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MEMORANDUM

Via E-Mail

DATE: November 7, 2007

TO: Firm Clients and Friends

FROM: Bergeson & Campbell, P.C.

RE: EPA Issues PR Notice Regarding Container and Containment Rule Label Revisions

Today's *Federal Register* includes a notice from the U.S. Environmental Protection Agency (EPA) announcing the availability of a Pesticide Registration (PR) Notice providing guidance to registrants on how to change their labels to comply with the new labeling requirements established by the container and containment rule. The new labeling regulations apply to all pesticide products except plant-incorporated protectants. By **August 17, 2009**, all pesticide products distributed or sold by a registrant must bear labels that comply with the new requirements. To allow sufficient time for EPA to process submissions, EPA is recommending that registrants submit revised labels, if submitted as a notification, before **February 1, 2009**, or **August 1, 2008**, if submitted as a request for amendment. According to the PR Notice, EPA intends to apply the guidance in the PR Notice "immediately" to applications for new and amended registrations. The PR Notice is available at http://www.epa.gov/PR_Notices/pr2007-4.pdf.

On August 16, 2006, EPA published a final rule that established standards for pesticide containers and containment structures. The final rule included requirements for label language to include the following: a statement identifying the container as refillable or nonrefillable; instructions to facilitate the removal of pesticides from containers prior to disposal or recycling; and, for nonrefillable containers, instructions for managing the container. The PR Notice provides instructions to pesticide registrants on revising their product labels to implement the new requirements. According to EPA, most registrants may be able to make the necessary label amendments by notification, but in some cases, registrants may need to apply for an amendment and EPA approval may be required. By **August 17, 2009**, all pesticide products distributed or sold by a registrant must have labels that comply with the new requirements, which are codified at 40 C.F.R. Section 156.159.



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The final regulations added a new Subpart H to 40 C.F.R. Part 156 titled “Container Labeling.” The new container labeling regulations require new label statements addressing the following topics:

- A statement identifying the container as refillable or nonrefillable and a reuse statement appropriate to that container;
- For nonrefillable containers, a recycling or reconditioning statement providing additional instructions for managing an empty container;
- For nonrefillable containers, a batch code for the product contained; and
- For some nonrefillable containers and all refillable containers, a statement providing cleaning instructions prior to container disposal.

In addition, the final rule modifies existing requirements in 40 C.F.R. Section 156.10 to allow for blank spaces on the labels of refillable containers so that the net weight or measure of content and EPA establishment number can be marked in by the refiller prior to distribution or sale of the pesticide.

As provided in 40 C.F.R. Section 152.46, some label changes require prior EPA approval or an application for amended registration, while in other cases, registrants may be permitted to make the changes and simply notify EPA. The PR Notice describes label changes that may be made by notification, and includes specific label language that registrants can use. The PR Notice states that, if registrants “use the language appropriate for their products exactly as provided in the new regulations, they may make the label changes without prior approval,” as provided in 40 C.F.R. Section 152.146(a)(2). Registrants who propose alternative language must submit an amendment application for EPA approval as provided in 40 C.F.R. Section 152.44. The PR Notice summarizes the existing procedures for submitting revised labels either via notification or amendment.

The label revisions do not require the submission of registration service fees under the Pesticide Registration Improvement Act (PRIA) because EPA-initiated amendments are not subject to PRIA. According to the PR Notice, EPA may review the notification to ensure that the label language is identical to that contained in the new regulation. Applications for amended registrations should include an explanation as to why alternate language is more appropriate, and a statement certifying that no other changes have been made to the label except for those clearly marked on the revised labeling. EPA will review the amendment application



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and determine whether it considers the proposed instructions acceptable. EPA will notify registrants in writing of its decision.

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