



BEYOND PESTICIDES

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March 28, 2014

National Organic Standards Board
Spring 2014 Meeting
San Antonio, TX

Re. CS: Vinasse

These comments are submitted on behalf of Beyond Pesticides. Beyond Pesticides, founded in 1981 as a national, grassroots, membership organization that represents community-based organizations and a range of people seeking to bridge the interests of consumers, farmers and farmworkers, advances improved protections from pesticides and alternative pest management strategies that reduce or eliminate a reliance on pesticides. Our membership and network span the 50 states and groups around the world.

Beyond Pesticides agrees with the intent of the Crops Subcommittee minority position on vinasse. However, both minority and majority positions have failed to incorporate accepted NOSB procedures and have proposed allowing synthetic materials and prohibiting nonsynthetic materials without giving reasons based in the law. The proposal of the majority is not enforceable and therefore does not represent an acceptable path because the Board, in effect, requests the NOP to make a decision on synthetic/nonsynthetic vinasse based on guidance language which may or may not be implemented by NOP.

1. The classification decision does not distinguish between synthetic and nonsynthetic vinasse.

The petition and the Technical Review both describe vinasse as a formulation that has both synthetic and nonsynthetic forms. Both identify vinasse as a formulated byproduct of the molasses fermentation process. That byproduct, according to the petition, is subjected in some cases to a variety of processing aids or manufacturing materials, such as antibiotics and antimicrobials, that create a synthetic end product that the petitioner refers to as vinasse. Other manufacturing processes do not utilize these synthetic additives.

The CS majority states,

It is apparent although not explicitly stated in the TR that vinasse production is decentralized in many countries and with many different approaches to the substance during and after fermentation. Some vinasse is generated without synthetic materials added during and after fermentation, while some may have additional acid, synthetic anti-microbial agents, or even synthetic sources of nitrogen added after fermentation.

Therefore the subcommittee has concluded that since not all vinasse is synthetic, it does not belong on the National List.

One can reasonably conclude from the CS majority position that some vinasse is synthetic, or at least, has not been established to be nonsynthetic. The proper approach to this situation, since the NOP tasked the CS with classifying vinasse, would be to establish parameters defining “synthetic vinasse” and “nonsynthetic vinasse.” It appears that the CS majority is attempting to accomplish the same end by classifying all vinasse as nonsynthetic and proposing that the NOP consider prohibiting some from being used in organic production.

The CS minority implies that the majority’s approach does not establish a process whereby the Board makes a synthetic-nonsynthetic determination, given the distinct manufacturing processes, and attempts to establish restrictions that would apply to both forms. This is a valid approach, but requires that the subcommittee address OFPA criteria by, for example, answering the evaluation questions in the checklist used by all subcommittees to determine whether a material may be used in or prohibited for use in organic production.

As far as classification goes, the CS has three choices:

- Give solid reasons for classifying all vinasse as synthetic;
- Give solid reasons for classifying all vinasse as nonsynthetic;
- Establish criteria for distinguishing synthetic from nonsynthetic manufacturing of vinasse;

If the subcommittee and the Board accept the petitioner’s explanation that some vinasse is produced as a synthetic and some is nonsynthetic, they should make a determination regarding which vinasse is synthetic and which is not. In fact, the subcommittee could use a modified form of the language it proposed for the NOP guidance as the criterion, thus making the motion:

Vinasse without prohibited additives, such as but not limited to, pH adjusters, sanitizers, ammonium compounds, antibiotics or chlorine materials. . . and without fortified nitrogen levels is nonsynthetic.

For a synthetic/nonsynthetic determination, the Board must consider as a starting point all synthetic materials used in the manufacturing process, regardless of whether they are listed as allowed synthetics or not. Once determining its classification, the Board could choose to recommend the synthetic chemical’s placement on the National List, which is a wholly separate decision from the listing decision. However, the use of a synthetic material, under OFPA requires that a classification determination be done first and that all its synthetic components be evaluated under the checklist criteria.

It is critical that the Board make a synthetic-nonsynthetic determination and not leave that decision to the NOP. It is not appropriate for the Board to ask NOP to develop guidance with the proposed definition, when the Board cannot ensure that the NOP will ultimately accept and

implement the Board's recommendation. If the Board wants to move forward now, in accordance with Board responsibility, it is simplest for the Board to deem the petition under consideration as a synthetic substance and request that the petitioner resubmit separate petition to reclassify specific forms of vinasse as nonsynthetic.

The CS and Board should determine, by definition, which vinasse is synthetic and consider the petition for listing only the synthetic formulation on §205.601. At that point, the determination could be made by the Board on the acceptability of that substance under the standards of the law. The only action that is necessary is a synthetic/nonsynthetic determination for vinasse and consideration for a 601 listing. The 601 listing at this time is problematic since the subcommittee has not completed checklist questions for the material, nor proposed a recommendation for 601 listing for public consideration.

2. Board must make synthetic-nonsynthetic determination.

It is not appropriate for the Board to allow the NOP to make a synthetic-nonsynthetic determination, as the majority recommendation does. Any guidance that the NOP issues on this issue must incorporate the synthetic-nonsynthetic determination. Asking the NOP to develop guidance without a Board determination puts NOP outside the scope of its authority, given that a petition has been submitted for Board consideration. If a petitioner submits a petition that identifies two distinct formulations and assigns the same name, in this case vinasse, to both formulations, the Board must find a way to distinguish those substances for purposes of determining the appropriate classification and listing.

3. The proposed actions of both the majority and minority are not based in science or law and cannot be implemented by the NOP.

To place restrictions on the use of vinasse as either the majority or the minority has proposed requires the subcommittee to address OFPA criteria by, for example, answering the evaluation questions in the checklist used by all subcommittees to determine whether a material may be used in or prohibited for use in organic production. The subcommittee has not addressed classification of materials criteria in its proposal, and therefore gives the NOP authority to allow the use of a substance that the Board must first recommend.

The means by which the majority proposes limiting the use of vinasse is not binding in any way on the NOP. Since the proposal is also made without justification based in OFPA criteria, it encourages the NOP to move forward with the possibility of allowing all use of all vinasse as a nonsynthetic.

We urge the NOSB to (i) send the classification question back to the CS for action as described above, (ii) ask the subcommittee to identify the synthetic form of vinasse based on criteria that distinguish synthetic from nonsynthetic vinasse, and (iii) request that the subcommittee complete a review of synthetic vinasse to determine compliance with the checklist criteria under OFPA and propose a 205.601 recommendation.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry Shistar". The signature is written in a cursive style with a prominent initial "T" and a long, sweeping underline.

Terry Shistar, Ph.D.
Board of Directors