

Report to SFIREG (December 2022): Activities of the Environmental Quality Issues (EQI) Working Committee.

Hotze Wijnja, Chair, Massachusetts Department of Agricultural Resources

Submitted December 1, 2022

EQI Committee Members

The EQI Working Committee is focused on issues related to water quality, human health and the environment, risk assessments, and technical aspects of the implementation of pesticide programs.

EQI welcomed Kathryn Rifenburg (OR) as a new member. James Cooper (FL), Rajinder Mann (MN), and Jennifer Teerlink (CA) were available to serve another term. Christina Zimmerman (WA), Mary Tomlinson (ME), Beth Dittman (NC) and David Scott continue to serve on the committee.

Summary of EQI Activities:

During 2022, EQI met virtually several times to discuss the work on various topics related to the JWC and Full SFIREG meetings. The Fall Joint Working Committee (JWC) meeting was held on September 19-20, 2022, in Providence, RI. The POM and EQI committees had joint sessions and a breakout session to discuss issues in detail within each committee. EQI committee members in attendance were James Cooper (FL), Rajinder Mann (MN), Christina Zimmerman (WA), Mary E. Tomlinson (ME), Beth Dittman (NC), and David Scott (IN), and Kathryn Rifenburg (OR). Summary notes of the September JWC meeting are included further below.

Status of Selected Topics and Completed Tasks (since June 2022):

- **Mosquito Control Mist Blower Use in Residential Settings ([Mosquito-Mist-Blower-Draft-Issue-Paper.pdf](#))**: EPA-OPP provide a response to the draft issue paper. Based on the information provided by EPA-OPP, EQI would like to propose that this draft issue paper is moved up for consideration by SFIREG and developed into formal issue paper. EQI continues to have concerns regarding the labeling of products for this use pattern, such as the absence of language to protect people, and the lack of guidance on how SLA's can properly address issues related to this issues with this use pattern.

- **Treated Seed Regulation:** The Treated Seeds issue paper was submitted to EPA on August 31, 2022 ([Treated Seed Issue Paper](#) and [Cover Letter](#)). Currently (December 1st, 2022), SFIREG and EQI are still waiting for a formal response to this issue paper.

In the meantime, EPA released a response to the a court order on regulatory oversight of pesticide-treated seeds ([EPA proposed consent decree](#)). The response was released on September 28, 2022 (<https://www.epa.gov/pesticides/epa-responds-treated-seed-petition>). The response provides some insight in EPA’s position regarding the treated article exemption of pesticide treated seeds and efforts to ensure proper labeling and instructions for the distribution, sale, and use of both the treating pesticide and the treated seed. However, the response does not address several aspects highlighted in the SFIREG issue paper, such as the need for systems for better tracking of treated seeds and associated pesticides, and various aspects of risks assessments. EQI is interested in EPA’s efforts to issue an advanced notice of proposed rulemaking (ANPRM) to address enforcement and regulation of pesticide-treated seed.

- **Registration Review schedule and Label Review schedules and challenges:** POM and EQI worked with Crop Life America regarding the registration review work group they are forming to address EPA’s Registration Review process/approval of state labels. Sarah Cafferty (IN, POM) and Mary Tomlinson (ME, EQI) were recommended to represent AAPCO. The work group has been formed and will meet soon.

At the September JWC meeting it was also discussed how we as working committees can come up with an organized approach to review the proposed registration review decisions to identify issues that would need attention. We could facilitate and guide the opportunities for commenting by states and other stakeholders on identified issues. It was also suggested that a webpage could be setup (SFIREG domain) as a resource for states. Discussions with POM and SFIREG leadership continue to find the best approach to move forward with this effort.

- **Atrazine:** EPA’s proposed additional mitigation measures for Atrazine have brought this herbicide to forefront of attention again. At the meeting, we discussed the opportunity to submit comments. EQI members shared information on the efforts going on in their states. MN planned to share their draft comments. Follow up discussions after the meeting contributed to comments that were submitted by SFIREG ([SFIREG-Comment-to-EPA](#)).
- **Methomyl Fly Bait:** During the meeting, the issues related to misuse of this product was discussed. Among the suggested follow up action was to find out if the issue also coming up in other states and regions besides IN and MI. It was suggested to learn if the misuse and non-target impacts occur also in other states and regions. It was recognized that this information is

often difficult to obtain. The option of a survey of states was suggested. After the meeting, an example of survey results was shared among EQI, which was an AAPCO 2020 survey on methomyl misuse ([AAPCO methomyl-survey.pdf](#)).

- **ESA Related:** The presentations during the meeting pointed out that there will be several opportunities to provide comments as the various elements of the new approach as described in the workplan are being developed. EQI follows the developments and will continue to work with POM and SFIREG leadership to facilitate the information sharing and collaboration with stakeholders.
- **PFAS and Pesticides:** EQI continues to follow the developments related to PFAS and pesticides. Recent developments were the release by EPA of container leaching and EPA's proposed action to remove 12 chemicals identified as per- and polyfluoroalkyl substances (PFAS) from the current [list of inert ingredients](#) approved for use in pesticide products to better protect human health and the environment (see also: <https://www.epa.gov/pesticides/pfas-packaging>). EQI has also taken note of a recently released study results that showed relatively high levels of PFOS in a number of insecticide products (([Lasee et al.](#))). This article has been getting attention from various groups and in the media and has also resulted in more calls for action by pesticide regulators to address the PFAS and pesticides issue ([PEER.pdf](#)). EQI is interested to learn on any follow-up activities on the new study, which suggests a different source of PFAS in pesticides than fluorinated containers, which is the current focus of response to earlier PFAS testing and research.
- **Aquatic Life Benchmark Factsheet:** EQI finalized the Aquatic Life Benchmark Factsheet. It will be made available on the SFIREG website
- **Water Quality Reporting:** Implementation and use of the FGD/CDX reporting system. The committee will follow the experiences of SLA's with the new online system. EQI also continues to interact with Washington State University regarding the POINTS system and options for access to historic data captured in the POINTS database.
- **Cover Crop and Plant Setback issue paper:** EQI continues to work with SFIREG to follow up on the Cover Crop and Plant Setback issue paper. Based on the response from EPA on the issue paper, the committee is considering exploring interactions with various stakeholders to outline a path forward. There have been efforts to meet with USDA groups NRCS, Soil Health, and OPMP. There is also interest from experts with the Weed Science Society of America (WSSA) to work on this.

- EQI continues to follow several other topics that have been considered and discussed, including Dicamba, PFAS in Pesticides & Containers, Chlorpyrifos, ESA, Registration Review related items, Rodenticides PIDs, and Chlorine Gas.

Meeting Notes on the September 19-20, 2022 Joint Working Committee meeting:

Combined POM and EQI Meeting notes:

POM/EQI Joint Meeting:

- AAPCO President updates (Liza Fleeson Trossbach, VA)
- SFIREG Chair updates (Gary Bahr, WA)
- Office of Pesticide Programs (OPP) Update (Ed Messina, US EPA)
- Office of Enforcement and Compliance Assistance (OECA) Update (Kelly Engle, US EPA)
- **Presentation on AAPCO/SFIREG/JWC** (Amy Sullivan, AAPCO-SFIREG Executive Secretary)
 - Amy Sullivan presented a presentation and gave an overview on the history of AAPCO/SFIREG/JWC and their roles and responsibilities

EQI Session:

- **Mosquito Control Mist Blower Use in Residential Settings**, Hotze Wijnja, MA, Dave Scott, IN
 - Discuss response from EPA to white paper and consider follow up.
 - Response had not been received by the time of the meeting [it was received in October and was discussed at an EQI meeting later that month].
- **Atrazine: EPA's proposed additional mitigation measures**, Hotze Wijnja, MA, and EQI committee members
 - Discussion of proposed measures and feedback from states.
 - EPA's proposed additional mitigation measures for Atrazine have brought this herbicide to forefront of attention again. At the meeting, we discussed the opportunity to submit comments. Minnesota was among the states that were considering submitting comments and was asked to share its draft comments with EQI.
- **Consideration of additional topics of interest**, Hotze Wijnja, MA, and EQI committee members
 - **Diuron** and EPA's recent proposed interim decision: There was no further discussion related to the latest information on Diuron. No concerns have

been raised and brought to the attention of state programs and it was decided that further attention is not needed from EQI at this time.

- **Methomyl Fly Bait:** Incidents with non-targets continue to occur. Fly bait product is general use, but state-restricted in certain states (IN, MI). It was suggested to learn if the misuse and non-target impacts occur also in other states and regions. It was recognized that this information is often difficult to obtain. The option of a survey of states was suggested.

POM Session:

- **AAPCO 24c guidance revisions** (Amy Brown, FL, and POM committee members)
 - Discussion of revisions needed and next steps
 - Committee reviewed the draft from 2019 and identified the following revisions
 - 24(c) - additional restrictions; page 7
 - Page 21; registration review process elements
 - Reference to EPA's 24(c) page instead of copying and pasting
 - Sarah Caffery and Morgan Griffith volunteered to work on the revisions
- **Paraquat FAQs revisions** (Amy Brown, FL, and POM committee members)
 - Discussion of revisions needed and next steps
 - Oregon provided an additional question and an answer EPA provided – do we need to add this to the document – Yes
 - Jimmy Hughes and Kristia Thomas volunteered to update the document
- **Additional Discussion**
 - Device Topic
 - Sarah Caffery volunteered to gather bullet points about issues they are seeing in Indiana
 - Emily Ryan, EPA will ask about the device paper response from EPA

POM/EQI Joint Meeting:

- **Endangered Species Act (ESA): A closer look at the efforts of EPA and partners to improve the FIFRA/ESA Process** (Hotze Wijnja, MA, Amy Brown, FL, and Brian Anderson, Associate Director, EPA Environmental Fate and Effects Division (EFED), the Services, USDA)
 - Brian Anderson presented a presentation on strategies and actions to improve the ESA-FIFRA work which included pilot projects, implementation and progress
 - The goal is to meet ESA obligations and all FIFRA actions that invoke ESA
 - Priorities include any chemical that have litigation actions and new active ingredients
 - Timelines for EPA and the Services for Biological Evaluation (BE)/Biological opinion (BiOp) are 18 months to implementation
 - New Active Ingredient Policy

- Federal Mitigation Pilot
 - Collaboration between EPA, the Services and USDA
 - Identify mitigation to reduce/minimize the effects of pesticides on listed species
 - Vulnerable Species Pilot
 - Identify specific species that are vulnerable to pesticide exposure
 - Identify subset of listed species
 - Currently drafting mitigations for pilot species
 - Will conduct public outreach – target stakeholder groups during public comment process
 - Registration review activities and ESA
 - Early ESA pilot chemicals in ESA workplan
 - Proposing mitigation
 - Methomyl: revised PID fall 2022
 - Carbaryl: PID fall 2022
 - Rodenticides: PID fall 2022
 - Neonicotinoids: revised PID Spring 2023
- **National Marine Fisheries Service Perspective was provided by Ryan DeWitt**
 - Provides ESA Section 7 Pesticide Consultations
 - Each federal agency shall insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize ESA species or result in destruction or adverse modification of designated critical habitat
 - Definitions
 - Jeopardy – to reduce appreciably the likelihood of both survival and recovery
 - Adverse Modification – appreciably diminishes the value of critical habitat
 - The Action in pesticide consultations-Actions with pesticide labels includes:
 - Labels as written/approved
 - Degradates and metabolites
 - Formulations, including other ingredients within
 - Adjuvants
 - Tank mixtures
 - ESA Coordination:
 - Includes the Applicant (Technical Registrants)
 - NMFS - salt water/salmon (approx. 100 of the species) - aquatic/watersheds- confined to aquatic environment/shorelines
 - FWS - wildlife & freshwater species (the rest)
 - Other stakeholders
 - ESA Process:

- EPA Biological Evaluation (BE) - individual-level determination
 - NMFS or FWS takes EPA BE --> to population-level determination
- Biological Opinion (BiOP)
 - Status of the species - abundance/distribution
 - + environmental baseline - where - past impacts to habitat
 - + effects of the action - specific impact of pesticides is assessed (Species and space have different baselines/sub populations)
 - + cumulative effects - impacts of known future events
 - = overall jeopardy conclusion
- BiOp Conclusion: is the action likely to jeopardize the species?
- NMFS Mitigation
 - Focuses on areas where needed most
 - Provides a variety of options
- How can you provide input? Public comment periods on the EPA's Draft BE and on the NMFS Draft BiOp
 - Also can comment directly to the NMFS contacts (see presentation for contacts)
- **U.S. Fish and Wildlife Service Perspective was provided by Nancy Golden**
 - ~1660 plants and animals listed as threatened or endangered under the ESA
 - FWS is responsible for terrestrial and freshwater species
 - Refined Species Ranges – developed and shared for each species
 - Results in better conservation for species
 - Refined species maps available to the public at <https://ecos.fws.gov/ecp/>
 - Conservation measures = Mitigation
 - Can occur at any stage of consultation:
 - EPA BE
 - FWS BiOp
 - The earlier in the process- the more efficient
 - Mitigation hierarchy
 - Avoidance
 - Minimization
 - Compensatory mitigation
 - Offsets - unavoidable impacts
 - Have not explored this yet with pesticide labels.
 - General Conservation Measures
 - Appear on all product labels
 - General Information needed:
 - Where are pesticides used
 - How pesticides are used in the field

- Best Management practices
- Current mitigation or conservation measures
- Other suggestions
- Looking Forward:
 - EPA mitigation pilots
 - Early coordination with federal partners, applicants (registrants) and other stakeholders
 - Expand stakeholder input
 - Streamline consultations and provide meaningful conservation to species
- **USDA Perspective was provided by Elyssa Arnold**
 - USDA Office of Pest Management Policy (OPMP)
 - <https://www.usda.gov/oce/pest/about>
 - Role in ESA FIFRA Consultations
 - Provides the grower perspective including how pesticides are typically used and the implications of proposed mitigations
 - Provides data on typical usage and can also conduct pesticide use surveys
 - Agricultural Resource Management Survey
 - Conservation Effects Assessment Program
 - Goals:
 - Participate as a member of the FIFRA-ESA Interagency Working Group
 - Engage in mitigation discussions with EPA and the Services
 - Ensure processes that require public notice and comment are followed
 - Communicate with stakeholders on ESA processes and outcomes
 - Challenges
 - Litigation concerns
 - Right balance between broadly applicable measures and targeted mitigation
 - Finding the right balance between flexibility and easy-to-follow labels:
 - Picklist is a challenge
 - How is this enforceable?
 - Does it apply to me?
 - What does the application require/what's the soil type?
 - How to record for compliance?
 - Coordination with applicators and SLAs responsible for the enforcement

- Find efficiencies in a traditionally lengthy process
- Moving forward – mitigation
 - Ensure Grower perspective is heard
 - Federal Early Mitigation Pilot
 - They will bring in grower and other stakeholder perspectives on proposed mitigation
 - Stakeholder outreach expected winter 2022
 - Feedback on Picklist
 - How is it working and how can it be improved?
- **Implementation of ESA and/or FIFRA mitigation measures on Labels** (Hotze Wijnja, MA, Amy Brown, FL, Dave Scott, IN, Liza Fleeson Trossbach, VA and EPA, Ashlea R. Frank, Compliance Services International (CSI))
 - Ashlea R. Frank, CSI gave a presentation titled “What do actions taken today tell us about labels of tomorrow” with the purpose was to help us understand more about label implementation needs due to ESA changes, be aware of what may be coming, and ways to disseminate information to applicators.
 - Presented what CSI does and that they have been involved in CSI has been involved in the intersection of FIFRA and ESA for many years
 - They also manage the FIFRA Endangered Species Task Force (FESTF) which is comprised of 17 pesticide registrant companies, has been addressing endangered species and pesticide data requirements for over 20 years. She gave an overview of the Task Force and their efforts
 - EPA’s new policy was discussed and how it operates on the theme of “quicker” data review
 - Due to ESA, registrants are making label decisions that try and balance product availability and usability with grower needs
 - Availability is the quality of being able to be used or obtained
 - Usability is the quality or state of being usable; ease of use
 - EPA only recognizes “Do Not” statements
 - Presented examples of ESA decisions (Malathion and Enlist) – What do they tell us about future labels?
 - Expect delays in registrations
 - Expect changes to the availability and usability of existing products as they go through Registration Review
 - “Pick-lists” such as what was used in Enlist and the NMFS final BiOp for malathion are likely to become more common
 - A model for ESA pesticide applicator training would help to assemble or identify consistent messages about ESA listed resources.
 - They welcome engagement with SFIREG in efforts to ensure usability and availability of pesticides through the implementation of informed and reasonable mitigation strategies

use in pesticide formulations without additional data and assessments. These inerts did not have tolerances established.

- Once removed, if a registrant wanted to use them, they would have to file a petition with EPA and provide supporting data.
 - There are still approximately 3 ingredients that are not being removed at this time, due to them having tolerance exemptions, this would have to go through the rule making process to have their tolerances revoked.
- PFAS Council-Jeff Dawson, OCSPP Immediate Office (IO)
 - National Environmental Justice Advisory Council (NEJAC)
 - NEJAC is having a public meeting next week to talk about public issues:
 - https://usepa.zoomgov.com/webinar/register/WN_kB_BJikKSQyvo8lxRyYnNg
 - Some ingredients may be identified as hazardous substances
 - What definition is being used?
 - OPPT working definition - [Per- and Polyfluoroalkyl Substances \(PFAS\) in Pesticide and Other Packaging | US EPA](#)
 - EPA/Industry collaboration on containers?
 - Some research from industry was provided
 - TOSCA letter on containers/fluorination
 - https://www.epa.gov/system/files/documents/2022-03/letter-to-fluorinated-hdpe-industry_03-16-22_signed.pdf
- **Chlorpyrifos and other OPs with possible tolerance revocations** (Hotze Wijnja, MA, Amy Brown, FL and Kelly Sherman, Branch Chief, OPP- Pesticide Re-evaluation Division (PRD)-RMIB3)
 - Dana Friedman, EPA provided an update on the issues
 - Organophosphates with possible tolerance revocation
 - The Petition requested that EPA revoke all tolerances and cancel all associated registrations for food uses for 15 OPs.
 - Docket EPA-HQ-OPP-2022-0490 – comment period will end September 25th
 - EPA will consider all comments and cannot speak to their actions right now
 - Chlorpyrifos
 - Return programs
 - EPA working with registrants; not authorized yet

- Parameters/agreements are continuously being revised
 - Updates will be provided to SLAs and the FAQ [Chlorpyrifos | US EPA](#)
- ESA
 - Mitigation from BiOp required amended labels to be submitted to EPA by Oct 29th
- Status of Cancellation Orders
 - 16 products were voluntary canceled
 - Notice of Intent to Cancel (NOIC) – once issued, it will be published in the Federal Register – becomes final within 30 days of the FRN
- Registration Review
 - May need to amend PID
 - USDA reviewing comments
 - Non-Food Uses may have more mitigations
 - ID will not be issued Oct 2022 as planned
- **Registration Review schedule** (Gary Bahr, WA, SFIREG Chair, Hotze Wijnja, MA, Amy Brown, FL, Sarah Cafferty, IN and Mary Tomlinson, ME)
 - SFIREG-JWC organizing reviews among committee members update
 - Improved communication with SFIREG/JWC would allow organizing reviews among committee members
 - Gary presented the benefits of organizing our reviews and how WA organizes their reviews
 - We would need to provide structure; outline; template; help facilitate commenting
 - POM/EQI will follow-up with a separate meeting with their committees to discuss a process for tackling this issue and if it would be of benefit
 - Crop Life America (CLA) workgroup update
 - Sarah Cafferty and Mary Tomlinson will represent AAPCO on the workgroup
 - Consists of CLA, EPA and state representatives
 - Workgroup is still being formed – no update at this time.
- **Technology Workgroup – Update** (Dwight Seal, NC, Committee Chair)
 - Dwight Seal, NC presented on the AAPCO Technology Workgroup
 - See presentation at <https://aapco.org/2015/07/29/working-committees/>
- **Label Improvement Project – Update** (Liza Fleeson Trossbach, VA, AAPCO President)
 - Liza Fleeson Trossbach, VA, presented on the Label Improvement project
- **Other Emerging Topics** (Hotze Wijnja, MA, Amy Brown, FL, Dave Scott, IN, Sarah Cafferty, IN and Committee Members)
 - Communicating with EPA’s Project Managers regarding product registration questions
 - Discussed interactions with PMs and SLITs

- Emily Ryan, EPA will follow up regarding SLITs and who is the contact
- Due to turnover, a SLITs training may be needed

Field Trip:

After the meeting, there was field trip to Wareham, MA, to visit a cranberry growing operation with an opportunity to observe a cranberry harvest and a visit to the UMass Cranberry Station in Wareham, MA. Steve Ward, cranberry grower, and Dr. Hilary Sandler educated the attendees on the uniqueness of cranberry growing systems and the associated pest control challenges.