commentletters

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3-25-16
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From: Terry McNabb <tmcnabb@aquatechnex.com>
Sent: Friday, March 25, 2016 8:45 AM
To: commentletters
Subject: Comment Letter - Draft Aquatic Weed Control Permit Amendments

I would like to comment on the Draft Aquatic Weed Control Permit Amendments with respect to sodium carbonate peroxyhydrate, hydrogen peroxide and peroxyacetic acid aquatic algaecides.

There are a number of proposed restrictions that will impact the effective use of these algaecides. PAK 27, GreenClean etc. are especially effective and primarily used to treat cyanobacteria blooms. Cyanobacteria blooms produce both acute and chronic toxins that impact wildlife, pets and increasingly human health. In addition to controlling the cyanobacteria, these products can also remove the organic toxins that these algae produce that pose the toxic threat to wildlife, pets and human health. When treatment threshold are reached where these compounds are required, the toxins and toxin producing organisms should be your major concern, not an EPA registered algaecide who's byproducts are oxygen and water. EPA has recently become concerned with the presence of these algae produced toxins in potable water systems because of the acute liver and nervous system toxins, but also because of the algae produced compounds that are now directly linked to ALS and similar diseases. EPA has begun to issue guidelines for removal of these compounds from potable water reservoirs and delivery systems and Peroxygen based algaecides remain the primary tool that is registered to accomplish that work. In summary, when these products are used, they are not the threat to the environment or human health, the organisms they target are.

Restriction 1, "apply only to contained, non-flowing waters". This restriction poses a direct threat to human health. The majority of the use of these algaecides in California are in potable water reservoirs or conveyance systems. For example, the California Aqueduct that supplies potable water to much of Southern California has had outbreaks of toxin producing cyanobacteria regularly in the past few years. This water is obviously flowing and removing this tool poses a direct threat to human health. There must be exceptions to this restriction to target cyanobacteria species in a number of situations where waters may not be considered contained or non-flowing.

Restriction 2 and 3. Because of potential toxicity when this product is used at the higher rates, do not apply at fish feeding times, do not apply when juvenile fish and invertebrates are present, etc. These products are almost never used at the higher rates you are concerned about. At the rates normally used to target cyanobacteria, the toxicity data shows potential for impact low to non existent. If you are concerned about the impact of the higher rates on the label, you should only place these restrictions on the higher use rates on the label, for example using over 40 pounds per acre foot. There is no need to place these restrictions on lower use rates that do not have any impact on these organisms.

Restriction 5, treat only one half of the contained water body at a time and do not make subsequent treatments of the untreated area in the same waterbody within 48 hours of the initial treatment. This restriction again has a significant impact on operations designed to protect wildlife, pets and human health. Treating reservoirs or lakes for toxic algae blooms has to be accomplished in one application whenever possible. These lakes mix and have wind driven patterns that move target algae around. Treating and targeting one half of a toxic algae bloom is extremely problematic. In the 48 hours between treatments, half of the toxin producing algae remain viable and producing toxin. In addition, they can easily be blown into the recently treated area where they are they protected from the second half of the application. This triggers additional treatments to bring the levels down to below thresholds. This regulation would both increase the threat posed by toxic algae and it would cause the number and volume of treatments to go up dramatically, something that is against the point of an NPDES permit in the first place.

Lastly, the need for an NPDES permit to apply an EPA registered pesticide to Waters of the US is totally driven by Case Law starting with the Talent Decision in the Ninth Circuit Court. As you know, EPA then issued a rule in the mid 2000's

that the application of a EPA registered aquatic pesticide to waters of the use should not be considered a discharge of a pollutant with respect to the Clean Water Act, and that no NPDES permit would be required. As you probably also know this triggered a number of additional lawsuits which were consolidated and decided by the Sixth Circuit Court of Appeals a few years ago. Their decision specifically said that the discharge of a US EPA registered aquatic pesticide to waters of the US should not be considered a pollutant under the Clean Water Act, but any chemical residue remaining after the product had completed it's intended purpose could be considered a pollutant and that conditions could require an NPDES permit. Peroxygen algaecides break down to oxygen and water as they complete their intended purpose, there is no chemical residue remaining and its rather dubious that an NPDES permit is required for this product in the first place.

Sincerely,

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