NORTHWEST ENVIRONMENTAL ADVOCATES

Fact Sheet on Petition to Protect Fish and Wildlife From Pesticide Use in Oregon

Why was this petition filed?

Northwest Environmental Advocates (NWEA) submitted a petition on August 9, 2012 to Oregon's Environmental Quality Commission (EQC) asking that it address significant gaps in Oregon's pesticide regulation. The Commission is a five-member citizens' board that adopts rules for the Oregon Department of Environmental Quality (DEQ). The petition points out that

- Oregon must be able to control pesticides in coastal watersheds in order to continue to receive federal funding, and that
- Restricting pesticides from entering Oregon waters is required by the Clean Water Act (CWA) and the Endangered Species Act (ESA).

The petition is based on the fact that pesticides used according to pesticide labels approved by the U.S. Environmental Protection Agency (EPA) under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) are harmful to many threatened and endangered species including salmon, steelhead, inland fish, frogs, turtles, and salamanders.

How does the petition relate to previous litigation on pesticides?

The petition builds on litigation by organizations that forced EPA and the National Marine Fisheries Service (NMFS) to consult under the Endangered Species Act (ESA) on the effects of certain pesticides on salmon and steelhead in the context of EPA's national registration of pesticides. The petition also builds on another series of lawsuits, that began in Oregon, about whether Clean Water Act permits are required for pesticides discharged into water. Some key results of these lawsuits are:

- A federal court's having established streamside buffers for certain pesticides as interim protections for salmon,
- Five biological opinions by NMFS that find certain pesticides used according to EPA-approved labels will cause "jeopardy" to the continued existence of salmon and steelhead,
- Restrictions on pesticide use in California to protect a variety of threatened and endangered species, and
- EPA's 2011 nationwide Pesticide General Permit for pesticide discharges, a federal action for which NMFS issued restrictions to protect salmon and steelhead. (The EPA permit only applies in Oregon to tribal lands.)
- Oregon DEQ's parallel permit, which lacks any restrictions whatsoever to prevent adverse impacts to salmon consistent with the NMFS findings.

What is the basis for the petition?

The five NMFS biological opinions and a 1989 biological opinion by the U.S. Fish and Wildlife Service (USF&WS) set out mandatory conditions called Reasonable and Prudent Alternatives (RPAs). The RPAs are intended to offset the risk of extinction to species caused by the pesticides and include such measures as stream buffers. Despite their mandatory nature, EPA has refused to limit the use of pesticides consistent with the RPAs. Likewise, DEQ has refused to incorporate the RPAs that were established for EPA's Pesticide General Permit into Oregon's permit that allows the discharge of the same pesticides into Oregon waters. Therefore, neither EPA nor DEQ is taking action to protect threatened and endangered species from pesticides.

Why was the petition filed now?

Two federal agencies (EPA and NOAA) are required by the Coastal Zone Act Reauthorization Amendments (CZARA) to approve Oregon's plan to control pesticides in coastal watersheds in order for the state to receive federal funds through two other federal laws. In 2004, EPA and NOAA signed off on Oregon's pesticide protections by relying on interim buffers required by a federal district court. However, these interim buffers cease to apply as NMFS issues each biological opinion, leaving no pesticide restrictions in place. To retain federal funding, Oregon must have a plan in place by May 2014 pursuant to a lawsuit brought by Northwest Environmental Advocates.

What does the petition ask for?

The petition asks the Commission to commence rulemaking and to take other actions. The new proposed rules seek to incorporate the RPA restrictions into Oregon's water quality standards and to require the use of buffers throughout the state for all pesticides. The petition also asks the Commission to itself petition:

- the Oregon Department of Agriculture (ODA), which regulates pesticides, to adopt restrictions on the sale and use of pesticides including point-of-sale notifications about the hazards of using pesticides according to the EPA-approved labels and to adopt rules restricting the use of pesticides by farmers, and

- the Board of Forestry for rule changes that reflect the RPA restrictions.

What happens next?

The Commission must act on the petition within 90 days. It may but it is not required to establish a public comment period in which to hear from members of the public. If the Commission grants the petition it will begin rulemaking on the proposed new rules.

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