



DEQ

State of Oregon
Department of
Environmental
Quality

National Pollutant Discharge Elimination System 2300A General Permit Fact Sheet

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PERMIT ACTION: 2300A National Pollutant Discharge Elimination System pesticide general permit renewal. The previous permit expired in September 2016.

PERMIT CATEGORY: 2300A NPDES General Permit

SOURCE LOCATION: Statewide

ACTIVITIES COVERED UNDER THIS PERMIT: A pesticide application that results in discharge to surface waters of the state from the use of a (i) biological pesticide or (ii) a chemical pesticide that leaves a residue, for five pest control categories identified below and described on page 1 of the permit.

The decision in *National Cotton Council, et al. v. EPA*, 553 F.3d 927 (6th Cir. 2009) and EPA regulations state that point source discharges of biological pesticides and chemical pesticides that leave a residue to waters of the U.S. are regulated pollutants under the Clean Water Act and therefore require NPDES permits.

The five categories listed below include the majority of pesticide applications that would result in point source discharges to surface waters of the state. Calculation of treatment area is used to determine established thresholds for registration and certain permit requirements. Regulated activities that are less than the treatment area thresholds for registration are automatically covered by this general permit and registration is not required.

Mosquito and Other Flying Insect Pest Control for the protection of public health and prevention of nuisance flying pests. Coverage extends to mosquitoes, black flies and other flying insect pests that develop or are present during a portion of their life cycle in or above standing or flowing water.

Weed and Algae Control for invasive or other nuisance weeds, algae and plant pathogens such as fungi and bacteria, in water or at the water's edge.

Nuisance Animal Control for invasive or other nuisance animals and pathogens in water and at the water's edge. Coverage extends, but is not limited to, control of fish and mollusks, fungi and bacteria.

Forest Canopy Pest Control for the control of pest species, including, but not limited to, an insect or pathogen, using aerial application of a pesticide over a forest environment or from the ground when in order to target pests effectively, a portion of the pesticide unavoidably will be applied over and deposited in surface waters of the state.

Area-Wide Pest Control for the control of pest species by using aerial pesticide application to cover a large area to avoid substantial and widespread economic and social impact when, to target pests effectively, a portion of the pesticide unavoidably will be applied over and deposited in surface water. The pest control under this category is not included in the above categories.

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NPDES Permit Fact Sheet

2300A General Permit

1. Introduction

This permit is a revision and renewal of the 2300A water quality pesticide general permit. This permit was first issued in October 2011 and expired on Sept. 30, 2016. The permit authorizes the discharge of pollutants, specifically biological pesticides and chemical pesticide residuals. The permit assumes that all chemical pesticide applications will leave a residual and constitute the discharge of a pollutant once the product has performed its intended purpose.

1.1 Background

History

In 2001, the Ninth Circuit U.S. Court of Appeals determined that compliance with Federal Insecticide, Fungicide, and Rodenticide Act registration and labeling requirements did not eliminate the need for a NPDES permit. [*Headwaters, Inc. v. Talent Irrigation District*, 243 F3d 526 (9th Cir Mar. 12, 2001)]. Accordingly, as early as 2001, DEQ regulated the discharge of chemical pesticide residue by issuing individual NPDES permits to ten irrigation systems. These individual permits authorized a discharge of chemical pesticide residue from the application of specified aquatic herbicides.

In 2006, EPA issued a regulation that interpreted the Clean Water Act as not requiring NPDES permits for pesticide applications. In 2009, the Sixth Circuit U.S. Court of Appeals vacated EPA's 2006 NPDES Pesticides Rule under a plain language reading of the Clean Water Act (*National Cotton Council v. EPA*, 553 F3d 297 (6th Cir, 2009)). The Sixth Circuit Court held that NPDES permits are required for all biological pesticide applications made in, over and near waters of the U.S., and chemical pesticide applications that leave a residue or excess pesticide in water when such applications are made in, over and near waters of the U.S. The Court of Appeals stayed the decision invalidating EPA's regulation until April 9, 2011. Subsequently, EPA requested and received an extension of the stay until Oct. 31, 2011. EPA and most states, including Oregon, issued NPDES pesticide general permits in October 2011 for pest control activities that result in a pesticide discharge to water from a point source. Detailed information relating to this matter can be found at 75 Federal Register 31775 (Jun. 4, 2010) and 76 Federal Register 68750 (Nov. 7, 2011).

Cooperative State Agency Involvement in Pesticide Use

EPA and the Oregon Department of Agriculture are the primary regulators of pesticide distribution and use under the federal Fungicide, Insecticide and Rodenticide Act and the Oregon Pesticide Control Act. ODA registers pesticides that are sold in Oregon, oversees the certification and licensing of pesticide users and consultants, investigates potential violations of FIFRA and Oregon's Pesticide Control Act, and issues enforcement actions. Under the federal Clean Water Act, DEQ regulates the discharge of pollutants (wastes) to waters of the state, primarily through the NPDES discharge permitting program. Water quality permits are one part of a multifaceted approach to reducing pesticide impacts to waters of the state. DEQ has ongoing partnerships with the Oregon Department of Agriculture and Department of Forestry as well as other state agencies to work on improving water quality protections related to pesticides, as described below. This includes ODA's Agriculture Water Quality Program (Oregon Agricultural Water Quality

Management Act) and ODF's Oregon Forestry Practices Act, including the recent provisions of the 2020 First Special Session Senate Bill 1602.

The Oregon Inter-Agency Water Quality Pesticide Management Team identifies the current and future needs for monitoring and stewardship activities for pesticides in surface and groundwater resulting from the legal use of registered pesticides, as specified by their labels. This team's focus applies across all land uses, including urban, agricultural and forestry point and nonpoint pesticide sources. Nonpoint pollution can occur when rainfall and snowmelt flow off land used for agriculture, forestry, rural and urban residences, as well as roads, buildings and other features of the landscape. This diffuse runoff can carry pollutants into drainage ditches, lakes, rivers, streams, wetlands, bays, aquifers and other waters of the state. Inter-Agency Team representatives include:

- Oregon Department of Agriculture
- Department of Forestry
- Department of Environmental Quality
- Oregon Health Authority
- Oregon Watershed Enhancement Board
- Oregon State University

More information is available at ODA's web page:

<https://www.oregon.gov/oda/programs/Pesticides/Water/Pages/AboutWaterPesticides.aspx>

Stewardship engagement occurs at a watershed level through the Pesticide Stewardship Partnership Program, that works with local organizations and other agencies. Water quality data is collected and used to focus technical assistance and best management practices on the streams and pesticides with the potential for aquatic life or human health impacts.

<https://www.oregon.gov/oda/programs/Pesticides/Water/Pages/PesticideStewardship.aspx>

Further, DEQ continues to pursue pesticide reductions. DEQ's 2018 Integrated Toxics Reduction Strategy is used for internal and external coordination to reduce toxics including current use pesticides.

<https://www.oregon.gov/deq/FilterDocs/ToxicsStrategy.pdf>

1.2 Current Action

General permits may be developed for certain categories of minor discharge sources or minor activities that involve similar or substantially similar types of operations, similar types of wastes, similar monitoring conditions and the category of sources are more appropriately controlled under a general permit. See OAR 340-045-0033(2).

This general permit meets the requirements of OAR 340-045-0033(2) and is appropriate for the pest control categories covered under this permit for the following reasons:

- Pesticide applications covered under this permit involve the same or substantially similar types of operations. The operations are required to minimize pesticide discharge by using pest management measures. These pest management measures are operational requirements commonly used in pest control and generally known as integrated pest management. Pest management measures include proper identification of the pest problem, alternative control methods and proper pesticide use that apply to each type of pest control under this permit.

- Pesticide applications have the potential to discharge or dispose of the same or similar types of wastes. The types of waste discharged are from pesticide use and are defined as biological pesticide applications or chemical pesticide applications that will leave a residual. The definition for pesticides is the same for all pest control under the permit.
- The same or similar monitoring requirements, effluent limitations and operating conditions for the categories are required in this permit. For all pesticide applications there are visual monitoring and pest management measure requirements.

Pest control activities are described under five categories: Mosquito and Other Flying Insect Pest Control, Weed and Algae Control, Nuisance Animal Control, Forest Canopy Pest Control and Area-Wide Pest Control. Any pesticide application for these types of pest control activities that result in the discharge of pesticides in, over or near surface waters of the state require this permit.

This fact sheet describes the basis and methodology used in developing the permit. The permit is divided into several sections:

- Schedule A – Discharge Limitations
- Schedule B – Minimum Monitoring, Reporting, and Recordkeeping Requirements
- Schedule C – Compliance Schedule – Not Applicable
- Schedule D – Special Conditions
- Schedule E – Pretreatment Activities – Not Applicable
- Schedule F – General Conditions

A summary of revisions in this permit renewal are listed below:

- There are limitations for general permit coverage in the section entitled Limitations on Coverage For All Operators, including those provided in OAR 340-045-033(10). Operators are required to comply with this permit and the other applicable regulations. Compliance with other relevant legal requirements is in place for the proper use of pesticides to minimize a discharge to waters of the state. For example, this permit does not negate the requirements under the Federal Insecticide, Fungicide, and Rodenticide Act, and its implementing regulations to use registered pesticides consistent with the product’s labeling. In fact, applications in violation of certain FIFRA requirements could also be a violation of the permit and therefore a violation of the CWA (e.g., exceeding label application rates). Additionally, other laws and regulations might apply to certain activities that are also covered under this permit, or other activities outside of the scope of this permit that affect water quality (e.g., the Oregon Forest Practices Act administered under ORS 527.610 to 527.770, 527.990, 527.992, and SB1602¹ and implementing regulations; the Oregon Agricultural Water Quality Management Act, administered under ORS 568.900 to 568.933 and 561.191).
- To minimize a discharge of pesticides, in Schedule A 1.b. an operator is required to follow court-ordered pesticide application buffer requirements.
- Ordinary High Water, Pesticide Discharge Management Plan, and Indirect Discharge are added in the definition section. Clarification is provided for areas counted in the calculation of treatment area referenced in Table 1.
- Provisions for future required electronic reporting. As appropriate and when electronic reporting is available, DEQ will direct a registrant to begin using electronic reporting.
- Permit coverage is not provided for a pesticide discharge to Outstanding Resource Waters.

¹ 2020 First Special Session Senate Bill 1602

- Other minor clarifications, such as use of the term water quality limited water instead of referencing a 303(d) list or impaired water. In preparation for electronic reporting, reference to a file number is replaced with permit number. Other corrections, such as typographical and grammatic changes were also made to this permit.

2. Cover Page

The cover page describes the scope of permitted activities and types of operations covered by this permit.

This proposed permit provides coverage for pesticide applications in, over or near surface waters that results in a discharge to surface waters of the state.

Pest control activities are described under five categories: Mosquito and Other Flying Insect Pest Control, Weed and Algae Control, Nuisance Animal Control, Forest Canopy Pest Control and Area-Wide Pest Control.

3. Definitions

This section contains definitions of the terms used throughout the permit. Definitions of phrases or words are in the permit to ensure a common understanding.

The term “ordinary high water” is included for purposes of defining where to measure the water’s edge, which is used in Table 1 registration treatment area calculations. Hydrologic surface connection is used to describe surface water present at the time of application. This permit renewal will regulate pesticide applications to waters of the state at the time of application as measured 3 feet from the ordinary high water line of a waterbody.

DEQ selected a 3-foot (one yard) minimum buffer because that number is consistent with the minimum buffer established in the U.S. District Court Western District of Washington at Seattle Case No. CO1-0132C, *Washington Toxics Coalition v. EPA*, and it reasonably reflects the distance where a pesticide application is likely to reach surface waters of the state.

Ordinary high water mark or high water line is a common term that describes an extent of a water body when water has receded or is dry. Oregon Revised Statute 274.005(3) definition of ordinary high water is included in this permit.

At the time of pesticide application, an application that is made 3 feet landward from the ordinary high water line is counted for purposes of implementing Table 1 registration.

A definition of Pesticide Discharge Management Plan is included in this permit.

A definition of Indirect Discharge is added for clarification.

4. Coverage and Eligibility

The permit is a general permit that is issued under OAR 340-045-0033 and covers activities that involve similar types of operations, similar types of wastes and similar monitoring conditions. The permit covers a limited range of pesticide applications. The covered pollutants are biological pesticides and chemical

pesticide residuals. The permit considers that all chemical pesticide applications will leave a residual and constitute the discharge of a pollutant once the product has performed its intended purpose. The pesticide applications covered under this permit include Mosquito and Other Flying Insect Pest Control, Weed and Algae Control, Nuisance Animal Control, Forest Canopy Pest Control, and Area-Wide Pest Control.

Some operators are required to submit an application and pay fees to register for the permit if they exceed the threshold(s) enumerated in Table 1 of the permit. Registration is required of federal and state agencies, as well as certain districts, regardless of threshold. DEQ will use information in the application to determine whether or not permit coverage under this general permit can be approved. After DEQ approves an application, that operator is referred to as a “registered operator.”

Other operators who conduct pesticide applications at or below the treatment threshold in a pest control category do not need to fill out a form or pay fees to register with DEQ, but are still responsible for keeping a copy of the permit and complying with certain basic permit requirements in Schedule A, Conditions 1., 2., 3. and 4.; Schedule B, Conditions 1. through 8.; and Schedule F, when applicable.

Any registrant with coverage under this permit may also request issuance of an individual permit. The application process is sufficient to determine eligibility under the general permit, and DEQ expects that most applicants will qualify for permit coverage; however pursuant to OAR 340-045-0033(10), situations when an individual permit may be required include:

- A discharge or activity is a significant contributor of pollution or creates other environmental problems;
- Failure to comply with, or is not currently in compliance with, the terms and conditions of the general permit, submitted false information, or the permittee is in violation of any applicable law;
- A change occurs in the availability of demonstrated technology or practices for the control or abatement of pollutants being discharged;
- Effluent limitation guidelines are promulgated for point sources covered by a general permit and the guidelines are not already in the general permit;
- Circumstances have changed so that the discharge or activity is no longer appropriately controlled under a general permit, or either temporarily or permanently reducing or eliminating the authorized discharge is necessary; or
- Any other relevant factors.

In Coverage and Eligibility Section 5, DEQ clarifies that operators are still required to comply with other applicable laws in addition to complying with the conditions of this permit. There are other laws that regulate the use of pesticides. For example, a violation of certain FIFRA requirements could also be a violation of the general permit (e.g., use of an aquatic-based pesticide at an application rate must not be exceeded as required by a FIFRA label.)

This permit does not provide general permit coverage for pesticide applications that are inconsistent with other requirements of state law such as the Forest Practices Act and its implementing regulations. For example, an aerial application to a forest floor that results in a discharge to waters of the state is covered by this permit as long as the application complies with FIFRA labeling and spray drift is consistent with ODF regulations for a target application.

4.1 Water Quality Limited Waters (303(d))

Permit coverage is not provided for all waters of the state. The general permit does not authorize a discharge to a waterbody or segment that is identified as water quality limited for a relevant pollutant addressed under this permit.

This eligibility limitation is based on a list of water quality limited waterbodies established pursuant to OAR 340-041-0046 and includes waters on the 303(d) list for a specific pesticide and its chemical residual, or degradates when a waste load allocation for the relevant pollutant parameter does not exist. This eligibility limitation is based on current and future 303(d) lists approved or established by EPA and currently includes waterbodies listed in Categories 4 and 5 of DEQ's Water Quality Assessment section of Oregon's 2018/2020 Integrated Report Database.

The 303(d) list that is in effect each year on January 1 will be used to determine eligibility under this permit. DEQ is using the most current 303(d) list in effect as of January 1 of each year to determine compliance instead of using a list that is in effect only at the time of permit issuance. Using a set date to determine that this permit authorizes coverage allows an operator to plan for purchases or services associated with pesticide use. Future listings of water quality limited waterbodies are available on DEQ's web site at: <https://www.oregon.gov/deq/wq/Pages/WQ-Assessment.aspx>.

4.2 Outstanding Resource Waters

Pursuant to OAR 340-041-0004(8), this general permit does not authorize a discharge in Outstanding Resource Waters of North Fork Smith River, its tributaries and associated wetlands (OAR 340-041-0305(4)), Waldo Lake and associated wetlands (OAR 340-041-0345(7)) and Crater Lake (OAR 340-041-0185(6)).

4.3 Other Discharges

There are regulations in place that exempt certain discharges from a NPDES permit requirement. These exemptions include discharges composed entirely of return flows from irrigated agriculture or agricultural stormwater runoff. (Clean Water Act section §502(14); 40 CFR §122.2 and 40 CFR §122.3(f)). However, discharges from the application of pesticides into irrigation ditches and canals – that are themselves surface waters of the state – are not exempt as irrigation return flows or agricultural stormwater.

This permit does not cover terrestrial (land-based) applications for the purpose of controlling pests on agricultural crops or forest floors. This is generally because many pesticide labels for these uses do not allow for application to surface water.

A stormwater permit is not considered an existing NPDES permit for purposes of OAR 340-045-0033(8) or OAR 340-045-0033(10). DEQ's existing stormwater permits for construction, industrial activity, and regulated municipal separate storm sewer systems, or MS4s, already include best management practices for pesticide applications. In this way, stormwater is in some cases already subject to NPDES permit requirements for pesticides. The annual treatment area threshold set in this permit will most likely avoid the need for a source to register for both a stormwater permit and a pesticide general permit.

5. Registration Requirements

Sections 2 through 4 contain requirements for permit coverage and registration. Table 1 annual treatment area thresholds and treatment area example calculations are used to implement registration.

Federal and state agencies and some districts must register regardless of treatment area thresholds. Other operators are required to register (submit an application and pay fees) for the permit if they exceed the thresholds enumerated in Table 1 of the permit.

Application for registration is required of new operators, as identified in Table 1, to continue permit coverage beyond the effective date of this permit.

An operator with a current permit that has administratively extended permit coverage will have continued permit coverage upon the effective date of this permit. For an operator seeking to be covered under a new or additional pest control category, an amended application form with new pesticide coverage information must be submitted 45 days prior to that planned activity.

Electronic registration will be available in the future. When electronic reporting is available, DEQ will direct a registrant to begin using electronic reporting formats, as appropriate.

Operators of small-scale pest control are not required to register and pay a fee for this pesticide general permit.

5.1 Application for Permit Coverage

DEQ has the authority to require that all operators submit an application for registration under the permit. However under OAR 340-045-0033(3)(a), DEQ can determine that an application to register is not required after considering the type of discharge, the volume, the availability of other means to identify the dischargers and the estimated number of discharges. This approach focuses DEQ resources on the largest operators and is consistent with EPA's Pesticide General Permit.

5.1.1 Type of Discharge

DEQ determined that an application for registration is not necessary for all operators that conduct pesticide applications. This permit regulates the discharge of biological pesticides and chemical pesticide residuals. The definition of pesticide is the same for all pest control under the permit and pesticides are used for various types of pesticide applications. Like EPA, DEQ does not expect the type of pesticide used in each pest control category to vary much, because the potential for toxic and conventional pollutants is not expected to vary within each type of pest control covered under the permit.

Registration requirements focus on the largest operators. Consistent with EPA's pesticide general permit, some operators that conduct pesticide applications are not required to submit a notice of intent. A NOI is the EPA equivalent of a registration form.

5.1.2 Volume

In considering whether to require certain operators to register, DEQ established annual treatment area thresholds as a means to consider the volume of pesticide applied. DEQ has determined that when the responsibility for pest control is over a small area, the amount of discharge that will result from the treatment of these areas will be substantially less than the volume of discharges from applications made to

large areas, on a per-application-basis, as well as cumulatively. See the discussion of annual treatment area thresholds below.

5.1.3 Identifying Operators

DEQ determined that an application for registration is not necessary for operators that conduct small-scale pesticide applications after evaluating the availability of other means to identify the dischargers.

DEQ works closely with ODA and ODF and has access to databases to identify operators whose discharges are subject to this permit but not required to submit a form to register under the permit. ODA maintains a database for licensed public, commercial and private pesticide applicators for pesticide applications such as right of way, public health, aquatic, and regulatory weed. ODF also requires pesticide applicators to keep a record of pesticide application information.

Other resources can be used to identify operators. The exact number and types of operations that may be subject to this permit is unknown. DEQ has access to data kept by the Secretary of State, ODA, and ODF, as well as data from the Land Management Division of the Oregon Department of State Lands, in areas pertaining to day-to-day management of publicly owned submerged and submersible land. Using this information, DEQ estimates that there are over 1,500 public and private entities, such as parks and recreation departments, public utilities, golf courses, wharfs, marinas and districts for water, drainage, soil and water conservation and weed control, where pest control is a part of their operation. Because all these resources exist to identify operators, DEQ determined that registration is not necessary for most small-scale pesticide applications.

5.1.4 Annual Treatment Area Threshold for Mosquito and Other Flying Insect Pest Control

Mosquito and Other Flying Insect Pest Control includes the application, by any means, of chemical and biological insecticides into or over water to control insects that breed or live in, over, or near water.

Oregon has 20 vector control districts established under ORS 452 that have mosquito control programs. These vector control programs are required to use Integrated Pest Management as defined in ORS 634.650. Mosquito control may also be performed by local governments, pest control companies and property owners.

Under ORS 452.210, counties may contract with any incorporated city, any vector control district, or with another county on any matter incident to the eradication, prevention and control of public health vectors and vector habitats using integrated pest management methods and for the supervision of such work by county employees.

ORS 452 establishes the responsibilities of the vector control districts and counties, which include operating requirements that relate to pesticide use such as:

- Using integrated pest management as defined in ORS 634.650(1);
- Obtaining approval from the Oregon Department Fish and Wildlife Commission when waters in the district are frequented by waterfowl or contain game fish;
- Applying pesticides for public health vectors;
- Receiving approval by the Oregon Health Authority prior to the use of pesticides. ORS 452.300(e).

See ORS 452.140, 452.245 and 452.300.

Oregon Department of Fish and Wildlife and vector control districts work together to develop a pesticide use plan to document the pesticide products that will be used for the upcoming mosquito season. The plan includes a list of pesticide products that are intended to be used and what was used the previous year. The active ingredient of the pesticide product is reported. Pesticide product use in sensitive areas, as set out in ORS 452.140(1), must be described. The integrated pest management practices (ORS 634.650(1)) that will be used to reduce the need for chemical control products while maintaining acceptable threshold levels are also provided in a pesticide use plan.

Operators of vector control districts conduct pesticide applications using larvicides and adulticides.

Similarly, other entities that conduct large-scale pesticide applications using an adulticide to suppress mosquitoes and other flying insects are required to register before their total treatment area in a calendar year goes over the annual treatment area threshold.

5.1.5 Annual Treatment Area Threshold for Weed and Algae Control

Weed and Algae Control applies to the application, by any means, of contact or systemic herbicides to control vegetation and algae in the water and at the water's edge, such as terrestrial plants including crops that are close to water. This pest control category includes the control of pathogens such as fungi and bacteria in water and at the water's edge.

Invasive weeds displace and compete with native and desirable domestic plant species. Without diseases, insects, and other environmental constraints that act as a natural control in their native regions, these invasive plants prosper and adversely affect resources such as fish, wildlife, recreation and overall watershed health. Abundant growth of native vegetation and algae can be a problem too. Overgrowth can damage the function and health of the aquatic ecosystems and degrade the beneficial uses (recreational, aesthetic enjoyment, fishery, irrigation, water supply, wildlife habitat). Weed and algae pest control may be used in the management of aquatic weeds and algae in waterbodies such as lakes, ponds, rivers, streams and drainage ditches. This pest control category may include crops, such as cranberries, where pesticide treatment occurs in surface waters of the state.

According to the National Hydrography Database there are about 36,600 lakes, ponds and reservoirs in Oregon. Approximately 96 percent of these waterbodies are smaller than 10 acres and 3 percent of them range between 10 to 50 acres. Of the remaining 1 percent, 0.4 percent are between 50 and 100 acres and 0.6 percent are larger than 100 acres. There are 111,619 miles of streams and rivers, 9 major estuaries and over 360 miles of coastline, according to the Oregon Water Resources Department.

The annual treatment area threshold above 20 acres of surface water and 20 linear miles is expected to account for the largest pesticide applications. Federal and state agencies and districts responsible for weed and algae pest control seeking coverage under the permit are required to register for any amount of pesticide used for weed and algae control.

5.1.6 Annual Treatment Area Threshold for Nuisance Animal Control

Nuisance Animal Control regulated under the permit includes the application, by any means, of chemicals into waters to control a range of animals in the course of invasive species eradication, fisheries management, watershed health, or equipment maintenance. Equipment maintenance includes, for example, boat launches and watercraft at recreational facilities, and fish ladders and screens for fish protection. Nuisance animal pest control includes pathogens such as fungi and bacteria in the water and at

the water's edge. Golf courses may control nematodes or insect populations at the water's edge. Federal and state agencies register for permit coverage regardless of total treatment area in a calendar year.

As stated in EPA's pesticide general permit fact sheet, the high mobility and prolific breeding ability that necessitate control of aquatic animals usually means that their treatment most often occurs in the entire waterbody they inhabit or a large portion of it. DEQ requires registration for the largest pesticide applications. The annual treatment area threshold above 20 acres of surface water and 20 linear miles will account for the largest pesticide applications.

5.1.7 Annual Treatment Area Threshold for Forest Canopy Pest Control

The Forest Canopy Pest Control category includes pest control projects in, over, or to forest canopies that occur over surface waters of the state. These pests are not necessarily aquatic, and can be species such as the gypsy moth and the tussock moth that are detrimental to the forest, agriculture, the environment, and public health. The large tracts of land involved can include surface waters of the state with or without flow.

Pesticide applications to a forest canopy can be applied aerially or from the ground. Applications of this nature usually occur over large tracts and are typically in response to specific pest outbreaks. The areas involved, together with the need for timely intervention and the often inaccessible nature of the terrain, call for the selective use of aerial spraying. In order to target a forest canopy, pesticides will unavoidably be discharged into waters. This may result from ground and/or aerial spraying in a forest environment in the course of controlling pests that are present near or over waters. A canopy can include both mature and immature forests canopies, including canopies that may not be continuously connected where control of pests associated with the canopy, such as branches and leaves of the trees, may unavoidably involve point source discharges of pesticides to water.

Registration requirements in this permit are the same as EPA's pesticide general permit. Federal and state agencies are required to register to this permit regardless of their annual treatment area threshold. Other operators who conduct large-scale operations are also required to register.

A 6,400 acres (10 square miles) annual treatment area threshold is established for operators not organized as a state or federal agency. This annual treatment area threshold includes large forestlands. Setting an annual treatment area threshold at 6,400 acres captures most operators and continues to exclude only the smallest applications from registration requirements. Calculation of annual treatment area threshold includes the total area from all repeated pesticide applications in a calendar year.

5.1.8 Annual Treatment Area Thresholds for Area-Wide Pest Control

The Area-Wide Pest Control category is for the control of pest species by using aerial pesticide application to cover a large area in order to avoid substantial and widespread economic and social impact. The aerial pesticide application will result in some of the pesticide unavoidably being applied over and deposited in water. The pest control under this category is not included in the other pest control categories covered under the permit. For example, while nuisance animal pest control can include insects, and weed and algae control includes plants, pest management practices in these categories do not include practices for aerial pesticide applications. The Area-Wide Pest Control category includes pest management practices necessary for aerial application.

This category covers diverse habitat not included in the above categories. Large treatment areas or areas that are inaccessible may need aerial applications of pesticides that would come under this category. For example, USDA Animal and Plant Health Inspection Service may conduct aerial spraying of pesticides to

control grasshoppers over rangeland. Other scenarios may include ODA spraying for gypsy moths over a varied rural, urban and forest landscape.

DEQ requires registration for the largest pesticide applications when a pesticide application unavoidably will be applied over and deposited in a surface water of the state. The annual treatment area threshold above 6,400 acres will account for the largest operators. Repeated pesticide applications to the same treatment area are included in the calculation for annual treatment area threshold.

Registration under this category is required of federal and state agencies regardless of annual treatment area threshold.

6. Schedule A: Effluent Limits

There are two categories of effluent limits for NPDES permits: 1) technology-based effluent limits and 2) water quality-based effluent limits.

TBELs define a minimum level of control using available technology. EPA establishes technology-based effluent limits through effluent limitation guidelines specific to industrial categories. If there are no applicable effluent limitation guidelines, best professional judgment may be used.

DEQ agrees with EPA's approach to regulate most pest control categories using technology-based effluent limits and narrative water quality-based effluent limits to protect water quality. As EPA explains in its fact sheet for the 2021 pesticide general permit on page 76:

“Permit writers are to assess whether the TBELs are protective of water quality standards, and if not, permit writers must also include WQBELs as necessary to ensure that the discharge will not cause an excursion above any state water quality standard, including state narrative criteria for water quality (see 40 CFR 122.44(d)). In developing WQBELs, permit writers must consider the potential impact of every proposed surface water discharge on the quality of the receiving water. Unlike individual permits that include requirements tailored to site-specific considerations, general permits, while tailored to specific industrial processes or types of discharges (e.g., from the application of pesticides), often do not contain site-specific WQBELs. Instead, in general, EPA includes a narrative statement that addresses WQBELs.”

When renewing a permit, a permit writer typically evaluates the existing limits in the permit against changes to technology-based standards and water quality standards that may have occurred during the permit term. With few exceptions, the anti-backsliding provisions (described in CWA Section 402(o) and CFR 122.44(l)) do not allow relaxation of effluent limits in renewed permits. The most stringent of the existing or new limits must be included in the new permit.

The non-numeric technology-based effluent limitations and narrative water quality-based effluent limits in this general permit must protect water quality and existing beneficial uses in the receiving surface waters of the state. In general, these beneficial uses are:

- Public and private domestic water supply
- Industrial water supply
- Irrigation and livestock watering
- Fish and aquatic life (including salmonid rearing, migration and spawning)
- Wildlife and hunting
- Fishing
- Boating

- Water contact recreation
- Aesthetic quality
- Hydro power
- Commercial navigation and transportation

6.1 Antibacksliding

When renewing a permit, a permit writer typically evaluates the existing limits in the permit against changes to technology-based standards and water quality standards that may have occurred during the permit term. With few exceptions, the anti-backsliding provisions (described in CWA Section 402(o) and CFR 122.44(l)) do not allow relaxation of effluent limits in renewed permits. The most stringent of the existing or new limits must be included in the new permit.

Similar to EPA's 2021 pesticide general permit, this permit retains technology-based effluent limits and narrative water quality-based effluent limits for most pest control categories.

6.2 Antidegradation

The narrative water quality-based effluent limits and technology-based pest management measures in this permit will be protective of water quality standards and existing beneficial uses for most pesticide applications.

The pest control covered under this permit and the discharges from pesticide applications existed prior to DEQ's issuance and coverage granted under the permit in October 2011. Federal and state agencies and others have used pesticides to achieve conservation management goals, restore water quality and maintain infrastructure. Vector control agencies are established to monitor flying insect populations to protect public health and use pest control when necessary. Pesticide applicators are licensed for pesticide use in categories such as right of ways, regulatory weed, public health, and aquatic. Pesticide application is expected to be consistent with past usage in that it will follow FIFRA label requirements and fluctuate with the severity of a pest infestation. As such, the existing discharges do not constitute new or increased "point source" discharges that would foreseeably degrade water quality.

As explained in EPA's 2021 pesticide general permit, chemical pesticides are applied as a product and are intended to be toxic to the target species. The discharges covered under this permit are for the chemical pesticide residues after the pesticide has performed its intended purpose. Therefore, the residue will be no higher than, and in many instances, will be lower than, the concentration of the pesticide as applied. Biological pesticides are certain microorganisms including bacteria, fungi, viruses, and protozoa that are effective in controlling target pests. By regulatory definition, biological pesticides do not work through a toxic mode of action.

Permit renewals with the same discharge loadings as the previous permit are not considered to lower water quality from the existing condition. DEQ's renewal of the pesticide general permit will continue to protect water quality as operators responsible for the pest control carry out the permit's technology-based requirements for minimization and follow pest management measures.

This renewal must include limits and other conditions necessary to meet water quality standards developed to protect the most sensitive existing beneficial uses. As such, this permit renewal includes pest requirements that may not currently be on a pesticide label, but are in effect due to a court order. In addition to using the correct amount of pesticide, operators must follow mandatory pesticide product label requirements.

Conditions in this permit implement antidegradation rules consistent with EPA’s August 2013 comments on DEQ’s antidegradation approach for permits. These comments can be found online at: <https://www.oregon.gov/deq/FilterDocs/saMemoAntiDegGP.pdf>.

The permit requires the protection of existing uses and limits when new or increased pollutants may be allowed. This permit does not provide coverage for a discharge to Outstanding Resource Waters. This permit contains water quality-based limits to prevent degrading water quality and prohibits an increased discharge of the limited water quality parameter (or parameter related to the limited parameter) in a water quality limited water.

6.3 TBEL and Narrative WQBEL Limits

This permit retains technology-based effluent limits and narrative water quality-based effluent limits for pest control categories.

6.3.1 Minimization (Condition Nos. 1. through 4.)

For many pesticide applications, minimization of the discharge can be achieved without using highly engineered, complex treatment systems. The specific limits included in Schedule A emphasize effective “low-tech” approaches, including following mandatory label requirements, using the optimal amount of pesticide product, performing regular equipment maintenance and calibration, accurately identifying the pest problem, efficiently and effectively managing the pest problem, and properly using pesticides.

These effluent limits are generally preventative in nature, and are designed to minimize the discharge of pollutants from pesticide use. Operators are ultimately responsible for ensuring that all required effluent limits are met.

6.3.2 Pest Management Measures (Conditions Nos. 1., 2. and 3.)

To meet these limits, the permit requires operators to implement site-specific pest management measures to minimize the discharge of pollutants from the application of pesticides. Minimize means to reduce or eliminate pesticide discharges to surface waters of the state, using achievable pest management measures to the extent technologically available and economically practicable and achievable. Exact pest management measures are not listed because there is variability in the best way to achieve these pest management measures.

Pest management measures can be actions, such as processes, procedures, schedules of activities, prohibitions on practices, and other management practices. Measures can also be structural, such as installed devices to prevent or reduce water pollution. The appropriate pest management measures need to be adapted for each site. Basic pest management measures are required of operators whose smaller scale pesticide applications are below the annual treatment area thresholds in Table 1. More detailed pest management measures are required of operators that trigger registration requirements. Both the basic and more detailed pest management measures must be protective of water quality. The more detailed pest management measures are required of registered operators, whose pesticide applications have a greater potential to affect the beneficial uses of water quality.

Condition 1.a. contains a general requirement that all operators must manage their discharge so that it does not cause or contribute to a violation of water quality standards. Operators must take corrective action in response to a discharge that does not meet this requirement.

Condition 1.b. includes court-ordered buffer requirements (i.e. specific set-back distances from water) in effect for specific pesticides approved for use in Oregon. Reference to the most recent court-ordered

decision in place is available on ODA's web page on buffers at <https://www.oregon.gov/ODA/programs/Pesticides/Water/Pages/Buffers.aspx>.

Generally, a pesticide product label contains both mandatory actions and advisory statements related to practices that can prevent pesticide residues from reaching surface waters. In Condition 2.a., DEQ requires operators to follow mandatory FIFRA label requirements (i.e. directions) that can protect water quality. This information can be found in several sections of a label, including sections with the following headings: Directions for Use, Environmental Hazards, Spray Drift Management, Endangered Species Protection, and Buffers (Vegetative and "No Spray" Buffers). The mandatory requirements are typically identifiable by language that includes the words "must" or "must not."

Examples of mandatory requirement language in the label that can protect water quality include:

- "This product must not be mixed or loaded within ___ feet of intermittent streams or rivers"
- "The following drift management requirements must be followed to avoid off-target drift movement from aerial applications..."
- "Any use of this product in an area where use is prohibited is a violation of federal law."
- "Do not exceed ___ pounds per acre per calendar year."

Using the pesticide product as intended and following the label will result in the efficient use of the pesticide and minimize or prevent a pesticide or pesticide residue from discharging to water. Using the amount of pesticide as required in Condition 2.b. reduces the amount of pesticide that is not performing a specific pest-control function. As explained in EPA's permit, using only the amount and frequency of applications necessary will save the user time and money.

In Condition 2.c., operators are required by DEQ to minimize a discharge through equipment maintenance, proper mixing and loading activities. Common sense and good housekeeping practices enable pesticide users to save time and money and reduce the potential for unintended discharges. Some basic practices to ensure equipment is in proper operating condition, and how to avoid improper pesticide mixing and equipment loading, are provided below:

- Inspect pesticide containers at purchase to ensure proper containment;
- Maintain and clean storage facilities for pesticides;
- Regularly monitor containers for leaks;
- Make sure gaskets are tight and connections are secure to prevent spills and leaks;
- Ensure the proper handling and storage of the equipment at the treatment site;
- Use leakproof containers for storage and use leakproof containers for mixing on site;
- Avoid storage and mixing in areas that will drain or leach any accidental spillage into water; and
- Promptly deal with spills following the manufacturer's recommendations.

For example, when water is taken from a stream for mixing pesticides or to clean equipment, there are ways to prevent the pesticide from getting into the stream. A backflow-preventer or an air gap on the device used for siphoning or a clean reservoir between the water source and the mixing container will prevent the pesticide from getting into the water.

In Condition 2.d., DEQ expects operators to maintain the application equipment and calibrate it to have the necessary control. In other words, apply too little, and the frequency of application increases; apply too much, and excess pesticide may lead to water quality problems, and could be a violation of pesticide laws (FIFRA and ORS 634). As explained in EPA's 2021 pesticide general permit fact sheet, proper equipment calibration can assure uniform application to the desired target and result in higher efficiency in terms of pest control and cost.

Spray application equipment must deliver at the correct pressure, with the right orifice size or tip to dispense the proper amount of product. Any pumps for spraying need maintenance to deliver the pesticide at sufficient pressure to apply a uniform and adequate rate of pesticide. Pesticide application efficiency and precision can be adversely affected by a variety of mechanical problems and can be addressed through regular calibration. Sound calibration practices to consider are:

- Choosing the right spray equipment for the application;
- Ensuring the proper regulation of pressure and choice of nozzle to ensure the desired application rate;
- Calibrating spray equipment prior to use to ensure the rate applied is that required for effective control of the target pest;
- Cleaning all equipment after each use and prior to using another pesticide;
- Checking all equipment regularly (e.g., sprayers, hoses, nozzles, etc.) for signs of uneven wear (e.g. metal fatigue/shavings, cracked hoses, etc.) to prevent equipment failure that may result in inadvertent discharge into the environment; and
- Replacing all worn components of pesticide application equipment prior to application.

Pesticide application equipment is generally sold with manufacturer's instructions for operators to follow on how to use the equipment properly. If the equipment is not new, operators should access the manufacturer's information to make sure the instructions are followed, the equipment is used properly to maximize efficiency and accuracy of delivery, and pesticide use is minimized.

Condition 2.e. contains a requirement to assess environmental conditions in the treatment area. DEQ expects that the weather conditions will be assessed to determine that the conditions are appropriate for an effective application in instances when the label dictates certain requirements. Documentation of weather conditions at the time of pesticide application is a requirement for registered operators.

For example, aerial applications are affected by environmental conditions such as temperature, wind, or other factors that contribute to the optimal use of the pesticide. Environmental conditions in the treatment area, such as temperature, precipitation, and wind speed, need to be assessed so that the aerial applications of chemical and biological sprays are optimized, and the effects on non-target species are minimized. The operator should consider which weather conditions have an increased potential for drift and runoff, and avoid aerial applications under those unfavorable conditions. Among other requirements, during aerial-or ground-based applications, the air temperature, relative humidity, wind speed, and direction should be recorded because these weather conditions may strongly affect the deposition and area of coverage.

Environmental conditions, such as temperature, precipitation, and wind speed, affect the results of an adulticide pesticide application, and therefore need to be considered. These conditions affect equipment performance and the ability to target the desired species. For example, when using ultra low volume spraying equipment, light wind conditions of less than 10 miles per hour are the most desirable for the material through the treatment area. Thermal fogs also perform best under very light wind conditions. Certain species of mosquito are active during the daytime, and application needs to be made at the period of highest activity. In order to prevent poor site coverage, a guidance system, when economically feasible, or site flagging, may be necessary to increase accuracy of the treatment coverage while minimizing the amount of pesticide being applied. Site restrictions such as water use and water movement need to be considered.

The efficacy of the pesticide may be dependent upon waterbody conditions, such as temperature or water movement, to ensure proper mixing and to have the least impact on non-target species. Proper mixing is used to achieve the necessary pesticide concentration.

Using site-specific pest management measures will minimize the discharge of pesticides to surface water. If site-specific pest management measures are not being met, or water quality standards are not being met as required by Condition 1., then corrective action is required.

6.3.3 Pest Management Measures (Condition Nos. 4 through 10)

As provided in Condition 4, all operators are required to use pest management measures to minimize the discharge of pesticides, regardless of the annual treatment area registration threshold. There are elements of integrated pest management in pest management measures, and a comparison to Oregon's requirement for integrated pest management under Oregon revised statutes is provided below.

Monitor and Identify Pests

Not all insects, weeds, and other living organisms require control. Many organisms are innocuous, and some are even beneficial. This permit condition emphasizes the need to monitor for pests and identify them accurately, so that appropriate control decisions can be made in conjunction with action thresholds. Monitoring and identification reduce the possibility that pesticides will be used when they are not really needed.

Action Thresholds

Before taking any pest control action, determine an action threshold: a point at which pest populations or environmental conditions indicate that pest control action must be taken. Detecting a single pest does not always mean control is needed. The level at which pests will become an economic threat is critical to guide future pest control decisions.

Pest Management

Work to prevent pests from becoming a threat as a first line of pest control. This may mean using cultural methods, mechanical or physical methods, biological control methods, or other preventative or pest reduction activities. These control methods can be effective and cost-efficient and present little to no risk to people or the environment. Once monitoring, identification, and action thresholds indicate that pest control is required, and preventive methods are no longer effective or available, then evaluate the proper control method both for effectiveness and risk.

Most federal and state agencies already use some form of integrated pest management. Integrated pest management is defined under FIFRA (FIFRA, 7 USC 136r-1) for federal agencies that are expected to follow integrated pest management (USC 136r-1). Under 136r-1, Integrated Pest Management is a sustainable approach to managing pests by combining biological, cultural, physical, and chemical tools in a way that minimizes economic, health, and environmental risks. USC 136r-1 contains this statement:

“The Secretary of Agriculture and the Administrator shall make information on Integrated Pest Management widely available to pesticide users, including Federal agencies. Federal agencies shall use Integrated Pest Management techniques in carrying out pest management activities and shall promote Integrated Pest Management through procurement and regulatory policies, and other activities.”

Under ORS 634.655, state policy requires all state agencies that have pest control responsibilities to follow the principles of integrated pest management. As of 2013, ORS 634.657 requires the formation of an integrated pest management coordinating committee, which is required to submit reports on activities related to integrated pest management. An integrated pest management coordinator is also provided for in this rule.

ORS 634.650(1) defines integrated pest management for state agencies that have pest control responsibilities in Oregon:

- (1) Integrated pest management means a science-based decision-making process that:
 - (a) Identifies and reduces risks from pests and from pest management-related strategies;
 - (b) Coordinates the use of pest biology, environmental information and comprehensive technology to prevent unacceptable levels of pest damage by economical means and poses the least possible risk to people, property, resources and the environment; and
 - (c) Uses a pest management approach that focuses on the prevention of pests through a combination of techniques that may include, but need not be limited to:
 - (A) Surveillance and monitoring;
 - (B) Early detection and rapid response;
 - (C) Mechanical control;
 - (D) The selective use of pesticides;
 - (E) Cultural practices;
 - (F) Modified land management;
 - (G) Biological controls;
 - (H) Evaluation of the effects and efficacy of pest treatments; and
 - (I) Control practices selected and applied to achieve desired pest management objectives in a manner that minimizes risks to human health, nontarget organisms, native fish and wildlife habitat, watersheds and the environment.

The permit requires the operator to follow appropriate pest management measures for pesticide use, if pesticide use is part of the pest control. This permit also extends the requirement to use pest management measures to operators not regulated under state and federal statutes for integrated pest management, and provides a mechanism for DEQ to enforce the reduction of pesticide discharges and better protect water quality.

Pest management measures in Condition Nos. 5. through 10. are defined for each pest control category and structured for the registered operators.

This permit provides coverage for all whose discharges of pesticides to surface waters of the state are solely from pesticide research and development activities. However, consistent with EPA's pesticide general permit, these operators implement pest management measures in the permit to the extent that implementation of the pest management measure does not compromise the research design. (See Schedule A, Condition Nos. 4.e. and 10.)

6.3.4 Identify the Problem (Condition Nos. 5.a., 6.a., 7.a., 8.a., and 9.a.)

Operators are required to identify the pest problem, identify the target pest, and establish an action threshold. Understanding the pest biology and ecology will provide insight into selecting the most effective and efficient pest management strategies, and in developing an action threshold. An action threshold is a pre-established criterion, a point at which pest populations or environmental conditions indicate that pest control action must be taken. Action thresholds help determine both the need for control actions and the proper timing for those actions. Action thresholds can vary by pest, by site, and by season. Establishing an action threshold can be dependent upon health, public safety, economics, aesthetics, and habitat management goals. Control for each specific pest also depends on the status of the pest as native recurring, quarantine restricted, or invasive species.

Knowledge of the pest problem is an important step in developing pest management strategies. While numerous, similar pests may be present in any given location, only a few of the representative species may constitute a threat that requires control activities. Through proper pest identification, informed pesticide management decisions can be made based on the development biology of the pest (susceptible development stage), pest mobility (potential rate of spread), timing to act on the selected pest management measures, applicable control techniques, and most effective chemical pesticides for the target species. Failure to identify pests can lead to unwarranted control activities, the need for chemical application with potential to discharge into water, or both.

Operators are required to identify the pest problem in their pest management area prior to the first application covered under this permit. Reevaluation of the pest problem is also important to ensure pest management strategies are still applicable. Operators must identify the pest problem at least once each calendar year prior to the first application for that calendar year.

6.3.4.1 Identifying the pest problem for Mosquito and Other Flying Insect Pest Control

Monitoring for mosquitoes can begin before the presence of the flying insect. In general, the ideal place for mosquitoes to breed is quiet, stagnant, sunlit water. Habitat and climate determine which mosquito species will be present in any area. Adult females lay their eggs in standing water, which can be a saltmarsh, a lake, a puddle, a natural reservoir on a plant, or an artificial water container such as a plastic bucket. The first three life stages are aquatic and last 5 to 14 days, depending on the species and the ambient temperature. For instance, during warm weather, it may take only 7 days to go from egg to adult mosquito. Eggs hatch to become larvae, then pupae. The adult mosquito emerges from the pupa as it floats at the water surface. Adults live for 4 to 8 weeks.

All mosquitoes need to have water to complete their life cycle. Natural and artificial containers can consist of holes in a tree, rain puddles, catch basins, wood piles, bird baths and discarded tires. Mosquitoes create a floating raft of between 100 and 400 eggs on top of stagnant water. The eggs can lie dormant in a tire, bucket or roof gutter until water and temperatures are ideal for hatching. A small water filled bucket can house 1,000 mosquitoes.

A mosquito control program typically consists of identification of the species, surveys in areas favorable to a species, and knowledge of larval and adult stage emergence for effective pesticide use.

Having a program in place for early detection allows for proper planning and management, which will reduce pesticide use.

6.3.4.2 Identifying the pest problem for Weed and Algae Control, and Nuisance Animal Control

Knowledge of the pest problem is important to keep the natural balance of plant and animal species in Oregon. Proper identification of the species, its growth patterns, how it spreads, and tracking its density, are the first steps to take in order to develop pest management measures. Familiarity with the watershed and beneficial uses of a watershed is also key to controlling the pest species that is present.

Identifying the problem will result in targeting the proper pest and using effective pest management. For example, a non-native fish species may contribute to excessive algae blooms.

Identifying the problem includes understanding how a pest spreads. For example, using drift card studies to evaluate dispersal.

Controlling a pest involves knowing its susceptible development stage.

6.3.4.3 Identifying the pest problem for Forest Canopy Pest Control and Area-Wide Pest Control

Identifying the problem consists of identifying the species, its development and behavior, identifying the extent and range of the pest problem both in the past and in the present, making a determination of the potential for pest problem expansion, and assessing the impacts for failure to provide pest control.

Mapping is also an important component in identifying the problem, as these types of pest control can involve treating large expanses. The distribution of the pest within the area of infestation can impact the selection of treatment activities. Mapping of the pest infestation allows evaluation of the actual or potential spread of the infestation (e.g., pest biology, pest mobility, and host availability), and serves as a tool to evaluate the effectiveness of the control activities. Mapping also provides essential information for assessment of economic damages that can result from the current and potential pest infestation, as well as failure to control the pest.

Problem identification includes determining the potential economic impact of not controlling the pest. By establishing economic thresholds, it is possible to determine pest density action thresholds that warrant control activities. However, control decisions must take into account not only the projected economic impact of the current pest infestation, but also the potential of the pest infestation to spread. Therefore, control decisions based on economic impact must in turn rely on proper pest identification, pest biology, and current and potential pest distribution.

For example, grids of pheromone traps and visual egg mass counts are monitoring techniques used to determine where a breeding insect population of gypsy moths is located.

Nymphal surveys are used to locate potential grasshopper/cricket outbreak areas. Adult grasshopper/cricket surveys are used to make predictions for the following year and develop an estimate of the acreage with economic levels of infestation (economic density).

6.3.5 Evaluate Pest Management Options (Condition Nos. 5.b., 6.b., 7.b., 8.b. and 9.b.)

Operators are required to implement efficient and effective means of pest management over the long term, which minimize discharges to surface waters of the state resulting from the application of pesticides. Alternatives to pesticide use must be considered, but can be considered in combination with other pest management options. Combinations of various management methods are frequently the most effective control strategies over the long term. The goal should be to emphasize long-term control rather than a temporary fix. The management strategy chosen must take into consideration the impacts to water quality, as well as minimizing impacts to non-target organisms. Other considerations in a pest management strategy include pest resistance, feasibility and cost effectiveness. The strategies to be evaluated are: no action, prevention, mechanical or physical methods, cultural methods, biological control agents and pesticides. Below are examples of pest management options. Additional information is available in the EPA 2021 pesticide general permit fact sheet available at: <https://www.epa.gov/npdes/pesticide-permitting-2021-pgp>.

Examples of Pest Management	Mosquito Control	Weed and Algae Control	Animal Control	Forest Canopy	Area-Wide
No Action	Mosquito-borne disease is not a concern to human or animals, control methods may cause secondary or non-target impacts and there is not a large human or animal population affected.	Available control methods may cause secondary or non-target impacts that are not justified, no available control exists, or weeds are at a level that does not impair water body uses.	Available control methods may cause secondary or non-target impacts that are not justified, no available control exists.	Available control methods may cause secondary or non-target impacts that are not justified, or aesthetic or economic losses are not anticipated.	Available control methods may cause secondary or non-target impacts that are not justified, or economic or social impacts are not anticipated.
Prevention	Public education and outreach	Increased public awareness, better design of water holding sites, early detection, and following the laws in place	Increased public awareness, better design of water holding sites, early detection, and following the laws in place	Increased public awareness of the origin of firewood	Emphasis on education and early detection.
Mechanical/ Physical Methods	Habitat modification, i.e. cutting grass, remove stagnant water, etc.	Remove weeds by hand or machine.	Fishing, dewatering, netting, electro fishing, electric fences, removing by hand or machine.	Egg mass removal, trapping	Remove weeds by hand or machine.
Cultural Methods	Remove standing water.	Pond dyes, water-level draw down	Eliminate food supply.	Species diversity	Grazing management, species diversity
Biological Control Agents	Introduce diseases, predators or parasites. Predators can include mosquito fish, bats, birds.	Introduce diseases, predators or parasites.	Introduce diseases, predators or parasites.	Introduce/ enhance diseases, predators or parasites, sterile insect release and mating disruption.	Introduce/ enhance predators.
Pesticides	Chemical and biological pesticides	Chemical pesticides	Chemical and Biological Pesticides	Chemical and biological pesticides	Chemical and biological pesticides

All pest management measures must be conducted in a manner that minimizes impacts to non-target species. In some instances, the need for chemical pesticide use in and adjacent to the treatment area can be reduced or virtually eliminated with proper execution of alternative strategies and proper best management practices, including routine evaluation. Operators must reevaluate pest management options every year prior to the first pesticide application for that calendar year.

6.3.6 Determine Appropriate Pesticide Use (Condition Nos. 5.c., 6.c., 7.c., 8.c. , and 9.c.)

Pest management measures take into consideration the pest management area and the pest management strategy for that area. By using pest management measures, consideration is given to other treatment alternatives or the combination of treatment alternatives (mechanical, cultural, biological) under pest management. Choosing a pesticide that is more selective for the target species is part of that consideration. Consider partial site treatments over time to minimize risk to non-target organisms. Pesticide application must be limited to the appropriate amount required to control the target pests. Methods used in applying pesticides must minimize the impact to non-target species.

If pesticides are used, they must only be used as needed as determined by an action threshold. Pesticide use must follow the appropriate best management practices including use of the minimum effective application rate. Operators should consider a pesticide that minimizes the movement of material off-site. The choice of a pellet or granular formulation over liquid or a pesticide with additives that causes the pesticide to stick in order to minimize the potential for movement of the material off-site are possible considerations.

Operators are required to conduct pest surveillance prior to the application of pesticides to determine when the action threshold is met. Pest surveillance is necessary for pest control in order to reduce the impact on the environment. Pest surveillance is important to properly time the need for pest control, taking into account such things as local environmental conditions, the possible spreading due to environmental conditions, and conditions that limit the choice or effectiveness of the control activity. Surveillance confirms that the action threshold has been achieved and the conditions for pesticide application in the treatment area are appropriate.

6.3.6.1 *Mosquito and Other Flying Insect Pest Control*

In mosquito and other flying insect pest control, use surveillance to time pest control properly and to evaluate the potential need for pesticide use for mosquito control. Understanding surveillance enables mosquito control operators to more effectively target their control efforts.

Operators are required to conduct a surveillance program to minimize discharges from control activities. Surveillance is necessary, not only to establish the pest's presence and abundance, but also to evaluate the effectiveness of source reduction and chemical control activities. Furthermore, surveillance should be used as an indicator of the need for additional pesticide control activities based on pre-established criteria related to population densities in local areas.

Larval surveillance involves routine sampling of aquatic habitats for developing mosquitoes. Larval counts can be used to indicate when chemical larval pest management measures are warranted. Counts can be expressed as the number of immature (larvae and pupae) mosquitoes per dip, per unit volume, or per unit surface area of the site.

Adult mosquitoes are attracted to different traps depending on their species, sex, and physiological condition so a variety of traps are typically used. Trapped adults provide information about local species composition, distribution, and density. In addition, the need for adulticide application may be established through the number and distribution of service requests received from the public.

Collection of data provides feedback to the mapping and planning component of the pest management measure, as well as to its effectiveness. It also serves to identify new sources of mosquitoes, or identify recurring problem sites.

Disease surveillance, when practical, is also a key component of a pest management strategy. The detection of antibodies in “sentinel” chicken flocks and equine cases, as well as testing dead birds and adult mosquitoes for infections, are all used to determine whether disease is being transmitted in an area. Mosquito and vector control agencies also may test mosquitoes for viruses in their laboratories. Although generally less sensitive than sentinel chickens, mosquito infections may be detected earlier in the season than chicken seroconversions, and therefore provide an early warning of virus activity. However, disease surveillance is not applicable to all mosquito control programs. In the absence of a dedicated disease surveillance program, mosquito control operators should stay informed of arboviral occurrence, or potential for occurrence, in their control areas as determined by local, state, and/or national public health agencies.

In many communities, the larvicides are the primary form of pesticide used to control mosquitoes. The application of pesticides to kill immature mosquitoes by ground or aerial application is typically more effective and target-specific than aerial spraying with an adulticide (*Best Management Practices in Mosquito Control* provided by the Oregon Mosquito and Vector Control Association.). The permit requires the use of larvicides where and when they would be most effective. In situations where larvicides are not practicable or feasible, the permit requires adult action thresholds be met before the use of adulticides to control the flying stage of the insect’s life cycle.

Types of equipment used for this type of pest control may include the aerial spraying from a plane, unmanned aerial vehicle, truck mounted or hand-held/backpack sprayers.

6.3.6.2 Weed and Algae Control

The density of the pest population that can be tolerated can differ for non-native species and overgrown native plant species. Management goals for nuisance native plants emphasize reduction of problem growth, not elimination of the species from the system, which is different from what may be required for non-native weed control. Surveillance needs to be conducted to determine when the conditions are right for the application of the pesticide (*Reference Guide for Developing Integrated Aquatic Vegetation Management Plans in Oregon*, Gibbons, Maribeth V., Rosenkranz, Mark G., Gibbons, Harry L., Sytsma, Mark D., Center for Lakes and Reservoirs, Portland State University, Portland OR, 1999). In selecting the right pesticide, there are several considerations, such as submersed and emergent applications and contact versus systemic herbicides. The efficacy of the pesticide may be dependent upon the waterbody conditions such as temperature, water movement for proper mixing and having the least impact on non-target species, or the stage of the plant growth.

This type of pest control equipment typically includes ground-based equipment such as truck-mounted, hand-held/backpack sprayers, or in-water injection. Pesticide applications can be dispersed from boat carrying the application equipment.

6.3.6.3 Nuisance Animal Control

In working through pest management measures, the combination or sole control of the pest may be through the use of a pesticide. If pesticides are used, they must only be used as needed, as determined by an action threshold. In some cases, that action threshold may be based on the presence of an invasive species, where pest identification alone may be sufficient to satisfy the surveillance requirement. Surveillance must consist of pest counts, or an area survey to determine that the action threshold is met, the application timing is appropriate, the treatment area has been evaluated for any site restrictions, and the appropriate application method is selected before the pesticide is applied.

Aquatic nuisance animal species and site restrictions (water use, water movement, etc.) must be identified when choosing an appropriate pesticide. Environmental factors such as temperature as well as biological factors such as migration timing should be considered when deciding on application timing.

This type of pest control equipment can typically include ground-based equipment such as truck-mounted, hand-held/backpack sprayers, or in-water injection. Pesticide applications can be dispersed from boats carrying the application equipment.

6.3.6.4 Forest Canopy Pest Control and Area-Wide Pest Control

Aerial applications are considered the preferred application method for large areas, and areas that are inaccessible for ground application. Type of equipment for these pest control types are directed over an application area via aerial spraying using a fixed-wing or rotary-wing aircraft, as well as high-pressure or broadcast sprayers to direct a pesticide to a canopy layer. For these types of pest control, surveillance involves observations of pest numbers, detecting the presence or confirming the absence of the pest population, knowing the magnitude of pest populations in a given location and identifying the area of infestation.

Surveillance for pesticide use involves knowing the developmental stage of the current infestation, and biotic factors that enhance development and spreading of pest populations, such as, weather, crowding, predators, pathogens, etc.

Selection of the appropriate pesticide is important when considering the non-target species that may be in the area and affected by the pesticide. For example, a viral insecticide that specifically targets gypsy moth larvae can be used in areas where an endangered or threatened butterfly or moth exist.

Pesticide application must be limited to the appropriate amount required to control the target pests. Methods used in applying pesticides must minimize the impact to non-target species. For example, a direct aerial pesticide application to water is avoided when using a pesticide that prohibits direct application to water by establishing buffers for water bodies.

7. Schedule B: Minimum Monitoring, Reporting and Recordkeeping Requirements (Conditions Nos. 1. through 11.)

The monitoring conditions in this permit are narrative. DEQ agrees with the EPA's conclusions that establishing numerical limits for most pesticide applications is not practicable, in part because there are no discrete sampling locations. DEQ agrees with EPA's conclusions that establishing a sampling regime to determine compliance with the permit effluent limits is not practicable. The issues are related.

As the EPA 2021 pesticide general permit fact sheet states, monitoring of pesticide discharges poses several challenges not generally encountered in "traditional" NPDES permitting situations. For example, there is no "wastewater discharge," per se, from pesticide applications that is analogous to end-of-pipe discharges. For example, a manufacturing plant would typically direct its wastewater through a treatment system to remove pollutants, and then would direct the effluent through a pipe into a receiving waterbody. However, for chemical pesticide applications, at the time of application, the pesticide contains both the portion serving its intended purpose as well as the potential residual for which monitoring data would be appropriate. Thus, monitoring the "outfall" in this case would merely provide data on the amount of the

product as applied (information already known through the FIFRA registration process), and is not useful for comparing with any type of effluent limitation or water quality standard.

EPA considered requiring ambient water quality monitoring. However, EPA determined that it was infeasible for the following reasons:

Uncertainty: Ambient water quality monitoring undertaken by an individual operator would generally not be able to distinguish whether the results were from the pesticide application for which monitoring is being performed, or some other upstream source.

Lack of applicable measurable standards: Pesticide-specific water quality standards do not exist at this time for the vast majority of constituents in the products authorized for use under this pesticide general permit.

Safety and Accessibility: Pesticides, particularly those used for mosquito control and forestry pest control, are often applied over waterbodies in remote areas, hazardous terrain, and swamps that are either inaccessible or pose safety risks for the collection of samples.

Difficulty of residue sampling for chemical pesticides: For chemical pesticides, the “pollutant” regulated by the pesticide general permit is the residue that remains after the pesticide has completed its activity, and it is this residue that would be the subject of any water quality monitoring requirement. However, the point at which only “residue” remains is not practically discernible at this time for all pesticides.

Usefulness of data: Trend data from ambient sampling programs, designed to capture a sole pest control activity, are more useful in determining compliance with ambient criteria or benchmarks. The Pesticide Stewardship Partnership Program ambient data are an example of such sampling, because the same type of pest control occurs in the area of the water being studied.

The same difficulties arise when considering a requirement for Whole Effluent Toxicity (WET) testing. The WET test is a measure of a source of toxicity. A sample from a receiving stream cannot be attributed to or used to identify a single source of toxicity.

Pursuant to CWA sections 308 and 402(a)(2), 40 CFR 122.43(a), and other applicable implementing regulations, monitoring requirements have been included in the permit and are discussed below.

This permit concentrates monitoring efforts in areas where practices and activities have the greatest potential for degrading surface water to maintain the desired beneficial uses. Operators who are subject to the permit but not registered under the permit are required to keep records for three years. DEQ can request the records to monitor for compliance, and use the recordkeeping to gather information on pesticide use in a watershed.

Electronic document submission requirements are added in this section. DEQ’s NPDES eReporting system is not currently able to accept electronic submissions, so this requirement will only become effective when permit registrant is notified.

7.1 Visual Monitoring Requirements (Condition No. 1.)

Visual monitoring assessments are required to identify, for example, instances of detrimental impact to non-target organisms, disruption or degradation of wildlife habitat, or the prevention of designated recreational or municipal uses of a waterbody that may be related to the operator’s use of pesticides in a

given area. Visual assessments will consist of spot checks in and around the of pesticide application for possible and observable adverse incidents, such as fish kills and/or distressed fish or macro-invertebrates.

Visual monitoring assessments are also required during the pesticide application when feasibility and safety allow. Visual assessment is not required during the course of treatment when that treatment is performed in darkness, as it is infeasible for the inspector to note adverse effects under these circumstances. Additionally, the following scenarios often rule out visual monitoring during pesticide application:

- Applications made from an aircraft;
- Applications made from a moving road vehicle when the applicator is the driver;
- Applications made from moving watercraft when the applicator is the driver;
- Applications made from a moving off-road wheeled or tracked vehicle when the applicator is the driver.

Conduct a visual monitoring assessment during any post-application surveillance to determine the efficacy of the pesticide treatment. Visual assessment of this type is only required if the operator performs post-application surveillance in the normal course of business.

Conduct visual assessments during applications and efficacy inspections on foot or from a stationary vehicle. For instance, the permit requires routine visual inspections as part of the pest treatment activity or as part of post-application pest surveillance, and calls for records of the pesticide discharge volume to be kept. In ORS 634.650(1)(c)(H), post-application surveillance monitoring is required of state agencies using integrated pest management in order to evaluate the effects and efficacy of pest treatments. Surveillance is necessary to not only establish the species presence and their abundance, but also as an evaluation tool of the effectiveness of chemical control activities. It is important to continue surveillance following the pest management measures to assess treatment efficacy and to monitor for new pests. Surveillance can be used to determine if the current techniques are effective and whether additional pest management measures are required, particularly pesticide application. Based on follow up surveillance activity, operators can make informed decisions. These decisions serve to increase the effectiveness of a control program, and minimize the potential for a pesticide discharge to water. The monitoring requirements of the permit reflect reasonable measures for good pest management practice, and ODA-licensed operators are currently using these practices to ensure environmental health and safety and optimal control of pest organisms. Under the pesticide general permit, all operators subject to the permit will be required to use these practices.

7.2 Notification Requirements (Condition Nos. 2. through 5.)

Notification to Oregon Emergency Response System is required for adverse incidents. The adverse incident notification requirements do not relieve the operator from the notification and reporting requirements under FIFRA. The adverse effects reporting requirement under FIFRA Section 6(a)(2) requires pesticide registrants and their agents to notify the EPA of additional factual information regarding unreasonable adverse effects on human health or the environment from the use of a registered pesticide. (Condition Nos. 3. and 4.)

Notify OERS if there is a reportable spill or threat of a reportable spill or other unpermitted discharge to water. Operators are required to report specific information within 24 hours of becoming aware of the adverse incident. (Condition No. 5.)

If a pesticide has a potable water use restriction on the label, then the operator must notify private and domestic water users who withdraw drinking water from the waterbody (Condition No. 2.). This condition applies to impacts to known drinking water with intakes from surface water; for example, the set-back distances were not observed, or the sample result is higher than the FIFRA label indicates is safe, or the water supply intake needs to be shut off for 24 hours. While the FIFRA label does not require notifying the drinking water supplier, it implies that there is the need for contact with the drinking water supplier. No notification is required if the FIFRA label requires setbacks and these setbacks are satisfied. The DEQ Drinking Water Protection Program and the Oregon Department of Water Resources provide drinking water source information tools to identify downstream intake locations.

7.3 Recordkeeping (Condition Nos. 6. through 9.)

Recordkeeping includes documentation of the monitoring required by the permit. All operators must maintain a copy of the current permit and other minimum recordkeeping requirements, such as records on the number of acres or linear miles treated on an annual basis. Pertaining to Schedule B, Condition No. 2., the name of the public or private drinking water supplier is recorded when a pesticide with potable water use restrictions is used. All pesticide application records required by licensed pesticide applicators or pesticide consultants must be kept in accordance with ORS 634.146 and OAR 603-057-0130. Licensed private applicators must keep records in accordance with US Department of Agriculture Agricultural Marketing Service. (Condition No. 8.)

Documentation that supports the rationale for not reporting an adverse incident is required. (Schedule B, Condition No. 8.) Operators are required to document when OERS is notified of a reportable spill or threat of a reportable spill or other unpermitted discharge to water. Documentation is required for corrective actions for all operators. (Condition Nos. 6. & 7.)

Recordkeeping requirements are more detailed for operators who are registered under the permit. Additional recordkeeping requirements for those registered under the permit are provided in Schedule B, 9. For example, Condition 9. includes a requirement for assessing environmental conditions related to pesticide use.

Recordkeeping and reporting may be different for an operator based on the annual treatment area for each pest control category. For example, if an operator does not meet the annual treatment area threshold under mosquito and other flying insect pest control, but meets the threshold in the weed control category, then the operator is required to register under the permit and submit an annual report only for the weed control category.

Under the requirements in Schedule F., records are required to be kept for 3 years. The records are available to DEQ upon request.

7.4 Reporting (Condition Nos. 3.c., 10. and 11.)

A written report is required to be submitted to DEQ within 30 days after reporting an adverse incident to OERS. Condition 3.c. explains the content of the written report.

Annual reporting is required for all registered operators (Condition No. 10.). Other monitoring and record retention requirements are contained in the Schedule F of the General Conditions, Schedule D, Section C, Monitoring and Records. Where the provisions in Schedule F conflict with Schedule B, those in the Schedule B are to be followed.

Electronic reporting requirements are included in Condition 11. A registrant will be notified when DEQ system is ready to accept electronic submissions.

8. Schedule C: Compliance Schedule

Schedule C is not a part of this permit.

9. Schedule D: Special Conditions

Registered operators must keep a Pesticide Discharge Management Plan available on site. The PDMP is distinct from the technology-based or water quality-based effluent limitation provisions in the permit. The PDMP is not a limitation and does not impose requirements on discharges. Requirements are imposed by the limitations in Schedule A. The PDMP is a tool for operators to document, among other things, implementation of pest management measures to comply with the permit's effluent limitations.

DEQ is following the reasoning developed in support of EPA's 2021 Pesticide General Permit. This reasoning is explained more fully in the EPA Permit's accompanying fact sheet, but an excerpt from is provided below.

“The requirement to prepare a PDMP is not an effluent limitation because it does not restrict quantities, rates, and concentrations of constituents that are discharged. CWA section 502(11). Instead, the requirement to develop a PDMP is a permit “term or condition” authorized under sections 402(a)(2) and 308 of the Act. Section 402(a)(2) states, “[t]he Administrator shall prescribe conditions for [NPDES] permits to assure compliance with the requirements of paragraph (1) of this subsection, including conditions on data and information collection, reporting, and such other requirements as he deems appropriate.” The PDMP requirements set forth in the permit are terms or conditions under the CWA because the operator is documenting information on how it is complying with the effluent limitations (and inspection and evaluation requirements) contained elsewhere in the permit. Thus, the requirement to develop a PDMP and keep it updated is no different than other information collection conditions, as authorized by section 402(a)(2), in other permits. Failure to have a PDMP, where required, is a violation of the permit.”²

While Part 2 of the permit requires the operator to select pest management measures to meet the effluent limitations in this permit, the pest management measures themselves described in the PDMP are not effluent limitations. The permit does not impose on the operator the obligation to comply with the PDMP; rather, the permit imposes on the operator the obligation to meet the effluent limitations prescribed in Parts 2.0 and 3.0. The operator is free to change, as appropriate, the pest management measures to meet the effluent limitations contained in the permit. This flexibility helps ensure that the operator is able to adjust its practices as necessary to ensure continued compliance with the permit's effluent limitations. However, the permit also contains a recordkeeping condition that requires updates to the PDMP with any such changes in the operator's practices. Thus, if an operator's on-the-ground practices differ from what is in the PDMP, this would constitute a violation of the permit's recordkeeping requirement to keep the PDMP up-to-date, and not a violation of the permit's effluent limitations, which are distinct from the PDMP. EPA recognizes, however, that because the PDMP documents how the operator is meeting the

² This permit is also consistent with the decision in *Texas Independent Producers and Royalty Owners Assoc., et. al. v. EPA*, 410 F.3d 964 (7th Cir. 2005), where petitioners challenged EPA's issuance of the construction general permit (CGP) that covers stormwater discharges. In that case, the Court found that neither the Stormwater Pollution Prevention Plan (SWPPP) nor the Notices of Intent (NOIs) are permits or permit applications because they do not amount to limits. 410 F.3d at 978. Further, the Court found that the permit requirement to develop a SWPPP is not an effluent limitation. For the PGP, the PDMP serves a similar purpose as the CGP SWPPP.

effluent limitations contained in the permit, not following through with actions identified by the operator in the PDMP as the method of complying with the effluent limitations in the permit is relevant to evaluating whether the operator is complying with the permit's effluent limitations.”

9.1 Pesticide Discharge Management Plan

In general, Schedule D requires the following documentation in the PDMP:

- (Condition 2.a.) Pesticide discharge management team information;
- (Condition 2.b.) Pest problem identification;
- (Condition 2.c.) Pest management options evaluation;
- (Condition 2.d.) Schedules and procedures pertaining to minimization of effluent limitations in Schedule A (e.g., application rate and frequency for a proposed pesticide, spill prevention procedures, maintenance of pesticide application equipment and assessment of environmental conditions);
- (Condition 2.e.) Response procedures (e.g., spill response procedures, adverse incident response procedures, and pesticide monitoring schedules and procedures);
- (Condition 2.f.) Supporting Documents (including a copy of any portions of any documents that document the implementation); and
- (Condition 2.g.) Signature Requirement.

Keep the PDMP up-to-date and modify it whenever necessary to document any corrective actions required to comply with the effluent limitations in this permit. (Schedule D Condition No.1)

10. Schedule E: Pretreatment Activities

Schedule E is not a part of this permit.

11. Schedule F: NPDES General Conditions

Schedule F contains general conditions that apply to all NPDES permittees. The general conditions address operation and maintenance, monitoring and recordkeeping, and reporting requirements. Schedule F, Section C., Condition 8 requires keeping permit records for at least 3 years.

DEQ recognizes that some of these conditions do not readily apply to pesticide applications covered under the permit. Pesticide applications are subject to NPDES permits, and Schedule F is a standard requirement for all such permits. When a conflict exists, follow the conditions in Schedules A, B and D.