



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 19 2012

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

Ms. Tracy Heinzman
Wiley, Rein & Fielding, L.L.P.
1776 K Street, N.W.
Washington, D.C. 20006

Re: No Action Assurance Regarding the Production of Methyl Bromide for 2013 Critical Uses

Dear Ms. Heinzman:

I am writing in response to your November 16, 2012, letter to the United States Environmental Protection Agency on behalf of the Methyl Bromide Industry Panel representing producers and importers, in which you request that the EPA not enforce restrictions on methyl bromide production and import found at 40 CFR § 82.4 until such time as the EPA's Office of Air and Radiation issues a final rule that authorizes the production and import of methyl bromide for critical uses in 2013. In your letter, you explain that methyl bromide production and import is essential to ensure pest control in some vital agricultural sectors, including controlling infestations in domestic plantings and food supply operations.

EPA recently signed for publication a notice of proposed rulemaking authorizing critical use of methyl bromide for 2013. EPA intends to finalize the rule as quickly as feasible, after considering public comment. I understand that without the production or importation of critical use methyl bromide in early 2013, critical users will have difficulty meeting their needs for early spring applications. The EPA recognizes, however, that the current regulations only authorize the production, importation or use of critical use methyl bromide through December 31, 2012. Thus, there is no current regulatory authorization to produce, import or use methyl bromide for critical uses in 2013.

For the reasons outlined in your letter, the EPA will exercise its enforcement discretion not to pursue enforcement for violations of 40 CFR § 82.4 against companies identified in the proposed 2013 critical use exemption rule as holders of critical use allowances for 2013, to produce, import or sell critical use methyl bromide for the proposed critical uses for 2013, in amounts not to exceed 340,831 kg. EPA will also exercise its enforcement discretion not to pursue enforcement for violations of 40 CFR § 82.4 against persons identified in the proposed rule as approved critical users who purchase or use critical use methyl bromide produced or imported by such companies for locations and uses identified as approved critical uses in the proposed 2013 critical use exemption rule. This exercise of discretion will begin on January 1, 2013, and is subject to the following conditions:

- Companies must continue to report 2012 and 2013 production and importation of methyl bromide to the EPA as required under the critical use regulations at 40 CFR § 82.13;
- Any critical use methyl bromide produced or imported in 2013 prior to the effective date of the final rule shall still count towards the company's 2013 allocation and, once the rule is effective,

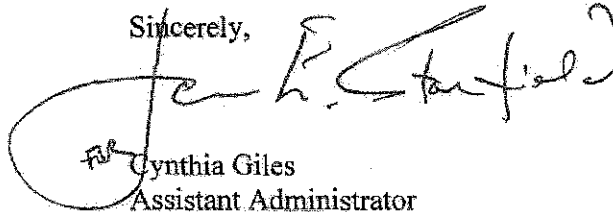
require the expenditure of 2013 vintage critical use allowances for all methyl bromide used during calendar year 2013;

- The allowance allocations are based on each company's proportionate share of allowances in the proposed rule, as follows:
 - Chemtura: Preplant 196,114 kg; Post Harvest: 11,008 kg
 - Albemarle: Preplant 80,647 kg; Post Harvest: 4,527 kg
 - ICL-IP: Preplant 44,567 kg; Post Harvest: 2,502 kg
 - TriCal: Preplant 1,388 kg; Post Harvest: 78 kg
- Companies and critical users identified in the proposed rule must comply with all requirements of 40 CFR § 82.4 and the proposed rule;
- This exercise of discretion terminates upon the effective date of the final rule for 2013 or 11:59 E.D.T., July 31, 2013, whichever occurs earlier; and
- The EPA reserves the right to revoke or modify this no action assurance.

The issuance of a no action assurance for this short period of time is in the public interest as it will prevent disruptions in critical pest control activities. I believe that this action will not increase environmental harm, as no additional allowances are or will be allocated based on this action.

If you have any further questions regarding this matter, please contact Charles Garlow, (202) 564-1088.

Sincerely,



Cynthia Giles
Assistant Administrator

cc: Gina McCarthy
Assistant Administrator, Office of Air and Radiation



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June 6, 2013

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VIA FACSIMILE AND EMAIL

Dominic Mancini, Acting Administrator
Office of Information and Regulatory Affairs
The Office of Management and Budget
725 17th Street, NW
Washington, DC 20503
Fax: (202) 395-3047

Re: E.O. 12866 Meeting Request – RIN: 2060-AR41: Protection of Stratospheric
Ozone: The 2013 Critical Use Exemption from the Phaseout of Methyl Bromide,
Final Rule

Dear Mr. Mancini:

Pursuant to Executive Order 12866, on behalf of the Methyl Bromide Industry Panel (MBIP), I hereby request a meeting with you or your designee regarding the above referenced Final Rule for the 2013 Methyl Bromide Critical Use Exemptions (CUEs) currently under OMB review. This rule was forwarded to OMB by the Environmental Protection Agency (EPA) on May 17, 2013.

The 2013 CUE rule sets the “allowances” for the total volume of methyl bromide which may be manufactured or imported by the methyl bromide registrants into the United States during the 2013 calendar year. The same allowances determine how much methyl bromide may be used by growers to prepare fields for a variety of important crops. Furthermore, allowances and uses are valid only from January 1 through December 31 of a particular year. For 2013, EPA estimated in the proposed rule that it will authorize 562,326 kg of critical use material, but has yet to do so. Without the allowances and uses in place, registrants cannot legally produce or import new methyl bromide to meet grower needs for the upcoming fumigation season. As of today, nearly half of the year has already passed without the final promulgation of the allowances needed. Due to the delay, growers are now faced with the prospect of missing important fumigation windows that precede Fall planting activities.

At the end of 2012, EPA had just proposed the rule that would allocate the allowances for 2013. Thus, in order to avert a crisis for growers (as it has been forced to do in each of the past six years), EPA issued a “No-Action Letter” to the registrants on December 19, 2012. The No-Action Letter stated that EPA would not take enforcement action against the registrants in the absence of final allowances so long as they produced or imported less than 340,831 kg of methyl bromide. Because of the volume limit, the registrants have not manufactured or imported at least 221,495 kg of the total amount of methyl bromide to be



Dominic Mancini

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authorized by EPA for 2013. That amount accounts for nearly 40% of the annual proposed total.

While the industry appreciated the No-Action Letter, it is a stop-gap measure. It does not authorize the full amount of production anticipated for 2013 and it expires on July 31, 2013. Once it expires, the registrants will have no ability to produce and import any product.

The registrants already have produced the full amount authorized by the No-Action Letter and that material has been used to meet grower needs during the Spring planting season. However, methyl bromide is primarily used by growers during two distinct seasons – a Spring season and a late summer/early Fall season. In most cases, the window for applying methyl bromide may only occur over one or two weeks each season. If the grower does not fumigate his field during that window of opportunity, his entire crop for that season will be in jeopardy.

The next significant season for fumigation activity will occur at the end of August and extend into early Fall. Without authorization to produce the additional volume of methyl bromide anticipated in the final rule, the registrants will not be able to meet growers' needs for the upcoming crop season.

The registrants expect to initiate production of the additional amount immediately upon publication of the final rule. However, it takes between six to eight weeks to produce the material, move it into distribution channels and get it into the hands of growers. In the very near term, the registrants also need some certainty as to the additional volume of production to be authorized so that planning for production can occur.

The purpose of the 12866 meeting would be to discuss these issues and others relevant to the need to promulgate the final rule as soon as possible.

Best regards,

A handwritten signature in cursive script that reads "Tracy Heinzman".

Tracy Heinzman
Counsel to the Methyl Bromide Industry Panel

cc: MBIP Members
David Donaldson, EPA

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