

Letter from Washington

Voices Rising to Protect Organic Standards

The USDA attack on organic standards continues around the October 2014 National Organic Standards Board (NOSB) meeting. The fall 2013 NOSB meeting raised serious questions about USDA changes in Board procedures that weaken its independent oversight of organic standards. This issue of *Pesticides and You* contains a thoughtful critique by Barry Flamm, Ph.D., the former chair of the NOSB, organic farmer, and deep thinker on organic practices.

USDA: Weakening Organic Standards

Starting point: Synthetic materials are defined as prohibited substances under federal organic law (*Organic Foods Production Act*), except when they are determined to be exempt by the NOSB in accordance with statutory criteria related to public health and environmental safety, compatibility with organic practices, and the need (or essentiality) in organic systems. As exempt prohibited materials, listed on the National List, the law establishes a five-year sunset process. Up until the reinterpretation of this word “sunset,” no one had questioned its long historical use in public policy and the requirement that laws with sunset provisions be reinstated or expire. And so, the NOSB, since its inception, voted on the question of whether exempt prohibited materials should be reinstated on the National List on a five-year cycle. This required a two-thirds vote of the Board—a high threshold and the same number of votes required to list the material in the first place through the NOSB petition process.

The process implementing sunset created a default assumption that, unless the Board voted the material back on the National List, it would fall off. The law incorporated the understanding that a supermajority is necessary to drive consensus among the organic stakeholders on the Board so that key sectors (consumers, farmers, environmentalists) would not be alienated from the process and turn their back on the organic market. In fact, the supermajority created a unified voice of support for the organic market, established trust in the organic label, and facilitated organic market growth to \$35 billion and climbing. Now, that has all changed with the announcement in September 2013 by USDA of a default assumption that materials stay on the National List unless they are taken off by a supermajority vote of the NOSB. This defies “sunset” as it is understood in policy making circles and by legal experts and raises questions of long-term integrity of the organic food label.

No one disputes that “sunset” is in the organic law. What is disputed is whether it is clearly defined. This isn’t the first time that we’ve seen government officials reinterpret a statute. However, a correct reading of the law requires attention to the context in which the words are read. A “textualist” would say that we just need to interpret the words on the page, without any context. As Jon Stewart pointed out in a bit on an *Affordable Care Act* court decision—in which Congress gave textualists an opening by leaving some words out of the law, these folks must get to a STOP sign on the street and then become immobilized because the word says stop. Of course, we know the meaning of STOP in the context of a stop sign on the street.

The default assumption that synthetic materials come off the National List in the absence of a Board vote (sunset) creates a statutory context requiring the Board to vote on whether to keep synthetic materials on the list, since the Secretary of Agriculture is prohibited from putting synthetic materials on the List without Board authorization. It is this process that gives the organic standards their integrity and the law its unique place among environmental statutes that make it extremely difficult (nearly impossible) to remove chemicals from commerce, despite mountains of scientific data, once they are permitted—and even if there are safer, more effective alternatives. The strong sunset foundation in the organic law is critical to organic growth, and “continuous improvement” in organic production practices.

Goats Protect the Ecosystem

As we search for effective non-chemical tools in land management, we turn our attention to an ecologically sensitive approach to vegetation management, while restoring, aerating, and fertilizing. This issue contains a talk that our Board member and president of Ewe4ic Ecological Services, Lani Malmberg, gave at the 32nd National Forum in Portland OR this spring. We advocate that this tool be more widely used in rural and urban environments as the threat of toxic herbicides increases daily.

Remembering Andrea Kidd Taylor, DrPH

Dr. Taylor passed away on September 1, 2014 at the age of 59 from cancer. As occupational and environmental health and safety expert and advocate (whether as an appointee to the U.S. Chemical Safety Board or the U.S. Presidential Advisory Committee on Gulf War Veterans’ Illnesses, or as a leader within the American Public Health Association, or as a professor at Morgan State University), and a member of the Beyond Pesticides Board of Directors for many years, Andrea taught us and reminded us of the purpose of education and action to advance values that protect people’s health, respect the environment, and uphold social and environmental justice. Those who attended Beyond Pesticides’ Forums and worked with Andrea know that her beautiful smile brought us joy, her persistence inspired a belief in change, and her willingness to give of herself taught us the value of collective action for the betterment of people and the planet. Andrea’s friendship and deep perspective and knowledge enabled us to do our best, to bring people of all backgrounds together to find solutions to problems that threaten health and safety at home, in the community, and in the workplace. We are deeply honored to



have worked with Andrea, and as we push ahead—as we know Andrea would want us to do, we gain strength from having worked with her, and feel her spirit urging us on to find answers to problems she so believed need solving. Onward!

Jay Feldman is executive director of Beyond Pesticides.