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NUMBER OF PAGES SENT (INCLUDING COVER PAGE): 11

SPECIAL INSTRUCTIONS: Enclosed at your request is a copy of the Joint Motion and Proposed Order filed today in NRDC v. Whitman, C-99-3701 WHA (N.D. Cal.)

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15 UNITED STATES DISTRICT COURT
 16 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

17 _____
 18 NATURAL RESOURCES DEFENSE
 COUNCIL, et al.,
 19 Plaintiffs,

v.

20 CHRISTINE TODD WHITMAN,
 Administrator of the United States
 21 Environmental Protection Agency, et
 al.,
 22 Defendants.
 23 _____

Case No. C-99-3701 CAL

JOINT MOTION FOR
 APPROVAL OF AGREED-UPON
 MODIFICATION TO CONSENT
 DECREE

24 Plaintiffs the Natural Resources Defense Council, et al. ("NRDC"), and Defendants the
 25 United States Environmental Protection Agency and Christine Todd Whitman, in her official
 26 capacity as Administrator, et al. (collectively, "EPA"), hereby move the Court to enter the
 27 attached Proposed Order modifying the Consent Decree entered by the Court in this action on

28 JOINT MOTION FOR APPROVAL OF AGREED-UPON MODIFICATION TO CONSENT DECREE
 NO. C-99-3701 CAL

1 September 26, 2001. In support of this motion, the parties state as follows:

2 1. On September 26, 2001, the Court entered an Amended Partial Consent Decree
3 (hereinafter "Consent Decree") settling NRDC's claims in Counts 1 through 5 of its Amended
4 Complaint. In these counts, NRDC alleged that EPA had failed to meet deadlines under the
5 Federal Food, Drug and Cosmetics Act ("FFDCA"), for the reassessment of pesticide tolerances
6 pursuant to FFDCA section 408(q), 21 U.S.C. § 346a(q).

7 2. The Consent Decree sets a number of deadlines for EPA to perform specified risk
8 assessments and other tasks that are part of EPA's reassessment of tolerances under the FFDCA
9 and its related reregistration of pesticide uses under the Federal Insecticide, Fungicide and
10 Rodenticide Act, 7 U.S.C. § 136a-1. See generally Consent Decree ¶¶ 4-11.

11 3. Sub-paragraph 8.e of the Consent Decree originally included a deadline of
12 August 3, 2002, for EPA to sign an Interim Reregistration Eligibility Determination ("Interim
13 RED") for the pesticide atrazine. The Parties extended that date by two weeks until August 17,
14 2002, pursuant to Paragraph 22 of the Consent Decree. See Consent Decree ¶ 3.p (defining
15 Interim RED), 8.e, 22 (the Parties may extend dates in the Consent Decree by written agreement
16 and notice to the Court). Consistent with Paragraph 22 of the Decree, the parties provided notice
17 to the Court of the two-week extension. See Notice of Agreed Modification to Consent Decree
18 (filed July 12, 2002).

19 4. The parties have now agreed to a further modification of the Consent Decree that
20 would delete the existing Sub-paragraph 8.e. In its place, language would be added to
21 Paragraph 8 that would: (a) require EPA to sign an Interim RED for atrazine by January 31,
22 2003; and (b) require EPA to sign by October 31, 2003, following Scientific Advisory Panel
23 review, a revised Interim RED considering data relating to additional specified issues pertinent to
24 atrazine, to the extent such data is timely received by the Agency and is not addressed in the
25 January 2003 Interim RED. The parties have further agreed to include language in Paragraph 8
26 permitting EPA to exclude consideration of a specific issue (potential risks to amphibians from
27 atrazine exposure) from the October 2003 Interim RED – and invoke a further extension – if

1 EPA determines that it needs more data on the issue, provided that EPA: (a) takes steps to
2 ensure that such data will be sought; and (b) issues a memorandum explaining its determination
3 that more data is necessary. The proposed modification would also add a "Whereas" clause to
4 the Consent Decree.

5 5. The parties' proposed modification will ensure that EPA has adequate time to
6 consider recently received data that may be pertinent to the Agency's risk evaluation for atrazine,
7 but which the Agency could not review in time to meet the existing Consent Decree deadline.

8 6. The parties' proposed modification would not alter any term of the Consent
9 Decree other than the existing Paragraph 8.

10 7. The specific terms of the proposed modification are set forth in the
11 Proposed Order accompanying this motion, and the parties' agreement to the modified terms is
12 reflected by their respective signatures on the Proposed Order.

13 8. Paragraph 21 of the Consent Decree provides that "[t]his Consent Decree may be
14 modified by written agreement of the parties and approval of the Court." *Id.* For that reason, the
15 parties now seek the Court's approval and entry of the Proposed Order.

16 **CONCLUSION**

17 Wherefore, pursuant to Paragraph 21 of the Consent Decree, the parties respectfully
18 request that the Court sign and enter the attached Proposed Order modifying the Consent Decree.

19 Respectfully submitted,

20 FOR PLAINTIFFS:

21 
ERIK D. OLSON


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25 Attorneys for Plaintiffs
26 Natural Resources Defense Council, et al.

27
28 Dated: August 8, 2002

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Dated: August 8, 2002


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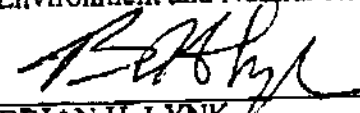
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CERTIFICATE OF SERVICE

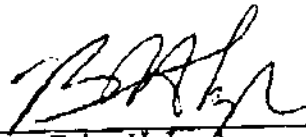
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The undersigned hereby certifies that on August 8, 2002, true and correct copies of the foregoing Joint Motion for Approval of Agreed-Upon Modification to Consent Decree and Proposed Order were sent via facsimile and regular mail, postage prepaid, to the following counsel of record:

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Dated: August 8, 2002



Brian H. Lynk

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

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NATURAL RESOURCES DEFENSE
COUNCIL, et al.,
Plaintiffs,

v.

CHRISTINE TODD WHITMAN,
Administrator of the United States
Environmental Protection Agency, et
al.,
Defendants.

Case No. C-99-3701 CAL

[PROPOSED] ORDER MODIFYING CONSENT DECREE

WHEREAS, on September 26, 2001 this Court entered herein an Amended Partial
Consent Decree ("Consent Decree");

WHEREAS, Sub-paragraph 8.e of said Consent Decree originally required EPA to sign
an Interim Reregistration Eligibility Determination ("Interim RED") for the pesticide atrazine by
August 3, 2002;

WHEREAS, the deadline under Sub-paragraph 8.e was subsequently extended to August
17, 2002, pursuant to Paragraph 21 of the Consent Decree, by written agreement of the parties
and notice filed with this Court on July 12, 2002;

WHEREAS, NRDC and EPA have now agreed to a modification that would delete Sub-
paragraph 8.e and add, in its place, language setting forth extended deadlines for actions
pertaining to atrazine; and

WHEREAS, the parties' agreement to the modification is reflected by their respective
signatures on this Order;

THEREFORE, upon consent of the parties hereto by their authorized representatives, IT
IS HEREBY ORDERED that:

1. The Consent Decree entered in this action on September 26, 2001, shall be
modified as follows:

1 a. The following "Whereas" clause is added immediately after the thirteenth
2 "Whereas" clause of the Consent Decree that concludes "in the FIFRA reregistration and FFDCA
3 tolerance reassessment programs":
4

5 "WHEREAS, EPA presently expects to include in the January 31, 2003 Interim RED referenced
6 in Paragraph 8 consideration of data pertaining to the association between atrazine exposure and
7 the incidence of prostate cancer in humans;"
8

9 b. Sub-paragraph e is deleted from Paragraph 8 of the Consent Decree; and

10 c. The following provisions are added at the end of Paragraph 8 of the
11 Consent Decree:
12

13 "EPA shall sign, on or before January 31, 2003, an Interim RED for atrazine. The scope of this
14 interim RED shall include, but not necessarily be limited to, data evaluated as part of the revised
15 aggregate risk assessment for atrazine issued on May 6, 2002. EPA shall sign, on or before
16 October 31, 2003, a revised Interim RED for atrazine that addresses the following: (1) except as
17 provided below, data, received by EPA prior to February 28, 2003, relating to the potential
18 effects of atrazine on amphibian species; and (2) to the extent not addressed in the January 31,
19 2003 Interim RED, data, received prior to February 28, 2003, relating to the association between
20 atrazine exposure and the incidence of prostate or other cancer in humans; and (3) other data,
21 timely received, that EPA, within its discretion, deems appropriate. At least three months prior
22 to signing this revised Interim RED, EPA shall develop a paper and submit it to the FIFRA
23 Scientific Advisory Panel (SAP) for review and comment. The EPA paper shall discuss:
24 (1) the significance of the amphibian risk data; (2) whether there is a need for additional data to
25 characterize more fully atrazine's potential risks to amphibian species, and, if so, what data
26 should be developed; and (3) other scientific issues concerning atrazine, including the
27 significance of data bearing on the association between atrazine exposure and the incidence of
28 prostate or other cancer in humans, and any other scientific issue in addition to the cancer issue

1 if EPA finds such additional issue to be appropriate for SAP review. If EPA concludes following
2 review of the SAP report on the amphibian risk issue that additional data are needed before
3 making a reregistration/reassessment determination pertaining to this issue, EPA may exclude
4 the amphibian risk issue from the October 31, 2003 Interim RED so long as (1) EPA takes steps
5 to insure that such additional data will be sought; and (2) EPA issues a memorandum signed by
6 the Director of the Office of Pesticide Programs, no later than October 31, 2003, determining that
7 there are insufficient data to warrant regulatory action based on amphibian risk and explaining
8 that decision. EPA shall have one year from when such data are submitted to address whether
9 these data indicate it is appropriate to maintain registrations and, if applicable, tolerances for
10 atrazine. Nothing herein shall be construed as an agreement by Plaintiffs that atrazine should
11 remain registered or that tolerances for atrazine should be maintained. Moreover, none of the
12 agreed-upon timeframes for agency actions pertaining to atrazine should be interpreted as
13 dictating or implying any particular substantive regulatory outcome for atrazine, nor shall
14 Plaintiffs' agreement to specific decisions to be made after the interim RED due on or before
15 January 31, 2003 be construed as Plaintiffs' agreement that atrazine may remain registered or
16 tolerances maintained after that date."

17
18 2. All other terms, conditions and requirements of said Consent Decree shall remain
19 in effect.

20
21 Dated: _____

HON. WILLIAM H. ALSUP
United States District Court

1 FOR PLAINTIFFS:

2 Dated: August 8, 2002



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10 Dated: August 8, 2002



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