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Deputy Director
Office of Policy and Reinvention
U.S. Environmental Protection Administration January 6, 2000

BY FACSIMILE

People for the Ethical Treatment of Animals (PETA) is the largest animal rights organization in the world. We are a non-profit organization with more than 600,000 members dedicated to animal protection. The following comments are submitted in response to a November 30, 1999, *Federal Register* notice entitled, "Review of Environmental Protection Agency Public Participation Policies." These comments are also submitted on behalf of Earth Island Institute, an environmental organization representing 100,000 members. Unfortunately, we became aware of this notice on January 5. Because the issue of public participation is of great concern to us, I contacted Deborah Dalton and was assured that if we submitted comments prior to January 7, our issues would be included in the agency's January 31 report to Administrator Browner.

General Background

The EPA requires more chemical toxicity testing on animals than any other federal agency. Tests commonly required by the EPA include skin corrosion and absorption testing, eye irritancy studies, lethal dose (acute poisoning) tests, and numerous other long and short-term studies. These tests involve forcing animals to eat, inhale, or be injected with chemicals. The standard battery of animal tests for food-use pesticides includes 19 separate animal tests on thousands of rabbits, hamsters, and dogs. Until very recently, the EPA has entirely excluded the animal protection community and animal welfare considerations from its decision-making process. The agency resists considering non-animal alternatives when they are available and has done virtually no research to develop or validate non-animal test methods.

The animal protection community has had a dismal experience with public participation at the EPA. This experience began in November 1998 when PETA learned of the voluntary high production volume (HPV) chemical testing program. We were informed of the program by a PETA member who received a mailing from the Environmental Defense Fund (EDF) – the prime champion of the HPV program. To our consternation, we quickly learned that no *Federal Register* notice had ever been published to inform interested stakeholders about the HPV program (to date, there has still been no *Federal Register* notice) and no solicitation of public input had occurred. In clear disregard of the 1981 policy on public participation, the HPV program had been developed quietly, behind closed doors, between three organizations – the EPA, the EDF, and the Chemical Manufacturers Association.

The HPV program is a massive one – both in terms of economic cost and, importantly to PETA, in terms of the numbers of animals who will be killed in this testing program. Estimates on the numbers of animals to be killed in this program have ranged from 800,000 to over 2,000,000. At the time of its proposal, the HPV program was the largest animal-testing program to have been proposed by the U.S. government. Yet not a single animal protection concern had been incorporated into the development or implementation of the program.

When PETA and other animal organizations attempted to meet and discuss these issues with EPA officials, we were met with complete disinterest and, in some cases, outright hostility. We proposed changes to the program that were endorsed by 17 animal and environmental protection organizations representing more than 10 million Americans and received no response from the agency. We suggested the use of validated non-animal test methods to replace some of the proposed animal tests and were stonewalled by officials in the Office of Pollution Prevention and Toxics. As a last resort, we were forced to bring our case against the HPV program to the public by means of a vigorous grassroots campaign. Eleven months later, in October 1999, we were finally able to wring some basic animal reduction measures out of the agency for incorporation into the HPV program.

To this day we continue to run into problems of notification, participation, and consideration of our issues with other EPA animal testing programs, such as the voluntary children's health chemical testing program (CHTP) and the endocrine disrupter screening program (EDSP). Following our interaction with the EPA on the HPV program, it was abundantly clear to EPA officials that PETA was, in fact, an interested stakeholder in the EDSP. Yet we learned of ongoing EDSP meetings only through an article in the Bureau of National Affairs' *Chemical Regulation Reporter*. After repeated requests, we were allowed to place an eminently qualified scientist on the EDSP taskforce but were denied observer status at the meeting, i.e., the meeting is officially closed to the public.

Comments on the Implementation of the EPA's 1981 Policy on Public Participation

The Office of Prevention, Pesticides and Toxic Substances has failed abysmally to follow even the minimal criteria set forth in the agency's 1981 policy on public participation. For example, Section B, "Purpose," states the following:

- *"Public participation must begin early in the decision-making process and continue throughout the process as necessary. The agency must set forth options and alternatives beforehand, and seek the public's opinion on them. Merely conferring with the public after a decision is made does not achieve this purpose."*

  The agency did not consult the public on the massive HPV program. As stated above, it was only by chance that the largest animal rights organization in the U.S. learned of the largest proposed animal testing program in the U.S. The agency was clearly not interested in soliciting our input nor in considering our concerns. The

program the agency developed with the EDF and the CMA was laid out as a done deal in the first HPV stakeholders meeting and no alternatives were suggested. The process by which the HPV program was developed and implemented makes a mockery of this stated purpose.

- *"Officials should actively seek to facilitate resolution of issues among disagreeing interests whenever possible."* Despite the fact that the animal protection coalition represented more than 10 million tax-paying Americans, no attempt was made to address our concerns with the HPV program until the Clinton Administration entered the picture. This occurred as a result of PETA's grassroots campaign and the resulting outpouring of calls, letters, faxes, and e-mails to the White House.

- *"In establishing a policy on public participation, EPA has the following objectives: …To solicit assistance from the public in identifying alternatives to be studied…To demonstrate that the agency consults with interested or affected segments of the public and takes public viewpoints into consideration when decisions are made…To anticipate conflicts and encourage early discussions of differences among affected parties…To foster a spirit of mutual trust, confidence, and openness between public*

While these objectives are admirable, it is clear that this policy has not reached the inner sanctum of such offices as Pollution Prevention and Toxics, whose main objective appears instead to be protecting its territory from any unwelcome outside intrusion or oversight. Letters from PETA to that office on the HPV program went unanswered as did letters from Congressional members, including Congressman George Brown, then ranking member on the House Science Committee. A response to Congressman Calvert, chair of the House Subcommittee on Science and Environment, was presented to him at Congressional oversight hearings on the HPV program, more than three months late.

In the CHTP, as with other testing programs, the EPA has failed to respond to, or even consider, animal protection issues. Given our recent very public opposition to the lack of animal protection concerns in the high production volume (HPV) chemical testing program, it is astonishing that the EPA is repeating many of its mistakes in this next voluntary and already highly criticized chemical testing program. Clearly the most effective way to reduce animal use is by not requiring tests when they are not needed or when the results will not provide relevant or useful information. The agency has now started to add wording about animal welfare concerns to agency documents as an afterthought whereas, to have any meaning and to conform to the 1981 policy, these concerns must be included up front in the discussion of the necessity and form of any proposed testing program.

EPA officials have attempted to ridicule animal protectionists in public meetings and have repeatedly dismissed our concerns as "misunderstandings" despite the fact that PETA representatives were often more familiar with the specifics of the proposed program and its toxicity tests and their ramifications than were EPA representatives.

> The fact that many of our concerns were eventually conceded by the agency demonstrates this fact. For example, EPA officials admitted their initial study, on which the entire HPV program was based, was "quick and dirty" and did not reveal the full extent to which data already exist on the HPV chemicals. EPA officials were also forced to concede our claim that, without some sort of amnesty, many companies would run new animal tests rather than bring forward existing data. At our insistence, EPA officials reversed a decades-long policy of requiring animal tests for genetic toxicity screening and will now allow the more sensitive non-animal test to be used.

Section D, "General Procedures for All Programs," states: *"It is necessary to identify groups or members of the public who may be interested in, or affected by, a forthcoming action…The contact list shall be used to send announcements of participation opportunities, notices of meetings, hearings…"* Clearly this was not done with the HPV program or the endocrine disrupter screening program. Despite repeated attempts over more than one year, this ex-government official has been unable to obtain access to the workings of the agency and notifications of meetings. Many EPA meetings appear to be held behind closed doors and only the favored non-governmental organizations that the agency is used to, and comfortable in dealing with are invited.

Further, section D states, "*Whenever possible, the social, economic, and environmental consequences of proposed decisions and alternatives should be clearly stated.*" In fact, the EPA is required under the Toxic Substances Control Act (TSCA) to consider the social impacts of its actions. Section 2(c) of TSCA states, "It is the intent of Congress that the Administrator shall…consider the environmental, economic, and social impact of any action the Administrator takes or proposes to take under this Act."

The social ramifications of the agency's large animal testing programs were never considered prior to PETA's involvement in the HPV program. European Union law requires that justification for causing pain to animals be established prior to their use in tests and that non-animal tests be used whenever practically available. British law requires an ethical cost-benefit analysis prior to launching animal testing programs. No similar regulations exist in the United States and the EPA is therefore able to push ahead with programs such as the endocrine-disruptor screening program. The EDSP may kill upwards of 100 million animals despite serious scientific questions about its justification and the validity and usefulness of the proposed tests. Clearly, the issue of animal suffering in laboratories is of great import to millions of Americans but, to date, the EPA has taken no steps to consider the impact of its programs on animal welfare.

Section D also details the requirements for advisory groups. Animal protection organizations have been completely excluded from the agency's advisory groups. While industry and environmental organizations are amply represented and welcomed, we had to fight for the belated placement of even one eminently qualified expert on the endocrine disrupter screening validation and standardization taskforce. As representatives of public interest groups, the agency should be actively soliciting our input and participation in these advisory group meetings. Instead, the opposite is true.

Conclusion

The HPV chemical testing program is a prime example of an EPA program that was rushed and not well thought out. This comes as little surprise considering the fact that only one public interest organization (the EDF) was involved in its development. Good public policy comes from listening to the public.

While the goals of the 1981 Policy on Public Participation are admirable and we support their expansion, it is clear that this policy has no real implementation value. The need for support of this policy at the highest levels of the agency is obvious. It is only when top management officials commit themselves to a policy of openness and forthrightness and require the same of their staff that the American public will actually benefit from the agency's written policy. Unless such a commitment is made, the EPA's public participation policy will continue to lack substance and will remain only words on paper.

Sincerely,

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