

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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BEYOND PESTICIDES/NATIONAL )  
COALITION AGAINST THE MISUSE )  
OF PESTICIDES )  
701 E. Street, SE )  
Washington, D.C. 20003 )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
CHRISTINE T. WHITMAN, )  
ADMINISTRATOR OF UNITED STATES )  
ENVIRONMENTAL PROTECTION )  
AGENCY, )  
Ariel Rios Building, 1101A )  
1200 Pennsylvania Ave., N.W. )  
Washington, D.C. 20460 )  
 )  
Defendant. )  
\_\_\_\_\_ )

Case Number: 1:02CV02419 (RJL)

DECLARATION OF DENISE KEEHNER

In accordance with 28 U.S.C. § 1746, Denise Keehner hereby declares as follows:

1. I am the Director of the Biological and Economics Assessment Division (BEAD) of the Office of Pesticide Programs (OPP), EPA. I have held this position since 2000.

2. BEAD has responsibility for evaluating the benefits of most registered pesticides to inform the regulatory decisions on whether those benefits exceed the pesticides' risks. Benefits assessments vary widely according to the nature and extent of the pesticide's uses, risks, and anticipated risk mitigation measures. Also, benefits assessments are developed based on risk managers' determination that there are risks of concern. BEAD conducts benefits assessments for pesticides that are undergoing reregistration under FIFRA § 4 and Special Review under 40

C.F.R. Part 154. These assessments are coordinated with the regulatory divisions of OPP.

3. OPP typically performs benefits assessments for reregistration actions after risk assessments have been completed, have been released for public comment, and risks of concern have been identified. When benefits assessments are conducted, they may consider the potential biological and economic impacts of risk mitigation and management measures identified through the development of the risk assessments. Once the risks and benefits have been assessed, OPP will make a regulatory decision of whether the pesticide meets the standard for registration, i.e., whether the benefits of the pesticide outweigh the risks.

#### Status of Wood Preservatives' Benefits Assessments

4. The benefits assessments for pentachlorophenol (penta) and the other wood preservatives (CCA and creosote) are in the very earliest stages and will not be completed for several months. We are planning to make a draft of the benefits assessment available to the public for comment before finalizing it.

5. The Agency made the decision to evaluate and make reregistration eligibility decisions on pentachlorophenol, creosote and CCA during the same period of time due to the fact that there are overlapping uses (i.e., that they can be alternatives for one another), there are risks of concern associated with all of them, and that any risk/benefit decision made for any one preservative should consider potential shifts to the others and the consequences of these shifts. During the benefits analysis currently being conducted by OPP, the questions of to what extent any one of these pesticides can substitute for another and to what extent non-pesticide treated alternatives (e.g., steel, cement, composite materials, etc.) are available and cost effective will be explored. This information will be considered by the Agency along with its assessment of the risks when it

conducts its risk/benefit analysis for the wood preservatives.

6. Because the risk assessments for penta and the other wood preservatives are not yet final, only very preliminary work has been done thus far on their benefits assessments. Here is a brief summary of some of the information we have so far.

a. We are aware that the utility industry relies heavily on penta-treated wood products. About 97% of the penta produced in the U.S. was used on utility poles. The estimated U.S. consumption of penta in 1999 was 15 million pounds. About 62 million (about 52%) of the utility poles currently in use have been treated with penta.

b. In the past, EPA restricted the use of certain industrial wood preservatives. At that time copper naphthenate was expected to replace much of the use of these wood preservatives and thus, to capture a larger market share, but this did not occur. CCA has had more success than copper naphthenate in capturing market share in the wooden utility pole sector. Based on our currently available information, copper naphthenate is used on approximately 3-5% of wooden utility poles, while CCA is used on about 35% of utility poles.

c. Thus far, BEAD has only some basic information on alternative pole materials that do not require treatment with pesticides. Most of this has been supplied by manufacturers of these materials who have met with OPP personnel. BEAD does not have scientifically valid data at this time to indicate whether the alternative materials are biologically and economically feasible as large scale alternatives to wood poles. There is some use in the U.S. of utility poles made from alternative materials such as steel, concrete, and composites. OPP's current information suggests that steel and concrete have about 2% of the market share. The use of composite materials for utility poles is still in the early stages and data are limited. Poles made from

alternative materials may be more expensive and there may be additional costs associated with alternatives such as disposal of existing wooden poles and a requirement for special installation equipment. There may also be regional limitations that could prohibit the use of alternative materials in some locations.

7. BEAD recently received proprietary information from a contractor in a preliminary report on creosote. A similar report on penta is scheduled for submission to BEAD later in December. The statement of work for the contractor's report on CCA is under development. BEAD expects the contractor's CCA report to be submitted in early 2003. These reports will provide information on the use of wood preservatives, information related to plants which treat wood with preservatives, information related to the industries that use treated wood products, and the alternatives to the individual preservatives. These reports, with other information, will be used to develop a thorough benefits assessment on the impact of potential risk management options.

8. Generally, when human health or ecological risks of concern are identified, the Agency undertakes a benefits analysis. The Agency's benefits analysis for penta will address the questions listed below. We have gathered some preliminary information to answer these questions, but until more in-depth analysis can be completed, it is not possible to accurately predict the impact of suspending or canceling one or more of the wood preservatives.

- a. Do wood treatment plants use multiple preservatives, or do they tend to use one particular type of product?
- b. What are the costs associated with switching preservatives in the treatment facilities?
- c. What are the costs associated with changing to alternative materials for utility poles

(poles, installation equipment, disposal of existing poles, etc.)?

- d. Are there any regional limitations to the use of alternatives, chemical and non-chemical (such as soil, topography, etc. on selection of alternatives)?
- e. How many poles are put up per year in the U.S.?
- f. How many have penta applied?
- g. To what extent are non-wood poles used in the U.S?
- h. What effect would the sudden unavailability of wood preservatives have on utility industry's ability to put up poles on short notice?
- i. Are there poles in storage already treated with penta (or other materials) and, if so, how many?
- j. To what extent is the industry changing to CCA or other chemical alternatives?
- k. To what extent is industry switching to other alternative materials (steel, concrete, composites, etc.)?
- n. What has been the experience of European countries and other nations concerning the wood preservatives and their experiences with alternative materials?

#### Consequences of Immediate Action

- 9. It is not possible at this time to predict all of the economic, social and environmental impacts that would occur if penta were suddenly unavailable for use (e.g., if the Agency were to suspend penta or other wood preservatives on an emergency basis) because we do not have adequate information at this time upon which to base a reliable assessment. The impacts could affect, but not be limited to, wood treatment facilities, utility companies, and utility consumers.
- 10. Whenever the Agency revises a pesticide's registration significantly (especially when

removing a product from the market), the Agency usually provides a transition period for the industry to adjust to any decision in an orderly fashion. In some cases, the impacts of a sudden regulatory change in the marketplace can be alleviated by allowing a certain time for transition.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 19<sup>th</sup> day of December, 2002.

A handwritten signature in black ink, appearing to read "Denise Keehner", written over a horizontal line.

Denise Keehner