

PUBLIC NOTICE

In accordance with the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*, the U.S. Environmental Protection Agency (EPA) is proposing to reissue the EPA National Pollution Discharge Elimination System General Permit for Pesticide Applications (“PGP”). The current PGP was first issued on Oct. 31, 2016, and expires Oct. 31, 2021. The requirements and conditions in the proposed 2021 PGP remain unchanged from the current general permit. The 2021 PGP becomes effective on November 1, and the 2016 authorization to discharge expires at midnight, November 1, 2021.

In accordance with Section 401 of the Clean Water Act, the Grand Portage Water Quality Standards, and the Grand Portage Water Resources Ordinance (as amended, the “Water Resources Ordinance”), the Grand Portage Environmental Resources Board (“Board”) has examined the application of the 2021 PGP and determined that there is reasonable assurance—with the conditions listed below—that the activities associated with the reissuance of the PGP will not violate applicable water quality standards.

However, certain conditions are necessary to protect (a) the public health and welfare of the Band, its members, and others living on its Reservation, and (b) the present and future use of Reservation waters for public and private water supplies, propagation of fish and aquatic life and wildlife, domestic and recreational purposes, and for agricultural, cultural, religious, commercial, industrial and other legitimate uses.¹ Accordingly, the following conditions will apply to discharges made under the 2021 PGP into Waters of the Grand Portage Reservation (as defined in the Water Resources Ordinance):

1. The General Permit authorization is for the application of pesticides that may occur within the exterior boundaries of the Grand Portage Reservation in accordance with the Grand Portage Land Use Ordinance. Operators are authorized to discharge under this permit consistent with the Annual Treatment Area Thresholds listed in the table below. A Notice of Intent is required for treatments that exceed the thresholds listed below.²

Pesticide Use	Annual Threshold
Mosquitoes and Other Flying Insect Pests	6400 acres of treatment area
Aquatic Weed and Algae Control:	
-In Water	20 acres of treatment area
-At Water’s Edge	20 linear miles of treatment area at water’s edge
Aquatic Nuisance Animal Control:	
-In Water	20 acres of treatment area
-At Water’s Edge	20 linear miles of treatment area at water’s edge
Forest Canopy Pest Control	640 acres of treatment area

Calculations should include the area of the applications made to: (1) waters of the U.S. and (2) conveyances with a hydrologic surface connection to waters of the U.S. at the

¹ Grand Portage Water Resources Ordinance, as amended, 2004, section 1.02 Authority.

² Grand Portage Water Resources Ordinance, section 3.03(3)(a).

time of pesticide application. For calculating annual treatment area totals, each pesticide application activity is counted as a separate activity. For example, applying pesticides twice a year to a ten-acre site should be counted as twenty acres of treatment area.

Calculations should include the linear extent of the application made at water's edge adjacent to: (1) waters of the U.S. and (2) conveyances with a hydrologic surface connection to waters of the U.S. at the time of pesticide application. For calculating annual treatment totals, each pesticide application activity and each side of a linear water body is counted as a separate activity or area. For example, treating both sides of a ten-mile ditch is equal to twenty miles of water treatment area.

2. In accordance with Water Quality Standards and the 1996 Cooperative Agreement between the Grand Portage Band of Chippewa and the Minnesota Pollution Control Agency, PGPs are denied within the no discharge zone of Lake Superior designated as Outstanding Resource Value Waters-Prohibited. These waters are located in the Grand Portage Zone of Lake Superior in "that portion of the Shoreline Waters north of latitude 47 degrees, 57 minutes, 13 seconds and east of Hat Point."³
3. Only those activities specifically authorized by the PGP are authorized by this Certification. This Certification does not authorize impacts to cultural properties, or historical sites, or properties that may be eligible for listing as such.⁴
4. All pesticide application discharges authorized by the PGP must comply with the Grand Portage Water Quality Standards, the Water Resources Ordinance, and Applicable Federal Standards (as defined in the Water Resources Ordinance).⁵ As such, appropriate steps must be taken to ensure that biological and chemical pollutants associated with pesticide applications are prevented from entering Waters of the Reservation.⁶ All spills must be reported to the appropriate emergency-management agency, and measures must be taken to prevent the pollution of Waters of the Reservation, including groundwater.⁷

³ Cooperative Agreement between the Grand Portage Band of Lake Superior Chippewa and the Minnesota Pollution Control Agency, 1996. Attachment 1, Grand Portage Water Quality Standards.

⁴ Grand Portage Water Resources Ordinance as amended, 2004, section 1.02.

⁵ *Id.*, Section 3.03(A).

⁶ Grand Portage Water Quality Standards, section XI. General Standards.

⁷ Grand Portage Water Quality Standards, section XI. General Standards. Grand Portage Water Resources Ordinance as amended, Section 3.04 General Orders, and section 3.05 Special/Emergency Orders.

5. A copy of the Pesticide Discharge Management Plan (the “Plan”) required by the PGP must be submitted to the Board at the same time the requisite Notice of Intent is sent to EPA.⁸ The Board may require monitoring of pesticide application discharges as determined on a case-by-case basis.⁹ If the Board determines that a monitoring plan is necessary, the monitoring plan must be prepared and incorporated into the Plan before the Notice of Intent is submitted to the EPA.¹⁰ The Plan should be sent to:

Grand Portage Environmental Resources Board
P.O. Box 428
Grand Portage, MN 55605

Copies of the Notice of Intent and Notice of Termination required under the PGP must be submitted to the Board at the address above at the same time they are submitted to the EPA.¹¹

6. If requested by the Grand Portage Environmental Department, the permittee must provide additional information necessary for a case-by-case eligibility determination to assure compliance with the Grand Portage Water Quality Standards and any Applicable Federal Standards.¹²
7. Discharges that the Board has determined to be or that may reasonably be expected to be contributing to a violation of Grand Portage Water Quality Standards or Applicable Federal Standards are not authorized by this certification.¹³
8. The Board retains full authority provided by the Water Resources Ordinance to ensure compliance with and to enforce the provisions of the Water Resource Ordinance, the Grand Portage Water Quality Standards, Applicable Federal Standards, and these certification conditions.¹⁴
9. Appeals related to Board actions taken in accordance with any of the preceding conditions may be heard by the Grand Portage Tribal Court.¹⁵

⁸ Grand Portage Water Resources Ordinance, section 3.03(3)(a).

⁹ Grand Portage Water Quality Standards, section XIV. Enforcement, Grand Portage Water Resources Ordinance, sections 4.01 and 5.01.

¹⁰ Grand Portage Water Resources Ordinance, as amended, 2004, Section 3.03.

¹¹ Grand Portage Water Resources Ordinance, as amended, 2004, Section 3.03.

¹² Grand Portage Water Quality Standards, section XIV. Enforcement, Grand Portage Water Resources Ordinance, sections 4.01 and 5.01.

¹³ Grand Portage Water Resources Ordinance, as amended, 2004, Section 3.03(A).

¹⁴ Grand Portage Water Resources Ordinance, as amended, 2004, section 1.02 Authority.

¹⁵ *Id.*, section 5.01.

The Public Comment Period for this conditional certification begins March 15th, 2021 and expires on April 13th, 2021. Comments regarding this conditional certification can be sent to <mwatkins@grandportage.com> or sent to the Environmental Board at the address provided below. As provided by the Water Resources Ordinance, any interested party may request that a public hearing be scheduled regarding the Board's decision to grant conditional certification of the 2021 PGP.¹⁶ Such a request must be directed to the following address within 30 days of this notice:

Grand Portage Environmental Resources Board
P.O. Box 428
Grand Portage, MN 55605

Materials reviewed by the Board in connection with its conditional certification of the 2021 PGP may be requested from the Grand Portage Environmental Resources Board at the address listed above. In addition, the Federal Register Notice proposing the PGP was published on January 15th, 2021 and can be accessed electronically through the EPA Internet at: <https://www.epa.gov/npdes/pesticide-permitting-draft-2021-pgp> or <https://www.federalregister.gov/documents/2021/01/15/2021-00834/draft-national-pollutant-discharge-elimination-system-npdes-pesticide-general-permit-for-point>. You may also contact Chelsea Durant, EPA Headquarters, Office of Water, Office of Wastewater Management at tel.: 202-564-2290 or email: durant.chelsea@epa.gov. Electronic versions of the draft 2021 PGP and Fact Sheet are also available at <https://www.epa.gov/npdes/pesticide-permitting>. The EPA Region 5 contact for the PGP is John Colletti at tel.: (312) 886-6106; or email at colletti.john@epa.gov.

¹⁶ *Id.*, section 3.03, (3)(d)(iv).