

NEWS, NOTES & QUOTES



National Newsletter of the Mulch & Soil Council

February 2023

COUNCIL NEWS

ORGANIC SUB-COMMITTEE REPORT



The Organic Certification Subcommittee (OCS) is a working group under the MSC Certification Committee chaired by Dr. Kay Jeong of Sun Gro Horticulture of Canada. The OCS met on January 18 in San Antonio, TX, to continue its investigation into developing a Council certification program for organic products. After approving previous meeting minutes, the group reviewed the draft content of a national consumer survey question on the public's recognition and understanding of OMRI on consumer products. A second question was drafted to determine any consumer purchase preference for garden products identified as either "organic" or "all natural". The committee also reviewed a wide-ranging program framework extending the MSC Certification Program to include organic products and agreed to focus initial efforts on premium potting soils, leaving other product categories for later consideration.

###

CERTIFICATION COMMITTEE REPORT



The MSC Certification Committee met on January 18 in San Antonio, TX, chaired by Dr. Kay Jeong of Sun Gro Horticulture of Canada. After approving previous meeting minutes, the committee reviewed the Certification Administrator's program report. There are 285 products presently certified compared to 294 at the same time last year. The difference is acquisitions and product consolidations. A total of 9 products were decertified by the Counsel in 2022 and 13 products were withdrawn by the manufacturers.

With the retirement of Certification Administrator Carol Ledbetter, program files were received in TX from the GA office. Five boxes of paper files with original contracts — some faded and 20 years old — were being inventoried. Staff is requesting the Board authorize funds to digitize the files completely. Staff is converting all certification transactions and files to electronic format moving forward. Certification Administrator Lonny Nelson has made travel and shipping arrangements for the 2023 certification audits and the first regional audit will occur in mid-February.

The committee then reviewed the program financial statements for the year-end and did a line-by-line review of the proposed budget for 2023 program operations. Both reports were sent to the MSC Board of Directors for their approval. Finally, it was noted that the old Innov-X XRF device had been sold.

###

L&R COMMITTEE REPORT

The L&R Committee met in San Antonio, TX, on January 18 and was also chaired by Dr. Kay Jeong of Sun Gro Horticulture of Canada. The Committee reviewed and discussed the NPRM on updating the FTC Green Guides designed to prevent greenwashing on environmental claims. There were several areas regarding recycling and composting that needed no changes and the committee deferred action.

L&R COMM. REPORT



The committee then reviewed the Minnesota DNR regulatory proposal to list jumping worms as a prohibited invasive species in the state. Further action was deferred to MnLNA with whom the Council has worded to develop and acceptable industry BMP on the issue. Finally, staff presented a brief review of the WOTUS status pending a full report from MSC Legislative Rep. David Crow at DCLRS which was scheduled for the next day.

Staff also presented a report on the revised Federal and state legislative and regulatory monitoring program that will launch this month. The committee discussed the legislative search criteria, bill evaluations, weekly reporting vehicles, and member special request opportunities of the program. Included in the discussions were listings of the agencies and organizations the Council interfaces or collaborates with in its monitoring activities.

###

BOARD OF DIRECTORS REPORT



The MSC Board of Directors held its regular quarterly meeting in San Antonio, TX, on January 19. Council President Jim Weber opened the meeting with a welcome to all participants and noted that the labor and transportation challenges in 2022 may ease a little while the new year brings the added challenges of inflationary economy and rising costs. But, there are signs 2023 can be a good year for the industry and we will move ahead with that in mind to help our members.

Director Changes: The Board approved a request by Grant County Mulch that Janie Berg be assigned as the official company representative and replacement for Tonya Berg Kitzmiller on the Board. With acquisitions of two companies with Board seats (Swanson Bark, Steve Liffers and New Earth Compost, Brad Volker) by Denali, Brad Volker tendered his resignation. The Board of Directors appointed Larry Doose of Sylva Corp, Princeton, MN, to fill the vacancy until the term expires at this year's annual meeting in Savannah.

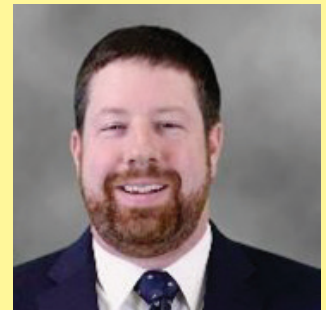
The next item of business was to unanimously reelect the current officers to another 1-year term. Officers re-elected are:



*President Jim Weber
Ohio Mulch*



*VP Byron Morgan
Mountain West Products*



*Sec./Treas. Joe Ertel
Oldcastle Lawn & Garden*

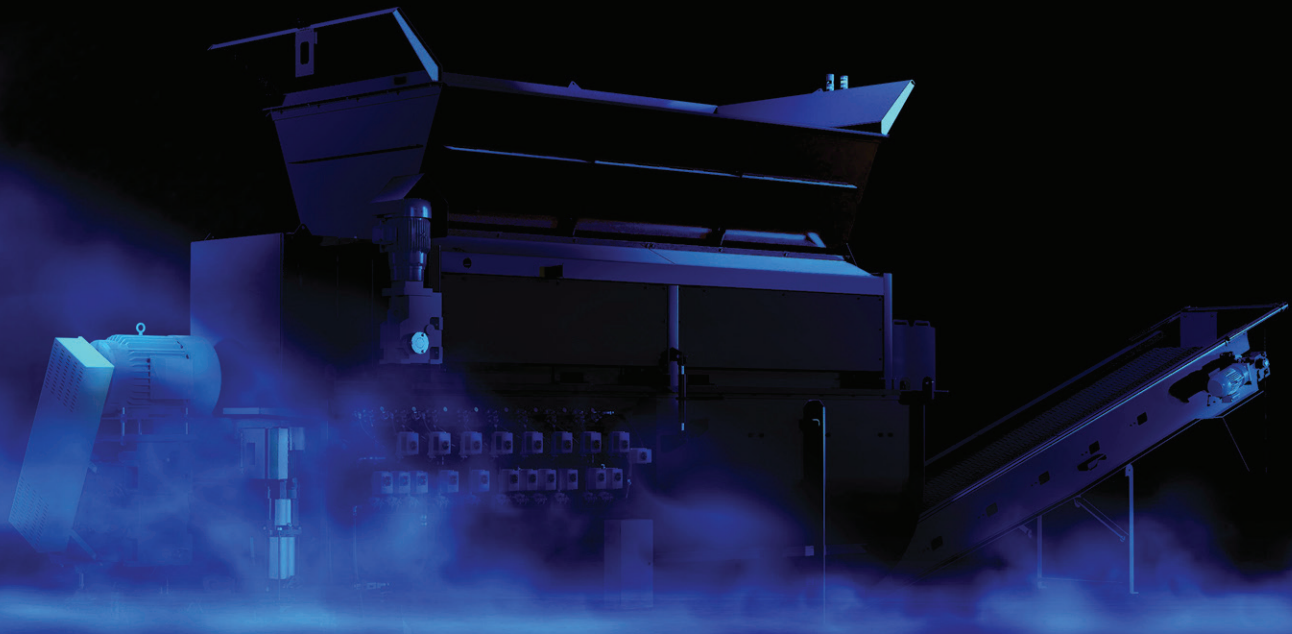
That was followed by the Executive Director's report where Bob LaGasse reviewed the headquarters activities since the October meeting. The report concluded with recommendations for new projects including:

- (1) producing a video promoting industry jobs available to women,
- (2) developing Plant Managers Training Courses on topics other than W&M,
- (3) the need for an MSC bylaws review committee and
- (4) the member request to appoint a committee to develop an industry approved method to verify the volume of bulk loads.

The Treasurer's report presented a line-by-line review of the financial status and operating revenues of the Council. Total income for 2022 was \$680,604 and expenses were \$582,702 for net revenues of \$97,901 for the year, subject to auditor adjustments for deferred dues and certification revenues. After approving the year-end financial report,



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BOARD OF DIRECTORS REPORT



the Board reviewed and adopted the proposed budget for 2023 operations with projected revenues of \$740,619 and expenses of \$702,193 and net revenues of \$38,426. Next, the Board approved the rehiring of the independent CPA firm of Carr, Riggs & Ingram, LLC, to audit the 2022 financial transactions of the Council.

The Board then considered committee business. The first item was President Jim Weber appointing a Bylaws Review Committee requested by the Executive Director. The ED's second request for a committee develop a Bulk Loads BMP was deferred to the annual meeting in Savannah. After reviewing committee reports (see reports elsewhere), the Board moved to Legislative & Regulatory review.

The AAPFCO meeting in Santa Fe listed several issues of interest to the Council and ED Bob LaGasse planned to attend the meeting. David Crow then joined the meeting via Zoom and reported on the status of WOTUS. The Biden Administration's over reach on waters of the US will soon be impacted by a pending SCOTUS ruling that could strike down the new law President Biden signed without fanfare. If it isn't stricken, anyone making any decisions involving land forming or water will have to get an EPA permit before acting which essentially takes private land management away from land owners and puts it in government control (see the Crow Report elsewhere in this issue.) Finally, the Board discontinued MSC efforts in the H-2B Non-Immigrant Work Visa program due to lack of interest by members.

Larry Doose was appointed the Annual Meeting Program Chair for Savannah in October. Proposed changes in meeting sponsor opportunities were adopted by the Board and San Antonio, TX, was chosen for the 2024 annual meeting city pending an acceptable hotel agreement.

Under new business, a discussion was held on the opportunities to conduct training courses on plant management topics beyond W&M. Plant safety, inventory management & control, fire training were some of the topics suggested. The Board requested staff to develop a specific training program proposal for Board review. As a final item of business, it was proposed that the Council offer opportunities for members to advertise equipment for sale in classified ads in the NNQ newsletter. The Board approved the request and referred implementation to staff.

The next meeting of the Board of Directors will be a teleconference in April followed by an in-person meeting in Nashville, TN, in July.

###

MSC EXPANDS STATE & FEDERAL L&R MONITORING PROGRAM

January was the start of the legislative season in virtually every U.S. state, and this year, the MSC Legislative & Regulatory Monitoring (L&RM) Program has been expanded to keep Council members better informed about what is happening at the Federal and state levels. Our objective is to keep members from being blind sided by proposed state and Federal laws and regulations that could harm or help your business.

In addition to the legislative and regulatory activity maps available to members on the MSC website 24/7, the Council has launched a weekly **STAKEHOLDER REPORTS** program listing and summarizing the latest **NEW** legislative proposals in all state legislatures and the U.S. Congress. The first Stakeholder Report focuses on **MULCH** and includes any bill or regulatory mention of keywords including: mulch, mulching, CCA, or "ground cover".

The second Stakeholder Report issued each week focuses on **SOILS** and includes any bill or regulatory mention of the keywords or phrases including: "potting soil", "potting mix", "garden soil", "landscape soil", "soil amendment", "planting soil", "planting mix", "yard waste", topsoil, compost, or manure.

NOTE:

1. As you view the Stakeholder Reports or regulatory announcements, remember you can get more details by [clicking the bill number](#) in the table
2. Additional key words can be added to the search criteria for either stakeholder report on request by a member.

MSC EXPANDS L&R REPORTING PROGRAM

All members have been added to the weekly Stakeholder Report mailing list. If you wish to unsubscribe from the list, or if you want to add other company employees to the distribution list, send a request to Membership@mulchandsoilcouncil.org .

On-Line Regulatory Reports:

The on-line tables available to member through the MSC legislative website include a full account of all old and new state and Federal **legislative bills** for mulches and soils, separately, and all state and Federal **regulatory actions** for mulch and soils, separately, as well. Council staff has reviewed all the legislative bills and regulations to offer summary comments to assist members in reviewing the information for their own use. Again, as you view the Stakeholder Reports or regulatory announcements, remember you can get more details by **clicking the bill number** in the table. To access all old and new legislative & regulatory monitoring reports 24/7 on the MSC website, visit:

https://mulchandsoilcouncil.org/membership/Bill_Monitor1.php

Custom L&R Searches Available:

Any member company with a specific topic they would like to track in one or more states that is not already being reported in the current L&RM program can contact the MSC office to discuss the possibility of a custom search.

If you have any questions or wish to make recommendations for this program, please contact MSC Executive Director Robert LaGasse at execdir@mulchandsoilcouncil.org. We welcome your comments and suggestions and thank you for your support and participation.

###

LEGISLATIVE & REGULATORY NEWS

MSC Legislative Rep. David Crow offers the following information published in THEHill.com as the best review of the current status of the controversies and issues over the Navigable Waters rule known as WOTUS:

BIDEN ADMIN JUMPS THE GUN ON 'NAVIGABLE WATERS' RULE

by Charles T. Yates and William Yeatman, Opinion Contributors – thehill.com

The **Biden** administration recently published its **final definition** of “navigable waters” — establishing the scope of federal power to regulate private property under the Clean Water Act. This is the relevant agencies’ — Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers — fourth attempt at crafting such a definition in the past 15 years. That history of confusion raises the question: Why finalize this rule now, when the Supreme Court is poised to provide much needed clarity and stability in **Sackett v. EPA**? (The case was brought by Pacific Legal Foundation, where we work.)

It is hard to see how the definition will do anything more than confuse matters more, further victimizing a regulated public that must conform, at enormous cost, to the government’s shifting standards.

Some background is necessary. The **Clean Water Act** authorizes the EPA and Army Corps to regulate “discharges” into “navigable waters.” The phrase “navigable waters” limits the authority granted to the agencies. If a water feature is a “navigable water,” the agencies can regulate. If not, they cannot. This limiting principle is especially important given that the statute authorizes **draconian** penalties.

However, under regulations promulgated in 1986, the agencies decided they could regulate activities in and around every wetland or other damp patch of land in the country. The Supreme Court struck down this limitless “land-is-waters” approach in 2006, in **Rapanos v. United States** (also brought by Pacific Legal Foundation). Alas, the



**The CROW
Political
Report**

**By David Crow
DC Legislative &
Regulatory Services**

court could not reach consensus on an appropriate test for agency authority.

Justice [Antonin Scalia](#), writing for a plurality, issued a clear standard that limited regulation to “waters” as understood in the conventional sense of the term — that is, relatively permanent or continuously flowing bodies of water. He also allowed for the regulation of some wetlands. But since wetlands are by definition not “waters,” he concluded that they can be regulated only incidentally to true waters — that is, where there exists a continuous surface water connection between the wetland and the water, such that it is difficult to tell where one ends and the other begins.

Justice Anthony Kennedy wrote separately and came up with a “significant nexus” test: Wetlands and other features need only have a (vaguely defined) significant nexus to some downstream water to be regulated.

Since the Rapanos case, every presidential administration has tried — and failed — to implement the Clean Water Act in accordance with that decision.

The Bush administration issued guidance to implement the 1986 regulations in accordance with aspects of both tests. This [approach](#) caused much confusion. Although the Scalia test provided clear bounds on federal authority, nothing stopped the agencies from relying on Kennedy’s amorphous and expansive “significant nexus” test to justify federal jurisdiction over private property.

In 2015, the Obama administration promulgated a rule that took the significant nexus test as a starting point to claim sweeping regulatory authority. Because of its patent illegality and the issuance of several injunctions, it never took effect throughout the entire country.

Enter the Trump administration. It first repealed the 2015 rule and then finalized a new definition of “navigable waters” that relied upon Scalia’s test. The Trump rule was ultimately vacated nationwide by a district court in Arizona.

Now the Biden administration has made [yet another attempt](#), promising a durable rule. Yet the rule, published on Jan. 18, basically codifies the unworkable Bush-era approach by making some allowance for Scalia’s test, while primarily relying on the broad significant nexus test. This obvious shortcoming has [spurred congressional reaction](#) in the form of a Congressional Review Act resolution to disapprove the rule.

There is a better way. At present, the Supreme Court has an opportunity to revisit its fractured opinion in Rapanos and provide clarity in Sackett v. EPA. After all, we know from years of experience that the Biden administration’s approach cannot provide the promised durability.

For 15 years, the EPA and Army Corps have prevented the Sacketts from building a home on their modest residential lot near Priest Lake, Idaho. In 2007, shortly after the court ruled in the Rapanos case, the EPA relied on the significant nexus test to assert authority over purported wetlands on the lot. The Sacketts were understandably surprised. Their lot contains no bodies of water, nor any surface water connections to any body of water. It is [surrounded](#) by roads and a built-out residential development.

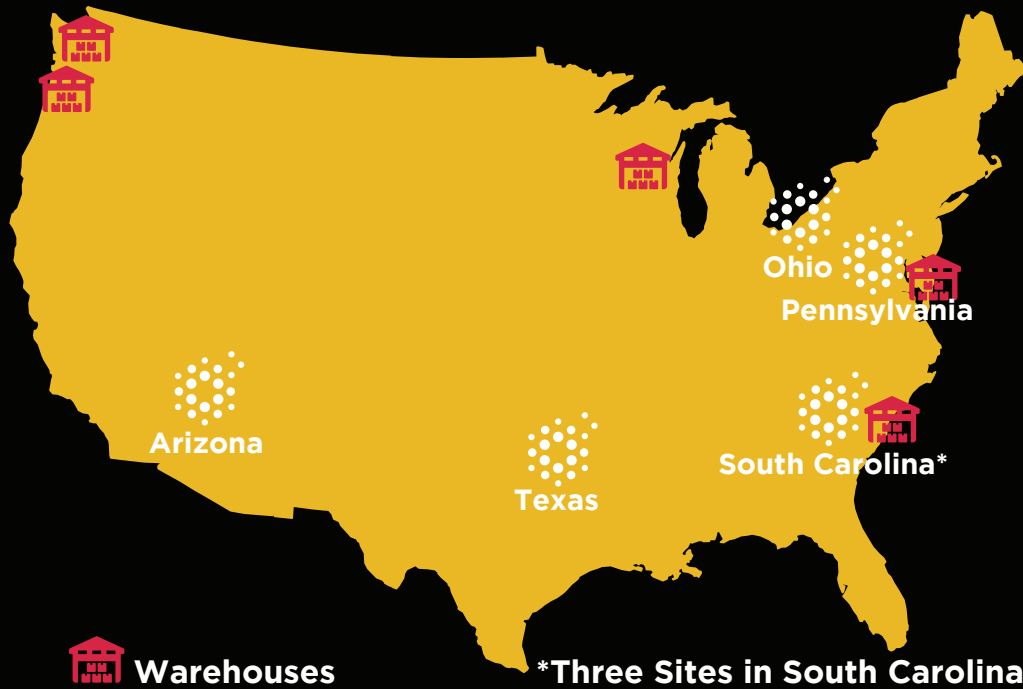
The Sacketts filed suit challenging the government’s claimed authority. They have argued that the significant nexus test is illegal. The court’s decision is expected by fall of 2023.

So, why would the Biden administration finalize its rule now? The significant nexus test underpins the Biden rule in every vital respect. And should the Sacketts prevail in their argument that the significant nexus test is illegal, a major amendment — if not a total rewrite — would be necessary. Even in the absence of a complete victory for the Sacketts, the Biden rule, which claims to be “informed by relevant Supreme Court case law,” would be outdated immediately upon issuance of a Supreme Court decision addressing federal wetlands authority.

The EPA has argued that the new rule will provide guidance and clarity, obviating the need for the Supreme Court to resolve the issues in Sackett. But the rule does little more than formally codify the Bush-era approach — the same regime giving rise to the



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dispute in the Sacketts' case.

This is no trifling issue. The agencies have again failed to recognize that as this game of regulatory ping-pong unfolds, it is ordinary Americans attempting to engage in everyday land use who must shoulder the burden of the government's ever shifting standards.

Charles Yates is an attorney and William Yeatman is senior legal fellow at [Pacific Legal Foundation](#), a nonprofit legal organization that defends Americans' liberties when threatened by government overreach and abuse.

###

The Winter Meeting of the AAPFCO was held February 13-14 at the La Fonda Hotel in Santa Fe, NM. A total of 149 people were registered representing state agencies and industry companies. Following the general session, the meeting broke into committee sessions as follows:



Terms & Definitions Committee

The T&D Committee took action on the following terms: Potato Fruit Juice (PFJ), Calcium citrate, and Orthosilicic acid (OSA).

Biostimulants Committee

The committee continued discussions of a draft Uniform Beneficial Substances Bill to regulate the sale and distribution of beneficial substances including plant biostimulants, soil amendments as well as other chemical or biological substances beneficial to plants and/or their growing environment, but excluding primary, secondary, and micro plant nutrients (fertilizers) and pesticides.

Included in the model bill is the provision that:

(b) In lieu of a statement of composition as required in Section 6, Number 6 of the Act, the label of **the following soil amendments** *when clearly and conspicuously identified as such on the label* shall include an ingredient statement, unless specific beneficial substance claims are made:

1. Compost
2. Garden Soil
3. Landscaping Soil or Topsoil
4. Mulch or Wood Products
5. Planting Mix
6. Potting Mix
7. Soilless Growing Media

Uniform Bills Committee

The Uniform Bills Committee discussed procedures and concluded the proposed model Beneficial Substances Bill does not have to go through this committee for approval. All work will be done by the Biostimulants Committee. The committee also noted that "Ready To Use" (T-44 P. 89 Official Publication NO 75) is not the prequalifier for a product to be labeled for traces less than their minimums. Therefore, the committee changed the format of Rule 1 for better understanding to:

Proposed Format:

1. Plant Nutrients in Addition to Nitrogen, Phosphate, and Potash.

Other plant nutrients when mentioned in any form or manner shall be registered and shall be guaranteed. Guarantees shall be made on the elemental basis. Sources of the elements guaranteed, and proof of availability shall be provided the _____ upon request.

Except guarantees for those water-soluble nutrients labeled for:



HAMER Brand Model 2090

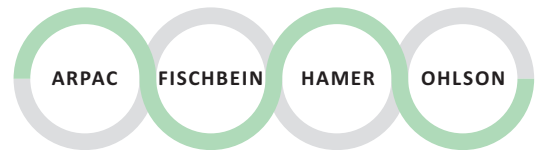
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The minimum percentages which will be accepted for registration are as follows: (continued with table)

###

NAISMA COMPOST CERTIFICATION



The North American Invasive Species Management Association (NAISMA) works to promote and empower invasive species management and to be the voice of invasive species management professionals in North America. NAISMA's Weed Free Products (WFP) Committee manages standards that limit the potential spread of noxious weeds via various products (Forage, Gravel, Mulch, and Compost).

At its February meeting, the WFP Committee reviewed a draft of its proposed weed free certification standards for compost which included the following:



Minimum Standards for Certified Weed-Free Compost

1. Compost shall be categorized as Weed Free if the following procedures are confirmed on site by the designated authority:

- The compost facility is permitted by the State or Province where located (**Inspection of Permit**)
- The State or Province where facility is permitted requires that processes listed under "or" below are adhered to during processing (**Inspection of State or Province permit requirements**)
- Field Inspection standards performed (Appendix D)

-OR-

- Facility follows EPA 40 CFR 503 Standards "Process to Further Reduce Pathogens (PFRP)" (**Inspection of temperature recordings, turn dates, and process**)
 - Static or windrow pile temperature is maintained at 55°C (130°F) or higher for 5 days or longer, during which the pile is turned a minimum of five (5) times.
 - In-vessel or mechanically aerated static piles (i.e., using a blower to force air through the pile), maintain a continuous minimum temperature of 55C (131F) for 3 consecutive days (72 hours).
- Moisture content maintained between 40-60% measured by moisture content meter (**Inspection of moisture content measurements**)
- A minimum of 6 evenly spaced temperature and moisture content measurements taken per pile, windrow, or vessel.
- Field Inspection standards performed (Appendix D)

Designated authority reserves the right to perform random checks of temperature and moisture content readings during the inspection process.

1. Area of Manufacture must be inspected by a designated authority a minimum of one time per calendar year.

NAISMA COMPOST (Cont'd.)

2. An Inspection Certificate as per Appendix B shall document the above requirements are met based upon a reasonable and prudent inspection.
3. Shipment of NAISMA Certified Weed Free Compost shall be accompanied by NAISMA Certification Marking as outlined in Appendix C.
4. If you have any questions or comments on the proposed weed free compost standard, please contact MSC Executive Director Robert LaGasse at execdir@mulchandsoilcouncil.org.

###

APHIS CHANGE FOR IMPORT FILERS



The U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS) is developing a new APHIS Core Message Set AQ3 flag to alert filers that products under a Harmonized Tariff Schedule (HTS) code require a Message Set. When implemented, the new AQ3 flag (set to "warning severity") will signal filers that additional data may be required. It will not prohibit filers from successfully submitting an entry without APHIS Core Message Set data or disclaims. **APHIS will update filers when the APHIS Core Message Set AQ3 flag is operational.**

APHIS is introducing the new flag in response to evidence that some HTS codes are largely disclaimed and do not require APHIS Core Message Set data. This change will eliminate the burden on stakeholders who had to disclaim large volumes of shipments.

Filers who get an HTS flagged AQ3 entry will receive this message: **"PU2 – DATA MSNG [missing] FOR HTS – NO ACTION REQD."**

APHIS reminds filers that the AQ3 flag does not eliminate the requirement to file a message set when permits, certificates or other documents are required for agriculture admissibility. The move to an AQ3 flag simply removes the requirement to disclaim products not regulated by APHIS, or indicates data is not required.

For help with the APHIS Core Message Set filing, please visit our [website](#), send an email to ace.itds@usda.gov, or call our help desk at 1-833-481-2102.

###

APHIS ENFORCEMENT SUMMARY 2022



APHIS Investigative and Enforcement Services' open inventory of cases involve investigative, enforcement, and regulatory support services for the four APHIS programs it serves, as well as for agricultural quarantine inspection activities carried out by the Department of Homeland Security's Customs and Border Protection. A case may involve one or more individuals or businesses.

Ag Quarantine Protection (AOI)

To support AQI activities in fiscal year 2022, APHIS Investigative and Enforcement Services initiated 992 cases, issued 182 official warnings, and issued 603 pre-litigation settlement agreements resulting in the collection of \$1,637,813 in stipulated penalties. In one case, APHIS negotiated a pre-litigation settlement agreement with an Express Carrier in the amount of \$491,250 that resolved hundreds of alleged violations of the Plant Protection Act and the Animal Health Protection Act relating to the breach of agricultural holds for inspection placed by CBP. In another case, APHIS negotiated a pre-litigation settlement agreement in the amount of \$132,438 to resolve numerous alleged violations of the Plant Protection Act and the Animal Health Protection Act relating to the handling of regulated garbage.

Plant Protection Quarantines (PPO)

In fiscal year 2022, APHIS Investigative and Enforcement Services opened 1,389 new cases; issued 505 warning letters; entered into 672 pre-litigation settlement agreements resulting in the collection of \$1,939,534 in stipulated penalties; and obtained, through Office of the General Counsel action, Administrative Orders assessing \$181,750 in civil penalties.

To support plant health in fiscal year 2022, APHIS Investigative and Enforcement Services initiated 29 cases, issued 15 official warnings, and negotiated 11 pre-litigation settlement agreements resulting in the collection of \$31,031 in stipulated penalties. In one case, IES negotiated a pre-litigation settlement in the amount of \$9,750 that resolved violations of the Plant Protection Act involving the importation of Hass avocados from Peru. In another case, IES negotiated a pre-litigation settlement for \$4,750 for violations of the Plant Protection Act involving non-compliance with ISPM-15 standards for regulating wood packing material in international trade.

###

The California Trucking Association has asked a federal judge to issue a new preliminary injunction in an attempt to continue its legal battle to block enforcement of California’s AB 5 law that CTA maintains will force owner-operators to become motor carrier employees.

Claiming it has new legal arguments, CTA on Jan. 11, asked federal district Judge Roger Benitez to temporarily block enforcement of the law that it said “effectively eliminates owner-operators from any role in motor transport in California.”



The request comes after a federal appellate court rejected CTA’s attempt to stop enforcement of AB 5, and the U.S. Supreme Court’s denial to hear the case. The law is intended to reclassify owner-operators as carrier employees, and has been criticized by motor carriers and independent contractors.

Before CTA’s unsuccessful first-round legal effort to block the law, Benitez in 2020 granted a preliminary injunction. In his order, Benitez of the Southern District Court of California, said, “There is little question that the state of California has encroached on Congress’ territory by eliminating motor carriers’ choice to use independent contractor drivers, a choice at the very heart of interstate trucking.”

CTA’s new request mirrors a similar request filed in December by the Owner-Operator Independent Drivers Association. “As shown by declarations, recent protests at the ports and surveys, owner-operators want the freedom to operate their own businesses,” CTA wrote.

“The state defendants have never articulated how a motor carrier can possibly satisfy the statute, including the ‘Prong B’ of the ABC test, and they remain intent on enforcing [the law] against motor carriers,” CTA’s legal brief said. “They thus continue to threaten irrevocable harm to plaintiffs and the owner-operators who have built businesses in reliance on federal law.”

The CTA legal filing noted that for decades, motor carriers across the United States have provided freight transportation services through owner-operators — individuals who drive their own trucks and who operate as independent contractors.

“Congress has recognized the critical role that owner-operators perform in interstate commerce, including through the Federal Aviation Administration Authorization Act,” CTA’s brief noted. “In 2019, however, California passed Assembly Bill 5, now codified in California labor code.”

The so-called F4A law prohibits states from “enacting or enforcing a law, regulation or other provision having the force and effect of law related to a price, route or service of any motor carrier.”

The California Trucking Association will appeal a court decision on the state’s independent contractor law that many in trucking deem unfavorable to the industry. CTA said under the AB 5 law, motor carriers can no longer offer the same range of services as before to customers seeking to transport cargo into or out of California.

###

RIDOT SEEKS TRUCK TOLL APPEAL

RHODE WORKS

The Rhode Island Department of Transportation is [seeking an appeal](#) of a federal court's ruling that its trucks-only tolling program is unconstitutional. [RIDOT asked that the Sept. 21 decision by District Judge William Smith](#) declaring the program unconstitutional be reversed, and that oral arguments be held on the case.



The [trucks-only tolling system](#) was part of then Gov. Gina Raimondo's broader RhodeWorks program, which had been projected to generate \$4.7 billion to finance infrastructure projects. The toll charge was shut down hours after Smith's ruling.

The lawsuit, filed nearly four years ago by American Trucking Associations and two motor carriers, alleged that the hotly contested tolling plan required out-of-state heavy trucks to pay nearly all of the tolls, while exempting state businesses, cars and intrastate motor carriers. The trial on the lawsuit ended June 13 after two weeks of testimony. The program administered tolls only to motor carriers traveling through the state.

In that ruling, Smith wrote, "Because RhodeWorks fails to fairly apportion its tolls among bridge users based on a fair approximation of their use of the bridges, [it] was enacted with a discriminatory purpose, and is discriminatory in effect, the statute's tolling regime is unconstitutional under the dormant Commerce Clause of the United States Constitution."

In its appeal, RIDOT said the appellate court should grant oral argument because the district court struck down a state statute on federal constitutional grounds. It also maintains that the case presents important questions relating to federalism and the Commerce Clause.

"The Commerce Clause regulates effects, not motives, and it does not require courts to inquire into ... legislators' reasons for enacting a law that has a discriminatory effect," RIDOT said. "If legislation were deemed 'discriminatory' every time a legislator declared she had heard her constituents' concerns, few laws would survive."

It added, "The district court gleaned discriminatory intent from stray statements by two officials. But this court has cautioned against precisely that error. Second, RhodeWorks does not unduly burden interstate commerce — its per-crossing tolls on the heaviest vehicle classes represent a 'fair approximation' of bridge use." RIDOT further maintained that the tolls "apply even-handedly to the vehicle classes that tend to do the most damage to bridges, regardless of the vehicles' registration. Charging all tractor-trailers does not disadvantage any similarly situated out-of-state businesses."

###

HR RULING ON ORIENTATION & IDENTITY

According to Intuit HR Services, most employers have heard of the classes that are protected by Title VII of the Civil Rights Act – race, color, national origin, sex, and religion. But many employers aren't aware that there are other federal and state laws that create protected classes, and that the Equal Employment Opportunity Commission (EEOC) and courts around the nation have the power to expand the definitions of these classes.



For instance, in a landmark ruling last month, the Seventh Circuit Court of Appeals found that workplace discrimination based on sexual orientation is prohibited under the Civil Rights Act because it falls under the definition of "sex." So, what does this mean for employers?

This ruling only affects Indiana, Illinois, and Wisconsin, but it makes it more likely that courts across the country will start interpreting sex to include sexual orientation. It also makes it more likely that the U.S. Supreme Court will hear a case on the topic and establish nationwide law.

Illinois and Wisconsin already have state laws that create employment protections

based on sexual orientation, so there are no new action items for employers in those states, unless of course they weren't aware of those state laws.

Employers in Indiana should ensure that their policies and practices do not allow for discrimination based on sexual orientation.

Interestingly, the EEOC has interpreted sex to include sexual orientation and gender identity for several years, hence Intuit HR's long-standing advice that employers treat those as protected classes.

###

INDUSTRY NEWS

RESEARCH ON CARBON-NEUTRALITY OF BIOMASS



A study titled "[Impacts of the US southeast wood pellet industry on local forest carbon stocks](#)," has been peer-reviewed and published in the scientific journal, *Nature* states the wood pellet industry met the overall condition of forest carbon neutrality in the U.S. Southeast between 2000 and 2019.

According to the [International Energy Agency](#) (IEA), if harvest volumes (for wood products and energy) and losses related to mortality and disturbances do not exceed the growth across the whole forest, there is no net reduction in forest carbon stock. The 2022 study in *Nature* additionally confirms, by data, that carbon neutrality guidelines have been met by biomass producers in the U.S. Southeast, which is the world's leading region for wood pellet production and export. Between 2000 and 2019, data and observations were collected from more than 19,000 forest inventory tracts maintained by the U.S. Forest Service. At the completion of the study, researchers concluded that, "our estimates offer robust evidence that the wood pellet industry has met the overall condition of forest carbon neutrality."

In parallel to the IEA, The United Nations Intergovernmental Panel on Climate Change's "[Special Report on Climate Change and Land](#)" stated, "In the long term, a sustainable forest management strategy aimed at maintaining or increasing forest carbon stocks, while producing an annual sustained yield of timber, fiber, or energy from the forest, will generate the largest sustained mitigation benefit" (Ch 4, 4.8.5, page 66).

In addition to peer-reviewed studies, third-party data, such as the [U.S. Forest Service's Forest Inventory and Analysis \(FIA\) Program](#), shows that increased demand for forest products in the U.S. Southeast has resulted in more, not less, forest inventory in the region year over year. In fact, since 1953, FIA data indicates that forest inventories in the U.S. Southeast have more than doubled while the region has continued to be an important wood basket.

###

DRAX ANNOUNCES \$50M ALABAMA EXPANSION



As global demand for biomass continues to surge, Drax has announced a \$50 million expansion at its Aliceville, Alabama wood pellet plant.

Situated within an attractive supply of wood and timber, Aliceville is well-positioned as a growing hub for sustainable forestry and the biomass industry. The region boasts of a high concentration of existing sawmills that produce the residuals necessary to support sustainable wood pellet production.

The \$50 million dollar investment at Drax's Aliceville pellet facility will increase production capacity by nearly 50 percent, from 250,000 tons to 380,000 tons.

The expansion includes upgrades to existing systems as well as new truck dumps and pelletizer units, which will allow for an increase in the amount of sawmill residuals processed. The additional capacity is expected to begin commissioning in 2024.

Drax's goal is to increase its global pellet production capacity from around 5 million tons to 8 million tons by 2030.

###

GM PLANS \$900M PLANT UPGRADES



General Motors says it will spend more than \$900 million to update four factories, with the bulk going to an engine plant in Flint, Mich., to build the next-generation V8 for big pickup trucks and SUVs. Factories in Rochester, N.Y., Defiance, Ohio and Bay City, Mich., also will see investments, some to make V8 engine components as well as parts for future electric vehicles, the company said Jan. 20.



The investments won't create any new jobs, but they will preserve about 2,400 hourly and salaried positions at the four sites, the company said. Much of the money, \$579 million, will go to Flint Engine Operations for equipment to build the sixth-generation small-block V8 that will go into the next round of big pickup trucks and SUVs. The plant now employs about 700 people who also will keep making their current product, a diesel engine used in light trucks.

GM, like other automakers, is facing stricter government fuel economy standards and pollution limits starting in the 2024 model year. New vehicles sold in the U.S. will have to average at least 40 miles per gallon of gasoline in 2026, up from about 28 mpg, under new Biden administration rules that undo a rollback of standards enacted under former President Donald Trump.

That means the new V8 will have to get better mileage and pollute less than the current versions. Although GM wouldn't release details on the new engine, Johnson said during a news conference at the Flint plant that it would be more efficient than the current version.

GM has a goal of selling only electric passenger vehicles by 2035, but Johnson said that's a dozen years out, a period when many customers will still want gas engines.

###

MEMBER NEWS

OLDCASTLE BUYS GC MULCH BAGGING ASSETS

Oldcastle APG®, a CRH company, has acquired the bagging assets of Grant County Mulch, a leading manufacturer and distributor of mulch, soil and decorative



stone headquartered in Petersburg, West Virginia. The acquired assets, which include five bagging facilities, will operate within Oldcastle APG's Lawn & Garden division.

"We are very pleased to welcome Grant County Mulch's highly complementary resources to the APG portfolio," said Tim Ortman, President, Oldcastle APG. "The addition of its solutions capability to our Lawn & Garden business will help strengthen our competitive positioning in the Mid-Atlantic US while enhancing our ability to best serve our customers across the country."

With bagging and distribution locations throughout the Mid-Atlantic region, Grant County Mulch's geographic platform will enable Oldcastle APG's Lawn & Garden business to deepen its manufacturing footprint and provide solutions to a broader customer base in the area. Additionally, the acquisition will augment Oldcastle APG's existing plant network and manufacturing expertise.

Established in 1986, Grant County Mulch quickly earned a reputation as a leading supplier of high-quality landscaping products including hardwood mulch, color-enhanced mulch, potting soil, pine nuggets, compost and stone. The company's commitment to developing premium packaged products and environmentally conscious processes further supports Oldcastle APG's dedication to producing comprehensive and sustainable solutions for its customers. Grant County Mulch will retain its bulk mulch and other bulk products operations and facilities.

OLDCASTLE (Cont'd.)

The addition of Grant County Mulch's bagging assets to the APG network follows several recent acquisitions by Oldcastle APG, including Soil Mender Products and South Jersey Agriculture Products, centered around expanding its Lawn & Garden solutions offerings in attractive markets.

###

DURAVANT ACQUIRES MULTISCAN

Duravant LLC ("Duravant"), a global engineered equipment and automation solutions provider to the food processing, packaging and material handling sectors, announced today that it has acquired Multiscan Technologies ("Multiscan"), a leading manufacturer of machine vision solutions for the food processing industry headquartered in Alicante, Spain. Multiscan designs and builds equipment for the sorting and inspection of fruits, vegetables and other agri-food products. Together with Duravant operating companies Key Technology and WECO, Multiscan significantly extends Duravant's reach across automated food processing and inspection categories with new complementary products, technologies and applications.



Multiscan has been a leader in vision technology for over 25 years. Their portfolio includes highly intelligent vision and transport systems for automated sorting and grading of food products and inspection systems using advanced x-ray digital processing and information management software that ensure food safety compliance. Multiscan serves customers in more than 35 countries, helping them improve efficiency, maximize throughput and ensure final product quality.

Mike Kachmer, President and CEO of Duravant, said, "Multiscan extends our reach into agri-food markets with intelligent inspection solutions that are highly complementary to Key Technology's and WECO's offerings. Their culture of innovation and customer commitment makes them a wonderful addition to the Duravant family."

Multiscan's team of engineers, software developers and technical experts deliver complete turnkey solutions from their manufacturing hub in Europe and support customers worldwide directly and through a wide network of distributors and integrators. Multiscan also has sales and service subsidiaries in the United States and Chile.

###

VERMEER UPDATES HG4000



Vermeer continues to innovate with the introduction of the re-designed Vermeer HG4000 horizontal grinder. This new generation of the HG4000 delivers powerful performance in various wood waste recycling applications and landscaping material production. It's equipped with a 536-horsepower (399.7-kW) CAT C13B T4F/Stage V diesel engine, a Series III duplex drum, an aggressive infeed to accommodate a variety of materials, and many performance and durability features. It's quiet, too, with a working sound level of 112 decibels.



According to Vermeer Product Manager for Environmental Equipment Jeff Bradley, the Vermeer HG4000 horizontal grinder is a productive machine for small to midsize mulch producers with limited space for the material. The size of the HG4000 also makes it efficient to transport in congested urban environments making it an ideal machine for small land-clearing operations. And while this horizontal is smaller than other machines in the Vermeer grinder product line, it still can handle a variety of materials ranging from loose, bulky materials like leaves, branches and yard clipping to hardwoods, pallets and logs."

VERMEER (Cont'd.)

The HG4000 has a feed table capacity of 4.6 cubic yards (3.5 m³). It features the proven cutting performance of the Vermeer patented Series III duplex drum with reversible hammers and tips for extended wear life compared to single-sided designs. The hard-faced anvil on the HG4000 delivers impressive cutting action with the drum, and a redesigned robust anvil-mount structure helps ease the hard-faced wear edge replacement process.

The redesigned Vermeer HG4000 incorporates several service and maintenance enhancements, including a drive belt tensioning system that does not require the engine to be moved when adjusting, large hinged side shields for optimal maintenance access, added power rotation to the screen hoist for changing screens, and a CAT engine with worldwide support. It can also be outfitted with an optional cross-band magnet and magnetic head pulley to pull metal from the top and bottom of material on the conveyor after it has gone through the machine for clean finished material.

For more information about the new Vermeer HG4000 horizontal grinder, contact your local Vermeer dealer or visit vermeer.com/HG4000

###

**WALZ SCANNER
FIRST NTEP CERTIFIED
IN THE USA**

WALZ
SCALE • SCANNER

MSC Affiliate Member Walz Scale just announced it has achieved NTEP “legal for trade” certification for their Walz Scanner volumetric measurement technology. NTEP stands for National Type Evaluation Program, an approval system created by the U.S. Department of Commerce's National Institute of Standard and Technology (NIST) and the National Conference on Weights and Measures (NCWM). This NTEP certification is the first of its kind in the USA and recognizes the Walz Scanner as the first accuracy-certified volumetric bulk measurement system in the market.

The Walz Scanner utilizes laser technology to scan and measure bulk material loads in trucks and rail cars. The system operates similar to truck and rail scales, but allows operations to achieve legal-for-trade volumetric load measurements while the vehicle is in motion. This is a big step forward in improving operational efficiencies for our customers.

According to Matt Walz, “The new NTEP certification currently does not cover mulch, but it should cover the soil/composting side of MSC members’ businesses. The key here is that the system has been proven to provide very accurate load volumes “at the time of scanning”. This should give MSC members and their customers a sense of confidence that the system results are correct. No other company has been able to achieve this level of accuracy.”

Walz continues to explain, “(NIST) HB44 does not allow for us to place a label on the (load) tickets that says ‘At the of scanning’. This is why we do not have the material approval for mulch – because of the known compaction. I am working with the NTEP working group to hopefully make the required changes in HB44; however, this could be a long process as government agencies do not move fast.”

NTEP certification for this technology opens up the opportunity for operations to utilize the Walz Scanner in replacement of – or in conjunction with – their scales to improve their business processes. While truck and rail scales provide load weights in a static state (vehicles must stop), the Walz Scanner provides load volumes while the vehicle is in motion. This dynamic operation is ideal for operations looking to increase vehicle throughput and track material loads by volume. For more information on the Walz scanner, visit www.walzscale.com

###



New Member Welcome

The Mulch & Soil Council is pleased to welcome as a new Producer Member company:



Back to the Roots

Nikhil Arora
100 Webster St Suite 200, Oakland, CA 94607
E: nikhil@backtotheroots.com
Web: www.backtotheroots.com

Certified Product News

NEW CERTIFIED PRODUCTS

Britton Industries
Britton Industries
Britton Industries
Wallace Farm, Inc.
Wallace Farm, Inc.
Wallace Farm, Inc.

MULCH

Premium Black Mulch
Premium Natural Mulch
Premium Red Mulch
Vigoro Premium Wood Mulch Black by Wallace Farm
Vigoro Premium Wood Mulch Brown by Wallace Farm
Vigoro Premium Wood Mulch Red by Wallace Farm

RECERTIFIED PRODUCTS

Austin Wood Recycling, Ltd.
Austin Wood Recycling, Ltd.
Austin Wood Recycling, Ltd.
Austin Wood Recycling, Ltd.
Austin Wood Recycling, Ltd.
Maibec Inc.
Maibec Inc.
Maibec Inc.
Margo State Line, Inc.
The Scotts Company
The Scotts Company

MULCH

Texas Native Contractor's Blend
Texas Native Premium Pine Mulch
Vigoro Premium Black Mulch by Austin Wood Recycling, Ltd.
Vigoro Premium Brown Mulch by Austin Wood Recycling, Ltd.
Vigoro Premium Red Mulch by Austin Wood Recycling, Ltd.
Cedar Mulch
Horizon Black Cedar Mulch
Nevada Brown Cedar Mulch
Professional Premium Red Mulch - Margo State Line
Earthgro Decorative Hardwood Mulch
Scotts Nature Scapes Advanced Color Enhanced Mulch - Sierra Red

Amerigrow Recycling
Kellogg Garden Products
Kellogg Garden Products
KSI (Kellogg)
KSI (Kellogg)

LANDSCAPE SOILS & AMENDMENTS

Eco Soil
Gardeners All Purpose Planting Mix
Kellogg All Natural Garden Soil for Trees, Shrubs & Roses
Gardeners Steer Manure
Gardeners Top Soil

Kellogg Garden Products
Miracle-Gro Lawn Products
Miracle-Gro Lawn Products
Miracle-Gro Lawn Products
Terrace Brands

PREMIUM SOILS

Kellogg Potting Soil
Miracle-Gro Cactus, Palm & Citrus Potting Mix 0.07-0.03-0.05
Miracle-Gro Indoor Potting Mix 0.25-0.13-0.18
Surprise Crafted by Miracle-Gro Fibermix 0.15-0.05-0.09
Bonnie Harvest Select Organic Raised Bed Soil 0.12-0.06-0.09

WITHDRAWN & DECERTIFIED PRODUCTS

PREMIUM SOILS

Miracle-Gro Lawn Products
The Scotts Company
Miracle-Gro Garden Mulch
Earthgro Decorative Groundcover Bark

NEW

FREE "FOR SALE" CLASSIFIED ADS FOR MSC MEMBERS

With current supply chain shortages and other issues expected to continue into the 2023 production season, any resource for added equipment needs or even used equipment bought just for parts could make a significant difference in productivity for your year. If you have some equipment or other items you would like to sell or trade, MSC is opening a new member service in the form of FREE "FOR SALE" Classified Ads. To run a free classified ad for one bi-monthly issue of the NNQ, all you have to do is:

- You **MUST** be a member company to run a free classified ad.
- Send up to 2 photos of the item you want to sell.
 - The photos should be a close-up that "fills the frame" of the picture.
 - Photos should be in a high resolution, jpg format
- Provide Product Information (in a WORD doc) as follows:
 - Item Description: (what is it?)
 - Manufacturer: (Who made it)
 - Model: (Item model number)
 - Year: (When it was manufactured)
 - Location of equipment: (where it is: city, state)
 - Price: (show price or "Call for Quote")
 - Company Contact: (Name, Phone, email)
 - Broker Contact (if any): (Name, Company, Phone, email)
 - Other: (list any other pertinent information you want callers to know before calling.)
- Submit your word doc and photo(s) as attachments in an email to membership@mulchandsoilcouncil.org

Other Details:

- Classified ads must be submitted by the first day of each even-numbered (Feb, Apr, Jun, etc.) month and will appear in the next available issue.
- Classified ads will run for one issue only unless resubmitted by the seller member prior to the next issue.
- Classified ads will be either 1/8 page (2.38" H x 3.63" W) or ¼ page (4.75" H x 3.63"W) depending on content and editor's layout.

NOTICE: The MSC reserves the exclusive right to reject any advertisement that, in the Council's sole opinion, is deemed unsuitable or inconsistent with the objectives of the Council or the NNQ Newsletter. In the event an advertisement is unacceptable, the MSC's only liability shall be limited to a refund of the advertising space fee for the omitted issue, if any.

Mark Your Calendar

