

Adulticides Permit Processing in California

Philip Isorena, P.E.
Chief, NPDES Wastewater Program
Division of Water Quality, State Water Resources Control Board

California Weed Science Society
January 13, 2010

The State Water Resources Control Board (State Water Board) and Regional Water Quality Control Boards have the responsibility to preserve and enhance the quality of the State's waters through the development of water quality control plans and the issuance of waste discharge requirements (WDRs). WDRs for discharges to surface waters also serve as National Pollutant Discharge Elimination System (NPDES) permits.

The NPDES Permit Program controls water pollution by regulating point sources that discharge pollutants into waters of the United States. On March 12, 2001, the Ninth Circuit Court of Appeals held that discharges of pollutants from the use of pesticides in waters of the United States require coverage under an NPDES permit. [*Headwaters, Inc. v. Talent Irrigation District*, (9th Cir. 2001) 243 F.3d 526.] In response to the Talent decision, the State Water Board adopted Water Quality Order No. 2001-12-DWQ, Statewide General National Pollutant Discharge Elimination System (NPDES) Permit for Discharges of Aquatic Pesticides to Waters of the United States, on an emergency basis to provide immediate NPDES permit coverage for broad categories of aquatic pesticide use in California.

Order No. 2001-12-DWQ expired on January 31, 2004. In May 2004, it was replaced by two general permits: a vector control permit for larvacides and a weed control permit. The vector control permit does not cover spray applications of pesticides to control adult mosquitoes. The State Water Board found that these two permits were adopted consistent with the Ninth Circuit decision.

On November 20, 2006, USEPA adopted the Aquatic Pesticide Rule which codified that NPDES permits are not required for pesticide applications as long as the discharger follows FIFRA label instructions. Thereafter, both the pesticide industry and environmental groups filed lawsuits in 11 of the 13 Circuits, including the Ninth Circuit Court, challenging USEPA's Aquatic Pesticide Rule. The petitions for review were consolidated in the Sixth Circuit Court.

On January 7, 2009, the Sixth Circuit Court determined that USEPA's Aquatic Pesticide Rule is not a reasonable interpretation of the CWA and vacated the Final Rule. USEPA did not request reconsideration of the decision, but did file a motion for a two-year stay of the effect of the decision in order to give agencies time to develop, propose, and issue NPDES general permits for pesticide applications covered by the ruling. On June 8, 2009, the Sixth Circuit granted the motion, such that the USEPA Aquatic Pesticide Rule will remain in place until April 9, 2011.

In February 2009, State Water Board staff met with members of the Mosquito and Vector Control Association of California (MVCAC), which represents the vast majority of governmental mosquito control programs in the state. California Department of Pesticide Regulation (DPR) and California Department of Public Health (CDPH) representatives were also present at the meeting, the purpose of which was to discuss MVCAC's need for a mosquito adulticide permit as a result of the Sixth Circuit Court's ruling. In subsequent meetings, representatives of these groups, including State Water Board staff, formed a technical committee to facilitate drafting of the adulticide permit. Representatives of USEPA Headquarters and Region 9 joined the technical committee after its initial formation. Before the Sixth Circuit granted USEPA's motion for a stay, there was an urgency to expedite the permitting process. Thus, the technical committee agreed to screen adulticide products qualitatively using the following procedures:

1. Permit only the most commonly used adulticide products in California. CPDH and MVCAC provided staff with a list of 30 products;
2. Exclude from the permit all adulticide products that contain priority pollutants as active ingredients and inert ingredients because having priority pollutants would add more complicated requirements; and
3. Exclude products with inert ingredients that have water quality concerns.

On November 23, 2009, staff posted a preliminary draft permit on the State Water Board's website for comments, which are due by January 25, 2010. Staff anticipates taking a final draft for the State Water Board's consideration at its meeting in December 2010.