



United States  
Environmental Protection  
Agency

Pesticides and  
Toxic Substances  
Enforcement Division

Washington, DC  
20460

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# **Federal Insecticide, Fungicide, and Rodenticide Act**

## **Compliance/Enforcement Guidance Manual**

### **Policy Compendium**

#### **Volume 5: FIFRA Compliance Program Policy Compendium**

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Volume 5 of the FIFRA Compliance Enforcement Guidance Manual Policy Compendium contains the FIFRA Compliance Program Policy Compendium documents, issued by the Office of Compliance Monitoring that are currently in effect. The Table of Contents of the remaining volumes, FIFRA miscellaneous sources, and a list of obsolete documents are contained in the Appendices.

Any questions or comments concerning these documents should be addressed to:

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FIFRA COMPLIANCE PROGRAM POLICY COMPENDIUM

A. E. Conroy II, Director  
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The Compliance Program Policies contained in this compendium and the Policy and Criteria Notices published by the Office of Pesticide Programs have been cross referenced by subject matter in a "Key Word Index" located at the end of this compendium. Copies of the Policy and Criteria Notices are not provided but a list of all current Notices is attached.

These Compliance Program Policies will supersede all existing policies.

## FIFRA COMPLIANCE PROGRAM POLICY No. 2.1

### Use Recommendations

FIFRA Section: 2(ee)

Issue:

Should the Agency allow the advocacy of Section 2(ee) uses by any person without regard to his financial interest in the sale of pesticides?

Policy:

To the extent that Section 2(ee) allows a particular use, any person, regardless of his financial interest in the sale of pesticides, may legally recommend or advertise such uses provided that recommendations made under Section 2(ee) pertaining to the amount of diluent used in applying pesticides for forestry or agricultural purposes is in accordance with the Advisory Opinion issued March 3, 1981 (46 FR 14965).<sup>1</sup>

Discussion:

#### Background

Federal jurisdiction over the use of pesticides was established through the 1972 amendments to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), Sections 3(d)(1); 4; 12(a)(2)(G). Acceptance of the label submitted with the registration of a pesticide product by the U.S. Environmental Protection Agency (EPA) is a central part of the pesticide registration process. The pesticide label dictates the approved uses for each registered pesticide. Any use of a registered pesticide which is inconsistent with its labeling is unlawful, (Section 12(a)(2)(G)).

In 1975, the Pesticides and Toxic Substances Enforcement Division (PTSED) initiated a series of Pesticide Enforcement Policy Statements (PEPS). The PEPS are designed to inform interested members of the public about the policies adopted by the Agency in the exercise of its prosecutorial discretion in the enforcement of FIFRA (40 FR 19526). Such exercise of prosecutorial discretion has been guided in each instance by the legislative history of the 1972 FIFRA amendments which states that it was the intent of Congress to ensure that the Agency evaluate the meaning of the term "inconsistent with the label" in a common sense manner,

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1. Supersedes Federal Register Notice, (Vol. 44, No. 112, Friday, June 8, 1979, p. 33151), which limited Section 2(ee) recommendations to user/applicators. This Policy does not prospectively amend any existing pesticide labeling; all changes in a registered pesticide label must still be approved by the Agency.

(H.R. Rep. No. 92-511, 92d Cong. 1st Sess., 16 (1971)). In accord with this Congressional direction, the PTSED determined that some uses or applications which were not expressly stated on the label were, nonetheless, to be allowed. In particular, the following uses were not subject to prosecution:

- 1) Use of registered pesticides at less than the label dosage rate (40 FR 19529; 40 FR 42914); (PEPS #1).
- 2) Use of registered pesticides for the control of unnamed target pests in structural pest control (40 FR 41175); (PEPS #2).
- 3) Use of registered pesticides for the control of pests not named on the label in agriculture and other non-structural pest control (41 FR 41142); (PEPS #5).
- 4) Use of aerial application techniques where the label instruction does not specifically prohibit such use (42 FR 21496); (PEPS #7).

The PEPS permitted these limited deviations from the language of the registered pesticide label only where the label does not explicitly proscribe such uses. Thus the question of "what" nonlabel uses were permissible was addressed by the PEPS. The second issue of "who" could recommend these uses was also answered by the PEPS.

All of the deviations permitted under the PEPS were subject to the restriction that only "knowledgeable experts" could recommend them. Under the PEPS, States could designate knowledgeable experts subject to certain educational and experiential standards. For example, knowledgeable experts could include persons employed by State Cooperative Extension Services, State Land Grant Colleges, and State Agriculture Departments.

The PEPS denied the designation of "knowledgeable expert" to individuals whose primary source of personal income is directly derived from the sale or distribution of pesticides. This limitation precluded pesticide sales representatives, marketing employees, or advertising agents from advocating PEPS deviations. The PEPS justified this position by reliance on Section 12(a)(1)(B) which makes it unlawful for any person with a financial interest in pesticide marketing to make a claim which differs substantially from registered pesticide labeling.

In short, the PEPS have had two consequences. First, they made certain pesticide use deviations permissible even though the uses do not appear on the registered pesticide label. Secondly, all persons with a direct financial interest in the sale of pesticides were forbidden under Section 12(a)(1)(B) from recommending any of the pesticide uses permitted by the PEPS.



### Federal Pesticide Act of 1978

FIFRA was again amended by enactment of the Federal Pesticide Act of 1978 (FPA). The FPA broadened the construction of Section 12(a)(2)(G) of FIFRA by adding Subsection 2(ee). Section 2(ee) defines the term "to use any registered pesticide in a manner inconsistent with its labeling." According to the language of this new section, it is a violation of Section 12(a)(2)(G) to use a registered pesticide "in a manner not permitted by the labeling" with the exception of four specific areas. The areas specifically excluded from enforcement are almost identical to those previously listed in the PEPS.<sup>2</sup> Under Section 2(ee) it is not a misuse to:

- 1) Apply a pesticide at any dosage, concentration, or frequency less than that specified on the labeling (PEPS #1);
- 2) Apply a pesticide against any target pest not specified on the labeling if the application is to the crop, animal, or site specified on the labeling (unless the label states that the pesticide may be used only against pests specified on the label) (PEPS #2,5);
- 3) Employ any method of application not prohibited by the labeling (PEPS #7); and
- 4) Mix a pesticide or pesticides with a fertilizer when such mixture is not prohibited by the labeling. (This issue was not expressly dealt with by PEPS but was covered by Policy and Criteria Notice 2000.1, Fertilizer-Pesticide Combinations.)

Thus, Section 2(ee) defines by law certain uses which will not be considered inconsistent with labeling even though these uses are not listed. The PTSED responded to Section 2(ee) by publishing a Federal Register Notice which rescinded PEPS numbers 1, 2, 5, and 7 (Vol. 44, No. 112, p. 33151). As explained in the Federal Register, the PTSED restricted the advocacy of Section 2(ee) uses to user/applicators. The PTSED has now reconsidered its earlier position and has decided to remove this restriction. Experience has demonstrated that the earlier policy prevented certain qualified individuals from recommending authorized deviations from the express terms of the label. The following examples illustrate the problem:

- In States with farm cooperatives there are individuals who both use and sell pesticides. These individuals were prevented from recommending authorized uses.

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2. It should be noted that while the FPA amends existing Federal law concerning pesticide misuse, it does not purport to affect State laws.

- Likewise, pest advisors who serve as IPM consultants or farm management consultants were prevented from recommending Section 2(ee) uses solely because they may also be directly or indirectly connected to the sale of pesticides.

The new PTSED position is also supported by the statutory language of Section 2(ee). Since Section 2(ee) uses are no longer considered misuse, any recommendations made regarding these uses will not be viewed as substantially different from use directions appearing on the label. Accordingly, it is PTSED policy that Section 12(a)(1)(B) no longer prohibits financially interested persons from recommending or advertising such uses. Thus, to the extent that Section 2(ee) allows a particular use, any person may advocate that use, provided that recommendations made under Section 2(ee)(1) pertaining to the amount of diluent used in applying pesticides for forestry or agricultural purposes is made in accordance with the Advisory Opinion issued March 3, 1981 (46 FR 14965).

#### Civil Liability


This new policy not only implements the Congressional intent of Section 2(ee) to allow beneficial nonlabel pesticide uses but also provides for strong enforcement to ensure appropriate recommendations of such uses. The policy statement in no way relaxes the administrative or other civil liability of persons who recommend pesticide uses. The only change is that the PTSED no longer limits the advocacy of permitted uses on the basis of financial interest in the use. The Agency will, however, take enforcement action under Section 12(a)(1)(B) against any person with a financial interest who makes pesticide use recommendations which exceed the limits of Section 2(ee). Additionally, any person who recommends Section 2(ee) uses, of course, remains liable for possible civil damages arising out of his own negligence.

#### See Also:

FIFRA Compliance Program Policy No. 12.1 Using Registered or Experimental Use Pesticides in a Manner not Included on the Label, Policy and Criteria Notice 2000.1, Fertilizer-Pesticide Combinations

#### Key Words:

Fertilizer-Pesticide Mixture, Knowledge Expert, Misuse, Target Pest, 2(ee), Use Inconsistent with the Labeling, Use Recommendations

  
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Enforcement Division

MAY 10 1982

Date

## FIFRA COMPLIANCE PROGRAM POLICY No. 2.2

### Labeling of Outer Containers

#### FIFRA Section: 2(q)

##### Issue:

When must a label be attached to a shipping container of a pesticide product?

##### Policy:

A label must be attached to a shipping container of a pesticide if the customary practice of the manufacturer is to retail the product to consumers without opening the outer shipping container to sell the product in individual units.

##### Discussion:

Section 2(q)(2)(C) of FIFRA states that a pesticide is misbranded unless a label is affixed to its container and to the outside container or wrapper of the retail package.

The regulations at 40 CFR 162.10(a)(4)(1) state in part:

The label shall appear on or be securely attached to the immediate container of the pesticide product. . . . If the immediate container is enclosed within a wrapper or outside container through which the label cannot be clearly read, the label must also be securely attached to such outside wrapper or container, if it is part of the package as customarily distributed or sold. (emphasis added)

The preamble to these regulations clearly states EPA's intention to continue its policy which requires labeling on retail packages for sale but not on shipping containers. If it is customary to sell a product in its shipping container rather than in individual units, the outer container must also bear a full end-use label. If a product is generally sold in individual units and only occasionally by the case, the outer container would not be required to bear labeling, since the outer container is not intended to serve as a retail unit.

The purpose of requiring labeling on the retail package, be it the shipping container or individual units, is to allow the person who uses the pesticide to read the entire label and be fully informed about the product. Failure to properly label the retail package is considered to be misbranding and is a violation of Section 12(a)(1)(E).

References:

Letter of June 16, 1976, from A. E. Conroy II, to  
Mr. C. M. Einhorn of USS Agri-Chemicals.

Memorandum of September 10, 1976, from A. E. Conroy II to  
Pesticide Branch Chiefs and Enforcement Division Directors.

Key Words:

Labeling, Outer Containers, Shipping Containers.



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MAY 10 1982  
Date

## FIFRA COMPLIANCE PROGRAM POLICY No. 2.3

### Under the Direct Supervision of a Certified Applicator in EPA Administered Programs

FIFRA Section 2(e)(4)

#### Issue:

What specific operational relationship and oversight constitute work "under the direct supervision of a certified applicator" in EPA administered programs?

#### Policy:

This statement of compliance program policy sets forth the standard that the Agency will employ in determining whether the use of an RUP was performed "under the direct supervision of a certified applicator."

The certified applicator is responsible for assuring that those working under his direct supervision are qualified to handle pesticides in general and are competent in the use (as defined in 40 CFR 162.3(oo)) of specific restricted use pesticides (RUP).

The certified applicator must maintain oversight of the pesticide use operation from onset to completion, being at all times aware of hazards presented by the situation. Furthermore, the certified applicator in supervising the work of a noncertified applicator must: (1) determine the level of experience and knowledge of the noncertified applicator in the use of a pesticide; 2) provide verifiable, detailed guidance on how to conduct each individual pesticide use performed under his direct supervision; (3) accompany the noncertified applicator to at least one site which would be typical of each type of pesticide use that the noncertified applicator performs; (4) be accessible to provide further instructions at all times during the noncertified applicator's use of the RUP; (5) to be able to be physically on the site, should the need arise, where the pesticide use or storage is taking place within a reasonable period of time; (6) in the case of a certified commercial applicator, maintain for at least two years, records regarding the types, amounts, uses, dates and places the RUP was used required by 40 CFR 171.7(b)(1)(iii)(E).

## Discussion:

FIFRA Section 2(e)(4) defines the phrase "under the direct supervision of a certified applicator" and 40 CFR 171.6 establishes "Standards for Supervision of Noncertified Applicators by Certified Private and Commercial Applicators." These provisions place on the supervising certified applicator authority and responsibility for ensuring that any noncertified applicators working under his direct supervision will use an RUP safely and effectively.

To effectively discharge these responsibilities, the certified applicator must assure that each of the following steps has been taken.

### I. Experience and Knowledge of the Noncertified Applicator

The certified applicator must review the noncertified applicator's experience and knowledge of both general and restricted use pesticides. This review will be used by the certified applicator to determine the extent and type of training and oversight the noncertified applicator will require. The certified applicator must assure that the noncertified applicator is familiar with and understands pesticide labeling instructions, especially those instructions relating to the prevention of hazard to man and the environment. Furthermore, the certified applicator must assure that the noncertified applicator is able to recognize poisoning symptoms and know the appropriate procedures to follow in the event of a poisoning incident.

### II. Instructions to Noncertified Applicators

The certified applicator must provide the noncertified applicator with verifiable, detailed guidance regarding the pesticide use to be performed (the Agency suggests written instructions as an effective method of providing verifiable, detailed guidance to the noncertified applicator). The instructions (to the noncertified applicator) must address such matters as the types and amount of pesticides to be used, the maintenance and calibration of the equipment to be used, and the presence and nature of any unique risk of environmental or health exposure. If a noncertified applicator will be using several different RUPs at different types of sites, then the certified applicator must accompany the noncertified applicator to at least one site for each different type of pesticide use. The noncertified applicator must also be informed of the pesticide labeling instructions, especially those instructions relating to the prevention of hazards to man and the environment.

### III. Assurance that the Noncertified Applicator is Competent

The certified applicator must assure that the noncertified applicator is competent in the use of an RUP and understands the instructions provided. At a minimum, the instructions must be given at a level and in a language understood by the non-certified applicator. In addition to the required verifiable, detailed guidance, the certified applicator must ask questions of the noncertified applicator to ensure his understanding of the instructions. When the noncertified applicator has not previously used the particular RUP, or if there is any doubt about the noncertified applicator's understanding of the instructions, the certified applicator must, in addition to on site instruction, provide on-the-job training and observe the performance of the noncertified applicator before leaving the site.

### IV. Accessibility of Certified Applicator

Section 171.6 states "... the availability of the certified applicator must be directly related to the hazard of the situation." The Agency has interpreted this statement to require the physical presence of the certified applicator on site when the use of an RUP poses a potentially serious hazard to man or the environment. Plus, the physical presence of the certified applicator is required on site when it is specified on the label.

Both 40 CFR 171.6 and FIFRA Section 2(e)(4) require that in cases where the physical presence of the certified applicator is not required, the certified applicator "...is available if and when needed...". The Agency interprets this provision to require, at a minimum, the availability by telephone or radio of the certified applicator immediately before, during and after the noncertified applicator's use of an RUP. The certified applicator must also have the capability to be physically on site, within a reasonable period of time, should the need arise. The potential or real consequences of a delay in arriving on site will be taken into consideration, when determining what is "a reasonable period of time".

### V. Records

Commercial applicators are required by 40 CFR 171.7(b)(1)(iii)(E), to maintain for two years, records regarding the types, amounts, uses, dates and places of application of RUPs. The requirement at 40 CFR 171.7(b)(1)(iii)(E) applies to both commercial applicators applying RUPs and commercial applicators supervising the application of RUPs.

## VI. Classification of Pesticide Dealers as Commercial Applicators

Any dealer who sells RUPs to persons who are not certified and who then supervises the uses of those products must be certified as a commercial, not private, applicator. If the dealer has received payment from the sale of the RUP and the product will be used on land owned by the purchaser or by some third party, the dealer cannot be deemed under FIFRA Section 2(e)(2) or 40 CFR 171.2(a)(20) to be a private applicator.

## VII. Liability

The certified applicator is responsible for ensuring the safe and effective use of any pesticide used under his direct supervision. Accordingly, the certified applicator is subject to enforcement liability, for violations that are committed by the noncertified applicator who is operating "under his direct supervision." The certified applicator cannot use as a defense against such liability, the ignorance or negligence of the applicator who is operating under his direct supervision, as it is his responsibility to ensure that the noncertified applicator is competent and has been provided adequate supervision. Where an RUP is misused by a noncertified applicator, EPA will initiate enforcement action against both the noncertified applicator and the certified applicator who supervised the use. The certified applicator will not be held liable if he can prove that he did not have any knowledge and did not, in any manner, instruct or authorize the noncertified applicator's use of an RUP. Hence, if the noncertified applicator is found not to be performing under the direct supervision of a certified applicator, he is in violation of FIFRA §§12(a)(2)(F) and 12(a)(2)(G).

See Also:

40 CFR 171.6

EPA v. Singleton Spray Service, Co.

A. E. Conroy II memo of October 21, 1981, to Leo J. Alderman entitled "Request for Interpretation of 'Under the Direct Supervision'".



Key Words:

Direct supervision, certified applicator, noncertified applicator, pesticide dealer, commercial applicator, private applicator.

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Office of Compliance Monitoring  
Office of Pesticides and Toxic Substances

April 5, 1985  
Date

FIFRA COMPLIANCE PROGRAM POLICY SECTION 3 INDEX PAGE

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## FIFRA COMPLIANCE PROGRAM POLICY No. 3.1

### Shipment Prior to Registration

FIFRA Section: 3

Issue:

May a pesticide product which is not sold under an Experimental Use Permit (EUP) be shipped to distributors prior to being registered with EPA?

Policy:

A pesticide product not sold under an EUP may be shipped prior to final approval of its EPA registration under certain circumstances. The registrant must apply to EPA for a temporary exemption to registration requirements; demonstrate a compelling need for the distributor to receive the product before its EPA registration is finalized; detail a plan for control of the product prior to registration; and receive EPA approval of the exemption request.

Discussion:

Section 3(a) of FIFRA states:

. . . no person in any State may distribute, sell, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver[y] (sic) or offer to deliver, to any person any pesticide which is not registered with the Administrator.

The exemptions to this requirement found in Section 3(b) do not address delivery of an unregistered pesticide to a distributor. However, the Agency will consider granting an exemption of this type as a matter of policy if certain conditions are met. When granting such exemptions, the Agency will consider: whether registration is imminent (final printed labeling waiting approval); the type of pesticide; the need for such action; and the registrant's ability to maintain control over the product to prevent its sale prior to registration.

Upon receiving EPA approval of the exemption request, the registrant must contact each EPA Region and State involved and inform them of the shipments. The registrant must provide the Regions and States with exact shipping data including the point of origin, the date of shipment, the name of the carrier, the name and address of the consignee, the name and telephone number of the responsible person at the consignee's, and the expected date of arrival. The registrant must also provide the Regions with a plan for control and handling of the product to prevent its sale or use prior to registration. If the product does not become registered as anticipated, the registrant must notify the Regions and States immediately and no further shipment or distribution of the product is allowed until it is fully registered.

Failure to fulfill the conditions of the exemption or sale of the product at the distributor level prior to registration is a violation of Section 12(a)(1)(A) of FIFRA.

See Also:

Registration.

References:

March 21, 1978 letter from A. E. Conroy II, Director, PTSED, to Ingrid K. Allen, Registration Coordinator, Agricultural Chemicals Division, Fisons, Inc.

Key Words:

Exemptions, Shipment, Unregistered Pesticides.

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MAY 10 1982  
Date

FIFRA COMPLIANCE PROGRAM POLICY No. 3.2

Distributor Registrations

FIFRA Section: 3

Issue:

May a distributor repackage a pesticide which it intends to sell under a supplemental registration?

Policy:

A distributor may repackage a pesticide it sells under a supplemental registration only if it is under contract to the basic registrant to do so.

Discussion:

Manufacturing or packaging a pesticide under contract and distributing a pesticide under a supplemental registration are two separate activities.

Section 3(b)(1) of FIFRA and the regulations at 40 CFR 162.5(b)(1) allow for the transfer of an unregistered pesticide from one registered establishment to another registered establishment operated by the same producer solely for packaging or use as a constituent part of another pesticide produced at the second establishment. The term "operated by the same producer" is defined at 40 CFR 162.3(dd) to mean another establishment owned by the registrant or an establishment operated by a person under contract to the registrant.

Under supplemental registration, a distributor of a registered pesticide product is permitted to market that pesticide product under the distributor's brand name if it adheres to the conditions described at 40 CFR 162.6(b)(4)(i). The regulations require, in part, that distributor products be manufactured and packaged by the same person who manufactures and packages the previously registered pesticide product (40 CFR Part 162.6 (b)(4)(i)(B)). Labeling is considered as part of packaging for the purposes of these regulations. These provisions preclude more than one person from producing a product.

The contract manufacturing policy may be applied to situations where a person, under contract to a manufacturer to produce or repackage a product, also wishes to distribute the product under a supplemental registration. A supplemental registrant (distributor) may repackage a pesticide, which it intends to sell under its own brand name, only if it is under contract to the basic registrant to do so. Where such a contractual arrangement exists, the supplemental registrant acts as an agent for the basic registrant and is held to the same standards of adulteration and misbranding imposed on the registrant at the time of registration.

A supplemental registrant under contract to the basic registrant may also label or repackage the product for other distributors. However, the product must bear the contractor's (supplemental registrant's) establishment number and the distributor number assigned to the firm whose brand name appears on the label.

Any supplemental registrant's (distributor's) name appearing on the label must be qualified by terms such as "packed for", "distributed by", or "sold by".

The Agency feels that this policy protects both the public and the environment for several reasons. The product produced by the contractor is fully registered with EPA by the basic registrant. In, addition the product must conform to the standards held for the basic registration and to the requirements for supplemental registrations.

Liability for any violation of Section 12 in such a contractual arrangement may rest with either or both parties to the contract depending upon the circumstances associated with the violation.

See Also:

FIFRA Compliance Program Policy No. 3.6., Contract Manufacturer

References:


40 CFR Part 162.26(b)(4)(i), (ii), (iii).

Memo of August 19, 1977, from A. E. Conroy II to Ed Johnson, OPP, titled "Contract Manufacturers".

Memo of December 13, 1976, from A. E. Conroy II, PTSED, to Regional Enforcement Division Directors and Pesticide Branch Chiefs titled "Relation Between Contract Manufacturers and Packagers and Distributors of Supplementally Registered Products".

Key Words:

Contract Manufacturing, Distributor Registrations, Repackaging, Supplemental Registrations.

  
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MAI, 0 1982  
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Date

## FIFRA COMPLIANCE PROGRAM POLICY No. 3.3

### Fumigation of Truck Vans on Flatbed Rail Cars

FIFRA Section: 3

Issue:

Will EPA, in the absence of specific label directions, allow the fumigation of truck vans with pesticide products that generate phosphine gas while the vans are being transported on flatbed rail-road cars?

Policy:

EPA will allow truck vans being transported on flatbed rail cars to be fumigated provided:

- 1) the pesticide label contains directions which allow the use of the product in sealed boxcars and hopper cars while in transit, on the commodity being carried in the truck van, and these directions are followed;
- 2) the truck vans are sealed and placarded during fumigation; and
- 3) the truck vans are fully aerated in accordance with label directions prior to removal from the flatbed rail car.

For the purposes of this policy, a truck van is defined as the container portion of any highway truck, trailer or semi-trailer having a demountable chassis.

Discussion:

The Agency finds that the use of aluminum phosphide products to fumigate truck vans while the vans are being transported on flatbed rail cars is allowable provided the conditions mentioned above are met.

This policy also applies to all other registered products which generate phosphine gas and bear directions for use in sealed boxcars and hopper cars. The Agency feels that the construction of truck vans is sufficiently similar to the construction of boxcars and hopper cars that there is no greater risk of exposure to phosphine gas during and after fumigation on rail cars provided that care is taken to properly seal, label, and aerate the truck vans. EPA feels that fumigation of truck vans while on rail cars provides the least risk of exposure when compared to other alternatives.

The Agency will not extend this interpretation to allow the fumigation of truck vans being transported over the highway because of concerns that the driver and other members of the public could be exposed to phosphine gas.

Key Words:

Aluminum Phosphide Products, Fumigation, Labeling, Phosphine Gas, Phostoxin, Rail Cars, Truck Fumigation, Truck Vans.



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Enforcement Division

MAY 10 1982

Date



## FIFRA COMPLIANCE PROGRAM POLICY No. 3.4

### Custom Blenders

#### FIFRA Section: 3

#### Issue:

Are custom blenders of pesticides subject to the requirements of Section 3 of FIFRA?

#### Policy:

Although custom blenders of pesticides are subject to the registration requirements of Section 3, they need not meet these requirements when certain prescribed conditions are met.

#### Discussion:

Section 3 of FIFRA requires any person who produces a pesticide to register that pesticide with the Administrator before selling or distributing it. Custom blenders provide the service of mixing pesticides to a customer's specifications, usually a pesticide(s)-fertilizer(s) or pesticide-pesticide mixture. Custom blending is considered production under Section 3. The Agency, however, has determined that registration of certain custom blends is not necessary to fulfill the intent of FIFRA.

In order for a custom blender to avoid liability for failure to meet the requirements of Section 3, the following conditions must be met:

- 1) the blend is prepared to the order of the user and is not held in inventory by the blender; and
- 2) the pesticide(s) used in the blend bears end-use labeling\* directions which do not prohibit use of the product in such a blend; and
- 3) the blend is prepared in a registered establishment; and
- 4) the blend is delivered to the user together with:

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\* The term "end-use labeling" means labeling containing directions for use in pest control and otherwise meeting the requirements of 40 CFR 162.10. Labeling indicating that a product is intended only for use in manufacturing or formulating pesticides shall not be considered end-use labeling.

- a) a copy of the end-use labeling of the pesticide used in the blend, and
- b) a statement specifying the composition of the mixture.

The Agency feels that the public will be adequately protected without Section 3 registration of custom blends if custom blenders meet these criteria.

If a custom blend does not meet the criteria listed above, it must be registered as a pesticide in accordance with the requirements of Section 3.

The limited obligations of custom blenders under Section 3 are independent of their obligations under FIFRA Sections 7 and 8.

See Also:

Custom Blenders - FIFRA Compliance Program Policy No. 7.1, Policy and Criteria Notice 2000.1

References:

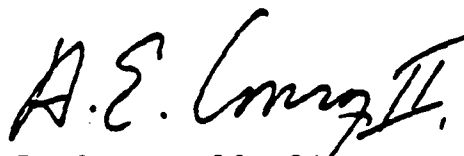
Memo to Pesticide Branch Chiefs and Enforcement Division Directors from Edwin L. Johnson and A. E. Conroy II, dated September 3, 1975, titled "Interim Regulations Regarding Registration of Custom Blends and Custom Blending Establishments."

Memo to Pesticide Branch Chiefs from A. E. Conroy II, dated September 10, 1980, titled "Custom Blender's Identification for ERSS."

PR Notice 73-1

Key Words:

Custom Blenders, Fertilizer-Pesticide Mixtures, Registration.



A.E. Conroy II, Director  
Pesticides and Toxic Substances  
Enforcement Division

MAY 10 1982  
Date

FIFRA COMPLIANCE PROGRAM POLICY NO. 3.5

Production of Pesticides for Personal Use

FIFRA Sections: 3, 7

Issue:

May a person lawfully produce a pesticide for his own use without registering his product or establishment?

Policy:

Generally, a person may lawfully produce a pesticide for his own use without registering his product or establishment.

Discussion:

Section 3 of FIFRA requires a pesticide producer to register his product only if he sells or distributes the pesticide. Furthermore, the regulations (40 CFR Part 167) which address the registration of pesticide producing establishments under FIFRA Section 7 state that persons who produce pesticides solely for application by themselves are not required to register their establishments. Thus, a person who produces a pesticide solely for personal use is not required under FIFRA to register the pesticide or the producing establishment.

The Agency considers any application of an unregistered pesticide for other than personal use to be distribution of an unregistered pesticide, a violation under Section 12(a)(1)(A) of FIFRA. This includes applying an unregistered pesticide to another person's property for other than monetary consideration. Furthermore, a person applying an unregistered pesticide for hire, only to provide a service of controlling pests without delivering any unapplied pesticide to any person so served, would be considered a distributor and, is therefore, subject to the higher penalties set forth in section 14(a)(1) and 14(b)(1) of FIFRA. (see S. Rep. No. 95-1188, 95th Cong., 2nd Sess. 44-45 (1978)).

References:

Memorandum to Roy Clark, Region IV, dated April 9, 1981 titled "Interpretation of FIFRA §162.4(c)(6).

Senate Report No. 95-1188, 95th Congress, 2nd Session 44-45 (1978).

Key Words:

Establishment Registration, Product Registration.

*A. E. Conroy II*  
A. E. Conroy II, Director  
Pesticides and Toxic Substances  
Enforcement Division

JUN 10 1982

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Date

## FIFRA COMPLIANCE PROGRAM POLICY No. 3.7

### Temporary Conversion of Cropland

#### FIFRA Section: 3

#### Issue:

In order to kill localized weeds or other pests on cropland, may a person temporarily convert the affected cropland to non-cropland, so they may use the higher dosage rates specified for noncrop use, or so they may use products labeled for noncrop use only?

#### Policy:

Cropland cannot be temporarily converted to noncropland for the purposes of using the greater application rates allowed by noncrop use labeling. A pesticide may not be used on cropland at higher than the labeled crop use dosage rates in order to kill localized weeds, or other pests, unless the label directions for that pesticide provide for spot treatment directions on cropland.

Additionally, cropland may not be temporarily converted to noncropland for the purposes of using products which are not registered for use on crops.

#### Discussion:

Labeling for noncrop uses often allow for greater application rates of pesticides than those application rates stipulated for use on crops. Additionally, crop rotation restrictions, which specify a period of time during which certain crops cannot be planted in a field after a pesticide has been applied, are not addressed on noncrop use labeling. Therefore, the Agency believes the temporary conversion of cropland to noncropland would inadvisably allow for the use of increased dosage rates and the use of pesticides which could result in injury or illegal residue to crops planted on that land in the future. However, spot treatment labeling, which may allow for greater application rates of pesticides than those application rates listed for typical crop use, does stipulate crop rotation restrictions.

The Agency considers fallow land, grazing land, pastureland, no-till land (including acreage enrolled in the Department of Agriculture's Conservation Reserve Program) and other cultivated lands to be cropland. The use of a pesticide on cropland at the higher application rates specified by noncrop use labeling, or the use of a pesticide on cropland which is not registered for use on crops, is a violation of FIFRA §12(a)(2)(G), the use of a registered pesticide in a manner inconsistent with its labeling.

References:

Memorandum from John B. Ritch, Jr., of Registration Division, to Lyn V. Frandsen, of Region X, dated March 1976, regarding a definition of noncropland.

Criteria and Policy Notice No. 2160.2, dated April 16, 1979, "Definition of Noncropland".

"Pesticides For Conservation Use Acreage Fact Sheet", dated 1983.

Memorandum from A. E. Conroy II to C. Alvin Yorke, dated February 26, 1986, regarding the temporary conversion of cropland.

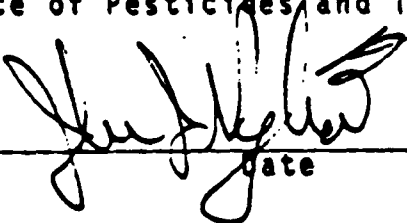
Memorandum from Art Losey, State of Washington Department of Agriculture, to John Seitz of OCM, dated December 8, 1986, regarding his position on the April 9, 1986 draft of FIFRA Compliance Program Policy No. 3.7.

Memorandum from Art Losey, State of Washington Department of Agriculture, to Kevin Pifer, Rod Awe, et. al., dated June 30, 1987, regarding the draft Policy For Pesticide Use on Conservation Reserve Acreage.

Key Words:

Cropland, Crop Rotation Restrictions, Conservation Reserve Program (CRP), Noncropland, Spot Treatment.

John J. Neylan III, Director  
Policy and Grants Division  
Office of Compliance Monitoring  
Office of Pesticides and Toxic Substances

  
\_\_\_\_\_  
Date

FEB 10 1988

## FIFRA COMPLIANCE PROGRAM POLICY No. 3.8

### The Use of Products Labeled "For Manufacturing Use Only" To Produce Pesticides For Personal Use

FIFRA Section: 3

Issue:

May a person use a product labeled "For Manufacturing Use Only", which does not bear detailed directions for use, to produce a pesticide for their own use?

Policy:

A person may not use a Manufacturing Use Only product, which does not bear detailed directions for use, to produce a pesticide for their own use, unless that person registers the formulated end-use product with the EPA.

Discussion:

The EPA interprets the label statement "For Manufacturing Use Only" to mean that products bearing this statement are intended only for formulation into registered products. The regulations further elaborate on this interpretation in 40 CFR Part 162.10 (1)(1)(iii)(A) which states that manufacturers are only permitted to omit detailed directions for use from the label provided "the product [with the omitted use directions] will not come into the hands of the general public except after incorporation into finished products." 40 CFR Part 162.10(1)(1)(iii)(C) further states: "detailed directions for use may be omitted from the labeling of pesticides which are intended for use only by formulators in preparing pesticides for sale to the public ... and provided the product as finally manufactured is registered."

Therefore, any pesticide formulated from a product labeled "For Manufacturing Use Only", without detailed directions for use on its label, must be registered with the Agency, even though it is for personal use and will not be sold or distributed.

The use of a "For Manufacturing Use Only" product, in which detailed directions for use do not appear on the label, for any purpose other than the production of a registered pesticide, would be considered a violation of FIFRA 912(a)(2)(G), the use of a registered pesticide in a manner inconsistent with its labeling.

See Also:

FIFRA COMPLIANCE PROGRAM POLICY 3.5 -- "Production of Pesticides For Personal Use".

References:

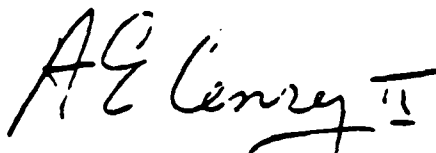
Memorandum from A. E. Conroy II to H. Kirk Lucius, dated February 5, 1980, regarding the Use of Zinc Phosphide and Diphacinone For Rodent Control in Florida Sugarcane Fields.

Memorandum from John B. Kitch, Jr., Director of Registration Division, to A. E. Conroy II, dated February 25, 1974, regarding Pesticide Products Intended "For Manufacturing Use Only".

40 CFR Part 162.10(f)(1)(iii)

Key Words:

Manufacturing Use Only, Personal Use, Product Registration



A. E. Conroy II, Director  
Office of Compliance Monitoring  
Office of Pesticides and Toxic Substances

AUG 29 1986

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Date



## FIFRA Compliance Program Policy No. 3.9

### Status of Supplemental Registration

FIFRA Section: 3

Issue:

What is the status of supplemental or distributor registrations when the Agency takes action against a basic registration?

Policy:

Actions taken against the basic registration are equally binding on supplemental registrations. Further, a registrant may be held liable for violations committed by its supplemental registrants or distributors.

Discussion:

The holder of a registration of a pesticide product (the "registrant" or "basic registrant") may allow the registered product to be sold or distributed under the name, address, and brand name of another person (called a "distributor" or "supplemental registrant"), under the conditions set forth in 40 CFR 162.6(b)(4). Distributor products are identified as such through the use of a special numerical suffix to the basic registration number on the label. As stated in 40 CFR 162.6(b)(4)(iii), a supplemental registrant (distributor) is deemed by EPA to be an agent of the basic registrant for all purposes under FIFRA. Further, as stated in the preamble to the final rule promulgating 40 CFR 162.6(b)(4) (49 FR 380, 381, January 4, 1984): "Supplemental registration is not registration of a separate product under FIFRA sec. 3, but permits an existing registrant to market his registered product, bearing a different name and address, through a distributor". Because a supplemental registrant is considered to be the agent of the basic registrant, the basic registrant is legally accountable for violations of FIFRA committed by its supplemental registrant with respect to the distributor product.

When EPA notifies a basic registrant of an action (e.g., a notice of intent to cancel, a notice of intent to suspend, or a stop sale, use, and removal order (SSURO)) against a registered pesticide, it does not separately notify supplemental registrants of the action. Thus, a basic registrant would be well advised to promptly inform each of its supplemental registrants of actions EPA takes with respect to the basic registration, in order that the basic registrant may avoid being held accountable for FIFRA violations by a supplemental registrant. For instance, when a pesticide product's registration is suspended after notice to the basic registrant, all versions of that product are suspended, including those bearing a supplemental registrant label. Likewise, when a SSURO is issued to a basic registrant with regard to a registered pesticide product, the terms of the SSURO are equally applicable to supplemental registrants of the product. If a supplemental registrant markets a product in violation of a cancellation or suspension order or SSURO, both the basic registrant and the supplemental registrant are in violation of FIFRA and will be held liable for such violation.

See also

Distributor Registrations - FIFRA Compliance Program  
Policy No. 3.2.

References

Memorandum from A.E. Conroy II to Anthony Baldi, dated March 19, 1987, regarding the status of supplemental registrations when the Agency takes action against a basic registration.

Memorandum from John J. Neylan III to Rick Tinsworth, dated March 25, 1987, regarding FIFRA §3(c)(2)(B) Suspension Notices.


PR Notice 82-3, 20 September 1982, "Notice to Producers, Registrants, and Formulators".

40 CFR §162.6(b)(4)(i).

40 CFR §162.6(b)(4)(iii).

Key words

Supplemental registrations, basic registrations,  
registrant/distributor liability

  
A.E. Conroy Jr., Director  
Office of Compliance Monitoring  
Office of Pesticides and Toxic Substances

7/6/87  
Date

FIFRA COMPLIANCE PROGRAM POLICY No. 3.10

Use of California's Methyl Bromide Fact Sheet

FIFRA Section: 3

Issue:

Label directions for all Methyl Bromide products require that customers sign an EPA Fact Sheet before structural fumigation occurs. Through regulation the state of California requires a California fact sheet be signed. Will EPA allow California's Fact Sheet (revised May 1992) to be used in lieu of EPA's Fact Sheet for customer signature before fumigation in California?

Policy:

Upon review of both Fact Sheets, the Office of Pesticide Programs has determined that use of the California Fact Sheet (Revised May 1992) would be sufficient to meet the Agency's intent in notifying customers prior to beginning fumigation. At the request of the Office of Pesticide Programs, the Office of Compliance Monitoring will allow applicators in California only to use California's Fact Sheet (Revised May 1992) for customer signature in lieu of EPA's Fact Sheet for customer signature before the applicator starts the fumigation process.

Discussion:

Methyl Bromide registrants voluntarily agreed to a label revision of Methyl Bromide products with structural (commercial and residential) fumigation use directions on the label due to health concerns of structural fumigants. Methyl Bromide Registrants with structural fumigation uses on their product labels have revised their aeration and reentry directions according to the Interim Approved Labeling. A Federal requirement of the new, approved label language is that applicators give their customers a fact sheet for their review and signature before the fumigation process begins. In addition to this Federal requirement, the state of California has passed regulations requiring applicators in California to give their customers the California Fact Sheet for review and signature. Without this policy, both fact sheets are required to be presented to the customer and signed. The Office of Pesticide Programs has reviewed both fact sheets and have requested the Office of Compliance Monitoring to allow applicators in California only to use the California Fact Sheet (Revised May 1992) in lieu of both. The EPA Fact Sheet is required to be signed in all other states.

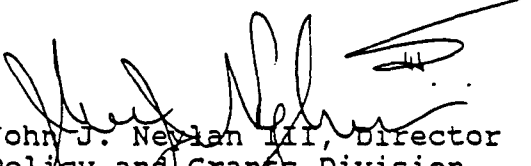
References

Letters from:

D. Barolo, Office of Pesticide Programs, to J. Neylan,  
Director, Policy and Grants Division, and P. Flaherty,  
Chief, Pesticides Enforcement Policy Branch, 8/6/92;  
J. Neylan, Office of Compliance Monitoring, to FIFRA  
Addressee List including Regional and Headquarters Division  
Directors, Branch Chiefs, and Section Chiefs, SEP 1 1992.

Key Words:

Methyl Bromide, Structural Fumigants, Fact Sheet

  
John J. Neylan III, Director  
Policy and Grants Division  
Office of Compliance Monitoring  
Office of Prevention, Pesticides  
and Toxic Substances

SEP 1 1992

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Date

FIFRA COMPLIANCE PROGRAM POLICY SECTION 4 INDEX PAGE

TITLE

NUMBER

Written Examinations for Private Pesticide  
Applicators

4.1

## FIFRA COMPLIANCE PROGRAM POLICY No. 4.1

### Written Examinations for Private Pesticide Applicators

#### FIFRA Section: 4(a)(1)

##### Issue:

May a State Certification Plan approved by EPA under FIFRA require a private pesticide applicator to pass a written examination to become certified or recertified?

##### Policy:

A State Certification Plan may require a private applicator to pass a written examination or other equivalent method of evaluating competency as a prerequisite to becoming certified or recertified.

##### Discussion:

Under FIFRA Sections 3(d) and 12(a)(2)(F), applicators must be certified before they may legally obtain and use pesticides classified for restricted use. FIFRA Section 4 establishes two different routes for certification: certification by a State pursuant to a Plan approved by the Administrator, or certification by the Administrator in cases where States have chosen not to submit a Plan. Only two States, Colorado\* and Nebraska, do not have plans for certification of pesticide applicators.

FIFRA Section 4(a)(2) describes the criteria used by the Administrator in deciding whether to approve a State-submitted Certification Plan. Section 4(a)(2)(E) states that a Plan submitted by a State must contain "satisfactory assurances that State standards for the certification of applicators of pesticides conform with those standards prescribed by the Administrator" under FIFRA Section 4(a)(1). Section 4(a)(1) provides that a State Certification Plan must specify a method by which an applicator will establish his competency.

Under FIFRA, the Administrator may not require a private applicator to pass an examination to establish competency for certification or require a State Plan to contain such a provision.

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\* Colorado is in the process of developing a certification plan, which will initially cover only commercial applicators.

FIFRA Section 4(a)(1) prohibits the Administrator from requiring private applicators to pass an examination to establish competency for certification in EPA-administered certification programs. Section 4(a)(1) also specifies "... That the certification standard for a private applicator shall, under a State plan submitted for approval, be deemed fulfilled by his completing a certification form ...". However, a State may wish to adopt a certification program which is more stringent than that prescribed under FIFRA Section 4 and related regulations. A State may on its own initiative choose to require a private applicator to pass an examination to establish competency for certification.

EPA's policy of accepting State Certification Plans which require private applicators to pass written examinations is supported by the lack of a statutory prohibition against such an action and the legislative history. The Senate and House conference report clearly affirmed the right of a State to require the passing of a written examination by a private applicator. The right of a State to require the passing of a written examination by a private applicator has been official EPA policy since the passage of FIFRA. Pursuant to this policy the Administrator has approved State Plans requiring the passing of a written examination by a private applicator as well as State Plans using methods other than written examinations to establish private applicator competency.

See Also:

Reference:

Letter dated August 30, 1982 from Edward C. Gray, Acting Associate General Counsel, Pesticides Division to Mr. Frank Graham, Florida Department of Agriculture, re: State - Imposed Requirement for Examination of Private Applicators.

Letter dated November 16, 1982 from Robert M. Perry, Associate Administrator for Legal and Enforcement Counsel and General Counsel to J. T. Griffiths, the Citrus Growers Association, subject: State - Imposed Requirements for Examination of Private Applicators.

Key Words:

Establish competency, written examination, private applicator certification.

A. E. Conroy II, Director  
Compliance Monitoring Staff  
Office of Pesticides and Toxic Substances

28 JUL 1983

\_\_\_\_\_  
Date



FIFRA COMPLIANCE PROGRAM POLICY SECTION 7 INDEX PAGE

TITLE

NUMBER

Custom Blenders

7.1

FIFRA COMPLIANCE PROGRAM POLICY No. 7.1

Custom Blenders

FIFRA Section: 7

Issue:

Are custom blenders of pesticides subject to the requirements of Section 7?

Policy:

Although custom blenders of pesticides are subject to the Section 7 establishment registration requirements they are not required to meet the reporting requirements of Section 7 if they meet certain conditions.

Discussion:

Section 7 of FIFRA requires that all pesticide producers must register those establishments in which they produce pesticides. They must also submit to the Agency annual reports concerning production and distribution of the pesticides. The regulations promulgated pursuant to this section (40 CFR 167) provide that a custom blender is a producer and is thus subject to the requirements of Section 7.

Custom blenders provide the service of mixing pesticides to a customer's specifications. The custom blend is usually a pesticide(s)-fertilizer(s) mixture or a mixture of pesticides derived from an end-use formulation.

The Agency has, however, determined that subjecting custom blending establishments to all provisions of Section 7 is not necessary for effective regulation of the industry. Therefore the Agency will not require producers of those blends exempt from Section 3\* to meet certain Section 7 requirements.

\*To be exempt from Section 3, a custom blend must meet the following requirements:

- 1) the blend is prepared to the order of the user and is not held in inventory by the blender, and
- 2) the pesticide(s) used in the blend bear(s) end-use labeling directions which do not prohibit use of the product in such a blend, and
- 3) the blend is prepared in a registered establishment, and
- 4) the blend is delivered to the user together with:
  - a) a copy of the end-use labeling of the pesticide used in the blend, and
  - b) a statement specifying the composition of the mixture.

All custom blenders, whether or not their blends must meet Section 3 requirements, must register their establishments with EPA. This is necessary to provide the Agency with the locations of pesticide blending operations. The Agency will use this information in scheduling Section 8 inspections and in tracing contaminated or other pesticides in violation of the law.

Custom blenders whose blends need not meet Section 3 requirements are not required to report on amount produced at the establishment or to place their establishment number on the pesticide produced. Normally, the Agency requires the establishment number to be placed on a product in order to allow EPA to trace a shipment of pesticides which may be in violation of the Act. Since a custom blend is used within a day or two of purchase and the user knows the person who manufactured the blend, placing the establishment number on the blend has little value.

Production data is required for registered pesticides, so the Agency knows how much of a pesticide is produced and who produces it. This information is useful not only to know the total production of pesticides but to assist EPA in recall actions or other actions where knowledge of production is essential. Because EPA does not require custom blenders to meet the Section 3 requirements of FIFRA, the Agency would not be consistent in asking for production information on a blend which does not require registration.

Custom blenders remain subject to the provisions of Section 8 of FIFRA as well as to all requirements relating to proper use of pesticides including transport, storage and disposal.

See Also:

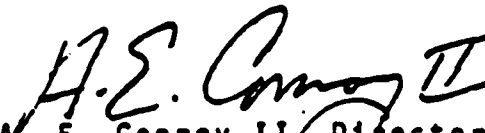
Custom Blenders - FIFRA Compliance Program Policy No. 3.4

References:

See references in FIFRA Compliance Program Policy No. 3.4

Key Words:

Custom Blenders, Establishment Registration, Reporting.

  
A. E. Conroy II, Director  
Pesticides and Toxic Substances  
Enforcement Division

JAY 10 1982  
Date

FIFRA COMPLIANCE PROGRAM POLICY SECTION 10 INDEX PAGE

TITLE

NUMBER

Release of Pesticide Production Data

10.1

FIFRA COMPLIANCE PROGRAM POLICY No. 10.1

Release of Pesticide Production Data

FIFRA Section: 10

Issue:

Under what circumstances will EPA release yearly production data for particular pesticides?

Policy:

The EPA will not release an individual producer's production data for a specific pesticide. The Agency will release production data in the aggregate, without individual producer identification, at the request or order of an EPA Administrative Law Judge in a data compensation proceeding under FIFRA Section 3(c)(1)(D). In such a case, the EPA will indicate the confidential nature of the data to the Judge. When EPA responds to a Congressional request for confidential data, the Office of Legal Counsel will decide whether to release the data.

Discussion:

Production data which producers submit under FIFRA Section 7(c)(1) is confidential (Section 7(d)) and thus may not be released by EPA (Section 10(b)). In many cases, aggregate yearly data which does not identify individual producers may not be confidential. However, there is a risk, in some cases, that the requestor may ascertain the identities of individual producers when combining the aggregate data with other information in his possession.

The Freedom of Information Act (FOIA) (5 U.S.C. Section 552) does not require an Agency to create a record in response to an FOIA request. The EPA regulations state: "The Freedom of Information Act does not require the creation of new records in response to a request ... The Act establishes requirements for disclosure of existing records" (40 CFR Section 2.105(a), emphasis added). The United States Supreme Court has endorsed this reading of FOIA; NLRB v. Sears Roebuck, 421 U.S. 132, 161-162. Aggregation of pesticide production data submitted to EPA is clearly the creation of new records.

While EPA could choose to release aggregate pesticide production data even where not required by FOIA, it has decided not to do so due to the risk of unintended disclosure of confidential data.


FIFRA Section 10(b) authorizes the release of certain confidential pesticide data to other Federal agencies; however, production data is not included. Also, FIFRA does not authorize the release of production data to States. Therefore, EPA will not routinely release individual or aggregate production data to other Federal Agencies or States. Release of confidential pesticide data to Congress, including the General Accounting Office, is governed by EPA-wide policy (40 CFR Part 2). When EPA responds to a Congressional request for confidential pesticide data, the Office of Legal Counsel must be contacted, since that Office will decide whether to release the data.

Reference:

Protective Order, -October 22, 1981, Union Carbide v. Thompson  
Hayward, FIFRA COMP. Docket Nos. 27 & 45, 40 CFR Part 2.

Key Words:

Confidentiality, Establishment Registration, Production Data.

  
A. E. Conroy, II, Director  
Pesticides and Toxic Substances  
Enforcement Division

MAY 10 1982

Date

FIFRA COMPLIANCE PROGRAM POLICY SECTION 12 INDEX PAGE

<u>TITLE</u>	<u>NUMBER</u>
Using Registered or Experimental Use Permit Pesticides in a Manner Not Included on the Label or Permit	12.1
Pesticides Closed Transfer, Mixing/Loading and Application Equipment (Closed Systems) (Revised)	12.2
Authority for Use Inspections	12.3
Making RUP's Available for Use Other Than in Accordance With Section 3(d) of FIFRA (Revised)	12.4
The Use of a Diluent Not Specified on the Product Label	12.5

## FIFRA COMPLIANCE PROGRAM POLICY NO. 12.1

### Using Registered Or Experimental Use Permit Pesticides In A Manner Not Included On The Label Or Permit

FIFRA Section: 12

Issue:

May a person legally use a registered or experimental use pesticide for testing purposes<sup>1</sup> not authorized by the label or permit?

Policy:

A person may legally use a registered or experimental use pesticide for testing purposes in a manner not authorized by the label or the permit if:

1. The purpose of the use is only to determine the pesticidal value of the substance or its toxicity or other properties, and
2. No one conducting the test expects to obtain any benefit in pest control from its use.

In addition, other specific conditions must be met for pesticide uses as described in 40 CFR Part 172.3(a)(1) for land use, Part 172.3(a)(2) for aquatic use and Part 172.3(a)(3) for animal treatments.

Discussion:

The experimental use permit (EUP) regulations provide at 40 CFR Part 172.2(a) that any person wishing to accumulate data necessary to register a substance under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) may apply for an EUP for:

- o A pesticide not registered with the Agency, or
- o A use of a registered pesticide not previously approved in the registration.

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<sup>1</sup> "For testing purposes" as defined in this policy refers to pesticide use for: a land use as described in 40 CFR Part 172.3(a)(1), an aquatic use as defined in Part 172.3(a)(2) and animal treatments as defined in Part 172.3(a)(3).



However, those regulations also provide at 40 CFR Part 172.3(a) that a person does not need an EUP to test a substance or mixture of substances where the only purpose of the test is to determine its pesticidal value, its toxicity or other properties, and where the persons conducting the test do not expect to receive any pest control benefit from the tests.

The regulations at 40 CFR Part 172.3(a)(1) state that such a purpose is presumed for land use tests if:

- o The total cumulative acreage treated does not exceed 10 acres for a particular substance or mixture of substances against a particular pest, and
- o The food or feed crops involved in, or affected by such tests shall be destroyed or consumed only by experimental animals unless a tolerance or exemption from the need for a tolerance has been established. These crops include crops subsequently grown on such land which may reasonably be expected to contain residues of such substances or mixtures of substances.

The regulations at 40 CFR Part 172.3(a)(2) state that such a purpose is presumed for aquatic use tests if:

- o The total area treated does not exceed 1 surface acre of water for a particular substance or mixture of substances against a particular pest,
- o The waters used in such tests will not be used for irrigation purposes, drinking water supplies or body contact recreational activities, and
- o No such tests may be conducted in any waters which contain, or which would affect, any fish, shellfish or other plants or animals taken for recreational or commercial purposes unless a tolerance or exemption from tolerance has been established.

The regulations at 40 CFR Part 172.3(a)(3) state such a purpose is presumed for animal treatments if:

- o The tests are conducted only on experimental animals, and
- o No animals may be tested if they may be used in food or feed unless a tolerance or an exemption from tolerance has been established.

**This policy does not limit, but rather supplements the existing policy regarding uses not authorized by the label but allowed under FIFRA §2(ee).**

The regulations also state at 40 CFR Part 172.3(c) that an EUP is not required if a registered pesticide is used in a test to determine its pesticidal value for a use not set forth on the label if the requirements at 40 CFR Part 173(a) are met.<sup>2</sup>


It is not a misuse violation of FIFRA to use a non-registered substance in tests to determine pesticidal value, toxicity or other properties under the previously-cited restrictions. Therefore, it is also not a violation to use a substance with an EUP in a manner contrary to the provisions of the permit, if the use is in tests which meet the conditions at 40 CFR Parts 172.3(a), 172.3(a)(1), 172.3(a)(2) and 172.3(a)(3) as set forth above.

See Also:

FIFRA Compliance Program Policy No. 2.2 - Use Recommendations

Key Words:

Experimental Use Permit (EUP), 2(ee), Use Recommendations.

  
A. E. Conroy II, Director  
Pesticides and Toxic Substances  
Enforcement Division

MAY 10 1982  
Date

FIFRA Compliance Program Policy No. 12.2

Pesticides Closed Transfer, Mixing/Loading and  
Application Equipment (Closed Systems)

FIFRA Section:

12(a)(2)(G)

Issue:

Will the Environmental Protection Agency take an enforcement action under FIFRA Section 12(a)(2)(G) against the operator who uses a closed system to mix, load, transfer or apply pesticides without wearing the personal protective equipment required by the pesticide product label?

Policy:\*

The Agency will not take an enforcement action under FIFRA Section 12(a)(2)(G) against the operator of a closed system who does not wear the personal protective equipment required by the pesticide product label, provided the conditions outlined in this policy are met.

Discussion:

The FIFRA Compliance Program Policy No. 12.2 issued May 10, 1982 said the Agency would take enforcement action under Section 12(a)(2)(G) against the operator for not wearing personal protective equipment required by the label if a closed system was used in transferring, mixing, loading or applying pesticides.

The California Department of Food and Agriculture and the Arizona Board of Pesticide Control petitioned the Agency to reconsider the May 10 policy. They stated that the pesticide label directs safety requirements at the most hazardous pesticide use situations without considering less hazardous situations. Further, the May 1982 policy may actually hinder the development of new equipment designed to safely handle pesticides.

The Agency's position is that wearing the personal protective equipment required by the pesticide label provides the greatest level of user protection. However, the Agency recognizes that technological and engineering advancements have made significant contributions in the field of pesticide use safety. One such advancement is the development of closed systems.

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\*This policy replaces FIFRA Compliance Program Policy No. 12.2 issued May 10, 1982.

For purposes of this policy, a closed system is hardware designed to empty and rinse pesticide containers, mix or dilute the pesticide, and transfer the pesticide, its diluents, and the container rinsing agent to the application equipment without permitting the pesticide to escape.

Preliminary field experiences indicate that the incidents of pesticide exposure to persons operating a closed system generally arise due to one of the following conditions:

- o Pesticide leaks at seals, gaskets, hoses, or seams caused by worn or poor quality parts, or by parts eroded when the chemicals are allowed to stand in the container.
- o Pesticide leaks at the couplings caused by high internal pressures or incomplete coupling due to non-matching parts or operator carelessness.
- o Improper use of equipment due to disregard for proper mixing/loading procedures or lack of training.

There are, however, many documented instances when a closed system has been used without resulting in an exposure from its use. Therefore, the Agency will amend its May 10, 1982, policy and will not take an enforcement action if the operator can show the following:

- o Records are available for the current operating year which show that a cleaning schedule and maintenance program (which includes flushing the system so that pesticides are not allowed to stand in the system for more than one work day) has been developed and is administered.
- o Records are available which indicate that the operator has received training (when, by whom) in operating procedures as prescribed by the closed system manufacturer and has been informed of the potential hazards of closed system misuse or improper maintenance before using.
- o Written instructions for operating the system are posted on or near the closed system.
- o All personal protective equipment required by the label is available for the operator at all times during mixing and loading or transfer operations.

Notwithstanding the requirements of this policy, if all of the personal protective equipment required by the label is not worn while using a closed system and a pesticide exposure occurs, the Agency may take an enforcement action under FIFRA Section 12(a)(2)(G) against the operator of the closed system.

See Also:

FIFRA Compliance Program Policy No. 12.2 "Closed Application System" issued May 10, 1982.

The Pesticide Misuse Review Committee (PMRC) Advisory Opinion Nos. 14, 18, 125, 205, 293, and 315.

October 12, 1982 letter from Ms. Lori Johnston, Assistant Director, Pest Management, Environmental Protection and Worker Safety, Department of Food and Agriculture, State of California to Mr. Edwin Johnson, Director, Office of Pesticide Programs, EPA.

July 1, 1982 letter from Mr. R. W. Sweet, Administrator, Board of Pesticide Control, State of Arizona to Mr. Phillip C. Martinelli, Director, Division of Plant Industry, Nevada Department of Agriculture, State of Nevada.

References:

"Closed System Update" by R.W. Brazelton, N.B. Akesson, and K.T. Maddy, January 1980.

Key Words:

Closed System, Personal Protective Equipment.



A. E. Conroy II, Director  
Compliance Monitoring Staff  
Office of Pesticides and Toxic Substances

15 DEC 1983

FIFRA COMPLIANCE PROGRAM POLICY No. 12.3

Authority for Use Inspections

FIFRA Section: 12(a)(2)(G), 9(b)

Issue:

May EPA conduct routine "use inspections" where pesticides are not held for distribution or sale?

Policy:

EPA may conduct use inspections to enforce Section 12(a)(2)(G) of FIFRA with the consent of the owner or person in charge of the premises.

Discussion:

FIFRA Section 9(a) provides authority for EPA to inspect establishments or other places where pesticides are held for distribution or sale. Upon a showing that there is reason to believe that the provisions of FIFRA have been violated, EPA inspectors may obtain warrants to inspect such establishments pursuant to section 9(b).

Notwithstanding the limitation of Section 9, EPA has developed a program of pesticide use surveillance to enforce Section 12(a)(2)(G) of FIFRA. This Section makes it unlawful to use a pesticide in a manner inconsistent with its labeling. To enforce this subsection and to prevent pesticide misuse, EPA may routinely undertake "use inspections", as part of a neutral administrative inspection scheme. However, inspectors must obtain the consent of the owner or person in charge of the premises to be inspected. Well established Fourth Amendment principles require that the consent be knowing and voluntary.


Within the framework outlined above, EPA inspectors may also obtain samples of pesticides or devices, and samples of any containers or labeling for such pesticides or devices, if necessary for the use inspection. Any such samples must be obtained in accordance with the receipt procedure described in Section 9(a).

Reference:

Letter from William L. Hazeltine to Congressman Harold T. Johnson dated August 12, 1975.

Key Word Headings:

Inspections, Misuse, Use Inspections.

  
A. E. Conroy II, Director  
Pesticides and Toxic Substances  
Enforcement Division

MAY 10 1982

Date

FIFRA COMPLIANCE PROGRAM POLICY No. 12.4

Making RUP's Available For Use Other Than in Accordance  
With Section 3(d) of FIFRA

Section: FIFRA §12(a)(2)(F)  
FIFRA §3(d)

Issue:

In States with EPA approved State certification and training programs, when will EPA take enforcement action against pesticide dealers who make restricted use pesticides (RUP) available to persons who are not certified applicators?

Policy:<sup>1</sup>

If a pesticide dealer cannot document that a restricted use pesticide made available to a person who is not a certified applicator is to be applied by a certified applicator, or under the direct supervision of a certified applicator, then EPA may take enforcement action for the FIFRA §12(a)(2)(F) violation unless the State takes appropriate enforcement action under its law.

Discussion:

Generally, a violation involving the sale of an RUP to a person who is not a certified applicator is a violation of State law, and the State would take enforcement action. Under current policy, States wishing to make RUP's available to persons other than certified applicators may only do so if they submit to the Administrator an amendment to their State Plan under FIFRA §4 containing the minimum standards as outlined at 40 CFR Part 171.11(g)(2)(ii). If a State does not have an EPA approved plan which allows the sale of an RUP to a person who is not a certified applicator, and enforcement action is not taken by the State under its law, EPA may take enforcement action under FIFRA §12(a)(2)(F).

Section 12(a)(2)(F) of FIFRA states:

It shall be unlawful for any person to make available for use, or to use, any registered pesticide classified for restricted use for some or all purposes other than in accordance with section 3(d) and any regulations thereunder; Provided, That it shall not be unlawful to sell, under regulations issued by the Administrator, a restricted use pesticide to a person who is not a certified applicator for application by a certified applicator.

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<sup>1</sup> FIFRA Compliance Program Policy No. 12.4 issued May 18, 1983 was superseded by the FIFRA §4 regulations found at 40 CFR 171.11. These regulations apply only to States with federally operated certification and training programs. This new policy 12.4 is applicable to all other States.



EPA is planning to issue regulations covering the sale of RUP's to persons who are not certified applicators in States where the Administrator does not conduct the pesticide applicator certification and training program.<sup>2</sup> However, in light of the Administrative Law Judge decision on Tierra Verde Company, Inc., and until regulations affecting all States have been published, the following policy will apply when federal action is appropriate in States with federally approved State certification and training programs:

- 1) If a dealer sells an RUP to a person who is not a certified applicator, and that dealer can adequately document<sup>3</sup> that the RUP was to be used by, or under the direct supervision of a certified applicator, then the Agency will take no action against the dealer for a violation of FIFRA §12(a)(2)(F).
- 2) If a dealer sells an RUP to a person who is not a certified applicator without documentation to prove the RUP was to be used by a certified applicator, and the dealer can prove the RUP was actually applied by a certified applicator, or under the direct supervision of a certified applicator, then this would be considered a minor violation. Under FIFRA section 9(c)(3) the EPA will issue a notice of warning to the dealer.
- 3) Anytime a dealer sells an RUP to a person who is not a certified applicator, and the dealer cannot prove that the pesticide was used by a certified applicator, or under a certified applicator's direct supervision, the EPA will issue a civil complaint. The penalty will be assessed in accordance with section 3 of the FIFRA Enforcement Policy - Interim Penalty Guidelines, dated June 11, 1981 from A. E. Conroy II, Director, Pesticides and Toxic Substances Enforcement Division, to Regional Enforcement Division Directors and Pesticide Branch Chiefs.<sup>4</sup>

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<sup>2</sup> The EPA has already promulgated regulations allowing the sale of RUP's to uncertified applicators in States where the Administrator conducts the pesticide applicator certification program (see 40 CFR 171.11). Other States may presently allow the sale of RUP's to a person who is not a certified applicator if they have a plan approved by the Administrator containing the minimum standards listed in 40 CFR 171.11.

<sup>3</sup> Adequate documentation consists of all the information listed at 40 CFR 171.11(g)(2)(11).

<sup>4</sup> The EPA may take enforcement action for a violation of FIFRA §12(a)(2)(F) against any uncertified applicator that uses an RUP and is not under the supervision of a certified applicator. EPA enforcement action will be in accordance with FIFRA §§26 and 27. The penalty will be assessed in accordance with the FIFRA Enforcement Policy - Interim Penalty Guidelines, dated June 11, 1981. The June 11, 1981 Interim Penalty Guidelines are found in the FIFRA Compliance/Enforcement Guidance Manual.

See Also:

"FIFRA Enforcement Policy - Interim Penalty Guidelines",  
June 11, 1981, from A. E. Conroy, Director, Pesticides and  
Toxic Substances Enforcement Division to Regional Enforcement  
Division Directors and Pesticide Branch Chiefs, FIFRA Compliance/  
Enforcement Guidance Manual.

Reference:

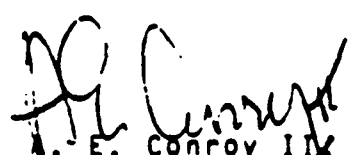
FIFRA Compliance Program Policy No. 12.4, "Making Restricted  
Use Pesticides Available to Persons Without Pesticide Applicator  
Certification, dated May 18, 1983.

Administrative Law Judge decision on Tierra Verde Company,  
Inc., December 2, 1985, Docket No. FIFRA-09-0422-C-85-1.

40 CFR 171.11

Key Words:

Certified Applicator, Dealer, Make Available For Use,  
Restricted Use Pesticides, RUP.

  
A. E. Conroy III, Director  
Office Of Compliance Monitoring  
Office of Pesticides and Toxic Substances

JUL 22 1986

\_\_\_\_\_  
Date

FIFRA Compliance Monitoring Policy No. 12.5

The Use Of a Diluent Not Specified  
On The Product Label

FIFRA Section:

12(a)(2)(G)

Issue:

Is the use of a diluent not specified on the pesticide label a violation of FIFRA?

Policy:\*

Under FIFRA Section 12(a)(2)(G), it is unlawful to use any registered pesticide in a manner inconsistent with its labeling. If the label specifies a substance as the product's diluent, the use of any other substance as a diluent is considered a use inconsistent with the label and constitutes a misuse violation under Section 12(a)(2)(G).

In instances where no diluent is specified on the label, water must be used as the diluent.

Discussion:

This policy applies to the use of any substance as a diluent, which is not specified on the label (e.g. vegetable oil, kerosene, diesel fuel, fuel oil,). This policy also applies to ultra-low, low volume, or conventional application systems.

The Agency is issuing this policy in response to the practice of some applicators to use diluents not specified on the label. Specifically, the use of vegetable oil by some applicators as a diluent because of its slow evaporation properties. The Agency is concerned that this practice will have adverse health effects if the pesticide does not evaporate at the anticipated rate (i.e., residues in excess of tolerances). In addition, there may be adverse safety impacts to farmworkers who are exposed to a pesticide that does not evaporate as rapidly as anticipated. The applicators state that the use of vegetable oil as the diluent results in a pesticide dosage less than that specified on the label. In the opinion of the applicators, the use of vegetable oil as the diluent can therefore be justified in ultra-low volume (ULV) applications under Section 2(ee)(1) and the March 3, 1981 Advisory Opinion issued under Section 2(ee).

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\* This policy does not supersede or affect existing policies on tank mixing, or mixing with dry fertilizers or mixing with liquid fertilizers, nor does this policy address additives, adjuvants or surfactants.

Section 2(ee)(1) states that applying a pesticide at any dosage, concentration, or frequency less than that specified on the labeling is not considered a use inconsistent with the label. The March, 1981 Advisory Opinion permits the use of a product at a dosage less than the specified label in ULV applications, (provided such use is recommended by an appropriate State or Federal agency, and the use pattern is submitted to and approved by EPA).

The provisions of Section 2(ee)(1) and the March, 1981 Advisory Opinion apply only to the use of the diluent specified on the label. Neither Section 2(ee) nor the March, 1981 Advisory Opinion permits a discretionary choice of diluent. The use of a diluent not specified on the label, regardless of resulting dosage or application method, constitutes a misuse under Section 12(a)(2)(G).

To determine a legal choice of product diluent, applicators must consult the pesticide labeling, pesticide exemptions, 24(c) registrations, or other pertinent EPA policy documents.

See Also:

"Ultra-low Volume or Low Volume Pesticide Application: Issuance of Advisory Opinion", Federal Register Vol. 46. No. 41, March 3, 1981.

References:

Key Words:

Ultra-low volume application, low volume applications, diluent, FIFRA Section 2(ee), vegetable oil diluent.



A. E. Conroy II, Director  
Compliance Monitoring Staff  
Office of Pesticides and Toxic Substances

FEB 21 1981

Interim FIFRA Compliance Program Policy No. 12.6

Enclosed Cab Use for Pesticide Application

FIFRA Section:

12(a)(2)(G)

Issue:

Will the U. S. Environmental Protection Agency take an enforcement action under FIFRA section 12(a)(2)(G) against the applicator who uses an appropriate enclosed cab to apply pesticides without wearing the personal protective equipment required by the pesticide product labeling?

Policy:

The Agency will not take an enforcement action under FIFRA section 12(a)(2)(G) against an applicator for using an enclosed cab instead of personal protective equipment required by the pesticide product labeling, provided the conditions outlined in this interim policy are met. This policy applies to ground methods of application only.

Discussion:

The Agency recognizes that technological and engineering advancements have made significant contributions in the area of protection during pesticide application. There is documented evidence that certain enclosed cabs can provide applicator protection equivalent or superior to that provided by personal protective clothing and equipment (PPE).

However, for these enclosed cabs to be used in lieu of PPE, certain potential problems must be addressed. It is of particular importance that these problems be addressed for enclosed cabs used for protection from respiratory hazards. Problems observed during field observations include:

- Insufficient data on the effectiveness of protection provided.
- Insufficient operating and maintenance instructions that allow the user to maintain effectiveness.
- Insufficient records showing the user is following manufacturer's recommendations.
- Insufficient training and documentation of training.
- Insufficient instruction on user protection if exit is necessary during use and how to avoid contamination of equipment.

Conditions:

During ground methods of pesticide application an enclosed cab may be used instead of the personal protective equipment required by the product labeling provided the following conditions are met. To ensure protection equivalent or superior to that provided by label-required personal protective equipment, enclosed cabs and users must meet all the following minimum requirements for purposes of this policy:

- 1) For labeling instructions that require dermal or eye protection, an enclosed cab must provide a nonporous barrier totally surrounding the occupants of the cab that prevents contact with the spray mist, dust, or treated surfaces.
- 2) Long-sleeved shirt, long-legged pants, shoes and socks must be worn in the cab. Uncontaminated personal protective clothing and equipment, including a properly functioning and maintained respirator, required by the product labeling to be used during application must be available inside the enclosed cab.
- 3) If exiting the enclosed cab, PPE required by the labeling must be worn if:
  - exit is made into the treated area, or
  - exit is made while the day's application is incomplete and contact is made with contaminated application equipment, such as during an adjustment to nozzles, or
  - the use of PPE outside the cab is otherwise required by the labeling.

PPE must be removed before reentering the cab and stored outside the cab. PPE may be taken into the cab only if it is enclosed in a chemical resistant container, such as a plastic bag.

- 4) For labeling instructions that require the use of respiratory protection during application, an enclosed cab with a properly functioning positive-pressure filtration/purification system may be used in lieu of a respirator and other labeling required PPE.

Cabs used in lieu of respiratory protection must be approved by the State in which the pesticide is being applied. States must submit a written statement agreeing to approve cabs used in lieu of respiratory equipment to the

appropriate EPA Regional office within ten days of implementing the policy. At a minimum, to qualify for State approval, the State must determine, based on data supplied by the manufacturer, that the positive-pressure filtration/purification system will maintain airborne concentrations below an applicable recognized occupational exposure limit value plus a 10 fold safety factor. (Note: Federal/State law may have applicable limits.) If there is no established permissible exposure limit (PEL), the protection provided must meet the protection factor provided by the respiratory protection equipment required by the labeling. If a State does not set up such an approval program, the respiratory protection device required by the labeling must be worn.

Note: Those States wishing to do so may use California's list of approved cabs. States are cautioned that this policy does not apply to fumigants unless, as part of their approval program, the State, after review of research presented, makes the determination that the enclosed cab provides protection equivalent to an applicable PEL or labeling required PPE, as outlined above.

In addition to all of the above requirements, the operator must make available at the request of the inspector:

- Operating and maintenance instructions to be followed in order to maintain required air levels and a cab interior free from contamination.
- Documentation which shows that the manufacturer's recommended operating, cleaning, and maintenance instructions are being followed by the operator/owner of the equipment.
- Documentation which indicates that the cab operator has received instruction in the proper operation as specified by the manufacturer and has been informed of any potential hazards associated with misuse or improper operation and maintenance.

See Also:

FIFRA Compliance Program Policy No. 12.2 "Pesticides Closed Transfer, Mixing/Loading and Application Equipment Systems (Closed Systems)" issued December 15, 1983.

FIFRA Compliance Program Policy No. 12.2 "Closed Application Systems" issued May 10, 1982.

Key Words:

Enclosed Cabs, Personal Protective Equipment, Respirators,  
Engineering Controls.



John J. Neylan III, Director  
Policy and Grants Division  
Office of Compliance Monitoring

Date August 8, 1990



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

MAY 30 1991

MEMORANDUM

SUBJECT: Extension of the FIFRA Compliance  
Program Policy 12.7 on Chemigation

FROM: John J. Neylan III, Director  
Policy and Grants Division  
Office of Compliance Monitoring (EN-342)

TO: Addressees

The attached policy on chemigation and chemigation equipment went into effect on April 11, 1989. The cover memorandum to the policy stated that it would be in effect for one year while the Office of Pesticide Programs (OPP) reviewed the issue and decided whether or not to impose label changes. In the Spring of 1990, the policy was extended by one year.

Based on a memorandum from OPP which indicated that more time is needed, we have decided to extend the policy until further notice. The policy will remain in effect until OPP has completed its decision making and such decisions are implemented.

If you have any questions, please contact Virginia Lathrop at FTS 398-8292.

Attachment



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

JUN 20 1990

OFFICE OF  
PESTICIDES AND TOXIC SUBSTANCES

MEMORANDUM

SUBJECT: Extension of the Interim Final FIFRA Compliance  
Program Policy 12.7 on Chemigation

FROM: John J. Neylan III, Director *Phyllis Flaherty for J. Neylan*  
Policy and Grants Division (EN-342)

TO: Addressees

The attached guidance on chemigation and chemigation equipment was put into effect by this Office on April 11, 1989. The interim final policy stated that it would be in effect for one year from the date of the policy. During this time the Office of Pesticide Programs (OPP) was to review the issue and decide whether or not to impose label changes to address the issue. Anne Lindsay, Director of Registration Division, OPP, has informed us that it is their intent to revise labeling and has requested that we extend the policy for one year. Based on OPP's recommendation, we are extending the policy until April 11, 1991.

If you have any questions, please contact me at 382-7825.

Attachment

cc: Anne E. Lindsay  
Douglas D. Campt



Attachment

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

APR 11 1989

OFFICE OF  
PESTICIDES AND TOXIC SUBSTANCES

MEMORANDUM

SUBJECT: Interim Final FIFRA Compliance Program Policy 12.7  
FROM: John J. Neylan III, Director  
Policy and Grants Division  
Office of Compliance Monitoring

TO: Addressees

Attached is an Interim Final FIFRA Compliance Program Policy 12.7 (chemigation) for immediate use, as well as for your review and comment. Please forward a copy of this policy to each State with which EPA has a FIFRA cooperative enforcement agreement for State review and comment.

This policy addresses the enforcement of the label provisions which were required in PR Notice 87-1. The policy states that EPA will not take an enforcement action under FIFRA section 12(a)(2)(G) against a person for using chemigation equipment which is not specified on the label if it is specified on a current list of comparable systems issued by EPA's Office of Pesticide Programs (OPP). A Chemigation Committee established by OPP has the responsibility for preparing and updating the list of approved, comparable equipment.

The attached list is the first, preliminary identification of comparable systems prepared by OPP. Because this list is subject to updates and modifications, it has not been made a part of this policy. Rather, the policy refers to "a current list of comparable systems," and provides information on how to obtain the list.

This is an interim final policy which will be in effect for one year from the date of this policy. During that year, OPP will review the issue of chemigation equipment and will decide whether or not to impose label changes to address the issues. Depending on the conclusions of this review, this interim policy may be withdrawn, modified, or extended.

Please submit your comments on this policy to Jan Bearden of my staff, mail code EN-342, E-mail EPA 7201, within 30 days of the date of this memorandum.

Attachments

INTERIM FINAL FIFRA COMPLIANCE PROGRAM POLICY NO. 12.7

Enforcement of the Label Improvement Program for  
Pesticides Applied through Irrigation Systems (Chemigation)

FIFRA Section: 12(a)(2)(G)

Issue:

The PR Notice 87-1, which deals with chemigation, requires labels to bear very specific directions as to what equipment may be used. The States and the regulated community have indicated that other comparable systems exist and have requested EPA to allow such systems to be used instead of what is specified on the label.

Policy:

EPA will not take an enforcement action under FIFRA section 12(a)(2)(G) against a person for using chemigation equipment which is not specified on the label if it is specified on a current list of comparable systems issued by EPA's Office of Pesticide Programs (OPP).

Discussion:

The PR Notice 87-1 was issued on March 11, 1987, under EPA's Label Improvement Program (LIP). PR Notice 87-1 required: 1) registrants of pesticide products which are applied through chemigation to revise their labels to include additional use directions and equipment for chemigation; and 2) labels released for shipment after April 30, 1988, to be amended to comply with this Notice.

EPA recognizes that other, comparable technologies exist for the application of pesticides through chemigation besides those listed on the label. Such technologies have been proposed to the Agency by grower groups, equipment manufacturers, and State regulators. To evaluate such technologies, OPP has organized a Chemigation Committee consisting primarily of agricultural engineers from various parts of the country. Based on the Committee's evaluations, a list of comparable equipment has been prepared and will be updated or modified, as appropriate.

Although current labels require very specific equipment to be used for chemigation and prohibit the use of any other type of irrigation system, EPA will allow the use of alternative technologies which are approved by OPP for this purpose and contained on an approved list at the time of application.

Please note that any applicable restrictions or requirements as identified on the list and all other label directions must be followed. To obtain a copy of a current list of comparable systems, contact the Chief of the Registration Support Branch, (RSB-H7505C), Registration Division, Office of Pesticide Programs, U.S. EPA, 401 M Street, S.W., Washington, D.C. 20460.

References: PR Notice 87-1

Letters from:

J. Downing, Ocean Spray Cranberries, Inc. to P. Flaherty, Chief, Policy and Analysis Branch, Office of Compliance Monitoring (OCM), 9/12/88;  
J. Downing, Ocean Spray Cranberries, Inc. to R. Ferrarin, New Jersey Dept. of Environmental Protection, 9/14/88;  
T. Ellwanger, Office of Pesticide Programs, to Chemigation Committee, 12/8/88;  
T. Ellwanger, Office of Pesticide Programs, to P. Flaherty, Chief, Policy and Analysis Branch, OCM, 2/21/89.

Key Words:

Enforcement, Chemigation, PR Notice 87-1

John J. Neylan III  
Director  
Policy and Grants Division  
Office of Compliance Monitoring

APR 11 1989

\_\_\_\_\_  
Date



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

MAR 22 1989

OFFICE OF  
PESTICIDES AND TOXIC SUBSTANCE

MEMORANDUM

SUBJECT: List of Alternative Chemigation Safety Equipment

FROM: Anne E. Lindsay, Director  
Registration Division (H7505C)  
Office of Pesticide Programs

A handwritten signature in cursive script, reading "Anne E. Lindsay", written over the typed name and title.

TO: Phyllis Flaherty, Acting Director  
Policy and Grants Division (EN-342)  
Office of Compliance Monitoring

Please find attached OPP's approved list of alternative chemigation safety equipment. These devices are offered as alternatives to certain required components of chemigation systems in PR Notice 87-1, the Chemigation Label Improvement Program. I am sure you are aware of the urgency to get this information into the hands of State and Federal regulators as soon as possible for the impending growing season. If we can be of assistance in the timely distribution, please let us know. There are several grower groups, equipment manufacturers, committee members, and other interested parties with whom we have been working, so we would appreciate several copies of the final document. I have been advised that there may be some further expansion of this list of alternatives upon further consideration of the Chemigation Committee.

Please contact Dr. Tom Ellwanger (557-1700) on the status of the mailout and if there are questions on the technical aspects of the project.

Attachment

### List of Alternative Chemigation Safety Equipment

PR Notice 87-1, the Label Improvement Program for Chemigation, issued March 11, 1987 requires that the labeling of agricultural pesticides intended for application through irrigation systems must include the use of certain types of safety devices to protect ground water from pesticide contamination. As a result of comments and new information received subsequent to issuance, a list of alternative devices to those included in PR Notice 87-1 has been considered and approved for use. In some cases these alternative devices may be less expensive, more reliable, or more available than some of those devices originally required. Be advised that all of the devices originally included in PR Notice 87-1 are still acceptable and that the PR Notice 87-1 is, in its entirety, still in effect. Devices required in PR Notice 87-1 which have no listed alternatives are still required components of all chemigation systems. The original devices as required in PR Notice 87-1 and their corresponding alternatives are listed below:

#### Original Device

Functional normally closed, solenoid-operated valve located on the intake side of the injection pump.

#### Alternative Device 1

Functional spring-loaded check valve with a minimum of 10 psi cracking pressure. The valve must prevent irrigation water under operating pressure from entering the pesticide injection line and must prevent leakage from the pesticide supply tank on system shutdown. This valve must be constructed of pesticidally resistant materials. [Note: this single device can substitute for both the solenoid-operated valve and the functional, automatic, quick closing check valve in the pesticide injection line.]

#### Alternative Device 2

Functional normally closed hydraulically operated check valve. The control line must be connected to the main water line such that the valve opens only when the main water line is adequately pressurized. This valve must prevent leakage from the pesticide supply tank on system shutdown. The valve must be constructed of pesticidally resistant materials.

### Alternative Device 3

Functional vacuum relief valve located in the pesticide injection line between the positive displacement pesticide injection pump and the check valve. This alternative is appropriate for only those chemigation systems using a positive displacement pesticide injection pump and is not for use with venturi injection systems. This valve must be elevated at least 12 inches above the highest fluid level in the pesticide supply tank and must be the highest point in the injection line. The valve must open at 6 inches water vacuum or less and must be spring loaded or otherwise constructed such that it does not leak on closing. It must prevent leakage from the pesticide supply tank on system shutdown. The valve must be constructed of pesticidally resistant materials.

### Original Device

Functional main water line check valve and main water line low pressure drain.

### Alternative Device 1

Gooseneck pipe loop located in the main water line immediately downstream of the irrigation water pump. The bottom side of the pipe at the loop apex must be at least 24 inches above the highest sprinkler or other type of water emitting device. The loop must contain either a vacuum relief or combination air and vacuum relief valve at the apex of the pipe loop. The pesticide injection port must be located downstream of the apex of the pipe loop and at least 6 inches below the bottom side of the pipe at the loop apex.

### Original Device

Positive displacement pesticide injection pump.

### Alternative Device 1

Venturi systems including those inserted directly into the main water line, those installed in a bypass system, and those bypass systems boosted with an auxiliary water pump. Booster or auxiliary water pumps must be connected with the system interlock such that they are automatically shut off when the main line irrigation pump stops, or in cases where there is no main line irrigation pump, when the water pressure decreases to the point where pesticide distribution is adversely affected. Venturies must be constructed of pesticidally resistant materials. The line from the pesticide supply tank to the venturi must contain a functional, automatic, quick closing check valve to prevent the flow of liquid back toward



the pesticide supply tank. This valve must be located immediately adjacent to the venturi pesticide inlet. This same supply line must also contain either a functional normally closed solenoid-operated valve connected to the system interlock or a functional normally closed hydraulically operated valve which opens only when the main water line is adequately pressurized. In bypass systems as an option to placing both valves in the line from the pesticide supply tank, the check valve may be installed in the bypass immediately upstream of the venturi water inlet and either the normally closed solenoid or hydraulically operated valve may be installed immediately downstream of the venturi water outlet.

Original Device

Vacuum relief valve.

Alternative Device 1

Combination air and vacuum relief valve.

FIFRA COMPLIANCE PROGRAM POLICY - No. 17.1  
Pesticide Processing in Foreign-Trade Zones

FIFRA Section: 17(c)

Issue:

Are pesticides which enter a foreign trade zone for further processing or repackaging subject to the requirements of FIFRA?

Policy:

A product which legally enters a foreign-trade zone for processing or repackaging is not subject to the requirements of FIFRA.

Discussion:

Foreign-trade zones or "freeports" are areas within the United States where products may be stored, processed, manipulated, manufactured and reshipped without being subject to the customs laws of the United States governing the entry of goods and the payment of duty.

Foreign-trade zones are established under the Foreign-Trade Zones Act and the general regulations and rules of procedure of the Foreign-Trade Zones Board contained in 15 CFR Part 400. The regulations contained in 19 CFR Part 146 govern admission of merchandise into a foreign-trade zone; manipulation, manufacturing, processing, etc. in a zone; exportation of merchandise from a zone; and transfer of merchandise from a zone into United States Customs territory.

In order to be considered exempt from the requirements of Customs and FIFRA, a pesticide product must be in full compliance with the laws regarding entry into the foreign-trade zone; be processed within the zone; and be reshipped to foreign points. Any product which enters the United States from a foreign-trade zone is subject to Customs laws and the requirements of FIFRA.


The only products legally entering a foreign-trade zone which are subject to the requirements of FIFRA are those which were produced in the United States or which entered into the United States and subsequently enter the foreign trade zone under the custody of United States Customs for processing or repackaging.

References:

19 CFR Part 146

Key Words:

Foreign Trade Zones, Freeports, Processing, Registration, Repackaging.

  
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Pesticides and Toxic Substances  
Enforcement Division

MAY 10 1982  
Date

FIFRA COMPLIANCE PROGRAM POLICY NO. 17.2

Waiver of Notice of Arrival Requirements

FIFRA Section: 17(c), 17(e)

Issue:

Can importers of multi-use chemicals and pesticides imported for non-pesticidal purposes obtain a waiver from "Notice of Arrival" requirements?

Policy:

Importers of multi-use chemicals and pesticides imported for non-pesticidal purposes can be granted a waiver from "Notice of Arrival" requirements.

Discussion:

Pesticides and devices imported into the United States must be in compliance with Section 17(c) of FIFRA. Section 17(c) states that pesticides or devices which are adulterated, misbranded or otherwise violate the provisions set forth in the Act or are injurious to health or the environment may be refused entry into the country. The Secretary of the Treasury is empowered by Section 17(e) of FIFRA to prescribe regulations for the enforcement of Section 17(c). 19 CFR Part 12.110 through 12.117 regulates the importation of pesticides and devices into the U.S. The regulations state in part that pesticides and pesticide products imported into the U.S. will not be released by U.S. Customs unless accompanied by a completed Notice of Arrival of Pesticides and Devices form (EPA Form 3540-1). To assist in monitoring compliance with this requirement, EPA developed a checklist of frequently encountered pesticides and distributed it to U.S. Customs commodity import specialists.

Some of the pesticide chemicals which appear on the list may be multi-use chemicals imported for non-pesticidal uses or pesticides imported for chemical analysis or other testing. As a matter of policy, the Agency will allow persons importing products for such purposes to request a waiver from the Notice of Arrival requirements. Such requests must be made in writing to EPA Headquarters and must state (1) the chemical being imported together with its EPA registration number, if registered; (2) the purpose for which the product is being imported; (3) the amount of chemical being imported; and (4) if known, the port of entry (if there is more than one, all ports of entry should be listed).

If EPA Headquarters approves the request, a copy of the request and the waiver granted will be sent to each affected Region.

To expedite future shipments, the Regions should encourage importers to file a copy of the waiver with Customs for each subsequent entry of the product.

References:

FIFRA Compliance Program Policy No. 2.4, Multi-Use Chemicals, 19 CFR Part 12.110 through 12.117.

Key Words:

Imports, Multi-Use Products, Notice of Arrival.

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Date

FIFRA COMPLIANCE PROGRAM POLICY SECTION 24 INDEX PAGE

TITLE

NUMBER

Special Local Needs Labeling

24.1

FIFRA COMPLIANCE PROGRAM POLICY No. 24.1

Special Local Needs Labeling

FIFRA Section: 24(c)

Issue:

Will the Agency permit a registrant to print or affix Section 24(c) (Special Local Need) labeling on Federal labeling?

Policy:

The Agency will permit Section 24(c) labeling to appear on Federal labeling under certain conditions.

Discussion:

Section 24(c) of FIFRA states that a State may register additional uses of federally registered pesticides for distribution and use within that State to meet special local needs provided that no such use has been previously denied, disapproved or cancelled by EPA. The Agency has 90 days to review such a registration. If the Agency does not deny a use within this time period, the use is considered to be registered under Section 3 for distribution and use only within that State. If the use is for a food or feed crop, a tolerance or exemption must exist for that use. 40 CFR Part 162.150-162.156 sets forth the regulations governing the registration of products under Section 24(c).

Part 162.153(e) requires that labeling governing any State-registered uses of a Federally registered product be made available at the time of use. As a matter of convenience for both the registrant and the user, Section 24(c) use directions may appear on a Federal label provided the directions are clearly identified and separate from Federal labeling. Either a distinct border around the Section 24(c) uses or a sticker which does not obscure the information on the Federal label is an acceptable means of conveying Section 24(c) information. The labeling must also clearly identify the State in which the Section 24(c) use is allowed. If a specific identical use has been registered in a number of States, the registrant may list all the States which have registered the use. The registrant must use the statement "For distribution and use only within (name of State(s))" on all Section 24(c) labeling. A product bearing Section 24(c) uses on the label may only be sold in those States listed.

This policy applies only to additional State registered uses of a Federally registered product. It does not not apply to State registered products.

See Also:

Section 24(c) Registration Guidelines 40 CFR Part 162.150-162.156.

References:

Letter of June 23, 1977 from A. E. Conroy II to Mr. Arthur F. Gohlke, Cities Service Company.

Key Words:

Intrastate Use, Labeling, Special Local Need, 24(c).

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Date



FIFRA COMPLIANCE PROGRAM POLICY NO. 25.1

Child Resistant Packaging

FIFRA Section: 25(c)(3)

Issue:

Are small packages of pesticide products which are labeled "For Agricultural Use Only" or which have directions expressed in number of pounds per acre but which are marketed for homeowner use automatically excluded from the Child Resistant Packaging (CRP) requirement?

Policy:

Labeling a pesticide "For Agricultural Use Only" or expressing the dosage rate in pounds per acre, label language usually reserved for "agricultural" products, does not automatically remove the pesticide from the Child Resistant Packaging requirements.

Discussion:

The Child Resistant Packaging Regulation, 40 CFR 162.16, requires a pesticide to be in such packaging if it meets certain criteria. One criterion is that the product is intended for use in, on or around all structures, vehicles or areas associated with the household or homelife.

Labeling a product "For Agricultural Use Only" removes a product from the CRP requirement only if the label statement is consistent with other label language and marketing practices for agricultural use. If, for example, the product is marketed in home or garden stores, or the entire net contents, if applied at the labeled dosage rate, would only cover a limited area such as a home garden, or other label language implies residential use, the product would require CRP if the other CRP criteria apply.

Expressing the use directions in terms of number of pounds per acre does not in or by itself preclude residential use. This also would not affect whether or not a product requires CRP.

Therefore, where the package size is small, the product is marketed in home and garden stores, or the entire net contents, if applied at the labeled dosage rate, would only cover a limited area, such as a home garden plot, CRP would be required if the CRP criteria are met regardless of whether the label also states "For Agricultural Use Only" or the dosage rate is expressed in agricultural terms, such as pounds per acre.

Additionally, a product may be misbranded, according to the proposed Registration Guidelines for Labeling, if the dosage rate exceeds the net contents of the product.

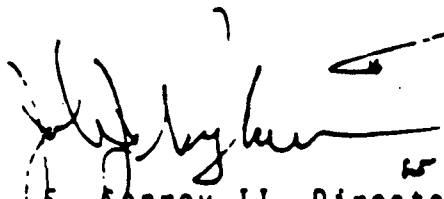
References:

40 CFR Part 162.16 ..

Memorandum to Roy P. Clark, Region IV, from A. E. Conroy II,  
dated July 27, 1982.

Key Words:

Agricultural Use Only  
Child Resistant Packaging  
Labeling

  
A. E. Conroy II, Director  
Pesticides and Toxic Substances  
Enforcement Division

SEP 1 1982

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Date

FIFRA COMPLIANCE PROGRAM POLICY No. 26.1

Transfer of Use Enforcement Primacy to the States

FIFRA Section: 26

Issue:

At what point does primary enforcement responsibility for pesticide use violations (primacy) transfer from EPA to a State?

Policy:

Primacy authority is transferred to a State when the State formally accepts a written offer by the Administrator to convey such authority. Primacy is also transferred when a cooperative enforcement agreement is signed by the Administrator and the State, unless the terms of the agreement specify otherwise.

Discussion:

Section 26 of FIFRA authorizes the Administrator to grant primacy to a State if the State has adopted adequate laws and adequate procedures for implementing such laws, or if the State has an approved certification plan that meets the adequate laws and procedures criteria. In addition, States may obtain primacy by entering into a cooperative agreement for the enforcement of pesticide use restrictions under Section 23 of FIFRA.

To transfer primacy through the first two mechanisms, the Administrator will write to the Governor offering to grant primacy to the State. The Administrator's letter will request a formal response to the offer of primacy. The transfer of primary use enforcement responsibility will not be effective until the Governor or his representative posts a written response accepting primacy. With respect to the third mechanism, when a State signs a cooperative agreement which calls for the State to monitor and enforce compliance with pesticide use restrictions, such State assumes use enforcement primacy unless the terms of the agreement specify otherwise. Thus the signing of an agreement which specifically states that the assumption by a State of primacy depends upon the occurrence of an event does not transfer primacy authority until the event takes place. Cooperative enforcement agreements which do not contain such conditions will serve to convey primacy to a State upon signature of the Governor and the Administrator or their duly designated representatives.

Key Words:

Certification Plan, Cooperative Enforcement Agreement,  
Primacy, State Authority, Use Enforcement.



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Pesticides and Toxic Substances  
Enforcement Division

MAY 10 1982

Date

FIFRA COMPLIANCE PROGRAM POLICY No. 26.2

Referral of State Misuse Cases to EPA

FIFRA Section: 26

Issue:

Is it legally permissible for the Environmental Protection Agency to prosecute Federal pesticide misuse violations which are based on evidence collected by State inspectors following State procedures?

Policy:

As long as States follow basic Constitutional evidentiary procedures, evidence collected under State authority can be used to prosecute violations of Federal pesticides laws.

Discussion:

Pursuant to Section 26 of FIFRA, most States now exercise primary enforcement responsibility for pesticide misuse violations. Although the Federal government retains concurrent authority with the States to prosecute misuse violations, this power is not ordinarily exercised.

Accordingly, States with primacy generally conduct use inspections under the authority of State law. In the usual pesticide misuse case, State law provides ample enforcement authority for the State to effectively prosecute misuse violations. Consequently, the States need not generally refer misuse cases to the EPA for prosecution under the parallel Federal authorities.

However, there are two instances where the States may choose to refer misuse cases to EPA for Federal prosecution:

- 1) When the misuse is prohibited by Federal law, but not by State law, or,
- 2) When both State and Federal law prohibit the misuse, but the State lacks adequate resources to pursue prosecution.

When either of these types of misuse cases is referred to EPA for action, the Agency will review the case file to ensure that the State inspection procedures adhere to basic Constitutional guarantees. Information collected by State inspectors is not excluded in court merely because it is gathered by State inspectors; instead it is subject to the common law rules of evidence or to the Federal Rules of

Evidence. The issue of the admissibility of evidence derived from State inspections involves the analysis of two questions: (1) was the information and evidence obtained by State inspectors legally obtained, and (2) is that evidence within the scope of admissible evidence. If both of these questions can be affirmatively answered for any given information, then that evidence may be properly introduced into a civil or criminal proceeding to enforce a violation of the FIFRA.

Accordingly, the wide variety of State inspection procedures do not affect the capacity of the Agency to accept a misuse case for prosecution. States may follow their own inspection procedures without regard to whether or not the misuse case will be referred to the Agency. The eventual referral of the case to the Agency for prosecution does not require a State inspector to change any existing State inspection procedures.

Key Words:

Evidence, Misuse, Primacy, State Authority.

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Enforcement Division

Jan 10 1982

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Date

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- TG -- Technical Guidance (Volume 1);
- SRG -- State-Related Guidance (Volume 2);
- ES -- Enforcement Strategies (Volume 3);
- ERP -- Enforcement Response Policies (Volume 4); and
- FCPP -- FIFRA Compliance Program Policy Compendium (Volume 5)

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