

EPA: Understanding enforcement

by Gail Hogan

"I would get up and make speeches and people would throw rocks at me and say, 'You mean if we use less than the pesticide that's on the label to control the pest, you're going to sue us?' And I would say, 'No, we're not!' And nobody would believe me."

So you think you have problems with the enforcement arm of the EPA? The above statement was made in an exclusive interview with Augustine Conroy II, director of the pesticides and toxic substances division of the office of the Assistant Administrator for EPA Enforcement. Other officials made similar comments.

Conroy was referring to the misunderstandings that resulted from amendments to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), misunderstandings that, in part, exist today.

The amendments, signed into law by the President on October of 1972, strengthened the vague FIFRA.

The new amendments prohibited any person from using any registered pesticide "in a manner inconsistent with its labeling," provided for classification of pesticides into "general" and "restricted" categories, limited those who could apply "restricted" pesticides, and gave EPA new powers of enforcement such as stop sale and removal orders, the power to initiate seizure

actions, the authority to require manufacturers to register pesticide producing establishments, and the power to initiate civil or criminal proceedings against violators.

In the years that followed, EPA's enforcement arm focused its strategy on ensuring compliance of manufacturers and users through producer establishment inspections, pesticide sampling, pesticide analysis and use surveillance.

With their strengthened powers, EPA was able to "clean up the industry," according to Conroy. "With the ability to initiate civil penalties for pre-market clearance of pesticides, we were able to turn around violations and fine companies in 60 to 90 days. When we could only initiate criminal penalties it would take about 18 months, as we had to go through the U.S. Attorney and the Justice Department."

Civil cases involving registration and labeling are handled in EPA offices. If the violator wants a hearing, he is entitled to one. The EPA Administrative Law Judge hears both sides of the case. He then submits his decision to the regional administrator (there are ten). Appeals go through the Appellate Court in the violator's district.

"Industry is pretty well on board and they know what they're doing now and so do we," Conroy emphasizes. "We used to have something like 300 violations of non-registered pesticides a year. Now we're down to 25, and I think that comes about as a result of our enforcing the statute the way it was intended to be."

"We've cleaned up. They (manufacturers) are shipping out products that are registered and they are labeled more or less the way they should be. That doesn't mean that I agree they ought to be registered in the first place," he adds.

But the other enforcement aspect, user violation, is another story. Of the 72 amendments over jurisdiction, only one applies and it does so with the phrase, "anyone who uses a registered pesticide inconsistent with its labeling is in violation." This, says Conroy, is a very, very limited jurisdiction.

EPA has taken a narrow view of the inconsistent phrase, Conroy says. "We interpreted it to mean exactly what it says. If you use a pesticide in any other way than on the label, it's a violation."

"That's when I got those rocks thrown at me. I was trying to explain that, yes, not using enough was a violation, but we were using discretion and saying we won't prosecute you for that. We were going to take these violators on a case-by-case basis."

The EPA decided to get this
Continued on page 17

enforcement

Continued from page 12

word out in print. Two years ago they began putting out a series of Pesticide Enforcement Policy Statements (PEPS). "This was our way of telling the consumer ahead of time how we felt about something," explains Conroy. "For example, if you're using less than the label dosage and it's effective, we aren't going to prosecute you for that."

What is the status of user violation enforcement today? EPA now

has a Pesticide Misuse Review Committee (PMRC) established for the purpose of reviewing each case of alleged misuse. Allegations may come from one of the ten EPA regional enforcement offices, the EPA surveillance program, FDA residual reports, USDA residual reports, other government reports, trade groups or private citizens.

The PMRC consists of personnel from the Agency's Office of General Counsel, Office of Enforcement, and the Office of Pesticide Programs.

The committee's responsibilities

include determining whether a registered pesticide has been misused, what level of enforcement action is warranted, whether the FIFRA is being applied in misuse cases, whether patterns of misuse are identifiable and if label or registration amendments are needed for specific pesticides or classes of pesticide products.

Conroy puts the PMRC this way. "We all three sit down at a table and say, 'Hey, that is a violation of the inconsistent statute because of this reason or this reason and because it's so serious, we think it ought to go to criminal court. Or because it's not quite so serious that we should take civil action, or maybe just send a warning letter.'"

The results of the committee are then sent to the regional office involved who proceeds with the action. Conroy says the EPA is now in a formulative stage in the area of pesticide misuse cases. "Now we want to see all cases as they occur so that we can devise policies and guideline on how to handle them with the idea of eventually turning these responsibilities over to the regional administrators."

To date there have been 211 cases of user misuse. Figures on the penalties were not available, but the penalties are as follows:

User violators fall into two categories — noncommercial and commercial (commercial applicators, producers, manufacturers). In noncommercial civil action cases, violators receive a warning letter for the first offense, and for the second offense a possible fine of up to \$1000. In a criminal action the violator may be fined \$1000 and receive a 30-day jail sentence.

For commercial violators, a civil action penalty can be a fine of up to \$5000. For a convicted criminal violator, the penalty can be a fine of up to \$25,000 and a one-year jail term.

But, points out Conroy, for a misuse case to reach criminal court, there has to be a knowing violation with very serious consequences such as a death. (See box.) To date the EPA has collected ten million dollars for pesticide violators, both manufacturers and users. Where has the money gone? That's another story. □

PMRC Case No. 18

The case involved the use of OLIN PARATHION 2 percent DUST on a watermelon crop near Nixon TX on June 22, 1974. Three teenagers were instructed by the property owner to apply the insecticide (by shaking a burlap bag) containing the pesticide over the watermelon plants.

The boys were equipped only with respirators and were dressed in lightweight shirts and trousers. They did not wear gloves, goggles or other clothing to protect exposed skin and eyes as required by the products labelling.

The owner supervised the dusting program operation for one hour before leaving. Later, the boys began removing their respirators while continuing to work.

An hour later one of the three boys became seriously ill and was taken to a doctor's office where he was pronounced dead from acute pesticide poisoning. The second boy recovered from the exposure after hospital treatment, while the third boy, the last to remove his equipment, showed no symptom of poisoning.

The labelling of the pesticide a) contained signal words "Danger" and "Poison" with skull and cross bones insignia, warning of the product's toxicity, its danger to humans upon inhalation and swallowing, and absorption through exposed skin or eyes; and b) prescribed the use of rubber gloves, protective clothing, goggles, and mask or respirator; and c) listed antidote and treatment instructions in the event of poisoning symptoms.

The manager of the local feed store, where the pesticide was purchased, stated that he had reviewed the labelling thoroughly with the crop owner. The crop owner also reviewed the labelling and instructions with the hired boys. The owner was clearly knowledgeable of the product's labelling prohibition's regarding human exposure and the requirements for protective clothing.

The PMRC determined that the owner knowingly instructed the use of the parathion in a manner inconsistent with warnings and cautions on the product labelling. Further, the owner, in his capacity as supervisor of the three boys, failed to insure that proper precautions were maintained throughout the pesticide's application. The committee recommended that criminal prosecution of the crop owner should be pursued under FIFRA section 14 (b) (2) for the use of a registered pesticide in violation of section 12(a) (2) (G). On March 12, 1975, the EPA office in Region VI referred the case to the U.S. Attorney recommending criminal prosecution of the crop owner.

The defendant entered a plea of no contest and was fined \$250.