Oklahoma Department of Agriculture, Food, and Forestry (ODAFF)

Agriculture Pollutant Discharge Elimination System (AgPDES)

PESTICIDE GENERAL PERMIT (PGP) FOR DISCHARGES FROM THE APPLICATION OF PESTICIDES (OKG87A000)

AUTHORIZATION TO DISCHARGE INTO WATERS OF THE STATE UNDER THE AGRICULTURAL POLLUTANT DISCHARGE ELIMNATION SYSTEM

In compliance with provisions of the Clean Water Act (CWA), 33 USC 1251 et seq., Oklahoma Agriculture Pollutant Discharge Elimination System Act, §2-2A-1 et seq., and Oklahoma Agriculture Environmental Permitting Act §2-2A-21 et seq., any operator of a point source discharge of pollutants (i.e., discharge) resulting from the application of pesticides and eligible for permit coverage under Part 1.1 is authorized to discharge to waters of the state in accordance with the requirements of this permit. This permit is structured as follows:

A copy of this permit must be kept by the permittee at the site of the permitted activity.

This permit will become effective June 1, 2017

This permit and authorization to discharge under the AgPDES shall expire at midnight May 31, 2022

Issued on May 31, 2017

Teena G. Gunter
AgPDES Director
Oklahoma Department of Agriculture, Food, and Forestry

Part I. Permit Area and Coverage

A. Applicability……... 1
1. Activities Covered……1
2. Activities not Covered…… 2
B. Authorization to Discharge under this Permit……... 3
1. How to Obtain Authorization……...……3
2. Operators Required to Submit an NOI……3
3. Discharge Authorization Date……..4
4. Termination of Coverage…….. 7
C. Effluent Limitations…..…….. 7
1. Limitations……... 7
2. Record Keeping……9
3. Reporting…… 10

Part II. Other Requirements

A. Definitions……..……...……1
B. Compliance Schedule……5
C. Other Discharges……...5
D. Facility Changes……5
E. Coverage Under Subsequent Permits……5
F. Termination of Authorization to Discharge…….. 5
G. Water Quality Standards……... 6
H. Requiring an Individual Permit……6
I. Property Rights……..7
J. Permit Reopener Clause……7
K. Severability……... 7

Appendix A – Notice of Intent Form AEMS098

Appendix B – Notice of Termination Form AEMS099

Appendix C – Standard Permit Conditions

PART I

A. APPLICABILITY

1. Activities Covered

This permit authorizes all dischargers of pesticides that are applied in accordance with state laws and rules, the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the pesticide label. Specific applicable Oklahoma Department of Agriculture, Food, and Forestry (ODAFF) laws include Oklahoma Statutes Title 2, Sections 3-81 through 3-86 and OAC 35:30-17-1 through OAC 35:30-17-99. These laws are incorporated by reference into this permit and are fully enforceable permit conditions. A copy of this permit can be found on ODAFF's website at the following web address: http://www.oda.state.ok.us/aems/agpdes.htm.

This permit covers applicators/dischargers who discharge any substance fitting the definition of a pesticide. "Pesticide" is defined in Title 2, Section 3-81 as a substance or mixture of substances intended for defoliating or desiccating plants, preventing fruitdrop, inhibiting sprouting, or for preventing, destroying, repelling, or mitigating any insects, rodents, fungi, bacteria, weeds, or other forms of plant or animal life or viruses, which the State Board of Agriculture (Board) declares to be a pest, except viruses on or in humans or animals.

This permit covers categories of authorization to include the following:

a. Mosquito and Other Flying Insect Pest Control - to control public health/nuisance and other flying insect pests that develop or are present during a portion of their life cycle in or above standing or flowing water. Public health/nuisance and other flying insect pests in this use category include but are not limited to mosquitoes and black flies;

b. Aquatic Weed and Algae Control - to control invasive or other nuisance weeds and algae in water and at water's edge, including irrigation ditches and/or irrigation canals;

c. Aquatic Nuisance Animal Control - to control invasive or other nuisance animals in water and at water's edge. Aquatic nuisance animals in this use category include, but are not limited to fish, lampreys, and mollusks;

d. Forest Canopy Pest Control - aerial application of a pesticide over a forest canopy to control the population of a pest species (e.g., insect or pathogen) where effective targeting of the pests results in a portion of the pesticide to unavoidably be applied over and deposited to water.

This permit also authorizes the discharge of storm water runoff from facilities which handle or use pesticides provided the pesticides are handled and stored in accordance with the FIFRA instructions specified on the container label and there has been no spillage or leakage which has not been cleaned up. Storm water coverage under this permit is not applicable to facilities which qualify for coverage under the Multi-Sector General Permit OKR05.

2. Activities not Covered

This permit does not authorize other discharges (such as treated sanitary waste water, equipment wash water, or wash water from cleaning storage or mixing tanks) from facilities which handle or use pesticides.

This general permit does not apply to the application of pesticides in the following areas:

Discharges from agricultural and silvicultural activities including storm water runoff from orchards, cultivated crops, pastures, range lands, and forest lands; or

Return flows from irrigated agriculture.

Should a discharge from any of these activities cause a violation of Oklahoma Water Quality Standards (OAC 785:45), the discharger will be subject to an enforcement action.

This general permit shall not apply to:

a. discharges which have limits assigned to them in the Oklahoma Water Quality Standards (WQS).;

b. discharges containing pesticides to waterbodies which have suspected causes of impairments listed which include that pesticide or its degradate as identified in the 303(d) list. For purposes of this permit, impaired waters consist of both waters with EPA-approved or EPA-established total maximum daily loads (TMDLs) and waters without an approved or established TMDL;

c. discharges containing restricted use pesticides to waterbodies which have suspected causes of impairments listed which include any pesticide or its degradate as identified in the 303(d) list. For purposes of this permit, impaired waters consist of both waters with EPA-approved or EPA-established TMDLs and waters without an approved or established TMDL;

d. discharges which are likely to have unauthorized adverse effects upon threatened or endangered species, or on the critical habitat for these species as determined in conjunction with the U.S. Fish and Wildlife Service (USFWS);

e. discharges which adversely affect properties listed or eligible for listing in the National Register of Historic Places, unless they are in compliance with requirements of the National Historic Preservation Act and any necessary activities to avoid or minimize impacts have been coordinated with the Oklahoma State Historic Preservation Office (for questions, the operator should contact the Section 106 Review Coordinator at (405) 521-6381);

f. discharges, as indicated by evidence, indicating the reasonable potential to cause or contribute to a violation of a water quality standard;

g. discharges in which the discharges are covered by another AgPDES permit or the discharges were included in a permit that within the last 5 years has been or is in the process of being denied, terminated, or revoked; and

h. discharges of pesticides to waters designated as Outstanding Resource Waters (ORW), High Quality Waters (HQW), or Sensitive Public and Private Water Supplies (SWS) in Appendix A of the Oklahoma WQS. However, there may be unusual situations where pesticide application may be allowed in order to maintain use and status of the water body. An example of this would include application of a pesticide to control an invasive aquatic plant species that is having a deleterious effect on the dissolved oxygen and other parameters of the ORW. Other examples would include application of a pesticide for the protection of human health and safety.

B. Authorization to Discharge under this Permit

1. How to Obtain Authorization

The following discharges are automatically authorized by this permit beginning November 1, 2016.

a. Eligible discharges made prior to the NOI submission deadline (see Table 2).

b. Eligible discharges that result from the application of a pesticide as part of *pesticide research and development,* as defined in Part II Section A of this permit.

c. Eligible discharges for which submission of an NOI is not required. See Part I.B.2 and Part I.B.3.

To obtain authorization under this permit for all other eligible discharges, an operator must submit a timely, complete, and accurate NOI consistent with the requirements of Part I.B.2 and Part I.B.3.

2. Operators Required to Submit an NOI

Operators who are or will be required to submit an NOI are identified in Table 1 in Part I.B.3. For calculating annual treatment area totals for purposes of determining if an NOI must be submitted, see the definition for "annual treatment area threshold" in Part II Section A of this permit.

An NOI provides notice to ODAFF that an operator intends to discharge to Waters of the U.S. from pesticide application activities eligible for coverage under this permit. Information required is provided on the NOI form included in Appendix A. To be covered under this permit, the NOI must identify the pest management area where the operator will conduct activities resulting in discharges to Waters of the U.S.

If required to submit an NOI, the operator must submit the NOI once, in accordance with the deadlines in Part I.B.3, Table 2. The operator must submit an updated NOI if the criteria in Part I.B.3, Table 3 are met.

If submitting the NOI prior to December 21, 2020, the operator must prepare and submit the NOI using ODAFF form AEMS098 available on ODAFF'S website (http://www.oda.state.ok.us/aems/agpdes.htm). If submitting the NOI on or after December 21, 2020, the operator must prepare and submit the NOI using ODAFF's electronic Notice of Intent System (eNOI) available on ODAFF's website (http://www.oda.state.ok.us/aems/agpdes.htm) unless eNOI is otherwise unavailable or the operator has obtained a waiver from the requirements to use eNOI for submission of the NOI. Operators waived

from the requirement to use eNOI for NOI submission must certify on the paper NOI submitted to ODAFF that use of eNOI will incur undue burden or expense compared to using the paper Notice of Intent form and then provide a basis for this determination. ODAFF will immediately post on that website all NOIs received. Late NOIs will be accepted, but authorization to discharge will not be retroactive.

Coverage will be available for the duration of the permit for operators who file an NOI, including the operator's employees, contractors, subcontractors, and other agents, for all activities identified on the NOI unless coverage is terminated pursuant to this permit. If a submitted NOI is not timely, accurate, or complete, any employee, contractor, subcontractor or other entity that discharges without the required NOI is not covered by this permit.

3. Discharge Authorization Date

Except for discharges identified in Tables 1-3, as of the effective date of this permit any operator with eligible discharges is automatically authorized to discharge under this permit without submission of an NOI. Operators with eligible discharges identified in Tables 1-3 are authorized under this permit consistent with the requirements in those tables.

Table 1. Operators Required to Submit NOIs

Pesticide Use	**Which Operator Must Submit NOIs?**	**For Which Pesticide Application Activities?**
Mosquito and Other Flying Insect Pest Control	Any operator for which pest management for land resource stewardship is an integral part of the organization's operations.	All mosquito and other flying insect pest control activities resulting in a discharge to Waters of the U.S.
	Mosquito control districts, or similar pest control districts.	All mosquito and other flying insect pest control activities resulting in a discharge to Waters of the U.S.
	Local governments or other entities that exceed the *annual treatment area threshold* identified in the next column.	Adulticide treatment if more than 6,400 acres during a calendar year.
Weed and Algae Pest Control	Any Agency for which pest management for land resource stewardship is an integral part of the organization's operations.	All weed and algae pest control activities resulting in a discharge to Waters of the U.S.
	Irrigation and weed control districts, or similar pest control districts.	All weed and algae pest control activities resulting in a discharge to Waters of the U.S.
	Local governments or other entities that exceed the *annual treatment area threshold* identified in the next column.	Treatment during a calendar year if more than either: 20 linear miles OR 80 acres of water (i.e., surface area)
Animal Pest Control	Any Agency for which pest management for land resource stewardship is an integral part of the organization's operations.	All animal pest control activities resulting in a discharge to Waters of the U.S.
	Local governments or other entities that exceed the *annual treatment area threshold* identified in the next column.	Treatment during a calendar year if more than either: 20 linear miles OR 80 acres of water (i.e., surface area)
Forest Canopy Pest Control	Any Agency for which pest management for land resource stewardship is an integral part of the organization's operations.	All forest canopy pest control activities resulting in a discharge to Waters of the U.S.
	Local governments or other entities that exceed the *annual treatment area threshold* identified in the next column.	Treatment if more than 6,400 acres during a calendar year.

Table 2. NOI Submittal Deadlines and Discharge Authorization Dates for Discharges from the Application of Pesticides

As of the effective date of this permit, any eligible discharge for which an NOI is required must submit an NOI consistent with the earliest due date identified below. If ODAFF receives an NOI on or before November 1, 2016, uninterrupted coverage continues[1]. NOI due dates for any discharges occurring on or after November 1, 2016 are as follows:		
Operator Type	**NOI Submission**	**Discharge Authorization Date [1]**
Any operator with a discharge in response to a declared pest emergency, as defined in Part II, for which that activity triggers the NOI requirement identified in Part I.B.2.	30 days after discharge begins.	Immediately upon beginning to discharge for activities conducted in response to a Declared Pest Emergency Situation.
Any operator that exceeds any annual treatment area threshold.	At least 10 days before exceeding an annual treatment area threshold.	No earlier than 10 days after ODAFF receives the complete and accurate NOI.
Any operator otherwise required to submit an NOI as identified in Table 1.	At least 10 days before any discharge for which an NOI is required.	No earlier than 10 days after ODAFF receives the complete and accurate NOI.

[1] On the basis of a review of an NOI or other information, ODAFF may delay authorization to discharge beyond any timeframe identified in Table 1-2, determine that additional technology-based and/or water quality-based effluent limitations or other conditions are necessary, or deny coverage under this permit and require submission of an application for an individual AgPDES permit.

Table 3. NOI Change of Information Submittal Deadlines and Discharge Authorization Dates

Operator Type	**NOI Submission Deadline**	**Discharge Authorization Date**
Any operator requiring permit coverage for a pest management area not identified on a previously submitted NOI for this permit. Revisions other than identification of a new pest management area or a new pesticide use pattern do not require a revised NOI submittal.	At least 10 days before beginning to discharge in that newly identified area unless discharges are in response to a Declared Pest Emergency Situation in which case not later than 30 days after beginning discharge.	No earlier than 10 days after ODAFF receives the complete and accurate NOI unless discharges are in response to a Declared Pest Emergency Situation in which case coverage is available immediately upon beginning to discharge.

To calculate annual treatment areas for Mosquitoes and Other Flying Insect Pest Control and Forest Canopy Pest Control for comparing with any threshold in Table 1 of Part I.B.3, 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 3 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 threshold. The treatment area for these two pesticide use patterns is additive over the calendar year.

To calculate annual treatment areas for Weed and Algae Control and Animal Pest Control for comparing with any threshold in Table 1 of Part I.B.3, calculations should include either the linear extent of or the surface area of waters for applications made to Waters of the U.S. or at water's edge adjacent to Waters of the U.S. 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 10 mile long ditch, banks on both sides of the ditch, and/or water in that ditch, the total treatment area is 10 miles for purposes of determining if an NOI is required to be submitted. Additionally, if the same 10 mile 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 of Part I.B.3. The treatment area for these two pesticide use patterns is not additive over the calendar year.

The Department may deny coverage under this permit and require submittal of an application for an individual AgPDES permit based on a person's compliance record, ambient water quality data, or any other information relative to the application of pesticides. ODAFF reserves the right to issue such persons an individual AgPDES permit with more specific limitations and conditions.

4. Termination of Coverage

Operators who were required to submit an NOI to obtain coverage under this permit who would like to terminate permit coverage may do so by submitting Form AEMS099 Notice of Termination (NOT) provided in Appendix B. Permit coverage may be terminated only if the Operator is no longer responsible for any discharges from the application of pesticides for which permit coverage was obtained.

Operators who were not required to submit an NOI to obtain coverage under this permit are automatically terminated from permit coverage when there are no longer any discharges from the application of pesticides.

C. EFFLUENT LIMITATIONS

1. Limitations

The permit incorporates Oklahoma pesticide laws and rules by reference (Oklahoma Statutes Title 2, Sections 3-81 through 3-86 and OAC 35:30-17-1 through OAC 35:30-17-99).

This permit authorizes all persons to handle, use, or apply pesticides in accordance with state laws and rules, the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the pesticide label.

Discharge must be controlled as necessary to meet applicable state water quality standards.

If it is determined that the discharge causes or contributes to an exceedance of applicable water quality standards, corrective action must be taken.

No pesticide may be applied unless that pesticide is registered by ODAFF.

No person shall apply a pesticide unless in accordance with state laws and ODAFF rules and FIFRA

laws and regulations which include all instructions on the pesticide label.

No person shall apply a restricted use pesticide unless that person is certified by ODAFF or that person is under the direct supervision of someone who is certified by ODAFF.

No person shall own or operate a business engaged in the application of pesticides for a fee unless that person has the proper license from ODAFF.

Any applicator of pesticides shall use the optimal amount of pesticide in accordance with the label. Applicators shall also maintain pesticide application equipment in proper operating condition by adhering to any manufacturer's conditions and industry practices.

All dischargers covered under this permit must conduct spot checks in and around the area where pesticides are applied for possible and observable adverse incidents as defined in Part II, Section A Definitions caused by application of pesticides, including but not limited to the unanticipated death or distress of non-target organisms and disruption of wildlife habitat and 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; and

b. During any pesticide application, when considerations for safety and feasibility allow.

If any of the situations listed below occur, the Operator must review and, as necessary, revise the evaluation and selection of control measures to ensure that the situation is eliminated and will not be repeated in the future. The Operator must document the situation as well as the corrective action taken:

a. An unauthorized release or discharge associated with the application of pesticides (e.g., spill, leak, or discharge) not authorized by this or another AgPDES permit occurs;

b. The discharger becomes aware, or the State permitting authority concludes, that control measures are not adequate/sufficient for the discharge to meet applicable water quality standards;

c. An inspection or evaluation of the activities by a state official reveals that modification to the control measures are necessary to meet the non-numeric effluent limits in the permits; or,

d. The discharger observes, for example, during visual inspection or monitoring that a modification is required or are otherwise made aware of an adverse incident, as defined in Part II, Section A.

This permit also authorizes the discharge of storm water runoff from facilities which handle pesticides provided the pesticides are handled and stored in accordance with the label and there has been no spillage or leakage which has not been cleaned up. Storm water coverage under this permit is not applicable to facilities which qualify for coverage under the Multi-Sector General Permit, OKR05.

This permit does not authorize other discharges (such as treated sanitary waste water, equipment wash water, or wash water from cleaning storage or mixing tanks) from facilities which handle pesticides.

Should any of the applicable state laws or rules change during the life of this permit or should the

FIFRA requirements change during the life of this permit, the AgPDES Director may modify or revoke and reissue this permit.

2. Record Keeping

"Commercial applicators" shall maintain, for a period of three years, records of pesticide applications and records of all data used to complete the NOI for this permit. Records must be available within seven days of the application at the physical address of the employer or the physical address of the licensee. A copy of these records shall be provided to any employee of ODAFF upon request at a reasonable time during normal working hours. The following information shall be recorded:

1. start and stop time of application;
2. total amount of pesticide used;
3. name and address of the commercial or non-commercial company;
4. name and address of person for whom applied;
5. legal description of the land where applied – the legal description may be a street address if properly marked, but shall not be a Post Office Box address;
6. date of application;
7. application rate;
8. dilution rate for mixing;
9. total quantity tank mix used;
10. complete trade name of pesticide product used;
11. EPA registration number of pesticide product used;
12. target pest for the application;
13. site where the pesticide was applied;
14. restricted Entry Interval as stated on the product label;
15. a copy of the pesticide product label or labeling that is attached to the container or included in the shipping case;
16. copies of written notices of spills provided to the ODAFF Pesticide Section as required by Part I.C.3;
17. copies of any contracts issued;
18. other information as required by the Board.

"Non-commercial applicators" described below shall accurately maintain, for a period of 3 years,

records of applications of all pesticides as described above. Records described herein shall be maintained within 7 days of the application at the physical address of the employer. A copy of these records shall be provided to any employee of ODAFF upon request, at a reasonable time during normal working hours.

1. applicators who apply or supervise the application of restricted use pesticides on a non-fee basis in, on or around institutions, motels, hotels, hospitals and like places as the owner or in the employ of the owner and for persons applying or supervising the application of any pesticide for grass and weed control and rodent and general pest control in, on, or around structures or grounds of government subsidized and administered housing and multiplex housing.

2. applicators who apply or supervise the application of restricted use pesticides on a non-fee basis in, on, or around commercial grain elevators and other grain handling establishments, feed mills, flour mills, food processing plants, and other places where processed or unprocessed foods are stored, as the owner or in the employ of the owner.

3. applicators who apply or supervise the application of pesticides on a non-fee basis for grass and weed control and rodent and general pest control (roaches, wasps, and ants) or restricted use pesticides, in, on, or around structures and grounds of schools that provide education for classes kindergarten through 12. Each certified applicator shall annually train all supervised persons applying pesticides in the proper handling, storage, use, application and disposal of pesticides.

3. Reporting

Routine reporting is not required by this permit.

All uncontained spills of more than 10 gallons liquid or 25 pounds dry weight of pesticide concentrate or 50 gallons of an application mixture (tank mix) shall be reported within 24 hours by telephone and by written notice within three days to Oklahoma Department of Environmental Quality, 405-702-5100 or 800-522-0206, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677 and Pesticide Section, Oklahoma Department of Agriculture, Food and Forestry 405-521-3864, P.O. Box 528804, Oklahoma City, Oklahoma 73152.

Part II
Other Requirements

A. DEFINITIONS

The permittee must comply with all applicable provisions of the Oklahoma Water Quality Standards. ODAFF has established the following definitions and requirements in accordance with those rules. The definition of other terms may be found in the Oklahoma Statutes Title 2, Sections 3-81 through 3-86 and OAC 35:30-17-1 through OAC 35:30-17-99.

(a) **Additional definitions:**

1. "Active ingredient" means an ingredient, which defoliates plants, prevents fruit drop, inhibits sprouting, or destroys, repels, or mitigates insects, fungi, bacteria, rodents, weeds, or other pests.

2. "Adverse Incident" means an incident that the discharger observed upon inspection or otherwise became aware of, in which:

    a. A person or non-target organism may have been exposed to a pesticide residue, and

    b. The person or non-target organism suffered a toxic or adverse effect.

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

    a. Distressed or dead juvenile and small fishes.

    b. Washed up or floating fish.

    c. Fish swimming abnormally or erratically.

    d. Fish lying lethargically at water surface or in shallow water.

    e. Fish that are listless or nonresponsive to disturbance.

    f. Stunting, wilting, or desiccation of non-target submerged or emergent aquatic plants

    g. Other dead or visibly distressed non-target aquatic organisms (amphibians, turtles, invertebrates, etc.).

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

3. "AgPDES" means those portions of the Oklahoma Water Quality Act and all rules promulgated under their authority which are deemed equivalent to the National Pollutant Discharge Elimination System (NPDES) under the Clean Water Act in accordance with Section 402 of the Clean Water Act and all applicable federal regulations.

4. “AgPDES Director” means the individual appointed by the Commissioner to perform the duties

identified in 2 O.S. §2A-5 of the Oklahoma Agriculture Pollutant Discharge Elimination System Act.

5. "Commercial applicator" means any person engaging in the commercial application of pesticides or commercial employment of devices. Any farmer while working for a neighbor in agricultural production, not advertising, and not held out to be in the business of applying restricted-use pesticides, shall not be classified by the Board as a commercial applicator.

6. “Commissioner” means the commissioner for agriculture, food, and forestry or his duly authorized representatives acting at his direction.

7. “Declared Pest Emergency” means an event defined by a public declaration by federal, state, or local government of a pest problem determined to require control through application of a pesticide beginning less than 10 days after identification of the need for pest control. This public declaration may be based on:

    a. Significant risk to human health;

    b. Significant economic loss; or

    c. Significant risk to:

        i. Endangered species,

        ii. Threatened species,

        iii. Beneficial organisms, or

        iv. The environment.

8. "Department" means the Oklahoma Department of Agriculture, Food, and Forestry (ODAFF).

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

10. "Effluent limitations" means any established restriction on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into waters of the U.S., including schedules of compliance.

11. "EPA" means the US Environmental Protection Agency.

12. "Facility” or “Activity" means any AgPDES point source or any other facility or activity (including land or appurtenances thereto) that is subject to statutes or rules under the AgPDES program. [40 CFR 122.2]

13. "FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act, P.L. 92-516, as amended.

14. "General use pesticide" means a pesticide which is classified for general use by the State Board of Agriculture or by EPA under FIFRA.

15. "Impaired Water" means water that has been identified by the State or EPA pursuant to Section 303(d) of the Clean Water Act 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.

16. "General Permit" means an AgPDES permit of general applicability authorizing a category of similar discharges within the State of Oklahoma.

17. "Inert ingredient" means an ingredient, which is not an active ingredient.

18. "Label" means the written, printed, or graphic matter attached to the pesticide, device, or container including the outside container or wrapper of the retail package of the pesticide or device.

19. "Labeling" means all labels and other written, printed, or graphic material:

    a. Upon the pesticide, device, or any of its containers or wrappers,

    b. Accompanying the pesticide or device at any time, or

    c. To which reference is made on the label or in literature accompanying the pesticide or device except when accurate, no misleading reference is made to current official publications of the United States Environmental Protection Agency, United States Department of Agriculture, United States Department of the Interior, the United States Public Health Service, State Experiment Stations, State Agricultural Colleges, or other federal institutions or official agencies of this state or other states authorized by law to conduct research in the field of pesticides.

21. "Noncommercial applicator" means any person, other than a commercial or private applicator, who uses or supervises the use of a restricted-use pesticide. The noncommercial applicator shall be under the supervision of an owner or manager of property and who is certified in the same manner as a commercial applicator. A noncommercial applicator is subject to all requirements except those pertaining to financial responsibility. Noncommercial applicator includes a government employee applying restricted-use pesticides in the discharge of official duties.

22. "Non-target organism" means a plant or animal other than the one against which the pesticide is applied.

23. "Operator" means the person or legal entity responsible for the operation and/or maintenance of a facility or process with a discharge covered by this permit.

24. "Owner" means the person or legal entity holding legal title to a facility or operation with a discharge covered by this permit.

25. "Person" means the state, any municipality, political subdivision, institution, individual, public or private corporation, partnership, association, firm, company, public trust, joint-stock company, trust, estate, state or federal agency, other governmental entity, or any other legal entity or an agent, employee, representative, assignee or successor thereof.

26. "Pesticide" means a substance or mixture of substances intended for defoliating or desiccating plants, preventing fruitdrop, inhibiting sprouting, or for preventing, destroying, repelling, or mitigating any insects, rodents, fungi, bacteria, weeds, or other forms of plant or animal life or viruses, which the Board declares to be a pest, except viruses on or in humans or animals.

27. "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).

28. "Pests" means any organism harmful to man including, but not limited to, insects, mites, nematodes, weeds, and pathogenic organisms. Pathogenic organisms include viruses, mycoplasma, bacteria, rickettsia, and fungi which the Board declares to be a pest.

29. "Private applicator" means any person who uses or supervises the use of any restricted pesticide for purposes of producing any agricultural commodity on property owned or rented by the person, or employer, or on the property of another person if applied without compensation other than trading of personal services between producers of agricultural commodities.

30. "Restricted use pesticide" means any pesticide classified for restricted use by the United States Environmental Protection Agency, either by regulation or through the registration process, or by the Board pursuant to the Oklahoma Agricultural Code.

31. "Waters of the U.S." means:

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

    b. All interstate waters, including interstate “wetlands;”

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

        i. Which are or could be used by interstate or foreign travelers for recreational or other purposes;

        ii. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

        iii. Which are used or could be used for industrial purposes by industries in interstate commerce;

    d. All impoundments of waters otherwise defined as Waters of the United States under this definition;

    e. Tributaries of waters identified in paragraphs (a) through (d) of this definition;

    f. The territorial sea; and

    g. “Wetlands” adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition. [40 CFR 230.3 (s)]

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 423.11(m) which also meet the criteria of this definition) are not Waters of the United States. Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA. [40 CFR 122.2]

Delineated Waters of the United States may or may not be wet at the time of discharge; however, discharges to such are still considered discharges to Waters of the United States. Also, this permit refers to the term "Waters of the United States' to identify those point source discharges required to obtain NPDES permit coverage. Any modification to the regulatory definition of "Waters of the United States" at 40 CFR 122.2 during the effective term of this permit becomes the legal standard for identifying those point source discharges required to obtain NPDES permit coverage consistent with the effective date of such regulations. See EPA's website for up-to-date guidance on identifying Waters of the United States.

B. COMPLIANCE SCHEDULE

The permittee shall be in compliance with the requirements specified herein and other applicable permitting and/or enforcement documents on the date of authorization of coverage under this general permit. If a discharge is found to be in violation of specified conditions, the permittee will be subject to enforcement action, including civil penalties, and may be required to obtain an individual permit under Title 2 O.S. Section 2A-9 of the Oklahoma Statutes.

C. OTHER DISCHARGES

This permit does not in any way authorize the permittee to discharge a pollutant not normally associated with the activity or from a source not eligible for coverage under this general permit.

D. FACILITY CHANGES

The authorization to discharge in accordance with this general permit may be terminated at the discretion of ODAFF if there is a change or alteration of the permitted facility or processes.

E. COVERAGE UNDER SUBSEQUENT PERMITS

This permit expires 5 years after the effective date. Should this permit expire before it is reissued, ODAFF will administratively extend the permit to discharge for permittees that were covered prior to the expiration until such time that a new general permit is issued. Upon reissuance or replacement of this permit, the permittee must comply with the requirements for obtaining coverage under the new permit to maintain authorization to discharge.

F. TERMINATION OF AUTHORIZATION TO DISCHARGE

ODAFF reserves the right to revoke the authorization to discharge in accordance with this general permit as it applies to any person and/or require such person to apply for and obtain an individual permit if:

1. the covered source or activity is a significant contributor to pollution or creates other environmental problems;

2. the permittee is not in compliance with the terms and conditions of this general permit;

3. conditions or standards have changed so that the source or activity no longer qualifies for this general permit; or

4. the discharge limitations contained in this permit are not in accordance with the Oklahoma WQS.

G. WATER QUALITY STANDARDS

OAC 785:45-5 Part 3 describes numerical and general criteria that apply to all water bodies of the State. Criteria are elements of the water quality which set limitations on the permissible amounts of a substance or other characteristics of state waters. The general criteria limit discharges to maintain existing beneficial uses in the receiving water body. Any noncompliance with the general or numerical criteria is not authorized under this permit.

The AgPDES Director has made the determination that the application of pesticides in accordance with controls required by ODAFF and the FIFRA label will comply with Oklahoma Water Quality Standards. However, any application of a pesticide which results in a long-term or permanent impact on a designated water use will be subject to enforcement action and/or individual permit action under the Oklahoma Water Quality Standards.

H. REQUIRING AN INDIVIDUAL PERMIT

(b) You may be required to submit an individual permit based on the following:

1. The AgPDES Director may require any person authorized by this permit to apply for and/or obtain an individual AgPDES permit. Any interested person may petition the AgPDES Director to take action under this paragraph. Where the AgPDES Director requires a discharger authorized to discharge under this permit to apply for an individual AgPDES permit, the AgPDES Director shall notify the discharger in writing that a permit application is required. This notification shall include a brief statement of the reasons for this decision, an application form, a statement setting a deadline for the discharger to file the application, and a statement that on the effective date of issuance or denial of the individual AgPDES permit as it applies to the individual permittee, coverage under this general permit shall automatically terminate. The AgPDES Director may grant additional time to submit the application upon request of the applicant. If a discharger fails to submit in a timely manner an application as required by the AgPDES Director under this paragraph, then the applicability of this permit to the permittee is automatically terminated at the end of the day specified by the AgPDES Director for application submittal.

2. Any discharger authorized by this permit may request to be excluded from the coverage of this permit by applying for an individual permit. In such cases, the permittee shall submit an individual application in accordance with the requirements stated above, with reasons supporting the request, to the AgPDES Director at the Oklahoma Department of Agriculture, Food, and Forestry, Agricultural Environmental Management Services Division, P.O. Box 528804, Oklahoma City, OK 73152. The request may be granted by issuance of an individual permit if the reasons cited by the permittee are adequate to support the request.

3. In order to appropriately cover all discharges that might occur at a facility, a permittee authorized to

discharge under this AgPDES permit might also need coverage under an individual AgPDES permit or other AgPDES general permits for discharges that occur at the facility/site that are not authorized by this general permit. The permittee shall maintain appropriate permit coverage for the permitted facility/site and shall maintain compliance with all effective AgPDES permits issued to the facility/site.

4. When an individual AgPDES permit is issued to a discharger otherwise subject to this permit, the applicability of this permit to that AgPDES permittee is automatically terminated on the effective date of the individual permit. When an individual AgPDES permit is denied to an owner or operator otherwise subject to this permit, that owner or operator then becomes ineligible for authorization to discharge under this general permit, unless the AgPDES Director determines that specific discharges from the owner or operator's facility may be authorized by this permit

I. PROPERTY RIGHTS

Authorization to discharge pursuant to the conditions of this permit does not relieve the permittee of any liability for damages to state waters or private property. For discharges to private land, this permit does not relieve the permittee from obtaining proper approval from the landowner for appropriate easements and rights of way.

J. PERMIT REOPENER CLAUSE

This permit may be modified, revoked and reissued, or terminated for cause in accordance with 40 CFR 122.62, 122.63, and 122.64. The filing of a request for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition. ODAFF reserves the right to reopen and modify this permit to conform to those standards necessary to maintain the water quality in order to support uses of the receiving water bodies.

K. SEVERABILITY

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

Appendix A. Notice of Intent Form

Oklahoma Department of Agriculture, Food, and Forestry

Notice of Intent (NOI) of Coverage Under the Pesticide General Permit (PGP) for Discharges from the Application of Pesticides

Submission of this completed Notice of Intent (NOI) constitutes notice that the Operator identified in Section B intends to be authorized to discharge pollutants to Waters of the U.S. within the pest management area identified in Section C under EPA's Pesticide General Permit. Submission of this NOI constitutes notice that the party identified in Section B of this form has read, understands, and meets the eligibility conditions of Part 1 of the permit; agrees to comply with all applicable terms and conditions of the permit; and understands that continued authorization under the permit is contingent on maintaining eligibility for coverage. To be granted coverage, all information required on this form must be completed. Please read and make sure you comply with all permit requirements.

Electronic Submission Waiver (skip if submitting through ODAFF's eNOI system)

☐ I hereby acknowledge my waiver request from the use of ODAFF's electronic Notice of Intent system (eNOI) because my use of eNOI will incur undue burden or expense over my use of this paper NOI form, or if eNOI is otherwise unavailable.

Briefly describe the reason why use of the electronic system causes undue burden or expense.

_____

_____

A. Notice of Intent Status

1. Mark whether this is the first time you are requesting coverage under the Pesticide General Permit or if this is a change of information for a discharge already covered under the Pesticide General Permit. If this is a change of information, supply the AgPDES permit tracking number for the discharge.

   ☐ Original NOI Submission

   ☐ NOI Change of Information: _____ (AgPDES Permit Number)

Please note: When selecting A.1.b please fill out Section B (Operator Name and Mailing Address) and the fields of the NOI that need to be modified.

B. Operator Information

1. Operator Name: _____
2. IRS Employer Identification Number (EIN): _____
3. Operator Type (check one):

   ☐ Federal government ☐ State government

   ☐ Local government ☐ Mosquito control district (or similar)

   ☐ Irrigation control district (or similar) ☐ Weed control district (or similar)

   ☐ Other: If other, provide brief description of type of operator _____

4. Mailing Address:

   Street:_____ City:_____ State:_____ ZIP Code:_____

   Telephone:_____ Ext_____ Fax:_____

   Contact Name:_____ E-mail:_____

C. Pest Management Areas: Complete Section C for each Pest Management Area for which coverage under the AgPDES Pesticide General Permit is desired. Copy this section for non-electronic submissions.

Pest Management Area #____of ##____

1. Pest Management Area Name:_____

   Provide a map of the location of the Pest Management Area (attached map) or describe the location of the Pest Management Area in detail below.

   _____

   _____

   _____

   _____

2. Are any of your activities for which you are requesting coverage under this NOI occurring on Indian Country Lands?

   If yes, identify the reservation or otherwise describe those areas: ☐ Yes ☐ No

   _____

   _____

3. Mailing address and contact information of pesticide applicator (or check here ☐ if same as provided in Section B):

   Street:_____ City:_____ State:_____ ZIP Code:_____

   Telephone:_____ Ext_____ Fax:_____

   Contact Name:_____ E-mail:_____

4. Pesticide Use Patterns to be included in this Pest Management Area (check all that apply):

   ☐ Mosquito and Other Flying Insect Pest Control ☐ Animal Pest Control

   ☐ Weed and Algae Pest Control ☐ Forest Canopy Pest Control

5. Receiving Waters (check one):

   ☐ Coverage requested for all Waters of the U.S. within the Pest Management Area identified above.

   ☐ Coverage requested specifically for the following Waters of the U.S. within the Pest Management Area identified above.

   _____

   _____

   ☐ Coverage requested for all Waters of the U.S. within the Pest Management Area identified above except for:

   _____

   _____

6. Water Quality Impaired Waters

   Operators are not eligible for coverage under this permit for any discharges from a pesticide application to Waters of the U.S. if the waters are identified as impaired by a substance which is either an active ingredient of the pesticide designated for use or is a degradate of such an active ingredient. See Part I.A.2 of the permit. Check one:

   ☐ Waters are NOT impaired by any substance which is either an active ingredient of a pesticide to be discharged or a degradate of such an active ingredient.

   ☐ Waters are on a current state list as being impaired by a substance which is either an active ingredient of a pesticide to be discharged or a degradate of such an active ingredient; however, evidence is attached documenting that the waters are no longer impaired.

D. 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 gather and evaluate the information submitted. On the basis of my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

Printed Name:_____ Title:_____

E-mail:_____ Phone:_____

Signature/Responsible Official:_____ Date:_____

NOI Preparer (Complete if NOI was prepared by someone other than the certifier)

Preparer Name:_____ Organization:_____

E-mail:_____ Phone:_____

Signature:_____ Date:_____

Appendix B. Notice of Termination Form

Oklahoma Department of Agriculture, Food, and Forestry

Notice of Termination (NOT) of Coverage Under the Pesticide General Permit (PGP) for Discharges from the Application of Pesticides

Electronic Submission Waiver (skip if submitting through ODAFF's eNOI system)

☐ I hereby acknowledge my waiver request from the use of ODAFF's electronic Notice of Intent system (eNOI) because my use of eNOI will incur undue burden or expense over my use of this paper NOT form, or if eNOI is otherwise unavailable.

Briefly describe the reason why use of the electronic system causes undue burden or expense.

_____

_____

_____

A. Notice of Intent Status

1. AgPDES Permit Number:_____
2. Reason for termination (check one only):
   - ☐ You have ceased all discharges from the application of pesticides for which you obtained permit coverage and you do not expect to discharge during the remainder of the permit term.
   - ☐ You have obtained permit coverage under an AgPDES individual permit or alternative AgPDES general permit for all pesticide discharges requiring AgPDES permit coverage.
   - ☐ A new operator has taken over decision-making responsibility for the pest control activities covered under an existing NOI. Provide the transfer date and the new operator information.

   New Operator Name:_____ Date of Transfer:_____

   Street:_____ City:_____ State:_____ ZIP Code:_____

   Telephone:_____ Ext_____ E-mail:_____

B. Operator Information

1. Operator Name: _____
2. IRS Employer Identification Number (EIN): _____
3. Mailing Address:

   Street:_____ City:_____ State:_____ ZIP Code:_____

   Telephone:_____ Ext_____ Fax:_____

   Contact Name:_____ E-mail:_____

C. Certification

I certify under penalty of law that I have met at least one of the reasons for terminating permit coverage listed in Section A above. I understand that by submitting this Notice of Termination, I am no longer authorized to discharge pesticides to Waters of the U.S.. This document and all attachments were prepared under my direction and supervision in accordance with a system designed to ensure that qualified personnel properly gather and evaluate the information submitted. On the basis of my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment. Additionally, I understand that the submittal of this Notice of Termination does not release a pesticide operator from liability for any violations of the Clean Water Act.

Printed Name:_____ Title:_____

E-mail:_____ Phone:_____

Signature/Responsible Official:_____ Date:_____

NOT Preparer (Complete if NOT was prepared by someone other than the certifier)

Preparer Name:_____ Organization:_____

E-mail:_____ Phone:_____

Signature:_____ Date:_____

Appendix C. Standard Permit Conditions

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

I. Duty to Comply

Operators must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Oklahoma Water Quality Standards and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

A. Operators must comply with effluent standards or prohibitions established under Oklahoma Water Quality Standards within the time provided in the regulations that establish these standards, even if the permit has not yet been modified to incorporate the requirement.

B. Penalties for Violations of Permit Conditions:

1. Whenever there are reasonable grounds to believe that there has been a violation of any of the provisions of the Oklahoma Agriculture Pollutant Discharge Elimination System Act, any permit, any rule, or any order of the AgPDES Director of the Agriculture Pollutant Discharge Elimination System, the AgPDES Director shall have the authority and powers to proceed as specified in the Administrative Procedures Act unless otherwise provided herein. However, provisions of this section for written notice, enforcement hearing, and administrative orders shall not be conditions precedent for seeking action in the district court as provided by the Oklahoma Agriculture Pollutant Discharge Elimination System Act or other applicable provisions of law.
2. The Oklahoma Agriculture Pollutant Discharge Elimination System Act shall not in any way impair or in any way affect the right of a person to recover damages for pollution that are otherwise allowed by law in a court of competent jurisdiction.
3. Any person having any interest connected with the geographic area or waters or water system affected, including but not limited to any health, environmental, pecuniary, or property interest, which interest is or may be adversely affected, shall have the right to intervene as a party in any administrative proceeding before the Department, or in any civil proceeding, relating to violations of the Oklahoma Agriculture Pollutant Discharge Elimination System Act or rules, permits or orders issued hereunder.
4. Whenever, on the basis of any information available, the Department finds that any person regulated by the Department is in violation of any act, rule, order, permit, condition or limitation implementing the Oklahoma Agriculture Pollutant Discharge Elimination System Act, or any previously issued discharge permit, the AgPDES Director may issue an order requiring the person or entity to comply with the provision or requirement, commence appropriate administrative enforcement proceedings, or bring a civil action. Provided, however, the issuance of a compliance order or denial, placing on probation, reinstatement, suspension or revocation of a permit shall not be considered a condition precedent to the accrual or imposition of penalties or fines in any administrative, civil, or criminal proceeding.
5. A copy of any order issued pursuant to this section shall be sent immediately to the violator. In any case in which an order or notice to a violator is issued to a corporation, a copy of the order shall be served on any appropriate individual officers or service agents.
6. Any order issued pursuant to this section shall state with reasonable specificity the nature of the violation, and shall specify a time for compliance not to exceed thirty (30) days in the case of a violation of an interim compliance schedule or operation and maintenance requirement and not to exceed a reasonable time in the case of a violation of a final deadline, taking into

account the seriousness of the violation and any good faith efforts to comply with applicable requirements. Any order or notice issued by the AgPDES Director may be served in any manner allowed by Oklahoma Rules of Civil Procedure applicable to a civil summons.

7. Whenever on the basis of any information available the AgPDES Director finds that any person regulated by the Department has violated any of the provisions of the Oklahoma Agriculture Pollutant Discharge Elimination System Act, or any permit, rule, order or condition or limitation implementing any of these sections, or previously issued discharge permit or related order, the AgPDES Director may assess, after providing notice and opportunity for an enforcement hearing to the alleged violator, an administrative fine of not more than Ten Thousand Dollars ($10,000.00) per day for each violation.

8. The total amount of the administrative fine shall not exceed One Hundred Twenty-five Thousand Dollars ($125,000.00) per violation. In determining the amount of any penalty assessed under this subsection, the AgPDES Director shall take into account the nature, circumstances, extent and gravity of the violation, or violations, and, with respect to the violator, the ability to pay, any prior history of violations, the degree of culpability, the economic benefit savings, if any, resulting from the violation, and any other matters as justice may require. For purposes of this subsection, a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

9. Enforcement hearings shall be conducted in accordance with the procedures set out in the Administrative Procedures Act.

10. The AgPDES Director is authorized to commence a civil action for appropriate relief, including a permanent or temporary injunction, for any violation for which the AgPDES Director is authorized to issue a compliance order under Part I.C.3.

11. Any person who violates any provision of the Oklahoma Agriculture Pollutant Discharge Elimination System Act, any permit condition or limitation implementing any of such provisions in a permit issued under the Oklahoma Agriculture Pollutant Discharge Elimination System Act, and any person who violates any order issued by the AgPDES Director under Part I.C.3, shall be subject to a civil penalty not to exceed Ten Thousand Dollars ($10,000.00) per day for each violation.

12. In determining the amount of the civil penalty, the court shall consider the seriousness of the violation or violations, the economic benefit, if any, resulting from the violation, any history of violations, any good faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and any other matters as justice may require. For purposes of this subsection, a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

13. Any action pursuant to this subsection may be brought in the district court for the district in which the property or defendant is located or defendant resides or is doing business, and the court shall have jurisdiction to restrain any violation and to require compliance.

14. The prior revocation of a permit shall not be a condition precedent to the filing of a civil action under the Oklahoma Agriculture Pollutant Discharge Elimination System Act.

15. Any person who violates any provision of this act, any order of the AgPDES Director, or any condition or limitation in a permit issued pursuant to this act may be punishable by a fine of not less than Five Hundred Dollars ($500.00) nor more than Ten Thousand Dollars ($10,000.00) per day for each violation, or by imprisonment for not more than six (6) months for each violation, or both.

16. Any person who knowingly makes any false material statement, representation, or certification in, omits material data from, or tampers with any application, notice, record, report, plan, or other document filed or required to be maintained under the Oklahoma Agriculture Pollutant

Discharge Elimination System Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under the Oklahoma Agriculture Pollutant Discharge Elimination System Act, shall be punishable, upon conviction, by a fine of not more than Ten Thousand Dollars ($10,000.00) per day for each violation, or by imprisonment for not more than two (2) years, or by both. If a conviction of a person is for a violation committed after a first conviction of that person under this paragraph, punishment shall be by a fine of not more than Twenty Thousand Dollars ($20,000.00) per day for each violation, or by imprisonment for not more than four (4) years, or by both. In addition, the AgPDES Director shall deny issuance of the permit or require submission of a new application.

17. For purposes of this subsection, a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

18. Whenever, on the basis of information available, the Department finds that an owner or operator of any source is introducing a pollutant into a treatment works in violation of the Oklahoma Agriculture Pollutant Discharge Elimination System Act or any requirement, rule, permit, or order issued under this act, the Department shall notify the owner or operator of the treatment works of the violation.

19. If the operator of the treatment works does not commence appropriate enforcement action within thirty (30) days of the date of the notification, the Department may commence a civil action for appropriate relief, including but not limited to a permanent or temporary injunction, against the owner or operator of the treatment works.

20. In the civil action, the Department shall join the operator of the source as a party to the action.

21. The action shall be brought in the district court in the county in which the treatment works is located.

22. The court shall have jurisdiction to restrain the violation and to require the operator of the treatment works and the operator of the source to take any action as may be necessary to come into compliance with the Oklahoma Agriculture Pollutant Discharge Elimination System Act.

23. Nothing in this subsection shall be construed to limit or prohibit any other authority the Department may have under this section.

24. Any person against whom an administrative compliance or penalty order is issued under this section may obtain review of the order by filing a petition for review in district court pursuant to the Oklahoma Administrative Procedures Act. The court shall not impose additional civil penalties for the same violation unless the assessment of the penalty constitutes an abuse of discretion. No stay of an administrative penalty order shall be granted until the amount of penalty assessed has been deposited with the reviewing district court pending resolution of the petition for review.

25. If any person fails to pay an assessment of an administrative penalty:

    a. after the order making the assessment has become final, or

    b. after a court in an action brought under paragraph 1 of this subsection has entered a final judgment in favor of the Department, as the case may be,

    a civil action may be brought in an appropriate district court to recover the amount assessed plus interest at currently prevailing rates from the date of the final order or the date of the final judgment, as the case may be. In such an action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

26. Any person who fails to pay on a timely basis the amount of an assessment of an administrative or civil penalty shall be required to pay, in addition to the amount and interest, attorney fees and costs for the collection proceeding and a quarterly nonpayment penalty for each quarter during which the failure to pay persists. The nonpayment penalty shall be in an

amount equal to twenty percent (20%) of the aggregate amount of the penalties of the person and nonpayment penalties which are unpaid as of the beginning of the quarter.

27. The Attorney General or the district attorney of the appropriate district court of Oklahoma may bring an action in a court of competent jurisdiction for the prosecution of a violation by any person of a provision of this act, any rule, any order of the AgPDES Director, or any condition or limitation in a permit issued pursuant to this act.

28. Any action for injunctive relief to redress or restrain a violation of any person of a provision of this act, any rule, any order of the AgPDES Director, or any condition or limitation in a permit issued pursuant to this act or recovery of any administrative or civil penalty assessed may be brought by:

    a. the district attorney of the appropriate district court of the State of Oklahoma,

    b. the Attorney General on behalf of the State of Oklahoma, or

    c. the Department on behalf of the State of Oklahoma.

29. It shall be the duty of the Attorney General and district attorney if requested by the AgPDES Director to bring such action.

II. Duty to Reapply

Except as otherwise provided for in Part II.E of the permit, if an Operator wishes to continue an activity regulated by this permit after the expiration date of this permit, the Operator must apply for and obtain authorization as required by the new permit once ODAFF issues it.

III. Need to Halt or Reduce Activity Not a Defense

It will 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 permit.

IV. Duty to Mitigate

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

V. Proper Operation and Maintenance

Operators must at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which the Operators installs or uses to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which the Operator installs only when the operation is necessary to achieve compliance with the conditions of this permit.

VI. Permit Actions

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

VII. Property Rights

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

VIII. Duty to Provide Information

Operators must furnish to ODAFF or an authorized representative (including an authorized contractor acting as a representative of ODAFF), within a reasonable time, any information that ODAFF may request to

determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. Operators must also furnish to ODAFF or an authorized representative upon request, copies of records required to be kept by this permit.

IX. Inspection and Entry

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

A. Enter upon an Operator's premises where a regulated activity is located or conducted, or where records must be kept under the conditions of this permit;

B. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

C. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

D. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Oklahoma Water Quality Standards, any substances or parameters at any location.

X. Monitoring and Records

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

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

B. Samples and measurements taken for the purpose of monitoring must be representative of the volume and nature of the monitored activity.

C. Operators must retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, for a period of at least 3 years from the date the permit expires or the date the Operator's authorization is terminated. This period may be extended by request of ODAFF at any time.

D. Records of monitoring information must include the following:

1. The date, exact place, and time of sampling or measurements;
2. The individual(s) who performed the sampling or measurements;
3. The date(s) analyses were performed
4. The individual(s) who performed the analyses;
5. The analytical techniques or methods used; and
6. The results of such analyses

E. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in the permit.

F. The Oklahoma Agriculture Pollutant Discharge Elimination System Act provides that any person who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under the Oklahoma Agriculture Pollutant Discharge Elimination System Act, shall be punishable, upon conviction, by a fine of not more than Ten Thousand Dollars ($10,000.00) per day for each violation, or by imprisonment for not more than two (2) years, or both. If a conviction of a

person is for a violation committed after a first conviction of that person under this paragraph, punishment shall be a fine of not more than Twenty Thousand Dollars ($20,000.00) per day for each violation, or by imprisonment for not more than four (4) years, or by both. In addition, the Director shall deny issuance of the permit or require submission of a new application.

XI. Signatory Requirements

A. All applications, including NOIs, must be signed as follows:

1. For a corporation: By a responsible corporate officer. For the purpose of this subsection, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions that govern the operation of the regulated activity including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
2. For a partnership or sole proprietorship: By a general partner or the proprietor, respectively; or
3. For a municipality, state, federal, or other public agency: By either a principal executive officer or ranking elected official. For purposes of this subsection, a principal executive officer of a federal agency includes (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit or the agency.

B. All reports submitted to ODAFF, must be signed by a person described in Appendix C, Subsection XI.A above or by a duly authorized representative of that person. A person is a duly authorized representative only if the following are true:

1. The authorization is made in writing by a person described in Appendix C, Subsection XI.A;
2. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated activity such as the position of superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and
3. The signed and dated written authorization is included with the report. A copy must be submitted to ODAFF, if requested.

C. Any compliance documentation required under this permit, must be signed and dated by the person preparing the change or documentation.

D. Changes to Authorization. If an authorization under Appendix C, Subsection XI.A is no longer accurate because the application activities have been purchased by a different entity, a new NOI satisfying the requirements of Subsection XI.A must be submitted to ODAFF. However, if the only change that is occurring is a change in contact information or a change in the Operator's address, the Operator need only make a modification to the existing NOI submitted for authorization.

E. Any person signing documents in accordance with Appendix C, Subsections XI.A or XI.B above must include the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information contained therein. Based on my inquiry of the

person or persons who manage the system, or those persons directly responsible for gathering the information, the information contained is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

F. The Agriculture Pollutant Discharge Elimination System Act provides that any person who knowingly makes any false statement, representation, or certification in, omits material from, or tampers with any application, notice, record, report, plan, or other document filed or required to be maintained under the Oklahoma Agriculture Pollutant Discharge Elimination System Act, shall be punishable, upon conviction, by a fine of not more than Ten Thousand Dollars ($10,000.00) per day for each violation, or by imprisonment for not more than two (2) years, or both. If a conviction of a person is for a violation committed after a first conviction of that person under this paragraph, punishment shall be a fine of not more than Twenty Thousand Dollars ($20,000.00) per day for each violation, or by imprisonment for not more than four (4) years, or by both. In addition, the Director shall deny issuance of the permit or require submission of a new application.

XII. Reporting Requirements

A. Anticipated noncompliance. Operators must give advance notice to ODAFF of any planned changes in the permitted activity which may result in noncompliance with permit requirements.

B. Transfers. This permit is not transferable to any person except after notice to ODAFF. Where an Operator wants to transfer coverage under the permit to a new Operator, the original Operator (i.e., the first Operator) must submit a Notice of Termination (NOT) pursuant to Part I.B.4. The new Operator must submit a NOI in accordance with Part I.B. See also requirements in Appendix C, Subsections XI.B and XI.D.

C. Pesticide Monitoring Reports. This permit does not require Operators to report monitoring results routinely; however, ODAFF may, pursuant to Part I.B.3, require certain Operators to monitor and report such results. In such instances, provisions of XII.C apply.

1. Monitoring data must be submitted to ODAFF Agricultural Environmental Management Services Division, P.O. Box 528804, Oklahoma City, OK 73152.
2. If an Operator monitors any pollutant more frequently than required using test procedures approved under 40 CFR Part 136 or as otherwise specified by ODAFF, the results of this monitoring must be included in reporting of monitoring data submitted to ODAFF.
3. Calculations for all limitations that require averaging of measurements must use an arithmetic mean unless otherwise specified by ODAFF.

D. Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit must be submitted no later than 14 days following each schedule date.

E. Twenty-four hour reporting.

1. In addition to adverse incident and spill reporting requirements in Part I.C, Operators must report any noncompliance which may endanger health or the environment. Any information must be provided orally within 24 hours from the time the Operator becomes aware of the circumstances. A written submission must also be provided within 5 days of the time the Operator becomes aware of the circumstances. The written submission must contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.
2. For purposes of this permit, Operators must submit a 24-hour report under this section for any upset, as defined in Appendix C, Subsection XIII, which exceeds any effluent limitation in the permit.

3. ODAFF may waive the written report on a case-by-case basis for reports under Appendix C, Subsection XII.E.2 if the oral report has been received within 24 hours.

F. Other noncompliance. Operators must report all instances of noncompliance not reported under Appendix C, Subsections XII.A, XII.D, and XII.E, at the time any applicable annual or monitoring reports are submitted. The reports must contain the information listed in Appendix C, Subsection XII.E.1.

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

XIII. Upset

A. Definition. Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the Operator's reasonable control. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation. See 40 CFR 122.41(n)(1).

B. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of Appendix C, Subsection XIII.C are met. Any determination made during administrative review of claims that noncompliance was caused by an upset, and before an action for noncompliance, is not final administrative action subject to judicial review. See 40 CFR 122.41(n)(2).

C. Conditions necessary for a demonstration of upset. See 40 CFR 122.41(n)(3). An Operator who wishes to establish the affirmative defense for an upset must demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that

1. An upset occurred and that the Operator can identify the cause(s) of the upset;
2. The permitted activity was at the time being properly operated; and
3. The Operator submitted notice of the upset as required in Appendix C, Subsection XII.E.2 (24 hour notice).
4. The Operator complied with any remedial measures required under Appendix C, Subsection IV.

D. Burden of proof. In any enforcement proceeding, the Operator, as the one seeking to establish the occurrence of an upset, has the burden of proof. See 40 CFR 122.41(n)(4).