

April 19, 2013

AUTHORIZATION TO DISCHARGE UNDER THE  
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with the provisions of the Clean Water Act (CWA), as amended (33 *United States Code* [U.S.C.] 1251 *et seq.*),

**Minnesota Department of Agriculture (MDA)**  
**625 Robert Street North**  
**St. Paul, MN 55155**

is authorized to discharge to:

receiving waters located within the external boundaries of the Fond du Lac  
Reservation (see Appendix B),

from:

the application of two pesticides (SPLAT GM-O and/or Disrupt II) used to control  
gypsy moths within the external boundaries of the Fond du Lac Reservation (i.e.,  
the Pest Management Area).

in accordance with effluent limitations, monitoring requirements and other conditions set forth in  
this permit

This permit becomes effective on **[INSERT DATE]**, 2013.

This permit and the authorization to discharge expire at midnight, **[INSERT DATE]**, 2018.

Signed this        day of        , 2013

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Tinka G. Hyde  
Director, Water Division  
US Environmental Protection Agency Region 5

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**Part I EFFLUENT LIMITATIONS AND MONITORING**

1. This permit establishes requirements for discharges from the application of the following two pesticides used to control gypsy moths (hereafter target pest) identified in the Applicant's permit application and other information submitted in support of that application:

<b>Manufacturer</b>	<b>Product Name</b>	<b>EPA Reg.</b>
ISCA Technologies	SPLAT-GM-O	80286-12
Hercon Environmental	Disrupt II	8730-55

2. This permit does not authorize discharges from the use of *Bacillus thuringiensis var. kurstaki* (Btk) within the external boundaries of the Fond du Lac Reservation.
3. The Applicant is liable for all actions carried out by any applicator hired to apply pesticide within the external boundaries of the Fond du Lac Reservation and must direct any applicator applying pesticide within the external boundaries of the Fond du Lac Reservation to do so in accordance with the terms and conditions established in this permit.
4. The Applicant must minimize the discharge of pesticides to waters of the United States from the application of pesticides, through the use of Pest Management Measures, as defined in Appendix A, subject to the following conditions:
  - A. **IDENTIFY THE PROBLEM** - Prior to the first pesticide application covered under this permit that will result in a discharge to waters of the United States, and at least once each calendar year thereafter prior to the first pesticide application in that calendar year, the Applicant must do the following:
    - i. Identify current distribution of the target pest and assess potential distribution in the absence of Pest Management Measures. Applicant may use other available data as appropriate to meet this condition;
    - ii. Develop Pest Management Measures based on developmental and behavioral considerations of the target pest; and
    - iii. Establish any pest- and site-specific Action Threshold, as defined in Appendix A to implement the pest management options.
  - B. **PEST MANAGEMENT OPTIONS** - Prior to the first pesticide application covered under this permit that will result in a discharge to waters of the United States, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, the Applicant must select and implement efficient and effective means of Pest Management Measures that minimize discharges resulting from the

- application of pesticides to control pests. In developing the Pest Management Measures for the Pest Management Area, the Applicant must evaluate the following management options, including a combination of these management options, considering impact to water quality, impact to non-target organisms, feasibility, and cost effectiveness: no action, prevention, Mechanical/Physical Methods, Cultural Methods, Biological Control Agents, and Pesticides.
- C. **PESTICIDE USE** - If a pesticide is selected to manage the Target Pest, and application of the pesticide will result in a discharge to waters of the United States, the Applicant must ensure that the Applicator:
- i. Conducts surveillance in an area that is representative of the pest problem prior to each application to assess the Pest Management Area and to determine when the pest Action Threshold is met;
  - ii. Reduces the impact on the environment and non-target organisms by evaluating the restrictions, application timing, and application methods in addition to applying the pesticide only when the Action Threshold(s) has been met;
  - iii. Uses only the amount of pesticide and frequency of pesticide application necessary to control the Target Pest, using equipment and application procedures appropriate for this task;
  - iv. Maintains pesticide application equipment in proper operating condition, including requirements to calibrate, clean, and repair such equipment and prevent leaks, spills, or other unintended discharges; and
  - v. Assesses weather conditions (e.g. temperature, precipitation and wind speed) in the treatment area to ensure application is consistent with all applicable federal requirements.
5. The Applicant must ensure that the Applicator controls discharges as necessary to meet applicable numeric and narrative Fond du Lac Reservation or State of Minnesota Water Quality Standards, for any discharges authorized under this permit, with compliance required upon beginning such discharge.
6. If at any time the Applicant becomes aware (e.g., through self-monitoring or by notification from the state or tribe), or EPA determines, that the Applicant's discharge causes or contributes to an excursion of any applicable Water Quality Standard, the Applicant must take corrective action as required in Part II and Part V.13 of this permit, up to and including the ceasing of the discharge, if necessary.
7. Aerial application over large bodies of water is NOT authorized, including all lakes, reservoirs, and rivers within or partially within the external boundaries of the Fond du Lac Reservation. This includes the St. Louis River, and the following lakes named in the Water Quality Standards of the Fond du Lac Reservation: Bang, Big, Cedar, Dead Fish,

East Twin, First, Hardwood, Jaskari, Lac, Lost, Martin (Jo Martin), Miller (Mud), Pat Martin, Perch, Rice Portage, Side, Simian, Sofie, Spring, Spruce, Third, West Twin, Wild Rice, and Second. In addition, Maggie Lake, Upper Deadfish Reservoir, and all open water and/or sensitive wetlands (Aquatic Bed/Emergent) wetlands ten (10) or more acres in size are NOT authorized. See Appendix C (Water Bodies NOT Authorized) for all water bodies identified in this listing. The final listing will be determined during the pre-flight meeting held prior to each year's application operation. Fond du Lac Office of Water Protection staff reserve the right to exclude additional areas as warranted. Exclusion of additional areas will be accomplished with a permit modification pursuant to 40 CFR 122.62.

8. The Applicant must ensure that the Applicator takes appropriate steps to ensure that petroleum products or other chemical pollutants are prevented from entering waters within the external boundaries of the Fond du Lac Reservation. All spills must be reported to the appropriate emergency management agency, and measures shall be taken immediately to prevent the pollution of water within the external boundaries of the Fond du Lac Reservation, including groundwater.
9. The Applicant must ensure that the Applicator prevents any discharge that causes a condition in which visible solids, bottom deposits, or turbidity impairs the usefulness of waters of the Fond du Lac Reservation for any of the uses designated under the Water Quality Standards of the Fond du Lac Reservation. These uses include public water supply, wildlife, aquatic life, warm water fisheries, cold water fisheries, subsistence fishing (netting), primary contact recreation, secondary contact recreation, cultural, wild rice areas, aesthetic waters, agriculture, navigation, and commercial.
10. Any discharge to waters of the United States where the water is designated by a state or tribe as Tier 3 (Outstanding National Resource Waters) for antidegradation purposes under Title 40 of the Code of Federal Regulations (CFR) 131.12(a)(3) is not authorized under this permit.

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

## **Part II CORRECTIVE ACTION**

1. Corrective Action
  - A. **Situations Requiring Revision of Pest Management Measures** – The Applicant must review and, as necessary, revise the evaluation and selection of Pest Management Measures consistent with effluent limitations of this permit for the following situations:

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- i. An unauthorized release or discharge associated with the application of pesticides (e.g., spill, leak, or discharge not authorized by this or another NPDES permit) occurs.
  - ii. The Applicant becomes aware, or EPA concludes, that Pest Management Measures are not adequate/sufficient for the discharge to meet applicable Water Quality Standards.
  - iii. Any monitoring activities indicate failure to meet applicable technology-based effluent limitations in this permit.
  - iv. An inspection or evaluation of activities by an EPA official, or local, state, or tribal entity, reveals that modifications to the Pest Management Measures are necessary to meet the effluent limitations in this permit.
  - v. The Applicant observes or is otherwise made aware of an Adverse Incident as defined in Appendix A.
- B. Corrective Action Deadlines** - If the Applicant determines that changes to Pest Management Measures are necessary to eliminate any situation identified in Part B.1.a, such changes must be made before, or if not practicable, as soon as possible after the next pesticide application that results in a discharge.
- C. Effect of Corrective Action** - The occurrence of a situation identified in Part II.1.A may constitute a violation of the permit. Correcting any situation identified in Part II.1.A does not absolve the Applicant of liability for any original violation. However, failure to comply with Part II.1.B. constitutes an additional permit violation. EPA will consider the appropriateness and promptness of corrective action in determining enforcement responses to permit violations.
- D.** EPA may impose additional requirements and schedules of compliance, including requirements to submit additional information concerning the condition(s) triggering corrective action or schedules and requirements more stringent than specified in this permit. Those requirements and schedules will supersede those of Part II.1.A and Part II.1.B. if such requirements conflict. Any additional requirements and schedules of compliance will be incorporated into the permit pursuant to 40 CFR 122.62.
2. Adverse Incident Documentation and Reporting
    - A. Twenty-Four (24)-Hour Adverse Incident Notification
      - i. Adverse Incident Notification Required Except as provided for in Part II.2.A.ii, if the Applicant observes or is otherwise made aware of an Adverse Incident, as defined in Appendix A, which may have resulted from a discharge from a pesticide application, the Applicant must immediately notify the appropriate EPA Region 5 Incident Reporting Contact, Mark Ackerman, (312) 353-4145 This

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notification must be made by telephone within 24 hours of the Applicant becoming aware of the Adverse Incident and must include at least the following information:

- a. The caller's name and telephone number;
  - b. The NPDES permit number;
  - c. The name and telephone number of a contact person, if different than the person providing the 24-hour notice;
  - d. How and when the Applicant became aware of the Adverse Incident;
  - e. Description of the location of the Adverse Incident;
  - f. Description of the adverse incident identified and the pesticide product, including EPA pesticide registration number, for each product applied in the area of the Adverse Incident;
  - g. Description of any steps the Applicant has taken or will take to correct, repair, remedy, clean up, or otherwise address any adverse effects; and
    1. If the Applicant is unable to notify EPA within 24 hours, the Applicant must do so as soon as possible and also provide an appropriate rationale for why they were unable to provide such notification within 24 hours.
    2. The Adverse Incident notification and reporting requirements are in addition to what the registrant is required to submit under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) section 6(a)(2) and its implementing regulations at 40 CFR Part 159.
- ii. Adverse Incident Notification Not Required
- a. Reporting of adverse incidents is not required under this permit in the following situations:
    1. The Applicant is aware of facts that indicate that the adverse incident was not related to toxic effects or exposure from the pesticide application;
    2. The Applicant has been notified by EPA, and retains such notification, that the reporting requirement has been waived for this incident or category of incidents;
    3. The Applicant receives information of an Adverse Incident, but that information is clearly erroneous; or

4. An Adverse Incident occurs to pests that are similar in kind to potential Target Pests identified on the FIFRA label.

B. Thirty (30)-Day Adverse Incident Written Report

- i. Except as provided for in Part II.2.A.ii, within 30 days of a reportable Adverse Incident pursuant to Part II.2.A.i, the Applicant must provide a written report of the Adverse Incident to both the EPA Region 5 office and to the Fond du Lac Reservation at the address listed in Part VI. The adverse incident report must include at least the following information:
  - a. Information required to be provided in Part II.2.A.i;
  - b. Date and time the Applicant contacted EPA notifying the Agency of the Adverse Incident, who they spoke with at EPA, and any instructions received from EPA;
  - c. Location of incident, including the names of any waters affected and appearance of those waters (sheen, color, clarity, etc);
  - d. A description of the circumstances of the Adverse Incident including species affected, estimated number of individual and approximate size of dead or distressed organisms;
  - e. Magnitude and scope of the affected area (e.g., aquatic square area or total stream distance affected);
  - f. Application rate; intended use site (e.g., on the bank, above waters, or directly to water); method of application; and the name of the pesticide product and EPA registration number;
  - g. Description of the habitat and the circumstances under which the Adverse Incident occurred (including any available ambient water data for pesticides applied);
  - h. If laboratory tests were performed, an indication of which test(s) were performed, and when; additionally, a summary of the test results must be provided within 5 days after they become available if not available at the time of submission of the 30-day report;
  - i. Description of actions to be taken to prevent recurrence of Adverse Incidents; and
  - j. Signature, date, and certification in accordance with Part V, Subsection 12.

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C. Adverse Incident to Threatened or Endangered Species or Critical Habitat

- i. Notwithstanding any of the other Adverse Incident notification requirements of this section, if the Applicant becomes aware of an Adverse Incident affecting a federally listed threatened or endangered species or its federally designated critical habitat which may have resulted from a discharge from the Applicant's pesticide application, the Applicant must immediately notify the U.S. Fish and Wildlife Service (FWS) in the case of a terrestrial or freshwater species. This notification must be made by telephone, to the appropriate contact listed on EPA's website at <http://cfpub.epa.gov/npdes/pesticides/esacontacts.cfm>, immediately upon the Applicant becoming aware of the Adverse Incident, and must include at least the following information:
- a. The caller's name and telephone number;
  - b. The Applicant's name and mailing address;
  - c. The name of the affected species;
  - d. How and when the Applicant became aware of the Adverse Incident;
  - e. Description of the location of the Adverse Incident;
  - f. Description of the Adverse Incident and the pesticide product, including the EPA pesticide registration number, for each product applied in the area of the Adverse Incident; and
  - g. Description of any steps the Applicant has taken or will take to alleviate the adverse impact to the species.

Additional information on federally-listed threatened or endangered species and federally-designated critical habitat is available from FWS ([www.fws.gov](http://www.fws.gov)) for terrestrial or freshwater species.

3. Reportable Spills and Leaks

A. Spill, Leak, or Other Unpermitted Discharge Notification

- i. Where a leak, spill, or other release into Waters of the United States containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110, 40 CFR Part 117, or 40 CFR Part 302 occurs in any 24-hour period, the Applicant must notify the National Response Center immediately at (800) 424-8802 in accordance with the requirements of 40 CFR Part 110, 40 CFR Part 117, and 40 CFR Part 302 as soon as the Applicant has knowledge of the release. Contact information must be in

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locations that are readily accessible and available in the area where the spill, leak, or other unpermitted discharge may occur.

- ii. State, tribal, or local requirements may also require reporting of spills or leaks to local emergency response, public health, or drinking water supply agencies.

B. Thirty-Day Spill, Leak, or Other Unpermitted Discharge Documentation

- i. If the Applicant becomes aware of a spill, leak, or other unpermitted discharge which triggers the notification in Part II.3.A and results in an Adverse Incident, then the Applicant must report the incident per the guidelines in Parts II.2.A and II.2.B. If the spill, leak, or other unpermitted discharge triggers the notification in Part II.3.A, but does not result in an Adverse Incident, then the Applicant must document and retain the following information within 30 days of becoming aware of the situation:
  - a. Information required to be provided in Part II.3.A;
  - b. Summary of corrective action taken or to be taken including date initiated and date completed or expected to be completed; and
  - c. Any measures to prevent recurrence of such a spill or leak or other discharge, including notice of whether PDMP modifications are required as a result of the spill or leak.

C. Other Corrective Action Documentation

- i. For situations identified in Part II.1.A, other than for Adverse Incidents (addressed in Part II.2), or reportable spills or leaks (addressed in Part II.3), the Applicant must document the situation triggering corrective action and planned corrective action within 30 days of becoming aware of that situation, and retain a copy of this documentation. This documentation must include the following information:
  - a. Identification of the condition triggering the need for corrective action review, including any ambient water quality monitoring that assisted in determining that discharges did not meet Water Quality Standards;
  - b. Brief description of the situation;
  - c. Date the problem was identified;
  - d. Brief description of how the problem was identified, how the Applicant learned of the situation, and date the Applicant learned of the situation;

- e. Summary of corrective action taken or to be taken, including date initiated and date completed or expected to be completed; and
- f. Any measures to prevent reoccurrence of such an incident, including notice of whether PDMP modifications are required as a result of the incident.

### **Part III RECORDKEEPING & ANNUAL REPORTING**

#### **1. Recordkeeping**

- A. The Applicant must retain the following records at the address provided on the NPDES application form
  - i. A copy of the application form submitted to EPA along with any supplemental information submitted with the application, any correspondence with EPA specific to coverage under this permit, and a copy of this permit;
  - ii. A copy of the PDMP, including any modifications made to the PDMP during the term of this permit;
  - iii. Copies of any Adverse Incident reports, required in Part II.2.B (and any other documentation required under Part II.2.A.ii for Adverse Incidents where reporting is not required);
  - iv. Copies of any spill or leak or other unpermitted discharge documentation, as required in Part II.3;
  - v. Copies of any annual reports, as required in Part III.3;
  - vi. Documentation of calibration of any equipment related to discharges covered under this permit;
  - vii. Information on each treatment area to which pesticides are discharged, including:
    - a. Description of each treatment area, including location and size (acres or linear feet) of treatment area and identification of any Waters of the United States, either by name or by location, to which pesticide(s) are discharged;
    - b. Action Thresholds;
    - c. Method and/or data used to determine that action threshold(s) has been met;
    - d. Description of pest management measure(s) implemented prior to the first pesticide application;

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- e. Company name and contact information for all Applicators;
  - f. Name of each pesticide product used including the EPA registration number;
  - g. Quantity of each pesticide product applied to each treatment area;
  - h. Pesticide application date(s); and
  - i. Whether or not visual monitoring was conducted during pesticide application and/or post-application and if not, why not and whether monitoring identified any possible or observable Adverse Incidents caused by application of pesticides.
2. Retention of Records
    - A. All required records must be documented as soon as possible but no later than 14 days following completion of each pesticide application. The Applicant must retain any records required under this permit for at least 3 years after the Applicant's coverage under this permit expires or is terminated. The Applicant must make available to EPA, including an authorized representative of EPA; all records kept under this permit upon request and provide copies of such records, upon request.
3. Annual Reporting
    - A. Applicant must submit an annual report to EPA. The annual report must be submitted to EPA Region 5 no later than February 15 of the following year for all pesticide activities covered under this permit occurring during the previous calendar year. Annual reporting requirements begin with those discharges occurring during calendar year 2013.
    - B. If the Applicant terminates permit coverage, an annual report must be submitted for the portion of the year up through the date of termination. In that instance, the annual report is still due no later than February 15 of the next year.
    - C. The annual report must contain the following information:
      - i. Applicant's name and contact information;
      - ii. NPDES permit number;
      - iii. Contact person name, title, e-mail address (if any), and phone number; and
      - iv. For each treatment area, report the following information:

- a. Description of treatment area, including location and size (acres or linear feet) of treatment area and identification of any Waters of the United States, either by name or by location, to which pesticide(s) are discharged;
- b. Company name(s) and contact information for pesticide applicator(s), if different from the Applicant.
- c. Total amount of each pesticide product applied for the reporting year by the EPA registration number(s) and by application method (e.g., aerially by fixed-wing or rotary aircraft, broadcast spray, etc.);
- d. Whether this pest control activity was addressed in the PDMP prior to pesticide application;
- e. If applicable, an annual report of any Adverse Incidents as a result of these treatment(s), for incidents, as described in Part II.2.A; and
- f. If applicable, description of any corrective action(s), including spill responses, resulting from pesticide application activities and the rationale for such action(s).

#### **Part IV SPECIAL CONDITIONS**

1. Pesticide Discharge Management Plan (PDMP)
  - A. The PDMP documents how the Applicant will implement the effluent limitations in Part A of the permit, including the evaluation and selection of Pest Management Measures to meet those effluent limitations in order to minimize discharges. The PDMP must be developed prior to the first pesticide application that results in a discharge. In the PDMP, the Applicant may incorporate by reference any procedures or plans in other documents that meet the requirements of this permit. If the Applicant relies upon other documents to comply with the effluent limitations in this permit, such as a pre-existing pest management plan, the Applicant must attach to the PDMP a copy of any portions of any documents that are used to document the implementation of the effluent limitations.
    - i. The PDMP must include the following elements:
      - a. Pesticide Discharge Management Team;
      - b. Problem Identification;
      - c. Pest Management Options Evaluation;
      - d. Response Procedures;

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1. Spill Response Procedures
  2. Adverse Incident Response Procedures
- e. Documentation to support eligibility considerations under other federal laws; and
  - f. Signature Requirements.
- ii. PDMP Team. The Applicant must identify all the persons (by name and contact information) that compose the team as well as each person's individual responsibilities, including:
    - a. Person(s) responsible for managing pests in relation to the pest management area;
    - b. Person(s) responsible for developing and revising the PDMP; and
    - c. Person(s) responsible for developing, revising, and implementing corrective actions and other effluent limitation requirements;
  - iii. Problem Identification. The Applicant must document the following:
    - a. Pest problem description. Document a description of the pest problem at the pest management area, including identification of the target pest(s), source(s) of the pest problem, and source of data used to identify the pest problem.
    - b. Action Threshold(s). Describe the action threshold(s) for the pest management area, including data used in developing the Action Threshold(s) and method(s) to determine when the Action Threshold(s) has been met.
  - iv. Pest Management Options Evaluation
    - a. The Applicant must document the evaluation of the pest management options, including combination of the pest management options, to control the target pest(s). Pest management options include the following: no action, prevention, Mechanical/Physical Methods, Cultural Methods, Biological Control Agents, and Pesticides. In the evaluation, the Applicant must consider the impact to water quality, impact to non-target organisms, feasibility, cost effectiveness, and any relevant previous Pest Management Measures.
  - v. Response Procedures. The Applicant must document the following procedures in the PDMP:

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- a. Spill Response Procedures – At a minimum, the Applicant must have:
    1. Procedures for expeditiously stopping, containing, and cleaning up leaks, spills, and other releases to Waters of the United States. Employees who may cause, detect, or respond to a spill or leak must be trained in these procedures and have necessary spill response equipment available. If possible, one of these individuals should be a member of the PDMP team.
    2. Procedures for notification of appropriate personnel, emergency response agencies, any tribal contacts and regulatory agencies.
  - b. Adverse Incident Response Procedures – At a minimum, the Applicant must have:
    1. Procedures for responding to any Adverse Incident resulting from pesticide applications;
    2. Procedures for notification of the Adverse Incident, both internal to the Applicant's agency/organization and external. Contact information for EPA, any tribal representatives, nearest emergency medical facility, and nearest hazardous chemical responder must be in locations that are readily accessible and available.
  - c. Signature Requirements. The applicant must sign, date and certify the PDMP in accordance with Part V, Subsection 12.
2. Pesticide Discharge Management Plan Modifications.
    - A. The Applicant must modify the PDMP whenever necessary to address any of the triggering conditions for corrective action in Part II.1.A. Changes to the PDMP must be made before the next pesticide application that results in a discharge, if practicable, or if not, no later than 90 days after any change in pesticide application activities. The revised PDMP must be signed and dated in accordance with Part V, Subsection 12.
  3. Pesticide Discharge Management Plan Availability.
    - A. The Applicant must retain a copy of the current PDMP, along with all supporting maps and documents, at the address provided in NPDES permit application. The PDMP and all supporting documents must be readily available, upon request, and copies of any of these documents provided, upon request, to EPA; a State, Tribal, or local agency governing discharges or pesticide applications within their respective jurisdictions; and representatives of the FWS. EPA may provide copies of the PDMP or other information related to this permit that is in its possession to members of the public. Any Confidential Business Information (CBI), as defined in 40 CFR Part 2, may be withheld from the public provided that a claim of confidentiality is properly

asserted and documented in accordance with 40 CFR Part 2; however, CBI must be submitted to EPA, if requested, and may not be withheld from those staff within EPA and FWS cleared for CBI review.

## **Part V STANDARD PERMIT CONDITIONS**

1. As provided by the introductory text of 40 CFR 122.41 and the regulation at 40 CFR 122.43(c), all of the standard permit conditions published in federal regulations at 40 CFR 122.41 that are not expressly identified here, are hereby incorporated by reference. Standard permit conditions in this part of the permit 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 permit.
2. Duty to Comply
  - A. The Applicant must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the CWA and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.
  - B. Applicant must comply with effluent standards or prohibitions established under CWA section 307(a) for toxic pollutants within the time provided in the regulations that establish these standards, even if the permit has not yet been modified to incorporate the requirement.
  - C. Penalties for Violations of Permit Conditions: EPA will periodically adjust for inflation the civil and administrative penalties listed below in accordance with the Civil Monetary Penalty Inflation Adjustment Rule (61 FR 252, December 31, 1996, pp. 69359–69366, as corrected in 62 FR 54, March 20, 1997, pp.13514–13517) as mandated by the Debt Collection Improvement Act of 1996. This rule allows EPA’s penalties to keep pace with inflation. The Agency is required to review its penalties at least once every 4 years thereafter and to adjust them as necessary for inflation according to a specified formula. The civil and administrative penalties following were adjusted for inflation starting in 1996.
    - i. Criminal Penalties
      - a. Negligent Violations. The CWA provides that any person who negligently violates permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to criminal penalties of not less than \$2,500 nor more than \$25,000 per day of violation, or imprisonment of not more than one year, or both. In the case of a second or subsequent conviction for a negligent violation, a person will be subject to criminal penalties of not more than \$50,000 per day of violation or by imprisonment of not more than two years, or both.

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- b. **Knowing Violations.** The CWA provides that any person who knowingly violates permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than \$5,000 or more than \$50,000 per day of violation, or by imprisonment for not more than 3 years, or both. In the case of a second or subsequent conviction for a knowing violation, a person will be subject to criminal penalties of not more than \$100,000 per day of violation, or imprisonment of not more than 6 years, or both.
- c. **Knowing Endangerment.** The CWA provides that any person who knowingly violates permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act and who knows at that time that he or she is placing another person in imminent danger of death or serious bodily injury will upon conviction be subject to a fine of not more than \$250,000 or by imprisonment of not more than 15 years, or both. In the case of a second or subsequent conviction for a knowing endangerment violation, a person will be subject to a fine of not more than \$500,000 or by imprisonment of not more than 30 years, or both. An organization, as defined in section 309(c)(3)(B)(iii) of the Act, will, upon conviction of violating the imminent danger provision, be subject to a fine of not more than \$1,000,000 and can be fined up to \$2,000,000 for second or subsequent convictions.
- d. **False Statement.** The CWA provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit will, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or both. The Act further provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance will, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.
- ii. **Civil Penalties.** The CWA provides that any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed the maximum amounts authorized by Section 309(d) of the Act and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. 2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. 3701 note) (currently \$37,500 per day for each violation).

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- iii. Administrative Penalties. The CWA provides that any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to an administrative penalty, as follows
    - a. Class I Penalty. Not to exceed the maximum amounts authorized by CWA section 309(g)(2)(A) and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. 2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. 3701 note) (currently \$16,000 per violation, with the maximum amount of any Class I penalty assessed not to exceed \$37,500).
    - b. Class II Penalty. Not to exceed the maximum amounts authorized by CWA section 309(g)(2)(B) and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. 2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. 3701 note) (currently \$16,000 per day for each day during which the violation continues, with the maximum amount of any Class II penalty not to exceed \$177,500).
  3. Duty to Reapply
    - A. If the Applicant wishes to continue an activity regulated by this permit after the expiration date of this permit, the Applicant must apply for and obtain a new permit.
  4. Need to Halt or Reduce Activity Not a Defense
    - A. It will not be a defense for the Applicant 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.
  5. Duty to Mitigate
    - A. The Applicant 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.
  6. Proper Operation and Maintenance
    - A. The Applicant must at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which the Applicant 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 Applicant installs only when the operation is necessary to achieve compliance with the conditions of this permit.

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7. Permit Actions
    - A. This permit may be modified, revoked and reissued, or terminated for cause. An Applicant'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.
  8. Property Rights
    - A. This permit does not convey any property rights of any sort, or any exclusive privileges.
  9. Duty to Provide Information
    - A. Applicant must furnish to EPA or an authorized representative (including an authorized contractor acting as a representative of EPA), within a reasonable time, any information that EPA may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. Applicant must also furnish to EPA or an authorized representative upon request, copies of records required to be kept by this permit.
  10. Inspection and Entry
    - A. Applicant must allow EPA, or an authorized representative (including an authorized contractor acting as a representative of EPA), upon presentation of credentials and other documents as may be required by law, to do the following:
      - i. Enter upon Applicant's premises where a regulated activity is located or conducted, or where records must be kept under the conditions of this permit;
      - ii. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
      - iii. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
    - B. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the CWA, any substances or parameters at any location.
  11. Monitoring and Records
    - A. Applicant must retain records of all reports required by this permit, and records of all data used to complete the application for this permit including any supplemental information, for a period of at least 3 years from the date the permit expires or the

date the Applicant's authorization is terminated. That period may be extended by request of EPA at any time.

[As written, this permit does not require the Applicant to perform the type of sample collection and monitoring described in Subsections B-F below; however, should EPA require any monitoring, the sample collection and monitoring requirements in Subsections B-F apply.]

- B. Samples and measurements taken for the purpose of monitoring must be representative of the volume and nature of the monitored activity.
- C. Applicant 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 Applicant's authorization is terminated. This period may be extended by request of EPA at any time.
- D. Records of monitoring information must include the following:
  - i. The date, exact place, and time of sampling or measurements;
  - ii. The individual(s) who performed the sampling or measurements;
  - iii. The date(s) analyses were performed
  - iv. The individual(s) who performed the analyses;
  - v. The analytical techniques or methods used; and
  - vi. 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 CWA provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit will, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or both.

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## 12. Signatory Requirements

- A. All applications, reports or information required to be submitted to EPA under this permit must be signed as follows:
- i. For a municipality, state, federal, or other public agency: By either a principal executive officer or ranking elected official. For purposes of this subsection, a principal executive officer of a federal agency includes (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit or the agency (e.g., Regional Administrator of EPA).
- B. Any Pesticide Discharge Management Plan (PDMP), including changes to the PDMP to document any corrective actions taken as required by Part B, and all other reports submitted to EPA as required by this permit, must be signed by a person described in Part V.12.A above or by a duly authorized representative of that person. A person is a duly authorized representative only if the following are true:
- i. The authorization is made in writing by a person described in Part V.12.A;
  - ii. 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
  - iii. The signed and dated written authorization is included in the PDMP. A copy must be submitted to EPA, if requested.
- C. All other changes to the PDMP, and other compliance documentation required under this permit, must be signed and dated by the person preparing the change or documentation.
- D. Changes to Authorization. If an authorization under Part V.12.B is no longer accurate because a different individual has responsibility for the overall operation of the permitted activities, a new authorization satisfying the requirements of Part V.12.B must be submitted to EPA prior to or together with any reports, information, or applications to be signed by an authorized representative.
- E. Any person signing documents in accordance with Part V, Subsections 12.A or 12.B above must include the following certification:

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

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

- F. The CWA provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance will, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

### 13. Reporting Requirements

- A. Anticipated noncompliance. The Applicant must give advance notice to EPA 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 EPA. The permit may be transferred by the existing Applicant to a new Permittee only if the permit has been modified or revoked and reissued (under 40 CFR 122.62(b)(2)), or a minor modification made (under 40 CFR 122.63 (D)), to identify the new Permittee and incorporate such other requirements as may be necessary under the CWA.
- C. Pesticide Monitoring Reports. This permit does not require routine monitoring reports; however, EPA may require the Applicant to monitor and report such results. In such instances, provisions of Part V.13.C apply.
  - i. Monitoring data must be submitted to EPA Region 5 at the address identified in Part VI.
  - ii. If the Applicant monitors any pollutant more frequently than required using test procedures approved under 40 CFR Part 136 or as otherwise specified by EPA, the results of this monitoring must be included in reporting of monitoring data submitted to EPA.
  - iii. Calculations for all limitations that require averaging of measurements must use an arithmetic mean unless otherwise specified by EPA.
- 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.

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- E. Twenty-four hour reporting.
- i. In addition to adverse incident and spill reporting requirements in Parts II.2.B and Part II.3.B, respectively, the Applicant must report any noncompliance which may endanger health or the environment. Any information must be provided orally within 24 hours from the time the Applicant becomes aware of the circumstances. A written submission must also be provided within 5 days of the time the Applicant 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.
  - ii. For purposes of this permit, the Applicant must submit a 24-hour report under this section for any upset, as defined in Part V.14, which exceeds any effluent limitation in the permit.
  - iii. EPA may waive the written report on a case-by-case basis for reports under Part V.13.E if the oral report has been received within 24 hours.
- F. Other noncompliance. The Applicant must report all instances of noncompliance not reported under Part V.13 Subsections A, C, D, and E at the time any applicable annual or monitoring reports are submitted. The reports must contain the information listed in Part V.13.E.i.
- G. Other information. Where an the Applicant 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 Applicant must promptly submit such facts or information.
14. 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 Applicant'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 Part V.14.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).

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- C. Conditions necessary for a demonstration of upset. See 40 CFR 122.41(n)(3). If the Applicant wishes to establish the affirmative defense for an upset must demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that
- i. An upset occurred and that the Applicant can identify the cause(s) of the upset;
  - ii. The permitted activity was at the time being properly operated; and
  - iii. The Applicant submitted notice of the upset as required in Part V.13.E.ii (24 hour notice).
  - iv. The Applicant complied with any remedial measures required under Part V.5.
- D. Burden of proof. In any enforcement proceeding, the Applicant seeking to establish the occurrence of an upset, has the burden of proof. See 40 CFR 122.41(n)(4).

#### **Part VI CONTACT INFORMATION & MAILING ADDRESS**

All written correspondence concerning discharges covered under this permit and directed to the EPA must be sent to the EPA Region 5 Office:

U. S. EPA Region 5  
Water Division  
NPDES Programs Branch  
77 W. Jackson Boulevard  
Mail Code WN-16J  
Chicago, Illinois 60604

All written correspondence concerning discharges covered under this permit and directed to the Fond du Lac Tribe must be sent to:

Fond du Lac Reservation  
Office of Water Protection  
1720 Big Lake Road  
Cloquet, Minnesota 55720

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## Appendix A Definitions

This Part includes definitions specific to the Permit.

**Action Threshold** – the point at which pest populations or environmental conditions necessitate that pest control action be taken based on economic, human health, aesthetic, or other effects. An action threshold may be based on current and/or past environmental factors that are or have been demonstrated to be conducive to pest emergence and/or growth, as well as past and/or current pest presence. Action thresholds are those conditions that indicate both the need for control actions and the proper timing of such actions.

**Active Ingredient** – any substance (or group of structurally similar substances if specified by the Agency) that will prevent, destroy, repel or mitigate any pest, or that functions as a plant regulator, desiccant, or defoliant within the meaning of FIFRA sec. 2(a). [40 CFR 152.3] Active ingredient also means a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for the production of such a pesticidal substance. [40 CFR 174.3]

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

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

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

- Distressed or dead juvenile and small fishes
- Washed up or floating fish
- Fish swimming abnormally or erratically
- Fish lying lethargically at water surface or in shallow water
- Fish that are listless or nonresponsive to disturbance
- Stunting, wilting, or desiccation of non-target submerged or emergent aquatic plants
- Other dead or visibly distressed non-target aquatic organisms (amphibians, turtles, invertebrates, etc.)

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

**Applicant or Permit Applicant or MDA or Permittee** – is the Minnesota Department of Agriculture and is liable for any applicator hired to apply pesticide within the external

boundaries of the Fond du Lac Reservation and must direct any applicator applying pesticide within the external boundaries of the Fond du Lac Reservation to do so in accordance with the terms and conditions established in this permit.

**Applicator or Applicators** – are those entities that are hired by the Minnesota Department of Agriculture or its affiliate partners to apply pesticide within the external boundaries of the Fond du Lac Reservation.

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

**Biological Pesticides (also called biopesticides)** – include microbial pesticides, biochemical pesticides and plant-incorporated protectants (PIP). Microbial pesticide means a microbial agent intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or dessicant, that (1) is a eucaryotic microorganism including, but not limited to, protozoa, algae, and fungi; (2) is a procaryotic microorganism, including, but not limited to, Eubacteria and Archaeobacteria; or (3) is a parasitically replicating microscopic element, including but not limited to, viruses. [40 CFR 158.2100(b)] Biochemical pesticide means a pesticide that (1) is a naturally-occurring substance or structurally-similar and functionally identical to a naturally-occurring substance; (2) has a history of exposure to humans and the environment demonstrating minimal toxicity, or in the case of a synthetically-derived biochemical pesticides, is equivalent to a naturally-occurring substance that has such a history; and (3) Has a non-toxic mode of action to the target pest(s). [40 CFR 158.2000(a)(1)] Plant-incorporated protectant means a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for production of such a pesticidal substance. It also includes any inert ingredient contained in the plant, or produce thereof. [40 CFR 174.3]

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

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

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

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

**Discharge of a pollutant** – any addition of any "pollutant" or combination of pollutants to "Waters of the United States" from any "point source," or any addition of any pollutant or combination of pollutants to the water of the "contiguous zone" or the ocean from any point source other than a vessel or other floating craft that is being used as a means of transportation. This includes additions of pollutants into Waters of the United States from: surface runoff that is collected or channeled by man; discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. [Excerpted from 40 CFR 122.2]

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

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

**Minimize** – to reduce and/or eliminate pesticide discharges to waters of the United States through the use of Pest Management Measures to the extent technologically available and economically practicable and achievable.

**Non-target Organisms** – includes the plant and animal hosts of the target species, the natural enemies of the target species living in the community, and other plants and animals, including vertebrates, living in or near the community that are not the target of the pesticide.

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

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

- (a) Any vertebrate animal other than man;
- (b) Any invertebrate animal, including but not limited to, any insect, other arthropod, nematode, or mollusk such as a slug and snail, but excluding any internal parasite of living man or other living animals;
- (c) Any plant growing where not wanted, including any moss, alga, liverwort, or other plant of any higher order, and any plant part such as a root; or
- (d) Any fungus, bacterium, virus, or other microorganism, except for those on or in living man or other living animals and those on or in processed food or processed animal feed, beverages, drugs (as defined in the Federal Food, Drug, and Cosmetic act (FFDCA) sec. 201(g)(1)) and cosmetics (as defined in FFDCA sec. 201(i)).

**Pest Management Area** – The area of land, including any water, for which the Applicant has responsibility and is authorized to conduct pest management activities as covered by this permit

**Pest Management Measure** – any practice used to meet the effluent limitations that comply with manufacturer specifications, industry standards and recommended industry practices related to the application of pesticides, relevant legal requirements and other provisions that the Applicant would implement to reduce and/or eliminate pesticide discharges to waters of the United States.

**Pesticide** – means (1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, (2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, and (3) any nitrogen stabilizer, except that the term “pesticide” shall not include any article that is a “new animal drug” within the meaning of section 201(w) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(w)), that has been determined by the Secretary of Health and Human Services not to be a new animal drug by a regulation establishing conditions of use for the article, or that is an animal feed within the meaning of section 201(x) of such Act (21 U.S.C. 321(x)) bearing or containing a new animal drug. The term “pesticide” does not include liquid chemical sterilant products (including any sterilant or subordinate disinfectant claims on such products) for use on a critical or semi-critical device, as defined in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321). For purposes of the preceding sentence, the term “critical device” includes any device that

introduced directly into the human body, either into or in contact with the bloodstream or normally sterile areas of the body and the term “semi-critical device” includes any device that contacts intact mucous membranes but which does not ordinarily penetrate the blood barrier or otherwise enter normally sterile areas of the body [FIFRA Section 2(u)].

The term “pesticide” applies to insecticides, herbicides, fungicides, rodenticides, and various other substances used to control pests. The definition encompasses all uses of pesticides authorized under FIFRA including uses authorized under sections 3 (registration), 5 (experimental use permits), 18 (emergency exemptions), 24(c) (special local needs registrations), and 25(b) (exemptions from FIFRA).

Note: drugs used to control diseases of humans or animals (such as livestock, fishstock and pets) are not considered pesticides; such drugs are regulated by the Food and Drug Administration. Fertilizers, nutrients, and other substances used to promote plant survival and health are not considered plant growth regulators and thus are not pesticides. Biological control agents, except for certain microorganisms, are exempted from regulation under FIFRA. (Biological control agents include beneficial predators such as birds or ladybugs that eat insect pests, parasitic wasps, fish, etc).

*This permit uses the term “pesticide” when referring to the “pesticide, as applied.” When referring to the chemical in the pesticide product with pesticidal qualities, the permit uses the term “active ingredient.”*

**Pesticide Product** – a pesticide in the particular form (including composition, packaging, and labeling) in which the pesticide is, or is intended to be, distributed or sold. The term includes any physical apparatus used to deliver or apply the pesticide if distributed or sold with the pesticide.

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

**Point source** – any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel, or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff. [40 CFR 122.2]

**Pollutant** – dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. For purposes of this definition, a “biological pesticide” is considered a “biological material,” and any “pesticide residue” resulting from use of a “chemical pesticide” is considered a “chemical waste.” [Excerpted from 40 CFR 122.2]

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

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

of the canal over which the pesticide is intended to control weeds. Similarly, the treatment area for a lake or marine area is the water surface area where the application is intended to provide pesticidal benefits.

**Waters of the United States** – EPA regulations at 40 CFR 122.2 define Waters of the United States as follows:

- (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:
  - (1) Which are or could be used by interstate or foreign travelers for recreational or other purposes;
  - (2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
  - (3) 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 122.2]

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 (<http://water.epa.gov/lawsregs/guidance/wetlands/CWAwaters.cfm>).

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**Water Quality Standards** – A water quality standard defines the water quality goals of a water body, or portion thereof, by designating the use or uses to be made of the water and by setting criteria necessary to protect the uses. Water quality standards also include an antidegradation policy and implementation procedures. See P.U.D. o. 1 of Jefferson County et al v. Wash Dept of Ecology et al, 511 US 701, 705 (1994). States, Tribes and EPA adopt water quality standards to protect public health or welfare, enhance the quality of water and serve the purposes of the Clean Water Act (See CWA sections 101(a)2 and 303(c)). Where necessary, EPA has the authority to promulgate federal water quality standards.

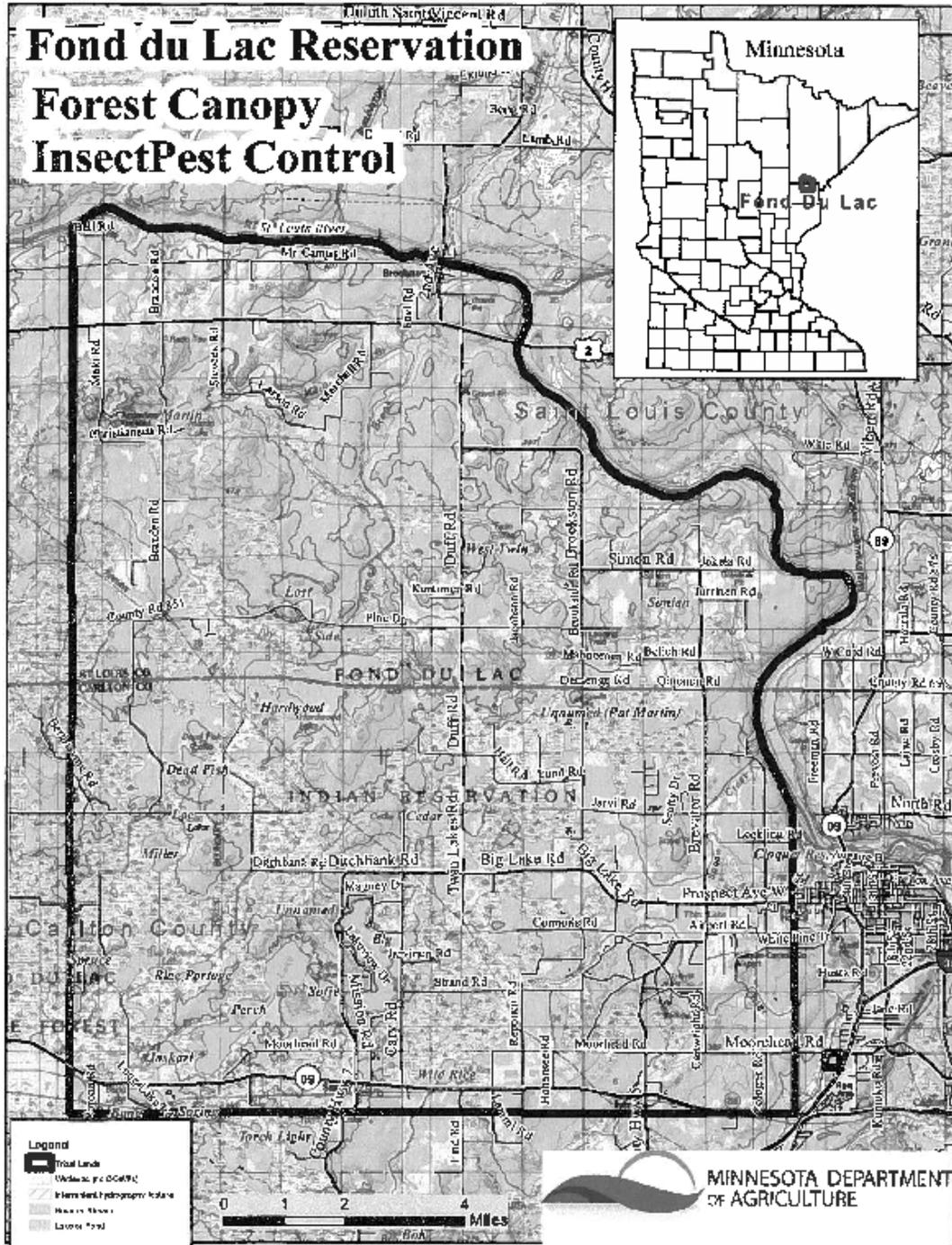
**Wetlands** – means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include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

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**Appendix B** Abbreviations and Acronyms

CERCLA	Comprehensive Environmental Response, Compensation and Liability Act
CWA	Clean Water Act (or the Federal Water Pollution Control Act, 33 U.S.C. §1251 <i>et seq</i> )
EPA	U. S. Environmental Protection Agency
ESA	Endangered Species Act
FIFRA	Federal Insecticide, Fungicide, and Rodenticide Act, 7 USC 136 et seq.
FWS	U. S. Fish and Wildlife Service
IPM	Integrated Pest Management
MDA	Minnesota Department of Agriculture
NEPA	National Environmental Policy Act
NMFS	U. S. National Marine Fisheries Service
NPDES	National Pollutant Discharge Elimination System
NRC	National Response Center
PDMP	Pesticide Discharge Management Plan
U.S.C.	United States Code

Appendix C Location Map



Appendix D Water Bodies NOT Authorized to Receive Discharge

# Water Bodies NOT Authorized

