

March 9, 1993

PESTICIDE REGULATION (PR) NOTICE 93-3

NOTICE TO MANUFACTURERS, FORMULATORS, PRODUCERS
AND REGISTRANTS OF PESTICIDE PRODUCTS

ATTENTION: Persons Responsible for Registration of Pesticides

SUBJECT: Labeling Statement Prohibiting Application to Water

This notice explains EPA's policy concerning the labeling statement which prohibits application of a pesticide to water and specifies a revised statement. Until the new statement is adopted on pesticide product labels, the enforcement interpretation in this notice applies to the existing labeling statement. This notice pertains only to the labeling statement on pesticide products and does not address the term "wetlands" as defined by EPA with respect to the Clean Water Act.

I. BACKGROUND

Two issues have arisen regarding the labeling statement which prohibits direct application of a pesticide to water: (1) what does the term "wetlands" in this statement mean and (2) to which uses does the "Do not apply directly to water" prohibition apply?

A. Meaning of "Wetlands"

In 1984, EPA changed the "Do not apply directly to water" statement on pesticides with outdoor, terrestrial uses to include the term "wetlands." The revised statement read: "Do not apply directly to water or wetlands (swamps, bogs, marshes, potholes)." The purpose of the change was to extend protection to areas where aquatic life might be affected by pesticides. The statement was intended to be consistent with the meaning of wetlands as defined in a 1980 Federal Register notice pursuant to the Clean Water Act (CWA), Section 404, as follows:

"The term 'wetlands' means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas." [40 CFR 230.3(t)]

The Federal Manual for Identifying and Delineating Jurisdictional Wetlands, jointly issued by EPA, the Army Corps of Engineers, the Soil Conservation Service and the U.S. Fish and Wildlife Service in 1989, was written to implement the regulatory definition of wetlands and included criteria regarding vegetation types, soil types and wetland hydrology. Subsequently, EPA received inquiries from the U.S. Department of Agriculture, state regulatory officials, the National

Forest Products Association and other groups as to whether the term "wetlands" on pesticide labels has the same meaning as for Clean Water Act jurisdiction. As of January 4, 1993, EPA has joined the U.S. Army Corps of Engineers in using the 1987 Corps of Engineers Wetlands Delineation Manual. This action does not have an impact on this PR Notice.

On April 16, 1991, EPA issued a memorandum to the EPA Regions clarifying the meaning of the term "wetlands" on pesticide labels (Attachment 1). The key message was that pesticides bearing a "wetlands" warning must not be applied directly to water, to areas where surface water is present or to intertidal areas below the mean high water mark. For enforcement purposes, the presence of residues from pesticides bearing a "wetlands" label warning for these areas could indicate a "use inconsistent with the labeling" (i.e., misuse).

To avoid confusion over the meaning of the term "wetlands" on pesticide labels versus the meaning of "wetlands" in connection with the Clean Water Act, EPA is revising the current water prohibition statement by deleting this term. The enforcement interpretation in the previous paragraph will remain in effect until the term "wetlands" no longer appears on pesticide labeling.

B. Use Patterns to Which the Water Prohibition Applies

A conflict occurs when the "Do not apply directly to water" statement is present on the labeling of products which are registered for both terrestrial and aquatic uses. While EPA does not intend for this statement to apply to the aquatic uses, the uses to which it applies are not clear. For example, a product which is registered as an insecticide against adult mosquitoes may have both aquatic and terrestrial sites in the use directions. Because the current "Do not apply directly to water" statement is unqualified, it applies to all of the registered sites. To correct this conflict, EPA is revising the water prohibition statement to clarify that it applies only to terrestrial uses.

II. POLICY

In the Environmental Hazards section of pesticide labeling, the statement "Do not apply directly to water or wetlands (swamps, bogs, marshes or potholes)..." should be replaced with:

"For terrestrial uses, do not apply directly to water, or to areas where surface water is present or to intertidal areas below the mean high water mark."

This statement will correct the two problems discussed above. First, inserting the phrase "For terrestrial uses" at the beginning of the water prohibition statement indicates that it applies to terrestrial, forestry (except aerial application) and domestic outdoor uses only [refer to Appendix A of 40 CFR Part 158 for descriptions of these general use patterns]. The revised statement does not apply to other general use patterns--aquatic (e.g., mosquito larvicides or

adulticides, aquatic herbicides, piscicides, slimicides, etc.), greenhouse and indoor uses.

Second, the new statement more clearly describes where pesticides intended for terrestrial use may not be applied. In that statement, the term "water" means natural or man-made bodies of water such as lakes, streams, rivers, canals, ponds, reservoirs, bays, oceans, etc. "Areas where surface water is present" means such areas as swamps, bogs, potholes and marshes where water is present on the soil surface; this phrase does not include irrigation ditches which have been drained. "Intertidal areas below the mean high water mark" means coastal and estuarine areas which are exposed during low tide, but covered during high tide.

III. EFFECTIVE DATE AND REQUIRED ACTIONS

This policy is effective immediately. The Agency intends to accept applications for registration of new products with terrestrial, forestry (except aerial application) and domestic, outdoor uses only if they comply by inserting the label statement shown in Section II.

Registrants of currently registered products with these same uses should also adopt the label statement shown in Section II. If the exact wording shown in Section II is used, registrants of existing products may accomplish this change by notification to EPA (see 40 CFR 152.46 or PR Notice 88-6). Alternate wording to the above label statement may only be adopted by submitting an application for amendment to the appropriate EPA Product Manager and obtaining EPA approval. To promote uniformity of this particular label statement across all affected products, EPA does not encourage registrants to seek alternate wording.

Label changes should be made by registrants and distributors no later than April 21, 1994. Persons other than registrants or distributors should not distribute or sell products after April 21, 1996 unless the labeling complies with this notice. The Agency may issue a notice of intent to cancel or take enforcement action against any product that is distributed or sold by a registrant (or distributor) after this date unless its labeling complies with this notice. If you have questions regarding this policy, you may contact Jeff Kempter, Registration Division (703-305-5448).

/signed/

Douglas D. Campt, Director
Office of Pesticide Programs