



**MEMORANDUM**

Via E-Mail

DATE: September 22, 2003  
TO: Firm Clients and Friends  
FROM: Bergeson & Campbell, P.C.  
RE: Treated Article Exemption Guidance

On September 9, 2003, the United States Environmental Protection Agency (EPA) responded to an August 25, 2003, letter seeking guidance on whether three examples of paint products qualify for the treated articles exemption under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Under FIFRA, products that satisfy the criteria for the treated article exemption do not require pesticide registration. To qualify for the treated article exemption, the article must be “treated with, or contain[], a pesticide to protect the article or substance itself”; and the pesticide must be registered for such use.<sup>1</sup>

In the August 25, 2003, letter requesting clarification, the submitter provided three examples involving a paint company contracting directly with the registered pesticide manufacturer for the pesticide product. Each of the examples represents different options available to the paint manufacturer for incorporating a preservative into paint. The three examples provided are:

- **EXAMPLE 1:** A paint company buys a pesticide registered under FIFRA section 3 for use as a preservative for paint. The paint company adds the preservative to a liquid component of the paint as a step in the manufacturing process. This process is due to pH considerations and is an otherwise normal way that solid materials are incorporated into paint. That is, neither a preservative material nor any other component is mixed into the paint as a final step but, rather is put into the paint during an early manufacturing step. In Example 1 all of the manufacturing steps are conducted at the paint company’s facility. Under these circumstances the

---

<sup>1</sup> 40 C.F.R. § 152.25(a).



Memorandum to Firm Clients and Friends  
September 22, 2003  
Page 2

stepwise addition of the registered preservative is for a short period in the form of a treated article (in this case a substance) intermediate and is therefore not different from any other treated article intermediate.

- **EXAMPLE 2:** The same paint company and the same registered pesticide. In this example, the paint company contracts the manufacturing step of adding the registered preservative to the paint component to a third party. We would contend that the component of paint containing the registered preservative is now a treated article intermediate and can be treated in the same manner as solid/solid mixtures common to the plastics industry.
- **EXAMPLE 3:** The same as Example 2 except now the paint company contracts separately with the registered pesticide manufacturer to perform the intermediate manufacturing step of putting the registered pesticide into a paint component. In this example we would also contend that the component of paint containing a registered pesticide is now a treated article intermediate and can be treated in the same manner as solid/solid mixtures common to the plastics industry.

EPA responded that the treated article exemption was satisfied for all three examples. EPA stated:

For all three examples, the Agency agrees that the liquid intermediate component that has been treated with a pesticide registered for use as a paint preservative during the manufacture of the paint qualifies for the treated article exemption because the conditions of 40 CFR 152.25(a) have been met. Since this regulation may apply to an article or substance of any kind, the treated intermediate liquid component described in your three examples certainly fits under the treated articles exemption.

\* \* \* \* \*

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