

Readopt Pes 601, effective 7-8-15 (Document #10875), to read as follows:

CHAPTER Pes 600 AQUATIC APPLICATION OF PESTICIDES

Statutory Authority: RSA 430:31

PART Pes 601 DIVISION APPROVAL REQUIRED

Pes 601.01 Special Permit Required.

(a) No person, firm, corporation, agency of state or local government, or other legal entity shall apply any pesticide to or in any surface water without receiving a special permit from the division.

(b) In addition to the requirement for a special permit, applications for treatment of surface waters 10 acres or larger in area shall also have prior recommendations by the water division, department of environmental services and New Hampshire fish and game department.

(c) Recommendations required under (b) above shall be obtained by the division of pesticide control by means of written requests accompanied by a copy of the special permit application submitted by the applicant.

(d) Those surface waters subject to (a) above shall include:

- (1) Rivers;
- (2) Streams;
- (3) Brooks;
- (4) Creeks or other waterways;
- (5) Wetlands, as defined in ~~Env-Wt 101:110~~ **RSA 482-A:2,X**, including any marsh, swamp, bog or other wetland type;
- (6) Ponds;
- (7) Lakes or any body of water that drains into such a waterway;
- (8) Any body of water used for public or private water supply;
- (9) Any great pond; and
- (10) Coastal wetland or tidal waters.

Readopt Pes 602.01, effective 2-28-17 (Document #12122), to read as follows:

PART Pes 602 APPLICATION PROCEDURE

Pes 602.01 Form A-1 Application for a Special Permit to Conduct an Aquatic Pesticide Treatment.

(a) An applicant for a special permit to conduct aquatic pesticide treatments under RSA 430:31,IV(a), except treatments to surface water of less than 10 acres as described by Pes ~~604.02~~ **604.05**, shall supply on Form A-1 Application for a Special Permit to Conduct an Aquatic Pesticide Treatment the following:

- (1) The applicant's:

- a. Name;
 - b. Address;
 - c. Telephone number;
 - d. Fax number;
 - e. Cell phone number, if the applicant wishes to provide it; and
 - f. Pesticide license number, if the applicant is the licensed pesticide applicator;
- (2) The applicant's contact's:
- a. Name;
 - b. Telephone number;
 - c. Cell phone number, if the contact wishes to provide it; and
 - d. Electronic mail address, if the contact wishes to provide it;
- (3) If the licensed pesticide applicator is not the applicant, the licensed pesticide applicator's:
- a. Name;
 - b. Address;
 - c. Electronic mail address;
 - d. Telephone number;
 - e. Fax number;
 - f. Cell phone number, if the licensed pesticide applicator wishes to provide it; and
 - g. Pesticide license number;
- (4) If the client is someone other than the individual mentioned in (1), (2), or (3) above, the client's:
- a. Name;
 - b. Address;
 - c. Telephone number;
 - d. Fax number; and
 - e. Electronic mail address, if the client wishes to provide it;
- (5) If the client is someone other than the individual in (1), (2), or (3) above, that client's contact or spokesperson's:
- a. Name;

- b. Title, if applicable;
 - c. Telephone number;
 - d. Cell phone number, if the contact or spokesperson wishes to provide it; and
 - e. Electronic mail address, if the contact or spokesperson wishes to provide it;
- (6) Whether any previous special permits were issued to conduct pesticide treatments at this site;
- (7) If applicable, the permit number and year of the most recent permit issued to conduct pesticide treatment at this site;
- (8) Whether there is a long-term management plan, pursuant to Pes 603.02(a)(11)b., for this location or project;
- (9) If applicable, a copy of the long-term management plan, pursuant to Pes 603.02(a)(11)b., attached to this application, and including the following information:
- a. The name of the plan; and
 - b. The month and year of issue or the date of the most recent amendment;
- (10) Confirmation whether any alternative control methods, other than pesticides, have been used at this site;
- (11) If applicable, a list of alternative control methods used at the site containing one of the following:
- a. The method(s) used and the corresponding date(s) of use; or
 - b. A statement that the information is contained within a long-term management plan attached to this permit application form;
- (12) If alternative control methods have not been used at this site, one of the following:
- a. An explanation of the reason(s) alternative control methods have not been used; or
 - b. A statement that the reason alternative control methods have not been used is described within the long-term management plan attached to this permit application form;
- (13) The names and addresses of the following:
- a. All abutters;
 - b. All persons utilizing the waters for domestic purposes; and
 - c. All persons who have made known their objections to the treatment through written or verbal communication with the applicant;
- (14) A description and map of the treatment area which includes:
- a. The long-term management plan that the applicant wants considered during the application review process;

- b. An overall description of the treatment area, including the following:
 1. Specific information regarding treatment area(s), including:
 - (i) Overall length along the shoreline;
 - (ii) Width outward from the shoreline;
 - (iii) Average depth;
 - (iv) Total treatment area in surface acres and acre feet;
 - (v) Type of bottom;
 - (vi) A statement whether the proposed treatment area is a place where watercraft congregate for recreational use such as boating, rafting, water skiing, riding of personal watercraft, or similar activities;
 - (vii) If the proposed treatment area is an area pursuant to (vi) above, the location of the nearest public and private boat ramps, identified on accompanying maps; and
 - (viii) If there are multiple treatment area sites, list all sites referenced to the map with acreage of each individual site; and
 - c. A scale map of one inch to 800 to 1000 feet delineating treatment and surrounding area, including the location of:
 1. Depth findings in the treatment area;
 2. Riparian owners, abutters, and others affected by the treatment;
 3. All inlet and outlet streams labeled as to whether the stream is inlet or outlet;
 4. Bathing areas;
 5. Bases of operations;
 6. Sampling sites;
 7. Public and private wells and surface water supplies, including intakes, that use the water for domestic purposes; and
 8. Downstream use of water;
- (15) The reason and need for pesticide application, including;
- a. A statement as to whether a proposal is consistent with a current long-term management plan, if one exists, for the water body; and
 - b. Where the proposed treatment is not consistent with the long-term management plan, a description of how the proposal deviates from the plan, and the reason for such deviation;
- (16) Whether the water level can be controlled, and how;

- (17) The names of predominant species of game fish known to be present;
- (18) A list of threatened and endangered species from the Natural Heritage Inventory, pursuant to ~~Res 1108~~**Ncr 312**, that identifies the species that the treatment area encompasses;
- (19) The use of the waters by abutters and those not contiguous to the treatment area, including:
 - a. The name, PWS identification number assigned by the department of environmental services, location, and distance to a proposed treatment area of any public water supply wells whose wellhead protection area(s) extend into a proposed treatment area, and the distance to the reference line that is closest to the proposed treatment area;
 - b. The name and location of any private water supply intakes and wells within 50 feet of a proposed treatment area and the distance to the reference line that is closest to the proposed treatment area;
 - c. A description of bathing uses, including locations relative to treatment area; and
 - d. A description of livestock watering and other agricultural uses and locations relative to the treatment area;
- (20) The uses of the outlet waters, including:
 - a. Names, PWS identification numbers, and the location of sources of public water supplies within 1,000 feet of the outlet waters and less than 2 miles downstream of the treatment area; and
 - b. Location of nearest point downstream where waters are used for bathing, residential or agricultural irrigation, watering livestock, and for other agricultural uses;
- (21) A statement that approval pursuant to Pes 602.01(c) has been sought;
- (22) Where approval as specified under (21) above cannot be obtained or is not granted:
 - a. A statement as to the reason that approval was not obtained;
 - b. A description of the nature of, and reason for, any objection, where such information is made known to the applicant; and
 - c. Copies of any written objections that might have been directed to the applicant pursuant to Pes 602.01(a)(21);
- (23) The method of notification to abutters and others directly affected by the treatment, pursuant to Pes 602.02, including:
 - a. The date any direct notices were mailed;
 - b. The names of any newspapers in which notice was published;
 - c. The dates of any notices provided;

- d. A description of any method used for notification other than newspaper or direct mailing, along with the date of such notice; and
- e. An attached copy of any notice, news releases, or direct mailings;

(24) A description of the pesticide application, including:

- a. The identity of the target organism;
- b. The method of treatment;
- c. The name(s) of pesticide(s) with the EPA Registration Number(s) of the product(s);
- d. The labels of pesticide to be used;
- e. The application rate;
- f. The amount to be used;
- g. The date(s) of pesticide application(s);
- h. The sequence of pesticide application(s); and
- i. The number and acreage of blocks to be treated;

(25) The method of posting the treated area;

(26) The planned concentrations of pesticide that will be present in the waters after treatment;

(27) The name of the person who will be collecting samples, as specified under Pes 603.03(c)(24), and the following information:

- a. The person's affiliation, such as, volunteer lake assessment program, municipal water works, or New Hampshire Environmental Laboratory Accreditation Program;
- b. A qualification narrative including one of the following:
 - 1. Experience conducting water sampling on behalf of a laboratory accredited by the New Hampshire Environmental Laboratory Accreditation Program;
 - 2. Experience as a volunteer water quality monitor trained by an entity such as the New Hampshire department of environmental services or the university of New Hampshire;
 - 3. Water sampling experience; or
 - 4. Water sampling training;

(28) The identity, address, telephone number, fax number, and electronic mail address and location of the laboratory conducting required analysis as specified in Pes 603.03(c)(24);

(29) If treatment is proposed in surface waters or the surface water's tributaries within 5 miles upstream of an intake used for public water supply, the applicant shall:

a. Present data as to the anticipated impact to the water supply, at a minimum to include such information as:

1. Estimates of the dispersion and dilution of the pesticide over time;
2. Flow characteristics;
3. Anticipated maximum concentration of pesticide at the affected public water supply intake(s); and
4. An estimate of the time, post treatment, when the maximum concentration of pesticide would be anticipated; and

b. Provide information, if no reasonable non-chemical alternative is available, as to why no reasonable non-chemical alternative information is available;

(30) Certification, by the applicant's signature, that:

a. The information on the form is true and correct to the best of the applicant's knowledge and belief; and

b. The applicant assumes full responsibility for:

1. Any damage resulting from inaccuracies in the information provided on the application form;
2. Miscalculations;
3. Improper applications of chemicals; and
4. Failures on the part of the applicant to gain the approval, or accommodate the objections of any riparian owners and other affected persons whose approval is required to be sought under Pes 600; and

(31) The signatures of the pesticide applicator and the client for whom the treatment is being made.

(b) The applicant shall mail or hand-deliver the completed application to:

NH Division of Pesticide Control
~~PO Box 2042, 25 Capitol Street~~ **1 Granite Place South Suite 211**
Concord, NH ~~03302-2042~~ **03301**

(c) The applicator shall seek approval for the proposed pesticide application from riparian owners, owners of public water systems, and abutters, both in the vicinity of the treatment area and along the outlet stream, who may have to temporarily restrict their usage of water.

(d) Information submitted in support of proposed treatment shall be complete and any falsification of information shall result in denial or revocation of the special permit.

(e) The division shall act upon the permit request within 90 days of its receipt.

Readopt Pes 602.02 through 603.05, effective 7-8-15 (Document #10875), to read as follows:

Pes 602.02 Public Notification Requirements.

- (a) Applicants shall provide notification of the pending application as follows:
 - (1) Written notice shall be provided directly to each abutter and to the owner of each well or intake that might be subject to water-use restrictions; and
 - (2) Notice of the area affected shall be published in a newspaper of general circulation in the area affected.
- (b) Notification in (1) and (2) above shall include a statement indicating that:
 - (1) Certain activities and water uses might be temporarily restricted as a condition of the special permit; and
 - (2) Those wishing to comment on the proposed application may contact the division to request a public hearing.
- (c) Applicants shall provide the division a copy of the following:
 - (1) The notice to abutters;
 - (2) The proposed notice sent to the newspaper; and
 - (3) A tear sheet from the newspaper showing the notice at such time as it is received by the applicant.

Pes 602.03 Public Hearings. A public hearing shall be scheduled in such cases where a written request has been made to the division by at least 5 abutters to the proposed treatment area or by one abutter owning 25 percent or more of the shoreland adjacent to the proposed treatment area within 15 days of the division receiving notification as per Pes 602.02(c)(1) and (2) above.

Pes 602.04 Notification of Public Hearings. Upon receipt of a request for a public hearing pursuant to Pes 602.03 above, the division shall:

- (a) Schedule the hearing;
- (b) Notify the applicant of the date of the hearing;
- (c) Publish notice of the hearing in a newspaper of general circulation in the area affected at least 14 days prior to the date of hearing; and
- (d) Instruct the applicant to provide notice of the hearing at least 14 days prior to date of hearing, to all persons owning property abutting the area to be treated. Such notice shall be by one or more of the methods specified under Pes 603.03(c)(2).

Pes 602.05 Content of Notices. The public notice and notice of hearing to the applicant and others shall contain:

- (a) A reference to the regulatory authority, Pes 602.03 and Pes 602.06, for conduct of hearing;
- (b) A statement of the purpose of the hearing;
- (c) A statement of the time, date, and place of the hearing, and the manner in which comments may be submitted for consideration by the division;

(d) A statement of the place and time where relevant material may be examined, and the name, address, and telephone number of the person from whom further information may be obtained; and

(e) A description of proposed treatment(s) including:

- (1) A description of the area to be treated and the areas likely to be affected;
- (2) The name and EPA registration number of pesticides to be used;
- (3) The name and address of the applicant and agent; and
- (4) The proposed date(s) of treatment(s).

Pes 602.06 Conduct of Public Hearings. The director of the division of pesticide control shall control public hearings as follows:

(a) The public shall have an opportunity to direct questions concerning said application to the applicant through the division;

(b) The director of the division shall limit presentations to issues relevant to the application under consideration;

(c) The division shall have an opportunity to freely question both the applicant and the participants in the hearing;

(d) If possible, the attendees of the hearing wishing to be heard shall register to speak prior to commencement of the hearing;

(e) Any interested person who desires to participate in the hearing shall be entitled to do so either by filing a written statement indicating the person's interest and his or her position on the particular application or by making an oral statement including the same information; and

(f) The director shall place time limits on presentations in the following situations:

- (1) Where testimony being presented is repetitious of that previously presented;
- (2) Where testimony being presented is not relevant to the issue of the special permit proposal; and
- (3) Where there is a time limitation on the length of the public hearing.

PART Pes 603 RECOMMENDATIONS AND DECISIONS

Pes 603.01 Recommendations.

(a) The division shall obtain recommendations from the water division of the department of environmental services and the New Hampshire fish and game department, pursuant to Pes 601.01(b).

(b) The request in (a) above shall be in writing and shall include a copy of the special permit application upon which recommendation is sought.

(c) The recommendations in (a) above shall be obtained by the division after the date of the public hearing and prior to the date for acting on a special permit request or prior to the date for acting on the special permit request if a hearing is not held.

Pes 603.02 Division Decisions.

(a) Decisions of the division to issue or deny a request for a special permit shall be based on an assessment of the following:

- (1) The impact of the proposed application of pesticide on human health;
- (2) The possible effects on non-target areas and non-target organisms;
- (3) Whether the proposed application of pesticides is consistent with the provisions described in any long-term management plan for the waterbody;
- (4) Whether the proposed application of pesticides complies with the provisions of Pes 100-1100;
- (5) The proximity of wells, water supplies, other surface waters, marshland and similar sensitive areas to the treatment area and measures considered to successfully protect such sensitive areas;
- (6) The characteristics, toxicity, and hazards of the pesticide to be utilized and the measures to minimize any adverse effects;
- (7) A review and consideration of the pesticide application equipment for appropriateness for the proposed application;
- (8) The considerations that have been given, and provisions made by the applicant to address or meet the concerns of dissenters of the proposal;
- (9) The adequacy of measures proposed to protect those persons who might use the waters for:
 - a. Recreational purposes, including watercraft use;
 - b. A source of drinking water; or
 - c. Other domestic purposes including showering, washing dishes and clothes; and
- (10) The recommendations of other agencies with authority to regulate the area affected; and
- (11) The long-term management plan, if:
 - a. The plan is included with the application pursuant to Pes 602.01; and
 - b. The plan is a document that specifies the integrated pest management techniques that will be applied over a set period of time, as outlined in the plan, to control nuisance vegetation in a specified waterbody.

(b) If after considering the special permit request and the criteria in (a) above, the division determines that the proposal could be executed with minimal risk to human health and the environment, the special permit shall be issued.

(c) Every decision of the division shall be in writing and shall include reasons for the decision.

Pes 603.03 Conditions for Granting "Special Permits."

(a) “The New Hampshire Environmental Laboratory Accreditation Program (NH ELAP)” means a program that provides accreditation to environmental laboratories as provided for in RSA 485:44, to ensure that such laboratories provide sufficiently accurate, precise, and consistent results of tests, analyses, and measurements.

(b) Special permits shall be issued, in writing, and shall state the terms and conditions under which the division granted approval.

(c) The pesticide applicator identified within a special permit shall comply with the following:

- (1) The applicator shall provide notice of the treatment to the following:
 - a. All owners of property abutting the area to be treated;
 - b. All persons utilizing the waters for domestic purposes; and
 - c. All local public health officials;
- (2) Notification pursuant to (1) above shall be by one or more of the following methods:
 - a. Registered mail, return receipt requested;
 - b. Certified mail, return receipt requested;
 - c. Electronic mail with an electronically verified return signature; or
 - d. Fax, with a return verification signature;
- (3) Notification pursuant to Pes 603.03(c)(1) shall be posted, if by mail or transmitted, if by electronic mail or fax, at least 14 days prior to the treatment date;
- (4) The applicator shall include in the notification in Pes 603.03(c)(1), (8), (18), and (19), the following information:
 - a. The name of the product;
 - b. The common chemical name of the active ingredient;
 - c. The EPA registration number;
 - d. All the warnings on the label of the product to be applied; and
 - e. All restrictions on the use of the waters;
- (5) In the event the notice of treatment under Pes 603.03(c)(1) is undeliverable, the applicator or the applicator’s representative shall hand deliver the notice directly to the property site(s) in the affected area(s) owned or occupied by such persons who did not receive notification, or in the case of failure to reach a public health official, to the local public health office, as applicable;
- (6) If no person is available to receive this notice, then the notice shall be left in a conspicuous location;
- (7) The applicator shall submit a signed statement attesting to fulfillment of the requirements pursuant to Pes 603.03(c)(1) to the division prior to the treatment date;

(8) The applicator shall publish notice of the treatment date in at least one newspaper of general circulation in the area to be treated at least once per week for 2 weeks preceding the treatment date to provide the general public with knowledge of the treatment;

(9) All waters treated with pesticides shall be posted with signs displaying the restrictions for water usage as they appear upon the labeling of the pesticide to be used according to procedures described in (10) below;

(10) The applicator shall post the shoreline adjacent to the treatment area with signs warning the general public that the area has been treated, as follows:

a. Signs shall be at least 8 x 10 inches, and be made of weather resistant materials with black letters on a yellow background;

b. The signs shall be posted at least every 100 feet;

c. Signs shall be in place from the beginning of the pesticide treatment process until the end of any restricted entry or use periods stipulated in the special permit, or, where not so specified, the restrictions specified on the pesticide label(s);

d. Signs shall include at a minimum the following information:

1. The treatment date(s);

2. The trade name(s) and common chemical name(s) of the pesticide(s) used;

3. All water use restrictions including recreational, domestic, potable, irrigation and agricultural uses, and the length of time the restrictions are to remain in effect; and

4. The name, address and telephone number of a contact person from whom additional information may be sought; and

e. The posting of signs shall not be required along undeveloped shoreline where there are no known commonly used access points.

(11) If the division, or the applicator, after consideration of the criteria set forth in Pes 603.02(a), determines that the period of posting water use restrictions pursuant to (9) above should be extended in order to protect human health and the environment, the posting period shall be extended;

(12) The extended posting period under (11) above shall be determined prior to the issuance of a special permit;

(13) No treatment of surface waters shall occur if water contaminated or affected by the treatment might adversely affect industrial processes that utilize that water, unless written permission is obtained from the affected industry or industries;

(14) The applicator shall provide prior written notification to appropriate town health officials and to the New Hampshire department of health and human services of the specific date(s) of treatment(s);

(15) The applicator shall provide prior written notification to the New Hampshire fish and game department of the specific date(s) of treatment(s);

- (16) The applicator shall notify the division of a pending treatment as follows:
- a. Notification shall be made at least 48 hours prior to the time of treatment by appropriate means, such as phone, fax, or electronic mail; and
 - b. Prior to commencement of treatment, the applicator shall provide a signed statement attesting to the fact that all pre-treatment requirements of the special permit have been met;
- (17) In cases of postponement of treatment of 14 days or less from the proposed date of treatment, the applicator shall hand deliver notice to all abutters, affected property owners with intakes and properties containing wells with use restrictions under the permit;
- (18) Notices given under (17) above shall specify the actual date of treatment and contain all of the information specified under Pes 603.03(c)(4);
- (19) In cases of postponement of treatment of more than 14 days from the proposed date of treatment, the applicator shall provide notification of the new date, as required in Pes 603.03(c)(1), (3), (4), (5), (6), (7), (8), (14), (15), and (16);
- (20) As practicable, the applicator shall notify other persons or entities who might not be located in the treatment area but might be affected by the treatment;
- (21) The applicator or client shall perform at least one follow-up inspection within 21 days of the treatment for the purpose of determining any adverse effects;
- (22) If the applicator or client becomes aware of any adverse impact, he or she shall report verbally within 24 hours and in writing within 5 days to the division of pesticide control;
- (23) Any written report submitted under Pes 603.03(c)(22) shall contain the following information:
- a. The amount of pesticides applied and in what areas;
 - b. Any adverse effects, including illnesses, off-target problems, and situations of non-notification where persons on abutter lists or lists of well owners were not notified;
 - c. Dates of follow-up inspections and details of how the inspections were conducted;
 - d. Arrangements made by the applicator, client, or both for testing to determine any alteration in water quality; and
 - e. The name(s) and address(es) of any persons who have filed comments;
- (24) The applicator shall arrange for the taking and analysis of a minimum of 2 samples with analysis conducted by a NH ELAP accredited laboratory, or as specified upon the pesticide label, according to the following provisions:
- a. The laboratory, the spokesperson from the laboratory, and the individual who will be taking the samples shall be named in the special permit request;

b. The individual taking the samples shall have one of the following qualifications:

1. Experience of conducting water sampling on behalf of a laboratory accredited by the New Hampshire Environmental Laboratory Accreditation Program;
2. Experience as a volunteer water quality monitor trained by an entity such as the New Hampshire department of environmental services or the university of New Hampshire;
3. Water sampling experience; or
4. Water sampling training;

c. The number and timing of sampling shall be determined by considerations listed in Pes 603.02(a) and label restriction intervals and shall be specified in the special permit;

d. Samples shall be taken from locations specified in the special permit or, if the special permit does not specify locations, from within the treatment area at predetermined locations indicated on the map supporting the special permit request;

e. The laboratory shall submit copies of the official laboratory reports of analysis to the division within 60 days of taking samples;

f. The reports shall include information compiled by the laboratory spokesperson, as follows:

1. A description of the sampling method;
2. The depth at which the sample was taken;
3. A map showing the exact location of where the samples were taken;
4. Coordinates of sample location(s), expressed in latitude and longitude, as determined by a global positioning system; and
5. A statement indicating the accuracy, in feet, of the coordinates determined in 4, above;

(25) The application rate of pesticides shall not:

- a. Exceed the rate specified on the label of the registered pesticide; and
- b. Reach or exceed dosages capable of reducing the number of non-target aquatic organisms to a non-viable level;

(26) Herbicides and algaecides for the control of aquatic vegetation shall not be used during the months of October through April; and

(27) The applicator shall submit a written report by November 1 of the year in which the special permit was in effect, presenting detailed information of the results of the treatment with pesticides, including:

- a. The effectiveness of treatment and degree of control;

- b. The effects on non-targeted species of vegetation;
- c. The adverse effects on other aquatic organisms;
- d. An estimate of the duration of control;
- e. The size of final treatment area, in acres;
- f. The date of treatment(s);
- g. The type and amount of product used in treatment(s); and
- h. A map showing pre-treatment footprint and post-treatment extent of remaining target species as observed on the date of the post-treatment follow-up survey per (21) above.

(d) Water supply wells that are located within 50 feet of any shoreline shall be treated as surface water intakes for the purpose of meeting associated pesticide label restrictions and setbacks unless the applicant can demonstrate through hydrogeologic evaluation that the drinking water standards specified within the New Hampshire Code of Administrative Rules Env-Dw 700 will not be violated as a result of the proposed treatment.

(e) The hydrogeologic evaluation mentioned in (d) above shall include, where available:

- (1) Information regarding the construction, depth, water quality, geologic setting, pumping rate, and other characteristics of the well;
- (2) Information from the well owner or other sources regarding the effects of changes in the lake level or the well;
- (3) A review of relevant monitoring data and relevant literature regarding the susceptibility of comparable wells in comparable settings to contamination as a result of aquatic use of comparable pesticides; and
- (4) A synthesis of available information with respect to the worst case and most likely impact of the proposed treatment on water quality in the well.

(f) Persons applying pesticides to surface waters containing intakes shall provide written notification to the owners of said intakes, as follows:

- (1) Signs and written notification, pursuant to Pes ~~602.03~~**603.03**, shall specify all applicable use restrictions; and
- (2) Any signs shall remain posted for the duration of the water-use restrictions as specified on the special permit.

Pes 603.04 Postponement of Treatment. If the division finds that, as a result of postponement of treatment, adverse effects on human health and the environment are likely, it shall, after a hearing, reconsider its original decision.

Pes 603.05 Suspension or Revocation of Special Permit. The division shall suspend or revoke a special permit if it finds that the applicant has not complied with the rules or has falsified information submitted in support of their application as follows:

(a) If the division finds that public health, safety or welfare requires emergency action, the division shall proceed with the suspension according to RSA 541-A:30, III; or

(b) If there is not an imminent hazard to public health, safety or welfare, the division shall proceed with the revocation according to RSA 541-A:30, II.

Readopt with amendment, Pes 604.01 through 604.04, effective 2-28-17 (Document #12122), to read as follows:

PART Pes 604 EXEMPTIONS

Pes 604.01 Applications by Governmental Agencies For Mosquito Control.

(a) Pesticide applications to surface waters by government agencies, **or by others on behalf of government agencies**, to control immature forms of mosquitoes and other biting arthropods, where the surface waters are not used for drinking or domestic purposes, shall not be subject to the special permit requirements under Pes 600 provided that such agencies comply with (b)-(e)-(c) below, **Pes 604.03, and Pes 604.04(b)**.

(b) Except for during a public health emergency, government agencies, **or by others on behalf of government agencies**, shall make application for a special permit to control mosquitoes and other biting arthropods according to the following provisions:

(1) The application shall be made on forms provided by the division;

(2) Applicants shall submit special permit applications to the division at least 30 days prior to the proposed commencement date of the program;

~~(3) Special permit applications shall include information and supporting documentation as specified under Pes 502.04 (e) and (d);~~

~~(43)~~ If the government agency is a municipality that approves mosquito control programs by town meeting, the control program shall have been approved by vote at a town meeting;

~~(54)~~ Special permit applications shall include information on the methods to be used to notify the following, pursuant to ~~(e)(2) below~~ **Pes 604.04(b)(2)**:

a. Residents of the town located in the spray area;

b. Town officials;

c. Apiary owners; and

d. Others affected by the treatment.

(c) Pesticide applications due to a public health emergency require a special permit, as follows:

(1) Application for a special permit shall be made in accordance with Pes 502.04(c) and (d); and

(2) The applicant shall provide written notification prior to application of pesticides in accordance with the provisions of Pes 505.06(q).

Pes 604.02 Form SP-MOS Application for a Special Permit for Governmental Agency Mosquito Control.

(a) Governmental agencies, or by those on behalf of government agencies, shall apply for a special permit to control mosquitoes and other biting arthropods, pursuant to Pes 604.01(b), by supplying the following:

(1) The applicant's:

- a. Name;**
- b. Business address;**
- c. Telephone number;**
- d. Fax number;**
- e. Cell phone number, if the applicant wishes to provide it;**
- f. Electronic mail address, if the applicant wishes to provide it; and**
- g. Pesticide license number, if the applicant is the licensed pesticide applicator;**

(2) If the licensed pesticide applicator is not the applicant, the licensed pesticide applicator's:

- a. Name;**
- b. Address;**
- c. Telephone number;**
- e. Fax number;**
- f. Cell phone number, if the licensed pesticide applicator wishes to provide it; and**
- g. Pesticide applicator license number;**

(3) If the client on whose behalf the treatment is made is not the individual identified per (1) or (2), the client's:

- a. Name;**
- b. Address;**
- c. Telephone number;**
- d. Fax number; and**
- e. Electronic mail address, if the client wishes to provide it;**

(4) Whether any previous special permits were issued to conduct pesticide treatments at this site;

(5) If applicable, the permit number and year of the most recent permit issued to conduct pesticide treatment at this site;

(6) The reason for the pesticide application, including:

a. Factors used to determine the need for treatment including:

1. Target species survey data; and

2. Public health threat information;

b. The name of the individual making the determination to apply pesticides;

(7) A description of the application including:

a. Target organisms;

b. Application method(s);

c. Method and frequency of calibration of equipment used;

d. Pesticides to be used;

e. Application schedule, including:

1. Approximate number and dates of applications; and

2. Potential application sites and acreage; and

f. Environmental considerations, including:

1. Pesticide management techniques for environmental protection; and

2. Justification for the use of pesticides which have label precautions pertaining to groundwater or surface water, risk to pollinators, aquatic organisms, or other risks to the environment; and

3. A list of threatened and endangered species from the Natural Heritage Bureau, pursuant to Ncr 312, that identifies the species the treatment area encompasses;

(8) A description of the treatment and monitoring area(s) including:

a. Detailed map(s), at a scale of 1:24000 or greater, identifying the treatment and surrounding areas including:

1. Proposed treatment area(s);

- (10) Copies of sample notifications used to satisfy Pes 505.06(q);
- (11) An indication if the applicant has received any requests from persons objecting to the application of pesticides to or in the vicinity of their property; and
- (12) The signatures of the applicant, pesticide applicator, and the client, as applicable.

(b) The applicant shall mail or hand-deliver the completed application to:

NH Division of Pesticide Control
1 Granite Place South Suite 211
Concord, NH 03301

- (c) Information submitted in support of the proposed mosquito control activities shall be complete and any falsification of information shall result in the denial or revocation of the special permit.

Pes 604.03 Recommendations.

(a-d) Prior to issuing a special permit to a government agency for mosquito control, the division shall obtain written recommendations from the water division, department of environmental services, and the fish and game department.

Pes 604.04 Conditions for Granting "Special Permits".

(a) Special permits shall be issued, in writing, and shall state the terms and conditions under which the division granted approval.

(e-b) Upon receipt of a special permit for mosquito control, government agencies shall comply with the following:

- (1) No pesticide application under said permit shall be made within 75 feet of any well used as a source of drinking water;
- (2) Prior to commencement of any pesticide applications the applicant shall provide notification to potentially affected persons in accordance with the requirements specified under Pes 505.06(q);
- (3) The applicant shall provide the division 48-hour advanced notification of intent to commence pesticide applications; and
- (4) Prior to commencement of any pesticide applications, the applicant shall provide to the division a written, signed attestation that all of the notification requirements, and any other pre-application conditions of the permit have been satisfied.

Readopt Pes 604.05 through 604.07, effective 7-8-15 (Document #10875), to read as follows:

~~Pes 604.02~~ **Pes 604.05 Surface Water of Less than 10 Acres.**

(a) Under the following conditions, surface waters less than 10 acres shall be exempt from the provisions of Pes 600 except Pes 601.01(a), Pes 603.03(c)26, ~~Pes 604.02(b)~~ **Pes 604.05(b)** through (d) and ~~Pes 604.03~~ **Pes 604.06:**

(1) The entire pond bottom and shoreline are owned by one individual or entity, or is under ownership by more than one individual or entity but where all owners agree to the treatment; and

(2) There is no regularly flowing surface outlet or the flow can be stopped.

(b) The person or entity shall apply for a special permit for the proposed treatment on forms provided by the division pursuant to ~~Pes 604.03~~**Pes 604.06**.

(c) The special permit application shall be received by the division 45 days prior to the proposed date of treatment; or

(d) At a time less than 45 days prior to the proposed date of treatment where circumstances would necessitate a shorter lead time, such as:

(1) Matters related to health and safety;

(2) Matters related to invasive species; or

(3) Matters related to outbreaks of insects or diseases.

~~Pes 604.03~~**Pes 604.06** Form A-2 Application for a Permit to Conduct Aquatic Pesticide Treatments to Surface Water of Less than 10 Acres as Described in Pes 604.02(a).

(a) An applicant for a permit to conduct aquatic pesticide treatments under RSA 430:31,IV(a) for surface waters as described in ~~Pes 604.02(a)~~**Pes 604.05(a)** shall supply on Form A-2 the following information:

(1) Whether the surface water is less than 10 acres in area;

(2) Whether the entire surface water and shoreline is owned by one person or entity;

(3) Whether all owners are in agreement with the treatment;

(4) Whether there is a regularly flowing outlet;

(5) Whether the outflow can be controlled;

(6) The applicant's:

a. Name;

b. Business address;

c. Telephone number;

d. Fax number;

e. Cell phone number, if the applicant wishes to provide it; and

f. License number of the pesticide applicator;

(7) The applicant's contact's:

- a. Name;
- b. Telephone number;
- c. Cell phone number, if the contact wishes to provide it; and
- d. E-mail address, if the contact wishes to provide it;

(8) If the licensed pesticide applicator is not the applicant or the applicant's contact, the licensed pesticide applicator's:

- a. Name;
- b. Address;
- c. E-mail address;
- d. Telephone number;
- e. Fax number;
- f. Cell phone number, if the applicator wishes to provide it; and
- g. Pesticide applicator license number;

(9) If the client on whose behalf the treatment is made is not the individual identified per (6), (7) or (8), the client's:

- a. Name;
- b. Address;
- c. Telephone number;
- d. Fax number;
- e. E-mail address, if the contact wishes to provide it;

(10) If the contact or spokesperson is different than the individual identified in (9) above, that contact or spokesperson's:

- a. Name;
- b. Telephone number;
- c. Cell phone number, if the contact or spokesperson wishes to provide it; and
- d. E-mail address, if the contact or spokesperson wishes to provide it;

(11) Whether any previous special permits were issued to conduct pesticide treatment at the site;

(12) If applicable, the permit number and year of the most recent permit issued to conduct pesticide treatment at the site;

(13) A description of the treatment area including:

- a. A list of treatment areas;

- b. Whether there are activities in the treatment area or water uses that might be affected by the pesticide treatment;
- c. If there are activities in the treatment area or water uses that might be affected by the pesticide treatment provide a list and description of each one;
- d. Whether a setback easement from any public water supplies is needed;
- e. If a setback easement from any public water supply is needed, a list of the water supplies and the location of the nearest distance from the water supplies to the treatment area; and
- f. The reason or need for the pesticide treatment;

(14) A detailed map showing the following:

- a. Treatment areas;
- b. Adjacent areas;
- c. Surface waters including:
 - 1. The surface water to be treated;
 - 2. Inlets labeled; and
 - 3. Outlets labeled;
- d. Pertinent topographic features; and
- e. Land type;

(15) Whether or not the surface water to be treated has regularly flowing outflow;

(16) If the surface water to be treated has regularly flowing outflow include a description of how the outflow will be controlled;

(17) The names and addresses of any other persons or entities that share ownership of the surface water or shoreline;

(18) Whether any other persons or entities that share ownership of the surface water or shoreline are in agreement with the treatment; and

(19) A description of the pesticide treatment including:

- a. The target organism;
- b. The method of treatment;
- c. The pesticide to be used including:
 - 1. The name of the product;
 - 2. The rate of application;
 - 3. The amount of formulation to be used; and
 - 4. An attachment of a complete copy of the pesticide label(s) to be used;

- d. Planned maximum concentration in parts per million of the chemical in the treated surface water;
- e. The chemical formulation in which the concentration is expressed;
- f. Number of treatments;
- g. Approximate date(s) of the treatment; and
- h. Statement that treatment shall be consistent with the label recommendations of the pesticide or pesticides to be used.

(b) The applicant, or pesticide applicator if not the applicant, and if applicable the client, shall sign and date the form attesting that the information provided in the application is accurate and true and acknowledging that falsification of information will result in denial of a special permit.

- (c) The applicant shall mail or hand-deliver the completed application to:

NH Division of Pesticide Control
~~PO Box 2042 25 Capitol Street~~ **1 Granite Place South Suite 211**
Concord, NH ~~03302-2042~~ **03301**

~~Pes 604.04~~ **Pes 604.07** Minimal Adverse Effects.

- (a) The following shall be exempt from the requirements of Pes 600:
- (1) Copper sulfate or copper sulfate compound pesticide application(s) for treatment of public surface waters recommended by the water division, department of environmental services, pursuant to RSA 487:15-25; and
 - (2) Reclamation of lakes and ponds for restocking purposes by the fish and game department, pursuant to RSA 206:10.
- (b) Agencies carrying out activities pursuant to (a) above shall proceed as follows:
- (1) Present orally to the director, division of pesticide control information as described under Pes 502.04 (b) and (c);
 - (2) Obtain verbal approval prior to the proposed treatment from the director, division of pesticide control; and
 - (3) Submit a written application as described under Pes 502.04 (b) and (c) to be received by the division no later than 10 days after the date of treatment.

APPENDIX

Rule	Specific State Statute which the Rule Implements
Pes 601.01	RSA 430:31, IV; RSA 430:34, II; RSA 430:41, IV
Pes 602.01	RSA 430:31, IV(j)
Pes 602.02 – 602.05	RSA 430:31, IV; RSA 430:34, II; RSA 430:41, IV
Pes 602.06 – 602.07	RSA 430:41, IV
Pes 603.01 – 603.05	RSA 430:31, IV; RSA 430:34, II; RSA 430:41, IV
Pes 603.03(c)(11)	RSA 430:31, IV
Pes 603.03(c)(16)	RSA 430:31, IV
Pes 603.03(c)(18)	RSA 430:31, IV
Pes 603.03(d),(e)	RSA 430:31, IV
Pes 603.03(c)(23)f.	RSA 430:31, IV
Pes 604.01	RSA 430:31, IV(e)
Pes 604.02	RSA 430:31, IV
Pes 604.03 – 604.07	RSA 430:31, IV; RSA 430:34, II; RSA 430:41, IV