



MEMORANDUM

Via E-Mail

DATE: January 23, 2004

TO: Firm Clients and Friends

FROM: Bergeson & Campbell, P.C.

RE: Congress Passes Pesticide Fees Legislation

Yesterday, Congress passed the Consolidated Appropriations Bill, which incorporates the text of the “Pesticide Registration Improvement Act of 2003” (S. 1664). The Act was introduced in the Senate on September 25, 2003, by Senators Thad Cochran (R-MS) and Tom Harkin (D-IA) with 21 co-sponsors. The legislation is the culmination of considerable negotiation among the United States Environmental Protection Agency (EPA), industry, and activist groups on the issue of whether new user fees should be imposed to fund pesticide registration and reregistration activities. In essence, the legislation is intended to provide more stable funding for EPA and, as a result, greater predictability for industry with regard to the timing of reviews of their applications and products. Pesticide registrants will pay increased maintenance fees and new registration fees, and EPA will be subject to deadlines for the completion of reviews of certain pesticide products. Representative Frank Lucas (R-OK) introduced identical legislation (H.R. 3188) in the House on September 25, 2003. The House bill has five co-sponsors.

Discussed below are the major provisions of the Act as passed in the Consolidated Appropriations Bill.

- The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) is amended to allow EPA to set and collect “registration fees” for new registrations. EPA must publish the schedule that appeared in the September 17, 2003, *Congressional Record* and which is appended, listing and implementing the new fees within 30 days of the bill’s effective date. These new fees are expected to raise \$18 million per year.



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As described in the appended chart, the Biopesticide and Pollution Prevention Division (BPPD) will review applications for new active ingredients for non-food uses in 12 months in FYs 2004-2008 and the application fee will be \$15,000; the Antimicrobial Division (AD) will review applications for new active ingredients for non-food, indoor, FIFRA Section 2(mm) uses in 24 months in FYs 2004-2008 and the application fee will be \$50,000; and the Registration Division (RD) will review applications for new active ingredients for non-food, outdoor uses in 32 months in FY 2004, 28 months in FY 2005, and 21 months in FYs 2006-2008, and the application fee will be \$330,000. The BPPD will review applications for new “me-too” products in six months in FYs 2004-2005 and in four months in FYs 2006-2008, and the application fee will be \$4,000; the AD will review applications for new “me-too” products for non-food, indoor, FIFRA Section 2(mm) uses in 6 months in FYs 2004-2008 and the application fee will be \$4,000; and the RD will review applications for new “me-too” products in 10 months in FY 2004, eight months in FY 2005, and six months in FYs 2006-2008, and the application fee will be \$4,000.

- EPA is subject to a schedule for reviewing pesticide product registration applications. The decision review periods are included on the registration fee schedule.
- There is oversight of EPA’s registration efforts through an annual audit by EPA’s Inspector General, who must report the findings and recommendations of the audit to the Administrator and to the appropriate committees of Congress.
- Judicial review is available to applicants if EPA fails to make a determination on an application for registration of a new active ingredient or new use for which a registration service fee is paid. Prior to filing a lawsuit, an applicant must request a meeting with EPA to set an acceptable alternative time frame. An applicant must wait two years from the date on which the decision time review period for the application ends before obtaining judicial review of EPA’s failure to make a determination within the decision time review period.
- Current registration maintenance fee limits have been increased as noted below, with the greatest increases during the first three years of the



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proposal and then declining in the last two years. The increases are expected to increase the current revenues from these fees to \$26 million from the current \$21.5 million in FY 2004, and to \$27 million in FYs 2005 and 2006, followed by declines to \$21 million in FY 2007 and to \$15 million in FY 2008.

- For registrants holding 50 or fewer registrations:
 - FY 2004: A maximum of \$84,000 (up from the current maximum of \$55,000);
 - FYs 2005 and 2006: \$87,000;
 - FY 2007: \$68,000; and
 - FY 2008: \$55,000.
- For registrants holding more than 50 registrations:
 - FY 2004: A maximum of \$145,000 (up from the current maximum of \$95,000);
 - FYs 2005 and 2006: \$151,000;
 - FY 2007: \$117,000; and
 - FY 2008: \$95,000.
- Under the legislation, “small businesses” is defined as those with global gross pesticide revenue at or below \$60 million, and a lower fee schedule applies for small businesses holding 50 or fewer registrations:
 - FY 2004: \$59,000;
 - FYs 2005 and 2006: \$61,000;
 - FY 2007: \$48,000; and



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- FY 2008: \$38,500.
- For small business registrants holding more than 50 registrations, the following schedule applies:
 - FY 2004: \$102,000;
 - FYs 2005 and 2006: \$106,000;
 - FY 2007: \$82,000; and
 - FY 2008: \$66,500.
- Fees now charged by EPA to set tolerances are eliminated through September 30, 2008.
- The funds collected pursuant to the bill's provisions go directly to EPA. EPA is to use them largely for registration, although a percentage will go to other programs, including:
 - Between \$750,000 and \$1 million per year will go to worker protection research and regulatory programs.
 - Up to \$500,000 per year could be used by EPA to review inert ingredients in pesticide mixtures.
- The legislation provides baseline budget protection for the Office of Pesticide Programs (OPP) for FYs 2004, 2005, and 2006. During this time period, EPA may not assess registration service fees unless the appropriation for OPP is equal to or greater than the amount appropriated for OPP in FY 2002. This is intended to ensure that revenue collected from pesticides fees will not be offset by a decrease in Congressional appropriations for either EPA or OPP.

In the past, a majority in industry felt that they did not want to pay additional fees of any kind, although a solid core indicated that they might be willing to pay additional fees if the fee structure were equitable and there was greater assurance of decisions being made within fixed periods of time. Generally speaking, there was more support for maintenance fees than there is for registration fees. This legislation reflects the interests of both the industry and the



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activist community as both want the program to have sufficient resources to do its job. By providing deadlines for EPA registration decisions, the legislation provides industry more stability in determining how long it will take new products to be approved for market. The legislation also provides EPA a dependable stream of funding for OPP to ensure it can meet those deadlines. Whether this legislation will meet these goals will be better revealed as EPA acts to implement it.

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We hope this information is helpful. As always, please call if you have any questions.

[Attachment](#)