

FINAL REGULATIONS

9.8 Regulations Governing Discharges from the Application of Pesticides to Waters of the State

9.8.1 Authority

These regulations are promulgated pursuant to the authority provided by 3 **Del. C.** §2200 et.al. and 7 **Del. C.** §6000 et.al, and 40 CFR Part 122.

9.8.2 Definitions

The following words and terms, when used in this Subsection, shall have the following meaning unless the context clearly indicates otherwise:

“Action Threshold” means the point at which pest populations or environmental conditions cannot be tolerated necessitating 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” means any substance (or group of structurally similar substances) 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 becomes 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, directly as a result of pesticide residue. The phrase “toxic or adverse effects” includes effects that occur within Waters of the State on non-target plants, fish or wildlife that are unusual or unexpected (e.g., effects are to organisms not otherwise described on the pesticide product label or otherwise not expected to be present), 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; or other dead or visibly distressed non-target aquatic organisms (amphibians, turtles, invertebrates, etc.)

The phrase, toxic or adverse effects, also includes any adverse effects to humans or domesticated animals that occur either from direct contact with or as a secondary effect from a discharge to Waters of the State that are temporally and spatially related to exposure to a pesticide residue (e.g., skin rashes, vomiting, lethargy, sickness from consumption of plants or animals containing pesticides).

“Agricultural land management practices” means those methods and procedures generally accepted by the Conservation Districts and used in the cultivation of land in order to further crop and livestock production and conservation of related soil and water resources.

“Annual Treatment Threshold” means an area (in acres) or linear distance (in miles) in a calendar year to which an Operator is authorizing and/or performing pesticide applications as identified below:

| Table 1. Annual Treatment Thresholds | |
|---|--|
| Pesticide Use | Annual Threshold |
| Mosquitoes and Other Flying Insect Pest Control (larvaecide and adulticide) | 6400 acres of treatment area cumulative |
| Weed and Algae Pest Control | 20 linear miles or 80 acres of water (i.e. surface area) |
| Animal Pest Control | 20 linear miles or 80 acres of water (i.e. surface area) |
| Forest Canopy Pest Control | 6400 acres of treatment area cumulative |

For calculating annual treatment areas for Mosquitoes and Other Flying Insect Pest Control and Forest Canopy Pest for comparing with any threshold in Table 1, 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 1, calculations should include either the linear extent of or the surface area of waters for applications made to Waters of the State or at water's edge adjacent to 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 such an application exceeds an annual treatment area threshold. 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 1. The treatment area for these two pesticide use patterns is not additive over the calendar year.

“Best Available Technology (BAT)” is the "best" or most advanced and reasonably cost-effective treatment technology, control measures and practices, including pollution prevention, available to prevent, manage, reduce or remove pollutants taking the following seven factors into account:

- (1) The age of equipment and facilities involved;
- (2) The process or processes employed;
- (3) The engineering aspects of applying the various technologies, types of controls or practices;
- (4) Process or production changes;
- (5) Pollution prevention measures (e.g. raw material substitutions, equipment modification, production scheduling, inventory control, housekeeping measures and in-process recycling that returns wastes directly to production as raw materials);
- (6) The cost of achieving such pollutant removal(s) or effluent reduction(s); and
- (7) Non-water quality impacts (e.g. energy requirements).

“Best Management Practices (BMPs)” means schedules of activities, prohibition of practices, maintenance procedures, and other management practices or measures to prevent or reduce the discharge of pollutants to Waters of the State. BMPs include the following, among other practices and measures: structural and non-structural controls; treatment requirements; and operating procedures and practices to control site runoff, or spillage, or leaks, or drainage from raw materials storage.

“Biological Control Agents” mean those agents that 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)” includes microbial pesticides, biochemical pesticides and plant-incorporated protectants (PIP).

Microbial pesticide means a microbial agent intended to prevent, destroy, repel, or mitigate any pest, or intended for use as a plant regulator, defoliant, or desiccant, that:

- (1) Is a eukaryotic microorganism including, but not limited to, protozoa, algae, and fungi;
- (2) Is a prokaryotic 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 means a pesticide that:

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

“Chemical Pesticides” means all pesticides not otherwise classified as biological pesticides.

“Cultural Methods” means manipulation of the habitat to increase pest mortality by making the habitat less suitable to the pest.

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

- (1) Significant risk to human health;
- (2) Significant economic loss; or,
- (3) Significant risk to endangered species, threatened species, beneficial organisms, or the environment.

“Department” means the State of Delaware Department of Natural Resources and Environmental Control.

“Discharge” when used without qualification, means the "discharge of a pollutant."

“Discharge of a Pollutant” means the addition of any pollutant, or combination of pollutants, to state waters or the contiguous zone, or the ocean, from any source or activity other than a vessel or other floating craft when being used as a means of transportation and in compliance with Section 312 of the Act. This definition includes additions of pollutants into State waters from: surface runoff that is collected or channeled by man; discharges through pipes, sewers, or other conveyances which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into a treatment works other than a publicly owned treatment works (POTW).

“Facility” means any NPDES “point source” (including land or appurtenances thereto) that is subject to regulation under the NPDES program. [40 CFR § 122.2]

“Federal Facility” means 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.

“FIFRA” means the Federal Insecticide, Fungicide and Rodenticide Act (7 USC § 136 et seq.) as amended.

“For-Hire” means an individual or company that has been hired to apply pesticides and 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”) means a water is impaired for purposes of this Subsection if it has been identified by the Department as not meeting applicable State 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.

“Inert Ingredient” means any substance (or group of structurally similar substances), other than an active ingredient, that is intentionally included in a pesticide product. Inert ingredient also means any substance, such as a selectable marker, other than the active ingredient, where the substance is used to confirm or ensure the presence of the active ingredient, and includes the genetic material necessary for the production of the substance, provided that genetic material is intentionally introduced into a living plant in addition to the active ingredient.

“Integrated Pest Management (IPM)” means an effective and environmentally sensitive approach to pest management that relies on a combination of common-sense practices. IPM uses current, comprehensive information on the life cycles of pests and their interaction with the environment. This information, in combination with available pest control methods, is used to manage pest damage by the most economical means, and with the least possible hazard to people, property, and the environment.

“Large Entity” means any:

- (1) Public entity that serves a population greater than 10,000 within the State of Delaware; or,
- (2) Private enterprise that exceeds the Small Business Administration size standard as identified at 13 CFR § 121.201 (size standards set by North American Industry Classification System codes, which vary by industry type) for applications within the State of Delaware; or,
- (3) Any State of Delaware employee who performs any pesticide application under the realm of this Subsection as part of their job duties.

“Mechanical/Physical Methods” means mechanical tools or physical alterations of the environment for pest prevention or removal.

“Minimize” means to reduce and/or eliminate pesticide discharges to Waters of the State through the use of “control measures” to the extent technologically available and economically practicable and achievable.

“Non-target Organisms” means the plant and animal hosts of the target species,

the natural enemies of the target species and other plants and animals, including vertebrates, living in or near the community that are not the target of the pesticide.

“Operator” means any entity (individual, association, partnership, corporation, municipality, State or Federal agency, or an agent or employee thereof) associated with the application of pesticides which results in a discharge to Waters of the State.

“Operator” includes:

- (1) Any entity which performs the application of a pesticide; or,
- (2) Any entity which has day-to-day control of the application (i.e., they are authorized to direct workers for hire to carry out those activities).

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

“Pest” means any organism under circumstances that make it deleterious to man or the environment, if it is:

- (1) 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, and any vertebrate animal other than man;
- (2) 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,
- (3) 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)).

“Pesticide Discharge Management Plan (PDMP)” means a document that identifies the control measures (including inspections, maintenance, monitoring, and corrective action) used to comply with the applicable requirements of this Subsection and documents its implementation.

“Pest Management Area” means the area of land, including any water, for which an Operator has responsibility for and is authorized to conduct pest management activities as covered by this Subsection (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” means any practice used to meet the effluent limitations outlined herein that complies with manufacturer’s specifications as required under FIFRA, 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 State.

“Pesticide” means:

- (1) any substance or mixture of substances intended to prevent, destroy, repel, or mitigate 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 is 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).

The term “pesticide” is used when referring to the “pesticide, as applied.” When referring to the chemical in the pesticide product with pesticidal qualities, the term “active ingredient” is used.

“Pesticide Product” means 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” means 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 State and no longer provides pesticidal benefits. It also includes any degradates of the pesticide.

“Pesticide Use Pattern” means the method and type of pest that is controlled, and includes the following: mosquito and other flying insect control (adulticide and larvaecide); weed and algae control; animal pest control; and forest canopy pest control.

“Point Source” means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, 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.

“Pollutant” means dredged spoil and other dredged materials, fill material,, solid waste,

incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, hydrocarbons, oil, product chemicals, 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."

"Secretary" means the Secretary of the State of Delaware Department of Natural Resources and Environmental Control or his duly authorized designee.

"State" means the State of Delaware.

"Target Pest" means the organism(s) toward which Pest Management Measures are being directed.

"Tier 3 Waters" means for anti-degradation purposes, pursuant to 40 CFR § 131.12(a)(3), Tier 3 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.

"Total Maximum Daily Loads (TMDLs)" means the amount of a given pollutant that may be discharged to a waterbody from point, nonpoint and natural background sources and still allow attainment or maintenance of the applicable narrative and numerical water quality standards. A "TMDL" is the sum of the individual Waste Load Allocations or WLAs for point sources and load allocations or LAs for nonpoint sources of pollution and natural background. A "TMDL" may include a reasonable margin of safety (MOS) to account for uncertainties regarding the relationship between mass loading and resulting water quality. In simplistic terms, a "TMDL" attempts to match the strength, location and timing of pollution sources within a watershed with the inherent ability of the receiving water to assimilate the pollutant without adverse impact.

"Treatment Area" means the entire area, whether over land or water, where a pesticide application is intended to provide pest control 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 pest control benefits.

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based 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.

"Waters of the State" or "State Waters" means all water, on the surface and under the ground, wholly or partially within, or bordering the State, or within its jurisdiction including but not limited to:

- (1) waters which are subject to the ebb and flow of the tide including, but not limited to, estuaries, bays and the Atlantic Ocean;
- (2) all interstate waters, including interstate wetlands;
- (3) all other Waters of the State, such as lakes, rivers, streams (including intermittent and ephemeral streams), drainage ditches, tax ditches, creeks, mudflats, sand flats, wetlands, sloughs, or natural or impounded ponds;
- (4) all impoundments of waters otherwise defined as Waters of the State under this definition; and
- (5) wetlands adjacent to waters (other than waters that are themselves wetlands) identified in (1) – (4).

Waste and stormwater treatment systems or waste storage structures including, but not limited to, treatment ponds or lagoons designed to meet the requirements of the Clean Water Act (other than cooling ponds which otherwise meet the requirements of this definition) are not “State Waters” or “Waters of the State.”

“**Water Quality Impaired**” See ‘Impaired Water’.

“**Water Quality Standards**” means any rule or limit established by the Secretary which consists of a designated use or uses for Waters of the State and the water quality criteria for such waters based upon such designated uses. Water quality standards also include an antidegradation policy and implementation procedures.

“**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. Wetland areas are as delineated under and through 7 **Del.C.** Ch. 66 and the “Corps of Engineers Wetlands Delineation Manual”, dated January, 1987.

9.8.3 Coverage

9.8.3.1 This Subsection applies to all Operators who: (1) apply biological pesticides or chemical pesticides that leave a residue (hereinafter collectively “pesticides”) for Pesticide Use Patterns described below; and (2) do so directly to Waters of the State or indirectly to systems that discharge into Waters of the State (i.e. stormwater wet ponds), and excludes pesticide applications for Federal Facilities.

9.8.3.2 Pesticide Use Patterns Covered Under Subsection

This Subsection applies to Operators who fall under any one of the following pesticide use patterns: Mosquito and Other Flying Insect Pest Control (adulticide and larvaecide); Weed and Algae Control; Animal Pest Control; or Forest Canopy Pest Control.

9.8.3.2.1 Mosquito and Other Flying Insect Pest Control (Adulticide and Larvaecide)

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.

9.8.3.2.2 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.

9.8.3.2.3 Animal Pest Control

To control animal pests in water and at water's edge. Animal pests in this use category include fish, lampreys, insects, mollusks, and pathogens.

9.8.3.2.4 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.

9.8.3.3 Coverage under this Subsection shall be granted for a duration of five (5) years (refer to 9.8.6 for resubmission requirements) unless determined otherwise by the Department. In no case shall coverage be valid for more than five (5) years.

9.8.3.4 For those Operators who exceed Annual Treatment Thresholds, those Operators are considered to be temporarily covered under this Subsection upon the NOI being received by the Department. If the application is approved, final coverage will be granted after NOI review by the Department. The Department may require application resubmission at any time if the NOI is deemed inadequate or incomplete.

9.8.4 Revocation

Permit coverage may be modified in whole or in part, revoked and reissued, or terminated by the Department during its term for cause as specified herein:

9.8.4.1 If the pesticide proposed for use on the NOI form is not registered for use under that specific Pesticide Use Pattern as defined in 9.8.2;

9.8.4.2 Violation of any term or condition of permit coverage, as contained herein;

9.8.4.3 Failure of the permittee to disclose fully all relevant facts in the NOI application or during the permit issuance process or the permittee's misrepresentation of any relevant facts at any time;

9.8.4.4 Failure to notify the Department by resubmission of a new NOI upon change in product use or substantial alterations or additions to the permitted activity;

- 9.8.4.5 A change in any condition that requires either a temporary or a permanent reduction or elimination of any discharge controlled by the permit (e.g., the promulgation of any applicable effluent standard or prohibition under the Clean Water Act, any change in State law that requires the reduction or elimination of the discharge, revisions to state Water Quality Standards or TMDLs etc.); or,
- 9.8.4.6 Information indicating that the permitted discharge poses a threat to human health or the environment.

9.8.5 **Exclusions and Limitations on Coverage**

9.8.5.1 **Exclusions**

Any introduction of pollutants from non-point source agricultural and silvicultural activities, including storm water runoff from orchards, cultivated crops, pastures and forest lands do not require a NPDES permit, but not discharges from but not discharges from aquaculture or aquatic animal production facilities that produce 2,000 lbs or more harvest weight fish or aquatic animals per year, discharges to aquaculture projects, discharges from concentrated animal feeding operations (CAFOs) or discharges from silvicultural point sources (**7 Del. Admin. C. §7201-6.3.1.6**).

9.8.5.2 **Limitations on Coverage**

9.8.5.2.1 **Discharges to Water Quality Impaired Waters**

The Operator is not eligible for coverage for any discharges from a pesticide application to Waters of the State if the water is identified as impaired by that pesticide or its degradates. If the discharge is not eligible because the water is listed as impaired for that specific pesticide, but there is evidence that shows the water is no longer impaired, this information may be submitted to the Department with a request that coverage be allowed.

9.8.5.2.2 **Discharges to Waters Designated as Tier 3 for Anti-degradation Purposes**

The Operator is not eligible for coverage for discharges from a pesticide application to waters designated by the Department as Tier 3 for anti-degradation purposes.

9.8.5.2.3 **Discharges Currently or Previously Covered by another Permit**

Discharges covered by another National Pollutant Discharge Elimination System (NPDES) permit shall apply for permit

coverage under this Subsection separately.

9.8.5.2.4 **Discharges Covered Under the Pesticides General Permit (federal lands)**

The Operator is not eligible for coverage for pesticide applications taking place on federal lands or federal facilities covered under NPDES Pesticides General Permit administered by EPA.

9.8.6 **Notice of Intent (NOI)**

- 9.8.6.1 All Operators (as defined in 9.8.2) regulated under this Subsection that fall below Annual Treatment Thresholds (as defined in 9.8.2) are automatically covered under this Subsection and need not submit a NOI.
- 9.8.6.2 Operators (as defined in 9.8.2) regulated under this Subsection that exceed the Annual Treatment Thresholds (as defined in 9.8.2) will be required to submit a complete and accurate NOI within ninety (90) days of promulgation. Only one Operator, not both (either the entity who performed the application of the pesticide or the entity who has day-to-day control of the application), shall apply for permit coverage for any given area.
- 9.8.6.3 All NOI submissions must follow Signatory Requirements as described in 9.8.14, and must be sent to the address as provided in 9.8.15, unless otherwise instructed.
- 9.8.6.4 Failure to submit a complete and accurate form will result in the facility being denied coverage.
- 9.8.6.5 Persons who discharge pesticides according to 9.8.3 who fail to notify the Department of their intent to be covered under this Subsection, or who discharge to waters of the State without an individual NPDES permit, are in violation of 7 **Del.C.** Ch. 60 and the federal Clean Water Act and may be subject to penalties.
- 9.8.6.6 Any Operator who has submitted a complete and accurate NOI under the *Emergency Regulations Governing Discharges from the Application of Pesticides to Waters of the State* will not be required to resubmit, and will fall under requirement per the final promulgated regulations herein.
- 9.8.6.7 Any person wishing to extend or renew coverage under this Subsection must submit a new NOI Form not less than sixty (60) days prior to the permit expiration date. In the event that the permittee submits a timely request to extend or renew existing coverage, and the Department through no fault of the permittee, is unable to make a final determination on the request before the expiration date of coverage, the terms and conditions of the existing coverage

shall be continued and remain fully effective and enforceable until the Department makes a final determination on the request.

9.8.6.8 A new NOI must be submitted to the Department under the following circumstances:

9.8.6.8.1 An Operator who has previously submitted an NOI and who undergoes a name change or change in ownership must submit a new NOI to the Department no later than (30) days after this change.

9.8.6.8.2 A change in Operator who was not listed on the original NOI must submit a new NOI to the Department no later than (30) days after this change.

9.8.6.8.3 Major changes in operations including the change of Operator (not change in employees under Operator), change in active ingredients (not change in specific product name), or instances where the average acres or linear miles treated varies by more than 15% of estimates as indicated on the original NOI will require NOI resubmission within thirty (30) days after such changes have occurred.

9.8.7 **Notice of Termination (NOT)**

9.8.7.1 Coverage under this Subsection continues until a completed Notice of Termination (NOT) form has been submitted to, and formally approved by, the Department, in instances when an NOI was originally submitted to the Department. The NOT shall be submitted on a form provided by the Department. Failure to submit a complete and accurate NOT form will result in the facility being denied termination under this Subsection.

9.8.7.2 All NOT submissions must follow Signatory Requirements as described in 9.8.14, and must be sent to the address as provided in 9.8.15.

9.8.7.3 For Operators who submitted a NOI under 9.8.6, the NOT Form shall be submitted to the Department within 30 days of any of the following events:

9.8.7.3.1 A new owner or Operator has taken over responsibility of the original Operator;

9.8.7.3.2 Operators have ceased applying and, therefore, are no longer discharging; or

9.8.7.3.3 Coverage under an individual permit has been granted by the Department.

9.8.8 Individual NPDES Permit Coverage

9.8.8.1 Requirements for Coverage under an Individual Permit

The Department may require the Operator to apply for and/or obtain authorization to discharge under an individual NPDES permit in accordance with Section 6.0 of the "Regulations Governing the Control of Water Pollution." If the Department requires Operator to apply for an individual NPDES permit, the Department will notify the Operator in writing that a permit application is required. This notification will include a brief statement of the reasons for this decision and will provide application information. In addition, if the Operator's discharges are authorized under this Subsection, the notice will set a deadline to file the permit application, and will include a statement that on the effective date of the individual NPDES permit, coverage under this Subsection will terminate. The Department may grant additional time to submit the application if the Operator submits a request setting forth reasonable grounds for additional time. If the Operator is covered and fails to submit an individual NPDES permit application as required by the Department, then the applicability of this permit to the Operator is terminated at the end of the day specified by the Department as the deadline for application submittal. The Department may take enforcement action for any unpermitted discharge or violation of any permit requirement.

9.8.8.2 Request for Coverage under an Individual NPDES Permit

The Operator may apply for an individual permit. In such a case, the Operator must submit an individual permit application in accordance with the requirements of Section 6.0 of the "Regulations Governing the Control of Water Pollution", with reasons supporting the request, to the Department. The request may be granted by issuance of an individual permit if the Operator's reasons are warranted.

When an individual NPDES permit is issued to the Operator to discharge a pollutant to Waters of the State as a result of a pesticide application, the Operator's authorization to discharge under this Subsection is terminated on the effective date of the individual permit.

9.8.9 Operator's Responsibilities (All Operators)

9.8.9.1 Requirement to Use Best Management Practices

Operators are required to comply with all other applicable federal or state laws and regulations that pertain to application of pesticides.

If an Operator's discharge of pollutants results from the application of pesticide that is being used solely for the purpose of Pesticide Research and Development (as defined in 9.8.2), the Operator must use such pesticide consistent with any applicable research plan and experimental use permit.

At a minimum, all Operators must comply with this Subsection and minimize the discharge of pesticides to Waters of the State from the application of pesticides, through the use of Pest Management Measures, as defined in 9.8.2.

- 9.8.9.1.1 To the extent determined by the Operator, 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.
- 9.8.9.1.2 Maintain pesticide application equipment in proper operating condition by adhering to any manufacturer's specifications and industry practices, and by calibrating, cleaning, and repairing such equipment on a regular basis to ensure effective pesticide application and pest control. Perform regular maintenance activities to reduce leaks, spills, or other unintended discharges of pesticides associated with the application of pesticides covered herein.
- 9.8.9.1.3 Assess weather conditions (e.g. temperature, precipitation and wind speed) in the treatment area to ensure application is consistent with all applicable state and federal requirements.

9.8.9.2 Requirement to First Evaluate Best Available Technology (BAT) for Pesticide Applications

Operators must select and implement efficient and effective means to control and manage pests that minimize any discharges (of pollutants) resulting from the application of pesticides from the Pesticide Use Patterns as in 9.8.3. In developing the Pest Management Measures to be implemented for each pest management area, the Operator must first evaluate [and document according to 9.8.10] 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

If a pesticide is selected to manage pests and the application of the pesticide will result in a discharge to a Waters of the State, Operators must:

- 9.8.9.2.1 Conduct surveillance in an area that is representative of the pest problem prior to each pesticide application. Surveillance may include larval and/or adult life stages, or evaluation of

existing larval surveillance data, environmental conditions, or data from adjacent areas; and

- 9.8.9.2.2 Reduce the impact on the environment and on non-target organisms when applying the pesticide; and
- 9.8.9.2.3 In situations or locations where practicable and feasible for efficacious control, use larvaecides as a preferred pesticide for mosquito or flying insect pest control; and
- 9.8.9.2.4 In situations or locations where larvaecide use is not practicable or feasible for efficacious control, use adulticides for mosquito or flying insect pest control; and
- 9.8.9.2.5 Evaluate the use of pesticides against the most susceptible developmental stage or the target species.

9.8.9.3 **Visual Monitoring Requirements**

During any pesticide application with discharges authorized under this permit, all Operators 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 9.8.2, 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.

9.8.9.4 **Observational Monitoring Requirements**

- 9.8.9.4.1 The amount of pesticide applied shall be monitored to ensure that the lowest effective amount is used to control the pest, consistent with reducing the potential for development of pest resistance without exceeding the maximum allowable rate of the product label.
- 9.8.9.4.2 Pesticide application activities shall be monitored to ensure that regular maintenance activities are being performed and that application equipment is in proper operating condition to reduce the potential for leaks, spills, or other unintended discharge of pesticides to surface waters.
- 9.8.9.4.3 Pesticide application activities shall also be monitored to ensure that the application equipment is in proper operating condition by adhering to any manufacturer's conditions and industry practices and by calibrating, cleaning, and repairing equipment on a regular basis.

9.8.9.5 **Water Quality-Based Effluent Limitations and Monitoring**

Although no numeric water-quality based effluent limits are established under this Subsection, all Operators must control discharges as necessary to meet applicable numeric and narrative state water quality standards, for any discharges authorized under this Subsection, with compliance required upon beginning such discharge.

If at any time an Operator becomes aware or the Department 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 9.8.11 up to and including the ceasing of the discharge, if necessary. At any time, the Department can require water quality-based monitoring by the Operator when deemed necessary. In this circumstance, test procedures to be used shall be those approved 40 CFR Part 136. Calculations for all limitations that require averaging of measurements must use an arithmetic mean unless otherwise specified by the Department.

9.8.9.6 **Problem Identification**

Prior to pesticide application, all Operators must do the following for each Pest Management Area, as defined in 9.8.2, and for each Pesticide Use Pattern, as established in 9.8.4:

9.8.9.6.1 **Mosquito and Other Flying Insect Pest Control (Adulticide and larvaecide)**

- 9.8.9.6.1.1 Establish densities for larval and adult mosquito or flying insect pest populations or identify environmental condition(s), either current or based on historical data for implementing Pest Management Measures;
- 9.8.9.6.1.2 Identify target pest(s) to develop Pest Management Measures based on developmental and behavioral considerations for each pest;
- 9.8.9.6.1.3 Identify known breeding sites for source reduction, larval control program, and habitat management;
- 9.8.9.6.1.4 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
- 9.8.9.6.1.5 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 conditions in 9.8.9.6.1.

9.8.9.6.2 **Weed and Algae Pest Control**

- 9.8.9.6.2.1 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);
- 9.8.9.6.2.2 Identify target pest(s);
- 9.8.9.6.2.3 Identify possible factors causing or contributing to the pest problem (e.g., nutrients, invasive species, etc.);
- 9.8.9.6.2.4 Establish any pest-and site-specific action threshold, as defined in 9.8.2; and
- 9.8.9.6.2.5 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 9.8.9.6.2.

9.8.9.6.3 **Animal Pest Control**

- 9.8.9.6.3.1 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);
- 9.8.9.6.3.2 Identify target pest(s);
- 9.8.9.6.3.3 Identify possible factors causing or contributing to the problem (e.g., nutrients, invasive species).
- 9.8.9.6.3.4 Establish any pest-and site-specific action threshold, as defined in 9.8.2; and
- 9.8.9.6.3.5 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 9.8.9.6.3.

9.8.9.6.4 **Forest Canopy Pest Control**

- 9.8.9.6.4.1 Establish any pest-and site-specific action threshold, as defined in 9.8.2;
- 9.8.9.6.4.2 Identify target pest(s) to develop Pest Management Measures based on developmental and behavioral considerations for each pest;
- 9.8.9.6.4.3 Identify current distribution of the target pest and assess potential distribution in the absence of Pest Management Measures; and

9.8.9.6.4.4 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 9.8.9.6.4.

9.8.10 Pesticide Discharge Management Plan (PDMP) Requirements

9.8.10.1 A Pesticide Discharge Management Plan (PDMP) must be developed only by the following Operators:

- (1) All State of Delaware Operators who perform pesticide application under the realm of this Subsection as part of their job duties; or,
- (2) Operators that are considered to be a Large Entity (as defined in 9.8.2) exceeding the Annual Treatment Thresholds (as defined in 9.8.2).

9.8.10.2 Applicable Operators as defined in 9.8.10.1 must prepare a Pesticide Discharge Management Plan (PDMP) within ninety (90) days of regulatory promulgation, or prior to the first pesticide application covered under this permit thereafter (except for any application made in response to a Declared Pest Emergency). It is the Operator’s responsibility to keep the plan up-to-date for the duration of coverage. The Operator will be required to develop a PDMP consistent with the deadlines outlined in Table 2 below.

| Table 2. Pesticide Discharge Management Plan Deadline | |
|--|--|
| Category | PDMP Deadline |
| Operators who know prior to commencement of discharge that they will meet the criteria of being a Large Entity. | Within 90 days of regulatory promulgation or prior to first pesticide application covered under this permit. |
| Operators who do not know until after commencement of discharge that they will exceed the thresholds associated with becoming a Large Entity, as identified in 9.8.2. | Prior to exceeding thresholds associated with becoming a Large Entity. |
| Operators commencing discharge in response to a Declared Pest Emergency as defined in 9.8.2 that will cause the Operator to exceed thresholds associated with becoming a Large Entity. | No later than 90 days after responding to Declared Pest Emergency. |

The PDMP documents how Operators will implement the non-numeric effluent limitations, including the evaluation and selection of Pest Management Measures to meet those non-numeric effluent limitations in order to minimize discharges. In the

PDMP, Operators may incorporate by reference any procedures or plans in other documents that meet the requirements of this Subsection. If Operators rely upon other documents to comply with the non-numeric effluent limitations, such as a pre-existing pest management plan, the Operator(s) must attach to the PDMP a copy of any portions of any documents that are used to document the implementation of the non-numeric effluent limitations.

9.8.10.3 **Contents of the Pesticide Discharge Management Plan**

The PDMP must include the following elements:

- 9.8.10.3.1 Location and address of where PDMP, records, and associated documents are kept
- 9.8.10.3.2 Identification of the persons (by name and contact information) who compose the Pesticide Management Team as well as each person's individual responsibilities, including person(s) responsible for managing pests in relation to the pest management area; person(s) responsible for developing and revising the PDMP; and, person(s) responsible for developing, revising, and implementing corrective actions and other non-numeric effluent limitation requirements.
- 9.8.10.3.3 Problem Identification as described within 9.8.9.6 (Problem Identification)
- 9.8.10.3.4 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 areas to which the plan applies and locations of the Waters of the State.
- 9.8.10.3.5 Documentation of the considerations given to the use of Best Available Technologies, as described in 9.8.9.2: No action, prevention, mechanical/physical methods, cultural methods, biological control agents, and pesticides. In the evaluation, Operators shall consider the impact to water quality, impact to non-target organisms, feasibility, cost effectiveness, and any relevant previous Pest Management Measures.
- 9.8.10.3.6 Procedures for Reporting Necessary Corrective Actions for Adverse Incidents and Spills and Leaks as specified within 9.8.11.3. Such procedures shall include notification, both internal to the Operator's agency/organization and external. Contact information for state/federal permitting agency, nearest emergency medical facility, and nearest hazardous chemical responder must be in locations that are readily accessible and available.
- 9.8.10.3.7 Documentation to support eligibility considerations under other federal laws;

9.8.10.3.8 Signature page per requirements in 9.8.10.6 and 9.8.14.

9.8.10.3.9 Additional recordkeeping as described in 9.8.12.

9.8.10.4 Pesticide Discharge Management Plan Modifications

Operators shall modify the PDMP whenever necessary to address any of the triggering conditions for corrective action in 9.8.11 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 9.8.10.6.

9.8.10.5 Pesticide Discharge Management Plan Availability

The Operator shall retain a copy of the current PDMP, along with all supporting maps and documents, at the address provided on the NOI form. The PDMP and all supporting documents must be readily available to the Department, upon request, and copies of any of these documents provided, upon request, to the Department. If requested, the Department may provide copies of the PDMP to members of the public in accordance with Delaware's Freedom of Information Act, 29 **Del.C.** §10002(d)(2).

9.8.10.6 Signature Requirements

9.8.10.6.1 The Operator shall sign, date, and certify the PDMP in accordance with 9.8.14.

9.8.10.6.2 Any Pesticide Discharge Management Plan (PDMP), including changes made to the PDMP to document any corrective actions taken as required by 9.8.11 and 9.8.12 and all requested reports submitted to the Department, must be signed by a person described in 9.8.14 or by a duly authorized representative of that person. A person is a duly authorized representative only if the following are true:

9.8.10.6.2.1 The authorization is made in writing by a person described in 9.8.14.

9.8.10.6.2.2 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

9.8.10.6.2.3 The signed and dated written authorization is included in the PDMP. A copy must be submitted to the Department, if requested.

9.8.10.6.3 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.

9.8.10.6.4 The most current PDMP must be signed in accordance with 9.8.14, and 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.”

9.8.10.6.5 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, are subject to the provisions of 7 Del.C. §6013.

9.8.11 **Corrective Action (All Operators)**

All Operators must comply with the provisions herein, and file associated written reports, for any authorized discharges, with compliance required upon beginning such discharge.

The occurrence of any situation as identified below may constitute a violation of this Subsection. Correcting the situation according to this subsection does not absolve the Operator of liability for any original violation. However, failure to comply with this Subsection constitutes an additional violation. The Department will consider the appropriateness and promptness of corrective action in determining enforcement responses to permit violations.

The Department or a court 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 Subsection. The requirements and schedules will supersede those requirements below if such requirements conflict.

9.8.11.1 **General Corrective Action**

9.8.11.1.1 **Situations Requiring General Corrective Action**

Operators must review and, as necessary, revise the evaluation and selection of Pest Management Measures, Best Management Practices, and utilization of Best Available Technology as described in 9.8.9.1 and 9.8.9.2 for the following situations:

- 9.8.11.1.1.1 An unauthorized release or discharge associated with the application of pesticides (e.g., discharge not authorized by this or another NPDES permit) occurs.
- 9.8.11.1.1.2 Operators become aware, or the Department concludes, that Pest Management Measures are not adequate/sufficient for the discharge to meet applicable water quality standards.
- 9.8.11.1.1.3 Any monitoring activities indicate failure to meet applicable Technology-Based Limitations in 9.8.9.1 and 9.8.9.2 and applicable Water Quality-Based Effluent Limitations in 9.8.9.5.
- 9.8.11.1.1.4 An inspection or evaluation of activities by an EPA official or the Department reveals that modifications are necessary to meet the effluent limitations in this permit.
- 9.8.11.1.1.5 Any Operator observes or is otherwise made aware of an adverse incident as defined in 9.8.2 (refer to adverse incident reporting in 9.8.11.2).

9.8.11.1.2 General Corrective Action Deadlines and Documentation

If an Operator determines that changes to Pest Management Measures, Best Management Practices, and Utilization of Best Available Technology as in 9.8.9.1 and 9.8.9.2 are necessary, such changes must be made before or, if not practicable, as soon as possible after the next pesticide application that results in a discharge.

For situations identified in 9.8.11.1.1, all Operators must document the situation triggering corrective action and planned corrective action within five (5) calendar days of becoming aware of that situation, and retain a copy of this documentation (no submission requirement to the Department). This documentation must include the following information:

- 9.8.11.1.2.1 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;
- 9.8.11.1.2.2 Brief description of the situation;
- 9.8.11.1.2.3 Date the problem was identified;

- 9.8.11.1.2.4 Brief description of how the problem was identified and how the Operator learned of the situation and date the Operator learned of the situation;
- 9.8.11.1.2.5 Summary of corrective action taken or to be taken including date initiated and date completed or expected to be completed; and,
- 9.8.11.1.2.6 Any measures to prevent reoccurrence of such an incident, including notice of whether PDMP modifications are required as a result of the incident.

9.8.11.2 Adverse Incidents

9.8.11.2.1 Immediate Adverse Incident Notification

Except as provided for in 9.8.11.2.4, if an Operator observes or is otherwise made aware of an adverse incident as defined in 9.8.2, which may have resulted from a discharge from a pesticide application, the Operator must immediately notify the Department utilizing the 24-hour HOTLINE at (800) 662-8802. Operators must also report any noncompliance which may endanger health or the environment. If an Operator is unable to notify the Department immediately of becoming aware of the situation, the Operator must do so as soon as possible and also provide the rationale for why the Operator was unable to provide such notification.

An operator becoming aware of the adverse incident and must provide at least the following information:

- 9.8.11. 2.1.1 The caller's name and telephone number;
- 9.8.11. 2.1.2 Operator name and mailing address;
- 9.8.11. 2.1.3 The name and telephone number of a contact person, if different than the person providing notice;
- 9.8.11. 2.1.4 How and when the Operator became aware of the adverse incident;
- 9.8.11.2.1.5 Location of incident, including the names of any waters affected and appearance of those waters (sheen, color, clarity, etc.);
- 9.8.11.2.1.6 The pesticide product (including EPA pesticide registration number), rate of application, method of application for each product applied in the area of the adverse incident;

- 9.8.11.2.1.7 A description of the circumstances of the adverse incident including species affected, estimated number of individual and approximate size of dead or distressed organisms;
- 9.8.11.2.1.8 If known, the identity of any other Operators authorized for coverage under this Subsection for discharges from the pesticide application activities that resulted in the adverse incident; and
- 9.8.11.2.1.9 Description of any steps the Operator has taken or will take to correct, repair, remedy, clean up, or otherwise address any adverse effects.

9.8.11.2.2 Five (5) Day Adverse Incident Written Report

Except as provided for in 9.8.11.2.4, within five (5) calendar days of a reportable adverse incident or situation endangering human health or the environment, Operators must provide a written report of the adverse incident to the Department to the address as provided in 9.8.15. The adverse incident report shall be signed according to signatory requirements in 9.8.14. Documentation shall include at least the following information:

- 9.8.11.2.2.1 All information also provided in 9.8.11.2.1 above;
- 9.8.11.2.2.2 Date and time the Operator contacted the Department notifying the Department of the adverse incident, whom the Operator spoke with, and any instructions received;
- 9.8.11.2.2.3 Magnitude and scope of the affected area (e.g., aquatic square area or total stream distance affected);
- 9.8.11.2.2.4 Pesticide application rate; intended use site (e.g., on the bank, above waters, or directly to water); method of application, and the name of the pesticide product and EPA registration number.
- 9.8.11.2.2.5 Description of the habitat and the circumstances under which the adverse incident occurred (including any available ambient water data for pesticides applied);
- 9.8.11.2.2.6. 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 5-day report;
- 9.8.11.2.2.7. Description of actions to be taken to prevent recurrence of adverse incidents; and,
- 9.8.11.2.2.8. Signatory requirements in accordance with 9.8.14.

9.8.11.2.3 **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 is also provided to all of the other authorized Operators within five (5) days of the reportable adverse incident.

9.8.11.2.4 **Instances when Notification is not Required for Adverse Incidents**

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

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

9.8.11.3 **Spills and Leaks**

9.8.11.3.1 **Immediate Spill and Leak Notification**

Where a leak, spill, or other release into Waters of the State containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under 7 **Del.C.** §6028 and the Department's Regulations for Reporting the Discharge of a Pollutant or Air Contaminant (7 **Del. Admin. C.** §1203) occurs in any 24-hour period, an Operator must notify the Department immediately by calling the Spill Notification 24 hour HOTLINE at (800) 662-8802 as soon as the Operator has knowledge of the release. State or local requirements may necessitate also reporting spills or leaks to local emergency response, public health, or drinking water supply agencies. An

operator becoming aware of the spill or leak must report all relevant information as described under Adverse Incident (9.8.11.2.1).

9.8.11.3.2 **Five (5) Day Written Report for Spills and Leaks**

If an Operator becomes aware of a spill, leak, or other unpermitted discharge in an amount equal to or in excess of a reportable quantity established under 7 **Del.C.** §6028 and the Department's Regulations for Reporting the Discharge of a Pollutant or Air Contaminant (7 **Del. Admin. C.** §1203), the Operator must additionally follow the written reporting protocol and report relevant information (in writing) to the Department as described under Adverse Incident (9.8.11.2) within five (5) calendar days.

9.8.12 **Recordkeeping**

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

9.8.12.1 **Recordkeeping for Anyone Hired to Apply Pesticides on Behalf of an Operator**

Anyone hired to apply pesticides on behalf of an Operator who submitted an NOI is to maintain a copy of the NOI and the Department's acknowledgement of permit coverage.

9.8.12.2 **Recordkeeping for Operators that Fall Below Annual Treatment Thresholds**

All Operators that fall below the Annual Treatment Thresholds must report Adverse Incidents and Spills and Leak in accordance with 9.8.11.2 and 9.8.11.3. All Operators must additionally document any Corrective Action as in 9.8.11.1.

9.8.12.3 **Recordkeeping for Operators that Exceed Annual Treatment Thresholds**

9.8.12.3.1 Operators who exceed Annual Treatment Thresholds must keep the following records:

9.8.12.3.1.1 A copy of the most recent (signed) NOI submitted to

the Department, which acts as proof of permit coverage;

- 9.8.12.3.1.2 A copy of all written reports as required under Corrective Action (9.8.11);
 - 9.8.12.3.1.3 Proof of Aquatic Pesticides License through the Delaware Department of Agriculture if applicable;
 - 9.8.12.3.1.4 Documentation of equipment maintenance and calibration (where applicable);
 - 9.8.12.3.1.5 Problem Identification for All Pest Management Options as in 9.8.9.6;
 - 9.8.12.3.1.6 Area description record keeping requirements: 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;
 - 9.8.13.3.1.7 The brand name of the pesticide used and EPA Registration Number;
 - 9.8.13.3.1.8 Date of treatment;
 - 9.8.13.3.1.9 When applicable, the dilution rate of the pesticide and the amount of diluted material applied per unit (i.e. gallons/acre, lbs/acre);
 - 9.8.13.3.1.10 The pest against which the pesticide was used (i.e. pesticide use pattern as in 9.8.3);
 - 9.8.13.3.1.11 The applicator's name and when applicable, the name of the certified applicator responsible for his supervision;
 - 9.8.13.3.1.12 When label directions advise precaution in regard to drift, on-site weather conditions to include wind velocity and direction, temperature, and relative humidity;
 - 9.8.12.3.1.13 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.
- 9.8.12.3.2 When applicable, copies of records as required for Licensed Applicators through the 3 Del.C. §1206 (a) & (b) or 3 **Del. Admin. C.** §601-5.0 can be utilized to

satisfy only those specific elements under this Subsection that directly apply.

9.8.12.3.3 All required records must be documented as soon as possible but no later than fourteen (14) days (unless under a different deadline has been specified under Corrective Action, 9.8.11) following completion of each pesticide application. Operators must retain any records required under this permit for minimum of 5 years. Operators must make available to the Department, including an authorized representative of the Department, all records kept under this Subsection upon request and provide copies of such records upon request.

9.8.12.4 **Recordkeeping for Operators Required to Have a PDMP**

9.8.12.4.1 All Operators that are required to have a PDMP, as outlined in 9.8.10 must keep the following records:

9.8.12.4.1.1 All information as described in 9.8.12.3 above;

9.8.12.4.1.2 A copy of the most recent PDMP; and,

9.8.12.4.1.3 Copy of annual reports submitted to the Department as described in 9.8.13.

9.8.12.4.2 All required records must be documented as soon as possible but no later than fourteen (14) days (unless under a different deadline has been specified under Corrective Action, 9.8.11) following completion of each pesticide application. Operators must retain any records required under this permit for minimum of 5 years. Operators must make available to the Department, including an authorized representative of the Department, all records kept under this Subsection upon request and provide copies of such records upon request.

9.8.13 **Annual Reporting (Operators Required to Have a PDMP)**

9.8.13.1 **Annual Reporting Requirements**

Operators that are required to have a PDMP, as outlined in 9.8.10, must submit an annual report to the Department. Once an Operator meets the obligation to submit an annual report, the Operator must submit the annual report each calendar year thereafter for the duration of coverage under this Subsection, whether or not the Operator has discharges from the application of pesticides in any subsequent calendar year. The annual report must be submitted no later than February 1 of the following year for all pesticide activities covered under this Subsection occurring during the previous calendar

year. Annual reporting requirements begin with those discharges occurring during calendar year 2012.

The annual report must contain the following information:

- 9.8.13.1.1 Operator's name and contact information;
- 9.8.13.1.2 Delaware Department of Agriculture Applicator Certification Number;
- 9.8.13.1.3 Contact person name, title, e-mail address (if any), and phone number; and,
- 9.8.13.1.4 For each treatment area, report the following information:
 - 9.8.13.1.4.1 Description of each treatment area, including location and size (acres or linear feet) of treatment area and identification of any Waters of the State, either by name or by location, to which pesticide(s) are discharged;
 - 9.8.13.1.4.2 Pesticide use pattern(s) (i.e., mosquito and other flying insects, weed and algae, animal pest, or forest canopy);
 - 9.8.13.1.4.3 Company name(s) and contact information for pesticide Operator;
 - 9.8.13.1.4.4 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.);
 - 9.8.13.1.4.5 Whether this pest control activity was addressed in the PDMP prior to pesticide application;
 - 9.8.13.1.4.6 If applicable, an annual report of any adverse incidents as a result of these treatment(s), for incidents, as described in 9.8.11.2; and,
 - 9.8.13.1.4.7 If applicable, description of any corrective action(s), including spill responses, resulting from pesticide application activities and the rationale for such action(s).

9.8.13.2 **Annual Reporting for All Other Operators**

Annual reporting will not be required for Operators other than as specified above in 9.8.13.1.

9.8.13.3 **Certification**

The annual report must be submitted and signed in accordance with 9.8.14, and 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.”

9.8.14 **Signatory Requirements**

- 9.8.14.1 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.
- 9.8.14.2 For a partnership or sole proprietorship: By a general partner or the proprietor, respectively; or
- 9.8.14.3 For a municipality, state, or other public agency: By either a principal executive officer or ranking elected official. For purposes of this Subsection, a principal executive officer 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 of the agency (e.g., Section Manager or Division Director).

9.8.15 **Address for Written Notifications to the Department**

Written correspondence to the Department should be addressed to:

Delaware Department of Natural Resources and Environmental Control
Division of Water
Surface Water Discharges Section – NPDES

89 Kings Highway
Dover, DE 19901

9.8.16 **Standard Conditions**

9.8.16.1 **Penalties for Violations**

Any person who violates conditions of this Subsection may be subject to penalties in accordance with 7 Del.C. Ch. 40, 7 Del.C. Ch. 60, or both. Violation of this Subsection is also a violation of the Clean Water Act and may be subject to penalties established under that statute.

9.8.16.2 **Duty to Mitigate**

Operators must take all reasonable steps to minimize or prevent any discharge in violation of this Subsection, which has a reasonable likelihood of adversely affecting human health or the environment.

9.8.16.3 **Need to Halt or Reduce Activity Not a Defense**

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

9.8.16.4 **Duty to Reapply**

If an Operator wishes to continue an activity regulated by this regulation after the expiration date of this regulation, as stated in 9.8.3.3, the Operator must apply for and obtain authorization as required by Delaware Code.

9.8.16.5 **Other State and Federal Laws**

Nothing shall be construed to preclude the institution of any legal action or relieve any person subject to this Subsection from any responsibilities, liabilities, or penalties established pursuant to any applicable State or Federal law or regulation.

9.8.16.6 **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 Subsection. 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 Subsection.

9.8.16.7 Property Rights

Coverage under this Subsection does not convey any property rights of any sort, any exclusive privileges, any authorization to damage, injure or use any private property, any authority to invade personal rights, any authority to violate federal, State, or local laws or regulations, or any taking, condemnation or use of eminent domain against any property owned by third parties. The Department does not warrant that the Operator's compliance with this Subsection and operation under this Subsection will not cause damage, injury, or use of private property, an invasion of personal rights, or violation of federal, state, or local laws or regulations. The Operator is solely and severably liable for all damage, injury or use of private property, invasion of personal rights, infringement of federal, State, or local laws and regulations, or taking or condemnation of property owned by third parties, which may result from actions taken under the Subsection.

9.8.16.8 Duty to Provide Information

The Operator shall furnish to the Department, within a reasonable timeframe, any information which the Department may request to determine cause for modifying, revoking and reissuing, or terminating coverage, or to determine compliance with this Subsection. The Operator shall also furnish to the Department upon request, copies of records required to be maintained by this Subsection.

9.8.16.9 Inspection and Entry

Operators must allow the Department upon presentation of credentials and other documents as may be required by law, to do the following:

- 9.8.16.9.1 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;
- 9.8.16.9.2 Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- 9.8.16.9.3 Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and,
- 9.8.16.9.4 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.

9.8.16.10 **Upset**

- 9.8.16.10.1 Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance. Before an action is taken for noncompliance, any determination made during administrative review of claims that noncompliance was caused by an upset is tentative. Such a determination is not final administrative action subject to judicial review.
- 9.8.16.10.2 Conditions necessary for a demonstration of upset. 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:
- 9.8.16.10.2.1 An upset occurred and that the Operator can identify the cause(s) of the upset;
 - 9.8.16.10.2.2 The permitted activity was at the time being properly operated;
 - 9.8.16.10.2.3 The Operator submitted notice of the upset as required in 9.8.11.2 and 9.8.11.3; and,
 - 9.8.16.10.2.4 The Operator complied with any remedial measures required under this Subsection.
- 9.8.16.10.3 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.

9.8.16.11 **Severability**

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

9.8.16.12 **Continuation of Regulatory Requirements**

The requirements of this Subsection shall continue in force and will be considered administratively extended until this regulation is re-promulgated.