

May 4, 2021

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

Dear Administrator Regan:

As a broad group of stakeholders who have a strong interest in the Environmental Protection Agency (EPA) maintaining an independent, predictable, science-based, and risk-based regulatory process for pesticides, we want to express our serious concerns with the April 29, 2021 ruling by a three-judge panel in the U.S. Court of Appeals for the Ninth Circuit in the case of *League of United Latin American Citizens, et al. v. U.S. Environmental Protection Agency*. By substituting its own judgment for EPA's assessment and dictating specific remedies the Agency must take to address petitions for canceling uses or revoking tolerances, the panel has superseded EPA's expert scientific regulatory staff that Congress has entrusted to carefully weigh the science and evidence on these matters. This represents a disruptive precedent for EPA's pesticide regulatory program. Considering the well-reasoned and forceful dissent in the decision, we strongly urge EPA to use whatever legal means necessary, including requesting an *en banc* rehearing in this case or filing an appeal, to avoid this precedent from damaging EPA's regulatory reputation, undermining the Agency's expertise, and stripping its authority.

The regulatory evaluation of chlorpyrifos has been complicated for the Agency. EPA's regulatory staff and its science advisory panel (SAP) have continuously and diligently weighed existing and new evidence regarding chlorpyrifos. The evaluation of this evidence continues today in the ongoing chlorpyrifos registration review process. Most of our organizations participated in the public comment processes on the petition and the ongoing registration review. EPA has regularly acknowledged this participation in its public responses to comments. To suggest this administrative review process is arbitrary or capricious is a gross misrepresentation of EPA's effort in reviewing this chemical and has the potential to affect regulatory evaluation of other chemicals. Agricultural stakeholders rely on the independent experts at EPA to reach reasonable, science-based and evidence-based conclusions, as EPA did in ultimately denying the petition in this case. In its opinion, the court panel inappropriately substituted its own views for that of EPA's regulatory and scientific expertise. We are gravely concerned how this precedent might impact the approach EPA must take with other petitions in the future.

In 2019 when a panel of the Court similarly dictated regulatory remedies that EPA must take to cancel uses and revoke tolerances of chlorpyrifos within 60 days, concerns were expressed and an *en banc* review of the panel's decision was granted. The outcome of the *en banc* hearing reversed the panel's decision, respecting EPA's regulatory expertise and authority by directing the Agency to reach a final decision on the petition within 90 days. Regrettably, the panel in this case has taken similar steps to that of the previous panel that undermine EPA's regulatory authority in ways that would inflict broader, long-term damage to its pesticide program.

As mentioned, EPA has been undergoing a registration review of chlorpyrifos separate from considering a petition to revoke tolerances and cancel uses. In December 2020, EPA published a proposed interim decision on chlorpyrifos, and according to EPA's registration review schedule, is set to publish an interim decision in the next couple months. The interim decision would, in a timely manner, answer the questions the panel has raised involving the petition and safe, continued use of chlorpyrifos. For the benefit of EPA's reputation and independence – as well as the maintenance of a predictable, science-based and risk-based regulatory system for this chemistry and others – we strongly believe it would be

better to address chlorpyrifos in this setting than allow a judicial panel to inappropriately short-circuit the Agency's registration review process. We urge EPA to pursue all available legal review avenues to protect the science-based and risk-based regulatory process. We are ready to assist you as appropriate in that effort.

Sincerely,

Agricultural Retailers Association
AmericanHort
American Blueberry Growers Alliance
American Farm Bureau Federation
American Seed Trade Association
American Soybean Association
American Sugarbeet Growers Association
Association of Equipment Manufacturers
California Citrus Quality Council
California Fresh Fruit Association
California Specialty Crops Council
CropLife America
Cherry Marketing Institute
Florida Citrus Mutual
Florida Fruit and Vegetable Association
Georgia Fruit and Vegetable Growers Association
Michigan Cherry Committee
Michigan Soybean Association
Minor Crop Farmer Alliance
National Agricultural Aviation Association
National Alliance of Independent Crop Consultants
National Association of Wheat Growers
National Asparagus Council
National Christmas Tree Association
National Corn Growers Association
National Cotton Council
National Council of Farmer Cooperatives
National Onion Association
National Pecan Federation
National Potato Council
National Sorghum Producers
National Sunflower Association
North Dakota Grain Growers Association
RISE (Responsible Industry for a Sound Environment)
Texas Citrus Mutual
United Fresh Produce Association
U.S. Apple Association
U.S. Peanut Federation
U.S. Rice Producer Association
USA Rice
Vidalia Onion Business Council

CC: The Honorable Tom Vilsack, Secretary, U.S. Department of Agriculture

CC: The Honorable Merrick Garland, Attorney General, U.S. Department of Justice