

STATE OF VERMONT  
 AGENCY OF NATURAL RESOURCES  
 DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
 NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)  
 PESTICIDE GENERAL PERMIT (PGP) FOR DISCHARGES FROM THE  
 APPLICATION OF PESTICIDES TO WATERS OF  
 THE STATE OF VERMONT



In compliance with the provisions of the Clean Water Act (CWA), as amended (33 U.S.C. § 1251 *et seq.*), and related regulations of the United States Environmental Protection Agency (U.S. EPA) at 40 C.F.R. Part 122; the Vermont Water Pollution Control statutes, 10 V.S.A. Chapter 47, including 10 V.S.A. §§ 1258 and 1259; and the Vermont Water Pollution Control Permit Regulations (Environmental Protection Rules, Chapter 13), including the rule governing general permits in Section 13.12, any Operator of a point source discharge of pollutants (i.e., discharge) resulting from the application of pesticides and eligible for permit coverage under Part 2.1 is authorized to discharge to waters of the State in accordance with the requirements of this permit. This permit is administered by the Vermont Department of Environmental Conservation (Department) and is specific to discharges to waters of the State. Nothing in this permit relieves an Operator from complying with other pesticide requirements under other laws, regulations, or permits. This permit is structured as follows:

- General requirements that apply to all Operators are found in Parts 1 through 10; and
- Definitions of terms used in this permit and standard permit conditions that apply to all Operators are found in Appendices A and B, respectively.

This permit was adopted on:	<b>[Month] [Day], 2017</b>
This permit shall become effective on:	<b>[Month] [Day], 2017</b>
This permit shall expire at midnight on:	<b>[Month] [Day], 2021</b>

Signed and issued this \_\_\_ day of \_\_\_\_\_, 2017

Emily Boedecker, Commissioner  
 Department of Environmental Conservation

By: \_\_\_\_\_  
 Peter LaFlamme, Director  
 Watershed Management Division

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## **1.0 Discharge Information and Coverage under This Permit**

The Department has the authority to issue and enforce permits for discharges to waters of the State and has been delegated the authority to issue NPDES permits by U.S. EPA (10 V.S.A. Chapter 47). The purpose of this permit is to protect the quality of Vermont’s waters by properly regulating the discharge of pesticides. This permit achieves the foregoing purpose through the discharge prohibitions, restrictions, and practices that it contains.

This permit covers any Operator, as defined in Appendix A, who meets the eligibility requirements identified in Part 1.1 and, if required, has submitted a Notice of Intent (NOI) in accordance with Part 1.2.

## **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**—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**—to control weeds, algae, and pathogens that are pests in water and at water’s edge, including ditches and/or canals.
- c. **Animal Pest Control**—to control animal pests in water and at water’s edge. Animal pests in this use category include fish, lampreys, insects, mollusks, and pathogens.
- d. **Forest Canopy Pest Control**—application of a pesticide 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.

### **1.1.2 Limitations on Coverage**

#### ***1.1.2.1 Discharges to Water Quality Impaired Waters***

Operators are not eligible for coverage under this permit for any discharges from a pesticide application to waters of the State if the water is identified as impaired by a substance which either is an active ingredient in that pesticide or is a degradate of such an active ingredient. For purposes of this permit, impaired waters are those that have been identified by State, pursuant to Section 303(d) of the CWA as not meeting applicable state water quality standards. Impaired waters, for the purposes of this permit, consist of both waters with EPA-approved or EPA-established total maximum daily loads (TMDLs) and waters for which EPA has not yet approved or established a TMDL.

#### ***1.1.2.2 Discharges to Waters Designated as Outstanding Resource Waters***

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 that are designated as Outstanding Resource Waters (ORWs) pursuant to 10 V.S.A. § 1424a. A list of designated ORWs is included in Appendix H of the Vermont Water Quality Standards.

#### ***1.1.2.3 Discharges to All Other Waters***

Discharges to waters of the State in compliance with the terms and conditions of this permit will be in compliance with Vermont’s Water Quality Standards, including the anti-degradation policy. The Department reserves the right to require an individual permit in Part 1.3.1 if the Department determines that individual permit coverage is more appropriate.

#### **1.1.2.4 Discharges Currently or Previously Covered by another Permit**

Discharges are not eligible for coverage under this permit if any of the following circumstances apply:

- a. The discharge is covered by another NPDES permit, or
- b. The discharge was included in a permit that in the past 5 years has been or is in the process of being denied, terminated, or revoked by the Secretary (this does not apply to the routine reissuance of permits every 5 years).

## **1.2 Authorization to Discharge under This Permit**

### **1.2.1 Operators not required to submit NOIs**

The following discharges are automatically authorized by this permit without submittal of an NOI:

- a. Eligible discharges that result from the application of a pesticide as part of *pesticide research and development*, as defined in Appendix A; and,
- b. Eligible use patterns for which submission of an NOI is not required under Part 1.2.2.

### **1.2.2 Operators required to submit NOIs**

Operators shall submit an NOI:

- a. If the application of a pesticide is conducted by an insect control district;
- b. If the total area to be treated in any one water exceeds 80 acres in any calendar year;
- c. If the activity is a wide area application for the control of pests to an area exceeding 6,400 acres in any calendar year;
- d. If the area of shoreline exceeding is to be treated with a pesticide for the control of aquatic or terrestrial pests in any calendar year exceeds 20 miles measured linearly; or,
- e. If the application is being conducted by a state or federal agency whose use of pesticides is part of its primary responsibility relating to the control of pest species, regardless of the total area to be treated.

For guidance in calculating annual treatment area totals to determine if an NOI must be submitted for pesticide applications for the pesticide use patterns in Part 1.1.1 see the definition for “Annual Treatment Area Threshold” in Appendix A – Definitions of this permit.

If required to submit an NOI, an Operator must submit the NOI, in accordance with the deadlines in Table 1-1. An Operator must prepare and submit the NOI to the Department at the address noted on the NOI. Applicants shall submit a NOI on a form provided by the Department. The Applicant shall, at a minimum, identify the pest management area where the Operator will conduct activities resulting in discharges to waters of the State to be covered under this permit, and shall identify the waters to which the Operator may discharge. Applicants shall also submit a Pesticide Discharge Management Plan (PDMP) with their NOI.

Coverage will be available for the duration of the permit for Operators who file an NOI, including the Operators’ employees, contractors, subcontractors, and other agents, for all activities identified on the NOI unless coverage is terminated pursuant to Part 1.2.6. If a submitted NOI is not timely, accurate, or complete, any employee, contractor, subcontractor or other entity that discharges without the required NOI is not covered by this permit. Late NOI’s will be accepted, but authorization to discharge will not be retroactive.

### 1.2.3 Discharge Authorization Date

Based upon a review of an NOI or other information, the Department may delay authorization to discharge, determine that additional technology-based and/or water quality-based effluent limitations or other conditions are necessary, or deny coverage under this permit and require submission of an application for an individual NPDES permit as detailed in Part 1.3.

### 1.2.4 Public Notice of NOI and Public Comments

Public notice of and the opportunity for public comment on a NOI and PDMP shall be provided pursuant to the statutes and rules in effect at the time an applicant files an administratively complete NOI with the Secretary.

The Department will issue an authorization to discharge if the NOI meets the terms and conditions of this general permit. A person who files a NOI shall only be authorized to discharge under the terms and conditions of this general permit upon receipt of a written authorization to discharge from the Department.

**Table 1-1. NOI Submittal Deadlines and Discharge Authorization Dates**

<b>Operator Type</b>	<b>NOI Submission Deadline</b>	<b>Discharge Authorization Date</b>
Operators not required to submit an NOI.	Not applicable	Immediately upon beginning to discharge if in compliance with this general permit.
Operators identified in Part 1.2.2.	At least 30 days prior to discharge	Upon issuance of a written authorization to discharge from the Department under this general permit.
Operator discharging in response to a declared pest emergency.	No later than 10 days after beginning discharge	Immediately upon beginning to discharge for activities conducted in response to declared pest emergency.

### 1.2.5 Continuation of This Permit

If this permit is not reissued or replaced before the expiration date, it will be administratively continued and remain in full force and effect. If an Operator’s authorization under this permit expires, any discharges authorized under this permit will automatically remain covered by this permit until the earliest of the following:

- a. An Operator is authorized for coverage under a reissued permit or a replacement of this permit, following the timely and appropriate submittal of a complete NOI requesting authorization to discharge under the new permit and in compliance with the requirements of the NOI;
- b. An Operator submits a Notice of Termination (NOT) and that notice is processed and posted consistent with Part 1.2.6;

- c. An NPDES individual permit for a discharge resulting from application of a pesticide that would otherwise be covered under this permit is issued or denied;
- d. The Department issues a formal permit decision not to reissue this general permit, at which time the Department will identify a reasonable period for covered dischargers to seek coverage under an alternative NPDES general permit or an NPDES individual permit. Coverage under this permit will cease when coverage under another permit is granted/authorized; or
- e. The Department has informed the Operator that its discharge is no longer covered under this permit.

## **1.2.6 Terminating Coverage**

### ***1.2.6.1 Submitting a Notice of Termination***

To terminate permit coverage, an Operator who is required to submit an NOI as identified in Part 1.2.2, must submit a complete and accurate NOT on a form available from the Department (at <http://dec.vermont.gov/watershed/lakes-ponds/permit/pesticide-general-permit>). Operators required to submit a NOT must prepare and submit that information to the Department. If an Operator submits a NOT without meeting one or more of the conditions identified in Part 1.2.6.2, the NOT is not valid. Operators are responsible for complying with the terms of this permit until authorization is terminated. If required to submit annual reports pursuant to Part 7, prior to the termination of authorization under this permit, Operators must file an annual report for the portion of the year up through the date of termination. The annual report is due no later than February 1<sup>st</sup> of the following year.

### ***1.2.6.2 When to Submit a Notice of Termination***

An Operator who is required to submit an NOI as identified in Part 1.2.2 must submit a NOT within 30 days after one or more of the following conditions have been met:

- a. A new Operator has taken over responsibility of the pest control activities covered under an existing NOI;
- b. The Operator has ceased all discharges from the application of pesticides for which permit coverage was obtained and does not expect to discharge during the remainder of the permit term for any of the use patterns as identified in Part 1.1.1; or
- c. The Operator has obtained coverage under a NPDES individual permit or an alternative NPDES general permit for all discharges required to be covered by a NPDES permit, unless coverage was obtained consistent with Part 1.3, in which case coverage under this permit will terminate automatically.

### ***1.2.6.3 Termination for Operators not Required to Submit an NOI***

Operators covered under this permit, who are not required to submit an NOI, are terminated from permit coverage when there is no longer a discharge from the application of pesticides or the discharges are covered under an NPDES individual permit or alternative NPDES general permit.

## **1.2.7 Procedures for Modification and Revocation of this Permit**

After notice and an opportunity for public hearing, this general permit may be modified in accordance the Vermont Water Pollution Control Permit Regulations. The Secretary reserves the right to modify or revoke this general permit based on changes in the federal NPDES program for pesticide applications including the modification or revocation by EPA of its pesticide general permit, or for other good cause in accordance with 40 C.F.R. § 122.62 and the Vermont Water Pollution Control Permit Regulations.

## **1.3 Individual and Alternative Permits**

### **1.3.1 Requirements for Coverage under an Alternative Permit**

The Department may require Operators to apply for and/or obtain authorization to discharge under either a NPDES individual permit or an alternative NPDES general permit.

If the Department requires an Operator to apply for a NPDES individual permit, the Department will notify the Operator in writing that a permit application is required. Such notification will include a brief statement of the reasons for the decision and will provide application information. In addition, for Operators whose discharges are authorized under this permit, any notice will set a deadline to file the permit application and will include a statement that on the effective date of the NPDES individual permit, coverage under this general permit will terminate. The Department may grant additional time to submit the application if an Operator submits a request setting forth reasonable grounds for additional time. If covered under this permit and the Operator fails to submit a NPDES individual permit application as required by the Department, the applicability of this permit to such Operator is terminated at the end of the day specified by the Department as the deadline for application submittal. The Department may take enforcement action for any unpermitted discharge or violation of any permit requirement.

### **1.3.2 Operator Requesting Coverage under an Alternative Permit**

If an Operator does not want to be covered by this general permit but needs permit coverage, the Operator may apply for a NPDES individual permit. In such a case, the Operator must submit an individual permit application to the Department with reasons supporting the request. The Department may deny such request and require coverage under this general permit or the request may be granted by issuance of a NPDES individual permit or authorization of coverage under an alternative NPDES general permit.

When an individual NPDES permit is issued, or the Operator is authorized under an alternative NPDES general permit to discharge a pollutant to waters of the State resulting from a pesticide application, authorization to discharge under this permit is terminated on the effective date of the NPDES individual permit or the date of authorization of coverage under the alternative NPDES general permit.

## **1.4 Severability**

Invalidation of a portion of this permit does not render the whole permit invalid. The Department's intent is that the permit will remain in effect to the extent possible; if any part of this permit is invalidated, the remaining parts of the permit will remain in effect unless the Department issues a written statement otherwise.

## **1.5 Other Federal and State Laws**

Operators must comply with all other applicable federal, state, town, and local laws and regulations that pertain to the application of pesticides. For example, 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. In fact, applications in violation of certain FIFRA requirements could also be a violation of this permit and therefore a violation of the CWA (e.g., exceeding label application rates). Additionally, other laws and regulations might apply to certain activities that are also covered under this permit (e.g., United States Coast Guard regulations).



## **1.6 Endangered and Threatened Species**

Coverage under this permit is available only for discharges and discharge-related activities that are not likely to result in a take of any species that are listed as threatened or endangered, or result in any adverse impacts to or destruction of habitat that is designated as critical, under Vermont’s Protection of Endangered Species Law, 10 V.S.A. § 5401-5410.

## **2.0 Technology-Based Effluent Limitations**

Part 3.0 includes technology-based effluent limitations applicable to all Operators for any discharges authorized under this permit, with compliance required upon beginning such discharge.

If an Operator’s discharge of pollutants results from the application of pesticide that is being used solely for “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.

As stated in Part 1.5, this permit requires all Operators to comply with all other applicable federal or state laws and regulations that pertain to application of pesticides by the Operator.

## **3.0 Operator’s Responsibilities**

### **3.1 All Operator’s Responsibilities**

To meet the effluent limitations of this permit, all Operators must minimize the discharge of pesticides to waters of the State from the application of pesticides through the use of Pest Management Measures.

#### **3.1.1 Pesticide amount and frequency of application**

The Operator shall determine the amount of pesticide and frequency of pesticide application, and use only the amount of pesticide and frequency of pesticide application necessary to control the target pest, using equipment and application procedures appropriate for the task.

#### **3.1.2 Equipment maintenance**

The Operator shall maintain pesticide application equipment in proper operating condition (e.g. with routine preventative maintenance checks and services), including calibrating, cleaning, and repairing such equipment and preventing leaks, spills, or other unintended discharges.

#### **3.1.3 Weather Assessment**

The Operator shall assess weather conditions (e.g. temperature, precipitation and wind speed) in the treatment area to ensure application is consistent with all applicable state and federal requirements.

### **3.2 Operators Required to Submit NOIs Responsibilities**

To meet the effluent limitations of this permit, prior to pesticide application, all Operators who are required to submit an NOI must also implement Parts 3.1 through: the use of Pesticide Management Measures; the use of the Pesticide Discharge Management Plan (PDMP), as required under Part 6; and the following requirements for each pesticide use pattern. The PDMP documents how Operators will implement the effluent limitations of this permit.

#### **3.2.1 Mosquito and Other Flying Insect Pest Control**

This part applies to discharges from the application of pesticides for mosquito and other flying insect pest control as defined in Part 1.1.1.

- 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, Operators required to submit NOIs must do the following for each pest management area, as defined in Appendix A:
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. If 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 3.2.1.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, Operators required to submit NOIs must select and implement efficient and effective Pest Management Measures that minimize discharges resulting from the application of pesticides to control mosquitoes or other flying insect pests. In developing the Pest Management Measures for each pest management area, the Operator 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 mosquitoes or flying insect pests, and application of the pesticide will result in a discharge to waters of the State, Operators that are required to submit NOIs 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 an adjacent area 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.

### 3.2.2 Weed and Algae Pest Control

This part applies to discharges from the application of pesticides for control of weeds, algae, and pathogens as defined in Part 1.1.1.

- 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, Operators required to submit NOIs must do the following for each pest management area, as defined in Appendix A:
  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 thresholds, as defined in Appendix A, for implementing Part 3.2.2.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 3.2.2.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, Operators required to submit NOIs must select and implement efficient and effective Pest Management Measures that minimize discharges resulting from the application of pesticides to control pests. In developing the Pest Management Measures for each pest management area, the Operator 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, Operators that are required to submit NOIs 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.

### 3.2.3 Animal Pest Control

This part applies to discharges from the application of pesticides for control of animal pests as defined in Part 1.1.1.

- 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, Operators required to submit NOIs must do the following for each pest management area, as defined in Appendix A:

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, as defined in Appendix A, for implementing Part 3.2.3.b; and,
  5. If 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 3.2.3.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, Operators required to submit NOIs must select and implement efficient and effective Pest Management Measures that minimize discharges resulting from the application of pesticides to control pests. In developing the Pest Management Measures for each pest management area, the Operator 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, Operators that are required to submit NOIs 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.

### 3.2.4 Forest Canopy Pest Control

This part applies to discharges from the application of pesticides for forest canopy pest control as defined in Part 1.1.1.

- 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, Operators required to submit NOIs must do the following for each pest management area, as defined in Appendix A:
1. Establish any pest and site-specific action threshold(s), as defined in Appendix A, for implementing Part 3.2.4.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. If 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 3.2.4.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, Operators required to submit NOIs must select and implement efficient and effective Pest Management Measures that minimize discharges resulting from the application of pesticides to control pests. In developing the Pest Management Measures for each pest management area, the Operator 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 of the pesticide will result in a discharge to waters of the State, Operators that are required to submit NOIs 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.

#### **4.0 Water Quality-Based Effluent Limitations**

All Operators must control discharges as necessary to meet the applicable numeric and narrative Vermont Water Quality Standards in accordance with the terms and conditions of this permit and Vermont state law.

If at any time an Operator becomes aware (e.g. through self-monitoring or by notification from the state or local government), or the Department 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 7, up to and including the ceasing of the discharge, if necessary.

#### **5.0 Monitoring Requirements**

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

If the Secretary determines that additional monitoring is necessary to meet the permit's technology- and water quality-based effluent limitations, the Secretary may notify the Operator of additional monitoring requirements. Any such notice shall briefly state the reasons for the monitoring; locations and parameters to be monitored; frequency and period of monitoring; sample types; and reporting requirements.

## **6.0 Pesticide Discharge Management Plan**

Except for any application made in response to a declared pest emergency, as defined in Appendix A, any Operator who is required to submit a NOI, as required in Part 1.2.2, must prepare and submit to the Department a Pesticide Discharge Management Plan (PDMP) at the time the NOI is filed. The PDMP does not contain effluent limitations; the effluent limitations are specified in Parts 2 and 3 of this permit. The PDMP documents how Operators will implement the effluent limitations in Parts 2 and 3 of the permit, including the evaluation and selection of Pest Management Measures to meet those effluent limitations to minimize discharges. In the PDMP, Operators may incorporate by reference any procedures or plans in other documents that meet the requirements of this permit. If Operators rely upon other documents to comply with the effluent limitations in this permit, such as an existing pest management plan, the Operator must attach to the PDMP a copy of any portions of any documents that are used to document the implementation of the effluent limitations.

### **6.1 Contents of the Pesticide Discharge Management Plan**

The PDMP must include the following elements:

- a. Pesticide Discharge Management Team
- b. Problem Identification
- c. Pest Management Options Evaluation
- d. Spill Response Procedures
- e. Adverse Incident Response Procedures
- f. Signature Requirements

#### **6.1.1 PDMP Team**

Operators must identify all the persons (by name and contact information) that compose the team as well as each person's individual responsibilities, including:

- a. Person(s) responsible for managing pests in relation to the pest management area;
- b. Person(s) responsible for developing and revising the PDMP; and,
- c. Person(s) responsible for developing, revising, and implementing corrective actions and other effluent limitation requirements.

#### **6.1.2 Problem Identification**

Operators must document the following:

- a. Pest problem description. Document a description of the pest problem at the pest management area, including identification of the target pest(s), source(s) of the pest problem, and source of data used to identify the problem in Parts 3.2.1-3.2.4.
  1. Identify the target pest to develop pest management measures based on developmental, behavioral, biological, and or/ecological considerations for each pest;
  2. Identify possible factors causing or contributing to the problem (e.g., nutrients, invasive species, sources);
  3. If applicable, identify known breeding sites for source reduction, larval control program, and habitat management;
  4. Analyze existing surveillance data, or follow the steps below to establish surveillance data, to determine whether action thresholds have been met for each pest management area, and identify new

- or unidentified sources of pest problems and sites that have recurring pest problems; and,
5. Characterize the extent of the problems, including, for example, water use goals not attained (e.g. wildlife habitat, fisheries, vegetation, and recreation);
  - b. Action threshold(s). Describe the action threshold(s) for the pest management area, including data used in developing the action threshold(s) and method(s) to determine when the action threshold(s) has been met. (e.g., Mosquito and Other Flying Insect Pest Control: mosquito egg surveys, larval surveys, adult surveys, citizen calls, and habitat mapping and record keeping);
  - c. General location map. In the plan, include a general location map (e.g., USGS quadrangle map, a portion of a city or county map, or other map) that identifies the geographic boundaries of the area to which the plan applies and location of the waters of the State; and,
  - d. Water quality standards. Document any Outstanding Resource Water and any water(s) identified as impaired by a substance which either is an active ingredient of the applied pesticide or a degradate of such an active ingredient.

### **6.1.3 Pest Management Options Evaluation**

Prior to each pesticide application, the Operator must implement measures in the following manner to minimize the discharge of pesticides.

- a. No pesticide shall be used unless/until the action threshold has been met.
- b. A pesticide shall only be used if all other methods are unreasonable and have been exhausted.
- c. If a pesticide is used, the Operator shall use the least amount of pesticide, and the least-toxic pesticide, necessary to control the pest.
- d. The Operator must evaluate the following management options, including a combination of these management options, considering impacts to water quality, ecological and public health, and non-target organisms, and feasibility. Each of these methods must be evaluated and utilized before the Operator resorts to pesticides. These options are:
  1. Take no action
  2. Prevention
  3. Use mechanical or physical methods, as defined in Appendix A
  4. Use cultural methods, as defined in Appendix A
  5. Use biological control agents, as defined in Appendix A
  6. Use pesticides, as defined in Appendix A
- e. The Operator must take all reasonable precautions to prevent off-target spray drift, including the following steps:
  1. Check the weather forecast before starting the spray application;
  2. Do not spray if the wind direction and speed would cause spray to drift onto sensitive areas;
  3. If applicable, release the pesticide as close as possible to the target;
  4. Check spray angles and adjust height accordingly; and,
  5. Use the lowest effective rates of application.

### **6.1.4 Response Procedures**

Operators must document the following procedures in the PDMP:

- a. Spill Response Procedures – Operators must have:
  1. Procedures for expeditiously stopping, containing, and cleaning up leaks, spills, and other releases to waters of the State. Employees who may cause, detect, or respond to a spill or leak

must be trained in these procedures and have necessary spill response equipment and these procedures immediately available (e.g. in vehicle).

2. Procedures for notification of appropriate facility personnel, emergency response agencies, and regulatory agencies.

b. Adverse Incident Response Procedures – Operators must have:

1. Procedures for responding to any adverse incident resulting from pesticide applications;
2. Procedures for notification of the adverse incident, both internal to the Operator’s agency/organization and external. Contact information for state/federal permitting agency, nearest emergency medical facility, and nearest hazardous chemical responder must be in locations that are readily accessible and available.

### **6.1.5 Signature Requirements**

Operators must sign, date, and certify the PDMP in accordance with Appendix B, Subsection B.11.

### **6.1.6 Public Notice**

When planning to spray pesticides, an Operator shall notify the public of the application schedule. The application schedule shall include specific dates and locations of pesticide applications, and the pesticides to be used. The schedule shall be made available on the Operator’s website in advance of any application. The Operator shall also provide on its website a phone number and other contact information for the public to contact the Operator with questions.

## **6.2 Pesticide Discharge Management Plan Modifications**

Operators must modify the PDMP whenever necessary to address any of the triggering conditions for corrective action in Part 7.1, or when a change in pest control activities significantly changes the type or quantity of pollutants discharged. Changes to the PDMP must be made before the next pesticide application that results in a discharge, if practicable, or if not, no later than 30 days after any change in pesticide applications. The revised PDMP must be signed and dated in accordance with Appendix B, Subsection B.11.

## **6.3 Pesticide Discharge Management Plan Availability**

Operators must retain a copy of the current PDMP, along with all supporting maps and documents, at the address provided in the NOI.

## **7.0 Corrective Action**

All Operators must comply with the provisions of Part 6 for any discharges authorized under this permit, with compliance required upon beginning such discharge.

### **7.1 Situations Requiring Revision of Pest Discharge Management Plan**

If any of the following situations occur, the Operator must review and, as necessary, revise the PDMP to ensure that the situation is eliminated and will not be repeated in the future:

- a. 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.
- b. Operators become aware, or the Department concludes, that the PDMP is not sufficient for the discharge to meet applicable water quality standards.
- c. Any monitoring activities indicate failure to meet applicable technology-based effluent limitations in Parts 2 and 3.



- d. An inspection or evaluation of activities by the Department reveals that modifications to the PDMP 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.

## **7.2 Corrective Action Deadlines**

If changes to the PDMP are necessary to eliminate any situation identified in Part 7.1, such changes must be made before or, if not practicable, no more than 10 days before the next pesticide application that results in a discharge. The Operator shall not conduct further applications until Department provides approval of such changes.

## **7.3 Effect of Corrective Action**

The occurrence of a situation identified in Part 7.1 may constitute a violation of the permit. Correcting any situation identified in Part 7.1 does not absolve Operators of liability for any original violation or subsequent violations. Failure to comply with Part 7.2 constitutes an additional permit violation. The Department will consider the appropriateness and promptness of corrective action, and the original cause of the occurrence, in determining enforcement responses to permit violations.

The Department may impose additional requirements and schedules of compliance, including requirements to submit additional information concerning the condition(s) triggering corrective action or schedules and requirements more stringent than specified in this permit, including cessation of the discharge. Those requirements and schedules will supersede those of Parts 7.1 and 7.2 if such requirements conflict.

## **7.4 Adverse Incident Documentation and Reporting**

### **7.4.1 Twenty-Four (24)-Hour Adverse Incident Notification**

#### ***7.4.1.1 Adverse Incident Notification Required***

Except as provided for in Part 7.4.4, if an Operator observes or is otherwise made aware of an adverse incident, as defined in Appendix A, which may have resulted from a discharge from a pesticide application, the Operator must immediately notify the Department via the contacts listed in Part 9.0 of this permit 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. If covered under an NOI, the NOI NPDES permit tracking number assigned by the Department;
- d. The name and telephone number of a contact person, if different than the person providing the notice;
- e. How and when the Operator became aware of the adverse incident;
- f. Description of the location of the adverse incident;
- g. Description of the adverse incident identified and the pesticide product, including EPA pesticide registration number, and approximate volume for each product applied in the adverse incident area;
- h. Description of any steps the Operator has taken or will take to correct, repair, remedy, clean up, or otherwise address any adverse effects; and
- i. If known, the identity of any other Operators authorized for coverage under this permit for discharges from the pesticide application activities that resulted in the adverse incident.

Notifications for spill related adverse incidents must also be made to the Department’s Spill Response Team hotline at (800) 641-5005.

If an Operator is unable to notify the Department within 24 hours, the Operator must do so as soon as possible and provide an appropriate rationale to the Department for why the Operator was unable to provide such notification within 24 hours.

The adverse incident notification and reporting requirements are in addition to what the registrant is required to submit under FIFRA section 6(a)(2) and its implementing regulations at 40 CFR Part 159.

#### ***7.4.1.2 Adverse Incident Notification Not Required***

Reporting of adverse incidents is not required under this permit if an Operator has been notified by the Department, and retains such notification, that the reporting requirement has been waived for this incident or category of incidents.

#### **7.4.2 Thirty (30)-Day Adverse Incident Written Report**

Except as provided for in Part 7.4.4, within 30 days of a reportable adverse incident pursuant to Part 7.4.1, Operators must provide a written report of the adverse incident to the Department. The adverse incident report must include at least the following information:

- a. Information required to be provided in Part 7.4.1;
- b. Date and time the Operator contacted the Department providing notification of the adverse incident, who the Operator spoke with at the Department, and any instructions received from the Department;
- c. Location of incident, including the names of any waters affected and appearance of those waters (i.e., 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; approximate volume discharged; 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 analyses are performed, an indication of what tests are performed: summary of the test results; what entity collected the sample, performed the tests, and chain of custody forms (if applicable) must be provided 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, Subsection B.11.

#### **7.4.3 Adverse Incident to Threatened or Endangered Species or Critical Habitat**

Notwithstanding any of the other adverse incident notification requirements of this section, if an Operator becomes aware of an adverse incident affecting a listed threatened or endangered species or its designated critical habitat which may have resulted from a discharge from the Operator’s pesticide application, the Operator must immediately notify the Department and the Vermont Fish & Wildlife Department, Natural Heritage Information Program. This notification must be made by telephone, to the

contacts listed in Section 9.0, immediately upon 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 of the affected species;
- 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 and the pesticide product, including the EPA pesticide registration number, for each product applied in the adverse incident area; and
- g. Description of any steps the Operator has taken or will take to alleviate the adverse impact to the species.

Additional information on listed threatened or endangered species and designated critical habitat is available from the Vermont Fish & Wildlife Department.

#### **7.4.4 Notification and Reporting for Adverse Incidents Involving Multiple Operators**

Where multiple Operators are authorized for a discharge that results in an adverse incident, notification and reporting by any one of the Operators constitutes compliance for all of the Operators, provided a copy of the written report required in Part 7.4.2 is also provided to all of the other authorized Operators within 30 days of the reportable adverse incident.

### **7.5 Reportable Spills and Leaks**

#### **7.5.1 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 more than a reportable quantity established under either 40 CFR Part 110, 40 CFR Part 117, or 40 CFR Part 302 occurs in any 24-hour period, an Operator must notify the Department Spill Response Team hotline at 800-641-5005 as soon as the Operator has knowledge of it. 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.

Other state or local requirements may necessitate also reporting spills or leaks to local emergency response, public health, or drinking water supply agencies.

#### **7.5.2 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 7.5.1 and results in an adverse incident, then the Operator must report the incident per the guidelines in Part 7.4.1 and 7.4.2. If the spill, leak, or other unpermitted discharge triggers the notification in Part 7.5.1, 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. Information required to be provided in Part 7.5.1;
- b. Summary of corrective action taken or to be taken, including date initiated and date completed or expected to be completed; and
- c. Any measures to prevent recurrence of such a spill or leak or other discharge, including notice of whether PDMP modifications are required because of the spill or leak.

## **7.6 Other Corrective Action Documentation**

For situations identified in Part 7.1, other than for adverse incidents (addressed in Part 7.4), or *reportable* spills or leaks (addressed in Part 7.5), 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 resulting from the incident.

## **8.0 Recordkeeping and Annual Reporting**

### **8.1 Recordkeeping for All Operators**

- a. Operators must keep written records as required in this permit 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, if the requirements of this permit are satisfied.
- b. All Operators must keep records of acres or linear miles treated for all applicable use patterns covered under this general permit to determine if the annual treatment area threshold, as identified in Part 1.2.2, is met during any calendar year.

### **8.2 Recordkeeping for All Operators required to submit an NOI**

All Operators must keep the following records:

- a. A copy of the NOI submitted to Department;
- b. A copy of the PDMP submitted to Department, including any modifications made to the PDMP during the term of this permit;
- c. All documentation required by PDMP, including documentation of surveillance and sequential steps in pest management options;
- d. Description of each treatment area, including location and size (acres or linear feet) of treatment area and identification of any waters of the State, either by name or by location, to which pesticide(s) are discharged;
- e. Pesticide use pattern(s) (i.e., mosquito and other flying insects, weed and algae, animal pest, or forest canopy);
- f. Target pest(s) and explanation of need for pest control;

- g. Name of each pesticide product used, including the EPA registration number, company name, and contact information for pesticide;
- h. Quantity of each pesticide product applied to each treatment area (e.g., application rates, diluents, dilutions);
- i. Documentation of equipment calibration;
- j. A copy of any Adverse Incident Reports;
- k. Rationale for any determination that reporting of an identified adverse incident is not required, consistent with allowances identified in Part 7.4.1.2;
- l. Pesticide application date(s) including time of day of the application;
- m. Documentation of all monitoring requirements under Part 5;
- n. A copy of any corrective action documentation;
- o. A copy of any spill and leak or other unpermitted discharge documentation;
- p. Copy of annual reports submitted to the Department; and,
- q. Correspondence exchanged with DEC or any other regulatory entity specific to coverage under this permit.

### **8.3 Additional Recordkeeping Requirements for All Operators**

All required records must be documented as soon as possible but no later than 7 days following completion of each pesticide application. An Operator must retain any records required under this permit for at least 3 years from the date that coverage under this permit expires or is terminated. Operators must make available all records kept under this permit and provide copies of such records, upon request, to the Department, including an authorized representative of the Department,

### **8.4 Annual Reporting for Any Operator Required to Submit an NOI**

Operators required to submit an NOI must submit an annual report to the Department. Annual reports shall be submitted each calendar year for the duration of coverage under this general permit when the Operator has discharges from the application of pesticides from the applicable use pattern. If required, an annual report must be submitted to the Department no later than February 1<sup>st</sup> of the following year for all pesticide activities covered under this permit occurring during the previous calendar year.

Operators required to submit an NOI based on an annual treatment area threshold being met must include information for the calendar year, with the first annual report required to include activities for the portion of the calendar year after the point at which Operators exceeded the annual treatment area threshold.

When Operators terminate permit coverage, as specified in Part 1.2.6, an annual report must be submitted for the portion of the year up to the date of termination. The annual report must contain the following information:

- a. Operator's name and contact information;
- b. Permit authorization number;
- c. Contact person name, title, e-mail address (if any), and phone number; and
- d. For each pesticide application, report the following information:

1. Description of treatment area, including location and size (acres or linear feet) of treatment area and identification of any waters of the State 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) and target pest(s);
3. Company name(s) and contact information for pesticide applicator(s), if different from the Operator;
4. Total amount of each pesticide product applied for the reporting year by the EPA registration number(s) and by application method (e.g., aerially by fixed-wing or rotary aircraft, broadcast spray, etc.);
6. If applicable, a summary report of any adverse incidents due to pesticide application(s), for incidents, as described in Part 7.4.1; and,
7. If applicable, a summary description of any corrective action(s), including spill responses, resulting from pesticide application activities and the rationale for such action(s).

## 9.0 Contacts

Vermont Department of Environmental Conservation  
Watershed Management Division  
Misha Cetner at (802) 490-6199, [misha.cetner@vermont.gov](mailto:misha.cetner@vermont.gov)  
<http://dec.vermont.gov/watershed>

Vermont Fish & Wildlife Department  
General Information at (802) 828-1000, [fwinformation@vermont.gov](mailto:fwinformation@vermont.gov)  
Natural Heritage Information Program  
For animal species: Mark Ferguson at (802) 279-3422, [mark.ferguson@vermont.gov](mailto:mark.ferguson@vermont.gov)  
For plant species: Bob Popp at (802) 476-0127, [bob.popp@vermont.gov](mailto:bob.popp@vermont.gov)

## 10.0 Appeal of this Decision

Pursuant to 10 V.S.A. Chapter 220, any appeal of this permit must be filed with the clerk of the Environmental Division of the Superior Court within 30 days of the date of the decision. The Notice of Appeal must specify the parties taking the appeal and the statutory provision under which each party claims party status; must designate the act or decision appealed from; must name the Environmental Division; and must be signed by the appellant or the appellant's attorney. In addition, the appeal must give the address or location and description of the property, project, or facility with which the appeal is concerned and the name of the applicant or any permit involved in the appeal. The appellant must also serve a copy of the Notice of Appeal in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings. For further information, see the Vermont Rules for Environmental Court Proceedings, available on line at [www.vermontjudiciary.org](http://www.vermontjudiciary.org). The address for the Environmental Division is: 32 Cherry St.; 2nd Floor, Suite 303; Burlington, VT 05401; Telephone # 802-951-1740.

## Appendix A – Definitions and Abbreviations & Acronyms

### A.1 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. [40 CFR 174.3]

**Adverse Incident** – means an unusual or unexpected incident that an Operator has observed upon inspection or of which the Operator otherwise becomes 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 State 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 State that are temporally and spatially related to exposure to a pesticide residue (e.g., vomiting, lethargy).

**Annual Treatment Area Threshold** – an area (in acres) or linear distance (in miles) in a calendar year to which an Operator is authorizing and/or performing pesticide applications in that area for activities covered under this permit.

For calculating annual treatment areas for Mosquitoes and Other Flying Insect Pest Control and Forest Canopy Pest for comparing with any threshold in Table 1-1, count each pesticide application activity to a treatment area (i.e., that area where a pesticide application is intended to provide pesticidal benefits within the pest management area) as a separate area treated. For example, applying pesticides three times a year to the same 3,000-acre site should be counted as 9,000 acres of treatment area for purposes of determining if such an application exceeds an annual treatment area threshold. The treatment area for these two pesticide use patterns is additive over the calendar year.

For calculating annual treatment areas for Weed and Algae Control and Animal Pest Control for comparing with any threshold in Table 1-1, calculations should include either the linear extent of or the surface area of waters for applications made to waters of the State or at water's edge adjacent to waters of the State. For calculating the annual treatment area, count each treatment area only once, regardless of the number of pesticide application activities performed on that area in each year. Also, for linear features (e.g., a canal or ditch), use the length of the linear feature whether treating in or adjacent to the feature, regardless of the number of applications made to that feature during the calendar year. For example, whether treating the bank on one side of a ten-mile long ditch, banks on both sides of the ditch, and/or water in that ditch, the total treatment area is ten miles for purposes of determining if an NOI is required to be submitted. Additionally, if the same 10-mile area is treated more than once in a calendar year, the total area treated is still 10 miles for purposes of comparing with any threshold in Table 1-1. The treatment area for these two pesticide use patterns is not additive over the calendar year.

**Biological Control Agents** – these agents are organisms that can be introduced to Operator sites, such as herbivores, predators, parasites, and hyperparasites. [Source: US FWS IPM Guidance, 2004]

**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 algae and fungi; (2) is a prokaryotic microorganism, including, Eubacteria and Archaeobacteria; or (3) is a parasitically replicating microscopic element, including viruses. [40 CFR 158.2100(b)] Biochemical pesticide means a pesticide that (1) is a naturally-occurring substance or structurally-similar and functionally identical to a naturally-occurring substance; (2) has a history of exposure to humans and the environment demonstrating minimal toxicity, or in the case of a synthetically-derived biochemical pesticides, is equivalent to a naturally-occurring substance that has such a history; and (3) has a non-toxic mode of action to the target pest(s). [40 CFR 158.2000(a)(1)] Plant-incorporated protectant means a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for production of such a pesticidal substance. It also includes any inert ingredient contained in the plant, or produce thereof. [40 CFR 174.3]

**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.

**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.

[40 CFR 166]

**Department (DEC)** – means the Vermont Department of Environmental Conservation.



**Discharge** – when used without qualification, means the “discharge of a pollutant.” [40 CFR 122.2]

**Discharge of a Pollutant** – any addition of any “pollutant” or combination of pollutants to “waters of the State” from any “point source,” or any addition of any pollutant or combination of pollutants to the water of the “contiguous zone” or the ocean from any point source other than a vessel or other floating craft that is being used as a means of transportation. This includes additions of pollutants into waters of the State from: surface runoff that is collected or channeled by man; discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. [Excerpted from 40 CFR 122.2]

**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 NPDES “point source” (including land or appurtenances thereto) that is subject to regulation under the NPDES program. [40 CFR 122.2]

**Forest Canopy Pest Control** – aerial application of a pesticide over a forest canopy to control the population of a pest species where to target the pests effectively a portion of the pesticide unavoidably will be applied over and deposited to water.

**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 the State, pursuant to Section 303(d) of the Clean Water Act, as not meeting applicable State 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.

**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. [40 CFR 174.3]

**Mechanical or 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 State through the use of Pest Management Measures to the extent technologically available and economically practicable and achievable.

**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 State 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.

**Outstanding Resource Water** – waters designated as Outstanding Resource Waters by the Secretary, pursuant to 10 V.S.A. § 1424a.

**Person** – means any individual; partnership; company; corporation; association; joint venture; trust; municipality; the state of Vermont or any agency, department, or subdivision of the State, any federal agency, or any other legal or commercial entity.

**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 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 humans or other living animals and those on or in processed food or processed animal feed, beverages, drugs (as defined in FFDCFA sec. 201(g)(1)) and cosmetics (as defined in FFDCFA sec. 201(i)).

**Pest Management Area** – the area of land, including any water, for which an Operator has responsibility for 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 in this permit 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 State.

**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 [FIFRA Section 2(u)].

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 State 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, landfill leachate collection system, vessel, or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff. [40 CFR 122.2]

**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.” [Excerpted from 40 CFR 122.2]

**Secretary** – means the Secretary of the Vermont Agency of Natural Resources or the Secretary’s duly authorized representative.

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

**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. [See section 303(d) of the Clean Water Act and 40 CFR 130.2 and 130.7]

**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 or Waters of the State** – means all rivers, streams, creeks, brooks, reservoirs, ponds, lakes, springs, and all bodies of surface waters, artificial or natural, which are contained within, flow through or border upon the state of Vermont or any portion of it. Waters of the State include Waters of the United States, as defined at 40 C.F.R. § 122.2.

**Water Quality Standards** – defined in 40 CFR § 131.3, and are provisions of State or Federal law, including the Vermont Water Quality Standards, which consist of a designated use or uses for the waters of the state, water quality criteria for such waters based upon such uses, and an antidegradation policy to protect high-quality waters. Water quality standards protect the public health or welfare, enhance the quality of water and serve the purposes of the Act.

## **A.2 Abbreviations & Acronyms**

CWA	Clean Water Act (or the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq)
DEC	Vermont Department of Environmental Conservation
EPA	U. S. Environmental Protection Agency
FIFRA	Federal Insecticide, Fungicide, and Rodenticide Act, 7 USC 136 et seq.
IPM	Integrated Pest Management
NOI	Notice of Intent
NOT	Notice of Termination
NPDES	National Pollutant Discharge Elimination System
ORW	Outstanding Resource Water
PDMP	Pesticide Discharge Management Plan
TMDL	Total Maximum Daily Load
USC	United States Code
WQS	Water Quality Standards

## Appendix B – Standard Permit Conditions

### B.1 Duty to Comply

Operators must comply with all conditions of this permit and your authorization to discharge hereunder. Any permit noncompliance constitutes a violation of 10 V.S.A. Chapter 47, the CWA, and related rules and regulations, and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

- A. Operators must comply with effluent standards or prohibitions established under CWA section 307(a) for toxic pollutants within the time provided in the regulations that establish these standards, even if the permit has not yet been modified to incorporate the requirement.
- B. Penalties for Violations of Permit Conditions: Violations of the terms and conditions of this permit are subject to civil and criminal penalties pursuant to 10 V.S.A. §§ 1274 and 1275 and administrative enforcement pursuant to 10 V.S.A. § 1272 and Chapters 201 and 211, and the U.S. EPA retains the authority to enforce the Clean Water Act and compliance with this permit pursuant to Section 309 of the Clean Water Act, 33 U.S.C. § 1319.

10 V.S.A. § 1275(a) provides that any person who violates any provision of Subchapter 1 of Vermont's Water Pollution Control Law, 10 V.S.A. §§ 1250-1284, or who fails, neglects, or refuses to obey or comply with any order or the terms of any permit issued in accordance with the subchapter, shall be fined not more than \$25,000 or be imprisoned not more than six months, or both. Each violation may be a separate offense and, in the case of a continuing violation, each day's continuance may be deemed a separate offense.

10 V.S.A. § 1275(b) provides that any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the subchapter, or by any permit, rule, regulation, or order issued under the subchapter, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under the subchapter, shall upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than six months, or by both.

10 V.S.A. § 8010 provides that an administrative penalty may be included as part of an administrative order. A penalty of up to \$42,500 may be assessed for each determination of a separate violation. In addition, if the Secretary determines that a violation is continuing, the Secretary may assess a penalty of up to \$17,000 for each day the violation continues. The Secretary may assess a maximum penalty of up to \$170,000 per violation.

When U.S. EPA brings the enforcement action, the penalties are as follows:

EPA will periodically adjust for inflation the civil and administrative penalties listed below in accordance with the Civil Monetary Penalty Inflation Adjustment Rule (61 FR 252, December 31, 1996, pp. 69359–69366, as corrected in 62 FR 54, March 20, 1997, pp.13514–13517) as mandated by the Debt Collection Improvement Act of 1996. This rule allows EPA's penalties to keep pace with inflation. The Agency is required to review its penalties at least once every 4 years thereafter and to adjust them as necessary for inflation according to a specified formula. The civil and administrative penalties following were adjusted for inflation starting in 1996.

#### 1. *Criminal Penalties*

- 1.1 *Negligent Violations.* The CWA provides that any person who negligently violates permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to criminal penalties of not less than \$2,500 nor more than \$25,000 per day of violation, or imprisonment of not more than one year, or both. In the case of a second or subsequent

conviction for a negligent violation, a person will be subject to criminal penalties of not more than \$50,000 per day of violation or by imprisonment of not more than two years, or both.

- 1.2 *Knowing Violations.* The CWA provides that any person who knowingly violates permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment for not more than 3 years, or both. In the case of a second or subsequent conviction for a knowing violation, a person will be subject to criminal penalties of not more than \$100,000 per day of violation, or imprisonment of not more than 6 years, or both.
- 1.3 *Knowing Endangerment.* The CWA provides that any person who knowingly violates permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act and who knows at that time that he or she is placing another person in imminent danger of death or serious bodily injury will upon conviction be subject to a fine of not more than \$250,000 or by imprisonment of not more than 15 years, or both. In the case of a second or subsequent conviction for a knowing endangerment violation, a person will be subject to a fine of not more than \$500,000 or by imprisonment of not more than 30 years, or both. An organization, as defined in section 309(c)(3)(B)(iii) of the Act, will, upon conviction of violating the imminent danger provision, be subject to a fine of not more than \$1,000,000 and can be fined up to \$2,000,000 for second or subsequent convictions.
- 1.4 *False Statement.* 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 will, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or both. The Act further provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance will, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.
2. *Civil Penalties.* The CWA provides that any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed the maximum amounts authorized by Section 309(d) of the Act and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. 2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. 3701 note) (currently \$37,500 per day for each violation).
3. *Administrative Penalties.* The CWA provides that any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to an administrative penalty, as follows
  - 3.1 *Class I Penalty.* Not to exceed the maximum amounts authorized by CWA section 309(g)(2)(A) and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. 2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. 3701 note) (currently \$11,000 per violation, with the maximum amount of any Class I penalty assessed not to exceed \$37,500).
  - 3.2 *Class II Penalty.* Not to exceed the maximum amounts authorized by CWA section 309(g)(2)(B) and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. 2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. 3701 note) (currently \$11,000 per day for each day during which the violation continues, with the maximum amount of any Class II penalty not to exceed \$157,500).

## **B.2 Duty to Reapply**

Except as otherwise provided for in Part 1.2.5 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 it is issued by the Department.

## **B.3 Need to Halt or Reduce Activity Not a Defense**

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

## **B.4 Duty to Mitigate**

Operators must 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.

## **B.5 Proper Operation and Maintenance**

Operators must at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which the Operators installs or uses to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which the Operator installs only when the operation is necessary to achieve compliance with the conditions of this permit.

## **B.6 Permit Actions & Revocation**

The Secretary may, after notice and opportunity for public hearing under 3 V.S.A. § 814, revoke or suspend, in whole or in part, authorization to discharge under this permit for cause, including:

- A. Violations of any terms or conditions of the permit;
- B. Obtaining authorization under the permit by misrepresentation or failure to disclose fully all relevant facts;
- C. A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge;
- D. Correction of violations of the Vermont Water Quality Standards.

An Operator's filing of a request for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

## **B.7 Property Rights & Compliance with Other Laws**

This permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to public or private property or invasion of personal rights. This permit does not authorize infringement of any applicable federal, state, or local laws or regulations nor obviate the necessity of obtaining such additional permits as may be required.

## **B.8 Duty to Provide Information**

Operators must furnish to the EPA, the Department, or an authorized representative (including an authorized contractor acting as a representative of the Department), within a reasonable time, any information that EPA or the Department may request to determine whether cause exists for modifying, revoking and reissuing, or

terminating this permit or to determine compliance with this permit. Operators must also furnish to EPA, the Department, or an authorized representative upon request, copies of records required to be kept by this permit.

## **B.9 Inspection and Entry**

Operators must allow the Department or an authorized representative (including an authorized contractor acting as a representative of the Department), at reasonable times and upon presentation of credentials, to:

- A. Enter upon an Operator's premises where a regulated activity is located or conducted, or where records must be kept under the conditions of this permit;
- B. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- C. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
- D. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the CWA or Vermont law, any substances or parameters at any location.

## **B.10 Monitoring and Records**

- A. Operators must retain records of all reports required by this permit, and records of all data used to complete the NOI for this permit, for a period of at least 3 years from the date the permit expires or the date the Operator's authorization is terminated. That period may be extended by request of the Department at any time.
- B. This permit does not automatically require Operators to perform the type of sample collection and monitoring described in the following sections of this appendix, B.10.B through B.10.F. However, where the Department requires any monitoring, consistent with Part 1.2.3 of the Permit, the sample collection and monitoring requirements in B.10.B through B.10.F of this Appendix apply to those Operators that collect samples.
- C. Samples and measurements taken for the purpose of monitoring must be representative of the volume and nature of the monitored activity.
- D. Operators must retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, for a period of at least 3 years from the date the permit expires or the date the Operator's authorization is terminated. This period may be extended by request of the Department at any time.
- E. Records of monitoring information must include the following:
  - 1. The date, exact place, and time of sampling or measurements;
  - 2. The individual(s) who performed the sampling or measurements;
  - 3. The date(s) analyses were performed
  - 4. The individual(s) who performed the analyses;
  - 5. The analytical techniques or methods used; and
  - 6. The results of such analyses
- F. Monitoring must be conducted according to test procedures approved by the Department.
- G. 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 will, upon conviction, be



punished by a fine of not more than \$10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or both.

## **B.11 Signatory Requirements**

- A. All applications, including NOIs, must be signed as follows:
1. For a corporation: By a responsible corporate officer. For the purpose of this subsection, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions that govern the operation of the regulated activity including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
  2. For a partnership or sole proprietorship: By a general partner or the proprietor, respectively; or
  3. For a municipality, state, federal, or other public agency: By either a principal executive officer or ranking elected official. For purposes of this subsection, a principal executive officer of a federal agency includes (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit or the agency (e.g., Regional Administrator of EPA).
- B. Any Pesticide Discharge Management Plan (PDMP), including changes to the PDMP to document any corrective actions taken as required by Part 7, and all reports submitted to the Department, must be signed by a person described in Appendix B, Subsection B.11.A above or by a duly authorized representative of that person. A person is a duly authorized representative only if the following are true:
1. The authorization is made in writing by a person described in Appendix B, Subsection B.11.A;
  2. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated activity such as the position of superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and
  3. The signed and dated written authorization is included in the PDMP. A copy must be submitted to the Department, if requested.
- C. All other changes to the PDMP, and other compliance documentation required under this permit, must be signed and dated by the person preparing the change or documentation.
- D. Changes to Authorization. If an authorization under Appendix B, Subsection B.11.A is no longer accurate because the application activities have been purchased by a different entity, a new NOI satisfying the requirements of Subsection B.11.A must be submitted to the Department. However, if the only change that is occurring is a change in contact information or a change in the Operator's address, the Operator need only make a modification to the existing NOI submitted for authorization.

- E. Any person signing documents in accordance with Appendix B, Subsections B.11.A or B.11.B above must include the following certification:

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

- F. The CWA provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance will, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

## **B.12 Reporting Requirements**

- A. Anticipated noncompliance. Operators must give advance notice to the Department of any planned changes in the permitted activity which may result in noncompliance with permit requirements.
- B. Transfers. An authorization under this permit is not transferable to any person except after notice to the Department. 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. See also requirements in Appendix B, Subsections B.11.B and B.11.D. Prior to transferring an authorization to discharge, the permittee shall submit notice of transfer to the Secretary. The notice shall be submitted 30 days prior to the proposed date of transfer and shall include the following:
1. The name and address of the present permittee,
  2. The name and address of the prospective permittee,
  3. The proposed date of transfer, and
  4. A statement signed by the prospective permittee, stating that:
    - a. The conditions of the facility operation that contribute to, or affect, the discharge will not be materially different under the new ownership;
    - b. He/she has read and is familiar with the terms of the permit and agrees to comply with all terms and conditions of the permit, and
    - c. He/she has adequate funding or other means to effect compliance with all terms of the permit.

A permittee may add a co-permittee by submitting a notice of addition of co-permittee on a form provided by the Secretary. The form shall include, at a minimum, the information required under this subsection.

- C. Pesticide Monitoring Reports. This permit does not require Operators to report monitoring results routinely; however, the Department may, pursuant to Part 1.2.3, require certain Operators to monitor and report such results. In such instances, provisions of B.12.C apply.
1. Monitoring data must be submitted to the Department
  2. If an Operator monitors any pollutant more frequently than required using test procedures approved under 40 CFR Part 136 or as otherwise specified by the Department, the results of this monitoring must be included in reporting of monitoring data submitted to the Department.

3. Calculations for all limitations that require averaging of measurements must use an arithmetic mean unless otherwise specified by the Department.
- D. 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.
- E. Twenty-four hour reporting.
1. In addition to adverse incident and spill reporting requirements in Parts 7.4 and 7.5, 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.
  2. For purposes of this permit, Operators must submit a 24-hour report under this section for any upset, as defined in Appendix B, Subsection B.13, which exceeds any effluent limitation in the permit.
  3. The Department may waive the written report on a case-by-case basis for reports under Appendix B, Subsection B.12.E.2 if the oral report has been received within 24 hours.
- F. Other noncompliance. Operators must report all instances of noncompliance not reported under Appendix B, Subsections 12.A, 12.D, and 12.E, at the time any applicable annual or monitoring reports are submitted. The reports must contain the information listed in Appendix B, Subsection 12.E.1.
- G. 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 Department, the Operator must promptly submit such facts or information.

### **B.13 Upset**

- A. 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).
- B. 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 B.13.C 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).
- C. 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:
1. An upset occurred and that the Operator can identify the cause(s) of the upset;
  2. The permitted activity was at the time being properly operated;
  3. The Operator submitted notice of the upset as required in Appendix B, Subsection B.12.E.2 (24 hour notice); and

4. The Operator complied with any remedial measures required under Appendix B, Subsection B.4.
- D. 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.

#### **B.14 Procedures for Modification and Revocation**

After notice and an opportunity for public hearing, pursuant to the requirements of the Vermont Water Pollution Control Permit Regulations (Environmental Protection Rules, Chapter 13), the Secretary may modify this permit for cause including:

1. The statutes or rules on which the permit is based have been changed,
2. There is a change in any condition that requires redrafting or alteration of the boundaries of a designated geographic area,
3. The Secretary has received new information, not available at the time of the permit issuance, which indicates that the cumulative effects violate the Vermont Water Quality Standards,
4. When required by the “reopener” conditions in this permit, or
5. To correct technical mistakes, such as errors in calculations or mistaken interpretations of law made in determining permit conditions.