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*par. Mr. Wied.*

January 14, 1993

**MEMORANDUM**

**TO: KATIE MCGINTY  
SPECIAL ASSISTANT TO THE PRESIDENT FOR ENVIRONMENTAL  
ISSUES**

**FROM: JIM LYONS**

**SUBJ: PENDING EPA ANNOUNCEMENT RE: DELANEY DECISION**

First of all, congratulations on your new assignment. Best of luck, and I hope we'll have many future opportunities to work together.

This may (or may not) be your first issue under the auspices of your new office, but, here it is.

**Issue**

EPA is considering the issuance of a Federal Register Notice regarding those pesticides and commodities that are affected by the Circuit Court decision requiring them to comply with the Delaney Clause in the Federal Food, Drug, and Cosmetic Act (FFDCA).

**Background**

Pesticide use in the U.S. is subject, primarily, to the requirements of two statutes -- the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA).

FIFRA authorizes the registration and use of pesticides for food and non-food uses. It provides the requirements for registering pesticides and the guidelines for cancelling or suspending a given use when the threat of "unreasonable adverse effects on the environment" (which includes people) exist.

FFDCA sets the standards for establishing a food-use tolerance which is needed to register a pesticide for such a use. That is, the amount of pesticide residue that is permissible on a product (at the farm gate) for it to be legally used in food production. Without a tolerance, a pesticide may not be registered for a food use. Pesticides are registered by use -- i.e., a specific pesticide may be used only on those products for which it has a tolerance and is registered. For example, pesticide X may be registered for use on soybeans and tomatoes, but not be registered for use on string beans.

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Under FFDCA, there are two types of tolerances. A "Section 408" tolerance is for residues on the raw agricultural commodity. A "Section 409" tolerance is for products that are processed in which the residue might concentrate. Therefore, a product may have a tolerance for tomatoes -- to use in salad -- but a different tolerance for processed tomatoes -- to be used in "V-8".

Under the "Delaney Clause" of the FFDCA, no food additives which cause cancer may be included in the production of a processed food. Pesticides which can cause cancer, even if they show up at extremely low levels -- low enough so as not to create a statistically-significant cancer risk to humans -- are therefore not to be included in processed foods. Otherwise, they are deemed adulterated (FFDCA term) and are illegal.

The reason EPA is not complying with Delaney is that they have been operating under a different policy which is based on levels of risk associated with exposure to a given pesticide. EPA determines, based on exposure to the residues of a pesticide on the different foods that a person consumes, that if the risk of contracting cancer is less than 1 in a million (based on average eating habits and a 70 year lifetime of exposure) than the risks are not great enough to warrant eliminating the use. Zero risk (i.e., Delaney) made more sense when the ability to measure residues of these products was not as great as it is today -- e.g., parts per million. Many in the environmental community agree. Others believe that any unnecessary exposure to a carcinogen (e.g., using a pesticide) should be illegal.

This, in brief, is the basis for much controversy over pesticide use, which led to a federal court decision last year to require EPA to comply with the law -- i.e., the Delaney clause.

The suit was brought by NRDC -- Natural Resources Defense Council. It was appealed by EPA, who lost, and decided not to appeal to the Supreme Court.

#### Status and Current Issue

NRDC and others have been pressing to have EPA issue a policy and the list of pesticides and commodities affected by the court ruling. EPA has not come forward.

In part, they have responded to concern among the chemical industry, commodity, and food processing groups who fear that the publication of such a list might cause another food safety scare -- like ALAR. They have fought the issuance of the list on another front. Once out, this could trigger a renewed Congressional debate over food safety and give the environmental community the leverage to force changes in FIFRA. Put simply, if

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the environmental community were to give up Delaney, they might be able to get significant gains in return --e.g., Circle of Poison, changes in the FIFRA cancellation or suspension process, or elimination of benefits in pesticide registration/cancellation decisions.

Now, the week of the Inauguration, EPA is considering issuing the list. While the environmentalists are likely to be pleased, the food and agriculture groups and the pesticide manufacturers will go ballistic.

AS OF 6 PM THIS EVENING, EPA WAS UNCERTAIN IF THEY WOULD ACTUALLY PUBLISH THE LIST OF PESTICIDES AND COMMODITIES THAT ARE AFFECTED. HOWEVER, SHOULD THE EPA MOVE FORWARD -- EITHER PUBLISHING THE LIST OR SIMPLY PUBLISHING THEIR POLICY WITH REGARD TO DELANEY WITHOUT THE LIST -- YOU WILL HEAR ABOUT IT BEFORE IT IS IN PRINT.

Let me know if you need more information or want to discuss this further.

Once again, congratulations and good luck.

Sol Wachtler, New York State's former chief judge, was charged yesterday with extortion and other crimes in a Federal indictment that provided new details of what prosecutors called a 13-month campaign by the judge to threaten a former lover.

The case of Mr. Wachtler, at the time of his arrest last year one of the most influential judges in the country and a potential candidate for governor, has been watched as a measure of how such a prominent man would be treated by the very system in which he was pre-eminent.

Mr. Wachtler was arrested in November after the authorities said he arranged to pick up a \$20,000 extortion payment from his former lover, Joy A. Silverman, a prominent Republican fund-raiser in Manhattan. Since then his lawyers, citing his mental condi-

tion, have been pressing for a plea bargain that would avoid prosecution on felony charges.

But the five-count indictment handed up yesterday by a Federal grand jury in Newark ended those negotiations, officials familiar with the case said, after prosecutors insisted that Mr. Wachtler serve some time in prison.

As a result, it is now increasingly likely that Mr. Wachtler, who has been confined under arrest at home with his movements monitored by an electronic bracelet while he undergoes psychiatric treatment, will stand trial later this year. His lawyers say he plans an insanity defense.

While most of the details of the charges have been previously reported, the indictment adds several strange new twists. The indictment for the first time accuses Mr. Wachtler of using "his power, influence and resources as Chief Judge" to carry out his lengthy campaign of kidnapping threats and harassment of Mrs. Silverman, her 14-year-old daughter, and her new companion, David Samson, a partner in a New Jersey law firm.

According to the indictment, Mr. Wachtler had his staff in his Mineola, L.I., chambers open up a file on Mr. Samson, research his career and obtain confidential information on file in state courts on his application for admission to the New York Bar.

The indictment also charges that in anonymous letters to Federal and state

come home in the last few weeks because they fell ill or were found to have been deported by mistake.

#### Call for Full Compliance

After hearing unofficial reports of the compromise as it was being submitted to the Rabin Cabinet but before it was approved unanimously, the group's spokesman, Abdul Aziz al-Rantisi, a Gazan leader of the Hamas Islamic movement, rejected the idea of allowing only some of the deportees to return home.

Although she was in no position to speak for the deportees, Hanan Ashrawi, spokeswoman for the Palestinian delegation to the peace talks, also insisted that the Security Council require that Resolution 799, calling for

Rodham Clinton's student Clinton hope House to all American let them smoke.

In her first inter-guration, Mrs. Clinton last Friday only a duty of the First Lady her household — responsibilities for cy in areas like addition to banning the White House, President want to more a part of gov the Executive Mar occasion.

There may be m the one held the da tion, she said. The long meetings to w

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## E.P.A. Plans to Seek Loosening of a Law On Food Pesticides

By KEITH SCHNEIDER

Special to The New York Times

WASHINGTON, Feb. 1 — Faced with a court order to ban many important farm chemicals, the Administrator of the Environmental Protection Agency said today that she would ask Congress to relax a law that prohibits trace amounts in food of chemicals that cause cancer in animals.

At issue is a provision of the Federal Food, Drug and Cosmetic Act, known as the Delaney Clause, that bans any additive in processed food that has been shown to cause cancer in humans or laboratory animals. Last summer, a Federal appellate court in San Francisco ordered the E.P.A. to follow the law and remove from the market any pesticide that caused cancer in animals and also appeared as residues in flour, juices, baked products and other processed foods.

#### 'Say It Ain't So'

Environmental and consumer groups, which had applauded the ruling, view the Delaney Clause as the most protective public health statute ever enacted, vowed today to fight any Administration effort to overturn the act.

"Say it ain't so," said Albert H. Meyerhoff, a senior lawyer with the Natural Resources Defense Council, in a telephone interview from his office in San Francisco. "This is an Administration that ran a campaign based upon a

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American manufacturers virtually roared into 1993, according to the first solid data on the economy's momentum so far this year. Page D1.

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Under President Clinton, liberal economists from M.I.T. are supplanting conservatives from the University of Chicago. Page D1.

### A Refugee From Sex Bias

Canada is considering granting refugee status to women who are persecuted because of their sex. Page A8.

### Effects of Cellular Phones

Scientists do not believe cellular phones harm health, but seek more studies. Science Times, page C1.

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## A Brutal Day to Live Outdoors

Two homeless men built a fire yesterday under the eaves of a building to fight off the effects of plummeting temperatures. A reprieve is in store today; a high of 24 and high wind

the-veins successor?

The Cowboys are back, and it was Mr. Johnson who masterminded a remarkable turnaround in the fortunes of a team that had not made it to the Super Bowl since 1979. As fans here wildly celebrated the team's 52-17 trouncing of the Buffalo Bills in Pasadena on Sunday, they readily proclaimed a new era of Cowboy dominance, and some even saw the victory as a harbinger of a much-needed economic resurgence for their city.

But many seemed much less sure about elevating Mr. Johnson to the mythic stature accorded Mr. Landry. "I don't know," said Donna Eddins, a nurse who had driven 90 miles from the North Texas town of Honey Grove this morning to be among the first to buy an official "Cowboys — Super Bowl Champions" shirt at the team's official licensed-products store here.

"You are talking about two very different personalities," Ms. Eddins said. "I mean, Landry was kind of a national hero. Somehow, I just can't imagine any of his players doing a Gatorade dunk on Tom Landry."

Mr. Johnson, his stern demeanor notwithstanding, was dunked Sunday night, perhaps the only time all season that a strand of his hair could be seen out of place.

But even if sports-obsessed Dallasites have not yet come to revere Mr. Johnson, they seem immensely grateful for his success. With a baseball team that has never made it to the playoffs, and a basketball team that is on course this season to set an N.B.A. record for losses, this city found the Cowboys' world championship particularly welcome.

And it sure seems to have salved the anger at Mr. Landry's unceremonious dismissal by the Cowboys' new

lineman on the 1964 University of Arkansas squad, as coach. Tens of thousands turned out in the streets for a thank-you procession that basically martyred Mr. Landry, and the new leadership was both vilified and ridiculed when the team finished 1-15 in the 1989 season.

Mr. Jones was even jeered by Texans as "the Hillbilly of Valley Ranch," a reference to his Arkansas roots and the name of the Cowboys' training camp.

But as people here came to find out, some Arkansans know a thing or two about how to win. "These guys may come from Arkansas, but they didn't hay," said Tom Blackstone, a fan from Richardson, a Dallas suburb. "Nobody liked the way they did it."

dy's assassination. "But the other side of the coin is, they're winning again."

And Larry Pullen, a seafood salesman from Dallas, said he was powerfully impressed with Mr. Johnson: "I can't say I like him. But I sure respect him."

Beyond the sweet satisfaction of winning a 60-minute football game, some people in Dallas think their team's triumph after a decade of frustration could mirror a rebound for Dallas after a decade of rising crime and unemployment.

"We both went into the same tank and stayed there for the same period of time," said Mayor Steve Bartlett. "Now America's team rebounded, and in many ways Dallas is on the road to becoming America's city again." He cited slight job growth in

der profound social or economic shifts remains to be seen, of course. But it is clear that the Cowboys have provided a short-term boon to some segments of the local economy.

"People feel good," said Mr. Pullen, the seafood salesman, who added that orders have been up by more than one-third in recent weeks. "And when they feel good they spend money."

Still, not everybody here, it should be noted, is a Cowboys' fan. Tammy DeMarco moved to Dallas from Niagara Falls, N.Y., six years ago only because her employer, the Occidental Chemical Corporation, moved some of its offices here.

"I'm still a Bills fan and proud of it," said Ms. DeMarco, a customer service representative. "I'm not going to just jump on some bandwagon because I live here now."

"I don't think you can find any fan truer than a Bills fan. If you haven't sat through a game in sleet, snow and freezing rain, you're not a fan."

## E.P.A. Head Would Ease Law on Food Pesticides

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promise to enhance protection of public health and the environment. We will fight diligently to insure that promise is kept."

Any Clinton Administration proposal to allow trace amounts of pesticides in processed food would be reviewed by several Congressional Committees, including the Senate Labor and Human Resources Committee, led by Senator Edward M. Kennedy of Massachusetts, and the House Energy and Commerce subcommittee on health and the environment, headed by Representative Henry Waxman of California. Last year Senator Kennedy and Mr. Waxman opposed a similar proposal by the Bush Administration and called for strengthening the nation's pesticide laws.

If it acts on a proposal to change the

law, Congress has several options: instead of overturning the provision, it could write exemptions into it, a procedure it followed in the 1970's when allowing the sale of saccharine.

Farm groups and the chemical industry are challenging the court ruling to banish the pesticides, and the Supreme Court is to decide this month whether to hear the challenge. They have also pressed the Administration to amend the provision and today they applauded E.P.A.'s call for change.

"Our association agrees with the National Academy of Sciences, the current law doesn't work and should be changed," said Jeffrey A. Nedelman, a spokesman for the Grocery Manufacturers of America in Washington, the food manufacturing industry. "Safety decisions should be made using the best available science, not 1958 information."

Although the new E.P.A. chief, Carol M. Browner, said today that the provision of the act at the heart of the ruling, approved in 1958, was a scientific anachronism, she said her agency will work to comply with the court's strict interpretation of it until, and if, Congress changes it. On Tuesday, as a first step in complying with the ruling, the E.P.A. is scheduled to make public a list of 35 pesticides out of the 300 basic pesticide ingredients now in use that could be removed from the market unless the law is changed.

"This is a very tough issue," said Mr. Browner today in an interview. "The law is the law. And right now the law says we cannot have these chemicals concentrate in processed food. We have to accept what the law is. But at the same time we have gotten to a point where we have to say we know a lot more about these chemicals than we did 35 years ago when the law was passed."

by The New York Times

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owell, Chairman  
esterday in Fort  
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