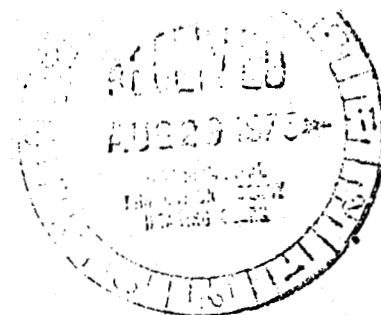


APPENDIX B

ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR



In the matter of:

Applications to register sodium cyanide for
use in the M-44 device to control predators

FIFRA Docket No. 382

INITIAL DECISION^{1/}

of
Frederick W. Denniston
Administrative Law Judge

This proceeding was initiated by the Administrator's order dated July 11, 1975, published in the Federal Register of July 15, 1975 (40 F.R. 29755). The proceeding is based on an application filed July 7, 1975 by the Fish and Wildlife Service of the U.S. Department of Interior, which seeks to register sodium cyanide M-44 capsules pursuant to Section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA) (86 Stat. 979, 7 U.S.C. 136a). Pursuant to the provisions of subpart D of the EPA regulations (40 CFR 164.130-133), the application under Section 3 has been treated as a petition for reconsideration of an order issued March 9, 1972 (37 F.R. 5718).

The notice provided for an expedited hearing, which was specified to begin on August 12, 1975 and to last 4 days unless, pursuant to a

^{1/} Exceptions may be filed by the parties pursuant to 40 CFR 164.101 but must be received on or before September 5, 1975.
NOTE: This is a correction of the date of September 4, 1975, announced on the record (Tr. 4-64), the fact that September 1 (Labor Day) is a holiday not having been considered.

recommendation of the presiding officer, it was further extended for an additional three days. The parties were allowed 4 days from the close of the hearing to file proposed findings and briefs. The presiding officer was allowed 6 days thereafter for the issuance of his initial decision, to which the parties could file exceptions 4 days thereafter.^{2/} Finally, it was provided that the Administrator's final order would be issued 21 days following the hearing, or 7 days after the filing of the exceptions. Saturdays, Sundays, and holidays were to be excluded from the foregoing count.

A prehearing conference was held on July 30, 1975 as a result of which Special Rules for the conduct of the proceedings were discussed, and were included in a Report of First Prehearing Conference issued July 31, 1975 (40 F.R. 33069). A second prehearing conference was held on August 7, 1975, at which some supplemental rules were adopted (Report of Second Prehearing Conference, August 11, 1975).

As permitted by the initiating order, certain interests filed applications which parallel that of the Fish and Wildlife Service, and by a second order, dated August 8, 1975, the following applications were, in effect, incorporated into this proceeding (40 F.R. 34455, August 15, 1975):

Montana Department of Livestock
Wyoming Department of Agriculture

^{2/} In the original notice, the exceptions were inadvertently referred to as "a reply brief."

Colorado Department of Agriculture
Oregon Department of Agriculture
Nevada State Department of Agriculture
Texas Department of Agriculture
M-44 Safety Predator Control Company,
Midland, Texas

Also, as allowed by the order, the following interventions occurred:

Interventions in support of application:

Wyoming
Montana
Navajo Nation
National Turkey Federation
American National Cattlemen's Association
National Wool Growers' Association

Interventions in opposition to application:

Environmental Defense Fund
Defenders of Wildlife
Friends of the Earth
National Audubon Society
Natural Resources Defense Council
National Wildlife Federation
Sierra Club ^{3/}
Oregon Environmental Council
Animal Protection Institute
Wildlife Management Institute
Humane Society of the United States

Amicus Curiae: As further provided by the initiating order, persons desiring to file briefs without becoming parties were permitted to do so and such amicus briefs were filed by the following:

American Farm Bureau Federation
Texas Department of Agriculture
California Department of Food and Agriculture

^{3/} The precise status of the Council is not clear as notwithstanding intervention in opposition has been entered, the Council, by letter dated June 19, 1975, to the Assistant Director of the State Department of Agriculture, has indicated approval.

Montana Wool Growers' Association
Montana Stockgrowers' Association
Congressman W. R. Poage
Texas and Southwestern Cattle Raisers Association

HISTORY OF PROCEEDING

On March 9, 1972, the Administrator issued a notice of suspension of the registration of certain products containing sodium fluoroacetate (1080), strychnine, and sodium cyanide. That document was published in the Federal Register of March 18, 1972 (37 F.R. 5718). The document referred to a report prepared under the aegis of the Secretary of Interior by a committee of which Dr. Stanley Cain, Director, Institute for Environmental Quality and Professor of Botany and Conservation at the University of Michigan, was chairman. The text of that order and the accompanying findings of fact are incorporated herein by reference. The order cancelled and suspended all uses of sodium cyanide and the other chemicals mentioned.

On January 10, 1974, EPA issued a notice that it would consider applications for the use of a so-called M-44 device and sodium cyanide for coyote control (39 F.R. 2295, January 18, 1974). This was followed by an amendment to the EPA regulations dated January 29, 1974 and effective February 1, 1974 by which a new Section 162.19 was added to the Rules which provided for the filing of experimental use applications for the use of sodium cyanide in a spring-loaded ejector unit as a predator control.

Finally, on July 11, 1975, the Administrator issued the instant notice of hearing which commenced this proceeding. In that notice, it was recited that, pursuant to the foregoing regulations, experimental use permits had been issued as follows:

Texas Department of Agriculture

Montana Department of Agriculture

California Department of Food and Agriculture

Department of the Interior

South Dakota Department of Game, Fish, and Parks

Idaho State Department of Agriculture

Nebraska State Department of Agriculture

Kansas State University

Texas A & M

ISSUES

The issues for determination in this proceeding are whether the following three items constitute substantial new evidence:

1. Four of the seven specific findings concerning sodium cyanide in the 1972 Order were directly related to the issue of human safety. Based on the data gathered in accordance with the applicant's experimental use permit, sodium cyanide when used in the M-44 has been shown to be significantly less hazardous to man than sodium cyanide when used in the explosive device for which it was registered at the time of the 1972 Order and which was known to cause injuries to humans.

2. Based on data derived from studies conducted subsequent to the 1972 Order and submitted by the applicant, use of sodium cyanide in the M-44 device is more selective than use of the chemical in the explosive device and more selective than some other chemical and non-chemical predator control methods.
3. In view of the data submitted by the applicant with respect to significantly reduced hazards to humans and the greater selectivity of sodium cyanide when used in the M-44, it is likely that proposed restrictions that might be developed, could be adopted and followed as a matter of practice by trained personnel subject to the supervision or control of the applicant.

These are followed by the following, which have been numbered for convenience:

4. Finally, if the above facts are determined to exist and to constitute substantial new evidence, the hearing must also determine whether such facts require modification of the 1972 Order to permit the registration of sodium cyanide for use in the M-44 to control predators in accordance with FIFRA.
5. The determination of these issues shall be made taking into account the human and environmental risks found by the Administrator in the 1972 Order and the cumulative effect of all past and present uses, including the requested use, and uses which may reasonably be anticipated as a result of a modification of the 1972 Order.

Hearings were held on August 12, 13, 14, and 15, 1975, and it was not necessary to seek the three-day extension which was conditionally provided. While arrangements were made to extend the workday

for an additional hour on August 13, 14, and 15, the additional time was not required, and the hearing concluded prior to 11:00 o'clock on August 15, 1975. The following appearances of counsel were entered:

David Fisher - Fish and Wildlife Service, U.S. Department of Interior,

Glenn Davis and John H. Midlen, Jr. - States of Wyoming and Montana,

George S. Andrews - Special Counsel, State of Wyoming,

Arthur Lee Quinn and Jeffrey Petrash - National Wool Growers' Association, American National Cattlemen's Association, National Turkey Federation, Navajo Nation,

Harold Burke, Assistant Attorney General - State of Oregon,

Richard E. Gutting, Jr. - Environmental Defense Fund, Defenders of Wildlife, Friends of the Earth, National Audubon Society, Natural Resources Defense Council, National Wildlife Federation, Oregon Environmental Council, Sierra Club, Animal Protection Institute, Wildlife Management Institute,

Murdaugh Stuart Madden and Roger A. Kindler - Humane Society of the United States,

Ronald McCallum and Colburn T. Cherney - U.S. Environmental Protection Agency.

Proposed Findings of Fact and Conclusions, and Briefs in support, have been filed by Fish and Wildlife Service, Department of Interior, the States of Montana, Wyoming and Oregon, American Farm Bureau Federation, Environmental Defense Fund and the associated environmentalist groups, and Respondent (Assistant Administrator, U.S. Environmental Protection Agency).

FINDINGS OF FACT

1. The M-44 is a mechanical device used to eject sodium cyanide into the mouth of canids when they activate it. It was developed in response to a need to replace the explosive shell of the Coyote Getter. Although serious injuries (14 documented human injuries for 550,000 getter-years of Service use since 1959) were infrequent with the latter, the potential for serious accidents was sufficient to warrant development of an alternative device. The manner of placement, use of scents that are offensive to humans, and elimination of the explosive charge made the M-44 relatively safe for humans.

2. The M-44 is composed of four parts: (1) the case--a sealed, impermeable plastic capsule containing one gram of formulated toxicant (0.88 gram of NaCN); (2) the case holder--a short, hollow tube wrapped with absorbent material to retain olfactory attractant and into which the case is inserted; (3) the ejector--a spring loaded plunger and triggering mechanism which is seated in and fastened to the tube and to which the case holder is fastened; (4) the tube--a hollow metal tube which is driven into the ground to support and anchor the mechanism.

3. Placement in the field is as follows: The tube is driven into the ground; the ejector is cocked, seated into the tube and the trigger mechanism engaged; the case is placed in the case holder which is then fastened to the ejector mechanism previously placed; and last, the

absorbent material on the case holder is saturated with an olfactory attractant. Canids drawn to the attractant grasp the case holder by their teeth and pull up, thus triggering the device, which then ejects the sodium cyanide into the animal's mouth.

4. The M-44 device will be used in accordance with formal policies and regulations established by the U.S. Fish and Wildlife Service. This use will conform to all applicable Federal, State, and local laws and regulations.

5. The U.S. Fish and Wildlife Service does not have authority over most lands on which the M-44 device will be used. To assure consideration, input, and approval from all responsible parties, M-44 use in programs on public lands will be controlled by cooperative agreement with appropriate jurisdictional agencies. Use of the device in programs on private lands would be controlled by written and signed cooperative agreement with the landowner or leasee.

6. Each individual M-44 use will be subject to careful analysis at the field level to assure that application is necessary, safe, and effective. Full documentation of livestock depredations, including evidence that such losses were caused by wild canids, or laboratory-confirmed verification that wild canids are, in fact, vectors of a communicable disease such as rabies, will be required before application is undertaken.

7. M-44 devices will be used only in areas specified under programs approved by U.S. Fish and Wildlife Service Regional Directors. They will not be used in: (1) National Parks or Monuments; (2) areas where threatened or endangered species might be adversely affected; or (3) areas where excessive exposure to public and family pets is probable.

8. M-44-s or capsules will not be given to, or entrusted to the care of, any person not under the supervision of the Service or other cooperating Government agencies. Care will also be taken to prevent theft or loss and the possibility of subsequent use of the capsules by nonauthorized persons.

9. M-44's will be used in locations and at times that will minimize encounters by humans, pets, and nontarget species. Special concern will be given to hunting and other seasonal use areas.

10. On private lands, M-44's will be used in areas where fencing, topography, seasons, climatic conditions, or other factors normally limit human access, while on public lands, M-44's will be used during those times of the year when use of the particular public land by the general public is at a minimum, or on areas not generally frequented by the public. Specific locations and time periods of M-44 use will be established by the appropriate Bureau representative, based upon land-use information provided by the land administrator and with his concurrence.

11. Warning signs in English and Spanish will be used to provide warning of all areas containing M-44's. Individual unit sites also will be clearly identified to protect persons who might happen upon them.

12. All Service-supervised employees will be instructed in the safe use of M-44's before being entrusted with them, including caution to be exercised to prevent personal injury from accidental discharge of the device.

13. Cyanide antidote kits will be carried by all employees using M-44's.

14. Special precautions will be in effect for the storage and disposal of capsules.

15. M-44 devices will be maintained on a routine basis (at least weekly) in order to replace discharged capsules and damaged warning signs, and to check them for human interference or abnormal conditions. They will be removed when unsafe conditions develop (i.e., new human activity in the area), when livestock depredation losses are stopped, or when evidence of the target species can no longer be found in the area.

16. All accidents involving humans and domestic animals as well as reports of animals taken by the device, will be reported immediately in accordance with established procedures.

17. During the experimental permit period from June 1, 1974 to October 31, 1974 the livestock losses were 3.4 percent before M-44 use

was initiated and 0.6 percent during and after their use, or a 2.8 percent reduction in losses (M-44 Efficacy report 1974). This shows the trend but is not an exact loss ratio or solely attributable to M-44's for several reasons: 1, in many cases other damage reduction methods were used simultaneously with M-44's; 2, funding does not allow for absolute search for kills; 3, time periods for collecting the "before" and "after" data are not equal.

18. Data taken from the same field reports, but limited to 2 months after initiation of M-44 use on each area, and including 13 months from June 1, 1974 to July 31, 1975 showed a reduction in sheep and goat losses of 2.9 percent from 3.3 percent before M-44 use to 0.4 percent after use began. The same data shows a reduction of cattle losses (mostly calves) of 3.0 percent from 3.3 percent before M-44 use to 0.3 percent after. Again this shows a trend, but not exact losses or exact loss ratios.

19. An important comparison should be pointed out, that these reductions of whatever size they are, were made where mechanical methods had been unsuccessful thus requiring the use of chemical methods.

20. The relative ratio by which M-44's take coyotes and fox as compared to nontarget species is indicated by data from the USFWS 1974 report which shows a target species take of 95 percent and nontarget species 5 percent. Data from the USFWS 1975 report indicates a take of 88 percent target species and 12 percent nontarget species.

21. The leader of the Predator Ecology and Behavior Project of the Fish and Wildlife Service, with credentials both academic and in research in the field of wild animal populations in general and predators in particular, testified as to the overall results of the FWS use of the M-44 device. In his opinion, the M-44 device is an effective device for achieving temporary reductions in canid populations; the device is selective for canids because of the nature of the attractant and manner of exposure; the risk to populations of nontarget species is minimal; and it is significantly safer for operating personnel than the Humane Coyote Getter. The risks associated with the Humane Coyote Getter, as used in the Federal program, were largely related to mechanical injuries caused by the top wad and sealant which effectively became^a projectile. Those risks have been essentially eliminated in the M-44. The potential risk of cyanide toxemia to operating personnel is present with either device, but evidence from the operational programs suggests that risk is extremely low.

22. Data compiled by the Fish and Wildlife Service indicate that the M-44 device is more selective for wild canids than are steel traps. A study covering the period 1970-1972, during which the M-44 and the Humane Coyote Getter were both used during part of the period, indicates that of the animals taken, 89 percent represented coyotes and foxes, and other species such as bear, bobcat, skunk, badger, raccoon, opossum and porcupine, represented very small percentages of the total. On the other

hand, a study made in Mexico, Colorado, and Wyoming of carnivores taken on steel trap lines, indicated that coyotes and red foxes comprised only 27.6 percent of the total taken. Thus while some nontarget animals are taken by the M-44's, they represent a very small proportion and substantially less than the steel traps.

23. A research scientist from the Texas A&M University, testified with respect to certain studies of predator-prey relationships. From these studies, he drew the conclusion that the M-44 is a selective device for capturing coyotes.

24. While in the 1972 Order the Administrator found that "There is no true effective antidote" with respect to the use of cyanide there considered, the record does not disclose on what that statement or finding was based. The evidence adduced herein indicates antidotes do exist and one of the requirements of the Fish and Wildlife Service will be that every person engaged in placing the devices must carry an antidote kit. There is question as to whether the antidote treatment could be self-administered by a person who might be suffering from the initial effects of poisoning by making an intravenous injection; however, antidotes do exist and the previous finding in 1972 is incorrect.

25. The States of Montana and Oregon offered copies of the rules governing the use of chemical toxicants for predator control in their states and similar rules for the State of Wyoming were submitted.

26. Currently a critical situation exists in the State of Montana due to serious losses to livestock producers caused by predatory animals, primarily coyotes. Present methods of trapping, denning, shooting and aerial hunting are being employed but livestock depredation continues to be a serious problem. Various alternate methods of control are being utilized.

27. On April 4, 1974, the Montana Department of Livestock was granted permission to use the M-44 device for experimental use purposes only. The expiration date on that permit is October 15, 1975. From July 1, 1974 to February 20, 1975, a total of 278 people from 22 counties and an Indian reservation were trained by the Montana Department of Livestock and licensed as government pesticide M-44 applicators. The training consists of techniques for the selection of placement sites, recordkeeping and reporting safety precautions, and various aspects of the use of the M-44 device. Special emphasis was given to environmental and human safety precautions to be observed when using the device and predacide.

28. During these training sessions, all participants were issued an amyl nitrite antidote kit and instructed in its proper use. All applicators were required to submit monthly reports on capsule usage, species taken, and the number of M-44 units in the field.

29. Between July 1, 1974 and June 30, 1975, a total of 608 coyotes, 148 foxes, and 23 skunks, 6 raccoons, 4 dogs, and 1 badger were taken by the licensed applicators in Montana. Coyotes and foxes are the target species for this program and account for 96 percent of the species taken. The Department of Livestock computes the cost of the program per coyote or fox taken as \$19.32. This compares to the average cost to take a coyote or fox by the state helicopter, fixed-wing aircraft or state trapper using mechanical methods of \$45.00, \$25.00 and \$200.00, respectively. Thus proving the M-44 to be economically feasible.

30. Montana considers the M-44 device using sodium cyanide to be a selective, efficient, humane, economically and environmentally-safe predatory control tool, and urges its registration.

31. The State of Oregon has adopted a comprehensive system of regulations to implement its application for registration. Those regulations become effective October 15, 1975. Under its program only registered or licensed governmental applicators will be authorized to utilize the toxicant and device, and then only for coyote control.

32. EDF and the opposing group of environmentalists offered the testimony of a field representative for Defenders of Wildlife, Richard L. Randall. Mr. Randall has had life-long experience in varying capacities with livestock and wildlife in the Western areas. He was formerly employed by the Fish and Wildlife Service, or its predecessor, until 1973 when he retired from government service because of injuries suffered in two aerial accidents which occurred while he was hunting coyotes in Wyoming.

33. He has had personal experience in both the Humane Coyote Getter and the M-44. In his experience, use of any predator control was not effective in significantly reducing losses due to predation. Randall believes that the M-44 presents a potential danger to children and others who may be attracted to the devices by the warning signs posted. He indicates that there is much vandalism of the devices by persons damaging them with rocks or running over them with vehicles and that many who disapprove of their use deliberately set them off and therefore they present a hazard to that group of people. Randall perceives no objection to the registration of the M-44 device provided adequate restrictions on its use are promulgated. While he did not specify the particular conditions he deemed appropriate, one of his principal criticisms was in opposition to placing the devices on or near roads. He does not believe that the M-44 is anymore effective or selective than its predecessor the Humane Coyote Getter.

34. The foregoing facts constitute substantial new evidence which was not available to the Administrator when he issued his March 1972 order, and could not have been presented or discovered by parties to that matter in view of the lack of a proceeding.

35. Based on the data gathered in accordance with the applicants experimental use permit, sodium cyanide when used in the M-44 has been shown to be significantly less hazardous to man than sodium cyanide when used in the explosive device for which it was registered at the time of the 1972 order and which was known to cause injuries to humans.

36. The use of sodium cyanide in the M-44 device is more selective than use of the chemical in the explosive device and more selective than some other chemical and non-chemical predator control methods.

37. It is also apparent that with appropriate restrictions as hereinafter discussed, the use of the M-44 should be approved and that the 1972 order should be modified accordingly.

CONCLUSIONS

The evidence is clear that the conditions of use of the M-44 as embodied in actual practice under the experimental use permits avoid most if not all of the dangers mentioned in the 1972 order. The testimony of the only witness in opposition tends to confirm this fact rather than controvert it. While apparently disagreeing that the M-44 is more selective than the former Humane Coyote Getter, that witness' statement was a general observation unsupported by data, and actual data of record establishes the contrary.

While the evidence presented might be considered lacking in the niceties of politico-economic analysis, when consideration is given to the subject-matter, i.e. wild animal predators, and the vast undeveloped areas in which these devices are utilized, the data presented indicate that the benefits of the proposed use greatly outweigh the risks which are shown to be minimal. A precise dollar evaluation of benefits versus risks, however, is not possible.

OPPOSITION CONTENTIONS

EDF contends it has been denied due process of law and a fair and proper hearing, and in support offers five contentions of procedural errors.

1. Intervention by Oregon: EDF points out that the initiating notice of July 11, 1975, provided that motions to intervene were to be filed no later than August 6, 1975. It also provided for states to file M-44 applications and allowed for their filing by July 31, 1975, to be reviewed and then made subject to a determination by the Administrator as to whether they qualified under Subpart D of the Rules. That determination was not made until the August 8, 1975 Notice, or after the date for filing interventions as such. As Oregon became an applicant on that date, it was appropriate that it become a party and offer evidence in support of its application. It should be noted that such evidence dealt with the manner in which the program would be administered within Oregon, but did include a letter of the Oregon Environmental Council expressing approval of these applications.

2. Application dates: EDF contends the August 8, 1975 Notice "ruled that applications received after this date [July 31, 1975] would be considered." No such language is contained in the Notice, which lists the applications received "on or before July 31, 1975." It therefore cannot be determined what the basis of this objection may be.

3. Irrelevant material: Throughout the hearing, EDF objected to any evidence beyond the issues 1 and 2 above, dealing with human hazards and selectivity, and thus asserts that irrelevant material was received. In taking this position, EDF ignores issues 4 and 5 in the initiating order as summarized above and cites no testimony which is irrelevant to those issues.

4. Special Rules: EDF points out that the Special Rules issued by the Presiding Officer provided for submission of all testimony on applications in writing and the distribution to parties on August 7, 1975, but that it did not receive the Oregon and Montana exhibits until after that date. As noted above, the Order incorporating those applications was not issued until August 8, 1975, and being proper parties provision for their testimony was required. In any event, EDF received the testimony in advance of the witness taking the stand and had opportunity for prior review; there is no indication that EDF was in any way prejudiced by this procedure.

5. Underlying data: EDF correctly points out that the Special Rule (Report of First Prehearing Conference) provided that data must be made available by the proponents of exhibits or expert testimony, but alleges testimony was allowed where such was unavailable to EDF, citing two references to the transcript. Those references indicate that EDF did in fact have the underlying studies when questioning the witness, and

afford no support for its contention. Further, the record indicates that where a witness had failed to supply the complete article from which he had quoted excerpts, the proposed testimony was stricken (Tr. 2-22). Moreover, with respect to the Special Rules which were discussed at the Prehearing Conference of July 30, 1975, various counsel, including EDF, urged that provision be made for special situations, and the Administrative Law Judge indicated that such would be entertained. (Tr. 1-28).

6. Subpoena of EPA official: A witness in the course of his testimony stated that an EPA official had told him the present applications would be granted. Later, EDF requested and was denied a subpoena requiring that official to testify and be cross-examined, on the grounds of relevancy. The decision-making process, in this instance, involves the Administrative Law Judge in the first instance and the Administrator, or his delegee, in the second. The views of staff members outside of this record are irrelevant unless it would appear to be related to the development of "secret law" as to which there is no indication here. Compare Sterling Drug Inc. v. F.T.C., 4502d 698 (1971).

Applicability of Section 102 of the National Environmental Policy Act: On brief, EDF also contends that Section 102(2)(c) of the National Environmental Policy Act (NEPA) [83 Stat. 852; 42 U.S.C. 4332 (2)(c)] requires that an environmental impact statement (EIS) is a prerequisite to the FWS application, and that its absence prevents any modification of the 1972 Order. In support, it offers a quotation from

Aberdeen and Rockfish Railroad et al. v. S.C.R.A.P. (_____ U.S. _____

No. 73-1966, June 24, 1975). The quotation is dictum in a case in which such a statement was held not to be required, and affords little guidance here. The issuance of the initiating notice herein, by the Administrator in the absence of an EIS, necessarily represented a determination by him that none was required. With regard to EPA itself, none is required and this proceeding does not fall within those as to which the Administrator has announced a voluntary program of preparing the EIS. See Statement of Policy and Procedures, 39 F.R. 16186 and 37119.

Effect of E.O. 11870: EDF contends the present FWS proposal is prohibited by Executive Order No. 11870 (July 18, 1975) (40 F.R. 30611) which amended Executive Order No. 11643 of February 8, 1972, by citing Section 3(c) thereof which deals with programs limited to one year. But this proceeding would be governed by Section 3(b), and no doubt represents the consultation with EPA which is required.

Section 3 of FIFRA: Finally, EDF contends the applications do not meet the requirements of Section 3 of FIFRA by asserting that the proposed use would have "unreasonable adverse effects on the environment." No attempt is made to justify the assertion, but reference is made to 40 CFR 162.11 of the recently issued Registration rules, effective August 4, 1975. But this proceeding is subject to Section 18 of FIFRA, as well as Section 3, and is governed by Subpart D of the Rules (40 CFR 164.130) and the statement of issues herein.

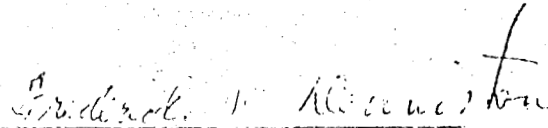
RESTRICTIONS

The Respondent in this proceeding (Assistant Administrator of EPA), on brief, urges the modification of the 1972 Order to permit the registration of sodium cyanide for use in the M-44 device to control canid predators subject to the 26 numbered conditions or restrictions set forth in the Appendix hereto.

These restrictions are based on the statements of intended use by the applicant witnesses herein or may reasonably be inferred from their testimony and appear to be appropriate in the light of the record. They also appear to meet the suggested restrictions offered by EDF in the alternative that their challenge of the proceeding is not accepted, and accordingly, the approval granted herein will be made subject to those restrictions.^{4/}

ULTIMATE FINDINGS AND CONCLUSIONS

In view of the foregoing, the 1972 Order should be modified to permit the registration of the M-44 device by the applicants herein subject to the conditions set forth in the Appendix hereto.


Frederick W. Denniston
Administrative Law Judge

August 29, 1975

^{4/} It is noted that by letter of August 27, 1975, counsel for the State of Montana takes exception to proposed restrictions No. 2, 14 and 22. No provision was made for such a filing, which is essentially a reply brief, and time does not permit provision therefor, and they have not been considered. They may, of course, be renewed on exceptions.