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EPA Issues Compliance Advisory Regarding Pesticide Devices Making Claims to Kill the Novel Coronavirus

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In late May, the U.S. Environmental Protection Agency (EPA) issued a Compliance Advisory providing the public with information regarding the limits of governmental review of the efficacy of pesticide devices, especially pesticide devices that claim to kill the novel coronavirus that causes COVID-19 (coronavirus). Per the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), chemical pesticides must be reviewed and approved by EPA for efficacy claims made by the pesticide registrant before marketing is permitted. In contrast, FIFRA prohibits pesticide device sellers from making false or misleading claims about the safety or efficacy of their pesticide devices, but it does not require EPA approval before a pesticide device may be sold. Thus, pesticide *devices* (an instrument or other machine) designed to kill a pest do not undergo pre-market review for efficacy.

Because there is no pre-market review of pesticide device efficacy, and since EPA “is receiving a steady stream of tips/complaints concerning potentially false or misleading claims” associated with pesticide devices being sold with claims of killing coronavirus, [EPA’s Compliance Advisory](#) sets out some cautionary statements:

“Please note that **ozone generators, UV lights and other pesticide devices may not be able to make claims against coronavirus where devices have not been tested for efficacy or safety for use against the virus causing COVID-19 or harder-to-kill viruses.** In addition, because EPA does not review these data as part of a registration review process, these claims are not supported by any government review.” [Emphasis in original].

The Advisory reviews EPA’s process for approving chemical pesticides, and specifically the process EPA uses to maintain its “List N”—a list of disinfectants that meet EPA’s criteria for use against coronavirus. The Advisory notes that consumers’ success in killing viruses using List N pesticides depends on following all label directions including heeding the recommended contact time, which is the amount of time the pesticide product needs to remain wet on a surface.

The Advisory also describes the limits prescribed by FIFRA for pre-market review and approval of pesticidal devices and warns that EPA cannot confirm whether, or under what circumstances, such pesticide devices might be effective against the spread of coronavirus. The Advisory specifically cautions that “consumers should be aware that pesticidal devices making such claims have NOT been reviewed and accepted by EPA”.

Pesticide device sellers are allowed to make certain efficacy claims, as long as they possess supporting data. FIFRA does impose penalties for making false or misleading labeling claims about the safety or efficacy of a pesticidal device.

The Advisory concludes with ‘Compliance Concerns’ and warns sellers who attempt to profit from sales of pesticides or pesticide devices with unapproved or unsupported claims for use against coronavirus:

“EPA intends to pursue enforcement against products making false and misleading claims regarding coronavirus. EPA is working with e-commerce platforms to remove/prohibit these fraudulent and/or otherwise inefficacious products from the marketplace. EPA is also coordinating with the U.S. Department of Justice and other federal partners to bring the full force of the law against those selling or otherwise distributing violative products.”

FOR MORE INFORMATION

Van Ness Feldman's environmental attorneys actively monitor EPA actions, including those related to FIFRA and disinfectants that meet coronavirus efficacy standards. If you have any questions regarding this recent Compliance Advisory, please contact [Dana Stotsky](#) or [Gwen Keyes Fleming](#).

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