



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
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OFFICE OF  
PREVENTION, PESTICIDES AND  
TOXIC SUBSTANCES

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Mr. Edmund.G. Brown Jr.  
Attorney General of the State of California  
c/o Susan Fiering  
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Mr. Charles M. Tebbutt  
Western Environmental Law Center  
1216 Lincoln St.  
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Re: Petition of Northwest Coalition for Alternatives to Pesticides, et al., to Require Disclosure of Hazardous Inert Ingredients on Pesticide Product Labels ("NCAP Petition") and  
Petition of [15 U.S. States and Territories] Requesting That the United States Environmental Protection Agency Amend Its Rules Governing the Disclosure Of "Inert" Ingredients on Pesticide Product Labels to Require the Disclosure of Ingredients for Which Federal Determinations of Hazard Have Already Been Made ("State Petition")

Dear Ms. Leval, Attorney General Brown and Mr. Tebbutt:

I am writing to respond to the above-referenced petitions, received by EPA on August 1, 2006. These similar petitions identified a set of over 350 inert pesticide ingredients as hazardous and requested that EPA act to require that the inert ingredient identities appear on the labels of products that include these ingredients in their formulations. EPA partially grants these petitions as set forth below.

The State Petition requested the following:

The Petitioners request that EPA issue a determination within 60 days of the filing of this Petition that these substances meet those FIFRA criteria for disclosure on the ingredient statement on pesticide labels. Petitioners further request that, consistent with that determination, the Administrator initiate a rulemaking to amend its regulations governing the labeling of pesticide products to require that those chemical substances identified in the Administrator's determination as posing a hazard to public health or the environment be disclosed on the label of any pesticide product in which they are formulated.

State Petition at 3.

Below is the request of the NCAP Petition:

Petitioners request that EPA issue a determination within 60 days of the filing of this Petition to amend its labeling regulations, 40 C.F.R. § 156.10, to require that pesticide product labels clearly list any inert ingredients that EPA regulates as a hazardous chemical under other statutory provisions. Should EPA determine that it will not or cannot list all chemicals identified as hazardous under other statutes, petitioners request that EPA assess each enumerated list in this petition and make a section-by-section determination of whether to require labeling for each subset section. Should EPA determine that it will not or cannot make a section-by-section determination, petitioners request that EPA assess each chemical within each enumerated list in this petition and make an individual determination for each chemical of whether to require labeling for that chemical. Separately from the foregoing requests for labeling, petitioners also request that EPA require labeling of the hazardous inerts identified in the Hazardous Substance Data Bank.

NCAP Petition at 1.

EPA agrees with the petitioners that the public should have a means to learn the identities of hazardous inert ingredients in pesticide formulations. The Agency believes that increased transparency could lead to better informed decision-making and to better informed pesticide use.

EPA finds support in FIFRA for increased transparency regarding hazardous inert ingredients. The safety of the formulation, including all its ingredients, is a critical factor in whether the pesticide “will perform its intended function without unreasonable adverse effects on the environment” (FIFRA §3(c)(5)(C)). Under FIFRA §2(bb), the term “unreasonable adverse effects on the environment” takes into account “the economic, social, and environmental costs and benefits of the use of any pesticide”. EPA believes, as a general matter, that pesticide formulations containing hazardous inert ingredients have a less favorable cost/benefit ratio than otherwise identical formulations that perform the same function and do not contain hazardous inert ingredients. Thus, EPA has the authority under FIFRA to take measures to reduce the use of hazardous inert ingredients in pesticide formulations, including making inert ingredient information public.

In response to these petitions, EPA is initiating rulemaking to increase the public availability of hazardous inert ingredient identities for specific pesticide formulations. In connection with this rulemaking EPA will also be discussing ideas to increase the disclosure of inert ingredient identities to an even greater degree than requested by the petitions, for example, by requiring disclosure of all inert ingredients, including ingredients not deemed hazardous. The Agency is considering regulatory action as well as pursuing voluntary initiatives to achieve this broader disclosure.

As an alternative to rulemaking, the NCAP petition asked that EPA make a chemical-by-chemical determination and then require the labels of specific products containing inert ingredients deemed hazardous to disclose the presence of the ingredient. The Agency thinks that such an approach could potentially involve EPA having to address relative levels of risk of specific inert ingredients on a case-by-case basis via label reviews, approvals of specific formulations for individual products, and even cancellation under section 6. Challenges to individual decisions would have to be addressed individually. In comparison to rulemaking, EPA thinks that a chemical-by-chemical and product-by-product approach to compelling disclosure would be very slow and resource-intensive. It is more efficient to use the authority provided in FIFRA section 25(a)(1) "to prescribe regulations to carry out the provisions of [FIFRA]. Such regulations shall take into account the difference in concept and usage between various classes of pesticides. . . and differences in environmental risk."

There are a number of significant issues regarding the regulatory action that EPA may choose to take, such as the criteria for determining what inert ingredient identities should be made public, the extent to which disclosure independent of hazard can be supported under existing law, whether a concentration threshold should trigger a disclosure requirement, whether public disclosure should be made on pesticide labels or other avenues (e.g., web resources), and what form the disclosed ingredient identities should take (e.g., Chemical Abstract Service names, trade names, common chemical names).

By embarking on such rulemaking, EPA intends to effect a sea change in how inert ingredient information is made available to the public. Because of the magnitude of the change and the difficult issues facing the Agency, EPA desires a significant amount of input from the many sectors that would be affected. Therefore the Agency is initiating this rulemaking via an Advance Notice of Proposed Rulemaking (ANPR). EPA is providing a draft of this ANPR to the Office of Management and Budget (OMB) for review in accordance with Executive Order 12866. The status of OMB's review of the ANPR may be viewed at <http://www.reginfo.gov/public/do/eoPackageMain>. We anticipate that the ANPR will be published by the end of this year.

EPA is not committing, and indeed legally cannot commit, to any particular outcome for rulemaking. Nonetheless, EPA regards its commitment to issue an ANPR as a partial grant of the petitions, in that the ANPR will announce the Agency's intention to pursue rulemaking to achieve the type of disclosure described in the petitions. As noted above, proposals to disclose the presence of inert ingredients in pesticide products raise many complex issues. An ANPR is therefore an appropriate first step because it will enable EPA to gather information and views from potentially affected stakeholders needed to develop a sound, practical and defensible

proposed rule. EPA is not, however, proceeding in the manner requested by the petitioners -- issuing determinations for that the specific substances listed in the petitions must be disclosed on product labels. Doing so would potentially result in numerous challenges regarding individual products. Furthermore, the Agency believes there are a variety of criteria that might be used to determine which inert ingredients should be disclosed on the basis of hazard, and desires informed input from diverse members of the public in order to determine the appropriate criteria. These factors, together with the opportunity to put forward a vision for broad disclosure of inert ingredient identities, lead EPA to conclude that a wide-ranging ANPR is the appropriate starting point for achieving inert ingredient disclosure.

The substantial participation of the petitioners in this rulemaking, as well as that of the other affected members of the public, is pivotal to the creation of workable and effective disclosure rules. I am looking forward to a robust and informative dialogue.

Sincerely,



Debra Edwards, Ph.D., Director  
Office of Pesticide Programs

cc: Todd Ommen  
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