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## SECTION I: European Union Developments

### ▶ European Court of Justice Issues Judgments on Recycling of Waste Oils

By the judgments of the European Court of Justice, delivered on January 27, 2005, Austria (C 15/03) and Portugal (C-92/03) have joined a long list of Member States condemned for failing to prioritize the recycling of waste oils under Council Directive 75/439/EEC on the disposal of waste oils, as amended by Council Directive 87/101/EEC. Austria was condemned, first, for not making a clear priority between "the disposal of waste oils by recycling" and "energy recover", thereby "placing regeneration and combustion on exactly the same footing", whereas Article 3 (1) requires a Member State to take measures to give priority to the processing of waste oils by regeneration.

The second point, tackled by the Court in both the Austrian and Portuguese cases, was to what level the government should be involved in removing technical, economic and organizational constraints, which, according to Article 3 (1), could be the sole reason to denying priority to regeneration of waste oils. Both governments argued that the provision does not impose an obligation to build a recycling plant, if such was absent in a Member State.

Keeping with previous judgments, the Court explained that the reference to "technical, economic and organizational constraints" forms part of a provision giving general expression to the obligation imposed on Member States, and that the Community legislature did not thereby intend to provide limited exceptions to a rule having general application, but to define the scope and content of a positive obligation to give priority to the processing of waste oils by regeneration. The rulings' impacts could be negligible, however, since the waste oils directive is up for revision. The European Commission is due to launch an official consultation soon. It has already sent out preliminary questionnaires to Member States. The first question is whether the promotion of regeneration over recovery is still justified.

[Ursula Schliessner](#)  
Brussels

### ▶ Danish Court Ruling Clarifies Member States' Duties Regarding Inclusion of Substances in Annex I

### Contact Info

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On January 18, 2005, McKenna Long & Aldridge LLP obtained an important ruling from the Danish Eastern High Court. The Court stated that the Danish Minister of the Environment infringed the EC Treaty, Directive 91/414/EEC and Directive 2000/67/EC (OJ 2000 L 276/38) including esfenvalerate in Annex I thereto (the "Esfenvalerate Directive"), in seeking to ban esfenvalerate, after the European Commission had adopted the Esfenvalerate Directive, but before that directive entered into force. Esfenvalerate is an existing active substance belonging to the first stage of the review program of work referred to in Article 8(2) of Directive 91/414/EEC.

On October 23, 2000, the European Commission adopted the Esfenvalerate Directive including esfenvalerate in Annex I to Directive 91/414/EEC. By its terms, the Esfenvalerate Directive entered into force on August 1, 2001. On July 18, 2001, the Danish Minister for the Environment issued Executive Order n. 697, which banned the marketing and use of esfenvalerate in Denmark. Order n. 697 entered into force on July 31, 2001.

The Danish Minister argued that, until the Directive entered into force, Denmark was at liberty to ban active substances like esfenvalerate, and that a ban that was properly in place on the date of the entry into force of the approval decision would remain controlling (i.e., took primacy over the EU Commission's approval) thereafter. The plaintiff, which is the principal manufacturer of esfenvalerate and the sole authorization holder in Denmark, challenged the ban, claiming that, pursuant to provisions in the EC Treaty, Directive 91/414/EEC, the Esfenvalerate Directive and the case-law of the European Court of Justice, Denmark was under a duty to allow the continued marketing and use of the active substance esfenvalerate, and that it was the date of adoption of the Esfenvalerate Directive in October 2000, and not its entry into force in August 2001, that triggered the preemptive effect of the approval of esfenvalerate.

The Danish Eastern High Court ruled that, as of the October 2000 adoption of the Esfenvalerate Directive, Denmark was obligated to allow the continued marketing and use of the active substance esfenvalerate and to process applications for (re) registration of esfenvalerate-based products pursuant to the Uniform Principles. The Court further concluded that Denmark could not circumvent this obligation by adopting a ban, as such an act was contrary to Directive 91/414/EEC, and to the provisions of the EC Treaty.

From a legal standpoint, the Danish ruling extends the established principle whereby Member States must refrain from adopting any measure that would jeopardize the objectives of a directive during the period of transposition, to the date of adoption of the directive – i.e., before its formal entry into force. While many cases dealt with the Member States' obligations during the period ranging from the entry into force to the end of the transposition period, the case at hand is the first ruling to deal with the period preceding the entry into force. The legal implications of this ruling are therefore crucial for the plant protection products industry in light of the fact that Annex I inclusion directives usually provide for a long period of time between the adoption and entry into force.

**Claudio Mereu**  
**Brussels**

▶ **DG Environment to Consult on Hazardous Waste Directive 91/689/EEC**

The European Commission (Commission) is considering conducting a detailed examination of the Hazardous Waste Directive. The Hazardous Waste Directive is one of the oldest EU legislative acts on waste. Its provisions are indispensable for safeguarding a high level of environmental protection; and the differentiation it introduces between hazardous and non-hazardous waste is, along with the differentiation between recovery and disposal laid down in the Waste Framework Directive, a key element of waste management policy.

This examination is part of the elaboration of the Strategy on Prevention and Recycling on Waste. Though expected in late 2004, the final proposal of the Strategy was rescheduled to spring 2005. The main objective of the Strategy is to decouple the use of resources and the generation of waste from the rate of economic growth. The Commission emphasizes the need to develop the right mix of legislative, voluntary and economic instruments to achieve this objective.

The Strategy also includes an assessment of existing waste policies. The Commission claims that among the objectives of this review is an aim to improve waste legislation by simplifying it. Therefore the strong connection between the provisions on waste and those exclusively applied to hazardous waste might justify their integration into one Directive.

With the intention of preparing a future position on this subject the Commission has formulated questions on which the comments of the public are welcome. For more information, see [http://www.europa.eu.int/comm/environment/waste/hazardous/hazardous\\_consult.htm](http://www.europa.eu.int/comm/environment/waste/hazardous/hazardous_consult.htm).

**Koen Van Maldegem**  
**Brussels**

### ▶ **European Emissions Trading Scheme Comes into Force**

On January 1, 2005, the EU emissions trading scheme came into force under Directive 2003/87/EC, implementing the EU's commitment to reduce greenhouse gases under the Kyoto Protocol and establishing a foundation for an international trading system. The scheme covers CO<sub>2</sub> emissions allowances to be traded within the energy and several heavy industry fields of all Member States. On December 21, 2004, the Commission also adopted a Regulation regarding an electronic registry that tracks ownership and trading of the emission allowances. The registry was launched on February 14, 2005. However, out of the current 25 Member States, Poland, Italy, Greece and the Czech Republic still do not have their national plans approved.

Another problematic situation is that of the UK. During the assessment of national plans by the Commission on July 7, 2004, its national plan was partially rejected and the Commission indicated that additional steps need to be included in the national plan in order for it to be acceptable. The changes subsequently made by the UK are not in the Commission's view acceptable, and the Commission has threatened to take the UK to court. UK's Secretary of State for the Environment confirmed on March 3, 2005, that the UK authorities believe they had every justification for seeking to amend their provisional proposals.

Meanwhile, European markets are getting ready for the trading. Even though the European stock exchange operators are not planning to open the market for trading until late March, spot trades are already occurring and exchanges are being prepared

and executed as forward contracts. Under the new scheme, there will be three ways to trade: forward contracts, futures and on the spot.

According to the *Budapest Business Journal* (March 4, 2005), the Hungarian government plans to introduce a special tax reduction on the trade of greenhouse gas emission credits. The tax cut is intended to make Hungary the center of the EU's carbon dioxide emission trade. For additional background information, please refer to the January 2005 *International Environmental Monitor*.

### Ruxandra Cana Brussels

#### ▶ **Commission Adopts Regulation (EC) No 92/2005 on Animal By-Products**

On January 19, 2005, the European Commission (Commission) adopted a regulation implementing Regulation No. 1774/2002 concerning the disposal or uses of animal by-products and amending Annex VI of the latter Regulation as it concerns biogas transformation and processing of rendered fats. The new Regulation approved the processes of high temperature and high pressure alkaline hydrolysis to be used for the treatment and disposal of animal by-products in Category 1 (with certain exceptions and conditions) and Categories 2 or 3. This approval means that afterwards it is open for the competent authorities to authorise the usage of such processes. Before authorization, the competent authority has to make sure that the plant complies with the technical specifications and conducts regular monitoring of processing parameters.

New regulations approving other processes are expected to appear soon. The Scientific Steering Committee already has issued an opinion considering five other processes as safe for the disposal of and/or uses of Categories 2 and 3 material under certain conditions.

### Iratxe Ballesteros Brussels

#### ▶ **European Council Adopts New Position on Pesticide Residue Limits**

The Council of the European Union issued Common Position (EC) 1/2005 on February 1, 2005, anticipating a Regulation on Maximum Residue Levels (MRLs) of pesticides in or on food and feed, to repeal the four earlier Directives on the subject and replace them with a single Regulation. This has the advantage of putting all the legislation in one document, and (as it is a Regulation) bringing it into force in all EU Member States without the need for each Member State to ratify the legislation in Parliament (as happens with Directives). A "Common Position" is typically a piece of legislation in its final draft. The new Regulation will set MRLs for all pesticides in foods and feeds, and the MRLs will apply throughout the EU. The Regulation will also apply to biocides, and veterinary medicines. Presently, each Member State can set its own MRL for a particular pesticide on a particular crop. The one-size-fits-all approach of a single Regulation is open to criticism, because application rates vary across the EU, between North and South, and the MRL can vary with the way the pesticide is applied. Different pest species in different countries can mean different rates and frequencies of application, leading to different residue levels. The new Regulation is one of the most significant pieces of EU legislation for plant protection and the food industry since 91/414/EEC.

The EU MRL will be based on the so-called "Critical GAP," which is the highest recommended safe use of a plant protection product in the EU. It should be noted that MRLs are not toxicological levels and that levels in food and feed are assessed, as part of an intake estimate, to ensure that consumption does not exceed the ADI (Acceptable Daily Intake) which is based on toxicological data. However, determination of MRLs should include an assessment of potential risks to consumers. Where authorized uses of pesticides do not give rise to detectable levels of residue, or where given pesticide active substances are not authorized in the EU (e.g., have been banned), the MRL will be set at the lowest level of detection, or a default of 0.01 mg/kg.

One criticism of the present system is that one Member State may impose a lower MRL than another and, thus, prevent import of "high MRL" crops or processed foods or feed from another Member State. This can be seen as a barrier to trade, and the EU primarily exists to remove barriers to trade within the Union. Equally, and of importance to other food-producing nations such as the USA, MRLs set in the EU will apply to imported food, and may restrict the import of foods to the EU. The Position notes this and the Regulation may include provision for different MRLs on imported foods, provided the safety of the foods can be demonstrated in the same way as for EU foods.

The EU is part way through a review of all pesticide active substances under Directive 91/414/EEC. The Regulation requires MRLs be set following Annex I listing to be supported by data (i.e., from field trials), or to be set at the (minimal) default level. When MRLs are to be set for an active substance, the same Member State that was Rapporteur under 91/414/EEC will act as Rapporteur on behalf of EFSA. Rapporteurs may charge a fee for this, to permit cost-recovery. Member States are also required to establish monitoring agencies to control residues in food and feed. There is also provision for temporary (one-year) MRLs to be extended to three years.

The MRLs will be declared in Annex I to the Regulation, which will be amended from time to time. If there are substances for which no MRL will be set, these will be listed in Annex IV to the Regulation. Anyone wishing to make an application for an MRL should present a dossier containing the crop residue and analytical data, together with appropriate scientific rationales and details of the GAP, and appropriate plant and animal metabolism data, to allow the Member State to evaluate the data. Information from a dossier submitted under 91/414/EEC may be used.

The regulation will apply to all active substances: for those already on Annex I of Directive 91/414/EEC, within 12 months of the entry into force of the Regulation, and for actives subsequently listed on Annex I, within 12 months of listing. While the Regulation will list exact times for the Commission and EFSA to respond to Rapporteur MS evaluations, there is no timeframe for the RMS evaluations themselves.

**Nick Leeming**  
**TSGE, Knaresborough, UK**

### **► Impact of EU Pesticide Residue Harmonization on Exports of US Food Products**

On February 4, the USDA Foreign Agriculture Service released a January 31 report entitled EU-25: *EU Pesticide MRLs Harmonized Shortly*, E35016, which notes that "current EU and Member State legislation on pesticide Maximum Residue Levels

(MRLs) is being replaced on course in 2005. This change, along with other developments in pesticide legislation in the EU, could have trade implications if the future EU harmonized MRL list does not include MRLs evaluated and authorized in U.S. and thus possibly found on exported U.S. agricultural commodities . . . ." See <http://www.fas.usda.gov/gainfiles/200502/146118686.doc> for USDA's complete report.

**Edwin L. Johnson**  
TSG, Washington, DC

#### ▶ **European Commission Approves New Agricultural Chemicals**

European Commission Directive 2005/2/EC (January 19, 2005) included *Ampelomyces quisquais* and *Gliocladium cetenum* as active substances (both as fungicides on Annex I) to Directive 91/414/EEC, as of April 1, 2005. Member States have until September 30, 2005 to review existing registrations for end-use products containing these "actives" to ensure that the conditions of listing on Annex I are complied with, or withdraw non-complaint registrations.

European Commission Directive 2005/3/EC (January 19, 2005) included imazosulfuron, Laminarin, methoxyfenzoide and s-metoachlor as active substances on Annex I to Directive 91/414/EEC, as of April 1, 2005. Member States have until September 30, 2005 to review existing registrations for end-use products containing these activities to ensure that the conditions of listing on Annex I are complied with, or to withdraw non-complaint registrations. Member States then have until September 30, 2006 to evaluate Annex II (product) dossiers for each authorized plant protection product in accordance with Uniform Principles. This applies to straight formulations and to mixtures where the other activities in the product were already on Annex I by March 31, 2005.

**Nick Leeming**  
TSGE, Knaresborough, UK

#### ▶ **EU Regions Defend Right to Ban Biotech Production**

Twenty EU regions met in Florence on February 4 to sign a charter proclaiming their right to declare themselves "GMO-free" regions. The organizers intend to work within the current EU legal framework to ban GM production in their regions. This could mark a shift in strategy precipitated by previous setbacks. In 2003, Upper Austria's attempts to impose a ban on GM production met with failure; the EU Commission ruled that Austria failed to provide sufficient scientific evidence to justify a ban. Likewise, the Commission has raised legal concerns with Germany's new coexistence law. Josef Stockinger, Upper Austria's agriculture minister and a founder of the regional network commented "... that in Berlin recently, Agriculture Commissioner Marianne Fischer-Boel recognized that there are insecurities and doubts related to the coexistence of crops. Without the intervention of the Commission, nothing serious can be done."

The network of 20 GMO-free regions is comprised of Italy (Sardinia, Tuscany, Emilia-Romagna, Marche, Lazio, Bolzano); France (Aquitaine, Brittany, Ile-de-France, Poitou-Charentes, Limousin); Austria (Upper Austria, Salzburg, Steiermark, Burgenland); the United Kingdom (Wales, the Highlands and Islands of Scotland); Spain (the Basque area); Germany (Schleswig-Holstein), and Greece (Drama-

Kavala-Xanthi). The report is posted at  
<http://www.fas.usda.gov./gainfiles/200502/146118774.doc>.

**Edwin L. Johnson**  
**TSG, Washington, DC**

### ▶ **European Food Safety Authority Issues Guidance on Assessing Risks of Ag Biotech**

An EFSA News Release entitled *EFSA concludes guidance document for the risk assessment of genetically modified plants and derived food and feed* states in part, "Following fruitful collaboration and consultation with stakeholders, the Scientific Panel on Genetically Modified Organisms (GMO Panel) of the European Food Safety Authority (EFSA) has concluded and published its guidance document for the risk assessment of genetically modified (GM) plants and derived food and feed. The guidance document is the result of a request submitted to EFSA by the European Commission for comprehensive guidance to applicants wishing to introduce GMOs or derived products to the EU market in accordance with the Regulation on GM food and feed.

"This guidance document was compiled by the GMO Panel, together with some members of other EFSA Scientific Panels and ad hoc experts. Before any GMO or derived product can be placed on the EU market, it is required to pass an approval system in which its safety vis-à-vis humans, animals and the environment is thoroughly assessed. In line with the provisions of the regulation on GM food and feed, the European Commission asked EFSA to develop and publish a detailed guidance document to assist applicants in the preparation and presentation of applications for the authorization of GM food and/or feed. Upholding its commitment to involve stakeholders in the risk assessment process, the guidance document has substantially benefited from comments received during a four-week public consultation period as well as Feedback received during a stakeholder consultation ... It provides detailed guidance for the preparation and presentation of applications within the framework of the Regulation on GM food and feed, and Directive 2001/18/EC on the deliberate release into the environment of GMOs. This document therefore covers the full risk assessment of GM plants and derived food and feed. Issues related to risk management of GMOs (traceability, labeling, and co-existence) are outside the remit of the GMO Panel ...."

See [http://www.efsa.eu.int/press\\_room/press\\_release/719\\_en.html](http://www.efsa.eu.int/press_room/press_release/719_en.html) for the complete text of the EFSA News Release. The guidance document entitled *Guidance document of the GMO Panel for the risk assessment of genetically modified plants and derived food and feed* was adopted on September 24, 2004 and last updated on November 30, 2004 and is posted at the following location:  
[http://www.efsa.eu.int/science/gmo/gmo\\_guidance/660\\_en.html](http://www.efsa.eu.int/science/gmo/gmo_guidance/660_en.html).

**Edwin L. Johnson**  
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## **SECTION II: United States Developments**

### ▶ **U.S. and Canada Commit to Use New OECD Approach in Pesticide Registration**

New pesticides are introduced to the market every year. Before consumers can buy these products, companies seeking to market them must submit a large package of data to governments, whose role it is to ensure that the pesticides meet health, environment and safety standards. Pesticides already on the market are re-evaluated to ensure that they continue to meet these standards. In the past, this process of pesticide approval and registration was carried out by each country individually. While some progress has been made to share the evaluation of pesticides, individual countries still do this work in many cases.

Pesticide regulators in the United States and Canada have announced their commitment to a global approach to the regulation of agricultural pesticides. Developed by the OECD Working Group on Pesticides, this approach will make the approval process for agricultural pesticides safer, faster and more efficient. Government pesticide regulatory authorities will be able to work together to ensure high levels of protection and access to important pest control products.

Using the objectives laid out in *The OECD Vision for the Future of a Global Approach to the Regulation of Agricultural Pesticides*, governments' pesticide regulators have agreed by 2014 to routinely 1) accept data submissions prepared by industry in the agreed OECD format; 2) exchange and use reviews of the data prepared in the OECD format to support independent risk assessments and regulatory decisions; 3) generate just one review report (or "monograph") for each new pesticide that could be used across all OECD countries, where feasible; and 4) ensure that the benefits derived and experiences gained from work sharing are taken into other international arenas to help developing countries efficiently manage their regulatory systems.

The new arrangements will allow governments to improve the soundness of the science behind regulatory decisions and to review new, safer, products and registered pesticides more efficiently. Consumers will benefit from more consistent and transparent pesticide regulation across countries. Farmers will benefit from quicker access to new and safer pesticides, and industry from lower trade barriers and costs associated with the regulatory process. Further announcements by European and Asian/Pacific governments in the OECD and by companies are anticipated in the coming months.

**Edwin L. Johnson**  
**TSG, Washington, DC**

### **▶ Department of Agriculture Establishes Food Safety and Inspection – Food Emergency Response Network**

The U.S. Department of Agriculture's Food Safety and Inspection Service (FSIS) recently announced the establishment of a new division that will play a major role in developing the Food Emergency Response Network (FERN), an integrated network of laboratories across America that can quickly respond to food-related emergencies. The FSIS-FERN Division will work with the U.S. Food and Drug Administration (FDA) to expand and manage an existing group of more than 90 federal, state, and local laboratories with the capability to detect acts of terrorism on the nation's food supply. The goal of this system is to allow for effective communication within the U.S. government and generally increase the ability to prevent and defeat terrorist attacks. This new division is being established under the FSIS Office of Public Health Science, and will be co-located with the FSIS Eastern Laboratory in Athens, Georgia. The mission of the FERN laboratories will include analyzing surveillance samples and ensuring the security and safety of their facilities and employees.

**Brian Finch**  
Washington, DC

▶ **Department of Health and Human Services Establishes New Office of Food Safety, Defense, and Outreach**

The Center for Food Safety and Nutrition (CFSAN) in the Department of Health and Human Services recently formed a new Office of Food Safety, Defense, and Outreach (OFSDO). This new office will consolidate outreach and education on food safety and defense with its counter terrorism and chief medical officer responsibilities, and will become the resource center for information on food safety, food defense, nutrition, and cosmetics. The consolidated OFSDO will serve as a conduit between individual offices that provide scientific expertise and Center-based outreach and education. OFSDO will work closely with various offices to identify their outreach and education needs, develop materials, and coordinate public events (e.g., public meetings and roll-outs), as necessary. These changes are designed to improve the quality, quantity, and timeliness of CFSAN outreach and education. With these changes, the OFSDO hopes to ensure consistent procedures and consumer messages.

**Brian Finch**  
Washington, DC

▶ **EPA Panel Reviews New Biotech Corn Variety**

The US Environmental Protection Agency (EPA) recently formed a panel of scientific advisors to review the safety of a new variety of genetically engineered corn that is rootworm-resistant. The new variety was developed by Pioneer Hi-Bred International and Dow AgroSciences. The companies assert that the corn is safe for human consumption, but some critics of genetically engineered food products are concerned that the corn's protein takes longer to break down in humans, which is often a sign of allergenicity. While the EPA and the Food and Drug Administration (which also assesses the safety of biotech foods) believe the corn is safe based on research provided by Pioneer and Dow, the agency is convening a panel of scientific advisers to examine the companies' data. Pioneer and Dow hope to put their new corn seed on the market next year.

**Sarah Lukie**  
Washington, DC

▶ **California Proposition 64 Ruled Retroactive ... and not Retroactive**

Two different California Courts of Appeal have reached different conclusions regarding the retroactivity of Proposition 64, which amended California Business & Professions Code sections 17200 and 17500. Proposition 64, enacted by the California electorate on November 3, 2004, amended sections of the California Business & Professions Code. This legislation provides fixes to many perceived problems regarding Unfair Competition Law ("UCL") litigation, which was seen by many as the effort of unscrupulous attorneys abusing the law to generate monetary settlements. Over the years, hundreds of companies doing business in California have been sued under the UCL, primarily by private persons or entities claiming to sue on behalf of the public under the Unfair Competition Law's citizen's suit provision. Lawsuits enforcing the California Safe Drinking Water and Toxic Enforcement Act ("Proposition 65") also typically asserted UCL claims. Now plaintiffs who have not suffered injury cannot bring actions based on the Unfair Competition

Law or Fair Advertising Law on behalf of the public interest. Under Proposition 64, only the state attorney general or local public officials have standing to sue on behalf of the public to enforce the Unfair Competition Law. Additionally, Proposition 65 limits private standing to bring suit to those individuals who have suffered actual injury or financial loss because of an allegedly unfair practice.

At issue now is whether Proposition 64 applies retroactively in litigation pending on November 3, 2004, the effective date of Proposition 64. Two different California Courts of Appeal have ruled in different ways, thereby teeing the issue for resolution before the California Supreme Court.

The California Court of Appeal, Second District, ruled on February 9th that Proposition 64 applies retroactively to cases that were pending when the measure was passed. However, the Court also held that "if a plaintiff filed a representative action under section 17200 or 17500 on behalf of the general public before November 3, 2004 and cannot meet the standing requirements under the statutes as amended by Proposition 64, the plaintiff may, at the trial court's discretion, be entitled to amend the complaint to substitute a plaintiff who meets the standing requirements."

At about the same time, the Court of Appeal, First District, ruled that Proposition 64 did not apply retroactively to cases pending when the measure passed. While the Court of Appeal, Second District, took judicial notice of that ruling, it still disagreed with the reasoning of the First District regarding applicability to pending cases. Justice Richard M. Mosk, writing for the Court of Appeal, Second District, stated, "Generally, there is a presumption that statutory enactments do not operate retroactively unless there is clear legislative intent to the contrary. ... [B]oth this court and the Courts of Appeal have generally commenced analysis of the question of whether a statute applies retroactively with a restatement of the fundamental principle that 'legislative enactments are generally presumed to operate prospectively and not retroactively unless the Legislature expresses a different intention.' But by virtue of (California) Government Code section 9606, this presumption does not apply when a statutory enactment repeals a statute that provides a purely statutory cause of action. In that instance, the enactment takes immediate effect in all pending cases - including cases in which a judgment has been entered but the matter is pending on appeal - unless the enactment contains a saving clause."

**[Ann Grimaldi](#)**  
**[San Francisco, CA](#)**

### ▶ **California Proposition 65 Fish Cases Settle**

The San Francisco County Superior Court has approved a settlement under which hundreds of restaurants in California will be required to post warnings for patrons about mercury in fish. This settlement concludes, at least as to the named restaurants, Proposition 65 enforcement action brought by California Attorney General Bill Lockyer in April 2003, alleging that restaurants violated the statute by failing to post clear and reasonable consumer warnings about exposure to mercury in shark, swordfish, and tuna. Mercury and its various compounds are listed by the state to cause cancer or reproductive harm. The settlement requires the restaurants to pay \$132,287 in civil penalties and an additional \$132,287 to fund programs to educate consumers about mercury in fish, and to help finance the effort to monitor the defendants' compliance with the settlement. Restaurants covered by this settlement include Morton's, Bennigan's, Red Lobster, Ruth's Chris Steakhouse, Yard

House, Chili's, Macaroni Grill, Outback Steakhouse, Benihana, Chart House, Claim Jumper, Cheesecake Factory, and P.F. Chang's.

Lockyer stated that "[they are] not trying to discourage people from eating fish, which is an important part of a balanced, healthy diet. But people have a right to know when they are being exposed to substances that can cause cancer, birth defects or reproductive harm, and businesses have a legal duty to provide that notice. This settlement achieves these significant public health objectives." Morton's and Red Lobster have already taken swordfish off their menus as a result of a national campaign calling attention to high levels of mercury found in the fish. The Food and Drug Administration also has issued an advisory warning consumers about mercury levels in this fish. Various grocery stores also are named as defendants in the consolidated fish cases pending in the San Francisco County Superior Court, and those parties continue to negotiate a settlement.

**Ann Grimaldi**  
San Francisco, CA

### ▶ **EPA Publishes Proposed Rule to Amend the Inventory Update Rule (IUR) Reporting Requirements**

In the January 26, 2005, Federal Register, the EPA published a proposed rule under TSCA Section 8(a) that would revise the IUR reporting requirements for 2006. Manufacturers and importers of chemicals have been required to submit IUR reports since 1986 and in subsequent four-year intervals, with the last report due in 2002. The 2006 IUR reporting revisions change the reporting cycle from 4 years to 5 years; move the submission period from the end of the calendar year (August 25 to December 23) to the beginning (January 1 to April 30); further explain the partial exemption for chemicals of low interest for use and exposure information; clarify the petroleum process stream partial exemption; amend the list of commercial and consumer product use categories; require separate reporting of manufacture and import volumes; edit the polymer exemption definition; and remove the requirements to determine the confidentiality of production volume in ranges. Comments on the proposed revisions must be submitted on or before February 25, 2005.

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## **SECTION III: International Developments**

### ▶ **First Meeting of Parties to Cartagena Protocol Establishes Expert Group**

At the first meeting of the Conference of Parties serving as the Meeting of the Parties to the Cartagena Protocol on Biosafety (COP-MOP 1), a decision was made to establish an Open-ended Technical Expert Group on Identification Requirements of Living Modified Organisms intended for direct use as Food or Feed, or for Processing (LMOs-FFP). The first meeting of the expert group takes place on March 16-18, 2005 in Montreal, Canada. Documents for the meeting are available at <http://www.biodiv.org/doc/meeting.asp?mtg=BSTEGIR-01>, or contact [secretariat@biodiv.org](mailto:secretariat@biodiv.org) for more information.

**Edwin L. Johnson**  
TSG, Washington, DC

▶ **Suicide Seeds: Canadian-led Coup to Allow Terminator Technology Narrowly Squelched at UN Meeting**

According to an ETC Group news release, the Canadian government proposed to promote the Terminator gene at a UN meeting in Bangkok, February 7-11 (SBSTTA, the scientific advisory body to the Convention on Biological Diversity - CBD). The news stunned farmers' organizations, government delegations, and civil society worldwide. Ottawa's instructions to the Canadian delegation in Bangkok called for an all-out push for field-testing and commercialization of sterile seed technologies, effectively un-doing the precautionary, de facto moratorium on Terminator seeds adopted by governments in 1998. In addition, the Canadian delegation was instructed to "block consensus" by governments attending the meeting if its proposal was not accepted. ETC Group also reported that, in advance of the Bangkok meeting, Canadian embassies around the world asked governments to support a recommendation for "field testing and commercial use" of Terminator.

After being swamped by protest emails and letters, Canada softened its public position on Terminator, but is continued to press a solidly pro-Terminator view in the corridors and in a committee appointed to negotiate draft text on Terminator. (The drafting group on Terminator included representatives from Canada, the European Community, Peru, Tanzania, and Philippines.) By Thursday morning, Canada and seed industry representatives had drafted text that included language promoting Terminator field trials and capacity building for the use of Terminator in the developing world and invited research by "private sector entities."

The UN meeting was also heavily attended by representatives from the biotech industry and related trade groups – including Monsanto, Delta & Pine Land, CropLife International, PhARMA (pharmaceutical manufacturers), and the International Seed Federation – who lobbied against current restrictions on the development of the Terminator technology. New Zealand and Australia also backed the position of industry and Canada. US government representatives observed from the sidelines. (The US government is not a Party to the Biodiversity Convention.) Key interventions by the governments of Norway, Sweden, Austria, the European Community, Cuba, Peru, and Liberia, on behalf of the African Group deleted the most offensive wording. The final text and recommendations reaffirm earlier decisions, amounting to a continuing, but fragile, de facto moratorium on Terminator. The issue now bounces to another CBD advisory body (the Working Group 8(j)) in March 2006.

**Edwin L. Johnson**  
TSG, Washington, DC

▶ **China Planning Large-Scale Introduction of Genetically Engineered Rice**

Yuan Longping, head of China's super hybrid rice scheme, was cited as telling the Changsha Evening News that China is on the verge of introducing genetically engineered rice on a large scale as it seeks ways to adequately supply the basic staple to its people, adding, "It would boost China's rice output by 30 million kilograms (66 billion pounds) a year. That's enough to feed 70 million more people." Yuan was further cited as saying the new rice strains still have to pass state appraisal, expected to be conducted later this year, before they receive vigorous promotion. Shrinking acreage, falling water tables and a population that is expected

to grow significantly beyond 1.3 billion are factors that have led China to explore other ways to feed its population.

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#### ▶ **UNEP Takes Action Against Mercury**

At the UNEP 23rd Governing Council meeting in Nairobi, governments took a step forward in reducing the health and environmental risks from mercury, a heavy metal linked with a wide range of medical problems. Under an expanded mercury program, they have asked the United Nations Environment Program (UNEP) to conduct a study on the amounts of mercury being traded and supplied around the world. Mercury, a heavy metal linked with effects such as damage to the nervous systems of babies, is used in products such as fluorescent light bulbs, dental fillings and thermometers. Action is also to be taken on improving the communication of the risks of mercury to vulnerable groups. These include pregnant mothers whose babies may be at risk if they eat too much mercury-contaminated fish or marine mammals such as seals.

overnments also agreed to promote "best available techniques" for reducing mercury emissions from chemical factories and other industrial sites. They agreed to develop partnerships between governments, international organizations, non-governmental organizations and the private sector to reduce mercury pollution with the first pilot projects to be in place by September this year. An estimated 2,000 tons of new mercury is released into the environment annually, mainly from coal-fired power stations, waste incinerators and as a result of artisanal mining of gold and silver.

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#### ▶ **Brazil Legalizes GM Crops**

Brazil's lower house of Congress recently approved a bill that legalizes the sale of biotech seeds in Latin America's largest country. While farmers have been planting genetically engineered soybeans illegally in Brazil for years, this law finally allows genetically modified seeds to be sold legally. This is good news for Monsanto Company, as the company's Roundup Ready Soybeans have been smuggled into country by farmers for years to cut production costs. The bill was already approved by the Senate and is now expected to be signed into law by President Luis Inacio Lula da Silva. At the present time, it is estimated that 30 percent of Brazil's soy is grown with genetically engineered seeds, with a figure closer to 90 percent in the southernmost states near Uruguay and Argentina, countries with no bans on these products.

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#### ▶ **Brazil's Legislature Approves Ag Biotech Legislation**

In a March 2 article entitled *Brazil Oks genetically modified crops*, the *News Sentinel* newspaper of Fort Wayne, Indiana reports " ... Brazil's lower house of Congress overwhelmingly approved a law Wednesday creating a framework to legalize biotech seed sales in Latin America's largest country. The move hotly protested by environmentalists clears the way for rules to be set that would allow Monsanto to sell

genetically modified soy seeds in Brazil, where soy production has boomed over the last decade. The modified seeds were banned in Brazil, but their use has been widespread for years by Brazilian farmers who use cloned or smuggled versions of the company's popular Roundup Ready seeds to cut production costs. Monsanto has complained for years that it was being robbed of profits from the widespread illicit use of a seed it developed. The bill passed by vote of 352-60. It has already been approved by Brazil's Senate and is expected to be signed into law by President Luiz Inacio Lula da Silva ... Experts estimate about 30 percent of Brazil's soy is grown with genetically engineered seeds, but the figure is near 90 percent in Brazil's southernmost state, where the seeds were first introduced in the 1990s after being smuggled in from neighboring countries with no bans on them ..." See <http://www.fortwayne.com/mld/newssentinel/11035178.htm> for the complete text of the newspaper story.

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