

Case Number (if relevant): CMS-452

Description: Concerns about the Department for Environment, Food and Rural Affairs' (Defra) compliance with environmental law, and consideration of relevant obligations when making the decision to authorise the use of restricted pesticide 'Cruiser SB' in 2023.

Case Overview

Background/Complaints Summary

The OEP received a complaint about Defra's decision to grant emergency authorisation for the use of 'Cruiser SB' in 2023, in accordance with Regulation (EC) No 1107 / 2009.

Cruiser SB is a broad-spectrum treatment containing the neonicotinoid insecticide thiamethoxam and its breakdown product clothianidin. Cruiser SB is used to protect sugar beet seedlings against 'virus yellows', which is spread by aphids.

In 2013, the EU placed restrictions upon three kinds of neonicotinoids – clothianidin, imidacloprid, and thiamethoxam – for their use in flowering crops due to the risks they pose to bee populations. In 2018, thiamethoxam was banned for outdoor use due to the risks for bees from treated seeds.

Defra has the authority (known as emergency authorisation) to permit the use of Cruiser SB in limited circumstances.

The complainant raised the following allegations in relation to Defra's decision to authorise use for the 2023 growing season:

- Defra failed to consider environmental harm when assessing proportionality.
- Defra failed in its obligation to assess and consider alternative measures or products before deciding to authorise the use of Cruiser SB.
- Defra failed to consider the limited impact on yield when using Cruiser SB.

The complainant also raised additional points with regards to transparency and participation, noting the difficulty in accessing information relating to historic emergency authorisations/statements of reasons and the decision-making process behind them.

OEP Actions

We carefully considered all of the information provided by the complainant.

We reviewed publicly available information on this matter and requested information from Defra to understand how applications for emergency authorisation were considered in 2023, and what information was provided to the Secretary of State before the decision to grant emergency authorisation was made.

Conclusions and Outcomes

From the information available to us, the OEP determined that there was no indication that there may have been a failure to comply with environmental law in relation to the specific grounds raised by the complainant.

Alleged unlawful failure to assess proportionality by reference to environmental harm

The OEP considers that what is proportionate would likely be viewed as a matter of judgement for the minister, so that it could only be challenged if the Minister had acted irrationally. As such we concluded that there was no indication of a failure to comply with the law.

Alleged unlawful assessment of alternatives

The OEP concluded that there is evidence of consideration of a range of issues within the Minister's decision, and it cannot be said that the decision-making framework only focused on the issue of farm profit, as suggested in the complaint.

Limited impact on yield in 2022

The OEP considers that this ground concerns the merits of the decision itself, and we have concluded that the information submitted does not indicate that there may have been a failure to comply with environmental law.

Transparency and participation

The OEP acknowledged that it appeared difficult to navigate existing UK pesticide authorisation databases, and to search for previous emergency authorisations and Statements of Reasons. We therefore asked Defra to clarify how this information practically can be accessed and searched by the public, noting the above apparent difficulties in navigating existing databases.

Defra responded to the OEP and accepted that the database could be improved. Defra confirmed that the Health and Safety Executive (HSE) intends to further develop the databases as part of its Biocides and Pesticides Transformation Programme to improve organisational design, processes and digital technologies for the biocides and pesticides chemicals regimes delivered by HSE. This will include consideration of the facility to identify, in the same way as for other authorisations, individual current and historic emergency authorisations.