



Maryland Department of Agriculture

Office of the Secretary

Larry Hogan, Governor
Boyd K. Rutherford, Lt. Governor
Joseph Bartenfelder, Secretary
Julianne A. Oberg, Deputy Secretary

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October 9, 2020

Dear Dr. Latshaw,

It was recently brought to my attention that our December 4, 2019, letter in response to questions raised in the letter from the Children's Environmental Health and Protection Advisory Council sent to me on November 19, 2019, was inadvertently circulated without my signature. Please know that the information included in the December 4, 2019, letter was our final response and our position remains the same. To avoid any further confusion, the original language is enclosed with my signature. I apologize for the oversight.

Sincerely,

Joseph Bartenfelder
Secretary



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Megan Weil Latshaw, PhD MHS
Children's Environmental Health and Protection Advisory Council (CEHPAC)

Dear Dr. Latshaw,

Thank you for your letter dated November 19, 2019, regarding the request for the Maryland Department of Agriculture to address questions raised in the Maryland Health in All Policies 2018 and 2019 Reports and by CEHPAC. The Department currently addresses Children's Environmental Health by enforcing various state laws regarding pesticides. The Department also enforces the federally mandated laws and regulations under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). In addition, all pesticides in Maryland are required to be applied per federally mandated labeling directions in which Children's Environmental Health is considered during EPA's registration process.

Below you will find the Department's response to your concerns.

1) Deciding which, if any, regulations proposed by MDA are referred to CEHPAC for review as part of the regulatory development process because they have the potential to affect children's environmental health;

All proposed MDA Regulations may be reviewed during the public comment period as required by Maryland Laws. Should CEHPAC wish to comment on regulations, they may do so at that time. If CEHPAC has regulatory change suggestions, they may approach the Secretary with their concerns.

2) Protecting children from pesticide and fertilizer pollution in Maryland waters and specifically ground water used for drinking wells;

The Maryland Pesticide Applicator's Law and Regulations address the Sale, Use and Distribution of pesticides in Maryland. The Department has also been designated the State Lead Agency, by EPA, for enforcing FIFRA. In addition, State and federal laws currently exist for mitigating ground water and surface water contamination, enforcement of these laws fall under the Department, EPA and/or the Maryland Department of the Environment. The Department has rules in place regarding Fertilizer use within Maryland. The Nutrient Management Program regulates all nutrient applications on over 5,300 farm operations in Maryland that meet the requirement of having 8 animal units or more, or generating at least \$2500 of gross income. All

of those farms are required to maintain a current nutrient management plan written by a certified and licensed Nutrient Management Consultant. The Nutrient Management Program conducts on-farm audits of nutrient applications, inspects the farm for buffers/setbacks and stream fencing, and checks the farm for any other potential environmental hazards. Nutrient Management also responds to citizen complaints related to claims of over-application, runoff and many other concerns.

3) Protecting children from exposures to hazardous pesticides applied without warnings or enforcement consequences;

The Department has been enforcing both State and Federal pesticide laws and regulations since the mid 1970's. This enforcement effort includes conducting both Routine and For Cause inspections of licensed pest control firms and pesticide applications throughout the state. The Department uses an *Enforcement Response Policy*, which is periodically reviewed by EPA. If the Department is able to conclusively determine a violation has occurred, the Maryland Pesticide Applicator's Law and Regulations, allows for enforcement actions that range from a Letter of Caution to a civil penalty, up to \$25,000.00, and/or imprisonment for up to 60 days. In addition, the Department has the ability to suspend, revoke, or deny any license or pesticide applicator certificate. Information on the Department's pesticide inspection activities can be found in the *Pesticide Data Report*, which is released each year.

5) Adopting the HiAP framework via the Toolkit, Procurement Process and specifically the Data Sharing Process (attached) as outlined in the 2019 Health in All Policies Report, to ensure MDA Regulations take public health and the environment into consideration.

The core of the Department's Regulations is to protect public health and the environment. The Department agrees that Data Sharing among agencies would likely provide good data in developing policies that would be beneficial to the public, however as stated in the Introduction of the HIAP report, there are larger systemic barriers at the Agency level that need to be addressed. Should Pilot studies in data sharing using the HIAP framework be developed, the Agency would be interested in seeing the results. However, at this time the only data sharing that the Department would be able to do would fall under public information act laws in order to protect constituent private information that the Department may have.

18) We would like to develop language to introduce Health in All Policies into State Government planning for integrated pest management. This would include actions at the County level and with similar requirements as stated for the Public Service Commission above

The Department has had School Integrated Pest Management Regulations in place since 1999 which were last amended in 2011. In addition, most licensed businesses and certified private applicators have been incorporating IPM measures for many years. Within the Agricultural Sector, the University of Maryland Extension has worked with farmers for more than 30 years with developing proper IPM programs for their particular operations.

19) Education Article Section § 5-312 (with definitions in § 3-602.1) requires new state funded school construction to meet or exceed the Leadership in Energy and Environmental Design (LEED) Silver rating (or state equivalent).

a. Under US Green Building Council LEED/Schools, indoor air quality (IAQ) construction management is an optional credit that projects can choose, but is not a requirement.

Additionally, when it comes to schools, certain LEED credits – specifically those related to IAQ, integrated pest management (IPM), and Green Cleaning should be made mandatory – that is be made to be a “prerequisite” rather than a “credit”.

b. Currently buildings can qualify for LEED certification without selecting any Indoor Environmental Quality credits. This is unacceptable for schools and can be remedied by making certain LEED credits prerequisites. Maryland must consider the impact to the building occupants as well as energy efficiency, etc. The building should have a positive impact on public health as well as the environment.

The Department already has had School Integrated Pest Management Regulations in place since 1999 which were last amended in 2011. These regulations would apply to all public school buildings and grounds.

20) Education Article Section 5-112 Green Cleaning Procurement for Public Schools: Education Article § 5-112 establishes guidelines for purchasing green products cleaning supplies in public schools. To improve children's health, it should be expanded to include day care centers and other areas where children spend their time. Additionally, clarification is needed so that schools would understand that air fresheners should not be allowed in schools. Greater guidance on disinfecting wipes and soaps is also needed.

The Department has had School Integrated Pest Management Regulations in place since 1999, which were last amended in 2011. These regulations would apply to all public school buildings. Antimicrobials are exempt under the School IPM Regulations. However, all antimicrobials that make a pesticidal claim must be registered with both EPA and the Department’s State Chemist Section. EPA exempts most products that meet the requirement of minimum risk products, such as the “green” cleaners (25b). However, if those products make a pesticidal claim they are still required to be registered for use in Maryland. Because of State and/or federal registration requirements, users of these products are still bound by all label directions.

The Department has reached out to daycare centers in regards to the use of pesticide products, including the use of antimicrobials. A brochure was developed for the daycare industry and is available on our website.

21) Maryland should address the issues identified in the Final Report of the Advisory Committee on the Management and Protection of the State's Water Resources (Wolman Report 2008). Access to clean drinking water, protection of ground water, streams and the bay is vital to public health.

The Department takes protection of ground water seriously by enforcing various State and Federal Pesticide and Nutrient management laws and regulations.

22) *Maryland should address the issues identified in the first state-wide assessment of Children's environmental health, Maryland's Children and the Environment (August 2008). The Report concluded (refer to page 4) "Maryland has made significant progress in reducing children's exposures to some environmental hazards. However, there are limitations in the state's capacity to conduct surveillance on important and emerging environmental hazards and exposures, as well as health outcomes. Maryland's investments in monitoring and surveillance have taken us part of the way in understanding children's environmental health in the state. We are aware of important trends and important differences by region and population group. It is important for public health policy to be guided by the best available science, supported by effective surveillance and dialogue. We hope that the indicators presented in this document advance the public dialogue and lead to improvements in children's environmental health.*

The Department is committed to Children's Environmental Health. It fulfils this commitment by enforcing both State and Federal Pesticide Laws and Regulations. Maryland also enforces the IPM in Public Schools law and regulations as part of its commitment to Children's Environmental Health.

23) *Maryland Department of Agriculture (MDA) Regulations 15.05.02 School Integrated Pest Management (IPM) Law*

- a. This regulation needs to be improved because it only covers the academic year (e.g. allows pesticide applications without notification on school gardens outside the academic year), prohibits the use of pest control products that are exempt from Environmental Protection Agency (EPA) registration and continues to allow for the routine application of pesticides in school buildings and on school grounds, and does not cover pesticide applications to a school's artificial turf athletic fields (as they are currently exempt from this regulation).*
- b. Per MDA practices, School Districts are not required adopt an IPM Policy as required by the statute. Some pesticide applications such as those for mosquito control, tick control and artificial turf fields not covered by regulations. Requesting that the MDA address the weaknesses in the School IPM regulations as these concerns do impact children's health.*

The Maryland School IPM Law does only cover the academic year, as dictated by the district's School Board. The School IPM regulations allow applications of all pesticides registered by the Department on public school property as long as the provisions of the regulations are upheld. The School IPM regulations would apply to all applications of pesticides as defined in the School IPM regulations. It is the Department's understanding that applications to artificial turf fields are generally disinfectants which are not covered under the current school IPM regulations. However, if the product makes a pesticidal claim and is registered by the Department, the product label would have to be adhered to and the label language would be enforceable. As for bullet point b.), all public school districts in the state of Maryland are required to adopt an IPM policy which is approved by the Department. The Department is unaware of any public school district in the State which have failed to implement an IPM policy for approval. The IPM In Schools regulations covers mosquito and tick control pesticide applications.

24) MDA Regulations 15.05.01.15 Posting of Signs (for pesticides applied to turf)

a. Signage is not sufficient to adequately inform the public and protect the public from unintended contact with pesticides. Expanded signage options for organic pest control applications should be developed so that the public knows which areas are treated with conventional pesticides and which are treated with organic means of pest control, some of which are exempt from EPA registration.

b. Commercial pesticide applications should be required to post the product name on the yellow "turf flag" along with their company name, phone number and date of application. The regulations should be modified so that members of the public who come in contact with a posted turf pesticide application sign can call and promptly obtain the Product Label and Material Safety Data Sheet (MSDS or SDS) for the products applied. Currently, this information is not available to the public, however, such information is vital to health care providers should someone experience a negative reaction or wish to protect themselves from contact with the pesticide applied.

Signage is required to be placed at the primary access points for the treated property and note the Date of Pesticide Application, Name of Licensee and the Telephone to contact the licensee for further information. The Department believes that these regulations are adequate and allow the public to understand that an area has been treated with pesticides, as well as giving the public the contact information of the firm to obtain further information regarding what product was applied. The Department currently does not differentiate organic vs. "conventional" pesticides, as all products which make pesticidal claims are a pesticide as defined in the Regulations and would require registration as a Pesticide in Maryland.

25) Per the MDA regulations (2011's SB 546) - Fertilizer can be applied from November 16 through December 1 a maximum of 0.5 pound per 1,000 square feet of water soluble nitrogen (no slow release) may be applied.

a. Issue - this regulation does not consider organically maintained turf and the application of compost as a fertilizer outside of the regulation designated window for the application of a fertilizer. Healthy soil is a key component impacting public health (i.e. air, water, soil, food, etc.) The law is being used to minimize runoff of nutrients, but unlike most states Maryland is not exempting compost — therefore treating compost the same as other fertilizers. There are so many benefits of compost from a human and environmental health standpoint. Regulations should address compost independent of conventional fertilizers.

The Nutrient Management Program at MDA is tasked with regulating nutrient applications to turf as part of the Urban Program, The University of Maryland provides technical guidance on compost. As stated, MDA is concerned with the potential runoff of all nutrients, including compost.

26) MDA Pesticide Sensitive Individual Notification Report (15.05.01.17)

a. This program should be simplified and made accessible to all residents of Maryland. Access to the form and the written requirements (ex. physician's certifications, list of neighbor's names and addresses, etc.) makes it difficult for most Marylanders to apply and receive notifications of a pesticide application made to a property contiguous to their residence or obtain the product

label (PL) and Safety Data Sheet (SDS) for the product being applied. Protection from unintentional exposure to pesticides from such applications or from the drift from such applications is vital to public health.

The Department has always taken action to make the Pesticide Sensitive Individual (PSI) applications accessible to all residents of Maryland. The Department's website includes a copy of the application to be placed on the list and residents may call to the Department and have an application mailed to them. As long as the application is completed, as required and the Department receives the application prior to the printing of the list, applicants will be approved. Anyone signing up after the list has been officially published will receive notification if the applicant provides, in writing, the name(s) of a licensee that may be working within their community. Applications must also be renewed annually. However, once approved, the requirement for a physician's signature is waived. Individuals on the PSI list are to be notified of all Turf and Ornamental applications on properties that are contiguous or adjacent to a PSI, this has been recently expanded per regulation change to include Public Health applications. The regulations currently do not require pesticide product labels and/or SDS' to be provided. However, many companies will honor a request to provide such information. Suspected pesticide drift should be reported to the Department as soon as possible regardless of where the application took place. The Department is currently working with the Maryland Department of IT on a secured database of applicants. This list will be available only to those licensee's operating in Categories 3A, 3C and 8. We are also trying to include an automatic email response for those licensee's that will notify them when a new addition is made to the list.

27) The Maryland Children's Environmental Health and Protection Advisory Council (CEHPAC) respectfully requests that the Maryland Department of Agriculture (MDA) review existing regulations pertaining to the Pesticide Applicator's Law (15.05.01) and Integrated Pest Management (IPM) and Notification of Pesticide Use in a Public School (15.05.02) to ensure that pesticide applications made to synthetic (or artificial) turf fields including those on public school grounds are regulated in the same manner as pesticide applications made to natural turf fields and other public school grounds. CEHPAC requests that the MDA take prompt action to clarify the regulations as necessary correct to this situation (Source: Letter CEHPAC to MDA 12/13/16)

The Department is unaware of any pesticides approved for artificial turf (other than anti-microbials). At this time, the Department believes that its current IPM in School Regulations and Pesticide Applicators Regulations are adequate to address artificial turf applications.

Sincerely,



Joseph Bartenfelder
Secretary of Agriculture