

Memo to Board

Re. Thursday, October 11, 2018 Meetings Capitol Hill

Beyond Pesticides

2:00pm	Keith Jones, Minority staff director 1304 Longworth House Office Building
3:00pm	Lindsay White, USDA Detailee and Katie Naessens, Senator Debbie Stabenow, Ranking Minority Member, Agriculture, Nutrition and Forestry Committee
4:00pm	Meetings with your delegation

Our meetings on Capitol Hill are focused on the Farm Bill and provisions, with specific focus on two provisions that are now being discussed in the conference committee considering the House and Senate bills. The Farm Bill appears to be stalled at this point and, given the midterm election, it is difficult to predict its future course. It is possible that the bill will be addressed by a lame duck Congress (the election may have a lot to do with this) or the programs it supports could be continued under a continuing resolution by December 31. Regardless, we are trying to bring attention to some key issues that relate to Beyond Pesticides' strategic work.

We are providing you with factsheets and background materials on two key issues.

Reject Preemption of Local Authority to Restrict Pesticides

Issue: A provision in the House Farm Bill preempts local authority to restrict pesticides

Action Requested in Hill Visits: Urge members of the Farm Bill conference committee to keep this provision out of the final Farm Bill.

In recent weeks we have brought national attention to this issue hidden in a House Farm Bill provision. The provision with a few words (*a state, but not a political subdivision of a state*) will reverse a 1991 Supreme Court decision that upheld the authority of local governments to restrict pesticides under federal pesticide law (FIFRA). While many state legislatures have, under chemical industry pressure, limited the authority of local governments to restrict pesticides, there is concern that this provision will close the door on the current ability of localities to adopt ordinances affecting all property, public and private, in their jurisdiction. Regardless, the determination of local authority is a state issue that the federal government has never regulated. We include in the packet an op-ed, editorials, and a letter from local officials opposing this provision. In addition, we include a letter from members of Congress to the conference committee, expressing opposition to this provision and others that undermine other environmental statutes (e.g., Endangered Species, Clean Water Act).

Reject Attack on Organic Integrity

Issue: A provision in the Senate Farm Bill creates serious uncertainty with the methods of evaluating the acceptability of synthetic materials in certified organic practices, undermining the public trust in the organic label. There are a number of provisions in the House Farm Bill that undermine the balance and role of the NOSB.

Action Requested in Hill Visits: Reject the Senate provision that raises questions the methods by which synthetic chemicals are allowed in organic production, undermining public trust in organic standards. Reject changes to NOSB in House Farm Bill. Support research and enforcement provisions.

When we wrote the Organic Foods Production Act (OFPA), we incorporated language that attempted to avoid the serious problems associated with pesticide registration under FIFRA. If synthetic materials were to be allowed in organic, they were to be subject to higher no adverse effects standards, a cradle-to-grave analysis, a determination of essentiality (necessity) of the material, and a sunset clause that forces a reevaluation every five years. This time-limited sunset contained a default assumption that continued allowance of the synthetic would not be permitted until the NOSB voted to allow it. The belief was that growers would continue to adopt methods not dependent on outside inputs, that there would be continuous improvement and this would drive synthetics off the National List because they were no longer needed. At the same time, new science would emerge identifying issues that would make the material unacceptable under the law's criteria. This contrasts dramatically with the allowance of pesticides under FIFRA, where once a decision is made to allow a chemical it is extremely difficult, or virtually impossible, to reverse that decision without serious political or public pressure.

The Senate Farm Bill contains a provision that brings uncertainty to the 5-year sunset process and could undermine a basic tenet of the law. Without this sunset provision, synthetic materials may remain on National List and attempts to introduce alternative materials and find new creative management practices would be disincentivized.

The provision may seem like it doesn't do anything (changes in law always do something, whether intended or not): "Any vote on a motion proposing to amend the national list shall be considered to be a decisive vote that requires 2/3 of the votes cast at a meeting of the Board at which a quorum is present to prevail." One interpretation of this provision is that any change to the National List is an amendment to the list requiring a 2/3 vote to make a change –take the synthetic off or put it on the National List. Whereas, OFPA as written has been implemented with the default assumption that the material comes off the list after 5 years unless the board votes decisively (2/3) to keep it on the list. In other words, this is a dramatic codification of an interpretation (adopted without public hearing and comment) now being used by USDA, for which we have sued the agency.

Clean Water Act

We include a factsheet on a provision in the House Farm Bill that will repeal the Clean Water Act provision requiring permits for discharge of pesticides in local waterways (NPDES, National Pollutant Discharge Elimination System).