

Region 8 Pre-SFIREG Meeting Report

Submitted by Kima Traynham,
US EPA Region 8 SFIREG Representative
November 2022

The Region 8 Pre-SFIREG Meeting was held as a breakout session during the hybrid Region 8 Pesticide Program Managers Meeting on September 20 & 21, 2022 in Denver, CO. Agenda attached.

Attendees:

In person:

EPA R8 – Blake Huff, Kevin Martin, David Cobb, Clyde Wilson, JD Farley, Devin Donaldson, Christine Tokarz

CO: Jolyn Morris

CSKT: Brittani Clairmont and Jasmin Courville Brown

Ft Peck: Ian Drum and Martina Wilson

MT: Leonard berry, Kima Traynham

ND: Andrew Thostenson

SD: Tom Gere

WY: Dale Heggem

Virtual:

EPA – Mark Smith, Acting Deputy Regional Administrator, Sherry Kinard,

CO: John Scott, Wondraid Gebru, Neil Kittleson

ND: Eric Delzer, Luke Wagner, Jerry Sauter

UT: Henry Nahalewski

WY: Erin Christiansen

Standing Rock Sioux: Jake Luger

MHA Nation/3 Affiliated Tribes: Jim Mossett

Cheyenne River: Jayme Mestes

Mark Smith, R8 Acting Deputy Regional Administrator provided our welcome remarks to the Manager's Meeting, and Rebecca Perrin, R8 Agriculture Advisor also provided an update.

In addition to the state reports, EPA Region 8 provided updates on Program funding and budgets, Certification and Training plans, Section 18 & 24(c) registrations, Innovations in electronic forms for C&T applications, Enforcement updates and focus areas for the region, and the new FIFRA grant database.

Our pre SFIREG breakout was held at the end of our Manager's Meeting.

State Updates:

CO: Significant staff turnover, all of the Enforcement staff turned over in 2021, five new Enforcement staff. Commissioner's office backlogged with cases, seeking more funding for attorneys to resolve.

Sunset Review: just got SR report as draft, commenting in progress. Not a lot came of the SR, may expand “pesticide sensitive” registry. Moved all license applications online, both new and renewals, which is working very well. Continue to expand digital/online options and offerings, including moving to digital mapping and inspection forms. C&T plan – worked thru last comments and on route to final signature. Most rules were passed last year, finalizing others.

MT: Staff turnover and vacancies, including significant vacancies in C&T program and licensing. Big lift for next several months to hire. Inspections done for FY2022 (ended 6/30/22) and FY 2023 is going well: several new field agents, they are hitting the ground running. This growing season was a “mild” year as far as complaint are concerned, no clear explanation, drought and cold wet spring probably had effect. Grasshoppers real issue late in year. No real changes on focus or types of complaints; business as usual. Dicamba has not been an issue outside of Ornamental & Turf sites. C&T plan – waiting on comments after resubmitting.

ND: Last year drought was bad, grasshoppers were bad, dicamba was bad – this year, late snow, good moisture, rains at the right time, record crops. Late planting and many prevent plant acres; dicamba used less. No real issues, comparatively quiet. Below average case numbers. Area of concern were bee kills still under investigation, no results at the time, possible grasshopper control applications involved. Dicamba registrants have reached out to talk about 2023 season, those conversations are just beginning. Training and certification program returning to “normal” post-Covid response; Fall training will resume in-person with accommodations available. No asynchronous training moving forward. C&T plan revisions continue. Returned with HQ comments Oct. 2021, resubmitted March, and April 2022, and again in late July. Work in progress.

SD: DOA merged with Dept. Natural Resources, now Dept of Ag and Natural Resources. Dicamba remains an issue; since 2017. Sitting down with registrant to talk 2023 growing season. Has Industrial Hemp program, 2021 was 1st growing season, primarily grain and fiber market. In the legislative session this year, they saw a bill brought by the Aerial Association intended to stop frivolous pesticide complaints/lawsuits; while it was ‘killed’ in 2022, expect to see similar this session. C&T plan at EPA HQ for signature. They will be working with the legislature this session to adjust laws, then rule revision after.

UT: Busy year, same as others. “Doing too much with too little.” Personnel issues: vacancies and retirements. Have been gathering data from other states to try to increase wages. Saw population increase and a resulting increase in urban/residential complaints, several violations. Drought has led to decrease in Ag complaints. Dicamba has not been an issue. Considering new testing platform, with remote proctoring option, getting close in that process. C&T revision has been submitted, rule changes in place.

WY: Significant staff changes and have lost some positions. Busy year for complaints. Short staffed; existing staff picking up the load but under manned. C&T plan is with EPA, not sure where in the process.

PRE-SFIREG BREAKOUT TOPICS:

C&T Plan Approval Process & Feedback:

CO: No issues; fairly smooth.

ND: Working thru Region was pretty smooth; frustration comes when moving up and thru headquarters. Delays, responses not received in timely fashion.

SD: No issues; experienced delays in Headquarter review but Region was fine. Asked when states have to have rule making/law finalized; Discussion followed: one answer provided was that it was to be negotiated and some states expect it may be several years after 2023 extension ends. ND expects some push back in legislature to changes and expects it may take 2 sessions to finish.

WY: New staff came on during the 2nd round of revisions; expressed some frustration at “new” comments shared during that 2nd revision review. Expect substantive public comments which could result in issues finalizing and wondered how that will be addressed if it occurs. WY’s lack of primacy makes it interesting.

MT: Had been provided a promise of “regional oversight” for these C&T plans, but expressed it didn’t go that way, more HQ input.

OP cancellation petition to EPA:

General discussion by several states around too many products grouped in PID/Re-Reg announcements coming out of EPA, all with a short 30-day window for response. For more than one state, the commenting process involves outreach to industry to gather comments, creation of a white paper that must then go thru the state agency, up to the governor office and back. 30 days is not sufficient, especially with more than one active ingredient at a time. SLAs and PSEPS are “hamstrung” by the current way these are being handled. Request standard of more than 30 days for comment, prefer they be released singly rather than large groups.

CO: No comments or concerns

MT No comments

ND: Several used extensively in state. ND DOA has been tracking and commenting. Doesn’t matter what EPA cancels, they should “just do it right.” Chlorpyrifos cancellation extremely flawed, huge vulnerability to food/feed production. When it is more expensive to dispose of a cancelled product than to keep it, can expect it may get used inappropriately. Would appreciate things being done in more orderly fashion moving forward: plans for disposal, existing stock in place, before cancellation.

Chlorpyrifos:

MT: No comments

ND: See earlier comment about cancellation without plan for channels of trade – creates huge vulnerability for food and feed production.

It was expressed that this is similar to the issues with Atrazine decision – EPA is not giving enough weight to actual use and needs for existing products, not considering resistance issues. For sugar beets, with the cancellation of chlorpyrifos the alternative product for those pests is much less effective. The availability of products to fill the pest control gaps created by cancellations needs to be considered. Additionally, mitigation methods required by labels should be enforceable. When they are subjective agronomic practices, they are likely to be ignored, impractical.

SD: Would like to see specific uses brought back – for example sunflowers have significant pests without effective control now that Chlorpyrifos has been cancelled.

UT: No comments beyond disappointed in process, not science based, political.

WY: EPA cancellation process was “wrong,” and a terrible precedent was set. Also would support seeing some uses brought back: nonfood grown for seed grasses, alfalfa, clover.

ATRAZINE Interim Registration Decision:

CO: Hadn't had a chance to gather info, not sure of impact. Does show up in CO groundwater samples

MT No comments

ND: ND has done surface monitoring long term, has a good data set but feels they get lumped in with others that see higher levels, feels models used are off. Concerned current process is not rooted in science, rather a sue and settle tactic. They intend to comment. Science Advisory Panel involvement is appropriate, and their view should be respected. Referred back to Chlorpyrifos decision; similar issues/concerns with the process. Additionally, mitigation methods required by labels should be better considered, as written, frequently something no SLA can enforce. When they are subjective agronomic practices, they are impractical for enforcement, and thus likely to be ignored.

SD: Will comment, widely used in South Dakota. Expect commodity groups will also comment. Concerns mentioned included language like “predict soil capacity” “predict rainfall.”

UT: No comment.

WY Nothing to add.

Dicamba:

CO: No complaints with Dicamba involved. Not many growers using. Intend to focus inspections with the user groups, will have a better idea of compliance after next inspection season.

MT: No comments.

ND: Concern is what will be the end result. This year, late planting, many acres not sprayed. Dicamba is a needed tool, works well, but doesn't stay put. Calendar cut-off dates may help, but seem arbitrary, not based in science. Might as well make it pre-emergent only. Atmospheric dependent: bad drought and high heat leads to more issues. But how do you reflect that on labels? Not sure of solution. Waiting on PID before considering making comments.

For 2022 season saw large number of injured soy acres. Enlist usage means even more dicamba - vulnerable beans. Observation that injured beans come out of it within 3-4 days with good climactic conditions, has lowered complaints. Noted this can change on a year-to-year basis.

SD: Echoes ND comments, and also not sure if they will be making comments. Observation that it works better pre or early post; they see some geographical areas effected more than others; timing can be the problem.

UT: No issues, no comments. Drought impacted - different crops.

WY: Not an issue.

Diuron:

CO: Not aware of PID. Have had detections in cannabis, not sure how it got there, theories include aquaponics.

MT No comments.

ND: PSEP Hadn't had a chance to look at PID, impacts in industrial sites, oil pads is significant. DOA had looked over it, agreed there is significant uses in state. Didn't feel changes were a big issue so didn't engage. No specialty crop concerns and thought there probably were replacements, tank mixes used in those sites commonly. Again, PID released a bunch of chemistries grouped together, a lot to get thru and a short comment period. The current "shotgun" approach is unworkable. Too much, too short time allowed for comment.

SD: No comments.

UT: No comments.

WY No comments.

Methomyl Fly Bait:

CO: Not seeing misuse but have been hearing about this for 10 years. If there is still that much misuse, restricting use seems like a reasonable solution.

MT: No problems.

ND: No problems.

SD: No problems.

UT: Understands there is some misuse (anecdotally) but no real issues.

WY: No issues, no concerns.

ESA and Pesticide evaluations, Labels, and BL2:

CO: No real issues, BL2 only has rodenticides. Doesn't appear to have updates, and no new a.i. added. They may have a 24C for a rodenticide, question as to any required additional ESA analysis for 24C products.

MT: No concerns or questions.

ND: Dicamba counties listed on BL2 don't make sense. ND has big counties, while the ES may only have a range of 2-3 square miles, the use of the product is banned in the entire county. Township level would be helpful, that is not a new request.

Some users didn't follow BL2 requirement. Buffers and setbacks on Dicamba in certain counties are hard to enforce if not impossible. More granularity is needed, township level. The realistic practicality of mitigations needs to be considered. Expect to see more of this on labels moving forward.

SD: BL2 includes rodenticides, dicamba OTT uses. SD has requested information as to why certain counties are included: no answer from EPA, questions was shoved over to FWS.

ND: When contacted, FWS office agreed the restriction didn't make sense.

UT: BL2 only rodenticides, limits not an issue.

WY: Echoes ND & SD comments.

New and Ongoing Issues:

CO: Attack on preemption/state uniformity/local regulation of pesticide use. Had heard there might be proposed federal regulation, perhaps in the Farm Bill? Something in Federal law is needed to shore up primacy, nip the movement in the bud at the federal level. EPA needs to engage on the federal level to kill the movement to move regulation to town or county level. Should stop at the SLA. This is an important issue and EPA is not engaging to resolve. More regulation creep into states below the SLA. Creates headaches for both SLA and regulated community. Suggest amending FIFRA to one SLA and no lower-level regulation.

At least one other state in R8, WY, has seen some efforts at pesticide regulation at lower than SLA level. Earlier comments included that some state outside of R8 are also seeing primacy challenges: MN was mentioned.

ND: ESA and pesticides. Understand need for ESA risk assessment. Our concern is how they are going about it. Currently seems based on assumption of misuse or off-target movement; creating models based on those assumptions. (Admittedly, it is easy to assume harm.) Thus, the label mitigations are also based on assumptions – Dicamba is an obvious example of the issue, but there are others. There is no real-world engagement with states. ESA limitations must have real-world parameters.

WY: Ongoing concern with EPA decisions based on administration agenda, not science.

ND: The OP cancellation petition is concerning, the proposed cancellation of an entire class of insecticide. Would have a huge impact if cancelled.

MT: SAFHERS project. FDA will pay for the programming that covers FDA programs. EPA needs to get involved, and to fund the build for EPA programs, or pesticide portion costs will fall to states.

Past database programs were hard coded, cumbersome without customization/modification possible. SAFHERs is designed to be flexible, can be modified, customized by states. Have been advised by SAFHERs that they will continue to reach out to states and EPA HQ.

Additional Topics:

MT: Significant staff vacancies in our training program, requested states share any online training opportunities that might be applicable for MT applicators/dealers. Conversation followed with various states offering suggestions. **Post Meeting:** MT also has new staff in key licensing position, reciprocity process lacks definition and detail. Are there national resources for states on reciprocity? Thought a training might have been announced but couldn't confirm, could be confusing that with AAPSE C&T Academy.

WY: Also have seen significant staff turnover. Requesting guidance on CEU approval process, state guidelines as to what SLAs do or don't approve. Also, requesting guidelines on Letters of Good Standing (LOGS).

Conversation followed about what information states share on LOGS, typically, unless revoked or suspended, viewed as "in good standing" – even if there have been enforcement actions, if resolved, and license is active, deemed "in good standing."

During the breakout R8 states also discussed what is desired as far as Pre-SFIREG meetings. While it was agreed that the meetings, like the Pesticide Managers meeting, should be driven by states, a shorter breakout was felt to be sufficient for R8 states as far as the Pre-SFIREG portion, and it was noted that the same topics are covered in every meeting SLAs attend, repetition not meaningful when no progress or changes have occurred. It was expressed by many that a return to a consistent Western Regions meeting is desired and was another opportunity for Pre-SFIREG meeting. Phone call is sufficient for June Pre-SFIREG meeting.

Final AGENDA Fall Pre-SFIREG/ R8 Pesticide Manager meeting

September 20 - 21, 2022

Denver, Colorado and Virtualy via Microsoft Teams

Tuesday, Sept. 20th

12:30 – 12:45 Welcome Remarks: Mark Smith, Acting Deputy Regional Administrator, Region 8

12:45 – 1:00 Introductions: R8 SFIREG Representative, State & Tribal participants and EPA Region 8 participants.

1:00 – 2:30 Individual State & Tribal Updates (5-10 minutes each)

2:30 – 3:00 SFIREG Update: Kima Traynham, Montana Dept of Agriculture

3:00 – 3:15 Break

3:15 – 3:45 Region 8 Agriculture Advisor Update: Rebecca Perrin, Agriculture Advisor, Office of the Regional Administrator.

3:45 – 4:15 Program Updates including Funding and Budget:
Blake Huff, Acting Branch Manager, Chemical Safety and Environmental Stewardship Branch, Region 8

4:15 – 4:30 Wrap up and adjourn

---End Day 1---

Wednesday, Sept. 21st

8:30 – 9:00 Certification and Training: Progress on EPA review & approval of State & Tribal Plans: Kevin Martin, LCRD, Region 8

9:00 – 9:15 Section 18s and Section 24(c)s: David Lieu, OCSPP/OPP/RD/MUERB

9:15 – 9:30 Updates & Innovation: Moving towards Electronic forms for C&T applications, Clyde Wilson, LCRD, Region 8

9:30 – 10:00 Dicamba Updates: Lindsay Roe, OCSPP/OPP/RD/HB

10:00 – 10:15 Break

10:15 – 11:00 Enforcement Updates and focus areas/priorities: David Cobb, Section Supervisor,
Toxics and Pesticides Enforcement Section, Region 8

11:00 – 11:30 New FIFRA Grant Database (FGD) - Roundtable discussion, State & Tribal experiences using the FGD for Fiscal Year workplans Kevin Martin, LCRD, Region 8

11:30 – 1:00 Lunch

1:00 – 3:00 State & Tribal Breakouts: States on their own and Tribes with EPA (Room TBD)

3:00 – 3:30 Roundtable discussion – various topics

- **Training needs**
- **Other as needed**
- **Wrap up and adjourn**

---End---