

## Region 4 Pre-SFIREG Meeting Notes, May 24, 2016

Pre-SFIREG Chair Pat Jones called the meeting to order at 8:00 am.

### Agenda:

**EPA Region 4 Pre-SFIREG Meeting May 24 - 25, 2016**  
**DoubleTree by Hilton Downtown Atlanta**  
**Atlanta, Georgia**

**Call-in Number: 1 866 299 3188, Conference Code 404 562**  
**9173**

**Adobe Connect link (for sessions designated as “remote”  
presentations)**

Tuesday, May 24, 2016	
7:00 - 8:00	<i>Breakfast - Room A</i>
<b>Meeting: - Room C</b>	
8:00 - 9:00	<i>States Only Meeting</i>
9:00 - 9:30	<i>Welcome/Introductions and Opening Remarks: Georgia Department of Agriculture and Commerce (GDA), Patrick Jones, North Carolina Department of Agriculture and Consumer Services (NCDA&amp;CS), and Carol Kempker , US EPA Region 4</i>
9:30 - 10:00	<i>Enforcement Update: Phillip Beard, US EPA Region 4</i>
10:00 - 10:15	<b>Break</b>
10:15 - 11:00	<i>Food Safety Modernization Act Update: Diane Ducharme, NC Cooperative Extension Service and Chip Simmons, NCSU NC Fresh Produce Safety Task Force Food Safety</i>
11:00 - 11:45	<i>Regional Grants Update – Overview of Grants.Gov and Discussion, QA Competency, FY Grant Cycle: Stuart Perry and Seema Rao</i>
11:45 - 12:45	<b>Lunch - Room A</b>
12:45 - 1:15	<i>Registration Update of Dicamba Products: Judy Fersch, BASF</i>

1:15 - 2:00	EPA Label Matching Project – Alan Boutureira, US EPA Headquarters Mardi Klevs US EPA Region 5
2:00 - 2:30	<i>Zika Update:</i> Randy Dominy, US EPA Region 4
2:30 - 2:45	<i>Managed Pollinator Protection Plan Update and Measures of Success:</i> Randy Dominy, US EPA Region 4
2:45 - 3:00	<i>Bee Kill Report:</i> Patrick Jones, NCDA&CS
3:00 - 3:15	<b>Break</b>
3:15 - 3:30	<i>AAPCO Update:</i> Tim Drake, Clemson University and Tony Cofer, Alabama Department of Agriculture and Industries
3:30 - 4:30	<i>WPS – C&amp;T Updates:</i> Richard Pont, US EPA Headquarters <i>State Feedback and Questions</i>
4:30 - 5:00	<i>State Feedback and Questions</i>

<b>Wednesday, May 25, 2016</b>	
7:00 - 8:00	<b>Breakfast - Room A</b>
<b>Meeting: - Room C</b>	
8:00 - 8:15	<i>FY2016 and 2017 PREP, Regional and National Inspector Training Plans:</i> Rick Hayes, Georgia Department of Agriculture (GDA) and Pat Livingston, US EPA Region 4
8:15 - 9:00	<i>State Agency Highlights – All States Reporting</i>
9:00 - 9:45	<i>EPA Structural Fumigation Update:</i> Randy Dominy, James Persall, US EPA Region 4
9:45 - 10:15	<i>AAPCO WPS Work Group Discussion:</i> Patrick Jones, NCDA&CS
10:15 - 10:45	<b>Break</b>
10:45 - 11:00	<i>ASPCRO Update:</i> Ryan Okey, Clemson University and Derrick Lastinger,

	GDA
11:00 - 11:30	<i>SFIREG Update of Pending Issues</i> : Patrick Jones, NCDA&CS
11:30 - 11:45	<i>Re-cap, Action Items, Wrap Up, States Only Meeting Feedback, and Discussion on Upcoming Meeting Location and Dates</i> : Patrick Jones, NCDA&CS
11:45 - 12:00	<i>Adjourn</i>

**States-Only Meeting:**

**Introductions of State Officials:** Present: GA, NC, AL, KY, FL, MS, SC, TN

**EPA entered the room at 9:00 am.**

Patrick Jones and Tommy Gray welcomed the attendees to Atlanta and EPA and made general announcements. Carol Kemker opened with comments from the EPA. She gave updates on funding and work plans. Funding has remained fairly constant and working to keep a consistent budget and at least the same money going to state programs. FIFRA workplan and template have been approved and are being used. There should not be a great change associated with this. Some changes on grants.gov (Philip will cover this). Regional trainings (NC, FL and other states) have gotten great national reviews. This helps in getting funding for future trainings. Fumigation issues in region are still getting a lot of press. Need to enhance public education regarding fumigants. Zika has brought about greater concerns in Region 4 because of our geographic location. Mosquito and vector control will be topics of discussion within EPA this year. Thirteen Region 4 EPA personnel were in attendance.

Kimberly Bingham gave an update on temporary personnel reassignments in Region 4.

**Enforcement Update:** (Philip Beard – EPA Region 4)

-Settled cases in FY 16 totaling 1.16 million so far (Section 12 cases). Issued 2 SSUROs. 73 open cases now.

-Focus areas: Pesticide Product integrity, border compliance, WPS

-Section 7 tracking system (eSSTS) is in place. This is a new web-based system that allows electronic submission of forms from companies, provides compliance monitoring database, can be used for establishment targeting, region can provide a state specific list, Region 4 contact is Justin Mullenix. (some state discussion was generated).

-Devices: devices that make claims and do not have data to back up these claims are in violation. EPA can follow up on these cases if the state cannot classify it as a violation (for devices that may or may not contain pesticides but make pest control claims).

Karen Hill – (EPA Region 4): FIFRA violations related to importation of illegal pesticides. Import of illegal pesticides poses a significant threat in the US to people and the environment. Import violation enforcement actions: over 16 million pounds of

pesticides were intercepted by US EPA in 2013. In 7 months 2015-16, 8,336,708 pounds of pesticides were intercepted by Region 4 alone. Failure to file NOA is the most frequent violation (notice of arrival of pesticide or device). Falsified information on the NOA is another common violation. Misleading or omission of information regarding the importation of unregistered pesticides for the following reasons (import for export purposes, for research and development, devices, FIFRA section 25b products). She reviewed the EPA NOA review process. Avg. time period from when the NOA is received until the date the pesticide enters the port is 1-4 days. This is not much time to give advance notice to states for port inspections. EPA will attempt to communicate with states as soon as is possible.

Highlighted import cases in the US:

- Well Shield* (case settled for \$253,600.00, import of unregistered pesticides which uses nanotechnology as the active pesticide component)
- Callington* (Case settled for \$7,700.00, Failed to submit 3 NOAs for 3 shipments, company self-reported)
- We Fix It* (Case settled for \$1,890.00, shipment held by customs for failure to submit an NOA, 3 bottles of unregistered pesticides were included in a registered shipment).

**FSMA Update:** Diane Ducharme (NC Cooperative Extension Service)

- Jan 4, 2011 FSMA was most sweeping regulation related to food safety in a long time.
- Prevention-based controls across the food supply continuum for imported as well as US produced foods.
- FDA still regulates food. Now have authority to conduct mandatory recalls, detention of products and other measures to ensure food safety in the marketplace.
- Has 7 foundational rules (controls for animal food, human food, foreign supplier verification required, third party auditors, sanitary transportation, intentional adulteration of domestic and foreign foods).
- Has a tiered compliance structure for business ranging from 1-3 years for the different Final Rules.
- Rules confirm the industry role in food safety, risk-based and flexible, focus is on prevention, domestic and imports are included, addresses small business issues, extensive government, stakeholder input is considered.
- Is an unfunded mandate for states (no federal funding). This will affect the ability of states to do outreach and educational programs. It will affect long-term sustainability of programs that area developed.

Overview of the 7 FSMA Foundational Rules:

1. Preventative controls for human foods: set standards for firms which manufacture, process, pack or hold human food. Update of cCGMPs...establishment of a food safety system, written plan,
2. Preventative controls for animal food: (same for human foods) relates to domestic and imported feed, pet food, and raw materials and ingredients.
3. Produce safety Rule: Deals with raw agricultural commodities for human consumption. Standards for growing, harvesting, packing and holding produce on farms. Focus on Ag. water quality, etc.

4. Foreign Supplier Verification: imported food to the us requires the same level of public health protection as domestic foods.
5. Third Party Auditor verification: defines a system for recognition of accreditation (3<sup>rd</sup> party auditors). Directs FDA to implement regulations, etc.
6. Sanitary Transportation: Require shippers, receivers, and carriers to take safety measures to protect food.
7. Intentional adulteration of food: Protect food supply against terrorism, sabotage. Bio, chemical, and radiological hazards are looked at, and also the most vulnerable links in the food chain are being identified and monitored.

**Registration of Dicamba Products / Dicamba in Tolerant Crops** Judy Fersch, Jim Wright, Jeff Burke, Shazia Brown, Tom Schmidt (BASF/Monsanto)

Timing for having tools available to growers: 2017 use season for M1691 anticipated due to EPA public comment period, Federal Registration, and fall bulk sales.

-Label will have requirements for minimizing off target movement of the product (nozzle, wind speed, ground speed, boom height, buffers, no spray if sensitive crop downwind)

-EPA imposed limitations of no tank mixes allowed (with other herbicides) and a 360 degree buffer around treated areas.

-Determining inadvertent crop residue tolerances are in progress for over 200 crops. Data have been submitted to EPA. EPA has concern over drift of the product to off target crops.

-Herbicide resistance management: ongoing stewardship programs, supporting website, EPA reporting requirements.

**EPA E-enterprise Pesticides Data Accessibility and label Matching Project:**

Alan Boutereira, (US EPA)

This is intended to be a mobile electronic label comparison tool that checks market labels against state and federal label databases to identify violative products in the marketplace. (detailed presentation is in the meeting packet).

**Pollinator Protection Plans** Randy Dominy (EPA Region 4): No decisions are on the table yet for new pollinator protection labeling. EPA has reviewed 113,000 comments. Randy is communicating with Marietta Echeverria, there will be nothing decided until all of the comments have been reviewed. EPA is hoping to finalize the policy by the end of 2016 calendar year.

**Zika Virus Update** Randy Dominy (EPA Region 4) EPA has been aggressively pursuing this issue since 2015. The agency has accelerated its regulatory processes in response to the urgency of Zika. (zika claim label amendments, CSF notifications and amendments, section 18s, repellency of products, etc.)

Addition of alternate active ingredient sources (DEET)

Section 18s...three public health emergency exemption requests have been submitted by CDC and approved for use in Puerto Rico US territorial island and US mainland temperate regions.

Donations of treated bed nets considered...coordinating with CDC and its foundation to ensure that pesticide donations can be used legally in the US.

Repellency awareness graphic was put into place to identify efficacious repellents.

Funding: 1.98 billion request with Congress. 500 million released by the President.

EPA preparing to budget request to solicit funding for outreach materials, IPM, waste assessment, assessment and monitoring in at-risk areas, Puerto Rico, and US Virgin Islands screen pilot (putting screens on windows).

Went state by state to determine activities going on in various states now to prepare for Zika. Most cases of travel-related zika in Florida and NC right now. No cases reported that have been transmitted within the mainland US to date.

*EPA Action item: Expedite a review of insecticides (with EPA/ US Fish and Wildlife Service) used in mosquito control.*

#### **Managed Pollinator Protection Update and Measures (Pat Jones – NCDA&CS):**

All States have reported to Jeanette Klopchin, except for two. Please update plans if you have not done so. Discussion on State Bee Kill Reporting form to be reported to Thomas Steeger.

**AAPCO Update** (Tony Cofer Alabama & Kathy Booker Tennessee): AAPCO website was reworked and is user-friendly now. SFIREG working committee nominations (EQI and POM) are due by June 6<sup>th</sup>. Zika survey will go out this week (ASPCRO/AAPCO) joint effort. March 5-8, 2017 at Hilton Alexandria will be next year's spring meeting. A lot of time has been spent on gathering and submitting comments related to the proposed C&T Rule changes. PREP was moved from OECA to FEAD, and the PREP Coordinator's travel was severely limited after that move. AAPCO believes this constitutes a problem and will continue to raise it as an issue until it is addressed by EPA.

#### **WPS and C&T Update Richard Pont (US EPA):**

##### **C&T Update:**

Proposed on August 24, 2015. Comment period ended on Jan 22, 2016, and extended several times. Final rule plan will be sent to OMB by July/August 2016. Proposed to sign final Rule in December 2016.

-Over 700 unique comments were submitted by states, PSEPs, applicators, growers. This was helpful in the process, and it became clear that state certification and recertification programs had gone in many different directions over the last 40 years.

-Comments showed that states were concerned over several of the key proposals in the rule (recertification periods, direct supervision, establishing supervision standards). As a result, EPA is considering a more flexible option for the final rule. This would accommodate the different approaches taken by various states over the years.

Current proposal is to not address the way states: Determine appropriate continuing education (CE) programs, frequency of recertification (recert. period) and amount of CE necessary in states. Amount of training depends on category (if required CE is too high, then the applicators will opt to take exams instead). It was determined that the proposal to earn at least ½ of credits in last 19 months is unnecessary and complex to administer within the states.

Comments on Recertification: Effectiveness of training depends on more than frequency and amount of CE (content, quality etc.)

Considering several options that will give more flexibility in the final rule to establish consistent characteristics of programs, but allow flexibility within reason in each state.

### **WPS Update:**

-By January 2, 2017 most provisions will go into effect.

-Several provisions delayed until 2018 (some handler requirements, etc.).

-Outreach: (educate regulators, stakeholder outreach, educational materials development, implementation of pesticide safety training).

-Richard also reported on the status of WPS implementation activities in detail. ----

Materials development is under way. It will include EPA website, materials for regulators, cooperative extension resources, etc. New five-year cooperative agreements (national farm worker training, resource development, meeting support and facilitation, pesticide safety education program funds distribution).

-National farm worker training will occur in approx. 30 states.

-Pesticide Resource development (PERC) coordinated by UC Davis.

-First year focus on WPS priority issues (needs assessment, etc.).

-Timing of WPS materials: Now available – summary tables, overview, PPTs, detailed PPTs on specific topics,

April 2016 - FAQs and AEZ interpretive guidance

May 2016 - Quick reference guide face sheets on specific topics, etc.

Summer 2016 – release more fact sheets and How to Comply Manual.

-WPS Pesticide Safety Training – June 2016 process for approving train the trainer program, review and approve TTT programs.

EPA is considering focused inspections for WPS which allows some flexibility to cover a subset of WPS requirements and would include some minimum elements. Seeking input on how to conduct focused inspections... would like feedback from states. Also seeking input on documenting inspections.

WPS Guidance Contacts: Richard Pont, Carol Schroeder, Nancy Fitz, Carol Galloway.

### **Wednesday, May 25, 2016 Meeting Notes:**

Pat Jones called the meeting to order at 8:00 am

**NC Bee kill reporting form** – Dwight Seal (NCDA&CS). It is a very comprehensive form that includes everything that would be of importance in a bee kill incident.

**Tribes, School IPM, and Training** Pat Livingston (EPA Region 4): Pat has communicated with all six tribes in Region 4, and is planning to do a Tier 1 inspection in the tribal areas. A couple of tribes are planning to complete pollinator protection plans. SIPM priorities in the region are to increase the implementation of SIPM in tribal schools, work with SLAs to increase implementation at the state level, and work with the Center of Expertise to utilize shared resources.

Pat is not sure if additional grant funding for SIPM will be available for states this year. Reports are needed by December 31 for states that have IPM projects this year.

**Regional Inspector Training plans (2016-17)** Rick Hayes (Georgia):

Planning to have nozzle identification, droplet size, respirator types, etc. in addition to WPS Training for the Savannah course in August 2016. The respirator identification training will be important for the new WPS regulation compliance. Invitation letter will go out next week.

**National PIRT and PREP for 2016-17:** North Carolina did a great job hosting the joint PIRT-PREP course that was held recently. The next course is scheduled for August (Tribal PIRT), FDACS will be hosting a pollinator protection PIRT in 2016 Proposed 2017 courses WPS in Oregon, and advanced inspector skills hosted by Georgia in July 17.

Four PREP courses in 2016 - Compliance and Enforcement held in NC May of 2016 and a WPS PREP will be held the week of June 6-9 hosted by FDACS. A Comprehensive Combo PREP will be in Santa Fe, NM in September. In October 2016, a PREP will be held in Indianapolis IN with a variety of topics (new formulations, climate change impacts, drones, efficacy, and the changing political landscape).

**State Updates:**

**GA:** Phenoxy herbicide crop issues (drift) are of concern. Trainings were held for around 1000 growers to focus on drift reduction and other issues with these herbicides. They have cooperated with UGA for this to occur. Mandatory training will be held when new product uses/labels come out.

Recent state-wide field operation that focused on structural fumigation was held. This was done in one day, and state-specific requirements were the focus of this (licensing requirements for technicians, etc.). Contracts were reviewed, and this is where most violations were found (mainly inaccurate records). Enforcement response (administrative orders, penalties, monetary penalties) was developed to address this. This was done in response to the incidents that occurred in the Virgin Islands and Florida. The next step is to go to the fumigation sites and observing fumigations. For the first time in a long time, UGA has a Pesticide Safety Education Coordinator.

**NC:** Pollinator Protection and the roll-out of Drift Watch have dominated things. This program has been very well received. Fumigation training has been going on, respirator fit testing, etc. NC can legally recertify applicators in other ways than through testing now. Wayne Buhler and others are rewriting manuals now.

**AL:** Alabama will be filling positions - Two new professional services inspectors have been added. Received approval for Ag. Compliance manager to be hired along with a C&T Manager. If these positions are filled, this will be the first time this has happened in 15 years. Plans to put a registered technician program into place. The entire database

system is being scrapped and they are going with a new data tracking system. Some of this will be in place by early fall.

Settlement against Knox Pest Control for around one million dollars, and they are still finding new cases related to this company's violations...so an ongoing process.

Special Registration issues: Helped US Fish and Wildlife service to get a registration to protect Sandhill Cranes. Two Section 18s submitted (one for grain sorghum product and one for cotton product. These are being handled differently by EPA because the active ingredient had lost its registration. Negotiated with growers to change label in order to get the product.

**KY:** IT staff have built component of pollinator protection plan. Tablets have been purchased for field staff and they are trying to go paperless for reporting. Recently rewrote some structural regulations related to IPM (can make applications in schools during the week and not just on weekends if necessary). Taking a look at bulk pesticide regulations...bulk fertilizer tanks near rivers.

**FL:** Main focus over the last nine months has been structural fumigation. Office of Inspector General came to Florida to observe how structural fumigations work. Florida does a lot more structural fumigations than any other state in the region. Florida received 11 recommendations from the IG report and they are addressing these now. Conditions of Registration are being placed on some fumigants (working with registrants). Florida can pull fumigation products out of the marketplace if registrants do not comply with these conditions of registration. FL has been dealing with the Zika issue a lot this spring. Aerial applicator issues...3 of 5 drift cases involved human exposure. Clean Sweep program is fully funded now. This has been a good program.

**MS:** Partnered with MS State Extension to produce training modules to address 2,4-D and Dicamba. Have been dealing with more than usual animal poisonings. Coyotes on grazing land were the primary target of these poisonings. Also, had a child poisoning from an inappropriate pesticide treatment indoors (bidrin). The child did recover.

**SC:** Staffing shortages with the loss of two investigators. Focusing on structural fumigations even though SC does not have a high volume of structural fumigations. Companies are not performing fumigations in most cases. Building practices and building code allow foam board insulation to extend below grade in certain conditions. This creates issues with termites. Membranes are being put on the foam board to allow this to happen, but these membranes are not effective. The membrane claims to keep termites out of the foam. Cases: last week DPR was successful in a case against a person who was defrauding families and elderly people. He took money up front and never returned to do work. Seven families were targeted. He was charged with breach of trust with fraudulent intent. He was sentenced to five years in prison. In another case, Gramoxone was being put into drink bottles and sold. One person died as a result. The person who sold the bottled product was charged with involuntary manslaughter. The person who stole the product also was charged.

**TN:** Has had no budget cuts and no loss of staff, but are anticipating retirements in the next few years. Had an applicator who applied fipronil illegally in homes. Product reg. fees have been increased from \$100.00 to \$200.00. Field operations will be under a new computer program, and this will be operational by February 2017.

**EPA Structural Fumigation Update** (Dale Dubberly - FDACS and James Persall - EPA Region 4): The incident occurred in August. Public records requests by the media were problematic because it took a lot of time, etc. The investigation was closed pretty quickly and then referred to the EPA as a criminal case (CID).

It was a joint investigation. Terminix had subcontracted the job to another company (Sunland). A child was affected adversely by the fumigant (Sulfuryl fluoride). PCO claimed it was Vikane, but the actual product that was used was not Vikane. Proper ventilation was not performed after the fumigation. After sampling, sulfur dioxide was found in the house several days after the poisoning occurred.

The company lied several times to FL, and thus the EPA. Final outcome was the company pled guilty and did the maximum time of one year in prison on the FIFRA violation. They (company or individual) cannot work in the pesticide business for 3 years anywhere in the US, and then must go through other stringent measures in order to be licensed to apply pesticides again in Florida.

The EPA Criminal Investigation Division CID trains and investigates violations of environmental laws and provides a range of technical and forensic services for civil and criminal investigative support and counsel on legal and policy matters. This division assists states in investigating FIFRA violations when called to assist with suspected criminal cases.

**AAPCO WPS Committee Report** (Pat Jones): Pat Jones is chairing this committee. AEZ discussions “Suspend application” is still in the final WPS rule, but if the applicator is confident the application will not impact neighboring people, etc. he can proceed with the application. This is up to the judgment of the applicator. It goes back to the label statement of “do not allow contact”. This allowance will be in the interpretive guidance. This guidance has not been released yet. EPA is aware that the resources are needed quickly, and this is in process now. The respirator requirements will be a big issue, especially for States who were not highly impacted by the Soil Fumigation phases. Family members are not exempt from any label requirements (respirators, etc.).

**ASPCRO update** (Ryan Okey- Clemson): Mid-year meeting went well. Rodenticide document is available on the web site now. At-large positions will be available for consideration. Participating with NASDA and AAPCO on a Zika survey to be sent out to states. The annual summer meeting will run Mon-Friday in Santa Fe New Mexico, beginning on August 24 2016. Region 4 has good representation on the ASPCRO Board and on various committees. In Feb. worked with NPMA on a survey regarding structural fumigation. 66% of responses indicated that state regulatory agencies are effective in regulating fumigations. Treating rodent burrows with fumigants was a topic of focus of another work group. ASPCRO is planning a training in 2017 that addresses structural

fumigation issues. EPA requested ASPCRO to send out a survey to states (will be sent in June) related to fumigants (storage restrictions for methyl bromide, etc.).

**SFIREG Update (Pat Jones):** Marijuana issues are still of great interest to some states. Also hemp regulations being worked on in certain states. There is a move to reclassify cannabis from schedule 1 to a schedule 2 drug which would make it easier for federal agencies to deal with registrations of pesticides. Still dealing with pollinator issues and toxicity of certain pesticides to bees. Additional measures may come about. POM is discussing federal credentialing issues (problems with WIKI, NETI).

**Recap:** Pat Jones reviewed the major topics and action items from the meeting.

-Lab issues may be on the fall pre-SFIREG agenda because of the Paraquat residue method problems raised by GA and discussion about the AAPCO Check Sample program. Lab directors may be invited to attend and discuss these issues and others related to lab analyses.

-Rules that apply to drone use in the application of pesticides...may be added to the fall agenda to clarify where states are on this and if rule changes will have to be made to accommodate pesticide application by drones.

-States are at different places in the completion of pollinator plans.

-Pre-SFIREG agenda topics were discussed, we need help getting topics for the agenda.

-Randy Dominy will follow up on mosquito control insecticides point and the zika call/communication with states.

-Concerns about Phenoxy herbicides still an issue.

-Upcoming fall 2016 pre-SFIREG will be in Georgia again.