

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

NATURAL RESOURCES DEFENSE)	
COUNCIL, et al.,)	
)	
Plaintiffs,)	
)	
v.)	
)	
CHRISTINE TODD WHITMAN,)	Case No. C-99-3701 CAL
Administrator of the United States)	
Environmental Protection Agency, et al.,)	
)	
Defendants.)	

)	
AMERICAN FARM BUREAU)	
FEDERATION, et al.,)	
)	
Intervenors.)	

)	
PEOPLE FOR THE ETHICAL)	
TREATMENT OF ANIMALS, et al.,)	
)	
Intervenors.)	

PARTIAL CONSENT DECREE

WHEREAS, the Natural Resources Defense Council (NRDC), The Breast Cancer Fund (TBCF), CalPIRG Charitable Trust (CalPIRG-CT), Pesticide Watch Education Fund (PWEF), Pesticide Action Network North American Regional Center (PANNA), San Francisco Bay Area Physicians for Social Responsibility, and United Farm Workers of America, AFL-CIO (collectively "Plaintiffs") commenced this action for declaratory and injunctive relief pursuant to, inter alia, the

Administrative Procedure Act (“APA”), 5 U.S.C. §§ 551, et seq., on August 3, 1999, against Defendants Carol Browner, then the Administrator of the Environmental Protection Agency, and the Environmental Protection Agency (collectively, “EPA”);

WHEREAS, Plaintiffs amended their complaint on February 8, 2000, EPA filed an answer to the amended complaint on March 10, 2000, and EPA amended its answer on March 30, 2000;

WHEREAS, Plaintiffs allege that EPA has failed to meet statutory deadlines for regulatory action mandated by the Federal Food, Drug and Cosmetics Act (“FFDCA”), including the reassessment of pesticide tolerances pursuant to FFDCA section 408(q), 21 U.S.C. § 346a(q), and the implementation of an Endocrine Disruptors Screening and Testing Program pursuant to FFDCA section 408(p), 21 U.S.C. § 346a(p);

WHEREAS, the APA provides for judicial review of agency action made reviewable by statute or final agency action for which there is no other adequate remedy in court to determine whether such action is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law, or unlawfully withheld or unreasonably delayed, 5 U.S.C. §§ 704,706;

WHEREAS, certain Plaintiffs have also filed, on August 3, 1999, a petition for review, United Farm Workers of America, AFL-CIO, et al. v. Browner, No. 99-70946 (9th Cir.) (“United Farm Workers”), alleging that EPA has unlawfully failed to complete the reregistration of pesticides pursuant to the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136a-1;

WHEREAS, EPA continues to dispute Plaintiffs’ allegations;

WHEREAS, EPA intends to comply with its obligations in FIFRA section 17(b) to transmit notices of pesticide cancellations and suspensions, including, but not limited to, cancellations or suspensions under section 6 of FIFRA, to governments of other countries and appropriate international agencies;

WHEREAS, EPA affirms its interest in providing opportunities for public participation in the conduct of its tolerance reassessment and pesticide reregistration activities, and its intent to discuss with its Committee to Advise on Reassessment and Transition (CARAT) the optimum timing and nature of such opportunities consistent with the schedules set forth in this Consent Decree;

WHEREAS, in conducting risk assessments with respect to tolerance reassessment and pesticide reregistration, EPA intends to consider label changes and other changes to the terms and conditions of a pesticide registration to the extent that there is adequate information to assess the effect of such changes upon the risk assessment;

WHEREAS, EPA intends to consider, in the development of any risk assessment, RED, or IRED identified in this Consent Decree, new data or information submitted sufficiently before the scheduled date of issuance of the risk assessment, RED, or IRED to allow for thorough review and consideration of the data or information, consistent with the scheduled date of issuance required herein.

WHEREAS, Plaintiffs and EPA have agreed to a settlement of the claims raised in Counts 1 through 5 of this Action without any admission of fact or law, which they consider to be a just, fair, adequate and equitable resolution of the claims raised in this action;

WHEREAS, Plaintiffs and EPA have agreed to a settlement of the claims raised in Count 6 of this Action, which settlement is embodied in a separate settlement agreement, which is not a part of this Consent Decree;

WHEREAS, Plaintiffs believe the activities required in this Consent Decree are among the highest priorities for EPA to address in the FIFRA reregistration and FFDCA tolerance reassessment programs;

WHEREAS, Plaintiffs have also agreed to the withdrawal of their petition for review in United Farm Workers;

WHEREAS, by entering into this Consent Decree, Plaintiffs and EPA do not waive or limit any claim or defense, on any grounds, related to any agency action that may ensue from EPA's performance of its obligations under this Consent Decree;

WHEREAS, it is in the interest of the public, the parties and judicial economy to resolve the issues in this action without protracted litigation; and

WHEREAS, the Court finds and determines that this Consent Decree represents a just, fair, adequate and equitable resolution of the claims raised in this action;

NOW, THEREFORE, it is hereby ordered, adjudged, and decreed as follows:

I. PARTIES

1. The parties to this Consent Decree are Plaintiffs and EPA.

II. PARTIES BOUND

2. This Consent Decree applies to, is binding upon, and inures to the benefit of Plaintiffs (and their successors, assigns, and designees) and EPA.

III. DEFINITIONS

3. Unless otherwise expressly provided, the terms used in this Consent Decree shall have the meaning, if any, assigned to them by FIFRA or the FFDCA as of the date of entry of this Consent Decree or as subsequently amended. The following definitions shall apply to the terms identified below:

A. General Terms

- a. “APA” means the Administrative Procedure Act, 5 U.S.C. §§ 551, et seq.
- b. “Consent Decree” means this decree.
- c. “Day” means a calendar day unless expressly stated to be a working day. In determining any period of time under this Consent Decree, where the last day or the date specified in this Consent Decree would fall on a Saturday, Sunday or federal holiday, the period shall run until the close of business of the next working day.
- d. “Effective Date” means the date upon which this Consent Decree is entered by the Court.
- e. “EPA” means the United States Environmental Protection Agency.
- f. “Execute” or “Execution” means that both parties have fully signed original counterparts to this Consent Decree and have caused such documents to be delivered to each other.
- g. “FFDCA” means the Federal Food Drug and Cosmetic Act, 21 U.S.C. §§

201-394.

- h. “FIFRA” means the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136-136y.
- i. “Paragraph” means a portion of this Consent Decree identified by an arabic numeral.
- j. “Plaintiffs” means the Natural Resources Defense Council, The Breast Cancer Fund, CalPIRG Charitable Trust, Pesticide Watch Education Fund, Pesticide Action Network North American Regional Center, San Francisco Bay Area Physicians for Social Responsibility, and United Farm Workers of America, AFL–CIO.
- k. “Section” means a portion of this Consent Decree identified by a roman numeral.
- l. “United Farm Workers” means the petition for review filed on August 3, 1999, by certain Plaintiffs in the Ninth Circuit alleging that EPA has unlawfully failed to complete the reregistration of pesticides pursuant to FIFRA, 7 U.S.C. § 136a-1, United Farm Workers, AFL-CIO, et al. v. Browner, No. 99-70946 (9th Cir.).
- m. The “United States” means the United States of America, including its officers, agencies, departments and instrumentalities.

B. Terms Related to Tolerance Reassessment

- n. “Organophosphate Pesticides” means the 39 chemicals identified on the

list attached to this Consent Decree as Appendix A, which is incorporated herein by reference.

o. “Reregistration Eligibility Determination” or “RED” means a document containing EPA’s determination as to whether pesticides containing an active ingredient are eligible for reregistration pursuant to section 4(g)(2)(A) of FIFRA and EPA’s determination as to whether the associated tolerances meet the standard set forth in section 408(b) of the FFDCA.

p. “Interim RED” means a document containing EPA’s determination as to whether pesticides containing an active ingredient are eligible for reregistration pursuant to section 4(g)(2)(A) of FIFRA and EPA’s determination, without consideration of any cumulative effects of the pesticide and other substances that have a common mechanism of toxicity, as to whether the associated tolerances would meet the standard set forth in FFDCA 408(b).

q. “Revised Risk Assessment” means a risk assessment completed after release to the public of a preliminary risk assessment and the consideration of public comment on the preliminary risk assessment.

IV. REASSESSMENT OBLIGATIONS

A. Conduct of the Organophosphate Risk Assessment

4. EPA shall issue a preliminary risk assessment by December 1, 2001 for cumulative effects of the 39 Organophosphate Pesticides. Any interested person may submit written comments to the Agency on such preliminary risk assessment within sixty (60) days of its issuance. Within two hundred and forty (240) days of the issuance of the preliminary risk assessment or August 3, 2002, whichever is later, EPA shall issue a revised risk assessment. In conducting this preliminary and revised

risk assessment, EPA shall consider cumulative effects of the Organophosphate Pesticides and other factors to the extent required by FFDCA § 408(b). In conducting these risk assessments, EPA will take into account the written report from the September 26-29, 2000 meeting of the FIFRA Scientific Advisory Panel (SAP) and the oral comments by the SAP during the December 7-8, 2000 meeting and any subsequent written report from that meeting. Nothing in this Paragraph shall limit or modify EPA's discretion to disagree with the SAP's conclusions.

5. Notwithstanding Paragraph 4, EPA shall be excused from compliance with the deadlines in Paragraph 4 if EPA encounters substantial scientific difficulties in conducting the risk assessment described therein. Substantial scientific difficulties shall be deemed to be present only if EPA determines, based upon information presented to the SAP and on the findings of a future report of the SAP that either (1) the premises underlying EPA's risk assessment of Organophosphate Pesticides are significantly flawed or (2) the methodology for conducting the risk assessment is significantly flawed. Significantly flawed means flawed to such an extent that EPA determines that its risk assessment approach, or resource commitment to conduct such risk assessment, must be fundamentally altered. If EPA determines that it has encountered substantial scientific difficulties as set forth in this Paragraph, EPA shall, within ninety (90) days of issuance of the relevant SAP report, provide to Plaintiffs in writing a notice that substantial scientific difficulties have been encountered, an explanation of the bases therefor, and a reasonable schedule for completing a preliminary and/or revised risk assessment in light of the SAP report and the issues raised therein. For the purposes of this Paragraph, it shall be presumed that any schedule of up to one additional year is reasonable; EPA bears the burden of overcoming this

presumption for any schedule longer than one additional year. Any schedule adopted pursuant to this Paragraph shall be enforceable under all the applicable provisions of this Consent Decree. If Plaintiffs disagree either with the determination that substantial scientific difficulties have been encountered or with the reasonableness of the schedule, Plaintiffs may invoke the Dispute Resolution provision in Paragraph 24 of this Consent Decree.

6. To the extent permitted by law, EPA will use best efforts to make the toxicity studies that are being relied upon in the conduct of the preliminary and revised cumulative risk assessments for organophosphates available to the public within forty-five (45) days of entry of this Consent Decree or, if a study is submitted after entry of this Decree, within forty-five (45) days of the Agency's receipt of the study. In making these studies available to the public, EPA will request that the submitters of such studies make such arrangements as are necessary to allow the studies to be available to interested pesticide producers notwithstanding the provisions of section 10(g) of FIFRA. EPA will make available to the public its analyses of relative potency factors for use in the preliminary cumulative risk assessment for organophosphates on or before July 31, 2001. If any person notifies the Agency that he/she desires to generate additional toxicology studies to assist in the characterization of the organophosphate relative potency factors and submits a protocol for any such study to EPA, EPA will review and comment in writing on such protocol within forty-five (45 days) of receipt of the protocol. Nothing in this paragraph shall be construed to authorize or to serve as the basis for the extension of any deadline embodied in this Decree.

7. Plaintiffs' entry into this Consent Decree does not imply in any way their acquiescence in the manner in which EPA performs risk assessments for cumulative exposure to pesticides. Plaintiffs expressly reserve all of their rights to challenge, in a separate action, any EPA final actions based on such risk assessment including challenging the validity of the risk assessment. EPA expressly reserves any and all defenses to any such challenge, including lack of jurisdiction.

B. Revised Risk Assessments and REDs

8. For each of the pesticides listed in this Paragraph, EPA shall, by the dates set forth herein, sign a RED, interim RED or revised risk assessment, as specified below. The interim RED and revised risk assessment will consider aggregate exposure to the pesticide, taking into account the validity, completeness, and reliability of the available data; however, EPA will not be required to consider any cumulative effects due to the pesticide's sharing a common mechanism of toxicity, in an interim RED or revised risk assessment issued under this Paragraph. In addition, the interim RED and revised risk assessment will consider potential worker and ecological risks posed by the pesticide. To the extent that an assessment of pesticide benefits is included in an IRED or RED identified in this Paragraph, EPA will provide an opportunity for public comment on the benefits assessment either by publication of the assessment on the Office of Pesticide Programs' Internet Website before issuance of the IRED or RED, or by specifically providing in the IRED or RED a sixty (60) day opportunity for public comment on the benefits assessment to commence upon issuance of the IRED or RED. If, in the course of preparing a RED pursuant to the schedule below, EPA determines that available information shows it would be appropriate to assess the cumulative effects of the listed pesticide and other

substances that have a common mechanism of toxicity, EPA will not be required by this Consent Decree to complete a RED by the specified date, and will instead complete an interim RED by that date.

	<u>Pesticide</u>	<u>Date</u>	<u>Type of action</u>
a.	phosmet	August 31, 2001	Interim RED
b.	azinphos-methyl	August 31, 2001	Interim RED
c.	propargite	September 30, 2001	RED
d.	chlorpyrifos	September 30, 2001	Interim RED
e.	atrazine	August 3, 2002	Interim RED
f.	carbaryl	June 30, 2003	Interim RED
g.	benomyl	July 31, 2002	RED
h.	endosulfan	July 31, 2002	RED
i.	lindane	July 31, 2002	RED
j.	diazinon	July 31, 2002	Interim RED
k.	metam sodium	August 31, 2004	Revised Risk Assessment

As to the August 31, 2004 date for the metam sodium revised risk assessment, EPA shall proceed at an earlier date if significant, new information indicates that the risks are substantially greater than the risks that are known to EPA at the effective date of this Consent Decree. Any EPA determination regarding the timing of the metam sodium revised risk assessment is entitled to deference.

C. Post-Interim RED Actions for Certain Pesticides

9. a. For each of the pesticides azinphos-methyl, chlorpyrifos, and diazinon, EPA will include in the Interim RED published pursuant to Paragraph 8 a determination, whether any use of the pesticide poses risks to workers that constitute unreasonable adverse effects on the environment. If EPA finds the pesticide poses such risks, EPA shall also include in the RED, at EPA's sole discretion, a determination whether such risks require relatively quick regulatory action or can likely be acceptably mitigated through more routine changes to a pesticide's labeling or formulation. If EPA determines that relatively quick regulatory action is appropriate, EPA will provide a draft notice of intent to cancel (NOIC) designed to eliminate the unreasonable adverse effects on the environment related to worker risk to the SAP and the United States Department of Agriculture (USDA) no later than eight (8) months after the date the Interim RED is signed. If EPA determines that the worker risks that constitute unreasonable adverse effects on the environment can likely be acceptably mitigated through more routine changes to a pesticide's labeling or formulation, EPA will provide a draft NOIC designed to eliminate such unreasonable adverse effects on the environment to the SAP and the USDA no later than 19 months after the date the Interim RED is signed.

b. The EPA's determination in Subparagraph (a) above, as to whether risks require relatively quick action or not, is not reviewable under this Consent Decree. Plaintiffs reserve their right to challenge EPA's actions in a separate action under any applicable authority. EPA reserves any and all defenses to any such challenge, including lack of jurisdiction.

c. Notwithstanding any other provision of this Paragraph, if EPA determines that the unacceptable worker risks identified in the determination called for under this Paragraph will be

substantially eliminated through implementation of an effective regulatory instrument that has been finalized before a draft NOIC is provided to the SAP and USDA, EPA shall not be obligated to issue a draft NOIC pursuant to this Paragraph and may instead elect to pursue any other appropriate regulatory means of dealing with any remaining unacceptable worker risks. In such circumstances, EPA shall, on or before the date it would have been obligated to provide a draft NOIC to the SAP and USDA, notify the Plaintiffs in writing of its determination, the bases therefor, and, if any unacceptable worker risks remain, how the Agency intends to deal with such risks. The Agency shall also provide such notification to the public in such manner as the Agency deems appropriate, including at a minimum either publication on the Office of Pesticide Programs' Internet Website Home Page or in the Federal Register.

d. Notwithstanding any other provision of this Paragraph, if EPA determines before a draft NOIC is provided to the SAP and USDA that new scientific information and/or a change in the way the Agency treats existing scientific information could significantly alter EPA's assessment of worker risks associated with the pesticide in a way that could significantly affect the basis for the draft NOIC, EPA may, on or before the date it would have been obligated to provide a draft NOIC to the SAP and USDA, issue a determination that it would be inappropriate to submit a draft NOIC to the SAP and USDA pursuant to the schedule that would otherwise be required pursuant to this Paragraph. Such determination shall include, at a minimum, the bases for the determination and a proposed schedule for further action with respect to the pesticide. Such schedule shall include, at a minimum, a proposed date for determining whether, in light of the new information or practice, worker risks associated with the pesticide constitute unreasonable adverse effects on the environment and, if so, how the Agency intends

to deal with such risks under the framework set forth in Subparagraph (a) of this Paragraph. EPA shall provide this determination in writing to the Plaintiffs, and EPA shall also make the determination available to the public in such manner as the Agency deems appropriate, including at a minimum either publication on the Office of Pesticide Programs' Internet Website Home Page or in the Federal Register.

D. Common Mechanism of Toxicity Determinations

10. For each group of pesticides listed in this Paragraph, EPA shall make a determination, by the specified date, as to whether the pesticides in the listed group share a common mechanism of toxicity. In making each such determination, EPA will either follow written policies pertaining to common mechanism determinations that are current at the time of the particular determination, or the Agency will include in writing in the determination a description of any deviations from current common mechanism policy and an explanation of why the Agency believes such deviations are appropriate. Each such common mechanism determination will be publicly released through a memorandum signed by the Director of the Office of Pesticide Programs. When each such determination is issued, EPA will provide the public a sixty (60) day opportunity to submit written comments on the determination. Nothing in this Consent Decree shall be construed to limit or modify EPA's discretion subsequently to change its conclusions regarding whether a group of pesticides listed herein shares a common mechanism of toxicity, whether based upon new data or upon reexamination of existing data. Plaintiffs' entry into this Consent Decree does not imply in any way their acquiescence in the manner in which EPA performs common mechanism determinations. Plaintiffs expressly reserve all of their rights to challenge, in a separate action, any EPA final actions based on such determinations, including challenging the validity of

the determination. EPA expressly reserves any and all defenses to any such challenge, including lack of jurisdiction.

	<u>Pesticide Group/Subgroup</u>	<u>Date</u>
a.	Carbamates:	
	i. methyl carbamates	June 30, 2001
	ii. thiocarbamates and dithiocarbamates	December 31, 2001
b.	Chloroacetanilides	June 30, 2001
c.	Triazines	March 31, 2002

E. Annual Reports

11. EPA shall prepare an annual report, as described below, beginning one year from the effective date of this Consent Decree. This date shall be known as the “annual reporting date.” The obligation to publish an annual report shall cease once EPA meets its obligations under Subparagraphs (a) and (b) or August 3, 2006, whichever is sooner. The annual report shall be published by placing the report on the Office of Pesticide Programs’ Internet Website. The report shall be readily accessible from the Office of Pesticide Programs’ Home Page. The annual report shall contain the following:

a. Pesticides in Paragraph 8. The annual report must address any pesticide in Paragraph 8 as to which (1) a RED or Interim RED has been issued at least three (3) months prior to the annual reporting date, and (2) the RED or Interim RED identifies at least one risk posed by the pesticide that may generally cause unreasonable adverse effects on the environment or concludes that at least one associated tolerance does not meet the requirements of FFDCA section 408(b). For the annual report

that is required after a pesticide is first identified under these criteria, the report shall contain the following information concerning the identified pesticide: (1) a description of the risk(s) or tolerance(s) that meet the above criterion; and (2) a description of EPA's plan for addressing such risk(s) or tolerance(s). Subsequent annual reports shall describe EPA's steps toward completion of its plan for addressing such risk(s) or tolerance(s). The obligation to include a pesticide in the annual report shall end once EPA includes in the annual report its conclusion that such risk(s) or tolerance(s) have been addressed.

b. Pesticides in Paragraph 10. The annual report must address any group or subgroup of pesticides in Paragraph 10 as to which (1) EPA has determined that the pesticides in the group or subgroup share a common mechanism of toxicity, and (2) such determination has occurred at least six (6) months prior to the annual reporting date. For the annual report that is required after a group or subgroup of pesticides is first identified under these criteria, the report shall contain the following information concerning the identified group or subgroup: a schedule for the completion of both a preliminary and revised risk assessment on the pesticide group or subgroup. Within six (6) months of completing the revised risk assessment for a pesticide group or subgroup, EPA shall make its best estimate of the schedule for completing the Interim REDs and/or REDs for the pesticides in that group or subgroup. This schedule shall be included in the first annual report due following the issuance of the schedule. No schedule made pursuant to this Paragraph shall be binding on the EPA under this Consent Decree or under any other provision of law. Subsequent annual reports shall describe EPA's steps toward completion of its schedules for completion of preliminary and revised risk assessments. The obligation to include a pesticide group or subgroup in the annual report shall end once EPA includes

in the annual report its conclusion that it has completed the REDs for the pesticides in the group or subgroup.

V. WITHDRAWAL OF PETITION FOR REVIEW

12. Plaintiffs agree that this Consent Decree shall be Null and Void unless, within thirty (30) days after being served with the Court's order establishing the Effective Date of this Consent Decree, Petitioners in the United Farm Workers case have withdrawn their petition for review. Further, this Consent Decree shall be Null and Void if any petitioner in United Farm Workers were to reinitiate that litigation prior to the date specified for completion of all activities required in Paragraph 8 (i.e., August 31, 2004). If any deadline in Paragraph 8 should be extended by the Court, this Consent Decree shall be Null and Void if any petitioner in United Farm Workers were to reinitiate that litigation prior to the extended deadline ordered by the Court. However, in no event shall this Consent Decree become Null and Void or otherwise affected by petitioners' reinitiating the United Farm Workers litigation after August 3, 2006.

VI. CONTINUING JURISDICTION

13. For purposes of entry and enforcement of this Consent Decree only, the parties to this Consent Decree agree that the Court has jurisdiction over this matter, the parties to the Consent Decree, any disputes arising under this Consent Decree, and any alleged violations of this Consent Decree, and may issue such further orders or direction as may be necessary or appropriate to construe, implement, modify or enforce the terms of this Consent Decree, and for granting any further relief as the interests of justice may require.

VII. REMEDY AND SCOPE OF JUDICIAL REVIEW

14. Nothing in this Consent Decree shall be construed to confer upon this Court jurisdiction to review any decision, either procedural or substantive, to be made by EPA pursuant to this Consent Decree, except for the purpose of determining EPA's compliance with this Consent Decree.

15. Plaintiffs' sole judicial remedy to address the merits of any final action that may ensue from EPA's performance of its obligations under this Consent Decree is to file a separate lawsuit challenging such final action. EPA reserves all of its defenses to any such suit. Nothing in this Consent Decree alters or affects the standards for judicial review of final EPA action, or creates jurisdiction that would otherwise not exist to review EPA action.

16. Plaintiffs agree that they will not seek to enforce any date for the performance of any obligation under this Consent Decree that is earlier than the date identified for such action in Paragraphs 4 through 10 of this Consent Decree, either pursuant to the FFDCA or any other authority.

VIII. AGENCY DISCRETION

17. Except as expressly provided herein, nothing in this Consent Decree shall be construed to limit or modify the discretion accorded EPA by the FFDCA, FIFRA, the APA, or general principles of administrative law.

18. Nothing in this Consent Decree shall bar EPA from acting on any matters covered in this Consent Decree in a time frame earlier than required by this Consent Decree or to take additional actions not specified herein if EPA determines such actions are appropriate under applicable law.

IX. COMPLIANCE WITH OTHER LAWS

19. Nothing in this Consent Decree shall be interpreted as or constitute a commitment or requirement that EPA obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or take any action in contravention of the FFDCA, FIFRA, the APA, or any other law or regulation, either substantive or procedural.

X. MODIFICATION

20. Amendment of the deadlines in FIFRA section 4 or FFDCA section 408(q) shall supercede any deadlines in this Consent Decree.

21. This Consent Decree may be modified by written agreement of the Parties and approval of the Court. Nothing in this Consent Decree, or in the Parties' agreement to its terms, shall be construed to limit the equitable powers of the Court to modify the terms of the Consent Decree upon a showing of good cause by any Party. Good cause may include changes in the law or substantial cuts to EPA's budget.

22. Any dates set forth in this Consent Decree may be extended by written agreement of the Parties and notice to the Court. In the event the Parties are not able to agree to an extension, either party may seek a modification of any date established in this Consent Decree in accordance with the following procedures:

a. If a Party files a motion requesting an extension of more than thirty (30) days of a date or dates established by this Consent Decree, provides notice to the other Party at least thirty (30) days prior to the date sought to be modified, and files the motion at least twenty (20) days prior to the

date sought to be modified, then the filing of such motion shall, upon request, stay the date for which modification is sought. Such stay shall remain in effect until the earlier of (i) a dispositive ruling by this Court on such motion, or (ii) the date sought in the motion.

b. If a Party files a motion requesting an extension of thirty (30) days or less of a date or dates established by this Consent Decree, provides notice to the other Party at least seven (7) days prior to the date sought to be modified, and files the motion at least seven (7) days prior to the date sought to be modified, then the filing of such motion shall, upon request, stay the date for which modification is sought. Such stay shall remain in effect until the earlier of (i) a dispositive ruling by this Court on such motion, or (ii) the date sought in the motion.

c. If a Party seeking modification does not provide notice pursuant to Subparagraphs a. or b. above, that Party may move the Court for a stay of the date or dates for which modification is sought. The Party seeking modification shall promptly give notice to the other Party of its intent to seek a modification and/or stay of the date sought to be modified. The notice provided under this Subparagraph and any motion for stay shall demonstrate why the Party could not have utilized the notification procedures set forth in Subparagraphs a. or b. above.

d. Any motion to modify a date established in this Consent Decree shall be accompanied by a motion for expedited consideration. All Parties shall join in any motion for expedited consideration associated with a motion to modify filed in accordance with procedures set forth in Subparagraphs a. or b. above.

XI. FORCE MAJEURE

23. The Parties recognize that performance under this Consent Decree is subject to fiscal and procurement laws and regulations of the United States which include, but are not limited to, the Anti-Deficiency Act, 31 U.S.C. § 1341, et seq. A force majeure event may arise, due to circumstances outside the reasonable control of EPA, that could delay compliance with the obligations set forth in Paragraphs 4 through 11 of this Consent Decree. Such force majeure events include, but are not limited to, a government shutdown, such as occurred in 1995 and 1996, a failure of Congress to renew maintenance fees under 7 U.S.C. § 136a-1(i) without the provision of comparable replacement funding, or catastrophic environmental events requiring immediate and/or time-consuming response by EPA. Emergency exemptions under section 18 of FIFRA shall not constitute a force majeure event for purposes of this Paragraph. Should a delay occur due to a force majeure event, any resulting failure to fulfill any obligations set forth herein shall not constitute a failure to comply with the terms of this Consent Decree, and any deadlines so affected shall be extended one day for each day of the delay. As soon as possible under such circumstances, EPA will provide Plaintiffs with notice invoking the relief provided for under this Paragraph, and with an explanation of EPA's basis for invoking this relief. EPA shall also provide Plaintiffs with reasonable notice of the termination of the force majeure event upon which EPA invoked this relief. Any dispute regarding invocation of such relief shall be resolved in accordance with the dispute resolution provision of Paragraph 23 of this Consent Decree.

XII. DISPUTE RESOLUTION

24. In the event of a disagreement between the Parties concerning the interpretation or performance of any aspect of this Consent Decree, the dissatisfied Party shall provide the other Party

with written notice of the dispute and a request for negotiations. The Parties shall meet and confer in order to attempt to resolve the dispute within (twenty) 20 days after receipt of the notice, or such time thereafter as is mutually agreed upon. If the Parties are unable to resolve the dispute within thirty (30) days after receipt of the notice, or such time thereafter as is mutually agreed upon, then either Party may petition the Court to resolve the dispute.

XIII. TERMINATION OF THIS CONSENT DECREE

25. This Consent Decree shall terminate after EPA has fulfilled its obligations under Paragraphs 4 through 11 of the Consent Decree. Upon termination of this Consent Decree, this Action shall be dismissed with prejudice. EPA shall file the appropriate notice with the Court so that the Clerk of the Court may close the file.

XIV. RELEASE

26. This Consent Decree constitutes a complete and final settlement and is in full satisfaction of all claims asserted by Plaintiffs in Counts 1 through 5 of this Action, and all claims that they could have asserted with respect to the allegations in Counts 1 through 5 in their Complaint.

XV. ATTORNEYS' FEES AND COSTS

27. The Parties agree that EPA shall pay \$40,000 to Plaintiffs for attorneys' fees and costs as a full and complete settlement of Plaintiffs' claims for attorneys' fees and costs in this action and in United Farm Workers. EPA shall pay the above amount within 90 days of the effective date of this Consent Decree.

XVI. APPLICABLE LAW

28. This Consent Decree shall be governed by and construed under the laws of the United States.

XVII. MUTUAL DRAFTING

29. The Parties to this Consent Decree agree that this Consent Decree was jointly drafted by them. Accordingly, the Parties agree that any and all rules of construction to the effect that ambiguity is construed against the drafting Party shall be inapplicable in any dispute concerning the terms, meaning, or interpretation of this Consent Decree.

XVIII. ENTIRE AGREEMENT

30. This Consent Decree constitutes the entire agreement of the Parties in this case. All prior conversations, meetings, discussions, drafts and writings of any kind are specifically superceded by this Consent Decree.

XIX. USE OF CONSENT DECREE

31. This Consent Decree shall not constitute an admission or evidence of any fact, wrongdoing, misconduct, or liability on the part of the United States, including, without limitation, EPA, its officers, or any other person affiliated with it.

XX. THIRD-PARTY BENEFICIARIES

32. Nothing in this Consent Decree shall be construed to make any other person or entity not executing this Consent Decree a third-party beneficiary to this Consent Decree. The Parties consent to the form, substance and entry of this Consent Decree.

XXI. EFFECTIVE DATE

33. This Consent Decree shall become effective upon the date of its entry by the Court. If, for any reason, the Court does not enter this Consent Decree, the obligations set forth in this Consent Decree are null and void.

XXII. NOTICE AND CORRESPONDENCE

34. Any notice, including correspondence, required or made with respect to this Consent Decree, shall be in writing, effective upon receipt, and sent to the following persons, or to such other person or persons as any Party may subsequently identify (in accordance with this provision) to the other Parties:

For Plaintiffs:

Fred Altshuler
Altshuler, Berzon, Nussbaum, Rubin & Demain
177 Post Street
Suite 300
San Francisco, CA 94108

Erik Olson
Natural Resources Defense Council
1200 New York Avenue, N.W., Suite 400
Washington, DC 20005

For EPA:

Assistant General Counsel for Pesticides

Pesticides and Toxics Law Office
Office of General Counsel (2333A)
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Chief
Environmental Defense Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 23986
Washington, D.C. 20026-3986
Attn: DJ # 1-05728

XXIII. COUNTERPARTS

35. This Consent Decree may be executed in any number of counterpart originals, each of which shall be deemed to constitute an original agreement, and all of which shall constitute one agreement. The execution of one counterpart by any Party shall have the same force and effect as if that Party had signed all other counterparts.

XXIV. REPRESENTATIVE AUTHORITY

36. Each undersigned representative of the Parties to this Consent Decree certifies that he or she is fully authorized to enter into and execute the terms and conditions of this Consent Decree, and to legally bind such Party to this Consent Decree. By the signatures below, the Parties consent to entry of this Consent Decree.

FOR PLAINTIFFS:

Dated: _____

Erik D. Olson
Adrianna Quintero
Natural Resources Defense Council
1200 New York Ave, NW
Suite 400
Washington, DC 20005

Counsel for Plaintiffs
Natural Resources Defense Council
The Breast Cancer Fund
CALPIRG Charitable Trust
Pesticide Watch Education Fund
Pesticide Action Network
San Francisco Bay Area Physicians for Social
Responsibility

Dated: _____

Fred H. Altshuler
Michael E. Wall
Altshuler, Berzon, Nussbaum, Rubin & Demain
177 Post Street, Suite 300
San Francisco, CA 94108

Counsel for Plaintiffs
United Farm Workers of America, AFL-CIO
Natural Resources Defense Council

FOR EPA:

Dated: _____

Anna L. Wolgast
Acting General Counsel
U.S. Environmental Protection Agency

FOR EPA:

ROBERT S. MUELLER, III
United States Attorney
Northern District of California

ALEX G. TSE
Assistant United States Attorney
450 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102
(415) 436-6730 (tel.)
(415) 436-6748 (fax)

JOHN C. CRUDEN
Acting Assistant Attorney General
Environment and Natural Resources Division

Dated: _____

By: _____

BRIAN H. LYNK, Attorney
D.C. Bar. No. 459525
United States Department of Justice
Environmental Defense Section
P.O. Box 23986
Washington, D.C. 20026-398
(202) 514-6187 (tel.)
(202) 616-0013 (fax)

OF COUNSEL:

Jonathan J. Fleuchaus
Robert G. Perlis
Robert Wing
Office of General Counsel
U.S. Environmental Protection Agency

SO ORDERED this _____ day of _____, 2001.

CHARLES A. LEGGE
UNITED STATES DISTRICT JUDGE

ATTACHMENT A

ORGANOPHOSPHATE PESTICIDES

- | | | | |
|-----|---------------------|-----|-------------------|
| 1. | Acephate | 21. | Methamidophos |
| 2. | Azinphos-methyl | 22. | Methidathion |
| 3. | Bensulide | 23. | Methyl-parathion |
| 4. | Cadusafos | 24. | Mevinphos |
| 5. | Chlorethoxyphos | 25. | Naled |
| 6. | Chlorpyrifos | 26. | Oxydemeton-methyl |
| 7. | Chlorpyrifos-methyl | 27. | Phorate |
| 8. | Coumaphos | 28. | Phosalone |
| 9. | Diazinon | 29. | Phosmet |
| 10. | Dichlorovos (DDVP) | 30. | Phostebupirim |
| 11. | Dicrotophos | 31. | Pirimiphos-methyl |
| 12. | Dimethoate | 32. | Propetamphos |
| 13. | Disulfoton | 33. | Profenophos |
| 14. | Ethion | 34. | Sulfotepp |
| 15. | Ethoprop | 35. | Temephos |
| 16. | Ethyl parathion | 36. | Terbufos |
| 17. | Fenamiphos | 37. | Tetrachlorvinphos |
| 18. | Fenitrothion | 38. | Tribufos |
| 19. | Fenthion | 39. | Trichlorfon |
| 20. | Malathion | | |

