

AMPS
Salt Lake City, UT
July 23, 2012

**The California &
 Nationwide Aquatic
 NPDES Permit: Déjà
 vu All Over Again?**

APMS
 Salt Lake City, UT
 July 23, 2012

Mike Blankinship
 Blankinship & Associates Inc.
 Agricultural & Environmental Consultants



Today's Talk



- The Problem
- The CA and Federal Solutions
- It's Not Over Until It's Over

2

What's the Problem?



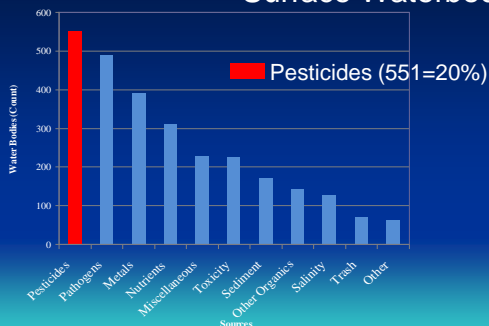
3

What's the Problem?

- People don't like pesticides
- People really don't like pesticides in their water
- Risk = Toxicity, right?
- 1996 Talent Irrigation District
 - leaking gate releases acrolein-treated water; 92K steelhead die
- On-going Clean Water Act 303(d) List

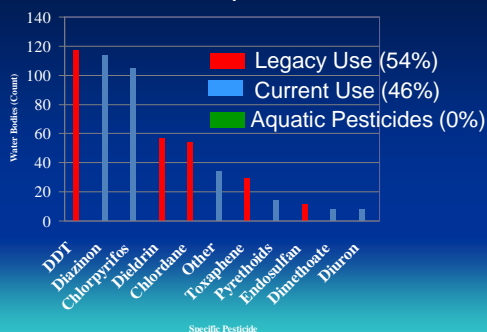


2010: California's 2,819 Impaired Surface Waterbodies



5

2010: California's 551 Pesticide-Impaired Water Bodies



6



Blankinship & Associates, Inc.
 Agricultural & Environmental Consultants

AMPS
Salt Lake City, UT
July 23, 2012

What's a Solution? NPDES

- **N**ational **P**ollutant **D**ischarge **E**limination **S**ystem
- Part of the Federal Clean Water Act
- Typical Uses: stormwater, construction, industrial discharges
- Benefits:
 - Protect water quality
 - Allows discharge
 - Provides legal protection



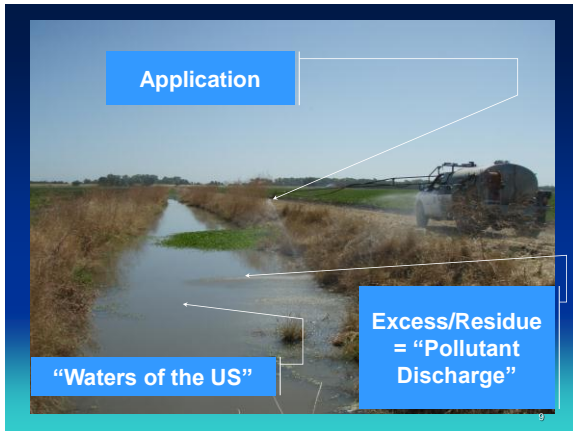
7

Do I Need an NPDES Permit?

- Your pesticide application leaves a "residue"
- You "discharge" the residue "pollutant" to "Waters of U.S."
- The residue is present >7 days in the treatment area
- Perceived CWA Violations and Subsequent Citizen Lawsuits Concern You



8



9

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

10

"Waters of the US"

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

11

"Waters of the US"

Excludes:

- Pre-1985 converted cropland
- Waste treatment ponds
- Artificial lakes/ponds used for stock watering, irrigation, settling basins, or rice growing
- Above the "ordinary high water mark"

12



Remember

- No NPDES permit is needed for terrestrial applications



13

“Waters of the US”

Yes or No?

14



15



17

Ordinary High Water Mark

- “...that line on the shore established by the fluctuations of water and **indicated by physical characteristics** such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.”

Source: 33 CFR 328.3(e)

18



AMPS
Salt Lake City, UT
July 23, 2012

**The EPA
Pesticide General Permit (PGP)**

- Does not apply in CA
- NOI was due Jan 12, 2012
- State-specific Rules Exist
- Consistency with AK, ID, NH, MA, NH, NM
- 80 acre or 20 linear mile threshold for NOI
- But, Weed Control and Irrigation Districts must submit an NOI



19

**The Ca NPDES Aquatic Pesticide
Weed Permit**

- Submit Notice of Intent (NOI)
- Prepare and Execute an Aquatic Pesticide Application Plan (APAP)
- APAP requires sampling & analysis
- Report Annually



California v. the EPA PGP

- California's Differences:
 - Regional Approach Required:
 - “Similar pesticides and application methods”
 - “Representative projects”
 - glyphosate 1 event/year*
 - 6 events in a row and done*



21

**The Future: Stay
Informed**

- California Aquatic Pesticide Permit (“Weed Permit”)
 - http://www.waterboards.ca.gov/water_issues/programs/npdes/aquatic.shtml
- The Reducing Regulatory Burdens Act (HR 872) as a Farm Bill Amendment



22

Today's Talk

- Rules
- Tools
- Questions



Mike Blankinship
(530) 757-0941
mike@h2osci.com

23



Blankinship & Associates, Inc.
Agricultural & Environmental Consultants