



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
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WATER DIVISION

May 7, 2019

Stacey Callaway
Water Quality Program
Department of Ecology
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(email to: cals461@ecy.wa.gov)

Re: U.S. Environmental Protection Agency's (EPA) Comments on Draft Washington Department of Ecology's Aquatic Mosquito Control General Permit

Dear Ms. Callaway:

Thank you for the opportunity to comment on Washington Department of Ecology's (Ecology) draft Aquatic Mosquito Control General Permit (draft permit). The draft permit was issued for public comment on March 6, 2019, and on April 19, 2019, the EPA requested additional time to provide comments on the draft permit. The EPA conducted this review in accordance with the procedures outlined in the July 2018 National Pollutant Discharge Elimination System (NPDES) Memorandum of Agreement Between the State of Washington and EPA Region 10.

Comment 1: With regard to S1.C. of the draft permit, this section pertains to the geographic areas covered under the permit, which includes activities within Washington State. The permit also states where the permit does not apply including Federal and Tribal lands. The EPA suggests that Ecology include a statement of clarification in this section that would direct dischargers of activities in the excluded areas to seek a permit under the EPA's Federal Pesticide General Permit.

Comment 2: With regard to S3.A.1.b of the draft permit, the EPA questions Ecology's jurisdictional authority to enforce the Endangered Species Act (ESA) under this permit. The permit states,

S3. DISCHARGE LIMITS

A. Compliance with Standards

1. Ensure that the application of pesticides listed in Special Condition S4. A (Active Ingredients Authorized for Use):

b. Complies with the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.). The application of pesticides must not cause a take, as set out in Section 9 of the Act, to an individual of a species listed as threatened or endangered unless that take is exempted under section 10 of the Act by the U.S. Fish and Wildlife Service or the National Oceanic and Atmospheric Administration. The list of endangered or threatened species is presented in 50 CFR 17.11(h).

The lead federal agencies for implementing the ESA are the U.S. Fish and Wildlife Service (FWS) and the U.S. National Oceanic and Atmospheric Administration – National Marine Fisheries Service

(NOAA-NMFS) (collectively referred to as the “Services”). Federal agencies consult with the Services on federal actions in accordance with Section 7 of the ESA. The EPA’s Office of Pesticide Programs, as the action agency, in collaboration with the Services and U.S. Department of Agriculture (USDA), ensure compliance with the ESA on individual pesticide active ingredients through amendments to pesticide labels. As Ecology does not have the jurisdiction to regulate and enforce the ESA, the EPA recommends removing subsection b.

Comment 3: With regard to Section S3.C. of the draft permit, the EPA recommends adding explicit language in Ecology’s permit in order to facilitate compliance and enforcement of the impaired waterbodies provision. The EPA refers Ecology to EPA’s Pesticide General Permit, Section 1.1.2.1, which pertains to protecting impaired waters.¹ For example, the PGP states, “Operators are not eligible for coverage under this permit for any discharges from a pesticide application to waters of the United States if the water is identified as impaired by a substance which either is an active ingredient in that pesticide or is a degradate of such an active ingredient.” The PGP provision relates specifically to water quality impairments for active ingredients.

Comment 4: With regard to Section S4.B.3.c. of the draft permit, the EPA disagrees with restrictions on the use of Deltamethrin until after resistance occurs. Section S4.B.3.c states:

S4. PESTICIDE USE

B. Pesticide Application Requirements

3. Adulticides

c. Deltamethrin

Deltamethrin may only be applied in response to the development of pesticide resistance within a mosquito population. Document the following information in your IPM plan (Special Condition S5) and Annual Report (Special Condition S8. A).

i. Evidence that indicated that a mosquito population was resistant to pesticides.

iii. Include the quantity applied, whether aquatic or terrestrial application, the rate or concentration of the application, and the name and EPA registration number for all active ingredients. Include this information for:

A. Pesticides you applied that ineffectively managed the pesticide-resistant mosquito population.

B. Pesticides you applied that effectively managed the pesticide-resistant mosquito population.

The language in subsection c., restricting the use of deltamethrin to only being applied in response to the development of pesticide resistance within mosquito populations is counter-productive to effective insecticide resistance management. In EPA’s *Pesticide Registration Notice (PRN) 2017-1: Guidance for Pesticide Registrants on Pesticide Resistance Management Labeling*, the EPA states that one important factor that fosters pesticide resistance is the repeated use of pesticides with the same mode of action on the same pest population. Thus, an important proactive pesticide resistance-management strategy is to rotate pesticides with different modes of

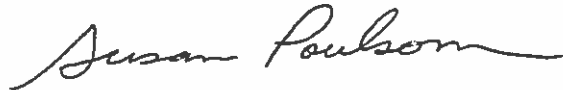
¹ EPA, 2016 Pesticide General Permit, Page 1-2, <https://www.epa.gov/npdes/pesticide-permitting-2016-pgp>.

action to control target pests in any given location.² By restricting the use of deltamethrin to only be applied in response to the development of resistance within mosquito populations, Ecology is preventing applicators from having access to multiple modes of action.

In addition, the language in subsections i. and iii. places the decision to determine whether pesticide resistance is occurring in an area on the reporting mosquito control district before allowing for the application of deltamethrin products. However, in contrast, language on page 27 of the Fact Sheet, states that malathion may only be used for the control of mosquito larvae with Ecology approval after consultation between Ecology, the Washington State Department of Health (DOH), and the Washington State Department of Fish and Wildlife (WDFW) in response to a public health emergency or pesticide resistance in a mosquito population. It is unclear whether Ecology is requiring consultation for the use of deltamethrin in response to pesticide resistance in a mosquito population. In identifying whether pesticide resistance is occurring in an area, EPA recommends that Ecology clarify whether mosquito control districts have the technical expertise to make the determination or if districts are required to consult with Ecology, the DOH, and the WDFW.

For any questions or concerns with EPA's comments on Ecology's draft Aquatic Mosquito Control General Permit, feel free to contact Bilin Basu at 206-553-0029.

Sincerely,



Susan Poulson, Acting Section Manager
NPDES Permitting Section

² EPA, Guidance for Pesticide Registrants on Pesticide Resistance Management Labeling, <https://www.epa.gov/sites/production/files/2017-09/documents/prn-2017-1-pesticide-resistance-management-labeling.pdf>.

