

EPA's Endocrine Disruptor Screening Program (List 2 Chemicals)

Background

Section 408(p)(5)(A) of the Federal Food, Drug and Cosmetic Act (FFDCA) authorizes EPA to screen "pesticide chemicals" and other chemicals for their potential to interact with the human endocrine system, and section 1457 of the Safe Drinking Water Act (SDWA) also authorizes EPA to screen substances that "may be found in sources of drinking water" if EPA determines that "a substantial population may be exposed" to those substances. EPA published its final list of 67 pesticide chemicals to screen in April 2009 (List 1), began issuing test orders for those chemicals in late 2009, and then proceeded to publish in November 2010 a list of 134 chemicals for screening under the SDWA (List 2).

Update

On January 18, 2011, CPDA submitted comments on the List 2 chemicals, admonishing EPA for initiating screening under the SDWA when the Agency is nowhere close to completing the screening of List 1 chemicals. EPA cites the FFDCA, the SDWA, and a House Appropriations Committee report as the authority directing it to develop List 2. CPDA emphasized in its comments that the Agency is under no statutory requirement to begin testing SDWA chemicals at this time. Neither the FFDCA nor the SDWA contains a mandated time period or deadline for EPA to begin EDSP screening generally or for SDWA chemicals specifically. Moreover, EPA incorrectly interprets language in the House report as a constitutionally valid mandate to initiate EDSP screening. CPDA also emphasized that EPA's premature rush to screen chemicals under the SDWA would undermine the valuable opportunity to use the experience from screening the List 1 chemicals to make experience and science-based improvements to the EDSP. EPA's List 2 initiative is also contrary to recommendations of the Agency's Scientific Advisory Board and its own statements. Other areas of concern CPDA emphasized were the Agency's (1) failure to describe the methods used to reduce an initial list of more than 200 chemicals to the final list of 134 and (2) intention to not respond formally to comments on List 2, contrary to the intent of the notice and comment provisions of the Administrative Procedure Act. Finally, CPDA noted that any Agency action to issue orders to manufacturers and importers other than those currently engaged in those activities is contrary to the plain language of the section 408(p)(5) of the FFDCA, which uses the present tense.