

Act 182 (H.706). An Act Relating to Banning the Use of Neonicotinoid Pesticides

Summary

A. Overview

- Act No. 182 of 2024 evolved over the past 10 years as Vermont and other jurisdictions enacted laws to regulate treated articles and treated article seeds specifically.
- The U.S. EPA establishes standards for the use of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), but states have substantial authority to regulate use and sale of pesticides.
- A treated article is not a pesticide under EPA rules. EPA defines a treated article as “an article or substance treated with, or containing, a pesticide to protect the article or substance itself (for example, paint treated with a pesticide to protect the paint coating, or wood products treated to protect the wood against insect or fungus infestation), if the pesticide is registered for such use.” 40 C.F.R. § 152.25.
- EPA regulates the original use of a pesticide in the creation of a treated article. But, the subsequent distribution of the treated article has been determined by EPA as “to be of a character not requiring regulation under FIFRA and therefore [are] exempt from all provisions of FIFRA when intended for use, and used only in the manner specified.” 40 C.F.R. § 152.25.
- Because of the EPA FIFRA exemption, most states do not regulate treated articles, but the FIFRA exemption does not preempt or prevent states from regulating treated articles.
- In 2015, Vermont became the first state to allow for the comprehensive regulation of treated articles when it enacted Act No. 99, an Act Relating to Regulation of Treated Article Pesticides.
- Act No. 99 authorized AAFM, upon recommendation of the predecessor to the current Agricultural Innovation Board (AIB), to adopt best management practices, standards, procedures, and requirements related to the sale, use, storage or disposal of treated articles that will have a hazardous long term deleterious effect on the environment.
 - Act No. 99 included discretionary authority for AAFM to adopt rules for persons selling treated article seeds to maintain records of sales.
- The Act No. 99 authority was discretionary—i.e. may adopt rules—because no State regulated treated articles and also because of expressed anxiety from advocates about the scope and effect of regulation.
- AAFM did not enact rules under Act No. 99 regulating treated articles, but, over time, concern and evidence grew that neonicotinoid pesticides might contribute to harm to pollinator species. Other jurisdictions, such as the European Union and Canadian provinces began regulating treated articles and specifically treated article seeds containing neonicotinoid pesticides.
- In 2022, the General Assembly enacted Act No. 145 requiring AAFM, after consultation with the AIB to adopt by rule BMPs for the use in the State of neonicotinoid treated article seeds. In developing those rules, AAFM was directed to address certain factors (see attached).
- In 2024, AAFM developed proposed draft rules establishing BMPs in response to Act No. 145. Those draft rules were presented to the General Assembly, and they specifically stated that they “were best practices to be used whenever reasonable and practical.”
- AAFM never adopted those draft rules, because during the 2024 session, the General Assembly took up H.706 (Act No. 182), an Act Relating to Banning the Use of Neonicotinoid Pesticides. Also, during that time, New York enacted law regulating the use of neonicotinoid treated seeds.

B. Summary of Act No. 182 of 2024

Sec. 1. Findings

The Findings address:

- The harm that neonicotinoid pesticides have been proven to pose to pollinator species.
- The fact the European Union and the Province of Quebec have banned their use; and
- The fact that the New York General Assembly passed legislation that:
 - prohibits the sale or use of corn, soybean, and wheat seed treated with imidacloprid, clothianidin, thiamethoxam, dinotefuran, or acetamiprid; and
 - prohibits the nonagricultural application of imidacloprid, clothianidin, thiamethoxam, dinotefuran, or acetamiprid to outdoor ornamental plants and turf.

Sec. 2. 6 V.S.A. § 1101. Definitions Section for Statutory Chapter on Control of Pesticides

Sec. 2 adds the following definitions to the statutory chapter on the control of pesticides:

- “Agricultural commodity” means any food in its raw or natural state, including all fruits or vegetables that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.
- “Agricultural emergency” means an occurrence of any pest that presents an imminent risk of significant harm, injury, or loss to agricultural crops.
- “Bloom” means the period from the onset of flowering or inflorescence until petal fall is complete.
- “Crop group” means the groupings of agricultural commodities specified in 40 C.F.R. § 180.41(c).
- “Environmental emergency” means an occurrence of any pest that presents a significant risk of harm or injury to the environment, or significant harm, injury, or loss to agricultural crops, including any exotic or foreign pest that may need preventative quarantine measures to avert or prevent that risk, as determined by the Secretary of Agriculture, Food and Markets.
- “Ornamental plants” mean perennials, annuals, and groundcover purposefully planted for aesthetic reasons.

Note: “Neonicotinoid pesticide” and “neonicotinoid treated article seeds” are defined in 6 V.S.A. § 1101:

- “Neonicotinoid pesticide”: any economic poison containing a chemical belonging to the neonicotinoid class of chemicals.
- “Neonicotinoid treated article seeds”: seeds that are treated or coated with a neonicotinoid pesticide.

Sec. 3. 6 V.S.A. § 1105b. Prohibition on Use and Sale of Neonicotinoid Treated Article Seeds

- Beginning Jan. 1, 2029, Sec. 3 prohibits a person from selling, offering for sale or use, distributing, or using any neonicotinoid treated article seed for soybeans or for any crop in the cereal grains crop group (crop groups 15, 15-22, 16, 16-22).
- The Secretary of Agriculture, after consultation with ANR, may issue a written exemption order to suspend the prohibition on use of neonicotinoid treated article seed for a period of not more than one year.

- ❖ The exemption process follows the exemption process in New York:
 - the person seeking the exemption order shall complete an integrated pest management training, provided by the Secretary or an approved third party;
 - the person seeking the exemption order shall complete a pest risk assessment and submit a pest risk assessment report to the Secretary;
 - any seeds authorized for use under the exemption order shall be planted only on the property or properties identified in the pest risk assessment report; and
 - the person seeking the exemption shall maintain records of the pest risk assessment report and records of when treated seeds are planted, both of which shall be subject to review by the AAFM.
- A written exemption order shall:
 - not be valid for more than a year; and
 - shall specify the types of neonicotinoid treated article seeds to which the exemption order applies, the date on which the exemption order takes effect; the exemption order's duration;
- A written exemption order may:
 - establish restrictions on use of the neonicotinoid treated article seeds to which the exemption applies to minimize harm to pollinators, bird populations, ecosystem health, and public health; or
 - establish other restrictions related to the use of neonicotinoid treated article seeds to which the exemption order applies that AAFM considers necessary.
- When a written exemption order is issued, the Secretary of Agriculture is required to submit a copy to the General Assembly. The General Assembly shall post the order to its website.
- AAFM, after consultation with ANR, may rescind an exemption order at any time.

Sec. 4. 6 V.S.A. § 1105c. Prohibited Uses of Neonicotinoid Pesticides

- Starting July 1, 2025, the following uses of neonicotinoid pesticides that are not treated seeds are prohibited:
 - the outdoor application of neonicotinoid pesticides to any crop during bloom;
 - the outdoor application of neonicotinoid pesticides to soybeans or any crop in the cereal grains crop group (crop groups 15, 15-22, 16, and 16-22);
 - the outdoor application of neonicotinoid pesticides to crops in the leafy vegetables, brassica, bulb vegetables, herbs and spices, and stalk, stem, and leaf petiole vegetables crop groups (crop groups 3, 3-07, 4, 4-16, 5, 5-16, 19, 22, 25, and 26) harvested after bloom; and
 - the application of neonicotinoid pesticides to ornamental plants.
- The Secretary of Agriculture may issue an exemption order to suspend a prohibition for a period of not more than one year. The exemption order process for neonicotinoid pesticides is similar to the exemption process for neonicotinoid treated seeds.

- An exemption order will be issued if:
 - a valid environmental emergency or agricultural emergency exists;
 - the pesticide would be effective in addressing the environmental emergency or agricultural emergency; and
 - no other, less harmful pesticide or pest management practice would be effective in addressing the environmental emergency or the agricultural emergency.
- The exemption order shall:
 - not be valid for more than one year;
 - specify the neonicotinoid pesticides, uses, and crops, or plants to which the exemption order applies; the effective date of the exemption order; and the exemption order's duration; and
 - provide a detailed evaluation determining that an agricultural or environmental emergency exists.
- A written exemption order may:
 - establish restrictions on the use of neonicotinoid pesticides to which the exemption order applies to minimize harm to pollinators, bird populations, ecosystem health, and public health; or
 - establish other restrictions related to the use of neonicotinoid pesticides to which the exemption order applies that the Secretary of Agriculture, Food and Markets considers necessary.
- When a written exemption order is issued, the Secretary of Agriculture is required to submit a copy to the General Assembly. The General Assembly shall post them to the General Assembly's website.

Sec. 5. 6 V.S.A. § 918; Conforming Amendment

- Sec. 5 is a conforming amending. Currently, neonicotinoid pesticides are required to be regulated as restricted use pesticides, except for certain exemptions.
- One of the current exemptions is for the use of neonicotinoid treated seed. Since such seeds will be prohibited, the exemption for them must be struck to avoid confusion.

Sec. 6. 6 V.S.A. § 1105a(c). Best Management Practices (BMPs) for Use of Neonicotinoid Pesticides

- The General Assembly previously required the Secretary of Agriculture to propose rules to establish BMPs for the use of neonicotinoid pesticides.
- Sec. 6 directs that those rules should include BMPs for the use of neonicotinoid treated article seeds and neonicotinoid pesticides prior to the effective dates of the relevant prohibitions on their use.
- The rules shall also include BMPs for the agricultural use after July 1, 2025 of neonicotinoid pesticides the use of which is not otherwise prohibited under law.

Sec. 7. 2022 Acts and Resolves No. 145, Sec. 4. Conforming Amendment

- Sec. 7 changes across reference for the due date of rules containing BMPs for treated article seeds.
- The 2024 due dates for rules would not apply to the new rulemaking requirements under Sec. 6 of this act.

Sec. 8. Contingent Repeal

- Sec. 8 would repeal the Vermont prohibitions on use of neonicotinoid treated seeds or on use of neonicotinoid pesticides if the similar provisions in New York are repealed.

Sec. 9. Effective Dates

- The findings (Sec. 1), definitions (Sec. 2), revised BMP rulemaking (Sec. 6), the conforming amendments (Secs 5 and 7), and Sec. 8 (the contingent repeal) take effect on passage.
- Senate Agriculture amended the effective dates for the prohibitions on use of neonicotinoid pesticides and the use of neonicotinoid treated article seed.
- The prohibited use of neonicotinoid pesticides (Sec. 4) shall take effect on July 1, 2025 (as the House proposed), but if the New York prohibition on the use of neonicotinoid pesticides on ornamental plants is not in effect, the Vermont law would not be effective until the New York prohibition is in effect
- The prohibition on use of neonicotinoid treated article seed (Sec. 3) shall take effect on January 1, 2029 (which is 2 years later than the House proposal), but if the New York prohibition on the use of neonicotinoid treated seeds is not in effect, the Vermont law would not be effective until the New York prohibition is in effect.

Sec. 2 of No. 145 of 2022. An act relating to the sale, use, or application of neonicotinoid pesticides.

Sec. 2. 6 V.S.A. § 1105a is amended to read:

§ 1105a. TREATED ARTICLES; POWERS OF SECRETARY; BEST

MANAGEMENT PRACTICES

(a) The Secretary of Agriculture, Food and Markets, upon the recommendation of the Agricultural Innovation Board, may adopt by rule:

(1) best management practices (BMPs), standards, procedures, and requirements relating to the sale, use, storage, or disposal of treated articles the use of which the Agricultural Innovation Board has determined will have a hazardous or long-term deleterious effect on the environment, presents a likely risk to human health, or is dangerous;

(2) requirements for the response to or corrective actions for exigent circumstances or contamination from a treated article that presents a threat to human health or the environment;

(3) requirements for the examination or inspection of treated articles the use of which the Agricultural Innovation Board has determined will have a hazardous or long-term deleterious effect on the environment, presents a likely risk to human health, or is dangerous;

(4) requirements for persons selling treated articles to keep or make available to the Secretary records of sale of treated articles, and what treatments were received, the use of which the Agricultural Innovation Board has determined will have a hazardous or long-term deleterious effect on the environment, presents a likely risk to human health, or is dangerous; or

(5) requirements for reporting of incidents resulting from accidental contamination from or misuse of treated articles the use of which the Agricultural Innovation Board has determined will have a hazardous or long-term deleterious effect on the environment, presents a likely risk to human health, or is dangerous.

(b) At least 30 days prior to prefiling a rule authorized under subsection (a) or subsection (c) of this section with the Interagency Committee on Administrative Rules under 3 V.S.A. § 837, the Secretary shall submit a copy of the draft rule to the Senate Committee on Agriculture and the House Committee on Agriculture and Forestry for review.

(c)(1) Under subsection (a) of this section, the Secretary of Agriculture, Food and Markets, after consultation with the Agricultural Innovation Board, shall adopt by rule BMPs for the use in the State of neonicotinoid treated article seeds. In developing the rules with the Agricultural Innovation Board, the Secretary shall address:

(A) establishment of threshold levels of pest pressure required prior to use of neonicotinoid treated article seeds;

(B) availability of nontreated article seeds that are not neonicotinoid treated article seeds;

(C) economic impact from crop loss as compared to crop yield when neonicotinoid treated article seeds are used;

(D) relative toxicities of different neonicotinoid treated article seeds and the effects of neonicotinoid treated article seeds on human health and the environment;

(E) surveillance and monitoring techniques for in-field pest pressure;

(F) ways to reduce pest harborage from conservation tillage practices; and

(G) criteria for a system of approval of neonicotinoid treated article seeds.

(2) In implementing the rules required under this subsection, the Secretary of Agriculture, Food and Markets shall work with farmers, seed companies, and other relevant parties to ensure that farmers have access to appropriate varieties and amounts of untreated seed or treated seed that are not neonicotinoid treated article seeds.