

EPA Proposes Complete Ban on Pesticide Spray Drift

EPA's Unrealistic Goal will have Devastating Impact on Agriculture

Background

On November 4, 2009, the Environmental Protection Agency (EPA) issued a Federal Register Notice seeking public comment on proposed guidance for new pesticide label language meant to reduce spray drift. In particular, the EPA is proposing that many commercial and noncommercial pesticide products add new warnings to limit drift that “could cause an adverse effect” to people or the environment. These changes are unnecessary, confusing and represent a radical departure from current law. The EPA’s proposal creates an unachievable and unenforceable zero-drift standard that could lead to excessive litigation against agriculture producers and significant loss of farm productivity. This current action by the EPA is just the latest example of the EPA blindly following its radical environmental policies and ignoring its effects on American agriculture, America’s food security and the American economy.

What They’re Saying

“While we appreciate EPA working to improve product labeling related to off-target drift, many aspects of the approach taken by the agency represent a radical policy shift on pesticide regulation and pose significant problems for state regulators and pesticide applicators.”

Stephen Haterius, Executive Director of the National Association of State Departments of Agriculture (NASDA)

“As the global population expands at a breathtaking pace, crop protection and other modern agricultural practices are essential to producing additional crops safely and sustainably. Unfortunately, EPA has shifted away from sound science and towards a hazard-based analysis that potentially obstructs our farmers from growing more food.”

Jay Vroom, President and CEO of CropLife America (CLA)

“The risk of spray drift is already considered in EPA’s registration process. Furthermore, the language that is being proposed in order to provide more precise, protective and enforceable labeling statements will only accomplish the opposite.”

Keith Menchey, Manager of Science and Environmental Issues for the National Cotton Council

The Facts: EPA Pushing Radical Standards

Undermines Risk-Benefit Standards: EPA's proposed guidance represents a radical departure from the Federal Insecticide Fungicide and Rodenticide Act's (FIFRA) scientific-based, risk-benefit standard of "no unreasonable adverse effect." EPA's newly proposed spray drift policy, "Do not apply this product in a manner that results in spray drift that could cause an adverse effect to people or any other non-target organism," adopts a precautionary approach at the expense of a scientific approach, and replaces FIFRA's risk-benefit standard with a zero-risk standard. The net result of all this will lead to situations where theoretical impacts could become the catalyst for nuisance lawsuits, whether or not harm actually occurred. Put simply, applicators would have to refrain from applying registered pesticides if spray drift *could* cause an adverse effect. Thus, applicators would be required to anticipate and avoid all potential situations, and be ready to promptly shut down operations if any meteorological or ecological situation arises (e.g., wind gusts or flocks of birds).

Impossible Standard: EPA's proposed zero-drift policies set an impossible standard for America's agriculture producers to meet. The EPA and the various state agencies charged with enforcing these regulations have long acknowledged that some spray drift is inherently inevitable (e.g., a standard of zero-drift in a down-wind direction is technically impossible). In spite of overwhelming evidence and testimony from experts in the field, the EPA is pushing agriculture producers towards a path of impending doom. Rather than forcing our agriculture community to meet unachievable goals, the EPA should focus on outreach, education and other efforts to promote the adoption and improvement of drift-reducing technologies.

Adverse Economic Impact: The overly restrictive label language proposed by the EPA will severely impact American agriculture and rural economies. Specifically, certain provisions of the proposed label standards will lead to a requirement that agriculture producers implement buffers around their fields to limit spray drift, which may reduce the total acreage of available cropland ready for production. Reduced cropland will result in lower production of food and fiber, which will result in higher food costs and the inability of American farmers to compete against international competitors. Estimates by the United States Department of Agriculture (USDA) on the economic impact of buffers suggest that the loss of farmable cropland would result in losses topping \$1 billion.

State Opposition: The EPA's proposal has been widely panned by state pesticide regulators, who say it forces them to become assessors of theoretical risks and will subject them to liability associated with the regulation of potential pesticide misuse based on vague standards. Furthermore, state regulators have said they do not have the toxicology endpoints or risk assessment data to make these types of theoretical decisions.

Frivolous Lawsuits: The vague language could compel individuals to allege potential harm even in the absence of any real adverse effects to their health or property. Rather than protecting the public and the environment from real risks, it is likely to lead to unwarranted enforcement actions and frivolous lawsuits against applicators and growers.