



February 21, 2023
Submitted By Email

Megan Patterson
Director
Maine Board of Pesticides Control
28 State House Station
Augusta, ME 04333
Megan.L.Patterson@maine.gov

Re: February 24, 2023 Board of Pesticides Control Meeting -- Comments On The Board's Implementation Of LD 264 As Part Of The 2023 Pesticide Product Renewal Program

Dear Ms. Patterson,

We write on behalf of CropLife America ("CLA") and RISE (Responsible Industry for a Sound Environment)® in response to the Board of Pesticides Control's (the "Board") invitation to provide comments in advance of its Friday, February 24, 2023 meeting. This letter: (1) provides information about several practical challenges and obstacles to compliance and protection of proprietary and other rights inherent in the renewal portal's current design; and (2) requests an extension of time for the Board to address these obstacles and for our members to complete the LD 264-required aspects of product renewal. Thank you for considering these comments on this important matter concerning the regulation and availability of pesticide products in Maine for both crop and professional pest control uses important for growers and public health.

CLA and RISE appreciate the Board's work to develop procedures to implement LD 264. Our members have used the time available to diligently gather information and prepare for renewing their product registrations using the new renewal portal, while CLA and RISE have worked to address membership's questions and concerns with the Board. As our members have submitted (or have attempted to submit) their pesticide renewal applications through the portal, they have encountered several practical obstacles to using the portal and completing their applications. These obstacles have in turn impeded our members' ability to protect the proprietary and other rights addressed in our November 29, 2022 written comments. This is so despite the Board's efforts to date, which we appreciate.

In light of the significance of these issues and the upcoming February 28 deadline, CLA and RISE respectfully request that the Board provide an extension to the 2024 renewal year for registrants to comply with the affidavit and Confidential Statement of Formula aspects of product registration renewal, while allowing registrants to renew their products by addressing all other requirements and paying the related fees. We believe this would allow the needed time to address all issues and at the same time allow products to be registered and available in Maine.



Although we believe an extension until the 2024 renewal year is justified by the complexity of the issues the Board is addressing, at a minimum, an additional four-month extension is needed for the Board to address these practical issues (including with its contractors) and help ensure that our members are able to take steps needed to protect their proprietary and other rights.

We provide specifics below, thank the Board for considering our comments, and commit to continuing to work diligently to help identify solutions and do our part to address LD 264.

Practical Obstacles To Completing 2023 LD 264 Compliance

The following are the four practical obstacles that our members have encountered to date, accompanied by our proposed solutions on each.

1. Text Box Character Limit: We appreciate the addition of text boxes to provide confidentiality claims and other information important to the answers to each affidavit question. Unfortunately, the current text boxes are limited to 255 characters, which allows only a short phrase and makes it impossible to provide full responses for those applications that require more information.

Proposed Solution: We request that the character limit be removed. In the alternative, we request that the character limit be increased to at least 4,000 characters.

2. Information That Goes Beyond CSF Information: The portal requires applicants to enter certain supplier identity and contact information that goes beyond what is required on the actual Confidential Statements of Formula, that is not required by LD 264, and that is not in the registrant's possession for every product. Currently, a registrant cannot proceed without entering this information. Additionally, this highly confidential information is not included in the CSFs submitted to EPA and other States. In other instances, there are multiple suppliers for inert or active ingredients on a CSF and the portal does not allow entry of more than one supplier.

Proposed Solution: We request that the Board remove the requirement to provide contact information for each supplier and provide the ability to include multiple suppliers for each ingredient.

3. Locking: When an applicant encounters an "Error," the product goes to a Pending Action and is locked until Maine resets the application, authorizing the applicant to access the application and resume work on it and complete submission. In some cases, Maine's responses are quick, which we appreciate. In others, it can take between one and two weeks or more for the BPC to reset the application.

Proposed Solution: We request that the locking feature be removed.



4. Amending A CSF: The portal originally allowed the applicant to amend a CSF. That option is no longer available and so users cannot submit updates if a CSF changes.

Proposed Solution: We request that the Board reinstate the feature that allows applicants to amend a CSF.

These Practical Obstacles Prevent Applicants From Protecting Their Rights

We request that the Board extend its timeline for the LD 264-specific requirements so the Board has adequate time to address all of the practical obstacles identified above and for the registrants in turn to complete renewals accurately while protecting their proprietary and other rights. As to the latter, the Board provided affidavit text boxes as a vehicle for registrants to provide necessary explanatory information and confidentiality claims. We appreciate that the Board made this option available.

However, the availability of the text boxes is not accomplishing its intended purpose because there is a limit of 255 characters in each text box. We appreciate that the Board provided the text boxes, which allow registrants: (1) the opportunity to provide context for the content of their responses to the yes-or-no affidavit questions; (2) to provide qualifications to help protect the individual providing responses to the questions from liability if those good-faith responses ultimately prove incorrect, for instance, because the requested information may not be within the registrant's knowledge; and (3) to make confidentiality claims. Our November 29, 2022, written comments to the Board provide more details about these points.

Text boxes that allow only 255 characters, which translates to just a few words, are not sufficient to provide such context, explanations, or confidentiality claims.

Confidentiality Of CSFs And Affidavits

Although not specifically on the agenda for the February 24, 2023, meeting, CLA and RISE wish to comment that our members continue to have significant concerns regarding the confidentiality of information provided to the Board, as detailed in our prior comments, and believe that with additional time the Board could establish procedures to address these concerns.

Board Authority To Extend Its Timeline For LD 264 Implementation

As with the Board's earlier short extension, the Board has the authority to extend its timeline for implementation of its own regulations, including LD 264 requirements for product registration,



given its broad discretion to interpret its own rules, regulations, and procedures.¹ Neither LD 264 nor the rule the Board adopted in response to LD 264 include a specific deadline by which registrants must provide either the affidavits or CSF contemplated in LD 264.² With no specific deadline for Board action, the Board is able to set a reasonable timeline that will allow it to determine the best means of effecting LD 264 with minimal disruption to Maine’s farmers and other important users who rely on regulated pesticides to control agricultural and public health pests.

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Thank you for your consideration of these comments and your continuing work on these important matters.

Sincerely,

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¹ See *DownEast Energy Corp. v. Fund Ins. Review Bd.*, 756 A.2d 948, 951 (Me. 2000) (applying rule that courts give “considerable deference to an agency’s interpretation of its own internal rules, regulations, and procedures and will not set it aside, unless the rule or regulation plainly compels a contrary result”) (citations and quotation omitted).

² 01-026 CMR Ch. 20 § 1(F).