National & State Policy Perspective

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BEYOND PESTICIDES

Clean Water Act

"restore and maintain the chemical, physical, and biological integrity of the Nation's waters" 33 U.S.C. 1251 (a)

"for the protection and propagation of fish, shellfish, and wildlife" 33 U.S.C. 1251(a)(2).

EPA is given the authority of "preventing, reducing, or eliminating the pollution of the navigable waters and ground waters…" 33 U.S.C. 1252(a).

Establishes National Pollution Discharge Elimination System (NPDES) permit process requiring permits for pesticide applications that discharge into water.

BEYOND PESTICIDES

- ***Headwaters v. Talent*** **(Ninth Circuit, 2001)** – Upheld NPDES permitting requirements. (2001)
- **In *National Cotton Council of America v. EPA*** (Sixth Circuit, 2009), court requires permits for all pesticide applications that leave a residue in water when such applications are made in or over, including near, waters of the U.S. reversing EPA regulation eliminating requirement for NPDES permit for pesticide applications (Nov. 2006)
- **Supreme Court lets Sixth Circuit decision stand** affirming NPDES requirement not fulfilled by FIFRA registration.

BEYOND PESTICIDES

To amend the Federal Insecticide, Fungicide, and Rodenticide Act to improve the use of certain registered pesticides
(S. 3735, August 5, 2010; Sens. Lincoln, Chambliss)

Overturns 6th Circuit Decision on NPDES

Section 3(f) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136a(f)) is amended by adding at the end the following: "(5) USE OF REGISTERED PESTICIDES.—Not- withstanding any other law, no permit shall be required for use under this Act, if that use is in accordance with this Act. . .

BEYOND PESTICIDES

Food Quality Protection Act (amendments to the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and the Federal Food Drug and Cosmetic Act (FFDCA)

- Aggregate risk (food + water + non-dietary exposure)
- Common mechanism of toxicity and cumulative risk
- Extra margin of safety for children

BEYOND PESTICIDES

Chesapeake Bay Program: Improved Strategies Are Needed to Better Assess, Report, and Manage Restoration Progress
(October 2005, GAO-06-96)

In developing such an approach, the Bay Program also faces the challenge of finding a way to incorporate the results achieved in implementing the 81 nonquantifiable commitments contained in *Chesapeake 2000* with the results achieved in implementing the 21 quantifiable commitments. For example, under the *Water Quality Protection and Restoration* goal, the Bay Program has a nonquantifiable commitment to reduce the potential risk of pesticides flowing into the bay by educating watershed residents on best management practices for pesticide use.

BEYOND PESTICIDES

GAO: Chesapeake Bay Program: Improved Strategies Are Needed to Better Assess, Report, and Manage Restoration Progress , continued
(October 2005, GAO-06-96)

Not only does the Bay Program currently have no method for measuring the progress made on this commitment, but it also has no approach for integrating these results with the results of the other 19 commitments listed under the water quality goal. Consequently, the program cannot currently assess the progress made in meeting the water quality goal. (p21)

BEYOND PESTICIDES

Chesapeake Bay Program

(Chesapeake Bay Watershed Partnership, including Maryland, Virginia, Pennsylvania, the District of Columbia, EPA, and the Chesapeake Bay Commission)

Goal

"reducing or eliminating the input of chemical contaminants from all controllable sources to levels that result in no toxic or bioaccumulative impact on the living resources that inhabit the or on human health."

BEYOND PESTICIDES

Chesapeake Bay Executive Order 13508
(May 29, 2009)

The Administrator shall identify pollution control strategies and actions authorized by the EPA's existing authorities to restore the Chesapeake Bay that:
(a) establish a clear path to meeting, as expeditiously as practicable, water quality and environmental restoration goals for the Chesapeake Bay;

BEYOND PESTICIDES

Chesapeake Bay Executive Order

(May 29, 2009)

PART 3 – RESTORE CHESAPEAKE BAY WATER QUALITY

Sec. 301. Water Pollution Control Strategies. In preparing the report required by subsection 202(a) of this order, the Administrator of the EPA (Administrator) shall, after consulting with appropriate State agencies, examine how to make full use of its authorities under the Clean Water Act to protect and restore the Chesapeake Bay and its tributary waters and, as appropriate, shall consider revising any guidance and regulations.

BEYOND PESTICIDES

Chesapeake Clean Water and Ecosystem Restoration Act of 2009, continued

‘(C) the Chesapeake Bay Basinwide Toxins Reduction and Prevention Strategy goal of reducing or eliminating the input of chemical contaminants from all controllable sources to levels that result in no toxic or bioaccumulative impact on the living resources of the Chesapeake Bay ecosystem or on human health;
“(D) habitat restoration, protection, creation, and enhancement goals established by Chesapeake Bay Agreement signatories for wetland, riparian forests, and other types of habitat associated with the Chesapeake Bay ecosystem; . . .

BEYOND PESTICIDES

Chesapeake Clean Water and Ecosystem Restoration Act of 2009

S. 1816, Sen. Cardin; H.R. 3852, Rep. Cummings

"(1) MANAGEMENT STRATEGIES.—The Administrator, in coordination with other members of the Chesapeake Executive Council, shall ensure that management plans are developed and implemented by Chesapeake Bay States to achieve and maintain

"(A) the nutrient goals of the Chesapeake Bay Agreement for the quantity of nitrogen and phosphorus entering the Chesapeake Bay and the watershed of the Chesapeake Bay;

"(B) the water quality requirements necessary to restore living resources in the Chesapeake Bay ecosystem;

BEYOND PESTICIDES

Chesapeake Bay Compliance and Enforcement Strategy

May 12, 2010

In addition to nutrients and sediments other serious contaminants are negatively affecting water quality in the Bay, such as PCBs; PAHs; and metals—such as mercury, endocrine disruptors, and pesticides. The U.S. Geological Survey estimates that 72 percent of the Bay segments are impaired by contaminants.

BEYOND PESTICIDES

To prohibit the use, production, sale, importation, or exportation of any pesticide containing atrazine
(H.R.5124, April 22, 2010, Rep. Ellison)

Notwithstanding any other law, the use, production, sale, importation, or exportation of atrazine or any atrazine product is prohibited.

BEYOND PESTICIDES

Organic Foods Production Act (OFPA)

Section 2118; "[S]ubstances – (i) would not be harmful to human health or the environment; (ii) is necessary to the production or handling of the agricultural product because of the unavailability of wholly natural substitute products; and, (iii) is consistent with organic farming and handling."

Category 1. Adverse impacts on humans or the environment?;
Category 2. Is the substance essential for organic production?, and;
Category 3. Is the substance compatible with organic production practices

BEYOND PESTICIDES

OFPA Checklist

- Are there adverse effects on environment from manufacture, use, or disposal?
- Is the substance harmful to the environment and biodiversity?
- Does the substance contain List 1, 2, or 3 inerts?
- Is there potential for detrimental chemical interaction with other materials used?
- Are there adverse biological and chemical interactions in agro- ecosystem?
- Are there detrimental physiological effects on soil organisms, crops, or livestock?
- Is there a toxic or other adverse action of the material or its breakdown products?

BEYOND PESTICIDES

OFPA Key Checklist Question and Guiding Principle

Is there another practice that would make the substance unnecessary?

BEYOND PESTICIDES