



CHEMICAL ADVISORY

January 5, 2010

The California Citrus Quality Council (CCQC) is sending you this message to provide an update on the registration of **spirotetramat (Movento™)**. On Dec. 23 a New York judge ordered the U.S. Environmental Protection Agency (EPA) to "vacate" the registration of spirotetramat effective Jan. 15, 2010. The decision was the result of a procedural error by the U.S. Environmental Protection Agency (EPA) in providing public notice and comment on the registration. This is normally a routine, bureaucratic procedure so no one knows why the public notice was not properly communicated.

Nevertheless, the oversight in public notice provided an opportunity for interest groups to challenge the spirotetramat registration under the premise that the public was denied an opportunity to comment on the alleged harmful impact of the chemical on bees. The court agreed.

Additional information regarding the decision is attached in the article below. EPA is now considering a range of possible options to respond to the order. Additionally, Bayer CropScience is considering options to appeal the decision. Little is known at this time as to how this will play out or whether this will be a temporary or longer term problem.

Since registration decisions are separate and apart from tolerance decisions, the court order is unlikely to impact the spirotetramat tolerance. This means that fruit already treated with spirotetramat is safe and legal.

CCQC is coordinating with Citrus Mutual, the Citrus Research Board, Bayer CropScience and the United Fresh Produce Association to develop a crisis communication plan to ensure there are no domestic or international market place disruptions as a result of the registration reversal. We are also in contact with EPA. We will provide additional updates when more is known about EPA's plans to move forward.

Please contact me by telephone at (530) 885-1894 or via e-mail at icranney@calcitrusquality.org if you have comments or questions.

Court Reverses EPA Registration of Pesticide Considered Possible Threat to Honeybees

A federal district court on Dec. 23 overturned the conditional registration of a Bayer CropScience insecticide that environmental groups said could harm honeybees (Natural Resources Defense Council v.

EPA, S.D.N.Y., No. 09cv4317, 12/23/09).

The U.S. District Court for the Southern District of New York ordered the registration vacated effective Jan. 15, 2010, and remanded the issue to the agency for "further



proceedings" in accord with Federal Insecticide, Fungicide, and Rodenticide Act and the Administrative Procedure Act.

The decision upheld claims in a lawsuit filed May 4 by the Natural Resources Defense Council and the Xerces Society that the agency did not publish Federal Register notices or provide for public comment before conditionally approving the pesticide in 2008.

EPA Action Called Deficient

"The EPA's failure to provide notice, invite comment, and publish its registration in this case constitutes a serious deficiency," Judge Denise Cote said in her order. EPA "utterly failed to comply ... and has offered no explanation whatsoever for these shortcomings," Cote said.

"EPA is reviewing the court's decision," the agency told BNA in a Dec.

29 e-mail.

Bayer CropScience said that it has already invested \$90 million on the testing and registration of spirotetramat and stands to lose tens of millions of dollars in sales if the EPA's registration decisions are vacated, according to court documents.

Reconsidering Risk to Bees

"This sends EPA and Bayer back to the drawing board to reconsider the potential harm to bees caused by this new pesticide," Aaron Colangelo, NRDC senior attorney, said in a statement Dec. 29.

Federal agencies and other organizations have been investigating what is called "colony collapse disorder," a syndrome that involves the significant disappearance of honeybee colonies that experts say is threatening agriculture nationwide and may partially be caused by pesticides (136 DEN A-6, 7/17/07
<[http://news.bna.com/delIn/display/link_res.adp?fedfid=15868799&fname=a0b](http://news.bna.com/delIn/display/link_res.adp?fedfid=15868799&fname=a0b4x0w7g2&vname=denotallissues)

[4x0w7g2&vname=denotallissues](http://news.bna.com/delIn/display/link_res.adp?fedfid=15868799&fname=a0b4x0w7g2&vname=denotallissues)>).

"EPA admitted to approving the pesticide illegally, but argued that its violations of the law should have no consequences," Colangelo said. He added that "Bayer should not be permitted to run what amounts to an uncontrolled experiment on bees across the country without full consideration of the consequences."

Notice Issued After the Fact

Although a fact sheet issued by the agency in 2008 explained that spirotetramat had been conditionally registered and summarized the rationale behind that decision, EPA conceded that "it did not publish a notice of registration in the Federal Register for any of these decisions until August 6, 2009, three months after the plaintiffs filed this lawsuit," the court order said.



The agency argued that the plaintiffs were not deprived of their ability to participate in the agency's decisionmaking process because the EPA solicited comments in response to the August 2009 notice and that the NRDC has submitted a comment, the order said.

"This argument is unpersuasive," the court said. Giving notice and inviting comments before an agency takes action ensures that affected parties have an opportunity to participate in and influence agency decision-making at an early stage, when the agency is more likely to give real consideration to alternative ideas, the order said.

EPA Concerns About Bees

The court order referred to concerns EPA expressed in a June 2008 Pesticide Fact Sheet about the possible effect on bees of spirotetramat, which was developed to control pests on fruits, nuts, vegetables, and in nurseries and greenhouses.

"Although spirotetramat can be classified as practically non-toxic to honey bees based on acute oral and contact studies, results of brood feeding studies and tunnel tests suggest the potential for effects to broods following spirotetramat applications at rates lower than the maximum proposed label rates," the fact sheet said. The fact sheet also said "significant brood effects including increased mortality in adults and pupae, massive perturbation of brood development, early brood termination, and decreased larval abundance were detected."

In the document, EPA recommended a study developed in collaboration with the Environmental Fate and Effects Division's chemical teams as well as with the USDA Agricultural Research Service Bee Research Lab for spirotetramat, spiromesifen, and spiroadiclofen.

By Bill Pritchard

The U.S. District Court for the Southern District of New York order in Natural Resources Defense Council v. EPA is available at http://docs.nrdc.org/wildlife/files/wil_09122901a.pdf.