



**Mosquito and Vector Control
Association of California**
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March 12, 2012

VIA E-MAIL: commentletters@waterboards.ca.gov

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

Re: Comment Letter - Vector Control Permit Amendment

Dear Ms. Townsend:

The Mosquito and Vector Control Association of California (MVCAC) appreciates the opportunity to provide comments on the proposed amendment to the Statewide General NPDES Permit for Residual Pesticide Discharges to Waters of the United States from Vector Control Applications (Vector Control Permit).

MVCAC represents the interests of 64 mosquito and vector control districts in the state. Mosquito and vector control districts protect the public health of the state's residents by significantly reducing nuisance impacts associated with mosquitoes and other vectors. Mosquitoes transmit serious life-threatening diseases such as encephalitis, West Nile virus and malaria. Mosquitoes also cause substantial public discomfort and nuisance impacts, adversely affecting outdoor workers, livestock, recreation and tourism.

After the March 1, 2011 adoption of the Vector Control Permit, we have worked closely with the State Water Board staff on the implementation of the new permit and on appropriate amendments to refine and improve the permit. We are grateful for the State Water Board staff's cooperation and assistance in this process.

MVCAC supports and requests the adoption of the proposed amendment to the Vector Control Permit.

Scope of Restriction for Section 303(d) Listed Waters

The proposed change to section IX(A)(2) (and a related change to the permit fact sheet) regarding discharges to California impaired waters is particularly important to the MVCAC membership. Approval of the change will better enable vector control districts to maintain an effective level of service for the state's residents.

Late on the day before the March 1, 2011 State Water Board meeting, State Board staff released a change sheet of proposed changes to the then-proposed Vector Control Permit. One of the proposed changes was to add “or any pesticides in the same chemical family” to section IX(A)(2). With the very short time available to review and assess the proposed changes in the change sheet, MVCAC did not catch the significance of the addition prior to the March 1 meeting. Shortly after the March 1, 2011 adoption of the Vector Control Permit with the change sheet addition to section IX(A)(2), MVCAC discovered the consequence of the change and determined that the change would adversely affect mosquito control.

Various water bodies throughout the state are listed by the State Water Board as impaired (“303(d)-listed”) by pesticides at levels that exceed protective water quality criteria and standards. In particular, several waters are listed as impaired by chlorpyrifos, diazinon and malathion, which are organophosphate pesticides, and some waters are listed as impaired by pyrethroids.

With the last-minute change to the permit, the adopted Vector Control Permit prohibits the discharge of any organophosphate pesticide near or over a water of the U.S. that is listed as impaired by chlorpyrifos, diazinon or malathion. This is a vast prohibition.

Vector control districts regularly use naled, which is another organophosphate pesticide. It is one of the most widely used vector control adulticides, in particular with the control of adult mosquitoes emanating from rice fields throughout the Central Valley. Naled is not on the 303(d) list. Nevertheless, because of the “or any pesticide in the same chemical family” prohibition, naled use is prohibited anywhere near a water body listed for chlorpyrifos, diazinon or malathion. Because of the scope of the listing, this prohibition will have a considerable impact on the efficacy of mosquito control.

Malathion also is sometimes used for adult mosquito control. Similarly, even though malathion is listed for only a few water bodies, the “or any pesticide in the same chemical family” addition effectively prohibits malathion use anywhere near waters impaired by chlorpyrifos or diazinon.

The Vector Control Permit presents a similar problem regarding pyrethroids and pyrethrins. Pyrethroids are synthetic chemical insecticides. Pyrethrins are botanical insecticides derived from chrysanthemum flowers. Both work by altering nerve function, which causes paralysis and death in target insect pests.

Several water bodies in the Central Valley are listed as impaired by pyrethroids, but not pyrethrins or public health pyrethroids. However, again the “or any pesticide in the same chemical family” addition effectively prohibits the use of pyrethrins or public health pyrethroids over or near waters impaired by pyrethroids. Many creeks also are listed for chlorpyrifos, which restricts naled use. The combination of the listings and the very-broad “or any pesticide in the same chemical family” phrase could result in adult mosquito control being entirely prohibited in

areas with waterways impaired by both pyrethroids and chloropyrifos, which could result in much greater exposure to mosquitoes.

The last-minute addition of “or any pesticide in the same chemical family” will significantly impede our members’ ability to provide effective mosquito control. With the significant restrictions, vector control districts will proceed to limited alternative control measures that will reduce the level of service. The addition is not legally required and not essential to protect water quality. We support your staff’s determination to delete the phrase.

On October 31, 2011, U.S. EPA issued a NPDES Pesticide General Permit for discharges from the application of pesticides to waters of the United States. The EPA permit provides coverage for discharges in the areas where EPA is the NPDES permitting authority. In its permit, U.S. EPA also addressed 303(d) listed waters in a provision that is less burdensome than the California permit: “Operators are not eligible for coverage under this permit for any discharges from a pesticide application to Waters of the United States if the water is identified as impaired by a substance which either is an active ingredient in that pesticide or is a degradate of such an active ingredient.”

The proposed amendment would make the California Vector Control Permit more consistent with the national permit. EPA’s provision is a more reasonable and balanced implementation of section 303(d).

Other Requested Changes

In addition to the Vector Control Permit amendments proposed by State Water Board staff, MVCAC also requests two additional changes to the permit.

1. MVCAC requests the removal of the requirement for visual and physical monitoring of larvicides (except temephos).

Currently, the Vector Control Permit requires visual and physical monitoring of larvicides, which is a new and significant burden for vector control staff. In 2004, the State Water Board adopted a NPDES permit for vector control larvicide applications. The evidence to date shows no impacts to water quality associated with the implementation of the previous permit. The need to collect visual and physical data on the larvicides that have been reviewed by the State Water Board will provide no environmental benefit and the requirement should be removed. However, temephos has been identified as an active ingredient of concern by the State and the need to collect data on this product is reasonable..

The nature and volume of materials used in larviciding make it nearly impossible that they will affect the parameters being measured (appearance, temperature, pH, turbidity, electrical conductivity), which were developed for monitoring industrial effluent (pollution). Any resultant data from the visual and physical monitoring would be unusable and unhelpful because any

effects of vector control larvicides would be inseparable from normal fluctuations in ambient water conditions (which are considerable in the very shallow water bodies the members typically treat). Vector control districts will continue to document all larvicide applications to waters of the U.S. as has been the practice through the Memorandum of Understanding with the California Department of Public Health.

The State Water Board already has reviewed the larvicides used by vector control districts and determined that their use is considered a best management practice. The Vector Control Permit instructs vector control districts to select control measures that use non-toxic and less toxic alternatives, which can be considered an effective BMP. Vector control districts can select larvicides for vector control in some situations that have none to very low toxicity to non-target organisms and pose very little or no threat to the environment. However, the time and expense that vector control districts face in documenting physical and visual monitoring will take away resources from larvicide applications and may potentially lead to more adulticide applications. This approach seems counterintuitive if larvicides are considered an appropriate less-toxic treatment that reduces adulticide usage. MVCAC supports a permit that reflects all options to maximize the ability to larvicide and limit the need for adulticide applications. This is consistent with US EPA Region 9 comments made in support of larviciding “until the cows come home”.

The requirement for a vector control district to physically monitor all applications at 10% of the application areas is onerous because a district may make thousands of applications at hundreds of application areas. Visual monitoring for adverse impacts of larvicides has been performed by MVCAC signatory to a cooperative agreement with California Department of Public Health for years without any evidence of adverse impacts to beneficial uses.

2. MVCAC requests the State Water Board to determine the process for including new pesticides in the permit.

The Vector Control Permit covers only those pesticide products described in Attachments E and F of the permit. The only way to add a product is to amend the permit, which is a difficult and cumbersome process.

Vector control districts have a limited number of products available for use and they need all available products to be included in the permit. Any new products must be registered by U.S. EPA and the California Department of Pesticide Regulation. The Vector Control Permit should not limit the use of new products that may become available. The State Water Board should assess and determine a clear and efficient mechanism to evaluate and add pesticide products to the permit. Instead of listing all products on attachments to the permit and requiring a permit amendment every time to add a new product, the permit should incorporate the authority and a process for State Water Board staff to add new products to the permit after they are registered by EPA and the California Department of Pesticide Regulation. A product-by-product permit amendment approach is too slow and cumbersome.

We request direction from the State Water Board to work with your staff on the development of a more timely pesticide-addition methodology for future consideration by the Board.

MVCAC Policy Views and Next Steps

While MVCAC has chosen to constructively cooperate with the State Water Board on NPDES permit matters and it supports the pending permit amendment, please understand that vector control districts are not pleased with these developments and concerned about adverse impacts to the public from increased mosquito populations. We believe that the Sixth Circuit case was wrongly decided and that the court failed to correctly reconcile the Clean Water Act and FIFRA. We are disappointed that U.S. EPA and the Justice Department failed to support the petition for review to the U.S. Supreme Court. We have reluctantly cooperated with the State Water Board and view NPDES permit compliance and cooperation on the permit as a wrongful burden. There is no evidence that NPDES regulation of vector control public health pesticides will result in any significant water quality improvements or benefits.

We will continue to support HR 872, which would amend federal law to remove the permit requirement. We are pleased that the House of Representatives understood the impacts to public health by quickly passing the bill by over 2/3 vote. We are disappointed with the Senate's failure to pass the bill despite similar strong bipartisan support. We continue to urge a vote on this bill to establish the intent of Congress of about how public health pesticides should be regulated.

The NPDES permit will burden and hamper effective mosquito control by:

- Requiring the MVCAC coalition (funded by vector control districts) as well as individual districts to spend substantial money, time and staff on permit monitoring, administration and paperwork, instead of on vector control.
- Requiring the coalition and districts to compile and generate data and prepare numerous and substantial logs and monitoring reports that will provide little useful data without any significant benefit to Waters of the US.
- Requiring districts to spend dwindling revenues and funds on permit-related costs and state permit fees.
- Exposing vector control districts to fines, penalties and lawsuits for alleged permit noncompliance.
- Detracting from the mission of vector control and risking public health.

Moving forward, we anticipate significant difficulties in reconciling the implementation of NPDES permit regulation with ongoing effective mosquito and vector control and therefore expect that the permit process will be unworkable and will ultimately expose our state citizens to more mosquitoes and mosquito-borne diseases.

Until Congress acts on HR 872 the national permit more fairly and reasonably approaches permit monitoring. Most of the states in the country will be following the national permit as a model. In contrast, California's permit contains more onerous monitoring requirements. MVCAC will be

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preparing a request to amend the monitoring provisions of the California permit, which we plan to submit to the State Water Board in a month or so. Our request will be modeled on the federal monitoring requirements. MVCAC is willing to support the current toxicity study and we recognize the appropriateness of such studies to gather data for registration of pesticides. However, instead of seeking data through burdensome permit monitoring, it would be more effective to continue to collaborate on future studies. Our upcoming request also will include a proposal for ongoing statewide collaboration and cooperation on later studies, in lieu of the extensive permit monitoring requirements. We ask the State Water Board to direct your staff to bring the MVCAC request to the Board for consideration after we submit the request.

Thank you for your consideration of our comments and requests. Please contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Catherine Smith".

Catherine Smith
Executive Director