



September 24, 2007

Office of Pesticide Programs (OPP)
Regulatory Public Docket (7502P)
Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460-0001

Re: Docket ID Number EPA-HQ-OPP-2007-0588

Dear Sir or Madam:

Oregon Water Resources Congress ("OWRC") is writing to comment on EPA's Environmental Fate and Ecological Risk Assessment for the Reregistration of Acrolein ("Ecological Risk Assessment"). Incorporated in 1912, OWRC works to protect water rights and promote the wise stewardship of water resources. OWRC's members include Oregon irrigation districts and others providing irrigation water throughout the state ("Districts").

The Districts rely on aquatic herbicides, particularly acrolein, to maintain flow in their irrigation systems. OWRC's members employ specific management practices to control the ecological risks of applying acrolein to irrigation systems. OWRC offers the following description of these practices in support of EPA's reregistration of MAGNACIDE[®] H (acrolein's registration name) under the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA").

In 2002, Oregon Department of Environmental Quality ("DEQ") began issuing Clean Water Act (CWA) National Pollutant Discharge Elimination System ("NPDES") permits to the Districts to govern the application of acrolein-based herbicide to waters in irrigation systems.¹ The permits require the Districts to close areas that are treated with acrolein and to implement management practices related to the inspection, repair, closure, and reopening of gates within irrigation systems during applications. These practices are grounded by a goal of confining acrolein applications to the irrigation system and preventing discharge to natural waters. Said differently, the management practices aim to control the ecological risks of acrolein to waters, plants and animals downstream of the treatment area. The heart of these practices involves closing and locking (and/or tagging) each irrigation gate within the treatment area that discharges to natural waters before acrolein is expected to reach that gate. The tags state that the delivery point has been closed and cannot be reopened without approval. The Districts cannot reopen the gates until they determine that acrolein levels in the treatment area are below risk-based levels. The Districts make this determination by keeping the gates closed until: 1) the holding period specified on the FIFRA label expires; or 2) the water in the treatment area has turned over (e.g. the process by which fresh, untreated water replaces the treated water). The sufficiency of

¹ DEQ required the permits as a result of the United States Court of Appeals for the Ninth Circuit's decision in *Headwaters, Inc. v. Talent Irrigation District*, 254 F.3d 526 (9th Cir. 2001). EPA later concluded that the *Headwaters* decision does not require NPDES permits for pesticide and herbicide applications made in accordance with FIFRA requirements. DEQ, however, has continued to issue these NPDES permits.

The mission of the Oregon Water Resources Congress is to promote the protection and use of water rights and the wise stewardship of water resources.

these methods has been demonstrated by studies conducted by OWRC in cooperation with DEQ, which we can provide at your request.

The Districts inspect and ensure that all gates in the treatment area are in good repair before each application season or specific application. As an added precaution, the Districts inspect closed gates at least once per day during the period when acrolein levels in the irrigation system are likely to exceed permit limits.

These key management practices appear in each District's NPDES permit. For EPA's convenience, we have reprinted here the relevant language from one of district's NPDES permits requiring these practices, as follows:

Inspection and Repair of Gates Prior to the application season or each application, the permittee must assure that all gates in the treatment area are in working order. * * *

Closure of Gates that may Discharge to Natural Waters The permittee must:

- i) **Close and Lock** Close and lock (if the gate will accommodate a lock) each gate within the treatment area that discharges to natural waters at least two hours before the aquatic herbicide wave is expected to reach that gate. For any lateral canal that discharges to natural waters, either the point of discharge to natural waters must be closed or the turnout to the lateral canal from the main canal must be closed.
 - (1) In making this calculation, the permittee must consider the volume and velocity of flow in the treatment area and the distance between the point aquatic herbicide is applied and the gate to be closed. The fastest velocity of flow, as averaged through the vertical water column, in a representative cross-section of the channel must be used. When channel configurations vary, calculations may be made on different sections of the treatment area to determine the time when the aquatic herbicide wave is expected to reach the gate.

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- ii) **Tag Gates** Attach an easily visible tag to each water user delivery point that cannot be locked. The tag must state that the delivery point has been closed at the request of the water user and may be reopened only by the permittee's personnel.

Inspection Requirements During the period when aquatic herbicide levels in the irrigation system are likely to be above the discharge limitation, the permittee must inspect water user delivery points at least once a day that have been closed as requested by the water user.

Reopening of Gates **Substitie KID language for this section** The permittee may only reopen gates when Acrolein-based herbicide is no longer present at levels above its discharge limitation. This determination may be made using one of the following:

- i) **Holding** For acrolein-based herbicide only, the permittee waits for expiration of the holding period as specified in the EPA-approved FIFRA label.
- iii) **Turnover** The permittee calculates the rate at which the volume of water in the treatment area is replaced by fresh, untreated water based on the portion of the treatment area where such turnover is the slowest (the slowest velocity of flow, as averaged through the vertical water column, in a representative cross-section

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Page 3 of 3 of the channel must be used). The permittee may not open the gate(s) until the water in the treatment area has turned over at least one time.

- (1) The permittee may calculate turnover rates for individual laterals that are fed from the main canal and open gates in these laterals if the volume of water in the lateral has turned over at least one time. For example, a lateral closer to the acrolein-based herbicide application point may turnover more quickly than the main canal or a lateral located farther away from the application point.
- (2) In making this calculation, the permittee must consider the distance between the point acrolein-based herbicide is applied and the gate farthest from the application point to be reopened.

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OWRC's members have executed these management practices with great success. Since implementing these practices in 2002, we are aware of no incidents where acrolein has been released from an Oregon irrigation system at harmful levels. This significant accomplishment has not come without cost. The management practices require the Districts' significant financial and administrative commitment. The Districts have had to dedicate additional staff, time and resources to ensure that the practices are properly employed.

OWRC does not believe that the ecological risks of acrolein-based herbicide applications in irrigation systems warrant changes to the FIFRA label for MAGNACIDE[®] H (the "Label"). That said, OWRC requests that EPA consider the Districts' experience when assessing the need for and/or imposing additional labeling conditions.

OWRC specifically requests that EPA not include further labeling conditions that are inconsistent with the Districts' obligation to implement the management practices in accordance with their NPDES permits. Although these management practices are burdensome and costly, OWRC and its members support them as a reasonable and practical way to protect natural waters. The Districts' experience demonstrates that these practices control the ecological risks of acrolein-based herbicide applications in irrigation systems while preserving the herbicide's extraordinary benefit to irrigation and drainage. If EPA determines that additional labeling conditions are required, OWRC suggests that:

- 1) the Label state that application of acrolein in compliance with the terms of an NPDES permit that specifically regulates application of aquatic herbicide is an acceptable alternative to compliance with any such additional labeling conditions; or
- 2) EPA write the specific management practices reprinted above into the Label and deem implementation of those practices to be an approved application method.

Thank you for providing OWRC this opportunity to comment on the Ecological Risk Assessment.

Very truly yours,

Anita Winkler
Executive Director
Oregon Water Resources Congress