

Washington Toxics Coalition
vs.
U.S. Environmental Protection
Agency

What Does This Decision
Mean?

Brief History

- **July 2002 California Alternatives to Toxics vs. EPA**
 - **Determined EPA had violated the Federal Endangered Species Act**
 - **Had NOT consulted with NMFS & USFWS prior to registration of 54 identified active ingredients**
 - **EPA must conduct “DETERMINATIONS” of risk and/or “CONSULTATIONS” of 54 active ingredients**

Brief History

- **November 2002**
Washington Toxics Coalition, etc.
vs. U. S. E.P.A.
- **Injunction request for interim measures to protect listed salmon and steelhead**
- **Until EPA completes “determinations” or “consultations” of the 54 a.i.’s**

US District Court Decision

- **US Federal Court Decision- Western Washington District - JANUARY 22, 2004**
 - **Applies to Washington, Oregon, California**
 - **Requires mandatory buffers along “salmon supporting waters”**
 - **54 active ingredients listed**
 - **Effective February 5, 2004**

US District Court Decision

- **Salmon Supporting Waters**
 - **Salmon/Steelhead bearing streams**
 - **As defined by StreamNet.org**
 - **Administered by Pacific States Marine Fisheries Commission**
 - **“ordinary high water mark”**
 - **Estuaries used by listed salmon are included even if not identified on StreamNet**

Which Active Ingredients?

- Currently 36 of 54 a.i.s remain on list
- As EPA makes “determinations” the number of a.i.s should decrease.
- Number varies slightly due to different formulations of an a.i. or affected ESU for that product
 - ESU= Evolutionarily Significant Unit
A distinct unit of salmon/steelhead critical to the existence of the species

EPA Determinations on Track

- **“Determinations” of a.i.s were placed on a time schedule to complete by the original federal court decision - CATS Decree**
- **“Determinations” are actually ahead of schedule**
- **“Consultations” with the services are either “informal” or “formal”**
- **Biological Opinions from the services in response to “formal” consultations do not have a specific response period of time.**

What Buffers are Required?

- Generally;
 - 20 yards - ground applications
 - 100 yards - aerial applications
- Variations are allowed for some products and/application methods. Examples...
 - Vector Control Programs
 - Most granular products = 20 yards air or ground
 - Noxious Weed Programs w/ conditions

Buffers Are Required When...

- Making applications in a listed ESU.
- Making applications near a waterway identified by StreamNet, or
 - any estuary used by salmon in an ESU
- You are using one of the listed active ingredients.

Buffers Required Until...

- EPA makes a "no effect" determination for the Salmon ESU;
- EPA makes a "not likely to adversely affect" determination;
- NMFS issues a biological opinion; or
- EPA finishes consultation process with the Services

Affected ESU's in Oregon

- Buffers do not apply to all of Oregon
- Seven ESU's identified
 - Upper Willamette River
 - Southern Oregon/N. Ca. Coast
 - Oregon Coast
 - Columbia River (3 ESU's)
 - Snake River

Additional Urban Restrictions

- In addition to mandatory buffers...7
“Urban Pesticides” identified
- Must have “Point of Sale” notification to the public
- “Salmon Hazard” Statement & Graphic
- Posted at all “points of sale”
- Specific “urban” areas defined - Does not apply to all urban areas in the state.

“Urban Pesticides”

- 2,4-D
- Carbaryl
- Diazinon
- Diuron
- Malathion
- Triclopyr BEE (Garlon 4)
- Trifluralin

Counterpart Regulations

- **Streamlining Government -**
 - **Improve communication between U. S. Fish and Wildlife Service (FWS), National Marine Fisheries Service (NMFS) and U. S. EPA**
 - **Meant to increase efficiency of EPA to comply with the Endangered Species Act**
 - **Streamlines consultation process for pesticide registrations**
 - **Comment period closes March 30, 2004**

Counterpart Regulations

- EPA, USFWS & NMFS will work together on initial determinations
- If EPA determination is “No Effect” OR “Not Likely to Adversely Affect” = NO FURTHER CONSULTATION
- When referred to the services for consultation:
 - the services will have been involved since the initial evaluation
 - EPA will assist services in consultation/biological opinion
- MORE EFFICIENT WAY TO COMPLY WITH ESA
- EPA will be able to set registration priorities

Counterpart Regulations

■ E-mail Comments-

PesticideESARegulations@fws.gov

Attn: 1018-AI95

Written Comments-

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How Do I Find Information?

- Washington Dept of Agriculture
 - <http://agr.wa.gov/PestFert/EnvResources/Lawsuit>
- Oregon State University Extension
 - <http://oregonipm.ippc.orst.edu/>
- Oregon Dept of Agriculture
 - <http://www.oda.state.or.us/pesticide/lawsregs/buffers>
- EPA
 - <http://www.epa.gov/oppfead1/endanger/effects/>