

Treatment with Algaecides, Bactericides and Moluscicides Policy

Kansas Department of Health and Environment Bureau of Water, Public Water Supply February 2020

This policy outlines the standard operating procedure for the review and approval of a public water supply submittal whose scope of work pertains, in part or in whole, to the control or elimination of biological concerns that include but are not limited to algae, bacteria and mollusks, through their exposure to a device or a pesticide.

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) provides for federal regulation of pesticide distribution, sale, and use. All pesticides distributed or sold in the United States must be registered (licensed) by the United States Environmental Protection Agency (EPA). Before EPA may register a pesticide under FIFRA, the applicant must show, among other things, that using the pesticide according to specifications "will not generally cause unreasonable adverse effects on the environment."

In distinguishing between "devices" and "pesticides", EPA clarified what constitutes a pesticide in a notice that was printed in the Federal Register on September 21, 2007. If an article uses physical or mechanical means to trap, destroy, repel, or mitigate any pest, EPA considers the article to be a device. In contrast, if the article incorporates a substance or mixture of substances to prevent, destroy, repel, or mitigate any pest, then EPA considers the article to be a pesticide. (Notice: "Pesticide Registration; Clarification for Ion-Generating Equipment", Federal Register, 72nd Vol., No. 183, Friday, September 21, 2007, pp. 54039-54041)

EPA's Office of Pesticide Programs (OPP) has direct oversight for both administering FIFRA and registering pesticides under FIFRA. It then follows that EPA's OPP has the regulatory responsibility for rendering a final opinion in matters where there is uncertainty as to the classification of an article as being a device or a pesticide, and subsequently whether an article must (or does not have to) be registered as a pesticide under FIFRA. It will be the responsibility of the public water supply system to obtain in writing a formal opinion from EPA's OPP for such matters. While the Kansas Department of Health and Environment (KDHE) will honor and abide by the EPA's OPP opinion, please understand that the KDHE will not be a participant in the development and subsequent issuance of such an opinion from EPA's OPP.

Where a submittal received by the KDHE by or on behalf of a public water supply system for formal review and approval and its proposed scope work includes the use of one or more pesticides, the following additional information pertaining to each pesticide must be included in the submittal:

1. A written statement signed by a duly authorized person on the official letterhead of the public water supply system that contains the following information:
 - a. Provide confirmation that the pesticide is registered under FIFRA as required and that the registration is current;
 - b. Provide confirmation that the intended uses (applications) of the pesticide are within the use site language of the product's FIFRA product labels.;

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- c. A written statement from the public water supply system signed by an authority of the public water supply system on official public water supply system letterhead attesting that all requirements for any other local, state and or federal regulations pertaining to the intended uses (applications) of the pesticide have been satisfied.
2. A copy of any written opinion from EPA that EPA's OPP pertaining to the classification of an article as being a device or a pesticide, and subsequently whether an article must (or does not have to) be registered as a pesticide under FIFRA;
3. A copy of the pesticide's current registration under FIFRA;
4. A copy of each of the pesticide's EPA approved product labels under FIFRA;
5. A copy of the FIFRA registered pesticide's current registration with the Kansas Department of Agriculture, Pesticide and Fertilizer Program;
6. Identification of the American National Standards Institute (ANSI) accredited certifying entity for the pesticide's NSF Standard 60 product certification, along with a copy of the certification as it appears on the ANSI accredited certifying entity's website;
7. Identification of the ANSI accredited certifying entity for the pesticide's NSF Standard 61 product certification along with a copy of the certification as it appears on the accredited certifying entity's website; and
8. A copy of the agreed upon consensus outcome email and the submittal for the formal waste stream summary review and disposal method consensus process.

The State of Kansas does not issue specific approvals for products, technologies or services. Therefore, approvals to proceed with construction apply to the submittal in general and are without specific reference to any aspect of the products, technologies and services that are associated with the project's scope of work. The KDHE does not maintain a "Kansas-approved" list of products, technologies and services. This ensures that all vendors will have equal access and opportunity to compete for business in Kansas, and ensures that the public water supply systems in Kansas will have maximum choice.

For information regarding drinking water requirements under FIFRA and SDWA please refer to the following EPA website:

<https://www.epa.gov/ground-water-and-drinking-water/understanding-drinking-water-requirements-under-fifra-and-sdwa>