



BEYOND PESTICIDES

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STATEMENT OF
SHAWNEE HOOVER, SPECIAL PROJECTS DIRECTOR
BEYOND PESTICIDES
ON
H.R. 1749
PEST MANAGEMENT AND FIRE SUPPRESSION ACT
TO AMEND THE
FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. 1342(1))
aka CLEAN WATER ACT
BEFORE THE
SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT
U.S. HOUSE OF REPRESENTATIVES

SEPTEMBER 29, 2005

Mr. Chairman and members of the Subcommittee. Thank you for the opportunity to appear before the Subcommittee today. I am Shawnee Hoover, Special Projects Director of Beyond Pesticides. Beyond Pesticides was founded almost 25 years ago and is a national, environmental health organization with a grassroots membership base representing thousands of people with partners extending well into the hundreds of thousands nationwide.

The legislation we discuss today turns on the central question of whether or not the Federal Insecticide Rodenticide and Fungicide Act (FIFRA), through its registration and labeling process of pesticides, can adequately replace the role of the Clean Water Act and its regulatory and enforcement mechanism, the National Pollutant Discharge Elimination System (NPDES) permit process.

More than three decades after the CWA was enacted, the Nation's waters continue to be polluted. Pesticides are one of the main sources of this pollution,

as state monitoring and US Geological Survey reports continue to inform us. (Clean Water Act § 303(d) 2000, 2002 listings nationwide.)

We feel that neither pesticide users, the public nor the environment are well-served or better protected by this bill.

There are three main reasons why sole reliance on FIFRA does not offer adequate protection of water, the environment, or the community.

1. Under FIFRA, EPA does not take into account unique local conditions when regulating risk and designing labels and has no official mechanisms to do so.
2. Direct deposition of pesticides to water occurs even when the label is properly followed.
3. The risk assessment process used to register pesticides under FIFRA has admitted limitations that create the need for complimentary laws.

Before proceeding I would like to ask the members of the Subcommittee to keep in mind that I am but a messenger. I speak on behalf of my organization, but my views are representative of a much larger network of stakeholders that include community residents, health professionals, scientists, farmers, sport fish and bee associations, public health officials, and of course, water groups, and those seeking to protect our environment.

There have been several federal court cases concerning this precise issue, those that have ruled, have ruled in favor of use of NPDES permits. I will not go over the specifics of each statute as they have been made quite clear in several court rulings. It is important to note that EPA did submit an Amicus brief in the Talents case agreeing that a NPDES permit was required in addition to following the FIFRA label.

EPA's risk assessment process that determines label requirements under FIFRA, operates in a national context using probabilistic modeling that averages risk factors and assumes full label compliance that does not include non-target impacts that occur from pesticidal drift, run off and other unintentional exposure. The CWA NPDES permits work in tandem with FIFRA to consider local environmental conditions and the specific impacts of pesticide application to local water bodies.

As the 9th Circuit court has also determined, the warnings on the label simply do not and cannot address specific water quality issues, such as accumulations of toxins specific to a certain site, concerns for the local habitat or sensitive population species that may be being monitored locally.

NPDES permits under the CWA on the other hand are highly local and specific and include monitoring and reporting requirements that can track which pesticide applications may occur and when. FIFRA has no "tools" of local monitoring to collect such information.

The Congressional Research Service report on this issue plainly stated that the NPDES permits under the CWA are undertaken by states to protect water quality, *QUOTE* "...because the federal government lacks the resources for day-to-day monitoring and enforcement." *ENDQUOTE* (Pesticide Use and Water Quality: Are the Laws Complimentary or in Conflict, April 25, 2005. RL32884, p. 4.)

EPA'S RISK ASSESSMENT PROCESS BY NATURE IS INSUFFICIENT TO PROTECT WATERWAYS FOR A MULTITUDE OF REASONS.

1. The label for the vast majority of chemicals do not address off-site non-target effects, sublethal effects or pesticidal drift that can be more deleterious than the lethal concentrations stated on the label. EPA has recognized these limitations of the risk assessment process as have the U.S. Fish and Wildlife Service, and several courts. These limitations can however be mitigated with the enforcement of other statutes such as the CWA.
2. The EPA risk assessment considers only the effects of the active ingredient and not the synergy of the multiple ingredients in the actual pesticide formulation, or between pesticides. NPDES, by nature of its monitoring and reporting provision can assess the effects of the actual pesticide formulation on water body ecosystems.
3. The reregistration of pesticides under FIFRA is a lengthy and ongoing process. Hundreds of pesticides currently registered and commonly used unfortunately still lack a full assessment of their potential short and long-term effects on human health, particularly on children, and the environment. Case in point is the lack of EPA evaluation of a pesticide's capacity to cause endocrine (hormonal) disrupting effects. Scientific studies are increasingly finding endocrine effects at extremely low doses (as low as 1 part per billion). These effects are also being discovered in wildlife.
4. Section 2 of the FIFRA statute denotes that EPA may consider the risks and benefits of the public health use of pesticides separately from the risks and benefits of other pesticides. It must be made clear that, to date, the agency has never done such an assessment of public health uses. In addition, the agency also has not evaluated the efficacy of the pesticides used in the context of public health as required by law.

5. EPA under FIFRA presumes that if the label is complied with, there will not be any unintentional pesticide exposure to water such as run off and drift. NPDES permits under the CWA can assess the realities of pesticide run off, drift, harm to specific local species and ecosystems and other issues central to overall water quality.

THE IMPORTANCE OF QUALIFIED OVERSIGHT

While we do not underestimate the importance of protecting the public from mosquito-borne disease, we believe that there are many ways to do this as supported by the Centers for Disease Control and Prevention (CDC), without removing the vital protections afforded by the CWA.

I have attached for the subcommittee Appendix A, which gives some examples of mosquito management techniques that have served to simultaneously protect the public from mosquito-borne disease as well as exposure to pesticides. It also must be recognized Mr. Chairman that this bill is about much more than just mosquito control.

Furthermore, EPA has issued a related guidance to change the labels of mosquito pesticides without having completed its legal obligation to determine if the label changes will result in unreasonable harm to human health or the environment. This has further weakened our confidence in the protection provided solely on the basis of the pesticide label.

Finally, please note that the EPA Assistant Administrator for Water stated that this bill would adversely affect drinking water and that the burden of cost would fall unfairly on local communities to clean up the pollutants.

Thank you for the opportunity to testify today. We value the exploration of the Subcommittee to seek improvements in public health and pest

management approaches. I appreciate your consideration of my points that this bill has fatal flaws that would result in the opposite of the bill's intention.

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