



July 18, 2022

VIA EMAIL to kerri.malinowski@maine.gov

Ms. Kerri Malinowski Farris  
Maine Department of Environmental Protection  
Office of the Commissioner  
17 State House Station  
Augusta, Maine 04333-0017

**Re: Comments on “Concept Draft for the Maine PFAS in Products Program,” Implementing Reporting Provisions of 38 MRSA Section 1612**

Dear Ms. Farris:

Thank you for the opportunity to provide comments addressing the Department of Environmental Protection’s (DEP) “Concept Draft for the Maine PFAS in Products Program” described during the June 30, 2022, stakeholder meeting.

Pesticides, including those containing fluorinated chemistry, are essential to protecting public health and safety, communities, ecosystems, and crops grown in Maine. Pesticides are applied in Maine by professional applicators, growers, and consumers to manage mosquito and tick populations, create fire breaks, maintain roadway lines of site, keep transportation and utility rights of way clear of vegetation, manage invasive and non-native species on land and in water, and to grow important food crops.

**Reporting Deadline Extension**

We joined other chemical industry sectors sending a letter June 27 to Commissioner Loyzim requesting a 12-month extension of the January 1, 2023, deadline for all entities and sectors required to comply with reporting requirements under 38 MRSA Section 1612. We ask DEP to grant this extension.

**Confidential Business Information**

To the extent DEP subjects pesticides to 38 M.R.S. §1612, we urge the Department to safeguard any and all confidential business information (CBI) submitted to the Department. CBI protected under FIFRA (and other statutes) should continue to be similarly protected under 38 M.R.S. §1614. Section 10 of the Federal Insecticide, Fungicide and Rodenticide Act or FIFRA<sup>1</sup> establishes the types of information that

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<sup>1</sup> 7 U.S.C. § 136h. The confidentiality of business information regulations (i.e., 40 C.F.R. Part 2, Subpart B) establish the basic rules governing business confidentiality claims, how EPA handles such claims, and determinations by the Agency as to whether information is entitled to confidential treatment for reasons of business confidentiality.<sup>1</sup> Under these provisions, “reasons of business confidentiality” is defined to include the concept of trade secrecy and other related legal concepts. These concepts provide business with the right to hold their business information as confidential and limit use or disclosure of this information by others to retain business advantages derived from the information’s exclusivity.



may be afforded CBI protection when submitted to EPA under FIFRA and how that protection may attach.

Generally speaking, Section 10 prohibits, with limited and rare exception, the public disclosure of information which in the EPA Administrator's judgment contains or relates to trade secret, commercial, or financial information that is obtained from a person and privileged or confidential. CBI includes for example, the concentrations of chemical constituents of the pesticide (i.e., Confidential Statement of Formula); manufacturing or quality control processes; details of any methods for testing, detecting, or measuring the quantity of any deliberately added inert ingredient of a pesticide; and the identity or percentage quantity of any deliberately added inert ingredient of a pesticide.<sup>2</sup> Maine's pesticide law specifically recognizes FIFRA Section 10's confidentiality provisions. Maine Title 7 M.R.S. §607.5-A Confidentiality, states any pesticide-related information protected under federal and state pesticide laws are confidential and may not be available for public inspection.

### **Registration Fees**

We recommend fees be appropriate for a product registration program and ask DEP to provide a system for electronic transmission of funds and batch payment to ensure an efficient administrative process. We appreciate DEP's consideration of a registration fee that is sufficient and reasonable.

### **Pesticides Are Unavoidable Use**

We urge DEP to consider pesticides an unavoidable use under 38 M.R.S. §1614. Pesticides undergo a rigorous scientific assessment process as part of EPA's registration procedures. All pesticides distributed or sold in the United States must be registered (licensed) by EPA. Pursuant to FIFRA, under which pesticides are regulated, EPA independently evaluates chemical-specific data to ensure that pesticides can be used safely with reasonable certainty of no harm and without unreasonable adverse effects to the environment<sup>3</sup> when label directions are followed.

Importantly, EPA is also required to review each registered pesticide at least every 15 years to ensure that each pesticide continues to meet FIFRA requirements. As part of this registration review, EPA often seeks additional scientific information from registrants to ensure that EPA has the necessary scientific information to conduct its review, based on the best available science.

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<sup>2</sup> 7 U.S.C. § 136h(d)(1). Disclosure is permitted only if the Administrator has first determined that disclosure is necessary to protect against an unreasonable risk of injury to health or the environment.

<sup>3</sup> FIFRA defines the term "unreasonable adverse effects on the environment" to mean: "(1) any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide, or (2) a human dietary risk from residues that result from a use of a pesticide in or on any food inconsistent with the standard under section 408 of the Federal Food, Drug, and Cosmetic Act."



Further, because the attributes of pesticides are well known, benefits are recognized in the regulatory process, and a range of products with different chemical structures contribute to effective control and resistance management, we believe pesticide formulations are an “unavoidable use.”

The PFAS chemistry issue is complex, so we appreciate the significant resources and work DEP has committed to this issue. Please contact us if we may provide more information about pesticides.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Novak", enclosed in a thin black rectangular border.

Chris Novak, President &  
CEO CropLife America  
4201 Wilson Boulevard  
Arlington, VA 22203  
202-296-1585

A handwritten signature in black ink, appearing to read "Megan J. Provost", enclosed in a thin black rectangular border.

Megan J. Provost, President  
RISE (Responsible Industry for a Sound Environment)<sup>®</sup>  
4201 Wilson Boulevard  
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202-872-3862

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Established in 1933, CropLife America ([www.croplifeamerica.org](http://www.croplifeamerica.org)) represents the developers, manufacturers, formulators, and distributors of plant science solutions for agriculture and pest management in the United States. CropLife America’s member companies produce, sell, and distribute virtually all the crop protection and biotechnology products used by American farmers.

RISE is the national not-for-profit trade association representing more than 220 producers and suppliers of specialty pesticide and fertilizer products to both the professional and consumer markets. RISE member companies manufacture more than 90 percent of domestically produced specialty pesticides used in the United States, including a wide range of products used on lawns, gardens, sport fields, golf courses, and to protect public health.