

DSHM-PES-05-05 Aquatic Pesticide Permit Program
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New York State Department of Environmental Conservation

DEC Program Policy

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I. SUMMARY

This Program Policy was formerly identified as TAGM 93-05.

The application of aquatic pesticides is regulated by the Department through New York State pesticide registration, pesticide applicator certification, pesticide business registration and the Aquatic Pesticide Permits Program [Article 15 0313-(4) of the Environmental Conservation Law (ECL) and Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR), Parts 327, 328 and 329]. The combined use of these management tools provide oversight for the control of aquatic pests while preserving and protecting the waters of the State of New York. The Aquatic Pesticide Permit Program is administered by the Bureau of Pesticides Management (Division of Solid and Hazardous Materials) and the Division of Environmental Permits.

II. POLICY

The Bureau of Pesticides Management is responsible for the administration of the Aquatic Pesticide Permit Program. This document provides guidance to the Regional Bureau of Pesticides Management staff.

A. Applications for a permit to control an aquatic pest in a water body in the State of New York, are submitted to the Department's Regional Pesticides Management Office that serves the county where the water body is located. The Regional Bureau of Pesticides Management staff initiates the review process for all Aquatic Pesticide Permit Applications (the Application). Regional Bureau of Pesticides Management staff are responsible for issuing and denying Aquatic Permits (the Permit) under 6 NYCRR 328 (Fish) and 329 (Aquatic Insect). Regional Bureau of Pesticides Management staff (Division of Solid and Hazardous Materials), along with the Division of Environmental Permits are responsible for issuing and denying Permits under 6 NYCRR 327 (Aquatic Vegetation).

An Aquatic Pesticide Permit Application Package (the Application Package) for the Management of Aquatic Vegetation (Part 327) or Fish (Part 328), is submitted to the Regional Bureau of Pesticides Management staff, and should include the Application form AQV (11/02).

The Application Package for the Management of Aquatic Insects (Part 329), is submitted to the Regional Bureau of Pesticides Management staff, and should include the Application form AQI (5/02)

B. A Permit is not required in the following situations:

1. The use of copper sulfate for algae control by or on behalf of a duly constituted water supply agency in its water supply.
2. The treatment of waters for aquatic vegetation control which have no outlet to other waters, which are one acre or less in size, and which lie wholly within boundaries of lands privately owned or leased by the individual making or authorizing such treatment.

Special permits and interregional permits may be issued by the Bureau of Pesticides Management in the Central Office. Such permits will be circulated to Regions where the permit is proposed.

III. PURPOSE AND BACKGROUND

This policy identifies the procedures and framework to the Department's Regional Bureau of Pesticides Management and Division of Environmental Permit staff for the administration of an Aquatic Pesticide Permit Program. The Aquatic Pesticide Permit Program is conducted under the authority granted by Article 15-0313 (4) of the Environmental Conservation Law (ECL) and Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York, 6 NYCRR Parts 327, 328 and 329.

IV. RESPONSIBILITY

The NYSDEC, Division of Solid & Hazardous Materials, Bureau of Pesticides Management is responsible for interpreting, implementing, maintaining, and updating this policy and the Aquatic Pesticide Permit Program.

V. PROCEDURE

A. Requests for Information

Interested parties requesting information on the Aquatic Pesticide Permit Program, or a requesting an Application to control a specific aquatic pest, should be sent an Application Package that includes the appropriate attachments in use for the Aquatic Permit type requested, and at a minimum:

1. A general information letter.
2. An Application form [AQV (11/02) for Part 327 or Part 328 applications, AQI (5/02) for Part 329 applications].
3. An instruction sheet for completing the Application form.
4. Sample riparian owner consent letter.
5. A Certification of Riparian Owner and User Status.
6. ECL 33-0905 (5) specific pre-application label notification requirements for Part 329 Permit application requests.
7. 6 NYCRR Parts 327, 328 or 329 (applicable regulations).

B. Processing Application Packages

1. The Permit Application Package Review Process

A sufficient number of copies of the Application Package must be requested from the applicant to ensure that all reviewing units have a copy of the Application Package. The reviewing units should be the Division of Water, Division of Fish, Wildlife and Marine Resources, Division of Environmental Permits and the State Department of Health regional or local Office. In addition, based on the information provided in the Application Package, review may be necessary by the Adirondack Park Agency, the State Department of Transportation or Office of General Services. If a reviewing unit does not want a complete Application Package, a memorandum to that effect must be included in the Application Package file. The applicant must submit the required number of copies of the Application Package or the Application Package shall not be accepted by the Department.

If more than one pesticide is proposed to be applied to a water body, a separate Application Package is required for each pesticide. For copper sulfate and shading product treatments, a single Application Package specifying all treatment dates may be submitted.

The Application Package to be retained by the Region for its files should be dated stamped on the reverse side of each page, on the date the Application Package is received. Date stamping of only the actual application form is acceptable if the Application Package is too voluminous. Further, any bound documents or submissions which are separate from the Application form may be stamped on the cover sheet only.

2. Fee Processing

A separate Application Package and fee of \$50.00 is required for each proposed aquatic pesticide treatment (except for copper sulfate, shading products, Bti or other larviciding treatments where multiple applications are involved). In accordance with fiscal requirements, the Application fee must be deposited on the date it is received. For Regions that do not/cannot meet this obligation, it is necessary to ensure that the Regional Director has approved a deviation from these fiscal controls and requirements.

A receipt must be issued for each fee received. The receipt should indicate the name of the Permit applicant, the name of the water body or stream proposed to be treated, and the date the Application Package and fee were received. If the name of the water body is unknown, a specific address or location should be provided. If multiple streams are proposed for treatment, for example, to control aquatic insects, the name of the community(ies) should be listed. A copy of the fee receipt should be attached to the Application Package.

3. Recording of Application Packages

Receipt and status of all Application Packages must be recorded and maintained by the Regional Pesticides Management staff, including the following information where applicable:

- a. Name of the applicant.
- b. Name or identification of the water body/stream.
- c. Name of community/county.
- d. Name and ID number of the certified applicator.

- e. Date the Application Package was received.
- f. Date(s) the application was determined to be incomplete.
- g. Reasons for the determination of an incomplete Application Package.
- h. Date a determination of completeness was made.
- i. Date the Application Package was circulated to Department programs, including Division of Water, Division of Fish, Wildlife and Marine Resources, Division of Environmental Permits regional or local State Department of Health offices.
- j. Recommendations made by any reviewing units.
- k. Date the Permit is issued.
- l. Date of any conferences to discuss the Application Package.
- m. Dates of any hearing.
- n. Date of any final decision as a result of a hearing.

4. Review of Application Package for Completeness

The Regional Pesticides Management staff is responsible for making a determination of the completeness of the application as soon as practicable following receipt of the application. The Application Package must include the following:

- a. An Application form that has been accurately completed (AQV (11/02) for Part 327 or Part 328 applications, AQI (5/02) for Part 329 applications).
- b. If the applicant is a lake association, a copy of a resolution of the lake association board of directors authorizing the filing of the Application.
- c. A copy of the NYS accepted pesticide label.
- d. The relevant portion of a 7 1/2 degree U.S.G.S. quadrangle of the

general area, indicating the location of the water body/streams (if a 7 1/2 degree quadrangle is unavailable, a 15 degree map can be used).

- e. A detailed map of the water body indicating the depths of the water body. All areas to be treated must be clearly identified.
- f. A list of names and addresses of all affected riparian users (includes owners and persons with vested right of use).
- g. A signed Certification of Notification of Affected Riparian Users and, if applicable, a copy of the letter sent to all riparian owners and users.

5. Review of the Application [AQV (11/02) or AQI (5/02)]. The Application must contain the following-accurate information, which should be verified by the Region as part of the determination of completeness.

- a. The name of the proposed applicator, the applicator's category/subcategory and the name of the applicator's business or agency. It is not necessary for a member of the lake association, who is a commercial certified applicator, to be registered as a business, if the applicator performs the pesticides application without charge.
- b. The identity of the pesticide proposed to be used, together with a copy of the NYS accepted label.
- c. Identification of the water body as follows:
 - i. The total acreage of the pond/lake, or in the case of insect control, the total area listed as square miles.
 - ii. The location of the water body or stream complex by town and county.
- d. The area to be treated, identified as follows:
 - i. For ponds/lakes, treated acreage given in surface acres (acre-feet to be treated can be determined from depth indications on the scale map).
 - ii. For insect control treatments, treated acreage listed in miles of streams treated.

- e. The proposed dates of the treatment.
- f. The dosage rates, provided in p.p.m., p.p.b., lbs./acre or acre-foot, or gal./acre or acre-foot.
- g. The total amounts of aquatic pesticide proposed to be applied for each treatment (not the total amount for all treatments).
- h. The target pest.
- i. For those proposed treatments marked "repeat," the application should be checked against the previous year's application and the Permit to determine if the proposed treatment is identical. Based on a comparison with the most recent Permit (old Permit number should be included for reference), any change in pesticide, dosage rate or area will be cause to consider the application as a new treatment.

6. Certification of Riparian owner and User Status Review: The Application [AQV (11/02) or AQI (5/02)] must be accompanied by a completed Certification of Notification of Riparian Owner and User.

7. Map Review: The detailed map should accurately indicate:

- a. For pond/lake treatments:
 - i. The exact map scale size and depths of the water body.
 - ii. The outline of the treatment area(s) with the type of vegetation clearly identified.
 - iii. Inlets, outlets, and wetlands contiguous to the water body.
 - iv. If there will be outflow, data to demonstrate how far the outlet waters will flow during the use restriction period, in order to identify potentially affected downstream riparian owners, together with an estimate of outflow in cubic feet per second (cfs), as well as the location and type of outflow control.
 - v. Location of bathing areas, livestock watering areas, water intakes, public lands contiguous to the water body, public boat launches and any other features that may be relevant to the treatment.

- b. For Insect Control (larviciding):
 - i. Outline of the treatment area with all streams clearly indicated.
 - ii. An estimate of all stream flows in cubic feet per second (cfs) prior to treatment.
 - iii. Wetlands contiguous to the water body.
 - iv. Bathing areas.
 - v. Livestock watering areas.
 - vi. Water intakes.
 - vii. Public lands contiguous to the water body.
 - viii. Any other features that may be relevant to the treatment.
- c. The relevant portion of the 7 1/2 degree U.S.G.S. quadrangle map should accurately identify the location and name of the water body or streams proposed for treatment.
- d. If the proposed treatment is identical to the treatment of the previous year, a statement to that effect should be requested from the applicant and made part of the application. Any changes in the proposed treatment will require a new map.

8. Determination of Completeness

Regional Bureau of Pesticides Management staff are responsible for making a determination of completeness for each Application Package.

If the Application Package is determined to be incomplete, it is recommended that the entire Application Package be returned to the applicant with a form letter indicating the deficiencies in the Application. As an alternative, the Applicant may be notified that the Application form is incomplete and give a time frame to resolve the incompleteness without returning the entire Application Package. However, the incompleteness notification should always be in writing to confirm the Department's determination of incompleteness.

9. Riparian Owners and Users

- a. **Riparian Owner and User Consent:** Under the regulations governing the Aquatic Pesticide Permit Program, no Permit is to be issued unless the Permit applicant has certified that the affected riparian owners/users have agreed to the temporary curtailment of their uses required by the pesticide application, or unless the applicant demonstrates to the satisfaction of the Commissioner that any nonconsenting riparian owners/users will not be significantly adversely affected by the pesticide application as proposed, under the terms and limitations provided for the proposed Permit. In order to effectively implement this regulatory requirement, the Application must be scrutinized to ascertain whether the appropriate riparian owners/users have been adequately and timely informed, whether consent has been obtained or whether any riparian owners/users object to the proposed pesticide application and, if so, whether the applicant demonstrated that such objectors will not be significantly adversely affected.

Riparian Ownership: Riparian owners are persons who own property along the shore of the water body to be treated. The ownership of the riparian property surrounding or bordering the water body proposed for treatment must be established and, if there is to be outflow during the restriction period along any outlet, this ownership must also be established.

Riparian Users: For purposes of the Aquatic Pesticide Permit Program, riparian users are those users of a water body who have a vested right to the use of the water body. Examples of such a vested right include a person with deeded access to the water body for recreational or other purposes, or a person who has a vested right to withdrawal and use of water from the water body.

As described in the Determination of Completeness discussion in Item 8 above, the applicant must submit a completed Certification of Notification of Riparian Users and Owners, together with a copy of the notification letter and a list of riparian owners/users to whom the notification letter was sent. This certification will identify whether the applicant is sole owner of all property surrounding the water body, or whether the water body has multiple riparian owners, whether outlet waters flow through lands owned by other than the sole riparian owner of the water body and there will be outflow during the use restriction period, or whether there are vested riparian users.

If there is more than one riparian owner, or if there are one or more

vested riparian users, these riparian owners and users must be notified in writing of the treatment and their right to object. If there will be outflow of treated waters through lands owned by other than the sole water body riparian owner, they too must be notified.

b. Riparian Owner/User Notification: If a riparian owner/user letter is required, the letter must include:

- i. The purpose of the proposed aquatic pesticide treatment.
- ii. The name of pesticide to be used and a copy of the product label (only the directions not relevant to the treatment may be deleted).
- iii. The date(s) of the proposed treatment(s).
- iv. The required water use restrictions.
- v. A statement informing riparian owners/users of their right to object to the treatment and giving the location of the Department Regional Office, name of a contact person and a period of time not less than 21 days, in which an objection may be filed with the Department. The riparian owners/users must be informed that their objections to the proposed treatment must demonstrate that their use of the water body will be significantly adversely affected, and that their objections must be provided to the Department in writing.
- vi. A telephone number and the time periods in which the riparian owner/user may call in order to be informed of the exact date of the pesticide application; or if a telephone number and time period are not provided in the notice, then a second notice must be sent to all riparian owners/ users at least 48 hours prior to the actual pesticide application informing them of the actual date of application and reminding them of the water use restrictions.
- vii. A statement that a lack of response by riparian owners/users is considered to be consent to the proposed pesticide treatment.

- viii. The period of time, no less than 21 days, in which nonconsenting riparian owners/users may respond with objections to the Department.

If a partial water body treatment is proposed in a small lake/pond (500 acres or less), all riparian owners/user must be notified. For large water bodies (greater than 500 acres in size) receiving partial treatments, the applicant must notify all affected riparian owner/users and designate the treatment area with buoys and warning signs. Affected riparian owners/users shall be those riparian owners/users located within one-half mile of the treatment area.

10. Water Holding Restrictions

In cases where regulations or label directions require that treated water not be used for a stated period of time, the applicant must submit proof with the application that the water use restrictions can be enforced. The enforcement may occur by: 1) holding the water; or, 2) either securing consent from downstream owners/users or showing that downstream owners/users will not be significantly adversely impacted.

If downstream owners/users object, the same evaluation of the objections must occur as for any objector who is an owner/user of the treated water body. However, the second alternative may not be used if the pesticide label states that there must be little or no outflow from the water body.

- a. If the applicant proposed to hold any outflow, the applicant must demonstrate that the holding restriction can be met for the period of time the use restrictions are in effect. If the outflow is to be stopped by means of an advance water drawdown, a drawdown study should be submitted that includes at least the following:
 - i. Outflow measurements.
 - ii. Anticipated average rainfall during the restriction period.
 - iii. Evaporation rate of the water body.
 - iv. Water level before and after the drawdown.
 - v. Dam configuration.
 - vi. The reserve capacity during the restriction period.

- b. As an alternative to the requirement for a drawdown study, an applicant may demonstrate that all impacted downstream riparian owners/users agree to comply with all water use restrictions for the specified period of time.
 - i. Those riparian owners/users whose approval must be obtained, shall be determined by the length of the restriction period and the distance the water will travel during that time period. Documentation of this agreement should include a property map and notification letter. In this case, the water holding restriction may be waived and replaced by other requirements specified in the Permit.
 - ii. If the applicant can demonstrate that there are no affected downstream riparian owners/users, no consent will be required.

11. SEQR Compliance

- a. In the case where a pesticide is listed in Parts 327, 328 or 329, or where a pesticide is evaluated in the 1981 Environmental Impact Statement (EIS), 1995 Supplemental Environmental Impact Statement (SEIS), Aquatic Pesticide Programmatic Environmental Impact Statement (PEIS) or SEQR is satisfied.
- b. In the case where a pesticide not listed in Parts 327, 328 or 329, or where a pesticide not evaluated in the 1981 EIS, 1995 SEIS or PEIS, is proposed for use, the applicant must take further steps to comply with SEQR. An Environmental Assessment Form (EAF) must be prepared by the applicant and attached to the application.
- c. Where an EAF has been submitted by the applicant, the Regional Bureau of Pesticides Management staff must prepare a Positive or Negative Determination or ensure that a Positive or Negative Determination has been prepared. The Region should consult with the Bureau of Pesticides Management Central Office staff regarding the preparation of a SEQR Declaration. At the present time, the only pesticide for which a Negative Declaration has been authorized is Bti. The EAF and SEQR determination (Positive or Negative Declaration) must be attached to the Application.
- d. In the case where a Positive Declaration has been made, the applicant is responsible for the preparation of a Supplemental EIS to complete the Application.

12. Review of Complete Application Packages by Department Units and Other Agencies

- a. All Application Packages should be numbered. A recommended numbering system for aquatic vegetation permits for example would take the form of AV-R-YR-999. The first two letters may be changed to AI for aquatic insect or AF for fish, R stands for the Region number, YR for the year the permit was issued and 999 would be a consecutive numbering system for each type of Permit.

- b. All complete Application Packages whether new or repeat Application Packages must be sent to the following Department units and agencies for their review. A period of at least 21 working days should be given for the review. It will not be necessary to send the Bureau of Pesticides Management Central Office a copy of the Application Package, unless the Region requests their review.
 - i. The Regional Bureau of Habitat in the Division of Fish, Wildlife and Marine Resources must review the Application Package to determine the fish and wildlife impacts associated with the proposed treatment of the water body or streams.
 - ii. The Regional Division of Environmental Permits must review the Application Package to determine if a Freshwater Wetlands Permit is required or, if the proposed treatment is within the boundaries of the Adirondack Park, Application Package should be sent to the Adirondack Park Agency, who shall be responsible for determining if a Freshwater Wetlands Permit is required.
 - iii. The Division of Water must review the Application Package to determine the water quality impacts associated with the proposed treatment of the water body or streams.
 - iv. In the case of insect control programs which include lands under the control of the Department, the Application Package should be reviewed by a person designated by the Regional Director. A Temporary Revocable Permit (Part 190) must be issued.
 - v. The Regional Office of the New York State Department of Health, or the local health department (if the Regional DOH has authorized circulation to a local health department) should review all proposed treatments, regardless of whether

the proposal is new or a repeat treatment, to determine whether private or public water supplies will be affected.

- vi. The New York State Office of General Services or the New York State Department of Transportation must review all proposed applications, if the water body or stream proposed for treatment involves lands under their jurisdiction.

13. Review of Applications Packages by Regional Bureau of Pesticides Management Staff

The Regional Bureau of Pesticides Management staff is responsible for conducting a review, which includes the following:

- a. Determination if other Applications Packages have been filed or if other Permits have been issued to treat the same water body by same or other applicant. If there are multiple applications, the Pesticide staff must consider the proposals jointly to determine if they are consistent with the regulations and label requirements on issues such as areas to be treated, re-treatment intervals and pesticide(s) to be used.
- b. Determination that the water body outflow can and will be controlled during and after the proposed pesticide application, as may be required by the specific pesticide label or Department regulation, or determination that if the water body outflow cannot be held, all downstream riparian users consent to the water use restrictions or that they will not be significantly adversely impacted.
- c. Verification that the applicant is a riparian owner or represents one or more riparian owners.
- d. Maintenance of a file of all comments received from reviewing units for each Application Package, which must be reviewed.
- e. Maintenance of a file of all riparian owner responses for each Application Package, which must be reviewed.

C. Permit Approval or Denial Procedures

1. Permit Approval

After receiving comments and recommendations in writing or no response from the reviewing units within the review time period, the Regional Pesticides Management staff must review all comments from all Department units, the Regional Department of Health or other agencies.

If there are no adverse impacts identified by any reviewing unit, and no recommendations have been made for the Permit denial, a determination can be made that a Permit will be issued. It is possible that riparian owner objections may be addressed through the Permit conditions and restrictions. Permit restrictions and conditions must be developed for each proposed Permit, based on regulations, Permit conditions recommended by reviewers, riparian owner objections and label directions. At a minimum, the following Permit conditions must be included:

- a. The permittee must notify the Regional Bureau of Pesticides Management Staff seven to 14 days prior to the treatment. A record must be kept confirming that the notification occurred.
- b. The permittee must also give notice of the proposed date to the Regional Office of the New York State Health Department seven to 14 days prior to the treatment, where the water body or outflow waters serve as water supplies.
- c. For all Permits requiring that treated water be held in the water body following the pesticide application, the permittee must notify the Regional Pesticides Management staff by telephone within 24 hours (or the first business day following treatment for Friday, weekend or holiday treatments). The purpose of the notification is to allow the Regional Pesticides Management staff to observe that the water holding requirements are met.
- d. The permittee must allow Regional Bureau of Pesticides Management staff and other staff access to the water body to observe and monitor the treatment.
- e. Unless the water body is under private ownership and does not have public access, the Permit should contain specific requirements for public notice.
 - i. The permittee may be required to provide information to the

newspaper or other media of the proposed application.

- ii. Posting of all public access points will be required on the day of the treatment. Posting will be required on the day of treatment to the shoreline areas with structures, if the appropriate information has not been provided with the consent letter. These signs shall list the dates and times of the treatments and all associated water use restrictions and shall remain posted for the entire time the restrictions apply.
 - 1) In cases of partial treatments, demarcation of the treatment area by buoys or markers with notification signs attached may be required, in lieu of posting the shorelines in these areas.
 - 2) If the water body is privately owned and has no public access, the posting requirement may be waived. However, due to the problems of trespassing and the large occurrence of absentee owner/tenants and second homes, the restriction should be waived only upon demonstration that all tenants have been notified and trespassing is unlikely.
 - 3) If all affected downstream riparian owners/users consent to treatment and the treated water will not be held in the water body, the posting of public access sites must be extended along the outlet stream for a distance determined by the Regional Office.
 - 4) If the consent notice did not contain a telephone number and time period for receiving information on the exact date of treatment, or if a second notice will not be sent to notify all riparian owners of the treatment, then posting of the water body at regular intervals of not more than 100 feet will be required. This posting will be required for portions of the waterfront containing structures, such as residences and commercial establishments, and all public access points on the water body (such as boat launches, public beaches and marinas), prior to the treatment. The State Department of Health may have additional posting requirements based upon their review of the Application.

- iii. For pond/lake treatments, Permits should be issued with appropriate restrictions for holding the water in a "no flow" condition. The time period is based on regulations, the EIS, SEIS or label directions, whichever is most restrictive. If the water cannot be held, the applicant must provide an appropriate study (i.e., a dye or float study) or worst-case estimate for the distance the treated water will flow for the time period, during which the use restrictions apply.
- iv. Use restrictions, if applicable, shall be based on regulations, the 1981 EIS, 1995 SEIS or label directions, whichever is most restrictive.
- v. Pesticide label restrictions that need to be added to the Permit conditions.
- vi. The following other conditions apply:
 - 1) No drift to nontarget waters.
 - 2) No authority to treat private lands.
 - 3) Use of the pesticide is valid for one treatment only, except for repeat copper sulfate, shading products, Bti or other larviciding treatments.
 - 4) The Permittee must grant authority to Department Regional Pesticides Management staff to enter private property.
 - 5) Time periods between treatments as specified in the regulations, PEIS or the product label.
- vii. Monitoring data on nontarget impacts and/or water quality data may be required.
- viii. Additional conditions requested by the State Department of Health may impose restrictions on posting notification, use of treated waters and monitoring conditions in addition to those imposed by this Department.

2. Permit Denial Reasons

Following review of all written comments, and if any reviewing unit recommends in writing a Permit denial, the Regional Pesticides Management staff may determine that a Permit shall be proposed to be denied based upon, but not limited to, the following reasons:

- a. The pesticide business is not registered or the pesticide applicator is not currently certified or not certified in the proper category.
- b. The pesticide product proposed for use is not registered by EPA and the Department.
- c. The dosage rates are not calculated (whichever of the three is most restrictive), according to:
 - i. Parts 327, 328, and 329 for any pesticides included therein.
 - ii. The specified dosage rates for pesticides covered in the 1981 PEIS or 1995 SEIS.
 - iii. Label directions for any other aquatic pesticide(s) registered in New York.
- d. The aquatic pesticide is not labeled for the pest indicated on the application.
- e. The dates specified in the regulations and, in the case of copper sulfate, at least two weeks apart.
- f. The proposed treatment otherwise fails to conform with the applicable regulations.
- g. Other reviewing program units recommend denial of the Permit based upon adverse effects to fish, wildlife, freshwater wetlands, water quality or other environmental resources.
- h. The Departments of Health or Transportation or Office of General Services recommend denial of the Permit, based on adverse effects to public health, public lands or other reasons supported by the agency.
- i. The applicant cannot demonstrate ability to hold the water in the treated water body for the required period of time, if such restrictions are required by the label.

3. Riparian Owner/User Objections

Objections must be reviewed by the Regional Pesticide Control Specialist 2 (RPCS 2) and the Regional Solid and Hazardous Materials Engineer (RS&HME) to determine whether issues are raised which would provide a basis for referral of the Permit application to the Office of Hearings by the appropriate Regional staff person. Expressions of general opposition to a proposed herbicide application are not sufficient grounds for making such a referral.

In order for objections to be considered substantive and significant, thus requiring a hearing referral, objections must be in writing, must explain the basis of the objection and must identify the specific impacts which the objector asserts would significantly adversely affect the nonconsenting owner/user or the environment. A hearing referral is required on the basis of an objection only if the Department staff determine that the objection constitutes grounds to propose to deny or impose significant conditions on the Permit.

The Commissioner has ruled in prior Permit decisions that, as a general matter, the inability to swim or fish for up to two weeks does not amount to a significant adverse effect which would justify denying a Permit. Thus, if this particular limitation on use is the sole basis of the objection, without any further aggravating factors, no hearing referral should be made. However, other factors that may make such impacts more significant to the objector may justify a different determination in any given circumstance.

In reviewing issues raised by objectors, the RPCS 2 and the RS&HME, in consultation with other appropriate Department staff, must determine whether any of those issues can be addressed through minor additional conditions on the Permit. If so, the RPCS 2, in consultation with the RS&HME, must design the appropriate condition(s) to be included in the draft Permit.

- a. If the RPCS 2 and the RS&HME find that the objectors raise one or more issues which could justify a denial of the Permit application or the imposition of significant new Permit conditions, the RPCS 2 must prepare a hearing referral and transmit it to the appropriate Regional staff person. It is the Region's responsibility to formally transmit the hearing referral to the Office of Hearings. The applicant and objectors should be informed that a hearing referral has been made, and notified that they will receive further communications from the Office of Hearings. An issues conference will be scheduled by the Office of Hearings, at which time an Administrative Law Judge (ALJ) will consider arguments and decide whether an adjudicatory hearing will be held.

- b. If the objections are determined by the RPCS 2 and the RS&HME not to raise issues justifying a hearing referral, the RPCS 2 must consult with the Regional Attorney's office, prior to notifying the applicant. If the RA's office concurs, the RPCS 2 shall so notify the applicant and objectors, stating why a hearing referral has been determined not to be necessary. The Permit, with appropriate conditions, may be issued simultaneously with the sending of such notices.

The Regional Pesticides Management staff shall immediately notify the applicant of any recommendations for Permit denial. The Pesticides Management staff may conduct a meeting of the Permit applicant and objectors to determine whether a settlement of the objections is possible. If agreement cannot be reached, the applicant may request a hearing. A legislative hearing and an issues conference shall be scheduled by the Department's Office of Hearings to hear the objections raised by affected riparian owners or agencies. Based on information provided at the hearing, the Administrative Law Judge may determine that no adjudicatory issues exist, and recommend to the Commissioner that a Permit may be issued with appropriate conditions or the Administrative Law Judge may determine that adjudicatory issues exist and schedule a hearing.

D. Permit Issuance

If a Permit is to be issued, the following procedures apply:

1. The Permit form should be prepared with all restrictions and conditions attached, and sent to the issuing official to be signed (use the current Permit format).
2. Copies should be made and distributed to the applicant, the pesticide applicator, all non-riparian owners/users, all Department reviewing units, the Regional or Local Office of the Health Department and the Adirondack Park Agency (if projects are within the Adirondack Park). A copy of the Permit and all attachments should be kept on file at the Regional Office.

E. Annual Permit Report

By November 30 of each year, a final report should be sent to the Director of the Bureau of Pesticides Management, indicating the following:

1. List of Permits issued by type, including applicant, water body location, pesticide, applicator and date(s) of application.
2. Total number of Permits issued, number of Permits issued by type, pesticide, total amount of fees generated throughout the season and any other relevant data as may be requested by the Director of the Bureau of Pesticides Management.

F. Central Office Responsibilities

The Central Office retains the responsibility for establishing Aquatic Pesticide Program direction, maintaining updated product information and coordinating interregional inspections of the system and its accomplishments.

Special permits and interregional permits may be issued by the Bureau of Pesticides Management at Central Office. Such permits will be circulated to Regions where the permit is proposed.

Related References:

For additional information on the Aquatic Pesticide Permit Program, including: Aquatic Vegetation Management Permits, Aquatic Pesticide Purchase Permits and Aquatic Antifouling Paints, please visit the following Department web page:

<http://www.dec.state.ny.us/website/dshm/pesticid/aqsav.html>