



# Blankinship & Associates

Agricultural & Environmental Scientists & Engineers

## March Madness 2011: Aquatic Pesticide Permit Update

### In California...

- On **Tuesday, March 1**, the SWRCB adopted NPDES permits for **aquatic animal** invasive species, **vectors** and large area **pesticide spray** applications.
- Drafts of these permits called for toxicity testing using test animal such as the Ceriodaphnia (pictured at right at ~100x magnification).



*Ceriodaphnia (water flea)*

- However, the Board decided **not to include toxicity testing** for the time being and allocated **\$500,000** from its Cleanup and Abatement fund to study the toxicity issue.
- **SWRCB SWAMP staff**, working with **UC Davis**, is charged with developing and implementing a study to evaluate whether the aquatic pesticides covered by the three permits contribute to toxicity.
- The study will conclude **by December 31, 2012**.
- If the study reveals toxicity related to aquatic pesticides, the Board may revisit the toxicity testing requirement in each permit.
- **Our View:** The Board acted wisely in not adopting a poorly conceived permit requirement without first demonstrating that toxicity testing can in fact address the **"No toxics in toxic amounts"** basin plan requirement. Part of the issue is the fact that **"inert"** or **inactive ingredients** are in some cases hard to identify and characterize as to their contribution, if any, to toxicity. The devil will be in the details as this toxicity study gets underway. Stay tuned.

### Federal Update 1



- On **Wednesday, March 2**, H.R. 872 was introduced by Bob Gibbs (R-OH) in the House of Representatives.

- In a nutshell, the bill is an effort **to reverse the 6th Circuit's decision** in the

National Cotton Council case, which resulted in the requirement that the USEPA develop a NPDES aquatic pesticide permit.

- The bill would establish that **FIFRA and FIFRA alone** (i.e., "read the label") meets all regulatory requirements for pesticide applications, including those to, over and near water of the US.
- **Our View:** This bill rightly addresses regulatory redundancy, but **runs counter** to the February 2010 Supreme Court decision not to review the 6<sup>th</sup> Circuit Court's decision requiring an NPDES permit. Whether adequate votes in the Senate exist to support this bill is unknown.



### Federal Update 2

\* On **Thursday, March 3**, USEPA announced that it will petition the 6<sup>th</sup> Circuit Court for a 6 month extension to allow more time for pesticide operators to obtain permits.

\* This changes the deadline from April 9 to October 31, 2011.

\* According to the USEPA, during the period while the court is considering the extension request, NPDES permits for pesticide applications will not be required under the Clean Water Act.

\* **Our View:** Simply put: **Uncertainty**. What impact this extension, if granted, may have in California and the ability to obtain permit coverage to **defend against CWA citizen law suits is unclear**. Our bet: **keep and use the permit** until more is known.

### Need Help?

To learn more about how we can assist you with aquatic pesticide permit compliance across the country, visit:

[our website](#), simply "reply" to this email, or contact:

- Stephen Burkholder  
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