



October 5, 2021

Via electronic mail to:

Anson Tebbetts, Secretary, Vermont Agency of Agriculture, Food & Markets
Julie Moore, Secretary, Vermont Agency of Natural Resources
Bryan Hurlburt, Commissioner, Connecticut Department of Agriculture
Katie Scharf Dykes, Commissioner, Connecticut Department of Environmental Protection
Amanda Beal, Commissioner, Maine Department of Agriculture, Conservation & Forestry
Melanie Loyzim, Commissioner, Maine Department of Environmental Protection
John Lebeaux, Commissioner, Massachusetts Department of Agricultural Resources
Martin Suuberg, Commissioner, Massachusetts Department of Environmental Protection
Shawn Jasper, Commissioner, New Hampshire Department of Agriculture, Markets & Food
Robert Scott, Commissioner, New Hampshire Department of Environmental Services
Ken Ayars, Chief, Rhode Island Division of Agriculture
Terrence Gray, Acting Director, Rhode Island Department of Environmental Management

Re: Legal authority to require testing for PFAS in pesticides in New England

Dear Commissioners,

In May 2021, we wrote to alert you to the urgent issue of the use of pesticides contaminated with per- and polyfluoroalkyl substances (“PFAS”), toxic “forever chemicals,” in New England. Tests by the U.S. Environmental Protection Agency (“EPA”) and Public Employees for Environmental Responsibility (“PEER”) showed alarmingly high concentrations of PFAS in pesticide products registered and used in every New England state. In response, in August 2021 representatives of each New England state’s Department of the Environment and Department of Agriculture met to discuss individual state responses to the issue as well as potential regional approaches. We were grateful for the opportunity to discuss how to protect our environment and our public health.

We write again to reiterate the need for states to take immediate action to protect New England’s environment and communities. We request that each state require manufacturers and distributors applying for registration of their pesticide products to submit testing results showing that their products are free from PFAS.

Require manufacturers to prove products do not contain PFAS

PFAS contamination of pesticides is a widespread issue, affecting an unknown, but likely very large, number of pesticide products. Pesticides must be screened for PFAS contamination to

protect public health and the environment. However, the EPA has not committed to systematically testing pesticides for PFAS. It therefore falls to New England's states to ensure that the pesticides used in the region are free from PFAS.

The most efficient method to ensure this is for states to require applicants for pesticide registration to submit laboratory test results demonstrating that their products do not contain PFAS.

The respective administrative body that registers pesticides for use in each New England state can require applicants to submit the results of a test for PFAS as part of the pesticide registration application. Doing so would be a meaningful step towards protecting New England's communities and the environment from further contamination.

While we agree with the states that it is critical for EPA to provide leadership on this critical issue, the states should act now to prevent more harmful PFAS exposure. We are aware that last week, EPA released its draft methodology for testing for PFAS in oily matrices like pesticides. EPA claims that one of the tests that found PFAS in Pemanone may have been a false positive; however, this new test is still being assessed and many pesticides do contain PFAS.

State Authorities to Regulate PFAS in Pesticides

Each New England state has legal authority to require pesticide manufacturers to demonstrate through laboratory testing that their products do not contain PFAS as part of the registration process.

Connecticut: Connecticut law grants the Department of Energy and Environmental Protection ("DEEP") broad authority to regulate the distribution, use and application of pesticides within the state. The Department has the authority to cancel or suspend the state registration for any pesticide that "causes unreasonable adverse effects on the environment," or which poses "an imminent hazard."¹ Importantly, during the registration process applicants must provide, "if requested by the commissioner, a full description of the tests made and the results thereof,"² as well as "if requested by the commissioner, a report on the pesticide which includes information on tests that have been made to establish the effectiveness of the product against the pest which is to be controlled, information concerning any hazard involved in the use of the product, information concerning both acute and chronic toxicity of the pesticide, information with regard to the persistence of the pesticide in the environment and information relating to the pesticide's impact on nontarget organism."³ Given that PFAS are toxic "forever chemicals," the commissioner is authorized to, and should, request test results demonstrating that applicants' pesticide products do not contain PFAS.

Maine: Maine law grants the Board of Pesticides Control ("the Board"), in cooperation with the Department of Agriculture, Conservation and Forestry ("DCAF"), broad authority to regulate pesticide distribution, use, and application within the state. Pursuant to that authority, the Board

¹ Conn. Gen. Stat. Ann. §§ 22a-52(c), 22a-53(a).

² Conn. Gen. Stat. Ann. §§22a-49(4).

³ Conn. Gen. Stat. Ann. §§22a-49(7).

can adopt rules that provide for the “collection, examination and reporting of samples of pesticides or devices.”⁴ Importantly, the Board can prescribe “the submission of information necessary for the board to undertake its responsibilities.”⁵ The Board is authorized to, and should, request test results demonstrating that applicants’ pesticide products do not contain PFAS.

Massachusetts: The Pesticide Board Subcommittee (“the Subcommittee”), the administrative body that registers pesticides for use in Massachusetts,⁶ has the authority to require applicants for registration to submit the results of such a test as part of the pesticide registration application. The Subcommittee’s decision to register a pesticide must be made upon a determination that the pesticide will not cause “unreasonable adverse effects on the environment,”⁷ including “an unreasonable risk to man or the environment, taking into account the economic, social and environmental cost and benefits of the use of any pesticide.”⁸ To make that determination, Massachusetts law authorizes the Subcommittee to “require of applicants for pesticide registrations any information that it deems necessary to determine whether, or how, the pesticide should be registered.”⁹ The Subcommittee is authorized to, and should, request test results demonstrating that applicants’ pesticide products do not contain PFAS.

New Hampshire: New Hampshire law grants the Department of Agriculture, Markets & Food (“DAMF”), through the Division of Pesticide Control, and in conjunction with the Pesticide Control Board, broad authority to regulate pesticide distribution, use, and application within the state. The Division of Pesticide Control is “authorized to examine any pesticide for the purpose of determining whether it complies with the registration requirements set forth [in New Hampshire law.]”¹⁰ Importantly, the Board has the authority to adopt restrictions on the sale or use of pesticides “which the board finds to be injurious or reasonably likely to be injurious to man or other living things other than those pesticides are intended to control.”¹¹ To accomplish this, the Board has the authority to adopt rules relative to “information required in support of requests to register pesticides.”¹² The Board is authorized to, and should, require test results demonstrating that applicants’ pesticide products do not contain PFAS.

Rhode Island: Rhode Island law grants the Department of Environmental Management (“DEM”) broad authority to regulate pesticide distribution, use, and application within the state.¹³ Importantly, the Director of the DEM “may prescribe other necessary information by

⁴ Me. Rev. Stat. tit. 7, § 610 (2)(A).

⁵ Me. Rev. Stat. tit. 7, § 610 (F).

⁶ See Mass. Gen. Laws ch. 132B, § 3A (assigning the Subcommittee the “responsibility of registering all pesticides for use in the commonwealth”).

⁷ Mass. Gen. Laws ch. 132B, § 7.

⁸ Mass. Gen. Laws ch. 132B, § 2.

⁹ Mass. Gen. Laws ch. 132B, § 7 (emphasis added).

¹⁰ N.H. Rev. Stat. Ann. § 430:42, III.

¹¹ N.H. Rev. Stat. Ann. § 430:31, IV(e).

¹² N.H. Rev. Stat. Ann. § 430:31, IV(r).

¹³ See, e.g., 23 R.I. Gen. Laws Ann. § 23-25-3 (“The purpose of this chapter is to regulate, in the public interest, the labeling, distribution, sale, storage, transportation, use and application, and disposal of pesticides as defined in this chapter.”).

regulation.”¹⁴ The DEM is authorized to, and should, require test results demonstrating that applicants’ pesticide products do not contain PFAS.

Vermont: Vermont law grants the Agency of Agriculture, Food and Markets (“VAAF”) broad authority to regulate pesticide distribution, use, and application within Vermont. The Agency’s authority includes the power to promulgate “appropriate rules and regulations for carrying out the provisions of this chapter, including rules and regulations providing for the collection and examination of samples of economic poisons.”¹⁵ The Agency is authorized to, and should, require test results demonstrating that applicants’ pesticide products do not contain PFAS.

The opportunity for regional leadership

A variety of popular pesticide products used across New England are now known to be contaminated with high levels of PFAS. Given the expense and difficulty of cleaning up PFAS once it is in the environment, New England states should act now to prevent further contamination. States must protect public health and the environment by requiring parties applying for registration of pesticides to provide laboratory test results demonstrating that the products are free from PFAS. The respective administrative body in each New England state has the authority to require these test results.

Please do not hesitate to contact us if we can work with you on this important issue. Thank you for your leadership.

Sincerely,



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¹⁴ R.I. Gen. Laws Ann. § 23-25-6(e).

¹⁵ Vt. Stat. Ann. tit. 6, § 915.