

# PESTICIDE REPORTS

Division of Agricultural Sciences and Natural Resources • Oklahoma State University  
<http://pested.okstate.edu>



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CHEM

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## REMINDER JUNE TEST HELP SESSIONS

The OSU Pesticide Safety Education Program will conduct the next test help sessions for 2016 in June. The workshops will be held June 28<sup>th</sup> in Oklahoma City and June 30<sup>th</sup> in Tulsa.

The Oklahoma City Test help session will at the OSU-OKC Agriculture Resource Center (ARC) 400 N Portland. The Tulsa session will be at the Tulsa County Extension Office at 4116 E. 15<sup>th</sup>.

The help sessions will focus on information covered in the core and service tech tests. OSU PSEP will answer any questions over other category tests during this session.

Applicators should acquire and study the manuals before coming to the help session for optimum success. Study manuals can be purchased by using the manual order form available at our website <http://pested.okstate.edu/pdf/order.pdf> or by calling University Mailing at 405-744-5385.

**ODAFF Testing fees are not included in the registration fee and must be paid separately.**

Register online at the Pesticide Safety Education Program (PSEP) website at <http://pested.okstate.edu/html/practical.htm>.

Registration forms can also be downloaded from the website.

Registration will start at 8:30 and the program will run from 8:45 am to 12:30 pm at both locations. Testing will begin at 1:30 pm at both locations.

### **NO CEU's will be given for this program!**

More Test Help Workshop dates are scheduled for 2016. Please go to the website below for more 2016 dates.

<http://pested.okstate.edu/html/practical.htm>

## **'VOLUNTARY' BAN OF PHOSPHITE AND PROPICONAZOLE FUNGICIDES ON PEANUTS**

John Damicone, OSU Extension Plant Pathologist

Peanut growers and those who work with the peanut industry as old as myself will remember that Lasso (alachlor) herbicide was registered for use on peanuts in the 1990s, but could not be used because of residue concerns by peanut buyers and manufacturers. This was an early example of industry concerns trumping EPA pesticide regulations. Despite directions for use on the label, and the adage that "the label is the law", peanut growers had to sign a waiver stating that they would not use Lasso on their peanut crop. Lasso essentially was lost to peanut producers as I am not aware ofalachlor, now labeled on peanuts as Intro, being used on peanuts. Fortunately, peanut farmers have had alternative weed control products such as Dual (metolachlor) and Outlook (dimethenamide-P) with similar weed control activity.

A similar 'voluntary' ban on fungicides is now being faced by the peanut growers in response to concerns about pesticide residues found on peanuts in the European Union (EU). The EU is a customer for exported US peanuts, particularly Virginia

types. Phosphorous acid is registered for use on peanuts and other crops to control diseases caused by water molds including Pythium, Phytophthora, and downy mildews. Formulations with peanuts on the label include Agri-Fos, Fosphite, Rampart, KPhite, and ProPhyt. Peanut growers in the Southwest US began using phosphorous acid for control of Pythium pod rot (Fig. 4) based on our research at OSU several years ago. Tim Brenneman at the University of Georgia first identified activity of phosphorous acid on Pythium pod rot in research conducted in Nicaragua before that.

Phosphorous acid (H<sub>3</sub>PO<sub>3</sub>) and the related fungicide Aliette (Fosetyl-AL or aluminum phosphite) both break down into phosphite (PO<sub>3</sub>) when taken up by the plant. The EPA currently considers phosphite a fertilizer and GRAS (generally regarded as safe) and has never set a residue tolerance for it on crops. However, phosphite apparently provides little if any phosphorous (P) nutrition to plants. Phosphate (PO<sub>4</sub>) provides P nutrition in plants. It is not clear why the EU is concerned about phosphite residues in nuts, but because there is no tolerance set, their default value is 2 ppm. They began testing Almonds, Pistachios, and Walnuts imported from the US for phosphite residues in 2014 and levels above 2 ppm were found. Phosphorous acid is used in the production of tree nuts in California for control of Phytophthora root rot. They set a temporarily higher tolerance for the 2014 crop but it reverted back to 2 ppm in 2015 when they expected that phosphites would no longer be used on tree nuts exported to the EU. Similarly, they began testing peanuts in 2015 and found levels above 2 ppm.

Propiconazole is one of the oldest triazole or Group 3 fungicides registered on peanuts and other numerous other crops. It is marketed alone as Tilt, PropiMax, or Bumper. It is also sold in combo products such as Stratego (+ trifloxystrobin) and Tilt/Bravo (+ chlorothalonil), which are commonly

used on peanuts for control of leaf spot (Fig. 5). Apparently the EU no longer accepts the current method for measuring propiconazole residue as valid and expects that the fungicide will no longer be used on peanuts exported into the EU until the issue is resolved. The tolerance (maximum allowable residue level or ‘MRL’) will have to be reset based on methods accepted by the EU, which will apparently take time and considerable expense.

Several major peanut shellers in the US required that growers sign a waiver pledging that they will not use products containing phosphorous acid or propiconazole on their peanuts in 2016. Alternative products for control of Pythium pod rot are limited to metalaxyl (MetaStar and Ultra Flourish), metalaxyl-M (Ridomil Gold), and azoxystrobin (Abound and generics). Unfortunately, use of metalaxyl products for Pythium pod rot will increase the cost of production of Virginia peanuts in Oklahoma. Abound has not provided adequate control of Pythium pod rot recently and led to grower use of phosphorous acid in the first place. There are good alternatives for Tilt/Bravo and Stratego for leaf spot control. Bravo can be tank mixed with tebuconazole (one of several generic Folicur formulations), cyproconazole (Alto), flutriafol (Topguard), or tetraconazole (Eminent). A premix formulation of chlorothalonil + tebuconazole (Muscle ADV) and a co-pack of chlorothalonil + tetraconazole (Echo/Eminent Co-Pac) are also registered for use on peanuts. Alternative products for Stratego on peanuts include fluoxastrobin + tebuconazole (Evito T) and trifloxystrobin + tebuconazole (Absolute). Consult the 2016 OSU Extension Agents’ Handbook of Insect, Plant Disease, and Weed Control (Circular E-832) for more information on application rates and disease control pointers for peanut production. (OSU Entomology & Plant Pathology ‘e-Pest alerts’ Vol. 15, No. 21, May 31, 2016)

<http://entopl.okstate.edu/pddl/2016/PA15-21.pdf>

## **EPA SEEKS COMMENT ON PROPOSAL TO REGISTER THE INSECTICIDE SULFOXAFLOR FOR REDUCED USE**

Following the decision of the Ninth Circuit Court of Appeals, EPA has reevaluated the data supporting the use of sulfoxaflor and is now proposing to approve an amended registration with fewer uses and additional requirements that will protect bees.

The proposed registration is very protective of pollinators and includes fewer crops than were allowed under sulfoxaflor’s previous registration. For those crops that are included and that are bee-attractive, sulfoxaflor would be prohibited before and during bloom, when bees are not expected to be present. Applications are prohibited on crops grown for seed production. Additional measures are being proposed to reduce spray drift: prohibiting applications if wind speeds are above 10 mph and requiring the use of medium to coarse spray nozzles. In addition, we are requesting public comment on two provisions we are considering. One that would impose a downwind, 12-foot, on-field buffer zone when there is blooming vegetation bordering the treated field and the second would prohibit tank mixing sulfoxaflor with other pesticides.

These restrictions practically eliminate exposure to bees on the field, which reduces the risk to bees below EPA’s level of concern such that no additional data requirements are triggered.

Sulfoxaflor is a sulfoximine, a new insecticide class, and is safer for bees and other pollinators, lady beetle larvae and other beneficial insects. It is a critical tool in Pesticide Resistance Management and Integrated Pest Management programs, potentially replacing multiple applications of compounds with a higher risk to people and non-target organisms. It specifically targets piercing,

sucking insects, such as aphids, mealybugs and whiteflies – frequent vectors of viral and bacterial diseases that can result in complete loss of important, high-value crops and trees. Sulfoxaflor works against pests that are becoming resistant to carbamate, neonicotinoid, organophosphate and pyrethroid insecticides

EPA is soliciting public comment for 30 days. Comments on the EPA's proposed regulatory decision must be submitted no later than June 17, 2016. Comments may be submitted to the sulfoxaflor docket EPA-HQ-OPP-2010-0889 at [www.regulations.gov](http://www.regulations.gov). After the comment period closes, EPA will review all of the comments and reach a final decision, which the Agency expects to issue in late summer or early fall 2016. (EPA May 17, 2016) <https://www.epa.gov/pesticides/epa-seeks-comment-proposal-register-insecticide-sulfoxaflor-reduced-use>

## **U.S. LAWMAKERS PUT PRESSURE ON EPA OVER HANDLING OF GLYPHOSATE REVIEW**

U.S. lawmakers have asked the Environmental Protection Agency (EPA) to explain why it published - and then withdrew - documents related to its review of glyphosate, the chemical in Monsanto Co's Roundup herbicide, according to a letter seen by Reuters.

The documents, which included a report that said glyphosate is not likely to be carcinogenic to humans, were posted by the EPA on April 29 and taken down from a website the government agency manages on May 2.

The letter, sent from the agriculture committee of the U.S. House of Representatives, marks the latest salvo in an ongoing debate over the EPA's role and influence in U.S. agriculture.

According to the letter, which cites a May 2 story by Reuters, the committee is looking into the EPA's recent actions related to the agency's multi-year review of potential risks tied to glyphosate and atrazine, another popular chemical used in agricultural herbicides.

The documents are part of the EPA's registration review of glyphosate and its potential human health and environmental risks, which started in 2009.

"We are troubled that EPA mistakenly posted and later removed documents related to assessments of two different chemicals within one week," according to the letter, signed by the Republican and Democrat leaders of the committee.

"These mistakes indicate systemic problems with EPA's management of its chemical review and publication processes."

The letter was sent to the EPA on Wednesday. The committee, which is conducting an oversight into the EPA's recent actions, will consider what action to take after it receives a response from the agency.

The EPA told Reuters on Thursday the agency has received the letter "and will respond appropriately."

The letter also asked the EPA who is in charge of overseeing the risk assessment process for chemicals and for a step-by-step description of the agency's approval process for publication of such assessments.

The committee also wanted to know what steps still needed to be taken to finalize and issue the glyphosate report, which it had expected in July 2015.

"We are concerned that EPA has continually delayed its review of glyphosate," the letter said.

On April 29, the agency posted a series of documents, including a report marked "FINAL" from the EPA's cancer assessment review committee (CARC). That report found that glyphosate, the active ingredient in the world's

mostly widely used weed killer, was "not likely to be carcinogenic to humans." [L2N17Z1TZ]

Another document also published on the regulations.gov website that the EPA manages and pulled down on May 2, was a preliminary assessment of the ecological risks of atrazine. Among other things, the report stated that atrazine effects exceeded EPA's "levels of concern" for chronic risk by 198 times for mammals, and 62 times for fish.

At the time, the agency told Reuters it took down the glyphosate report and other documents "because our assessment is not final." The agency said the documents were "preliminary" and that they were published "inadvertently." (Reuters May 12, 2016) <http://www.reuters.com/article/us-usa-glyphosate-epa-idUSKCN0Y32WV>

## **HISTORIC JACKSONVILLE BUILDING TO BE DEMOLISHED DUE TO TERMITE INFESTATION**

The board of trustees of the Cummer Museum of Art & Gardens reluctantly decided the old Woman's Club of Jacksonville, a building in which the museum invested \$7 million and which is listed on the National Register of Historic Places, must be demolished, Jacksonville.com reported.

The cause is an infestation of a particularly voracious and difficult to control termite, the Formosan subterranean termite. During an inspection in July, the infestation was discovered. The Cummer spent eight months seeking a solution before concluding the building could not be saved, the article noted.

The article also noted that a number of termite experts were brought into to examine solutions, including Todd Shupe, a professor of wood science at Louisiana State University, and Nan-Yao Su, a distinguished professor of entomology at the

University of Florida. But the building, which, despite its brick exterior, is largely built of wood, could not be saved, the Cummer board concluded. (PCT Online, May 13, 2016)

<http://www.pctonline.com/article/jacksonville-formosan-termite-building-demolish/>

## **U.N. EXPERTS FIND WEED KILLER GLYPHOSATE UNLIKELY TO CAUSE CANCER**

The pesticide glyphosate, sold by Monsanto in its Roundup weed killer product and widely used in agriculture and by gardeners, is unlikely to cause cancer in people, according to a new safety review by United Nations health, agriculture and food experts.

In a statement likely to intensify a row over its potential health impact, experts from the U.N.'s Food and Agriculture Organization (FAO) and World Health Organization (WHO) said glyphosate is "unlikely to pose a carcinogenic risk to humans" exposed to it through food. It is mostly used on crops.

Having reviewed the scientific evidence, the joint WHO/FAO committee also said glyphosate is unlikely to be genotoxic in humans. In other words, it is not likely to have a destructive effect on cells' genetic material.

Diazinon and Malathion, two other pesticides reviewed by the committee, which met last week and published its conclusions on Monday, were also found to be unlikely to be carcinogenic.

"In view of the absence of carcinogenic potential in rodents at human-relevant doses and the absence of genotoxicity by the oral route in mammals, and considering the epidemiological evidence from occupational exposures, the meeting concluded that glyphosate is unlikely to pose a carcinogenic risk to

humans from exposure through the diet," the committee said.

Glyphosate is also "unlikely to be genotoxic at anticipated dietary exposures", it added.

The group reaffirmed an acceptable daily intake (ADI) of up to 1 milligram of glyphosate for every kilogram of body weight.

## CONTRADICTION?

The conclusions appear to contradict a finding by the WHO's Lyon-based International Agency for Research on Cancer (IARC), which in March 2015 said glyphosate is "probably" able to cause cancer in humans and classified it as a 'Group 2A' carcinogen.

Seven months after the IARC review, the European Food Safety Authority (EFSA), an independent agency funded by the European Union, published a different assessment, saying glyphosate is "unlikely to pose a carcinogenic hazard to humans".

The United States' Environmental Protection Agency (EPA), which first assessed glyphosate in 1986 and has reviewed it several times since then, had also previously concluded it has "low toxicity for humans".

The differing findings thrust glyphosate into the centre of a row involving EU and U.S. politicians and regulators, the IARC experts, the WHO and environmental and agricultural scientists.

The EU's pesticides committee is due to meet later this week to decide whether to re-license glyphosate. The U.S. EPA is being investigated for withdrawing a report saying the chemical is probably not carcinogenic.

In a question-and-answer document issued alongside the joint FAO/WHO statement, the WHO denied that the conclusions by the joint group and by IARC were contradictory. It said they were "different, yet complementary", with the IARC assessment focused on hazard while the other looked at risk.

"IARC reviews published studies to identify potential cancer hazards," the WHO said. "It does not estimate the level of risk to the population associated with exposure to the hazard."

In contrast, it said, the joint FAO/WHO committee looks at published and unpublished studies to assess the health risk to consumers from dietary exposure to pesticide residues in food. (Reuters May 16, 2016) <http://www.reuters.com/article/us-health-who-glyphosate-idUSKCN0Y71HR>

## **BAYER LOSES ROUND ONE IN DISPUTE OVER BELT INSECTICIDE**

Bayer CropScience and Nihon Nohyaku subsidiary Nichino America' administrative challenge of the US EPA's effort to cancel Bayer's insecticide, Belt (Nihon Nohyaku's flubendiamide), will be restricted. The scope is to be limited to whether the companies failed to comply with the required conditions of their registration and the legality of the Agency's plan to dispose of existing stocks.

The ruling by EPA Administrative Law Judge (ALJ) Susan Biro is a blow to the companies and may be worrisome for the pesticide industry and other agricultural interests that are backing them in their challenge of the EPA's action.

CropLife America, the National Corn Growers Association and more than 30 other industry organisations say that the EPA's move is an attempt to bypass established regulatory procedures and

demand voluntary cancellation of the Belt insecticide.

The dispute centres on a conditional registration that the Agency granted Bayer in July 2008, covering uses of flubendiamide on more than 200 crops across the US, including maize, soybeans, fruits and tree nuts. Citing concerns about the potential impacts on aquatic ecosystems and the effectiveness of vegetative buffers, the EPA required Bayer to complete four additional studies by July 2012. The registration also included a provision calling on Bayer to voluntarily request cancellation if the EPA had subsequently found that continued use would cause "unreasonable adverse effects" on the environment.

After reviewing the new studies, the Agency concluded that its new assessment met that threshold, citing specific risks to aquatic invertebrates and asking Bayer to voluntarily cancel the insecticide.

Bayer disagreed with the EPA's scientific conclusion and refused the cancellation request, prompting the Agency in March to issue a notice of intent to cancel the Belt registration. The company appealed that decision to the ALJ, arguing that the EPA's "forced 'voluntary' cancellation" was illegal and that it should be afforded a full cancellation hearing, rather than a limited review.

A full hearing would allow the company to contest the EPA's scientific conclusions about the insecticide and could include an independent expert review of the Agency's analysis. But Judge Biro concluded that allowing an extended cancellation process for conditional registrations would "make no sense" within the framework of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).

The longer process is applicable to full registrations under the FIFRA because the EPA has previously determined that their use would not cause "unreasonable adverse effects" on the environment, the judge explained. "Conditional registrations, on the other hand, are granted explicitly because the Administrator cannot make such a determination," she wrote in the April 25th order. A conditional

registration is akin to a "stop-gap status" that gives the registrant time to gather the data needed to prove that it is entitled to a full registration, according to Judge Biro. "As such, conditional registrations are not entitled to the same lengthy procedures for cancellation."

The judge also noted that Bayer played an "active part" in drafting the conditions within the registration, including the voluntary cancellation provisions, and were "well aware" of their significance. "As such, this tribunal sees no reason to allow petitioners out of the 2008 legal agreement they knowingly made for a 'fast death' cancellation arrangement," Judge Biro said in the 29-page order. "This is especially true because petitioners only sought to challenge the voluntary cancellation arrangement as 'unlawful' seven years after entering into it and only when EPA sought to trigger the cancellation and make petitioners live up to their end of the bargain."

The hearing has been scheduled for May 10th-13th. (Pesticide & Chemical Policy/AGROW, May 4, 2016)

## **US APPEALS COURT SCEPTICAL OF ESA PESTICIDE "MEGA" SUIT**

A US federal appeals court this week appeared sympathetic to environmentalists' frustration with the EPA's failure to fully assess the risks to endangered species from legal pesticide uses. But the court offered few signs that it would revive a complaint that aims to force the Agency to consult with federal wildlife agencies on the possible harm from 31 active ingredients.

Oral arguments rested on the jurisdictional issues related to the lawsuit, rather than the merits, yet the ultimate ruling could have a serious impact on US pesticide policy and the EPA's obligations under the Endangered Species Act (ESA).

The appeal before the US Court of Appeals for the Ninth Circuit aims to revive a large portion of the ESA "mega-suit" originally filed in the US District

Court for the Northern District of California in January 2011 by the Center for Biological Diversity (CBD). US Judge Joseph Spero has rejected various versions of the CBD's complaint on three occasions, including an August 2014 decision to dismiss 31 "failure to consult" claims. The pesticides in question, including atrazine, chlorpyrifos, diazinon and 2,4-D were all registered prior to 1985.

The CBD argues that the failure to consult claims do not seek to invalidate pesticide registrations and are under the purview of the ESA, not the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). The litigation seeks a court order requiring the EPA to initiate consultation on the 31 pesticides and to enjoin pesticide use in specific areas that harm listed species.

But Judge Spero ruled that the claims are governed by the FIFRA, not the ESA, and concluded that under the federal pesticide law the claims were either filed too late or should have been brought directly to the appeals court.

The key legal question for the appeals court is whether the claims identify a specific "agency action" triggering the EPA's requirement to consult under the ESA's Section 7. Under a previous court ruling, the 9th Circuit has defined a two-part test to define a relevant agency action. First, a federal agency must take an "affirmative action" and second, determine whether the agency had "some discretion to influence or change the activity for the benefit of a protected species."

The EPA does not dispute that the claims meet the second part of the test, but contends that the plaintiffs fail to state any "affirmative action" that requires consultation. "The District Court was right, a plaintiff cannot challenge a failure to initiate consultation in a vacuum," Department of Justice attorney Anna Katselas told the three-judge panel. "You have to identify the affirmative act on which you are alleging consultation should have occurred."

The CBD's attorney, Stephanie Parent, said that the EPA's "ongoing authority" over pesticide use is akin

to an affirmative action and argued that the ESA, not the FIFRA, should govern the complaint.

Judge Richard Paez appeared sceptical. "Can you point to anything concrete other than that they have this continuing duty?" he asked during the May 9th oral arguments.

Ms Parent noted that the failure to warn claims cited examples of numerous actions, including additional mitigation measures imposed after the EPA issued re-registration eligibility decisions (REDs) in 2008 for some of the pesticides in question.

Judge Kim McLane Wardlaw questioned the CBD's argument on the timing of its complaint. "It seems to me if we accepted your theory, you could sue any time because there is always something going on at the Agency," she said. "What's the limit? You are saying we can sue any time to require compliance with Section 7."

The problem is "one of the EPA's own making", Ms Parent replied. "We couldn't sue anytime if in fact they had done some consultation." The duty for the EPA to consult "doesn't evaporate simply because they failed to take it in the first instance", she added. "They have a continuing duty to take that action. We don't need further affirmative acts."

Judge Carlos Bea suggested that the EPA should have consulted with the wildlife agencies before the REDs in question were issued, but added that the CBD could have asked the court to review those orders under the FIFRA. "We could have but that does not preclude the ESA citizen suit claim here," Ms Parent said. "That is what we have to decide," Judge Bea replied.

Judge Wardlaw voiced concern with the EPA's failure to complete its ESA consultations. "The EPA has been criticised for unreasonable delay," she said. "Can the EPA just delay making decisions or taking an affirmative action to avoid the lawsuit forever?"

Ms Katselas responded that the Agency was working to improve its consultation process as it



moved forward with registration reviews and said that the CBD had ample opportunity to weigh in with its concerns. "They can always petition the Agency and then go from there," she said. "But they can't come to court whenever time they wish, years after the fact."

An attorney for interveners CropLife America, the American Farm Bureau Federation and other agricultural interests voiced their support for the EPA's position and echoed the argument that the complaint was an "indirect attack" on registration decisions that could lead to new restrictions on pesticide uses. "That is why my clients are concerned," said David Weinberg, an attorney with law firm Wiley Rein. "They have a licence. The litigation affects the rights they have in that licence." (Pesticide & Chemical Policy/AGROW, May 13, 2016)

## **ZIKA FOUND IN ANOTHER MOSQUITO SPECIES**

For the first time in the Western Hemisphere, researchers have detected the Zika virus in *Aedes albopictus*, the mosquito species known as the "Asian tiger," a finding that increases the number of U.S. states potentially at risk for transmission of the disease, the Washington Post reported.

During the summer months when U.S. mosquito populations are at their peak, *albopictus* are more ubiquitous than the *Aedes aegypti* that have been the primary vector of the spread of Zika elsewhere in the Americas. Unlike the *aegypti* mosquito, which is mostly present in southern United States and along the Gulf Coast, the *albopictus* has a range as far north as New England and the lower Great Lakes.

The discovery was reported recently by the Pan American Health Organization after researchers in Mexico confirmed the presence of Zika in Asian tiger mosquitoes captured in the state of San Luis Potosi and sent them to government labs for testing. (PCT Online, May 6, 2016)

<http://www.pctonline.com/article/zika-aedes-albopictus-mosquitoes/>

## **AMID ZIKA CONCERNS HOUSE PASSES BILL EASING PESTICIDE USE RESTRICTIONS NEAR WATERWAYS**

On May 24, the U.S. House of Representatives passed H.R. 897, the Zika Vector Control Act 258-156. The bill, sponsored by Rep. Bob Gibbs (R-OH), alters pesticide spraying permit requirements near waterways.

Gibbs warned that mosquitoes could start spreading the Zika virus in the United States this summer. He argued his legislation to lift regulations on spraying near waterways would make it easier to fight the disease, which endangers pregnant women. Gibbs' bill would establish that pesticides applied near waters don't need a National Pollutant Discharge Elimination System permit from the U.S. Environmental Protection Agency if the substance is being used for its intended purpose and the use complies with pesticide label requirements.

Gibbs argued that the permit requirement is redundant, as the pesticides are already approved under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), and the additional permit process under the Clean Water Act is costly and burdensome. The National Pest Management Association has long opposed NPDES permit requirements for these same reasons; in fact, the association and its members voiced opposition to NPDES permits at this year's Legislative Day.

The measure, which passed the House of Representatives under other names such as the Reducing Regulatory Burdens Act, in past years but never became law because the Senate didn't act. Now that the Senate is controlled by Republicans, its advocates - such as farming organizations - hope its prospects have improved..(PCT Online May 26,

2016) <http://www.pctonline.com/article/zika-npdes-permit-pass-gibbs-house/>

## **DISPUTE OVER EPA PESTICIDE DRIFT REVIEW HITS FEDERAL COURT**

US environmentalists upset with the EPA's plan to protect children from pesticide drift got their day in federal court this week. They urged the three-judge panel to compel the Agency to reconsider whether to impose interim no-spray buffer zones for drift-prone pesticides.

At issue is a dispute between the EPA and a group of environmentalists and farmworker advocates led by Pesticide Action Network North America. The controversy centres on the EPA's obligations under the Food Quality Protection Act (FQPA), which required the Agency to set standards in 2006 to protect children from aggregate exposures to pesticides.

The coalition of NGOs filed a petition with the EPA in 2009 that noted that the Agency had failed to include any assessment of risks from pesticide drift when it set the FQPA standards. The petition called on the EPA to conduct pesticide-specific drift assessments and to impose measures necessary to protect children from drift. The EPA acknowledged in March 2014 that it had failed to assess drift and agreed to complete the assessments, but rejected the request for interim, no-spray buffer zones for organophosphate and N-methyl carbamates around schools, rural homes, parks, daycare facilities and other areas where children congregate. The requested buffer zones are 60 feet (18m) for ground spraying and 300 feet (91m) for aerial applications.

The Agency says that it is better suited to address the drift issue as part of its ongoing registration review process, but that argument appeared at times to frustrate the three-judge panel of the US Court of Appeals for the Ninth Circuit at the May 9th hearing.

"It seems like it is taking forever," said Judge Kim McLane Wardlaw told US Department of Justice attorney David Carson. "You have documents that say all these pesticides will be reregistered and reviewed with a special eye toward drift and its effects on children by 2016. It is 2016 and you haven't done it."

Mr Carson responded that the Agency has a plan to complete its reviews in a timely manner and should be finished prior to the 2022 deadline for registration reviews. The Agency intends to issue interim decisions on the pesticides in question by 2017-2018 and those decisions could include new risk mitigation measures to protect against drift exposures, he said.

"EPA is very serious about addressing this drift risk issue but it needs to do so in a scientifically defensible manner," Mr Carson said. "Where drift risks do exist, buffers may or may not be the answer or they may not be the best answer. You really have to look at the particular pesticide to see and that is why EPA is proceeding on a pesticide-by-pesticide basis."

The environmentalists' "one-size fits all approach simply isn't scientifically sound", he told the Court.

Judge Carlos Bea appeared sceptical. "It seems to me that the buffer zones being requested are very modest," he said. "What is so bad about putting those into effect until you finish the process?"

Mr Carson responded that the Agency does not have data to suggest that children face undue risks from drift and said that it would be imprudent for the EPA to impose buffers outside the registration review process.

"It is a pesticide-by-pesticide approach even for determining buffer widths," he said. "Keeping in mind there are economic interests who are going to be very concerned about how big a buffer you are going to impose upon them, because that is going to significantly affect crop yields."

The attorney for the environmentalists argued that the question was about whether the EPA had followed the law. While the EPA is revisiting the drift issue, it is required to protect children from "unreasonable risk" under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), Earthjustice attorney Jannette Brimmer, said on behalf of the petitioners.

"The point isn't that EPA isn't trying hard to get its work done," Ms Brimmer said, but it has been a decade since the Agency was supposed to complete the risk assessments that should have included drift exposures.

Judge Wardlaw asked why the petitioners don't just wait and challenge the final re-registration decisions.

"The issue with respect to interim protections is ripe now," Ms Brimmer said. "There has got to be some protection from unreasonable risk while EPA works through that [process]. EPA has that obligation under FIFRA and that is what the petition asked for."

Judge Richard Paez noted the EPA's argument that the issue is complex and its efforts are hampered by resource constraints, suggesting that the Agency deserves some deference on the issue. It would take a "significant amount of [EPA] resources to determine what would be the appropriate buffer for various categories or types of pesticides", he said. "That is a policy.". (Pesticide & Chemical Policy/AGROW, May 11, 2016)

## CEU Meetings

No meetings to report for June.

## ODAFF Approved Online CEU Course Links

Technical Learning College

<http://www.abctlc.com/>

Green Applicator Training

<http://www.greenapplicator.com/training.asp>

All Star Pro Training

[www.allstarce.com](http://www.allstarce.com)

Wood Destroying Organism Inspection Course

[www.nachi.org/wdocourse.htm](http://www.nachi.org/wdocourse.htm)

CTN Educational Services Inc

[http://ctnedu.com/oklahoma\\_applicator\\_enroll.html](http://ctnedu.com/oklahoma_applicator_enroll.html)

Pest Network

<http://www.pestnetwork.com/>

Univar USA

<http://www.pestweb.com/>

Southwest Farm Press Spray Drift Mgmt

<http://www.pentonag.com/nationalsdm>

SW Farm Press Weed Resistance Mgmt in Cotton

<http://www.pentonag.com/CottonWRM>

Western Farm Press ABC's of MRLs

<http://www.pentonag.com/mrl>

Western Farm Press Biopesticides Effective Use in Pest Management Programs

<http://www.pentonag.com/biopesticides>

Western Farm Press Principles & Efficient Chemigation

<http://www.pentonag.com/Valmont>

For more information and an updated list of CEU meetings, click on this link:

<http://www.state.ok.us/~okag/cps-ceuhome.htm>

## ODAFF Test Information

Pesticide applicator test sessions dates and locations for June/July are as follows:

June		July	
7	Goodwell	8	OKC
9	Tulsa	14	Tulsa
10	OKC	22	OKC
23	Tulsa	28	Tulsa
24	OKC		

Altus: SW Research & Extension Center  
16721 US HWY 283

Atoka: KIAMICHI TECH CENTER 1301  
W Liberty Rd, Seminar Center

Enid: Garfield County Extension Office,  
316 E. Oxford.

Goodwell: Okla. Panhandle Research &  
Extension Center, Rt. 1 Box 86M

Hobart: Kiowa County Extension Center  
Courthouse Annex, 302 N. Lincoln

Lawton: Great Plains Coliseum,  
920 S. Sheridan Road.

McAlester: Kiamichi Tech Center on  
Highway 270 W of HWY 69

OKC: Arcadia Conservation Education  
Building 7201 E 33<sup>rd</sup> St. Edmond  
OK (New Location)

Tulsa: NE Campus of Tulsa Community  
College, (Apache & Harvard)  
Large Auditorium

**Pesticide Safety  
Education Program**