State Lead Agencies Issues with Neonicotinoid Treated Seed Regulation
Region 2 States Issue Topic
SFIREG Meeting
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DRAFT

Introduction

State Lead Agencies (SLA's) for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) in Region 2 states are receiving numerous inquiries and complaints about the current regulation and potential impacts of pesticides related to neonicotinoid treated seeds. Concerns have been raised about how states govern pesticide seed treatments known as "Treated Articles", and in particular the use of neonicotinoid treated seeds and potential impacts from residues under state and federal law and rules. Currently SLA's follow federal law where the EPA considers neonicotinoid seeds to be pesticides, but exempts them from regulation under FIFRA, 7 U.S.C. §§ 136-136y, where:

- All pesticides sold or distributed in the US must first be registered with the EPA,
- FIFRA defines a pesticide as including any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, 7 U.S.C. § 136(u),
- EPA may exempt a pesticide from FIFRA's requirements if it determines that regulation of the pesticide is unnecessary,
- Including to regulate for the purposes of the prevention of unreasonable environmental harm, 7 U.S.C. § 136w(b),
- The EPA exemption of "Treated Articles" and treated neonicotinoid seeds leaves the states with a regulatory gap related to complaints, questions, and potential lawsuits.
- The primary neonicotinoid active ingredients registered for seed treatments are acetamiprid, clothianidin, imidacloprid, and thiamethoxam.

Key Questions

- The utilization of pesticide treated seeds is a beneficial practice and vital for crop production for many commodities.
- However, as Region 2 SLA's and other states around the nation have discovered, treated seed dust and drift issues can pose extensive risk to pollinators and the environment.
- Aerial drift of seed treatment dust can be generated during treatment and planting.
- Environmental concerns are becoming very common as there are concerns on potential impacts to native and managed pollinators.
- While treating seeds with insecticides is vital for protecting seeds and emerging crops during the early growing season, and can reduce impacts to applicators and the overall environment through the reduced risk theories of treating seed, there becomes a

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potential wide-scale impact to beneficial insects, pollinators, aquatic systems, and the environment from the dust and residue.

- Without the ability to regulated treated articles, SLAs are left to rely upon education, training, extension and involvement, Integrated Pest Management (IPM) and Stewardship Strategies.
- The EPA regulatory exemption of treated seeds leaves SLA's with state programmatic and regulatory gaps and the burden of creating education and extension programs, and the impacts of responding to complaints and potential lawsuits.
- SLA's may struggle to have the funding and personnel to respond to the complaints and gaps in regulations and properly instruct applicators and mixers to properly follow the directions on the treated seed bags, properly inform and educate on understanding the hazard statements related to pollinators, non-target organisms, and aquatic systems.
- Managing treated seed is often complex and can involve education, IPM, and ensuring planting equipment is functioning and properly calibrated and maintained. Application lubricants can cause complications and should be chosen carefully to reduce treated seed abrasion increasing dust.
- Prevention of planted treated seed impacts can be complicated by weather conditions especially related to humidity, temperature, and wind. Understanding the location and proximity to pollinator habitat and activity is also very important. Also, the proximity to sensitive habitats and aquatic systems is important.
- The issues related to the prevention of creating treated seed dust and also managing spills are all complex and important issues for SLAs as concerns and complaints have increased for Region 2 states and other states around the country.

SFIREG Discussion:

- Region 2 SLAs recommend that SFIREG discuss the "Treated Article" FIFRA exemption issue with regards to neonicotinoid treated seeds, and consider this topic as an Issue Paper.
- Are these issues occurring with other states around the nation, and are the SLA authorities and approached not adequate to handle the treated seed impacts due to the "Treated "Article" exemption?
- Should neonicotinoid treated seed regulation be changed at the EPA level or will SLAs continue to deal with these issues state by state and respond to complaints, lawsuits, and the burden of providing education, training, extension, and stewardship solutions?
- Because the EPA exempts the regulation pesticide-treated seeds, it leaves each state to determine how to create appropriate responses, laws, rules, and management. Without uniform and comprehensive approaches under a regulatory environment to these issues, the SLAs are burdened in numerous ways and can have difficulty creating programs and restrictions necessary to protect pollinators, and the environment where treated seed may cause environmental contamination.

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