

## **Spirotetramat – Interim Cancellation Order**

### **Summary & Background**

This notice announces the Agency's issuance of an interim cancellation order for all pesticide products containing the active ingredient spirotetramat pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. sections 136-136y. The order includes provisions for the disposition of existing stocks of spirotetramat products that have been released for shipment prior to today's date. Under those provisions, as of today's date, it is unlawful to sell or distribute these products except for the limited purpose of return to the manufacturer, or for proper disposal. Use of products already in the possession of applicators is permitted provided such use is consistent with the previously approved labeling for the product.

On January 25, 2010, the U.S. Environmental Protection Agency (EPA) published on this website a notice announcing EPA's intention to issue a cancellation order as a result of the December 23, 2009 decision of the U.S. District Court for the Southern District of New York to vacate all spirotetramat registrations that EPA had previously registered in 2008 under FIFRA, and seeking comment on the existing stocks provisions of such cancellation order. The comment period on that notice closed February 8, 2010. The court's vacatur order was stayed by the District Court itself until February 16th, and later, by the Court of Appeals for the Second Circuit until March 10, 2010. While EPA had intended to issue a final cancellation order on or about the effective date of the vacatur order, EPA has been unable to complete its review of the comments it received on the January 25th notice. As a result, EPA is not in a position to issue a final order at this time, but believes that it is nonetheless necessary to issue an interim order to put in place temporary provisions for existing stocks of spirotetramat products that are currently in the channels of trade. It is EPA's intent in this interim order to generally follow the FIFRA statutory defaults with respect to unregistered pesticides, but to modify those defaults in two important respects: to require users to continue to comply with previously-approved labeling, and to allow distributors and retailers of pesticides to ship product for certain limited purposes (disposal or return to manufacturer). EPA will continue to review the comments received on the January 25th notice and intends, in the very near future, to issue a final order. In that final order, EPA will disclose its determination in response to the comments on the appropriate disposition of existing stocks of spirotetramat and will either continue or modify the provisions announced today. If the existing stocks provisions are modified in the final order, the terms of that order will supersede the terms contained in this interim order.

### **Interim Cancellation Order, Including Provisions for Existing Stocks**

1. Pursuant to section 6(a)(1) of FIFRA, EPA hereby issues a cancellation order for the registrations of all product registrations vacated by the December 23, 2009 order of the U.S. District Court for the Southern District of New York, which vacatur went into effect on March 10, 2010. So long as this interim cancellation order remains in effect, any distribution, sale, or use of these products in a manner inconsistent with this order, including the provisions below regarding the disposition of existing stocks, will be considered a violation of section 12(a)(2)(K) and/or 12(a)(1)(A) of FIFRA.

2. Existing Stocks. For purposes of this order, the term "existing stocks" is defined, pursuant to EPA's existing stocks policy (56 FR 29362, June 26, 1991) as those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the amendment or cancellation action (*i.e.*, in the present case, March 10, 2010, when the vacatur went into effect). Pursuant to section 6(a)(1) of FIFRA, this cancellation order includes the following existing stocks provisions.

a. Distribution or sale. Distribution or sale of existing stocks of all cancelled products listed below is prohibited effective as of today's date, except that existing stocks may be shipped for the purposes of return to the manufacturer, or for proper disposal.

b. Use. Use of existing stocks of the cancelled products listed below is permitted until such stocks are depleted, provided that the use of such existing stocks is consistent with the previously-approved labeling that accompanied the product.

### 3. List of Cancelled Products

- i. Spirotetramat Technical; EPA Registration Number 264-1049
- ii. Movento; EPA Registration Number 264-1050
- iii. BYI 8330 150 OD; EPA Registration Number 264-1051
- iv. Ultor; EPA Registration Number 264-1065
- v. Spirotetramat 240 SC Greenhouse and Nursery Insecticide/Miticide; EPA Registration Number 432-1471



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