

**UC Davis Aquatic Weed School  
September 5, 2012**

**UC Davis  
Aquatic Weed  
School**

Wednesday  
September 5, 2012

**California's  
NPDES Permit  
for Aquatic  
Pesticides**

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**Today's Talk**

- Rules
- Tools for Following the Rules
- Questions



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**Some Rules You May Know:**

- **General Rules:**
  - Never lick a steak knife
- **Rules of Probability:**
  - The probability of being watched is directly proportional to the stupidity of your act.
- **Meeting Rules:**
  - "It is better to be thought a fool than to open one's mouth and remove all doubt." (Benjamin Franklin)

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**Why Have Rules?**

**Because there is  
a Problem**



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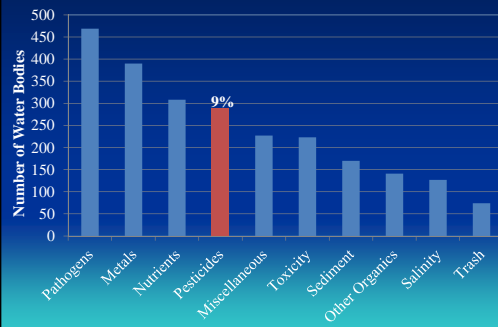
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### What's the Problem?

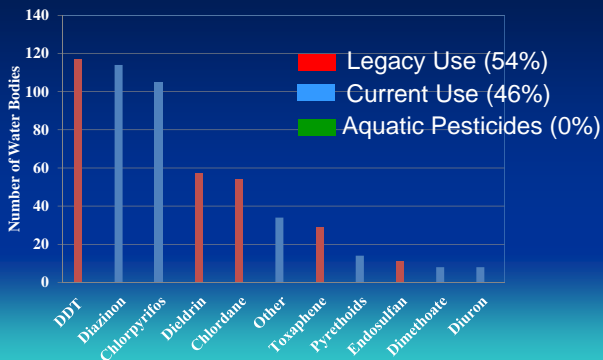
- People don't like pesticides
- People really don't like pesticides in their water
- Risk = Toxicity, right?
- 1996 Talent Irrigation District
  - leaking gate releases acrolein-treated water; 92K steelhead die
- On-going Clean Water Act 303(d) List



### 2010 303(d) List: California's 2,496 Impaired Surface Waterbodies



### 2010: California's Number of Pesticide-Specific Impaired Water Bodies



### 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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### Who Uses NPDES?

- Everyone. No Exceptions
- 45 States Manage NPDES themselves
- 5 States Do Not: ID, AK, NM, MA, VT and NH
- Others Do Not, too: D.C., US Territories, Tribal Lands and Federal Facilities
- California's Permit in place since 2001

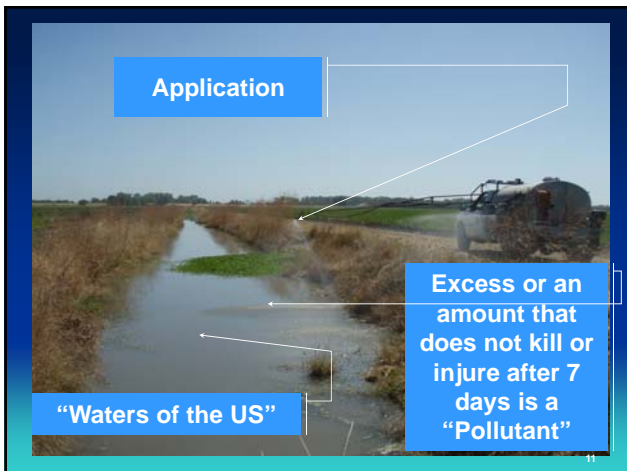
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### How Do I Know if I Need an NPDES Permit?

- 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”**

**Yes or No?**

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## 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)

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## **The EPA Permit**

- Does not apply in CA



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**“Current” California Permit Requirements**

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



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**Chemical Control**

- Currently only 12 registered for Use in CA



Triclopyr TEA
Diquat Dibromide
Penoxsulam
Glyphosate
Fluridone
Na <sub>2</sub> CO <sub>3</sub> Peroxyhydrate
Non-Ionic Surfactants
2,4-D
Imazapyr
Endothall
Acrolein *
Copper *

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**Who Enforces this ?**

- **Unlikely:**
  - SWRCB
  - RWQCB
  - Ag Commissioner
  - CDFG
- **Likely:**
  - Environmental Advocacy Groups



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**What Now?**

*The California's Aquatic Weed Permit: 2012*

- Key Potential Revisions:
  - 3 samples/application (used to be 4)
  - Glyphosate testing reduced to 1x/yr (Used to be unlimited)
  - Sample 6 in row with <WQO, then 1x/yr thereafter
  - Group or Watershed Monitoring



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## What Now?

*The California's Aquatic Weed Permit: 2012*

- Adoption Hearing on November 6, 2012
- Revised APAP needed
- No CEQA "redo" for Copper and acrolein



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## Can You Answer These Questions:



- What's the Problem?
- Do I Need an NPDES Permit?
- Will the EPA Permit Mean Anything in CA?
- Could the cost of compliance be less the next 5 years?
- Will the Panda lead the Giants past the Padres for the NL West title?
- Could Joe DiTomaso beat Lars Anderson in arm wrestling?

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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](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.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/sal/mars.htm>

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## Breaking News: New Aquatic Weed Tool Available & Requires No Permit Introducing: Aqua-Cow<sup>™</sup>



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**More Information**

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