

## PESTICIDE POLLUTANT DISCHARGE FACT SHEET

WPDES Permit No. WI-0064556-2 Nuisance or Invasive Aquatic Plants, Algae & Pathogens  
WPDES Permit No. WI-0064564-2 Detrimental or Invasive Aquatic Animals  
WPDES Permit No. WI-0064572-2 Forest Canopy Pests  
WPDES Permit No. WI-0064581-2 Mosquitos or Other Flying Insects

April 2018

### **GENERAL PERMIT COVERAGE**

General Permits (GP) are designed to cover discharges from a class of facilities or industries that are similar in nature. When a GP is issued or reissued, all facilities meeting its requirements must apply for coverage under the GP. GPs currently exist for groundwater remediation, nonmetallic mining operations, swimming pools and numerous other types of facilities. For facilities that are eligible for coverage under a GP, the Wisconsin Department of Natural Resources (Department) sends a cover letter to the facility (permittee). The cover letter includes the Department's determination that a facility's discharge is covered under the GP and may specify alternate requirements outlined in the permit such as modified sampling frequencies for certain parameters or the inclusion of monitoring for parameters in addition to those requiring regular monitoring.

### **GENERAL DESCRIPTION OF OPERATIONS COVERED UNDER THIS GP**

Four Wisconsin Pollutant Discharge Elimination System (WPDES) general permits have been issued to authorize point source discharges of a biological pollutant, an excess chemical pollutant, and a residual chemical pollutant directly into waters of the state as defined in s. 283.01(20) of the Wis. Statutes. These general permits address pollutant discharges where the Wisconsin Department of Trade & Consumer Protection (DATCP) registration and the Environmental Protection Agency (EPA) pesticide label authorizes the pesticide to be applied either directly or incidentally into water.

The labeling and use of pesticides in the United States is regulated by the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). The requirements of FIFRA, the DATCP pesticide registration & licensing program, and aquatic organism management program specified in chs. NR 107 and 109, Wis. Adm. Code for the aquatic plant management program (APM) continue to regulate the use of pesticides in Wisconsin. The Aquatic Plant Management (APM) program requires annual permits. These annual permit requirements are for the use of pesticides. These permits may require different or additional reporting or restrictions than the WPDES general permit. The WPDES permit is valid for the term of the general permit and/or the requested coverage time period if less. Permittees do not need to reapply annually for the WPDES general permit coverage as long as they requested coverage for the full permit term.

The WPDES permits are required because of the Federal 6th Circuit Court of Appeals ruled on January 7, 2009 in National Cotton Council, et al. v. the U.S. Environmental Protection Agency (EPA) that in addition to FIFRA, Clean Water Act permits are also required for pest control activities that result in:

- (1) a biological pollutant discharge,
- (2) an excess chemical pollutant discharge into waters of the state located beyond the treatment area boundary, and/or
- (3) a chemical pollutant residue that remains in waters of the state after completion of the pesticide treatment period.

An excess or residual chemical pollutant from a pest control treatment project could include, but not be limited to:

- (1) a pesticide active or inert ingredient,
- (2) a pesticide degradation by-product,
- (3) a chemical applied to enhance pesticide effectiveness, and/or

- (4) a non-pesticide chemical applied to control a problem species.

Efforts have been made to have these general permits be as consistent as possible with other WPDES general permits and the existing chs. NR 107 and 109, Wis. Adm. Code APM permit program. The treatment technology best management practices of the pesticide general permits are primarily based on the pest management concepts presented in the EPA 2016 NPDES pesticide pollutant discharge permit and fact sheet. Each of the general permits requires an Integrated Pest Management (IPM) plan be developed and implemented by the permittee. Each of these general permits contains specific best management practices designed to minimize pollutant discharges to waters of the state for the particular pests covered. The general permits also require that Wisconsin aquatic life and human health water quality standards be met for a biological pollutant, excess chemical pollutant discharge outside of the treatment area and any chemical pollutant residual remaining after the treatment period is completed.

The proposed general WPDES discharge permits have two primary requirements:

- (1) that the permittee evaluate a range of pest management options that can minimize the discharge of excess or residual pollutants to the aquatic environment, and
- (2) that aquatic life and human health water quality standards be met for any excess pollutant discharge outside of the treatment zone and any pollutant residual remaining after the treatment period is completed.

Wisconsin general permits authorize pollutant discharge from control activities for the following types of organisms:

- Nuisance or Invasive Aquatic Plants, Algae & Pathogens - Permit No. WI-0064556
- Detrimental or Invasive Aquatic Animals - Permit No. WI-0064564
- Forest Canopy Pests - Permit No. WI-0064572
- Mosquitoes or Other Flying Insects - Permit No. WI-0064581

Permittees may be pesticide applicator companies, individual landowners, lake associations or group, governmental agencies or other parties. The permittee is responsible for ensuring all requirements of the general permit are met including, but not limited to, applying for permit coverage, annual reporting, update to Integrated Past Management (IPM) plans, and pesticide application in accordance with the IPM plan. The permittee does not need to be the landowner or the pesticide applicator. However, at least one party responsible for the pesticide application must have WPDES coverage granted for the project prior to beginning any treatment. Most often, the party that will be applying the aquatic pesticide and that retains certification to apply aquatic pesticides holds the WPDES GP coverage.

## **RATIONALE FOR PERMIT REQUIREMENTS**

### **APPLICABILITY CRITERIA**

#### **ACTIVITIES COVERED**

These permits are applicable to pesticide pollution discharges directly to surface waters or indirectly to groundwaters via seepage. Each of the four general permits contain specific applicability criteria.

Section 283 of the Wisconsin Statutes and the Clean Water Act require a WPDES permit for the discharge of any pollutant from a “point source” into waters of the state. The National Cotton Council v. EPA decision indicated that a pesticide application nozzle or mixer outlet could be considered a point source when this activity results in an excess or residual pollutant discharge. The four general WPDES permits described in this fact sheet apply when:

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- (1) A control activity for an organism listed in the permit results in a biological pollutant discharge, an excess chemical pollutant discharge beyond the treatment area boundary, or a chemical residual pollutant discharge that remains after the treatment period.
- (2) A non-pesticide control activity (such as alum or dyes for algae control through nutrient inactivation or shading) consistent with the pollutant discharge concept in the National Cotton Council decision results in a pollutant discharge, an excess pollutant discharge beyond the treatment boundary, or a residual pollutant discharge that remains after the treatment period. For these activities, the pest treatment area is delineated by the permittee based on the uses or values being impaired by the organism targeted for control. The treatment area map identifies any needed restriction necessary to protect non-target sensitive, threatened or endangered organisms, such as those specified in s. NR 107.05(3) Wis. Adm. Code. The treatment period would typically extend through the time the pesticide or chemical treatment continues to be effective on the target species or population.

### Invasive Species Control in Outstanding and Exceptional Resource Waters

An invasive species control activity in an outstanding or exceptional resource water can be covered under a pesticide pollutant discharge general permit when quick action is needed to prevent establishment of an invasive species in the high quality receiving water. The colonization of an invasive species may have the potential to do great harm in a high quality aquatic ecosystem. When there is an invasive species emergency, the permittee, which in most cases would be a governmental entity, would need fast action to control an invasive species and could not wait 6 months for an individual WPDES permit to be drafted for the control activity. The detrimental or invasive species would need to be listed in s. NR 20.38 or ch. NR 40, Wis. Adm. Code which can be quickly modified through an emergency action by the DNR board if needed.

When this activity would result in a pollutant discharge to an outstanding resource water or an exceptional resource water (when there is no public health problem), the invasive species control activity would need to be managed to ensure:

- (1) any biological pollutant discharge rapidly degrades or is neutralized to a non-detectable level,
- (2) any excess chemical pollutant discharge outside of the treatment area/transition zone shall not exceed the background concentration of the pollutant in the receiving water as specified in s. NR 102.10, Wis. Adm. Code, and
- (3) any chemical pollutant residual remaining after completion of the treatment period shall not exceed the background concentration of the pollutant in the receiving water as specified in s. NR 102.10, Wis. Adm. Code.

### **ACTIVITIES NOT COVERED**

#### Municipal Sanitary Sewer Systems

Discharges to municipal sanitary sewer systems are not covered under this general permit. This general permit applies only to direct discharges to waters of the State (i.e. discharges to storm sewers or other conveyances to a surface water, or seepage to the groundwater).

#### Biocides

Biocides are toxic and require regulation by an individual permit when used as a water treatment additive. Facilities discharging wastewater treated with biocides other than chlorine will be in violation of this general permit and ss. NR 106.61(2)(a) and NR 106.61(1)(f), Wis. Adm. Code.

#### Wetlands

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Discharges covered under this general permit shall meet the wetland protection requirements of ch. NR 103, Wis. Adm. Code, and shall not significantly adversely impact wetlands. For discharges that impact wetlands, a facility will need to submit information that allows the Department to determine if a discharge meets code requirements. See wetland exemption subsections in each permit.

### Outstanding and Exceptional Resource Waters

This permit, in most situations, does not authorize discharges to outstanding and exceptional resource waters in ch. NR 102, Wis. Adm. Code. Section NR 207.03 requires that pollutant discharges to outstanding resource waters to not exceed background levels of the pollutant in the high quality water. The same standard applies to exceptional waters, except when there is a public health problem. The pesticide pollutant background level in these high quality receiving waters is expected to be non-detectable, although the permittee could supply background concentration sample results for any pollutant parameter that would be contained in the discharge. The permittee can use the surface water data viewer (<http://dnrm.wisconsin.gov/sl/?Viewer=SWDV>) to identify the outstanding and exceptional resource waters in the county that the discharge will occur.

### Surface Water Standards, Antidegradation, and Groundwater Standards

The discharges from facilities eligible for this general permit are not expected to exceed any surface water or groundwater standards. Facilities with discharges that have a reasonable potential (as specified in ch. NR 106, Wis. Adm. Code) to violate surface water quality standards or ch. NR 140, Wis. Adm. Code, groundwater quality standards would normally require the increased oversight, monitoring and water quality limitations found in a site-specific individual permit.

### Hazardous Substances

Discharges of hazardous substances that are required to be reported under ch. NR 706, Wis. Adm. Code are not authorized by this permit. Exemptions for discharge of these substances require an individual permit which provides the oversight, monitoring and discharge limitations necessary to protect receiving waters. Section 292.11(2)(a), Wis. Stats., requires any person who possesses or controls a hazardous substance or who causes the discharge of a hazardous substance to notify the Department of Natural Resources **immediately** of any discharge not authorized by the permit. **The discharge of a hazardous substance that is not authorized by this permit or that violates this permit may be a hazardous substance spill. To report a hazardous substance spill, call DNR's 24-hour HOTLINE at 1-800-943-0003.**

### Endangered and Threatened Species

Discharges that affect endangered and threatened species are not eligible for this permit, unless the Department determines that the discharges comply with the endangered and threatened species protection requirements of s. 29.604, Wis. Stats., and ch. NR 27, Wis. Adm. Code. Facilities with discharges that require more oversight to ensure that they do not violate these protection requirements may need to be covered by an individual permit.

### Discharges within Tribal Lands

The Department lacks the authority to issue WPDES permits within Tribal Lands due to the state delegation agreement with U.S. EPA. In such instances, the Tribe or U.S. EPA regulates the discharge and would issue a discharge permit. In the case of non-tribal landowners on Tribal Lands (such as lakes) the Department will evaluate authority on a case by case basis.

### Irrigation return flows, agricultural storm water runoff and drift

The Clean Water Act specifically exempts irrigation return flows and agricultural storm water runoff from the need for WPDES permit coverage. These general permits do not change these exclusions in any way. In Wisconsin, DATCP provides training and registration of pesticide applicators for pesticides application

control to minimize pesticide movement into non-point storm water runoff. These permits do not cover spray drift resulting from pesticide applications. Pesticide spray drift should be addressed through alternative methods including assessment of drift risk, label requirements on pesticides, education. See EPA documents on reducing spray drift <https://www.epa.gov/reducing-pesticide-drift>.

#### Terrestrial Pesticides

Pesticides labeled for terrestrial use are prohibited by the label to have a direct discharge into water. Therefore, these WPDES permits do not authorize a direct discharge of a terrestrial labeled pesticide into waters of the state. On November 4, 2009, EPA issued a draft Pesticide Registration Notice for public comment on the issue of pesticide incidental deposition. The actions detailed in the Pesticide Registration Notice focus on improving the clarity and consistency of pesticide labels in order to reduce incidental deposition and prevent harm to human health and the environment. During applicator registration activities, the Wis. DATCP makes efforts to insure the pesticide applicators are aware that terrestrial labeled pesticides should be controlled to prevent the incidental deposition of these products into waters of the state.

Pesticides used for forest canopy pest control and adult flying insect (mosquito) control are labeled for an incidental amount of pesticide deposition into water. Therefore, incidental deposition of forest canopy and flying insect control pesticides into waters of the state are covered under these WPDES GPs.

#### Coverage by Another WPDES Permit

When pesticide pollutants in a point source discharge are addressed in another WPDES permit, a facility would not need coverage under these pesticide pollutant general permits. Site specific WPDES permits and general permits for industrial and municipal categories can address any needed requirements for pesticide pollutant discharges from wastewater treatment lagoons and storage ponds. Storm water WPDES permits are required for contaminated runoff for a large group of facilities in ch. NR 216, Wis. Adm. Code. Existing storm water permits for construction, industry, and municipalities can address pesticide discharges in storm water runoff through implementation of the storm water pollutant prevention plan required in their WPDES permit.

Other examples of entities that generally would not normally need coverage under these general pesticide pollutant WPDES permits would be:

- (1) Aquaculture activities that are not a significant source of pollutants and are below the production thresholds specified in Federal 40 CFR, Part 122.24 appendix C.
- (2) EPA has promulgated regulations for the Concentrated Aquatic Animal Production facility point source category (aquaculture). Facilities with annual production less than 20,000 lbs of cold water fish or 100,000 lbs of warm water fish; or feed less than 5000 lbs of food per year are not included in the point source category and therefore do not require coverage under a WPDES permit.
- (3) Private pond treatments where the water is completely retained on the owner's property. Private ponds whose water is entirely confined and retained completely upon the property of a person is not considered a water of the state under s. 283 Wis. Statutes and the WPDES permit program. A pond that has a seasonal overflow beyond the private property would be considered a water of the state.

### **REQUIREMENTS FOR ALL DISCHARGES**

#### Request for Coverage

Any pesticide control project that meets the activities applicable to this general permit must submit a request for coverage. All requests of coverage must be submitted and mailed to the Department to Water Permits Central Intake, PO Box 7185, Madison, WI 530707-7185. The request for coverage can be found at the Department website: <http://dnr.wi.gov/topic/wastewater/GeneralPermits.html>. Many control projects covered under these four permits require annual authorization under chs. NR 107 or 109, Wis. Adm. Code. When applying for NR 107 or 109 permits the application includes request for WPDES coverage. Only one application form is required. Unless coverage under the WPDES general permit was requested for only one year, WPDES coverage continues for the permit term of the general permit. Annual application for WPDES coverage is not required.

**Note:** Due to the EPA mandated electronic reporting rule (effective December 21, 2015), the Department is in the process of developing and requiring online requests for coverage to discharge under this general permit. The Department will notify permittees when this requirement becomes available.

#### Delegation of Signature Authority

In accordance with s. NR 205.07(1)(g), Wis. Adm. Code, the permittee must provide written permission for a duly authorized representative to submit specific documents on the behalf of a responsible executive, officer, manager, partner, or proprietor of a permitted facility. An executive, officer, manager, partner, or proprietor can only delegate signature authority to duly authorized representative if that person has responsibility for the activity regulated by this general permit. The written permission shall specify the name of the individual and their employment position. The written permission must be submitted to the Department or together with the submittal of any required documents. If there are any changes to this permission, a new written permission shall be submitted to the Department.

#### Water Treatment additives – Discharge of Other (Non-Pesticide) Control Additives or Products

Non-pesticide products or additives used for control activities, such as oils, surfactants, nutrient inactivation products, shading products, water dyes, water clarification products, etc., need to be controlled so any excess or residual pollutant discharge meets Wisconsin water quality standards. The Department may require the permittee to submit information on the aquatic toxicity, human health impact, and persistence of any pesticide or non-pesticide additive or product used to control a pest problem when there would be a biological or chemical waste pollutant discharge to waters of the state. The pesticide general permits may only be used for control activities intended for control of target species.

Registered pesticides are not considered additives under these permits and will not require additive review. Any non-registered additive used as part of a control project will require approval and review.

### **SPECIFIC PERMIT REQUIREMENTS**

#### Wisconsin Water Quality Standards

The permit requires that a pollutant residue or discharge beyond the treatment area meet surface water quality standards contained in chs. NR 102, 103, 104, 105, 106 and 207, Wis. Adm. Code. The general surface water standards in ch. NR 102.04, Wis. Adm. Code specify that pollutant discharges be controlled to prevent interference with public rights from toxic substances, objectionable deposits, floating or submerged material, and materials producing color, odor, taste or unsightliness. A pollutant discharge that results in an exceedance of any applicable numeric or narrative Wisconsin water quality standard is prohibited. The permits also require compliance with ground water standards contained in NR 140, Wis. Adm. Code. However, the EPA pesticide label would prevent the direct discharge of a pesticide to Wisconsin groundwater. Additionally, the Department will evaluate any potential downstream water quality standards that the permittee is responsible for meeting.

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Upon receipt of an application (also known as Notice of Intent or NOI), the Department would evaluate any proposed new or increased pollutant discharge amount to insure the antidegradation requirements of NR 207 are met. Pesticide treatments that are continuing from previous years would not be considered a new discharge. In a case where significant lowering of water quality is proposed, the Department may require the permittee to evaluate a variety of options to insure that no significant lowering of water quality occurs in the receiving water. These options include, but are not limited to, improved control of water movement beyond the treatment area, pesticide treatment timing to enhance degradation, reconsideration of the choice of the pesticide pollutant active ingredient, changes to reduce the pollutant discharge level, etc.

The Federal NPDES pesticide pollutant discharge permit administered by the EPA is the basis for the Wisconsin WPDES general permits. The EPA expects that compliance with the conditions in the pesticide pollutant general permit (e.g., the technology-based limitations, corrective actions, etc.) will result in discharges that are controlled as necessary to meet applicable water quality standards. The EPA NPDES permits document use of technology-based limitations to meet water quality standards are based on the cumulative effect of the following factors:

- (1) Under FIFRA, EPA evaluates risk associated with pesticides and mitigates unreasonable ecological risk. Compliance with FIFRA is assumed.
- (2) EPA evaluated national-scale ambient monitoring data, as well as the frequency of the identification of specific pesticides as the cause of water impairments, to assess whether pesticide residues are currently present in waters at levels that would exceed water quality standards. The monitoring data show that, in most samples, most pesticides were below ambient water quality criteria or benchmarks developed by EPA's Office of Pesticide Programs (OPP) as indicators of narrative water quality criteria. For the small number of pesticides found in monitoring data to be present above such benchmarks, the evaluation, as summarized in the EPA fact sheet, also documents risk mitigation actions taken by EPA (such as cancellation of pesticide uses) that EPA expects have reduced the levels of those pesticides in water.
- (3) Technology-based effluent limitations (integrated pest management plans) in the EPA pesticide GP or state NPDES permit would provide further protections beyond compliance with existing FIFRA requirements.
- (4) Biological pesticides discharged to waters, by regulatory definition, do not work through a toxic mode of action. For chemical pesticides, the discharges covered under this permit are the residues after the pesticide has performed its intended purpose. Thus, the residue will be no higher than, and in many instances, lower than, the concentration of the pesticide as applied.
- (5) The permits exclude pesticide applications that result in discharges of any pesticide to waters impaired for that pesticide.

If at any time the permittee or the Department determines that the discharge causes or contributes to an exceedance of a Wisconsin water quality standard, the permittee must take corrective actions as required in the "Duty to Mitigate" standard permit requirement and report the excursion to the Department as required in the "Permit Noncompliance Reporting" standard requirement. The Department may impose additional water quality based limitations in a site specific individual permit, if information in a permit application, a required report, or from other sources indicates that a pollutant discharge is not controlled as necessary to meet Wisconsin water quality standards.

### Treatment Technology Based Best Management Practices

## Fact Sheet for WPDES PESTICIDE POLLUTANT DISCHARGES

The best available treatment (BAT) technology is the economically achievable standard for this category. In this case, the Department is required to establish BAT based on ch. NR 220, Wis. Adm. Code. Although the Federal pesticide discharge general NPDES permit is not directly applicable to Wisconsin, the treatment technology based provisions of the Federal pesticide general permit have been utilized as the basis for the Wisconsin Best Available Technology (BAT) management practices contained in the WPDES general permits.

The technology based requirements of the Wisconsin pesticide pollutant discharge general permits require the permittee to control the pesticide application, to evaluate pest management options, and to minimize discharge of pollutants to waters of the state. Consistent with the treatment technology requirements of the Clean Water Act, the term “minimize” means to reduce and/or eliminate pollutant discharges to waters of the state through the use of technologically available and economically achievable control measures for the class of point sources covered under this permit taking into account any site specific unique factors. The permittee must minimize the discharge of pollutants by properly maintaining, repairing, calibrating and cleaning pesticide application equipment. The permit specifies items that must be evaluated to minimize the pesticide pollutant discharge for the specific pest control project. The permittee shall implement pest management practices which involve:

- (1) Identifying the characteristics of the pest problem;
- (2) assessing effective pest management options; and
- (3) minimizing the pollutant discharge to waters of the state as much as possible.

The proposed general permits rename the integrated pest management (IPM), aquatic animal management, and aquatic plant management (APM) plans to all be integrated pest management (IPM) plans for consistency. The concept of management plans is not new to Wisconsin. The Wisconsin Department of Health has been advocating an IPM approach for vector and nuisance mosquito control in Wisconsin for a number of years. Virtually all current vector mosquito control activity in Wisconsin utilizes larvicide treatments and IPM practices to apply pesticides when action thresholds are met. The Department lands division uses an IPM approach for pesticide use on state wetlands and shorelands in state parks, natural areas and wildlife areas. Lake associations that receive state grant monies have been required to complete aquatic plant management plans for a number of years. For pest control activities covered under these general permits, the permittee can briefly summarize the pest characterization, the management options evaluation, and the pesticide discharge minimization evaluation. The pest management decision summary shall be documented by the permittee for each treatment project. These plans must be retained by the permittee and made available upon request to the Department.

For larger projects, over 20 acres or 20 linear shoreline miles, the permittee must also provide certification to the Department that they have implemented an IPM plan for all control projects. This certification may be done at the time of application or in the annual report following the first year of discharge (control project).

### Discharge of Pesticide Active Ingredients Not Listed in the GP

The Wisconsin pesticide discharge general permits specify pesticide active ingredient substances that may be discharged. The permittee must request coverage for specific pesticide active ingredients and coverage is only approved for these chemicals. A permittee may request authorization to discharge a pesticide active ingredient not listed in the general permit by requesting the general permit be modified to include an additional active ingredient substance, or a permittee may apply for a site specific WPDES permit to authorize the discharge of an alternate pesticide active ingredient.



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Since pesticide active ingredient substances have a lengthy registration and approval process with EPA under the FIFRA law, there is normally significant lead time before a new pesticide active ingredient is approved for use in water to allow the general permit to be modified or reissued. When a new pesticide active ingredient is approved by EPA and registered for use in Wisconsin (with DATCP), the Department may modify or reissue the general permit to include the additional registered active ingredient.

The permittee may discharge a pesticide active ingredient not listed in the permit on a limited basis in the context of data development and/or research to support pesticide registration under the jurisdictions of EPA or DATCP through exemption from or issuance of an *Experimental Use Permit* (Federal or State). Because of the expected small scale use of an experimental use pesticide, a permittee discharging a pesticide for such purposes is not required document a pest management decision summary, but must follow the other requirements of the WPDES permit.

A permittee may discharge a pesticide active ingredient not listed in the permit or an active ingredient in a pesticide not labeled for use in a location appropriate to aquatic animal management on a limited basis in the context of a *Special Local Need (SLN)* (*Section 24c*) registration granted by the Wis. Department of Agriculture, Trade and Consumer Protection under s. ATCP 29.72 or a *Section 18 emergency exemption* granted by EPA under 40 CFR 166.

### Monitoring Requirements

The Department has proposed a monitoring requirement for an excess or residual pollutant discharge for specific control activities. When bromine, chlorine, pH adjustment or heat is used to control invasive mussels or bacteria monitoring for residual pollutant is required. These sample results would be used to show that the pollutant minimization management practices are effective in meeting Wisconsin water quality standards. An annual monitoring sample is also required when certain chemical larvicides or adulticides for mosquito or other flying insect control have an excess or residual pollutant discharge into waters of the state. The specified chemical pesticides with a monitoring requirement have potential for harm to non-target aquatic life located outside the treatment area; the once per year monitoring requirement would generate data to evaluate whether an excess or residual chemical pesticide levels have a potential to exceed Wisconsin water quality standards. Similar more extensive monitoring is also required for sea lamprey control projects. These projects are currently completed by public agencies using extensive IPM plans.

The Department may waive this requirement in writing based on a demonstration that representative monitoring will be completed by a group of permittees, an IPM plan eliminates the need for monitoring, or that such receiving water testing is not possible due to sample collection, analysis method, public health emergency, or legal issues that prevent collection of valid sample results.

### Integrated Pest Management Decision Summary and Certification

The general permits require that an integrated pest management decision summary be retained by the permittee when the cumulative annual treatment area exceeds 20 acres of waters of the state or 20 linear mile of shoreline. The integrated pest management plan and decision summary must be maintained by the permittee at a location where it can be available for review by Department staff or members of the public. If a permittee's office is not staffed during normal business hours, the permittee needs to provide a copy of the decision summary for review no later than 5 days after any request to review the plan. The decision summary shall be updated when there are significant changes to the treatment area, target species, or pest control products used. If it is not possible to document the decision summary prior to a pesticide application related to a government declared invasive species emergency or public health emergency, the permittee needs to document the decision summary within 90 days after the emergency is declared.

The primary objective of the integrated pest management decision summary is to document the decision process of where, when, and how the control activity is implemented within a permittee's site specific treatment area, to minimize the discharge of excess or residual chemical pollutants and biological pollutants to waters of Wisconsin, and to describe the actions taken to ensure discharges from the control activities do not cause or contribute to a violation of Wisconsin water quality standards. The decision summary management plans should briefly show the results of implementing the best management practices for the treatment specific to the site and pest treatment situation. The general permits contain a list of items that, at a minimum, should be addressed in the integrated pest management decision summary document. For items that do not apply to the specific treatment project, the permittee can indicate N/A. The decision summary document can be brief, but the document should confirm how the permittee addressed each of the IPM items for the specific treatment project.

### Reporting Requirements

This general permit requires covered control projects to submit the results of all monitoring that is specified by the permit. Permittees may choose to meet the WPDES reporting requirements by using the APM report form or a similar form containing the required information. The Department is in the process of moving to e-reporting for all general permits as required by EPA. Permittees will be notified of new e-reporting requirements and how they can coordinate meeting the APM permit and WPDES permit reporting requirements. In general, the reporting requirements for the APM permits are more extensive with a few exceptions. In practice, APM permit holders have provided this information to the APM program and these reports are available to the WPDES program avoiding duplicate submittal requirements.

A Department chs. NR 107 or 109 Wis. Adm. Code monitoring form or an alternate report format (such a spreadsheet table) may be used to submit the reporting information. If an alternative format is used it must include all the reporting information required under the WPDES permit. Permittees should read the reporting requirements carefully as additional monitoring is required for some control projects (i.e. sea lamprey and zebra mussel control, among others). These monitoring data must be submitted to the WPDES program annually by February 15<sup>th</sup> for activities in the previous calendar year. Reporting timelines for chs. NR 107 or 109 permits must be met independent of WPDES GP reporting deadlines.

For those control projects, such as forest canopy pests projects, that may not require chs. NR 107 or 109, Wis. Adm. Code permits the annual reporting will be completed only through the WPDES permit program per the directions in the general permit.

### Submittal of Monitoring Results

During the first year of permit coverage or at the time of permit application, the permittee shall certify that the applicable integrated pest management decision documents have been completed as required. This is required for all control projects over 20 acres or 20 linear shoreline miles.

The permittee shall report a zero discharge for a year when there have been no pollutant discharges under this permit related to pest control activities.

**Note:** Due to the EPA mandated electronic reporting rule (effective December 21, 2015), the Department is in the process of requiring monitoring results to be reported on an electronic Discharge Monitoring Report (eDMR). The Department will contact the permittee when this requirement becomes available if electronic reporting is required.

### Private Pond Reporting Requirements

The permittee is exempt from the decision summary, the written certification, and the reporting requirements of the general permits when:

- (1) the treatment area is confined to a private pond (as defined in NR 107.11(3)(a), Wis. Adm. Code) or wetland area located entirely within the property boundaries of the permittee,
- (2) there is no public access during the treatment period,
- (3) and the permittee can control any overflow to prevent discharge of the pesticide beyond the treatment area.

A permittee meeting these criteria are expected to have a low potential for any excess or residual pollutant level to exceed state water quality standards. This exemption applies to private ponds that have an overflow to waters of the state during some times of the year. Private ponds whose water is completely retained (all year) on a private owners property are not included in the waters of the state definition for the purposes of the WPDES program pesticide general permits.

### STANDARD REQUIREMENTS

The "Standard Requirements" are a group of permit conditions from ss. NR 205.07(1) and NR 205.07(3), Wis. Adm. Code, that apply to all industrial wastewater pollutant dischargers, including requirements related to the Department's rights to enter and inspect facilities, the permittee's responsibility to inform the Department of changes at a facility, sampling procedures and other general conditions typically associated with a WPDES general permit. These requirements are included by reference into the permit. The permittee shall comply with all of these requirements, except for s. NR 205.07(1)(n), Wis. Adm. Code, which does not apply to facilities covered under general permits.

### EXPLANATION OF CHANGES MADE

The Department reviewed the reissued NPDES pesticide permit as part of the reissuance of these general permits. In addition, communication with stakeholders including other regulatory agencies and permitted parties was completed. Upon review, the Department determined that the requirements and standards in the four general permits would be largely unchanged. The following is a list of changes made to the proposed general permits:

- (1) The Integrated Pest Management Plan (IPM) term replacing the APM, AAM, and IPM plans in the current general permit. This change is consistent with the terminology used in the Federal permit. In practice, the term 'APM plan' may continue to be used by permittees if they choose. The purpose of these plans is to ensure permittees are taking a holistic approach to managing invasive or nuisance species (pests). Clarifying language, similar to the Federal permit requirement was added to require permittees to reevaluate pest management options annually. In practice, permittees with APM NR 107/109 permits are required to reapply annually including reevaluation of the pest management plan.
- (2) Reporting requirements, specifically the submittal address and coordination with APM chs. NR 107 and 109, Wis. Adm. Code permit reporting requirements, was clarified. In the first five years of the permit term, the Department found that most reports were submitted to our APM program. This program tracks and documents these reports. For streamlining purposes, the Department proposes to continue to allow compliance with reporting to include compliance with APM NR 107 and 109 reporting. For those permits requiring specific monitoring reporting of these data is required annually. The Department will complete e-reporting requirements during the proposed general permit term and will notify the permittees when e-reporting is required.
- (3) The decision summary certification language was updated. The Department did not receive a high compliance rate with submittal of this document. Upon review it was determined that

## Fact Sheet for WPDES PESTICIDE POLLUTANT DISCHARGES

this certification would be more appropriate to complete at the time of permit application prior to any discharge proposed over 20 acres or 20 linear shoreline miles. The Department plans to update the e-application to include this certification language. In addition, at the time of permit reissuance permittees with no certification on record will be asked to submit certification to the Department.

- (4) Clarifying language and additional discussion on ineligible activities and administrative processes (transfer, ending coverage, etc.) were added to update the permit to match other WPDES general permits. These updates include tribal land language, requirements to meet water quality standards of downstream waterways, removal of the term “such as excess or residual pesticide” from the title pages,
- (5) The Mosquito action threshold language was updated to comply with the Federal permit to clarify that action thresholds are specific to adults or larvae and when a treatment may occur. Action threshold language from the Federal permit was also added to the aquatic animal control permit.
- (6) Additional language was added to the reporting requirements to require permittees report to the Department if an excursion of downstream water quality standards occurs.

In review of the reissued Federal permit and compliance with the last five years of data found that no new chemicals or changes to monitoring requirements was needed. Reduction in monitoring requirements for control projects completed by Federal or State agencies was considered. It was found that these control projects have IPM plans that often exceed the standards in the general permit and the data on control projects is made available to the public on the internet reducing the need for reporting to the Department. However, the reporting requirements do not constitute significant administrative burden and so they were retained at this time. Future permit reissuances may assess reporting needs in light of required e-reporting that will take place in the permit term after reissuance.

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## **PESTICIDE POLLUTANT DISCHARGE MODIFICATION**

WPDES Permit No. WI-0064556-2-01 Nuisance or Invasive Aquatic Plants, Algae & Pathogens

### **GENERAL DESCRIPTION OF MODIFICATION**

The Wisconsin Pollutant Discharge Elimination System (WPDES) general permit for activities to control nuisance or invasive aquatic plants, algae and pathogens (hereinafter, "General Permit") has been issued to authorize certain point source discharges of a biological pollutant, an excess chemical pollutant, and/or a residual chemical pollutant directly into waters of the state as defined in s. 283.01(20) of the Wis. Statutes. This General Permit addresses pollutant discharges where the Wisconsin Department of Trade & Consumer Protection (DATCP) registration and the Environmental Protection Agency (EPA) pesticide label authorizes the pesticide to be applied either directly or incidentally into water. The labeling and use of pesticides in the United States is regulated by the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). The requirements of FIFRA, the DATCP pesticide registration & licensing program, and aquatic organism management program specified in chs. NR 107 and 109, Wis. Adm. Code, for the aquatic plant management program (APM) continue to regulate the use of pesticides in Wisconsin.

After reissuance of the General Permit, the Department was notified of a new approved active ingredient – florpyrauxifen benzyl (e.g. ProcellaCOR™) – for use in Wisconsin. This modification adds florpyrauxifen benzyl as number 15 on the list of approved active ingredients under this General Permit. Section 3.2 of the permit was modified. No other changes were made. All the chemicals listed in the General Permit must meet the requirements to maintain Wisconsin Department of Trade & Consumer Protection (DATCP) registration and the Environmental Protection Agency (EPA) approvals as aquatic pesticides.

During the period from initial approval of this new chemical for use in Wisconsin until this permit can be modified, the provisions in Sections 2.9 and 3.2 of the General Permit No. WI-0064556-2 Nuisance or Invasive Aquatic Plants, Algae & Pathogens are in effect and permittees may request expanded coverage to include florpyrauxifen benzyl products by submitting a new/updated NOI to the Department for approval.

Many applicants currently covered by this General Permit requested use of any approved chemical on their NOI submittal and thus have broad coverage under this General Permit. These permittees do not need to reapply or submit additional information. However, some permittees listed specific and limited chemical(s) on their NOI form. These permittees must submit a new/updated NOI to the Department to include florpyrauxifen benzyl (e.g. ProcellaCOR™) in their General Permit coverage. If permittees are unsure of the chemical(s) listed on their original NOI they should contact the Department.

### **EXPLANATION OF CHANGES MADE**

On Page 8: Section 3.2 of the permit – added "15. florpyrauxifen benzyl (e.g. ProcellaCOR™)"

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