

State FIFRA Issues Research and Evaluation Group (SFIREG) Report

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The Region 4 spring pre-SFIREG meeting was held by teleconference on October 28, 2020.

Because of the call-in format, the meeting was held as a one-day meeting. Only matters of urgent business were discussed. All states in the region (AL, FL, GA, KY, MS, NC, SC, TN) as well as Region 4 EPA leadership and staff were in attendance.

Pertinent reports and updates were given by the regional EPA leadership team. Updates on the following topics were presented and discussed:

- Pesticide Programs
- Certification and Training
- Regional Grants
- PIRT/PREP and Regional Trainings
- Current Enforcement in Region 4
- Federal EPA Credentials
- Integrated Pest Management in Region 4

A primary discussion during the meeting was, again, what states are doing to continue operations during the COVID19 pandemic. All states are conducting “business as usual” at this point, having adapted well to working remotely and implementing special safety measures during inspections. There have been difficulties in the training and testing of private and commercial applicators in most states.

Several states in the region implemented extensions on licensing and certification deadlines in order to accommodate commercial and private applicators who could not take trainings or examinations due to testing facility closures in most states and limitations on the number of people who could assemble for any purpose. Also, most states reported that their state offices and facilities have been closed to the general public for extended periods of time.

In the discussion, no issues were brought forth that needed to be resolved within the region between states and the regional EPA office.

The white paper related to the use of unregistered products by bee keepers in the region that was submitted for consideration by SFIREG during the last full SFIREG meeting was discussed, and states in Region 4 would like to know if it is being taken on for consideration and possible action by the POM Committee. It was stated that so

far, OECA is not being responsive to state concerns with regard to this issue. The request was made to approach PERC to produce some educational materials for beekeepers related to this.

A discussion was held on the UV light devices that are being used for antimicrobial treatments and sanitation in hospitals and other facilities due to the COVID 19 pandemic. Many states are seeing an increase in the use of these types of devices and are not sure in some cases whether they should be registered prior to use in the state or not. Ms. Diane Isbell from OPP gave a presentation to clarify some of the questions related to the use of these devices, and how the EPA is handling the registration issue.

There have been some challenges to state preemption in Florida and SC. In Florida, there is a pre-emption concern, and that state has faced challenges to primacy on pesticide regulation of the registered GMO mosquito. In SC, there is a current challenge related to the use of second-generation anticoagulant rodenticides in a resort island community at the coast.

No new major issues were identified in Region 4 that need to be taken to SFIREG for consideration or action.

The next pre-SFIREG is planned for April or May of 2021 and will be held virtually again due to COVID and likely travel restrictions in the region.

Individual state responses to the seven questions sent out by SFIREG are reflected below.

Region 4 State Responses to Specific SFIREG Questions

- FY2022-2025 FIFRA Cooperative Agreement Guidance** : OPP has gathered comments on the grant guidance from AAPCO and states by the August 2020 deadline. Now that comments have been provided to EPA OPP, please reflect on the topics and discuss any additional perspectives and comments related to program areas where you would like to provide additional feedback to EPA OPP. How can SFIREG assist you in communicating with EPA specific suggestions and changes to the guidance? Are there any additional changes or additions suggested?

AL: Alabama viewed the draft guidance and did not have any comments to add.

FL: None suggested.

GA: None suggested,

KY: No additional changes or additions suggested.

MS: None at this time.

NC: None

SC: No suggestions to offer

TN: No suggestions to offer.

2. **Pollinator Management and Bee Keeping Practices and Products:**

Recent concern has emerged from R4 states and other states about how Pollinators are managed and concerns about bee keeping practices and products that might be causing issues. What issues do you see in your state and regions with regards to managed pollinator pesticide use practices, cases, and management where education, training, and pesticide labels and

AL: Many pesticide products using in commercial mosquito control have no enforceable drift language.

FL: From past history, there are some cases where we documented misuse of pesticides by beekeepers. This was usually by beekeepers attempting to control pests within the hive (ie varroa mites, beetles, etc.). Training for beekeepers would be beneficial.

GA: Nothing specific on this issue.

KY: In recent past, we have followed up on claims of pesticide damage/harm to honey bee colonies, but following investigations, damage/harm to honey bees has been caused by improper hive care by beekeeper.

MS: Pollinators continue to be a serious concern for MDAC. MS farmers, beekeepers, along with other stakeholders continue their commitment to open communication. For FY20 MDAC has not received any bee kill complaints.

NC: Beekeepers take all kind of shortcuts in the pest management. They are supported by the distribution and marketing of unregistered products. We need to take more productive enforcement actions on the practices.

I have submitted a proposal to PERC to develop training and outreach materials to address the misuse of ag products in beehives.

We should support our apiary inspectors by coordinating training and inspections to address these issues. Apiary inspectors are not equipped, nor do they have the authority to enforce pesticide laws. The apiary staff in NC are very concerned about

the stewardship issues and believe the over-use and misuse of amitraz is contributing to pest resistance and poor health of hives.

SC: We have not seen any issues, but continually from some beekeepers that there is a large portion that manage their pollinators by any means

TN: The usual complaints saying pesticides killed my bees. However, lab results are negative.

3. Paraquat Labeling - Certified Applicator Requirement:

The recent changes to the label only allow "certified applicators" to make applications. Have the states in your region received any feedback regarding this requirement and impacts to the ability to get the training and make the necessary applications? Have you received questions regarding additional training and who can do what? What if any other frequently asked questions can you share?

AL: We have no feedback on this issue.

FL: We are not receiving any feedback, positive or negative, regarding this requirement. Amy Brown is on the POM committee and has provided questions received by Ricardo Davalos our WPS coordinator to the POM committee. These questions were incorporated into the Paraquat F&Q that the committee is working on.

GA: We have received very few questions about this requirement, and no one has had trouble accessing the training.

KY: To date, the required on-line training for use of paraquat has been successful here in Kentucky. UK worked successfully earlier in year to make the required training available to private applicators as well.

MS: The most common question received by MDAC was from our RUP dealers asking if the paraquat training was required to purchase paraquat. We've also been asked if training was available for groups and where to access that training.

NC: COVID restrictions obviously made the initial certification difficult. The willingness of our field staff to offer 1 on 1, in person exams allowed us to keep up with the demand, though not all applicators can pass the exam. We have received tons of questions about the extensive definition of use that was included in the C&T rules and how it affects the paraquat training and certification. The transportation of the products and handling bulk materials has been a big issue.

SC: The most common question is the availability of it in Spanish and will DPR offer a certification exam and study material in Spanish.

TN: None, however, training is an issue due to COVID. Extension is handling the training aspect.

4. Dicamba 2020 Growing Season and Upcoming EPA Decisions:

We have been through the 2020 growing season, and how many reports of misuse have you received; how many enforcement actions have been taken; and what are the overall issues you're dealing with from 2020 or even previous years. What trends do you have in cases? Have the 2019 changes and training programs for the dicamba label made a difference? What are the states specific concerns regarding continued use of dicamba in 2020 and the next registration decision cycle in the fall of 2020?

AL: We still have no news on the re-registration of the products that were cancelled which is a problem for growers, and they are selecting crops that have the dicamba trait for next year setting up for potential misuse of legacy products. Alabama has not had the problems of many other states. Alabama had two misuse and two enforcement action on dicamba for FY 2020.

FL: No problems reported.

GA: Our 2020 complaint numbers remained extremely low for the postemergency dicamba products. We believe that the training program we require has made a huge difference in stewardship of these tools amongst Georgia growers. We are concerned about increasing buffer zones on the new labels.

KY: For the 2020 growing season, we only had 3 dicamba complaints issued as related to non-DT soybean varieties. There are concerns of damage to burley and dark tobacco crops but damage is not being reported due to concerns of not being able to sale crop.

MS: We received 6 dicamba complaints this season resulting in one enforcement action as of 10/19/20. Complaints were much reduced from previous years. It would appear that compliance is a result of adopted technology, label updates, and training. We are anxiously awaiting the registrations for the following dicamba products Engenia, Xtendimax, FeXapan, and Tavium. Without these registrations, the cost and effectiveness of our producers growing season will be impacted.

NC: No cases reported – we have heard rumors of some drift incidents... No enforcement actions taken. Our state specific training presented by NC Cooperative Extension Specialist has made a difference. The protection of NC's specialty crops is

our biggest concern. The destruction of tobacco acreage if damaged by dicamba drift is a big concern.

SC: SC observed minor impact from Dicamba cases, there were few complaints.

TN: In 2020, there were 21 confirmed dicamba complaints. Out of those 21, there were/will be 5 penalties given out. All five penalties were given because wind was blowing towards a sensitive crop when the application was made. The applicator was either unaware of the sensitive crop or were just careless in their application. Those complaint numbers are not representative of the actual damage seen from dicamba in 2020. There were an estimated 18,000 acres of soybeans damaged by dicamba-I personally walked around 6,000 acres. These individuals did not file an official complaint with TDA. The main issues we have seen in 2019 and 2020 are: Dicamba applications being made when weeds were too tall. This led to poor performance of the OTT dicamba products and has been leading to resistance problems in certain weeds. University of Tennessee Extension has been doing a tremendous amount of research on Round-up mixed with dicamba products. Their research shows mixing Glyphosate with dicamba lowers the pH of the spray mixture which can then lead to poor performance as well as an increased potential for dicamba to move off-target. Another issue is the misunderstanding of buffer requirements by applicators. I believe the UT Extension dicamba training, the 2019 label changes, and the outreach and education the TDA has performed has made a big difference the past two years. Applicators seem to have a better understanding of label, for the most part, and physical drift problems/complaints have been decreased as well. The volatility of the dicamba products is still an issue and is the pattern of damage we have seen the most here in Tennessee.

5. **Revised C&T Plans**: As the modified certification plans have been developed and submitted to EPA; how have your programs continued to adapt to C&T issues and topics especially during this COVID-19 pandemic? Are there any continued or lingering concerns/questions regarding the review process, and how can SFIREG assist you in working with EPA OPP?

AL: These plans continue to be a manpower and resource drain for Alabama. Our plan has been submitted but we have not received comments back yet. This delay will push back implementation of the overall plan.

FL: We are keeping all of our stakeholders up to date on anticipated changes and want them involved in discussions leading up to any potential changes. We've also started reviewing exams, manuals, and rules to identify which categories are going to require revisions based on the new category standards.

GA: We are working on drafting new regulations now and plan to put them up for public comment by the end of this year. No statutory changes will be necessary.

KY: With revised plans submitted for legislative approval last year and dropped due to COVID at last minute, proposed changes will be submitted again for the upcoming session.

MS: This year MSU-ES developed online applicator training programs for both commercial and private applicators. We have also continued to offer testing on a one-on-one basis to limit potential COVID exposure.

NC: Because the COVID outbreak began immediately after the revised State Plans were submitted, the amount of time given to any revised plan issues has been minimal. The specific NCDA&CS COVID responses are detailed below in #6. We just received the initial “deep dive” regional report, from EPA, on issues, major and minor, they have found and that need to be addressed on our Plan.

SC: No questions at this time.

TN: TDA gave an extension for accruing the required CEU’s which expired 9/30/20. This was granted for both commercial and private applicators.

6. **COVID-19:** With the evolving public health crisis, all states have been impacted to varying degrees. How have your programs continued to adjust to the pandemic and COVID-19 impacted your respective pesticide programs, inspections and investigations, C&T, and other programs. Are there any implications to your ability to meet your commitments under your cooperative agreement across programs? What if any assistance do you need from EPA?

AL: Alabama’s overall inspections numbers will be down for FY 2020 due to COVID, but we will hit our grant commitment numbers.

FL: While we had a brief period of being unable to offer pesticide exams for about 45 days at the very beginning of the pandemic, we were able to work with the PSEP team at UF/IFAS and get most exam centers back up and running at limited capacity by mid-May. During this period of “shut down”, we took the opportunity to explore the option of remote testing across the state. The ability for an examinee to test from a remote location such as their home, place of business, etc...would allow a huge aspect of flexibility that examinees have not had previously. This remote testing would be conducted through a third party entity who would proctor these exams using a webcam. We are working with our PSEP to integrate a program like this and are in the very early stages of this process. We’d be very interested in hearing if other Region IV states are pursuing a similar program.

GA: Fortunately, we were able to meet all of our inspection goals in FY20. We have had budgetary cuts at the state level that have impacted our laboratory's ability to run formulation samples.

KY: Limited in-person testing is still available at two testing sites each week. CEU class offerings have improved greatly here in recent weeks with approvals of numerous on-line/virtual requests. Kentucky has made decision to NOT extend certifications into the 5th year. Any certifications that expire at the end of this year will be required to retest. Inspections have been able to continue, while recognizing in-person requirements for staff and businesses.

MS: Our inspection numbers were down in the 3rd quarter due to inspectors being unable to visit establishments to conduct routine inspections. We were only able to handle complaints and requested inspections for approximately six weeks. We were able to meet our commitments with EPA and expect to continue doing so for the foreseeable future.

NC: C&T

- Widespread Recertification course cancellations resulted in NCDA&CS meeting with NCSU and deciding to begin reviewing/approving live webinar courses for pesticide recertification credits.
- Exams were cancelled and field staff administered in person exams on a case by case basis, based on need.
- The Pesticide section requested, from the Pesticide Board, a 90 day extension added to the 6/30 deadline for all Commercial applicators and a 60 day extension added to the 9/30 deadline for Private applicators to complete their recertification requirements.
- Minimum requirements have been developed and implemented that allows Online On Demand (no camera required) courses meeting these minimums, to be approved for recertification credits.
- We have gotten approval through all of the NCDA&CS channels to join with an Online Testing provider. This will allow the public to take our licensing exams 24/7 from any location meeting the minimum site requirements. Once implemented, this will allow us to offer initial certification exams to people unable to find an in person site available.

We have had to adjust inspection numbers to due restriction earlier this year. Most inspections are being conducted as usual. We do try to avoid high traffic facilities.

SC: None at the moment. Currently working to meet our commitment.

TN: Routine inspections were performed electronically. Investigations were performed in-person and following CDC Guidelines. At present, no assistance is needed from EPA.

- 7. Issues in states with FIFRA preemption:** States in R8 and elsewhere have asked for SFIREG to assess the complex nature of FIFRA preemption. State lead agencies for FIFRA have historically had state primacy for FIFRA, act as co-regulators with EPA for FIFRA, lead the work to implement the EPA FIFRA Cooperative Agreements, create state pesticide laws and rules to regulate pesticides and implement associated pesticide programs. Preemption is the ability of one level of government to override laws of a lower level. Pesticides in many states are regulated solely by the State Lead Agency. There has been a movement in some states to allow the restriction of pesticide uses at other jurisdictional levels such as city or county governments. Are there issues and implications for your ability to work as the SLA, work with applicators and the pesticide industry, and what assistance do states need? Full SFIREG appreciates your assistance to fill out this survey to assist in creating the issue paper.

AL: Alabama is a preemption state and we have had no issue this far as outlined above.

FL: We do have instances where local governments have tried to ban pesticides (ie North Fort Myers Beach proposed ban on glyphosate). In these instances, FDACS informs local entities of s. 487.051(2), Florida Statutes which states in part "... This part is intended as comprehensive and exclusive regulation of pesticides in this state. Except as provided in chapters 373, 376, 388, 403, and 482, or as otherwise provided by law, no agency, commission, department, county, municipality, or other political subdivision of the state may adopt laws, regulations, rules, or policies pertaining to pesticides, including their registration, packaging, labeling, distribution, sale, or use, except that local jurisdictions may adopt or enforce an ordinance pertaining to pesticides if that ordinance is in the area of occupational license taxes, building and zoning regulations, disposal or spillage of pesticides within a water well zone, or pesticide safety regulations relating to containment at the storage site."

GA: Our state law prevents local authorities from making regulations related to pesticide use.

KY: No issues with Kentucky working as the SLA for all pesticide related issues as governed by FIFRA.

MS: As of this date we have not seen a movement in Mississippi for local governments to restrict pesticide uses. However, this issue needs to be addressed before the issue arises here.

NC: NC has 100 counties and 760 towns and cities. Local regulation of pesticides on any level other than the State would create chaos.

This could mean every city, borough, parish, county, and town can, and probably would, have different rules and regulations of pesticides. Removing preemption would have a devastating impact on every single pest management professional; they would be required to know the individual regulations on pesticides in every single jurisdiction their company operates in.

Certain municipalities could attempt to regulate pesticides in an effort to ‘protect pristine environments,’ or safeguard watershed areas---without fully vetting the collateral impacts to agriculture, commerce, and public health.

The local regulation pendulum could also swing in a more permissive and troublesome direction, with efforts by some groups to promote the use of certain pesticide products to control specific pests (bed bugs, geese, or pigeons for instance) even if the products were not registered with the State for that use. Such regulations could hinder ongoing public health protection efforts at the state level, and would certainly beg the question as to who would bear the costs if such programs are ineffective and public health, safety and welfare is further compromised?

With respect to detrimental impacts upon our State’s agriculture and agribusiness industries, while there is right to farm legislation in NC, a local ordinance could prohibit critical production tools. As stated above, local government could prohibit certain pesticides, or certain pest control methods. What about growers who farm in several counties or farmers whose fields span municipal boundaries? What if a local farmers market were to say that no commodity treated with x, y, or z could be sold—even though at the State and national level, the commodity is fully compliant? What if they tried to prohibit transportation of certain pesticides through the city, or again, certain application methods, such as wide area vector control operations? Wide area pest management programs, such as boll weevil, gypsy moth, emerald ash borer, forest pest management or even pests of public health significance such as mosquitoes, rats, bed bugs, fleas and ticks, etc., would be severely impacted, for example, if a city right in the middle of a critical treatment area banned such spray operations or the pesticides being applied?

And if such happened and there was drift into that city, who would be expected to enforce? The state would not enforce a local ordinance.

Perhaps one of the most serious impacts of local regulation of pesticides and pesticide application would be the confusion it would create for our citizens in knowing who to even turn to for help with any pesticide related complaints, and it would place us as state-level regulators, in a most unfortunate position in having to explain to a citizen, or group of citizens, that we cannot enforce their local laws, or that their local/county law conflicts with state law, and therefore we may not even be sure who needs to help the complainant(s), and/or who is authorized ultimately to do so – or they will get conflicting and/or erroneous information due to variances from state law, and this possibility will make it that much more difficult for the state to take any action against potential respondents, and could potentially extend our investigations even longer in total time spent on a case, which complainants already grumble about.

SC: We currently have a coastal community that attempted to ban SGAs. Our preemption law prohibited that action, and they now are looking at possibly modifying that law.

TN: No issues at this time.