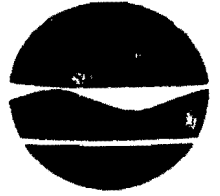


Region 5

New York State Department of Environmental Conservation

BUREAU OF PESTICIDES MANAGEMENT
P.O. Box 220, Hudson St. Ext.
Warrensburg, NY 12885-0220
(518) 623-3671 or 668-5441



Thomas C. Jorling
Commissioner

Dear Applicant:

Enclosed is an application for permit and information as you requested.

- _____ Application for Permit
- _____ Environmental Assessment Form
- _____ Instruction Sheet

In order to apply for a permit you will need to:

- _____ Complete the application and submit it with:
- _____ Six copies of map(s) with the treatment areas identified specifically.
- _____ A list of all riparian owners who may be affected by this treatment that have been contacted and agree to the treatment.
- _____ A copy of the notification letter and label which was used to inform the riparian owners.
- _____ Section 1 of the Environmental Assessment form completed to comply with the State Environmental Quality Review Act (SEQRA), a Negative Declaration must be filed.
- _____ Fifty dollars (check made payable to NYSDEC).

Your application will not be considered complete if you have not complied with all of the items checked (X) above.

When an application is considered complete, it is subject to the standard review process of this department. If you have any questions, please contact this office.

Sincerely,

William A. Sutfin
Pesticide Control Specialist II

Enclosure

3/91

APPLICATION FOR A PERMIT

For the Use of Chemicals for the Control of Aquatic Vegetation

See instructions on reverse side of last sheet before completing this application; please type or print clearly in ink

| | | | | | |
|--|--|---|---|--|----------------------------|
| NAME OF APPLICANT | | | | FOR DEPARTMENT USE ONLY | |
| STREET ADDRESS | | | | Application Number | |
| POST OFFICE | | STATE | ZIP CODE | | |
| 1. <input type="checkbox"/> Riparian Owner(s) <input type="checkbox"/> Lessees <input type="checkbox"/> Association of riparian owner(s) or lessees | | | | Type of Application <input type="checkbox"/> Repeat <input type="checkbox"/> New | |
| | | | | Name of Water | |
| | | | | County location of water treatment | |
| 2. TOTAL ACREAGE OF WATER | | 3. NUMBER OF AREAS TO BE TREATED | | 4. TOTAL ACREAGE TO BE TREATED | |
| 5. CHEMICAL REQUESTED | | TOTAL AMOUNT | CONCENTRATION OF ACTIVE INGREDIENT | RATE OF APPL. | PROPOSED DATE OF TREATMENT |
| 6. CHEMICAL PRODUCT OR TRADE NAME AND EPA REGISTRATION NUMBER | | | | 7. TYPE OF VEGETATION: <input type="checkbox"/> Emergent <input type="checkbox"/> Submergent <input type="checkbox"/> Algae (species) _____ | |
| 8. METHOD OF CHEMICAL APPLICATION | | | 9. NEW YORK STATE CERTIFICATION ID NUMBER | | |
| | | | Category | Sub-category | |
| 10. IF TREATMENT INVOLVES THE USE OF AIRCRAFT, ANSWER THE FOLLOWING: Does the aircraft have: a. a leakproof distribution system? <input type="checkbox"/> Yes <input type="checkbox"/> No b. a positive shutoff to prevent dribble? <input type="checkbox"/> Yes <input type="checkbox"/> No c. positive pump pressure to apply chemicals at the prescribed rate? <input type="checkbox"/> Yes <input type="checkbox"/> No d. is their adequate insurance on the craft to reimburse individuals or property owners against losses? <input type="checkbox"/> Yes <input type="checkbox"/> No e. does the aircraft comply with pertinent Civil Air Board Regulations, including licensing, and those of New York State? <input type="checkbox"/> Yes <input type="checkbox"/> No | | | | | |
| 11. IS THERE AN OUTLET TO THE WATER? <input type="checkbox"/> Yes <input type="checkbox"/> No | | ESTIMATED FLOW DURING AND AFTER TREATMENT (in cfs) | | | |
| 12. CAN APPLICANT CONTROL WATER LEVEL AFTER TREATMENT? <input type="checkbox"/> Yes <input type="checkbox"/> No If "Yes", how? | | | | Body of Water: | |
| | | | | Town: | |
| | | | | County: | |
| 13. FISH PRESENT: <input type="checkbox"/> Yes <input type="checkbox"/> No ARE THEY STOCKED BY THE STATE? <input type="checkbox"/> Yes <input type="checkbox"/> No | | 14. IS THE WATER USED AS, OR CLOSELY TO A WATER SUPPLY? <input type="checkbox"/> Yes <input type="checkbox"/> No TYPE: <input type="checkbox"/> Private <input type="checkbox"/> Public | | 15. NAME OF APPLICATOR | |
| 16. Have all other riparian users, in the vicinity of the treated area and along the outlet stream, who may be required to restrict their usage as a result of the treatment: Approved your plans? <input type="checkbox"/> Yes <input type="checkbox"/> No Agreed to restrictions? <input type="checkbox"/> Yes <input type="checkbox"/> No | | | | STREET ADDRESS | |
| 17. IF REQUIRED: Are you prepared to post the shoreline of the area to be treated with suitable warning signs? <input type="checkbox"/> Yes <input type="checkbox"/> No Will you mark or bouy the area to be treated previous to treatment <input type="checkbox"/> Yes <input type="checkbox"/> No | | | | POST OFFICE STATE ZIP CODE | |
| | | | | BUSINESS REGISTRATION NUMBER | |
| 18. The applicant guarantees that he will employ the listed chemicals in conformance with all the conditions of the permit and agrees to accept the following conditions as a prerequisite to the issuance of a permit: that the issuance of the permit is based on the accuracy of all statements presented by the applicant: that damage resulting from the inaccuracy of any computations, improper application of the chemical, or legal responsibility for the representations made in obtaining approvals or releases, or the failure to obtain approvals or releases from the riparian users likely to be affected is the sole responsibility of the applicant. | | | | | |
| APPLICANT'S SIGNATURE | | | TITLE | | PHONE |
| MAILING ADDRESS | | | | DATE | |

SUBMIT 45 DAYS BEFORE TREATMENT

See Reverse Side

INSTRUCTIONS AND INFORMATION

1. Four (4) copies (white) of all application papers for permit are to be submitted.
2. A permit for the use of chemicals for control and elimination of aquatic vegetation must be obtained in accordance with the Rules and Regulations of the State of New York, adopted pursuant to Article 15, Title 3 of the Environmental Conservation Law.
EXCEPTIONS:
 - (a) Use of copper sulfate for algae control by a duly constituted water supply agency in its water supply waters, or
 - (b) Treatment of waters which have no outlet to other waters and which lie wholly within boundaries of lands privately owned or leased by the individual making or authorizing such treatment.
3. To apply chemicals to water the applicator, if he is a riparian owner, lessee, or a member of an association of such persons etc. must be certified as a pesticide applicator to use such pesticides. List the applicator's certification I.D. number and category(s) on the application. If treatment is to be made by other than the applicant, fill out item 15 on this application. Details about certification may be obtained from any local county cooperative extension agent and any regional or unit office of the Department of Environmental Conservation.
4. Application should be filled out completely. Failure to do so will delay issuance of a permit.
5. In addition to the completed form, the applicant shall provide in triplicate, the following maps or scale drawing. (One will be returned to the applicant and made part of the permit, the other will be retained by the issuing office and one will be retained by the Region.)
 - (a) Maps such as the U.S. Geological Survey Quadrangle or Lake Chart showing the geographic location of the water or portion to be treated.
 - (b) In addition, an expanded scale drawing on 8 1/2 by 11 inch paper showing in detail the following features of the treatment areas: (If necessary, more than 1 such drawing may be submitted).
 1. Outline of area to be treated.
 2. Outline of weed beds—(if area to be treated is 5 acres or less of a large body of water, just show the weed areas within 200 feet of area to be treated).
 3. Length of shoreline in the treatment area (in feet).
 4. Width outward from shore (in feet).
 5. Depth soundings and their location (sufficient to calculate the volume of water to be treated).
 6. Inlet and outlet streams and structures.
 7. Names and locations of riparian and other known users that may be affected by treatment of this water.
 8. Names and locations of public and private water supply intakes, cattle watering areas, and bathing areas in the vicinity of the treatment areas and on the outlet waters.
6. **Public Watersupply Waters:** Application that involve public water supply will be referred to the State Department of Health for approval before a permit will be issued.
State-stocked trout waters: Applications involving these waters will be rejected if the proposed control is deemed to adversely affect trout habitat in the water.
7. Applications should be fully completed and returned to the Pesticide Inspector, listed below, covering the county where the control is being applied.
8. Applicant may retain yellow copy if desired.
9. Mail Application to the Regional Pesticide Inspector who covers the County in which the lake is located.

| Counties | Regional Address | Counties | Regional Address |
|---|---|--|---|
| Nassau, Suffolk | Blg. 40—SUNY Stony Brook, N.Y. 11790 (516) 751-7900 Ext. 243 | Herkimer, Jefferson, Lewis, Oneida, St. Lawrence | 317 Washington Street Watertown, N.Y. 13601 (315) 782-0100 Ext. 251 |
| Bronx, Kings, Queens, Richmond, New York | 2 World Trade Center 61st Floor New York, N.Y. 10047 (212) 488-6146 | Broome, Cayuga, Chenango, Cortland, Madison, Onondaga, Oswego, Tioga, Tompkins | P.O. Box 1169, Fisher Ave. Cortland, N.Y. 13845 (607) 753-3095 |
| Dutchess, Orange, Sullivan, Westchester, Putnam, Rockland, Ulster | 21 South Pitt Corners Road New Paltz, N.Y. 12561 (914) 255-5453 | Chemung, Genesee, Livingston, Monroe, Ontario, Orleans, Seneca, Schuyler, Steuben, Yates, Wayne | 6274 East Avon-Lima Road Avon, N.Y. 14414 (716) 226-2466 |
| Albany, Columbia, Delaware, Greene, Montgomery, Otsego, Rensselaer, Schenectady, Schoharie | 2176 Guilderland Ave. Schenectady, N.Y. 12306 (518) 382-0680 | Allegheny, Cattaraugus, Chautauqua, Niagara, Erie, Wyoming | 600 Delaware Ave. Buffalo, N.Y. 14202 (716) 842-2872 |
| Clinton, Essex, Franklin, Hamilton, Fulton, Saratoga, Warren, Washington | Hudson Street Warrensburg, N.Y. 12885 (518) 623-3671 Ext. 58 | | |

1. Application Form Review: The application form 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 commercial certified applicator, to be registered as a business, if the applicator performs the pesticides application without charge;
 - c. the identity of the chemical proposed to be used, together with a copy of the label;
 - d. identification of the water body as follows:
 1. The total acreage of the pond/lake, or in the case of insect control, the total area listed as square miles; and
 2. The location of the water body or stream complex by town and county;
 - e. the area to be treated, identified as follows:
 1. for ponds/lakes, treated acreage given in surface acres (acre-feet to be treated can be determined from depth indications on the scale map); or
 2. for insect control treatments, treated acreage listed in miles of streams treated;
 - f. the dates of the treatment;
 - g. the dose rates, provided in p.p.m., lbs./acre or acre-foot, or gal/acre or acre-foot;
 - h. the total amounts of aquatic pesticide to be applied for each treatment (not the total amount for all treatments);
 - i. the target pest; and
 - j. for those proposed treatments marked "repeat", the application should be checked against the previous year's application and 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 chemical, dosage rate or area will be cause to consider the application as a new treatment.
2. Certification of Riparian Owner and User Status Review: The application must be accompanied by a completed Certification of Notification of Riparian Owner and User, a copy of which is attached to this TAGM as Attachment F.
 3. Map Review: The detailed map should accurately indicate:

a. For pond/lake treatments:

1. the exact map scale size and depths of the water body;
2. the outline of the treatment area(s) with the type of vegetation clearly identified;
3. inlets, outlets, and wetlands contiguous to the water body;
4. if there will be outflow, data to demonstrate how far the outlet waters will flow during the use restriction period, in order to identify the affected downstream riparian owners, together with an estimate of outflow in cfs, as well as the location and type of outflow control; and
6. 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):

1. outline of the treatment area with all streams clearly indicated;
2. estimate all stream flows in cfs prior to treatment;
3. wetlands contiguous to the water body; and
4. bathing areas, livestock watering areas, water intakes, public lands contiguous to the water body and any other features that may be relevant to the treatment.

The relevant portion of the 7 1/2" U.S.G.S. quadrangle map should accurately identify the location and name of the waterbody or streams proposed for treatment.

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.

4. Determination of Completeness

Regional Pesticide staff are responsible for making a

determination of completeness for each aquatic pesticide permit application.

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

E. Riparian Owners and Users

1. 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 non-consenting 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, permit applications 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 waterbody to be treated. Ownership of the riparian property surrounding or bordering the water body proposed for treatment, and if there is to be outflow during the restriction period, along any outlet, must 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 Application Completeness discussion

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 will be outflow through lands owned by other than the sole water body 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.

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

- a. the purpose of the proposed aquatic pesticide treatment;
- b. the name of the chemical to be used and a copy of the product label (only the directions not relevant to the treatment may be deleted);
- c. the date(s) of the proposed treatment(s);
- d. the required water use restrictions;
- e. 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;
- f. 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;

- g. a statement that a lack of response by riparian owners/users is considered to be consent to the proposed pesticide treatment; and
- h. the period of time, no less than 21 days, in which non-consenting riparian owners/users may respond with objections to the Department.

Even if a partial waterbody treatment is proposed, all riparian owners/users must be notified. If the Region believes that there is a special case that does not warrant this requirement, the Region should seek the guidance of the Bureau Central Office.

F. 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 a 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 waterbody.

- 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:
 - outflow measurements;
 - anticipated average rainfall during the restriction period;
 - evaporation rate of the water body;
 - water level before and after the drawdown;
 - dam configuration; and
 - 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.

1. 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.
2. If the applicant can demonstrate that there are no affected downstream riparian owners/users, no consent will be required.

An application is not complete if inaccurate information is contained on the application form, or if any of the above information required in Sections D.1-6 is missing or not attached to the permit application form.

G. SEQR Compliance

In the case where a pesticide is listed in Parts 327, 328 or 329, or where a pesticide is evaluated in the 1981 Aquatic Pesticide Programmatic Environmental Impact Statement (PEIS), SEQR is satisfied.

In the case where a pesticide not listed in Parts 327, 328 or 329, or where a pesticide not evaluated in the 1981 Aquatic Pesticide PEIS, is proposed for use, the applicant must take further steps to comply with SEQR. A Short Environmental Assessment Form (EAF) must be prepared by the applicant and attached to the application.

Where a Short EAF has been submitted by the applicant, the Regional Pesticide staff must prepare a Positive or Negative Determination has been prepared or ensure that a Positive or Negative Determination been prepared. The Region should consult with the Bureau Central Office regarding the preparation of a SEQR Declaration. At the present time, the only chemical for which a Negative Declaration has been authorized is Bti. The Short EAF and SEQR determination (Positive or Negative Declaration) must be attached to the permit application.

In the case where a Positive Declaration has been made, the applicant is responsible for the preparation of a Supplemental EIS to complete the permit application.

H. Review of Complete Applications by Department Units and Other Agencies

1. All applications 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.
2. All complete applications (whether new or repeat proposals) 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 Pesticide Regulation Central Office a copy of the permit application, unless the Region requests their review.
 - a. The Regional Bureau of Environmental Protection (Division of Fish and Wildlife) must review the application to determine the fish and wildlife impacts associated with the proposed treatment of the water body or streams.
 - b. The Regional Division of Regulatory Affairs (D.R.A.) must review the application to determine if a Freshwater Wetlands Permit is required; or

If the proposed treatment is within the boundaries of the Adirondack Park, the application should be sent to the Adirondack Park Agency, who shall be responsible for determining if a Freshwater Wetlands Permit is required.
 - c. The Regional Lake Manager (Division of Water) must review the permit to determine the water quality impacts associated with the proposed treatment of the water body or streams.
 - d. In the case of insect control programs which include lands under the control of the Department, the application should be reviewed by a person designated by the Regional Director. A Temporary Revocable Permit (Part 190) must be issued. The Director, Division of Lands and Forests or his/her designee may co-sign the permit in lieu of a separate Part 190 permit.
 - e. 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.

- f. 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 (for example, lake bottoms).

I. Review of Permit Applications by Regional Pesticide Staff

The Regional Pesticide staff is responsible for conducting a review, which includes the following:

- a. determination if other permit applications 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 chemicals 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 permit application, which must be reviewed.
- e. maintenance of a file of all riparian owner responses for each permit application, which must be reviewed.

V. Permit Approval or Denial Procedures

A. Permit Approval

After receiving comments and recommendations in writing or no

response from the reviewing units within the review time period, the Regional Pesticide staff must review all comments from all Department units, the Bureau Central Office, 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 permit denial, a determination can be made that a permit will be issued. It is possible that riparian owner objections may be addressed through 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/or label directions. At a minimum, the following permit conditions must be included:

1. The permittee must notify the Regional Pesticide staff 7 to 14 days prior to the treatment. A record must be kept confirming that the notification occurred.
2. The permittee must also give notice of the proposed date to the Regional Office of the New York State Health Department 7 to 14 days prior to the treatment, where the water body or outflow waters serve as water supplies.
3. For all permits requiring that treated water be held in the water body following the pesticide application, the permittee must notify the Regional Pesticide 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 Pesticide staff to observe that the water holding requirements.
4. The permittee must allow Regional Pesticide and other staff access to the water body to observe and monitor the treatment.
5. Unless the water body is under private ownership and does not have public access, the permit should contain specific requirements for public notice.
 - a. The permittee may be required to provide information to the newspaper or other media of the proposed application.
 - b. Posting of all public access points will be required on the day of the treatment. Posting, as discussed in IV.D.4., 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.

- i. 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.
 - ii. 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.
 - iii. If all downstream riparian owners/users consent to the treatment and the treated water will not be held in the waterbody, the posting requirement must extend along all outlet streams for the distance the water is expected to travel during the use restriction period.
 - iv. 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 less 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 waterbody (such as boat launches, public beaches and marinas), prior to the treatment. The Department of Health may have additional
6. 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 1981 E.I.S. or label directions, whichever is most restrictive.

If the water cannot be held, a dye study or worst case estimate for the distance the treated water will flow for the time period the use restrictions apply. All riparian

owners/ users affected by the downstream flow study must consent to the use restrictions.

7. Use restrictions, if applicable, shall be based on regulations, the 1981 E.I.S. or label directions, whichever is most restrictive.
8. Pesticide label restrictions that need to be added to the permit conditions.
9. The following other restrictions apply:
 - a. no drift to non-target waters
 - b. no authority to treat private lands
 - c. use of chemical valid for one treatment only, except for repeat copper or Bti treatments
 - d. granting authority to Department staff to enter private property
 - e. time periods between treatments as specified in the regulations, PEIS or the product label.
10. Monitoring data on non-target impacts and/or water quality data may be required.
11. Additional conditions requested by the Health Department may impose restrictions on posting notification, use of treated waters and monitoring conditions in addition to those imposed by the Department.

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

1. the pesticide business is not registered or the pesticide applicator is not currently certified or not certified in the proper category;
2. the pesticide product proposed for use is not registered by EPA and/or the Department;
3. the dose rates are not calculated according to:
 - a.. Parts 327, 328, and 329 for any chemicals included therein, or
 - b. the specified rates in Attachment F for chemicals covered in the 1981 Environmental Impact Statement, or
 - c. label directions for any other aquatic

pesticides registered in New York,

whichever of the three is most restrictive;

4. the aquatic pesticide is not labeled for the pest indicated on the application;
5. the dates specified in the regulations and, in the case of copper sulfate, at least two (2) weeks apart;
6. the proposed treatment otherwise fails to conform with the applicable regulations;
7. other reviewing program units recommend denial of the permit based upon adverse effects to fish and wildlife, freshwater wetlands, water quality or other environmental resources;
8. 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;
9. the applicant cannot demonstrate ability to hold the water in the treated water body for the required period of time.

C. Riparian Owner/User Objections: Objections must be reviewed by the Regional Pesticide Control Specialist II (RPCS II) and the Regional Hazardous Substances Engineer (RHSE), 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 non-consenting 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 aquatic pesticide 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 II and the RHSE, 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 II, in consultation with the RHSE, must design the appropriate condition(s) to be included in the draft permit.

i. If the RPCS II and the RHSE 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 II 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.

ii. If the objections are determined by the RPCS II and the RHSE not to raise issues justifying a hearing referral, the RPCS II must consult with the Regional Attorney's office, prior to notifying the applicant. If the RA's office concurs, the RPCS II 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 Pesticide staff shall immediately notify the applicant of any recommendations for permit denial. The Regional Pesticide staff may conduct a meeting of the project 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 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.

VI. Permit Issuance

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

- A. A permit form should be prepared with all restrictions and conditions attached, and sent to the issuing official to be signed (use permit forms - Attachment H).
- B. Copies should be made and distributed to the applicant, the pesticide applicator, all non-consenting riparian owners/users, all Department reviewing units, the Regional 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.

VII. Annual Aquatic Permit Report

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

- list of permits issued by type, including applicant, water body location, chemical, applicator and date(s) of application; and
- total number of permits issued, number of permits issued by type and chemical, total amount of fees generated throughout the season and any other relevant data as may be requested by the director.

VIII. Central Office Responsibilities

The Central Office retains the responsibility for establishing 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 Central Office. Such permits will be circulated to Regions where the permit is proposed.

GENERAL INFORMATION LETTER FOR AQUATIC PESTICIDE PERMITS

Dear Applicant;

Enclosed you will find an information package describing the procedures for submitting applications for aquatic permits to control aquatic vegetation, aquatic insects or unwanted fish. The information package includes:

- an application form;
- an instruction sheet for completing the application form;
- Part 327, 328 or 329, regulations for control of aquatic vegetation, aquatic insects or unwanted fish, respectively;
- a sample riparian owner consent letter;
- guidance on aquatic pesticide application rates;
- a publication on alternatives methods to chemical control of aquatic organisms; and
- a copy of the Department's Guidance on Diquat Use.

If you wish to make an application for an aquatic pesticide permit, please accurately complete an application and send six copies of the complete application package, which should include the following:

1. a completed application form;
2. the relevant portion of the U.S.G.S. quadrangle map of the water body or stream(s) proposed for treatment;
3. a detailed map of the water or stream system proposed for treatment, with depth contours and identified features described in the application form and instructions;
4. a copy of the letter sent to all riparian owners of the waterbody or stream system proposed for treatment;
5. a list of all affected riparian owners to whom the consent letter was sent, and proof in the form of a Post Office receipt to confirm that the notice was mailed or proof of delivery service in the form a receipt from the server;
6. a copy of the Water Body Association Board of Directors resolution authorizing the application for the permit, if you are completing the application for an association which is seeking a permit; and
7. if the treatment is proposed by aircraft, a discussion of environmental preferability for aerial application.

If you have further questions, please contact your Regional Pesticide office; consult the listing on the reverse side of this letter.

The Bureau of Pesticide Regulation

Information on Control of Aquatic Vegetation

Publication: "Diet for a Small Lake"

Cost: \$10.00 plus \$2.00 shipping

Available from: Federation of Lake Associations of New York
2175 Ten Eyck Avenue
Cazenovia, NY 13035
315/655-4760
FAX 315/655-3454

Sample Riparian Owner Consent Letter

Dear Riparian Owner:

The _____
(Name of Lake Association, Riparian Owner or Agency)
proposes to conduct an application of the following chemical(s)
_____ to the following waters _____
(Name of water body or streams to be treated)
on the following dates _____
(list all dates of proposed treatments)

As an affected riparian owner, you have the right to consent or object to the restrictions of water use resulting from the proposed treatment. The water use restrictions associated with use of the above chemical(s) are checked below:

- ___ Swimming and bathing are prohibited for _____
- ___ Fishing is prohibited for _____
- ___ Livestock watering is prohibited for _____
- ___ Irrigation or spraying of agricultural crops is prohibited for _____
- ___ Use of water for human consumption is prohibited for _____
- ___ Other _____
(specify)

You have twenty-one (21) days to respond to this notice. If you wish to object to the proposed treatment(s), please file a written document stating your objection to the proposed treatment and the water use restrictions resulting from the treatment.

Send your comments to the person listed below:

Name of Contact Person
NYS Department of Environmental Conservation
Region _____
Address _____
Telephone Number _____

If you do not respond to this notice, your lack of response will be considered to be consent to the proposed treatment. If you have any questions, please contact the Department representative listed above.

Attachment F

CERTIFICATION OF NOTIFICATION OF RIPARIAN OWNERS AND USERS

TO: Bureau of Pesticide Regulation
New York State Department of Environmental Conservation

RE: Aquatic Pesticide Permit Application of:
(Name of applicant as it appears on Aquatic Pesticide Permit Application)

CHECK ALL APPROPRIATE STATEMENTS

___ All owners of real property abutting the body of water proposed to be treated pursuant to the above-referenced Aquatic Pesticide Permit Application, a list of whom is attached to this letter, have been notified by letter of the proposed pesticide permit. This list includes property owners abutting the outflow from this body of water, if the water is not to be held in the treated water body for the period of time during which use of the water is restricted. Such letters were mailed or personally delivered on: _____ . A copy of the letter is attached.

___ A review of the appropriate real property tax records indicates that no person other than the applicant owns any real property abutting the water body proposed to be treated pursuant to the above-referenced Aquatic Pesticide Permit application.

___ A person or persons not owning abutting real property possess a vested legal right to use of the water body proposed to be treated. All such persons have been notified by letter of the proposed pesticide permit. A list of such persons, and the nature of their right to use of the water proposed to be treated is attached. Such letters were mailed or personally delivered on: _____ . A copy of the letter is attached.

___ To my knowledge, no person other than the applicant possesses any vested legal right to use the water body proposed to be treated pursuant to the above-referenced Aquatic Pesticide Permit application.

SIGNED: _____

Print or type Name: _____

DATE: _____

If applicant is not an individual, relationship to applicant: _____

False statements made on this document are punishable under §210.45 of the Penal Law