

STATE NEONICOTINOID USE LAWS & REGULATIONS

Gene Harrington

Senior Director, State Government Affairs, Agriculture & Environment

Biotechnology Innovation Organization

May 22, 2023

Presentation to Vermont Agricultural Innovation Board

PRESENTATION SUMMARY

- Federal Regulation of Neonicotinoid Insecticides & Treated Seeds
- Overview of State Neonicotinoid Use Laws & Regulations
- State Neonicotinoid Treated Seed Laws & Regulations
- Pending State Neonicotinoid Treated Seed Legislation

U.S. EPA REGULATION OF NEONICOTINOID INSECTICIDES & TREATED SEEDS

- Under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), pesticides - including neonicotinoid insecticides - are subject to a rigorous U.S. EPA conducted registration process that includes human health, ecological, and environmental risk assessments.
- FIFRA also requires pesticides – including neonicotinoid insecticides – to go through registration review every 15 years to ensure all products on the market have been subject to the latest scientific review using the most up to date information
- Neonicotinoid insecticides are presently going through registration review, a process that will likely include new mitigations to reduce potential ecological risks, particularly to pollinators, and protect public health. A final interim decision is expected in 2024. Additionally, the EPA requested that registrants implement a national stewardship program to increase grower awareness and use of best management practices to reduce ecological risks.

TREATED ARTICLE EXEMPTION

- Agricultural producers rely on treated seed to protect their crops from fungi, subterranean nematodes, insects and other pests during the most vulnerable, early stages of a plant's lifecycle.
- Under Section 25(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), “treated articles” such as treated seed, wood/lumber (railroad ties, utility poles), clothing and textiles, medical scrubs, kitchen sponges, shower curtains, and paints are exempt from FIFRA registration requirements.
- Section 25(b) of FIFRA grants authority to the EPA Administrator to exempt from the requirements of FIFRA by regulation any pesticide the Administrator determines either (1) to be adequately regulated by another Federal agency, or (2) to be of a character which is unnecessary to be subject to FIFRA in order to carry out the purposes of this law. Also allows for the exemption of minimum risk pesticides like mint-oil, citric acid, garlic, etc.
- An article or substance treated with pesticide qualifies for the treated article exemption if: (1) the incorporated pesticide is registered for use in or on the article or substance, and (2) the sole purpose of the treatment is to protect the article or substance itself.
- Because these products are being protected by the already regulated and approved pesticide, there is no reason to duplicate that review.
- In 2016, Vermont became the first – and to date only – state to authorize the regulation of treated article pesticides

U.S EPA REGULATION OF NEONICOTINOID INSECTICIDES & TREATED SEEDS

- On September 27, 2022, EPA dismissed a 2017 petition requesting the Agency to regulate treated seed in general and specifically neonicotinoid treated seed.
- EPA explained in its response that it does fully assess, as part of its review of the pesticide registered for treating seed, both the use of the treating pesticide and the treated seed and impacts to human health and the environment. These assessments consider the fate and effect of the pesticide, including consideration of the exposure and impacts from the use of the treated seed.
- “EPA, in fact, fully assesses both the use of the treating pesticide on a seed crop and use of the treated seed. Such assessments take into account the fate of the pesticide when used to treat seed, including any potential uptake and distribution into the developing seedling and plant, and the risks from those exposures. For example, EPA’s assessments fully consider the impact of the availability of the pesticide on the treated seed to all taxa, using various tools and modeling allowing EPA to estimate consumption by birds and mammals of pesticide-treated seed. In addition, the treated article exemption regulatory text appropriately covers any seed treated with such a registered pesticide product if use of the pesticide and the treated seed is consistent with all instructions on the registered pesticide product and seed bag tag labeling and claims made for the seed treatment are limited to seed and what the seed becomes.”

U.S EPA REGULATION OF NEONICOTINOID INSECTICIDES & TREATED SEEDS

- EPA also announced that it “intends to work with the States and other federal agencies and to issue an advanced notice of proposed rulemaking to seek additional information on pesticide seed treatment and to issue a rule pursuant to FIFRA...to regulate the use of pesticide-treated seed, which may prove to be a more efficient and less resource intensive solution to some of the concerns raised in the petition.”
- EPA further stated that “The agency has been reviewing labeling instructions for pesticides registered for seed treatment use(s) in registration and registration review to ensure there are complete and appropriate instructions for the distribution, sale, and use of both the treating pesticide and the treated seed.”

FEDERAL SEED ACT REQUIRED LABELING FOR TREATED SEED

- Under the Federal Seed Act (FSA) and associated regulations, USDA requires labeling for chemically treated seed. Specifically, agricultural and vegetable seeds that are chemically treated must be labeled with either the pesticide active ingredient or the trade name of the seed treatment product,
- FSA regulations also require seed treated with a chemical to be labeled with, “Do not use for food,” “Do not use for feed,” “Do not use for oil purposes,” or “Do not use for food, feed, or oil purposes,” if the amount remaining with the seed is harmful to humans or other vertebrate animals. The most commonly used labeling for seed with these types of seed treatments is “Treated with (name of substance)” and “Do not use for food, feed, or oil purposes.”
- Some states have adopted the federal requirement in their laws or regulations.

U.S FDA REGULATION OF TREATED SEED UNDER FEDERAL FOOD, DRUG AND COSMETIC ACT

- Under the Federal Food, Drug and Cosmetic Act, FDA requires treated seed to be colored.

STATE NEONICOTINOID USE/APPLICATION LAWS & REGULATIONS

- **Oregon 2015 Rulemaking** - Prohibits the application of the four neonicotinoid insecticides, dinotefuran, imidacloprid, thiamethoxam and clothianidin, regardless of application method, on all trees in the *Tilia* genus, which includes linden and basswood trees. Doesn't apply to treated seed
- **Maryland 2016 Law** – Restricts homeowner/consumer use of neonicotinoids. Does not apply to farmers or treated seed
- **Connecticut 2016 Law** – Prohibits applying neonicotinoid insecticides to linden or basswood trees or labeled for treating plants, to any plants when such plant bears blossoms; requires the Department of Energy and Environmental Protection commissioner to classify certain neonicotinoids as “restricted use” pesticides; and requires the Connecticut Department of Agriculture to develop best practices for minimizing the release of neonicotinoid insecticide dust from treated seeds.
- **Vermont 2019 Law** - Requires the Secretary of Agriculture, Food and Markets to register neonicotinoid pesticides approved for outdoor use as restricted use pesticides. Expressly exempted “treated article seed.”
- **Maine 2021 Law** – Directs the Maine Board of Pesticides Control to adopt rulemaking prohibiting the use of any product containing the active ingredient dinotefuran, clothianidin, imidacloprid or thiamethoxam used for application in outdoor residential landscapes such as on lawn, turf or ornamental vegetation. In September 2022 BPC rules became effective making certain neonicotinoids state restricted pesticides. Does not apply to treated seed.
- **Vermont 2022 Law** - Requires the Secretary of Agriculture, Food and Markets, after consultation with the Agricultural Innovation Board, to adopt by rule best management practices for the use of neonicotinoid treated article seeds in the State. Also requires the AIB to submit to the General Assembly a report regarding whether BMPs should be adopted for the use of treated article seeds that are not neonicotinoid treated article seeds.

STATE NEONICOTINOID USE/APPLICATION LAWS & REGULATIONS

- **Massachusetts 2022 Rulemaking** – In February of 2021, the Massachusetts Pesticide Board Subcommittee modified the registration classification of pesticide products containing neonicotinoids that have outdoor non-structural uses or outdoor non-agricultural uses on the label from general use to state restricted use. These include but are not limited to, uses on lawn and turf, trees and shrubs, ornamentals, and vegetable and flower gardens. The reclassification went into effect on July 1, 2022. This action does not impact agricultural uses of neonicotinoid insecticides including treated seeds.
- **New York 2022 Rulemaking** – In January of 2022, the New York Department of Environmental Conservation announced that, beginning January 1, 2023, pesticide products containing *imidacloprid*, *acetamiprid*, and *thiamethoxam* that are labeled for foliar, outdoor use, and/or seed treatment will be reclassified as “restricted use” pesticides in New York
- **New Jersey 2022 Law** – Directs the Department of Environmental Protection to adopt, within one year, rules and regulations classifying neonicotinoid pesticides as restricted-use pesticides. Also included in the new statute, beginning October 31, 2023, a person would be restricted from selling, offering for sale, or using within the State any neonicotinoid pesticide, unless the pesticide is registered and will only be applied by a licensed pesticide applicator to an agricultural plant. Expressly exempts “any application to protect agricultural seed.”
- **Rhode Island 2022 Law** - Effective January 1, 2024, the statute restricts the use of neonicotinoids outdoors, allowing only certified applicators to purchase or use neonicotinoid insecticides. Also prohibits their use on any linden or basswood tree or to any plant when it is blossoming. Expressly exempts seeds treated with a neonicotinoid to protect the seeds treated against insect infestation.
- **Colorado 2023 Law** - Requires that, on or before January 1, 2024, the commissioner of agriculture adopt rules designating requiring neonicotinoid pesticides to be designated as limited-use pesticides limiting their use to licensed pesticide applicators and authorizing only licensed dealers to sell them. The measure is silent on treated seed and Colorado Department of Agriculture staff believes treated seed is outside of its scope because of the federal treated article exemption.

STATE NEONICOTINOID USE/APPLICATION LAWS & REGULATIONS

- **Minnesota 2023 Legislation** – (1) Prohibits the use of neonicotinoid insecticides in a wildlife management area, state park, state forest, aquatic management area, or scientific and natural area; (2) Directs the Commissioner of Agriculture, in consultation with the Commissioner of the Pollution Control Agency, to develop and maintain consumer guidance regarding the proper use and disposal of seed treated with pesticide; (3) Further mandates a person selling seed treated with pesticide at a retail location to post in a conspicuous location the guidance developed by the Commissioner; (4) Prohibits a person from using, storing, handling, distributing, or disposing of seed treated with pesticide in a manner that: (1) endangers humans, food, livestock, fish, or wildlife; or (2) will cause unreasonable adverse effects on the environment; (5) Authorizes certain cities to limit residential use of neonicotinoid insecticides.

•

STATE NEONICOTINOID TREATED SEED LAWS & REGULATIONS

Connecticut 2016 Law

Directed the Commissioner of Agriculture, not later than January 1, 2017, in collaboration with the Connecticut Agricultural Experiment Station and the Department of Energy and Environmental Protection, to develop best practices for minimizing the airborne liberation of neonicotinoid insecticide dust from treated seeds and mitigating the effects of such dust on pollinators. Such best practices shall include,:

- (1) Methods to minimize such dust when treated seeds are dispensed from a seed bag into seed planter equipment;
- (2) guidance on the positioning of the vacuum system discharge of seed planter equipment to direct such discharge toward the soil;
- (3) time frames for the mowing of flowering vegetation located next to crop fields;
- (4) identification of weather conditions that minimize drift of such dust; and
- (5) suggestions for the use of seed lubricants to effectively minimize the drift of such dust.

[https://portal.ct.gov/-](https://portal.ct.gov/)

[/media/CAES/DOCUMENTS/Publications/pollinators/BestManagementPracticesforHandlingSeedsT](#)

[reatedWithNeonicotinoidInsecticidespdf.pdf](#) - Best Management Practices for Farmers Using Seeds Treated With Neonicotinoid Insecticides

New York 2022 Rulemaking

Beginning January 1, 2023, Pesticide products containing *imidacloprid*, *acetamiprid*, and *thiamethoxam* that are labeled for foliar, outdoor use, and/or seed treatment will be reclassified as “restricted use” pesticides in New York

MINNESOTA DEPARTMENT OF AGRICULTURE'S STEWARDSHIP GUIDELINES & BEST MANAGEMENT PRACTICES FOR NEONICOTINOID INSECTICIDE TREATED-SEED

- In May of 2019, the Minnesota Department of Agriculture, in cooperation with University of Minnesota Extension and others, issued BMPs for using neonicotinoid insecticide treated-seed
- https://www.mda.state.mn.us/sites/default/files/2019-05/neonictreatedseedbmps_0.pdf - BMPs
- <https://www.mda.state.mn.us/sites/default/files/inline-files/neonicreviewssummary.pdf>
August 2016 MDA Review of Neonicotinoid Use, Registration, and Insect Pollinator Impacts in Minnesota

DECEMBER 2021 WASHINGTON STATE DEPARTMENT OF AGRICULTURE REPORT TO WASHINGTON LEGISLATURE

- In the Spring of 2021, Washington State enacted legislation directing the Washington State Department of Agriculture (WSDA) to produce a report that includes recommendations addressing risks of harms to bees and other pollinators from the use of neonicotinoid pesticides and treated seeds.
- According to the report, “WSDA knew of no bee deaths related to neonicotinoid pesticide applications or seed treatments in the last seven years.”
- The report makes no recommendations related to neonicotinoid treated seed
- <https://www.betterseed.org/wp-content/uploads/Washington-State-NEONIC-PollinatorHealth-2021-ReportToLegislature.pdf> - WSDA December 2021 Report to the Legislature: Protection of Pollinator Health: Pollinators & Neonicotinoids

PENDING STATE NEONICOTINOID TREATED SEED LEGISLATION

- Legislatures in California and New York are considering legislation that would ban or restrict the use of neonicotinoid treated seed. The outcome of both bills is unclear at this point.
- Nevada and Connecticut are also considering neonicotinoid legislation but those measures don't cover treated seeds

CALIFORNIA DEPARTMENT OF PESTICIDE REGULATION

- In Fall of 2020, CA DPR rejected a petition by several environmental groups to regulate seeds treated with neonicotinoids.
- In February of 2023, many of the same groups filed suit against CA DPR in the Superior Court of the State California
- In a February 2022 notice of proposed rulemaking to more closely regulate how and when neonicotinoids can be used in agricultural settings, CA DPR wrote “Risks from residues in pollen and nectar of crops from seed treatment applications were evaluated in the preliminary pollinator risk assessments published by U.S. EPA. The preliminary assessments concluded that seed treatment applications result in low neonicotinoid residues in pollen and nectar and thus pose a low risk to honey bees; DPR concurred with this assessment in its Risk Determination. Therefore, seed treatment applications are not part of this rulemaking.”