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MEMORANDUM

Via E-Mail

DATE: November 19, 2008

TO: Firm Clients and Friends

FROM: Bergeson & Campbell, P.C.

RE: EPA Requests Comments on Petition to Regulate Silver Nanoparticles under FIFRA

On November 19, 2008, the U.S. Environmental Protection Agency (EPA) announced the availability for review and comment of a petition requesting EPA regulate nanoscale silver products as pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). According to the notice, EPA “has determined that the petition raises issues that potentially affect private and public sector stakeholders.” The International Center for Technology Assessment (ICTA) and 13 other consumer, health, and environmental groups filed the petition. Comments are due **January 20, 2009**.

The petition requests that EPA undertake the following actions:

1. Classify nanoscale silver as a pesticide and require manufacturers to register nanoscale silver products as pesticides pursuant to FIFRA. Furthermore, in reference to nanoscale silver, petitioners request that EPA clarify that pesticidal intent and public health claims can be both implicit and explicit, and that manufacturers cannot avoid pesticide classification (and registration under FIFRA) simply by stripping their products of labeling.
2. Determine that nanoscale pesticides, such as nanoscale silver pesticides, are new pesticidal substances that require new pesticide registration under FIFRA, with accompanying toxicity testing and risk assessment specific to nanoscale materials.
3. Assess the potential human health and environmental risks of nanoscale silver pursuant to EPA’s statutory obligations under FIFRA, the Food Quality Protection Act, the Endangered Species Act, and the National



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Environmental Policy Act. The petitioners recommend that EPA analyze existing scientific studies on the environmental health and safety of nanoscale silver; assess the potential impacts of nanoscale silver on children and infants; ensure the protection of threatened and endangered species in connection with any EPA actions involving nanoscale silver; and assess the environmental impacts of any EPA actions involving nanoscale silver, including completing a programmatic environmental impact statement.

4. Take immediate statutory and regulatory action to prohibit the sale of nanoscale silver products, classifying these products as illegal pesticide products with unapproved health benefit claims. In this regard, the petition claims that the nanoscale silver products currently on the market are in clear violation of FIFRA. The petition recommends that EPA pursue enforcement actions against and issue enforcement penalties to those manufacturers and/or distributors currently selling nanoscale silver products.

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