
Judge dismisses most of a suit against EPA pesticide approvals

Bob Egelko - Thursday, August 14, 2014

SAN FRANCISCO -- A federal magistrate has dismissed most of a lawsuit by environmental advocates challenging the government's approval of numerous pesticides, but said they can pursue claims that federal officials allowed 11 chemicals on the market without getting up-to-date information about hazards to endangered species.

U.S. Magistrate Joseph Spero of San Francisco, ruling Wednesday, rejected the central claim by the Center for Biological Diversity and the Pesticide Action Network, that the Environmental Protection Agency since 2005 had routinely violated laws requiring consultation with government scientists before approving the sales of potentially harmful pesticides.

Without deciding whether the EPA had complied with the laws, Spero said the environmental groups should have contested the agency's earlier approvals of the pesticides' ingredients, rather than challenging the sales of specific products.

The EPA's "registration," or approval, of a pesticide's ingredients can be challenged only in a federal appeals court, within 60

days of the agency's action. Approvals of pesticide products can be challenged within six years in lower federal courts - but only, Spero said, if a lawsuit raises issues that couldn't have been foreseen earlier.

The environmentalists' lawsuit, filed in 2011 and amended twice since then, "does not identify any fact that demonstrates the product (approvals) raised any new issues ... that could not have been raised in a timely challenge" when the EPA earlier approved the chemicals that go into making pesticides.

But that wasn't the case, he said, for 11 pesticide ingredients that were registered by the EPA decades ago and apparently have not been reapproved in the past decade. That means they can be challenged in federal court if the environmental groups can show new conditions that should have required the agency to consult scientists at the Fish and Wildlife Service or the National Marine Fisheries Service.

The chemicals include warfarin, a rodenticide that the environmentalists describe as highly toxic to wildlife; permethrin, a potent insecticide; and malathion, which touched off a battle

between environmentalists and farmers when California used it against destructive outbreaks of the Mediterranean fruit fly in 1981 and 1989.

"Our case is still alive," said Collette Giese, a lawyer for the environmental groups. "This is an important case that deserves to be considered on its merits" and shouldn't be dismissed for procedural reasons, she said.

Because the EPA last consulted with government scientists about the pesticides in 1989 and 1993, Giese said, the plaintiffs must now present information obtained since then that should require additional consultations - for example, new listings of endangered species and habitat, or studies showing increased toxic hazards from the chemicals.

Pesticide manufacturers joined the EPA in seeking dismissal of the suit. A representative of the manufacturers was not immediately available for comment.