

JUN 18 1987
11:21 o'clock P.M.
MARCH FONG EU, Secretary of State
By *[Signature]*
Deputy Secretary of State

CALIFORNIA OFFICE OF ADMINISTRATIVE LAW
SACRAMENTO, CALIFORNIA

| | | |
|--------------------------------------|---|--------------------------------|
| In re: |) | 1987 OAL Determination No. 8 |
| Request for Regulatory |) | |
| Determination filed by |) | [Docket No. 86-014] |
| the Swimming Pool |) | |
| Chemical Manufacturers |) | June 18, 1987 |
| Association, concerning |) | |
| "California Notice 86-9" |) | Determination Pursuant to |
| issued by the Department |) | Government Code Section |
| of Food and Agriculture ¹ |) | 11347.5; Title 1, |
| |) | California Administrative Code |
| |) | Chapter 1, Article 2 |

Determination by:

[Signature]
 LINDA HURBLE STOCKDALE BREWER, Director
 John D. Smith, Chief Deputy Director/
 General Counsel

Herbert F. Bolz, Coordinating Attorney
 Scott J. Hallabrin, Sr. Staff Counsel
 Rulemaking and Regulatory
 Determinations Unit

SYNOPSIS

The issue presented to the Office of Administrative law was whether the statutory requirement that the Department of Food and Agriculture identify and obtain from pesticide product registrants certain health effects studies has been unlawfully supplemented by the Department.

The Office of Administrative Law has concluded that the Department has imposed requirements in the identification and acquisition of health effects studies which supplement the statute and therefore are invalid and unenforceable until properly adopted as regulations.

June 18, 1987

THE ISSUE PRESENTED 2

The Swimming Pool Chemical Manufacturers Association (Association) has requested the Office of Administrative Law (OAL) to determine whether or not the document titled "Notice to Pesticide Registrants Pertaining to the Birth Defect Prevention Act of 1984 (SB 950), California Notice 86-9" (Notice) issued by the California Department of Food and Agriculture (DFA or Department) is a "regulation" as defined in Government Code section 11342, subdivision (b) and is therefore invalid and unenforceable unless adopted as a regulation and filed with the Secretary of State in accordance with the California Administrative Procedure Act (APA).³

June 18, 1987

THE DECISION 4, 5, 6, 7

- I. The Office of Administrative Law finds that California Notice 86-9 (1) is not a "regulation" as defined in the APA and (2) is not subject to the requirements of the APA insofar as it identifies data gaps that remain unfilled in accordance with Food and Agricultural Code section 13127, subdivision (c), requires return of the Data Gap Response Sheet within 90 days and implies that pesticide registrations would be suspended or revoked for failure to respond to the Notice.

- II. The Office of Administrative Law finds that the following provisions of California Notice 86-9 (1) are subject to the requirements of the APA, (2) are "regulations" as defined in the APA but, (3) between the date of issuance of the Notice and the date of this Determination, were adopted as regulations by DFA and filed with the Secretary of State in accordance with the APA:
 - (a) requiring pesticide registrants who are required to submit data to DFA pursuant to the Birth Defect Prevention Act⁸ to select and submit data according to one of the following options:
 - (1) to generate and submit the required data to DFA;
 - (2) to agree to jointly generate and submit the required data with another party and to provide a copy of the agreement to DFA;
 - (3) to claim that the data requirements are not applicable to the use patterns of the registrant's pesticide products and to provide supporting information to DFA;
 - (4) to submit the data to DFA;
 - (5) to offer to compensate other registrants or suppliers of the data for sharing of the responsibility of generating the data and to provide copies of the offers to DFA;
 - (6) to enter into an agreement to compensate the developer of the required data and to provide a copy of the agreement to DFA;
 - (7) to indicate that another pesticide registrant will submit the required data on behalf of the responding registrant.

June 18, 1987

- (b) establishment of a reconsideration process with timetables and requirements for supporting documentation.
- (c) for each active ingredient on the Unit I list, establishment of study categories that have either no data or incomplete data.

III. The Office of Administrative Law finds that the following provisions of California Notice 86-9 (1) are subject to the requirements of the APA (2) are "regulations" as defined in the APA and are therefore invalid and unenforceable unless adopted as regulations and filed with the Secretary of State in accordance with the APA:

- (a) categorizing certain pesticide active ingredients into Unit I;⁹
- (b) grouping of certain chemicals and designation of "lead chemicals" for these groups; and¹⁰
- (c) instructing pesticide registrants who are required to submit data to DFA pursuant to the Birth Defect Prevention Act to do the following when notifying DFA of the options they have selected in response to the Notice:
 - (1) when selecting the option to generate and submit the required data, to also submit a progress report on each test every January 1 and July 1 until the data is submitted and to state the protocols by which the data will be generated;
 - (2) when selecting the option to agree and jointly generate and submit the required data with another party, to also provide progress reports to the DFA;
 - (3) when selecting the option to claim that the data requirements are not applicable to the use patterns of the registrant's pesticide products and the claim is under EPA Data Requirements for Pesticide Registration Final Rule, to also provide to DFA six current labels, the registrant's EPA-stamped label, the registrant's letter of acceptance from the EPA and the Confidential Statement of Formula.

June 18, 1987

I. AGENCY, AUTHORITY, APPLICABILITY OF APA; BACKGROUND

Agency

The California Department of Food and Agriculture's history may be traced back to the creation in 1880 of the State Board of Viticultural Commissioners. Today, the Department is responsible for administering a wide variety of programs related to agriculture, including pesticide registration.

Authority¹¹

Food and Agricultural Code section 407 expressly grants the general power to adopt regulations to the Director of Food and Agriculture:

"The director may adopt such regulations as are reasonably necessary to carry out the provisions of this code which he is directed or authorized to administer or enforce."

Express rulemaking authority is also granted by Food and Agricultural Code section 12781 (Director may adopt regulations reasonably necessary to carry out statutory chapter concerning economic poisons).

We therefore conclude that DFA has pertinent rulemaking authority.

Applicability of APA to Agency's Quasi-Legislative Enactments

The APA applies to all state agencies, except those "in the judicial or legislative departments."¹² Since DFA is in neither the judicial nor legislative branch of state government, we conclude that APA rulemaking requirements generally apply to DFA.

In any event, Food and Agricultural Code section 14 makes clear that DFA rulemaking is subject to the APA:

"Whenever, pursuant to this code, any state department, officer, board, agency, committee or commission is authorized to adopt rules and regulations, such regulations shall be adopted in accordance with [the APA], to the extent that [the APA] is not specifically in conflict with the express terms of this code which authorize the adoption of such regulations. . . ."

June 18, 1987

"The authority to adopt any rule, regulation, or rule and regulation which is vested in any state department officer, board, agency, committee, or commission pursuant to this code includes the authority to amend or repeal the rule, regulation, or rule and regulation." [Emphasis added.]

Background

The requestor, the Swimming Pool Chemical Manufacturers Association, is a not-for-profit mutual benefit corporation, many of whose members have chemical products registered as pesticides with the DFA.¹³ In its Request, the Association states that California Notice 86-9 (excerpts attached as Appendix A) is regulatory in nature.

On March 14, 1986, the Association filed with OAL a Request for Determination similar to the present request. That Request for Determination pertained to a DFA document dated January 31, 1986, and titled "Notice to Pesticide Registrants pertaining to the Birth Defect Prevention Act of 1984, California Notice 86-1."

As is suggested by its title, California Notice 86-1 was issued pursuant to the Birth Defect Prevention Act of 1984 ("the Act").¹⁴ The stated purpose of the Act is to "prevent pesticide induced abortions, birth defects and infertility."¹⁵ Toward this purpose, the Act required, among other things, that DFA compile by July 1, 1985, a list of mandatory health effects studies that it had on file for each pesticide active ingredient¹⁶ in pesticides registered in California.¹⁷ By December 31, 1985, DFA was required, among other things, to provide to the Legislature its assessment as to whether each of these studies was valid, complete and accurate and to further provide a list of data gaps for each pesticide active ingredient in pesticides registered in California.¹⁸

DFA was also required by December 31, 1985, to identify the 200 pesticide active ingredients with (1) the most significant data gaps, (2) the most widespread use and (3) that presented the most hazards to humans. Within 30 days thereafter, DFA was required to notify each registrant of a pesticide product containing any of the 200 identified pesticide active ingredients of the data gap that was required to be filled.¹⁹ California Notice 86-1 was issued by DFA on January 31, 1986, in an effort to satisfy this requirement. The 200 active ingredients deemed most hazardous were placed in a category termed "Unit I".

OAL issued a determination²⁰ (hereafter, the October 1986 determination) in response to the Association's March 1986 Request for Determination concerning California Notice 86-1.

June 18, 1987

In that Determination, OAL found that several provisions of California Notice 86-1 were subject to the requirements of the APA and were "regulations" as defined by the APA. These provisions were, therefore, found invalid and unenforceable unless adopted as regulations and filed with the Secretary of State in accordance with the APA. Specifically, OAL's October 1986 determination found California Notice 86-1 to contain the following regulatory provisions:

- (a) that registrations of those not responding properly will be subject to "cancellation";
- (b) all response timetables;
- (c) specifically how data shall be developed;
- (d) details of how to share responsibility for developing data;
- (e) details of how to file claims that data requirements are not applicable;
- (f) details of how to request registration amendments or voluntary cancellations;
- (g) categorization of pesticide active ingredients into units I, II, III, and IV;
- (i) requiring that certain forms be submitted and that they ~~be completed per specific instructions.~~

California Notice 86-9, the subject of the present request, apparently was DFA's attempt, as required by the Act, to follow-up on California Notice 86-1. Food and Agricultural Code section 13127, subdivision (c)(1) required DFA to determine by September 1, 1986, whether a test had been initiated to fill the data gaps for each of the 200 pesticide active ingredients identified by DFA as of December 31, 1985, and made available to registrants 30 days thereafter. If no test was initiated by September 1, 1986, DFA is empowered to

"fill data gaps in accordance with procedures provided in subparagraph (B) of paragraph (2) of subdivision (c) of Section 136a of Title 7 of the United States Code. In order to carry out this section, the director [of DFA] has the same authority to require information from registrants of active pesticide ingredients that the administrator of the Environmental Protection Agency has pursuant to subparagraph (B) of paragraph (2) of subdivision (c) of Section 136a of Title 7 of the United States Code."²¹

June 18, 1987

California Notice 86-9 was issued by DFA on September 1, 1986, and did the following:

- (1) pursuant to the statutory deadline set forth in Food and Agricultural Code section 13127, subdivision (c), notified pesticide registrants that DFA's mandatory health effects data base for what is described as the Unit I category of pesticide active ingredients was incomplete;
- (2) included the 200-item Unit I list of pesticide active ingredients;
- (3) identified the study categories for each Unit I active ingredient that have either no data or incomplete data;
- (4) grouped certain chemicals in the Unit I list and designated "lead chemicals" for each group;
- (5) included a multi-part Data Gap Response Sheet (see Appendix A) and instructions for its completion and required pesticide registrants to complete and return the sheet to DFA within 90 days from the date of the Notice;
- (6) included a list of studies submitted to the DFA in response to California Notice No. 86-1, indicated that DFA had not reviewed these studies and indicated that pesticide registrants could, by proper completion of the Data Gap Response Sheet, claim one or more of these studies as fulfilling the applicable data requirement;
- (7) established procedures whereby pesticide registrants could petition DFA for reconsideration of the acceptability of any study; and
- (8) indicated that the continued registration of a registrant's pesticide depended upon a proper response to the Notice.

The Association filed this Request for Determination concerning California Notice 86-9 with OAL on November 14, 1986. DFA responded to the Request for Determination on May 18, 1987. DFA's Response incorporated by reference its Response to the Request for Determination concerning California Notice 86-1. The Response also stated (1) that DFA had recently formally submitted to OAL a proposal that two new provisions be added to the CAC, sections 6194 and 6195 of Title 3 and (2) that the issues raised in this latter Request for Determination were "integrally related" to this regulatory filing. OAL approved DFA's adoption of sections 6194 and 6195 of Title 3 of the CAC; these sections

June 18, 1987

were filed with the Secretary of State and made effective June 1, 1987.²² (Sections 6194 and 6195 are attached as Appendix B.)

III. DISCUSSION OF DISPOSITIVE ISSUES

There are two main issues before us:²³

- (1) WHETHER THE CHALLENGED RULE IS A "REGULATION" WITHIN THE MEANING OF THE KEY PROVISION OF GOVERNMENT CODE SECTION 11342.
- (2) WHETHER THE CHALLENGED RULE FALLS WITHIN ANY ESTABLISHED EXCEPTION TO APA REQUIREMENTS.

FIRST, WE INQUIRE WHETHER THE CHALLENGED RULE IS A "REGULATION" WITHIN THE MEANING OF THE KEY PROVISION OF GOVERNMENT CODE SECTION 11342.

In pertinent part, Government Code section 11342, subdivision (b) defines "regulation" as:

". . . every rule, regulation, order or standard of general application or the amendment, supplement or revision of any such rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure" [Emphasis added.]

Government Code section 11347.5, authorizing OAL to determine whether or not agency rules are "regulations," provides in part:

"No state agency shall issue, utilize, enforce or attempt to enforce any guideline, criterion, bulletin, manual, instruction [or] . . . standard of general application . . . which is a regulation as defined in subdivision (b) of section 11342, unless the guideline, criterion, bulletin, manual, instruction [or] . . . standard of application . . . has been adopted as a regulation and filed with the Secretary of State pursuant to this chapter" [Emphasis added.]

Applying the definition of "regulation" found in Government Code section 11342, subdivision (b) involves a two-part inquiry.

June 18, 1987

First, is the informal rule either

- o a rule or standard of general application or
- o a modification or supplement to such a rule?

Second, does the informal rule either

- o implement, interpret, or make specific the law enforced or administered by the Department or
- o govern the agency's procedure?

As set forth in Part I above, California Notice 86-9 contained seven general provisions or requirements. We will discuss each of these provisions or requirements as they relate to the two main issues stated above.²⁴

IV. CONTENTS OF CALIFORNIA NOTICE 86-9

A. Notification to pesticide registrants that DFA's mandatory health effects data base for Unit I pesticide active ingredients is incomplete.

Food and Agricultural Code section 13127, subdivision (c) required DFA to determine by September 1, 1986, whether a test had been initiated to fill the data gaps for each of the 200 pesticide active ingredients identified by December 31, 1985. If no test was initiated by the registrant by September 1, 1986, then DFA was required to

"fill data gaps in accordance with procedures provided in subparagraph (B) of paragraph (2) of subdivision (c) of section 136a of Title 7 of the United States Code. In order to carry out this section, the director [of DFA] has the same authority to require information from registrants of active pesticide ingredients that the administrator of the Environmental Protection Agency has pursuant to subparagraph (B) of paragraph (2) of subdivision (c) of section 136a of Title 7 of the United States Code."

Title 7 United States Code, section 136a, subdivision (c)(2)(B)(i) requires the Administrator of the Environmental Protection Agency, if he or she determines that additional pesticide data is required, "to notify all existing registrants of the pesticide to which the determination relates...." [Emphasis added.]²⁵

Clearly, DFA is empowered under the provisions of section 13127, subdivision (c) to take action to fill data gaps by notifying registrants of where gaps exist.

June 18, 1987

No further implementation, interpretation or specificity is required to enable DFA to undertake such a notification. We conclude, therefore, that this provision of California Notice 86-9 is not a regulation.

B. Establishment of the 200-item Unit I list of pesticide active ingredients

The Unit I list of pesticide active ingredients was established by DFA in response to Food and Agricultural Code section 13127, subdivision (a). That section required DFA to "identify 200 pesticide active ingredients which ...[it]...determines have the most significant data gaps, widespread use, and which are suspected to be hazardous to people...." California Notice 86-1 contained the Unit I list. Notice 86-9 contains the Unit I list and identifies the incomplete study categories²⁶ for each pesticide active ingredient on the list.

The October 1986 determination found that DFA's establishment of the Unit I category as set forth in California Notice 86-1 was a "regulation" as defined in the APA.²⁷

No significant facts arising in the context of Notice 86-9 that would require reversal of our previous conclusion have been brought to our attention; there is thus no basis for modifying our earlier finding.

Therefore, we again conclude that the establishment of and reference to the Unit I list of pesticide active ingredients in relation to California Notice 86-9 is a "regulation" as defined in the APA.²⁸

C. Identification of study categories for each Unit I active ingredient that has either no data or incomplete supporting data.

Food and Agricultural Code section 13125, subdivision (c) establishes the study categories for which the required data must be obtained.²⁹ Food and Agricultural Code section 13127, subdivision (a) requires DFA to notify pesticide product registrants of the study categories that have insufficient data. As was discussed in Part IV.A., above, DFA's mere notification about these deficiencies is not regulatory within the terms of the APA.

However, like the establishment of the Unit I list, the establishment of study categories for each pesticide active ingredient on the list that had no data or incomplete data is a "regulation" as defined in the APA. The establishment of these categories is a standard

June 18, 1987

applying generally to all registrants of products containing the pesticide active ingredients for which study categories are established. Also, establishing study categories deemed to have insufficient data required interpretation by DFA of the applicable provisions of the Food and Agricultural Code. Food and Agricultural Code section 13225, subdivision (c) identifies the study categories for which the DFA must obtain data,³⁰ and Food and Agricultural section 13125, subdivision (a) only sets forth general requirements that the studies in each category be "valid, complete, and adequate."

Nowhere does the Act set out with specificity the criteria to be applied by DFA in determining whether the data received in a particular study category is sufficient. It follows then that DFA had to establish criteria based upon its expertise (i.e., had to interpret the statute) in order to make these determinations. The establishment of the study categories containing insufficient data is therefore a "regulation" as defined in the APA.³¹

- D. Grouping of certain chemicals in the Unit I list of pesticide active ingredients and designation of "lead chemicals" for each group.

As part of its establishment of the Unit I list of pesticide active ingredients, DFA grouped together on the list certain chemicals and designated "lead chemicals" for each group. The October 1986 determination concluded that this practice, as undertaken in relation to California Notice 86-1, was a "regulation" as defined in the APA.³² As with the establishment of the Unit I list, OAL finds no facts arising in the context of Notice 86-9 that would alter its previous view. Therefore, we again conclude that grouping of chemicals and designation of group "lead chemicals" on the Unit I list in relation to California Notice 86-9 is a "regulation" as defined in the APA.

- E. Inclusion of a Data Gap Response Sheet and instructions for its completion, and requiring pesticide registrants to complete and return the Sheet to DFA within 90 days from the date of issuance of the Notice.

Notice 86-9 includes a pre-printed form known as the Data Gap Response Sheet. This form contains 11 options from which a pesticide registrant can choose in responding to DFA's identification of data gaps for each of the registrant's pesticide products. The form also requires that the registrant complete and return the Sheet to DFA within 90 days from the date of issuance of the Notice. Other portions of the Notice, separate from

June 18, 1987

the Sheet, as well as parts of the Sheet itself, contain various instructions for completion of the Sheet. The Data Gap Response Sheet that is part of California Notice 86-9 is virtually identical to the Data Gap Response Sheet issued by DFA as part of California Notice 86-1, except that Notice 86-9 contains the requirements that the Sheet be returned in 90 days and also adds four new options numbered 8 through 11. Instructions for completion of the Sheet that appear in other parts of Notice 86-9 differ from instructions set forth in Notice 86-1.

In the October 1986 determination³³ OAL concluded that Notice 86-1, in requiring completion of the Data Gap Response Sheet and stating instructions for its completion, was a "regulation" as defined in the APA. To the extent that California Notice 86-9 requires completion of a second Data Gap Response Sheet and gives instructions for its completion, it likewise is a "regulation" as defined in the APA. However, we conclude that the requirement that registrants supply data (as opposed to completing the form) within 90 days from the date of issuance of the Notice is not a "regulation" as defined in the APA. The 90-day response requirement is stated in 7 United States Code, section 136a, subdivision (c)(2)(B)(ii)³⁴, and this provision is incorporated into Food and Agricultural Code section 13127, subdivision (c), as quoted above. No further implementation, interpretation or specificity is required to enable DFA to impose such a requirement.

- F. Inclusion of a list of studies submitted to DFA in response to California Notice 86-1, indication that DFA had not reviewed the studies and indication that pesticide registrants could claim one or more of these studies as fulfilling the applicable data requirement.

To the extent that these provisions give instructions for completion of the Data Gap Response Sheet, they are "regulations" as discussed in Part IV.E., above. However, the mere inclusion in the Notice of a list of studies and an indication that DFA has not yet reviewed them does not state a rule of general application or implement, interpret or make specific any law enforced by DFA.

- G. Establishment of procedures whereby pesticide registrants could petition DFA for reconsideration of the acceptability of any study.

Notice 86-9 states that registrants who disagree with DFA's determinations concerning whether or not it will accept studies submitted to fill data gaps can petition DFA for reconsideration. The petition, however, must be

June 18, 1987

made within 90 days after the date of the Notice and "should show in detail why you believe the study was improperly evaluated and provide reasons for a different evaluation." If no petition is received by DFA, the Notice states that DFA's decision is final.

In applying the first of the two-part inquiry above, it is clear that these reconsideration provisions are a standard of general application: they apply to all registrants who disagree with DFA's acceptance or non-acceptance of studies submitted in an attempt to fill data gaps. Second, these provisions govern DFA's procedure in making final its decisions on the acceptance or non-acceptance of these studies. By imposition of this procedure, none of DFA's decisions regarding these studies can become final until after expiration of the 90 day period for filing a petition for reconsideration of the decision. We conclude, therefore, that this provision is a "regulation" as defined in the APA.

H. Indication that continued registration of a registrant's pesticide depended upon a proper response to the Notice.

Notice 86-9 states: "Continued registration of your pesticide products depend [sic] upon an accurate response to this letter." It also states that failure to complete the required studies on a pesticide active ingredient "could affect the registration of all products containing that active ingredient."

Title 7 United States Code, section 136a, subdivision (c)(2)(B)(iv),³⁵ as incorporated into Food and Agricultural Code section 13127, subdivision (c) (see above), permits DFA to take action to suspend and eventually revoke the registration of a pesticide for failure of the registrant to supply required data. We conclude, therefore, that this provision is not a regulation as defined in the APA because it requires no further implementation, interpretation or specificity in order for DFA to enforce its provisions.

SECOND, WE INQUIRE WHETHER CALIFORNIA NOTICE 86-9 FALLS WITHIN ANY LEGALLY ESTABLISHED EXCEPTION TO APA REQUIREMENTS.

Rules concerning certain activities of state agencies--for instance, "internal management"--are not subject to the procedural requirements of the APA.³⁶

California Notice 86-9 shares a common statutory authority with and was issued in a manner similar to California Notice

June 18, 1987

86-1. Therefore, all issues concerning whether Notice 86-9 falls within any exception to the APA requirements would require the same conclusions applied to Notice 86-1 in the October 1986 determination.³⁷ DFA raised no new issues in this regard in its Response to this Request for Determination.

In the October 1986 determination, OAL concluded that California Notice 86-1 fell within no legally established exceptions to the APA requirements.³⁸

Based thereon, we conclude that none of the recognized exceptions (set out in note 36) apply to California Notice 86-9.

V. EFFECT OF ADOPTION OF SECTIONS 6194 AND 6195 OF TITLE 3 OF CALIFORNIA ADMINISTRATIVE CODE

On June 1, 1987, OAL approved and filed with the Secretary of State newly adopted sections 6194 and 6195 of Title 3 of the CAC (see Appendix B). These sections were adopted by DFA pursuant to the APA. Section 6194 placed in regulation many of the provisions of California Notice 86-9 that pertained to the completion of and supply of information on the Data Gap Response Sheet as discussed in Part IV.E., above. Section 6194 now requires registrants, when supplying required data to DFA, to follow its provisions and not to complete a set form or follow the requirements of the Data Gap Response Sheet. Section 6195, subdivision (a) sets forth the criteria that DFA will consider when determining whether studies submitted to fill an identified data gap are valid, complete and adequate³⁹, as discussed in Part IV.C., above. Section 6195, subdivision (b) places into regulation the reconsideration process discussed in Part IV.G., above. These newly adopted sections did not include all parts of California Notice 86-9 discussed in Part IV above that were determined to be "regulations".⁴⁰

The effect of the adoption of sections 6194 and 6195 is as follows: (1) All those provisions of California Notice 86-9 determined by OAL to be "regulations" were invalid and unenforceable until June 1, 1987; (2) Those provisions of California Notice 86-9 determined to be "regulations" by OAL and not included in sections 6194 and 6195 of Title 3 of the CAC continued to be invalid and unenforceable on and after June 1, 1987; (3) Those provisions of California Notice 86-9 determined herein to be "regulations", but that were included in sections 6194 and 6195 of Title 3 of the CAC were rendered valid and enforceable on June 1, 1987.⁴¹

June 18, 1987

VI. CONCLUSION

For the reasons set forth above, OAL concludes:

1. that California Notice 86-9 (1) is not a "regulation" as defined in the APA and (2) is not subject to the requirements of the APA insofar as it identifies data gaps that remain unfilled in accordance with Food and Agricultural Code section 13127, subdivision (c), requires return of the Data Gap Response Sheet within 90 days and implies that pesticide registrations will be suspended or revoked for failure to respond to the Notice.

2. that the following provisions of California Notice 86-9 (1) are subject to the requirements of the APA, (2) are "regulations" as defined in the APA but, between the date of issuance of the above Notice and the date of this Determination, were adopted as regulations by DFA and filed with the Secretary of State in accordance with the APA:
 - (a) requiring pesticide registrants who must submit data to DFA pursuant to the Birth Defect Prevention Act to select and submit data according to one of the following options:
 - (1) to generate and submit the required data to DFA;

 - (2) to agree to jointly generate and submit the required data with another party and to provide a copy of the agreement to DFA;
 - (3) to claim that the data requirements are not applicable to the use patterns of the registrant's pesticide products and to provide supporting information to DFA;
 - (4) to submit the data to DFA;
 - (5) to offer to compensate other registrants or suppliers of the data for sharing of the responsibility of generating the data and to provide copies of the offers to DFA;
 - (6) to enter into an agreement to compensate the developer of the required data and to provide a copy of the agreement to DFA;
 - (7) to indicate that another pesticide registrant will submit the required data on behalf of the responding registrant.

June 18, 1987

(b) establishment of a reconsideration process with timetables and requirements for supporting documentation.

(c) establishment of study categories for each active ingredient on the Unit I list that have either no data or incomplete data.

3. that the following provisions of California Notice 86-9 (1) are subject to the requirements of the APA (2) are "regulations" as defined in the APA and are therefore invalid and unenforceable unless adopted as regulations and filed with the Secretary of State in accordance with the APA. These regulatory provisions include the following:

(a) categorization of pesticide active ingredients into Unit I;⁴²

(b) grouping of certain chemicals and designation of "lead chemicals" for these groups;⁴³ and

(c) instructing pesticide registrants who are required to submit data to DFA pursuant to the Birth Defect Prevention Act to do the following when notifying DFA of the options they have selected in response to the Notice:

(1) when selecting the option to generate and submit the required data, to also submit a progress report on each test every January 1 and July 1 until the data are submitted and to state the protocols by which the data will be generated;

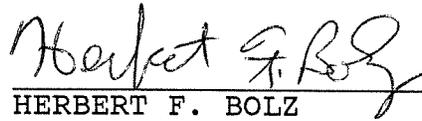
(2) when selecting the option to agree and jointly generate and submit the required data with another party, to also provide to DFA progress reports;

(3) when selecting the option to claim that the data requirements are not applicable to the use patterns of the registrant's pesticide products and the claim is under EPA Data Requirements for Pesticide Registration Final Rule, to also provide to DFA six current labels, the registrant's EPA-stamped label, the registrant's letter of acceptance from the EPA and the Confidential Statement of Formula.

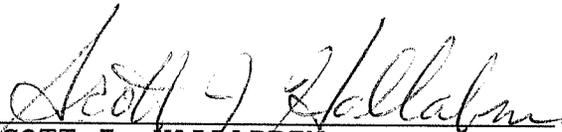
June 18, 1987

In short, the Office of Administrative Law has concluded that the Department has imposed requirements in the identification and acquisition of health effects studies which supplement the statute and therefore are invalid and unenforceable until properly adopted as regulations.

DATE: June 17, 1987



HERBERT F. BOLZ
Coordinating Attorney



SCOTT J. HALLABRIN
Senior Staff Counsel

Rulemaking and Regulatory
Determinations Unit

HFB:sjh:twm\87.8a

June 18, 1987

- 1 In this proceeding, the Swimming Pool Chemical Manufacturers Association (Association) was represented by Michael Goldstein, President of the Association; D. J. Wilson, Secretary of the Association; William Landman and Clifford Kipers. The Department was represented by Rex Magee, Associate Director.

- 2 The legal background of the regulatory determination process --including a survey of governing case law--is discussed at length in note 2 to 1986 OAL Determination No. 1 (Board of Chiropractic Examiners, April 9, 1986, Docket No. 85-011), California Administrative Notice Register 86, No. 16-Z, April 18, 1986, pp. B-14--B-16; typewritten version, notes pp. 1-4. See also Wheeler v. State Board of Forestry (1983) 144 Cal.App.3d 522, 192 Cal.Rptr. 693 (overturning Board's decision to revoke license for "gross incompetence in . . . practice" due to lack of regulation articulating standard by which to measure licensee's competence); City of Santa Barbara v. California Coastal Zone Conservation Commission (1977) 75 Cal.App.3d 572, 580, 142 Cal.Rptr. 356, 361 (rejecting Commission's attempt to enforce as law a rule specifying where permit appeals must be filed--a rule appearing solely on a form not made part of the CAC). For an additional example of a case holding a "rule" invalid because (in part) it was not adopted pursuant to the APA, see National Elevator Services, Inc. v. Department of Industrial Relations (1982) 136 Cal.App.3d 131, 186 Cal.Rptr. 165 (internal legal memorandum informally adopting narrow interpretation of statute enforced by DIR). Also, in Association for Retarded Citizens--California v. Department of Developmental Services (1985) 38 Cal.3d 384, 396 n.5, 211 Cal.Rptr. 758, 764 n.5, the court avoided the issue of whether a DDS directive was an underground regulation, deciding instead that the directive presented "authority" and "consistency" problems.

- 3 We refer to the portion of the APA which concerns rulemaking by state agencies: Chapter 3.5 of Part 1 ("Office of Administrative Law") of Division 3 of Title 2 of the California Administrative Code (sections 11340 through 11356).

- 4 As we have indicated elsewhere, an OAL determination concerning a challenged "informal rule" is entitled to great weight in both judicial and adjudicatory administrative proceedings. See 1986 OAL Determination No. 3 (Board of Equalization, May 28, 1986, Docket No. 85-004), California Administrative Notice Register 86, No. 24-Z, June 13, 1986, p. B-22; typewritten version, pp. 7-8; Culligan Water Conditioning of Bellflower, Inc. v. State Board of

June 18, 1987

Equalization (1976) 17 Cal.3d 86, 94, 130 Cal.Rptr. 321, 324-325. The Legislature's special concern that OAL determinations be given appropriate weight in other proceedings is evidenced by the directive contained in Government Code section 11347.5: "The office's determination shall be published in the California Administrative Notice Register and be made available to . . . the courts." (Emphasis added.)

- 5 Two untimely comments were received, from Gary Van Delden of APS Industries, Inc. and W.B. Edwards, Luseaux Laboratories, Inc., and thus were not considered by OAL.
 - 6 An OAL finding that a challenged rule is illegal unless adopted "as a regulation" does not of course exclude the possibility that the rule could be validated by subsequent incorporation in a statute.
 - 7 Pursuant to Title 1, CAC, section 127, this Determination shall become effective on the 30th day after filing with the Secretary of State.
 - 8 Food and Agricultural Code sections 13121 through 13130.
-
- 9 On June 12, 1987, DFA submitted to OAL the emergency adoption of section 6198.5 of Title 3 of the California Administrative Code, (attached as Appendix C). With the exception of strychnine sulfate and fenaminosulf, subdivision (a) of section 6198.5 set forth each of the pesticide active ingredients contained in the Unit I list described in California Notice 86-9. Subdivision (b) set forth the chemical groups and designation of "lead chemicals" also contained in this Notice. OAL approved this adoption on June 16, 1987, and it was filed with the Secretary of State on that date. Pursuant to Government Code section 11346.1, subdivision (d), emergency regulations become effective immediately upon filing with the Secretary of State or upon any later date designated by the agency. DFA did not specify any later effective date. This adoption therefore became effective on June 16, 1987. Government Code section 11346.1,, subdivision (e) states that no regulation adopted as an emergency regulation shall remain in effect for more than 120 days unless the adopting agency completes the adoption process pursuant to the APA. (Due to the June 12, 1987, filing date of section 6198.5 and the time constraints for issuance of this Determination, OAL was unable to include a full discussion of this issue in the body of this

June 18, 1987

Determination.)

10 See note 9, supra.

11 We discuss the affected agency's rulemaking authority (see Gov. Code, sec. 11349(b)) in the context of reviewing a Request for Determination for the purposes of exploring the context of the dispute and of attempting to ascertain whether or not the agency's rulemaking statute expressly requires APA compliance. If the affected agency should later elect to submit for OAL review a regulation proposed for inclusion in the California Administrative Code, OAL will, pursuant to Government Code section 11349.1(a), review the proposed regulation in light of the APA's procedural and substantive requirements.

The APA requires all proposed regulations to meet the six substantive standards of necessity, authority, clarity, consistency, reference, and nonduplication. OAL does not review alleged "underground regulations" to determine whether or not they meet the six substantive standards applicable to regulations proposed for formal adoption.

The question of whether the challenged rule would pass muster under the six substantive standards need not be decided until such a regulatory filing is submitted to us under Government Code section 11349.1(a). At that point in time, the filing will be carefully reviewed to ensure that it fully complies with all applicable legal requirements.

Comments from the public are very helpful to us in our review of proposed regulations. We encourage any person who detects any sort of legal deficiency in a proposed regulation to file comments with the rulemaking agency during the 45-day public comment period. Such comments may lead the rulemaking agency to modify the proposed regulation.

If review of a duly-filed public comment leads us to conclude that a regulation submitted to OAL does not in fact satisfy an APA requirement, OAL will disapprove the regulation. Government Code section 11349.1.

12 Government Code section 11342(a). See Government Code sections 11346; 11343. See also 27 Ops.Cal.Atty.Gen. 56, 59 (1956).

13 As described in the Association's Request.

June 18, 1987

14 See note 11, supra.

15 Food and Agricultural Code section 13122.

16 Food and Agricultural Code section 13124, subdivision (c) requires the DFA to report to the Legislature:

"(c) By July 1, 1985, a list of mandatory health effect studies on file at the department [of Food and Agriculture] for each pesticide active ingredient."

Food and Agricultural Code section 13123, subdivision (c) defines "mandatory health effect study" as "adverse reproductive effect, chronic toxicity, mutagenicity, neurotoxicity, oncogenicity, and teratogenicity studies required for full registration or licensing of pesticides in California, as of July 1, 1983."

17 Section 12815 of the Food and Agriculture Code requires registration with DFA of pesticides, which are referred to in section 12753 of the Code as "economic poisons" and defined as :

"(a) Any spray adjuvant.

(b) Any substance, or mixture of substances which is intended to be used for defoliating plants, regulating plant growth, or for preventing, destroying, repelling, or mitigating any and all insects, fungi, bacteria, weeds, rodents or predatory animals or any other form of plant or animal life which is, or which the director may declare to be, a pest, which may infest or be detrimental to vegetation, man, animals or households, or be present in any environment whatsoever."

18 Food and Agricultural section 13125, subdivisions (a) and (b).

19 Food and Agricultural Code section 13127, subdivision (a).

20 1986 OAL Determination No. 8 (Department of Food and Agriculture, October 15, 1986, Docket No. 86-004), California Administrative Notice Register 86, No. 44-Z, October 31, 1986.

21 7 United States Code, section 136a, subdivision (c)(2)(B)

reads in pertinent part:

- "(i) If the Administrator determines that additional data are required to maintain in effect an existing registration of a pesticide, the Administrator shall notify all existing registrants of the pesticide to which the determination relates and provide a list of such registrants to any interested person.
- (ii) Each registrant of such pesticide shall provide evidence within ninety days after receipt of notification that it is taking appropriate steps to secure the additional data that are required. . . .
- (iv) Notwithstanding any other provision of this subchapter, if the Administrator determines that a registrant within the time required by the Administrator, has failed to take appropriate steps to secure the data required under this subparagraph. . . the Administrator may issue a notice of intent to suspend such registrant's registration of the pesticide for which additional data is required. . . ."

22 DFA requested and OAL granted an early effective date for sections 6194 and 6195 pursuant to Government Code section 11346.2, subdivision (d).

23 See Faulkner v. California Toll Bridge Authority (1953) 40 Cal.2d 317, 324 (point 3); Winzler & Kelly v. Department of Industrial Relations (1981) 121 Cal.App.3d 120, 174 Cal.Rptr. 744 (points 1 and 2); cases cited in note 2 of 1986 OAL Determination No. 1. A complete reference to this earlier Determination may be found in note 2 to today's Determination.

We conclude that the six above-noted provisions of California Notice 86-9 are "quasi-legislative" in nature because they are rules formulating general policies oriented toward future decisions. Gov. Code, section 11346. See Pacific Legal Foundation v. California Coastal Commission (1982) 33 Cal.3d 158, 168, 188 Cal.Rptr. 104, 111 (quasi-legislative acts are reviewable by ordinary mandamus (Code Civ. Pro., sec. 1085) or action for declaratory relief (Code Civ. Pro., sec. 1060); whereas, quasi-judicial or adjudicatory acts are reviewable by administrative mandamus (Code Civ. Pro., sec. 1094.5)).

In California Notice 86-9, DFA, acting pursuant to the Act, imposed several specific requirements on pesticide registrants that are not expressly stated in the Act. For example, the Notice establishes a process whereby pesticide registrants who disagree with DFA's failure to accept any

June 18, 1987

submitted study can, within 90 days, petition DFA for reconsideration. According to the Notice, failure to submit such a petition within the 90 day period renders DFA's decision final. These provisions clearly indicate a general policy oriented toward future decisions by DFA.

- 24 As noted in earlier determinations, OAL is not limited by arguments advanced by the requester in assessing the validity of challenged rules. See 1987 OAL Determination No. 5 (State Personnel Board, April 30, 1987, Docket No. 86-011), California Administrative Notice Register 87, No. 20-Z, May 15, 1987, B-45; typewritten version p. 6; and 1987 OAL Determination No. 4 (Department of Industrial Relations, Division of Labor Standards Enforcement, March 25, 1987, Docket No. 86-010), California Administrative Notice Register 87, No. 15-Z, April 10, 1987, p. B-38, n. 17; typewritten version p. 15.
- 25 See note 21, supra.
- 26 Pursuant to Food and Agricultural Code section 13125, subdivision (c) DFA was required to report to the legislature by December 31, 1985, among other things, "[its]... determination of whether each study shows adverse reproductive effects, chronic toxicity, mutagenic effects, neurotoxic effects, oncogenic effects, or teratogenic effects." These study categories were the basis for the identification of data gaps required under Food and Agricultural section 13127, subdivision (a).
- 27 See 1986 OAL Determination No. 8, California Administrative Notice Register, No. 44-Z, October 31, 1986, p. B-35; typewritten version, p. 19.
- 28 See note 9, supra.
- 29 See note 26, supra.
- 30 See note 26, supra.
- 31 See note 9, supra.
- 32 See 1986 OAL Determination No. 8, California Administrative Notice Register, No. 44-Z, October 31, 1986, p. B-35;

June 18, 1987

typewritten version, p. 19.

33 Id., p. B-35; typewritten version, p. 19.

34 See note 21, supra.

35 See note 21, supra.

36 The following provisions of law may also permit agencies to avoid the APA's requirements under some circumstances, but do not apply to the case at hand:

a. Rules relating only to the internal management of the state agency. Government Code section 11342, subdivision (b).

b. Forms prescribed by a state agency or any instructions relating to the use of the form, except where a regulation is required to implement the law under which the form is issued. Government Code section 11342, subdivision (b).

c. Rules that "establish[] or fix[] rates, prices or tariffs." Government Code section 11343, subdivision (a)(1).

d. Rules directed to a specifically named person or group of persons and which do not apply generally or throughout the state. Government Code section 11343, subdivision (a)(3).

e. Legal rulings of counsel issued by the Franchise Tax Board or the State Board of Equalization. Government Code section 11342, subdivision (b).

f. Contractual provisions previously agreed to by the complaining party. City of San Joaquin v. State Board of Equalization (1970) 9 Cal.App.3d 365, 376, 88 Cal.Rptr. 12, 20 (Sales tax allocation method was part of a contract which plaintiff had signed without protest); see Roth v. Department of Veterans Affairs (1980) 110 Cal.App.3d 622, 167 Cal.Rptr. 552 (dictum); Nadler v. California Veterans Board (1984) 152 Cal.App.3d 707, 719, 199 Cal.Rptr. 546, 553 (same); but see Government Code section 11346 (no provision for non-statutory exceptions to APA requirements); see International Association of Fire Fighters v. City of San Leandro (1986) 181 Cal.App.3d 179, 182, 226 Cal.Rptr. 238, 240 (contracting party not estopped from

June 18, 1987

challenging legality of "void and unenforceable" contract provision to which party had previously agreed); see Perdue v. Crocker National Bank (1985) 38 Cal.3d 913, 926, 216 Cal.Rptr. 345, 353 ("contract of adhesion" will be denied enforcement if deemed unduly oppressive or unconscionable).

The above is not intended as a exhaustive list of possible APA exceptions.

37 See 1986 OAL Determination No. 8, California Administrative Notice Register, No. 44-Z, October 31, 1986, pp. B-30-35; typewritten version, pp. 14-19.

38 Id., pp. B-31-35; typewritten version, pp. 14-19.

39 See Food and Agricultural Code section 13125, subdivision (a).

40 See Part VI of this determination for a summary of what portions of Notice 86-9 were included in newly adopted sections 6194 and 6195 of Title 3 of the California Administrative Code.

41 Those provisions of California Notice 86-9 determined to be "regulations" and that were included in section 6198.5 of Title 3 of the California Administrative Code (see note 9, supra) were rendered valid and enforceable on June 16, 1987.

42 See note 9, supra.

43 See note 9, supra.

DEPARTMENT OF FOOD AND AGRICULTURE

1220 N Street
Sacramento, CA 95814



September 1, 1986

CALIFORNIA NOTICE 86-9

NOTICE TO PESTICIDE REGISTRANTS PERTAINING TO
THE BIRTH DEFECT PREVENTION ACT OF 1984
(SB 950)

The purpose of this notice is to inform registrants that the Department's mandatory health effects data base for the Unit I list of pesticide ingredients is incomplete.

Enclosed is a list of the Unit I 200 active ingredients together with active ingredients belonging to the same chemical groups as any of the 200 ingredients. The Unit I list identifies the study categories for each active ingredient for which we have no data or incomplete data. The Department's toxicology review worksheets identify additional data or information needed for each study category with incomplete data on file. These worksheets were sent to the data submitter(s) and other registrants who requested them. For chemical groups, completing the data base for any ingredient in a group will satisfy the data requirements for all chemicals in the group. Please be advised that health effects studies received by the Department after April 1, 1986 have yet to be reviewed. To aid in your response to this notification, a list of unreviewed studies is provided. Should you believe that an unreviewed study fulfills a data requirement, please check option number six for the appropriate data requirement when responding to this notice.

If after reviewing the toxicology worksheets, you disagree with the Department's determination concerning the acceptability of any submitted study, you may, within 90 days of the date of this notice, petition for reconsideration. Your petition should show in detail why you believe the study was improperly evaluated and provide reasons supporting a different evaluation. Should you petition for reconsideration of a study evaluation, please choose option number ten and submit your response together with your petition and supporting information. If no petition is received, the Department's determination shall be final.

Enclosed with this notice is a Response Sheet similar to the one you received with California Notice 86-1. The following four options have been added: to enter into a compensation agreement with a data developer; to identify another registrant who will submit the data on your behalf; to petition for reconsideration of a study evaluation; and to request an exemption from the data requirements due to limited use of your product or substantial economic hardship to users if your product is unavailable.

Response Required

A response to this notice is required only for the pesticide active ingredients on the enclosed Unit I list .

Formulators - If you are a formulator, the appropriate response to this notice is option number nine on the enclosed response sheet. Option nine provides for the designation of another registrant who will submit the data on your behalf. Attach to your response sheet a letter from the other registrant identifying your company and your pesticide products for which data will be provided.

Other Registrants - If you have not previously submitted a Data Gap Response Sheet or if you submitted a response sheet that was inappropriately completed, and did not include the required documents, then you need to complete and submit a copy of the enclosed response sheet for each of your registered products (and for each active ingredient in a product). When your response is the same for each product containing a certain active ingredient, you may submit only one response sheet for that active ingredient. If you are generating data and have initiated any of the required tests, then check option two and submit the response sheet together with documentation confirming initiation of the test(s) and a schedule for submission of the data to CDFA.

Response Sheets are due to the Department within 90 days after this notice is issued. Continued registration of your pesticide products depend on an accurate response to this letter. Failure to complete the health effects data base for an active ingredient could affect the registration of all products containing that active ingredient.

No Response Required

~~If you responded to California Notice 86-1 by submitting for each registered product a Data Gap Response Sheet appropriately completed, together with the required documents, and that response is still accurate, then please do not respond to this notice. Your response is appropriate if you checked either Option 1-3 or 5-7 on the 86-1 response sheet, and the previous response is still the response of your choice. The Department will consider registrants' claims regarding the applicability of data requirements for certain use patterns (Option 4) and review amended labels. When a determination is made, registrants will be notified.~~

Requests for additional information should be directed to Rusty Millar at (916) 322-3564. All responses must include the required documents and be addressed to:

SB 950 September Response
Pesticide Registration Branch
California Department of Food and Agriculture
1220 N Street, Room A-447
Sacramento, California 95814

Sincerely,



Robert V. Peterson, Chief
Pesticide Registration Branch

Enclosures

SEND TO: 36 SEPTEMBER RESPONSE
 Pesticide Registration Branch
 California Department of Food and Agriculture
 1220 N Street, Room A-447
 Sacramento, California 95814

California Department of Food and Agriculture
 CALIFORNIA DATA GAP RESPONSE SHEET
 FOR

CALIFORNIA NOTICE 86-9

PESTICIDE REG. NO. _____

PRODUCT NAME _____

ACTIVE INGREDIENT _____

REGISTRANT'S NAME _____

BASIC MANUFACTURER OF THE ACTIVE INGREDIENT _____

A Data Gap Response Sheet for each product must be filled in and sent to the Department within 90 days of the date of the Notice. For products containing more than one active ingredient, complete a response sheet for each active ingredient in the product. When your response is the same for each product containing a certain active ingredient, you may submit only one response sheet for that active ingredient.

OPTION NO.

1. I request voluntary cancellation of this product's registration. Sign below and return to the above address.

You may choose different options for different data requirements, but for each data gap, at least one option must be checked.

| Option Nos. 2-11 for filling data gaps | Chronic Feeding | | Oncogenicity | | Teratogenicity | | Reproduction | Mutagenicity | | | Neurotoxicity | |
|---|-----------------|-----|--------------|-------|----------------|--------|--------------|--------------|---|---|---------------|--|
| | RAT | DOG | RAT | MOUSE | RAT | RABBIT | RODENT | G | C | D | HEN | |
| 2. I will generate and submit the data for each data requirement I have checked and will submit a progress report on each test every January 1 and July 1 until the data are submitted. These data will be generated according to EPA's Pesticide Assessment Guidelines, October 1982 <input type="checkbox"/> , the OECD protocols <input type="checkbox"/> , or different protocol (copy attached) <input type="checkbox"/> . A complete schedule for submitting data is attached. | | | | | | | | | | | | |
| 3. I have entered into an agreement with one or more registrants or suppliers to share the responsibility of generating and submitting data and progress reports for each data requirement I have checked. A copy of the agreement is attached and the name and address of the registrant or supplier to submit each test is specified. | | | | | | | | | | | | |
| 4. I claim that I am not obligated to submit the data required by this notice for the checked data requirement box(es) because the use(s) of my registered pesticide product are such that, under the EPA Data Requirements for Pesticide Registration Final Rule, these data requirements do not apply to my product. Attached is an explanation of why my registered pesticide product is not subject to the Requirements together with six (6) current labels, my EPA stamped label and letter of acceptance, and Confidential Statement of Formula. | | | | | | | | | | | | |
| 5. I enclose a request to amend my registration by deleting one or more of its currently registered uses. Once this amendment is approved, I believe the data requirements in the checked box(es) will not apply to my product. | | | | | | | | | | | | |
| 6. Studies recently submitted for the data requirements checked should fill data gaps. | | | | | | | | | | | | |
| 7. I have been unsuccessful in entering into any agreement to share the responsibility of generating data with other registrants and suppliers. Attached are copies of the offers I have made and proof of receipt of the offers for the data requirements checked. | | | | | | | | | | | | |
| 8. I have entered into an agreement to compensate the data developer for each data requirement box I have checked. A copy of each agreement is attached. | | | | | | | | | | | | |
| 9. Another registrant (registered with CDFA or EPA) will submit the required data on my behalf. Attached is a letter from the other registrant who will provide the data. | | | | | | | | | | | | |
| 10. I am petitioning for reconsideration of CDFA's determination of acceptability of a study submitted to fill the data requirement for the box checked. Attached is my request for reconsideration with reasons supporting a different evaluation. | | | | | | | | | | | | |
| 11. I am requesting an exemption from the data requirements because: <input type="checkbox"/> my product has limited use <input type="checkbox"/> unavailability of my product would result in substantial economic hardship to users. Attached is information supporting my request. | | | | | | | | | | | | |

*G = Gene mutation, C = Chromosome aberration, D = DNA repair

Date _____

Signature of Authorized Representative _____

Telephone Number and Area _____

Name Typed or Printed _____

Mailing Address: _____

Birth Defect Prevention Act of 1984
(SB950)
Unit 1 Pesticide Active Ingredient List
(Current status by Study Category)

09/01/86

Page 1

Chemical name: ACEPHATE

* * * * * Information on the Chemical * * * * *

Chronic Feeding, Rat.....ADDITIONAL DATA OR INFORMATION NEEDED.
Chronic Feeding, Dog.....ADDITIONAL DATA OR INFORMATION NEEDED.
Oncogenicity, Rat.....ADDITIONAL DATA OR INFORMATION NEEDED.
Oncogenicity, Mouse.....ADDITIONAL DATA OR INFORMATION NEEDED.
Reproduction, Rodent.....ADDITIONAL DATA OR INFORMATION NEEDED.
Teratology, Rat.....ADDITIONAL DATA OR INFORMATION NEEDED.
Teratology, Rabbit.....ADDITIONAL DATA OR INFORMATION NEEDED.
Mutagenicity, Gene Mut...ADEQUATE DATA ON FILE.
Mutagenicity, Chrom. Ab..ADEQUATE DATA ON FILE.
Mutagenicity, DNA.....ADDITIONAL DATA OR INFORMATION NEEDED.
Neurotoxicity, Hen.....ADEQUATE DATA ON FILE.

Chemical name: ACROLEIN

* * * * * Information on the Chemical * * * * *

Chronic Feeding, Rat.....NO DATA ON FILE.
Chronic Feeding, Dog.....NO DATA ON FILE.
Oncogenicity, Rat.....NO DATA ON FILE.
Oncogenicity, Mouse.....NO DATA ON FILE.
Reproduction, Rodent.....NO DATA ON FILE.
Teratology, Rat.....ADDITIONAL DATA OR INFORMATION NEEDED.
Teratology, Rabbit.....NO DATA ON FILE.
Mutagenicity, Gene Mut...ADDITIONAL DATA OR INFORMATION NEEDED.
Mutagenicity, Chrom. Ab..ADEQUATE DATA ON FILE.
Mutagenicity, DNA.....ADEQUATE DATA ON FILE.
Neurotoxicity, Hen.....DATA IS NOT REQUIRED AT THIS TIME.

CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE

LIST OF SB 950 HEALTH EFFECTS STUDIES
RECEIVED AFTER APRIL 1, 1986 AND
BEFORE AUGUST 1, 1986

These Studies Have Not Been Reviewed

September 1, 1986

CALIFORNIA DEPT OF FOOD & AGRICULTURE
 PESTICIDE REGISTRATION DATA INDEX
 SHORT FORM REPORT FOR SELECTED RECORDS

08/14/86

ACEPHATE

 CHEMICAL NO: 108 CHEMICAL CODE: 1685 CAS NO: 30560-19-1

| TEST TYPE | RECORD NO. | TITLE | DOCUMENT NO. | STUDY DATE | TRADE SECRET | MATERIAL TESTED |
|-----------|------------|-------|--------------|------------|--------------|-----------------|
|-----------|------------|-------|--------------|------------|--------------|-----------------|

843 - STRUCTURAL CHROMOSOME ABERRATION

45232 EVALUATION OF THE EFFECT OF ACEPHATE ON SISTER
 CHROMATID EXCHANGE FREQUENCIES IN CULTURED
 CHINESE HAMSTER OVARY CELLS: FINAL REPORT

103-158 6-80 Y T

45233 MUTAGENICITY EVALUATION OF CHEVRON ACEPHATE
 TECHNICAL SX-1102 IN THE SISTER CHROMATID
 EXCHANGE ASSAY IN VIVO IN HOUSE BONE MARROW:
 FINAL REPORT

108-158 1-82 Y T

111

FACE SHEET

FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE OFFICE OF ADMINISTRATIVE LAW

CERTIFICATION: I hereby certify that the attached are true and correct copies of regulations adopted, amended or repealed by this agency and that the information specified on this Face Sheet is true and correct.

ENDORSED FILED
IN THE OFFICE OF

JUN 1 4 03 PM 1987

MARION FONG EU
SECRETARY OF STATE
OF CALIFORNIA

ENDORSED
APPROVED FOR FILING
JUN 1 1987

Department of Food and Agriculture
(AGENCY)

Ray Magee
AGENCY OFFICER WITH RULEMAKING AUTHORITY

Date: 5/29/87

For use of Office of Adm Law

For use by Secretary of State only

AGENCY CONTACT PERSON FOR THIS FILING
(See instructions)

TITLE

TELEPHONE

Mr. Van Cheney Program Supervisor (916) 322-5130

- Type of filing, (check one) 30-day Review Emergency Certificate of Compliance (Complete Part 4 below)
- Regulatory changes resulting from Govt. Code 11349.7 review (Complete Part 6 below)
- Nonsubstantive changes with nonregulatory effect Printing Error Correction

a. Specify California Administrative Code title and sections as follows:

SECTIONS ADOPTED: 6194-6197

SECTIONS AMENDED:

SECTIONS REPEALED:

APPROVED

b. The following sections listed in 3a contain modifications to the text originally made available to the public: 6194-6197

CERTIFICATE OF COMPLIANCE (Government Code Section 11346.1(e)). The above-named agency officer certifies that this agency complied with the provisions of Government Code Sections 11346.4-11346.8. (Check one)

- prior to the emergency adoption
- within 120 days of the effective date of the emergency adoption of the above-referenced regulations.

Is this filing a resubmittal of a previously disapproved or withdrawn regulation?

- No Yes, if yes, give date(s) of prior submittal(s) to OAL:

Is the filing submitted to carry out amendments or repeals identified in the statement of review completion submitted as a result of the agency's review of regulations administered by it as of June 30, 1980?

- No Yes, if yes, give date statement was submitted to OAL: January 26, 1987

If these regulations required prior review and approval or concurrence by any of the following agencies, check appropriate box(es)

- Fair Political Practices Commission (Include FPPC approval stamp) Building Standards Commission (Attach approval)
- State Fire Marshall (Attach approval) Department of Finance (Attach properly signed Std. 399)
- Other _____ (SPECIFY AGENCY)

(X-rel from 87, 23)

a. PUBLICATION DATE OF NOTICE IN CALIFORNIA ADMINISTRATIVE NOTICE REGISTER: Register 86, No. 27-Z 7-4-86

b. DATE OF FINAL AGENCY ACTION: April 30, 1987

c. DATES OF AVAILABILITY OF MODIFIED REGULATION(S) (GOVT. CODE SEC. 11346.8(c)): April 7, 1987 to April 30, 1987

Effective date of regulatory changes: (See Government Code Section 11346.2 and instructions on reverse)

- a. Effective 30th day after filing with the Secretary of State.
- b. Effective upon filing with the Secretary of State.
- c. Effective on _____ as required or allowed by the following statute(s): _____
- d. Effective on June 1, 1987 (Designate effective date earlier than 30 days after filing with the Secretary of State pursuant to Govt. Code Sect. 11346.2(d).) Attach request demonstrating good cause for early effective date. Request subject to OAL approval.
- e. Effective on _____ (Designate effective date later than the normal effective date for the type of order filed.)

MODIFICATION SYMBOLS AND THEIR MEANINGS

Section 11346.8 (c) of the Government Code requires the Department to make available to the public the full text of the regulation as originally proposed, with the proposed change clearly indicated. Since this is the second time these regulations have been modified, different symbols will be used.

Modifications made December 11, 1986 were indicated by the use of vertical strikeout through text to be deleted and underline under text to be added.

Modifications being proposed at this time are indicated by horizontal dashes through text to be deleted and double underline under text to be added.

MODIFIED TEXT OF PROPOSED REGULATION

Title 3. California Administrative Code
Chapter 6. Pesticides and Pest Control Operations
Subchapter 2. Economic Poisons
Group 1. Economic Poison Registration
Article 3. Supplemental Data Requirements

Adopt Section 6194 to read:

6194. Required Submission of Data.

(a) Registrants required to submit data in support of registrations pursuant to Food and Agricultural Code Sections 13127, 13143 or 13146 shall respond to the director's ~~determinations~~ notices of the data and study requirements. ~~in accordance with the provisions of the director's notifications.~~ The director may amend such determinations, study requirements, time schedules and procedures as required by changes in law and as he deems necessary to accomplish the purposes of Articles 14 and 15 of Chapter 2, Division 7, of the Food and Agricultural Code. Where the notice pertains to data required pursuant to Food and Agricultural Code Section 13127, the data shall be one or more of the mandatory health effects studies specified in Food and Agricultural Code Section 13123. Where the notice pertains to data required pursuant to Food and Agricultural Code Sections 13143 or 13146, the data shall be all or some of the information specified in Food and Agricultural Code Section 13143 (a)(1) through (6).

Not later than 90 days after the date of such a notice, registrants shall inform the director in writing as to how they will comply with the data requirements by choosing one or more of the following options:

1) Submit the data with their response to the notice.

2) Develop and submit the data.

- (3) Agree to jointly develop and submit the data with one or more parties and provide a copy of the agreement signed by the participating parties.
- (4) Acquire authorization to use data being developed and submitted by another party and provide a copy of the authorization signed by that party.
- (5) Offer to compensate the developer(s) of the data and provide a copy of the offer, together with evidence that the data developer(s) received the offer.
- (6) Claim the data requirements are not applicable to the registered use patterns of the registrant's pesticide products and provide information supporting the claim.
- (7) Claim an exemption from the mandatory health effects data requirements pursuant to Food and Agricultural Code Section 13128 and provide the information specified in subsection (c).

An option shall be chosen for each data requirement; however, different options may be chosen for different data requirements. When requested by the director, registrants who have chosen option two and/or three shall submit a written status report to the director regarding the development of the data which shall include, but is not limited to:

- (1) The name and address of the person/organization conducting the study,
- (2) The initiation and expected completion dates, and
- (3) The scheduled date of submission of the data to the Department.

The status report shall be submitted not later than 30 days after the date of the director's request, unless a later date is specified.

(b) Subsection (a) applies to all registrants of products containing active pesticide ingredients and includes registrants that obtain or have obtained registration for end use products without submission of citation of data pursuant to Section 13128 of the Agricultural Code. Data requirements noticed pursuant to the Food and Agricultural Code, Section 13127, shall not apply to applicants for California registration specified in Food and Agricultural Code Section 13128 or to registrants who obtained registration pursuant to Food and Agricultural Code Section 12811 of for end use products that are formulated using another producer's pesticide product which is registered with the United States Environmental Protection Agency (EPA) provided:

(1) All pesticide active ingredients in the formulated product are derived solely from one or more EPA registered pesticide products.

(2) All pesticide active ingredients in the formulated product and the supplier(s) or manufacturer(s) of each pesticide ingredient in the formulated product those ingredients appear on the Department's published list of pesticide active ingredients naming the companies that are proceeding to develop the data required pursuant to Section 13127 of the Food and Agricultural Code.

(c) The director shall grant an exemption as authorized by Section 13128 of the Food and Agricultural Code to an formulator applicant or registrant that meets the conditions specified in subsection (b). To apply for an exemption, a formulator the applicant or registrant shall submit the following:

(1) A statement of formula; on a prescribed form; identifying the name of the EPA registrant and the EPA registration number of each pesticide product purchased to formulate the end use product-, and

(2) A statement that the supplier(s) or manufacturer(s) of the active ingredient(s) in the formulated product appear on the Department's current list of companies that are proceeding to develop the required data.

(d) If a registrant that has been granted an exemption pursuant to Section 13128 of the Food and Agricultural Code purchases a pesticide product different from that reported in accordance with subsection (c), the registrant ~~is~~ required to shall notify the director of the change. If the registrant still meets the conditions specified in subsection (b) and wishes to request an exemption, it is required to the registrant shall reapply for the ~~formulator's~~ exemption following the procedure described in subsection (c).

(e) The ~~director~~ Department will periodically publish a list of companies that are proceeding to develop the ~~required~~ data required pursuant to Section 13127 of the Food and Agricultural Code. An ~~formulator~~ applicant or registrant that has been granted an exemption pursuant to Section 13128 of the Food and Agricultural Code will be exempt as long as the supplier(s) or manufacturer(s) of the pesticide active ingredients(s) in its end use product is/are named ~~in~~ on the Department's list. An applicant or registrant that no longer qualifies for such an ~~formulator's~~ exemption is required to respond to the director's ~~determinations and notifications~~ notices as specified in ~~Section 6194~~ subsection (a).

(f) ~~(f)~~ Any registrant required to submit data as provided in subsection (a) may apply to the director to appoint another registrant as its agent to do so. The appointee may be a registrant of the Department or the

United States Environmental Protection Agency. The application shall be filed on a prescribed form and contain: (1) the application; (2) the agreement of the other registrant to assume the responsibility; and (3) an acknowledgement by the applicant that it remains responsible for supplying the required data if the appointee fails to do so, or if the director terminates the appointment.

The director will approve the appointment if the appointee shows it is fully prepared to meet the obligations of the appointment. The appointment may be terminated by the director if he finds the appointee has failed to provide the required data or has failed to make satisfactory progress to ensure compliance with that requirement.

NOTE: Authority cited: Sections 12781, 13127, 13128 and 13146 13145, Food and Agricultural Code.

Reference: Sections 13127, 13128, and 13143 and 13146, Food and Agricultural Code.

Adopt Section 6195 to read:

6195. Validity Acceptability of Submitted Studies.

(a) Consistent with Food and Agricultural Code Sections 13125 and 13143, studies submitted by registrants in fulfillment of requirements under Section 6194 must be "valid, complete and adequate" and, when applicable, comply with the requirements of the United States Environmental Protection Agency as specified in Section 13143.

(b) The director will determine whether information and studies submitted pursuant to Sections 13127, 13143 and 13146 of the Food and Agricultural Code are valid, complete, and adequate. The director's determination of the accept-

ability of submitted studies shall be based upon a showing by the registrant that the studies meet the requirements of subsection (a) and, if deemed advisable, upon the director's independent review using generally accepted scientific criteria will be made by considering the following factors including, but not limited to: (1) Study design and conduct, (2) Test substance characterization, (3) Collecting and reporting of data, (4) Statistical analysis of study results, and (5) A showing by the registrant that the information and studies meet the requirements of Food and Agricultural Code Sections 13123.5 or 13143.

(b) The director's determination of acceptability shall be final unless, within 90 days after notice to the registrant of disapproval, the registrant petitions for reconsideration and shows in detail therein the particular matters alleged to have been improperly evaluated by the director and the reasons supporting a different evaluation. The director may grant reconsideration upon such showing and may permit the registrant to supplement the material previously submitted, or otherwise show that the studies submitted are acceptable. The time periods and procedures in such reconsideration actions shall be set by the director in consideration of the particular matters involved.

NOTE: Authority cited: Sections 12781, ~~13127~~ and 13145 ~~13146~~, Food and Agricultural Code.

Reference: Sections 13127, ~~and 13143~~ and 13146, Food and Agricultural Code.

APPENDIX C

Title 3. California Administrative Code
Chapter 6. Pesticides and Pest Control Operations
Subchapter 2. Economic Poisons
Group 1. Economic Poison Registration
Article 3. Supplemental Data Requirements

Adopt Section 6198.5 to read:

6198.5. List of Active Ingredients Identified Pursuant to Section 13127 of the Food and Agricultural Code.

(a) Section 13127(a) of the Food and Agricultural Code requires the Department to identify 200 active ingredients which the Department determines have the most significant data gaps, widespread use, and which are suspected to be hazardous to people. The active ingredients are listed below in alphabetical order:

1. Acephate
2. Acrolein
3. Alachlor
4. Aldicarb
5. Aldrin
6. Alkyl (50%C14, 40%C12, 10%C16) Dimethyl Benzyl Ammonium Chloride
7. Allethrin
8. Aluminum Phosphide

9. Amitraz
10. Amitrole
11. Arsenic Pentoxide
12. Arsenic Trioxide
13. Asulam, Sodium Salt
14. Atrazine
15. Azinphos-Methyl
16. Barban
17. Bendiocarb
18. Benomyl
19. Bentazon, Sodium Salt
20. Boric Acid
21. Bromacil
22. Bromoxynil Octanoate
23. Captafol
24. Captan
25. Carbaryl
26. Carbofuran
27. Carbon Tetrachloride
28. Carboxin
29. Chloramben
30. Chlordane
31. Chlordimeform
32. Chlorflurenol, Methyl-Ester
33. Chlorine
34. Chlorobenzilate

- 35. Chloroneb
- 36. Ortho-Benzyl-Para-Chlorophenol
- 37. Chloropicrin
- 38. Chlorothalonil
- 39. Chlorpyrifos
- 40. Chlorsulfuron
- 41. Chlorthal-Dimethyl
- 42. Copper Hydroxide
- 43. Coumaphos
- 44. Creosote
- 45. Cryolite
- 46. Cyanazine
- 47. Cyanuric Acid, Monosodium Salt
- 48. Cycloate
- 49. Cyhexatin
- 50. 2, 4-D
- 51. 2, 4-D, Dimethylamine Salt
- 52. Daminozide
- 53. DDVP
- 54. Deet
- 55. Demeton
- 56. Diazinon
- 57. Dicamba
- 58. Dichlobenil
- 59. Para-Dichlorobenzene
- 60. 1,2-Dichloropropane, 1,3-Dichloropropene and Related C-3 Compounds
- 61. 1,3 Dichloropropene

- 62. Diclofop Methyl
- 63. Dicofol
- 64. Didecyl Dimethyl Ammonium Chloride
- 65. Diethatyl-Ethyl
- 66. Dimethoate
- 67. Dimethylphthalate
- 68. 2,4-Dinitrophenol
- 69. Dinocap
- 70. Dinoseb
- 71. Dioxathion
- 72. Diphacinone
- 73. Diphenamid
- 74. Diphenylamine
- 75. Dipropyl Isocinchomeronate
- 76. Diquat Dibromide
- 77. Diuron
- 78. Endosulfan
- 79. Endothall, Mono (N,N-Dimethylalkylamine) Salt
- 80. Endrin
- 81. EPN
- 82. EPTC
- 83. Ethalfluralin
- 84. Ethephon
- 85. Ethofumesate
- 86. Ethoprop
- 87. Ethyl Alcohol

- 88. Ethylene Dibromide
- 89. Ethylene Dichloride
- 90. Ethylene Glycol, Monomethyl Ether
- 91. Ethylene Oxide
- 92. Fenamiphos
- 93. Fenarimol
- 94. Fensulfothion
- 95. Fenthion
- 96. Ferbam
- 97. Fluchloralin
- 98. Flucythrinate
- 99. Fluometuron
- 100. Fluvalinate
- 101. Folpet
- 102. Formaldehyde
- 103. Fosamine, Ammonium Salt
- 104. Glyphosate, Isopropylamine Salt
- 105. Heptachlor
- 106. Hydrogen Chloride
- 107. Imazalil
- 108. Iprodione
- 109. Isopropyl Alcohol
- 110. Lindane
- 111. Linuron
- 112. Lithium Hypochlorite
- 113. Malathion
- 114. Maleic Hydrazide, Diethanolamine Salt
- 115. Maleic Hydrazide, Potassium Salt
- 116. Mancozeb
- 117. Maneb
- 118. Mefluidide, Diethanolamine Salt
- 119. Metaldehyde
- 120. Metam-Sodium
- 121. Methidathion
- 122. Methomyl
- 123. Methyl Bromide
- 124. Methylene Chloride
- 125. Methylenebis(Thiocyanate)
- 126. Methyl Parathion
- 127. Metolachlor
- 128. Metribuzin
- 129. Mevinphos
- 130. Molinate
- 131. Monocrotophos
- 132. MSMA
- 133. Naled
- 134. Naphthalene
- 135. Napropamide
- 136. Naptalam, Sodium Salt
- 137. Nitrapyrin
- 138. Norflurazon
- 139. Octylbicycloheptene Dicarboximide
- 140. Oryzalin

- 141. Oxadiazon
- 142. Oxamyl
- 143. Oxycarboxin
- 144. Oxyfluorfen
- 145. Oxythioquinox
- 146. Paraquat Dichloride
- 147. Parathion
- 148. PCNB
- 149. PCP
- 150.. Pebulate
- 151. Pendimethalin
- 152. Permethrin
- 153. Petroleum Distillate, Aromatic
- 154. Phenothrin
- 155. Ortho-Phenylphenol
- 156. Phorate
- 157. Phosalone
- 158. Phosmet
- 159. Phosphamidon
- 160. Phosphoric Acid
- 161. Picloram
- 162. Pine Oil
- 163. Piperonyl Butoxide, Technical
- 164. PMA
- 165. Prometryn
- 166. Propamocarb
- 167. Propargite
- 168. Propetamphos

- 169. Propoxur
- 170. Propyzamide
- 171. Pyrethrins
- 172. Resmethrin
- 173. Rotenone
- 174. Simazine
- 175. Sodium Arsenite
- 176. Sulfur
- 177. Sulfur Dioxide
- 178. Sulfuryl Fluoride
- 179. Terbacil
- 180. Terrazole
- 181. Tetrachlorophenol
- 182. Tetrachlorvinphos
- 183. Tetramethrin
- 184. Thiabendazole, Hypophosphite Salt
- 185. Thiobencarb
- 186. Thiophanate-Methyl
- 187. Thiram
- 188. Toxaphene
- 189. Triadimefon
- 190. S,S,S-Tributylphosphorotrithioate
- 191. Tributyltin Benzoate
- 192. Tributyltin Oxide
- 193. Trichlorophon

- 194. Trichloro-S-Triazinetrione
- 195. Triclopyr
- 196. Trifluralin
- 197. Triforine
- 198. Vernolate
- 199. Vinclozolin
- 200. Ziram

(b) The Director has determined that certain of the active ingredients listed in subsection (a) are chemically and toxicologically similar to other active ingredients registered by the Department. Such similar active ingredients have been placed into groups. Completion of the mandatory health effects studies, required pursuant to Section 13127 of the Food and Agricultural Code, for an active ingredient listed in the group will satisfy the data requirements for all of the active ingredients in the group, unless adverse effects reported pursuant to Section 6210 indicate that the mandatory health effects studies should be completed for other active ingredients within the group. In addition, copies of the mandatory health effects studies submitted to the Environmental Protection Agency for any of the active ingredients listed below shall also be submitted by the registrant to the Department. The groups are listed below, the active ingredient(s) listed in subsection (a) have an * after their name:

1. Alkyl (50%C14, 40%C12, 10%C16) Dimethyl Benzyl Ammonium Chloride*
Alkyl (60%C14, 30%C16, 5%C12, 5%C18) Dimethyl Benzyl Ammonium Chloride
Alkyl (25%C12, 60%C14, 15%C16) Dimethyl Benzyl Ammonium Chloride
Alkyl (47%C12, 18%C14, 10%C18, 10%C16, 15%C8-C10) Dimethyl Benzyl Ammonium Chloride
Alkyl (50%C12, 30%C14, 17%C16, 3%C18) Dimethyl Benzyl Ammonium Chloride
Alkyl (58%C14, 28%C16, 14%C12) Dimethyl Benzyl Ammonium Chloride
Alkyl (61%C12, 23%C14, 11%C16, 5%C8-C10-C18) Dimethyl Benzyl Ammonium Chloride
Alkyl (65%C12, 25%C14, 10%C16) Dimethyl Benzyl Ammonium Chloride
Alkyl (67%C12, 25%C14, 7%C16, 1%C8, C8, C10, C18) Dimethyl Benzyl Ammonium Chloride
Alkyl (90%C14, 5%C12, 5%C16) Dimethyl Benzyl Ammonium Chloride
Alkyl (93%C14, 4%C12, 3%C16) Dimethyl Benzyl Ammonium Chloride
Roccal-R (61%12, 23%C14, 11%C16, 5%C18)
Tetradecyldimethylbenzyl Ammonium Chloride

2. Aluminum Phosphide*
Magnesium Phosphide
Zinc Phosphide

3. Boric Acid*
Boric Oxide
Borax
Sodium Metaborate
Disodium Octaborate Tetrahydrate
Sodium Tetraborate (Pentahydrate)

4. Bromacil*
Bromacil, Dimethylamine Salt
Bromacil, Lithium Salt
Bromacil, Sodium Salt

5. Bromoxynil Octanoate*
Bromoxynil, Butyric Acid Ester
6. Chloramben*
Chloramben, Ammonium Salt
7. Chlordimeform*
Chlordimeform Hydrochloride
8. Ortho-Benzyl-Para-Chlorophenol*
Ortho-Benzyl-Para-Chlorophenol, Potassium Salt
Ortho-Benzyl-Para-Chlorophenol, Sodium Salt
9. Copper Hydroxide*
Copper Sulfate (Anhydrous)
Copper Sulfate (Pentahydrate)
Copper
Copper Ammonium Carbonate
Copper Bronze Powder
Copper Carbonate, Basic
Copper Oxide
Copper Oxychloride
Copper Oxychloride Sulfate
Copper-Sulfate (Basic)
Copper-Zinc Sulfate Complex
Cupric Oxide
10. Cyanuric Acid, Monosodium Salt*
Trichloro-S-Triazinetrione*
Dichloro-S-Triazinetrione
Sodium Dichloro-S-Triazinetrione
Sodium Dichloro-S-Triazinetrione (Dihydrate)

11. 2,4-D*
2,4-D, Dimethylamine Salt*
2,4-D, Alkanolamine Salts (Ethanol and Isopropanol Amines)
2,4-D, Butoxyethanol Ester
2,4-D, Butoxypropyl Ester
2,4-D, Butyl Ester
2,4-D, Diethanolamine Salt
2,4-D, Diethylamine Salt
2,4-D, N, N-Dimethyloleyl-Linoleylamine Salt
2,4-D, Dodecylamine Salt
2,4-D, 2-Ethylhexyl Ester
2,4-D, Isoocetyl Ester
2,4-D, Isopropyl Ester
2,4-D, Morpholine Salt
2,4-D, Octyl Ester
2,4-D, N-oleyl-1, 3-Propylenediamine Salt
2,4-D, Propyl Ester
2,4-D, Propyleneglycolbutylether Ester
2,4-D, Sodium Salt
2,4-D, Tetradecylamine Salt
2,4-D, Triethylamine Salt
2,4-D, Triisopropylamine Salt

12. Dicamba*
Dicamba, Diethanolamine Salt
Dicamba, Dimethylamine Salt
Dicamba, Monoethanolamine Salt
13. Didecyl Dimethyl Ammonium Chloride*
Dioctyl Dimethyl Ammonium Chloride
Octyl Decyl Dimethyl Ammonium Chloride
Octyl Dodecyl Dimethyl Ammonium Chloride
14. Dinoseb*
Dinoseb, Amine Salt
Dinoseb, Ammonium Salt
Dinoseb, Sodium Salt
Dinoseb, Triethanolamine Salt
15. Diphacinone*
Diphacinone, Sodium Salt
16. Endothall, Mono (N, N-Dimethylalkylmine) Salt*
Endothall
Endothall, Mono (N, N-Diethylalkylamine) Salt
Endothall, Dipotassium Salt
17. Lithium Hypochlorite*
Calcium Hypochlorite
Sodium Hypochlorite
18. Maleic Hydrazide, Diethanolamine Salt*
Maleic Hydrazide, Potassium Salt*
Maleic Hydrazide

19. Methylenebis (Thiocyanate)*
2-(2-Butoxyethoxy) Ethyl Thiocyanate
Methylisothiocyanate
20. MSMA*
DSMA
21. Paraquat Dichloride*
Paraquat Bis (Methylsulfate)
22. PCP*
PCP, Potassium Salt
PCP, Sodium Salt
23. Petroleum Distillate, Aromatic*
Kerosene
Petroleum Oil, Paraffin Based
Isoparaffinic Hydrocarbons

Petroleum Derivative Resin
Petroleum Distillates
Petroleum Distillates, Refined
Petroleum Hydrocarbons
Petroleum Naphthenic Oils
Petroleum Oil, Unclassified
Petroleum, Unrefined

24. Ortho-Phenylphenol*
Ortho-Phenylphenol, Ammonium Salt
Ortho-Phenylphenol, Potassium Salt
Ortho-Phenylphenol, Sodium Salt
25. Picloram*
Picloram, Triisopropanolamine Salt
26. PMA*
Phenylmercuric Oleate
27. Pyrethrins*
Pyrethrum Narc
28. Tetrachlorophenol*
2,3,4,6 - Tetrachlorophenol, Potassium Salt
Tetrachlorophenol, Sodium Salt
29. Thiabendazole, Hypophosphite Salt*
Thiabendazole
-
30. Thiophanate-Methyl*
Thiophanate
31. Tributyltin Benzoate*
Tributyltin Oxide*
Tributyltin Methacrylate
Bis (Tributyltin) Adipate
Tributyltin Acetate
Tributyltin Chloride
Tributyltin Chloride Complex of Ethylene Oxide Condensate
of Abietylamine
Tributyltin Fluoride
Tri-N-Butyltin Maleate
Tributyltin Monopropylene Glycol Maleate
Tributyltin Neodecanate
Tributyltin Resinate

NOTE: Authority cited: Section 407 and 12781, Food and Agricultural Code.

Reference: Section 13127, Food and Agricultural Code.