

# NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM GENERAL PERMIT

**DISCHARGE AUTHORIZED:** DISCHARGES FROM THE APPLICATION OF PESTICIDES

**AREA OF COVERAGE:** THE STATE OF ALABAMA

**PERMIT NUMBER:** ALG870000

**RECEIVING WATERS:** ALL WATERS OF THE STATE OF ALABAMA

*In accordance with and subject to the provisions of the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§1251-1388 (the "FWPCA"), the Alabama Water Pollution Control Act, as amended, **Code of Alabama 1975**, §§ 22-22-1 to 22-22-14 (the "AWPCA"), the Alabama Environmental Management Act, as amended, **Code of Alabama 1975**, §§22-22A-1 to 22-22A-17, and rules and regulations adopted thereunder, and subject further to the terms and conditions set forth in this permit, the Permittee is hereby authorized to discharge into the above-named receiving waters.*

**ISSUANCE DATE:** AUGUST 20, 2021

**EFFECTIVE DATE:** NOVEMBER 1, 2021

**EXPIRATION DATE:** OCTOBER 31, 2026

  
Alabama Department of Environmental Management

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## PART I: COVERAGE UNDER THIS GENERAL PERMIT

### A. PERMIT COVERAGE

This permit covers any Operator that meets the eligibility requirements identified in Part I.B. This permit does not negate the requirements under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and its requirement to use registered pesticides consistent with the product's labeling. The Operator must comply with all other applicable Federal, State or local laws and regulations that pertain to the application of pesticides.

### B. ELIGIBILITY

#### 1. Activities Covered

This permit is available to Operators who discharge to waters of the State from applications that leave a residue of (1) biological pesticides or (2) chemical pesticides when the pesticide application is for one of the following pesticide use patterns:

(a) Mosquito and Other Flying Insect Pest Control

This permit authorizes point source discharge(s) from the application of pesticides to control public health/nuisance and other flying insect pests that develop or are present during a portion of their life cycle in or above standing or flowing water. Public health/nuisance and other flying insect pests in this use category include, but are not limited to, mosquitoes and black flies and included the use of adulticides and larvacides as well as the application of a pesticide into forest canopies.

(b) Weed and Algae Pest Control

This permit authorizes point source discharge(s) from the application of pesticides to control invasive or other nuisance weeds and algae in water and at the water's edge, including irrigation ditches and/or irrigation canals. It also includes pathogens such as fungi and bacteria.

(c) Animal Pest Control

This permit authorizes point source discharge(s) from the application of pesticides to control invasive or other nuisance animals in water and at the water's edge. Nuisance animals in this use category include, but are not limited to, fish, lampreys, and mollusks. It also includes pathogens such as fungi and bacteria.

(d) Forest Canopy or Other Area-Wide Pest Control

This permit authorizes point source discharge(s) from the aerial or ground application of a pesticide over or into a forest canopy or other vegetation to control the population of a pest species (e.g., insect or pathogen) where, to target the pest(s) effectively, a portion of the pesticide unavoidably will be applied over and deposited into a water of the State.

Pesticide applications resulting in the discharge to a water of the State designated as Tier 3 (e.g., ONRW) in accordance with ADEM Admin. Code r. 335-6-10-.12(2), made to restore or maintain water quality, or to protect public health or the environment that do not degrade water quality are covered by this permit.

Any pesticide application that does not fall within the four (4) use patterns listed above and covered by this permit may require NPDES permit coverage under another NPDES program if those activities result in point source discharges to waters of the State.

#### 2. Limitations of Coverage

The following discharges are not authorized by this permit:

- (a) Any discharge from a pesticide application to a water of the State if the water is identified as being impaired by that pesticide or its degradates. For the purposes of this permit, impaired waters are those that have been identified by the State, pursuant to Section 303(d) of the Clean Water Act (CWA), as not meeting applicable State water quality standards, and those waters with EPA-approved or EPA-established Total Maximum Daily Loads (TMDLs) for a pesticide or its degradates.
- (b) An Operator is not eligible for coverage under this permit if the discharges are covered by another NPDES permit.

- (c) An NPDES permit is not required for return flows from irrigated agriculture or for the introduction of pollutants from nonpoint source agricultural and silvicultural activities as described in 40 CFR 122.3 (e), including storm water runoff from orchards, cultivated crops, pastures, range lands and forest lands. According to 40 CFR 122.27, nonpoint source silviculture activities such as nursery operations, site preparation, reforestation, and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural runoff do not meet the definition of a silvicultural point source activity and therefore do not require NPDES coverage.
- (d) The aquatic application of a pesticide labeled exclusively for terrestrial use is not covered by this permit.
- (e) An NPDES permit is not required for terrestrial pesticide applications that do not result in a point source discharge to waters of the State.
- (f) Any discharge that occurs from the inappropriate use of a pesticide (i.e., not according to the product's label) is not covered by this permit.

**C. AUTHORIZATION TO DISCHARGE UNDER THIS PERMIT**

**1. Obtaining Coverage**

Any person wishing to obtain coverage under this general permit must:

- (a) Meet the eligibility requirements identified in Part I.B, and
- (b) Submit a timely (see Table 2 in Part I.C.6.), complete, and correct Notice of Intent (NOI) if an Operator identified in Part I.C.3.

**2. Operators Not Required to Submit a NOI**

- (a) Operators meeting the eligibility provisions outlined in Part I.B, and whose discharges are not subject to the requirement to submit a NOI, as identified in Part I.C.3, are automatically authorized to discharge upon the effective date of this permit, in compliance with the requirements of this permit.
- (b) Pesticide research and development activities, and discharges in response to a declared pest emergency situation are automatically covered under this permit.

**3. Operators Required to Submit a NOI**

- (a) Any Operator exceeding an annual treatment area threshold for pesticide application (see Table 1) is required to submit a NOI to obtain coverage under this general permit for discharges to waters of the State as a result of the application of pesticides.

<b>Table 1. Annual Treatment Area Thresholds</b>		
<b>PGP Part</b>	<b>Pesticide Use</b>	<b>Annual Threshold</b>
II.B.1	Mosquitoes and Other Flying Insect Pest Control	During a calendar year, 6400 acres of treatment area
II.B.2	Weed and Algae Pest Control:	
	- In Water	During a calendar year, 100 surface acres of water
II.B.3	- At Water's Edge:	During a calendar year, 100 linear miles of treatment area in waters of the State or at water's edge
	Animal Pest Control:	
	- In Water	During a calendar year, 100 surface acres of water
II.B.3	- At Water's Edge	During a calendar year, 100 linear miles of treatment area in waters of the State or at water's edge
	II.B.4	Forest Canopy or Other Area-Wide Pest Control

- (b) Coverage is for the Operator who filed the NOI, including its employees, contractors, subcontractors, and other agents, for all activities identified on the NOI for the duration of this permit unless coverage is terminated pursuant to Parts I.C.6 or VIII.N. If a NOI is not submitted by the deadline identified in Table 2 in Part I.C.6., and/or technically complete and correct, then any employee, contractor, subcontractor, or other entity that discharges without the required NOI is not covered by this permit.
- (c) The Operator is required to maintain a copy of the NOI submitted to the Department, and any correspondence exchanged between the Operator and the Department specific to coverage under this permit, at the address provided in Section II on the NOI.
- (d) Pesticide applications resulting in the discharge to a water of the State designated as Tier 3 (e.g., ONRW) in accordance with ADEM Admin. Code r. 335-6-10-.12(2), made to restore or maintain water quality, or to protect public health or the environment that do not degrade water quality are required to submit a NOI to obtain coverage under this general permit.

#### 4. Contents of the NOI

- (a) The NOI shall include:
  - (i) The correct fee pursuant to ADEM Admin Code R. 335-1, Fee Schedule D;
  - (ii) The Operator's name, telephone number, mailing address, and email address;
  - (iii) The county or counties in which the application of a pesticide will occur;
  - (iv) The contact person and title, telephone number and email address;
  - (v) The location where NPDES records for this facility/activity will be kept;
  - (vi) The pesticide use pattern and receiving waters;
  - (vii) A list of active ingredients of pesticides planned to be used. If this information is not known at the time of the NOI submittal, the information shall be submitted to the Department through an information update at least ten (10) days prior to discharge and update the Pesticide Discharge Management Plan (PDMP);
  - (viii) A portion or copy of a recent map or series of maps (e.g., USGS quadrangle map or LIDAR contour map) at an appropriate contour level, including perennial, intermittent, and ephemeral streams/lakes/springs/wetlands. Several maps/pages may be necessary depending on the size and scope of the project area. The map(s) at a minimum must include an outline of the pesticide application treatment area. If multiple use patterns are to be permitted separate maps for each use pattern and/or each different treatment area. If this information is not known at the time of the NOI submittal, the information shall be submitted to the Department through an information update as timely as possible and update the Pesticide Discharge Management Plan (PDMP); and
  - (ix) Identification of receiving stream(s) for which coverage under this general permit is desired.
- (b) The NOI shall be signed by a person meeting the requirements for signatories under ADEM Admin Code r. 335-6-6-.09.
- (c) The person signing the NOI shall make the certification required for submission of documents under ADEM Admin. Code r. 335-6-6-.09(4); "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine or imprisonment for knowing violations. I further certify that the applicant has sufficient title, right or interest in the property where the proposed activity occurs."

**5. Submittal of Documents**

The Permittee must complete and submit the NOI electronically, using the Department's Alabama Environmental Permitting and Compliance System (AEPACS), unless the Permittee submits in writing valid justification as to why the electronic submittal process cannot be utilized and the Department approves in writing the utilization of hard copy submittals. The AEPACS can be accessed at the following link <http://adem.alabama.gov/AEPACS>. All permit requests for issuance, modifications, and termination of the existing permit should all be submitted through the AEPACS.

**6. Discharge Authorization Date**

(a) Operators are authorized to discharge under this permit consistent with Table 2 below.

<b>Table 2. NOI Submittal Deadlines and Discharge Authorization Dates</b>		
<b>Category</b>	<b>NOI Submittal Deadline</b>	<b>Discharge Authorization Date</b>
Operators not required to submit a NOI.	Not applicable.	Immediately upon the permit effective date.
Operators identified in Part I.C.3. of this permit.	At least ten (10) days prior to commencement of discharge.	Upon receipt of a complete, correct and timely NOI by the Department.
Operators who will discharge to a Tier 3 water (e.g. ONRW).	At least thirty (30) days prior to commencement of discharge.	Upon Department issuance of coverage letter.
Operators commencing discharge in response to a <u>declared pest emergency situation</u> as defined in Part IX.	Not Applicable. Must submit notification to the Department of a discharge to a water of the State.	Immediately upon the permit effective date, for activities conducted in response to declared pest emergency situation.

(b) Based on a review of the submitted NOI or other information, the Department may:

- (i) Delay authorization to allow for further review,
- (ii) Determine that additional technology-based and/or water quality-based effluent limitations are necessary, or
- (iii) Deny coverage under this permit and require submission of an application for an individual NPDES permit, as detailed in Part VIII.O.

**7. Continuation of the General Permit**

If this permit is not reissued or replaced prior to the expiration date, it will be administratively continued in accordance with the ADEM Admin. Code Chapter 335-6-6 and remain in force and effect if the Operator re-applies for coverage as required under Part I.C.8 of this permit. Any Operator who was granted permit coverage prior to the expiration date will automatically remain covered by the continued permit until the earliest of:

- (a) Reissuance or replacement of this permit, at which time the Operator must comply with the NOI conditions of the new permit to maintain authorization to discharge; or
- (b) Issuance or denial of an individual permit; or
- (c) A formal permit decision by the Department not to reissue this general permit, at which time the Operator must seek coverage under an alternative general permit or an individual permit; or
- (d) A Notice of Termination (NOT) has been submitted; or
- (e) The Department has informed the Operator that coverage under this permit is no longer needed.

## 8. Duty to Reapply for Coverage under this General Permit

- (a) The Operator authorized to discharge under this General Permit who wishes to continue to discharge upon the expiration of this permit, shall submit a NOI to be covered by the reissued General Permit. Such NOI shall include information required by the initial NOI and shall be submitted at least 90 days prior to the expiration date of this General Permit.
- (b) Failure of the Operator to submit a NOI for reauthorization under this permit at least 90 days prior to the permit's expiration will void the automatic continuation of the authorization to discharge under this permit as provided by ADEM Admin. Code r. 335-6-6-.06. Should the permit not be reissued for any reason prior to its expiration date, Operators who failed to meet the 90-day submittal deadline will no longer have an authorization to discharge after the expiration of the permit.

## 9. Termination of Coverage

The Director may suspend or terminate coverage under this permit for cause without the consent of the Operator. Cause shall include, but not be limited to, noncompliance with this permit or the applicable requirements of Department rules, or a finding that this permit does not sufficiently protect water quality.

- (a) Operators 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 in, over or near a water of the State, or their discharges are covered under another NPDES permit. These Operators are not required to submit a NOT to terminate permit coverage.
- (b) Operators that are covered under this permit as a result of a declared pest emergency situation are terminated from permit coverage when they no longer have a discharge from the application of pesticides in, over or near a water of the State, or their discharges are covered under another NPDES permit. These Operators are not required to submit a NOT to terminate permit coverage. However, these Operators are required to notify the Department in writing when they meet the requirements of this paragraph and no longer need coverage under this permit.

### (c) Voluntary NOT – Initiated by Permittee

Operators required to submit a NOI to obtain coverage under this permit must submit a complete and accurate NOT, in a format acceptable to the Department within thirty (30) days of one of the following conditions:

- (i) A new Operator has taken over responsibility for pest control activities covered under an existing NOI;
- (ii) The Operator has ceased all discharges from the application of pesticides for which permit coverage was obtained and does not expect to discharge during the remainder of the permit term for any of the use patterns identified in Part I.B.1;
- (ii) Coverage under an individual permit or alternative general permit has been obtained.

### (d) Content of the Voluntary NOT. The NOT shall include:

- (i) The Operator's name, permit number, mailing address, telephone number, and email address;
- (ii) The contact person's name, title, and telephone number;
- (iii) The basis for the requested termination; and
- (iv) Certification that coverage under this permit is no longer needed.

### (e) When terminating permit coverage, the Operator must submit a report for the portion of the calendar year up through the date of the termination request. The report must be submitted with the NOT. The report must contain the following information:

- (i) The Operator's name, telephone number, and email address;
- (ii) The NPDES permit number(s);
- (iii) The contact person's name, title, email address (if any), and telephone number; and



- (iv) For each pest treatment area, report the following information:
- (1) Identification of any waters or other treatment area, including size, either by name or by location, to which any pesticide(s) were discharged;
  - (2) Pesticide use pattern(s) (i.e., mosquito and other flying insects, weeds and algae, nuisance animals, or forest canopy) and target pest(s);
  - (3) Company name(s) and contact information for pesticide applicator(s), if different from the NOI submitter;
  - (4) Total amount of each pesticide product applied (in gallons or pounds) for the reporting year by the EPA registration number(s) and by application method (e.g., aerially by fixed-wing or rotary aircraft, broadcast spray, etc.);
  - (5) If this pest control activity was addressed in the Pesticide Discharge Management Plan (PDMP) prior to pesticide application;
  - (6) If applicable, a report of any adverse incidents as a result of these treatment(s), as described in Part VI.D; and
  - (7) A description of any corrective action(s), including spill responses, resulting from pesticide application activities and the rationale for such action(s).

#### **D. OTHER FEDERAL AND STATE LAWS**

The Operator must comply with all other applicable federal and State laws and regulations that pertain to the application of pesticides. This permit does not negate or alter the requirements of FIFRA and its implementing regulations to use registered pesticides consistent with the product's labeling.

## PART II: TECHNOLOGY-BASED EFFLUENT LIMITATIONS

To meet the effluent limitations in Part II, all Operators must implement application-specific control measures that minimize discharges of pesticides to waters of the State.

### A. REQUIREMENTS FOR ALL OPERATORS

All Operators are required to:

1. Maintain pesticide application equipment in proper operating condition by adhering to any manufacturer's conditions and industry practices;
2. Perform regular maintenance activities to reduce leaks, spills, or other unintended discharges of pesticides associated with the application of pesticides covered under this permit;
3. Assess environmental conditions (e.g., temperature, precipitation, wind speed) to ensure pesticide application is consistent with applicable requirements; and
4. Use only the necessary amount of pesticide product per application and at the necessary frequency of pesticide applications to control the target pest consistent with reducing the potential for development of pesticide resistance.

### B. PEST MANAGEMENT MEASURES

This Part applies to any Operator that is required to submit a NOI as required in Part I.C.3.

If the discharge of pollutants results from the application of a pesticide used solely for the purpose of "pesticide research and development" as defined in Part IX, Part II.B, pest management measures must still be implemented only to the extent that its requirements do not compromise the research design.

#### 1. Mosquito and Other Flying Insect Pest Control

This part applies to discharges from the application of pesticides for mosquito and other flying insect pest control as defined in Part I.B.1.

- (a) Identify the Problem. Prior to the first pesticide application covered under this permit that will result in a discharge to waters of the State, and at least once each calendar year thereafter during which an Operator will have a discharge to a water of the State, the Operator must do the following for each pest management area as defined in Part IX:
  - (i) Establish densities for larval and adult mosquito or flying insect pest populations to serve as action threshold(s) for implementing pest management measures;
  - (ii) Establish procedures to determine target pest densities;
  - (iii) Identify target mosquito or other flying insect pest(s) to develop specific pest management measures based on developmental and behavioral considerations for each pest;
  - (iv) Identify known breeding sites for source reduction, larval control program, and habitat management area; and
  - (v) Analyze existing surveillance data to identify new or unidentified sources of mosquito or flying insect pest problems as well as sites that have recurring pest problems.
- (b) Pest Management Options. Prior to the first pesticide application covered under this permit that will result in a discharge to waters of the State, and at least once each calendar year thereafter during which an Operator will have a discharge to a water of the State, the Operator must select and implement, for each pest management area, efficient and effective means of pest management that minimize discharges resulting from application of pesticides to control mosquitoes or other flying insect pests. In developing these pest management measures, the Operator must evaluate the following management options, including a combination of these management options, considering impact to water quality, impact to non-target organisms, feasibility, and cost effectiveness:
  - (i) No Action
  - (ii) Prevention

- (iii) Mechanical or physical methods
  - (iv) Cultural methods
  - (v) Biological control agents
  - (vi) Pesticide Application
- (c) Pesticide Use. If a pesticide is selected to manage mosquitoes or other flying insect pests and application of the pesticide will result in a discharge to waters of the State, the Operator must:
- (i) Conduct larval and/or adult surveillance in an area that is representative of the pest problem, or evaluate existing larval surveillance data, or data from adjacent areas prior to each pesticide application to assess the pest management area and to determine when the action threshold(s) is met that necessitates the need for pest management;
  - (ii) Assess environmental conditions (e.g. temperature, precipitation, and wind speed) in the treatment area prior to each pesticide application to identify whether existing environmental conditions support development of pest populations and are suitable for treatment activities;
  - (iii) Reduce the impact on the environment and on non-target organisms by applying the pesticide only when the action threshold(s) has been met;
  - (iv) In situations or locations where practicable and feasible for effective control, use larvicides as a preferred pesticide for mosquito or other flying insect pest control when the larval action threshold(s) has been met; and
  - (v) In situations or locations where larvicide use is not practicable or feasible for effective control, use adulticides for mosquito or other flying insect pest control when the adult action threshold(s) has been met.

## 2. Weed and Algae Pest Control

This part applies to discharges from the application of pesticides for weed and algae control as defined in Part I.B.1.

- (a) Identify the Problem. Prior to the first pesticide application covered under this permit that will result in a discharge to waters of the State, and at least once each calendar year thereafter during which an Operator will have a discharge to a water of the State, the Operator must do the following for each pest management area, as defined in Part IX.
- (i) Identify areas with weed or algae pest problems and characterize the extent of the problems, including, for example, water use goals not attained (e.g. wildlife habitat, fisheries, vegetation, and recreation);
  - (ii) Identify target weed and/or algae pest(s);
  - (iii) Identify possible factors causing or contributing to the weed or algae pest problem (e.g., nutrients, invasive species, etc.);
  - (iv) Establish procedures to determine target pest densities;
  - (vi) Establish past or present weed or algae densities to serve as action threshold(s) for implementing pest management measures.
- (b) Pest Management Options. Prior to the first pesticide application covered under this permit that will result in a discharge to waters of the State, and at least once each calendar year thereafter during which an Operator will have a discharge to a water of the State, the Operator must select and implement, for each pest management area, efficient and effective means of pest management that minimize discharges resulting from application of pesticides to control weeds and algae. In developing these pest management measures, the Operator must evaluate the following management options, including a combination of these management options, considering impact to water quality, impact to non-target organisms, feasibility, and cost effectiveness:
- (i) No Action
  - (ii) Prevention

- (iii) Mechanical or physical methods
  - (iv) Cultural methods
  - (v) Biological control agents
  - (vi) Pesticide Application
- (c) Pesticide Use. If a pesticide is selected to manage weeds or algae and application of the pesticide will result in a discharge to a water of the State, the Operator must:
- (i) Conduct surveillance in an area that is representative of the pest problem prior to each pesticide application to assess the pest management area and to determine when the action threshold(s) is met that necessitates the need for pest management; and
  - (ii) Reduce the impact on the environment and non-target organisms by applying the pesticide only when the action threshold(s) has been met.

### 3. Animal Pest Control

This part applies to discharges from the application of pesticides for animal pest control as defined in Part I.B.1.

- (a) Identify the Problem. Prior to the first pesticide application covered under this permit that will result in a discharge to waters of the State, and at least once each calendar year thereafter, during which an Operator will have a discharge to a water of the State, the Operator must do the following for each pest management area, as defined in Part IX:
- (i) Identify areas with animal pest problems and characterize the extent of the problems, including, for example, water use goals not attained (e.g. wildlife habitat, fisheries, vegetation, and recreation);
  - (ii) Identify target animal pest(s);
  - (iii) Identify possible factors causing or contributing to the animal pest problem (e.g., nutrients, invasive species, etc.);
  - (iv) Establish procedures to determine target pest densities; and
  - (v) Establish animal pest densities to serve as action threshold(s) for implementing pest management measures.
- (b) Pest Management Options. Prior to the first pesticide application covered under this permit that will result in a discharge to waters of the State, and at least once each calendar year thereafter during which an Operator will have a discharge to a water of the State, the Operator must select and implement, for each pest management area, efficient and effective means of pest management that minimize discharges resulting from application of pesticides to control nuisance animals. In developing these pest management measures, the Operator must evaluate the following management options, including a combination of these management options, considering impact to water quality, impact to non-target organisms, feasibility, and cost effectiveness:
- (i) No Action
  - (ii) Prevention
  - (iii) Mechanical or physical methods
  - (iv) Cultural methods
  - (v) Biological control agents
  - (vi) Pesticide Application
- (c) Pesticide Use. If a pesticide is selected to manage nuisance animals and application of the pesticide will result in a discharge to a water of the State, the Operator must:

- (i) Conduct surveillance in an area that is representative of the pest problem prior to each pesticide application to assess the pest management area and to determine when the action threshold(s) is met that necessitates the need for pest management; and
- (ii) Reduce the impact on the environment and non-target organisms by applying the pesticide only when the action threshold(s) has been met.

#### 4. Forestry Canopy or Other Area-Wide Pest Control

This part applies to discharges from the application of pesticides for forest canopy or other area-wide pest control as defined in Part I.B.1.

- (a) Identify the Problem. Prior to the first pesticide application covered under this permit that will result in a discharge to waters of the State, and at least once each calendar year thereafter during which an Operator will have a discharge to a water of the State, the Operator must do the following for each pest management area, as defined in Part IX:
  - (i) Establish target pest densities to serve as action threshold(s) for implementing pest management measures;
  - (ii) Identify target pest(s) to develop pest management measures based on developmental and behavioral considerations for each target pest;
  - (iii) Identify current distribution of the target pest and assess potential distribution in the absence of pest management measures; and
  - (iv) Establish target pest densities to serve as action threshold(s) for implementing pest management measures.
- (b) Pest Management Options. Prior to the first pesticide application covered under this permit that will result in a discharge to waters of the State, and at least once each calendar year thereafter during which an Operator will have a discharge to a water of the State, the Operator must select and implement, for each pest management area, efficient and effective means of pest management that minimize discharges resulting from application of pesticides to control forestry canopy or other area-wide pests. In developing these pest management measures, the Operator must evaluate the following management options, including a combination of these management options, considering impact to water quality, impact to non-target organisms, feasibility, and cost effectiveness:
  - (i) No Action
  - (ii) Prevention
  - (iii) Mechanical or physical methods
  - (iv) Cultural methods
  - (v) Biological control agents
  - (vi) Pesticide Application
- (c) Pesticide Use. If a pesticide is selected to manage forestry canopy or other area-wide pests and application of the pesticide will result in a discharge to waters of the State, the Operator must:
  - (i) Conduct surveillance in an area that is representative of the pest problem prior to each pesticide application to assess the pest management area and to determine when the action threshold(s) is met that necessitates the need for pest management;
  - (ii) Assess environmental conditions (e.g. temperature, precipitation, and wind speed) in the treatment area prior to each pesticide application to identify whether existing environmental conditions support development of pest populations and are suitable for treatment activities;
  - (iii) Reduce the impact on the environment and non-target organisms by applying the pesticide only when the action threshold(s) has been met; and
  - (iv) Evaluate using pesticides against the most susceptible developmental stage.

### **PART III: WATER QUALITY-BASED EFFLUENT LIMITATIONS**

This Part applies to all Operators covered under this general permit.

1. Discharges must be controlled as necessary to meet applicable numeric and narrative State water quality standards.
2. If at any time the Operator becomes aware, or the Department determines, that the Operator's discharges cause or contribute to an excursion of applicable water quality standards, the Operator must take corrective action as required in Part VI.

### **PART IV: SITE MONITORING**

#### **A. MONITORING REQUIREMENTS FOR ALL OPERATORS**

The Operator must monitor:

1. The amount of pesticide applied to ensure that only the necessary amount of pesticide is used at the necessary frequency to effectively control the pest, consistent with reducing the potential for development of pest resistance.
2. The pesticide application activities to ensure that regular maintenance activities are being performed, and to ensure that the application equipment is in proper operating condition:
  - (a) To reduce the potential for leaks, spills, or other unintended discharge of pesticides to waters of the State, and
  - (b) By adhering to any manufacturer's conditions and industry practices, and by calibrating, cleaning, and repairing equipment on a regular basis.

#### **B. VISUAL MONITORING REQUIREMENTS FOR ALL OPERATORS**

1. All Operators covered under this permit must conduct visual monitoring/spot checks in the area to and around where pesticides are applied for possible and observable adverse incidents caused by the application of pesticides, including the unanticipated death or distress of non-target organisms, disruption of wildlife habitat, recreational water use, or municipal water use.
2. Visual assessments of the application site must be performed:
  - (a) During any pesticide application when considerations for safety and feasibility allow; and
  - (b) During any post-application surveillance or pesticide effectiveness check if a surveillance or pesticide effectiveness check is conducted.
3. If post-application visual monitoring is not conducted, then the Operator must document, in detail, the reasons why.

**PART V: PESTICIDE DISCHARGE MANAGEMENT PLAN****A. PESTICIDE DISCHARGE MANAGEMENT PLAN (PDMP)**

This Part applies to any Operator required to submit a NOI, as required in Part I.C.3.

1. A PDMP must be developed, maintained, and implemented for each pesticide use pattern indicated on the NOI upon submittal of the NOI.
2. The PDMP must be made available to the Department for review upon request and must be kept up-to-date thereafter for the duration of coverage under this general permit. Some sections of the PDMP may require input from the pesticide applicator.

**B. CONTENTS OF THE PESTICIDE DISCHARGE MANAGEMENT PLAN**

The contents of the PDMP must include the following elements:

**1. Pesticide Discharge Management Team**

Identify all team members by name, title, and individual responsibilities, including:

- (a) Person(s) responsible for managing pests in relation to the pest management area;
- (b) Person(s) responsible for developing and revising the PDMP;
- (c) Person(s) responsible for developing, revising, and implementing corrective actions and other effluent limitation requirements; and
- (d) Person(s) responsible for pesticide applications. If the pesticide applicator is unknown at the time of plan development, indicate when the identity of the applicator is anticipated.

**2. Problem Identification**

The Operator must document the following:

- (a) Pest problem description. Document a description of the pest problem within the pest management area, including identification of the target pest(s), source of the pest problem, and source of data used to identify the problem.
- (b) Action Threshold(s). Describe the action threshold(s) for the pest management area, including a description of how they were determined.
- (c) Location map (See Part I.C.4.(a).viii.). Include a location map (e.g., USGS quadrangle map, or a portion of a city or county map) that identifies the geographic boundaries of the area to which the plan applies and location of the waters of the State; and
- (d) Water quality standards. Document any Tier 3 waters and/or water(s) identified as impaired by a substance which either is an active ingredient or a degrade of such an active ingredient. List the pesticide(s) or any degradates for which the water is impaired.

**3. Control Measure Description**

The Operator must:

- (a) Document the evaluation of control measures for the pest management area; and
- (b) Document the control measures that will be implemented to comply with the effluent limitations. Include in the description the active ingredient(s) of the pesticides(s) evaluated.

#### 4. Schedules and Procedures

Document the following schedules and procedures in the PDMP:

- (a) Pertaining to Control Measures Used to Comply with the Effluent Limitations:
  - (i) Application Rate and Frequency. (Part II.A.) Procedures for determining only the necessary amount of pesticide product used per application and at the necessary frequency needed to control the target pest, consistent with reducing the potential for development of pest resistance;
  - (ii) Spill Prevention. (Part II.A.) Procedures and schedule of maintenance activities for preventing spills and leaks of pesticides associated with the application of pesticides covered under this permit;
  - (iii) Pesticide Application Equipment. (Part II.A.) Schedules and procedures for maintaining the pesticide application equipment in proper operating condition, including calibrating, cleaning, and repairing the equipment;
  - (iv) Pest Surveillance. (Parts II.B.1.(c), II.B.2.(c), II.B.3.(c), and II.B.4.(c).) Procedures and methods for conducting pre-application pest surveillance; and
  - (v) Assessing Environmental Conditions. (Parts II.B.1.(c).ii., and II.B.4.(c).ii.) Procedures and methods for assessing environmental conditions in the treatment area.
- (b) Pertaining to Other Actions Necessary to Minimize Discharges:
  - (i) Spill Response Procedures:
    - (1) Procedures for expeditiously stopping, containing, and cleaning up leaks, spills, and other releases. Employees who may cause, detect, or respond to a spill or leak must be trained in these procedures and have necessary spill response equipment available. If possible, one of these individuals should be a member of the PDMP team; and
    - (2) Procedures for notification of appropriate facility personnel, emergency response agencies, and regulatory agencies, including ADEM.
  - (ii) Adverse Incident Response Procedures:
    - (1) Procedures for responding to any adverse incident resulting from pesticide applications; and
    - (2) Procedures for notification of the adverse incident, both internal to the agency/organization and external. Contact information for State/federal permitting agency, including ADEM, nearest emergency medical facility, and nearest hazardous chemical responder must be in locations that are readily accessible and available.
  - (iii) Post Application Monitoring Schedules and Procedures:
    - (1) A schedule for post application monitoring of treatment areas;
    - (2) The person responsible for conducting the monitoring; and
    - (3) Procedures for documenting any observed impacts to non-target organisms resulting from the pesticide discharge.

#### 5. Signature Requirements

The Operator must sign, date, and certify the PDMP in accordance with Part VIII.I.



**C. PESTICIDE DISCHARGE MANAGEMENT PLAN MODIFICATIONS**

1. The PDMP must be revised whenever necessary to address any of the triggering conditions for corrective action in Part VI.A or when a change in pest control activities significantly changes the type or quantity of pollutants discharged. Changes to the PDMP must be made before the next pesticide application that results in a discharge, if practicable, or if not, no later than 90 days after any change in pesticide application activities.
2. The PDMP must be reviewed, at a minimum, once per calendar year and whenever necessary to update the pest problem identified and pest management measures evaluated for the pest management area. A member of the pesticide discharge management team (pursuant to Part V.B.1 of this permit) must sign and date the PDMP each time the plan is reviewed.

**D. PESTICIDE DISCHARGE MANAGEMENT PLAN AVAILABILITY**

A copy of the current PDMP must be retained, along with all supporting maps and documents, at the address provided in the NOI. The PDMP and all supporting documents must be made readily available to the Department upon request.

## **PART VI: CORRECTIVE ACTION**

### **A. SITUATIONS REQUIRING REVISION OF CONTROL MEASURES**

This Part applies to all Operators covered under this general permit.

The Operator must review and, as necessary, revise the evaluation and selection of pest management measures consistent with Part II.A and Part II.B of this permit, for the following situations:

1. An unauthorized release or discharge associated with the application of pesticides (e.g., spill, leak, or discharge not authorized by this or another NPDES permit) occurs;
2. The Operator becomes aware, or the Department concludes, that the pest management measures are not adequate for the discharge to meet applicable water quality standards or the requirements of this permit;
3. Any monitoring activities indicate that the Operator failed to meet applicable limitations in Part II of this permit;
4. An inspection or evaluation of the activities by the Department, or the Operator, reveals that modifications to the pest management measures are necessary to meet the requirements of this permit; or
5. The Operator observes, during visual monitoring required in Part IV.B, or is otherwise made aware of, an adverse incident, as defined in Part IX.

### **B. CORRECTIVE ACTION DEADLINES**

This Part applies to all Operators covered under this general permit.

If the Operator determines that changes to the pest management measures are necessary to eliminate any situation identified in Part VI.A, such changes must be made before the next pesticide application that results in a discharge to waters of the State.

### **C. EFFECT OF CORRECTIVE ACTION**

This Part applies to all Operators covered under this general permit.

1. The occurrence of a situation identified in Part VI.A may constitute a violation of the permit. Correcting the situation according to Part VI.A does not absolve the Operator of liability for any original violation. However, failure to comply with Part VI.B constitutes an additional permit violation. The Department will consider the appropriateness and promptness of corrective action in determining enforcement responses to permit violations.
2. The Department may impose additional requirements and schedules of compliance, including requirements to submit additional information concerning the condition(s) triggering corrective action or schedules and requirements more stringent than specified in this permit. Those requirements and schedules will supersede those of Part VI.A and Part VI.B if such requirements conflict.

### **D. ADVERSE INCIDENT DOCUMENTATION AND REPORTING**

This Part applies to all Operators covered under this general permit. The Operator must report adverse incidents even for those instances when the pesticide labeling states that adverse effect may occur.

#### **1. Twenty-Four (24) Hour Adverse Incident Notification**

If the Operator observes or is otherwise made aware of an adverse incident that may have resulted from a discharge from the pesticide application, the Operator must immediately notify the Department. This notification must be made either by telephone, email, or through the AEPACS within twenty-four (24) hours of becoming aware of the adverse incident and must include at least the following information:

- (a) The name and telephone number of person reporting;
- (b) Operator name and mailing address;
- (c) NPDES permit number, if applicable;
- (d) The name and telephone number of a contact person, if different than the person providing the 24-hour notice;

- (e) How and when the Operator became aware of the adverse incident;
- (f) Description of the location of the adverse incident;
- (g) Description of the adverse incident identified and the pesticide name for each product applied in the area of the adverse incident; and
- (h) Description of any steps taken or will be taken to correct, repair, remedy, cleanup, or otherwise address any adverse effects.

If the Operator is unable to notify the Department within twenty-four (24) hours, this must be done as soon as possible and must include rationale for why the Operator was unable to provide such notification within twenty-four (24) hours.

## **2. Thirty (30) Day Adverse Incident Written Report**

Within thirty (30) days of a reportable adverse incident pursuant to Part VI.D.1, the Operator must provide a written report of the adverse incident to the Department through the AEPACS. The adverse incident report must include at least the following information:

- (a) Information required to be provided in Part VI.D.1;
- (b) Date and time the Operator contacted the Department with notification of the adverse incident, who the Operator spoke with at the Department, and any instructions received from the Department;
- (c) Location of 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, estimated number of individual and approximate size of dead or distressed organisms;
- (e) Magnitude and scope of the affected area (e.g., aquatic square area or total stream distance affected);
- (f) Pesticide application rate, intended use site (e.g., banks, above waters, or directly to water), method of application, and name of pesticide product;
- (g) Description of the habitat and the circumstances under which the adverse incident occurred (including any available ambient water data for pesticides applied);
- (h) If laboratory tests were performed, an indication of which test(s) were performed and when they were performed. Provide a summary of the test results within five (5) days after they become available;
- (i) Description of actions to be taken to prevent recurrence of adverse incidents; and
- (j) Sign and date in accordance with Part VIII.I.

## **3. Adverse Incident to Threatened or Endangered Species or Critical Habitat**

Notwithstanding any of the other adverse incident notification requirements of this section, if the Operator becomes aware of an adverse incident to a federally-listed threatened or endangered species or its federally-designated critical habitat, that may have resulted from a discharge from the pesticide application, the Operator must immediately notify the National Marine Fisheries Service (NMFS), Southeast Regional Office (727) 824-5301, in the case of an anadromous or marine species, or the U.S. Fish and Wildlife Service (FWS), Daphne office (251) 441-5787 or Wetumpka office (334) 478-7900, in the case of a terrestrial or freshwater species.

## **4. Adverse Incident Reporting Exceptions**

Reporting of adverse incidents is not required under this permit in the following situations:

- (a) The Operator is aware of facts that clearly establish that the adverse incident was not related to toxic effects or exposure from the pesticide application;
- (b) The Operator has been notified in writing by the Department that the reporting requirement has been waived for this incident or category of incidents;

- (c) The Operator receives information of an adverse incident, but that information is clearly erroneous; and
- (d) An adverse incident occurs to pests that are similar in kind to pests identified on the FIFRA label.

## **E. REPORTABLE SPILLS AND LEAKS**

This Part applies to all Operators covered under this general permit.

### **1. Spill, Leak, or Other Unpermitted Discharge Notification**

Where a leak, spill, or other release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110, 40 CFR Part 117, or 40 CFR Part 302 occurs in any 24-hour period, the Operator must notify the National Response Center (NRC) immediately at (800) 424-8802, the local Emergency Management Agency, and the ADEM at (334) 271-7700, as soon as the Operator has knowledge of the release.

Local requirements may necessitate also reporting spills or leaks to local emergency response, public health, or drinking water supply agencies.

### **2. Thirty-(30) Day Spill, Leak, or Other Unpermitted Discharge Documentation**

Within thirty (30) days of becoming aware of a spill, leak, or other unpermitted discharge triggering the notification in Part VI.E.1, the Operator must document and retain the following information:

- (a) Information required to be provided in Part VI.E.1;
- (b) Summary of corrective action taken or to be taken including date initiated and date completed or expected to be completed; and
- (c) Any measures to prevent recurrence of such a spill or leak or other discharge, including notice of whether PDMP modifications are required as a result of the spill or leak.

## **F. OTHER CORRECTIVE ACTION DOCUMENTATION**

This Part applies to all Operators covered under this general permit.

For situations identified in Part VI.A, other than for adverse incidents or reportable spills or leaks, the Operator must document the situation triggering corrective action and the planned corrective action within thirty (30) days of becoming aware of that situation and retain a copy of this documentation. This documentation must include the following information:

1. Identification of the condition triggering the need for corrective action review, including any ambient water quality monitoring that assisted in determining that discharges did not meet water quality standards;
2. Brief description of the situation;
3. Date the problem was identified;
4. Brief description of how the problem was identified, how the Operator learned of the situation and the date the Operator learned of the situation;
5. Summary of corrective action(s) taken or to be taken including date initiated and date completed or expected to be completed; and
6. Any measures to prevent recurrence of such an incident, including notice of whether PDMP modifications are required as a result of the incident.

**PART VII: RECORDKEEPING AND REPORTING****A. RECORDKEEPING AND REPORTING**

1. All Operators covered under this general permit must keep written records as required in this permit. These records must be accurate, complete, and sufficient to demonstrate compliance with the conditions of this permit. The Operator can rely on records and documents developed for other obligations, such as requirements under FIFRA and State or local pesticide programs, provided all requirements of this permit are satisfied and a copy of the document or portion is kept with the written records and made available upon request by the Department.
2. All Operators must keep the following records:
  - (a) A copy of any Adverse Incident Reports (See Part VI.D.2);
  - (b) The rationale for any determination that reporting of an identified adverse incident is not required consistent with allowances identified in Part VI.D.1;
  - (c) A copy of any corrective action documentation (See Part VI.F); and
  - (d) A copy of any spill and leak or other unpermitted discharge documentation as required by Part VI.E.2.

**B. ANNUAL REPORTING FOR OPERATORS REQUIRED TO SUBMIT A NOI**

Operators required to submit a NOI under Part I.C.3, must prepare and keep onsite an annual report that must be made readily available for review by the Department. The annual report must be completed no later than February 15<sup>th</sup>, and must include information for the previous calendar year. The first annual report is required to include activities for the portion of the calendar year after the effective date of the NOI.

The annual report must contain the following information:

1. Operator's name, title, e-mail address (if any) and telephone number;
2. NPDES permit number(s); and
3. Description of each pest treatment area, including:
  - (a) Identification of any waters or other treatment area(s), either by name or by location, to which any pesticide(s) were discharged;
  - (b) Pesticide use pattern(s) and specific target pest(s) per pesticide use pattern (i.e., mosquito and other flying insects, weeds and algae, nuisance animals, or forest canopy) and target pest(s);
  - (c) Company name(s) and contact information for pesticide applicator(s) if different from the NOI submitter;
  - (d) Quantity of each pesticide product applied (in gallons or pounds and specify if quantities are for the pesticide product as packaged or as formulated and applied) for the reporting year by the EPA registration number(s) and by application method (e.g., aerially by fixed-wing or rotary aircraft, broadcast spray, etc.);
  - (e) If applicable, any adverse incidents as a result of these treatment(s) to non-target organisms;
  - (f) A description of any corrective action(s), including spill responses, resulting from pesticide application activities and the rationale for such action(s);
  - (g) Summary of surveillance method(s) used, date(s) of surveillance activities, and findings of surveillance;
  - (h) Action threshold used during the previous year;
  - (i) Specific pesticide application date(s);
  - (j) Name of each pesticide product used;
  - (k) Concentration (%) of active ingredient in formulation;
  - (l) For pesticide applications directly to waters of the State, the effective concentration of active ingredient required for control;

- (m) Documentation of any equipment calibration(s);
- (n) A copy of the PDMP, including any modifications made to the PDMP during the term of this permit as well as whether this pest control activity was addressed in the PDMP prior to pesticide application; and
- (o) Summary of all adverse incidents that occurred during the previous calendar year.

## **PART VIII: STANDARD AND GENERAL PERMIT CONDITIONS**

### **A. DUTY TO COMPLY**

1. The Operator must comply with all conditions of the permit. Any permit noncompliance constitutes a violation of the AWPCA and the FWPCA and is grounds for enforcement action or termination or denial of coverage under this permit.
2. Any Operator who violates a permit condition is subject to a civil penalty as authorized by Code of Alabama (1975) §22-22A-5(18) (1987 Cum. Supp.) and/or a criminal penalty as authorized by the AWPCA.

### **B. NEED TO HALT OR REDUCE ACTIVITY NOT A DEFENSE**

It shall not be a defense for the Operator in an enforcement action that it would have been necessary to halt or reduce pesticide application activities in order to maintain compliance with the conditions of the permit.

### **C. DUTY TO MITIGATE**

The Operator shall take all reasonable steps to mitigate, minimize or prevent any violation of the permit or minimize or prevent any adverse impact of any permit violation.

### **D. PERMIT ACTIONS**

This permit may be modified, revoked and reissued, suspended, or terminated for cause. The filing of a request by the Operator for a permit modification, revocation and re-issuance, termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

### **E. PROPERTY RIGHTS**

This permit does not convey any property rights of any sort or any exclusive privilege.

### **F. DUTY TO PROVIDE INFORMATION**

1. The Operator shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking, and re-issuing, suspending, or terminating this permit or to determine compliance with this permit. The Operator shall also furnish to the Director upon request, copies of records required to be kept by this permit.
2. The Operator shall inform the Director in writing of any change in the Operator's mailing address or telephone number or in the Operator's designation of a contact or officer having the authority and responsibility to prevent and abate violations of the AWPCA, the Department's rules and the terms and conditions of this permit no later than ten (10) days after such change. Upon request of the Director, the Operator shall furnish an update of any information provided in the NOI.
3. If the Operator becomes aware that it failed to submit any relevant facts in the NOI, submitted incorrect information in the NOI, or submitted incorrect information in any report to the Director, it shall promptly submit such facts or information with a written explanation for the mistake and/or omission.
4. All information and/or documents required to be submitted to the Department by this general permit shall be submitted via the AEPACS, which can be accessed at the following link, <http://adem.alabama.gov/AEPACS>, or delivered to the following address: Alabama Department of Environmental Management Water Division, Stormwater Management Branch, Post Office Box 301463, Montgomery, Alabama 36130-1463, or 1400 Coliseum Boulevard, Montgomery, Alabama 36110-2400.

### **G. INSPECTION AND ENTRY**

The Operator shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law to:

1. Enter upon the Operator's premises where a regulated activity is located or conducted or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit; and
3. Inspect at reasonable times any equipment, practices, or operations regulated or required under this permit.

#### **H. NONCOMPLIANCE NOTIFICATION**

1. If for any reason, the Operator's discharge does not comply with any condition of this permit, the Operator shall verbally notify the Director within twenty-four (24) hours of the noncompliant event followed by a written report within five (5) days of the non-compliant event.
2. A written noncompliance notification shall be in a format acceptable to the Department and shall include:
  - (a) A description of the noncompliant event, its cause, if known, and location;
  - (b) The expected period of noncompliance, including dates and times; and
  - (c) A description of any corrective measures taken or to be taken to correct the noncompliance and mitigate any associated effects to the environment.

#### **I. SIGNATORY REQUIREMENTS**

The NOI and all reports or information submitted to the Director shall be signed and certified according to the requirement of ADEM Admin Code r. 335-6-6-.09.

#### **J. TRANSFERS**

This permit is not transferable to any person except after written notice to the Department. The Department may require the submittal of an updated NOI to change the name of the Operator and any other information affected by the proposed transfer.

#### **K. BYPASS**

Any bypass claimed by the Operator is subject to the requirements of ADEM Admin Code r. 335-6-6-.12(m).

#### **L. UPSET**

Any upset claimed by the Operator is subject to the requirements of ADEM Admin Code r. 335-6-6-.12(n).

#### **M. SEVERABILITY**

The provisions of this permit are severable and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances, and the remainder of this permit shall not be affected thereby.

#### **N. MODIFICATION, REVOCATION AND REISSUANCE, AND TERMINATION**

The Director may modify, revoke and reissue, or terminate this permit in accordance with ADEM Admin. Code r. 335-6-6-.23(7).

#### **O. ISSUANCE OF AN INDIVIDUAL PERMIT**

The Director may require the Operator to obtain an individual permit for discharges covered by this permit in accordance with ADEM Admin. Code r. 335-6-6-.23(9).

#### **P. RECORDS, DOCUMENTATION AND RETENTION**

All required records must be documented no later than fourteen (14) days following completion of the activity. Any records required under this permit must be maintained for at least three (3) years from that date the record was created. All records required to be kept by this permit must be made available to the Department upon request.



#### Q. AVAILABILITY OF REPORTS

Except for data determined to be confidential under Code of Alabama 1975, §22-22-9(c), all reports prepared and submitted in accordance with the terms of this permit shall be available for public inspection at the offices of the Department or the Department's electronic filing system (eFile) at <http://app.adem.alabama.gov/eFile/>. Effluent data shall not be considered confidential. Knowingly making any false statement in any such report may result in the imposition of criminal penalties as provided for in Section 309 of the FWPCA, 33 U.S.C. §1319, and Code of Alabama 1975, §22-22-14.

#### R. COMPLIANCE WITH WATER QUALITY STANDARDS AND OTHER PROVISIONS

1. On the basis of the Operator's application, plans, or other available information, the Department has determined that compliance with the terms and conditions of this permit will assure compliance with applicable water quality standards. However, this permit does not relieve the Operator from compliance with applicable State water quality standards established in ADEM Admin. Code chap. 335-6-10 and does not preclude the Department from taking action as appropriate to address the potential for contravention of applicable State water quality standards which could result from discharges of pollutants from the permitted facility.
2. Compliance with permit terms and conditions notwithstanding, if the Operator's discharge(s) cause(s) or contribute(s) to a condition in contravention of State water quality standards, the Department may require abatement action to be taken by the Operator, modify the permit pursuant to the Department's rules and regulations, or both.
3. If the Department determines, on the basis of any investigation, inspection, or sampling, that a modification of this permit is necessary to assure maintenance of water quality standards or compliance with other provisions of the AWPCA or FWPCA, the Department may require such modification and, in cases of emergency, the Director may prohibit the noticed act until the permit has been modified.

#### S. CIVIL AND CRIMINAL LIABILITY

1. Tampering: Any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained or performed under this permit shall, upon conviction, be subject to penalties and/or imprisonment as provided by the AWPCA and/or the AEMA.
2. False Statements: Any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be punished as provided by applicable State and Federal law.
3. Permit Enforcement: This NPDES Permit is a permit for the purpose of the AWPCA, AEMA, and FWPCA and, as such, all terms, conditions, or limitations of this permit are enforceable under State and Federal law.
4. Relief From Liability: Except as provided in Part VIII.K. (Bypass) and Part VIII.L. (Upset), nothing in this permit shall be construed to relieve the permittee of civil or criminal liability under the AWPCA, AEMA, or FWPCA for noncompliance with any term or condition of this permit.

**PART IX: DEFINITIONS**

1. **Action Threshold** - the point at which pest populations or environmental conditions can no longer be tolerated necessitating that pest control action be taken based on economic, human health, aesthetic, or other effects. An action threshold may be based on past and/or current 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 such actions.
2. **Active Ingredient** - any substance (or group of structurally similar substances if specified by the Department) that will prevent, destroy, repel or mitigate any pest, or that functions as a plant regulator, desiccant, or defoliant within the meaning of FIFRA sec. 2(a). [40 CFR 152.3]. 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 such a pesticidal substance. [40 CFR 174.3]
3. **ADEM or Department** - the Alabama Department of Environmental Management, or an authorized representative.
4. **Adverse Incident** - an unusual or unexpected incident that has been observed upon inspection or of which the Operator has otherwise become aware, in which:

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

The phrase "toxic or adverse effects" includes effects that occur within waters of the State on non-target plants, fish or wildlife that are unusual or unexpected (e.g., effects are to organisms not otherwise described on the pesticide product label or otherwise not expected to be present) as a result of exposure to a pesticide residue, and may include:

- Distressed or dead juvenile and small fishes;
- Washed up or floating fish;
- Fish swimming abnormally or erratically;
- Fish lying lethargically at water surface or in shallow water;
- Fish that are listless or nonresponsive to disturbance;
- Stunting, wilting, or desiccation of non-target submerged or emergent aquatic plants; and
- Other dead or visibly distressed non-target aquatic organisms (amphibians, turtles, invertebrates, etc.).

The phrase, "toxic or adverse effects," also includes any adverse effects to humans (e.g., skin rashes) or domesticated animals that occur from a discharge to waters of the State that are temporally and spatially related to exposure to a pesticide residue (e.g., vomiting, lethargy).

5. **AEMA** – means the Alabama Environmental Management Act, Code of Alabama 1975 §§ 22-22A-1, et seq.
6. **Annual Treatment Area Threshold** – an area (in acres) or linear distance (in miles) in a calendar year to which an Operator performs pesticide applications in that area for activities covered under this permit.
  - (a) For calculating annual treatment areas for Mosquitoes and Other Flying Insect Pest Control and Forestry Canopy Pest Control for comparing with any threshold in Table 1, count each pesticide application activity to a treatment area (i.e., that area where a pesticide application is intended to provide pesticidal benefits within the pest management area) as a separate area treated. For example, applying pesticides three times per year to the same 3000-acre site should be counted as 9000 acres of treatment area for the purposes of determining if such an application exceeds an annual treatment area threshold. The treatment area for these two pesticides use patterns is additive over a calendar year.

- (b) For calculating annual treatment areas for Weed and Algae Control and Animal Pest Control for comparing with any threshold in Table 1, calculations should include either the linear extent of or the surface waters for applications made to waters of the State or at water's edge adjacent to waters of the State. For calculating the annual treatment area, count each treatment area only once, regardless of the number of pesticide application activities performed on that area in a given calendar year. Also, for linear features (e.g., a canal or ditch), use the length of the linear feature whether treating in or adjacent to the feature, regardless of the number of applications made to that feature during the calendar year. For example, whether treating the bank on one side of a ten-mile ditch, banks on both sides of the ditch, and/or water in that ditch, the total treatment area is ten miles for purposes of determining if a NOI is required to be submitted. Additionally, if the same ten-mile area is treated more than once in a calendar year, the total area treated is still ten miles for purposes of comparing with any threshold in Table 1. The treatment area for these two pesticides use patterns **is not** additive over the calendar year.
7. **AWPCA** - the Alabama Water Pollution Control Act.
  8. **Biological Control Agents** – these agents are organisms that can be introduced to the treatment areas, such as herbivores, predators, parasites, and hyperparasites.
  9. **Biological Pesticides** (also called biopesticides) - include microbial pesticides, biochemical pesticides, and plant-incorporated protectants (PIP). Microbial pesticide means 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. Biochemical pesticide means 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). Plant-incorporated protectant 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 production of such a pesticidal substance. It also includes any inert ingredient contained in the plant or produce thereof.
  10. **CFR** - Code of Federal Regulations
  11. **Chemical Pesticides** – all pesticides not otherwise classified as biological pesticides.
  12. **Control Measure** – any BMP or other method used to meet the effluent limitations. Control measures must comply with manufacturer specifications, industry standards and recommended industry practices related to the application of pesticides, and relevant legal requirements. Additionally, control measures could include other actions that a prudent Operator would implement to reduce and/or eliminate pesticide discharges to waters of the State to comply with the effluent limitations in Parts II and III of this permit.
  13. **CWA or The Act** - the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Pub.L. 92-500, as amended Pub.L. 95-217, Pub.L. 95-576, Pub.L. 96-483 and Pub.L. 97-117, 33 U.S.C. 1251 et.seq.
  14. **Cultural Methods** - manipulation of the habitat to increase pest mortality by making the habitat less suitable to the pest.
  15. **Declared Pest Emergency Situation** – an event defined by a public declaration by a federal agency, State, or local government of a pest problem determined to require control through application of a pesticide beginning less than ten (10) days after identification of the need for pest control. This public declaration may be based on:
    - (a) Significant risk to human health;
    - (b) Significant economic loss; or
    - (c) Significant risk to:
      - (i) Endangered species,
      - (ii) Threatened species,
      - (iii) Beneficial organisms, or

- (iv) The environment.
16. **Director** - the Director of the Department or his designee.
  17. **Discharge** - the addition, introduction, leaking, spilling, or emitting of any sewage, industrial wastes, pollutant, or other wastes into waters of the State.
  18. **EPA** - Environmental Protection Agency.
  19. **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.
  20. **Facility or Activity** – any NPDES “point source” (including land or appurtenances thereto) that is subject to regulation under the NPDES program.
  21. **For-Hire Applicator** - includes persons who make contractual pesticide applications for which they or their employer receives compensation (e.g., lawn care firms, pest control companies, etc.).
  22. **FWPCA** - the Federal Water Pollution Control Act.
  23. **Impaired Water (or “Water Quality Impaired Water” or “Water Quality Limited Segment”)** – a water is impaired for purposes of this permit if it has been identified pursuant to Section 303(d) of the CWA as not meeting applicable State water quality standards. Impaired waters include both waters with approved or established TMDLs, and those for which a TMDL has not yet been approved or established.
  24. **Inert Ingredient** - any substance (or group of structurally similar substances if designated by the Department), 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.
  25. **Mechanical/Physical Methods** - mechanical tools or physical alterations of the environment, for pest prevention or removal.
  26. **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.
  27. **Operator** – is any entity involved in the application of a pesticide that results in a discharge to waters of the State. For-hire applicators and owners may be considered Operators for the purposes of this permit.
  28. **Owner** - the entity paying for or making the decision to perform pesticide applications that result in discharges to a water of the State, including the ability to modify those decisions.
  29. **Person** – any and all persons, natural or artificial, including, but not limited to, any individual, partnership, association, society, joint stock company, firm, company, corporation, institution, trust, other legal entity, business organization or any governmental entity and any successor, representative, responsible corporate officer, agent, or agency of the foregoing.
  30. **Pest** – any organism under circumstances that make it deleterious to man or the environment, if it is:
    - (a) Any vertebrate animal other than man;
    - (b) Any invertebrate animal including, but not limited to, any insect, other arthropod, nematode, or mollusk such as a slug or snail, but excluding any internal parasite of living man or other living animals;
    - (c) Any plant growing where not wanted, including any moss, alga, liverwort, or other plant of any higher order, and any plant part such as a root; or
    - (d) Any fungus, bacterium, virus, or other microorganism, except for those on or in living man or other living animals and those on or in processed food or processed animal feed, beverages, drugs, and cosmetics.
  31. **Pest Management Area** – the area of land, including any water, for which the Operator is conducting pest management activities covered by this permit.

32. **Pest Management Measures** – are effective and environmentally sensitive approaches to pest management. Pest Management Measures also 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.
33. **Pesticide** – (1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, (2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, and (3) any nitrogen stabilizer.

The term “pesticide” 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 sections 3 (registration), 5 (experimental use permits), 18 (emergency exemptions), 24(c) (special local needs registrations), and 25(b) (exemptions from FIFRA). Drugs used to control diseases of humans or animals (such as livestock and pets) are not considered pesticides and 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 are not pesticides.

34. **Pesticide Product** – a pesticide in the particular form (including composition, packaging, and labeling) in which 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.
35. **Pesticide Research and Development** – Activities undertaken on a systematic basis to gain new knowledge (research) and/or the application of research findings or other scientific knowledge for the creation of new or significantly improved products or processes.
36. **Pesticide Residue** – for the purpose of determining whether an NPDES permit is needed for discharges to waters of the State from pesticide application, pesticide residue refers to that portion of a pesticide application that is discharged from a point source to waters of the State and no longer provides pesticidal benefits. It also includes any degradates of the pesticide.
37. **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.
38. **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.”
39. **Target Pest** – the organism toward which pest management measures are being directed.
40. **Tier 3 Waters** – high quality waters constituting an Outstanding National Resource Water (ONRW), such as waters of National Parks and State Parks, wildlife refuges, and waters of exceptional recreational or ecological significance.
41. **Total Maximum Daily Loads (TMDLs)** – A TMDL is a calculation of the maximum amount of a pollutant that a water body can receive and still meet water quality standards and an allocation of that amount to the pollutant's sources. A TMDL includes wasteload allocations (WLAs) for point source discharges; load allocations (LAs) for nonpoint sources and/or natural background and must include a margin of safety (MOS) and account for seasonal variations.
42. **Treatment Area** – The area of land, including any waters or the linear distance along water's edge, to which pesticides are being applied. Multiple treatment areas may be located within a single “pest management area.”

The “treatment area” includes the entire area, whether over land, water, or both, where the pesticide application is intended to provide pesticidal benefits within the pest management area. In some instances, the treatment area will be larger than the area where pesticides are actually applied. For example, the treatment area for a stationary drip treatment into a canal includes the entire width and length of the canal over which the pesticide is intended to control weeds. Similarly, the treatment area for a lake or marine area is the water surface area where the application is intended to provide pesticidal benefits.

43. **Waters of the State** – all surface waters of any river, stream, watercourse, pond, lake, coastal, ground, or surface water, wholly or partially within the State, natural or artificial. This does not include waters which are entirely confined and retained completely upon the property of a single individual, partnership, or corporation unless such waters are used in interstate commerce.
44. **Water Quality Standards** – a water quality standard defines the water quality goals of a water body, or portion thereof, by designating the use or uses to be made of the water and by setting criteria necessary to protect the uses.
45. **Wetlands** - those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

## FACT SHEET

### NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT TO DISCHARGE TO WATERS OF THE STATE OF ALABAMA GENERAL PERMIT

**Date:** June 30, 2021

**Prepared By:** Blake B. Pruitt

**NPDES Permit No.** ALG870000

**1. Description of Category:**

This permit is available to operators who discharge to waters of the State from the application of (1) biological pesticides or (2) chemical pesticides that leave a residue, when the pesticide application is for one of the following pesticide use patterns: (a) Mosquito and Other Flying Insect Pest Control, (b) Weed and Algae Control, (c) Nuisance Animal Control, or (d) Forest Canopy or Other Area-Wide Pest Control.

**2. Geographic area covered:**

State of Alabama

**3. Receiving waters:**

All Waters of the State

**4. Types of discharge:**

Discharge from the application of biological pesticides or chemical pesticides that leave a residue into, over or near a water of the State, when the pesticide application is for one of the following pesticide use patterns: (a) Mosquito and Other Flying Insect Pest Control, (b) Weed and Algae Control, (c) Nuisance Animal Control, or (d) Forest Canopy or Other Area-Wide Pest Control as defined in Part I.B.1 of the proposed general permit.

**5. Permit Conditions:**

The permit conditions are based on the EPA's Pesticide General Permit, which was required by the January 26, 2009, ruling in National Cotton Council, et al, v. EPA by the U.S. Sixth Circuit Court of Appeals.

**6. Procedures for the formulation of final determinations**

**a. Comment Period**

The Alabama Department of Environmental Management proposes to reissue a General NPDES Permit subject to the conditions outlined above. These determinations are tentative.

Interested persons are invited to submit written comments on the proposed general permit to the following address:

Jeffery W. Kitchens, Chief  
Water Division  
Alabama Department of Environmental Management  
1400 Coliseum Blvd  
(Mailing Address: Post Office Box 301463; Zip 36130-1463)  
Montgomery, Alabama 36110-2400  
(334) 271-7823  
[water-permits@adem.alabama.gov](mailto:water-permits@adem.alabama.gov)

All comments received prior to the closure of the public notice period (see attached public notice) will be considered in the formulation of final determinations with regard to this general permit.

**b. Public Hearing**

A written request for a public hearing may be filed within the public notice period and must state the nature of the issues proposed to be raised in the hearing. A request for a hearing should be filed with the Department at the following address:

Jeffery W. Kitchens, Chief  
Water Division  
Alabama Department of Environmental Management  
1400 Coliseum Blvd  
(Mailing Address: Post Office Box 301463; Zip 36130-1463)  
Montgomery, Alabama 36110-2400  
(334) 271-7823  
[water-permits@adem.alabama.gov](mailto:water-permits@adem.alabama.gov)

The Director shall hold a public hearing whenever it is found, on the basis of the hearing request, that there exists a significant degree of public interest in a permit application or draft permit. The Director may hold a public hearing whenever such a hearing might clarify one or more issues involved in the permit decision. Public notice of such a hearing will be made in accordance with ADEM Admin. Code r. 335-6-6-.21.

**c. Reissuance of the Permit**

All comments received during the public comment period shall be considered in making the final permit decision. At the time that any final permit decision is issued, the Department shall prepare a response to comments in accordance with ADEM Admin. Code r. 335-6-6.21. **The permit record, including the response to comments, will be available to the public via the eFile System (<http://app.adem.alabama.gov/eFile>) or an appointment to review the record may be made by writing to the Permits and Services Division at the above address.**

Unless a request for a stay of the permit or permit provision is granted by the Environmental Management Commission, the proposed permit contained in the Director's determination shall be issued and effective; and such issuance will be the final action of the Alabama Department of Environmental Management.



**d. Appeal Procedures**

As allowed under ADEM Admin. Code chap. 335-2-1, any person aggrieved by the Department's final administrative action may file a request for hearing to contest such action. Such requests should be received by the Environmental Management Commission within thirty days of reissuance of the permit. Requests should be filed with the Commission at the following address:

Alabama Environmental Management Commission  
1400 Coliseum Blvd  
(Mailing Address: Post Office Box 301463; Zip 36130-1463)  
Montgomery, Alabama 36110-2059

All requests must be in writing and shall contain the information provided in ADEM Admin. Code r. 335-2-1-.04.

**NPDES GENERAL PERMIT RATIONALE  
PESTICIDE GENERAL PERMIT  
NPDES PERMIT NO. ALG870000**

**DATE:** June 30, 2021

**PREPARED BY:** Blake B. Pruitt

**PERMIT IS A REISSUANCE DUE TO EXPIRATION**

**PERMIT DISCHARGE:**

This permit is available to operators who discharge to waters of the State from the application of (1) biological pesticides or (2) chemical pesticides that leave a residue, when the pesticide application is for one of the following pesticide use patterns: (a) Mosquito and Other Flying Insect Pest Control, (b) Weed and Algae Control, (c) Nuisance Animal Control, or (d) Forest Canopy or Other Area-Wide Pest Control.

**GEOGRAPHIC AREA COVERED**

State of Alabama

**RECEIVING WATERS**

All Waters of the State of Alabama

**PERMIT PROCEDURES**

This draft Permit has been developed in accordance with applicable procedures of ADEM Admin. Code r. 335-6-6.

**DISCUSSION**

The Department is proposing to reissue NPDES General Permit ALG870000. This permit is available to operators who discharge to waters of the State from the application of (1) biological pesticides or (2) chemical pesticides that leave a residue, when the pesticide application is for one of the following pesticide use patterns: (a) Mosquito and Other Flying Insect Pest Control, (b) Weed and Algae Control, (c) Nuisance Animal Control, or (d) Forest Canopy or Other Area-Wide Pest Control.

On November 26, 2006, the USEPA issued an aquatic pesticide rule which states that a Clean Water Act (CWA) permit is not required for the application of pesticides directly to water in order to control pests or for the application of pesticides to control pests that are present over or near water, where a portion of the pesticide will unavoidably be deposited in the water in order to target the pests (i.e., spraying to control non-native plants growing on the water's edge because some of the pesticide would unavoidably enter the water). EPA determined that the CWA as it applies to pesticides is ambiguous and that pesticides applied according to the Federal Insecticide, Fungicide

and Rodenticide Act (FIFRA) requirements are not pollutants and therefore are not subject to NPDES permitting.

On January 26, 2007, the Rule became effective. However, on January 19, 2007, EPA received petitions for review of the Aquatic Pesticides rule from both environmental and industry groups. The case, *National Cotton Council, et al, v. EPA*, was assigned to the Sixth Circuit Court of Appeals.

On January 19, 2009, the U.S. Sixth Circuit Court of Appeals held in *National Cotton Council, et al, v. EPA*, that the final Aquatic Pesticides rule was not a reasonable interpretation of the CWA and vacated the rule. Reversing EPA's November 2006 Aquatic Pesticides Rule, the Sixth Circuit held that CWA permits are required for all biological and chemical pesticide applications that leave a residue in water when such applications are made in, over, or near waters of the U.S.

In response to this decision, on April 9, 2009, EPA requested a two-year stay of the mandate to provide the Agency time to develop general permits, to assist NPDES-authorized states to develop their NPDES permits, and to provide outreach and education to the regulated communities. On June 8, 2009, the Sixth Circuit granted EPA the two-year stay of the mandate. The stay of the mandate expired on April 9, 2011. Therefore, NPDES permits are required for all point source dischargers to waters of the State from the application of pesticides (biological and chemical) that leave a residue.

This permit follows the Sixth Circuit Court of Appeals decision in *National Cotton Council, et al, v. EPA*, and EPA's Pesticide General Permit.

The technology-based effluent limitations contained in the pesticide general permit are non-numeric and constitute the levels of control that reduce the impacts caused by the discharge of pesticides to waters of the State. Additionally, these limitations provide for the protection of applicable numeric and narrative State water quality standards.

The water quality-based limitations contained in the permit are also non-numeric and require the control of discharges as necessary to meet applicable numeric and narrative State water quality standards.

Coverage under this general permit will be initiated by submitting a Notice of Intent (NOI) for any operator who will exceed an annual treatment area threshold defined in Part I.C.2 of the general permit. Pursuant to ADEM Admin Code r. 335-6-6-.23(15)(c), and given the type and expected number of discharges, the Department is proposing that other operators that do not exceed an annual treatment threshold may be authorized to discharge under this general permit without having to submit a NOI.

## **PERMIT CHANGES**

This draft general permit renewal contains the same basic framework of requirements as the current permit. However, some language in this draft general permit renewal has been revised in order to clarify permit requirements. Although not inclusive of all changes proposed to the permit, the following list contains notable proposed changes.

### **Eligibility:**

Part I.B.1.(a).-clarified mosquito and other flying insect pest control includes larvacides.

### **Contents of the NOI:**

Part I.C.4. - The Department has included that the additional information shall be included on the NOI to include a list active ingredients of pesticides that are planned to be used, and a map outlining treatment areas, and receiving waters.

### **Submittal of Documents:**

Part I.C.5-The Department has included that requirement that NOIs for permit coverage shall be submitted electronically to the Department's Alabama Environmental Permitting and Compliance System (AEPACS) information for submittal of documents.

### **Pesticide Discharge Management Plan:**

Part V.B.2(d)-Added the requirement to document any Tier 3 waters identified as impaired by a substance which is either an active ingredient or degrade of such active ingredient.

Part IX-Added a separate permit part for definitions.

Part IX. – Added a definition for AEMA.

**RESPONSE TO COMMENTS**  
**NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)**  
**GENERAL PERMIT NO. ALG870000**  
**August 19, 2021**

On July 9, 2021, the Alabama Department of Environmental Management (hereinafter “ADEM” or “the Department”) proposed to reissue General Permit No. ALG870000 regulating discharges associated with pesticide application. On July 9, 2021, in accordance with ADEM Admin. Code r. 335-6-6-.21, the Department gave public notice that a draft NPDES general permit had been prepared, and a tentative determination had been made to reissue the permit. The public comment period concluded on August 10, 2021.

The purpose of this document is to provide responses to technical and substantive comments received during the public comment period. Copies of the permit record outlining all written comments received during the public comment period can be reviewed or obtained by submitting a request to the Department’s public Records Officer by e-mail at [records@adem.state.al.us](mailto:records@adem.state.al.us), fax to (334) 271-7950, or mailed to P.O. Box 301463, Montgomery, AL 36130-1463. This information may also be viewed or downloaded online via the Department’s eFile system available at <http://app.adem.alabama.gov/eFile/>.

**Response to comments**

**Part I: Coverage under this general permit**

Comment 1: A commenter stated that all operators who intend to apply pesticides to Alabama waterways should also be required to submit a NOI (Notice of Intent) to the Department.

Response 1: The Department believes that this this section of the permit is adequately written and this permit provision is consistent with the requirements of the current permit. The permit has not been modified based on this comment.

Comment 2: A commenter stated that by not requiring small operators to submit a NOI to the Department, this allows them to not maintain records concerning discharges related to pesticide application.

Response 2: Per Permit Part I.C.2. (a) operators discharging without submitting a NOI are required to be in compliance with the requirements of the permit. This permit provision is consistent with the requirements of the current permit. The permit has not been modified based on this comment.

Comment 3: A commenter stated that the requirement to submit known active ingredient updates “as timely as possible” is too lenient.

Response 3: The permit has been modified to require submittal of the information to the Department 10 days prior to discharge.

Comment 4: A commenter stated the Department should require public notification related to pesticide applications, including spray schedule dates, application maps, and public notice for impacted areas.

- Response 4: ADEM currently places all public documents in the eFile system in a timely manner. The permit has not been modified based on this comment.
- Comment 5: A commenter stated information related to current permits is not easily accessible via the Department's eFile system and that ADEM, for full transparency, must promptly add required documents to eFile.
- Response 5: ADEM currently places all public documents in the eFile system in a timely manner. Additionally, this comment is not relevant to the issuance of the general permit. The permit has not been modified based on this comment.
- Comment 6: A commenter stated that all operators should be required to submit their Pesticide Discharge Management Plan to the Department along with the NOI. The commenter also suggests that these documents be available on the operator's website and ADEM's eFile system.
- Response 6: The Department can require the permittee to provide a copy of the Pesticide Discharge Management Plan at any time on a case-by-case basis. All documents that are received by the Department will be made available to the public electronically via the Department's eFile system. This permit provision is consistent with the requirements of the current permit. The permit has not been modified based on this comment.
- Comment 7: A commenter stated that language concerning reporting of adverse incidents lacks accountability, and that the public should be made aware of adverse incidents through various outlets.
- Response 7: Per Part VI. D. of the permit, the operator must notify the Department of adverse incidents. All documents that are received by the Department will be made available to the public electronically via the Department's eFile system. The permit has not been modified based on this comment.
- Comment 8: A commenter stated that language had been deleted from the draft permit that was in the previous version, "The Operator must report adverse incidents even for those instances where the pesticide labeling states that adverse effects may occur."
- Response 8: This language was not deleted from the draft permit. Permit Part VI.D contains the following language: The Operator must report adverse incidents even for those instances when the pesticide labeling states that adverse effect may occur. The permit has not been modified based on this comment.

## Bergquist, Shelane P

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**From:** Justinn Overton <justinn@coosariver.org>  
**Sent:** Thursday, August 5, 2021 10:24 AM  
**To:** Water-Permits@adem.alabama.gov  
**Subject:** UPDATE: General NPDES Permit ALG870000  
**Attachments:** AL General Pesticide Permit Comment Letter (2).pdf

To Whom it May Concern,

Please disregard the previous email sent by Coosa Riverkeeper. Attached is a comment letter on the General NPDES Permit ALG870000 regarding the application of biological or chemical pesticides that leave a residue on the waters of the State of Alabama.

Please let me know if you have any issues opening the document. Thank you for the opportunity to provide feedback.

Thank you,  
Justinn

~~~~~  
justinn overton  
executive director & riverkeeper  
coosa riverkeeper  
office: 205.981.6565 | cell: 205.288.7112

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• KEEPING WATCH OVER OUR WATERS SINCE 2010 •

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Mr. Jeffrey Kitchens  
ADEM Water Division  
Alabama Department of Environmental Management  
P. O. Box 301463  
Montgomery, AL 36130-1463

August 5, 2021

**RE: Alabama General Pesticide Permit - ALG870000**

via electronic mail only

Dear Mr. Kitchens,

Thank you for the opportunity to comment on the Alabama Department of Environmental Management (ADEM) proposed reissuance of NPDES Permit ALG870000 (Permit) referenced above as the Alabama General Pesticide Permit. The permit in question authorizes application of pesticides to all waters of the state of Alabama.

Coosa Riverkeeper, a citizen-led river conservation non-profit, submits this comment letter on behalf of the organization's interests, its members and the general public to protect, restore and promote the Coosa River and its tributaries in Alabama. Our organization works to answer the simple questions "is it safe to swim?", "are the fish safe to eat?", and "what can I do to make the Coosa healthier for my community?" as a means to ensure the public is aware of issues that impact recreation, public health, and property value. Many of our members enjoy recreation on the Coosa River.

The Coosa River is one of the most developed and heavily recreated river systems in Alabama, the River State. When Alabama Power created the impoundments on the Coosa River, they made six large lakes that are a significant part of life on the Coosa and where tens of thousands of people live, fish and swim. Alabama Power undoubtedly plays an integral role in shoreline management, controlling invasive species, and managing river conditions.

Over the past three years, Coosa Riverkeeper has received numerous citizen complaints about excessive spraying on the Lower Coosa reservoirs, specifically Lay Lake, by Alabama Power or its

Coosa Riverkeeper |



contractors. In particular, bass anglers and lake homeowners have documented spraying along shorelines and sloughs with limited vegetation, instances of overspraying in sloughs killing native grasses, and expressed concerns about the impact of the fish spawn. These individuals have documented these concerns by taking pictures and videos and reporting these concerns to Coosa Riverkeeper. Coosa Riverkeeper met with Alabama Power Shorelines on two occasions and exchanged multiple emails to inquire about the spraying program and increase communications between our two organizations.

Coosa Riverkeeper understands the need to spray for invasive aquatic species such as water lettuce that limits recreational use of our lakes as well as the importance of spraying to prevent the spread of lyngbya mats, a harmful cyanobacteria. We understand that in some instances spraying is to manage areas that provide a breeding ground for mosquitoes. However, the public should be able to recreate without fear of how the chemicals applied on or near the water impact public health, native grasses, and aquatic wildlife. For now, the lack of transparency from entities like Alabama Power of where, when, and what they intend to spray to control vegetation leaves families fishing for answers about shoreline management.

Our organization is taking the time to comment on this draft permit because the public concerns would be easy to eliminate if Operators such as Alabama Power were required to be transparent by the Permit itself. Our main concern with the draft Permit is overall lack of accountability and transparency on the Operator. Without the requirement from the Department to be transparent in providing pertinent documentation, it is unlikely that the Operator will take the required steps to truly alleviate public concern or misconception about spraying the lakes for vegetation management. Finally, Coosa Riverkeeper has major concerns with ADEM's ability to be impartial to large Operators, like Alabama Power.

## **BRIEF SUMMARY**

Coosa Riverkeeper's overall position on this Permit represents our wishes to promote Operator accountability and transparency for the sake of public trust and protection of our waterways.

This comment letter addresses four main concerns within the proposed general permit:

- (1) small operators are not required to submit Notice of Intent (NOI)
- (2) lack of clarification of NOI
- (3) lack of "publicly" available information
- (4) concerns on corrective action accountability

## **DISCUSSION**

### **SMALL OPERATORS ARE NOT REQUIRED TO SUBMIT NOI**

The draft permit states, “operators meeting the eligibility provisions, and whose discharges are not subject to the requirement to submit an NOI, are automatically authorized to discharge upon the effective date of this permit, in compliance with the requirements of this permit” (Part I, Section C). This implies that Operators can apply pesticides directly to, or adjacent to public waterways without the submission of an NOI, as long as they are intending to apply on less than 6,400 acres of land or 100 acres of surface water. This proposed change for small Operators removes the requirement to conduct research about the underlying pest issue prior to beginning pesticide application. It does not require the small Operator to maintain detailed records such as identifying the receiving waterways simply due to the smaller size of the operations. This significantly decreases accountability for the small Operator while increasing the probability of spraying harmful pesticides directly into public water without proper knowledge or oversight. Essentially, ADEM now allows the small Operator to choose what information they will share with the Department along the proposed application area. It is important that this section was not previously included in the Permit.

**RECOMMENDATION:** We ask the Department to require a NOI from all Operators who intend to apply pesticides to Alabama waterways regardless of their proposed operation size.

## **LACK OF CLARIFICATION ON NOI**

In the proposed draft permit, the Department now requires the Operator to include a list of active ingredients of pesticides to be used, a portion or copy of a current map (or series of maps) with an outline of the pesticide application area, and identify receiving streams upon submission of an NOI. Although we believe this is a step in the right direction, no language in the permit actually requires this information be submitted or kept on file at ADEM. The permit states, “If this information is not known at the time of the NOI submittal, the information shall be submitted to the Department through an information update as timely as possible and update the Pesticide Discharge Management Plan (PDMP)” (Part I, Section C).

The phrase “as timely as possible” is far too lenient and vague, allowing the Operator to withhold vital information from the Department and the public for an inconclusive amount of time. The information should either be required immediately upon submission, or within a hard time frame such as 30 days. Failure to submit should bar the Operator from application under this general permit. This lax regulation allows yet another opportunity for the Operator to choose when and how they want to share information with the Department, and homeowners and boat owners on the lakes, which further compounds the transparency issue for our members and concerned anglers.

Transparency on when and where Operators spray our lakes is an essential part of public education and cultivating trust within communities. It is possible to have an aquatic vegetation program that alleviates public concern by providing maps, spray schedules, and a robust public education

campaign. For example, the Tennessee Valley Authority (TVA) has a treatment schedule with specific dates and application maps that are publicly available on their website (*see Attachment A*). Some individuals simply may not understand why certain areas need to be sprayed, some are concerned about potential impacts to their health if in the area (or in the lake itself) during application periods, and some feel that the Operator is spraying too many native grasses that are essential to a strong fishery. Although the Department is not well known for its public communication abilities, the Department could play a critical role in increasing transparency by requiring NOI and other relevant documents to be shared with the public and circulated to specific reservoirs in preparation for spraying.

**RECOMMENDATION:** Coosa Riverkeeper recommends that the following language be added to the AL General Pesticide Permit under Part I Contents of the NOI (vii & viii), "If this information is not known at the time of the NOI submittal, the information shall be submitted to the Department through an information update and the Operator must update the Pesticide Discharge Management Plan (PDMP) within 30 days." We ask the Department to require public notification including but not limited to: spray schedule dates, application maps, and public notices for impacted areas.

## **LACK OF "PUBLICLY" AVAILABLE INFORMATION**

While the draft permit is easily accessible on ADEM's eFile system, it is currently not as easy to find information about the entities operating under the Permit. We have not been able to locate any previous NOIs submitted under this Permit for Alabama Power Shoreline Management as of the date of this letter on eFile. There is no clarification on whether NOIs submitted under the Permit will be available to the public through the eFile system. If the NOI and other relevant documents are indeed publicly available, please clarify what identifiers are necessary to find them within ADEM's eFile system. For example, our team searched for a specific submission date given to us by Alabama Power Shorelines and not even that helpful information brought any relevant results on eFile.

Part V of the draft permit details that any Operator required to submit a NOI must create a Pesticide Discharge Management Plan (PDMP); however, the PDMP is not required for submission or operation under this Permit -- nor is a NOI. Essentially, the Department is merely suggesting the Operator to create these documents but not requiring them to actually operate. From a public education perspective, requiring the PDMP has the potential to alleviate a lot of public concern because the Operator would be required to explain their rationale for spraying in specific areas. Coosa Riverkeeper believes the PDMP and/or annual report should be required upon submission as a means to be readily available to the Department and to the public to ensure transparency and public trust. The information in these documents would be useful to understand the spray schedule over time, see the impact of the spray program on specific reservoirs, and current status of our pesticide application in the Coosa reservoirs.

**RECOMMENDATION:** Coosa Riverkeeper recommends adding the following language to the AL General Pesticide Permit under Part V Pesticide Discharge Management Plan, “The PDMP must be submitted along with the NOI and must be kept up-to-date for the duration of coverage under this general permit.” Coosa Riverkeeper recommends that ADEM immediately updates eFile upon submission of the required documents. We implore ADEM to require the Operator to submit their PDMP to their Operator’s website for full transparency and to prevent public misconception about the Operator’s spray schedule and purpose.

## **CONCERNS ON CORRECTIVE ACTION ACCOUNTABILITY**

We ask the Department to re-insert specific language from Part VI concerning Corrective Actions. The previous Alabama General Pesticide Permit issued in 2016 makes note in Section D that, “The Operator must report adverse incidents even for those instances where the pesticide labeling states that adverse effects may occur.” Most other states and the EPA guidelines continue to include this language in their draft permits. However, in Alabama, this language, and the subsequent requirement to report, was removed from the draft permit. Adverse incidents could occur from improper application including over-applying the chemical, causing impact to the surrounding areas, people, and animals. Operators should report adverse incidents to the Department immediately.

The current language absolves the Operator of any responsibility to report or investigate the potential for adverse incidents on our waterways based on product warnings. It is important to note that although the chemical may be safe for aquatic life, the application rate is critical for maintaining a healthy ecosystem. The Operator should follow the instructions on the label including how to calculate the proper amount to apply, taking into account the size of the water body, the weight of the water, water temperature, hardness of the water, and any spray drift management<sup>1</sup> as determined by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The Operator should be responsible for reporting adverse effects or incidents to the Department and to the public, regardless of the known likelihood that the effect may occur as noted by the pesticide label. Incidents resulting from improper application will have detrimental impacts to the fish spawn, wildlife, and human health. The Department and the public should be made aware of adverse incidents as soon as possible.

**RECOMMENDATION:** Coosa Riverkeeper recommends that the following language be re-added to the AL General Pesticide Permit under Part VI Corrective Action, “The Operator must report adverse incidents to the department and notify the public even for those instances where the pesticide labeling states that adverse effects may occur.” Examples of public notification should include social media postings, uploading to ADEM eFile, and press releases to media outlets.

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<sup>1</sup> 2013 Label, supra note 47, at 5-8; 2015 Label, supra note 47, at 7-10

## Conclusion

The application of pesticides is necessary in the battle against invasive aquatic species and harmful cyanobacteria, especially in managing our reservoirs' aquatic vegetation for boater safety and public health. ADEM should require all operators, regardless of operational size, intending to spray directly in, or adjacent to any public waterway to submit an NOI. The NOI, PDMP, and all other relevant information and requirements should be made publicly available.

As it stands, ADEM does not have a general pesticide permit that promotes transparency between the concerned public and the permit holder. We implore ADEM to redraft the permit, incorporating our suggestions to ensure that the permit will protect public health, aquatic wildlife, and water quality. ADEM should require all Operators to share valuable information about their spray schedule and treatment plans with concerned citizens.

Thank you for your time and consideration of these comments.

For Coosa,



Justinn E. Overton  
Staff Riverkeeper & Executive Director  
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**ATTACHMENT A: TVA Aquatic Weeds Treatment Schedule Website & Potential Treatment Maps**



**Source:** <https://www.tva.com/environment/environmental-stewardship/angler's-aquatic-plant-id/aquatic-weeds-treatment-schedule>