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To: "NJinPAS Network" <NJinPASNetwork@AESOP.RUTGERS.EDU>
Sent: Tuesday, December 16, 2003 4:41 PM
Subject: Largest Pesticide Enforcement Penalty in U.S. History: False Safety Claims

Courtesy of Audrey E. Moore, USEPA Region 2 Regional Ag Policy Specialist

See New York Attorney General's website for the following articles: http://www.oag.state.ny.us/press/2003/dec/dec15a_03.html

DOW SUBSIDIARY TO PAY \$2 MILLION FOR MAKING FALSE SAFETY CLAIMS IN PESTICIDE ADS

Largest Pesticide Enforcement Penalty in U.S. History

Attorney General Eliot Spitzer today announced that Dow AgroSciences, LLC, a subsidiary of the Dow Chemical Company, will pay a \$2 million penalty for illegally advertising safety claims about its pesticide products in New York between 1995 and 2003.

This is the largest enforcement penalty ever obtained in a pesticide case.

"Pesticides are toxic substances that should be used with great caution," said Attorney General Spitzer. "By misleading consumers about the potential dangers associated with the use of their products, Dow's ads may have endangered human health and the environment by encouraging people to use their products without proper care."

Consumer and public health advocates hailed the settlement.

Edward Groth III, PhD, a senior scientist with Consumers Union, publishers of Consumer Reports, said: "Chlorpyrifos (Dursban) was one of the most highly toxic active ingredients used in home pesticides. Dow's exaggerated safety claims for this very toxic chemical, cited in the Attorney General's lawsuit, were simply outrageous. Consumers should thank Eliot Spitzer for putting a stop to such gross corporate deception."

Dr. Philip Landrigan, chair of the Department of Community and Preventative Medicine at Mount Sinai Medial Center, said: "Excellent studies conducted by independent scientists have clearly shown that chlorpyrifos, the active ingredient in Dursban, is toxic to the human brain and nervous system and is especially dangerous to the developing brain of infants. I applaud the actions of Attorney General Spitzer to stop these misleading and potentially dangerous safety claims."

Spitzer sued Dow for repeatedly violating a 1994 agreement with New York State prohibiting advertising touting the safety of its pesticide products. As part of the 1994 agreement, the company agreed to stop making claims that its products were "safe." However, an investigation by Spitzer's office found that almost immediately after the company entered into the agreement it once again began to make misleading safety claims in its print, video and internet advertising.

Pursuant to a Consent Judgment signed December 12 by Judge Joan Madden in Manhattan Supreme Court, Dow is required to pay a \$2 million penalty, is barred from making safety claims about its pesticide products, and is required to implement a compliance program consisting of the following components:

- A complete internal review of all advertisements being published by Dow or its agents in New York State and removal of any advertisement that makes safety claims about pesticide products;

The appointment of an attorney working under the company's Director of Ethics and Compliance who will be responsible for reviewing and approving all advertising. No advertisement will be published in New York State unless it has first been reviewed by the appointed attorney; and,

A training program regarding federal and state law and the consent judgment for all employees and advertising agency personnel involved in creating or reviewing advertisements.

An investigation in the early 1990s by the Attorney General Office found that Dow engaged in false and misleading advertising that violated both state and federal laws. In exchange for not paying fines for its illegal advertising claims, Dow signed an agreement with the state in 1994 in which it pledged to reform its advertising and marketing practices.

The Attorney General's investigation revealed that, after the 1994 agreement, Dow continued to illegally advertise the safety of chlorpyrifos and other pesticides. The investigation centered on Dow's advertising of the Dursban™ pesticide product line, which contains chlorpyrifos, a synthetic chemical compound that has been linked to severe health problems in humans, including poisoning, nerve damage and birth defects. The federal Environmental Protection Agency, specifically citing health risks to children, took action in 2000 to prohibit most household uses of chlorpyrifos.

As recently as March, 2003, Dow's internet site included the statement: "Consumer exposure from labeled use of chlorpyrifos products provides wide margins of safety for both adults and children." In contrast, Dow's safety data sheet for Durban TC™ (chlorpyrifos) states that excessive vapor concentrations are attainable and could be hazardous on single exposure."

For a more complete list of false and misleading safety claims made by Dow, see the attached tables.

The matter was handled in the Attorney General's Environmental Protection Bureau by Assistant Attorney General Philip Bein, Affirmative Litigation Chief Lemuel Srolovic, and Chief Scientist Michael Surgan.

Related Material : Dow AgroScieneces Consent Order @
http://www.oag.state.ny.us/press/2003/dec/dow_consentorder.pdf

DOW SUBSIDIARY TO PAY \$2 MILLION: APPENDIX

Dow AgroSciences' advertising claims for its chlorpyrifos products are contradicted by the product labels, other Dow documents (such as Material Data Safety Sheets), and government findings.

According to the labels and Material Safety Data Sheets for Dursban (chlorpyrifos) products:

Data sheets for Dursban TC state "excessive vapor concentrations are attainable and could be hazardous on single exposure." The MSDS for Dursban Pro states "...concentrations may be attained that may be hazardous on single exposure."

Labels for Dursban TC, Dursban Pro, Dursban 50W, state that the pesticides "may be fatal if swallowed," and users should "avoid contact with skin, eyes, or clothing," and "avoid breathing vapors or spray mist."

Labels for Dursban TC, Dursban Pro, Dursban 50W, Dursban 75WG, state that the pesticides are "toxic to birds and wildlife, and extremely toxic to fish and aquatic organisms."

According to the U.S. Environmental Protection Agency (EPA):

Chlorpyrifos accounted for 7,000 of 116,225 (6%) of unintentional pesticide exposures to single products reported in 1996 to Poison Control Centers in the United States.

"Chlorpyrifos is part of a class of older, riskier pesticides, some going back 50 years. Exposure to these kinds of pesticides can cause neurological effects. Now that we have completed the most extensive evaluation ever conducted on the potential health hazards from a pesticide, it is clear that the time has come to take action to protect our children from exposure to this chemical." (EPA Administrator Carol Browner).

EPA Regulations designate as "false or misleading" claims "as to the safety of the pesticide or its ingredients, including statements such as 'safe,' 'nonpoisonous,' 'noninjurious,' 'harmless' or 'nontoxic to humans and pets' with or without such a qualifying phrase as 'when used as directed.'"

Dow AgroSciences claimed:

"... no significant adverse health effects will likely result from exposures to Dursban, even at levels substantially above those expected to occur when applied at label rates."

"Are chlorpyrifos (Dursban) products safe for use around children? Used as directed, chlorpyrifos products provide wide margins of safety for both adults and children."

"...three decades of use have shown that unless seriously misused, products containing chlorpyrifos have wide margins of safety that protect users and consumers, including infants and children."

"there is simply no credible scientific evidence that Dursban products harm people or the environment when used properly."

Dow AgroSciences' advertising claims about its herbicide products are contradicted by the product labels, other Dow documents (such as Material Data Safety Sheets), and government findings.

According to the product labels and Material Safety Data Sheets for Dow's herbicides:

Product label for Garlon 3A states that it "causes irreversible eye damage" and is "harmful if swallowed or absorbed through skin."

Product label for Dow's Conserve SC warns that the product is "highly toxic to bees ... [and] ... molluscs."

Product label for Snapshot 2.5 TG states that this pesticide is "extremely toxic to freshwater marine, and estuarine fish and aquatic invertebrates including shrimp and oyster."

Dow's safety data sheet for Surflan A.S. herbicide warns that the product "may cause skin irritation," and, "in animals, has been shown to cause liver, kidney, bladder, spleen and blood effects. Human signs and symptoms may include central nervous system depression (headache, dizziness, drowsiness and incoordination)."

According to the U.S. Environmental Protection Agency (EPA):

"[B]y their very nature, most pesticides create some risk of harm to humans, animals or the environment because they are designed to kill or otherwise adversely affect living organisms."

Surflan A.S. and Team Pro Technical contain active ingredients that are classified as possible carcinogens by EPA

EPA Regulations designates as false or misleading "[n]on-numerical and/or comparative statements on the safety of the [pesticide] product"

DowAgroSciences claimed:

"No risk to the consumer from the use of pesticides when they are used as directed."

"Herbicides are tested thoroughly for their ... safety to wildlife, humans, and the environment."

"[S]afe at high rates" (referring to Conserve SC)...."

"There's safety and savings in Snapshot herbicide."

"They [pesticides] are essentially 'environmental medicines'..."

"Its easy on beneficial insects and is not harmful to the environment or ornamentals." (Referring to Conserve SC and Spinosad).

". . . offering an environmentally sound approach . . ." (referring to Spinosad as the active ingredient in Conserve insecticide).

". . . if ingested, Garlon 3A has low toxicity when compared to many substances we come in contact with daily. For instance, table salt is about as toxic as Garlon 3A; and caffeine is 15 times more toxic than Garlon 3A."

http://www.oag.state.ny.us/press/2003/dec/dec15a_03.html

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