

***PSD Consultation response on: Informal consultation on plans for greater access to information about crop spraying from PAN UK, September 2003***

Caroline Kennedy  
Pesticides Safety Directorate  
Mallard House  
Kings Pool  
3 Peasholme Green  
York YO1 7PX

29 September 03

Dear Caroline

***Informal consultation on plans for greater access to information about crop spraying.***

Pesticide Action Network *UK* has unique expertise, networks, and resources, in pesticide-related health issues. Our aims are to eliminate the hazards of pesticides, to reduce dependence on pesticides and prevent unnecessary expansion of use, and to increase the sustainable alternatives to chemical pest control. We are committed to equal opportunities and to raising awareness of gender-specific pesticide problems.

The PEX project, which began in 1998, provides advice and information to those affected by exposure through a helpline, and a quarterly newsletter. We refer chemically exposed people onto sympathetic medical help; assist in forming support contacts; maintain a database of pesticide exposure cases, comprising over 1500 entries; liaise between exposed people and researchers, and carry out policy advocacy on the basis of research findings.

*Farmers and growers in England and Wales to complete and maintain a register of pesticide treatments used on their holding(s) and to provide access to those registers.*

PAN *UK* supports this proposal. Disclosure of the registers should be mandatory and made directly to any member of the public, not just:

- individuals 'with a direct interest'
- 'persons acting on behalf of those affected [such as] doctors or legal representatives'.

The measures should apply to all commercial users of pesticides, to include farmers, horticulturalists, amenity users including local authorities, and industrial users of pesticides. The PSD and HSE should also give consideration to record-keeping of amateur use.

Farmers have heavy workloads, and every effort should be made to avoid or minimise extra steps in the record-keeping which they already have to undertake. **Ease of data-collection for pesticide-users should be a high priority in the implementation of these measures:** for example, pro formas and CD ROMs (such as were used in implementing recent Nitrogen Vulnerable Zone restrictions) could be provided, which would greatly reduce the bureaucratic burden. Farm Assurance Schemes already require users to keep full and accurate records and to disclose them to the retailer.

Most farmers and growers receive public money in the form of subsidies, and there should therefore be transparency and accountability to the public over pesticide use.

Applicants should be entitled to the information by more than one means (both on inspection, and by being supplied with copies, for example), in line with provisions in the Freedom of Information

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Act. Access should not be denied for long periods, for example, during harvesting: it should be provided within a 20 day period from the date of a request throughout the year.

Records should be supplied to government (at local or regional level) no later than seven days after application. A statutory national electronic record should be created from this data: see *Statutory pesticide usage reporting* below. The raw data should be retained by the user for three years so that validation checks can be made and any discrepancies resolved. Existing requirements for aerial spraying should be brought into line with these new measures.

The proposed measures would rationalise a number of anomalies in the current arrangements.

- Under the Control of Pesticides Regulations (COPR), it is mandatory for users to *disclose* records of treatments to the PSD, in furtherance of their remit to control the use of pesticides, but it is not mandatory under Control of Substances Hazardous to Health (COSHH) for users to keep the records in the first place. In complying with COSHH, employers would be expected to record what type of chemical an employee may have been exposed to. However this does not extend to requiring that records of individual spray activities be kept to the detail set out in Table 7 of the Green Code.
- It is mandatory to keep, and retain for three years, records of pesticides sprayed by air under the Control of Pesticides (Amendments) Regulations 1997.

*The need for statutory pesticide usage reporting*

PAN UK supports the view of the Central Science Laboratory's Pesticide Usage Survey Group (PUSG) (Dr Miles Thomas, pers comm with Alison Craig 5 September 03) that there should be ***mandatory pesticide usage reporting*** in the UK, whereby users are obliged to make regular returns to a central point, as well as mandatory on-site registers and disclosure. This need is evident from our PEX service work also.

A national electronic pesticide usage dataset, on which records are retained indefinitely, accessible to the public, would enable regulators and scientists to carry out more accurate health and environmental impact surveillance, and epidemiological survey. More accurate implementation of comparative assessment in the approvals process would also be possible. It would empower local communities to assess their own local hazards, encouraging public participation in government decision-making and vigorous democracy. An email alert system could be set up, allowing concerned members of the public to receive prompt information on local spraying.

Occupational health services for farmers could greatly benefit from the availability of this information: epidemiological research data could be compared with pesticide usage, and potential issues identified. (The Farmers and Rural Health Service in Cumbria/Lancashire, for example, is a model which could pilot such research in areas where there is significant pesticide usage).

An excellent statutory reporting scheme, which is completely accessible to the public, exists in California. A more limited scheme has now been started in Oregon. Record keeping of pesticide usage is mandatory in Belgium (for some crops), Denmark, Sweden, The Netherlands and (for aerial spraying only) the UK. For full details see 'Pesticide Use Reporting – legal framework, data processing and utilisation' (report and appendices) [www.pan-germany.org/Downloads](http://www.pan-germany.org/Downloads).

Three of the recommendations made in the recent Working Group on Risk Assessment of Mixtures of Pesticides (and similar substances) (WiGRAMP) report support the need for mandatory pesticide usage reporting:

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- To accommodate analysis of all sources of exposure and concurrent exposure to more than one pesticide will require changes in the methods used for risk assessment, including in some cases, the use of probabilistic exposure assessment.
- Aggregate exposure assessment will require robust data on all pathways of exposure and sources of variation in such exposure, development of probabilistic exposure assessment, contingent on changes in residue surveillance.
- Changes to approval system such that pesticide and veterinary medicine authorisation considers mixtures from all sources of exposure.

*Disadvantages of current data-gaps*

In the UK, it is not even mandatory for users to disclose their records to Central Science Laboratory's Pesticide Usage Survey Group (PUSG). PUSG carries out a sample survey only of a maximum of 2,000 farms between October to April, extrapolating estimates of national pesticide usage figures from the results.

Dr Miles Thomas of PUSG notes that, since Foot and Mouth Disease, farmers have lost confidence in government agencies, so the rate of refusal to disclose records has risen (in the arable sector) from around 2 per cent to 25-35 per cent. This further weakens the PUSG scheme, placing significant extra burdens on the survey team which comprises four scientists.

It is the experience of PUSG (Dr Miles Thomas, verbal pers comm. with Alison Craig 5 September 03) that farmers almost always keep good and detailed spray records, because it is in their economic interests to do so, and farm assurance schemes require them. A significant proportion of farmers (Dr Thomas estimated around 25 per cent) now use specialised farm software packages for this task, so e-versions of the data are also available.

*Farmers and growers in England and Wales to notify those in surrounding houses of timing of spray operations and the pesticides to be used.*

PAN UK supports this proposal. There should be both advance notification, and signs on site, in the form of PSD-produced pro forma posters (equivalent to the Health & Safety At Work, etc Act poster), giving **dated** information, or an access point to it, such as a website, and always including a telephone number. This information should be posted at points nearest human habitation and at all access points to rights of way when they cross sprayed fields. People affected should be notified in advance about the posting of the information and its location.

We recognise that weather and labour conditions can be unpredictable, and that pesticide-users cannot reasonably be expected to give precise scheduling information. However, website or ansaphone information can and should give general information about a user's intentions regarding spraying, including a provisional schedule.

Residents and users of rights of way should also be given at least a full *week's* notice (with dated information, on a PSD-produced pro forma) of the *first spraying*. Updated versions, and date of last spraying, should be made available via the access point as above. Updates and notification alerts can be done by ansaphone message, email lists, mobile phone texts, or wipeboards, for example, and should be within at least 24 hours of spraying.

Existing requirements for notification under COPR (for aerial spraying, for sulphuric acid, and to bee-keepers) should be improved in these respects and brought into line.

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The on-site information should comprise, at minimum:

1. Intended dates of spraying.
2. Name of active ingredients or products intended to be used (first or next spraying).
3. Re-entry interval when a condition of use.
4. Name of pesticide-user, and contact telephone number: this should be large and legible at a reasonable distance.
5. Access point to full updated spray-schedule information: website, email address or ansaphone telephone number.
6. Name of land-owner or tenant farmer.
7. Contact details of the Pesticides Safety Directorate, with an indication that evaluation information on the pesticide is available from PSD.
8. Date of posting of information.

The website information should comprise the same details, plus, with the PSD details, a link to the pesticides' evaluation material.

Grant aid proportionate to the extent of human habitation/rights of way adjacent to a holding should be made available to farmers and growers, especially for small-scale producers, for the provision of equipment such as poster/boards, ansaphones, and IT.

***ENFORCEMENT***

We are very concerned that the Health & Safety Executive (verbal pers comm with Alison Craig 11 September 03) has said that it does not have sufficient resources to enforce these proposals and that they are therefore unable to support them. Public concern expressed in the consultation responses indicates that an urgent review of HSE resourcing levels, and policies and culture regarding public protection from pesticides, is needed.

***CRITICAL HEALTH ISSUES***

There can be no complacent assumptions that single exposures to pesticide spray-drift or vapour, in a 'bystander' scenario, are harmless. In the recent Florida case, Castillo vs Du Pont, which has been decided in favour of the plaintiff, it has been proven that a woman who was exposed once only to benlate, at a critical point in pregnancy, gave birth to a son suffering microphthalmia. She was walking near her home on a right of way. The birth defect was caused by dermal exposure to benlate at a concentration of less than 20 parts per billion.

Yet when Mrs Castillo's claim was brought to the attention of the Advisory Committee on Pesticides, before the legal outcome, they decided it did not justify a review of the fungicide. The case indicates that pesticides can harm the foetus at extremely low doses, and that current risk assessments do not adequately take this into account.

It should also be noted that even when individuals' progeny suffer such a distinctive and appalling disorder such as microphthalmia, like Mrs Castillo's son, tracing a causal link with a pesticide was only possible after a ten-year legal battle and financial resources which were considerably greater than those of most people. Disease caused by 'bystander' exposure can very rarely be proven, and therefore it is imperative that regulators take a precautionary protective approach.

***LEGISLATIVE CONTEXT***

PAN UK is in favour of the above proposals, which we believe should be statutorily enforced by law. The Green Code should be updated with these measures included and made statutory. This would be in line with the government's commitment to transparency and accountability, and with the presumption in favour of openness in both the Environmental Information Regulations and the Freedom of Information Act.

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If democracy is to flourish, citizens must be well-informed. The rights to freedom of expression and its corollary, the freedom to receive information, are fundamental rights recognised in most international human rights documents.

The Aarhus Convention ([www.unece.org/env/pp/documents/cep43e.pdf](http://www.unece.org/env/pp/documents/cep43e.pdf)) on access to information and public participation in decision-making, and access to justice in environmental matters, 2001, which the UK 'strongly supports', and to which we are a signatory, links environmental and human rights in seeking to ensure there is a means for the public to assert the right to live in an environment adequate for his or her health and well-being. Article 5, Mandatory systems and public authority to possess and update environmental information relevant for their function requires operators whose activities have a significant impact on the environment to inform the public about these impacts.

The European Commission's Fifth Environmental Action Programme conceded that 'present instruments are not satisfactorily coping with current levels of environmental degradation', and stressed that: 'the success of the drive towards sustainability will depend to a very considerable extent on the decisions, actions and involvement of the general public'.

***SCIENTIFIC BASIS***

The introduction of these measures is overdue, lagging behind advances in scientific knowledge in the detection of pesticide spray-drift. Examples of under-estimates are described in the PAN North America report *Secondhand Pesticides*, 2003. In the DEFRA-funded forthcoming research project 'Bio-monitoring for pesticide exposures (CTD 0301)' there is an acknowledgement of the uncertainties surrounding current estimates of exposure based on predictive models used in the evaluation process.

***PUBLIC OPINION***

Since launching our Right to Know questionnaire at an event in April, we have received hundreds of completed returns (of hard copies at events, and website email versions). There has been an overwhelmingly positive response to the following question:

***When pesticides are used locally (on footpaths, verges, paths, parks and fields, public buildings, your workplace etc) do you believe you should have the right to advance notice of what the chemicals are, and when they're applied?***

A first batch of 100 anonymised questionnaire responses (hard-copy version – email not so easy to anonymise), received so far, is enclosed with this letter; further batches will be sent.

We hope this response is useful and look forward to hearing from you.  
Yours sincerely

Alison Craig, PAN UK

Cc Maurice Frankel, Campaign for Freedom of Information  
Dr Miles Thomas, Central Science Laboratory, PUSG