic standard or prohibition is established under Section 307(a) of the Act for a toxic pollutant which is present in the discharge and such standard or prohibition is more stringent than any limitation for such pollutant in this permit.

VI. DEFINITIONS

1. **“A-Closed”** waterbodies are the 15 waterbodies identified in ARM 17.30.607, .608, and .610, with specific water quality standards under ARM 17.30.621.
2. **“Act”** means the Montana Water Quality Act, Title 75, Chapter 5, MCA.
3. **“Action Threshold”** means 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.
4. **“Administrator”** means the administrator of the United States Environmental Protection Agency.
5. **“Adverse Incident”** means an incident that you have observed upon inspection or of which you otherwise become aware, in which:

(1) A person or non-target organism may have been exposed to a pesticide residue, and

(2) The person or non-target organism suffered a toxic or adverse effect.

The phrase “toxic or adverse effects” includes effects that occur within state surface waters on non-target plants, fish or wildlife that are unusual or unexpected (e.g., effects are to organisms not otherwise described on the pesticide product label or otherwise not expected to be present) as a result of exposure to a pesticide residue, and may include:

- Distressed or dead juvenile and small fishes,
- Washed up or floating fish,
- Fish swimming abnormally or erratically,
- Fish lying lethargically at water surface or in shallow water,
- Fish that are listless or nonresponsive to disturbance,
- Stunting, wilting, or desiccation of non-target submerged or emergent aquatic plants, and
- Other dead or visibly distressed non-target aquatic organisms (amphibians, turtles, invertebrates, etc.).

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 to state surface waters that are temporally and spatially related to exposure to a pesticide residue (e.g., vomiting, lethargy).

6. **“Best management practices (BMPs)”** means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of state waters. BMP's also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage [ARM 17.30.1304].
7. **“Biological Pesticide”** (also called biopesticides) - include microbial pesticides, biochemical pesticides including methoprene and other insect growth regulators, and plant-incorporated protectants (PIP):

- *Microbial pesticide* means a microbial agent intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or dessicant, that (1) is a eucaryotic microorganism including, but not limited to, protozoa, algae, and fungi; (2) is a procaryotic microorganism, including, but not limited to, Eubacteria and Archaeobacteria; or (3) is a parasitically replicating microscopic element, including but not limited to, viruses. [40 CFR 158.2100(b)]
 - *Biochemical pesticide* mean a pesticide that (1) is a naturally-occurring substance or structurally-similar and functionally identical to a naturally-occurring substance; (2) has a history of exposure to humans and the environment demonstrating minimal toxicity, or in the case of a synthetically-derived biochemical pesticides, is equivalent to a naturally-occurring substance that has such a history; and (3) Has a non-toxic mode of action to the target pest(s). [40 CFR 158.2000(a)(1)]
 - *Plant-incorporated protectant* means a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for production of such a pesticidal substance. It also includes any inert ingredient contained in the plant, or produce thereof. [40 CFR 174.3]
8. ***“Calibration of Equipment”*** means measurement of dispersal or output of application equipment and adjustment of such equipment to control the rate of dispersal, and droplet or particle size of a pesticide dispersed by equipment [ARM 4.10.1501(15)].
 9. ***“Chemical Pesticides”*** means all pesticides not otherwise classified as biological pesticides.
 10. ***“Control measures”*** are actions (including processes, procedures, schedules of activities, prohibitions on practices and other management practices), to prevent or reduce water pollution. Use of the term control measure is intended to describe the range of pollutant reduction practices that may be employed, whether they are structural, non-structural or procedural and includes BMPs as one of the components.
 11. ***“Decision-maker”*** is any entity with control over the decision to perform pesticide applications including the ability to modify those decisions that result in a discharge to waters of the United States.
 12. ***“Department”*** means the Montana Department of Environmental Quality (DEQ).
 13. ***“Director”*** means the Director of DEQ and/or a designee.
 14. ***“Direct Chemical Pesticide Application”*** means any chemical residue from the application of chemical pesticides directly to state surface waters in order to control pests. For chemical or conventional pesticides applied directly to waters, it is the pesticide residue, including excess pesticide that is present outside of the treatment area or within the treatment area once the target pests have been controlled that is considered a pollutant under this permit.
 15. ***“Discharge of a pollutant”*** and “discharge of pollutants” each means any addition of any pollutant or combination of pollutants to state waters from any point source. This definition includes additions of pollutants into water of the state from: surface runoff which is collected or channelled by man; discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other person which do not lead to a treatment works. [ARM 17.30.1304].

16. ***“Drift or Spray Drift”*** means movement of a pesticide during or immediately after application or use through air to a site other than the intended site of application or use [ARM 4.10.1501(38)].
17. ***“EPA”*** means the United States Environmental Protection Agency.
18. ***“Federal Clean Water Act”*** means the federal legislation at 33 USC 1251, et seq.
19. ***“Integrated Pest Management (IPM)”*** – is an effective and environmentally sensitive approach to pest management that relies on a combination of common-sense practices. IPM uses current, comprehensive information on the life cycles of pests and their interaction with the environment. This information, in combination with available pest control methods, is used to manage pest damage by the most economical means, and with the least possible hazard to people, property, and the environment [EPA PGP]. IPM as defined in FIFRA, is a sustainable approach to managing pests by combining biological, cultural, physical, and chemical tools in a way that minimizes economic, health, and environmental risks (FIFRA, 7 U.S.C. 136r-1). IPM is not a single pest control method but, rather, a series of pest management evaluations, decisions and controls.
20. ***“Multi-county,”*** means the general permit authorizing pesticide application within the boundaries of more than one county as identified by the applicant. The application is restricted to identifying twenty (20) contiguous counties under any one multi-county permit;
21. ***“Owner/operator”*** means a person who owns, leases, operates, controls, or supervises a point source [75-5-103, MCA and ARM 17.30.1304]. This could include:
 - Entities with control over the financing and/or decision-making to perform pesticide applications (“decision-makers”), or
 - Entities with day-to-day control (pesticide applicators).
22. ***“Pest”*** means any organism under circumstances that make it deleterious to man or the environment, if it is:
 - (a) Any vertebrate animal other than man;
 - (b) Any invertebrate animal, including but not limited to, any insect, other arthropod, nematode, or mollusk such as a slug and snail, but excluding any internal parasite of living man or other living animals;
 - (c) Any plant growing where not wanted, including any moss, alga, liverwort, or other plant of any higher order, and any plant part such as a root; or
 - (d) Any fungus, bacterium, virus, or other microorganism, except for those on or in living man or other living animals and those on or in processed food or processed animal feed, beverages, drugs (as defined in FFDCA sec. 201(g)(1)) and cosmetics (as defined in FFDCA sec. 201(i)).
23. ***“Pest Management Area”*** means the area of land, including any water, for which you are conducting pest management activities covered by this permit.
24. ***“Pesticide”*** means:
 - (a) a substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest;
 - (b) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and

- (c) any nitrogen stabilizer, except that the term "pesticide" shall not include any article that is a "new animal drug" within the meaning of section 201(w) of the federal Food, Drug, and Cosmetic Act, 21 U.S.C. 321(w), that has been determined by the United States Secretary of Health and Human Services not to be a new animal drug by a regulation establishing conditions of use for the article, or that is an animal feed within the meaning of section 201 of 21 U.S.C. 321 bearing or containing a new animal drug. The term "pesticide" does not include liquid chemical sterilant products (including any sterilant or subordinate disinfectant claims on such products) for use on a critical or semi-critical device, as defined in section 201 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 321. For purposes of the preceding sentence, the term "critical device" includes any device that is introduced directly into the human body, either into or in contact with the bloodstream or normally sterile areas of the body, and the term "semi-critical device" includes any device that contacts intact mucous membranes but that does not ordinarily penetrate the blood barrier or otherwise enter normally sterile areas of the body.

The term "pesticide" applies to insecticides, herbicides, fungicides, rodenticides, and various other substances to control pests. The definition encompasses all uses of pesticides authorized under FIFRA.

Note: drugs used to control diseases of humans or animals (such as livestock or pets) are not considered pesticides; such drugs are regulated by the Food and Drug Administration (FDA). Fertilizers, nutrients, and other substances used to promote plant survival and health are not considered plant growth regulators and thus are not pesticides.

25. **"Point source"** means any discernible, confined, or discrete conveyance ... from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff [75-5-103(28), MCA and ARM 17.30.1304].
26. **"Pollutant"** means ...chemical wastes, biological materials, ... and industrial, municipal, and agricultural wastes discharged into water [ARM 17.30.1304].
27. **"Receiving stream"** means the river, stream, or creek, which receives the wastewater discharge from the construction activity.
28. **"Regional Administrator"** means the administrator of Region VIII of EPA, which has jurisdiction over federal water pollution control activities in the state of Montana.
29. **"Research and Development"** means activities undertaken on a systematic basis to gain new knowledge (research) and/or the application of research findings or other scientific knowledge for the creation of new or significantly improved products or processes (experimental development).
30. **"Single-county,"** means the general permit authorizing pesticide application within the boundaries of one county.
31. **"State waters"** means a body of water, irrigation system, or drainage system, either surface or underground [75-5-103, MCA]. The term does not apply to:
- (i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or
 - (ii) irrigation waters or land application disposal waters when the waters are used up within the irrigation or land application disposal system and the waters are not returned to state waters.

32. **"Surface waters"** means any waters on the earth's surface including, but not limited to, streams, lakes, ponds, and reservoirs; and irrigation and drainage systems discharging directly into a stream, lake, pond, reservoir, or other surface water. Waterbodies used solely for treating, transporting, or impounding pollutants shall not be considered surface water [ARM 17.30.602 and 17.30.702].

33. **"TMDL"** means the total maximum daily load limitation of a parameter, representing the estimated assimilative capacity for a water body before other designated uses are adversely affected. Mathematically, it is the sum of wasteload allocations for point sources, load allocations for non-point and natural background sources, and a margin of safety.

34. **"Treatment Area"** means the area of any waters to which pesticides are being applied. Multiple treatment areas may be located within a single "pest management area."

The "treatment area" includes the entire area, over water, where the pesticide application is intended to provide pesticidal benefits. In some instances, the treatment area will be larger than the area where pesticides are actually applied. For example, the treatment area for a stationary drip treatment into a canal should be calculated by multiplying the width of the canal by the length over which the pesticide is intended to control weeds. The treatment area for a lake or marine area is the water surface area where the application is intended to provide pesticidal benefits.

35. **"Unavoidable Discharge of Chemical Pesticides"** means the application of chemical pesticides to control pests that are present on or over surface water, including near such waters, where a portion of the pesticides will unavoidably be deposited into waters of the state. For any pesticide applied over water (e.g., adulticide mosquito control or aerial application of insecticides to a forest canopy where surface water may be present below the canopy), any pesticide or pesticide residue that is incidentally deposited in state surface waters is considered a pollutant since the intended purpose of the application is to target pests above the water but it was unavoidable that some of the application missed the pests and ended up in the water.

However, the PGP does not include "spray drift" – the airborne movement of pesticide sprays away from the target application site into a water of the state – or application of pesticides to terrestrial agriculture crops where storm water may pick up residual. As non-point sources, spray drift and stormwater runoff are not covered by the PGP.

36. **"Visual monitoring"** means an examination of the area of treatment to ensure treatment was successful and to ascertain whether an adverse impact occurred.

Appendix A: Notice of Intent