

PUBLIC NOTICE

Notice is hereby given that the Massachusetts Department of Environmental Protection (MassDEP), under authority granted by the Massachusetts Clean Waters Act, M.G.L. c. 21, §§ 26 – 53, is proposing to issue a federal Clean Water Act (CWA) section 401 certification for the U.S. Environmental Protection Agency's (EPA) proposed 2026 Draft NPDES Pesticide General Permit (PGP) (MA Permit No. MAG870000). This permit will provide coverage to any Operator authorized by EPA under the 2026 PGP for the application of pesticides which will result in a discharge to waters of the United States. The proposed section 401 certification is available at <https://www.mass.gov/service-details/massdep-public-hearings-comment-opportunities>. Alternatively, a copy of the document can be obtained by contacting Jennifer Wood, MassDEP Surface Water Discharge Program, at 617-835-9886 or jennifer.wood@mass.gov. The draft NPDES permit is available at <https://www.epa.gov/npdes/pesticide-permitting-proposed-2026-pgp>. Written comments on the section 401 certification will be accepted until 5:00 p.m. on April 7, 2024. MassDEP strongly encourages written comments to be submitted by email to massdep.publiccommentnpdes@mass.gov; subject line: Pesticide General Permit Water Quality Certificate (WQC). If not possible, please contact Jennifer Wood at 617-835-9886 or jennifer.wood@mass.gov.

Following the close of the comment period, MassDEP will issue a final CWA section 401 certification and forward copies to each person who has submitted written comments or requested notice.

For special accommodations, please call the MassDEP Diversity Office at 617-292-5751. TTY# MassRelay Service 1-800-439-2370. This information is available in alternate format upon request.

By Order of the Department

Bonnie Heiple, Commissioner

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Clean Water Act Section 401 Certification
For the Proposed 2026 Federal NPDES Permit
Pesticide General Permit
MA Permit No. MAG870000

The Massachusetts Department of Environmental Protection (MassDEP), having reviewed the United States Environmental Protection Agency's (EPA) draft 2026 Federal NPDES Pesticide General Permit ("Permit"), EPA Public Notice from November 28, 2023 – January 12, 2024, and considered the public comments received on MassDEP's proposed Clean Water Section 401 Certification for the draft Permit, presented for public notice in compliance with MassDEP's public notice procedures established pursuant to Clean Water Act Section 401(a)(1) from March 8, 2024 to April 7, 2024, hereby certifies that there is reasonable assurance that the activity will be conducted in a manner that will not violate applicable state water quality requirements, if carried out in accordance with the provisions of the Permit and the conditions described below, and provided that the Permit is not modified in a manner inconsistent with this certification:

The following conditions, together with the terms and conditions contained in the Permit, are necessary to assure compliance with the applicable provisions of the Federal Clean Water Act Sections 208(e), 301, 302, 303, 306, and 307 and with appropriate requirements of State law, including, without limitation, the Massachusetts Clean Waters Act, M.G.L. c. 21, §§ 26-53 and the Massachusetts Water Quality Standards published at 314 CMR 4.00:

Applicable to Mosquito and Other Flying Insect Pest Control, Weed and Algae Pest Control, Animal Pest Control, and Forest Canopy Pest Control

- a. Pursuant to the Massachusetts Water Quality Standards published at 314 CMR 4.00:
 - i. Discharges to Massachusetts Outstanding Resource Waters, as defined in 314 CMR 4.02 and identified in 314 CMR 4.06, are not eligible for coverage under this General Permit unless an authorization is granted by MassDEP pursuant to 314 CMR 4.04(3)(b) and 4.04(5), or the applicant certifies that the discharge complies with general antidegradation authorizations that the Department intends to issue. Information regarding authorizations will be available on the MassDEP website.
 - ii. Operators must use best management practices (as defined in 314 CMR 3.02) to not apply pesticides to vernal pools (as defined in 314 CMR 4.02). This requirement is intended to comply with the protection of vernal pools in 314 CMR 4.06(1)(d)12.
 - iii. All Operators must control discharges as necessary to meet applicable water quality standards in all surface waters of the Commonwealth, including but not limited to standards for toxic pollutants in 314 CMR 4.05(e).
 - iv. Applicants shall stay informed of EPA's and other investigations related to per- and polyfluoroalkyl substances (PFAS) resulting from the storage and transportation of pesticides in storage containers (e.g., fluorinated high-density polyethylene (HDPE) containers) (<https://www.epa.gov/pesticides/pfas-packaging>). MassDEP is closely following this issue and understands and supports EPA continuing its investigation and assessment of the potential impacts on human health and the environment. As the Pesticide General Permit does not require effluent monitoring, it would not be possible for MassDEP to

require monitoring of discharges for PFAS. To minimize PFAS release, applicants should avoid use of containers, such as fluoridated HDPE containers, that have been demonstrated to leach PFAS into materials stored in the containers, and the use of poly-fluorinated propellants. Applicators are also encouraged, where feasible, to minimize the use of formulations containing poly-fluorinated chemicals, either as active or inactive ingredients. This condition is necessary for compliance with the standards for toxic pollutants at 314 CMR 4.05(e).

- b. Pursuant to M.G.L. c. 132B §10 and 333 CMR 10.00, chemical treatments using restricted use pesticides shall only be performed by an applicator currently certified by the MDAR Pesticide Program in the appropriate category or categories. Pursuant to M.G.L. c. 132B §6 and 333 CMR 8.00, pesticides used for treatments must be currently approved for use in the state by the MDAR Pesticide Program and registered by EPA. Chemical application shall be applied in accordance with the manufacturer's label directions, pesticide use laws, and any conditions imposed by other local or state agencies. Issuance of coverage under this permit does not release the applicant for coverage under this permit from liability resulting from the negligent or reckless application of chemicals.
- c. Operators must comply with all applicable state laws and regulations, including but not limited to M.G.L. c. 131 §40 and 310 CMR 10.00 (the Wetlands Protection Act and Regulations); M.G.L. c. 131A and 321 CMR 10.00 (the Massachusetts Endangered Species Act and Regulations); and M.G.L. c. 132B and 333 CMR 2.00-14.00 (the Pesticide Control Act and Regulations). The following general requirements also apply:
 - i. MassDEP may require the applicant for coverage under this permit to cease application of chemicals to a body of water at any time following the issuance of coverage under this permit if the Department determines that the chemical treatment will be ineffective or will result in unreasonable restrictions on current water uses or will produce unnecessary adverse side effects on non-target flora or fauna.
 - ii. Applicants must implement Massachusetts state conditions for any chemical or site-specific situation as deemed necessary by MassDEP.
 - iii. Applicants must comply with state law and regulations regarding spills and leaks associated with the application of pesticides covered under this permit.

Applicable to Weed and Algae Pest Control Only

- d. Pursuant to M.G.L. c. 111 §5E, Operators must submit a BRP WM04 application and obtain approval from DEP prior to application of chemicals authorized under this permit. **Notification to MassDEP must be made through the WM04, as required in the WM04 application.** This section shall not apply to employees and agents of the departments of environmental protection, conservation and recreation, and fish and game, or of the state reclamation board or of related federal agencies, while in the conduct of their official duties; nor shall it apply to the use of chemicals in privately owned ponds from which there are no flowing outlets, or to algaecides approved by the department and used by legally established water supply agencies to control taste and odors.
- e. Pursuant to M.G.L. c. 111 §5E, applicants must implement Massachusetts state conditions for the use of alum and meet the following conditions:
 - i. In all cases the chemicals added may not cause or contribute to any fish kill, including fish spawning, or other negative aquatic impact.

- ii. pH and alkalinity: The pH of the pond or lake water must be maintained within a pH range of 6.5 – 8.3 to minimize potential aluminum solubility and toxicity. During treatment, testing should include, at a minimum, 3 pH profiles throughout the treatment area using a calibrated meter, and measurement intervals should include surface, bottom, and 3 equally spaced measures in between. If, during treatment, the pond has an ambient pH outside this range the applicant should adjust the treatment as needed to attain the pH range. If the final pH after treatment is still not within the range, then water samples from treated and untreated areas should be sampled and analyzed for total aluminum and dissolved aluminum with detection limits of 10 ppb or less.
 - iii. Reporting: Any observations of dead, dying or stressed fish or freshwater shellfish (e.g., fish swimming at the surface; mussels gaping) or wildlife during or immediately after the approved treatment shall be reported as quickly as possible to the Massachusetts Environmental Police (MEP) Radio Room at 800-632-8075. Any pH reading outside the target range of 6.5 – 8.3 should be further investigated and reported to MassDEP. All required water quality monitoring data, fish and wildlife observations and a narrative description of the treatment, including any on-site modifications to the application plan to maintain pH within the desired range shall be included in the report to MassDEP certifying the treatment specifics.
- f. Pursuant to M.G.L. c. 111 §5E, shoreline areas of a lake or pond must be posted with signs warning the general public of any water use restrictions stated on the chemical label, or otherwise required by MassDEP or other state Agencies, for a minimum of one week. This is especially important at bathing beaches and other areas of common access. The signs shall clearly state that the chemical treatment is being conducted pursuant to a permit issued by the EPA and MassDEP. A new sign shall be posted for each treatment event.

Applicable to Mosquito and Other Flying Insect Pest Control only

- g. Pursuant to M.G.L. c. 132B §10, 333 CMR 10.00, and M.G.L. c. 252, chemical treatments must be performed by an applicator currently licensed/certified by the MDAR Pesticide Program and in accordance with M.G.L. c. 252 and any provisions or policies instituted by the State Reclamation and Mosquito Control Board.
- h. Pursuant to M.G.L. c. 132B and 333 CMR 14.00, applicants for coverage under this permit must adhere to the public notification provisions of the Child Protection Act (Chapter 85 of the Acts of 2000) when applicable.

To meet the requirements of Massachusetts laws, each of the conditions cited in the draft permit and this certification shall not be made less stringent unless new data or other information is presented and MassDEP determines modification of this certification is appropriate in consideration of the relevant water quality considerations.

Signed this 17th day of April, 2024

Lealdon Langley, Director
Massachusetts Department of Environmental Protection
Bureau of Water Resources
Division of Watershed Management