

# Environmental Issues Facing the Golf Industry



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## Welcome



**Fred Ridley**  
Co-Chair of the Golf & Resort Industry Team

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## Today's Presenters

### Environmental Best Management Practices for Golf Courses



**Thomas K. Maurer**



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## Today's Presenters

### Water Rights and Golf Courses



**S. Wayne Rosenbaum**  
**Matthew J. Riopelle** *(not pictured)*



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## Today's Presenters

### Pesticide Management and Residual Pesticide Contamination Issues



**Julie S. Solmer**



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- April 2006 Foley & Lardner LLP
  - Golf Industry Survey
  - Top Golf Industry Executives Surveyed on issues and trends



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## Environmental Issues are a Top Concern



“The ‘Augusta effect’ has led customers and operators to believe that everything must be lush and green, when in fact if the course is firm and fast, it is healthiest.”

- Verbatim response to Foley’s 2006 Golf Industry Outlook Survey



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## Environmental Issues are a Top Concern *continued*



- Despite the fact that two-thirds of respondents (66%) told us they are not currently implementing water reduction programs, the issue of water resources ranked as the top environmental issue facing golf courses today, followed closely by pesticide regulation.
- The vast majority (70%) of respondents told us that they are “concerned” or “very concerned” with the impact of proposed pesticide bans and increased regulation.



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## Environmental Issues are a Top Concern *continued*



- However, only 10% of respondents considered themselves “actively involved” in regulatory issues affecting the industry. The overwhelming majority of respondents (83%) said they remain “generally informed” but not actively involved in regulatory matters.

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## Today's Program



- Overview of Golf Course Environmental Issues
- Best Managements Practices
- Environmental Due Diligence (Phase I's, Phase II's and more)
- Water Use
- Pesticides

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# Environmental Best Management Practices for Golf Courses

Thomas K. Maurer



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## Environmentally Friendly Golf Courses

- United States Golf Association and Golf Course Superintendents Association of America (GCSAA) Programs
- Audubon International Cooperative Sanctuary Program (3,800 enrolled, 500 certified)
- “Environmental Principles for Golf Course in the United States” (Center for Resource Management, 1995)
- “continued on following slide”



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- “Best Management Practices for the Enhancement of Environmental Quality on Florida Golf Courses”

Florida Department of Environmental Protection and Florida Golf Course Superintendents Associations

January 2007



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## BMPs

- Not Regulatory, but may overlap other legal requirements
- Environmental benefits of golf courses



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## BMPs - Priorities



- To correct existing water quality/quantity problems
- To minimize water quality/quantity problems from current land use and operations
- Improve and measure existing and new BMPs



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## BMPs - Incentives



- Improved turf quality
- Improved golf experiences
- Reduced environmental impacts
- Improved worker safety
- Efficient allocation of resources
- Reduced maintenance expenditures
- Reduced regulatory requirements
- Industry self-regulation



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## BMPs - Monitoring



- Pre-development Monitoring
- Monitoring During Construction
- Post Construction Monitoring
- QA/QC

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## BMPs – Design & Construction



- Relationship of site to watershed and ecological community
- Identify resources and features and areas of special protection
- Management practices – specific examples
- Monitory Programs
- Site Selection

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## BMPs – Design & Construction



- Drainage
- Stormwater, ponds and lakes
- Water quality measures
- Play area design
- Non-play areas (50-70% natural)
- Wildlife management
- Maintenance Facilities
- Water sources
- Irrigation

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## BMPs - Irrigation



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## BMPs – Nutrition & Fertilization



Turf grasses need up to 16 elements –

- Site analysis – macronutrients & micronutrients
- Fertilizer analysis and types
- Fertilizer Program factors
  - budget
  - player expectations
  - construction soils
  - timing and frequency
  - sampling

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## BMPs – Cultural Practices



- Mowing
- Cultivation Practices
  - Aerification
  - Rolling
  - Vertical mowing
- Over seeding
- Shade and Tree Management

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## BMPs – Lake and Aquatic Plant Management



### Reasons for Lakes

- water hazards
- aesthetics
- natural features
- irrigations
- stormwater treatment

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## BMPs – Lake and Aquatic Plant Management



### Problems

- Low DO
- Sedimentation
- Changes in plant population
- Nuisance vegetation
- Littoral zones

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## BMPs – Pest Management



### Integrated Pest Management

- cultural controls
- biological controls
- genetic controls
- chemical controls

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## BMPs – Pesticide Management



- Regulation and Licensing
- Record Keeping
- Water Quality
- Selection and Use
- Handling and Storage
- Spill Response

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## BMPs – Maintenance Operations

- Fueling
- Equipment washing
- Waste Handling

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## Environmental Due Diligence

- Phase I's – ASTM/All Appropriate Inquiry
- Phase II's – purpose and future use of course
- Golf course – conversions to other land uses.

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# Water Rights and Golf Courses

S. Wayne Rosenbaum  
Matt J. Riopelle



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## Introduction

- In this presentation we will discuss the following topics:
  - Differences between water rights laws in the western and eastern states
  - Recycled water and the laws relating to the use of recycled water on golf courses
  - The benefits and challenges of using recycled water on golf courses
  - Considerations for new courses planning on using recycled water and retrofitting existing courses
  - Recycled water and storm water regulation



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## The Problem



- Growing urbanization is increasing the demand for water
- Domestic, industrial, commercial, and agricultural users are requiring more water each year
- The future of the golf industry is tied to water availability and price
- Golf courses, particularly those located in arid regions, require a significant amount of water
- Without access to water, golf courses are unable to maintain the green and lush grounds expected by users
- As traditional sources of water – surface and groundwater – become scarce and more heavily regulated, golf courses are increasingly turning to reclaimed or recycled water to meet their demand
- The use of recycled water requires golf courses to comply with additional legal constraints as well as design and structural challenges



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## Water Rights



- A water right allows the diversion of water at a particular place and for a particular purpose
- Each individual state generally retains ownership of ‘natural’ or public water within its boundaries
- State statutes, regulations, and case law govern the allocation and administration of the rights of private parties and governmental entities to use water



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## Western Water Rights



- The western United States developed the prior appropriation doctrine
  - Allocates water rights under the principle of “first in time – first in right”

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## Elements of Prior Appropriation



- **Intent**
  - Requires that the appropriator demonstrate an intent to appropriate the water, divert the water, and apply it to beneficial use
  - Today, intent is generally indicated by applying for a permit
- **Diversion**
  - Diversion traditionally served dual purposes providing notice of a user’s intent to appropriate water and defining the extent of use
  - A diversion, although sufficient to prove intent, is not necessary
- **Beneficial Use**
  - Beneficial use is a core component of the prior appropriation doctrine
  - The beneficial use requirement is intended to prevent waste
- **Priority**
  - First come, first served
  - The first appropriator has a right to use all of the water necessary to fulfill its water right

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## Eastern Water Rights



- The riparian doctrine used in the east establishes water rights as a result of land ownership
- The landowner has only a usufructuary right and not a property right in the water
- The riparian right is regulated by requiring a reasonable use which allows for the consumptive use of water



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## Characteristics of Riparian Rights



- Riparian rights are of equal priority
- Unless adjudicated, the right is not quantified, rather it extends to the amount of water which can be reasonably and beneficially used on the riparian parcel
- Riparian rights are correlative; during times of water shortage, the riparian proprietors share the shortage
- Water may be used only upon that portion of the riparian parcel which is within the watershed of the water source
- The riparian right does not extend to seasonal storage of water
- The riparian right is part of the riparian land and cannot be transferred for use on other lands
- The riparian right remains with the land when riparian lands are sold
- When riparian lands are subdivided, parcels which are severed from the adjacent water source lose their riparian rights unless the rights are reserved
- A riparian right is not lost by non-use



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## Recycled/Reclaimed Water

- Municipal, industrial, or agricultural waste water can be treated to produce water that can be productively reused.
- Recycled water undergoes different levels of treatment depending on state law and the intended use of the recycled water.
  - Primary treatment -- screening or settling process to remove solids
  - Secondary treatment -- a biological process in which complex organic matter is broken down and metabolized by simple organisms, which are then removed
  - Advanced or tertiary treatment -- processes similar to those used to prepare potable water.
- Golf courses are becoming a major user of recycled water due to
  - Rising costs of potable water
  - Laws and rules requiring golf courses to use recycled water
  - The constant supply of recycled water.

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## Required Use of Recycled Water

- California law requires the use of recycled water for irrigation by declaring that the use of potable domestic water for non-potable uses, including the irrigation of golf courses, is a waste or an unreasonable use of water if recycled water is available
- It is likely that other states will also find the use of potable water on golf courses an unreasonable use if recycled water is available

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## Recycled Water Applications for Golf Courses



- Golf courses use recycled water for two primary purposes: irrigation and water hazards
- The water hazards can also serve as storage ponds for recycled water to be used for irrigation



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## Urban Reuse Systems



- Urban reuse systems provide recycled water for various urban purposes including irrigation of golf courses
- Studies comparing the impacts of irrigation with reclaimed versus potable water for “landscape plants, soils, and irrigation components” showed
  - Few significant differences
  - Landscape plants grew faster with reclaimed water
  - Elevated chlorides in reclaimed water limited the foliage that could be irrigated
- Urban reuse can be classified as unrestricted or restricted based on state law
  - Unrestricted golf courses do not strictly control public access, while restricted golf courses control public access so that the course “cannot be used as if it were a park, playground, or school yard and where irrigation is conducted only in areas and during periods when the golf course is not being used by golfers”
- Recycled water used to irrigate unrestricted areas typically must undergo advanced or tertiary treatment
- Only secondary treatment may be required for recycled water used in restricted areas



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## Recreational and Environmental Reuse



- Recreational or environmental reuse is the impoundment of water for aesthetic or recreational purposes
  - Includes water hazards on golf courses
- Many states have regulations that specifically address recreational uses of recycled water
  - The state regulations limit the use of recycled water and mandate a different treatment level depending on the use and human contact with the water
- Due to higher nutrient levels in recycled water, nutrient control is important for impoundments of recycled water on golf courses in order to prevent algae blooms, which create odors, an unsightly appearance, and eutrophic conditions
- Recycled water impoundments can also serve as storage facilities for irrigation water within the course
- If ponds are used to store recycled water before use in irrigation, substantial labor and maintenance are needed to prevent the buildup of algae and weed growth which can cause major problems if introduced into irrigation systems



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## Use of Recycled Water On Golf Courses



- The use of recycled water in golf course irrigation is becoming more prevalent because:
  - It is a reliable source
  - Large expanses of turfgrass grown on golf courses can absorb relatively large amounts of nitrogen and other nutrients
  - Less expensive than other water
  - Course superintendents have learned to manage any adverse conditions that may arise



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## Economic Incentives of Recycled Water



- Recycled water contains nutrients, such as nitrogen, phosphorus, and potassium, that can figure significantly in the fertilization program for the golf course
  - Increased nutrients can have a significant economic benefit, due to the decreased need for fertilization
  - Golf courses can realize additional savings because the nationwide recycled water rates are approximately eighty percent of potable water rates

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## Economic Disadvantages to Recycled Water



- More frequent soil and water quality testing
- Increased nutrients can make it difficult to control grass growth and maintain a proper fertility program
- Possible need for extensive soil and water amendments to manage sodium and bicarbonate levels
- Salinity management
- Pond weed and algae control
- Odor control
- Retrofit costs of installing new irrigation system parts
- Cost to build storage facilities to accommodate excess water when it is not needed.
- Cost of negotiation of a supply agreement with suppliers of recycled water
- Cost of obtaining and complying with the necessary permits governing the use of recycled water

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## Additional Challenges Related to the Use of Recycled Water



- All physical connections between the recycled and potable systems must be disconnected
- On-site lakes, wells, and creeks whose water is used for potable purposes should be protected from spray and runoff
- Drinking fountains should be protected from overspray
- Quick couplers may need to be tagged or replaced to prevent inadvertent drinking of recycled water by maintenance personnel or others
- On new courses, purple irrigation system components are likely required to signify the presence of recycled water
- Labeling all visible irrigation system components, as well as installing warning signs in English and Spanish, may be required

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## Additional Challenges Related to the Use of Recycled Water *continued*



- Depending on the pumping capacity and pressure requirements of an existing system, a booster pump and additional electricity may be required
- If recycled water cannot be stored in existing lakes, additional storage facilities may be required
- Storage facilities require a high level of maintenance, options include tanks or “lined” ponds
  - The initial cost of constructing lined ponds may be less than installing covered tanks, but maintenance cost is generally higher
- An irrigation filtration system may be necessary to remove suspended matter
- Recycled water may need to be blended with fresh water to reduce salt content
- Local regulations may require protection of adjacent properties from runoff or overspray
  - Compliance may require redesigning the irrigation system

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## Salinity Issues



- Irrigation water blending (i.e. recycled with fresh water)
- Injection into the irrigation water of acids, gypsum, or other amendments
- Application of gypsum, sulfur, and other amendments to the soil
- Additional core aerating to reduce soil impermeability caused by elevated sodium levels
- Installation of additional drainage lines in low-lying areas to remove leached salts



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## Environmental and Management Issues



- If a golf course is located above a drinking water aquifer, a comprehensive groundwater quality monitoring program may be required if irrigated with recycled water
- Depending on the treatment level, recycled irrigation may cause odor
- Liability issues may result from human health problems and adjacent property contamination
- Equipment deterioration can result when using saline irrigation water
- Switching from fresh to recycled irrigation will increase the responsibilities of the course superintendent



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## Permitting and Regulatory Issues

- If the development or redevelopment of the golf course results in the disturbance of more than one acre of land, the golf course is required to apply for a General Construction Storm Water Permit – issued by individual states
- Additionally, if the disturbance is less than one acre but part of a common development or sale then a Construction Permit is also required

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## Permitting and Regulatory Issues *continued*

- Currently, golf courses are not required to obtain an Industrial Storm Water Permit to cover on-site maintenance facilities and pesticide and fertilizer storage areas
- However, it is within the power of the EPA or state agency to require these facilities to apply for an Industrial Storm Water Permit
- It is highly recommended to adopt Best Management Practices (BMPs) to limit storm water discharge from these areas

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## Permitting and Regulatory Issues

*continued*



- The regulatory framework governing the discharge of water is highly complex
- Golf courses discharge water directly into the ground water, directly into surface water, and indirectly into surface water through storm water drainages; discharges into the different systems require compliance with a variety of local, state, and federal rule and regulations
- In order to ensure compliance, it is necessary to understand the discharge requirements imposed by the municipality, the regional board (if one exists), the state, and the EPA



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## Conclusions



- Recycled water is quickly becoming a primary source of water for golf courses
- As treatment technology improves, more wastewater will be recycled every year allowing golf courses to rely more heavily on recycled water
- The environmental and economic benefits of using recycled water are undeniable
- The use of recycled water increases costs in the form of increased monitoring, increased potential for liability, and other legal and structural costs and challenges
- A thorough understanding of the costs and benefits will allow developers and existing course superintendents to make rational decisions regarding the use of recycled water that will ultimately allow the courses to successfully manage their water



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# Pesticide Management and Residual Pesticide Contamination Issues

Julie S. Solmer



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## The Regulation of Pesticides

- Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136 *et seq.*
  - Began with the Federal Insecticide Act of 1910 – most recent amendments in 2004
  - Emphasis shift from protecting farmers from adulterated or misbranded products, to preventing “unreasonable adverse effects on the environment”



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## The Regulation of Pesticides

- Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. § 301 *et seq.*
  - Maximum residue concentrations (“tolerances”) for pesticides in raw agricultural commodities and processed food

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## Environmental Concerns

- Spray drift, stormwater runoff, leaching through soil to groundwater
- Persistence in soil - brownfields
- Non-target toxicity and bioaccumulation
- Secondary pest outbreaks
- Pest resistance
- Integrated Pest Management (IPM)

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## Overview of FIFRA

### ■ Broad Applicability

- FIFRA defines “pesticide” as: any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest
- FIFRA defines “pest” as: (1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organisms on or in living man or other animals)

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## Overview of FIFRA

### ■ Broad Applicability *continued*

- U.S. EPA regulations define “pesticide” as: any substance or mixture of substances intended for a pesticidal purpose. Two tests for identifying a pesticidal purpose:
  - Pesticidal claims test: Does the seller claim, explicitly or implicitly, that a pesticide is, or can be used as, a pesticide?
  - Pesticidal use test: Does the substance have any significant commercially valuable use other than a pesticidal one?

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## Overview of FIFRA



### ■ Exemptions

- Not intended for use against “pests”
- Not deemed to be used for a “pesticidal effect”
- Minimum risk pesticides (e.g., castor oil, citronella, garlic, linseed oil, white pepper)

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## Overview of FIFRA



### ■ Regulation of the Use of Pesticides

- Must use pesticide in a manner consistent with the label
- Worker protection standard – applies to agricultural establishments (farms, forests, nurseries, and greenhouses)

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## Overview of FIFRA



- Regulation of the Use of Pesticides *continued*
  - Restricted use pesticides
    - Must be applied by or under the direct supervision of a *certified applicator*
    - Certified applicator must be licensed by the state, or if no state program, U.S. EPA
    - Certified applicator must keep appropriate records
    - U.S. EPA may classify a pesticide for restricted use if, without additional regulatory restrictions, the pesticide will cause unreasonable adverse effects on the environment
    - List of restricted use pesticides that must be applied by or under the direct supervision of a certified applicator – 40 C.F.R. § 152.175

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## Overview of FIFRA



- Regulation of the Use of Pesticides *continued*
  - State and local requirements governing the “sale and use” of pesticides
    - States may impose regulations on the “sale and use” of pesticides, but may not permit any sale or use prohibited by FIFRA
    - State restricted use designations
    - Certification and licensing requirements
    - California – pesticide-specific use requirements, standard of care, wellhead protection (no mixing, storing, rinsing, maintenance activities within 100 feet of well), notice to operator of property, mixture, equipment cleaning, storage, transportation, and disposal requirements
    - Florida – state law governing irrigation systems used for the application of pesticides, pesticide-specific use requirements, local zoning ordinances controlling the locations of pesticide storage facilities
    - Wisconsin – negligence standard, prohibits contaminating waters of the state, notice prior to application, warning signs posted, special rule for golf courses

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## Overview of FIFRA



### ■ Registration of Pesticides

- No person may distribute or sell to any person any pesticide product that is not registered
  - Pesticide product: a pesticide in the particular form (including composition, packaging, and labeling) in which the pesticide is, or is intended to be, distributed or sold
- U.S. EPA must determine the pesticide will not cause “unreasonable adverse effects on the environment”
- Data requirements, data rights, and compensation



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## Overview of FIFRA



### ■ Registration of Pesticides *continued*

- Registration Fees
- Judicial review
- States may provide for registration of additional uses of federally-registered pesticides for use within the state to meet special local needs
- States may impose additional registration requirements – necessary before a pesticide may be sold and distributed within the state



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## Overview of FIFRA



### ■ Re-registration

- Applies to pesticides first registered prior to November 1, 1984

### ■ Special Review

- Process to determine whether to cancel, deny, or reclassify registration of a pesticide because pesticide may cause unreasonable adverse effects on the environment

### ■ Registration of Establishments that Produce Pesticides



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## Overview of FIFRA



### ■ Labeling Requirements

- States may not impose any additional or different requirements
- Target pests
- Dosage, frequency, concentration
- Method of application, directions for use
- Procedures for transportation, storage, and disposal of pesticide and container



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## Overview of FIFRA



### ■ **Labeling Requirements** *continued*

- New requirements relating to refillable containers and residue removal instructions
- No false or misleading statements
- Hazard warnings and worker protection statements
- Restricted use pesticides must be labeled with the terms of the restricted use, advertisements must include the statement “Restricted Use Pesticide”

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## Overview of FIFRA



### ■ **Packaging and Container Standards**

- Child resistant packaging required for pesticides meeting toxicity and use criteria
- August 16, 2006 final rule specifying container design standards and containment structure standards

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## Overview of FIFRA

### ■ Data Submission and Recordkeeping Requirements

- Registrants must submit information regarding unreasonable adverse effects on the environment
- Certified applicators must maintain records

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## Overview of FIFRA

### ■ Unlawful Acts

- Selling or distributing an unregistered pesticide
- Making claims inconsistent with application for registration
- Adulterating or misbranding
- Detaching or altering a label
- Selling a restricted use pesticide for use in violation of use restrictions
- Use in a manner inconsistent with labeling
- Failure to comply with reporting obligations or falsifying information

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## Overview of FIFRA

### ■ Enforcement

- States have primary enforcement responsibility for pesticide use violations if U.S. EPA has determined that the state has adequate pesticide use laws and enforcement procedures, or if U.S. EPA and the state have entered into a cooperative enforcement agreement
- U.S. EPA cannot initiate an enforcement action for a use violation except when a “significant” violation has been referred to the state and the state has not taken action within 30 days, or when U.S. EPA determines there is an emergency situation and the state is unwilling or unable to respond
- U.S. EPA may issue “stop sale, use, or removal” order, and may confiscate pesticides

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## Overview of FIFRA

### ■ Enforcement *continued*

- Civil penalties
  - Commercial applicators - \$5,000 for each offense
    - Commercial applicator – certified applicator who uses or supervises the use of any restricted use pesticide for any purpose other than producing any agricultural commodity on property owned or rented by the applicator.

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## Overview of FIFRA

### ■ **Enforcement** *continued*

- Criminal penalties for “knowing” violations
  - Commercial applicators - \$25,000 for each offense, 1 year imprisonment
  - Disclosure if information with intent to defraud - \$10,000 fine, 3 years imprisonment
  - Both the person committing a violation and the employer of such person can be held criminally liable.

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## Brownfields

- Many pesticides are hazardous substances under CERCLA and state counterparts
- Spills could be subject to reporting obligations

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## Brownfields



- CERCLA exemption for “application of a registered pesticide product”
  - Pesticide must be registered, and must be “applied” to take advantage of the exemption
  - Application – placement for effect of a pesticide at or on the site where the pest control or other response is desired
  - Exemption does not apply to spills, releases, illegal drift, application in violation of label, or application in other than a “customary manner”
  - “Arranger” liability – In *U.S. v. Aceto Agricultural Chemicals Corp.*, sent pesticides off-site for formulation, disposal of pesticide wastes was inherent in the formulating process
  - Could still be subject to toxic tort
  - State laws may differ

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## Brownfields



- Even if exempt – issues arise in context of property transaction
  - Future use of site – cleanup standards
  - Phase I/II environmental assessment
  - Address liability in the purchase agreement
  - Proposed Maryland bill would require a person proposing to redevelop property previously used as a golf course to commission a specified assessment of the property before construction, and to obtain approval of the testing plan and results by the Maryland Department of the Environment

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## Questions and Answers



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## Your Foley Contacts

- **Thomas K. Maurer**
  - (407) 244-3242 / [tmaurer@foley.com](mailto:tmaurer@foley.com)
- **S. Wayne Rosenbaum**
  - (619) 685-6413 / [srosenbaum@foley.com](mailto:srosenbaum@foley.com)
- **Julie S. Solmer**
  - (414) 319-7311 / [jsolmer@foley.com](mailto:jsolmer@foley.com)
- **Matt J. Riopelle**
  - (619) 685-4636 / [mriopelle@foley.com](mailto:mriopelle@foley.com)



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