

**FACT SHEET
AND SUPPLEMENTARY INFORMATION
FOR GENERAL PERMIT ARG870000**

For the issuance of the new General Permit for Pesticide Dischargers located within the State of Arkansas, Permit Number ARG870000

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1. Background

1.1 General Permit Coverage

Under 40 C.F.R. § 122.28, general permits may be written to cover categories of point sources having common elements, such as facilities that involve the same or substantially similar types of operations, that discharge the same types of wastes, or that are more appropriately regulated by a general permit. Given the vast number of pesticide applicators requiring National Pollutant Discharge Elimination System (NPDES) permit coverage and the common discharges from these applicators, the Arkansas Department of Energy and Environment – Division of Environmental Quality (DEQ) believes that it makes administrative sense to issue a general permit, rather than issuing individual permits to each applicator.

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 the permit.

1.2 NPDES Pesticide Application Regulation History

The Environmental Protection Agency (EPA) regulates the sale, distribution and use of pesticides in the U.S. under the statutory framework of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136 *et seq.*, to ensure that when used in conformance with FIFRA labeling directions, pesticides will not pose unreasonable risks to human health and the environment.

A history of regulation of pesticides under the NPDES program is available on the EPA's website at:

<https://www.epa.gov/npdes/pesticide-permitting-program-history>

NPDES permits are required for pesticides applied directly to water to control pests and/or applied to control pests that are present in or over, including near waters. Irrigation return flows and agricultural runoff will not require NPDES permits as they are specifically exempted from the CWA.

Rule 6.206 provides for automatic coverage of dischargers of pesticides in the state of Arkansas that qualify for this permit.

40 CFR 122.28(b)(2)(v) states that permit coverage can be given without requiring the submittal of an NOI. The Director is required to consider the following items:

(1, 2, & 4) the type of discharge, the expected nature of the discharge, and the expected volume of the discharges: The type and expected nature of the discharge are discussed in Part 3.1 (Covered Uses) of the Fact Sheet. When considering the need for an NOI, these discharges were considered to be of a type and nature that could be permitted without notification of DEQ. The expected volume of the discharges will be very low, due to the nature of the pesticide applications. Applicators will use as little product as necessary to meet their goals, due to expense of over-application and FIFRA labeling and Arkansas State Plant Board (ASPB) requirements. Most applications covered by this permit will be at water's edge with a portion of the pesticide application unavoidably being discharged to waters of the State. The volume of pesticide discharged to waters of the State by this method will be very small. The expected volume of discharges directly to waters of the State to treat aquatic organisms will be dependent on the target organism and area needing treatment. ASPB rules and FIFRA requirements dictate the maximum allowable dose.

(3) the potential for toxic and conventional pollutants in the discharges: A review of the 303(d) list of impaired waters in the state of Arkansas showed that no waterbodies in the state were impaired due to pesticide use. The Arkansas State Plant Board (ASPB)'s rules and FIFRA requirements control pesticide applications to such a degree that the potential for toxic and conventional pollutants in the discharges is very low. In such a case that a pollutant causes an adverse incident, the permit will still require corrective

actions to be implemented.

(5) other means of identifying discharges covered by the permit: The ASPB currently regulates pesticides licensing and use requirements. If a problem arises with a pesticide discharge that needs DEQ's attention, the ASPB would be a partner in determining the responsible party and any violations of law. Requiring additional paperwork and fees through DEQ will put an undue burden on the permittees without any appreciable benefit.

and (6) the estimated number of discharges to be covered by the permit: According to the ASPB's website, each year ASPB's Pesticide Division issues approximately 6,000 Private Applicator Licenses, 1000 Commercial Applicator Licenses, 600 Non-Commercial Applicator Licenses, 400 Commercial Firm Licenses (ground and air), and 200 Custom Applicator Licenses and maintains approximately 19,400 active Private Applicator Licenses. While not all of these applicators will apply pesticides in a manner that will require coverage by this general permit, a large number of these licensees may need coverage during some of their applications. Most pesticide applications are needed to occur within a short timeframe to be most effective. The review process can take several days to weeks to get an approval. Allowing discharges to begin immediately without the submittal of an NOI will ensure that pesticide applications occur in a timely manner.

It is important to note that while no NOI is required to be submitted to the Division, a Notice of Coverage must still be posted at the application site or kept at the physical address of the permittee. A blank Notice of Coverage is available on DEQ's website. Facilities with coverage under this permit must comply with all provisions of the general permit, as required by APC&EC Rule 6.206.

Information regarding pesticides licensing and proper use in Arkansas can be found on the Arkansas State Plant Board's website at the following address:

<https://www.agriculture.arkansas.gov/plant-industries/pesticide-section/>

2. Significant Changes

- 2.1 In the permit name, "Discharges" was changed to "Dischargers".
- 2.2 The term "operator" has been changed to "permittee" for consistency throughout the permit. The definition of "permittee" has been modified to match the former definition of "operator".
- 2.3 The term "site" was changed to "pest management area" when referencing the location for posting the NOC.
- 2.4 Part 1.1.1 no longer allows for multiple permittees to be responsible for compliance with this permit for any single discharge from the application of pesticides. The person who signs a Notice of Coverage (NOC) for automatic coverage is ultimately

- responsible for the discharges covered under that NOC.
- 2.5 Part 1.2.1 was updated to be consistent with the wording in Rule 6.206.
 - 2.6 The condition excluding discharges other than pesticides (Part 2.1.9 of the previous permit) was moved to Part 1.3.2.
 - 2.7 Part 1.4 (Automatic Coverage) was updated to clarify that a NOC must be completed and either posted at the pest management area or kept at the physical address of the permittee to obtain coverage under this permit.
 - 2.8 Part 1.5 (Terminating Coverage) was updated to better clarify the conditions for termination
 - 2.9 Part 1.6 (Requiring an Individual Permit) was updated to add the permittee being a significant contributor to pollution as a reason for requiring an individual permit, and to add a timeliness requirement for submitting an application.
 - 2.10 The Re-opener Clause (Part 1.8 of the previous permit) and Continuance of the Expired General Permit condition (Part 1.5 of the previous permit) were moved to Parts 6.10 and 6.11, respectively. The Continuance of the Expired General Permit condition was also updated to better reflect that automatic coverage is typically granted under this permit.
 - 2.11 The requirement to take corrective actions if a discharge has caused or contributed to an excursion of applicable water quality standards was moved from Part 2.1.2 to Part 2.1.6.2.2.
 - 2.12 Part 2.1.4 was updated to clarify that all ASPB licensure requirements must be followed.
 - 2.13 The requirement to conduct spot checks and assess weather conditions (Parts 2.1.6 and 2.1.8 of the previous permit) were moved to Part 3.2 because they are monitoring requirements. The weather assessment was also updated to include the wind direction.
 - 2.14 A new condition was added as Part 2.1.7 to require proper maintenance of pesticide application equipment.
 - 2.15 Part 4.1 was updated to remove language regarding copying of records that was redundant with Parts 4.3.2 and 5.4, and to remove language regarding posting the NOC that was redundant with Part 1.4 and the cover page of the permit.
 - 2.16 Part 4.1.14 was updated to clarify that the inspection reports from routine monitoring and spot checks are part of the required record keeping, including the weather assessment.
 - 2.17 The Monitoring and Records standard conditions (Part 8 of the previous permit) were

- moved to Parts 4.2 and 4.3.
- 2.18 The 24 hour reporting condition in Part 5.2 was updated. All adverse incidents are required to be reported to DEQ within 24 hours in addition to uncontained pesticide spills of more than one gallon liquid or four gallons dry weight.
- 2.19 The Reporting Requirements standard conditions (Part 9 of the previous permit) were moved to Parts 5.3 through 5.7
- 2.20 The signatory requirements condition in Part 5.5.1 were updated to clarify that this condition also applies to the signatory on a Notice of Coverage for sites with automatic coverage.
- 2.21 The State Laws condition (Part 6.7 of the previous permit) was removed. This condition was redundant with the Applicable Federal, State, or Local Requirements condition.
- 2.22 Part 8 was updated to incorporate definitions from FIFRA (7 U.S.C. § 136) and the Arkansas Pesticide Use and Application Act (Ark. Code Ann. § 20-20-203) by reference.
- 2.23 The following definitions were removed from Part 8. Some definitions may remain incorporated by reference if defined in the CWA, FIFRA, or Arkansas Pesticide Use and Application Act:
- 2.23.1 Active Ingredient
 - 2.23.2 ADEQ (replaced by DEQ)
 - 2.23.3 Applicable effluent standards and limitations
 - 2.23.4 Biological Control Agents (already included in the definition of Pesticide)
 - 2.23.5 Contiguous (incorporated into the definition of Pest Management Area)
 - 2.23.6 Cultural Methods
 - 2.23.7 Declared Pest Emergency Situation
 - 2.23.8 Department (replaced by Division)
 - 2.23.9 Discharge
 - 2.23.10 Discharge of a Pollutant
 - 2.23.11 Hydrophytic Vegetation
 - 2.23.12 Inert Ingredient
 - 2.23.13 Non-Native Plants
 - 2.23.14 Operator (replaced by Permittee)
 - 2.23.15 Pesticide Use Patterns
 - 2.23.16 Phytoplankton
 - 2.23.17 Pollutant
 - 2.23.18 Toxic or Adverse Effects (already included in the definition of Adverse Incident)
 - 2.23.19 Waters of the United States

- 2.24 The definition of “Adverse Incident” in Part 8 was updated to clarify that the permittee may document the toxic or adverse effect, and to include “Fish lying lethargically at water surface or in shallow water” as an example.
- 2.25 Definitions of “Facility or Activity” and “Total Maximum Daily Load or TMDL” were added to Part 8.
- 2.26 The definitions of “Pest” and “Restricted-Use Pesticide” in Part 8 were updated to be consistent with the Arkansas Pesticide Use and Application Act.

3. Permit Coverage

3.1 Covered Uses

This general permit covers discharges from the application of biological pesticides or chemical pesticides (hereinafter collectively “pesticides”) that leave a residue in water when such applications are made into, over, or near Waters of the State, except where excluded by Part 1.3 of the general permit. Permittees must meet the eligibility requirements in Part 1.2 of the general permit. Permittees may be required to obtain an individual permit in accordance with Part 1.6 of the general permit.

4. Monitoring Requirements

All monitoring requirements are now in Part 3. The required types and frequency of monitoring have been based on the previous permit, except that wind direction was added to the spot check monitoring requirements.

5. Other Conditions

5.1 Geographic Area and Covered Facilities

The general permit, when issued, will authorize discharges from application of pesticides throughout the State of Arkansas. The permit will be applicable only to applications which are made into, over, or near waters of the state and are, therefore, subject to the requirements of Section 301 and 402 of the Clean Water Act.

5.2 Timing of Requests

Permittees eligible for automatic coverage may be covered immediately after completing a Notice of Coverage (NOC) and either posting the NOC at the site or filing the NOC at the physical address of the permittee.

5.3 Expiration Date

In accordance with 40 CFR 46(a), the general permit will expire five (5) years from the effective date of the permit. An expired permit will continue in effect until such time that the permit is renewed or a new permit is issued.

5.4 Individual Permits

The Director of DEQ may require the issuance of individual permits according to the criteria in 40 CFR 122.28(b)(3).

6. Development and Basis for Permit Conditions

In accordance with 40 C.F.R. § 122.44(d), the Division is required to include any requirements necessary to achieve State Water Quality Standards as established under Section 303 of the Clean Water Act.

Discharges to waters that are listed as impaired under Section 303(d) of the Clean Water Act or waters with an approved total maximum daily load (TMDL) are excluded from coverage under this permit unless the permittee includes the additional documentation and/or best management practices (BMPs) required by Parts 1.3.1.1 and 1.3.1.2 of the permit.

The effluent limitations in the permit are not numeric and constitute the levels of control that reduce the area and duration of impacts caused by the discharge of pesticides to Waters of the State in a treatment area. The effluent limitations provide for protection of water quality standards, including protection of beneficial uses of the receiving waters inside the treatment area following completion of pest management activities.

The effluent limitations in this permit are expressed as specific pollution prevention requirements for minimizing the pollutant levels in the discharge. DEQ has determined that the combination of pollution prevention approaches and structural management practices required by these limits is the most environmentally sound way to control the discharge of pesticide pollutants to meet the effluent limitations.

The effluent limitations require all levels of operators to “minimize” discharges of pesticide. Consistent with the control level requirements of the CWA, the term “minimize” means to reduce or eliminate pesticide discharges to Waters of the State through the use of control measures to the extent technologically available and economically achievable and practicable.

These effluent limitations are generally preventative in nature, and are designed to minimize pesticide discharges into Waters of the State. Permittees are required to minimize the discharge of pesticides to Waters of the State by:

- 6.1 Using the lowest effective amount of pesticide product per application and optimum frequency of pesticide applications as necessary to control the target pest, consistent with reducing the potential for development of pest resistance.

Operators must consider lower application rates, frequencies, or both to accomplish effective control. The lowest effective application rate also reduces the amount of

pesticide available that is not performing a specific pest-control function. Using the lowest possible effective rate and frequency of applications can result in cost and time savings to the user. To minimize discharges of pesticide, operators should base the rate and frequency of application on what is known to be effective against the target pest or necessary for resistance management.

Operators must also consider pest resistance to pesticides when reducing discharges from application of pesticide. Resistance management is an important part of pest control. Some pests can develop resistance to pesticides unless resistance management techniques are adopted by pesticide users. Resistance can result in the loss of effectiveness of pesticides with relatively favorable environmental and human health risks and increase reliance on riskier pesticides. When resistance occurs, users may increase rates and frequency of application in an attempt to maintain pesticide effectiveness. This can lead to the loss of efficacy and increased exposure to the pesticide. Pesticide applicators should be aware of the potential for pest resistance to develop by considering the pest, the pesticide and its mode of action, the number of applications and intervals, and application rates.

Pest resistance develops because intensive pesticide use kills the susceptible individuals in a population, leaving only the resistant ones to reproduce. Several pest management tactics help prevent or delay the occurrence of pesticide resistance. One tactic is to reduce dosages in order to avoid establishing a population of resistant organisms and instead allowing some survivors to pass on genes for susceptibility. Another is to apply pesticides over limited areas to reduce the proportion of the total pest population exposed to the pesticide, thereby maintaining a large pool of individuals still susceptible to the pesticide. A third tactic to prevent development of resistant pest populations is to rotate pesticides with different modes of actions against the pests rather than depend on a single mode of action.

- 6.2 As detailed in Part 3.2 of the permit, all dischargers 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 8, 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.

Permittees must carry out a visual evaluation of the pest management area in compliance with the permit conditions. Permittees are required to do spot checks of areas in and around the treatment area within a reasonable period of time after each pesticide application, not to exceed the time required for maximum effect indicated on the product label to observe the effects of the pesticides on the treatment area and document if there was an observable adverse or toxic impact that may possibly be related to the operator's use of pesticides in the treatment area. Permittees must take corrective actions for any observed problem(s) and document the effect of the corrective measure(s) when completed.

Permittees shall conduct a visual evaluation to determine if the target pest action threshold(s) are met and weather conditions are conducive to proper application, identify conditions (e.g. temperature, precipitation, and wind direction & speed in the treatment area) that support development of pest populations and are suitable for control activities, and during the application when considerations for safety and feasibility allow.

Performing spot checks during application and post-application helps the permittee determine the effectiveness of the pesticide application as well as check for observable adverse incidents. Requiring spot checks ensures that water quality is protected while allowing for the removal of pest organisms.

- 6.3 If any of the situations detailed in Part 2.1.6 occur, the permittee must review and, as necessary, revise the evaluation and selection of control measures to ensure that the situation is eliminated and will not be repeated in the future.

The control measures implemented by the permittee should not be seen as unchangeable. Under the permit, revisions should be made to control measures based on the information gathered from visual inspections, State permitting authority reviews and other sources. This revision process ensures that the best feasible methods for controlling pesticide residuals are always in effect.

- 6.4 Other narrative limitations included in the permit to minimize the discharge of pollutants are listed below:

- 6.4.1 Pesticides must be handled, used, and applied in accordance with state laws, rules, and regulations, including all requirements of the Arkansas State Plant Board (ASPB), and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), which includes all instruction on the pesticide label;
- 6.4.2 Discharges must be controlled as necessary to meet applicable state water quality standards (APC&EC Rule 2); and
- 6.4.3 Pesticide application equipment must be properly maintained.

7. Public Notice

The public notice of the draft permit was published for public comment on February 7, 2021. The last day of the comment period was March 9, 2021. No public comments were received on the draft permit.

A copy of the draft permit and public notice were sent via email to the Corps of Engineers, the Regional Director of the U.S. Fish and Wildlife Service, the Arkansas Department of Parks, Heritage, and Tourism, the EPA, and the Arkansas Department of Health.

8. Economic Impact

The Pesticide Dischargers Located within the State of Arkansas General Permit ARG870000 incorporates narrative effluent limitations. There is no permit fee, and 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.

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). 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.

No significant changes were made to this permit that would cause additional economic impact to the facility.

9. Contact Information

For additional information regarding this permit, please contact the NPDES Permits Branch of the Office of Water Quality:

via mail at:

NPDES Permits Branch
Division of Environmental Quality, Office of Water Quality
5301 Northshore Drive
North Little Rock, AR 72218-5317

via phone at: (501) 682-0623; or

via email at water-draft-permit-comment@adeq.state.ar.us

10. Sources

1. EPA's 2016 NPDES Pesticide General Permit for Discharges from the Application of Pesticides
2. FIFRA, 7 U.S.C. § 136 *et seq.*
3. Arkansas Water and Air Pollution Control Act, Ark. Code Ann. § 8-4-101 *et seq.*
4. Arkansas Pesticide Use and Application Act, Ark. Code Ann. § 20-20-201 *et seq.*
5. 40 C.F.R. §§ 122, 126, 152.3, 158.2000(a)(1), 158.2100(b), & 174.3
6. APC&EC Rules 2, 6, & 9
7. ARG870000 General Permit