



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

OFFICE OF
PREVENTION, PESTICIDES
AND TOXIC SUBSTANCES

Mr. Allen James, President
Responsible Industry for a Sound Environment
1156 15th St. NW, Ste. 400
Washington, DC 20005

May 15, 2009

Dear Mr. James:

It has been brought to our attention that certain pesticides are being sold, distributed, and promoted with the inappropriate words "Professional" and "Professional Grade" in product names and advertising. EPA's Office of Pesticide Programs (OPP) provides information to stakeholders on its website about the regulations that govern labels and advertising, and tools for understanding how the Agency reviews pesticide labels (www.epa.gov/pesticides/regulating/labels/label_review.htm). As part of our overall outreach strategy, we are soliciting the aid of RISE in getting key messages regarding permissible claims on distributor products out to your membership. Broad circulation of this letter to stakeholders will help remind them of Federal pesticide label regulations and the OPP's process for addressing misbranded products, such as those with false and misleading statements.

OPP would like to take this opportunity to explain its position on the use of words "professional" and "professional grade" in product names and in marketing materials. OPP is aware that a distributor is selling and distributing products under a brand name that includes "Professional Grade." In addition to naming its products as "Professional Grade," product advertising has used claims such as "Professional Grade Results" and "Put the power of the professional in your hands."

Section 12(a)(1)(E) of the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA") states that it is unlawful to distribute or sell "any pesticide which is ... misbranded." A pesticide is misbranded if "its labeling bears *any* statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular." FIFRA § 2(q)(1)(A)(emphasis added). The following describes why EPA finds use of "Professional Grade" in these products' labeling and marketing to be a false or misleading claim and therefore unacceptable.

EPA has listed examples of statements that are false or misleading in its regulations as 40 CFR § 156.10(a)(5). Of interest relating to "professional grade," the list includes "a false or misleading statement concerning the effectiveness of the product as a pesticide or device" and "a false or misleading comparison with other pesticides or devices." 40 CFR § 156.10(a)(5)(ii) and (iv). "Professional Grade" implies a falsehood that pesticides are classified by grade, which they are not. This is a false or misleading comparison to other pesticides under 40 CFR § 156.10(a)(5)(ii).

"Professional Grade" implies or could well imply that the products are more efficacious than

competitors' products. This is likely a false or misleading statement about the comparative effectiveness of the product under 40 CFR § 156.10(a)(5)(iv).

The use of "professional" is misleading in that it does not explain which professionals are being referenced. None of the products in question have ever been classified as restricted use (40 CFR § 152.160), therefore, the sale or use of these products is not restricted to any particular group and the products are legally available for purchase by average consumers.

The product advertising includes phrases that use the term "professional", include the following: "Professional Grade Ingredients!", "Professional Grade Results! Now Available to Consumers," and "Put the Power of the Professionals in your Hands." Section 12(a)(1)(B) of FIFRA states that it is unlawful to distribute or sell "any registered pesticide if any claims made for it as a part of its distribution or sale substantially differ from any claims made for it as a part of the statement required in connection with its registration." OPP has not approved the use of "professional" in claims for these products either at the distributor or basic registrant level.

OPP would like to remind basic registrants and supplemental distributors that only limited changes may be made between basic registered products and their supplementally distributed products per 40 CFR § 152.132(d). Specific claims may be deleted from distributor-product labels but they may not be added per 40 CFR § 152.132(d)(5). When distributor-product names contain new claims that have not been accepted for the basic registration, the label is in violation of 40 CFR § 152.132(d). Both the distributor and the basic registrant are liable for violations pertaining to the distributor product.

I hope this letter clarifies OPP's position regarding use of "professional grade" and "professional" in pesticide product labels and advertising. OPP is considering whether to refer this and similar matters to the Office of Enforcement and Compliance Assurance (OECA) for potential enforcement action. OPP will be reviewing the supplemental distribution agreements required under 40 CFR § 152.132(a) more closely in an attempt to rectify improper brand names before they reach the marketplace.

We ask that this letter be widely circulate to your membership, and we thank you in advance for your help. If you have any questions, please feel free to call Meredith Laws, Chief of the Insecticide-Rodenticide Branch, at (703) 308-7038.

Sincerely,



Lois Rossi, Director,
Registration Division
EPA's Office of Pesticide Programs