

Judge seems unmoved by suit challenging EPA on pesticides

Bob Egelko

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A federal magistrate signaled Friday that he's likely to dismiss a lawsuit by environmental groups challenging the government's approval of 50 pesticides over nearly a decade.

The Center for Biological Diversity and the Pesticide Action Network claim the Environmental Protection Agency has allowed the sale of products since January 2005 that contain chemicals that could harm 119 endangered species, including the California condor.

They accuse the EPA of violating laws that require consultation with scientists at the Fish and Wildlife Service and the National Marine Fisheries Service before approving potentially dangerous pesticides.

But at a two-hour hearing in San Francisco, U.S. Magistrate Joseph Spero said the lawsuit appeared to be a challenge to the EPA's earlier approvals of the pesticides' ingredients. Under federal law, he noted, those registrations can be challenged only in a federal appeals court, within 60 days of the agency's actions - which would mean this lawsuit was filed too late.

"I think we need to have more specific allegations" that a pesticide product is causing harm the EPA didn't anticipate when it approved the ingredients, Spero told the environmental groups' lawyers.

For example, he said, the suit could have alleged that the EPA allowed the sale of a product with different dosages, or for different uses, than the pesticides the agency had previously approved.

"You have to do it earlier in the process," by challenging the initial registrations, Spero said.

That interpretation, the environmentalists' lawyers argued, would make lawsuits over harmful pesticides virtually impossible.

"We could never challenge the products," because they're never approved within 60 days of the EPA's registration of their ingredients, said attorney Collette Giese.

When the EPA initially approved the pesticides' ingredients, "they didn't do an analysis with respect to endangered species, so we don't have anything to go on," said Justin Augustine, another lawyer for the environmental groups.

"You can take that to Congress," Spero replied.

The EPA has registered more than 18,000 pesticides for use in the United States. Conservationists estimate that Americans use more than 1 billion pounds of pesticides a year. Some of the products in the current suit include the herbicide atrazine, linked to cancer and birth defects in recent research.

Lawyers for the EPA and pesticide manufacturers denied that the agency had approved harmful products and urged dismissal of the suit.

Spero said he would issue a ruling within 30 days.