

Authorization to Discharge Under the National Pollutant Discharge Elimination System and the Arkansas Water Pollution Control Act

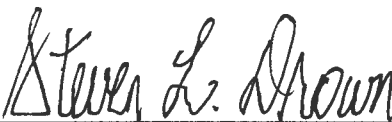
In accordance with the provisions of the Arkansas Water Pollution Control Act (Ark. Code Ann. 8-4-101 et seq.), and the Clean Water Act (33 U.S.C. 1251 et seq.),

Pesticide Discharges Located within the State of Arkansas

This general permit authorizes the discharge of biological pesticides or chemical pesticides (including insecticides, nematicides, rodenticides, fungicides and herbicides) that leave a residue in water when such applications are made into or over, including near Waters of the State except as stated in Part 1.3 in accordance with effluent limitations, monitoring requirements, and other conditions set forth in this permit.

To be eligible for Automatic Coverage under this permit, a copy of the completed Notice of Coverage must be posted at the site or kept at the physical address of the operator prior to commencing the pesticide application, per APC&EC Regulation 6.206.

Original Effective Date: March 1, 2012
Modification Effective Date: April 1, 2013
Expiration Date: February 28, 2017



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Modification Issue Date

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PART 1 PERMIT COVERAGE

1.1 Coverage under This Permit

1.1.1 This permit covers any operator that meets the eligibility requirements identified in Part 1.2. An operator, defined in Part 10, generally includes the entity with day-to-day operational control of a facility or who performs activities (e.g., the application of pesticides) that are necessary to ensure compliance with the permit (e.g., they are authorized to direct workers to carry out activities required by the permit or perform such activities themselves). The definition of operator includes for-hire certified applicators; those individuals who may not be owners or managers of a facility, but are responsible for the application of pesticides at a facility. As such, more than one operator may be responsible for compliance with this permit for any single discharge from the application of pesticides.

1.1.1.1 An operator will need to obtain a permit for each Pest Management Area, as defined in Part 10, which meets the coverage requirements outlined in this permit. Operators in charge of multiple Pest Management Areas that require permit coverage shall obtain permits for each such site.

1.1.2 This general permit does not apply to the application of pesticides to areas which are exempt from National Pollutant Discharge Elimination System (NPDES) permitting including:

1.1.2.1 Any introduction of pollutants from non-point source agricultural and silvicultural activities, including storm water runoff from orchards, cultivated crops, pastures, range lands, and forest lands; and

1.1.2.2 Return flows from irrigated agriculture.

1.2 Eligibility

1.2.1 This permit is available to operators, as defined in Part 10, who qualify under the permitting requirements established under APC&EC Reg. 6.206, Permitting requirements for discharges associated with the application of pesticides. This permit allows the discharge of pollutants to Waters of the State from the application of (1) biological pesticides or (2) chemical pesticides that leave a residue (hereinafter collectively "pesticides"), when the pesticide application is for one of the following pesticide use patterns:

1.2.1.1 Mosquito and Other Flying Insect Pest Control – to control 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. Public health/nuisance and other flying insect pests in this use category include, but are not limited to, mosquitoes and black flies.

- 1.2.1.2 Weed and Algae Control – to control invasive or other nuisance weeds and algae in water and at water's edge, including irrigation ditches or irrigation canals. This use pattern is understood to include right-of-way maintenance for utilities and forest lands, as well as other applicable uses.
- 1.2.1.3 Aquatic Nuisance Animal Control – to control invasive or other nuisance animals in water and at water's edge. Aquatic nuisance animals in this use category include, but are not limited to fish, lampreys, and mollusks.
- 1.2.1.4 Forest Canopy Pest Control – aerial application of a pesticide over a forest canopy to control the population of a pest species (e.g., insect or pathogen) where, to target the pests effectively, a portion of the pesticide unavoidably will be applied over and deposited to water.

1.3 Limitations on Coverage

- 1.3.1 This general permit does not cover the following types of discharges. For such discharges, other appropriate NPDES permits, including individual permits, must be obtained. This permit does not authorize the following pesticide application discharges:
 - 1.3.1.1 Discharges into Impaired Receiving Waters (303(d) List) – Discharges from a facility into a receiving water listed as impaired under Section 303(d) of the Clean Water Act, 33 U.S.C. § 1313(d), unless the permittee:
 - 1.3.1.1.1 Documents that the pollutant(s) for which the waterbody is impaired is not present at the facility, and retains documentation of the finding with the records; or
 - 1.3.1.1.2 Incorporates any additional best management practices needed to prevent to the maximum extent possible exposure of the pollutants for which the waterbody is impaired and to sufficiently protect water quality. Please note that the Department will be reviewing this information. If it is determined that the facility will discharge to an impaired waterbody, then the Department may require additional requirements, including obtaining an individual NPDES permit.
 - 1.3.1.2 Discharges into Receiving Waters with an Approved TMDL – Discharges from a facility into receiving waters for which there is an established Total Maximum Daily Load (TMDL) allocation are not eligible for coverage under this permit unless:
 - 1.3.1.2.1 The permittee develops and certifies a plan of action for implementing best management practices that is consistent with the assumptions and requirements in the approved TMDL; and
 - 1.3.1.2.2 If a specific numeric wasteload allocation has been established that would apply to the facility's discharges, the operator must implement necessary steps to meet that allocation. Please note that the Department will be reviewing this information. If it is determined

that the application will discharge to a receiving water with an approved TMDL, then the Department may require additional best management practices or an individual NPDES permit.

1.3.1.3 Applications that have a direct discharge into Extraordinary Resource Waters (ERWs), Ecologically Sensitive Waters (ESWs), and Natural and Scenic Waterways (NSWs), as designated in Arkansas Pollution Control and Ecology Commission (APC&EC) Regulation No. 2. However, there may be unusual situations where pesticide application may be allowed in order to maintain use and status of the water body. An example of this would include application of a pesticide to control an invasive aquatic plant species that is having a deleterious effect on the dissolved oxygen and other parameters of the waterbody. Other examples would include application of a pesticide for the protection of human health, safety, or the environment.

1.3.1.4 The discharge is covered by another NPDES Permit.

1.3.1.5 The discharge was included in a permit that in the past 5 years has been or is in the process of being denied, terminated, or revoked by ADEQ.

1.3.1.6 Reserved.

1.4 Automatic Coverage

1.4.1 Operators meeting the eligibility provisions outlined in Part 1.2 are automatically authorized to discharge in compliance with the requirements of this permit.

1.5 Continuation of this Permit

1.5.1 If this permit is not reissued or replaced prior to the expiration date, it will be administratively continued in accordance with Ark. Code Ann. § 8-4-203(m) and the terms and conditions of the permit shall remain in effect. If permit coverage was granted prior to the expiration date, permittees will automatically remain covered by the continued permit until the earliest of:

1.5.1.1 Reissuance or replacement of this permit, at which time the permittee must comply with the conditions of the new permit to maintain authorization to discharge and, the permittee is required to notify the Department of his/her intent to be covered under this permit starting 180 days prior to expiration date and no later than 30 days prior to expiration date; or

1.5.1.2 The processing and posting of a Notice of Termination consistent with Part 1.7; or

1.5.1.3 The issuance or denial of an individual permit for a discharge resulting from application of a pesticide that would otherwise be covered under this permit; or

1.5.1.4 A formal permit decision by the Department not to reissue this general

permit, at which time the Department will identify a reasonable time period for covered permittees to seek coverage under an alternative general permit or an individual permit. Coverage under this permit will cease when coverage under another permit is granted/authorized; or

1.5.1.5 The Department has informed the permittee that they are no longer covered under this permit.

1.6 Terminating Coverage

1.6.1 Permittees covered under this permit are terminated from permit coverage when they no longer have a discharge from the application of pesticides or their discharges are covered under an NPDES individual permit or alternative NPDES general permit

1.7 Requiring an Individual NPDES Permit

1.7.1 At the discretion of the Director, the Department may require any operator covered under this general permit to apply for and obtain an individual NPDES permit for reasons that include, but are not limited to, the following:

1.7.1.1 The operator is not in compliance with the conditions of the general permit;

1.7.1.2 Conditions or standards have changed so that the operator no longer qualifies for a general permit coverage;

1.7.1.3 The Department does not renew this general permit; or

1.7.1.4 Effluent limitation guidelines are promulgated for point sources covered by the general NPDES permit.

1.7.2 The permittee will be notified in writing that an application for an individual permit is required. When an individual NPDES permit is issued to a permittee otherwise covered under this general permit, the applicability of the general permit to that permittee automatically terminates upon the effective date of the individual NPDES permit.

1.7.3 Any permittee covered by this general permit may request to be excluded from coverage of this general permit by applying for an individual NPDES permit.

1.8 Re-opener Clause

In accordance with 40 CFR § 122.62(a)(2), the permit may be modified, or alternatively, revoked and reissued, if new information is received that was not available at the time of permit issuance that would have justified the application of different permit conditions at the time of permit issuance.

PART 2
EFFLUENT LIMITATION REQUIREMENTS

- 2.1** All permittees must minimize the discharge of pollutants resulting from the application of pesticides. All permittees must do the following:
- 2.1.1 This permit authorizes all persons to handle, use, or apply pesticides in accordance with state laws and regulations and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136 *et seq.*, which include all instructions on the pesticide label;
 - 2.1.2 Discharge must be controlled as necessary to meet applicable state water quality standards, as found in APC&EC Reg. 2. If it is determined that the discharge causes or contributes to an excursion of applicable water quality standards, corrective action must be taken;
 - 2.1.3 No pesticide may be applied unless that pesticide is registered by the Arkansas State Plant Board (ASPB);
 - 2.1.4 No person shall apply a pesticide unless in accordance with state laws and ASPB or that person is under the direct supervision of someone who is certified by ASPB;
 - 2.1.5 Use the lowest effective amount of pesticide product per application and optimum frequency of pesticide applications as necessary to control the target pest, consistent with the reducing the potential for development of pest resistance;
 - 2.1.6 All permittees covered under this permit must conduct spot checks in the area and around where pesticides are applied for possible and observable adverse incidents as defined in Part 10 caused by application of pesticides, including but not limited to the unanticipated death or distress of non-target organisms and disruption of wildlife habitat, recreational or municipal water use (e.g., effects to organisms not otherwise described on the pesticide product label or otherwise not expected to be present). Visual assessments of the application must be performed:
 - 2.1.6.1 During any post-application surveillance or efficacy check that is conducted, if surveillance or an efficacy check is conducted; and
 - 2.1.6.2 During any pesticide application, when considerations for safety and feasibility allow.
 - 2.1.7 Corrective Actions: If any of the following situations occur, the permittee must review and, as necessary, revise the evaluation and selection of the control measures to ensure that the situation is eliminated and will not be repeated in the future; an explanation of the situation should be recorded, along with any corrective actions taken in response:
 - 2.1.7.1 An unauthorized release or discharge associated with the application of pesticides e.g., spill, leak, or discharge not authorized by this or another NPDES permit occurs; or

- 2.1.7.2 The permittee becomes aware, or the State permitting authority concludes, that the control measures are not adequate or sufficient for the discharge to meet applicable water quality standards; or
- 2.1.7.3 An inspection or evaluation of the permitted activities by a state official reveals that modification to the control measures are necessary to meet the non-numeric effluent limits in the permits; or
- 2.1.7.4 The permittee observes, for example, during visual inspection or monitoring that a modification is required or is otherwise made aware of an adverse incident, as defined in Part 10; or
- 2.1.8 Assess weather conditions (e.g. temperature, precipitation and wind speed) in the treatment area to ensure application is consistent with all applicable federal requirements; and
- 2.1.9 This permit does not authorize other discharges (such as treated sanitary wastewater, equipment wash water, or wash water from cleaning storage or mixing tanks) from facilities which handle pesticides.

PART 3
MONITORING REQUIREMENTS

- 3.1** A permittee who has obtained coverage under this general permit must conduct semi-annual monitoring (or more frequently at the discretion of the Department or ASPB). Monitoring shall include:
- 3.1.1 Inspection of the physical surroundings of the site to determine that all requirements of this permit have been complied with;
 - 3.1.2 Visually assess the area to and around which pesticides are applied for possible and observable adverse incidents, as defined in Part 10;
 - 3.1.3 If an adverse incident, any of the items described in Part 2.1.7, or a water quality issue as defined in Part 2.1.2 is observed, it should be recorded along with any corrective actions taken or planned, as required by Part 2.1.7; and
 - 3.1.4 Inspect the records required under the Arkansas Pesticide Use and Application Act, Ark. Code Ann. § 20-20-201 *et seq.*

PART 4
RECORD KEEPING REQUIREMENTS

- 4.1** A permittee who has obtained coverage under this general permit shall maintain, for a period of three years, records of pesticide applications. Records must be available within three days of the application at the physical address of the employer or the physical address of the licensee and must be kept for three years after permit expiration or termination. A copy of these records shall be provided to any employee of the department upon request at a reasonable time during normal working hours. All records shall be kept in accordance with state laws, ASPB, and FIFRA. A copy of the completed Notice of Coverage must be posted at the site or kept at the physical address of the operator for automatic permit coverage prior to commencing the pesticide application. The following information shall be recorded:
- 4.1.1 Permittee name and address;
 - 4.1.2 Certified applicator, name, address, and certification number, if applicable;
 - 4.1.3 Customer name and address, if applicable;
 - 4.1.4 Product/brand name;
 - 4.1.5 EPA registration number;
 - 4.1.6 Restricted/general use pesticide;
 - 4.1.7 Application date;
 - 4.1.8 Crop/type of application;
 - 4.1.9 Location of application;
 - 4.1.10 Size of each treatment area (acres, square feet, or minutes of spraying) and the total size of the pest management area;
 - 4.1.11 Rate of application;
 - 4.1.12 Total amount of product (concentrate) applied;
 - 4.1.13 List of Control Measures for the use of any pesticide; and
 - 4.1.14 Inspection reports as required in Part 3, including records of adverse incidents, as defined in Part 10, and corrective action documentation, as required in Part 3; and
 - 4.1.15 Any spill or leak or other unpermitted discharge documentation.

PART 5
ROUTINE REPORTING REQUIREMENTS

- 5.1** Routine reporting is not required by this permit.

- 5.2** All uncontained pesticide spills of more than one gallon liquid or four pounds dry weight must be reported to the Water Division Enforcement Branch of ADEQ within 24 hours by telephone (501-682-0640) and by written notice within three days. Permittees are responsible for the cost of cleanups resulting from pesticide spills in their operations.

PART 6 GENERAL CONDITIONS

6.1 Duty To Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Federal Clean Water Act, 33 U.S.C. § 1251 *et seq.*, and the Arkansas Water and Air Pollution Control Act, Ark. Code Ann. § 8-4-101 *et seq.*, and is grounds for enforcement action or for requiring a permittee to apply for an individual NPDES permit.

6.2 Penalties for Violations of Permit Conditions

The Arkansas Water and Air Pollution Control Act, Ark. Code Ann. § 8-4-103(a), provides that any person who violates any provisions of a permit issued under the Act shall be guilty of a misdemeanor and upon conviction thereof shall be subject to imprisonment for not more than one (1) year, or a fine of not more than twenty-five thousand dollars (\$25,000) or by both such fine and imprisonment for each day of such violation. Any person who violates any provision of a permit issued under the Act may also be subject to civil penalty in such amount as the court shall find appropriate, not to exceed ten thousand dollars (\$10,000) for each day of such violation. Ark. Code Ann. § 8-4-103(b). The fact that any such violation may constitute a misdemeanor shall not be a bar to the maintenance of such civil action.

6.3 Permit Actions

This general permit may be modified, revoked and reissued, or terminated for cause in accordance with the requirements of the NPDES Permit Program Regulations at 40 C.F.R. Parts 122 and 124, as adopted by reference in APC&EC Reg. 6.104(A)(3) & (5). The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

6.4 Toxic Pollutants

If any toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under APC&EC Reg. 2, or Section 307(a) of the Clean Water Act, 33 U.S.C § 1317, for a toxic pollutant which is present in the discharge and that standard or prohibition is more stringent than any limitations on the pollutant in this permit, this permit shall be modified or revoked and reissued to conform to the toxic effluent standard or prohibition and the permittee so notified.

The permittee shall comply with effluent standards or prohibitions established under APC&EC Reg. 2, or Section 307(a) of the Clean Water Act, 33 U.S.C § 1317, for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

6.5 Civil and Criminal Liability

Nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance.

6.6 Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Clean Water Act, 33 U.S.C § 1321.

6.7 State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities or penalties established pursuant to any applicable State law or regulation under authority preserved by Section 510 of the Clean Water Act, 33 U.S.C. § 1570.

6.8 Property Rights

The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

6.9 Severability

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

6.10 Applicable Federal, State or Local Requirements

Permittees are responsible for compliance with all applicable terms and conditions of this permit. Receipt of this permit does not relieve any permittee of the responsibility to comply with any other applicable federal, state or local statute, ordinance, policy, or regulation.

PART 7
OPERATION AND MAINTENANCE OF POLLUTION CONTROLS

7.1 Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. The permittee shall provide an adequate operating staff which is duly qualified to carryout operation, maintenance and testing functions required to ensure compliance with the conditions of this permit.

7.2 Need to Halt or Reduce 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 permit. Upon reduction, loss, or failure of controls or equipment, the permittee shall, to the extent necessary to maintain compliance with this permit, control, reduce, or cease application or discharges or both until controls or equipment are restored or alternative controls or equipment are provided. This requirement applies, for example, when the nozzle of an application device is broken, allowing a free flow of product to be dispensed.

7.3 Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment or the water receiving the discharge.

PART 8 MONITORING AND RECORDS

8.1 Penalties for Tampering

The Arkansas Water and Air Pollution Control Act, Ark. Code Ann. § 8-4-103(a), provides that any person who falsifies, tampers with, or knowingly renders inaccurate, any monitoring device or method required to be maintained under the Act shall be guilty of a misdemeanor and upon conviction thereof shall be subject to imprisonment for not more than one (1) year, or a fine of not more than ten thousand dollars (\$10,000) or by both such fine and imprisonment.

8.2 Inspection and Entry

The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

- 8.2.1 Enter upon 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 permit;
- 8.2.2 Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- 8.2.3 Inspect, at reasonable times, any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
- 8.2.4 Sample, inspect or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the federal Clean Water Act, 33 U.S.C. § 1251 *et seq.*, or Arkansas Water and Air Pollution Control Act, Ark. Code Ann. § 8-4-101 *et seq.*, any substances or parameters at any location.

PART 9 REPORTING REQUIREMENTS

9.1 Changes in Discharge of Toxic Substances for Industrial Discharges

The permittee shall notify the Director as soon as he/she knows or has reason to believe:

9.1.1 That any activity has occurred or will occur which would result in the discharge, in a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the "notification levels" described in 40 C.F.R. § 122.42(a)(1).

9.1.2 That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the "notification levels" described in 40 C.F.R. § 122.42(a)(2).

9.2 Duty to Provide Information

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

9.3 Signatory Requirements

9.3.1 All reports required by the permit and other information requested by the Director shall be signed and certified by a person as described in sections 9.3.1.1 through 9.3.1.3 or by a duly authorized representative of that person as described in section 9.3.1.4. :

9.3.1.1 For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:

9.3.1.1.1 A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or

9.3.1.1.2 The manager of one or more manufacturing, production, or operation facilities, provided: the manager is authorized to make management decisions which govern the operation of the regulated facility, including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to ensure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application

requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

9.3.1.2 For a partnership or sole proprietorship: by a general partner or proprietor, respectively; or

9.3.1.3 For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes:

9.3.1.3.1 The chief executive officer of the agency, or

9.3.1.3.2 A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

9.3.1.4 A person is a duly authorized representative only if:

9.3.1.4.1 The authorization is made in writing by a person described above;

9.3.1.4.2 The authorization specified either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and

9.3.1.4.3 The written authorization is submitted to the Director.

9.4 Certification

Any person signing a document under this section shall make 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 ensure 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.”

9.5 Penalties for Falsification of Reports

The Arkansas Water and Air Pollution Control Act, Ark. Code Ann. § 8-4-103, provides that any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained under this permit shall be subject to civil or criminal penalties specified in Part 6.2, under the authority of the Act.

PART 10 DEFINITIONS

All definitions contained in Section 502 of the Clean Water Act, 33 U.S.C. § 1362, shall apply to this permit and are incorporated herein by reference. Additional definitions of words or phrases used in this permit are as follows:

- 10.1 Act** – the Arkansas Water and Air Pollution Control Act, Ark. Code Ann. § 8-4-101 *et seq.*
- 10.2 Active Ingredient** – Any substance (or group of structurally similar substances if specified by the EPA) that will prevent, destroy, repel or mitigate any pest, or that functions as a plant regulator, desiccant, or defoliant within the meaning of FIFRA § 2(a) (7 U.S.C. § 136(a)). Active ingredient also means a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for the production of that pesticidal substance.
- 10.3 ADEQ** – the Arkansas Department of Environmental Quality.
- 10.4 Adverse Incident** – An incident, which the permittee has observed upon inspection or that the permittee or permitting authority otherwise becomes aware that:
- (a) A person or non-target organism may have been exposed to a pesticide or pesticide residue, and
 - (b) The person or non-target organism suffered a toxic or adverse effect documented by ADEQ or another state or federal agency.

The phrase “toxic or adverse effects” includes effects that occur within Waters of the State on non-target plants, fish or wildlife that are unusual or unexpected (e.g., effects are to organisms not otherwise described on the pesticide product label or otherwise not expected to be present) as a result of exposure to a pesticide residue, and may include:

- Distressed or dead juvenile and small fishes;
- Washed up or floating fish;
- Fish swimming abnormally or erratically;
- Fish that are listless or nonresponsive to disturbance;
- Stunting, wilting, or desiccation of non-target submerged or emergent aquatic plants; or
- Other dead or visibly distressed non-target aquatic organisms (amphibians, turtles, invertebrates, etc.).

The phrase, “toxic or adverse effects,” also includes any adverse effects to humans (e.g., skin rashes) or domesticated animals that occur either directly or indirectly from a discharge to Waters of the State that are temporally and spatially related to exposure to a pesticide residue (e.g., vomiting, lethargy).

- 10.5 APC&EC** – the Arkansas Pollution Control and Ecology Commission.
- 10.6 Applicable effluent standards and limitations** – all State and Federal effluent standards and limitations to which a discharge is subject under the federal Clean Water Act, 33 U.S.C. § 1251 *et seq.*, including, but not limited to, effluent limitations, standards of performance, toxic effluent standards and prohibitions, and pretreatment standards.

- 10.7 Applicable water quality standards** – all water quality standards to which a discharge is subject under the federal Clean Water Act, 33 U.S.C. § 1251 *et seq.*, and which have been: (a) approved or permitted to remain in effect by the Administrator following submission to the Administrator pursuant to Section 303(a) of the Act, 33 U.S.C. § 1313(a); or (b) promulgated by the Director pursuant to Section 303(b) or 303(c) of the Act, 33 U.S.C. § 1313(b)–(c), and standards promulgated under APC&EC Reg. 2.
- 10.8 Best Management Practices (BMPs)** – Best management practices are examples of control measures that may be implemented to meet effluent limitations. They are schedules of activities, practices (and prohibitions of practices), structures, vegetation, 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 spillage or leaks, or drainage from raw material storage.
- 10.9 Biological Control Agents** – Organisms that can be introduced to a site for the control of a target pest, such as herbivores, predators, parasites, and hyperparasites.
- 10.10 Biological Pesticides (also called Biopesticides)** – Includes microbial pesticides, biochemical pesticides and plant-incorporated protectants. A microbial pesticide is 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.
- A biochemical pesticide is 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 pesticide, 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). A plant-incorporated protectant is a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for production of such a pesticidal substance. It also includes any inert ingredient contained in the plant or produce.
- 10.11 C.F.R.** – Code of Federal Regulations.
- 10.12 Chemical Pesticides** – All pesticides not otherwise classified as biological pesticides.
- 10.13 Contiguous** – For the purposes of this permit, two or more treatment areas are contiguous if they share a common boundary or if the distance between each of the sites is 15 miles or less and the sites are within the same county. To permit two or more contiguous sites together, they must share a common operator.
- 10.14 Control Measure** – Any BMP or other method used to meet the effluent limitations to minimize the discharge of pollutants to Waters of the State.
- 10.15 Cultural Methods** – Manipulation of the habitat to increase pest mortality by making the habitat less suitable to the target pest.

- 10.16 CWA** – Clean Water Act, 33 U.S.C. § 1251 *et seq.*
- 10.17 Declared Pest Emergency Situation** – A public declaration by the federal, state, or a local government that has determined that there is a pest problem that requires control through the application of a pesticide for pest control beginning less than ten days after identification of the need for pest control based on:
- (a) Significant risk to human health;
 - (b) Significant economic loss; or
 - (c) Significant risk to:
 - (1) Endangered species,
 - (2) Threatened species,
 - (3) Beneficial organisms, or
 - (4) The environment.
- 10.18 Department** – the Arkansas Department of Environmental Quality.
- 10.19 Director** – the Director of the Arkansas Department of Environmental Quality.
- 10.20 Discharge** – When used without qualification, means the "discharge of a pollutant."
- 10.21 Discharge of a Pollutant** – Any addition of any "pollutant" or combination of pollutants to Waters of the State from any "point source," or any addition of any pollutant or combination of pollutants to the waters of the "contiguous zone" or the ocean from any point source other than a vessel or other floating craft that is being used as a means of transportation.
- 10.22 FIFRA** – Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 *et seq.*
- 10.23 FFDCA** – Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301 *et seq.*
- 10.24 For-Hire Certified Applicator** – For the purposes of this permit, a for-hire certified applicator is any individual who holds the necessary license for pesticide application, issued by the Arkansas State Plant Board under the Arkansas Pesticide Use and Application Act, Ark. Code Ann. . § 20-20-201 *et seq.*, and regulations promulgated thereunder, who is under contractual obligation to provide pest control services within a pest management area.
- 10.25 Hydrophytic Vegetation** - A plant growing in water or a substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content.
- 10.26 Impaired water** – A water body listed in the current, approved Arkansas 303(d) list.
- 10.27 Inert Ingredient** - Any substance (or group of structurally similar substances if designated by the EPA), other than an active ingredient that is intentionally included in a pesticide product. Inert ingredient also means any substance, such as a selectable marker, other than the active ingredient, where the substance is used to confirm or ensure the presence of the active ingredient, and includes the genetic material necessary for the production of the substance, provided that genetic material is intentionally introduced into a living plant in addition to the active ingredient.

- 10.28 National Pollutant Discharge Elimination System (NPDES)** - the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under the federal Clean Water Act, 33 U.S.C. § 1251 *et seq.* and regulations promulgated thereunder.
- 10.29 Non-Native Plants** – A plant living outside of its natural or historical range of distribution. Not all non-native plants are considered to be noxious plants.
- 10.30 Non-target Organisms** – Includes the plant and animal hosts of the target species, the natural enemies of the target species living in the community, and other plants and animals, including vertebrates, living in or near the community that are not the target of the pesticide.
- 10.31 Operator** – for the purpose of this permit, means any person (an individual, association, partnership, corporation, municipality, state or federal agency) who has the primary management and ultimate decision-making responsibility over the operation of a facility or activity. This includes for-hire certified applicators, as defined in Part 10.24. The operator is responsible for ensuring compliance with all applicable environmental regulations and conditions.
- 10.32 Permittee** – For the purposes of this permit, a permittee is defined as a person (an individual, association, partnership, corporation, municipality, state or federal agency) eligible for coverage under Part 1.2 of the permit.
- 10.33 Pest** –Any organism under circumstances that make it deleterious to man or the environment and if it is:
- (a) Any vertebrate animal other than humans;
 - (b) Any invertebrate animal, including but not limited to, any insect, other arthropod, nematode, or mollusk such as a slug and snail, but excluding any internal parasite of living humans or other living animals;
 - (c) Any plant growing where it is not wanted, including any moss, algae, liverwort, or other plant of any higher order, and any plant part such as a root; or
 - (d) Any fungus, bacterium, virus, or other microorganism, except for those on or in living humans or other living animals and those on or in processed food or processed animal feed, beverages, drugs (as defined in FFDCA § 201(g)(1), 21 U.S.C. § 321(g)(1)), and cosmetics (as defined in FFDCA § 201(i), 21 U.S.C. § 321(i)).
- 10.34 Pest Management Area** – A contiguous area of land, including any Waters of the State, where the permittee is responsible for pest management.
- 10.35 Pesticide** – means (1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; (2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and (3) any nitrogen stabilizer, except that the term “pesticide” shall not include any article that is a “new animal drug” within the meaning of section 201(w) of the FFDCA, 21 U.S.C. § 321(w), that has been determined by the Secretary of United States Department of Health and Human Services not to be a new animal drug by a regulation establishing conditions of use for the article, or that is an animal feed within the meaning of section 201(x) of the FFDCA, 21 U.S.C. § 321(x), bearing or containing a new animal drug. The term “pesticide” does not include liquid

chemical sterilant products (including any sterilant or subordinate disinfectant claims on such products) for use on a critical or semi-critical device, as defined in section 201 of the FFDCA, 21 U.S.C. § 321. For purposes of the preceding sentence, the term “critical device” includes any device introduced directly into the human body, either into or in contact with the bloodstream or normally sterile areas of the body and the term “semi-critical device” includes any device that contacts intact mucous membranes but which does not ordinarily penetrate the blood barrier or otherwise enter normally sterile areas of the body, FIFRA Section 2(u), 7 U.S.C. § 136(u). The term “pesticide” applies to insecticides, herbicides, fungicides, rodenticides, and various other substances used to control pests. The definition encompasses all uses of pesticides authorized under FIFRA including uses authorized under sections 3 (registration), 5 (experimental use permits), 18 (emergency exemptions), 24(c) (special local needs registrations), and 25(b) (exemptions from FIFRA), 7 U.S.C. § 136.

Note: drugs used to control diseases of humans or animals (such as livestock, fishstock and pets) are not considered pesticides; such drugs are regulated by the United States 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 under FIFRA. (Biological control agents include beneficial predators such as birds or ladybugs that eat insect pests, parasitic wasps, fish, etc).

This 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 permit uses the term “active ingredient.”

- 10.36 Pesticide Product** – A pesticide in the particular form (including composition, packaging, and labeling) that the pesticide is, or is intended to be, distributed or sold. The term includes any physical apparatus used to deliver or apply the pesticide if distributed or sold with the pesticide.
- 10.37 Pesticide Use Patterns** – The pesticide use patterns describe the type of pests being controlled or the location and method of pesticide application.
- 10.38 Pesticide Residue** – Includes that portion of a pesticide application that is discharged from a point source to Waters of the State and no longer provides pesticidal benefits but which may impact non-target species. It may include the pesticide and degradates of the pesticide.
- 10.39 Phytoplankton** - Photosynthetic plankton, mainly unicellular algae.
- 10.40 Point Source** – Any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff. (See 40 C.F.R. § 122.3).
- 10.41 Pollutant** – Dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials

(except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. This definition is subject to additional restrictions, as defined in 40 C.F.R. § 122.2..

- 10.42 Restricted-Use Pesticide** – A pesticide classified as a restricted-use pesticide by the United States Environmental Protection Agency.
- 10.43 Toxic or Adverse Effects** - Effects that occur within Waters of the State on non-target plants, fish or wildlife that are unusual or unexpected as a result of exposure to a pesticide residue (e.g., effects to organisms not otherwise described on the pesticide product label or otherwise not expected to be present). Adverse effects to small organisms may not be directly observable.
- 10.44 Toxic Pollutant** – Any pollutant listed as toxic under 40 C.F.R. § 307(a)(1) or, in the case of “sludge use or disposal practices,” any pollutant identified in regulations implementing section 405(d) of the federal Clean Water Act, 33 U.S.C. § 1345..
- 10.45 Treatment Area** – An area of land, including any Waters of the State, within a pest management area where pesticides are being applied at a concentration that is adequate to control the targeted pests within that area. Multiple treatment areas may be located within a single “pest management area.”
- 10.46 Water’s Edge** - The surface area of the channel that is not covered by water during low flow conditions immediately bordering: (1) Waters of the State, or (2) a conveyance to Waters of the State along which water (e.g., runoff, irrigation waters, or floodwaters) flows.
- 10.47 Waters of the State** – Waters of the State means all streams, lakes, marshes, ponds, 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, which are contained within, flow through, or border upon this state or any portion of the state.
- 10.48 Waters of the United States** – The definition of Waters of the United States, for purposes of this permit, is taken verbatim from 40 C.F.R. § 122.2.

Waters of the United States or *waters of the U.S.* means:

(a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(b) All interstate waters, including interstate “wetlands;”

(c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, “wetlands,” sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

- (1) Which are or could be used by interstate or foreign travelers for recreational or other purposes;
- (2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
- (3) Which are used or could be used for industrial purposes by industries in interstate commerce;
- (d) All impoundments of waters otherwise defined as waters of the United States under this definition;
- (e) Tributaries of waters identified in paragraphs (a) through (d) of this definition;
- (f) The territorial sea; and
- (g) "Wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 423.11(m) which also meet the criteria of this definition) are not waters of the United States. This exclusion applies only to manmade bodies of water which neither were originally created in waters of the United States (such as disposal area in wetlands) nor resulted from the impoundment of waters of the United States. [See Note 1 of this section.] Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

**PART 11
ECONOMIC IMPACT**

The Pesticide Discharges Located within the State of Arkansas General Permit ARG870000 incorporates narrative effluent limitations based on EPA's draft Pesticide General Permit. There are no laboratory testing requirements for compliance with this permit. The permit is also in compliance with applicable state laws, specifically the Arkansas Water and Air Pollution Control Act, Ark. Code Ann. § 8-4-101 et seq. and the regulations promulgated thereunder.

The Arkansas Department of Environmental Quality has not added any requirements not specifically outlined in State and Federal Regulations. Issuance of this permit is required by federal law, based on a decision of the Federal Court of Appeals for the Sixth Circuit in *National Cotton Council of America v. EPA*, 553 F.3d 927 (6th Cir. 2009). It was the Department's intent to not require any additional conditions that are not required by the Arkansas State Plant Board. Therefore, this permit does not place any additional undue burden on any private business entity, large or small. It does not restrict any opportunities that are available to any small businesses. The requirements are set at a level to protect water quality while minimizing the resources required for compliance.