

For the first time in four decades, EPA uses emergency suspension power on a pesticide

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On August 6, the Environmental Protection Agency issued an Emergency Order (<https://bit.ly/3TeF3CM>) directing the suspension of all registrations issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for pesticide products containing the active ingredient dimethyl tetrachloroterephthalate (DCPA), also marketed under the trade name Dacthal.

DCPA is a benzoic acid herbicide that inhibits cell division of root tips in target plants.

According to EPA, this is the “first time in almost 40 years that EPA is using its emergency suspension authority to stop the use of a pesticide.”

DCPA is a benzoic acid herbicide that inhibits cell division of root tips in target plants. It controls annual grasses and broadleaf weeds before they emerge in a variety of agricultural crops.

DCPA is registered for agricultural uses, including on Allium species, Brassica species, cucurbits, root vegetables, fruiting vegetables, strawberry, sod, and nursery ornamental production. Non-agricultural uses of DCPA include non-residential grass/turf including golf courses and athletic fields.

EPA says that “While these turf uses are considered non-residential because the treated turf is not a home lawn, there is still the potential for residential post-application exposures as a result of application to these use sites.”

Essentially, by its emergency order, EPA has determined that the “continued sale, distribution, or use of DCPA products during the time required to cancel such products would pose an imminent hazard and that an emergency exists that does not permit EPA to hold a hearing before suspending such products.”

Effective immediately, no person in any state may distribute, sell, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver to any person any pesticide product containing DCPA. According to EPA, these findings are based primarily on a “risk of thyroid hormone

perturbations in the fetuses of female bystanders and workers who apply DCPA or who enter treated fields after application.”

Further, “EPA has concerns that pregnant individuals may be currently exposed to DCPA at levels higher than those that cause fetal thyroid hormone disruption, but at which no thyroid effects would occur in the pregnant individual.” EPA has determined that there is “no combination of practicable mitigations under which DCPA use can continue without presenting an imminent hazard.”

The company that is the sole registrant Dacthal products submitted to EPA multiple mitigation proposals, which recommended reducing the “use pattern” among other restrictions, e.g., use only on certain vegetables, geographic limitations, and designation as a restricted use pesticide. The proposals were rejected by EPA.

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According to EPA, it “does not typically approve labeling that restricts the amount of product that individual handlers are allowed to use for several reasons.” EPA says that there are various kinds of tasks individual handlers may need to do as part of an application, such as mixing the product, loading application equipment, using specific equipment, cleaning, repairing, or maintaining application equipment, and disposing of pesticides or materials with pesticide residue.

In a nutshell, these multiple activities “can all lead to exposure, and make it difficult to adequately reduce exposure through a simple label restriction on the amount of a pesticide handled each day.”

At present, according to EPA there is also no mechanism in place through which users can track compliance with the proposed daily amount handled limitations. Without a mechanism for reliably tracking the amounts of product handled per day (across different handling tasks as noted above), EPA found that it would be very difficult to enforce the proposed label requirement.

"Without a way to provide clear limits for all handler tasks and ensure compliance with a limit to the amount of product handled

each day for each handler," EPA determined this mitigation measure would not adequately address these handler risks.

About the author



Oliver E. Twaddell, a partner at **Goldberg Segalla**, handles commercial and general litigation in federal and state court, including cases involving breach of contract, breach of fiduciary duty, fraud, noncompetition and unfair trade practices, as well as property damage, land use and environmental contamination, toxic tort and other general tort actions. He also has experience in litigating copyright and trademark infringement matters and counseling foreign banks, corporations, individuals, partnerships and other entities in complex domestic and international litigation. Based in White Plains, New York, Twaddell can be reached at otwaddell@goldbergsegalla.com. This article was originally published Aug. 15, 2024, on the firm's website. Republished with permission.

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