Kathy Hamel

The Talent Irrigation District Court Decision – Impacts to the Management of Aquatic Nuisance Species

Biography
Kathy Hamel has a Master of Science degree in aquatic ecology from the University of Western Australia. Her earlier work experience involved research work on blue green algae and nutrient cycling in an Australian estuary. For the past 14 years, Kathy has been managing an aquatic weeds program for the Washington State Department of Ecology. She is also a scientific advisor to the State Noxious Weed Control Board, is on the board of the Western Aquatic Plant Management Society, and is an active member of the Washington Lakes Protection Association.

Presentation Abstract
In May 1996, the Talent Irrigation District, an irrigation district in southern Oregon, applied the chemical acrolein to the Talent Canal to control excessive growth of weeds. The next day many dead fish were found in nearby Bear Creek downstream from a leaking waste gate from the canal. Over 92,000 juvenile steelhead were killed. A fish kill had also been reported in Bear Creek in 1983 following acrolein application.

As a result of the fish kill, environmental groups filed suit under the Clean Water Act (CWA) alleging that Talent was in violation of the CWA when it discharged acrolein without a National Pollution Discharge Elimination System permit (NPDES).
Talent argued that the acrolein label approved by the Environmental Protection Agency (EPA) under the Federal Insecticide, Fungicide, Rodenticide Act (FIFRA) did not require the user to obtain a permit. Although a lower court found that Talent did not need to obtain a permit, this decision was reversed in the 9th Circuit District Court in March. They found that the EPA-approved label under FIFRA did not eliminate Talent's obligation to obtain a NPDES permit. Decisions made in the 9th Circuit District Court apply to nine western states and Guam.

This decision has been interpreted in many western states to mean that the application of any aquatic pesticide to waters of the United States now requires an NPDES permit. This has permitting implications for aquatic activities such as noxious weed management, mosquito control programs,

exotic fish and animal management, and chemical removal of weeds for flood control and water delivery. The NPDES permitting program typically covers facilities that discharge pollutants from point sources. These discharges include municipal sewage treatment plants, industrial wastewater, and stormwater. Aquatic pesticide applications do not fit well into the NPDES permit model. We now have a scenario where aquatic pesticide application in the nine western states and Guam will be handled differently than aquatic pesticide use in the rest of the United States.