



Recent Federal Developments May 15, 2006

David B. Fischer Joins Bergeson & Campbell, P.C. -- David B. Fischer, former Managing Counsel for the Chlorine Chemistry Council of the American Chemistry Council, has joined Bergeson & Campbell, P.C. David's distinguished career in the industrial chemical community is diverse, and he is well known and highly regarded. As Managing Counsel for the Chlorine Chemistry Council of the American Chemistry Council, he pursued regulatory advocacy efforts with the U.S. Environmental Protection Agency (EPA), the Agency for Toxic Substances and Disease Registry (ATSDR), the National Toxicology Program (NTP), and the Food and Drug Administration (FDA) involving dioxin, disinfection byproducts, vinyl, and other products and byproducts of chlorine chemistry. He also served as lead in-house counsel in the chloroform litigation before the United States Court of Appeals for the D.C. Circuit (*Chlorine Chemistry Council v. EPA*). David also has served as Director of Government Relations for the American Bird Conservancy, where he was responsible for regulatory advocacy efforts with federal agencies and served as lead in-house counsel on all litigation matters. David holds an undergraduate degree in biochemistry and molecular biology from Northwestern University, a Masters of Public Health from the University of North Carolina, and a J.D. with honors from the University of Maryland School of Law. David will provide legal and policy advice to clients on a broad range of industrial, specialty chemical, and biological product approval and defense matters and issues relating to the regulation of those chemicals by federal, state, and international governmental entities. David's sophisticated understanding of regulatory processes will enhance the deep legal, regulatory, and science policy capabilities that Bergeson & Campbell, P.C. offers.

TSCA/FIFRA/EPCRA/NTP

OPP Issues Instructions For Transmitting Information To OPP -- The Office of Pesticide Programs (OPP) moved in early May to a new Crystal City (Arlington, VA) location. OPP updated and reissued its guidance on the processing and routing of mail received in OPP. OPP's April 12, 2006, Pesticide Registration (PR) Notice 2006-1 updates the guidance for sending or delivering mail to OPP, and cautions against transmitting Confidential Business Information (CBI) on facsimile (fax) machines. PR Notice 2006-1 supersedes PR Notice 2004-1, issued June 15, 2004, and PR Notice 2000-4, issued April 25, 2000. PR Notice 2006-1 is available on the Internet at http://www.epa.gov/PR_Notices/pr2006-1.pdf. It applies to all transactions to OPP by mail, hand (personal) or courier delivery, or by fax. This notice was effective on **May 8, 2006**.

PETA Urges End To Funding Of Cancer Tests Using Rodents -- On April 17, 2006, the People for the Ethical Treatment of Animals (PETA) issued a report entitled *Wa\$ted Money, Wasted Lives*, asking for an end to federal funding for rodent cancer tests conducted by NTP. The report, which is available at <http://www.stopanimaltests.com/u-ntp.asp>, reportedly is the first action in a campaign against U.S. and U.K. legislative and regulatory bodies urging these bodies to appreciate that animal tests have both strengths and weaknesses and may not in all cases replicate cancer effects in humans.



EPA Schedules PFOA Meeting -- On April 19, 2006, EPA announced that it has scheduled Technical Work Groups regarding Perfluorooctanoic Acid (PFOA) on **June 6-7, 2006**. EPA is also scheduling a plenary session of parties interested in PFOA on **June 8, 2006**. The meetings are part of EPA's ongoing Toxic Substances Control Act (TSCA) review of PFOA and it is intended to give interested parties an update on efforts chemical manufacturers and others are making to understand how PFOA might be entering the environment and voluntary efforts underway to explore these issues further. Interested parties will also be told of NTP efforts to set certain toxicological effects of PFOA in laboratory animals.

Center For International Environmental Law Issues Report On U.S. Chemical Law Changes -- On May 9, 2006, the Center for International Environmental Law (CIEL) released a report entitled *Cloudy Skies, Chance of Sun: A Forecast for U.S. Reform of Chemicals Policy*. A copy of the report is available at http://www.ciel.org/Publications/Cloudy_skies_9May06.html. According to CIEL, the absence of "decisive" federal action on industrial chemicals has caused many states to address or to issue more restrictive requirements for certain chemicals. According to the report, at least six states have passed legislation or have issued some sort of executive order to restrict certain polybrominated flame retardants. According to the report, many Americans are concluding that "a new approach is needed to eliminate dangerous chemicals" in that the U.S. legal framework for regulating most industrial chemicals is out of date. The report also includes a short summary of problems with TSCA, concerns about the erosion of right-to-know laws, and the emergence of state chemical control restrictions.

EPA Extends Comment Period On Perfluoroalkyl Sulfonates Proposal -- On May 10, 2006, EPA announced its decision to extend the public comment period for the proposed Significant New Use Rule (SNUR) for certain Perfluoroalkyl Sulfonates (PFOS). 71 Fed. Reg. 27217. The comment period had been May 10, 2006. The comment period is now open to **August 8, 2006**.

EPA Schedules Public Workshop On IUR -- On April 26, 2006, EPA published a notice announcing that a public workshop will be held to provide training for persons responsible for submitting information during the 2006 Inventory Update Reporting (IUR) period. 71 Fed. Reg. 24673. The workshop will focus on reporting requirements, case studies, the electronic IUR software, and submission of IUR information through the Internet. The workshop is open to the public and will be held on **May 22, 2006**, in St. Louis, Missouri. Please consult the *Federal Register* for details.

EPA Settles TSCA Violations Against 3M Company -- On April 25, 2006, EPA announced that 3M Company (3M) and EPA settled alleged violations of TSCA that the company discovered and disclosed during a corporate-wide audit agreement. *In Re 3M Company*, Docket No. TSCA-HQ-2006-5004. EPA asserted 244 counts against 3M for the company's alleged failure to provide information to EPA required under TSCA Section 8(e), and the company's alleged failure to provide a submission of premanufacture notices (PMN) under TSCA Section 5 and



3M's alleged failure for several years to provide EPA Commencement of Manufacture or Import notices for two chemicals. Some of the alleged violations involved data on PFOS and PFOA. Under the terms of the settlement, 3M will pay approximately \$1.5 million to settle the allegations. Additional information is available at <http://www.epa.gov/compliance/resources/cases/civil/tsca/3m.html>.

EPA Schedules Public Meeting On Inert Ingredient Tolerance Exemptions -- On May 3, 2006, EPA announced that it would hold two identical public hearings on Tuesday, **May 23, 2006**, on EPA's proposed action on pesticide inert ingredient tolerance exemptions that lack sufficient toxicity data to make the determination of safety for human health required under the Federal Food, Drug, and Cosmetic Act (FFDCA). 71 Fed. Reg. 26000. Please consult the *Federal Register* for additional details.

EPA Proposes To Revoke 129 Tolerance Exemptions -- On May 3, 2006, EPA proposed under FFDCA Section 408(e)(1) to revoke the existing exemptions from the requirement of a tolerance for residues of certain inert ingredients because there are insufficient data to make the determination of safety required under FFDCA Section 408(b)(2), or because they are deemed to be redundant and unnecessary. 71 Fed. Reg. 25993. EPA has also identified substances within certain of these tolerance exemptions that meet the definition of low-risk polymers and is proposing to establish new tolerance exemptions for them. The revocation actions are required under FFDCA Section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996. EPA is required by August 2006 to reassess the tolerances that were in existence on August 2, 1996. The regulatory actions proposed in the May 3, 2006, *Federal Register* pertain to the proposed revocations of 129 tolerance exemptions that would be counted as tolerance reassessment toward the August 2006 deadline. Comments are due on or before **July 3, 2006**.

EPA's SAB Urges EPA To Improve Ecological Systems Benefit Calculations -- EPA's Science Advisory Board (SAB) has urged EPA to improve its ability to calculate the contributions ecological systems make to society. The recommendations are set forward in the Panel's draft report entitled *Valuing the Protection of Ecological Systems and Services: An Expanded Integrative Approach*. The draft document was discussed by SAB's Committee on Valuing the Protection of Ecological Systems and Services on May 9-10, 2006. The report, which is available at <http://www.epa.gov/sab/panels/vpesspanel.html>, expresses the SAB's view that EPA is reluctant to experiment with new ways to analyze benefits and that EPA's approach "creates a bias toward the status quo and a disincentive to explore new or innovative approaches."

EPA Announces Peer Review Workshop To Consider Alternative Health Risk Assessment Approaches -- On May 4, 2006, EPA announced that Eastern Research Group, Inc., an EPA contractor, would convene an independent panel of experts and organize and conduct an external peer-review workshop to review the external review draft document entitled *Considerations for Developing Alternative Health Risk Assessment Approaches for Addressing Multiple Chemicals*,



Exposures and Effects; An External Review Draft (EPA/600/R-06/0113A). 71 Fed. Reg. 26365. The draft document was prepared by the National Center for Environmental Assessment (NCEA) within EPA's Office of Research and Development (ORD). The peer review panel will convene on **May 25, 2006, at 9:00 a.m.** and continue on **May 26, 2006, until 3 p.m.** Please consult the *Federal Register* for additional details.

NANOTECHNOLOGY

Subcommittee Hearing On Promoting Economic Development Opportunities Through Nano Commercialization -- On May 4, 2006, the Senate Commerce Committee's Subcommittee on Trade, Tourism, and Economic Development held a hearing on Promoting Economic Development Opportunities Through Nano Commercialization. Speakers included: Sean Murdock, Executive Director of the NanoBusiness Alliance; Robert D. Rung, President and Executive Director of the Oregon Nanoscience and Microtechnologies Institute; Philip Boudjouk, Vice President for Research/Creative Activities and Technology Transfer at North Dakota State University; David Rejeski, Director of the Woodrow Wilson International Center for Scholars' Project on Emerging Nanotechnologies; and Jerry Gwaltney, City Manager for the City of Danville, Virginia. A video of and testimony presented at the hearing is available online at <http://commerce.senate.gov/hearings/witnesslist.cfm?id=1867>.

The hearing examined economic development efforts that have a strong nanotech focus; investigated how commercialization of nanotechnology would expedite the application of this technology to more products resulting in more high-paying jobs and better quality products in the domestic and global marketplaces; and examined potential economic impacts that nanoscience commercialization will have on business promotion in communities. Testimony supported Senator Gordon Smith's (R-OR) view that applications of nanotechnology were both tremendous and exciting and that many benefits are born from collaboration between federal, state, and local governments and institutions that focus on making commercialization of nano products a priority.

FDA Plans Public Meeting On Nanotechnology -- On April 14, 2006, FDA announced in the *Federal Register* its decision to schedule, sometime in **October 2006**, a public meeting on FDA-regulated products containing nanotechnology materials. 71 Fed. Reg. 19523. The meeting is intended to "help FDA further its understanding of developments in nanotechnology materials that pertain to FDA-regulated products." Although FDA is not accepting registrations at this time, it "would appreciate receiving expressions of interest from those intending to attend or present at the meeting." FDA believes this information will help it prepare and plan for the meeting. Information can be provided to Poppy Kendall at Poppy.Kendall@FDA.HHS.GOV, or 301-827-3360. Based on the level of response, FDA will obtain a venue and structure the meeting to accommodate the audience and range of topics discussed. Details about the venue,



specific date, time, and registration will be provided in a *Federal Register* notice closer to the meeting date.

According to FDA's April 13, 2006, press release, FDA is holding the meeting "to further its understanding of developments in nanotechnology and, more specifically, to hear":

- About the new types of nanotechnology products under development in the areas of foods (including dietary supplements), food and color additives, animal feeds, cosmetics, human and animal drugs, and human biologics and medical devices;
- About any specific scientific issues related to the development of these products relevant to FDA's regulation of them;
- Any other issues about which regulated industry, academia, and the interested public may wish to inform FDA concerning the use of nanotechnology in FDA-regulated products; and
- If there are opportunities for FDA to address hurdles that may be inhibiting the use of nanotechnology in medical product development.

FDA notes in its April 14, 2006, *Federal Register* notice that it is particularly interested in nanotechnology materials that enable developments in implants and prosthetics, drug delivery, and food processing, and materials that may already be in sunscreens and cosmetics.

AIR/WATER

EPA Issues Final Rule Amending Startup, Shutdown, And Malfunction Requirements -- On April 20, 2006, EPA issued final amendments to certain aspects of startup, shutdown, and malfunction (SSM) requirements affecting sources subject to the National Emission Standards for Hazardous Air Pollutants (NESHAP). 71 Fed. Reg. 20446. The final rule responded to a 2003 petition to reconsider certain aspects of the amendments to the NESHAP General Provisions issued in May 2003. The final amendments allow sources additional flexibility to address emissions during periods of SSM. According to EPA, the amendments do not alter the obligation and requirement under 40 C.F.R. Section 63.6(e)(1)(i) that source owners and operators minimize emissions at all times, including during periods of SSM. Among other things, the revisions provide clarifying edits that reporting and recordkeeping is only required when a startup or shutdown causes the applicable emission standards to be exceeded, and for any occurrence of malfunction that also includes potential exceedances and that such recordkeeping and reporting must include information on actions taken during such periods of SSM to minimize



emissions in conformance with Section 63.6(e)(1)(i). The notice also provides responses to comments submitted on EPA's request for information in response to the petition to reconsider. The final rule was immediately effective.

OMB Urges EPA To Update Particulate Matter Standards -- On April 13, 2006, the Office of Management and Budget (OMB) issued a prompt letter to EPA Administrator Johnson "to follow up" on several issues that apparently were discussed between EPA and OMB previously, including: key steps that need to be taken to complete the particulate matter (PM) rulemaking and the longer-term need for innovative science research to address the gaps and public health knowledge about fine PM. The OMB prompt letter was sent by Donald Arbuckle, Acting Administrator of the Office of Information and Regulatory Affairs (OIRA). EPA's January 17, 2006, proposed rule would tighten air quality standards for fine PM and revise EPA's coarse particulate standards. According to the OMB letter, EPA's analysis assumes all types of fine PM are equally toxic, a position OMB challenges. In particular, the letter urges EPA to explore alternatives to the "assumption that all particles are equally toxic." OMB also urges EPA to address several specific concerns "about the way the Agency is applying the underlying epidemiological studies in this rulemaking." OMB is concerned that EPA's risk assessment and resulting cost-benefit analysis for the proposed fine PM standard relies "too heavily on a series of analyses that are sensitive to plausible changes in model specification." OMB also urges EPA to ensure that its assessment of coarse fraction PM should control for exposure to fine PM as well as control for potential confounding with other co-pollutants. A copy of OMB's letter is available at http://www.reginfo.gov/public/prompt/Prompt_Letter_to_EPA.pdf.

RCRA/CERCLA

EPA Announces Availability Of Additional Information On Hazardous Waste Manifest System -- On April 18, 2006, EPA announced the availability of additional information on the electronic manifest (e-manifest) project. 71 Fed Reg. 19842. The new information relates to a two-day meeting EPA convened in 2004 to obtain public input on the development and implementation of the e-manifest project. Based on the meeting and additional information, EPA believes that "a centralized, national e-manifest system is the preferred approach. . . ." Comments on the new information are due by **June 19, 2006**.

EPA Withdraws Rule On Electroplating Sludge Rule -- On May 10, 2006, EPA reported that it has withdrawn a draft proposed rule that would have allowed for the recycling of F006 electroplating sludge. EPA also indicated that it is considering rolling the proposal into a broader rule with other industrial recycling operations. According to EPA, it "has decided not to continue with the development of this stand-alone rule addressing F006 recycling." EPA said it may include the proposal in a separate rulemaking that seeks to redefine solid waste. The F006 proposal was listed as withdrawn on May 3 on a list of regulatory reviews conducted by OMB.



The proposal was intended to exempt recycled electroplating sludge containing a high percentage of recoverable metals from hazardous waste management requirements under the Resource Conservation and Recovery Act (RCRA), thus reducing the costs of recycling.

LEGISLATIVE DEVELOPMENTS

Committee Approves Bill Addressing CAFE Standards -- The House Energy and Commerce Committee approved draft legislation on May 10, 2006, that would give the Department of Transportation (DOT) the authority to vary fuel economy standards for passenger cars according to their size and weight. The Committee approved the bill in a party-line 28-26 vote. The vote set the stage for consideration of the bill on the House floor. The vote on approving the bill came after the Committee rejected an amendment Representative Edward Markey (D-MA) offered to increase the corporate average fuel economy (CAFE) standard that all automakers must meet to 33 miles per gallon by 2015. The current standard for passenger cars is 27.5 miles per gallon, and it has not been changed since 1975.

Committee Approves Money For EPA, Supports Resolution Addressing Global Warming Resolution -- The House Appropriations Committee approved an appropriations bill on May 10, 2006, that would provide EPA with \$7.56 billion in fiscal 2007 and satisfy White House proposed cuts in a popular revolving fund for local water and sewer projects. The current-year budget is \$7.6 billion. The total funding for EPA that the Committee approved is \$252 million above the budget request the Bush Administration presented. The full Committee voted a small increase for the Superfund program, raised funding for brownfields cleanups slightly, and cut the appropriation for cleaning up leaking underground storage tanks. The panel also approved on a voice vote a "Sense of the Congress Resolution," offered as an amendment by Representative Norman Dicks (D-WA), stating that human activity contributes to global warming. The fiscal 2007 spending bill also would provide:

\$72.8 million for EPA's leaking underground storage tank program, down from \$79.9 million in fiscal 2006;

\$54.3 million for EPA's OPP for the review and reregistration of existing pesticides, about \$3 million more than the Administration's request, but \$3 million less than the current level; and

\$808 million for environmental science and technology, an increase of \$77.2 million over the current year and \$19.7 million more than the Administration's fiscal 2007 request to fund research grants and cooperative agreements with universities and others.



Offshore Drilling Exemption Approved -- The House Appropriations Committee on May 10, 2006, approved an amendment to exempt natural gas exploration from the offshore drilling moratorium that has been routinely added to the Interior Department appropriations bill for more than two decades. Representative John Peterson (R-PA) offered the amendment during the markup of the Department of the Interior spending bill for fiscal 2007; it was approved 37-25.

Bill To Address Energy Issues -- On May 5, 2006, Senator Craig Thomas (R-WY) introduced a bill, S. 2755, the Energy PRICE Act, that is intended to represent a “commonsense” approach to the nation’s energy problems. The bill that Thomas, a senior member of the Senate Energy and Natural Resources Committee, has proposed contains provisions to improve conservation, production, efficiency, and refining capacity. A number of the proposals were debated last year but not included in the energy bill. Among the key provisions are:

drilling on the coastal plain of the Arctic National Wildlife Refuge;

streamlining the permitting process for the construction and operation of new and expanded refineries;

reducing the number of “boutique” fuels made for specific polluted areas;

tax incentives for refinery expansion, accelerated pipeline depreciation, and tax-exempt bonds to finance electricity transmission lines and pipelines; and

reforming the CAFE standards to improve passenger vehicle fuel economy.

One provision would repeal language in the 2006 transportation bill that blocks the construction of a liquefied natural gas terminal in Fall River, Mass. The terminal is strongly opposed by Massachusetts officials.

Senate Coalition Introduces Energy Legislation -- A coalition of Senate Democrats and Republicans introduced on May 4, 2006, two bills -- one to expand tax incentives for alternative fuels and vehicles (S. 2748) and a second to reduce oil consumption by 10 million barrels a day by 2036 (S. 2747). The tax bill will be referred to the Senate Finance Committee. The policy provisions, including the oil savings goal, will be referred to the Senate Energy and Natural Resources Committee. The bills are taken from an earlier bill (S. 2025), the Vehicle Fuel Choice Act, introduced on November 18, 2005, by the same bipartisan group and referred to the Senate Finance Committee, where it has languished. The group includes: Democratic Senators Jeff Bingaman (NM), Joe Lieberman (CT), Maria Cantwell (WA), Evan Bayh (IN), and Ken Salazar (CO) and Republican Senators Norm Coleman (MN) and Lincoln Chafee (RI). The tax bill



would extend several tax credits for renewable energy and energy efficiency programs to 2010, and extend and expand tax credits for alternative fuels and vehicles. It would extend tax credits for electricity production from non-fossil fuels, for energy efficient commercial buildings and new homes, for residential energy efficient upgrades, for fuel cell power plants and microturbines, and for solar energy and biofuels. It would extend tax credits for electric vehicles; remove the cap on the number of hybrid vehicles that qualify for tax credits; provide tax credits for automakers, private fleet purchases, and alternative fueling stations; close the sport-utility vehicle loophole that grants a \$25,000 tax deduction for the business purchase of SUVs over 6,000 pounds, and creates an idling-reduction credit for trucks. It also would address combined heat and power units and advanced meters.

Bill To Streamline Refinery Permits Fails -- Under pressure to take action on high gas prices, the House voted on May 3, 2006, to approve a bill to create the first federal gasoline price-gouging law, but Democrats defeated a Republican measure to streamline the permitting process for new refineries. The gasoline price-gouging measure (H.R. 5253) easily passed the House on a 389-34 vote. The refinery permitting bill (H.R. 5254) was opposed by the Democratic caucus and garnered only 13 Democratic votes. A majority of the House voted for it, 237-188, but the bill fell short of the two-thirds vote needed for bills on the suspension calendar, which prohibits amendments and limits debate.

Modified Clean Air Planning Act Re-Introduced -- Senator Thomas Carper (D-DE) on May 3, 2006, reintroduced his bill to reduce air pollution emissions from power plants, including carbon dioxide, a major greenhouse gas. Acknowledging the chances for passage of the bill in the current Congress are extremely thin, Carper reintroduced the bill as part of a long-term effort to achieve passage. The bill, known as the Clean Air Planning Act, has the same Republican co-sponsors as similar legislation (S. 843) Carper introduced in 2003 -- Senators Lamar Alexander (R-TN), Lincoln Chafee (R-RI), and Judd Gregg (R-NH). Senator Dianne Feinstein (D-CA) signed on as a co-sponsor of the new bill. Like the previous measure, the new Carper bill would use emissions trading to reduce emissions of nitrogen oxides, sulfur dioxide, and carbon dioxide. In contrast to previous measures, the new bill does not call for emissions trading for mercury emissions. The new Carper bill includes tighter emissions caps for some pollutants than the previous measure. The new bill is intended to reduce nitrogen oxide emissions from power plants an average of 67 percent and sulfur dioxide emissions by 82 percent by 2015. Each electric generating unit would be required to reduce mercury emissions by 90 percent by 2015. The bill would reduce carbon dioxide emissions to 2006 levels in 2010 and 2001 levels in 2015. The bill leaves out provisions exempting power plants from new source review pollution control requirements that were included in the bill from 2003.



MISCELLANEOUS

White House Officials Urge Federal Agencies To Implement EMS -- In an April 11, 2006, memorandum, Joshua B. Bolten, then-Director of OMB, and James Connaughton, Chair of the Council on Environmental Quality (CEQ), encouraged all federal agencies to adopt and implement environmental management systems (EMS). According to the memorandum, only about 15 percent of federal agencies have met the goal of Executive Order (EO) 13148, which was issued in April 2000 and established requirements for the implementation of EMS at all appropriate federal facilities by December 31, 2005. Subsequently, in January 2006, OMB launched new scorecard initiatives related to key EO and statutory environmental management goals, with EMS as a fundamental requirement. The memorandum states that the Office of the Federal Environmental Executive is working closely with the agencies to assess their status and progress in implementing EMS. The memorandum asks agencies “to work with us, through the new scorecard process, to establish a firm date for final completion of these efforts” and states that “EMS will help to better equip agencies with the information, resources, strategy, and feedback they need to ensure they are continuously improving their performance and reducing their environmental impact.” The memorandum is available at <http://www.whitehouse.gov/omb/memoranda/fy2006/m06-11.pdf>.

DPR Will Hold A Dialogue Session On Registration Fees And Request For Comments On The Fee-Setting Process -- In January 2004, a new law (Senate Bill 1049, Chapter 741 Statutes of 2003) required the Department of Pesticide Regulation (DPR) to set its fees at a level that covers the costs of the registration and licensing programs. When the new fees were put in place in 2004, DPR knew that more work lay ahead to make managing the fee authority transparent, fair, and responsive. The registration fee dialogue session will be at the conclusion of a two-day Registration Branch workshop on Assembly Bill 1011. Admission to the full workshop is \$30. For more information, go to http://www.cdpr.ca.gov/docs/registration/fee_session.pdf. There is no admission charge for those who wish to attend only the dialogue session on registration fees. The session will be held **May 2, 2006**. Written comments may also be submitted and are due **June 1, 2006**.

Senate Committee Approves New Assistant Administrator -- On April 26, 2006, the Senate Environment Public Works Committee approved Bill Wehrum as Assistant Administrator for the Office of Air and Radiation. The vote was ten to eight votes along party lines. Additionally, the Committee approved the nomination of James Gulliford by voice vote. Gulliford was named Assistant Administrator of EPA’s Office of Prevention, Pesticides and Toxic Substances.

EPA Releases Report On Progress Of Major Sectors And Partnerships With EPA -- On May 1, 2006, EPA released its second report on the environmental progress it has achieved with 11 manufacturing and service sectors that have committed to entering into voluntary partnerships with EPA. The report, entitled *2006 Sector Strategies Performance Report*, provides an update



on the voluntary programs initiated in 2003. The report goals are to summarize each sector's economic statistics and trends, and describe, where possible, environmental progress made in each of the sectors over the past decade. The update of the report includes a summary of how EPA's Toxics Release Inventory (TRI) data can be used to target the greatest hazard-reduction opportunities when managing chemicals. The new report also focuses on beneficial reuse opportunities of materials that have been traditionally discarded. The performance report is available at <http://www.epa.gov/sectors/performance.html>.

Creation Of Office Of The Associate Administrator For Homeland Security -- On May 2, 2006, EPA Administrator Johnson announced the creation of the new position of Associate Administrator for Homeland Security within the Office of the Administrator. Tom Dunne has been appointed as the new Associate Administrator, and will direct EPA's Office of Homeland Security, which becomes a part of the new Office of the Associate Administrator for Homeland Security. The Assistant Administrator will be responsible for EPA's planning, prevention, preparedness and response to incidents of national significance, in which case the Assistant Administrator will serve as the Agency Director of Emergency Operations in coordination with the relevant program offices. The Associate Administrator will report directly to the EPA Administrator and Deputy Administrator. Dunne currently serves as a Deputy Assistant Administrator for the Office of Solid Waste and Emergency Response. Dunne also has served EPA previously as Regional Administrator, Region 10, and as the Director of Regional Operations.

California Proposed Regulations On Data Cost-Sharing -- On May 5, 2006, DPR published its long-awaited proposed rule on pesticide data cost-sharing. By way of background, last October, Governor Arnold Schwarzenegger signed into law Assembly Bill (A.B.) 1011. The legislation, which took effect on January 1, 2006, overhauled California's pesticide laws in several key respects, most notably by eliminating the letter of authorization approach to pesticide data-sharing by follow-on registration applicants and creating in its place a data-sharing scheme between original and follow-on (a/k/a generic or "me-too") registrants that is more akin to the data compensation scheme under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Section 6 of A.B. 1011, now codified in Food and Agriculture Code (FAC) Section 12811.5, required DPR to promulgate emergency regulations on data-sharing dispute resolution proceedings within 60 days of the law's enactment. DPR promulgated those emergency regulations on March 23, 2006.

In its May 5, 2006, action, DPR proposes to adopt permanently the already existing emergency regulations in 3 CCR Sections 6170 and 6310, and to promulgate two new provisions, Sections 6312 and 6314.



Written comments on the DPR proposal must be received by DPR no later than 5:00 p.m. (PST) on **June 19, 2006**. A public hearing on the proposal will not be held unless a written request for a hearing is submitted no later than **June 4, 2006**.

EPA Proposes Ideas To Offer Incentives For Performance Track Program Participants -- On May 15, 2006, EPA and state officials offered recommendations to expand their efforts to develop incentives for more participation in voluntary environmental performance-based programs. 71 Fed. Reg. 28026. The “high-value” incentives to be developed include expedited permitting, increased public recognition, and easier use of existing flexibility. The incentives are intended to encourage companies to join EPA’s Performance Track program and similar state programs. Comments are due **June 14, 2006**.

Use Of Specified Methods Of Detection And Analysis As A Defense To A Proposition 65 Enforcement Action -- On April 8, 2006, Section 12900 of Title 22 of the California Code of Regulations, “Use of Specified Methods of Detection and Analysis as a Defense to an Enforcement Action,” became effective. Section 12900 establishes a “safe harbor” defense, under specified circumstances, to allegations that a person doing business may have violated Proposition 65. The California Office of Environmental Health Hazard Assessment (OEHHA) promulgated Section 12900 because, in recent years, litigants and courts have had difficulty interpreting and applying Section 12901’s definition of “any detectable amount,” particularly in the context of consumer products exposures. According to OEHHA, one of the original purposes of Section 12901 was to allow regulated industries to rely on analytical test methods and procedures they were already using to comply with other environmental laws. OEHHA determined that, rather than revising Section 12901, it should repeal Section 12901 in its entirety and promulgate a new regulation. OEHHA intends Section 12900 to address “core needs for clarity and certainty concerning testing methodologies already in use by California businesses.” More information, including the text of the regulation and the Final Statement of Reasons, is available on the Internet at <http://www.oehha.ca.gov/prop65/law/12900adopt.html>.

Arbuckle Set To Leave OMB -- On May 9, 2006, OMB announced that Acting Administrator of OIRA, Don Arbuckle, would leave on June 2, 2006, to teach at the University of Texas in Dallas. John Morall will become the Acting Deputy Administrator of OIRA. Morall is currently the OIRA Branch Chief for Health, Transportation, and General Government.

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