

NEWS, NOTES & QUOTES



National Newsletter of the Mulch & Soil Council

FEBRUARY 2022

COUNCIL NEWS

CERTIFICATION COMMITTEE REPORT



The MSC Certification Committee, chaired by Dr. Kay Yeon Jeong of Sun Gro Horticulture, met on January 19 in Savannah, GA. After hearing reports on program statistics and finances, the committee reviewed the memo sent to the membership advising label reviews for the coming season. A discussion was then held on product label reviews being done for old and new products that relate to certification requirements as well as AAPFCO and NIST requirements not directly related to certification. Due to the increasing requests, the committee asked MSC Legal Counsel John Hazard to draft 2 statements that will be added to certification label communications indicating:

- 1) MSC comments and /or suggestions are not legal advice and should be reviewed with legal and regulatory officials, and
- 2) MSC Certification Program approval of products and labels are for certification program requirements only and do not represent, convey or attest to compliance with any Federal, state or local laws, regulations or other requirements.

With new directors and committee members now on the Board, Certification Director Robert LaGasse presented a 4-year review to the financial activities of the program and then a brief history of the overall certification program since its first committee discussions in 1997 to the first certified products in 2001 to the present status of almost 300 certified products. A special discussion was held on the impact Covid-19 had on greenhouse testing of certified soil product audit samples in 2020 and 2021. Labor shortages, campus shutdowns and fluctuations in university policies at Texas Tech made it difficult to process audit tests on a reasonable schedule. As an alternative, the committee voted to recommend that the MSC Board move soils testing to new in-house greenhouse facilities being developed by staff at no additional cost to the Council. That change will place both the mulch and soil product testing under one laboratory facility and staff with much better control over labor and scheduling.

###

STANDARDS COMMITTEE REPORT



The MSC Standards Committee, chaired by Kimberly Rygielski of The Scotts Company, also met on January 19 in Savannah. After approving the minutes of the last meeting, the committee reviewed the schedule for the Winter 2022 meeting of AAPFCO. With new developments coming for a model law for biostimulants, staff will participate in the event to provide input for our industry. The committee then reviewed new developments on the jumping worm issue reported by Larry Doose for Minnesota. It is not clear why an invasive pest that has been present in over 30 states, some more than two decades, is suddenly reaching a crisis status in MN. Last summer, the Council posted a consumer FAQ on its website: <https://mulchandsoilcouncil.org/FAQs.php>. The committee requested staff investigate further and follow up on reports of possibly conflicting information from various sources.



MSC will also coordinate information exchanges with MnLNA whose members are our industry's customers and are being impacted by the new interest in jumping worms.

###

The MSC Board of Directors met on January 20 at The DeSoto Hotel in Savannah, GA. The first item of business was the election of officers, and it was unanimously voted to re-elect the present officers for 2022.

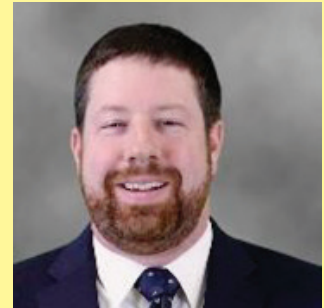
Officers re-elected are:



*President Jim Weber
Ohio Mulch*



*VP Byron Morgan
Mountain West Products*



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

Executive Director Robert LaGasse presented a quarterly report on Council activities since the last meeting of the Board. The directors then reviewed the year-end financial statement and an operating ratio report favorably comparing MSC revenues and expenses to other national non-profits of the same size and composition. Then the Board approved the proposed operating budget for calendar year 2022.

Committee Chairs & Reports:

Since committee assignments are for the calendar year, the first meeting each year is used to review committee charges, assign committee chairs and adjust committee assignments as needed. This year's committee chairs will be:

- Certification Committee.....Dr. Kay Yeon Jeong, Sun Gro Horticulture
- Honors Committee.....Byron Morgan, Mountain West Products
- Standards CommitteeKimberly Rygielski, The Scotts Company
- Nom. & ElectionsSteve Liffers, Swanson Bark & Wood Products
- Transportation Committee.....Jim Weber, Ohio Mulch
- Industry Statistics.....Kent Rotert, Colorbiotics
- Legislative & Regulatory CommitteeDr. Kay Yeon Jeong, Sun Gro Horticulture

Certification Committee Report: The Board received the report from the Certification Committee and voted to cancel the soil testing services agreement with Texas Tech University and move certification soil testing inhouse as proposed by staff and the Certification Committee. The Board directed Legal Counsel Hazard and ED LaGasse to draw up a contract for the revised testing services for Board approval.

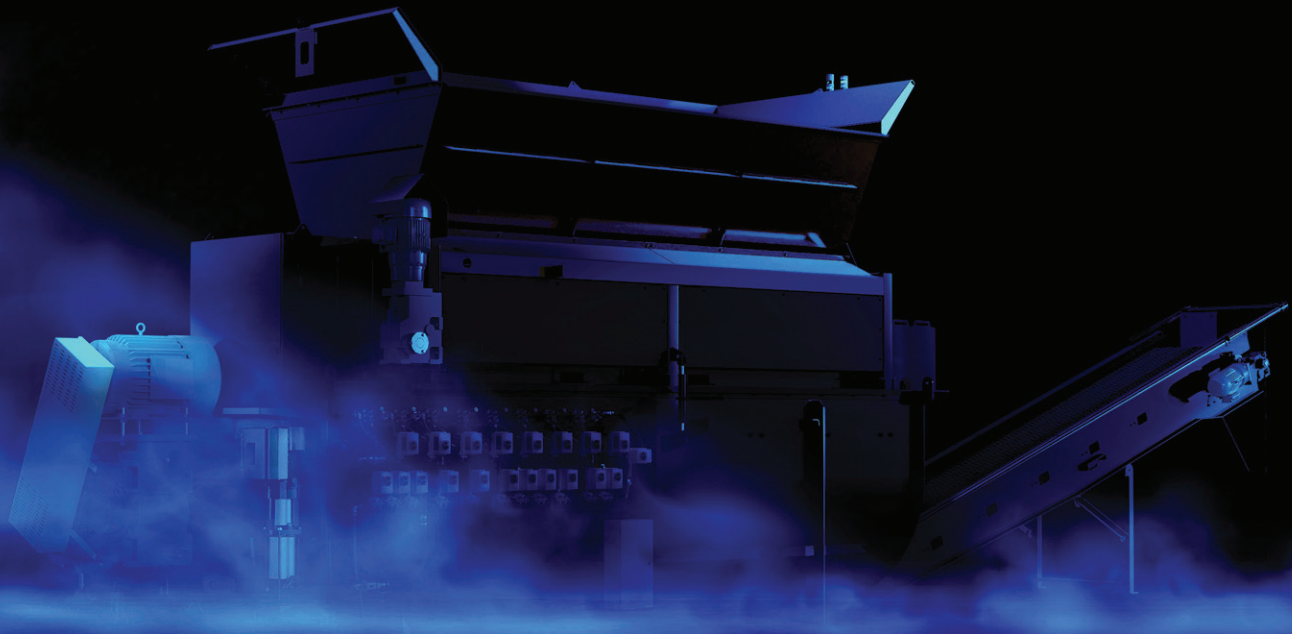
Standards Committee Report: The committee updated the Board on its activities and the growing jumping worm issue. The present heat treatment guideline is 104°F for 3 days, but managed organic piles typically heat to 131°F to 175°F; so, the Board directed staff to investigate the time exposure required for kill temperatures at these higher levels.

Honors Nominations: A call for honors nominations will be published in the February and April issues of the NNQ. Nominations will be presented to the committee as received.

Nominations Committee Report: The director seats expiring in 2022 included Joe Ertel, Kay Jeong, Rick Mahoney and Kimberly Rygielski. Current directors will have the opportunity to run for reelection and a call for nominations will be published in the



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BOARD REPORT



August issue of the NNQ newsletter.

Transportation Committee Report: Committee Chair Jim Weber discussed several key issues regarding driver and truck shortages. The FMCSA rule requiring ELDT to have a driving school certificate before being able to take the CDL exam was a concern due to the average school cost of \$6,000-\$7,000. The Board reviewed the outline of the National Propane Gas Association (NPGA) program MSC could recommend to members at a cost of <\$700. Bob LaGasse will contact NPGA for more information and clarification on on-site, behind-the-wheel training requirements.

Industry Statistics Committee: The committee reviewed the subject matter of the last 8 membership surveys over the past 2 years. Given the uncertainty supply chain shortages have introduced into the industry, it was decided to conduct a supply chain survey of the members in February to better understand what the industry is facing going into the major season in March.

L&R Report: Looking at legislative & regulatory issues facing the industry, the Board discussed H.R. 3897 dealing with H-2B non-immigrant work visas. While it appears our industry would qualify as H-2B visa jobs, our industry doesn't have any history of tapping this labor resource to meet our seasonal work needs. It was decided to assign this issue to the L&R committee and request staff to investigate the requirements for industry involvement in this visa program.

Annual Meeting: The Board then took-up considerations for the 2022 annual meeting. President Weber appointed Secretary / Treasurer Joe Ertel of Oldcastle Lawn & Garden Products to chair the 2022 annual meeting program in Charlotte, NC., on October 4-6, 2022. The Board also reviewed the 2022 meeting budget and updated and expanded the sponsorship opportunities for this year's annual meeting event.

Future Meetings: Having experienced the DeSoto Hotel and reviewing its contract proposal, the Board voted to select The DeSoto Hotel in Savannah, GA, as the site for the 2023 MSC annual meeting. It was also suggested that it has been 2 years since the last plant managers training course on weights & measures was conducted and staff should develop a program agenda and test market an in-person plant managers training course for August 2022 in Las Vegas.

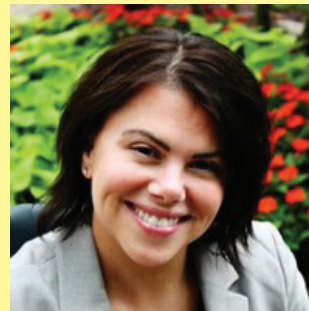
The next meeting of the MSC Board of Directors will be by teleconference in May. If anyone has questions regarding the MSC Board activities, feel free to contact the Executive Director or any Board member of your choice.

###

LEGISLATIVE VIDEO NOW ON-LINE

Annual Meeting participants will recall that one session planned for the topic, "Everything You Need to Know About DC and How It Affects MSC Members" was changed on site due to a last-minute conflict. Since then, our 2021 Annual Meeting Program Chair Kimberly Rygielski has continued working to have the 50th MSC Annual Meeting program in Memphis completed as planned and a video presentation of the final meeting topic is now available to all Council members.

Taking a new look at what has happened since the annual meeting and at the start of 2022, Ann Aquillo, The Scotts Company's V.P. of Government Relations, discusses with Jim Esquea, V.P. of Public Affairs for The Scotts Company, what is happening in legislation and politics, including the balance of power, in Washington. Ann has 25 years experience in government relations and leads The Scotts team that manages all



*Ann Aquillo, VP
Scotts Government Relations*



*Jim Esquea, VP
Scotts Public Affairs*

VIDEO (CONT'D)

federal, state, and local government efforts, political activities and industry advocacy efforts. Jim has 25 years of federal policy experience in Washington including serving as Assistant Secretary for Legislation at HHS, experience on the Senate Budget Committee, a program manager at OMB and more. This 30-minute presentation is now available for viewing by ALL Council members by clicking on the following link:

<https://vimeo.com/67888522/01439ac550> .

We thank Ann and Jim for taking time to share their expertise on Capitol Hill politics and we also want to extend special thanks to our Program Chair Kimberly Rygielski for working so hard to complete the outstanding program for the Mulch & Soil Council's 50th Annual Meeting in Memphis last September.

###

MSC JOINS NOSB AMICUS BRIEF



For the past 2 years, we have reported on the efforts by some organic farmers (using organic field production methods) to sue the USDA, the National Organic Program (NOP) and the National Organic Standards Board (NOSB) to force NOP to change its decade-long policy allowing container and hydroponic growers to be certified as organic crop producers. The traditional organic farmers claim a primary principle of "organic" crop production requires conservation, stewardship and sustainable crop production "in the earth's crust" (agronomic soil). Since greenhouses and hydroponic production is not in the "earth's crust" they essentially demand that all controlled environment agriculture (CEA - especially hydroponics) does not qualify as organic and USDA must discontinue the long-standing approval of container and hydroponic growers as USDA/NOP Certified Organic producers and crops. *That is what they tell the courts.*



We have also reported that some of the plaintiffs in this case have admitted in public, and in publications, that the crop yield per acre of CEA is 10-15 times greater than field-grown organic farming. This yield floods the market with more certified organic crops for consumers, and the higher supply keeps market prices down which makes it more difficult for the traditional organic framers to profit at the lower market prices. So, you can determine for yourself if this is about their perceived principles of the earth's crust... or money.

Regardless, the traditional organic farmers and their trade groups in concert with the Center for Food Safety (CFS) sued USDA/NOP/NOSB) and Ag. Secretary Tom Vilsack in 2020 to overturn NOSB's ruling that hydroponic and container growers can continue to be certified as organic growers. They lost that case in 2021 as the court ruled NOSB was not wrong in its interpretation of the Organic Food Production Act (OFPA).

The Coalition for Sustainable Organics (CSO) lead a CEA industry effort to file an *Amicus Curiae* (friend of the court) brief to support USDA/NOP in its defense of the NOSB refusal to cancel CEA organic certification. Since some greenhouse growers are MSC member customers, CSO asked the Council to support the original *amicus brief* last year, but there was insufficient time to get everything reviewed and approved before their filing deadline. We were not part of the original case proceeding.

After losing the case, the Center for Food Safety (CFS) filed an appeal on behalf of the organic farmers. CSO again asked MSC to join as a party to an *amicus brief* supporting USDA/NOP/NOSB in their defense against the appeal to overturn CFS et al's loss in the original case. Other supporters (Amici) of the brief are the CSO, Aquaponics Association (AA), Western Growers Association (WGA), International Fresh Produce Association (IFPA) and The Scotts Company.

NOSB (CONT'D)

After reviewing the issues and in consultation with MSC Legal Counsel John Hazard, the MSC Board of Directors unanimously voted to join as a participant in the filing of an *Amici Curiae* on behalf of our industry in support of USDA/NOSB's decision to allow greenhouse and hydroponic growers to continue to be eligible for classification as organic production facilities.

The *amicus brief* was filed with the 9th Circuit Court on February 20 and Plaintiff-Appellant's reply is expected around March 7. Any member interested in receiving a copy of the *Amicus Curiae* brief as filed should contact MSC Executive Director Robert LaGasse at execdir@mulchandsoilcouncil.org.

###

AAPFCO WINTER MEETING



AAPFCO

Association of American
Plant Food Control Officials

MSC staff traveled to Mobile, AL on February 13-16 to participate in the 2022 Winter Meeting of the AAPFCO. There were 14 states and 67 industry representatives present or the first in-person meeting since 2020. Craig Rosenbusch of The Fertilizer Institute (TFI) reported on a recent survey where fertilizer manufacturers indicated the top influences on the fertilizer market are the price of commodities, the price of inputs and government regulation. The leading industry opportunities identified were: innovation with biostimulants, green ammonia, enhanced efficiency fertilizers and sustainability.



Opening Session of the 2022 Winter AAPFCO Meeting

Supply chain issues are having major price impacts in the market as 30% of nitrogen materials and 40% of world phosphorus supplies come from China; so, trade sanctions immediately create material shortages. Sanctions on Belarus also caused a 20% drop in potash supplies in the U.S. Other contributors to rocketing prices are the labor shortages, the decline in production (2020 & 2021) when product demand boomed, weather in Texas that shut down natural gas production resulting in a 20% decline in nitrogen production and hurricane Ida shutting down more natural gas production.

Other activities benefitting from coordination among states and industry included updating terms for "beneficial substances", acceptance of new guidelines for efficacy claims for biostimulants, and new efforts to draft a model law and regulation for biostimulants.

###

NAISMA COMPOST CERTIFICATION

The North American Invasive Species Management Association (NAISMA) is an organization of Federal, state and local government officials charged with preventing the spread of invasive species (primarily weed seeds) on land and water by promoting and enforcing prevention and treatment standards, practices and inspections for forage, hay and gravel.

Last year the MSC assisted the NAISMA Weed Free Products Committee (WFPC) in developing guidelines for certifying mulch products as weed free. Those guidelines were adopted by the NAISMA membership last fall.

Last December, the WFPC invited the Council to again participate in developing a new guideline for certifying weed-free compost. We recommended they also invite our colleagues at the U.S. Composting Council and USCC Executive Director Frank Franciosi joined the group for a preliminary meeting in January. Since heat treatment of compost for PFRP generally includes weed seeds, it is yet to be decided if a new standard or certification is needed under NAISMA, but we will keep the MSC membership advised as the work progresses. If you have any interest in contributing to the WFPC activities, please contact the MSC office.

###





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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. Past recipients include:

- **Dr. Bill Fonteno**, NC State Univ. — for his exceptional work as the program director of the MSC Product Certification Program.
- **Dr. Kathryn Louis**, Sun Gro Horticulture — in recognition of many years of service as a director, committee chair and president of the Council and exceptional leadership as president of the Mulch & Soil Research Foundation.
- **Steve Jarahian**, Oldcastle Lawn & Garden — in recognition of his many years service as director, program chair, Certification Committee chair and president of the Council.
- **Steve Titko**, The Scotts Company — in recognition of his many years service to the Council as a director and chair of the Standards Committee

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:

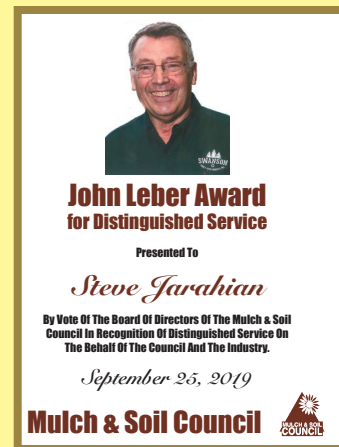
- **Leadership:** as a director, committee member or other program participant of the Council.
- **Advocacy:** as a spokesman for the Council and/or the mulch and soil industry to the public or government.
- **Training & Education:** as a mentor sharing his or her expertise with other industry members 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 should be submitted to membership@mulchandsoilcouncil.org **by April 8, 2022**. *Please include a statement on why the person or organization is being nominated.*



###



HAMER Brand Model 2090

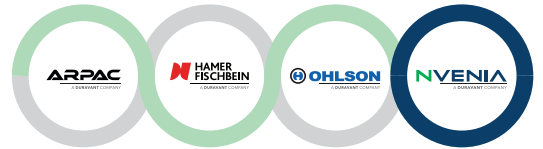


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The CROW
Political
Report

By David Crow
DC Legislative &
Regulatory Services

Legislative & Regulatory NEWS

The Supreme Court has taken up WOTUS but there is more than one issue to consider, and more than one case to review. It is complicated.

The court is reviewing the Sackett v EPA case written by the 9th Circuit and asking if it "set forth the proper test for determining whether wetlands are waters of the U.S. (WOTUS).

In the Sacket case, the Rapanos test was used to determine the law's scope over wetlands. As you know, the Supreme Court ruled 4-4-1, with Justice Scalia writing that there must be a surface connection to wetlands that is relatively permanent, in order to be considered a WOTUS. Justice Kennedy wrote whether a connection exists between surface water and wetlands depends on a significant nexus between the wetlands in question and navigable waters in the traditional sense. His definition has been used by environmentalists as the true definition. However, Justices Roberts, Thomas, and Alito, all still on the court, agreed with Scalia. Since the court has six conservative justices, this seems like an important factor in a future decision.

Federal appellate courts have ruled differently regarding how to interpret Rapanos, but most have ruled in favor of Kennedy's significant nexus test. Justice Brett Kavanaugh, in a concurring opinion of Maui, HI v Hawaii Wildlife Fund, a six to three Supreme Court ruling, set a functional equivalent test for determining whether pollutants traveling through groundwater may need a Clean Water Act permit, a ruling that is considered to favor the Scalia definition rather than Kennedy's significant nexus test.

Some legal experts believe the issue before the Supreme Court now is from a 2021 9th Circuit Court ruling in Northern California River Watch v City of Healdsburg regarding the viability of the significant nexus test from the Rapanos case. The 9th Circuit upheld Rapanos.

As we know, the Biden Administration is using the Rapanos significant nexus definition in writing the Interim WOTUS rule citing Circuit Court rulings in New Mexico and Arizona stating that the Trump era Navigable Waters Protection Act (NWPA) would cause irreparable harm on 333 projects under consideration by EPA and the Army Corps of Engineers, if they went forward. EPA has publicly stated that they aim to create a durable regulation using the 1986 regulations and adding new language making the significant nexus language permanent.

The August 2021 Healdsburg case upholds the Rapanos test. The Supreme Court is using this case to make a decision. Logically, it can be assumed the court's majority disagree with Healdsburg and will revisit the significant nexus test. The speculation is that the Kavanaugh language in the Maui case, setting a functional equivalent test for determining whether pollutants traveling through groundwater need a Clean Water Act permit, may replace Rapanos' significant nexus test. Clearly, the Kavanaugh language is more restrictive.

To conclude, EPA will likely finalize the Interim WOTUS rule shortly after February 7th using the significant nexus language. They presumably would move to a Phase 2 rule with the significant nexus test along with other language.

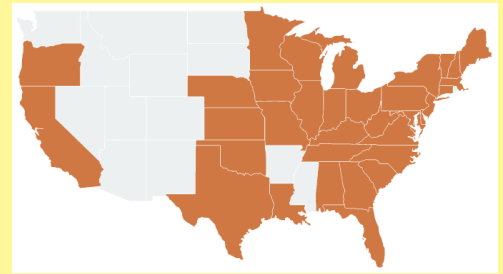
It would seem to me that EPA would be wise to hold up on Phase 2 knowing a Supreme Court ruling in all likelihood could reverse their new rule, but it is hard to determine what they will do. And some people believe EPA will use the Interim rule to wipe the Navigable Waters Protection Act off the books giving them more discretion to write new language more favorable to environmentalists' liking.

This is a very complicated issue that has a long way to go, but the Supreme Court's willingness to take the Healdsburg case clearly signals their disapproval of the Rapanos' significant nexus test and a willingness to offer more restrictive language. Hopefully, I have captured this correctly without leaving too much out or missing important details.

###

JUMPING WORM CONTROVERSY CONTINUES

Although jumping worms (AKA: Alabama Jumpers, Crazy Worms and Snake Worms) were imported from Asia almost 2 decades ago and are present in more than 30 states, today, controversy continues to stir in Minnesota over concerns that urban infestations will spread and endanger our northern forests. Presently, we do not know how close or even likely such an occurrence may be, but what we do know is that there is no present chemical or biological preventative or treatment to control the spread - anywhere.



States with Reported Jumping Worm Presence.

The worms live a relatively short life cycle of only one season, but they leave behind copious egg cocoons that are so small they are difficult to detect. Both the worms and their cocoons are sensitive to heat when exposed to 104°F for 3 days. Higher temperatures very likely will kill the worms and their cocoons much faster, but the optimum kill temperature has not been identified, yet.

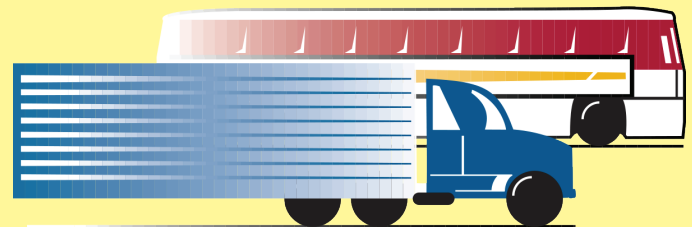
The MSC has issued a statement regarding jumping worms as part of our Consumer FAQs on our website at: <https://mulchandsoilcouncil.org/FAQs.php>. Based on current information, the Council advises that managed piles and manufactured/processed mulch and soil products reach temperatures well above the 104°F required to kill the worms and their cocoons. The Council also recommends that producers should monitor and document their inventory pile temperatures for jumping worms as they would do under normal temperature monitoring for fire prevention.

In addition, the Council is working with producers in the state and the MN Landscape and Nursery Association (MnLNA) to develop information and recommendations for both manufacturers and consumers to follow to minimize the spread of jumping worms in and from the state.

###

OHIO REAFFIRMS CITIZENSHIP REQUIREMENT FOR CDL

The State of Ohio recently sent a letter to holders of CDL licenses up for renewal emphasizing that applicants must provide proof of U.S. citizenship or lawful permanent residency in order to renew their license. The MSC office was asked if this is a new policy and our investigation indicates the requirement was adopted by the Federal Motor Carrier Safety Administration (FMCSA) in May 2011; so, it is not new. However, our transportation legal expert Rick Schweitzer, indicates enforcement is up to each state which can be highly variable. Accordingly, the MSC office advises members to be aware of two “new” issues impacting the current availability of CDL licenses:



F M C S A
Federal Motor Carrier Safety Administration

1.) At least one (and probably more) states are enforcing the existing requirement that CDL license holders must be a U.S. citizen or lawful permanent resident and

- 2.) Effective February 7, 2022, all applicants to get or change classification of a CDL license must have a certificate of completion from an FMCSA-approved driver training school/program before they can take the knowledge or skills tests for a commercial driver’s license with only a very few exceptions that generally do not apply to our industry.

###

FMCSA APPRENTICE DRIVER PROGRAM

Federal trucking regulators are seeking emergency White House approval to take a first step toward a driver apprenticeship program included in last year's \$1 trillion infrastructure bill as a near-term measure to help alleviate the trucking industry's ongoing driver shortage.

The DRIVE-Safe Act, included in the Infrastructure Investment and Jobs Act signed by President Joe Biden in November, creates an apprenticeship program under which drivers younger than 21 can drive commercial vehicles interstate. Previously, under-21 drivers were limited to intrastate operations.

In a Jan. 7 Federal Register announcement, the Federal Motor Carrier Safety Administration said it is seeking emergency authorization from the Office of Management and Budget to initiate data collection from motor carriers for the pilot apprenticeship program. FMCSA is asking OMB to act by Jan. 13.

"The request for emergency OMB approval was issued to help meet deadlines for establishing the apprenticeship program outlined in the bipartisan infrastructure law, also known as the Infrastructure Investment and Jobs Act," said an FMCSA spokesperson. "At this time, nothing is being requested from the motor carriers. This ICR is informing the public of the information collection and the opportunity to comment."

Plans for the pilot would only allow employment of drivers that already hold intrastate commercial driver licenses, and would require carriers to ensure that participating drivers follow a strict training regimen and be monitored by their employers.

The industry is hopeful that the pilot could lead to an increased supply of drivers to help plug critical truck driver shortages. FMCSA estimates that 4,500 motor carriers would seek to enroll more than 40,000 drivers in the pilot.

Plans call for the pilot to require apprentices to complete two probationary periods, during which they may operate in interstate commerce only under the supervision of an experienced driver in the passenger seat. An experienced driver must be 26 or older who has held a CDL and been employed for at least the past two years and who has at least five years of interstate CMV experience.

###

EPA issued a final registration review decision requiring the cancellation of pentachlorophenol, a wood preservative used primarily on utility poles. During the registration review process, EPA found that given the emergence of viable alternatives, the risks pentachlorophenol poses to workers' health outweigh the benefits of its use.

Following EPA's March 2021 proposal to cancel pentachlorophenol, for which the Agency held a 60-day comment period, this final decision concludes EPA's registration review of pentachlorophenol and initiates the process of risk mitigation which in this case consists of cancellation. After two years, pentachlorophenol will no longer be manufactured, sold, or distributed in the United States.

Alternatives to pentachlorophenol include copper naphthenate and DCOIT, along with well-established wood preservatives such as chromated arsenicals and creosote. The complete phase-out of pentachlorophenol will be conducted over five years and is intended to ensure stability within the utility pole industry by giving wood treaters time to switch to alternative wood preservatives. For the next two years, registrants may continue to produce, sell, and distribute wood preservatives containing pentachlorophenol while wood treatment facilities transition to alternatives. After February 2024, wood treatment facilities will be allowed to use their existing stocks of pentachlorophenol to produce treated wood for an additional three years.

Registrants are required to submit voluntary cancellation requests to the Agency within 60 days of the publication of the final registration review decision. The Agency will then begin the cancellation process by publishing a notice of receipt of these requests in the Federal Register and opening a 30-day public comment period. To read EPA's final decision, see docket EPA-HQ-OPP-2014-0653 at [regulations.gov](https://www.regulations.gov)

###



EPA CANCELS UTILITY POLE CHEM



SIX STATES ADOPT CLEAN TRUCK RULE

The U.S. trucking industry is set to be transformed by a handful of states adopting zero-emission vehicle requirements. Oregon, Washington, New York, New Jersey and Massachusetts followed California in approving the Advanced Clean Truck rule late last year, requiring a growing percentage of all medium- and heavy-duty trucks sold to be zero-emission starting in 2025. Manufacturers must increase their zero-emission truck sales in those states to 30% to 50% by 2030, and 40% to 75% by 2035.



In the years to come, the new sales mandate will fill the country's coastal highways and corridors with an expanding number of electric-powered large pickups, buses, garbage trucks and tractor-trailers. Oregon also approved the Heavy-Duty Omnibus rule, which toughens tailpipe standards on sales of new trucks that still run on fossil fuels and makes them 90% cleaner, once fully implemented.

Other states may follow soon: Maine has taken steps to adopt the ACT rule in 2022, while Colorado, Illinois, Connecticut and Vermont have signaled plans to weigh the new regulations as well. Even parts of the country that don't have the rules in place could see a spillover effect as manufacturers start to comply.

###

OSHA FORMALLY WITHDRAWS VACCINE MANDATE

The Occupational Safety and Health Administration is formally withdrawing its emergency temporary standard requiring large companies to require their employees to receive COVID-19 vaccinations, the agency announced Jan. 25.



The withdrawal of the standard comes after a Jan. 13 U.S. Supreme Court opinion staying the standard, voting 6-3 to stay the temporary standard, ruling that OSHA did not have the authority to issue the mandate.

"This agency action becomes effective immediately both because there is good cause and because the action removes a requirement on the regulated community," OSHA said.

The mandate, issued Nov. 5, would have required companies with 100 or more employees to see that their employees get vaccinated, or wear face coverings and test weekly.

OSHA said that public comments on the mandate withdrawal would be "impracticable, unnecessary and contrary to the public interest because it would unnecessarily delay the resolution of ambiguity for employers and workers alike."

The agency's pre-publication Federal Register announcement said: "Notwithstanding the withdrawal of the vaccination and testing [emergency temporary standard], OSHA continues to strongly encourage the vaccination of workers against the continuing dangers posed by COVID-19 in the workplace."

Although the justices issued a stay on the mandate, sending it back down to the 6th U.S. Circuit Court of Appeals for a possible challenge by the Department of Labor, the withdrawal by OSHA effectively signals the end of a possible challenge by the Labor Department.

###

INDUSTRY NEWS

SCHNEIDER TO CLOSE CANADIAN OPERATIONS

Schneider National announced plans to wind down its Canadian operations later this year. Based in Green Bay, Wis., the company operates a 39-acre facility in Puslinch Township, Ontario, about 55 miles west of Toronto. This location is expected to be sold. No specific timetable for that sale, but said Schneider expects to cease Canadian-based operations by the end of March. The company said the decision to leave Canada has nothing to do with tighter cross-border COVID-19 vaccine regulations recently implemented by the country.





In 1989, Schneider was awarded operating authority by the Canadian government to haul freight in the provinces of Quebec, Ontario and British Columbia. It opened an office in Canada the following year. Schneider on its website says it has been in operation for 86 years and operates 180 properties worldwide. In the third quarter of 2021 it generated \$1.44 billion in revenue and net income was \$110 million.

On Jan. 4, Schneider announced the \$263 million cash acquisition of Celina, Ohio-based Midwest Logistics Systems, which operates 900 tractors with 1,000 drivers across 30 U.S. locations. Schneider plans to run Midwest as an independent subsidiary that will continue to operate under its current name. Its financial results will be reported in dedicated operations as part of Schneider's truckload segment results beginning in the first quarter of this year.

Schneider ranks No. 7 on the Transport Topics Top 100 list of the largest for-hire carriers in North America, and No. 15 on the Transport Topics Top 50 list of the largest logistics companies.

###

Tilly is a new internet company that provides homeowners with custom landscape plans, virtually. Here are the company's observed garden trends for the coming year.



2021 — was another year of ups and downs, but it continued to reinforce the importance of the home and creating a comfortable space to call your own. People's habits have changed and investing in the home is a priority, with the outdoors high on the checklist to round out your lifestyle and home-bound entertainment. Creating a home oasis will continue to be a must in

2022 — with extreme weather patterns affecting the country coast to coast, we expect people to place emphasis on a landscape that leans into the weather conditions they are experiencing more than ever. The good news is that there are a number of things you can do in your yard to make a difference in your community and your space individually.

Environmental Trends:

1. **Stamp Out Invasive Species:** Shifting the focal point from native plants to also understand the importance and harm of invasive species will trend in 2022.
2. **Low Water Usage Landscapes:** Xeriscape landscaping will continue to grow in popularity across the US, but specifically boom in the West and Southwest. A well-designed low water plan, combined with homeowner's investing in smart irrigation systems, will greatly reduce water bills, remove the use of pesticides and fertilizers, and focus the design on native plants which are more likely to thrive in the surrounding environment.
3. **Storm Water Mitigation :** Homeowners will actively seek natural solutions to help eradicate drainage and flooding problems from 2021 including:
 - **Drainage Solutions:** Drainage swales, underground seepage tanks, french drains, will be a must next year. *Anything (like mulch) that helps reduce and slow surface run off and allow that water to soak into the ground rather than travel across fields and roadways where it picks up chemicals and dumps them into waterways.*
 - **Rain Gardens:** Rain Gardens are a depression designed to collect runoff from a roof, driveway or yard and are usually filled with shrubs or perennials.

- **Permeable pavers:** Incorporating permeable pavers can help slow down water runoff, recharge the aquifer, and allow it to infiltrate into the ground better.

Design Trends:

4. **Herb Gardens:** During covid many homeowners dove head first into creating plentiful vegetable gardens unaware of how difficult it can be or how little a veggie garden may produce. As lives get busier, Tilly predicts homeowners will downsize and focus on herb gardens, which are less upkeep, need less space and can be used frequently when cooking or for drinks.
5. **Doggy-Influenced Design:** Many people brought home dogs during the pandemic: so, expect homeowners to make design decisions to support their pets and create beautiful dog-friendly areas. Dogs often create dead spots in the lawn, but adding synthetic turf and teaching them to use the turf as a bathroom can help save grassy areas and simply needs a wash down every once in a while. Homeowners will also invest in fences to keep their pups safe and we'll see a rise in dog runs where it's okay for the dog to rip up the grass and run amuck.
6. **Backyard Neighborhood Bar & Grill:** A bar type counter with stools for friends and family to relax and converse at will be the new coveted watering hole amongst friends.
7. **Smart Outdoor Technology:** Some homeowners will invest in products that create the ultimate entertaining space that offers maximum convenience with new weather resistant tech.
8. **Finding Square Footage:** Landscape designers and homeowners will continue to find new ways to maximize the space and "find" new square footage in their yards. For example, pergolas may have a "sunbrella" awning that's rain resistant to make the space more usable. In-ground pools or hot tubs could have moveable decks so space is regained when not in use.
9. **Creative Upcycling:** Using a tree stump or a vintage claw foot bathtub as a planter or using tree stumps for a children's play space in the backyard or vintage bar carts to shelve plants vertically on a patio space, mounting old windows, mirrors or chalkboards to fences for decoration and/or functional use! Taking inspiration from your surroundings will push people to get creative and have fun!
10. **Paving Patterns:** Unexpected paving patterns can quickly take a space from great to stunning and memorable. Large pavers in a running bond pattern will be the new contemporary look rather than multiple sized pieces. Paving with a smoother finish rather than a textured or rock faced look will be a go to style.
11. **Indoor Inspiring The Outdoors:** Expect design to shift from cool colors such as grays and white to more warm earthy colors like tans and browns.

Tilly is a new internet company that provides homeowners with custom landscape plans, virtually. They also offer virtual project managers for the install process as well as an option to hire a personal Garden Coach to help customers maintain their new plantings. (There's also a Pro solution that allows landscaping companies to outsource designs to Tilly.) For more information, visit <https://tillydesign.com/>

###

MEMBER NEWS

OLDCASTLE APG ACQUIRES SJAP

Oldcastle APG, has acquired the recycling and mulch operations of South Jersey Agriculture Products (SJAP), a regional manufacturer of lawn and garden products located in southern New Jersey. *A long-time co-packing partner, SJAP fits seamlessly into Oldcastle APG's existing portfolio*, elevating Oldcastle APG's manufacturing capabilities in the soil and mulch product categories. Made entirely from recycled materials, SJAP's lawn and garden products not only improve outdoor aesthetics, but also promote soil health and biodiversity in outdoor areas.



Supporting its strategy to provide integrated end-to-end solutions to customers across the country, Oldcastle APG's acquisition of SJAP's recycling and mulch operations enables increased production capacity and market share growth in the desirable Mid-Atlantic region, augmenting its expansion into the lawn and garden category. This move follows notable acquisitions made by Oldcastle APG to supplement its presence in the landscape materials space. Shortly after acquiring Buckeye Resources in 2019, Oldcastle APG acquired B&B Bedding and CST in 2020 – all of which enhanced its lawn and garden position across the Midwest.

"We are excited to continue growing our Lawn & Garden business in the Mid-Atlantic region with the addition of SJAP's recycling and mulch operations to the APG family," said Tim Ortman, President, Oldcastle APG. "SJAP's complementary product offering, high-quality manufacturing and strategic geographic position will help strengthen our ability to best serve our customers in this area."

The acquisition was finalized in December 2021.

###

AMERIMULCH ANNOUNCES NEW LINE

Amerimulch® is excited to introduce the new 150 Line of mulch colorants. The 150 Line was developed as a high-performance alternative to low-cost, low-grade colorants currently on the market. ChromaScape's 150 Line can *reduce application rates* up to 50% which equates to more yield of colored mulch per tote or drum of colorant. By using the 150 Line you can improve manufacturing efficiencies from handling fewer totes and drums on the yard and in inventory. The 150 Line will have a positive environmental impact by reducing disposable packaging. Explore the game-changing 150 Line by contacting Amerimulch at service@chromascape.com or 888.421.0010.



Amerimulch provides landscape colorants and equipment for the production of profitable, in-demand, colored mulches. Our colorants are formulated for superior bonding, coating, and coverage and our equipment is designed for producers who want simple, effective, high-volume production. Take the next step in landscape coatings and technology with Amerimulch.

About ChromaScape:

Established in 1998, ChromaScape is a specialty colorants and additives supplier who provides premium products for a variety of industries. ChromaScape's technical expertise, industry knowledge and reliable performance gives customers the freedom and peace of mind to enhance, innovate and vibrantly enhance every corner of the world. <http://www.chromascape.com>

###

New Member Welcome

The Mulch & Soil Council is pleased to welcome the following companies as new members of the Council:

Producer Members:

Kristy K Organics

Kristy Flowers
651 Lincoln Loop
Sauk Center, MN 56378
kristy@kristykorganics.com
www.kristykorganics.com

Pacific Topsoils, Inc.

Janusz Bajsarowicz
805 80th St. SW
Everett, WA 98203
janusz@pacifictopsoils.com
www.pacifictopsoils.com

Associate Member:

EXO Freight

Jacob McLeod
360 N Main St, Suite 410
Royal Oak, MI 48067
jake@exofreight.com
www.exofreight.com

###

Certified Product News

Recertified Products

Austin Wood Recycling, Ltd.
Austin Wood Recycling, Ltd.
Gro-Well Brands, Inc.
Gro-Well Brands, Inc.
Gro-Well Brands, Inc.
Homer Industries, LLC
Homer Industries, LLC
Homer Industries, LLC
Homer Industries, LLC
Homer Industries, LLC
Hyponex Corporation
Hyponex Corporation
Hyponex Corporation
Hyponex Corporation
Hyponex Corporation
Hyponex Corporation
Hyponex Corporation
Maibec Inc.
Maibec Inc.
Maibec Inc.
Maibec Inc.
Margo State Line, Inc.
Margo State Line, Inc.
Margo State Line, Inc.
Ohio Mulch Supply, Inc.
Phillips Bark Processing Co.
Phillips Bark Processing Co.
Phillips Bark Processing Co.
The Mulch and Soil Company
The Mulch and Soil Company
The Mulch and Soil Company
The Scotts Company
The Scotts Company
The Scotts Company

Mulch

Texas Native Premium Pine Mulch
Vigoro Premium Brown Mulch by Austin Wood Recycling, Ltd.
Vigoro Black Mulch by Gro-Well Brands
Vigoro Brown Mulch by Gro-Well Brands
Vigoro Red Mulch by Gro-Well Brands
ColorScape Blend Black Mulch
ColorScape Blend Brown Mulch
ColorScape Blend Gold Mulch
ColorScape Blend Red Mulch
ColorScape Brown Mulch
COLORSTAY by Scotts Black Mulch
COLORSTAY by Scotts Brown Mulch
COLORSTAY by Scotts Red Mulch
Florida Select Natural Eucalyptus Mulch
Nature's Garden Black Mulch
Nature's Garden Brown Mulch
Nature's Garden Red Mulch
Cedar Mulch
Horizon Black Cedar Mulch
Nevada Brown Cedar Mulch
Yucatan Red Cedar Mulch
Vigoro Premium Black Mulch by Margo State Line
Vigoro Premium Brown Mulch by Margo State Line
Vigoro Premium Red Mulch by Margo State Line
100% Pure Cypress 112E
Gardenese Cypress Mulch Blend
Gardenese Pine Bark Mulch
Gardenese Pine Bark Nuggets
Vigoro Premium Black Mulch by The Mulch and Soil Company
Vigoro Premium Brown Mulch by The Mulch and Soil Company
Vigoro Premium Red Mulch by The Mulch and Soil Company
Scotts Florida Select Brown Mulch
Scotts Florida Select Natural Mulch
Scotts Florida Select Red Mulch

Certified Product News

Recertified Products

Miracle-Gro Lawn Products
Miracle-Gro Lawn Products
Miracle-Gro Lawn Products
Miracle-Gro Lawn Products
Miracle-Gro Lawn Products
Miracle-Gro Lawn Products
Sun Gro Horticulture
Sun Gro Horticulture
Sun Gro Horticulture
Sun Gro Horticulture
Swiss Farms Products, Inc.
Terrace Brands

Miracle-Gro Lawn Products
Miracle-Gro Lawn Products
Miracle-Gro Lawn Products
Miracle-Gro Lawn Products
Sun Gro Horticulture
Sun Gro Horticulture
Sun Gro Horticulture
Sun Gro Horticulture
Sun Gro Horticulture
Sun Gro Horticulture
Sun Gro Horticulture
Swiss Farms Products

Sun Gro Horticulture

Terrace Brands

Landscape Soils

Miracle-Gro Garden Soil Flowers 0.09-0.08-0.09
Miracle-Gro Garden Soil All Purpose - For In-Ground Use 0.10-0.06-0.08
Miracle-Gro Garden Soil All Purpose 0.09-0.05-0.07
Miracle-Gro Garden Soil Flowers 0.09-0.05-0.07
Miracle-Gro Garden Soil, Cactus, Palm & Citrus 0.10-0.09-0.07
Nature's Care Organic Garden Soil 0.08-0.06-0.07
Black Gold Natural & Organic Flower & Vegetable Soil
Black Gold Natural & Organic Garden Compost Blend
Black Gold Natural & Organic Garden Soil
Black Gold Natural & Organic Ultra Outdoor Planting Soil
Organics Vigoro Organic Garden Soil 0.10-0.05-0.10
Southern Roots Gardening Organic Garden Soil 0.04-0.03-0.03

Premium Soils

Miracle-Gro Cactus, Palm & Citrus Potting Mix 0.07-0.03-0.05
Miracle-Gro Indoor Potting Mix 0.25-0.13-0.18
Nature's Care Organic Potting Mix with Water Conserve 0.18-0.10-0.12
Nature's Care Organic Raised Bed Soil w/Water Conserve 0.09-0.08-0.09
Black Gold All Purpose Potting Mix
Black Gold Moisture Supreme Container Mix
Black Gold Natural & Organic Cocoblend Potting Mix
Black Gold Natural & Organic Potting Mix Plus Fertilizer (0.09-0.03-0.03)
Black Gold Waterhold Cocoblend Potting Soil
Sunshine Professional Growing Mix
Sunshine All Purpose Potting Mix
Organics Vigoro Organic Potting Mix 0.10-0.05-0.05

Specialty Growing Media

Black Gold Natural & Organic Seedling Mix

Standard Horticultural Growing Media

Southern Roots Gardening Organic Potting Mix 0.06-0.04-0.05

MARK YOUR CALENDAR

