Certified Mail

Ms. Wendy Keefover-Ring, Director
Carnivore Protection Program
1911 11th Street
Suite 103
Boulder, CO 80302

January, 16, 2009


Dear Ms. Keefover-Ring:

This letter constitutes the Environmental Protection Agency’s (EPA) response to the petition and addenda filed January 24, 2007, March 20, 2007, July 27, 2007, and January 7, 2008, by Sinapu on behalf of itself and 10 other groups requesting that EPA suspend and cancel the registrations of the predator control uses of sodium cyanide and sodium fluoroacetate (Compound 1080). Specifically, Petitioners ask EPA to:

1. Determine that sodium cyanide and Compound 1080 when used for registered lethal predator control cause unreasonable adverse effects on public health, the environment, and to species’ populations (including those that are threatened or endangered);
2. Determine that sodium cyanide and Compound 1080 when used for registered lethal predator control present an imminent hazard to public health and the environment because the unreasonable adverse effects resulting from their continued use cannot be avoided within the time necessary for cancellation hearings;
3. Issue a Notice of Intent to Cancel the registrations of all registered pesticide products used for predator control that contain sodium cyanide and Compound 1080;
4. Immediately suspend the registrations of all registered pesticide products used for predator control that contain sodium cyanide and Compound 1080;
5. Move as expeditiously as possible to complete the cancellation of all registered pesticide products used for predator control that contain sodium cyanide and Compound 1080; and
Due to the more than 50-page response from the EPA regarding M-44s and Compound 1080, only the conclusion of the document follows the introduction. The entire document can be found by visiting:


(6) Pursuant to the Endangered Species Act (ESA), reinitiate consultation with the U.S. Fish and Wildlife Services (FWS) on sodium cyanide and Compound 1080 when used for registered lethal predator control so that more threatened and endangered species are not harmed.

For the reasons set forth in the attached response, EPA is denying the first five elements of the petition. In regards to the sixth element, EPA is granting the petition insomuch as the Agency plans to reinitiate consultation with FWS on these pesticides.

IV. CONCLUSION

Petitioners have raised a number of varied arguments against the M-44 and 1080 LPC registrations, but essentially the arguments boil down to two separate ones. First, a variety of reasons is put forward to support the contention that proper use of the products poses unreasonable risks to the environment. Second, Petitioners argue that the pesticides have not been used properly and the registrant, APHIS WS, has failed to live up to some of its responsibilities. EPA does not believe that the information or arguments put forward by Petitioners warrant cancellation of these registrations under either theory. EPA is therefore denying that portion of the petition that requests EPA initiate cancellation action against the registrations. Because suspension is an interim remedy under FIFRA that must be accompanied by the initiation of cancellation action, and because EPA has determined not to initiate cancellation action, that portion of the petition that requests EPA suspend the registrations is also denied. EPA does believe it appropriate to reinitiate consultation with the FWS on endangered species issues related to these registrations, and is granting that portion of the petition.

As to the argument that proper use of the M-44 and 1080 LPC poses unreasonable risks to the environment, EPA finds the petition unpersuasive for a number of reasons.
First, a number of the issues raised by Petitioners seem directed against lethal predator control practices generally, rather than the M-44 and 1080 LPC registrations specifically. For example, Petitioners argue that predator control programs are ineffective in substantially reducing predator populations, and that reducing predator populations can have negative effects on ecosystems. Even if true (and the arguments appear, at least at first blush, to be somewhat mutually inconsistent), given that the great majority of lethal predator control in the United States does not involve either the M-44 or 1080 LPC (approximately 12% and 0.04% respectively (See Ref. 15 at 1) it is not clear at all that granting the petition would have much impact. Similarly, while Petitioners argue that use of the M-44 and LPC devices can be expected to kill non-target wildlife and (at least in the case of the M-44) predators that may not themselves be preying upon cattle or sheep, Petitioners do not present much evidence or argument to believe that other lethal control measures, principally trapping, are more selective or would result in fewer fatalities. As stated earlier, the only authority EPA may exercise in responding to this petition would be to impact the lethal predator control measures sanctioned under FIFRA; EPA can not ban lethal predator control measures generally.

Moreover, most of the arguments raised in the petition are similar to the arguments that have been considered by EPA in its previous decisions relating to these pesticides. EPA has long recognized that there will be non-target fatalities with use of the M-44 and LPC, and the Petitioners have not provided any substantial new information in this regard. Petitioners do not argue that the number of non-target fatalities is greater than was anticipated by the earlier Agency decisions, or that the devices have been significantly less selective than was believed when those decisions were made. Where a petition essentially seeks reconsideration of a decision that has been the subject of a number of previous determinations, the Agency would expect to see a greater discussion of the significance of new information that was not previously considered by the Agency. The information proffered by Petitioners on non-target fatalities, on the other hand, seems consistent with the Agency’s earlier decisions.

It also bears noting that the Agency is obligated to reassess the compliance with registration standards by every pesticide registration every fifteen years under the “registration review” provision of section 3(g) of FIFRA. EPA will be opening the registration review docket for both M-44 sodium cyanide capsules and 1080 LPCs for public review and comment in September 2010. Through this registration review process, EPA will thoroughly review any new information regarding potential risks from these two products, and if appropriate, consider additional risk management steps. While EPA has considered Petitioners’ arguments here, a case could be made for denying any petition seeking separate review of registrations that is not accompanied by substantial new information demonstrating that the Agency review should not wait until the next registration review cycle.

Petitioners also argue that the risks presented by these registrations are unreasonable because of homeland security concerns and the ESA. As discussed earlier, EPA does not believe that it is obligated under the ESA to cancel these registrations, and
EPA believes (and the Department of Homeland Security agrees) that cancellation is not necessary from a homeland security perspective.

While Petitioners also argue that there are no benefits associated with the use of these predacides, EPA finds that there do appear to be benefits associated with these registrations. While different predator-control techniques are frequently used, EPA believes that these pesticidal uses do have value as a last resort to prevent depredation of specific herds or flocks.

For all these reasons, EPA does not believe that Petitioners' claims separately or in the aggregate show that the lawful use under these registrations results in unreasonable adverse effects on the environment or that there is any likelihood that a cancellation action would either be appropriate or successful.

As to the allegations of misuse of these pesticides and the allegations that APHIS WS has failed to submit required information to EPA pursuant to section 6(a)(2) of FIFRA or to properly safeguard material, EPA believes that these assertions, even if true, would not warrant cancellation in the first instance. EPA does not agree that the information proffered by Petitioners supports a finding that there has been widespread misuse of these registrations, although isolated misuse could well have occurred. But even if the misuse were more widespread than EPA believes to be the case, EPA believes that enforcement and education, rather than cancellation, are generally the appropriate first responses to pesticide misuse. Similarly, in most cases the preferred initial response to the assertions against APHIS WS would also be enforcement and/or education. EPA agrees with Petitioners that it is important that the M-44 and LPC devices be used properly, and EPA has initiated discussions with APHIS WS, and will continue to have such discussions, in order to minimize the potential for misuse and to assure that the registrant properly fulfills its obligations under FIFRA. But upon considering the arguments and information in the petition, EPA does not believe that cancellation is the appropriate response even if the allegations of misuse and reporting violations are true.

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