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STATE OF NEBRASKA
OFFICIAL
MAR 11 1992
DEPT. OF JUSTICE

DATE: March 9, 1992

SUBJECT: Federal Insecticide, Fungicide, Rodenticide Act (FIFRA)

REQUESTED BY: Senator W. Owen Elmer, Nebraska State Legislature

WRITTEN BY: Don Stenberg, Attorney General
Linda L. Willard, Assistant Attorney General

You have asked several questions regarding the Federal Insecticide, Fungicide, Rodenticide Act (FIFRA) and Legislative Bill 349. You first ask if the State of Nebraska is required to adopt a state program under FIFRA. Our answer is no. There is nothing in FIFRA which requires a state to adopt a state program in the area of insecticides, fungicides, and rodenticides. The Act states at 7 U.S.C. § 136w-1 that a state will have primary enforcement responsibility during any period for which the Administrator of the U.S. Environmental Protection Agency (EPA) determines that the state laws and regulations and their implementation are "adequate." Presumably, "adequate" means whether the state laws and regulations are in conformity with the federal regulations. The Administrator cannot require that the state laws and regulations be more strict than the federal regulations, although a state may have laws or regulations that are more strict than the federal Act. This section also states that the Administrator shall have primary enforcement responsibility for those states that do not have primary enforcement responsibility.

Under 7 U.S.C. § 136v, states may regulate the sale and use of federally registered products under the Act but only to the extent that the state regulation does not permit a sale or use that is prohibited by the federal Act. Additionally, 7 U.S.C. § 136u permits the Administrator of the Environmental Protection Agency to

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enter into contracts with states to delegate the authority to cooperate in the enforcement of the Act and to cooperate in training and certification of applicators consistent with the standards the Administrator prescribes.

If state laws and regulations are adequate, the Administrator may enter into a contract with the state to allow the state to conduct the primary enforcement of insecticides, fungicides, and rodenticides. If the Administrator determines that a state is not adequately enforcing its own laws under its contract for primary enforcement, after appropriate procedures, the Administrator may rescind all or part of the contract with the state.

You next ask whether the two documents, "PROTECTING THE NATION'S GROUNDWATER: EPA'S STRATEGY FOR THE 1990'S, THE FINAL REPORT OF THE EPA GROUND-WATER TASK FORCE, JULY 1991" and "PESTICIDES AND GROUND-WATER STRATEGY, OCTOBER, 1991" published by the United States Environmental Protection Agency require the State of Nebraska to develop a State Management Plan for groundwater. Again our answer is no. Both of these documents clearly state that they are not regulatory documents and impose no requirement on any party. The documents are stated to be informational documents to advise the public of the strategy and plan which the federal government intends to implement in the areas in question. They advise the public of the direction the federal government will take in decision making based on current federal regulations and may give an indication of the course of future proposed regulations.

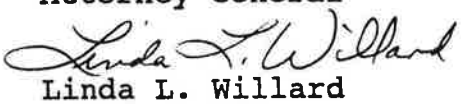
Since the documents in question "impose no requirement on any party," they do not require the State of Nebraska to develop a State Management Plan for groundwater. Nor would either of these documents require the state to take over primary enforcement of insecticides, fungicides, or rodenticides. Even if these documents state a preference for state enforcement of FIFRA issues, they do not impose such a duty on the state.

Your final question asks under what authority the two documents cited above have been drafted and whether they carry any legal responsibility to the State of Nebraska. It is unclear from the documents under what specific authority they were issued. Clearly, they are both publications of the United States Environmental Protection Agency. Apparently, from the introductory letter found immediately inside the cover of each document, the documents are intended to advise the public of EPA's policy which will guide federal efforts and serve as a guide to states with

primary enforcement responsibility and, undoubtedly, as a guide to states, with or without primary enforcement responsibility, in drafting of statutes and regulations.

Sincerely,

DON STENBERG
Attorney General



Linda L. Willard
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28-01-14.92

cc: Patrick J. O'Donnell
Clerk of the Legislature

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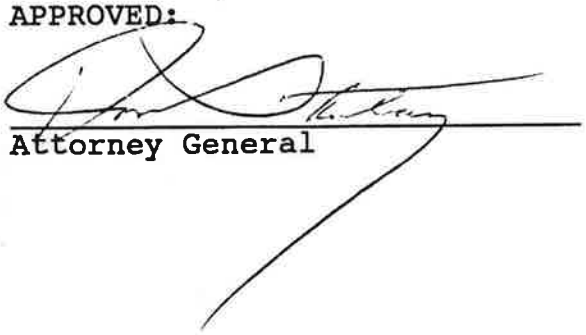

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