

**ADMINISTRATIVE RULE & REGULATION REVIEW SUBCOMMITTEE
OF THE
JOINT BUDGET COMMITTEE**

**Room B, MAC
Little Rock, Arkansas**

**Tuesday, January 17, 2016
8:30 a.m.**

Sen. John Cooper, Chair
Sen. Uvalde Lindsey, Vice-Chair
Sen. Larry Teague
Sen. Jason Rapert
Sen. Jonathan Dismang
Sen. Keith Ingram
Sen. Jim Hendren
Sen. Jimmy Hickey, Jr
Sen. David Wallace
Sen. Bill Sample, ex-officio
Sen. Terry Rice, ex-officio

Rep. Stephen Meeks, Chair
Rep. Lane Jean, Vice-Chair
Rep. Jon S. Eubanks
Rep. Douglas House
Rep. Mark D. McElroy
Rep. Joe Jett
Rep. John Payton
Rep. Les Eaves
Rep. Michelle Gray
Rep. David L. Branscum, ex-officio
Rep. Jim Dotson, ex-officio

A. Call to Order.

B. Rules filed pursuant to Ark. Code Ann. § 10-3-309.

1. STATE PLANT BOARD, PESTICIDE DIVISION (Terry Walker)

a. SUBJECT: Pesticide Classification and Use

DESCRIPTION: This rule will allow the introduction of new pesticide technologies while still providing a level of protection for the farmers with susceptible crops who do not choose to use these technologies. This rule will also allow the Plant Board to ensure all applicators of the new pesticide technologies are properly trained and the pesticides are being used in accordance with the label and state regulations.

PUBLIC COMMENT: A public hearing was held on November 21, 2016. The public comment period expired on November 18, 2016. Multiple public comments were received and have been summarized by the agency as follows:

The concerns expressed in the 223 comments *in favor* of the proposed regulations were considered during the lengthy period of debate during the development of the proposed regulations. The Board agreed with the comments and voted to approve the proposed regulations as written.

The concerns expressed in the 9 comments *against* the proposed regulations were considered during the lengthy period of debate during the development of the proposed regulations. Due to historical drift and volatility issues with 2, 4-D and dicamba, the Pesticide Committee and the Board met numerous times over the past five years in order to safely introduce new pesticide technologies into the farming community. Research was presented by the pesticide manufacturers and University of Arkansas researchers. The Pesticide Committee advised all pesticide manufacturers that third-party drift and volatility research would need to be conducted and presented to the Pesticide Committee. The pesticide manufacturers presented their own drift and volatility research to the Pesticide Committee. However, only one chose not to allow a third party to conduct additional research. In light of this, the Pesticide Committee and the Board proposed regulations to protect farmers who choose not to use the new seed technologies while also allowing for a safe introduction of the pesticide technologies. In conclusion, the Board determined other factors outweighed the concerns addressed in these comments and voted to approve the proposed regulations as written.

The concerns expressed in the 29 comments *in favor of the proposed regulations but also requesting additional regulations* were considered during the lengthy period of debate during the development of the proposed regulations. However, the Board determined, based on information provided by the scientists, there is a use for dicamba when used under proper cropping systems, and to completely ban its use would be an overreach. Also, in order to add additional restrictions to the regulations, adoption of the rule would be delayed. In order to have the proposed regulations in place for the 2017 farming season, the Board voted to approve the proposed regulations as is, but would consider amending the regulations in the future.

The concerns expressed by *Helena Chemical Company* presented new information the Board had not been aware of. To properly evaluate the information and request, the Board voted to approve the proposed regulations as written to allow sufficient time to seek scientific input for consideration. However, the Board agreed to have the Pesticide Committee meet with Helena Chemical Company to discuss their concerns. The Pesticide Committee met on December 21, 2016, at 9:00 a.m.

The concerns expressed by *Monsanto* in a letter submitted to the Board during the public hearing were considered during the lengthy period of debate during the development of the proposed regulations. The process of developing the proposed regulations started over 5 years ago. Historically, the Plant Board had drift and volatility problems with dicamba and 2, 4-D. The Plant Board had regulations in place over the years for dicamba and 2, 4-D. The regulations have been modified over the years as pesticide technologies have changed. The dicamba regulations that were in place 14-plus years ago were relaxed and eventually removed completely due to the fact dicamba was no longer being used except for preseason burn down applications. When the Plant Board was approached by Monsanto approximately 5 years ago, the Pesticide Committee had concerns about dicamba being used over the top of crops during farming season. Thus, the Pesticide Committee called upon experts in the farming community to provide input before the new technologies were approved for use in Arkansas.

- Data submitted in 2014 was not for the now labeled Vaporgrip technology. It was for M1691 (M1691 is similar to the pesticide Clarity).
- University of Arkansas researchers did conduct efficacy research on Vaporgrip technology. Efficacy research is not the same as drift or volatility.
- Staff and University of Arkansas researchers were invited to Texas to look at research conducted by Monsanto. University of Arkansas researchers had a scheduling conflict and could not attend. These studies were not conducted in Arkansas and are not third-party unbiased research studies; they are company-based studies.
- Current regulations were enacted in 2014 with the assumption a registration would be granted for Vaporgrip products for 2015. The regulations addressed the first two years of registration in hopes of obtaining real world use data since there would be a limited amount of seed available. The seed was deregulated by the USDA, and the EPA did not issue a registration for the Vaporgrip technologies until 2016. Due to the misuse of dicamba in 2015 and 2016, the Pesticide Committee decided to review the current regulations. In light of the fact that no third-party drift and volatility studies had been conducted as requested over the past five years, and more seed would be available going into the 2017 farming season, the Pesticide Committee proposed more stringent regulations until real world use data could be acquired. Monsanto did meet with the Pesticide Committee on several occasions and presented research. However, this was not third-party unbiased research.

- The Plant Board has the authority to require training. However, training is conducted by the University of Arkansas Cooperative Extension Service.
- BASF's Engenia formulation is not the same dicamba molecule as Monsanto's new Xtendimax with Vaporgrip technologies. Third-party data showed Engenia to be less volatile as well as fewer driftable fines.
- All other pesticide manufacturers (BASF and Dow Agro Sciences) were also in attendance at the multiple Pesticide Committee meetings over the past five years. BASF and Dow Agro Sciences had no objection with providing third-party drift and volatility data and complied accordingly.

The Plant Board also requested a response from Dr. Jason Norsworthy to Monsanto's comments. The Pesticide Committee and the Board have called upon Dr. Norsworthy, along with other University of Arkansas researchers, to give expert opinion and present research during the rulemaking process. He provided the following responses to the Monsanto comments:

1) "Specifically, the label requires a 110' downwind buffer to sensitive crops for most applications."

- Not true. The label requires a 110' downwind buffer to the field edge. This has nothing to do with sensitive crops, but rather endangered species.
- The buffer to susceptible crops or sensitive crops is not defined by a distance. See label page 9. "DO NOT APPLY this product when the wind is blowing toward adjacent commercially grown dicamba sensitive crop."

2) "Requirements on nozzles, wind speed, ground speed, tank mixes and boom height are all the same as what has been presented to the Board over the past few years."

- Not true. I made a presentation to the Board in summer 2014 regarding the use of TTI and AIXR nozzles and dicamba drift. I made a presentation at WSSA and Dan Reynolds made one at SWSS in 2014. Also, see brochure outlining nozzle AIXR – TTI nozzles and 20-inch height. Label has 24-inch height and only TTI 11004 nozzle.

3) "Those application requirements (for Xtendimax) were developed with the assistance of academics across the country, including here at Arkansas."

- Not true. We never took part in developing the application requirements that appear on the current Xtendimax label.

4) “Monsanto submitted a comprehensive data package including rigorous third-party studies across broad geographies all done to GLP standards.”

- The data package that was presented to the EPA has nothing to do with yield loss and injury to soybean. Monsanto makes it appear that there is no need for additional regulations. The EPA has stated that regulations to minimize the off-target movement of a herbicide to susceptible crops in terms of causing injury and yield loss is the responsibility of each state individually.

5) “Some of the data, regarding the relative volatility of VaporGrip formulations, was submitted to the Pesticide Committee of the Plant Board in 2014 and again summarized this summer.”

- There was never data from the University of Arkansas on VaporGrip formulations submitted to the Pesticide Committee. The Pesticide Committee as well as the University of Arkansas asked repeatedly to allow us to test VaporGrip. Boyd Carey is on record on Aug. 8 stating that the University of Arkansas nor any other university was given the opportunity to test VaporGrip in fear that the results may jeopardize the federal label.

6) “This summer, the Plant Board has asked us to do additional testing with the University of Arkansas on volatility, and we are working toward that end.”

- I asked again in August to conduct volatility and drift work this fall following the Pesticide Committee meeting but again was denied the opportunity.

7) “We twice invited academics from across the country to Texas to observe our large GLP volatility field trials. We recently hosted an academic symposium in St. Louis to discuss our GLP data set and other testing results of our new dicamba formulations, testing methodology, field study results and the evolution of our dicamba formulations.”

- We were contacted two to three weeks prior to this meeting. We all had conflicts and weren’t able to attend and that was communicated to Bob Montgomery. As written, it infers that the University of Arkansas weed scientists were not cooperative with Monsanto. That is far from the truth. Again, we asked on numerous occasions to test the VaporGrip.

According to the agency, each entity was given ample opportunity to come before the Pesticide Committee and the Full Board to present information. Since no new significant information/research was brought to light in the comments, the Board voted to approve the proposed regulations as written. Moving forward, as more drift and volatility data is obtained, the Pesticide Committee and the Board would be willing to readdress the regulations.

The agency further states that several changes were made to the proposed revisions since the version originally filed; however, those changes were only a reorganization of the material to develop a rule that reads more easily and communicates the thrust of the rule better. The changes were made at the suggestion of the Attorney General's Office and in consultation with the legal staff in the Governor's Office. The agency submits that the changes have been deemed non-substantive and do not change the rule from what was considered during the public hearing and subsequently adopted by the Plant Board.

Rebecca Miller-Rice, an attorney with the Bureau of Legislative Research, asked the following question:

What effect, if any, did the December 21, 2016 meeting and discussion with Helena Chemical Company have on the proposed revisions to the rules? **RESPONSE:** The Helena discussions did not have any impact on the reorganization of the rule.

The proposed effective date is pending legislative review and approval.

CONTROVERSY: The agency states that this rule is expected to be controversial because it would restrict the use of pesticides containing the active ingredient dicamba.

FINANCIAL IMPACT: The agency states that there is no financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 20-20-206(a)(1), the State Plant Board shall administer and enforce the Arkansas Pesticide Use and Application Act, codified at Ark. Code Ann. §§ 20-20-201 through 20-20-227, and shall have authority to issue regulations after a public hearing following due notice to all interested persons to carry out the provisions of the Act. When the Board finds it necessary to carry out the purpose and intent of the Act, regulations may relate to the "time, place, manner, amount, concentration, or other conditions under which pesticides may be distributed or applied and may restrict or prohibit use of pesticides in designated areas during specified periods of time to prevent unreasonable adverse effects by drift or misapplication" to plants or adjacent or nearby lands; wildlife in the adjoining or nearby areas; fish and other aquatic life in waters in reasonable proximity to the area to be treated; and humans, animals, or beneficial insects. Ark. Code Ann. § 20-20-206(a)(1)(A)-(D).

C. Adjournment.