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## ***Keeping an Eye on Washington***

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### **EPA Establishes Online Labeling Discussion Forum**

EPA has established an online discussion forum, “Enable the Label,” to facilitate the exchange of information and ideas related to the labeling of pesticides. The online forum features a monthly discussion that focuses on one or two individual chapters of the Label Review Manual (LRM) along with several questions posed by EPA aimed at generating feedback on specific portions of the text that may be in need of further clarification or improvement. Forum participants will have the opportunity to post comments on the featured topics and provide input on any other subject covered in that month’s discussion. At the end of each month, EPA will review the comments and suggestions posted and make changes to the LRM as warranted. Once the discussion closes, posts for that month will be archived and available for viewing in “read-only” format. To join the EPA online discussion forum, visit <http://blog.epa.gov/enablethelabel/>.

During the September 2010 launch of the online forum, the discussion addressed Chapters 1 and 2 of the LRM with a focus on: 1) products that are exempt from registration; 2) the difference between plant nutrients and plant growth regulators; and 3) products that are not considered pesticides if they are labeled for use “only in or on living man or animals.” The online discussion topic for October focuses on Chapter 3 of the LRM. EPA is seeking input on three specific areas germane to Chapter 3 as follows: 1) differences between mandatory versus advisory statements (the Agency is encouraging forum participants to post examples of each type of statement); 2) clarifications that may be necessary regarding types of pesticide labeling; and 3) whether the examples of label formats EPA has included in Chapter 3 can be improved. The discussion thread on Chapter 3 of the LRM will close on October 31<sup>st</sup>. The November 2010 discussion forum will address Chapter 4 of the LRM titled “Types of Label Reviews.”

### **EPA Issues Final Rule Extending Container Labeling Compliance Date to August 16, 2011**

On October 8, 2010, EPA published in the *Federal Register* a final rule amending the pesticide container and containment regulations to provide an 8-month extension of the labeling compliance date from December 16, 2010 to August 16, 2011. Pesticide products released for shipment after August 16, 2011 will be required to bear a label that complies with the container requirements. EPA states that this change is being made to provide the additional necessary time for pesticide registrants to change their labels and for EPA and the states to review and approve

the revised labels. EPA's final rule takes effect on December 7, 2010 and may be accessed at <http://edocket.access.gpo.gov/2010/pdf/2010-25425.pdf>.

The pesticide container and containment regulations, promulgated on August 16, 2006, include requirements for container design; procedures, standards, and label language to facilitate removal of pesticide residue prior to container disposal or recycling, and criteria for containment of stationary pesticide containers and procedures for container refilling operations. A final rule published on October 29, 2008 amended the 2006 regulations to extend the original compliance date of August 16, 2009 to August 16, 2010.

However, upon further consideration, EPA determined there was insufficient time to change all labels by the revised August 16, 2010 compliance date due to several factors: 1) more antimicrobial product labels than expected required alternate rinsing instructions rather than the standard text as set forth in the original regulations (such statements cannot be made by notification and require more in-depth review by EPA); 2) the Agency's position on the appropriate container-related statements, particularly rinsing and treatment of rinsate, for certain pesticides changed over time as a result of experience with product-by-product label reviews thus creating confusion within the registrant community; and 3) the length of time for states to review and approve labels is increasing due to staffing reductions and furloughs brought about by budget shortfalls. EPA also estimated that as of May 2010, there were at least 1,000 and potentially several thousand remaining pesticide product labels for which Agency review was pending. The Agency concluded that there was not enough time for the necessary label changes to undergo review by EPA and the states and then be printed and applied to all products released for shipment after August 16, 2010.

For these reasons, EPA decided to move forward with a proposed rule, published in the June 15, 2010 *Federal Register*, calling for a one-year extension of the container labeling compliance date. Concurrent with the proposed one-year extension, EPA also issued a final rule providing a four-month extension of the August 16, 2010 compliance date to December 16, 2010. In promulgating the June 15<sup>th</sup> final rule, EPA sought to avoid the temporary removal of a significant number of pesticides from the market while its proposal calling for a one-year extension worked its way through the public participation and rulemaking process.

Additional information on the container rule may be obtained by contacting Nancy Fitz, EPA Field and External Affairs Division, Office of Pesticide Programs, telephone: (703) 305-7385; email: [fitz.nancy@epa.gov](mailto:fitz.nancy@epa.gov).

### **Web-Distributed Labeling Update**

EPA has provided CPDA a draft *Federal Register* notice describing the various elements of its web-distributed labeling initiative and requesting feedback from the public on the concept. The Agency is hoping to publish the notice in late October or early November 2010. Web-distributed labeling is predicated on making the most current version of pesticide labeling available to users electronically through the Internet. Portions of the label would no longer physically accompany the pesticide container. Users instead would be directed to a website where they would retrieve crop specific labeling by entering the product registration number, the state/county where the

pesticide would be applied, and the applicable use pattern or crop. EPA hopes that the website would provide streamlined labeling for the user to download that would include only the information germane to the particular application requested. As such, EPA believes that this initiative will improve label comprehension, readability, and compliance. When fully operational, a web-distributed labeling system would offer alternate delivery mechanisms for those who lack Internet access. The Agency states that this initiative is being proposed initially as a voluntary option for registrants and acknowledges that it would not be appropriate for all pesticide products.

### **EPA Updates Online Pesticide Fee Determination Decision Tree**

As reported previously, pesticide registration fees increased 5% effective October 1, 2010 as authorized under the Pesticide Registration Improvement Renewal Act. EPA has updated its Fee Determination Decision Tree to help pesticide registration applicants identify and then pay the appropriate fee from among the 140 fee categories. After the applicant answers a series of questions, the FY 2011/2012 Fee Determination Decision Tree will narrow the 140 categories to one to five possible choices. The Decision Tree web site may be accessed at <http://www.epa.gov/pesticides/fees/tool/decisiontree/main.htm>.

### **OPP Labeling Consistency Web Site Includes New Posting Applicable to Supplemental Distributors**

The Office of Pesticide Programs (OPP) Pesticide Labeling consistency web site includes a recently posted question from a producer of a registered pesticide who wishes to sell the product in bulk to a refiller/distributor. The distributor in turn intends to repackage the producer's product into smaller refillable containers for resale. The producer poses a three-part question as follows: 1) Can the distributor use the producer's label with the product name removed? 2) Is it permissible to add the distributor name and address and distributor registration number to the label? 3) Can the storage and disposal language be revised to reflect storage and disposal requirements of a refillable product? The following is EPA's response as it appears on the Agency's web site:

*"You cannot do any of the activities you describe without the consent of the registrant. Even with the consent of the registrants, there are limitations.*

*In accordance with 40 CFR 152.132, the registrant may enter into a supplemental distributor agreement with another party to distribute a registered product under another person's name and address instead of or in addition to the registrant's own. For a supplemental distributor to distribute a pesticide, the registrant must notify EPA and the distributor must complete a Notice of Supplemental Distribution of a Registered Pesticide Product (EPA form 8570-5) signed by both the registrant and the distributor. 40 CFR 152.132 limits what can differ about a distributor product from the registered product. The distributor may only package the registrant's product if the distributor is the same producer (or under contract in accordance with 40 CFR 152.30) as the producer who produces, packages, and labels the registered product. See 40 CFR 152.132(b). Further, the distributor product may not be repackaged (i.e. it remains in the producer's unopened container). See 40 CFR 152.132(c).*

*The label of the supplemental registrant's product must be the same of the registrant with the exception that: (1) the product name may be different, (2) the name and address of the distributor may appear instead of that of the registrant, (3) the registration number of the registered product must be followed by the distributor's company number, (4) the establishment number must be that of the final establishment where the product was produced, and (5) specific claims may be deleted provided no other changes are necessary. The registrant must ensure that the EPA-approved labeling of the registered product includes appropriate statements for refillable containers in accordance with 40 CFR 156 Subpart H.*

*Because you are the producer of the pesticide and the distributor is not, the distributor would not be able to repackage the product into smaller containers even with a supplemental distributor agreement with the registrant. Under a supplemental distributor agreement you may be able to change the product name and the distributor name, address and number. But without a change to the EPA-approved label of the registered product, you cannot change the storage and disposal language."*

### **EPA Publishes "Protecting Children's Health: The National Pesticide Program"**

EPA's Office of Pesticide Programs (OPP) has published a new document entitled "Protecting Children's Health: The National Pesticide Program." The document provides an overview of OPP's activities to protect children from potential pesticide risks and discusses efforts to expand that protection.

In announcing the availability of the document, OPP notes that it is developing additional initiatives that expand current activities and address gaps and deficiencies. OPP adds that the document "Protecting Children's Health: The National Pesticide Program" outlines the "multiple ways that children may be exposed to pesticides and details how the national pesticide program is working to address potential pesticide risk in a number of core programmatic components."

The document is available online at <http://www.epa.gov/pesticides/health/protecting-children.pdf>.

### **EPA Releases its Five-Year Strategic Plan for Fiscal Years 2011-2015**

EPA has unveiled its five-year strategic plan for fiscal years 2011 to 2015 which outlines the Agency's goals in moving forward with its environmental and human-health mission as follows: 1) taking action on climate change and improving air quality; 2) protecting America's waters; 3) cleaning up communities and advancing sustainable development; 4) ensuring the safety of chemicals and preventing pollution; and 5) enforcing environmental laws. The strategic plan was submitted to the Office of Management and Budget and to the Congress on September 30, 2010.

The document describes EPA's plans, over the next five years, to implement a comprehensive pesticide risk reduction program through science-based registration and re-evaluation processes, a worker safety program, certification and training activities, and support for integrated pest

management. The Agency states that its current pesticide review processes focus on ensuring that pesticide registrations comply with the Endangered Species Act and achieve broader EPA objectives for water quality protection. EPA intends to continue its emphasis on the protection of potentially sensitive populations, such as children, by reducing exposures from pesticides used in and around homes, schools, and other public areas. The Agency adds that it is reviewing its worker safety certification and training regulations to ensure that they are adequately protective.

EPA also notes that it is working to identify any potential risks of nanoscale materials during new and existing chemical review and on improving data collection efforts. In addition, the Agency addresses the Endocrine Disruptor Screening Program and cites its goal of completing EDSP decisions by the year 2015 for 100 percent of chemicals for which complete EDSP information is expected to be available. The Agency states that EDSP decisions for a chemical can range from determining its potential to interact with the estrogen, androgen, or thyroid hormone systems to otherwise determining whether further endocrine related testing is necessary. In other activities, EPA is exploring options for utilizing FIFRA and TSCA as tools to ensure that drinking water is protected from pesticides and industrial chemicals and that chemicals found in drinking water are being screened for endocrine disrupting properties.

The strategic plan reiterates EPA's call for revamping TSCA to strengthen the Agency's ability to collect and act upon "critical" data regarding chemical risks. The Agency states, "While TSCA does provide some authority to EPA to collect chemical information and mandate industry to conduct testing, there remain large, troubling gaps in the available data and state of knowledge on many widely used chemicals in commerce. EPA's authority to require development and submission of information and testing data is limited by legal hurdles and procedural requirements. As we look to the future, it is important to work together with Congress and stakeholders to modernize and strengthen the tools available under TSCA to prevent harmful chemicals from entering the marketplace and to increase confidence that those chemicals that remain are safe and do not endanger the environment or human health, especially for consumers, workers, and sensitive subpopulations like children."

As part of its approach to chemical risk management, EPA states that it is strengthening rules to keep track of substances in commerce and to provide better information to the public about releases of toxic chemicals into the environment. The Agency is also increasing its evaluation of claims of confidentiality in order to make all health and safety data for chemicals in commerce more publicly available. EPA adds that it is applying sophisticated scientific tools in reviewing new chemical submissions under TSCA and increasing the efficiency and effectiveness of these reviews through the implementation of electronic submission and management systems.

The EPA strategic plan may be accessed online at [http://www.epa.gov/ocfo/plan/2015/FY2011\\_2015\\_EPA\\_Strategic\\_Plan.pdf](http://www.epa.gov/ocfo/plan/2015/FY2011_2015_EPA_Strategic_Plan.pdf).

### **Senate Committee Holds Oversight Hearing on Impact of EPA Regulation on Agriculture**

On September 23, 2010, the Senate Committee on Agriculture, Nutrition and Forestry conducted an oversight hearing on the impact of EPA regulation on agriculture. Testifying at the hearing

was EPA Administrator Lisa Jackson who provided an overview of programs focused on pesticides, water, and other areas germane to agriculture.

Senator Blanche Lincoln (D-AR), Committee Chair, opened the hearing by identifying ten separate regulatory requirements that she described as providing little, if anything, in the way of additional environmental protection yet will significantly increase farm operating costs thus making agricultural producers less competitive. Among the issues addressed by Sen. Lincoln was EPA's proposed pesticide spray drift guidance document that she categorized as "vague," "unworkable," and "unenforceable." Sen. Lincoln emphasized that in its current form, the Agency's proposal will leave agricultural producers uncertain as to whether or not they are in compliance when spraying pesticides.

The Arkansas Senator also voiced her displeasure with EPA's activities in developing a National Pollutant Discharge Elimination System (NPDES) Pesticide General Permit (PGP) for point source discharges from the application of pesticides to, over, or near waters of the United States. The Agency's initiative responds to a United States Sixth Circuit Court of Appeals decision, handed down in January 2009, that vacated an EPA rule which held that a pesticide applied in, over, or near a receiving water of the U.S. in accordance with the FIFRA approved label is not subject to NPDES permitting requirements under the Clean Water Act. Senator Lincoln stated, "What is most frustrating to me about this development is that the pesticide applications will be unnecessarily regulated twice – once under FIFRA and again under the Clean Water Act. I firmly believe that as long as a FIFRA-registered product is applied in accordance with its label and any other conditions, then we shouldn't be requiring unnecessary, duplicative regulatory burdens." As reported previously, Senator Lincoln along with Ranking Member Saxby Chambliss (D-GA) have introduced S. 3735, a bill that would clarify that a Clean Water Act permit is not required if a pesticide is applied in accordance with FIFRA.

In her opening remarks, Senator Lincoln also addressed EPA's proposed boiler MACT regulation, the Agency's draft ambient air quality standards for particulate matter, the proposal to establish a Total Maximum Daily Load (TMDL) for the Illinois River, and the ongoing debate surrounding the regulation of greenhouse gases.

Following the opening comments of Committee Chair Lincoln and those of Ranking Member Chambliss, EPA Administrator Jackson delivered her testimony beginning with an overview of the Agency's decision to conduct an assessment of the scientific issues associated with the potential human health and environmental effects of atrazine. She told the Committee that in 2003, EPA completed a comprehensive review of atrazine and determined that based on the scientific information available at the time, the chemical was not likely to adversely impact human health or have unreasonable impacts on the environment when used in accordance with new labeling restrictions. In 2003, EPA reregistered atrazine with the requirement that the registrants conduct water monitoring in approximately 150 community water systems. She noted that since then, a variety of data sources indicating the presence of atrazine in drinking water sources and other bodies of water prompted the Agency to initiate a reassessment of the pesticide. During 2009-2010, the Scientific Advisory Panel (SAP) held four public meetings to review new atrazine research generated since the chemical was reregistered in 2003. In addition, EPA Administrator Jackson reported that an epidemiological Agricultural Health Study of

atrazine is now underway within the National Cancer Institute with the results expected to be available in 2011. She indicated that at the conclusion of EPA's assessment of the human health effects of atrazine, the Agency will ask the SAP to review the potential effects of atrazine on amphibians and aquatic ecosystems.

Administrator Jackson then turned her attention to the consultation process under Section 7 of the Endangered Species Act (ESA) which requires EPA to consult with the Services if a pesticide registration may affect a listed species or habitat. The EPA Administrator stated, "For the many ESA consultations we face, our goal with the Services and stakeholders is to ensure our assessments are scientifically sound, that the process is transparent, and that decisions are timely. To promote these goals," she continued, "there is a senior level workgroup involving EPA, NOAA, and the Department of the Interior, focusing on improving the scientific and regulatory coordination that is necessary to comply with the ESA." EPA Administrator Jackson noted that the Agency is also focusing its ESA compliance efforts on the Registration Review program which provides opportunities for public input on preliminary risk assessments and potential risk mitigation measures. She added that EPA is working with the Services in an effort to develop consensus on scientific methodologies needed to successfully carry out the consultation requirements under Section 7 of the ESA.

In her other comments, Administrator Jackson told the Committee that the NPDES Pesticide General Permit, which was issued in draft form on June 4, 2010 with a public comment period that ended on July 19, 2010, is expected to be finalized in December 2010. The EPA Administrator reported that during the comment period accompanying the release of the draft permit, the Agency received approximately 750 individual comment letters that will be considered in finalizing the document. In describing EPA's various outreach efforts, webcasts, and meetings held with stakeholders and state regulators throughout the permit development process, Administrator Jackson stated that the Agency plans to hold one more "face to face" meeting with state officials prior to promulgation of the permit.

At the conclusion of her testimony, EPA Administrator Jackson fielded questions from a number of Committee members, including Senators Amy Klobuchar (D-MN), Debbie Stabenow (D-MI), John Thune (R-SD), Pat Roberts (R-KS), and Mike Johanns (R-NE) – all of whom expressed concern with at least one forthcoming Agency regulation likely to adversely impact agricultural producers. Senator Johanns was particularly vocal in his remarks telling Administrator Jackson that there was a pervasive feeling in the farm sector that the Agency was simply giving "lip service" to agricultural groups as it continued to impose a regulatory agenda on farmers that would have obvious burdensome, adverse impacts.

### **Temporary Federal Funding Measure Extends DHS Authority to Regulate Chemical Site Security through December 3, 2010**

On September 30, 2010, the President signed into law H.R. 3081, a Continuing Resolution (CR) that provides temporary stopgap funding of federal government operations through December 3, 2010. The CR was passed by the Senate on September 29<sup>th</sup> by a vote of 69-30 and by the House on September 30<sup>th</sup> with a vote of 228-194. The funding measure includes a provision that extends the existing authority of the Department of Homeland Security to regulate chemical

facility security through the duration of the CR. In the absence of the CR, DHS authority to administer the Chemical Facility Anti-Terrorism Standards (CFATS) would have expired earlier this month.

As reported previously, the FY 2011 Department of Homeland Security Appropriations bill includes language that would provide for a one-year extension of DHS authority to regulate chemical facility security through early October 2011. The DHS funding measure along with the other unfinished appropriations bills may be considered as part of an omnibus bill when Congress returns on November 15<sup>th</sup> for its lame duck session following the upcoming midterm elections. However, it is also possible that lawmakers may be forced to pass another short-term funding measure given the limited time remaining in the 111<sup>th</sup> Congress. Meanwhile, it is becoming more unlikely that a comprehensive chemical facility authorizing bill will be passed by the current Congress.