



Public Employees for Environmental Responsibility

Protecting Employees Who Protect The Environment



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**PEER Comments
On
Docket Identification Number EPA-HQ-OPP-2007-1008
Draft Notice on
Label Statements Regarding Third-Party Endorsements & Cause Marketing Claims
December 19, 2007**

The U.S. Environmental Protection Agency (EPA) has asked for public comments on a proposed policy to allow third party endorsements and charitable cause marketing claims to appear on the labels of regulated pesticide products. For the reasons outlined below, PEER believes that this proposed policy undermines important public health protections, lacks regulatory rigor and is a needless diversion of scarce agency resources.

The central thrust of this EPA proposal is to allow manufacturers to dedicate label space that is otherwise restricted to information about safety and proper usage to claims by third parties or about charitable tie-ins that have nothing to do with safe and proper usage of an inherently dangerous product.

1. Placement of the Red Cross and Other Safety or Environmental Symbols on Commercial Poisons Is Inherently Misleading

EPA would allow pesticide makers to feature the symbols from the Red Cross and other well-regarded charities on product labels. In addition, EPA would allow third-party endorsements from organizations such as the Red Cross or groups with safety, medical or environmental titles.

The placement of safety and environmental information on the label that has nothing to do with the qualities or properties of the product is inherently misleading:

A. Violates Federal Trade Commission Guidelines

The FTC Environmental Marketing Guidelines provide that it is “deceptive to represent, directly or indirectly, that a product...offers a general environmental benefit” [16 C.F.R. § 260.7]

The placement of an environmental symbol is an indirect representation that the product has environmental benefits.

B. Violates EPA Guidelines

Agency guidelines emphasize safety and usage information and discourage any “symbols implying safety or non-toxicity, such as a Red Cross or a medical seal of approval (caduceus).” <http://www.epa.gov/oppfead1/labeling/lrm/chap-16.htm>

While EPA is not proposing to repeal these guidelines, its proposal clearly would allow display of the Red Cross and would allow endorsements by medical or safety organizations.

C. State Laws

Minnesota has concluded that the Clorox charitable claims about the American Red Cross violate state pesticide labeling laws. Other states may reach similar conclusions about EPA-approved endorsement or cause marketing labels.

Notwithstanding these actual and potential conflicts between, on one hand, the EPA policy and, on the other hand, guidelines and statutes governing consumer protection, EPA does not include these other authorities as touchstones for its consideration of applicant’s proposed labels. EPA should be taking actual and potential conflicts between its proposed policy and state statutes and agency guidelines into consideration

2. EPA Plan Puts Vulnerable Populations at Risk

The sole evidence offered by EPA that its approval of the Clorox-Red Cross label claim was not misleading was a study conducted by Clorox marketing researchers (“Assessment of American Red Cross label on Clorox Bleach Package” October 2, 2007). That study was limited to adult female shoppers over age 18.

This study only looked at purchasers and not product users. For example, the study did not consider –

- Populations with limited English or limited language skill; or
- Children.

These risks are not merely theoretical. In 2005, according to that year’s annual report from the American Association of Poison Control Centers, pesticides are the eighth most frequent cause of calls to poison centers, accounting for more than 100,000 exposures a year, nearly half of which involve children younger than six years old.

Even the relatively small category of chlorinated bleach products were the subject of more than 54,000 calls to poison control centers, with the vast majority of those calls concerning unintentional exposure, including nearly 20,000 children under age six.

Given that unsafe ingestion of pesticides and other regulated products is already a major concern, EPA should not take any steps that may aggravate the problem.

3. Extraneous Claims Distract Consumer from Concentrating on Safe Usage Label Instructions

While the safe usage directions are the most information on the label, those directions are usually in small print and consist of dense wording. By contrast, EPA wants to approve the placement of catchy or recognizable symbols or the images of famous people, such as athletes, actors and other celebrities who may endorse a regulated product.

By their very nature, these marketing claims are designed to draw attention. In drawing attention to the marketing claim, consumer attention is drawn away from the dry, dense wording describing safe usage. For example, the hazard information on the Clorox label is dark blue on a medium blue background. The safe usage directions which constitute the majority of information on the label, are usually in small print and consist of such dense wording and poor color contrast they are barely legible. By contrast, the bright red cross of the Red Cross logo definitely attracts the eye more than the dark blue, fine print safety label.

Anything that distracts consumer attention away from safe usage information undermines the purpose of the EPA regulation of label content.

4. EPA Plan Creates Conflicts with State Regulations

As noted above, the State of Minnesota has already outlawed the EPA approval for Red Cross symbols on Clorox bleach products. In addition, the Attorneys General of seven other states (New York, Illinois, Connecticut, Maryland, Vermont, Oklahoma and Arizona) have expressed their conclusions that “our states are now placed in the untenable position of either registering Clorox products that they believe to be illegally labeled or alternately, denying their states’ residents market access to such popular and widely used products as Clorox bleach” [April 3, 2007 letter from Attorney General Mario Cuomo, et al to American Red Cross].

Significantly, EPA has not coordinated with its state partners. Nor has EPA meaningfully consulted with the State-FIFRA Issues Research and Evaluation Group it has created to make sure that there is a consensus-based approach to pesticide regulatory issues.

While state cannot make pesticide regulations more lenient than federal regulations, EPA should not create regulatory conflicts and undermine state governments by making federal pesticide regulations more lenient than existing state regulations, especially when the conflict involves perceptions of safety.

5. EPA Has Presented No Information Indicating Why its Label Policy Is Needed

This label policy appears to be prompted solely by the urging of the Clorox Company. Moreover, EPA has yet to release the communications from Clorox which prompted this change in policy.

Other than this mysterious request, the record contains no information indicating any perceived need or expected public benefit to be derived from this new policy. To the extent that there exists even a remote possibility that damage to public health could result from consumer confusion, there should be a clear, countervailing public good to balance

against that harm. That countervailing public good is not evident in this case. As a consequence, EPA's action appears gratuitous and motivated solely by a desire to serve corporate convenience.

6. EPA Proposed Policy Lacks Workable Standards

A. No Criteria for Conclusions

Under its proposed policy, EPA will approve any third party or charitable marketing claims where it can "make a finding that the information is not false and misleading, and does not detract from other valuable information on the label." EPA does not spell out how it will make this determination, especially since by their nature any extraneous third party and charity tie-in claims will take up space on a label that would otherwise be devoted to safety-related information.

B. No Fixed Burden of Proof or Even Burden of Presentation on Applicant.

Under its proposal, EPA does not require the applicant to submit any evidence or information. Indeed, the applicant is not even required to submit a mock up of the label it seeks EPA to approve. In its notice, EPA recommends submittal of mock up labels and market research on consumer perception but does not require it.

C. Questionable Claims Will Be Approved

In addition, the EPA policy provides for conditional approval in cases where the agency has "some residual concern" in order to allow the applicant time to gather additional evidence to assuage the agency's unease. This provision suggests an EPA posture in which they will approve anything that is not egregiously misleading.

D. Vague Policy Invites Litigation

The lack of identifiable standards that EPA will use to make findings leaves the agency open to litigation from applicants whose labels are inexplicably rejected by EPA as well as by public health and consumer protection organizations who see EPA label approvals as misleading or distracting from safety information.

7. Proposal Entangles EPA in Corporate Marketing Schemes

This plan will require EPA staff to evaluate a possibly endless variety of endorsement or cause-marketing claims. These claims have nothing to do with the product's characteristics, as such. Instead, these claims are designed to serve as a form of embedded advertising that is supposed to improve the regard that the potential consumer has for either the manufacturer or the product.

The task of parsing advertising claims should be left to agencies with expertise in enforcing against unfair or deceptive business practices. EPA has no such expertise.

8. Proposal Results in a Needless Diversion of Scarce Regulatory Resources

From global warming to preventing childhood exposure to lead-based paint, EPA has an extensive critical agenda of regulatory issues that it has yet to address. This plan would require EPA to divert regulatory resources from these important environmental protection

and public health issues to matters of purely commercial significance. This diversion is a misuse of public resources that EPA should avoid.

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