



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
CHEMICAL SAFETY AND
POLLUTION PREVENTION

CERTIFIED MAIL

October 25, 2011

Mr. Charles Andrews
Associate Director
California Department of Pesticide Regulation
1001 I Street, PO Box 4015
Sacramento, CA 95812-4015

Re: EPA's Response to CDPR's August 4, 2011 Letter Regarding the Agency's 2009 Pyrethroid Labeling Initiative

Dear Mr. Andrews:

Thank you for your letter of August 4, 2011 requesting clarification on language used in the Environmental Protection Agency's (EPA or the Agency) June 2009 pyrethroid labeling initiative "Environmental Hazard and General Labeling for Pyrethroid Non-Agricultural Outdoor Products Notification." The Agency appreciates the California Department of Pesticide Regulation's (CDPR) engagement in these issues and participation in a conference call on September 9, 2011 to discuss and clarify the questions raised in your letter. EPA seeks to respond formally to your questions while incorporating the discussions we had via conference call.

The main questions raised in CDPR's August 4th letter focused on the following label statement the Agency requested pyrethroid registrants to incorporate onto all pyrethroid non-agricultural outdoor labels per the 2009 letter and notification.

"All outdoor applications must be limited to spot or crack-and-crevice treatments only, except for the following permitted uses:

- (1) Treatment to soil or vegetation around structures;
- (2) Applications to lawns, turf, and other vegetation;
- (3) Applications to building foundations, up to a maximum height of 3 feet.

Other than applications to building foundations, all outdoor applications to impervious surfaces such as sidewalks, driveways, patios, porches and structural surfaces (such as windows, doors, and eaves) are limited to spot and crack-and-crevice applications, only."

CDPR Question 1: "In California, many houses are built on a slab foundation typically about three to four inches above the grade level. DPR is proposing to reduce the 3 foot allowance to 2

feet and using the wording ‘perimeter band treatment up to a maximum height of two feet above the grade level.’ If a structure has a four inch foundation above grade level, this wording would allow an applicator to continue to apply material another 20 inches up the vertical side of the house on the house siding material. Does the word ‘foundation’ exclude application of the chemical to the siding material of a building? We suggest the label language be changed to address differences in building structures.”

EPA Response: We do not believe revising the federal labels to reflect this change in language is necessary. The use of the word "foundation" does not exclude application to the siding material of a building. It is the Agency's intention that the term "foundation" used in this context applies to any material on the vertical side of the structure (ground up), not the foundation concrete slab specifically. If CDPR would like to identify more specific or restrictive use patterns in your proposed rule than what is currently required on the federal label, it is within the state's right to do so.

CDPR Question 2: “DPR would like to allow applicators to apply product as a ‘pin stream’ defined as ‘one inch wide or less.’ A pin stream application is often made to a surface where there is no crack-and-crevice. Does the term ‘crack-and-crevice’ include DPR’s definition of a pin stream application? ...we would like to discuss with you possible label changes to address this concern and clarify the language.”

EPA Response: The Agency notes that the term “crack and crevice” is defined by EPA in the enclosed Pesticide Regulation Notice (PRN) 73-4, as “...application of small amounts of insecticides into cracks and crevices in which insects hide or through which they may enter the building. Such openings commonly occur at expansions joints, between different elements of construction, and between equipment and floors...” EPA has no official definition of the term “pin stream,” and would generally consider “pin stream” to be an application method, as opposed to “crack and crevice,” which is an application site. During our September 9th discussion, CDPR clarified that they are using the term “pin stream” to define limited surface applications where no crack or crevice is present, such as a one inch band application around windows or doors. The Agency believes that this type of use would fall within the intent of the exceptions for “crack and crevice” and “spot treatment” which are included in the 2009 pyrethroid labeling language. Although PRN 73-4 technically defines a spot as not to exceed two square feet, and treatment around a window or door does not fit into a square, the Agency feels that CDPR’s description of a small area, limited surface application falls within the spirit of a spot treatment or crack and crevice application. Again, the Agency does not believe revising the label statement from the 2009 initiative is warranted to make a relatively minor change. CDPR can include “pin stream” in your proposed rule without violating the intent of EPA’s label statement.

CDPR Question 3: “DPR would like to allow broadcast application to ‘areas protected by a structure from precipitation.’ For example, under the eaves of a house or under a covered patio. Would DPR’s use of such wording in the proposed regulation be interpreted by your Agency as less restrictive than the label language?”

EPA Response: Regarding broadcast applications to covered patios, the Agency would consider this allowance to be less restrictive than the federal label, and thus not in accordance with the 2009 pyrethroid labeling initiative. The Agency does not believe there is a way to fully ensure that an outdoor covered area will not be exposed to a weather event. Broadcast treatment of a pesticide to a concrete slab below a roof structure, for example, could potentially produce runoff depending on the strength, severity, and duration of a weather event.

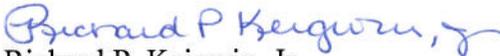
Regarding applications to “under the eaves of a house,” CDPR clarified during our September 9th call that this language is intended to mean the underside of the eaves, of the housing or construction material itself, also known as a soffit. “Under the eaves of a house” is not intended to describe ground that lies directly below the eaves. A broadcast application to the ground underneath the eaves would be considered less restrictive than the federal label, but the Agency views treatments to the undersides of eaves for treatment of spiders, etc. to fall within the exceptions included in our 2009 pyrethroid labeling initiative.

Based on the above examples, the wording “areas protected by a structure from precipitation” seems too general to capture all possible scenarios, some of which may fall within the intent of the Agency’s label restrictions while others do not. Therefore, the Agency does not support this language be included in the proposed rule. The Agency would be happy to review additional language if CDPR develops alternative wording addressing the above concerns.

Lastly, CDPR’s August 4th letter informed the Agency that you have been working with pyrethroid registrants to incorporate changes to the bifenthrin product labels. Rather than have CDPR place additional restrictions into regulation, the registrants wish to amend the federal labels. CDPR asked for the Agency’s support in processing the change. EPA will process amended labels voluntarily submitted by the registrants as any standard label amendment. Please note that certain types of amendment applications may be subject to service fees under the Pesticide Registration Improvement Act (PRIA). See the EPA website¹ for additional information.

Because the clarifications and interpretive guidance provided in this letter could apply to other states and stakeholders, the Agency plans to make this letter publicly available on our website for the 2009 pyrethroid non-agricultural outdoor product labeling initiative². If you have any questions or would like to discuss this further, please contact Monica Wait of my staff at (703)347-8019 or wait.monica@epa.gov.

Sincerely,


Richard P. Keigwin, Jr.

Director
Pesticide Re-evaluation Division

¹ <http://www.epa.gov/opp00001/fees/tool/>

² <http://www.epa.gov/opprrd1/reevaluation/environmental-hazard-statment.html>

CC:

Ann Prichard, CDPR
Denise Alder, CDPR
Lois Rossi, EPA, Registration Division
Richard Gebken, EPA, Registration Division

Enclosure:

USEPA Pesticide Regulation Notice 73-4. August 14, 1973.