

California Regional Water Quality Control Board
San Diego Region

CLEANUP AND ABATEMENT ORDER No. 2001-160
DISCHARGERS OF AQUATIC PESTICIDES
TO WATERS OF THE UNITED STATES

The California Regional Water Quality Control Board, San Diego Region (Regional Water Board) finds that:

1. Attachment 1, which may be revised as necessary, contains a list of dischargers who have submitted Form A (attached) seeking coverage under a proposed general National Pollutant Discharge Elimination System (NPDES) permit for discharges of aquatic pesticides to waters of the United States throughout the region.
2. Pursuant to the March 12, 2001 decision of the Ninth Circuit Court of Appeals in Headwaters, Inc. v. Talent Irrigation District, discharges of aquatic pesticides similar to the discharges at issue here require coverage under a NPDES permit.
3. The dischargers intend to discharge aquatic pesticides that are registered by the Department of Pesticide Regulation (DPR) to waters of the United States. DPR and county agricultural commissioners regulate the use of pesticides by the dischargers.
4. The purpose of the pesticide applications is to prevent the growth and spread of aquatic weeds, algae, vectors, and nuisance fish. These organisms are all destructive to the beneficial uses of waters including irrigation, navigation, and aquatic life. Vectors constitute a serious threat to human health.
5. This order covers discharges from the application of aquatic pesticides that are registered for use by DPR and includes requirements that will protect the beneficial uses of water from the effects of these applications.
6. Wastes generated by the use of pesticides are not regulated by DPR. These wastes include pesticide residues and breakdown products that leave the treatment zone. Pesticide formulations include not only the "active ingredients," but also chemicals referred to as "inert ingredients." These wastes can pose a threat to the beneficial uses of the State's waters if not properly managed and therefore are subject to regulation by the Regional Board.
7. The aquatic pesticides will be applied directly into the water column and/or directly to organisms in the water with the intent of killing the aquatic weeds, algae, vectors, or nuisance fish. The impacts of these chemicals will not be limited to the target plants; other plants and aquatic life in the treatment area may also be impacted. Due to water movement at the treatment locations, the

- pesticides can be carried to adjacent areas while concentrations in the water are still high enough to cause adverse impacts to aquatic organisms. The pesticides may also cause adverse impacts on beneficial uses such as irrigation, municipal water supplies and recreational activities, such as swimming. These adverse impacts have been evaluated as part of the pesticide registration process conducted by the United States Environmental Protection Agency (U.S. EPA) and DPR. A purpose of this Order is to minimize the areal extent and duration of adverse impacts to beneficial uses outside of target areas treated with aquatic pesticides.
8. Discharges must be consistent with both state and federal antidegradation policies. These policies allow degradation of water quality only under specified circumstances. These policies do not allow activities that result in violations of water quality objectives. Decreases in water quality must be in the best interests of the people of the State. Inasmuch as compliance with this Order is intended to minimize adverse impacts and protect waterways, water supplies, and public health, the Board finds that this activity is a benefit to the people of the State and that this Order is consistent with the antidegradation policies.
 9. Weather conditions may require immediate application of aquatic pesticides in order to maintain adequate water supplies and to protect the public health. The Regional Board has not had and will not have adequate time and resources to process NPDES permits for these discharges prior to the need for their application, and, for these reasons, there is a substantial threat that the dischargers may proceed with the applications prior to receiving NPDES permits.
 10. The Basin Plan prohibits discharges of pollutants from point sources to waters of the United States without first obtaining a NPDES permit. For the reasons stated in the preceding paragraph, there is a substantial threat that this prohibition may be violated. In addition, such discharges may create a condition of pollution or nuisance.
 11. Section 13304(a) of the California Water Code provides that:

“Any person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board cleanup such waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts. Upon failure of any person to comply with the cleanup and abatement order, the Attorney General, at the request of the board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In any such suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the fact may warrant.”

12. Section 13267(b)(1) of the California Water Code provides, in part, that:

“...the regional board may require that any person who has discharged, discharges, or is suspected of discharging, or who proposes to discharge waste within its region...shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports.”

13. Based on these threatened discharges, it is appropriate to issue this enforcement order, which will abate the effects of the discharges.

14. The issuance of this Order is an enforcement action taken by a regulatory agency and is exempt from the provisions of the California Environmental Quality Act, pursuant to Section 15321(a)(2), Title 14, California Code of Regulations.

15. Failure to comply with this Cleanup and Abatement Order may subject the Dischargers to administrative civil liability or referral to the Office of the Attorney General for civil actions.

16. This order will be rescinded as to each discharger at the time that the discharger is regulated by a NDPES permit for the discharge of aquatic pesticides or there is a final determination that a NPDES permit is not required for the discharge. Dischargers may also choose to terminate coverage under this Order.

IT IS HEREBY ORDERED that, pursuant to Sections 13267 and 13304 of the California Water Code, the Dischargers listed in Attachment 1 shall comply with the following:

1. DPR and the County Agricultural Commissioners regulate the use of pesticides by the dischargers. The use must be consistent with the label instructions and any Use Permits issued by the Agricultural Commissioner. Parties applying products must be licensed by DPR and all use reported to the Agricultural Commissioner.
2. The discharge of chemicals to surface waters, other than the materials associated with the application of the aquatic pesticides identified in Form A is prohibited.
3. The discharges shall not cause exceedance of any applicable water quality objective or water quality standard for receiving waters except in compliance with this order.
4. The Dischargers will follow procedures that are designed to maximize efficacy of control efforts and minimize adverse impacts to the environment. The steps that will be followed include:

- a. *Preliminary site evaluations.* The Discharger will conduct a site inspection to verify the need for treatment, options to treatment, and suitability of the site for treatment.
 - b. *Secondary site evaluations and pre-treatment monitoring.* The Discharger will determine the type and intensity of treatment needed. This evaluation will include measurement and analysis of indicators to provide information on potential efficacy and water quality impacts.
 - c. *Treatment.* Immediately prior to treatment, the Discharger will examine a series of indicators and modify treatment plans accordingly. These indicators may include day length, precipitation, recreational activity, sunlight, tidal water exchange, water depth, water flows, water turbidity, and wind. If this examination indicates a potential for reduced control efficacy and/or heightened water quality impacts, the treatment will be rescheduled.
 - d. *Post-treatment.* The Discharger will monitor control efficacy and water quality impacts. The results of this monitoring will be evaluated by the Discharger to refine project operations through an adaptive management process.
5. The discharge shall not cause the underlying groundwater to be degraded.
 6. The Discharger is granted a categorical exception from meeting the priority pollutant criteria/objectives specified in the State Water Resources Control Board's *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays and Estuaries*. This exception is short-term and only applies following the use of aquatic pesticides identified in Form A.
 7. The Discharger shall follow procedures designed to minimize environmental impacts.
 8. The Discharger shall take steps to notify potential water users of the expected extent of the impacted area if there may be adverse impacts to recreational, agricultural, and domestic uses of the water.
 9. The Discharger shall comply with Monitoring and Reporting Program No. 2001-160 which is part of this Order, and any revisions thereto as ordered by the Executive Officer.

10. When requested by U.S. EPA, the Discharger shall complete and submit Discharge Monitoring Reports to that agency. The submittal date shall be no later than the submittal date specified in the Monitoring and Reporting Program for Discharger Self Monitoring Reports.

Ordered by

John H. Robertus
Executive Officer
May 4, 2001