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10
11 **IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON**

12 WASHINGTON TOXICS COALITION,)
13 NORTHWEST COALITION FOR)
ALTERNATIVES TO PESTICIDES,) Case No. C01-0132
14 PACIFIC COAST FEDERATION OF)
FISHERMEN'S ASSOCIATIONS, and) **FEDERAL DEFENDANTS'**
15 INSTITUTE FOR FISHERIES RESOURCES,) **STATUS REPORT**

16)
17 Plaintiffs,)

18 vs.)

19 ENVIRONMENTAL PROTECTION AGENCY,)
20 and MIKE LEAVITT)

21 Defendants.)

22 vs.)

23 AMERICAN CROP PROTECTION ASSOC. et al)

24 Intervenor-Defendants)
25)
26)
27)

28 FEDERAL DEFENDANTS' STATUS REPORT

Case No. C01-0132

Environment & Natural Resources Div.
U.S. Department of Justice
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1 Pursuant to this Court's order of January 22, 2004 ("January 2004 Order"), the EPA
2 hereby files its status report describing the steps it has taken to comply with the Court's order.
3 January 2004 Order at ¶ VIII.

4 Paragraph IV of the January 2004 Order requires EPA to (1) develop a point of sale
5 notification for certain urban use pesticides ("Urban Pesticides") incorporating certain specified
6 text that includes a prominent graphic; (2) notify retailers that they are to make these
7 notifications whenever products containing the Urban Pesticides are sold in the Urban Areas
8 subject to the January 2004 Order; (3) produce and provide copies of the notifications to state
9 pesticide agencies, state fish agencies, and land grant university extension coordinators in the
10 urban areas subject the January 22; and (4) request that these entities provide the information to
11 certain certified applicators. January 2004 Order at ¶ IV.

12 Paragraph VIII of the January 2004 Order requires EPA to (1) inform registrants, states,
13 certified applicators and licensed pesticide dealers of the Court's July 2, 2002, July 16, 2003, and
14 August 8, 2003 Orders in this action as well as the January 22 Order; (2) instruct registrants to
15 make pesticide distributors, wholesalers, retailers, brokers, dealers, and others in privity with
16 them aware of these court orders; and (3) instruct states to inform registrants, certified
17 applicators, and licensed pesticide dealers of the injunction. January 2004 Order at ¶ VIII.

18 We describe the steps taken to meet these obligations in section I below. In addition, as
19 described in section II below, the EPA has also taken several actions not mandated by the
20 Court's orders related to the pesticides affected by the January 2004 Order .

21 **I. EPA's Steps to Comply with the January 2004 Order.**

22 The Court's order specifies that its effective date is two weeks after its entry. January
23 2004 Order at ¶ V. The Court's order was entered on January 22, 2004, and its effective date
24 was February 5, 2004. We note that the January 2004 Order requires that this status report be
25 filed "within 60 days of the date of this Order," January 2004 Order at ¶ VII, but requires that
26 many of the obligations imposed upon EPA be completed with "60 days of the effective date of
27

1 this Order.” January 2004 Order at IV.B. Therefore, since the effective date of the order was
2 two weeks after the entry date of the order, this report was required to be filed two weeks before
3 the time set by the Court for EPA’s compliance with many obligations in the order.

4 Accordingly, in some instances this report discusses events that EPA expects to complete in the
5 near future to comply with the Court’s order.

6 **A. Development of the Point of Sale Warning.**

7 Paragraph IV.A. requires EPA to develop a point of sale notification for certain urban use
8 pesticides incorporating certain specified text that includes a prominent graphic. The EPA has
9 fully satisfied this obligation.

10 Attached as Exhibit 1 is the point of sale notification developed by EPA. The
11 notification includes both the text required by the Court and a prominent graphic as set forth in
12 the January 2004 Order. The notification was sent to counsel for Intervenor-Defendant CropLife
13 America (which has agreed to serve as the contact point on this matter for the Intervenor-
14 Defendants) on March 1, 2004 for use in satisfying their obligation under ¶ IV.B. of the Order to
15 distribute the notifications to certain sales outlets.

16 **B. Notice to Retailers Within 60 Days of Effective Date of the Order.**

17 Paragraph IV.B of the order requires EPA, by April 5, 2004, to notify retailers that they
18 are to make the point of sale notifications whenever products containing the Urban Pesticides are
19 sold in the Urban Areas subject to the January 2004 Order. EPA will fully satisfy this
20 obligation by April 5, 2004.

21 Attached as Exhibit 2, is a pre-publication version of a Federal Register Notice entitled,
22 “Notice to Pesticide Retailers and State Agencies regarding *Washington Toxics Coalition et al. v.*
23 *EPA* Litigation” that EPA has prepared to fully satisfy this obligation. The Notice provides, as
24 directed by the Court, that retailers in affected urban areas are to make the point of sale
25 notification whenever pesticide products containing the seven urban pesticides are sold. It also
26 lists the seven pesticides for which this obligation applies; provides information regarding the

1 urban areas where it applies; and provides information for retailers to obtain copies of the point
2 of sale notification from Intervenor-Defendants if retailers have not received the notice by April
3 5, 2004 (also the date by which Intervenor-Defendants are to distribute the point of sale
4 notifications). The Federal Register Notice has been signed, is being sent by EPA to the Office
5 of the Federal Register, and is scheduled to be published in the Federal Register within the next
6 10 days. In addition, the Notice will be posted on EPA's website at www.epa.gov/espp in
7 advance of its publication date. EPA has also provided information regarding the Court's Orders
8 electronically to over 4,000 interested persons through the EPA Office of Pesticide Programs'
9 "listserve" list.

10 **C. Provide Copies of Urban Use Notification; Request that Information be**
11 **Provided to Certain Certified Applicators.**

12 Paragraph IV.B also requires that by April 5, 2004, EPA produce and provide copies of
13 the point of sale notifications to state pesticide agencies, state fish agencies, and land grant
14 university extension coordinators in the urban areas subject the January 2004 Order and request
15 that these entities provide the information to certain certified applicators. EPA is fully satisfying
16 this obligation in following manner.

17 First, the Federal Register notice discussed above and attached as Exhibit 2, addresses
18 and will satisfy EPA's obligation to request that state pesticide agencies, state fish agencies, and
19 land grant university extension coordinators in the urban areas provide the notification to certain
20 certified applicators. That notice also provides that if any of these entities have not received the
21 point of sale notification by April 5, 2004, they may do so by contacting EPA at a number and
22 address identified in that notice. Second, EPA has been and will continue to use its "listserve"
23 list, as described above, to disseminate information regarding the January 2004 Order to parties
24 interested in EPA's pesticide regulatory activities – many of which include state and local
25 regulatory agencies.

26 Finally, within the next 10 days, EPA intends to provide copies of the notification to
27 these entities identified above by U.S. mail, together with a letter reiterating the Court's direction

1 to request that this information be provided to certain certified applicators.

2 **D. Informing and Instructing Registrants, States et al. of the Court's Orders**
3 **and Injunction (January 2004 Order at ¶ VIII)**

4 Paragraph VIII of the order directs EPA to inform registrants, states, certified applicators
5 and licensed pesticide dealers of the Court's July 2, 2002, July 16, 2003, and August 8, 2003
6 Orders in this action as well as the January 22 Order. It also requires EPA to instruct registrants
7 to make pesticide distributors, wholesalers, retailers, brokers, dealers, and others in privity with
8 them aware of these court orders; and to instruct states to inform registrants, certified applicators,
9 and licensed pesticide dealers of the injunction.

10 EPA has fully satisfied this obligation through publication of a February 17, 2004,
11 Federal Register Notice (69 Fed. Reg. 7478), attached as Exhibit 3. This Fed. Reg. Notice (1)
12 informs registrants, states, certified applicators and licensed pesticide dealers of the Court's July
13 2, 2002, July 16, 2003, and August 8, 2003 Orders in this action as well as the January 2004
14 Order and provides additional background information regarding the January 2004 Order,
15 including a list of the 38 affected pesticides and a link to EPA's website where these persons and
16 others may obtain the January 2004 Order and the Court's previous Orders; (2) instructs
17 registrants to make pesticide distributors, wholesalers, retailers, brokers, dealers, and others in
18 privity with them aware of the injunction and (3) instructs states to inform registrants, certified
19 applicators, and licensed pesticide dealers of the injunction. This Notice is also available on
20 EPA's website and EPA has provided this information through the EPA Office of Pesticide
21 Programs' "listserve" list.

22 **II. Additional EPA Actions not Mandated by the January 2004 Order**

23 In addition to satisfying the mandatory obligations set forth in the Court's Order, EPA
24 has taken other steps to effectuate the Court's order that the Court has not ordered or required.
25 While these steps have not been mandated by this Court and their disclosure is not required by
26 the Court's order, EPA includes them in this status report solely for the Court's information.
27 First, EPA has and will continue to use its website at www.epa.gov/espp to provide guidance to

1 pesticide users, registrants, and others regarding the January 2004 Order and how to comply with
2 the terms of the Order. Second, on February 23, 2004, EPA posted on its website a “question
3 and answer” document regarding the Order at <http://epa.gov/oppfeed1/endanger/wtc/qs-as.htm>.

4 Third, in the coming weeks, EPA also intends, through its website, to provide affected
5 pesticide users with interactive maps as well as certain textual information regarding the 38
6 pesticides affected by the January 2004 Order to assist users in complying with the Order. The
7 interactive mapping project is being undertaken by EPA staff with assistance from the United
8 States Geological Survey Cartography and Publishing Program in Madison, Wisconsin.
9 Completing this unique task requires (1) that “Salmon Supporting Waters” be identified for each
10 ESU pursuant to the Court’s definition; (2) that specific limitations for each of the 38 pesticides
11 subject to the January 2004 Order be linked to each of the ESUs to which the limitations apply;
12 and (3) that the system can be “queried” based on the pesticide user’s location. When complete,
13 the system will allow pesticide users to (1) ascertain whether the Order applies to geographic
14 areas where they may apply any of the specific pesticides; (2) determine whether the Order
15 applies to a particular water body; and (3) determine what the specific buffer is for that particular
16 pesticide active ingredient and particular water. The system will provide overlays of
17 topographic maps, street atlas maps, digital photography, and complete water body data sets to
18 provide users with certainty about buffer locations. Attached as Exhibit 4 are draft copies of
19 some of the representative “screens” that users will view when using the system.

20 **Conclusion**

21 EPA has either satisfied, or will satisfy, by the deadlines specified by the Court, all of its
22 obligations under the order. In addition, EPA has taken steps beyond what the Court has ordered
23 to assist the public in understanding and complying with the Court’s order.

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25 Respectfully submitted,

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s/ Wayne D. Hettenbach Date:12/5/03
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