

Glyphosate Commission – Meeting Minutes – September 15, 2022

APPROVED BY COMMISSION 2/9/24

AGENDA:

1. Call to Order
 2. Approval of June 17, 2022 meeting minutes
 3. Discussion: Workplan (including Phase II Timeline)
 4. Discussion: Phase I Report Comments / ERG Letter / Accepting Report
 5. ERG Contract – Phase II Extension
 - a. Update: Funding
 - b. Approval: ERG Contract Amendment/Authorization
 6. Other Business: reserved for items not reasonably anticipated by the Chair
 7. Adjournment
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1. Chair Suuberg called the meeting to order and called a roll call for a quorum. Present: John Lebeaux (Commissioner DAR), Marc Nascarella (DPH, Representing Commissioner Margret. Cooke), Eve Schluter (MA Wildlife), Julie Richburg (Trustees of Reservations).
2. Chair Suuberg raised approval for the minutes. No comments or questions being raised, the Chair moved to adopt the minutes as drafted; seconded (by John Lebeaux); Passed unanimously.
3. The Chair reviewed the agenda. With respect to timeline, he noted that while the original deadline for the Commission was 12/31/21, due to various administrative, procurement, and funding issues, the Commission has not yet completed its work, and may seek another extension.
 - Keeping legislators, including legislative sponsor Representative Gentile apprised of progress.
 - The draft Phase 1 report was posted to the website, and the commission has received public comments. We will discuss potential changes based on those comments today.
 - Will also discuss starting the work on Phase 2. ERG (consultant) has stated that they will need approximately 6 months to complete that work from the date it receives approval to start. The Commission has sought from ERG an estimate of costs for completing the Phase 2 work, including responding to comments.
 - Chair invited ERG to discuss Phase 2 and contract.
- John Wilhelmi. (ERG): Agreed the 6 months needed for Phase 2 is appropriate. Previous commitment was 4 months. ERG will need time to consider information that will be received during Phase 2, and comments which is why 6 months is the needed timeline.

The Chair noted that as a result, the contract w/ERG will need to be amended, and MassDEP and MDAR are working on identifying appropriate sources of funding (inc. existing sources). Invited Commissioner LeBeaux to comment (Provided no comment at this this time).

4. Phase 1 Report Comments: All comments and ERG letter of 8/24/22 were circulated and posted online. The Chair invited Commissioners to discuss the public comments and ERG's suggestions as well as requests for guidance in its letter.

Public Comment/Input: the Chair summarized the comments received and ERG's recommendations.

- John Wilhelmi: noted that there were many helpful comments received that may not have been summarized in the letter.
- Concerning additional opportunity for Public Comment - John LeBeaux: agreed that all identified commenters be allowed to comment at beginning of Phase 2, and also suggested that there be affirmative outreach to all stakeholders identified throughout the process, including previous commenters, and announce a comment period on a draft Phase 2 Report. Chair thanked John LeBeaux for his suggestion.
- Julie Richburg: also asked that outreach not be just to original stakeholders, but also those identified in the comments on the Phase 1 Report. John LeBeaux agreed.
- Eve Schluter: agreed w/everything that had been said. Asked how comment period would be noticed. Asked that a notification plan be put together (e.g., notice in the environmental monitor).
- Marc Nascarella: asked to what extent response to comments will be part of the Phase 2 report. Suggested a section in the report that characterizes themes of the comments would be helpful to document consideration and address criticisms raised.
- Chair asked John Wilhelmi for his thoughts. John Wilhelmi: agrees with concepts suggested, including thematic summary in Phase 2 report (rather than 1-by-1 response to comments received).

Annual Usage Data: Chair noted that ERG noted that gathering using data would be exceedingly difficult and costly from the DAR paper usage reports. Other sources of information are noted in the ERG letter, including an EPA report that has information about usage by state and by sector/purpose of use. It also refers to information in the Kynetic database (which was mentioned in a public comment).

- John Wilhelmi: cannot comment about what is in the reports (has not seen any examples). ERG is capable of reviewing the reports if so directed.
- John LeBeaux: noted that MDAR receives 1,500-2,000 reports each year in paper form, which include the product name, EPA registration #, crop type and location, application method, and amount used. The report does not include active ingredient. The forms are submitted by licensed applicators- will not capture agricultural applications or use by individual consumers. DAR does not have resources to digitize and receive the reports electronically at this time. Chair asked about other data sources and the Kynetic database.
 - Taryn LaScola: prompted by John LeBeaux, noted that any information from other places may be helpful, but should be accurately presented as to its scope. Other data sources may still be useful to identify where holes may exist in our knowledge of glyphosate use.

- Marc Nascarella: noted that Commission's focus is on licensed pesticide applicators and asked if there was a way to estimate use by licensed applicators. Also noted that there's a distinction between licensed applicators and members of the general public who purchase glyphosate products at retail locations.
- Taryn LaScola: noted that there are a lot of interesting questions to be answered regarding use of such products by homeowners/ individual consumers, but that MDAR does not gather such information, and would need to have discussions about its authority to collect that information and how to find such information.
- John Wilhelmi: noted that in EPA's 2020 Report referenced in ERG's letter, national data shows "applied by consumer" is the largest share of use by volume.
- Chair inquired of John LeBeaux as to whether it would be possible to evaluate a shorter time period (for example a year) of DAR usage data. It would require determining which products include glyphosate.
- John LeBeaux: currently MDAR merely receives the reports, but the resources needed to analyze such reports would be significant. ERG could potentially do it (though it would add to the scope), but it would be very difficult for MDAR to do so.
- John Wilhelmi: stated that ERG could do it if the Commission decides to do it, but it would take the equivalent of 2 FTE analysts working for 2 years. Based on a quick estimate, to analyze 2,000 reports requiring 2 hours per report would be 4,000 hours of work and more than double the current budget. Spending one hour per report would mean 2,000 hours- a significant amount of work.
- Taryn LaScola: noted that reports can vary from 1-2 pages to several pages long. Some describe other services (pesticide applications etc.)
- Chair: concerned about what this would do to the budget. It does sound like ERG has some data that would help the Commission determine how much is being used in MA.
- Julie Richburg: could a statistical subsample be used, to hold it up against the Kynetic database? For example, review 100 reports. She has seen these reports, and some are short.
- Eve Schluter: agreed that a sample would be a potential approach, but what about moving to online reporting? Could we create an electronic form for 2022 application to get a full year of data?
- Chair expressed concern that it would be difficult to put together an electronic system for 2022 as an IT project as those workplans have been agreed on.
- Eve Schluter: When are the reports due? Could we send a webform to licensed applicators and ask for usage information?
- Taryn LaScola: notices of annual reporting go out in January, and applicators usually take a couple of months to send in, so most reports are in by March/April.
 - Chair noted that timing makes it tough for 2022.
- The Chair asked how the Commission feels about using the sources/databases as identified by ERG, while asking MDAR to consider Julie Richburg's suggestion to analyze a sample of DAR reports.
 - John LeBeaux: could talk to ERG and DEP about coming up with a method of selecting 100 reports (herbicide only). Supports moving ahead with the source identified.

- Chair: will authorized ERG to move forward w/usage data sources / databases referenced by ERG, while MDAR and DEP will discuss looking at a sample.

Considering Precedential Judicial Decisions: the Chair opened the discussion by noting that at least one commenter raised concerns with relying on precedential judicial decisions, and that ERG has asked for feedback from the Commission on this matter.

- Chair noted that it would be important for the Commission and ERG to be aware of any scientific studies that were used by experts in litigation. Asked Commission members for their thoughts:
- Marc Nascarella: DPH is supportive of the approach suggested. Recognizes that how civil cases are decided is very different than scientific studies and conclusions from them. Agreed it would be useful to look for information from cases not for legal determinations, but on the underlying science. May provide something of value to the Commission.
- John LeBeaux: like all members of the Commission, wants to rely on the science, including any science used in a trial. Asked how easy/difficult it is to get that kind of information from reported judicial decisions.
- Ravi Simon (Rep. Gentile's Office): In attendance as Rep Gentile could not attend. Noted that a request has been put in for \$117k to fund Commission's work in the Supplemental Budget, and currently looking for a Senate sponsor. Chair thanked him and Rep. Gentile.
- Benny Meshoulam (MassDEP / OGC): prompted by Chair, noted that there are several websites that summarize the outcomes of the cases and monetary awards, but no websites seem to summarize the science.
- Chair: while may not be looking for a detailed characterization of tens of thousands of cases, happy to hear from stakeholders about what may be out there and take it into consideration.
 - Eve Schluter and John LeBeaux agreed w/the approach.
 - John LeBeaux: does ERG have any thoughts?
 - John Wilhelmi: To clarify – ERG would focus on using precedential judicial decisions to find additional scientific, peer reviewed and published material?
 - Chair: hoping that ERG could call out science that does/does not meet indicia of being reliable
 - John LeBeaux: would think that the same criteria should be followed that are followed for scientific reports outside judicial proceedings.
 - John Wilhelmi: agreed.

Considering Inert Ingredients: Chair asked John Wilhelmi to discuss inert ingredients.

- John Wilhelmi: noted that focus should be on glyphosate given the original scope of work, but there have been studies with readily available information on the relative toxicity of inert ingredients and glyphosate. ERG could cite those references in the Phase 2 Report but believes the focus should be on glyphosate. Noted the Pesticide Subcommittee may also have opinions about inert ingredients.
- Chair: asked John LeBeaux what he thought of ERG's suggested approach
- John LeBeaux: noted that the Commission's report will eventually go to the Pesticide Subcommittee, which only considers active ingredients and not inert ingredients. Questioned

whether it would be a good use of resources given that the subcommittee will not use it in making its decision. Unlikely that ERG could summarize / evaluate all inert ingredients.

- Marc Nascarella: would be helpful if Phase 2 reports met the purpose of Individual Review for Pesticide Subcommittee, and anything outside the scope of that review would make it confusing for the Pesticide Subcommittee. Sounds like inert ingredient review is outside the scope.
- Julie Richburg: agrees w/other members but would be good to have some information. Report should have information on most common alternatives- but agrees the focus should be on glyphosate. Could include literature collected on inert ingredients.
- Chair: thought ERG suggested that report focus on glyphosate, w/appendix that summarizes available inert ingredient information. John Wilhelmi?
- John Wilhelmi: focus on glyphosate w/appendix that talks about the readily available information on inert ingredients. But maybe should not focus on inert ingredients at all. Time spent on inert ingredients will take away from focus.

Chair: summarized consensus after Commission's discussion:

- Direct ERG to complete and submit Phase 1 Report reflecting corrections and new stakeholders;
- Public Comment:
 - adopt approach recommended by ERG;
 - reach out to everyone that has been involved to let them know about Phase 2 comment opportunity;
 - summarize themes raised in public comments on Draft Phase 2 report; and
 - include all comments in Phase 2 report as an appendix.
- Glyphosate Usage Data for Massachusetts:
 - Agreed to have ERG proceed to evaluate data sources identified as proposed;
 - MassDEP and MDAR will work to see if a subset / sample of application reports could be used in deliberations and advise commission if data can be mined in a reasonable way.
- Considering "precedential judicial decisions": Commission is interested in scientific studies and encourages ERG to ask public commenters for any scientific studies that were used in litigation.
- Considering "inert ingredients" – Commission concurred that focus is on Glyphosate, not inert ingredients.
- Chair suggested motion: accept Phase 1 with corrections and additions identified. John LeBeaux: offered motion, Eve Schluter Seconded the motion. Passed unanimously. Final Phase 1 Report will be posted on the Commission's website.

5. Chair raised the issue of the contract extension to complete Phase 2. Asked John LeBeaux to speak on current status of developing a path forward.

- John LeBeaux: MDAR has funds and will be ready to execute once the Commission agrees to move forward.
- Chair: Thanked John LeBeaux and MDAR, and noted that new contract will require additional funding, and that Phase 2 work will include additional work to consider public comments and will establish suggested time frame for completing Phase 2. MDAR has been working hard to make sure that this can happen.

- Chair offered motion: asking MDAR to execute an amendment to contract for ERG to proceed to Phase 2, including updated scope of work (6 months from execution) and timeline (including additional public comment work for Phase 2), and that Phase 2 work proceed while MDAR and DEP to work on securing additional legislative funding through appropriation. Motion offered by John LeBeaux, seconded by Julie Richburg. Passed unanimously.
6. The Chair offered the public an opportunity for public comment. None offered. Chair thanked Commissioners, ERG, and agency staff.
 7. Motion to adjourn was offered by John LeBeaux, second by Chair. Passed unanimously. Meeting adjourned.