

2024 STATE/FEDERAL NEONICOTINOID TREATED SEED LEGISLATIVE/ADMINISTRATIVE ACTIVITY

Gene Harrington

Senior Director, State Government Affairs, Agriculture & Environment

Biotechnology Innovation Organization

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PRESENTATION SUMMARY

- Recent Federal Regulatory Activity
- Recent State Activity

U.S EPA/RECENT ADMINISTRATIVE ACTIONS

- On September 27, 2022, U.S. EPA dismissed a 2017 Center for Food Safety 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/RECENT ADMINISTRATIVE ACTIONS

- 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.”

U.S EPA/RECENT ADMINISTRATIVE ACTIONS

- On May 31, 2023, U.S. EPA sued by Center for Food Safety in the Ninth Circuit, challenging EPA's decision to deny their 2017 petition to regulate treated seeds. In their complaint, the CFS raised claims under both FIFRA and the Administrative Procedure Act ("APA") to argue that EPA's interpretation of the Treated Article Exemption is unlawful.
- On October 12, 2023, U.S. EPA issued an Advanced Notice of Proposed Rulemaking seek additional information on the use of pesticide-treated seed and paint products. EPA is looking to better understand whether or to what extent pesticide-treated seed and paint need to be further regulated. EPA accepted comments until February 9, 2024.
- 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 2025.

2024 STATE NEONICOTINOID TREATED SEED USE LAWS & REGULATIONS/CALIFORNIA

- California AB 1042 –On September 22, California Governor Gavin Newsom signed into law legislation that:
- Requires that when more than one substance is applied to an agricultural or vegetable seed, the seed be labeled with the signal word for the substance with the highest level of toxicity; and,
- Requires that, beginning January 1, 2027, for pesticide-treated seeds packaged after January 1, 2027, and shipped, delivered, transported, distributed, or sold in the state for planting within the state, the label include, for each pesticide, the following information:
 - i) The registration number from the United States Environmental Protection Agency, if applicable; and, ii) The quantity applied by weight or amount per seed.

CALIFORNIA DEPARTMENT OF PESTICIDE REGULATION

- In Fall of 2020, CA DPR rejected a petition by from Natural Resources Defense Council and several environmental groups to regulate seeds treated with neonicotinoids.
- In February of 2023, NRDC and the other groups filed suit against CA DPR in the Superior Court of the State California
- Case was supposed to go to trial in May of 2024
- DPR and plaintiffs have been engaged in settlement talks for the last several months

MINNESOTA DEPARTMENT OF AGRICULTURE

- On October 15, 2024, the Natural Resources Defense Council and other environmental groups petitioned the Minnesota Department of Agriculture to adopt rulemaking pertaining to the regulation of neonicotinoid treated seed.
- MDA required to respond within 60 days

STATE NEONICOTINOID TREATED SEED USE/LAWS & REGULATIONS/NEW YORK

- On March 22, 2024, New York Governor Kathy Hochul signed into law S 8031/A 8571. This measure represents the chapter amendments to the Birds and the Bees Protection Act that Governor Hochul negotiated with the New York Legislature when she signed that legislation into law in late 2023
- Specifically, S 8031/A 8571 does the following:
 - Beginning January 1, 2029, prohibits any person from selling, offering for sale or use, or distributing within the state any corn, soybean or wheat seeds coated or treated with a neonicotinoid, unless a valid waiver is issued by NY DEC to the user.
 - The DEC Commissioner, in consultation with the Commissioner of Agriculture, shall promulgate any appropriate regulations prior to undertaking this waiver process.

2024 STATE NEONICOTINOID TREATED SEED USE LAWS & REGULATIONS/NEWYORK

- No waiver shall be valid for more than two years
- A waiver shall only be granted if: (1) the farm owner completes integrated pest management training; (2) a pest risk assessment and a pest risk assessment report must be completed; (3) any such seeds may only be planted on the farm property or properties identified in the pest risk assessment report; and (4) the farm owner must maintain current records of such pest risk assessment report and records of when treated seeds are planted, both of which shall be subject to review upon request by the department.
- The Department shall annually report to the legislature on the number of waivers granted.
- DEC and the Department of Agriculture and markets in consultation with New York state's land grant university shall conduct a study to identify practicable and feasible alternatives to the use of neonicotinoid pesticides. The results of the study shall be submitted to the Governor, the President of the Senate and the Speaker of the Assembly on or before January 1, 2026 and shall be posted on the department's public website.

2024 STATE NEONICOTINOID USE/APPLICATION LAWS & REGULATIONS/WASHINGTON STATE

- On March 28, 2024, Washington State Governor Jay Inslee signed into law (SB 5972) legislation restricting consumer/residential use of neonicotinoid insecticides.
- Under SB 5972, beginning January 1, 2026, a person may not use neonicotinoid insecticides on nonproduction outdoor ornamental plants, trees, and turf in this state, unless the application is made as part of a licensed application, a tree injection, or during the production of an agricultural commodity
- Washington is now the 13th state to legislatively restrict neonicotinoid insecticides for consumer/residential use, joining California, Colorado, Connecticut, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Jersey, New York, Rhode Island, and Vermont.