



STATE OF MINNESOTA

Minnesota Pollution Control Agency

Industrial Division

**National Pollutant Discharge Elimination System (NPDES) /
State Disposal System (SDS) General Permit MNG87D000
Vegetative Pests and Algae Control Pesticide General Permit**


ISSUANCE DATE: April 11, 2012

EXPIRATION DATE: October 31, 2016

The state of Minnesota, on behalf of its citizens through the Minnesota Pollution Control Agency (MPCA), **authorizes the Permittee to discharge a biological pesticide or chemical pesticide that leaves a residue for control of Vegetative Pests and Algae** in accordance with the requirements of this permit. If pesticides are applied by the Decision-makers listed in this permit in excess of the Threshold in Section 1.4, then a Notice of Intent (NOI) must be submitted.

The goal of this permit is to protect water quality in accordance with Minnesota and U.S. statutes and rules, including Minn. Stat. chs. 115 and 116, Minn. R. chs. 7001, 7050, 7052, and 7053; and the U.S. Clean Water Act (CWA).

This permit is effective on the issuance date identified above. This permit expires at midnight on the expiration date identified above.

Signature: 
Jeff Stollenwerk, Manager
Land and Water Quality Permits Section
Industrial Division

for The Minnesota Pollution Control Agency

Permit Required Submittals:

Submit Reports to:

Attention: WQ Submittals Center
Minnesota Pollution Control Agency
520 Lafayette Rd N
St Paul, MN 55155-4194

Questions on this permit?

• Contact:
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VEGETATIVE PESTS AND ALGAE CONTROL GENERAL PERMIT REQUIREMENTS

1. General Permit Applicability and Eligibility

- 1.1 This permit applies to individuals, groups, units of government, or other entities who discharge to waters of the state biological pesticides or chemical pesticides that leave a residue (hereinafter collectively "pesticides") when the application is to control **algae and aquatic and terrestrial vegetative pests in waters of the state**.
- 1.2 Individuals, groups, units of government, and other entities associated with the application of pesticides which result in a discharge to a water of the state under this permit are considered Decision-makers or Applicators. For the purpose of this permit, "Decision-maker" means any entity with control over the decision to perform pesticide applications, including the ability to modify those decisions. "Applicator" means 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). More than one entity (Decision-maker and/or Applicator) may be responsible for complying with this permit for any single discharge from the application of pesticides. A Decision-maker that self-applies pesticides is also considered an Applicator and must comply with applicable requirements imposed on both Applicators and Decision-makers.
- 1.3 For the purposes of this permit, both Decision-makers and Applicators are considered "Permittees" unless otherwise noted and regardless of whether a NOI is required to be submitted.
- 1.4 The following Decision-makers are required to submit a NOI under this general permit for discharges to waters of the state resulting from the application of pesticides (hereinafter "Thresholds"):

Threshold for Vegetative Pests and Algae	
Lakes \geq 20 acres in size	Decision-makers that treat greater than 15% of the littoral zone ¹
	Decision-makers that treat the whole lake ¹ (ex: algae control)
All other waters of the state	Decision-makers that apply to a treatment area ² of 1200 acres or greater that have visible standing water at the time of application (see NOTE below).

¹ Littoral zone – means the surface area of a water body where the depth is 15 feet or less.

² The treatment area for a lake is the surface area where the application is intended to provide pesticidal benefits taking into effect wind and wave action.

³ Treatment Area – The area to which pesticides are being applied and where the pesticide application is intended to provide pesticidal benefits. In some instances, the treatment area will be larger than the area where pesticides are actually applied. If aerially applying the pesticide, all waters of the state under that area should be added to the "treatment area." If spot spraying and a discharge to waters of the state is unavoidable, then the area that receives application should be added to the calendar year total to determine if the Threshold is exceeded. This Threshold is cumulative and based on a calendar year total. For example, treating the same 100-acre wetland three times a year would result in a treatment total of 300 acres.

NOTE: If you are treating an area that is intermittently wet, count it toward the threshold total only when visible standing water is present at the time of application.

- 1.5 The following discharges, consistent with the permit eligibility provisions in Section 1.1, are automatically authorized by the issuance date of this permit:
 - a. Eligible discharges made prior to the Notice of Intent submission deadline Section 4.2;
 - b. Eligible discharges that result from the application of a pesticide as part of pesticide research and development (defined in Section 6.39);
 - c. Eligible discharges for which submission of an NOI is not required.

However, these discharges are still required to comply with the minimum requirements of this permit as defined in Section 3 (Basic Requirements) and Section 5 (Standard Permit Requirements).

- 1.6 Consistent with the permit eligibility provisions of Section 1.1, dischargers that submit an application and are issued an Aquatic Plant Management (APM) permit through MN Rules 6280 by the Department of Natural Resources fulfill the requirements of this permit's NOI and are granted coverage under this NPDES/SDS general permit. Compliance with an APM permit satisfies the requirements of this NPDES/SDS permit, and no further reporting to MPCA is required.
- 1.7 Decision-makers required to submit a NOI, see Sections 4.1-4.5 for timing of submittal and authorization of discharge.
- 1.8 Decision-makers and Applicators covered under this permit that are not required to submit a NOI are terminated from permit coverage when they no longer have a discharge from the application of pesticides nor activities associated with the discharge required by this Permit, including, but not limited to monitoring, reporting and recordkeeping.

2. Exclusions / Limitations on Coverage

- 2.1 Decision-makers and Applicators are not eligible for coverage under this permit for discharges to:
 - a. Waters of the state identified as impaired for the pesticide or its degradates. Impaired waters are those which have been identified pursuant to Section 303(d) of the CWA as not meeting applicable state water quality standards.
 - b. Waters designated by the state as Prohibited Outstanding Resource Value Waters (ORVWs) for nondegradation purposes under Minn. R. 7050.0180 subp. 3 through 5 (Nondegradation for ORVWs).
- 2.2 Decision-makers and Applicators are not eligible for coverage under this permit due to other NPDES/SDS coverage in the following cases:
 - a. Discharges currently covered under another point source NPDES/SDS permit.

- b. Discharges covered within five years prior to the effective date of this permit by an individual permit or alternative general permit that established numeric water quality-based limitations for the pesticide in question or its degradates. See Section 4.43 for submittal of an application for an individual permit or alternative general permit.
- c. Discharges from activities where any NPDES/SDS permit has been or is in the process of being denied, terminated, or revoked by MPCA (this does not apply to the routine reissuance of permits every five years).

3. Technology-Based Effluent Limits for Pesticide Application

- 3.1 **Decision-makers' Responsibilities.** To meet the effluent limitations of this permit, all Decision-makers must minimize the discharge of pesticides to waters of the state from the application of pesticides, through the use of pest management measures (defined in Section 6.38). To the extent the Decision-maker determines the amount of pesticide or frequency of pesticide application, the Decision-maker must use the lowest effective amount of pesticide product per application and optimum frequency of pesticide application necessary to control the target pest, consistent with reducing the potential for development of pest resistance.
- 3.2 **Applicators' Responsibilities.** To meet the effluent limitations of this permit, all Applicators must implement the following requirements to minimize the discharge of pesticides to waters of the state from the application of pesticides, through the use of pest management measures:
 - a. To the extent not determined by the Decision-maker, use the lowest effective amount of pesticide product per application and optimum frequency of pesticide application necessary to control the target pest, consistent with reducing the potential for development of pest resistance, and apply pesticides in accordance with the product label or labeling and in a manner that will not cause unreasonable adverse effects to the environment. This includes using equipment and application procedures appropriate for this task.
 - b. Maintain pesticide application equipment in proper operation conditions, including requirement to calibrate, clean, and repair such equipment to prevent leaks, spills or other unintended discharges and to ensure the rate of pesticide application is calibrated (i.e. nozzle choice, droplet size, etc.) to deliver the precise quantity of pesticide needed to achieve the requirements outlined in Section 3.2.a. above.
 - c. Assess weather conditions (e.g. temperature, wind speed, and wind direction) in the treatment area to ensure application is consistent with all applicable federal requirements.

Water Quality-Based Effluent Limitations

- 3.3 Your discharge must be controlled as necessary to meet applicable numeric and narrative state water quality standards in accordance with Minn. R. 7000, 7050, 7052, and 7053 including the narrative standards governing nondegradation for all waters and ORVWs.
- 3.4 If at any time you become aware, or the MPCA determines, that your discharge causes or contributes to an exceedance of applicable water quality standards, you must take corrective action as required in Section 3.13 – 3.17 of this Permit (Corrective Action).

- 3.5 The MPCA may impose additional water quality-based limitations or require you to obtain coverage under an individual permit if information in your NOI, required reports, or other sources indicates that your discharges are not controlled as necessary to meet applicable water quality standards.

Site Monitoring

- 3.6 **Applicators Responsibilities.** All Applicators must, when considerations for safety and feasibility allow, visually assess the area to and around where pesticides are applied for possible and observable Adverse Incidents (defined in Section 6.4), caused by application of pesticides, including the unanticipated death or distress of non-target organisms and disruption of wildlife habitat, recreational or municipal water use.
- 3.7 **Decision-makers Responsibilities.** If any post-application surveillance occurs, Decision-makers must visually assess the area to and around where pesticides were applied for possible and observable Adverse Incidents caused by application of pesticides, including the unanticipated death or distress of non-target organisms and disruption of wildlife habitat, recreational or municipal water use.

Adverse Incident Notification and Reporting for both Decision-makers and Applicators

- 3.8 **Immediate Adverse Incident Notification.** If you observe or are otherwise made aware of an Adverse Incident that may have resulted from a discharge from your pesticide application, you must notify the Minnesota Public Safety Duty Officer at 800-422-0798 (651-649-5451 in the metro area) immediately. "Adverse Incident" means an incident that you have observed upon inspection or of which you otherwise become aware in which non-target organisms may have been exposed to a pesticide residue and suffered a toxic or adverse effect. See Section 6.4 for the full definition.

The Adverse Incident notification must include at least the following information:

- a. The caller's name and telephone number.
- b. Decision-makers and/or Applicators name and mailing address.
- c. If covered by a NOI, the NPDES/SDS tracking number.
- d. The name and telephone number of a contact person, if different than the person providing the 24-hour notice.
- e. How and when you became aware of the Adverse Incident.
- f. Description of the Adverse Incident identified and the location.
- g. The U.S. Environmental Protection Agency (EPA) pesticide registration number for each product you applied in the area of the Adverse Incident. If not a pesticide, provide the chemical product name.
- h. Description of any steps you have taken or will take to correct, repair, remedy, cleanup, or otherwise address any adverse effects, if applicable.

The Adverse Incident notification and reporting requirements are in addition to what the registrant is required to submit under Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) section 6(a)(2) and its implementing regulations at 40 CFR pt. 159.

- 3.9 Following Immediate Adverse Incident Notification in Section 3.8, submittal of an Adverse Incident Report per Section 3.10 is not required in situations identified in a. through d. below. However, documentation must be submitted to the MPCA either by electronic mail to the assigned MPCA staff or by letter to the Water Quality Submittals Center within fifteen (15) days of the Notification and must include justification as to why the Decision-maker and/or Applicator believes the Adverse Incident meets one or more of the situations identified below:
- a. An Adverse Incident occurs to pests that are similar in kind to pests identified as potential targets on the FIFRA label. For example, herbicides used to control vegetative aquatic pests may also impact non-target organisms and if identified on the label, reporting is not required.
 - b. You are aware of facts that clearly establish that the Adverse Incident was not related to toxic effects or exposure from your application.
 - c. You have been notified in writing by the MPCA that the reporting requirement has been waived for this incident or category of incidents.
 - d. You receive information notifying you of an Adverse Incident but that information is clearly erroneous.
- 3.10 **Adverse Incident Report.** Within fifteen (15) days of a reportable Adverse Incident pursuant to Section 3.8 of this Permit, you must provide a written Adverse Incident Report to the MPCA Water Quality Submittals Center. Your Adverse Incident Report must include at least the following information:
- a. Information required to be provided in Section 3.8.
 - b. Date and time you notified authorities, whom you spoke with, and any instructions you received.
 - c. Location of incident, including the names of any waters affected and appearance of those waters (sheen, color, clarity, etc).
 - d. A description of the circumstances, 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., banks, above, or direct to water), method of application, and name of pesticide, description of pesticide, and EPA registration number.
 - g. Description of the habitat and the circumstances under which the Adverse Incident occurred (including any available ambient water data for pesticides applied).
 - h. If laboratory tests were performed, indicate what test(s) were performed and when, and provide a summary of the test results within 5 days after they become available.
 - i. Actions to be taken to prevent recurrence of Adverse Incidents.
 - j. Signed and dated in accordance with Section 5.17 (Required Signatures).
- 3.11 **Adverse Incident to Threatened or Endangered Species or Critical Habitat.** Notwithstanding any of the other Adverse Incident notification requirements of Section 3.8 and 3.10, if you become aware of an Adverse Incident to a federally or state-listed threatened or endangered species or its federally-designated critical habitat, that may have resulted from your discharge, you must immediately notify the U.S. Fish and Wildlife Service (FWS) – Twin Cities Field Office (Ecological Services) at 612-725-3548 (TwinCities@fws.gov) or the Minnesota Department of Natural Resources (MDNR) Division of Ecological and Water Resources at 1 888-646-6367

(or 651-296-6157 in the metro area). This notification must be made by telephone immediately upon your becoming aware of the Adverse Incident and must include at least the following information:

- a. The caller's name and telephone number.
- b. Applicator name, mailing address, and telephone number (if different than above).
- c. The name of the affected species.
- d. How and when you became aware of the Adverse Incident.
- e. Description of the location of the Adverse Incident.
- f. Description of the Adverse Incident, including the EPA pesticide registration number for each product you applied in the area of the Adverse Incident. If not a pesticide, provide the chemical product name.
- g. Description of any steps you have taken or will take to alleviate the adverse impact to the species.

Additional information on federal and state-listed threatened or endangered species and critical habitat is available from FWS (<http://www.fws.gov/midwest/TwinCities/>) and MDNR (<http://www.dnr.state.mn.us/eco/index.html>).

- 3.12 Where multiple entities are authorized for a discharge that results in an Adverse Incident, notification and reporting by any one of the entities (Decision-maker or Applicator) constitutes compliance for all of the entities, provided a copy of the written report required in Section 3.10 is also provided to all of the other authorized Decision-makers and/or Applicators within 30 days of the reportable adverse incident.

Corrective Action

- 3.13 If any site-monitoring activities conclusively indicate that you failed to meet the basic requirements in Section 3.1 through 3.4 of this Permit, you must review and, as necessary, revise the evaluation and selection of your pest management measures to ensure that the situation is eliminated and will not be repeated in the future.
- 3.14 If any of the following situations occur, Decision-makers and Applicators must review and, as necessary, revise the evaluation and selection of your pest management measures 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 occurs (e.g., a spill, leak, or discharge not authorized by this or another NPDES/SDS permit consistent with Minn Stat. 115.061).
 - b. You become aware, or the MPCA concludes, that your control measures are not adequate/sufficient for the discharge to meet applicable water quality standards.
 - c. An inspection or evaluation of your activities by an MPCA official or local entity reveals that modifications to the control measures are necessary to meet the non-numeric effluent limits in this permit.
 - d. You observe, or are otherwise made aware of, a Reportable Adverse Incident.
- 3.15 If you determine that changes to your pest management measures are necessary to eliminate any situation identified in Section 3.13 and 3.14, such changes must be made before the next

pesticide application that results in a discharge if practicable, or if not, as soon as possible thereafter.

- 3.16 The occurrence of a situation identified in Section 3.13 and 3.14 may constitute a violation of the permit. Correcting the situation does not absolve you of liability for any original violation. However, failure to comply with Sections 3.13 and 3.14 constitute an additional permit violation. The MPCA will consider the appropriateness and promptness of corrective action in determining enforcement responses to permit violations.
- 3.17 The MPCA or a court 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. Those requirements and schedules will supersede those of Section 3.13 and 3.14 if such requirements conflict.

Recordkeeping

- 3.18 Decision-makers and Applicators must keep written records as required in this permit. These records must be accurate and complete and sufficient to demonstrate your compliance with the conditions of this permit. You can substitute records and documents developed for other obligations, such as requirements under FIFRA and state or local programs, provided all requirements of this permit are satisfied.
- 3.19 Decision-makers and Applicators shall keep records of acres or percentage of littoral zone receiving treatment for all activities covered under this general permit. The records must be kept up-to-date to help you determine if your permitted discharge meets the Thresholds as identified in Section 1.4.
- 3.20 Decision-makers and Applicators must keep the following records:
- a. A copy of any Adverse Incident Reports (Section 3.10).
 - b. Your rationale for any determination that reporting of an identified Adverse Incident is not required consistent with allowances in Section 3.9.
- 3.21 Applicators must retain the following records when applying a pesticide. These records are required under authority of the Minnesota Department of Agriculture and when an application is performed by a for-hire Applicator, the Applicator is required to give a copy of the records to the Decision-maker (customer):
- a. Name of Target pest.
 - b. Name of Applicator (individual and company), including license number and company address .
 - c. Pesticide application date(s) and time(s).
 - d. Brand name of the pesticide, the United States Environmental Protection Agency registration number, and dosage used.
 - e. Location of the site where the pesticide was applied, including number of units treated (acres or linear feet, or gallons of pesticide applied).
 - f. Temperature, wind speed, and wind direction at time of each pesticide application.
 - g. Documentation of equipment calibration.

- h. Whether or not visual monitoring was conducted during pesticide application and if not, why not and whether monitoring identified any possible or observable adverse incidents caused by application of pesticides.

4. Requirements for Decision-makers that Must Submit a NOI

Authorization to Discharge under This Permit

- 4.1 To obtain authorization under this permit, a Decision-maker must meet the eligibility requirements identified in Section 1.1 and if so required, submit a NOI in accordance with Section 1.4 (Thresholds) of this Permit.
- 4.2 Decision-makers are authorized to discharge under this permit as follows:

Type	NOI Submission Deadline	Discharge Authorization Date
Any Decision-maker not required to submit an NOI	Not applicable	Immediately upon beginning the discharge
Decision-makers whose discharge begins <u>before</u> final permit issuance and that meet the criteria in Section 1.4 requiring submission of an NOI.	Due between April 30, 2012, and July 30, 2012.	Immediately upon beginning to discharge. Authorization granted until July 30, 2012. If MPCA receive a complete and accurate NOI on or before July 30, 2012, uninterrupted coverage continues.
Decision-makers whose discharges begin <u>after</u> final permit issuance and that meet the criteria in Section 1.4 requiring submission of an NOI.	Due prior to exceeding a Threshold.	Immediately upon beginning to discharge, until the discharge exceeds a Threshold. If a Decision-maker submits an NOI after July 30, 2011, they are reauthorized after MPCA notifies them of receipt of a complete and accurate NOI.
Decision-makers whose discharge is in response to a <u>declared pest emergency situation</u> , as defined in Section 6.15 for which that activity triggers the NOI requirement identified in Section 1.4.	No later than 30 days after beginning discharge but no earlier than April 30, 2012.	Immediately, for activities conducted in response to declared emergency situation. A complete and accurate NOI shall be submitted within 30 days of the declared emergency. Coverage is reauthorized after MPCA notifies them of receipt of a complete and accurate NOI.
Any Decision-makers requiring permit coverage for a treatment area not within the pest management area identified on a previously submitted NOI. (If the Decision-maker cannot determine whether a revised NOI is needed, the Decision-maker may contact the MPCA.)	At least 10 days before beginning to discharge in that newly identified area unless discharges are in response to a declared pest emergency, in which case not later than 30 days after beginning discharge.	After MPCA notifies the Decision-maker of receipt of a complete and accurate NOI, unless discharges are in response to a declared pest emergency. If a declared pest emergency, a complete and accurate NOI shall be submitted within 30 days of the declared emergency. Coverage is reauthorized after MPCA notifies the Decision-maker of receipt of a complete and accurate NOI.

- 4.3 Coverage is for the Decision-maker who filed a NOI, including its employees, contractors, subcontractors, Applicators (commercial/for-hire applicators) and other agents, for all activities identified on the NOI. Applicators that are not also Decision-makers do not need to submit a NOI.

- 4.4 Electronic reporting of the NOI (eNOI) will be available online beginning April 30, 2012. If required to submit an NOI, a Decision-maker must submit the NOI once, in accordance with the deadlines in Section 4.3. The Decision-maker must prepare and submit the NOI using MPCA's electronic Notice of Intent system (eNOI) available on MPCA's website (www.pca.state.mn.us/pesticidepermit) unless eNOI is otherwise unavailable or the Decision-maker has obtained a waiver from the requirement to use eNOI for submission of the NOI. Decision-makers waived from the requirement to use eNOI for NOI submission must certify on paper that use of eNOI will incur undue burden or expense over the use of a paper form and then provide a basis for this determination. MPCA will notify Decision-makers of complete and accurate NOIs received. Late NOIs will be accepted, but authorization to discharge will not be retroactive.
- 4.5 Based on a review of your NOI or other information, the MPCA may delay coverage for further review, notify you that additional effluent limitations are necessary, or may deny coverage under this permit and require submission of an application for an individual NPDES/SDS permit, as detailed in Section 4.39 – 4.42. In these instances, the MPCA will notify you in writing of the delay, of the need for additional effluent limits, or of the request for submission of an individual NPDES/SDS permit application.

Technology-Based Effluent Limits

Pest Management Measures

- 4.6 If you discharge pollutants as a result of the application of pesticides for the sole purpose of research and development (defined in Section 6.40), you are not required to fully implement Section 4.8 – 4.10 for such discharges, but you still must implement Sections 3.1 – 3.5 to the extent that its requirements do not compromise the research design.
- 4.7 Decision-makers that submit a NOI are required to evaluate, select, and implement site-specific control measures that reduce and/or eliminate discharges of pesticides to waters of the state to the extent technologically available and economically practicable and achievable to meet the effluent limits in Sections 3.1 -3.5 and Sections 4.8 – 4.10 of the permit. Control measures can be actions (including processes, procedures, schedules of activities, prohibitions on practices, and other management practices), or structural or installed devices to minimize discharges of pesticides to waters of the state.

Part 1: Identify the Problem

- 4.8 Prior to the first pesticide application covered under this permit after the Threshold is reached, and at least once each year thereafter during which you will have a discharge, you must do the following for each pest management area:
- a. Identify areas with vegetative pest or algae problems and **characterize the extent of the problems**, including, for example, water use goals not attained (e.g. wildlife habitat, fisheries, vegetation, and recreation).
 - b. Identify **target vegetative pest species**.
 - c. Identify possible factors **causing or contributing to the vegetative pest or algae problem** (e.g., nutrients, invasive species, etc).

- d. Establish past or present vegetative pest or algae densities to serve as pest **action threshold(s)** for implementing pest management strategies. The action threshold is a point at which pest populations or environmental conditions indicate that pest control action must be taken.
- e. In the event there are no data for one or more proposed pest management area(s) in the past calendar year, use other data as appropriate to meet the permit conditions a - d above.

Part 2: Pest Management Strategies

- 4.9 Prior to the first pesticide application covered under this permit after the Threshold has been reached, and at least once each year thereafter during which you will have a discharge, you must select and implement for each pest management area efficient and effective means of pest management strategies that most successfully minimize discharges resulting from application of pesticides to control vegetative pests and algae, including the use of pesticide and non-pesticide methods. In developing your pest management strategies, you must evaluate the following management options considering impact to water quality, non-target organisms, pest resistance, feasibility, and cost effectiveness:
 - a. No action.
 - b. Prevention.
 - c. Mechanical/physical methods.
 - d. Cultural methods.
 - e. Biological control agents.
 - f. Pesticides.

Part 3: Pesticide Use

- 4.10 If a pesticide is selected for managing pests and application of the pesticide will result in a discharge to waters of the state, after the Threshold has been reached, you must:
 - a. Conduct surveillance prior to each pesticide application to assess the pest management area and to determine when the action threshold is met that necessitates the need for pest management.
 - b. Reduce the impact on the environment and non-target organisms by applying the pesticide only when the action threshold has been met.

Pesticide Discharge Management Plan (PDMP) for Large Entities

- 4.11 Decision-makers who submit a NOI, apply pesticides, and are a Large Entity (defined in Section 6.25) must prepare a Pesticide Discharge Management Plan (PDMP) for discharges from all treatment areas covered under this permit. The PDMP does not contain effluent limitations; the limitations are contained in Sections 3.1 – 3.6 and Sections 4.8 – 4.10 of this Permit. One PDMP may cover one or more treatment areas for each pesticide application activity.
- 4.12 The PDMP is intended to document the evaluation and selection of control measures. The additional documentation requirements (see Adverse Incidents and Recordkeeping Sections of this permit) are intended to document the implementation (including inspection, maintenance, monitoring, and corrective action) of the permit requirements. In your PDMP, you may refer to

procedures in other documents that meet the requirements of this permit. If you reference other documents, you must keep a copy of relevant portions of those documents with your PDMP and make it available for review consistent with Sections 4.24 and 4.26 (PDMP Availability).

4.13 Your PDMP must contain the following elements:

- a. Pesticide Discharge Management Team.
- b. Problem Description.
- c. Control Measures Description.
- d. Schedules and Procedures
 - 1) Spill Response Procedures.
 - 2) Adverse Incident Response Procedures.
- e. Signature Requirements.

PDMP – Team

4.14 You must identify the persons (by name or title) that comprise the team as well as their individual responsibilities, including:

- a. Person(s) responsible for managing pests in the treatment area described below.
- b. Person(s) responsible for developing and revising the PDMP.
- c. Person(s) responsible for taking corrective actions where required.
- d. Person(s) responsible for pesticide applications, or Applicators. If the Applicator is unknown at the time of plan development, indicate whether or not a for-hire Applicator will be used.

4.15 Identification of team members must include any written agreement(s), such as a for-hire pesticide Applicator, that specify the division of responsibilities between Decision-makers and Applicators as necessary to comply with the provisions of this permit.

PDMP – Problem and Pest Management Area Description

4.16 You must document the pest problem in your pest management area as required in Section 4.8 of this permit, including, but not limited to, identification of the target pest(s), source of the pest problem, and source of data used to identify the problem, action thresholds, and how they were determined.

4.17 You must 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.

4.18 You must document any waters identified as impaired by a substance which either is an active ingredient or a degradate of such an active ingredient.

PDMP – Control Measures Description

4.19 You must document your evaluation of control measures for your pest management area. You must document the control measures you will implement to comply with the effluent limitations

required in Sections 3.1 – 3.5 and Sections 4.8 – 4.10. Include in the description the active ingredient(s) evaluated.

PDMP –Schedules and Procedures

- 4.20 You must document schedules and procedures in your PDMP pertaining to control measures and pest management used to comply with the Effluent Limitations in Section 3.1 – 3.5 and Sections 4.8 – 4.10 of this Permit, including:
- a. Spill Response Procedures – At a minimum, Decision-makers must have:
 - 1) Procedures for expeditiously stopping, containing, and cleaning up leaks, spills, and other releases to Waters of the United States. Employees who may cause, detect, or respond to a spill or leak must be trained in these procedures and have necessary spill response equipment available. If possible, one of these individuals should be a member of the PDMP team.
 - 2) Procedures for notification of appropriate facility personnel, emergency response agencies, and regulatory agencies.
 - b. Adverse Incident Response Procedures – At a minimum, Decision-makers 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 Decision-maker'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.

PDMP – Signatures and Modifications

- 4.21 You must sign, date, and certify your PDMP in accordance with Section 5.17 (Required Signatures).
- 4.22 You must modify your PDMP whenever necessary to address any of the triggering conditions for corrective action in Section 3.13 and 3.14 (Corrective Actions) or when a change in pest control activities significantly changes the type or quantity of pollutants discharged.
- 4.23 Changes to your PDMP must be made before the next pesticide application that results in a discharge, if practicable, or if not, as soon as possible thereafter. The revised PDMP must be signed and dated in accordance with Section 5.17.
- 4.24 You must review your PDMP at a minimum once per calendar year and whenever necessary to update the pest problem identified and pest management strategies evaluated for your pest management area.

PDMP – Availability

- 4.25 You must retain a copy of the current PDMP, along with all supporting maps and documents, at the address provided in the NOI. The PDMP and all supporting documents must be readily available, upon request, and copies of any of these documents provided, upon request, to the

MPCA or agencies governing discharges or pesticide applications within their respective jurisdictions.

- 4.26 The MPCA may provide copies of your PDMP or other information related to this permit that is in its possession to members of the public. Any Confidential Business Information (CBI), as defined in Minn. Stat. § 116.075 (40 CFR pt. 2), may be withheld from the public provided that a claim of confidentiality is properly asserted and documented in accordance with Minn. R. 7000.1300 (40 CFR pt. 2). However, CBI must be submitted to the MPCA if requested, and may not be withheld from those staff within the MPCA or local/federal agencies cleared for CBI review (See Section 5.19, Confidential Information).

Corrective Action Documentation

- 4.27 Decision-makers required to submit an NOI, for situations identified in Section 3.13 and 3.14 that do not include Adverse Incidents, must document the situation triggering corrective action and the planned corrective action within fifteen (15) days of becoming aware of the situation and retaining a copy of this documentation. This documentation must include, but is not limited to 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 you learned of the situation, and date you 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.
 - f. For large entities, whether PDMP modifications are required as a result of the problem.

Recordkeeping

- 4.28 In addition to the recordkeeping requirements under Section 3.18 through 3.21 of this permit, Decision-makers who submit a NOI are required to keep records listed below at the address provided on the NOI. This includes recordkeeping requirement under Section 3.21, which is required by Minnesota Department of Agriculture to be recorded by any for-hire Applicators and copied to the Decision-maker (customer):
- a. A copy of the NOI submitted to the MPCA, any correspondence exchanged between you and the MPCA specific to coverage under this permit, and your assigned permit tracking number.
 - b. Documentation of any equipment cleaning, calibration, and repair (only if Decision-maker is also the Applicator)
 - c. Description of pest management measures(s) implemented prior to the first pesticide application.
 - d. Target pest(s) and pest density prior to pesticide application.
 - e. Identification of any waters, either by name or by location, to which you discharged any pesticide(s).
 - f. Quantity of each pesticide product applied to each treatment area.

- g. Whether or not visual monitoring was conducted during pesticide application and/or post-application and if not, why not and whether monitoring identified any possible or observable adverse incidents caused by application of pesticides.

Recordkeeping for Pesticide Application by Large Entities

4.29 In addition to Section 4.28, any Decision-maker required to submit an NOI and is a Large Entity (defined in Section 6.25) must retain the following records at the address provided on the NOI:

- a. A copy of the PDMP, including any modifications made to the PDMP during the term of this permit.
- b. Copy of Annual Reports submitted to MPCA.
- c. Action Thresholds.
- d. Method and/or data used to determine that action threshold(s) has been met.

4.30 All required records must be documented as soon as possible but no later than 15 days following pesticide application. You must retain any records required under this permit for at least 5 years after the date of pesticide application. You must make available to the MPCA, including an authorized representative of the MPCA, all records, including electronic records, kept under this permit upon request and provide copies of such records, upon request.

Annual Reporting

4.31 If you submitted a NOI and are considered a Large Entity, you must submit an Annual Report to the MPCA by February 15 for all pesticide activities covered under this permit occurring during the previous calendar year. You must retain a copy for your records. The report shall be completed on MPCA's Annual Report form. The first Annual Report is due February 15, 2013, for facilities that discharged during 2012

4.32 Once you meet the obligation to submit an Annual Report, you must submit an Annual Report each calendar year thereafter for the duration of coverage under this general permit. If pesticide application does not occur in a subsequent calendar year, you may check the "No Discharge" box on the Annual Report form for that year.

4.33 The Annual Report must include information for the calendar year. The first annual report must include activities for the portion of the calendar year after the effective date of the posting of a NOI. If the effective date is after November 1, you are not required to submit an Annual Report for that first partial year but must submit annual reports thereafter, with the first Annual Report submitted also including information from the first partial year.

4.34 When you terminate permit coverage, as specified in Sections 4.36 – 4.38, you must submit an Annual Report for the portion of the year up through the date of your termination. The Annual Report must be postmarked no later than 45 days after your termination date, or February 15 of the following year, whichever is earlier.

4.35 The Annual Report must contain the following information:

- a. Decision-maker's name.

- b. NPDES/SDS permit tracking number(s).
- c. Contact person name, title, e-mail address (if any), and phone number.
- d. For each treatment area, report the following information:
 - 1.) Identification of any waters or other treatment area either by name or by location, including size, Latitude and Longitude (if known), and Public Water Inventory number (if known), to which you discharged any pesticide(s).
 - 2.) Pesticide use pattern(s) and target pest(s).
 - 3.) Total amount of each pesticide product applied for the reporting year listed by the EPA registration number(s), if applicable, and by application method (e.g., aerially by fixed-wing or rotary aircraft, broadcast spray, etc.).
 - 4.) Whether this control activity was addressed in your PDMP prior to pesticide application, if applicable.
 - 5.) If applicable, a Report of any Adverse Incidents as a result of these treatment(s).
 - 6.) A description of any corrective action(s), including spill responses, resulting from pesticide application activities and the rationale for such action(s).

Terminating Coverage

- 4.36 Decision-makers covered by the posting of a NOI must submit a complete and accurate Permit Change Request form to terminate permit coverage. Authorization to discharge under this permit terminates after the Decision-maker receives either written or electronic notification by the MPCA that permit coverage has been terminated. You are responsible for meeting the terms of this permit until your authorization is terminated.

- 4.37 You must submit a Permit Change Request form within 30 days after one of the following conditions has been met:
 - a. You have ceased all discharges from the application of pesticides for which you obtained permit coverage and you do not expect to discharge during the remainder of the permit term for the activity identified in Section 1.1 including, but not limited to monitoring, reporting and recordkeeping; or
 - b. You have obtained coverage under an individual permit or an alternative general permit for all discharges required to be covered by an NPDES/SDS permit, unless you obtained coverage consistent with Section 4.39 – 4.42 below, in which case no Permit Change Request form is required.

If you submit a Permit Change Request form without meeting one of the above conditions, your form is not valid.

- 4.38 Decision-makers are required to submit Annual Reports pursuant to Section 4.31 – 4.35 and must file an Annual Report for the portion of the year up through the date of your termination. The Annual Report is due no later than 45 days after your termination date.

Individual or Alternative General Permits

MPCA Requiring Coverage under an Individual or Alternative General Permit

- 4.39 The MPCA may require you to obtain authorization to discharge under either an individual NPDES/SDS permit or an alternative NPDES/SDS general permit in accordance with 40 CFR § 122.64 and § 124.5, and Minn. R. ch. 7001.
- 4.40 If the MPCA requires you to apply for an individual NPDES/SDS permit, the MPCA will notify you in writing that a permit application is required. This letter will include a brief statement of the reasons for this decision and will provide application information, including a deadline to file the permit application. The MPCA may grant additional time to submit the application if you submit a request setting forth reasonable grounds for additional time.
- 4.41 If you are covered under this permit and fail to submit an individual NPDES/SDS permit application as required by the MPCA, then the this permit's coverage to you is terminated at the end of the day specified by the MPCA as the deadline for application submittal. The MPCA may take appropriate enforcement action for any unpermitted discharge.
- 4.42 If during the course of this general permits' term the water of the state being discharged to is listed as Impaired pursuant to Section 303(d) of the CWA for a pesticide or its degradates, and general permit coverage is for the discharge of that specific pesticide or one of its degradates, you shall notify the MPCA whether you will retain coverage under the general permit and thus are required to change the pesticide being used, or obtain an individual permit or an alternative general permit by meeting the requirements of Sections 4.43 and 4.44. The listing of Impaired Waters can be found at <http://www.pca.state.mn.us/index.php/view-document.html?gid=8262>

Decision-maker Requesting Coverage under an Individual or Alternative General Permit

- 4.43 You may request to be excluded from coverage under this general permit by applying for an individual permit. In such a case, you must submit an individual permit application in accordance with the requirements of Minn. R. 7001.0050 with reasons supporting the request. The request may be granted by issuance of an individual permit or authorization of coverage under an alternative general permit if your reasons are warranted.
- 4.44 When an individual NPDES/SDS permit or an alternative NPDES/SDS general permit is issued, authorization to discharge under this permit is terminated on the effective date of the individual permit or the date of authorization of coverage under the alternative general permit.

5. Standard Permit Requirements

- 5.1 Incorporation by Reference. The following applicable federal and state laws are incorporated by reference in this permit, are applicable to the Permittee, and are enforceable parts of this permit: 40 CFR §§ 122.41, 122.42, pts. 136, 403 and 503; Minn. R. chs. 7001, 7041, 7045, 7050, 7052, 7053, 7060, and 7080; and Minn. Stat. chs. 115 and 116.

- 5.2 Other federal and state laws. Permittees must comply with all other applicable federal and state laws and regulations that pertain to the application of pesticides. For example, this permit does not negate the requirements under the 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 the permit and therefore a violation of the CWA (e.g. exceeding label application rates).
- 5.3 Permittee Responsibility. The Permittee shall perform the actions or conduct the activity authorized by the permit in compliance with the conditions of the permit and, if required, in accordance with the plans and specifications approved by the Agency (Minn. R. 7001.0150, subp. 3, item E).
- 5.4 Toxic Discharges Beyond Impact to Target Species Prohibited. Whether or not this permit includes effluent limitations for toxic pollutants, the Permittee shall not discharge a toxic pollutant that will impact non-target species except according to 40 CFR pts. 400 to 460 and Minn. R. chs. 7050, 7052, 7053 and any other applicable MPCA rules (Minn. R. 7001.01090, subp. 1, item A).
- 5.5 Nuisance Conditions Prohibited. The Permittee's discharge shall not cause any nuisance conditions including, but not limited to floating solids, scum and visible oil film, acutely toxic conditions to non-target aquatic life, or other adverse impact on the receiving water (Minn. R. 7001.0210, subp. 2).
- 5.6 Property Rights. This permit does not convey a property right or an exclusive privilege (Minn. R. 7001.0150, subp. 3, item C).
- 5.7 Liability Exemption. In issuing this permit, the state and the MPCA assume no responsibility for damage to persons, property, or the environment caused by the activities of the Permittee in the conduct of its actions, including those activities authorized, directed, or undertaken under this permit. To the extent the state and the MPCA may be liable for the activities of its employees, that liability is explicitly limited to that provided in the Tort Claims Act (Minn. R. 7001.0150, subp. 3, item O).
- 5.8 Agency Obligations. The MPCA's issuance of this permit does not obligate the MPCA to enforce local laws, rules, or plans beyond what is authorized by Minn. Stat. (Minn. R. 7001.0150, subp. 3, item D).
- 5.9 Liabilities. The MPCA's issuance of this permit does not release the Permittee from any liability, penalty or duty imposed by Minnesota or federal statutes or rules or local ordinances, except the obligation to obtain the permit (Minn. R. 7001.0150, subp. 3, item A).
- 5.10 More Stringent Rules. The issuance of this permit does not prevent the future adoption by the MPCA of pollution control rules, standards, or orders more stringent than those now in existence and does not prevent the enforcement of these rules, standards, or orders against the Permittee (Minn. R. 7001.0150, subp. 3, item B).
- 5.11 Severability. The provisions of this permit are severable, and if any provisions of this permit, or the application of any provision of this permit to any circumstance, are held invalid, the

application of such provision to other circumstances and the remainder of this permit shall not be affected thereby.

5.12 Compliance with Other Rules and Statutes. The Permittee shall comply with all applicable air quality, solid waste, and hazardous waste statutes and rules.

5.13 Inspection and Entry. When authorized by Minn. Stat. §§ 115.04; 115B.17, subd. 4; and 116.091, and upon presentation of proper credentials, the agency, or an authorized employee or agent of the agency, shall be allowed by the Permittee to enter at reasonable times upon the property of the Permittee to examine and copy books, papers, records, or memoranda pertaining to the construction, modification, or operation of the facility covered by the permit or pertaining to the activity covered by the permit; and to conduct surveys and investigations, including sampling or monitoring, pertaining to the construction, modification, or operation of the facility covered by the permit or pertaining to the activity covered by the permit (Minn. R. 7001.0150, subp. 3, item I).

5.14 Completing Reports. The Permittee shall submit the results of the required sampling and monitoring activities on the forms provided, specified, or approved by the MPCA. The information shall be recorded in the specified areas on those forms and in the units specified (Minn. R. 7001.1090, subp. 1, item D; Minn. R. 7001.0150, subp. 2, item B).

Required forms may include:

- a. Adverse Incident Report
- c. Annual Report

5.15 **Submitting Reports. Forms shall be submitted to:**

MPCA
Attn: Pesticide NPDES/SDS Permitting Reports
520 Lafayette Road North
St. Paul, Minnesota 55155-4194

Forms shall be submitted as specified in this permit. Annual Reports shall be submitted for each event even if no discharge occurred during the reporting period (Minn. R. 7001.0150, subp. 2 item B and 3, item H).

5.16 Incomplete or Incorrect Reports. The Permittee shall immediately submit an amended report to the MPCA upon discovery by the Permittee or notification by the MPCA that it has submitted an incomplete or incorrect report. The amended report shall contain the missing or corrected data along with a cover letter explaining the circumstances of the incomplete or incorrect report (Minn. R. 7001.0150, subp. 3, item G).

5.17 Required Signatures. All forms, reports, and other documents submitted to the MPCA shall be signed by the Permittee or the duly authorized representative of the Permittee. Minn. R. 7001.0150, subp. 2, item D. The person or persons that sign the forms, reports, or other documents must certify that he or she understands and complies with the certification requirements of Minn. R. 7001.0070 and 7001.0540, including the penalties for submitting false information.

- 5.18 Records. The Permittee shall, when requested by the Agency, submit within a reasonable time the information and reports that are relevant to the control of pollution regarding the construction, modification, or operation of the facility covered by the permit or regarding the conduct of the activity covered by the permit (Minn. R. 7001.0150, subp. 3, item H).
- 5.19 Confidential Information. Except for data determined to be confidential according to Minn. Stat. § 116.075, subd. 2, all reports required by this permit shall be available for public inspection. In order to maintain data for confidential use of the MPCA, pursuant to Minn. Stat § 116.075, or as nonpublic data not on individuals or private data as it relates to individuals, pursuant to Minn. Stat. § 13.37, a person must affirmatively request such recognition by providing the Commissioner a written request setting forth the statutory grounds and the reasons that justify the classification of the records or other information as not public (Minn. R. 7001.1300, subp. 1). Effluent data shall not be considered confidential. To request the Agency maintain data as confidential, the Permittee must follow Minn. R. 7000.1300.

Noncompliance and Enforcement

- 5.20 Subject to Enforcement Action and Penalties. Noncompliance with a term or condition of this permit subjects the Permittee to penalties provided by federal and state law set forth in section 309 of the CWA; United States Code, title 33, section 1319, as amended; and in Minn. Stat. §§ 115.071 and 116.072, including monetary penalties, imprisonment, or both (Minn. R. 7001.1090, subp. 1, item D).
- 5.21 Criminal Activity. The Permittee may not knowingly make a false statement, representation, or certification in a record or other document submitted to the Agency. A person who falsifies a report or document submitted to the Agency, or tampers with, or knowingly renders inaccurate a monitoring device or method required to be maintained under this permit is subject to criminal and civil penalties provided by federal and state law (Minn. R. 7001.0150, subp. 3[G]).
- 5.22 Noncompliance Defense. It shall not be a defense for the Permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit (40 CFR § 122.41 [c]).
- 5.23 Civil and Criminal Liability. Nothing in this permit shall be construed to relieve the Permittee from civil or criminal penalties for noncompliance with the terms and conditions provided herein. Nothing in this permit shall be construed to preclude the initiation of any legal action or relieve the Permittee from any responsibilities, liabilities, or penalties to which the Permittee is or may be subject to under Section 311 of the CWA and Minn. Stat. chs. 115 and 116, as amended; and any rules adopted thereunder.
- 5.24 Noncompliance. If the Permittee discovers, through any means, including notification by the MPCA, that noncompliance with a condition of the permit has occurred, the Permittee shall take all reasonable steps to minimize the adverse impacts on human health, public drinking water supplies, or the environment resulting from the noncompliance (Minn. R. 7001.1090, subp. 3[J]).
- 5.25 Unauthorized Releases of Wastewater Prohibited. Except for conditions specifically described in Minn. R. 7001.1090, subp. 1, items J and K, all unauthorized bypasses, overflows, discharges,

spills, or other releases of wastewater or materials to the environment, whether intentional or not, are prohibited. However, the MPCA will consider the Permittee's compliance with permit requirements, frequency of release, quantity, type, location, and other relevant factors when determining appropriate action (40 CFR § 122.41 and Minn. Stat. § 115.061).

5.26 Discovery of a Release. Upon discovery of a release, the Permittee shall:

- a. Immediately take all reasonable action necessary to minimize or abate the incident and to recover any pesticides involved in the incident.
- b. Notify the Minnesota Department of Public Safety Duty Officer at 800-422-0798 (toll free) or 651-649-5451 (metro area) immediately upon discovery of the release. In addition, you may also contact the MPCA during business hours at 800-657-3864.
- c. Recover as rapidly and as thoroughly as possible all substances and materials released or immediately take other action as may be reasonably possible to minimize or abate pollution to waters of the state or potential impacts to human health caused thereby. If the released materials or substances cannot be immediately or completely recovered, the Permittee shall contact the MPCA. If directed by the MPCA, the Permittee shall consult with other local, state or federal agencies (such as the MDNR and/or the Wetland Conservation Act authority) for implementation of additional clean-up or remediation activities in wetland or other sensitive areas.
- d. If directed by the MPCA, the Permittee shall collect representative samples of the release. The Permittee shall sample the release for parameters of concern immediately following discovery of the release. The Permittee may contact the MPCA during business hours to discuss the sampling parameters and protocol. If the release cannot be immediately stopped, the Permittee shall consult with MPCA regarding additional sampling requirements. Samples shall be collected at least, but not limited to, two times per week for as long as the release continues.
- e. Submit the sampling results as directed by the MPCA. At a minimum, the results shall be submitted to the MPCA within 15 days of the release.

5.27 Upset Defense. In the event of temporary noncompliance by the Permittee with an applicable effluent limitation resulting from an upset of the Permittee's activity due to factors beyond the control of the Permittee, the Permittee has an affirmative defense to an enforcement action brought by the Agency as a result of the noncompliance if the Permittee demonstrates by a preponderance of competent evidence:

- a. The specific cause of the upset.
- b. That the upset was unintentional.
- c. That the upset resulted from factors beyond the reasonable control of the Permittee and did not result from operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or increases in production which are beyond the design capability of the treatment facilities.
- d. That at the time of the upset the facility was being properly operated.
- e. That the Permittee properly notified the Commissioner of the upset in accordance with Minn. R. 7001.1090, subp. 1, item I.
- f. That the Permittee implemented the remedial measures required by Minn. R. 7001.0150, subp. 3, item J.

- 5.28 The Permittee shall at all times properly operate and maintain the equipment and systems of treatment and control, and the appurtenances related to them, which are installed or used by the Permittee to achieve compliance with the conditions of the permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures.
- 5.29 Report Changes. The Permittee shall give advance notice as soon as possible to the MPCA of any substantial changes in operational procedures, activities that may alter the nature or frequency of the discharge, and/or material factors that may affect compliance with the conditions of this permit (Minn. R. 7001.0150, subp. 3, item M).
- 5.30 The MPCA Initiated Permit Modification, Suspension, or Revocation. The MPCA may modify or revoke and reissue this permit pursuant to Minn. R. 7001.0170. The MPCA may revoke without reissuance this permit pursuant to Minn. R. 7001.0180.
- 5.31 TMDL Impacts. Facilities that discharge to an impaired surface water, watershed or drainage basin may be required to comply with additional permits or permit requirements, including additional restrictions as authorized by the CWA 303(d)(4)(A) and 40 CFR § 122.44 (l)(2)(i) necessary to ensure consistency with the assumptions and requirements of any applicable EPA approved wasteload allocations resulting from Total Maximum Daily Load (TMDL) studies.
- 5.32 Permit Transfer. The permit is not transferable to any person without the express written approval of the Agency after compliance with the requirements of Minn. R. 7001.0190. A person to whom the permit has been transferred shall comply with the conditions of the permit (Minn. R. 7001.0150, subp. 3, item N).
- 5.33 Permit Reissuance. If the Decision-maker desires to continue permit coverage beyond the date of permit expiration, the Decision-maker shall submit an application for reissuance at least 180 days before permit expiration. If the Decision-maker does not intend to continue the activities authorized by this permit after the expiration date of this permit, the Decision-maker shall notify the MPCA in writing at least 180 days before permit expiration.

If the Decision-maker has submitted a timely application for permit reissuance, the Permittee may continue to conduct the activities authorized by this permit, in compliance with the requirements of this permit, until the MPCA takes final action on the application, unless the MPCA determines any of the following (Minn. R. 7001.0040 and 7001.0160):

- a. The Permittee is not in substantial compliance with the requirements of this permit, or with a stipulation agreement or compliance schedule designed to bring the Permittee into compliance with this permit.
- b. The MPCA, as a result of an action or failure to act by the Permittee, has been unable to take final action on the application on or before the expiration date of the permit.
- c. The Permittee has submitted an application with major deficiencies or has failed to properly supplement the application in a timely manner after being informed of deficiencies.

6. Permit Specific Definitions

- 6.1 "Act" means the federal CWA, as amended, 33 U.S. Code 1251 et seq.
- 6.2 "Action Threshold" means the point at which pest populations or environmental conditions can no longer be tolerated, necessitating that pest control action be taken based on economic, human health, aesthetic, or other effects. Sighting a single pest does not always mean control is needed. Action Thresholds help determine both the need for control actions and the proper timing of such actions.
- 6.3 "Active Ingredient" means 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).
- 6.4 "Adverse Incident" means an incident that you have observed upon inspection or of which you otherwise become aware, in which (1) Non-target organism may have been exposed to a pesticide residue, and (2) The non-target organism suffered a toxic or adverse effect.

The phrase "toxic or adverse effects" includes effects that occur within waters of the U.S. 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:

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

The phrase, "toxic or adverse effects," also includes any adverse effects to humans (e.g., skin rashes) or domesticated animals that occur either directly or indirectly from a discharge to waters of the state that are temporally and spatially related to exposure to a pesticide residue (e.g., vomiting, lethargy).

- 6.5 "Agency" means the Minnesota Pollution Control Agency (MPCA).
- 6.6 "Applicator" means a person or commercial business that applies pesticides or other chemicals covered by this permit to a water of the state. Applicators are required to be licensed if hired or to apply registered pesticides. See Minn. Stat. § 18B.29 through 18B.35 for specifics on certification and licensing.

- 6.7 "Best Management Practices" or "BMPs" means practices to prevent or reduce the pollution of waters of the state, including schedules of activities, prohibitions of practices, and other management practices, and also includes treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal or drainage from raw material storage (Minn. R. 7001.1020, subp 5).
- 6.8 "Biological Control Agents" mean agents that are organisms that can be introduced to your sites, such as herbivores, predators, parasites, and hyperparasites (Source: FWS IPM Guidance, 2004).
- 6.9 "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 dessicant, that: (1) is a eucaryotic microorganism including, but not limited to, protozoa, algae, and fungi; (2) is a procaryotic microorganism, including, but not limited to, Eubacteria and Archaeobacteria; or (3) is a parasitically replicating microscopic element, including but not limited to, viruses (40 CFR § 158.2100[b]). Biochemical pesticide mean a pesticide that: (1) is a naturally-occurring substance or is 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).
- 6.10 "CFR" means the Code of Federal Regulations.
- 6.11 "Chemical Pesticides" means all pesticides not otherwise classified as biological pesticides.
- 6.12 "Commissioner" means the commissioner of the Minnesota Pollution Control Agency or a designated representative.
- 6.13 "Control Measures" refers to any BMP or other method used to meet the effluent limitations. Control measures must comply with manufacturer specifications, industry standards and recommended industry practices related to the application of pesticides, and relevant legal requirements. Additionally, control measures could include other actions that a prudent operator would implement to reduce and/or eliminate pesticide discharges to waters of the state to comply with the effluent limitations in Sections 3 and 4 of this permit.
- 6.14 "Cultural Methods" means manipulation of the habitat to increase pest mortality by making the habitat less suitable to the pest.
- 6.15 "Decision-maker" means any entity associated with the application of pesticides which results in a discharge to waters of the state and that has control over the decision to perform pesticide applications, including the ability to modify those decisions. This does not include local, state or other units of government that may provide instruction or control documents based on their

authority over pests or the use of pesticides by another party (i.e. the Lake Association is considered the Decision-maker even if the DNR may direct the Lake Association to use a specific pesticide product or limit the amount to be applied).

- 6.16 "Declared Pest Emergency Situation" means 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:
- a. Significant risk to human health.
 - b. Significant economic loss.
 - c. Significant risk to:
 - 1) Endangered species.
 - 2) Threatened species.
 - 3) Beneficial organisms.
 - 4) The environment (40 CFR pt. 166).
- 6.17 "Discharge" when used without qualification, means the "discharge of a pollutant" (40 CFR § 122.2).
- 6.18 "Duty Officer" means the Minnesota Duty Officer, Department of Public Safety, Division of Emergency Management.
- 6.19 "Facility or Activity" means any NPDES "point source" (including land or appurtenances thereto) that is subject to regulation under the NPDES program (40 CFR § 122.2).
- 6.20 "Federal Facility" means any buildings, installations, structures, land, public works, equipment, aircraft, vessels, and other vehicles and property, owned, operated, or leased by, or constructed or manufactured for the purpose of leasing to, the federal government.
- 6.21 "For-Hire Applicator" includes persons who make contractual pesticide applications for which they or their employer receives compensation (e.g., lawn care firms, pest control companies). This includes "Commercial Applicators" as defined in Minn. Stat. ch. 18B.
- 6.22 "General Permit" means a permit issued under Minn. R. 7001.0210 to a category of permittees whose operations, emissions, activities, discharges, or facilities are the same or substantially similar.
- 6.23 "Impaired Water" or "Water Quality Impaired Water," for the purposes of this permit, means a water identified by the state pursuant to Section 303(d) of the CWA 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.
- 6.24 "Inert Ingredient" means 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).

- 6.25 "Large Entity" means any: (a) public entity that serves a population greater than 10,000 or (b) private enterprise that exceeds the Small Business Administration size standard as identified at 13 CFR § 121.201.
- 6.26 "Littoral zone" means the surface area of a water body where the depth is 15 feet or less (Minn. R. 6280.0100, subp.9).
- 6.27 "Mechanical/Physical Methods" means mechanical tools or physical alterations of the environment, for pest prevention or removal.
- 6.28 "Minimize" means to reduce and/or eliminate pesticide discharges to waters of the state through the use of "control measures" to the extent technologically available and economically practicable and achievable.
- 6.29 "MPCA" means the Minnesota Pollution Control Agency, or Minnesota Pollution Control Agency staff as delegated by the Minnesota Pollution Control Agency.
- 6.30 "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.
- 6.31 "NPDES" means National Pollutant Discharge Elimination System which is the program for issuing, modifying, revoking, reissuing, terminating, monitoring, and enforcing permits and imposing and enforcing pretreatment requirements under sections, 307, 318, 402, and 405 of the CWA: 33 U.S.C. §§ 1317, 1328, 1342, and 1345.
- 6.32 "Outstanding Resource Value Waters" are waters within the Boundary Waters Canoe Area Wilderness, Voyageur's National Park, and Department of Natural Resources designated scientific and natural areas, wild, scenic, and recreational river segments, Lake Superior, those portions of the Mississippi River from Lake Itasca to the southerly boundary of Morrison County that are included in the Mississippi Headwaters Board comprehensive plan dated February 12, 1981, and other waters of the state with high water quality, wilderness characteristics, unique scientific or ecological significance, exceptional recreational value, or other special qualities which warrant stringent protection from pollution (Minn. R. 7050.0180 subp. 2(A), including any updates).
- 6.33 "Permittee" means any entity associated with the application of pesticides which results in a discharge to waters of the state regardless of whether a NOI is required to be submitted.
- 6.34 "Person" means an individual, association, partnership, corporation, municipality, State or Federal agency, or an agent or employee thereof.
- 6.35 "Pest" means an insect, rodent, nematode, fungus, weed, terrestrial or aquatic plant, animal life, virus, bacteria, or other organism designated by rule as a pest, except a virus, bacteria, or

other microorganism on or in living humans or other living animals (Minn. Stat. § 18B.01, subd. 17).

- 6.36 "Pest Management Area" means the area of land, including any water, for which you are conducting pest management activities covered by this permit.
- 6.37 "Pest Management Measure" means any practice used to meet the effluent limitations that comply with manufacturer specifications, industry standards and recommended industry practices related to the application of pesticides, relevant legal requirements and other provisions that a prudent Permittee would implement to reduce and/or eliminate pesticide discharges to waters of the state.
- 6.38 "Pesticide" means a substance or mixture of substances intended to prevent, destroy, repel, or mitigate a pest, and a substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant. (Minn. Stat. 18B.01, subd. 18)

Under FIFRA Section 2(u), "Pesticide" means: (1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, (2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, and (3) any nitrogen stabilizer, except that the term "pesticide" shall not include any article that is a "new animal drug" within the meaning of section 201(w) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321[w]), that has been determined by the Secretary of Health and Human Services not to be a new animal drug by a regulation establishing conditions of use for the article, or that is an animal feed within the meaning of section 201(x) of such Act (21 U.S.C. 321[x]) bearing or containing a new animal drug. The term "pesticide" does not include liquid chemical sterilant products (including any sterilant or subordinate disinfectant claims on such products) for use on a critical or semi-critical device, as defined in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321). For purposes of the preceding sentence, the term "critical device" includes any device that introduced directly into the human body, either into or in contact with the bloodstream or normally sterile areas of the body and the term "semi-critical device" includes any device that contacts intact mucous membranes but which does not ordinarily penetrate the blood barrier or otherwise enter normally sterile areas of the body.

The term "pesticide" applies to insecticides, herbicides, fungicides, rodenticides, and various other substances used to control pests. The definition encompasses all uses of pesticides authorized under FIFRA including uses authorized under sections 3 (registration), 5 (experimental use permits), 18 (emergency exemptions), 24(c) (special local needs registrations), and 25(b) (exemptions from FIFRA).

Note: drugs used to control diseases of humans or animals (such as livestock 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."

- 6.39 "Pesticide Product" means 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.
- 6.40 "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). These types of activities are generally categorized under the four-digit code of 5417 under the 2007 NAICS.
- 6.41 "Pesticide Residue" – includes that portion of a pesticide application that is discharged from a point source to waters of the U.S. and no longer provides pesticidal benefits. It also includes any degradates of the pesticide.
- 6.42 "Point source" means 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)
- 6.43 "Pollutant" means any sewage, industrial waste, or other wastes, as defined in Minnesota Statutes chapter 115.01, discharged into a disposal system or to waters of the state, and includes 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]
- 6.44 "Release" means any bypass, overflow, discharge, spill, or other release of wastewater or materials to the environment.
- 6.45 "SDS" means State Disposal System and generally describes a permit issued by the state of Minnesota that is non-surface water discharging or land application facilities.
- 6.46 "Small Entity" means any: (a) public entity that serves a population of 10,000 or less or (b) private enterprise that does not exceed the Small Business Administration size standard as identified at 13 CFR § 121.201.
- 6.47 "Target Pest" is the organism toward which pest control measures are being directed.

- 6.48 "Technology-based effluent limitation, standard, or prohibition" means an effluent limitation, standard, or prohibition promulgated by the EPA at 40 CFR pts. 400 to 460; under sections 301 and 306 of the CWA; 33 U.S.C. §§ 1311 and 1316. (Minn. R. 7010.0120, subp. 29).
- 6.49 "Total maximum daily load" or "TMDL" means the sum of the individual wasteload allocations for point sources and load allocations for nonpoint sources and natural background, as more fully defined in 40 CFR §130.2(i). A TMDL sets and allocates the maximum amount of a pollutant that may be introduced into a water of the state and still assure attainment and maintenance of water quality standards. (Minn. R. 7052.0010 subp. 42).
- 6.50 "Upset" means an exceptional incident in which the permit discharge limits are unintentionally and temporarily exceeded due to factors beyond the reasonable control of the Permittee.
- 6.51 "Waters of the State" means all streams, lakes, ponds, marshes, wetlands, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the state or any portion thereof. (Minn. Stat. 115.01, subp. 22).
- 6.52 "You" and "Your," as used in this permit are intended to refer to the permittee as the context indicates and that party's activities or responsibilities.