



PESTICIDES

Court reverses key part of challenge to EPA registrations

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A federal appeals court today breathed new life into a challenge by environmental groups to U.S. EPA's registration of nearly 400 pesticides.

The Center for Biological Diversity and Pesticide Action Network North America filed the large lawsuit contending that EPA should have consulted the Fish and Wildlife Service and National Marine Fisheries Service when it considered the reregistration of pesticides containing 31 different active ingredients.

They filed complaints that ran over 450 pages, and a district court ruled for EPA and virtually every major agribusiness group that intervened on behalf of the agency.

The 9th U.S. Circuit Court of Appeals largely upheld that decision today, but it reversed the ruling on one key aspect and sent it back to federal district court for further consideration.

Specifically, the challengers alleged that for each of those 31 active ingredients, EPA failed to engage in the consultation process with FWS and NMFS as required under the Endangered Species Act.

EPA and the intervenors argued that the lawsuit was barred for several reasons. More importantly, however, they said the environmentalists were seeking to challenge EPA's reregistration eligibility decisions, or REDs, which occur early in the consideration process.

Challenges to those REDs were impermissible because the statute of limitations had already expired, EPA argued, and therefore CBD and PAN could not sue over them again — a violation of the so-called “collateral attack” legal doctrine.

The San Francisco-based 9th Circuit, however, ruled 2-1 that the Center for Biological Diversity and Pesticide Action Network North America were challenging aspects of the reregistration that occurred after the RED was issued and, therefore, were permissible.

“The collateral attack doctrine is not at issue here,” wrote Judge Richard Paez for the court. “CBD does not seek to unravel a prior agency order, nor does it attempt to challenge ‘any of the analyses or conclusions contained in the RED[s].’”

The case will now return to lower court for further proceedings.

The 31 active ingredients are: 1,3-dichloropropene; 2,4-D salts and esters; acephate; alachlor; atrazine; bensulide; bromadiolone; captan; carbaryl; chlorothalonil; chlorpyrifos; diazinon; dicamba and salts; diuron; ethoprop; MCPA; methomyl; metolachlor and isomers; metribuzin; naled; oxydemeton-methyl; oxyfluorfen; paraquat dichloride; pendimethalin; phorate; phosmet; propanil; propargite; S,S,S-tributyl phosphorotrithioate; thiobencarb; and trifluralin.