# STATEMENT OF BASIS

**Permit Type:** General Surface Water Discharge Permit for Point Source Application of Pesticides to Waters of the State in South Dakota to Manage Aquatic Invasive or Nuisance Pests– New

**Permit Number:** SDGA20000

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This document is intended to explain the basis for the requirements contained in the draft Surface Water Discharge General Permit for Discharges Associated with the Application of Pesticides into Surface Waters of the State to Manage Aquatic Invasive or Nuisance Pests (Pests General Permit). This document provides guidance to aid in complying with the draft Pests General Permit requirements. This guidance is not a substitute for reading the draft Pests General Permit and understanding its requirements.

## APPLICABILITY

This Pests General Permit is proposed for any pesticide application to manage aquatic invasive or nuisance pests that may result in a discharge of pesticides to surface waters of the state.

## PERMIT DESCRIPTION

Pesticide applications have the potential to be discharged to surface waters of the state. These discharges contain pollutants which, if not properly managed, can result in impacts to water quality and non-targeted aquatic life. In accordance with the South Dakota Water Pollution Control Act and the Administrative Rules of South Dakota (ARSD), the discharge of pollutants into surface waters of the state requires a Surface Water Discharge permit. Animal pests, such as silver and bighead carp, zebra and quagga mussels, and rusty crayfish, negatively affect aquatic biodiversity, human health, and economic stability. Aquatic nuisance animals decrease populations of native aquatic species including threatened and endangered species. Aquatic nuisance animals can reduce aquatic biodiversity by preventing desirable species growth and unbalancing desirable aquatic species populations and development. Social and economic impacts are all affected by a lower aesthetic appeal of water bodies, an increased cost of agricultural irrigation water, and an increase in the risk of human diseases by providing ideal vector breeding grounds. In addition, the reduction in the utility of water can have social and economic impacts due to reduced hydroelectric operations, impeded opportunity for recreational activities and disruption of water transport. As a result, if or when animal pests become established and impede the environmental stability and use goals for a body of water, implementing of Pest Management Measures will become necessary. Animal aquatic pests also include insects, amphibians, and other animals that spend part or all of their life cycle at water's edge, including near the water, as well as in or near the waters of the state that are not always "wet".

The draft Pests General Permit contains pesticide application requirements, Pesticide Discharge Management Plan (PDMP) requirements, and other conditions applicable to pesticide applications near or into surface waters of the state.

## BACKGROUND

The federal Clean Water Act (CWA) requires that any discharge of a pollutant into waters of the United States must be covered by a National Pollutant Discharge Elimination System (NPDES) permit. On December 30, 1993, the United States Environmental Protection Agency delegated the permitting authority under the NPDES program to the state of South Dakota. The South Dakota Department of Environment and Natural Resources (SDDENR) refers to its permits as Surface Water Discharge permits.

Prior to 2011, all pesticide applications were regulated by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). FIFRA includes regulations on the sale, distribution, and use of pesticides. Beginning in 2001, numerous court cases began addressing pesticide discharges to waters of the United States. Many states began issuing NPDES permits for pesticide applications beginning in 2002. Because of the varying court decisions, and the different positions of the states on the issue, EPA published a final rule on November 27, 2006 stating that a NPDES permit is not required for pesticide applications. The final rule became effective on January 26, 2007.

Petitions for review of EPA's 2006 NPDES Pesticides Rule were filed in eleven circuit courts following the issuance of the final rule. On January 9, 2009, the Sixth Circuit vacated EPA's 2006 NPDES Pesticides Rule. This decision broadened the definition of "pollutant" to include biological pesticides and residual chemical pesticides. Therefore, chemical pesticide excess and residues are pollutants and are required to obtain a NPDES permit if they are discharged from a point source into waters of the United States. Additionally, the application of any biological pesticides to waters of the United States requires a NPDES permit for all discharges from a point source.

Following the 2009 Sixth Circuit decision, EPA request a two-year stay of the mandate to provide time to develop a General Permit, assist NPDES-authorized states develop General Permits, and provide outreach and education to the regulated community. On June 8, 2009, the Sixth Circuit granted EPA the two-year stay of the mandate.

Because of the 2009 Court decision to vacate the 2006 NPDES Pesticides Rule, South Dakota was required to issue Surface Water Discharge permits for pesticide discharges to surface waters of the state. South Dakota has developed a General Pesticide Permit to meet this requirement and the current version was issued on September 1, 2017. This draft Pests General Permit will be issued to fulfill the need of facilities to control invasive species that are not covered under the General Pesticide Permit.

The United States Congress has considered, and continues to consider, legislation to eliminate the need for NPDES permits for pesticide applications. This legislation, if passed, may alter need for the General Permit. If Congress passes legislation stating NPDES permits are no longer needed for pesticide applications, SDDENR intends to revoke both the General Pesticide Permit and the Pests General Permit. This would eliminate any permitting requirements for discharge to surface waters of the state resulting from the application of pesticides.

## DISCHARGE DESCRIPTION

Based on the Sixth Circuit's court decision in 2009, two types of pesticides are considered a pollutant: biological pesticides and chemical pesticides which leave any excess or residue. For purposes of the draft Pests General Permit, SDDENR is following EPA guidance by assuming that all chemical pesticides will leave a residue once the product has performed its intended purpose. SDDENR is adopting the following guidance (as developed by EPA) with respect to the application of chemical pesticides.

1. **The application of a chemical pesticide into surface waters of the state to control an animal pest located in surface waters of the state.** Once the pesticide no longer provides any pesticidal benefit, any amount of the pesticide remaining the in the water is a "residual" and would require a Surface Water Discharge permit. SDDENR expects that some portion of every application of a pesticide made into surface waters of the state will leave a residual in the water. Therefore, coverage under the draft Pests General Permit is needed for these types of applications.

All applications of biological pesticide to surface waters of the state will require coverage under the draft Pests General Permit.

***Pesticide Application Activities Covered***

Pesticides are applied for a variety of invasive and nuisance animal pests to many different areas in South Dakota. Additionally, the application procedure can vary based on the type of targeted pest and the location of application. Three animal pest application categories are included in the draft Pests General Permit. These three categories are intended to cover the various types of animal pest pesticide applications throughout South Dakota.

1. **Fish**
   Reasons for application of pesticides in waters of the state for controlling nuisance species of fish may include, but are not limited to, restoration of threatened and endangered species; fish population management; restoration of native species; control of invasive species; and aquaculture. Pest Management Measures for fish should consider mechanical, biological, and chemical controls.

2. **Mollusks**
   Nuisance mollusks including, but not limited to, zebra and quagga mussels, may cause damage to freshwater ecosystems, degrade drinking water, clog water-intake/discharge pipes for utilities and industries, and negatively impact commercial and recreational activities. Use of molluscicides is one of several methods of control for these aquatic nuisance animals; however, it is important to consider the impacts of mechanical, biological, and/or chemical pesticide use for control of mussels and other aquatic nuisance mollusk species.

3. **Other Animals**
   There may be animals of concern in addition to fish and mollusks. Control of other animals including but not limited to amphibians or insects found to be a nuisance and requiring

management with mechanical, biological, and/or chemical pesticides are included in the requirements in Section 2.1.

The appropriate type of Pest Management Measures for animal pests is dictated by the biology of the target pest and by environmental conditions and concerns for a specific area. Numerous Pest Management Measures are used to reduce the impact of animal pests, but integrated pest management should be the basis for any pest control program. This is a comprehensive approach for managing pest populations using a variety of Pest Management Measures.

## GENERAL PERMIT COVERAGE

To obtain authorization under the draft Pests General Permit, the applicator's pesticide activities must be included in the application category stated above. Pesticide applicators discharging a pollutant from a point source associated with the application categories covered by the draft Pest General Permit will need to submit a Notice of Intent (NOI) found in Appendix A of the draft general permit to be covered under the draft Pest General Permit upon the effective date of the draft Pest General Permit. These applicators are subject to all applicable requirements contained within the draft Pests General Permit.

Coverage under this draft Pests General Permit is required if water is present at the time and location of the pesticide application. If water is not present at the time and location of the pesticide application, the requirements included in the draft Pests General Permit do not apply. Compliance with this provision must be documented by recording the presence or absence of water at the date, time, and location of application.

### *Activities Not Covered*

An applicator is not eligible for coverage under the draft Pests General Permit for the activities listed below. An individual permit or alternative general permit would be required for any of the following discharges to surface waters of the state:

1. **Discharges of a Pesticide to Waters of the State Identified in the 303(d) List or Integrated Report as Impaired for that Pesticide or its Degrades.** The draft Pests General Permit allows SDDENR to deny coverage under the draft Pests General Permit or require an applicator covered under the draft Pests General Permit to apply for an individual permit.

The CWA specifically exempts irrigation return flows and agricultural storm water runoff from requiring a NPDES permit, even if they contain pesticides or pesticide residues. The draft Pests General Permit will not require these activities to obtain General Permit coverage.

This draft Pests General Permit does not cover terrestrial application for the purpose of controlling pests on agricultural crops or forest floors. SDDENR does not anticipate these activities will result in a discharge of pollutants to surface waters of the state.

## REQUIRING AN INDIVIDUAL PERMIT

If a permittee is currently discharging under the draft Pests General Permit and SDDENR determines that individual permit coverage is required, SDDENR will notify the permittee in writing of the need for an individual Surface Water Discharge permit. This written notice will include the reasoning for requiring an individual permit, an application form for an individual permit, and a deadline for filing the application.

Any permittee may apply for an individual permit rather than obtaining automatic coverage under the draft Pests General Permit. An individual application shall be submitted for coverage under an individual permit with reasoning supporting the request. SDDENR will review the request and will determine if individual permit coverage is appropriate. If SDDENR issues an individual permit to a permittee currently covered under the draft Pests General Permit, or coverage under an alternative general permit is obtained, coverage under the draft Pests General Permit will be terminated on the effective date of the new permit.

## NOTICE OF INTENT

The permittee must submit a complete and accurate Notice of Intent (NOI) 30 days prior to discharge as described in **Section 2.9** of the draft Pests General Permit. The NPDES general permit regulations, at 40 CFR 122.28(b)(2), require that the permittee submit an NOI to obtain coverage under an existing general permit for which that discharge is eligible. The Notice of Intent form can be found in Appendix A

Before permit coverage begins, each NOI for coverage under the draft Pests General Permit will be public noticed for 10 days on South Dakota Department of Environment and Natural Resources public notice website at https://denr.sd.gov/public/default.aspx. The permittee must submit a new NOI for changes to original form when coverage for an additional discharge not included in the original NOI is being requested.

## NOTICE OF TERMINATION

The Pests General Permit specifies procedures for terminating coverage under this general permit.

### *Submitting a Notice of Termination*

To terminate coverage under this permit, the permittee who submitted a Notice of Intent to obtain permit coverage is required to submit a Notice of Termination (NOT) located in Appendix B of the draft Pests General Permit in accordance with information identified in **Section 2.10** of the draft Pests General Permit. The permittee's authorization to discharge under the permit terminates at midnight of the day that a complete NOT is processed.

### *When to Submit a Notice of Termination*

Once all point source discharges associated with pesticide application have ceased, the permittee must submit a NOT, as described in **Section 2.10** of the draft Pests General Permit, within 30 days after one or more of the conditions of listed in **Section 2.10** have been met.

If the Department determines that the permittee has not satisfied one of the conditions in **Section 2.10** of the draft Pests General Permit, then the notice is not valid and the Department will not terminate coverage. The permittee would then still need to comply with the conditions of the draft Pests General Permit.

## RECEIVING WATERS

The South Dakota Surface Water Quality Standards (SDSWQS), Administrative Rules of South Dakota (ARSD), Sections 74:51:03:01 and 74:51:03:06, designate beneficial uses for all surface waters of the state. These classifications designate the minimum quality at which the surface waters of the state are to be maintained and protected. All waterbodies in South Dakota have been assigned one or more of the following beneficial uses:

1. Domestic water supply waters;
2. Coldwater permanent fish life propagation waters;
3. Coldwater marginal fish life propagation waters;
4. Warmwater permanent fish life propagation waters;
5. Warmwater semipermanent fish life propagation waters;
6. Warmwater marginal fish life propagation waters;
7. Immersion recreation waters;
8. Limited contact recreation waters;
9. Fish and wildlife propagation, recreation, and stock watering waters;
10. Irrigation waters; and
11. Commerce and Industry waters.

The draft Pests General Permit was developed to ensure these beneficial uses are maintained and protected.

## TOTAL MAXIMUM DAILY LOAD

Section 303(d) of the CWA requires states to develop Total Maximum Daily Loads (TMDLs) for waters at levels necessary to achieve and maintain water quality standards. TMDLs are calculations of the amount of pollution a waterbody can receive and still maintain applicable water quality standards. TMDLs are necessary for waters that do not meet or are not expected to meet water quality standards with the application of technology-based controls for point sources. TMDLs address specific waterbodies, segments of waterbodies, or even entire watersheds, and are pollutant specific. TMDLs must allow for seasonal variations and a margin of safety, which accounts for any lack of knowledge concerning the relationship between pollutant loads and water quality.

The draft Pest General Permit requires best management practices to ensure the SDSWQS are met and maintained. However, if SDDENR determines a specific site or application has the potential to cause or contribute to an impairment of the SDSWQS, SDDENR can require the permittee to implement additional controls and/or obtain an individual discharge permit.

## ANTIDEGRADATION

SDDENR has fulfilled the antidegradation review requirements for this draft Pests General Permit. In accordance with South Dakota's Antidegradation Implementation Procedure and the SDSWQS, no further review is required. The results of SDDENR's review are included in Attachment 1.

## EFFLUENT LIMITS

Under the CWA, dischargers shall comply with both technology-based and water quality-based effluent limits. Where EPA has not yet issued a technology-based effluent limitation guideline, states are expected to determine the appropriate technology-based level of control based on permit writer's judgement. The CWA allows states and EPA to meet the requirement for technology-based limits using non-numeric, or "narrative" effluent limits in permits, where appropriate. EPA has developed regulations allowing the use of narrative best management practices as effluent limits (40 CFR 122.44(k)). EPA has not yet developed specific technology-based effluent limits for pesticide applications. Therefore, the draft Pest General Permit includes non-numeric effluent limits based on permit writer's judgement, including best management practices, to ensure state and federal requirements are met.

The non-numeric effluent limits are expected to minimize environmental impacts by reducing the discharge of pesticides to surface waters of the state, thereby protecting the receiving waters and all applicable water quality standards. SDDENR believes if the permittee follows the narrative effluent limits in the draft Pest General Permit, the beneficial uses of South Dakota's surface waters will be maintained. Therefore, numeric water quality-based effluent limits have not been included in this draft Pest General Permit. However, if beneficial uses are impacted, SDDENR could reopen and modify the draft Pest General Permit or could require the permittee to obtain an individual permit or alternative General Permit.

The effluent limits in this draft Pest General Permit are expressed as specific pollution prevention requirements for minimizing the pollutant levels in the discharge. The combination of pollution prevention practices and management practices required by the draft Pests General Permit are the most reasonable way to control the discharge of pesticide pollutants.

Effective immediately and lasting through the life of the draft Pest General Permit, all permittees shall comply with the narrative effluent limits included in the draft Pest General Permit. These limits are based on best management practices to meet the SDSWQS, and permit writer's judgement.

### *All Pesticide Applications*

The following limits apply to **all** pesticide applications used to manage aquatic invasive or nuisance pests:

1. The permittee must follow all applicable state and FIFRA label instructions.

2. The permittee shall be aware of other pesticide applications that are occurring in the same treatment area. If the applicator is aware of other pesticide applications occurring in the

same treatment area, the applicators shall coordinate the applications to minimize discharge into surface waters of the state due to over application.

3. The permittee shall use only the amount of pesticide and frequency of pesticide application necessary to control the target pest using equipment and application procedures appropriate for the task.

4. The permittee shall maintain equipment to minimize leaks, spills, or other unintended discharges of pesticides by adhering to any manufacturer's conditions and industry practices, and by calibrating, cleaning, and repairing such equipment on a regular basis.

5. The permittee shall develop and implement best management practices (BMPs) to minimize and mitigate the adverse effects of discharges on water quality and non-target species.

6. If a release or spill occurs within and/or outside of the operational area, the permittee shall immediately contain and recover the product using absorbent materials, pumps, or similar means. The permittee shall notify the Department within 24-hours of the incident according to **Section 5.3**. The permittee shall properly dispose of or reuse excess materials.

   Operational area containment surfaces exposed to concentrated and diluted pesticides shall be periodically cleaned by the permittee and all rinsates shall be recovered and stored in accordance with South Dakota Codified Law (SDCL) Chapter 38-21 and the Administrative Rules of South Dakota Article 12:56.

   Recovered substances may be used in accordance with the applicable pesticide product labels.

7. Permittees must prepare a Pesticide Discharge Management Plan (PDMP). The requirements of the PDMP are included in **Section 4.0** of the draft Pests General Permit.

8. Assess environmental conditions prior to each pesticide application to identify if conditions are suitable for pesticide application activities; and

9. Evaluate the management options, considering impacts to water quality, impacts to non-target organisms, pest resistance, feasibility, and cost-effectiveness.

10. If any of the following situations occur, the permittee shall review and, as necessary, revise the control measures to ensure that the situation is eliminated and will not be repeated in the future:

    a. A pesticide application results in adverse impacts to water quality or non-target organisms;

b. An unauthorized release or discharge occurs (e.g., spill, leak, or discharge not authorized by the draft Pests General Permit or another Surface Water Discharge permit);

c. An inspection or evaluation by EPA, SDDENR, or the South Dakota Department of Agriculture (SDDA) determines that modifications to the control measures are necessary to meet the non-numeric effluent limits in the draft Pests General Permit; or

d. The permittee observes or is otherwise made aware of an adverse incident as a result of the application.

If the permittee determines that changes to the PDMP are necessary to eliminate any situation identified above, such changes shall be made before the next pesticide application that results in a discharge.

11. Inspect and evaluate the treatment area after each pesticide application or weekly if continuous treatment to determine the effectiveness of the treatment and determine if the application adversely affected the environment or non-target organisms.

12. Prior to the first pesticide application and at least once each year thereafter, the permittee shall, at a minimum:

    a. Identify areas with pest problems and characterize the extent of the problems, including, for example, water use goals not attained (*e.g.* fisheries, recreation);

    b. Identify target pest(s);

    c. Identify possible factors causing or contributing to the problem (*e.g.*, nutrients, invasive species);

    d. Select and implement efficient and effective means of Pest Management Measures that minimize discharges resulting from the application of pesticide.

**INSPECTIONS**

The permittee is required to inspect the application area as well as the application equipment when pesticides are being applied. These inspections must be documented, and the requirements can be found in **Section 3.1**of the draft Pests General Permit.

**BEST MANAGEMENT PRACTICES**

The draft Pests General Permit does not require the permittee to perform regular sampling of the pesticide application discharge. However, the draft General Permit requires the permittee to develop and implement BMPs. Due to the variance in types of pesticide application activities, a

variety of BMPs could be implemented to meet the narrative effluent limits included in the draft General Permit. Therefore, the draft Pests General Permit does not include specific BMPs that must be implemented.

BMPs can include, but are not limited to:

- Process and procedure modifications to reduce the impacts to the environment;
- Developing schedules for maintenance or training activities;
- Prohibitions on specific practices;
- Installation of devices or structures to prevent or reduce water pollution; and
- Other management practices.

The BMPs will need to be in writing and kept on site. The BMPs also need to be made available to SDDENR, EPA, or SDDA upon request.

## PESTICIDE DISCHARGE MANAGEMENT PLAN

The draft Pests General Permit requires all permittees to develop a Pesticide Discharge Management Plan (PDMP). The PDMP is required to document inspections, maintenance activities, required monitoring, and any corrective actions being used to comply with the effluent limits. The PDMP may reference procedures in other documents, such as a pre-existing integrated pest management (IPM) plan. If so, the permittee shall keep a copy of relevant portions of these documents with the PDMP.

A PDMP must be developed for each pesticide application activity which requires coverage under the draft General Permit. One PDMP can be used for multiple applications under a single application category.

**Section 4.2** of the draft General Pest Permit outlines the requirements of the PDMP. Upon request of the permittee, the Department has a PDMP template that can be used by the permittee if requested.

## MONITORING, RECORD KEEPING, AND REPORTING REQUIREMENTS

The permittee must keep records and submit reports to SDDENR upon request. All records, including the PDMP, must be maintained and made available to SDDENR, EPA or SDDA, upon request.

### *Recordkeeping Requirements*

Permittees shall keep a copy of the PDMP for review by SDDENR, EPA or SDDA as well as the following records for each application:

1. Date and time of the pesticide application;

2. Person or entity who applied the pesticide and their South Dakota Certified Pesticide applicator number;

3. The locations of land or property where the pesticide was applied;

4. The pest(s) to be treated;

5. The size of the treatment area;

6. The trade or brand name and common name of each pesticide applied, the EPA pesticide registration number for each product, and the company name appearing on the product label;

7. The weather conditions at the time of application, including wind direction, estimated wind velocity, and temperature at the time the pesticide was applied (this requirement does not apply to application of baits in bait stations or pesticide applications in or immediately adjacent to structures);

8. The amount of pesticide applied and the application rate; and

The permittee shall give advance notice to the Department of any planned changes in the permitted facility or activity that may result in noncompliance with the draft General Permit requirements.

***Annual Report***
The permittee shall submit an Annual Report to the Department. This report is due by **February 28th** of the following year.

The annual report must contain the following information, at a minimum:

1. The permittee's name;

2. South Dakota Certified Pesticide Applicator number;

3. The total surface water treatment area in acres, linear miles, or total amount of pesticide used;

4. Target pest(s) and pesticides used; and

5. Whether or not the permittee applied pesticides because of a declared pest emergency declared by a federal agency, the State of South Dakota, or a local government. If pesticides were applied in response to a declared pest emergency, the permittee must include:

    a. Dates and times of the pesticide application;

b. Target pest(s); and

c. Which government entity declared the pest emergency.

***Twenty-Four (24) Hour Adverse Incident Notification***
The permittee shall notify the Department of any adverse incidents that may have resulted from a discharge from the permittee's pesticide application as soon as possible. The Department shall receive notification no later than twenty-four (24) hours after the permittee becomes aware of the circumstances.

***Thirty (30) Day Adverse Incident Written Report***
Within thirty days of becoming aware of an adverse incident, the permittee shall provide a written report of the adverse incident to the Department.

The Department may waive the written report requirement on a case-by-case basis if the notification has been received within 24 hours by the Surface Water Quality Program at (605) 773-3351.

***Other Reporting Requirements***
Other state and federal regulations require spills and leaks of pesticides to be reported. The SDDA has a website with reporting requirements for pesticide applicators (https://sdda.sd.gov/ag-services/pesticide-program/compliance/pesticide-program-pesticide-spills/).

***Sampling Requirements***
The draft Pests General Permit does not require effluent monitoring as a Pests General Permit requirement. Adequate PDMPs and BMPs should be sufficient to meet the effluent limits in the draft General Permit. Therefore, sampling and testing for specific parameters will not be required. However, if there is reason to suspect noncompliance with the effluent limits, SDDENR reserves the right to require sampling and testing on a case-by-case basis. Additionally, SDDENR may require sampling and testing to measure the effectiveness of the BMPs in preventing the discharge of pollutants.

## DRAINAGE ISSUES

The county in which the discharge will occur has the authority to regulate drainage. The permittee is responsible for getting any necessary drainage permits from the respective county **prior** to discharging, if applicable.

## ENDANGERED SPECIES

No listed endangered species are expected to be impacted by activities related to the draft Pests General Permit. However, the US Fish and Wildlife Services has a list of all of the endangered species, listed by county, at the following website:
https://www.fws.gov/southdakotafieldoffice/SpeciesByCounty_Jan2017.pdf.
The following table lists the endangered species that may be present in South Dakota:

| GROUP | SPECIES |
|---|---|
| BIRD | CRANE, WHOOPING |
| | TERN, LEAST |
| FISH | SHINER, TOPEKA [1] |
| | STURGEON, PALLID |
| INSECT | BEETLE, AMERICAN BURYING [2] |
| INVERTEBRATE | POWESHIEK SKIPPERLING |
| | RUSTY PATCHED BUMBLE BEE[3] |
| MAMMAL | FERRET, BLACK-FOOTED [4] |
| MUSSEL | MUSSEL, SCALESHELL [5] |
| | MUSSEL, HIGGINS EYE [5, 6] |

[1] Although Topeka Shiners have not been formally documented within Clark, Douglas, Jerauld, Kingsbury, McPherson, Spink, or Yankton Counties, the species may still occur in these areas because they contain portions of known occupied Topeka Shiner streams and/or potentially occupied streams that exist within one or more of the three known inhabited watersheds in South Dakota: the James, Vermillion, and Big Sioux.

[2] The American Burying Beetle is presently known for only Gregory, Todd, and Tripp counties. One specimen was recently trapped in southern Bennett County. Historic specimens have been recorded from Haakon and Brookings Counties. A comprehensive status survey has never been completed for the American burying beetle in South Dakota. Until status surveys have been completed, the beetle could and may occur in any county with suitable habitat. Suitable habitat is considered to be any site with significant humus or topsoil suitable for burying carrion.

[3] The Rusty Patched Bumble Bee was added to the Endangered Species List on January 11, 2017. South Dakota is not included in the current range. Two counties (Roberts and Day) have historic occurrence records. Under Section 7 consultation, surveys are not required and the species is not anticipated to be present in South Dakota.

[4] Black-footed ferrets have been reintroduced in the Badlands National Park, Buffalo Gap National Grasslands, Cheyenne River Sioux Reservation, Lower Brule Sioux Reservation, Rosebud Sioux Reservation, and Wind Cave National Park.

[5] Shells of these species have been found, but no populations have been located.

[6] A fresh dead shell of a Higgins Eye Mussel was found in the Missouri River below Gavins Point Dam on October 27, 2004.

## GENERAL PERMIT EXPIRATION

A five-year General Permit is recommended. If the draft General Permit should expire before a new general permit is reissued, the terms and conditions of the expired General Permit will remain effective and enforceable until the effective date of the reissued general permit. SDDENR will continue the General Permit coverage for each permittee covered under the draft General Permit upon the expiration date.

## PERMIT CONTACT

This statement of basis and the draft General Permit were developed by Kyle Doerr, Engineer II for the Surface Water Quality Program. Any questions pertaining to this statement of basis or the draft General Permit can be directed to the Surface Water Quality Program, at (605) 773-3351.

June 8, 2020

# ATTACHMENT 1

## Antidegradation Review

Permit Type: **General Permit for Point Source Application of Pesticide to Manage Aquatic Invasive or Nuisance Pests**

Permit #: **SDGA20000**

Receiving Stream: **Varies** Classification: **Varies**

**APPLICABILITY**

1. Is the permit or the stream segment exempt from the antidegradation review process under ARSD 74:51:01? Yes ☒ No ☐ If no, go to question #2. If yes, check those reasons why the review is not required:

☐ Existing facility covered under a surface water discharge permit is operating at or below design flows and pollutant loadings;

☐ *Existing effluent quality from a surface water discharge permitted facility is in compliance with all discharge permit limits;

☐ *Existing surface water discharge permittee was discharging to the current stream segment prior to March 27, 1973, and the quality and quantity of the discharge has not degraded the water quality of that segment as it existed on March 27, 1973;

☐ *The existing surface water discharge permittee, with DENR approval, has upgraded or built new wastewater treatment facilities between March 27, 1973, and July 1, 1988;

☐ The existing surface water discharge permittee discharges to a receiving water assigned only the beneficial uses of (9) and (10); the discharge is not expected to contain toxic pollutants in concentrations that may cause an impact to the receiving stream; and DENR has documented that the stream cannot attain a higher use classification. This exemption does not apply to discharges that may cause impacts to downstream segments that are of higher quality;

☐ Receiving water meets Tier 1 waters criteria. Any permitted discharge must meet water quality standards;

☐ The permitted discharge will be authorized by a Section 404 Corps of Engineers Permit, will undergo a similar review process in the issuance of that permit, and will be issued a 401 certification by the department, indicating compliance with the state's antidegradation provisions; or

☒ Other: This stream segment is exempt due to ARSD 74:51:01:59 water resource enhancement or restoration projects- Use of EPA-registered pesticides.

*An antidegradation review is not required where the proposal is to maintain or improve the existing effluent levels and conditions. Proposals for increased effluent levels, in these categories of activities are subject to review.

**No further review required.**

## ANTIDEGRADATION REVIEW SUMMARY

2. The outcome of the review is:

- ☒ A formal antidegradation review was not required for reasons stated in this worksheet. Any permitted discharge must ensure water quality standards will not be violated.
- ☐ The review has determined that degradation of water quality should not be allowed. Any permitted discharge would have to meet effluent limits or conditions that would not result in any degradation estimated through appropriate modeling techniques based on ambient water quality in the receiving stream, or pursue an alternative to discharging to the waterbody.
- ☐ The review has determined that the discharge will cause an insignificant change in water quality in the receiving stream. The appropriate agency may proceed with permit issuance with the appropriate conditions to ensure water quality standards are met.
- ☐ The review has determined, with public input, that the permitted discharge is allowed to discharge effluent at concentrations determined through a total maximum daily load (TMDL). The TMDL will determine the appropriate effluent limits based on the upstream ambient water quality and the water quality standard(s) of the receiving stream.
- ☐ The review has determined that the discharge is allowed. However, the full assimilative capacity of the receiving stream cannot be used in developing the permit effluent limits or conditions. In this case, a TMDL must be completed based on the upstream ambient water quality and the assimilative capacity allowed by the antidegradation review.
- ☐ Other: _____

3. Describe any other requirements to implement antidegradation or any special conditions that are required as a result of this antidegradation review: **Antidegradation will not apply to this draft Pests General Permit due to ARSD 74:51:01:59. This rule states if pesticide is used according to label it is presumed to not cause long-term damage. Therefore, no formal antidegradation review is required as this permit is exempt.**

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|---|---|
| Tina McFarling, PE | 06/08/2020 |
| Team Leader | Date |
| Kelli Buscher, PE | 06/08/2020 |
| Program Administrator | Date |