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A Broader Perspective

Alert

Environmental Client Service Group

To: Our Clients and Friends

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EPA Enforcement Against Pesticide Manufacturer Highlights Significance of Adverse Effects Reporting

A key obligation for pesticide registrants is contained in section 6(a)(2) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), which requires that a pesticide registrant report to EPA "additional factual information regarding unreasonable adverse effects on the environment of the pesticide" obtained after the registration of the pesticide. This information can take many forms, including product complaints, poison control center reports, or field laboratory studies. This ongoing reporting obligation complements the requirement that similar information must be provided to EPA during the pesticide registration process.

Just this week, EPA announced that it settled for $1.85 million an enforcement action against DuPont relating to these reporting obligations. At issue was DuPont's Imprelis herbicide, which was registered by EPA in 2010. Not long after the product was introduced into the market, DuPont and EPA began receiving reports of adverse effects to nontarget plant and tree species. After inquiries from EPA, DuPont reported to EPA the results of eighteen field trial studies that had previously been conducted on Imprelis but not provided to EPA. DuPont also apparently submitted over 7,000 other reports of adverse effects received regarding Imprelis. Given these reports and the field trial studies, EPA issued a Stop Sale, Use or Removal Order and Imprelis was subsequently removed from the market.

EPA brought an enforcement action against DuPont, alleging that the failure to submit the eighteen field trial studies constituted a violation of the adverse effects reporting obligations under FIFRA. Significantly, EPA also alleged that each sale of Imprelis during the time period it was on the market constituted a sale of a misbranded product because the product labeling did not contain adequate instructions to protect nontarget organisms from damage. The expansion of allegations brought the number of penalties from eighteen separate violations to almost 350 violations of FIFRA. This enforcement should help drive home to registrants the significance of reporting adverse effects information, and how what might otherwise be a single violation for failure to report can turn into a much larger issue of sale and distribution of misbranded product.

For further information on this Client Alert or other pesticides issues, please contact:

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