

The Honorable Michael S. Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, DC 20460-0001
June 25, 2021
Re: Pesticide Devices Making Public Health Claims

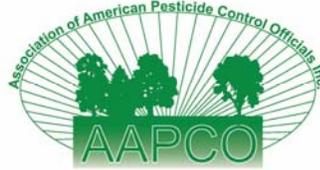
The Association of American Pesticide Control Officials (AAPCO), The Association of Structural Pest Control Regulatory Officials (ASPCRO), and the National Pest Management Association (NPMA) submit the following comments to the U.S. Environmental Protection Agency's (EPA) concerning pesticide devices, specifically devices that make human health claims and produce a pesticidal substance. We are concerned that these devices may be used disproportionately in underserved communities; predominately impacting low-income areas, indigenous populations, and communities of color. Lack of proper registration and regulatory oversight of these devices is leaving the most sensitive portions of these communities vulnerable, as they are mainly used in hospitals, nursing homes, and long-term care facilities, etc., for wide area disinfection.

The Association of American Pesticide Control Officials (AAPCO) was formed in 1947, the same year that Congress enacted the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). AAPCO is a professional association comprised of the officers charged by law with the execution of the state, territorial, provincial, and federal pesticide laws in the United States, including all its territories, and in Canada. The Environmental Protection Agency (EPA) and States are co-regulators in the implementation and enforcement of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). Our mission is to represent state pesticide control officials in the development, implementation, and communication of sound public policies and programs related to the sale, application, transport, storage and disposal of pesticides.

The Association of Structural Pest Control Regulatory Officials (ASPCRO) has been focusing on structural pest management issues since 1956. ASPCRO's membership is comprised of state pest control regulatory officials who are responsible for assuring consumer protection related pest control and prevention. Part of ASPCRO's mission is to provide and promote solutions to address emerging issues, and to act as a liaison between the EPA, consumers, and industry partners.

The National Pest Management Association (NPMA) was established in 1933 to support the \$9.4 billion U.S. pest management industry. More than 80% of the industry is made up of small businesses, many of them with 5 employees or less. NPMA's member companies provide pest control services to control a myriad of pests in countless commercial, residential, and institutional settings. The structural pest management industry relies on EPA and state pesticide regulatory agencies to ensure that their mission of protecting public health, food, and property can be performed in a safe and effective manner.

Collectively, AAPCO, ASPCRO and NPMA are concerned by recent shifts in the market towards pesticide devices that make human health claims and produce a pesticidal substance. We support many devices



being exempt from pesticide registration when they operate only by physical means (such as electricity, light or mechanics), but when devices produce substances that declare pesticidal claims similar to “...environmental cleaning and disinfecting that aims at reducing harm to human health and the environment...”, they have entered an area outside the normal realm of devices used to destroy, repel, trap or mitigate any pest. These devices echo the human health claims of EPA registered Section 3 products, despite being exempt from Section 3 registration. These devices are being used in a variety of facilities and industries and produce pesticidal substances such as electrolyzed water, hypochlorous acid, ozone, and chlorine dioxide touted for disinfecting, sanitizing, and sterilizing hard surfaces. A clean distinction needs to be made that separates traditional devices from generators or devices that produce a substance that acts as a pesticide.

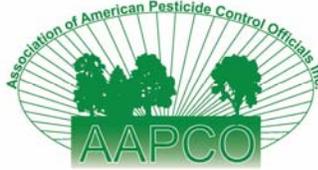
There are public health implications with the use of these devices in establishments such as hospitals, nursing homes, childcare facilities, food processing, livestock processing, cruise ships, and fresh fruit and vegetable processing facilities. The webpages for these various devices are touting pesticidal claims such as “proven effective on biofilm, viruses, bacteria such as E. Coli, Clostridium Difficile, and Staphylococcus aureus, fungi and algae, with the benefits of no buildup of resistance, reduced costs, greatly reduces use of conventional agents, green, safe and easy to use with on-site production”. It is concerning that no scientific data is being submitted to EPA to prove their effectiveness in reducing bacteria, fungi or other disease-causing pathogens. Furthermore, it is alarming that a hospital, nursing home, or childcare facility could use these products instead of hospital grade, EPA registered antimicrobial products which must submit the testing protocols for registration and prove effectiveness in control of *Staphylococcus aureus* (*S. aureus*) and *Pseudomonas aeruginosa* (*P. aeruginosa*).

We are further concerned for maintenance worker safety and the effectiveness of these products. There is little to no assurance that these products are effective and that set standards are being followed in their production, labeling, and use. If we fail to bring this issue forward, we are not doing our part to protect human health. EPA should be equally concerned for the safety of our citizens on a national level. Many of these generators are also considered to be misbranded because they are labeled with claims of being a “US EPA Registered Sterilant”, inaccurate citing of EPA Est. No. with product registration numbers, and other misleading statements. To further confuse the consumers, many companies that manufacture these generators also produce pesticides for distribution with the same active ingredients as those substances being produced by the generators.

EPA's Role in Protecting Public Health

FIFRA defines:

- A pesticide as “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.”
- A “device” as any instrument or contrivance (other than a firearm) that is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than bacteria, virus, or other microorganism on or in living man or other living animals); but not including equipment used for the application of pesticides when sold separately therefrom.



- A Producer and produce; the term “producer” means the person who manufactures, prepares, compounds, propagates, or processes any pesticide or device or active ingredient used in producing a pesticide. The term “produce” means to manufacture, prepare, compound, propagate, or process any pesticide or device or active ingredient used in producing a pesticide.

In an effort to clarify, EPA has indicated that the distinction between a pesticide or device could be made by determining the source or who provided the materials for the generator. The product would cross the line of being a pesticide if the ingredient, such as a salt, was being provided with the generator, as it would meet the definition of a substance.

For consumer protection, health, and safety, we request EPA further refine the definition of “devices” and “pesticide” to require pesticide registration for generators or devices that produce a new substance that acts as a pesticide. Especially if the device does not work only by physical means (such as electricity, light, or mechanics). This will assist in assuring clear, defensible, and more protective determinations.

With this shift, EPA could begin to evaluate these products for proven effectiveness, especially for those products making human health claims, and begin to further regulate companies that make false or misleading claims on their product labeling. This will help all of us reach a common goal of ensuring public safety and health.

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