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Keeping an Eye on Washington

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CPDA Sponsored Witness Tells Congress ESA Consultation Process is Broken

A rare full joint committee hearing was held on Tuesday, May 3rd, by the House Agriculture and Natural Resources Committees that included testimony from an associate member of CPDA among a list of invited witnesses. Titled "At Risk: American Jobs, Agriculture, Health and Species – the Costs of Federal Regulatory Dysfunction," the hearing examined how the Endangered Species Act (ESA) consultation process has broken down and the resulting effects.

CPDA was part of a coalition of allied agricultural and chemical interests that visited members of the two committees over the past two weeks in an effort to illustrate the nexus between the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the ESA and to provide a brief overview of the Section 7 consultation process and resulting controversial Biological Opinions (BiOps) issued by the National Marine Fisheries Service (NMFS). The group also explained how the request made by EPA along with the Fish & Wildlife Service and NMFS (collectively referred to as the 'Services') and USDA for a study focusing on improving the incorporation of the best available science into the consultation process is not likely to bring consistency to the disparate approaches adopted by the Services in assessing the ESA effects of pesticides nor improvements to the consultation process itself. The coalition also criticized the Administration for continuing to advance BiOps under the currently flawed system even though it has readily acknowledged the problems inherent in the consultation process as it is now structured.

The broken consultation process became a national issue with the January 20, 2011 filing of a mega-lawsuit by the Center for Biological Diversity that named over 200 endangered species located in 49 states and 300 pesticide compounds for which the mandatory ESA consultation process has not yet been completed. The current flawed BiOps that impose massive buffer strips applicable to all water conveyances in the states of Washington, Oregon, Idaho and California and the potential scope of restrictions possible resulting from the mega-lawsuit pose serious implications for the future of agricultural production on a national scale. Within ten years, NMFS has managed to complete only three biological opinions covering less than 30

pesticides. Meanwhile, the FWS has yet to even start a single biological opinion on one of the 100+ compounds EPA has presented it for consultation.

Considering the importance of this issue to association members, CPDA was able to secure a spot for Debra Edwards, former Director of EPA's Office of Pesticide Programs, as a witness at the hearing. Edwards was factual and authoritative in her testimony as to how and why the consultation process is broken. Her closing remarks provided a clear and concise summary of the issue for members of the two committees as follows:

"In addition to my concerns regarding the scientific transparency of conclusions reached in existing Biological Opinions, I am concerned for the future sustainability of the pesticide ESA consultation process in general. There are more than 900 pesticide active ingredients and nearly 20,000 pesticide products registered for use in the United States. Under the current consultation paradigm, each use pattern for each product must be re-evaluated at least every 15 years, taking into consideration each geographic use area and each of the approximately 1200 listed endangered or threatened species or critical habitat within each use area. This complex, multi-faceted pesticide use situation will require literally hundreds of thousands of analyses and decision points and, in my opinion, constitutes a significant resource challenge for the departments and the agency involved."

During questioning, Agriculture Committee Chairman Rep. Frank Lucas (R-OK) queried Dr. Edwards about the approach of EPA and the Services on use of the "best available science" in the consultation process. Everyone present was surprised to learn from Dr. Edwards that a significant concern of EPA's is the Services' use of data and information from the "gray literature" in their assessments. This is noteworthy since "gray literature" refers to studies and data that are not published in peer-reviewed journals nor are generally available to the public. For these reasons, EPA does not and cannot use any information from this source in their assessments.

While the goal of the hearing was to highlight the fact that the process is broken and to examine the resulting consequences of the current BiOps on agricultural production, Congressman Jim Costa (D-CA) prompted the Administration witnesses to commit to requesting the inclusion of a study on the potential economic impacts of the various measures mandated in a BiOp as part of the charge to the NAS. Furthermore, Rep. Costa pledged that he would co-sign with Republicans a letter to the Administration showing bipartisan support of the request for an economic analysis study.

In addition to Dr. Edwards, the Committees heard from representatives from EPA, FWS, NMFS and USDA, as well as a Washington farmer, a Benton County Washington Mosquito Control manager, the Oregon Farm Bureau, the Washington Dept. of Agriculture and the Pacific Coast Federation of Fishermen's Association. To see Dr. Edwards' full testimony, visit <http://naturalresources.house.gov/UploadedFiles/EdwardsTestimony05.03.11.pdf> Full copies of the witnesses' testimony can be accessed at <http://naturalresources.house.gov/Calendar/EventSingle.aspx?EventID=237995>.

CPDA is very satisfied with the hearing proceedings and we are confident the testimony provided concrete evidence that the ESA consultation process is dysfunctional and needs to be fixed before our nation's agricultural production is severely impacted. CPDA plans to continue working with the committees of jurisdiction to find solutions to the consultation problem.

Bill to Exempt FIFRA Registered Pesticides from NPDES Permitting Requirements Approved by the House

On the afternoon of Thursday, March 31, 2011, the full House passed H.R. 872, the "Reducing Regulatory Burdens Act of 2011." The bill was brought up under the suspension calendar, a procedural maneuver under which a measure cannot be amended and which requires a two-thirds super-majority for passage. The final vote on H.R. 872 was 292-130. The legislation, introduced by Representatives Bob Gibbs (R-OH), Jean Schmidt (R-OH), Joe Baca (D-CA), and others would amend FIFRA and the Clean Water Act to eliminate the requirement of a National Pollutant Discharge Elimination System (NPDES) permit for the proper use of FIFRA registered pesticides. The bill now goes to the Senate for consideration. H.R. 872 was reported out of the House Transportation and Infrastructure Committee on March 16, 2011 by a strong bipartisan vote of 46-8. On March 9, 2011 the measure was approved by the House Committee on Agriculture (which holds joint jurisdiction over the bill) by voice vote.

The legislation addresses the United States Sixth Circuit Court of Appeals decision in *National Cotton Council v. EPA*. The court's decision 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. If the court's decision stands, NPDES permits will be required for discharges to waters of the U.S. from the application of biological pesticides and chemical pesticides that leave a residue. In a subsequent development, on March 28th the Sixth Circuit Court of Appeals granted EPA's request for a 6-month stay of the permitting scheme mandate from April 9, 2011 to October 31, 2011 (see related story in this issue of "Keeping an Eye on Washington").

CPDA has been actively engaged in garnering Congressional support for this critical piece of legislation and throughout the month of March made a series of House visits in anticipation of the floor vote. In addition, CPDA joined with a broad coalition of allied agricultural and chemical interests in co-signing a March 29, 2011 letter sent to every member of the House requesting their vote in support of the measure. In related activities, on the eve of the House Transportation & Infrastructure Committee markup, CPDA co-signed a March 15, 2011 coalition letter that was sent to every member of that panel urging their support of H.R. 872. CPDA was also one of the signatories on a March 8, 2011 industry coalition letter addressed to every member of the House Agriculture Committee calling for Congressional passage of the measure. In addition to these efforts on Capitol Hill, CPDA prepared a letter for association members to send to their Senators and Representatives urging them to support and co-sponsor H.R. 872.

Meanwhile, on April 4, 2011 Senator Pat Roberts (R-KS), Ranking Member of the Senate Committee on Agriculture, Nutrition and Forestry, introduced legislation (S. 718) that would exempt FIFRA registered products from Clean Water Act permitting requirements. Joining Sen.

Roberts in introducing the measure were Senators John Barrasso (R-WY), Mike Enzi (R-WY), Mike Crapo (R-ID), Mike Johanns (R-NE), Richard Lugar (R-IN), James Risch (R-ID), Saxby Chambliss (R-GA), Thad Cochran (R-MS), Richard Burr (R-NC), Roy Blunt (R-MO), Jerry Moran (R-KS) and Charles Grassley (R-IA).

CPDA continues to work in support of legislation that removes pesticides from the NPDES permitting requirement as the focus of attention centers on the Senate. For more information, please contact CPDA Director of Legislative Affairs John Boling at jboling@cpda.com.

U.S. Sixth Circuit Court of Appeals Grants EPA's Request for a 6-Month Stay of its Ruling that Would Require NPDES Permits for Pesticide Applications

On March 28, 2011, the U.S. Sixth Circuit Court of Appeals granted EPA's March 3rd request for a 6-month extension of the two-year stay of the Court's January 2009 ruling which holds that biological pesticides and residues left in water from products regulated under FIFRA are a pollutant and therefore require an NPDES permit under the Clean Water Act. The Court's approval of EPA's request extends the deadline for implementing the permitting regime from April 9, 2011 to October 31, 2011. While the stay is in effect, permits for pesticide applications will not be required under the Clean Water Act. In seeking a 6-month extension, EPA explained this would allow sufficient time for the Agency to engage in Endangered Species Act consultation and complete the development of an electronic database to streamline requests for coverage under the general permit. EPA added that the extension would allow time for authorized states to finish developing their state permits and for permitting authorities to provide additional outreach to stakeholders on pesticide permit requirements.

Concurrently, Senator Debbie Stabenow (D-MI), Chair of the Senate Committee on Agriculture, Nutrition and Forestry, wrote a March 2nd letter to EPA Administrator Lisa Jackson requesting that the Agency seek a nine month extension of the 2-year court-issued stay. In her letter, Chairwoman Stabenow emphasized that neither EPA nor States with delegated NPDES programs are sufficiently prepared to implement the permitting requirements. Senator Stabenow wrote that providing additional time would give the relevant regulatory agencies an opportunity to properly implement the Court's 2009 ruling (please click [here](#) to read Senator Stabenow's letter to EPA Administrator Lisa Jackson).

EPA Posts Pre-Publication Version of Draft Final Pesticide General Permit

On April 1, 2011 EPA posted on its web site a pre-publication version of its draft pesticide general permit for discharges of pesticide applications to U.S. waters. EPA notes that while legislation to exempt FIFRA regulated products from NPDES permitting requirements passed the House on March 31, 2011, the Agency was still providing a preview of the draft final permit to assist states in developing their own permits and to give the regulated community the opportunity to become familiar with its requirements before it takes effect on October 31st.

Meanwhile, EPA continues to engage with the Services under the ESA Section 7 consultation process in assessing the impact of the permit on threatened and endangered species.

The Agency states that any modifications to the permit deemed necessary pursuant to the outcome of these consultation proceedings will be completed by May 6, 2011. The document would then go through a second round OMB review between May 9, 2011 and June 9, 2011. If ESA consultation significantly changes the permit, a 30-day public comment period may be necessary. EPA intends to issue a final pesticide general permit by July 30, 2011.

The draft final pesticide general permit includes several significant changes as compared with the Agency's originally proposed permit. The draft final permit more clearly distinguishes between the responsibilities of applicators and decision-makers and stipulates that for-hire applicators do not have to file a "notice of intent" (NOI) for the discharge of pesticides into waters of the U.S. to be covered by the permit. Furthermore, small entities meeting NOI obligations can prepare a pesticide discharge elimination worksheet in lieu of developing a Pesticide Discharge Management Plan (PDMP). Finally, certain threshold areas triggering the need for a permit have been increased – the threshold for mosquitoes and forests has been increased from 640 to 6400 acres and only includes adulticides for mosquitoes while the threshold for water bodies increased from 20 to 80 acres.

EPA has also developed an interactive tool for potential permittees to guide them step-by-step through questions to help them determine if a permit will be needed for their pesticide application when the requirement for a permit takes effect. This tool will also help permittees understand what their requirements will be under EPA's Pesticide General Permit. The interactive tool may be accessed at <http://cfpub.epa.gov/npdes/pesticides/prtool.cfm>.

Further information, including a link to the pre-publication version of the draft final permit, may be found at http://cfpub.epa.gov/npdes/home.cfm?program_id=410.

CPDA Comments on EPA's Proposed Web-Distributed Labeling Initiative

On March 29, 2011, CPDA submitted comments to EPA on the Agency's December 29, 2010 proposed approach for web-distributed labeling (WDL) (75 Fed. Reg. 82011). WDL would allow users to download portions of pesticide labeling from the internet specific to the use of a chemical on a particular crop and within a particular state. In its comments, CPDA elaborated on the deficiencies inherent in the Agency's proposed initiative and the potential legal liabilities which registrants, distributors, and applicators of pesticides would find themselves vulnerable to under such a system. Emphasizing that WDL would disrupt almost 40 years of stability in how label information is distributed, CPDA urged the Agency to abandon its initiative.

The Agency maintains that WDL will allow new labeling, including new uses and/or new risk mitigation, to reach the user more expeditiously compared with the current paper-based labeling system. EPA explains that streamlined labeling would omit unrelated directions and significantly reduce the overall length of the label. The Agency believes that shorter, more focused labeling would improve readability, user comprehension and compliance thus leading to improved protection of human health and the environment from the risks associated with the improper use of pesticides. EPA concedes that a web-distributed labeling system would not be appropriate for all pesticides and proposes to implement this initiative as a voluntary option for certain products.

In its comments, CPDA noted that while some components of the current paper-based registration system, such as supporting data/studies, draft master labels, and CSFs are suitable for transitioning to an electronic registration system, the content of a product marketing label, which sets forth all of the legal requirements applicable to the distribution, sale, and use of the product, is not suitable for piecemeal distribution in commerce. In addition, CPDA pointed out that a reduction in the time needed for label changes to reach the marketplace can easily be achieved by enhancing communication between EPA staff and registrants and the Agency's better management of registration actions.

CPDA also expressed its concern that products in a web-distributed labeling system are likely to be perceived as being different from products that are not in the system, resulting in an uneven playing field for competing products in the marketplace and enhanced potential legal liabilities for entities producing, marketing, and using pesticides. To read the comments submitted by CPDA, click [here](#).

CPDA Endorses Legislation to Extend Department of Homeland Security Authority to Regulate Chemical Facility Security

On April 14, 2011, the House Homeland Security Subcommittee on Cybersecurity, Infrastructure Protection, and Security Technologies adopted H.R. 901, the "Chemical Facility Anti-Terrorism Security Authorization Act of 2011" by a party line vote of 6 to 4. The measure would extend the current authority of the Department of Homeland Security (DHS) to regulate chemical site security through September 30, 2018. DHS authority to administer the Chemical Facility Anti-Terrorism Standards (CFATS) was originally set to expire on September 2009 but has been temporarily extended several times through the appropriations and budget resolution process. During the markup, Republicans voted in unison to reject three amendments offered by the minority, one of which would have established an "Inherently Safer Technology" requirement that would have forced companies to adopt alternate methodologies and chemical substances in their manufacturing processes, a proposal strongly opposed by CPDA and allied industry groups. CPDA applauds those Subcommittee members who recognized the deficiencies inherent in an IST mandate and rejected efforts to incorporate this flawed concept into chemical facility security legislation.

On the eve of the markup, CPDA President Sue Ferenc sent an April 13, 2011 letter to Subcommittee Chairman Dan Lungren (R-CA) endorsing the bill. In the letter, CPDA explained that since the promulgation of the Chemical Facility Anti-Terrorism Standards (CFATS), chemical facilities nationwide have been working closely with DHS in making significant progress in reducing on-site vulnerabilities to terrorist attack and in enhancing security measures. CPDA emphasized that a long-term authorization such as that contained in H.R. 901 would provide the certainty needed to continue working towards full implementation of CFATS and that programmatic changes should only be considered after the regulations have been fully implemented and adequate time has been allowed to constructively critique the program. In its other comments, CPDA expressed its strong opposition to adding new IST mandates to the CFATS because they do not directly relate to security. CPDA stated that such requirements could possibly decrease security by shifting attention away from the goal of successfully meeting

security performance standards and instead misdirect efforts toward a prescriptive *process* for meeting security standards. To read a copy of CPDA's Congressional testimony, click [here](#).

H.R. 901 was introduced on March 4, 2011 by Subcommittee Chairman Dan Lungren who was joined by full Committee Chair Peter King (R-NY). Other original co-sponsors include Representatives Mike Rogers (R-AL), Michael McCaul (R-TX), Billy Long (R-MO), Tom Marino (R-PA), Tim Walberg (R-MI), and Joe Walsh (R-IL).

Meanwhile, on May 4, 2011 a competing bill, H.R. 908, was reported out of the House Energy and Commerce Subcommittee on Environment and Energy by voice vote. The legislation, introduced on March 3, 2011 by Representative Tim Murphy (R-PA), would extend DHS authority to implement CFATS through October 4, 2017. During its deliberations, the panel adopted one amendment offered by Subcommittee Chairman John Shimkus (R-IL) that authorizes DHS funding of CFATS at \$89.92 million for each of fiscal years 2012 through 2017.

A third bill, H.R. 916, addressing chemical facility security was introduced on March 3, 2011 by Representative Charles Dent (R-PA). The measure would extend DHS authority over chemical site security through October 4, 2015. Thus far the bill has not yet been taken up in subcommittee.

As reported previously, the issue of chemical site security has been the subject of two House hearings held earlier this year. On February 11, 2011, the Subcommittee on Cybersecurity, Infrastructure Protection, and Security Technologies held a hearing which included testimony from Rand Beers, Under Secretary, National Protection and Programs Directorate, Department of Homeland Security (DHS). Under Secretary Beers expressed the Administration's support for making permanent the CFATS authorization, allowing prudent use of IST, and including water and wastewater facilities in the program. Republican members at the hearing responded by expressing their strong opposition to IST citing possible unintended and adverse consequences of adopting such requirements. Democrats, however, were generally supportive of incorporating IST provisions as part of chemical facility security legislation. Similar party line differences were made apparent during a March 31, 2011 hearing on chemical site security conducted by the House Energy & Commerce Subcommittee on Environment and the Economy.

Chemical Site Security Legislation Introduced in Senate

Meanwhile, in the Senate, several pieces of chemical facility security legislation are under consideration. Two bills introduced on March 31, 2011 by Senator Frank Lautenberg (D-NJ) call for the imposition of an IST requirement on "highest risk" chemical and water treatment facilities. The "Secure Water Facilities Act" (S. 711) and the "Secure Chemical Facilities Act" (S. 709) would require companies to evaluate whether their facilities could reduce the consequences of an attack by using a "safer" chemical or process. Both measures would require the adoption of IST if a facility is classified as one of the highest-risk facilities and implementation of the alternate measure is feasible and would not increase risk overall by shifting risk to another location. S. 711 has been referred to the Senate Committee on Public Works and the Environment while S. 709 has been referred to the Senate Committee on

Homeland Security and Governmental Affairs. CPDA remains steadfastly opposed to efforts to include language in any chemical facility security bill that would call for the imposition of an IST requirement and will work to ensure that the legislation introduced by Senator Lautenberg does not gain any momentum.

On March 4, 2011, Senator Susan Collins (R-ME), Ranking Member of the Senate Committee on Homeland Security and Governmental Affairs, introduced bipartisan legislation, S. 473, titled the “Continuing Chemical Facilities Antiterrorism Security Act of 2011.” The measure would extend the current authority of DHS to implement CFATS for three years through October 4, 2014 and is similar to legislation that was unanimously reported out of Committee in July 2010. Joining Sen. Collins in introducing S. 473 were Senators David Pryor (D-AR), Rob Portman (R-OH), and Mary Landrieu (D-LA). The Senate bill continues the risk-based approach of the CFATS and does not include any language that would impose an IST mandate on chemical facilities.

In addition to the three-year extension of DHS authority to implement CFATS, the Senate bill includes language calling for: 1) the development of voluntary exercise and training programs to improve collaboration with the private sector and State and local communities under the CFATS program; 2) the creation of a voluntary technical assistance program under the existing CFATS structure that would allow DHS, at the request of the owners/operators of covered chemical facilities, to provide recommendations or assistance to covered facilities to aid in compliance with the CFATS program or to reduce the risk of consequences of a terrorist attack on the covered facility; and 3) the creation of a chemical facility best practices clearinghouse and private sector advisory board at DHS to aid in the implementation of CFATS and the voluntary technical assistance program.

CPDA will continue its efforts in seeking an extension of the current DHS authority to regulate chemical facility security so that the significant progress made thus far by the regulated community in meeting performance standards and requirements under CFATS is not undone.

CPDA Submits Comments to EPA on the Administration’s Initiative Calling for Retrospective Regulatory Review

On April 4, 2011, CPDA submitted comments to EPA on the Agency’s implementation of President Obama’s Executive Order 13563, published in the *Federal Register* on January 18, 2011, titled “Improving Regulation and Regulatory Review,” which directs each federal agency to consider “how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome.” Specifically, the EO calls on every agency to develop “a preliminary plan, consistent with law and its resources and regulatory priorities, under which the agency will periodically review its existing significant regulations to determine whether such regulations should be modified, streamlined, expanded or repealed to make the agency’s regulatory program more effective and/or less burdensome in achieving its regulatory objectives.”

In its comments, CPDA stated that the approach to designing a plan for review of all of EPA’s significant rules should be developed in a transparent fashion and should allow ample

time and opportunity for public input. CPDA noted that while EPA provided approximately 45 days for input on the design of the plan, this time period is “grossly insufficient for comprehensive review of individual rules and the collection of data in support of suggested revisions, identification of duplicative or outmoded rules or justification of cancellation of rules.” As such, CPDA pointed out that the Agency’s request for input on which regulations could be modified, have achieved their original objective, or have proven excessively burdensome is premature. “Until such time as the structure for the review process has been established,” CPDA stated, “the collection of data and development of justifications cannot be optimally developed to adequately inform the Agency.”

CPDA urged EPA to establish a prioritization scheme that would help identify existing regulations deemed appropriate candidates for retrospective review taking into account such factors as whether the rule clearly requires excessive reporting activities, demands significant resources from the agency and public, or whether it is obviously outdated. CPDA referenced the Counterpart Regulations structuring the consultation process under the Endangered Species Act as an example of an existing rule that could be justified as deserving review priority. “This regulation,” CPDA stated, “clearly needs to be revisited, modified and streamlined so as to allow the affected agencies’ regulatory actions to be more efficient, timely and less burdensome. Even superficial review of the history of litigation surrounding the inability of the affected agencies to make the consultation process work, and the concordant loss of Agency and public resources as a result indicates review is critical. With more time, the public could easily provide evidence of the needs for this review, as well as for others.”

CPDA then cited the Endocrine Disruptor Screening Program (EDSP) as an example of regulatory action through significant guidance that should be prioritized for review. Noting that the first phase of Tier 1 testing alone for 67 chemicals that is currently underway will cost nearly \$100 million, CPDA maintained that many of these substances will then move on to Tier II testing at an additional cost of \$3 million to \$4 million each. “If fully implemented,” CPDA stated, “Tier I and Tier II testing will then commence on, at the very least, over a thousand registered pesticide chemicals.” CPDA pointed out that when approving implementation of this first phase of the EDSP, the Office of Management and Budget (OMB) directed EPA to review and more accurately assess the burden of this costly program and to better demonstrate its practical utility before expanding the testing to more chemicals. CPDA stressed that this directive strongly supports immediate review of the EDSP.

The Agency is now in the process of reviewing the public comments it has received and intends to submit a draft preliminary plan for retrospective regulatory review to OMB in the very near future. The final plan will be posted on EPA’s web site in late May or early June. To access CPDA’s comments, click [here](#).

EPA Announces Public Comment Period on Proposed Pilot Fragrance Notification Program

In the April 15, 2011 *Federal Register*, EPA published a notice announcing the Agency's proposed Pilot Fragrance Notification Program (PFNP) for registrants seeking to add new or modify existing fragrances in new or currently registered pesticide products. EPA intends to implement the proposed pilot for a period of two years as a process improvement effort to streamline the current 90-day process for amending registrations to a 30-day notification process when fragrance ingredients are added, removed, or modified. The Agency states that this action is a follow up to the 2007 Fragrance Notification Pilot Program and is very similar in conduct.

Under the proposed Pilot Program, registrants will be able to self-certify and rely on the Fragrance Ingredient List which is comprised of more than 1,500 fragrance component ingredients contained in pesticide products previously reviewed and registered by the Agency. According to EPA, these component ingredients have undergone an Agency evaluation to determine their suitability for safe use as components of fragrances in non-food use pesticide product formulations. Only fragrances in which all of the components in the fragrance are on the List are eligible to participate in the proposed Pilot Fragrance Notification Program.

The deadline for public comment on the proposed pilot is May 16, 2011. Comments may be submitted electronically at www.regulations.gov and must be identified by docket number EPA-HQ-OPP-2010-1046. More information and a description of the 2007 Fragrance Notification Pilot Program and the Fragrance Ingredient List are available at: www.epa.gov/opprd001/inerts/.

EPA Proposes Changes to Labeling of Unregistered Pesticides Intended for Export

On April 6, 2011, EPA published in the *Federal Register* a proposed rule that would require unregistered pesticides and pesticide devices intended for export to be clearly labeled as "Not Registered for Use in the United States" when these products are shipped from one registered establishment to another registered establishment operated by the same producer within the United States. As presently written, the current regulations do not expressly require that unregistered products be labeled as such when moving between those establishments. EPA states that the current 1993 regulations "inadvertently failed to explicitly state" that the export label requirements apply to such movement. Therefore, the proposed regulations would require that all unregistered pesticide products and devices intended for export be labeled as "Not Registered for Use in the United States" during movement between registered establishments operated by the same producer within the U.S. Comments on the proposed rule must be submitted to EPA by June 6, 2011 and must be identified by docket identification number EPA-HQ-OPP-2009-0607. The *Federal Register* notice containing the proposal may be accessed at <http://edocket.access.gpo.gov/2011/2011-7900.htm>.

EPA Requests Public Comment on Petition Calling for Bilingual Pesticide Labels

On Wednesday, March 30, 2011, EPA published in the *Federal Register* a notice of receipt and request for comment on a petition filed by the Migrant Clinicians Network, Farmworker Justice, and other farm worker interest groups requesting that the Agency require that all pesticide product labels be available in both English and Spanish. EPA states that while

the petition focuses on farm workers, people in occupations such as lawn and landscape maintenance, structural pest control, commercial and residential cleaning, as well as Spanish speaking consumers who use pesticides at home may also be affected by the availability of bilingual labels. As such, EPA is requesting comment on whether to require labeling in English and Spanish for all types of pesticide products before responding to the petition.

At present, EPA allows pesticide manufacturers to add labeling in other languages, in addition to providing pesticide product labels in English. For agricultural products subject to the Worker Protection Standard, EPA requires that certain parts of the pesticide label include words or phrases in Spanish. In response to the petition, EPA is seeking comment on whether to require bilingual labeling in English and Spanish for all pesticides or for only certain types of pesticides, certain pesticide use sites, certain pesticide active ingredients, pesticides in certain toxicity categories, or certain parts of pesticide labels. The Agency would also like to receive public comment on the potential benefits and costs or disadvantages of a bilingual pesticide labeling requirement, and on the potential scope of such a requirement.

EPA states that its request for comment on expanding the bilingual labeling requirement for pesticides is consistent with Executive Order 13166 issued on August 11, 2000 which directs federal agencies to improve access to programs and activities for persons who, as a result of national origin have limited English proficiency. Public comments are due by June 28, 2011 and must be identified by docket number EPA-HQ-OPP-2011-0014. Further information may be accessed at <http://www.epa.gov/pesticides/regulating/labels/bilingual-pesticide-labels.html>.