



STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
BOARD OF PESTICIDES CONTROL
28 STATE HOUSE STATION
AUGUSTA, MAINE 04333

JANET T. MILLS
GOVERNOR

AMANDA E. BEAL
COMMISSIONER

Memorandum

To: Board of Pesticides Control

From: Megan Patterson | Director | Maine Board of Pesticides Control

Subject: Summary of the August 5, 2022 Board Discussion of Pesticide Container Regulation

Date: October 21, 2022

Introduction

At its June 17, 2022 meeting, the Board discussed LD 2019—An Act to Require the Registration of Adjuvants in the State and to Regulate the Distribution of Pesticides with Perfluoroalkyl and Polyfluoroalkyl Substances. The Board requested information on existing regulations relative to pesticide containers and asked staff to research options relative to defining what “contamination” means in the context of the bill. For the August 5, 2022 meeting, staff compiled federal pesticide container regulations and presented this information to the Board. To aid in facilitating continued discussion of pesticide container regulation staff have prepared a summary of and responses to comments and questions from the August 5, 2022 meeting. For additional context, all comments and questions referenced may also be found in the August 5, 2022 minutes.

Several Board members expressed concern about meeting the statutory deadline for container-related rulemaking.

As mentioned at the August 5, 2022 meeting, it is unlikely that the Board will meet the statutory deadline, but it is important to keep the legislature informed that the Board is making a good faith effort to complete the directive. If the Board agrees, staff will prepare a progress report for the legislature in the form of a letter. Staff will work with the DACF Commissioner’s Office to submit the letter to the legislature.

MEGAN PATTERSON, DIRECTOR
90 BLOSSOM LANE, DEERING BUILDING



PHONE: (207) 287-2731
WWW.THINKFIRSTSPRAYLAST.ORG

Federal preemption of pesticide container regulation was discussed.

Staff thought it might be helpful for the purposes of discussion to reference the federal laws establishing federal preemption over pesticide containers. Preemption occurs when a higher level of government reduces or limits the authority of a lower level of government over an issue. For instance, if federal and state law conflict, then the federal law has authority.

EPA establishes preemptive authority over the regulation of containers here:

7 U.S.C. § 136v(b)—Authority of States:

A State may regulate the sale or use of any federally registered pesticide or device in the State, but only if and to the extent the regulation does not permit any sale or use prohibited by this subchapter.

(b) UNIFORMITY

Such State shall not impose or continue in effect any requirements for labeling or packaging in addition to or different from those required under this subchapter.

EPA further explains that package/packaging is defined as follows:

40 CFR part 152.3 Definitions:

Package or packaging means the immediate container or wrapping, including any attached closure(s), in which the pesticide is contained for distribution, sale, consumption, use, or storage. The term does not include any shipping or bulk container used for transporting or delivering the pesticide unless it is the only such package.

The Board discussion included several possible responses to the legislative rulemaking directive. Options discussed included:

1. Adopting the relevant federal regulations by reference.
2. Let the legislature know that the Board has encountered legal issues with federal preemption.
3. Do the research and attempt to find some small regulatory gap that might present an opportunity for state regulation.
4. Require registrants to state whether products are stored in containers that contain PFAS.*

*On May 16, 2022, the Board completed rulemaking to require pesticide product registrants to complete a series of affidavits as a part of the pesticide product registration process. The affidavits require registrants to address the use of container fluorination for packaging and presence of PFAS in product formulations.

The Board asked about regulations addressing PFAS and adjuvants.

In 2022, the 130th legislature passed LD 2019(PL 2022 c. 673) which, in part, added adjuvants to the umbrella definition of pesticide (7 M.R.S.A. §604). While it is a policy decision, staff have presumed that all regulations pertaining to pesticides now extend to adjuvants.