

California Weed Science Society
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California
Weed Science
Society
Annual Conference

Monterey, CA
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The Ever-
changing
NPDES Aquatic
Pesticide
Permit: What
Now?

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Today's Talk



- What is NPDES?
- Do I Need an NPDES Permit?
- The California and Nationwide Aquatic Pesticide NPDES Permits
- Injunction Dysfunction
- What Now?

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What is NPDES?

- National Pollutant Discharge Elimination System
- Part of the Federal Clean Water Act
- Typical Uses: stormwater, construction, industrial discharges
- Benefits:
 - Protect water quality
 - Allows discharge
 - Provides legal protection



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Recent History

- 2002: CA issues Emergency General Permit for Discharge of Aquatic Pesticides [Permit Required](#)
- 2002: Forsgren Case: [Permit Required](#)
- 2004: New 5 year Permit Issued by CA [Permit Required](#)
- 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](#)
- Mar 2010: Supreme Court Will Not Consider the Case [Permit Required](#)
- Aug 2010: House & Senate introduce bill to overturn NPDES permits for pesticides and rely on FIFRA [Permit Required](#)
- Apr 2011: [Permit Required](#)



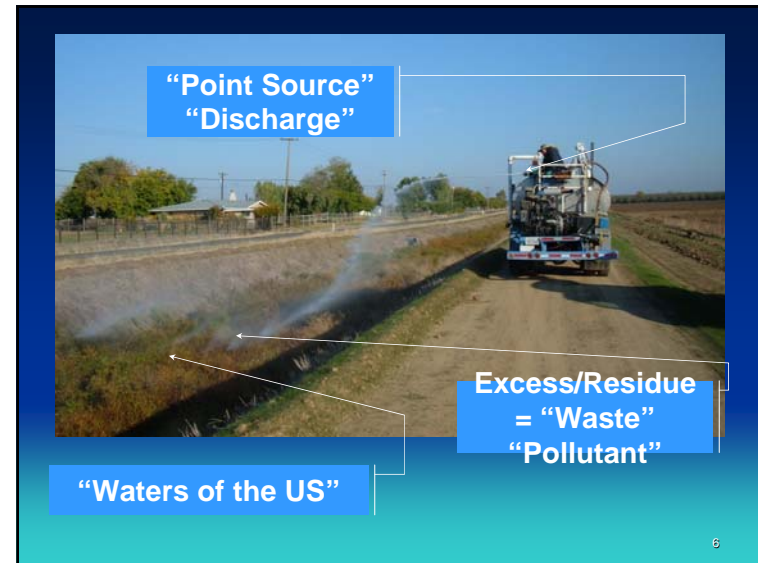
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Do I Need an NPDES Permit?

- You “discharge” a “pollutant” to “Waters of U.S.”
- Your pesticide application leaves a “residue”
- Your applications are to, over or near water
- Perceived CWA Violations and Subsequent Citizen Lawsuits Concern You



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Waters of the US “WOUS”

- All interstate waters and wetlands currently, formally or potentially used in interstate commerce;
- All other waters, including intrastate waters the use, degradation or destruction of which could affect interstate or foreign commerce
- Waters which are or could be used:
 - by interstate or foreign travelers for recreational or other purposes;
 - for industrial purposes by industries in interstate commerce
 - to take fish or shellfish and sold in interstate or foreign commerce; or

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“Waters of the US”

- Adjacent Wetlands and Ponds
- Tributaries
- Seasonally intermittent streams ultimately emptying into a WOUS

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“Waters of the US”

Excludes:

- Pre-1985 converted cropland
- Waste treatment ponds
- Artificial lakes/ponds created by excavating/diking dry land to collect/retain water used exclusively for stock watering, irrigation, settling basins, or rice growing
- Above the “ordinary high water mark”

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“Waters of the US”

- All **INTER**state waters and wetlands currently, formally or potentially used in interstate commerce;
- **Example: Klamath, Truckee & Colorado Rivers**
- All other waters, including **INTRA**state waters the use, degradation or destruction of which **COULD** affect interstate or foreign commerce including waters.
- Waters which are or **COULD** be used:
 - by interstate or foreign travelers for recreational or other purposes;
 - for industrial purposes by industries in interstate commerce
 - to take fish or shellfish and sold in interstate or foreign commerce; or
- **Example: The Delta**
- **TRIBUTARIES to WQUS**
- **Seasonally intermittent streams that ultimately empty into a WQUS**
- **Ponds adjacent to WQUS**
- **Example ...**

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“Waters of the U.S.”



Ask: Could I Be Conected?”

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The Existing Ca Aquatic Pesticide Permit

- Still In Effect and Usable
- Submit Notice of Intent (NOI)
- Prepare and Execute an Aquatic Pesticide Application Plan (APAP)
- Report Annually



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Aquatic Pesticide Application Plan (APAP):

- Prepare Quality Assurance Plan
- Describe weeds, water body, tolerances
- Document all applications
- Sample 10 % of all applications
- Evaluate BMP effectiveness
- List Gates/Control Structures
- Get Local RWQCB Approval

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“California 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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The Draft EPA Permit

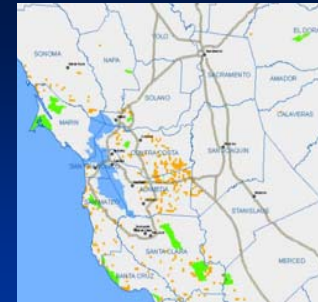
- Likely will not apply in CA (We are currently more stringent)
- However, California mimics the EPA permit:
 - 4 distinct “scenarios”
 - April 2011 deadline



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Injunction Dysfunction

- Salmon/Steelhead
- Red-legged Frog
- Goby 11
- Bottomline:
 - Buffer Zones
 - Exceptions for Invasive & Noxious Species Control



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What Now?

The Four "New" CA Aquatic Pesticide Permits

- SWRCB have prepared 3 Aquatic Pesticide Permits
 - Vectors
 - Invasive Animals
 - Aerial Applications
 - Aquatic Weeds




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What Now?

Three of California's Aquatic Pesticide Permits

- Feb 15, 2011
 - First 3 permits proposed for adoption
 - Key Elements:
 - Toxicity testing ?
 - Group or Watershed Monitoring ?
 - ?



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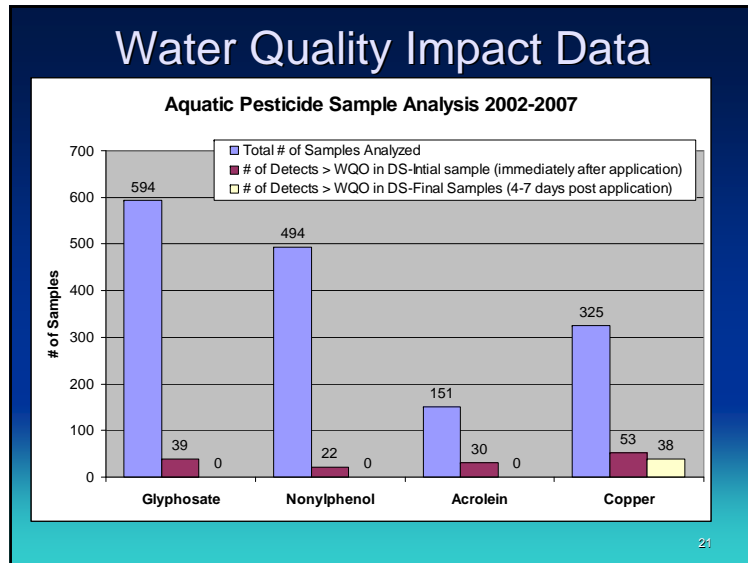
What Now?

The California's Aquatic Weed Permit: 2011

- Potential Schedule:
 - Mar 15: Public Release
 - Apr 15: Public Hearing
 - June 21: Propose for Adoption
- Key Elements:
 - Toxicity testing ?
 - Group or Watershed Monitoring ?
 - ?



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The Future: Stay Informed



- 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/rif.htm>
- Salmonid Injunction
 - <http://www.epa.gov/espp/litstatus/wtc/maps.htm>

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More Information

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