



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

OFFICE OF CHEMICAL SAFETY  
AND POLLUTION PREVENTION

October 17, 2011

Michael Thabault  
Assistant Regional Director  
Ecological Services  
United States Fish and Wildlife Service  
South Dakota Field Office  
Pierre, SD 57501

Dear Mr. Thabault:

Thank you for your September 9, 2011 letter which responds to the September 30, 2010 letter from Ms. Arthur Jean Williams requesting optional formal consultation consistent with 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) containing the active ingredient chlorophacinone, which was registered in May 2009 under Section 3 of FIFRA for use to control black-tailed prairie dogs (*Cynomys ludovicianus*) in Colorado, Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming. The label accompanying the Section 3 registration allowed use of Rozol to begin on October 1, 2009.

Your September 9, 2011 letter requested certain information, but confirmed that the information provided by the U.S. Environmental Protection Agency (EPA) with its September 30, 2010 letter was adequate to initiate formal consultation. This letter responds to the information requested and clarifies the scope of the action on which we anticipate consultation will focus.

The EPA, in its effects determination, concluded that chlorophacinone or Rozol Prairie Dog Bait was "likely to adversely affect" 21 federally listed threatened or endangered species (<http://www.epa.gov/oppfead1/endanger/litstatus/effects/#chlorophacinone>). Based on input provided by the U.S. Fish and Wildlife Service (USFWS) in its September 9, 2011 letter, we anticipate that formal consultation will proceed relative to these species with the exception of three species the USFWS stated do not overlap with the range of black-tailed prairie dogs. These three species are: the California condor (*Gymnogyps californianus*), Salt Creek tiger beetle (*Cicindela nevadica lincolniana*), and Sonora tiger salamander (*Ambystoma tigrinum stebbinsi*). It is our understanding that USFWS believes the federal action will not affect these three species and therefore, they will not be evaluated further as part of the formal consultation.

Finally, the USFWS requested further information on the status of: (1) the avian reproduction study; (2) implementation of a number reasonable and prudent alternatives specified in the USFWS March 1993 Biological Opinion (BiOp); and (3) other mitigation measures that might minimize or restrict Rozol use where listed species are known to occur. This information and EPA's responses to the preliminary comments USFWS provided in its September 9, 2011 letter, are provided in the Enclosure to this letter.

EPA looks forward to working with USFWS in achieving a successful formal Section 7 consultation which results in reasonable protections for listed species that co-occur in the area of Rozol use to control black-tailed prairie dogs, while minimizing unnecessary burdens on pesticide users.

Enclosure

Sincerely,

A handwritten signature in black ink, appearing to read 'A Pease', written over a horizontal line.

Anita Pease, Associate Director  
Environmental Fate and Effects Division (7507P)  
Office of Pesticide Programs

cc: Donald Brady  
Arty Williams

## Enclosure

### EPA Response to USFWS Questions and Preliminary Comments on EPA's September 2010 Document Entitled, "Risks of Chlorophacinone Use on Black Tailed Prairie Dogs to Federally Endangered and Threatened Species"

#### Status of avian reproduction study

During the September 29, 2011 conference call between the Rozol registrant (Liphatech Inc.), EPA, and USFWS, Liphatech indicated that the avian reproduction study required as a condition of the FIFRA Section 3 registration has recently been initiated. According to information provided by Liphatech, the range finding study is complete, and the full study is expected to be complete by mid-2012. The registrant will determine the feasibility of obtaining an interim report on preliminary results, based on discussion with their contract laboratory. Should such an interim report become available, EPA will share that with the USFWS.

#### Implementation of USFWS 1993 BiOp

As noted in the USFWS September 9, 2011 letter, the USFWS 1993 BiOp evaluated chlorophacinone use in restricted situations and locations, not including the use to control prairie dogs, which is the subject of the current consultation. The USFWS 1993 BiOp recommended various reasonable and prudent alternatives (RPAs) around species habitat and specified certain reasonable and prudent measures (RPMs) (i.e., monitoring and enforcement program and laboratory studies on a surrogate snake species). These alternatives and measures have not been implemented for chlorophacinone. The Agency will address the potential risks of chlorophacinone to listed and non-listed species as part its Registration Review program ([http://www.epa.gov/oppsrrd1/registration\\_review](http://www.epa.gov/oppsrrd1/registration_review)), which is intended to ensure that, as the ability to assess risk evolves and as policies and practices change, all registered pesticides continue to meet the statutory standard of no unreasonable adverse effects to human health and the environment. During Registration Review for chlorophacinone, which is scheduled to begin in 2017 along with other currently registered rodenticides, the Agency will complete an ecological risk assessment and engage in any necessary consultation or re-initiation of consultation to address potential impacts to listed species from all uses of chlorophacinone.

Although the RPAs and RPMs specified in the USFWS 1993 BiOp were not implemented, it should be noted that the Rozol label approved on September 10, 2010 for use on prairie dogs ([http://iaspub.epa.gov/apex/pesticides/f?p=PPLS:102:4234008126061106::NO::P102\\_REG\\_NUM:7173-286](http://iaspub.epa.gov/apex/pesticides/f?p=PPLS:102:4234008126061106::NO::P102_REG_NUM:7173-286)) includes restrictions, such as a requirement to contact endangered species specialists at a USFWS office before applying this product within prairie dog towns within the range of the black-footed ferret. In addition, the Rozol label was revised again on August 8, 2011 (see **website link above**) and now excludes the following four states: Montana, New Mexico, North Dakota, and South Dakota. Although these four states have been removed from the most recent revision to the Rozol label, EPA requests that the consultation continue to cover all 10 states that were originally specified on the September 10, 2010 label and evaluated in EPA's chlorophacinone effects determination dated September 2010.

Regarding the USFWS' request for further information on a surrogate snake species, we anticipate that the pending avian reproduction study will help inform the risk to snakes, given that data on avian species are typically used by EPA as surrogates for reptiles in the absence of data specific for reptiles. However, EPA does not anticipate awaiting receipt of the full avian reproduction study to complete consultation, but rather believes we should continue with and complete consultation based on the best available data. To that end, EPA notes that page 81 of EPA's September 2010 effects determination specifically addresses risk to the New Mexican ridge-nosed rattlesnake (*Crotalus willardi obscurus*).

### **Mitigation measures to avoid or minimize Rozol use**

In response to the USFWS request for EPA to propose measures to restrict Rozol use in areas known to be occupied by ESA listed species, EPA has not implemented any additional restrictions beyond those that are on the current August 8, 2011 Rozol label for use on prairie dogs. However, EPA looks forward to working with USFWS regarding any proposed mitigation in areas known to be occupied by ESA listed species as part of the formal Section 7 consultation process and supports the USFWS' decision to evaluate and consult on Rozol use that may occur at all known ferret locations or other listed species locations within the black-tailed prairie dog range.

Regarding the USFWS recommendation that EPA rescind the registration until after Section 7 consultation is completed, this issue has been previously addressed by EPA (see petition at EPA-HQ-OPP-2009-0684-0162) and the status of the registration pending consultation is currently addressed by court order, *Defenders of Wildlife v. Jackson*, 09-cv-1814 (D.D.C., July 27, 2011).

### **Attachment I – Status and Life History for the Threatened and Endangered Species for Which a May Affect Determination was Made**

USFWS states that the list of counties that may have black-footed ferrets should include Custer and Lyman Counties in South Dakota. The tables provided in Attachment I of the effects determination were based on information provided on the USFWS website (<http://ecos.fws.gov/speciesProfile/profile/speciesProfile.action?spcode=A004>). Although the Attachment I tables did not list these two counties, they were included in EPA's analysis, which was ultimately based on the list of 19 counties (including Custer and Lyman Counties in South Dakota) obtained from the Scott Larson of the USFWS. Further, EPA agrees that the 19 counties identified by USFWS should be considered as part of the current formal Section 7 ESA consultation process.

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

USFWS recommends that the black-footed ferret map reflect that the ferret is not believed to exist in the black-tailed prairie dog range in eastern Colorado. EPA obtained the black-footed ferret map provided in Appendix A of the effects determination based on information of "block cleared" counties in Colorado from the USFWS website ([http://www.fws.gov/mountain-prairie/species/mammals/blackfootedferret/statewide\\_block\\_clearance\\_map\\_090809\\_final.pdf](http://www.fws.gov/mountain-prairie/species/mammals/blackfootedferret/statewide_block_clearance_map_090809_final.pdf)). EPA agrees that the black-footed ferret map should have been based on the 19 counties identified by USFWS, and should not have included eastern Colorado as black-tailed prairie dog range.

EPA acknowledges that the ocelot range map incorrectly links to the whooping crane map.

### **Appendix I: Summary of Chlorophacinone Incidents**

EPA appreciates the additional incident information provided by USFWS. Regarding the April 2005 illegal Rozol application, it is unclear whether this report represents a true incident because only the target species (i.e., prairie dogs) appear to have been killed as a result of the application. EPA will review the information provided by USFWS further to determine its utility and relevance as an incident. Regarding the information provided on the bald eagle incident that occurred in Nebraska in 2006, EPA will ensure that is information is captured in the incident database and agrees it should be considered during consultation.