State Lead Agency Issues

US EPA Design for the Environment (DfE) Program

Pesticide State Lead Agencies (SLAs) recognize the need for US EPA to foster public service activities such as the DfE Program to help consumers make more informed pesticide and chemical purchase decisions. The comments provided below are born out of a desire by SLAs to help the Agency develop an effective DfE program and process, and to assist EPA with the necessary task of insuring a credible program that consumers can trust. SLAs understand that a credible DfE program will require vigilance at the state product registration and field compliance levels to verify that product labels do not bear the DfE symbol if they have not been through and passed the established review process, as referenced in the April 22, 2010 FIFRA analysis of DfE Pilot by the Agency’s Pesticides and Toxic Substances Law Office.

SLAs have identified several implementation issues and are providing the following recommendations to help address these shared co-regulator issues in a manner that does not result in unnecessary regulatory burdens for either EPA or the SLAs:

1) Most SLAs register pesticide products annually. As part of that registration process many SLAs will be reviewing product labels and will be adding a DfE verification step as the DfE symbol starts to appear on labels submitted for state registration. Likewise, SLA field staff will be monitoring labels in the marketplace for DfE compliance. Therefore, it is critical that the database to be used by SLAs as part of the DfE verification step be maintained and updated in an extremely timely manner. Otherwise, state product registration delays and misguided enforcement activities will result.

2) SLAs are concerned that regulating the use of the DfE symbol on distributor registration product labels will add an additional layer of challenges to those highlighted in the first issue. It is our understanding that a valid distributor registration requires that EPA Form 8570-5 be submitted and processed and that the language on the distributor label is consistent with the language on the “master label”. It is also our understanding that the Agency does not currently review distributor labels for consistency with the master label. Therefore, we are concerned that a distributor product label bearing a DfE symbol to communicate some level of EPA review would be significantly misleading to the public if the distributor registration is not otherwise valid. SLAs believe insuring distributor
product compliance would be much more effective and efficient if is done at the front end of the registration/review/acceptance process rather than at the end of the process, when the product is actually in the marketplace. To that end, SLAs believe that the primary registrant should be required to submit at least annually to EPA a formal list of all registrants with whom the primary registrant has a formal distribution agreement, along with a copy of that distributor label. If the Agency does not have the resources to perform a front end review step to insure the distributor registration is valid, SLAs could assist with the process during the state product registration process. If the Agency could provide SLA product registration managers with access to a database (even a spreadsheet) containing the list of active primary registrant/distributor relationships and the list of distributor products covered by those agreements SLAs could help support the DfE credibility effort for distributor products.

3) Lastly, SLAs would like to confirm that use of the DfE symbol on a label without passing prior review would constitute federal misbranding of that product. As with any incident of misbranding, SLAs are eager to perform our role in the regulatory partnership to help instill consumer confidence in the registration process. However, we are concerned that if OECA does not share our desire to act decisively and swiftly to address such an obvious misbranding issue, our regulatory efforts and the consumer confidence that they should instill will be lost. If the DfE symbol program is truly important to the Agency, we agree that it should be credible and readily enforceable.