

April 18, 2023

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

Dear Administrator Regan,

We are deeply concerned with recent steps EPA has taken regarding revised draft occupational and non-occupational risk assessments for four pesticidal active ingredients – diazinon, ethoprop, tribufos, and phosmet – which the agency has indicated are likely to result in greater restrictions on product use outside of the standard notice and comment period. Alarming, EPA has initiated discussions on mitigations based solely on these revised risk assessments outside of the normal registration review process and in ways that are in contravention to the agency's own regulations. Preventing the public from commenting denies impacted stakeholders due process, sets a dangerous precedent that risks making the pesticide program less predictable and transparent, and risks harming our nation's farmers and other non-agricultural users of these tools. We strongly urge EPA to open public comment periods on these revised draft risk assessments prior to taking any further action on the registration review for these active ingredients.

On March 15, 2023, EPA announced and published revised draft occupational and non-occupational risk assessments suggesting that existing registered uses for these four active ingredients, which have been in effect for decades, now suddenly pose such significant, novel risks that the agency must seek to impose new protective restrictions on them without public input. These announcements and potential actions pose many questions. EPA's standard 15-year registration review process generally includes conducting new ecological and human health (including occupational) risk assessments on every registered pesticide, which the agency then opens for public comment.¹ In the agency's own words, there is value in inviting the "public to submit suggestions for mitigating the risks."

In fact, EPA's own regulations state "The Agency will generally make available for public review and comment a draft risk assessment for a pesticide if a new risk assessment has been conducted.... If the revised risk assessment indicates risks of concern, the Agency may, in the notice announcing the availability of the revised risk assessment, provide a comment period of at least 30 calendar days for the public to submit suggestions for mitigating the risk identified in the revised risk assessment."²

While the agency might suggest the terms "generally" and "may" imply EPA has the discretion whether to open the revised risk assessments for public comment, the regulations go on to provide enumerated instances when the agency may not seek public comment. They stipulate "the Agency might not request comments on a draft risk assessment in cases where the Agency's initial screening of a pesticide indicates that it has low use/usage, affects few if any stakeholders or members of the public, poses low risk, and/or requires little or no risk mitigation.

¹ U.S. Environmental Protection Agency. Last updated November 16, 2022. *Registration Review Process*.
<https://www.epa.gov/pesticide-reevaluation/registration-review-process>

² 40 CFR § 155.53(c)

In such cases, the Agency will make a draft risk assessment available for public review and comment when it issues a proposed decision on the registration review case.”³

All of these enumerated instances when the agency can forgo public comment suggest lower risk, not the alleged greater risk of concern which EPA states is its motive for these revised risk assessments and potential mitigative actions. Moreover, the regulations are clear that one or more of these inapplicable lower risk exceptions are prerequisite for EPA’s suggested approach of allowing stakeholders to comment on revised risk assessments in the years to come as part of the proposed interim decisions (PID). Since none of these lower risk, enumerated exceptions that would permit EPA to currently forgo public comment apply in this situation, it would also then be inappropriate for the agency to use this delayed PID comment option as opposed to providing the opportunity to comment directly on the revised draft risk assessments.

Furthermore, each of the four active ingredients identified by EPA had draft risk assessments published for public comment as recently as late 2015 through early 2017, in which these novel concerns were not identified and thus were not available for public comment. It is anything but clear what new science or data has since become available to EPA in the past several years since these public comment periods that now suddenly requires revised risk assessments and immediate mitigation without public input and outside of the established registration review schedule. It is also unclear as to why specifically these four active ingredients are the subject of novel risk assessments and potentially subsequent restriction. EPA is conducting registration review of approximately 1,700 active ingredients, including numerous products from the same class of insecticides, and yet has perplexingly singled out these four chemistries for revised risk assessments and potentially additional restrictions. On its face, this action seems arbitrary and capricious, especially considering the agency did not present these greater risks of concern in its recent risk assessments and had every opportunity to permit public comment at that time.

While unusual, it is far from unprecedented for EPA to revise risk assessments mid-registration review and indicate it may act on those revised risk assessments prior to the finalization of a new registration. However, what is unprecedented is the agency refusing to take public comment on them. For example, in recent years the agency revised its risk assessments on dicamba, chlorpyrifos, and atrazine in its ongoing registration review and proceeded to open public comments on each. We strongly believe impacted stakeholders would have meaningful comments to provide that may clarify the risk assessments themselves or instruct any subsequent mitigations found necessary.

As discussed above, the agency claims stakeholders will have the opportunity to comment on these risk assessments and any subsequent mitigations in proposed interim decisions (PID) on these four chemistries scheduled to be published in 2025 and 2026. However, this means users of these tools could be subject to new, agency-devised restrictions for years with no opportunity to provide feedback. If EPA already has registration review schedules established to publish PIDs on these four chemistries that have been in use for decades, it is not clear why this urgent action is essential, especially in the opaque, unorthodox manner proposed by the agency. These concerns are amplified by the fact that in December 2022 Congress extended the deadline until October 2026 for every active ingredient under registration review. The registration reviews of all four of these active ingredients are on schedule to meet that statutory deadline, which further calls into question the agency’s sudden sense of urgency.

Congress established statutory standards for federal agencies to have predictable, transparent regulatory processes to allow stakeholders due process and an opportunity to provide input to

³ 40 CFR § 155.53(c)(1)

help agencies reach the most appropriate, equitable regulatory outcomes. This action represents a significant departure from those statutory expectations, the agency's own implementing regulations, and is a concerning turn towards greater opaqueness in EPA's pesticide program. As concerning, it may result in greater restrictions on tools needed by growers and non-agricultural users without giving them the opportunity to provide input. Prior to taking any action on these revived risk assessments, we strongly urge EPA to open public comment periods on them and recommit itself to the statutory and regulatory expectation of a fair, transparent regulatory process.

Sincerely,

Agricultural Retailers Association
American Soybean Association
American Sugarbeet Growers Association
California Citrus Quality Council
California Specialty Crops Council
CropLife America
Council of Producers and Distributors of Agrotechnology
Florida Fruit and Vegetable Association
International Fresh Produce Association
National Agricultural Aviation Association
National Association of Wheat Growers
National Corn Growers Association
National Cotton Council
National Onion Association
National Potato Council
Northwest Horticultural Council
USA Rice