

## Notice of Opportunity to Provide Informal Comments on Preliminary Draft Adulticides Permit

In response to a recent decision of the Sixth Circuit U.S. Court of Appeals,<sup>1</sup> State Water Resources Control Board Staff have developed a preliminary [draft NPDES General Permit for Adulticides](#) to cover the discharge of residual pesticides to waters of the United States resulting from adult mosquito spray applications. We will accept and consider comments on this preliminary draft Permit; however, we will not respond to comments or develop a response to comments document. We will, however, post all comment letters received on this website. There are two areas that we are interested in receiving specific comments on: (1) the Watershed Monitoring section; and (2) whether to combine the NPDES General Permit for Adulticides for spray applications and the Vector Control Permit for direct applications to control mosquito larvae into one permit. The final draft NPDES General Permit for Adulticides will be noticed for a 30-day formal public comment period at a later time; at that time, we will respond to comments received during the formal comment period.

By **January 25, 2010**, please send comments on the draft permit to: Phil Isorena [[pisorena@waterboards.ca.gov](mailto:pisorena@waterboards.ca.gov), (916) 341-5544] and Trinh Pham [[tpham@waterboards.ca.gov](mailto:tpham@waterboards.ca.gov), (916) 327-8117].

**(If 15 megabytes in size or less)**, or by mail addressed to Trinh Pham, Division of Water Quality, State Water Resources Control Board, 1001 I Street, Sacramento, CA 95814. Please also indicate in the subject line, “**Comment Letter – Preliminary Draft Adulticides Permit.**”

### Background

On January 7, 2009, the Sixth Circuit U.S. Court of Appeals vacated U.S. Environmental Protection Agency’s (USEPA) Aquatic Pesticide Rule.<sup>2</sup> USEPA did not request reconsideration of the decision, but filed a motion for a two-year stay of the effect of the decision in order to provide agencies time to develop, propose, and issue NPDES general permits for pesticide applications covered by the ruling. On June 8, 2009, the Sixth Circuit granted the motion, such that the USEPA exemption will remain in effect until April 9, 2011.

In February 2009, State Water Board staff met with members of the Mosquito and Vector Control Association of California (MVCAC), which represents the vast majority of governmental mosquito control programs in the state. California Department of Pesticide Regulation (DPR) and California Department of Public Health (CDPH) representatives were also present at the meeting, the purpose of which was to discuss MVCAC’s need for a mosquito adulticide permit as a result of the Sixth Circuit ruling. In subsequent meetings, representatives of these

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<sup>1</sup> *National Cotton Council v. United State Environmental Protection Agency*, 553 F.3d 927 (2009).

<sup>2</sup> 40 CFR § 122.3(h).

groups, including State Water Board staff, formed a technical committee to facilitate drafting of the adulticide permit. Representatives of USEPA Headquarters and Region 9 joined the technical committee after its initial formation. Before the Sixth Circuit granted USEPA's motion for a stay, there was an urgency to expedite the permitting process in order to allow mosquito abatement activities to go forward in compliance with applicable law. As a result, staff drafted the Permit following the procedures adopted by the technical committee to expedite permit processing. These procedures include:

1. Permit only the most commonly used adulticide products in California. CPDH and MVCAC provided staff with a list of 30 products;
2. Exclude from the permit all adulticide products that contain priority pollutants as active ingredients and inert ingredients because having priority pollutants would add more complicated requirements; and
3. Exclude products with inert ingredients that have water quality concerns.

Thus, this version of the preliminary draft NPDES General Permit for Adulticides provides limitations and requirements only for the most commonly used adulticide products in California. However, since the stay was granted, staff has proceeded with reviewing all of the currently registered adulticide products in California and will add other products to the Permit as appropriate. The revised Order that will be noticed for a 30-day public comment period will include the results of staff's review of the remaining products.