

## **Sharing of Responsibilities Between Operators Covered by EPA's Pesticide NPDES General Permit: Potential Contract Language**

WHEREAS this Contract is between \_\_\_\_\_, a decision-making entity ("Client") with control over the decision to perform pesticide applications, including the ability to modify those decisions that result in a discharge to Waters of the United States, and \_\_\_\_\_, a contract entity ("Applicator") who is to perform for-hire pesticide applications under the direction of the Client to satisfy the terms of this Contract;

WHEREAS the Applicator identified in this contract is expected by Client to properly execute the pesticide application and may direct workers to carry out those activities, it is acknowledged by both parties that these day-to-day application management activities do not assume the decision-making role of Client as defined by the pesticide NPDES general permit;

WHEREAS the pesticide NPDES general permit compliance requirements for Applicator differ from those of Client, it will be Applicator's responsibility under this Contract to satisfy the following permit requirements to: (a) apply the pesticide(s) chosen by Client in the amount and frequency dictated by the product label and this Contract; (b) apply the pesticide(s) in a professional manner, assessing weather conditions and performance of application equipment, so as to minimize discharge to Waters of the United States; (c) maintain all pesticide application equipment, including calibration, cleaning, and repair to industry standards, recommended industry practices and/or manufacturer specifications to prevent leaks, spills, misapplication or other unintended discharges to Waters of the United States; (d) monitor Applicator's activities and take corrective actions that may become necessary to minimize discharges to Waters of the United States and meet permit requirements; (e) accurately and timely report corrective actions or adverse incidents as necessary to meet permit requirements, and keep and retain necessary records to document those actions and incidents for three years after the expiration of the NPDES permit, and (f) share information as necessary with Client to facilitate Client's development of plans, records and to satisfy permit compliance requirements;

WHEREAS it will be Client's responsibility, and not Applicator's, under this Contract and in satisfaction of permit requirements to (a) submit accurate and complete Notices of Intent (NOI) to appropriate regulatory entities with copies to Applicator for any pesticides to be applied under this Contract that may result in a discharge to Waters of the United States; (b) submit accurate and complete certifications with copies to Applicator for satisfaction of the Endangered and Threatened Species protection compliance provisions of permit; (c) complete and keep up to date Pesticide Discharge Management Plans required by the permit; (d) complete and document Integrated Pest Management decisions and activities required by the permit; (e) complete and document surveillance and monitoring requirements of the permit other than those required of Applicator as described in the previous paragraph; and (f) keep records and provide reports, including but not limited to Annual Reports, as required of Client by the permit;

WHEREAS Client may engage multiple for-hire applicators over the course of the calendar year for pesticide application activities that alone or collectively may result in discharges to Waters of the United States;

THEREFORE Client agrees that under this Contract, Applicator is responsible for only those permit compliance requirements that are directly under Applicator's control. Applicator shall not be responsible for any activities that could render him a "Decision-maker" and shall not be responsible for any permit compliance requirements that apply to Decision-makers. Each party to this Contract agrees to comply with those terms and conditions of the applicable permit that, according to the permit, apply to that party, and that neither party assumes responsibility under the application contract for compliance with permit terms not applicable to that party. Applicator shall not be responsible for, and Client shall indemnify Applicator against, all claims, obligations and losses that may result from any errors or adverse incidents made by Client or any other for-hire applicators not party to this Contract.

Client	Date	Applicator
		Date

Disclaimer: The above model contract serves as an example for your review and possible use as you prepare for contract negotiations with your customers (e.g., state agencies, mosquito control districts, etc.). It is designed to help you avoid being categorized under the NPDES permit as a "decision maker" instead of a "applicator." This model language is only a guide, and does not convey any legal relationship between NAAA and your firm. The contract language you develop with your clients should be reviewed by your personal attorney.