



CONTACT:

llavoie@cdnpaint.org • gleroux@cdnpaint.org

## Regulatory Bulletin

### ENVIRONMENT

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# Health Canada Is Developing a Policy Regarding Articles Treated with a Pest Control Product

The industry has to use claims for marketing an article that is treated with an antimicrobial product in order to prevent its degradation. When marketing and selling articles containing an antimicrobial product such as paints, caulking products, etc. there seems to be one claim deemed acceptable in Canada with regards to "mildew resistance". According to directions from the Plant Industry Directorate, Agriculture Canada, the following claim is deemed acceptable "Contains a control product which resists mildew on the film." In contrast, there are 27 different mildew resistant claims that are currently authorized by the [US Environmental Protection Agency \(EPA\) Office of Pesticides Program](#). CPCA recently inquired on behalf of US members if any of these claims could be used in Canada.

The Pesticides Compliance Program of Health Canada (Consumer Product Safety) recently confirmed to CPCA that its department is currently developing a policy regarding articles that are treated with a pest control product (antimicrobial or others). This new policy or guideline should be aligned, at least for the most part, with the corresponding [US EPA Pesticide Registration \(PR\) Notice 2000-1](#). The Health Canada Pesticides Compliance Program encourages and maximizes compliance with the [Pest Control Products Act \(PCPA\)](#) and compliance activities are conducted in partnership with other relevant federal and provincial ministries. Where violations of the [PCPA](#) or [Pest Control Regulations](#) occur, appropriate enforcement measures may be taken.

Although the US EPA has addressed non-public health claims for more than twenty-five years (issuing several interpretations and then a notice), there has never been a clear policy or clear position held at Health Canada with regards to articles treated with a pest control product. And it has never been among Health Canada's top priorities to develop such a policy or guideline over the past several years. However, it finally became a priority in 2011-2012 (probably because of the proliferation of antibacterial claims in articles sold on the market) and a preliminary draft was produced in summer 2012. This project has even survived the 15% staff cuts that Health Canada experienced last year. The Pesticides Compliance Program is confident it will be completed although it may still take several months before the final guideline is officially published on the Health Canada website. CPCA will inform members of this publication date in a future edition of the CPCA Regulatory News.

Once this new guideline is finalized and approved, Health Canada also plans to inform all Canadian importers and distributors of articles in Canada.

## **US EPA Policy**

The US EPA regulations in 40 CFR 152.25(a) exempt certain treated articles and substances from regulation under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) if specific conditions are met. As per Pesticide Registration (PR) Notice 2000-1 published by the EPA, known as the "Treated Articles Exemption", specific guidance is provided to producers and distributors of pesticide treated articles and substances. A treated article or substance is defined as containing a registered pesticide or biocide. For example, the notice requires the qualification of mildew resistant claims by stating that the dried paint film or dry coating of the paint is mildew resistant and provides twenty-seven (27) acceptable claim statements (see Appendix).

## **Health Canada's Position**

The Health Canada Pesticides Compliance Program recently informed CPCA that all of the above mildew resistant claims included in the US EPA notice and mentioned in the Appendix **are acceptable in Canada**.

This new guideline will apply to all articles claiming antimicrobial properties that are sold by Canadian manufacturers, distributors and importers.

**Exceptions:** These claims cannot be used for antimicrobial products which are not homologated or which require registration. This is the case for wood preservatives and antifouling paint. Therefore, the new guideline will not apply to pesticides, insecticides, fungicides, algicides, etc that are sold separately and for this purpose only. The types of claims given in the Appendix are not permitted for antimicrobial pesticide products that are exempt from registration.

Concerning wood preservatives to be manufactured, imported and sold in Canada, these products are considered as pesticides and therefore, they require registration under the *Pest Control Products Act (PCPA)*, and any related claims must be consistent with the registered product's label. In the case of antifouling paint, all label claims must be reviewed and approved by Health Canada prior to being used. For these two

types of products, the examples of claims given in the following Appendix would likely be unacceptable. The new guideline will not cover specific public health claims or medical claims for protection against bacteria, fungi, viruses or pathogens by the users themselves of the articles (i.e. kitchen accessories, mattresses, etc.).

**CPCA Recommendation:** Although CPCA was told by a Health Canada Compliance officer that all claims statements are deemed currently acceptable, CPCA recommends to members, before re-labelling any mildew-resistant paint products (or by extension, odor claims), until the new policy/guideline is officially published, to double check with the Health Canada Pesticides Compliance Program department for further certainty.

Members can contact the [Compliance, Laboratory Services and Regional Operations Directorate](#), 2720 Riverside Drive Ottawa, Ontario K1A 0K9 Tel: 613-736-3799 Toll free: 1-800-267-6315 Teletypewriter: 1-800-267-1245 (Health Canada)

Please contact CPCA ([Lysane Lavoie](#)), if you have any further questions.

## APPENDIX

### Pesticide Registration (PR) Notice 2000-1 –

EPA considers terms such as “antimicrobial,” “fungistatic,” “mildew-resistant,” and “preservative,” as being acceptable for exempted treated articles or substances provided that they are properly, and very clearly, qualified as to their intended non-public health use.

#### **Acceptable Claims for Mildew Resistance**

- Dry coating of this paint is mildew resistant;
- Cured sealant is mildew resistant;
- Specifically formulated to resist mildew on the paint film;
- Gives mildew resistant coating; Creates mildew resistant coating;
- Provides mildew resistant coating;
- Mildew Resistant – This paint contains a preservative which inhibits the growth of mildew on the surface of this paint film;
- Powerful mildew resistance on dry coating of paint; Resists mildew on dry paint film; Inhibits mildew on dry paint film;
- This article has been treated with a fungistatic agent to protect the product from fungal growth;
- Mildew Resistant – Treated with a fungistatic agent to protect the paint itself from growth of mildew;
- Mildew Resistant – This product contains a preservative which inhibits the growth of mildew on the surface of this paint film;
- Mildew Resistant – Extends useful life of article by controlling deterioration caused by mildew;

- Algae Resistant – This article contains a preservative to prevent discoloration by algae;
- A fungistatic agent has been incorporated into the article to make it resistant to stain caused by mildew;
- Article treated to resist deterioration by mold fungus;
- Article treated to resist deterioration from mildew;
- The fungistatic agent in this article makes it especially useful for resisting deterioration caused by mildew;
- Dried paint film resists mold fungus;
- Dry coating resists discoloration from mildew;
- Dried film resists stains from mold;
- A mold or mildew resisting component has been incorporated in this article to make its dry film mildew resistant;
- Specially formulated to resist mildew growth on the paint film;
- Retards paint film spoilage;
- Resists film attack by mildew;
- Mildew resistant on the paint film.