

California Regional Water Quality Control Board  
Santa Ana Region

Cleanup and Abatement Order No. 01-66  
for  
Dischargers of Aquatic Pesticides to Waters of the United States

The California Regional Water Quality Control Board (hereinafter, Regional Board) finds that:

1. Attachment 1, which may be revised as necessary, contains a list of dischargers who have submitted Form A, 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 Department of Pesticide Regulation (DPR) to waters of the United States. DPR and the 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 or may be 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 beneficial uses of water from 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 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 not only aquatic organisms but also, other beneficial uses such as irrigation, municipal water supplies and recreation (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 will 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 substantial evidence that the dischargers may proceed with the applications prior to receiving NPDES permits. This constitutes a threatened discharge within the meaning of Water Code section 13304.
  10. Discharges of pollutants from point sources to waters of the United States without first obtaining an NPDES permit are prohibited. For the reasons stated in the preceding paragraph, there is 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 subject to a NPDES 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. This Order will expire after 90 days, except that it will be extended upon receipt by the Regional Board of a memorandum from the Chief of the Division of Water Quality, State Water Resources Control Board, stating that substantial progress is being made in the adoption of a general NPDES permit.

**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. The use of aquatic pesticides must be consistent with the label instructions and any Use Permits issued by the Agricultural Commissioner. Persons 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 registered by DPR and identified in Form A is prohibited.
3. The discharges shall not cause exceedance of any applicable water quality objective nor adversely affect the beneficial uses of receiving waters, except in compliance with this Order.
4. The dischargers shall 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 recreation, agricultural and domestic uses of the water.
  9. The discharger shall comply with Monitoring and Reporting Program No. 01-66, which is part of this Order, and any revisions thereto.

Ordered by:

---

Gerard J. Thibeault  
Executive Officer

May 7, 2001



California Regional Water Quality Control Board  
Santa Ana Region

Monitoring And Reporting Program No. 01-66  
for  
Dischargers of Aquatic Pesticides to Waters of The United States

**DOCUMENTATION**

The discharger shall maintain records of the location of all treatment areas, the names of the water bodies treated and, where appropriate, the surface area of the water treated. The type, name, concentration and amount of chemicals used during each treatment shall also be recorded. Where treatments continue for more than one day, the amount of chemical used shall be recorded at least weekly.

**IMPACTED AREA MONITORING**

Water samples shall be collected quarterly and analyzed for the active ingredients in the pesticide(s) applied. The discharger shall conduct the monitoring in a manner that ensures that all pesticides used during a calendar quarter are subject to water quality monitoring at least once during that period of time. All sample collection, transport and analyses shall be conducted following procedures approved by U.S. Environmental Protection Agency.

For natural flowing water bodies, the sample shall be taken immediately downstream of the treatment area within one hour following the application of pesticides. For canals and other man-made conveyance facilities, the samples shall be taken at the point at which treated water is discharged to a natural water body (sampling is not required if no such discharge occurs). For lakes and other quiescent water bodies, samples shall be taken within 10 feet of any spot treatments within four hours of the application. Where the entire lake is treated, the sample shall be taken at the point where water leaves the water body and within 4 hours of the application. Mosquito abatement and vector control agencies may perform statistically representative sampling, which must include all habitat types.

For each site where samples are collected, the discharger shall develop a sketch showing the treatment area, the location of the monitoring site(s) relative to the treatment area, the shore, and direction of water movement. The depth at which the sample is collected shall also be recorded.

The discharger shall complete a chain of custody form (usually available from the analytical laboratory) showing:

1. Names of parties collecting and transporting sample
2. Time of sample collection and delivery to lab
3. Type and volume of sample bottle
4. Method of sample preservation (ice, acid, etc.)

## **REPORTING**

Prior to conducting any operations involving aquatic pesticides, the discharger shall provide the Board with the following information:

1. A map indicating water bodies to be treated.
2. A complete list of the chemicals to be used, including adjuvants.
3. A proposed schedule and anticipated duration of activities.

The discharger shall submit a calendar-year annual report to the Board by January 31<sup>st</sup> of each year. The report shall contain tabular summaries of the pesticide monitoring data obtained during the year in a format that satisfies the requirements for inclusion in the Department of Pesticide Regulation's surface water database.

Sketches of sample locations, chain of custody forms and other information developed as part of this monitoring program shall be maintained by the discharger and submitted to the Regional Board upon request.

## **QUALITY ASSURANCE PLAN**

The discharger shall begin monitoring upon issuance of this Cleanup and Abatement Order. The discharger shall develop and submit a Quality Assurance Plan (QAP) for its monitoring program by January 1, 2002. This QAP shall address all aspects of the monitoring program and be modeled after a draft QAP provided by the Regional Board. Following development of the QAP, the Discharger shall follow the procedures specified in this document.

Ordered by:

---

Gerard J. Thibeault  
Executive Officer

May 7, 2001

**(FORM A)**  
**NOTICE OF INTENT**  
**TO OBTAIN COVERAGE UNDER A**  
**GENERAL PERMIT TO DISCHARGE AQUATIC PESTICIDES**

**I. NOI STATUS**

MARK ONLY ONE ITEM    1. <input type="checkbox"/> New Applicator    2. <input type="checkbox"/> Change of Information for WDID# <span style="border: 1px solid black; display: inline-block; width: 100px; height: 15px; vertical-align: middle;"></span>
---

**II. PESTICIDE APPLICATOR INFORMATION**

Name/Agency	Contact Person		
Mailing Address	Title		
City	State	Zip	Phone (     )     -

**III. RECEIVING WATER INFORMATION**

A. Do wastes and pesticide residues discharge to (Check all that apply): 1. <input type="checkbox"/> Canals, Ditches, or other constructed conveyance facilities owned and controlled by Applicator? _____ 2. <input type="checkbox"/> Other conveyance systems? - Enter owner's name: _____ 3. <input type="checkbox"/> Directly to waters of U.S. (e.g., river, lake, creek, stream, bay, ocean, etc.)? _____
B. Regional Water Quality Control Board where application sites are located (REGION 1,2,3,4,5,6,7,8, or 9):    REGION _____
C. Name of receiving water: (river, lake, creek, stream, bay, ocean): _____

**IV. PESTICIDE APPLICATION INFORMATION**

A. Target Organism:    ___Algae    ___Aquatic Weeds (surface)    ___Aquatic Weeds (submerged)    ___Mosquitoes and other Vectors ___OTHER (identify): _____
B. Pesticides Used: List Name and Active ingredients - _____
C. Period of Application: Start Date _____ End Date _____

**(FORM A)**  
**NOTICE OF INTENT**  
**TO OBTAIN COVERAGE UNDER A**  
**GENERAL PERMIT TO DISCHARGE AQUATIC PESTICIDES**

**I. NOI STATUS**

MARK ONLY ONE ITEM    1. <input type="checkbox"/> New Applicator    2. <input type="checkbox"/> Change of Information for WDID# <span style="border: 1px solid black; display: inline-block; width: 100px; height: 15px; vertical-align: middle;"></span>
---

**II. PESTICIDE APPLICATOR INFORMATION**

Name/Agency	Contact Person		
Mailing Address	Title		
City	State	Zip	Phone (    )    --

**III. RECEIVING WATER INFORMATION**

A. Do wastes and pesticide residues discharge to (Check all that apply):  1. <input type="checkbox"/> <b>Canals, Ditches, or other constructed conveyance facilities owned and controlled by Applicator?</b> _____ 2. <input type="checkbox"/> <b>Other conveyance systems? - Enter owner's name:</b> _____ 3. <input type="checkbox"/> <b>Directly to waters of U.S. (e.g., river, lake, creek, stream, bay, ocean, etc.)?</b> _____
B. Regional Water Quality Control Board where application sites are located (REGION 1,2,3,4,5,6,7,8, or 9):    REGION _____
C. Name of receiving water: (river, lake, creek, stream, bay, ocean): _____

**IV. PESTICIDE APPLICATION INFORMATION**

A. Target Organism:    ___Algae    ___Aquatic Weeds (surface)    ___Aquatic Weeds (submerged)    ___Mosquitoes and other Vectors ___OTHER (identify): _____
B. Pesticides Used: List Name and Active ingredients - _____
C. Period of Application: Start Date _____ End Date _____

**V. VICINITY MAP** (must show application site location in relation to nearest named streets, intersections, etc.)

Have you included a vicinity map with this submittal? .....  YES  NO

**VI. CERTIFICATIONS**

"I certify under penalty of law that this document and all attachments were prepared under my direction and supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment."

Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

**VII. FORM A SUBMITTAL INFORMATION**

**A. The completed and signed Form A should be mailed or Faxed to:**

**State Water Resources Control Board  
Division of Water Quality  
Attn: Aquatic Pesticide Application Activities  
P.O. Box 100  
Sacramento, CA 95812-0100**

**FAX (916) 341-5463**