

RESPONSE TO PUBLIC COMMENT

Pesticide General Permit

MPDES Permit No. MTG870000

The Montana Department of Environmental Quality (DEQ) issued Public Notice MT-21-11 on June 1, 2021. The Public Notice provided the tentative determination to issue a Montana Pollutant Discharge Elimination System (MPDES) General Permit for discharges to surface water from pesticide application to or over surface waters; known as the Pesticide General Permit (PGP). The notice required that all written comments be received or postmarked by July 1, 2021, to be considered in formulation of the final determination and issuance of the permit. A public hearing was also held on July 1, 2021, to accept public comments. DEQ received no comments during the public hearing.

DEQ received written comments from two parties: Melva M. Plouzek and the Environmental Protection Agency (EPA) Region VIII. DEQ has considered these comments in preparation of the final permit and decision. A summary of the submitted comments and DEQ's responses are included below. Copies of the original comment letters are available from DEQ upon request. This Response to Comments is an addendum to and supersedes relevant portions of the Fact Sheet to the extent those changes are described herein.

Comment 1: Melva M. Plouzek

What regard do you take for not only the fish but bees? Application methods could be specific, that would prevent the pesticide getting into waterways or the type of pests limited. Preserving the bees is very necessary.

Response to Comment 1:

Montana Pollutant Discharge Elimination System permits regulate point sources discharges of pollutants to state surface waters. Through the PGP, DEQ regulates the discharge of pesticides remaining from direct application to, or unavoidably discharged into, surface water. The PGP fact sheet Parts I.C and II.C explains the purpose and scope of the PGP coverage.

The Montana Department of Agriculture is responsible for regulating pesticides and pesticide applications under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). DEQ is not delegated to enforce FIFRA rules. However, DEQ included some basic FIFRA requirements in the PGP; for instance, the PGP does not allow authorization for the discharge of any pesticide that is not labeled for use in water. In addition, the PGP requires applicators to follow FIFRA label precautions and restrictions.

Pesticide labels are required to carry specific warnings to alert the pesticide user of the risk to pollinators. Many pesticides, especially insecticides, have use restrictions prohibiting application when bees are foraging in the treatment area, or applications that may leave harmful residues. Some labels prohibit applications when crops are blooming and require that the applicator notify beekeepers in the area prior to application. Applicators must comply with these and other label restrictions to reduce risks.

Contact the Montana Department of Agriculture with any questions regarding pesticide label language or other steps being taken to better protect pollinators from pesticides.

No changes will be made in response to this comment.

Comment 2: EPA Region VIII

MDEQ should clarify the circumstances under which discharges to areas of significant ecological and/or recreational significance will be permitted.

Comment 2A:

In Section II.D. of the fact sheet, “Activities Ineligible for Coverage under this General Permit” (page 7), MDEQ lists [criteria] that may result in denial of coverage under this general permit. Section I.C. of the permit also includes the first sentence of this criteria as a reason for possible denial of general permit coverage.

Since it appears that there are scenarios in which coverage may not be granted, please provide details regarding how the impacts to the various resource types will be assessed or prioritized in reaching this determination.

Response to Comment 2A:

Montana regulations set the framework for our general permit program, including reasons that DEQ may deny a request for authorization under ARM 17.30.1341(4). The criteria that EPA references within Section II.D of the fact sheet and Part I.C. of the General Permit, “Activities Ineligible for Coverage under this General Permit,” is the standard general permit language taken from the Administrative Rules of Montana that is included in all General Permits. DEQ may deny authorization under any of our general permits for the reasons listed. It would be inappropriate to list examples within the General Permit. DEQ reviews each application for authorization to discharge pollutants associated with pesticide application and ensures the activity is eligible for coverage under the General Permit prior to issuing an authorization letter.

The Pesticide General Permit requires that pesticide projects in A-Closed and Outstanding Resource Waters (ORW) are automatically designated as Tier II; this is more protective than requirements for similar-sized projects outside of these areas. DEQ could deny authorization to pesticide application within one of these protected areas under ARM 17.30.1341(4)(e) if the requested pesticide application was going to cause a permanent condition, or the risks of the pesticide application were determined to outweigh the benefits.

No changes will be made to the final permit in response to this comment.

Comment 2B:

Section III.B.1. of the fact sheet, “Description of Receiving Waters and Applicable Standards” (beginning on page 11), offers some details for permitting dischargers to waters with specific beneficial use classifications, Outstanding Resource Waters, and A-Closed Classification Waters. In Section III.B.1.a., it appears that MDEQ concludes that dischargers to Outstanding Resource Waters may be permitted as Tier II facilities on the basis that “DEQ considers pesticide application to be a temporary change and therefore recognizes that discharges of pesticides to water bodies within the National Parks and Wilderness Areas are eligible for coverage under the PGP.” This seems to indicate that all discharges of this kind are eligible for coverage. ... If the state intends to indicate that discharges of this type are eligible for coverage, but only as Tier II facilities, this should be clarified throughout the document.

Response to Comment 2B:

In addition to the existing language in Sections II.A. and II.B.2. of the fact sheet addressing A-Closed and Outstanding Resource Waters (including footnote 2 in Table 1), DEQ agrees to provide clarification on the abovementioned circumstances by inserting the following language into Sections II.C.2., II.D.2., II.E.2, and II.F. of the final permit. The underlined sentences are added to provide additional clarification regarding the eligibility of coverage for discharge into A-Closed and ORW Classification Waters.

II.C.2.: In addition to the universal monitoring requirements in Section II.C.1, a permittee that is greater than the threshold level for any Pesticide Use Pattern in Table 1 or permittees that propose a discharge of pesticides to waterbodies classified as A-closed or Outstanding Resource Waters

must also conduct the following in accordance with their PDMP, and maintain a log of each activity:

II.D.2: In addition to the universal recordkeeping requirements in Section II.D.1, a permittee that is greater than the threshold level for any Pesticide Use Pattern in Table 1 or permittees that propose a discharge of pesticides to waterbodies classified as A-closed or Outstanding Resource Waters must also maintain the following records:

II.E.2.: In addition to the universal requirements in Section II.E.1, a permittee that is greater than the threshold level for any Pesticide Use Pattern in Table 1 or permittees that propose a discharge of pesticides to waterbodies classified as A-closed or Outstanding Resource Waters must submit annual reports that contain basic information on their pesticide discharges to state surface waters. The annual report form (AR-3, updated 2021) can be found on DEQ's website at: <https://deq.mt.gov/water/assistance>.

II.F.: In addition to the effluent limits in Section II.B and monitoring requirements in Section II.C, a permittee that is greater than the threshold level for any Pesticide Use Pattern in Table 1 or permittees that propose a discharge of pesticides to waterbodies classified as A-closed or Outstanding Resource Waters must also develop, maintain, and implement a written Pesticide Discharge Management Plan (PDMP).

Comment 2C:

If the state has developed criteria to determine if ... dischargers [to A-Closed Classification Waters] are eligible for coverage under the Montana PGP, this information would be helpful to potential permittees.

Response to Comment 2C:

See responses to Comments 2A and 2B.

Comment 3: EPA Region VIII

EPA suggests considering the inclusion of general language pertaining to the use of non-pesticide substances [in addition to pesticides] for pest control projects.

Response to Comment 3:

DEQ agrees to include general language pertaining to the use of non-pesticide products/additives for pest control projects. The following language will be included into Section II.B.1.c of the final general permit:

Any spray additives/adjuvants used in conjunction with a pest control project must be used in accordance with manufacturing guidelines, and must be managed so that any biological, excess chemical, or residual chemical pollutant discharge meets water quality standards. DEQ may require the permittee to submit information on the aquatic toxicity, human health impact, and persistence of any spray additive/adjuvant used when there would be a pollutant discharge to waters of the state.

In addition to the language above, spray additive/adjuvant usage monitoring and recordkeeping requirements will be added into sections II.C and II.D, respectively, of the final permit. A section requiring permittees to list any planned spray additive/adjuvant usage will be added to the NOI. A section requiring permittees to report any spray additive/adjuvant usage will be added to the Tier II reporting Form AR3.