



United States
Department of
Agriculture

Forest
Service

Pacific
Southwest
Region

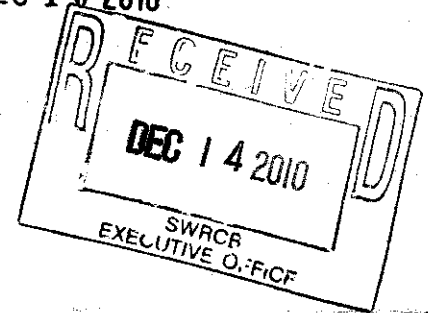
Public Hearing (11/2/10)
Draft Spray Application Permit
Deadline 12/16/10 by 12 noon

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File Code: 2150/2530

Date: DEC 1 0 2010

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



Re: Comment Letter – Draft Spray Applications Permit

Dear Ms. Townsend:

The Forest Service appreciates the opportunity to comment on the draft *Statewide General National Pollutant Discharge Elimination System (NPDES) Permit for Residual Pesticide Discharges to Waters of the United States from Spray Applications*. I appreciate that the State Water Board has involved Regional Office staff in developing this draft permit. The Forest Service was formed in part to protect the waters of the United States and is committed to maintaining the quality of the water that runs off from the National Forests in California.

I do have several larger concerns about the current wording in the draft permit. In addition, there are more editorial and technical comments that I have attached in a separate document to this letter.

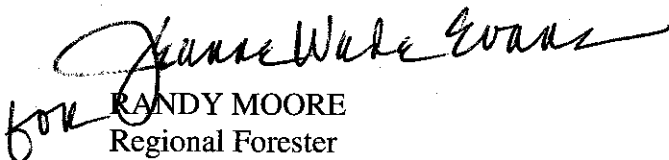
- Since this permit is designed to cover area-wide aerial applications of larvicides for the control of forest insects (both invasive and native), the wording that limits the dischargers to only the Forest Service (USFS) and the California Department of Food and Agriculture (CDFA) is overly restrictive. There are other large forest landowners in California that may need to utilize this permit for the same type of treatment. By excluding them from this permit, these other landowners would be required to obtain a separate permit. In the past, these area-wide projects have been done as cooperative projects (which is desired based on the biology of these insect pests), which would not be allowed under this draft permit. Restricting the permit to only the USFS would require us to be the permit holder for any landowner needing to be covered by it, introducing questions of liability. Please do not restrict the list of dischargers under this permit to only the USFS and CDFA. In addition, please do not restrict the Forest Service to only biological pesticides as listed in Table 1 of the draft permit; our potential uses could involve all of the herbicides and insecticides currently listed in the permit.
- The ability to quickly respond to new non-native invasive insect pests would appear to be counter to this permitting process. The current expectation is that this permitting process, once the formidable amount of required paperwork is submitted, would take 1-2 months for state approval. It is apparent that the ability to rapidly respond to a fast-spreading insect population would not be possible under this permit. The permit should be written so as to allow for emergency insect eradication programs, perhaps with a limited list of insecticides.



- The monitoring requirements are not well justified. The expense of these monitoring requirements could easily exceed the cost of project implementation, especially for smaller scale projects. The language of the permit, including the appendices, does not clearly justify the level of data collection required in Attachment C. Why does the Water Quality Control Board need the amount of information? What purpose will it serve, and how will the permitting process be changed in response to the collection of this data? Will future monitoring requirements be reduced? There has been an existing aquatic plant NPDES permit in place for several years that has not required this level of monitoring and has not resulted in litigation. What has changed so that water chemistry and acute/chronic aquatic invertebrate toxicity testing is now required? At most, it would seem prudent to require the testing of water for levels of the active ingredient. There appears to be sufficient existing toxicity data through US EPA and others to make conclusions about the expected risk from any resultant detected levels of pesticide active ingredient.
- On page 19 of the draft permit (Section IX.B.3), there is a provision that allows the Discharger to propose reductions in the frequency of monitoring, but nothing that allows the Discharger to propose changes to the monitoring program. Please modify this provision to allow the Discharger to propose any modification to the monitoring program.
- While I appreciate that the larvicides used in area-wide control activities are recognized as being of low aquatic toxicity and hence exempt from the monitoring requirements of this permit, the existing wording in the permit is not clear to this point. Please state in Section IX.B on page 19 that the larvicides are exempt from any monitoring requirements.
- There are Regional Water Quality Control Boards which have standards in their Basin Plans that restrict pesticide levels in water in conflict with the recognition that pesticide residues would be 'allowed' under this permit. Yet there is no language in this permit that would allow overriding the Regional Board's requirements. In order to be able to plan work under this permit, clarification is needed as to the procedure to follow in such an instance.

I appreciate your consideration of these comments, and hope that you will continue to work with the Regional Pesticide-Use Specialist, David Bakke, in further developing this permit language to meet your April deadline. If there are any questions on these comments, feel free to contact David at (707) 562-8916, or at dbakke@fs.fed.us.

Sincerely,


for RANDY MOORE
Regional Forester

cc: David Bakke, Barry Hill

Attachment to USDA Forest Service Regional Forester Letter
Subject: Comment Letter – Draft Spray Applications Permit

Permit

Cover page and elsewhere – Please refer to this agency as the USDA Forest Service throughout the permit.

Page 4 and elsewhere – referring to an insect pheromone as an adulticide is incorrect as it is not intended to kill adult insects. In the permit it is used as a mating disruption agent for the light brown apple moth.

Page 7, Section B, second paragraph, third line – include the phrase “but is not restricted to” after the word “includes”.

Page 8, Section 1 – delete the last sentence in this section as it is obviously a value judgment (that the Clean Water Act is more protective than FIFRA).

Page 8, Section 2, second paragraph, third line – add the phrase “or License” after “Certificate” – both are valid applicator licenses for restricted-use pesticides.

Page 13, Table 3 – it makes sense to use aquatic animal species to set the monitoring trigger values for insecticides, but not for herbicides, which are more likely to impact aquatic plants or algae. It is unclear how the pesticides were chosen to be included in this table out of the list of pesticides covered under this permit. There are more specific comments on the values in this table in our comments to Appendix D, below.

Page 17, Section D, item 4 – it appears that the last four items are not correctly placed. These would appear to be water monitoring parameters and would not necessarily be a part of a daily log.

Page 21, Section 4.iii.a. – substitute the word “product” for “produce”.

Attachment C – Monitoring and Reporting Program

Page C-4, Section III.A. – Please state in the introductory paragraph that the use of the insect larvicides and the herbicide triclopyr amine do not require toxicity testing. The existing language is not clear on that point and would lead one to believe toxicity testing is required with the use of any of these pesticides. It would also be helpful to clearly state what level of monitoring is required for all applications and for applications when water monitoring triggers are met. Is the chronic/acute testing required of all treatments? Or only those that exceed the monitoring triggers? With several of the herbicides (for example, imazapyr) language in Attachment D states that there are no monitoring triggers because of low toxicity, but then goes on to say that monitoring would still be required. Why? The language throughout this attachment is not at all clear in its justifications, explanations on process, explanations on minimum requirements, nor is the intent clear.

Page C-4, Section III.A.4. – It is not clear anywhere in Attachments C or D why malathion/piperonyl butoxide or the pyrethrins/pyrethroids require specific acute/chronic tests. Please explain and justify the need. In addition, the use of the amphipod *Hyaella azteca* (note the incorrect species spelling on this page) is not one of the species used in the US EPA document (821-R-02-012) as a standard acute toxicity test species, yet the EPA document is supposedly the reference for the test specifications.

Page C-4, Section III.A.4. – The last paragraph states that the chronic toxicity tests should use species specified in the US EPA referenced document 821-R-02-013, however this reference document lists three species. Is it the Board's intent that each species should be tested? If so, please justify this extensive level of testing. If this isn't the intent, please clarify the language in this section.

Page C-4, Section III.A.5 – The referenced US EPA documents are available on the internet. Please include the website address for these documents:
<http://water.epa.gov/scitech/swguidance/methods/wet/>. It appears that the acute toxicity testing reference (821-R-02-012) is only applicable to the use of pyrethrins/pyrethroids. If this is not the case, then this entire section III.A is confusing and poorly written.

Page C-5, Section III.B. – First paragraph – what is meant by a “pass/fail” for toxicity testing? This is also repeated in item 1.a. on the same page, and in Table C-1. Please explain this in the lead paragraph in this section.

Page C-8, Table C-1 – It is unclear why there are requirements to monitor for water temperature, pH, turbidity, electrical conductivity, or dissolved oxygen. None of these would likely be affected by a pesticide application of these active ingredients. Please explain and justify these requirements.

Page C-9, Table C-1, Footnote 5 – It would seem that if analytical capability does not exist for detecting a particular pesticide, the permit should not require it to be monitored. Yet this footnote states that it is up to the Discharger to develop an alternative testing method to satisfy the requirements for monitoring for an active ingredient even though no such test exists. Please explain the logic behind this requirement and how a Discharger could be expected to meet it.

Page C-9, Table C-1, Footnote 6 – please note the incorrect spellings of several of the pesticide active ingredients: “larvicide”, “imidacloprid”, and “chlorsulfuron”.

Attachment D – Fact Sheet

Page D-6, Item 2 – It appears this section has the wrong title, as the narrative does not concern itself with “Related Aquatic Pesticide Regulation”.

Page D-34, Table D-1 (and elsewhere in Attachment D) – it seems surprising that there are no results for toxicity testing of *Daphnia* spp. (waterfleas), as these tests are basic for pesticide registration. Please explain why most values are shown as “N/A”.

Page D-47, Table D-10 (and elsewhere in Attachment D) – several of the values in this table should be shown as “greater than (>)” the values listed (e.g., 96 hour LC50 for bluegill, rainbow trout).

Page D-48, Table D-11 – the highlighted ‘lowest’ LC50 of 100,000 is not actually an LC50 and should not be characterized as such. The LC50 was not determined, and should be shown as >100,000.

Page D-49, Table D-12 – With chronic NOEC values available for mysids, trout, and water fleas, why use the LC50/10 value? The LC50/10 is supposed to be an approximation of the NOEC, but in this case sufficient experimental NOEC values are available to support a value of at least 20,000 micrograms/liter.

Page D-49, paragraph after Table D-12 - Attachment D is where an explanation is expected to justify why monitoring is required for chloresulfuron even though toxicity is considered low and no monitoring trigger is developed. This explanation is lacking.

Page D-50, Table D-13 – The monitoring trigger value for clopyralid appears to be based on the consideration of an inert ingredient, but there is no specific information or calculations shown to support this value of 2,784 micrograms/liter. What inert is the issue? Is it polyglycol 26-2? If so, what toxicity value was used to develop the monitoring trigger? In order to support the permit values, the process should be more transparent than it is.

Page D-52, two paragraphs after Table D-14 – there are numerous references to aminopyralid in these two paragraphs, when the section is supposed to be discussing imazapyr. This requires correction. Also, Attachment D is where an explanation is expected to justify why monitoring is required for imazapyr even though toxicity is considered low and no monitoring trigger is developed. This explanation is lacking. Is the Water Board aware that there are aquatic imazapyr formulations?