



DUST IN THE.....WHERE?

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Over approximately the last 2 years we have observed that while in the pursuit of structural pests such as bed bugs, fleas, and other influential insects, inappropriate or counter-labeler use of dust formulations has resulted in a significant increase of both claims and lawsuits.

Throughout the U.S., whether performed by pest management professionals or wildlife damage control professionals (licensed and certified to apply a dust formulation), some applications have resulted in third parties and/or consumers filing complaints with the courts and/or regulatory agencies. Claims are not limited to certain areas of the country. We have handled, or helped PMPs handle, exposures in all four corners of the country.

We are hopeful the following information will help with the technical side of applying dust products. More importantly, we offer simple ways to help mitigate claims and/or suits that are becoming more frequent every year.

Let's start with the types of claims/suits we are receiving. We can then delve into some pragmatic information about dust applications that you may want to implement within your company and with your employees.

There is one common "statement" that we constantly hear with "dusting" or dust application claims. It is made by about every dusting expert and regulatory official as well as anyone involved with the claimant or plaintiff.

"If the consumer can see the dust, you used too much!"

Of course there are some that disagree, but when you have a number of credible experts testifying to this statement being true, it does make it difficult for your defense. Here is a prime example:

"We have a condo that was treated for fleas. Got a call well into the claim that too much dust was used and the state was called in. The state inspector wrote up a report that too much dust was used and the resident moved out for close to six months! The unit had to be cleaned three times and we were not informed until about the 3rd time the condo was to be treated (another issue about reporting claims early). Needless to say, this certain consumer was very, very particular about any residue of any kind. Since this claim is

still ongoing, we will leave other issues out of the article for defense purposes. The bottom line is this claimant stated that the dust caused her property damage and bodily injury.

Here is the kicker. There were two other condos that were also treated with dust resulting in the same complaints. This time we were able to get on it from the start, and guess what, even though you could see dust in isolated areas, swab and air samples came back with normal results. Therefore they basically have no claim. It is our understanding that the other condo that had to be treated three times (per residents demands) was in the same shape. Right now, we have one claim where we have demands well over \$100K for one condo and \$0 for the other 2 units.

So how can that be? Three condos with the same alleged conditions, but such different results? Again who was involved and when? On the claims side, it is so easy. If you have an insurance person or expert in litigation that knows these exposures, CALL THEM! That is everything!

We have had other dusting situations that turned out to be nothing. Some even under the insured's deductible. But this is all after the fact. Now let's focus on ways to mitigate or totally avoid these claims in the first place.

Dust formulations, when applied correctly or per labeler directions, are exceptionally effective in the reduction and elimination of pest pressures. However, nowhere on a dust insecticide label have I ever read, "*apply per resident's demands*" or "*applications should be per the property owners' and/or residents' requirements*" or "*treat if you feel like it.*" So why do it?

While following the directives of the product label, you must be aware of the hidden structural components that may carry a dust formulation from region A to region B. If you apply the product here, *it will go where?*

A dust formulation particle can be 0.4-10 μm (micrometer or micron is one millionth of a meter) in size. If one throws a little *Brownian motion* or physics into the mix, dusts can be either very effective tools or very expensive claims.

Brownian motion or pedesis (*Greek meaning "leaping"*) is the random motion of particles suspended in a fluid (liquid or gas) resulting from collisions with the quick atoms or molecules in the liquid or gas.

If particles subject to Brownian motion are present in a given medium and there is no preferred direction for random oscillations, then over a period of time, the particles will tend to be spread evenly throughout the medium. For example, if A and B are two adjacent regions and, at the time or t , A contains twice as many particles as B, then at

that instant the probability of a particle leaving *A* to enter *B* is twice as great as the probability that a particle will leave *B* to enter *A*. The physical process in which a substance tends to spread steadily from regions of high concentration to regions of lower concentration is *diffusion*.

External physiochemical factors that affect the molecules in a liquid or gas include:

- Radiation
- Heat
- Temperature
- Air/Gas or Fluid Pressure & Density
- Light
- Color
- Sound
- Electrical Field
- Magnetism
- Acidity or Alkalinity (pH)

Now that you are thoroughly confused or enlightened on dust particle movement, the best method to avoid claims is to read, understand, and follow the label. Within their directions, product labels incorporate and balance all dust formulation characteristics.

Pragmatically, and within the IPM template, product labels blend all required information to provide the “*How to...*” within an *environmental assessment*.

- OTC product name
- Formulation
- Application techniques (for a dust: crack and crevice, spot, void, and/or space)
- Target pests (always identify to species)
- Specific locations for use (including indoors and outdoors)
- Environmental preparations for use
- Active ingredient
- EPA information
- Cautions during use (including PPE and re-entries)
- First Aid
- Applications rates

- Pre-calibrated application equipment
 1. Bulb dusters: approximately 0.04 ounces of dust per compression*
 2. Bellows dusters: approximately >0.04 ounces of dust per compression*
 3. Piston dusters: approximately 0.25 ounces of dust per compression*
 4. Battery powered dusters: adjustable flow rates*
 5. Electric duster: used to treat large areas*

*Varies by manufacturer (calibrate equipment per the product label).

- Application scenarios by pest
- Storage, handling, and disposal
- Manufacturer and contact/emergency contact information

A duster pulls air into a chamber and through agitation mixes a metered dose of dust per compression application. Avoid inhalation, ingestion, and eye/skin irritation through labeler directed use of PPE.

Dust applications must result in a fine surface film within unexposed and/or inaccessible sites. In pursuit of structural pests, dust applications must approach the IPM goal of environmentally benign as well as the prevention of claims and losses.

Folks, training is everything! Whether in the office or in the field, facilitated training of applicators by licensees or vendors through instructional, hands-on dust applications must be completed and constantly updated. Just as essential as ongoing training is documenting (in writing) the training event topic (noting lecture and/or hands-on training), instructor, date, time and duration, location, attendees, and any pre/post-quiz or pre/post-test results (file with documentation). ATTENDEES MUST SIGN THE TRAINING SHEET FOR VERIFICATION! *No documentation, and it NEVER happened!*

Plaintiffs' attorneys are subpoenaing training records and questioning the documents if attendees are not somehow documented or signed-in for verification. We can defend if not verified, but it does give the plaintiffs' side an issue of fact they can use to confuse a jury.

We are hopeful the above information will be of benefit to your business and your knowledge of dust formulation application exposures. We feel these will be more common types of claims in the foreseeable future. Protect yourselves!

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