

Albany  
Atlanta  
Brussels  
Denver  
Los Angeles

**McKenna Long  
& Aldridge**<sup>LLP</sup>  
Attorneys at Law

101 California Street • 41st Floor • San Francisco, CA 94111  
Tel: 415.267.4000 • Fax: 415.267.4198  
www.mckennalong.com

New York  
Philadelphia  
Sacramento  
San Diego  
San Francisco  
Washington, D.C.

STANLEY W. LANDFAIR  
(415) 267-4170

EMAIL ADDRESS  
slandfair@mckennalong.com

April 11, 2011

**VIA EMAIL AND U.S. MAIL**

Ann M. Prichard, Chief  
Pesticide Registration Branch  
California Department of Pesticide Regulation  
1001 "I" Street  
Sacramento, California 95812-4015

**RE: *HEXAZINONE***

Dear Ms. Prichard:

By notice dated November 1, 2010, the Department of Pesticide Registration's ("DPR") informed registrant E.I. du Pont de Nemours and Company ("DuPont") that trace levels of DuPont's registered herbicide product hexazinone have been detected in wells in five California counties since 2007, and that DPR has concluded that these detections resulted from legal agricultural uses of the product in some cases. The DPR notice states that the Department will initiate the cancellation process for all registered agricultural uses of hexazinone unless DuPont requests a hearing, and assuming that a hearing is requested, unless DuPont can demonstrate at the hearing why cancellation, or lesser measures such as additional use restrictions and mitigation measures, are unwarranted.

DuPont requested a hearing, now scheduled for May 9, 2011. In the enclosed "Information and Report concerning Hexazinone ("Report"), DuPont demonstrates that the evidence of detection does not satisfy the statutory standards for cancellation of any current registered use of hexazinone products or the imposition of any restrictions or mitigation measures. Please this letter and the Report to the members of the subcommittee of the Pesticide Registration and Evaluation Committee who will attend the hearing on May 9, 2011.

The Report demonstrate that hexazinone "has not polluted, and does not threaten to pollute, the groundwater of the state in any region within the state in which [hexazinone] may be used according to the terms under which it is registered." Food & Agricultural Code Section 13150(a)(2). While hexazinone has been detected in (a very few) wells, those detections do not suggest that groundwater has been "polluted" with hexazinone that that hexazinone is a threat to "pollute" groundwater, as the term "pollution" is defined in the Act. To summarize, the amounts detected are less than one-thousandth the concentration of hexazinone that the United States Environmental Protection Agency ("US EPA") has determined is safe for human consumption in drinking water, assuming a lifetime of exposure at that level. A small number of infrequent detections in wells at levels so far below the level that has been deemed safe for lifetime

Ann M. Prichard, Chief  
April 11, 2011  
Page 2

consumption in drinking water cannot satisfy the definition of "pollution," defined in Section 13142(j) as the introduction into the ground waters of the state of a pesticide "above a level with an adequate margin of safety that does not cause adverse health effects."

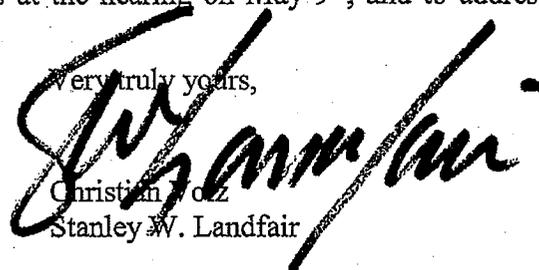
As documented in the Report, US EPA established a "Lifetime Health Advisory Level" ("HAL") for hexazinone in drinking water in 1996 at 400 micrograms per liter ( $\mu\text{g}/\text{l}$ ), and reaffirmed that 400  $\mu\text{g}/\text{l}$  HAL in 2009. That level was based on a conservative no observed adverse effect level in the most sensitive species tested (dog). Considering that the *highest* level at which hexazinone has been detected is 0.274  $\mu\text{g}/\text{l}$ , it is obvious that the groundwater of the state has not been polluted by hexazinone within the meaning of Section 13142(j). The greater than 1000-fold difference between 400  $\mu\text{g}/\text{l}$  and 0.274  $\mu\text{g}/\text{l}$  is an "adequate margin of safety."

Nor do the facts indicate that hexazinone *threatens* to pollute groundwater, e.g., through the accumulation of residues in soil and groundwater and migration to drinking water wells. Several lines of evidence contradict such an assessment:

- The product has been on the market for many years, its sales are consistent and not increasing, and there is no pattern of increasing concentrations in the limited monitoring well data.
- Hexazinone degrades in soil and will not accumulate and reach a level of public health concern.
- DuPont's hexazinone labels already restrict the uses and application rates significantly in ways that are calculated to minimize the potential to leach into groundwater or runoff into surface waters; thus, adequate "mitigation" measures are already in place.
- Additional mitigation measures are not justified given the absence of any threat to "pollute" the groundwater and will impose a significant economic burden on alfalfa growers.

For all these reasons, DuPont respectfully submits that DuPont's hexazinone registrations should not be cancelled and that neither additional use restrictions nor mitigation measures are justified by the scientific evidence and data, measured against the appropriate statutory standard. We look forward to discussing these points at the hearing on May 9<sup>th</sup>, and to addressing any questions the subcommittee may have.

Very truly yours,



Christian Lopez  
Stanley W. Landfair

Enclosure  
SF:27467541.2