

MAR 14 2010

WATER QUALITY PROGRAM

**Mosquito Control District
of
Cowlitz County**

PO Box 1261
Longview, WA 98632



March 8, 2010

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Pat Brock, Attorney

Mr. Jon Jennings
Aquatic Pesticides and CAFOs
Water Quality program
Washington State Department of Ecology
P.O. Box 47600
Olympia, WA 98504

Dear Mr. Jennings:

I have served as the Cowlitz County Mosquito Control District's attorney since its inception in 1990 and have been retained by the Benton, Franklin, Skamania and Grant Counties' Mosquito Control Districts for the purposes of providing legal advice and comments with respect to this permit. It is my opinion that if the draft permit language becomes final, it will be necessary that the Districts cease all applications targeting adult nuisance mosquitoes.

The definition of Waters of the State is too vague:

Waters of the State: All surface and ground waters in Washington State as defined by chapter 90.48.020 RCW and all future amendments of state statute. 90.48.020 reads that "waters of the state" shall be construed to include lakes, rivers, ponds, streams, inland waters, underground waters, salt waters and all other surface waters and watercourses within the jurisdiction of the state of Washington.

In order to target adult mosquitoes the equipment used by the Districts is designed to generate an aerosol cloud. The droplets produced by specialized mosquito control equipment have a 300ft spray swath. Aerial applications can produce a spray swath of 300-1000 feet.

In order to prevent any residue from depositing on the water during these applications, Mosquito Control professionals would be forced

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to place a large buffer around all waters of the state as defined above. The buffers would be so numerous and difficult to navigate that the operator would unavoidably expose surface waters to residue. It is my opinion that both the operator and his or her employer, the District, would be in violation of the permit guidelines, thus exposing the district to potential fines and penalties.

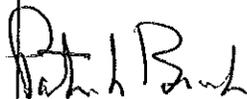
In our view, there are arguably two solutions to this conflict. First, clarify the definition of "waters of the state." If the definition were altered to reflect only navigable waters such as rivers and streams this would be amenable to my clients. Second, modify the permit language to allow incidental amounts of adulticides and their residues into waters of the state for nuisance mosquito control.

Frankly, we are unclear as to whether it is Department of Ecology's position that it lacks the legal authority to make these modifications, or is it simply believed that such accommodation is inappropriate. If it is the former, we would request that the Department of Ecology state in clear terms why this is believed to be the case. If it is the latter, we would ask that the Department of Ecology reconsider and make the changes requested.

I ask that these comments be given full consideration prior to issuance of a final permit.

Thank you for the opportunity to provide comment on the Preliminary Draft Aquatic Mosquito Control National Pollutant Discharge Elimination System State Waste Discharge General Permit.

Sincerely,



Patrick Brock
Attorney at Law
Bar No. 1642

c: Cowlitz Co. Mosquito Control District
Benton Co. Mosquito Control District
Franklin Co. Mosquito Control District
Skamania Co. Mosquito Control District
Grant Co. Mosquito Control District