



RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

235 Promenade Street, Providence, RI 02908-5767

TDD 401-222-4462

May 22, 2012

**RE: Rhode Island Pesticide General Permit for Discharges from the Application of Pesticides (PGP)
Rhode Island Pollutant Discharge Elimination System (RIPDES) Permit No. RIG870000**

Enclosed is the final RIPDES PGP issued pursuant to State regulations, promulgated under Chapter 46-12 of the Rhode Island General Laws of 1956, as amended, and the final permit Fact Sheet which describes the basis for the permit's conditions. Also enclosed is a copy of the Department of Environmental Management's (DEM's) response to comments received on the draft permit and information relative to hearing requests and stays of RIPDES Permits. As indicated in the Response to Comments, the DEM received written comments on the draft permit during the permit's public notice period. Therefore, in accordance with Rule 46 of the Regulations for the Rhode Island Pollutant Discharge Elimination System this permit shall become effective thirty (30) days after the DEM's date of signature.

The final PGP applies to four pesticide use patterns that result in the discharge of pesticides to Waters of the State resulting from: (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. Discharges of pesticides to Waters of the State that are not included in these use patterns must be covered by a separate individual permit. Permit coverage is not required for pesticides applications that do not result in a point source discharge to Waters of the State and it remains a violation to apply pesticides in a manner inconsistent with their labels or for pesticides to drift into Waters of the State.

Should you have any questions concerning the PGP, feel free to contact Joseph Haberek at 401- 222-4700, extension 7715.

Sincerely,

Angelo S. Liberti, P.E.
Chief of Surface Water Protection

Enclosures

cc: Eugenia Marks, The Audubon Society of Rhode Island, 12 Sanderson Road, Smithfield, RI 02917-2600
Gregory H. Underwood, The Greene Company, 1065 Narrow Lane, Greene, RI 02827
Ralph D. Pratt, The Greene Company, 1065 Narrow Lane, Greene, RI 02827

Office of Water Resources/Telephone: 401.222.4700/Fax: 401.222.6177

RESPONSE TO COMMENTS

From April 11, 2012 to May 18, 2012, the Rhode Island Department of Environmental Management (DEM) solicited public comment on a draft Rhode Island Pollutant Discharge Elimination System (RIPDES) General Permit for Discharges from the Application of Pesticides (PGP). The following is a synopsis of the significant comments received and the DEM's responses to those comments.

The following responses address the comments that were raised by the Audubon Society of Rhode Island (the Audubon Society) in a letter dated April 16, 2012.

Comment: The Audubon Society highlighted the presence of rare and endangered plants associated with wetlands and commented that the permit should include "adequate provisions for protection of those known sites [that include rare and endangered plants] and a protocol for determining and mitigating threats to both plant and animal species, including invertebrates, of state concern". The Audubon Society also noted that "there are seasonality issues relative to breeding...where the species has no special legal protection and the window of exposure is specific, that should be considered."

Response: Part 1.1.2 of the PGP is the "Limitations on Coverage" section of the permit and includes the specific instances in which the discharge of pesticides to waters of the state is not eligible for coverage. Part 1.1.2.3 applies specifically to discharges of pesticides to waters of the state that include endangered and threatened species and critical habitat. This part prohibits coverage for pesticide discharges and discharge-related activities that adversely affect a listed, or proposed to be listed, endangered or threatened species or its critical habitat. Therefore, any discharges of pesticides to waters of the state that may adversely affect endangered plant or animal species, including invertebrates, are not eligible for coverage under this permit.

As indicated in the permit fact sheet, 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 pesticide applications with the DEM's Water Quality and Wetland Restoration Team to ensure that the application of pesticides will not result in adverse impacts to rare and endangered plant or animal species. If there will be any adverse impacts to rare and endangered plant or animal species, approval is not granted and pesticide use is not authorized. Since part 1.1.2 of the PGP already prohibits any discharges of pesticides to waters of the state if it will have adverse impacts to endangered or threatened species or their critical habitat, no change to the draft PGP was made.

The following responses address the comments that were raised by The Greene Company in a letter dated April 25, 2012.

Comment: The Greene Company suggested that the heading "Animal Pest Control at Cranberry Bogs" in both the PGP and fact sheet be renamed "Pest Control at Cranberry Bogs" (see comment 1 from The Greene Company's letter) and that the pests targeted by cranberry bogs be modified to only include insects, fungal pathogens, and weeds (see comments 1 and 3 from The Greene Company letter). This suggestion was made to clarify that fish, lampreys, and mollusks are not considered to be pests at cranberry bogs.

Response: The DEM is in agreement with these comments and, therefore, has changed all references to pest control at cranberry bogs in part 1.1.1.c, 1.2.1, and 2.2.3 of the PGP and in the fact sheet from "Animal Pest Control at Cranberry Bogs" to "Pest Control at Cranberry Bogs". The DEM has also removed fish, lampreys, and mollusks from the listing of target pests at cranberry bogs in the part 1.1.1.c of the PGP and the fact sheet.

Comment: The Greene Company also indicated that the fact sheet's statement that "applications of this nature [at cranberry bogs] are often made over an entire or large portion of a waterbody as typically the target pests are mobile" is only true if the ditch system within the cranberry bog is considered a waterbody. The Greene Company further indicated that pesticides are not applied directly to the ditches, but make their way into the ditches incidentally.

Response: The discharge from a cranberry bog's ditch, or system of ditches, into surface waters is considered a point source and if these ditches contain any pesticides, either applied directly or incidentally, the application of these pesticides would be subject to the PGP. The DEM has modified the fact sheet language to clarify that, 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 and that multiple pesticide applications for pest control may be made several years apart.

HEARING REQUESTS

If you wish to contest any of the provisions of this permit, you must request a formal hearing within thirty (30) days of receipt of this letter. The request should be submitted to the Administrative Adjudication Division at the following address:

Bonnie Stewart, Clerk
Department of Environmental Management
Office of Administrative Adjudication
One Capitol Hill - Second Floor
Providence, Rhode Island 02903

Any request for a formal hearing must conform to the requirements of Rule 49 of the State Regulations.

STAYS OF RIPDES PERMITS

Should the DEM receive and grant a request for a formal hearing, the contested conditions of the permit will not automatically be stayed. However, the permittee, in accordance with Rule 50, may request a temporary stay for the duration of adjudicatory hearing proceedings. Requests for stays of permit conditions should be submitted to the Office of Water Resources at the following address:

Angelo S. Liberti, P.E.
Chief of surface Water Protection
Office of Water Resources
235 Promenade Street
Providence, Rhode Island 02908

All uncontested conditions of the permit will be effective and enforceable in accordance with the provisions of Rule 49.