



Heal the Bay

1444 9th Street
Santa Monica CA 90401

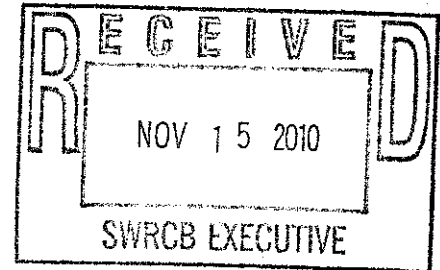
ph 310 451 1550
fax 310 496 1902

info@healthebay.org
www.healthebay.org

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

November 15, 2010

Chairman Charles R. Hoppin and Board Members
State Water Resources Control Board
1101 I Street, 24th Floor
Sacramento, CA 95814
Sent Via Email [commentletters@waterboard.ca.gov]



Re: Comment Letter – NPDES Permit for Residual Pesticide Discharges from Spray Applications

Dear Chair Hoppin and Board Members:

On behalf of Heal the Bay, we submit the following comments on the proposed NPDES Permit for Residual Pesticide Discharges from Spray Applications (“Draft Permit” or “Permit”). We appreciate the opportunity to provide comments.

In general we are supportive of the State Board’s effort through the Draft Permit to strengthen protections on waterbodies from the discharge of pesticide residues resulting from spray applications. As discussed in the Draft Permit, residual pesticides discharged into surface waters constitute pollutants within the meaning of the Clean Water Act. However as discussed in detail below, we have concerns with several of the provisions in the Draft Permit. Most importantly, we believe that a numeric toxicity limit should be included in the Draft Permit.

The Draft Permit should include a Numeric Toxicity Limit

The Draft Permit states that the numeric effluent limits for pollutant discharges associated with the application of pesticides are infeasible. Instead the Permit includes “receiving water monitoring triggers.” Part of the reasoning is that the Draft Permit is covering the breakdown products and the exact effluent is unknown. However, this reasoning does not hold for a numeric toxicity limit. In fact, a toxicity limit is the ideal alternative. Toxicity testing is the safety net for NPDES permits because permits do not require monitoring or have limits for all constituents that can cause receiving water toxicity. The State Board staff developing this Draft Permit should coordinate with the team working on the Toxicity Policy in order to develop an appropriate numeric target. Alternatively, an effluent limit of 1 TUc would protect beneficial uses and meet the narrative toxicity objective of “no toxics in toxic amounts.” This limit has been used in POTW NPDES permits and TMDLs, particularly in the Los Angeles Region.



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Receiving Water Monitoring Triggers Should Require Action

The Draft Permit states that water monitoring triggers will be used to assess compliance and trigger additional investigations for the toxicity caused. Despite this description, the Draft Permit does not outwardly provide the discharger a clear path forward if the instantaneous maximum monitoring triggers are exceeded. Instead the Permit only states that the Permit *may* be reopened. If a trigger is exceeded, the Pesticides Application Plan ("PAP") is obviously insufficient and should be updated with appropriate BMPs. Also accelerated monitoring should be required. Most importantly it should be required that the Permit be reopened to include a receiving water limitation, if a trigger is exceeded.

Discharges should not be Permitted to Biologically Sensitive Areas

The State Board should specify that a Permit shall not be granted for pesticide application in biologically sensitive areas. For instance, no pesticide application should be allowed in sensitive areas such as aquatic Environmentally Sensitive Habitat Areas (ESHA) (i.e. wetlands, riparian habitats). The potential consequences are severe, and biological beneficial uses would be impaired.

Several of the PAP Requirements should be Clarified

The Draft Permit states that the Pesticides Application Plan ("PAP") must include "representative monitoring locations" and a brief definition is included. However, it is unclear how many sites would be satisfactory. Ideally there would be a site at the application location and also sites upstream and downstream.

Also, the Draft Permit does not specify when a PAP will be updated. This frequency should be defined in the Permit. At a minimum, the PAP must be updated whenever a receiving water trigger is exceeded and when new pesticides are used.

We appreciated the opportunity to provide comments. If you have any questions, please contact us at 310-451-1500.

Sincerely,

Kirsten James
Water Quality Director

Mark Gold, D. Env
President