UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF PREVENTION, PESTICIDES AND TOXIC SUBSTANCES

MEMORANDUM February 9, 2009

SUBJECT: Effects Determinations for Fenamiphos Relative to the California Red-Legged Frog and Other Listed Species and Designated Critical Habitat

FROM: Thomas Steeger, PhD, Senior Biologist Thomas Steeger 2/9/09
ERB 4
Environmental Fate and Effects Division

TO: Arthur-Jean B. Williams, Associate Director
Environmental Fate and Effects Division

Attached is a memorandum from the Special Review and Reregistration Division (SRRD) and the Registration Division (RD) detailing the cancelation order for fenamiphos and confirming that all products containing fenamiphos have been cancelled. As such a No Effect (NE) determination has been made with respect to the potential direct and indirect effects to the California red-legged frog (CRLF) and potential adverse modification to designated critical habitat from uses of the insecticide fenamiphos. This determination focuses on the CRLF, including designated critical habitat, addressing provisions of a settlement agreement entered into by the federal government to resolve claims made by plaintiffs against EPA in a court case (CBD v. EPA[1]).

The Effects determination is consistent with the Agency's Overview Document[2] and stated below:

> Based on the best available information, the Agency makes a No Effect (NE) determination for the CRLF from the use of fenamiphos. Additionally, the Agency has determined that there is no potential for modification of CRLF designated critical habitat from the use of the chemical.

The Endangered Species Act requires we assess uses of pesticides relative to any potentially affected listed species. Since fenamiphos has been cancelled throughout the United States and as such is no longer registered for use, the determination NE also applies to all listed species and the determination of no habitat modification also applies to all listed species for which critical habitat has been delineated.

As required by the Alternative Consultation Agreement EPA entered into with the U.S. Fish and Wildlife Service and National Marine Fisheries Service (Services), I have been trained by the Services to make such determinations. Additionally, this assessment was subjected to internal Agency peer review throughout its development.

Please let me know if you have any questions regarding this assessment and effects determination for fenamiphos.

Attachments

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[1] Settlement agreement of October 20, 2006: Center for Biological Diversity v. United States Environmental Protection Agency. Civ. No: 02-1580-JSW(JL)).

[2] Overview of the Ecological Risk Assessment: Process in the Office of Pesticide Programs, U.S. Environmental Protection Agency: Endangered and Threatened Species Effects Determinations: January 23, 2004.

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MEMORANDUM

PC Code: 100601

DATE: October 31, 2008

SUBJECT: Confirmation of fenamiphos (100601) Cancellation

FROM: Eric Miederhoff, Chemical Review Manager E Miederhoff 11/12/08
Reregistration Branch 3
Special Review and Reregistration Division (7508P)
AND
Tony Kish, Product Manager Tony Kish 11-12-08
Team 22, Fungicide Branch
Registration Division (7505P)

THRU: Tracy Perry, Team Leader Tracy Perry
Reregistration Branch 3
Special Review and Reregistration Division (7508P)

TO: Holly Galavotti and Dana Spatz
California Red Legged Frog Steering Committee
Environmental Fate and Effects Division (7507P)

In response to your request for details on the cancellation of fenamiphos, including its salt(s), and major degradates (fenamiphos sulfoxide and fenamiphos sulfone), this memo serves as confirmation from SRRD and RD that products containing this active ingredient have been canceled. Therefore, a Red Legged Frog risk assessment will not need to be conducted for fenamiphos.

A December 10, 2003 Use Deletion and Product Cancellation Order published in the Federal Register (FRL-7332-5), specified that the Agency would grant a request from Bayer CropScience, the sole registrant, to voluntarily cancel all registrations for products containing the active ingredient fenamiphos. The Order provided that Bayer would cease sale and distribution of fenamiphos products by May 31, 2007. Persons other than the registrant were required to halt sale and distribution of products by May 31, 2008. A subsequent order extended this deadline

for two fenamiphos products, EPA Reg. #s 432-1291 and 264-731, until November 30, 2008. Use of existing stocks of all fenamiphos products, in accordance with existing labeling is allowed until stocks are exhausted.

Additionally, Bayer agreed to the following phase-out conditions:

1) Prohibit all use and formulation for use on extremely vulnerable soils after May 31, 2005.
2) Cap production at 500,000 pounds for fenamiphos manufacturing use products used in the United States for the year ending May 31, 2003.
3) Cap Production for each subsequent year at 20% of the previous year's production during the 5-year phase-out period.