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From the book

*A wild cub, one of the coyotes that Hope Ryden stalked and studied for her book "God's Dog."*

# The Case for the Coyote

Reviewed by  
Mary Richie

**Book World**

The reviewer, author of "A Romantic Education," recently published "Loving Upward," her second novel.

**GOD'S DOG.** By Hope Ryden.

(Coward, McCann & Geozhegan. 268 pp. \$12.50)

cluding "America's Last lose sheep, and they have to

Water



Mr. Robt

in

W



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May 14, 1975

MEMORANDUM FOR NORM ROSS  
DOMESTIC COUNCIL

SUBJECT: Predator Control

Yesterday I received the recommendations on predator control submitted by the Wool Growers. This memorandum represents both my response to the Wool Growers' presentation and my views on the issue discussed with the President.

My understanding was that the purpose of the meeting with the President was to provide the representatives of the Wool Growers and their associates an opportunity to express their views. Consequently, I did not express my own views; neither did the others present who did not subscribe to the Wool Growers' views. There are clearly two sides to this issue, and I believe it would be a serious mistake if a decision for a change in present policy were to be reached when only one side has been heard.

Opposition to the use of poisons on public lands comes from a very broad cross section of the American public. It is not limited to the environmental groups or any other single segment. Illustrative of this, EPA informs me that the week that Administrator Train announced the experimental program for testing Sodium Cyanide in the M-44 mechanism, they received some 6,000 telegrams and 4,000 letters, about 99% in protest of the action.

Consequently, I would strongly urge that before there is any change in the Executive Order or current policy on predator control poisons, the President should meet with



representatives of the important part of his constituency which does not wish to see any relaxation of the poison ban.

Mr. Quinn's letter transmitting the Wool Growers recommendations states that he is acting "on behalf of the National Wool Growers Association and the other organizations represented at last week's conference." However, my staff has been in contact with Mr. Robert Jantzen, who represented the International Association of Game, Fish and Conservation Commissioners at the meeting with the President. As Mr. Jantzen has written, the Association is preparing a separate recommendation. At least in the draft form available to us, this recommendation is quite different from that of the Wool Growers'.

The basic thrust of the Wool Growers recommendations is to rescind the existing Executive Order. That is the effect of their proposed modified executive order and it would be immediately perceived as such by the public. I very strongly advise against this procedure for the reasons outlined below. I am not commenting in detail on the specifics of the Wool Growers submissions since they are all directly related to effectively rescinding the Executive Order. I am also not going into detail on the history or nature of the predator control program and problem. I understand that the Department of the Interior is preparing you a background briefing paper which accomplishes that. You also have the Predator Control section from our last Annual Report.

The basic issue is one of a drastically declining sheep industry. Since about 1940, the industry has been in a virtually constant decline. The periods of greatest decline have accompanied the period of greatest use of poisons in predator control. Further, the decline in the industry has been roughly equivalent both in the 17 Western states where coyotes are a problem and in the 31 other sheep raising states where they are not. This situation continues. Currently the total losses of livestock in the other 31 are actually slightly greater than those in the 17 states which



have coyotes. There is no question but that the sheep industry is in serious trouble, but there is equally no question but that coyote predation is not the main problem. It is, however, a convenient target for the frustrations of the Western wool growers.

The predator control program currently being used, most with nontoxic methods, is killing as many coyotes on an annual basis as were killed on an average during the decade prior to the poison ban. In view of the methods used, this effort is probably providing more overall protection to the wool growers, since the nontoxic methods are generally more selective for the coyotes which are causing the actual trouble, than was the broad scale use of toxicants. Since the poison ban, predation is up in some areas and down in others. From the information available to us (from USDA, USDI, EPA, etc.) there is no substantiation that overall predation has significantly increased since the poison ban.

The Wool Growers recommendations include reference to the need to use poisons for predator control to protect wildlife. However, as Mr. Jantzen pointed out in the meeting with the President, predation is not a major wildlife problem. The wildlife profession itself has come out strongly in opposition to poisons in predator control. At the 1973 North American Wildlife and Natural Resources Conference, the proposed new North American Wildlife Policy was presented. This was the result of year's study by a very distinguished group of top wildlife professionals, including representation from the International Association. In terms of poisons for predator control, the Wildlife Policy stated: "Poisoning should be outlawed except for emergency use by qualified personnel."

Citizen opposition to the use of poisons in predator control is based on several factors. One is the abhorrence of what is perceived as the cruelty involved. Another is the potential damage to nontargeted animals (including birds) and to the ecosystem as a whole. A further factor involves the predators themselves. Citizens place a high



social value on predators and resent their destruction. Livestock grazing on public lands is seen by much of the public as one privileged use of such lands. There is growing opposition when this use further impacts other public use and enjoyment of those lands, particularly through the use of poisons for predator control with its real or believed impact on the predators, other wildlife, and ecosystems of the public lands.

Those of the public who are better acquainted with the situation realize that predators are not what is causing the decline of the sheep industry, and that in most cases poisons are of questionable benefit at best. This combination of considerations of morality with other factors creates strong opposition to poisons from a very broad spectrum of the nation's public.

Given these factors, recognizing that predation is not the basic problem of the sheep industry, and that poisons, even with unlimited use, have never solved the industry's problems, it is clear to me that rescinding the Executive Order would be strongly counterproductive.

Another option would be to suspend or amend the Executive Order to allow use of the M-44 under certain circumstances. I would advise against this procedure also.

The M-44 is currently in wide use under the EPA experimental program and under the USDI emergency uses. The Wool Growers have repeatedly emphasized that the M-44 is not effective. We know that the M-44 certainly has limitations on its effectiveness, and alone is not the answer. Consequently, amending the Order to allow the M-44 will at most buy a few months time. It will appear to be a step in the direction of helping the Wool Growers, but will create real problems with the rest of the public. The Wool Growers in short order will come back saying that the M-44 does not work and that we must go to 1080 or other poisons. Having set the precedent of allowing poisons on public lands, it will then be politically vastly more difficult to hold the line. Therefore, there is little



even temporary, to be gained from amending the Order to allow the M-44 and a great deal to be lost. In my judgment it will create a worse problem in the long run (long being perhaps less than six months after whatever action is taken).

The time element is a further factor to be considered if any change is contemplated. If control of poisons is shifted entirely to EPA (through amendment or rescission of the Executive Order), the administrative procedures will require many months. If this procedure involves an environmental impact statement and public hearings, the time would be extended, possibly late into 1976. Such delays would only create further frustration on the part of the Wool Growers, while doing nothing to mollify the rest of the public.

My advice, then, is: (1) leave the Executive Order in place; (2) assure that the emergency provisions of the Executive Order operate smoothly; (3) accelerate research on the toxic collar and on other methods of predator control; and (4) identify the real factors affecting the sheep industry and determine Federal policy accordingly.

I will be pleased to amplify these comments or provide any additional information.

Russell W. Peterson  
Chairman

bcc: Peterson (2), Jellinek, Widman, Talbot  
Central File - Reading File  
LMTalbot:jp 5-15-75



THE WHITE HOUSE  
WASHINGTON

May 16, 1975

TO : JIM CAVANAUGH

FROM: NORM ROSS *NR*

Per our discussion.

I don't feel that I need to  
discuss this with Cannon unless  
he wants to.



THE WHITE HOUSE

WASHINGTON

May 16, 1975

MEMORANDUM FOR: JIM CANNON  
FROM: NORM ROSS  
SUBJECT: Coyote Problem

As a follow-up to the April 29, meeting with the President on the subject of coyote predation, the National Wool Growers Association has forwarded recommendations to you directed towards a solution of the problem. The recommendations included:

- A proposed amended Executive Order
- A suggested Presidential Message to accompany issuance of an amended Executive Order
- Suggested additional directives of the President needed to effect a solution to the predator problem

Essentially, the proposed Executive Order rescinds Executive Order 11643 by eliminating its restrictions on toxicant use. The proposed Executive Order would limit the use of chemical toxicants to those permitted by the Federal Insecticide, Fungicide and Rodenticide Act. The proposal would put the solution to the problem clear in the hands of Russ Train.

The Wool Growers recommendations were staffed to EPA, Agriculture, Interior and CEQ for their review and comment.

EPA

- Opposes the proposed modification in the Executive Order. Actions to register toxicants causing secondary poisoning effects are unlikely to be forthcoming in less than two years, if at all.



- Proposal would greatly alienate the environmental community without really helping the livestock industry
- Train feels the Administration should:
  - Reintroduce Animal Damage Control legislation which provides funding for alternatives to toxicants and research
  - Give high priority in EPA to review data on cyanide
  - Develop controls on cyanide use
  - Begin to prepare an EIS for operational use of cyanide devices should they be found registerable
  - Urge Interior to proceed with rapid development of new alternatives for predator controls

CEQ

- Strongly urge that before there is any change in the current policy, the President should meet with representatives of the other side of the controversy
- A change in the Executive Order would create a worse problem in the long run
- Russ Peterson recommends that the Administration:
  - Leave the Executive Order in place
  - Assure that the emergency provisions of the Executive Order operate smoothly
  - Accelerate research on other methods of predator control
  - Identify the real factors affecting the sheep industry and determine Federal policy accordingly

The Department of Interior also opposes any modification in the existing Executive Order for the same reasons as given above. Comments have not been received from the Department of Agriculture

We have heard these arguments and have debated the issue long enough. Dick Dunham and I strongly recommend that you call Russ Train and tell him to proceed under his authority in the Federal Insecticide, Fungicide and Rodenticide Act to take those steps necessary which would permit the use of chemical toxicants for controlling predatory animals.

May 18, 1975

MEMORANDUM FOR: JIM CANNON  
FROM: NORM ROSS  
SUBJECT: Coyote Problem

As a follow-up to the April 29, meeting with the President on the subject of coyote predation, the National Wool Growers Association has forwarded recommendations to you directed towards a solution of the problem. The recommendations included:

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CEO

- Strongly urge that because there is any change in the current policy, the President should meet with representatives of the other side of the controversy
- A change in the Executive Order would create a worse problem in the long run
- Russ Peterson recommends that the Administration:
  - Leave the Executive Order in place
  - Assure that the emergency provisions of the Executive Order operate smoothly
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NEROSS/ee



EXECUTIVE OFFICE OF THE PRESIDENT  
COUNCIL ON ENVIRONMENTAL QUALITY  
722 JACKSON PLACE, N. W.  
WASHINGTON, D. C. 20006

20 MAY 1975

Dear Jim:

This is to follow up the meeting on predator control with the President. Since the purpose of the meeting was to give the Wool Growers an opportunity to express their views, those of us who held an opposite view remained silent. However, only one side of this highly charged question has been heard, and before any change in the status quo is made, it is essential that the other side be heard. If you think that the Wool Growers were angry, wait till you hear from the vastly larger cross section of our public if we start poisoning their wildlife on public lands.

Wildlife has become a significant interest of the American public. The current popularity of TV wildlife shows is just one indication of that. Poisons in themselves are red flags. The threat of returning poisons to public lands unites a mass of the public that is vastly broader than the traditional environmental interests.

The public is concerned with "non-target" as well as "target" animals and birds killed by poisons. There are no real compilations of unintentional losses, but in a study of one small area, the animals accidentally poisoned that were found included: 3 bobcats, 37 dogs, 1 house cat, 2 badgers, 4 weasels, 8 eagles, 7 magpies, 4 hawks, and 2 ground squirrels. I have attached a table of known "target" animals that were killed during the decades prior to the ban on poisons: 23,803 bears, 477,194 bobcats, 51,857 wolves, 7,264 mountain lions, and 2,823,146 coyotes. No wonder the public reaction is so great!

The other key point, of course, is that the poison ban is not what is putting the sheep industry out of business. The industry has declined dramatically since the 1940's,



and the greatest periods of decline accompanied the periods of greatest use of poisons. The decline is about the same in the 17 states with a coyote problem as in the 31 non-coyote states, and total losses of sheep are greater percentagewise in the non-coyote states. Predation and the poison ban is a convenient target for the Wool Growers frustration, but it is not the central problem.

Accordingly, my recommendation is to retain the Executive Order as it is, but to take some appropriate measures. There are further details in my memo to Norm Ross on this, which is attached.

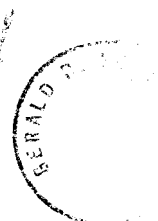
Sincerely,



Russell W. Peterson  
Chairman

Mr. James M. Cannon  
Assistant to the President  
for Domestic Affairs  
White House  
Washington, D. C. 20500

Enclosures



THE WHITE HOUSE  
WASHINGTON

May 21, 1975

TO : JIM CANNON

FROM: NORM ROSS

As per your request.



EDWARD A. McCABE  
K. MARTIN WORTHY  
FULLER HOLLOWAY  
ARTHUR PETER, JR.  
HENRY ROEMER MCPHEE  
GLENN L. ARCHER, JR.  
WM. H. BRADFORD, JR.  
JOHN W. PETTIT  
JOHN P. BANASON, JR.  
ARTHUR LEE QUINN  
STUART C. WHITE  
JOHN G. DEGOOYER  
BERNARD T. RENZY  
JEROME P. WEISS  
MARK SULLIVAN III  
ANTHONY J. THOMPSON  
JOHN H. SPELLMAN  
A. FAXON HENDERSON, JR.  
MICHAEL C. DURNEY  
CHARLES M. BRUCE  
STEVEN T. HANBLIN  
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JOHN ENRIETTO (RESIDENT PART)

May 9, 1975

Mr. James Cannon  
Assistant to the President for  
Domestic Affairs  
The White House  
Washington, D.C. 20500

Dear Mr. Cannon:

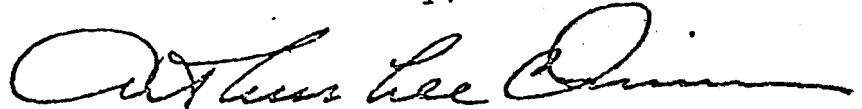
It was a great pleasure meeting you at the conference with the President on the afternoon of April 29th, during which the subject of coyote predation was discussed. We appreciate your interest in this critical matter and look forward to working with you towards a successful solution.

As you will recall, as the meeting concluded, the President requested recommendations be made to you and Secretary Butz with respect to Executive Order 11643. We are pleased to do this on behalf of the National Wool Growers Association and the other organizations represented at last week's conference. Identical recommendations have been made to Secretary Butz, and he has indicated he will coordinate with you at a later date.

It is my understanding that Mr. Norman Ross of your staff will initially review these materials, but we trust you will subsequently give them your personal attention.

Looking forward to hearing from you, and with warm regards, I am,

Yours sincerely,



Arthur Lee Quinn

ALQ:mf

Enclosures



Enclosures

- (1) A final draft of the Proposed Form of Amended Executive Order.
- (2) A suggested Presidential Message to accompany issuance of an amended Executive Order.
- (3) An explanation of Modifications in Executive Order 11643.
- (4) A Statement of Purpose and Intent pertaining to the proposed changes in Executive Order 11643.
- (5) Suggested Additional Directives of the President needed to effect a solution to the predator crisis.



Proposed Modified Executive Order

EXECUTIVE ORDERS

No. \_\_\_\_\_

Date and Citation

ENVIRONMENTAL SAFEGUARDS ON ACTIVITIES FOR ANIMAL  
DAMAGE CONTROL

By virtue of the authority vested in me as President of the United States, and in furtherance of the purposes and policies of the Act of March 2, 1931 (46 Stat. 1468; 7 U.S.C. 426 - 426(b)); the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); the Endangered Species Conservation Act of 1969. (16 U.S.C. 668aa); and the Federal Insecticide, Fungicide and Rodenticide Act, as amended (7 U.S.C. 136 et seq.), it is ordered as follows:

Section 1. Policy. It is the policy of the Federal Government (1) to limit and insure the proper use of chemical toxicants for the purpose of controlling predatory mammals, rodents or birds by permitting only those toxicants approved under provisions of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, to be used in any Federal Program; (2) that chemical toxicants be used only when and where other methods of control are inadequate and/or ineffective; (3) that when chemical toxicants are used on Federal lands, the provisions of the Federal Insecticide,

Enclosure No. 1



## EXECUTIVE ORDERS

Fungicide and Rodenticide Act notwithstanding, only agents or employees of the Federal or State Governments shall be permitted to apply such toxicants. All such animal or bird damage control programs shall be conducted in a manner which contributes to the maintenance of environmental quality, and to the conservation and protection, to the greatest degree possible, of the nation's wildlife resources, including predatory animals.

Sec. 2. Definitions. As used in this order the term:

(a) "Federal lands" means all real property owned by or leased to the Federal Government, excluding lands administered by the Secretary of the Interior pursuant to his trust responsibilities for Indian affairs.

(b) "Agencies" means the departments, agencies and establishments of the executive branch of the Federal Government.

(c) "Chemical toxicant" means any chemical substance used for killing predatory mammals, rodents or birds.

(d) "Predatory mammal or bird" means any animal or bird which habitually preys upon other animals or birds.

(e) "Rodent" means any animal in the orders rodentia or lagomorpha.

EXECUTIVE ORDERS

Sec. 3. Restrictions on Use of Chemical Toxicants.

Heads of agencies shall take such action as is necessary, in any Federal program of mammal, rodent or bird damage control under their jurisdiction to:

(a) Insure that only those chemical toxicants approved by the Administrator of the Environmental Protection Agency under the provisions of the Federal Insecticide, Fungicide and Rodenticide Act, be used in such programs;

(b) Limit the use of chemical toxicants to those circumstances where other methods of control are determined to be inadequate or ineffective; and

(c) Permit only agents or employees of the Federal or State Governments to use approved chemical toxicants on Federal lands.

Sec. 4. Rules for Implementation of Order. Heads of agencies shall issue such rules or regulations as may be necessary and appropriate to carry out the provisions and policy of this order.

GERALD FORD

THE WHITE HOUSE

Date \_\_\_\_\_

Suggested Presidential Message to Accompany Issuance  
of Amended Executive Order

On February 8, 1972, President Nixon promulgated Executive Order 11643, entitled "Environmental Safeguards on Activities for Animal Damage Control on Federal Lands." Without altering its basic purpose I have today amended this order for the following reasons:

- (1) Subsequent to Executive Order 11643, the Federal Environmental Pesticide Control Act (FEPCA) was enacted to amend the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). This legislation now provides the Environmental Protection Agency with ample authority to prevent the misuse of all harmful chemicals, authority it did not have when Order 11643 was issued.
- (2) The Federal Government experience in animal damage control, of the past three years, has shown that in many situations mechanical methods of control are effective in protecting wildlife, domestic livestock and poultry from wild animal predation. But it has also shown that under numerous circumstances and conditions mechanical means are ineffective.

Enclosure No. 2

(3) As a result of unmanageable predation in various parts of the country losses of livestock, poultry and certain species of wildlife have been excessive, causing severe economic hardship and depletion of valuable resources.

The revised Order redefines Federal Government policy in accordance with the amended FIFRA but further limits the use of chemical toxicants for predator control in Federal programs to only those approved by the Administrator of the Environmental Protection Agency. Further, chemical toxicants are to be used only when it has been determined that non-toxic methods are inadequate or ineffective and when used on Federal lands they are to be applied only by agents or employees of the Federal or State Governments.

It is in the best interests of our nation to manage wildlife populations in an effort to maintain environmental quality as well as afford protection to domestic livestock and poultry. A balanced program of animal damage control must be undertaken to achieve these purposes and this could not be done under the restrictions imposed by Order 11643.



## Explanation of Modifications in Executive Order 11643

### Title

The new title should read "Environmental Safeguards on Activities for Animal Damage Control" (strike "On Federal Land"). The scope of the modified order would be extended to include the use of toxicants on all lands, private as well as public, because FIFRA encompasses all classes of land. The additional provision of limiting pesticide use for animal damage control purposes to those cases where non-chemical techniques are "inadequate" covers private as well as public lands.

### Legal Citations

The following legal citations should be added:

- (a) The Act of March 2, 1931 (46 Stat. 1468; 7 U.S.C. 426 - 426(b)).
- (b) The Federal Insecticide, Fungicide and Rodenticide Act, as amended (7 U.S.C. 136 et seq.).

The addition of these two statutes is necessary because both provide fundamental responsibilities for animal damage control and toxicant use.

### Policy

New Section 1 (1). Policy. The suggested changes are designed to achieve the basic objectives outlined in Enclosure No. 4, "Statement of Purpose and Intent." The existing language, except for the last sentence of the order, becomes unnecessary

Enclosure No. 3

or contradictory to the intention of focusing on FIFRA. The amended order would be extended to include "rodents."

New Section 1 (2) is intended to limit the use of toxicants for animal damage control beyond provisions of FIFRA but not so tightly that administrators are unable to strike reasonable balances between non-chemical and chemical control methods, including considerations of available funds and costs of alternate methods of control, as well as adoption of newly developed methods of chemical control which may prove more desirable than mechanical measures.

New Section 1 (3) is intended to preclude any private applicator of any class under provisions of FIFRA from applying toxicants for purposes of animal damage control on Federal lands, unless such applicators are acting in their capacity as agents for Federal or State Governments.

#### Definitions

- New Section 2 (a) "Federal lands" remains the same, with the exception of eliminating sub-section (2) "real property located in metropolitan areas."
- (b) "Agencies" remains same as in old order.
- (c) "Chemical toxicant" as redefined herein is intended to exempt such products as tranquilizers, repellents or attractants from restrictions contained in Section 1 (2) and (3)

- (d) "Predatory mammal or bird" remains the same.

A definition of "rodent" has been added.

- (e) "Secondary poisoning effect" - This definition should be removed in its entirety. It becomes irrelevant since such distinctions are now to be made in accordance with FIFRA.
- (f) "Field use" becomes irrelevant and should be eliminated.

#### Restrictions on Use of Chemical Toxicants

The existing Section 3 becomes unnecessary in its entirety because of the subsequently enacted provisions of FIFRA which provide means of restricting pesticide applications. However, the amended order should provide that agency heads use toxicants in accordance with the stated policy of section 1, that is, only those approved by EPA, only where non-toxic methods will not achieve the desired results and only by government employees on Federal lands.

#### Rules for Implementation of Order

Section 4 should remain as is.

## Statement of Purpose and Intent

The proposed revisions in Executive Order 11643 are designed to limit and insure proper and responsible use of chemical toxicants for animal damage control through fundamental reliance upon the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended by the Federal Environmental Pesticide Control Act (FEPCA). FEPCA was enacted subsequent to the Executive Order and the amended FIFRA is the basic statute designed to prevent environmental abuse by misapplication of pesticides. It should, therefore, be the guiding legislation for toxicant use in animal damage control.

It should be noted that over 50,000 chemicals are registered under FIFRA, but, to our knowledge, the only ones singled out for prohibition by an Executive Order are the several formerly used in predator control. It should be further noted that these same chemicals are still registered under FIFRA for use in controlling rodents in urban areas.

The Department of Interior experience of the past three years has shown that the use of toxicants can be reduced from former levels and they need be applied only in a limited number of situations. This same experience has clearly proven that toxicants are essential under certain circumstances and are a necessary method for any balanced control program.

In addition to provisions of FIFRA, it is intended there be two other restrictions on use of toxicants for these purposes. They are:

- (1) That toxicants not be used if non-chemical methods are adequate to protect domestic animals and wildlife resources from predation. In determining "adequacy" cost dimensions as well as effectiveness of control techniques in reducing animal damage should be important factors. For example, use of shot-gunning by helicopters in areas far removed from airports may financially preclude that technique as a justified alternative to toxicant use. It is also important to recognize that future research may produce entirely new toxicants and/or delivery methods which are environmentally more desirable than non-chemical alternatives. On the other hand, it is imperative the term "inadequate" not become a loophole for escaping environmental considerations or for not providing satisfactory protection for domestic livestock, poultry or wildlife resources.

(2) On Federal lands only Federal or State employees or their properly designated agents should apply pesticides for animal damage control. This would preclude application on Federal lands by individuals, who otherwise may qualify under provisions of FIFRA, unless those persons are serving as agents for Federal or State Governments

It is intended that the modified order continue to have as a basic purpose the objective of conserving wildlife resources and environmental quality, as did order 11643.

Suggested Additional Directives of the President  
Necessary to Solve the Predator Crisis

- (1) The Secretary of Interior should be instructed to immediately apply to EPA for experimental use permits for chemicals which are likely to be useful as candidate materials for animal damage control programs under provisions of FIFRA. This will expedite the development of factual information necessary to classify and register such pesticides for use under appropriate provisions of FIFRA. Current policy under Executive Order 11643 has precluded all Federal research involving pesticides for animal damage control programs except sodium cyanide.
- (2) We believe the history of unreasonable delay by EPA in processing and responding to requests from the various States under provisions of FIFRA indicates a conscious effort to frustrate implementation of the FIFRA Act. The President should also direct the Administrator of EPA to give priority to expediting the regulatory procedures under FIFRA, especially the processing of experimental permits, and perhaps a definite target date for a full implementation of the Act.

TP  
THE WHITE HOUSE  
WASHINGTON

May 21, 1975

TO : JIM CANNON

FROM: NORM ROSS

Per your request.

Attached are the  
recommendations from  
Ag., EPA, CEQ and Interior  
regarding predator control.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

SUBJECT: Proposal to Amend Executive Order 11643

DATE: MAY 14 1978<sup>5</sup>

FROM: Russell E. Train, Administrator



TO: Normal E. Ross, Domestic Council  
The White House

Thank you for providing me with a copy of the Wool Growers' proposal to amend Executive Order 11643. I appreciate the opportunity to comment on this important matter.

The White House meeting on March 29 was for the purpose of allowing members of the livestock industry to present their views to the President. Consequently, other parties in attendance, including me, did not present their views in any depth. I am therefore directing my response to Mr. Cannon and expressing my views on the predator issue in general, as well as specifics on the Wool Grower's proposal. A copy of my letter to Mr. Cannon is enclosed for your information, which I believe fully states my reaction to the proposed modifications.

Please let me know if we can offer any further information or assistance at this time.





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

THE ADMINISTRATOR

Dear Mr. <sup>Jim</sup> Cannon:

MAY 14 1975

I appreciate the opportunity to comment on the proposed modification of Executive Order 11643 submitted by counsel for the National Wool Growers Association. Because of the magnitude of this proposed action, I would like to more broadly express this Agency's position on predator control in general, which of course has direct bearing on the Executive Order. Because of the short time frame necessary for our response, I will address the major issues which I feel should be brought to the President's attention.

Let me begin by stating that in the opinion of this Agency, the proposed modification would in effect nullify the intent and impact of the Executive Order. The Order as proposed would no longer be a tool of administrative policy; the changes would in fact render it an empty shell of platitudes mouthing a respect for environmental integrity, but in effect removing all operational guidance of substance currently contained in the Order. Nor do I feel that the proposed change is a reflection of the consensus of opinion stated in the April 29 meeting at the White House which I attended along with other Federal Agency representatives and the Wool Growers and the Cattleman's Association.

In essence, the modified Order would permit the use of toxicants where nonchemical control is "inadequate" or "ineffective"; while these terms are not explicitly defined, the Order makes clear that a cost evaluation is essential in determining "adequacy." While use of chemicals is presumably to be the "second choice" in control efforts, it is clear that poisoning is often economically advantageous to many non-chemical controls, e.g., aerial surveillance and gunning. The cost approach to determining adequacy of non-chemical controls is not required to be balanced against other factors such as potential impact on non-target populations. Further, by removing the requirement for consultation among Agencies and thus fragmenting the decision of control among land-managing departments, a different interpretation of "inadequate" and "ineffective" can be expected. I believe interagency consultation to be a vital part of the current Order, and certainly necessary to a consolidated Federal animal control policy.

Most importantly, the use of toxicants under the proposed order would be contingent upon EPA registration or experimental permit under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended. It is thus imperative to understand this Agency's position regarding predator poisons.

EPA has extensively researched the predator situation in the last several years. As you know, following the implementation of Executive Order 11643 in February 1972, this Agency suspended and canceled the registrations of predator control products containing strychnine, sodium cyanide, and 1080 on the basis that these toxicants posed an "imminent hazard to the public welfare." In response to growing complaints of increased predator losses by the livestock industry subsequent to this action, the Agency launched an investigation into the current predator control situation.

We have learned, first of all, that the decline of the livestock industry, particularly the sheep segment, is due to far larger problems than predation. Economic stresses include such factors as increased labor costs (giving rise to less efficient range management), the increase in the synthetic fiber industry, and the general supply/demand situation for meat. We have further learned that significant declines in the sheep industry in the East have occurred where coyotes are not a problem; that predator rates are up in some areas, down in others and on balance appear to remain unchanged since the toxicant ban.

Furthermore, the Cain Committee report (on which the Executive Order and our subsequent suspension/ cancellation are largely based) found non-target impacts resulting from secondary poisoning to be of significant magnitude. The FIFRA requires that registration be based upon data demonstrating a) that the product will be efficacious in its intended use and b) that it may be used without unreasonable adverse effects on the environment, which of course includes wildlife. The findings of Cain would thus be a major obstacle to registration of toxicants with secondary poisoning potential.

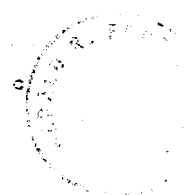
The most promising of the toxicants from a registration standpoint is sodium cyanide. As you are no doubt aware, the Agency has issued a total of nine experimental use permits for the testing of sodium

cyanide in the spring-loaded ejector mechanism (known as the M-44) in an effort to collect data which can support, or conversely refute, registration under FIFRA. Since sodium cyanide was never registered for use in the M-44 (it was formerly employed in the "getter"--an explosive device with a history of hazard to humans), we believe a proper opportunity should be allowed to gather appropriate data for registration purposes. We expect to be receiving final data results between June and November.

With respect to the other toxicants, the Agency has significant questions which stand in the way of their potential for reregistration because of their exhibited toxic effects. Effects which caused initial cancellation to be taken. Agency policy specifies that reregistration of products which have been previously suspended and/or cancelled due to a finding of unreasonable adverse effect cannot be accomplished without full exploration of benefits and risks, and without opportunity for public hearing. Suspension/cancellation may not be reversed lightly nor without the same opportunity for full public participation as provided for in the initial cancellation proceedings. Furthermore, such hearings demand the public's time and resources and cannot be initiated on a whim but only after finding of substantial new evidence. On March 18, 1975, after long deliberation about the equities involved in overturning a cancellation stemming from finding of unreasonable adverse effect, I promulgated regulations covering these types of cases. A copy is enclosed for your information.

In the case of Compound 1080 or strychnine, it is clear that a showing of substantial new evidence followed by a formal administrative hearing would be necessary prior to any reversal of the Agency's 1972 Orders. Such hearings, based upon past experience, could take from several months to two years.

Sodium cyanide, on the other hand, is in a different situation since, as I indicated earlier, a primary consideration in the cancellation appeared to be the explosive nature of the device in which it was employed. Since EPA does not register devices, it can be argued that sodium cyanide in a different device may be registered without such a hearing upon proper showing of safety and efficacy; or in the event of a hearing it is unlikely to be so protracted as in the case of other toxicants. I have directed my Office of General Counsel to advise me as to the procedural aspects in this complicated case. Also



I might mention that potassium cyanide for use in the M-44 has never been Federally registered and is thus not affected by the March 18 regulations.

As for a potential time frame for registering sodium cyanide, we are obliged, of course, to await the outcome of the experimental programs. To respond prior to the collection of adequate data could only lead to the assumption by the Wool Growers that the programs were meaningless stalling devices, and to the charge by environmentalists that we are not properly administering FIFRA. Thus, no action can reasonably be expected until fall 1975, assuming that adequate data will be available by that time. Further, the Department of the Interior advises that in any case, that Agency must prepare an environmental impact statement prior to operational use of any toxicant in its programs, and fall would be consistent with USDI's timing needs as well.

To attempt to circumvent proper procedures as outlined can lead only to greater delays due to vigorous and difficult-to-defend court suits to prevent the use of toxicants.

Another major point to which I have alluded heretofore is the reaction of the environmental organizations to any modifications in the Executive Order. The President has been exposed to the Wool Grower's and Cattlemen's thoughts on the issue. I do not know, however, if he realizes the tremendous interest in predator control by wildlife organizations and the public at large. Speaking from my own personal experience, the week that we announced the initiation of the experimental sodium cyanide programs, I received approximately 10,000 telegrams in strong opposition to my action. The hundreds of letters which followed were at least 99% in opposition to any use of predator toxicants. A recent book has come to my attention which praises the coyote as "God's dog." Walt Disney films have generated much interest in and affection for the coyote. The animal, in fact, to many symbolizes the free and vanishing wildlife in this country. Reaction to use of toxicants on public land has been particularly strong; many have voiced an objection to use of toxicants on "my land" to deter "my coyotes" to protect the "self serving" interests of the sheep industry. I therefore strongly suggest that the President solicit the input of the major environmental organizations, e.g., the National Wildlife Federation, the Humane Society, Environmental Defense Fund, Friends of the Earth, Fund for the Animals, Sierra Club, Natural Resources Defense Fund, etc., before proceeding with any changes in the Order.

EPA certainly does not intend to prevent the livestock industry from protecting its livelihood. It is concerned about the methods used. Proper animal management, denning, trapping, shooting and other alternatives are available and do not result in unacceptable environmental effects; the spring loaded cyanide device as well may be acceptable if it proves efficacious in current experiments. However, toxicants with high potential for inflicting direct and secondary poisoning on non-target species should not be allowed on either public or private lands.

The Administration has in the past two years proposed legislation to more effectively assist the livestock industry in controlling predator damage. This legislation, the Animal Damage Control Act, would have provided funds to the States and increased research into predator control techniques. EPA supported the bill, which unfortunately was not reported out of Committee.

In summation, then, EPA opposes the proposed modification in the Executive Order. Actions to register toxicants causing secondary poisoning effects are unlikely to be forthcoming in less than two years, if at all. The only feasible relief at this time lies with cyanide (sodium or potassium) for use in the M-44, and even this will depend upon results of the current experimental program and cannot reasonably be accomplished before fall 1975 and perhaps even not before early 1976. Alternative example scenarios are attached to illustrate typical situations which may arise.

On balance, it appears that the Wool Growers' proposal will greatly alienate the environmental community without really helping the livestock industry.

I believe we must develop a policy which will be in keeping with the realities of probable accomplishments in assisting the livestock industry without abandoning a sound environmental and public land policy by the Administration. Namely, the Administration should:

1. Reintroduce Animal Damage Control legislation which provides for adequate operational funding of alternatives to toxicants, mandates and funds a strong research effort and streamlines program management with the States. The Wool Growers', Cattlemen and other livestock interests should be urged to get behind the passage of such legislation.

2. Give high priority in EPA to review of data on cyanide as quickly as it is received to determine whether registration can be justified.

3. Develop controls on cyanide use, to be ready if the data can support registration. These can be developed, implemented, and enforced without special changes in the Executive Order through labeling. EPA, *USDI* and USDA should approach this jointly.

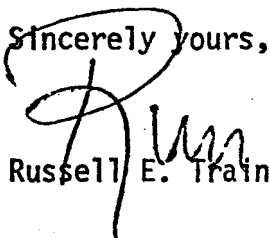
4. Begin to prepare an EIS for operational use of cyanide devices should they be found registerable, or approvable for emergency use under the FIFRA (*USDI*).

5. Urge *USDI* to proceed with rapid development of new alternatives, chemical and non-chemical, for predator controls such as the promising toxic collar. The current E.O. should not be read as prohibiting such work. EPA will lend full support to *USDI* in clearing necessary experimental use permits.

I urge, therefore, that you recommend the President reject the Wool Growers' proposal, and at the very most look to the action I have suggested here.

Again, I appreciate the opportunity to comment on this matter, and ask that you keep me personally apprised of needs for further information or actions being considered on this very important and critical area.

Sincerely yours,

  
Russell E. Train

Mr. James Cannon  
Assistant to the President for  
Domestic Affairs  
The White House  
Washington, D. C. 20500

Enclosures

Two Example Alternative Scenarios--M-44

	<u>FAST#</u>	<u>SLOW</u>
Prepare EIS*	None	
Suspend E.O.	June 75	Dec. 75
Suit on Action without EIs, filed	July 75	None
Suit on Action without EIS, cancelled	Dec. 75	None
EPA receives last EUP data	Nov 75	Nov 75
Completes review	Dec 75	Dec 75
Determines hearing needed:		
Start hearing	None	March 76
End hearing		June 76
Outcome of hearing		?
Assume positive action, no hearing	Dec. 75	None
Suit against positive action, filed	January 75	July 76
Suit against positive action, completed	Mar. 76	Sept. 76
Earliest use season	Spring 76	Fall 76
Find ineffective	Summer 76	Winter 76
Seek other Toxicants	Summer 76	Winter 76
Impact by Fall, 1976	Woolgrowers & cattlemen after new toxicant, Impact Negative	Don't have any toxicant, Impact Negative

Environmentalists negative under either option.

\*USDI believes EIS required for operational program.

#This scenario assumes that the Administrative Procedures Act does not require an adjudicatory hearing (vs. DDT Louisiana Case).

**Title 40—Protection of Environment**

**CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY**

[FRL 344-4]

**PART 164—RULES OF PRACTICE COVERING HEARINGS, UNDER THE FEDERAL INSECTICIDE, FUNGICIDE AND RODENTICIDE ACT, ARISING FROM REFUSAL TO REGISTER, CANCELLATIONS, REGISTRATIONS, CHANGES OF CLASSIFICATIONS, SUSPENSIONS OF REGISTRATIONS AND OTHER HEARINGS CALLED PURSUANT TO SECTION 6 OF THE ACT**

**Subpart D—Rules of Practice for Applications Under Sections 3 and 18 To Modify Previous Cancellation or Suspension Orders**

On February 10, 1975, the Environmental Protection Agency ("EPA") published notice in the FEDERAL REGISTER (FR 6229) of the filing of an application under section 18 of the Federal Insecticide, Fungicide and Rodenticide Act, amended ("FIFRA"), and regulations thereunder, for the use of pesticides containing DDT (1,1,1-trichlorophenyl ethane) on cotton to control the tobacco bud worm. EPA also published on February 10, 1975, notice in the FEDERAL REGISTER (40 FR 6228) of informal public hearings with respect to Louisiana's application to be held in Baton Rouge, Louisiana, on February 27-28, 1975 and Washington, D.C., on March 3-5, 1975.

The objective of EPA in holding the informal hearings was to provide all interested parties with an opportunity to formally to present their views and allow EPA to reach a determination as soon as practicable. As these informal hearings progressed it became apparent that the questions raised by the Louisiana application directly relate to the prior cancellation determination of the Administrator with respect to DDT, following extensive adjudicatory hearings and judicial review. After the informal hearings were announced, concern developed within EPA that because these prior administrative and judicial proceedings, informal hearings alone may not fully satisfy the requirements of the FIFRA, the Administrative Procedures Act and due process. EPA has concluded that the law requires that revised procedures be instituted for the

Louisiana application and for similar cases in the future, in order to provide required notice and opportunity for formal public hearings to all affected parties. If the procedures were not revised and the ultimate determination were to grant the petition, court challenges to the procedures would cause additional delays and may even result in reversal on procedural grounds. In such a situation, Louisiana would be denied the benefits of a favorable ruling for spring cotton planting because of procedural irregularities. The purpose of this notice is to set forth the required procedures and to explain reasons for requiring such procedures. With respect to the Louisiana application this notice also serves to confirm a tentative time schedule announced at the Washington, D.C. informal hearings on March 5, 1975, within which these procedures will operate.

Since the registration of DDT for pests on cotton, including the tobacco bud worm, constituted at least 75% of DDT usage subject to the cancellation order of the Administrator of June 14, 1972 (37 FR 13369) and amounted to 10 million pounds of DDT annually, the Louisiana application for use of 2.25 million pounds in Louisiana in 1975 squarely presents the question of whether the final cancellation order should be reconsidered. EPA has determined that any application under section 3 or section 18 of FIFRA for the use of a pesticide at a site and on a pest for which registration has been finally cancelled or suspended by the Administrator is in substance a petition for reconsideration of such order. Because of the extensive notice and hearing opportunities mandated by FIFRA and the Administrative Procedures Act before a final cancellation or suspension order may be issued, EPA has determined that such orders may not be reversed or modified without affording interested parties—who may in fact have participated in lengthy cancellation proceedings—similar notice and hearing opportunities.

Section 6 of FIFRA permits the Administrator to issue notice of intent to cancel a pesticide registration upon a finding by him that the pesticide "generally causes unreasonable adverse effects on the environment." Such notice is required to be sent to the registrant and made public. The registrant, or other person adversely affected, may then request a hearing. The final decision of the Administrator is required to be made after the conclusion of the hearing. The United States Court of Appeals for the District of Columbia has characterized the cancellation procedures as providing "extensive safeguards" and "elaborate procedural protection" to pesticide registrants and others and, as a result, "a substantial time, likely to exceed one year, may lapse between issuance of notice of cancellation and final order of cancellation." \* \* \* *Environmental Protection Agency*, 328 F.2d 528, 533 (1972).

The application filed by Louisiana involves the requested use of DDT on cotton. The extensive administrative and judicial proceedings leading up to final cancellation of DDT registrations not only relate directly to the Louisiana petition but also demonstrate the exhaustive proceedings which precede final EPA actions in contested cancellation or suspension proceedings.

#### PROCEEDINGS LEADING TO THE FINAL CANCELLATION OF DDT

(1) *The EDF Petition of October 1969.* On October 31, 1969, the Environmental Defense Fund, The National Audubon Society, the Sierra Club and the West Michigan Environmental Action Counsel ("EDF") filed a petition with the Secretary of Agriculture ("USDA"), requesting him (1) to issue notices of cancellation for all pesticide products containing DDT, and (2) to suspend the registrations during the cancellation proceedings. EDF's petition precipitated, as the Administrator's Order noted, "approximately 3 years of intensive administrative inquiry into the uses of DDT." Order of June 14, 1972 at 1 ("Order").

(2) *The Secretary of Agriculture's Response.* In response to EDF's petition, three things occurred. First, USDA cancelled four uses of DDT (on shade trees, tobacco, around the home and in aquatic areas); second, USDA requested comments on other DDT products; and third, USDA took no action on the request for suspension.

On November 25, 1969, USDA published a notice which stated (34 FR 18827):

The department is considering cancellation of any other uses of DDT unless it can be shown that certain uses are essential in the protection of human health and welfare and only those uses for which there are no effective and safe substitutes for the intended use will be continued.

On December 11, 1969, a reply to the petition was sent to EDF by the Director of Science and Education for USDA, stating that the Department had been "concerned for some time over the potential hazards that may result from the presence of DDT and other persistent pesticides in the environment," and listing several actions, including the above cancellations, that had been taken. No specific mention was made of EDF's request for suspension.

(3) *Environmental Defense Fund, Inc. v. Hardin (DDT-I)* On December 29, 1969, EDF filed a petition in the Court of Appeals for the District of Columbia seeking review of USDA's failure to comply fully with their requests.

On May 28, 1970, in *Environmental Defense Fund, Inc. v. Hardin*, 138 U.S. App. D.C. 391, 428 F.2d 1093 (1970), the Court held that EDF had standing to challenge the Secretary's determinations under FIFRA, that a refusal to suspend was reviewable, and that the inaction on the suspension request was ripe for review. This Court noted that:

Numerous scientific studies and several reports to government agencies have concluded that DDT has a wide spectrum harmful effects on nontarget plant and animal species; it increases the incidence of cancer and reproductive defects and its residues persist in the environment and in the human body long enough to be found far in time and space from the origin application. 428 F.2d at 1096-97.

and remanded to the Secretary:

Either for a fresh determination on the question of suspension, or for a statement of reasons for his silent but effective refusal to suspend the registration of DDT. If he persists in denying suspension in the face of the impressive evidence presented by petitioners, then the basis for that decision should appear clearly on the record, not in conclusory terms but in sufficient detail to permit prompt and effective review. 428 F.2d at 1100.

In addition, the Court ordered USDA to decide "on the record" whether to issue the remaining requested cancellation notices or to explain the reasons for deferring the decision still further. *Ibid.*

(4) *The "Statement of Reasons" of the Secretary and Additional Cancellations.* On June 23, 1970, the Secretary filed a "Statement of Reasons Underlying the Decisions on Behalf of the Secretary with Respect to the Registration of Products Containing DDT." At the outset he adhered to "the prior determination that no DDT registration should be suspended at this time, and that further action with respect to cancellations should await completion of (USDA's intra-agency) use-by-use evaluations presently in progress." Statement of Reasons at 1. He went on to make the following findings:

(1) "that there are reports of carcinogenicity resulting from the administration of large doses of DDT in test animals" (p. 1);

(2) DDT is persistent and accumulates in animal tissues (p. 3);

(3) "DDT is present in most forms of animal life" (*ibid.*);

(4) "there is information which suggests that DDT is interfering with the reproduction of certain raptorial birds and may be a contributor, among other factors, to the decline of some of these species" (*ibid.*);

(5) "DDT is moderately toxic to honey bees" (*ibid.*);

(6) "DDT in lakes and streams has been a factor in fish mortality and reproductive failures" (*ibid.*); and

(7) When DDT accumulates in "detritus" food some harm may be done to detritus feeders" (pp. 3-4).

He concluded (p. 8) that:

(1) DDT is not an "imminent hazard to human health";

(2) "there are some adverse effects upon certain species of fish and wildlife";

(3) "DDT has indisputably important and beneficial uses in connection with human health and agriculture, and there are not yet available substitutes for all [emphasis added] essential uses";

(4) DDT use should be reduced to "uses which are essential to the public health and welfare"; and

(5) there should be "continuation of the review of the possible effects (both beneficial and deleterious) of DDT."

In addition to issuing the Secretary's statement of reasons, USDA took other

action subsequent to the filing of EDF's initial petition. Specifically, on February 26, May 6 and August 18, 1970, in order to protect man and the environment from the hazardous use of DDT, notices of cancellation were issued covering registrations for a number of vegetable, grain, fruit, forestry, livestock, nursery and lawn uses of products containing DDT.

(5) *Environmental Defense Fund v. Ruckelshaus (DDT II)*. On January 7, 1971, after reviewing USDA's Statement of Reasons, the Court remanded the case a second time, this time to the Administrator of the newly-created Environmental Protection Agency, who had just been given authority for administration of the FIFRA. *Environmental Defense Fund v. Ruckelshaus*, 142 U.S. App. D.C. 74, 439 F. 2d 584 (1971).

The Court determined that the Secretary's refusal to suspend or cancel all registrations of DDT had been predicated on an "incorrect interpretation of the controlling statute." 439 F. 2d at 588. Noting in particular that the Secretary had found that DDT at large dosages caused cancer in experimental animals and that DDT was toxic to certain birds, bees, and fish, the Court stated that it was "plain that he found a substantial question concerning the safety of DDT." 439 F. 2d at 594-95. When such a question exists, this Court held, the administrative procedure must be "triggered." Accordingly, the case was remanded to the Administrator with instructions to issue notices of cancellation with respect to the remaining uses of DDT.

(6) *The Administrator's Issuance of Notices of Cancellation*. On January 15, 1971, the Administrator issued notices of cancellation with respect to all remaining registrations of DDT products.

More than 50 registrants filed objections and a request for a public hearing. Two registrants, Montrose Chemical Company and Crop King sought advisory committee consideration. In addition to EDF, several other parties intervened in the hearing, namely: USDA, The National Agricultural Chemicals Association (NACA), H. P. Cannon & Son (a Delaware food processor, only as to use of DDT on sweet peppers) and Eli Lilly & Company, a former registrant of one DDT product. Montrose and Crop King were not parties to the public hearing.

(7) *The Administrator's March 18, 1971 Refusal to Suspend*. In response to Court order that he reconsider the question of suspension, the Administrator issued a statement of "Reasons Underlying the Registration Decision Concerning Products Containing DDT, 2,4,5-T, Aldrin and Dieldrin" on March 18, 1971. It set forth the reasons why the Administrator deemed suspension of DDT products unnecessary in view of the administrative proceeding then underway, and articulated general standards relating to pesticide cancellation and suspension matters. The Administrator noted that:

This determination is supported by the nature of the present effects of DDT. DDT is a hazard by virtue of its potential toxicity at prolonged low levels of exposure. This hazard is made acute by the persistence, mo-

bility, and biomagnification of DDT in the environment. Recognizing these characteristics, the four government committees which have studied the DDT problem in depth between 1963 and 1969 have all recommended that its use be phased out over a period of time. [Footnote omitted] None have recommended an immediate ban. However, the time has come for resolution of the DDT issue in light of the standards set out in the FIFRA. This is now being done through the orderly administrative forum provided by the statute in the cancellation proceedings.

(8) *Advisory Committee Report*. The advisory committee requested by Crop King and Montrose, and composed of experts nominated by the National Academy of Sciences, began deliberations on DDT in May, 1971. On September 9, 1971, the committee issued its report and recommendations. After a lengthy discussion of the scientific evidence of the hazards of DDT use, the committee found that DDT posed an imminent hazard to the environment and recommended that all DDT uses be rapidly phased out. Previously, four Presidential and other scientific commissions recognized the inherent hazards of DDT. "Use of Pesticides." A Report of the President's Science Advisory Committee (May, 1963); "Restoring the Quality of Our Environment," Report of the Environmental Pollution Panel, President's Science Advisory Committee (November, 1965); Report of the Committee on Persistent Pesticides, Division of Biology and Agriculture, National Research Council, to U.S. Department of Agriculture (May 1969); the Report of the (H.E.W.) Secretary's Commission on Pesticides and Their Relationship to Environmental Health (Mark Commission) (December, 1969).

(9) *EDF v. Ruckelshaus (DDT III)*. EDF returned to Court a third time to challenge the Administrator's refusal to suspend. Since the advisory committee report was issued just prior to oral argument, the case was remanded to EPA for further consideration of the suspension issue in light of the advisory committee findings.

(10) *The Administrator's November 1, 1971 Statement*. In a statement filed with the Court on November 1, 1971, the Administrator again determined not to suspend DDT products. In reaching that decision he noted that the advisory committee had found:

DDT spreads from its site of application and is carried throughout the global biosphere' (Conclusion 2, page 39); and DDT and its metabolites persist for years in the environment and become concentrated in certain species of fish and wildlife, which suffer either present or potential danger therefrom (Conclusion 3, page 39).

However, the Administrator concluded, as the advisory committee had similarly concluded,

... there will be no appreciable difference in hazard to the public whether the registration of DDT is immediately suspended or whether it is cancelled in the near future, if warranted. Therefore, the harm to the public from DDT cannot be lessened by immediate suspension as opposed to appropriate cancellations upon the orderly completion of the cancellation procedures.

(11) *EDF v. Ruckelshaus (DDT IV)*. With the administrative proceedings in process, the Court on December 9, 1971, denied EDF's suspension petition, while at the same time granting EDF the right to renew its petition if the administrative proceedings were not completed by April 15, 1972.

(12) *Formal Public Hearings*. Formal public hearings commenced on August 17, 1971, before a hearing examiner and concluded on March 16, 1972. During those eight months, 123 witnesses<sup>1</sup> testified, and 363 exhibits were introduced into evidence. The DDT industry presented 17 witnesses and introduced 53 exhibits; USDA, in a dual role as registrant (of two agricultural pest quarantine products) and intervenor, presented 40 witnesses and 94 exhibits; EDF presented 13 witnesses and introduced 66 exhibits; and the EPA staff presented 47 witnesses and introduced 132 exhibits. The remaining witnesses and exhibits were introduced by H. P. Cannon and Eli Lilly. The transcript of the evidentiary hearing contains more than 9,300 pages.

(13) *The Examiner's Recommended Decision*. The Hearing Examiner's recommended decision was issued on April 25, 1972. Stating that in order to cancel DDT, he would either have to find that DDT directly causes cancer in man or makes the "earth uninhabitable" the Examiner concluded that the "DDT products in issue were not misbranded under the FIFRA (7 U.S.C. 135b(2), (z)(2) (c), (d) and (g))"; that, as a matter of law, DDT use is not a carcinogenic, mutagenic or teratogenic hazard to man; and that DDT did not have a deleterious effect on fish or wildlife. Rec. Dec. pp. 92-94.

(14) *Oral Argument Before the Administrator*. On May 16, 1972, the Administrator personally heard over three hours of oral argument on the exceptions raised by the various parties.

(15) *The Administrator's Cancellation Order of June 14, 1972*. On June 14, 1972, the Administrator issued an order cancelling all DDT registrations except those for public health and agricultural pest quarantine use. The order established December 31, 1972, as the effective date of the cancellations.

At the outset, he stated that he was "persuaded . . . that the long-range risks of continued use of DDT for use on cotton and most other crops is unacceptable and outweighs any benefits." Order at 1.

The Administrator found that DDT is persistent, highly mobile in the environment, biomagnified in food chains, and has deleterious effects on beneficial organisms. The bulk of his Opinion and Findings were concerned with the harmful effects resulting from these properties and assessment of the asserted bene-

<sup>1</sup> 38 of the witnesses were wildlife biologists, 32 were entomologists, 9 were toxicologists or pharmacologists, 5 were cancer experts, 6 were chemists, 5 were medical doctors, 2 were economists, and 6 were businessmen. The remaining witnesses represented other miscellaneous disciplines and fields.

fits of the DDT uses in issue. He found that DDT is a potential human carcinogen and presents a real carcinogenic risk to man. See Findings at 3.

He also found widespread hazards to birds, fish and other animal life caused by use of DDT, specifically (*ibid*):

1. DDT affects phytoplankton species' composition and the natural balance in aquatic ecosystems.
2. DDT is lethal to many beneficial agricultural insects.
3. DDT can have lethal and sublethal effects on useful aquatic freshwater invertebrates, including arthropods and molluscs.
4. DDT is toxic to fish.
5. DDT can affect the reproductive success of fish.
6. DDT can have a variety of sublethal physiological and behavioral effects on fish.
7. Birds can mobilize lethal amounts of DDT residues.
8. DDT can cause thinning of bird eggshells and thus impair reproductive success.

He then found minimal benefits because adequate alternative pest control measures were available. Finding V-10. He ultimately concluded that almost all uses of DDT were not safe, that the risks of use far outweighed any benefits and that it was therefore misbranded under FIFRA.

(16) *EDF v. EPA (DDT V)*. Coahoma Chemical Company, EDF and other parties sought review of the Administrator's final cancellation order in the Court of Appeals. Observing that the order was issued "after a lengthy administrative review. . .," the Court affirmed the determination and order of the Administrator. *Environmental Defense Fund, Inc. v. Environmental Protection Agency*, 489 F.2d 1247, 1249 (D.C. Cir. 1973). In so doing the Court rejected industry argument that:

\*\*\* the Administrator's findings are insufficient in that they are based to a large extent on data which does not directly and specifically relate to the use of DDT to combat the boll weevil and the bollworm in the cotton growing areas of the Southeast.

The Court went on to find that:

It is true that much of the evidence in the record concerning dangers of DDT does not specifically relate to this one area or to the use on cotton crops. However, it is not necessary to have evidence on such a specific use or area in order to be able to conclude on the basis of substantial evidence that the use of DDT in general is hazardous. The Administrator has pointed to evidence in the record showing that use of DDT except in minuscule amounts in highly controlled circumstances should be curtailed because of unreasonable risks to health and the environment. Reliance on general data, consideration of laboratory experiments on animals, etc., provide a sufficient basis to support the Administrator's findings, even with regard to each special use of DDT, 489 F.2d at 1253-54 (footnotes omitted).

*Other Cancellation and Suspension Proceedings.* In each of the other major cancellation and suspension proceedings initiated pursuant to Section 6, EPA has similarly provided extensive notice and formal hearing opportunities.

The aldrin and dieldrin suspension order issued by the Administrator on October 1, 1974 followed almost three years

of administrative proceedings. The initial cancellation notice for the major uses of aldrin and dieldrin was issued by the Administrator on March 18, 1971. Formal administrative hearings commenced on August 7, 1973. During the following twelve months of hearing, 249 witnesses testified, and over 35,000 pages of transcript and exhibits were considered and the suspension is now subject to judicial review by the Court of Appeals for the District of Columbia.

Similarly, the two administrative proceedings currently in progress with respect to pesticide products containing mercury and mirex have involved lengthy hearings. The notice of intent to hold hearings on mirex was issued on March 28, 1973. The formal hearings were begun on December 3, 1973 and have not yet concluded. To date, over 60 witnesses have testified in those hearings resulting in a record of over 12,400 pages. As in the aldrin and dieldrin proceedings, a scientific advisory committee report on mirex was prepared prior to the commencement of the formal hearings.

The cancellation notice of pesticide products containing mercury was issued on March 22, 1972. The formal administrative hearings began on October 1, 1974 and are still in progress. Forty witnesses have testified thus far in those hearings generating a record of over 2,400 pages.

#### THE REQUIRED PROCEDURES

In cancellation and suspension cases such as those outlined above, where EPA has finally determined to cancel or suspend a pesticide registration after exhaustive notice and opportunities for hearing as mandated by FIFRA and the Administrative Procedure Act ("APA"), fairness requires that such final orders not be modified or reversed lightly. Such prior orders should not be modified or reversed without notice and opportunity for formal public hearings. The formal on-the-record decision making process imposed by FIFRA and the APA as a necessary prerequisite to final cancellation or suspension would be rendered meaningless if the Administrator were to modify or reverse such orders without notice to the public, without an opportunity for formal hearings and without limiting his consideration to a formal hearing record. Such an informal process could greatly prejudice the interests of parties to the original proceedings. In the original proceedings they had the opportunity to be represented by counsel, to present witnesses and documentary evidence and to cross-examine witnesses of other parties. They had the opportunity to argue their cases before an independent hearing examiner and before the Administrator. An informal process to modify or reverse final orders would not provide such opportunities, would not protect the procedural rights of affected persons and would undercut the statutory scheme required by FIFRA.

Formal reconsideration of prior orders should only be granted where there is substantial new evidence which may materially affect the order. The provisions

of FIFRA relating to notice and to the opportunity of adversely affected parties to join in formal hearings are broadly drafted to permit maximum participation in the cancellation proceedings by other Federal agencies, the States, industry, environmental groups, and private citizens. With such broad opportunity to participate in the original proceedings the public interest—and the interests of the parties who participated in such proceedings—requires that the issues before the Administrator not be relitigated without a threshold determination that there is substantial new evidence which may materially affect the prior order. This procedure does not prejudice the interests of parties seeking modification. If there is substantial new evidence, a formal hearing should be convened to demonstrate the materiality of such evidence. Moreover, the public interest demands that public agencies not be required to expend limited resources on reconsideration of facts previously adjudicated. Public resources should not be committed to reconsider a prior order unless there is substantial new evidence which may materially affect such order.

For the foregoing reasons, EPA is adopting a new Subpart D to the Rule of Practice (40 CFR Part 164) setting forth the procedures to be followed in the case of an application under FIFRA sections 3 or 18 which requests use of pesticide at a site and on a pest for which registration has been finally cancelled or suspended. These revised procedures require that in any such case the Administrator will initially determine, on the basis of the application and supporting data, whether there is substantial new evidence which may materially affect the prior order and whether such evidence could not have been discovered by due diligence on the part of the parties in the original proceeding. If it is determined that there is no such evidence then the application will be denied. If it is determined that there is such evidence then a formal hearing will be convened to determine whether such evidence materially affects the prior order and requires its modification. This determination will be made on the basis of the record in the hearing and the recommendations of the administrative law judge presiding over the hearing, taking into account the human and environmental risks found by the Administrator in his prior order and the cumulative impact of past, present, and anticipated uses in the future. The procedures adopted today also provide that in emergency circumstances the Administrator may rule on the application without convening a formal hearing when he determines that: (1) the application presents a situation involving need to use the pesticide to prevent an unacceptable risk to human health, or (2) there is no other feasible alternative solution to such risk and (3) the time available to avert the risk to human health or fish and wildlife is insufficient to permit convening

hearing; and (4) the public interest requires the granting of the requested use as soon as possible.

Notice of the Administrator's determinations regarding substantial new evidence will be published in the FEDERAL REGISTER, as will notice of findings of emergencies which require action without hearing.

In the case of the petition by the State of Louisiana it is anticipated that the Administrator will make his determination as to whether substantial new evidence exists on or about March 14, 1975. If it is determined that no substantial new evidence is presented then the petition will be denied. If it is determined that substantial new evidence is presented then notice of a formal public hearing will be issued as soon as possible and it is anticipated that, depending on the date of the Administrator's determination, the hearing would commence on March 21, 1975, and be scheduled for approximately five days, with the presiding officer's recommendations due approximately four to five days after the hearing and a final determination by the Administrator anticipated to be made approximately four to five days thereafter. Notice of the revised procedures set forth in this publication and of this tentative time schedule was given to all parties involved in the informal public hearings held in Washington, D.C., on March 5, 1975. Because of the March 5, 1975 notice to interested parties, including the State of Louisiana, the publication of this regulation on the eve of the Administrator's anticipated decision as to substantial new evidence will not prejudice the interests of interested parties including the State of Louisiana. All interested parties received notice of these procedures on March 5 and were encouraged to submit an additional brief statement summarizing what they maintain to be substantial new evidence on March 10, 1975. The State of Louisiana, and other interested parties have submitted such statements.

In addition, the Louisiana application was filed under FIFRA section 18 pursuant to which Louisiana is required to show that there is a pest outbreak for which no alternatives are available and which will result in significant economic or health problems (40 CFR Part 166). Louisiana has questioned whether EPA is now changing the substantive standard by which its application will be evaluated. The procedures set forth in this regulation do not, however, change the substantive rules by which the Louisiana application will be measured. The issues raised by the Louisiana application under section 18 were adjudicated and finally decided in the 1972 DDT cancellation case. In that case the Administrator was required to make, and made, specific findings and conclusions with respect to the risks and benefits associated with DDT use on cotton. The Administrator's findings and conclusions were then affirmed by the Court of Appeals for the District of Columbia. Thus, no

showing under section 18 of a pest outbreak, of unavailability of alternatives and of significant economic problems could now be made without substantial new evidence. The procedures set forth in this regulation clarify the application of the general rules under sections 3 and 18 to specific cases, such as the Louisiana application, which in substance request modification or reversal of a prior final order.

Following the 1972 DDT cancellation order, EPA permitted limited quantities of DDT for temporary use to control the pea leaf weevil and the tussock moth in specific areas. In 1973 and 1974 DDT was authorized for use for the pea leaf weevil in Idaho and Washington. These authorizations considered the available evidence "in light of the terms of the June 1972 (cancellation) order \* \* \*" (39 FR 10322). However, the use of DDT for the pea leaf weevil was not cancelled by the Administrator in his 1972 order and thus the pea leaf weevil applications did not in substance request the use of a pesticide on a site and against a pest which was cancelled by final order.

In 1974 DDT was authorized for use on the Douglas-fir tussock moth in Oregon, Idaho and Washington. That decision specifically stated that: "The use of DDT for control of the tussock moth was not specifically addressed in (the 1972 DDT cancellation) order, but there is no present registration of DDT for this purpose." 39 FR 8377. The use of DDT on the Douglas-fir tussock moth was not cancelled by the Administrator in his 1972 order. This use had been registered in 1947 by the Forest Service, but the registration was later withdrawn without objection.

To the extent that the procedures announced in this notice may differ from prior agency practice as observed in the pea leaf weevil, tussock moth and other cases, EPA has concluded that such differences are necessitated for the reasons set forth in this preamble.

In accordance with 5 U.S.C. section 553, the procedures set forth in these regulations shall take effect upon publication, without notice and public procedure thereon, because they contain rules of agency procedure and practice which are not required to be issued as proposed rulemaking. For the reasons set forth in this preamble, EPA finds for good cause that the effective date of these regulations will not be postponed for 30 days after publication because the currently pending application by the State of Louisiana requests a determination as soon as possible and EPA has determined that these procedures should be implemented immediately so that the Louisiana application may be processed in accordance with them.

For the reasons set forth herein, Title 40, Part 164 of the Code of Federal Regulations is hereby amended by adding a new Subpart D to read as follows:

Dated: March 12, 1975.

RUSSELL E. TRAIN,  
Administrator.

**Subpart D—Rules of Practice for Applications Under Sections 3 and 18 To Modify Previous Cancellation or Suspension Orders**

- Sec.  
164.130 General.  
164.131 Review By Administrator.  
164.132 Procedures governing hearing.  
164.133 Emergency waiver of hearing.

**AUTHORITY:** Sec. 25(a) and 6 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended by the Federal Environmental Pesticide Control Act of 1972 (86 Stat. 997).

**Subpart D—Rules of Practice for Applications Under Sections 3 and 18 To Modify Previous Cancellation or Suspension Orders**

**§ 164.130 General.**

EPA has determined that any application under section 3 or section 18 of the Act to allow use of a pesticide at a site and on a pest for which registration has been finally cancelled or suspended by the Administrator constitutes a petition for reconsideration of such order. Because of the extensive notice and hearing opportunities mandated by FIFRA and the Administrative Procedures Act before a final cancellation or suspension order may be issued, EPA has determined that such orders may not be reversed or modified without affording interested parties—who may in fact have participated in lengthy cancellation proceedings—similar notice and hearing opportunities. The procedures set forth in this Subpart D shall govern all such applications.

**§ 164.131 Review by Administrator.**

(a) The Administrator will review applications subject to this Subpart D and supporting data submitted by the applicant to determine whether reconsideration of the Administrator's prior cancellation or suspension order is warranted. The Administrator shall determine that such reconsideration is warranted when he finds that: (1) the applicant has presented substantial new evidence which may materially affect the prior cancellation or suspension order and which was not available to the Administrator at the time he made his final cancellation or suspension determination and (2) such evidence could not, through the exercise of due diligence, have been discovered by the parties to the cancellation or suspension proceeding prior to the issuance of the final order.

(b) If after review of the application and other supporting data submitted by the applicant, the Administrator determines, in accordance with paragraph (a), of this section, that reconsideration of his prior order is not warranted, then the application will be denied without requirement for an administrative hearing. The Administrator shall publish notice in the FEDERAL REGISTER of the denial briefly describing the basis for his determination as soon as practicable. Such denial shall constitute final agency action.

(c) If after review of the application and other supporting data submitted by the applicant, the Administrator deter-

mines, in accordance with paragraph (a) of this section, that reconsideration of his prior order is warranted, he will then publish notice in the FEDERAL REGISTER setting forth his determination and briefly describing the basis for the determination. Such notice shall announce that a formal public hearing will be held in accordance with 5 U.S.C. section 554. The notice shall specify: (1) the date on which the hearing will begin and end; (2) the issues of fact and law to be adjudicated at the hearing; (3) the date on which the presiding officer shall submit his recommendations, including findings of fact and conclusions, to the Administrator, and (4) the date on which a decision by the Administrator is anticipated.

**§ 164.132 Procedures governing hearing.**

(a) The burden of proof in the hearing convened pursuant to § 164.131 shall be on the applicant and he shall proceed first. The issues in the hearing shall be whether: (1) substantial new evidence exists and (2) such substantial new evidence requires reversal or modification of the existing cancellation or suspension order. The determination of these issues shall be made taking into account the human and environmental risks found by the Administrator in his cancellation or suspension determination and the cumulative effect of all past and present uses, including the requested use, and uses which may reasonably be anticipated to occur in the future as a result of granting the requested reversal or modification. The granting of a particular petition for use may not in itself pose a significant risk to man or the environment, but the cumulative impact of each additional use of the cancelled or suspended pesticide may re-establish, or serve to maintain, the significant risks previously found by the Administrator.

(b) The presiding officer shall make recommendations, including findings of fact and conclusions and to the extent feasible, as determined by the presiding officer, the procedures at the hearing shall follow the Rules of Practice, set forth in Subparts A and B of this Part 164.

**§ 164.133 Emergency waiver of hearing.**

(a) In the case of an application subject to this Subpart D which is filed under Section 18 of FIFRA, and regulations thereunder, and for which a hearing is required pursuant to § 164.131, the Administrator may dispense with the requirement of convening such a hearing in any case in which he determines:

(1) That the application presents a situation involving need to use the pesticide to prevent an unacceptable risk: (i) to human health, or (ii) to fish or wildlife populations when such use would not pose a human health hazard; and

(2) That there is no other feasible solution to such risk; and

(3) That the time available to avert the risk to human health or fish and wildlife is insufficient to permit con-

vening a hearing as required by § 164.131; and

(4) That the public interest requires the granting of the requested use as soon as possible.

(b) Notice of any determination made by the Administrator pursuant to paragraph (a) of this section shall be published in the FEDERAL REGISTER as soon as practicable after granting the requested use and shall set forth the basis for the Administrator's determination.

[FR Doc.75-7080 Filed 3-17-75; 8:45 am]

U.S. DEPARTMENT OF AGRICULTURE

Date May 20, 1975

FROM: Executive Assistant  
to the Secretary

TO : Norm Ross  
Room 218 Old Executive Office Building

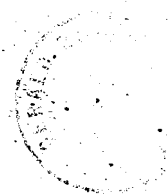
I am attaching herewith the proposed amendment to Executive Order 11643. It has been approved by Assistant Secretaries Long and Feltner. The Secretary has not had an opportunity to digest this yet, but suggested that I forward this to you immediately so Mr. Cannon will have the benefit of our thinking.

If there are any changes suggested by Secretary Butz, I will call you.



EVAN J. HALE  
Attachment


521




UNITED STATES DEPARTMENT OF AGRICULTURE  
ANIMAL AND PLANT HEALTH INSPECTION SERVICE  
WASHINGTON, D.C. 20250

Subject: Proposed Amended Executive Order 11643

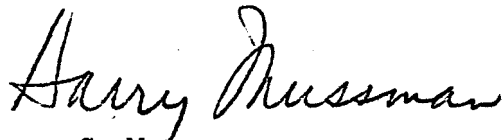
May 19, 1975

To: Robert W. Long   
Assistant Secretary for  
Conservation, Research, and Education

Through: R. L. Feltner  
Assistant Secretary for  
Marketing and Consumer Services 

Enclosed is the proposed amended Executive Order 11643, Environmental Safeguards on Activities for Animal Damage Control, as Related to Federal Lands, for Public Health, and Other Federal Programs.

Please review for approval. The deadline for this document is noon tomorrow.



Harry C. Mussman  
Acting Administrator

Enclosure

Title 3--The President

EXECUTIVE ORDER 11643, AMENDED

Environmental Safeguards On Activities For Animal Damage Control, as Related to Federal Lands, For Public Health, and Other Federal Programs

By virtue of the authority vested in me as President of the United States and in furtherance of the purposes and policies of the Federal Insecticide, Fungicide, and Rodenticide Act of 1973, as amended (7 U.S.C. 136 et seq.); The National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); The Endangered Species Conservation Act of 1969 (16 U.S.C. 668aa); and the Act of March 2, 1931 (46 Stat. 1468; 7 U.S.C. 426-426(b)); it is ordered as follows:

Section 1. Policy. It is the policy of the Federal Government to (1) use pesticides on Federal lands and in Federal programs on other lands, for the purposes of public health and to control depredating mammals and birds, only in accordance with the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended; and (2) interpret and administer the policies, regulations, and public laws on the use of pesticides in control of such mammals or birds in accordance with the National Environmental Policy Act of 1969; and (3) monitor, evaluate, and control these activities for the protection and enhancement of the environment.

All such mammal and bird control programs shall be conducted in accordance with a manner which contributes to the maintenance of environmental quality, and to the conservation and preservation of the Nation's resources, including wild and domestic animals, and agricultural and forest crops.

Enclosure No. 1



Section 2. Definitions. As used in this Order the term:

(a) "Federal lands" means all real property owned by or leased to the Federal Government, excluding (1) lands administered by the Secretary of Interior pursuant to his trust responsibilities for Indian Affairs, and (2) real property located in metropolitan areas.

(b) "Agencies" means the departments, agencies, and establishment of the Executive Branch of the Federal Government.

(c) "Pesticides" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any mammal or bird pest.

(d) "Depredating mammal or bird" means any mammal or bird which preys upon other animals, birds, or forest and agriculture crops.

(e) "Public health purposes" means any control action of mammals or birds to reduce the menace of disease to humans, wild and domestic animals.

Section 3. Restrictions on Use of Pesticides for Animal Damage Control.

(a) Heads of agencies shall take such actions as is necessary to comply with all Federal policies, regulations and laws in the use of pesticides in control of depredating mammals or birds and for public health purposes on Federal lands and in Federal programs on other lands.

(b) Heads of any Federal Agency, within their respective areas of responsibility, when in their judgment control of depredating mammals and birds, or protection of public health is inadequate and creating an



emergency, shall request the Administrator, Environmental Protection Agency, to grant emergency use of pesticides required to alleviate the emergency in accordance with Section 18, FIFRA, as amended.

(c) Heads of Federal Agencies shall act in such manner to prevent the substantial irretrievable damage to nationally significant resources which include, but are not limited to, domesticated species, endangered or threatened wildlife species.

Section 4. Rules for Implementation of Order:

Heads of agencies shall issue such rules or regulations as may be necessary and appropriate to carry out the provisions and policy of this Order.

Section 5. Amending of Previous Order:

This Executive Order amends and supersedes Executive Order 11643 in its entirety.

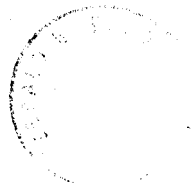


Suggested Presidential Message to Accompany Issuance  
of Amended Executive Order

Executive Order 11643, entitled "Environmental Safeguards on Activities for Animal Damage Control on Federal Lands," was promulgated as of February 8, 1972. Without altering its basic purpose I have today amended this order for the following reasons:

- (1) Subsequent to Executive Order 11643, the Federal Environmental Pesticide Control Act (FEPCA) was enacted to amend the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This legislation now provides the Environmental Protection Agency (EPA) with authority to prevent the misuse of pesticides.
  
- (2) The Federal Government experience in control of depredating mammals and birds in the past three years, has shown that in many situations mechanical methods of control are effective in protecting wildlife, domestic livestock and poultry, and forest and agriculture crops from wild animal predation. But it has also shown that under numerous other circumstances and conditions mechanical means are ineffective.

Enclosure No. 2



- (3) As a result of depredation in various parts of the country , losses of livestock, poultry and certain species, of wildlife have sometimes been excessive, causing economic hardship and depletion of valuable resources.
- (4) Since the issuance of Executive Order 11643, instances have occurred whereby wild mammals and birds have become a public health menace, such as with rabies.
- (5) Other wild mammal and bird depredations have occurred in both forest and agricultural crops requiring the use of pesticides.

The Order redefines Federal policy to include provision for public health and depredations on crops to insure proper use of pesticides on Federal lands and in Federal programs on other lands when needed. Further, the revised Executive Order reduces delays in meeting emergency use of pesticides on Federal lands for public health and control of depredating animals, yet provides fundamental environmental protection of humans, wild and domestic animals.

It is in the best interests of our nation to manage wild and domestic animal populations in an effort to maintain environmental quality as well as afford protection to humans and forest and agricultural crops. A balanced program must be undertaken to achieve these purposes.

Explanation of Modifications in Executive Order 11643

Title

The new title should read "Environmental Safeguards on Activities for Animal Damage Control, as Related to Federal Lands, For Public Health, and Other Federal Programs."

Legal Citations

The following legal citations should be added:

- (a) The Act of March 2, 1931 (46 Stat. 1468; 7 U.S.C. 426 - 426(b).
- (b) The Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 et seq.).

The addition of these two statutes is necessary because both provide fundamental responsibilities for mammal and bird damage control and pesticide use.

Policy

New Section 1(1). Policy. The suggested changes are designed to achieve the basic objectives outlined in Enclosure No. 4, "Statement of Purpose and Intent." The existing language, except for the last sentence of the order, becomes unnecessary or contradictory to the intention of focusing on FIFRA.

Enclosure No. 3

New Section 1 (2) is intended to provide a balanced control of the mammal and bird species beyond provision of the FIFRA within existing legislation relating to environmental policy.

New Section 1 (3) is intended to include provisions of existing Executive Orders relating to protection and enhancement of the environment, and pollution at Federal facilities.

Definitions

- New Section 2 (a) "Federal lands" remains the same, with the exception of excluding sub-section (2) "real property located in metropolitan areas."
- (b) "Agencies" remains same as in old order.
- (c) "Pesticides" replaces the term "chemical toxicants" to be consistent with the FIFRA and to avoid possible redefinition when and if the Toxic Substances Act is passed.
- (d) "Depredating mammal or bird" replaces the term "Predatory mammal or bird" to be consistent with the control of these species in forest and agricultural crops.
- (e) "Public health purposes" term is added to define its use in Section 1 (1).

The terms "secondary poisoning" and "field use" are now irrelevant and are eliminated.

Restrictions on Use of Pesticides

The existing Section 3 has been removed in its entirety to be consistent with provisions of the FIFRA, NEPA, and the Endangered Species Conservation Act, and the Act of March 2, 1931. However, the amended order provides that heads of agencies comply with existing policies, regulations and laws when pesticides are needed for animal damage control, and for their use under emergency provisions.

Rules for Implementation of Order

Section 4 should remain as is.

Amending of Previous Order

Section 5 is added to amend and supersede Executive Order 11643.

## Statement of Purpose and Intent

The revisions in Executive Order 11643 are designed to insure proper and responsible use of pesticides for mammal and bird control through fundamental reliance upon the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, by the Federal Environmental Pesticide Control Act (FEPCA). FEPCA was enacted subsequent to the Executive Order and the amended FIFRA is the basic statute designed to prevent environmental abuse by misapplication of pesticides. It should, therefore, be the guiding legislation for pesticides used in animal damage control and for protection of public health.

It should be noted that over 50,000 chemicals are registered under FIFRA, but, to our knowledge, the only ones singled out for prohibition by an Executive Order are three canceled pesticides. It should be further noted that these same chemicals are still registered under FIFRA for use in controlling rodents in urban areas.

Experience in the past three years has shown that some pesticides can be used with little, if any, hazard to the environment. This same experience has demonstrated that pesticides are essential under certain circumstances and may be necessary components of any balanced control program.

It is intended that the modified order continue to have among its basic purposes the objective of conserving wildlife and domestic resources and environmental quality.

Enclosure No. 4

Suggested Additional Directives of the President

- (1) The Secretary of Interior should be instructed to apply for registration of those pesticides which can be successfully used in mammal and bird control under provisions of the FIFRA. He should also be instructed to begin screening those pesticides for which the Denver Wildlife Research Center has data for possible substitute pesticides in mammal and bird control. Candidate pesticides should be chosen and application for registration made with the Environmental Protection Agency (EPA).
  
- (2) The President should also direct the Administrator of EPA to give priority to expediting the regulatory procedures under FIFRA for the registration of pesticides for animal damage control.

EXECUTIVE OFFICE OF THE PRESIDENT  
COUNCIL ON ENVIRONMENTAL QUALITY

722 JACKSON PLACE, N. W.  
WASHINGTON, D. C. 20006

May 14, 1975

MEMORANDUM FOR NORM ROSS  
DOMESTIC COUNCIL

SUBJECT: Predator Control

Yesterday I received the recommendations on predator control submitted by the Wool Growers. This memorandum represents both my response to the Wool Growers' presentation and my views on the issue discussed with the President.

My understanding was that the purpose of the meeting with the President was to provide the representatives of the Wool Growers and their associates an opportunity to express their views. Consequently, I did not express my own views; neither did the others present who did not subscribe to the Wool Growers' views. There are clearly two sides to this issue, and I believe it would be a serious mistake if a decision for a change in present policy were to be reached when only one side has been heard.

Opposition to the use of poisons on public lands comes from a very broad cross section of the American public. It is not limited to the environmental groups or any other single segment. Illustrative of this, EPA informs me that the week that Administrator Train announced the experimental program for testing Sodium Cyanide in the M-44 mechanism, they received some 6,000 telegrams and 4,000 letters, about 99% in protest of the action.

Consequently, I would strongly urge that before there is any change in the Executive Order or current policy on predator control poisons, the President should meet with

representatives of the important part of his constituency which does not wish to see any relaxation of the poison ban.

Mr. Quinn's letter transmitting the Wool Growers recommendations states that he is acting "on behalf of the National Wool Growers Association and the other organizations represented at last week's conference." However, my staff has been in contact with Mr. Robert Jantzen, who represented the International Association of Game, Fish and Conservation Commissioners at the meeting with the President. As Mr. Jantzen has written, the Association is preparing a separate recommendation. At least in the draft form available to us, this recommendation is quite different from that of the Wool Growers'.

The basic thrust of the Wool Growers recommendations is to rescind the existing Executive Order. That is the effect of their proposed modified executive order and it would be immediately perceived as such by the public. I very strongly advise against this procedure for the reasons outlined below. I am not commenting in detail on the specifics of the Wool Growers submissions since they are all directly related to effectively rescinding the Executive Order. I am also not going into detail on the history or nature of the predator control program and problem. I understand that the Department of the Interior is preparing you a background briefing paper which accomplishes that. You also have the Predator Control section from our last Annual Report.

The basic issue is one of a drastically declining sheep industry. Since about 1940, the industry has been in a virtually constant decline. The periods of greatest decline have accompanied the period of greatest use of poisons in predator control. Further, the decline in the industry has been roughly equivalent both in the 17 Western states where coyotes are a problem and in the 31 other sheep raising states where they are not. This situation continues. Currently the total losses of livestock in the other 31 are actually slightly greater than those in the 17 states which

have coyotes. There is no question but that the sheep industry is in serious trouble, but there is equally no question but that coyote predation is not the main problem. It is, however, a convenient target for the frustrations of the Western wool growers.

The predator control program currently being used, most with nontoxic methods, is killing as many coyotes on an annual basis as were killed on an average during the decade prior to the poison ban. In view of the methods used, this effort is probably providing more overall protection to the wool growers, since the nontoxic methods are generally more selective for the coyotes which are causing the actual trouble, than was the broad scale use of toxicants. Since the poison ban, predation is up in some areas and down in others. From the information available to us (from USDA, USDI, EPA, etc.) there is no substantiation that overall predation has significantly increased since the poison ban.

The Wool Growers recommendations include reference to the need to use poisons for predator control to protect wildlife. However, as Mr. Jantzen pointed out in the meeting with the President, predation is not a major wildlife problem. The wildlife profession itself has come out strongly in opposition to poisons in predator control. At the 1973 North American Wildlife and Natural Resources Conference, the proposed new North American Wildlife Policy was presented. This was the result of year's study by a very distinguished group of top wildlife professionals, including representation from the International Association. In terms of poisons for predator control, the Wildlife Policy stated: "Poisoning should be outlawed except for emergency use by qualified personnel."

Citizen opposition to the use of poisons in predator control is based on several factors. One is the abhorrence of what is perceived as the cruelty involved. Another is the potential damage to nontargeted animals (including birds) and to the ecosystem as a whole. A further factor involves the predators themselves. Citizens place a high

social value on predators and resent their destruction. Livestock grazing on public lands is seen by much of the public as one privileged use of such lands. There is growing opposition when this use further impacts other public use and enjoyment of those lands, particularly through the use of poisons for predator control with its real or believed impact on the predators, other wildlife, and ecosystems of the public lands.

Those of the public who are better acquainted with the situation realize that predators are not what is causing the decline of the sheep industry, and that in most cases poisons are of questionable benefit at best. This combination of considerations of morality with other factors creates strong opposition to poisons from a very broad spectrum of the nation's public.

Given these factors, recognizing that predation is not the basic problem of the sheep industry, and that poisons, even with unlimited use, have never solved the industry's problems, it is clear to me that rescinding the Executive Order would be strongly counterproductive.

Another option would be to suspend or amend the Executive Order to allow use of the M-44 under certain circumstances. I would advise against this procedure also.

The M-44 is currently in wide use under the EPA experimental program and under the USDI emergency uses. The Wool Growers have repeatedly emphasized that the M-44 is not effective. We know that the M-44 certainly has limitations on its effectiveness, and alone is not the answer. Consequently, amending the Order to allow the M-44 will at most buy a few months time. It will appear to be a step in the direction of helping the Wool Growers, but will create real problems with the rest of the public. The Wool Growers in short order will come back saying that the M-44 does not work and that we must go to 1080 or other poisons. Having set the precedent of allowing poisons on public lands, it will then be politically vastly more difficult to hold the line. Therefore, there is little,

even temporary, to be gained from amending the Order to allow the M-44 and a great deal to be lost. In my judgment it will create a worse problem in the long run (long being perhaps less than six months after whatever action is taken).

The time element is a further factor to be considered if any change is contemplated. If control of poisons is shifted entirely to EPA (through amendment or rescision of the Executive Order), the administrative procedures will require many months. If this procedure involves an environmental impact statement and public hearings, the time would be extended, possibly late into 1976. Such delays would only create further frustration on the part of the Wool Growers, while doing nothing to mollify the rest of the public.

My advice, then, is: (1) leave the Executive Order in place; (2) assure that the emergency provisions of the Executive Order operate smoothly; (3) accelerate research on the toxic collar and on other methods of predator control; and (4) identify the real factors affecting the sheep industry and determine Federal policy accordingly.

I will be pleased to amplify these comments or provide any additional information.



Russell W. Peterson  
Chairman

Thursday, May 22, 1975

Who wrote  
Two labels?

McClure - 1) Two types of  
exposures

a) Dangerous  
~~in~~ hands  
of experts  
only -  
only want  
it that way

Bait  
station  
type of  
poison  
under strict  
governmental  
control

Art -  
Reluctantly -  
few of  
3 years

b) M-U-U -  
for general  
use - by  
Livestock

THE WHITE HOUSE

WASHINGTON

May 27, 1975

MEMORANDUM FOR: JIM CANNON  
FROM: DOUG COSTLE *DC*  
SUBJECT: Coyote Predation; Wool Growers' Proposal  
to Amend Executive Order 11643

After reviewing the EPA, CEQ and Interior positions on the Wool Growers' proposal, I think that our principal objective should be to move this out of the White House, if possible. As long as it is here, it represents a no-win proposition for the President.

The situation basically comes down to this:

1. The evidence for and against the use of chemicals for predator control is inconclusive. Both sides make strong arguments on the basis of available data. The available data is simply not definitive.
2. Interior, CEQ and EPA are unanimously opposed to alteration of the Executive Order or putting the President in the position of "over promising" to the Wool Growers.
3. Amending the Executive Order will not, by itself, advance the cause of the Wool Growers, but will bring down the wrath of the organized environmental community (not just the nuts, either). Specifically, even were the Executive Order to be amended, the use of 1080, strychnine, and cyanide (sodium or potassium) compounds would have to be licensed in separate proceedings by EPA under recently amended pesticides laws. The existence of the Federal Executive Order does not affect this requirement either way.

Under EPA adopted rules, 1080 or strychnine, having already been suspended once, can only be registered again upon a showing of substantial new evidence--evidence not shown to date. The use of sodium or potassium cyanide would also require EPA licensing although the probability of a favorable ruling is higher in the case of these compounds. If EPA were to license these compounds, then the Executive Order would have to be amended or it would act as a separate bar to the use of these compounds on Federal lands.

4. Interior is of the opinion that an environmental impact statement would have to be prepared before any of these compounds could be used on Federal lands (even if the Executive Order were to be dropped or amended). If they began preparing that statement now, it would be 2-4 months before a high quality draft would be ready, and 6-8 months before a final environmental impact statement could be published.
5. In an attempt to gather the necessary information for eventual licensing of cyanide compounds, EPA has issued permits for an experimental program in the use of the M-44 device. Early results look promising. Some of these experimental studies will be concluded within a matter of 3-4 months. According to EPA, the analysis of this data could be accelerated.

In short, even if the President wished to move decisively, there appears to be no "quick fix" available to him under existing laws.

#### RECOMMENDATIONS

1. That the President defer amending or dropping the Executive Order until after EPA's evaluation of the use of cyanide compounds is completed. The President will gain nothing and lose a great deal by amending the Executive Order. He will not advance the Wool Growers' cause thereby, and he will make the environmentalists mad. He will also appear to be prejudging

EPA study results before they are in and the findings of any legally prescribed formal hearings before they are held.

2. That you instruct EPA to accelerate to the maximum extent feasible the collection and analysis of data on the use of M-44. Simultaneously, instruct Interior to begin work on a draft, contingency environmental impact statement involving the use of cyanide compounds.
3. That you direct Interior to accelerate its program of research into both chemical and non-chemical alternatives (I understand that Interior has been hesitant in getting too deeply into the question of chemical alternatives).
4. That the President's new science adviser be asked to independently evaluate the available scientific data on the environmental and health effects of 1080, strychnine and any other relevant chemicals for use in predator control and assess the significance of predator control to the economic viability of the industry. This study could provide a valuable input to any EPA hearing.
5. That Russell Train work directly with the Wool Growers and clearly indicate that we understand and are sympathetic with the Wool Growers' problems and that EPA will work with them to re-evaluate the evidence on both sides of this question. I think it is important that the Wool Growers understand that we are sympathetic to their problems. They, in turn, must understand that no "instant resolution" is available to the President, for legal as well as political reasons.
6. That you and Secretary Butz sit down personally with Train, Peterson and Hughes (from Interior) to hear their arguments, both on the merits and on the politics.
7. That you afford a selected responsible environmental group an opportunity to meet with you. This will avoid criticism from the environmentalists that the White House has listened to only one side of this issue. (Reference earlier correspondence from Audubon Society, et al).

As you know, I am holding several pieces of correspondence on this. If you concur in the above recommendations we can move things along fairly quickly.

Concur \_\_\_\_\_

Do Not Concur \_\_\_\_\_

See Me \_\_\_\_\_

DRAFT

THE WHITE HOUSE

WASHINGTON

May 29, 1975

MEMORANDUM FOR THE PRESIDENT

FROM: JAMES M. CANNON

SUBJECT: Coyote Predation; Wool Growers' Proposal  
to Amend Executive Order 11643 --  
For Your Information

We have reviewed the coyote control question in detail with all parties involved, including the Wool Growers.

We feel that it would be inadvisable to amend Executive Order 11643 at this time because, under recently amended laws, formal EPA hearings, findings, etc. are required before such an executive action by you can effectively change the situation.

I propose to take the following steps to help solve this problem.

1. Russ Train will work with the Wool Growers to re-evaluate the evidence on both sides of this question. It will be explained to the Wool Growers that no "instant resolution" is available to the President, for legal reasons.
2. EPA will accelerate to the maximum extent practicable the collection and analysis of data on the use of cyanide compounds for control. This is the most promising solution.
3. I will ask the new Science Adviser (or the National Academy of Sciences) to independently evaluate the available scientific data on the environmental and health effects of all alternatives for use in predator control and to assess the significance of predator control to the economic viability of the industry.
4. I will ask Interior to accelerate their research into both chemical and non-chemical predator control alternatives and to begin work on a draft environmental impact statement involving the use of cyanide compounds.

A more detailed memorandum from a member of my staff is attached at Tab A.

Agree \_\_\_\_\_ Disagree \_\_\_\_\_ See me \_\_\_\_\_

THE WHITE HOUSE

WASHINGTON

May 27, 1975

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FROM: DOUG COSTLE *DC*  
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Concur \_\_\_\_\_

Do Not Concur \_\_\_\_\_

See Me \_\_\_\_\_



DOMESTIC COUNCIL CLEARANCE SHEET

DATE: May 29, 1975

JMC action required by: \_\_\_\_\_

*Book  
let's  
Discuss  
Jim*

TO: JIM CANNON

VIA: DICK DUNHAM *[Signature]*

~~JIM CAVANAUGH~~

FROM: DOUG COSTLE

SUBJECT: Coyote Predation; Wool Growers' Proposal to Amend Executive Order 11643

COMMENTS: *My suggestions is to  
have you show  
handle the coyote's*

DATE: 6/5/75

RETURN TO:

Material has been:

- Signed and forwarded
- Changed and signed (copy attached)
- Returned per our conversation
- Noted
- 

*Copy Ret'd to  
Dunham  
for further  
discussion*

\_\_\_\_\_  
Jim Cannon