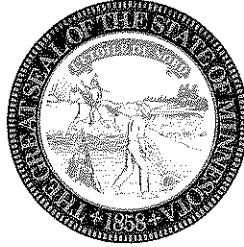


Rick Hansen
State Representative

District 52A
Dakota County



Minnesota House of Representatives

May 2nd, 2014

Gregg Regimbal
Pesticide and Fertilizer Management Division
Minnesota Department of Agriculture
625 Robert Street North
Saint Paul, MN 55155-2538

Dear Mr. Regimbal:

This letter is submitted pursuant to the public comment period for the Minnesota Department of Agriculture's March, 2014, document "Scoping a Review of Neonicotinoid Use, Registration and Insect Pollinator Impacts in Minnesota." I have several concerns, as expressed below.

Registration Decision

The scoping document inexplicably omits a key policy option -- the ability of the Minnesota Department of Agriculture ("the Department") to refuse to approve, or "register", a neonicotinoid pesticide for use in Minnesota.

The legislature explicitly granted the Department this authority so that the Department could take action necessary to protect the state's environment and natural resources. By omitting this potential outcome, the Department has inappropriately limited the scope of the forthcoming special registration review. Surely a complete and adequate review would include a thorough analysis of whether the Department should continue to register the pesticides in question. Only if the Department first provides sufficient justification for continued registration should the document discuss what, if any, actions the Department will take to protect pollinators from registered neonicotinoids.

The scoping document lists several possible outcomes of the anticipated special registration review of neonicotinoids. These potential outcomes include:

"...clarification of label provisions designed to protect non-target organisms and the environment, enforcement-related education, applicator guidance and social network tools developed to enhance product stewardship, and other measures designed to minimize the impacts of pesticide use on human health and the environment." (p. 4)



These outcomes appear to be built upon the Department's forgone conclusion that it will continue to register neonicotinoid pesticides. This limits the scope of special registration review outcomes to potential application restrictions and enforcement-education efforts.

A key item is missing from the Department's list of potential outcomes -- refusal to approve or renew the registration for some or all neonicotinoid pesticides.

Although the Department's intent is not entirely clear from the wording of the draft scoping document, the Department may have unwittingly or inadvertently dismissed this option by writing:

"The scope of these special registration reviews varies depending on the potential education, outreach, and enforcement needs identified by the Department. As such, these reviews are not intended to be redundant of analyses and decisions reached by the United States Environmental Protection Agency (USEPA) during federal registration. Rather, these reviews result in a greater understanding of federal registration concerns and provide a variety of opportunities for action." (p. 4).

Read in the context of the entire scoping document, this statement gives the reader the impression that the Department's hands are tied with regard to whether to authorize the continued use of neonicotinoids in Minnesota. The Department implies that this exercise would not only be redundant, but futile as well. If this were the case -- i.e., if the Department were bound by USEPA's decision whether to authorize the use of a pesticide, then what is the purpose of the state-level registration requirement in Minnesota law?

The legislature did not intend that the Department would simply rubber stamp USEPA's registration decisions for fear of being "redundant". This implicit interpretation of the law is nonsensical and -- more troubling -- at odds with legislative intent. What exactly is the purpose of this "special registration review" if not to review and evaluate the Department's registration decision in light of the latest evidence on "insect pollinator impacts"?

By law, a pesticide may not be used in Minnesota unless it is registered by the Department (§18B.26, subd. 1). Registrations expire and must be renewed annually. The legislature granted the Department the authority to approve, deny, or cancel the registration of any pesticide (§18B.26, subd. 5). As a result, although the USEPA may register a pesticide, under state law the Department can prohibit its use in Minnesota.

If the Department chooses to register a pesticide, the Department is empowered to "impose state use and distribution restrictions on a pesticide as part of the registration to prevent unreasonable adverse effects on the environment." (ibid) The scoping document reflects (to some extent) the "restrictions" element of the statute, but omits the denial/cancellation option.

An adequate scoping document and special review would identify all potential options, not only those least likely to upset affected industries. Why allocate scarce public resources to a scoping effort or special registration review that ignores a significant and lawful potential outcome? This is a failure of due diligence. The citizens of Minnesota deserve a full and thorough analysis of neonicotinoids and the Department's legal duty to protect pollinators and the environment at large. The final scoping document and the special registration review must fully explore all options at the Department's disposal, or this effort will be a waste of time and public money.

Use Restrictions

As described above, state law vests the Department with the authority to impose pesticide use and distribution restrictions in order to prevent unreasonable adverse environmental impacts. This includes restrictions on a registered pesticide's application methods, timing, rate, target pests, etc. The potential review outcomes identified by the Department in the scoping document do not fully reflect the Department's authority in this area. Instead, the potential outcomes are focused on label clarification and education efforts. While these are important activities that should be part of the solution, the final scoping document and the registration review itself must emphasize and explore the Department's options and recommendations in the statutorily-authorized area of state-level pesticide use and distribution restrictions. Effective restrictions could protect pollinators from unreasonable harm attributable to specific, high-risk neonicotinoid application practices.

The Department is uniquely positioned to identify problematic neonicotinoid practices and enforce appropriate restrictions. If the Department fails to uphold this duty, its inaction will justifiably draw into question the Department's ability to sufficiently administer state and federal pesticide control laws.

Process

To date, the Department has provided inadequate opportunity for public involvement in the neonicotinoid special registration review process.

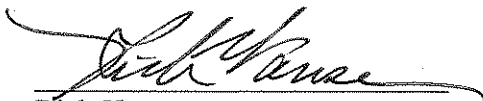
On March 3, 2014, the Department announced via the State Register and the Department's pesticide-non-point-source e-mail listserv the availability of the draft scoping document for public review and comment. To my knowledge the Department took no additional action to notify the public. While the pesticide industry, agricultural organizations, and other vested stakeholders are accustomed to reviewing the State Register and likely are members of the Department's listserv, the general public is not.

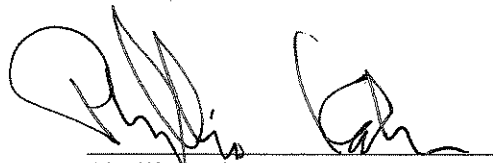
At a minimum, the Department should develop and publicize a listserv for the neonicotinoid special registration review. The general public could use this dedicated service to follow and actively participate in the process. In addition, the Department should hold and sufficiently publicize public meetings around the state so that interested

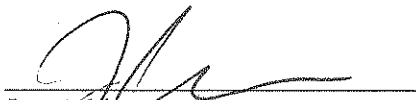
parties beyond the Department's usual list of stakeholders can provide input. The Department need look no further than other state entities for best practices in this area, including the Minnesota Department of Natural Resources' critical area rulemaking process and the meetings of the Lessard-Sams Outdoor Heritage Council.

The Department cannot perform a full and adequate special registration review without the opportunity for true public participation. The impacts that neonicotinoid pesticides have on pollinators affect all Minnesotans.

Sincerely,


Rick Hansen

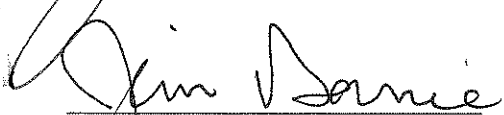

Phyllis Kahn


Joe Atkins


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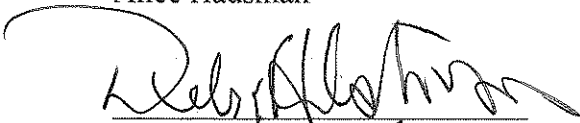

Carlos Mariani

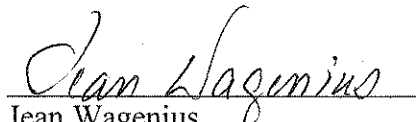

Jim Davnie



John Persell



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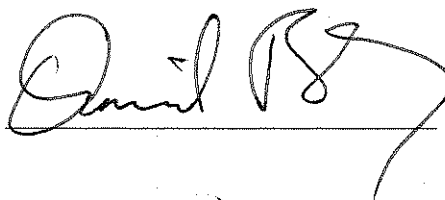

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