

EPA Region 2 Pre-SFIREG Meeting Report

Submitted by Anthony Lamanno, EPA Region 2 SFIREG Representative.

The EPA Region 2 pre-SFIREG meeting was held virtually on April 12, 2023. New York, New Jersey, Puerto Rico, the US Virgin Islands (Region 2 states and territories), and EPA Region 2 attended the meeting. The following are some of the topics discussed during this meeting:

Worker Protection Standard (WPS) Application Exclusion Zone (AEZ) Update-

Tara Glynn, EPA Region 2, Land Chemicals and Redevelopment Division, provided an update on the WPS rule regarding the AEZ. The 2015 WPS revision introduced the AEZ provision to the rule which required agricultural employers to keep workers and all other individuals out of the AEZ. The 2020 WPS rule amendments modified the requirements regarding the AEZ by changing the AEZ distance requirements from being based upon application method, height, and droplet size to application method and height only. In addition, the 2020 rule clarified that suspended applications can resume after the AEZ is clear of people and that immediate family members can remain in enclosed structures in the AEZ. However, this 2020 rule was challenged, resulting in a court-ordered stay, and the amended rule was not implemented. In early 2023, the EPA issued a proposed rulemaking regarding WPS.

This proposed rulemaking reconsiders and retains some of the 2020 AEZ requirements, including that suspended applications can resume after the AEZ is clear of people and that immediate family members can remain in enclosed structures in the AEZ. It also intends to reinstate some of the 2015 WPS AEZ provisions, including the AEZ distance requirements being based upon application method, height, and droplet size. However, droplet size will be based upon the American Society of Agricultural and Biological Engineers droplet size standards. The public comment period for the proposed regulation is March 12 through May 12. Until the 2023 proposed rule is adopted, the 2015 AEZ requirements will remain in effect.

Update on FIFRA Grants Database and the Cooperative Agreement Guidance

(CAG)- Vivian Chin, EPA Region 2 Land Chemicals and Redevelopment Division, provided information on the FIFRA Grants Database and CAG. The use of the FIFRA Grants Database remains optional at this time; however, use is encouraged by EPA. There are various resources, including training videos, to assist the states and territories in the use of this database.

The CAG has been updated to include Appendix 12, *Environmental Justice Activities Within FIFRA Program Areas* and Appendix 13, *Federal Civil Rights Information and Responsibilities*. Appendix 12 provides information to the states, territories, and tribes to document work done to address environmental justice matters and identify further activities that may be used to address environmental justice matters. While appendix 13 informs states, territories, and tribes about their civil rights responsibilities to better serve impacted communities.

Device Compliance Advisory- Vickie Pane, EPA Enforcement and Compliance Assurance Division, provided an overview of the EPA's February 2023 Compliance Advisory, *What You Need to Know About Producing, Distributing or Selling Pesticide Devices*. This advisory is intended to provide regulatory guidance for companies that are producing, selling, and distributing pesticide devices and includes information on how to differentiate between pesticides and devices.

Cancellation of Pesticide Registration in the United States Virgin Islands- Leslie Leonard, Environmental Program Manager, US Virgin Islands Department of Planning and Natural Resources, Pesticides Control Program, discussed a matter regarding the cancellation of US Virgin Islands registered pesticide products by the manufacturers. Concerns about why registrants were cancelling their products was discussed during the meeting. Puerto Rico provided some information on this matter since the same thing came up several years ago there. It seems as if manufacturers may register pesticides in specific state or territory for a period of time to see if there are adequate sales to justify registration or to support certain users. If the sales of the products are not adequate, they will cancel the registration.

FIFRA Section 26 State Primacy Enforcement Authority- Scott Menrath, Director, New York State Department of Environmental Conservation, Bureau of Pesticides Management, led a conversation regarding state primacy under FIFRA Section 26. The New York State Legislature continues to pursue legislation to allow local governments to prohibit pesticide applications in wetlands even though the Governor vetoed a similar bill last year. This bill along with several local governments proposing or enacting laws to regulate pesticides has caused concern regarding New York State's ability to achieve a uniform statewide pesticide program. Various levels of pesticide regulation, including pesticide use bans in certain instances, may create a situation that is difficult for the regulated community to remain in compliance.

New York was wondering if this issue has come up in the other Region 2 states and territories. Puerto Rico and the US Virgin Islands have not experienced this issue; however, New Jersey does allow municipalities to conduct pesticide inspections and create ordinances. The ordinances must be approved by the NJ Department of Environmental Protection (DEP). All enforcement of the local ordinances is referred to and conducted by DEP and not the municipalities.

The Region 2 states and territories feel that the issue of state primacy and the preemption of local pesticide regulation is an important issue and requests that SFIREG continue to discuss this matter with EPA.

Neonicotinoid Interim Decision- At the request of the Region 2 states EPA Headquarters provided an update on the neonicotinoid interim decision (ID) for the 15-year neonicotinoid registration review cycle. Neonicotinoids have undergone recent risk assessments in which numerous public comments were received. In 2020 EPA identified risk concerns for pollinators, human health, aquatic invertebrates, and

mammals from neonicotinoid pesticides. To alleviate some of these concerns EPA implemented spray drift and run-off mitigation measures to be placed on product labels. In addition, in 2002 EPA began formal consultation with the US Fish and Wildlife Service and the National Marine Fisheries Service, who still need to issue Biological Opinions on neonicotinoids, to identify Endangered Species Act concerns. This process may result in amending the risk mitigation measures to protect endangered species. It is anticipated that the ID may be issued in the 4th quarter of federal fiscal year 2023 and have a 60-day public comment period.

Treated Seeds- EPA headquarters was asked to speak about their plans or next steps regarding treated seeds. EPA plans to issue an advance notice of proposed rulemaking regarding treated seeds. This advanced notice will provide an opportunity for states and stakeholders to provide input into the process of regulating treated seeds. EPA views treated seeds as pesticides; however, they are exempt from pesticide registration due to the treated article exemption, provided they meet the requirements to qualify as a treated article. As this process moves forward at EPA there will need to comply with the Endangered Species Act. EPA has already identified issues regarding pollinators, burial, and disposal of treated seeds. Furthermore, EPA may be developing label requirements for treated seed to meet the treated article exemption. If the label instructions on the treated seed container are not followed it may be considered the application of an unregistered pesticide. In addition to these efforts, EPA also intends to promote stewardship and education regarding treated seeds.

SFIREG Discussion Topics for Pre-SFIREG Meetings

The SFIREG Chair requested that the regional representatives discuss the following topics during the pre-SFIREG meetings in preparation for the June Full SFIREG meeting:

SFIREG Processes for Providing Comments to EPA on Significant Regulatory Processes- The SFIREG Chairperson requested that the regional representatives query the states and territories about the best way to participate in the EPA public comment process. The Region 2 states and territories recommend the possibility of quarterly pre-SFIREG calls or documents being placed on a shared folder for states or territories to provide comments.

Certification and Training (C&T) Plan Approval Process and the Feedback from EPA Regions and Headquarters- All the Region 2 state and territory C&T plans have been approved by EPA. The states and territories have created implementation timelines and are in various stages of regulation development to implement the plans. Pesticide Safety and Education Program (PSEP) funding did come up as part of this discussion since the states, territories, and EPA Region 2 recognize that PSEP is an essential component of the implementation of the state and territory plans. EPA Region 2 updated the states and territories about the lack of PSEP funding associated with beginning stages of PRIA 5.

Without adequate funding the PSEP may not be able to deliver the essential services required for this implementation.

Endangered Species Act Workplan Concepts for Mitigation, Labels, and Bulletins Live! 2- The Region 2 states and territories were asked if there were any current issues or questions regarding the implementation of the concepts for the EPA's Endangered Species Act workplan and the proposed mitigation strategies. The states still have a concern regarding the enforceability of the label language that was developed to protect endangered species; however, no other issues were identified.

Rodenticide Proposed Interim Decisions (PIDs) and Regulations- The Region 2 states and territories were asked to identify any issues regarding the Rodenticide PIDs and the potential reclassification of several rodenticides to federally restricted use pesticides. There were concerns raised regarding how the pesticide applicator direct supervision requirements would change with this restricted use classification. If restricted, the current New York State regulations would not allow these materials to be used with off-site direct supervision by a commercial pesticide apprentice, which would create a significant burden on the pest control industry. In addition, there were also concerns raised about the enforcement of internet sales of these rodenticides if they become RUPs.

SLA Updates on Experiences with the Current FIFRA Cooperative Agreement, Funding, Reporting, Staffing, Credentials, and other Administrative Topics- The Region 2 states and territories were asked if there are any items they wanted SFIREG to consider regarding the cooperative agreements, funding, reporting, staffing, or credentials while negotiating the new grant guidance. There were no items identified.

Chlorpyrifos- The Region 2 state and territories were asked if there were any additional topics or issues regarding EPA's final rule revoking all "tolerances" for chlorpyrifos, the voluntary product cancellation request, or EPA's notice of intent to cancel the remaining products labeled for use on food. The Region 2 states and territories did not have any additional concerns regarding this matter.

Atrazine Interim Registration Decision-The Region 2 states and territories were asked if there were any questions or concerns regarding the EPA's proposed changes to the Atrazine registrations. There were none raised.

Dicamba- EPA posted label amendments to the public docket to further restrict the over-the-top uses of Dicamba in Iowa, Indiana, and South Dakota. The Region 2 states and territories did not express any concerns regarding these label amendments or any other dicamba matters.

Bilingual Pesticide Labels- The Pesticide Registration and Improvement Act (PRIA 5) is requiring key pesticide label information to be translated into Spanish. EPA stakeholder engagement regarding the implementation plan for this requirement will begin in 2023; however, the date for completion of this translation is based upon pesticide type and toxicity. Restricted use pesticides and the most toxic agricultural pesticides will be required to have portions of the label translated by December 2025, while others will be phased in by December 2026, December 2027, and December 2028 with the final bilingual label requirements in 2030. Several of the Region 2 states and territories expressed concern over the enforceability of this translated label language. Many of the states and territories do not have adequate bilingual enforcement staff to verify if the pesticides are being used in accordance with the translated label. Additionally, there was also concern regarding the accuracy of the translations. Many states and territories will not have the resources to verify that the translations are accurate. The states and territories would likely be looking for EPA to determine the translations are accurate.

New and Ongoing Issues- There were no new or ongoing issues identified by EPA Region 2 or the Region 2 states and territories.