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Keeping an Eye on Washington

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PPDC Meeting Includes Discussion of Web Distributed Labeling

The Pesticide Program Dialogue Committee (PPDC) meeting held April 22-23, 2009 included a discussion of web distributed labeling. Bill Jordan of EPA indicated that a PPDC work group formed around this issue has reached a general consensus to move forward with a virtual pilot that would serve as a “test drive” for EPA, industry, growers, and other stakeholders to gauge how such an initiative would perform without any liability concerns. The virtual pilot would not require changing any labels and would include a website with sample web distributed labeling that would allow users to retrieve crop and state-specific labeling for informational purposes only. According to a PPDC Workgroup paper, the virtual pilot might include the participation of state regulators who could focus on the enforceability of web distributed labeling. For example, state regulators could use the virtual pilot to ascertain whether the label information obtained through the web distributed labeling site matches the labeling approved in their individual states. Regulators at the state level could also determine whether any changes in state law or regulation would be necessary to be consistent with web distributed labeling. Should the virtual pilot be well received, EPA might then move forward with a pilot in the field. Jordan acknowledged that several important issues related to web distributed labeling remain – namely, concerns surrounding questions of enforcement and liability in connection with the use of a pesticide product for which the label is not attached to the container. EPA also recognizes the fact that high speed Internet access may not be readily available to all growers particularly in a number of rural communities where broadband capabilities are limited or non-existent. For growers whose access to the Internet is limited to dial-up, EPA’s Bill Jordan believes that this will be adequate to download label files. Furthermore, web-distributed labeling would include alternate delivery methods such as mail and fax to accommodate users that do not have access to the web or the necessary technology to download and print labels.

Jordan told the PPDC that one of the benefits of web distributed labeling is that the dissemination of product labels reflecting the most up to date and comprehensive risk mitigation measures would be made more expedient. The EPA staffer explained that currently when the Agency decides it wants additional risk mitigation information added to the label, the registrant must amend the label, print the new label, and affix it to the

container. Eventually, a user buys the product with the updated information appearing on the label. This lengthy process can mean that it will take months before the updated risk mitigation information makes it to the hands of the user. Jordan stated that under web distributed labeling, the steps of printing the new label and distributing the product with the new labeling affixed to the container is eliminated. Instead, the most current version of the label becomes available immediately through the Internet. As such, EPA believes that risk mitigation measures and information on new uses would reach the grower and product user much sooner. According to EPA, this expediency would lead to improved compliance in the field through timely access to more readable container labels and labeling.

In his other comments, Jordan indicated that web distributed labeling would not likely work for all types of pesticide products. As such, it is probable that the scope of this initiative will be limited to agricultural pesticides, at least initially. Moreover, if this activity moves forward, it will likely do so as a voluntary initiative. Jordan added that one option under consideration would call for the creation of a searchable data base for those products that are volunteered for participation in the web distributed labeling initiative. Such a data base would provide access to labeling for a specific use in a specific state and would provide links to Endangered Species bulletins. It might also highlight changes from previous versions of labeling.

In addition to web distributed labeling, EPA is developing an e-labeling initiative which will include structured labeling content for purposes of making the label more consistent and facilitating the Agency's ability to receive, review and approve master labeling electronically.

CPDA is a member of the PPDC Web Distributed Labeling Workgroup and will continue to monitor these labeling developments closely.

PPDC Discussion Includes Update on Sixth Circuit Court of Appeals Decision on Pesticide Applications and NPDES Permitting

At the April 2009 PPDC meeting, EPA personnel provided an update on the Agency's response to the January 7, 2009 Sixth Circuit Court of Appeals decision vacating an EPA rule which held that the application of a pesticide in, over or near water in accordance with FIFRA labeling requirements does not need an NPDES permit under the Clean Water Act. The EPA final rule, issued on November 27, 2006, states that the application of a pesticide to waters of the United States consistent with all relevant requirements under FIFRA does not constitute the discharge of a pollutant that requires an NPDES permit in the following two circumstances: 1) the application of pesticides directly to waters of the United States in order to control pests (i.e., applications to control mosquito larvae, aquatic weeds, or other pests that are present in waters of the United States); and, 2) the application of pesticides to control pests that are present over waters of the United States, including near such waters, where a portion of the pesticides will unavoidably be deposited to waters of the United States in order to target the pests

effectively (i.e., when insecticides are aerially applied to a forest canopy where waters of the United States may be present below the canopy or when pesticides are applied over or near water for control of adult mosquitoes or other pests).

Petitions for review of the EPA rule were filed in 11 Circuit Courts and were consolidated in the Sixth Circuit Court of Appeals (*National Cotton Council, et al. v. EPA*). On April 29, 2008 the Sixth Circuit heard oral arguments. In its January 7, 2009 decision, the Court held that the final EPA rule was not a reasonable interpretation of the Clean Water Act and vacated the regulation. Specifically, the Court held that NPDES permits are required for: 1) all biological pesticides applications that are made in or over, including near waters of the United States; and, 2) chemical pesticide applications that leave a residue or excess pesticide in water when such applications are made in or over, including near waters of the United States.

According to EPA, the following categories of pesticide application over or near waters of the United States are covered by the Court's decision: mosquito larvicides, mosquito adulticides, herbicides used to control weeds in lakes and ponds, herbicides used to control weeds in irrigation systems and other waterways, herbicides used to control weeds along ditch banks in agricultural drainage systems, insecticides used in wide-area insect suppression programs, herbicides used in wide-area control programs directed at aquatic invasive plant species, and pesticides used in forestry programs. EPA states that irrigation and agricultural storm water run-off are two areas specifically exempted from NPDES permitting requirements under the Clean Water Act.

On April 9, 2009, EPA filed a Motion for Stay of the Court's decision for a period of 24 months. At the request of EPA, USDA joined in filing a Motion for a Stay due to the Court decision's potential for disruption to agriculture. USDA was also concerned that the Court decision could negatively impact the activities of the Forest Service and the Animal Plant Health and Inspection Service (APHIS) and could lead to a setback in certain projects underway within the Agricultural Research Service.

EPA states that if the stay is granted, it will provide the Agency with the necessary time to develop, propose and issue final NPDES general permits for those states that have not established an NPDES permit program. Until the Court makes a decision on the request for a rehearing or stay of its January 2009 decision, the Agency's final NPDES aquatic pesticide rule remains in effect and permits are not required as long as the pesticide application is made in accordance with the FIFRA label.

Meanwhile, EPA's Office of Water and Office of Pesticide Programs are preparing to work jointly on the development of a general NPDES permit and are looking at existing permitting requirements and processes that are in place in 23 different states. As part of this effort, EPA plans to form a workgroup that will include representatives from AAPCO. Some state regulators have indicated that the Sixth Circuit Court decision, if allowed to stand, could decimate already stressed pesticide regulatory budgets. For example, at the recent PPDC meeting, a representative from the state of California expressed concern that NPDES permitting activities for pesticide applications as

mandated by the Sixth Circuit Court of Appeals decision could consume as much as 20% of California's mosquito abatement budget essentially bringing this activity to a halt. Several state lead regulatory agency representatives have asked EPA to be included in consultations as work on the development of a general NPDES permit gets underway. In other activities, EPA has established internal teams that are in the process of identifying specific pesticide products that will likely be impacted by the Sixth Circuit Court decision.

EPA Selects 67 Chemicals for Initial EDSP Screening

On April 15, 2009, EPA published in the *Federal Register* its long anticipated final list of the first group of chemicals that will be screened under the Endocrine Disruptor Screening Program (EDSP). Accompanying the list of chemicals, EPA published its policies and procedures document that sets forth the Agency's approach for conducting the initial EDSP screening. In addition, the Agency announced the submission of a new Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. The ICR covers the information collection activities associated with Tier 1 screening of the first group of chemicals under the EDSP. As required under the Paperwork Reduction Act, the ICR is subject to a 30-day public comment period.

The final list of chemicals selected for initial screening consists of 67 pesticide active ingredients and HPV inert ingredients used in pesticide formulations. EPA emphasizes that the 67 chemicals were selected on the basis of exposure potential only and should not be construed as a list of known or likely endocrine disruptors. The original draft list of candidates for screening consisted of 73 chemicals and was published in the *Federal Register* on June 18, 2007.

Speaking about EPA's plans to implement the EDSP at the April 2009 PPDC meeting, Agency representatives stated that EDSP test orders will be issued no later than July 2009. In preparation, EPA's Office of Pesticide Programs and Office of Science Coordination and Policy have been working jointly on developing an internal process to handle this activity. EPA staff indicated that the Agency is in the process of identifying those companies which hold registrations for the chemicals appearing on the final list of substances selected for initial screening. While Agency personnel affirm that EPA's approach is to use registration review as a means of integrating EDSP testing in the pesticide approval process, they add that some of the chemicals on the final list are not yet scheduled for registration review. As such, Agency staff describe this situation as something of a "disconnect." In their other comments, EPA personnel state that they do not anticipate issuing all 67 test orders at the same time. Rather, the Agency is trying to work out a priority or "sequencing system" that will be based on efficiencies rather than exposure considerations. EPA representatives reiterate that as the Agency proceeds with implementation of the endocrine screening program during this initial phase, subsequent changes will be made to the initiative where needed.

EPA Nearing Completion of Documents Addressing Spray Drift

The April 2009 PPDC meeting featured an update on EPA's activities that address the issue of spray drift. Bill Jordan reported that three documents are close to release for public comment. The first of these is a draft PR Notice that would set forth language for inclusion on the label of products that have the potential for drift. Jordan noted that EPA's aim is to provide a clear, understandable, and enforceable statement on spray drift that will better enable users to protect public health when applying products that have the potential for drift. The draft PR Notice would include an aquatic specific statement that addresses droplet size, buffers, and other factors relevant to drift. Jordan added that the PR Notice would also recommend the timing and processes by which companies should change product labeling to incorporate the new language. The second document is described as a "labeling interpretation" document which will discuss the rationale for the proposed statements contained in the draft PR Notice. The third document is a *Federal Register* notice announcing the availability of the draft PR Notice on spray drift and the accompanying "labeling interpretation" document. The *Federal Register* notice will also provide a description of the history surrounding the issue of spray drift and a summary of related EPA activities including the drift reduction technology initiative. The three documents will likely be published in late 2009 or early 2010.

EPA Office of Water and Office of Pesticide Programs Work to Harmonize Aquatic Effects Assessments

During the recent PPDC meeting, EPA personnel reported that the Agency's Office of Water (OW) and Office of Pesticide Programs (OPP) have been working together in an effort to harmonize ecological risk assessment methodologies for pesticides to meet the mandates of the Clean Water Act and FIFRA. According to a PPDC issue paper distributed at the April 2009 meeting, SFIREG encouraged collaboration between both offices to agree on endpoints that states could use when aquatic life criteria are not available. In response, OW and OPP have been working collaboratively to introduce state-of-the-science methods into the risk assessment methodologies used by both offices. In addition, OW and OPP have been reviewing each other's ecological assessment and criteria documents. Both offices are focused on designing a transparent process that will ensure stakeholder input from technical experts, the environmental community, the regulated community, state and local governments, as well as other interested parties.

EPA Working on Revamping its Web Site

EPA reports that it is moving all of its websites to a new "Content Management System" technology and the Agency's pesticide web site will transition to the new system in the spring of 2010. A PPDC issue brief states that this effort will provide OPP with the opportunity to improve the organization of the web site's content and navigation. OPP information technology staff will hold a number of focus groups and request volunteers in an effort to gather input on how the web site might be changed. Individuals

interested in participating in a focus group or who have suggestions on improving the OPP web site should contact Nikos Singelis at singelis.nikos@epa.gov or (703) 603-0164.

EPA Establishes Web Page on Electronic Submission of Pesticide Applications

EPA has devoted a section of its web site to the electronic submission of pesticide applications. The web site provides hands-on information and guidance on the electronic submission of an application for a new or amended registration, experimental use permits, tolerance petitions, and supplemental distributor applications. EPA states that at this time applications in support of reregistration or registration review are not eligible for electronic submission. The Agency adds that supplemental information submitted at the request of EPA, FIFRA 6(a)(2) submissions, submissions of data as a condition of registration, and notifications are not eligible for electronic submission. This section of EPA's web site may be accessed at <http://www.epa.gov/pesticides/regulating/registering/submissions/#ecsf>.

Environmental Coalition Urges EPA to Consider Climate Change Impacts of Pesticides

A coalition of environmental groups have written a joint letter to EPA Administrator Lisa Jackson and OPP Director Debbie Edwards urging the Agency to develop a set of recommendations for pesticide regulation that takes into consideration the impacts of climate change. The signatories to the April 1, 2009 letter included the Sierra Club, the Center for Biological Diversity, the Pesticide Action Network, Defenders of Wildlife, the Center for Environmental Health, and the Natural Resources Defense Council. The coalition states, "...Climate change will significantly alter the behavior and impacts of many pesticides, and EPA must move swiftly to address these new challenges. Addressing climate-linked pesticide impacts now is particularly appropriate because EPA is in the early stages of the registration review process...and so has an important opportunity to recalibrate its practices even as the climate crisis becomes ever more acute."

The letter states that warming climates, altered precipitation regimes, and heightened carbon dioxide levels will put stress on agricultural systems and may favor pests and disease vectors. The coalition argues that this, in turn, may cause pesticide use levels now seen primarily in the south to appear in more northerly regions. The signatories add, "...It is worth noting, too, that this general increase in pesticide use will likely be quite complex on local and regional scales. Because the agricultural map of the United States may be quite different in a few decades, some regions will experience farming practices, including the use of some pesticides, which they presently do not. In other cases, novel combinations of pesticides will appear, as the present pattern of use shifts."

The environmental groups also assert that likely weather patterns may “exacerbate” pesticide contamination of non-agricultural environments and may alter pesticide break-down pathways. The letter specifically cites the potential for enhanced pesticide spray drift and volatilization linked to higher temperatures and increased wind speeds. The signatories to the letter state, “...with drier, warmer conditions, pesticides will likely travel further than they have before, with attendant ecological and human health risks.” The coalition continues, “...new configurations of soil and atmospheric conditions implicate the break-down pathways of many pesticides. In some cases, formerly aerobic waters may become anaerobic; in others, soil composition may lead to new compounds coming into contact with toxins.”

The environmental coalition requests that EPA formally present the issue of pesticide regulation as related to climate change to the Scientific Advisory Panel (SAP) and the Science Review Board for consideration. The groups also suggest that EPA host a public workshop on interactions between climate change and pesticide impacts that would be attended by SAP and Science Review Board members along with EPA staff as well as interested stakeholders and members of the public. The letter concludes, “...The integrity of pesticide regulation depends upon integrating climate change into the FIFRA process.”

In related developments, the House Committee on Agriculture has posted on its web site a questionnaire that seeks input from stakeholders in the agricultural and forestry communities concerning a range of climate change options that may be considered by Congress. Among these are various proposals that would allow producers to receive emission allowances to generate carbon offsets which could be sold under a cap and trade program. The questionnaire may be accessed at <http://agriculture.house.gov/inside/pubs/Questions.doc>.

President Releases EPA Budget Request for FY 2010

On May 7, 2009, President Obama released the proposed FY 2010 budget for EPA which calls for \$10.5 billion in discretionary funding authority. According to the Obama Administration, the FY 2010 EPA budget request represents the highest level of proposed funding in the Agency’s 39-year history. The President’s budget request includes several proposals to establish new pesticide fees as follows: 1) \$23 million in new maintenance fees in addition to the \$22 million in maintenance fees currently authorized under PRIA; 2) an additional \$12 million in enhanced registration service fees beyond those authorized under existing statute; and, 3) \$13 million in new tolerance fees currently prohibited under PRIA. The Administration states that it will submit legislative language to Congress to enact these new fees which would go into the general Treasury as a deficit reduction measure. As a member of the PRIA Fees Coalition, CPDA remains opposed to the establishment of any new pesticide fees other than those authorized under current PRIA. CPDA will work closely with other members of the PRIA Fees Coalition in an effort to block any traction that the President’s fee proposal may gain in Congress.

In other EPA budget news, the President's funding request includes \$11.4 million for the continued development and implementation of the Agency's Endocrine Disruptor Screening Program (EDSP). Budget documents indicate that EDSP research efforts will include the following: 1) the development of novel *in vitro* assays as improved alternatives that may further reduce the quantity of animals used; 2) finalization of the Tier 2 amphibian developmental/reproductive assay and the fish 2 generation study for validation; 3) providing the underlying science that will help in the interpretation of studies submitted to the Agency under EDSP; and, 4) determining the impact of endocrine disrupting chemicals on the environment and developing methods for preventing and mitigating exposures.

On May 12, 2009, EPA Administrator Lisa Jackson appeared before the Senate Committee on Environment and Public Works to discuss the Administration's FY 2010 funding request. The next day she appeared before the Senate Committee on Appropriations to respond to questions about the proposed Agency budget for FY 2010. CPDA will report on further developments on EPA funding as the budget process continues to unfold in Congress.

President's FY 2010 Budget Request for DHS Proposes One Year Extension of CFATS Regulatory Authority

The President's FY 2010 budget request for the Department of Homeland Security (DHS) includes language that would extend by one year the current regulatory authority of DHS to implement the Chemical Facility Anti-Terrorism Standards (CFATS) through October 4, 2010. Absent legislative action, the Department's current chemical security regulatory authority as provided for under Section 550 of Public Law No. 109-295 will end in October 2009.

EPA Administrator Jackson Issues Memo on Scientific Integrity

On May 9, 2009 EPA Administrator Lisa Jackson issued a memo to EPA employees announcing that she has asked the Agency's Science Policy Council (SPC) to inventory all agency guidelines and policies that relate to scientific integrity to identify possible gaps and areas for improvement. Jackson stated that one SPC focus will be updating and reaffirming EPA's Peer Review Handbook and recommending how EPA can improve implementation of its peer review policies across the Agency's programs and regions. Jackson has also asked the SPC to work with the National Partnership Council "to reaffirm the Agency's Principles of Scientific Integrity and update the Principles of Scientific Integrity online training."

EPA Administrator Jackson's memo responds to a March 9, 2009 directive from President Obama instructing the Director of the White House Office of Science and Technology Policy (OSTP) to develop a set of recommendations intended to guarantee the integrity of scientific and technological processes used throughout the Executive

Branch. The recommendations must be presented to the President within 120 days from the date of his memorandum. Administrator Jackson has designated Acting Science Advisor Kevin Teichman to work with the OSTP in consultation with the SPC in developing a set of recommendations.

In related developments, on April 23, 2009 the White House OSTP published in the *Federal Register* a request for public comment on what recommendations would be responsive to the aims of the President, specific implementing strategies, and examples of data and empirical evidence related to the effectiveness of strategies to promote scientific integrity. The deadline for public comment ended on May 13, 2009.