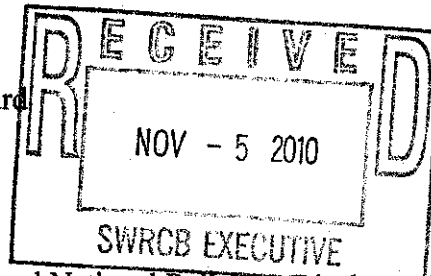




November 5, 2010

Ms. Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
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Sacramento, CA 95814



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RE: "Comment Letter – Statewide General National Pollutant Discharge Elimination System (NPDES) Permit for Residual Pesticide Discharges to Waters of the United States from Spray Applications."

Dear Ms. Townsend:

Thank you for the opportunity to provide comment on the "Statewide General National Pollutant Discharge Elimination System (NPDES) Permit for Residual Pesticide Discharges to Waters of the United States from Spray Applications." Like all surface water utilities, the East Bay Municipal Utility District depends on the rainfall and snowmelt that runs off watersheds to provide its 1.3 million customers with drinking water. Any activity on these watersheds has the potential to leave behind residuals that can be carried, by the runoff, into drinking water supplies. It is paramount that any pesticide and adjuvant application be conducted in a manner that poses no threat to drinking water quality. Any watershed designated for "municipal water supply" must be afforded a degree of protection commensurate with the importance of the resource. The components of that protection are outlined below.

Greater efforts are needed to ensure the application of pesticides and their adjuvants (some of which may have established primary or secondary drinking water standards) are consistent with Best Management Practices (BMPs). This will allay stakeholder concerns, and confirm fate/transport estimates made by the registrants and dischargers. It is not sufficient to assume the calculations or fate and transport data presented during registration cover the "worst case scenario" or "most conservative case."

We support the concept of triggers (Section VII; Table 3) and monitoring requirements outlined in Attachment C and urge the State Water Resources Control Board (SWRCB) to further strengthen these measures by including provisions within the monitoring program to establish watershed water quality benchmarks (pre-application monitoring) which can be compared to post application "stratified" or "event-based" samples. Monitoring programs should be optimized to capture potentially measurable and detectable events (e.g., the rising arm, peak, and falling arm of a first flush event off the watershed) to ensure the BMPs were followed during application and pesticide registration fate and transport estimates were valid. A strong monitoring program would further the SWRCB and Regional Water Quality Control Boards' implementation of the Watershed Management Approach identified and described in Attachment C. Omitting a

strong stratified or event based monitoring program from BMPs is not consistent with good public health practice nor is it good environmental stewardship.

The concept of a strong stratified (event based) watershed monitoring program is supported by a letter from the California Department of Public Health's (CDPH) Drinking Water Program in response to the California Department of Food and Agriculture's (CDFA) Programmatic Environmental Impact Report (EIR) for controlling the Light Brown Apple Moth (enclosure). CDPH stated that they believed the impact estimates in the Draft EIR, however, the letter also recommended that CDFA work with stakeholders to develop a watershed monitoring program to ensure their activities did not adversely impact water quality.

While we would like pesticide registration and NPDES permitting process to be fully transparent, there are proprietary laws and regulations that prevent water utilities and the general public from having access to pesticide component formulation information. Without the ability to identify the components of the pesticides, it is impossible for the water utility or watershed stakeholders to establish effective and efficient monitoring programs. Until these laws and regulations are revised, state agencies, such as CalEPA (SWRCB and Department of Pesticide Registration) and CDPH, must work together to ensure monitoring programs collect and process samples for the correct pesticides and adjuvants.

It is the responsibility of the discharger to bear the financial burden of developing and executing a monitoring program to demonstrate that their activities do not have a significant impact on the watershed or water quality. It would be inherently unfair to ask water utility rate payers to bear the financial burden of any monitoring activity that is not their doing.

Public water utilities do not have access to water quality data collected by private companies. Hence, it is imperative that regulatory agencies overseeing the monitoring notify stakeholders, in a timely manner, should any contaminant be detected. Prompt notification will allow the utility the opportunity to respond in accordance with their emergency response plan.

Further, the Pesticide Application Plan (PAP) should include a sign off by the primary stakeholders (including regulatory agencies like CDPH, municipalities, and utility districts) in the watershed, indicating their review and concurrence with the monitoring elements of the PAP. Their signoff would also indicate that they consider it to be sufficient to evaluate and characterize any short or long-term impact that the pesticide application might have on drinking water quality.

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If you have any questions regarding the content of these comments, please contact
Dr. Richard Sakaji (510.287.0964).

Sincerely,



Michael J. Wallis
Director of Operations and Maintenance


cc: M. Rentz, ACWA
M. Blankinship, Blankinship and Associates



California Department of Public Health
MEMORANDUM

DATE: February 26, 2010

TO: Robert Leavitt, Ph.D.
Acting Director
Plant Health and Pest Prevention Services
California Department of Food and Agriculture
1220 N Street

FROM: Gary H. Yamamoto, P.E., Chief 
California Department of Public Health
Division of Drinking Water and Environmental Management
1616 Capitol Avenue, MS 7400
(916) 449-5577

SUBJECT: Response to Comments Submitted by the East Bay Municipal Utility District (EBMUD) on the Light Brown Apple Moth (LBAM) Eradication Program Draft Programmatic Environmental Impact Report (PEIR)

In January 2010, the California Department of Food and Agriculture (CDFA) asked the California Department of Public Health (CDPH) to comment on a letter dated September 28, 2009, from EBMUD. The letter provided EBMUD's comments on the subject draft PEIR. In its letter, EBMUD stated that the CDPH Drinking Water Program (DWP) should provide written concurrence with the draft PEIR's conclusion that the LBAM eradication program will not degrade drinking water supplies.

DWP concurs with the draft PEIR's conclusion that the LBAM eradication program will not degrade drinking water supplies. This concurrence is based upon the following considerations:

1. The preferred alternative proposes using pheromone-based products that are designed to interrupt LBAM mating activities, as well as other products that will be unlikely to impact drinking water supplies. The use of pheromone-based products provides tools that are inherently safer with regard to public and environmental health than traditional pesticide products designed solely to poison these organisms.
2. The preferred alternative would not result in the application of LBAM treatment chemicals directly to water bodies, and would employ techniques to avoid their drift or other misapplication into water bodies.
3. The preferred alternative would use product formulations that are highly insoluble in water and that adhere strongly to solid surfaces. This will minimize the

potential to introduce LBAM treatment-related chemicals indirectly into water bodies as a result of rainfall runoff.

4. The preferred alternative would use ground application of LBAM-treatment formulations in accessible areas. Since drinking water reservoirs have access roads, this will also minimize the potential to introduce treatment-related chemicals indirectly into drinking water supplies. Applicators can better target their product application and ensure there is no misdirected application.
5. The preferred alternative would use treatment formulations that degrade rapidly in the environment, which will also minimize the potential to introduce treatment-related chemicals indirectly into water bodies.

Given these mitigations, DWP believes the LBAM eradication project will not degrade drinking water supplies; however, considering the significance of any contamination, including inadvertent contamination of drinking water supplies, and in order to provide further assurance, DWP suggests the California Department of Food and Agriculture (CDFA) implement the following additional mitigation measures:

1. CDFA and its contractors should work with local water agencies to develop appropriate procedures for application of LBAM treatment materials in the vicinity of their reservoirs.
2. In at least the early phases of the program, CDFA should consider monitoring drinking water reservoirs to determine if treatment-related chemical components are detectable after application.
3. CDFA should not rely upon public drinking water systems to provide treatment of drinking water supplies to remove LBAM eradication-related contaminants, should there be an inadvertent contamination from product application. Instead, CDFA's design for its application procedures should include extra precautions, if necessary, to prevent any contamination from occurring.

Please contact me if you have any questions regarding this matter.