



May 23, 2024

Molly Darlington, Ph.D.
Research Scientist
Pesticide and Fertilizer Management Division
625 Robert Street North
Saint Paul, MN 55155-2538

Re: Minn. Dept. of Agriculture Public Input Request - PFAS in Pesticides

We respectfully submit comments on the following questions posed by MDA on behalf of NRDC:

- 1. What criteria should be used to determine whether a PFAS ingredient in a pesticidal product is “essential for health, safety, or the functioning of society”? What material/information should be required from registrants to demonstrate essentiality?**

The MDA’s regulations on essential use should be harmonized with the MPCA’s regulations on the concept. Such harmonization will provide consistency on the application of the concept in Minnesota. It is also consistent with the structure of the law covering essential use. Under Amara’s Law and related provisions, while MDA has sole authority over the *application* of pesticides in Minnesota,¹ and also oversees *the registration and approval* of pesticide products containing intentionally added PFAS,² MPCA has the initial authority on sales and distribution of all products containing intentionally added PFAS, including pesticides, subject to review and approval by MDA on determinations when it concerns pesticides.³ Thus, the laws do not

¹ Minnesota Statutes 2022, section 18B.03, subdivision 5 (“The commissioner [of MDA] has the sole regulatory authority *over the terrestrial application of pesticides containing PFAS*, including but not limited to the application of pesticides to agricultural crops, structures, and other nonaquatic environments. In order to reduce duplication, a registrant is not required to provide technical data to another state agency if the registrant previously submitted the data to the commissioner and the data is available to the other state agencies.”) (emphasis added).

² Minnesota Statutes 2022, section 18C.202, subdivision 3 (“Beginning January 1, 2032, the commissioner [of MDA] *must not register or approve* a product for use under this chapter if the product contains intentionally added PFAS unless the commissioner determines that the use of PFAS is a currently unavoidable use.”) (emphasis added).

³Minnesota Session Law - 2023, Chapter 60, H.F. No. 2310, Section 21, subdivision 5(d) (stating that “The commissioner [of MPCA] may not take action under paragraph (b) or (c) with respect to a pesticide, as defined under chapter 18B, a fertilizer, an agricultural liming material, a plant amendment, or a soil amendment as defined under chapter 18C, *unless the commissioner of agriculture approves the action.*”) (emphasis added). Paragraphs (b) and (c) concern sales, offers for sale, and distribution of all products containing intentionally added PFAS. In addition, the exemptions from the ambit of MPCA’s authority in subdivision 8 do not include any exemptions for pesticides.

contemplate that MDA independently develop a definition of essential uses when it comes to the sale and distribution of pesticides, but rather that MDA review MPCA's conclusions and assess them with a view to pesticides, including the considerations recognized in the law. Given that MPCA's regulations will cover far more products than pesticides, MDA should align its criteria with MPCA's for the purposes of overseeing application of pesticides and registration and approval of pesticides.

Amara's Law and Section 18B.01 both define "currently unavoidable use" as a "use of a PFAS that is essential for the health, safety, or functioning of society and for which alternatives are not reasonably available." When it comes to pesticides, 18B.01 adds that "currently unavoidable use may include consideration of the need to prevent or minimize potential pest resistance and the potential human health and environmental impacts of alternative products." We anticipate that MDA would use these latter considerations in determining whether to approve the MPCA's actions on pesticides pursuant to Amara's Law.

Given that the base definition is the same, we attach here the comments we provided to MPCA on the criteria for determining essential use and additional terms that should be defined, and urge MDA to align with MPCA's criteria.

2. What criteria should be used to determine the necessity of PFAS ingredients for pest resistance management? What material/information should be required from registrants to demonstrate the necessity of a PFAS ingredient for resistance management?

This question addresses the same basic inquiry as in Question 1 above, just as specifically applied to pest resistance management. Thus, we believe similar criteria are relevant, and that the basic criteria should be made specific to this context.

It will be particularly important to understand and outline the function of PFAS in the pesticide as it relates to resistance management.

3. What criteria should be used to determine whether there are "reasonably available alternatives" to a PFAS ingredient in a pesticidal product (e.g., cost of alternative to the pesticide manufacturer/pesticide user/etc., efficacy/performance of the alternative)? What information should be required of registrants to demonstrate the availability of alternative ingredients?

When assessing "reasonably available alternatives" for the use of PFAS in pesticides, we believe the considerations will be similar to the considerations for other products. Additionally, aligning with MPCA's criteria would harmonize Minnesota's regulations on essential use and would be consistent with the statutory structure outlined in the laws governing essential use of PFAS.

We provided recommendations to MPCA on assessing "reasonably available alternatives," and submit those comments for your consideration, and we urge you to align with MPCA's criteria.

In addition, we note that on pesticides specifically, Maine passed a law ([H.P. 1501 - L.D. 2019](#)) prohibiting the distribution of pesticides that are contaminated by perfluoroalkyl and polyfluoroalkyl substances; or that contain intentionally added PFAS beginning in 2030. Under Maine law, pesticides are defined as follows:

“Pesticides” include any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pests; any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant; and any substance or mixture of substances intended to be used as a spray adjuvant. "Pesticide" includes a highly toxic pesticide.

MDA should take into account that pesticide distribution in Maine will have to abide by the law above in assessing whether alternatives are reasonably available.

4. What criteria should be used to determine the “potential human health and environmental impacts of alternative products” that do not contain intentionally added PFAS ingredients? What information should be required of registrants to demonstrate human health and environmental impacts of potential alternatives?

We understand this question to be fundamentally about safer alternatives. We provided comments to MPCA concerning criteria and considerations for safer alternatives and submit a copy of those comments for your consideration. As we mention above, aligning with MPCA’s criteria would harmonize Minnesota’s regulations on essential use and would be consistent with the statutory structure outlined in the laws governing essential use of PFAS.

7. Use the space below to provide additional comments.

There are additional criteria that MDA should consider. These are outlined in response to Question 9 in the comments to MPCA, which are attached.

We would be happy to discuss any of the information provided in our comments and attachments. For further details, please contact:

Avi Kar, Senior Attorney & Senior Director, Toxics (akar@nrdc.org)
Anna Reade, PhD, Director, PFAS Advocacy (areade@nrdc.org)
Katie Pelch, PhD, Scientist (kpelch@nrdc.org)