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ADVISORY OPINION

#273

U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D.C. 20207

October 11, 1978

William Brown, Esq.
Hertlein, Brown and Paulino
1110 Morse Rd.
Columbus, Ohio 43229

Dear Mr. Brown:

This is in response to your letter of September 18, 1978 concerning pentachlorophenal treated lumber. In your letter you ask whether such lumber is required to be labeled under the Federal Hazardous Substances Act (FHSA), whether the Commission has undertaken any studies concerning the toxicity of pentachlorophenal, whether the Consumer Product Safety Act (CPSA) requires registration of compounds such as pentachlorophenal with the Commission, and whether the Commission has taken any regulatory action with regard to pentachlorophenal.

As you may know, under the CPSA, the Commission is authorized to take regulatory action to address unreasonable risks of injury associated with consumer products. "Consumer product" is defined in the Act as "any article or component part thereof, produced or distributed for sale to ... or for the use... of a consumer in or around a permanent, or temporary household or residence, a school, in recreation or otherwise." (see section 3(a)(1)). Articles not customarily produced or distributed for sale to or use by consumers are excluded from the definition and are outside the Commission's authority under the CPSA.

Under the FHSA, products intended or packaged in a form suitable for use in the household which present one or more of the enumerated hazards (that the product is toxic, corrosive, an irritant, flammable, combustible, and so forth) and which may cause substantial personal injury or

illness during or as a proximate result of reasonably foreseeable handling or use are considered "hazardous substances" and are required to be labeled in accordance with the Act. (see FHSA, section 2(f)).

You should be aware, however, that "pesticides" as that term is used in the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) are specifically excluded from Commission jurisdiction under the CPSA. (section 3(a)(1)(D)). The FHSA also specifically excludes "pesticides," as that term is used in FIFRA. ("Pesticide" is defined in FIFRA as "any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects which may be present in any environment whatsoever." Since it appears that the only reason pentachlorophenal would be added to lumber for barns would be to mitigate pests, we assume that the compound is a pesticide). The FHSA further provides that an article which is not in itself a pesticide but which bears or contains a pesticide is a hazardous substance, if the article meets one of the definitions of "hazardous substance" in section 2(f)(1) of the Act. (see section 2(f)(2)). Similarly, under the CPSA, articles which merely bear or contain pesticides but are not in themselves pesticides may be subject to the Act if they meet the definition of "consumer product."

From the information in your letter, we are unable to determine whether pentachlorphenal treated lumber would be a hazardous substance subject to the FHSA labeling requirements because we do not know whether the lumber is intended or packaged in a form suitable for household use and whether the treated lumber itself would meet one of the definitions of "hazardous substance" contained in the Act. If you wish to submit more detailed information on the product, the Commission's Directorate for Compliance and Enforcement may be able to advise you on the applicability of the FHSA labeling requirements. You may write to: Mr. David Schmeltzer, Associate Executive Director for Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207.

As to your question concerning registration of pentachlorophenal, while section 13(a) of the CPSA authorizes the Commission to issue regulations requiring the registration of new consumer products with the CPSC, the Commission has never implemented this section. The CPSA contains no general authority for the Commission to require registration of consumer products and no registration of pentachlorophenal is required. In addition, the Commission has not taken any regulatory action with regard to pentachlorophenal.

As to any Commission studies concerning the toxicity of pentachlorophenal, we have referred this question to the Commission's technical staff for response. You should be hearing from them shortly.

I hope this information is helpful.

Sincerely,

Margaret A. Freeston

Margaret A. Freeston
Acting General Counsel

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General Counsel

October 31, 1978

William Brown, Esq.
Hertlein, Brown and Paulino
1110 Morse Road
Columbus, Ohio 43229

Dear Mr. Brown:

Your letter of September 18, 1978, to the Consumer Product Safety Commission regarding pentachlorophenol, was forwarded by the Office of General Counsel to the Division of Toxicology and Medicine for additional comment.

Pentachlorophenol (PCP) and several salt derivatives are registered as pesticides by the Environmental Protection Agency (EPA) for home and industrial use. Consumer products containing PCP as the active ingredient also include lesser amounts of tetrachlorophenol which is formed in the manufacturing process. Several dioxin and furan derivatives are present as contaminants.

Substances defined as hazardous under the Federal Hazardous Substances Act (FHSA) must bear a label, which, among other things, states: the name of the hazardous substance, the nature of the hazard, required warnings or cautions, and first-aid instructions. For certain substances that are considered to present a particular hazard, additional labeling statements are deemed necessary for the protection of the public health.

It is the responsibility of a manufacturer to assure that his products are labeled according to the provisions of the law. The Code of Federal Regulations, Title 16, Subchapter C, Federal Hazardous Substances Act Regulations, Section 1500, contains statutory definitions including those for "toxic" and "highly toxic" and appropriate biological tests to supplement these definitions. For example, an oral LD_{50} of 50 mg/kg or less in rats would classify a substance as "highly toxic"; 50 mg to 5 gm/kg would be considered "toxic." The Commission may conduct laboratory tests to make the determination that a consumer product is hazardous as defined

by the FHSA. Compliance may also be accomplished by the Commission field staff monitoring products at the manufacturing level or in the marketplace.

Human and animal experience reported in the scientific literature indicate that PCP can cause toxicity through all portals of entry. Systemic intoxication, manifest as hyperpyrexia, can occur through accidental ingestion, absorption of solutions through the skin or inhalation of vapor. Prolonged or frequent skin contact may cause an acneform dermatitis and allergic response. In addition, vapor and dust can also produce local irritation of eyes, nose and throat. The toxic properties of the contaminants are relatively unknown.

Recently, potential adverse effects on the reproduction system and/or fetus of animals treated with PCP have been identified by EPA. These toxicological data will be evaluated by EPA to determine if, in the light of potential human exposure, an adequate margin of safety exists (see Federal Register, October 18, 1978, pp 48446-48617, enclosed). It is our understanding that in the interim, PCP can continue to be used for the uses for which it is registered.

The Commission has not performed any toxicity studies with PCP or its contaminants and none are ongoing. Further, at this time no toxicological studies are planned for the future.

We hope the above information has been helpful.

Sincerely,

Rita A. Orzel, Ph.D.
Division of Toxicology and Medicine

Enclosure

cc:
Central File
Reading File
OGC
ESHT
OPM

ESHT/ROrzel:ko

Law Offices
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Donald A. Hertlein
William W. Brown
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(614) 885-3365

September 18, 1978

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SEP 25 1978

The General Council
U.S. Consumer Safety Commission
Washington, D.C. 20207

Re: Labeling of Pentachlorophenal
Hazardous Substances Control Act 15 USC 1261

Dear Sir:

This office represents several dairy farmers who have constructed large dairy barns of pentachlorophenal treated lumber. The pentachlorophenal treated lumber has created injury to both the cattle and the human beings that have come in contact with it due to the presence of chlorinated dibenzodioxins in the pentachlorophenal. It is our understanding that both the Hazardous Substances Control Act and the Consumer Products Safety Act, are both contained in 15 USC 2051 and 1261 and are administered by the Consumer Products Safety Commission. The Hazardous Substances Control Act has certain definitions which make certain substances either toxic, highly toxic or corrosive. The effect of falling within one of these would seem to require labeling of the product or any other product which incorporates the substance which is toxic by nature. We would be interested to find out whether your commission has in any way either undertaken a study of pentachlorophenal and it's contaminants or made any determination as to whether or not pentachlorophenal or the contaminants within pentachlorophenal have beendetermined to be toxic or highly toxic. We would also request that you advise whether the Consumer Products Safety Act requires a manufacturer or pentachlorophenal to register said compound with the Consumer Products Safety Commission or whether your commission has taken any action of a regulatory nature in regard to pentachlorophenal.

We are aware that this substance is registered under the Federal Insecticide, Pesticide and Rodenticide Act however this does not fall within the jurisdiction as I understand it.

Please advise at your earliest opportunity.

Sincerely yours,

William W. Brown

WB?jt

OSU

September [illegible]

Mr. John Stackhouse
Director
Ohio Department of Agriculture
Ohio Departments Building
Columbus, OH 43215

Dear John:

Yesterday I visited a dai[illegible] Feucht - owner, that has [illegible] last several years. The owner [illegible] moving into a new barn constructed with so[illegible] has entered into litigation. It was, in fact [illegible] the problems to my attention.

The farmer is literally bankr[illegible] and lost [illegible] including calves and heifers since 1974. [illegible] mitted to ship milk because of [illegible] is an unbelievable 5-10 pound [illegible] many people including FDA, [illegible] of Agriculture. But what di[illegible] has been done to arrive at a diagnosis of [illegible] the owner has entered litigation, there is a reluct[illegible] to become involved. The owner [illegible] that the problem is related to the [illegible] true source of the problem may be [illegible] promise of financial rescue. This may indeed be [illegible] problem but too little has been done to establish cause of death and to eliminate other possible causes.

I am writing to you because I am disturbed that such a catastrophic problem could persist over a period of about [illegible] without diagnosis. None of the many visitors to the farm have [illegible] sense of direction. Statements of poor management [illegible] solutions to problems. But even a poorly managed farm would not [illegible] John Staubus and I have reviewed the feeding program [illegible] Mrs. Feucht and if the information provided is accurate, he has been feeding the herd quite adequately.

What is needed is some rolled up [illegible]
There were eight deaths last week [illegible]
Feuchts have had to obtain other [illegible]
the herd is almost decimated, [illegible]
of Agriculture be brought [illegible]

RAY:am