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 (TWC), §26.040(d) and 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 This response addresses all timely received public comments, whether or not withdrawn.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 on July 12, 2021, are not addressed in this Response. Joint comments were received from the Lone Star Chapter of the Sierra Club and Environment Texas (Alex R. Ortiz and Bay Scoggin both signed on behalf of the Sierra Club; and Alessandra R. Papa and Luke Metzger both signed on behalf of Environment Texas (Sierra Club and Environment Texas)).

If you need more information about this permit or the wastewater permitting process, please call the TCEQ Office of Public Assistance at 1-800-687-4040. The complete Commissioner’s Response to Public Comment may be found at the following website:

<https://www14.tceq.texas.gov/epic/eCID/>***.*** Additionally, general information about the TCEQ can be found at our website at [www.tceq.texas.gov](http://www.tceq.texas.gov)***.***

# 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 pests, animal pests, area-wide and forest canopy pests.

This permit was renewed on November 2, 2016. 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, 2021.

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.

# Procedural Background

TCEQ published notice of the draft PGP to solicit public comment in the Dallas Morning News, Houston Chronicle, and in the *Texas Register* on June 11, 2021. The public comment period ended on July 12, 2021. This permit is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999.

# Comments and Responses

## Comment 1

The Sierra Club and Environment Texas argued that the PGP is not as protective of the environment when compared with the U.S. Environmental Protection Agency’s (EPA’s) PGP due to the annual thresholds that trigger the submittal of a notice of intent (NOI) for the Vegetation and Algae and Animal Pest Control Use Patterns.

They stated that the TCEQ’s PGP annual threshold of greater than or equal to 100 acres in water, or greater than or equal to 200 linear miles at water's edge for both the Vegetation and Algae and Animal Pest Control Use Patterns are greater than the EPA’s annual threshold of more than either: 20 linear miles or 80 acres of water (i.e., surface area) for both the Weed and Algae Pest Control and Animal Pest Control; and concluded that the TCEQ should adopt the same annual thresholds as the EPA’s for the use patterns.

The Sierra Club and Environment Texas commented further that operators who exceed the thresholds set in Part II, A(1)(b)(ii) of the permit, are not required to submit an NOI or compile an annual report, nor are operators falling below the threshold required to submit a self-certification form to a TCEQ regional office. They are concerned that the PGP allows a pesticide discharge which has no risk assessment in drinking water and no acute exposure benchmark without recordkeeping.

## Response 1

During this renewal period, the annual thresholds for the use patterns were not amended since EPA Region VI approved them in the 2011 PGP and the subsequent renewal in 2016. By letter dated March 11, 2021, EPA Region VI stated that the TCEQ may proceed with the issuance of the draft permit.

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

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

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

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

Level IA will submit an NOI to obtain authorization and prepare and keep onsite an annual report, while Level IB will submit a completed self-certification to the applicable TCEQ Regional Office. Record keeping is required for Levels I and II to assist the permittee in tracking what pesticides were applied along with the volume and effectiveness of the applications. The records can also help determine compliance with the PGP requirements.

## Comment 2

The Sierra Club and Environment Texas allege that due to the higher annual thresholds of the Vegetation and Algae Pest and Animal Pest Control Use Patterns, the PGP allows unsupervised use and insufficient documentation which pose greater risks to human health. They elaborated on the health problems that are associated with pesticides including but not limited to miscarriage, developmental disabilities and cancer.

## Response 2

The PGP is a Clean Water Act (CWA) permit that is administered under the TPDES program for point source discharge of pesticides (biological and chemical) in, over or near waters of the U.S. A pesticide user must comply with all applicable FIFRA requirements contained on pesticide product labels, which is the law governing the use of the pesticide product. Applying pesticide product without following the label instruction will be a violation of the PGP, which can result in an enforcement action including penalties and technical requirements for corrective action. The Texas Water Code authorizes TCEQ to administer fines of up to $25,000 per day for each violation; however, penalties are calculated using the TCEQ’s Enforcement Penalty Policy, which takes into account several factors, including the severity and duration of the violation, the permittee’s compliance history, and economic benefit. Violations are maintained on file and are included in the calculation of a facility and a person’s compliance history. Compliance history ratings are considered during permit application reviews.

The PGP promotes the use of an integrated approach to pest control, and the use of a chemical pesticide as the last resort. It also 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. If pesticides are used contrary to the FIFRA label instruction, it can cause adverse incident to a person or non-target organisms; which can lead to toxic or adverse effect to non-target-plants, fish, or wildlife that are unusual or unexpected as a result of exposure to the pesticide or pesticide residue. The PGP requires that pesticide application be carried out by a certified pesticide applicator if the pesticide is classified as a RUP, SLU pesticide, or RH. Pesticides that will be applied directly to surface water must be registered by EPA as an aquatic pesticide. 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 3

The Sierra Club and Environment Texas commented that the use of pesticides that pose significant risks to human health by contaminating drinking water should be monitored by TCEQ regardless of whether arbitrary thresholds are met. They commented further that the tiered approach of the annual threshold will cause many pesticides to fall through the cracks of prudent regulation, including those for which the EPA has set no human health benchmarks for either acute or chronic exposure.

## Response 3

The TCEQ implements and enforces standards that are established to protect human health, safety, and the environment. 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 on an annual basis. The TCEQ is also required by the 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.

Regarding the tiered approach of the operator level of the PGP, the TCEQ PGP established the various levels based on the annual threshold, the type of pesticides used, and whether there is public or private access. These factors represent risk levels to human health and the environment. Due to a smaller treatment area, Levels II and III pose a lower risk to human health and the environment. The ED has concluded that lower risk can be associated with less stringent requirements without impacting human health or the environment. As noted in the third paragraph of Response #1 above, the operator levels are based on risk factors that are associated with the location, size of the treatment area, volume and type of chemicals to be discharged and the ease of access by the public to the location. The requirement for Level III is that the operator follows the label instructions.

In certain instances, discharges can be covered under a general permit without submission of an NOI as allowed by TWC, §26.040(f):

(f) A general permit may authorize a discharger to discharge without submitting a notice of intent if the commission finds that a notice of intent requirement would be inappropriate.

All pesticides with or without benchmarks are regulated through the provisions in FIFRA.

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

## Comment 4

The Sierra Club and Environment Texas argued that the EPA lacks sufficient data to complete a risk assessment for chlorsulfuron in drinking water, and that none of the pesticides containing this ingredient are classified as restricted-use by either the EPA or Texas.

## Response 4

In a memo dated November 15, 2012, the EPA documented that the preliminary problem formulation for the ecological risk, environmental fate, endangered species and drinking water assessments to be conducted as part of the Registration Review of the sulfonylurea herbicide chlorsulfuron was completed. (see the document at <https://www.regulations.gov/document/EPA-HQ-OPP-2012-0878-0003>)

Additional information on the product can be obtained from the EPA at <https://www.epa.gov/toxics-release-inventory-tri-program/chlorsulfuron-petition>. The public may also visit the EPA pesticide registration website for the details of pesticide evaluation for potential human health and environmental effects associated with use of the product at

<https://www.epa.gov/pesticide-registration/about-pesticide-registration>.

Below is an excerpt from the EPA factsheet for Reregistration Eligibility Document (RED). The excerpt is the EPA’s regulatory history of chlorsulfuron .

**Chlorsulfuron Regulatory History from Reregistration Eligibility Document (EPA RED FACTS)**

Chlorsulfuron was first registered in the United States in 1982 by E.I. du Pont de Nemours and Company (DuPont). It was formulated into products for use on food crops (wheat, barley, and forage grasses) and non-food crops (non-cropland grasses and tree plantings). Since 1988 additional products have been registered, mostly by DuPont. Nufarm Americas Inc. has one registered product containing chlorsulfuron (EPA Reg. # 228-375) and Lesco Inc has one registered product containing chlorsulfuron (EPA Reg. # 10404-59). In addition, there are two products registered as Special Local Needs (SLN) registrations for use in Oklahoma and Texas to allow aerial application to wheat.

Chlorsulfuron dietary and residential aggregate risks were assessed in an Agency action published in the *Federal Register* on August 14, 2002 (volume 67, number 157). This action established new tolerances for residues for chlorsulfuron in or on grass, forage and grass hay. This action also reassessed all other existing tolerances of chlorsulfuron as required by the Federal Food, Drug and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA). Therefore, this Reregistration Eligibility Decision document and supporting risk assessments address only the environmental and occupational risks from the use of chlorsulfuron. For information on dietary and residential risks, please refer to the earlier notice published in the *Federal Register*.

According to the US EPA, all pesticides sold or distributed in the United States must be registered by EPA, based on scientific studies showing that they can be used without posing unreasonable risks to people or the environment. Because of advances in scientific knowledge, the law requires that pesticides which were first registered before November 1, 1984, be reregistered to ensure that they meet today’s more stringent standards.

In evaluating pesticides for reregistration, EPA obtains and reviews a complete set of studies from pesticide producers, describing the human health and environmental effects of each pesticide. To implement provisions of the FQPA of 1996, EPA considers the special sensitivity of infants and children to pesticides, as well as aggregate exposure of the public to pesticide residues from all sources, and the cumulative effects of pesticides and other compounds with common mechanisms of toxicity. The Agency develops any mitigation measures or regulatory controls needed to effectively reduce each pesticide’s risks. EPA then reregisters pesticides that meet current human health and safety standards and can be used without posing unreasonable risks to human health and the environment.

## Comment 5

The Sierra Club and Environment Texas stated that most hazardous pesticide products, such as chlorsulfuron, are not covered by the PGP due to the crack in the permit, and that the products are not labeled as RUP. They further stated that scientists have criticized the EPA’s lack of scrutiny over pesticides’ impacts on human health, saying that pesticide companies have too much of a hand in their own oversight.

## Response 5

Pesticide applications have been regulated under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) of the U.S. EPA. However, in the case of *National Cotton Council, et al., v. EPA*, 553 F.3d 927 (January 7, 2009), the Court ruled that pesticide application is a point source discharge that must be regulated under the Clean Water Act.

The 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 the EPA assesses a variety of potential human health and environmental effects associated with use of the product. When the 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 the EPA have ample authority to prosecute pesticide misuse when it occurs.

## Comment 6

The Sierra Club and Environment Texas commented that the EPA’s Scientific Advisory Board wrote that the EPA’s redefinition of waters of the United States in 2019 “neglect[ed] established science.” They further argued that the EPA’s own regulations may not be strong enough to adequately protect human health, the TCEQ should not take further liberties when it comes to protecting Texans.

## Response 6

The commission notes that there is continued regulatory uncertainty regarding the definition of WOTUS . On August 30, 2021 the U.S. District Court for the District of Arizona vacated and remanded the 2020 WOTUS definition, Due to this decision, EPA and U.S. Army Corps of Engineers announced that they are now interpreting WOTUS consistent with the pre-2015 regulatory regime until further notice. EPA and the Corps have also indicated that they are moving forward with adopting a new WOTUS definition. In light of these developments, in response to this comment the general permit was revised to replace the WOTUS definition with a reference to 40 CFR §120.2.

## Comment 7

The Sierra Club and Environment Texas stated that pesticides pose risks to aquatic wildlife and that the EPA does not have complete Aquatic Life Benchmarks and ambient water quality criteria for pesticides. Furthermore, they argued that of EPA’s Aquatic Life Benchmarks and Ecological Risk Assessments for Registered Pesticides, 313 of the registered pesticides and/or their degradates are lacking ambient water quality criteria for chronic toxicity to fish, and 302 registered pesticides and/or their degradates are lacking ambient water quality criteria for chronic toxicity to invertebrates. These numbers are both higher if they include values that are derived and either overestimate or underestimate toxicity. They therefore claim that this makes widespread use of any of those pesticides inappropriate for a general permit.

The Sierra Club and Environment Texas suggested that pesticide applications for pesticides that lack EPA ambient water quality criteria for chronic toxicity to wildlife be processed through individual TPDES permits rather than under this general permit.

The Sierra Club and Environment Texas commented further that the TCEQ should eliminate the permit’s stratified system so that operators using chemicals which are known to be toxic to aquatic life may be flagged in an NOI and required to apply for an individual permit.

## Response 7

In the October 2019 report on restricted use product, there were 1,136 pesticide products listed (see Restricted Use Product Summary Report (October 24, 2019)). In the EPA document titled “Aquatic Life Benchmarks and Ecological Risk Assessments for Registered Pesticides | Pesticide Science and Assessing Pesticide Risks | US EPA”, there are over 643 pesticides and pesticides degradates that are listed, which includes a September 2020 update. Research studies are ongoing during registration or re-registration of pesticides to identify and update the FIFRA label or eliminate certain pesticides if they are found to pose a risk to human health or the environment. Adequate records are kept and are made available to the public. The public visit the following US EPA websites for information:

<https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/aquatic-life-benchmarks-and-ecological-risk> and

<https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/aquatic-life-benchmarks-and-ecological-risk#benchmarks>.

Specific pesticides are not included in the NOI, but they are required to be documented in the onsite Pesticide Discharge Management Plan (PDMP). 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.

Regarding the issuance of an individual permit (IP) instead of a general permit (GP), TWC gives the TCEQ the authority to issue GPs 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. The TCEQ chose the discharges from pesticide applications to be covered under a general permit because they are a category of point sources with similar characteristics (same kinds of effluent limitations, permit conditions, and discharge the same types of pollutants).

Part II.C. of the PGP clarifies under what conditions an alternative or individual permit will be required. The operator must apply for and receive an individual permit or other applicable general permit authorization prior to discharging.

## Comment 8

The Sierra Club and Environment Texas commented that chemical contaminants such as pesticides and herbicides contribute to water quality impairment and are a major reason for the decline of freshwater mussel species such as the Texas Hornshell Mussel which have been classified by the U.S. Fish and Wildlife Service as an endangered species.

## Response 8

The Federal pesticide law (the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)) provides for several types of registrations, and state, tribes or territories can further place restrictions on some pesticides within their jurisdiction. A license from the Texas Department of Agriculture will be required to purchase any RUP.

The PGP requires that pesticide application be carried out by a certified pesticide applicator if the pesticide is classified as a RUP, SLU pesticide, or RH. Pesticides that will be applied directly to surface water must be registered by EPA for aquatic use.

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

"Applicators shall demonstrate practical knowledge of the secondary effects which can be caused by improper application rates, incorrect formulations, and faulty application of restricted pesticides used in this category. They shall demonstrate practical knowledge of various water use situations and the potential of downstream effects. Further, they must have practical knowledge concerning potential pesticide effects on plants, fish, birds, beneficial insects and other organisms which may be present in aquatic environments. These applicators shall demonstrate practical knowledge of the principles of limited area application.” (EPA document titled “Standards for Certification of Pesticide Applicators from the EPA National Service Center for Environmental Publications”). See 40 CFR §171.4.

The PGP addresses potential pollutant impacts through non-numeric effluent limitations because setting specific water quality-based effluent limitations is not feasible. The provisions that are expected to result in compliance with water quality criteria and protection of attainable water quality include technology-based effluent limitations set forth in Part III.B.1 of the PGP.

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:
4. 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
5. In situations or locations where larvicide use is not practicable or feasible for efficacious control, use adulticides when adult action thresholds have been met.
6. For Area-Wide Pest and Forest Canopy Pest Controls: Use pesticides against the most susceptible developmental stage.

Moreover, the PGP addresses water quality based effluent limitations through compliance with the other terms and conditions, and the narrative effluent limitations in Part III.B.2 and Part IV.B.2 of the permit, which state:

1. 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.
2. 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.
3. The Executive Director may require a permittee to obtain coverage under an individual permit as necessary to protect water quality.

## Comment 9

Sierra Club and Environment Texas commented that Permethrin is classified as a RUP by the EPA for wide area applications, except for wide area mosquito adulticide use. They further stated Permethrin is highly toxic to freshwater aquatic organisms, but when it is used in mosquito abatement products, the EPA’s aquatic buffer zone restriction is removed. They argue most public health models produced results exceeding the acute risk quotient for freshwater fish, invertebrates, and sediment organisms. The commenters stated that this creates a situation where protective measures are removed just when they are crucially needed and highly toxic chemicals may be discharged into the very ecosystems they harm. They further stated that scenarios like this make it all the more important for the TCEQ to treat its monitoring responsibilities with gravity.

## Response 9

The PGP requires that pesticide applications be conducted in accordance with state law and the pesticide’s FIFRA label. All RUP users must be certified according to the provisions of the act (FIFRA) or that they work under the supervision of a certified applicator. In addition, the pesticide applicators must comply with the licensing requirements from the Texas Department of Agriculture (TDA).

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.

The PGP is complaint driven, and the TCEQ investigates complaints and conducts comprehensive compliance investigation at regulated facilities. If the public is concerned about potential violations of the PGP, the public may contact TCEQ's statewide toll-free number at 1-888-777-3186 or may file a complaint on line at <https://www.tceq.texas.gov/assets/public/compliance/monops/complaints/complaints.html>. The TCEQ's regional staff investigates public complaints and the agency takes appropriate enforcement action if the investigator documents a violation.

## Comment 10

The Sierra Club and Environment Texas commented that neonicotinoids are extremely damaging to aquatic life. They stated that Nithiazine, a neonicotinoid, is one of the many pesticides that lacks chronic toxicity criteria for both invertebrates and fish, and therefore TCEQ should ban the use of neonicotinoids or designate it as a RUP.

According to the Sierra Club and Environment Texas, the National Academy of Sciences recently published a study showing that neonics pose a broad risk to biodiversity that spreads through food webs from plants to pests to their natural enemies. They claim that while neonics are widely accepted as contributing to colony collapse disorder in honeybees and several neonics have been banned in outdoor use by the European Union for this reason, there is a growing body of proof that these insecticides are toxic to aquatic ecosystems. They went on to state that as these pesticides are already known to harm non-target plants and animals and are being linked more closely to declines in aquatic biodiversity, TCEQ should take all steps necessary to ban the use of neonicotinoids. They argued that they should be classified as RUP.

## Response 10

The EPA is responsible for registering pesticide under the statutory framework of FIFRA based on scientific studies showing that they can be used without posing unreasonable risks to people or the environment.

The TDA licenses pesticide applicators and dealers, regulates pesticide storage facilities, investigates cases of human or animal exposure to pesticides, collects waste pesticides, and monitors agricultural pesticides.

The TCEQ is the regulatory agency responsible for enforcing the CWA in Texas. TCEQ conducts focused groundwater monitoring for pesticides and conducts investigations of surface water and groundwater contamination suspected from pesticides.

The TCEQ cannot ban the use of any pesticide product; only the EPA under FIFRA can ban or not re-register a product.

On January 30, 2020, the EPA released proposed interim decisions for neonicotinoids. The EPA proposed:

* “management measures to help keep pesticides on the intended target and reduce the amount used on crops associated with potential ecological risks;
* requiring the use of additional personal protective equipment to address potential occupational risks;
* restrictions on when pesticides can be applied to blooming crops in order to limit exposure to bees;
* language on the label that advises homeowners not to use neonicotinoid products; and
* cancelling spray uses of imidacloprid on residential turf under the Food Quality Protection Act (FQPA) due to health concerns.
* Additionally, the agency is working with industry on developing and implementing stewardship and best management practices.”

Please see the following EPA website for details:

[EPA Releases Proposed Interim Decisions for Neonicotinoids | US EPA](https://www.epa.gov/pesticides/epa-releases-proposed-interim-decisions-neonicotinoids)

For the EPA’s effort to protect bees and other pollinators from pesticide exposure, please visit the following EPA website at:

[EPA Actions to Protect Pollinators | US EPA](https://www.epa.gov/pollinator-protection/epa-actions-protect-pollinators).

## Comment 11

The Sierra Club and Environment Texas stated the use patterns outlined in the draft PGP raise environmental justice concerns that should be further investigated.

According to the Commenters, disease-carrying mosquitoes are often found in urban areas and in low lands that flood frequently, where low-income housing is usually found in the US. They concluded therefore, that disease-carrying mosquitoes are likely to be found in land that floods frequently, and that low-income communities have a higher likelihood of being exposed to the pesticides discharge from aerial application. They implied that the potential effects from insufficient thresholds or reporting requirements would likely disproportionately affect lower-income communities.

## Response 11

The TCEQ complies with the federal regulations codified at 40 Code of Federal Regulations Parts 5 and 7 that relates to environmental justice. TCEQ addresses environmental equity (also known as environmental justice) concerns for all Texans, including low-income and minority communities across the state, so that all Texans can fully participate in decision-making processes and enjoy the benefits of the TCEQ environmental programs.

The TCEQ does not allow discrimination on the basis of race, color, national origin, sex, disability, age, sexual orientation, veteran status, or retaliation in the administration of our programs or activities, as required by federal and state laws and regulations.

You may visit the TCEQ environmental justice web page for additional information at: <https://www.tceq.texas.gov/agency/decisions/hearings/envequ.html>.

The public are encouraged to report a concern about discrimination at the following the TCEQ website:

<https://www.tceq.texas.gov/agency/decisions/hearings/envequ.html#report>.

## Comment 12

The Sierra Club and Environment Texas concluded that the TCEQ should adopt more stringent thresholds regarding NOI requirements based on pesticide use patterns to be consistent with and as protective as the EPA PGP; adopt more stringent reporting requirements; and evaluate Environmental Justice concerns raised in the comment letters.

## Response 12

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

The permit requirement in Part II.B.8 includes provision for listed endangered or threatened species. Pesticide applicators must comply with the EPA endangered species bulletin if the treatment area(s) coincides with a designated pesticide use limitation area and follow the FIFRA label instruction if it includes requirements for endangered or threatened species.

Part III.B.1.(a) of the PGP includes the technology-based effluent limitation that permittees must comply with to minimize pesticide discharges into waters of the U.S. In accordance with state law and the pesticide label, permittees should 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.

For all use patterns, permittees are required to develop and implement written integrated pest management practices (IPM) to comply with the non-numeric effluent limitations in the permit for each treatment area and pesticide use pattern. Part III.B.1.(b) of the PGP lists the content of the IPM for each use pattern, which includes identification of the problem, pest management strategy and pesticide use. Pesticide application is the last resort of the pest management strategy, and if selected, the permittee can only apply if the action threshold has been met or disease is present. The permittee must also reduce impact on the environment and non-target organisms by evaluating the restrictions, application timing, and application methods.

For Mosquito and Other Insect Pests Control, permittees are required to identify known breeding sites for source reduction, larval control, and habitat management. Larvicide is a preferred pest control when the larva action threshold has been met where practicable and feasible for efficacious control; and the use of adulticide or locations where larvicide use is not practicable or feasible for efficacious control.

For Area-Wide Pest Control and Forest Canopy Pest Control Use patterns, permittees are required to identify current distribution of the target pest and assess potential distribution in the absence of control measures, as well as develop a species-specific control strategy based on developmental and behavioral considerations for each target pest. Permittees must use pesticides against the most susceptible developmental stage.

For Vegetation and Algae Pest Control and Animal Pest Control, permittees must identify possible factors causing or contributing to the target pest problem (e.g., nutrients, invasive species, etc.); 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.

For Vegetation and Algae Pest Control and Animal Pest Control, permittees must identify possible factors causing or contributing to the target pest problem (e.g., nutrients, invasive species, etc.); and 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.

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

# Changes to the Permit

The permit was revised in response to the public comments, specifically the definition of WOTUS.