



## MEMORANDUM

### Via E-Mail

DATE: September 29, 2003

TO: Firm Clients and Friends

FROM: Bergeson & Campbell, P.C.

RE: Congress Considers Pesticide Registration Legislation

New user fees may become a reality for pesticide product registrants under a bill introduced in the Senate on September 25, 2003, by Senators Thad Cochran (R-MS) and Tom Harkin (D-IA) with 13 co-sponsors. Titled the “Pesticide Registration Improvement Act of 2003,” S. 1664 is the culmination of considerable negotiation among the United States 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 would provide more stable funding for EPA and thus perhaps greater predictability for industry. Pesticide registrants would pay increased maintenance fees and new registration fees, and EPA would 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 three co-sponsors.

Discussed below are the major provisions of S. 1664 and an outline of the history of this issue.

### **Major Provisions**

The bill includes the following provisions of interest:

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



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- EPA would be subject to a schedule for reviewing pesticide product registration applications. The decision review periods are included on the appended registration fee schedule.
- There would be 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 would be available if EPA failed to make a determination on the application for registration of a new active ingredient or new use for which a registration service fee is paid. An applicant could not obtain judicial review of a failure to make a determination before the application of the two-year period that begins on the date on which the decision time review period for the application ends.
- Current registration maintenance fees would be increased as noted below; the increases would be expected to increase the current revenues from these fees to \$26 million from the current \$21.5 million in fiscal year 2004, and to \$27 million in fiscal years 2005 and 2006, followed by declines to \$21 million in 2007 and to \$15 million in 2008.
  - For registrants holding 50 or fewer registrations:
    - Fiscal year 2004: A maximum of \$84,000 (up from the current maximum of \$55,000);
    - Fiscal years 2005 and 2006: \$87,000;
    - Fiscal year 2007: \$68,000; and
    - Fiscal year 2008: \$55,000.
  - For registrants holding more than 50 registrations:
    - Fiscal year 2004: A maximum of \$145,000 (up from the current maximum of \$95,000);
    - Fiscal years 2005 and 2006: \$151,000;



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- Fiscal year 2007: \$117,000; and
  - Fiscal year 2008: \$95,000.
- For “small manufacturers,” defined as those with global gross pesticide revenue at or below \$60 million, a lower fee schedule would apply.
- Fees now charged by EPA to set tolerances would be eliminated.
- The funds collected pursuant to the bill’s provisions would go directly to EPA. EPA would use them largely for registration, although a percentage would go to other programs, including:
- Between \$750,000 and \$1 million per year would 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.

### **History of the Issue**

Historically, funding for the Office of Pesticide Programs (OPP) has been a challenge. Congressional appropriations rarely provide adequate funding to meet everyone’s expectations as the interests and objectives of the various stakeholders create conflicting pressures/priorities. Further, the pesticides program has not been a priority for most Administrations and therefore has been more susceptible to periodic budget cuts. The only two sources of funding for the program currently are general appropriations and industry fees.

The current maintenance fees were established in the 1980s. These fees pay for about 190 people within OPP who have reregistration responsibilities, as well as about ten people who work on “fast track” registration actions. The tolerance fees currently collected by OPP offset general appropriations dollars; therefore, they do not result in increased funding or support additional work.

Many in industry, although believing that OPP needs sufficient resources to deliver its core responsibilities and willing to support Congressional appropriations for this purpose, nevertheless had a great deal of concern as to whether output is all it can be, and whether the industry could or should support additional fees. The debate was complicated by the



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fundamental differences among and between basic registrants, formulators, distributors, and the user community as to who should bear the burden of these costs, and how.

Various efforts over the years have aimed at trying to capture the real cost of doing business in OPP. One that received considerable attention a few years ago was a proposal to advance a “fee for service” legislative package that would have included higher fees in return for greater predictability and accountability. This effort bogged down as senior government officials in the last administration demanded higher fees with no assurances of greater service.

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 activist community as both want the program to have sufficient resources to do its job. Whether this legislation will meet these goals will be better revealed as it moves through Congress.

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We hope that this information is helpful. If you would like additional information on this issue, feel free to e-mail or call Jim Aidala at [jaidala@lawbc.com](mailto:jaidala@lawbc.com), (202) 557-3830, or Dan Barolo at [dbarolo@lawbc.com](mailto:dbarolo@lawbc.com), (202) 557-3800.

[Attachment](#)