United States Department of the Interior

FISH AND WILDLIFE SERVICE
Mountain-Prairie Region

IN REPLY REFER TO:
FWS/R6
ES

MAILING ADDRESS:
P.O. Box 25486, DFC
Denver, Colorado 80225-0486

STREET LOCATION:
134 Union Boulevard
Lakewood, Colorado 80228-1807

September 9, 2011

Ms. Arthur-Jean Williams
U.S. Environmental Protection Agency
Office of Pesticide Programs
1200 Pennsylvania Ave. NW, Ariel Rios Bldg.
Washington, D.C. 20460

Dear Ms. Williams:

This letter responds to the U.S. Environmental Protection Agency's (EPA) September 30, 2010, request for initiation of Endangered Species Act (ESA) Section 7(a)(2) formal consultation under 50 CFR Part 402.46, Optional Formal Consultation Procedures for the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). This consultation addresses the use of Rozol Prairie Dog Bait (EPA Reg. No 7173-286) registered in May 2009 under Section 3 of FIFRA for use on black-tailed prairie dogs (*Cynomys ludovicianus*) in Colorado, Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming. Rozol is an anticoagulant rodenticide containing the active ingredient chlorophacinone. The label accompanying the Section 3 registration allowed use of Rozol to begin on October 1, 2009.

In September 2010, EPA determined that use of Rozol for black-tailed prairie dog control "may affect, and is likely to adversely affect" (LAA) 21 federally listed species including the following: grizzly bear *(Ursus arctos horribilis)*, American burying beetle *(Nicrophorus americanus)*, Salt Creek tiger beetle *(Cicindela nevadica lincolniana)*, California condor *(Gymnogyps californianus)*, whooping crane *(Grus americana)*, Eskimo curlew *(Numenius borealis)*, northern Aplomado falcon *(Falco femoralis septentrionalis)*, black-footed ferret *(Mustela nigripes)*, Chiricahua leopard frog *(Rana chiricahuensis)*, jaguar *(Panthera onca)*, Gulf Coast jaguarundi *(Herpailurus yagouaroundi cacomitli)*, Canada lynx *(Lynx canadensis)*, Preble's meadow jumping mouse *(Zapus hudsonius preblei)*, ocelot *(Leopardus pardalis)*, Mexican spotted owl *(Strix occidentalis lucida)*, piping plover *(Charadrius melodus)*, New Mexican ridge-nosed rattlesnake *(Crotalus willardi obscurus)*, Sonora tiger salamander *(Ambystoma tigrinum stebbinsi)*, black-capped vireo *(Vireo atricapilla)*, golden-cheek warbler *(Dendroica chrysoparia)*, and gray wolf *(Canis lupus)*. In addition, EPA's assessment finds the action is likely to adversely affect seven species' designated critical habitats including the Salt Creek tiger beetle, whooping crane, Canada lynx, Preble's meadow jumping mouse, Mexican spotted owl, piping plover, and New Mexican ridge-nosed rattlesnake.

We believe that the California condor, Salt Creek tiger beetle, and Sonora tiger salamander do not overlap with the range of black-tailed prairie dogs; therefore, we do not anticipate adverse effects to those species or their critical habitats. Consequently, we will not be evaluating those species further during this formal consultation. We concur with your effects determinations for the remaining species and their designated critical habitats. The information provided by EPA is adequate to initiate formal Section 7 consultation for the ongoing use of Rozol for black-tailed prairie dog control in 10 States. Approximately 2.4 million acres of black-tailed prairie dogs occur in the 10 States where EPA has registered Rozol for use as a prairie dog toxicant (U.S. Fish and Wildlife Service (USFWS) 2009a).

One of our responsibilities under 50 CFR § 402.14(g)(4) is to formulate a biological opinion (BO) that determines whether the action taken, together with cumulative effects, is likely to jeopardize the continued existence of federally threatened and endangered species. We anticipate providing a draft of the BO by December 10, 2011.

To intiate formal Section 7 consultation, the EPA posted the following information online:

Nation-wide Effects Determination for Chlorophacinone Relative to the Use of Rozol Prairie Dog Bait (EPA Reg. No. 7173-286)

Transmittal Letter (PDF) from Arthur-Jean B. Williams, Associate Director, Environmental Fate and Effects Division to Gary Frazer, Assistant Director for Endangered Species, U.S. Fish and Wildlife Service (9/30/10) (2 pp, 51K)

Effects Memorandum (PDF) from Jean Holmes, Acting Branch Chief, Environmental Fate and Effects Division (et. al) to Arthur-Jean B. Williams, Associate Director, Environmental Fate and Effects Division (9/29/10) (4 pp, 69K)

Chlorophacinone Analysis (PDF) Nation-wide Effects Determination for Chlorophacinone Relative to the Use of Rozol Prairie Dog Bait (EPA Reg. No. 7173-286) (9/29/10) (122 pp, 1507K)

- Attachment I: Status and Life History for the Threatened and Endangered Species for which a May Affect Determination was made (PDF) (134 pp, 908K)
- Appendix A: Maps Showing the Overlap of the Initial Area of Concern and the Species Habitat and Occurrence Sections (PDF) (23 pp, 10703K)
- Appendix B: Risk Quotient (RQ) Method and Levels of Concern (LOCs) (PDF) (2 pp, 22K)
- Appendix C: Estimation of Upper-bound Aquatic Exposure (PDF) (2 pp, 19K)
- Appendix D: Literature Submitted During the Comment Period for "Receipt of Petition Requesting EPA to Suspend the Registration of Rozol Prairie Dog Bait and Cancel Certain Application Sites" (EPQ-HQ-OPP-2009-0684-0001) (PDF) (1 pg, 11K)
- Appendix E: Summary of Ecotoxicity Data (PDF) (7 pp, 83K)
- Appendix F: Bibliography of ECOTOX Open Literature (PDF) (26 pp, 227K)
- Appendix G: Accepted ECOTOX Data Table (sorted by effect) and Bibliography (PDF) (5 pp, 89K)

- Appendix H: The HED Chapter of the Reregistration Eligibility Decision Document (RED) for Rodenticide Cluster (PDF) (38 pp, 147K)
- Appendix I: Summary of Chlorophacinone Incidents (PDF) (2 pp. 45K)
- Appendix J: Calculation of Avian RQs using LD50 data (PDF) (1 pg, 10K)

Liphatech, Inc., (the applicant in this consultation) is the manufacturer of Rozol and provided a review of the EPA "Chlorophacinone Effects Determination" report via letter on November 18, 2010, and requested information in that letter be forwarded to the the U.S. Fish and Wildlife Service (USFWS) (Liphatech 2010). We received that information on July 20, 2011, and will consider that information as well as the above information from your website, as we proceed with formal consultation.

We reviewed the information EPA developed for this consultation and we offer preliminary comments by individual document. We will provide a more indepth review of the Chlorophacinone analysis in the BO.

1. **Nationwide Effects Determination for Chlorophacinone Relative to the Use of Rozol Prairie Dog Bait**

   The Effects Determination by EPA indicates that an avian reproduction study for chlorophacinone is required in order to complete the FIFRA Section 3 registration. We request that you provide the results from this study so that we may consider the information in the BO. If this study has yet to be started, we recommend that it be conducted in a manner that appropriately reflects exposure in the field and on species that are most representative of species likely exposed to this product through its use as a rodenticide on black-tailed prairie dogs. Further, we offer to assist EPA and the applicant in developing protocols and recommendations to help make the avian reproduction study beneficial in evaluating non-target risk to avian species. Results from the avian reproduction study, if designed and conducted properly, should help refine our understanding of risk to Federally listed species and benefit efforts to protect avian species protected by the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act.

2. **Attachment I - Status and Life History for the Threatened and Endangered Species for Which a May Affect Determination was Made**

   The list of counties that may have black-footed ferrets should include Custer and Lyman Counties in South Dakota

3. **Appendix A: Maps Showing the Overlap of the Initial Area of Concern and the Species Habitat and Occurrence Sections**

   We recommend that he black-footed ferret map reflect that the ferret is not believed to exist in the black-tailed prairie dog range in eastern Colorado.

   The ocelot range map web link incorrectly leads to a whooping crane map inserted at that link.

4. Appendix I: Summary of Chlorophacinone Incidents

In April 2005, EPA investigated an illegal application of Rozol on the Rosebud Sioux Indian Reservation in south-central South Dakota. The applicator, after learning that prairie dog carcasses on a label from Kansas were to be collected, then retrieved approximately 400-500 prairie dogs from approximately 160 acres that had been poisoned (Golden and Gober 2010). The EPA issued a Notice of Warning to the applicator in 2005; we note that incident does not appear on the chlorophacinone incident database (EPA 2005), and recommend you add it.

We have previously provided information on a bald eagle that was poisoned in Nebraska in late 2006 after consuming prairie dogs that had eaten Rozol. This poisoning occurred within months of the Nebraska Special Local Needs label approving use of Rozol on black-tailed prairie dogs. This information also is not yet reflected on the chlorophacinone incident database. We are providing that information herein as Enclosure II, and recommend you add it to your records.

Previous Consultation and Coordination

On February 26, 1991, EPA initiated formal Section 7 consultation with USFWS on 31 pesticides including chlorophacinone as a rodenticide that was to be used in fairly restricted situations and locations but not approved for use on prairie dogs (EPA 1991). We responded with a BO dated March 1993 that evaluated chlorophacinone and 15 other pesticides for their use as vertebrate control agents (USFWS 1993). The 1993 BO states that of the 28 listed species evaluated for impacts from chlorophacinone usage, 21 species' continued existence would be jeopardized. For each of those jeopardy determinations, the BO described reasonable and prudent alternatives for EPA to follow in order to avoid jeopardizing the continued existence of those 21 listed species (USFWS 1993). The current usage of chlorophacinone on black-tailed prairie dogs via the EPA 2009 Section 3 FIFRA registration of Rozol involves only 4 listed species previously evaluated in the 1993 BO (USFWS 1993).

The 1993 BO includes terms and conditions that EPA develop and implement a monitoring and enforcement program to determine: 1) compliance with label instructions, 2) compliance with recommended reasonable and prudent alternatives and reasonable and prudent measures, and 3) effectiveness of recommended buffer zones for both ground and aerial applications. We request that you provide us an update on the status of the monitoring program so that we can determine if such measures would be applicable for the current consultation.

The 1993 BO also includes a reasonable and prudent measure requiring you to conduct laboratory studies on a surrogate snake species to ascertain impacts to listed snake species from chlorophacinone use. Because this consultation will address New Mexican ridge-nosed rattlesnake, it would be helpful to have the results from that previous study to help inform impacts to reptiles for this consultation.

When a Federal agency develops their biological assessment and supporting information to initiate Section 7 consultation, the proposed action usually includes conservation measures to avoid or minimize the impact to listed species from the action. Prior to your request for formal consultation on Rozol, you requested (and we provided) all known locations of black-footed ferrets in the range of the black-tailed prairie dog. However, we were unable to locate any measures in your request for consultation that might avoid or minimize Rozol use where listed species, including the ferret, are known to occur. If we are misinterpreting the information provided by EPA, please advise accordingly. Absent any restrictions by EPA where the product can be used, we must analyze the actions as if Rozol use may occur at all known ferret locations or other listed species locations within the black-tailed prairie dog range.

In 2009, after learning that EPA had registered and approved Rozol for wide-scale use on black-tailed prairie dogs, we requested that you rescind the registration until after Section 7 consultation could be completed (USFWS 2009b). We continue to recommend this as a reasonable course of action given this product's previously documented unauthorized taking of a federally threatened bald eagle in 2006 (USFWS 2007). This position also is consistent with comments provided to EPA by State game and fish agency representatives and wildlife professional societies when those groups provided comments to EPA on the registration of Rozol for prairie dog control (Koch 2008; Lanka 2009; Mann 2009).

In summary, we request the following information be provided to assist in development of the BO. We remind you of the requirements of the ESA's implementing regulations that you provide us with the best available scientific and commercial data available when initiating consultation (50 CFR § 402.14(d)).

1) Results of the avian reproduction study required as part of the FIFRA Section 3 registration.

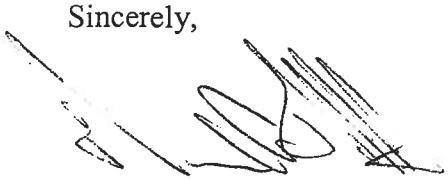
2) Results of the monitoring/enforcement program, a reasonable and prudent measure from the 1993 BO intended to minimize incidental take.

3) Results of the chlorophacinone study on a surrogate snake species, a reasonable and prudent measure in the 1993 BO intended to obtain toxicity data on the chemical's secondary poisoning hazard to snakes.

4) Any measures you propose to implement to restrict Rozol use in areas known to be occupied by ESA listed species.

We appreciate your consideration of our comments on the formal Section 7 consultation for Rozol use on black-tailed prairie dogs, and look forward to receipt of the additional information requested as well as further coordination with your agency throughout this formal consultation process. Should you have any questions on these comments, please contact Mr. Scott Larson, South Dakota Field Office Supervisor, at (605) 224-8693, extension 224.

Sincerely,



Assistant Regional Director
Ecological Services

Enclosure

Literature Cited

Golden, N.H., and J. Gober. 2010. Prairie Dogs, Pesticides, and Protected Species: Concerns for Anticoagulant Use in a Sensitive Ecosystem. Proc. 24th Vertebr. Pest Conf. Published at University of California, Davis. 2010. Pages 181-185.

Koch, D. 2008. Western Association of Fish and Wildlife Agencies comment letter to EPA on Section 3 registration of Rozol and Kaput as rodenticides to control black-tailed prairie dogs. 2 pp.

Lanka, B. 2009. Central Mountains and Plains Section of The Wildlife Society comment letter to EPA on Section 3 registration of Rozol and Kaput as rodenticides to control black-tailed prairie dogs. 8 pp.

Liphatech, Inc. 2010. November 18, 2010, letter to EPA providing comments on the "Chlorophacinone Effects Determination" published on a September 29, 2010. 12 pp.

Mann, D. 2009. South Dakota Chapter of The Wildlife Society comment letter to EPA on Section 3 registration of Rozol and Kaput as rodenticides to control black-tailed prairie dogs. 8 pp.

U.S. Environmental Protection Agency. 1991. EPA Request for formal consultation on 31 pesticides registered under FIFRA. 300 pp.

U.S. Environmental Protection Agency. 2005. EPA Notice of Warning issued to applicator of Rozol Pocket Gopher bait on the Rosebud Sioux Reservation pursuant to Section 14(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act. 2 pp.

U.S. Fish and Wildlife Service. 1993. Biological Opinion Part I, 16 Vertebrate Control Agents. 181 pp.

U.S. Fish and Wildlife Service. 2007. Report of Investigation dated October 19, 2007, regarding bald eagle mortality in Nebraska from chlorophacinone poisoning. 11 pp.

U.S. Fish and Wildlife Service. 2009a. 12-Month Finding on a Petition to List the Black-tailed Prairie Dog as Threatened or Endangered. Federal Register Vol. 74, No. 231 December 3, 2009, pages 63343-63366.

U.S. Fish and Wildlife Service. 2009b. September 9, 2009, letter to EPA regarding the registration of Rozol and Kaput as rodenticides for black-tailed prairie dog control. 9 pp.

ENCLOSURE

Law Enforcement Investigation of a Bald Eagle Recovered After an Application of Rozol in November 2006

United States Department of the Interior

FISH AND WILDLIFE SERVICE
Office of Law Enforcement
Clark R. Bavin
National Fish and Wildlife Forensics Laboratory
1490 East Main Street
Ashland, Oregon 97520

IN REPLY REFER TO:

FWS/LE LAB CASE #07-000015

March 22, 2007

Mike Damico, SA/LE
USFWS/LE, North Platte
PO Box 1086
North Platte, NE 69103

Dear Agent Damico:

Enclosed are the examination reports regarding the evidence submitted to the Laboratory under Agency Case No. 2007600155.

Radiographs and photographic enlargements are available upon request for courtroom proceedings. The evidence is being returned to you under separate cover.

Please be aware that because of the presence of the anticoagulant rodenticide *Chlorophacinone*, proper disposal of this eagle carcass requires either its burning or burial. The eagle carcass is unsuitable for transfer to the National Eagle Repository upon completion of your investigation.

If I can be of further assistance, please give me a call at 541-482-4191.

Sincerely,

Rhoda M. Ralston, DVM

Rhoda M. Ralston, DVM
Veterinary Medical Examiner
E-mail Address: *rhoda_ralston@fws.gov*

United States Department of the Interior

FISH AND WILDLIFE SERVICE
Office of Law Enforcement
Clark R. Bavin
National Fish and Wildlife Forensics Laboratory
1490 East Main Street
Ashland, Oregon 97520

IN REPLY REFER TO:

March 22, 2007

VETERINARY MEDICAL EXAMINATION REPORT

Agency:
USFWS/LE, North Platte
PO Box 1086
North Platte, NE 69103

Lab Case #: 07-000015
Examiner: Ralston
Agency Case #: 2007600155
Investigator: Damico
Suspects:

Case Title: Red Willow County Bald Eagle

EVIDENCE RECEIVED:

The following evidence was received in the Evidence Unit of the Laboratory on January 11, 2007, and was transferred to the undersigned examiner on January 16, 2006:

LAB-1: "One adult bald eagle - ST#650204" [ST#650204; Item#1]

EXAMINATION/S CONDUCTED:

The evidence item was x-rayed, dissected, and examined visually (necropsy examination) for gross pathological lesions. Photographs were taken to document any significant gross pathological findings.

Liver tissue (LAB-1A) from the eagle carcass was transferred to the USGS, National Wildlife Health Center, Madison, Wisconsin, for the detection of liver lead levels (See attached National Wildlife Health Center Diagnostics Services Case Report, dated February 14, 2007.)

Liver tissue (LAB-1B) from the eagle carcass was transferred to Mark A. Kirms, Senior Forensic Scientist - Chemistry, for analyses to determine the presence of any anticoagulant rodenticides (See attached Chemistry Examination Report, dated March 19, 2007.)

NECROPSY EXAMINATION RESULTS: **Lab Case #: 07-000015** **Lab-1**

Species:	Bald Eagle	**Sex/Age:**	Female/Adult
Weight:	4900 gm	**Identification #:**	ST #650204; Item#1
Body Condition:	Excellent	**Specimen:**	Intact Carcass
Post Mortem Condition:	Good	**Date Examined:**	January 24, 2007

HISTORY:

No history provided.

RML
Examiner's Initials

EXTERNAL EXAMINATION:

The feathers on the right side of the face are bile-stained. There is bloody mucous in the mouth. The oral mucous membranes are pale. A small skin laceration (2.0 cm in diameter) is observed on the dorsal (top) aspect of the elbow region of the right wing. The surrounding feathers are bloody. Bloody feathers are also present on the ventral (underneath) right elbow. The keel is not prominent. There are no palpable fractures or electrothermal injuries evident. The feathers surrounding the vent are not fecal-stained. The feet are semi-clenched.

INTERNAL EXAMINATION:

The carcass was partially skinned and the breast removed to facilitate an internal examination. Extensive subcutaneous tissue swelling and hemorrhage extends from the shoulder to below the elbow of the right wing. Hemorrhage is noted in the muscle tissues and into the clavicular air sac. The blood is not well clotted. No penetrating gunshot wounds are evident. There are abundant subcutaneous and mesenteric fat deposits. The breast musculature is normally developed. The skull is intact. The brain is pale, but otherwise normal.

All tissues are generally pale (anemic). The trachea and body cavity air sacs are normal. There is hemorrhage present in the dorsal periphery of both lungs, especially the right. The pericardial sac surrounding the heart is distended with serosanguinous fluid (hydropericardium). Ecchymotic hemorrhages are present on the epicardial surfaces of the heart. The heart is intact, but empty of clotted blood. The liver and kidneys are pale, but otherwise normal. The kidneys are urate-filled. The gall bladder is distended with semi-viscous bile. The spleen is pale and shrunken (2.0 cm X 1.4 cm). The pancreas is normal. The crop and stomach contain only bile-stained mucous. The intestinal tract is empty and atrophied.

RADIOGRAPHIC EXAMINATION:

No fractures or metallic radiodensities suggestive of bullet fragments or pellets are observed.

SUBSAMPLES SAVED/SUBMITTED FOR ANALYSIS:

LAB-1A:	Liver tissue for lead analysis from LAB-1
LAB-1B:	Liver tissue for anticoagulant analysis from LAB-1

NECROPSY FINDINGS:

1) Small hemorrhagic skin laceration on dorsal elbow region of the right wing
2) Extensive tissue hemorrhage of right wing from the shoulder to below the elbow
3) Pericardial sac surrounding the heart distended with serosanguinous liquid (hydropericardium)
4) Generalized pale (anemic) tissues

DIAGNOSIS:

Poisoning - Anticoagulant Rodenticide *Chlorophacinone*
Trauma

Examiner's Initials

COMMENT:

Based on the gross pathological (necropsy) findings and Examiner Kirms results (See attached Chemistry Examination Report, dated March 19, 2007.), it is my opinion, this eagle died from the ingestion of the rodenticide *Chlorophacinone* (0.30 µg/g). Either ingestion of the unprotected bait (primary poisoning) or the chronic (over a period of time) ingestion of rodents that have succumbed due to their eating the substance (secondary poisoning), interferes with vitamin K reduction and activation of blood clotting factors which results in hemorrhaging. The massive or sustained hemorrhaging can then lead to anemia, shock, and subsequent death.

The observed small hemorrhagic skin laceration on the dorsal elbow region of the right wing was caused by trauma from an undetermined source. This trauma may have initiated the extensive hemorrhaging caused by the presence of the anticoagulant rodenticide in this eagle.

DISPOSITION OF EVIDENCE:

All evidence item(s) were transferred to the Evidence Unit pending return to the submitting agency.

Rhoda M. Ralston, DVM
Veterinary Medical Examiner

United States Department of the Interior

FISH AND WILDLIFE SERVICE
Office of Law Enforcement
Clark R. Bavin
National Fish and Wildlife Forensics Laboratory
1490 East Main Street
Ashland, Oregon 97520

IN REPLY REFER TO.

March 19, 2007

CHEMISTRY EXAMINATION REPORT

Agency:
USFWS/LE, North Platte
PO Box 1086
North Platte, NE 69103

Lab Case #: 07-000015
Examiner: Kirms
Agency Case #: 2007600155
Investigator: Damico
Suspects:

Case Title: Red Willow County Bald Eagle

EVIDENCE RECEIVED:

The following evidence was transferred to the undersigned examiner on February 08, 2007:

LAB-1B: Liver tissue for anticoagulant analysis from LAB-1

EXAMINATION CONDUCTED:

LAB-1B: The evidence item was analyzed for the presence of anticoagulants employing high performance liquid chromatography/mass spectrometry.

EXAMINATION CONCLUSIONS:

LAB-1B: Results from the analyses conducted revealed the presence of the anticoagulant *Chlorophacinone* in a quantity of 0.30 µg/g.

DISPOSITION OF EVIDENCE:

The evidence item was transferred to the Evidence Unit pending return to the submitting agency.

Mark A. Kirms
Senior Forensic Scientist

EPARTMENT OF THE INTERIOR
.S. FISH AND WILDLIFE SERVICE
FFICE OF LAW ENFORCEMENT

REPORT OF INVESTIGATION
REPORT#: 2007600155R003

ote: This document contains neither recommendations nor conclusions of the Office of Law Enforcement, U.S. Fish and Wildlife Service. It is the property of this office and loaned to your agency. It, and its contents are not to be distributed outside of your agency.

ISE TITLE	*REPORT DATE*	*CASE NUMBER*
RED WILLOW COUNTY BALD EAGLE	10/19/2007	2007600155
	REPORTING OFFICER Mike Damico - SA0435	*REPORT STATUS* DISPOSITION OF PROPERTY PENDING
	APPROVED BY /s/ Honora G. Gordon	

BJECTS OF REPORT

ARRETT D. EILER
ONNIE SUGHROUE, JR.

IOPSIS

is report updates the investigation of the suspected killing of a Bald Eagle (eagle) in Red Willow County, Nebraska, in violation of the ld and Golden Eagle Protection Act. On 12/06/06, Nebraska Conservation Officer (NCO) Virgil Gosch recovered the carcass of an eagle. CO Gosch suspected the cause of death may have been poisoning. The eagle was transferred to the National Forensics Lab on 01/10/07, o determined the cause of death to be poisoning by Rozol.

08/07/07, Barrett EILER, manager of the property where the suspected prairie dog poisoning had taken place, was contacted. EILER nfirmed the prairie dog town had been poisoned and identified Donnie SUGHROUE as the poison applicator. SUGHROUE was also ntacted and confirmed Rozol as the poisoning agent used. SUGHROUE is licensed as an approved applicator and followed label tructions. SUGHROUE also stated it was not unusual for prairie dogs showing the effects of the poisoning to come to the surface of the und, seemingly unaware of any potential dangers, being in what he described, as a stupor state before their death.

RIBUTION

rnal List
oger Gephart, SA0422
onnie Gordon, SA0501
obert Prieksat, SA0449
ike Damico, SA0435
ury Mowad, SA0446

External List
Gosch Virgil , NCO
USFWS Ecological Services

RED WILLOW COUNTY BALD EAGLE

INV 2007600155
R-3

NARRATIVE

DETAILS OF INVESTIGATION

08/07/07 - Contact with Barrett EILER

On 08/07/07, SA Mike Damico contacted Barrett EILER, of McCook, Nebraska. EILER admitted to managing the property where the prairie dog town had been located, as well as the nearby field where the eagle carcass had been recovered. EILER confirmed the prairie dogs had been poisoned and he had paid Donnie SUGHROUE to apply Rozol to kill the prairie dogs. EILER believed SUGHROUE to be a licensed applicator and thought he had paid SUGHROUE about $8.00 per acre to apply the Rozol, plus the cost of the poison itself. EILER also said to the best of his knowledge, none of his neighbors had killed prairie dogs with poison in the last season. EILER provided contact information for SUGHROUE, which also included the Nebraska licensed pesticide applicator number 082464.

08/07/07 - Contact with Donnie SUGHROUE

On 08/07/07, SA Damico contacted Donnie SUGHROUE, at his home in Bartley, Nebraska. SUGHOURE recalled being hired to poison the prairie dog town for EILER and had made the application of Rozol on November 8, 2006. SUGHROUE used 12.5 buckets of Rozol to cover about 38 acres. SUGHROUE charged EILER $10.00 per acre, plus the cost of the Rozol, which he picked up himself. SUGHROUE produced his Nebraska Commercial Pesticide Applicator License, NEB 082464, which permitted him to apply Rozol for the control of prairie dogs.

SUGHROUE explained he applies the Rozol into the prairie dog hole, not onto the surface around the hole. SUGHROUE displayed specialized equipment used for this purpose. SUGHROUE went on to explain a return visit is made within four to five days after initial application and again in another four days after that. SUGHROUE said he had not seen many prairie dogs on the surface at this particular location, when he returned, but at other sites he had. SUGHROUE also explained that he knew poisoned prairie dogs often returned to the surface before dying, as evidenced by the bloody stools he often saw when he returned to inspect the sites. SUGHROUE further relayed an incident when the poison Rozol had been applied to a prairie dog town, as per label instructions and the lady owning the property watched as poisoned prairie dogs stumbled around on the surface for two weeks after the application. SUGHROUE added when he does see prairie dogs on the surface after they have been poisoned, they seem to be in a stupor, and not wary at all. SUGHROUE said he could often walk right up to these poisoned prairie dogs and they would not run away.

DESCRIPTION OF SUBJECTS

Barrett D. EILER
38986 US Highway 6
PO Box 821
McCook, NE 69001
(308) 345-6735

Donnie SUGHROUE, Jr.
Box 283
Bartley, NE 69020
(308) 692-3693

WITNESSES

Virgil Gosch
Nebraska Conservation Officer
Box 752
McCook, NE 69001
(308) 345-2185

Mike Damico
Special Agent
USFWS-LE
Box 1086
North Platte, NE 69101
(308) 534-0925

LAWS VIOLATED

Eagle Act, 16 U.S.C. 668
Migratory Bird Treaty Act, 16 U.S.C. 703

EVIDENCE

One adult Bald Eagle carcass, Seizure Tag #650204 - located at the USFWS North Platte LE office. (This evidence must be buried or incinerated for proper disposal. The Rainwater Basin Waterfowl Management District office has offered to help with the disposal when they next use their incinerator.)

RED WILLOW COUNTY BALD EAGLE

INV 2007600155
R-3

ATTACHMENT

1. Copy of Rozol Label (1 Page)

RESTRICTED USE PESTICIDE
DUE TO POTENTIAL SECONDARY TOXICITY TO NONTARGET ORGANISMS
For retail sale to and use only by certified and licensed private applicators or commercial/non-commercial applicators certified and licensed in Nebraska's wildlife damage control category.

24(c) SUPPLEMENTAL LABEL

FOR DISTRIBUTION AND USE ONLY WITHIN THE STATE OF NEBRASKA

rozol®

PRAIRIE DOG BAIT

FOR USE ON RANGELAND AND NONCROP AREAS

TO CONTROL BLACK-TAILED PRAIRIE DOGS (*Cynomys ludovicianus*)

EPA SLN No. NE-060001

EPA Registration No. 7173-184 EPA Est No. 7173-WI-1

This label is effective beginning February 15, 2006 and expires March 15, 2008

DIRECTIONS FOR USE

It is a violation of Federal Law to use this product in a manner inconsistent with its labeling, which includes this supplemental label and the label for Rozol Pocket Gopher Bait (EPA Reg. No. 7173-184). Both of these labels must be in the possession of the user at the time of application. Follow all directions of this supplemental label and all applicable directions, restrictions and precautions on the label for EPA Reg. No. 7173-184.

The Nebraska Pesticide Act requires sales of restricted use pesticides to be recorded by the dealer within 48 hours of the sale, and provided to a designated agent of the Nebraska Department of Agriculture upon request. Users of this product are advised that monitoring will be conducted by the NDA in order to determine compliance with all label and recordkeeping provisions.

Use restrictions: This product may only be used in underground applications to control black-tailed prairie dogs (*Cynomys ludovicianus*) on rangeland and noncrop areas in Nebraska.

- Bait must be applied at least 6 inches down prairie dog burrows. Do not apply bait on or above ground level. Treat only active burrows.
- Apply bait only between October 1 and March 15 of the following year, before spring green-up of vegetation occurs.
- Store this product away from humans, domestic animals, pets and nontarget wildlife. Do not allow children, pets, domestic animals, or persons not involved in the application to be in the area where the product is being applied.
- Wear chemical-resistant gloves when handling bait or dead animals.

Site Assessment: Before applying this product, identify active prairie dog burrows by visual observation. The openings of active burrows will generally be free of leaves, seeds, other debris or spider webs, and will show freshly turned earth, and have prairie dog feces nearby.

Application: Apply 1/4 cup (53 grams or nearly 2 ounces) of bait at least 6 inches down active prairie dog burrows. Make sure no bait is left on the soil surface at the time of application. Applicator must retrieve and dispose of any bait that is spilled above ground or placed less than 6 inches down the burrow entrance.

Follow-up: Prairie dogs that have eaten this bait will begin to die off in 4 to 5 days after they eat a lethal amount. Applicator must return to the site within 1 to 2 days after bait application, and on 1 to 2 day intervals, to collect and properly dispose of any bait or dead or dying prairie dogs that may have come to the surface. Carcass collection and burial should occur in late afternoon, near sundown, in order to reduce the potential of scavenging animals finding prairie dog carcasses. Continue to collect and dispose of dead or dying prairie dogs at 1 to 2 day intervals until dead animals are no longer found. Carcasses buried on site must be in holes dug at least 18 inches deep, or in inactive burrows, to avoid scavenging by non-target animals. Burial includes covering and packing the hole or burrow with soil. Any animal killed other than prairie dogs must be reported to the Nebraska Department of Agriculture by calling (877) 800-4080.

Reapplication: If prairie dog activity persists several weeks or months after the bait was applied, a second application prior to March 15 is allowed, by treating burrows in the same manner and procedure as the first application. Follow all baiting, animal disposal and reporting directions as indicated above.

24(c) registrant

LIPHATECH
3600 W. Elm Street
Milwaukee, WI 53209
(414) 351-1476

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ADMINISTRATIVE PAGE

ADMINISTRATIVE INFORMATION

Proper below ground application of Rozol, even with the poison inserted under ground with a special applicator, still results in poisoned prairie dogs dying above ground on the surface. These prairie dogs dying above ground, make for a very attractive food source for raptors and other animals. It is easy to imagine predators of every sort accessing this food source and ultimately dying from it. It appears authorization of Rozol for use as a prairie dog poison is the real problem because of secondary poisoning issues with raptors feeding on the prairie dogs dying above ground.

Due to the fact the Rozol was properly applied, by a licensed applicator following the label application guidelines, it appears the death of the eagle resulted because of the authorization of the use of Rozol as an approved poison for prairie dogs. This information should be passed along to the USFWS Ecological Service Office, to EPA, and the Nebraska Department of Agriculture for their use in arguing the merits of this decision and so they can consider what steps to take to prevent any future incidents. See Attachment #1, copy of Rozol Label.