

To Members of the Legislative Committee on Administrative Rules,

Thank you again for allowing me to testify before the committee about the proposed pesticide rule. I am providing the information below as a follow-up to that discussion.

Subsequent to my testimony, Mr. Giguere said the following: "The Committee [referring to the Pollinator Protection Committee] outlined exactly what they wanted updated in the regulations and said change your regs to meet these specs, and all of those changes are in the regulations. What Ms. Bellairs is talking about are other recommendations that weren't supposed to go into the regs but were just something that the Agency should do and they have been done in portions over the years either through legislation or through policy at the agency. And we can be more specific on those counts. I don't have my copy of the Report; I don't remember it was so long ago."

With this, Mr. Giguere is apparently saying that because some PPC recommendations weren't included in the section of their Report headed Changes to the State pesticide regulations, the Agency need not address them in this rule.

However, I recently contacted a member of the Pollinator Protection Committee (PPC) and asked why only some recommendations ended up in the section dealing with changes to State pesticide regulations and others did not. This is the response I received:

"...the classifications of the ideas was something that Cary just did without any conversation or confirmed intent by the full committee that I can remember. His presentation of the results of our discussions/votes seemed to make sense at the time, and it accurately included the brainstorming ideas we all had contributed, so no-one questioned it that I know of. I personally did not give much thought to the classifications or groupings that the ideas were organized into. I did not believe that the list of ideas was going to be the final document and I don't believe anyone else did either when the list was first created as it was supposed to be the basis for a Pollinator Protection Plan. Since we ran out of time, it ended up becoming a list of recommendations instead."

So Mr. Giguere's contention that the PPC "outlined exactly what they wanted updated in the regulations" is not supported by this member of the PPC. This PPC member also said that many of the recommendations contained the word "should" because the Committee didn't feel it had the authority to use the word "shall."

THE PPC RECOMMENDATIONS BELOW HAVE NOT BEEN FULLY IMPLEMENTED OR INCLUDED IN THE RULE

The PPC Report states that the Agency will "accept recommendations as comments to its rulemaking" except that recommendations that do not require rulemaking will be used "to

update its educational criteria." We contend that the recommendations below from the 2017 Report should be in the rule, and that they are not "educational criteria." Below are **direct quotes** from the Pollinator Protection Committee Report regarding recommendations that are specifically aimed at the AAFM. From the Pollinator Protection Committee Report:

"Many of the recommendations pertain to the Vermont Agency of Agriculture, Food & Markets' pesticide regulations, as well as policies within the pesticide regulatory program. As the Agency is about to undergo an update of these regulations, the Agency will accept these recommendations as comments to its rule-making, where appropriate. Recommendations that do not require rule-making will be used by the Agency to update its educational criteria."[from page 2 of the report; emphasis added]

1."A statewide moratorium on applications to ornamental plants accessible to pollinators with neonicotinoid products, applied by soil drench, trunk injection, foliar and basal bark sprays, for three years or until such time research can demonstrate rates at which treatment can be safe for pollinators. Research and management and treatment of invasive species would be exempted." This item passed with a **9-0-0** vote of the PPC

Comment: Though this recommendation does not specifically refer to the AAFM, the previous paragraph quoted does indicate that the AAFM will consider items for its update of regulations if that item requires rulemaking. The Agency declined to add this recommendation to the Rule.

In addition, the recommendation above affects the application of pesticides, which directly relates to the bee provisions that the Agency has included in the Rule:

Provision in the proposed Rule affecting only "managed" bees:

5.04 Protection of Bees

- (a) No person shall apply a pesticide to a flowering crop, including but not limited to, alfalfa, apple, blueberry, clover, pumpkin, raspberry, squash, or trefoil without prior notification of at least 48 hours to an apiculturist who has an established apiary on the premises.
- (b) A person hiring a commercial applicator for an application under Section 5.04(a) shall notify, or cause to be notified, the apiculturist at least 48 hours prior to the application.
- (c) A person applying a pesticide that is highly toxic to bees shall:
 - (1) apply the pesticide during periods and conditions of least exposure, such as early morning or late evening; and when winds are less than nine mph;

- (2) include a 50-foot buffer from pollinator foraging sites, such as natural and semi-natural areas or intentional pollinator plantings or a 20-foot-wide non-pollinator-attractive vegetative barrier higher than the spray release height with an established 60% plant density.
- (d) A person shall avoid the application of a fungicide or soil fumigant to pollinator-attractive plants when in bloom.

2."The Agency of Agriculture, Food & Markets should classify all pesticides with active ingredients that are highly toxic to bees restricted use products (Vermont Class A).This recommendation passed 8-0-1

"For the purposes of these recommendations the term "highly toxic to bees" was defined by the Committee as those active ingredients classified as EPA Toxicity Category I, highly toxic to bees . . ." [from page 3 of the PPC report]

Comment: As mentioned in testimony, *Restricted Use Pesticides can still be applied by trained applicators*. If this provision were in the rule, it would be an incentive not to use the pesticides that are the most toxic to bees, which would be a very good thing. The Agency declined to accept this recommendation.

And the Agency said in their draft rule comment that pesticides "highly toxic to bees" would include ALL pesticides. The table in the link below lists pesticides that are highly toxic to bees and shows that only about 77 pesticides fall into that category. The vast majority of pesticides listed in the 7-page table are listed as medium or low toxicity to bees.

<https://pesticidestewardship.org/wp-content/uploads/sites/4/2019/12/Bee-Pesticide-Risk-Traffic-Light-3-2-17.pdf>

3."The Agency of Agriculture, Food & Markets should put in place a robust program to track the amount of pesticides being released within the state on a yearly basis (as many types and uses as possible, including treated articles) to assess if the amount released in Vermont's environment is growing, declining or remaining static." Agreed by Consensus*

Comment: This is a change that we requested be made to the "use" definition so that the use of treated article seeds would be included in the total of pesticides released annually within the state. However, the Agency declined to accept this recommendation. As indicated in testimony, in 2015 the Agency prepared a report on neonicotinoid seeds which stated "A significant quantity of neonicotinoid pesticide enters Vermont on treated seed"; and it estimated that treated seeds account for 8,270 pounds of ai [active ingredient] per year in

Vermont."

https://pss.uvm.edu/beecllover/Articles/NEONICOTINOID_PESTICIDES_Report_Final.pdf

4."The Agency of Agriculture, Food & Markets should revise the Regulations for the Control of Pesticides, specifically identifying managed and native pollinators and their habitat as an environmental concern in the regulations and permit language." Agreed by Consensus*

Comment: We requested that the "Protection of Bees" section of the rule apply to managed and wild pollinators. The Agency declined to accept that suggestion, notwithstanding that this provision IS part of the PPC's recommendations for regulations

5."The Agency of Agriculture, Food & Markets will use its regulatory authority of treated articles to develop best management practices (BMPs) on planting neonicotinoid treated corn/soybean seed starting as soon as possible. They will not be permitted unless a quantifiable demonstrated need can be identified by scouting techniques." Split Opinion Favorable ***

Comment: The Agricultural Innovation Board is currently working on this issue. The PPC suggested that these BMP's be done "as soon as possible." Five years have elapsed since this recommendation was directed to the AAFM.

***Consensus:** recommendations received strong support from all

****General agreement:** recommendations received support from at least five members and no significant opposition

*****Split opinion (favorable):** recommendations were supported by 5 or more members and opposed by at least two members

Additional recommendations:

The PPC also made other recommendations for the AAFM to address which we believe are critical to implement in order to reduce pesticide impacts on people and the environment:

"The Agency of Agriculture Food & Markets should track all pesticide use and set goals for pesticide reduction." **Consensus***

"The Agency of Agriculture Food & Markets should work with the UVM Extension program to set specific IPM thresholds before use of pesticides, identify less toxic options for farmers, and reduce overall use of pesticides." **Consensus***

"Pesticides used in Vermont should be based on need, not used prophylactically." **Passed**

8-1-0

Link to Pollinator Protection Committee report:

<https://agriculture.vermont.gov/sites/agriculture/files/documents/Pollinator%20Protection%20Report-FINAL.pdf>

Pollinator Protection Committee Members:

Katie Ballard - Ballard Acres Farm, Georgia, VT and Director of Research at W.H. Miner Institute

Eric Boire - Crop Production Services, Addison, Vermont and President of Vermont Tree Fruit Growers Association

Terry Bradshaw - Tree Fruit and Viticulture Specialist, University of Vermont, **Chair of the Pollinator Protection Committee**

Chris Conant - Claussen's Greenhouses, Colchester, Vermont

Ross Conrad - Dancing Bee Gardens, Middlebury, VT. Member of Vermont & Addison County Beekeepers Associations and a regular contributor to Bee Culture.

Cary Giguere - Agrichemical Program Manager and Chair of State FIFRA Issues Research and Evaluation Group (SFIREG)

John Hayden - The Farm Between, Jeffersonville VT

Mike Palmer - French Hill Apiaries, St. Albans, VT. Member of the Vermont Beekeepers Association.

Leif Richardson - Research fellow, Gund Institute, University of Vermont and research associate with the Vermont Center for Ecostudies

Jane Sorensen - River Berry Farm, Fairfax, Vermont. Also owns Northeast Pollinator Plants

We believe that the legislative intent to implement these recommendations of the PPC is clear. The Rule proposed by AAFM omits some of their key recommendations. We hope this information is helpful to the Committee in its deliberations.

Judy Bellairs, Pollinator Protection Leader
Vermont Chapter of the Sierra Club
December 7, 2022