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ICF INTERNATIONAL
EPA PUBLIC MEETING
2009 CRITICAL USE EXECPTION FROM THE
PHASEOUT OF METHYL BROMIDE

EPA East Building
Room 1117-A
1201 Constitution Avenue, N.W.
Washington, D.C.

Monday, December 15, 2008
9:15 a.m.

The above-entitled matter convened on
Monday, December 15, 2008, Jeremy Arling,
Stratospheric Protection Division at the U.S.
Environmental Protection Agency, presiding.

1 P R O C E E D I N G S

2 (9:15 a.m.)

3 MR. ARLING: My name is Jeremy Arling, and
4 I work in the Stratospheric Protection Division at
5 the U.S. Environmental Protection Agency. This is a
6 public hearing for the proposed Rule 2009, Critical
7 Use Exemption from the Phaseout of Methyl Bromide.

8 Just to let you know, what is said here,
9 will go into the public docket. We will have a copy
10 of this transcript posted to the docket within five
11 to seven business days, and it will be publicly
12 available for others to comment on.

13 The public comment period will close on
14 January 12th, to give people an extra two weeks to
15 review the transcript.

16 Just a gentle reminder, please turn off
17 your cell phones, if you've got them on. There isn't
18 really any time restriction on your speaking. We've
19 got until noon, and I think we've got time for that.

20 Ross, should we mention the No Action
21 Assurance Letter that went out on Friday, just to
22 make everyone aware that there was -- I'm going to

1 let you speak to this.

2 MR. BRENNAN: I'll be happy to provide an
3 update. Most folks in this room know that last
4 Friday, December 12th, EPA's Office of Enforcement
5 and Compliance Assurance, signed what's referred to
6 as a No Action Assurance Letter for the 2009 Critical
7 Uses.

8 The No Action Assurance Letter recognizes
9 that the Final Rule allocating Critical Uses for 09,
10 would likely not be finalized until well into 2009.
11 For that reason, before issuance of the Final Rule,
12 it would allow for production, distribution, and use
13 of methyl bromide, subject to the stipulations in the
14 Proposed Rule, so it would apply to the producers
15 identified in the Proposed Rule, the distributors,
16 and the users identified in the Proposed Rule.

17 It would allow the production and
18 distribution and use in the amounts identified in the
19 Proposed Rule, recognizing, obviously, that the
20 amounts and users may change prior to the issuance of
21 the Final Rule.

22 Nevertheless, EPA will exercise

1 enforcement discretion in the period prior to
2 finalization, as long as the conditions of the
3 Proposed Rule are met. We envision the No Action
4 Assurance Letter to expire on May 1st, 2009, or,
5 obviously, upon promulgation of the Final Rule.

6 We hope that that Rule will be issued well
7 before May 1st. I just wanted to let folks know
8 about that development.

9 MR. ARLING: With that, I think we'll turn
10 it over. If you could just state your name and your
11 affiliation.

12 MR. HALE: My name is Dan Hale. I'm
13 testifying today on behalf of the California
14 Strawberry Commission.

15 The United States has reduced over 80
16 percent of the methyl bromide production since 1991,
17 and the California strawberry industry has
18 transitioned more strawberry acres to alternative
19 fumigants, faster than any other country in the
20 world. We are pleased that these efforts have helped
21 to contribute improvements to the ozone layer.

22 We learned at the 20th meeting of the

1 parties of the Montreal Protocol, held in October
2 2008, that bromide levels have returned to their
3 historic natural equilibrium, and that the ozone
4 layer is expected to fully recover faster than
5 originally estimated.

6 Part of the success might be attributed to
7 emission reduction technology that has been
8 implemented in the United States since 1991.
9 According to the California EPA, Department of
10 Pesticide Regulation, emissions in 1991, were about
11 80 percent, compared to current technology that
12 reduces emissions below 48 percent.

13 Our industry has invested more funding
14 than any other commodity group in the world, to
15 continue emission reduction research.

16 EPA's 2009 allocation rule, specifically
17 asks for additional recommendations on how emissions
18 could be further reduced. On this issue, we offer
19 several recommendations:

20 First, that EPA implement a multi-year CUE
21 and a multi-year allocation rule. It is very
22 difficult to attract private-sector investment on

1 emission reduction research, without the ability for
2 such potential investors to estimate the market.

3 In the absence of a predictable market, we
4 recommend that EPA provide matching grant funds that
5 might be combined with funding provided by commodity
6 groups such as ours.

7 Second, EPA should create regulatory
8 incentives for using formulas with a lower ratio of
9 methyl bromide. EPA's recent fumigation regulation,
10 creates just the opposite effect.

11 EPA is proposing to require the largest
12 buffer zones for formulas that use less methyl
13 bromide. EPA should consider the environmental
14 benefit of formulas such as 50/50 -- that's 50
15 percent methyl bromide, 50 percent chloropicrin --
16 and reduce the buffer zones for such formulas.

17 Third, EPA should regulate emissions
18 instead of production. Methyl bromide has a short
19 half-life, naturally degrades, and can be neutralized
20 using a catalyst.

21 However, because EPA regulates production
22 on an annual basis, it fails to reward investment in

1 new environmental technology.

2 By simply regulating emissions instead of
3 production, EPA could not only protect the
4 environment, but also stimulate the investment in and
5 development of new environmental technologies.

6 At this time, I would like to focus my
7 comments on the formula used in the 2009 allocation.

8 First, the formula incorporates a variety
9 of assumptions. For example, the formula assumes
10 that existing stocks are readily available for
11 current CUE use. This is false.

12 As EPA states in Section 5, a variety of
13 sections that were once Critical Uses, no longer are.
14 EPA falsely assumes that all these uses have switched
15 to alternative fumigants.

16 A review of the California EPA Pesticide
17 Use Report for California, demonstrates that a
18 variety of commodities that do not have CUEs, are
19 using methyl bromide stocks as part of their
20 transition strategy.

21 Additionally, anecdotal reports in 2008,
22 provide further evidence that stocks are not readily

1 available as CUE replacements.

2 California experienced spot shortages in
3 several CUE commodities in 2008, as a result of
4 geographical shortage when one of the registrants
5 decided to direct its new production to a different
6 region of the country.

7 If stocks were readily available for
8 replacement, no such shortages should have occurred.

9 A second false assumption is the amount of
10 carryover. Last year's hearing demonstrated that
11 EPA's reporting system has caused at least one
12 registrant to fail to accurately report CUE use.

13 The result is that EPA's estimate of what
14 might be available from the previous year's
15 production, is exaggerated. As noted in Section 5,
16 just this year, EPA has discovered 18 new companies
17 that are producers, distributors, or applicators. As
18 a result, 2008 will be the first year that EPA will
19 receive data from these companies.

20 A third false assumption is the amount of
21 stocks used in 2008. As indicated by EPA, the Agency
22 will receive reports for the first time from 18 new

1 producers, distributors, and applicators.

2 This could change the various assumptions
3 being made. For example, the proposed allocation
4 rule attempts to model the utilization rate of stocks
5 as either linear or exponential.

6 A third option could be that previous
7 year's use of stocks simply reflects the unique
8 market conditions of that year.

9 Finally, I would like to comment on the
10 amount of new production proposed in the 2009 CUE
11 allocation rule. The 2009 CUE allocation rule,
12 attempts to rationalize what can only be described as
13 market manipulation.

14 While the rule makes multiple references
15 to various decisions of the Montreal Protocol, it
16 fails to recognize that the CUE process itself, has
17 already considered the issue of stocks within the
18 United States, and made a deliberative, technical,
19 economic, and policy decision about the amount of
20 methyl bromide that should come from new production,
21 versus stocks; indeed, the 2009 allocation rule even
22 references these points:

1 First, describing the definition of CUE,
2 the specific use is critical, because of the lack of
3 availability, would result in significant market
4 disruption, and there are no technically and
5 economically feasible alternatives.

6 Second, describing the CUM process, the
7 technical review itself, remains rigorous, with
8 careful consideration of new technical and economic
9 conditions.

10 And, third, describing the decision of the
11 parties, the agreed Critical Use levels of 2009,
12 total 4,261,974 kilograms, however, the maximum
13 allowable new production and import, is 3,961,974
14 kilograms.

15 The parties had all the same information
16 before them that EPA has considered in the 2009
17 allocation rule, and could have specified a
18 considerable lesser amount of new production, but
19 they decided not to.

20 EPA's role should be not to completely
21 redo such a long and complex decision, but, instead,
22 should consider additional information that was not

1 fully available to the parties, and make small
2 adjustments that will not result in market
3 disruptions.

4 Instead of making such a dramatic
5 reinterpretation of the data and a significantly
6 different outcome, EPA will cause a market
7 disruption, which is the very thing the CUEs are
8 intended to avoid.

9 Thank you for the opportunity to comment
10 at today's hearing.

11 MR. BRENNAN: Very good. Is there anybody
12 else who would like to make comments at today's
13 hearing?

14 (No response.)

15 MR. ARLING: If not, we thank you for
16 coming, and, again, we will be posting the Notice of
17 this hearing in the docket, within five to seven
18 days. Thank you very much.

19 (Whereupon, at 9:25 a.m., the hearing was
20 concluded.)

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