

**ENVIRONMENTAL PROTECTION AGENCY**

[OPP-2004-0290; FRL-7679-3]

**Calcium Hydroxide; Receipt of Application for Emergency Exemption, Solicitation of Public Comment****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

**SUMMARY:** EPA has received a quarantine exemption request from the Hawaii Department of Agriculture to use the pesticide calcium hydroxide (CAS No. 1305-62-0) to treat up to 4,000 acres of outdoor plants in nurseries, residential areas, parks, hotels and resorts, forest habitats, and natural areas to control Coqui and Greenhouse frogs. The Applicant proposes the use of a chemical in a manner which is likely to be of interest to the public. EPA is soliciting public comment before making the decision whether or not to grant the exemption request.

**DATES:** Comments, identified by docket identification (ID) number OPP-2004-0290, must be received on or before October 12, 2004.

**ADDRESSES:** Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:**

Stacey Milan Groce, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-2505; fax number: (703) 308-5433; e-mail address: milan.stacey@epa.gov.

**SUPPLEMENTARY INFORMATION:****I. General Information****A. Does this Action Apply to Me?**

You may be potentially affected by this action if you petition EPA for emergency exemption under section 18 of FIFRA. Potentially affected entities may include, but are not limited to:

- Federal or State Government Entities (NAICS 9241), i.e., Departments of Agriculture, Environment, etc.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining

whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

**B. How Can I Get Copies of this Document and Other Related Information?**

1. **Docket.** EPA has established an official public docket for this action under docket ID number OPP-2004-0290. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

2. **Electronic access.** You may access this **Federal Register** document electronically through the EPA Internet under the “**Federal Register**” listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select “search,” then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in

EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

**C. How and to Whom Do I Submit Comments?**

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked “late.” EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. **Electronically.** If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact

information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at <http://www.epa.gov/edocket/>, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP-2004-0290. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to [opp-docket@epa.gov](mailto:opp-docket@epa.gov), Attention: Docket ID Number OPP-2004-0290. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001, Attention: Docket ID Number OPP-2004-0290.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP-2004-0290. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

#### *D. How Should I Submit CBI to the Agency?*

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

#### *E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice.
7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## **II. Background**

### *What Action is the Agency Taking?*

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the Administrator determines that emergency conditions exist which require the exemption. The Hawaii Department of Agriculture has requested the Administrator to issue a quarantine exemption for the use of calcium hydroxide on outdoor plants in nurseries, residential areas, parks, hotels and resorts, forest habitats, and natural areas to control Coqui and Greenhouse frogs. Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the Applicant asserts that it is necessary to control the Coqui and Greenhouse frogs (*Eleutherodactylus coqui* and *E. planirostris*), in areas of Hawaii where they have been accidentally introduced, via infested nursery plantings. These species are not native to Hawaii, but come from the Caribbean and have the potential to cause serious damage to the native ecosystems, including endangered and threatened species. *E.coqui* is now firmly established on Maui and the Island of Hawaii with smaller populations on Kauai and Oahu. *E. planirostris* is also found on Kauai, Oahu, Maui, and the island of Hawaii. The sites where they are established include commercial plant nurseries, residential areas, resorts and hotels, parks, forest habitats and natural areas. The species are spread to additional sites primarily through transportation of infested plant materials to uninfested sites.

The Applicant asserts that these frogs pose a serious threat to both agriculture and the native Hawaiian forest ecosystems, including many endangered species. In particular, *Eleutherodactylus* frogs have the potential to be a serious threat to native endangered bird species. The *E. coqui* may exert predation pressure on a wide variety of native arthropods, many of which are already stressed due to the establishment of other alien predators and parasitoids. Additionally, these frog species will compete for insect food sources with native birds, the majority of which are

partially or completely insectivorous. The Hawaiian hoary bat and many arthropod species also depend upon insects and spiders as a food source. The exemption application indicates that another concern is that the rapid increase in populations of these frog species could provide a food source for and enhance the already large populations of introduced predators, such as rats and mongooses.

In 2002, EPA granted the Hawaii Department of Agriculture a section 18 emergency exemption for the use of caffeine to control the *Eleutherodactylus* frogs. However, there was minimal usage of that section 18 program for caffeine.

In this request, the Applicant proposes to make a maximum of twelve applications per year at a rate of 250 pounds of product per acre (242.5 lbs. a.i. per acre) for foliar applications and 500 pounds per acre (485 lbs. a.i. per acre) for dust and soil drench applications. The projected acreage for 2004 through 2006 is 4,000 acres on outdoor plant nurseries, residential areas, resorts and hotels, parks, forest habitats, and natural areas throughout the entire state of Hawaii. Therefore, a maximum of 36,000,000 lbs. of calcium hydroxide could be applied using foliar applications and a maximum of 72,000,000 pounds of calcium hydroxide could be applied using dust and soil drench applications.

This notice does not constitute a decision by EPA on the application itself. Section 166.24 of the regulations governing section 18 of FIFRA indicates categories of exemption applications for which a notice of receipt should be published. An analogous exemption program intended to control introduced frogs in Hawaii involving the chemical caffeine drew significant public interest. Thus, EPA has determined that publication of this notice of receipt under 40 CFR 166.24(a)(7) is appropriate.

The notice provides a 15-day opportunity for public comment on the section 18 application for the use of calcium hydroxide against introduced frogs in Hawaii.

The Agency will review and consider all comments received during the comment period in determining whether to issue the quarantine exemption requested by the Hawaii Department of Agriculture.

## List of Subjects

Environmental protection, Pesticides and pests.

Dated: September 17, 2004.

### Betty Shackleford,

*Acting Director, Registration Division, Office of Pesticide Programs.*

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**BILLING CODE 6560-50-S**

sanitary removal and treatment of sewage from all vessels are reasonably available for such water to which such prohibition would apply.

The information submitted to me by the State of Connecticut certified that there are eleven disposal facilities available to service vessels operating in the Groton/Mystic portions of Connecticut waters. A list of the facilities, phone numbers, locations, and hours of operation is appended at the end of the determination.

Based on the examination of the petition and its supporting information, which included site visits by EPA New England staff, I have determined that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the area covered under this determination.

The area covered under this determination extends from Eastern Point, Groton at (41°19'08.94" N by 72°04'31.09" W) due south to the boundary between Connecticut and New York at (41°15'54.55" N by 72°04'31.09" W), then northeasterly following the boundary between Connecticut and New York to (41°17'26.34" N by 72°01'10.94" W) then continuing northeasterly following the boundary between Connecticut and New York to (41°18'37.84" N by 71°55'47.63" W) then south east following the boundary between Connecticut and New York to a point due south of Wamphassuc Point at (41°18'28.99" N by 71°55'15.75" W), then due north past Noyes shoal to Wamphassuc Point (41°19'40.63" N by 71°55'15.75" W), and following the boundary between Connecticut and Rhode Island to U. S. Route 1 over the Pawcatuck River and including all Connecticut waters seaward of U.S. Route 1.

This determination is made pursuant to Section 312(f)(3) of Public Law 92-500, as amended by Public Laws 95-217 and 100-4, for the purpose of declaring these waters a "No Discharge Area" (NDA).

Section 312(f)(3) states: After the effective date of the initial standards and regulations promulgated under this section, if any State determines that the protection and enhancement of the quality of some or all of the waters within such States require greater environmental protection, such State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters, except that no such prohibition shall apply until the Administrator determines that adequate facilities for the safe and

EPA has prepared a response to the one written comment it received during the 45-day comment period, and it may be requested from EPA by writing to: Ann Rodney, U.S. EPA New England, 1 Congress Street, Suite 1100, CWQ, Boston, MA 02114-2023.

Dated: September 13, 2004.

### Robert Varney,

*Regional Administrator.*

Name	Location	Contact information	Hours of operation	Mean low water depth	Fee
Shennecossett Yacht Club.	Pine Island Bay .....	VHF CH 68; 860-445-7892.	June—Sept, 9 a.m.—6 p.m.	7 feet .....	Members Free, \$5 for non-members.