

## Avocados...Minor Crop...Major Problems



### **Kathleen Thuner**

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*Chairman Todd: I am Ted Todd, Lois Todd's husband. I carry the bags at meetings like this. She arranged for the whole meeting, and so it involved a lot of carrying bags.*

*Our first speaker this morning is a young lady whom many of you know —certainly all of you from San Diego County know, and throughout the industry. She is the Agricultural Commissioner for San Diego County and is known by the growers in San Diego County primarily for not only being a good enforcer of the regulations she is assigned to enforce, but she has worked very hard and successfully on the Aliette registration; and the growers in San Diego County tell me that she is certainly a tremendous supporter and friend of production agriculture. And she worked very hard and successfully on getting gibberelin approved for use on limes. Those are just a couple of the many things that she has done for the benefit of production agriculture. She asked to apologize for her voice, she has a cold; and I want to thank her very much for, in spite of that, coming down here this morning. So with that... Kathleen Thuner.*

Good morning and thank you for that kind introduction. First of all, let me tell you how pleased I am to be here. In all the years that I ever read the Yearbook, I never thought I'd ever be part of it. It's kind of an awesome responsibility, as well as a challenge, to say something that somebody will care about when they read it next year. A lot of what has been in your prior yearbooks has been valuable information both in the technical aspects and also in the subsequent comments from the various speakers.

Let me make one disclaimer. I do not speak for the California Association of Agricultural Commissioners and Sealers, nor for the director of the California Department of Food and Agriculture. I speak basically for myself as a regulator in the County of San Diego,

and as someone who has a real and deep concern about the ongoing operation of agriculture in an urbanizing county especially, but throughout California.

Last year, in 1988—in fact, we're only about three days away from its one year anniversary—there was signed into law something that we in the trade call "FIFRA-Lite". We get so used to calling things like that, we oftentimes forget that most people don't know what we're talking about; and when I had originally talked to Lois [Todd], I had said I wanted to talk about "FIFRA-Lite and its heavy implications." And she said that no one will know what FIFRA is. I thought, that's impossible! Everyone knows what FIFRA is: it's the Federal Insecticide, Fungicide, and Rodenticide Act; and, of course, it was lightly amended in 1988.

But Lois was right! I called the EPA three days later and I asked to get a copy of the amendment and nobody knew what FIFRA was at EPA! So I brought you a copy so you can obviously see it is a FIFRA amendment, and it has some real implications for how you operate in the coming years, especially I would say in the 1990s and beyond; and I thought briefly I'd talk about a few of the implications.

FIFRA, by the way, was signed in October of '88, but it became effective sort of as a Christmas present for all of you on Christmas Eve in 1988. Then in April of this year, published in the Federal Register were the implementational details that the EPA was going to use for how they are going to make this new act work. Basically, it has five provisions, and they all to some degree affect your operation.

The first is the acceleration of re-registration. This is a major change in how EPA operates. One of the large criticisms that's levied at EPA—I think rightly so, it was after all started in 1970, is that here we are nearly 20 years later with a whole lot of data that has never been filed and re-registrations that have never occurred; but FIFRA-Lite takes care of that for you. Everything that has to be re-registered will be re-registered in nine years. So by 1998, everything that you can use will have completely gone through the data gap process. But there's a slight fall-out effect there. Ever so slight. And that is, if you don't have data that was produced after 1970, then you may have to re-do those studies. Furthermore, if your pesticide was registered before 1984, you have to reassure EPA that all of the information meets today's standards. And that's a significant challenge —especially for the registrant, but the outfall is largely upon the user.

They've published lists, and since San Diego County Agriculture Department produces and labels some registered materials, I've been getting a lot of this information directly. My office used to go and get Special Local Need (SLN) registrations for minor crops throughout our county. However, in April 1989, we got billed for \$425 each, for each of those registrations. And for us in San Diego County, that meant that if we had kept every single one of those registrations, we would have had to come up with \$35,000. Now, I'm flush—as most of you know, government bureaucrats have lots of money — but \$35,000 was a little bit beyond the capabilities of my budget. So we went through a rigorous process in my office of contacting anybody and everybody we could think of who used any of those materials; and we finally honed it down to 17 for which we paid the registration fees. In the County of San Diego, my office paid \$7,500 to keep those labels for one year; basically because we didn't want to leave people in the lurch and we

were unable to find other people who would take over some of those registrations. Very few of them impacted avocado growers, but they do impact other growers in other minor crops that are a major portion of the agriculture in San Diego and throughout the state of California. We're not the "big five" type of state: we're not soybeans and wheat; we're avocados and cherimoyas and limes and things like that. "Quality of life" products, I call them.

Well, after you go through this process, then there's what they call expedited registration; and this has some benefits for you, because expedited registration allows the "me too" people to get their product registered. Right now, there are well over 1,000 applications for new registrations that do not require scientific review, and really do not require any of the stringent EPA assessment, and yet are sitting stacked on desks at EPA simply because the focus for the last 18 years at EPA has been wholly on getting things killed at this end, and whatever was coming in was getting reviewed slower and slower and slower. Expedited registration means that they have to rule on that preliminarily, and have to respond to your request within 45 days. Furthermore, they have to give a final decision in 90 days. That is a significant change, and I'm hoping it's a good change.

Then there is collection of fees. In order to pay for all this, they suddenly decided that the user should pay. As you know, we've been using user fees in California now since Prop. 13; we're probably the biggest user fee generator state in the nation. If you do anything in California, there's probably a fee that covers it. But EPA has two kinds of fees. There's the fee that is for the active ingredient that EPA is charging, and the "max" about is \$150,000 for an active ingredient. That's a one time fee, that's shared with the technical producers, based on market share. But the real "kicker" for us in the small end of the world is the maintenance fee. That's the one where I got the bill for \$35,000 and whittled it down to about \$8,000. Next, they have a mandate that says they have to come up with 14 million dollars to support that program; and this year to date, they've come up with only seven. So guess what that means: they're going to raise the fee next year. So, even if I only get half of the pesticides that we got registered last year, registered this year, it's still costing the same amount of money. In fact, what we're looking at is limiting it to only the pesticides that we in our department actually use in the course of our business. And that's going to leave some people out there with nothing at all. In fact, nationwide 20,000 registrations are now in jeopardy because their registration fees were not paid. (One of those is Lannate on avocados.)

Another thing the new FIFRA-Lite does is take care of pesticides from cradle to grave. They have storage and disposal regulations that are going to really change how our pesticides are handled by growers, by end user, and what happens to that ultimate little bottle and where it goes. All of that will be regulated.

Further, the final change, the fifth one, was they changed indemnification. Basically what happens is only the end users can be indemnified if the pesticide is called back, but EPA won't pay that out of their budget; essentially what will happen is there will have to be congressional action to provide for that, for indemnification; and somehow I think that congressional action like that is not likely to occur unless there's some major hue and outcry.

What do these things mean for you? Well, frankly I think they mean fewer chemicals. A recent survey showed that the basic reason that manufacturers were withdrawing product was the price of continuing the registration. It seems to take about \$40,000 to do the residue study, and \$4 million to do the human effects study. Those are baseline figures. So you can see that if you take and add that against the other costs of doing business and make the company pay for pesticides used in such a small market share, the company is perhaps going to say, "Oh, we like doing business with you, but I'm not sure we can continue to do that." And out go the small crop registrations.

However, one thing that I did hear at EPA when I was back in Washington last week was that they have a genuine concern about minor crops. I was also advised by a very high staffer at EPA that the way you can get things to be re-registered, or registered, is to become the squeaking wheel. And you did a good job of that on Aliette. I think you can congratulate yourselves. But Aliette is just one of the things you've got; keeping whatever you have is the major issue. I think it would behoove each one of you to get really concerned about every pesticide that you have, that you use, to know what its registration status is, and to be aware of where that status is in the process. There's what they call the "A List", "B List", "C List", and "D List." The "A List" is the majority of agricultural chemicals. That's a huge list. We're still going through it. Going through that list requires a concerted effort. But I would really recommend that your advisory committee, your ag. chemicals committee (which, by the way, I congratulate you as an association for having one; that was a tremendous step forward), that the committee go through that "A List", "B List", "C List", "D List" as they're published, and really get that information out a.s.a.p. to whoever needs to know. Make your contacts now. My office, at least in San Diego, we'd like to work with whoever you want to work with on that, because we'd rather have you use something that's registered than be in a position of not being able to do that.

Food safety right now is what they call a "crisis", a "crisis in confidence." The crisis in food safety, that's all you hear today. Well, the other day I bothered to look the word up in the dictionary and found that a crisis is a turning point. Either for good or for bad. It is not necessarily a bad event. In essence, I think that's exactly where we are with the food safety issue and with pesticides in general—we are at the turning point. In California, there's been an enormous response to food safety issues. In fact, the governor signed, and it's now operative, the Bronzan Bill, AB 2161, which had tremendous bipartisan support; and I think it behooves you to look at who were the co-authors of that bill—both sides of the aisle supported the legislation. Some interesting coalitions were built there. The bill requires 100% ag. use reporting; and in fact, right now we are in the regulatory phase of implementing the law. There will be public hearings on a 100% use reporting. You should make an effort to attend. If you cannot attend, *please* read those regulations and please write comments on them before the time lapses. I recommend to you strongly that you support the concept, but I recommend that you look at the regulations for feasibility. I think that's where you have the most input to give. I think it's basically good that you're going to have to report, because if you don't report we're not going to know what's being used, and then there really may be nothing left to use. This reporting is an integral part of maintaining the use of pesticides that are needed in agricultural production.

The Bronzan Bill also requires expanded focus monitoring; the effort focuses on the most highly toxic and hazardous materials. It requires dietary risk assessments be done for infants and children. This is on the leading edge; this is way ahead of the EPA and FDA. It enables the director to suspend pesticide registration for lack of health effects data. That, too, is a significant change. It establishes in March of 1990 a science advisory panel whose purpose is to look at detection capability and technology and to assess, are we really on the cutting edge of that technology and where do we need more research and more development? It also establishes funds for pest management research projects. I think you should be aware of that. After all, you've been funding those kinds of projects [pest management research] for many, many years. It would behoove you, I think, to get into that loop and to know where these monies are going to be spent.

The funds for all this? Ah yes, it will cost money. The funds come from an increase in the mill tax on every pesticide sold in the State of California. They come on surcharges to producers, to processors, and to registrants. A lot of dollars.

What's the Congress doing? The Congress can't sit still. After all, this "crisis" is a major international and national event. And Congress has all kinds of bills floating around. I think most people would probably say that the Food Safety Assurance Act of 1989, the De La Garza Bill, is probably the most acceptable, if there's such a term, to the ag. industry. But it also has some things in it that I think will give the environmental community something too. And that is really important at this point, because it's recognized that they didn't get what they wanted in the amendment to FIFRA '88. And now they have the media, public opinion, and public pressure pushing on the regulators to give them exactly what they want.

They're not exactly in the mood to compromise right now, so I think it's even more important for the ag. industry to establish a dialogue with the environmental community.

In addition to the Congress, California, and everybody else, the President has gotten into this. Now this is unusual. It's not too often that the President establishes a domestic policy council and tells them to do something about this kind of issue. I don't remember it happening on such an issue in many, many years. Normally, the President is involved in trade-type contests and things like that, but very seldom does he get involved in internal domestic policies that have to do with agriculture, because usually those are addressed in the agricultural bills. By the way, there is a bill of 1990 which is being formulated as we speak; and that bill will really promote the concept of lower pesticide usage. As for you, I think in the long run, that's probably the biggest benefit. It's hard, though, to think in the long run when you're right now in the short term faced with not having anything registered to use, and I recognize that.

In California, there is the Environmental Protection Initiative of 1990—the Van de Kamp Initiative—I really recommend that you follow very carefully. Next week there's a meeting of concerned ag. industry representatives who will review the wording and hopefully give us a clue as to the specifics in that initiative. Oddly enough, I talked (off the record) to a member of the attorney general's own staff recently, a deputy attorney general, who told me he had recommended against filing that particular initiative because it violated the state constitution (because it contains more than one issue). The

real issue is that it may be used as an election media event to attract voters on a specific issue that may allow for substantial changes in who represents the people in the State of California. That's the issue, not the environmental impact of that particular initiative.

Foreign markets are an area that I think will become increasingly important, even more than they already are, but for a different reason. Food safety is a global issue. In fact, in some ways California, although it's on the leading edge of safety technology in the United States, is behind some of the other countries in terms of both food safety technology and concern on the part of the people about these issues. Your product, when it goes to a foreign market, can easily become like the cherries of Washington state in Korea, unfairly implicated for residue because there's unwarranted things being said about it and little is known about what actually has been used in its production.

In our business, we oftentimes issue phytosanitary certificates, and the one thing USDA adamantly tells us is that phytosanitary certificates are *only* to determine the real phytological and insect condition of that crop. If you believe that (when you read the actual requirements from other countries) then I think "Pollyanna" ought to be your name, because there are some requirements for "freedom from" for California products that prohibit the product from going into countries. It's impossible to certify for the fact that something isn't there when it isn't there to certify it isn't there, if you know what I mean.

Taste, convenience, value, and safety. I think those are the things that you really need to hone in on, and I think you're fortunate you use so very few pesticides in the production of your crop. In fact, I know that because I've spent a great deal of time trying to get residue samples to prove people are misusing pesticides. Probably you think that's terribly awful of me, but that's my role. We focus in on particular commodities; and in San Diego County, avocados get a certain, shall we say, high priority, and we look for certain pesticides. Now, we don't find them (the residues).

You can become real close to people (the public) when you get involved in long term airline flights that don't work. I had that experience on Tuesday. I was in Sacramento when the earthquake struck, and I ended up getting into San Diego about 12 o'clock at night, and I had been at the Sacramento airport since two in the afternoon. My first flight was canceled. And I became very close friends—almost lifetime friends—with this one lady. And she asked, what do I do? And I said, well, it's easier to say what I don't do than what I do do, because frankly I do so many different things it's really hard—I have a list of about 27—but I said the thing that most people notice about what my office does is, we regulate pesticides.

"No-o-o!"

And she said, "But you said you work for the county. The county regulates pesticides?" I said, "Yes." "But does the Health Department?" "No. Not the Health Department; the Agriculture Department." "Oh? Okay." So nine hours later, that lady said this to me: she said, "I feel a whole lot better, knowing that you're out there. I feel a whole lot better knowing that about two percent of the things I eat may have any residue at all." "But," she said, "I still want residue-free food." And you know what? That's not a problem for a lot of producers. Residue-free food is not a problem. She's not telling you you can't use

pesticides; what she's saying is that she doesn't want to detect it. And for a great many products, I don't think that's a significant problem, until our detection technology gets even better. But that's another issue.

But if you're going to take the attitude like another lady did at the Republican meeting I was speaking at the day before: Well, she said her father had been using this one recently banned pesticide for controlling ants for 70 years and he's still going strong. You're not going to get anybody to accept that. You're going to get people who look at you and say, "Oh, my God! It's another one of those people who will eat malathion." You know what I mean? You've lost your audience.

The things I think we need, and this group does admirably at, is more U.C. research and support of regulation. I was really impressed by the comments last year in your Yearbook, by Jack Shepherd. I thanked him this morning for them, and I strongly believe that what he told you was so important—important for an obvious reason: it's economically the right thing to do—support research and regulation.

If you follow the regulations, you'll at least have a leg to stand on. It's sort of a growers' insurance policy. But if you don't follow the regulations, and you choose to use the material that's not registered, and you flagrantly violate the workers' health and safety regulations, and you take the attitude that you worked so hard for so many days to produce this crop, then you are the one who's going to cause most of the problems for the other growers. I always tell people I think that the violators are only 56/100% of farmers; it's the 99 and 44/100% who are following the rules, and I really believe that. In fact, I think we reviewed about 25,000 pesticide use reports in San Diego last year. That's a significant number. We had 23 administrative actions. Now if you consider that there are 6,500 growers— that's our best guesstimate—23 administrative actions is not that many. Those are people whom we had gone through a certain process with, and they met the criteria for the more than a "letter of warning." In only five cases last year, I did not use administrative penalties; in those five cases, I took a different enforcement track (criminal). The administrative penalty portion —I believe those people aren't "bad actors"; however, they're failing to do things that they're required to do, and if we see them failing to do it right in front of us, I can't look the other way. And my staff cannot be expected to look the other way. But if they correct it, they don't move past that enforcement level, there's no record. There's no criminal record of an administrative penalty. But when people don't do that, and I've had a few of those types, a very small minority, then I *have* taken criminal action against them. In fact, it may interest some of you to know that we have an arrest warrant out in San Diego County for a grower. Now that, to me, did not have to happen. We made every effort, and the university made every effort, for this man. I think we bent over backwards. It has taken two years to finally reach the point where the only thing between that person and jail is the fact that apparently he has to get another speeding ticket because he's on that list (wants and warrants). The guy shows no regard for any regulation, and he's the kind of person that if the media get ahold of, they go with him as a "typical" grower. They really do. And it's unfair. Totally unfair.

One of the things that we have, I think, in San Diego, that I'm proud of, is what I call our fragile credibility with the environmental community. And I do regard it as very fragile. We really are, and so are the Farm Bureau, the flower growers, and the avocado

growers making a definite effort in that county to listen to the environmental community. We don't have to agree with their values and opinions, but we do have to listen to them. And the one thing you don't want to do is what the Department of Food and Ag. did to a local environmental leader. She wrote the director — actually she wrote to a state senator, I should say that, and the state senator forwarded it to the director's office. And the director's office responded with an eight-page letter: pick, pick, point-by-point at every single thing that she had said. That's not what she was asking for, and I know that because she called furious to my office when she got her letter, and *she* sent me the copy of her letter. She said, "All I wanted was, the next time I'm in Sacramento to have Mr. Voss (the director) make time for me." Now, the unfortunate part is that that letter actually deterred the public interest. This lady sits on the Republican Central Committee, she's one of these real active types —an environmental Republican; I didn't know they existed! But they do! I really hope that, based on what Jack Shepherd said last year, that you will have found an environmentalist to sit on your ag. chemical committee; and if you haven't, I'll help you find one. I really will. Because I think that's the key to the long term solution of what is basically a communications problem.

And so I'd like to end by leaving you with one really important thing that my father always said—and I thought it was his idea until I found as I read and got older that it was really Henry Kaiser, who said—that "problems are opportunities in work clothes." Remember that, and good luck. Thank you.