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ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM PESTICIDE GENERAL PERMIT (PGP) RESPONSE TO COMMENTS (A.A.C. R18-9-A908(E)(2)) October 31, 2011

ADMINISTRATIVE RECORD

The requirement to obtain a Clean Water Act permit for point source discharges from pesticide applications to waters of the U.S. stems from the decision by the Sixth Circuit Court of Appeals. In its ruling on *National Cotton Council, et al. v. EPA* the Court vacated EPA's 2006 rule that said permits were not required for applications of pesticides to, over or near U.S. waters when in compliance with the FIFRA label. Thus, discharges to waters of the U.S. from the application of pesticides that leave a residue will require permits with the court's mandate effective October 31, 2011.

The Arizona Department of Environmental Quality (ADEQ) issued the Arizona Pollutant Discharge Elimination System (AZPDES) Aquatic Pesticide General Permit (PGP) to applicators a means to comply with the court's ruling when applying pesticides to, over, or near waters of the U.S. within Arizona (except on Indian Country land where U.S. EPA is the permitting authority).

A pesticide user must comply with all applicable Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) requirements contained on pesticide product labels. Arizona's PGP includes requirements that are not inconsistent with pesticide product labels (nor does the permit override any existing FIFRA labeling requirements).

ADEQ's PGP authorizes discharges to waters of the U.S. from the application of (1) biological pesticides, and (2) chemical pesticides that leave a residue for the following pesticide use patterns: (a) mosquito and other flying insect or pest control; (b) aquatic weed, algae and vegetation control; (c) nuisance animal control; (d) forest canopy pest control; and (e) Specific Approval determined by the department to be within the scope of the PGP.

On February 25, 2011, the public notice for PGP (AZG2011-001) was published in the Arizona Administrative Register. The Public Comment period closed on March 29, 2011.

The Fact Sheet (the supporting document that describes the permit's scope and rationale for coverage) sets forth the basis for permit conditions to be applied statewide through issuance of the new Arizona Pollutant Discharge Elimination System (AZPDES) Pesticide General Permit

Comments were received on the public noticed draft permits from the city of Phoenix and Arizona Game and Fish Department.

In addition to changes to the permit made in response to the comments from city of Phoenix and AZGFD, the Arizona Department of Environmental Quality (ADEQ or Department) made other changes to several

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sections of the permit in response to U.S. EPA's April 2011 draft PGP. The changes made to ADEQ's final permit generally resulted in clarification regarding decision maker and applicator responsibilities. Finally, corrections to the permit, fact sheet and appendices were made pertaining to formatting, punctuation, spelling and cross-references.

General

Clarification was added to section 1.0 (Coverage Under this General Permit) to describe permit coverage applicability for operators (decision makers and applicators).

Section 3.1 was renamed "Applicator's Responsibilities" to better represent this section of the permit. The draft permit required both the decision maker and the applicator to comply with this section of the, even when these were different operators. In situations where the decision maker and the applicator are different, it would be impracticable for the decision maker to comply with the effluent limitations.

Section 3.2 was revised to clarify that it is the decision maker's responsibility to ensure the pesticide management measures (PMM) are met. The decision maker may conduct or implement the PMM either directly, or through contractual agreement with an applicator or other person; regardless, it is the decision maker's responsibility to ensure the effluent limitations in section 3.2 are met.

Table 3.2 (Annual Treatment Area Threshold) was moved to section 6.0 (Table 6.0). Table 6.1 in the draft permit (Pesticide Discharge Management Plan Deadline) was deleted from the final permit.

Section 4.0 (Surface Water Quality-Based Effluent Limitations) was revised to clarify that all operators are responsible for meeting numeric and narrative surface water quality standards.

Section 5.1 (Monitoring Requirements for Pesticide Applicators) was revised to clarify visual monitoring requirements for applicators with the focus on adverse incidents rather than equipment maintenance, calibration, repairs, etc. The corresponding section of the fact sheet was revised accordingly.

Section 5.2 (Visual Monitoring Requirements for all Applicators) was revised to clarify visual monitoring requirements for operators (either decision maker or applicator) during post-application surveillance during the course of business. The corresponding section of the fact sheet was revised accordingly.

Section 7 (Corrective Action) was revised to include section 7.4.4 (Notification and Reporting for Adverse Incidents Involving Multiple Operators) to clarify that if there is more than one operator for a given pesticide discharge activity (e.g. decision maker is a different person than the applicator) that notification and reporting by any one of the operators constitutes compliance for all of the operators. The department encourages decision makers to coordinate with their applicators prior to any discharge activity to clarify roles and responsibilities, including reporting responsibilities.

Section 7 (Corrective Action) was also revised to extend the timeframe for reporting requirements. The draft permit specified five (5) days to submit the Adverse Incident Written Report. The final permit was revised to provide thirty (30) days to submit the Adverse Incident Report (see section 7.4.2). Similarly, the timeframe for reporting spills, leaks, and other unpermitted discharges, and documentation of other corrective action were changed from five (5) days in the draft permit to thirty (30) days in the final permit (see sections 7.5.2 and 7.6).

Section 8 (Recordkeeping and Annual Reporting) was modified to clarify recordkeeping responsibilities for all operators (section 8.1), for-hire applicators (section 8.2), and decision makers who are required to submit a NOI and prepare a PDMP (section 8.3).

The terms “decision maker,” “applicator,” and “annual treatment threshold” were added to section 11 of the permit.

City of Phoenix Comments

Comment 1 – Multiple NOIs

Please clarify whether an entity such as a corporation or municipality that conducts operations subject to the permit may elect to file multiple concurrent NOIs (rather than as required by Section 2.4.2.b)? If so, must there be a consistent rationale (such as a geographic location, funding source, type and purpose of the discharge, different operating division and/or management responsible for the discharge, etc.) for filing new and separate NOIs? If an entity does file multiple NOIs, may the total affected area under each NOI be considered separately or combined for purposes of determining the applicability of the thresholds listed in Table 3.2.

Response 1

An operator may elect to submit multiple concurrent NOIs. For example, a municipality may have two or more departments that apply pesticides. Each department may each submit a separate NOI or they may be covered under a single NOI. While the departments may submit separate NOIs, the annual thresholds listed in Table 6.0 (Table 3.2 in draft permit) must be combined. For example, if two or more city departments submit separate NOIs to apply a pesticide(s) for mosquito control to the same body of water, if the cumulative area treated equals or exceeds 6,400 acres the departments must prepare a PDMP, as required in section 6 of the permit.

No changes were made to the permit in response to this comment.

Comment 2 – Waters of the United States

The term “waters of the U.S.” is used in Section 1.2.1 and elsewhere throughout the draft permit. The term has been interpreted differently in various judicial proceedings and specific regulatory programs. If ADEQ intends the term to apply only to a particular designated set of waters for purposes of this permit, please provide a reference or link to that list. Otherwise, please amend the draft permit to include a more expansive explanation of the term in this context, particularly with respect to its use in the summation of discharge-affected areas for purposes of determining the applicability of the annual thresholds listed in Table 3.2.

Response 2

The term “waters of the U.S.” is defined in 40 CFR 122.2 and is included in section 11.0 (Definitions) of the permit. Neither the State of Arizona nor U.S. EPA maintains a list of waters of the U.S. Rather, waters of the U.S. are determined based on the definition or by a Jurisdictional Determination conducted by U.S. EPA or the Army Corps of Engineers. Phase I municipal separate storm sewer permittees (such as the city of Phoenix) were required to include outfalls to waters of the U.S. as part of their Part I Municipal Separate Storm Sewer (MS4) permit application. The Phase I MS4s can utilize these records to help determine permitting applicability/requirements.

Regardless, the department recommends all operators use the definition of waters of the U.S. provided in section 11.0 to determine permitting applicability and requirements.

No changes were made to the permit in response to this comment.

Comment 3 – Interchangeable Terms

The draft permit uses terms such as “waters,” “receiving waters,” and “waters of the U.S.” in an apparently interchangeable manner. Please review the permit to clarify where intended meanings of such terms are consistent or inconsistent, and provide definitions or if possible use only one defined term for each meaning. As but a single example, Section 8.4.d.1 requires the operator as part of an annual report to identify “any waters or other treatment area” to which pesticides were discharged. It is unclear to us whether by that phrase ADEQ intends an operator to identify treatment areas that are not waters? Identify treatment areas that may not be waters of the U.S. and thus not subject to the draft permit? Perhaps the section should be amended to required identification of only those treatment areas that are waters of the U.S., consistent with the intended coverage of the permit.

Response 3

As indicated in the comment, the permit does make use of some interchangeable terms. For example, the terms “waters,” “receiving waters,” and “water of the U.S.” are used interchangeably at various locations in the permit. This interchangeable terminology is found throughout federal rules, permits, fact sheets, and associated guidance. For example, 40 CFR 122.2 uses the term “receiving water” throughout the rule when establishing permitting requirements.

No changes were made to the permit in response to this comment.

Comment 4 - Section 1.2.2.3 — Discharges Covered by Another AZPDES Permit:

In the case where a facility has an individual AZPDES permit in place (obtained in the last five years), will this permit provide coverage to pesticide discharges and eliminate the need for coverage under the draft general permit?

Are there specific conditions, such as if the permit already has established site specific numeric water quality based limitations or specifically mentions the application of pesticides, that must be met to obtain coverage through the individual permit?

If not retroactive, can future individual AZPDES permits potentially be structured to eliminate the need for coverage under the draft general permit?

Would a Municipal Stormwater General Permit (MSGP) be considered another AZPDES permit?

Response 4

If a person has been issued AZPDES permit coverage for pesticide discharges prior to the effective date of Arizona’s PGP, the operator would not need to obtain coverage under this permit, unless required by ADEQ. However, ADEQ is unaware of any previously issued AZPDES permits that cover pesticide discharges as this activity did not require permit coverage until the court vacated the exemption (see National Cotton Council v. EPA).

The Municipal Separate Storm Sewer System (MS4) permit and Multi-Sector General Permits (MSGP) are both examples of other AZPDES permits, as indicated in the comment. However, pesticides discharges are not currently authorized in any of the Arizona’s MS4 permits (general permits or individual permits, nor is it included in the MSGP. Pesticide discharges are unlikely to be included in either of these permits in the future because the MS4 permits and MSGP are stormwater permits, where as the PGP is not.

No changes were made to the permit in response to this comment.

Comment 5 - Section 2.1 — Effective Date of Permit Coverage:

Phoenix requests that all operators be granted automatic coverage under the draft general permit until July 18, 2011 regardless of the waterway designation. The NOI is not presently available online and those requesting coverage for an impaired waterway obviously do not have 31 days remaining in advance of April 9 to obtain coverage. If this request is not granted, application of pesticides for legitimate public health purposes in these areas will not be permitted for a period of time.

Response 5

Section 2.1 (Effective Date of Permit Coverage) was revised to grant automatic permit coverage for all operators (except those seeking specific approval) until February 6, 2012. This will give those operators who are otherwise required to submit a NOI time to complete and submit the form, and if necessary, to prepare a Pesticide Discharge Management Plan (see permit section 6).

Comment 6 - Section 2.3 — Persons Subject to this Permit:

The decision maker (defined here) is identified in section 2.4 as synonymous with the operator that is discharging pesticides. It appears to us that in many cases the decision maker who decides to conduct a pesticide application would not be the actual person discharging the pesticide (the applicator). The entire permit should be revised to use consistent terms, such as the applicant, who files the NOI; the executive or responsible corporate officer, who signs the NOI; the decision maker, who decides to conduct the application subject to the NOI and the terms of the general permit; and the applicator, who conducts the application of pesticides.

Response 6

The permit is structured that both the decision maker and applicator have some specific roles and responsibilities. Section 2.4 identifies the decision maker as being the person responsible for submitting a NOI (if required) and to identify the applicator (if different from the decision maker) on the NOI. Additional information regarding who signs an NOI is provided in Response 21 below.

Changes were made to the permit to help clarify decision maker and applicator roles and responsibilities.

Comment 7 - Section 2.4 —Pesticide Discharges Requiring an NOI:

There could be potentially three different parties involved in the process; the executive of the regulated entity who signs and submits the NOI; a decision maker who makes the decision to conduct pesticide applications; and an operator who conducts the application and all related field and recordkeeping activities. The first sentence mixes the latter two terms. As noted in comment 6 above, defined roles and consistency in the rules are imperative to understanding and applying those same rules.

Please provide a reference or link to the list of waters designated Aquatic and Wildlife warm and cold.

Response 7

The NOI includes information for identifying the decision maker (contact person and the person who signs the NOI) as well as the applicator information (if different than the decision maker), see also Response 21 below.

Waters that are designated as Aquatic and Wildlife (warm and cold) are listed in Arizona Administrative Code, Title 18, Chapter 11, Appendix B and is available at:

http://www.azsos.gov/public_services/Title_18/18-11.htm

No changes were made to the permit in response to this comment.

Comment 8 - Section 2.4.c - Discharges to Impaired Waters:

Does this section apply to all discharges of pesticides to any of the impaired waters on the referenced list; to all discharges of pesticides to those waters listed as impaired by any pesticide or its degradates; or only to discharges of pesticides into a water that is listed as impaired by that particular pesticide or its degradates, as implied by Section 1.2.2.1?

Does the term "impaired water" have the same meaning elsewhere in the draft permit, such as Section 2.4.5, as it does here?

Response 8

This section applies to those waters that are impaired for the pesticide (and its degradates) to be used. For example, if a water is impaired for pesticide "A" and pesticide "A" is to be used, the operator(s) must comply with this section. However, if a pesticide other than the one the water is impaired for is to be utilized, the requirements in this section do not apply.

The term "impaired water," as defined in section 11, has the same meaning throughout the permit.

No changes were made to the permit in response to this comment.

Comment 9 - Section 2.4.1. NOI Requirements, Item e:

How does ADEQ desire this information to be reported if permit coverage is sought for an area wide application, where there could be multiple receiving waters and multiple points of discharge to each?

Response 9

Operators submitting a NOI for area wide permit coverage will be required to list all known receiving waters and associated information (latitude/longitude, impaired waters, Outstanding Arizona Waters, etc.).

No changes were made to the permit in response to this comment.

Comment 10 - Section 2.4.2 Type of Permit Coverage and Associated Fee:

Will ADEQ allow a large municipality such as Phoenix to obtain area wide discharge permit coverage or is there a size limit to the geographic area allowed for one NOI?

Please provide a definition of watershed (Phoenix assumes it refers to one of the ten main watersheds in Arizona, but reference to a list would be helpful).

What is the definition of "district" and "political boundary"? This is important in determining if area wide coverage is permissible or if separate NOIs need to be submitted for a single project that crosses a particular boundary?

If NOIs for impaired waterways are required by April 9, 2011, and the new AZPDES permit fees are not put into effect until July 2011, is no fee required with the NOI between April 9 and July 2011?

Response 10

The area wide permit provision was included in Arizona's PGP to reduce the administrative burden on large operators (like the city of Phoenix) by providing a mechanism to limit the number of NOIs that would otherwise be required. In order to avoid potential overlap and retain accurate records, the permit does limit area wide NOIs. For example, if there is more than one watershed within a municipality, the operator must submit a separate NOI for each watershed within the municipality if the intent is to apply pesticides to waters within each watershed.

For the purpose of the PGP, the 10 watersheds listed in Arizona Administrative Code, Title 18, Chapter 11, Appendix B are the applicable watersheds (see also AZGFD Comment/Response 2).

A discussion of "district" and "political boundary" is included in the fact sheet. If a project crosses a political boundary or watershed, separate NOIs are required.

Because the court delayed the permitting requirement from April 9, 2011 to October 31, 2011 and the effective date of Arizona Pollutant Discharge Elimination System (AZPDES) fees is July 1, 2011, NOIs submitted to ADEQ are subject to applicable fees.

Comment 11 - Section 2.4.3 Where to Submit:

Will ADEQ use the Smart NOI website for the PGP? If the Smart NOI feature is not going to be utilized, it should be stricken from the permit to avoid confusion. Please provide a link to the NOI location on the website when it is available. Note that this section refers to an "applicant" who submits the NOI.

Response 11

Currently, ADEQ does not have plans to include the PGP on the SMART NOI, largely due to limited funds to create the online application. Section 2.4.3 was revised to indicate applicants may submit NOIs via the SMART NOI if it becomes available. Also, the option of submitting NOIs via facsimile was removed because the AZPDES fee must be included with the NOI in order for it to be complete.

Comment 12 - Section 2.4.8 Change in Operators:

Note that this section refers to an "operator" who files for an NOI. As previously stated, the entire rule should be revised to refer to an applicant, who files the NOI; an executive or responsible corporate officer, who signs the NOI; a decision maker, who decides when and where to apply the pesticides within the constraints of the NOI and the general permit; and an applicator, who conducts the pesticide application.

Clarify if this change relates to the decision maker or the applicator. If there is a change in the decision maker then the requirement is understandable. However if one of the many listed applicators changes, can the NOI be amended to reflect that change, or must a new NOI be submitted?

Response 12

The change in operator requirements in section 2.4.8 is consistent with A.A.C. R18-9-C904 (Change of Ownership or Operator under a General Permit). Therefore, no changes were made to this section.

If information submitted on the NOI changes (other than a change in operator, i.e., decision maker), a revised NOI must be submitted to ADEQ indicating what the changes are. This is not considered a new NOI and there is no fee required for submitting a revised NOI to update information.

Comment 13 - Section 2.7.2: Coverage under an Alternate Permit:

Provide clarification on the types of alternative AZPDES general permits that are available as an alternative to the Pesticide General Permit. RI 8-9- C902(A) and (B) only refer to individual AZPDES permits.

Response 13

At the time Arizona's PGP was issued, there were no other general permits available for pesticide discharges to waters of the U.S., nor are there any plans for an alternative permit at the time the final permit was issued. However, this provision is included in the PGP to allow for alternative individual and general permit coverage if such permits become available.

No changes were made to the permit in response to this comment.

Comment 14 - Section 2.9: Other Federal and State Laws:

Provide clarification on how Arizona Office of Pest Management requirements may impact the responsibilities of the decision maker. We recommend that ADEQ coordinate with OPM to align the draft general permit with the applicable OPM regulations, to the greatest extent possible.

Response 14

The department solicited input from both Arizona Office of Pest Management and Arizona Department of Agriculture throughout the permit development process to ensure the permit does not conflict with the requirements of other departments. This permit does not change an operator's responsibility to comply with any applicable requirements imposed by the Arizona Office of Pest Management.

No changes were made to the permit in response to this comment.

Comment 15 - Section 3.1.1: Minimize Pesticide Discharges to Waters of the United States:

What criteria does ADEQ believe is appropriate to use in determining that an operator did or did not use the lowest effective amount to control the pest? How will ADEQ determine that pest control procedures will need to be revised?

Response 15

Section 3.1.1 of the fact sheet was revised to reaffirm it is illegal to use a pesticide in a way prohibited by the FIFRA labeling and to minimize the total amount of pesticide discharged operators must use only the amount of pesticide and frequency of pesticide application necessary to control the target pest. The operator is responsible determining if pest control procedures need to be revised by ensuring the conditions of the permit are met, that FIFRA label instruction are followed, as well as complying with any other applicable local state, or federal requirements are met.

Comment 16 - Table 3.2:

In general, many of the terms used in this table should be supported by definition or guidance. For example, how is the limit of the "waters edge" to be determined? Should that apply to the edge of a "water of the U.S." or to the edge of the water present within a "water of the U.S."

What about application to presently dry portions of a "water of the U.S."?

How will terrestrial weed application be calculated, by approximate spot treatment or the entire treated area at the facility? Unless guidance is provided it is likely that different operators will be inconsistent in making these calculations.

Pesticide applications made to the “water’s edge” and calculated in linear feet should be cumulative for each application, as required by the 2010 NPDES Draft Pesticides General Permit issued by the U.S. EPA, rather than counted only once for multiple applications as stated in Footnote 2.

Does the annual threshold follow a calendar year or permit year? Section 8.4 specifies an annual reporting period, but does not clearly state whether the thresholds listed in Table 3.2 must be calculated for that annual reporting period, or for the entire permit year. For example, may a party apply pesticides to a cumulative total of 12,000 acres for mosquito control over a permit period, but not be required to comply with section 3.2 because only 6000 acres were affected in each calendar year?

Response 16

The fact sheet was revised to address questions about “waters’ edge” by adding clarification to the Scope of Permit section, including the following:

For example, discharges to control pests in or near areas that are Waters of the United States, even when these areas are dry for much of the year, may be covered by this permit, if one is required. This would include discharges on forest or range lands that include dry washes and ephemeral streams, to control pests that may be found in these occasionally wet areas, including pests that may also be found in upland areas. For two of the categories, weed and algae pest control and animal pest control, the permit specifies that covered activities include applications to control pests “in water and at water’s edge.” ADEQ intends for the phrase “at water’s edge” to allow coverage of activities targeting pests that are not necessarily “in” the water but are near the water such that control of the pests may unavoidably involve a point-source discharge of pesticides to Waters of the United States.

Additional information was also added to section 1.2.1 of the fact sheet.

Table 3.2 was moved to section 6 (Table 6.) and Footnotes 1 and 2 were deleted. A definition and explanation of Annual Treatment Area Threshold was added to section 11 (Definitions) of the permit. The treatment area for pesticide use patterns is not additive over the calendar year. The definition also clarifies the calculations are for a calendar year.

Comment 17 - Section 3.2:

In general section 3.2 and its subsections contain terms such as “identify”, “evaluate”, and “assess”, each of which is subjective as to the degree of effort and manner of presentation. Please provide guidance that establishes minimum professional standards for compliance and documentation.

Response 17

Throughout the permit, phrases and terms (such as “identify,” “evaluate,” and “asses”) which are not otherwise specifically defined in the permit have the plain and ordinary meaning. The degree of effort and manner of presentation may vary depending on the particular pesticide application project; therefore, the operator must consider the project specifics in determining the minimum professional standards.

No changes were made to the permit in response to this comment.

Comment 18 - Section 5.2: Visual Monitoring Requirements for All Operators:

“All operators covered under this permit must conduct spot checks in the area to and around where pesticides are applied...”. Is this “operator” supposed to be the decision maker, applicator, or either?

Response 18

Section 5.2 of the fact sheet was revised to clarify visual assessment requirements as follows:

Visual monitoring must also be conducted during any post-application surveillance, such as to determine the efficacy of the pesticide application. Visual monitoring of this type is required of all operators but only if the operator, be it the applicator or the decision-maker or both, performs post application surveillance in the course of business.

Comment 19 - Table 6.1: Pesticide Discharge Management Plan Deadline:

If an applicator is not required to submit an NOI based on receiving waters, but does exceed the annual threshold, do they have to submit a PDMP? It would be helpful to add this situation to the chart: “If an NOI is not required but the annual threshold is reached, then. Or, clarify that only discharges requiring an NOI should be summed for purposes of comparing with the annual threshold.

Response 19

Table 6.1 (Pesticide Discharge Management Plan Deadline) was removed from the final permit and the Annual Treatment Area Threshold table (3.2 in the draft permit) was moved to section 6 to help clarify that if an operator was not required to prepare a NOI, then a PDMP is not required regardless of whether a annual treatment area threshold is met or exceeded.

Comment 20 - Section 6.1.5, Schedules and Procedures:

“The following schedules and procedures must be documented in your PDMP.” No schedules and procedures follow in this section; does this refer to both 6.1.5.1 and 6.1.5.2?

Response 20

Permit section 6.1.5 (Schedules and Procedures) and 6.1.5.1 (Control Measures Used to Comply with Effluent Limitations in Section 3) were both deleted from the final permit. Section 6.1.5.2 (Other Actions Necessary to Minimize Discharges) was moved to section 6.1.4 (Response Procedures) in the final permit. Section 6.1.4 was also modified to eliminate what were apparent duplicate requirements. Signature Requirements for the PDMP was moved to 6.1.5 in the final permit.

Comment 21 - Section 9.10— Signatory Requirements:

For municipalities, the principal executive officer or ranking elected official that signs the NOI would not normally be the decision maker responsible for pesticide application. Does ADEQ recognize that the decision maker would typically not sign the permit or apply the pesticides?

As noted in comment — above, the terms decision maker, operator, and applicator should be more carefully used in the draft general permit to assure that the permitted entities can understand ADEQ’s intent.

Will ADEQ allow municipalities to designate principal executive officer or ranking elected official responsibilities in a manner similar to current AZPDES permitting?

Response 21

Signatory requirements are established in federal rule (see 40 CFR 122.22), which includes instructions for persons from municipalities that must sign the application (Notice of Intent for a general permit). Specifically, the rule states:

(3) For a municipality, State, Federal, or other public agency. By either a principal executive officer or ranking elected official. For purposes of this section, 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 of the agency (e.g., Regional Administrators of EPA).

ADEQ offer the following clarification; the ranking elected official for a city, county, state or federal agency would be the mayor, county commissioner, governor or president, respectively. The principal executive officer will vary from agency to agency but must oversee, control and manage all aspects of the agency, geographic unit, or installation and have the authority to allocate funds to address environmental issues.

In the example of a municipality (e.g., city of Phoenix) submitting a Notice of Intent, the city is applying as the “decision maker.” It may be, however, that the qualified individual signing the NOI is not the actual person taking the lead role on behalf of the city. The individual taking the lead role on behalf of the city is the contact person identified on the NOI. The applicator (identified on the NOI) may be city personnel, or may be a person under contract with the city.

The final permit was revised to better clarify the roles and responsibilities of operators that serve as the decision maker, the applicator, or both.

Arizona Game and Fish Department

Comment 1 – Section 2.4.1 NOI Requirements (page8)

Will ADEQ supply the AZPDES NOI form or does the Operator insure that the minimum requirements are submitted?

Response 1

Pursuant to A.A.C. R18-9-C901(B), the department has provided a Notice of Intent (NOI) form to be used by operators who are required to submit a NOI.

No changes were made to the permit in response to this comment.

Comment 2 – Section 2.4.1. I The watershed in which the discharge is to occur (page 9)

Watershed size needs to be defined. We suggest that the minimum size watershed that completely contains the discharge activity is described.

Response 2

For the purpose of the Pesticide General Permit and when to submit one or more NOIs, the term “watershed” refers to the ten (10) watersheds identified in Arizona Administrative Code, Title 18, Chapter 11, Appendix B. Those watersheds include: Bill Williams (BW), Colorado-Grand Canyon (CG), Colorado – Lower Gila (CL), Little Colorado (LC), Middle Gila (MG), Santa Cruz – Rio Magdalena – Rio Sonoyta (SC), Sand Pedro-Willcox Playa-Rio Yaqui (SP), Salt River (SR), Upper Gila (UG), and Verder River (VR).

No changes were made to the permit in response to this comment.

Comment 3 - Sections 3.2.1.2.c.d. – 3.2.2.2.c.d . – 3.2.3.2.c.d. – 3.2.4.2.c.d. – 3.2.5.2.c.d. Pest Management Methods (pages 16 through 20)

Mechanical or Physical Methods seem to be the same or very similar to Cultural Methods, can these two methods be combined?

Response 3

A discussion of mechanical/physical, and cultural methods is included in the fact sheet and provides examples of each method. As defined in section 11 of the final permit, cultural method means manipulation of the habitat to increase pest mortality by making the habitat less suitable to the pest, and mechanical/physical method means mechanical tools or physical alteration of the environment for pest prevention or removal.

No changes were made to the permit in response to this comment.

Comment 4 – Section 6.1, Contents of Pesticide Discharge Management Plan (page 23)

There should be five elements listed under this heading only four are presented. Pest Problem Description is missing.

2. Pertaining to other Actions Necessary to Minimize Discharges:

There should only be three elements under this heading, there are five listed. Element d. (Documentation to Support Eligibility Considerations under Other Federal Laws) should be removed this is the only place in the document that this is referred.

Element e. (Signature Requirements) is misplaced it should be listed under 6.1 Contents of Discharge Management Plan

Response 4

Section 6.1 was modified to include “b. Pest Problem Description;” element “d” (requirement to Documentation to Support Eligibility Considerations under Other Federal Laws) was removed; and Signature Requirements was moved to section 6.1.5. See also city of Phoenix comment/response 20.

Comment 5 - Pesticide Monitoring Schedules and Procedures: At a minimum (page 25)

Element “c” is a duplication of element “3” located immediately above “c” on page 25. Element “c” should be removed.

Response 5

Element “c” in the draft permit was a duplication of element “3.” Therefore, element “c” was removed from the final permit.

Comment 6 – Section 9.10.a.3. For a municipality, state, federal or other public agency: By either a principal executive officer or ranking elected official (page 35)

We recommend that the principal executive officer or ranking elected official have the ability to designate an individual or position that would have signatory authority for the NOIs.

Response 6

Signature requirements for State issued permits are established in federal rule (40 CFR 122.22), which specifies that permit applications (NOI) be signed by a principal executive officer or ranking elected official. See also city of Phoenix comment/response 21 above.

No changes were made to the permit in response to this comment.

Comment 7 – Section 9.17 Bypass (page 39)

This bypass section should be removed. When pesticides are applied the applicator can either apply or not apply, the applicator cannot “bypass”.

Response 7

Bypass is included as a permit condition in accordance with 40 CFR 122.41, which requires all NPDES (AZPDES) permits to include standard permit conditions either by incorporating them into the permit, or by reference. While there may be limited applicability to the Pesticide General Permit, bypass is included to meet federal requirements and to accommodate potential situations where an operator would be subject to a bypass situation under this permit.

No changes were made to the permit in response to this comment.