



Office of Water Protection PUBLIC NOTICE

APPLICANT: U.S. EPA Region 5

ISSUED: 01 December 2023

401 Water Quality Certification

EXPIRES: 30 December 2023

An application for Clean Water Act (CWA) Section 401 Tribal Water Quality Certification has been received from the United States Environmental Protection Agency (EPA) Region 5 for the proposed renewal of the National Pollutant Discharge Elimination System (NPDES) General Permit for Point Source Discharges from the Application of Pesticides (PGP). The PGP was originally issued on October 31, 2011 and renewed for an additional five years in 2016 and 2021, which Fond du Lac Denied Certification both times. The renewal of this permit would be for an additional five (5) years but would not go into effect until the current permit expires in October 2026.

The applicant states that the PGP is to provide NPDES coverage to operators who wish to discharge to Waters of the United States from the application of (1) biological pesticides or (2) chemical pesticides that leave a residue, when the pesticide application is for one of four (4) pesticide use patterns (see Description below).

The draft PGP and an associated Fact Sheet explaining the rationale behind the permit are available electronically through the U.S. EPA website at:

<https://www.epa.gov/npdes/pesticide-permitting>

This Public Notice is in regards to inform you of the request for 401 Water Quality Certification for the PGP renewal, which cannot be issued within the Fond du Lac Reservation until 401 Water Quality Certification is granted by the Fond du Lac Band of Lake Superior Chippewa.

LOCATION: When issued, the PGP will cover activity in EPA Region 5 (Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin), including Indian Country. However, this Public Notice is only to notify interested parties regarding such activities within the external boundaries of the Fond du Lac Reservation.

DESCRIPTION: As stated above, this PGP renewal is to provide coverage for operators that discharge to Waters of the United States for the application of pesticides in one of four pesticide use patterns as follows:

1. Mosquito and Other Flying Insect Pest Control – to control public health/nuisance and other flying insect pests that develop or are present during a portion of their life cycle in or above standing or flowing water. Public health/nuisance and other flying insect pests in this use category include but are not limited to mosquitoes and black flies.

2. Aquatic Weed and Algae Control – to control invasive or other nuisance weeds and algae in water and at water's edge, including irrigation ditches and/or irrigation canals.

3. Aquatic Nuisance Animal Control – to control invasive or other nuisance animals in water and at water's edge. Aquatic nuisance animals in this use category include, but are not limited to fish, lampreys, and mollusks.

4. Forest Canopy Pest Control – aerial application of a pesticide over a forest canopy to control the population of a pest species (e.g., insect or pathogen) where to target the pests effectively a portion of the pesticide unavoidably will be applied over and deposited to water.

The PGP will not provide coverage for discharges to water quality impaired waters that are identified as impaired by that pesticide or its degradates. In addition, discharges to waters designated as Tier 3 for antidegradation purposes are not eligible under the PGP. On the Fond du Lac Reservation, currently Perch Lake, Rice Portage Lake, Miller (Mud) Lake, Deadfish Lake, Jaskari Lake, and Wild Rice Lake have been designated as Outstanding Reservation Resource Waters (Tier 3), although additional waters may be designated in the future. Finally, discharges currently or previously covered by another permit are not eligible for coverage under the PGP.

Operators seeking coverage under the PGP will be required to submit a Notice of Intent (NOI) to EPA before beginning the pesticide application and a Notice of Termination (NOT) to discontinue permit coverage. In addition, additional pesticide minimization, pest management, and other restrictions will be required for permit coverage.

The Pesticide General Permit will be valid for a period of five (5) years beginning on 31 October 2026.

PRECAUTIONS TO PROTECT WATER QUALITY: As stated above, the PGP requires operators to minimize pesticide discharges to waters of the U.S., use integrated pest management practices, and numerous other practices to reduce or eliminate pesticide discharges to waters of the United States.

COMMENTS: Interested parties are invited to submit to the Office of Water Protection written facts, arguments, or objections within 30 days of this notice. These statements should address the protection of water quality on the reservation in regards to the PGP.

Part 9 of the PGP allows states and tribes to request additional requirements through the 401 Water Quality Certification process. Comments regarding any additional requested requirements will also be accepted by the Office of Water Protection. Comments received may be forwarded to the applicant for their reply.

Comments on this Public Notice or other replies concerning the 401 Water Quality Certification for the PGP may be sent to the following:

Richard Gitar
Office of Water Protection
Fond du Lac Reservation
28 University Road
Cloquet, Minnesota 55720

Or, if you have questions about the proposed PGP or the 401 Water Quality Certification process, please contact Richard Gitar, Water Regulatory Specialist at 218-878-7122 or email at richardgitar@fdlrez.com.

AUTHORITY: The application for 401 Water Quality Certification will be reviewed according to the provisions of Section 401 of the Clean Water Act (33 U.S.C. 1251 et seq.), Fond du Lac Band of Lake Superior Chippewa Ordinance # 01/06 Water Quality Certification (adopted by Resolution # 1033/06, as amended, of the Fond du Lac Business Committee on March 28, 2006; Amended by Resolution #1513/20 of the Reservation Business Committee on December 16, 2020), and Fond du Lac Band of Lake Superior Chippewa Water

Quality Standards of the Fond du Lac Reservation Ordinance # 12/98, as amended (adopted by Resolution # 1286/01 of the Fond du Lac Reservation Business Committee on September 11, 2001, and by Resolution #1321/20 of the Reservation Business Committee on July 8, 2020).

NOTICE TO EDITORS: This Public Notice is provided as background information and is not a request or contract for publication.