

# Department of Water and Power



# the City of Los Angeles

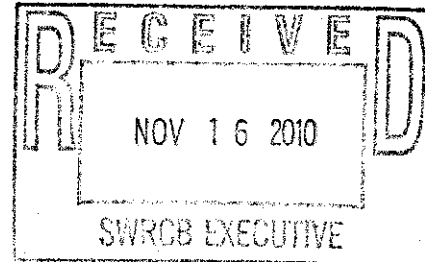
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November 16, 2010

Ms. Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board  
1001 I Street, 24<sup>th</sup> Floor  
Sacramento, CA 95814



Dear Ms. Townsend:

Re: Comment Letter – Draft Aquatic Animal Invasive Species Control Permit

The Los Angeles Department of Water and Power (LADWP) appreciates the opportunity to provide comments on the draft *NPDES Statewide General National Pollutant Discharge Elimination System (NPDES) Permit for Residual Pesticide Discharges to Waters of the United States from Aquatic Animal Invasive Species Control Applications* (Permit). LADWP commends the State Water Resources Control Board (Board) on developing a permit that balances receiving waters protections with those offered by pesticide applications for aquatic animal invasive species control. LADWP recognizes that any activity involving California waters needs to be designed and implemented to ensure compliance with applicable water quality standards. LADWP supports the effectiveness of a Best Management Practices (BMP) strategy, as utilized in the Aquatic Weed permit, for protecting water quality. As demonstrated by eight years' of test data collected under that permit, intentional applications of pesticides have not had adverse water quality impacts. Therefore, LADWP does not believe that toxicity testing as required in the draft aquatic animal invasive species control permit is justified and as written does not fully consider the balance between the operational needs of the dischargers and environmental benefits.

LADWP has concerns in the following areas and provides the comments below:

## 1. Toxicity Testing

The monitoring program as written will be labor-intensive and represents a significant allocation of Dischargers' resources, but without a well-defined environmental benefit. Drift, leaching, and runoff, versus intentional pesticide applications, have contributed to toxicity impairment. In addition, the Board has not indicated why the BMP approach used in the Aquatic Weed Control permit is insufficient, when its effectiveness has been demonstrated. Also, the proposed toxicity testing program calls for the evaluation of

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*whole systems*, even though the permit is intended to address only Dischargers' applications. Toxicity monitoring is most valuable when the effluent constituents are unknown, or to assess water quality in a broader context. For the latter, toxicity testing evaluates all factors that may contribute to toxicity and affect test organisms. Then a process of elimination is required to determine which specific sources caused acute toxicity (mortality), prior to developing and implementing appropriate mitigation measures. However, the NPDES permittees know the exact pesticides, and active ingredients of said pesticides, that they are applying. And the pesticides are applied in conformance with FIFRA label requirements.

At the November 2 hearing, Board staff supported toxicity testing on the grounds that it is the only method available for monitoring the effects of pesticide adjuvants. However, the current Aquatic Weed Permit also evaluates an adjuvant surrogate for any adverse impacts. As discussed earlier, monitoring data for that permit showed that intentional applications of pesticides to control weeds have had no adverse water quality impacts, so toxicity testing is not warranted.

For the above reasons, the BMP approach is the most practical and efficacious, requires immediate notification of any adverse impacts, and therefore provides data necessary for the Board's decision-making process. Maintaining this approach would allow a more focused use of all resources.

LADWP recommends the elimination of the toxicity testing program as written and substitution of a BMP strategy, similar to that proposed in the draft federal pesticides permit, coupled with establishment of a five-year stakeholder work group. The group would review relevant literature and existing test results, conduct collaborative field studies, and/or recommend pilot/scientific studies.

## **2. Sample Types - Attachment C. Section III.A. 2., Page C-4**

This section stipulates that "grab samples" shall be taken. It is unclear whether "grab samples" are the same as the "background" samples referenced in **Section IV.B.1 (Page C-6)**, and in **Table C-1, Page C-8.** "

LADWP recommends that "background samples" should be used in lieu of "grab samples" throughout the Permit.

## **3. Monitoring Frequencies - Footnote 4, Table C-1, Coalition or Individual Monitoring Requirements, Page C-9**

The footnote mandates six (6) physical, chemical and toxicity samples per application season per year. Six appears to be an arbitrary number, as there is no benefit to requiring a greater number of samples than applications events. "Application season" is not defined.

LADWP recommends that sampling schedules coincide with Dischargers' application events, the dates of which are inherently variable, and that all references to application seasons be deleted.

**4. Definition of Receiving Water - Attachment C, Third paragraph of Section IV. B., Monitoring Requirements, Page C-6**

It is unclear whether monitoring is to also take place in man-made canals, ditches, or other similar conveyances.

LADWP recommends that the toxicity testing in man-made structures be eliminated, as these structures are most often used for drinking or agricultural water purposes, and any pesticide applications that are made are necessary to protect health.

**5. Numeric Receiving Water Monitoring Limitations - - Section IV. Table 3, Receiving Water Monitoring Limitations, Page 13**

The purpose of receiving water monitoring limitations is unclear. The Permit acknowledges the unknown nature of effluent containing pesticides and the short duration of intermittent pesticide releases in **Section III.L., Antidegradation Policy, Page 11**: "While surface waters may be *temporarily degraded*; water quality standards and objectives will not be exceeded." The Permit therefore calls for the employment of BAT (Best Available Technology Economically Achievable) and BCT (Best Conventional Pollutant Control Technology) for the restoration of water quality following pesticide applications. In other words, the Permit acknowledges the benefits of a BMP strategy. Per the testimony of Board staff during the October 19, 2010, hearing on the draft Vector Control permit, there is a paucity of data pertaining to toxicity limits and human health impacts. In addition, Permit **Section III.H., Receiving Water Limitations (Page 10)** cites the lack of precision pertaining to chlorine measuring instruments. And some water bodies are already listed as impaired for toxicity due to past pesticide uses by unidentified sources, not from intentional applications. Without mechanisms for identifying or apportioning all sources of toxicity, exceedances of numeric receiving water limitations would not necessarily indicate a failure by Dischargers to comply. The use of numeric limitations is also not a guarantee that a reduction in ambient toxicity can be achieved. From a human health perspective, there appears to be an insufficient amount of data regarding appropriate toxicity limits. It would follow that the data are also insufficient for setting numeric receiving water limitations, and that any limitations would therefore be arbitrary.

LADWP therefore recommends the elimination of the limitations and that the State Board establish a working group to undertake a small-scale pilot study that examines the relative contributions of toxics from sources other than permitted Dischargers.

6. Aquatic Pesticide Application Plan (APAP) - Attachment C, VIII.C, Page 14

Per this section, APAPs are expected to serve as an outline of the Dischargers' pesticide application plans. However, per the second bullet point after "Question No. 2" in **Attachment C, Page C-2, Aquatic Pesticides Application Plans (APAPs)** are designed to assist with: "identification of critical gaps in knowledge (e.g., inability to document impacts, lack of knowledge about *potential* (emphasis added) sources, absence of trend-monitoring components) relevant to the Coalition's or Discharger's circumstances." The requirements to identify knowledge gaps, etc. fall outside the scope of an APAP, and better describe a study. A review of the 303(d) list shows that toxicity impairment in numerous water bodies is frequently attributed to "unknown" and "nonpoint sources." It is unclear how an APAP – or application plan – could be used to identify toxicity sources.

LADWP recommends that the following language be eliminated from this section of the permit: "identification of critical gaps in knowledge (e.g., inability to document impacts, lack of knowledge about *potential* (emphasis added) sources, absence of trend-monitoring components) relevant to the Coalition's or Discharger's circumstances."

7. Aquatic Pesticide Application Plan (APAP) Attachment C, I.A., Page C-2

This section indicates: "All samples shall be taken at the anticipated monitoring locations specified in the APAP submitted by the Discharger. Monitoring locations shall not be changed without notification to and approval of the appropriate Regional Water Boards." Discharger's or Coalition's PAP, unless otherwise specified. **Section II.C.3. on Page 5** requires submittal of an APAP to the Board. Upon approval of the APAP, the Board will issue a Notice of Applicability (NOA) that allows the Discharger to apply pesticides. The Permit includes no time limit for the Board review of APAPs and the issuance of NOAs. Without NOAs, Dischargers could be precluded from responding to infestations in a timely manner, which could imperil public health and/or water conveyance structures and systems. The Permit does not specify a mechanism for notifying the Board of revisions to monitoring locations (such as a revised APAP), or a time limit for the Board to review and approve the revisions.

Infestations may occur at different locations during different seasons and years. Monitoring locations should reflect application areas. The Permit seems to imply that Dischargers may have to repeatedly update APAPs as new areas of infestation are discovered through surveillance. However, the APAP is intended to provide a general overview, while the Pesticide Application Log is the document that provides detailed application data.

LADWP recommends that the State Board approve original APAPs within 10 business days. Once the original APAP is approved and an NOA issued, Dischargers should have the authority to undertake pesticide applications for invasive species as needed.

Invasive species are often transported via privately-owned boats and fishing gear, so locations where they might be found cannot always be predicted. Logically, Dischargers should also be able to take monitoring samples in areas that correspond to application areas, even if those monitoring locations were not included in the original APAP. Dischargers could then provide written, after-the-fact notice of monitoring location revisions to the Board (within five business days).

#### 8. Public Notice Requirements – Section VIII.B., Page 14

This Section specifies: "Every calendar year, prior to the first application of pesticides, the Discharger shall notify potentially affected government agencies." Due to the possible extensive notice required, this could be challenging or impractical to implement. Secondly, Item 4 of Section VIII.B. (Page 14) states notification should also include "General time period and locations of expected uses." Aquatic animal invasive species control applications are scheduled when presence invasive species requires such. This item implies that applications occur at regular intervals.

LADWP recommends that dischargers provide an NOI (Notice of Intent) only to local agricultural commissioners instead of "potentially affected government agencies." LADWP also recommends that once the original APAP is approved and an NOA issued, Dischargers should have the authority to undertake pesticide applications for invasive species as needed. (Invasive species are often transported via privately-owned boats and fishing gear, so the locations and times they might be found cannot be predicted.) Dischargers could then provide written, after-the-fact notice of monitoring location revisions to the Board (within five business days).

#### 9. Technical Report - Section VIII. Standard Provisions, A, 8.d, Page 17

This Section states: "...all technical reports must contain a statement..." It is unclear if a "Technical Report" is the same as the sampling results that are to be provided in the annual report, which is referenced in **Annual Reports - Section V.B.1.b, Page C-9.**

LADWP recommends substituting the following language in **Section VIII. A.8.d.:**  
"...all technical reports containing receiving water monitoring data or monitoring sampling results...."

#### 10. Five-Day Written Report - Section VIII. C.2.b.vii, Page 19

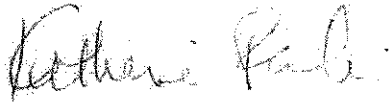
This Section requests "any available ambient water data for pesticides applied." It is unclear if "ambient water data" is the same as "background" water samples, which are

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referenced in Table C-1, Page C-8. For purposes of uniformity, LADWP recommends that one term – “background” -be used throughout the Permit.

Thank you for this opportunity to provide comments. LADWP looks forward to working with State Board staff on the development of this Permit. Should you have any questions, please contact Ms. Jennifer Pinkerton of the Wastewater Quality and Compliance Group at (213) 367-4230.

Sincerely,

A handwritten signature in cursive script, appearing to read "Katherine Rubin".

Katherine Rubin, Manager of Wastewater Quality and Compliance

JP:jp

c: Ms. Jennifer Pinkerton