

**STATE WATER RESOURCES CONTROL BOARD  
BOARD MEETING/HEARINGSESSION – DIVISION OF WATER QUALITY  
AUGUST 7, 2012**

**ITEM 6**

**SUBJECT**

PUBLIC HEARING ON THE STATEWIDE GENERAL NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT FOR RESIDUAL AQUATIC PESTICIDE DISCHARGES TO WATERS OF THE UNITED STATES FROM ALGAE AND AQUATIC WEED CONTROL APPLICATIONS

**DISCUSSION**

The proposed National Pollutant Discharge Elimination System (NPDES) Permit for Residual Aquatic Pesticide Discharges to waters of the United States from Algae And Aquatic Weed Control Applications (Aquatic Weed Control Permit) has been prepared in response to the *National Cotton Council of America vs. United States Environmental Protection Agency* (USEPA) decision by the Sixth Circuit Court of Appeals which requires that pesticide applications at, near, or over water that could result in a discharge of pollutants to waters of the United States must be covered by an NPDES permit. This permit will supersede existing [Order No. 2004-0009-DWQ](#) which the State Water Board issued in 2004.

Applicability: The proposed Aquatic Weed Control Permit covers discharges of residual algaecides and aquatic herbicides from direct applications to surface waters to control algae and aquatic weeds. The proposed permit does not authorize the discharge of residual pesticides and their degradation byproducts to waters of the United States that are impaired by the active ingredients of the products covered in the proposed permit. Impaired waters are those waters not meeting water quality standards pursuant to Section 303(d) of the CWA. California impaired waters are listed on [http://www.waterboards.ca.gov/water\\_issues/programs/tmdl/2010state\\_ir\\_reports/2010\\_combo303d.xls](http://www.waterboards.ca.gov/water_issues/programs/tmdl/2010state_ir_reports/2010_combo303d.xls).

Enrollment Process: To obtain authorization under the proposed Aquatic Weed Control Permit, dischargers must submit a complete application package [Notice of Intent (NOI) Form, Aquatic Pesticide Application Plan (APAP), and an application fee] to the State Water Board. Permit coverage will become effective when (1) the discharger has submitted a complete permit application; (2) the APAP has been posted on the State Water Board's website for 30 days; and (3) the State Water Board Deputy Director of the Division of Water Quality (Deputy Director) has approved the APAP and issued a Notice of Applicability (NOA). The discharger is authorized to discharge starting on the date of the NOA. Alternatively, the Deputy Director may: (1) issue a Notice of Exclusion, which either terminates coverage under the Aquatic Weed Control Permit; or (2) require submittal of an application for an individual permit or an alternative general permit.

Effluent Limitations: It is infeasible for the State Water Board to establish numeric effluent limitations because: (1) in pesticide applications, there is no effluent per se since the pesticide products do not become pollutants until after they become residuals; (2) at which point the pesticide products become residuals and, therefore, pollutants is unknown because of the varying amounts of pesticides applied and different environmental conditions when they are

applied; (3) it would be impractical to treat numerous short duration intermittent pesticide residue releases to surface waters from many different locations; and (4) treatment, in many cases, may render the pesticide useless for weed and algae control. Therefore, the effluent limitations contained in the proposed Aquatic Weed Control Permit are narrative and include requirements to develop and implement an APAP that describes appropriate Best Management Practices, including compliance with all pesticide label instructions. In addition, the proposed permit includes both narrative and numeric receiving water limitations and receiving water monitoring triggers to ensure protection of the beneficial uses of the receiving waters.

Numeric Receiving Water Limitations: The proposed Aquatic Weed Control Permit contains numeric receiving water limitations for 2, 4-D, acrolein, copper, diquat, endothall, fluridone, glyphosate, and dissolved oxygen. These numeric receiving water limitations are the same as those in the existing permit (Order No. 2004-0009-DWQ). These limitations are based on promulgated water quality criteria such as those provided in the California Toxics Rule, water quality objectives adopted by the State Water Boards and Regional Water Quality Control Boards (Regional Water Boards) in Water Quality Control Plans, water quality standards such as drinking water standards adopted by U.S. EPA or the California Department of Public Health, or U.S. EPA National Recommended Ambient Water Quality Criteria.

Numeric Receiving Water Monitoring Triggers: The proposed Aquatic Weed Control Permit also contains numeric receiving water monitoring triggers for imazapyr and triclopyr Triethylamine salt (triclopyr TEA). This is because information regarding residual pesticides discharged to the receiving water that contain imazapyr and triclopyr TEA as a result of pesticide applications is not adequate to develop receiving water limitations for these two active ingredients. Therefore, the proposed Aquatic Weed Control Permit only contains numeric Receiving Water Monitoring Triggers for these two active ingredients.

Monitoring and Reporting Program: The proposed Aquatic Weed Control Permit requires dischargers to submit a monitoring and reporting program as part of the APAP to determine compliance with permit requirements. The monitoring program includes chemical testing of active ingredients permitted by the proposed permit. Chemical testing will be used to determine if residuals of the active ingredients in the pesticide products and their degradation byproducts exceed their numeric receiving water limitations or triggers. For chemical testing, the discharger shall collect six samples for each active ingredient in each environmental setting (agricultural, urban, or wetland). If a pesticide is applied less than six times a year, the discharger shall collect a sample for each active ingredient every time the product containing the active ingredient is applied in each environmental setting (agricultural, urban, or wetland).

This General Permit does not require toxicity testing because toxicity studies conducted in 2002-2004 and the monitoring data collected under Order No. 2004-0009-DWQ indicate that these pesticide applications will not result in widespread or sustained impacts to waters of the United States.

## **POLICY ISSUE**

None.

## **FISCAL IMPACT**

State Water Board staff work associated with or resulting from this action will be addressed with existing and future budgeted resources.

## **REGIONAL BOARD IMPACT**

Yes. The Regional Water Boards have the responsibility to implement the proposed Aquatic Weed Control Permit.

## **STAFF RECOMMENDATION**

The State Water Board should adopt the [proposed Aquatic Weed Control Permit](#).

State Water Board action on this item will assist the Water Boards in reaching Goal 6 of the Strategic Plan Update: 2008-2012 to enhance consistency across the Water Boards, on an ongoing basis, to ensure our processes are effective, efficient, and predictable, and to promote fair and equitable application of laws, regulations, policies, and procedures. In particular, approval of this item will assist in fulfilling Objective 6.2 to target consistency improvements in program delivery identified through past input, and solicit input to identify consistency issues as they arise.