

**SOUTH DAKOTA DEPARTMENT OF ENVIRONMENT
AND NATURAL RESOURCES
JOE FOSS BUILDING
523 EAST CAPITOL AVENUE
PIERRE, SOUTH DAKOTA 57501-3181**

GENERAL PERMIT FOR PESTICIDE APPLICATION

**Authorization to Discharge Under the
Surface Water Discharge System**

In compliance with the provisions of the South Dakota Water Pollution Control Act and the Administrative Rules of South Dakota (ARSD) Chapters 74:52:01 through 74:52:11, any pesticide applicator **discharging a pollutant from a point source associated with the application of a pesticide**, located in the State of South Dakota is authorized to discharge into waters of the state of South Dakota in accordance with the conditions and requirements set forth herein.

This General Permit shall become effective on **October 31, 2011**.

This General Permit and the authorization to discharge shall expire at midnight, **October 30, 2016**.

Signed this 11th day of April, 2011



Authorized Permitting Official

Steven M. Pirner
Secretary
Department of Environment 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 the 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 dessicant, that (1) is a eucaryotic microorganism including, but not limited to, protozoa, algae, and fungi; (2) is a procaryotic microorganism, including, but not limited to, *Eubacteria* and *Archaeobacteria*; or (3) is a parasitically replicating microscopic element, including but not limited 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 Endangered Species Act of 1973 (16 U.S.C. 1531-1544, 87 Stat. 884),
 - b. Beneficial organisms, or
 - c. The environment.

“Discharge” means an 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” refers to the U. S. Environmental Protection Agency or authorized representative.

“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, which 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 degradates 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 spoil, solid waste, incinerator residue, sewage, sewage sludge, garbage, 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 association 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.

“SDDENR” refers to the South Dakota Department of Environment and Natural Resources or authorized representative.

“SDDA” – the South Dakota Department of Agriculture.

“Secretary” refers to the Secretary of the South Dakota Department of Environment and Natural Resources, or authorized representative, unless otherwise stated.

“Total Maximum Daily Load” 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 one 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.

“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 §§ 34A-2-10 and 34A-2-11 or actual existing beneficial uses, whichever is higher, and effluent standards adopted pursuant to § 34A-2-13 or pursuant to the best professional judgment of the Secretary, whichever is applicable.

2.0 COVERAGE UNDER THIS PERMIT

2.1 Activities Covered

A Surface Water Discharge permit is required for 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. This General Permit is available for the following pesticide use categories:

1. **Mosquito and Other Flying Insect Pest Control.** This use category includes the control of public health/nuisance and other flying insect pests that develop or are present during a portion of their life cycle in or above standing or flowing water. Pests in this use category include, but are not limited to, mosquitoes and black flies. The General Permit is only required for this use if water is present during the pesticide application. See Section 3.2 for specific requirements regarding this use.
2. **Weed and Algae Control.** This use category includes the control of invasive or other nuisance weeds 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. The General Permit is only required for this use if water is present during the pesticide application. See Section 3.3 for specific requirements regarding this use.
3. **Aerial Pest Control.** This use 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 be unavoidably 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. The General Permit is only required for this use if water is present during the pesticide application. See Section 3.4 for specific requirements regarding this use category.

Note: Mosquito adulticides may be applied aerially, in which case the application would be covered under the "Mosquito and Other Flying Insect Pest Control" use category.

4. **Ditch and Stream Bank Pest Control.** This use category includes the management of a diverse pest spectrum where pesticides are deposited into a ditch or along stream banks to target the pests effectively and may result in a discharge to waters of the state. The General Permit is only required for this use if water is present during the pesticide application. See Section 3.5 for specific requirements regarding this use category.
5. **Declared Pest Emergency Situation.** This use category is for discharges associated with a declared pest emergency discharge. The General Permit is only required for this use if water is present during the pesticide application. See Section 3.6 for specific requirements regarding this use category.

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 in the 303(d) list or Integrated Report as impaired for that pesticide or its degradates, unless a total maximum daily load has been established for the receiving waters and the total maximum daily load establishes a wasteload allocation for the discharge.
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 limited to fish, lampreys, and mollusks.

2.3 Obtaining Authorization

1. All pesticide activities requiring coverage under this permit will automatically have coverage upon the effective date of this general permit.
2. 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.
3. Pesticide applicators authorized to discharge under this General Permit are only covered for those use categories identified in Section 2.1, 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.

2.4 Terminating Coverage

Pesticide applicators covered under this General Permit are terminated from permit coverage if the discharge is covered under an individual permit or alternative general permit.

2.5 Continuation of the Expired General Permit

If this General Permit is not reissued or replaced prior to the expiration date, it will be administratively continued in accordance with 40 CFR 122.6 and remain in force and effect. Any permittees authorized to discharge under this General Permit will automatically remain covered by this General Permit until the earliest of:

1. The Secretary reissues the General Permit; or
2. The Secretary terminates a permittee's coverage under the General Permit in accordance with Section 2.4.; or
3. The Secretary issues an individual permit for a discharge resulting from application of a pesticide that would otherwise be covered under this General Permit; or

4. A formal permit decision by the Secretary not to reissue this General Permit.

2.6 Reaffirm Eligibility

Periodically during the term of this General Permit and at the time of reissuance, the permittee may be requested to reaffirm its eligibility to discharge under this General Permit.

2.7 Other Federal and State Laws

The permittee shall comply with all other applicable federal and state laws and regulations that pertain to the application of pesticides. For example, the permittee shall continue to comply with the requirements of FIFRA and the state of South Dakota.

3.0 TECHNOLOGY-BASED EFFLUENT LIMITS

3.1 General Technology-Based Effluent Limits

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

1. 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 4.1.
2. If an activity selected for managing pests 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 control activities; and
 - b. Evaluate the management options, considering impact to water quality, impact to non-target organisms, pest resistance, feasibility, and cost effectiveness.
3. 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. If pesticide application results in adverse impacts to water quality or non-target organisms, the permittee shall review and revise its application methods and control measures to reduce such impacts;
 - b. The permittee has an unauthorized release or discharge (e.g., spill, leak, or discharge not authorized by this or another surface water discharge permit);
 - c. An inspection or evaluation by EPA, SDDENR, or SDDA determines that modifications to the control measures are necessary to meet the non-numeric effluent limits in this General Permit, or
 - d. The permittee observes or is otherwise made aware of an adverse incident as a result of the normal treatment.
4. If the permittee determines that changes to the pesticide discharge management plan are necessary to eliminate any situation identified above, such changes shall be made before the next pesticide application that results in a discharge.

3.2 Mosquito and Other Flying Insect Pest Control

This Section applies to discharges to waters of the state from the application of pesticides for mosquito and other flying insect pest control if water is present at the time and location of an application as stated in Section 2.1. Prior to each pesticide application, the permittee shall do the following:

1. Determine densities of larval and adult populations and pest management controls for each treatment area;

2. Develop a pest-specific control strategy based on developmental and behavioral considerations for each pest;
3. Identify known and potential breeding sites for source reduction, larval control program, and habitat management; and
4. Analyze existing data to identify additional sources of nuisance insect production, including sites that have recurring pest problems.

3.3 Weed and Algae Control

This Section applies to discharges to waters of the state from the application of pesticides for weed and algae control if water is present at the time and location of an application as stated in Section 2.1.

1. Prior to the each application, the permittee shall do the following:
 - a. Identify areas and characterize the extent of the problem; and
 - b. Identity target weed and algae pests as necessary for pest control.
2. If the application of a pesticide selected to manage weeds or algae will result in a discharge to waters of the state, the permittee shall:
 - a. Inspect and evaluate the treatment area prior to application in order to implement appropriate pest management controls; and
 - b. Inspect and evaluate the treatment area after each pesticide application to determine if there have been impacts to water quality or to non-target organisms.

3.4 Aerial Pest Control

This Section applies 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 stated in Section 2.1.

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 selected for aerial management of pests will result in a discharge to waters of the state, the permittee shall:
 - 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.

3.5 Ditch and Stream Bank Pest Control

This Section applies to discharges to waters of the state from the application of pesticides for ditch and stream bank pest control when water is present at the time and location of an application as stated in Section 2.1.

1. Prior to the each application, the permittee shall:
 - a. Establish target pest densities for each treatment area for implementing 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 the application of a pesticide is selected to manage pests will result in a discharge to waters of the state, the permittee shall:
 - a. Inspect and evaluate the treatment area prior to each application to properly implement pest management controls;
 - b. Assess and record environmental conditions to identify known and potential sites that support target pest development and are conducive for treatment activities;
 - c. Use pesticides during the most susceptible developmental stage when possible.

3.6 Declared Pest Emergency Situation

This Section applies to discharges from the application of pesticides for Declared Pest Emergency Situations when water is present at the time and location of an application as defined in Section 2.1. Once the public declaration has been made by the appropriate agency, the permittee shall:

1. Take reasonable steps during the pesticide application to minimize the impact on water quality and non-target organisms by considering site restrictions, application timing, and application method; and
2. Inspect and evaluate the treatment area after pesticide application to determine if there have been adverse impacts to water quality or to non-target organisms.

4.0 PESTICIDE DISCHARGE MANAGEMENT PLAN

4.1 Pesticide Discharge Management Plan

1. Permittees who apply pesticide because of a declared pest emergency, or have been certified for either (1) aquatic pest control or for (2) public health pest control, must prepare a Pesticide Discharge Management Plan (PDMP). One PDMP may cover one or more treatment areas for each use category. 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 a copy of relevant portions of those documents with the PDMP and make it available for review consistent with Section 5.5.
2. The PDMP shall be signed in accordance with Section 5.8, and contain the following elements:
 - a. Personnel Responsibilities, see Section 4.2;
 - b. Pest Problem Description, see Section 4.3;
 - c. Pest Management controls, see Section 4.4;
 - d. Schedules and Procedures, see Section 4.5;
 - e. Pesticide Inspection and Evaluation Procedures, see Section 4.6; and
 - f. Best Management Practices, see Section 4.7.
3. The PDMP shall be kept up-to-date for the duration of coverage under this General Permit.
 - a. The permittee shall modify the PDMP whenever necessary to address any necessary corrective actions in Section 3.
 - b. When a review of the PDMP indicates that changes to any control measures are necessary to meet the effluent limits (or other conditions) in this General Permit, the permittee shall modify the PDMP to reflect changes implemented.
 - c. Changes to the PDMP shall be signed and dated in accordance with Section 5.8.
 - d. The permittee shall review the PDMP at a minimum **once per year** and when pest management strategies are updated.

4.2 Personnel Responsibilities

The permittee shall identify the persons (by name or title) responsible for implementing the PDMP, including:

1. Person(s) responsible for developing and revising the PDMP;
2. Person(s) responsible for pesticide application in each treatment area;
3. Person(s) responsible for taking corrective actions where required; and

4. Person(s) responsible for pesticide applications.

4.3 Pest Problem Description

The permittee shall document the following in the PDMP:

1. 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);
2. The target pest(s) and, if known, pest densities; and
3. The desired result of application (e.g. target pest density, obtain wildlife habitat, recreational or water use).

4.4 Pest Management Controls

In developing the pest management strategies, the permittee shall evaluate the following management options considering the impact to water quality and impact to non-target organisms:

1. Mechanical/physical methods;
2. Cultural methods;
3. Biological control agents; and
4. Pesticides

4.5 Schedules and Procedures

The permittee shall identify and document the following procedures in the PDMP:

1. **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.
2. **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.
3. **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:
 - a. Detailed steps for responding to any incident, including steps to minimize and mitigate the adverse incidents on water quality or non-target species;
 - b. Chain of command notification for any incident, including both internal and external contacts;

- c. Name and telephone number for state contacts including SDDENR at (605) 773-3296, and SDDA at (605) 773-3375;
- d. Name, location, and telephone of nearest emergency medical facility;
- e. Name, location, and telephone of nearest hazardous chemical responder (including police and fire department); and
- f. Name and telephone number for the National Pesticide Telecommunications Network at (800) 858-7378.

4.6 Inspection and Evaluation Procedures

The permittee shall document the following procedures in the PDMP:

1. The procedures and methods for conducting both pre- and post-application inspection and evaluation of the treatment area;
2. The person (or position) responsible for conducting treatment area inspections and evaluations; and
3. Procedures for documenting any incidents of permit noncompliance.

4.7 Best Management Practices

The PDMP shall include best management practices the permittee will use to ensure compliance with the conditions of the General Permit. These practices should include, but are not limited to the following:

1. Follow all applicable state and FIFRA label instructions;
2. The permittee should make efforts to be aware of other pesticide applications that are occurring in the same treatment area. If the permittee is aware of other pesticide applications occurring in the same treatment area, the permittees shall coordinate the applications to minimize discharge into waters of the state due to over application.
3. Use only the amount of pesticide and frequency of pesticide application necessary to control the target pest and minimize the potential for development of pest resistance;
4. 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. Develop and implement procedures to minimize and mitigate the adverse incidents on water quality and non-target species.
6. All releases or spills within and outside of operational area containment shall be immediately recovered using absorbent materials, pumps, or similar means. Excess materials shall be properly disposed of or reused.

- a. Operational area containment surfaces exposed to concentrated and diluted pesticides shall be periodically cleaned and all rinsates shall be recovered and stored in accordance with SDCL chapter 38-21.
- b. Recovered substances may be used in accordance with the applicable pesticide product labels.
- c. The permittee shall report the discharge in accordance with state and federal laws.

5.0 REPORTING AND RECORD KEEPING REQUIREMENTS

5.1 Electronic Signatures

SDCL 1-40-39 authorizes SDDENR to accept a document with an electronic signature. SDDENR 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. Any entity submitting a report to SDDENR as required by EPA may satisfy reporting requirements by cross-media electronic reporting in lieu of paper-based reporting as provided for by the EPA pursuant to the standards promulgated in the Federal Register, Vol. 70, No. 197 (October 13, 2005--40 CFR Parts 3, 9, 51 et al.--Cross-Media Electronic Reporting; Final Rule).

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 Use Category	Threshold ¹
Mosquitoes and Other Flying Insect Pests	6,400 surface water acres of treatment area annually ²
Weed and Algae Control:	
<ul style="list-style-type: none"> • In Water • At Water's Edge: 	<ul style="list-style-type: none"> • 80 surface water acres of treatment area, per application ³ • 20 linear miles of treatment area at water's edge, per application ⁴
Ditch and Stream Bank Control:	
<ul style="list-style-type: none"> • In Water • At Water's Edge: 	<ul style="list-style-type: none"> • 80 surface water acres of treatment area, per application ³ • 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 threshold is cumulative. To calculate the annual treatment totals over 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. For example, treating 5,000 surface water acres for mosquitoes two times in a calendar year would count as 10,000 acres and an annual report would be required to be submitted.

³ This threshold is not cumulative and is determined simply by the surface water acres receiving pesticides, regardless of the number of applications in a calendar year. For example, if the permittee applies pesticides to the same 40 surface water acres (and water is present) five times in a calendar year, the threshold has not been exceeded and an annual report is not required.

⁴ This threshold is not cumulative and is determined simply by the linear miles of stream banks receiving pesticides, regardless of the number of applications in a calendar year. For example, if the permittee applies pesticides to 18 miles of stream bank (and water is present) and applies to both banks, the threshold has not been exceeded and an annual report is not required.

2. The report shall be due by February 28th of the following year and shall include the following:
 - 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. Whether or not the permittee applied pesticides because of a declared pest emergency. If yes, then list the dates and times this occurred, the target pest, and what government entity declared the pest emergency.
 - e. For each threshold that was exceeded list the target pest(s) and pesticides used.

5.3 Anticipated Noncompliance

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

5.4 Adverse Incident Reporting

1. **Forty-Eight (48) Hour Adverse Incident Notification.** The permittee shall notify SDDENR as soon as possible of an adverse incident that may have resulted from a discharge from the permittee's pesticide application. SDDENR shall receive the report no later than forty-eight (48) hours after the permittee becomes aware of the circumstances. The report shall be submitted to SDDENR at (605) 773-3296 and to SDDA at (605) 773-4432 during regular business hours (8:00 am – 5:00 pm Central Time). This reporting requirement is in addition to any other applicable reporting requirements the permittee may be subject to under state and federal law.
2. When providing the 48-hour notice identified in paragraph 1 above, notification for any adverse incident shall include the following information at a minimum:
 - a. 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;
 - b. Description of the adverse incident, including the EPA pesticide registration number for each product applied by the permittee in the area;
 - c. Product use and purpose;
 - d. How and when the permittee became aware of the adverse incident;
 - e. Location of the adverse incident including any water bodies that may have been impacted; and

- f. Description of any steps that have been or will be taken to mitigate or correct any adverse incidents.
3. **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 SDDENR at the address provided in Section 5.4.4. The incident report shall include at least the following information:
 - a. All documentation required in Section 5.4.1 (*Forty-Eight (48) Hour Adverse Incident Notification*) above.
 - b. Date of incident, if known (if appropriate, list start and end dates);
 - c. Date and time SDDENR was notified of the adverse incident as well as when 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 affected (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;
 - k. Actions to be taken to prevent recurrence of incident;
 4. The Secretary may waive the written report on a case-by-case basis if the oral report has been received within 48 hours by the Surface Water Quality Program, South Dakota Department of Environment and Natural Resources, (605) 773-3351.

5.5 General Recordkeeping Requirements

1. The permittee shall retain records of all information and reports required by the General Permit and records of all data used to complete the Annual Report (if applicable) for the General Permit for a period of at least three (3) years from the date of the sample, measurement, report or application or for a period of at least three (3) years from the date that coverage under this General Permit expires or is terminated, whichever is greater. The period may be extended by request of SDDENR at any time.

2. All permittees are required to keep a record of the following documentation:
 - a. Permittee's name;
 - b. Times and date(s) of pest management activities;
 - c. Target Pest(s);
 - d. Pest management strategies used;
 - e. Pesticide used:
 - i. Names and amounts of pesticides used, or EPA registration numbers;
 - ii. Locations and names of waters where pesticides are applied. SDDENR will accept a map with this information;
 - iii. Documentation of the inspections and evaluations required in Part 3.0;
 - iv. Any observed impacts to non-target organisms resulting from any pesticide discharge as required in Section 3.1;
 - v. Maintenance records documenting when the application equipment was calibrated and repaired, if applicable; and
 - vi. For mosquito and other flying insect control, why larvicidal treatment was not used.
3. All reports and documents required by this General Permit shall, upon request of the Secretary, be submitted to the South Dakota Department of Environment and Natural Resources at the address below:

SD Department of Environment and Natural Resources
Surface Water Quality Program
PMB 2020
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

5.6 Required Recordkeeping for Certain Permittees

Permittees who apply pesticide as part of a declared pest emergency, or have been certified for either (1) aquatic pest control or for (2) public health pest control shall keep the following records for each application in addition to information required in Section 5.5:

1. The name and address of the person or entity for whom the pesticide was applied;
2. The location of the land or property where the pesticide was applied;
3. The pest(s) to be treated;
4. The size of the treatment area;
5. The dates and times the pesticide was applied;
6. The person or firm who applied the pesticide;

7. The trade or brand name and common name of the pesticide applied, or EPA pesticide registration number for each product, and the company name appearing on the product label;
8. The weather conditions at the time of application, including direction and estimated velocity of the wind and the 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);
9. Amount of the pesticide applied and the application rate; and
10. Specific crop or designated site or commodity to which pesticide application was made.

5.7 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 SDDENR. Permit applications, permits, and effluent data shall not be considered confidential.

5.8 Signatory Requirements

1. **Information.** All submittals, including the Annual Report , shall be signed as follows:
 - a. For a corporation: by a responsible corporate officer or a duly authorized representative;
 - b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively, or a duly authorized representative;
 - c. For a municipality, State, Federal, or other public agency: by either a principal executive officer, ranking elected official, or a duly authorized representative.
2. **Duly Authorized Representatives.** A person is a duly authorized representative only if:
 - a. The authorization is made in writing by a person described above in Section 5.8.1 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 or activity such as the position of superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and
 - c. The signed and dated written authorization is included in the PDMP. A copy shall be submitted if requested by SDDENR or EPA.

3. **Certification.** The following certification shall be included with all documents signed under this section:

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.

6. STANDARD PERMIT CONDITIONS

6.1 Duty to Comply

The permittee shall comply with all conditions of this General Permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

6.2 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.

6.3 Duty to Mitigate

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

6.4 Duty to Provide Information

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

6.5 Other Information

When the permittee becomes aware that he or she failed to submit any relevant facts or submitted incorrect information in any report to the Secretary, the permittee shall promptly submit such facts or information.

6.6 Property Rights

The Secretary's issuance of coverage under this General Permit 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. The State does not warrant that the permittee's compliance with this General Permit 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 severally 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.

6.7 Severability

If any portion of this General Permit is found to be void or is challenged, the remaining permit requirements shall remain valid and enforceable.

6.8 Requiring an Individual Permit or an Alternative General Permit

The Secretary may either deny coverage or require any person requesting coverage under the General Permit to apply for, and obtain, an individual Surface Water Discharge permit. Cases where an individual permit may be required include, but are not limited to the following:

1. The permittee is not in compliance with the conditions of the General Permit;
2. A change has occurred in the availability of demonstrated technologies or practices for the control or abatement of pollutants applicable to pesticide application sites;
3. Effluent limitation guidelines are promulgated for point sources covered by this General Permit;
4. A water quality management plan containing requirements applicable to pesticide application sites is approved;
5. The discharge is a significant contributor of pollution to waters of the state or it presents a health hazard; and
6. The discharge is to an impaired water body where the best management practices are not sufficient to implement the assigned waste load allocations.

6.9 Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all systems of treatment and control that are used to achieve compliance with the conditions of this General Permit. Proper operation and maintenance requires the operation of backup or auxiliary systems only when the operation is necessary to achieve compliance with the conditions of this General Permit.

6.10 Inspection and Entry

The permittee shall allow the SDDENR, SDDA 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 shall be kept under the conditions of this General Permit;
2. Have access to and copy, at reasonable times, any records that shall 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,
4. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the South Dakota Water Pollution Control Act, any substances or parameters at any location.

6.11 Permit Actions

This General Permit may be modified, revoked and reissued, or terminated by the Secretary for cause. A request by a permittee for such changes does not stay any permit condition.

6.12 Reopener Provision

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 are necessary to implement a total maximum daily load approved by the Secretary and/or EPA.
5. **Other Changes.** Other conditions or standards change so that the discharge no longer qualifies for this General Permit, changes in necessary influent or effluent pollutant monitoring, additional industrial pretreatment requirements become applicable to the permittee, or other items.

7. PENALTIES FOR NONCOMPLIANCE

7.1 Penalties for Violations of General Permit Conditions

Any person who violates a 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. Nothing in this General Permit shall be construed to relieve the permittee of the civil or criminal penalties for noncompliance.

7.2 Penalties for Tampering

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. 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.

7.3 Penalties for Falsification of Reports

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. 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.

7.4 Oil and Hazardous Substance Liability

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