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**PUBLIC NOTICE NO. MT-11-01
January 10, 2011**

PURPOSE OF PUBLIC NOTICE

The purpose of this notice is to state the Department of Environmental Quality's intention to issue a General Permit as described in this notice. This permit is issued by the Department under the authority of 75-5-402, Montana Code Annotated (MCA); the Administrative Rules of Montana (ARM) 17.30.1301 *et seq.*, Montana Pollutant Discharge Elimination System (MPDES); and Sections 402 and 303 of the Federal Clean Water Act. The Water Protection Bureau has prepared a draft permit for the facilities listed below. Copies of the draft permit, fact sheet, and environmental assessment are available upon request from the Water Protection Bureau or on the Department's website www.deq.mt.gov.

APPLICANT INFORMATION

PERMIT CATEGORY: Owners/Operators of Pesticide Applications To or Over State Surface Waters

GEOGRAPHIC REGION: Statewide

FACILITIES: Pesticide General Permit

RECEIVING WATER: Statewide

PERMIT NUMBER: MTG870000

The Pesticide General Permit (PGP) will provide statewide general permit coverage for owners/operators for the application of pesticide to or over, including near, state surface water. The PGP is designed to cover pesticide applications in which it is unavoidable that some of the pesticides will be deposited in the water in order to effectively target pests. The PGP will cover owners/operators that annually conduct pesticide applications at over treatment area thresholds within specific pesticide use patterns as defined in the permit.

This is a new general permit. On January 9, 2009, the Sixth Circuit Court of Appeals held that the Clean Water Act unambiguously includes "biological pesticides" and "chemical pesticides" with residuals within its definition of "pollutant." On June 8, 2009, the Sixth Circuit granted the Environmental Protection Agency (EPA) a two-year stay. At the end of the stay, on April 9, 2011, wastewater discharge permits will be required for discharges to state surface waters of biological pesticides, and of chemical pesticides that leave a residue. Montana is a delegated state with the legal authority to issue and enforce Montana Pollutant Discharge Elimination System (MPDES) permits. The Montana Department of Environmental Quality (Department) is required to develop a PGP that will be as stringent as the EPA's Pesticide General Permit.

On September 21, 2000, a U.S. District Judge issued an order stating that until all necessary Total Maximum Daily Loads (TMDLs) under Section 303(d) of the Clean Water Act are established for a particular water

quality limited segment, the State is not to issue any new permits or increase permitted discharges under the MPDES program. The order was issued in the lawsuit *Friends of the Wild Swan v. U.S. EPA, et al.*, CV 97-35-M-DWM, District of Montana, Missoula Division. This is a new permit. However, the Department believes that the issuance of this general permit does not conflict with this order because:

- The only 303(d) impairment for a currently registered pesticide in Montana is Hauser Lake for Endosulfan Sulfate. Use of this pesticide at Hauser Lake will not be allowed under the PGP; and
- Application of pesticides is not a new activity and does not allow an increase in pollutant loads over what has historically occurred. The change is that pesticide applicators to or over, including near waters of the state will now be regulated by the Department under the PGP rather than under the 308 authorization.

PUBLIC COMMENT

Public comments are invited ANYTIME PRIOR TO CLOSE OF BUSINESS March 2, 2011. Comments may be directed to the DEQ Permitting & Compliance Division, Water Protection Bureau, PO Box 200901, Helena, MT 59620. All comments received or postmarked PRIOR TO CLOSE OF BUSINESS March 2, 2011 will be considered in the formulation of final determinations to be imposed on the permits. If you wish to comment electronically, you may e-mail Noelle Uncles or Barb Sharpe at WPBPublicNotices@mt.gov.

A public hearing will be held on the draft pesticide general permit, the Statement of Basis/Fact Sheet, Environmental Assessment, and the Department's tentative determination on **February 15, 2011, at 1:30 pm, 1520 East 6th Ave Helena, MT, Rm 111.**

The Department will respond to all substantive comments and issue a final decision within sixty days of this notice or as soon as possible thereafter. Additional information may be obtained upon request by calling (406) 444-3080 or by writing to the aforementioned address. The complete administrative record, including permit application and other pertinent information, is maintained at the Water Protection Bureau office in Helena and is available for review during business hours.

The State of Montana makes reasonable accommodations for any know disability that may interfere with a person's ability to participate in state government. Persons needing an accommodation must notify Noelle Uncles or Barb Sharpe no later than February 7, 2011, to allow adequate time to make needed arrangements. You can call Noelle or Barb at 444-3080 or write to them at the address noted to make your request known.

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