



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

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Charles D. Baker
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Secretary

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Commissioner

May 24, 2021

Lynne Jennings, Water Permits Branch Chief
USEPA – New England
5 Post Office Square, Suite 100 (OEP06-1)
Boston, MA 02109-3912

RE: Massachusetts Clean Water Act Section 401 Certification for the Pesticide General Permit

Dear Ms. Jennings,

Enclosed please find as Attachment 1 the Commonwealth of Massachusetts' Clean Water Act (CWA) section 401 certification (State Certification) for the proposed 2021 National Pollutant Discharge Elimination System (NPDES) Pesticide General Permit (MA Permit No. MAG870000). MassDEP proposed a draft State Certification for public notice and comment on April 27, 2021. A copy of the public notice is enclosed as Attachment 2. The public comment period posted for the draft State Certification closed on May 17, 2021. MassDEP did not receive any public comments during the public comment period.

Please contact Ms. Susannah King, MassDEP's NPDES Section Chief, at (617) 556-1147 or susannah.king@mass.gov if you have any questions.

Sincerely,

Lealdon Langley, Director
Division of Watershed Management
Bureau of Water Resources

ecc: George Papadopoulos, EPA Region 1
Deb Szaro, Acting Regional Administrator, Region 1
Jennifer Wood, MassDEP
David Wong, MassDEP
Taryn LaScola, MassDAR
Todd Richards, MassWildlife
Misty-Anne Marold, MassWildlife
Bob Boeri, Massachusetts Office of Coastal Zone Management

FINAL
Clean Water Act Section 401 Certification
For the Proposed 2021 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 2021 Federal NPDES Pesticide General Permit (MA Permit No. MAG870000), EPA Public Notice from January 15, 2021 to March 16, 2021, and considered the public comments received on MassDEP's proposed Clean Water Section 401 Certification for the draft 2021 Pesticide General Permit, and in consideration of the relevant water quality considerations, hereby certifies:

1. that the following conditions, together with the terms and conditions contained in the proposed 2021 Federal Pesticide General 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 M.G.L. c. 131 §40, applicants for coverage under this permit are hereby notified that issuance of this concurrence letter does not in any way constitute MassDEP approval of chemical treatment as it relates to the provisions of the Wetlands Protection Act.
- b. Pursuant to 321 CMR 10.04, applicants for coverage under this permit are hereby notified that issuance of this concurrence letter does not in any way constitute the Massachusetts Division of Fisheries and Wildlife's (MassWildlife) approval of the chemical treatment as it relates to the provisions of the Massachusetts Endangered Species Act (M.G.L. c.131A) or its implementing regulations (321 CMR 10).
- c. Pursuant to M.G.L. c. 132B §10 and 333 CMR 10.00, chemical treatments to water using general use pesticides shall only be performed by an applicator currently licensed by MassDEP to perform chemical applications to aquatic systems and the Massachusetts Department of Agricultural Resources (MDAR) Pesticide Program in the aquatics category, if applicable. Chemical treatments to Bordering Vegetated Wetlands (310 CMR 10.55(2)(a)) and Salt Marsh (310 CMR 10.32(2)) using general use pesticides and techniques that ensure chemicals are not applied to water shall only be performed by an applicator currently licensed by the MDAR Pesticide Program. Chemical treatments using restricted use pesticides shall only be performed by an applicator currently certified by the MDAR Pesticide Program.
- d. 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.
- e. Pursuant to M.G.L. c.131 §40, 310 CMR 10.00, 310 CMR 22.20B(8), 314 CMR 3.05(5), 310 CMR 10.04, and 314 CMR 9.03(4), since chemical treatments constitute the alteration of wetland resources, a Notice of Intent (NOI) must be filed in accordance with the Wetlands Protection Act and Wetlands Protection Regulations. This condition does not apply when treatment is undertaken with algaecide containing copper

approved by MassDEP and used by legally established water supply agencies to control taste and odors. This condition does not apply to the introduction of pollutants from nonpoint source agricultural and silvicultural activities or normal maintenance or improvement of land in agricultural use as defined in 310 CMR 10.04 and 314 CMR 9.03(4).

- f. Pursuant to M.G.L. c.131 §40, 310 CMR 22.20B(8), 314 CMR 3.05(5), 310 CMR 10.04, and 314 CMR 9.03(4), applicants for coverage under this permit shall obtain a final Order of Conditions or Negative Determination of Applicability from the local Conservation Commission or a MassDEP Emergency Order prior to treatment. Applicants are required to provide a copy of a valid Order of Conditions or Negative Determination of Applicability annually to MassDEP prior to application of chemicals authorized under this permit. This condition does not apply when treatment is undertaken with algaecide containing copper approved by MassDEP and used by legally established water supply agencies to control taste and odors. This condition does not apply to the introduction of pollutants from nonpoint source agricultural and silvicultural activities or normal maintenance or improvement of land in agricultural use as defined in 310 CMR 10.04 and 314 CMR 9.03(4).
- g. Pursuant to M.G.L. c. 111 §5E, 314 CMR 3.05(5), 310 CMR 10.04, and 314 CMR 9.03(4), 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. This condition does not apply when treatment is undertaken with algaecide containing copper approved by MassDEP and used by legally established water supply agencies to control taste and odors. This condition does not apply to the introduction of pollutants from nonpoint source agricultural and silvicultural activities or normal maintenance or improvement of land in agricultural use as defined in 310 CMR 10.04 and 314 CMR 9.03(4).
- h. Pursuant to M.G.L. c. 111 §5E, 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.
- i. Pursuant to M.G.L. c. 111 §5E, chemical application shall be applied in accordance with the manufacturer's label directions, existing pesticide use laws, and any conditions imposed by other local or state agencies.
- j. Pursuant to M.G.L. c. 111 §5E, 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.
- k. Pursuant to M.G.L. c. 111 §5E, 314 CMR 3.05(5), 310 CMR 10.04, and 314 CMR 9.03(4), applicants must implement Massachusetts state conditions for the use of alum (appended). This condition does not apply to the introduction of pollutants from nonpoint source agricultural and silvicultural activities or normal maintenance or improvement of land in agricultural use as defined in 310 CMR 10.04 and 314 CMR 9.03(4).

- l. Pursuant to M.G.L. c. 111 §5E, 314 CMR 3.05(5), 310 CMR 10.04, and 314 CMR 9.03(4), applicants must implement Massachusetts state conditions for electronic notification (appended). This condition does not apply when treatment is undertaken with algaecide containing copper approved by MassDEP and used by legally established water supply agencies to control taste and odors. This condition does not apply to the introduction of pollutants from nonpoint source agricultural and silvicultural activities or normal maintenance or improvement of land in agricultural use as defined in 310 CMR 10.04 and 314 CMR 9.03(4).
- m. Pursuant to M.G.L. c. 111 §5E, 314 CMR 3.05(5), 310 CMR 10.04, and 314 CMR 9.03(4), applicants must implement Massachusetts state conditions for the use of products containing 2,4-D (appended). This condition does not apply to the introduction of pollutants from nonpoint source agricultural and silvicultural activities or normal maintenance or improvement of land in agricultural use as defined in 310 CMR 10.04 and 314 CMR 9.03(4).
- n. Pursuant to M.G.L. c. 111 §5E, applicants must implement Massachusetts state conditions for any chemical or site-specific situation as deemed necessary by MassDEP.
- o. Pursuant to M.G.L. c. 111 §5E, 314 CMR 3.05(5), 310 CMR 10.04, and 314 CMR 9.03(4), by December 31st each year the applicant for coverage under this permit shall submit, in electronic form, an annual Treatment Summary report to MassDEP certifying the treatment date(s), target species (provide genus and species and common name(s) when possible), application rate(s), target in-water concentration, location, acreage treated and the total weight/volume for each chemical used in the treatment. This condition does not apply when legally established water supply agencies use algaecide containing copper, with approval from MassDEP, to control taste and odors. This condition does not apply to the introduction of pollutants from nonpoint source agricultural and silvicultural activities or normal maintenance or improvement of land in agricultural use as defined in 310 CMR 10.04 and 314 CMR 9.03(4).
- p. Pursuant to M.G.L. c. 111 §5E, the NOI shall indicate whether the proposed treatment is within a Zone II of a drinking water groundwater supply.
- q. Pursuant to M.G.L. c. 111 §5E, the NOI shall indicate whether the proposed treatment is to a surface public water supply.
- r. Pursuant to M.G.L. c. 111 §5E, no chemical treatment shall be conducted while a Massachusetts Department of Public Health advisory is in effect.
- s. Pursuant to 314 CMR 4.05(5)(e), 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 fluorinated 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.

Applicable to Animal Pest Control only

- t. Pursuant to M.G.L. c. 111 §5E, MassDEP must provide written approval of the Pesticide General Permit NOI, when applicable, prior to the applicant receiving coverage under the permit.

Applicable to Mosquito and Other Flying Insect Pest Control only

- u. 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 any provisions or policies instituted by the State Reclamation and Mosquito Control Board.
 - v. Pursuant to M.G.L. c. 132B, 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.
 - w. Pursuant to M.G.L. c. 132B, 333 CMR 13.00, and M.G.L. c. 21E §7, applicants must comply with state law and regulations regarding spills and leaks associated with the application of pesticides covered under this permit.
2. that there is a reasonable assurance that the activity will be conducted in a manner which will not violate applicable state water quality standards.

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.

If any condition in the draft 2021 Federal NPDES Pesticide General Permit is changed during EPA's review in any manner inconsistent with this certification, the Department reserves the right to modify this certification in consideration of the relevant water quality considerations. In addition, the Department reserves the right to modify this certification if there is a change in Massachusetts law or regulation upon which this certification is based, or if a court of competent jurisdiction or MassDEP Office of Appeals and Dispute Resolution stays, vacates or remands this certification, as provided by 40 C.F.R. § 124.55.

Signed this 24th day of May, 2021



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

APPENDIX – STATE POLICIES:

1. Alum/aluminum sulfate treatment conditions:
 - a.) In all cases the chemicals added may not cause or contribute to any fish kill, including fish spawning, or other negative aquatic impact.
 - b.) pH and alkalinity: The pH of the pond or lake water must be maintained within a pH range of 6.0 - 7.5 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.
 - c.) 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 MassDEP and the MEP Radio Room at 800-632-8075. Any pH reading outside the target range of 6.0 - 7.5 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.
2. Electronic Notification: Electronic notification of treatment must be made to MassWildlife (jason.stolarski@mass.gov) and MassDEP (David.W.Wong@mass.gov). Notification that the treatment was performed or postponed shall be made within 24 hours of treatment or schedule change. The notification message should include waterbody, town, state tracking number, GPS coordinates (decimal degrees), and chemicals used.
3. Use of Products Containing 2,4-D: Prior to each use of any product containing 2,4-D, the applicants must request and receive written approval from MassDEP. Each request will be reviewed for potential impact to drinking water wells and MassDEP may require site specific conditions. At a minimum, the applicant must provide notice to all lake abutters prior to treatment with 2,4-D. A copy of the notice sent to abutters, date sent and list of those it was sent to must be included in the annual Treatment Summary report.

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 2021 Draft NPDES Pesticide General Permit (PGP) (MA Permit No. MAG870000). This permit will provide coverage to any Operator authorized by EPA under the 2021 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 617-654-6536 or jennifer.wood@mass.gov. The draft NPDES permit is available at <https://www.epa.gov/npdes/pesticide-permitting-draft-2021-pgp>. Written comments on the section 401 certification will be accepted until 5:00 p.m. on May 17, 2021. During the state of emergency, MassDEP strongly encourages written comments to be submitted by email to massdep.npdes@mass.gov; subject line: Certification for Pesticide General Permit. If not possible, please send by mail to Jennifer Wood, MassDEP, 1 Winter Street, Floor 5, Boston, MA 02108.

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

Martin Suuberg, Commissioner