Message

From: Jim Kunstman [jkunstman@pbigordon.com]
Sent: 12/4/2020 3:42:16 PM
To: Picone, Kaitlin [Picone.Kaitlin@epa.gov]; Messina, Edward [Messina.Edward@epa.gov]
CC: Ray McAllister [rmcallister@croplifeamerica.org]; Manojit Basu [mbasu@croplifeamerica.org]; rlattimore@croplifeamerica.org; jrathvon@paleyrothman.com; Wormell, Lance [Wormell.Lance@epa.gov]; Teter, Royan [Teter.Royan@epa.gov]; Trivedi, Adrienne [Trivedi.Adrienne@epa.gov]
Subject: RE: Your Recent Letter to AAPCO & SFIREG Re: Pesticide Impurities

Kaitlin / Ed,

Hopefully you both had a relaxing Thanksgiving holiday.

I know that you all have had more than a few things to think about lately, but have you had a chance to think about the discussion I shared last week?

With the agenda being published this week for the SFIREG meeting next week (partial copy below) .. I noticed that the topic of the AAPCO/SFIREG Issue Paper on Pesticide Impurities is going to be discussed .. most likely by Jackie Mosby? What I'm hoping she'll say is that this is a difficult topic which is getting some attention and that the EPA will be looking for all stakeholders to weigh in on it in the next few months. What I'm hoping she won't say is that with your EPA letter in hand, the states now have the ability to treat organic products, products used on organic commodities and marijuana differently than other pesticides regulated by FIFRA.

I also read that the UN this week declassified marijuana as a dangerous drug so I'm sure that the pressure will mount for the US to do something similar. While I have mixed feelings about marijuana in general, having had a teen who misused it terribly, I recognize that some of the problems with it may be easier to deal with if it can be more easily regulated. But, before it can be regulated, it must be studied more, and to do that, we need a firm set of rules to evaluate it with .. a set of rules that has had good discussion by all affected stakeholders.

I remain interested in further conversations on the subject. Let me know if this can be helpful to you as well.

Regards,

Jim

STATE FIFRA RESEARCH & EVALUATION GROUP (SFIREG)
FULL COMMITTEE AGENDA
2777 South Crystal Drive, One Potomac Yards (South Building) First Floor Conference Room
US EPA OFFICES, ARLINGTON, VA
December 7 - 8, 2020

Please join the meeting from your computer, tablet or smartphone.
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Monday, December 7, 2020 @ 12:30 PM (Eastern)

12:30 pm **Welcome, Introductions, and Announcements**
Gary Bahr, SFIREG Chair
Leo Reed, AAPCO President
Amy Sullivan, Executive Secretary

12:40 pm **Office of Pesticide Programs (OPP) Report**
Report on status of relevant activities of OPP impacting state pesticide regulatory programs including current status of items forwarded to EPA:
- *Update on EPA OPP Organizational Chart and changes*
- *Issue Paper-Pesticide Impurities in EPA Registered Pesticides (October 2018)*
- *Issue Paper-Cover Crop Issues and Plant-Back Restrictions (July 2019)*
- *Letter - Concerns Regarding The Establishment of Action Thresholds (July 2019)*

[Jackie Mosby and Sandra O'Neill, EPA/OPS/OMS]

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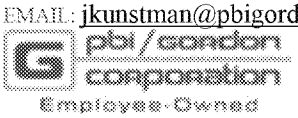

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From: Jim Kunstman
Sent: Monday, November 23, 2020 4:12 PM
To: Picone, Kaitlin <Picone.Kaitlin@epa.gov>
Cc: Ray McAllister <rmcallister@croplifeamerica.org>; Manojit Basu <mbasu@croplifeamerica.org>; rlattimore@croplifeamerica.org; jrathvon@paleyrothman.com; Messina, Edward <Messina.Edward@epa.gov>; Wormell, Lance <Wormell.Lance@epa.gov>; Teter, Royan <Teter.Royan@epa.gov>; Trivedi, Adrienne

<Trivedi.Adrienne@epa.gov>
Subject: RE: Your Recent Letter to AAPCO & SFIREG Re: Pesticide Impurities

Kaitlin,

Hello again! I've prepared some additional thoughts on the issue discussed last week thru our emails and put together the attached document.

This is no longer an issue for PBI-Gordon as we recalled our affected product back in 2017 to avoid the hassles I saw coming. We haven't canceled the registrations, however, in hopes that one day things will become clearer as to how products like this will be regulated. I chose to respond to this issue more because I think this issue can be resolved with proper discussion amongst all parties. What PBI-Gordon and other companies have gone and are going through because of the cloudiness of regulations is what discourages registrants from pursuing new organic product registrations.

I am optimistic that given some time, more research, and proper discussion, this issue can be overcome which is why I offer my thoughts and willingness to continue the conversation. The fact that this conversation is still needed, is why I again suggest that Ed indicates with further communication to AAPCO & SFIREG that the topics covered in his Oct 15 letter are preliminary in nature .. and need some more flushing out.

Thanks again for your efforts .. and hope you all have a great Thanksgiving holiday.

Jim

From: Jim Kunstman
Sent: Thursday, November 19, 2020 2:50 PM
To: Picone, Kaitlin <Picone.Kaitlin@epa.gov>
Cc: Ray McAllister <rmcallister@croplifeamerica.org>; Manojit Basu <mbasu@croplifeamerica.org>; Chris Novak <novak@croplifeamerica.org>; rlattimore@croplifeamerica.org; jrathvon@paleyrothman.com; Messina, Edward <Messina.Edward@epa.gov>; Wormell, Lance <Wormell.Lance@epa.gov>; Teter, Royan <Teter.Royan@epa.gov>; Trivedi, Adrienne <Trivedi.Adrienne@epa.gov>
Subject: RE: Your Recent Letter to AAPCO & SFIREG Re: Pesticide Impurities

Kaitlin,

Hey .. I just wanted to thank you for responding to my letter to Ed Messina. I don't think we've met yet .. but I know Ed wouldn't let just anyone handle issues like this .. so looking forward to some meaningful dialogue. I do have to wonder about someone who claims to enjoy discussing policy & procedures .. ha ha.

I did discuss this issue a bit at the Crop Life America (CLA) Registration Committee meeting last week, so I would like a day or so to compile the thoughts that were generated. I am also on the Strategic Oversight Council (SOC) for CLA and I wish that I would have had the letter to discuss when Ed spoke to that group a few weeks ago.

You are correct in noticing that our biggest concern is over the percieved change in how EPA is handling traditional versus organic products relative to the terms "adulterated" and "misbranding" and how PR 96-8 is being considered. Overall, I have to say that I was very pleased to see much of what was shared in the letter of Oct 15 .. clarifying which were issues and which should be looked into more. As I also indicated in my letter to Ed, my other concern is that his letter is already being used in legal battles to make points which I believe should still be under open discussion.

So .. as I indicated above .. I'll try to get back to you in a day or so to more clearly outline the issues .. and we can perhaps look to early next week if an additional discussion is needed.

Thanks again,

Jim

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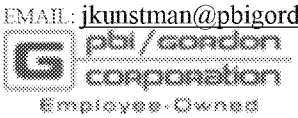

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Cc: Ray McAllister <rmcallister@croplifeamerica.org>; Manojit Basu <mbasu@croplifeamerica.org>; Chris Novak <novak@croplifeamerica.org>; rlattimore@croplifeamerica.org; jrathvon@paleyrothman.com; Messina, Edward <Messina.Edward@epa.gov>; Wormell, Lance <Wormell.Lance@epa.gov>; Teter, Royan <Teter.Royan@epa.gov>; Trivedi, Adrienne <Trivedi.Adrienne@epa.gov>
Subject: RE: Your Recent Letter to AAPCO & SFIREG Re: Pesticide Impurities

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Jim,

Ed looped me on your question, as following the recent OCSPP reorganization, SFIREG engagement is coordinated by the Intergovernmental & Community Relations Branch—which is part of the new Office of Program Support. While I'm new to this portfolio, I'm not new to OCSPP and I'm familiar with the response to SFIREG on the pesticide impurities issue paper. Additionally, in my in my previous role I coordinated the formulation of OPP's guidance inventory earlier this year as required by E.O. 13891, so I probably enjoy discussing policy/procedures requirements more than most.

We could use some additional clarity regarding your statement that there was a change in standard procedures included in the response letter and where the response directly ties to federal/state marijuana issues. It seems like you might be referring to the discussion on misbranding related to organic labeling claims, but additional information or questions would be helpful. Happy to discuss if that's easier. Additionally, I'm looping in our OECA colleagues to weigh in as needed if you have specific questions surrounding enforcement actions.

Thank you,
Kaitlin

Kaitlin Keller Picone
Chief, Intergovernmental & Community Relations Branch
Mission Support Division, Office of Program Support

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Cc: Ray McAllister <rmcallister@croplifeamerica.org>; Manojit Basu <mbasu@croplifeamerica.org>; Chris Novak <novak@croplifeamerica.org>; rlattimore@croplifeamerica.org; James Rathvon (jrathvon@paleyrothman.com) <jrathvon@paleyrothman.com>
Subject: Your Recent Letter to AAPCO & SFIREG Re: Pesticide Impurities

Ed,

I wonder if you would have a few moments to discuss the recent letter you sent to AAPCO and SFIREG Leadership. I understand that this letter was in response to their "White Paper" of Oct 16, 2018 regarding "Pesticide Impurities in EPA Registered Products". In general, I am excited that EPA wants to revisit the situation and come up with some ideas on resolution. The fact that this letter is proposing changes in some standard procedures, without being put out for public comment or discussion is very troubling. I found out about it due to a lawyer friend who indicated that the letter was already being used in a legal case between the State of OR and a company with an organic product caught up in the mess.

I don't know if you recall, but I was at the AAPCO meeting back in 2017 when Ms. Kachadoorian first formally presented the issues that were to be highlighted in their white paper. Examples that Rose used in her presentation were in fact based on products being distributed by PBI-Gordon. After her presentation, I spoke with you and Rick Keigwin in the back of the room about the subject and we discussed that indeed, the issue was not about pesticide impurities in general, but about the fact that the growing use of pesticides on marijuana was creating problems. These problems were primarily due to the fact that EPA could not move on registering pesticides on this crop, but that states were coming up with their own ways of dealing with the situation. States like OR, WA, CO, and CA put out their own lists of approved chemicals, most of which were either organic in nature, or were exempt from tolerances, and had enforcement rules which basically said that if a chemical not on their list was detected in marijuana, it had to be destroyed.

With the recent election voting to approve the "recreational use" of marijuana in more states .. and a new vice-president elect who is in favor of marijuana this is an issue which needs to be dealt with sooner than later. The 2018 Farm Bill opened the door for pesticides to be used on hemp (a cousin of marijuana), but not on crops containing more than 0.3% THC.

Your letter indicated that EPA has and is reviewing the situation, but without further discussion and comment by all parties involved, it should not be used to set policy or legal arguments. I've included Ray, Mano and Chris from CLA so that they are aware of the concern .. with hopes that a renewed discussion can take place .. and find some resolution which doesn't involve states coming up with ways to deal with problems such as this that might create a bigger chasm between FIFRA and States Laws. At the very least, I would strongly urge you to either withdraw the letter .. or at least indicate that it sets a "starting point" for future discussions .. and NOT yet be used as policy or to confirm legal arguments.

As always .. I have long been supportive of the actions you've taken and know that the industry and EPA need to work together as much as possible .. to continue to preserve the long standing tradition of protecting our nation with safe and effective products. As indicated .. I am eager to talk more if you have the time and interest.

Best Regards .. Jim

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