

**Authorization to Discharge Under the National Pollutant Discharge
Elimination System and the Arkansas Water Pollution Control Act**

In accordance with the provisions of the Arkansas Water Pollution Control Act (Ark. Code Ann. 8-4-101 et seq.), and the Clean Water Act (33 U.S.C. 1251 et seq.),

Pesticide Dischargers Located within the State of Arkansas

are authorized to discharge biological pesticides or chemical pesticides (including insecticides, nematicides, rodenticides, fungicides, and herbicides) that leave a residue in water when such applications are made into, over, or near Waters of the State, except as stated in Part 1.3, in accordance with effluent limitations, monitoring requirements, and other conditions set forth in this permit.

To be eligible for Automatic Coverage under this permit, a copy of the completed Notice of Coverage (NOC) must be posted at the pest management area or kept at the physical address of the permittee prior to commencing the pesticide application, per APC&EC Rule 6.206.

Effective Date: March 1, 2022

Expiration Date: February 28, 2027

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PART 1 PERMIT COVERAGE

1.1 Coverage under This Permit

1.1.1 This permit covers any permittee that meets the eligibility requirements identified in Part 1.2. A permittee, defined in Part 8, generally includes the entity with day-to-day operational control of a facility or who performs activities (e.g., the application of pesticides) that are necessary to ensure compliance with the permit (e.g., they are authorized to direct workers to carry out activities required by the permit or perform such activities themselves). The definition of permittee includes for-hire certified applicators; those individuals who may not be owners or managers of a facility, but are responsible for the application of pesticides at a facility.

1.1.1.1 A permittee will need to obtain a permit for each Pest Management Area, as defined in Part 8, which meets the coverage requirements outlined in this permit. Permittees in charge of multiple Pest Management Areas that require permit coverage shall obtain a separate permit for each such site.

1.1.2 This general permit does not apply to the application of pesticides to areas which are exempt from National Pollutant Discharge Elimination System (NPDES) permitting including:

1.1.2.1 Any introduction of pollutants from non-point source agricultural and silvicultural activities, including storm water runoff from orchards, cultivated crops, pastures, range lands, and forest lands; and

1.1.2.2 Return flows from irrigated agriculture.

1.2 Eligibility

1.2.1 This permit is available to permittees, as defined in Part 8, who qualify under the permitting requirements established under APC&EC Rule 6.206, Permitting Requirements for Discharges of Pesticides. This permit allows the discharge of pollutants to waters of the state from the application of biological pesticides or chemical pesticides that leave a residue (hereinafter collectively "pesticides"), when the pesticide application falls under one of the following pesticide use patterns:

1.2.1.1 Mosquito and Other Flying Insect Pest Control – 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.

1.2.1.2 Weed and Algae Control – to control invasive or other nuisance weeds and algae in water and at water's edge, including irrigation ditches or irrigation canals. This use pattern is understood to include right-of-way maintenance for utilities and forest lands, as well as other applicable uses.

1.2.1.3 Aquatic Nuisance Animal Control – to control invasive or other nuisance animals in water and at water's edge. Aquatic nuisance animals in this use category include, but are not limited to fish and mollusks.

1.2.1.4 Forest Canopy Pest Control – aerial application of a pesticide over a forest canopy to control the population of a pest species (e.g., insect or pathogen) where, to target the pests effectively, a portion of the pesticide unavoidably will be applied over and deposited to water.

1.3 Limitations on Coverage

1.3.1 This general permit does not cover the following types of discharges. For such discharges, other appropriate NPDES permits, including individual permits, must be obtained. This permit does not authorize the following pesticide application discharges:

1.3.1.1 Discharges into an impaired waterbody (303(d) List) – Discharges from a facility into a receiving water listed as impaired under Section 303(d) of the Clean Water Act, 33 U.S.C. § 1313(d), unless the permittee:

1.3.1.1.1 Documents that the pollutant(s) for which the waterbody is impaired is not present at the facility, and retains documentation of the finding with the records; or

1.3.1.1.2 Incorporates any additional best management practices needed to prevent to the maximum extent possible exposure of the pollutants for which the waterbody is impaired and to sufficiently protect water quality. If it is determined that the facility will discharge to an impaired waterbody, additional requirements may be necessary, including obtaining an individual NPDES permit.

1.3.1.2 Discharges into Receiving Waters with an Approved TMDL – Discharges from a facility into receiving waters for which there is an established Total Maximum Daily Load (TMDL) allocation are not eligible for coverage under this permit unless:

1.3.1.2.1 The permittee develops and certifies a plan of action for implementing best management practices that is consistent with the assumptions and requirements in the approved TMDL; and

1.3.1.2.2 If a specific numeric wasteload allocation has been established that would apply to the facility's discharges, the permittee must implement necessary steps to meet that allocation. If it is determined that the application will discharge to a receiving water with an approved TMDL, then the Division may require additional best management practices or an individual NPDES permit.

1.3.1.3 Applications that have a direct discharge into Extraordinary Resource Waters (ERWs), Ecologically Sensitive Waterbodies (ESWs), and Natural and Scenic Waterways (NSWs), as designated in Arkansas Pollution Control and Ecology Commission (APC&EC) Rule 2. However, there may be situations where pesticide application may be allowed in order to maintain use and status of the waterbody. An example of this would include application of a pesticide to control an invasive aquatic plant species that is having a deleterious effect on the dissolved oxygen and other parameters of the waterbody. Other examples would include application of a pesticide for the protection of human health, safety, or the environment.

1.3.1.4 The discharge is covered by another NPDES Permit.

1.3.1.5 The discharge was included in a permit that in the past 5 years has been or is in the process of being denied, terminated, or revoked by DEQ.

- 1.3.2 This permit does not authorize other discharges (such as treated sanitary wastewater, equipment wash water, or wash water from cleaning storage or mixing tanks) from facilities which handle pesticides.

1.4 Automatic Coverage

- 1.4.1 Permittees meeting the eligibility provisions outlined in Part 1.2 are automatically authorized to discharge in compliance with the requirements of this permit after completing a Notice of Coverage (NOC) and either:
- 1.4.1.1 posting the NOC at the pest management area; or
 - 1.4.1.2 keeping a copy of the NOC at the physical address of the permittee.

1.5 Terminating Coverage

- 1.5.1 Coverage under this permit is terminated after one of the following conditions have been met:
- 1.5.1.1 all discharges authorized by this permit are eliminated; or
 - 1.5.1.2 coverage under an Individual NPDES Permit, or alternative NPDES general permit, for all discharges authorized by this permit is obtained.

1.6 Requiring an Individual NPDES Permit

- 1.6.1 At the discretion of the Director, the Division may require any permittee covered under this general permit to apply for and obtain an individual NPDES permit for reasons that include, but are not limited to, the following:
- 1.6.1.1 The permittee is a significant contributor of pollution;
 - 1.6.1.2 The permittee is not in compliance with the conditions of the general permit;
 - 1.6.1.3 Conditions or standards have changed so that the permittee no longer qualifies for this general permit;
 - 1.6.1.4 The Division does not renew this general permit; or
 - 1.6.1.5 Effluent limitation guidelines are promulgated for point sources covered by the general NPDES permit.
- 1.6.2 The permittee will be notified in writing that an application for an individual permit is required. When an individual NPDES permit is issued to a permittee otherwise covered under this general permit, the applicability of the general permit to that permittee automatically terminates upon the effective date of the individual NPDES permit.

Timeliness: Should DEQ determine at any point that the permittee has not submitted or responded to the permitting process or requests for information in a timely manner, DEQ will provide a final notice in writing setting a reasonable time/period for the permittee to complete the necessary application(s) or supplementary material to complete processing. After that time DEQ may terminate the continued coverage and may terminate the review of any incomplete permit application in accordance with permitting procedures identified by APC&EC Rule 8.

- 1.6.3 Any permittee covered by this general permit may request to be excluded from coverage of this general permit by applying for an individual NPDES permit.

PART 2
EFFLUENT LIMITATION REQUIREMENTS

2.1 Minimization of pollutants

All permittees must minimize the discharge of pollutants resulting from the application of pesticides. All permittees must do the following:

- 2.1.1 Handle, use, and apply pesticides in accordance with state laws and regulations and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136 *et seq.*, which includes all instructions on the pesticide label;
- 2.1.2 Discharges must be controlled as necessary to meet Applicable Water Quality Standards, as defined in Part 8 of this permit;
- 2.1.3 No pesticide may be applied unless that pesticide is registered by the Arkansas State Plant Board (ASPB);
- 2.1.4 Any person applying a pesticide shall comply with state laws and ASPB rules, including but not limited to ASPB licensure requirements;
- 2.1.5 Use the lowest effective amount of pesticide product per application and optimum frequency of pesticide applications as necessary to control the target pest, consistent with reducing the potential for development of pest resistance;
- 2.1.6 Corrective Actions: If any of the following situations occur, the permittee must review and, as necessary, revise the evaluation and selection of the control measures to ensure that the situation is eliminated and will not be repeated in the future; an explanation of the situation should be recorded, along with any corrective actions taken in response:
 - 2.1.6.1 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;
 - 2.1.6.2 The permittee becomes aware, or DEQ concludes, that:
 - 2.1.6.2.1 the control measures are not adequate or sufficient for the discharge to meet Applicable Water Quality Standards; or
 - 2.1.6.2.2 a discharge has caused or contributed to an excursion of Applicable Water Quality Standards;
 - 2.1.6.3 An inspection or evaluation of the permitted activities by a state official reveals that modification to the control measures are necessary to meet the non-numeric effluent limits in the permits; or
 - 2.1.6.4 The permittee observes, for example, that during visual inspection or monitoring a modification of control measures is required or is otherwise made aware of an adverse incident, as defined in Part 8;

Maintain pesticide application equipment in proper operating condition, including the requirement to calibrate, clean, and repair such equipment and prevent leaks, spills, or other unintended discharges;

PART 3 MONITORING REQUIREMENTS

3.1 Routine Monitoring

A permittee who has obtained coverage under this general permit must conduct semi-annual monitoring (or more frequently at the discretion of the Division or ASPB). Monitoring shall include:

- 3.1.1 Inspection of the physical surroundings of the pest management area to determine that all requirements of this permit have been complied with;
- 3.1.2 Visually assess the area to and around which pesticides are applied for possible and observable adverse incidents, as defined in Part 8;
- 3.1.3 If an adverse incident or any of the items described in Part 2.1.6 is observed, it should be recorded along with any corrective actions taken or planned, as required by Part 2.1.6; and
- 3.1.4 Inspect the records required under the Arkansas Pesticide Use and Application Act, Ark. Code Ann. § 20-20-201 *et seq.*

3.2 Spot Checks

- 3.2.1 Spot checks must be performed and include assessments during application, when considerations for safety and feasibility allow, and during any post-application surveillance or efficacy check that is conducted. Visual assessments of the application must be performed. All permittees covered under this permit must conduct spot checks in the area and around where pesticides are applied for possible and observable adverse incidents, as defined in Part 8, caused by application of pesticides, including but not limited to the unanticipated death or distress of non-target organisms and disruption of wildlife habitat, recreational or municipal water use (e.g., effects to organisms not otherwise described on the pesticide product label or otherwise not expected to be present).
- 3.2.2 All permittees covered under this permit shall assess weather conditions (e.g. temperature, precipitation, and wind direction & speed) in the treatment area to ensure application is consistent with all applicable state, federal, and local requirements;

PART 4 RECORD KEEPING REQUIREMENTS

4.1 Required record keeping

A permittee who has obtained coverage under this general permit shall maintain, for a period of three years, records of pesticide applications. Records must be available within three days of the application at the physical address of the permittee and must be kept for three years after permit expiration or termination. All records shall be kept in accordance with state laws, ASPB rules, and FIFRA. The following information shall be recorded:

- 4.1.1 Permittee name and address;
- 4.1.2 Certified applicator, name, address, and license number, if applicable;
- 4.1.3 Customer name and address, if applicable;
- 4.1.4 Product/brand name;
- 4.1.5 EPA registration number;
- 4.1.6 Restricted or general use pesticide;
- 4.1.7 Application date;
- 4.1.8 Crop/type of application;
- 4.1.9 Location of application;
- 4.1.10 Size of each treatment area (acres, square feet, or minutes of spraying) and the total size of the pest management area;
- 4.1.11 Rate of application;
- 4.1.12 Total amount of product (concentrate) applied;
- 4.1.13 List of Control Measures for the use of any pesticide;
- 4.1.14 Inspection reports from routine monitoring and spot checks as required in Part 3, including:
 - 4.1.14.1 records of adverse incidents, as defined in Part 8;
 - 4.1.14.2 corrective action documentation, as required in Part 3.1.3; and
 - 4.1.14.3 assessment of weather conditions (e.g. temperature, precipitation, and wind direction & speed) in the treatment area as required in Part 3.2.2.; and
- 4.1.15 Any spill, leak, or other unpermitted discharge documentation;

4.2 Penalties for Tampering

The Arkansas Water and Air Pollution Control Act, Ark. Code Ann. § 8-4-103(a), provides that any

person who falsifies, tampers with, or knowingly renders inaccurate, any monitoring device or method required to be maintained under the Act shall be guilty of a misdemeanor and upon conviction thereof shall be subject to imprisonment for not more than one (1) year, or a fine of not more than ten thousand dollars (\$10,000) or by both such fine and imprisonment.

4.3 Inspection and Entry

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

- 4.3.1 Enter upon the permittee's premises where a regulated facility or activity is located or conducted, including pest management areas, or where records must be kept under the conditions of this permit;
- 4.3.2 Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- 4.3.3 Inspect, at reasonable times, any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
- 4.3.4 Sample, inspect or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the federal Clean Water Act, 33 U.S.C. § 1251 *et seq.*, or Arkansas Water and Air Pollution Control Act, Ark. Code Ann. § 8-4-101 *et seq.*, any substances or parameters at any location.

PART 5 REPORTING REQUIREMENTS

5.1 Routine Reporting

Routine reporting is not required by this permit.

5.2 Twenty-four Hour Reporting

Please be aware that the notifications can be sent by email to water-enforcement-report@adeq.state.ar.us or at 501-682-0624 for immediate reporting:

5.2.1 The permittee shall report any noncompliance which may endanger health or the environment within 24 hours from the time the permittee becomes aware of the circumstances to the Enforcement Branch of the Office of Water Quality of DEQ. A written submission shall also be provided within 3 days of the time the permittee becomes aware of the circumstances. The written submission shall contain the following information:

5.2.1.1 A description of the noncompliance and its cause;

5.2.1.2 The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and

5.2.1.3 Steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

5.2.2 The following must be reported within 24 hours:

5.2.2.1 All uncontained pesticide spills of more than one gallon liquid or four pounds dry weight; and

5.2.2.2 All Adverse Incidents, as defined in Part 8.

5.2.3 The Director may waive the written report on a case-by-case basis if the notification has been received within 24 hours to the Enforcement Branch of the Office of Water Quality of the DEQ.

5.2.4 The permittee is responsible for the cost of cleanups and/or remediation resulting from pesticide spills in their operations

5.3 Changes in Discharge of Toxic Substances for Industrial Discharges

The permittee shall notify the Director as soon as he/she knows or has reason to believe:

5.3.1 That any activity has occurred or will occur which would result in the discharge, in a routine or frequent basis, of any toxic pollutant including those listed in 40 C.F.R. § 401.15 which is not limited in the permit, if that discharge will exceed the highest of the "notification levels" described in 40 C.F.R. § 122.42(a)(1).

5.3.2 That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant including those listed in 40 C.F.R. § 401.15 which is not limited in the permit, if that discharge will exceed the highest of the "notification levels" described in 40 C.F.R. § 122.42(a)(2).

5.4 Duty to Provide Information

The permittee 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 reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

5.5 Signatory Requirements

5.5.1 All applications, Notices of Coverage for sites with automatic coverage, reports, or information submitted to the Director shall be signed and certified as follows:

5.5.1.1 For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:

5.5.1.1.1 A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or

5.5.1.1.2 The manager of one or more manufacturing, production, or operation facilities, provided: the manager is authorized to make management decisions which govern the operation of the regulated facility, including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

5.5.1.2 For a partnership or sole proprietorship: by a general partner or proprietor, respectively; or

5.5.1.3 For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes:

5.5.1.3.1 The chief executive officer of the agency, or

5.5.1.3.2 A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

5.5.1.4 All reports required by the permit and other information requested by the Director shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

5.5.1.4.1 The authorization is made in writing by a person described above;

5.5.1.4.2 The authorization specified either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and

5.5.1.4.3 The written authorization is submitted to the Director.

5.6 Certification

Any person signing a document under this section shall make the following certification:

“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 and imprisonment for knowing violations.”

5.7 Penalties for Falsification of Reports

The Arkansas Water and Air Pollution Control Act, Ark. Code Ann. § 8-4-103, provides that any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained under this permit shall be subject to civil or criminal penalties specified in Part 6.2, under the authority of the Act.

PART 6 GENERAL CONDITIONS

6.1 Duty To Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Federal Clean Water Act, 33 U.S.C. § 1251 *et seq.*, and the Arkansas Water and Air Pollution Control Act, Ark. Code Ann. § 8-4-101 *et seq.*, and is grounds for enforcement action or for requiring a permittee to apply for an individual NPDES permit.

6.2 Penalties for Violations of Permit Conditions

The Arkansas Water and Air Pollution Control Act, Ark. Code Ann. § 8-4-103(a), provides that any person who violates any provisions of a permit issued under the Act shall be guilty of a misdemeanor and upon conviction thereof shall be subject to imprisonment for not more than one (1) year, or a fine of not more than twenty-five thousand dollars (\$25,000) or by both such fine and imprisonment for each day of such violation. Any person who violates any provision of a permit issued under the Act may also be subject to civil penalty in such amount as the court shall find appropriate, not to exceed ten thousand dollars (\$10,000) for each day of such violation. Ark. Code Ann. § 8-4-103(b). The fact that any such violation may constitute a misdemeanor shall not be a bar to the maintenance of such civil action.

6.3 Permit Actions

This general permit may be modified, revoked and reissued, or terminated for cause in accordance with the requirements of the NPDES Permit Program Regulations at 40 C.F.R. Parts 122 and 124, as adopted by reference in APC&EC Rule 6.104(A)(3) & (5). The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

6.4 Toxic Pollutants

If any toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under APC&EC Rule 2, or Section 307(a) of the Clean Water Act, 33 U.S.C § 1317, for a toxic pollutant which is present in the discharge and that standard or prohibition is more stringent than any limitations on the pollutant in this permit, this permit shall be modified or revoked and reissued to conform to the toxic effluent standard or prohibition and the permittee so notified.

The permittee shall comply with effluent standards or prohibitions established under APC&EC Rule 2, or Section 307(a) of the Clean Water Act, 33 U.S.C § 1317, for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

6.5 Civil and Criminal Liability

Nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance.

6.6 Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Clean Water Act, 33 U.S.C § 1321.

6.7 Property Rights

The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State or local laws, rules, or regulations.

6.8 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.

6.9 Applicable Federal, State, or Local Requirements

Permittees are responsible for compliance with all applicable terms and conditions of this permit. Receipt of this permit does not relieve any permittee of the responsibility to comply with any other applicable federal, state, or local statute, ordinance, policy, rule, or regulation.

6.10 Re-opener Clause

In accordance with 40 C.F.R. § 122.62(a)(2), the permit may be modified, or alternatively, revoked and reissued, if new information is received that was not available at the time of permit issuance that would have justified the application of different permit conditions at the time of permit issuance.

6.11 Continuance of the Expired General Permit

If this permit is not re-issued or replaced prior to the expiration date, it will be administratively continued in accordance with Ark. Code Ann. § 8-4-203(m) and remain in force and effect. If permit coverage was granted prior to the expiration date, the permittee will automatically remain covered by the continued permit until the earliest of:

- 6.11.1 Reissuance or replacement of this permit, at which time the permittee must comply with the conditions of the new permit to maintain authorization to discharge;
- 6.11.2 Termination of this permit in accordance with Part 1.5;
- 6.11.3 Issuance of an individual permit, or other general permit, for the permittee's discharges;
- 6.11.4 A formal permit decision by DEQ to not re-issue this general permit, at which time the permittee must seek coverage under an individual permit or other general permits, if available. See Part 1.6.2;
or
- 6.11.5 Notification from DEQ that the permittee is no longer covered under this permit.

PART 7
OPERATION AND MAINTENANCE OF POLLUTION CONTROLS

7.1 Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

The permittee shall provide an adequate operating staff which is duly qualified to carryout operation, maintenance and testing functions required to ensure compliance with the conditions of this permit.

7.2 Need to Halt or Reduce not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit. Upon reduction, loss, or failure of controls or equipment, the permittee shall, to the extent necessary to maintain compliance with this permit, control, reduce, or cease application or discharges or both until controls or equipment are restored or alternative controls or equipment are provided. This requirement applies, for example, when the nozzle of an application device is broken, allowing a free flow of product to be dispensed.

7.3 Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment or the water receiving the discharge.

PART 8 DEFINITIONS

All definitions contained in Section 502 of the Clean Water Act, 33 U.S.C. § 1362, 7 U.S.C. § 136, and Ark. Code Ann. § 20-20-203 shall apply to this permit and are incorporated herein by reference. Additional definitions of words or phrases used in this permit are as follows:

- 8.1 Act** – the Arkansas Water and Air Pollution Control Act, Ark. Code Ann. § 8-4-101 *et. seq.*
- 8.2 Adverse Incident** – An incident, which the permittee has observed upon inspection or that the permittee or permitting authority otherwise becomes aware that:
- 8.2.1 A person or non-target organism may have been exposed to a pesticide or pesticide residue, and
- 8.2.2 The person or non-target organism suffered a toxic or adverse effect documented by the permittee, DEQ, or another state or federal agency.

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; or
- 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 either directly or indirectly from a discharge to Waters of the State that are temporally and spatially related to exposure to a pesticide residue (e.g., vomiting, lethargy).

- 8.3 APC&EC** – the Arkansas Pollution Control and Ecology Commission.
- 8.4 Applicable Water Quality Standards** – all water quality standards to which a discharge is subject under the federal Clean Water Act, 33 U.S.C. § 1251 *et seq.*, and which have been: (a) approved or permitted to remain in effect by the Administrator following submission to the Administrator pursuant to Section 303(a) of the Act, 33 U.S.C. § 1313(a); or (b) promulgated by the Director pursuant to Section 303(b) or 303(c) of the Act, 33 U.S.C. § 1313(b) –(c), and standards promulgated under APC&EC Rule 2.
- 8.5 Best Management Practices (BMPs)** – Best management practices are examples of control measures that may be implemented to meet effluent limitations. They are schedules of activities, practices (and prohibitions of practices), structures, vegetation, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to Waters of the State. BMPs also include treatment requirements, operating procedures, and practices to control spillage or leaks, or drainage from raw material storage.
- 8.6 Biological Pesticides or Biopesticides** – Includes microbial pesticides, biochemical pesticides, and plant-incorporated protectants.

- 8.6.1 **Microbial Pesticide** – 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.
- 8.6.2 **Biochemical Pesticide** – 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).
- 8.6.3 **Plant-incorporated Protectant** – 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.
- 8.7 **C.F.R.** – Code of Federal Regulations.
- 8.8 **Chemical Pesticides** – All pesticides not otherwise classified as biological pesticides.
- 8.9 **Control Measure** – Any Best Management Practice (BMP) or other method used to meet the effluent limitations to minimize the discharge of pollutants to Waters of the State.
- 8.10 **CWA** – Clean Water Act, 33 U.S.C. § 1251 *et seq.*
- 8.11 **DEQ** – the Division of Environmental Quality.
- 8.12 **Director** – the Director of the Division of Environmental Quality.
- 8.13 **Facility or Activity** - any NPDES “point source” or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the NPDES program. For the purposes of this permit, a Pest Management Area is considered a facility or activity.
- 8.14 **FIFRA** – Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 *et seq.*
- 8.15 **FFDCA** – Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301 *et seq.*
- 8.16 **For-Hire Certified Applicator** – For the purposes of this permit, a for-hire certified applicator is any individual who holds the necessary license for pesticide application, issued by the Arkansas State Plant Board under the Arkansas Pesticide Use and Application Act, Ark. Code Ann. § 20-20-201 *et seq.*, and regulations promulgated thereunder, who is under contractual obligation to provide pest control services within a pest management area.
- 8.17 **Impaired waterbody** – A waterbody listed in the current, approved Arkansas 303(d) list.
- 8.18 **National Pollutant Discharge Elimination System (NPDES)** - the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under the federal Clean Water Act, 33 U.S.C. § 1251 *et seq.* and regulations promulgated thereunder.
- 8.19 **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.

8.20 Permittee – for the purpose of this permit, a permittee is any person (an individual, association, partnership, corporation, municipality, state or federal agency) who has the primary management and ultimate decision-making responsibility over the operation of a facility or activity. This includes for-hire certified applicators, as defined in Part 8. The permittee is responsible for ensuring compliance with all applicable environmental regulations and conditions.

8.21 Pest – Includes the following:

8.21.1 Any insect, rodent, nematode, fungus, or weed; or

8.21.2 Any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism except viruses, bacteria, or other microorganisms on or in living human or other living animals, which the United States Environmental Protection Agency declares to be a pest under section 25(c)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act, or which the Arkansas State Plant Board declares to be a pest under § 20-20-206(e)

8.22 Pest Management Area – A contiguous area of land, including any Waters of the State, where the permittee is responsible for pest management. For the purposes of this permit, two or more treatment areas are contiguous if they share a common boundary or if the distance between each of the sites is 15 miles or less and the sites are within the same county. To permit two or more contiguous sites together, they must share a common permittee.

8.23 Pesticide – means (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, except that the term “pesticide” shall not include any article that is a “new animal drug” within the meaning of section 201(w) of the FFDCA, 21 U.S.C. § 321(w), that has been determined by the Secretary of United States Department of Health and Human Services not to be a new animal drug by a regulation establishing conditions of use for the article, or that is an animal feed within the meaning of section 201(x) of the FFDCA, 21 U.S.C. § 321(x), bearing or containing a new animal drug. The term “pesticide” does not include liquid chemical sterilant products (including any sterilant or subordinate disinfectant claims on such products) for use on a critical or semi-critical device, as defined in section 201 of the FFDCA, 21 U.S.C. § 321. For purposes of the preceding sentence, the term “critical device” includes any device introduced directly into the human body, either into or in contact with the bloodstream or normally sterile areas of the body and the term “semi-critical device” includes any device that contacts intact mucous membranes but that does not ordinarily penetrate the blood barrier or otherwise enter normally sterile areas of the body, FIFRA Section 2(u), 7 U.S.C. § 136(u). 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), 7 U.S.C. § 136.

Note: drugs used to control diseases of humans or animals (such as livestock, fishstock, and pets) are not considered pesticides; such drugs are regulated by the United States Food and Drug Administration. Fertilizers, nutrients, and other substances used to promote plant survival and health are not considered plant growth regulators and thus are not pesticides. Biological control agents, except for certain microorganisms, are exempted from regulation under FIFRA. (Biological control agents include beneficial predators such as birds or ladybugs that eat insect pests, parasitic wasps, fish, etc.)

- 8.24 Pesticide Product** – A pesticide in the particular form (including composition, packaging, and labeling) that the pesticide is, or is intended to be, distributed or sold. The term includes any physical apparatus used to deliver or apply the pesticide if distributed or sold with the pesticide.
- 8.25 Pesticide Residue** – Includes that portion of a pesticide application that is discharged from a point source to Waters of the State and no longer provides pesticidal benefits but that may impact non-target species. It may include the pesticide and degradents of the pesticide.
- 8.26 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 storm water runoff. (See 40 C.F.R. § 122.3).
- 8.27 Restricted-Use Pesticide** – A pesticide or pesticide use classified for restricted use by the administrator of the United States Environmental Protection Agency.
- 8.28 Total Maximum Daily Load or TMDL** - the sum of the individual wasteload allocations (WLAs) for point sources and load allocations (LAs) for non-point sources and natural background. If receiving water has only one point source discharger, the TMDL is the sum of that point source WLA plus the LAs for any non-point sources of pollution and natural background sources, tributaries, or adjacent segments. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure
- 8.29 Toxic Pollutant** – Any pollutant listed as toxic under 40 C.F.R. § 307(a)(1) or, in the case of “sludge use or disposal practices,” any pollutant identified in regulations implementing section 405(d) of the federal Clean Water Act, 33 U.S.C. § 1345.
- 8.30 Treatment Area** – An area of land, including any Waters of the State, within a pest management area where pesticides are being applied at a concentration that is adequate to control the targeted pests within that area. Multiple treatment areas may be located within a single “pest management area.”
- 8.31 Water’s Edge** - The surface area of the channel that is not covered by water during low flow conditions immediately bordering: (1) Waters of the State, or (2) a conveyance to Waters of the State along which water (e.g., runoff, irrigation waters, or floodwaters) flows.
- 8.32 Waters of the State** – Waters of the State means all streams, lakes, marshes, ponds, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion of the state.