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April 3, 2022

VIA E-MAIL

Megan Patterson, Director
Maine Board of Pesticides Control
28 State House Station
Augusta, ME 04333
Megan.L.Patterson@maine.gov
pesticides@maine.gov

Re: Protections for Confidential Business Information

Dear Megan:

I write on behalf of CropLife America (“CLA”) and RISE (Responsible Industry for a Sound Environment)® to reiterate support for the Board of Pesticide Control’s efforts to establish a process and rubric for evaluating claims of confidential business information or trade secrets (together “CBI”) with respect to information reported to the Board.

Confidential statements of formula (“CSFs”) are not “public records” for purposes of Maine’s Freedom of Access Act (“FOAA”), as the Board’s legal advisor Mark Randlett correctly stated at the February 24, 2023 Board meeting. *See* 7 M.R.S. § 607(5-A). CLA and RISE appreciate the efforts Board staff are undertaking to ensure the security and complete confidentiality of that valuable information.

As Mr. Randlett also correctly stated at the February 24, 2023 Board meeting, the Board has an obligation to prevent disclosure of non-CSF CBI. The definition of “Public records” under FOAA excepts “[r]ecords that would be within the scope of a privilege against discovery or use as evidence recognized by the courts of this State in civil or criminal trials if the records or inspection thereof were sought in the course of a court proceeding.” 1 M.R.S. § 402(3)(B). Maine’s Rules Civil Procedure and of Evidence protect proprietary information from disclosure. M.R. Civ. Pro. 26(c)(7), M.R. Evid. 507. Proprietary information that a registrant submits to the Board, therefore, is not a “public record” under Maine law and is protected from disclosure.

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Adopting a formal process and rubric for evaluating CBI claims, along with processes for notifying CBI claimants of any challenge to their claims, will better ensure results consistent with the law, and therefore better protect the public's and the information owners' rights to proper adjudication of CBI claims.

Thank you for the opportunity to provide these comments. As always, I am available for any questions or concerns you, the Board, or Board staff may have.

Kind regards,

/s/ Graham C. Zorn

Graham C. Zorn

CC: Mark Randlett, Assistant Attorney General