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International Program

June 13, 2003

Via United States Mail (Return Receipt Requested)

Christine Whitman
EPA Administrator
Environmental Protection Agency
1101A, Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: EPA's Consultation with the State Department on Plan Colombia Aerial Fumigations

Dear Ms. Whitman:

I am writing on behalf of the Interamerican Association for Environmental Defense (AIDA) to express several concerns about the U.S. Environmental Protection Agency's consultation with the U.S. Department of State regarding the State Department's certification of the Plan Colombia aerial fumigation program pursuant to Consolidated Appropriations Resolution, Pub. L. No. 108-7 (Title II, Department of State, Andean Regional Initiative), 117 Stat. 11, 172-174 (2003). The Appropriations Resolution requires, *inter alia*, that the State Department certify to the Appropriations Committee, *after consultation with EPA*, that the herbicide is used in accordance with both EPA label requirements and the Colombian Environmental Management Plan for aerial fumigation.

To that end, I have attached here three important documents related to Plan Colombia. The first is a brief memo prepared by AIDA outlining the requirements for environmental protection, mitigation, and reporting established by the Colombian Environmental Management Plan (EMP) for the coca and poppy crop eradication program in Colombia. The second is a more detailed report by the University of Florida College of Law Conservation Clinic. This report contains a critique of last year's consultation and certification process, a legal analysis of what should be required of this year's process, and more detailed information on the Colombian EMP. The third is a recent resolution issued by the Colombian Ombudsman's Office (in Spanish, with important sections underlined) concerning implementation of the eradication program and particularly the impending spraying of the Caldas coffee producing region. I hope this information will be useful to the EPA as you undertake the 2003 consultation process on the fumigation program.

As part of the consultation process, AIDA considers it critical that EPA evaluate whether or not the EMP is in fact being implemented. The EMP contains a number of protections for the environment, but the information we have received suggests that few of these are carried out. We therefore request that EPA not simply accept claims that the EMP is being followed, but rather, verify whether this is truly the case. A number of reporting requirements for mapping,

monitoring studies, and independent inspections (audits) are mandated in the EMP. Whether the Colombian National Directorate of Narcotics (DNE) is complying with the EMP could easily be determined by reviewing the reports associated with these monitoring and independent oversight requirements. The main quarterly and annual reporting requirements are highlighted in the attached memo so that EPA can request copies of these studies, maps, and reports from the State Department and the Colombian authorities. Certainly, if these documents are not made available, the State Department cannot reasonably claim compliance with the EMP.

We have a number of specific concerns regarding the effectiveness of EMP implementation in Colombia. For example, we are certain that the Colombian government is violating the EMP prohibitions on spraying of:

1. Indigenous reserves and areas with legal crops (including alternative development areas);
2. Areas with small-scale production (as compared to industrial farms) of coca and poppy crops;
3. Surface waters; and
4. Buffer zones.

The attached recent resolution from the Colombian Ombudsman's Office contains further information as to violations of the EMP. The Ombudsman's Office asserts that DNE and other governmental agencies have systematically failed to implement and comply with the EMP. Specifically, the resolution affirms that DNE has not complied with the characterization, mapping, mitigation, monitoring or compensation requirements of the EMP. For example, DNE has not yet contracted independent auditors to oversee the program as required.

The resolution also states that the complaint procedure is inadequate, and highlights DNE's failure to investigate complaints concerning the destruction of food crops and impacts on public health. It is noteworthy that the Ombudsman's Office has received more than 6,000 complaints of harm, and that only two of these have been appropriately addressed. Special consideration should be given to complaints received by the Ombudsman's Office of harms to human health, the environment, and property, because many people are reluctant to file complaints with the Colombian National Police or Drug Eradication Authorities. (The cultivation of coca and poppy plants is illegal and farmers fear that complaints about impacts from the fumigation program will lead to arrests.)

In this and past resolutions, the Ombudsman's Office also affirms that DNE has not demonstrated the effectiveness of the spraying in reducing illicit crop cultivation. Coca and poppy cultivation is increasing despite the intensification of aerial fumigation programs, and crops are simply displaced to other areas in Colombia and the Andes.

Beyond EMP implementation, additional issues of concern include:

1. Herbicide in use. In response to EPA's 2002 consultation with the State Department, the State Department promised to discontinue use of Roundup Export in Colombia and to instead begin to use Roundup Ultra for the eradication program. (This was in response to EPA's finding of the potential for health impacts associated

- with the use of Roundup Export.) Some time thereafter, the State Department confirmed that this switch had been made. However, there is no official data from Colombia to support this assertion. In fact, as recently as January 31, 2003, the Colombian Ministry of Environment issued a Resolution approving a request for a change in the formulation to be used. This Resolution approved the use of a 10-Liter per hectare dose of Roundup 480 SL + 1% Cosmoflux, as compared to the earlier dose of 8-Liter per hectare Roundup 480 SL + 1% Cosmoflux approved by the Ministry on November 26, 2001. The important point is that between November 2001 and January 2003, there was no change (nor a request for a change) in the herbicide formulation approved for use by the Ministry of Environment. Thus, it appears likely that the herbicide (Roundup Export) used during 2001 is still in use today. This conflicts with the State Department's statements that the different formulation is being used, and is a matter that must be clarified.
2. Annual limits on herbicide exposure. We are concerned about whether the annual limits on herbicide use are being exceeded. If we assume that the State Department is in fact now using Roundup Ultra (again, it is unclear whether this is true), the Roundup Ultra label states that "except as otherwise noted in the crops section of this label, the combined total of all treatments must not exceed 8 quarts of this product per acre per year." Eight quarts per acre is 18.7-Liters per hectare. Thus, if any area were to be sprayed twice in one year at the 10-Liter per hectare dose, the annual limit would be exceeded. Last year, the State Department stated that "up to two applications of the glyphosate product are sprayed over coca crops. . . ." If this practice continues at the 10-Liter per hectare dose, the annual limit is being exceeded. Even more worrisome is that reports from Colombia and documents from the State Department indicate that many fields are sprayed up to three times each year because plants recover in a few months.
 3. Contamination of surface waters. A comparison of the Material Safety Data Sheet for Roundup Ultra and Roundup Export suggests that while Roundup Ultra is less damaging to eyes, it may be slightly more irritating to skin, and is slightly more toxic to fish and aquatic invertebrates. The Colombian EMP explicitly prohibits spraying of surface waters, as does the Roundup Ultra label. However, the natural environment in the areas of Colombia being sprayed is such that it would be virtually impossible to avoid spraying surface waters. This has been stated repeatedly and is obvious to those who visit the area. EPA should assess what measures the State Department takes to avoid spraying surface waters and whether these effectively guarantee compliance with label conditions. Last year, the State Department reported that "pilots are instructed to avoid spraying surface waters." That is not equivalent to ensuring that surface waters are not sprayed.

Water contamination is also of great concern because the vast majority of areas sprayed are not connected to water systems. Instead, water for drinking and cooking is almost exclusively obtained from surface waters or collection ponds that are at risk of being sprayed. Similarly, lacking showers, people bathe in the surface waters. Thus, when waters are contaminated, there may be no nearby source of water that is safe for consumption or washing. Throughout the exposure assessment, EPA should

consider local environmental and living conditions, along with all potential exposure routes.

4. Exposure assessment. The 2002 EPA consultation report on the eradication program included an exposure assessment which, because it was based on incomplete information about conditions in Colombia, did not consider all likely exposure pathways. Perhaps most important, based on the State Department's assertions, EPA assumed that people are not directly sprayed. This is untrue. The Colombian Ombudsman's Office has received thousands of reports of people being directly sprayed by the fumigation planes. One well-known incident was when the late senator Paul Wellstone was accidentally sprayed. If the pilots cannot avoid spraying a US senator who has traveled to Colombia to observe and verify the precision with which the planes hit targets during spraying missions, it is highly unlikely that they can avoid spraying people working in or living near the fields.

A number of additional concerns with EPA's consultation process in 2002 were raised in the expert reviews of the State Department's certification report. For reference, these are still available on the Amazon Alliance website (<http://www.amazonalliance.org>).

We will greatly appreciate EPA's consideration of these issues, and the information in the attached documents, as the agency proceeds with this year's consultation. We also request that you share this letter and the attachments with other agency staff involved in this year's consultation on the Plan Colombia aerial fumigations. If you have any questions or suggestions regarding the above, please telephone me at (510) 550-6700 or e-mail me at mmollo@earthjustice.org.

Sincerely,

EARTHJUSTICE

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