

ASSEMBLY THIRD READING
AB 1042 (Bauer-Kahan)
As Amended March 16, 2023
Majority vote

SUMMARY

Requires the director of the Department of Pesticide Regulation (director) to adopt regulations to govern the use and disposal of seeds treated with a pesticide.

Major Provisions

- 1) Requires the director to adopt regulations to govern the use and disposal of seeds treated with a pesticide.
- 2) Requires that regulations adopted to govern the use and disposal of seeds treated with a pesticide prohibit the use of such seeds that meet any of the existing statutory conditions for the cancelation of the registration of a pesticide.
- 3) Prohibits a person from selling, delivering, or using seeds treated with a pesticide that are not registered for that use.
- 4) Requires, on and after January 1, 2025, a use report to be submitted by, or on behalf of, a grower to the director or a County Agricultural Commissioner (CAC), on a form and in a manner prescribed by the director, when seeds treated with a pesticide are used by the grower in the state.
- 5) Requires the director to endeavor to eliminate from use in the state any seed treated with a pesticide that endangers the agricultural or nonagricultural environment, is not beneficial for the purposes for which it is sold, or is misrepresented. Requires the director, in carrying out this responsibility, to develop an orderly program for the continuous evaluation of all seeds treated with a pesticide.
- 6) Requires the director to prohibit or regulate the use of seeds treated with a pesticide.

COMMENTS

Pesticide treated seeds: Pesticides, such as fungicides, insecticides, bactericides, algacides, slimicides, and nematocides, are applied to seeds prior to planting to protect them from diseases, insects, or other pests. Pesticide treatments on seeds are used for localized plant protection; to protect against soil and aboveground pests; and, as systemic pesticides that absorb into the plant and distribute throughout its tissues. According to the United States Environmental Protection Agency (US EPA), treating seeds with pesticides has become a common agricultural practice to improve seed quality by reducing soil borne diseases and by discouraging insects or other pests. In addition to agricultural use, treated seeds are used in residential gardens.

Fate of pesticide treated seeds in the environment: According to a summary of the fate of neonicotinoid-treated seeds in the environment presented by the Department of Pesticide Regulation (DPR), 90% or more of pesticides applied to seeds can move offsite and leach into water or soil and be taken up by non-crop plants. Additionally, approximately 2 to 3% of the neonicotinoid pesticides on treated seeds is lost as dust at planting, and another 2 to 3 % is taken

up by plants. Neonicotinoids applied to seeds protect the plant from root feeding pests for a maximum of two to three weeks. Other pesticide classes, such as fungicides, are commonly used in seed treatment products, however less is known about the environmental fate of non-neonicotinoid pesticides used in seed treatment products.

DPR reports that managed pollinators, such as honey bees, and wild pollinators are exposed to pesticides applied to treated seeds through dust, agricultural soil, crop flowers, and nearby wildflowers. Birds are exposed to pesticides on seeds through the seeds themselves, such as by ingestion, and through contaminated water. Aquatic invertebrates are exposed to pesticides from treated seeds through dust, seeds, and water. Pesticides from treated seeds can be absorbed by aquatic plants. According to the US EPA, workers at commercial seed treatment facilities can be exposed to pesticides on treated seeds, as can farm workers treating or planting treated seeds.

Regulation of pesticide treated seeds: According to DPR's website, "Pesticide-treated seeds are exempted from review by the [US EPA] under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as "treated articles." To the extent that a seed is treated to protect the seed, the seed does not fall under the state definition of "pesticide" and is excluded from review by DPR. Seed treatment products must be registered by [US EPA] and DPR when the coating process is conducted in California. However, there is limited information on which commodities utilize treated seeds, which active ingredients are used for each commodity, and the extent to which treated seeds are used in California."

California Department of Food and Agriculture seed inspection data from 2010 to 2021 show that many seed treatment products found on seeds in California are not registered for use in the state, meaning that pesticides not allowed for use in California are entering the state and planted via treated seeds.

How much treated seed is used in California? While regulators concur that treated seed use has significantly increased over recent decades, little direct information is available to assess treated seed use in California. DPR requires reporting of all agricultural pesticide use, including the type of pesticide applied, the amount applied, the area treated, and the application method. However, DPR argues that pesticide-treated seeds do not fall under the state definition of a pesticide and are exempt from pesticide use reporting. They say that seed treatment products are considered industrial use and do not have the same reporting requirements. Therefore, publicly available pesticide use data in California does not currently account for pesticides applied as seed treatments, and little direct or detailed information is known about the amount and types of pesticides on seeds in the state.

Unfortunately, the lack of data on treated seeds is a national problem. Pesticide use data in the United States also does not currently account for pesticides applied as seed treatments; therefore, while we find that seed treatment use has increased in major field crops over the last several decades, there is a high degree of uncertainty about the extent of acreage planted with treated seeds, the amount of regional variability, and the use of certain active ingredients.

This bill: This bill sets up a regulatory program at DPR to both gather information on and regulate the use of pesticide-treated seeds using a similar structure under which DPR currently regulates other methods of pesticide use. Specifically, this bill requires the director to adopt regulations to govern the use and disposal of seeds treated with a pesticide, and requires that those regulations prohibit the use of such seeds that meet any of the existing statutory conditions

for the cancellation of the registration of a pesticide. These provisions are consistent with existing statutory requirements on other uses of pesticides in the state.

According to the Author

"One would think that the Department of Pesticide Regulation would regulate all pesticide uses – that is not true. DPR does not protect Californians from the pesticides used to treat seeds. As a result, a huge volume of pesticide use in California may be completely unknown. AB 1042 takes the long-overdue step of resolving this loophole by ensuring [DPR] regulates pesticide-treated seeds, consistent with its mandate."

Arguments in Support

According to a coalition of supporters, "Seed treatments are potentially the greatest source of pesticide contamination in the United States, yet due to a gaping loophole in federal pesticide law, The Treated Article Exemption, they go unregulated. As such, they are not tracked, labeled, or regulated in the same manner as other pesticides. The [US EPA] has upheld the current classification despite repeated efforts by concerned citizens and organizations...210 products are registered as seed treatments by CDPR, representing 68 unique active ingredients. This does not account for seeds imported from other states which may use other active ingredients or products. However, CDPR itself stated in a 2021 workshop: "...[pesticide-coated] seed does not fall under the state definition of 'pesticide' and is excluded from review by CDPR." ...Coated seeds are incredibly damaging to the environment. A single seed coated with a neonicotinoid insecticide can kill a songbird. There is enough active ingredient on a single seed to kill 80,000 bees. As much as 95% of the coating dusts or sloughs off, killing local wildlife, persisting in soil for up to three years, and infecting ground and surface water... A CDPR evaluation found 93% of urban water samples in Los Angeles, Orange, and San Diego County and 67% in urban areas of Alameda, Contra Costa, Placer, Sacramento, and Santa Clara County contained seedcoating chemicals at levels above EPA's chronic benchmark for harm to aquatic ecosystems... AB 1042 is not a chemical ban; it simply clarifies CDPR's authority to regulate pesticide-coated seeds within currently prescribed California state law."

Arguments in Opposition

According to a coalition of opponents, "[AB 1042] would require unnecessary and burdensome regulations of treated seeds, resulting in fewer pest and disease prevention options available to California farmers. This additional regulatory review will add significant expense to the California Department of Pesticide Regulation (CDPR) and County Agricultural Commissioners, whose budgets are already fiscally challenged... Treated seeds protect plants against pests, diseases, and fungi from infancy, at the most vulnerable stage... Additionally, treating the seed often reduces the need for and or number of foliar applications of pesticide materials, providing better environmental protection and fewer passes with equipment through the field, resulting in reduced carbon emissions... Treated seeds are regulated by the US EPA and CDPR as a "treated article"... Because these products are being protected by the already regulated and approved pesticide, there is no reason to duplicate that review... The duplicated review required by AB 1042 would have no additional benefit to health, safety, or the environment... AB 1042 would "ban" the sale of treated seeds, then require timely, extensive regulatory review across multiple products, greatly reducing the availability of safe and effective crop protection tools... Until this duplicative review is accomplished, no treated seeds will be available, likely for several years. In the likely event that proponents of this measure or any other interested parties would fight budget augmentations, personnel allocations, and the regulations themselves... an effective ban would be created only in California to the detriment of California farmers."

FISCAL COMMENTS

According to the Assembly Appropriations Committee, DPR anticipates costs of an unknown but potentially significant amount, likely in the hundreds of thousands of dollars, to adopt and implement regulations governing the use and disposal of pesticide-treated seeds (DPR Fund).

VOTES**ASM ENVIRONMENTAL SAFETY AND TOXIC MATERIALS: 7-2-0**

YES: Lee, Arambula, Bauer-Kahan, Connolly, McKinnor, Pacheco, Zbur

NO: Hoover, Ta

ASM APPROPRIATIONS: 11-4-1

YES: Holden, Bryan, Calderon, Wendy Carrillo, Mike Fong, Hart, Lowenthal, Papan, Pellerin, Weber, Ortega

NO: Megan Dahle, Dixon, Mathis, Sanchez

ABS, ABST OR NV: Robert Rivas

UPDATED

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