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Jay Feldman
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Beyond Pesticides/National Coalition Against the Misuse of Pesticides
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Senior Vice President
Environmental Working Group
1436 U Street, NW
Suite 100
Washington, DC 20009

Re: Objections and Request for a Hearing Concerning Sulfuryl Fluoride Tolerances

Dear Sirs and Madam:

This letter concerns the objections and hearing requests that you have filed with regard to tolerance rulemaking actions on January 23, 2004, and July 15, 2005, involving the pesticide sulfuryl fluoride. In connection with objections and hearing requests you filed as to the January 23, 2004 rulemaking, I wrote to you on June 4, 2005 to notify you of certain preliminary determinations on your hearing requests, to inform you of the requirement to submit data relied upon in your objections and hearing requests, and to answer certain questions posed in your objections and hearing requests. While your response to that letter was pending, EPA issued its July 15, 2005 sulfuryl fluoride tolerance rulemaking and you submitted a second set of objections and hearing requests.
In a letter dated December 16, 2005, you responded to my letter of June 4, 2005. Attached to that letter were (1) a revised version of your objections and hearing requests; and (2) copies of studies relied upon by you in your objections and hearing requests. In that letter you stated that you do not plan to pursue issues 1 through 8 in your objections and hearing requests to the January 23, 2004 rulemaking and that you were in agreement with EPA’s proposed consolidation of your two sets of objections and hearing requests. You also stated in the letter that you had not received a copy of EPA’s risk assessment supporting the July 15, 2005 rulemaking and requested the opportunity to submit further issues once that document was provided.

I have reviewed your letter and the document containing the revised objections and hearing requests. I am granting your request to submit further issues based upon EPA’s risk assessment for the July 15, 2005 rulemaking. A copy of that risk assessment and a revised version of the risk assessment correcting various errors is attached to this letter. Any additional issues for hearing must be submitted within 90 days of your receipt of this letter.

There are several other matters we would like you to address before we can rule upon your revised objections and hearing request:

1. Revised Objections and Hearing Request. You have now submitted 3 sets of objections and hearing requests to EPA. The revised set you submitted with your December 16, 2005 letter appears to be a consolidated set of objections and hearing requests covering both rulemakings in that there is a substantial amount of overlap and repetition in the three submissions. We would like you to verify that the December 16, 2005 submission replaces the two earlier submissions. If you so indicate, our ruling on your objections and hearing request will address only the December 16, 2005 submission. If you do not regard the December 16, 2005 submission as a replacement for the earlier objections and hearing requests, then before EPA will rule on your objections and hearing requests you must either (1) withdraw your revised objections and hearing requests; or (2) submit a consolidated set of objections and hearing requests that replaces all earlier objections and hearing requests.

2. Questions as opposed to Issues for Hearing. As I noted in my letter of June 4, 2005, several of the issues which you requested a hearing on in your hearing requests pertaining to the January 23, 2004 rulemaking, were framed as questions to EPA, not as disputed matters of fact. Only issues raising material, disputed matters of fact are appropriate for hearing. Your revised objections and hearing requests attached to your December 16, 2005 letter also contains several “hearing issues” framed as questions about precisely what assumptions EPA made in its risk assessment. You explain in your objections and hearing requests that this approach was necessary because you did not have a copy of EPA’s risk assessment for the July 15, 2005 rulemaking. As noted above, I am providing you with a copy of that risk assessment so that that irregularity can be corrected.
3. **Word Processing Error.** The paragraph beginning on page 43 of your revised objections and hearing requests begins “Issue 4.” However, the paragraph immediately previous is labeled as “Issue 44” and several paragraphs later “Issue 45” is set forth. This appears to have been a word processing error. Would you please clarify what is intended here.

Please address these matters in writing within 90 days of your receipt of this letter. Your response should be sent to EPA at:

Public Information and Records Integrity Branch,  
Information Resources and Services Division (7502C)  
Docket ID No. OPP-2005-0174  
Office of Pesticide Programs  
U.S. EPA  
1200 Pennsylvania Ave., NW  
Washington, DC 20460-0001

A copy should be sent to:

Jonathan Fleuchaus (2333A)  
Office of General Counsel  
U.S. EPA  
1200 Pennsylvania Ave., NW  
Washington, DC 20460-0001

If you have questions concerning this letter or need additional time to prepare a response please contact Jonathan Fleuchaus in EPA’s Office of General Counsel. He can be reached by telephone at (202) 564-5628 or by e-mail at fleuchaus.jonathan@epa.gov.

Sincerely,

James Jones  
Director  
Office of Pesticide Programs

Attachments