



## **Chemical Producers and Distributors Association**

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### **Report to the Membership 2006-2007**

#### ***Legislative Issues***

- CPDA Supports Early Reauthorization of PRIA
- CPDA Dissuades EPA From Moving Forward with Damaging Fast Track Proposal
- CPDA Opposes President's FY 2008 Pesticide Fees Proposal
- CPDA Seeks Co-Sponsorship of the Agricultural Business Security Tax Credit Act
- CPDA Opposes Efforts to Revise Chemical Facility Security Requirements Through the Budget Process

#### ***Regulatory Issues***

- EPA Addresses CPDA Call for Labeling Guidance on Chemical Equivalency with the Brand Name Pesticide
- CPDA Applauds EPA for New Notification Processing Procedures
- CPDA Continues to Engage with EPA on Container Issues
- CPDA Weighs in on DHS Regulation of Chemical Facility Security
- CPDA Identifies Concerns with DHS Draft Appendix A: Chemicals of Concern
- CPDA Monitors EPA Action on Revoking Tolerance Exemptions for Inerts
- CPDA Encourages EPA to Move Forward with Policy on Data Compensation for Inerts
- CPDA Addresses OSHA GHS Proposal

#### ***CPDA Adjuvant and Inert Committee (AIC) Issues***

- CPDA Adjuvant Certification Program Gains Recognition in Registrant Community
- CPDA Establishes Drift Reduction Technology Work Group

### ***Other Issues***

- CPDA Representatives Meet with California Department of Pesticide Regulation Officials to Discuss Volatile Organic Compound (VOC) Issue
- CPDA Makes Recommendations Addressing Creation of a Generic Pesticide Registration Mechanism in Canada
- CPDA Calls for Additional Time to Assess Potential Impact of Draft Worker Protection/Certification and Training Proposal

### ***Conferences***

- CPDA Changes Format of Mid-Year Meeting to Bring More Value to Attendees
- CPDA Moves Trade Show to Coincide with Annual Meeting and Expands Exhibitor Base to Include International Presence
- AIC Conference in 2008 to Move to San Antonio, Texas

### ***Membership Recruitment***

### ***Conclusion***

## **CPDA Report to the Membership for 2006-2007**

CPDA had a very successful year during 2006-2007 and was involved in a full slate of legislative and regulatory activities. We would like to take this opportunity to highlight some of these initiatives along with our accomplishments and to provide a brief summary of the many issues that CPDA continues to engage in. The staff of CPDA looks forward to serving its membership during the coming year and encourages its member companies to take an active role in moving the association's public policy agenda forward.

### **Legislative Affairs**

#### CPDA Channels its Efforts in Support of the Early Reauthorization of the Pesticide Registration Improvement Act (PRIA)

CPDA continues to work as part of the Pesticide Industry Fees Coalition in support of the early reauthorization of the Pesticide Registration Improvement Act (PRIA). CPDA and its industry partners are optimistic that in the near future the legislation may move through the House under a suspension of the rules and in the Senate under a unanimous consent agreement. Both parliamentary procedures are generally used to move non-controversial pieces of legislation expeditiously through Congress.

PRIA was enacted into law on January 23, 2004 as part of the Consolidated Appropriations Act of 2004 and went into effect on March 23, 2004. The statute represents a carefully crafted, landmark agreement that brought together members of a broad coalition of divergent interests including members of the regulated community, environmental interests, agricultural commodity groups, farm worker advocates, and the EPA. PRIA establishes a system of pesticide registration fees for a variety of product registration submissions and sets forth specific timelines for Agency decisions on these product actions. Since its enactment, this important statute has provided stability in funding of EPA's Office of Pesticide Programs (OPP) and has instilled greater predictability to the registration process by establishing deadlines for product review times. Moreover, PRIA demands a strong element of accountability in the Agency's pesticide registration activities.

The industry fees coalition and the NGO community have reached consensus on draft language to renew the statute that has been presented to the House and Senate Agriculture Committees. The language clarifies the intent of the original statute and contains technical modifications to the statute and the accompanying PRIA product category chart. In a recent development, the Congressional Budget Office (CBO) has determined that the draft PRIA language will have no net budget effect. The CBO determination represents positive news for the industry coalition in that "PRIA II" will not be deemed as a revenue reducing initiative and thus should face little, if any, resistance in the House and Senate.

The draft PRIA consensus language contains several technical modifications aimed at improving the original statute. Specifically, the draft language would: 1) extend maintenance fees for five years at \$22 million per year with no COLA through 2012; 2) continue the allocation of 1/7 of the maintenance fees for the processing of me-too products and inerts; 3) authorize a 5% increase in registration fees for 2008 followed by another 5% increase in 2010; 4) retain the OPP budget baseline protection at the FY 2002 level of \$122 million so that fees are not used to offset appropriations for EPA pesticide review activities; 5) revise "ultra" small business fee waiver provisions so as to reduce the current 100% waiver to 75% (this revision is intended to ensure that all businesses pay a fair share yet still provide small registrants some level of financial relief); 6) authorize EPA to retain 25% of any fee for a withdrawn application; and, 7) require

accountability and the development of process improvements in EPA's implementation of its registration review initiative.

In its other provisions, the draft language would amend PRIA Section 3(g) to require EPA to docket the minutes of meetings with outside parties on registration review within 45 days of such meeting. In addition, the language would amend PRIA Section 3(g) to require EPA to periodically review all pesticide cases within fifteen years of October 1, 2008 or the date of initial registration, whichever is later. The language also increases the worker protection set-aside from \$500,000 to \$1 million annually, dedicates \$750,000 in FY 2008-2009 and \$500,000 in 2010-2012 for Partnership Grants, and sets aside \$500,000 from fees to fund the Pesticide Safety Education Program (PSEP). The PSEP funding provision has the strong support of the American Farm Bureau Federation, allied commodity groups, and the American Association of Pest Control Officials (AAPCO).

### CPDA Dissuades EPA From Moving Forward with Proposed Changes to PRIA Fast Track Categories

For the better part of the past year, CPDA and other members of the pesticide industry fees coalition held numerous meetings with EPA staff from RD, AD, and BPPD in an effort to develop consensus on a set of draft changes to the PPRIA product category chart. CPDA is pleased to report that these discussions culminated in an agreement on a set of revisions to the PRIA category chart that were recently presented to Congressional staffers on the authorizing committees who appear amenable to submitting these changes for publication in the *Congressional Record*. CPDA is hopeful that publication of the revised final PRIA chart in the *Congressional Record* will provide further momentum to the early reauthorization of PRIA.

In the months leading up to the agreement on the revised PRIA chart, CPDA was successful in dissuading EPA from moving forward with an earlier proposal that would have significantly increased review times for "me-too" product submissions from the current statutory deadline of 90 days to as much as four to five months. In response to strong opposition voiced by CPDA, EPA agreed to an alternative approach presented by CPDA that called for the retention of a three month review time period for all "me-too" product applications under PRIA II. In addition, EPA responded favorably to the inclusion of CPDA recommended language in the R30 PRIA product category description clarifying that applications with no data review or only product chemistry data review are eligible for a 90-day review. The positive response of EPA to this language is significant in that the Agency had initially maintained that it could not complete product chemistry reviews within the 90-day PRIA time frame and was pushing for a 150-day review period. EPA also accepted the addition of CPDA supported language in the R30 category which describes the data citation options for "me-too" applications eligible for a 90-day review as follows: cite-all data citations or selective data citation where the applicant owns all required data or the applicant has specific authorization from the data owner.

In related activities that took place during negotiations over chart revisions, CPDA responded to feedback from its member companies and was successful in persuading the industry fees coalition to delete an earlier reference to "CSF and Label Review required" within the revised R30 product category description. As initially agreed to by the industry fees coalition, the revised R30 language noted that a CSF and Label Review are required for applications submitted under this category. Several CPDA members contacted the association's office and asked that this reference be deleted since changes to the CSF and accompanying label reviews may currently be accomplished through the notification process set forth under PR Notice 98-10. Notifications submitted to EPA under PR Notice 98-10 are not subject to a PRIA fee and are processed by EPA within 30 days. A number of CPDA members voiced concern that the inclusion of the phrase "CSF and Label Review required" as part of the proposed R30 product category description could

subject notifications to a PRIA fee where none is required now and increase the processing time from the current 30-day timeframe to 90 days.

CPDA representatives relayed these concerns to members of the pesticide industry fees coalition explaining that the inclusion of this wording could have an adverse impact on notification actions for existing products by subjecting these submissions to longer processing times and by requiring a fee for these actions. CPDA convinced members of the industry fees coalition to delete the reference to “CSF and Label Review required” within the revised R30 product category description.

#### CPDA Opposes Fee Proposals Contained in President’s FY 2008 EPA Budget Request

CPDA continues to work in strong opposition to the provisions in the President’s FY 2008 EPA budget request calling for the establishment of \$66 million in new pesticide fees beyond existing fees authorized by PRIA. The President’s budget calls for: 1) \$12 million in new registration fees that will be collected in addition to the \$10 million in PRIA registration fees estimated for FY 2008; 2) \$32 million in the establishment of a new registration review fee; 3) the collection of \$13 million in new tolerance fees by removing the PRIA statutory prohibition that bars EPA from collecting this fee; and, 4) a restructuring of maintenance fees to allow for a \$9 million increase in authorized collections in FY 2008 from \$15 million to \$24 million. CPDA believes that these fees, if enacted, would lead to an unraveling of PRIA. This statute has provided stability in funding of EPA’s Office of Pesticide Programs (OPP), brought greater predictability to the registration process by establishing time frames for product review, incorporated accountability in the Agency’s pesticide registration activities, and has resulted in a number of pesticide registration process efficiencies and improvements.

The President’s budget proposal will not provide any direct benefit to EPA’s pesticide program. Rather, the President’s proposed pesticide fees would go to the U.S. treasury to offset the deficit.

#### CPDA Seeks Congressional Co-sponsorship of the Agricultural Business Security Tax Credit Act

CPDA continues to work with the Agricultural Retailers Association (ARA), CropLife America (CLA), the National Agricultural Aviation Association (NAAA), and The Fertilizer Institute (TFI) in support of the Agricultural Business Security Tax Credit Act. This important legislation would establish a modest tax credit to help eligible agricultural businesses offset the cost of enhancing on-site security. On March 29, 2007, the bill was introduced in the House as H.R. 1814 by Representative Ron Lewis (R-KY) who authored similar legislation in the previous Congress. A companion bill was introduced in the Senate on February 12, 2007 as S. 551 by Senators Pat Roberts (R-KS), Ben Nelson (D-NE), and Johnny Isakson (R-GA). Senators Roberts and Nelson introduced nearly identical legislation in the 109th Congress.

Under H.R. 1814/S. 551, an eligible business would receive a tax credit equivalent to 30 percent of the aggregate amount paid on implementing qualified security measures at facilities where pesticides and fertilizers are stored. A facility is limited to receiving no more than \$100,000 in tax credit within a five year period. The legislation includes an overall annual cap of \$2 million for any eligible business. The language has been previously reviewed by the Joint Taxation Committee (JTC), receiving a score of \$12 million over 10 years. If enacted, the Agricultural Business Security Tax Credit Act would help alleviate any adverse economic impact that eligible agricultural companies might be subjected to as a result of the new Chemical Facility Anti-Terrorism Standards promulgated in early April 2007 by the U.S. Department of Homeland Security (DHS).

CPDA has joined with ARA, CLA, NAAA, TFI, and numerous state and regional crop protection and agricultural business associations in signing on to a May 31, 2007 letter that was distributed to every member of the House and Senate urging co-sponsorship of this critical legislation. CPDA will continue its advocacy efforts in support of enactment of the Agricultural Business Security Tax Credit Act during the 110<sup>th</sup> Congress.

#### CPDA Opposes Congressional Efforts to Revise Chemical Facility Security Requirements Through the Budget Process

Over the past few months, CPDA has been working with allied industry trade groups in an effort to prevent the Congressional adoption of potentially damaging chemical facility security provisions through the budget process. Last spring, during Congressional deliberations over the Iraq-Afghanistan emergency supplemental appropriations bill, the House and Senate passed language opposed by CPDA and other industry trade groups that would have allowed states to adopt their own chemical security standards thus opening the door to possible mandates calling for the use of inherently safer technology (IST). The language in the emergency supplemental bill would have led to a set of inconsistent and potentially conflicting security requirements across all fifty states.

During the Senate debate on the emergency supplemental appropriations measure that took place last March, Senator George Voinovich (R-OH) offered an amendment to strike the language allowing for the preemption of federal regulation of chemical site security by states and localities. Shortly after the Voinovich amendment was introduced, CPDA wrote to selected members of the Senate urging them to vote in support of the language. In its letter, CPDA stated, "...In the absence of strong federal preemption, state and local governments could adopt an assortment of regulations and standards that would give rise to a patchwork of different requirements across all fifty states, resulting in contradictory or duplicative measures that could potentially compromise overall security." CPDA emphasized that Congress should not pass any legislation that would delay the current efforts underway within DHS to regulate chemical site security but should, instead, give the current process a chance to work.

CPDA also joined with the Agricultural Retailers Association, Crop Life America, The Fertilizer Institute, and the National Agricultural Aviation Association as signatories on a letter to the Senate calling for support of the Voinovich amendment. The letter emphasized that it is critically important for the federal government to be the sole regulator for the purpose of chemical facility security as it directly relates to the national security threat posed by terrorists against high risk facilities.

The final version of the emergency supplemental appropriations bill that was ultimately signed into law by President Bush on May 25, 2007 did not include the damaging chemical facility security provisions debated earlier last spring in the House and Senate.

However, the FY 2008 Homeland Security Appropriations measure (H.R. 2638) adopted by the House on June 15, 2007 includes language which stipulates that stricter state and local chemical security laws cannot be preempted by federal requirements. The House measure also includes language that would re-categorize chemical facility security data as "Sensitive Security Information." Currently, the chemical facility security regulations promulgated by DHS classify information collected pursuant to the rule as "Chemical-terrorism Vulnerability Information (CVI)," a category that better protects against the inappropriate public disclosure of such data. Meanwhile, the Senate Committee on Appropriations reported its version of the FY 2008 Homeland Security appropriations measure on June 14, 2007 that includes a similar provision on federal preemption that was authored by Senator Frank Lautenberg (D-NJ).

The Bush Administration has expressed its opposition to the chemical facility security provisions under consideration in the Homeland Security appropriations bill. CPDA will continue to work with allied industry trade groups in an effort to remove these harmful provisions from the appropriations bill that funds the Department of Homeland Security.

### **Regulatory Affairs**

#### EPA Addresses CPDA Call for Labeling Guidance that Addresses Chemical Equivalency with Brand Name Pesticide Product

Over the past year, CPDA has been working with EPA in providing input on the Agency's development of a guidance document that addresses the use of voluntary label language on me-too products that references chemical equivalency with the brand name pesticide. A guidance document has now been posted on the OPP Labeling Committee web site for public comment. EPA had previously announced its decision to allow a me-too pesticide product label to include a statement whereby the generic registrant would be permitted to identify by name the branded version of the product that contains the same active ingredient found in the me-too pesticide. EPA will allow the addition of such language to the label only through the amendment process and not through notification. The guidance document posted on the OPP Labeling Committee web site addresses placement on the label, font size and type of this voluntary language as well as disclaimers.

#### CPDA Applauds EPA for New Notification Processing Procedures

In a March 14, 2007 meeting with EPA officials, a delegation of CPDA members raised the issue of notification requests submitted to the Agency under PR Notice 98-10. CPDA representatives pointed out that under PR Notice 98-10, the EPA notifies the registrant in writing within thirty days only if the application does not qualify as a notification. Members of the CPDA delegation suggested that EPA should also provide a written response informing the applicant that the notification request is approved so as to bring more certainty into the product decision-making process.

In response to the concerns raised by CPDA, Registration Division personnel announced that EPA is implementing new notification and minor formulation amendment processing procedures. Under the new system, the applicant will receive one of three types of letters that sets forth EPA's decision on the notification submission as follows: 1) "Initial Screen" letter whereby EPA informs the applicant that the notification request falls within the scope of PR Notice 98-10; 2) "Further Label Investigation Required" letter whereby EPA explains that the notification request does not fall within the scope of PR Notice 98-10 but that it can be processed as a fast track amendment (EPA would stipulate that the Confidential Statement of Formula and/or label submitted with the application have been forwarded to the product manager for further processing); and, 3) "Not a Notification" whereby EPA stipulates that the notification request does not fall within the scope of PR Notice 98-10 and must be resubmitted as an amendment. An applicant will receive a 30-day response to a notification request and a 45-day response to a minor formulation change submitted under PR Notice 98-10.

#### CPDA Continues to Engage with EPA on Container Issues

After more than thirteen years in the making, on Wednesday, August 16, 2006, EPA published in the *Federal Register* its final rule establishing standards for pesticide containers and containment. The rule includes standards for: 1) nonrefillable containers; 2) refillable containers; 3) the repackaging of pesticide products; 4) container labeling; and, 5) containment structures.

The Agency's final rule adopts a CPDA recommendation calling for non-refillable containers equal to or larger than 5.0 liters (1.3 gallons) for liquid formulations to be excluded from regulation. This decision represents a significant departure from EPA's original proposal that used container size as a criterion for determining whether a pesticide product should be subject to the nonrefillable container regulations. In contrast, the approach adopted by EPA in the final rule uses the toxicity level of the pesticide, rather than container size/capacity, as the criterion for determining whether the container is subject to the non-refillable standards. The Agency's final rule also adopts a CPDA recommended residue removal standard of 99.99% and abandons its original proposal that would have established a 99.9999% standard of container cleanliness.

In related developments, EPA has decided to pursue an Advance Notice of Proposed Rulemaking (ANPRM) rather than a proposed rule as the next step in the Pesticide Container Recycling Rule project, a move that will undoubtedly delay the promulgation of a final initiative calling for a mandatory recycling program. EPA signals that the longer time period involved in pursuing an ANPRM would provide the Agency an avenue for gathering the additional quantitative risk assessment and economic analysis necessary to assess the potential impact of the plastic pesticide container recycling initiative.

The Agency had previously announced an accelerated schedule that called for the publication of a proposed rule on plastic pesticide container recycling in the fall of 2007 with a final rule targeted for promulgation a year later. With the decision of EPA senior management to pursue an ANPRM, Agency staffers are waiting for information about the new timing/schedule for release of a proposal. However, in report language accompanying the FY 2008 Interior, Environment and Related Agencies funding bill (Senate Report 110-091, June 26, 2007), the Senate Committee on Appropriations expressed its desire to see EPA move expeditiously in promulgating a container recycling rule. The Committee states, "The recycling of agricultural and specialty pesticide containers is a significant component of the human health and environmental protection goals of the Federal Insecticide, Fungicide and Rodenticide Act. The Committee continues to support EPA's efforts on recycling but is concerned with the delay in establishing regulations to make recycling a part of the comprehensive effort to ensure the safe use and disposal of pesticide containers. The Committee strongly encourages EPA to adopt pesticide container recycling regulations within 180 days of enactment."

CPDA has been evaluating possible mechanisms for funding a mandatory plastic pesticide container recycling requirement for registrants and in mid-February 2007 met with EPA officials to discuss possible options. During these discussions, CPDA staff recommended that the Agency establish an independent entity free of affiliation with any one group to coordinate mandatory recycling of plastic agricultural pesticide containers. CPDA suggested that the recycling initiative could be funded through the imposition of a fee added to the cost of the container that would be collected by the third party entity administering the program. EPA personnel responded positively to the recommendations of CPDA. The association will continue to monitor this issue and will submit comments to EPA once the ANPRM is published.

#### CPDA Weighs in on DHS Regulation of Chemical Site Security

On June 8, 2007, the U.S. Department of Homeland Security (DHS) interim final rule to establish Chemical Facility Anti-Terrorism Standards went into effect. The regulations are issued pursuant to Section 550 of the Department of Homeland Security Appropriations Act of 2007, signed into Public Law No. 109-295 on October 4, 2006 by President Bush. Shortly after the standards were initially proposed as an Advance Notice of Rulemaking (ANRM), CPDA commented on the proposal expressing the association's overall support of the Department's approach that called for establishing a risk-based, tiered mechanism in the regulation of chemical

facility security. In its February 7, 2007 comments, CPDA also agreed with the Department that the authority for regulating chemical facility security should reside with the DHS in accordance with the doctrine of federal preemption. The association applauded DHS for its recognition that the construct of inherently safer technology (IST) is not germane to a discussion of chemical facility security but instead is based on environmental considerations. CPDA added that the imposition of an IST mandate would not likely contribute to an overall reduction in risk but could simply redistribute risk from manufacturing sites to transportation and supply chains that serve the production sector.

While praising the Department for its position on these issues, CPDA raised several concerns that focused on the proposed “Top-screen” methodology for defining “high risk” facilities. Specifically, CPDA questioned whether the “Top-screen” rating tool is sensitive enough to ensure that low risk facilities are not inappropriately categorized as high risk. CPDA also emphasized that tiers must have objective and distinct criteria for appropriate placement of a facility within a specific tier, and must allow performance standards to be designed for that tier based on the magnitude of consequences and facility vulnerability. In its other comments, CPDA recommended that the Department adopt enhanced protections for the sensitive chemical site security data it collects to ensure against inappropriate public disclosure of information that might put facilities at a greater risk of potential terrorist attack. Finally, CPDA encouraged the Department to avail itself of consultation with chemical facility owners and operators as it develops specific performance standards for each risk tier.

#### CPDA Submits Comments to DHS Identifying Concerns with Draft Appendix A: Chemicals of Concern

When the DHS promulgated its final chemical facility security regulations in early April 2007, the Department released for public comment a draft list of chemicals of concern and associated threshold levels that would trigger the requirement that a facility complete a preliminary online risk assessment questionnaire referred to as “Top-Screen.” CPDA submitted comments to the Department on the draft Appendix A on May 9, 2007 in which the association recommended that DHS move forward with publishing a list that contains chemicals known to be of high risk at established numeric quantities in all physical states and to conduct further review on the remaining chemicals on the draft list until further information is known about threshold quantities, the physical state of the substance that poses risk, and common modes of use, storage and application.

In its comments, CPDA emphasized that as proposed, Appendix A is too expansive and covers a number of substances that are commonly used in manufacturing processes across a wide spectrum of industries in the United States. CPDA pointed out that the Screening Threshold Quantities (STQs) suggested by DHS for many of the commonly used chemicals listed in Appendix A are too low and would trigger the requirement for a Top-Screen risk assessment by a number of facilities that are not high risk. CPDA also stated that trace amounts of a particular substance that may be found in mixtures should not trigger the requirement to perform a preliminary Top-Screen risk assessment. The association recommended that the Department articulate its policy on mixtures in writing so as to eliminate any potential confusion that may arise in the future. In its other comments, CPDA urged DHS to eliminate the “any amount” threshold quantity for chemicals listed in Appendix A because it is not a realistic representation of the risk that may or may not be posed by the substance in question. CPDA stated that in its place, DHS should devise specific threshold quantity levels, supported by available information pertaining to the relative risk or hazard associated with a particular chemical.

CPDA also expressed its concerns with regard to how DHS intends to treat the aggregate on-site storage or use of chemicals listed in Appendix A noting that even if a facility houses a

listed substance that meets the threshold quantity in the aggregate, DHS needs to consider other qualifying factors that in actuality would indicate a lower risk profile for that facility. Finally, CPDA identified three substances including propane, urea, and 28% liquid ammonium nitrate recommending that DHS remove these substances from the draft Appendix A pending further review and discussion.

At the time of this writing, DHS was continuing in its review of public comments submitted in response to draft Appendix A. It is possible that a final list of chemicals of concern could be published in the *Federal Register* by late July 2007.

In the interim, CPDA continues to participate as an active member of the Chemical Sector Coordinating Council (CSCC) in providing input to DHS in its implementation of the final interim rule to establish chemical site security standards.

#### CPDA Monitors EPA Action on Revocation of Tolerance Exemptions for Inert Ingredients

On August 9, 2006, EPA published in the *Federal Register* its final rule calling for the revocation of 122 inert ingredient tolerance exemptions due to the lack of sufficient and reliable data to make the required safety determination under FFDCCA Section 408(c)(2) as amended by FQPA. The revocation of the listed tolerance exemptions is effective on August 9, 2008 thus providing two years for the submission of supporting data to EPA.

In response to EPA's rulemaking, the Joint Inerts Task Force (JITF) was formed independently by a group of registrants and inert ingredient suppliers who have expressed an interest in supporting the inert products subject to EPA's tolerance exemption revocation action. The permanent Executive Committee of the Task Force contains an equal number of registrant and inert ingredient supplier companies, with ad hoc, non-voting membership by CPDA and Crop Life America. The Task Force has established a process and entered into a contractual arrangement with an outside firm to collect the needed safety data to prevent revocation of the tolerance exemptions slated for August 2008. Of the 481 inert ingredients, only 14 are not being supported by the Task Force. For these 467 supported chemistries, a preliminary 22 cluster groups have been identified, though there will likely be changes before the proposed clusters are presented to EPA.

#### CPDA Encourages EPA to Move Forward with Policy on Data Compensation for Inerts

CPDA continues to urge EPA to move forward with a policy to establish data compensation protections for inert ingredients. An initial draft of EPA's long awaited proposal to implement Section 408(i) of the Federal Food, Drug and Cosmetic Act (FFDCA), as amended by FQPA, to establish data compensation protections for food use inert ingredients is essentially complete and is currently undergoing internal agency review. At a June 27, 2007 meeting of the Joint Inerts Task Force (JITF), EPA's Kerry Leifer indicated that he expects a draft proposal will be issued as an Advance Notice of Proposed Rulemaking (ANPRM) late this year.

EPA has signaled that the ANPRM will likely incorporate a number of elements contained in the Agency's "Proposal for Implementing Data Compensation Rights for Data Submitted in Support of Tolerance and Tolerance Exemption Actions," issued on April 17, 2003. Among these is a provision allowing for citation of the formulator's exemption. In addition, the ANPRM will likely acknowledge the need for data citation forms specific to data submitted in support of inert ingredients. The ANPRM may also call for the establishment of a Data Submitter's List that presumably would identify for each inert the studies considered, the owner of the data, and members of consortia or task forces that own the data as well as the identification of companies that make or made an offer to pay. EPA representatives have suggested that the

Agency will likely move forward with release of the Data Submitter's List even while rulemaking is in progress.

The Agency's decision to establish a mechanism addressing data compensation for inerts through rulemaking represents a significant departure from its earlier approach that called for articulation of such a policy in the form of a PR Notice. On Thursday, February 15, 2007, CPDA representatives met with EPA personnel Pauline Wagner and Kerry Leifer in an effort to secure a better understanding of the Agency's change in strategy. EPA staffers indicated that the Agency's decision to pursue a formal rulemaking was predicated largely on legal and enforcement considerations. While the initiative will not likely be proposed as a major rule, it will have significant regulatory impacts.

Once the anticipated ANPRM is released, CPDA will review the document and submit public comments to the Agency's docket.

#### CPDA Addresses OSHA GHS Proposal

On September 12, 2006, OSHA published its Advance Notice of Proposed Rulemaking (ANPRM) that proposed potential modifications to the Hazard Communication Standard (HCS) to conform to GHS. CPDA submitted comments to the docket in response to this draft initiative in which the association emphasized that while the ANPRM does not propose any direct mandatory testing requirements, in reality companies will likely choose to perform testing simply to avoid what will essentially be the non-risk based reclassification of their product to a more restrictive category of hazard. In its other comments, CPDA pointed out that the cost of performing the appropriate testing in order to defend placement of a product in a lower hazard class can be significant – particularly for small companies with limited resources. Moreover, many manufacturers of pesticides and inert ingredients formulate their products into chemical mixtures that may contain multiple ingredients. Each of these ingredients frequently has a separate safety data sheet. If a mixture will require a single safety data sheet, it would force pesticide manufacturers and inert ingredient suppliers to test or retest their mixtures for hazards, thus driving up the cost and time of marketing mixtures. CPDA also noted that the OSHA ANPRM does not include a detailed plan for retraining which is a necessary component of GHS implementation that will be costly and time consuming.

In related activities, on October 20, 2006, CPDA joined with eleven allied trade associations in co-hosting a workshop that focused on OSHA's proposed changes to the Hazard Communication Standard to conform to GHS. The workshop featured a full slate of speakers from OSHA, the U.S. Department of Transportation, the U.S. Small Business Administration, the regulated community, as well as legal experts who addressed various aspects of the initiative. The workshop was very well attended and drew an audience of more than 175 individuals.

### **CPDA Adjuvants and Inerts Committee (AIC) Activities**

#### CPDA Adjuvant Certification Program Gains Recognition in Registrant Community

The CPDA Voluntary Certification Program for spray tank adjuvant products and soil conditioners continues to gain recognition within the agricultural registrant and retailer community. The CPDA certification program, launched in 2001 by the CPDA Adjuvants and Inerts Committee, consists of a set of 17 voluntary standards that set forth product performance standards consistent with American Society of Testing and Materials (ASTM) guidelines, definitions and methodologies. The adjuvant standards establish minimum benchmarks for good product stewardship and functionality claims as supported by industry experts. In so doing, the

CPDA adjuvant certification program provides the assurance to the user that a product certified under this initiative meets certain uniform performance specifications. In a January 2006 letter to CPDA, EPA announced its decision to grant permission under PR Notice 98-10 to allow registrants' labels to recommend the use of adjuvants certified under the association's program. EPA will allow the following statement recommending the use of a CPDA certified adjuvant to appear on the pesticide product label: "When an adjuvant is to be used with this product, [name of the registrant of the pesticide] recommends the use of a Chemical Producers and Distributors Association certified adjuvant." This language allows for the clear identification of a product as having been certified under CPDA's program. EPA's decision on this labeling language has prompted a significant level of interest in the registrant community in the use of CPDA certified adjuvants.

#### CPDA Establishes Drift Reduction Technology Work Group

CPDA has established a new Drift Reduction Technology (DRT) work group that will provide input to EPA on the Agency's DRT program that is expected to include buffer zone requirements and drift reduction testing protocols. A number of companies belonging to CPDA's Adjuvants and Inerts Committee (AIC) have expressed an interest in participating in the new DRT Work Group. CPDA invites any member with an interest in this issue to join in this effort.

### **Other Issues**

#### CPDA Representatives Meet with California Department of Pesticide Regulation Officials to Discuss Volatile Organic Compound (VOC) Issues

On February 26, 2007, a delegation of CPDA representatives met with officials from the California Department of Pesticide Regulation to discuss the issue of VOC emissions potential as related to the use of liquid agricultural pesticide formulations. The California Air Resources Board (ARB) and the California Department of Pesticide Regulation (DPR) have drafted a revised State Implementation Plan (SIP) under the Clean Air Act to fulfill California's commitment to reduce VOC emissions from agricultural and structural use pesticides. The Clean Air Act requires the submission of state implementation plans to EPA for implementing, maintaining, and enforcing national ambient air quality standards (NAAQS) for air pollutants such as ozone. During last February's meeting, CPDA representatives requested that DPR revise the pesticide element contained in the SIP to allow for an "adjustment factor" that would call for the consideration of factors other than the thermogravimetric analysis (TGA) data as a means of assessing the VOC emissions potential of liquid agricultural pesticide formulations. The CPDA delegation emphasized that reliance upon TGA data alone may lead to inflated "worst-case" estimates. CPDA representatives encouraged California regulators to instead consider the use of the TGA test in combination with other science-based VOC assessment tools that more accurately reflect VOC emissions potential estimates.

On April 26, 2007, the ARB released its revised draft SIP that sets forth the state strategy for achieving reductions in ozone emissions and for meeting federal standards for fine particulate matter. The revised draft SIP includes a discussion of the DPR proposed 2008 Pesticide Plan that sets forth strategies to reduce reactive organic gas (ROG) emissions from pesticides through regulation of fumigant pesticide use. In related developments, DPR has made available a May 23, 2007 draft plan for reducing emissions of volatile organic compounds from agricultural and commercial structural pesticides. The draft "VOC Plan" addresses the use of fumigants and emulsifiable concentrates (ECs) which, according to DPR, cause the greatest VOC emissions

from pesticide use in any given non-attainment area. CPDA will continue to monitor this issue and to work collaboratively with allied industry groups in monitoring further developments.

#### CPDA Makes Recommendations Addressing the Creation of a Generic Pesticide Registration Mechanism in Canada

On April 11, 2007, CPDA submitted comments to the Canadian Pest Management Regulatory Agency (PMRA) on a regulatory proposal entitled, "Protection of Proprietary Interests in Pesticide Data in Canada." While praising PMRA for its efforts to establish a process for the expedited registration of generic pesticides, CPDA raised several concerns related to the data compensation provisions set forth in the proposal.

Under the PMRA initiative, a registration would be granted *after* the negotiation and arbitration process for a Letter of Authorization has occurred. Should the mandatory arbitration/negotiation process fail, PMRA would rely upon the existing data set available in making a decision on the generic registration. CPDA questioned why there is any need to delay the issuance of a decision on the generic pesticide submission once chemical equivalency with the originally registered product has been established. CPDA pointed out that by granting the registration prior to the conclusion of the mandatory negotiation/arbitration process, additional pressures are placed on all parties to reach a satisfactory agreement on compensation for data used to support the licensing of a generic pesticide.

CPDA called upon PMRA to model its data compensation provisions after the system used in the United States whereby the right to market a generic product exists once a certified offer to pay is made and the registration is granted. As such, negotiations on data compensation should occur concurrently with evaluation of the generic registration application. The generic product could enter the market upon issuance of a certificate of registration even if no agreement is reached or arbitration proceedings have not been completed.

#### CPDA Calls for Additional Time to Assess the Potential Impact of Draft PPDC Worker Protection/Certification and Training Proposal

The Pesticide Program Dialogue Committee (PPDC) Worker Safety group has developed an issue paper that would expand the scope of individuals subject to regulation and new testing requirements for the application of general use pesticides by occupational applicators. The proposal has not been released as a draft rulemaking but rather has been addressed, thus far, through the venue of the PPDC. EPA set a deadline of June 15, 2007 for comments on the PPDC worker safety work group proposal.

The proposal under consideration would: 1) call for expanding the scope of applicators subject to regulation to include all employees who handle pesticides in an occupational setting; 2) require occupational applicators of potentially harmful pesticides to pass a certification exam that determines their competency to use pesticides safely; and, 3) revise standards for the use of restricted use pesticides by uncertified applicators working under the direct supervision of a certified applicator.

Under the current regulatory regime, restricted use pesticides may only be applied by individuals classified as certified applicators. It is estimated that restricted use pesticides account for approximately 11% of all registered pesticides on the market. The proposal under review would extend the certified applicator requirement beyond restricted use pesticides to the remaining 89% of pesticides on the market that are registered for general use.

CPDA sent a June 15, 2007 letter to EPA's Kevin Keaney, Chief of OPP Pesticide Worker Safety Programs, requesting a 90-day extension of the comment period on the proposal. In its letter, CPDA emphasized that there are numerous aspects of the proposal that need to be addressed including the applicability of testing and training requirements, content of training programs, testing standards, retraining intervals, implications for product labeling, changes to hazard communication requirements, possible revisions to pesticide information sheets, and other related issues. CPDA stated that given the far-reaching potential impact of the proposal, a 90-day extension of the comment period is necessary in order to provide meaningful input on these issues.

In related activities, CPDA joined with a broad coalition of associations representing various registrants, formulators, distributors, and users of both traditional pesticides and antimicrobial products in asking EPA for an extension of the comment period on the PPDC worker safety issue paper. In its letter, the group voiced concern that the level of outreach and notification to potentially impacted stakeholders regarding the proposal was inadequate and that the regulated community had not been included in the ongoing discussions over the initiative. The letter called upon EPA to provide clearer and more comprehensive communication on the proposal that would assist the regulated community in understanding its implications and identifying relevant concerns.

CPDA will continue to monitor the worker protection certification and training proposal and work with its allied trade association partners in engaging with EPA on this initiative.

### **Conferences**

CPDA has changed the format and structure of its Mid-Year Meeting in an effort to bring more value to conference attendees. To this end, CPDA launched its inaugural "Meet the Regulators" event as an exciting new component of the Mid-Year Meeting. This activity, held on March 14, 2007, gave Mid-Year Meeting attendees the opportunity to meet one on one with EPA decision-makers on issues of importance to the CPDA membership including labeling, the inert ingredient approval process, registration policy, and other relevant topics.

In other changes, CPDA has moved its trade show to coincide with the Annual Meeting and has expanded its exhibitor base to include companies from China and other countries. Last year's trade show attracted about 40 Chinese companies seeking to establish or expand a presence in the U.S. pesticide markets. We are excited to be holding our second international trade show in conjunction with the 2007 Annual Meeting in Portland.

CPDA is also pleased to announce that it will be making a change in the venue of its annual Adjuvants and Inerts Committee (AIC) Conference. While this meeting has traditionally been held in Memphis, Tennessee, at the request of a number of its member companies the location of this conference will include other locations as well. The next AIC conference will be held in San Antonio, Texas. CPDA will announce further details on this meeting as they become available.

### **Membership Recruitment**

CPDA is pleased to report that 2006-2007 signified one of the most successful years for the association in terms of recruitment of new membership. Recognizing the benefits of membership in CPDA, a total of eleven companies joined the association over the past year. Collectively, these companies represent a diverse cross-section of the pesticide industry spanning such business operations as the production and formulation of pest control products, the development of inert ingredients used in food use formulations, the manufacture of containers

utilized to house and distribute product, as well as a range of scientific, administrative, and investment consulting services provided to the industry. CPDA encourages the participation of its new members in identifying issues of importance to their business and sharing their expertise in support of the association's execution of its legislative and regulatory programs. CPDA would like to take this opportunity to extend an official welcome to the following new members: AgriCapital Corporation, Arysta LifeScience North America Corporation, BrightPath Capital, Clariant Corporation, Exponent, Helm Agro USA, Inc., Kincannon & Reed, Lee Container Corporation, McLaughlin Gormley King Company, SAFRISK, LC, and Technology Sciences Group.

### **Conclusion**

In conclusion, the CPDA staff would like to thank its membership for the privilege of serving them during this past year. The industry faces a number of challenges and opportunities ahead. CPDA stands ready to meet this task. The association encourages your company to assist us by providing guidance and input on issues that are important to your business.