



EPA Takes Broad Action on Pesticide Devices

10.26.2020

The United States Environmental Protection Agency (EPA) is in the process of a regulatory crackdown, spurred by the current pandemic, which may have broader effects than meet the eye and which raises questions that do not have clear answers. The subject of this regulatory action is the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), with the targets being large e-commerce marketplaces; however, the action taken by EPA may have more far-reaching effects than just on these on-line websites.

On June 10, 2020, EPA issued Stop Sale, Use, or Removal Orders (Orders) to Amazon.com Services LLC (Amazon) and eBay Inc. to cease and desist from selling or distributing a number of pesticide products and devices in violation of FIFRA. EPA alleged the products and devices were unregistered, misbranded, or restricted-use pesticides, and said the claims made about them were false or misleading. The Orders are largely a response to the spur of products listed for sale on the web that make unsubstantiated claims about products or include regulated ingredients that are claimed to combat the spread of or eliminate COVID-19.

While many of the products listed in the Orders are plainly in violation of FIFRA, the Orders also include pesticide devices less obviously regulated by the Act, which evidences a broader reach by EPA than is clearly warranted under relevant guidance. For example, devices listed in the Orders include dehumidifiers that claim to do no more than remove excess moisture from the air which can result in mold and mildew. These are said to be in violation of FIFRA for lack of an EPA establishment number on the product—the key requirement for pesticide *devices* under FIFRA, as compared to a more comprehensive review and registration process for pesticide *products*.

EPA maintains guidance on its website related to pesticide devices; however, the source of these documents can be traced to a single Federal Register notice on Pest Control Devices and Device Producers. This document provides little clarification beyond the definitions in FIFRA and applicable federal regulations. That's why EPA's inclusion of certain devices that do not claim to trap, destroy, repel, or mitigate any pest or any other form of plant or animal life, but which merely claim to create a similar effect as an indirect result, appears to indicate an enhanced scope of regulation by EPA.

While discussion of this action and the direct effects seem limited in scope to on-line sellers, the consequences may be more expansive. First, as a result of this action, on-line sellers have begun to review and remove similar products and devices beyond those listed in the Orders. This may come as a surprise to manufacturers who are entirely unaware of the potential applicability of FIFRA to their products. Second, the action shows the increased scrutiny that EPA is willing to undertake in response to products that profess to address public health emergencies. Accordingly, manufacturers that produce products or make claims even tangentially related to environmental or human health effects should reevaluate the potential applicability of FIFRA to the products they produce. The alternative is to risk potential enforcement by EPA.

In the Matter of Amazon.com Services LLC, Stop Sale, Use, or Removal Order, EPA Docket No. FIFRA-10-2020-0102 (June 10, 2020).

Attachment A to June 10, 2020 Order.

Related People

- Pierce Werner ? 803.567.4606 ? pwerner@williamsmullen.com

Related Services

- Environment & Natural Resources