



California Regional Water Quality Control Board

Lahontan Region



Linda S. Adams
Secretary for
Environmental Protection

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Arnold Schwarzenegger
Governor

MEMORANDUM

TO: Jeanine Townsend
Clerk to the Board
State Water Resources Control Board

FROM:

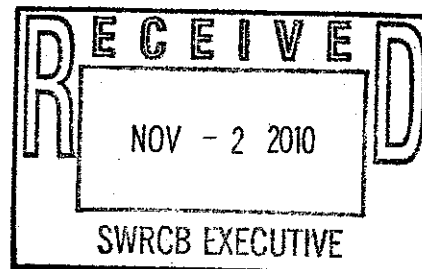

Lauri Kemper

Assistant Executive Officer

LAHONTAN REGIONAL WATER QUALITY CONTROL BOARD

DATE: November 2, 2010

SUBJECT: **COMMENTS ON THE DRAFT VECTOR CONTROL PERMIT**



Thank you for the opportunity to comment on the draft NPDES General Permit for Residual Pesticide Discharges to Waters of the United States from Vector Control Applications (Vector Control Permit).

1. Previously, staff from the Lahontan Water Board commented on the draft permit in a memorandum dated August 19, 2010 (see enclosure). At that time the language contained in the draft Vector Control Permit allowed the Regional Water Boards to have more upfront review and oversight of the pesticide application project.

For example, Section II.C. – General Permit Application specified that permit coverage will be effective when (1) a the Discharger submitted a complete application, (2) the pesticide application plan (PAP) has been approved by the **Regional Water Board Executive Officer**, and (3) the **Regional Water Board Executive Officer** has issued a notice of Applicability (NOA). (Emphasis added.)

Similarly, Section IX.B. – Monitoring and Reporting Program Requirements provided the **Regional Water Board Executive Officer** the ability to add monitoring and reporting requirements to the PAP as well as allow reductions in monitoring frequencies if appropriate.

The language in Sections II.C. and IX.B. contained in the latest draft of the Vector Control Permit has been modified from the earlier version we commented on and now states that it is the responsibility of the **State Water Board Deputy Director of the Division of Water Quality** to (1) accept the PAP, (2) issue the NOA, (3) add monitoring and reporting requirements, and (4) reduce monitoring frequencies.

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(Emphasis added.) We understand that staff from both the State and Regional Water Board will review the application for completeness and applicability for coverage under the Vector Control Permit. It is, however, important that Regional Board staff be involved in the review of NOIs and in issuing NOAs. The proposed changes will allow Regional Board staff to track use of pesticides in their region and will enable Regional Boards to impose additional permit conditions as warranted by regional policy or specific water body conditions.

2. Section II.C of the earlier version of the draft Vector Control Permit read:

“... 3. The Regional Water Board Executive Officer has issued a Notice of Applicability (NOA). The NOA will specify the types(s) of pesticides that may be used and any **Region-specific conditions and requirements** not stated in this General Permit. Any such **Region-specific conditions and requirements** shall be enforceable. The Discharger is authorized to discharge starting on the date of the NOA.” (Emphasis added.)

We request that the words “Region-specific” be returned to sentences two and three of this section. Adding this language makes it clear to the Discharger that additional requirements beyond those specified in the Vector Control Permit may be added to the NOA to further protect the water quality from the proposed aquatic pesticide discharge. Adding this language may also prompt more direct consultation with the Regional Board prior to submitting the Notice of Intent.

3. Similar to our previous comment provided on August 19, 2010, we request the following language be inserted directly after the third sentence in requirement no. 3 of Section II.C.

In addition to issuing an NOA, some Regional Water Boards may have to grant a prohibition exemption to allow discharges of aquatic pesticides to surface waters for purposes of vector control. The discharger will need to apply for the exemption and the prohibition exemption will be included in the NOA.

Region 6 staff also provided comments on the draft NPDES permit for pesticides use for animal aquatic invasive species (AIS) on September 14, 2010 (enclosed). The need for tracking of aquatic pesticide projects by Regional Board staff is important, no matter the permit coverage. Please apply the comments within this letter to the draft NPDES permit for pesticide use for AIS for which there is a public hearing today, November 2, 2010.

Thank you for considering these comments. Please contact me at (530) 542-5436 or lkemper@waterboards.ca.gov or Mary Fiore-Wagner at mfwagner@waterboards.ca.gov with any questions or points of clarification.

resources on responding rapidly while complying with the pre-, event, and post-application monitoring requirements.

4. In effect, the Lahontan Water Board's existing pesticide water quality objective prohibits application of pesticides to surface waters for all purposes including those necessary for the protection of public health and safety and ecological integrity. (A conditional exception of rotenone use by the Department of Fish Game may be allowed.) The Lahontan Water Board is currently proposing to amend its Basin Plan by removing the existing regionwide pesticide water quality objective and replacing that objective with a regionwide waste discharge prohibition for pesticide application to water coupled with exemption criteria. The proposed amendment would provide the Lahontan Water Board with the discretion to approve eligible aquatic pesticide applications which would be regulated under Waste Discharge Requirements or National Pollution Discharge Elimination System (NPDES) permits, either individual or general (e.g. the Statewide NPDES General Permit for Residual Pesticide Discharges to Waters of the U.S from Aquatic Animal Invasive Species Control Applications).

Provided the proposed amendment is adopted and a prohibition exemption is subsequently granted to allow a proposed discharge of aquatic pesticides to surface waters, this General Permit may be used to regulate discharges of aquatic pesticides used to control aquatic animal invasive species identified in the California Aquatic Invasive Species Management Plan or other more region-specific management plan (e.g. Lake Tahoe Region Aquatic Invasive Species Management Plan.)

The language in section II.C. - General Permit Application specifies that permit coverage will be effective when,

- “... 3. The Regional Water Board Executive Officer has issued a Notice of Applicability (NOA). The NOA will specify the types(s) of pesticides that may be used and any Region-specific conditions and requirements not stated in this General Permit. Any such Region-specific conditions and requirements shall be enforceable. The Discharger is authorized to discharge starting on the date of the NOA.”

We request the following language be inserted directly after the third sentence in requirement no. 3.

In addition to issuing an NOA, some Regional Water Boards may have to grant a prohibition exemption to allow discharges of residual pesticides to surface waters from aquatic animal invasive species control applications. The prohibition exemption will be included in the NOA.

5. The language in section II.C. - General Permit Application specifies that permit coverage will be effective when,

- "2. The PAP has been approved by the Regional Water Board Executive Officer;

Region 6 supports this requirement, but requests the word "approved" be replaced with "accepted" in requirement no. 2. Though the difference between these words appears to be subtle, we believe that it is legally significant. If the word "approved" is used we are concerned with the potential for liability that we may assume. This wording also appears in Attachment D – Fact Sheet, Section II.A.

6. Section III.A.5. Please include the Regional Boards in the acknowledgements.
7. Section VI.H. Aquatic Communities. The current language reads, "Aquatic communities and populations, including vertebrates, invertebrates, and plant species to be degraded." The definition of these terms should be expanded for the intent to explicitly cover native species. Invasive species, unfortunately, may be considered part of the aquatic communities and populations and the specific intent of the actions authorized by this permit is to kill or degrade these species. Additionally, some aquatic invasive species alter the native ecology, but at the same time coexist with some native species rather than wholly supplanting native communities. The goal of a project to control an invasive species may inadvertently degrade native populations in hopes of restoring the native assemblage of the aquatic communities.
8. Section VIII.A.2. Sub element 1) of this paragraph states that the General Permit is not applicable for Outstanding National Resource Waters. The Lahontan Region holds California's two ONRWs. Lake Tahoe is an ONRW currently struggling with existing and the threatened introduction of invasive species that could be addressed with authorizations of this permit. Staff recommends that this section is altered so that the Lahontan Regional Board may approve discharges of aquatic pesticides if the project includes a separate antidegradation analysis that finds the discharge will be consistent with state and federal antidegradation policies.
9. Section VIII.A. 7. The reference to Section VIII.C.10 is a typo. That section does not exist in this permit. I think the writers meant Section VII.C.12. Additionally; this provision requires the Discharger to implement identified alternatives that could reduce potential water quality impacts. This does not allow for the possibility that the alternatives examined are ineffective and can be dismissed after analysis in preference for discharge.
10. Section VIII.C.2.b.ii. This references "Section C.3.a above." Such a section does not exist "above," so it is unclear what information requirements are referenced.



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Arnold Schwarzenegger
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MEMORANDUM

TO: Sarah Ong
Water Resource Control Engineer
Regulatory Section – NPDES Unit
Division of Water Quality
State Water Resources Control Board

FROM: 
Mary Fiore-Wagner, Dan Sussman ← for
Environmental Scientists
LAHONTAN REGIONAL WATER QUALITY CONTROL BOARD

DATE: September 14, 2010

SUBJECT: STAFF COMMENTS ON DRAFT NPDES GENERAL PERMIT FOR
RESIDUAL PESTICIDE DISCHARGES TO WATERS FOR AQUATIC
ANIMAL INVASIVE SPECIES CONTROL APPLICATIONS

Thank you for the opportunity to comment on the draft NPDES General Permit for Residual Pesticide Discharges to Waters of the United States for Aquatic Animal Invasive Species Control Applications (General Permit). The proposed General Permit covers point source discharges of sodium hypochlorite based pesticides that are applied to surface waters to control aquatic invasive animals (e.g. New Zealand mudsnails, Asian clams, Zebra Mussels). The General Permit does not cover the use of rotenone.

Below you will find our comments.

1. Section II. A. – General Permit Coverage indicates that the General Permit covers direct applications for aquatic animal invasive species control. Staff of the Lahontan Regional Water Quality Control Board (Lahontan Water Board) recommend that the General Permit include a definition of invasive species so that the number of pesticide applications eligible for coverage under the General Permit is limited to only those necessary to control species that establish and reproduce rapidly outside of their native range and have the potential to negatively impact human health, the environment, or the economy. Staff suggests referencing a definition for invasive species similar to the one mentioned in the California Aquatic Invasive Species Management Plan (Management Plan). Including a definition will make it clear to

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applicants that the General Permit is specifically intended to cover aquatic invasive species rather than over abundant and perhaps nuisance indigenous species that are more appropriately controlled with non-chemical measures.

Additionally, the General Permit should explicitly state that its applicability is limited to applications of sodium hypochlorite that are applied to control aquatic animal invasive species identified in the Management Plan or a more region-specific management plan prepared for a specific watershed or waterbody.

2. Section II.B.2. Please change "...activities required by this General Permit..." to "activities authorized by this General Permit..." The permit does not compel the discharger to pursue the activities, but it does authorize the discharge.
3. Section II.C. – General Permit Application specifies that permit coverage will be effective when all of the following have occurred:

"1. The Discharger has submitted a complete permit application;

2. The APAP has been approved by the Regional Water Board Executive Officer; and

3. The Regional Water Board Executive Officer has issued a Notice of Applicability...."

These requirements are reasonable for circumstances that do not require an urgent response to control an aquatic animal invasive species of concern. The General Permit, however, should consider emergency situations where pesticide applications are time-sensitive (e.g. new infestation of Quagga mussel in waterbody not previously affected). A definition of emergency should be included in the General Permit.

To accommodate for pesticide applications that meet the General Permit definition of "emergency", the General Permit should modify the above-listed requirements if preparation and submittal of such documents (Aquatic Pesticide Application Plan or APAP, Monitoring Plan) would preclude rapid implementation of control measures. For example, in emergency situations, it may be appropriate to waive certain elements of the APAP (i.e. information required in Section VII.C. element no. 11. a-d - Identify the Problem) or allow the Discharger to submit this information within 14 days of project implementation.

Attachment C (Monitoring and Reporting Program) of the General Permit should also include specific monitoring expectations for emergency projects, but allow Dischargers to submit their monitoring plan within 14 days following the pesticide application. For a time-sensitive project, this allows Dischargers to focus their

11. Sections VIII.C.3.b and c. (pages 20, 21). There are four instances of Section C.4 being reference. This section appears to be incorrect, as it is referenced "above," whereas the section referenced is below.

Thank you for considering these comments. Please contact me at (530) 542-5466 or dsussman@waterboards.ca.gov with any questions or points of clarification.



Linda S. Adams
Secretary for
Environmental Protection

California Regional Water Quality Control Board
Lahontan Region

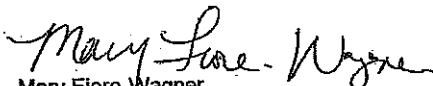
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MEMORANDUM

TO: Philip Isorena
Chief, NPDES Wastewater Unit
Division of Water Quality
State Water Resources Control Board

FROM: 
Mary Fiore-Wagner
Environmental Scientist
LAHONTAN REGIONAL WATER QUALITY CONTROL BOARD

DATE: August 19, 2010

SUBJECT: **REGION 6 STAFF COMMENTS ON DRAFT NPDES GENERAL PERMIT FOR RESIDUAL PESTICIDE DISCHARGES TO WATERS FROM MOSQUITO CONTROL APPLICATIONS**

Thank you for the opportunity to comment on the draft NPDES General Permit for Residual Pesticide Discharges to Waters of the United States from Mosquito Control Applications (Order). Below please find comments on the draft language.

1. In Section II.C. - General Permit Application, the Order language specifies that permit coverage will be effective when,
 2. The PAP has been approved by the Regional Water Board Executive Officer; and
 3. The Regional Water Board Executive Officer has issued a Notice of Applicability (NOA). The NOA will specify the types(s) of pesticides that may be used and any Region-specific conditions and requirements not stated in this General Permit."

Region 6 supports these requirements, but requests the word "approved" be replaced with "accepted" in requirement no. 2. Though the difference between these words appears to be subtle, we believe that it is legally significant. If the word "approved" is used we are concerned with the potential for liability that we may assume.

At the end of Requirement no. 3, we request the following language be inserted directly after the second sentence.

(e.g. In addition to issuing an NOA, some Regional Water Boards may have to grant a prohibition exemption to allow discharges of aquatic pesticides to surface waters for purposes of vector control.)

Thank you for considering the Lahontan Water Board staff comments. Please contact me at (530) 542-5425 or mfwagner@waterboards.ca.gov with any questions or points of clarification.

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Enclosure:

- Region 6 Staff Comments on the Vector Control Permit- Memorandum dated August 19, 2010
- Region 6 Staff Comments on the Pesticides for Animal AIS Permit – Memorandum dated September 14, 2010