

**California Weed Science Society
Annual Conference
Visalia, CA
January 12, 2010**

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Society
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*Navigating
California's
NPDES Permit
for Aquatic
Pesticides:
Changes Ahead*

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Today's Talk



- Background & History
- Where Are We?
 - Today
 - Tomorrow
- What You Should Do

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Types of Aquatic Weeds

- Emergent
- Riparian
- Floating
- Submersed
- Algae



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Chemical Control

- Only 10 registered for Use in CA



Chemicals
Triclopyr
Diquat Dibromide
Glyphosate
Fluridone
Na ₂ CO ₃ Peroxyhydrate
Non-Ionic Surfactants
2,4-D
Imazapyr
Endothall
Acrolein *
Copper *

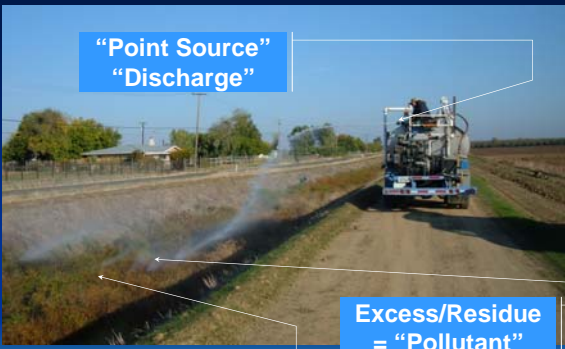
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NPDES Aquatic Pesticide Permit You Need One if....

- You “discharge” a “pollutant” to “Waters of U.S.”
- Your chemical leaves a “residue” greater than its WQO or “Produces Unintended Effects”
- Perceived CWA Violations and Subsequent Citizen Lawsuits Concern You



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“Point Source”
“Discharge”

“Waters of the US”

Excess/Residue = “Pollutant”

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“Waters of the U.S.”



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“Water Quality Objectives”



Chemical	WQO (ug/L)
Triclopyr	N/A, monitoring required
Diquat Dibromide	20
Glyphosate	700
Fluridone	560
Na ₂ CO ₃ Peroxyhydrate	Pending
Non-Ionic Surfactant (nonylphenol)	6.6
2,4-D	70
Imazapyr	N/A, monitoring required
Endothall	100
Acrolein *	320
Copper *	3-52 (Hardness Dependent)

* Requires SIP Exception

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History

- **1996:** Talent Irrigation District – Acrolein/Copper – 90,000 juvenile steelhead dead
- **1998:** Headwaters Suit – Alleged CWA Violation
- **2001:** 9th Circuit Court Decision – Overturns Lower Court – CWA violation cited – NPDES **Permit Required**



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History (con't)

- **2002:** CA issues Emergency General Permit for Discharge of Aquatic Pesticides
- **2002:** Forsgren Case: **Permit Required**
- **2004:** New 5 year Permit Issued by CA
- **2005:** Fairhurst Case: **Permit NOT Required**
- **2007:** EPA: **Permit NOT Required**
- **Jan 2009:** 6th Circuit Court: **Permit Required**
- **June 2009:** 6th Circuit Court: 2 Year “Stay” Granted = **Permit NOT Required**



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About as clear as....



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The Future

- **Jan 2010:** Draft CA Vector Control Permit Out
- **Jan 2010:** CA meets USEPA: Who Takes the Lead?
- **Apr 2010:** Draft USEPA Permit Out
- **Summer/Fall 2010:** Draft CA Aquatic Weed Permit Out
- **Summer/Fall 2010:** Pending Supreme Court Hearing: Is This What Congress Intended the CWA To Be?
- **Apr 2011:** USEPA Permit Ready

■ **Outcome Unknown**

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What We Do Know

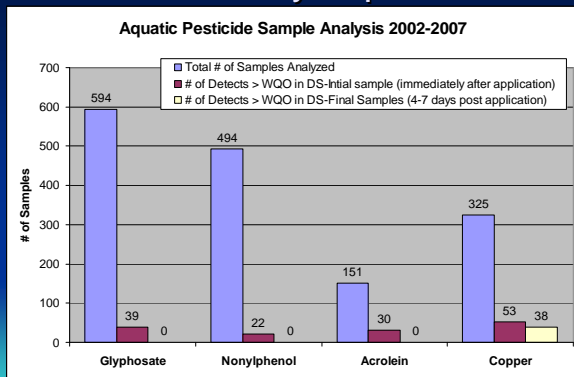
- USEPA
 - Restrictions on 303(d) listed water bodies
 - Permit need may be “triggered” based on acreage/linear miles treated or amount used
 - Applicators and Dischargers need to file NOI
- California
 - Vector Control Permit Requires Toxicity Testing
 - Group Approach Reconsidered
 - Permit Data being considered



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Water Quality Impact Data



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What Do You Do Now?

- EPA’s 2007 Decision: “No Permit Needed” “stays” until final EPA Permit ready in April 2011 (i.e.: No permit Needed)
- But...
 - CWA Citizen Law Suit Still an Option
 - CA is within 9th Circuit Court
 - The Future is Uncertain
- **So, Keep your permit**
- **And Stay Informed**

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Stay Informed



- California
 - SWRCB:
http://www.waterboards.ca.gov/water_issues/programs/npdes/aquatic.shtml
 - Join the SWRCB "aquatic weed control" list serve:
http://www.waterboards.ca.gov/resources/email_subscriptions/swrcb_subscribe.shtml
- USEPA
http://cfpub.epa.gov/npdes/home.cfm?program_id=41#water_transfer
and
<http://www.epa.gov/oppfead1/cb/ppdc/2009/october/session-1.pdf>

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Additional Regulatory Constraints

- 2006 Red Legged Frog
- 2009 Goby 11

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Red Legged Frog

- Oct 2006: Stipulated Injunction
- 66 pesticides restricted within designated habitat
- 4 aquatic pesticides on list:
 - Imazapyr
 - 2,4-D
 - Glyphosate
 - Triclopyr
- ~40K Ac & 33 Counties



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RLF Habitat Restrictions

- No applications
 - Ground: < 60' of habitat
 - Aerial: < 200' of habitat
 - Spot treatment >15' away OK
- Exceptions:
 - Public Health Vector Control
 - Invasive Species & Noxious Weeds



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“Goby 11”

- ESA Failure Alleged by CBD
- 11 Species
- 74 Pesticides
- 8 Counties



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“Goby 11”

**• 3 Aquatic
Pesticides**

- 2,4-D
- Acrolein
- Diquat

• 11 Species

- Tiger salamander
- SJ Kit Fox
- Alameda Whip Snake
- SF Garter Snake
- Salt Marsh Harvest Mouse
- CA Clapper Rail
- CA Freshwater Shrimp
- Bay Checkerspot Butterfly
- VELB
- Tidewater Goby
- Delta Smelt

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