



STATE OF COLORADO

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
Water Quality Control Division

CDPS GENERAL PERMIT

FOR DISCHARGES FROM APPLICATIONS OF PESTICIDES COLORADO DISCHARGE

PERMIT SYSTEM

In compliance with the provisions of the Colorado Water Quality Control Act, (25-8-101 et seq., CRS, 1973 as amended), facilities engaged in applications of pesticides are authorized to discharge from locations throughout the State of Colorado to surface Waters of the State.

Such discharges shall be in accordance with conditions of this general permit.

This permit and the authorization to discharge shall expire at midnight, December 31, 2019.

Modified, Reissued, and Signed this 25th day of November, 2014

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

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Water Quality Control Division

Permit Actions Summary:

Modification 1: Minor Modification - Issued November 25, 2014, Effective January 1, 2015 (Part 5.1.2, 5.3)

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1.0 Coverage under This Permit

This permit covers any Operator who meets the eligibility requirements identified in Part 1.1.

For the purpose of this permit, “Operator” is defined in Appendix A to mean any entity associated with the application of pesticides which results in a discharge to surface Waters of the State that meets either of the following two criteria: (1) any entity who performs the application of a pesticide or who has day-to-day control of the application (i.e., they are authorized to direct workers to carry out those activities); or (2) any entity with control over the decision to perform pesticide applications including the ability to modify those decisions. Operators identified in (1) above are referred to in this permit as Applicators while Operators identified in (2) are referred to in this permit as Decision- makers. As defined, more than one Operator may be responsible for complying with this permit for any single discharge from the application of pesticides.

For purposes of this permit, all Operators are defined as either an Applicator or a Decision- maker or both an Applicator and a Decision-maker.

When an Operator is both an Applicator and a Decision-maker, the Operator must comply with all applicable requirements imposed on both Applicators and Decision- makers. When the permit references all “Operators,” both Applicators and Decision- makers must comply.

1.1 Eligibility

1.1.1 Activities Covered

This permit is available to Operators who discharge to surface Waters of the State from the application of (1) biological pesticides or (2) chemical pesticides that leave a residue (collectively called *pesticides*), when the pesticide application is for one of the following pesticide use patterns:

- a. **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 mosquitoes and black flies.
- b. **Weed and Algae Pest Control**—to control weeds, algae, and pathogens that are pests in water and at water’s edge, including ditches and/or canals.
- c. **Animal Pest Control**—to control animal pests in water and at water’s edge. Animal pests in this use category include fish, insects, mollusks, and pathogens.
- d. **Forest Canopy Pest Control**—application of a pesticide to 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.

1.1.2 Limitations on Coverage

1.1.2.1 Discharges to Water Quality Impaired Waters

Operators are not eligible for coverage under this permit for any discharges from a pesticide application to surface Waters of the State if the water is identified as impaired by a substance which either is an active ingredient in that pesticide or is a degradate of such an active ingredient. For purposes of this permit, impaired waters are those that have been identified by the Water Quality Control Commission pursuant to section 303 of the CWA as not meeting applicable state water quality standards. Impaired waters, for the purposes of this permit, consist of both waters with EPA-approved or EPA- established total maximum daily loads (TMDLs) and waters for which EPA has not yet approved or established a TMDL, and waters for which development of a TMDL is not necessary. A list of those waters is available at the Integrated Water Quality Monitoring and Assessment Report for the state of Colorado. If a discharge from a pesticide application would not be eligible under this permit because the water is listed as impaired for that specific pesticide, but there is evidence that shows the water is no longer impaired, Operators may submit this information to the Division consistent with Table 7-2 in Part 7.6, and request that coverage be

allowed under this permit.

1.1.2.2 Discharges to Waters Designated as Outstanding Waters for Antidegradation Purposes

Except for discharges from pesticide applications made to restore or maintain water quality or to protect public health or the environment that either do not degrade water quality or only degrade water quality on a short-term or temporary basis, Operators are not eligible for coverage under this permit for discharges to surface Waters of the State if the water is designated by the Water Quality Control Commission as Outstanding Waters for antidegradation purposes under Title 40 of the *Code of Federal Regulations* (CFR) 131.12(a)(3). A list of Outstanding waters in geographic areas covered under this permit is available at <http://www.cdphe.state.co.us/regulations/wqccregs/index.html>.

1.1.2.3 Discharges Currently or Previously Covered by another Permit

Discharges are not eligible for coverage under this permit if any of the following circumstances apply:

- a. The discharge is covered by another CDPS permit, or
- b. 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 the Division (this does not apply to the routine reissuance of permits every 5 years).

1.2 Authorization to Discharge under This Permit

1.2.1 How to Obtain Authorization

To obtain authorization under this permit, an Operator must meet the permit eligibility provisions in Part 1.1. Operators meeting the eligibility provisions outlined in Part 1.1 are automatically authorized by this permit without submission of an application.

1.2.2 Discharge Authorization Date

Operators are authorized to discharge under this permit immediately.

1.2.3 Terminating Coverage

Operators 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 a CDPS individual permit or alternative CDPS general permit.

1.3 Alternative Permits

1.3.1 Requirements for Coverage under an Alternative Permit

In accordance with Regulation 61.9(2)(b)(iii), the Division may require Operators to apply for and/or obtain authorization to discharge under either a CDPS individual permit or an alternative CDPS general permit.

If the Division requires an Operator to apply for a CDPS individual permit, the Division will notify the Operator in writing that a permit application is required. Such a notification will include a brief statement of the reasons for the decision and will provide application information. In addition, for Operators whose discharges are authorized under this permit, any notice will set a deadline to file the permit application and will include a statement that on the effective date of the CDPS individual permit, coverage under this general permit will terminate. The Division may grant additional time to submit the application if an Operator submits a request setting forth reasonable grounds for additional time. If covered under this permit and the Operator fails to submit a CDPS individual permit application as required by the Division, the applicability of this permit to such Operator is terminated at the end of the day specified by the Division as the deadline for application submittal. The Division may take enforcement action for any unpermitted discharge or

violation of any permit requirement.

1.3.2 Operator Requesting Coverage under an Alternative Permit

If an Operator does not want to be covered by this general permit but needs permit coverage, the Operator can apply for a CDPS individual permit. In such a case, the Operator must submit an individual permit application in accordance with the requirements of Regulation 61.4(1)(a), with reasons supporting the request, to the Division at the address listed in Part 8 of this permit. The request may be granted by issuance of a CDPS individual permit or authorization of coverage under an alternative CDPS general permit.

When an individual CDPS permit is issued, or the Operator is authorized under an alternative CDPS general permit to discharge a pollutant to surface Waters of the State as a result of a pesticide application, authorization to discharge under this permit is terminated on the effective date of the CDPS individual permit or the date of authorization of coverage under the alternative CDPS general permit.

1.4 Severability

Invalidation of a portion of this permit does not render the whole permit invalid. The Division's intent is that the permit will remain in effect to the extent possible. If any part of this permit is invalidated, the remaining parts of the permit will remain in effect unless the Division issues a written statement otherwise.

1.5 Other Federal and State Laws

Operators must comply with all other applicable federal and state laws and regulations that pertain to the application of pesticides. For example, this permit does not negate the requirements under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and its implementing regulations to use registered pesticides consistent with the product's labeling. In fact, applications in violation of certain FIFRA requirements could also be a violation of the permit and therefore a violation of the CWA (e.g. exceeding label application rates). Additionally, other laws and regulations might apply to certain activities that are also covered under this permit.

2.0 Technology-Based Effluent Limitations

This part includes technology-based effluent limitations applicable to all Operators, as defined in Appendix A, for any discharges authorized under this permit, with compliance required upon beginning such discharge. All Operators are classified as either "Applicators" or "Decision-makers," as defined in Appendix A, or both. Applicators must perform the tasks identified in Part 2.1 – Applicator's Responsibilities. Decision-makers must perform the tasks identified in Part 2.2 – Decision-makers Responsibilities. There may be instances when a single entity acts as both an Applicator and a Decision-maker.

If an Operator's discharge of pollutants results from the application of a pesticide that is being used solely for the purpose of "pesticide research and development," as defined in Appendix A, the Operator must use such pesticide consistent with any applicable research plan and experimental use permit.

As stated in Part 1.5, this permit requires all Operators to comply with all other applicable federal or state laws and regulations that pertain to application of pesticides by the Operator.

2.1 Applicators' Responsibilities

To meet the effluent limitations of this permit, all Applicators must implement Part 2.1 to minimize the discharge of pesticides to surface Waters of the State from the application of pesticides, through the use of Pest Management Measures, as defined in Appendix A.

2.1.1 Amount

Where not determined by the Decision-maker, Applicators shall use only the amount of pesticide and frequency of pesticide application necessary to control the target pest, using equipment and application procedures appropriate for this task.

2.1.2 Maintenance

Operators shall maintain pesticide application equipment in proper operating condition, including the requirement to calibrate, clean and repair such equipment and prevent leaks, spills or other unintended discharges.

2.1.3 Applicable Federal Requirements

Assess weather conditions (e.g. temperature, precipitation and wind speed) in the treatment area to ensure application is consistent with all applicable federal requirements.

2.2 Decision-makers' Responsibilities: For All Decision-makers

To meet the effluent limitations in Part 2.2, all Decision-makers must minimize the discharge of pesticides to surface Waters of the State from the application of pesticides, through the use of Pest Management Measures, as defined in Appendix A.

To the extent the Decision-maker determines the amount of pesticide or frequency of pesticide application, the Decision-maker must use only the amount of pesticide and frequency of pesticide application necessary to control the target pest.

2.3 Decision-Maker's Responsibilities: For Any Decision-maker Who is Required to Submit an Annual Report

To meet the effluent limitations of this permit, any Decision-maker who is or will be required to submit an Annual Report, as required in Part 7.6, must also implement Parts 2.3.1 - 2.3.4 to minimize the discharge of pesticides to surface Waters of the State from the application of pesticides, through the use of Pest Management Measures, as defined in Appendix A.

2.3.1 Mosquito and Other Flying Insect Pest Control

This part applies to discharges from the application of pesticides for mosquito and other flying insect pest control as defined in Part 1.1.1.

a. Identify the Problem. Prior to the first pesticide application covered under this permit that will result in a discharge to surface Waters of the State, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, a Decision-maker who is or will be required to submit an Annual Report must do the following for each pest management area, as defined in Appendix A:

1. Establish densities for larval and adult mosquito or flying insect pest populations or identify environmental condition(s), either current or based on historical data, to serve as action threshold(s) for implementing Pest Management Measures;
2. Identify target pest(s) to develop Pest Management Measures based on developmental and behavioral considerations for each pest;
3. Identify known breeding sites for source reduction, larval control program, and habitat management;
4. Analyze existing surveillance data to identify new or unidentified sources of mosquito or flying insect pest problems as well as sites that have recurring pest problems; and
5. In the event there are no data for the pest management area in the past calendar year, use other available data as appropriate to meet the permit conditions in Part 2.2.1.a.

b. Pest Management Options. Prior to the first pesticide application covered under this permit that will result in a discharge to surface Waters of the State and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, any Decision-maker who is or will be required to submit an Annual Report must select and implement efficient and effective means of Pest Management Measures that minimize discharges resulting from the application of pesticides to control mosquitoes or other flying insect pests. In developing the Pest Management Measures for each pest management area, the Decision-maker must evaluate the following management options, including a combination of these management options, considering impact to water quality, impact to non-target organisms, feasibility, and cost effectiveness:

1. No action
2. Prevention
3. Mechanical or physical methods
4. Cultural methods
5. Biological control agents
6. Pesticides

c. Pesticide Use. If a pesticide is selected to manage mosquitoes or flying insect pests, and application of the pesticide will result in a discharge to surface Waters of the State, any Decision-maker who is or will be required to submit an Annual Report must:

1. Conduct larval and/or adult surveillance in an area that is representative of the pest problem or evaluate existing larval surveillance data, environmental conditions, or data from adjacent areas prior to each pesticide application to assess the pest management area and to determine when the action threshold(s) is met;
2. Reduce the impact on the environment and on non-target organisms by applying the pesticide only when the action threshold(s) has been met;
3. In situations or locations where practicable and feasible for efficacious control, use larvicides as a preferred pesticide for mosquito or flying insect pest control when the larval action threshold(s) has been met*; and
4. In situations or locations where larvicide use is not practicable or feasible for efficacious control, use adulticides for mosquito or flying insect pest control when the adult action threshold(s) has been met.

****Note that larviciding for control of mosquitos is excluded from any annual treatment area threshold calculation. However, while not included in annual treatment area threshold calculations, discharges from larviciding activities are still required to be covered under a CDPS permit and the PGP will serve that purpose without the need to submit an Annual Report for larviciding activities.***

2.3.2 Weed and Algae Pest Control

This part applies to discharges from the application of pesticides for control of weeds, algae, and pathogens as defined in Part 1.1.1.

a. Identify the Problem. Prior to the first pesticide application covered under this permit that will result in a discharge to surface Waters of the State, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, any Decision-maker who is or will be required to submit an Annual Report must do the following for each pest management area, as defined in Appendix A:

1. Identify areas with pest problems and characterize the extent of the problems, including, for example, water use goals not attained (e.g. wildlife habitat, fisheries, vegetation, and recreation);
2. Identify target pest(s);

3. Identify possible factors causing or contributing to the pest problem (e.g., nutrients, invasive species, etc);
4. Establish any pest- and site-specific action threshold, as defined in Appendix A, for implementing Part 2.2.2.b; and
5. In the event there are no data for the pest management area in the past calendar year, use other available data as appropriate to meet the permit conditions in Part 2.2.2.a.

b. Pest Management Options. Prior to the first pesticide application covered under this permit that will result in a discharge to surface Waters of the State, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, any Decision-maker who is or will be required to submit an Annual Report must select and implement efficient and effective means of Pest Management Measures that minimize discharges resulting from the application of pesticides to control pests. In developing the Pest Management Measures for each pest management area, the Decision-maker must evaluate the following management options, including a combination of these management options, considering impact to water quality, impact to non-target organisms, feasibility, and cost effectiveness:

1. No Action
2. Prevention
3. Mechanical or physical methods
4. Cultural methods
5. Biological control agents
6. Pesticides

c. Pesticide Use. If a pesticide is selected to manage pests, and application of the pesticide will result in a discharge to surface Waters of the State, any Decision-maker who is or will be required to submit an Annual Report must:

1. Conduct surveillance in an area that is representative of the pest problem prior to each pesticide application to assess the pest management area and to determine when the action threshold(s) is met; and
2. Reduce the impact on the environment and non-target organisms by applying the pesticide only when the action threshold has been met.

2.3.3 Animal Pest Control

This part applies to discharges from the application of pesticides for control of animal pests as defined in Part 1.1.1.

a. Identify the Problem. Prior to the first pesticide application covered under this permit that will result in a discharge to surface Waters of the State, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, any Decision-maker who is or will be required to submit an Annual Report must do the following for each pest management area, as defined in Appendix A:

1. Identify areas with pest problems and characterize the extent of the problems, including, for example, water use goals not attained (e.g. wildlife habitat, fisheries, vegetation, and recreation);
2. Identify target pest(s);
3. Identify possible factors causing or contributing to the problem (e.g., nutrients, invasive species);
4. Establish any pest- and site-specific action threshold, as defined in Appendix A, for implementing Part 2.2.3.b; and
5. In the event there are no data for the pest management area in the past calendar year, use other available data as appropriate to meet the permit conditions in Part 2.2.3.a.

- b. Pest Management Options** Prior to the first pesticide application covered under this permit that will result in a discharge to surface Waters of the State, and at least once each year thereafter prior to the first pesticide application during that calendar year, any Decision-maker who is or will be required to submit an Annual Report must select and implement efficient and effective means of Pest Management Measures that minimize discharges resulting from the application of pesticides to control pests. In developing the Pest Management Measures for each pest management area, the Decision-maker must evaluate the following management options, including a combination of these management options, considering impact to water quality, impact to non-target organisms, feasibility, and cost effectiveness:
1. No action.
 2. Prevention
 3. Mechanical or physical methods
 4. Biological control agents
 5. Pesticides
- b. Pesticide Use.** If a pesticide is selected to manage pests and application of the pesticide will result in a discharge to surface Waters of the State, any Decision-maker who is or will be required to submit an Annual Report must:
1. Conduct surveillance in an area that is representative of the pest problem prior to each application to assess the pest management area and to determine when the action threshold(s) is met; and
 2. Reduce the impact on the environment and non-target organisms by evaluating site restrictions, application timing, and application method in addition to applying the pesticide only when the action threshold(s) has been met.

2.3.4 Forest Canopy Pest Control

This part applies to discharges from the application of pesticides for forest canopy pest control as defined in Part 1.1.1.

- a. Identify the Problem.** Prior to the first pesticide application covered under this permit that will result in a discharge to surface Waters of the State, and at least once each calendar year thereafter prior to the first pesticide application in that calendar year, any Decision-maker who is or will be required to submit an Annual Report must do the following for each pest management area, as defined in Appendix A:
1. Establish any pest- and site-specific action threshold, as defined in Appendix A, for implementing Part 2.2.4.b;
 2. Identify target pest(s) to develop Pest Management Measures based on developmental and behavioral considerations for each pest;
 3. Identify current distribution of the target pest and assess potential distribution in the absence of Pest Management Measures; and
 4. In the event there are no data for the pest management area in the past calendar year, use other available data as appropriate to meet the permit conditions in Part 2.2.4.a.
- b. Pest Management Options** Prior to the first pesticide application covered under this permit that will result in a discharge to surface Waters of the State, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, any Decision-maker who is or will be required to submit an Annual Report must select and implement efficient and effective means of Pest Management Measures that minimize discharges resulting from the application of pesticides to control pests. In developing the Pest Management Measures for each pest management area, the Decision-maker must evaluate the following management

options, including a combination of these management options, considering impact to water quality, impact to non-target organisms, feasibility, and cost effectiveness:

1. No action
2. Prevention
3. Mechanical/physical methods
4. Cultural methods
5. Biological control agents
6. Pesticides

c. Pesticide Use. If a pesticide is selected to manage forestry pests, and application of the pesticide will result in a discharge to surface Waters of the State, any Decision-maker who is or will be required to submit an Annual Report must:

1. Conduct surveillance in an area that is representative of the pest problem prior to each application to assess the pest management area and to determine when the pest action threshold is met;
2. Reduce the impact on the environment and non-target organisms by evaluating the restrictions, application timing, and application methods in addition to applying the pesticide only when the action threshold(s) has been met; and
3. Evaluate using pesticides against the most susceptible developmental stage of target pests.

3.0 Water Quality-Based Effluent Limitations

All Operators must control discharges as necessary to meet applicable numeric and narrative state or tribal water quality standards, for any discharges authorized under this permit, **with compliance required upon beginning such discharge.**

If at any time an Operator becomes aware (e.g., through self-monitoring or by notification from the state or tribe), or the Division determines, that the Operator's discharge causes or contributes to an excursion of any applicable water quality standard, the Operator must take corrective action as required in Part 6 and Appendix B, Section B.3, up to and including the ceasing of the discharge, if necessary.

4.0 Monitoring

4.1 Visual Monitoring Requirements for Pesticide Applicators

During any pesticide application with discharges authorized under this permit, all Applicators must, when considerations for safety and feasibility allow, visually assess the area to and around where pesticides are applied for possible and observable adverse incidents, as defined in Appendix A, caused by application of pesticides, including the unanticipated death or distress of non-target organisms and disruption of wildlife habitat, recreational or municipal water use.

4.2 Visual Monitoring Requirements for all Operators

During any post-application surveillance of any pesticide application with discharges authorized under this permit, all Operators must visually assess the area to and around where pesticides were applied for possible and observable adverse incidents, as defined in Appendix A, caused by application of pesticides, including the unanticipated death or distress of non-target organisms and disruption of wildlife habitat, recreational or municipal water use.

5.0 Pesticide Discharge Management Plan

Any Decision-maker who is required to submit an Annual Report as required in Part 7.6 regardless of the amount of treatment during a calendar year and is a *large entity*, as defined in Appendix A, must prepare a Pesticide Discharge Management Plan (PDMP) and have the PDMP completed prior

to having a discharge associated with pesticide applications authorized under this permit. Any Decision-maker who is subject to an annual treatment area threshold, and is a *large entity*, must prepare a PDMP if the annual treatment area threshold was exceeded for the prior calendar year, and have the PDMP completed prior to April 1 of the following calendar year. There is one exception (for which a PDMP is not required to be developed):

- Any application is made in response to a Declared Pest Emergency Situation, as defined in Appendix A.

The PDMP does not contain effluent limitations; the effluent limitations are specified in Parts 2 and 3 of the permit. The PDMP documents how Decision-makers will implement the effluent limitations in Parts 2 and 3 of the permit, including the evaluation and selection of Pest Management Measures to meet those effluent limitations in order to minimize discharges. In the PDMP, Decision-makers may incorporate by reference any procedures or plans in other documents that meet the requirements of this permit. If Decision-makers rely upon other documents to comply with the effluent limitations in this permit, such as a pre-existing pest management plan, the Decision-maker must attach to the PDMP a copy of any portions of any documents that are used to document the implementation of the effluent limitations.

5.1 Contents of the Pesticide Discharge Management Plan.

The PDMP must include the following elements:

- a. Pesticide Discharge Management Team
- b. Problem Identification
- c. Pest Management Options Evaluation
- d. Response Procedures
 1. Spill Response Procedures
 2. Adverse Incident Response Procedures
- e. Documentation to support eligibility considerations under other federal laws
- f. Signature Requirements.

5.1.1 PDMP Team.

Decision-makers must identify all the persons (by name and contact information) that compose the team as well as each person's individual responsibilities, including:

- a. Person(s) responsible for managing pests in relation to the pest management area
- b. Person(s) responsible for developing and revising the PDMP; and
- c. Person(s) responsible for developing, revising, and implementing corrective actions and other effluent limitation requirements.

5.1.2 Problem Identification.

Decision-makers must document the following:

- a. Pest problem description. Document a description of the pest problem at the pest management area, including identification of the target pest(s), source(s) of the pest problem, and source of data used to identify the problem in Parts 2.3.1, 2.3.2, 2.3.3, and 2.3.4.
- b. Action threshold(s). Describe the action threshold(s) for the pest management area, including data used in developing the action threshold(s) and method(s) to determine when the action threshold(s) has been met.
- c. General location map. In the plan, include a general location map (e.g., USGS quadrangle map, a portion of a city or county map, or other map) that identifies the geographic boundaries of the area to which the plan applies and location of the surface Waters of the State.
- d. Water quality standards. Document any Outstanding Waters and any water(s) identified as impaired by a substance which either is an active ingredient or a

degrade of such an active ingredient.

5.1.3 Pest Management Options Evaluation

Decision-makers must document the evaluation of the pest management options, including combination of the pest management options, to control the target pest(s). Pest management options include the following: no action, prevention, mechanical/physical methods, cultural methods, biological control agents, and pesticides. In the evaluation, Decision-makers must consider the impact to water quality, impact to non-target organisms, feasibility, cost effectiveness, and any relevant previous Pest Management Measures.

5.1.4 Response Procedures.

Decision-makers must document the following procedures in the PDMP:

- a. Spill Response Procedures – At a minimum, Decision-makers must have:
 1. Procedures for expeditiously stopping, containing, and cleaning up leaks, spills, and other releases to surface Waters of the State. Employees who may cause, detect, or respond to a spill or leak must be trained in these procedures and have necessary spill response equipment available. If possible, one of these individuals should be a member of the PDMP team.
 2. Procedures for notification of appropriate facility personnel, emergency response agencies, and regulatory agencies.
- b. Adverse Incident Response Procedures – At a minimum, Decision-makers must have:
 1. Procedures for responding to any adverse incident resulting from pesticide applications.
 2. Procedures for notification of the adverse incident, both internal to the Decision-makers' agency/organization and external. Contact information for the Division, nearest emergency medical facility, and nearest hazardous chemical responder must be in locations that are readily accessible and available.

5.1.5 Signature Requirements.

Decision-makers must sign, date and certify the PDMP in accordance with Appendix B, Subsection B.11.

5.2 Pesticide Discharge Management Plan Modifications.

Decision-makers must modify the PDMP whenever necessary to address any of the triggering conditions for corrective action in Part 6.1, or when a change in pest control activities significantly changes the type or quantity of pollutants discharged. Changes to the PDMP must be made before the next pesticide application that results in a discharge, if practicable, or if not, no later than 90 days after any change in pesticide application activities. The revised PDMP must be signed and dated in accordance with Appendix B, Subsection B.11.

5.3 Pesticide Discharge Management Plan Availability.

Decision-makers must retain a copy of the current PDMP, along with all supporting maps and documents. The PDMP and all supporting documents must be readily available, upon request, and copies of any of these documents provided, upon request, to the Division, EPA, or another State, Tribal, or local agency governing discharges or pesticide applications within their respective jurisdictions. The Division may provide copies of the PDMP or other information related to this permit that is in its possession to members of the public. Any Confidential Business Information (CBI), as defined in 40 CFR Part 2 and Regulation 61.5(4)(b), may be withheld from the public provided that a claim of confidentiality is properly asserted and documented in accordance with 40 CFR Part 2; however, CBI must be submitted to the Division, if requested, and may not be withheld from staff within the Division.

6.0 Corrective Action

All Operators must comply with the provisions of Part 6 for any discharges authorized under this permit, with compliance required upon beginning such discharge.

6.1 Situations Requiring Revision of Pest Management Measures

Operators must review and, as necessary, revise the evaluation and selection of Pest Management Measures consistent with Part 2.1 and 2.2 for the following situations:

- a. An unauthorized release or discharge associated with the application of pesticides (e.g., spill, leak, or discharge not authorized by this or another CDPS permit) occurs.
- b. Operators become aware, or the Division concludes, that Pest Management Measures are not adequate/sufficient for the discharge to meet applicable water quality standards.
- c. Any monitoring activities indicate failure to meet applicable technology-based effluent limitations in Part 2.
- d. An inspection or evaluation of activities by a Division official, or EPA local, state, or tribal entity, reveals that modifications to the Pest Management Measures are necessary to meet the effluent limitations in this permit.
- e. Any Operator observes or is otherwise made aware of an adverse incident as defined in Appendix A.

6.2 Corrective Action Deadlines

If an Operator determines that changes to Pest Management Measures are necessary to eliminate any situation identified in Part 6.1, such changes must be made before or, if not practicable, as soon as possible after the next pesticide application that results in a discharge.

6.3 Effect of Corrective Action

The occurrence of a situation identified in Part 6.1 may constitute a violation of the permit. Correcting any situation identified in Part 6.1 does not absolve Operators of liability for any original violation. However, failure to comply with Part 6.2 constitutes an additional permit violation. The Division will consider the appropriateness and promptness of corrective action in determining enforcement responses to permit violations.

The Division may impose additional requirements and schedules of compliance, including requirements to submit additional information concerning the condition(s) triggering corrective action or schedules and requirements more stringent than specified in this permit. Those requirements and schedules will supersede those of Part 6.1 and 6.2 if such requirements conflict.

6.4 Adverse Incident Documentation and Reporting

6.4.1 Twenty-Four (24)-Hour Adverse Incident Notification

6.4.1.1 Adverse Incident Notification Required

Except as provided for in Part 6.4.4, if an Operator observes or is otherwise made aware of an adverse incident, as defined in Appendix A, which may have resulted from a discharge from a pesticide application, the Operator must immediately notify the Division. This notification must be made by telephone within 24 hours of the Operator becoming aware of the adverse incident and must include at least the following information:

- a. The caller's name and telephone number;
- b. Operator name and mailing address;
- c. The name and telephone number of a contact person, if different than the person providing the 24-hour notice;

- d. How and when the Operator became aware of the adverse incident;
- e. Description of the location of the adverse incident;
- f. Description of the adverse incident identified and the pesticide product, including EPA pesticide registration number, for each product applied in the area of the adverse incident;
- g. Description of any steps the Operator has taken or will take to correct, repair, remedy, clean up, or otherwise address any adverse effects; and
- h. If known, the identity of any other Operators authorized for coverage under this permit for discharges from the pesticide application activities that resulted in the adverse incident.

If an Operator is unable to notify the Division within 24 hours, the Operator must do so as soon as possible and also provide an appropriate rationale for why the Operator was unable to provide such notification within 24 hours.

The adverse incident notification and reporting requirements are in addition to what the registrant is required to submit under FIFRA section 6(a)(2) and its implementing regulations at 40 CFR Part 159.

6.4.1.2 Adverse Incident Notification Not Required

Reporting of adverse incidents is not required under this permit in the following situations:

- a. An Operator is aware of facts that indicate that the adverse incident was not related to toxic effects or exposure from the pesticide application;
- b. An Operator has been notified by the Division, and retains such notification, that the reporting requirement has been waived for this incident or category of incidents;
- c. An Operator receives information of an adverse incident, but that information is clearly erroneous; or
- d. An adverse incident occurs to pests that are similar in kind to potential target pests identified on the FIFRA label.

6.4.2 Thirty (30)-Day Adverse Incident Written Report

Except as provided for in Part 6.4.4, within 30 days of a reportable adverse incident pursuant to Part 6.4.1.1, Operators must provide a written report of the adverse incident to the Division. The adverse incident report must include at least the following information:

- a. Information required to be provided in Part 6.4.1.1;
- b. Date and time the Operator contacted the Division notifying the agency of the adverse incident, who the Operator spoke with at the Division, and any instructions received from the Division;
- c. Location of incident, including the names of any waters affected and appearance of those waters (sheen, color, clarity, etc);
- d. A description of the circumstances of the adverse incident including species affected, estimated number of individual and approximate size of dead or distressed organisms;
- e. Magnitude and scope of the affected area (e.g., aquatic square area or total stream distance affected);
- f. Pesticide application rate; intended use site (e.g., on the bank, above waters, or directly to water); method of application; and the name of pesticide product and the division registration number;
- g. Description of the habitat and the circumstances under which the adverse incident occurred (including any available ambient water data for pesticides applied);
- h. If laboratory tests were performed, an indication of which test(s) were performed, and when; additionally, a summary of the test results must be provided within 5 days after they become available if not available at the time of submission of the 30-day report;

- i. Description of actions to be taken to prevent recurrence of adverse incidents; and
- j. Signature, date, and certification in accordance with Appendix B, Subsection B.11.

6.4.3 Notification and Reporting for Adverse Incidents Involving Multiple Operators

Where multiple Operators are authorized for a discharge that results in an adverse incident, notification and reporting by any one of the Operators constitutes compliance for all of the Operators, provided a copy of the written report required in Part 6.4.2 is also provided to all of the other authorized Operators within 30 days of the reportable adverse incident.

6.5 Other Corrective Action Documentation

For situations identified in Part 6.1, other than for adverse incidents (addressed in Part 6.4), Operators must document the situation triggering corrective action and planned corrective action within 30 days of becoming aware of that situation, and retain a copy of this documentation. This documentation must include the following information:

- a. Identification of the condition triggering the need for corrective action review, including any ambient water quality monitoring that assisted in determining that discharges did not meet water quality standards;
- b. Brief description of the situation;
- c. Date the problem was identified;
- d. Brief description of how the problem was identified, how the Operator learned of the situation, and date the Operator learned of the situation;
- e. Summary of corrective action taken or to be taken, including date initiated and date completed or expected to be completed; and
- f. Any measures to prevent reoccurrence of such an incident, including notice of whether PDMP modifications are required as a result of the incident.

7.0 Recordkeeping

The recordkeeping requirements vary depending on the type of Operator, and whether a Decision-maker is a small or large entity. Table 7-1 references applicable requirements for the range of Operators covered under this permit.

Table 7-1: Applicable Recordkeeping Requirements for Different Types of Operators.

PGP Part	Applicable Type of Operator
7.1	Recordkeeping: All Operators
7.2	Recordkeeping: All Operators who are For-Hire Applicators, as defined in Appendix A
7.3	Recordkeeping: Any Decision-maker required to submit an Annual Report and who is a small entity ¹
7.4	Recordkeeping: Any Decision-maker required to submit an Annual Report and who is a large entity ²
7.5	Retention of Records: All Operators
¹ Small Entity – As defined in Appendix A, is any (1) public entity that serves a population of 10,000 or less or (2) private enterprise that does not exceed the Small Business Administration size standard as identified at: www.sba.gov/contractingopportunities/officials/size/table/index.html . ² Large Entity - As defined in Appendix A, is any (1) public entity that serves a population greater than 10,000 or (2) private enterprise that exceeds the Small Business Administration size standard as identified at: www.sba.gov/contractingopportunities/officials/size/table/index.html .	

Operators must keep written records as required in this permit for all discharges covered under this permit. These records must be accurate and complete to demonstrate the Operator's compliance with the conditions of this permit. Operators may rely on records and documents developed for other obligations, such as requirements under FIFRA, and state or local pesticide programs, provided that all requirements of this permit are satisfied.

The Division recommends that all Decision-makers, who are or may be required to submit an Annual Report based on their annual treatment area, keep records of acres or linear miles treated for all applicable use patterns covered under this general permit. The records should be kept up-to-date to help Decision-makers determine if the annual treatment area threshold is met during any calendar year.

7.1 Recordkeeping For All Operators

All Operators must keep the following records:

- a. A copy of any Adverse Incident Reports (See Part 6.4.2);
- b. Rationale for any determination that reporting of an identified adverse incident is not required, consistent with allowances identified in Part 6.4.1.2; and
- c. A copy of any corrective action documentation (See Part 6.6).

7.2 Recordkeeping for All Operators who are For-Hire Applicators

Any Operator who is a For-Hire Applicator, as defined in Appendix A, must retain the following records:

- a. Documentation of equipment calibration; and
- b. Information on each treatment area to which pesticides are discharged, including:
 1. Description of each treatment area, including location and size (acres or linear feet) of treatment area and identification of any waters, either by name or by location, to which pesticide(s) are discharged;
 2. Pesticide use pattern(s) (i.e., mosquito and other flying insects, weed and algae, animal pest, or forest canopy);
 3. Target pest(s);
 4. Name of each pesticide product used including the EPA registration number;

5. Quantity of each pesticide product applied to each treatment area;
6. Pesticide application date(s); and
7. Whether or not visual monitoring was conducted during pesticide application and/or post-application and if not, why not and whether monitoring identified any possible or observable adverse incidents caused by application of pesticides.

7.3 Recordkeeping for Any Decision-maker Required to Submit an Annual Report and Who is a Small Entity

Any Decision- maker required to submit an Annual Report that is defined as a *small entity*, must retain the following records at the address used in the Annual Report:

- a. Copy of the Annual Report submitted to the Division, and any correspondence exchanged between the Decision-maker and the Division specific to coverage under this permit;
- b. Documentation of equipment calibration (only if Decision-maker is also the Applicator);
- c. Information on each treatment area to which pesticides are discharged, including:
 1. Description of treatment area, including location and size (acres or linear feet) of treatment area and identification of any surface Waters of the State, either by name or by location, to which pesticide(s) are discharged;
 2. Pesticide use pattern(s) (i.e., mosquito and other flying insects, weed and algae, animal pest, or forest canopy);
 3. Target pest(s) and explanation of need for pest control;
 4. Description of pest management measure(s) implemented prior to the first pesticide application;
 5. Company name and contact information for pesticide applicator;
 6. Name of each pesticide product used including the EPA registration number;
 7. Quantity of each pesticide product applied to each treatment area;
 8. Pesticide Application Start Date;
 9. Pesticide Application End Date; and
 10. Whether or not visual monitoring was conducted during pesticide application and/or post-application and if not, why not and whether monitoring identified any possible or observable adverse incidents caused by application of pesticides.

7.4 Recordkeeping for Any Decision-maker Required to Submit an Annual Report and Who is a Large Entity

Any Decision- maker required to submit an Annual Report that is defined as a *large entity* must retain the following records at the address provided in the Annual Report:

- a. Copy of the Annual Report submitted to the Division, and any correspondence exchanged between the Decision-maker and the Division specific to coverage under this permit;
- b. A copy of the PDMP, including any modifications made to the PDMP during the term of this permit;
- c. Documentation of equipment calibration (only if Decision-maker is also the Applicator);
- d. Information on each treatment area to which pesticides are discharged, including:
 1. Description of each treatment area, including location and size (acres or linear feet) of treatment area and identification of any surface Waters of the State, either by name or by location, to which pesticide(s) are discharged;
 2. Pesticide use pattern(s) (i.e., mosquito and other flying insects, weed and algae, animal pest, or forest canopy);
 3. Target pest(s) and explanation of need for pest control;
 4. Action Thresholds;
 5. Method and/or data used to determine that action threshold(s) has been met;

6. Description of pest management measure(s) implemented prior to the first pesticide application;
7. Company name and contact information for pesticide applicator;
8. Name of each pesticide product used including the EPA registration number;
9. Quantity of each pesticide product applied to each treatment area;
10. Pesticide application date(s); and
11. Whether or not visual monitoring was conducted during pesticide application and/or post-application and if not, why not and whether monitoring identified any possible or observable adverse incidents caused by application of pesticides.

7.5 Retention of Records for All Operators

All required records must be documented as soon as possible but no later than 14 days following completion of each pesticide application. Operators must retain any records required under this permit for at least 3 years after the Operator's coverage under this permit expires or is terminated. Operators must make available to the Division, including an authorized representative of the Division, all records kept under this permit upon request and provide copies of such records, upon request.

7.6 Annual Report

7.6.1 Decision-makers Required to Submit an Annual Report

Any "Decision-maker who is required to submit an Annual Report" as defined in Appendix A, is identified in Table 7-2.

For calculating annual treatment area totals for purposes of determining if an Annual Report must be submitted, see the definition for "annual treatment area threshold" in Appendix A of the permit.

An Annual Report provides notice to the Division that a Decision-maker is operating in accordance with this general permit for discharges to surface Waters of the State from pesticide application activities eligible for coverage under this permit. The Annual Report must at least include the following information:

- a. Decision-makers name and contact information;
- b. Contact person name, title, e-mail address (if any), and phone number; and
- c. For each treatment area, report the following information:
 - i. Description of treatment area, including location and size (acres or linear feet) of treatment area and identification of any Waters of the United States, either by name or by location, to which pesticide(s) are discharged;
 - ii. Pesticide use pattern(s) (i.e., mosquito and other flying insects, weed and algae, animal pest, or forest canopy) and target pest(s);
 - iii. Company name(s) and contact information for pesticide applicator(s), if different from the Decision-maker;
 - iv. Total amount of each pesticide product applied for the reporting year by the EPA registration number(s) and by application method (e.g., aerially by fixed-wing or rotary aircraft, broadcast spray, etc.);
 - v. Whether this pest control activity was addressed in the PDMP prior to pesticide application;
 - vi. If applicable, an annual report of any adverse incidents as a result of these treatment(s), for incidents, as described in Part 6.4.1; and

- vii. If applicable, description of any corrective action(s), including spill responses, resulting from pesticide application activities and the rationale for such action(s).

If required to submit an Annual Report, a Decision-maker must submit it in accordance with the deadlines in Part 7.6, Table 7-3. The Annual report must be signed in accordance with the signatory requirements included in Appendix B, Subsection B.11.

Applicators who are not also Decision-makers do not need to submit an Annual Report.

Table 7-2. Decision-makers Required to Submit an Annual Report

PGP Part/Pesticide Use	Which Decision-makers Must Submit an Annual Report	For Which Pesticide Application Activities?
All four use patterns identified in Part 1.1.1	Any Decision-maker with an eligible discharge to an Outstanding Water consistent with Part 1.1.2.2	Activities resulting in a discharge to an Outstanding Water
1.1.1(a) - Mosquito and Other Flying Insect Pest Control	Any Agency for which pest management for land resource stewardship is an integral part of the organization's operations.	All mosquito and other flying insect pest control activities resulting in a discharge to surface Waters of the State.
	Mosquito control districts, or similar pest control districts	All mosquito and other flying insect pest control activities resulting in a discharge surface Waters of the State.
	Local governments or other entities that exceed the annual treatment area threshold identified here	Adulticide treatment if more than 6,400 acres during a calendar year
1.1.1(b) - Weed and Algae Pest Control	Any Agency for which pest management for land resource stewardship is an integral part of the organization's operations.	All weed and algae pest control activities resulting in a discharge to surface Waters of the State.
	Irrigation and weed control districts, or similar pest control districts (see Definition of Irrigation Control District in Appendix A)	All weed and algae pest control activities resulting in a discharge to surface Waters of the State.
	Local governments or other entities that exceed the annual treatment area threshold identified here	Treatment during a calendar year if more than either: 20 linear miles OR 80 acres of water (i.e., surface area)
1.1.1(c) - Animal Pest Control	Any Agency for which pest management for land resource stewardship is an integral part of the organization's operations.	All animal pest control activities resulting in a discharge to surface Waters of the State.
	Local governments or other entities that exceed the annual treatment area threshold identified here	Treatment during a calendar year if more than either: 20 linear miles OR 80 acres of water (i.e., surface area)
1.1.1(d) - Forest Canopy Pest Control	Any Agency for which pest management for land resource stewardship is an integral part of the organization's operations.	All forest canopy pest control activities resulting in a discharge to surface Waters of the State.
	Local governments or other entities that exceed the annual treatment area threshold identified here	Treatment if more than 6,400 acres during a calendar year

7.6.2 Annual Report Due Date

For discharges authorized under this permit, Annual Reports are due to be received by the Division according to the following schedule.

Table 7-3. Annual Report Submittal Deadlines

Operator Type	Annual Report Submission Deadline
Any Decision-maker with a discharge in response to a Declared Pest Emergency for which that activity triggers the Annual Report requirement identified in Part 7.6.1	Annual Reports are due to the Division at least 30 days after beginning discharge.
Any Decision-maker that exceeds any annual treatment area threshold.	Annual Reports are due to the Division by February 1 st and shall summarize pesticide use for the previous calendar year.
Any Decision-maker otherwise required to submit an Annual Report as identified in Table 7-2.	Annual Reports are due to the Division by February 1 st and shall summarize pesticide use for the previous calendar year.

8.0 Division Contact Information and Mailing Addresses

All written correspondence concerning discharges covered under this permit and directed to the Division, must be sent to the addresses listed below in Part 8.1.

Note: If the Division notifies dischargers (either directly, by public notice, or by making information available on the Internet) of other reporting options that become available at a later date (e.g., electronic submission), Operators may take advantage of those options, in accordance with the instructions provided by the Division to satisfy the reporting requirements of this permit.

8.1 Division Notifications

Oral Notifications, during normal business hours shall be to:

Compliance Assurance Section – Industrial Compliance Program
Water Quality Control Division
Telephone: (303) 692-3500

Written notification shall be to:

Compliance Assurance Section – Industrial Compliance Program
Water Quality Control Division
Colorado Department of Public Health and Environment
WQCD-WQP-B2
4300 Cherry Creek Drive South
Denver, CO 80246-1530

Appendix A - Definitions, Abbreviations, and Acronyms

A.1 Definitions

Action Threshold – the point at which pest populations or environmental conditions necessitate that pest control action be taken based on economic, human health, aesthetic, or other effects.

An action threshold may be based on current and/or past environmental factors that are or have been demonstrated to be conducive to pest emergence and/or growth, as well as past and/or current pest presence. Action thresholds are those conditions that indicate both the need for control actions and the proper timing of such actions.

Active Ingredient – any substance (or group of structurally similar substances if specified by the Agency) that will prevent, destroy, repel or mitigate any pest, or that functions as a plant regulator, desiccant, or defoliant within the meaning of FIFRA sec. 2(a). [40 CFR 152.3]

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 such a pesticidal substance. [40 CFR 174.3]

Adverse Incident – means an unusual or unexpected incident that an Operator has observed upon inspection or of which the Operator otherwise become aware, in which:

- (1) There is evidence that a person or non-target organism has likely been exposed to a pesticide residue, and
- (2) The person or non-target organism suffered a toxic or adverse effect.

The phrase toxic or adverse effects includes effects that occur within surface 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 lying lethargically at water surface or in shallow water
- Fish that are listless or nonresponsive to disturbance
- Stunting, wilting, or desiccation of non-target submerged or emergent aquatic plants
- 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 from direct contact with or as a secondary effect from a discharge (e.g., sickness from consumption of plants or animals containing pesticides) to surface Waters of the State that are temporally and spatially related to exposure to a pesticide residue (e.g., vomiting, lethargy).

Annual Treatment Area Threshold – an area (in acres) or linear distance (in miles) in a calendar year to which a Decision-maker is authorizing and/or performing pesticide applications in that area for activities covered under this permit.

Applications of pesticides that are made to ditches that are dry at the time of application are not required to count those applications toward threshold limits, provided the following requirements are adhered to:

- Ditches must be dry at the time of application and the applicator must check weather patterns to ensure that a precipitation event is not forecast in the ensuing 48 hours.
- Treatments in ditches that are dry are restricted to spot spraying
- Only aquatic or terrestrial herbicides labeled for use on roadsides, right-of-ways or dry ditches, but that do not prohibit application to water, may be used.

For calculating annual treatment areas for Mosquitoes and Other Flying Insect Pest Control and Forest Canopy Pest for comparing with any threshold in Table 7-2, count each pesticide application activity to a treatment area (i.e., that area where a pesticide application is intended to provide pesticidal benefits within the pest management area) as a separate area treated. For example, applying pesticides three times a year to the same 3,000 acre site should be counted as 9,000 acres of treatment area for purposes of determining if such an application exceeds an annual treatment area threshold. The treatment area for these two pesticide use patterns is additive over the calendar year.

For calculating annual treatment areas for Weed and Algae Control and Animal Pest Control for comparing with any threshold in Table 7-2, calculations should include either the linear extent of or the surface area of waters for applications made to surface Waters of the State or at water's edge adjacent to surface Waters of the State. For calculating the annual treatment area, count each treatment area only once, regardless of the number of pesticide application activities performed on that area in a given year. Also, for linear features (e.g., a canal or ditch), use the length of the linear feature whether treating in or adjacent to the feature, regardless of the number of applications made to that feature during the calendar year. For example, whether treating the bank on one side of a ten-mile long ditch, banks on both sides of the ditch, and/or water in that ditch, the total treatment area is ten miles for purposes of determining if an Annual Report is required to be submitted. Additionally, if the same 10 miles area is treated more than once in a calendar year, the total area treated is still 10 miles for purposes of comparing with any threshold in Table 7-2. The treatment area for these two pesticide use patterns is not additive over the calendar year.

Applicator – any entity who performs the application of a pesticide or who has day-to-day control of the application (i.e., they are authorized to direct workers to carry out those activities) that results in a discharge to surface Waters of the State.

Biological Control Agents – these agents are organisms that can be introduced to Operator sites, such as herbivores, predators, parasites, and hyperparasites. [Source: US FWS IPM Guidance, 2004]

Biological Pesticides (also called biopesticides) – include microbial pesticides, biochemical pesticides and plant-incorporated protectants (PIP). Microbial pesticide means a microbial agent intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, that (1) is a 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)] Biochemical pesticide mean 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)(1)] Plant-incorporated protectant 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 production of such a pesticidal substance. It also includes any inert ingredient contained in the plant, or produce thereof. [40 CFR 174.3]

Chemical Pesticides – all pesticides not otherwise classified as biological pesticides.

Cultural Methods – manipulation of the habitat to increase pest mortality by making the habitat less suitable to the pest.

Decision-maker – any entity with control over the decision to perform pesticide applications including the ability to modify those decisions that result in a discharge to surface Waters of the State.

Decision-maker Who is Required to Submit an Annual Report – this includes any decision-maker listed in Table 7.2 who is required to submit an Annual Report regardless of the amount of treatment during a calendar year. Any decision-maker who met an annual treatment area threshold for the previous calendar year is considered a Decision-maker who is required to submit an annual report for the current calendar year. .

Declared Pest Emergency Situation – 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:
 - (i) Endangered species,
 - (ii) Threatened species,
 - (iii) Beneficial organisms, or
 - (iv) The environment.

Director – a Regional Administrator of the Environmental Protection Agency or an authorized representative. [Excerpted from 40 CFR 122.2]

Discharge – when used without qualification, means the "discharge of a pollutant." [40 CFR 122.2]

Discharge of a pollutant – any addition of any "pollutant" or combination of pollutants to "surface Waters of the State" from any "point source," or any addition of any pollutant or combination of pollutants to the water 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. This includes additions of pollutants into surface Waters of the State from: surface runoff that is collected or channeled by man; discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. [Excerpted from 40 CFR 122.2]

EPA Approved or Established Total Maximum Daily Loads (TMDLs) – "EPA Approved TMDLs" are those that are developed by a State and approved by EPA. "EPA Established TMDLs" are those that are issued by EPA.

Facility or Activity – any NPDES "point source" (including land or appurtenances thereto) that is subject to regulation under the NPDES program. [40 CFR 122.2]

Federal Facility – any buildings, installations, structures, land, public works, equipment, aircraft, vessels, and other vehicles and property, owned, operated, or leased by, or constructed or manufactured for the purpose of leasing to, the federal government.

For-Hire Applicator – includes persons who make contractual pesticide applications for which they or their employer receives compensation (e.g., lawn care firms, pest control companies).

Impaired Water (or "Water Quality Impaired Water" or "Water Quality Limited Segment") – a water is impaired for purposes of this permit if it has been identified by a State, Tribe or EPA pursuant to Section 303 of the Clean Water Act as not meeting applicable State or Tribal water quality standards (these waters are called "water quality limited segments" under 40 CFR 130.2(j)). Impaired waters include both waters with approved or established TMDLs, and those for which a TMDL has not yet been approved or established, and waters for which development of a TMDL is not necessary.

Indian Country – (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights- of-way running through the reservation; (b) all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. This definition includes all land held in trust for an Indian tribe. [18 U.S.C. 1151; 40 CFR 122.2]

Inert Ingredient – any substance (or group of structurally similar substances if designated by the Agency), other than an active ingredient, that is intentionally included in a pesticide product. [40 CFR 152.3] 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. [40 CFR 174.3]

Irrigation Control District – Any irrigation district (which may or may not be organized as special districts under Colorado law), ditch company (including mutual ditch companies, unincorporated ditch companies), or other similar private entity

that supplies irrigation water, which also operates a system of irrigation ditches or canals greater than seven miles in length. 'Irrigation control district' does not include end users of irrigation water (i.e. farmers) or carriage right ditches, drainage ditches, or similar intermediate irrigation delivery systems that are under seven miles in length, or do not directly contribute surface water return flows to Waters of the State.

Large Entity - any entity that is not a "small entity."

Mechanical/Physical Methods - mechanical tools or physical alterations of the environment, for pest prevention or removal.

Minimize – to reduce and/or eliminate pesticide discharges to surface Waters of the State through the use of Pest Management Measures to the extent technologically available and economically practicable and achievable.

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.

Operator – for the purpose of this permit, means any entity associated with the application of pesticides which results in a discharge to surface Waters of the State that meets either of the following two criteria:

- (i) any entity who performs the application of a pesticide or who has day-to-day control of the application (i.e., they are authorized to direct workers to carry out those activities); or
- (ii) any entity with control over the decision to perform pesticide applications including the ability to modify those decisions.

Outstanding Waters – for antidegradation purposes, pursuant to 40 CFR 131.12(a)(3), Outstanding waters are identified by States or Tribes as having high quality waters constituting an Outstanding National Resource Water (ONRW), which may include waters of National Parks and State Parks, wildlife refuges, and waters of exceptional recreational or ecological significance.

Person – an individual, association, partnership, corporation, municipality, State or Federal agency, or an agent or employee thereof.

Pest – Consistent with 40 CFR 152.5, any organism under circumstances that make it deleterious to man or the environment, if it is:

- (a) Any vertebrate animal other than man;
- (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 man or other living animals;
- (c) Any plant growing where not wanted, including any moss, alga, 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 man or other living animals and those on or in processed food or processed animal feed, beverages, drugs (as defined in FFDCa sec. 201(g)(1)) and cosmetics (as defined in FFDCa sec. 201(i)).

Pest Management Area – The area of land, including any water, for which an Operator has responsibility and is authorized to conduct pest management activities as covered by this permit (e.g., for an Operator who is a mosquito control district, the pest management area is the total area of the district).

Pest Management Measure – any practice used to meet the effluent limitations that comply with manufacturer specifications, industry standards and recommended industry practices related to the application of pesticides, relevant legal requirements and other provisions that a prudent Operator would implement to reduce and/or eliminate pesticide discharges to waters of the United States. In Colorado, Pest Management Measures are measures taken as part of an Integrated Pest Management plan.

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 Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(w)), that has been determined by the Secretary

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 such Act (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 Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321). For purposes of the preceding sentence, the term “critical device” includes any device that 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)].

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).

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 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.”

Pesticide Product – a pesticide in the particular form (including composition, packaging, and labeling) in which 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.

Pesticide Research and Development – Activities undertaken on a systematic basis to gain new knowledge (research) and/or the application of research findings or other scientific knowledge for the creation of new or significantly improved products or processes (experimental development).

Pesticide Residue – includes that portion of a pesticide application that is discharged from a point source to Waters of the US and no longer provides pesticidal benefits. It also includes any degradates of the pesticide.

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 stormwater runoff. [40 CFR 122.2]

Pollutant – dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. For purposes 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.” [Excerpted from 40 CFR 122.2]

Small Entity - any (1) private enterprise that does not exceed the Small Business Administration size standard as identified at 13 CFR 121.201, or (2) local government that serves a population of 10,000 or less.

State - means any of the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands.

Surface Waters of the State- Surface Waters of the State of Colorado means any and all surface and subsurface waters which are contained in or flow in or through this State, but does not include waters in sewage systems, waters in treatment works of disposal systems, waters in potable water distribution systems, and all water withdrawn for use until use and treatment have been completed.

Target Pest – the organism(s) toward which pest management measures are being directed.

Total Maximum Daily Loads (TMDLs) – a TMDL is a calculation of the maximum amount of a pollutant that a water body can receive and still meet water quality standards, and an allocation of that amount to the pollutant's sources. A TMDL includes wasteload allocations (WLAs) for point source discharges; load allocations (LAs) for nonpoint sources and/or natural background, and must include a margin of safety (MOS) and account for seasonal variations. [See section 303(d) of the Clean Water Act and 40 CFR 130.2 and 130.7]

Treatment Area – the entire area, whether over land or water, where a pesticide application is intended to provide pesticidal benefits within the pest management area. In some instances, the treatment area will be larger than the area where pesticides are actually applied. For example, the treatment area for a stationary drip treatment into a canal includes the entire width and length of the canal over which the pesticide is intended to control weeds. Similarly, the treatment area for a lake or marine area is the water surface area where the application is intended to provide pesticidal benefits.

Water Quality Impaired – See “Impaired Water”.

Water Quality Standards – A water quality standard defines the water quality goals of a water body, or portion thereof, by designating the use or uses to be made of the water and by setting criteria necessary to protect the uses. Water quality standards also include an antidegradation policy and implementation procedures. States, Tribes and EPA adopt water quality standards to protect public health or welfare, enhance the quality of water and serve the purposes of the Clean Water Act (See CWA sections 101(a)2 and 303(c)). Where necessary, the Division has the authority to promulgate state specific water quality standards.

Wetlands – means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. [40 CFR 122.2]

A.2 Abbreviations and Acronyms

CDPS	Colorado Discharge Permit System
CERCLA	Comprehensive Environmental Response, Compensation and Liability Act
CWA	Clean Water Act (or the Federal Water Pollution Control Act, 33 U.S.C. §1251 <i>et seq</i>)
EPA	U. S. Environmental Protection Agency
ESA	Endangered Species Act
FIFRA	Federal Insecticide, Fungicide, and Rodenticide Act, 7 USC 136 <i>et seq</i> .
FWS	U. S. Fish and Wildlife Service
IPM	Integrated Pest Management
NEPA	National Environmental Policy Act
NOT	Notice of Termination
NPDES	National Pollutant Discharge Elimination System
PDMP	Pesticide Discharge Management Plan
SARA	Superfund Amendments and Reauthorization Act
TMDL	Total Maximum Daily Load
U.S.C.	United States Code
WQS	Water Quality Standard

Appendix B - Standard Permit Conditions

Standard permit conditions in Appendix B generally are consistent with the permit provisions required by Regulation 61 and 40 CFR 122.41 but are modified to reflect the nature of discharges covered under this general permit.

B.1 Duty to Comply

Operators must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the CWA and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification of permit conditions.

Operators must comply with effluent standards or prohibitions established under CWA section 307(a) for toxic pollutants within the time provided in the regulations that establish these standards, even if the permit has not yet been modified to incorporate the requirement.

B.2 Duty to Reapply

This permit does not have an application requirement. Therefore the standard provisions regarding a duty to reapply are not applicable to this permit at this time.

B.3 Need to Halt or Reduce Activity Not a Defense

It will not be a defense for an Operator in an enforcement action to say it would have been necessary to halt or reduce the permitted activity to maintain compliance with the conditions of this permit.

B.4 Duty to Mitigate

Operators must 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.

B.5 Proper Operation and Maintenance

Operators must at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which the Operators installs or uses 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 the Operator installs only when the operation is necessary to achieve compliance with the conditions of this permit.

B.6 Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. An Operator's filing of a request for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

B.7 Property Rights

This permit does not convey any property rights of any sort, or any exclusive privileges.

B.8 Duty to Provide Information

Operators must furnish to the Division or an authorized representative (including an authorized contractor acting as a representative of the Division), within a reasonable time, any information that the Division may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. Operators must also furnish to the Division or an authorized representative upon request, copies of records required to be kept by this permit.

B.9 Inspection and Entry

Operators must allow the Division, or an authorized representative (including an authorized contractor acting as a representative of the Division), upon presentation of credentials and other documents as may be required by law, to do the following:

- A. Enter upon an Operator's premises where a regulated activity is located or conducted, or where records must be kept under the conditions of this permit;
- B. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- C. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
- D. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the CWA, any substances or parameters at any location.

B.10 Monitoring and Records

- A. Operators must retain records of all reports required by this permit, and records of all data used to complete the Annual Report for this permit, for a period of at least 3 years from the date the permit expires or the date the Operator's authorization is terminated. That period may be extended by request of the Division at any time.

[As written, this permit does not require Operators to perform the type of sample collection and monitoring described in the following sections of this appendix, B.10.B through B.10.F. However, where the Division requires any monitoring, the sample collection and monitoring requirements in B.10.B through B.10.E of this appendix apply to those Operators that collect samples.]

- B. Samples and measurements taken for the purpose of monitoring must be representative of the volume and nature of the monitored activity.
- C. Operators must retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, for a period of at least 3 years from the date the permit expires or the date the Operator's authorization is terminated. This period may be extended by request of the Division at any time.
- D. Records of monitoring information must include the following:
 - 1. The date, exact place, and time of sampling or measurements;
 - 2. The individual(s) who performed the sampling or measurements;
 - 3. The date(s) analyses were performed
 - 4. The individual(s) who performed the analyses;
 - 5. The analytical techniques or methods used; and
 - 6. The results of such analyses
- E. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in the permit.

B.11 Signatory Requirements

- A. All Annual Reports and PDMPs must be signed as follows, unless delegated in accordance with the requirements of Section B.11.B below:
 - 1. For a corporation: By a responsible corporate officer. For the purpose of this subsection, a responsible corporate officer means: (i) 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 (ii) the manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions that govern the operation of the regulated activity including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure 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.
 - 2. For a partnership or sole proprietorship: By a general partner or the proprietor, respectively; or

3. For a municipality, state, federal, or other public agency: By either a principal executive officer or ranking elected official. For purposes of this subsection, a principal executive officer of a federal agency includes (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit or the agency (e.g., Regional Administrator of EPA).
- B. A person identified in Section B.11.A. may authorize a representative to sign PDMPs, annual reports, or corrective actions taken only if the following are true:
1. The authorization is made in writing by the person described in Appendix B, Subsection B.11.A;
 2. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated 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
 3. The signed and dated written authorization is included in the PDMP. A copy must be submitted to the Division, if requested.
- C. All other changes to the PDMP, and other compliance documentation required under this permit, must be signed and dated by the person preparing the change or documentation.
- D. Changes to Authorization. This permit does not have an application requirement and as such operator – specific authorizations will not be administered by the Division. Therefore the standard provision regarding changes to an authorization do not apply to this permit at this time.
- E. Any person signing documents in accordance with Appendix B, Subsections B.11.A or B.11.B above must include the following certification:
- “I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information contained therein. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information contained 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.”
- F. The CWA provides that 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 permit, including monitoring reports or reports of compliance or noncompliance will, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

B.12 Reporting Requirements

- A. Anticipated noncompliance. Operators must give advance notice to the Division of any planned changes in the permitted activity which may result in noncompliance with permit requirements.
- B. Transfers. Since this permit provides automatic authorization to operators eligible for coverage under this permit, operations can be transferred to another entity automatically, without notification to the Division.
- C. Pesticide Monitoring Reports. This permit does not require Operators to report monitoring results routinely; however, the Division may, require certain Operators to monitor and report such results. In such instances, provisions of B.12.C apply.
1. Monitoring data must be submitted to the Division.
 2. If an Operator monitors any pollutant more frequently than required using test procedures approved under 40 CFR Part 136 or as otherwise specified by the Division, the results of this monitoring must be included in reporting of monitoring data submitted to the Division.
 3. Calculations for all limitations that require averaging of measurements must use an arithmetic mean unless otherwise specified by the Division.
- D. Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit must be submitted

no later than 14 days following each schedule date.

E. Twenty-four hour reporting.

1. In addition to adverse incident and spill reporting requirements in Parts 6.4 and 6.5, respectively, Operators must report any noncompliance which may endanger health or the environment. Any information must be provided orally within 24 hours from the time the Operator becomes aware of the circumstances. A written submission must also be provided within 5 days of the time the Operator becomes aware of the circumstances. The written submission must contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.
2. For purposes of this permit, Operators must submit a 24-hour report under this section for any upset, as defined in Appendix B, Subsection B.13, which exceeds any effluent limitation in the permit.
3. The Division may waive the written report on a case-by-case basis for reports under Appendix B, Subsection B.12.E.2 if the oral report has been received within 24 hours. F. Other noncompliance. Operators must report all instances of noncompliance not reported under Appendix B, Subsections 12.A, 12.D, and 12.E, at the time any applicable annual or monitoring reports are submitted. The reports must contain the information listed in Appendix B, Subsection 12.E.1.

G. Other information. Where an Operator becomes aware of its failure to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Permitting Authority, the Operator must promptly submit such facts or information.

B.13 Upset

- A. Definition. Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the Operator's reasonable control. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation. See 40 CFR 122.41(n)(1).
- B. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of Appendix B, Subsection B.13.C are met. Any determination made during administrative review of claims that noncompliance was caused by an upset, and before an action for noncompliance, is not final administrative action subject to judicial review. See 40 CFR 122.41(n)(2).
- C. Conditions necessary for a demonstration of upset. See 40 CFR 122.41(n)(3). An Operator who wishes to establish the affirmative defense for an upset must demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that
 1. An upset occurred and that the Operator can identify the cause(s) of the upset;
 2. The permitted activity was at the time being properly operated; and
 3. The Operator submitted notice of the upset as required in Appendix B, Subsection B.12.E.2 (24 hour notice).
 4. The Operator complied with any remedial measures required under Appendix B, Subsection B.4.
- D. Burden of proof. In any enforcement proceeding, the Operator, as the one seeking to establish the occurrence of an upset, has the burden of proof. See 40 CFR 122.41(n)(4)