



## Oregon Water Resources Congress

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January 2, 2008

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:

The Oregon Water Resources Congress (“OWRC”) is writing to comment on EPA’s Human Health Risk Assessment for the Reregistration of Acrolein (“Human Health 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 (“OWRC’s members”). OWRC offers these comments based on its members experience in using acrolein to control weeds in irrigation canals and ditches over many years without known harm to human health.

Certain of OWRC’s members apply acrolein to irrigation systems pursuant to Clean Water Act National Pollutant Discharge Elimination System (“NPDES”) permits (“the Districts”). The Districts employ specific management practices to control the human health risks of applying acrolein to irrigation systems. These practices mitigate risk to workers and bystanders during and after application periods.

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”).

### **I. The Districts Control Health Risks to Bystanders**

The Districts rely upon practical strategies to control the risk that bystanders will be exposed to acrolein, whether in natural waters adjoining irrigation systems or the irrigation systems themselves.

***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.***

**A. *Acrolein is Confined to the Irrigation Systems, Not Discharged to Natural Waters***

The Oregon Department of Environmental Quality (“DEQ”) began issuing NPDES permits to the Districts in 2002. As indicated above, the permits govern the application of acrolein-based herbicide to waters in irrigation systems.<sup>1</sup> The permits require the Districts to implement management practices related to the inspection, repair, closure, and reopening of gates within irrigation systems treated with acrolein.<sup>2</sup> Aimed at confining acrolein applications to the irrigation systems and preventing discharge to natural waters, these management practices control the risks to bystanders making recreational use of natural waters downstream of treatment areas in the Districts’ irrigation systems. The practices appear as identical provisions in each District’s NPDES permit.<sup>3</sup> The Districts have implemented these management practices with great success. Since implementing these practices in 2002, OWRC is aware of no incidents where acrolein has been released from the Districts’ irrigation systems at levels harmful to humans.

**B. *The Districts Control Risks of Exposure to Bystanders in Application Areas***

The Districts also work to reduce the risk of exposure to bystanders in the vicinity of irrigation systems treated with acrolein. Most significantly, in accordance with their property and easement rights, the Districts expressly prohibit bystanders from entering the irrigation systems. This prohibition extends to all activities bystanders might otherwise seek to undertake in the irrigation systems (e.g. swimming, fishing, etc). So-called “ditchriders,” employed by the Districts to patrol stretches of the irrigation systems, help enforce this prohibition, as do local law enforcement officials.

Additional bystander protections are incorporated into each District’s NPDES permit. Each District’s NPDES permit requires that notice be provided to the public before the District makes its first aquatic herbicide application during each calendar year. Pursuant to its NPDES permit, each District must notify water users in the District of its intent to use acrolein. The District must also provide notice to the general public.

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<sup>1</sup> DEQ issued NPDES permits for aquatic herbicide use 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 in an administrative rule that the Headwaters decision does not require NPDES permits for pesticide and herbicide applications made in accordance with FIFRA requirements. DEQ, however, has not rescinded or otherwise canceled these NPDES permits, and the Districts currently have NPDES permit renewal applications pending before DEQ.

<sup>2</sup> Several of these same NPDES permits also regulate the Districts’ application of copper-based herbicides in irrigation systems.

<sup>3</sup> For EPA’s convenience, OWRC reprinted the relevant language from the Districts’ NPDES permits requiring these practices in its September 24, 2007 comment (EPA-HQ-OPP-2007-0588), posted by EPA on December 7, 2007 to the acrolein reregistration docket.

These notices provide the public with critical information. Among other things, these notices describe where and when the acrolein-based herbicide will be applied, specify water use restrictions or precautions that apply during treatment, and provide a telephone number that persons may call to get additional, acrolein-related information (e.g. the District's up-to-date acrolein application schedule).

These public notice requirements appear as similar provisions in each District's NPDES permit. For EPA's convenience, we have reprinted here the relevant provisions from one of the NPDES permits requiring these practices, as follows:

**Access to Application Schedule** The permittee must provide a phone number that interested persons may call to get more information from the permittee. The permittee must provide the caller with its most current application schedule and let the caller know if [ ] schedule is subject to change.

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**Public Notice Requirements**

- a. **Notice of Intended Use** For every calendar year, prior to the permittee's first application of aquatic herbicide, the permittee must notify:
  - i) Each water user within its district by general newsletter, special notice enclosed with a regular assessment, individual letter or publication in one or more newspapers with a combined circulation area encompassing the area in which the irrigation system is located, and
  - ii) The general public in the area served by the permittee's system by publication in one or more newspapers with a combined circulation area encompassing the area in which the irrigation system is located.
  
- b. **Requirements for Notice** The permittee must include the following in the notice:
  - i) A statement of the permittee's intent to use acrolein-based or copper-based herbicides, purpose of use, general description of where it will be used, general time period of expected use, and any water use restrictions or precautions during treatment.
  - ii) A phone number that interested persons may call to get more information from the permittee. [See the "Access to Application Schedule" provision restated above.]
  - iii) A statement indicating that the water user may request in writing that water deliveries during acrolein-based herbicide application be stopped.

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The public notices provided by the Districts pursuant to their NPDES permits serve as cost-effective, practical measures to keep bystanders informed and (more importantly) to alert them to stay out of irrigation systems treated with acrolein-based herbicides. In light of their utility, the

Districts are currently considering expanding the public notices to: 1) include a statement describing the human health hazards that may be present in areas treated with acrolein-based herbicides; 2) caution the public that entry into irrigation systems is prohibited; and 3) explain that interested persons can sign up to receive electronic or written notice of acrolein applications in their area before they occur.

OWRC believes that the public notice provisions in the District's NPDES permits are a more practical means to protect bystanders from exposure to acrolein than the method suggested in the Human Health Risk Assessment. That suggestion—to mark areas in the “vicinity of treatment” to prohibit entry by bystanders—is ill-suited for application in the Districts' irrigation systems. The irrigation systems maintained by the Districts span many miles and are crisscrossed by myriad points of potential public access (e.g., road crossings, etc.). Moreover, areas in irrigation systems treated with acrolein-based herbicide stretch for considerable distance and amount to moving targets due to the irrigation water's steady flow through the canals. For these reasons, it would be impractical and prohibitively expensive for the Districts to post signs or otherwise denote treated areas as a means of controlling risk of acrolein exposure to bystanders.

## **II. Worker Inhalation Exposure**

The Human Health Risk Assessment suggests that workers may be exposed (through the inhalation pathway) to acrolein in excess of levels of concern after initial set up and prior to break down of equipment, as well as after treatment is complete. Although OWRC expressly disagrees with this suggestion, the Districts implement a practical policy to protect applicators and other nearby workers from inhalation exposures in treatment areas at all times. Whereas the FIFRA label for MAGNACIDE® H (the “Label”) requires applicators to wear a full face air purifying respirator and butyl rubber gloves only while setting up and breaking down application equipment, the Districts require their workers to take extra precautions. In particular, the Districts require and train their workers to keep their respirator and gloves within reach whenever conducting activities near treated areas at or near the time of treatment. The workers are instructed to wear this equipment whenever they encounter acrolein at irritating levels in the treatment area, not just while setting up and prior to breaking down application equipment. Coupled with requirements on the Label, this simple measure ensures that the risk of acrolein inhalation exposure to workers in the vicinity of treatment areas is controlled.

## **III. Conclusion**

The Districts have implemented the above-described protective measures with great success. To date, no reported incidents involving acrolein exposure to workers or bystanders have occurred in the irrigation systems maintained by the Districts. This accomplishment results from the Districts' significant financial and administrative commitment to ensuring the safety of their workers and the public from the human health risks of using acrolein-based herbicides.

OWRC does not believe that the human health risks of acrolein-based herbicide applications in irrigation systems warrant changes to the Label. That said, OWRC requests that EPA consider the Districts' experience when assessing the need for and/or imposing additional labeling conditions.

The Districts' experience demonstrates that the practices summarized above effectively control the risks to workers and bystanders of acrolein-based herbicide applications in irrigation systems. Accordingly, OWRC specifically requests that EPA not include further labeling conditions that are inconsistent with the Districts' obligations under their NPDES permits or the additional risk mitigation practices employed by the Districts (described above) as a matter of policy.

If EPA determines that additional labeling conditions are required, OWRC suggests that:

- 1) the Label state that application of acrolein-based herbicide in irrigation systems in compliance with the terms of a valid NPDES permit is an acceptable alternative to compliance with any such additional labeling conditions; or
- 2) EPA write the specific practices taken by the Districts to protect workers and bystanders into the Label and deem implementation of those practices to be an approved application method.

Both of these suggestions recognize the sufficiency of the Districts' efforts to control the human health risks of using acrolein in their irrigation systems without imposing those efforts uniformly upon all acrolein users. Accordingly, OWRC requests that EPA adopt either or both of these suggestions if it determines that additional labeling conditions are necessary.

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

Very truly yours,



Anita Winkler  
Executive Director  
Oregon Water Resources Congress