

[OPP-30000/8D FRL 2873-3]

Intent To Cancel Registration of Certain Pesticide Products Containing Sodium Fluoroacetate ("1080"); Availability of Position Document 4**Correction**

In FR Doc. 85-18136 beginning on page 31012 in the issue of Wednesday, July 31, 1985, make the following corrections:

1. On page 31013, in the first column, in the sixth line, "40935" should read "50935".

2. On page 31017, in the second column, in paragraph 2, in the last line, "statement" should read "statements".

BILLING CODE 1505-01-M

[FRL-2885-5]

Proposed Determination To Prohibit or Restrict the Specification of an Area for Use as a Disposal Site; Notice of Public Hearing

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Section 404(c) of the Clean Water Act authorizes the Environmental Protection Agency (EPA) to prohibit or restrict the discharge of dredged or fill material at defined sites in the waters of the United States (including wetlands) if it determines, after notice and opportunity for hearing, that use of the site for disposal would have an unacceptable adverse impact on various resources, including wildlife. EPA's Regional Administrator, Region I, has concluded that he has reason to believe that a proposal by The Pyramid Companies ("Pyramid") to fill portions of Sweedens Swamp in Attleboro, Massachusetts, for the purpose of building a shopping mall, may have unacceptable adverse impacts on wildlife and possibly other resources. Accordingly, EPA is announcing the Regional Administrator's proposed determination to prohibit or restrict the filling of Sweedens Swamp and is seeking public comment on his proposal.

Purpose of Public Notice

EPA would like to obtain comments on this proposed determination to prohibit or restrict the disposal of dredged or fill material into Sweedens Swamp, and on whether or not the impacts of such disposal would represent an unacceptable adverse effect as described in section 404(c) of the Clean Water Act.

DATES: All comments should be submitted by 60 days from publication

of this notice to the person listed under **ADDRESSES**. A public hearing will be held on September 26, 1985, from 7:00 to 11:00 p.m.

Public Hearing

A public hearing will be conducted on September 26, 1985, from 7:00 to 11:00 p.m., in the Attleboro High School Auditorium, located on Rathbun Willard Drive, in Attleboro, Massachusetts.

Written comments may be submitted prior to the hearing. Both written and oral comments may be presented during the hearing. The hearing record will remain open for the submittal of written comments until the close of the sixtieth day after publication of this notice, or possibly a later date announced at the hearing.

The Regional Administrator's designee will be the Presiding Officer at the hearing. Any person may appear at the hearing and present oral or written statements, and may be represented by counsel or other authorized representative. The Presiding Officer will establish reasonable limits on the nature and length of the oral presentations. No cross examination of any hearing participant will be permitted, although the Presiding Officer may make appropriate inquiries of any such participant.

ADDRESSES: Comments should be sent to Linda M. Connolly, U.S. Environmental Protection Agency, WOB-2103, J.F.K. Federal Building, Boston, MA 02203. Copies of comments submitted to EPA may be reviewed at the same address. EPA regulations provide that a reasonable charge may be made for copying.

The public hearing will be held in the Attleboro High School Auditorium, located on Rathbun Willard Drive, in Attleboro, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Douglas Thompson, U.S. EPA, Region I, J.F. Kennedy Federal Building, Boston MA 02203; (617) 223-5600.

SUPPLEMENTAL INFORMATION:**I. Description of the Section 404(c) Process**

The Clean Water Act, 33 USC 1251 *et seq.*, prohibits the discharge of pollutants, including dredged and fill material, into the waters of the United States (including wetlands) except in compliance with, among other things, section 404. Section 404 authorizes the Secretary of the Army, acting through the Chief of Engineers, to authorize the discharge of dredged or fill material at specified sites, through the application of environmental guidelines developed by EPA in conjunction with the

Secretary or where warranted by the economics of anchorage and navigation, except as provided in section 404(c). Section 404(c) authorizes the Administrator of EPA, after notice and opportunity for hearing, to prohibit or restrict the use of a defined site for disposal of dredged or fill material, where he determines that such use would have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife or recreational areas.

Regulations published at 40 CFR Part 231 establish the procedures to be followed by EPA in exercising its section 404(c) authority. Whenever the Regional Administrator has reason to believe that use of a site may have an unacceptable adverse effect on the pertinent resources, he may begin the process by notifying the Corps of Engineers and the applicant, if any, that he intends to issue a proposed determination under section 404(c). Unless the applicant or the Corps persuades the Regional Administrator that there will not be unacceptable adverse impacts or identifies corrective measures satisfactory to the Regional Administrator within 15 days, he then publishes a notice in the **Federal Register** of his proposed determination soliciting public comment and offering an opportunity for a public hearing. Today's notice represents this step in the process.

Following the public hearing and the close of the comment period, the Regional Administrator decides whether to withdraw his proposed determination or prepare a recommended determination. If he prepares a recommended determination, he then forwards it and the complete administrative record compiled in the Region to the Assistant Administrator for External Affairs at EPA's headquarters for a final decision affirming, modifying, or rescinding the recommended determination. The Corps of Engineers and the applicant are provided with another opportunity for consultation before this final decision is made.

II. Description of the Site

The 80 acre project site involved in this action includes a 50 acre wetland, known as Sweedens Swamp, located near the intersection of Routes 95 and 1A in Attleboro, Massachusetts. Largely a red maple wetland adjacent to a

¹ The pertinent regulations are set forth at 40 CFR Part 230 and are often referred to as the section 404(b)(1) guidelines.

headwater tributary of the Seven Mile River in southeastern Massachusetts, Sweedens Swamp is located roughly one-quarter mile from the Rhode Island border. The predominant habitat type is deciduous forested wetland (45 acres) although pockets of emergent and shrub wetlands exist on-site. Several shallow streams wind through the wetland and there is some seasonal ponding of water on the southern portion of the wetland. Upland habitat types include oak dominated forest and disturbed field. Human disturbance is evidenced by sporadic dumping of refuse and debris, primarily at the wetland's perimeter, and by the existence of several foot trails (with occasional use by dirtbikes) through the site.

Wetlands, to varying degrees, have hydrologic, biological, and social values. Sweedens Swamp provides flood storage but its role in this regard may be limited since it is located high in a small watershed (625 acres). The wetland also may function to improve or maintain water quality in the Seven Mile River by the adsorption and uptake of contaminants. Pyramid states that most of the water entering the site does not contact the vegetation and that the wetland therefore functions "inefficiently" for water quality renovation. It is not clear, however, whether Sweedens Swamp is less functional for water quality renovation than other wooded swamps in New England. Sweedens Swamp, which overlies a large regional aquifer, functions primarily as a groundwater discharge (rather than recharge) area.

EPA, the U.S. Fish and Wildlife Service, and the New England Division of the Army Corps of Engineers have concluded that the site provides excellent habitat for small mammals, songbirds, reptiles, and amphibians. This view is based on the diversity, density, and structural heterogeneity of the vegetation in the swamp. Waterfowl, including black ducks and mallards, are known to utilize the site; red shouldered hawks, a predatory bird species, have been observed in the wetland. In addition to these wildlife values, the wetland may have social value as open space and provide some opportunities for passive recreation (such as bird watching).

The proposed shopping mall would alter all but 4 acres of the site. Pyramid proposes to place 885,000 cubic yards in 32 acres of the wetland to construct the buildings, parking areas, and roads associated with the development. The company also proposes to excavate 9.0 acres of upland to create wetland onsite and alter 13.3 acres of the existing

swamp in an attempt to increase its value for fisheries, wildlife, and water quality maintenance. In addition, Pyramid proposes to mitigate the impacts by attempting to build another wetland, consisting of marsh, open water, and shrub swamp at an off-site location.

III. Proceedings to Date

In 1982, the DeBartolo Corporation, Pyramid's predecessor, failed in its attempt to obtain a state permit to fill the wetlands for the purpose of building a shopping mall. Pyramid, however, in March 1985 received a permit from the State for its proposed development. The issuance of the state permit is currently being challenged in Massachusetts Superior Court.

Pyramid applied for a section 404 permit from the Corps of Engineers in July 1984. In October 1984, February 1985, and April 1985, EPA objected to issuance of the permit on various grounds. In particular, EPA expressed concern that this non-water dependent project did not comply with the section 404(b)(1) guidelines because there were other practicable, less environmentally damaging alternatives available to accomplish the basic project purpose. Attention has primarily focused on an alternate site in North Attleboro which contains few wetlands and which the Corps and EPA believe is a feasible location to develop a shopping mall. The U.S. Fish and Wildlife Service also objected to permit issuance for the same reasons.

New England Division of the Corps of Engineers initially agreed that the permit should be denied, but was instructed by the then Deputy Director of Civil Works, General Wall, to forward its files and recommended decision to him for review. In May 1985, General Wall concluded that the project did comply with the section 404 (b)(1) guidelines because there was no practicable, less environmentally damaging alternative. His conclusion was based on a finding that (1) the North Attleboro site is not available to Pyramid because it is now controlled by another developer and that from Pyramid's point of view the site would not fulfill the purposes of its proposed project; and (2) from the public interest perspective, Pyramid's proposed mitigation (i.e., on-site and off-site wetland enhancement and creation) would reduce the adverse impacts of the discharge to a point where no other site could offer a less environmentally damaging practicable alternative. In his view, such mitigation can be used to satisfy the guidelines even when there may be a practicable upland site available. General Wall therefore

directed the Division to revise its decision documents and issue the permit with appropriate conditions. Accordingly, on June 28, 1985, the Division sent EPA its Notice of Intent to Issue the permit.

On July 23, 1985, the Regional Administrator of EPA notified the Division and Pyramid of his intention to issue a proposed determination to prohibit or restrict the use of Sweedens Swamp as a disposal site, based on the belief that the proposed project may have unacceptable adverse effects—specifically, the avoidable loss of wildlife habitat. A 15 day consultation period ended on August 8, 1985. Following another review of Pyramid's proposal, the Regional Administrator was not persuaded that there would be no unacceptable adverse effects from the proposed discharge.

IV. Basis for Proposed Determination

A. Section 404(c) Criteria

As mentioned above, the Act requires that exercise of final section 404(c) authority be based on a determination of "unacceptable adverse effect" on municipal water supplies, shellfish beds, fisheries, wildlife, or recreational areas. The regulations define this term at 40 CFR 231.2(e) as:

Impact on an aquatic or wetland ecosystem, which is likely to result in significant degradation of municipal water supplies (including surface or ground water) or significant loss of or damage to fisheries, shellfishing, or wildlife habitat or recreation areas. In evaluating the unacceptability of such impacts, consideration should be given to the relevant portions of the section 404(b)(1) guidelines (40 CFR Part 230).

The preamble explains that since one of the basic functions of section 404(c) is to police the application of the section 404(b)(1) guidelines, those portions of the guidelines relating to alternative sites may be considered in evaluating the unacceptability of environmental impacts. 44 F.R. 58078 (Oct. 9, 1979). Thus, it is appropriate under section 404(c) to take into account whether the loss of the resource is avoidable.

B. Impacts of Filling Sweedens Swamp

Construction of the shopping mall would result in the initial, direct loss of 32 acres of wetland habitat. If the on-site wetland creation plan were successful, there would be a net loss of 23 acres of wetland at the site. Approximately 9 acres of upland would be converted to wetland; The remaining 20 acres of upland habitat would be replaced by the mall. This proposal, if permitted, would be the largest single loss of wetland authorized in

Massachusetts in the past five years, and one of the largest fill projects in New England during the last few years.

The hydrologic regime of the site would be altered by the project. On one hand, the remaining wetlands would, according to the developer, function better to maintain water quality. Since the mall, however, would be a source of various contaminants to surface waters it is unclear what the net effect upon water quality would be. Flood storage capacity would be reduced by the project but the developer intends to provide adequate compensatory storage.

Adverse impacts to wildlife will result from the reduction of wetland acreage. The native vegetation and the less mobile animal species will perish under the fill. Other species (e.g., birds) may escape from the site and attempt to relocate to other nearby habitats; relocation may not be successful, however, for highly territorial species or if the adjacent areas are already at carrying capacity.

If the on-site and off-site created and enhanced wetlands function as described by Pyramid, they would provide wildlife habitat. The replacement wetlands, however, would not be of the same type as these destroyed and would be utilized by different wildlife species. The developer has stated that the replacement wetlands, although different from Sweedens Swamp, represent less common habitat types and should be more attractive to waterfowl. Neither the on-site nor off-site replacement wetlands would be immediately available for wildlife use and the extent of utilization would depend upon the ultimate success of the wetland creation effort.

Construction of the shopping mall and the replacement wetlands will involve considerable dredging, filling and earthmoving which will result in a temporary increase in sedimentation and turbidity or surface water in the vicinity.

C. Avoidability of the Impacts on Sweedens Swamp

As mentioned above, whether an impact is avoidable can affect its acceptability under section 404(c). This is consistent with 40 CFR 230.10(a) of the guidelines, which requires that (except for the navigation override), "no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences." The

preamble to the guidelines explains that the particular alternatives approach adopted by EPA reflects the view that the waters of the United States "from a priceless mosaic. Thus, if destruction of an area of waters of the United States may reasonably be avoided, it should be avoided." 45 F.R. 85340 (Dec. 24, 1980).² To reinforce this point, the guidelines establish a rebuttable presumption that practicable, environmentally preferable alternatives exist for "non-water dependent activities," such as shopping centers, proposed to take place in "special aquatic sites," such as wetlands. 40 CFR 230.10(a)(3).

Pyramid states that the alternative sites identified during the permit process are not "practicable" sites for shopping centers, citing factors such as access from major highways, visibility, size, lack of parking, distance from its preferred market area, and other matters. However, this contention has been disputed. A consultant hired by the Corps concluded that at least one other site three miles away in North Attleboro (at the intersection of Routes 1 and I-295) was also suitable for a shopping mall of the general type proposed by Pyramid. Moreover, another shopping center developer has concluded that the North Attleboro site is suitable and is in the process of obtaining the necessary permits to build. It also appears that this site was available to Pyramid at the time it made its site selection. This site is an upland one (less than an acre of wetlands), the use of which would apparently have significantly less impact on the environment than the use of Sweedens Swamp, although some similar questions have been raised about both sites (e.g., questions about impacts to water supplies).

Therefore, based on the present record, it does not appear to EPA Region I that Pyramid has clearly demonstrated that there is no practicable, environmentally preferable site for a shopping center. We are particularly interested in comments and information from the public on all aspects of this issue.

D. Off-Side Mitigation

As described above, Pyramid has proposed to create a new wetland at another location in order to compensate for values which would be lost at Sweedens Swamp. While the off-site mitigation was not part of its original

² The preamble goes on to note that where a category of discharges is so minimal in impact that it has been placed under a general permit, a case-by-case analysis of alternatives is not necessary. The current proposal was removed from coverage from the general permit at 33 CFR 330.5(a)(26) because its impacts were not minimal.

permit application, Pyramid now suggests that this proposal means that there could be no alternative site which is "environmentally preferable."

The specific location and details of the to-be-created wetland have not yet been determined. The current leading candidate is an abandoned gravel pit located near Tiffany Street in Attleboro, near the Ten Mile River. However, questions remain about its availability, its suitability for creation of a self-sustaining, functioning wetland, and the extent to which it could replicate the values to be lost at Sweedens Swamp. In addition, the art of creating wetlands is not yet fully understood, especially in fresh water environments and particularly on the scale involved here. EPA is interested in any comments and information on wetlands creation in general; on the substitution of one kind of wetland for another; and on what would be required to establish a suitable wetland at the Tiffany Street site, the likelihood of its long-term success, and the performance measures necessary to determine long-term success, including the length of time it would take to be confident of such success.

EPA has traditionally not considered wetlands creation to be an appropriate factor to consider in weighing the environmental comparability of two practicable project sites under § 230.10(a) of the Guidelines. In other words EPA normally does not evaluate or accept mitigation (in the sense of wetland creation or enhancement) plans until after the alternatives test is satisfied. Therefore, even if the factual problems with the mitigation proposal described above are resolved, there still remain the questions (1) whether the proposed mitigation plan can be found to satisfy the practicable alternatives test in § 230.10(a); and (2) if the mitigation proposal does not strictly satisfy the guidelines, is that noncompliance sufficient to render the adverse impacts at Sweedens Swamp unacceptable within the meaning of section 404(c).

IV. Solicitation of Comments

EPA solicits comments on all issues raised by its proposed determination in this case, including, in particular, whether there is a practicable alternative to locating a shopping center in Sweedens Swamp, the relative environmental impacts (to wildlife, water supply and/or recreation) at the various potential sites, the proposal for off-site mitigation, and the acceptability or unacceptability of the impacts likely to occur if Sweedens Swamp is filled as proposed. Comments should be sent by

60 days from the date of publication of this **Federal Register** notice to the person listed above under ADDRESSES and may also be provided at the public hearing announced above.

All comments received, as well as the hearing record will be fully considered by the Regional Administrator in making his decision to prepare a recommended determination to prohibit or restrict filling Sweedens Swamp or to withdraw today's proposed determination.

Dated: August 13, 1985.

Michael R. Deland,

Regional Administrator.

[FR Doc. 85-19334 Filed 8-20-85; 8:45 am]

BILLING CODE 6560-50-M

[FRL-2885-2]

**Science Advisory Board,
Subcommittee on Dioxins; Open
Meeting—September 4-6, 1985**

Under Pub. L. 92-463, notice is hereby given that a meeting of the Science Advisory Board's Dioxins Subcommittee will meet September 4-6, 1985, at the main auditorium of the Environmental Protection Agency's Environmental Monitoring Systems Laboratory, 944 East Harmon Avenue, Las Vegas, Nevada. The meeting will begin at 8:00 a.m. on September 4 and adjourn at approximately 4:00 p.m. on September 6.

The purpose of the meeting is to provide the Subcommittee with the opportunity to review the quality, relevance and direction of the Agency's dioxins' research program. The program has four major research components including (1) engineering, (2) monitoring, (3) environmental effects, and (4) health effects and assessment. The program is discussed in a document prepared by EPA's Office of Research and Development entitled: Status of Dioxin Research in the U.S. Environmental Protection Agency. Individual copies of the document may be obtained by writing or calling Dr. Rizwanul Haque, Office of Environmental Processes and Effects Research, Office of Research and Development (RD-682), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 (202) 382-5967.

The meeting is open to the public. Any member of the public wishing to attend, obtain information, or submit written comments to the Subcommittee should notify Dr. Terry F. Yosie, Director, Science Advisory Board at (202) 382-4126 or Ms. Patti Howard, Staff Secretary (A-101F), 401 M Street SW., Washington, D.C. 20460 or call (202) 382-2552 by close of business August 29, 1985.

Dated: August 15, 1985.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 85-19929 Filed 8-20-85; 8:45 am]

BILLING CODE 6560-50-M

[OPP-30253; FRL-2883-3]

Idacon, Inc.; Application To Register a Pesticide Product

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register a pesticide product containing an active ingredient not included in any previously registered product pursuant to the provision of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATE: Comment by September 20, 1985.

ADDRESS: By mail submit comments identified by the document control number [OPP-30253] and the file number (10413-RU) to:

Information Services Section (TS-757C), Program Management and Support Division, Attn: Product Manager (PM) 16, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. In person, bring comments to: Rm. 236, CM #2, Attn: PM 16, Registration Division (TS-767C), Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: William Miller, PM 16, (703-557-2600).

SUPPLEMENTARY INFORMATION: Idacon, Inc., 10611 Harwin Drive, Suite 400, Houston, TX 77036, has submitted an application to EPA to register the woodpecker repellent, ST-138(R), EPA File Symbol 10413-RU, containing the active ingredient 3,5,5-trimethyl-2-

cyclohexene-1-one at 50 percent. The application proposes that the product be classified for general use in wood treatment facilities, utility poles, and crossarms. Notice of receipt of this application does not imply a decision by the Agency on the application.

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Program Management and Support Division (PMSD) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the PMSD office (703-557-3262), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

Dated: August 7, 1985.

Douglas D. Camp,

Office of Pesticide Programs.

[FR Doc. 85-19714 Filed 8-20-85; 8:45 am]

BILLING CODE 6560-50-M

[OPP-50640; PH-FRL 2885-8]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: By mail, the product manager cited in each experimental use permit at the address below: Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each