

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Rulemaking Adoption

AGENDA REQUESTED: November 2, 2011

DATE OF REQUEST: October 14, 2011

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Charlotte Horn, (512) 239-0779

CAPTION: Docket No. 2010-1650-MIS. Consideration of the adoption of the pesticides general permit.

The adoption would establish the pesticides general permit to authorize the application of pesticides into, over or near waters of the United States in accordance with the Clean Water Act as determined by the Sixth Circuit Court of Appeals. The permit is required to be issued and effective by October 31, 2011. The proposed draft permit was published in the December 17, 2010, issue of the *Texas Register* (35 TexReg 283). (Charles Maguire, Robert Brush) (Rule Project No. 2010-042-OTH-NR)

Kim Wilson

Deputy Director

Jaya Zyman-Ponebshek

Division Director

Charlotte Horn

Agenda Coordinator

Copy to CCC Secretary? NO X YES

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Commissioners **Date:** October 14, 2011

Thru: Bridget Bohac, Chief Clerk
Mark R. Vickery, P.G., Executive Director

From: L'Oreal Stepney, Deputy Director
Office of Water

Docket No.: Docket No. 2010-1650-MIS

Subject: Commission Approval of Pesticide General Permit
Permit Number TXG870000
Non-Rule Project No. 2010-042-OTH-NR

Summary and Background

On January 9, 2009, the United States (U.S.) Sixth Circuit Court of Appeals held in *National Cotton Council, et al., v. EPA* that Clean Water Act permits are required for all biological pesticide and chemical pesticide applications that leave a residue in water when such applications are made into or over, including near waters of the U.S. In response to this decision, the United States Environmental Protection Agency (EPA) has developed a National Pollutant Discharge Elimination System (NPDES) pesticides general permit and required NPDES-authorized states to develop their own NPDES permits (Texas Pollutant Discharge Elimination System (TPDES)) in Texas.

The original timeline was for EPA to finalize their permit by December 2010, and for the state issued general permit to be issued by April 2011. On March 28, 2011, the U.S. Court of Appeals for the Sixth Circuit granted EPA's request for an extension to allow more time for pesticide operators to obtain permits for pesticide discharges into U.S. waters. The court's decision extends the deadline for when permits will be required from April 9, 2011 to October 31, 2011. At the time of filing this Executive Summary, the EPA has a revised draft posted on their website but it is not yet final.

Categories of Authorized Pesticides Discharge

- Level IA: Public entities applying Restricted Use Pesticides (RUP), State Limited Use (SLU) Pesticides or Regulated Herbicides (RH) to waters of the U.S. where there is public or private access, or private entities applying RUP or SLU pesticide or RH to waters of the U.S. where there is public access; and who meet the annual threshold for one of the pesticide use patterns.
- Level IB: Public entities applying general use pesticides (GUP) to waters of the U.S. where there is public or private access, or private entities applying GUP to waters of the U.S. where there is public access, or private entities applying GUP, RUP or SLU pesticides or RH to waters of the U.S. where there is only private access; and who meet the annual threshold for one of the pesticide use patterns.
- Level II: Public or private entities applying RUP or SLU pesticides or RH to waters of the U.S. where there is public or private access, or public or private entities applying GUP to one acre or

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more of waters of the U.S. in one calendar year where there is public or private access; and who do not meet annual thresholds for the pesticide use patterns.

- Level III: Public or private entities applying GUP regardless of number of applications, to less than one acre of waters of the U.S. in one calendar year where there is public or private access.

Applicability

Five use patterns are included in the general permit which encompasses the majority of pesticide applications that would result in point source discharges to waters of the U.S. The use patterns and their thresholds for Level IA and IB are as follows:

- **Mosquito & other Insect Pests** = 6,400 acres per year
- **Vegetation & Algae Pest** = 100 acres in water or 200 linear miles of water's edge per year
- **Animal Pest** = 100 acres in water or 200 linear miles of water's edge per year
- **Area-wide Pest** = 6,400 acres per year
- **Forest Canopy Pest** = 6,400 acres per year

Permit Requirements

COMPLIANCE ACTION LEVELS IA AND IB

Administrative Requirements

- **Level IA:** Required to Submit a Notice of Intent (NOI) application and prepare and keep onsite an annual report;
- **Level IB:** Required to Submit a Self-Certification form to TCEQ Regional Office but no annual report, annual water quality fees or NOI required;
- **Recordkeeping:** permit, any adverse incident reports, spill or leak reports, copy of NOI (IA) or self-certification form (IB) submitted to TCEQ, certificate issued by TCEQ and pesticide application records for each treatment area;
- **Reporting and Notification:** Annual reporting (IA shall prepare and keep onsite an annual report and be readily available for review by a TCEQ representative), adverse incident notification (24-hour), adverse incident written report (14-day), spill or leak notification (24-hour), spill or leak written report (14-day) and other reporting; and
- **County-wide permits** available to persons or entities with more than five pest management areas or a county whose pest management area is the same as its jurisdictional boundary. **State-wide permits** available to persons or entities with more than ten pest management areas.

Technical Requirements

- Technology-Based Effluent Limitations;
- Water Quality-Based Effluent Limitations;
- Visual Evaluation Requirements;
- Pesticide Discharge Management Plan; and
- Reporting.

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COMPLIANCE ACTION LEVEL II

Administrative Requirements

- **Level II:** Below the annual pest management and treatment areas thresholds. Not required to submit a NOI - Self-Certification Form kept on-site.

Technical Requirements

- Minimize Pesticide Discharges into Waters of the United States;
- Water Quality-Based Effluent Limitations;
- Visual Evaluation Requirements;
- Corrective Action: Situations requiring revision of control measures, corrective action documentation and corrective action deadlines;
- Recordkeeping: permit and any adverse incident reports; and
- Reporting and Notification: Adverse incident notification (24-hour) and adverse incident written report (14-day).

COMPLIANCE ACTION LEVEL III

Administrative Requirements

- **Level III.** Operators applying general use pesticides to less than one acre of treatment area annually regardless of the number of applications. No NOI required.

Technical Requirements

- Minimize discharges by following pesticide label instructions.

Fees

- \$100 if submitting a paper NOI, or \$75 if submitting by online e-permitting.
- Annual Water Quality Fees: \$100 for a pest management area, or \$500 cap for a County-wide or statewide permit.

Number of expected authorizations:

Based on estimates from the Texas Department of Agriculture, TCEQ expects 7,500 NOIs based on the proposed thresholds.

Proposed changes from previous draft permit:

- Cover Page (Effective & Expiration Dates of the Permit)
- Removed the word "Aquatic" & "Nuisance" in the Pesticide Use Patterns to be consistent with EPA permit.
- Added a definition for jurisdictional boundary as requested by the EPA.
- In response to public comment revised the effluent limitations for all sections to clarify the requirement to use the lowest effective amount of pesticide.
- In response to public comment revised the pesticide discharge management plan to require that documentation of pesticide applications be done within 14 days (was 48 hours)

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Effect on the:

Regulated community: After October 31, 2011 a permit will be required to apply pesticides in, over or near Waters of the U.S. within the state of Texas.

- Level IA will submit a NOI to obtain coverage, pay annual fees and prepare and keep onsite an annual report and comply with technical requirements listed in the permit;
- Level IB has same technical requirement as Level IA but will not have to submit a NOI, annual report or pay annual water quality fees. Affected persons must send a complete self certification form to the TCEQ Regional Office;
- Level II has no NOI requirement, no annual fees and no annual reporting but must comply with applicable technical requirement. Affected persons must complete a self certification form and keep onsite; and
- Level III has to minimize discharges by following the label instructions. No recordkeeping or reporting requirement.

Public: The permit requirements are not expected to affect the amount and/or type of pesticides being applied, therefore the public at large is not expected to be affected by the requirements of this permit.

Agency programs: Water Quality Division will have to process NOIs and send the bills for annual water quality fees; the Financial Administration Division will receive and process application and annual water quality fees. Field Operation Support Division will have to conduct investigations and respond to complaints and Enforcement Division will receive and process annual reports.

Planned stakeholder involvement:

There have been two stakeholders meetings held; August 03, 2010 and September 09, 2010. At the August Water Quality Advisory Workgroup meeting, the EPA draft permit was presented and stakeholders were urged to submit inputs or suggestions that will be used to draft the Texas pesticides permit. The draft TPDES TXG870000 was uploaded to the Agency pesticides Web site and stakeholders were notified before the stakeholders meeting that was held in September. The draft permit was presented at the meeting, comments were received and changes have been made to the draft permit as a result of the stakeholder comments. A public meeting was held during the public comment period to take oral comments from the public.

EPA Review:

Draft permit was mailed to EPA on September 21, 2010 and again on September 7, 2011 after the comment period ended. EPA approved the draft permit on November 29, 2010 and again on October 7, 2011.

Public Comment

Some commentors requested that the permit be revised to:

- clarify the definition for waters of the U.S. The definition for waters of the U.S. matches the federal definition, except the list of exceptions added by the ED. Many commentors wanted the ED to expand the list of exceptions and revise the federal definition. Due to the complexity of

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the definition of waters of the U.S. and the fact that it matches the federal definition, no changes were made to the permit;

- clarify the definition for waters edge. This term and definition were used in the permit to clarify the intent of "near waters of the U.S." No changes were made to the permit.
- clarify that the permit is only applicable to point source discharges. The permit was revised to clarify that it authorizes the *point source* discharge of biological pesticides or chemical pesticides that leave a residue in water;
- remove the area-wide pest control use pattern from the permit because they believe that it will expand the scope of the permit to include land application rather than aquatic applications only. The use pattern was included to provide coverage for agricultural operations that apply chemical pesticides to waters of the U.S. Without this use pattern, these types of pesticide applications would require an individual permit to discharge. No changes were made to the permit, however, clarification was provided in the response to comments; and
- change "vegetation and algae control" being authorized by the permit to "aquatic vegetation and algae control." Commenters fear that not saying "aquatic" expands the jurisdiction of the permit to the broader landscape. Initially we agreed to this change, however, EPA revised their draft permit to remove "aquatic." We also removed aquatic from our draft.

Potential controversial concerns and legislative interest:

United States House of Representative Bill 872, the Reducing Regulatory Burdens Act of 2011 and Senate Bill 718 - To amend the Federal Insecticide, Fungicide, and Rodenticide Act and the Federal Water Pollution Control Act to clarify Congressional intent regarding the regulation of the use of pesticides in or near navigable waters, and for other purposes.

House of Representative Bill 872 clarifies Congressional intent regarding the regulation of the use of pesticides in or near navigable waters and Senate Bill 718 prohibits the requirement of a permit for any pesticide used in accordance with the Federal Insecticide, Fungicide and Rodenticide Act. This permit will no longer be required if the bill passes.

Key dates in the proposed general permit schedule:

Notice Published in Texas Register: December 17, 2010

End of Comment Period: January 18, 2011

Commission Agenda for Adoption: November 2, 2011

Direction and Guidance:

General Permit Action Project Number: Project No. 2010-042-OTH-NR.

Agency contacts:

Joy Tegbe, Project Manager, 239-1318, Water Quality Division
Robert Brush, Staff Attorney, 239-5600

Commissioners
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September 29, 2011

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Charlotte Horn, Texas Register Coordinator, 239-0779

cc: Chief Clerk, 2 copies
Executive Director's Office
Susana M. Hildebrand, P.E.
Anne Idsal
Curtis Seaton
Ashley Morgan
Office of General Counsel
Joy Tegbe
Charlotte Horn

Attachment A
Summary of Changes to Proposed Permit and Fact Sheet

This permit was originally set on Commission Agenda in April, and then pulled based on the court's delay until October 31, 2011. Since then, changes have been made to the draft permit. Some of these changes improve the flexibility of the permit, based on what is now included in EPA's draft permit (which could still change). The most significant change from the April proposal is that the word "aquatic" has been removed from in front of vegetation and animals. "Aquatic" was in EPA's original permit. During the public comment period, Texas Department of Agriculture (TDA) requested that TCEQ add it to the draft permit, so "aquatic" was included in the April proposal. EPA has now removed "aquatic" from their draft permit and TDA has told us they are OK with our original language that did not limit the coverage to aquatic vegetation or animals.

Below are all changes that are being made to the permit and fact sheet made as a result of public comments and those made for consistency with the EPA draft permit:

Changes to Permit

1. The title of the permit now reads: "General Permit to Authorize Point Source Discharge of Biological Pesticides and Chemical Pesticides That Leave a Residue in Water".
2. The first sentence of the cover page now reads: "This general permit authorizes the point source discharge of biological pesticides or chemical pesticides....."
3. The definition of general permit has been deleted from Part I and the following definitions have been revised to be consistent with EPA's: Action threshold, Adverse Incident, Pest Management Area and Waters of the U.S.
4. The definition of "declared pest emergency situation" was changed to include the following: "(d) Significant threat to quality of life."
5. Added a definition for Jurisdictional Boundary. It reads: "**Jurisdictional Boundary** - the limits or territory within which authority may be exercised by the Operator."
6. The phrase "labeled as pesticides" was added to the third sentence in the "note" under the definition of "pesticides." That sentence now reads: "Biological control agents, except for certain microorganisms labeled as pesticides, are exempted from regulation as pesticides under this general permit and FIFRA."
7. The Pesticide General Permit Requirement Matrix in Part II.A. was revised to eliminate "use" from the "Above Annual Threshold Use" and "Below Annual Threshold Use."
8. The Pesticide General Permit Requirement Matrix in Part II.A. was revised to eliminate "(public or private entities on land with public or private access applying small volumes of pesticides for control)" from Below Annual Threshold Use. Additionally, the last line of the PGP Requirement Matrix was revised as follow: "General Use Pesticide 1 Ac or more of waters of the U.S annually, and General Use Pesticide Less than 1 Ac of waters of the U.S. annually, for Level II and Level III, respectively."
9. Part II.A.1.(b)(ii) & (iii) have been revised as follow:
 - (ii) Vegetation and Algae Pest Control- Operators treating a treatment area greater than or equal to 100 acres in water or greater than or equal to 200 linear miles at water's edge;
 - (iii) Animal Pest Control- Operators treating a treatment area greater than or equal to 100 acres in water or greater than or equal to 200 linear miles at water's edge;

10. Part II.A.2.(a) of the permit was revised to add the phrase “waters of the U.S.” so that it now reads: “Public entities applying general use pesticides (GUP) to waters of the U.S. where there is public or private access, private entities applying GUP to waters of the U.S. where there is public access, or private entities applying GUP, RUP or SLU pesticide or RH to waters of the U.S. where there is only private access.”
11. Part II.A.4 of the permit was revised as follows:
 - (a) Public or private entities applying GUP regardless of the number of applications, to less than one (1) acre of waters of the U.S. in one calendar year where there is public or private access; and
 - (b) who do not meet the pesticide use pattern thresholds in Part II.A.1.(b).
12. The following sentences were added at the beginning of Part II.C. of the permit: “Irrigation return flows from agriculture or agricultural storm water runoff or nonpoint source silvicultural activities are exempt from this permit even when they contain pesticides or pesticide residues. The CWA specifically exempts these categories of discharges from requiring TPDES permit coverage.”
13. The permit was revised to replace both “letter” and “statement” with “form” throughout the permit where there was either Self Certification Statement or Self Certification Letter.
14. Part II.D.2.c. was revised as follows: “The operator shall submit a NOI for each pest management area that meets the requirements of Part II.A.1. Public or private entities with more than five (5) pest management areas within a single county or a county whose pest management area is the same as its jurisdictional boundary may submit a single NOI for a county-wide permit. Persons or entities with more than ten (10) pest management areas may submit a single NOI for a statewide permit.”
15. Part II.D.2(d) has been revised as follows: “(d) An operator may submit a NOI to TCEQ using the electronic Notice of Intent (eNOI) system accessible at <http://www.tceq.texas.gov/> or paper form”.
15. The permit was revised to provide provisional authorization for 90 days after the effective date of the permit. The provision was added to Part II.D.4.(c) of the permit and it reads: “Upon issuance of this general permit, operators that are required to submit a NOI or Self Certification Form have provisional authorization from the effective date of this permit until 90 days after the effective date of this permit. Within 90 days of the effective date of this general permit operators that are required to submit a NOI or Self Certification Form shall submit such documentation for continued coverage. Failure to submit a NOI or Self Certification Form by the deadline will result in expiration of the provisional authorization to operate under the general permit.”
16. Boll weevil control was deleted from the list of examples in Part II.B.4. and replaced with the phrase “aerial crop dusting” so that it now reads: “Examples include, but are not limited to, aerial crop dusting,.....”
17. The first sentence of Part II.B.5. of the permit was revised to add the phrase “and ground” and now reads as follow: “Aerial and ground application of a pesticide over....”
18. Part III.D.1.(b)(2) has been revised as follows: Action threshold(s) for the pest management area, including data used in developing the action threshold(s) and method(s) to determine when the action threshold(s) has been met.
19. Part III.D.1.(c)(6) under the Evaluation and Selection of Pest Management Strategies- items (i)-(iii) – deleted.

20. Part III.D.1.(d)(1)(i) has been revised as follows: Identify the procedures for stopping, containing and cleaning up leaks, spills and other releases.
21. Part III.D.1.(d)(1)(ii) has been revised as follows: Make available the necessary equipment to personnel to implement a clean up. Employees who may cause, detect, or respond to a spill or leak must be trained in these procedures. If possible, one of these employees should be a member of the PDMP team.
22. Parts III.D.2.(a)(3)(i) and IV.D.1.(c)(1) have been revised as follows: Use only the amount of pesticide and frequency of pesticide applications necessary to control the target pest, using equipment and application procedures appropriate for this task.
23. Part III.E.6 – Pesticide application records: Documentation of pesticide applications in the PDMP to be done within 14 days (was 48 hrs).

Changes to Fact Sheet

1. The last sentence of Part I. summary of the Fact Sheet was revised as follows: “Level III operators are public or private entities that apply General Use Pesticide (GUP) to less than 1 acre of waters of the U.S. per calendar year and are required to follow the FIFRA label.”
2. The second sentence in the first paragraph of Part I. Summary of the Fact Sheet was revised as follows: “These operations are currently regulated under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) of the U.S. EPA.”
3. The second paragraph of Part I. Summary of the Fact Sheet was revised as follows: “Level IB consists of operators that meet the pest management or treatment area threshold but will be applying General Use pesticides (GUP) or private entities applying GUP, Restricted Use Pesticide (RUP), State-Limited-Use (SLU) pesticide or Regulated Herbicide (RH) to waters of the U.S where there is only private access and therefore are required to submit a complete Self Certification Form to the Commission to obtain permit coverage.”
4. Part III.A.1.(b) and (c) of the Fact Sheet were revised to remove “nuisance” from the use patterns.
5. The last sentence of the first paragraph of Part III.A.2. of the Fact Sheet was revised as follows: “Therefore, only the operators that meet the annual thresholds are required to submit a NOI if the operators will be applying restricted use or state-limited-use pesticides or regulated herbicides to waters of the U.S;” and the following was added to the 2nd paragraph “Calculations should include either the linear extent of or the surface area of waters for applications made to Waters of the U.S. Count each treatment areas once, regardless of the number of pesticide application activities performed on that area in a given year. If a pest management area has multiple treatment area, treatment areas are not additive. At least, one treatment area must meet the threshold for the purpose of determining whether NOI is required. Also, for linear feature (e.g. a canal or ditch), use the length of the linear feature whether treating in or adjacent to the feature, regardless of the number of applications made to that feature during the calendar year. For example, whether treating the bank on one side of a two hundred (200) – mile long ditch, banks on both sides of the ditch, and/or water in that ditch, the total treatment area is two hundred miles for purposes of determining if a NOI is required to be submitted. Additionally, if the same two hundred miles area is treated more than once in a calendar year, the total area treated is still two hundred miles. The treatment area for these two use patterns is not additive over the calendar year”.
6. The first sentence of Part III.B. of the Fact Sheet was modified and now reads: “Irrigation return flows from agriculture or agricultural storm water runoff or nonpoint source silvicultural activities is exempt from this permit, even when they contain pesticides or pesticide residues, as

the CWA specifically exempts these categories of discharges from requiring TPDES permit coverage.”

7. Part IV.4. of the Fact Sheet was revised to read: “Operators in this group include but are not limited to state agencies, cities, and counties, farmers on stock ponds, homeowner’s association around lake, pest control company doing nuisance insect pest control in neighborhoods, homeowners, gardeners.”
8. Second paragraph of Part IV.5. of the factsheet has been revised as follows: “Provisional authorization has been provided for all operators that are required to submit a NOI or Self Certification Form from the effective date of this permit until 90 days after the effective date of this permit. All operators required to submit a NOI or Self Certification Form must do so prior to the deadline to continue authorization under this general permit. Failure to submit a NOI or Self Certification Form by the deadline will result in expiration of the provisional authorization to operate under the general permit”.
9. The following sentence was added to the third paragraph of Part VII.: “The TCEQ conducts focused groundwater monitoring for pesticides, and conducts investigations of surface water and groundwater contamination suspected from pesticides.”
10. Renumbered the Fact Sheet from Section VI to XIII.

COMMISSIONER'S RESPONSE TO PUBLIC COMMENT

The executive director of the Texas Commission on Environmental Quality (commission or TCEQ) files this Response to Public Comment (Response) on Texas Pollutant Discharge Elimination System (TPDES) Permit to Authorize Point Source Discharge of Biological Pesticides and Chemical Pesticides that Leave a Residue in Water General Permit Number TXG870000. As required by Texas Water Code (TWC), §26.040(d) and 30 Texas Administrative Code (30 TAC) §205.3(c), before a general permit is issued, the executive director must prepare a response to all timely, relevant and material, or significant comments. The response must be made available to the public and filed with the Office of the Chief Clerk at least ten days before the commission considers the approval of the general permit. This response addresses all timely received public comments, whether or not withdrawn. Comments received after the end of the comment period on January 18, 2011 are not responded to in this Response. Timely public comments were received from the following persons and entities:

ADAPCO (supports comments of Texas Mosquito Control Association), American Electric Power (AEP), City of Baytown (Baytown), Brazoria County, Burnett Consulting, Caddo Lake Institute, Carol and Blackman, Inc. (CB), Coastal AG Consulting, Cotton and Grain Producers of the Lower Rio Grande Valley (GPLRGV), Sid Chambers, Eastman Chemical Company (ECC), Ray Gomez, Hancock Forest Management (HFM), David Hansen, Harris County, Harris County Flood Control District (HCFCD), Jefferson County Mosquito Control District (JCMCD), Justin Seed Company, Inc. (JSC), The Lake Doctor (Mark Palmer), Lake Pro, Inc. (Lake Pro), Lake Management Services (LSM), Lower Colorado River Authority (LCRA), Lower Neches Valley Authority (LNVA), Lloyd Gosselink Rochelle & Townsend, P.C. (Lloyd Gosselink), Lone Star Chapter of the Sierra Club (Sierra Club) (supports comments of Caddo Lake Institute), Nearly Wild Texas (NWT), Oncor Electric Delivery Company, LLC (ONCOR), Orange County Mosquito Control District (OCMCD), San Jacinto River Authority (SJRA), City of Shoreacres (Shoreacres), Shores Air-Ag, Inc. (Shores Air-Ag), South Texas Cotton and Grain Association (STCGA), Texas Ag Industries Association (TAIA), Texas AgriLife Extension Service (TAES), Texas Aquatic Plant Management Society (TAPMS), Texas Boll Weevil Eradication Foundation, Inc., (TBWEF), Texas Citrus Mutual (TCM), Texas Department of Agriculture (TDA), Texas Farm Bureau (TFB), Texas Forestry Association (TFA), Texas Industry Project, (TIP), Texas Mosquito Control Association (TMCA), Texas Parks & Wildlife Department (TPWD), Texas Pest Control Association (TPCA), Texas Vegetation Management Association (TVMA), West Nueces – Las Moras Soil and Water Conservation District Number236 (WN Number 236), and Williamson County Grain, Inc. (WCG).

Also comments were received from the following related to golf courses: the Vaquero Club, Gentle Creek Golf Club (GC), TPC Craig Ranch, Pecan Grove GC, Lone Star Golf Course Superintendents Association, Horseshoe Bay Resort, River Ridge GC, Shadow Hawk/Houstonian GC, Stephen F. Austin GC, Redstone GC, and Texas Alliance of Recreational Organizations (Golf Courses).

If you need more information about this permit or the wastewater permitting process, please call the TCEQ Office of Public Assistance at 1-800-687-4040. The complete Commissioner's Response to Public Comment may be found at the following website: <http://www10.tceq.state.tx.us/epic/CCD/>. Additionally, general information about the TCEQ can be found at our website at www.tceq.texas.gov.

Background

Over the past ten years, several courts addressed the question of whether the Clean Water Act (CWA) requires National Pollutant Discharge Elimination System (NPDES) permits for pesticide applications. These cases resulted in some confusion among the regulated community and other affected citizens about the applicability of the CWA to pesticides applied to waters of the U.S.

On November 27, 2006, EPA issued a final rule ("2006 NPDES Pesticides Rule") clarifying two specific circumstances in which a NPDES permit was not required to apply pesticides to or around water. They were: the application of pesticides directly to water to control pests and the application of pesticides to control pests that are present over, including near water where a portion of the pesticides will unavoidably be deposited to the water to target the pests, in both instances provided that the application is consistent with relevant Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) requirements.

On January 9, 2009 the United States (U.S.) Sixth Circuit Court of Appeals held in *National Cotton Council, et al., v. EPA*, 553 F.3d 927 (January 07, 2009) that CWA permits are required for all biological pesticides and chemical pesticides applications that leave a residue in water when such applications are made into or over, including near waters of the U.S. In response to this decision, EPA has developed a draft NPDES pesticides general permit (PGP) and required NPDES authorized states to develop their own PGPs.

The timeline was for EPA to finalize their PGP by December 2010 and for the state issued general permit to be issued and effective by April 9, 2011. However, EPA did not meet their December deadline and have not yet issued the federal version of the PGP.

Procedural Background

TCEQ published notice of the draft PGP to solicit public comment in the *Beaumont Enterprise*, *Dallas Morning News*, *Houston Chronicle*, *Midland Reporter Telegram* and *San Antonio Express* on December 13, 2010 and in the *Texas Register* on December 17, 2010. During the comment period, TCEQ conducted a public meeting on January 12, 2011 to take oral and written testimonies. The public comment period ended on January 18, 2011. TCEQ also took public comment via letter and electronic-comment, receiving written testimony from 5 interested parties and 4 oral comments. This permit is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999.

COMMENTS and RESPONSES

General Comments

Comment 1:

TDA comments that much thought and hard work went into the development of the PGP and appreciates that TCEQ took into consideration the size of possible pest management areas in the state and for incorporating present pesticide application record keeping requirements in this permit where possible. Therefore, TDA supports the permit.

TMCA and ADAPCO comment that some of their member agencies provided public comment regarding specific aspects of the draft permit and that some of the comments and suggestions were incorporated into the permit. Therefore, TMCA and ADAPCO favor most of the changes that were made and support the changes in the final draft version of the PGP.

TPWD is grateful that TCEQ made a significant effort to engage TPWD and other stakeholders in the process of drafting the permit. TPWD notes that the current version of the permit addresses comments made in response to earlier versions and is grateful for TCEQ's responsiveness to TPWD's concerns.

TPCA comments that TCEQ was attentive to stakeholder input and worked hard on the draft permit. Therefore, TPCA supports the proposed PGP and looks forward to distributing TCEQ educational materials that implement the permit.

TVMA, TAIA, Shores Ag-Air, JSC, and WCG comment that they appreciate the tremendous undertaking by staff at TCEQ to formulate and work with EPA to develop the proposed general permit. They also appreciate the effort made by TCEQ to convince EPA to increase the amount of area treated before a notice of intent (NOI) must be filed.

Response 1:

The Commission acknowledges these comments.

Comment 2:

Caddo Lake Institute and Sierra Club comment that there should be more public participation in the development process of this permit.

WN Number 236 and NWT suggest that a public notice regarding the permit be posted in major newspapers across the state to inform all citizens of this significant environmental regulation and public comment period be extended by 60 days to allow the citizens of Texas time to review the permit and provide comments.

Response 2:

30 TAC §205.3 provides the minimum public participation requirements for development of a general permit. They include:

- (a) Notice shall be published as follows
 - (2) For draft general permits with statewide applicability, notice shall be published in the *Texas Register* and in at least one newspaper of statewide or regional circulation.

- (3) The public notice shall be published not later than the 30th day before the commission considers the approval of a general permit.
- (c) The contents of a public notice of a draft general permit shall:
 - (2) include an invitation for written comments by the public regarding the draft general permit;
 - (3) specify a comment period of at least 30 days
- (d) Requirements relating to public meetings are as follows.
 - (1) The agency may hold a public meeting to provide an additional opportunity for public comment and shall hold such a public meeting when the executive director determines, on the basis of requests, that a significant degree of public interest in a draft general permit exists.
 - (2) Notice of a public meeting shall be by publication in the *Texas Register* not later than the 30th day before the date of the meeting.

These notice requirements were exceeded in the public participation process for the PGP by:

1. Forming a stakeholder group specifically for development of the PGP,
2. Conducting four stakeholder meetings, posting an initial draft permit on the TCEQ website to solicit comments from stakeholders, and
3. Publishing the notice in five newspapers in the state in addition to publication in the *Texas Register*.

Comment 3:

TIP comments that TCEQ correctly used the federal regulatory definition of waters of the U.S. and correctly explained the exemptions from waters of the U.S. for waste treatment systems and constructed storm water retention and detention ponds in the permit. Therefore, TIP strongly supports limiting permit applicability to discharges directly to waters of the U.S. and the water's edge as the *National Cotton Council* case only relates to point source discharges of pesticides to waters of the U.S. and to waters so near waters of the U.S. that the pesticide will be unavoidably deposited in waters of the U.S.

Response 3:

The Commission acknowledges this comment.

Comment 4:

TPCA commented that they support the definition of “operator,” which allows either the property owner or a decision-making commercial applicator to be eligible for coverage under PGP.

Response 4:

The Commission acknowledges this comment.

Comment 5:

TPCA comments that the Association supports the distinction made between pesticide toxicity levels in the permit.

Response 5:

The Commission acknowledges this comment.

Comment 6:

TAES comments that the general permit could be interpreted by the non-regulated community to subject agricultural producers, pest management professionals, and homeowners to additional liabilities, litigation, added fees, and recordkeeping requirements under the CWA.

TVMA, TAIA, Shores Ag-Air, JSC, WCG, and Coastal AG Consulting comment that the permit is more restrictive than the proposed EPA PGP placing additional costs on maintaining right-of-ways. These costs would have to be passed on to the consumer's electric bill, transportation fuel, heating fuel, transporting freight, taxes, and a never ending list of additional costs.

TAPMS, SJRA, David S. Hansen, TFB, and Coastal AG Consulting comment that the permit will cause economic distress to landowners and private applicators due to the cost and time requirements for monitoring treatments, recordkeeping, and reporting. WN Number 236 and Mr. Hansen are concerned that the permit will be an additional burden to smaller producers of livestock and oppose the permit. WN Number 236 recommends that the permit be issued by TDA and not TCEQ; and that it is a waste of state dollars to have two agencies regulating and monitoring the same activity.

Golf Courses request that the golf industry should be exempt and not subject to this general permit.

WN Number 236 comments that the permit is broader and more stringent than the EPA's proposed PGP and recommends that the state permit not go beyond the federal PGP.

LMS comment that the pesticides permitting process would cause significant problems for TCEQ, the operator, and the owner of the aquatic impoundments that treat for pesticides and cause unnecessary delays for control of pests, which in turn would result in significant increased costs.

Lloyd Gosselink request that TCEQ add a subsection to Part II to clarify that coverage under the permit is not required for applications of pesticides to areas that do not include "waters of the U.S."

TIP suggests that TCEQ create a new section to add a statement to the permit clarifying that the permit is not intended to and does not require discharge authorization for any pesticide application beyond that required by the CWA.

Response 6:

The requirement to obtain permits for point source discharges from pesticide applications to waters of the U.S. stems from a recent decision by the Sixth Circuit Court of Appeals. In its ruling on *National Cotton Council, et al. v. EPA*, the Court ruled that NPDES permits were required for applications of pesticides to, over, or near waters of

the U.S. waters when in compliance with the FIFRA label. The scope of the TPDES PGP is limited to discharges of biological pesticides and chemical pesticides that leave residue in water when such applications are made into, over, or near waters of the U.S. Any operator that discharges biological pesticides or chemical pesticide that leaves a residue in water into, over or near waters of the U.S. must obtain authorization under this permit or an alternate permit for compliance with CWA.

This permit provides coverage for pesticides applications into, over, or near waters of the U.S. for mosquito and other insect pest control, vegetation and algae control, animal pest control, area-wide pest control, and forest canopy pest control. Operators that cannot obtain coverage under this permit will be required to apply for an individual permit if they apply pesticides near waters of the U.S. where pesticides will unavoidably get into those waters. The scope of the permit is broad enough to allow most operators to be able to obtain coverage under a general permit rather than an individual permit.

An economic impact analysis was not done to determine the impact of the permit on the regulated entity. However, EPA performed a draft economic impact analysis for the PGP and found the economic impact on covered entities, including small businesses, to be minimal. Also, the burden to farmers is expected to be minimal because the CWA exempts agricultural storm water and irrigation return flow from NPDES permitting requirements.

In 1998, EPA delegated NPDES authority to TCEQ. TDA is not authorized to issue NPDES permits.

Comment 7:

Golf Courses request that spray drift be exempt from obtaining authorization under this permit.

TMCA and ADAPCO comment that insecticide drift is an important aspect of mosquito control in order to kill mosquitoes, and suggest that a 300 feet limit from the point of pesticide application be specified to define what adjacent means in the permit for ground based ultra low volume spraying.

Response 7:

The PGP authorizes pesticides in, over, and near waters of the U.S. Spray drift resulting from applications that are not made in, over, or near waters of the U.S. are not required to obtain authorization under this permit.

Comment 8:

TIP comments that the language of the PGP and Fact Sheet should be revised to clarify the intent of the permit and that questions and answers guidance document be provided. Golf Courses, TVMA, TAIA, Shores Ag-Air, JSC, WCG, and NWT request that TCEQ develop and implement outreach and education programs across the state to educate all pesticide operators, landscapers, and homeowners about the PGP requirements, prior to the implementation and enforcement of the new permit.

Response 8:

The Fact Sheet for the permit summarizes the terms and intent of the PGP. TCEQ was actively involved in outreach programs throughout the public participation process of

the PGP development (five stakeholders meetings), spreading the word in groups and association meetings, and the pesticides stakeholders website. TCEQ will continue and expand these efforts after the PGP is issued.

Comment 9:

TFB, TAES, TAIA, Coastal AG Consulting, and TCM request adding the term “point source” to the title and first sentence of the permit so that it would not be interpreted that nonpoint source contributions of pesticides also fall under the TPDES general permit.

Response 9:

In response to the comment, the title of the permit was revised to add the phrase “authorize point source” so that it now reads: “General Permit to Authorize Point Source Discharge of Biological Pesticides and Chemical Pesticides That Leave a Residue in Water.” Additionally, the first sentence of the cover page was also changed to read: “This general permit authorizes the point source discharge of biological pesticides or chemical pesticides (including insecticides, nematicides, rodenticides, fungicides and herbicides) that leave a residue in water when such applications are made into or over, including near waters of the United States (U.S.) including exceptional, high, intermediate, limited or no significant aquatic life use receiving waters as designated in the Texas Surface Water Quality Standards only according to limitations, requirements and other conditions set forth in this general permit, as well as the rules of the Texas Commission on Environmental Quality (TCEQ), the laws of the State of Texas, and other orders of the TCEQ (Commission).”

Comment 10:

TAES comments that agricultural and silvicultural storm water runoff and return flows from irrigated agriculture should be excluded from obtaining coverage under this permit and that language be added to clearly state the exemption.

Response 10:

In response to the comment, the following sentences were added at the beginning of Part II.C. of the permit: “Irrigation return flows from agriculture or agricultural storm water runoff or nonpoint source silvicultural activities are exempt from this permit even when they contain pesticides or pesticide residues. The CWA specifically exempts these categories of discharges from requiring TPDES permit coverage.”

Comment 11:

TFB, STCGA, CGPLRGV, and TIP comment that the application of pesticides “near” waters of the U.S. do not constitute a discharge to waters of the U.S and as such, every instance of “including near” preceded by waters of the U.S be deleted from the permit. Additionally, TIP recommends that “near” not be applied to vegetation control, algae control, and nuisance animal control use patterns.

Response 11:

If the pesticides application is for treating pests in close proximity to waters of the U.S. where unavoidably the chemicals will get into the water, the pesticide application is a point source or a direct discharge to water. Such discharges must be authorized by this

permit. This rationale applies to all use patterns with the exceptions of the limitations on coverage in Part II.C. of the permit.

Comment 12:

TMCA and ADAPCO comment that the applicability of this permit to other storm water dischargers, e.g. point-source industrial storm water discharges needs to be clarified and conflicting definitions and language need to be addressed.

Response 12:

Irrigation return flows and agricultural storm water runoff do not require TPDES permits even when they contain pesticides or pesticide residues. The CWA exempts these categories of discharges from requiring TPDES permit coverage. Other storm water runoff is either: (a) already required to obtain TPDES permit coverage as established in CWA §402(p) or (b) classified as a non-point source discharge so that TPDES permit coverage is not required.

Comment 13:

WN Number 236 comments that it is impossible to apply a general use pesticide, restricted use pesticide, state limited use (SLU) pesticide, or regulated herbicide to less than one acre of water without it dispersing and it being potentially subjected to runoff.

Response 13:

Operators that will be applying a restricted use pesticide, state-limited-use (SLU) pesticide, or regulated herbicide to areas less than the annual threshold, but greater than one acre are included in Level II. Only operators that will be applying general use pesticides to less than one acre of water of the U.S. in one calendar year are included in Level III.

The PGP establishes the various levels based on the annual threshold, the type of pesticides used, and whether there is public or private access. These factors represent risk levels to human health and the environment. Due to a smaller treatment area, Levels II and III pose a lower risk to human health and the environment. The ED believes that lower risk can be associated with less stringent requirements without impacting human health or the environment. The requirement for Level III is that the operator follows the label instructions.

Comment 14:

NWT suggests that attaching copies of pertinent forms, including the NOI, NOT, and NOC to the PGP would help the regulated community familiarize themselves with these documents.

Response 14:

All forms will be made available after the PGP is issued on TCEQ's website.

Comment 15:

Baytown respectfully requests that TCEQ consider delaying the issuance of a final PGP until EPA issues the federal PGP.

Response 15:

As a NPDES delegated state, TCEQ is required to comply with a court mandated deadline for NPDES permits for discharges of biological pesticides and chemical pesticides that leave a residue in water when such application are into, over, or near waters of the U.S. While TCEQ would prefer to wait for EPA to finalize their permit, TCEQ must comply with the Court deadline.

Part I. Definitions**Comment 16:**

Lloyd Gosselink comments that all defined terms that are utilized in the permit should be capitalized wherever they are used for easy reference in the permit.

Response 16:

The permit, as written, is grammatically correct. Therefore, defined words follow proper grammar and normal capitalization rules.

Comment 17:

Harris County and HCFCD comment that in the definition of “action threshold” the list of considerations for taking pest control action is not fully inclusive with the term "other effects." They suggested including "other governmental infrastructure for crucial functions of health and safety" to the list under the definition of “action threshold.”

Response 17:

The term “action threshold” was revised for clarity. It now reads: “The point at which pest populations or environmental conditions cannot be tolerated necessitating that pest control action must be taken based on economic, human health, aesthetics, or other effects. An action threshold may be based on current and /or past environmental factors that are or have been demonstrated to be conducive to pest emergence and /or growth, as well as past and /or current pest presence. Action thresholds are those conditions that indicate both the need for control actions and the proper timing of those actions.”

The conditions vary depending on whether it is for health hazard or set of conditions requiring that actions be taken before any pest or pest damage appears. The definition although not exhaustive is sufficient. The permit allows operators to determine their action thresholds and document the trigger for the pest control activity in the pesticides discharge management plan. The requirements of the Integrated Pest management (IPM) plan in Part III.B.1.(b) presents a clear statement of intentions before a pest event occurs. The IPM plan prevents operators from under or over reacting to pest problems.

Comment 18:

The Golf Courses and AEP comment that the phrase “may have been exposed” under the definition of “adverse incident” leaves the door wide open for any kind of falsely-alleged exposure claim. Therefore, they recommend replacing the phrase with “there is evidence that” a person or non-target organism “has likely” been exposed to a pesticide residue. Additionally, AEP comments that the definition of “adverse incident” is too broad and could be construed to mean any effect that a TCEQ Investigator perceives in a negative nature.

Response 18:

In response to the comment the definition of adverse incident was revised for clarity purpose. It now reads: “An unusual or unexpected incident, that an operator has observed upon inspection or that the permittee or permitting authority otherwise becomes aware that:

- (a) There is evidence that a person or non-target organism has likely been exposed to a pesticide or pesticide residue, and
- (b) The person or non-target organism suffered a toxic or adverse effect documented by the appropriate TCEQ Regional Office.”

TCEQ will have to document that a toxic or adverse effect has occurred i.e., effects that occur within waters of the U.S. on non-target plants, fish, or wildlife that are unusual or unexpected as a result of exposure to a pesticide residue (e.g., effects to organisms not otherwise described on the pesticide product label or otherwise not expected to be present).

Comment 19:

NWT recommends revising the definition of “adverse incident” for consistency with the definition in the EPA draft PGP.

Response 19:

The reference listed effects in the proposed EPA PGP are examples of what is considered adverse incidents. The examples are not included in TCEQ’s PGP so as not to limit TCEQ investigators and allow them to consider any other non-listed observable effects when trying to verify a potential adverse effect.

Comment 20:

TAPMS, SJRA, and TAES comment that the definition of “biological control agents” should be clarified as it relates to triploid grass carp and salvinia weevils.

Response 20:

Biological control agents as defined by the permit in Part I are organisms that can be introduced to a site for the control of a target pest, such as herbivores, predators, parasites, and hyperparasites. Biological control agents are not biological or chemical pesticides. It is an alternative pest control method that relies on predation, parasitism or herbivory, or other natural mechanisms. Introducing grass carp to water bodies can be likened to using a “lawn mower” to control vegetation in water.

Comment 21:

TMCA and ADAPCO recommend deleting the term “hyperparasite” from the definition of “biological control agents” because hyperparasites are not biological control agents.

Response 21:

TCEQ declines to make the change because hyperparasites can be employed as biological control agents. See U.S. Fish & Wildlife Service Integrated Pest Management Guidance, 2004.

Comment 22:

Baytown recommended that the following phrase “significant threat to quality of life” be added to the list of situations that the need for pest control be based under the definition

of “declared pest emergency situation.” Baytown notes that after Hurricanes Rita and Ike, mosquito landing rates throughout the city were 100+ per minute. The species involved were salt-marsh and floodwater. These are not typically known to be a vector for disease, but the impact on recovery and quality of life was devastating and required emergency spraying.

Response 22:

In response to the comment the definition of “declared pest emergency situation” was changed to include the following: “(d) Significant threat to quality of life.”

Comment 23:

TFB comments that the definition of “discharge of pollutant” in the PGP will negatively impact agricultural best management practices such as terraces, grassed waterways, sediment control basins, and other structures that help reduce storm water runoff from agricultural fields. TFB points out that these could be construed as point source discharges. TFB recommends deleting “surface runoff that is collected or channeled by man” from the definition.

TIP suggests revising the definition to remove the reference at the end to "leading into privately owned treatment works" because wastewater conveyances to privately owned treatment works are part of a wastewater treatment system and are exempt from the definition of waters of the U.S. Also, to avoid confusion with other uses of "conveyances" in the permit, TIP recommends that "conveyances" be deleted from the definition.

Response 23:

The definition of “discharge of a pollutant” in the PGP includes any addition of any “pollutant” or combination of pollutants to waters of the U.S. from any “point source.” As noted by the definition of “point source,” storm water from agricultural runoff is exempt from TPDES permit requirements.

Irrigation return flows and agricultural storm water runoff do not require a TPDES permit, even when they contain pesticides or pesticide residues as the CWA specifically exempts these categories of discharges from requiring permit coverage. Additionally, other storm water runoff is either already required to obtain TPDES permit coverage as established in CWA §402(p) or classified as a non-point source discharge that does not require TPDES permit coverage. Storm water runoff that may contain pesticides would not be eligible for coverage under the PGP, and is not required to obtain TPDES permit coverage, unless it was already required to do so or EPA designates it as a source for future storm water permitting.

Comment 24:

NWT comments that a definition should be included in the PGP for “effluent” or “effluent limitations.”

Response 24:

TCEQ declines to add a definition of “effluent limitation” to this permit. However, this term is defined in 30 TAC §305.2(13) as: “Any restriction imposed on quantities, discharge rates, and concentrations of pollutants which are discharged from point

sources into waters in the state.” That definition is applicable to the term as used in this permit.

Comment 25:

Harris County and HCFCD comment that the term “executive director” should be defined in the PGP.

Response 25:

TCEQ declines to add a definition of “Executive Director” to the PGP. However, this term is defined in 30 TAC §3.2(16) as: “The executive director of the Commission, or any authorized individual designated to act for the Executive Director.” That definition is applicable to the term as used in this permit.

Comment 26:

NWT suggests that the definition of “integrated pest management” be expanded to emphasize that the least toxic pesticides should be employed when all other measures fail.

Response 26:

The permit defines Integrated Pest Management Practices (IPM) as follows: “Is an effective and environmentally sensitive approach to pest management that relies on a combination of common-sense practices. IPM uses current, comprehensive information on the life cycles of pests and their interaction with the environment. This information, in combination with available pest control methods, is used to manage pest damage by the most economical means; and with the least possible hazard to people, property, and the environment.”

TCEQ believes that the last sentence of this definition addresses the concern raised by the commenter.

Comment 27:

NWT suggests defining “impaired waters” in the PGP for consistency with EPA’s definition.

Response 27:

TCEQ declines to add the requested definition because Part II.C.2.(a) of the PGP explains what constitutes impaired waters.

Comment 28:

TPCA, Caddo Lake Institute, and Sierra Club suggest adding a definition for “near water.” The Caddo Lake Institute and Sierra Club also recommend that the definition also provide for a distance threshold surrounding all waters to provide a conservative approach and so that operators/permittees will have a better understanding of the term.

Baytown, Rey Gomez, Golf Courses, and TAES comment that “near” be defined or be replaced with a more specific term that will not need an interpretation. The Golf Courses also recommend that the term “adjacent” and “near” be eliminated from the permit and replaced with a clearly defined term for “water’s edge.”

Response 28:

Although the Court did not define the term “near” in the context of pesticide discharges, EPA explains near as the unavoidable discharge to waters of the U.S. in order to target pests in close proximity to water. An example is treating vegetation along the bank of a ditch when water is flowing through it. However, the term “water’s edge” is used to mean the same as “near” in the PGP and is defined as: “The surface area of the channel that is not covered by water during low flow conditions immediately bordering: (1) waters of the U.S., or (2) a conveyance to waters of the U.S. along which water (e.g., runoff, irrigation waters, or floodwaters) flows.”

Comment 29:

TMCA and ADAPCO recommend changing the term “non-native plants” to either “noxious plants” or “invasive plants” because not all non-native plants are noxious or invasive. TMCA and ADAPCO also recommend referencing TPWD’s list of noxious plants, as amended.

Response 29:

As used in the permit, “non-native plants” means an unwanted non-native plant. Noxious or invasive plants could be both native and non-native. Therefore, non-native plants cannot be replaced with either of the terms.

Comment 30:

TMCA, ADAPCO, and NWT comment that the PGP is inconsistent because the terms “operator” and “permittee” are used interchangeably, even though they have different definitions. They suggest deleting the term “permittee” from the PGP.

Response 30:

TCEQ declines to make the suggested changes. An “operator” becomes a “permittee” after obtaining coverage under the PGP.

Comment 31:

TFA, HFM, and NWT comment that the definition of “operator” is confusing, but they support the ability for land managers (agents), acting on behalf of their clients who are the actual landowners, to obtain permit coverage under this permit.

Response 31:

The permit defines an operator as: “The person legally responsible for pest management activities resulting in the discharge of pesticides to waters of the U.S. Legally responsible in this context means the person who controls the timing, location, method and means of pest management. Employees, agents and for-hire commercial applicators are not operators but, if hired by an operator covered under the general permit, such employees, agents and for-hire commercial applicators will be authorized and covered under the general permit without the need to obtain individual coverage. However, for-hire commercial applicators, acting on their own accord without consultation with the landowner, are operators for purposes of this general permit if they are legally responsible for pest management activities and must individually seek coverage under the general permit as operators.”

The permit requires that decision makers (landowners, cities, counties) submit an NOI for authorization under the PGP if they exceed the annual thresholds. For hire commercial applicators are not required to submit NOIs, but are automatically covered by the permit if hired by an operator authorized under the PGP. According to the PGP, the landowner is the permittee. If permit violations occur, TCEQ must hold the responsible party liable for corrective actions. Therefore, TCEQ wants to authorize whoever is financially responsible for remediation and/or violations.

Comment 32:

TVMA, TAIA, Shores Ag-Air, JSC, and WCG comment that the PGP is unclear about who is responsible for applying for authorization, paying fees, or keeping records for right-of-way applications. They ask for clarification in determining the operator for right-of-ways whether it is the land owner, the entity that has the easement, the company maintaining the right-of-way, or the State of Texas.

Response 32:

Operators are persons who control the timing, location, method, and means of pest management; and are therefore responsible for the permit requirements. In the case of right-of-ways, the company maintaining the right-of-way is responsible for the timing, location, method, and means of pest management and would be the operator. The operator is responsible for obtaining coverage under the PGP and complying with the appropriate requirements based on whether they are in Level IA, IB, II, or III.

Comment 33:

TFA, HFM, TFB, Golf Courses, and ECC suggest that the definition of “pest management area” should include examples of features that would separate contiguous areas, such as roads, streets, and utility right of ways.

Response 33:

A publicly owned road or street does not make an area non-contiguous. Rights of way and easements do not make a pest management area non-contiguous. Natural occurring forested areas are still part of the pest management area (PMA) and do not break up contiguous areas. In response to the comment the definition of pest management area was revised. It now reads: “A contiguous area of land, including any waters of the U.S., where the permittee is responsible for and is authorized to conduct pest management activities as covered by this permit (e.g., for an operator who is a mosquito control district, the pest management area is the total area of the district).”

Comment 34:

TDA recommend that the inclusion of "biological control agents" under the definition of "pesticide" be clarified to exclude them from permit coverage and suggest that the wording on page 8 be amended to read: "Biological control agents, except for certain microorganisms labeled as pesticides, are exempted from regulation as pesticides under this general permit and FIFRA (Biological control agents include beneficial predators such as birds or ladybugs that eat insect pests, parasitic wasps, fish, etc. that may be considered in the course of considering IPM)."

Response 34:

In response to the comment, the phrase “labeled as pesticides” was added to the third sentence in the “note” under the definition of “pesticides.” That sentence now reads: “Biological control agents, except for certain microorganisms labeled as pesticides, are exempted from regulation as pesticides under this general permit and FIFRA.”

Comment 35:

NWT, Caddo Lake Institute, and Sierra Club suggest that fertilizers containing pesticides such as weed and feed products that contain 2,4-D should be included in the definition of “pesticides” and considered a pesticide for purposes of the PGP.

Response 35:

Fertilizer product containing 2,4-D would fall under the current definition of “pesticides” in the PGP. If the fertilizer is applied into, over, or near water, it would be covered by the PGP.

Comment 36:

CB comments that the definition of “pesticide residue” does not list what pesticides do not leave a residue. CB Inc. notes that it is difficult and not possible in some cases to determine permit eligibility with the current definition.

Response 36:

At this point, TCEQ anticipates that all chemical pesticides used in, over or near waters of the U.S. will leave a residue. Determination that the pesticide does not leave a residue will be done on a case-by-case basis and should be documented by the operator.

Comment 37:

NWT comments that pesticide residue can impact people and the environment and that it can be from active and inactive ingredients; and additives such as surfactants or oils may degrade water quality and even contribute to impairment.

Response 37:

TCEQ agrees with the comment. The permit authorizes the discharge of biological pesticides and chemical pesticides that “leave a residue” in water. However, no changes were made to this permit in response to this comment.

Comment 38:

NWT requests that the definition of “point source” be clarified as it relates to return flows from irrigated agriculture or agricultural storm water runoff; and nonpoint source silvicultural activities. The Golf Courses requested clarification in the definition of “point source” regarding the status of agriculture and suggested that the maintenance of golf courses be covered under the definition.

Response 38:

The CWA exempts agricultural storm water and irrigation return flow from NPDES/TPDES permitting requirements. Those exemptions remain unchanged. The definition of “point source” in the PGP does not include return flows from irrigated agriculture or agricultural storm water runoff or nonpoint source silvicultural activities.

Comment 39:

Harris County, HCFCD, TMCA, and ADAPCO comment that the definition of "potentially invasive plants" in the PGP appears contradictory and recommend that the word "potentially" be removed.

Response 39:

"Potentially invasive plants" is defined in the PGP as: "Plants that are not indigenous to Texas, and have been shown to have invasive tendencies." As used in the PGP, it means that the plants have the tendency to spread beyond where they are wanted and are difficult to control. By including the word "potential," it allows inclusion of plants without having to provide conclusive evidence of invasion.

Comment 40:

Lloyd Gosselink recommends including a definition of "private access" in the PGP.

Response 40:

For the purpose of this permit, private access means the public does not have access to the land without the land owner's permission. However, no changes are made to the permit as a result of this comment.

Comment 41:

NWT requests that a more comprehensive definition be provided for "restricted use pesticides (RUP)" that includes EPA's determination that the RUP may be hazardous to human health or to the environment even when used according to the label. NWT states that this is so that operators who apply these pesticides can understand the hazard posed by RUP to facilitate minimizing or eliminating their use in or near waters of the U.S.

Response 41:

The PGP requires that pesticide application be carried out by a certified pesticide applicator if the pesticide is classified as a RUP, state-limited-use (SLU) pesticide, or regulated herbicide. Pesticides that will be applied directly to surface water must be registered by EPA as an aquatic pesticide. FIFRA, EPA, and TDA require that applicators demonstrate practical knowledge of the principles and practices of pest control; and safe use of pesticides. These include: Drift from targeted areas, dissipation and persistence rates of chemicals in water, comprehending label instructions as to maximum gallons per surface acre per depth allowed, expected movement of chemicals within a cove, or unusual water body characteristics.

FIFRA requires that all persons who apply pesticides classified as RUP be certified according to the provisions of the act or that they work under the supervision of a certified applicator. Commercial and public applicators must pass a core examination to demonstrate a practical knowledge of the principles and practices of pest control and safe use of pesticides. In addition, applicators using or supervising the use of any RUP purposefully applied to standing or running water (excluding applicators engaged in public health related activities) must pass an additional exam to demonstrate competency as described as follows:

"Aquatic applicators shall demonstrate practical knowledge of the secondary effects which can be caused by improper application rates, incorrect formulations, and faulty application of restricted pesticides used in this category. They shall demonstrate practical knowledge of various water use situations and the potential of downstream effects. Further, they must have practical knowledge concerning potential pesticide effects on plants, fish, birds, beneficial insects and other organisms which may be present in aquatic environments. Applicants in this category must demonstrate practical knowledge of the principles of limited area application." See 40 CFR §171.4.

No changes were made to the PGP in response to the comment.

Comment 42:

NWT suggests that the definition of "state limited use pesticide (SLU)" be expanded to include any pesticide or pesticide use which, when used as directed or in accordance with a widespread and commonly recognized practice, requires additional restrictions to prevent unreasonable adverse effects on the environment, including humans, land, beneficial insects, animals, crops, and wildlife (other than pests).

Response 42:

SLU pesticides are pesticides containing certain active ingredients, with the potential to cause adverse effects to non-targeted vegetation, and are classified as SLU pesticides when distributed in containers larger than one quart liquid or 2 pounds dry or solid. The current definition in the PGP for SLU is consistent with TDA and is considered sufficient for purposes of the permit.

Comment 43:

NWT suggests that the definition of "total maximum daily loads (TMDLs)" be expanded.

Response 43:

The definition of TMDL is consistent with 30 TAC §307.3. Therefore, no changes were made in response to the comment.

Comment 44:

Brazoria County comments that the county supports the definition of "treatment area" in the PGP.

Response 44:

The Commission acknowledges this comment.

Comment 45:

NWT suggests that the term "upset" be defined in the permit.

Response 45:

The term "upset" is not used in the permit, so no definition of the term is necessary.

Comment 46:

Caddo Lake Institute, Sierra Club, and NWT comment that the definition of "water's edge" is too narrow in scope, and is not protective of waters of the U.S. They recommend that a quantitative standard be used to account for the variable weather conditions in

Texas. Therefore, they recommend that the definition of “water’s edge” should specify that for lakes, the water’s edge should include at least up to the flood pool level for any reservoir. The water’s edge near wetlands should be defined as at least as high as the highest level where there is evidence of wetland vegetation or rising waters.

Baytown, ECC, TMCA, and ADAPCO comment that the definition of “water’s edge” be clarified to specify whether curbs, gutters, streets, and ditches that are used as a conveyance for storm water should be included and exemptions be provided for pesticides that are applied to storm water conveyances, such as storm drains or ditches where mosquitoes are found if a TPDES Phase I or II municipal separate storm sewer system (MS4) Permit is currently held.

CB comments that the definition of “water’s edge” should only include surface area of the channel that is covered by water during low flow conditions immediately bordering waters of the U.S. CB also notes that the second part of the definition includes the language “a conveyance to waters of the U.S.,” which in their opinion broadens the definition of “waters of the U.S.” because a lot of things could be considered a conveyance.

TIP requests that TCEQ improve the definition of “water’s edge” by adding a specific statement that the definition is intended to describe the scope of "near waters of the U.S." and suggested revising the definition of water’s edge as follows: “The area near waters of the U.S. is the surface area of the channel that is not covered by standing water during low flow conditions immediately bordering waters of the U.S.”

Furthermore, TIP requested that if the TCEQ adds a definition of conveyance as suggested above, TIP would support inclusion of the conveyance concept in the definition as follows: “Water’s Edge - The area referred to as near waters of the U.S. is the surface area of the channel that is not covered by water during low flow conditions immediately bordering: (1) waters of the U.S., or (2) a conveyance.”

The Golf Courses and Rey Gomez comment that a definition of “hydrologic surface connection” should be provided and that it should clarify whether this consists of a physical water connection at the time of a pesticide application or the potential for a physical water connection at any point in time.

The Golf Courses and TIP comment that the definition of “water’s edge” is too broad and could allow for an unintentional expansion of the limits of waters of the U.S. They suggest that “a conveyance to waters of the U.S. along which water (e.g., runoff, irrigation waters, or floodwaters) flows” be deleted from the definition or that a definition be provided.

Response 46:

TCEQ agrees that the definition of water’s edge is complex. However, the definition provided in the permit provides the best protection for water quality and is clear enough to provide for effective enforcement.

Comment 47:

TAPMS, SJRA, and TAES comment that the definition of "waters of the U.S." includes "intrastate lakes," but does not differentiate between a lake and a pond. Furthermore, the definition states that natural ponds are included when there are no natural ponds in

the state of Texas. The commenters request that the definition be clarified if pond owners are exempt since all impoundments in the state of Texas are man-made.

JCMCD, TBWEF, Harris County, and HCFCD comment that “waters of the U.S.” should be defined as navigable waters to clear up any discrepancies as to what constitutes waters of the U.S. TBWEF comment that recent case law has broadened the scope of the definition of waters of the U.S. by creating uncertainty into what areas may constitute waters of the U.S. Therefore, TBWEF suggests that either the definition be clarified or TCEQ provide clear guidance on how to practically determine whether a particular body of water meets the definition.

WN Number 236 comments that the definition and the wording in the exceptions to “waters of the U.S.” covers all land in the state of Texas.

Harris County and HCFCD comment that the definition of “waters of the U.S.” should be clarified to account for the many storm water detention basins throughout the state, which may or may not have a surface hydrologic connection to waters of the U.S.

Baytown and ECC comment that “waters of the U.S.” should be clarified to address whether storm water conveyances such as ditches, curbs, gutters, streets, and storm drains are to be considered local waters. Baytown also recommends adding storm water conveyances as an exception.

CB asks whether operators are required to consider dry stream beds, ditches, or manmade drainage ditches when calculating coverage areas related to permit thresholds.

TIP requests that TCEQ state in the preamble to the final permit that storm water and wastewater conveyances, sumps, retention basins, and impoundments that are identified in an application for an individual TPDES permit or in a storm water pollution prevention plan (SWP3) associated with a TPDES general storm water permit are not waters of the U.S. or near waters of the U.S. In particular, TIP requests that TCEQ clarify that the application of pesticides to such conveyances (whether or not they contain flowing water) or to slopes adjacent to such conveyances are not intended to be regulated by the PGP.

Response 47:

It is agreed that the definition of “waters of the U.S.” is complex. However, the definition in the PGP is verbatim from the federal definition in 40 CFR §122.2 and is clear enough to provide for effective enforcement. The citation at the beginning of the definition now reads: “EPA regulations at 40 CFR 122.2 define Waters of the United States as follows:”

The permit applies to waters of the U.S., only. If the man-made impoundments are waters of the U.S. and pesticides will be applied to the waters then they are not exempt from the permit requirements. TCEQ can address questions about whether a particular water body meets the definition of “waters of the U.S.” on a case-by-case basis.

Comment 48:

Mark Palmer comments that the definition of “waters of the U.S.” states that it is not limited to intrastate lakes. In the PGP on page 12, part A the sentence uses the term “interstate.” Mr. Palmer asks which term is correct.

Response 48:

There are cases where both intrastate and interstate waters can be defined as waters of the U.S. as noted in the definition below.

The definition of “waters of the U.S.” includes:

- (b) All interstate waters, including interstate “wetlands;”
- (c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, “wetlands,” sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
 - (i) That are or could be used by interstate or foreign travelers for recreational or other purposes;
 - (ii) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - (iii) That are used or could be used for industrial purposes by industries in interstate commerce.”

TCEQ can address questions about whether a particular water body meets the definition of “waters of the U.S.” on a case-by-case basis.

Comment 49:

Mr. Palmer asks how to obtain a Texas stream segment number map.

Response 49:

Segment names and numbers may be obtained from the “Atlas of Texas Surface Waters.” This document is available by contacting the TCEQ publications at 512-239-0010 and is available on the web at www.tceq.texas.gov.

Comment 50:

Caddo Lake Institute and Sierra Club comment that the PGP should provide coverage for waters of the state that meet the eligibility criteria and not limit the permit to waters of the U.S., only.

Response 50:

The court decision, CWA, and EPA permit only address waters of the U.S., so TCEQ is not proposing to include waters of the state at this time. However, water bodies that fall into the definition of water in the state, but not waters of the U.S. could be regulated for pesticides application in the future.

Comment 51:

LNVA asks if state irrigation canals meet the definitions of waters of the U.S.

Response 51:

Irrigation canals that are not isolated would be waters of the U.S. In this context, isolated means the irrigation canal is cut off and does not have contact with waters of the U.S. or to a tributary to waters of the U.S.

Comment 52:

TIP recommends that a definition be added to the permit for “conveyances” to identify the linear bodies of water that could be regulated by the permit as near waters of the U.S. and suggest the following sentence would be appropriate: “The portion of linear bodies of water downstream from any regulated discharge of pollutants pursuant to an individual or general TPDES permit that contains flowing water at the time of the pesticide application provided that a hydrologic connection exists between the flowing water and waters of the U.S. at the time of the pesticide application.”

Response 52:

The purpose of defining terms is because such terms are assumed to be not commonly understood by the public or have unique meaning in the permit. TCEQ thinks that the term conveyance is understood and as such not in need of a definition in the PGP.

Comment 53:

NWT requests adding a definition of “wetlands” in the PGP.

Response 53:

30 TAC §305.2 defines wetlands as those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas and constitute water in the state. The term is used in the definition of waters of the United States and was clarified in the context of the definition. The focus of this permit is the direct application of pesticides into, over, or near waters of the U.S.

Comment 54:

NWT comments that the definition of “water quality standards” should be expanded in the permit.

Response 54:

The definition of “water quality standard” in the PGP is consistent with how that term is used in 30 TAC Chapter 307 and is sufficient for purposes of this permit.

Part II. Permit Applicability and Coverage

Comment 55:

TIP recommends revising Part II.A.4 for consistency as follows:

- (a) Public or private entities applying GUP regardless of the number of applications, to less than one (1) acre of waters of the U.S. in one calendar year where there is public or private access; and
- (b) Who do not meet the pesticide use pattern thresholds in Part II.A.1 .(b).

Response 55:

In response to the comment, Part II.A.4 of the permit was revised as suggested.

Comment 56:

TIP supports the use of thresholds stated in the permit that are intended to recognize that the same areas will be treated during a year and also support the proposed thresholds as they relate to pesticides used and pesticide use patterns.

Response 56:

The Commission acknowledges this comment.

Comment 57:

AEP and ONCOR request adding a use pattern called “Electrical Power Generation, Transmission, and Distribution Line Vegetation Control” to the PGP for the application of pesticides to control vegetation in and around power plants, power plant substations, and right-of-ways for transmission and distribution electric power lines. ONCOR also suggests that the annual threshold for the use pattern be 200 linear miles at water’s edge per project or treatment area.

Response 57:

The control of vegetation, as described in the comment would meet the vegetation and algae control use pattern. The ED believes that an additional use pattern is not necessary.

Comment 58:

TAIA comments that flying was omitted from “Mosquitoes and Other Insect Pest” use pattern, thereby expanding the coverage of this permit.

Response 58:

Flying was removed from the permit to provide coverage for operators to control other non-flying insect pests present in, over, or near water without having to obtain an individual permit.

Comment 59:

TVMA, TAIA, Shores Air-Ag, JSC, WCG, TAES, TFB, TCM, and TDA request adding “aquatic” to vegetation, algae, and nuisance animal pest control use patterns so as not to expand coverage to non-point source pesticide applications. They note that this was included in an earlier version of the PGP provided to stakeholders, but removed in the officially proposed TPDES PGP.

Response 59:

“Aquatic” was removed from the use patterns to provide coverage for pesticide applications that treat pests that are not aquatic, but are found near or in close proximity to water, and in the process of treating such pests, unavoidably the pesticide will get into water. Authorization is still limited to applications in, over, or near waters of the U.S.

Comment 60:

Lake Pro, Mark Palmer, Golf Courses, ECC, TAES, TAPMS, SJRA, TFB, and TAES request clarification regarding calculating the thresholds. For example, they ask whether the annual thresholds are additive or cumulative. Lake Pro and Mr. Palmer

asked if multiple lakes that do not connect, meaning separate ponds or lakes, would be considered together in a pest management area or considered different treatment areas whether the lakes are owned by one owner or not. TAPMS, SJRA, TFB, and TAES ask whether the treatment area is only the area that the pesticide is actually applied to or does it include the entire body of water. For example, if an application is made on 20 acres area of pond weeds, but the lake itself is 110 acres, then is the application above threshold that requires a permit or not.

The Golf Courses suggest that the threshold be defined in Part I of the PGP or the method for calculation be made explicit to ensure compliance and eliminate confusion. They also request that the PGP clearly state threshold quantities and how they are calculated in the far left column of the PGP Requirement Matrix.

TAES suggests that TCEQ clearly state that multiple treatments of a single area are not cumulative towards meeting a threshold. For example, an individual treating a 10 acre pond would be a Level II operator under the permit. TAES asks if they treat that same pond four times will that make them a Level IB operator.

ONCOR asks for clarification on how a linear project crossing hundreds of miles with intermittent pesticide application is classified under the PGP since they apply pesticides in limited areas across their service area. ONCOR requests that each pesticide application should be considered a separate treatment area.

Response 60:

To clarify calculating the threshold for vegetation and algae control and animal pest control use patterns, Part II.A.1.(b)(ii) and Part II.A.1.(b)(iii) of the permit were revised to add the phrase “a treatment area” and now reads as follows:

- “(ii) Vegetation and Algae Control- Operators treating a treatment area greater than or equal to 100 acres in water or greater than or equal to 200 linear miles at water’s edge;
- (iii) Animal Pest Control- Operators treating a treatment area greater than or equal to 100 acres in water or greater than or equal to 200 linear miles at water’s edge;...”

For vegetation and algae control, and animal pest control the annual threshold is 100 acres or more of surface water or 200 linear miles or more at water’s edge, regardless of whether the operator is treating both sides of a river or stream. These thresholds must be met or exceeded within a treatment area to qualify as Level I.

To calculate the surface acres treated, at least one treatment area must meet or exceed 100 acres. So, if a Pest Management Area (PMA) has two separate lakes that are being treated, the PMA would have two treatment areas. Suppose Lake A is 50 acres and Lake B is 150 acres. The operator treats 20 acres in Lake A and 70 acres in Lake B so the treatment would be 20 acres and 70 acres, respectively. Neither treatment area meets or exceeds the 100 acre threshold so the operator would not be in Level I, regardless of the number of times these acres are treated. However, if the operator treated 125 acres in Lake B this would exceed the annual threshold, putting the operator in Level I.

To calculate the linear miles at water’s edge, the calculation should include the linear extent of the application made at water’s edge within each treatment area, regardless of whether the operator is treating both sides of the river or stream. For example, if each side of a river is treated and the operator treats 12 river miles, the treatment area

remains 12 miles, regardless of whether they are treating one side or both sides of the river or stream. At least one treatment area must meet or exceed 200 linear miles. Another example, if an operator has a linear PMA such as a right-of-way that is 100 yards wide, which crosses three (3) waters of the U.S., the operator will have 3 treatment areas, each 100 yards in length. None of the treatment areas meet or exceed the 200 linear miles. The three treatment areas are not added together.

These examples are intended to help the regulated community understand how to calculate treatment size to determine when the annual threshold is met or exceeded.

Comment 61:

Caddo Lake Institute and Sierra Club commented that the PGP should cover incidental pesticide applications to row crops or forests that might involve direct application of chemicals to a total of more than 1 or possibly 5 acres of waters and water's edge, including areas with wetlands that come and go; and ephemeral streams.

Response 61:

This permit authorizes all discharges of biological pesticides and chemical pesticides that leave a residue in water when such applications are made into, over, or near waters of the U.S. This includes incidental applications to waters of the U.S. when applying to crops and forests.

Comment 62:

Caddo Lake Institute and Sierra Club comment that the annual threshold for the use patterns should be based on 1,000 acres containing no more than 10 acres of waters of the U.S. for mosquito and other insect pests, area-wide pest control, and forest canopy pest control, 10 acres in water and 20 acres at water's edge for vegetation, algae, and nuisance animal control.

Response 62:

In most instances, pesticide applications are repeated five times or more to control most pests. Therefore, for calculating the annual pest management or treatment area totals for this permit, EPA thresholds (640 acres, 20 acres and 20 linear miles) were increased ten-fold for the mosquito and insect pests, area wide pest control, and forest canopy use patterns; and five-fold for vegetation, algae, and animal pest controls. Each pesticide application activity is not considered as a separate activity as long as it is carried out on the same pest management or treatment area due to the number of applications required to control the pests in certain areas. Therefore, only the operators that meet or exceed the annual thresholds are required to submit a NOI if the operators are applying restricted use pesticides, state limited use pesticides, or regulated herbicides to waters of the U.S.

To calculate the annual threshold for vegetation, algae, and animal pest control in water, calculations should include the area of the applications made to: (1) waters of the U.S. and (2) conveyances with a hydrologic surface connection to waters of the U.S. at the time of pesticide application. For calculating annual threshold for vegetation, algae, and animal pest control at water's edge, calculations should include the area of the application made at water's edge adjacent to: (1) waters of the U.S. and (2) conveyances

with a hydrologic surface connection to waters of the U.S. at the time of pesticide application.

The annual threshold for mosquito and other insect pest, area-wide pest, and forest canopy pest controls include land and water. If an operator has 6,400 acres or more of land that constitutes the PMA and has a creek or an intermittent stream within it, the operator is required to submit a NOI for authorization under the PGP. However, if there is no creek or intermittent stream in the pest management area, the operator is not required to submit a NOI.

It is believed that in the course of applying the pesticide to the PMA that the operator will not turn off the nozzle when they get to the creek to continue on the other side of the creek. Therefore, the pesticide will be applied directly to water to control pests that are present near waters.

Comment 63:

CB supports the current thresholds in the draft permit.

Response 63:

TCEQ acknowledges this comment.

Comment 64:

TFA and HFM comment that the thresholds for area-wide pest control and forest canopy pest control should be based on the treatment area and not on the PMA so as not to expand the coverage to include discharge from non-point sources.

Response 64:

The threshold (6,400 acres) for mosquito and other insect pests control, area-wide pest control, and forest canopy pest control use patterns is the land area that is under the control of the operator. Only operators that have waters of the U.S in the 6,400 acres meet the threshold. In order to target pests in close proximity to water, there would be unavoidable discharge to waters of the U.S. Therefore, both the land and water acreage in the PMA are calculated in the annual threshold.

Comment 65:

Mark Palmer asks if the lakes that he treats do not need permit coverage, whether he is required to file an NOI and or develop a Pesticide Discharge Management Plan (PDMP).

Response 65:

Only operators that meet Level I are required to submit a NOI or self certification form; and develop a PDMP. Operators that meet Level II or III are not required to submit an NOI, self certification form, or develop a PDMP.

Comment 66:

The Golf Courses comment that PGP should allow golf courses to fall within the Level II or III Compliance matrix.

Response 66:

The PGP establishes the levels based on the annual threshold, the type of pesticides used, and whether there is public or private access. These factors represent risk levels to

human health and the environment. Using risk based factors to determine administrative and technical requirements is more appropriate than the classification by industry type.

Comment 67:

TVMA, TAIA, Shores Ag-Air, JSC, WCG, TFB, and Coastal AG Consulting suggest removing state-limited-use (SLU) pesticides from the PGP and limiting it to only the listed federally restricted use pesticides to be consistent with the EPA PGP. They also comment that no SLU pesticide was added to the TDA's SLU list because of water quality concerns and these should not be covered by the PGP.

Response 67:

The EPA PGP does not include any requirements that apply only to a specific pesticide or type of pesticide. The TCEQ PGP regulates discharges from the application of any pesticide used to control pests for five pesticide use patterns. Restricted use pesticide, state limited use (SLU) pesticides, and regulated herbicides present a higher risk to human health and the environment. Therefore, those use patterns are regulated by the PGP. The increased risk, coupled with risks due to public access are the basis for multiple levels of administrative and technical requirements of this permit.

Comment 68:

LCRA comments that operators that will be applying restricted use pesticides, SLU pesticides, or regulated herbicides to less than one (1) acre of waters of the U.S. in one calendar year are not covered under the proposed PGP. LCRA requests that restricted use pesticides, SLU pesticides, and regulated herbicides be added to Level III operators.

TIP requests clarifying that the use of non-general use pesticides for treatment of termites in homes and buildings would not prevent Level III classification.

Response 68:

All operators that will be applying restricted use pesticides, SLU pesticides, or regulated herbicides to any amount of acres of waters of the U.S that is less than the annual thresholds are categorized as Level II. Only operators applying general use pesticides to less than 1 acre of waters of the U.S qualifies as Level III.

Comment 69:

Lloyd Gosselink, TFA, and HFM recommend revising Part II.A.2.(a) of the PGP by replacing the phrase "to an area" with "to waters of the U.S."

Response 69:

In response to the comment, Part II.A.2.(a) of the permit was revised to add the phrase "waters of the U.S." so that it now reads: "Public entities applying general use pesticides (GUP) to waters of the U.S. where there is public or private access, private entities applying GUP to waters of the U.S. where there is public access, or private entities applying GUP, RUP or SLU pesticide or RH to waters of the U.S. where there is only private access."

Comment 70:

Lloyd Gosselink recommends that "Annual Threshold Use" referenced in the matrix be defined to differentiate it from "Action Threshold Use."

Response 70:

In response to the comment, the PGP Requirement Matrix in Part II.A. was revised to eliminate “use” from the “Above Annual Threshold Use” and “Below Annual Threshold Use.” The section now reads: “Above Annual Threshold” and “Below Annual Threshold.”

Comment 71:

TIP requests that TCEQ revise the middle column on the next to last line of the PGP Requirement Matrix table for Level II operators to read: “1 Acre “of waters of the U.S.” or more annually;...” and for Level III operators to read: “Less than 1 Acre “of waters of the U.S.” annually.”

Lloyd Gosselink recommends revising the matrix to replace “on land” with “to waters of the U.S.” under the “Below Annual Threshold Use” column. Also, they comment that the reference to “small volumes of pesticides for control” is unnecessary since the applicability of Level II and Level III coverage is driven by the Annual Threshold Use.

Response 71:

In response to the comment, the PGP Requirement Matrix in Part II.A. was revised to eliminate “(public or private entities on land with public or private access applying small volumes of pesticides for control)” from Below Annual Threshold Use.

Additionally, the last line of the PGP Requirement Matrix was revised as follow: “General Use Pesticide 1 Ac or more of waters of the U.S annually, and General Use Pesticide Less than 1 Ac of waters of the U.S. annually, for Level II and Level III, respectively.”

Comment 72:

The Golf Courses, TFA, HFM, TAPMS, SJRA, and TAES ask if there is a difference between the self certification letter and the self certification statement; and whether they will be made available to the public.

Response 72:

In response to the comment, the permit was revised to replace both “letter” and “statement” with “form” throughout the permit. The self certification form will be made available after the PGP is issued and will be available on the TCEQ website.

Comment 73:

NWT comments that operators who meet or exceed the annual threshold and will be applying any biological or chemical pesticides on public or private land, or any Level II operators that will be applying restricted use pesticides, SLU pesticides, or regulated herbicides should be required to submit an NOI for authorization. NWT also suggests eliminating Level IB from the permit. Furthermore, NWT comments that neither the public or private access provisions are protective of water quality, fish, wildlife, or people. Therefore, they suggest requiring operators that do not belong to any of the divisions to obtain coverage under an individual permit if they will be applying restricted use pesticides, SLU pesticides, or regulated herbicides.

Lloyd Gosselink suggest requiring Level IB coverage for public entities applying restricted use pesticides, SLU pesticides, or regulated herbicide to waters of the U.S.

where there is only "private access" since private entities making such applications to waters of the U.S. where there is only "private access" must obtain Level IB coverage.

CB comment that TCEQ should eliminate the four levels from the permit and revise the permit to be consistent with EPA's PGP by requiring one level of permitting with the thresholds that are currently in the draft TPDES PGP and removing Level III from the permit since the permit requirements are similar to the other levels.

Response 73:

All operators above the annual threshold must comply with the same non-numeric effluent limitations. The only difference between levels IA and IB is that Level IB operators are not required to submit an NOI or annual report.

The permit is protective of the human and natural resources of the state of Texas. The PGP covers the entire state and operators will belong to one of the four (4) levels. The only time that an applicant will be required to obtain coverage under an individual permit is stated in Part II.C. of this permit. The four levels are split up based on whether they are above the acreage threshold, the type of access, and the type of pesticides used. Each of these criteria is related to an increased risk either to human health, the environment, or both.

The four levels identified in the permit are established based on 3 risk factors: The size of the treatment area (which is directly correlated to the volume of pesticides used which will vary proportionately with the size of the treatment area), public access, and pesticide type. Restricted use pesticides, SLU pesticides, and regulated herbicides pose a higher risk to human health and the environment than general use pesticides.

However, the size of the treatment area and public access are other factors that are considered when determining the non-numeric effluent limits. Pesticides applications to an area with public access will affect more people than an area with only private access. Level IA is for operators that will be covering larger areas and using pesticides with very high toxicity to both human and aquatic lives. On the other hand, Level IB is for operators that will be applying general use pesticides with lower toxicity levels to large areas.

Level II is for operators that will be covering smaller areas and using pesticides with very high toxicity (restricted use pesticides, SLU pesticides, or regulated herbicides) to both human and aquatic lives; and operators that will be covering greater than 1 acre of waters of the U.S. and using general use pesticides. Level III is for operators that will be covering less than 1 acre of waters of the U.S. and using general use pesticides. These risk factors are appropriate criteria to determine administrative and technical requirements under the PGP.

Comment 74:

ECC comments that the area-wide pest control use pattern in Part II.B.4. of the PGP should be included in the definitions.

Response 74:

TCEQ declines to add a definition for area-wide pest control because it is already explained in Part II.B.4 of the permit. Area-wide pest control is described in Part II.B.4. of the PGP. It states: "Aerial and ground application of a pesticide to control the

population of a target pest where control technologies over large areas are most effective to avoid substantial and widespread economic or social impact. These efforts involve aerial and ground pesticide applications to areas that include a wide range of diverse habitats such that a portion of the pesticide applied will unavoidably be applied over and deposited to waters of the U.S. to target the pests effectively.”

Comment 75:

TMCA and ADAPCO comment that the restrictions in Part II.C.2 - Discharges to Water Quality-Impaired Receiving Waters, should apply only to the specific pesticide causing the impairment and not the class of the pesticide.

Response 75:

The permit restriction does not apply to the class of pesticides, rather it applies to the specific pesticide or the degradate(s) of the pesticide(s) that may have greater, equal, or lesser toxicity than the parent compound causing the impairment(s). For example, if a water body is impaired for atrazine, the permit restriction would apply to atrazine and its degradates: De-ethyl-atrazine, deisopropyl atrazine, or di-aminotriazine.

The PGP does not authorize coverage for point source discharges of pesticides or their degradates to surface waters already impaired by those specific pesticides or degradates. If the operator chooses to continue to use those pesticides, then the operator would need to obtain coverage under an individual permit.

Comment 76:

Lloyd Gosselink comment that the limitations on permit coverage for discharges to water quality impaired receiving waters where EPA has not approved or established a TMDL be removed from the permit because the limitation will prohibit permit coverage for any discharge from a pesticide application.

Response 76:

The limitation in Part II.C.2.(a) only applies to constituents of concern where the water body is listed as impaired. As of the issue date of the PGP, there are no Texas waters identified as impaired by a pesticide.

Comment 77:

TMCA and ADAPCO comment that TCEQ should provide guidance materials regarding the list of impaired waters and Tier 3 waters. NWT suggests that Tier 3 Waters be defined in the permit.

Response 77:

The §303(d) list of impaired waters is currently available on TCEQ’s website at:

http://www.tceq.texas.gov/compliance/monitoring/water/quality/data/wqm/305_303.html

There are currently no Tier 3 waters in Texas. The PGP provision is for any future designated Tier 3 waters.

Comment 78:

NWT, Caddo Lake Institute, and Sierra Club comment that information regarding public access to NOIs and other records required by the PGP should be provided in the permit.

Response 78:

Public access to documents such as the NOI is governed by the Texas Government Code Chapter 552. The permit identifies certain recordkeeping requirements that the permittee must keep onsite. These records must be made available to the ED upon request.

Comment 79:

Lloyd Gosselink suggests that TCEQ amend Part II.D.2 of the permit to allow any political subdivision to submit an NOI to obtain coverage for its entire jurisdictional boundaries.

Response 79:

The ED agrees that a county-wide NOI can apply to any persons or entities that have multiple pest management areas within a single county. Therefore, Part II.D.2.c. was revised as a result of this comment and now reads as follows: “The operator shall submit a NOI for each pest management area that meets the requirements of Part II.A.1. Public or private entities with more than five (5) pest management areas within a single county or a county whose pest management area is the same as its jurisdictional boundary may submit a single NOI for a county-wide permit. Persons or entities with more than ten (10) pest management areas may submit a single NOI for a statewide permit.”

Comment 80:

Lloyd Gosselink suggest that TCEQ include a reasonable time limitation for the ED to respond to NOIs submitted under the PGP to ensure that permittees are timely informed that coverage under the general permit was granted or denied.

Response 80:

Part II.D.4 clearly states: “Provisional authorization to discharge under the terms and conditions of this general permit begins 48 hours after a completed NOI is postmarked for delivery to the TCEQ. For electronic submittal of NOIs, provisional authorization begins 24 hours following confirmation of receipt of the electronic NOI form by the TCEQ.” This allows the operator to be provisionally authorized very quickly. Therefore, the length of time taken by the TCEQ to finalize its administrative review of NOIs should not delay pest management activity.

Comment 81:

Shoreacres requests that TCEQ clarify if the county where the city is located can continue to provide pest control activities for the city.

Response 81:

The PGP allows a city to obtain coverage if they meet the definition of operator or for a county to provide pest control services to the cities within the county.

Comment 82:

NWT comments that a fee should be assessed on all operators applying pesticides. They suggest that lower fees be assessed for smaller operators, alternative fee payment plans be provided to assist individuals who may need payment options, and higher fees be assessed from larger applicators. TFB comments that only entities that submit NOIs be required to pay fees. WN Number 236 comments that the fees involved (\$100 annual Water Quality Fee and the \$75 to \$100 per NOI) is a burden to producers.

Response 82:

The fees assessed in Part II.D.5 include an application fee with the NOI and an annual water quality fee from operators that submit an NOI to obtain authorization under the PGP. An annual water quality fee for permittees authorized under TCEQ general permits is specifically allowed by 30 TAC §205.6.

Operators in Levels IB, II, or III are not required to pay either an application fee or an annual water quality fee. TCEQ thinks that this fee structure is appropriate.

Comment 83:

NWT comments that information on alternative and individual permit conditions be provided. NWT also comments that operators should not be eligible for coverage under a general permit for discharges to Tier 3 waters, but should be required to get coverage under an individual permit.

Response 83:

Alternative or individual permit are permits to a specific person or persons and are custom fitted to the particular operator and operation. Part II.C. of the PGP clarifies under what conditions an alternative or individual permit is required. The operator must apply for and receive an individual permit or other applicable general permit authorization prior to discharging. In the event that an individual permit or alternative permit is required, that permit would be subject to public notice as prescribed in 30 TAC Chapter 39. Currently, there are no water bodies in the state classified as Tier 3 waters.

Comment 84:

TVMA, TAIA, Shores Ag-Air, JSC, and WCG comment that TCEQ should emphasize that the PGP does not replace or eliminate any operator's responsibilities under Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Response 84:

According to Part III.B.1.(a)(1), Part IV.B.1.(a), and Part V.B.(a) of the PGP, operators are required to apply pesticides in accordance with state law and the pesticide label. A pesticide user must comply with all applicable FIFRA requirements listed on pesticide product labels. The PGP includes additional requirements that are not inconsistent with pesticide product labels and the permit does not replace any existing FIFRA labeling requirements.

Comment 85:

Caddo Lake Institute and Sierra Club suggest that TCEQ should require operators seeking coverage under the PGP for vegetation control to coordinate with TPWD to assure compatibility with the State Aquatic Vegetation Management Plan and any local

plans. Additionally, they recommend requiring that operators file NOIs and the Pesticide Discharge Management Plans (PDMPs) with TPWD; and that NOIs and PDMPs should be provided to the public for meaningful review and incorporated into the PGP.

Response 85:

TCEQ worked closely with the TPWD to develop the PGP and they support the permit as written. This permit does not replace other state requirements, but is in addition to any existing requirements. It is the responsibility of the permittee to determine if there are any other applicable laws or requirements and comply with them.

Part III.D. of this permit requires that a PDMP be developed and implemented within 90 days after the PGP is issued. The PDMP is a tool for the permittee to use as a guide to pest management at a given site. It establishes what the target pests are, when, where and how to treat the pests; and it contains procedures and records of past pesticide activities to help determine effectiveness, problems, and the need for revisions to pest management strategies. It is a working document that is subject to changes and updates.

Part III.D.3 of the permit requires that permittees must retain a copy of the PDMP either onsite or at the address provided on the NOI; and that these documents must be available to the Executive Director upon request. Documents in the public record file of the Commission are available to the public upon request.

Provisions are made for both electronic and paper submittals to allow for some flexibility so that operators that do not have access to the web or email can submit a paper form.

Comment 86:

Caddo Lake Institute and Sierra Club comment that TCEQ should address area-wide pest control with individual permits or in a separate general permit that allows for addressing the preventive nature, large area, and other complications that arise in this permit when it also applies to such preventative treatments. Clearly, the requirements for use of integrated pest management (IPM) and other best management practices need to be modified if preventative applications or treatments are allowed.

Response 86:

TCEQ thinks that individual permits are not necessary because the use of preventive pesticide application falls within Integrated Pest Management Practices and the scope of the PGP. The IPM requires that permittees establish target pest density that serve as an action threshold and Part III.1.b.(3)(i) – “Pesticide Use requires that if pesticide application is used as a pest management strategy, the permittee shall apply pesticide only when the action threshold(s) have been met or disease is present.”

Comment 87:

Mark Palmer, Lloyd Gosselink, TVMA, TAIA, Shores Ag-Air, JSC, WCG, and NWT comment that it will be very difficult or impossible to get the proper paperwork processed quickly between the for-hire applicators and the landowners. Therefore, the commenters are requesting a grace period between when the permit is issued and the

submittal of NOIs or other required forms by operators to obtain authorization; and for the regulated community to familiarize with the program before enforcing the permit.

Response 87:

In response to the comments, the PGP was revised to provide provisional authorization for 90 days after the effective date of the permit. All operators required to submit an NOI or self certification form must do so prior to the expiration of this deadline to continue authorization under the PGP. This provision was added to Part II.D.4.(c) of the PGP.

Comment 88:

TFB is opposed to requiring PDMPs for agricultural lands and thinks that such regulatory measures exceed the authority of the CWA. Moreover, TFB comments that the additional use pattern for area-wide pest control will expand the scope of the permit to include land application rather than aquatic applications only. Therefore, the use pattern should be eliminated from the permit. CB comments that the area wide pest control use pattern is duplicative of some of the other patterns and requested that it be removed from the permit.

Response 88:

Although EPA did not include an area-wide use pattern in its PGP, TCEQ determined that it is appropriate to include this use pattern to provide coverage for agricultural operations that apply chemical pesticides to waters of the U.S.

Part II.B.4 explains the use pattern for area-wide pest control and includes examples of activities that would meet this use pattern. The PGP states that these efforts involve aerial and ground pesticide applications to areas that include a wide range of diverse habitats such that a portion of the pesticide applied will unavoidably be applied over and deposited to waters of the U.S. Agricultural operators that take measures to prevent application in, over, or near waters of the U.S would not qualify for the area-wide use pattern or any portion of the permit. TCEQ encourages all operators, including agricultural operators, to evaluate application methods to eliminate unnecessary discharges if possible.

An additional use pattern was added to provide coverage for pesticide applications other than forest canopy pest control, mosquito, and other insect pest control that will unavoidably be applied over and deposited to waters of the U.S. Without this use pattern, these types of pesticide applications would require an individual permit to discharge.

Comment 89:

TBWEF, STCGA, and GPLRGV comment that boll weevils should be deleted from the examples under the area-wide pest control use pattern in Part II.B.

Response 89:

Boll weevil control is provided as an example of applications that could meet the criteria for area-wide pest control use pattern. Not all boll weevil control activities require permit authorization. This permit only authorizes the discharge of pesticide in, over, or near waters of the U.S. Other discharges do not require permit authorization.

In response to the comments, boll weevil control was deleted from the list of examples referenced by the commenters and the examples in Part II.B.4. were revised to add the phrase “aerial crop dusting” so that it now reads: “Examples include, but are not limited to, aerial crop dusting, aerial and ground application for the control of nuisance and disease borne mosquitoes using pesticides, ground application of pesticides for the maintenance of rights-of-ways, drainage ditches, and other governmental infrastructure for crucial functions of health and safety; urban landscaping, treating orchard pests, or controlling fruit flies.”

Comment 90:

TFA and HFM comment that “ground” applications should be added to the forest canopy pest control use pattern in Part II.B.

Response 90:

In response to the comments, the first sentence of Part II.B.5. of the permit was revised to add the phrase “and ground” and now reads as follow: “Aerial and ground application of a pesticide over a forest canopy to control the population of a pest species (e.g., insect or pathogen) where to target the pests effectively a portion of the pesticide unavoidably will be applied over and deposited into water.”

Comment 91:

TPCA and Burnett’s Consulting support the addition of area-wide pest control use pattern to the permit.

Response 91:

The Commission acknowledges this comment.

Comment 92:

Caddo Lake Institute and Sierra Club comment that all operators (Levels I, II, and III) authorized under this permit should be required to submit NOIs, PDMPs, Self Certification forms, NOCs, and reports to TCEQ.

Response 92:

The PGP establishes the levels based on the annual threshold, the type of pesticides used, and whether there is public or private access. These factors represent risk levels to human health and the environment, using risk based factors to determine administrative and technical requirements is more appropriate.

Part III. Level I Operators

Comment 93:

Harris County, HCFCD, and AEP comment that the permit requirements in Part III.B.1.(b), identifying the problem, the pest management strategies and the pesticide use, will be similar for most treatment areas and as such should be streamlined in the permit for identical treatment areas to reduce administrative burden and repetitive reporting. AEP comments that the requirement is too prescriptive.

Response 93:

IPM must be established for each pest management area and for each use pattern, not necessarily for each treatment area. An IPM can cover multiple treatment areas if they are identical. Revision to IPMs can be done, as needed, so long as the PGP conditions are met.

The PGP should be prescriptive enough that each permittee knows what is expected of them. To simply require an IPM without establishing what the IPM should include would leave the permittee vulnerable to subjective determinations of sufficiency.

Comment 94:

TAES, TAPMS, and SJRA comment that the application of aquatic herbicides always causes reductions in dissolved oxygen concentrations. Therefore, they recommend that the permit should state that "temporary" deterioration of water quality will occur and is acceptable" after the direct application of pesticides to affect the control of the specific target pests for any of the use patterns. TAES also comments that the phrase discharges that would cause or contribute to a violation of water quality standards" may be too broad, given that any addition of chemicals could be considered to "contribute" to a potential violation of water quality standards. The purpose of a pesticide application consistent with the FIFRA label and TDA application standards should not be subject to interpretation as a violation of the permit. Language to clarify the permits exemption from being a potential violation will facilitate comprehension and compliance.

Harris County and HCFCD comment that TCEQ should provide a definition for the word "excursion" as used in Part III.B.2.(a) and III.B.2.(b) - Effluent Limitations to clarify what is considered a permit violation that would require corrective action.

Response 94:

The PGP addresses potential pollutant impacts through non-numeric effluent limitations because setting specific water quality-based effluent limitations is not feasible. The provisions that are expected to result in compliance with water quality criteria and protection of attainable water quality include technology-based effluent limitations set forth in Part III.B.1., which require the operator to minimize discharge of pesticides to waters of the U.S. through the use of control measures to the extent technologically available, economically achievable, and practicable for the category of point sources covered under this permit taking into account any unique factors relating to the operators to be authorized under the PGP.

All operators must minimize discharges of pesticides by using the lowest effective amount of pesticide product per application and optimum frequency of pesticide applications necessary to control the target pest taking into account pest resistance concerns, perform regular maintenance activities, including calibrating, cleaning, and repairing application equipment.

In addition to the technology-based effluent limitations, Part III, IV, and V of the PGP contain the water-quality-based effluent limitations. TCEQ expects that compliance with the narrative effluent limitations and other terms and conditions in this permit will meet applicable water quality-based effluent limitations.

Comment 95:

AEP comments that Part III.B.1.(b)(2) should be tailored for electric utilities to reflect the existence of vegetation management plans required under "NERC Standard FAC-003-1 Vegetation Management." AEP comments that there is a general lack of specificity in the direction to evaluate the management options (prevention, mechanical/physical methods, etc.) and it is unclear what considerations (ranging from environmental impacts to water quality to economic impacts of cost) determine progression through the various management options. Also, AEP comments that there is lack of definition concerning how pest population densities are to be determined and that the suggestion or recommendation of more specific population density or estimation methodologies would be beneficial.

Response 95:

Many factors, some that are site and use pattern specific, should be considered when selecting the appropriate pest management strategy. Due to the site specific nature of these considerations, it is impractical to specify if or when each strategy must be used.

Due to the variability in the control measures that can be used to meet the effluent limitations in this permit, the PGP is not mandating the specific control measures operators will use to meet the limitations. For example, mosquito control operators are required to consider mechanical or physical methods of control or source reduction to eliminate or reduce mosquito habitat. How this is achieved will vary by operator. For some, this may be achieved through water management, wetlands management, or regular mowing while for others mowing will not be feasible. A given control measure may be acceptable and appropriate in some circumstances, but not in others. The operator determines what measure is appropriate for the operator's situation in order to meet the non-numeric effluent limitations. Operators are required to implement site-specific control measures to meet these limitations. The permit provides examples of control measures, but operators are required to tailor these to their situations as well as improve upon them as necessary to meet permit limits. If an operator finds their control measures are not minimizing discharges of pesticide adequately, the control measures must be modified as practicable and documented in the PDMP.

Part III.D. of the PGP requires that permittees develop a PDMP within 90 days of permit coverage. The PDMP contains schedules and procedures pertaining to control measures used to comply with the non-numeric effluent limitations (e.g., application rate and frequency, spill prevention, pesticide application equipment, pest surveillance, and assessing environmental conditions) and pertaining to other actions necessary to minimize discharges (e.g., spill response procedures, adverse incident response procedures, and pesticide monitoring schedules and procedures). A permittee may refer to procedures in other documents that meet the requirements of the permit in the PDMP, but a copy of the referenced document must be kept in the PDMP and should be made available for review when requested by TCEQ staff. It is the duty of the permittee to document methodologies in their PDMP.

Comment 96:

ECC, TMCA, ADAPCO, Golf Courses, and TIP request that TCEQ clarify "lowest effective amount" as used in the permit. They comment that operators should be allowed to follow the pesticide product label by using the amount indicated on the pesticide label as

the lower end of the effective range. TMCA and ADAPCO recommend adding the phrase “as determined by either local product testing or using generally accepted industry minimums and standards as determined for the target pest.” TMCA and ADAPCO also comment that the permit requirements in Part III.D.1.c.6.ii. are too expensive and time consuming.

Golf Courses comment that the PGP should be worded in such a way that the operator will have the authority to use best professional judgment in making decisions on the appropriate label rates for the control of target pest.

TIP suggests clarifying the sentence to read: “(1) operators will be deemed to be in compliance with the requirement if they initially use the amount indicated on the pesticide label as the lower end of the effective range, and (2) operators may depend upon the guidance or instructions of a licensed pesticide applicator with whom the operator has contracted to apply the pesticide.”

Response 96:

In response to the comment, Part III.B.1.(a)(1) and Part IV.B.1(a) of the permit were revised. The sections now read as follows:

“In accordance with state law and the pesticide label, use only the amount of pesticide and frequency of pesticide applications necessary to control the target pest, using equipment and application procedures appropriate for this task. In no case exceed the maximum application rate, established under FIFRA, referenced on the pesticide product label. To minimize the total amount of pesticide applied, the operator shall consider different application rates, frequencies, or both to accomplish effective control in accordance with the following:”

TCEQ can only verify the testing that was carried out by EPA on any pesticides and can confirm or verify the information that is on the product label should there be an adverse incident. Therefore, the suggested phrase is not applicable. When EPA approves a pesticide for a particular use, EPA imposes restrictions through labeling requirements governing such use. The restrictions are intended to ensure that the pesticide serves its intended purpose and avoids unreasonable adverse effects.

Comment 97:

Harris County, HCFCD, Brazoria County, TMCA, and ADAPCO comment that the five day time frame required in Part III.D.2.(b) is restrictive and does not take into instances where this will not be practical, such as an emergency event. They recommend that the phrase "a reasonable time period" be used to replace the five day time frame.

Response 97:

It is considered that “a reasonable time period” will be difficult to enforce by TCEQ inspectors due to its vagueness. A specific timeframe is used in the PGP to standardize when compliance is required.

Comment 98:

NWT comments that pesticide discharge to waters of the U.S. for research and development should be covered under an individual permit.

Response 98:

The TPDES pesticides permit is consistent with EPA's draft PGP with respect to discharges related to pesticide research and development. For research purposes, pesticide discharges may be necessary, regardless of pest density. Research and development activities should not be limited by requiring alternative pest management strategies prior to using pesticides.

Comment 99:

NWT comments that all levels of operators should follow IPM practices to minimize pesticide discharges to waters of the U.S.

Caddo Lake Institute and Sierra Club comment that TCEQ should require that PDMPs developed under the permit to incorporate the principles of IPM in the same way that those principles are required in pesticide applications for schools and other public areas. They also comment that TCEQ should require the use of the least toxic alternative or require that non-toxic methods of pest control be tried first; and set objective standards for allowable pesticide use.

Response 99:

All permittees, at all levels, must minimize discharges using Best Management Practices (BMPs) that are technologically available, economically practicable, and achievable. As noted previously, the levels are split based on risk factors. The higher risk levels require more prescriptive BMPs. TCEQ thinks this is an appropriate method to determine administrative and technical requirements.

In addition, requiring IPM from smaller operators (Level III) might not be economically achievable because of concerns about potential unintended consequences of such a requirement, such as an inability to conduct essential public health and safety operations due to a reduction of available funds or manpower.

The PGP establishes the levels based on the annual threshold, the type of pesticides used, and whether there is public or private access. These factors represent risk levels to human health and the environment; using risk based factors to determine administrative and technical requirements is more appropriate. Levels II and III pose a lower risk to human health and the environment because they are treating a smaller area than Level I. TCEQ thinks that lower risk can be associated with less stringent requirements without impacting human health or the environment.

Comment 100:

TFB comments that only operators subject to NOIs should be responsible for developing and maintaining a PDMP, self-certification statement, or any other form of record-keeping under this permit. NWT comments that all operators who meet the annual threshold and are required to submit an NOI should also be required to develop a PDMP.

Response 100:

All operators in Level I (IA and IB) are required to develop and implement a PDMP within 90 days of obtaining coverage under this permit. Level IA will submit an NOI to obtain authorization and prepare and keep onsite an annual report, while Level IB will

submit a completed self certification to the applicable TCEQ Regional Office. Records are required for Levels I and II to assist the permittee in keeping track of what pesticides were applied along with the volume and effectiveness of the applications. They can also help determine compliance with the PGP requirements.

Comment 101:

Lloyd Gosselink comments that PDMP should be defined in the permit.

Response 101:

TCEQ declines to define PDMP because it is explained in Part III.D. of the PGP. The PDMP must be prepared within 90 days after the permit is issued by Level I operators. The PDMP documents the implementation (including inspection, maintenance, monitoring, and corrective action) of control measures being used to comply with the conditions of the permit. The purpose of the PDMP is to ensure that operators have: (1) taken steps to identify the pest problem, (2) evaluated pest management options, and (3) appropriate control measures to control pesticide discharges. The content of the PDMP can be found in Part III.D. of the permit.

Comment 102:

Baytown recommends that TCEQ mirror EPA's draft PGP requirement for visual evaluation because of the following reasons:

- (1) After significant rain events and tropical storms, there are areas in the City that experience extreme hatch-offs of saltwater and floodwater species of mosquitoes. Requiring a visual evaluation prior to each pesticide application is not practical or necessary after these hatch-offs, and
- (2) The City's adulticide operations (night spraying) take place in the evening and performing a landing rate at night during the application is not feasible, practical, or safe. If TCEQ does not mirror EPA's Draft PGP for this requirement, the City recommends removing this requirement for evening adulticide applications.

Response 102:

Visual evaluation prior to pesticide application will help assist in compliance with the permit by ensuring that the action threshold is met. Also knowing the extent of the pest problem (location and number of pests) will help determine the type of pest management strategy that is appropriate. As noted by the Commenter, visual evaluation at night may not be feasible. The permit requires visual evaluation during the pesticide application when consideration for safety and feasibility allow. Post application visual evaluation will assist the permittee to determine effectiveness of application and will be used to check for toxic or adverse effects.

Comment 103:

Baytown suggests removing the recordkeeping requirement in Part III.E.(6) to maintain the pesticide application records in the PDMP as the records are currently maintained according to TDA requirements so as not to duplicate effort.

CB recommends that TCEQ recognize the TDA's existing licensing and training programs as permit compliance; and consider developing a memorandum of

understanding or some other instrument in order to fully acknowledge and accept TDA compliance activities as compliance with the PGP.

Response 103:

The TDA requirements do not include all of the records required by Part III.E. (6) (a-l). TCEQ thinks that these records are necessary to document compliance with requirements of this PGP.

Comment 104:

Harris County Mosquito Control District and Brazoria County commented that the 48 hours timeframe to document Pesticide Application in the PDMP is too restrictive.

Response 104:

In response to the comment, the timeframe to document pesticide application was revised from 48 hours to within fourteen (14) days after pesticide application.

Comment 105:

NWT comments that additional reporting requirements should be added for reporting adverse incident to endangered species and critical habitat as outlined by EPA.

Response 105:

Toxic or adverse effects must be reported, regardless of whether or not the affected species is listed as an endangered species or the habitat is for an endangered species.

Comment 106:

Caddo Lake Institute and Sierra Club comment that TCEQ should require that the information collected during monitoring and observations be included in the information made available to the public.

Response 106:

Recordkeeping is used by the permittee to determine effectiveness of their pest management activities and helps identifies when changes to pest management activities are needed. These records are available to TCEQ investigators to determine compliance with requirements of the PGP.

Comment 107:

AEP comments that there is no elaboration concerning how recordkeeping data will be used beyond data collection and submission. Also, AEP comments that TCEQ should justify the need for operators to provide an annual report of pesticide use and recommend that TCEQ allow for the integration of records kept as normal business practice to suffice for purposes of implementing the permit.

Response 107:

Currently, there is very little information available regarding pesticide use. The annual report will be used to compile data on pesticide use that could be used in future refinements to the PGP.

Comment 108:

NWT commented that Levels I and II operators should be required to submit annual reports on pesticide use. Pesticide use could be collected in an online database from purchase to application. NWT asks TCEQ to consider quarterly or semi-annual submission of reports.

Response 108:

Only Level IA operators are required to prepare and keep onsite an annual report on pesticide use and these records are available to TCEQ investigators to determine compliance with permit requirements. TCEQ thinks that compliance with the technical requirements of the permit provides environmental protection and that imposing additional administrative requirements would not increase environmental protection. All operators are required to report adverse incidents.

Comment 109:

TMCA, ADAPCO, Harris County, and HCFCD comment that there is inconsistency between Part III.E.6.j., which states “any observed toxic or adverse effects to non-target organisms” must be reported “within 48 hours after implementing pest management strategies” and Part III.C.4., which states “spot checks” for “observable toxic or adverse effects” be conducted “within a reasonable period of time after each pesticide application, not to exceed the time required for maximum effect indicated on the product label.”

Response 109:

TCEQ disagrees that there are inconsistencies in the referenced sections of the permit. Part III.E.6. states: “Pesticide Application Records: The following information must be recorded in the PDMP for each treatment area as soon as possible but no later than 48 hours after implementing pest management strategies (non-pesticide methods and pesticide application).” This provision refers to the timeframe for pesticide application to be recorded in the PDMP. It is set at 48 hours after the actual activity to prevent operators from forgetting or confusing the details of the activity that was carried out. The requirement to keep the record will demonstrate compliance with the conditions of the permit and help the TCEQ investigators to verify compliance with permit conditions.

Part III.E.6.j. states in part: “...any observed toxic or adverse effects to non-target organisms...” This provision refers to recording observed adverse effects to non-target organisms discovered during visual evaluations.

Part III.C.4. states: “Visual Evaluation Requirements: Within a reasonable period of time after each pesticide application, not to exceed the time required for maximum effect indicated on the product label.” This provision refers to when to conduct post-pesticide application visual evaluation.

Comment 110:

ECC asks that the TCEQ clarify what is meant by the term “spot checks” in Part III.C. and asks what the frequency of “spot checks” should be. ECC and TIP comment that the requirement to revisit a treatment area doubles the manpower time associated with conducting treatment and adds unneeded costs to pesticide treatment actions.

Therefore, they suggest that TCEQ revise the requirement to be consistent with EPA's PGP requirement.

Response 110:

TCEQ disagrees with the comment. Part III.C. requires the permittee to conduct visual evaluations of the treatment area prior to, during, and after pesticide application. The term "spot checks" as used in this permit means that the permittee is not required to conduct visual evaluation of the pest management area, but only inspect the treatment area where pesticide was applied. Part III.C.1-4 explains what the permittee must be looking for during each visual evaluation.

Comment 111:

ECC and TIP comment that the non-numeric effluent limitations in the PGP that reference equipment cleaning, calibration, and maintenance of equipment should be revised because some operators will be contracting with licensed applicators for most pesticide applications and will not be in a position to witness the cleaning, calibration, and maintenance of equipment. Therefore, they should not have to maintain records for maintenance and calibration of pesticide equipment.

TIP requests that the permit requirements in Part III.B.1.(a)(3) and Part IV.B.1.(c) be revised to state that operators will be compliant with the requirements if they contract with licensed applicators to apply pesticides in accordance with the requirements of the paragraph.

Response 111:

The operator assumes full responsibility for permit compliance. For example, a mosquito control district that controls the pest management program in its district would be considered the operator, even if a hired contractor is the one actually applying the pesticide. It is the mosquito control district's responsibility to ensure that the hired contractor complies with the conditions of the permit when pesticides are being applied. The contract licensed applicators can provide records of equipment cleaning, calibration, and maintenance to the operator that they are in compliance with the permit.

Comment 112:

Golf courses ask whether the licensed contract applicators or the property owner is responsible for the pesticides applications and recordkeeping.

Response 112:

Operator is defined in the PGP as the person legally responsible for pest management activities resulting in the discharge of pesticides to waters of the U.S. In this context, "legally responsible" means the person who controls the timing, location, method, and means of pest management. Employees, agents, and for-hire commercial applicators are not operators but, if hired by an operator covered under the PGP, such employees, agents, and for-hire commercial applicators will be authorized and covered under the PGP without the need to obtain individual permit coverage.

However, for-hire commercial applicators, acting on their own accord without consultation with the landowner, are operators for purposes of the PGP if they are

legally responsible for pest management activities and must individually seek coverage under the PGP as operators. Whoever meet the definition of “operator” in the PGP is responsible for compliance with the permit requirements.

Comment 113:

ECC and TIP comment that the post application visual evaluation requirement in Part III.C.4 should be deleted from the PGP because one pesticide product label reviewed did not indicate when the "maximum effective time" would be. According to ECC and TIP, some pesticides lose some amount of pesticide effectiveness over time once they are opened and the actual "maximum effective time" changes, which is not specifically described on the product label.

Response 113:

Post application visual evaluations are necessary to determine pesticide application effectiveness and if toxic or adverse effects to non-target organisms have occurred. Toxic or adverse effects leading to an adverse incident or lack of effectiveness could trigger revisions to the PDMP or changes to pest management strategies.

Comment 114:

The Caddo Lake Institute and Sierra Club comment that the requirements in Part III.C. of the PGP are not adequate. According to the Caddo Lake Institute and the Sierra Club, TCEQ should require applicants to document impacts, effectiveness of application, and any adverse effects. Additionally, the Caddo Lake Institute and Sierra Club recommend that TCEQ should require Level II operators to implement IPM as stated in Part III.B.(b) of the PGP and also comply with the requirements in Part III.C. of the PGP.

Response 114:

Part III.E.6.e. of the PGP requires the permittee to record the dates of pre-and post-pesticide applications, visual evaluations, and any observed toxic or adverse effects. Level II applicators are not required to implement an IPM. The IPM establishes action thresholds that trigger pesticide application. The pre-pesticide application visual evaluation required for Level I will determine if the action thresholds are met. Level II has a lower risk since it is below the annual threshold. Lower risk reduces the need for additional technical requirements.

Comment 115:

The Caddo Lake Institute and Sierra Club comment that TCEQ should require several levels of self reporting on adverse incidents or potential adverse incidents.

Response 115:

Level III operators (operators that apply general use pesticides only belong to this group) are not required by the PGP to report adverse incidents or potential adverse incidents. However, they are required to follow all pesticides label instructions for applying and handling the pesticide. These operators are applying general use pesticide to less than one acre and pose the lowest risk to human health and the environment.

All other operators (IA, IB, and II) are required to notify the TCEQ within 24 hours of any potential adverse incident. TCEQ will determine if an adverse incident has occurred.

Comment 116:

TMCA and ADAPCO comment that TCEQ should clarify if the permit requirement in Part III.E.6.(j) to document “observed toxic or adverse effects to non-target organisms” is expected for effects resulting from the permittee’s pesticide application activity or some other responsible party’s activity.

Response 116:

The definition of toxic or adverse effect limits the scope to the effects as a result of exposure to a pesticide residue.

Comment 117:

TMCA and ADAPCO recommend that “potential” be removed from the title of Part III.F.2, and “should have known” be removed from the text in Part III.F.2. TMCA, ADAPCO, and Brazoria County recommend removing the phrase “has been informed” from the text in Part III.F.2. so that the permittee is only required to report confirmed adverse incidents within the required 24 hour period.

AEP suggests that the concept of "adverse impacts" for reporting and notification be abandoned in favor of the standardized language already found in NPDES permits that requires the permittee to determine and report those events that may endanger human health and the environment.

Response 117:

Parts III.F.(2) and IV.F.(1). of the PGP require operators to notify the appropriate TCEQ Regional Office within 24 hours of any potential adverse incident related to the application of pesticides covered under the permit. Since the incident will not have been confirmed by the Commission at that point, it is considered a potential adverse incident. The incident becomes an adverse incident after it is verified, confirmed, and documented by TCEQ.

The phrase “has been informed of” suggests that an adjacent land owner or neighbor could inform the operator of the potential adverse incident.

Comment 118:

Harris County and HCFCD comment that maintaining records for five years is longer than the three years required for NPDES permits. TAES recommends that the PGP require that pesticide records be maintained by the applicator for two years from the date of application of each pesticide to be consistent with TDA applicator retention requirements.

WN Number 236 comments that the PGP will require producers who have a pesticide license through TDA to keep two different sets of records; one set for two years to comply with the TDA’s requirements and another set for five years for to comply with TCEQ’s requirements.

Response 118:

According to 30 TAC §205.5, a general permit may be issued for a term not to exceed five years. The PGP is effective for five years. Therefore, permittees are required to keep their records for the five year duration of the permit.

Comment 119:

Mark Palmer asked for the length of time there needs to be between a chemical application and an incident (i.e. fish kill) that must be reported to TCEQ.

Response 119:

The length of time will vary based on the type of pesticide used. Due to the number of pesticides available for use, it is impractical for TCEQ to establish a specific length of time.

Comment 120:

Harris County and HCFCD comment that the requirement to maintain pesticide application records in the PDMP is not necessary since the EPA draft PGP does not require that these records be maintained in the PDMP. They recommend that TCEQ mirror the EPA draft PGP requirements for pesticide application recordkeeping.

Response 120:

The PDMP is a tool for a permittee to use as a guide to pest management. The PDMP establishes what the target pests are and when, where, and how to treat the pests. The PDMP also contains procedures and records of past pesticide activities to help determine the effectiveness of the pesticide used, problems, and the need for revisions to pest management strategies. The PDMP is a working document that is subject to changes and updates. Records in the PDMP are available to TCEQ authorized representatives and will provide the proof of compliance with permit conditions.

Comment 121:

Harris County, HCFCD, TMCA, and ADAPCO comment that there is inconsistent language when referring to "possible" "potential" or "observable" toxic or adverse effects. Harris County, HCFCD, TMCA, and ADAPCO recommend TCEQ use consistent terms to clarify the intent in the following sections of the permit: Part III.E.6.(j) - "observed toxic or adverse effects," Part IV.C. "possible and observable toxic or adverse effects," Part IV.D.(e) "a toxic or adverse effect," and Part IV.F.(1) "Potential Adverse Incident Notification."

Response 121:

The terms as used in the various sections mentioned refer to specific effects and words such as "possible", "potential" or "observable" describe the different situations.

Toxic or adverse effect is defined in Part I of the PGP as: "Effects that occur within waters of the U.S. on non-target plants, fish or wildlife that are unusual or unexpected as a result of exposure to a pesticide residue (e.g., effects to organisms not otherwise described on the pesticide product label or otherwise not expected to be present). Adverse effects to small organisms may not be directly observable."

Part III.E.6.(j) Any observed toxic or adverse effects to non-target organisms. The reference here is to toxic or adverse effects observed during post application visual evaluation.

The word "possible" as used in Part IV.C. is meant to ensure that the permittee carefully considers all unusual or unexpected effects, regardless of the source of the effect prior to

making a final determination of whether the effects meet the definition of a toxic or adverse effect.

The word “potential” as used in Part III.F.(2) and Part IV.F.(1) means that the incident is not considered an adverse incident until TCEQ confirms the incident. Since the incident has not been confirmed by the Commission, it is considered a potential adverse incident. It becomes an adverse incident after it is verified, confirmed, and documented. The provision states: “If a permittee knows or should have known or has been informed of an adverse incident, the permittee shall notify the appropriate TCEQ Regional Office within 24 hours of becoming aware of the potential adverse incident or call the TCEQ 24-hour Spill Reporting Line at 1-800-832-8224.”

The word “observed” as used in Part IV.D.(e) refers to toxic or adverse effects observed by the permittee or someone else who observed the effects and notified the permittee.

Part IV. Level II Operators

Comment 122:

Rey Gomez asks if threshold numbers can be included in the permit for Level II.

Response 122:

The eligibility criteria for Level II operators is stated in Part II.A.3.(a) and (b) of the permit. The provision states:

Level II: Operators that meet the following criteria:

- (a) Public or private entities applying RUP or SLU pesticides or RH to waters of the U.S. where there is public or private access, or public or private entities applying GUP to one (1) acre or more of waters of the U.S. in one calendar year where there is public or private access; and
- (b) Who do not meet the pesticide use pattern thresholds in Part II.A.1(b).

Comment 123:

LCRA states that TCEQ should allow submission of electronic copies of Adverse Incident Reports and Self Certification form. LCRA recommends revising Part IV.E.2 and 3 to add in parentheses (an electronic copy is acceptable).

Response 123:

Adverse incident reports must be submitted in writing to TCEQ. Currently, there is no mechanism for electronic submission of these documents. The PGP does not specify the format (paper vs. electronic) for onsite records. However, all records must be readily available to authorized representatives of TCEQ, regardless of the format of the records.

Part VI. Standard Permit Conditions

Comment 124:

TMCA and ADAPCO recommend adding the following sentence to Part VI - Standard Permit Conditions: "Nothing in this General Permit is intended to negate any person's ability to assert the force majeure (acts of God, war, strike, riot, or other catastrophes)."

Response 124:

30 TAC §70.7 – Force Majeure, is applicable to all enforcement actions taken by TCEQ, including enforcement of the PGP whether stated in the permit or not. 30 TAC §70.7 states: “(a) If a person can establish that an event that would otherwise be a violation of a statute, rule, order, or permit was caused solely by an act of God, war, strike, riot, or other catastrophe, the event is not a violation of that statute, rule, order, or permit. (b) The owner or operator of the affected facility shall have the burden of proof to demonstrate that any pollution or discharge is not a violation as provided by subsection (a) of this section. (c) If force majeure is claimed as an affirmative defense to an action brought under this chapter, the permittee must submit notice to the executive director as provided by §305.125(9) of this title (relating to Standard Permit Conditions).”

Fact Sheet and Executive Director’s Preliminary Decision**Part I. Summary****Comment 125:**

NWT comments that the Fact Sheet and PGP should be drafted so that they are consistent with the regulatory language. According to NWT, if the Fact Sheet and PGP are consistent with the regulatory language, then all regulated entities could understand and follow systematically without jumping back and forth from the draft to the fact sheet.

Response 125:

The Fact Sheet summarizes the PGP requirements. The requirements in the PGP are what the permittees must comply with. TCEQ believes that the requirements in both the Fact Sheet and the PGP are understandable.

Comment 126:

TIP comments that TCEQ incorrectly characterized Level III operators in the last line of the summary on page one of the Fact Sheet. Therefore, TIP suggests that the sentence be revised to: “Level III operators are public and private entities that apply GUP to less than one acre of waters of the U.S. per calendar year and are required to follow the FIFRA label.”

Response 126:

In response to the comment, the last sentence of Part I. Summary of the Fact Sheet was revised as follows: “Level III operators are public or private entities that apply GUP to less than 1 acre of waters of the U.S. per calendar year and are required to follow the FIFRA label.”

Comment 127:

Harris County, HCWCID, TMCA, and ADAPCO recommend that “were previously” be changed to “are currently” in Part I. Summary of the Fact Sheet.

Response 127:

In response to the comment, the second sentence in the first paragraph of Part I. Summary of the Fact Sheet was revised as follows: “These operations are currently

regulated under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) of the U.S. EPA.”

Comment 128:

TFA and HFM comment that a complete description of Level IB operators should be included in the second paragraph in Part I. Summary of the Fact Sheet. This segment includes private entities applying restricted use pesticide, SLU pesticide, or regulated herbicide to private access.

Response 128:

In response to the comment, the second paragraph of Part I. Summary of the Fact Sheet was revised to: “Level IB consists of operators that meet the pest management or treatment area threshold but will be applying General Use pesticides (GUP) or private entities applying GUP, RUP, SLU pesticide or RH to waters of the U.S where there is only private access and therefore are required to submit a complete Self Certification Form to the Commission to obtain permit coverage.”

Part III. Permit Applicability

Comment 129:

TFA and HFM comment that the last paragraph on page 4 of Part III.A.2 of the Fact Sheet should be clarified by stating: “Level IA operators with 6,400 acres of contiguous land (pest management area) that apply pesticides to waters of the U.S. are required to submit NOIs so as to be consistent with the permit.”

Response 129:

The Fact Sheet summarizes the PGP requirements. The requirements in the PGP are what the permittees must comply with. The PGP defines who qualifies as a Level IA operator in Part II.A.1. TCEQ declines to make the suggested change to the Fact Sheet.

Comment 130:

TFA, HFM, and TIP comment that operators do not turn off the spray nozzle when they reach an intermittent stream to continue on the other side may be true for aerial spraying, but not true for operators who are conducting area-wide pest control by ground application because the operators can choose to avoid spraying over water. Therefore, TIP requested that a sentence be added to the third paragraph of Part III.A.2. of the Fact Sheet stating that “a person conducting ground application of pesticides is not within the jurisdiction of the CWA or regulated by this permit if the person turns off the nozzle when they get to the creek such that the operator does not apply pesticides near waters of the U.S.”

Response 130:

The Fact Sheet does not make a definitive statement about the operator turning off the spray nozzle over the waterway. The sentence in question states that “it is believed that in the course of applying the pesticide to the pest management area that the operator will not turn off the nozzle when they get to the creek to continue on the other side of the creek. Therefore, the pesticide will be applied directly to water to control pests that are present near waters. ”

The PGP authorizes the discharge of biological pesticides or chemical pesticides that leave a residue in water when such applications are made into, over or near waters of the U.S to control pests. If the operator applies pesticide such that the pesticide does not discharge into, over, or near waters of the U.S. then PGP coverage is not required.

Comment 131:

TIP comments that the discussion in Part III.A.2. of the Fact Sheet (page 4) regarding 10-fold and 5-fold thresholds may be confusing and suggests that TCEQ revise the last sentence of the first paragraph to read: “Therefore, only operators that meet the thresholds of treating 6,400 contiguous acres or more have been required to submit a NOI if the operators will be applying restricted use or state-limited-use pesticides or regulated herbicides to waters of the U.S.”

Response 131:

In response to the comment, the last sentence of the first paragraph of Part III.A.2. of the Fact Sheet was revised as follows: “Therefore, only the operators that meet the annual thresholds are required to submit a NOI if the operators will be applying restricted use or state-limited-use pesticides or regulated herbicides to waters of the U.S.”

Comment 132:

TIP suggests revising the second paragraph of Part III.A.2. of the Fact Sheet to read: “To calculate the annual threshold for vegetation and algae and animal pest control in water, calculations should include the area of the applications made to (1) waters of the U.S. and (2) for conveyances, the application made to flowing water having a hydrologic surface connection to waters of the U.S. at the time of pesticide application.”

Response 132:

TCEQ agrees that the definition of water’s edge is complex. However, no changes were made to the Fact Sheet. The definition provided in the permit provides the best protection for water quality and is clear enough to provide for effective compliance and enforcement.

Comment 133:

TFA and HFM recommend that “and nonpoint source silvicultural activities” be added to the first sentence after “storm water” in Part III.B – Permit Limitations of the Fact Sheet for consistency with the definition of point source in the PGP.

Response 133:

In response to the comment, the first sentence of Part III.B. of the Fact Sheet was modified and now reads: “Irrigation return flows from agriculture or agricultural storm water runoff or nonpoint source silvicultural activities is exempt from this permit, even when they contain pesticides or pesticide residues, as the CWA specifically exempts these categories of discharges from requiring TPDES permit coverage.”

Part IV. Permit Coverage

Comment 134:

TIP comments that TCEQ incorrectly characterized Level III operators as homeowners or gardeners, thereby excluding public and private entities who may choose to use only GUP so that they will be eligible to be Level III operators.

Response 134:

In response to the comment, Part IV.4. of the Fact Sheet was revised to read: “Operators in this group include but are not limited to state agencies, cities, and counties, farmers on stock ponds, homeowner’s association around lake, pest control company doing pest control in neighborhoods.”

Part VI. Legal Basis

Comment 135:

NWT comments that additional background information on the CWA, NPDES permits, and the history of pesticide regulation and leading the various court decisions should be provided in the Fact Sheet.

Response 135:

TCEQ thinks that sufficient background information was provided in the Fact Sheet in Parts VI (Legal basis) and VII (Regulatory Background and Legal History).

Part VIII. Integrated Pest Management Practices

Comment 136:

Harris County and HCFCD comment that the statement in Part VIII.2 of the Fact Sheet that states that pesticide application can only be carried out by a trained, certified, pesticide applicator if the pesticide is classified as restricted use excludes applicators being supervised by a licensed applicator. Therefore, they suggest that the language be changed to include applicators being supervised by a licensed applicator.

Response 136:

It is not the intent of the PGP or Fact Sheet to identify who must be licensed to apply restricted use pesticides, SLU pesticides, or regulated herbicides; or if supervised individuals can apply without a license. Pesticides licensing requirements are beyond the scope of the PGP. Licensing requirements are found in 4 TAC Chapter 7, Subchapter C.

FACT SHEET AND EXECUTIVE DIRECTOR'S PRELIMINARY DECISION

For proposed Texas Pollutant Discharge Elimination System (TPDES) General Permit No. TXG870000 for point source discharge from the application of biological pesticides or chemical pesticides that leave a residue in water when such applications are made into or over, including near waters of the United State (U.S.) to control pests.

Issuing Office: Office of Water
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711

Prepared by: Water Quality Division
(512) 239-4671

Date: November 2, 2011

Permit Action: New

I. Summary

The Texas Commission on Environmental Quality (TCEQ) is proposing to issue a general permit authorizing the application of pesticides into or over, including near waters of the U.S. for the control of mosquito and other insect pests, vegetation and algae pest, animal pest, area-wide and forest canopy pests. These operations are currently regulated under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) of the U.S. Environmental Protection Agency (EPA).

The annual pest management area threshold for mosquito and other insect pests, area-wide pest and forest canopy pest controls is 6,400 acres or greater; and for vegetation and algae pest and animal pest controls, the treatment area threshold is 100 acres in water and 200 linear miles at water's edge. The permit specifies which operator may be authorized under this general permit and those which must be authorized by an individual TPDES permit. The permit identifies three levels of authorization for eligible operators, Levels I (IA and IB), II, and III. Level IA operators meet the pest management or treatment area thresholds and may apply Restricted Use Pesticides (RUP) or State-Limited-Use (SLU) pesticide or Regulated Herbicides (RH) and therefore meet the criteria and are required to submit a Notice of Intent (NOI) to obtain authorization. Level IB consists of operators that meet the pest management or treatment area threshold but will be applying General Use pesticides (GUP) or private entities applying GUP, RUP, SLU pesticides or RH to waters of the U.S where there is only private access and therefore are required to submit a complete Self Certification Form to the Commission to obtain permit coverage. Level II are smaller operators that do not meet the pest management area threshold and may be applying RUP, SLU pesticide, RH or GUP and are required to complete a Self Certification Form and keep it onsite. Level III are public or private entities that apply GUP to less than 1 acre of waters of the U.S per calendar year and are required to follow the FIFRA label.

FACT SHEET AND EXECUTIVE DIRECTOR'S PRELIMINARY DECISION
PESTICIDE GENERAL PERMIT NO. TXG870000

II. Executive Director's Recommendation

The Executive Director has made a preliminary decision that the general permit, if issued, meets all statutory and regulatory requirements. The proposed permit will expire five years from the date of issuance in accordance with 30 TAC §205.5(a).

III. Permit Applicability

A. Discharges Eligible for Authorization

1. If a chemical pesticide leaves any excess or residue after performing its intended purpose, such excess or residue would be considered a pollutant, and excess quantities of a biological pesticide and the biological pesticide itself are considered a pollutant under the Clean Water Act.

This general permit authorizes the discharge of biological pesticides or chemical pesticides (including insecticides, nematicides, rodenticides, fungicides and herbicides) that leave a residue in water when such applications are made into or over, including near waters of the United States (U.S.) including exceptional, high, intermediate, limited or no significant aquatic life use receiving waters as designated in the Texas Surface Water Quality Standards only according to limitations, requirements and other conditions set forth in this general permit, as well as the rules of the Texas Commission on Environmental Quality (TCEQ), the laws of the State of Texas, and other orders of the TCEQ (Commission). The discharge of pesticides in accordance with the terms and conditions of this general permit will provide adequate protection of non-target organisms and will not have a significant adverse effect on receiving water quality or violate the standards of the receiving water's classification. The general permit covers the following use patterns:

- (a) Mosquito and Other Insect Pest Control.

Pesticide applications to control mosquitoes and nuisance insect pests, such as Mayflies, Caddisflies, Stoneflies or Black flies, that develop or are present during a portion of their life cycle in or above standing or flowing water. This use pattern includes the application, by any means, of chemical and biological insecticides and larvicides into or over water to control insects that breed or live in, over, or near Waters of the U.S. Applications of this nature usually involve the use of ultra low volume sprays or granular larvicides discharged over large swaths of mosquito breeding habitat and often are performed several times per year.

- (b) Vegetation and Algae Pest Control.

Pesticide applications to control invasive or nuisance vegetation and algae in waters of the U.S. and at water's edge, including, but not limited to, free-floating plants such as duck weed or watermeal, emergent plants such as cattails, noxious weeds, non-native and potentially invasive plants, filamentous algae,

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Cyanobacteria, or phytoplankton and other vegetation growth patterns that would reduce or impede water flows. This use pattern includes the application, by any means, of contact or systemic herbicides to control vegetation and algae in Waters of the U.S. and at water's edge, including ditches and/or canals. Applications of this nature typically are single spot pesticide applications to control infestations or staged large scale pesticide applications intended to control pests in several acres of waterway. Pesticide applications in a treatment area may be performed one or more times per year to control the pest problem.

(c) Animal Pest Control.

Pesticide applications to control invasive or nuisance animals in waters of the U.S. and at water's edge. Animal pests include, but are not limited to, fish, lampreys, mollusks, or rodents. This use pattern includes the application, by any means, of chemicals into Waters of the U.S. to control a range of animal pests for purposes such as fisheries management, invasive species eradication or equipment operation and maintenance. Applications of this nature are often made over an entire or large portion of a water body as typically the target pests are mobile. Multiple pesticide applications to a waterbody for animal pest control are often made several years apart.

(d) Area-Wide Pest Control.

Aerial and ground application of a pesticide to control the population of a target pest where control technologies over large areas are most effective to avoid substantial and widespread economic or social impact. These efforts involve aerial and ground pesticide applications to areas that include a wide range of diverse habitats such that a portion of the pesticide applied will unavoidably be applied over and deposited into Waters of the U.S. to target the pests effectively. Examples include, but are not limited to, aerial crop dusting, aerial and ground application for the control of nuisance and disease borne mosquitoes using pesticides, ground application of pesticides for the maintenance of rights-of-ways, drainage ditches, and other governmental infrastructure for crucial functions of health and safety; urban landscaping, treating orchard pests, or controlling fruit flies.

(e) Forest Canopy Pest Control.

This use pattern includes aerial and ground pest control projects, in and over forest canopies where Waters of the U.S. exist below the canopy and the use of pesticide will unavoidably be discharged into waters. in the course of controlling the pest. Applications of this nature usually occur over large tracts of land, and are typically made in response to specific outbreaks. These pests are not necessarily aquatic (e.g., airborne non-aquatic insects) but are detrimental to industry, the environment, and public health. Mosquito adulticides may be applied to forest canopies. Examples include spraying trees to control target pest

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like aphids or pecan weevils, using pesticides herbicides to manage in forested stands or those planned for reforestation, or using herbicides to manage vegetation to maintain right of ways, or application of pesticides for fungi, insects, weed or vertebrate pests in forest trees management.

The four use patterns included in the general permit encompass the majority of pesticide applications that would result in point source discharges to waters of the U.S. that the US EPA covered under the NPDES permit. In developing the Texas Pesticides GP, the EPA draft was presented to the stakeholders and their inputs were among those used to draft the TPDES. Among their suggestions was that no group should be denied coverage under this permit and as such a fifth use pattern, the Area-Wide Pest Control which was in the original EPA draft was added. This will provide coverage for Agricultural Producers and Forestry operations that might need coverage if they have an intermittent stream or creek that are waters of the U.S. running across their pest management area. All pesticides applied directly to water to control pests in or over, including near waters are covered by this permit.

2. Determination of Pest Management Area Annual Threshold for the Pesticide Use Patterns.

In most instances, pesticides applications are repeated five times or more to control most pests (Impact Assessment Inc. and the California Department of Health Services, Environmental Health Investigations Branch, 2000; Texas Parks & Wildlife Department, 2010; Harris County Mosquito Control District, 2009). Therefore for calculating the annual pest management or treatment area totals for this permit, the U.S. EPA thresholds (640 acres, 20 acres and 20 linear miles) have been increased ten-fold for the mosquito and other insect pests, area wide pest control and forest canopy pest use patterns and five-fold for vegetation and algae pest and animal pest controls. Each pesticide application activity is not considered as a separate activity as long as it is carried out on the same pest management or treatment area due to the number of applications required to control the pests in certain areas. Therefore, only the operators that meet or exceed the annual thresholds have been required to submit a NOI if the operators will be applying restricted use or state-limited-use pesticides or regulated herbicides to waters of the U.S.

To calculate the annual threshold for vegetation and algae and animal pest control in water, calculations should include the area of the applications made to: (1) waters of the U.S. and (2) conveyances with a hydrologic surface connection to waters of the U.S. at the time of pesticide application. For calculating annual threshold for vegetation and algae and animal pest control at water's edge, calculations should include the area of the application made at water's edge adjacent to: (1) waters of the U.S. and (2) conveyances with a hydrologic surface connection to a water of the U.S. at the time of pesticide application. Calculations should include either the linear extent of or the surface area of waters for applications made to Waters of the U.S. Count each treatment areas once, regardless of the number of pesticide application activities performed on that area in a given year. If a pest management area has multiple

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treatment area, treatment areas are not additive. At least, one treatment area must meet the threshold for the purpose of determining whether NOI is required. Also, for linear feature (e.g. a canal or ditch), use the length of the linear feature whether treating in or adjacent to the feature, regardless of the number of applications made to that feature during the calendar year. For example, whether treating the bank on one side of a two hundred (200) – mile long ditch, banks on both sides of the ditch, and/or water in that ditch, the total treatment area is two hundred miles for purposes of determining if a NOI is required to be submitted. Additionally, if the same two hundred miles area is treated more than once in a calendar year, the total area treated is still two hundred miles. The treatment area for these two use patterns is not additive over the calendar year.

The annual threshold for mosquito and other insect pest, area-wide pest and forest canopy pest controls include land and water. If an operator has 6,400 acres or more of land that has a creek or an intermittent stream that is a Water of the U.S. within it (pest management area), the operator is required to submit a NOI for coverage under the general permit. However, if there is no creek or intermittent stream in the pest management area, the operator is not required to submit a NOI. It is believed that in the course of applying the pesticide to the pest management area that the operator will not turn off the nozzle when they get to the creek to continue on the other side of the creek. Therefore, the pesticide will be applied directly to water to control pests that are present near waters. The following annual thresholds have been set for the various use patterns covered by the permit:

- (a) Mosquito and Other Insect Pests Control- Pest management area of 6,400 acres or more;
- (b) Vegetation and Algae Pest Control- Treatment on canals and irrigation system conveyances of 100 acres in water or 200 linear miles at water's edge;
- (c) Animal Pest Control- Treatment area of 100 acres in water or 200 linear miles at water's edge;
- (d) Area-wide Pest Control- Pest management area of 6,400 acres or more; or
- (e) Forest Canopy Pest Control- Pest management area of 6,400 acres or more.

B. Permit Limitations

Irrigation return flows from agriculture or agricultural stormwater runoff or nonpoint source silvicultural activities is exempt from this permit, even when they contain pesticides or pesticide residues, as the CWA specifically exempts these categories of discharges from requiring TPDES permit coverage. Additionally, other stormwater runoff is either: (a) already required to obtain TPDES permit coverage as established in section 402(p) of the CWA or (b) classified as a non-point source discharge for which TPDES permit coverage is not required. Existing stormwater permits for

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construction, industry, and municipalities already address pesticides in stormwater. The Commission has determined not to issue permit coverage under this permit if:

1. The use pattern is not listed in the permit.
2. The waters of the U.S. is identified as impaired on the current EPA approved 303(d) list of impaired waters, as required by 33 USC §1313(d), where the water is impaired for the pesticide or its degradates, unless the discharges are consistent with the U.S. EPA approved TMDL and the TCEQ implementation plan. Impaired waters for the purposes of this permit include both waters with EPA-approved and EPA-established Total Maximum Daily Loads (TMDLs) and waters for which EPA has not yet approved or established a TMDL.
3. The water body is designated as Tier 3 (outstanding natural resource waters) for anti-degradation purposes under 30 TAC §307.5(b)(3).
4. The operator is currently covered for the discharge of pesticides under another TPDES permit, or covered within five years prior to the effective date of this permit by an individual permit or alternative general permit where that permit established site-specific numeric water quality-based limitations or the activities under any TPDES permit has been or in the process of being denied, terminated, or revoked by Commission.
5. The discharges are prohibited by 30 TAC, Chapter 311 (relating to Watershed Protection), 30 TAC, Chapter 213 (relating to the Edwards Aquifer), or any other applicable rules or laws.
6. The discharges would cause or contribute to a violation of water quality standards or would fail to protect and maintain existing designated uses of receiving waters.
7. Authorization may be denied if the Executive Director determines that the discharge will not maintain existing uses of receiving waters, or deny a NOI or revoke authorization if the applicant submits any false information in a NOI, or cancel, revoke, or suspend authorization to discharge based on a finding of historical and significant noncompliance with the provisions of this general permit, or operator has a customer classification that is a poor performer under 30 TAC § 60 (relating to Compliance History).

IV. Permit Coverage

1. Level IA: Operators that meet the following criteria:
 - (a) public entities applying Restricted Use Pesticides (RU), State Limited Use (SLU) Pesticides or Regulated Herbicides (RH) to waters of the U.S. where there is public or private access or private entities applying RU or SLU pesticide or RH to waters of the U.S. where there is public access; and

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- (b) meet or exceed the annual pest management area thresholds for the pesticide use patterns in one calendar year.

Submittal of a NOI is required for Level IA authorization. Public or private entities with more than five (5) pest management areas within a single county or a county whose pest management area is the same as its jurisdictional boundary may submit a single NOI for a county-wide permit and persons or entities with more than ten (10) pest management areas within the state of Texas may submit a single NOI for a statewide permit. The NOI form must require, at a minimum, the following information:

- (a) the legal name, address and telephone number of the applicant;
- (b) the site name or identifier of the Pest Management Area(s);
- (c) the name of the water body (receiving waters) or TCEQ 4-digit Segment Number that will receive the pesticide discharge;
- (d) the county where the Pest Management Area is located;
- (e) the contact and contact address for the PDMP;
- (f) the pesticide use pattern(s); and
- (g) certification that the PDMP will be prepared and implemented.

Operators in this category include but are not limited to state and federal agencies, cities, counties, school districts and pest control companies.

2. Level IB: Operators that meet the following criteria:

- (a) public entities applying general use (GU) pesticides to waters of the U.S. where there is public or private access, private entities applying GU pesticides to waters of the U.S. where there is public access, or private entities applying GU, RU or SLU pesticides or RH to an area where there is only private access; and
- (b) meet or exceed the pest management area threshold for the pesticide use patterns in one calendar year.

Operators meeting the description and criteria that qualify for Level IB are not required to submit a NOI in order to be authorized under this general permit. However, the operators are required to submit a complete Self Certification Form to the Commission and comply with all applicable permit conditions to demonstrate authorization under this permit.

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Operators in this category include but are not limited to state and federal agencies, cities, counties, pest control companies doing pest control in Parks, farmers, homeowner's association, pest control company doing pest control in neighborhoods.

3. Level II: Operators that meet the following criteria:
 - (a) Public or private entities applying RU or SLU pesticides or RH to waters of the U.S. where there is public or private access, or public or private entities applying GU pesticides to one (1) acre or more of waters of the U.S. in one calendar year where there is public or private access; and
 - (b) do not meet the pest management area thresholds for the pesticide use patterns in one calendar year.

Operators are required to complete a Self Certification Form and keep it onsite.

Operators in this category include but are not limited to state agencies, cities, and counties, farmers on stock ponds, homeowner's association around lake, pest control company doing pest control in neighborhoods.

4. Level III: Public or private entities applying GUP to less than one (1) acre of waters of the U.S. where there is public or private access. According to the U.S. EPA, it is estimated that 74 % of all U.S. households used some form of pesticide, and spent \$20/year for pesticides applied by the homeowner (but not hired applicators). As such operators in this group are required to follow the pesticide label instructions only and are not required to keep record or report pesticide use. Operators in this group may include but are not limited to state agencies, cities, and counties, farmers on stock ponds, homeowner's association around lake, pest control company doing pest control in neighborhoods, homeowners, gardeners.
5. Discharge Authorization Date

Provisional authorization to discharge under the terms and conditions of this general permit begins 48 hours after a completed NOI is postmarked for delivery to the TCEQ. For electronic submittal of NOIs, provisional authorization begins 24 hours following confirmation of receipt of the electronic NOI form by the TCEQ. Following review of the NOI, the Executive Director will: 1) determine that the NOI is complete and confirm coverage by providing a written notification and an authorization number; 2) determine that the NOI is incomplete and request additional information needed to complete the NOI; or 3) deny coverage in writing. Denial of coverage will be made in accordance with TCEQ rules related to General Permits for Waste Discharges, 30 TAC §205.4.

Provisional authorization has been provided for all operators that are required to submit a NOI or Self Certification Form from the effective date of this permit until 90 days after the effective date of this permit . All operators required to submit a NOI or

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Self Certification Form must do so prior to the deadline to continue authorization under this general permit. Failure to submit a NOI or Self Certification Form by the deadline will result in expiration of the provisional authorization to operate under the general permit.

6. Notice of Change

Permittees that submitted a NOI are required to submit a Notice of Change (NOC) to supplement or correct information if any of the following occurs:

- (a) the permittee knows or should have known that the permittee failed to submit any relevant facts or incorrect information in the NOI; or
- (b) relevant facts in the NOI change, including but not limited to: permittee address, permittee phone number, the addition or removal of a pest management area, the site name or identifier of the Pest Management Area, a change in the location of records for the pest management area, a change in the location of the PDMP, or a change in the contact or contact address for the PDMP.

7. Termination of Coverage

Termination of Permit coverage under the terms and conditions of this general permit are as follows:

- a. Permittees that are required to submit a NOI will terminate coverage by the submittal of a Notice of Termination (NOT) on a form approved by the Executive Director when: 1) the permittee changes; 2) the discharge becomes authorized under an individual permit or alternative general permit; or 3) when the permittee determines that the annual threshold will not be exceeded during the remainder of the permit term.

Authorization to discharge terminates at midnight on the day that a NOT is postmarked for delivery to the TCEQ. If TCEQ provides for electronic submission of NOTs, then authorization to discharge terminates immediately following confirmation of receipt of the electronic NOT form by the TCEQ.

- b. Permittees that are not required to submit a NOI will terminate permit coverage when they no longer have a discharge from the application of pesticides. These operators are not required to submit a NOT to terminate permit coverage.

V. Permit Conditions and Effluent Limitations

The effluent limitations in the permit are non-numeric and constitute the levels of control that reduce the area and duration of impacts caused by the discharge of pesticides to Waters of the U.S. in a treatment area. The effluent limitations provide for protection of

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water quality standards, including protection of beneficial uses of the receiving waters inside the treatment area following completion of pest management activities.

The effluent limitations in this permit are expressed as specific pollution prevention requirements for minimizing the pollutant levels in the discharge. TCEQ has determined that the combination of pollution prevention approaches and structural management practices required by these limits are the most environmentally sound way to control the discharge of pesticide pollutants to meet the effluent limitations.

- A. The non-numeric effluent limitations require all levels of operators to “minimize” discharges of pesticide. Consistent with the control level requirements of the CWA, the term “minimize” means to reduce or eliminate pesticide discharges to waters of the U.S. through the use of control measures to the extent technologically available and economically achievable and practicable.

These effluent limitations are generally preventative in nature, and are designed to minimize pesticide discharges into waters of the U.S. Operators are required to minimize the discharge of pesticides to waters of the U.S. by:

1. Using only the amount of pesticide and frequency of pesticide applications necessary to control the target pest using equipment and application procedures appropriate for this task.

Operators must consider lower application rates, frequencies, or both to accomplish effective control. The lowest effective application rate also reduces the amount of pesticide available that is not performing a specific pest-control function. Using the lowest possible effective rate and frequency of applications can result in cost and time savings to the user. To minimize discharges of pesticide, operators should base the rate and frequency of application on what is known to be effective against the target pest or necessary for resistance management.

Operators must also consider pest resistance to pesticides when reducing discharges from application of pesticide. Resistance management is an important part of pest control. Some pests can develop resistance to pesticides unless resistance management techniques are adopted by pesticide users. Resistance can result in the loss of effectiveness of pesticides with relatively favorable environmental and human health risks and increase reliance on riskier pesticides. When resistance occurs, users may increase rates and frequency of application in an attempt to maintain pesticide effectiveness. This can lead to the loss of efficacy and increased exposure to the pesticide. Pesticide applicators should be aware of the potential for pest resistance to develop by considering the pest, the pesticide and its mode of action, the number of applications and intervals, and application rates.

Pest resistance develops because intensive pesticide use kills the susceptible individuals in a population, leaving only the resistant ones to reproduce. Several pest management tactics help prevent or delay the occurrence of pesticide resistance. One

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tactic is to reduce dosages in order to avoid establishing a population of resistant organisms and instead allowing some survivors to pass on genes for susceptibility. Another is to apply pesticides over limited areas to reduce the proportion of the total pest population exposed to the pesticide, thereby maintaining a large pool of individuals still susceptible to the pesticide. A third tactic to prevent development of resistant pest populations is to rotate pesticides with different modes of actions against the pests rather than depend on a single mode of action.

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

To minimize discharges of pesticide, operators must ensure that the equipment is calibrated (i.e. nozzle choice, droplet size, etc.) to deliver the appropriate quantity of pesticide needed to achieve greatest efficacy against the target pest. Improperly calibrated pesticide equipment may cause either too little or too much pesticide to be applied. This lack of precision can result in excess pesticide being available or result in ineffective pest control. When done properly, equipment calibration can assure uniform application to the desired target and result in higher efficiency in terms of pest control and cost. It is important for applicators to know that pesticide application efficiency and precision can be adversely affected by a variety of mechanical problems that can be addressed through regular calibration. Sound calibration practices to consider are:

- (a) Choosing the right spray equipment for the application
 - (b) Ensuring proper regulation of pressure and choice of nozzle to ensure desired application rate
 - (c) Calibrating spray equipment prior to use to ensure the rate applied is that required for effective control of the target pest
 - (d) Cleaning all equipment after each use or prior to using another pesticide unless a tank mix is the desired objective and cross contamination is not an issue
 - (e) Checking all equipment regularly (e.g., sprayers, hoses, nozzles, etc.) for signs of uneven wear (e.g., metal fatigue/shavings, cracked hoses, etc.) to prevent equipment failure that may result in inadvertent discharge into the environment; and
 - (f) Replacing all worn components of pesticide application equipment prior to application.
3. Assessing weather conditions (e.g. temperature, precipitation, and wind speed) in the treatment area to ensure application is consistent with all applicable federal requirements.

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Weather conditions may affect the results of pesticide application. Permittees are required to assess the treatment area to determine whether weather conditions support pest populations and are suitable for pesticide application.

B. Water Quality Based Effluent Limitations.

Levels I and II operators are required to maintain the applicable water quality standard in accordance with 30 TAC §307 and take corrective action if a discharge causes or contributes to an excursion of any applicable water quality standard. The Executive Director may require a permittee to obtain coverage under an individual permit as necessary to protect water quality.

Compliance with the pesticide label and other terms and conditions in this permit will meet applicable water quality-based effluent limitations. The permit does not cover discharges of any pesticide into a body of water that is impaired for that pesticide or the pesticide degrades, or into a Tier 3 water.

VI. Integrated Pest Management (IPM) Practices

Level I must develop and implement written IPM practices to comply with the non numeric effluent limitations in the permit.

IPM is a sustainable approach to managing pests by combining biological, cultural, physical, and chemical tools in a way that minimizes economic, health, and environmental risks. It is a series of pest management evaluations, decisions and controls that minimize pesticide use. Using pesticide as pest management strategy should be the last option if all other pest control strategies fail so as to reduce potential environmental effects of the chemicals.

Operators whose discharges of pesticides to waters of the U.S. are solely from pesticide research and development activities are required to comply with the additional technology-based effluent limitations only to the extent the limits may not compromise the research design.

1. Pest Problem Identification.

Operators are required to identify the pest problem, identify the target pest, establish an action threshold and document all the processes used to determine the pest problem. Action threshold is the point at which pest populations or environmental conditions can no longer be tolerated necessitating that pest control action must be taken based on economic, human health, aesthetics, or other effects considerations. Action thresholds help determine both the need for control actions and the proper timing of those actions. The permit requires operators to use existing surveillance data (if it is available) to meet the conditions of the permit.

2. Pest Management Strategy

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Operators must evaluate both pesticide and non-pesticide methods of pest management strategies by considering and evaluating the following options: no action, prevention, mechanical or physical methods, cultural methods, biological control agents, and pesticides.

In the evaluation of these options, operators must consider impacts to water quality, impacts to non-target organisms, pest resistance, feasibility, and cost effectiveness. Operators could choose to combine any of the pest management strategies that will effectively control the target pest(s) and produce no adverse or toxic effect on non-target organisms.

3. Pesticide Use

Operators must conduct pest surveillance prior to pesticide application to verify the need for using pesticide as a pest management strategy. Operators are required to reasonably justify the proposed treatment and should only apply pesticide when the action threshold has been met so as to reduce the impact on the environment and non-target organisms. Operators must adhere to FIFRA and the pesticide label instructions. The pesticide label is a binding legal agreement between the EPA, the registrant, and the user.

Pesticide application can only be carried out by a trained, certified pesticide applicator if the pesticide is classified as Restricted Use, State-Limited-Use Pesticides or Regulated Herbicides. Pesticides that will be applied directly to surface water must be a pesticide that is registered by the U.S. EPA as an aquatic pesticide.

It is a violation of the CWA and this permit if a pesticide is used in a way or place not specified on the label.

VII. Pesticide Discharge Management Plan (PDMP)

Level I authorized operators must prepare a PDMP for the pest management area within 90 days of coverage under this permit to comply with the permit conditions. Operators must document the implementation (including inspection, maintenance, monitoring, and corrective action) of control measures being used to comply with the effluent limitations set forth in Part III of the permit.

The following must be documented in the PDMP: (1) pesticide discharge management team (2) pest problem identification (3) evaluation and selection of pest management strategies and (4) response procedures (e.g., spill response procedure, adverse incident response procedure, visual evaluations, pest surveillance, and assessing environmental conditions) and pertaining to other actions necessary to minimize discharges (e.g., spill response procedures, adverse incident response procedures, and pesticide monitoring schedules and procedures) The PDMP must be kept up-to-date and modified whenever necessary to document any corrective actions as necessary to meet the effluent limitations in this permit.

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The PDMP requirements set forth in the permit are terms or conditions under the CWA because the operator is documenting information on how it is complying with the effluent limitations (and inspection and evaluation requirements) contained elsewhere in the permit.

VIII. Visual Evaluation Requirements

Levels I and II operators must carry out a visual evaluation of the pest management area in compliance with the permit conditions. Operators are required to do spot checks of areas in and around the treatment area within a reasonable period of time after each pesticide application, not to exceed the time required for maximum effect indicated on the product label to observe the effects of the pesticides on the treatment area and document if there was an observable adverse or toxic impact that may possibly be related to the operator's use of pesticides in the treatment area. Permittees must take corrective actions for any observed problem(s) and document the effect of the corrective measure(s) when completed. Permittees shall conduct a visual evaluation to determine if the target pest action threshold(s) are met and weather conditions are conducive to proper application, identify conditions (e.g. temperature, precipitation, and wind speed in the treatment area) that support development of pest populations and are suitable for control activities, and during the application when considerations for safety and feasibility allow.

IX. Recordkeeping

Levels I and II operators are required to keep a copy of this permit (electronic copy also acceptable) and any adverse incident reports. Level I operators are required to keep records of all pesticide use. Records will allow evaluation of pest control efforts and help plan future treatments. Level III operators are not required to keep records.

The permit authorizes Level I operators to harmonize the state law (4 TAC §7.33), the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and CWA recordkeeping practices, where appropriate. The following records are required to be kept for a period of at least 5 years from the date the record was created and must be made available to the Executive Director upon request:

1. a copy of spill or leak reports;
2. a copy of the NOI submitted to TCEQ along with any correspondence to/from TCEQ specific to coverage under this permit;
3. a copy of the acknowledgment certificate issued by TCEQ or Self Certification Form submitted to TCEQ; and
4. pesticide application records for each treatment area must be recorded as soon as possible but no later than fourteen (14) days after implementing the pest management strategy to include the following:

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- (a) The name(s) of the record keeper;
- (b) Pesticide applicator's name
- (c) Target Pest(s);
- (d) Pest management strategies used and what action threshold(s) have been met;
- (e) Date of pre- and post-application surveillance and visual evaluations;
- (f) Date pest management strategy was conducted;
- (g) Name and total amount (in gallons or pounds) of pesticide product applied, including the product's EPA registration numbers;
- (h) Concentration (%) of active ingredient in formulation;
- (i) Identify which treatment area or portion of a treatment area was treated;
- (j) Any observed toxic or adverse effects to non-target organisms;
- (k) A copy of any modifications made to the PDMP during the term of the permit;
and
- (l) Date that application equipment was calibrated, cleaned, and repaired, if applicable.

X. Reporting and Notification

Level IA operators must submit an annual report. The annual report includes the operator's name; authorization number(s); contact person name, title, e-mail address (if any), and phone number. Information about the each treatment area that summarizes the amount of pesticides used, target pest(s) and pesticide use patterns in a pest management area during one calendar year must also be reported. The permit specifies conditions for the reporting requirements that include: 24hour potential adverse incident or spill or leak notifications(required for the Levels I and II), fourteen (14) days adverse incident or spill or leak written reports, (required for Levels I and II) and other 24hour reporting of situations that may endanger human health or safety, or the environment to the TCEQ. Reporting will assist the Commission to better understand and remedy pesticide water pollution problems that may arise, identify possible permit violations, identify where permit may need modification to further protect water quality and help with data collection on aquatic pesticide use in Texas.

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XI. Addresses

Questions concerning this general permit should be sent to:

James M. Moore, Section Manager
Water Quality Assessment Section (MC-150)
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087
(512) 239-4671
e-mail: PGP@tceq.state.tx.us

Comments regarding this general permit should be sent to:

Chief Clerk's Office (MC-105)
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

Supplementary information on this Fact Sheet is organized as follows:

- IV. Permit Coverage
- V. Permit Conditions and Effluent Limitations
- VI. Integrated Pest Management Practices
- VII. Pesticide Discharge Management Plan
- VIII. Visual Evaluation Requirements
- IX. Recordkeeping
- X. Reporting and Notification
- XI. Addresses
- XII. Legal Basis
- XIII. Regulatory Background and Legal History
- XIV. Procedures for Final Decision
- XV. Administrative Record

XII. Legal Basis

Section 26.121 of the Texas Water Code (TWC) makes it unlawful to discharge pollutants into or adjacent to water in the state except as authorized by a rule, permit, or order issued by the commission. TWC § 26.027 authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state. TWC § 26.040 provides the commission with the authority to amend or adopt, as necessary to implement this section, rules adopted under § 26.040, and to authorize pesticides discharges by general permit.

On September 14, 1998, the TCEQ received authority from the United States Environmental Protection Agency (EPA) to administer the Texas Pollutant Discharge Elimination System

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(TPDES). The TCEQ and the EPA have signed a Memorandum of Agreement that authorizes the administration of the National Pollutant Discharge Elimination System (NPDES) program to the TCEQ as it applies to the State of Texas.

CWA §§ 301, 304, and 401 (33 United States Code (USC), §§ 1331, 1314, and 1341) include provisions that state that NPDES permits must include effluent limitations requiring authorized discharges to: (1) meet standards reflecting levels of technological capability; (2) comply with EPA-approved state water quality standards 30 TAC §307; and (3) comply with other state requirements adopted under authority retained by states under CWA § 510, 33 USC, § 1370.

XIII. Regulatory Background and Legal History

The Commission was given authority to issue general permits by HB 1542 that passed during the 75th legislative session. Further clarification of general permit authority was provided in subsequent legislation, HB 1283, passed during the 76th legislative session. As a result of this authority, and in accordance with a memorandum of agreement between the EPA and TCEQ relating directly to the TPDES permit program, the commission is seeking to issue this general permit.

EPA regulates the sale, distribution and use of pesticides in the U.S. under the statutory framework of FIFRA to ensure that when used in conformance with FIFRA labeling directions, pesticides will not pose unreasonable risks to human health and the environment. All new pesticides must undergo a registration procedure under FIFRA during which EPA assesses a variety of potential human health and environmental effects associated with use of the product. When EPA approves a pesticide for a particular use, the Agency imposes restrictions through labeling requirements governing that use. The restrictions are intended to ensure that the pesticide serves an intended purpose and avoids unreasonable adverse effects. States have primary authority under FIFRA to enforce "use" violations, but both the States and EPA have ample authority to prosecute pesticide misuse when it occurs.

The Texas Department of Agriculture licenses pesticide applicators and dealers and regulates pesticide storage facilities by imposing enforcement actions, including monetary penalties, for law violation, investigates cases of human or animal exposure to pesticides, collects waste pesticides and monitors agricultural pesticides. The TCEQ conducts focused groundwater monitoring for pesticides, and conducts investigations of surface water and groundwater contamination suspected from pesticides.

In the case of the National Cotton Council et al., v. EPA (2009), the court evaluated the legality of a 2006 EPA rule that provided that the application of pesticides and herbicides to and over surface water to control pests, weeds and insects consistent with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) does not require a NPDES Permit. On January 07, 2009 the U.S. Sixth Circuit Court of Appeals ruled that Clean Water Act permits are required for all biological pesticide applications and chemical pesticide

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applications that leave a residue in water when those applications are made in or over, including near, waters of the U.S.

On April 09, 2009, EPA filed a motion to stay issuance of the Court's mandate for two years to provide EPA time to develop, propose and issue a final NPDES general permit for pesticide applications, for states to develop permits, and to provide outreach and education to the regulated community.

On November 2, 2009, industry petitioners of the Sixth Circuit Case petitioned the Supreme Court to review the Sixth Circuit's decision. On February 22, 2010, the Supreme Court denied the request to hear industry's petition, leaving the April 2011 effective date unchanged. On March 3, 2011, the U.S. Environmental Protection Agency (EPA) requested an extension to allow more time for pesticide operators to obtain permits for pesticide discharges into U.S. waters. On March 28, 2011, the U.S. Court of Appeals for the Sixth Circuit granted EPA's request for an extension to allow more time for pesticide operators to obtain permits for pesticide discharges into U.S. waters. The court's decision extended the deadline for when permits will be required from April 9, 2011 to October 31, 2011.

XIV. Procedures for Final Decision

The Memorandum of Agreement between the EPA and TCEQ provides that EPA has no more than 90 days to comment, object, or make recommendations to the draft general permit before it is published in the *Texas Register*. According to 30 TAC, Chapter 205, when the draft general permit is proposed, notice must be published, at a minimum, in at least one newspaper of statewide or regional circulation. The commission may also publish notice in additional newspapers of statewide or regional circulation. Mailed notice must also be provided to the following:

- A. the county judge of the county or counties in which the discharges under the general permit could be located;
- B. if applicable, state and federal agencies for which notice is required in 40 CFR, §124.10(c);
- C. persons on a relevant mailing list kept under 30 TAC, §39.407, relating to Mailing Lists; and
- D. any other person the Executive Director or Chief Clerk may elect to include.

After notice of the general permit is published in the *Texas Register* and the newspaper(s), the public will have 30 days to provide public comment on the proposed permit.

Any person, agency, or association may make a request for a public meeting on the proposed general permit to the Executive Director of the TCEQ before the end of the public comment period. A public meeting will be granted when the Executive Director or Commission determines, on the basis of requests, that a significant degree of public interest

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in the draft general permit exists. A public meeting is intended for the taking of public comment, and is not a contested case proceeding under the Administrative Procedure Act. The Executive Director may call and conduct public meetings in response to public comment.

If the Executive Director calls a public meeting, the Commission will give notice of the date, time, and place of the meeting, as required by Commission rule. The Executive Director shall prepare a response to all significant public comments on the draft general permit raised during the public comment period. The Executive Director shall make the response available to the public. The general permit will then be filed with the Commission to consider final authorization of the permit. The Executive Director's response to public comment shall be made available to the public and filed with the Chief Clerk at least ten days before the Commission acts on the general permit.

XV. Administrative Record

The following section is a list of the fact sheet citations to applicable statutory or regulatory provisions and appropriate supporting references.

A. 40 CFR Citations

Part 122, 124 and 136

B. TCEQ Rules

30 TAC Chapters 39, 205, 281, 305, 307, 319, 331, and 335

C. Miscellaneous

EPA, National Recommended Water Quality Criteria:2002, EPA-822-R-02-047, November 2002, EPA's Draft Pesticides General Permit , Texas Water Code Chapter 26.0286 and Texas 2006 Clean Water Act Section 303 (d) list.

D. Impact Assessment, Inc. and the California Department of Health Services, Environmental Health Investigations Branch, 2000: Analytical Procedures, Methodologies, and Field Protocols to Monitor and Determine Environmental Contaminants: Pesticide Use in California: U.S./Mexico Border Region.

E. Texas Parks and Wildlife Department, 2010: Data presented to the TCEQ in TPWD Informal Comments on Pesticide General Permit Draft Presented at stakeholder meeting September 9, 2010.

F. Harris County, Texas Public Health and Environmental Services Mosquito Control Division, 2009: Annual Report titled "Field Headquarters Operations 2009" Submitted to the TCEQ on November 17, 2010.



General Permit No. TXG870000

This is a new General Permit

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
P.O. BOX 13087
AUSTIN, TX 78711-3087

GENERAL PERMIT TO AUTHORIZE POINT SOURCE DISCHARGE OF
BIOLOGICAL PESTICIDES AND CHEMICAL PESTICIDES THAT LEAVE A
RESIDUE IN WATER

under provisions of
Section 402 of the Clean Water Act (CWA)
and Chapter 26 of the Texas Water Code

This general permit authorizes the point source discharge of biological pesticides or chemical pesticides (including insecticides, nematocides, rodenticides, fungicides and herbicides) that leave a residue in water when such applications are made into or over, including near waters of the United States (U.S.) including exceptional, high, intermediate, limited or no significant aquatic life use receiving waters as designated in the Texas Surface Water Quality Standards only according to limitations, requirements and other conditions set forth in this general permit, as well as the rules of the Texas Commission on Environmental Quality (TCEQ), the laws of the State of Texas, and other orders of the TCEQ (Commission). The issuance of this general permit does not grant to the permittee the right to use private or public property for the conveyance of wastewater along the discharge route. This includes property belonging to, but not limited to, any individual, partnership, corporation or other entity. Neither does this general permit authorize any invasion of personal rights nor any violation of federal, state, or local laws or regulations. It is the responsibility of the permittee to acquire property rights as may be necessary for the application of pesticides.

This general permit and the authorization contained herein shall expire at midnight on November 2, 2016.

EFFECTIVE: November 2, 2011

ISSUED:

For the Commission

TPDES GENERAL PERMIT NO. TXG870000
 RELATING TO THE POINT SOURCE DISCHARGE OF PESTICIDES TO
 WATERS OF THE U.S.

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Part I. Definitions

The following words and terms, for the purposes of this general permit, shall have the following meanings.

Action Threshold – The point at which pest populations or environmental conditions cannot be tolerated necessitating that pest control action must be taken based on economic, human health, aesthetics, or other effects. An action threshold may be based on current and /or past environmental factors that are or have been demonstrated to be conducive to pest emergence and /or growth, as well as past and /or current pest presence. Action thresholds are those conditions that indicate both the need for control actions and the proper timing of those actions.

Active Ingredient – Any substance (or group of structurally similar substances if specified by the Executive Director) that will prevent, destroy, repel or mitigate any pest, or that functions as a plant regulator, desiccant, or defoliant within the meaning of Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) § 2(a) (7 U.S.C. § 136(a)). 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 that pesticidal substance.

Adverse Incident – An unusual or unexpected incident, that an operator has observed upon inspection or that the permittee or permitting authority otherwise becomes aware that:

- (a) There is evidence that a person or non-target organism has likely been exposed to a pesticide or pesticide residue, and
- (b) The person or non-target organism suffered a toxic or adverse effect documented by the appropriate TCEQ Regional Office.

Agents – Persons who act for the operator or representatives of the operator.

Best Management Practices (BMPs) – Best management practices are examples of control measures that may be implemented to meet effluent limitations. They are schedules of activities, practices (and prohibitions of practices), structures, vegetation, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to waters of the U.S. BMPs also include treatment requirements, operating procedures, and practices to control spillage or leaks, or drainage from raw material storage.

Biological Control Agents – Organisms that can be introduced to a site for the control of a target pest, such as herbivores, predators, parasites, and hyperparasites.

Biological Pesticides (also called Biopesticides) - Include microbial pesticides, biochemical pesticides and plant-incorporated protectant. A microbial pesticide is 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.

A biochemical pesticide is a pesticide that: (1) is a naturally-occurring substance or structurally-similar and functionally identical to a naturally-occurring substance; (2) has a history of exposure to humans and the environment demonstrating minimal toxicity, or in the case of a synthetically-derived biochemical pesticide, 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). A plant-incorporated protectant is 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.

CFR – Code of Federal Regulations.

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

Control Measure – Any BMP or other method used to meet the effluent limitations to minimize the discharge of pollutants to waters of the U.S.

Cultural Methods - Manipulation of the habitat to increase pest mortality by making the habitat less suitable to the target pest.

CWA – Clean Water Act, also known as the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251–1387.

Cyanobacteria (blue green algae) – This is a group of unicellular photosynthetic organisms without a well-defined nucleus.

Declared Pest Emergency Situation – A public declaration by the federal, state, or a local government that has determined that there is a pest problem that requires control through the application of a pesticide for pest control beginning less than ten days after identification of the need for pest control 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, or
 - (4) The environment; or
- (d) Significant threat to quality of life

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

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

Edwards Aquifer - As defined in 30 TAC Chapter § 213.3 (relating to the Edwards Aquifer), that portion of an arcuate belt of porous, water-bearing, predominantly carbonate rocks known as the Edwards and Associated Limestones in the Balcones Fault Zone trending from west to east to northeast in Kinney, Uvalde, Medina, Bexar, Comal, Hays, Travis, and Williamson Counties; and composed of the Salmon Peak Limestone, McKnight Formation, West Nueces Formation, Devil’s River Limestone, Person Formation, Kainer Formation, Edwards Formation, and Georgetown Formation. The permeable aquifer units generally overlie the less-permeable Glen Rose Formation to the south, overlie the less-permeable Comanche Peak and Walnut Formations north of the Colorado River, and underlie the less-permeable Del Rio Clay regionally.

Edwards Aquifer Recharge Zone – Generally, that area where the stratigraphic units constituting the Edwards Aquifer crop out, including the outcrops of other geologic formations in proximity to the Edwards Aquifer, where caves, sinkholes, faults, fractures, or other permeable features would create a potential for recharge of surface waters into the Edwards Aquifer. The recharge zone is identified as that area designated as such on official maps located in the offices of the TCEQ and the appropriate underground water conservation district. Also, see 30 TAC § 213.3.

Employees – Persons employed by the operator for wages or salary.

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

FFDCA – Federal Food, Drug and Cosmetic Act, 21 U.S.C. §§ 301–399a.

FIFRA – Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136–136y.

Filamentous Algae – Algae that grows in long strings or mats in water.

For-Hire Commercial Applicator - Includes persons licensed by the Texas Department of Agriculture who make contractual pesticide applications that they or their employer receives compensation (e.g., lawn care firms, pest control companies).

General Permit - A permit issued under the provisions of 30 Texas Administrative Code (TAC), Chapter 205, authorizing the discharge of waste into waters of the U.S.

for one or more categories of waste discharge within a geographical area of the state or the entire state as provided by Texas Water Code (TWC) §26.040.

General Use Pesticide – Any pesticide that is typically purchased and used by the general public and does not meet the definition of restricted use pesticide, state limited use pesticide, or regulated herbicide in 4 TAC § 7.1.

Hydrophytic Vegetation - A plant growing in water or a substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content.

Inert Ingredient - Any substance (or group of structurally similar substances if designated by the Executive Director), other than an active ingredient that is intentionally included in a pesticide product. 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.

Integrated Pest Management (IPM) – Is an effective and environmentally sensitive approach to pest management that relies on a combination of common-sense practices. IPM uses current, comprehensive information on the life cycles of pests and their interaction with the environment. This information, in combination with available pest control methods, is used to manage pest damage by the most economical means; and with the least possible hazard to people, property, and the environment.

Jurisdictional Boundary - the limits or territory within which authority may be exercised by the Operator.

Mechanical or Physical Methods - Mechanical tools, or physical alterations of the environment that target pest prevention or removal.

Minimize - To reduce or eliminate pesticide discharges to waters of the U.S. through the use of achievable control measures to the extent technologically available and economically practicable.

Non-Native Plants – A plant living outside of its natural or historical range of distribution. Not all non-native plants are considered to be noxious plants.

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.

Notice of Change (NOC) - A written submission to the Executive Director from a permittee authorized under a general permit, providing any changes to information previously provided to the Commission, or any changes with respect to the nature or operations of the regulated entity or the characteristics of the discharge.

Notice of Intent (NOI) - A written submission to the Executive Director from an applicant requesting coverage under the terms of this general permit.

Notice of Termination (NOT) - A written submission to the Executive Director from a permittee authorized under a general permit requesting termination of coverage under the general permit.

Operator – The person legally responsible for pest management activities resulting in the discharge of pesticides to waters of the U.S. Legally responsible in this context means the person who controls the timing, location, method and means of pest management. Employees, agents and for-hire commercial applicators are not operators but, if hired by an operator covered under the general permit, such employees, agents and for-hire commercial applicators will be authorized and covered under the general permit without the need to obtain individual coverage. However, for-hire commercial applicators, acting on their own accord without consultation with the landowner, are operators for purposes of this general permit if they are legally responsible for pest management activities and must individually seek coverage under the general permit as operators.

Permittee – Any person authorized under this general permit. Permittee also includes any person hired by or under contract with an operator covered under the general permit.

Pest – Any organism under circumstances that make it deleterious to man or the environment and if it is:

- (a) Any vertebrate animal other than humans;
- (b) Any invertebrate animal, including but not limited to, any insect, other arthropod, nematode, or mollusk such as a slug and snail, but excluding any internal parasite of living humans or other living animals;
- (c) Any plant growing where it is not wanted, including any moss, algae, liverwort, or other plant of any higher order, and any plant part such as a root; or
- (d) Any fungus, bacterium, virus, or other microorganism, except for those on or in living humans or other living animals and those on or in processed food or processed animal feed, beverages, drugs (as defined in FFDCA § 201(g)(1)), 21 U.S.C. § 321(g)(1), and cosmetics (as defined in FFDCA § 201(i), 21 U.S.C. § 321(i)).

Pest Management Area – A contiguous area of land, including any waters of the U.S., where the permittee is responsible for and is authorized to conduct pest management activities as covered by this permit (e.g., for an operator who is a mosquito control district, the pest management area is the total area of the district).

Pest Management Strategy – An action or no action, taken to reduce the population of target pests below the action threshold.

Pesticide –Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, or any nitrogen stabilizer. The term does not include any article that is a “new animal drug” within the meaning of § 201(w) of the FFDCA (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 § 201(x) of that Act (21 U.S.C. § 321(x)) bearing or containing a new animal drug. The term also does not include liquid chemical sterilant products (including any sterilant or subordinate disinfectant claims on those products) for use on a critical or semi-critical device, as defined in FFDCA § 201 (21 U.S.C. § 321). For purposes of the preceding sentence, the term “critical device” includes any device that is 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 that does not ordinarily penetrate the blood barrier or otherwise enter normally sterile areas of the body. [FIFRA § 2(u), 7 U.S.C. § 136(u)].

The term also 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 §§ 3 (registration of pesticides, 7 U.S.C. § 136a), 5 (experimental use permits, 7 U.S.C. § 136c), 18 (exemptions of Federal and State agencies, 7 U.S.C. § 136p), 24(c) (authority of States, additional uses, 7 U.S.C. § 136v(c)), and 25(b) (authority of Administrator, exemption of pesticides, 7 U.S.C. § 136w(b)).

Note: Drugs used to control diseases of humans or animals (such as livestock and pets) are not considered pesticides; those 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 labeled as pesticides, are exempted from regulation as pesticides under this general permit and FIFRA. (Biological control agents include beneficial predators such as birds or ladybugs that eat insect pests, parasitic wasps, fish, etc).

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

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

Pesticide Use Patterns – The pesticide use patterns describe the type of pests being controlled and / or the location and method of pesticide application.

Pesticide Research and Development – Activities undertaken on a systematic basis to gain new knowledge (research), 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 North American Industry Classification System.

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 but which may impact non-target species. It may include the pesticide and degradates of the pesticide.

Phytoplankton - Photosynthetic plankton, mainly unicellular algae.

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

Political subdivision - A county, municipality, special district, school district, junior college, district, housing authority, or any other legally established political subdivision of the state.

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

Potentially Invasive Plants – Plants that are not indigenous to Texas, and have been shown to have invasive tendencies.

Private Entity – A person who is not defined as a public entity.

Public Access – Land owned by a public entity.

Public Entity - A Federal, State, city, district, or other political subdivision including a school district, university, public utility (e.g., electric, water, gas), a special district such as a mosquito control district, or a similar entity; an Indian tribe or authorized Indian tribal organization (e.g., as identified by category code 92 in the 2007 NAICS, and government establishments engaged in other sectors including but not limited to

category codes 22 (Utilities) and 71 (Arts, Entertainment, and Recreation) in the 2007 NAICS).

Regulated Herbicide – A herbicide product that contains any of the following active ingredients:

- (a) 2,4-dichlorophenoxyacetic acid (2,4-D)
- (b) 2-methyl-4-chlorophenoxyacetic acid (MCPA)
- (c) 3,6-dichloro-*o*-anisic acid (dicamba)
- (d) 3,7-dichloro-8-quinolinecarboxylic acid (quinclorac)

Formulations containing the active ingredients listed above are exempt from being classified as regulated herbicides if they meet one of the following criteria:

- (1) Specialty fertilizer mixtures that are labeled for ornamental use and registered in the Texas Agriculture Code, Chapter 63, concerning Commercial Fertilizer; or
- (2) Products that are ready for use and require no further mixing or dilution before use and are packaged in containers with a capacity of one gallon or less for liquid formulations and four pounds or less for dry or solid materials.

Restricted-Use-Pesticide – A pesticide classified as a restricted-use pesticide by the United States Environmental Protection Agency.

State-Limited-Use Pesticide – Any pesticide product that contains any of the following active ingredients:

- (a) 2,4-dichlorophenoxyacetic acid (2,4-D)
- (b) 2,4-dichlorophenoxy butyric acid (2,4-DB)
- (c) 2,4-dichlorophenoxy propionic acid (2,4-DP)
- (d) 2-methyl-4-chlorophenoxyacetic acid (MCPA)
- (e) 3,6-dichloro-*o*-anisic acid (dicamba)
- (f) 3,4-dichloropropionanilide (propanil)
- (g) 5-bromo-3-sec-butyl-6-methyluracil (bromacil)
- (h) 2,4-bis(isopropylamino)-6-methoxy-*s*-triazine (prometon)
- (i) 3,7-dichloro-8-quinolinecarboxylic acid (quinclorac)
- (j) Devices using the active ingredients sodium fluoroacetate (Compound 1080) and sodium cyanide, in any quantity, for livestock predation.

TAC – Texas Administrative Code.

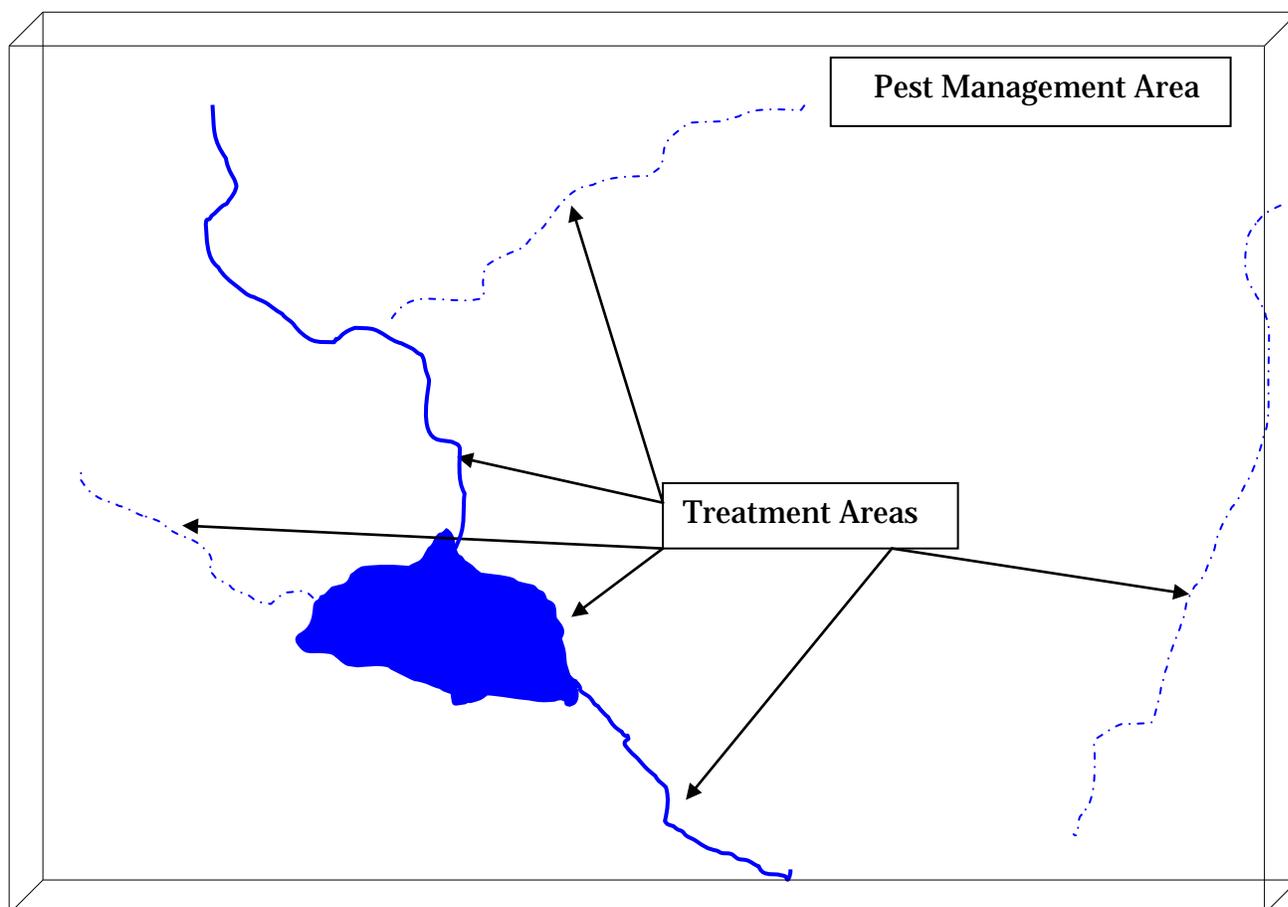
Target Pest – The organism toward which pest control measures are being directed.

Total Maximum Daily Loads (TMDLs) – The total amount of a substance that a water body can assimilate and still meet the Texas Surface Water Quality Standards. See 30 TAC § 307.3.

Toxic or Adverse Effects - Effects that occur within waters of the U.S. on non-target plants, fish or wildlife that are unusual or unexpected as a result of exposure to a pesticide residue (e.g., effects to organisms not otherwise described on the pesticide product label or otherwise not expected to be present). Adverse effects to small organisms may not be directly observable.

Texas Pollutant Discharge Elimination System (TPDES) Permit – The state program for issuing, amending, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment requirements, under the Clean Water Act §§ 307, 402, 318, and 405, the Texas Water Code (TWC), and the Texas Administrative Code (TAC) regulations.

Treatment Area – An area of land, including any waters of the U.S., within a pest management area where pesticides are being applied at a concentration that is adequate to control the targeted pests within that area. Multiple treatment areas may be located within a single “pest management area.” For discharges with the pesticide use pattern of Area-Wide Pest Control Area, a single pest management area will be considered a treatment area.



U.S.C. – United States Code.

Water's Edge - The surface area of the channel that is not covered by water during low flow conditions immediately bordering: (1) waters of the U.S., or (2) a conveyance to waters of the U.S. along which water (e.g., runoff, irrigation waters, or floodwaters) flows.

Waters of the United States (waters of the U.S.): EPA regulations at 40 CFR 122.2 define Waters of the United States as follows:

- (a) All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;
- (b) All interstate waters, including interstate "wetlands;"
- (c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
 - (i) That are or could be used by interstate or foreign travelers for recreational or other purposes;
 - (ii) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - (iii) That are used or could be used for industrial purposes by industries in interstate commerce;
- (d) All impoundments of waters otherwise defined as waters of the United States under this definition;
- (e) Tributaries of waters identified in paragraphs (a) through (d) of this definition;
- (f) The territorial sea; and
- (g) "Wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the Clean Water Act (other than cooling ponds as defined in 40 CFR Part 423.11(m) that also meet the criteria of this definition) are not waters of the U.S. "Waters of the U.S." does not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

Exceptions: For purposes of this general permit, waters of the U.S. does not include playa lakes, stock ponds, other isolated wetlands, or conveyances without a hydrologic surface connection to waters of the U.S.

Water Quality Standards – As defined in 30 TAC §307.

Part II. Permit Applicability and Coverage

A. Categories of Authorized Pesticide Discharges

This permit covers the following groups of operators:

1. Level IA: Operators that meet the following criteria:
 - (a) public entities applying Restricted Use Pesticides (RUP), State Limited Use (SLU) Pesticides or Regulated Herbicides (RH) to waters of the U.S. where there is public or private access or private entities applying RUP or SLU pesticide or RH to waters of the U.S. where there is public access; and
 - (b) who meet the threshold for one of the following pesticide use patterns in one calendar year:
 - (i) Mosquito and Other Insect Pests Control- Operators treating a pest management area greater than or equal to 6,400 acres and containing waters of the U.S.;
 - (ii) Vegetation and Algae Pest Control- Operators treating a treatment area greater than or equal to 100 acres in water or greater than or equal to 200 linear miles at water's edge;
 - (iii) Animal Pest Control- Operators treating a treatment area greater than or equal to 100 acres in water or greater than or equal to 200 linear miles at water's edge;
 - (iv) Area-wide Pest Control- Operators treating a pest management area greater than or equal to 6,400 acres and containing waters of the U.S.; or
 - (v) Forest Canopy Pest Control- Operators treating a pest management area greater than or equal to 6,400 acres and containing waters of the U.S.
2. Level IB: Operators that meet the following criteria:
 - (a) public entities applying general use pesticides (GUP) to waters of the U.S. where there is public or private access, private entities applying GUP to waters of the U.S. where there is public access, or private entities applying GUP, RUP or SLU pesticide or RH to waters of the U.S. where there is only private access; and
 - (b) who meet the pesticide use pattern thresholds in Part II.A.1(b).

3. Level II: Operators that meet the following criteria:
 - (a) Public or private entities applying RUP or SLU pesticides or RH to waters of the U.S. where there is public or private access, or public or private entities applying GUP to one (1) acre or more of waters of the U.S. in one calendar year where there is public or private access; and
 - (b) who do not meet the pesticide use pattern thresholds in Part II.A.1(b).

4. Level III: Operators that meet the following criteria:
 - (a) Public or private entities applying GUP regardless of the number of applications, to less than one (1) acre of waters of the U.S. in one calendar year where there is public or private access; and
 - (b) who do not meet the pesticide use pattern thresholds in Part II.A.1 .(b).

PESTICIDES GENERAL PERMIT REQUIREMENT MATRIX

ANNUAL THRESHOLD	LOCATION OF USE	TYPE OF PESTICIDE USED	PERMIT REQUIREMENTS
Above Annual Threshold	Use by public entities where there is either public or private access (Examples: State Agencies, Cities and Counties)	Restricted or State-Limited Use Pesticide or Regulated Herbicide	Level IA Compliance NOI Required – ePermit TCEQ HQ ** Annual report required Operator must be licensed by TDA Fees: NOI - \$100 paper or \$75 ePermit; Annual - \$100 with \$500 cap for county-wide or state-wide
	OR		
	Use by private entities where there is public access (Examples: pest control company doing nuisance insect control in parks)	General Use Pesticide	Level IB Compliance – no annual report Self Certification Form to TCEQ Regional Office No fees
	Use by private entities where there is only private access (Examples: farmers on stock ponds or creeks, homeowner’s association around lake; pest control company doing nuisance insect control in neighborhoods)	Restricted or State-Limited Use Pesticide or Regulated Herbicide	Level IB Compliance – no annual report Self Certification Form to TCEQ Regional Office Operator must be licensed by TDA No fees
		General Use Pesticide	Level IB Compliance – no annual report Self Certification Form to TCEQ Regional Office No fees
Below Annual Threshold (No NOI Required)		Restricted or State-Limited Use Pesticide or Regulated Herbicide	Level II Compliance Self Certification Form (Onsite) Operator must be licensed by TDA No fees
		General Use Pesticide 1 acre of Waters of the U.S. or more annually	Level II Compliance Self Certification Form (Onsite) No fees
		General Use Pesticide Less than 1 acre of Waters of the U.S. annually	Level III Compliance No fees

****Single Pest Management Area NOI; or Public or private entities with more than five (5) pest management areas within a single county or a county whose pest management area is the same as its jurisdictional boundary may submit a single NOI for a county-wide NOI; or if a person or an entity has more than ten (10) pest management areas within the state the person or entity can apply for state-wide NOI.**

B. Discharges Eligible for Authorization

This permit is available to operators who discharge to waters of the U.S. from the application of biological pesticides or chemical pesticides that leave a residue in water when such applications are made into or over including near waters of the US when the pesticide application is for one of the following pesticide use patterns:

1. Mosquito and Other Insect Pests Control.

Pesticide applications to control mosquitoes and nuisance insect pests, such as Mayflies, Caddisflies, Stoneflies or Black flies, that develop or are present during a portion of their life cycle in or above standing or flowing water.

2. Vegetation and Algae Pest Control.

Pesticide applications to control invasive or nuisance vegetation, algae and pathogens in waters of the U.S. and at water's edge, including, but not limited to, free-floating plants such as duck weed or watermeal, emergent plants such as cattails, noxious weeds, non-native and potentially invasive plants, filamentous algae, Cyanobacteria, or phytoplankton.

3. Animal Pest Control.

Pesticide applications to control invasive or nuisance animals in waters of the U.S. and at water's edge. Nuisance animals include, but are not limited to, fish, lampreys, insects, mollusks, rodents or pathogens.

4. Area-Wide Pest Control.

Aerial and ground application of a pesticide to control the population of a target pest where control technologies over large areas are most effective to avoid substantial and widespread economic or social impact. These efforts involve aerial and ground pesticide applications to areas that include a wide range of diverse habitats such that a portion of the pesticide applied will unavoidably be applied over and deposited to waters of the U.S. to target the pests effectively. Examples include, but are not limited to, aerial crop dusting, aerial and ground application for the control of nuisance and disease borne mosquitoes using pesticides, ground application of pesticides for the maintenance of rights-of-ways, drainage ditches, and other governmental infrastructure for crucial functions of health and safety; urban landscaping, treating orchard pests, or controlling fruit flies.

5. Forest Canopy Pest Control.

Aerial and ground application of a pesticide over a forest canopy to control the population of a pest species (e.g., insect or pathogen) where to target the

pests effectively a portion of the pesticide unavoidably will be applied over and deposited into water. Examples include, but are not limited to, spraying trees to control target pest like aphids or pecan weevils, using pesticides to manage vegetation in forested stands or those planned for reforestation, using herbicides to manage vegetation to maintain right of ways, or application of pesticides for fungi, insects, weed or vertebrate pests in forest trees management.

C. Limitations on Coverage

Irrigation return flows from agriculture or agricultural stormwater runoff or nonpoint source silvicultural activities is exempt from this permit even when they contain pesticides or pesticide residues. The CWA specifically exempts these categories of discharges from requiring TPDES permit coverage. The following discharges otherwise subject to this permit are not eligible for coverage under this permit and the operator must apply for an individual permit or be covered by another applicable general permit prior to discharging.

1. Discharges other than use patterns listed in Part II.B.
2. Discharges to Water Quality-Impaired Receiving Waters. Impaired waters for the purposes of this permit include both waters with EPA-approved and EPA-established Total Maximum Daily Loads (TMDLs) and waters for which EPA has not yet approved or established a TMDL.
 - (a) Discharges of the constituent(s) of concern to impaired water bodies when there is an EPA approved TMDL and TCEQ approved TMDL implementation plan are not eligible for this permit unless they are consistent with the EPA approved TMDL and the TCEQ TMDL implementation plan. Constituents of concern are those for which the water body is listed as impaired.
 - (b) The Executive Director may amend this general permit or develop a separate general permit for discharges to these water bodies. For discharges not eligible for coverage under this permit, the discharger must apply for and receive an individual permit or other applicable general permit authorization prior to discharging.
3. Discharges to Waters Designated as Tier 3 for Antidegradation Purposes

An operator is not eligible for coverage under this permit for discharges to waters designated as Tier 3 (outstanding natural resource waters) for anti-degradation purposes under 30 TAC §307.5(b)(3).
4. Discharges Currently or Previously Covered by Another Permit

An operator is not eligible for coverage under this permit if any of the following circumstances apply:

- (a) Discharge of pesticides are currently covered under another TPDES permit; or
 - (b) Discharges from activities where any TPDES permit has been or is in the process of being denied, terminated, or revoked by TCEQ (this does not apply to the routine reissuance of permits every five years).
5. Discharges are not eligible for authorization under this general permit if prohibited by:
- (a) 30 TAC Chapter 311 (relating to Watershed Protection);
 - (b) 30 TAC Chapter 213 (relating to Edwards Aquifer); or
 - (c) any other applicable rules or laws.
6. Compliance with Water Quality Standards

Discharges that would cause or contribute to a violation of water quality standards or that would fail to protect and maintain existing designated uses of receiving waters are not eligible for coverage under this general permit. The Executive Director may require an application for an individual permit or alternative general permit to authorize discharges of pesticides that are determined to cause a violation of water quality standards or are found to cause, or contribute to, the loss of a designated use of receiving waters.

7. Denial of Authorization

- (a) The Executive Director may deny an application for authorization under this general permit, and may require that the applicant apply for an individual permit or alternative general permit if the Executive Director determines that the discharge will not maintain existing uses of receiving waters.
- (b) The Executive Director may deny a NOI or revoke authorization under this general permit if the applicant submits any false information in a NOI.
- (c) The Executive Director may deny, cancel, revoke, or suspend authorization to discharge under this general permit based on a finding of historical and significant noncompliance with the provisions of this general permit.

- (d) Denial of authorization to discharge under this general permit or suspension of a permittee's authorization under this general permit will be done according to Commission rules in 30 TAC § 205.4 (relating to General Permits for Waste Discharges).
- (e) Any operator that has a customer classification that is a poor performer under 30 TAC § 60 (relating to Compliance History) is not eligible for coverage under this general permit and must be authorized under an individual permit.

D. Obtaining Authorization

1. Operators Required to Submit a Notice of Intent (NOI).

If all the following conditions are met, the operator shall submit a NOI to obtain authorization under this permit:

- (a) The operator meets the criteria in Part II.A.1;
- (b) The operator meets the criteria in Part II.B.; and
- (c) The operator is not prohibited in Part II.C.

2. Application for Authorization to Discharge

- (a) Submission of a NOI is an acknowledgment that the conditions of this general permit are applicable to the proposed discharge, and that the applicant agrees to comply with the conditions of this general permit.
- (b) The NOI must contain all information as prescribed on forms provided by the Executive Director.
- (c) The operator shall submit a NOI for each pest management area that meets the requirements of Part II.A.1. Public or private entities with more than five (5) pest management areas within a single county or a county whose pest management area is the same as its jurisdictional boundary may submit a single NOI for a county-wide permit. Persons or entities with more than ten (10) pest management areas may submit a single NOI for a statewide permit.
- (d) An operator may submit a NOI to TCEQ using the electronic Notice of Intent (eNOI) system accessible at <http://www.tceq.texas.gov> or paper form.
- (e) Following review of the NOI, the Executive Director will either confirm coverage by providing a notification and an authorization number to

the applicant or notify the applicant that coverage under this general permit is denied.

- (f) A copy of the NOI, along with any correspondence from the Executive Director confirming permit coverage, must be retained at the address provided in the NOI.

3. Contents of the NOI

The NOI form must require, at a minimum, the following information:

- (a) the legal name, address and telephone number of the applicant;
- (b) the site name or identifier of the Pest Management Area(s);
- (c) the name of the water body (receiving waters) and TCEQ 4-digit Segment Number that will receive the pesticide discharge;
- (d) the county where the Pest Management Area is located;
- (e) the contact and contact address for the PDMP;
- (f) the pesticide use pattern(s); and
- (g) certification that the PDMP will be prepared and implemented.

4. Discharge Authorization Date

- (a) Applicants seeking authorization to discharge under this general permit shall submit a completed notice of intent (NOI) or a completed Self Certification Form, as applicable, on a form approved by the Executive Director. Applications are not required for facilities that are automatically authorized under this general permit. Provisional authorization to discharge under the terms and conditions of this general permit begins 48 hours after a completed NOI is postmarked for delivery to the TCEQ. For electronic submittal of NOIs, provisional authorization to discharge under the terms and conditions of this general permit begins immediately following confirmation of receipt of the electronic NOI by the TCEQ.

Following review of the NOI, the Executive Director will: 1) determine that the NOI is complete and confirm coverage by providing a written notification and an authorization number; 2) determine that the NOI is incomplete and request additional information needed to complete the NOI; or 3) deny coverage in writing. Denial of coverage will be made in accordance with TCEQ rules related to General Permits for Waste Discharges, 30 TAC §205.4.

- (b) In response to a declared pest emergency situation, authorization to discharge under the terms and conditions of this permit is effective immediately for the area of the declared pest emergency situation and a NOI must be submitted by paper no later than 30 days after commencement of the discharge.
- (c) Upon issuance of this general permit, operators that are required to submit a NOI or Self Certification Form have provisional authorization from the effective date of this permit until 90 days after the effective date of this permit. Within 90 days of the effective date of this general permit operators that are required to submit a NOI or Self Certification Form shall submit such documentation for continued coverage. Failure to submit a NOI or Self Certification Form by the deadline will result in expiration of the provisional authorization to operate under the general permit.

5. Fees

- (a) An application fee must be submitted with the NOI.
 - (1) \$100 if submitting a paper NOI, or
 - (2) \$75 if submitting by online e-permitting.
- (b) Annual Water Quality Fees:
 - (1) \$100 for a pest management area, or
 - (2) \$500 for a county-wide or statewide permit.
- (c) A fee is not required for submission of a Notice of Change (NOC) or Notice of Termination (NOT).

6. Revocation of Individual Permit

For facilities authorized under an individual permit, the submittal of a NOI constitutes the applicant's intent to be authorized under this general permit and also serves as a request to voluntarily revoke coverage under the individual permit. The individual permit will be revoked following issuance of the acknowledgment letter providing coverage under the general permit.

7. Change of Operational Control

Authorization under this general permit is not transferable. If the operational control of the pest management area changes, the present permittee shall submit a NOT and the proposed permittee, shall submit a

NOI. The NOT and NOI must be submitted not later than 10 days prior to the change in operational control. Any change in a permittee's Charter Number, as registered with the Texas Secretary of State, or any change in the entity status is considered a change in ownership of the company and would require the new permittee to apply for permit coverage as stated above. If the NOT and NOI are submitted as required under this provision, there will be no lapse in authorization.

8. Notice of Change

A NOC form must be submitted with supplemental or corrected information within 14 days following:

- (a) the time when the permittee knows or should have known that the permittee failed to submit any relevant facts or submitted incorrect information in the NOI; or
- (b) the time when relevant facts in the NOI change, including but not limited to: permittee address, permittee phone number, the addition or removal of a pest management area, the site name or identifier of the Pest Management Area, a change in the location of records for the pest management area, a change in the location of the PDMP, or a change in the contact or contact address for the PDMP.

9. Operators Not Required to Submit a NOI

Operators that meet the following requirements may be authorized under this general permit and are not required to submit a Notice of Intent, unless otherwise required by the Executive Director:

- (a) The operator does not meet the criteria in Part II.A.1.;
- (b) The operator meets the eligibility provisions outlined in Part II.B.;
- (c) The operator is not prohibited from authorization under this general permit in Part II.C;
- (d) The operator complies with applicable requirements of this permit; and
- (e) The operator complies with the self certification requirements below:
 - (1) Operators that meet the criteria in Part II.A.2, must complete a self certification form and submit it to the appropriate TCEQ Regional Office.
 - (2) Operators that meet the criteria in Part II.A.3, must complete a self certification form and keep it onsite.

- (3) Operators that meet the criteria in Part II.A.4 are not required to complete a self certification form.

E. Permit Expiration

1. Permit Term

This general permit is effective for five years from the date of issuance. Authorizations for discharge under the provisions of this general permit may be issued until the expiration date of the general permit. This general permit may be amended, revoked, or cancelled by the Commission after notice and comment as provided by 30 TAC §§ 205.3 and 205.5.

2. Permit Renewal

If the Commission proposes to reissue this general permit before the expiration date, the general permit will remain in effect after the expiration date for those existing discharges covered by the general permit in accordance with 30 TAC Chapter 205. The general permit will remain in effect for these discharges until the date on which the Commission takes final action on the proposal to reissue this general permit. No new NOIs will be accepted or new authorizations honored for authorization under the former general permit after the expiration date.

3. Application following Renewal

Upon issuance of a renewed or amended general permit, all operators, including those covered under the expired general permit, shall submit a NOI or NOT in accordance with the requirements of the renewed or amended permit or submit an individual permit application, within 120 days after the effective date of the renewed or amended general permit. Failure to submit a NOI or NOT by the deadline will result in expiration of the existing authorization to operate under the general permit.

4. Expiration without Renewal

According to 30 TAC § 205.5(d) (relating to Permit Duration, Amendment, and renewal), if the Commission has made a determination that the general permit will not be renewed at least 90 days before the expiration date, permittees authorized under this general permit shall submit an application for an individual permit or alternative general permit before the expiration date. If the application for an individual permit or alternative general permit is submitted before the general permit expiration date, authorization under this expiring general permit remains in effect until the issuance or denial of an individual permit or alternative general permit.

F. Terminating Coverage

1. A permittee shall terminate coverage under this general permit through the submittal of a NOT, on a form approved by the Executive Director, when the permittee changes; the discharge becomes authorized under an individual permit or alternative general permit; or when the permittee determines that the annual threshold in Part II.A.1.(b) will not be exceeded during the remainder of the permit term.

Authorization to discharge terminates at midnight on the day that a NOT is postmarked for delivery to the TCEQ. If TCEQ provides for electronic submission of NOTs, then authorization to discharge terminates immediately following confirmation of receipt of the electronic NOT form by the TCEQ.

2. Operators 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. These operators are not required to submit a NOT to terminate permit coverage.

G. Alternative TPDES Permit Authorization

1. Individual Permit Alternative

Discharges eligible for authorization under this general permit may alternatively be authorized by an individual permit according to 30 TAC Chapters 281 and 305 (relating to Applications Processing and Consolidated Permits).

2. Transfer of an Authorization Type

When an individual TPDES permit is issued or authorization to discharge under an alternative TPDES general permit is granted to discharge a pollutant to a waters of the U.S. as a result of a pesticide application, the 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.

Discharges from facilities currently authorized by a TPDES individual permit, and discharges from facilities currently authorized under another TPDES general permit, may only be authorized under this TPDES general permit if the following conditions are met:

- (a) The discharges meet the applicability and eligibility requirements for coverage under this general permit;

- (b) The current individual permit does not contain numeric water quality-based effluent limitations for the discharge (unless the discharges that resulted in the limitations have ceased and any contamination that resulted in these limitations is removed or remediated);
- (c) The Executive Director has not determined that continued coverage under an individual permit is required based on consideration of a total maximum daily load (TMDL) model, antibacksliding policy, history of substantive noncompliance, or other site-specific considerations;
- (d) A previous application or permit for the discharge has not been denied, terminated, or revoked by the Executive Director as a result of enforcement or water quality related concerns. The Executive Director may provide a waiver to this provision based on new circumstances at the pest management area, or if there is a new operator; and
- (e) The authorization to discharge under a current individual permit or alternative general permit will be terminated or canceled on the effective date of coverage under this permit.

H. Severability

The provisions of this general permit are severable and invalidation of a portion of this permit does not render the whole permit or the remainder of the permit invalid. The Commission's intent is that the permit is to remain in effect to the extent possible; in the event that any part of this permit is invalidated, TCEQ will advise the regulated community as to the effect of this invalidation.

Part III. Level I Operators.

A. Applicability

The requirements in this Part apply to operators that meet the criteria in Part II.A.1 or Part II.A.2, except as noted.

B. Effluent Limitations

1. Technology-Based Effluent Limitations

- (a) Minimize Pesticide Discharges into Waters of the United States

Permittees shall develop and implement control measures to minimize discharges resulting from application of pesticides to waters of the U.S. to the extent achievable using best management practices that are technologically available and economically practicable and achievable. To minimize discharges resulting from application of pesticides, operators shall:

- (1) In accordance with state law and the pesticide label, use only the amount of pesticide and frequency of pesticide applications necessary to control the target pest, using equipment and application procedures appropriate for this task. In no case exceed the maximum application rate, established under FIFRA, referenced on the pesticide product label. To minimize the total amount of pesticide applied, the operator shall consider different application rates, frequencies, or both to accomplish effective control in accordance with the following:
 - (i) Base the rate of application on what is known to be effective against the target pest or as necessary for resistance management; and
 - (ii) Base the frequency of applications on target pest action thresholds to provide effective and economical control and to prevent unnecessary impact on non-target organisms.
- (2) Maintain pesticide application equipment in proper operating condition including requirement to calibrate, clean, and repair such equipment and prevent leaks, spills, or other unintended discharges; and
- (3) Assess weather conditions (e.g. temperature, precipitation and wind speed) in the treatment area to ensure application is consistent with all applicable federal requirements.

(b) Integrated Pest Management (IPM) Practices

Permittees that discharge pollutants as a result of the application of pesticides for the sole purpose of pesticide research and development are not required to fully implement Part III.B.1.(b) for discharges resulting from those pesticide research and development activities but shall implement Part III.B.1.(b) to the extent that its requirements do not compromise the research design. The discharge may not result in an exceedance of the state water quality standards or criterion, whether narrative or numeric. All other permittees shall comply with the following requirements for each pesticide use pattern.

Prior to the first pesticide application and at least once each calendar year thereafter during which a permittee will have a discharge, the permittee shall develop and implement written integrated pest management practices to comply with the non-numeric effluent limitations in the permit for each treatment area and pesticide use pattern as follows:

- (1) Identify the problem.

- (i) Identify target pests;
 - (ii) Establish target pest densities or identify environmental condition(s), either current or based on historical data that serve as action threshold(s) for implementing pest management strategies;
 - (iii) Establish procedures to determine target pest densities;
 - (iv) For Vegetation and Algae Pest Control and Animal Pest Control:
 - a. Identify possible factors causing or contributing to the target pest problem (e.g., nutrients, invasive species, etc); and
 - b. Identify areas with target pest problems and characterize the extent of the problems, including, for example water use goals not attained for wildlife habitat, fisheries, vegetation, and recreation.
 - (v) For Mosquito and Other Insect Pests Control:
 - a. Identify known breeding sites for source reduction, larval control, and habitat management; and
 - b. Analyze existing surveillance data to identify new or unidentified sources of mosquito or other nuisance insect pest problems as well as sites that have recurring pest problems.
 - (vi) For Area-Wide Pest and Forest Canopy Pest Controls:
 - a. Identify current distribution of the target pest and assess potential distribution in the absence of control measures; and
 - b. Develop a species-specific control strategy based on developmental and behavioral considerations for each target pest.
- (2) Pest Management Strategies. The permittee shall evaluate, select and implement one or more of the following management strategies that successfully minimizes discharges of pesticides, while considering effectiveness and efficiency, impact to water quality, impact to non-target organisms, pest resistance, feasibility, and cost effectiveness:

- (i) No action
 - (ii) Prevention
 - (iii) Mechanical or physical methods
 - (iv) Cultural methods
 - (v) Biological control agents
 - (vi) Pesticide application
- (3) Pesticide Use. If pesticide application is used as a pest management strategy, the permittee shall:
- (i) Apply pesticide only when the action threshold(s) have been met or disease is present;
 - (ii) Reduce the impact on the environment and non-target organisms by evaluating the restrictions, application timing, and application methods in addition to applying the pesticide only when the action thresholds have been met;
 - (iii) For Mosquito and Other Insect Pest Control:
 - a. In situations or locations where practicable and feasible for efficacious control, use larvicides as a preferred pest control when the larval action thresholds have been met; and
 - b. In situations or locations where larvicide use is not practicable or feasible for efficacious control, use adulticides when adult action thresholds have been met.
 - (iv) For Area-Wide Pest and Forest Canopy Pest Controls: Use pesticides against the most susceptible developmental stage.

2. Water Quality-Based Effluent Limitations

- (a) Any discharge that causes or contributes to an excursion of any applicable numeric or narrative water quality standard is prohibited and is a violation of this permit.
- (b) If at any time a permittee becomes aware, or the Executive Director determines, that the discharge causes or contributes to an excursion of

an applicable water quality standard, then the permittee shall take corrective action.

- (c) The Executive Director may require a permittee to obtain coverage under an individual permit as necessary to protect water quality.

C. Visual Evaluation Requirements

Permittees shall conduct a visual evaluation consisting of spot checks in the treatment area to and around where pesticides are applied for possible and observable toxic or adverse effects as follows:

1. Prior to each pesticide application to determine if the target pest action threshold(s) are met and weather conditions are conducive to proper application;
2. Prior to each pesticide application for Mosquito and Other Insect Pest and Area-Wide Pest Control to identify conditions (e.g. temperature, precipitation, and wind speed in the treatment area) that support development of pest populations and are suitable for control activities;
3. During the application when considerations for safety and feasibility allow; and
4. Within a reasonable period of time after each pesticide application, not to exceed the time required for maximum effect indicated on the product label.

D. Pesticide Discharge Management Plan

Permittees shall prepare a Pesticide Discharge Management Plan (PDMP) for each pest management area covered under this permit. The PDMP must be prepared within 90 days of coverage under this general permit. A permittee may refer to procedures in other documents that meet the requirements of this permit in the PDMP, but a copy of the referenced document must be kept in the PDMP and should be made available for review when requested by the Executive Director.

1. Contents of Pesticide Discharge Management Plan. A PDMP must contain the following elements:
 - (a) Pesticide Discharge Management Team. The permittee shall identify PDMP team members by name or title as well as their individual responsibilities, including:
 - (1) Person(s) responsible for managing pests in the pest management area;

- (2) Person(s) responsible for developing and revising the PDMP; and
- (3) Person(s) responsible for developing, revising, and implementing corrective actions and other effluent limitation requirements; and
- (4) Person(s) responsible for pesticide applications. If the pesticide applicator is unknown at the time of plan development, indicate whether or not a for-hire applicator will be used and indicate when the applicator will be identified.

Identification of team members must include any written agreement(s) between the permittee and any other operator(s), such as a for-hire commercial pesticide applicator, that specify the division of responsibilities between operators as necessary to comply with the provisions of this permit.

(b) Problem Identification

- (1) Pest problem description. The permittee shall document the following:
 - (i) Identify the geographic boundaries of the pest management area and each treatment area and waters of the U.S. within the pest management area on a general location map (e.g., topographic, vicinity map, original United States Geological Survey 7.5 minute quadrangle map, a portion of a city or county map, or other map);
 - (ii) Pesticide use patterns for each treatment area;
 - (iii) Target pest(s);
- (2) Action threshold(s) for the pest management area, including data used in developing the action threshold(s) and method(s) to determine when the action threshold(s) has been met.
- (3) List of pesticide(s) or any degradates for which the water-body is impaired; and
- (4) Procedures to determine target pest densities.

(c) Evaluation and Selection of Pest Management Strategies. In the PDMP, the permittee shall document the evaluation of pest management strategies for the pest management area. The permittee shall select the pest management strategies that most successfully minimize discharges resulting from application of pesticides, including the use of pesticide and non-pesticide methods. The evaluation must establish if

and when the following pest management strategies will be used while considering impact to water quality, impact to non-target organisms, pest resistance, feasibility, and cost effectiveness:

- (1) No action
 - (2) Prevention
 - (3) Mechanical and physical methods
 - (4) Cultural methods
 - (5) Biological control agents
 - (6) Pesticides
- (d) **Response Procedures.** The permittee shall document the following procedures in the PDMP:
- (1) **Spill Response Procedures.** The permittee shall take appropriate measures necessary to prevent spills and to clean up spills of any pesticide. There shall be no disposal of pesticides or residues from storage or application equipment into waters of the U.S. Where potential spills can occur the permittee shall:
 - (i) Identify the procedures for stopping, containing and cleaning up leaks, spills and other releases;
 - (ii) Make available the necessary equipment to personnel to implement a clean up. Employees who may cause, detect, or respond to a spill or leak must be trained in these procedures. If possible, one of these employees should be a member of the PDMP team;
 - (iii) Document procedures and schedules for maintenance activities to minimize potential for leaks, spills, and unintended or accidental release of pesticides from pesticide containers;
 - (iv) Document the chain of command notification for spills, both internal to permittee's agency or organization and external;
 - (v) Document state and federal contacts with phone number;
 - (vi) Document the name, location, and telephone number of the nearest emergency medical facility;

- (vii) Document the name, location, and telephone number of the nearest hazardous chemical responder (including police and fire department);
 - (viii) Maintain contact information for the National Pesticide Telecommunications Network at 800-858-7378; and
 - (ix) Maintain contact information for the National Spill Response Center at 800-424-8802 or <http://www.nrc.uscg.mil/nrchip.html>.
- (2) **Equipment Maintenance Schedules and Procedures.** The permittee shall document in the PDMP the schedules and procedures for maintaining the application equipment in proper operating condition, including calibrating, cleaning, and repairing the equipment.
- (3) **Adverse Incident Response Procedures.** Procedures for responding to adverse incidents must be identified and documented as follows:
- (i) Course of action and timing of responses to any adverse incident;
 - (ii) Chain of command notification for the adverse incident, both internal to the permittee's agency or organization and external;
 - (iii) State and Federal contacts with phone numbers;
 - (iv) Name, location, and telephone of nearest emergency medical facility; and
 - (v) Name, location, and telephone of nearest hazardous chemical responder (including police and fire department).
- (4) **Visual Evaluations.** The permittee shall document the procedures for visual evaluations:
- (i) The process for determining the location of any visual evaluations;
 - (ii) A schedule and procedures for any visual evaluations;
 - (iii) The person (or position) responsible for conducting visual evaluations; and

- (iv) Procedures for documenting any observed toxic or adverse effects.

2. Pesticide Discharge Management Plan Modifications

- (a) The PDMP must be reviewed whenever necessary to address any of the triggering conditions for corrective action or when a change in pest control activities significantly changes the type or quantity of pollutants discharged. Changes must be made to the PDMP 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 Part VI.H. of this permit. The PDMP must be reviewed at a minimum of once per calendar year to ensure compliance with effluent limitations of this permit including the problem description, evaluation and selection of pest management strategies, schedules and procedures, adverse incident action plan and visual evaluations. The permittee shall modify the PDMP and implement corrective actions if the following occur:
 - (1) An unauthorized release or discharge (e.g., spill, leak, or discharge not authorized by this or another TPDES permit) occurs;
 - (2) The permittee becomes aware, or the Executive Director determines, that the control measures are not adequate or sufficient for the discharge to meet applicable water quality standards;
 - (3) The Executive Director determines that the permittee failed to:
 - (i) Use only the amount of pesticide and frequency of pesticide applications necessary to control the target pest, using equipment and application procedures appropriate for this task;
 - (ii) Perform regular maintenance activities to ensure that the application equipment is in proper operating condition to minimize the potential for leaks, spills, and unintended or accidental release of pesticides to waters of the U.S.; or
 - (iii) Calibrate, clean, and repair equipment on a regular basis to ensure that the application equipment is in proper operating condition.
 - (4) Executive Director determines that modifications to the control measures are necessary to meet the effluent limits in this permit; or

(5) The permittee observes or is otherwise made aware of a toxic or adverse effect.

(b) If the PDMP is required to be revised by Part III.D.2.(a)(1) for reasons other than for toxic or adverse effect, spills or leaks, the permittee shall make the revisions and implement corrective actions before the next pesticide application that results in a discharge, or as soon as practicable. If revisions and corrective actions cannot be made prior to the next pesticide application, the permittee shall document in the PDMP the reasons why. The permittee shall also document in the PDMP within five (5) days the following information:

- (1) Identification of the condition(s) triggering the need for corrective action;
- (2) A brief description of the circumstances of the situation;
- (3) Date the problem was identified;
- (4) Summary of corrective action taken or to be taken;
- (5) Date corrective action was initiated; and
- (6) Date corrective action was completed or expected to be completed.

3. Pesticide Discharge Management Plan Availability

Permittees shall retain a copy of the PDMP either onsite or at the address provided on the NOI and these documents must be immediately available to the Executive Director upon request. Documents in the public record file of the Commission are available to a member of the public upon request.

E. Recordkeeping

Permittees shall keep written records in the PDMP as required by this permit. These records must be accurate and complete to demonstrate compliance with the conditions of this permit. Permittees may harmonize state law (4 TAC §7.33), FIFRA and CWA recordkeeping practices, where appropriate.

Operators are required to keep the following records either onsite or at the location provided in the NOI for a period of at least 5 years from the date the record was created and these documents must be made available to the Executive Director upon request:

1. A copy of this permit (an electronic copy is also acceptable);

2. A copy of any adverse incident reports;
3. A copy of spill or leak reports;
4. A copy of the NOI or self certification form, as applicable, submitted to TCEQ along with any correspondence to or from TCEQ specific to coverage under this permit;
5. A copy of the acknowledgment certificate issued by TCEQ, if applicable;
6. **Pesticide Application Records: The following information must be recorded in the PDMP for each treatment area as soon as possible but no later than fourteen (14) days after implementing pest management strategies (non-pesticide methods and pesticide application):**
 - (a) The name(s) of the record keeper;
 - (b) Pesticide applicator's name;
 - (c) Target pest(s);
 - (d) Pest management strategies used and what action threshold(s) have been met;
 - (e) Date of pre- and post-application surveillance and visual evaluations;
 - (f) Date pest management strategy was conducted;
 - (g) Name and total amount (in gallons or pounds) of pesticide product applied, including the product's EPA registration numbers;
 - (h) Concentration (%) of active ingredient in formulation;
 - (i) Identify of which treatment area or portion of a treatment area was treated;
 - (j) Any observed toxic or adverse effects to non-target organisms;
 - (k) A copy of any modifications made to the PDMP during the term of the permit;
 - (l) Date that application equipment was calibrated, cleaned, and repaired, if applicable;
7. A copy of the Pesticide Discharge Management Plan; and

8. A copy of all annual reports, if applicable, and any other report(s) required to be prepared or filed under this general permit.

F. Reporting and Notification

1. Annual Reporting. Permittees that meet the criteria in Part II.A.1 shall prepare and keep onsite an annual report and be readily available for review by a TCEQ representative. When a permittee terminates permit coverage, the permittee shall submit an annual report for the portion of the year up through the date of the termination. The annual report is due no later than 45 days after permit termination date. The annual report must contain the following information:
 - (a) Operator's name;
 - (b) Authorization number(s);
 - (c) Contact person name, title, e-mail address (if any), and phone number;
 - (d) For each treatment area, report the following:
 - (1) Identification of any waters or other treatment area, including size, either by name or by location, to which pesticide has been applied;
 - (2) Pesticide use pattern(s) (i.e., mosquito and other insect pest, vegetation and algae pest, animals pest, area-wide pest or forest canopy pest);
 - (3) Name and total amount (in gallons or pounds) of pesticide product applied, including the product's EPA registration numbers;
 - (4) Target pest(s);
 - (5) Company name(s) and contact information for pesticide applicator(s), if different from the NOI submitter;
 - (6) Whether or not the permittee was required to take corrective action, if so provide brief description of corrective actions taken;
 - (7) Whether this pest control activity was addressed in the PDMP prior to pesticide application; and
 - (8) Whether or not the permittee provided written report(s) to TCEQ of an adverse incident.

2. Potential Adverse Incident Notification

If a permittee knows or should have known or has been informed of an adverse incident, the permittee shall notify the appropriate TCEQ Regional Office within 24 hours of becoming aware of the potential adverse incident or call the TCEQ 24-hour Spill Reporting Line at 1-800-832-8224. If the permittee is unable to notify TCEQ within 24 hours, the permittee shall do so as soon as possible and provide the rationale why the permittee was unable to provide the notification within 24 hours.

When providing the 24-hour notice for any potential adverse incident, the permittee shall include at least the following information:

- (a) The name and telephone number of the person providing notification;
- (b) Permittee name and mailing address;
- (c) The TCEQ authorization number for the pest management area;
- (d) The name and telephone number of a contact person, if different from the person providing the 24-hour notice;
- (e) How and when the person providing notification became aware of the adverse incident;
- (f) Description of the location of the adverse incident;
- (g) Description of the adverse incident identified;
- (h) The pesticide product, including EPA pesticide registration number for each pesticide that was applied in the area of the adverse incident; and
- (i) Description of any corrective actions the permittee has taken or will take to correct, repair, remedy, cleanup, or otherwise address any adverse effects.

3. Adverse Incident Written Report

Within fourteen (14) days of becoming aware of an adverse incident, the permittee shall provide a written report of the adverse incident to the appropriate TCEQ Regional Office. The adverse incident report must include at least the following information:

- (a) Information required to be provided in Part III.F.2;

- (b) Date and time the permittee provided 24 hour notice to TCEQ of the adverse incident;
- (c) Location of the adverse incident, including the names of any waters affected and appearance of those waters (sheen, color, clarity, etc.);
- (d) A description of the circumstances of the adverse incident including species affected, number of individuals and approximate size of dead or distressed organisms;
- (e) Magnitude of the effect (e.g. aquatic square area or total stream distance affected);
- (f) Pesticide application rate, application site (e.g., water's edge, above, or direct to water), and method of application;
- (g) Description of the habitat and the circumstances under which the adverse incident occurred (including any available ambient water data);
- (h) If laboratory tests were performed, an indication of which test(s) were performed, and when, and provide a summary of the test results immediately upon availability (if not available at the time of submission of the 14-day report);
- (i) If applicable, explain why the permittee believes the adverse incident could not have been caused by exposure to the pesticide;
- (j) Description of any corrective actions the permittee has taken or will take to prevent recurrence; and
- (k) Target and non-target organism(s) that were affected.

4. Spill or Leak Notification

The permittee shall notify the TCEQ Regional Office within 24 hours of becoming aware of a spill or leak that resulted in a discharge to waters of the U.S. If the permittee is unable to notify TCEQ Regional Office within 24 hours, the permittee shall do so as soon as possible and also provide the rationale for why the permittee was unable to provide the notification within 24 hours. The notification must include at least the following information:

- (a) The name and telephone number of the person providing notice;
- (b) Permittee name and mailing address;

- (c) TCEQ authorization number for the pest management area;
- (d) The name and telephone number of a contact person, if different from the person providing the 24-hour notice;
- (e) How and when the person providing notification became aware of the spill or leak;
- (f) Description of the location of the spill or leak;
- (g) Description of the spill or leak identified;
- (h) The EPA pesticide registration number of each pesticide product spilled or leaked, and the known or estimated quantities spilled or leaked that were discharged to waters of the U.S.; and
- (i) Description of any steps the permittee has taken or will take to contain the spill or leak.

5. Spill or Leak Written Report

Within fourteen (14) days of becoming aware of a spill or leak, the permittee shall provide a written report of the spill or leak to the appropriate TCEQ Regional Office. The spill or leak report must include the following information:

- (a) Information required to be provided in Part III.F.4;
- (b) Summary of corrective action taken or to be taken;
- (c) Date corrective action was initiated; and
- (d) Date corrective action was completed or expected to be completed.

6. Other Reporting Requirement.

The permittee shall report any noncompliance, other than that required by Part III.F. 1-5 above that may endanger human health or safety, or the environment to the TCEQ. Report of this information must be provided orally or by facsimile transmission to the TCEQ regional office within 24 hours of knowing of the noncompliance. A written submission of this information must also be provided within five (5) working days of knowledge of the noncompliance. The written submission must contain a description of the noncompliance and its cause; the potential danger to human health or safety, or the environment; and the period of noncompliance, including exact dates and times. If the noncompliance has not been corrected, written submission must also contain the anticipated

time it is expected to continue, and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance and to mitigate its adverse effects.

Part IV. Level II Operators.

A. Applicability

This Part applies to operators that meet the criteria in Part II.A.3.

B. Effluent Limitations

1. Technology-Based Effluent Limitations

Minimize Pesticide Discharges into Waters of the United States. Operators shall develop and implement control measures to minimize discharges resulting from the application of pesticides to waters of the U.S. to the extent achievable using best management practices that are technologically available and economically practicable and achievable. To minimize discharges resulting from application of pesticides, operators shall:

- (a) In accordance with state law and the pesticide label, use only the amount of pesticide and frequency of pesticide applications necessary to control the target pest, using equipment and application procedures appropriate for this task. In no case exceed the maximum application rate, established under FIFRA, referenced on the pesticide product label. To minimize the total amount of pesticide applied, the operator shall consider different application rates, frequencies, or both to accomplish effective control in accordance with the following:
 - (1) Base the rate of application on what is known to be effective against the target pest or as necessary for resistance management; and
 - (2) Base the frequency of applications on the lowest frequency possible to provide effective and economical control and to prevent unnecessary impact on non-target organisms.
- (b) Maintain pesticide application equipment in proper operating condition including requirement to calibrate, clean, and repair such equipment and prevent leaks, spills, or other unintended discharges; and
- (c) Assess weather conditions (e.g. temperature, precipitation and wind speed) in the treatment area to ensure application is consistent with all applicable federal requirements.

2. Water Quality-Based Effluent Limitations

- (a) Any discharge that causes or contributes to an excursion of any applicable numeric or narrative water quality standard is prohibited and is a violation of this permit.
- (b) If at any time a permittee becomes aware, or the Executive Director determines, that the discharge causes or contributes to an excursion of an applicable water quality standard, then the permittee shall take corrective action.
- (c) The Executive Director may require a permittee to obtain coverage under an individual permit as necessary to protect water quality.

C. Visual Evaluation Requirement

Permittees shall conduct a visual evaluation consisting of spot checks in the treatment area to and around where pesticides are applied for possible and observable toxic or adverse effects as follows:

- 1. Within a reasonable period of time after each pesticide application, not to exceed the time required for maximum effect indicated on the product label; and
- 2. During the application when considerations for safety and feasibility allow.

D. Corrective Action

- 1. Situations Requiring Revision of Control Measures.

The permittee shall review and revise control measures if any of the following situations occur to ensure that the situation is eliminated and will not be repeated:

- (a) An unauthorized release or discharge (e.g., spill, leak, or discharge not authorized by this or another TPDES permit) occurs;
- (b) The permittee becomes aware, or the Executive Director determines, that the control measures are not adequate or sufficient for the discharge to meet applicable water quality standards;
- (c) The Executive Director determines that the permittee failed to:
 - (1) Use only the amount of pesticide and frequency of pesticide applications necessary to control the target pest, using equipment and application procedures appropriate for this task;

- (2) Perform regular maintenance activities to ensure that the application equipment is in proper operating condition to minimize the potential for leaks, spills, and unintended or accidental release of pesticides to waters of the U.S.; or
- (3) Calibrate, clean, and repair equipment on a regular basis to ensure that the application equipment is in proper operating condition.
- (d) TCEQ determines that modifications to the control measures are necessary to meet the effluent limits in this permit; or
- (e) The permittee observes or is otherwise made aware of a toxic or adverse effect.

2. Corrective Action Documentation

For situations requiring revision of control measures other than for toxic or adverse effects, a permittee shall document the situation triggering corrective action within 24 hours of becoming aware of that situation. The documentation must include the following information:

- (i) Identification of the condition(s) triggering the need for corrective action;
- (ii) A brief description of the circumstances of the situation;
- (iii) Date the problem was identified;
- (iv) Date corrective action was initiated; and
- (v) Date corrective action was completed or expected to be completed.

3. Corrective Action Deadlines.

If a permittee determines that changes to control measures are necessary, those changes must be made before the next pesticide application that results in a discharge, or as soon as practicable.

E. Recordkeeping

The permittee shall keep the following records on site for a minimum of 5 years from the date the record was created and shall submit them to the Executive Director within five days of a written request by the Executive Director:

- 1. A copy of this permit (an electronic copy is acceptable);

2. A copy of any Adverse Incident Reports; and
3. A copy of the Self Certification Form.

F. Reporting and Notification

1. **Potential Adverse Incident Notification.** If a permittee knows or has been informed of an adverse incident, the permittee shall notify the appropriate TCEQ Regional Office within 24 hours of becoming aware of the potential adverse incident or call the TCEQ 24-hour Spill Reporting Line at 1-800-832-8224. If the permittee is unable to notify TCEQ within 24 hours, the permittee shall do so as soon as possible and provide the rationale why the permittee was unable to provide the notification within 24 hours.

When providing the 24-hour notice for any potential adverse incident, the permittee shall include at least the following information:

- (a) The name and telephone number of the person providing notification;
 - (b) Permittee name and mailing address;
 - (c) The name and telephone number of a contact person, if different from the person providing the 24-hour notice;
 - (d) How and when the person providing notification became aware of the adverse incident;
 - (e) Description of the location of the adverse incident;
 - (f) Description of the adverse incident identified;
 - (g) The pesticide product, including EPA pesticide registration number for each pesticide that was applied in the area of the adverse incident; and
 - (h) Description of any corrective actions the permittee has taken or will take to prevent recurrence.
2. **Adverse Incident Written Report.** Within fourteen (14) days of becoming aware of an adverse incident, the permittee shall provide a written report of the adverse incident to the appropriate TCEQ Regional Office. The adverse incident report shall include at least the following information:
 - (a) Information required to be provided in Part IV.E.2;
 - (b) Date and time the permittee provided 24 hour notice to the Commission of the adverse incident;

- (c) Location of the adverse incident, including the names of any waters affected and appearance of those waters (sheen, color, clarity, etc.);
- (d) A description of the circumstances of the adverse incident including species affected, number of individuals and approximate size of dead or distressed organisms;
- (e) Magnitude of the effect (e.g. aquatic square area or total stream distance affected);
- (f) Pesticide application rate, application site (e.g., water's edge, above, or direct to water), and method of application;
- (g) Description of the habitat and the circumstances under which the adverse incident occurred (including any available ambient water data);
- (h) If laboratory tests were performed, an indication of which test(s) were performed, and when, and provide a summary of the test results immediately upon availability (if not available at the time of submission of the 14-day report);
- (i) If applicable, explain why the permittee believes the adverse incident could not have been caused by exposure to the pesticide;
- (j) Description of any corrective actions the permittee has taken or will take to prevent recurrence; and
- (k) Target and non-target organism(s) that were affected.

Part V. Level III Operators.

A. Applicability

This Part applies to operators that meet the criteria in Part II.A.4.

B. Effluent Limitations

Operators shall implement control measures to minimize discharges resulting from the application of pesticides to waters of the U.S. to the extent achievable using best management practices.

- (a) Apply in accordance with state law and the pesticide label; and
- (b) Store pesticides and dispose of unused pesticides and their containers according to the label instructions.

C. Recordkeeping and Reporting

Recordkeeping and reporting are not required.

Part VI. Standard Permit Conditions

- A. The permittee has a duty to comply with all conditions in this general permit. Failure to comply with any condition is a violation of the general permit and the statutes under which the general permit is issued. Any violation may be grounds for enforcement action, for terminating coverage under this general permit, or for requiring a permittee to apply for and obtain a TPDES individual permit.
- B. The permittee shall furnish any information, at the request of the Executive Director that is necessary to determine whether cause exists for revoking, suspending, or terminating authorization under this general permit. The requested information must be provided within a reasonable time frame and in no case later than 30 days from the date of the request.
- C. Inspection and entry shall be allowed under Chapters 26-28 of the Texas Water Code (TWC); Texas Health and Safety Code §§ 361.032-361.033 and 361.037; and 40 CFR § 122.41(i). The statement in TWC § 26.014 that Commission entry into a pest management area must occur in accordance with an establishment's rules and regulations concerning safety, internal security, and fire protection is not grounds for denial or restriction of entry to any part of the pest management area, but merely describes the Commission's duty to observe appropriate rules and regulations during an inspection.
- D. All records, reports, drawings, and other documentation required by this general permit must be maintained for a minimum period of five years from the date of the record and either be kept on-site or made readily available for review by an authorized representative of the Commission upon request. This period may be extended at the request of the Executive Director.
- E. NOIs, NOTs, and NOCs must be signed in accordance with the requirements of 30 TAC § 305.44(a) (relating to Signatories to Applications). Pesticides Discharge Management Plans, reports, and other information requested or required by the Executive Director must be signed in accordance with the requirements of 30 TAC § 305.128 (relating to Signatories to Reports).
- F. Authorization under this general permit may be suspended or revoked for the reasons stated in 30 TAC § 205.4. Notifying the TCEQ of planned changes or an anticipated noncompliance does not stay any general permit condition.
- G. This general permit does not convey any property rights of any sort, or any exclusive privilege.

- H. If the permittee becomes aware that the permittee failed to submit any relevant facts in an NOI, NOT, or NOC, or submitted incorrect information in an NOI, NOT, or NOC or in any report to the Executive Director, the permittee shall promptly submit those correct facts or information.
- I. The permittee is subject to administrative, civil, and criminal penalties, as applicable, under TWC §§7.051, 7.101, 7.148, and 7.149 for violations including, but not limited to, the following:
1. Violating CWA, Sections 301, 302, 306, 307, 308, 318, or 405 (33 U.S.C. §§ 1311, 1312, 1316, 1317, 1318, 1328, or 1345, or any condition or limitation implementing any sections in a general permit issued under CWA, Section 402, or any requirement imposed in a pretreatment program approved under CWA, Section 402(a)(3) or (b)(8) (33 U.S.C. §§ 1342(a)(3) or (b)(8));
 2. Intentionally or knowingly tampering with, modifying, disabling, or failing to use pollution control or monitoring devices, systems, methods, or practices required under this permit; and
 3. Intentionally or knowingly makes or causes to be made a false material statement, representation, or certification in, or omits or causes to be omitted material information from, an application, notice, record, report, plan, or other document, including monitoring device data, filed or required to be maintained by this permit.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



DOCKET NO. 2010-1650-MIS
General Permit No. TXG870000

IN THE MATTER OF THE TPDES	§	BEFORE THE TEXAS
GENERAL PERMIT TO AUTHORIZE	§	COMMISSION ON
DISCHARGES OF BIOLOGICAL	§	ENVIRONMENTAL
PESTICIDES AND CHEMICAL	§	QUALITY
PESTICIDES THAT LEAVE RESIDUE IN	§	
WATER WITHIN THE STATE OF TEXAS	§	

COMMISSION RESOLUTION ISSUING THE GENERAL PERMIT

WHEREAS, under Texas Water Code (TWC) Section (§) 26.121, no person may discharge waste or pollutants into or adjacent to any water in the state except as authorized by a rule, permit, or order issued by the Texas Commission on Environmental Quality (TCEQ or Commission);

WHEREAS, under TWC § 26.027, the TCEQ has the authority to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to waters in the state;

WHEREAS, under TWC § 26.040, the TCEQ has the authority to issue a general permit to authorize the discharge of waste into or adjacent to waters in the state;

WHEREAS, the definition of waters of the United States, defined in Title 40 Code of Federal Regulations (40 CFR) 122.2 is a subset of the TWC definition of waters in the state.

WHEREAS, a General Permit (TXG870000) that authorizes discharges to waters of the United States of biological pesticides and chemical pesticides that leave residue in water in the state of Texas was drafted and proposed by the Executive Director and is attached as Exhibit A;

WHEREAS, the TCEQ received public comment on the proposed General Permit;

WHEREAS, the Executive Director made certain changes to the General Permit based on comments received;

WHEREAS, the Executive Director prepared, made available to the public, and filed with the Chief Clerk a written Response to Public Comments on the proposed General Permit in accordance with the requirements of Title 30 Texas Administrative Code (30 TAC) § 205.3(e) and is attached as Exhibit B;

WHEREAS, the Commission has reviewed in accordance with Texas Natural Resources Code § 33.205 and 30 TAC § 205.5(f) the changes to the General Permit for consistency with the Texas Coastal Management Program (CMP) and found that the General Permit is consistent with applicable CMP goals and policies and that the General Permit will not adversely affect any applicable coastal natural resource areas as identified in the CMP;

WHEREAS, the Commission determined in accordance with TWC §§ 26.040(a)(1)-(4) that the General Permit would authorize dischargers who engage in the same or substantially similar types of operations, discharge the same types of waste, are subject to the same requirements regarding effluent limitations or operating conditions, and are subject to the same or similar monitoring requirements;

WHEREAS, the Commission finds in accordance with TWC § 26.040(a)(5) that the General Permit would apply to dischargers who are more appropriately regulated under a general permit than under individual permits and that:

(A) The General Permit was drafted to assure that it can be readily enforced and that the Commission can adequately monitor compliance with the terms of the General Permit; and

(B) The category of discharges covered by the General Permit will not include a discharge of pollutants that will cause significant adverse effects to water quality; and

THEREFORE, after consideration of all public comment and the responses to such comment, the Commission, by this resolution, issues the General Permit as recommended by the Executive Director and adopts the Executive Director's Response to Public Comment. Furthermore, the Commission directs staff to make any non-substantive changes to the permit and the Response to Public Comment to satisfy Texas Register format requirements and requests that the general permit and Commission's Response to Public Comment be made available to the public in accordance with the requirements of TWC § 26.040(d) and 30 TAC § 205.3(e).

It is so **RESOLVED**.

Date of Adoption:

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Bryan W. Shaw, Ph.D., Chairman
For the Commission