REPACKAGING PESTICIDES AND THE HYDROPONICS INDUSTRY

This Guidance document is to help insure that all pesticides being purchased and sold within the Hydroponic industry are handled correctly and all Federal and California laws and regulations are being followed.

The following information will be covered in this document:

- Regulation of pesticides
- Legal requirements for repackaging pesticides, including;
  - o Product registration requirements for repackaged pesticides
  - o U.S. EPA pesticide establishment registration requirements
- Requirements for selling agricultural use pesticides
- Registering a pesticide and mill fees
- Potential civil or criminal penalties for violating California or federal pesticide laws

REGULATION OF PESTICIDES

Pesticide use is controlled by federal, state and local government agencies. The U.S. Environmental Protection Agency (U.S. EPA) delegates pesticide enforcement to the states. The U.S. EPA sets the minimum pesticide standards according to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) in the Code of Federal Regulations Title 40 (40CFR), Parts 150 to 189.

The California Department of Pesticide Regulation (DPR) and the County Agricultural Commissioners administer and enforce programs governing the sale and use of pesticides in California, including the following:

- Scientific evaluation of products before they can be sold or used.
- Examination and licensing of individuals and businesses that recommend perform or supervise pest control.
- Surveillance of products sold in the marketplace to ensure they are registered and meet state health, environmental and safety standards.
- Site-specific permitting for the use of certain hazardous pesticides.
- Full reporting of agricultural pesticide use.
- Sampling and residue testing of fresh produce.
- Strict laws, regulations and programs to protect workers and the environment, including field inspections and monitoring of air, soil and water.
- Grants and outreach promoting greater use of pest management strategies that lower risks associated with pesticides and reduce pesticide use where possible.
- Local enforcement agents in all 58 counties that conduct safety inspections and investigations.

LEGAL REQUIREMENTS FOR REPACKAGING PESTICIDES

REPACKAGED PESTICIDES ARE REQUIRED TO BE REGISTERED WITH DPR.

It is illegal to sell repackaged pesticide products in California unless they are registered with DPR. Under California law, pesticides are required to be registered with DPR prior to use, sale, or possession. (Food & Agr. Code, §§ 12993; 12995.) DPR registers pesticides on a product-by-product basis by reviewing each individual product label. Pesticide product labels include information necessary to safe and effective use including the following:

- Storage and disposal directions;
- Environmental protection;
- Worker safety;
- Personal protective equipment;
- First aid, and;
- Mixing and application directions.

The laws against unregistered pesticide products protect the public from pesticide products that have not been reviewed and approved by DPR experts.

Every pesticide product must be registered with DPR prior to sale, including when different labels are used to market the same chemical formula. For example, if a pesticide is sold in two different container sizes, both must be registered with DPR. When a person or company repackages pesticide from its original container, they are producing a new pesticide product. That product is required to be registered. Repackaged pesticides that are not registered by DPR have not been reviewed to confirm that all the accompanying label or labelling set forth all the requirements to assure the efficacy and safety of the specified use and handling and application instructions that protect public health.

ANYONE WHO REPACKAGES PESTICIDES MUST REGISTER WITH U.S. EPA.

Under FIFRA, the production of pesticides is required to be conducted in a registered pesticide producing establishment. (7 U.S.C. § 136e.) The repackaging of pesticide is considered pesticide production. Therefore, any person or company that repackages pesticides is required to obtain a U.S. EPA pesticide establishment number. Registered pesticide establishments are subject to regulatory requirements including the following:

- Site inspections (7 U.S.C. § 136g.);
- Record-keeping requirements (7 U.S.C. § 136f.);
- Detailed annual reporting to U.S. EPA (40 C.F.R. § 167.);
- Producers must print their registered establishment number on pesticide product labels. (40 C.F.R. § 156.10.)

For more information about pesticide production requirements, including U.S. EPA's description of activities that are considered to be pesticide "production," see:
https://www.epa.gov/compliance/pesticide-establishment-registration-and-reporting

HYDROPONICS STORES THAT SELL AGRICULTURAL USE PESTICIDES MUST BE LICENSED PEST CONTROL DEALERS.

Only licensed pest control dealers may sell pesticides that have agricultural uses specified on the registered label, regardless of the other uses that may appear on the labeling. (Food & Agr. Code, § 12101.) Hydroponics stores that sell agricultural use pesticides are required to obtain a pest control dealer license from DPR. Below is an example of a pesticide label that is registered for Agricultural Use:

Under California law, licensed pest control dealers are subject to regulatory requirements including the following:

- Must have a properly licensed supervisor onsite at each office and location (Food & Agr. Code, § 12101.5.)
- Required to maintain records of purchases, sales, and distributions of pesticides (Food & Agr. Code, § 12114.)
- Must ensure that anyone purchasing an agricultural use pesticide has an operator identification number, if required. (Cal. Code Regs.,tit. 3, § 6562(a)(4).

For more information about pest control dealer and other DPR-license types, visit DPR's licensing and certification website: http://cdpr.ca.gov/docs/license/liccert.htm For more

REGISTERING A PESTICIDE AND MILL FEES

Pesticides that are required to be registered with DPR are subject to the following registration fees:

Application Type	Fee
New Products	$1,150
Amendments	$25
Notification Of Minor Changes	$25
Product Registration Renewal	$1,150
Late Product Registration Renewal	$1,380

An annual registration of a pesticide in California is mandatory and the certificate of registration in California expires the 31st of December each year. (Food & Agr. Code, § 12817.)

California assesses a "mill fee" on all pesticide sales at the first point of sale into the state. The mill assessment fee is calculated quarterly on pesticide sales at a rate of $0.021 per dollar of sales, plus an additional $0.0075 for agricultural and dual-use pesticide products.

PENALTY NOTICE

FINES AND PENALTIES

The sale or distribution of unregistered pesticide is a violation of California law. (Food & Agr. Code, § 12993.) Violators are subject to civil penalties of up $5,000 in an administrative action or $10,000 if prosecuted civilly. (Food & Agr. Code, §§ 12998; 12999.4.) Criminal violations of state pesticide law can result in fines of up to $50,000 and one year in prison. (Food & Agr. Code, § 12996.)

If you believe someone is selling pesticides illegally--pesticides that are unregistered or misbranded--call DPR's Product Compliance Program at (916) 445-4159, or E-mail to: productcompliance@cdpr.ca.gov.