

1001 G Street, N.W.  
Suite 500 West  
Washington, D.C. 20001  
tel. 202.434.4100  
fax 202.434.4646

*By Courier and Electronic Delivery*

August 7, 2007

Ms. Eurika Durr  
Clerk of the Environmental Appeals Board  
U.S. Environmental Protection Agency  
1341 G Street, NW  
Suite 600  
Washington, DC 20005

Re: In the Matter of *Rizing Sun, L.L.C.*  
Docket No. FIFRA-0-2004-0024  
EAB Appeal No. FIFRA-07-02

Dear Ms. Durr:

By this letter Keller and Heckman LLP respectfully requests permission of the Board to file a late *amicus curiae* brief in support of the Appellee in the *Matter of Rizing Sun, L.L.C.* We became aware of this case only after the deadline for such a filing had passed.

The initial decision of Administrative Law Judge Spencer T. Nissen addressed an issue of vital importance to the community regulated under the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"). We understand that the Respondent-Appellee in this matter has been proceeding *pro se* and had, in fact, not filed a responding brief by the deadline prescribed by 40 CFR §22.30. Given the importance of this issue, we seek this permission in order to file a brief presenting a broader industry perspective to this vital issue.

Our firm has a significant, well recognized national practice in FIFRA. Our clients are significant registrants and producers in every segment of the FIFRA regulated community. This issue is of relevance to even the most diligent companies, as simple inadvertence can result in an unintended claim resulting in a charge of sale and distribution of an unregistered pesticide. In our experience, in virtually every case alleging the sale of an unregistered pesticide, EPA FIFRA enforcement staff lodge charges and seek penalties both for the lack of registration and for misbranding arising from the same transaction in the same pesticide.

Our interest in this matter lies strictly in the legal question as framed by Appellant: "whether EPA may assess separate civil penalties for a violation of FIFRA section 12(a)(1)(A) and a violation of FIFRA sections 12(a)(1)(E) arising from the distribution or sale of the same pesticide in the same transaction." We believe there are persuasive legal arguments supporting Judge Nissen's decision, and we request permission to present those arguments to the Board.

Writer's Direct Access

Telisport W.

Putsavage

(202) 434-4194

putsavage@khlaw.com

\*Admitted to practice only  
in Maryland, New York

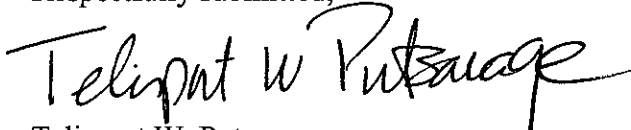
**KELLER AND HECKMAN LLP**

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We have no connection to Respondent/Appellee and take no position as to the culpability of Respondent or the penalty imposed by the Judge below.

In the event the Board grants our request, we would request a period of three weeks from the date of being notified of the Board's decision within which to file our brief. We recognize the Agency's desire to bring this matter to a conclusion as rapidly as possible. However, we note that this proceeding was commenced on September 28, 2004, that the hearing commenced on February 7, 2006, and that Judge Nissen's decision was issued May 8, 2007. Given the period of time that has elapsed in this matter to date, and given the importance of this issue, we suggest that the additional time that would be entailed with granting our request is not significant and is justified in order to present a full airing of the issue.

Respectfully submitted,




Telisport W. Putsavage  
Attorney at Law\*

In the matter of *Rizing Sun, L.L.C.*, Respondent  
Docket No. FIFRA-09-2004-0024  
Appeal No. FIFRA 07-02

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the foregoing Request for Permission to File a Late *Amicus Curiae* Brief, dated August 7, 2007, was served this day in the following manner to the addressees listed below.



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Norma Jean Sacchetti  
KELLER AND HECKMAN, LLP  
1001 G Street, NW  
Suite 500 West  
Washington, DC 20001  
(T) (202) 434-4100  
(F) (202) 434-4646

One copy via electronic mail and courier:

Eurika Durr  
Clerk of the Court  
Environmental Appeals Board  
Colorado Building – MC 1103B  
Room 629  
Washington, DC 20005

One copy via U.S. Postal Service Express mail:

Allen H. Smith  
P.O. Box 5491  
Peoria, AZ 85385

One copy via electronic mail and First Class mail, postage pre-paid:

Danielle Carr  
Regional Hearing Clerk  
U.S. EPA – Region IX  
75 Hawthorne Street – ORC-1

San Francisco, CA 94015

David Kim, Esq.  
Assistant Regional Counsel  
U.S. EPA – Region IX  
75 Hawthorne Street – ORC-1  
San Francisco, CA 94105

Carl Eichenwald  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460-0001

Gary Jones  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460-0001