

2005 Cal-IPC Symposium

October 6, 2005

An Update on
California's
NPDES Permit
for Aquatic
Herbicide Use



Blankinship & Associates, Inc.
Agricultural & Environmental
Consultants

Aquatic
Pesticides
DETOUR
AHEAD?



Today's Talk

- Permit History
- Recent Developments
- Cherry Crk, MT
- What You Should Do



History



- 1996 Talent Irrigation District
- 1998 Headwaters Suit
- 2001 9th Circuit Court
- 2002 SWRCB NPDES #1
- 2004 SWRCB NPDES #2

History (con't)

- **NPDES Permit Needed if:**
 - “Pollutant” applied to waters of the US
 - “Pollutant” = “Chemical Waste”
 - “Chemical Waste” = “Residual” or “produces unintended effects”
- **Modeled after acrolein**

History (con't)



● 2005

- January: EPA Interpretive Statement: “No NPDES Permit Needed if FIFRA Followed”
- February: CWA Language Change “No NPDES Permit Needed if FIFRA Followed”
- April: HR 1749 (Otter) “No NPDES Permit Needed if FIFRA Followed”

History (con't)



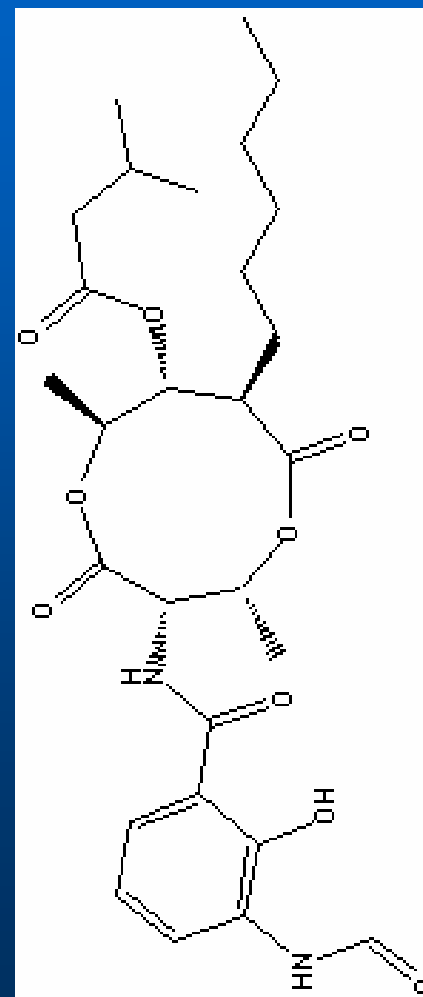
● 2005

- September 8th: 9th Circuit Court Fairhurst v. Hagener (Montana DFWP)
- No NPDES Permit Needed....in this case.
- Why?

Fairhurst v. Hagener (Montana DFWP)

● Background

- Antimycin (Fintrol®) Used to Kill Non-Native Fish in Cherry Creek, MT
- Works like rotenone & CN^-



Fairhurst v. Hagener (Montana DFWP)



- **Antimycin:**
 - “dissipates rapidly”
 - “leaves no residue” after it performs its intended purpose
 - No “refuse or excess material” left
 - These facts determined independent of FIFRA

Fairhurst v. Hagener (Montana DFWP)

- **NPDES Permit Needed if:**
 - “Pollutant” applied to waters of the US
 - “Pollutant” = “Chemical Waste”
 - “Chemical Waste” = “Residual” or “produces unintended effects”
- **Antimycin is not a chemical waste, therefore no NPDES Permit Needed.**

Important Points



● SWRCB Memo Sept. 29, 2005

- A permit is required if a pesticide remains in the water following its intentional and beneficial function
- Dischargers who believe they no longer need coverage should be allowed to withdraw
- Risk of CWA liability still exists
- See SWRCB Table

SWRCB

<u>Chemical</u>	<u>Half Life (days)</u>
<u><i>Antimycin</i></u>	<u><i>0.014</i></u>
Acrolein (ave)	0.33
Endothal (ave)	6
Imazapyr	7
Fluridone	20
Glyphosate (ave)	41
Copper Sulfate	Persists Indefinitely
2,4-D	None Given
Diquat Dibromide	None Given
Triclopyr	None Given
Petroleum Hydrocarbon	None Given

Source: <http://www.swrcb.ca.gov/aquatic/docs/matrix.pdf>

Scientific Literature

Active Ingredient	Aquatic Half life (Ave) Days
Triclopyr	0.4
Diquat Dibromide	2
Glyphosate DA Salt	2
Copper Carbonate	4
Copper Ethanolamine	4
Copper Sulfate Pentahydrate	4
Acrolein	4
Imazapyr	4
Endothal DiK Salt	6
2,4-D DMA salt	6
Glyphosate IPA Salt	7
<u>Antimycin</u>	<u>9</u>
Fluridone	21

You May Not Need One if



- “Rapid” dissipation occurs
- No “residual” is left
- No “unintended” side effects
- No Perceived CWA liability

Special Cases: Copper & Acrolein

- **State Implementation Plan (SIP) Exception Required**
- **Requires CEQA Process**
 - **Initial Study/Mitigated Negative Declaration**
 - **Plan on at least a 90-120 day lead time at the SWRCB**



What to Do Next



- **Continue to Use the Permit**
- **Always follow label (i.e., mitigate “residual” and “excess” arguments)**
- **Sign-up to SWRCB List serve**
- **Review SWRCB memo**

(http://www.swrcb.ca.gov/aquatic/docs/memo_fairhurstvhagener.pdf)

Aquatic Pesticide NPDES Permitting



More Info



● SWRCB

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More Info



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