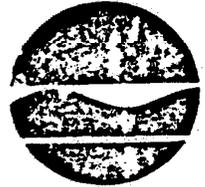


New York State Department of Environmental Conservation  
50 Wolf Road, Albany, New York 12233



Peter A. A. Berle,  
Commissioner

June 14, 1978

Mr. James O. Cole  
Assistant Counsel  
The Clorox Company  
P.O. Box 24305  
Oakland, California 94623

DEC 35-02

Re: Declaratory Ruling: Clorox, Liquid-plumr, Formula 409  
Disinfectant Bathroom Cleaner

Dear Mr. Cole:

In your letter of March 27, 1978 you requested a declaratory ruling pursuant to Section 204 of the New York State Administrative Procedures Act and 6 NYCRR Part 619 as to whether Clorox liquid bleach, Liquid-plumr and Formula 409 Disinfectant Bathroom Cleaner fall within the definition of "household cleansing product" in Article 35 of the Environmental Conservation Law (ECL). The delay in my response was due to a backlog of work and I apologize.

I conclude that Clorox liquid bleach is not a household cleansing product but that Liquid-plumr and Formula 409 are household cleansing products.

Section 35-0103 of the Act defines household cleansing product as a product which meets two requirements. First, it must contain a surfactant as a wetting or dirt emulsifying agent. Second, it must be used primarily for domestic or commercial cleaning purposes.

Excluded from the statutory definition of household cleansing products are, among others, insecticides, fungicides and rodenticides, and Section 659.1(a)(2) of the regulations of the Department further explains that such products are excluded from the definition of "household cleansing product" only when labeled, advertised, marketed and distributed for use primarily as pesticides. The term "pesticides" includes insecticides, fungicides and rodenticides since pesticide is defined in part in Environmental Conservation Law Section 33-0101-27 as "any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, fungi..."

CLOROX

Clorox is clearly used primarily for domestic or commercial cleaning purposes. The claims made on its label are the best indication of its intended uses. On the front of its label two claims are made. First, that it is a bleach, and secondly, that it removes stains, cleans and disinfects. On the reverse of the label prominently printed in large type is the question "What household cleaning jobs can Clorox do?"

Mr. James O. Cole  
Page - 2 -  
June 14, 1978

The answer is essentially that it can be used on surfaces all around the house for cleaning, disinfecting and deodorizing, and illustrations and directions are given for its use in the bathroom, in the kitchen and on floors and woodwork.

The remainder of the label discusses the use of Clorox as a laundering aid and additive to be used with a detergent.

At no place on the standard label is there any claim that Clorox is a pesticide. The only claims beyond cleaning that the product makes is that it disinfects, deodorizes and bleaches. The fact that it is a registered pesticide with the United States Environmental Protection Agency is not dispositive of the question whether it falls within the definition of a household cleaning product for two reasons. First, although Section 659.1(a)(2) of the regulations excludes pesticides from the definition of a household cleaning product it does so only if the product is labeled, advertised, marketed and distributed for use primarily as a pesticide and Clorox is labeled, advertised, marketed and distributed for use primarily as a bleach and cleaner. Second, a product can be both a household cleansing product and another substance subjecting it to regulation under another law if it contains ingredients which would classify it in another category.

Nevertheless, the dispositive question is whether Clorox contains a surfactant and the answer to this is no. Although the label makes claims that it is a laundry additive and boosts cleaning power, its only active ingredient is sodium hypochlorite (5.25%) and the remaining ingredients (94.75%) are listed as inert ingredients. Assuming that these inert ingredients do not contain a wetting or dirt emulsifying agent as a surfactant, Clorox would be excluded from the category of household cleansing product.

#### LIQUID-PLUMR

Liquid-plumr is a household cleansing product under the definition in Article 35 because it contains a surfactant (wetting agent) and is used primarily for domestic or commercial cleaning purposes. Although it is similar to Clorox in that it contains sodium hypochlorite, the label also lists wetting agents among its ingredients. This clearly brings it within the first test for a household cleansing product, that is, it contains a wetting agent. It also meets the second test for a household cleansing product because it is used primarily to clean out clogged pipes.

Mr. James O. Cole  
Page - 3 -  
June 14, 1978

Its action is described on the label as dissolving hair and cutting grease and that action is essentially the action of cleaning or removing dirt or impurities. Especially significant is the claim on the label that clogged drains can be prevented by using a weekly application of the product, which claim is essentially that it should be used regularly as a cleaning product inside pipes and drains.

The definition of household cleansing product does not exclude a product such as Liquid-plumr. First, the definition states that a household cleansing product includes, but is not limited to, soaps and detergents. This reflects a legislative intent to cover all cleansing products wherever used and not merely those used to cleanse fabrics, dishes, food utensils and household and commercial premises. Second, the definition of a household cleansing product states only that domestic or commercial cleaning purposes includes, but is not limited to, the cleansing of household and commercial premises without any qualification that the term "premises" is restricted to external surfaces. In addition, Liquid-plumr is marketed in sizes convenient for household use and in stores catering essentially to individual household customers.

FORMULA 409 DISINFECTANT BATHROOM CLEANER

Formula 409 is also a household cleansing product since it contains a surfactant and is used primarily for domestic or commercial cleaning purposes.

The ingredient list for Formula 409 is:

Active ingred.:	
<u>Tetrasodium ethylenediamine</u>	
<u>tetraacetate</u>	1.06%
<u>Alkyl (60% C<sub>14</sub>; 30% C<sub>16</sub>; 5% C<sub>12</sub>;</u>	
<u>5% C<sub>18</sub>) dimethyl benzyl ammonium</u>	
<u>chloride</u>	0.09%
<u>Alkyl (68% C<sub>12</sub>; 32% C<sub>14</sub>) dimethyl</u>	
<u>ethyl benzyl ammonium chloride</u>	0.09%
Essential oils	0.19%
Inert ingred.:	
Includes <u>detergents, propellants,</u>	
and other <u>grease cutting agents</u>	98.57%

The underlined ingredients have been determined by Department staff to be surfactants.

Mr. James O. Cole

Page - 4 -

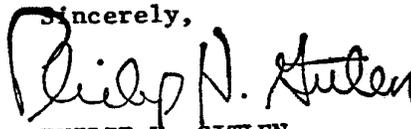
June 14, 1978

The fact that this product is used primarily for domestic or commercial cleaning purposes is clear from part of its name, i.e., "cleaner" and that it is for use in bathrooms, primarily a domestic area. This places it among the host of special household cleansing products targeted for use in specific areas of the home, such as window cleaners, rug cleaners, oven cleaners, appliance cleaners, toilet bowl cleaners and bathroom cleaners.

The mere fact that Formula 409 is also labelled as a disinfectant does not remove it from the scope of Article 35, just as such labelling as a disinfectant does not remove a similar product from the scope of the Federal Insecticide, Fungicide, and Rodenticide Act (See U.S. v. Weinreb, 99 F. Supp. 763, SDNY, 1951.)

This declaratory ruling is binding on this agency and is subject to review in the manner provided in Article 78 of the Civil Practice Law and Rules.

Sincerely,



PHILIP H. GITLEN  
General Counsel

MJG:PHG:hac

bcc: M.J. Goroski, Jr.

N. Gingold

P. Wardwell