

LD 264: Resolve, Directing the
Board of Pesticides Control to
Gather Information Relating to
Perfluoroalkyl and
Polyfluoroalkyl Substances in
the State



LD 264 provision—affidavits

- Requires amending pesticide registration rules to require submission of two affidavits that address:
 - the use of fluorinated high-density polyethylene (HDPE) containers for storing, distributing, and packaging pesticide products; and
 - the inclusion of perfluoroalkyl or polyfluoroalkyl substances (PFAS) in the formulation of the pesticide product.

LD 264 provision—gather information

- Requires the Board to gather information relating to PFAS substances with a specific focus on developing:
 - the framework necessary to regulate fluorinated adjuvants;
 - the framework necessary to prohibit the distribution and use of pesticides and adjuvants containing PFAS; and
 - a feasible definition of PFAS adulteration in a pesticide.
- Submit a report by January 15, 2022 to the ACF Committee.

Actions to date

- Developed affidavit language
- Researched, planned and now working with software programmers to develop affidavit functionality within existing registration software
- Also developing the ability to collect Confidential Statements of Formula (CSF) for registered pesticides (but could also be for adjuvants)
- Collected data from other states on registration of spray adjuvants
- Analyzed statutes, rules, and regulations from Maine and other states to identify authorities to regulate spray adjuvants
- Collected lists of regulated spray adjuvants from other states
- Explored definitions of PFAS and PFAS adulteration

Actions to date, continued

- Determined limits of BPC enforcement authorities in cases of PFAS adulteration
- Communicated with pesticide repackaging entities in the state about the use of fluorinated HDPE containers (6 entities)
- Communicated with DEP staff regarding overlap with LD 1503, An Act To Stop Perfluoroalkyl and Polyfluoroalkyl Substances Pollution (now 38 MRS §1614 *et seq.*)
- Identified several currently registered pesticide active ingredients that meet the definition of PFAS as established in 38 MRS §1614
- Identified areas of concern for implementation of LD 264 with ambiguity in interpreting definitions of PFAS

Regulating fluorinated adjuvants

- Focused on adjuvants sold separately from registered pesticide products
- Adjuvants in pesticide formulations are addressed in the CSF/by affidavits
- “Fluorinated adjuvants” assumed to contain at least one ingredient considered a PFAS
- Adjuvants are not federally regulated; but are regulated by AR, CA, ID, KY, MS, TN, UT, WA, WY
- Registration fees that range from \$160 - \$1,150 per product
- Copy of product labels are not required by KY, TN, WY
 - By request in AR and six copies required by CA
- Copy of Confidential Statement of Formula not required for CA, KY, MS, TN, UT, WY
 - By request in AR and efficacy data required for ID

Authorities to regulate adjuvants

- Staff have researched what is needed to regulate adjuvants
- Statutory definitions from other states
 - AR and KY define adjuvants in statute
 - KY and WY includes adjuvants in pesticides definition
- Maine does not define adjuvants in statute
- Adjuvants may be regulated by:
 - Creating a statutory and regulatory rubric to include development of key definitions and collection of fees
 - Could collect spray adjuvant information in a manner similar to pesticide registration
 - Could consider submission of the CSF

Staffing

- Currently, BPC has one full-time employee dedicated to product review and registration and water quality
 - In the process of hiring an additional FTE to help with current registration demands and water quality monitoring responsibilities
- BPC would need at least one additional FTE for adjuvant registration review.
- Other states dedicate between 1 to 7 FTE that are solely responsible for the registration of pesticides and spray adjuvants.
- Staffing demands depend on the extent of the review required.
- Adjuvant registration will add to the inspection demands, registration referrals, and communication.

Steps to prohibit distribution and application of PFAS in pesticides

- Current Maine law allows BPC to collect CSF information in addition to affidavits – allowing the BPC to identify all intentionally added PFAS.
 - Formulations with PFAS will be subject to LD 1503 (Title 38, Section 1614) by 2030 unless deemed “unavoidable” by DEP.
- Maine does not regulate spray adjuvants and would, as mentioned, need authority from the legislature.
 - Authority would be needed in statute to include adjuvants in the pesticides definition or add a spray adjuvant definition
 - Again, formulations with PFAS will be subject to LD 1503 by 2030 unless use is deemed "unavoidable" by DEP.
 - As this is a new area of regulation for the BPC, depending on the proposed regulatory approach, at least one FTE and funding for this position will be needed.

LD 1503 (Title 38, Section 1614)

- Will prohibit PFAS chemicals as intentionally added components in pesticides starting in 2030
- DEP may allow for products with intentionally added PFAS to be sold if the product's use is designated as "unavoidable" by DEP
 - Unless use of a pesticide or adjuvant which contains PFAS is designated as "unavoidable" by DEP—sale, registration, and use of these products would be prohibited.

Limitations in identifying PFAS adulterants

- EPA verified testing for PFAS that are not a part of pesticide formulation is limited
 - 12,039 known PFAS that exists (as of December of 2021)
 - EPA considers PFAS as 'toxicologically significant' contaminants under 6(a)(2) reporting
 - BPC is working with EPA to determine if we can and how to gain access to this information
 - Mandatory submission for manufacturers within 30 days
 - EPA definition includes substances with a chain of two or more fully fluorinated carbons
- Somewhere between three and 190 ingredients in pesticides or adjuvants that could be classified as PFAS in Maine
 - Enforcement could be difficult to pursue given limited testing options
 - CSF could identify substances that could be referred to enforcement