

NEWS, NOTES & QUOTES



National Newsletter of the Mulch & Soil Council

APRIL 2021

Council News

Offering technical training is one of the primary services of the NIST Office of Weights and Measures (OWM). ...Because all in-person learning events were suspended, OWM's leadership directed staff to quickly adapt and expand our online training tools and virtual course delivery to meet the needs of our stakeholders.During the last year, OWM instructors have designed, developed and delivered more than 70 online learning events to over 3,000 students, primarily U.S. industry, state and local government officials.One area of emphasis was legal metrology best practices related to evidence, search and seizure, and due process, as well as method of sale and test procedures for packaged consumer products sold by volume, like animal bedding and mulch.

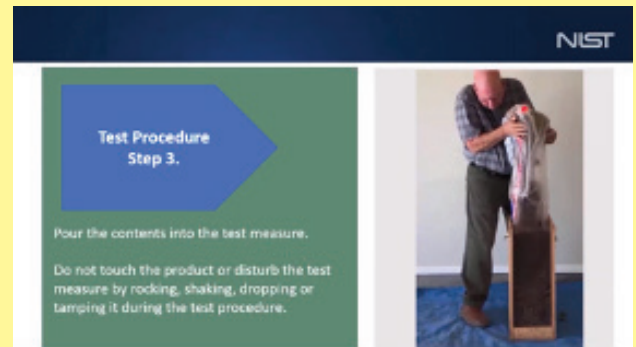
For example, NIST's Office of Weights and Measures instructor and subject matter expert in these areas, David Sefcik, collaborated with the Mulch & Soil Council (while exclusively teleworking) to produce a 1.5-hour, six-module prerecorded webinar series (with video demonstrations) based on NIST Handbook (HB) 130, Method of Sale, and NIST HB 133, Test Procedure for Packages of Mulch and Soils Labeled by Volume.

David remarked that "this was the first time OWM has partnered with an industry association to develop an 'on-demand' training that their members and regulatory officials would benefit from. Students have commented that they like ease of access to the different modules, the thoroughness of the training, and that the presentation of the material was easy to understand and follow."

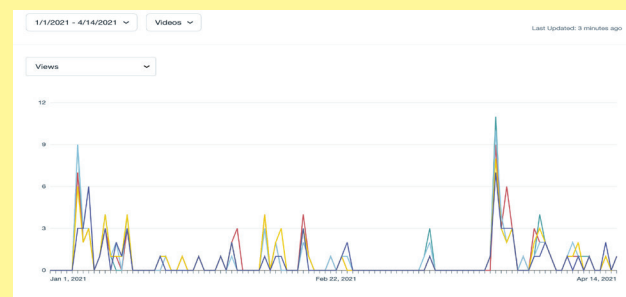
So How Is It Going?

Since NIST/OWM announced the availability of the 6 training videos to state inspectors in January, there have been a total of 383 unique viewers averaging 62 unique viewers for each of the 6 training presentations.

The objective of the Mulch & Soil Council was to provide uni-



Bob LaGasse, Mulch & Soil Council executive director, demonstrates NIST test procedure in new online training series. Credit: NIST



MSC Video Usage
Period: Jan 1 - April 14, 2021

Video Name	plays	loads	finishes	unique_viewers	unique_loads
NIST Training Module 1	81	167	64	70	97
NIST Training Module 3b	80	176	59	64	97
NIST Training Module 2	79	166	66	67	97
NIST Training Module 4b	77	166	62	63	97
NIST Training Module 5b	65	167	52	58	97
NIST Training Module 6b	54	158	47	50	96
MSC Training on Bulk Mulch Volume	13	38	4	6	16
2020 PMTC Product Variability: Dr. Fon	5	36	3	5	16
Totals	454	1074	357	383	613



NIST Credits MSC Excerpt From NIST "Taking Measure" blog: (<https://www.nist.gov/blogs/taking-measure>)

NIST (Cont'd)

form training resources for both industry and regulatory officials. Council members who participated in the Plant Managers Training Course last December still have unlimited access to the videos to review any issues in question and provide on-going training through June 2021. The Council will continue to monitor training video usage throughout the year. We can see that states are taking advantage of the new training tools available and more training should result in more uniform testing this season.

MSC Issues Farm Supply Information Letter for Truck Drivers

As reported in the last NNQ Newsletter, the MSC Transportation Committee was preparing a special information letter for industry truck drivers. The purpose of the letter is to explain the changes to FMCSA rules on agricultural commodities that occurred in late December 2020, and how those changes now qualify mulch and soil products as exempt farm supplies.

Working with MSC's special counsel on transportation issues, the committee completed the letter and sent it to all Council members on March 15. Additional copies of the farm supply information letter are available from the MSC office on request.

After a few weeks in the field, several questions were raised by state officials suggesting further clarification would be helpful.

Clarification of Farm Supply Letter to Drivers

Currently, there have been minimal questions about the MSC Transportation Committee's March 15th letter for industry drivers on FMCSA's regulatory changes last December. However, in the event members are questioned by an inspector or officer, we have drafted the following additional information in support of the Council's position:

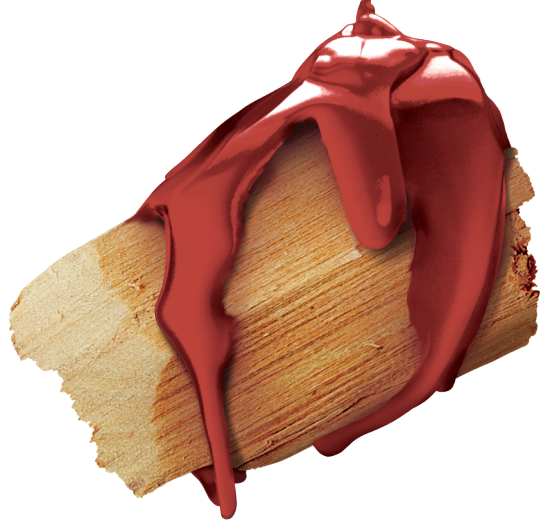
- Effective December 9, 2020, FMCSA clarified agricultural commodities to include horticultural products including plants such as sod, flowers, ornamentals, seedlings, shrubs, live trees, and Christmas trees, within the scope of the definition. *49 CFR §395.2(2); (85 Fed.Reg. 74909, Nov. 24, 2020)*
- Products that are directly related to the "growing or harvesting of an agricultural commodity during the planting and harvesting seasons within each state" are classified as farm supplies. (*49 CFR §395.2*)
- Mulch and soil products are direct support products for the growing or harvesting of horticultural agricultural commodities; therefore, they are now farm supplies, by definition.
- Mulch and soil manufacturers are wholesale distributors to traditional farms, controlled environment farms, wholesale & retail nursery growers of horticultural commodities, retail distributors (mass merchants, home centers, garden centers, nurseries), and others (commercial landscapers, government [Federal, State & local], etc.).

Under *49 CFR §395.1(k)*: The regulations say:

(2) Farm supplies for agricultural purposes from a wholesale distribution point of the farm supplies to a farm or other location where the farm supplies are intended to be used within a 150 air-mile radius from the distribution point;

Which we read as:

(2) Packaged and bulk mulch and soil (farm supplies) for cultivation or harvest of agricultural commodities including horticultural products (for agricultural purposes) from a mulch/soil producer (wholesale) or mass merchant, garden center, or nursery selling horticultural agricultural commodities (retail distribution point of the farm supplies) to a farm or commercial grower or home garden (other location) where the farm supplies are intended to be used within 150 air miles of the distribution point. (Therefore, product shipped from the producer (wholesaler) or retailer to the end user of the mulch and soil (farm supply) is exempt during the growing or harvesting season.)



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Clarification (Continued)

AND

(3) Farm supplies for agricultural purposes from a wholesale distribution point of the farm supplies to a retail distribution point of the farm supplies within a 150 air-mile radius from the wholesale distribution point.

Which we read as:

(3) *Bulk and packaged mulch and soil* (farm supplies) *for cultivation or harvest of agricultural commodities including horticultural products* (for agricultural purposes) from a *mulch/soil producer* (wholesale distribution point of the farm supplies) to a *mass merchant or garden center that sells horticultural agricultural commodities* (retail distribution point of the farm supplies) within a 150 air-mile radius from the *mulch/soil producer* (wholesale distribution point). *(Therefore product shipped from the producer (wholesaler) to a retailer of the mulch and soil (farm supply) is exempt during the growing or harvesting season.)*

The Mulch & Soil Council believes these statements are consistent with our work and discussions with the FMCSA before and after the December 9th rule change. There was also no disagreement from FMCSA in more than 2 dozen comments on this position in the open docket hearings for the Interim Final Rule (IFR) ending 12/24/20.

If there is disagreement from any authorities, we would appreciate any citations that are counter to the current regulatory citations provided above, and we will be happy to meet with them to discuss any issues.

TRANSPORTATION Q&A

Q: Since bagged mulches and soils are exempt as farm supplies, is the shipment of bags to the farm supply producer to package the farm supply also exempt? Could the exemption also be applied to other manufacturing material required to produce the farm supply like the bagging equipment, grinders, shredders, and other equipment needed by the farm supply manufacture to produce the farm supply?

A: This is a difficult question that has no definitive answer. The definition of "farm supplies for agricultural purposes" in [49 CFR 395.2](#) is "products directly related to the growing or harvesting of agricultural commodities during the planting and harvesting seasons within each State, as determined by the State, and livestock feed at any time of the year."

The FMCSA has issued an [interpretation](#) that fuel may be considered farm supplies for agricultural purposes under certain circumstances.

Question 31: Does fuel used in the production of agricultural commodities qualify as "farm supplies" under [49 CFR 395.1\(k\)](#)?

Guidance: Fuel qualifies as a farm supply if (1) it is "for agricultural purposes," e.g. used in tractors or other equipment that cultivate agricultural commodities or trucks that haul them, but not in automobiles, station wagons, SUVs or other vehicles designed primarily to carry passengers, or for residential heating or cooking; (2) it is transported within the planting and harvesting season, as determined by the State, and within a 100 air-mile radius of the distribution point for fuel; (3) the motor carrier is operating in interstate commerce; and (4) the entire fuel load on the vehicle is to be delivered to one or more farms. A carrier may not use the exemption if any portion of the fuel load is to be delivered to a non-farm customer. [Note the exemption is now allowed within a 150 air-mile radius.]

As set out in 395.1(k), the exemption from the hours of service rules applies as follows:

(k) Agricultural operations. *The provisions of this part shall not apply during planting and harvesting periods, as determined by each State, to drivers transporting*

(1) Agricultural commodities from the source of the agricultural commodities to a location within a 150 air-mile radius from the source;

(2) Farm supplies for agricultural purposes from a wholesale or retail distribution point of the farm supplies to a farm or other location where the farm supplies are intended to be used within a 150 air-mile radius from the distribution point; or

(3) Farm supplies for agricultural purposes from a wholesale distribution point of the farm supplies to a retail distribution point of the farm supplies within a 150 air-mile radius from the wholesale distribution point.

Using the language in 395.1(k)(2) and the fuel interpretation, it could be argued that that the transportation of bags and /or bagging equipment from a wholesale or retail distribution point to a location where the mulch or soil bagging is to take place would be exempt from 49 CFR Part 395 if the transportation is within the planting and harvesting season, as determined by the State, and within a 150 air-mile radius of the distribution point, the motor carrier is operating in interstate commerce; and the entire shipment on the vehicle is to be delivered for use in agricultural purposes. A carrier may not use the exemption if any portion of the load is to be delivered for non-farm use.

Although we believe this analysis is consistent with existing statutes, regulations and interpretations, there is NO guarantee that FMCSA or state enforcement officials would reach the same conclusion.

Q: Since the definition of "farm supplies for agricultural purposes" in [49 CFR 395.2](#) is limited to the *"planting and harvesting seasons within each State, as determined by the State..."* how can mulch & soil producers determine what the specific growing and harvesting season is in each state?

A: Virtually every state has defined its growing and harvesting season as the full calendar year, with only a few exceptions. The FMCSA has a list of state growing & harvesting seasons that can be downloaded at [final-ag-table03262021-002.pdf](#) or can be found on the FMCSA website at: <https://www.fmcsa.dot.gov/mission/training/state-planting-and-harvesting-periods>

Trucking Company Bankruptcies Add To Shortages

Things we consider that have adversely impacted the availability of trucking this season include the widely reported pre-pandemic shortage of 80,000 drivers, the closing of driver training schools for a year and government payments delaying drivers going back to work. However, a much overlooked contributor to the trucking shortage in 2021 is the fact that the COVID-19 pandemic forced more than 3,000 trucking companies out of business in 2020 — a significant leap from about 1,000 the year prior.

As reported in *Transport Topics* newsletter (<https://www.ttnews.com/>), a total of 3,140 trucking companies with an average fleet of 16 trucks ceased operations last year, according to a report from transportation industry data firm Broughton Capital, up from 1,100 in 2019. And of those that closed last year, slightly more than half — or 1,580 companies — shuttered during the months of April, May and June, when freight volumes plunged amid the widespread economic disruption that pushed businesses to close and put millions of people on unemployment. In May alone, 760 trucking companies closed their doors.

Bankruptcies (Continued)

Smaller trucking companies were particularly hard hit. The first quarter 10,700 trucks were pulled from the road, but May was actually the peak of trucking failures and 16,000 trucks were pulled from the road. In total, it is estimated that more than 50,000 trucks stopped hauling in 2020.

According to American Trucking Associations, small trucking companies and independent owner-operators make up the majority of the nation's freight carriers; 91% of fleets operate with six or fewer trucks and 97% operate with 20 or fewer.

Both Broughton and ATA Chief Economist Bob Costello see trucking capacity remaining very tight the remainder of 2021 and well into 2022.

INDUSTRY NEWS

Hydroponics Stays Organic

In the case *Center for Food Safety v USDA*, San Francisco U.S. District Court Judge Richard Seeborg ruled, "USDA's ongoing certification of hydroponic systems that comply with all applicable regulations is firmly planted in OFPA (Organic Food Production Act)." The ruling ended an ongoing effort by organic activist organizations and field-grown organic crop farmers to force USDA's National Organic Program (NOP) to decertify organic crop production using the more efficient hydroponic and container growing technologies.

Drax Buys Pinnacle

Pinnacle Renewable Energy Inc. and Drax Group plc. announced shareholder approval for the planned acquisition of Pinnacle by Drax. Under the agreement, Drax, through its wholly owned subsidiary Drax Canadian Holdings Inc., will acquire all of the issued and outstanding common shares of Pinnacle for C\$11.30 in cash per share. Pinnacle is the second largest producer of industrial wood pellets in the world. The company operates nine production facilities in Western Canada and one in Alabama. An additional facility is under construction in Alabama, with more in development. Pinnacle also owns a port terminal in Prince Rupert, British Columbia.

The transaction will boost Drax's wood pellet production capacity by 2.9 million metric tons. With the addition of Pinnacle's 11 sites, Drax will own 17 pellet plants and development projects. This will give Drax the capacity to produce 4.9 million metric tons of wood pellets annually from 2022, with access to four deep water port facilities and three major wood fiber baskets.

TFI, Biostimulant Coalition Unite

In January, The Fertilizer Institute (TFI) and the [Biostimulant Coalition](#) reached a formal agreement to form a "Biostimulant Council" and work together to advance policy and regulatory frameworks that increase biostimulant market access and encourage research and innovation.

The Biostimulant Coalition was formed in 2011 as a non-profit group of interested parties cooperating to proactively address regulatory and legislative issues involving biological or naturally derived additives, including but not limited to bacterial or microbial inoculants, biochemical materials, amino acids, humic acids, fulvic acid, seaweed extract and other similar materials.

"We are happy to welcome the Biostimulant Coalition under the TFI umbrella," said TFI President & CEO Corey Rosenbusch. "Biostimulants are an important and growing area of crop nutrition. The Biostimulant Coalition has achieved great success as the voice of an emerging industry and we are excited about the potential to achieve even more with the additional resources of TFI fully behind the effort."

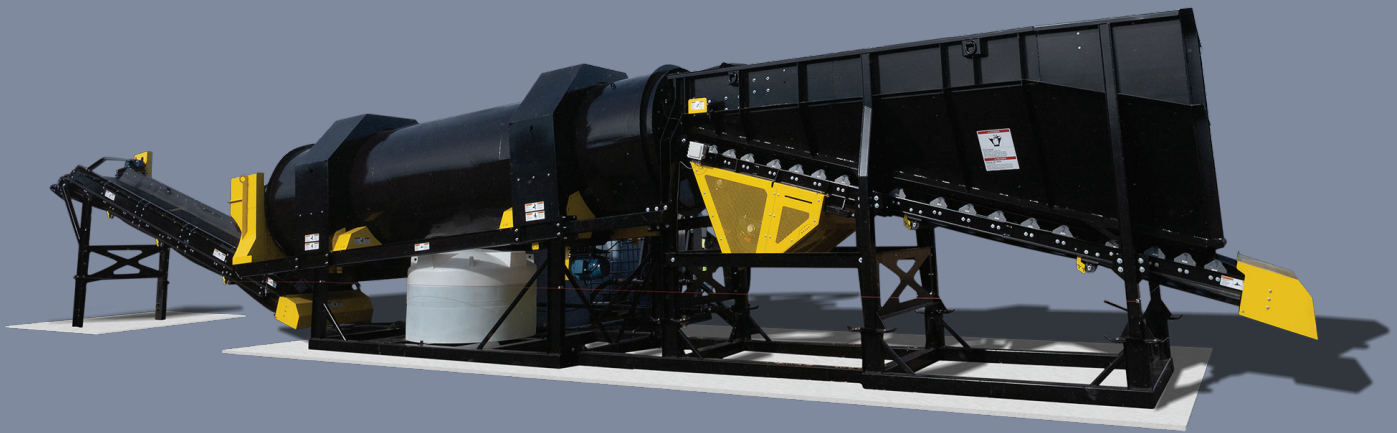
"The partnership with TFI will provide the Biostimulant Coalition with all the tools we need to continue serving the membership we have, as well as growing those offerings," agreed Biostimulant Coalition Executive Director, David Beaudreau, Jr. "TFI brings to the table a high functioning team of professionals and a full suite of legal,



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Biostimulant (Continued)

policy, regulatory, and communications resources.”

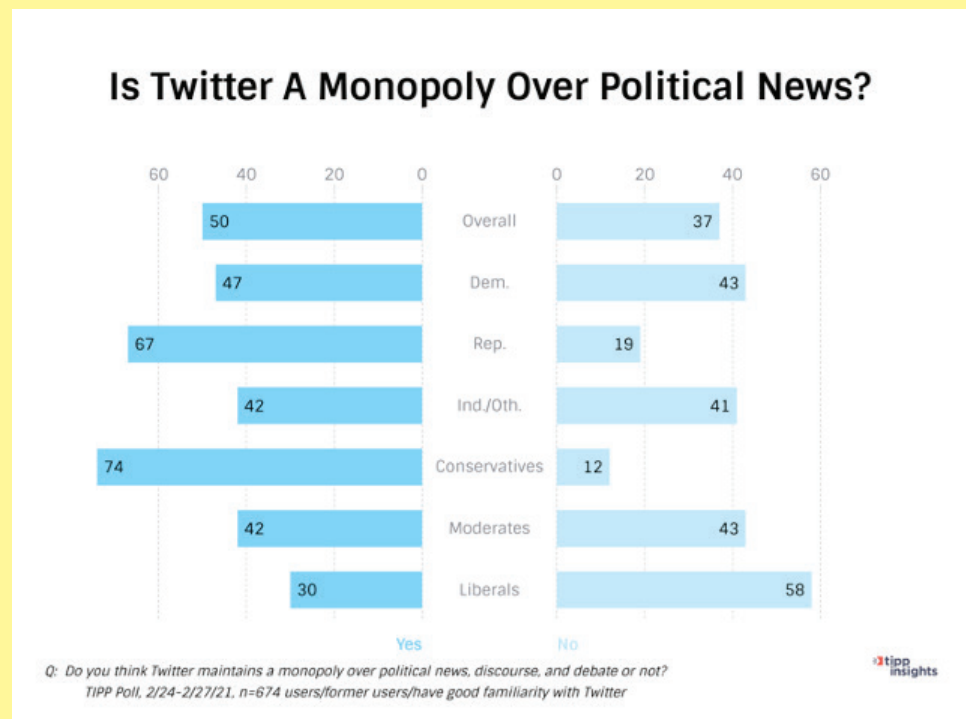
“The number one issue facing the biostimulant industry is not having a regulatory approval process that allows biostimulants to be marketed to or utilized by farmers,” concluded Rosenbusch. “TFI will be leading the way to change that and ensure the industry has a workable biostimulant definition, products have an approval path to market and scientifically defensible claims can be analyzed by growers to evaluate use on their crops.”

National News

50% Believe Twitter is A Monopoly

Twitter is the only game in the town of its kind. Thanks to President Trump, who brought retail politics into the platform, it added relevance and helped consolidate Twitter’s position. Alternative platforms such as Parler and Gab are distant challengers, but Twitter is the elephant in the room. Many journalists and commentators have worked hard to develop an enormous Twitter following, and these influencers draw their cache and livelihood from the platform. Can they afford to exercise their right to free speech if it may mean being banned for life by the powerful platform?

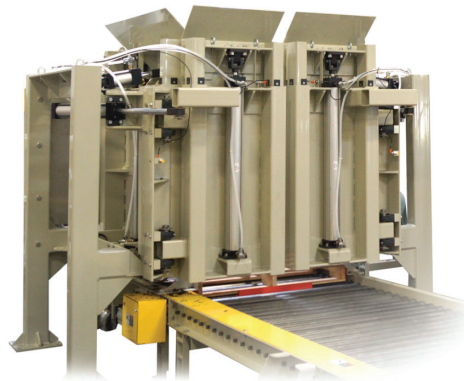
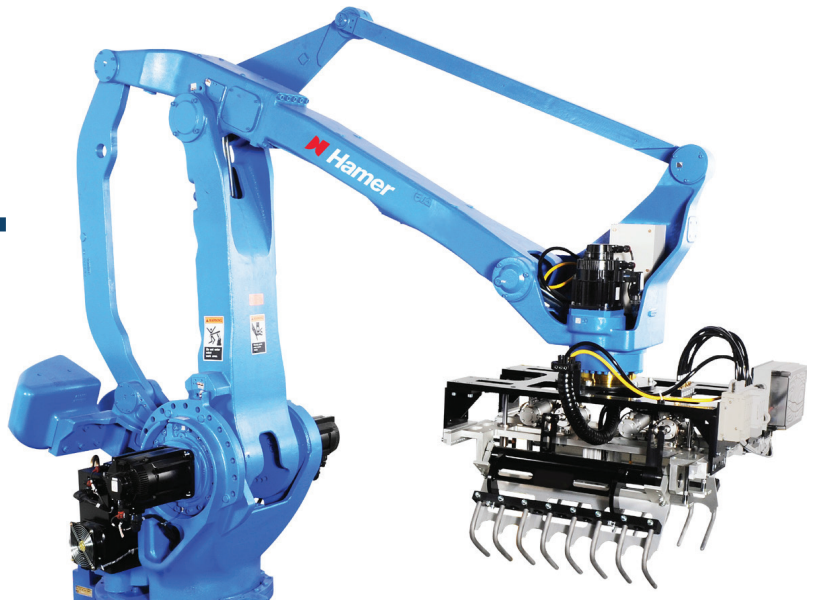
One-half (50%) think Twitter is a monopoly, while 37% think it is not, and 14% are not sure.



About The Survey

TechnoMetrica conducted the online survey from Feb 24 to Feb 27, 2021; the nationwide study had a sample of 1,280 Americans, 18 or older. TechnoMetrica’s network of panel partners provided the study sample. Upon the study completion, TechnoMetrica weighted the study dataset by gender, age, race, education, and geographical region to mirror known benchmarks such as the U.S. Census. The credibility interval (CI) for the survey is +/- 2.8 percentage points, meaning the study is accurate to within ± 2.7 percentage points, 19 times out of 20, had all Americans been surveyed. The subgroup of Twitter users/former users/good familiarity used for this analysis has a CI of +/-3.9 percentage points. Cross-tabs are available [here](#). From TippInsights at <https://tippinsights.com/tags/>

MULCH & SOIL BAGGING TECHNOLOGY



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GOVERNMENT & REGULATORY

CA Closes Treated Wood Lophole

Earlier this year, CA Gov. Gavin Newsome vetoed a bill to extend permission under California's Alternative Management Standard (AMS) for residential and commercial customers to dispose of treated wood waste in normal landfill operations. That is a loophole that allows CCA and other treated wood waste to end up in garden mulch. Eliminating treated wood from non-hazardous landfills is the right action.

Ending the AMS loophole immediately reclassified treated wood waste as a hazardous material, and unfortunately, some municipalities like the Marin County hazardous waste facility were caught off guard. The municipalities reacted by notifying consumers and businesses that they could not accept treated wood waste due to "space, training and budget constraints" at their facility. The government's solution: just hang onto your treated wood scraps until we get back to you from the state.

EPA Proposes Canceling Pentachlorophenol

U.S. Environmental Protection Agency (EPA) is proposing the cancellation of the registration of pentachlorophenol. Pentachlorophenol is a heavy-duty wood preservative used primarily on utility poles. After completing a risk assessment, EPA determined that pentachlorophenol poses significant human health risks to workers. To address this issue, EPA is proposing to cancel all uses of pentachlorophenol through the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) registration review process. The agency will accept public comments on this proposed interim decision (PID) for 60 days in docket EPA-HQ-OPP-2014-0653 at regulations.gov.

This proposed interim decision (PID) is the next step in the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) registration review process that EPA conducts at least every 15 years. After considering any comments concerning the PID, EPA will issue an interim decision, which would finalize the cancellation of pentachlorophenol.

WELCOME New Members

The Mulch & Soil Council is pleased to welcome the following new member:

Producer Member

Profile Products/Hydra Fiber

Jeff Langner

750 W Lake Cook Road Ste 440

Buffalo Grove, IL 60089

TEL: 847.215.3427

EM: jlangner@profileproducts.com

WEB: www.hydrafiber.com

Certified Product News

New Certified Product

Miracle-Gro Lawn Products, Inc.

Premium Soil

Miracle-Gro Tropical Potting Mix 0.08-0.03-0.06

Recertified Products

All-American Products
Austin Wood Recycling, Ltd.
Austin Wood Recycling, Ltd.
Oldcastle Lawn & Garden, Inc.
Oldcastle Lawn & Garden, Inc.
Oldcastle Lawn & Garden, Inc.
Oldcastle Lawn & Garden, Inc.
Sims Bark Co.
Sims Bark Co.
Sims Bark Co.
The Scotts Company
The Scotts Company
The Scotts Company

Mulch

All-American Cypress Mulch Blend
Texas Native Premium Pine Mulch
Vigoro Premium Brown Mulch by Austin Wood Recycling, Ltd.
Mahaska Mulch Premium Red Cedar Blend
Vigoro Premium Black Mulch by B and B Bedding
Vigoro Premium Brown Mulch by B and B Bedding
Vigoro Premium Red Mulch by B and B Bedding
Vigoro Premium Black Mulch by Sims Bark
Vigoro Premium Brown Mulch by Sims Bark
Vigoro Premium Red Mulch by Sims Bark
California Select Classic Black Mulch
California Select Forest Brown Mulch
California Select Sierra Red Mulch

Certification News (Continued)

Recertified Products

Black Gold Compost Company
Kellogg Garden Products
Kellogg Garden Products
Kellogg Garden Products
Kellogg Garden Products
Kellogg Garden Products
Kellogg Garden Products
Kellogg Garden Products
KSI (Kellogg)
KSI (Kellogg)
Swiss Farms Products, Inc.

Hyponex Corporation
Kellogg Garden Products
Kellogg Garden Products
Kellogg Garden Products
Miracle-Gro Lawn Products, Inc.
Miracle-Gro Lawn Products, Inc.
Sun Gro Horticulture
Sun Gro Horticulture

Kellogg Garden Products

Landscape Soils

Black Velvet Mushroom Compost
All Natural Garden Soil for Flowers & Vegetables (Red)
Amend Garden Soil for Flowers & Vegetables
Gardeners All Purpose Planting Mix
Gromulch Premium Planting Mix & Mulch
Kellogg All Natural Garden Soil for Trees, Shrubs & Roses
N Rich Soil Enriching Compost
Topper Soil Prep & Seed Cover
Gardeners Steer Manure
Gardeners Top Soil
Vigoro Enriched Lawn Soil 0.04-0.04-0.04

Premium Soils

Hyponex by Scotts Moisture Potting Soil 0.07-0.01-0.03
Patio Plus - All Natural Outdoor Potting Soil
Kellogg Palm, Cactus & Citrus
Kellogg Potting Soil
Miracle-Gro Expand 'N Gro Concentrated Planting Mix 0.45-0.15-0.30
Miracle-Gro Performance Organics Raised Bed Mix 0.11-0.02-0.02
Sunshine Professional Growing Mix
Sunshine All Purpose Potting Mix

Standard Soils

Gardeners Potting Soil

Audit Team Back in the Field

After a year of being grounded by the COVID-19 pandemic, MSC's certified products audit team has returned to the field to collect product samples from around the country. As soon as their vaccinations became effective in mid-March, team members Carol Ledbetter and JC McGowan headed for the Southeast U.S. to collect over 80 product samples from retail outlets or ready-to-ship pallets at manufacturing plants. The process took 5 days and covered over 1,200 miles. In early April, the team traveled the South collecting 38 product samples in Texas and Louisiana racking up another 1,500 miles in just 5 days.

The Council extends its thanks to all the member company representatives who help the team gather samples around the country.









Call For Honors Nominations

Volunteers are the essential engine that powers many programs and activities of the Mulch & Soil Council. From committees to the Board of Directors, the selfless service of members combines the business and industry knowledge of many individuals into a consensus-driven body of action. In the MSC, everyone who wants to constructively participate is welcomed to join our efforts to create a rising tide that lifts all boats.

The Mulch & Soil Council is grateful for all the tremendous contributions made by volunteers every year, and we thank everyone who has taken time to share their expertise for the benefit of all members and the industry at large.

Such was the case of John Leber who was the president of Swanson Bark and Wood Products and served the Council with distinction for many years as a director and as the Secretary/Treasurer until his untimely death in an industrial accident in 2015. As a memorial to John, the Board of Directors created a special, John Leber Distinguished Service Award to recognize an individual or organization that has demonstrated an extraordinary commitment to advancing the objectives of the Mulch & Soil Council and/or the mulch and soil industry.

Call For Nominations

Eligibility: Nominations are open to individuals or organizations who are members of the Council at the time of nomination.

Qualifying Activities: The award is intended for any person or organization providing exceptional service to the Mulch & Soil Council in any of the following examples or similar activities:

- ***Leadership:*** as a director, committee member or other program participant of the Council
- ***Advocacy:*** as a spokesman for the Council and/or the mulch and soil industry to the public or government.
- ***Training & Education:*** as a mentor sharing his or her expertise with other industry members for the improvement of the industry.

When: Distinguished service may be recognized for a single event/activity or for multiple years of service.

Where: The nominee shall reside within North America.

Nomination & Submission: The MSC Honors Committee shall provide vetted honors candidates to the MSC Board of Directors from nominations by its members or the MSC membership at large. A brief bio shall be included for each candidate.

Nominations Deadline: Nominations, including a statement on why the person or organization is being nominated, should be submitted by

June 30, 2021

to membership@mulchandsoilcouncil.org.

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