

Where FIFRA Meets the CLEAN WATER & ENDANGERED SPECIES ACT

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FIFRA and the CWA

- FIFRA regulates Pesticide use
- CWA Establishes Water quality Standards
- CWA Established National Pollution Discharge Elimination System Permits
- Question Is application of a Pesticide under FIFRA the release of a pollutant?

FIFRA & CWA

- 2nd Circuit Court of Appeals Altman V. Town of Amherst- Pesticide to water not a pollutant
- 9th Circuit Court of Appeals, Headwaters vs Talent Irrigation District-Discharge of pesticides to control aquatic weeds needs NPDES

FIFRA & CWA

- Most pesticide applications to water are for public health concerns or resource protection or needs
- EPA Interim Statement 7/11/2003
- Signed by Office of Pesticide Programs and Office of Water
- States covered by 9th Circuit- get NPDES permits

FIFRA & CWA

- Not taken to Supreme Court- yet
- How does the Clean water Act Affect FIFRA applications
- What if the Application is a violation of FIFRA
- In Wisconsin Could WPDES permits be needed?

FIFRA & Endangered Species Act

- Washington Toxics Coalition Suit over how 54 Ais Might Impact Salmon
- Sued under Endangered Species Act
- Applications by forest service and Agriculture may get to streams
- EPA Had not reviewed all Active Ingredients



ENDANGERED SPECIES PROTECTION

Presentation to the Pesticide Program Dialogue Committee

October 29, 2003

ESA Overview

- Applies to all federal agencies
- Imposes procedural and substantive obligations on federal agencies

ESA Section 7(a)(2)

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 - Ensure Agency actions are not likely to jeopardize listed species by reducing numbers, distribution, or reproduction
 - Ensure Agency actions are not likely to destroy or adversely modify designated critical habitat

ESA Section 7(d)

- Sec. 7(d) – While in consultation
“shall not make any irreversible or
irretrievable commitment of resources...
which has the effect of foreclosing the
formulation or implementation of any
reasonable and prudent alternative
measures...”

ESA Consultation

- No consultation if “no effect”
- Consultation required if “may affect”
 - Informal consultation
 - Formal consultation

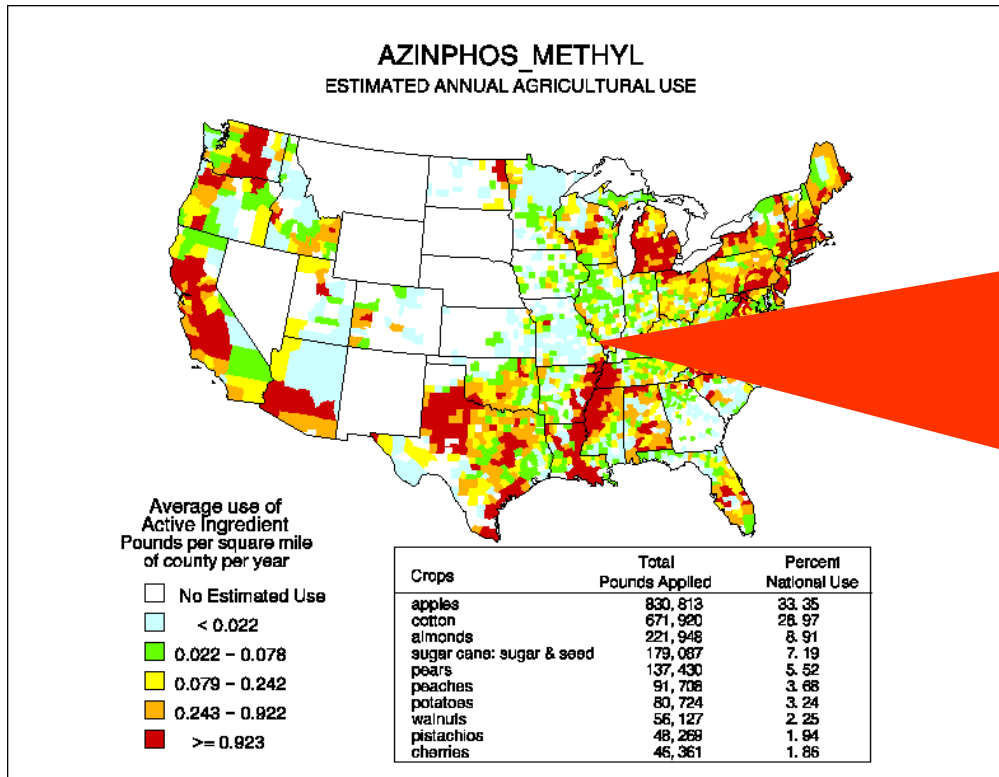
What does this Mean for OPP?

- OPP must assure that any outdoor use pesticides will not violate the ESA
- Eco-risk assessments are integral part of registration decisions under FIFRA.
- Using these as screen, OPP must focus the assessment to address specific listed species

Litigation

- CATs - consent decree
- WTC - court ordered schedule/interim measures
- NRDC – Atrazine
- CBD – California Red-Legged Frog
- Defenders of Wildlife - Fenthion
- SOSA – Barton springs salamander – Notice of Intent to Sue

Risk Assessment Processes



Nature of the Screening Level Process

- Same exposure and effects analyses as for non-endangered species
- Evaluation criteria (e.g. levels of concern, or LOCs) are more conservative than for non-endangered species
- Screen is not intended to be specific to individual species

Screening Level Exposure

- Not tied to individual species' location
- Assumes an endangered species is present on or near application site
- Aquatic exposures based on surface water models; may include monitoring data; upper-bound exposure conditions
- Terrestrial exposures based on dietary exposure and pesticide residues

Screening Level Effects

- Conducted like non-endangered species
- Usually no data for endangered species per se
- Based on toxicity endpoints from most sensitive species tested within broad taxonomic groups:
 - Birds
 - Mammals
 - Fish
 - Aquatic Invertebrates
 - Plants
- Typical endpoints relate to acute mortality and reproduction/growth effects

Initial Proximity Determination

- Identify specific species within taxonomic group(s) of concern
- Determine in what counties the species are found
- Determine whether labeled uses are likely to occur in each county

Models and Uses

- Determine whether exposure scenario used to estimate risk at a national level, is appropriate to this geographic area
- Determine whether specific use instructions on the label would preclude exposure at levels of concern

Result of Refinement

- Determinations
 - No Effects – no consultation required
(no exposure of concern)
 - May Affect – consultation required
 - Not Likely to Adversely Affect - informal
(Exposure may occur and may be at levels of concern)
 - Likely to Affect – formal
(Exposure likely to occur at levels of concern)

Information Needs for Registration (cont.)

- Propose risk mitigation
 - Timing of applications
 - Application rates
 - Buffer areas
 - Off-labeling of specific geographic areas

Implementation Proposal

- Products requiring use modifications would be labeled with generic statement
- County-level Bulletins to depict geographic area, pesticide, use limitations
- Use limitations would be enforceable under FIFRA

Overall Implications for Pesticide Decisions

- Incorporate refinements in registration and reregistration decisions
- Decisions will need to address ES issues or move into consultation
- Products may be required to carry label statements referring to County Bulletins