

January 15, 2008

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

RE: Comments to Docket ID Number EPA-HQ-OPP-2007-0944
Petition Requesting EPA to Issue a Notice of Intent to Cancel the Registrations of
M-44 Sodium Cyanide Capsules and Sodium Fluoroacetate
Federal Register Volume 72, Number E7-22369, Pages 64623 - 64624

Introduction

On January 27, 2004, a number of environmental groups filed a petition with the Environmental Protection Agency (EPA) asking the agency to issue a notice of intent to cancel the registration for M-44 sodium cyanide capsules and sodium fluoroacetate (commonly known as “compound 1080”). These compounds are critical to maintaining a viable livestock industry. The undersigned groups ask EPA to reject the petition because it is not ripe for review.

Background

Sodium cyanide (SC) and sodium fluoroacetate (SF) both first came into use in this country in the 1940s. More recently, EPA approved SC for use in 1975 to control coyote, red fox, gray fox and wild dog populations that prey upon livestock, poultry or endangered species, or that are vectors of communicable diseases. The approval was subject to 26 use restrictions to minimize potential adverse impacts on man and the environment. The U.S. Fish and Wildlife Service issued a biological opinion in March 1993 that proposed additional restrictions on the use of SC to protect endangered species.

The EPA approved SF in 1985 for a toxic collar product to thwart coyote attacks on sheep and goats. In March 1993, the U.S. Fish and Wildlife Service issued a final biological opinion on the effects of SF on threatened and endangered species addressed the livestock protection collar and included jeopardy determinations to the gray wolf and grizzly bear. Specific areas were identified where the collar could not be used and the restrictions were incorporated on the livestock protection collar labels.

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) provides for the cancellation of registrations that cause “unreasonable adverse effects on the environment”. 7 U.S.C. § 136d(b). In support of its petition, the environmental groups assert that SC and SF threaten species listed under the Endangered Species Act (ESA); generally have caused unintended deaths of numerous species and domestic pets; and finally that the compounds could be used as bioterrorism agents and the Animal and Plant

Health Inspection Service lack adequate measures to control their use. Each of these contentions is considered below.

Discussion

Endangered Species

The EPA should decline to make a decision regarding issues on which it lacks primary jurisdiction and expertise. So for example, the environmentalists want EPA to cancel the registrations for SC and SF based in part on a broad claim that the compounds are harming species listed under the ESA. As indicated above, the FWS has already considered the impact of these compounds on endangered species and issued Biological Opinions with use restrictions. EPA is not vested with primary authority for considering the effects of human activities on endangered species. Unless and until the FWS acts in this matter, the EPA should decline to take action on a petition like that submitted in this case.

Bioterrorism Agents

The environmentalists also suggest that SC and SF can be used as bioterrorism agents. Again, there is a prescribed channel for considering these kinds of claims and the petitioners' concerns should be set aside until they have been addressed by the proper authorities.

Sections 201 and 212 of The Public Health Security and Bioterrorism Preparedness Act of 2002 requires the Departments of Health and Human Services (HHS) and Agriculture, respectively, to maintain lists of each biological agent and toxin that poses a severe threat to public health and safety or to animal or plant health or to animal or plant products. The USDA promulgated its list of agents at 7 C.F.R. § 331.3 and 9 C.F.R. § 121.3. HHS promulgated its list of agents at 42 C.F.R. § 73.3. None of these lists include sodium cyanide or sodium fluoroacetate.

By statute, HHS and USDA are responsible for determining which toxic agents pose severe threats to human, animal, or plant life. Unless and until the responsible Departments give a positive response to such a petition, the EPA should decline to take action on a petition like that submitted in this case.

Wildlife Species not Listed Under the ESA

Petitioners also assert SC and SF cause unreasonable adverse effects on wildlife species not listed under the ESA. States are responsible for managing these species. If SC or SF are causing unreasonable harm to these species, petitioners should bring their claims to the relevant state authorities. It is the states that have comprehensive plans for managing wildlife in their borders in the context of all wildlife species and in the context of all land

uses in the state. What we have with this petition is advocacy by wildlife interests in a vacuum.

If a state were to conclude that SC and SF are causing unreasonable adverse effects to wildlife, the state can publicize the finding and the state or wildlife interests could then bring the information forward to the EPA. Unless and until a state makes such a finding, the EPA should decline to take action on a petition like that submitted in this case.

Conclusion

The environmental groups bring an unripe claim before EPA to cancel the registrations for sodium cyanide and sodium fluoroacetate. Because of the lack of development of a factual record by the agencies of jurisdiction, the petitioners' claim is grounded on facts they prefer if not simply their personal bias. This is too important an issue for EPA to decide based on personal bias. We urge EPA to dismiss the petition for cancellation. We appreciate your consideration of our views.

California Cattlemen's Association
California Public Lands Council
California Woolgrowers Association
California Farm Bureau
Colorado Cattlemen's Association
National Cattlemen's Beef Association
National Farmers Union
Nebraska Cattlemen's Association
Public Lands Council
Utah Cattlemen's Association
Utah Farmers Union
Wyoming Stockgrowers Association