

AMVAC Request 1: “All documents memorializing a delegation of authority to grant or deny waiver requests in connection with the DCPA DCI that grant such authority to any person within EPA below the Administrator that are now in force, or that were in force at any time after the issuance of the DCI.”

OPP Response: Delegation from the EPA Administrator to the OCSPP Assistant Administrator (“AA”) is reflected in Delegation 5-1-B, dated May 11, 1994, specifically “[t]o perform the EPA functions and responsibilities relative to the amending of existing registrations and the approval of new uses for existing registrations of pesticides pursuant to Section 3 of FIFRA, as amended.”

Although not directly responsive to AMVAC’s request, Respondent also notes that Delegation 5-38, dated July 20, 2016, provides additional authorities for the OCSPP AA to “grant or deny requests for time extensions or data waivers relating to Data Call-in Notices issued in conjunction with registration review,” among others. On January 9, 2023, OCSPP produced to AMVAC two additional sub-delegations of Delegation 5-38 authority, dated June 13, 2008 and June 17, 2008.

Re-delegation of Delegation 5-1-B authority from the OCSPP AA to the OPP Director (“OD”) is reflected in the memorandum titled “Administrative Clarification of FIFRA and FFDCA Redelegations of Authority,” dated August 3, 1988, specifically for all authorities under Delegation 5-1-B, among others. During the Counsel Call, AMVAC raised concerns with OPP’s reliance on this 1988 redelegation memorandum, including that it was “incomplete.” Specifically, the 1988 memorandum references 14 attached top-level delegations, including 5-1-B and 5-7. Although not all of the attachments to the original document are present in the version of this memorandum provided to AMVAC, the relevant Delegations 5-1-B and 5-7 are attached. The later and most current version of Delegation 5-1-B, dated May 11, 1994, does not place

additional limitations on OPP's or any OPP subdivision's authorities over the version attached to the 1988 memorandum. Accordingly, the 1988 memorandum re-delegating authority granted to the OCSPP AA by the pre-1988 version of Delegation 5-1-B is still in force and effect until specifically rescinded. The text of the 1988 memorandum, along with the text of the attached pre-1988 Delegation 5-1-B, are more than sufficient for the Presiding Officer to conclude that the OCSPP AA appropriately delegated authority to grant or deny waiver requests to the OPP OD.

Re-delegation from the OPP OD to the Pesticide Re-evaluation Division ("PRD") Director ("DD") is reflected in a memorandum titled "Redelegation of Authority for Amending Registrations," dated March 25, 2020, specifically "[t]o determine the acceptability of data for existing registrations, as part of the registration review process, to waive data requirements where significant regulatory or environmental impact is not involved, and to determine the acceptability of labeling." During the Counsel Call, AMVAC raised concerns with this document¹ because it did not include, as an attachment, a September 29, 1986 delegation from the EPA Administrator titled "Change to Existing Registration." Respondent has not found a copy of the 1986 memorandum referenced. However, the March 25, 2020 memorandum did not note that the 1986 document was attached, and there is no indication that it was ever so attached. AMVAC raises no genuine concern as to the effectiveness of this re-delegation memorandum, or of any further re-delegation depending upon it.

Re-delegation from the PRD DD to the PRD Branch Chiefs ("BCs") is reflected in the memorandum titled "Redelegation of Authority for Amending Registrations to the Pesticide Re-Evaluation Division Branch Chiefs," dated March 26, 2020, specifically "[t]o determine the

¹ AMVAC's concern apparently extends to the two lower-level re-delegations discussed in the following two paragraphs. Respondent's position as to the effectiveness of these memoranda is the same.

acceptability of data for existing registrations, as part of the registration review process, to waive data requirements where significant regulatory or environmental impact is not involved, and to determine the acceptability of labeling.”

Re-delegation from PRD BCs to PRD Team Leaders (“TLs”) is reflected in a memorandum titled “Redelegation of Authority for Amending Registrations,” dated April 24, 2020, specifically “[t]o determine the acceptability of data for existing registrations, as part of the registration review process, to waive data requirements where significant regulatory or environmental impact is not involved, and to determine the acceptability of labeling.”

AMVAC Request 2: “All documents memorializing a delegation of authority to issue a NOITS in connection with the DCPA DCI that grant such authority to any person within EPA below the Administrator that were in force in April of 2022.”

OPP Response: Delegation from the EPA Administrator to the OCSPP AA is reflected in Delegation 5-7, dated May 11, 1994, specifically “[t]o perform the EPA functions and responsibilities relative to the administrative review, suspension, and cancellation of registration, as set forth in FIFRA, as amended, Section 3, 4, or 6.”

Re-delegation from the OCSPP AA to the OPP OD is reflected in a memorandum titled “Reaffirmation of Redelegation of Authority to Issue Notices of Intent to Suspend under FIFRA section 3(c)(2)(B) and Process Voluntary Cancellations/Use Terminations under FIFRA Section 6(f),” dated July 2, 2007, specifically “to issue Notices of Intent to Suspend under section 3(c)(2)(B).” *See also* Administrative Clarification of FIFRA and FFDCA Redelegations of Authority (Aug. 3, 1988).

Re-delegation from the OPP OD to the PRD DD is reflected in a memorandum titled "Redelegation of Authority to Issue Notices of Intent to Suspend under FIFRA section 3(c)(2)(B) and to Process Voluntary Cancellations/Use Terminations under FIFRA Section 6(f)," dated July 16, 2017, specifically "authority to issue Notices of Intent to Suspend pursuant to FIFRA Section 3(c)(2)(B)."

Other Responsive documents:

A memorandum titled "Administrative Corrections for Office of Pesticide Programs Redelegations of Authority," dated August 30, 2009, acknowledges the September 27, 2009 renaming² of OPP's Special Review and Reregistration Division ("SRRD") to PRD and administratively changes prior redelegations to SRRD to reflect the new PRD naming.

Respectfully submitted,

Dated: January 9, 2023

Forrest Pittman
Pesticides and Toxic Substances Law Office
Office of General Counsel
U.S. Environmental Protection Agency
Mail Code 2310A
1200 Pennsylvania Avenue, NW
Washington, DC 20460
202-564-9626
Pittman.Forrest@epa.gov

Counsel for Respondent

² See Joint Set of Stipulated Facts, stipulation 15 (Jan. 6, 2023). It is not clear whether AMVAC intends to challenge delegations of authority based on the delegations being made to SRRD, but Respondent notes that petitioners have previously considered the renaming of SRRD to PRD unobjectionable.

TO:

Hume M. Ross

Tracy A. Heinzman

Keith A. Matthews

WILEY REIN LLP

2050 M ST NW

Washington, DC 20036

Telephone: (202) 719-7000

HRoss@wiley.law

THeinzman@wiley.law

KMatthews@wiley.law

Attorneys for Petitioner AMVAC Chemical Corp.

Cristen S. Rose

HAYNES BOONE

800 17th Street NW

Washington, DC 20006

Cristen.Rose@haynesboone.com

Attorney for Petitioner "Grower Group"

(Grower-Shipper Association of

Central California, et al.)

***In re FIFRA Section 3(c)(2)(B) Notice of Intent to Suspend Dimethyl
Tetrachloroterephthalate (DCPA) Technical Registration***

AMVAC Chemical Corporation; Grower-Shipper Association of Central California; Sunheaven Farms, LLC; J&D Produce; Ratto Bros., Inc.; and Huntington Farms, Petitioners.
Docket No. FIFRA-HQ-2022-0002

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Respondent's Response to AMVAC'S Motion for Production of Delegation Documents**, dated January 9, 2023, was sent this day to the following parties in the manner indicated below.

Forrest Pittman
Attorney Advisor

Copy by OALJ E-Filing System to:
Mary Angeles, Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Ronald Reagan Building, Rm. M1200
1300 Pennsylvania Ave. NW
Washington, DC 20004

Copy by Electronic Mail to:
Hume M. Ross
Tracy A. Heinzman
Keith A. Matthews
WILEY REIN LLP
2050 M ST NW
Washington, DC 20036
Telephone: (202) 719-7000
HRoss@wiley.law
THeinzman@wiley.law
KMatthews@wiley.law
Attorneys for Petitioner AMVAC Chemical Corp.

Cristen S. Rose
HAYNES BOONE
800 17th Street NW
Washington, DC 20006
Cristen.Rose@haynesboone.com
*Attorney for Petitioner "Grower Group"
(Grower-Shipper Association of
Central California, et al.)*

Dated January 9, 2023