

State of Vermont
Agency of Agriculture, Food and Markets



Public Health & Agricultural Resource Management Division

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Best Management Practices for the Use of Insecticide Treated Article Seeds

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Vermont Best Management Practices for the Use of Insecticide Treated Article Seeds

Section 1. General

1.01 Preamble:

In 2017, and in accordance with Act 83 of the 2016 Vermont Legislative session, the Vermont Pollinator Protection Committee issued its report to the legislature including recommendations for the use of pesticides. In 2021, the Vermont Legislature passed Act 49, establishing the Agricultural Innovation Board (“AIB”) – a non-partisan board comprised of 13 members with diverse agricultural, public health, environmental, and scientific knowledge and experience. In 2022, the Vermont Legislature passed Act 145 that, among other things, directs the Vermont Agency of Agriculture, Food and Markets, in consultation with the AIB, to adopt by rule Best Management Practices (“BMPs”) for the use of treated article seeds in the State.

To address its responsibility to develop a policy recommendation for neonicotinoid treated article seeds, the AIB invited testimony from subject matter experts, industry representatives, researchers, and agricultural services providers in 2022 and 2023. Through this process, the AIB learned about: the toxicity of neonicotinoid insecticides on non-target insects, and organisms up the trophic ladder; the potential risk for pollinator exposure, and exposure to small mammals, birds, and amphibians from the use of neonicotinoid treated seeds; the complexity of the national seed market; and a current lack of State-specific field research evaluating the risks and benefits of neonicotinoid treated article seeds considering current conservation tillage practices in the State. The AIB determined that more work is needed and recommended actions to better understand the issues within Vermont, help educate growers about practices that may limit pest pressure and reduce non-target exposure, and promote ongoing or planned research.

Seeds treated with a pesticide to protect the seed are classified as “treated articles” under the Federal Insecticide Fungicide and Rodenticide Act (“FIFRA”) and Vermont law. As “treated articles”, treated article seeds are exempt from various FIFRA and State law pesticide provisions. The Environmental Protection Agency (“EPA”) is currently assessing whether pesticide treated seeds should be further regulated. EPA issued an Advanced Notice of Proposed Rulemaking for Public Comment in October 2023, soliciting information on the use of pesticide treated seed. Included in the Advanced Notice of Proposed Rulemaking are proposed seed bag label requirements.

1.02 Enabling Legislation: These rules are adopted pursuant to 6 V.S.A. § 1105a(a)(1) and (c)(1). These rules are intended to be interpreted harmoniously with State and federal law, including the Vermont Rule for Control of Pesticides. If distinct laws are updated, cannot be interpreted harmoniously, and/or conflict, then the following order of precedence applies: 1) federal law (when it preempts state law or incorporates mandatory label requirements), 2) state statute, 3) Vermont Rule for Control of Pesticides, and 4) these rules.

- 1.03 Purpose: The following BMPs are established for appropriate use of insecticide treated article seeds. These practices are recommended best practices to be used whenever reasonable and practical. Additional or modified BMPs may be adopted as Vermont-based research evolves and provides more guidance.

Section 2. Definitions

- 2.01 Container means a device in which an insecticide treated article seed is stored, transported, disposed of, or otherwise handled.
- 2.02 Diamide Pesticide means any pesticide containing a chemical belonging to the anthranilic diamide class of chemicals.
- 2.03 Groundwater means water below the land surface that occurs in a zone of saturation.
- 2.04 Integrated Pest Management (IPM) means a sustainable, science-based, decision-making process that combines biological, cultural, physical and chemical tools to identify, manage and reduce risk from pests, and utilizes pest management tools and strategies that minimize overall economic, health and environmental risks.
- 2.05 Label or Labeling means:
- (a) the written, printed, or graphic matter on, or attached to, the seed bag, or the immediate container thereon;
 - (b) the outside container or wrapper of the retail package, if there is one, of the seed bag; and
 - (c) the written, printed, or graphic matter that is incorporated into the label by reference.
- 2.06 Loading means any act of transferring an insecticide treated article seed to or from any storage container, or to any planter.
- 2.07 Neonicotinoid Pesticide means any pesticide containing a chemical belonging to the neonicotinoid class of chemicals.
- 2.08 Insecticide Treated Article Seeds are treated article seeds that are treated or coated with an insecticide including neonicotinoid and/or anthranilic diamide insecticides.
- 2.09 Person means any individual, partnership, association, corporation, or organized group of persons whether incorporated or not, including:
- (a) an unincorporated organization, trust, or other legal or commercial entity, including a joint venture or affiliated ownership;

- (b) a municipality or state agency; or
 - (c) individuals and entities affiliated with each other for profit, consideration, or any other beneficial interest derived from agricultural management, including lessors and lessees.
- 2.10 Storage means the holding of an insecticide treated article seed for use or distribution in an area other than the sales floor of a licensed retailer.
- 2.12 Surface Water means all rivers, streams, brooks, reservoirs, ponds, lakes, springs, and all bodies of waters, artificial or natural, that are contained within, flow through, or border the State or any portion of it.
- 2.13 Treated Article means a pesticide or class of pesticides exempt under 40 C.F.R. § 152.25(a) from regulation under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136-136y.
- 2.14 Use means:
- (a) pre-planting activities involving the transporting and loading of an insecticide treated article seed;
 - (b) planting of an insecticide treated article seed;
 - (c) transporting or storing an insecticide treated article seed or container that has been opened;
 - (d) cleaning equipment used for transporting or planting an insecticide treated article seed; and
 - (e) disposing of any excess insecticide treated article seed, equipment wash water, or container.

Section 3. Best Management Practices

- 3.01 General. A person who uses an insecticide treated article seed should adhere to label requirements. Where provisions of this rule conflict with label language, the label language applies.
- 3.02 Label Guidance. A person using an insecticide treated article seed should follow the directions and requirements on an insecticide treated article seed bag label including:
- (a) proper handling, storage, use, and disposal;
 - (b) recommended rate and depth of planting; and
 - (c) hazard statements related to pollinators.

- 3.03 Dust and Non-target Exposure Mitigation. A person using an insecticide treated article seed should minimize dust generation and potential drift or other non-target exposure from the seed as follows:
- (a) avoid planting during windy conditions (>15mph) and when wind is blowing toward a nearby surface water or flowering crops;
 - (b) handle seed bags carefully during transport and loading to reduce abrasion and dust generation;
 - (c) use dust-reducing seed lubricants and avoid using lubricants that increase dust due to abrasion;
 - (d) ensure the planter is calibrated and functions properly;
 - (e) avoid or reduce releasing excess dust from a seed bag, including by loading planters at least 10 yards inside field borders;
 - (f) clean planting equipment without using compressed air;
 - (g) clean planting equipment without contaminating surface water and pollinator attractive habitats;
 - (h) dispose of excess rinse water from cleaning within the crop field and without causing surface ponding;
 - (i) do not broadcast plant or scatter seeds to soil surfaces;
 - (j) ensure all planted seeds are thoroughly incorporated during planting and evaluate whether additional incorporation is necessary after initial planting to thoroughly cover any exposed seeds; and
 - (k) collect any seeds spilled during loading or planting and store them for subsequent planting in accordance with section 3.06, or dispose of any seeds spilled during loading or planting in accordance with section 3.07.
- 3.04 Integrated Pest Management. A person using an insecticide treated article seed should implement integrated pest management practices including the following practices:
- (a) learn which crop production practices increase or reduce risk of insect pest damage;
 - (b) choose an appropriate rate of insecticide seed treatment that can effectively manage target pests without overapplication; and

- (c) utilize multiple pest management methods (cultural, mechanical, biological) to avoid or reduce pest risk, whenever feasible.

3.05 Communication and Continuous Education.

- (a) Any person using an insecticide treated article seed should provide at least 48 hours advance notice to all apiculturists who have an established apiary on the premises.
- (b) A person using an insecticide treated article seed should attend reasonably available education and outreach programs, including those provided by university extension services or the seed industry related to best management practices for using insecticide treated article seeds.

3.06 Storage.

- (a) Return insecticide treated article seeds that are spilled during loading or planting to the original seed lot container.
- (b) Store insecticide treated article seeds away from food and feedstuff and protect and secure them to prevent unauthorized access by people and wildlife.

3.07 Disposal.

- (a) Unless being used for storage in accordance with section 3.06(a), dispose of insecticide treated article seeds and/or containers:
 - (1) in accordance with the seed bag label and local requirements; or
 - (2) by returning to the manufacturer.
- (b) Do not:
 - (1) Recycle an insecticide treated article seed container;
 - (2) Compost any insecticide treated article seed;
 - (3) Burn or otherwise incinerate any insecticide treated article seed in a stove inside a residence or outbuilding; and/or
 - (4) Use a treated seed for fuel or ethanol production purposes.

Section 3. Severability

If any provision of this rule or its application to any person or circumstance is determined to be invalid or in violation of the Constitution or laws of the United States or Vermont, that determination shall not affect any other provision or application of this rule that may be given effect without the invalid provision or application, and to that end all provisions of this rule are severable.

Section 4. Effective Date

This rule shall become effective on [15 days after adoption].