



April 12, 2016

Ms. Michelle Arsenault
National Organic Standards Board
USDA-AMS-NOP
1400 Independence Avenue, SW
Room 2648-S Mail Stop 0268
Washington, DC 20250-0268

Docket: AMS-NOP-15-0085

RE: Crops Subcommittee –2018 Sunset, Peracetic acid; EPA List 4 – NPEs annotation change discussion document, Plastic mulch and covers (petroleum-based other than polyvinyl chloride (PVC)), Sodium Nitrate.

Dear Ms. Arsenault,

We thank each member of the National Organic Standards Board (NOSB) for their extraordinary volunteer efforts on behalf of the organic community and commend you all for your work on the complex and diverse questions being considered at the upcoming meeting in Washington, DC.

We wish to comment to the NOSB on Peracetic acid as one of the National List substances used in crop production under review for sunset in 2018. Our comments also address the EPA List 4 – NPEs annotation change discussion document. In addition, we are resubmitting our comments on Plastic mulch and covers (petroleum-based other than polyvinyl chloride (PVC)) and the prohibition of natural sodium nitrate.

Also, we wish to take this opportunity to note a larger concern that emerges when one reviews the history of these and other materials intended to help organic farmers. We believe strongly that organic production methods need to be a progressive integrated system that allows for and adopts the most progressive tools available that are in alignment with organic principles and the National List criteria. It was not intended to be limited to a select few materials that are only added if no other tools are available. Farmers need a full array of choices that will encourage a biologically diverse system with a vibrant and growing earthworm population, beneficial insects and microbes. However, in reality, we are limiting grower tools unnecessarily and losing grower support for the program in the process.

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Sunset Review – Peracetic Acid on the National List §205.601(a)(6) and §205.601(i)(8)

We support the continued use of Peracetic acid for use in disinfecting equipment, seed, and asexually propagated planting material and for use to control fire blight bacteria. However, we do not support the annotation “Also permitted in hydrogen peroxide formulations as allowed in §205.601(a) at concentration of no more than 6% as indicated on the pesticide product label” as written. The restriction of 6% concentration is not necessary because it does not prevent an end user from using a strong solution or even straight concentrate, as long as the product is labeled at 6% Peracetic acid or less. The product concentration does not denote the final solution’s strength, dilution rates do.

It is important that Peracetic acid remain on the list and that the annotation is revised to read “Also permitted in hydrogen peroxide formulations as allowed in §205.601(a).” The EPA in 2011 changed their label requirements and Peracetic acid formed *in situ* in hydrogen peroxide – acetic acid formulations must be listed as an active ingredient. If the annotation is completely removed, a number of disease-control products currently allowed under §205.601(a) and used by organic farmers today will be in jeopardy. Peracetic acid and hydrogen peroxide are vital tools in organic pre-harvest crop protection and postharvest food safety and sanitation.

Farmers will need to comply as early as January 2017 with new food safety rules in the Food Safety Modernization Act (FSMA). Peracetic acid (PAA) is the best material for farmers to use to meet the new requirements because it is an effective sanitizer, it does not have the residues or safety concerns of sodium hypochlorite and chlorine dioxide, and it rapidly degrades into acetic acid, oxygen and water, none of which are of toxicological concern.

In addition, and of critical importance, with the removal of streptomycin and tetracycline from the National List for fire blight control in apples and pears, farmers are restricted to a limited number of products to stave off damage from fire blight bacteria. Peracetic acid must be retained on the National List for this purpose.

List 4 – NPEs annotation change discussion document

For over five years the National Organic Program (NOP) and the NOSB have endeavored to find a solution to the obsolete listing of EPA List 4 inerts as allowed for use in organic crop production. We therefore applaud and support the NOSB decision in October 2015 to continue List 4 Inerts at 205.601(m) while implementing a new review and cooperation with the EPA Safer Choice Program (SCP) (formerly Design for the Environment Program). Wolf, DiMatteo + Associates (WDA) urges the NOP, EPA and NOSB to proceed quickly with this approach. It appears that this program can replace List 4 and ensure compliance to the requirements of the Organic Foods Production Act and NOP Rules, provide continued safety and effectiveness of organic pest control materials. We especially encourage you to avoid unnecessary duplication of reviews of inert ingredients.

We appreciate that the NOSB Crops Subcommittee has made it clear that inert ingredients in the category of nonylphenol ethoxylates (NPEs) will not be allowed, and that input companies should work to phase out their use. We ask that the NOSB and the NOP allow input companies sufficient time to reformulate effective products without NPEs. The Subcommittee has suggested a 3 to 4-year timeline from the publication of the discussion document. We ask that the time frame be set at 3 years from the publication of the Final Rule for Inert Ingredients on SCIL, not from the publication of this discussion paper.

The experience of phasing out List 3 materials by 2002 which began in 2000 was only possible with EPA fast-tracking the review of some inert ingredients and moving them from List 3 to List 4. Without this cooperation, the timeline for companies to reformulate would not have been possible. Currently, the Inerts Working Group has not yet published any information on how the inert ingredients on the Safer Chemical Ingredient List (SCIL) that are NOP compliant will be identified on the list.

As you know, the uncertainty regarding inert ingredients that would be allowed in organic pest controls has halted review of any new pest controls for addition to the National List. Pest control manufacturers have been held back in their research and development of materials that can provide organic farmers with tools that are safe, effective and compliant with the NOP. Delays in decisions of this importance have serious impacts on the continued growth of the organic sector and continuous improvement of pest control on organic farms.

We encourage the Inerts Working Group to focus its resources on moving quickly to publish information on how the NOP compliant inert ingredients will be identified on the SCIL and how NOP criteria for inert ingredients will be assessed when an inert ingredient is submitted to the Safer Choice program.

Plastic mulch and covers (petroleum-based other than polyvinyl chloride (PVC))

We wish to take this opportunity to comment about the inappropriate prohibitions that have been placed on the use of the newly listed Biodegradable Biobased Mulch. Another growing season will pass with this material, although available, not allowed for use by organic farmers.

We urgently request that currently available Biodegradable mulch films which meet the National List criteria and definitions in the NOP regulations be allowed for use immediately. To accomplish this, the NOP Policy Memo 15-1 will need to be corrected to match the actual language of the regulations. This will allow organic producers access to Biodegradable Mulch Film and the ability to choose to make this improvement on organic farms now.

Our understanding of the NOSB discussions and the vote to add Biodegradable Mulch to the National List in 2012 was that biobased content would be required and the content would be tested and reported, but no minimum content would be required at this time. However, the NOP issued a policy memo in January, 2015 restricting biodegradable biobased mulches to only those that are 100% biobased. There are no 100% biobased biodegradable agricultural mulches, nor are there any expected to be available in the near future.

The NOSB recommendation and the current language in the National List regarding biodegradable mulches support a different interpretation. The definition for “biodegradable” and for “biodegradable biobased mulch film” in the NOP Rule support the use of biobased products with some plant-based content that can be determined using the ASTM D6866 method. The original petition and Technical Review were clear about the content of the biodegradable mulch film. The June 2015 Report on Biodegradable Biobased Mulch Films confirmed that biodegradable mulch film content is not 100% biobased. Again, the actual language of the NOSB recommendation in October of 2012 does not require 100% biobased content.

Further background: Plastic mulches are used widely across the world on farms and have numerous benefits, including weed control and moisture retention and resulting increased

yields. Organic growers have commented that conventional plastic mulches are labor intensive, as they must be removed at the end of the season and disposed of, taking soils with them. They also leave non-degradable plastic fragments, which will remain in the soils for long periods of time. Finally, disposal of these films (via landfill or incineration) is costly and ecologically damaging. Biodegradable mulch films have comparable performance of conventional mulches, but eliminate many of their drawbacks. Biodegradable mulch films are an improvement on these conventional mulches, as they overcome the issues of waste creation and disposal. At the end of the crop cycle, fully biodegradable mulch films are plowed back into the soil, where they are converted to carbon dioxide and water via biodegradation by soil microorganisms.

If fully petroleum-based plastic mulch were petitioned for the first time now and compared to the alternative biodegradable bioplastic (bio and petroleum-based) mulch film that is available, it would be obvious that the biodegradable bioplastic mulch is a significantly better choice for organic production when the manufacture, content, and impact on the environment are compared.

The original petition for biodegradable mulch films, the supporting documentation, and the independent technical review indicated that some petroleum products are a part of the production process. In fact, many materials on the National List of Allowed SYNTHETICS are derived from petroleum products. It appears that new material reviews and proposed listings are now being used to address specific policy concerns and issues beyond the criteria, such as use of petroleum, without uniform application to the entire standard or adequate vetting of the implications of such annotations and NOP interpretation memos. We realize these are difficult and challenging issues, but we strongly recommend encouraging use of better practices and not adding requirements that are inconsistent with other allowed practices and materials within the organic program.

The decision of the NOP prevents growers from having the option to use and evaluate the significant benefits of biodegradable plastic mulches which contain some biobased content. In their place, organic growers will have no choice but to continue to use non-degradable, plastic mulches, which are derived solely from petroleum or not be certified organic. This is, unfortunately, a lost opportunity for the organic sector to be a leader in sustainable practices.

It is deeply disturbing and disappointing that Biodegradable Mulch Film is still not allowed for use on organic farms. Please take the necessary actions to make this material available now.

Natural Sodium Nitrate

WDA makes note to the NOSB that in the 2017 Sunset Summaries published in advance of both the April 2015 and the October 2015 NOSB meetings there was no listing for a continued prohibition of sodium nitrate despite the fact that it is listed in the electronic code of Federal Regulations (current as of April 12, 2016) under §205.602 Nonsynthetic substances prohibited for use in organic crop production; (g) Sodium nitrate—unless use is restricted to no more than 20% of the crop's total nitrogen requirement; use in spirulina production is unrestricted until October 21, 2005.

In April of 2011 the NOSB reviewed sodium nitrate at the request of the NOP and recommended renewal of the prohibition of this natural material without the 20% annotation. This recommendation, if it had been finalized, would prohibit the substance in its entirety. However, the NOP notice 12-1 dated September 11, 2012 states: “The NOP instead announced that it

would address the NOSB's Sunset 2012 recommendation for sodium nitrate through a rulemaking action separate from other Sunset 2012 substances. A proposed rule regarding the use of sodium nitrate is forthcoming. The final rule for sodium nitrate will not become effective until after the sunset date for sodium nitrate passes, due to the length of time required for rulemaking. Therefore, there will be a period of time after October 21, 2012, when sodium nitrate is not present as a prohibited nonsynthetic on the National List... After October 21, 2012 organic producers that use sodium nitrate will need to continue to comply with the soil fertility and crop nutrient management practice standard. "

The current listing in the electronic code of Federal Regulations and the NOP notice 12-1 are in contradiction and have caused confusion among those who provide soil amendments for organic farms and among organic farmers. Is the 20% restriction in the annotation the requirement to meet to be in compliance with the NOP Rule or is there no restriction on the use of sodium nitrate as long as the accredited certification agency approves its use in accordance with the soil fertility and crop nutrient management practice standard?

According to the recommendation of the NOSB, the annotation for the use of sodium nitrate was to sunset in October of 2012 but there has not been rulemaking to this effect. WDA urges the NOSB to request that a proposed and final rule that reflects their decision of 2011 be published prior to October 2017, the Sunset Date for the sodium nitrate.

We understand that, in practice on many organic farms, sodium nitrate is used in well over the 20% restriction. This "silent" allowance of Sodium Nitrate has caused an unfair situation and competitive disadvantage for the input companies and the growers who are honoring the April 2011 recommendation vote of the NOSB to prohibit its use.

We recognize and appreciate the commitment of the NOSB members to consider the full range of stakeholder opinion and through a deliberative process, without individual bias, make recommendations to advance the organic sector. Thank you.

Sincerely,

Bill Wolf, Katherine DiMatteo and Sandy Mays
Partners

The partners and associates of Wolf, DiMatteo + Associates have over 100 years of combined experience in the organic sector. We have served hundreds of farms and businesses with their organic production systems and regulatory compliance, both nationally and internationally. We have been involved in the founding of several key organic organizations including the Organic Trade Association, Organic Materials Review Institute and the Organic Center. We are fiercely committed to continual improvement and to provide our clients and the organic sector with the tools to advance organic, environmental, and social practices.