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14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**

16 CENTER FOR BIOLOGICAL DIVERSITY,)
17 a non-profit corporation,)
18 Plaintiff,)
19 v.)
20 MIKE LEVITT, Administrator,)
21 Environmental Protection Agency, and)
22 WAYNE NASTRI, Region 9 Administrator,)
23 Environmental Protection Agency,)
24 Defendants.)

Case No.: 02-1580-JSW

**SECOND DECLARATION OF
PATRICIA M. CLARY IN SUPPORT OF
PLAINTIFF'S SECOND MOTION FOR
SUMMARY JUDGMENT**

DATE: January 30, 2004
TIME: 9:00 a.m.
PLACE: 17th Floor, Courtroom 2
JUDGE: Hon. Jeffrey S. White

24 I, Patricia M. Clary, do hereby declare as follows:

25 1. I am the Director of Californians for Alternatives to Toxics ("CATs"), a position I have
26 held for fifteen years. CATs has been organized as a not-for-profit public interest organization
27 for twenty-one years. Its principal place of business is in Eureka, in the County of Humboldt,
28 California. I state the following based upon my own personal knowledge developed in twenty-

1 seven years of studying, analyzing and evaluating pesticides, their use and alternatives to use
2 and on my capacity as the Director of CATs.

3 2. The pesticides listed in Table 1, which can be found after paragraph 85 of this
4 declaration and is described below, are all pesticides currently registered by the U.S.
5 Environmental Protection Agency (“EPA”) under the Federal Insecticide, Fungicide, and
6 Rodenticide Act (“FIFRA”). Under FIFRA, a pesticide generally may not be sold or used in the
7 United States unless it has an EPA registration for that particular use. 7 U.S.C. § 136a(a).
8 Under FIFRA, EPA may register a pesticide if it makes the following determinations: (1) the
9 labeling complies with FIFRA’s requirements; (2) the composition claims are warranted; (3) the
10 pesticide will perform its intended function; and (4) the pesticide will not cause unreasonable
11 adverse effects on the environment. 7 U.S.C. § 136a(c)(5). To implement these requirements,
12 FIFRA gives the EPA the authority to register pesticides; to require appropriate chemical,
13 toxicological, and environmental studies; and to prescribe labeling use restrictions aimed to
14 prevent unreasonable adverse effects on human health and the environment. 7 U.S.C. §§136-
15 136y.

16 3. FIFRA defines a pesticide as “any substance or mixture of substances intended for
17 preventing, destroying, repelling, or mitigating any pest.” 7 U.S.C. § 136(u). A pesticidal
18 “substance” is referred to as the “active ingredient” which is defined as “an ingredient which
19 will prevent, destroy, repel, or mitigate any pest” or have other adverse impacts on the target
20 organism such as retarding growth rate, causing leaves to drop, drying out plant parts or
21 interfering in chemical processes. 7 U.S.C. § 136(a). The FIFRA regulations state that an
22 ingredient will be considered an active ingredient if it is contained in a pesticide product and
23 either (1) the ingredient has the capability by itself, and when used as directed at the proposed
24 use dilution, to function as a pesticide; or (2) the ingredient has the ability to elicit or enhance a
25 pesticidal effect in another compound whose pesticidal activity is substantially increased due to
26 the interaction of the compounds. 40 C.F.R. § 153.125.

27 4. Most pesticide products are formulated to include one or more active ingredients
28 combined with other ingredients. These other ingredients function simply to enhance or prolong

1 the activity of an active ingredient by physical action, such as “spreaders and stickers” and other
2 adjuvants. Under FIFRA these other chemicals are not considered to be “active” ingredients. 40
3 C.F.R. § 153.125. Instead, FIFRA and the FIFRA regulations define these compounds that are
4 not “active” as “inert” ingredients. 7 U.S.C. § 136(u). Inert ingredients may be part of a
5 pesticide product, 40 C.F.R. § 153.125, but are not themselves considered “pesticides” under
6 law. Id.

7 5. In registering pesticides, EPA registers both active ingredients and formulated products
8 containing such active ingredients. EPA may first register the active ingredient, then license
9 pesticide products that incorporate the data developed during the registration process for that
10 active ingredient. 40 C.F.R. § 152.113. In other situations, EPA may register a new pesticide
11 product containing a new active ingredient, which must comply with the same EPA data review
12 requirements applicable to the registration of a new active ingredient. 40 C.F.R. § 152.114.

13 6. The FIFRA Amendments of 1988 required EPA to reregister all pesticide products
14 containing active ingredients first registered before November 1, 1984. 7 U.S.C. § 136a-1. The
15 purpose of EPA’s re-registration review is to reassess the potential hazards arising from the
16 currently registered uses of the pesticide; to determine if there is a need for additional data on
17 health and environmental effects; and to determine whether the pesticide will cause
18 unreasonable adverse effects on the environment.

19 7. The 1988 FIFRA Amendments set forth five stages for the re-registration of pesticide
20 products. Phase 1 required EPA to establish priorities for re-registration. 7 U.S.C. § 136a-1(c).
21 Phase 2 required registrants to declare intent to re-register pesticides and to identify and commit
22 to preparing data that would be required for re-registration. 7 U.S.C. § 136a-1(d). Phase 3
23 required registrants to submit the data identified in Phase 2. 7 U.S.C. § 136a-1(e). Phase 4
24 required EPA to review the completeness of registrants’ Phase 3 data submissions. 7 U.S.C. §
25 136a-1(f). Phase 5 required EPA to “conduct a thorough examination of all data submitted
26 under this section concerning an active ingredient . . . and all other available data found by the
27 Administrator to be relevant.” 7 U.S.C. § 136a-1(g).

1 8. EPA has completed Phases 1 through 4 for most pesticides and is now in the process of
2 reviewing data in Phase 5, to make final decisions on re-registration. EPA makes its final re-
3 registration decision for a pesticidal active ingredient in a Re-registration Eligibility Decision
4 (“RED”) document. EPA then re-registers pesticide products containing the pesticidal active
5 ingredient after certain product-specific data and revised labeling are submitted and approved.
6 All the active ingredients in a pesticide product must be eligible for registration before the
7 product may be reregistered. See U.S. EPA Pesticide Re-registration Facts,
8 <http://www.epa.gov/oppfead1/trac/factshee.htm>.

9 9. EPA may also issue Interim Re-registration Eligibility Decisions (“IREDs”) for
10 pesticides undergoing re-registration and requiring a re-registration eligibility decision. The
11 IRED, issued after EPA completes the individual pesticide’s aggregate health and ecological
12 risk assessment, may include taking risk reduction measures -- for example, reducing risks to
13 workers or eliminating uses that the registrant no longer wishes to maintain -- to gain the
14 benefits of these changes before EPA issues the final RED following consideration of
15 cumulative risks. See <http://www.epa.gov/pesticides/re-registration/candidates.htm#reds>.

16 10. Amendments to FIFRA in 1996 pursuant to the Food Quality Protection Act (“FQPA”)
17 also affected the re-registration process. 21 U.S.C. §§ 346a et seq. Under FQPA, EPA must
18 issue Reports on Food Quality Protection Act Tolerance Reassessment Progress and Interim
19 Risk Management Decisions (“TREDs”) for a pesticide that requires a tolerance reassessment
20 decision.

21 11. In 2002, EPA had completed re-registration on 73% of the pesticidal active ingredients
22 (445 cases) subject to the 1988 FIFRA amendments. EPA had 27% or 167 pesticide cases left
23 to complete. (U.S. EPA. OPP Annual Report 2002. (<http://www.epa.gov/Annual/index.htm>)
24 Completed REDs and other re-registration decision documents are available to the public on the
25 EPA’s website. (See U.S. EPA <http://www.epa.gov/oppsrrd1/REDs>).

26 12. As part of the re-registration process, EPA is required to assess the potential for
27 pesticides to have adverse ecological impacts, including hazards to non-target organisms such as
28 birds, mammals, fish, terrestrial and aquatic invertebrates, and plants. 40 C.F.R. § 158.202(h).

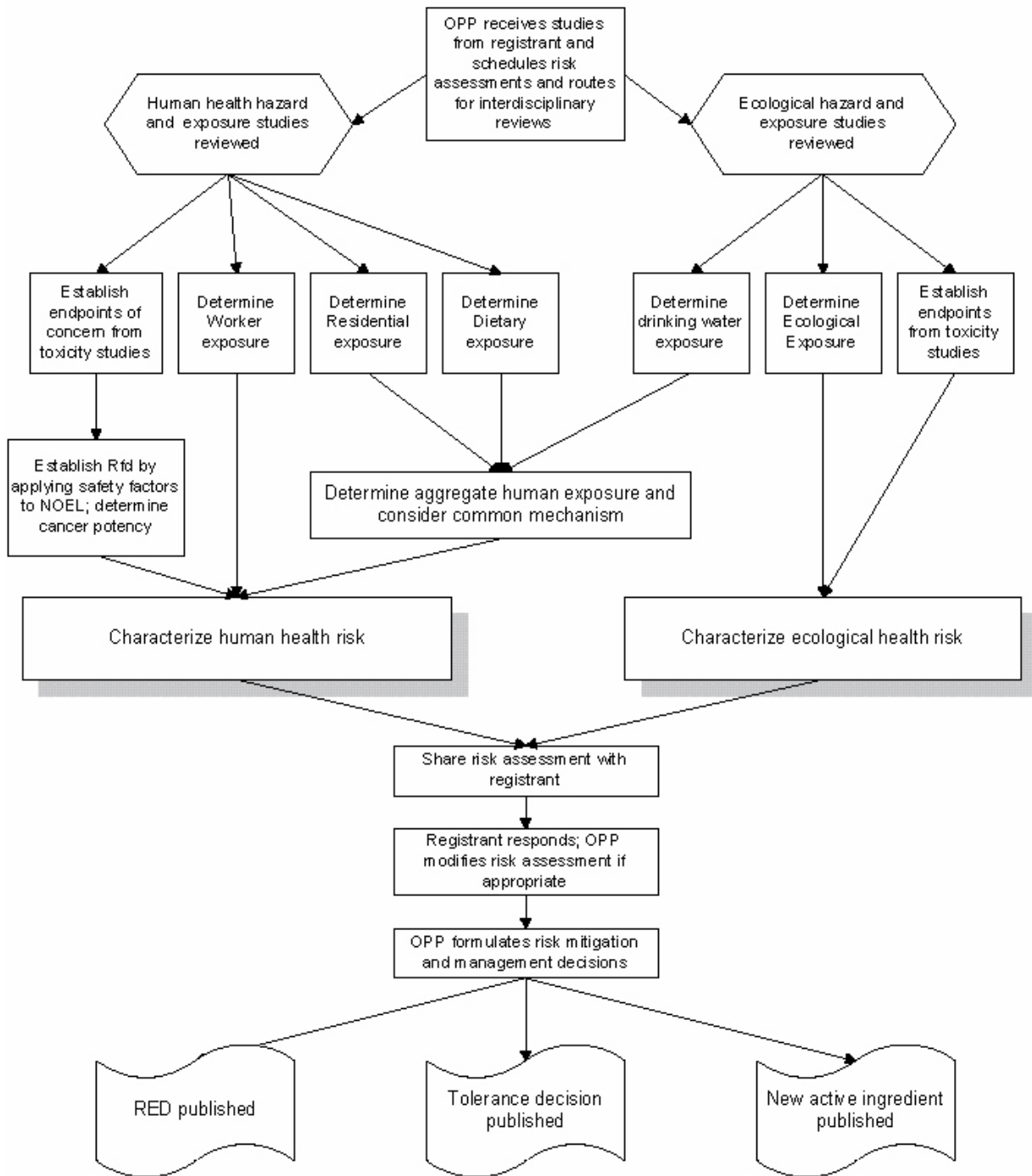
1 EPA makes this assessment by first reviewing studies it requires pesticide manufacturers to
2 submit in support of re-registration. These include “environmental fate” studies describing what
3 happens to a pesticide in soil, water, and air after the pesticide has been applied and include the
4 following types of studies: hydrolysis, photodegradation, metabolism, field dissipation,
5 accumulation, adsorption/desorption and leaching. 40 C.F.R. § 158.290. EPA also reviews
6 acute and sometimes chronic toxicity studies for the active ingredient on selected surrogate
7 wildlife and plant species. 40 C.F.R. § 158.490.

8 13. EPA’s ecological impact assessment follows agency-wide guidelines for ecological risk
9 assessment established in April 1998 and is conducted by EPA’s Environmental Fate and
10 Effects Division (“EFED”). First, EFED reviews the environmental fate data submitted
11 pursuant to 40 C.F.R. 158.290, as well as other relevant information, to characterize the
12 potential environmental exposure of nontarget organisms, such as fish and wildlife, to pesticides
13 and to estimate expected environmental concentrations of pesticides in specific habitats where
14 threatened or endangered species or other wildlife populations at risk are found. 40 CFR § 158.
15 202(d)(1) (See EPA, Staff Background Paper #2.1, TRAC. 5/27/98,
16 <http://www.epa.gov/oppfead1/trac/proces.htm>). EFED also reviews the toxicity data submitted
17 pursuant to 40 C.F.R. § 158.490, as well as other relevant information, to characterize the
18 hazards posed by the active ingredient in question to living organisms. 40 CFR § 158. 202(h).
19 EFED then conducts ecological risk assessments based on these environmental fate and effect
20 characterizations which are published for public review. Id. These EFED documents, known as
21 EFED “chapters,” form conclusions that are the basis of EPA’s REDs, as described above,
22 which allow for the continued use of these pesticides in California. Below is a copy of the flow
23 chart posted by EPA at its website at <http://www.epa.gov/oppfead1/trac/rrflow.htm> to show the
24 process by which studies submitted by pesticide registrants are reviewed by EPA to reach
25 conclusions about ecological exposure and other characteristics of pesticides in support of
26 registration.

27 //

28 //

OPP's Registration and Reregistration Process



14. The pesticides listed in Table 1 and described below are all active ingredients registered with the EPA as technical grade products, which EPA defines as “pesticide chemical in pure form as it is manufactured prior to being formulated into an end-use product” (see

1 <http://www.epa.gov/OCEPAterms/tterms.html>), as active ingredients contained within
2 formulated pesticide products, or both. See 40 C.F.R. §§ 152.113-152.114.

3 15. To support the date of first registration of the pesticides listed in Table 1, Plaintiff has
4 submitted documents generated by EPA. (See Exhibits 1-67, attached hereto). These
5 documents include: relevant pages of REDs; relevant pages of Chemical Fact Sheets; and
6 communications by EPA. Each of these documents were obtained by me, or by my staff
7 working under my supervision, from the EPA by request some years ago, and stored in our
8 library; from the internet at the EPA website; or as a result of a request for information by
9 telephone with staff at EPA's Office of Pesticide Programs ("OPP") and subsequent response
10 from OPP by facsimile and e-mail.

11 16. To support that the pesticidal active ingredients listed in Table 1 are currently registered
12 by the EPA for use in California, Plaintiff submitted documents which demonstrate active
13 registration status for each pesticide (See Exhibits 1-66, attached hereto). Each of these
14 documents were obtained by me, or by my staff working under my supervision, from a web site
15 hosted by the California Department of Pesticide Regulation. (See
16 <http://www.cdpr.ca.gov/docs/epa/m2.htm>) A joint project of CDPR and OPP, this website is
17 updated weekly.

18 17. To support that EPA has reached conclusions regarding the environmental fate and effect
19 of pesticides in Phase 5 of the re-registration process (see above, Paragraph 7), Plaintiff has
20 submitted relevant pages of EPA REDs, IREDs, EFED chapters and Fact Sheets. (See
21 Exhibits.1, 3-4, 6-11, 13-23, 25-27, 29-31, 35-41, 43-50, 52-57, 60-66, attached hereto). Each of
22 these documents were obtained by me, or by my staff working under my supervision, from the
23 EPA re-registration web site. (<http://cfpub.epa.gov/oppref/rereg/status.cfm?show=rereg>). Where
24 EPA has not yet completed these documents, I also referred to pesticide fact sheets from reliable
25 and verifiable services including Extoxnet Pesticide Information Profiles,
26 (<http://ace.ace.orst.edu/info/extoxnet/pips/>), the U.S. Forest Service Pesticide Fact Sheets
27 (<http://infoventures.com/e-hlth/pesticide/imazapyr.html>), the International Programme on
28 Chemical Safety (IPCS) information site, <http://www.inchem.org/>, as well as peer-reviewed

1 scientific articles. Each of these documents were obtained by me, or by my staff working under
2 my supervision, from these web sites.

3 18. The U.S. Fish and Wildlife Service listed the red-legged frog as threatened under the
4 Federal Endangered Species Act on June 24, 1996. Since that time, EPA has taken action with
5 respect to the re-registration of 53 of the 66 pesticides listed in Table 1. See Table 1, Column 3.
6 As evidence for this post-listing agency action, Plaintiff has submitted excerpts from REDs,
7 IREDs or EFED chapters for each of these pesticides. (See Exhibits 1, 3-4, 6-11, 13-23, 25-27,
8 29-31, 35-41, 43-50, 52-57, 60-66, attached hereto). For the remainder of the 13 pesticides
9 listed in Table 1, no re-registration documents have been completed. However, these pesticides
10 are currently under review in what EPA describes as a “pre-RED status” (See Exhibit 68,
11 attached hereto). A pesticide is considered to have pre-RED status when OPP is reviewing for
12 publication in a RED the data generated by the pesticide’s producers regarding its human health
13 and/or environmental effects (U.S. EPA 1998 Status of Pesticides In Registration, Re-
14 registration, and Special Review (“Rainbow Report”),
15 <http://www.epa.gov/docs/Rainbow/98rainbo.pdf> (Excerpts attached as Exhibit 68)). EPA
16 anticipates for several of these pesticides the publication of a RED within three years and has
17 posted this status at its web site (U.S. EPA Candidates for Re-registration Decisions.
18 <http://www.epa.gov/pesticides/re-registration/candidates.htm#reds>).

19 19. Set forth below is the registration information and exhibit cites for each of the pesticides
20 listed in Table 1. The citations refer to the Exhibits attached to this declaration, and
21 accompanying Bates stamp page number (i.e., “BS 001” etc.) for these exhibits.

22 20. **1,3- Dichloropropene (telone)**

- First registered in 1954 (Ex. 1, BS 003).
- Registered for use in California as of November 2003 (Ex. 1, BS 001).
- Post 1996: A RED was published in 1998 (Ex. 1, BS 002).

23 21. **2,4-D**

- First registered in 1948 (Ex. 2, BS 917).
- Registered for use in California as of November 2003 (Ex. 2, BS 026).
- Post 1996: In pre-RED re-registration status (Ex. 2, BS 917).

24 22. **Acephate**

- First registered in 1973 (Ex. 3, BS 038).
- Registered for use in California as of November 2003 (Ex. 3, BS 036).
- Post 1996: An IRED was published in 2001 (Ex. 3, BS 918).

- 1 23. **Alachlor**
- First registered in 1969 (Ex. 4, BS 058).
 - Registered for use in California as of November 2003 (Ex. 4, BS 056).
 - Post 1996: A RED was published in 1998 (Ex. 4, BS 057).
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- 4 24. **Aldicarb**
- First registered in 1979 (Ex. 5, BS 916).
 - Registered for use in California as of November 2003 (Ex. 5, BS 079).
 - Post 1996: In pre-RED re-registration status (Ex. 5, BS 918).
- 5
- 6 25. **Atrazine**
- First registered in 1958 (Ex. 6, BS 098).
 - Registered for use in California as of November 2003 (Ex. 6, BS 095).
 - Post 1996: An IRED was published in 2003 (Ex. 6, BS 098).
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- 9 26. **Azinphos-methyl**
- First registered in 1959 (Ex. 7, BS 119).
 - Registered for use in California as of November 2003 (Ex. 7, BS 117).
 - Post 1996: An IRED was published in 2001 (Ex. 7, BS 117A).
- 10
- 11 27. **Bensulide**
- First registered in 1968 (Ex. 8, BS 132).
 - Registered for use in California as of November 2003 (Ex. 8, BS 129).
 - Post 1996: An IRED was published in 2000 (Ex. 8, BS 130).
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- 14 28. **Bromacil**
- First registered in 1961 (Ex. 9, BS 139).
 - Registered for use in California as of November 2003 (Ex. 9, BS 137).
 - Post 1996: A RED was published in 1996 (Ex. 9, BS 138).
- 15
- 16 29. **Captan**
- First registered in 1951 (Ex. 10, BS 163).
 - Registered for use in California as of November 2003 (Ex. 10, BS 160).
 - Post 1996: A RED was published in 1999 (Ex. 10, BS 162).
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- 19 30. **Carbaryl**
- First registered in 1959 (Ex. 11, BS 178).
 - Registered for use in California as of November 2003 (Ex. 11, BS 175).
 - Post 1996: An IRED was published in 2003 (Ex. 11, BS 176A).
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- 21 31. **Chloropicrin**
- First registered in 1962 (Ex. 12, BS 916).
 - Registered for use in California as of November 2003 (Ex. 12, BS 203).
 - Post 1996: In pre-RED re-registration status (Ex. 12, BS 919).
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- 24 32. **Chlorothalonil**
- First registered in 1966 (Ex. 13, BS 211).
 - Registered for use in California as of November 2003 (Ex. 13, BS 208).
 - Post 1996: A RED was published in 1998 (Ex. 13, BS 210).
- 25
- 26 33. **Chlorpyrifos**
- First registered in 1965 (Ex. 14, BS 229).
 - Registered for use in California as of November 2003 (Ex. 14, BS 223).
 - Post 1996: An IRED was published in 2001 (Ex. 14, BS 224A).
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- 1 34. **Chlorthal-dimethyl (dacthal)**
2 • First registered in 1958 (Ex. 15, BS 247).
3 • Registered for use in California as of November 2003 (Ex. 15, BS 243).
4 • Post 1996: A RED was published in 1998 (Ex. 15, BS 245).
- 5 35. **Diazinon**
6 • First registered in 1956 (Ex. 16, BS 259).
7 • Registered for use in California as of November 2003 (Ex. 16, BS 256).
8 • Post 1996: A IRED was published in 2002 (Ex. 16, BS 257A).
- 9 36. **Dicofol**
10 • First registered in 1957 (Ex. 17, BS 274).
11 • Registered for use in California as of November 2003 (Ex. 17, BS 273).
12 • Post 1996: A RED was published in 1998 (Ex. 17, BS 274).
- 13 37. **Diflubenzuron**
14 • First registered in 1979 (Ex. 18, BS 295).
15 • Registered for use in California as of November 2003 (Ex. 18, BS 292).
16 • A RED was published in 1997 (Ex. 18, BS 293).
- 17 38. **Dimethoate**
18 • First registered in 1976 (Ex. 19, BS 908).
19 • Registered for use in California as of November 2003 (Ex. 19, BS 317).
20 • Dimethoate is a candidate for completion of a RED in 2004 (Ex. 19, BS 920).
21 • Post 1996: An EFED assessment was published in 1999 (Ex. 19, BS 319).
- 22 39. **Disulfoton**
23 • First registered in 1961 (Ex. 20, BS 331).
24 • Registered for use in California as of November 2003 (Ex. 20, BS 329).
25 • Post 1996: An IRED was published in 2002 (Ex. 20, BS 921).
- 26 40. **Diuron**
27 • First registered in 1966 (Ex. 21, BS 909).
28 • Registered for use in California as of November 2003 (Ex. 21, BS 340).
• Post 1996: A TRED for diuron was approved in 2002 (Ex. 21, BS 341).
• In pre-RED re-registration status (Ex. 21, BS 921).
41. **Endosulfan**
• First registered in 1954 (Ex. 22, BS 350).
• Registered for use in California as of November 2003 (Ex. 22, BS 347).
• Post 1996: A RED was published in 2002 (Ex. 22, BS 348).
42. **EPTC**
• First registered in 1958 (Ex. 23, BS 368).
• Registered for use in California as of November 2003 (Ex. 23, BS 361).
• Post 1996: A RED was published in 1999 (Ex. 23, BS 362).
43. **Esfenvalerate**
• First registered in 1986 (Ex. 24, BS 907).
• Registered for use in California as of November 2003 (Ex. 24, BS 379).
44. **Fenamiphos**
• First registered in 1972 (Ex. 25, BS 387).
• Registered for use in California as of November 2003 (Ex. 25, BS 385).
• Post 1996: An IRED was published in 2002 (Ex. 25, BS 386).

- 1 45. **Glysohphate**
- First registered in 1984 (Ex. 26, BS 401).
 - Registered for use in California as of November 2003 (Ex. 26, BS 397).
 - A RED was published in 1993 (Ex. 26, BS 400).
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- 4 46. **Hexazinone**
- First registered in 1975 (Ex. 27, BS 406).
 - Registered for use in California as of November 2003 (Ex. 27, BS 405).
 - Post 1996: A TRED was published in 2002 (Ex. 27, BS 406).
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- 6 47. **Imazapyr**
- First registered in 1985 (Ex. 28, BS 907).
 - Registered as an herbicide (Ex. 28, BS 414).
 - Registered for use in California as of November 2003 (Ex. 28, BS 415).
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- 9 48. **Iprodione**
- First registered in 1979 (Ex. 29, BS 427).
 - Registered for use in California as of November 2003 (Ex. 29, BS 424).
 - Post 1996: A RED was published in 1998 (Ex. 29, BS 425).
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- 11 49. **Linuron**
- First registered as a pesticide in 1966 (Ex. 30, BS 442).
 - Registered for use in California as of November 2003 (Ex. 30, BS 438).
 - Post 1996: A TRED was published in 2002 (Ex. 30, BS 439).
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- 14 50. **Malathion**
- First registered in 1956 (Ex. 31, BS 912).
 - Registered for use in California as of November 2003 (Ex. 31, BS 452).
 - Post 1996: A candidate for completion of a RED in 2004 (Ex. 31, BS 933).
 - An EFED risk assessment was published in 2000 (Ex. 31, BS 452A).
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- 17 51. **Mancozeb**
- First registered in 1967 (Ex. 32, BS 910).
 - Registered for use in California as of November 2003 (Ex. 32, BS 461).
 - Post 1996: In pre-RED re-registration status (Ex. 32, BS 922).
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- 19 52. **Maneb**
- First registered in the late 1940's (Ex. 33, BS 911).
 - Registered for use in California as of November 2003 (Ex. 33, BS 473).
 - Post 1996: In pre-RED re-registration status (Ex. 33, BS 922).
- 20
- 21
- 22 53. **Metam Sodium**
- First registered in 1973 (Ex. 34, BS 907).
 - Registered for use in California as of November 2003 (Ex. 34, BS 477).
 - Post 1996: In pre-RED re-registration status.
- 23
- 24 54. **Methamidophos**
- First registered in 1972 (Ex. 35, BS 510).
 - Registered for use in California as of November 2003 (Ex. 35, BS 508).
 - Post 1996: IRED was published in 2002 (Ex. 35, BS 509A).
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- 27 55. **Methidathion**
- First registered in 1972 (Ex. 36, BS 518).
 - Registered for use in California as of November 2003 (Ex. 36, BS 516).
 - Post 1996: An IRED was published in 2001 (Ex. 36, BS 516A).
- 28

- 1 56. **Methomyl**
- First registered in 1968 (Ex. 37, BS 527).
 - Registered for use in California as of November 2003 (Ex. 37, BS 524).
 - Post 1996: RED was published in 1998 (Ex. 37, BS 525).
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- 4 57. **Methoprene**
- First registered in 1975 (Ex. 38, BS 539).
 - Registered for use in California as of November 2003 (Ex. 38, BS 537).
 - Post 1996: RED was published in 1991 (Ex. 38, BS 538).
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- 6 58. **Methyl parathion**
- First registered in 1954 (Ex. 39, BS 546).
 - Registered for use in California as of November 2003 (Ex. 39, BS 544).
 - Post 1996: IRED was published in 2003 (Ex. 39, BS 545).
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- 9 59. **Metolachlor**
- First registered in 1976 (Ex. 40, BS 559).
 - Registered for use in California as of November 2003 (Ex. 40, BS 556).
 - A RED was published in 1995 (Ex. 40, BS 557).
 - Post 1996: A TRED was published in 2002 (Ex. 40, BS 924).
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- 12 60. **Molinate**
- First registered in 1983 (Ex. 41, BS 916).
 - Registered for use in California as of November 2003 (Ex. 41, BS 570).
 - Post 1996: An EFED assessment was published in 2001 (Ex. 41, BS 571).
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- 14 61. **Myclobutanil**
- First registered in 1989 (Ex. 42, BS 907).
 - Registered for use in California as of November 2003 (Ex. 42, BS 582).
- 15
- 16 62. **Naled**
- First registered in 1959 (Ex. 43, BS 591).
 - Registered for use in California as of November 2003 (Ex. 43, BS 588).
 - Post 1996: An IRED was published in 2002 (Ex. 43, BS 589).
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- 19 63. **Norflurazon**
- First registered in 1974 (Ex. 44, BS 605).
 - Registered for use in California as of November 2003 (Ex. 44, BS 603).
 - Post 1996: A TRED was published in 2002 (Ex. 44, BS 604).
- 20
- 21 64. **Oryzalin**
- First registered in 1974 (Ex. 45, BS 620).
 - Registered for use in California as of November 2003 (Ex. 45, BS 617).
 - A RED was published in 1994 (Ex. 45, BS 618).
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- 24 65. **Oxamyl**
- First registered in 1974 (Ex. 46, BS 631).
 - Registered for use in California as of November 2003 (Ex. 46, BS 628).
 - Post 1996: An IRED was published in 2000 (Ex. 46, BS 629).
- 25
- 26 66. **Oxydemeton-methyl**
- First registered in 1961 (Ex. 47, BS 905).
 - Registered for use in California as of November 2003 (Ex. 47, BS 643).
 - Post 1996: An IRED was published in 2002 (Ex. 47, BS 926).
- 27
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- 1 67. **Oxyfluorfen**
- First registered in 1979 (Ex. 48, BS 655).
 - Registered for use in California as of November 2003 (Ex. 48, BS 653).
 - Post 1996: A RED was published in 2002 (Ex. 48, BS 654).
- 2
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- 4 68. **Paraquat –dichloride**
- First registered in 1964 (Ex. 49, BS 671).
 - Registered for use in California as of November 2003 (Ex. 49, BS 668).
 - Post 1996: A RED was published in 1997 (Ex. 49, BS 670).
- 5
- 6 69. **Pendimethalin**
- First registered in 1972 (Ex. 50, BS 689).
 - Registered for use in California as of November 2003 (Ex. 50, BS 688).
 - Post 1996: A RED was published in 1997 (Ex. 50, BS 689).
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- 9 70. **Permethrin**
- First registered in 1979 (Ex. 51, BS 907).
 - Registered for use in California as of November 2003 (Ex. 51, BS 699).
 - Post 1996: In pre-RED re-registration (Ex. 51, BS 927).
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- 11 71. **Phorate**
- First registered in 1959 (Ex. 52, BS 709).
 - Registered for use in California as of November 2003 (Ex. 52, BS 704).
 - Post 1996: An IRED was published in 2001 (Ex. 52, BS 705).
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- 14 72. **Phosmet**
- First registered in 1966 (Ex. 53, BS 718).
 - Registered for use in California as of November 2003 (Ex. 53, BS 716).
 - Post 1996: An IRED was published in 2001 (Ex. 53, BS 718).
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- 16 73. **Prometryn**
- First registered in 1964 (Ex. 54, BS 737).
 - Registered for use in California as of November 2003 (Ex. 54, BS 734).
 - Post 1996 action: A RED was published in 1996 (Ex. 54, BS 735).
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- 19 74. **Propanil**
- First registered in 1962 (Ex. 55, BS 913).
 - Registered for use in California as of November 2003 (Ex. 55, BS 748).
 - Pre-RED re-registration status (Ex. 55, BS 928).
 - Post 1996: An EFED assessment was published in 2001 (Ex. 55, BS 753).
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- 22 75. **Propargite**
- First registered in 1969 (Ex. 56, BS 764).
 - Registered for use in California as of November 2003 (Ex. 56, BS 761).
 - Post 1996: A RED was published in 2001 (Ex. 56, BS 762A).
- 23
- 24 76. **Propyzamide (pronamide)**
- First registered as a pesticide in 1972 (Ex. 57, BS 772).
 - Registered for use in California as of November 2003 (Ex. 57, BS 770).
 - Post 1996: A TRED was published in 2002 (Ex. 57, BS 772).
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- 26 77. **Rotenone**
- First registered in 1947 (Ex. 58, BS 786).
 - Registered for use in California as of November 2003 (Ex. 58, BS 785).
 - Post 1996: In Pre-RED re-registration status (Ex. 58, BS 929).
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- 1 78. **Simazine**
- First registered in 1957 (Ex. 59, BS 914).
 - Registered for use in California as of November 2003 (Ex. 59, BS 790).
 - Post 1996: In pre-RED re-registration status (Ex. 59, BS 930).
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- 4 79. **S,S,S-tributylphosphorotrithioate (DEF or Tribufos)**
- First registered in 1961 (Ex. 60, BS 907).
 - Registered for use in California as of November 2003 (Ex. 60, BS 795).
 - A RED was published in 2000. (Ex. 60, BS 796).
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- 6 80. **Strychnine**
- First registered in 1947 (Ex. 61, BS 813).
 - Registered for use in California as of November 2003 (Ex. 61, BS 811).
 - A RED was published in 1996 (Ex. 61, BS 812).
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- 9 81. **Thiobencarb**
- First registered in 1982 (Ex. 62, BS 825).
 - Registered for use in California as of November 2003 (Ex. 62, BS 821).
 - Post 1996: A RED was published in 1997 (Ex. 62, BS 823).
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- 11 82. **Triclopyr**
- First registered in 1979 (Ex. 63, BS 840).
 - Registered for use in California as of November 2003 (Ex. 63, BS 837).
 - Post 1996: A RED was published in 1997 (Ex. 63, BS 838).
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- 14 83. **Trifluralin**
- First registered in 1963 (Ex. 64, BS 857).
 - Registered for use in California as of November 2003 (Ex. 64, BS 854).
 - A RED was published in 1996 (Ex. 64, BS 856).
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- 16 84. **Vinclozolin**
- First registered in 1981 (Ex. 65, BS 873).
 - Registered for use in California as of November 2003 (Ex. 65, BS 869).
 - Post 1996: A RED was published in 2001(Ex. 65, BS 871).
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- 19 85. **Ziram**
- First registered in 1960 (Ex. 66, BS 907).
 - Registered for use in California as of November 2003 (Ex. 66, BS 879).
 - Post 1996: An EFED assessment of ziram was published in 2001(Ex. 66, BS 881).
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TABLE 1: PESTICIDES THAT MAY AFFECT RED-LEGGED FROGS

(ALSO AVAILABLE AS TABLE 1 IN SUSAN E. KEGLEY DECLARATION)

Pesticide	Agency Action		Pesticide is in Action Area	Potential to Contaminate Frog or Habitat			Potential to Affect the Frog		
	Current Registr.	Post-1996 Agency Action		CA DPR Found Pesticide in Frog Habitat; warrants evaluation	Pesticide Detected in Surface Water in Calif.	Pesticide Detected in Air in Calif.	Potential for Contamination	Potential for Aquatic Toxicity	FWS Pesticide of Concern
1,3-dichlorpropene	Yes	Yes; RED:				Yes; EPA	Yes; EPA		
2,4-D	Yes	pre-RED Status	Yes	Yes	Yes	Yes; Exttoxnet, Inchem	Yes; Exttoxnet, Inchem		
acephate	Yes	Yes; IRED	Yes		Yes	Yes; EPA	Yes; EPA	Yes	common mechanism toxicity with other OPs
alachlor	Yes	Yes. RED		Yes	Yes	Yes; EPA	Yes; EPA		
aldicarb	Yes	pre-RED Status		Yes		Yes; Exttoxnet, Inchem	Yes; Exttoxnet, Inchem		common mechanism toxicity with other n-methyl carbamates
atrazine	Yes	Yes; IRED		Yes	Yes	Yes; EPA	Yes; EPA		toxicity: (Haves 2002)
azinphos-methyl	Yes	Yes; IRED	Yes	Yes		Yes; EPA	Yes; EPA	Yes	common mechanism toxicity with other OPs
bensulide	Yes	Yes; IRED	Yes			Yes; EPA	Yes; EPA		common mechanism toxicity with other OPs
bromacil	Yes	Yes; RED		Yes		Yes; EPA	Yes; EPA		
captan	Yes	Yes; RED	Yes			Yes; EPA	Yes; EPA		
carbaryl	Yes	Yes; IRED	Yes		Yes	Yes; EPA	Yes; EPA	Yes	common mechanism toxicity with other n-methyl carbamates
chloropicrin	Yes	pre-RED Status	Yes			Yes; Exttoxnet	Yes; Exttoxnet		
chlorothalonil	Yes	Yes; RED	Yes		Yes	Yes; EPA	Yes; EPA		
chlorpyrifos	Yes	Yes; IRED	Yes	Yes	Yes	Yes; EPA	Yes; EPA	Yes	common mechanism toxicity with other OPs
chlorthal-dimethyl (DCPA)	Yes	Yes; RED	Yes			Yes; EPA	Yes; EPA		
diazinon	Yes	Yes; IRED	Yes	Yes	Yes	Yes; EPA	Yes; EPA	Yes	common mechanism toxicity with other OPs
dicofol	Yes	RED; Yes	Yes			Yes; EPA	Yes; EPA	Yes	
diflubenzuron	Yes	Yes; RED	Yes			Yes; EPA	Yes; EPA		
dimethoate	Yes	Yes; EFED	Yes			Yes; EPA	Yes; EPA		common mechanism toxicity with other OPs

Pesticide	Agency Action		Pesticide is in Action Area	Potential to Contaminate Frog or Habitat			Potential to Affect the Frog		
	Current Registr.	Post-1996 Agency Action		CA DPR Found Pesticide in Frog Habitat; warrants evaluation	Pesticide Detected in Surface Water in Calif.	Pesticide Detected in Air in Calif.	Potential for Contamination	Potential for Aquatic Toxicity	FWS Pesticide of Concern
disulfoton	Yes	Yes; IRED	Yes			Yes; EPA	Yes; EPA	Yes	common mechanism toxicity with other OPs
diuron	Yes	pre-RED Status		Yes		Yes; EPA	Yes; EPA		
endosulfan	Yes	Yes; RED	Yes		Yes	Yes; EPA	Yes; EPA	Yes	
EPTC	Yes	Yes; RED	Yes		Yes	Yes; EPA	Yes; EPA		
esfenvalerate	Yes	pre-RED Status	Yes			Yes; Extoxnet	Yes; Extoxnet	Yes	
fenamiphos	Yes	Yes; IRED	Yes		Yes	Yes; EPA	Yes; EPA	Yes	common mechanism toxicity with other OPs
glyphosate	Yes	Yes; RED	Yes			Yes; EPA	Yes; EPA	Yes	
hexazinone	Yes	Yes; RED				Yes; EPA	Yes; EPA		
imazapyr	Yes	pre-RED Status				Yes; EPA; USDA Fact Sheet	Yes; EPA; USDA Fact Sheet		
iprodione	Yes	Yes; RED	Yes			Yes; EPA	Yes; EPA		
linuron	Yes	Yes; RED		Yes	Yes	Yes; EPA	Yes; EPA		
malathion	Yes	Yes; EFED	Yes	Yes	Yes	Yes; EPA	Yes; EPA	Yes	common mechanism toxicity with other OPs
mancozeb	Yes	pre-RED Status	Yes			Yes; Extoxnet; USDA Fact Sheet	Yes; Extoxnet; USDA Fact Sheet	Yes	Developmental toxicant under Prop. 65
maneb	Yes	pre-RED Status	Yes			Yes; Extoxnet	Yes; Extoxnet	Yes	Developmental toxicant under Prop. 65
metam sodium	Yes	pre-RED Status	Yes		Yes	Yes; DPR TAC; JPR Fact Sheet	Yes; DPR TAC; JPR Fact Sheet		Developmental toxicant under Prop. 65
methamidophos	Yes	Yes; IRED	Yes		Yes	Yes; EPA	Yes; EPA	Yes	common mechanism toxicity with other OPs
methidathion	Yes	Yes; IRED	Yes		Yes	Yes; EPA	Yes; EPA		common mechanism toxicity with other OPs
methomyl	Yes	Yes; IRED	Yes	Yes		Yes; EPA	Yes; EPA		common mechanism toxicity with other n-methyl carbamates

Pesticide	Agency Action		Pesticide is in Action Area	Potential to Contaminate Frog or Habitat			Potential to Affect the Frog		
	Current Registr.	Post-1996 Agency Action		CA DPR Found Pesticide in Frog Habitat; warrants evaluation	Pesticide Detected in Surface Water in Calif.	Pesticide Detected in Air in Calif.	Potential for Contamination	Potential for Aquatic Toxicity	FWS Pesticide of Concern
methoprene	Yes	Yes; RED	Yes			Yes; EPA	Yes; EPA	Yes	
methyl parathion	Yes	Yes; IRED			Yes	Yes; EPA	Yes; EPA		common mechanism toxicity with other OPs
metolachlor	Yes	Yes; RED		Yes	Yes	Yes; EPA	Yes; EPA		
molinate	Yes	Yes; EFED		Yes	Yes	Yes; EPA	Yes; EPA		
myclobutanil	Yes	pre-RED Status	Yes			Yes; EPA (Acquire data)	Yes; EPA (Acquire data)		Developmental toxicant under Prop. 65
naled	Yes	Yes; IRED	Yes		Yes	Yes; EPA	Yes; EPA	Yes	
norflurazon	Yes	Yes; RED		Yes		Yes; EPA	Yes; EPA		
oryzalin	Yes	Yes; RED				Yes; EPA	Yes; EPA		
oxamyl	Yes	Yes; IRED	Yes			Yes; EPA	Yes; EPA		common mechanism toxicity with other n-methyl carbamates
oxydemeton-methyl	Yes	Yes; IRED	Yes			Yes; EPA	Yes; EPA		Developmental toxicant under Prop. 65; common mechanism toxicity with other OPs
oxyfluoren	Yes	Yes; RED	Yes			Yes; EPA	Yes; EPA		
paraquate dichloride	Yes	Yes; RED	Yes			Yes; EPA	Yes; EPA	Yes	
pendimethalin	Yes	Yes; RED	Yes	Yes	Yes	Yes; EPA	Yes; EPA		
permethrin	Yes	pre-RED Status	Yes	Yes		Yes; Exttoxnet	Yes; Exttoxnet	Yes	
phorate	Yes	Yes; IRED				Yes; EPA	Yes; EPA		common mechanism toxicity with other OPs
phosmet	Yes	Yes; IRED	Yes			Yes; EPA	Yes; EPA	Yes	common mechanism toxicity with other OPs
prometryn	Yes	Yes; RED	Yes			Yes; EPA	Yes; EPA		
propanil	Yes	Yes; RED		Yes	Yes	Yes; EPA	Yes; EPA		
propargite	Yes	Yes; RED	Yes	Yes		Yes; EPA	Yes; EPA		Developmental toxicant under Prop. 65

Pesticide	Agency Action		Pesticide is in Action Area	Potential to Contaminate Frog or Habitat			Potential to Affect the Frog		
	Current Registr.	Post-1996 Agency Action		CA DPR Found Pesticide in Frog Habitat; warrants evaluation	Pesticide Detected in Surface Water in Calif.	Pesticide Detected in Air in Calif.	Potential for Contamination	Potential for Aquatic Toxicity	FWS Pesticide of Concern
propyzamide (pronamide)	Yes	Yes; RED	Yes	Yes		Yes; EPA	Yes; EPA		
rotenone	Yes	pre-RED Status	Yes	Yes		Yes; EPA; Extoxnet	Yes; EPA; Extoxnet	Yes	
simazine	Yes	pre-RED Status	Yes	Yes	Yes	Yes; Extoxnet	Yes; Extoxnet		Developmental toxicant under Prop. 65
SSS-tributyl phosphorothiolate (DEF or Tribufos)	Yes	Yes; IRED			Yes	Yes; EPA	Yes; EPA		common mechanism toxicity with other OPs
strychnine	Yes	Yes; RED	Yes			Yes; EPA	Yes; EPA	Yes	
thiobencarb	Yes	Yes; RED		Yes	Yes	Yes; EPA	Yes; EPA		
triclopyr	Yes	Yes; RED	Yes	Yes		Yes; EPA	Yes; EPA	Yes	
trifluralin	Yes	Yes; RED	Yes	Yes	Yes	Yes; EPA	Yes; EPA	Yes	
vinclozolin	Yes	Yes; RED	Yes			Yes; EPA	Yes; EPA		Developmental toxicant under Prop. 65
ziram	Yes	Yes; EFED				Yes; EPA	Yes; EPA		

I declare under the penalty of perjury that the foregoing is true and correct and was executed this 26th day of December, 2003 at Eureka, California.

/s _____
Patricia M. Clary