

Statement on amendment to H.R. 8841 (extension of federal insecticide, fungicide, and rodenticide act)

Senator Hiram L. Fong Papers

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Statement of U. S. Senator Hiram L. Fong
On His Amendment to H. R. 8841 (Extension of Federal
Insecticide, Fungicide, and Rodenticide Act)
Amendment Re Advisory Panel Input for Ongoing Proceedings
In the U. S. Senate
November 12, 1975

MR. FONG. MR. President, I send an amendment to the desk to the pending measure, H. R. 8841, to extend the Federal Insecticide, Fungicide, and Rodenticide Act, and ask that my amendment be read.

In H. R. 8841, as reported to the Senate by our Agriculture and Forestry Committee, Congress would require that, prior to issuance of a notice of cancellation, the Environmental Protection Agency Administrator have the comments of a Scientific Advisory Panel. Section 7 of the bill creates that panel, defines its mandate, and provides the Administrator with important input.

I fully agree with this provision of the bill and the judgment which it represents. I believe, however, that creation of this panel may work a gross discrimination on some.

I speak, in particular, about ongoing proceedings in the EPA, which affect my State of Hawaii. The EPA has issued cancellation notices for several pesticides. The hearings on these cancellation notices, or suspension notices on these pesticides, are currently taking place.

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The registrants who are involved in these proceedings -- and the Administrator who must make the ultimate decision on cancellation -- should have the comments of the Section 7 Advisory Panel.

Unfortunately, because these proceedings were begun several months before the enactment of the amendments to FIFRA, proposed in the pending bill, H. R. 8841, the Administrator will be denied this important input.

Any proceeding begun after the date of enactment of H. R. 8841, however, would be covered by the new Scientific Advisory Panel provisions of the bill.

My amendment would cover only two ongoing proceedings: the heptachlor-chlordane and the Mange Medicine proceedings.

In the heptachlor-chlordane proceeding, the EPA contemplates cancelling a registration, which is vital to the pineapple growers of Hawaii. Without my amendment, this may be done without the valuable input of a Section 7 Scientific Advisory Panel.

Therefore, Mr. President, I offer an amendment which would require the Administrator to submit issues as to the impact of ongoing cancellation proceedings begun after June 30, 1974, on

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health and environment, including the benefits conferred by the use of the pesticide involved in the proceeding.

Current Law:

Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the Administrator may issue a notice of cancellation and/or suspension without consultation with the scientific community. As testimony of the House and Senate hearings reveals, the mere issuance of a notice may have profound effects on business, agriculture, and the American consumer.

Although FIFRA provides a mechanism whereby scientific input may be obtained during a cancellation proceeding, see Section 6 (d), such input is discretionary with the Administrator or Hearing Examiner and comes too late to have any effect on the issuance of the notice.

H. R. 8841 as Reported to Senate

Section 7 of H. R. 8841 as reported to the Senate seeks to remedy this problem. It is similar to the language of the House-approved version of this bill. In the words of the Senate Committee Report, it "is intended to further assure balance and objectivity in EPA actions... and to assure that the EPA obtains unbiased objective scientific opinion in making its decisions."

The bill provides for the appointment, prior to the issuance of the notice of cancellation of a Scientific Advisory Panel.

The Panel will comment "as to the impact on health and the environment of the action proposed in notices of intent issued under section 6(b) and of the proposed and final form of regulations issued under section 25(a) within the same time periods as provided for the comments of the Secretary of Agriculture under such sections."

The Administrator selects the 7-member panel from a field of 12 nominees submitted by the National Science Foundation. The Panel will receive for comment notices for proposed rulemaking, final regulations, and notices of intent to cancel or change registration at the same time these are provided to the Department of Agriculture under Sections 1 and 2 of the bill.

In the words of the House Report, "(t)he purpose of this provision is to involve persons nominated by the bonafide scientific community in a consultative capacity at the time when it is most meaningful so that we might benefit from their experience and insight. The amendment will tap a tremendous reservoir of talent where there is the best expertise on problems of health and the environment. By adding the scientific and medical input, it should strengthen the impact of scientific personnel at EPA."

In the words of the Senate Committee Report, "The creation of a Scientific Advisory Panel and notification of this panel of proposed cancellation or suspension actions and any proposed regulations are intended to further assure balance and objectivity in EPA actions. The purpose of this provision is to assure that the EPA obtains unbiased objective scientific opinion in making its decisions.

"The Committee considers this to be a desirable provision. To ensure against possible bias or conflicts of interest, the Committee amended this section to authorize the Administrator to require such information as necessary from nominees to the panel, to publish the name, address, and professional affiliation of the nominees in the Federal Register, and to promulgate regulations regarding conflicts of interest for panel members."

Fong Amendment:

If the scientific input provided under Section 7 of the bill is important -- and I believe it is -- this input is important in all cases. The American public should not be denied the benefits of this input in ongoing proceedings.

To remedy the denial of this benefit to the Administrator, registrants, and the American public, my amendment would provide

that the Administrator must submit issues as to the impact of ongoing cancellation proceedings on health and the environment including the benefits conferred by the use of the pesticide involved in the proceeding.

Under my amendment, the report of the Panel will be made public and will be considered as part of the hearing record. The Administrator must submit these issues to the panel; he may not waive the submission.

The Administrator will have the valuable input described above in ongoing, as well as future, cancellation hearings.

The current provision for discretionary referral does not cure the problem. The Administrator and his Hearing Examiners have refused to exercise this power in some cases, denying the parties a third-party opinion on important issues.

Recognizing that certain ongoing proceedings have reached late stages where this input is no longer needed and recognizing the difficulty of consideration of this input at a late stage in the proceeding, I have limited the effect of this amendment to proceedings begun after June 30, 1974.

As a result of this limitation, my amendment will only affect two ongoing proceedings: the heptachlor-chlordane and the

manage medicine proceedings. It should be noted that the amendment applies to ongoing proceedings in the cancellation phase, in the suspension phase, and proceedings held in abeyance.

Because the Scientific Advisory Panel will be considering its issues simultaneously with EPA consideration, this amendment will not delay Agency action under FIFRA.

Mr. President, earlier in my statement I referred to the vital concern of the pineapple industry in Hawaii in the heptachlor-chlordane proceedings now pending before an Administrative Law Judge of the Environmental Protection Agency.

Pineapple is our second largest agriculture industry, having a value of approximately \$124 million in 1974. It employs 3,700 workers year-round in Hawaii and approximately 7,000 seasonal workers during the heavy harvest and canning season. Pineapple is one of the principal employers on four of our 6 largest islands.

Only two pesticides -- Heptachlor and Mirex -- have been effective and environmentally acceptable in controlling mealybug wilt in pineapple. To control this insect pest, it is necessary to control the ants which carry the mealybug from pineapple plant to pineapple plant.

Without effective control of the ant and mealybug wilt disease, production of pineapple can^{not} be sustained in Hawaii on

a commercial scale. This is not a matter of opinion but of fact proved by costly experience prior to the development of effective controls.

Continued formulation of Mirex beyond the coming year is highly uncertain. If Heptachlor is cancelled, the pineapple growers in Hawaii and the employees who depend on pineapple for their livelihood face disaster. It is estimated that the entire pineapple industry in Hawaii could be wiped out within ten years if Mirex or Heptachlor are not available to control the ants and mealybug wilt.

Five years ago, on October 22, 1970, the Pineapple Research Institute of Hawaii petitioned the U. S. Department of Agriculture expressing industry concern for the continuance of the registrations of Chlordane, Lindane and Heptachlor.

Four years ago, on November 17, 1971, the Director of the Pineapple Research Institute appeared before the Mirex Advisory Commission in Washington, seeking exemption from the notice of cancellation of all registrations of Mirex pesticides issued March 17, 1971.

Yet despite five years of petitions, hearings, field monitoring in Hawaii by agreed upon third party (University of Hawaii) and many other steps listed in the attached Chronologies, the threat of complete loss of all presently known effective pesticides for mealybug and ant control now looms more imminent than ever before.

The pineapple growers in Hawaii are well aware of the chemical properties of the pesticides they use. They have been extremely cautious in their applications. They have complied with any conditions EPA has invoked so far on the use of these pesticides, and they have been monitored by the State of Hawaii and EPA. So the growers have demonstrated they are responsible users of Mirex and Heptachlor.

Inasmuch as the pineapple industry of Hawaii faces disaster if both Mirex and Heptachlor are denied them, I am hopeful the manager of this bill, Senator Allen of Alabama, would accept my amendment so that the Heptachlor proceeding, which is so vital to Hawaii's pineapple industry, will be subject to the Scientific Advisory Panel proceeding.

Of course, the amendment does not mean the EPA Administrator is required to accede to the views of the Scientific Advisory Panel. It just means that the Environmental Protection Agency would have the comments and input of the Scientific Advisory Panel in connection with EPA proceedings on suspension or cancellation of pesticides.

With this explanation of the purpose and intent of my amendment, I would hope the manager would be agreeable to accepting my amendment and taking it to conference with the House.

EFFECT OF FONG AMENDMENT

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CURRENT LAW:

Under the Federal Insecticide, Fungicide and Rodenticide Act the Administrator may issue a notice of cancellation and/or suspension without consultation with the scientific community. As testimony of the House and Senate hearings reveals, the mere issuance of a notice may have profound effects on business, agriculture, and the American consumer.

Although FIFRA provides a mechanism whereby scientific input may be obtained during a cancellation proceeding, see Section 6 (d), such input is discretionary with the Administrator or Hearing Examiner and comes too late to have any effect on the issuance of the notice.

H. R. 8841

Section 7 of H. R. 8841 seeks to remedy this problem. In the words of the House Report, it "is designed to strengthen, ... the input of the scientific community into the decision-making processes of the Environmental Protection Agency."

The bill provides for the appointment, prior to the issuance of the notice of cancellation of a Scientific Advisory Panel.

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The Panel will "comment as to the impact on health and the environment of the action proposed."

The Administrator selects the 7-member panel from a field of 12 nominees submitted by the National Science Foundation. The Panel will receive for comment notices for proposed rule-making, final regulations, and notices of intent to cancel or change registration. At the same time, they are provided to the Department of Agriculture under Sections 1 and 2 of the bill.

In the words of the House Report, "(t)he purpose of this provision is to involve persons nominated by the bonafide scientific community in a consultative capacity at the time when it is most meaningful so that we might benefit from their experience and insight. The amendment will tap a tremendous reservoir of talent where there is the best expertise on problems of health and the environment/ By adding the scientific and medical input, it should strengthen the impact of scientific personnel at EPA.

FONG AMENDMENT:

If the scientific input provided under Section 7 of the bill is important, it is important in all cases. The American public should not be denied the benefits of this input in on-going proceedings.

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To remedy the denial of this benefit to the Administrator, registrants, and the American public, this amendment would provide that the Administrator must submit issues as to the impact of on-going cancellation proceedings on health and the environment including the benefits conferred by the use of the pesticide involved in the proceeding.

The report of the Panel will be made public and will be considered as part of the hearing record. The Administrator must submit these issues to the panel; he may not waive the submission.

The Administrator will have the valuable input described above in on-going, as well as future, cancellationshearings.

The current provision for discretionary referral does not cure the problem. The Administrator, and his Hearing Examiners have refused to exercise this power in some cases, denying the parties a third-party opinion on important issues.

Recognizing that certain on-going proceedings have reached late stages where this input is no longer needed and recognizing the difficulty of consideration of this input at a late stage in the proceeding, I have limited the effect of this amendment to proceedings begun after _____.

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As a result of this limitation, my amendment will only affect two on-going proceedings: the Heptachlor-Chlordane and the Mange Medicine proceedings. It should be noted that the amendment applies to on-going proceedings in the cancellation phase, in the suspension phase, and proceedings held in abeyance.

Because the Scientific Advisory Panel will be considering its issues simultaneously with EPA consideration, this amendment will not delay Agency action under FIFRA.

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WHAT PROCEEDINGS OF EPA WILL BE AFFECTED

1. BHC and QUARTARNY-AMONIA -- 3/10/72
2. MERCURY -- 3/22/72
3. ALDRIN - DIELDRIN -- 12/7/72
4. MIREX -- 4/2/73
5. MANGE MEDICINE -- 11/23/74
6. CHLORDANE/HEPTACHLOR -- 11/19/74

SOURCE: EPA HEARING CLERK

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QUESTION TO ALYCE: What date do you want to fill in on blanks?
When you select the date, you can see how it would affect the on-going proceedings.

RECOMMENDATION: June 30, 1974 date which means it would include only two on-going hearings -- the MANGE MEDICINE and HEPTACHLOR for the pineapple.

As a result of this limitation, my amendment will only affect the Heptachlor - chlordane and the mange medicine proceedings. It should be noted that the amendment applies to on-going proceedings in the cancellation phase, in the suspension phase, and proceedings held in abeyance.

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