Permit No.: SDGA10000

SOUTH DAKOTA DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES

General Surface Water Discharge Permit
Authorizing Discharge
Under The South Dakota Surface Water Discharge System

In compliance with the provisions of the South Dakota Water Pollution Control Act and the Administrative Rules of South Dakota, Article 74:52,

any pesticide applicator discharging a pollutant from a point source associated with the application of a pesticide

is authorized under this General Permit to discharge to

waters of the state of South Dakota

in accordance with the conditions set forth herein. Authorization is limited to those application categories specifically listed in the General Permit. The permittee must comply with all conditions of this General Permit. Any General Permit noncompliance constitutes a violation of the South Dakota Water Pollution Control Act and is grounds for enforcement action; for General Permit termination, revocation and reissuance, or modification; or for denial of a General Permit renewal application.

This General Permit shall become effective July 1st, 2023.

This General Permit and the authorization to discharge shall expire at midnight, June 30th, 2028.

Signed this 28th day of June 2023

Authorized Permitting Official

Hunter Roberts
Secretary
Department of Agriculture and Natural Resources

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1.0 DEFINITIONS

"Active Ingredient" means any ingredient which prevents, destroys, repels, or mitigates insects, fungi, rodents, weeds, or other pests.

"Adverse Incident" means an undesirable unexpected event caused by use of a pesticide that adversely affects human health or the environment, or is reasonably likely to suffer a delayed or chronic adverse effect in the future. This definition does not include spills and leaks. The phrase "adverse incident" includes effects on non-target plants, fish, or wildlife that are unusual or unexpected as a result of exposure to a pesticide residue, and may include:

1. Distressed or dead fish;

2. Stunting, wilting, or desiccation of non-target submerged or emergent aquatic plants; or

3. Other dead or visibly distressed non-target aquatic organisms (amphibians, turtles, invertebrates, etc.).

The phrase, "adverse effects," also includes any adverse effects to domesticated animals or humans related to exposure to a pesticide residue.

"Applicator" see "Pesticide Applicator."

"ARSD" means the Administrative Rules of South Dakota.

"Best Management Practices (BMPs)" include schedules of activities, prohibitions of practice, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to waters of the state. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

"Biological Pesticides" also called biopesticides, include microbial pesticides, biochemical pesticides, and plant-incorporated protectant (PIP).

1. Microbial pesticide means a microbial agent intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, that (1) is a eukaryotic microorganism including, but not limit to, protozoa, algae, and fungi; (2) is a prokaryotic microorganism, including, but not limited to, *Eubacteria* and *Archaebacteria*; or (3) is a parasitically replicating microscopic element, including but not limit to, viruses. [40 CFR 158.2100(b)]

2. Biochemical pesticide means a pesticide that (1) is a naturally-occurring substance or structurally-similar and functionally identical to a naturally-occurring substance; (2) has a history of exposure to humans and the environment demonstrating minimal toxicity, or in the case of a synthetically-derived biochemical pesticides, is equivalent to a naturally-occurring substance that has such a history; and (3) has a non-toxic mode of action to the target pest(s). [40 CFR 158.2000(a)]

3. Plant-incorporated protectant means a pesticidal substance that is intended to be produced and used in a living plant, or in the material produced by the plant, and the genetic material necessary for production of such a pesticidal substance. It also includes any inert ingredient contained in the plant, or material produced by the plant. [40 CFR 174.3]

"Chemical Pesticides" means all pesticides not otherwise classified as biological pesticides.

"Control Measure" refers to any BMP or other method used to meet any effluent limit and minimize the discharge of pollutants to waters of the state.

"Clean Water Act" or **"CWA"** (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Pub. L. No. 92-500, as amended by Pub. L. No. 95-576, Pub. L. No. 96-483, and Pub. L. No. 97-117, 33 U.S>C. 1251 et seq. as in effect on January 1, 1992.

"Declared Pest Emergency Situation" means an event defined by a public declaration by a federal agency, state, or local government of a pest problem determined to require control through application of a pesticide beginning less than ten days after identification of the need for pest control. This public declaration may be based on:

1. Significant risk to human health;

2. Significant economic loss; or

3. Significant risk to:

    a. Threatened or endangered species, as defined by the Endangered Species Act of 1973 (16 U.S.C. 1531-1544, 87 Stat. 884);

    b. Beneficial organisms; or

    c. The environment.

"Discharge" means any addition of any pollutant or combination of pollutants to surface waters of the state from any point source. For the purposes of this General Permit, this does not include the lawful transfer, mixing, loading, unloading, repackaging, or refilling of a pesticide carried out over operational area containment and not lawful distribution, use, disposal, or application of a pesticide.

"EPA" or **"US EPA"** means United States Environmental Protection Agency.

"Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)" refers to the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 135 et seq., as amended by the Federal Environmental Pesticide Control Act of 1972, 86 Stat. 973.

"Inert Ingredient" means an ingredient which is not an active ingredient.

"Integrated Pest Management (or IPM)" is a holistic approach to managing pests by combining biological, cultural, physical, and chemical tools in a way that balances economic, health, and environmental risks and benefits.

"Minimize" means to reduce and/or eliminate to the extent achievable using control measures (including Best Management Practices) that are technologically available and economically achievable and practicable in light of best industry practice.

"Nonpoint Source" means a source of pollution that is not defined as a point source.

"Permittee" refers to any pesticide applicator covered under this General Permit.

"Person" means an individual, association, partnership, corporation, municipality, state or federal agency, or an agent or employee thereof.

"Pest" means any insect, rodent, nematode, fungus, weed, or other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism, except viruses, bacteria, or other microorganisms on or in living man or other living animals, with the SD Secretary of Agriculture by regulation may declare to be a pest.

"Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pests, or any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

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

This General Permit uses the term, "pesticide," when referring to the, "pesticide, as applied." When referring to the chemical in the pesticide product with pesticidal qualities, the General Permit uses the term, "active ingredient."

"Pesticide Applicator" means a person who owns, leases, operates, controls, or supervises the application of a pesticide.

"Pesticide Residue" refers to the portion of a pesticide application that is discharged from a point source to waters of the state and no longer provides pesticidal benefits. It may include the pesticide and the degrades of the pesticide.

"Point Source" means any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, animal feeding operation, vessel, or other floating craft from which pollutants are or may be discharged.

"Pollutant" means any dredged soil, solid waste, incinerator residue, sewage, sewage sludge, garage, trash, munitions, chemical waste, biological material, radioactive material, heat, wrecked or discarded equipment, rock, sand, cellar dirt or any industrial, municipal, or agricultural waste discharged into waters of the state. For the purpose of this definition, a "biological pesticide" is considered a "biological material," and any "pesticide residue" resulting from use of a "chemical pesticide" is considered a "chemical waste." This term does not mean sewage from water craft; or water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in associate with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the state after it is determined that such injection or disposal will not result in the degradation of ground or surface water resources.

"SDDANR" means the South Dakota Department of Agriculture and Natural Resources.

"Secretary" means the Secretary of the South Dakota Department of Agriculture and Natural Resources, or authorized representative.

"Surface Water Discharge (SWD) Permitting Program" is the state program that regulates the discharge of pollutants into the state's waters. This is the state's implementation of the federal NPDES program.

"Total Maximum Daily Load" or **"TMDL"** means the sum of the individual wasteload allocations for point sources and load allocations for nonpoint sources and natural background. If a receiving water has only on point source discharger, the total maximum daily load is the sum of that point source wasteload allocation plus the load allocations for any nonpoint sources of pollution and natural background sources, tributaries or adjacent segments. Total maximum daily loads can be expressed in terms of either mass per time, toxicity, or other appropriate measure.

"Treatment Area" refers to the area of land, including any waters, to or over which pesticides are being applied at a concentration adequate to cause the intended effect of controlling targeted pests within that area.

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limits because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

"Waters of the State" refers to all waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, situated wholly or partly within or bordering upon the state, but not waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the federal Clean Water Act other than cooling ponds as defined in 40 C.F.R. 423.11(m) (July 1, 1991).

"Water Quality Standards" refers to the water quality standards adopted pursuant to SDCL 34A-2-10 and 34A-2-11 or actual existing beneficial uses, whichever is higher, and effluent standards

adopted pursuant to SDCL 34A-2-13 or pursuant to the best professional judgement of the Secretary, whichever is applicable.

"Whole Effluent Toxicity" or **"WET"** is the total toxic effect of an effluent measured directly with a toxicity test.

2.0 GENERAL PERMIT COVERAGE

2.1 Coverage under the General Permit

The General Permit is applicable to pesticide applicators that discharge to waters of the state from the application of either chemical pesticides that leave a residue or biological pesticides and are not otherwise excluded from coverage under the federal Clean Water Act. The following application categories are covered under this General Permit:

1. **Mosquito and Other Flying Insect Pest Control**. This application category includes the application, by any means, of chemical and biological insecticides and larvicides into or over waters of the state to control insects that breed or live in, over, or near water. Flying insect pests in this application category include, but are not limit to, mosquitoes and black flies.

2. **Weed and Algae Control.** This application category includes the application, by any means, of contact or systemic herbicides to control vegetation and algae in water and at water's edge, including irrigation ditches and/or irrigation canals. Applications of this nature may be single spot treatments of infestations or staged large scale treatments intended to clear several acres of waterway. Treatments may be singular or occur several times per year.

3. **Aerial Pest Control.** This application category is for the aerial application of a pesticide to control the population of a pest (e.g., insect or pathogen) where to target the pests effectively, a portion of pesticide will unavoidably be discharged into waters of the state. These pests are not necessarily aquatic (e.g., airborne non-aquatic insects) but are detrimental to industry, the environment, and public health. **Note:** If the mosquito adulticides are applied aerially, the application would be covered under the "Mosquito and Other Flying Insect Pest Control" application category.

4. **Ditch and Stream Bank Pest Control.** This application category includes the management of a diverse pest spectrum where pesticides are deposited into ditch or along stream banks to target the pests effectively and may result in a discharge to waters of the state.

5. **Declared Pest Emergency Situation.** This application category is for a publicly declared emergency by a federal agency, state, or local government.

All pesticide activities requiring coverage under this General Permit will automatically have coverage upon the effective date of this General Permit. Coverage under this General

Permit is required if water is present at the time and location of the pesticide application; the authorization is not applicable if the pesticide application is in a dry drainage and does not reach a flowing stream. Compliance can be verified by recording the presence or absence of water at the date, time, and location of application.

Pesticide applicators authorized to discharge under this General Permit are only covered for those use categories identified above, and not for any other discharge that causes or contributes to pollutants being discharged into waters of the state such as spills or leaks of pesticides.

2.2 Limitations on Coverage

A pesticide applicator is not eligible for coverage under this General Permit for the activities listed below. An individual permit or alternative General Permit would be required for any of the following discharges into waters of the state:

1. Discharges of a pesticide to waters of the state identified on the 303(d) list or Integrated Report as impaired for that pesticide or its degrades.

2. Management of invasive or other nuisance pests in water, including, but not limited to lakes, ponds, rivers, and streams. Aquatic nuisance animals in this activity include, but are not limit to fish, lampreys, and mollusks.

2.3 Continuation of the Expired General Permit

An expired General Permit continues in full force and effect until a new General Permit is issued. Any permittees authorized to discharge under this General Permit will automatically remain covered by this General Permit until a new General Permit is issued.

2.4 Reopener Provisions

This General Permit may be reopened and modified (following proper administrative procedures) to include the appropriate effluent limits (and compliance schedules, if necessary), or other appropriate requirements if one or more of the following events occurs:

1. Water Quality Standards: The water quality standards of the receiving waters applicable to this General Permit are modified in such a manner as to require different effluent limits than contained in this General Permit;

2. Water Quality Management Plan: A revision to the current water quality management plan is approved and adopted that calls for different effluent limits than contained in this General Permit;

3. Effluent Guidelines: Effluent limit guidelines are promulgated or revised for point sources covered by this General Permit;

4. Total Maximum Daily Load: Additional controls in the General Permit are necessary to implement a total maximum daily load approved by the Secretary and/or EPA;

5. Noncompliance: The discharger is a significant contributor of pollution to waters of the state, presents a health hazard, or is in noncompliance with the conditions of the General Permit;

6. Whole Effluent Toxicity: Whole effluent toxicity is detected in the discharge; or

7. Other Changes: Other conditions or standards change so that the discharge no longer qualifies for this General Permit, such as the permittee being designated as a major discharger, changes in necessary influent or effluent pollutant monitoring, additional industrial pretreatment requirements become applicable to the permittee, or other items.

2.5 Requiring an Individual Permit

1. The Secretary may require any permittee covered under this General Permit to apply for and obtain an individual permit if any of the following occur:

   a. Noncompliance. The permittee is a significant contributor of pollution to waters of the state, presents a health hazard, or is in noncompliance with the conditions of this General Permit;

   b. Changes in Technology or Practices. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;

   c. Effluent Guidelines. Effluent limitation guidelines are promulgated for the discharge;

   d. Water Quality Management Plan. A water quality management plan containing requirements applicable to the discharge is approved;

   e. Whole Effluent Toxicity. SDDANR determines there is reasonable potential for the discharge to exceed the Whole Effluent Toxicity requirements;

   f. Discharge to Waters of the State Identified on the 303(d) List. Those discharges which will be to waters of the state identified on the 303(d) list or the Integrated Report as impaired for that pesticide or its degrades;

   g. Management of Invasive or Other Nuisance Animals in Water. Those pesticide applications for management of invasive or other nuisance animals in water including, but not limited to, lakes, ponds, rivers, and streams. Aquatic nuisance animals in this activity include, but are not limited to fish, lampreys, and mollusks; or

   h. Other Changes. Other conditions or standards change so that the permittee no longer qualifies for coverage under this General Permit, such as changes in necessary pesticide application monitoring, the discharge does not

qualify as an approved application activity, or other items that would necessitate an individual Surface Water Discharge permit.

2.6 Property Rights

1. The Secretary's issuance of this General Permit, adoption of design criteria, and approval of plans and specifications, does not convey any property rights of any sort, any exclusive privileges, any authorization to damage, injure or use any private property, any authority to invade personal rights, any authority to violate federal, state or local laws or regulations, or any taking, condemnation or use of eminent domain against any property owned by third parties.

2. The State does not warrant that the permittee's compliance with this General Permit, design criteria, approved plans and specifications, and operation under this General Permit, will not cause damage, injury or use of private property, an invasion of personal rights, or violation of federal, state or local laws or regulations. The permittee is solely and severably liable for all damage, injury or use of private property, invasion of personal rights, infringement of federal, state or local laws and regulations, or taking or condemnation of property owned by third parties, that may result from actions taken under the General Permit.

2.7 General Permit Actions

The Secretary may modify, revoke and reissue, or terminate coverage under this General Permit for cause, including failure to comply with any provision of this General Permit or any condition imposed by the Secretary upon granting coverage under this General Permit. The filing of a request by the permittee for a General Permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any General Permit condition.

2.8 Severability

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

2.9 Terminating Coverage

Coverage under the General Permit is automatically terminated if one or both of the following occur:

1. All discharges covered by the General Permit have ceased and there will be no further discharges during the remainder of the General Permit term for any of the application categories as identified in **Section 2.1**; or

2. The permittee has obtained coverage under an individual Surface Water Discharge permit or an alternative General Permit for all discharges of pollutants to surface waters of the state.

3.0 EFFLUENT LIMITS

3.1 Inspection Requirements

1. The permittee shall inspect the application area(s) following each application and application equipment daily while in use. The application area(s) and application equipment should be inspected to ensure that the best management practices are being implemented properly and for evidence of adverse effects to the water quality or non-target organisms. The permittee shall maintain the following records for each application:

    a. Date and time of the application;

    b. Name and address of the person or entity for whom the pesticide was applied;

    c. Name or entity who applied the pesticide;

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

    e. The target pest(s);

    f. The size of the treatment area;

    g. 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;

    h. The weather conditions at the time of application, including wind direction, estimated wind velocity, and temperature at the time the pesticide was applied;

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

    j. The specific crop, designated site, or commodity to which pesticide application was made.

2. The permittee shall maintain the inspection records for each application in accordance with proper record-keeping procedures and shall make the inspection records available for inspection, upon request, by the Secretary or the US EPA.

3.2 Effluent Limits – *All Pesticide Discharges*

All permittees covered under this General Permit shall comply with the following technology-based effluent limits:

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

2. The permittee shall make efforts to 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 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 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 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 SDCL Chapter 38-21 and Article 12:56.

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

7. Permittees who apply pesticide as part of a declared pest emergency or have been certified for (1) aquatic pest control or for (2) public health pest control must prepare a Pesticide Discharge Management Plan (PDMP) in accordance with **Section 4.0**.

8. If an application will result in a discharge of pollutants to waters of the state, the permittee shall:

   a. Assess environmental conditions prior to each pesticide application (e.g., temperature, precipitation, and wind speed in the treatment area) to identify if conditions are suitable for pesticide application activities; and

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

9. 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 this or another Surface Water Discharge permit);

c. An inspection or evaluation by EPA or SDDANR determines that modifications to the control measures are necessary to meet the non-numeric effluent limits in the 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.

3.3 Effluent Limits – *Mosquito and Other Flying Insect Pest Control Pesticide Application*

These limits apply to discharges to waters of the state from the application of pesticides for mosquito and other flying insect pest control, as defined in **Section 2.1** of the General Permit.

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

   a. Determine densities of larval and adult populations in order to implement pest management controls for each treatment area;

   b. Develop a pest-specific control strategy based on developmental and behavioral considerations for each pest;

   c. Identify known and potential breeding sites for source reduction, larval control programs, and habitat management; and,

   d. Analyze existing data to identify sources of nuisance insect production, including sites that have recurring pest problems.

3.4 Effluent Limits – *Weed and Algae Control Pesticide Application*

These limits apply to discharges to waters of the state from the application of pesticides for weed and algae control, as defined in **Section 2.1** of the General Permit.

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

   a. Identify areas with aquatic pest problems and characterize the extent of the problems in order to implement BMPs;

   b. Identify target aquatic pests, as necessary, for pest control; and

c. Establish past or present pest densities which serve to determine pest management strategies.

2. If an application of the pesticide will result in a discharge to waters of the state, the permittee shall, at a minimum:

a. Inspection and evaluate the treatment area prior to each application to properly implement pest management controls; and

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

3.5 Effluent Limits – *Aerial Pest Control Pesticide Application*

These limits apply to discharges to waters of the state from the application of pesticides for aerial pest control if water is present at the time and location of an application, as defined in **Section 2.1** of the General Permit.

1. Prior to each aerial application of pesticides to a treatment area, the permittee shall do the following:

a. Identify areas with pest problems and characterize the extent of the problems;

b. Identify target pests as necessary for pest control; and

c. Establish past or present pest densities to determine pest management strategies.

2. If the application of a pesticide will result in a discharge to waters of the state, the permittee shall, at a minimum:

a. Inspect and evaluate the treatment area prior to each application to properly implement pest management controls; and

b. Inspect and evaluate the treatment area after each pesticide application to determine if there have been adverse impacts to water quality or to non-target organisms.

3.6 Effluent Limits – *Ditch and Stream Bank Pest Control Pesticide Application*

These limits apply to discharges to waters of the state from the application of pesticides for ditch and stream bank pest control, as defined in **Section 2.1** of the General Permit.

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

a. Establish target pest densities for each treatment area for implementing BMPs and pest management controls;

b. Identify target pests to develop a pest-specific control strategy based on developmental and behavioral considerations for each pest; and

c. Identify current distribution of the target pest and assess potential distribution in the absence of control measures.

2. If an application of the pesticide will result in a discharge to waters of the state, the permittee shall, at a minimum:

a. Inspect and evaluate the treatment area prior to each application to assess the treatment area and to properly implement BMPs and pest management controls;

b. Assess and record environmental conditions to identify known and potential sites which support target pest development and are conducive for treatment activities; and

c. Apply pesticides during the most susceptible developmental stage, when possible.

3.7 Effluent Limits – *Declared Pest Emergency Pesticide Application*

These limits apply to discharges from the application of pesticides for Declared Pest Emergency Situations, as defined in **Section 2.1** of the General Permit. A pest emergency is identified when a federal agency, the State of South Dakota, or a local government has publicly declared an emergency situation requiring the application of a pesticide. Once a pest emergency has been declared, the permittee shall, at a minimum:

1. Take reasonable steps during the pesticide application to minimize the impact on the environment and non-target organisms by considering site restrictions, application timing, and application method; and

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

4.0 PESTICIDE DISCHARGE MANAGEMENT PLAN

4.1 Plan Preparation and Compliance

In addition to the narrative effluent limits established in **Section 3.0**, the permittees who apply pesticides in response to a declared pest emergency, or have been certified for either (1) aquatic pest control, or for (2) public health pest control is required to develop and implement a Pesticide Discharge Management Plan (PDMP). The PDMP shall be developed to reduce pollutants entering surface waters of the state from discharges associated with this General Permit. **The plan must be developed prior to discharging**

pesticides from an activity covered by this General Permit. Once complete, the PDMP becomes an enforceable part of the General Permit.

The PDMP is intended to document the evaluation and selection of control measures. The PDMP may reference procedures in other documents, such as a pre-existing integrated pest management (IPM) plan. If so, the permittee shall keep copies of relevant portions of those documents with the PDMP and make it available for review in accordance with **Section 5.7**.

4.2 Contents of the Plan

The PDMP shall be signed in accordance with **Section 5.4 – Signatory Requirements**, and contain the following elements, at a minimum:

1. Personnel Responsibilities

    a. Person(s) responsible for developing and revising the PDMP;

    b. Person(s) responsible for pesticide application in each treatment area;

    c. Person(s) responsible for taking corrective actions where required; and

    d. Person(s) responsible for pesticide applications.

2. Pest Problem Description

    a. Location of the treatment area(s), including a map with geographic boundaries and any waters of the state that may receive a discharge due to pesticide application (e.g., quadrangle map, a portion of a city or county map, or other map);

    b. The target pest(s) and, if known, pest densities; and

    c. The desired result of application (e.g., target pest density, obtain wildlife habitat, recreational or water use, etc.).

3. Pest Management Controls

    a. Mechanical/physical management controls;

    b. Cultural management controls;

    c. Biological control agents; and

    d. Pesticides.

4. Schedules and Procedures

    a. **Equipment Maintenance Schedules and Procedures.** The permittee shall develop and document procedures for maintaining the application

equipment in proper operating condition, including calibrating, cleaning, and repairing the equipment. These procedures shall include schedules for completing the required maintenance, as well as employee training, where necessary.

b. **Handling Procedures.** The permittee shall develop and document procedures for proper handling and storage of pesticides to prevent or minimize the potential for discharges to waters of the state.

c. **Response Procedures.** The permittee shall identify and document the following procedures for preventing and responding to spills and leaks, and for responding to an adverse incident:

i. Detailed steps for responding to any incident, including steps to minimize and mitigate the adverse incidents on water quality or non-target species;

ii. Chain of command notification for any incident, including both internal and external contacts;

iii. Name and telephone number for state contacts including SDDANR at (605) 773-3296;

iv. Name, location, and telephone of nearest emergency medical facility;

v. Name, location, and telephone of nearest hazardous chemical responder (including police and fire department); and

vi. Name and telephone number for the National Pesticide Telecommunications Network at (800) 858-7378.

5. Pesticide Inspection and Evaluation Procedures

a. The procedures and methods for conducting both pre- and post-application inspection and evaluation of the treatment area;

b. The person responsible for conducting treatment area inspections and evaluations; and

c. Procedures for documenting any incidents of General Permit noncompliance.

6. Best Management Practices (BMPs)

a. The PDMP shall include best management practices the permittee will use to ensure compliance with the conditions of the General Permit.

7. Modifications to the PDMP

8. Other Documents Referenced in the PDMP

4.3 Signature and Plan Review

1. The plan shall be signed in accordance with **Section 5.4 – Signatory Requirements** and retained at the facility. Employees must receive training on the plan and have access to the information contained in the plan.

2. The permittee shall make plans available upon request to the Secretary.

3. The Secretary may notify the permittee at any time that the plan does not meet the minimum requirements of **Section 4.0 – Pesticide Discharge Management Plan**. Such notification shall identify those provisions of the General Permit which are not being met by the plan and identify which provisions require modifications in order to meet the minimum requirements. Within seven days of notification, the permittee shall make the required changes to the plan and shall submit to the Secretary a written certification that the request changes have been made.

4.4 Keeping Plans Current

The permittee shall amend the plan whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the waters of the state. The plan shall also be amended if the plan proves to be ineffective in eliminating or significantly minimizing pollutants present in the discharge.

5.0 RECORD KEEPING & REPORTING REQUIREMENTS

5.1 Submittal of Reports

1. All reports required herein, shall be signed and certified in accordance with **Section 5.4 – Signatory Requirements** and submitted to the Secretary at the following address:

   South Dakota Department of Agriculture and Natural Resources
   Water Quality Program
   Joe Foss Building
   523 East Capitol Avenue
   Pierre, SD 57501-3182

   In accordance with 40 CFR, Part 122, all General Permit reports shall be submitted electronically starting no later than **December 21, 2025.**

2. All reports must be submitted no later than **the 28th day of the month following the completed reporting period**.

   All annual reports must be submitted by **February 28th of the following calendar year**. See **Section 5.2** for the annual report thresholds and requirements.

3. In accordance with SDCL 1-41-27, the Secretary is authorized to accept a document with an electronic signature. SDDANR shall provide for the authenticity of each electronic signature by adhering to any standards established by the South Dakota Bureau of Information and Telecommunications pursuant to SDCL 53-12-47 and 53-12-50 or any other standards established by rules promulgated pursuant to SDCL Chapter 1-26.

5.2 Annual Reporting

1. Permittees are required to submit an annual report if the pesticide applications exceed the thresholds in Table 1 during the calendar year (January 1 – December 31), or if pesticides were applied because of a declared pest emergency.

Table 1: Annual Treatment Area Thresholds

Pesticide Application Category	Annual Treatment Area Threshold [1]
Mosquitos and Other Flying Insect Pests	**6,400 surface water acres** of treatment area annually [2]
Weed and Algae Control In Water	**80 surface water acres** of treatment area, per application [3]
Weed and Algae Control At Water's Edge	**20 linear miles** of treatment area at water's edge, per application [4]
Ditch and Stream Bank Control In Water	**80 surface water** acres of treatment area, per application [3]
Ditch and Stream Bank Control At Water's Edge	**20 linear miles** of treatment area at water's edge, per application [4]
Aerial Pest Control	**6,400 surface water acres** of treatment area annually [2]

[1] The thresholds are calculated based on the areas treated when water is present. If water is not present at the time of the application, these areas should not be included in the calculation of the annual threshold areas.

[2] This is a cumulative threshold level. To calculate the annual treatment area over the calendar year, add the surface water acres for each pesticide application to waters of the state (when water is present). If that total is greater than the stated threshold, an annual report is required to be submitted.

[3] This threshold is not cumulative and is determined by the surface water acres receiving pesticides, regardless of the number of applications in a calendar year.

[4] This threshold is not cumulative and is determined by the linear miles of stream banks receiving pesticides, regardless of the number of applications in a calendar year.

2. The report shall be due by **February 28th of the following year** and shall include the following, at a minimum:

   a. The permittee's name;

   b. South Dakota Certified Pesticide Applicator number, if applicable;

c. The total surface water treatment area in acres or linear miles, as appropriate, for each pesticide use category;

d. Target pest(s) and pesticides used, for each threshold exceeded; and

e. Whether or not the permittee applied pesticides because of a declared pest emergency. If pesticides were applied in response to a declared pest emergency, the permittee must include:

i. Dates and times of the pesticide application;

ii. Target pest(s); and

iii. Which government entity declared the pest emergency.

5.3 Adverse Incident Reporting

1. **Twenty-four (24) Hour Adverse Incident Notification.** The permittee shall notify SDDANR as soon as possible of an adverse incident that may have resulted from a discharge from the permittee's pesticide application. SDDANR shall receive notification no later than twenty-four (24) hours after the permittee becomes aware of the circumstances. The notification shall be submitted to SDDANR at (605) 773-3351 during regular business hours (8:00 AM – 5:00 PM Central Time). Outside of normal business hours, the permittee shall leave a message. This reporting requirement is in addition to any other applicable reporting requirements the permittee may be subject to under state and federal law.

A. When providing the 24-hour notice identified in paragraph 1 above, notification for any adverse incident shall include the following information at a minimum:

i. Contact information, including the caller's name and telephone number, the permittee's name and mailing address, and the name and telephone number of a contact person, if different than the person providing notice;

ii. Description of the adverse incident, including the EPA pesticide registration number for each product applied by the permittee in the area;

iii. Product use and purpose;

iv. How and when the permittee became aware of the adverse incident;

v. Location of the adverse incident including any water bodies that may have been impacted; and

vi. Description of any steps that have been or will be taken to mitigate or correct any adverse incidents.

2. **Thirty (30) Day Adverse Incident Written Report.** Within thirty (30) days of becoming aware of an adverse incident, the permittee shall provide a written report of the adverse incident to SDDANR at the address provided in **Section 5.1**. The incident report shall include the following information, at a minimum:

    a. All documentation required in **Section 5.3.1 – Twenty-Four (24) Hour Adverse Incident Notification** above.

    b. Date of incident, if known (if appropriate, list start and end dates);

    c. Date and time SDDANR was notified of the adverse incident, as well as other agencies notified;

    d. Location of incident, including approximate range, area, and magnitude of the effect (e.g., aquatic square area, or total stream distance affected);

    e. Names of any surface waters impacted and the appearance of the waters (e.g., sheen, color, clarity, etc.);

    f. A brief description of the circumstances of the incident including species affected;

    g. Symptoms or adverse incidents:

        i. If plants were impacted, the type of plant life affect (i.e., crop, forest, orchard, home garden, ornamental foliage, etc.);

        ii. The number of individual and approximate size of any dead or distressed organisms.

    h. Pesticide application rate;

    i. The intended use site (e.g., banks, above, or direct to water), and method of application;

    j. If laboratory tests were performed, indicate what test(s) were performed and provide a copy of the test results; and

    k. Actions to be taken to prevent recurrence of the incident.

3. The Secretary may waive the written report on a case-by-case basis if the oral report has been received within 24 hours by the Water Quality Program, South Dakota Department of Agriculture and Natural Resources, (605) 773-3351.

5.4 Signatory Requirements

1. All reports or information submitted to the Secretary shall be signed and certified as follows:

a. For a corporation: by a responsible corporate officer;

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively;

c. For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official.

2. All reports required by the General Permit and other information requested by the Secretary shall be signed by a person described in Paragraph 1 of this section or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described above and submitted to the Secretary; and,

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility, such as the position of superintendent or equivalent responsibility, or an individual or position having overall responsibility for environmental matters. A duly authorized representative may be either a named individual or any individual occupying a named position.

3. If an authorization under Paragraph 2 a. above is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization must be submitted to the Secretary.

4. Any person signing a document under this section shall include the following certification:

> *I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.*

5.5 Retention of Records

1. The permittee shall retain records of all applications and reports required by this General Permit. This includes:

a. Inspection records;

b. A copy of the General Permit;

c. The PDMP, if applicable;

d. Annual reports, if applicable;

e. Copies of all other reports required by this General Permit; and

f. Records of all inspections and practices used to meet the technology-based effluent limits included in **Section 3.0**.

2. This information must be retained for a period of at least **three years** from the date of the inspection, measurement, report, or application. This period may be extended by request of the Secretary at any time. Data collected on site, the PDMP, if applicable, and a copy of this General Permit must be maintained on site during the duration of the permitted activity.

5.6 Availability of Reports

Except for data determined to be confidential under ARSD Section 74:52:02:17, all reports prepared in accordance with the terms of this General Permit shall be available for public inspection at the office of SDDANR. The name and address of the permittee, General Permit applications, notices of intent, General Permit, and effluent data shall not be considered confidential.

5.7 Duty to Provide Information

1. The permittee shall furnish to the Secretary, within a reasonable time, any information the Secretary may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this General Permit, or to determine compliance with this General Permit. The permittee shall also furnish to the Secretary, upon request, copies of records required to be kept by this General Permit.

2. If the permittee becomes aware that it failed to submit any relevant facts in a General Permit application form, or submitted incorrect information in a General Permit application form or any report to the Secretary, it shall promptly submit such facts or information.

5.8 Planned Changes

The permittee shall give notice to the Secretary as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when the alteration or addition could significantly change the nature or increase the quantity of pollutant discharged, or could result in noncompliance with General Permit conditions. This notification also applies to pollutants that are not subject to effluent limits or other notification requirements in this General Permit.

5.9 Notification of Spills and Releases

1. A release or spill of a regulated substance (includes petroleum and petroleum products) must be reported to SDDANR immediately if any one of the following conditions exists:

a. The release or spill threatens or is in a position to threaten the waters of the state (surface water or ground water);

b. The release or spill causes an immediate danger to human health or safety;

c. The release or spill exceeds 25 gallons;

d. The release or spill causes a sheen on surface water;

e. The release or spill of any substance that exceeds the ground water quality standards of ARSD Chapter 74:54:01;

f. The release or spill of any substance that exceeds the surface water quality standards of ARSD Chapter 74:51:01;

g. The release or spill of any substance that harms or threatens to harm wildlife or aquatic life;

h. The release or spill of crude oil in field activities under SDCL chapter 45-9 is greater than 1 barrel (42 gallons); or

i. The release or spill is required to be reported according to SARA Title III List of Lists, Consolidated List of Chemicals Subject to Reporting Under the Emergency Planning and Community Right to Know Act, US Environmental Protection Agency.

2. To report a release or spill, call SDDANR at 605-773-3296 during regular office hours (8 a.m. to 5 p.m. Central Time). To report the release after hours, on weekends or holidays, call State Radio Communications at 605-773-3231. Reporting the release to the department does not meet any obligation for reporting to other state, local, or federal agencies. Therefore, the responsible person must also contact local authorities to determine the local reporting requirements for releases.

6.0 COMPLIANCE REQUIREMENTS

6.1 Duty to Comply

The permittee shall comply with all conditions of this General Permit. Any General Permit noncompliance constitutes a violation of the South Dakota Water Pollution Control Act and the federal Clean Water Act and is grounds for enforcement action; for General Permit termination, revocation and reissuance, or modification; or for denial of a General Permit renewal application (a violation of a condition of this General Permit is subject to SDCL Section 34A-2-75).

6.2 Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any wastewater discharge and/or sludge disposal or reuse in violation of this General Permit that has a reasonable likelihood of adversely affecting human health or the environment.

6.3 Need to Halt or Reduce Activity Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this General Permit.

6.4 Upset Conditions

1. An upset constitutes an affirmative defense to an action brought for noncompliance with technology based permit effluent limits if the requirements of Paragraph 2 of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review (i.e., Permittees will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with technology-based permit effluent limits).

2. Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

    a. An upset occurred and the permittee can identify the cause(s) of the upset;

    b. The permitted facility was at the time being properly operated;

    c. The permittee submitted notice of the upset as required under **Section 5.9 – Notification of Spills and Releases**; and,

    d. The permittee complied with mitigation measures required under **Section 6.2 – Duty to Mitigate.**

3. Burden of proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

6.5 Penalties for Violations of General Permit Conditions

Any person who violates a General Permit condition is in violation of the provisions of SDCL 34A-2-36, and is subject to penalties under SDCL 34A-2-75. In addition to a jail sentence authorized by SDCL 22-6-2, such violators are subject to a criminal fine not to exceed ten thousand dollars per day of violation. The violator is also subject to a civil penalty not to exceed ten thousand dollars per day of violation, or for damages to the environment of this state. Except as provided in **Section 6.4 – Upset Conditions**, nothing in this General Permit shall be construed to relieve the permittee of the civil or criminal penalties for noncompliance.

6.6 Penalties for Falsification of Reports

1. Any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this General Permit, including monitoring reports or reports of compliance or noncompliance, is in violation of the provisions of SDCL 34A-2-77, and is subject to penalties under SDCL 34A-2-75.

2. Any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this General Permit is in violation of the provisions of SDCL 34A-2-77, and is subject to penalties under SDCL 34A-2-75.

3. In addition to a jail sentence authorized by SDCL 22-6-2, such violators are subject to a criminal fine not to exceed ten thousand dollars per day of violation. The violator is also subject to a civil penalty not to exceed ten thousand dollars per day of violation, or for damages to the environment of this state.

6.7 Toxic Pollutants

The permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Federal Clean Water Act for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions, even if the General Permit has not yet been modified to incorporate the requirement.

6.8 Oil and Hazardous Substance Liability

Nothing in this General Permit shall be construed to preclude SDDANR from taking any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to that the permittee is or may be subject under section 311 of the Federal Clean Water Act.

6.9 Inspection and Entry

The permittee shall allow the Secretary or EPA, upon the presentation of credentials and other documents as may be required by law, to:

1. Enter the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this General Permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this General Permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this General Permit; and,

Sample or monitor at reasonable times for the purpose of assuring General Permit compliance or as otherwise authorized by the South Dakota Water Pollution Control Act, any substances or parameters at any location.