



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

July 3, 2008

ADMINISTRATOR
OFFICE OF
INFORMATION AND
REGULATORY AFFAIRS

The Honorable Marcus C. Peacock
Deputy Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Mr. Peacock:

On April 1, 2008, the Environmental Protection Agency (EPA) submitted for Executive Order No. 12866 review a draft proposed rule entitled "Pesticide Container Recycling." In this proposed rule, EPA would require registrants who sell agricultural or professional specialty pesticides in rigid, nonrefillable high density polyethylene (HDPE) containers to participate in a recycling program. Registrants would be required to achieve a relatively low recycling rate less than 50 percent by weight-- for all rigid nonrefillable HDPE containers used -- during the previous calendar year. These pesticide container recycling programs would be certified by a third party to meet the ANSI standard. In order to implement the third party certification, EPA would also establish an accreditation program for third party certifiers.

In the course of reviewing this proposal and the supporting analysis, we have concluded that the draft does not meet several of the provisions of Executive Order No. 12866, as amended by Executive Order No. 13422. Pursuant to section 6(b)(3) of Executive Order No. 12866, we are returning the draft proposed rule for further consideration and analysis.

EPA's stated regulatory objective is to reduce the improper disposal of unrinsed or poorly rinsed pesticide containers. We recognize that illegal and improper disposal of these pesticide containers may create hazards. However, it remains unclear whether providing the proposed recycling program will result in a meaningful reduction in the improper disposal of these containers.

In addition, EPA's analysis of the proposed program indicates that the quantified costs imposed by the proposed recycling program will exceed the quantified benefits by more than two orders of magnitude. Further, EPA has not analyzed other alternatives, including alternatives that may increase net benefits and potentially reduce burdens on small businesses. Consistent with Section 1(b)(6) and 1(b)(11) of Executive Order No. 12866, EPA should determine whether alternatives exist that would impose the least burden on society and ensure that the benefits of the intended regulation justify its costs.

We appreciate EPA staff's willingness to examine these important questions, and are returning this rule to allow time to do so. We stand ready to work with your staff, and I would be happy to discuss these issues with you.

Sincerely,

A handwritten signature in blue ink, appearing to read "S. Dudley", is positioned above the typed name.

Susan E. Dudley
Administrator