

September 1, 2021

The Honorable Michael Regan  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave, NW  
Washington, DC 20460-0001

Dear Administrator Regan:

As stakeholders who represent growers, retailers, applicators, manufacturers, processors, cooperatives, and crop consultants, we are greatly disappointed with EPA's recent decision to revoke tolerances of chlorpyrifos and the manner in which the revocation was conducted. Despite pledges from this Administration to "make evidence-based decisions guided by the best available science and data,"<sup>1</sup> this decision does not reflect the best available science on chlorpyrifos. As a result, this decision has cast the entire agriculture supply chain in a position of great uncertainty and eroded trust in the pesticide regulatory process. We strongly urge EPA to expeditiously issue critically needed guidance for stakeholders for implementing this decision and to recommit itself to the science, risk, and evidence-based regulatory process expected by stakeholders and the public.

In its April 2021 ruling, the Ninth Circuit Court of Appeals gave EPA the opportunity to modify and retain chlorpyrifos tolerances that the Agency determined with reasonable certainty would not result in harm from aggregate exposure. EPA has a great deal of data that speaks to this matter from its ongoing registration review process for chlorpyrifos. In its 2020 proposed interim decision, human health risk assessments, and drinking water assessments on chlorpyrifos, EPA concluded there were "agricultural uses that the agency has determined will not pose potential risk of concern," either from food residues or drinking water concentrations.<sup>2</sup> Despite these agricultural uses meeting this essential health protection standard, the Agency decided to revoke all tolerances regardless, creating great uncertainty within the agricultural community and supply chains.

Setting aside the now-imminent restrictions growers will face in combating pests that threaten their operations, the sequence in which EPA conducted this action – by moving to revoke tolerances prior to cancelling uses – means many growers and retailers continue to possess unused product for which there remain legally registered uses under FIFRA. EPA has not at all clarified whether growers can continue to use these legal stocks, whether retailers can continue to sell them, and under what conditions.

Of additional concern is the subject of residues. EPA indicated in its notice that the tolerance revocation will take effect February 28, 2022. Our understanding is that under Section 408 of the Federal Food, Drug, and Cosmetics Act (FFDCA) as long as the tolerances are in place at the time of application and the use is registered under FIFRA, resulting commodities in the channels of trade are legal. However, this is much easier to say than apply in practice and we greatly hope EPA will issue guidance in coordination with the Food and Drug Administration (FDA) on how it plans to address commodities in the channels of

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<sup>1</sup> Biden Jr., Joseph R. The White House. January 27, 2021. *Memorandum on Restoring Trust in Government Through Scientific Integrity and Evidence-Based Policymaking*. <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/memorandum-on-restoring-trust-in-government-through-scientific-integrity-and-evidence-based-policymaking/>

<sup>2</sup> U.S. Environmental Protection Agency. December 3, 2020. *Chlorpyrifos Proposed Interim Registration Review Decision Case Number 0100*. PA-HQ-OPP-2008-0850. P. 40.

trade. As EPA is aware, residues on some products in the supply chain can last for significant periods of time. Before EPA's announcement, applicators would not have been on notice about the need to keep any special application records to document the legal use. In short, the guidance offered by EPA to stakeholders to date does little to provide clarity, and conflicting statements from EPA on the risks of chlorpyrifos further confuses whether and how EPA and FDA will address residues of chlorpyrifos in the channels of trade after the revocations take effect.

Related to this is the matter of customers of the food and feed supply chains. As discussed above, we believe the science and EPA's own record reflects that chlorpyrifos can be safely used on agricultural products. However, EPA's contradicting statements on this issue have not reassured the public, causing alarm and inquiries from customers of agricultural producers about uses and potential residues of chlorpyrifos in their operations. This poses a potential financial and reputational threat to producers who have used the product – threats which EPA could minimize with additional clarity.

EPA's action has put growers, agricultural stakeholders, and supply chains in an unfair and impossible position through no fault of their own. This is compounded by the fact that the Agency has not offered sufficient guidance to stakeholders on how they should expect to comply with this action – guidance which should have been ready at the time it was announced. We urge you to expeditiously provide stakeholders and the public much-needed clarity regarding the continued use and existence of chlorpyrifos in supply chains. Moreover, for the sake of confidence and integrity in the regulatory process and to prevent these perilous situations moving forward, we implore EPA to conduct all future actions based on the evidence and expertise of its career scientists and in coordination with stakeholders.

Sincerely,

Agricultural Retailers Association  
American Farm Bureau Federation  
American Pulse Association  
American Seed Trade Association  
American Soybean Association  
American Sugarbeet Growers Association  
California Citrus Quality Council  
California Citrus Mutual  
Cherry Marketing Institute  
CropLife America  
Florida Citrus Mutual  
Idaho-Oregon Fruit and Vegetable Association  
Michigan Vegetable Council  
Michigan Onion Committee  
Minor Crop Farmer Alliance  
National Agricultural Aviation Association  
National Alliance of Independent Crop Consultants  
National Asparagus Council  
National Association of Wheat Growers  
National Council of Farmer Cooperatives  
National Onion Association  
National Potato Council

National Sorghum Producers  
National Sunflower Association  
North Dakota Grain Growers Association  
US Beet Sugar Association  
US Peanut Federation  
USA Dry Pea & Lentil Council  
USA Rice  
Washington Friends of Farms & Forests  
Western Growers

CC: The Honorable Janet Woodcock, M.D., Acting Administrator, U.S. Food & Drug Administration  
The Honorable Tom Vilsack, Secretary, U.S. Department of Agriculture  
The Honorable Debbie Stabenow, Chairwoman, U.S. Senate Committee on Agriculture,  
Nutrition, and Forestry  
The Honorable John Boozman, Ranking Member, U.S. Senate Committee on Agriculture,  
Nutrition, and Forestry  
The Honorable David Scott, Chairman, U.S. House Committee on Agriculture  
The Honorable Glenn 'GT' Thompson, Ranking Member, U.S. House Committee on Agriculture