Rhode Island Pollutant Discharge Elimination System (RIPDES)
Pesticide General Permit (PGP)
for Discharges from the Application of Pesticides

May 2012

Expiration Date: June 21, 2017

Rhode Island Department of Environmental Management (RIDEM)
Office of Water Resources
RIPDES Program

RIG870000

AUTHORIZATION TO DISCHARGE UNDER THE
RHODE ISLAND POLLUTANT DISCHARGE ELIMINATION SYSTEM

PESTICIDE GENERAL PERMIT (PGP) FOR DISCHARGES
FROM THE APPLICATION OF PESTICIDES

In compliance with the provisions of Chapter 46-12 of the Rhode Island General Laws, as amended, except as provided in Part 1.1.2 of this permit, any Operator of a point source discharge of pollutants resulting from the application of pesticides, which is eligible for permit coverage under Part 1.1 and located in the State of Rhode Island, is authorized to discharge in accordance with the conditions and requirements set forth herein. Authorization to discharge shall be granted in accordance with Part 1.2 of this permit.

This general permit shall become effective thirty (30) days from the date of signature.

This general permit and the authorization to discharge expire at midnight, five years from the effective date.

Signed this 22nd day of May, 2012.

Angelo S. Liberti

Angelo S. Liberti, P.E.
Chief of Surface Water Protection
Office of Water Resources
Rhode Island Department of Environmental Management
Providence, Rhode Island

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1.0 Coverage under This Permit

This permit covers any Operator who meets the eligibility requirements identified in Part 1.1.

For the purpose of this permit, "Operator" is defined in Appendix A to mean any entity associated with the application of pesticides which results in a discharge to Waters of the State that either: (1) performs the application of a pesticide or who has day-to-day control of the application (i.e., they are authorized to direct workers to carry out those activities); or (2) has control over the decision to perform pesticide applications including the ability to modify those decisions. Operators identified in (1) above are referred to in this permit as "Applicators" while Operators identified in (2) are referred to in this permit as "Decision-makers". As defined, more than one Operator may be responsible for complying with this permit for any single discharge from the application of pesticides. All Operators are defined as either an Applicator, a Decision-maker, or both. When an Operator is both an Applicator and a Decision-maker, the Operator must comply with all applicable requirements imposed on both Applicators and Decision-makers. When the permit references all "Operators," both Applicators and Decision-makers must comply.

1.1 Eligibility

1.1.1 Activities Covered

This permit is available to Operators who discharge to Waters of the State from the application of (1) biological pesticides or (2) chemical pesticides that leave a residue (collectively called *pesticides*), when the pesticide application is for one of the following pesticide use patterns:

a. **Mosquito and Other Flying Insect Pest Control**— Pesticide applications to control public health/nuisance and other flying insect pests that develop or are present during a portion of their life cycle in or above standing or flowing water. Public health/nuisance and other flying insect pests in this use category include mosquitoes and black flies.

b. **Weed and Algae Pest Control**— Pesticide applications to control weeds, algae, and pathogens that are pests in water and at water's edge, including ditches and/or canals.

c. **Pest Control at Cranberry Bogs**— Pesticide applications to control pests in water and at water's edge at cranberry bogs. Pests in this use category include insects, pathogens, and weeds.

d. **Forest Canopy Pest Control**— Pesticide applications to a forest canopy to control the population of a pest species (e.g., insect or pathogen) where, to target the pests effectively, a portion of the pesticide unavoidably will be applied over and deposited to water.

Applications of "restricted use" and "state limited use" pesticides and applications of any pesticides made by "for-hire" applicators must be performed by a RIDEM Division of Agriculture licensed applicator. All pesticide applications shall be in accordance with the manufacturer's directions, existing pesticide use laws, and any conditions imposed by

RIDEM and other local agencies. Issuance this permit does not release the applicant from liability resulting from the negligent or reckless application of chemicals.

1.1.2 Limitations on Coverage

1.1.2.1 Discharges to Water Quality Impaired Waters

Except for discharges from pesticide applications made to restore water quality or that only degrade water quality on a short-term or temporary basis, Operators are not eligible for coverage under this permit for any discharges to Waters of the State if the water is identified as impaired by a substance which either is an active ingredient in the pesticide or is a degradate of an active ingredient in the pesticide. For purposes of this permit, impaired waters are those that have been identified by RIDEM in its most recent 303(d) list of impaired waters as not meeting applicable water quality standards and consists of both waters with approved Total Maximum Daily Loads (TMDLs) and waters for which an approved TMDL has not been established. A list of those waters is available at: http://www.dem.ri.gov/programs/benviron/water/quality/surfwq/index.htm.

1.1.2.2 Discharges to Waters Designated as Tier 2 ½ or Tier 3 for Antidegradation Purposes

Except for discharges from pesticide applications made to restore or maintain water quality or to protect public health or the environment that either do not degrade water quality or only degrade water quality on a short-term or temporary basis, Operators are not eligible for coverage under this permit for discharges to Waters of the State if the water is designated by RIDEM as Tier 2 ½ (Special Resource Protection Waters) or Tier 3 (Outstanding National Resource Waters) for antidegradation purposes under Appendix C of the Rhode Island Water Quality Regulations.

1.1.2.3 Endangered and Threatened Species and Critical Habitat Protection

Coverage under this permit is available only for discharges and discharge-related activities that will not adversely affect a listed or proposed to be listed endangered or threatened species or its critical habitat.

1.2 Authorization to Discharge under This Permit

1.2.1 How to Obtain Authorization

Operators that apply pesticides to control Other Flying Insects, Pests at Cranberry Bogs, and Forest Canopy Pests shall be authorized to discharge under this permit on the effective date of the permit and must comply with all of the requirements of this permit on its effective date.

Operators that apply pesticides to control mosquitoes and weeds and algae that have received the following RIDEM approvals to apply pesticides are automatically authorized to discharge under this permit upon receipt of the applicable RIDEM approval. Coverage will be available for the duration of the applicable RIDEM approval.

Use Category	Required RIDEM Approval
Mosquito Pest Control	Division of Agriculture
Weed and Algae Pest Control	Division of Agriculture

1.2.2 Terminating Coverage

RIDEM may require any operator covered under this permit to cease the application of pesticides at any time if RIDEM determines that the pesticide will be ineffective, will result in unreasonable restrictions on current water uses, or will produce unnecessary adverse side effects on non-target flora or fauna.

1.3 Alternative Permits

RIDEM may require Operators to apply for and/or obtain authorization to discharge under either an individual permit or an alternative general permit. If RIDEM requires an Operator to apply for another permit, RIDEM will notify the Operator in writing that a permit application is required.

1.4 Severability

Invalidation of a portion of this permit does not render the whole permit invalid.

1.5 Other Federal and State Laws

Operators must comply with all other applicable federal and state laws and regulations that pertain to the application of pesticides. This permit does not negate the requirements under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and its implementing regulations to use registered pesticides consistent with the product's labeling.

2.0 Technology-Based Effluent Limitations

This Part includes technology-based effluent limitations applicable to all Operators for any discharges authorized under this permit, with compliance required upon beginning such discharge. Applicators must perform the tasks identified in Part 2.1. Decision-makers must perform the tasks identified in Part 2.2. There may be instances when a single entity acts as both an Applicator and a Decision-maker.

If an Operator's discharge of pollutants results from the application of pesticide that is being used solely for the purpose of "pesticide research and development," as defined in Appendix A, the Operator must use such pesticide consistent with any applicable research plan and experimental use permit.

2.1 Applicators' Responsibilities – All Applicators must minimize the discharge of pesticides to Waters of the State from the application of pesticides, through the use of the following Pest Management Measures:

2.1.1 Use only the amount of pesticide and frequency of pesticide application necessary to control the target pest, using equipment and application procedures appropriate for this task.

2.1.2 Maintain pesticide application equipment in proper operating condition, including requirement to calibrate, clean, and repair such equipment and prevent leaks, spills, or other unintended discharges.

2.1.3 Assess weather conditions (e.g. temperature, precipitation and wind speed) in the treatment area to ensure application is consistent with all applicable federal requirements.

2.2 Decision-makers' Responsibilities

- All Decision-makers must minimize the discharge of pesticides to Waters of the State from the application of pesticides, through the use of Pest Management Measures. The Decision-maker must use only the amount of pesticide and frequency of pesticide application necessary to control the target pest.

2.2.1 Mosquito and Other Flying Insect Pest Control

Decision makers with discharges from the application of pesticides for mosquito and other flying insect pest control as defined in Part 1.1.1 should implement the following measures to ensure that the technology-based limits are met.

a. **Identify the Problem**. Prior to the first pesticide application covered under this permit that will result in a discharge to Waters of the State, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, Decision-makers must do the following for each pest management area:

   1. Establish densities for larval and adult mosquito or flying insect pest populations or identify environmental condition(s), either current or based on historical data, to serve as action threshold(s) for implementing Pest Management Measures;
   2. Identify target pest(s) to develop Pest Management Measures based on developmental and behavioral considerations for each pest;
   3. Identify known breeding sites for source reduction, larval control program, and habitat management;
   4. Analyze existing surveillance data to identify new or unidentified sources of mosquito or flying insect pest problems as well as sites that have recurring pest problems; and
   5. In the event there are no data for the pest management area in the past calendar year, use other available data as appropriate to meet the permit conditions in Part 2.2.1.a.

b. **Pest Management Options**. Prior to the first pesticide application covered under this permit that will result in a discharge to Waters of the State and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, the Decision-maker must select and implement efficient and effective means of Pest Management Measures that minimize discharges resulting from the application of pesticides. In developing the Pest Management Measures for each pest management area, the Decision-maker must evaluate the following management options, including a combination of these management options, considering impact to water quality, impact to non-target organisms, feasibility, and cost effectiveness:

   1. No action
   2. Prevention

3. Mechanical or physical methods
4. Cultural methods
5. Biological control agents
6. Pesticides

c. **Pesticide Use.** If a pesticide is selected to manage pests, and application of the pesticide will result in a discharge to Waters of the State, the Decision-maker must:

1. Conduct larval and/or adult surveillance in an area that is representative of the pest problem or evaluate existing larval surveillance data, environmental conditions, or data from adjacent areas prior to each pesticide application to assess the pest management area and to determine when the action threshold(s) is met;
2. Reduce the impact on the environment and on non-target organisms by applying the pesticide only when the action threshold(s) has been met;
3. In situations or locations where practicable and feasible for efficacious control, use larvicides as a preferred pesticide for mosquito or flying insect pest control when the larval action threshold(s) has been met; and
4. In situations or locations where larvicide use is not practicable or feasible for efficacious control, use adulticides for mosquito or flying insect pest control when the adult action threshold(s) has been met.

2.2.2 Weed and Algae Pest Control

Decision makers with discharges from the application of pesticides for the control of weeds and algae as defined in Part 1.1.1 should implement the following measures to ensure that the technology-based limits are met.

a. **Identify the Problem.** Prior to the first pesticide application covered under this permit that will result in a discharge to Waters of the State, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, the Decision-makers must do the following for each pest management area:

1. Identify areas with pest problems and characterize the extent of the problems, including, for example, water use goals not attained (e.g. wildlife habitat, fisheries, vegetation, and recreation);
2. Identify target pest(s);
3. Identify possible factors causing or contributing to the pest problem (e.g., nutrients, invasive species, etc);
4. Establish any pest- and site-specific action threshold for implementing Part 2.2.2.b; and
5. In the event there are no data for the pest management area in the past calendar year, use other available data as appropriate to meet the permit conditions in Part 2.2.2.a.

b. **Pest Management Options.** Prior to the first pesticide application covered under this permit that will result in a discharge to Waters of the State, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year,

the Decision-maker must select and implement efficient and effective means of Pest Management Measures that minimize discharges resulting from the application of pesticides. In developing the Pest Management Measures for each pest management area, the Decision-maker must evaluate the following management options, including a combination of these management options, considering impact to water quality, impact to non-target organisms, feasibility, and cost effectiveness:

1. No action
2. Prevention
3. Mechanical or physical methods
4. Cultural methods
5. Biological control agents
6. Pesticides

c. **Pesticide Use.** If a pesticide is selected to manage pests, and application of the pesticide will result in a discharge to Waters of the State, the Decision-maker must:

1. Conduct surveillance in an area that is representative of the pest problem prior to each pesticide application to assess the pest management area and to determine when the action threshold(s) is met; and
2. Reduce the impact on the environment and non-target organisms by applying the pesticide only when the action threshold has been met.

2.2.3 Pest Control at Cranberry Bogs

Decision makers with discharges from the application of pesticides for the control of pests at cranberry bogs as defined in Part 1.1.1 should implement the following measures to ensure that the technology-based limits are met.

a. **Identify the Problem.** Prior to the first pesticide application covered under this permit that will result in a discharge to Waters of the State, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, the Decision-maker must do the following for each pest management area:

1. Identify areas with pest problems and characterize the extent of the problems, including, for example, water use goals not attained (e.g. wildlife habitat, fisheries, vegetation, and recreation);
2. Identify target pest(s);
3. Identify possible factors causing or contributing to the problem (e.g., nutrients, invasive species);
4. Establish any pest- and site-specific action threshold for implementing Part 2.2.3.b; and
5. In the event there are no data for the pest management area in the past calendar year, use other available data as appropriate to meet the permit conditions in Part 2.2.3.a.

b. **Pest Management Options** Prior to the first pesticide application covered under this permit that will result in a discharge to Waters of the State, and at least once each

year thereafter prior to the first pesticide application during that calendar year, the Decision-maker must select and implement efficient and effective means of Pest Management Measures that minimize discharges resulting from the application of pesticides. In developing the Pest Management Measures for each pest management area, the Decision-maker must evaluate the following management options, including a combination of these management options, considering impact to water quality, impact to non-target organisms, feasibility, and cost effectiveness:

1. No action.
2. Prevention
3. Mechanical or physical methods
4. Biological control agents
5. Pesticides

c. **Pesticide Use.** If a pesticide is selected to manage pests and application of the pesticide will result in a discharge to Waters of the State, the Decision-maker must:

1. Conduct surveillance in an area that is representative of the pest problem prior to each application to assess the pest management area and to determine when the action threshold(s) is met; and
2. Reduce the impact on the environment and non-target organisms by evaluating site restrictions, application timing, and application method in addition to applying the pesticide only when the action threshold(s) has been met.

2.2.4 Forest Canopy Pest Control

Decision makers with discharges from the application of pesticides for forest canopy pest control as defined in Part 1.1.1 should implement the following measures to ensure that the technology-based limits are met.

a. **Identify the Problem**. Prior to the first pesticide application covered under this permit that will result in a discharge to Waters of the State, and at least once each calendar year thereafter prior to the first pesticide application in that calendar year, the Decision-maker must do the following for each pest management area:

1. Establish any pest- and site-specific action threshold for implementing Part 2.2.4.b;
2. Identify target pest(s) to develop Pest Management Measures based on developmental and behavioral considerations for each pest;
3. Identify current distribution of the target pest and assess potential distribution in the absence of Pest Management Measures; and
4. In the event there are no data for the pest management area in the past calendar year, use other available data as appropriate to meet the permit conditions in Part 2.2.4.a.

b. **Pest Management Options** Prior to the first pesticide application covered under this permit that will result in a discharge to Waters of the State, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, the Decision-maker must select and implement efficient and effective means of Pest

Management Measures that minimize discharges resulting from the application of pesticides. In developing the Pest Management Measures for each pest management area, the Decision-maker must evaluate the following management options, including a combination of these management options, considering impact to water quality, impact to non-target organisms, feasibility, and cost effectiveness:

1. No action
2. Prevention
3. Mechanical/physical methods
4. Cultural methods
5. Biological control agents
6. Pesticides

c. **Pesticide Use.** If a pesticide is selected to manage forestry pests, and application will result in a discharge to Waters of the State, the Decision-maker must:

1. Conduct surveillance in an area that is representative of the pest problem prior to each application to assess the pest management area and to determine when the pest action threshold is met;
2. Reduce the impact on the environment and non-target organisms by evaluating the restrictions, application timing, and application methods in addition to applying the pesticide only when the action threshold(s) has been met; and
3. Evaluate using pesticides against the most susceptible developmental stage.

3.0 Water Quality-Based Effluent Limitations

All Operators must control discharges as necessary to meet applicable numeric and narrative water quality standards, for any discharges authorized under this permit, with compliance required upon beginning such discharge. If at any time an Operator becomes aware (e.g., through self-monitoring or by notification from the state) or RIDEM determines that the Operator's discharge causes or contributes to an excursion of any applicable water quality standard, the Operator must take corrective action as required in Part 5 up to and including the ceasing of the discharge, if necessary.

4.0 Monitoring

4.1 Visual Monitoring Requirements for Pesticide Applicators

During any pesticide application with discharges authorized under this permit, all Applicators must, when considerations for safety and feasibility allow, visually assess the area to and around where pesticides are applied for possible and observable adverse incidents caused by application of pesticides, including the unanticipated death or distress of non-target organisms and disruption of wildlife habitat, recreational or municipal water use.

4.2 Visual Monitoring Requirements for all Operators

During any Operator post-application surveillance of any pesticide application with discharges authorized under this permit, all Operators must visually assess the area to and around where pesticides were applied for possible and observable adverse incidents caused by application of pesticides, including the unanticipated death or distress of non-target organisms and disruption of wildlife habitat, recreational or municipal water use.

5.0 Corrective Action

All Operators must comply with the provisions of Part 5 for any discharges authorized under this permit, with compliance required upon beginning such discharge.

5.1 Situations Requiring Revision of Pest Management Measures

Operators must review and, as necessary, revise the evaluation and selection of Pest Management Measures consistent with Part 2.1 and 2.2 for the following situations:

a. An unauthorized release or discharge associated with the application of pesticides (e.g., spill, leak, or discharge not authorized by this or another permit) occurs.

b. Operators become aware, or RIDEM concludes, that Pest Management Measures are not adequate/sufficient for the discharge to meet applicable water quality standards.

c. Any monitoring activities indicate failure to meet applicable technology-based effluent limitations in Part 2.

d. An inspection or evaluation of activities by a RIDEM official, or federal, local, state, or tribal entity, reveals that modifications to the Pest Management Measures are necessary to meet the effluent limitations in this permit.

e. Any Operator observes or is otherwise made aware of an adverse incident as defined in Appendix A.

5.2 Corrective Action Deadlines

If an Operator determines that changes to Pest Management Measures are necessary to eliminate any situation identified in Part 5.1, such changes must be made before or, if not practicable, as soon as possible after the next pesticide application that results in a discharge.

5.3 Effect of Corrective Action

The occurrence of a situation identified in Part 5.1 may constitute a violation of the permit. Correcting any situation identified in Part 5.1 does not absolve Operators of liability for any original violation. However, failure to comply with Part 5.2 constitutes an additional permit violation. RIDEM will consider the appropriateness and promptness of corrective action in determining enforcement responses to permit violations.

5.4 Adverse Incident Documentation and Reporting

5.4.1 Twenty-Four (24)-Hour Adverse Incident Notification

If an Operator observes or is otherwise made aware of an adverse incident, which may have resulted from a discharge from a pesticide application, the Operator must notify RIDEM by telephone within 24 hours of the Operator becoming aware of the adverse incident and must include at least the following information:

a. The caller's name and telephone number;

b. Operator name and mailing address;

c. The name and telephone number of a contact person, if different than the person providing the 24-hour notice;

d. How and when the Operator became aware of the adverse incident;

e. Description of the location of the adverse incident;

f. Description of the adverse incident identified and the pesticide product, including EPA pesticide registration number, for each product applied in the area of the adverse incident;

g. Description of any steps the Operator has taken or will take to correct, repair, remedy, clean up, or otherwise address any adverse effects; and

The adverse incident notification and reporting requirements under this permit do not satisfy any reporting requirements under other Regulations or laws, including FIFRA.

5.4.2 Thirty (30)-Day Adverse Incident Written Report

Within 30 days of an adverse incident, Operators must provide a written report of the adverse incident to the RIDEM. The adverse incident report must include at least the following information:

a. Information required to be provided in Part 5.4.1;

b. Date and time the Operator contacted RIDEM of the adverse incident, who the Operator spoke with at RIDEM, and any instructions received from RIDEM;

c. Location of incident, including the names of any waters affected and appearance of those waters (sheen, color, clarity, etc);

d. A description of the circumstances of the adverse incident including species affected, estimated number of individual and approximate size of dead or distressed organisms;

e. Magnitude and scope of the affected area (e.g., aquatic square area or total stream distance affected);

f. Pesticide application rate; intended use site (e.g., on the bank, above waters, or directly to water); method of application; and the name of pesticide product and EPA registration number;

g. Description of the habitat and the circumstances under which the adverse incident occurred (including any available ambient water data for pesticides applied);

h. If laboratory tests were performed, an indication of which test(s) were performed, and when; additionally, a summary of the test results must be provided within 5 days after they become available if not available at the time of submission of the 30-day report;

i. Description of actions to be taken to prevent recurrence of adverse incidents; and

j. Signature, date, and certification in accordance with Appendix B.

5.5 Reportable Spills and Leaks

5.5.1 Spill, Leak, or Other Unpermitted Discharge Notification

Where a leak, spill, or other release into Waters of the State containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity occurs, the Operator must notify the RIDEM immediately. Contact information must be in locations that are readily accessible and available in the area where the spill, leak, or other unpermitted discharge may occur.

5.5.2 Thirty-Day Spill, Leak, or Other Unpermitted Discharge Documentation

If an Operator becomes aware of a spill, leak, or other unpermitted discharge which triggers the notification in Part 5.5.1 and results in an adverse incident, then the Operator must report the incident per the guidelines in Part 5.4. If the spill, leak, or other unpermitted discharge triggers the notification in Part 5.5.1, but does not result in an adverse incident, then the Operator must document and retain the following information within 30 days of becoming aware of the situation:

a. Summary of corrective action taken or to be taken including date initiated and date completed or expected to be completed; and

b. Any measures to prevent recurrence of such a spill or leak or other discharge, including notice of whether PDMP modifications are required as a result of the spill or leak.

5.6 Other Corrective Action Documentation

For situations identified in Part 5.1, other than for adverse incidents (addressed in Part 5.4), or reportable spills or leaks (addressed in Part 5.5), Operators must document the situation triggering corrective action and planned corrective action within 30 days of becoming aware of that situation, and retain a copy of this documentation. This documentation must include the following information:

a. Identification of the condition triggering the need for corrective action review, including any ambient water quality monitoring that assisted in determining that discharges did not meet water quality standards;

b. Brief description of the situation;

c. Date the problem was identified;

d. Brief description of how the problem was identified, how the Operator learned of the situation, and date the Operator learned of the situation;

e. Summary of corrective action taken or to be taken, including date initiated and date completed or expected to be completed; and

f. Any measures to prevent reoccurrence of such an incident, including notice of whether PDMP modifications are required as a result of the incident.

6.0 Recordkeeping

Operators must keep written records for all discharges covered under this permit. These records must be accurate and complete to demonstrate the Operator's compliance with the conditions of this permit. Operators may rely on records and documents developed for other obligations, such as requirements under FIFRA, and state or local pesticide programs, provided that all requirements of this permit are satisfied.

6.1. Recordkeeping For All Operators - Operators must keep the following records:

a. A copy of any Adverse Incident Reports;

b. Rationale for any determination that reporting of an identified adverse incident is not required;

c. A copy of any corrective action documentation; and,

d. A copy of any spill and leak or other unpermitted discharge documentation

6.2. Recordkeeping for All Operators who are For-Hire Applicators –

Any Operator who is a For-Hire Applicator must retain the following records:

a. Documentation of equipment calibration; and

b. Information on each treatment area to which pesticides are discharged, including:

1. Description of each treatment area, including location and size (acres or linear feet) of treatment area and identification of any waters, either by name or by location, to which pesticide(s) are discharged;
2. Pesticide use pattern(s) (i.e., mosquito and other flying insects, weed and algae, animal pest, or forest canopy);
3. Target pest(s);
4. Name of each pesticide product used including the EPA registration number;
5. Quantity of each pesticide product applied to each treatment area;
6. Pesticide application date(s); and
7. Whether or not visual monitoring was conducted during pesticide application and/or post-application and if not, why not and whether monitoring identified any possible or observable adverse incidents caused by application of pesticides.

6.3 Retention of Records for All Operators –

Operators must retain any records required under this permit for at least five (5) years after the Operator's coverage under this permit expires or is terminated. Operators must make available to RIDEM, including an authorized representative of RIDEM, all records kept under this permit upon request and provide copies of such records, upon request.

7.0 RIDEM Mailing Addresses

Signed copies of these, and all other reports required herein, shall be submitted to:

Rhode Island Department of Environmental Management
RIPDES Program
235 Promenade Street
Providence, Rhode Island 02908

Appendix A - Definitions

Action Threshold – the point at which pest populations or environmental conditions necessitate that pest control action be taken based on economic, human health, aesthetic, or other effects. An action threshold may be based on current and/or past environmental factors that are or have been demonstrated to be conducive to pest emergence and/or growth, as well as past and/or current pest presence. Action thresholds are those conditions that indicate both the need for control actions and the proper timing of such actions.

Active Ingredient – any substance (or group of structurally similar substances if specified by the Agency) that will prevent, destroy, repel or mitigate any pest, or that functions as a plant regulator, desiccant, or defoliant within the meaning of FIFRA sec. 2(a). [40 CFR 152.3] Active ingredient also 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 the production of such a pesticidal substance.

Adverse Incident – means an unusual or unexpected incident that an Operator has observed upon inspection or of which the Operator otherwise become aware, in which:

(1) There is evidence that a person or non-target organism has likely 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 Waters of the United States 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
- 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 from direct contact with or as a secondary effect from a discharge (e.g., sickness from consumption of plants or animals containing pesticides) to Waters of the United States that are temporally and spatially related to exposure to a pesticide residue (e.g., vomiting, lethargy).

Applicator – any entity who performs the application of a pesticide or who has day-to-day control of the application (i.e., they are authorized to direct workers to carry out those activities) that results in a discharge to Waters of the United States.

Biological Control Agents – these agents are organisms that can be introduced to Operator sites, such as herbivores, predators, parasites, and hyperparasites.

Biological Pesticides (also called biopesticides) – include microbial pesticides, biochemical pesticides 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 desiccant, that (1) is a eukaryotic microorganism including, but not limited to, protozoa, algae, and fungi; (2) is a prokaryotic microorganism, including, but not limited to, Eubacteria and Archaebacteria; 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.

Chemical Pesticides – all pesticides not otherwise classified as biological pesticides.

Cultural Methods – manipulation of the habitat to increase pest mortality by making the habitat less suitable to the pest.

Decision-maker – 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.

Decision-maker Who is or Will be Required to Submit an NOI – any Decision-maker covered under the PGP who knows or should have known that an NOI will be required for those discharges. Excluded from this definition are those activities for which an NOI is required based solely on that Decision-Maker exceeding an annual treatment area threshold.

Declared Pest Emergency Situation – an event defined by a public declaration by a federal agency, state, or local government of a pest problem determined to require control through application of a pesticide beginning less than ten days after identification of the need for pest control. This public declaration may be based on:

(1) Significant risk to human health;

(2) Significant economic loss; or

(3) Significant risk to:

- (i) Endangered species,
- (ii) Threatened species,
- (iii) Beneficial organisms, or
- (iv) The environment.

Director –the director of the Department of Environmental Management or any subordinate or subordinates to whom he delegated the powers and duties vested in him by these regulations.

Discharge – when used without qualification, means the "discharge of a pollutant."

Discharge of a pollutant – any addition of any "pollutant" or combination of pollutants to "waters of the State" from any "point sources"

EPA Approved or Established Total Maximum Daily Loads (TMDLs) – "EPA Approved TMDLs" are those that are developed by a State and approved by EPA. "EPA Established TMDLs" are those that are issued by EPA.

Facility or Activity – any point source or any other activity (including land or appurtenances thereto) that is subject to regulation under the RIPDES permit program.

Federal Facility – any buildings, installations, structures, land, public works, equipment, aircraft, vessels, and other vehicles and property, owned, operated, or leased by, or constructed or manufactured for the purpose of leasing to, the federal government.

For-Hire Applicator – includes persons who make contractual pesticide applications for which they or their employer receives compensation (e.g., lawn care firms, pest control companies).

Impaired Water (or "Water Quality Impaired Water" or "Water Quality Limited Segment") – a water is impaired for purposes of this permit if it has been identified by a State, Tribe or EPA pursuant to Section 303(d) of the Clean Water Act as not meeting applicable State or Tribal water quality standards (these waters are called "water quality limited segments" under 40 CFR 130.2(j)). Impaired waters include both waters with approved or established TMDLs, and those for which a TMDL has not yet been approved or established.

Indian Country – (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; (b) all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. This definition includes all land held in trust for an Indian tribe.

Inert Ingredient – any substance (or group of structurally similar substances if designated by the Agency), other than an active ingredient, that is intentionally included in a pesticide product,. [40 CFR 152.3] Inert ingredient also means any substance, such as a selectable marker, other than the active ingredient, where the substance is used to confirm or ensure the presence of the active ingredient, and includes the genetic material necessary for the production of the substance, provided that genetic material is intentionally introduced into a living plant in addition to the active ingredient.

Large Entity - any entity that is not a "small entity."

Mechanical/Physical Methods - mechanical tools or physical alterations of the environment, for pest prevention or removal.

Minimize – to reduce and/or eliminate pesticide discharges to waters of the United States through the use of Pest Management Measures to the extent technologically available and economically practicable and achievable.

NMFS Listed Resources of Concern – federally-listed endangered and threatened species and federally-listed critical habitat for which NMFS' 2011 *Endangered Species Act Section 7 Consultation Biological Opinion on the U.S. Environmental Protection Agency's Proposed Pesticides General Permit* concluded the interim final permit, absent any additional mitigating measures, would either jeopardize the continued existence of such species or destroy or adversely modify such critical habitat. The Biological Opinion included a Reasonable and Prudent Alternative, implemented through this permit, to avoid likely jeopardy to listed species or adverse modification of critical habitat. Additional information, including maps noting where these resources overlap with PGP areas of coverage is available at www.epa.gov/npdes/pesticides.

Non-target Organisms – includes the plant and animal hosts of the target species, the natural enemies of the target species living in the community, and other plants and animals, including vertebrates, living in or near the community that are not the target of the pesticide.

Operator – for the purpose of this permit, means any entity associated with the application of pesticides which results in a discharge to Waters of the United States that meets either of the following two criteria:

(i) any entity who performs the application of a pesticide or who has day-to-day control of the application (i.e., they are authorized to direct workers to carry out those activities); or

(ii) any entity with control over the decision to perform pesticide applications including the ability to modify those decisions.

Person – an individual, association, partnership, corporation, municipality, State or Federal agency, or an agent or employee thereof.

Pest – Consistent with 40 CFR 152.5, 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)).

Pest Management Area – The area of land, including any water, for which an Operator has responsibility and is authorized to conduct pest management activities as covered by this permit (e.g., for an Operator who is a mosquito control district, the pest management area is the total area of the district).

Pest Management Measure – any practice used to meet the effluent limitations that comply with manufacturer specifications, industry standards and recommended industry practices related to the application of pesticides, relevant legal requirements and other provisions that a prudent Operator would implement to reduce and/or eliminate pesticide discharges to waters of the United States.

Pesticide – means (1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, (2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, and (3) 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 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(x) of such Act (21 U.S.C. 321(x)) 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 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 which 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 used to control pests. The definition encompasses all uses of pesticides authorized under FIFRA including uses authorized under sections 3 (registration), 5 (experimental use permits), 18 (emergency exemptions), 24(c) (special local needs registrations), and 25(b) (exemptions from FIFRA).

Note: drugs used to control diseases of humans or animals (such as livestock, fishstock and pets) are not considered pesticides; such drugs are regulated by the Food and Drug Administration. Fertilizers, nutrients, and other substances used to promote plant survival and health are not considered plant growth regulators and thus are not pesticides. Biological control agents, except for certain microorganisms, are exempted from regulation under FIFRA. (Biological control agents include beneficial predators such as birds or ladybugs that eat insect pests, parasitic wasps, fish, etc).

This permit uses the term "pesticide" when referring to the "pesticide, as applied." When referring to the chemical in the pesticide product with pesticidal qualities, the permit uses the term "active ingredient."

Pesticide Product – a pesticide in the particular form (including composition, packaging, and labeling) in which the pesticide is, or is intended to be, distributed or sold. The term includes any physical apparatus used to deliver or apply the pesticide if distributed or sold with the pesticide.

Pesticide Research and Development – 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).

Pesticide Residue – includes that portion of a pesticide application that is discharged from a point source to Waters of the US and no longer provides pesticidal benefits. It also includes any degradates of the pesticide.

Point source – any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel, or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

Pollutant – dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. For purposes of this definition, a "biological pesticide" is considered a "biological material," and any "pesticide residue" resulting from use of a "chemical pesticide" is considered a "chemical waste."

Small Entity - any (1) private enterprise that does not exceed the Small Business Administration size standard as identified at 13 CFR 121.201, or (2) local government that serves a population of 10,000 or less.

Target Pest – the organism(s) toward which pest management measures are being directed.

Tier 3 Waters – for antidegradation purposes, pursuant to 40 CFR 131.12(a)(3), Tier 3 waters are identified by States or Tribes as having high quality waters constituting an Outstanding National Resource Water (ONRW), which may include waters of National Parks and State Parks, wildlife refuges, and waters of exceptional recreational or ecological significance.

Total Maximum Daily Loads (TMDLs) – a TMDL is a calculation of the maximum amount of a pollutant that a water body can receive and still meet water quality standards, and an allocation of that amount to the pollutant's sources. A TMDL includes wasteload allocations (WLAs) for point source discharges; load allocations (LAs) for nonpoint sources and/or natural background, and must include a margin of safety (MOS) and account for seasonal variations.

Treatment Area – the entire area, whether over land or water, where a pesticide application is intended to provide pesticidal benefits within the pest management area. 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 includes the entire width and length of the canal over which the pesticide is intended to control weeds. Similarly, the treatment area for a lake or marine area is the water surface area where the application is intended to provide pesticidal benefits.

Waters of the State – all surface water and groundwater of the State of Rhode Island, including all tidewaters, territorial seas, wetlands, land masses partially or wholly submerged in water, and both inter-and intrastate bodies of water which are, have been or will be used in commerce, by industry, for the harvesting of fish and shellfish or for recreational purposes.

Water Quality Impaired – See 'Impaired Water'.

Water Quality Standards – the physical, chemical, biological and esthetic characteristics of a water body as described by State water quality criteria or the water quality which would result from existing discharges under design conditions, whichever is more stringent as determined by the Department.

Wetlands – those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

Appendix B - Standard Permit Conditions

A. Duty to Comply. The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of Chapter 46-12 of the Rhode Island General Laws and the CWA and is grounds for enforcement action which may include permit termination, revocation and reissuance, modification, or for the denial of a permit renewal application and the imposition of penalties.

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

2. Section 309 of the CWA provides significant penalties for any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318 or 405 of the CWA or any permit condition or limitation implementing any such sections in a permit issued under Section 402 of the CWA. Any person who violates any condition of this permit is subject to a civil penalty of up to $25,000 per day of such violation, as well as any other appropriate sanctions provided by Section 309 of the CWA. Section 309(c)(-4) of the CWA provides that any person who knowingly makes any false material statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including reports of compliance or noncompliance shall, upon conviction, be punished by a fine of up to $10,000 or by imprisonment of not more than two (2) years, or by both.

3. Chapter 46-12 of the Rhode Island General Laws provides that any person who violates a permit condition is subject to a civil penalty of not more than $25,000 per day of such violation. Any person who willfully or negligently violates a permit condition is subject to a criminal penalty of not more than $25,000 per day of such violation and imprisonment for not more than five (5) years, or both. Any person who knowingly makes any false statement in connection with the permit is subject to a criminal penalty of not more than $5,000 for each instance of violation or by imprisonment for not more than thirty (30) days, or both.

B. Duty to Reapply. Except as otherwise provided for in Part 1.2.4 of the permit, if an Operator wishes to continue an activity regulated by this permit after the expiration date of this permit, the Operator must apply for and obtain authorization as required by the new permit once EPA issues it.

C. Need to Halt or Reduce Activity Not a Defense. It shall not be a defense for an operator 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. Operators 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. Duty to Provide Information. Operators shall furnish to RIDEM, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking, and reissuing, or terminating this permit, or to determine compliance with this permit. Operators shall furnish to RIDEM any copies that are required to be kept as part of this permit.

F. Signatory Requirements. All Notices of Intent, reports, certifications or information either submitted to RIDEM, or that this permit requires to be maintained by the operator, shall be signed and certified in accordance with Rule 12 of the RIPDES regulations. Rhode Island General Laws, Chapter 46-12 provides that any person who knowingly makes an false statements, 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 up to $25,000 per violation, or by imprisonment for not more than thirty (30) days per violation, or by both.

G. Release in Excess of Reportable Quantities. If a release in excess of reportable quantities occurs, the operator must notify the RIDEM immediately. This permit does not relieve the operator of the reporting requirements of 40 CFR 117 and 40 CFR 302.

H. Property Rights. The issuance of this permit does not convey any property rights of any sort, nor any exclusive privileges, nor does it authorize any injury to private property nor any invasion of personal rights, nor any infringement of Federal, State, or local laws or regulations.

I. 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.

J. State Laws. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the operator from any responsibilities, liabilities, or penalties established pursuant to any applicable State law.

K. Proper Operations and Maintenance. The operator shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the operator to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. Proper operation and maintenance requires the operations of backup or auxiliary facilities or similar systems, installed by an operator only when necessary to achieve compliance with the conditions of the permit.

L. Monitoring and Records

1. Samples and measurements taken for the purpose of monitoring shall be representative of the volume and nature of the discharge over the sampling and reporting period.

2. Operators shall retain records of all monitoring including all calibration and maintenance records and all original strip chart recordings from continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least five (5) years from the date the permit expires or is terminated. This period may be extended by request of the RIDEM at any time.

3. Records of monitoring information shall include:

    a. The date, exact place, and time of sampling or measurements;

    b. The individual(s) who performed the sampling or measurements;

    c. The date(s) analyses were performed;

    d. The individual(s) who performed the analyses;

    e. The analytical techniques or methods used; and

    f. The results of such analyses.

4. Monitoring must be conducted according to test procedures approved under 40 CFR 136 and applicable Rhode Island regulations, unless other test procedures have been specified in this permit.

5. The CWA provides that any person who falsifies, tampers with, or knowingly renders inaccurate, any monitoring device or method required to be maintained under this permit shall upon conviction, be punished by a fine of up to $27,500 per violation or by imprisonment for not more than six months per violation, or by both. Chapter 46-12 of the Rhode Island General Laws also provides that such acts are subject to a fine of up to $25,000 per violation, or by imprisonment for not more than thirty (30) days per violation, or by both.

M. Upset Conditions

1. Definition. Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the Operator's reasonable control. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation. See 40 CFR 122.41(n)(1).

2. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of Appendix B, Subsection M.3 are met. Any determination made during administrative review of claims that noncompliance was caused by an upset, and before an action for noncompliance, is not final administrative action subject to judicial review. See 40 CFR 122.41(n)(2).
3. Conditions necessary for a demonstration of upset. See 40 CFR 122.41(n)(3). An Operator who wishes to establish the affirmative defense for an upset must demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that
    a. An upset occurred and that the Operator can identify the cause(s) of the upset;
    b. The permitted activity was at the time being properly operated; and
    c. The Operator submitted notice of the upset as required in Appendix B, Subsection U.5.b (24 hour notice).
    d. The Operator complied with any remedial measures required under Appendix B, Subsection D.
4. Burden of proof. In any enforcement proceeding, the Operator, as the one seeking to establish the occurrence of an upset, has the burden of proof. See 40 CFR 122.41(n)(4).

N. Inspection and Entry. Operators shall allow the RIDEM or an authorized representative of DEM, upon presentation of credentials and other documents as may be required by law, to:

1. Enter upon the operator'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, or operations regulated or required under this permit; and

4. Sample or monitor any substances or parameters at any location, at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the CWA or Rhode Island General Law.

O. Permit Actions. This permit may be modified, revoked and reissued, or terminated for cause, including but not limited to: violation of any terms or conditions of this permit; obtaining the permit by misrepresentation or failure to disclose all relevant facts; or a change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge. The filing of a request by the operator for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

P. Requiring an Individual Permit or an Alternative General Permit

1. The Director of RIDEM may require any operator authorized to discharge under this permit to apply for and obtain either an individual or an alternative RIPDES general permit. Any interested person may petition the RIDEM to take action under this paragraph. RIDEM may determine at its own discretion that an individual or an alternative general permit is required.

2. Any operator authorized to discharge by this permit may request to be excluded from coverage of this permit by applying for an individual permit. The operator shall submit an individual application with reasons supporting the request to the RIDEM. The request may be granted by issuance of an individual permit or an alternative general permit, if the reasons cited by the operator are adequate to support the request. RIDEM shall notify the permittee within a timely fashion as to whether or not the request has been granted.

3. If an operator requests or is required to obtain coverage under an individual or an alternative general permit, then authorization to discharge under this permit shall automatically be terminated on the date of issuance of the individual or the alternative general permit. Until such time as an alternative permit is issued, the existing general permit remains fully in force.

Q. Reopener Clause. RIDEM reserves the right to make appropriate revisions to this permit in order to incorporate any appropriate effluent limitations, schedules of compliance, or other provisions which may be authorized under the CWA or State Law. In accordance with Rule 15 and 23 of the RIPDES Regulations, if any effluent standard or prohibition, or water quality standard is promulgated under the CWA or under State Law which is more stringent than any limitation on the pollutants limited in this permit, or controls pollutants not limited in the permit; then RIDEM may promptly reopen the permit and modify or revoke and reissue the permit to conform to the applicable standard.

R. Availability of Reports. Except for data determined to be confidential under Part S. below, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the DEM at 235 Promenade Street, Providence Rhode Island. As required by the CWA, effluent data shall not be considered confidential. Knowingly making any false statement on any such report may result in the imposition of criminal penalties as provided for in Section 309 of the CWA and under section 46-12-14 of the Rhode Island General Laws.

S. Confidentiality of Information

1. Any information submitted to DEM pursuant to these regulations may be claimed as confidential by the submitter, consistent with Rhode Island General Law 38-2-2. Any such claim must be asserted at the time of the submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "confidential business information" on each page containing such

information. If no claim is made at the time of submission, DEM may make the information available to the public without further notice.

2. Claims of confidentiality for the following information will be denied:

    a. The name and address of any permit application or permittee;

    b. Permit applications, permits and any attachments thereto; and

    c. RIPDES effluent data.

T. Right to Appeal. Within thirty (30) days of receipt of notice of final authorization, the operator or any interested person may submit a request to the RIDEM for an adjudicatory hearing to appeal the decision to be covered under the general permit. The request for a hearing must conform to the requirements of the RIPDES Regulations.

U. Reporting Requirements

1. Anticipated noncompliance. Operators must give advance notice to RIDEM of any planned changes in the permitted activity which may result in noncompliance with permit requirements.
2. Transfers. This permit is not transferable to any person except after notice to RIDEM. Where an Operator wants to transfer coverage under the permit to a new Operator, the original Operator (i.e., the first Operator) must submit a Notice of Termination pursuant to Part 1.2.5. The new Operator must submit a NOI in accordance with Part 1.2.
3. Pesticide Monitoring Reports. This permit does not require Operators to report monitoring results routinely; however, EPA may, pursuant to Part 1.2.3, require certain Operators to monitor and report such results. In such instances, the following provisions apply.
    a. Monitoring data must be submitted to RIDEM at the appropriate address identified in Part 8.
    b. If an Operator monitors any pollutant more frequently than required using test procedures approved under 40 CFR Part 136 or as otherwise specified by RIDEM, the results of this monitoring must be included in reporting of monitoring data submitted to RIDEM.
    c. Calculations for all limitations that require averaging of measurements must use an arithmetic mean unless otherwise specified by RIDEM.
4. Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit must be submitted no later than 14 days following each schedule date.
5. Twenty-four hour reporting.

a. In addition to adverse incident and spill reporting requirements in Parts 6.4 and 6.5, respectively, Operators must report any noncompliance which may endanger health or the environment. Any information must be provided orally within 24 hours from the time the Operator becomes aware of the circumstances. A written submission must also be provided within 5 days of the time the Operator becomes aware of the circumstances. The written submission must contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

b. For purposes of this permit, Operators must submit a 24-hour report under this section for any upset, as defined in Appendix B, which exceeds any effluent limitation in the permit.

c. RIDEM may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

6. Other noncompliance. Operators must report all instances of noncompliance at the time any applicable annual or monitoring reports are submitted. The reports must contain the information listed in Appendix B, Subsection U.5.a.

7. Other information. Where an Operator becomes aware of its failure to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Permitting Authority, the Operator must promptly submit such facts or information.

Rhode Island Pollutant Discharge Elimination System (RIPDES)
Pesticide General Permit (PGP)
for Point Source Discharges to
Waters of the State from
the Application of Pesticides

Fact Sheet

Rhode Island Department of Environmental Management (RIDEM)
Office of Water Resources
RIPDES Program

May 2012

Background

In accordance with Chapter 46-12 of the Rhode Island General Laws, the discharge of pollutants into Waters of the State via a point source discharge is prohibited unless in compliance with the terms and conditions of a RIPDES permit issued in accordance with State Regulations. The RIPDES program relies on two types of permits: individual and general.

An individual permit is a permit specifically tailored for an individual discharger or situation that requires individual consideration. Upon receiving the appropriate permit application(s), RIDEM develops a draft permit for public comment for that particular discharger based on the information contained in the permit application (e.g., type of activity, nature of discharge, receiving water quality). Following consideration of public comments, a final permit is then issued to the discharger for a specific time period (not to exceed 5 years) with a provision for reapplying for further permit coverage prior to the expiration date.

In contrast, a general permit covers multiple facilities/sites/activities within a specific category for a specific period of time (not to exceed 5 years). For general permits, RIDEM develops and issues the permit in advance, with dischargers then obtaining coverage under the permit. A general permit is also subject to public comment prior to issuance. The primary benefit of using a general permit, as opposed to issuing several individual permits, is that it would streamline the permitting process allowing the use of pesticides to proceed without any unnecessary delays, while affording equal environmental protection. As opposed to individual permits, the general permit does not require a public notice each time a specific discharge is authorized. The permit's streamlining would reduce the application period, thereby effectively allowing RIDEM to respond quicker to environmental concerns and produce savings to potential applicants.

Under Rule 32 of the Regulations for the Rhode Island Pollutant Discharge Elimination System (the RIPDES Regulations), general permits may be written to cover categories of point sources having common elements, such as facilities that involve the same or substantially similar types of operations, that discharge the same types of wastes, or that are more appropriately regulated by a general permit. Given the number of pesticide operations requiring permit coverage and the discharges common to these operations, RIDEM believes that it makes administrative sense to issue a general permit, rather than issuing individual permits to each Operator. This approach is consistent with the approach that the United States Environmental Protection Agency (EPA) has selected for its permitting of these types of discharges in states and territories for which EPA is the permitting authority. Courts have approved of the use of general permits - See e.g., *Natural Res. Def. Council v. Costle*, 568 F.2d 1369 (D.C. Cir. 1977); *EDC v. US EPA*, 344 F.3d 832, 853 (9th Cir. 2003).

History of Pesticide Application Regulation

The sale, distribution, and use of pesticides in the United States is regulated under the statutory framework of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) to ensure that, when used in conformance with FIFRA labeling directions, pesticides will not pose unreasonable risks to human health and the environment. All new pesticides must undergo a registration procedure under FIFRA during which EPA assesses a variety of potential human health and environmental effects associated with use of the product. Under FIFRA, EPA is required to consider the effects of pesticides on the environment by determining, among other things, whether a pesticide "will perform its intended function without unreasonable adverse effects on the environment" and whether "when used in accordance with widespread and commonly recognized practice [the pesticide] will not generally cause unreasonable adverse effects on the environment." - 7 U.S.C. 136a(c)(5). In performing this analysis, EPA examines the ingredients of a pesticide, the intended type of application site and directions for use, and supporting scientific studies for human health and environmental effects and exposures. The applicant for registration of the pesticide must provide specific data from tests done according to EPA guidelines.

When EPA approves a pesticide for a particular use, the Agency imposes restrictions through labeling requirements governing such use. The restrictions are intended to ensure that the pesticide serves an intended purpose and avoids unreasonable adverse effects. It is illegal under Section 12(a)(2)(G) of FIFRA to use a registered pesticide in a manner inconsistent with its labeling. Rhode Island has authority to enforce the FIFRA pesticide sale, distribution, and use requirements under Rhode Island General Law (RIGL) 23-25, also known as the Pesticide Control Act. The Pesticide Control Act and FIFRA give the State authority to prosecute pesticide misuse when it occurs.

Court Decisions leading to the Clean Water Act (CWA) regulation of Pesticide Applications

Over the past ten years, several courts addressed the question of whether the CWA requires National Pollutant Discharge Elimination System (NPDES) permits for pesticide applications. In 2001, the United States Court of Appeals for the Ninth Circuit held in Headwaters, Inc. v. Talent Irrigation District (Talent) that an applicator of herbicides was required to obtain a NPDES permit under the circumstances before the court - 243 F.3rd 526 (9th Cir. 2001). The Talent decision caused considerable confusion among public health authorities, natural resource managers, and others who rely on pesticides regarding their potential obligation to obtain a NPDES permit when applying a pesticide consistent with FIFRA.

In 2002, the Ninth Circuit in League of Wilderness Defenders et al. v. Forsgren (Forsgren) held that the application of pesticides to control Douglas Fir Tussock Moths in National Forest lands required a NPDES permit - 309 F.3d 1181 (9th Cir. 2002). The court in Forsgren did not analyze the question of whether the pesticides applied were pollutants, because it assumed that the parties agreed that they were. In fact, the United States expressly reserved its arguments on that issue in its brief to the District Court - Id. at 1184, n.2. The court instead analyzed the question of whether the aerial application of the pesticide constituted a point source discharge, and concluded that it did - Id. at 1185.

The Second Circuit Court of Appeals addressed the applicability of the CWA's NPDES permit requirements to pesticide applications. In Altman v. Town of Amherst (Altman), the court vacated and remanded for further development of the record a District Court decision holding that the Town of Amherst was not required to obtain a NPDES permit to spray mosquitocides over Waters of the United States - 47 Fed. Appx. 62, 67 (2nd Cir. 2002). In its opinion, the Second Circuit stated that "[u]ntil the EPA articulates a clear interpretation of current law – among other things, whether properly used pesticides released into or over water of the United States can trigger the requirement for NPDES permits * * * – the question of whether properly used pesticides can become pollutants that violate the CWA will remain open." - Id. at 67.

In Fairhurst v. Hagener, the Ninth Circuit again addressed the CWA's applicability to pesticide applications. The court held that pesticides applied directly to a lake in order to eliminate non-native fish species, where there are no residues or unintended effects, are not "pollutants" under the CWA because they are not chemical wastes - 422 F.3d 1146 (9th Cir. 2005).

On November 27, 2006, EPA issued a final rule (hereinafter called the "2006 NPDES Pesticides Rule") clarifying two specific circumstances in which a NPDES permit was not required to apply pesticides to or around water. They were: 1) the application of pesticides directly to water to control pests; and 2) the application of pesticides to control pests that are present over, including near, water where a portion of the pesticides will unavoidably be deposited to the water to target the pests, provided that the application is consistent with relevant FIFRA requirements in both instances. The rule became effective on January 26, 2007.

On January 19, 2007, EPA received petitions for review of the 2006 NPDES Pesticides Rule from environmental and industry groups. Petitions were filed in eleven circuit courts with the case, National Cotton Council, et al, v. EPA, assigned to the Sixth Circuit Court of Appeals. On January 7, 2009, the Sixth Circuit vacated EPA's 2006 NPDES Pesticides Rule under a plain language reading of the CWA. National Cotton Council of America v. EPA - 553 F.3d 927 (6th Cir., 2009). The Court held that the CWA unambiguously includes "biological pesticides" and "chemical pesticides" with residuals within its definition of "pollutant." Specifically, an application of chemical pesticides that leaves no excess portion is not a discharge of a pollutant, and the applicator need not obtain a NPDES permit. However, chemical pesticide residuals are pollutants as applied if they are discharged from a point source for which NPDES permits are required. Biological pesticides on the other hand are always considered a pollutant under the CWA regardless of whether the application results in residuals or not and require a NPDES permit for all discharges from a point source.

In response to the Court's decision, EPA proposed a general permit on June 4, 2010 to cover certain discharges resulting from pesticide applications. EPA's final permit became effective October 31, 2011.

RIDEM's Office of Water Resources and Division of Agriculture have developed a general permit that meets the goals and objectives of EPA's final permit but does not result in an undue regulatory burden. RIDEM's general permit recognizes instances where existing state regulations and programs adequately control the application of pesticides and therefore differs from the EPA final permit. Key differences are that submittal of a Notice of Intent (NOI) is not required to obtain permit authorization and development of a Pesticide Discharge Management Plan (PDMP) is not required.

Implications of the Court's Decision

Irrigation return flow (which includes runoff from a crop field due to irrigation of that field) and agricultural stormwater runoff do not require RIPDES permits, as they are exempted by Rule 9 of the RIPDES Regulations. For example, runoff into engineered conservation measures on a crop field such as grassy swales and other land management structures that direct flow from the crop field is considered either irrigation return flow or agricultural stormwater and does not require a NPDES permit even if it contains pesticides or pesticide residues. However, discharges from the application of pesticides, which includes applications of herbicides, into irrigation ditches and canals that are themselves Waters of the United States, are not exempt as irrigation return flows or agricultural stormwater, and require NPDES permit coverage. This is because such pesticide discharges are not only point sources, but also that these pesticides are now defined as "pollutants" under the CWA due to the Sixth Circuit Court's decision. Some irrigation systems may not be Waters of the State and thus discharges to those waters would not require RIPDES permit coverage.

This PGP covers discharges from the application of pesticides and does not change, in any way, the determination of whether certain types of stormwater runoff are required to obtain permit coverage. This is true whether the runoff contains pesticides or pesticide residues resulting from the application of pesticides. In particular, non-agricultural stormwater runoff that may contain pesticides is not required to obtain RIPDES permit coverage unless it was already required to do so prior to the Sixth Circuit decision and is not be eligible for coverage under this permit. Existing stormwater permits for construction, industry, and municipalities already address pollutants, including pesticides, in stormwater. Thus, stormwater runoff is either: (a) already required to obtain RIPDES permit coverage under Rule 31 of the RIPDES Regulations or (b) classified as a discharge for which RIPDES permit coverage is not currently required under Rule 9 of the RIPDES Regulations.

RIDEM determined that four use patterns of pesticide application, which are generally consistent with the use patterns selected by EPA in their general permit, would encompass the majority of pesticide applications that would result in point source discharges to Waters of the State. This permit does not cover, nor is permit coverage required, for pesticides applications that do not result in a point source discharge to Waters of the State such as for the purpose of controlling pests on agricultural crops, forest floors, or range lands. However, the application of herbicides in Waters of the United States and the control of pests on plants grown in Waters of the State, such as perennial obligate hydrophytes, is within the scope of coverage of this permit. This fact sheet does not identify every activity which may involve a point source discharge of pesticides to Waters of the State that would require a permit; rather, the fact sheet focuses on the activities for which coverage under the PGP is available. The existence of this general permit does not alter the requirement that discharges of pesticides to Waters of the State that are not covered by this permit must be covered by an individual permit or another general permit.

Coverage under this Permit

Activities Covered

Only Operators meeting the eligibility requirements outlined in the PGP may be covered under the permit. If an Operator does not meet the eligibility provisions described in the PGP, the Operator's point source discharges to Waters of the State from the application of pesticides will be in violation of the RIPDES Regulations and the CWA, unless the Operator has obtained coverage under another permit. It should be noted that agricultural stormwater and irrigation return flow are exempt from RIPDES permitting requirements. Also, applications of pesticides that do not reach Waters of the State do not need permit coverage. The final PGP covers the discharge of pesticides (biological pesticides and chemical pesticides which leave a residue-as noted below, RIDEM assumes that most if not all chemical pesticides will leave a residual once the product has performed its intended purpose, unless the Operator can show otherwise) to Waters of the State resulting from the following use patterns: (1) Mosquito and Other Flying

Insect Pest Control; (2) Weed and Algae Control; (3) Pest Control at Cranberry Bogs; and (4) Forest Canopy Pest Control as summarized below:

Mosquito and Other Flying Insect Pest Control

This use pattern includes the application, by any means, of chemical and biological insecticides and larvicides into or over water to control insects that breed or live in, over, or near Waters of the United States. Applications of this nature usually involve the use of ultra low volume sprays or granular larvicides discharged over large swaths of mosquito breeding habitat and often are performed multiple times per year.

Weed and Algae Pest Control

This use pattern includes the application, by any means, of contact or systemic herbicides to control vegetation and algae (and plant pathogens such as fungi) in Waters of the State and at water's edge, including ditches and/or canals. Applications of this nature typically are single spot pesticide applications to control infestations or staged large scale pesticide applications intended to control pests in several acres of waterway. Pesticide applications in a treatment area may be performed one or more times per year to control the pest problem.

Pest Control at Cranberry Bogs

This use pattern includes the application, by any means, of pesticides into Waters of the State to control pests at cranberry bogs. In some instances the application of pesticide may be made over an entire or large portion of a waterbody to address pests that are mobile. Multiple pesticide applications to a waterbody for pest control may also be made several years apart. This category only covers discharges of pesticides at cranberry bogs.

Forest Canopy Pest Control

This use pattern includes pest control projects in, over, or to forest canopies (aerially or from the ground) to control pests in the forest canopy where Waters of the State exist below the canopy. Applications of this nature usually occur over large tracts of land, and are typically made in response to specific pest outbreaks. RIDEM understands that for this use pattern pesticides will be unavoidably discharged into Waters of the State in the course of controlling pests over a forest canopy as a result of pesticide application. These pests are not necessarily aquatic (e.g., airborne non-aquatic insects) but are detrimental to industry, the environment, and public health. Note: Mosquito adulticides applied to forest canopies are covered under the "Mosquito and Other Flying Insect Pest Control" use pattern.

This PGP does not cover spray drift resulting from pesticide applications and discharges to waters of the state as a result of spray drift represent a violation.

As stated above, the Sixth Circuit found that if a chemical pesticide leaves any excess or residue after performing its intended purpose, such excess or residue would be considered a pollutant under the CWA. The Court also found that, unlike chemical pesticides, not only would the residue and excess quantities of a biological pesticide be considered a pollutant, but so too would the biological pesticide itself under the CWA. Although the court did not define what a residual is, for purposes of this permit, RIDEM assumes that most if not all chemical pesticides will leave a residual once the product has performed its intended purpose, unless the Operator can show otherwise.

Limitations on Coverage

Discharges to Water Quality Impaired Waters

Coverage under the PGP is only available with this general permit for certain discharges to impaired waters. Discharges to waters which are impaired for a substance which is not an active ingredient in that pesticide or a degradate of such an active ingredient are eligible for coverage. In addition, except for discharges from pesticide applications made to restore water quality or that only degrade water quality on a short-term or temporary basis, the permit is not available for the discharge of any pesticide to water that is impaired for a substance that is an active ingredient in that pesticide or a degradate of such an active ingredient. For purposes of this permit, impaired waters are those that have been identified by RIDEM in its most recent 303(d) list of impaired waters as not meeting applicable water quality standards and consist of both waters with approved Total Maximum Daily Loads (TMDLs) and waters for which an

approved TMDL has not been established. A list of those waters is available at: http://www.dem.ri.gov/programs/benviron/water/quality/surfwq/index.htm.

Discharges to Waters Designated as Tier 2 ½ or Tier 3 for Antidegradation Purposes

Except for discharges from pesticide applications made to restore or maintain water quality or to protect public health or the environment that either do not degrade water quality or only degrade water quality on a short-term or temporary basis, Operators are not eligible for coverage under this permit for discharges to Waters of the State if the water is designated by RIDEM as Tier 2 ½ (Special Resource Protection Waters) or Tier 3 (Outstanding National Resource Waters) for antidegradation purposes under Appendix C of the Rhode Island Water Quality Regulations.

Endangered and Threatened Species and Critical Habitat Protection

Coverage under this permit is available only for discharges and discharge-related activities that will not adversely affect a listed or proposed to be listed endangered or threatened species or its critical habitat.

How to Obtain Authorization to Discharge Under this Permit

Rule 32(b)(2) of the RIPDES Regulations outlines the requirements to submit a Notice of Intent (NOI) to obtain coverage under a general permit for which a given discharge is eligible. Those regulations, at Rule 32(b)(2)(v), provide that, at the discretion of the Director of RIDEM, certain discharges can be authorized under a general permit without submitting an NOI where it has been determined that requiring an NOI would be inappropriate. The DEM has reviewed its existing regulations that are in place to control the use of pesticides to determine if the submission of an NOI is appropriate. In reviewing these regulations, the DEM has identified the following laws and regulations that currently regulate the use of pesticides:

RIGL 23-25, also known as the State's Pesticide Control Act, regulates the labeling, distribution, sale, storage, transportation, use and application, and disposal of pesticides in the state. In addition, RIGL 20-11-10 specifies that no person shall place, deposit, or explode any substance injurious to the health or life of fish in any stream or fresh water pond within the state; provided, however, a person may obtain a permit issued by RIDEM to use certain chemicals for the eradication of vegetation and control of fish populations. To implement these laws, RIDEM promulgated the Rules and Regulations Pertaining to Pesticides (RI Pesticide Regulations). Rule 19(G) of the RI Pesticide Regulations requires that, all pesticide applications to any surface waters of the State for the control of aquatic nuisances or for any other reason shall not be made unless such applications have been approved by the Director of RIDEM. In addition, Rule 9.02.D.3.m of the Rules and Regulations Governing the Administration and Enforcement of the Fresh Water Wetlands Act requires that applications minimize or eliminate the use or increase of any pollutants, fertilizers, pesticides, herbicides, or any other chemical or organic application which increase pollutant and nutrient loadings.

Based on these regulations, the DEM has established the following existing permitting processes to regulate the discharge of pesticides to Waters of the State for each pesticide use category:

Mosquito and Other Flying Insect Pest Control

Mosquito – The RIDEM's Division of Agriculture reviews, approves, and supplies mosquito adulticide and larvicide to any municipalities that apply mosquito control pesticides throughout the state. In addition, the Division of Agriculture provides detailed guidance on how to use the pesticide to the municipalities.

Other Flying Insects - The Division of Agriculture licenses all applicators that use "restricted use" and "state limited use" pesticides and all for-hire applicators. To obtain a license, these applicators must pass an exam that ensures that they are properly trained in the use of pesticides in accordance with their FIFRA labels such that they do not apply the pesticides in a manner that would cause adverse impacts to human health or the environment. To maintain their license, all applicators are also required to meet certain continuing education requirements that are designed to ensure that the applicator is knowledgeable about the most recent methods of pesticide use.

Weed and Algae Pest Control

Aquatic Weeds and Algae – All aquatic herbicide applications to waters of the state are currently required to submit an application and obtain approval from the Division of Agriculture. The Division of Agriculture coordinates the review of these applications with the RIDEM's Water Quality and Wetland Restoration Team to ensure that the application of pesticides will not result in any adverse impacts to human health or the environment.

Terrestrial Weeds – The Division of Agriculture licenses all applicators that use "restricted use" and "state limited use" pesticides and all for-hire applicators. To obtain a license, these applicators must pass an exam that ensures that they are properly trained in the use of pesticides in accordance with their FIFRA labels such that they do not apply the pesticides in a manner that would cause adverse impacts to human health or the environment. To maintain their license, all applicators are also required to meet certain continuing education requirements that are designed to ensure that the applicator is knowledgeable about the most recent methods of pesticide use.

Pest Control at Cranberry Bogs

The Division of Agriculture licenses all applicators that use "restricted use" and "state limited use" pesticides and all for-hire applicators. To obtain a license, these applicators must pass an exam that ensures that they are properly trained in the use of pesticides in accordance with their FIFRA labels such that they do not apply the pesticides in a manner that would cause adverse impacts to human health or the environment. To maintain their license, all applicators are also required to meet certain continuing education requirements that are designed to ensure that the applicator is knowledgeable about the most recent methods of pesticide use.

Forest Canopy Pest Control

Aerial Application - The Division of Agriculture reviews and approves all aerial applications of pesticides throughout the state. In addition, the Division of Agriculture provides detailed guidance on how to use the pesticide to the applicators.

Ground Application - The Division of Agriculture licenses all applicators that use "restricted use" and "state limited use" pesticides and all for-hire applicators. To obtain a licensed, these applicators must pass an exam that ensures that they are properly trained in the use of pesticides in accordance with their FIFRA labels such that they do not apply the pesticides in a manner that would cause adverse impacts to human health or the environment. To maintain their license, all applicators are also required to meet certain continuing education requirements that are designed to ensure that the applicator is knowledgeable about the most recent methods of pesticide use.

Since Rhode Island already has established regulations and permitting/approval programs to regulate the use of pesticides, RIDEM has made a determination that it is not necessary to submit a separate RIPDES NOI for authorization under this permit. Instead, the application of pesticides to control Other Flying Insects, Pests at Cranberry Bogs, and Forest Canopy Pests shall be authorized and must comply with all of the requirements of the PGP on the effective date of the PGP. The application of pesticides to control mosquitoes and weeds and algae that have received the above-mentioned RIDEM approvals to use pesticide are automatically authorized to discharge under the PGP upon receipt of the indicated RIDEM approval. Coverage for these types of pesticide applications (e.g., to control mosquitoes and weeds and algae) will be available for the duration of the indicated RIDEM approval.

The PGP contains standard language that provides RIDEM with the authority to modify permit terms or terminate permit coverage as appropriate. In general, RIDEM may take the following actions: 1) Require Operators to apply for or obtain authorization to discharge under an individual permit or an alternative general permit; 2) Terminate, revoke and reissue, or modify a permit for any permit noncompliance, that is also grounds for enforcement action; or 3) Modify, revoke and reissue, or terminate a permit for cause.

Sharing of Responsibilities

This general permit was developed with the understanding that there may be more than one responsible entity for a given discharge. The PGP includes a definition of "Operator" in the permit that is intended to clarify this point, focusing on the fact that Operator control exists both at the "Decision-maker" level about how to control pests, including financial considerations, as well as at the pesticide "Applicator" level (such as calibration of pesticide application equipment). In these instances, both Operators, i.e., the Decision-Maker and the Applicator, are required to obtain NPDES permit coverage; however, the permit strives to minimize any potential duplication of effort by identifying which Operator is responsible for certain permit conditions. The final permit clarifies these responsibilities by identifying whether RIDEM expects these activities to be performed by all Operators, or just the Decision-maker or the Applicator. Entities such as subcontractors that are hired by an owner or other entity but are under the supervision of such owner or entity generally are not Operators. Similarly, entities are likely not an Operator if, for example, they own the land, but the activities are being performed outside of their control (e.g., a public entity is spraying for mosquitoes over private property, or a private party is spraying for weeds on public lands leased from the federal government).

RIDEM encourages Operators to use already prepared information and explore possible cost savings by sharing responsibilities for implementing aspects of this permit. For example, a mosquito control district may have developed something for their FIFRA program and they could assume the overall coordination of an integrated pest management program while a hired contractor may be responsible for minimizing the pesticide discharge and for site monitoring and maintaining and calibrating pesticide application equipment. In instances where multiple Operators are responsible for the discharge from larger pesticide application activities, some form of written explanation of the division of responsibilities should be documented. However, any and all Operators covered under this permit are still jointly responsible for any violation that may occur, though RIDEM may consider this written division of responsibilities when determining the appropriate enforcement response to a violation.

Effluent Limitations in the Permit

Part 2 of the permit contains technology-based effluent limitations and Part 3 of the permit contains water quality-based effluent limitations. These Parts of the permit contain effluent limitations, defined in the CWA as restrictions on quantities, rates, and concentrations of constituents that are discharged. Under the CWA these effluent limitations can be narrative rather than numeric. Violation of any of these effluent limitations constitutes a violation of the permit.

The technology-based effluent limitations require the Operator to minimize the discharge of pesticides to Waters of the State from the application of pesticides. Consistent with the control level requirements of the CWA, the term "minimize" means to reduce and/or eliminate pesticide discharges to Waters of the State through the use of Pest Management Measures to the extent technologically available and economically achievable and practicable for the category or class of point sources covered under this permit taking into account any unique factors relating to the Operators to be covered under the permit. The technology-based effluent limitations section is divided into two parts. The first part applies to all Applicators and addresses the general requirement to minimize discharges from application of pesticides. In this part, all Applicators must minimize discharges of pesticides by using only the amount of pesticide product per application and frequency of pesticide applications necessary to control the target pest, performing regular maintenance activities, calibrating and cleaning/repairing application equipment, and assessing weather conditions in the treatment area. The second part requires that Decision-makers use only the amount of pesticide and frequency of pesticide application necessary to control the target pest. This part also includes guidance on the factors that should be determined when selecting the appropriate pest management measures.

In addition to the technology-based effluent limitations, Part 3 of the PGP contains water-quality-based effluent limitations. The Operator must control its discharge as necessary to meet applicable water quality standards. Any discharge that results in an excursion of any applicable numeric or narrative water quality standard is prohibited. In general, based on the requirements in this permit in addition to FIFRA, RIDEM expects that compliance with the technology-based effluent limitations and other terms and conditions in this permit will meet applicable water quality-based effluent limitations. However, if at any time, the Operator or RIDEM determines that the discharge causes or contributes to an excursion of applicable water quality standards, the Operator must take corrective actions and document and report

the excursion(s) to RIDEM as required in the PGP. Furthermore, RIDEM may impose additional water quality-based limitations on a site-specific basis, or require the Operator to obtain coverage under an individual permit, if information in required reports or from other sources indicates that, after meeting the technology-based limitations in this Permit, the discharges are not controlled as necessary to meet applicable water quality standards.

Except as noted below, the limits assigned in this permit are consistent with the limits that EPA has assigned in its PGP. EPA has already determined that these non-numeric effluent limits represent the best practicable technology (BPT) for all pollutants, the best conventional pollutant control technology for conventional pollutants (BCT) and the best available technology economically achievable (BAT) for toxic and non-conventional pollutants. EPA has also determined that the combination of pollution reduction practices described above are the most environmentally sound way to control the point source discharges of biological pesticides and chemical pesticides that leave a residue. However, EPA required that certain decision-makers also comply with additional technology-based effluent limitations (i.e. to identify the pest problem, implement effective and efficient pest management options, and adhere to certain pesticide use provisions) which EPA determined are the Best Available Technology Economically Achievable for these Operators. RIDEM has determined that that implementation of existing laws and regulations coupled with limits in the draft permit represent Best Available Technology Economically Achievable for these Operators.

Site Monitoring

Monitoring is required in RIPDES permits to demonstrate compliance with the permit conditions. Monitoring requirements apply from the time any authorized Operator begins discharging under this permit. Pursuant to CWA sections 308 and 402(a)(2), 40 CFR 122.43(a), and other applicable implementing regulations, the following requirements have been included in the permit, as discussed below. The monitoring requirements of this permit are narrative and demonstrate compliance with permit conditions by using currently established pesticide use routines for monitoring pest control.

Visual Monitoring Requirements for Pesticide Applicators

Visual monitoring assessments are required as a means of identifying instances of detrimental impact to non-target organisms, disruption or degradation of wildlife habitat, or the prevention of designated recreational or municipal uses of a waterbody that may possibly be related to the Operator's use of pesticides in a given area. This requirement consists of visually monitoring the area to and around where pesticides are applied for possible and observable adverse incidents, such as unanticipated death or distress of non-target organisms and disruption of wildlife habitat, recreational or municipal water use.

Visual monitoring assessments are required during the pesticide application when feasibility and safety allow. Visual monitoring is not required during the course of pesticide application when that application is performed in darkness as it would be infeasible for the inspector to note adverse effects under these circumstances. Additionally, the following scenarios often preclude visual monitoring during pesticide application:

1. Applications made from an aircraft
2. Applications made from a moving road vehicle when the Applicator is the driver
3. Applications made from moving watercraft when the Applicator is the driver
4. Applications made from a moving off-road wheeled or tracked vehicle when the Applicator is the driver.

Visual Monitoring Requirements for all Operators

Visual monitoring must also be conducted during any post-application surveillance to determine the efficacy of the pesticide application. Visual monitoring of this type is required of all Operators but only if the Operator, be it the Applicator or the Decision-maker or both, performs post application surveillance in the course of business. EPA expects that post-application visual assessments are reasonably conducted on foot or from a stationary vehicle, although they might also be conducted from a moving vehicle, including a boat or plane, in certain circumstances.

Corrective Action

The purpose of including corrective action requirements in this permit is to assist this new universe of RIPDES permittees with effectively meeting technology-based and water-quality-based effluent limitations and implementing Pest Management Measures in this permit. Corrective action requirements apply from the time any authorized Operator begins discharging under this permit. Corrective actions in this permit are follow-up actions an Operator must take to assess and correct problems. They require review and revision of Pest Management Measures and pesticide application activities, as necessary, to ensure that these problems are eliminated and will not be repeated in the future. The permit makes clear that the Operator is expected to assess why a specific problem has occurred and document what steps were taken to eliminate the problem. It should be noted that a situation triggering corrective action is not necessarily a permit violation and, as such, may not necessarily trigger a modification of Pest Management Measures to meet effluent limitations. However, failure to conduct (and document) corrective action reviews in such cases does constitute a permit violation.

Situations Requiring Revision of Pest Management Measures

Operators are required to review and, as necessary, revise the selection and implementation of their Pest Management Measures to eliminate any of the following situations:

- An unauthorized release or discharge associated with the application of pesticides (e.g., spill, leak, or discharge not authorized by this or another NPDES permit) occurs;
- Operators become aware, or RIDEM concludes, that Pest Management Measures are not adequate/sufficient for the discharge to meet applicable water quality standards;
- Any monitoring activities indicate failure to meet applicable technology-based effluent limitations;
- An inspection or evaluation by a RIDEM official, or local, state, or Tribal entity, determines that modifications are necessary to meet the non-numeric effluent limitations detailed in the PGP; or
- An Operator observes or is otherwise made aware (e.g., a third party notification) of an adverse incident.

The permit requires that corrective action be completed "before or, if not practicable, as soon as possible after the next pesticide application that results in a discharge."

Recordkeeping

This permit requires all Decision-makers and Applicators to maintain certain records to help them assess performance of Pest Management Measures and to document compliance with permit conditions. Recordkeeping and reporting requirements apply from the time any authorized Operator begins discharging under this permit. Operators can rely on records and documents developed for other programs, such as requirements under FIFRA, provided all requirements of the permit are satisfied.

These records must be kept by *all* Operators. Although this section is a universal requirement, these particular records are necessary only in the event of an adverse incident, the case that corrective action was required, or in the event of a discharge resulting from a spill or leak.

a. A copy of any Adverse Incident Reports;
b. Rationale for any determination that reporting of an identified adverse incident is not required;
c. A copy of any corrective action documentation; and,
d. A copy of any spill and leak or other unpermitted discharge documentation

All Operators who are *For-Hire* Applicators, as defined in Appendix A of the permit, must keep the records listed above, as well as records that specifically document pesticide application equipment maintenance and details of the pesticide application event. Since Decision-makers who are not themselves performing pesticide applications are generally not able to record such information, EPA requires different recordkeeping requirements depending on the type of Operator.

1. Documentation of equipment calibration; and
2. Information on each treatment area to which pesticides are discharged, including:

a. Description of each treatment area, including location and size (acres or linear feet) of treatment area and identification of any waters, either by name or by location, to which pesticide(s) are discharged;
b. Pesticide use pattern(s) (i.e., mosquito and other flying insects, weed and algae, animal pest, or forest canopy);
c. Target pest(s);
d. Name of each pesticide product used including the EPA registration number;
e. Quantity of each pesticide product applied to each treatment area;
f. Pesticide application date(s); and
g. Whether or not visual monitoring was conducted during pesticide application and/or post-application and if not, why not and whether any unusual or unexpected effects identified to non-target organisms.

Operators must retain copies of these documents for a period of at least 5 years from the date their coverage under this permit expires or is terminated.

Definitions and Acronyms

Appendix A of the PGP provides permit-specific definitions of statutory, regulatory, and other terms important for understanding its requirements.

Standard Permit Conditions

Appendix B incorporates standard conditions that apply to all RIPDES permits, with some minor revisions to more clearly address pesticide application operations covered under the PGP.