

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for General Permit Adoption

AGENDA REQUESTED: October 19, 2016

DATE OF REQUEST: September 30, 2016

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Sherry Davis, (512) 239-2141

CAPTION: Docket No. 2015-1216-MIS. Consideration of the adoption of the renewal with amendment of Texas Pollutant Discharge Elimination System General Permit No. TXG870000, which authorizes the application of pesticides into or over, including near, waters of the United States for the control of mosquito and other insect pests, vegetation and algae pests, animal pests, area-wide pests, and forest canopy pests. Public notice of the proposed draft permit was published in the July 1, 2016, issue of the *Texas Register* (41 TexReg 4880). (Laurie Fleet, Kathy Humphreys) (Non-Rule Project No. 2015-037-OTH-NR).

L'Oreal Stepney, P.E.

Deputy Director

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Division Director

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Copy to CCC Secretary? NO X YES

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** September 30, 2016

Thru: Bridget C. Bohac, Chief Clerk
Richard A. Hyde, P.E., Executive Director

From: L'Oreal W. Stepney, P.E., Deputy Director
Office of Water

Docket No.: 2015-1216-MIS

Subject: General Permit: Commission Approval for Adoption
Renewal with Amendment of General Permit No. TXG870000
Project No. 2015-037-OTH-NR

Summary and Background:

This is a renewal with amendment of a Texas Pollutant Discharge Elimination System (TPDES) General Permit No. TXG870000 which authorizes the application of pesticides into or over, including near, waters of the United States (U.S.) for the control of mosquito and other insect pests, vegetation and algae pests, animal pests, area-wide pests, and forest canopy pests. The draft permit will replace the current general permit that expires November 2, 2016.

Basic Requirements:

A. Applicability:

TPDES General Permit No. TXG870000 authorizes 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 pests, animal pests, area-wide pests, and forest canopy pests.

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 annual thresholds are as follows:

- Mosquito and Other Insect Pests = 6,400 acres per year;
- Vegetation and Algae Pests = 100 acres in water or 200 linear miles of water's edge per year;
- Animal Pests = 100 acres in water or 200 linear miles of water's edge per year;
- Area-wide Pests = 6,400 acres per year; and
- Forest Canopy Pests = 6,400 acres per year.

B. Permit Requirements:

The permit is divided into four operator levels: Level IA, IB, II, and III. The administrative and technical requirements for each operator level are as follows:

Project No. 2015-037-OTH-NR

Levels IA and IB:

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.

Administrative Requirements:

- Level IA: Submit a Notice of Intent (NOI) application
- Level IB: Submit a Self-Certification Form to the Texas Commission on Environmental Quality (TCEQ, agency, or commission) Regional Office (No NOI required.)
- Recordkeeping for any adverse incident reports, spill or leak reports, and pesticide application records for each treatment area
- Reporting and notification for 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

County-wide authorization is available to operators with more than five pest management areas in a single county or a county whose pest management area is the same as its jurisdictional boundary. State-wide authorization is available to operators with more than 10 pest management areas in the state.

Technical Requirements:

- Technology-based effluent limitations
- Water quality-based effluent limitations
- Visual evaluation requirements
- Pesticide discharge management plan
- Reporting

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 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.

Administrative Requirements:

- Complete the Self-Certification Form and keep on-site (No NOI required.)

Technical Requirements:

- Minimize pesticide discharges into waters of the U.S.

Project No. 2015-037-OTH-NR

- Water quality-based effluent limitations
- Visual evaluation requirements
- Corrective Action: situations requiring revision of control measures, corrective action documentation, and corrective action deadlines
- Recordkeeping: any adverse incident reports
- Reporting and notification: adverse incident notification (24-hour) and adverse incident written report (14-day)

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.

Administrative Requirements:

- No NOI or Self-Certification Form required

Technical Requirements:

- Minimize discharges by following pesticide label instructions

C. Fees:

- Application Fee: \$100 if submitting a paper NOI or \$75 if submitting by online e-permitting
- Annual Water Quality Fees: \$100 for a single pest management area, or \$500 for a county-wide or statewide authorization

Number of current/expected authorizations:

There are currently 22 facilities authorized via an NOI under this general permit. A significant number of additional NOIs are not expected.

Proposed changes from the current permit:

- A. The definition of "operator" was revised to remove references to when for-hire applicators are considered operators because the language resulted in confusion to the regulated community.
- B. The Limitations on Coverage Section was revised to add additional limitations on coverage related to compliance history rating of "unsatisfactory performer" and pursuant to the October 23, 2013, Commissioner's Order on the Livestock Manure Composting General Permit, WQG200000, the draft permit was similarly revised to clarify that an applicant who owns or operates a facility classified as an "unsatisfactory performer" is entitled to a hearing before the commission prior to denial or suspension of an authorization.
- C. The Obtaining Authorization Section was revised to remove the 90-day provisional coverage from the effective date of the general permit. This provisional authorization was only needed when the permit was initially issued to allow facilities to obtain authorization.

Project No. 2015-037-OTH-NR

- D. The Permit Expiration Section was revised to reduce the deadline to submit a renewal NOI or Self-Certification Form from 120 days to 90 days after the effective date of this general permit and to require permittees that complete a Self-Certification Form and keep it on-site to complete a new Self-Certification Form within 90 days after the effective date of this general permit. The 90-day renewal period is consistent with other general permits.
- E. The Limitations on Coverage Section was revised to add a provision requiring the permittee to follow the guidance associated with the use limitation area when the treatment areas coincide with a designated pesticide use limitation area, as indicated by the United States Environmental Protection Agency (EPA) Endangered Species Bulletins. This provision was added based on EPA's February 29, 2016, Conditional No Objection Letter.
- F. The Obtaining Authorization and Terminating Authorization Sections were revised to require permittees to submit NOIs, Notice of Terminations, and Notice of Changes to TCEQ electronically by September 1, 2017. This provision complies with the Federal Electronic Reporting Rule.

Planned stakeholder involvement:

A letter was sent to facilities currently authorized under the general permit advising them on the upcoming renewal and providing them an opportunity to send in preliminary suggestions. No comments were received. The status of the general permit renewal will continue to be discussed at quarterly Water Quality Advisory Workgroup meetings.

EPA Review:

On February 29, 2016, TCEQ received a letter from EPA requesting the addition of the language "to protect and address any impacts to federally listed endangered and/or threatened species and their habitat..." Additionally, EPA requested that the permit include requirements of the Federal Electronic Reporting Rule. The draft permit was revised to address both of these requests. On April 18, 2016, EPA notified TCEQ that they "have no objections and/or further comments on the revisions."

Public Comment:

Timely public comments were received from Ms. Lori Peniche, Ms. Lucy Hutcheson Barrow, Ms. Margaret Pierce, Ms. Ann Kyle, Ms. Terry L. White, Ms. Ann Leigh Ellis, Ms. Ashley Parham, Ms. Alisha Parham and Ms. Marla Welch.

Comments were related to the adverse health effects of pesticides on humans and the environment; toxic effects that pesticides can have in water; the specific pesticides the state plans to use, where they plan to apply them, and in what quantities; the need for an integrated approach to pest control and not complete reliance on pesticides; general objection to permit renewal; Center for Disease Control should declare a pest emergency situation instead of any level of government; background check for operators and their employees; the people who spray pesticides should be required to have a degree in science, environment, or medicine; municipal water districts should be required to test drinking water to ensure that specific chemicals sprayed are not persisting in the drinking water supplied to the citizens; Texas should implement the Texas Monarch and

Project No. 2015-037-OTH-NR

Native Pollinator Conservation Plan; citizens can be responsible for their own mosquito control by using non-toxic repellants and removing puddles from their yards, and citizens should be able to opt out if they want to live an organic lifestyle.

No changes were made to the proposed permit in response to public comment.

Potential controversial concerns and legislative interest:

Legislative interest or issues with the public are not anticipated.

Effect on the regulated community, public, or agency programs:

This renewal with amendments is not expected to have any significant effect on the regulated community, the public, or agency programs.

Key dates in the proposed general permit schedule:

Published notice in *Texas Register* and newspapers: July 1 and July 22, 2016

End of Public Comment Period: August 22, 2016

Anticipated Adoption Date: October 19, 2016

Statutory authority:

- Texas Water Code (TWC), §26.121, which 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, which 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; and
- TWC, §26.040, which provides the commission with authority to amend rules to authorize waste discharges by general permit.

Agency Contacts:

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Kathy Humphreys, Staff Attorney, (512) 239-3417

Sherry Davis, Texas Register Rule/Agenda Coordinator, (512) 239-2141

Attachments:

Draft Permit, Fact Sheet, Response to Comments

cc: Chief Clerk, 7 copies

Texas Commission on Environmental Quality

P.O. Box 13087 Austin, Texas 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),
Chapter 26 of the Texas Water Code (TWC),
and 30 Texas Administrative Code (TAC) Chapter 205

This permit supersedes and replaces
General Permit No. TXG870000, issued on November 2, 2011.

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 or Commission), the laws of the State of Texas, and other orders of the 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, 2021.

EFFECTIVE: November 2, 2016

DATE SIGNED:

For the Commission

TPDES GENERAL PERMIT NO. TXG870000

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

Table of Contents

Page

Part I. Definitions.....	3
Part II. Permit Applicability and Coverage.....	12
A. Categories of Authorized Pesticide Discharges	12
B. Discharges Eligible for Authorization.....	15
C. Limitations on Coverage.....	16
D. Obtaining Authorization	18
E. Permit Expiration.....	22
F. Terminating Coverage.....	23
G. Alternative TPDES Permit Authorization	23
H. Severability	24
Part III. Level I Operators.	24
A. Applicability	24
B. Effluent Limitations	25
1. Technology-Based Effluent Limitations	25
2. Water Quality-Based Effluent Limitations	28
C. Visual Evaluation Requirements	28
D. Pesticide Discharge Management Plan.....	28
E. Recordkeeping	33
F. Reporting and Notification.....	35
Part IV. Level II Operators.	39
A. Applicability	39
B. Effluent Limitations	39
1. Technology-Based Effluent Limitations	39
2. Water Quality-Based Effluent Limitations	40
C. Visual Evaluation Requirement	40
D. Corrective Action.....	40
E. Recordkeeping	41
F. Reporting and Notification.....	42
Part V. Level III Operators.....	43
A. Applicability	43
B. Effluent Limitations	43
C. Recordkeeping and Reporting	44
Part VI. Standard Permit Conditions.....	44

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 United States Code (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 desiccant, that (1) is a eukaryotic microorganism including, but not limited to, protozoa, algae, and fungi; (2) is a prokaryotic 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 10 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 §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. §§301-399f.

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 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. As used in this permit, employees, agents, and for-hire commercial applicators are not operators; however, if employees, agents, and for-hire commercial applicators are hired by an operator who is covered under the general permit, they will be authorized and covered under the general permit without the need to obtain separate coverage.

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 any:

- (a) vertebrate animal other than humans;
- (b) 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) 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) 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 the Federal Food Drug and Cosmetic Act (FFDCA), 21 U.S.C. §321(g)(1), and cosmetics (as defined in FFDCA 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 FFDCRA §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); or
- (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); or
- (j) devices using the active ingredients sodium fluoroacetate (Compound 1080) and sodium cyanide (M44), in any quantity, for livestock predation.

TAC - Texas Administrative Code.

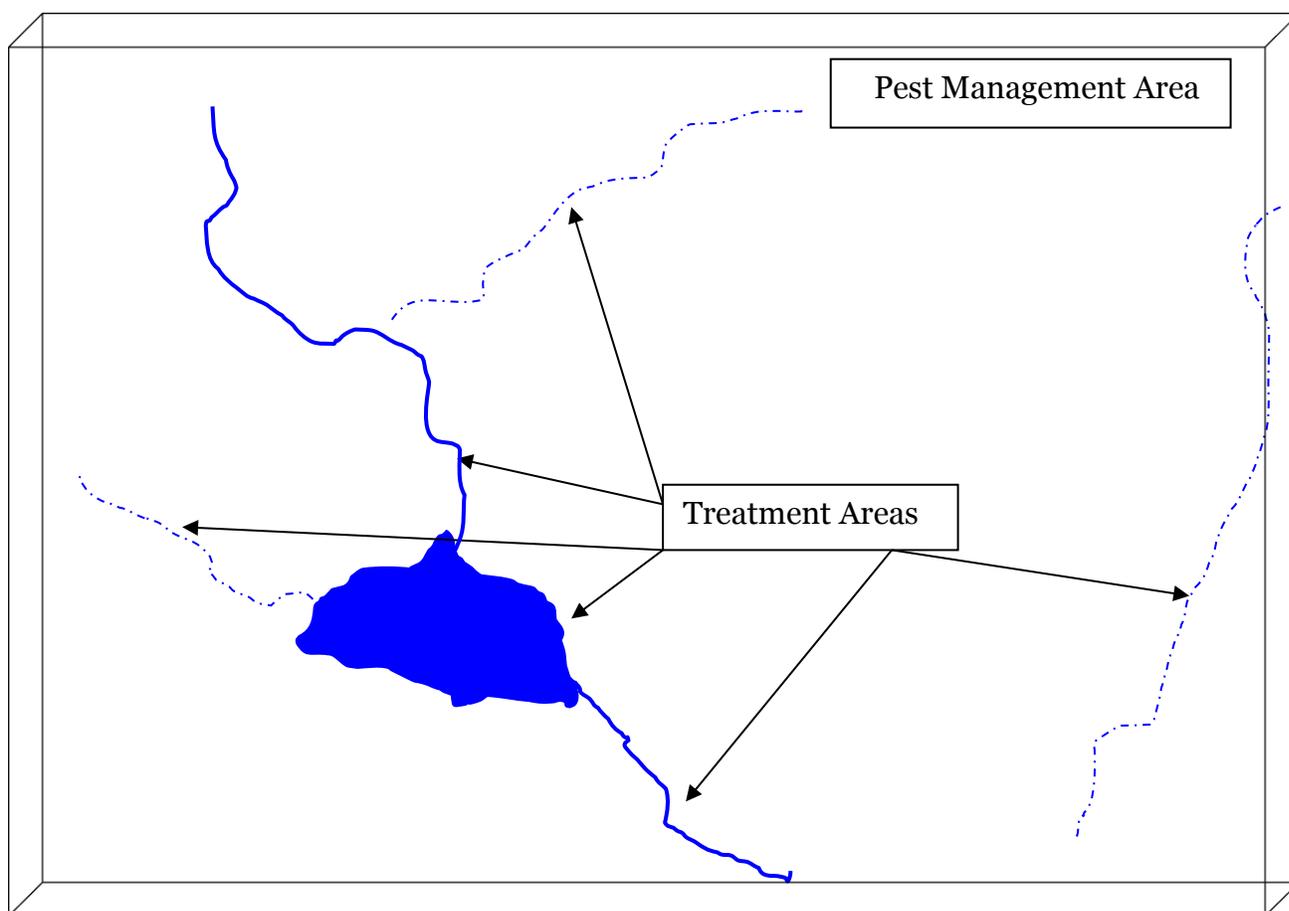
Target Pest - The organism toward which pest control measures are being directed.

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 TWC, and the Texas Administrative Code (TAC) regulations.

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.

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 U.S. 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 §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 Chapter 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 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 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	Restricted or State-Limited Use Pesticide or Regulated Herbicide	Level IA Compliance NOI to TCEQ HQ ** Annual report required Fees: Application Fee and Annual Fee
		OR	
	Use by private entities where there is public access	General Use Pesticide	Level IB Compliance Self-Certification Form to TCEQ Regional Office No annual report No fees
	Use by private entities where there is only private access	Restricted or State-Limited Use Pesticide or Regulated Herbicide	Level IB Compliance - no annual report Self-Certification Form to TCEQ Regional Office No fees
		General Use Pesticide	Level IB Compliance - no annual report Self-Certification Form to TCEQ Regional Office No fees
Below Annual Threshold		Restricted or State-Limited Use Pesticide or Regulated Herbicide	Level II Compliance Self-Certification Form (Onsite) 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 Forms No fees

****Single Pest Management Area Notice of Intent (NOI); or Public or private entities with more than five 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 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 U.S., 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, weeds, 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) The Executive Director shall deny or suspend an applicant's authorization to discharge under this permit based on a rating of "unsatisfactory performer" according to Commission rules in 30 TAC §60.3 (relating to Use of Compliance History). An applicant that is

classified as an "unsatisfactory performer" is entitled to a hearing before the Commission prior to having its authorization denied or suspended, in accordance with TWC §26.040(h).

- (e) 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 Authorizations and Notice of Intent).

8. Federally-Listed Endangered and Threatened Species

Pesticide applications conducted in accordance with the manufacturer's label are authorized for use unless the treatment areas coincide with a designated pesticide use limitation area, as indicated by EPA Endangered Species Bulletins. The operator shall follow the guidance associated with the use limitation area. Endangered Species Bulletins may be accessed from EPA's website (<http://www.epa.gov/endangered-species>) or by calling 800-447-3813.

D. Obtaining Authorization

1. Operators Required to Submit an NOI

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

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

2. Application for Authorization to Discharge

- (a) Submission of an 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 an NOI for each pest management area that meets the requirements of Part II.A.1. Public or private entities with more than five 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 10 pest management areas may submit a single NOI for a statewide permit.

- (d) Effective September 1, 2017, applicants must submit an NOI using the online e-permitting system available through the TCEQ website or request and obtain an electronic reporting waiver. Electronic reporting waivers are not transferrable and expire on the same date as the authorization to discharge.
- (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 name and contact address for the Pesticide Discharge Management Plan (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 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.

5. Fees

- (a) An application fee must be submitted with the NOI:

- (1) \$100 if submitting a paper NOI, or
- (2) \$75 if submitting online through 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.

Effective September 1, 2017, permittees must submit an NOC using the online e-permitting system available through the TCEQ website unless the permittee obtained an electronic reporting waiver.

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 effective date. 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

For permittees that are required to submit an NOI or Self-Certification Form, including those covered under the previous general permit, the permittee is required to submit an NOI or Self-Certification Form within 90 days of the effective date of this general permit to continue authorization to discharge pesticides under this general permit. Failure to submit a new NOI or Self-Certification Form by the deadline will result in expiration of the existing authorization to operate under the previous general permit.

For permittees required to complete a Self-Certification Form and keep it onsite, including those permittees covered under the previous general permit, the permittee must complete a new Self-Certification Form within 90 days of the effective date of this general permit to continue authorization to discharge pesticides under this general permit. Failure to complete a new Self-Certification Form by the deadline will result in expiration of the existing authorization to operate under the previous general permit.

A permittee covered under the previous general permit may alternatively submit an individual permit application within 90 days of the effective date of this general permit to apply for an individual 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.

Effective September 1, 2017, permittees must submit an NOT using the online e-permitting system available through the TCEQ website unless the permittee obtained an electronic reporting waiver.

Authorization to discharge terminates at midnight on the day that a NOT is postmarked for delivery to the TCEQ. For electronic submission of the NOT, 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 permittees 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 U.S.

The permittee 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, the permittee 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 permittee 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 the requirements 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

A permittee that discharges pollutants as a result of the application of pesticides for the sole purpose of pesticide research and development is 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; and/or
- (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

The permittee 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

The permittee shall prepare a 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;
 - (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; and/or
 - (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 cleanup. 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/nrchp.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 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

The permittee 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

The permittee 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. The permittee may harmonize state law (4 TAC §7.33), FIFRA, and CWA recordkeeping practices, where appropriate.

The permittee is required to keep the following records either onsite or at the location provided in the NOI for a period of at least five 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 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 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; and
 - (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. A permittee that meet the criteria in Part II.A.1 shall prepare and keep onsite an annual report that is readily available for review by a TCEQ representative. When the 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 number;
 - (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 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 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 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 permittees 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. The permittee 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, the permittee 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 permittee 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

The permittee 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 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 a permittee that meets the criteria in Part II.A.4.

B. Effluent Limitations

The permittee 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. To minimize discharges resulting from application of pesticides, the permittee shall:

- (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 TWC Chapters 26-28; 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 §§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 §402, or any requirement imposed in a pretreatment program approved under CWA §§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.

**FACT SHEET AND EXECUTIVE DIRECTOR'S PRELIMINARY DECISION GENERAL
PERMIT TXG870000**

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 18, 2015

Permit Action: Renewal with Amendment

I. Summary

The Texas Commission on Environmental Quality (TCEQ or commission) is proposing to renew and amend a general permit authorizing the application of pesticides into or over, including near, waters of the United States (U.S.) for the control of mosquito and other insect pests, vegetation and algae pest, animal pest, area-wide and forest canopy pests. The draft permit will replace the current general permit that expires November 2, 2016.

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 effective date 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, the excess or residue would be considered a pollutant. Excess quantities of a biological pesticide and the biological pesticide itself are considered a pollutant under the federal Clean Water Act (CWA).

This general permit authorizes the 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 U.S.

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

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. The use patterns are:

(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, 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, 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. Nuisance animals include, but are not limited to, fish, lampreys, insects, mollusks, rodents or pathogens. 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.

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

(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 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.

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

2. Annual Thresholds

The general permit establishes the following annual thresholds 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;

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

- (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.
3. Determination of Pest Management Area Annual Threshold for the Pesticide Use Patterns

In most instances, pesticide 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. Environmental Protection Agency (EPA or Agency) thresholds (640 acres, 20 acres and 20 linear miles) have been increased ten-fold for the mosquito and other insect pests control, area wide pest control and forest canopy pest control use patterns and five-fold for vegetation and algae pest control and animal pest controls use patterns. 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 notice of intent (NOI) if the operators will be applying Restricted-Use (RU) or State-Limited-Use (SLU) pesticides or Regulated Herbicides (RH) to waters of the U.S.

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 waters of the U.S. within the pest management area, the operator is required to submit an NOI for coverage under the general permit. However, if there is no creek or intermittent stream that is waters of the U.S. in the pest management area, the operator is not required to submit an 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.

To calculate the annual threshold for vegetation and algae and animal pest control in water, calculations must 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

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

calculating annual threshold for vegetation and algae and animal pest control at water's edge, calculations must 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. Calculations must 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 areas, the treatment areas are not additive. At least one treatment area must meet the threshold for the purpose of determining whether an NOI is required. For a linear feature (e.g., a canal or ditch), the length of the linear feature, whether treating in or adjacent to the feature, must be used, 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 200-mile long ditch, banks on both sides of the ditch, and/or water in that ditch, the total treatment area is 200 miles for purposes of determining if an NOI is required to be submitted. Additionally, if the same 200 miles area is treated more than once in a calendar year, the total area treated is still 200 miles. The treatment area for the two use patterns is not additive over the calendar year.

B. Limitations on Permit Coverage

1. Irrigation return flows (which includes runoff from a crop field due to irrigation of that field) from agriculture or agricultural stormwater runoff or nonpoint source silvicultural activities is exempt from this permit, even when the return flows contain pesticides or pesticide residues, as the federal CWA specifically exempts these categories of discharges from requiring Texas Pollutant Discharge Elimination System (TPDES) permit coverage. For example, runoff into engineered conservation measures on a crop field such as grassy swales and other land management structures that direct flow from the crop field is considered either irrigation return flow or agricultural stormwater. However, discharges from the application of pesticides, into irrigation ditches and canals that are themselves waters of the U.S., are not exempt. Additionally, other stormwater 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 for which TPDES permit coverage is not required. Existing stormwater permits for construction, industry, and municipalities already address pesticides in stormwater. The commission has determined not to issue permit coverage under this general permit if the:
 - a. use pattern is not listed in the permit;
 - b. waters of the U.S. are identified as impaired on the current EPA-approved §303(d) list of impaired waters, as required by 33 United

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

States Code (USC), §1313(d), where the water is impaired for the pesticide or its degradates, unless the discharges are consistent with the EPA-approved Total Maximum Daily Load (TMDL) and the TCEQ implementation plan. Impaired waters for the purposes of this permit include both waters with EPA-approved and EPA-established TMDLs and waters for which EPA has not yet approved or established a TMDL;

- c. water body is designated as Tier 3 (outstanding natural resource waters) for anti-degradation purposes under 30 TAC §307.5(b)(3);
 - d. operator is currently covered for the discharge of pesticides under another TPDES permit, or was 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 is in the process of being denied, terminated, or revoked by the commission;
 - e. discharge is 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;
 - f. discharge would cause or contribute to a violation of water quality standards or the discharge would fail to protect and maintain existing designated uses of receiving waters;
2. Authorization may be denied if the Executive Director determines that the discharge will not maintain existing uses of receiving waters.
 3. The Commission may, after notice and opportunity for a hearing, deny an NOI or revoke authorization if the applicant submits any false information in an NOI.
 4. The Commission may, 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 compliance history rating of "unsatisfactory performer" under 30 TAC Chapter 60 (relating to Compliance History).

IV. Permit Coverage

A. Level IA: Operators that meet the following criteria:

1. public entities applying RU Pesticides, SLU Pesticides or RH to waters of the U.S. where there is public or private access or private entities

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

applying RU or SLU pesticide or RH to waters of the U.S. where there is public access; and

2. meet or exceed the annual pest management area thresholds for the pesticide use patterns in one calendar year.

Submittal of an NOI is required for Level IA authorization. Public or private entities with more than five 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.

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

1. 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
2. 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 an NOI in order to be authorized under this general permit. However, the operators are required to submit a completed Self-Certification Form to the commission and comply with all applicable permit conditions under this permit.

C. Level II: Operators that meet the following criteria:

1. 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 acre or more of waters of the U.S. in one calendar year where there is public or private access; and
2. 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, keep it onsite, and comply with all applicable permit conditions under this permit.

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

D. Level III: Operators that are:

1. public or private entities that apply GU pesticides to less than one acre of waters of the U.S. where there is public or private access; or
2. homeowners that use some form of pesticides and apply the pesticides themselves.

Operators in this group are required to follow the pesticide label instructions only and are not required to keep records or report pesticide use.

E. 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 immediately 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.

F. Application Following Renewal

For permittees that are required to submit an NOI or Self-Certification Form, including those covered under the previous general permit, the permittee is required to submit an NOI or Self-Certification Form within 90 days of the effective date of this general permit to continue authorization to discharge pesticides under this general permit. Failure to submit a new NOI or Self-Certification Form by the deadline will result in expiration of the existing authorization to operate under the previous general permit.

For permittees required to complete a Self-Certification Form and keep it onsite, including those permittees covered under the previous general permit, the permittee must complete a new Self-Certification Form within 90 days of the effective date of this general permit to continue authorization to discharge pesticides under this general permit. Failure to complete a new Self-Certification Form by the deadline will result in expiration of the existing authorization to operate under the previous general permit.

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

G. Notice of Change

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

1. the permittee knows or should have known that the permittee failed to submit any relevant facts or incorrect information in the NOI; or
2. 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 Pesticide Discharge Management Plan (PDMP), or a change in the contact or contact address for the PDMP.

H. Termination of Coverage

1. Permittees that are required to submit an 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.
2. Authorization to discharge terminates at midnight on the day that an 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.
3. Permittees that are not required to submit an NOI will terminate permit coverage when they no longer have a discharge from the application of pesticides. These operators are not required to submit an NOT to terminate permit coverage.

V. Permit Conditions and Effluent Limitations

A. General

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

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

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.

The non-numeric effluent limitations require all levels of operators to minimize discharges of pesticide. Consistent with the control level requirements of the federal 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.

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

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 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 include:

- (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

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

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.

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 standards in accordance with 30 TAC Chapter 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 as defined by 30 TAC § 307.5(b)(3) .

C. Integrated Pest Management (IPM) Practices

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

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 to minimize pesticide use. To reduce potential environmental effects of the chemicals, using pesticide as pest management strategy should be the last option if all other pest control strategies fail.

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

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. The 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 available) to meet the conditions of the permit.

2. Pest Management Strategy

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 Federal Insecticide, Fungicide and Rodenticide Act (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 RU Pesticides, SLU

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

Pesticides or RH. Pesticides that will be applied directly to surface water must be a pesticide that is registered by the EPA as an aquatic pesticide.

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

D. Pesticide Discharge Management Plan (PDMP)

Level I 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). 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.

The PDMP requirements set forth in the permit are terms or conditions under the federal 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.

E. 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

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

and are suitable for control activities, and during the application when considerations for safety and feasibility allow.

F. 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 FIFRA and federal CWA recordkeeping practices, where appropriate. The following records are required to be kept for a period of at least five 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 14 days after implementing the pest management strategy to include the following:
 - (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;

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

- (h) concentration (%) of active ingredient in the 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.

G. 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: 24-hour potential adverse incident or spill or leak notifications (required for the Levels I and II), 14 days adverse incident or spill or leak written reports (required for Levels I and II), and other 24-hour 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 the permit may need modification to further protect water quality and help with data collection on aquatic pesticide use in Texas.

VI. Changes From Existing General Permit

- A. The definition of "operator" was revised to remove references to when for-hire applicators are considered operators because the current language resulted in confusion by the regulated community.
- B. The Limitations on Coverage Section was revised to add additional limitations on coverage related to compliance history rating of "unsatisfactory performer" and pursuant to the October 23, 2013 Commissioner's Order on the Livestock Manure Composting General Permit, WQG200000, the draft permit was similarly revised to clarify that an applicant who owns or operates a facility classified as an "unsatisfactory performer" is entitled to a hearing before the commission prior to denial or suspension of an authorization.

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

- C. The Obtaining Authorization Section was revised to remove the 90-day provisional coverage from the effective date of the general permit. This provisional authorization was only needed when the permit was initially issued to allow facilities to obtain authorization while they developed their PDMP.
- D. The Permit Expiration Section was revised to reduce the deadline to submit a renewal NOI or Self-Certification Form from 120 days to 90 days after the effective date of this general permit and to require permittees that complete a Self-Certification Form and keep it on-site to complete a new Self-Certification Form within 90 days after the effective date of this general permit. The 90-day renewal period is consistent with other general permits.
- E. The Limitations on Coverage Section was revised to add a provision requiring the permittee to follow the guidance associated with the use limitation area when the treatment areas coincide with a designated pesticide use limitation area, as indicated by EPA Endangered Species Bulletins. This provision was added based on EPA's February 29, 2016 Conditional No Objection letter.
- F. The Obtaining Authorization and Terminating Authorization Sections were revised to require permittees to submit NOIs, NOTs, and Notice of Changes to TCEQ electronically by September 1, 2017. This provision complies with the Federal Electronic Reporting Rule.

VII. Addresses

Questions concerning the draft general permit should be sent to:

Laurie Fleet (MC-148)
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087
(512) 239-4671
Laurie.Fleet@tceq.texas.gov

Comments regarding the draft 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

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

Supplementary information on this Fact Sheet is organized as follows:

- VIII. Legal Basis
- IX. Regulatory Background and Legal History
- X. Procedures for Final Decision
- XI. Administrative Record

VIII. Legal Basis

Texas Water Code (TWC) §26.121 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 issue general permits to authorize the discharge of waste into or adjacent to waters in the case by category of discharges in a particular geographical area of the state.

On September 14, 1998, the TCEQ received authority from the EPA to administer the TPDES program. 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.

Federal CWA, §§301, 304, and 401 (33 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 Chapter 307); and (3) comply with other state requirements adopted under authority retained by states under federal CWA, §510, 33 USC, §1370.

IX. Regulatory Background and Legal History

The Texas Water Code § 26.040, provides TCEQ with authority to issue general permits. 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

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

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 TCEQ and the Texas Department of Agriculture (DOA) have distinct responsibilities regarding pesticide use in Texas. The DOA licenses pesticide applicators and dealers and regulates pesticide storage facilities, 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 FIFRA does not require an NPDES Permit. On January 07, 2009 the U.S. Sixth Circuit Court of Appeals ruled that federal CWA permits are required for all biological pesticide applications and chemical pesticide 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 EPA requested an extension to allow more time for pesticide operators to obtain permits for pesticide discharges into waters of the U.S. 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 waters of the U.S. The court's decision extended the deadline for when permits will be required from April 9, 2011 to October 31, 2011.

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

X. 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 circulation or newspapers of 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 Code of Federal Regulations (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 request, that a significant degree of public interest 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 Texas 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 10 days before the commission acts on the general permit.

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

XI. 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 Parts 122, 124, and 136
- B. 30 TAC Chapters 39, 205, 281, 305, 307, 319, 331, and 335
- C. EPA, National Recommended Water Quality Criteria: 2002, EPA-822-R-02-047
- D. EPA's 2011 Pesticides General Permit
- E. TWC, §§26.027, 26.0286, 26.040, and 26.121
- F. 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.
- G. Texas Parks & Wildlife Department, 2010: Data presented to the TCEQ in TPWD Informal Comments on Pesticide General Permit Draft Presented at stakeholder meeting September 9, 2010.
- H. 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.

COMMISSIONERS' RESPONSE TO PUBLIC COMMENT ON GENERAL PERMIT NO.
TXG870000

The Executive Director (ED) of the Texas Commission on Environmental Quality (commission or TCEQ) files this Response to Public Comment (Response) on the renewal and amendment of Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXG870000, which authorizes point source discharges of biological pesticides and chemical pesticides that leave a residue in water. As required by Texas Water Code §26.040(d) and Title 30 Texas Administrative Code §205.3(e), before a general permit is issued, the ED 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 are not addressed in this Response. Timely public comments were received from the following persons: Ms. Lori Peniche, Ms. Lucy Hutcheson Barrow, Ms. Margaret Pierce, Ms. Ann Kyle, Ms. Terry L. White, Ms. Ann Leigh Ellis, Ms. Ashley Parham, Ms. Alisha Parham, and Ms. Marla Welch.

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. Additionally, general information about the TCEQ can be found on our website at www.tceq.texas.gov.

I. Background and Permit Summary

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 (CWA) 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.

On November 2, 2011 the TCEQ issued a Texas Pollutant Discharge Elimination System (TPDES) Pesticides General Permit (PGP) authorizing the point source discharge of pesticides for the control of mosquito and other insect pests, vegetation and algae, animal pest, area-wide and forest canopy pests.

This is a renewal with amendment of the TPDES general permit authorizing the application of pesticides into or over, including near, waters of the United States (U.S.) for the control of mosquito and other insect pests, vegetation and algae pests, animal pests, area-wide pests, and forest canopy pests. The draft permit will replace the current general permit that expires November 2, 2016.

This PGP does not require or prohibit the use of any specific pesticide; neither does it regulate any specific pesticide; however, all pesticide users must comply with all applicable Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) requirements contained on pesticide product labels. The pesticide label instructions include the allowable application rate, which has been developed based on extensive studies of each pesticide to minimize adverse impacts on human health and the environment. Additionally, all pesticide users must comply with all local regulations.

II. Procedural Background

TCEQ published notice of the draft PGP to solicit public comment in the *Dallas Morning News* and in the *Texas Register* on July 1, 2016 and in the *Houston Chronicle* on July 22, 2016. The public comment period ended on August 22, 2016. This permit is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999.

III. Comments and Responses

Comment 1

Ms. Lori Peniche, Ms. Margaret Pierce, Ms. Terry L. White, Ms. Ashley Parham, Ms. Alisha Parham, and Ms. Marla Welch comment that they are concerned about the adverse health effects of pesticides on humans and the toxic effects they can have in waters because the permit requires only visual evaluation after pesticide contamination. Ms. Lori Peniche, Ms. Terry L. White and Ms. Marla Welch oppose the permit. Ms. Lori Peniche comments that the public needs to be informed about the state's intentions and the public health consequences.

Ms. Lucy Hutcheson Barrow and Ms. Margaret Pierce comment that the TCEQ should address environmental concerns of the public regarding pesticide application near waterways and inform the public of specific pesticides the state plans to use, where they plan to apply them, and in what quantities. In addition, they comment that the state should get approval of the public before applying such pesticides.

Response 1

The TCEQ is not proposing the use of any specific pesticides, rather is establishing the process through which certain pesticide users must use to comply with state and federal law.

The requirement to obtain permits for point source discharges from pesticide applications to waters of the U.S. stems from a decision by the U.S. Sixth Circuit Court of Appeals. In its ruling on *National Cotton Council, et al. v. EPA*, the Court ruled that National Pollutant Discharge Elimination System (NPDES) permits were required for applications of pesticides to waters of the U.S., in addition to being compliant with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) label requirements.

The U.S. Environmental Protection Agency (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 the 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 authority to prosecute pesticide misuse when it occurs.

Comment 2

Ms. Lucy Hutcheson Barrow and Ms. Margaret Pierce comment that they recognize the threat of insect-borne disease and the need to reduce mosquito populations; however, they believe the state must not overreact and apply so many pesticides that we contaminate our water and consequently our overall ecosystem. Birds and fish rely on

insects to feed their young. The commenters support an integrated approach to pest control and not complete reliance on pesticides. Furthermore, they recommend that resources be directed at removing standing water where mosquitoes breed, and encouraging bats, swifts and other flycatcher populations to control the mosquito population in highly populated areas. They note that the scientific community is working to create a Zika vaccine.

Response 2

The ED agrees with the commenters regarding the use of an integrated approach to pest control. The PGP requires that operators develop and implement Integrated Pest Management (IPM) practices. IPM is defined in the PGP as follows: “Is an effective and environmentally sensitive approach to pest management that relies on a combination of common-sense practices. IPM practices use 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.” According to the PGP, based on the IPM practices, using a chemical pesticide is only a last resort and must be in accordance with state law and the pesticide label, applying only the amount of pesticide and frequency of pesticide applications necessary to control the target pest, and using equipment and application procedures appropriate for the task.

Comment 3

Ms. Ann Kyle comments that the negative effect of the PGP outweighs its benefit. Ms. Terry L. White, Ms. Ann Kyle, Ms. Marla Welch and Ms. Ann Leigh Ellis comment that the permit should not be renewed. Ms. Ann Kyle comments further that immunocompromised individuals and people with poor nutrition are more at risk of being infected by the Zika or West Nile virus, and therefore, everyone should not be subject to the chemicals used for controlling mosquitoes.

Response 3

This PGP does not require the use of any specific pesticide for any specific purpose. Pesticide applications to control pests are regulated under the FIFRA by the EPA. As stated above, the requirement to obtain permits for point source discharges from pesticide applications to waters of the U.S. stems from a decision by the U.S. Sixth Circuit Court of Appeals. The PGP was first issued in 2011 as a result of the Court decision. The PGP must be renewed to provide citizens of Texas a way to comply with the Court mandate and the CWA. The PGP requires that all pesticide applications must be consistent with pesticide use requirements implemented through FIFRA, the intent of which is to minimize negative impacts on humans and the environment. Pesticide applications to control pests are regulated under the FIFRA by the EPA, additionally, local governments may have other requirements for general pesticide use.

Comment 4

Ms. Terry L. White comments that the PGP does not protect public health and actually increases the toxic burden that she has a right to try to avoid. Ms. Ann Kyle, Ms. Terry L. White, Ms. Ashley Parham, Ms. Alisha Parham, and Ms. Marla Welch comment on the health impact of pesticides on people and the environment. Ms. Terry L. White is concerned that the permit is broad, vague, and should not exist. More specifically, she believes that the definition of “Action Threshold” for spraying can be based on anyone’s opinion concerning economic, health, and/or aesthetic or any other reason, and the definition of “Declared Pest Emergency Situation” makes it too easy for any

deranged or misinformed city employee to spray toxic chemicals for reasons such as economics, aesthetics, and health fears. In addition, she comments that the definition of “Declared Pest Emergency Situation” also enables frequent release of poisonous chemicals into neighborhoods and parks.

Response 4

The ED agrees with the comment that there are potential health risks to humans and the environment associated with the use of pesticides. The permit authorizes the discharge of biological pesticides and chemical pesticides that leave a residue in waters of the U.S. The discharge must be consistent with pesticide use requirements implemented through FIFRA, the intent of which is to minimize negative impacts on humans and the environment.

The PGP defines “Action Threshold” as “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 purpose of action thresholds are to assure that pesticides are used only when absolutely needed and after consideration of other control methods. 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 permit allows operators to determine their action thresholds and document the trigger for the pest control activity in the pesticides discharge management plan. The criteria of the IPM plan in Part III.B.1(b) of the PGP require a clear statement of intentions before a pest event occurs. The IPM plan prevents operators from under- or over-reacting to pest problems.

Comment 5

Ms. Ann Kyle, Ms. Ashley Parham and Ms. Alisha Parham comment that no epidemic has been declared by the Center for Disease Control (CDC) and Ms. Terry L. White, Ms. Ashley Parham and Ms. Alisha Parham comment that according to the permit any state, county, or city designated employee can declare a pest emergency instead of the CDC.

Response 5

The PGP authorizes discharges under the terms and conditions of the PGP in response to a declared pest emergency situation that requires an immediate response. A notice of intent (NOI) must be submitted in paper form no later than 30 days after commencement of the discharge. According to the PGP, a declared pest emergency situation is defined as follows:

“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 10 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”

Any level of government can declare a pest emergency situation based on the defined criteria listed in the definition above, because pest problems are often localized and require immediate action at the local level.

Comment 6

Ms. Terry L. White, Ms. Ashley Parham and Ms. Alisha Parham comment that the PGP does not require a background check for operators and their employees who fly planes which release toxic chemicals overhead in the night or day. They comment further that the PGP should be reviewed by Homeland Security. Ms. Terry L. White concludes that the permit is a security nightmare.

Response 6

The CWA does not require background checks on point source dischargers, therefore requiring background checks on operators and their employees is outside the scope of the PGP.

Comment 7

Ms. Terry L. White comments that the people who spray pesticides should be required to have a degree in science, environment, or medicine.

Response 7

The CWA does not include college education requirements for operators or their employees. The PGP requires that pesticide application be carried out by a certified pesticide applicator if the pesticide is classified as a restricted use pesticide (RUP), state-limited-use (SLU) pesticide, or regulated herbicide (RH). 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. FIFRA and TDA require that all persons who apply pesticides classified as RUP, SLU or RH be certified according to the provisions of the act or that they work under the supervision of a certified applicator.

Comment 8

Ms. Terry L. White comments that TCEQ should prescribe chemicals with the same level of care and consent as the medical profession.

Response 8

The PGP does not regulate the use of any specific pesticide. Pesticide toxicity levels have been used in the PGP to make a distinction between the different levels of operators based on the type of pesticide used and the type of access to the pest management area (public or private), so as to give maximum protection to both human health and the environment.

Additionally, a pesticide user must comply with all applicable FIFRA requirements contained on pesticide product labels. The pesticide label instruction includes the allowable application rate, which has been developed based on extensive studies of each pesticide to minimize adverse impacts on human health and the environment.

Comment 9

Ms. Lucy Hutcheson Barrow and Ms. Margaret Pierce comment that the bayou and river systems as well as drinking water sources would be severely impacted by heavy pesticide use upstream. Ms. Terry L. White, Ms. Ashley Parham and Ms. Alisha Parham comment that municipal water districts should be required to test drinking water to ensure that specific chemicals sprayed are not persisting in the drinking water supplied to the citizens.

Response 9

The PGP requires operators to apply pesticides in accordance with state laws and FIFRA requirements contained on pesticide product labels. The pesticide label instruction includes the allowable application rate to minimize adverse impacts on human health and the environment.

As required by the Safe Drinking Water Act, public water systems test their finished drinking water for certain pesticides. The TCEQ is also required by Safe Drinking Water Act to assess every public drinking water source for susceptibility to certain chemical constituents. The resulting source water susceptibility assessment reports provided to public water systems are then used to implement local source water protection projects. The public can visit the TCEQ website at <http://www.tceq.texas.gov/drinkingwater> for more information on drinking water.

Comment 10

Ms. Terry L. White, Ms. Ashley Parham and Ms. Alisha Parham comment that there are not enough healthy bees to pollinate crops but according to this permit, operators are allowed to spray pounds of products highly toxic to bees for reasons including aesthetics.

Response 10

The PGP requires that operators apply pesticides in accordance with the FIFRA label instructions. Under FIFRA, EPA evaluates risk associated with pesticides and mitigates unreasonable ecological risk. Technology-based effluent limitations in the PGP provide further protections beyond compliance with existing FIFRA requirements.

According to the PGP, if pesticide use is selected as a pest management strategy, the following additional requirements must be met:

1. Apply pesticide only when the action threshold(s) have been met or disease is present;
2. Reduce the impact on the environment and non-target organisms by evaluating the restrictions, application timing, and application methods in addition to applying the pesticide only when the action thresholds have been met;
3. 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.
4. For Area-Wide Pest and Forest Canopy Pest Controls: Use pesticides against the most susceptible developmental stage.

Comment 11

Ms. Terry L. White, Ms. Ashley Parham and Ms. Alisha Parham comment on why the PGP is considered a “point source” water pollution permit or a TPDES “general permit.” Ms. Terry L. White comments further, referencing Texas Water Code §26.040, that “the commission may issue a general permit to authorize discharge of waste into or adjacent to waters in the state...” She states instead that the commission through the PGP is authorizing release of neurotoxic, carcinogenic, and teratogenic chemicals with humans knowingly as the “non-target organisms.”

Response 11

The Texas Water Code (TWC) gives the TCEQ the authority to issue general permits if certain conditions are met. Specifically, the dischargers must be engaged in the same or substantially similar types of operations; discharge the same type of waste; and be subject to the same permitting conditions. TWC § 26.040. The PGP is not a point source, rather the PGP authorizes the discharge of pesticide from a point source. According to the PGP a “Point Source” is “[a]ny 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.” For the purposes of pesticide application a point source is the point where the pesticide is released from a container.

Based on a ruling by the 6th Circuit Court of Appeals made on January 7, 2009 in *National Cotton Council, et al. v. EPA*, applications of biological pesticides and chemical pesticides that leave a residue in water require a TPDES permit when such applications are made in, over, or near waters of the United States.

Additionally, all pesticide users must comply with all applicable FIFRA requirements contained on pesticide product labels. The PGP includes additional requirements that are consistent with pesticide product labels; the PGP does not override any existing FIFRA labeling requirements.

Comment 12

Ms. Terry L. White, Ms. Lori Peniche, Ms. Ashley Parham and Ms. Alisha Parham comment that the permit only requires visual inspections to determine toxic contamination. Ms. Terry L. White comments further that some pest control sprays are toxic in the parts per million range which can only be detected by chemical testing.

Response 12

The PGP requires that pesticide applications be conducted in accordance with state law and the pesticide’s FIFRA label. In addition, the pesticide applicators must comply with the licensing requirements from the TDA.

The PGP requires operators to conduct a visual evaluation consisting of spot checks in the treatment area and around where pesticides are applied for possible and observable toxic or adverse effects. If toxic or adverse effects are observed, the operator must take a corrective action (Levels I & II Operators) as indicated in their pesticide discharge management plan (PDMP) (Level I). If there is an adverse incident, the operator must call the TCEQ. 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 to other actions necessary to minimize discharges (e.g., spill response procedures, adverse incident response procedures, and pesticide monitoring schedules and procedures).

Comment 13

Ms. Terry L. White, Ms. Ashley Parham and Ms. Alisha Parham comment that the toxicity of the products allowed in the permit are determined by the level of ingestion that it takes to poison someone to death. They therefore, recommend that the pesticide products be ranked for neurotoxicity, carcinogenicity, and teratogenicity.

Response 13

Pesticide toxicity factors are inherent in the categorization of the operator levels identified in the permit and are established based on three 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 Pesticide, State Limited Use and Regulated Herbicide pesticides pose a higher risk to human health and the environment than general use pesticides. Operators that will be applying these pesticides 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 requires operators to implement technology-based effluent limitations, IPM practices and water quality-based effluent limitations. Operators must 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.

The technology-based effluent limitation measures include using only the amount of pesticide product per application and frequency of pesticide applications necessary to control the target pest, performing regular maintenance activities, calibrating and cleaning/repairing application equipment, and assessing weather conditions in the treatment area. Secondly, operators must develop and implement written IPM practices to comply with the non-numeric effluent limitations in the permit for each treatment area and pesticide use pattern. An IPM plan involves: (1) identifying and assessing the pest problem; (2) assessing effective pest management strategies; and (3) following specified procedures for pesticide application.

Comment 14

Ms. Terry L. White, Ms. Ashley Parham and Ms. Alisha Parham comment that Texas should implement the Texas Monarch and Native Pollinator Conservation Plan. Furthermore, Ms. Terry L. White, Ms. Ashley Parham and Ms. Alisha Parham comment that citizens can be responsible for their own mosquito control by using non-toxic repellants and removing puddles from their yards, and that citizens should be able to opt out if they want to live an organic lifestyle.

Response 14

The PGP is protective of human health and the environment provided the operators comply with the state law, FIFRA instruction, and the PGP.

The PGP supports the use of non-toxic means of pest control by requiring operators to develop and implement IPM. 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.

The PGP does not oppose the implementation of the Texas Monarch and Native Pollinator Conservation Plan nor does it prohibit citizens from controlling mosquitoes by using non-toxic repellants and removing puddles from their yards.

IV. Changes Made In Response to Public Comment

No changes were made to the proposed permit in response to public comment.

**DOCKET NO. 2015-1216-MIS
General Permit No. TXG870000**

**IN THE MATTER OF A RENEWAL WITH
AMENDMENT OF A TEXAS POLLUTANT
DISCHARGE ELIMINATION SYSTEM
GENERAL PERMIT AUTHORIZING THE
APPLICATION OF PESTICIDES INTO OR
OVER, INCLUDING NEAR, WATERS OF THE
UNITED STATES**

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**BEFORE THE TEXAS
COMMISSION ON
ENVIRONMENTAL
QUALITY**

**COMMISSION RESOLUTION ISSUING THE RENEWAL WITH AMENDMENT OF A
GENERAL PERMIT**

WHEREAS, under Texas Water Code (TWC), § 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 for the discharge of waste or pollutants into or adjacent to water 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, a renewal with amendment of a Texas Pollutant Discharge Elimination System (TPDES) general permit authorizing the application of pesticides into or over, including near, waters of the United States for the control of mosquito and other insect pests, vegetation and algae pests, animal pests, area-wide pests, and forest canopy pests, was drafted and proposed by the executive director and is attached as Exhibit A;

WHEREAS, the TCEQ received public comments on the general permit, and drafted a Response to Public Comment, which 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 has 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 has 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 has been 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;

THEREFORE, by this resolution, the Commission issues the General Permit and Response to Public Comment, attached as Exhibits A and B, respectively, as recommended by the executive director and as approved by the Commission during its October 19, 2016, public meeting.

Furthermore, the Commission directs staff to make any non-substantive changes to the general permit to satisfy *Texas Register* format requirements and requests that the general permit 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**.

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

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

Date Signed