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Subject: Environmentalists, Industry In Talks To Revise ESA Pesticide Framework

Environmentalists, Industry In Talks To Revise ESA Pesticide Framework

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Some environmentalists and pesticide industry officials are in talks aimed at improving federal reviews of pesticides' risks to endangered species, after industry officials urged the Trump administration to scrap the Obama-era framework process, but the talks have split environmentalists with others doubting the talks' usefulness and industry's commitment.

“We're in discussions, trying to see if we can identify areas that we agree on,” to help the agencies efficiently comply with the Endangered Species Act (ESA) requirements in pesticide reviews, says a source with a group that is participating in the talks.

“We're working to see if we can solve this administratively using better science and policies,” the source adds.

One possible area for compromise, the source says is improved maps of species' habitat ranges. The source said that incorrect maps drive up the number of cases where pesticide uses are deemed as possibly affecting endangered species, leading to an unnecessary increase in federal officials' workload.

But a source with the Center for Biological Diversity (CBD), the lead plaintiff in environmentalist lawsuits that have resulted in settlements and deadlines for federal agencies to complete the reviews, was skeptical of the negotiations.

While CBD is interested in making the Obama-era process more efficient, the source argues that after the election of President Donald Trump, the pesticide industry has moved the goal posts, calling to scrap years of federal work on an effort that the industry has generally supported, even while calling for refinements to the process.

“We are totally supportive of making the process more efficient and better,” the CBD official said. But the source added that the pesticide industry is “not approaching it from a perspective of good faith, so I don't see why we would try to revise a process with them.”

Industry sources were not immediately available for comment. But earlier this

year, Dow AgroSciences and two other registrants urged top officials at EPA and federal wildlife agencies to scrap the Obama administration's “interim approaches” for assessing pesticides' risks to endangered species, charging the approaches are “fundamentally flawed and should be set aside.”

They urged the administration to halt the first three reviews -- covering organophosphate pesticides -- conducted under the process, though adopting a new approach and applying it to ongoing reviews may be difficult as EPA and wildlife management agencies are subject to court-endorsed settlements with CBD and other environmentalists to complete the reviews of the three chemicals at the heart of the industry concerns.

The industry calls for review have drawn public opposition from several environmental groups and doubts from former EPA toxics chief Jim Jones that the Trump administration will be able to adopt “sustainable” long-term changes to the framework.

'Interim Approaches'

ESA Section 7 requires that EPA consult with the U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service, collectively known as the services, on pesticides' potential risks to listed species. After an EPA biological evaluation, the services craft a biological opinion (BiOp) of the product's potential for jeopardizing listed species and lay out reasonable and prudent alternatives that EPA must implement to protect the species.

But EPA and the services have long failed to conduct the required consultations on pesticides' risks to listed species, resulting in numerous environmentalist lawsuits that have set legal deadlines for the agencies to consult on risks of certain commonly-used pesticides.

In November 2013, EPA and federal wildlife officials rolled out an “interim approaches” process based on NAS advice for complying with the ESA in Federal Insecticide, Fungicide and Rodenticide Act pesticide registrations. The process, based on National Academy of Sciences advice, seeks to remedy EPA's long-standing failure to consult with federal wildlife officials before registering pesticides as required by the ESA.

Since then, EPA officials have acknowledged that the current process is overly conservative but said they are working to improve it and make it more efficient.

Nevertheless, on Jan. 18, days before Trump's inauguration, the Obama EPA forwarded the first final biological evaluations to the services, in support of final BiOps due out by December 2017.

The first three draft evaluations EPA completed under the interim approaches framework drew critical comments from the pesticide after two of the draft reviews -- issued in April 2016 of chlorpyrifos and malathion -- found the substances are likely to adversely affect 97 percent of species evaluated and 99 percent of critical habitat.

But despite the year-end deadline, the services have yet to issue draft BiOps for public comment, which the CBD source says suggests they appear likely to miss the December 2017 deadline.

A federal government source tells *Inside EPA* that the services are continuing work on the first draft biological evaluations. The source acknowledged that agencies have received the industry letters seeking to halt the process, but that staff has not yet heard how the administration will respond or received any direction to change course.

The environmentalist who is negotiating with the pesticide industry said that advocates have always known that the federal interim approaches would require revision to make the process more efficient, but said environmentalists do not support scrapping the Obama administration's process altogether.

The source also said that the biggest challenge is the volume of work that the first pesticide reviews conducted under the new process have generated. In the past, less than 8 percent of pesticide uses have required formal consultation, the source says, noting that the corresponding numbers under the new process are in the 90th percentile.

“Figuring out how to conduct those formal consultations efficiently” is a driving concern, the source says. Advocates also are awaiting release of the first draft BiOps to see whether the services find that certain pesticide uses jeopardize listed species or adversely modify critical habitat.

Dangerous Tactic

But the CBD source argues that pesticide industry calls to scrap the interim approaches risks throwing away years of federal agency work and fail to address the long-standing problem of federal agencies' failure to consult on ESA risks. Pushing for Trump administration rollback of the interim approaches is a dangerous tactic, the source says, noting that if there is a new president in four years, environmentalists may be less willing to cooperate on future, legally-required reviews

“If they kill the first three biological evaluations at Dow's request that will spur its own consequences,” the source says, noting that EPA will still have a legal obligation to complete ESA evaluations on a backlog of pesticides. “They're going to have a train wreck on their hands, and we'll not be in the mood to accommodate them.” -- *Dave Reynolds* (dreynolds@iwpnews.com)