

## DEQ Response to Comments

### 2300A NPDES Pesticide General Permit:

May 24, 2022

#### Overview

DEQ accepted public comment on the proposed 2300A general permit from Nov. 10, 2021 through Jan. 10, 2022. A public hearing was held on Dec. 14, 2021 for the proposed permit. This permit originally expired on Sept. 30, 2016 and was administratively continued.

This document provides a summary of comments received during the public comment period. Comments that resulted in a revision to the permit are noted; for all other comments, no change was made to the permit.

The following individuals or entities submitted provided comment during the public comment period:

List of commenters		
#	Commenter	Affiliation
1	Elisabeth Holmes	Willamette Riverkeeper
2	Sharalyn Peterson	Northwest Center for Alternatives to Pesticides
3	Lisa Arkin	Beyond Toxics
4	Mary Anne Cooper	Oregon Farm Bureau
5	Katie Murray	Oregonians for Food and Shelter
6	Mike Eliason	Oregon Forest & Industries Council
7	Nick Racine	US Army Corp of Engineers, Portland District
8	Greg Barron	North Morrow Vector Control District
9	Kenny Carver	Washington County Department of Health and Human Services

Public comments received by the close of the public comment period are organized by commenter or by topic if more than one comment was made about the same topic. DEQ's response follows the summary comment. Original comments are on file with DEQ.



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### Permit Coverage

1. Comment:

If a registered operator does not wish to be covered by and subject to this permit, what other options are available?  
(commenter 9)

Response:

An individual permit is an alternative to an NPDES general permit. Use of pest management practices without the use of pesticides is another option.

2. Comment:

Clarify that the permit authorizes and regulates only point source discharges of pesticides to waters of the state. Insert the phrase ‘point source’ before discharge in the first paragraph on page 2. (commenters 4, 5 and 6)

Response:

A NPDES permit is for a discharge of a pollutant from a point source. See 40 CFR Part 122.1(b)(1). The following sentences on pages 1 and 2 of the permit are revised to clarify that this permit is for a point source discharge and is referred to as a discharge.

The term ‘*point source*’ is added on page 1 of the permit as follows:

“This National Pollutant Discharge Elimination System general permit provides coverage for the following five pest control categories for *point source* discharges (*discharges*) to surface waters of the state from the application of biological pesticides or chemical pesticides that leave a residue (collectively called pesticides).”

On page 2, the term discharge is used and “point source” is deleted from the following sentence: “Until this permit expires or is modified or revoked, an operator is authorized to apply pesticides which results in a discharge ~~in~~ to surface waters of the state ~~or at a water’s edge only from an authorized point source discharge point or points established in Schedule A and~~ only in conformance with all the requirements, limitations, and conditions set forth in the included schedules as follows:”

3. Comment:

Clarify the reference to ‘*indirect discharge*’ in the ‘Permitted Activities’ section refers only to a publicly owned treatment works, in accordance with the definition of indirect discharger in 40 CFR Part 122.2. (commenters 4, 5 and 6)

Response:

A definition of ‘*indirect discharge*’ is added as follows: Indirect Discharge means a nondomestic discharger introducing pollutants to a publicly owned treatment works per 40 CFR Part 122.2.

4. Comment:

Appropriately limit the scope of the permit. Do not infringe or create confusion with Oregon Department of Agriculture and Oregon Department of Forestry nonpoint source programs. Address what is allowed under the Clean Water Act or consistent with DEQ’s water quality regulation.

This permit is for direct and intentional application of an aquatic use pesticide or herbicide to a water of the state. A permit should not be required for a direct application to a waterway that is unintentional through a misapplication or drift. Misapplication and drift that results in a direct application to a waterway are prohibited under Oregon’s pesticide laws and are enforced by Oregon Department of Agriculture. A permit should not be required for a pesticide product applied to land that attaches to soil that enters a waterway through runoff. Both ODA and ODF have established buffers for pesticide applications and measures to reduce sedimentation in streams. (commenters 4, 5 and 6)

Response:

The permit addresses this concern on page 9 which states in part: ‘Operators must comply with all other applicable federal and state laws and regulations that pertain to the application of pesticides...’

Permit coverage is required by the Clean Water Act. This permit is issued by DEQ under its authority to administer the federal NPDES program. Where appropriate, this permit is consistent with EPA’s pesticide general permit. This general permit identifies and provides coverage for five pest control categories which may result in point source discharges to water. Without permit coverage, a misapplication or drift that results in a discharge to water violates Oregon water pollution control laws.

Section 4.2 of the fact sheet provides further explanation.

5. Comment:

Why is DEQ imposing duplicative requirements? Remove duplicative measures (e.g. IPM protocols, spill management) and other rules, regulations, federal and state laws that encompass many of these permit conditions. Imposition of these duplicative measures are not required under the Sixth Circuit Court ruling. (commenters 8 and 9)

Response:

Section 1.1 of the fact sheet provides background information on the Sixth Circuit Federal Court of Appeals determination. This general permit does not duplicate measures for all pest control categories. When permit requirements are duplicative, in most cases that same record or requirement can be used or followed for purposes of this permit. Also see the response to comment 4.

## **Pesticides as a Pollutant**

### 6. Comment:

PGP has been in place since 2011. Has DEQ identified any new pollutants of concern being used by registered operators? (commenters 8 and 9)

### Response:

Permit coverage is still for a discharge of pollutants, specifically biological pesticides and chemical pesticide residuals. As such, this permit would continue to be inclusive of any biological or chemical pesticide approved for use in Oregon.

### 7. Comment:

Draft permit only references the assumption that chemical pesticides leave a residue. Section 5.1.1 of the fact sheet references both biological and chemical pesticides. Chemical or biological pesticides that leave a residue are a discharge of a pollutant subject to the Clean Water Act. Correct the permit to make the permit consistent with EPA's General Permit on this point. (commenters 1, 2 and 3)

### Response:

The permit definition of pesticide residue is the same as EPA's definition. A pesticide residue includes that portion of a pesticide application that is discharged from a point source to surface waters of the state and no longer provides pesticidal benefits. A biological pesticide is a pollutant. A chemical pesticide that no longer provides pesticidal benefit is a pollutant. See Section 1 of the Fact Sheet.

Also see the response to comment 8 below.

### 8. Comment:

Revise Condition A.1. Delete the second sentence and revise the first sentence to read: An NPDES permit is not required for the application of a pesticide that does not leave a residue. DEQ does not provide a basis for the assumption that "all pesticide applications will leave a residue." Commenter includes antimycin cited in Sixth Circuit Court decision.

An operator must meet the following water quality-based effluent limits for discharges to surface waters of the state from the use of chemical pesticides that leave a residue in water or from the use of biological pesticides ~~biological pesticides or chemical pesticides~~ for the pest control covered under this permit. ~~The permit considers that all pesticide applications will leave a residue.~~ (commenters 4, 5 and 6)

### Response:

This is a general permit that allows—but limits—a discharge from chemical pesticide use. It is appropriate for Schedule A to contain effluent limits for a discharge of a pesticide because at the time of application, the pesticide contains both the portion serving its intended purpose as well as the potential residual. There is no sampling requirement to determine that a residue is present, as the general permit asserts that chemical pesticide applications leave a residue once the product has performed its intended purpose.

The Sixth Circuit Court cited a particular instance of the use of antimycin which may not always be the case. According to the March 2, 2021 biological opinion for EPA's pesticide general permit, when used in aquaculture, antimycin treated water is normally confined then deactivated with potassium permanganate.

This permit also considers that a discharge of an excess amount of pesticide, a recalled product, or a product not registered for a target species, will result in a residue even if that same pesticide, used as intended, was determined not to leave a residue.

9. Comment:

General permit is not appropriate for covered activities. General permit is overly broad for what is authorized or intended by applicable laws and regulations. DEQ's general permit covers five very different categories of discharge with different application methods. DEQ does not identify the number of pesticide active ingredients that may be covered.

Provide a more thorough explanation. It is unclear how all activities, operators and pesticides are justified under the regulatory requirements for a general permit. These are distinctly different components. (commenters 1, 2 and 3)

Response:

This is a general permit renewal for pesticide applications in five pest control categories. The fact sheet for the permit contains an explanation on how activities, operators and pesticides are appropriately covered under the general permit. A summary is provided in Section 1.2 of the fact sheet.

10. Comment:

Require the largest most impactful pesticide applicators to obtain an individual permit. (commenters 1, 2 and 3)

Response:

As explained in Section 4 of the fact sheet, DEQ expects a majority of applicants will qualify for permit coverage under this general permit; however, DEQ may require an operation to obtain individual coverage in certain situations including when a discharge or activity is a significant contributor of a pollutant(s) or creates other environmental problems.

Also, general permit coverage is not available for a discharge of a pesticide to water impaired for that pesticide.

### **Who is Subject to the 2300A General Permit?**

11. Comment:

Concerned that DEQ does not know the number and types of operators that may be subject to the permit. Identifying number and types of operators is key to designing the general permit. If DEQ knew that there were significantly more than 1,500 operators that should be subject to the 2300A General Permit, wouldn't that inform, and change, their understanding of the scope of this program, and the human health and environmental impacts of biological and chemical pesticide applications across the state?

DEQ estimates do not indicate whether it's for small or large operators, what percentage of permit registrants are in each pest control category or if the number of permit registrants are expected to change. (commenters 1, 2 and 3)

Response:

Section 5. of the fact sheet contains information on a potential number of operators, type of discharge, volume of discharge that is used to determine registration requirements. As explained in this Section 5.1.3 the number of potential operators is not known, but DEQ has resources to identify operators through other state agencies. Section 5 also describes the annual treatment thresholds used to determine small and large operators for purposes of registration. Federal and State agencies as well as some districts are identified as operators that are required to register regardless of an annual treatment area threshold.

A record of registrants is available to the public at this DEQ web page:

<https://www.deq.state.or.us/wq/sisdata/ContactsCriteria.asp>.

12. Comment:

For clarification, suggest changing the narrative annual treatment area threshold in Table 1 from 'no annual threshold' to 'zero.' The term 'no annual threshold' could imply there is no maximum numeric measurement these agencies can reach and therefore are not required to register.

Why are public entities required to register under the no annual threshold language? These entities are required to meet conditions in the permit through other regulations in federal and state law and FIFRA. DEQ is duplicating regulation. (commenters 8 and 9)

Response:

Table 1 narrative annual treatment area threshold is revised to state ‘Registration is required.’

Clean Water Act and FIFRA requirements operate independently of each other. Mosquito and other flying insect pest control, for example, is a category of pest control that requires NPDES permit coverage. DEQ appropriately requires federal, state and districts that are responsible for large scale pesticide applications to register to the permit.

NPDES general permits typically include practices that are common for a pest control category as technology-based effluent limits. These are pest management practices that minimize a pollutant. In addition, this permit requires corrective action when effluent limits are not being met.

### **Pesticide Discharge Management Plan**

13. Comment:

The requirement to prepare a PDMP and to follow 2300A general permit provisions does require compliance with the PDMP and must become an enforceable plan like other management plans across DEQ’s CWA permitting structure. The fact sheet, in part, states the permit does not impose on the operator the obligation to comply with the PDMP, then states, DEQ requires compliance with the PDMP as a recordkeeping requirement. (commenters 1, 2 and 3)

Response:

A PDMP is a recordkeeping requirement and, as defined in the permit, a tool to assist the registrant, not an effluent limit.

The effluent limits in the permit ensure compliance with water quality-based requirements. Effluent limits are set out separately from the plan. As explained in Section 9 of the fact sheet, PDMP development is consistent with EPA’s pesticide general permit.

14. Comment:

Require PDMPs to be submitted to DEQ and made available for public review. Requiring more than a ‘check-box’ to indicate a PDMP was developed prior to exceeding the annual threshold will allow DEQ and the public to confirm the PDMP is substantive, compliant and being followed. (commenters 1, 2 and 3)

Response

A potential registrant must indicate and certify on its application that a PDMP is developed. A permit will not be assigned without confirmation that a PDMP is complete. Registrants are required to maintain updates, make modifications in response to corrective actions as necessary, and continue to inform DEQ on PDMP changes in the annual report. Schedule B, condition 10.e. requires a registrant to confirm a pest control activity was addressed in the PDMP and include a description of any modifications made to a PDMP.

In addition, Schedule F, condition D.7 requires a permit registrant to furnish DEQ with any information that DEQ may request to determine permit compliance. Also see the above response to comment 13.

### **Water Quality Limited Waters**

15. Comment:

Revise “Discharges Not Authorized By This Permit” to read “The 303(d) list as approved or established by EPA that is in effect at the time of issuance of this permit (or for operators that must register under the permit, at the time DEQ issues written notice of permit registration approval) will be used to determine if coverage is available.” Making a determination

of the impairment status of a pesticide – particularly for those not required to register— is overly burdensome. Each stormwater permit registrant is informed at the time of permit assignment for the rest of the permit term. (commenters 4, 5 and 6)

Response:

It is appropriate to have water quality protection for impaired waters in a general permit. This is a general permit that does not allow permit assignment for a discharge to a water quality limited stream. The list of water quality limited waters that is in effect as of January 1 of each year will be used to identify water quality-limited streams. A water quality assessment takes time and has a separate public notice process. An assessment may result in a 303(d) list contained in an EPA approved integrated report that is available on DEQ's web page at <https://www.oregon.gov/deq/wq/Pages/WQ-Assessment.aspx>.

A water quality-limited designation takes time for development and approval which allows operators, who may need to use pesticides to conduct pest control, to anticipate the necessary requirements for this permit. For example, an integrated report approved by EPA in June of 2022 applies in January 2023 for purposes of this permit.

16. Comment:

Prohibit discharges into any water bodies impaired for any pesticide or degradate or any toxic pollutant. The current prohibition does not protect most Oregon waters from pesticides that could degrade and further impair water quality.

The general permit allows pesticide applications that are consistent with a TMDL. DEQ has only one pesticide TMDL. Some common pesticides are not found in the 303(d) database. Pesticides listed in Schedule A.1.b.i do not appear in 303(d) database. If Oregon is not sampling that does not mean pesticides are not present and waters are not impaired.

DEQ should prohibit discharges into any water bodies impaired for any pesticide or degradate or for any toxic pollutant to prevent impacts from simultaneous exposure to multiple pesticides. Synergistic effects and combinations of pesticides can further impair already degraded water bodies. (commenters 1, 2 and 3)

Response:

The general permit does not authorize a discharge to a waterbody or segment that is identified as water quality-limited for a relevant standard. This eligibility requirement 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 requirement is for current and future 303(d) lists approved or established by EPA.

### **Treatment area: Three-Foot Buffer and Ordinary High Water**

17. Comment:

A three-foot buffer and ordinary high water mark are insufficient to protect water from pesticides due to dynamic nature of Oregon's streams and rivers. More protection should be provided. Put seasonal limitations in place to protect migrating salmon species from being exposed to pesticides. Make the 'dry season' provision more protective as it does not account for pesticide residue in sediment. Commenter provides reference to <https://www.oregon.gov/deq/wq/Documents/PSPBienniumReport.pdf>

Allowing for a 'dry season' provision does not account for pesticide residue in sediment. (commenters 1, 2 and 3)

Response:

A pesticide application to a water of the state, such as an intermittent stream when dry or dry wetland, is not included in a calculation when determining a treatment area threshold for purposes of permit registration. However, a discharge to a surface water of the state requires NPDES permit coverage. This permit retains its common practices, as well as other laws and regulations in place to minimize pesticides.

The term ordinary high water is described in ORS 264.005(3) as a line. The definition of ‘water’s edge’ in the permit is revised to reference the ordinary high water ‘line’ instead of ordinary high water mark.

## **Schedule A**

18. Comment:

Remove condition A.1.a. There is no legal or factual basis for this condition. This condition is neither a discharge concentration limit that must be achieved nor a best management practice. If there is a reasonable potential for the discharge of a pollutant to cause or contribute to a violation of water quality standards, the permit must include effluent limits for that pollutant. See 40 C.F.R. § 122.44(d)(1). Or if numeric effluent limits are not feasible the permit may include “best management practices.” Schedule A includes “best management practices” to address that potential. If additional measures are necessary to address water quality standards then they should be identified and included in the permit. Cites a *Natural Resources Defense Council v. EPA, 808 F 3d 556,577-79( 2d Cir.2015)* legal action. (commenters 4, 5 and 6)

Response:

Similar to EPA’s 2021 pesticide general permit, this permit retains this narrative water-quality based effluent limit. Section 6 of the fact sheet explains that a general permit does contain narrative water-quality based effluent limits for certain types of discharges, one of which is a discharge from the application of pesticides.

## **Threatened and Endangered Species**

19. Comment:

Encourage DEQ to more clearly spell out limitations and protections for threatened, endangered species and critical habitat. (commenters 1, 2 and 3)

20. Comment:

Consider prohibiting the following chemicals in or near waters where National Marine Fisheries Service ‘Listed Resources of Concern’ occur to protect ESA-listed species: 2,4-D, Carbaryl, Carbofuran, Chlorothalonil, Chlorpyrifos, Diazinon, Diflubenzuron, Diuron, Fenbutatin oxide, Malathion, Methomyl, Naled, Oryzalin, Pendimethalin, Propargite, Trifluralin. These chemicals are contained in the NMFS’ biological opinion for the 2021-2026 EPA-administered pesticide general permit. The biological opinion determined that their label use would continue to jeopardize the continued existence of ESA-listed species and/or adversely modify designated critical habitat. (commenter 7)

Response to comments 19 and 20 above:

This permit is written to be protective of the beneficial uses of fish and wildlife, which also serves to include endangered or threatened species. This permit also contains no-spray buffer zones for certain chemicals in Schedule A, condition 1.b. to protect endangered and threatened Pacific salmon and steelhead in Oregon identified in EPA’s interactive map: *Salmon mapper*. More information on these buffers is available on Oregon Department of Agriculture’s web page at: <https://www.oregon.gov/oda/programs/pesticides/water/pages/buffers.aspx>

In the development of its permit, EPA was required to consult with National Marine Fisheries Service and US Fish and Wildlife Service. EPA’s pesticide general permit contains provisions for using pesticides contained in a NMFS biological opinion.

This permit does not allow a pesticide application that is inconsistent with other laws and regulations for the use of a pesticide.



## **Pest Management Measures**

### 21. Comment:

Revise condition A.2.b. for clarification add if and as identified and remove the word contained. ‘Use the amount of pesticide, *if* and as *identified* ~~contained~~ on FIFRA label, to reduce the potential for development of pest resistance,...’ (commenters 4, 5 and 6)

### Response:

The condition requires an operator to use the amount of pesticide that is on a label. This condition includes an explanation of its benefit.

Schedule A, Condition 2.b. is revised as follows: Use the amount of pesticide, as contained on a FIFRA label, ~~to~~ *Using the correct amount of pesticide* reduces the potential for development of pest resistance, and ~~to~~ minimizes the frequency of pesticide application necessary to control the target pest;’

### 22. Comment:

Action Threshold definition is not appropriate and creates a burden to develop or pay to develop a scientifically-based action threshold without adding the following sentence: ‘Operators may rely on established action thresholds, if available and appropriate to the intended pest control, or may rely on their best judgment and experience in determining an action threshold for purposes of this permit.’ (commenters 4, 5 and 6)

### Response:

Knowledge of the pest problem is an important step in developing pest management strategies. Extension services, agencies and associations provide credible literature and education courses, all of which are readily available to develop an appropriate action threshold. Scientifically-based is not a term that is used in the permit under the definition of ‘action threshold.’

### 23. Comment:

In the fact sheet on page 13, DEQ does not identify the specific industrial process subject to the general permit. (commenters 1, 2 and 3)

### Response:

In Section 6 of the fact sheet, the term industrial process is used to describe a typical scenario for assigning technology-based effluent limits. As explained on page 14, pest control categories are regulated using technology-based effluent limits.

### 24. Comment:

Revise conditions A.4. a., b., and c. Management practices in conditions A.4. a., b., and c. may not be feasible for certain applications or not readily available, particularly to operators that are not required to register.

- Condition A.4.a: Insert the phrase “To the extent available,” at the beginning of the condition.
- Condition A.4.b: Insert the phrase “If feasible,” at the beginning of the condition.
- Condition A.4.c: Revise the first sentence to read as follows: “Before taking any pest control action, determine action thresholds using established thresholds, when available and appropriate to the intended pest control, or using best judgment and experience.” (commenters 4, 5 and 6)

### 25. Comment:

What taxonomic level of identification is required in condition A.4.b and 4.d.ii to identify the pest to be managed. Specifically state the level of taxonomic identification to meet this and similar requirements within proposed permit conditions. (commenter 9)

Response to comment 24 and 25 above.

Conditions in Schedule A.4. are reasonable and required in order for the permit to be sufficiently protective of water quality. A taxonomic level is not specified. As explained in Section 6.3.1 of the fact sheet, these are effective 'low-tech' approaches. A pest management measure is selected that is appropriate for an operator's situation.

26. Comment:

Agency and pest control district coverage is automatic. Because coverage is automatic, there's concern that Mosquito and Other Flying Insect Pest Control pesticide applications will be conducted too often and not target insect life cycles. (commenters 1, 2 and 3)

Response:

State and Federal agencies and pest control districts are required to register. Both registered and unregistered operators are required to use pesticides effectively by following pest management measures in addition to following a FIFRA label. As explained in Section 6.3 of the fact sheet, elements of integrated pest management are in this permit as pest management measures. (See also responses to 25 and 24 above.)

27. Comment:

Use of the word 'preferred' and conditions A.5.c. iii. and iv. implies that larvicides are safer than adulticides. DEQ must provide and share with ODA, OHA, EPA and ODFW comparison data (e.g. analytical data) to justify implying larvicides are safer than adulticides and to require conditions in iii. and iv. If there is no data, then remove this pesticide use philosophy from the permit conditions. (commenter 9)

28. Comment:

Why is DEQ requiring the use of larvicides as a preferred pesticide over adulticides? Larvicide rates are pound per acre while adulticides are measured at ounces per acre. Consider that adult mosquitos migrate from areas where mosquito there are no mosquito control measures. With IPM there are different methods for control. Pesticide label is the law. (commenter 8)

Response to comments in 27 and 28 above.

Both larvicides and adulticides may be used. Section 6.3.6.1 of the fact sheet provides the following information: 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. This requirement is consistent with EPA's 2021 pesticide general permit.

29. Comment:

Define the term evaluate that is used in Schedule A-Evaluate Pest Management Options. What actions, steps or processes does an operator need to take to satisfy this requirement. (commenters 8 and 9)

Response:

The use of the term evaluate is not different from its common meaning and does not require a separate definition in the permit. The permit provides the approach for evaluating pest management measures in Schedule A conditions 4 through 10.

30. Comment:

Remove the condition to evaluate pest management options in condition A 5.b. A registered operator is a subject matter expert and should not be forced to conduct extreme measure of evaluation. Evaluation of seven pest management options in singly and combination for a target pest while considering the relation of management options impact to water quality, impact to non-target organisms, pest resistance, feasibility and cost effectiveness leads to 25,000 evaluations ( $n= 7!*5$ ). Time-consuming and could allow a target pest to increase due to delay resulting in more pesticide use which would be counter-productive in the effort to reduce pesticide pollutant residues from a point source discharge. (commenter 9)

Response:

As explained in Section 6.3.3 of the fact sheet, DEQ does expect a registered operator to follow pest management measures because these measures are common to pest control programs that practice integrated pest management. Section 6.3.5 of the fact sheet contains typical examples of pest management options and refers to EPA's 2021 pesticide general permit for additional information.

### **Anti-backsliding, Antidegradation Provisions**

31. Comment:

General permit does not demonstrate compliance with anti-backsliding. Specify how the general permit will uphold the state's antidegradation policy in OAR 340-041-0004(1). Include information on the quantity of operators seeking coverage, their industries, kinds of pesticides used, for example aquatic toxicity, chemical or biological coverage half-life or concentration of pesticides, and method of application.

Include specific reporting conditions in Schedule B Additional Recordkeeping to confirm whether applications to demonstrate compliance with TBELs.

Require PDMPs to be submitted to DEQ and be publicly available. (commenters 1, 2 and 3)

Response:

The renewed permit does not backslide. As explained in the fact sheet in Section 6.1, this permit is as stringent as the previous permit.

This general permit contains technology-based management measures and narrative water quality-based effluent measures to be protective of water quality. As explained in Section 6.2 of the fact sheet, the typical types of pest control covered under this permit and the discharges from pesticide applications already existed. Pesticide application is expected to be consistent with past usages in that it will follow FIFRA label requirements and fluctuate with the severity of a pest problem.

DEQ's general permit is consistent with EPA's general permit in that it includes monitoring, recordkeeping and reporting, as well as general operation and maintenance requirements for effective oversight. Submittal or public notice of a PDMP is not required, which is also consistent with EPA's general permit. Recordkeeping and updates to pest management measures are documented when corrective action is necessary per Schedule B, conditions 6 and 7. Registered operators submit an annual report that includes a description of any modification made to the PDMP.

### **Waters with Special Protections**

32. Comment:

General permit does not demonstrate compliance with Oregon's outstanding resource waters rules, and the protection of federally designated status for Oregon waters. Ensure the 2300A does not impact the extraordinary qualities of these waters: Oregon Outstanding Resource Waters Rule (OAR 340-041-0004(8)), Wild and Scenic Rivers Act and pending River Democracy Act. (commenters 1, 2 and 3)

Response:

As explained in Section 6.2 of the fact sheet, 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. This permit protects water quality, which includes wild and scenic waters.

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

Note that an emergency short-term project for use of a pesticide that would result in a discharge to water of the state may be granted via a mutual agreement and order, which is an option that is subject to a 30-day public notice. Another alternative is an individual permit issued for the length of a project and set to terminate at the end of the project, but no more than five years.

### **Monitoring, Reporting and Recordkeeping**

33. Comment:

Reject any attempts to increase or expand the reporting requirements beyond products that are directly applied to water under this permit. Any increased or expanded reporting would create a burden to farmers and foresters, a challenge to measure compared to traditional end of pipe discharges, provide a misleading impression of the amount of products being applied. (commenters 4, 5 and 6)

Response:

Sampling is not required as part of this permit. As in the prior permit, there are recordkeeping and reporting requirements for pesticide applications in five pest control categories that are conducted in, over and near water. Recordkeeping and reporting levels have remained the same under the proposed permit for registered and unregistered operators.

34. Comment:

Require operators to provide written advance notice to water source users and DEQ and require operators to retain a copy of the written notice. Do not limit notification to what a label requires. TBELs and narrative water quality-based effluent limitations must protect drinking water supplies. A downstream drinking water community may receive multiple notifications and need to determine whether or not to take precautions. (commenters 1, 2 and 3)

35. Comment:

Revise condition B.2. with an additional sentence as follows: 'For purposes of meeting its obligations under this permit, operators may rely on drinking water source information designated for this purpose and readily available on the websites of DEQ and the Oregon Department of Water Resources.' Operators do not have a practical means of obtaining information to provide notice to users of known public or private surface drinking water sources. This additional sentence clarifies that operators may rely on drinking water source information that is readily available from DEQ and the Oregon Department of Water Resources. (commenters 4, 5 and 6)

Response to comments 34 and 35:

This permit is for an operator. DEQ expects an operator to be familiar with its treatment area before using a pesticide product with a drinking water restriction on the label. This permit requires notification to a drinking water supplier in Schedule B 2. There are various sources of information available to determine a public or private surface drinking water supplier. Schedule A, condition B.2. states two such sources of information.

This permit condition is specific to any label that contains a drinking water restriction. DEQ's Drinking Water Protection web page at <https://www.oregon.gov/deq/wq/programs/Pages/dwp.aspx> contains resources to Oregon Health Authority. DEQ's Drinking Water Protection web page also contain information on pollution sources in and around a drinking water source for a supplier.

36. Comment:

The term registered operator on pages 20 and 21 appears to be anyone who is required to register. (commenters 4, 5 and 6)

Response:

Yes. A registered operator is required to keep records as required in Schedule B, condition 9 on pages 20 and 21.

37. Comment:

Change treatment area and maintenance recordkeeping and reporting requirements to more clearly mirror the federal permit. Requirement to include specific records for each treatment area could be extremely onerous. Access to equipment calibration may be through a third-party contractor and not available. (commenters 4, 5 and 6)

Response: Monitoring and recordkeeping are required in an NPDES permit. DEQ's permit does require registered operators to keep records per treatment area to enable oversight of pesticide use, which is what EPA's permit requires. EPA's permit assigns certain recordkeeping requirements to an applicator, one of which is a maintenance recordkeeping requirement. DEQ's permit is for an operator that may not be a licensed applicator so that DEQ's permit specifically allows a registered operator to use any applicator's record of maintenance for that recordkeeping requirement.

38. Comment:

In condition B.11.b.i., replace the term 'monitoring result' with 'annual report.' (commenters 4, 5 and 6)

Response:

Schedule B, condition 11.b.i is revised to read as follows: The permit registrant must submit ~~monitoring results annually~~ *an annual report* as specified in 10.a or 10.b. above unless specified otherwise in this permit or as specified in writing by DEQ.

39. Comment:

Don't require a report if DEQ does not review annually. What is the purpose of the annual reports? What reviews, conclusions, analysis has DEQ conducted with annual reports? Recommend DEQ provide registered operators a report. Do not require them if no state review is conducted annually. (commenters 8 and 9)

Response:

DEQ requires an annual report from registered operators. An annual report is the minimum reporting requirement under an NPDES permit. It is used to determine compliance with permit conditions for oversight of pesticide use.

### **Annual Treatment Area Threshold**

40. Comment:

In reference to Mosquito and Other Flying Insect Pest Control, commenter is concerned that not counting a pesticide application to an ephemeral wetland may lead to an area being treated too frequently and may lead to major impacts to water quality as well as insects that rely on these wetlands during their hydroperiod. (commenters 1, 2 and 3)

41. Comment: Do not exclude dry wetlands from the count of treatment area acreage in Area-Wide Pest Control. (commenters 1, 2 and 3)

Response to comments 40 and 41 above:

Permit coverage is required for a pesticide application to a water of the state. A pesticide application to a water of the state that is dry at the time of a pesticide application, specifically a 'dry wetland,' is not part of a calculation for total treatment area for permit registration but does require an operator to meet mandatory pesticide label requirements and other permit requirements.

42. Comment:

Recommend removing all statements and requirements as it pertains to pesticide applications made to land (dry at the time of pesticide application). DEQ is regulating outside of its regulatory authority to use a CWA general permit for pesticide applications made to dry land. Why does DEQ include language throughout the permit regarding land? Does DEQ have authority to regulate requirements for pesticide applications made to land? Does DEQ have authority to regulate pesticide applications that do not come within 3 feet of waters of the state? (commenters 8 and 9)

Response:

DEQ is not including land by itself, and appropriately includes land that is comprised, in part, with water when considering large areas under Mosquito and Other Flying Insect control, Forest Canopy and Area-Wide pest control. DEQ requires permit coverage for an application at a water's edge that is made 3 feet landward from an ordinary high-water mark of a water of the state. DEQ does require permit coverage for a pesticide application that results in a discharge to waters of the state that are dry at the time, such as an intermittent stream or wetland; these are not tallied in a calculation of treatment area.

43. Comment:

Reduce the annual treatment area threshold of 6,400 acres to a smaller threshold of 3,200 acres or 5 square miles of adulticide in the Mosquito and Other Flying Insect Pest Control category to reduce the overall amount of chemical being applied, help restore the ecology of the area and mitigate pest resistance. (commenters 1, 2 and 3)

Response: Permit coverage is required and automatic for areas of treatment below an annual treatment area threshold. An annual treatment area threshold is used for registration purposes in order to track the larger users.

44. Comment:

In the Forest Canopy Pest Control category, it is not clear why a threshold is set at 6,400 acres or 10 square miles. Threshold is larger than what EPA proposed. Suggest a smaller threshold of 3,200 acres or 5 square miles to reduce the overall amount applied. (commenters 1, 2 and 3)

45. Comment:

What is the premise for 6,400 acres for 'large' operators. Smaller acreages can have a significant impact on local areas. Use a lower threshold of about 3,200 acres or 5 square miles. (commenters 1, 2 and 3)

Response to comments 44 and 45 above:

This permit retains a 6,400 acre size for large operators, which is utilized for purposes of registration thresholds. This is the same as EPA's pesticide general permit.

46. Comment:

Does the use of pesticides for weed and algae control within irrigation system boundaries require both the 2000J General Permit and the 2300A General Permit? (commenters 1, 2 and 3)

Response:

Coverage under both general permits for weed and algae control is not required. 2000J is a pesticide general permit for weed and algae control conducted by Irrigation Districts, Water Improvement Districts and Water Improvement Districts. Irrigation systems that are not districts are not eligible for coverage under the 2000J, and therefore need coverage under this general permit.

47. Comment:

State and Federal agencies and weed control districts are exempt from the annual treatment area threshold. It is not uncommon for multiple pesticide applications to occur in the same year. Only one application gets reported. Hold them accountable so that they do not abuse the use of chemicals. (commenters 1, 2 and 3)

Response:

State and federal agencies and weed control districts are required to register for coverage regardless of the number of pesticide applications that occur in a year. Table 1 of the permit will clarify state and federal agencies are required to register regardless of treatment area threshold.

48. Comment:

Concerned that a weed and algae control pesticide application to an intermittent stream or ditch that is dry at the time of the pesticide application is not counted toward the treatment area. Intermittent streams provide food, habitat and spawning areas for fish, macroinvertebrates and other beneficial organisms for part of the year. (commenters 1, 2 and 3)

Response:

Permit coverage is required for a pesticide application to a surface water of the state. A pesticide application to a water of the state that is dry at the time of a pesticide application is not part of a calculation for total treatment area for registration purposes but does require an operator to meet mandatory pesticide label requirements and other permit requirements for a pesticide application to waters of the state.

### **Nuisance Animal Control**

49. Comment:

Protect other important species that may be affected by pesticide applications, such as, freshwater mussels. Commenter references a Xerces Society petition, which cites a DEQ 2015 and 2020 Toxics Assessment Report. (commenters 1, 2 and 3)

Response:

Operators are required to follow pest management measures to minimize pesticide use. A discharge is required to meet water quality standards which includes aquatic life.

50. Comment:

Nuisance Animal Control identification lacks in applicator's accountability and diligence prior to allowing pesticide use. (commenters 1, 2 and 3)

Prohibit the use of pesticides to kill beavers. Concerned that the proposed permit does not prohibit the use of pesticides against animals, such as beavers that are essential to water functions and have ecological value, but deemed as a nuisance. This general permit can impact methods used and the quantities of beavers killed on private lands. (commenters 1, 2 and 3)

Response:

Registered and unregistered operators are required to use available information, properly identify a pest, monitor, establish an action threshold and evaluate appropriate control methods.

### **Forest Canopy Pest Control**

51. Comment:

Agencies and pest control districts exempt from defined permitting thresholds under the 2300A General Permit will conduct pesticide applications too frequently and not successfully target insect life cycle stages leading to pesticide resistant insects and larger outbreaks. (commenters 1, 2 and 3)

Response:

DEQ revised Table 1 registration requirements to make it clear that state and federal agencies and certain districts are required to register. This permit's pest management measures take into consideration information about a pest. A registered operator is required to evaluate pest management measures each year prior to the first pesticide application for that calendar year. Schedule A, condition 4 of the permit contains a pest management measure that includes identification of a pest problem using information on the life cycle of a pest.

52. Comment:

Concerned pesticide applications will lead to soil and water contamination over time. Concerned about non-target plant and animal species. (commenters 1, 2 and 3)

Response:

As stated in section 4.2 of the fact sheet, this general permit does not cover terrestrial (land-based) applications for the purpose of controlling pests on a forest floor. This general permit will be protective of water quality standards and existing beneficial uses for most pesticide applications. In addition, this permit does not allow a pesticide application that is inconsistent with other laws and regulations.

53. Comment:

Require notification of an adverse incident within 24 hours after the incident occurs especially when there is contact with surface water and/or non-target areas when mixing or applying pesticides that are highly toxic to aquatic life. This type of notification is similar to other NPDES permits. (commenters 1, 2 and 3)

Response:

Notification of an adverse incident is required within 24 hours once an operator observes or is aware of an adverse incident. This adverse incident notification requirement is similar to EPA's pesticide general permit.

54. Comment:

Require documented evidence of alternative management such as prevention, monitoring, mechanical and/or biological controls prior to the applications of pesticides known to be highly toxic to pollinators, for example bees. (commenters 1, 2 and 3)

55. Comment:

Broad framework of the permit seems to allow the use of pesticides that will also kill pollinators. Use the 2300A GP to have operators transition away from pesticides to more alternative management practices. (commenters 1, 2 and 3)

Response: The permit is for a discharge to waters of the state. Permit conditions are in place to protect water quality and its beneficial uses. This permit contains conditions to minimize pesticide use and to that extent, if applicable, will include protections for pollinators.

56. Comment:

Align Oregon Forest Practices Act rule notification for sprays that occur directly over waterways with 2300A permit notice for sprays. SB1602, the new OFPA rule, would supersede the less stringent permit for notification, recordkeeping and surface water protections. (commenters 1, 2 and 3)

Response:

This permit is for a discharge to waters of the state. This permit does contain a requirement to notify a drinking water supplier to be protective of the beneficial use of drinking water.

### **Area-Wide Pest Control**

57. Comment:

Permit allows Area-Wide Pest Control to avoid substantial and widespread economic and social impact. Make the provisions in this category more clear, stringent, and enforceable and not presume a large degree of flexibility for operators. (commenters 1, 2 and 3)

Response:



This general permit allows-but limits-a pesticide discharge to occur for the protection of public health, to prevent nuisance, as well as to prevent substantial and widespread economic and social impact. Water quality is protected through pest management measures and narrative effluent limits for pest control categories in this general permit.

58. Comment:

What is the basis for an operator and DEQ to verify that a pest control category is at a level needed to avoid substantial and widespread economic and social impact? (commenters 1, 2 and 3)

Response: USDA Animal and Plant Health Inspection Service may conduct aerial spraying of pesticides to control grasshoppers over rangeland. An example of a socioeconomic impact may include recreational enjoyment. Pest control may also support recreation objectives. ODA may conduct aerial spraying for gypsy moths over a varied rural, urban and forest landscape. These are two examples of the need for this pest control category. These examples are included in the fact sheet in Section 5.1.8. A benefit of these types of pesticide applications is dependent upon the treatment area. For example, local economy could be affected when grasshoppers that infest rangeland move to surrounding croplands. Reductions in natural vegetation could impact its recreational benefit.

59. Comment:

Revise the final sentence in the description of pest control on page 1 to read: "This category does not include pest control included in the above categories." (commenters 4, 5 and 6)

Response:

The final sentence in Area-Wide Pest Control on page 1 of the permit and fact sheet is revised to read as follows:

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 in order to target pests effectively, a portion of the pesticide unavoidably will be applied over and deposited in surface waters of the state. ~~The pest control under~~ This category is does not included *pest control included* in the above categories.

60. Comment:

Require an operator to consider impacts on the local community. Provide more bookends. Don't allow decisions to be made in a vacuum. (commenters 1, 2 and 3)

Response:

This permit is assigned to an operator. An operator is, in many cases, a landowner or government organization. Operators are responsible for their treatment area and must follow pest management measures to minimize a discharge of pesticides in that treatment area that is part of a community. In addition, this permit contains a specific requirement when using a pesticide with drinking water restrictions on the label.

## **Schedule F Standard Conditions**

61. Comment:

Conditions in Schedule F Section C are confusing because they refer to monitoring not required by the permit. Remove general conditions in Schedule F Section C to avoid confusion.

Conditions in E13 through E15 are definitions related to monitoring that is not required by the permit. Remove general these conditions to avoid confusion. (commenters 4, 5 and 6)

Response:

Schedule F is a standard set of conditions that is included in all DEQ NPDES permits. Section 11 of the fact sheet explains that DEQ recognizes that some of the conditions do not readily apply. Schedule F also contains an explanatory

note as follows: Where requirements in Schedules A through E contain requirements that are more specific than the general conditions, those provisions supersede the general conditions.

### **Other Comments**

62. Comment:

This permit applies to homeowners also. Homeowners are the largest users. The permit has been in place since 2012. What public education measures has DEQ completed for homeowners and other unregistered operators to educate, inform and track homeowner pesticide use? (commenters 8 and 9)

Response:

If a homeowner does conduct an activity covered by this permit, they are expected to meet the permit conditions. This permit was put on public notice utilizing the state's GovDelivery System. DEQ also maintains a web presence for this permit.

63. Comment:

What analysis has DEQ conducted that confirms that this permit will or has reduced pesticide applications made to waters of the state? (commenters 8 and 9)

Response:

A permit is required for the protection of beneficial uses of a water body. As defined in the permit, minimize means to reduce or eliminate pesticide discharges to waters of the state through the use of achievable pest management measures to the extent technologically available and economically practicable and achievable. The fact sheet in the 2011 pesticide general permit explained downward trends in pesticide use can be associated with a focus on pest management measures. The permit continues to contain pest management measures.

64. Comment:

If asked, will DEQ provide a review of a PDMP and records to ensure compliance with the conditions without penalty to the operator? (commenter 9)

Response: DEQ may review a PDMP and other records if a compliance inspection is conducted. DEQ is not able to provide consultative actions, such as PDMP reviews outside of the compliance process.

65. Comment:

Please describe DEQ's processes, findings, and discussions taken to ensure the permit requirements and conditions set forth are not a condition of the systemic racism from the existence of systemic, institutionalized policies, practices, and procedures that place operators, applicators, and permittees who identify as a marginalized group at a disadvantage. If no discussions, reviews, collaborations have been taken by DEQ during this permit process, please explain why and if DEQ plans to have these discussions and reviews prior to renewal of this PGP. (commenter 9)

Response: DEQ must follow all applicable federal and state laws, including those relevant to environmental justice and equal protections, in establishing the requirements and conditions of any permit. In addition, DEQ is one of approximately a dozen State of Oregon natural resource agencies that must apply specific considerations for environmental justice concerns in permitting decisions under ORS 182.545. For this permit development, those processes included formal public notification of the permitting process, opportunities for public comment in times and methods accessible and convenient to those who could be affected by the permit decision and multiple engagement meetings with people who may be affected by the permit decisions.

66. Comment:

Disagree with the court decision that pesticide applications to waterways constitute a point source discharge. (commenters 4, 5 and 6)

Response:

Thank you for your comment. This comment is outside the scope of permit coverage.