

September 21, 2022

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

Dear Administrator Regan,

As EPA approaches its September 30 deadline to decide on the petition seeking rulemaking or a formal agency interpretation for pesticidal seed treatments (EPA-HQ-OPP-2018-0805), we urge the agency to firmly reject the petition. There is no benefit to be gained by imposing duplicative layers of regulation on already-regulated products, as would occur should the petition be granted. Conversely, there is real, significant harm that will occur to U.S. agricultural production; our food, fuel, and fiber supplies; the environment; and EPA's regulatory workload should the agency grant this ill-conceived petition. Our organizations and many others have already provided robust feedback to the agency during the public comment period for this petition. We are writing to remind EPA of the harm that will occur should the agency grant this petition and reaffirm the need for its denial.

As the agency knows, pesticidal seed treatments are already subject to robust regulation by EPA under FIFRA. Under the agency's treated article exemption, a treated article – in this case, the seed itself – can be exempt from regulation under FIFRA if the article contains or is treated with a pesticide; the pesticide is intended to protect the article itself; and the pesticide is registered for this use. Agricultural seed treatments satisfy all of these criteria. The pesticide applied to the seed is registered with and regulated by EPA for use on the seed on which it is applied and intended to protect. EPA's FIFRA review includes ensuring human health and the environment are protected from unreasonable adverse effects with its use. As EPA's treated article regulation suggests, the agency would not get into the business of regulating wood, paint, or barns if paint used on a barn included a registered pesticide intended to protect the wood from pests. The agency is not involved in the regulation of medical devices even if the instruments themselves are treated with registered antimicrobial pesticides intended to protect the devices. Neither should the agency wade into the regulation of seeds and plants by granting this petition.

The harm that would occur should EPA grant this petition is significant and severe. Hundreds of thousands of agricultural producers across the U.S. currently use seed treatments to protect their crops from devastating fungi, subterranean nematodes, insects, and other pests during the most vulnerable, early stages of a plant's lifecycle. If the agency were to put new, duplicative regulatory burdens on seeds or seed treatments by granting this petition, it would reduce grower access to these tools, placing crops at greater pest risk. Not only would this harm farmer livelihoods, but it would also pose a direct threat to U.S. and global food security at a time when we can ill afford to jeopardize production due to pressures from record inflation, a war in Ukraine, lingering supply chain difficulties, among other challenges.

Granting this petition would also carry negative environmental consequences. Seed treatments coat a seed with a miniscule amount of pesticidal active ingredient, which is then buried under the ground where it has reduced environmental exposure risks. If agricultural producers lose access to seed treatments due to new, duplicative regulatory burdens, many growers will likely need to spray more

pesticide in greater volumes through broadcast, soil, and other applications. This outcome will have the opposite effect of what the petitioners intend by increasing the volume of pesticides used through application methods with a greater environmental footprint.

Finally, granting the petition would have the impact of significantly increasing EPA's regulatory workload. In several recent instances, such as in the agency's Endangered Species Act (ESA) Work Plan, EPA has expressed concern that lengthy ESA analysis, compliance with court-ordered deadlines, a stagnant program budget, and inflationary attrition on its workforce have challenged the agency's ability to conduct its pesticide registration work. To invite a new, duplicative layer of regulation by granting this petition would not just impose a burden on regulated entities, but also on the regulators who would then have to review additional applications for products already subject to review under FIFRA.

Again, the above concerns and others have already been conveyed to the agency during the public comment periods for this petition and the related consent decree. As EPA makes its final considerations regarding the petition, we would remind the agency that to grant it would greatly harm the ability of U.S. agricultural producers to productively and sustainably feed, fuel, and clothe the world. It would also result in significant, unnecessary costs to both regulated entities and the agency's workload, all with no benefit to be gained from regulating already-regulated products. We continue to urge the agency to firmly deny this harmful petition.

Sincerely,

Agricultural Retailers Association  
American Farm Bureau Federation  
American Seed Trade Association  
American Soybean Association  
American Sugarbeet Growers Association  
Association of Equipment Manufacturers  
California Citrus Quality Council  
California Farm Bureau  
California Specialty Crops Council  
Council of Producers and Distributors of Agrotechnology  
CropLife America  
Delta Council  
Florida Fruit & Vegetable Association  
Minor Crop Farmer Alliance  
Mississippi Farm Bureau Federation  
National Alliance of Independent Crop Consultants  
National Association of State Departments of Agriculture  
National Association of Wheat Growers  
National Barley Growers Association  
National Corn Growers Association  
National Cotton Council  
National Council of Farmer Cooperatives  
National Onion Association  
National Potato Council  
National Sorghum Producers  
National Sunflower Association

North Dakota Grain Growers Association  
Southern Crop Production Association  
U.S. Canola Association  
USA Rice  
Western Growers