

The Ever Changing California NPDES Aquatic Pesticide Permit: What Now?

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Aquatic weed specialists working for drinking water, flood control, and irrigation interests manage algae and a variety of aquatic weeds including submersed, floating, emergent and riparian species. These weeds can create flow restrictions in irrigation canals and flood control structures and pose taste, odor and aesthetic problems in drinking water storage and conveyance facilities. Use of chemicals to control these weeds in surfacewater in California is limited to the following:

Active Ingredient	
2,4-D	Endothal
Triclopyr	Diquat
Glyphosate	Copper
Imazapyr	Acrolein
Sodium Peroxyhydrate	Non-Ionic Surfactants

In 2002, California began regulating the use of aquatic pesticides in virtually all waters in the state with a National Pollutant Discharge Elimination System (NPDES) permit. The history of the permit can generally be summarized as follows:

Year	Action	Permit Required?
1996	Talent Irrigation District Acrolein/Copper 90,000 juvenile steelhead dead	No
1998	Headwaters Suit; Alleged CWA Violation	No
2001	9th Circuit Court Decision Overturns Lower Court; CWA violation cited; NPDES Permit Required. Permit Required	Yes
2002	CA issues Emergency General Permit for Discharge of Aquatic Pesticides	Yes
2002	Forsgren Case: Permit Required	Yes
2004	New 5 year Permit Issued by CA	Yes
2005	Fairhurst Case: Permit NOT Required	No
2007	EPA states that Permit NOT Required	No
Jan 2009	6th Circuit Court: Permit Required	Yes
June 2009	6th Circuit Court: 2 Year "Stay" Granted = Permit NOT Required	No
Mar 2010	Supreme Court will not hear the case	Yes
Aug 2010	Congress introduces bill to overturn 6 th Circuit Court	Maybe
Apr 2011	EPA issues final aquatic pesticide permit	Yes

Four conditions are required for an NPDES permit. Discharge (1) of a pollutant (2) from a point source (3) to waters of the US (4). Application, or discharge, of a pesticide from a boom or nozzle can be considered a point source and can not reasonably be done without excess or residual pesticide entering the water. This excess residue is considered a pollutant for purposes of NPDES compliance. For all practical purposes, waters where these applications occur are either waters of the US or are tributary to waters of the US.

Currently, both California and EPA are drafting new aquatic pesticide permits. Although not certain, the following schedule is anticipated:

Date	Action
Jan 2010	California EPA SWRCB releases draft Vector Control Aquatic Pesticide Permit
Apr 2010	USEPA releases draft aquatic pesticide permit
Summer/Fall 2010	California EPA SWRCB releases draft Aquatic Pesticide Permit
Summer/Fall 2010	Potential Supreme Court Decision on the need for an NPDES permit
Apr 2011	USEPA Final aquatic pesticide permit complete

The content of either the USEPA or the California permit is not well understood at this time. However, the following content for each permit is anticipated:

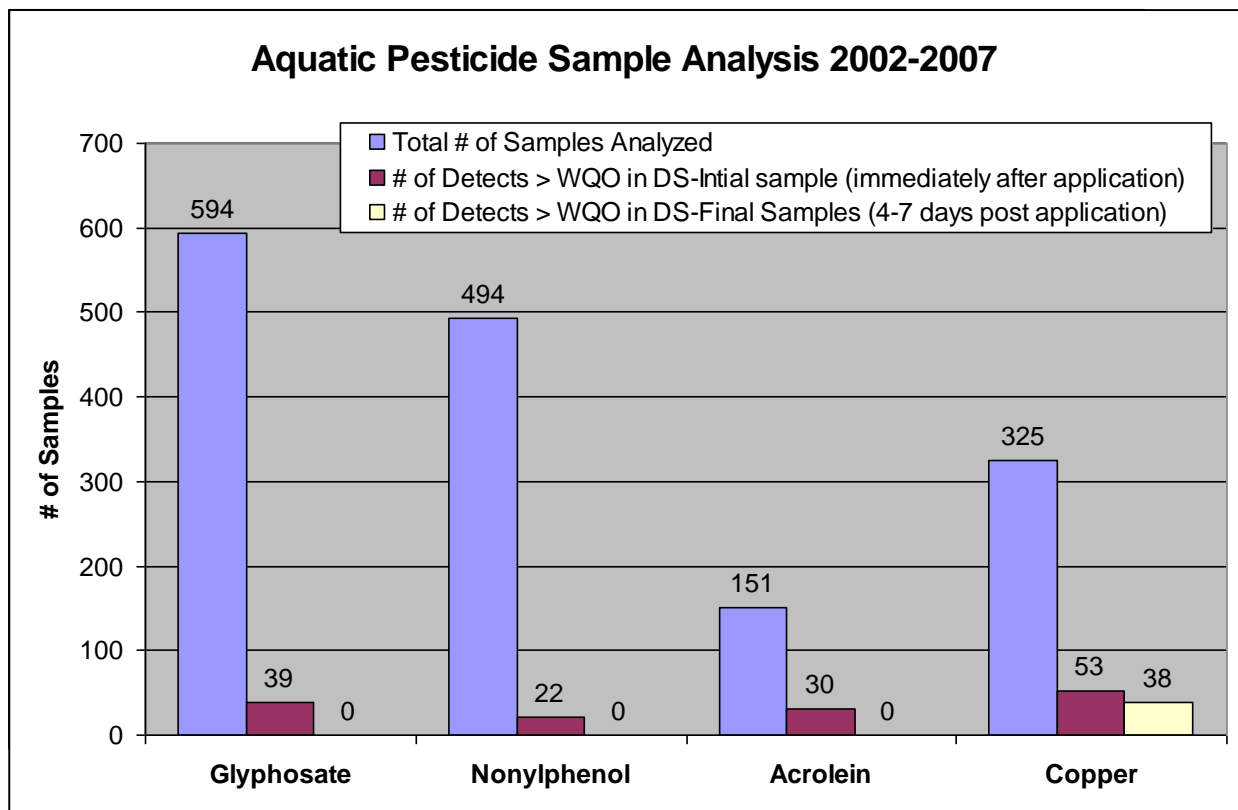
USEPA

- Restrictions on 303(d) listed water bodies
- Permit need may be “triggered” based on acreage/linear miles treated or amount used
- Applicators and dischargers need to file NOI

California

- vector control permit requires toxicity testing
- Group approach maybe reconsidered
- Past compliance data being considered

Past compliance data being considered by California regulators includes the following data gathered from 2002-2007 from irrigation and flood control districts located on Central and Northern California. This data maybe used to evaluate the necessity and frequency of sampling in the new permit.



The current status of both the USEPA and California permits are in flux. Although expired, the existing California permit is still available for use and may provide permittees coverage against Clean Water Act citizen lawsuits. Accordingly, it is recommended that organizations in California that are applying pesticides to waters of the US maintain their existing permit or obtain one.

For more information and to track the progress of both permits, refer to the following:

- California Aquatic Pesticide Permit (“Weed Permit”)
 - http://www.waterboards.ca.gov/water_issues/programs/npdes/aquatic.shtml
- Goby 11 Injunction
 - <http://www.epa.gov/oppfead1/endanger/litstatus/factsheet.html>
 - <http://www.epa.gov/oppfead1/endanger/litstatus/use-limitation.html>
- Red-Legged Frog Injunction
 - http://www.cdpr.ca.gov/docs/endspec/rl_frog/index.htm
 - <http://www.epa.gov/espp/litstatus/redleg-frog/rlf.htm>
- Salmonid Injunction
 - <http://www.epa.gov/espp/litstatus/wtc/maps.htm>
- USEPA NPDES Aquatic Pesticide Permit
 - http://cfpub.epa.gov/npdes/home.cfm?program_id=410

Additional important information related to the use of aquatic pesticides is associated with endangered species:

In October 2006, the USEPA agreed to a stipulated injunction to restrict the use of 66 pesticides near red legged designated habitat. Of these 66 pesticides, the following 4 are aquatic pesticides: 2,4-D, Glyphosate, Triclopyr, and Impazapyr. Approximately 40,000 acres in 33 California counties are potentially affected. Exceptions include public health vector control and invasive species and noxious weeds.

In 2009, the U.S. EPA was sued by the Center for Biological Diversity regarding the failure of EPA to properly consult with federal fish and wildlife agencies during the registration process for 74 pesticides regarding potential impacts to endangered species. The three aquatic pesticides in the group of 74 are 2,4-D, Acrolein and Diquat. The suit involves the following 11 species: Tiger salamander, San Joaquin Kit Fox, Alameda Whip Snake, San Francisco Garter Snake, Salt Marsh Harvest Mouse, Clapper Rail, Freshwater Shrimp, Bay Checkerspot Butterfly, Valley Elderberry Longhorn Beetle, Tidewater Goby and the Delta Smelt.