

Data Protection and Broker License in California

By Kenneth D. Morris, Esq.

Although existing California law generally regulates pesticides and provides sanctions in the event of the sale of unregistered pesticides or if anyone other than a licensed pesticide broker, a registrant of a pesticide, or a licensed pest control dealer sells or distributes registered pesticide products for agricultural uses, beginning January 1, 2006 this law also apply to sellers or distributors of pesticides that are used for nonagricultural uses. With the passage of California Assembly Bill No. 1001 and its signing by the Governor on October 8, 2005, the new law now requires additional persons to be licensed, expands the definition of a crime, and requires pesticide retailers to maintain records that show the names and contact information of their suppliers.

The law now provides that it is unlawful for any person, other than the registrant or a pest control dealer duly licensed to sell, distribute in the State, or import into the State, any pesticide products that have been registered unless that person is also licensed as a pesticide broker. As a result, “big box” retailers, for example, will now have to obtain broker licenses in order to sell in the State. All licensed pesticide brokers must report quarterly on the dollar sales and maintain records detailing the names and contact information of their suppliers.

The law also changes the rules for data protection for registered pesticides. Prior to January 1, California had no provision similar to the Federal Insecticide, Fungicide, and Rodenticide Act in its requirement of offers to pay compensation to the basic registrant in order to register a follow-on product. Previously, only if the original registrant provided the required letter of access could a company obtain registration in California and rely on the original registrant’s data. Under the new law, if a California applicant for registration does not submit its own data to fulfill a current data requirement, the applicant must either (i) obtain written permission from the data owner in order to rely on the data, (ii) formulate or obtain its product from a source that has data authorization, or (iii) irrevocably offer to pay the data owner a share of the cost of producing the data. If agreement on the amount of compensation cannot be reached, either party may initiate arbitration. It will be up to original registrants, however, to petition the Department within twelve (12) months from the date of registration of the follow-on product if no compensation has been paid following an offer having been made.

Kenneth D. Morris, Esq. L.L.C. Law Offices*
1320 Vale Dr.
West Chester, PA 19382
Office: 484-607-8203
Cell: 484-678-3954
Fax: 610-793-4245
E Mail: kdm@kenmorrislaw.com
**Also admitted NJ and DC*