



STATE OF WEST VIRGINIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OF WATER AND WASTE MANAGEMENT  
601 57<sup>th</sup> STREET SE  
CHARLESTON, WV 25304-2345

GENERAL

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM  
WATER POLLUTION CONTROL PERMIT

**Permit No.:** WV0116645

**Issue Date:** December 4, 2017

**Subject:** Pesticide General Permit  
for Point Source Discharges

**Effective Date:** January 4, 2018

**Expiration Date:** December 4, 2022

**Supersedes:** WV0116645

**Issued:** October 30, 2011

**To whom it may concern:**

This is to certify this permit is available to operators who discharge to waters of the State from the application of (1) biological pesticides or (2) chemical pesticides that leave a residue (hereinafter collectively “pesticides”), when the pesticide application is for one of the following pesticide use patterns:

- 1. 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.
- 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.
- 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.
- 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.

**This General Permit is subject to the following terms and conditions:**

The information submitted on and with the site registration application form will hereby be made terms and conditions of the General Permit with like effect as if all such information were set forth herein, and other pertinent conditions set forth in Sections A, B, C, D, E, F, G, H and Appendix A.

**The validity of this permit is contingent upon the payment of the applicable annual permit fee, as required by Chapter 22, Article 11, Section 10 of the Code of West Virginia.**

#### Continuation of this General Permit

If this general permit is not reissued or replaced prior to the expiration date, it will be administratively continued in accordance with 47 CSR 10 and remain in force and effect. If you were authorized to discharge under this general permit prior to the expiration date, any discharges authorized under this permit will automatically remain covered by this general permit until the earliest of:

1. Your authorization for coverage under a reissued general permit or a replacement of this general permit following your timely and appropriate submittal of a complete application requesting authorization to discharge under the new general permit and compliance with the requirements of the new permit; or
2. Your submittal of notification that the facility has ceased operations; or
3. Issuance or denial of an individual permit for the facility's discharge; or
4. A formal permit decision by the Division of Water and Waste Management (DWWM) not to reissue this general permit, at which time DWWM will identify a reasonable time period of covered dischargers to seek coverage under an alternative general permit or individual permit. Coverage under this permit will cease at the end of this time period.

#### A. PERMIT COVERAGE

##### 1. Who Should Apply

- a. For the purpose of this general permit, Operator means any entity associated with the application of pesticides which results in a discharge to waters of the State when the pesticide application is for one of the pesticide use patterns listed above, 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 in control over the financing for, or with control over the decision to perform pesticide applications including the ability to modify those decisions.
- b. The following discharges, consistent with the permit eligibility provisions in Section A.1.a. are automatically authorized by this permit beginning with the effective date of this permit:
  1. Eligible discharges that result from the application of a pesticide as part of pesticide research and development;
  2. Eligible discharges for which submission of a permit registration application is not required. See Sections A.1.c. and A.2 below.
- c. All Operators whose activities will result in a discharge and know or reasonably should have known that those activities will exceed one or more of the annual (i.e., calendar year) thresholds listed in Table 1 for the treatment area, are required to submit a permit registration application to obtain coverage under this general permit for discharges to waters of the State resulting from the application of pesticides.

- d. To determine whether an operator's activities will exceed one or more of the annual treatment area thresholds, the entity should exclude from its calculation any pesticide application activities conducted under another operator's permit registration.
- e. Treatment area means 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 is the water surface area where the application is intended to provide pesticidal benefits.
- f. Antidegradation - Discharges to Waters Designated as Tier 3  
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 waters of the State designated as Tier 3 (Outstanding National Resource Waters) for antidegradation purposes under 47 CSR 2.

**Table 1. Annual Treatment Area Thresholds**

Pesticide Use	Annual Threshold
Mosquitoes and Other Flying Insect Pests	6400 acres of treatment area
Aquatic Weed and Algae Control:	
-In Water	80 acres of treatment area <sup>1</sup>
-At Water's Edge:	20 linear miles of treatment area at water's edge <sup>2</sup>
Animal Pest Control:	
-In Water	80 acres of treatment area <sup>1</sup>
-At Water's Edge	20 linear miles of treatment area at water's edge <sup>2</sup>
Forest Canopy Pest Control	6400 acres of treatment area
<p>1. Calculations should include the area of the applications made to: (1) waters of the State and (2) conveyances with a hydrologic surface connection to waters of the State at the time of pesticide application. For calculating annual treatment area totals, count each pesticide application activity as a separate activity. For example, applying pesticides twice a year to a ten-acre site should be counted as twenty acres of treatment area. 2. Calculations should include the linear extent of the application made at water's edge adjacent to: (1) waters of the State and (2) conveyances with a hydrologic surface connection to waters of the State at the time of pesticide application. For calculating annual treatment totals, count each pesticide application activity and each side of a linear water body as a separate activity or area. For example, treating both sides of a ten-mile ditch is equal to twenty miles of water treatment area.</p>	

## 2. When to Apply for Coverage

- a. Operators who know or should have reasonably known prior to commencement of discharge that they will exceed an annual treatment area threshold identified in Section A.1. for that year, shall submit the NOI at least 90 days prior to first pesticide application covered under this permit.
- b. Operators who do not know or would reasonably not know until after commencement of discharge, that they will exceed an annual treatment area threshold identified in Section A.1. for that year, shall submit the NOI at least 60 days prior to exceeding an annual treatment area threshold.
- c. Operators commencing discharge in response to a declared pest emergency situation that will cause the operator to exceed an annual treatment area threshold shall submit the application no later than 90 days after responding to declared pest emergency situation.

## 3. Terminating Permit Coverage

- a. To terminate permit coverage, the permittee must submit a complete and accurate Notice of Termination (NOT) on forms made available by DWWM. Permittees are responsible for complying with the terms of this permit until authorization is terminated. The permittee must meet one or more of the conditions identified in Section A.3.b. below before the division can terminate permit coverage.
- b. A permittee must submit a NOT within 30 days after one or more of the following conditions have been met:
  1. The permittee has ceased all discharges from the application of pesticides for which the permit coverage was obtained and does not expect to discharge during the remainder of the permit term for any of the use patterns as identified in Section A.
  2. The permittee has obtained coverage under an individual permit or an alternative general permit for all discharges required to be covered by an NPDES permit.
- c. Permittees covered under this permit, who are not required to submit a permit registration application, are terminated from permit coverage when there is no longer a discharge from the application of pesticides or the discharges are covered under an NPDES individual permit or alternative NPDES general permit.

## **B. SCHEDULE OF COMPLIANCE**

Effective date of the permit.

## **C. TECHNOLOGY-BASED EFFLUENT LIMITATIONS**

1. To meet the effluent limitations of this permit, all permittees must minimize pesticide discharges to waters of the State by:
  - a. Using the lowest effective amount of pesticide product per application and optimum frequency of pesticide applications necessary to control the target pest, consistent with reducing the potential for development of pest resistance; and

- b. Performing regular maintenance activities to reduce leaks, spills, or other unintended discharges of pesticides associated with the application of pesticides covered under this permit; and
  - c. Maintaining pesticide application equipment in proper operating condition by adhering to any manufacturer's conditions and industry practices, and by calibrating, cleaning, and repairing such equipment on a regular basis to ensure effective pesticide application and pest control. The permittee must ensure that the equipment's rate of pesticide application is calibrated to deliver the precise quantity of pesticide needed to achieve greatest efficacy against the target pest.
2. Prior to the first pesticide application covered under this permit that will result in a discharge to waters of the State, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, any permittee who is or will be required to submit a permit registration application must do the following:
- a. For each pest management area:
    - 1. Identify target pest(s) to develop pest management measures based on developmental and behavioral considerations for each pest;
    - 2. Identify areas with pest problems, characterize the extent of the problems, including, for example, water use goals not attained (e.g., wildlife habitat, fisheries, vegetation, and recreation);
    - 3. Identify current distribution of the target pest and assess potential distribution in the absence of pest management measures; and
    - 4. Identify possible factors causing or contributing to the pest problem (e.g., nutrients, invasive species, etc.);
    - 5. Establish any pest- and site-specific action threshold for implementing Section C.2.b;
    - 6. If applicable, 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;
    - 7. If applicable, identify known breeding sites for source reduction, larval control program, and habitat management;
    - 8. 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. 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 Section C.2.a.
  - b. 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 these measures for each pest management area, the permittee 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. Mechanical or physical methods - mechanical tools or physical alterations of the environment, for pest prevention or removal.
  3. Habitat alteration methods - manipulation of the habitat to increase pest mortality by making the habitat less suitable to the pest.
  4. Biological control methods - using organisms that can be introduced to pest management areas such as herbivores, predators, parasites and pathogens to combat pests.
  5. Pesticides
- c. If a pesticide is selected to manage pests, and application of the pesticide will result in a discharge to waters of the State, any permittee who is or will be required to submit a permit registration application 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 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.
  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; and
  5. Evaluate using pesticides against the most susceptible developmental stage.

#### **D. WATER QUALITY BASED EFFLUENT LIMITATIONS**

1. The effluent or effluents covered by this permit are to be of such quality so as to not cause violations of applicable numeric and narrative water quality standards in 47 CSR 2 of the WV Legislative Rules.

#### **E. MONITORING REQUIREMENTS**

1. All permittees must monitor the amount of pesticide applied to ensure that they are using the lowest amount to effectively control the pest, consistent with reducing the potential for development of pest resistance.
2. All permittees must monitor their pesticide application activities to:
  - a. Ensure they are performing regular maintenance activities and;
  - b. Ensure that application equipment is in proper operating condition to reduce the potential for leaks, spills, or other unintended discharge of pesticides to waters of the State, and;

- c. 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.
3. All permittees must conduct spot checks in the area to and around where pesticides are applied for possible and observable adverse incidents caused by application of pesticides, including but not limited to the unanticipated death or distress of non-target organisms and disruption of wildlife habitat, recreational or municipal water use. Visual assessments of the application site must be performed:
  - a. During any post-application surveillance or efficacy check, if surveillance or an efficacy check is conducted.
  - b. During any pesticide application, when considerations for safety and feasibility allow.

## **F. PESTICIDE DISCHARGE MANAGEMENT PLAN**

1. Any permittee who is, or will be, required to submit a permit registration application must develop and implement a Pesticide Discharge Management Plan (PDMP) for all discharges covered under this general permit.
2. The PDMP must be submitted as part of the permit registration application
3. The PDMP shall be kept up-to-date for the duration of coverage under this general permit, even if the permitted discharges subsequently fall below the applicable application threshold.
4. The PDMP may incorporate by reference any procedures or plans in other documents that meet the requirements of this permit. Other documents or portions thereof, used to describe how the permittee will comply with the effluent limitations in this permit, such as a pre-existing integrated pest management plan, must be attached to the PDMP.
5. Contents of the Pesticide Discharge Management Plan  
The Pesticide Discharge Management Plan (PDMP) must include the following elements described in Sections F.5.a through F.5.e. below:
  - a. PDMP Team  
The plan must identify all the persons (by name and contact information) that compose the team as well as each person's individual responsibilities, including:
    1. Person(s) responsible for managing pests in relation to the pest management area.
    2. Person(s) responsible for developing and revising the PDMP;
    3. Person(s) responsible for developing, revising, and implementing corrective actions and other effluent limitation requirements; and
    4. Person(s) responsible for pesticide applications. If the pesticide applicator is unknown at the time of plan development, indicate whether or not a for-hire applicator will be used and when it is anticipated that the applicator can be identified.
    5. Identification of team members must include any written agreement(s) between the permittee and any other operator(s), such as a for-hire pesticide applicator, that specify the division of responsibilities between operators as necessary to comply with the provisions of this permit

**b. Pest Management Area Description**

The plan must document the following:

1. Problem Description - A description of the pest problem at the pest management area, including identification of the target pest(s), source of the pest problem, and source of data used to identify the problem in Section C.5.
2. Action Threshold(s) - The action threshold(s) for the pest management area, including a description of how the threshold(s) was (were) determined.
3. General location map - A portion of a U.S.G.S. topographic quadrangle map in the plan that identifies the geographic boundaries of the area to which the plan applies and location of the waters of the State and list the name of the quadrangle.
4. Water Quality Standards - Documentation of the water quality standards applicable to waters to which there may be a discharge, including the list of pesticide(s) or any degradates for which the water is impaired.

**c. Control Measures Description**

The permittee must document their evaluation of control measures for the pest management area. Describe all the control measures that will be implemented to comply with the effluent limitations required by the general permit. Include a description of the active ingredient(s) evaluated.

**d. Schedules and Procedures**

The permittee must document the following schedules and procedures in the PDMP:

1. Application Rate and Frequency - Procedures for determining the lowest effective amount of pesticide product per application and the optimum frequency of pesticide applications necessary to control the target pest, consistent with reducing the potential for development of pest resistance;
2. Spill Prevention - Procedures and schedule of maintenance activities for preventing spills and leaks of pesticides associated with the application of pesticides covered under this permit.
3. Pesticide Application Equipment - Schedules and procedures for maintaining the pesticide application equipment in proper operating condition, including calibrating, cleaning, and repairing the equipment.
4. Pest Surveillance - Procedures and methods for conducting pre-application pest surveillance.
5. Assessing Environmental Conditions - Procedures and methods for assessing environmental conditions in the treatment area.
6. Spill Response Procedures - At a minimum the PDMP must have:
  - a. Procedures for expeditiously stopping, containing, and cleaning up leaks, spills, and other releases. 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.
- b. Procedures for notification of appropriate facility personnel, emergency response agencies, and regulatory agencies.
7. Adverse Incident Response Procedures - At a minimum the PDMP must have:
    - a. Procedures for responding to any adverse incident resulting from pesticide applications;
    - b. Procedures for notification of the incident, both internal to the permittee'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.
  8. Pesticide Monitoring Schedules and Procedures - The permittee must document procedures for monitoring consistent with the requirements in Section E including:
    - a. The process for determining the location of any monitoring;
    - b. A schedule for monitoring;
    - c. The person (or position) responsible for conducting monitoring; and
    - d. Procedures for documenting any observed impacts to non-target organisms resulting from the pesticide discharge.
  - e. Signature Requirements  
The permittee must sign, date and certify the PDMP in accordance with 47 CSR 10, Subsection 5.11.
  - f. Pesticide Discharge Management Plan Modifications  
The permittee shall modify the PDMP 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, as soon as possible thereafter. The Director may review changes or modifications to the PDMP.
  - g. The permittee must review the PDMP at a minimum once per calendar year and whenever necessary to update the pest problem identified and pest management strategies evaluated for the pest management area.
  - h. The permittee must retain a copy of the current PDMP, along with all supporting maps and documents, at the address provided on the registration application. The PDMP and all supporting documents must be readily available, on request, and copies of any of these documents provided, upon request, to the Director or their representative.

## **G. RECORDKEEPING**

1. All permittees must keep the following records:
  - a. Company name and contact information for pesticide applicator if applicator is other than the permittee; and

- b. Documentation of equipment calibration and maintenance if the permittee is also the applicator; and
  - c. For each treatment area, on an annual basis:
    - 1. Description or map indicating the location and size of each treatment area, and identification of any waters to which pesticides are discharged
    - 2. Pesticide use pattern(s)
    - 3. Target pest(s)
    - 4. Name of each pesticide product used and its EPA registration number
    - 5. Quantity of each pesticide product applied
    - 6. Pesticide application date(s)
    - 7. Whether or not visual monitoring was conducted during pesticide application and/or post-application
  - d. Any possible or observable adverse incidents, caused by application of pesticides; and
  - e. A copy of any corrective action documentation; and
  - f. Documentation of any leaks, spills or other releases;
2. In addition to Section G.1.a. – G.1.f., any permittee who is, or will be, required to submit a permit registration application must retain at the address provided on the registration application:
- a. A copy of the General Permit
  - b. A copy of the submitted application
  - c. A copy of the PDMP, including any modifications made to the plan during the term of this General Permit; and
  - d. Documentation of employee training.

## **H. OTHER CONDITIONS**

1. The Director may require any person authorized by this permit to apply for and obtain an individual NPDES permit. Any interested person may petition the Director to take action under this paragraph. The Director may require any owner or operator authorized to discharge under this permit to apply for an individual NPDES permit only if the owner or operator has been notified in writing that a permit application is required. This notice shall include a brief statement of the reasons for this decision, an application form, a statement setting a deadline for the owner or operator to file the application, and a statement that on the effective date of the individual NPDES permit, coverage under this general permit shall automatically terminate.
2. This permit will be considered as an individual permit if the coverage of a specific individual facility is the subject of an appeal in accordance with Chapter 22, Article 11, Section 21 of the West Virginia Code. Any subsequent action taken as result of the appeal will only affect the specific subject facility.
3. This permit shall be promptly modified or revoked and reissued to conform to any effluent standard or limitation issued if an applicable standard or limitation is promulgated under


Section 301(b)(2)(C) and (D), 304(b)(2) and/or 307(a)(2) of the Clean Water Act, and that effluent standard or limitation:

- a. Contains different conditions or is otherwise more stringent than any effluent limitation in this permit; or
  - b. Controls any pollutant not limited in the permit; or
  - c. Requires reassessment due to change in 303(d) status of water body; or
  - d. Incorporates the results of any TMDL allocation, which may be approved for the receiving water body.
4. It is recognized that this general permit continues to be in the developmental stage and its limitations, standards and conditions will be reviewed by the Director at the time of reissuance, or earlier, if necessary, for possible revisions. Based upon that review, such revisions may be more or less stringent than the limitations, standards and conditions contained in this general permit.
  5. Permittees discharging pollutants of concern to waters for which there is a total maximum daily load (TMDL) established or approved by EPA are not eligible for coverage under this general permit, unless the permit conditions of this general permit are consistent with the assumptions and requirements of such TMDL. Therefore, the permittee must submit an NPDES application to the West Virginia Department of Environmental Protection for coverage under an individual NPDES permit. The permittee should consult with the State or EPA TMDL authority to confirm if his/her facility is subject to an approved TMDL.
  6. **Endangered or Threatened Species**  
Permittees discharging to a stream where a federally endangered or threatened species or its habitat are present, the applicant must contact the US Fish and Wildlife Service to ensure that requirements of the Federal Endangered Species Act are met.
  7. No condition of this permit shall release the permittee from any responsibility or requirements under other environmental statutes or regulations.
  8. All permittees shall handle, use and apply pesticides in accordance with state laws and regulations and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), which includes all instructions on the pesticide label.
  9. If there is evidence indicating potential or realized impacts on water quality due to any discharge authorized by this general permit, the owner or operator of such discharge may be required to obtain an individual permit or alternative general permit in accordance with Section H.1. of this permit, or the permit may be modified to include different limitations and/or requirements.
  10. Each applicant for coverage under this general permit shall submit a Groundwater Protection Plan (GPP) for review by the Division of Water and Waste Management. Said plan shall be in compliance with the requirements of 47 CSR Series 58 of the West Virginia Code and Section 301 of the CWA. The GPP shall be submitted concurrently with the site registration application form.
  11. All PDMPs and GPPs required under this permit are considered reports that shall be available to the public under Section 308(b) of the CWA. Any operator with a discharge covered by this permit shall make plans available to members of the public upon request. However, the permittee may claim any portion of a PDMP or GPP as confidential in accordance with 47 CSR 10 Section 12.7.

The herein-described activity is to be constructed or installed, and operated, used and maintained strictly in accordance with the terms and conditions of this permit, with any plans, specifications and information submitted with the individual site registration application form, with any plan of maintenance and method of operation thereof submitted and with any applicable rules and regulations promulgated by the Environmental Quality Board and the Secretary of the Department of Environmental Protection.

Failure to comply with the terms and conditions of this permit, with any plans, specifications and information submitted, and with any plan of maintenance and method of operation thereof submitted shall constitute grounds for the revocation or suspension of this permit to any individual establishment or other person and for the invocation of all the enforcement procedures set forth in Chapter 22, Article 11, or 15 of the Code of West Virginia.

This permit is issued in accordance with the provisions of Articles 11 and 12, Chapter 22 of the Code of West Virginia and is transferable under the terms of Section 11 of Article 11.

BY:  \_\_\_\_\_

Scott G. Mandirola

Director

# Appendix A

## I. MANAGEMENT CONDITIONS

### 1. Duty to Comply

- (a) The permittee must comply with all conditions of this permit. Permit noncompliance constitutes a violation of the CWA and State Act and is grounds for enforcement action; such as suspension or revocation of permit followed by possible civil or criminal action.
- (b) The permittee(s) shall comply with all effluent standards or prohibitions established under Section 307(a) of the CWA for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.
- (c) Systems unable to achieve compliance may be required to replace or add additional treatment components.

### 2. Duty to Reapply

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for a new permit within thirty (30) days of receipt of the reissuance package. Since the permittee is registered for coverage under a general permit, this agency will notify the permittee regarding permit reissuance at the appropriate time.

### 3. Duty to Mitigate

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

### 4. Permit Actions

This permit may be modified, revoked and reissued, suspended, or revoked for cause. The filing of a request by the permittee for permit modification, revocation and reissuance, or revocation, or a notification of planned changes or anticipated noncompliance, does not stay any permit conditions.

### 5. Property Rights

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

### 6. Signatory Requirements

All registration application forms, reports, or information submitted to the Director shall be signed and certified as required in Title 47, Series 10, Section 4.6 of the West Virginia Legislative Rules.

### 7. Transfers

This permit coverage is not transferable to any person except after notice to, and approval by, the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary.

### 8. Duty to Provide Information

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

### 9. Other Information

Where the permittee becomes aware that he/she has failed to submit any relevant facts in a facility registration application form, or submitted incorrect information in a facility registration application form or in any report to the Director, he/she shall promptly submit such facts or information.

### 10. Inspection and Entry

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

- a) Enter upon the permittee's premises in which an effluent source or activity is located, 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

## **I. MANAGEMENT CONDITIONS (Continued)**

- d) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the State Act, any substances or parameters at any locations.

### **11. Permit Modification**

This permit may be modified, suspended, or revoked in whole or in part during its term in accordance with the provisions of Chapter 22, Article 11, Section 12 of the Code of West Virginia.

### **12. Water Quality**

The effluent or effluents covered by this permit are to be of such quality so as not to cause violation of applicable water quality standards adopted by the Department of Environmental Protection.

### **13. Outlet Markers**

A permanent marker at the establishment shall be posted in accordance with Title 47, Series 11, Section 9 of the West Virginia Legislative Rules promulgated pursuant to Chapter 22, Article 11.

### **14. Liabilities**

- a) Any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Clean Water Act is subject to a civil penalty not to exceed \$25,000 per day of such violation. Any person who willfully or negligently violates permit conditions implementing sections 301, 302, 306, 307, or 308 of the Clean Water Act is subject to a penalty not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than one year, or by both fine and imprisonment.
- b) Any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, 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 fine and imprisonment.
- c) 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 shall, 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 fine and imprisonment.
- d) Nothing in I.14.a), b) and c) shall be construed to limit or prohibit any other authority the Director may have under the State Water Pollution Control Act, Chapter 22, Article 11.

### **15. Outlet Accessibility**

The outlet shall be located in an area that is easily accessible for compliance inspection and monitoring:

- a. It shall be free of debris and tall weeds;
- b. It shall not be submerged under water;
- c. It shall not be discharged into the ground (sub-surface);
- d. It shall have proper ground clearance to allow for compliance monitoring;
- e. It shall not be combined with any other outlet pipes or any form of drainage pipe; and
- f. If it is drained into a culvert or storm drain it must be easily accessible for monitoring.

If site-specific conditions do not allow for the installation of an easily accessible outlet, then a sampling port may be installed instead. Sampling ports must be designed, constructed, and installed to provide easy access for collecting a "free fall" water sample from the effluent stream after chlorination and de-chlorination.

## **II. OPERATION AND MAINTENANCE**

### **1. Proper Operation and Maintenance**

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the permit. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures

## II. OPERATION AND MAINTENANCE (Continued)

### 2. Need to Halt or Reduce Activity Not a Defense

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

### 3. Bypass

#### a) Definitions

- (1) "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility; and
- (2) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

b) Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of II.3.c) and II.3.d) of this permit.

- c) (1) If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten (10) days before the date of the bypass;
- (2) If the permittee does not know in advance of the need for bypass, notice shall be submitted as required in III.2.b) of this permit.

#### d) Prohibition of bypass

- (1) Bypass is permitted only under the following conditions, and the Director may take enforcement action against a permittee for bypass, unless;
  - (A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
  - (B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and
  - (C) The permittee submitted notices as required under II.3.c) of this permit.
- (2) The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed in II.3.d)(1) of this permit.

### 4. 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 reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.

b) Effect of upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of II 4.c are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

c) Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs or other relevant evidence that:

- (1) An upset occurred and that the permittee can identify the cause(s) of the upset;
- (2) The permitted facility was at the time being properly operated.
- (3) The permittee submitted notice of the upset as required in III.2.b) of this permit.
- (4) The permittee complied with any remedial measures required under I.3 of this permit.

d) Burden of proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

### 4. Installation of Appropriate Treatment Not a Defense

It shall not be a defense for a permittee in noncompliance with applicable effluent limitations to claim that the appropriate minimum treatment was installed as required in Section A of this permit. Sewage treatment systems shall incorporate design criteria that will achieve assigned effluent limits during all normal seasonal or climatic conditions of the year.

#### **5. Removed Substances**

Where removed substances are not otherwise covered by the terms and conditions of this permit or other existing permit by the Director, any solids, sludge, filter backwash or other pollutants (removed in the course of treatment or control of wastewaters) and which are intended for disposal within the State, shall be disposed of only in a manner and a site subject to the approval by the Director. If such substances are intended for disposal outside the State or for reuse, i.e., as a material used for making another product, which in turn has another use, the permittee shall notify the Director in writing of the proposed disposal or use of such substances, the identity of the prospective disposer or users, and the intended place of disposal or use, as appropriate.

### **III. OTHER REPORTING**

#### **1. Reporting Spills and Accidental Discharges**

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee for any responsibilities, liabilities, or penalties established pursuant to Title 47, Series 11, Section 2 of the West Virginia Legislative Rules promulgated pursuant to Chapter 22, Article 11. Attached is a copy of the West Virginia Spill Alert System for use in complying with Title 47, Series 11, Section 2 of the rules as they pertain to the reporting of spills and accidental discharges.

#### **2. Immediate Reporting**

- a) The permittee shall report any non-compliance that may endanger health or the environment immediately after becoming aware of the circumstances by using the Agency's designated spill alert telephone number. A written submission shall be provided within five (5) days of the time the permittee becomes aware of the circumstances. The written submission shall 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 recurrence of the noncompliance.
- b) The following shall also be reported immediately:
  - (1) Any spill(s) or discharge(s) to any surface water collection point.
  - (2) Any spill(s) or discharge(s) to the ground exceeding ten (10) gallons.
- c) The Director may waive the written report on a case-by-case basis if the oral report has been received in accordance with the above.
- d) Compliance with the requirements of III.2.a or III.2.b of this section, shall not relieve a person of compliance with Title 47, Series 11, Section 2 of the West Virginia Legislative Rules, or Chapter 22, Article 12.
- e) The notification number for emergency reporting of non-compliance is 1-800-642-3074.

#### **3. Reporting Requirements**

- a) Planned changes. The permittee shall give notice to the Director of any planned physical alterations or additions to the permitted facility that may affect the nature or quantity of the discharge. Notice is required when:
  - (1) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in Section 13.7.b of Title 47, Series 10 of the West Virginia Legislative Rules; or
  - (2) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. The notification applies to pollutants that are subject neither to effluent limitations in the permit, nor to notification requirements under III.2. of this section.
- b) Anticipated noncompliance. The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.

#### **4. Other Noncompliance**

The permittee shall report all instances of noncompliance not reported under the above paragraphs at the time monitoring reports are submitted. The reports shall contain the information listed in III.2.a).



**EMERGENCY RESPONSE SPILL ALERT SYSTEM  
WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**REQUIREMENTS:**

Title 47, Series 11, Section 2 of the West Virginia Legislative Rules, Environmental Protection, Water Resources - Waste Management, Effective July 1, 1987.

**RESPONSIBILITY FOR REPORTING:**

Each and every person who may cause or be responsible for any spill or accidental discharge of pollutants into the waters of the State shall give immediate notification to the Division of Water and Waste Management's Emergency Notification Number, 1-800-642-3074. Such notification shall set forth insofar as possible and as soon thereafter as practical the time and place of such spill or discharge, type or types and quantity or quantities of the material or materials therein, action or actions taken to stop such spill or discharge and to minimize the polluting effect thereof, the measure or measures taken or to be taken in order to prevent a recurrence of any such spill or discharge and such additional information as may be requested by the Division of Water and Waste Management. This also applies to spills to the waters of the State resulting from accidents to common carriers by highway, rail and water.

It shall be the responsibility of each industrial establishment or other entity discharging directly to a stream to have available the following information pertaining to those substances that are employed or handled in its operation in sufficiently large amounts as to constitute a hazard in case of an accidental spill or discharge into a public stream:

- (1) Potential toxicity in water to man, animals and aquatic life;
- (2) Details on analytical procedures for the quantitative estimation of such substances in water and
- (3) Suggestions on safeguards or other precautionary measures to nullify the toxic effects of a substance once it has gotten into a stream.

Failure to furnish such information as required by Section 14, Article 11, Chapter 22, Code of West Virginia may be punishable under Section 24, Article 11, Chapter 22, and/or Section 22, Article 11, Chapter 22, Code of West Virginia.

It shall be the responsibility of any person who causes or contributes in any way to the spill or accidental discharge of any pollutant or pollutants into State waters to immediately take any and all measures necessary to contain such spill or discharge. It shall further be the responsibility of such person to take any and all measures necessary to clean-up, remove and otherwise render such spill or discharge harmless to the waters of the State.

When the Director determines it necessary for the effective containment and abatement of spills and accidental discharges, the Director may require the person or persons responsible for such spill or discharge to monitor affected waters in a manner prescribed by the Director until the possibility of any adverse effect on the waters of the State no longer exists.

**VOLUNTARY REPORTING BY LAW OFFICERS, U. S. COAST GUARD, LOCK MASTERS AND OTHERS:**

In cases involving river and highway accidents where the responsible party may or may not be available to report the incident, law officers, U. S. Coast Guard, Lock Masters and other interested person(s) should make the report.

WHO TO CONTACT:

Notify the following number: **1-800-642-3074**

INFORMATION NEEDED:

- |  |                                       |
|--|---------------------------------------|
| - Source of spill or discharge               | - Personnel at the scene              |
| - Location of incident                       | - Actions initiated                   |
| - Time of incident                           | - Shipper/Manufacturer identification |
| - Material spilled or discharged             | - Railcar/Truck identification number |
| - Amount spilled or discharged               | - Container type                      |
| - Toxicity of material spilled or discharged |                                       |