

 <p>P.O. Box 99 • Ray Brook, New York 12977</p>	<p>Effective Date: May 13, 2011</p>
	<p style="text-align: center;">APA General Permit 2011G-2</p> <p>In the Matter of the Issuance of a General Permit for the</p> <p style="text-align: center;">New York State Department of Transportation Herbicide Vegetation Management for Guide Rail and Sign and Delineator Posts Adjacent to Wetlands in the Adirondack Park</p>

SUMMARY AND AUTHORIZATION

The New York State Department of Transportation is granted a general permit on conditions authorizing a vegetative management program allowing certain herbicides to be applied within 100 feet of wetlands. This General Permit is applicable to the area under guide rails and around delineator and sign posts within the state highway rights-of-way in areas classified Travel Corridor on the Official Adirondack Park Land Use and Development Plan Map in the Adirondack Park.

This General Permit is issued pursuant to Environmental Conservation Law Article 24 and 9 NYCRR Parts 572 and 578.

This General Permit may not be used until recorded in the names of "New York State" and "New York State Department of Transportation" in the Office of the County Clerk for the counties of Clinton, Essex, Franklin, Fulton, Hamilton, Herkimer, Lewis, Oneida, St. Lawrence, Saratoga, Warren, and Washington.

This General Permit shall be effective from the date of issuance until modified or revoked by the Agency.

JURISDICTION

Herbicide use in close proximity to wetlands is a regulated activity requiring an Agency permit pursuant to 9 NYCRR 578.3(n)(2), as the use of herbicides may substantially impair the functions served by or the benefits derived from freshwater wetlands.

GUIDE RAIL VEGETATION MANAGEMENT PLAN AS PROPOSED

The New York State Department of Transportation ("DOT") proposes a Vegetation Management Plan involving the use of herbicides to control or eliminate vegetation in areas that cannot be machine mowed for financial reasons, including under the line of guide rail and immediately adjacent to the base of individual sign and delineator posts. The objectives include: reducing costly labor intensive control techniques for grass, weeds, vines, brush and woody plant growth along guide rails and sign and delineator posts; using materials and application techniques that are environmentally safe and provide one season control to a broad spectrum of plants; and developing a program that will facilitate improved safety conditions for inspection and maintenance of guide rails by improving better visibility and drainage.

More specifically:

1. The DOT proposes to apply herbicides to an area 3 feet or less in width under the line of guide rails and to the area immediately at the base of sign and delineator posts generally during the months May through August to control and limit the growth of grass, weeds, vines, brush and woody plants.
2. The DOT will maintain a minimum 5 foot no-herbicide spray buffer from all wetlands.
3. The following herbicides (or similar equivalents) are proposed for application to ensure control of a wide range of plants. They will be applied within recommended label rates but at a conservative dosage as noted below:

<u>Product</u>	<u>EPA Reg No.</u>	<u>Rate Per Acre This Project</u>	<u>Recommended Label Rates</u>
Roundup Original Max	524-539	2.0 quarts	1-3.3 qts./Ac
Oust XP	352-601	3.0 ounces	1-8 ozs./Acre
Escort XP	352-439	1.0 ounce	1-2 ozs./Acre
Krenite S	352-395	2.0 gallons	1.5-6 gal./Acre
Garlon 4 Ultra	62719-527	2 qts./Acre (or less - Poison Ivy control)	1-8 qts./Acre

4. These herbicides will be applied to guide rail as a mix by boom sprayer equipped with spray nozzles appropriate for the application conditions. The sprayer configuration may vary from DOT Region to Region, but generally is equipped with calibrated nozzles, computer and drip reduction valves to control drift and accurately apply the herbicides at the prescribed rates. The boom height will also be kept low to control drift. For applications around sign and delineator posts, the herbicide will be applied by either 1) a hose attached to the truck's spray system equipped with appropriate spray nozzle for the application, or 2) a back pack sprayer equipped with the appropriate spray nozzle for the application.
5. No application will take place when wind speed is sufficient to cause off-target drift. No application will take place when rain is predicted within 12 hours of application or within the rain-fast period specified in the product label of the herbicides(s) and adjuvant(s) being used. Spray operations will be immediately shut down when unacceptable off-target drift is observed or is a probable occurrence under existing conditions.
6. During all applications, a NYS Department of Environmental Conservation ("DEC") Commercially Certified Pesticide Applicator or Technician, certified for applications in Category 6A - Rights-of-Way and/or the DOT Regional Maintenance Environmental Contact ("MEC") will be present. If the MEC is not present, all spray operators will be wetland-recognition-trained. The DOT Regional Spray Crew Supervisor will monitor all spray operations. No products will be stored within the Adirondack Park except under lock and key in the contractor's on-site pesticide vehicles or at a NYSDOT Maintenance Residency equipped with proper storage facilities.
7. No application of herbicides except RoundUp Original Max (or equivalent) or RoundUp Original Max + Oust (or equivalent) will take place within 100 feet of known public or private water supplies.
8. Wetlands and surface drainage features will be field identified by DOT Maintenance Environmental Staff in consultation with the DOT Regional Spray Crew Supervisor (and will be subject to review with Agency staff) to insure that the 5 foot no-herbicide spray areas are maintained. Within the 5-foot buffer areas, vegetation will be controlled by manual methods as needed.

After-spray monitoring will include visual inspection for damage to non-target areas. If adverse impact is found, DOT will determine way(s) to prevent reoccurrence.

9. Monitoring results and continued research on impacts and alternatives will be used to continue to update or amend the vegetative management plan, including consideration of integrated pest management principles, reduced quantity and frequency of herbicide applications, and use of developing alternative technologies for vegetation control.

CONDITIONS

1. All projects authorized by this General Permit shall be undertaken as described in the Guide Rail Vegetation Management Plan as Proposed and in compliance with the Conditions stated herein. Any change in the herbicide product, method of application, rate of application, or width of treatment zones, as well as any other changes to the Guide Rail Vegetation Management Plan, shall require consultation with Agency staff, and may require permit amendment.
2. No project authorized by this General Permit may be undertaken until this General Permit has been recorded in the Office of the County Clerk for the counties of Clinton, Essex, Franklin, Fulton, Hamilton, Herkimer, Lewis, Oneida, St. Lawrence, Saratoga, Warren, and Washington.
3. This General Permit is binding on the DOT and all contractors or other New York State agencies undertaking all or a portion of any project authorized by this General Permit.
4. The Agency may conduct such on-site investigations, examinations, tests and evaluations as it deems necessary to ensure compliance with the terms and conditions hereof. Such activities shall take place at reasonable times and upon advance notice where possible. DOT shall arrange transportation for Agency staff to undertake such evaluations of the condition of vegetation along the highway corridor.
5. Pre-treatment reviews of highway corridors shall be conducted each year, to evaluate the need for and scope of treatments, to identify specific locations where spot herbicide treatments would be sufficient, and to apply integrated plant management practices to minimize the total volume and frequency of treatments.

Prior to any herbicide treatments, the DOT shall also evaluate 1) adjacent surface and ground water levels and 2) current and predicted weather conditions.

6. The herbicides described herein shall be applied in strict compliance with all the measures described herein, the Environmental Protection Agency and DEC approved product labels, and standard application practices according to DEC Commercially Certified Pesticide Applicator standards.
7. Records detailing all herbicide treatments authorized by this General Permit shall be timely prepared and maintained in accord with EPA and DEC requirements.
8. Following treatment each year and at the same time it is submitted to the DEC, the MEC shall submit to the Agency the annual applicator's report listing the location (by county, state highway number, and mile marker) of all guide rail herbicide applications conducted during the year and the name(s) of the herbicide(s) used in each maintenance project.

All observed non-target adverse impacts, spills or public complaints shall be investigated by DOT staff and described in the report. The report shall include an evaluation of the actions which caused any non-target impacts, the nature and degree of the impact, and measures to be implemented to correct or avoid reoccurrence.

The report shall include an update of research on alternative methods of vegetation control to reduce the total herbicides used, as well as any further research on the impacts of inerts and surfactants used in the products.

The report shall include information on any other items of interest encountered during that year's vegetation management activities, including observations and details of compliance with any terms and conditions of this General Permit.

9. If at any time the DOT or any other state agency or contractor suspects herbicide material is getting into any wetlands, stream or water body, treatment shall cease at once. Treatment shall not recommence unless and until the treatment problem is identified, the treatment method amended to correct the problem, and DOT environmental staff have determined that the amended treatment method will prevent any additional herbicide material to enter wetlands or any stream or water body. Materials for containing and absorbing any spills and field communication

equipment with appropriate phone numbers to immediately report any emergencies (DEC Spill Hotline 800-457-7362) shall be available on treatment vehicles at all times.

10. No disposal of equipment wash water or herbicide containers shall occur in the Adirondack Park.

FINDINGS OF FACT

1. Freshwater wetland covertypes potentially affected by activities involving the management of terrestrial invasive plant species include all those found in the NYS Freshwater Wetlands Act (ECL Article 24): wetland trees, wetland shrubs, emergent vegetation, rooted, floating-leaved vegetation, free-floating vegetation, wet meadow vegetation, bog mat vegetation, and submergent vegetation. These covertypes form the wetlands defined in Agency Rules and Regulations as deciduous swamp, coniferous swamp, shrub swamp, emergent marsh, deep water marsh, wet meadows and bog.
2. The wetlands potentially affected by use of herbicides along guide rail provide important benefits valued by society such as flood and storm control and abatement, wildlife habitat, surface and subsurface water resource protection, recreation, erosion control, education and scientific research, open space and aesthetics and nutrient cycling.
3. Implementation of the guide rail herbicide vegetation management program in accordance with the Conditions of this General Permit will not result in undue adverse impacts on Park resources, will not substantially impair the functions served by or the benefits derived from wetlands, and will provide economic and social benefits to the affected municipalities.
4. The non-target herbicide toxicity of the herbicides approved for use under this General Permit range from slightly toxic to practically nontoxic. Toxicological studies providing these results have been conducted with mammals, wildlife, birds, fish and invertebrates such as soil fungi and bacteria. Acute toxicological studies have measured toxicity from ingestion, inhalation, and skin and eye exposure. Chronic toxicological studies have looked at mutagenicity, teratogenicity (reproductive) and oncogenicity (tumors) effects.
5. None of the herbicides approved for use in this General Permit are "restricted use" herbicides. Restricted use herbicides are generally more potent and more toxic when compared to non-restricted use herbicides. Restricted use herbicides require a

pesticide applicators license to purchase and apply while non-restricted use herbicides are available to the public for purchase and use (similar to over-the-counter medicine).

6. Potential impact to both the environment and to wetlands and water bodies caused by the activities authorized herein will be minimized through the combination of low herbicide toxicity, medium to low herbicide mobility, and conservative application techniques, and proper handling and storage of the herbicides.
7. The success of this project depends on having:
 - o wetlands properly recognized;
 - o the availability of MEC and crew controls; and,
 - o following the Vegetation Management Plan.
8. The project as proposed and authorized herein will not cause any change in the quality of "registered," "eligible," or "inventoried" property as those terms are defined in 9 NYCRR §426.2 for the purpose of implementing §14.09 of the New York State Historic Preservation Act of 1980.

CONCLUSIONS OF LAW

The Agency has considered all statutory and regulatory criteria for project approval as set forth in Environmental Conservation Law §§ 24-0103 and 24-0105 and 9 NYCRR Part 578. The Agency hereby finds that this general permit is approvable and complies with the above criteria, provided it is undertaken in compliance with the conditions herein.

PERMIT issued this day
of , 2011.

ADIRONDACK PARK AGENCY

BY: _____
Richard E. Weber, III
Deputy Director, Regulatory Programs

STATE OF NEW YORK)
) ss.:
COUNTY OF ESSEX)

On the day of in the year 2011, before me, the undersigned, a Notary Public in and for said State, personally appeared Richard E. Weber, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

May 2011