

FACT SHEET INFORMATION FOR WPDES GENERAL PERMITS FOR PESTICIDE POLLUTANT DISCHARGES

Internet links updated January 31, 2013

SUMMARY

The goal of the Clean Water Act and Section 283 of the Wisconsin Statutes is to maintain and restore the chemical, physical, and biological integrity of waters of the state. These laws prohibit the discharge any pollutant from a point source into waters of the state unless the discharge is authorized under a Wisconsin Pollutant Discharge Elimination System (**WPDES**) permit. Four WPDES generalized permits have been issued to authorize point source discharges of a biological pollutant, an excess chemical pollutant, and a residual chemical pollutant directly into waters of the state as defined in s. 283.01(20) of the Wis. Statutes. Each of these general permits contains best management practices designed to minimize pollutant discharges to waters of the state. The proposed general permits also require that Wisconsin aquatic life and human health water quality standards be met for a biological pollutant, excess chemical pollutant discharge outside of the treatment area and any chemical pollutant residual remaining after the treatment period is completed.

Pesticide pollutant WPDES permit information is available on the Department of Natural Resources internet site at <http://dnr.wi.gov/topic/wastewater/AquaticPesticides.html>. At the bottom of that internet page, there is a link to register with the free GovDelivery service to be notified of significant updates for this topic. The final proposed WPDES pesticide general permits, fact sheet, public comment summary, and notice of intent (NOI) are available on this site. These documents have been updated based on comments received during the public comment period from January 28 to April 7, 2011. Public informational hearings on this topic were held in Green Bay (March 2nd) and Madison (March 4th). After review of comments received, the Department issued the 4 pesticide pollutant discharge general permits to be effective on November 1, 2011.

NEED FOR CLEAN WATER ACT PERMITS FOR PESTICIDE POLLUTANT DISCHARGES

The labeling and use of pesticides in the United States is regulated by the Federal Insecticide, Fungicide and Rodenticide Act (**FIFRA**). The requirements of FIFRA, the Wis. DATCP pesticide registration & licensing program, and aquatic organism management program specified in Ch. NR 107 Wis. Adm. Code continue to regulate the use of pesticides in Wisconsin. However, on January 7, 2009, the Federal 6th Circuit Court of Appeals ruled in National Cotton Council, et al. v. the U.S. Environmental Protection Agency (**EPA**) that in addition to FIFRA, Clean Water Act permits are also required for pest control activities that result in: (1) a biological pollutant discharge, (2) an excess chemical pollutant discharge into waters of the state located beyond the treatment area boundary, and/or (3) a chemical pollutant residue that remains in waters of the state after completion of the pesticide treatment period. An excess or residual chemical pollutant from a pest control treatment project could include, but not be limited to: a pesticide active or inert ingredient, a pesticide degradation by-product, a chemical applied to enhance pesticide effectiveness, and a non-pesticide chemical applied to control a problem species. The Court has granted a delay, until October 31, 2011, to allow the US states and EPA time to provide permit coverage to pesticide pollutant dischargers after that date. For additional information regarding the legal history of Clean Water Act applicability to water pollutant discharges from pest control activities, refer to pages 2-6 of the June 2010 Fact Sheet for the proposed EPA NPDES Pesticides General Permit.

WISCONSIN PESTICIDE POLLUTANT GENERAL PERMITS

Since the Dept. of Natural Resources (the **Department**) implements the Clean Water Act permit program in Wisconsin, 4 general WPDES permits have been issued to authorize a point source discharge of a biological pollutant, an excess chemical pollutant, and a residual chemical pollutant directly into waters of the state as defined in s. 283.01(20) of the Wis. Statutes. These general permits address pollutant discharges where the Wisconsin Dept. of Trade & Consumer Protection (**DATCP**) registration and the EPA pesticide label authorizes the pesticide to be applied either directly or incidentally into water.

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

- Nuisance or Invasive Aquatic Plants, Algae & Bacteria-Permit No. WI-0064556-1
- Detrimental or Invasive Aquatic Animals - Permit No. WI-0064564-1
- Forest Canopy Pests - Permit No. WI-0064572-1
- Mosquitoes or Other Flying Insects - Permit No. WI-0064581-1

The proposed general WPDES discharge permits have two primary requirements: (1) that the permittee evaluate a range of pest management options that can minimize the discharge of excess or residual pollutants to the aquatic environment, and (2) that state aquatic life and human health water quality standards be met for any excess pollutant discharge outside of the treatment zone and any pollutant residual remaining after the treatment period is completed. After January 1, 2013, treatment operations of greater than 20 acres of waters of the state or 20 linear miles of shoreline would be required to document a summary of the integrated pest management decisions and submit an annual report.

WISCONSIN GENERAL PERMITS

Wisconsin General Permits (**GP**) are designed to cover discharges from a class of operations or activities that are similar in nature. When a generalized discharge permit is issued, activities within the category that meet the permit's applicability criteria may be covered under a GP. WPDES General Permits currently exist for pollutant discharges from approximately 20 categories of industrial, municipal, and commercial activities, such as dredging, nonmetallic mining, non-contact cooling, water treatment, etc. Wisconsin also has general WPDES permits for industrial and municipal storm water discharges. An internet page containing the current industrial and municipal general permit documents can be found by searching for "Wisconsin general WPDES permits" in an internet search engine.

When an operation provides information to the Department in a Notice of Intent (**NOI**) that meets the applicability criteria of the GP, the Department will provide written confirmation that the facility's pollutant discharge is appropriately regulated by the general permit. This confirmation normally includes an internet link for downloading a copy of the permit and any necessary supporting documents. The permittee contact, location, and pollutant discharge information would be added to the database of WPDES permittees. This permittee specific information would allow the Department, to review the proposed activity, to provide training to permittees on WPDES requirements (such as standards for high quality waters and endangered species protections), and allow follow-up by the Department as necessary.

A pesticide pollutant discharge general permit can be used to supplement another WPDES permit that does not address pesticide pollutant discharges. An example would be coverage of a municipal storm water utility under the flying insect (mosquito) pesticide pollutant general permit in addition to a municipal storm water general permit designed to control sediment pollution. This would require best management practices for conventional pollutants, such as suspended solids, under the storm water permit and pollutant minimization for mosquito larvae control in storm water storage ponds under the flying insect general permit. Another example would be a facility that currently has an industrial site specific permit for process wastewater may also request that an aquatic plant control pesticide discharge from a cooling water lagoon be covered under a general permit. A facility can request (during the site specific permit reissuance process) that a single WPDES permit address all water pollutant discharges from the facility.

ACTIVITIES COVERED UNDER THE PEST CONTROL GENERAL PERMITS

Section 283 of the Wisconsin Statutes and the Clean Water Act require a WPDES permit for the discharge of any pollutant from a “point source” into waters of the state. The National Cotton Council v. EPA decision indicated that a pesticide application nozzle or mixer outlet could be considered a point source when this activity results in an excess or residual pollutant discharge. The 4 general WPDES permits described in this fact sheet apply when a control activity for an organism listed in the permit results in a biological pollutant discharge, an excess chemical pollutant discharge beyond the treatment area boundary, or a chemical residual pollutant discharge that remains after the treatment period. These pollutant discharges include chemical pollutants for non-pesticide control activities (such as alum or dyes for algae control through nutrient inactivation or shading) to be consistent with the pollutant discharge concept in the National Cotton Council decision. The pest treatment area would be delineated by the permittee based on the uses or values being impaired by the organism targeted for control. The treatment area map should also identify any needed restriction necessary to protect non-target sensitive, threatened or endangered organisms, such as those specified in s. NR 107.05(3) Wis. Adm. Code. The treatment period would normally extend through the time the pesticide or chemical treatment continues to be effective on the target species or population.

The control activities addressed by these general permits are grouped as follows: nuisance or invasive aquatic plants (which include algae, bacteria and viruses), detrimental or invasive aquatic animals, forest canopy pests, and mosquitoes & other flying insects. As specified in s. 283.01(20), Wis. Stats., waters of the state include those portions of Lake Michigan and Lake Superior within the boundaries of Wisconsin, all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, watercourses, drainage systems and other surface water or groundwater, natural or artificial, public or private, within the state or its jurisdiction, except those waters which are entirely confined and retained completely upon the property of a person. Waters of the state generally include wetland areas below the ordinary high water mark or level, even when these areas may be temporarily dry.

CATEGORIES NOT INCLUDED UNDER THESE GENERAL PERMITS

There are several categories of control activities that would normally **not** be included within the applicability criteria for these Wisconsin general discharge permits. These general permits do not apply to **non-point source discharges**. Also, the Clean Water Act specifically exempts irrigation return flows and agricultural storm water runoff from the need for WPDES permit coverage. These general permits do not change these exclusions in any way. In Wisconsin, DATCP provides training and registration of pesticide applicators for pesticides application control to minimize pesticide movement into non-point storm water runoff.

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

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

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

ACTIVITIES EXCLUDED FROM THESE GENERAL PERMITS

Point source pollutant discharges to **outstanding and exceptional resource waters** related to control activities for **native Wisconsin species** are not authorized by this permit. As is commonly specified for other Wisconsin general permits, an individual, site specific WPDES permit would be needed in this case to evaluate and regulate any potential pollutant discharge to these high quality waters. An entity requesting to discharge a pesticide in this case should submit the individual permit application at least 6 months prior to the scheduled activity. Outstanding or exceptional resource waters are listed in ss. NR 102.10 and 102.11, Wis. Adm. Code. The following link can be used to determine if a facility discharges to an outstanding or exceptional resource water: <http://dnr.wi.gov/topic/SurfaceWater/orwerw.html> .

An activity would be excluded from coverage under these general permits when there would be a significant adverse impact on wetlands resulting in the **wetland protection** requirements of ch. NR 103, Wis. Adm. Code not being met. For discharges that have a potential to have a significant negative impact on wetlands, the activity would need to submit information that allows the Department to determine if a pollutant discharge meets NR 103 requirements.

This permit is not applicable to pest control activity by a tribal entity that would have an excess or residual pesticide pollutant discharge within **Indian Country** (reservation or tribal lands). The US Environmental Protection Agency or a delegated tribe regulates pollutant discharges by tribal entities within Indian Country. If there is a question regarding WPDES permit coverage for non-Indian pollutant discharges within Indian Country, contact a legal advisor or the Wis. Bureau of Water Quality Management at (608) 267-7694.

The Department is implementing plans throughout the state to reduce the pollutant loadings as much as possible to **303(d) listed impaired water bodies**. These general permits are not applicable to a pest control activity that would have a pollutant discharge to waters of the state identified as impaired by that pollutant. Impaired waters are those that have been identified by Wisconsin pursuant to Section 303(d) of

the Clean Water Act as not meeting applicable State water quality standards. Impaired waters include both waters with State and Federally approved Total Maximum Daily Loads (TMDLs) and impaired waters for which the State and EPA have not yet approved a TMDL. At the issuance date of this permit, there are no Wisconsin waters identified as impaired for a pesticide. The section 303(d) list of Wisconsin impaired water bodies may be obtained by contacting the Department or by searching for the section 303(d) list on the Department's Internet site. The Department updates the section 303(d) list approximately every two years. The updated list is effective upon approval by EPA. The current link to the section 303(d) list is: <http://dnr.wi.gov/topic/impairedwaters/> .

APPLYING FOR COVERAGE UNDER THESE GENERAL PERMITS

A pesticide contract applicator or the sponsor of the pest control activity may apply for coverage under these general pollutant discharge permits. The Department estimates that if pesticide contract applicators would be the primary entities covered under these pesticide pollutant discharge general permits, there would be approximately 400-500 permittees over the 5 year permit life. The applicator of the aquatic pesticide would typically be registered and trained in pesticide control practices. The applicator directly controls where the pesticide spray is applied. A contract applicator can apply for 5 year coverage under a general pollutant discharge permit for treatment projects conducted within a large area of Wisconsin. In this case, the applicator should develop a generic procedure for applying the pest management and pollutant minimization concepts of the permit. That general procedure would then be used to create a brief (1 to 2 page) summary document that contains the pest management and pollutant minimization decisions specific to each treatment project. In cases when the pest treatment operation does not hire a contract applicator that has multi-site WPDES permit coverage, the activity sponsor, such as a lake association or a mosquito control public health department, can apply for WPDES permit coverage.

Wisconsin is developing an internet based system that would allow an aquatic pest control operation to apply for a Wisconsin Ch. NR 107 aquatic organism management permit and Clean Water Act (WPDES) general permit coverage using one application. This electronic application system should be operational in late January to February 2012. Also, a paper WPDES Notice of Intent (NOI) will be available for download from the Department "WPDES pesticide pollutant general permit" internet page to allow a permittee to choose to mail a completed paper NOI to the Department.

BASIS FOR THE PROPOSED WISCONSIN PESTICIDE POLLUTANT DISCHARGE PERMITS

These 4 Wisconsin general permits are designed to regulate a point source pollutant discharge directly to waters of the state from control activities for aquatic animals, flying insect pests, forest canopy pests and aquatic plants (which include algae, wetland plants, bacteria & viruses). Efforts have been made to have these new general permits be as consistent as possible with other Wis. WPDES general permits and the existing NR 107, Wis. Adm. Code aquatic plant management permit program. For example, the 10 acre threshold for documenting the pest management decision summary was based on the s. NR 107.04(3) size criteria for large aquatic plant management projects. [Note this threshold was increased to 20 acres based on public comments]. Since 1989, the Wisconsin Ch. NR 107 program has been issuing **use permits** for aquatic plant and larval mosquito management activities in waters of Wisconsin (with some exceptions for certain types of waters specified in s. NR 107.11). The court decision that triggered this nationwide effort for pesticide pollutant discharge permit coverage, Cotton Council, et al vs. EPA, was used to carefully describe the pollutant discharges to be addressed by a Clean Water Act permit. The treatment technology best management practices (AAM, IPM and APM) requirements of the Wisconsin permits are primarily based on the pest management concepts presented in the EPA NPDES pesticide pollutant discharge permit and fact sheet proposed in June 2010. Also, experience from other US states such as

Washington, California, and Maine that have had Clean Water Act general permits for pesticide pollutant discharges for several years, was utilized as a benchmark for the Wisconsin general discharge permits.

RATIONALE OF SPECIFIC PERMIT REQUIREMENTS

The Wisconsin pesticide pollutant general permits contain water quality-based requirements in parts 2.1 through 2.3 and technology-based best management practice requirements in parts 2.4 through 2.7.

WISCONSIN WATER QUALITY STANDARDS

The permit requires that a pollutant residue or discharge beyond the treatment area meet **surface water quality standards** contained in Chs. NR 102, 103, 104, 105, 106 and 207, Wisconsin Administrative Code. General surface water standards (NR 102.04) specify that pollutant discharges be controlled to prevent interference with public rights from toxic substances, objectionable deposits, floating or submerged material, and materials producing color, odor, taste or unsightliness. A pollutant discharge that results in an exceedence of any applicable numeric or narrative Wisconsin water quality standard is prohibited. The permits also require compliance with ground water standards contained in NR 140, Wis. Adm. Code; however, the EPA pesticide label would prevent the direct discharge of a pesticide to Wisconsin groundwater. Upon receipt of an NOI, the Department would evaluate any proposed new or increased pollutant discharge amount to insure the antidegradation requirements of NR 207 are met. Pesticide treatments that are continuing from previous years would not be considered a new discharge. In a case where significant lowering of water quality is proposed, the Department may require the permittee to evaluate a variety of options to insure that no significant lowering of water quality occurs in the receiving water, such as improved control of water movement beyond the treatment area, pesticide treatment timing to enhance degradation, reconsideration of the choice of the pesticide pollutant active ingredient, changes to reduce the pollutant discharge level, etc. In general, based on the data included in the California's and EPA's record for this pollutant discharge category, Wisconsin concurs with the EPA water quality limits evaluation (shown below) for this discharge category contained in page 72 of the fact sheet for the proposed Federal NPDES pesticide pollutant discharge permit:

EPA expects that compliance with the other conditions in the pesticide pollutant general permit (e.g., the technology-based limitations, corrective actions, etc.) will result in discharges that are controlled as necessary to meet applicable water quality standards based on the cumulative effect of the following factors, which are described in more detail below:

- (1) Under FIFRA, EPA evaluates risk associated with pesticides and mitigates unreasonable ecological risk. Compliance with FIFRA is assumed. (See Part III.1.5 of this EPA fact sheet.)
- (2) EPA evaluated national-scale ambient monitoring data, as well as the frequency of the identification of specific pesticides as the cause of water impairments, to assess whether pesticide residues are currently present in waters at levels that would exceed water quality standards. The monitoring data show that, in most samples, most pesticides were below ambient water quality criteria or benchmarks developed by EPA's Office of Pesticide Programs (OPP) as indicators of narrative water quality criteria. For the small number of pesticides found in monitoring data to be present above such benchmarks, the evaluation, as summarized in Appendices B and C of the EPA fact sheet, also documents risk mitigation actions taken by EPA (such as cancellation of pesticide uses) that EPA expects have reduced the levels of those pesticides in water.
- (3) Technology-based effluent limitations in the EPA proposed pesticide GP or state NPDES permit would provide further protections beyond compliance with existing FIFRA requirements.

(4) Biological pesticides discharged to waters, by regulatory definition, do not work through a toxic mode of action. For chemical pesticides, the discharges covered under this permit are the residues after the pesticide has performed its intended purpose. Thus, the residue will be no higher than, and in many instances, lower than, the concentration of the pesticide as applied.

(5) The PGP excludes pesticide applications that result in discharges of any pesticide to waters impaired for that pesticide.

If at any time the permittee or the Department determines that the discharge causes or contributes to an exceedence of a Wisconsin water quality standard, the permittee must take corrective actions as required in the “Duty to Mitigate” standard permit requirement and report the excursion to the Department as required in the “Permit Noncompliance Reporting” standard requirement. The Department may impose additional water quality based limitations in a site specific individual permit, if information in an NOI, a required report, or from other sources indicates that a pollutant discharge is not controlled as necessary to meet Wisconsin water quality standards. For additional information regarding the applicability of water quality standards to water pollutant discharges from pesticide treatment activities, refer to pages 71-80 of the June 2010 Fact Sheet for the proposed EPA NPDES Pesticides General Permit.

DISCHARGE OF OTHER (NON-PESTICIDE) CONTROL ADDITIVES OR PRODUCTS

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

INVASIVE SPECIES CONTROL IN OUTSTANDING OR EXCEPTIONAL WATER

Under part 2.3 of the permit, an invasive species control activity in an **outstanding or exceptional resource water** can be covered under a pesticide pollutant discharge general permit when quick action is needed to prevent establishment of an **invasive species** in the high quality receiving water. The colonization of an invasive species may have the potential to do great harm in a high quality aquatic ecosystem. When there is an invasive species emergency, the permittee, which in most cases would be a governmental entity, would need fast action to control an invasive species and could not wait 6 months for an individual WPDES permit to be drafted for the control activity. The detrimental or invasive species would need to be listed in s. NR 20.38 or ch. NR 40, Wis. Adm. Code. Ch. NR 40 can be quickly modified through an emergency action by the DNR board if needed. When this activity would result in a pollutant discharge to an outstanding resource water or an exceptional resource water (when there is no public health problem), the invasive species control activity would need to be managed so: (a) any biological pollutant discharge rapidly degrades or is neutralized to a non-detectable level, (b) any excess chemical pollutant discharge outside of the treatment area/transition zone shall not exceed the background concentration of the pollutant in the receiving water as specified in s. NR 102.10, Wis. Adm. Code, and (c) any chemical pollutant residual remaining after completion of the treatment period shall not exceed the background concentration of the pollutant in the receiving water as specified in s. NR 102.10. Section NR 207.03 requires that pollutant discharges to outstanding resource waters to not exceed background levels of the pollutant in the high quality water. The same standard applies to exceptional waters, except when there is a public health problem. The pesticide pollutant background level in these high quality receiving waters is expected to be non-detectable, although the permittee could supply background concentration sample results for any pollutant parameter that would be contained in the discharge.

TREATMENT TECHNOLOGY BASED BEST MANAGEMENT PRACTICES

Due to the court decision timeline, EPA has not completed its evaluation of pest control activities nationwide with discharges to waters of the US to develop the best available treatment (**BAT**) technology, economically achievable standard for this category. In this case, the Department is required to establish BAT based on NR 220, Wis. Adm. Code. Although the Federal pesticide discharge general NPDES permit is not directly applicable to Wisconsin, the treatment technology based provisions of the proposed Federal pesticide general permit have been utilized as the basis for the Wisconsin Best Available Technology (BAT) management practices contained in the proposed WPDES general permits.

The technology based requirements in parts 2.4 through 2.7 of the Wisconsin pesticide pollutant discharge general permits require the permittee to control the pesticide application, to evaluate pest management options, and to minimize discharge of pollutants to waters of the state. Consistent with the treatment technology requirements of the Clean Water Act, the term “minimize” means to reduce and/or eliminate pollutant discharges to waters of the state through the use of technologically available and economically achievable control measures for the class of point sources covered under this permit taking into account any site specific unique factors. The permittee must minimize the discharge of pollutants by properly maintaining, repairing, calibrating and cleaning pesticide application equipment. Also, the permittee shall implement pest management practices which involve: (1) identifying the characteristics of the pest problem; (2) assessing effective pest management options; and (3) minimizing the pollutant discharge to waters of the state as much as possible. The permit specifies items that must be evaluated to minimize the pesticide pollutant discharge for the specific pest control project. For additional information regarding the basis for treatment technology best management practices contained in parts 2.4 through 2.7 of the Wisconsin general permits, refer to pages 34-71 of the June 2010 Fact Sheet for the proposed EPA NPDES Pesticides General Permit.

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

DISCHARGE OF OTHER PESTICIDE ACTIVE INGREDIENTS

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

Also, a permittee may discharge a pesticide active ingredient not listed in the permit or an active ingredient in a pesticide not labeled for use in a location appropriate to aquatic animal management on a limited basis in the context of a Special Local Need (SLN) (Section 24c) registration granted by the Wis. Department of Agriculture, Trade and Consumer Protection under s. ATCP 29.72 or a Section 18 emergency exemption granted by EPA under 40 CFR 166. The permittee may also discharge a pesticide active ingredient not listed in the general WPDES permit if use of the active ingredient is approved by the Department in the permit issued under the authority of Ch. NR 107 or 109, Wisconsin Administrative Code.

ADDITIONAL REQUIREMENTS FOR PEST CONTROL POLLUTANT DISCHARGES

The general permit sections after part 2 and before the Documentation and Reporting permit section contain additional requirements for control of specific types of pests. These additional requirement sections includes a list of pesticide active ingredients or treatment biocides currently in use and likely to have a pollutant discharge to waters of the state. The pesticide active ingredients or biocides listed in the general permits can feasibly be degraded, neutralized or controlled to the extent necessary for any excess or residual pollutant level to meet Wisconsin water quality standards. Dimilin is an example of an active ingredient that is excluded from coverage under these general permits due to high potential to negatively impact aquatic life. The label for this product states that it should not be discharged into water and spray incidental deposition should be avoided, however it is not clear from the label that discharge of the product into water is prohibited. A permittee may request authorization to discharge a pesticide active ingredient not listed in the general permit by requesting the general permit be modified to include an additional active ingredient substance, or a permittee may apply for a site specific WPDES permit to authorize the discharge of an alternate pesticide active ingredient.

In the future, the Department plans on creating supplemental guidance for these permits that summarizes in a simplified way the numeric water quality standards that need to be met for any excess or residual chemical pollutant discharge from these activities. California has done a significant amount of work in this area. These standards could be developed for products containing the pesticide active ingredients, other pollutants (such as alum), and non-pesticide additives (see part 2.2) allowed to be discharged under the general permits. Based on the pollutant discharges allowed under these permits, the additional guidance would summarize any applicable numeric water quality standards based on NR 105 criteria and available LC/EC 50 data for pesticide products. This information would help clarify the amount of pollutant control needed to prevent an excess or residual chemical pollutant discharge from exceeding a Wisconsin water quality standard.

Since pesticide active ingredient substances have a lengthy registration and approval process with EPA under the FIFRA law, there is normally significant lead time before a new pesticide active ingredient is approved for use in water. The Washington state aquatic pesticide discharge general permit was not modified to add an active ingredient substance during the last 5 years. When a new pesticide active ingredient is approved by EPA and registered for use in Wisconsin (with DATCP), the Department may modify or reissue the general permit to include the additional registered active ingredient.

The Department has proposed a **monitoring requirement** for an excess or residual pollutant discharge when bromine, chlorine, pH adjustment or heat is used to control invasive mussels or bacteria. These sample results would be used to show that the pollutant minimization management practices are effective in meeting Wisconsin water quality standards. An annual monitoring sample is also required when certain chemical larvicides or adulticides for mosquito or other flying insect control have an excess or residual pollutant discharge into waters of the state. The specified chemical pesticides with a monitoring requirement have potential for harm to non-target aquatic life located outside the treatment area; the once per year monitoring requirement would generate data to evaluate whether an excess or residual chemical pesticide levels have a potential to exceed Wisconsin water quality standards. The Department may waive this requirement in writing based on a demonstration that representative monitoring will be completed by a group of permittees or that such receiving water testing is not possible due to sample collection, analysis method, public health emergency, or legal issues that prevent collection of valid sample results.

INTEGRATED PEST MANAGEMENT DECISION SUMMARY

The general permits require that an aquatic plant, aquatic animal or integrated pest (flying insect or forest canopy) **management decision summary** be retained by the permittee when the cumulative annual treatment area exceeds 20 acres of waters of the state or 20 linear mile of shoreline. Pest treatment operations covered under the general permits are required to implement the integrated pest management practice requirements of parts 2.4 through 2.7 of the general permits. Facilities with a treatment area greater than the 20 acres (in waters of the state) or 20 linear miles of shoreline are required to retain a integrated pest management decision summary document at a location where it can be available for review by Department staff or members of the public. If a permittee's office is not staffed during normal business hours, the permittee needs to provide a copy of the decision summary for review no later than 5 days after any request to review the plan. The decision summary shall be updated when there are significant changes to the treatment area, target species, or pest control products used. If it is not possible to document the decision summary prior to a pesticide application related to a government declared invasive species emergency or public health emergency, the permittee needs to document the decision summary within 90 days after the emergency is declared.

The Department has allowed a **delay until after January 1, 2013**, for the decision summary document requirement. This should allow all permittees covered under the general permits time to evaluate the treatment technology management practices and develop a format for a brief decision summary document for control activities with pesticide pollutant discharges during the 2012 treatment season.

The primary objective of the aquatic plant, aquatic animal, and integrated pest management decision summary is to document the decision process of where, when, and how the control activity is implemented within a permittee's site specific treatment area, to minimize the discharge of excess or residual chemical pollutants and biological pollutants to waters of Wisconsin, and to describe the actions taken to ensure discharges from the control activities do not cause or contribute to a violation of Wisconsin water quality standards. The decision summary management plans should briefly show the results of implementing the best management practices (parts 2.4 through 2.7 of the permits) for the treatment specific to the site and pest treatment situation. The general permits contain a list of items that, at a minimum, should be addressed in the integrated pest management decision summary document. For items that do not apply to the specific treatment project, the permittee can indicate N/A. The decision summary document can be brief, but the document should confirm how the permittee addressed each of the IPM items for the specific treatment project.

For pollutant discharges after January 1, 2014, a permittee with an annual total treatment area that exceeds 20 acres or 20 linear mile of shoreline is required to certify, in writing, to the Department that, the operation has implemented a process to produce an integrated pest management decision summary document that meets the requirements of the general permit. A copy of the **certification**, showing the date mailed to the Department, must be retained as part of the WPDES permit documentation.

When the treatment area is confined to a private pond (as defined in NR 107.11(3)(a), Wis. Adm. Code) or wetland area located entirely within the property boundaries of the permittee, there is no public access during the treatment period, and the permittee can control any overflow to prevent discharge of the pesticide beyond the treatment area, the permittee is **exempt** from the decision summary, the written certification, and the reporting requirements of the general permits. A permittee meeting these criteria are expected to have a low potential for any excess or residual pollutant level to exceed state water quality standards. This exemption applies to private ponds that have an overflow to waters of the state during some times of the year. Private ponds whose water is completely retained (all year) on a private owners property are not included in the waters of the state definition.

ANNUAL REPORTING

Except for exempted activities, a permittee is required to submit an annual report to the DNR Water Quality Program, by February 15th for a discharge during the previous year, that summarizes the pollutant discharge information for the year. During one year of the permit (2014 or later), the annual report should contain a signed certification statement that applicable integrated pest management decision documents have been completed as required. The summary of the annual report information should include the: permittee name, treatment area size and location (GPS Lat/Long preferred), duration of the treatment period, target species name, control product name & amounts applied, applicator names, any adverse conditions noted/corrective actions taken, and any pollutant testing results for the previous calendar year. Either a Department Ch. NR 107 Wis. Adm. Code monitoring form may be used to submit the reporting information, or an alternate report format (such a spreadsheet table) may be used that clearly shows the reporting information collected during the previous calendar year.

The annual report may be submitted to the office identified in the document granting coverage under this permit or it may be submitted to the Department of Natural Resources Regional Headquarters office. Control activities covered under this permit that have a pollutant discharge in multiple locations during the year may submit the annual report information, including the sites and counties where the control activities took place, to the Headquarters of the Department Region in which the control activities were primarily located. The permittee shall report a zero discharge for a year when there have been no pollutant discharges under this permit related to pest control activities.

STANDARD REQUIREMENTS

The "Standard Requirements" are a group of requirements from ss. NR 205.07(1) and NR 205.07(3), Wis. Adm. Code that are included by reference in these WPDES permits. An exception is s. NR 205.07(1)(n), which does not apply to facilities covered under general permits. Selected s. NR 205.07 requirements are listed in the permit for the convenience of the permittee, such as: spill reporting, duty to mitigate, non-compliance reporting, rights to inspect, records retention, etc. The permittee shall comply with these requirements.

CONTRIBUTORS

The following individuals were helpful in drafting these pesticide pollutant discharge general permits: Rick Graham, Matt Sunseri, and Chris Lettau of the Wis. DATCP, Tim Asplund and Bob Wakeman of

the Wis. NR 107 aquatic plant management program, Paul Cunningham of the Wis. fisheries management program, Mike Fodale of the US Fish & Wildlife Sea Lamprey control program, Andrea Diss-Torrance and Bill Mcnee of the Wis. gypsy moth suppression program, Diep Hoang Johnson of the Wisconsin Division of Health, and Phil Clayton of Wisconsin Lake and Pond Resources.

The general permits are proposed to expire on September 30, 2016.

Respectfully submitted,

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Bureau of Watershed Management
Wis. Department of Natural Resources