



4201 Wilson Blvd. • Suite 700 • Arlington, VA 22203

T 202.457.0825 • F 202.463.0474 • www.aradc.org

May 24, 2023

Alec Mullee
Water Law Office
Office of General Counsel, U.S. Environmental Protection Agency

RE: Proposed Settlement Agreement: Clean Water Act and the Administrative Procedure Act; Docket ID # EPA-HQ-OGC-2023-0247

The Agricultural Retailers Association (ARA) appreciates the opportunity to comment on the U.S. Environmental Protection Agency's (EPA) proposed settlement agreement in the Center for Biological Diversity v. EPA and FWS, No. 21-71306 (9th Cir.).

ARA is a not-for-profit trade association that represents America's agricultural retailers and distributors. ARA members provide goods and services to farmers and ranchers which include: fertilizer, crop protection chemicals, seed, crop scouting, soil testing, custom application of pesticides and fertilizers, and development of comprehensive nutrient management plans. Retail and distribution facilities are scattered throughout all 50 states and range in size from small family-held businesses or farmer cooperatives to large companies with multiple outlets.

ARA opposes the proposed settlement agreement as the additional ESA risk assessments for the National Pollutant Discharge Elimination Permit (NPDES) Pesticide General Permit (PGP) is redundant and unnecessary. Any additional ESA risk assessments will not add any additional protections as the pesticide applicator operating under the PGP is already required to comply with the approved EPA FIFRA label that was developed following an ESA risk assessment for the pesticide as part of the registration or re-registration review process. All pesticide uses on the label being applied by applicators are already approved by EPA Office of Pesticide Programs (OPP) as well as the state lead pesticide agencies before being eligible for application under the NPDES PGP program.

ARA agrees with the following statement made by Secretary of Agriculture Tom Vilsack in a letter to EPA on March 6, 2009 – "Subjecting FIFRA-compliance pesticides to additional regulatory regimes under the CWA (Clean Water Act) is duplicative and will not help protect the environment. FIFRA mandates that EPA approve and issue a registration for a pesticide product only after the EPA has determined that the product will not cause "unreasonable adverse effects on the environment." The pesticide registration and re-registration process under FIFRA considers the effects on pesticides on both human health and aquatic resources. If the EPA has concluded that a pesticide satisfies FIFRA and will not have an "unreasonable adverse effect on the environment,"

then it is reasonable to exclude the application of that pesticide from the permitting requirements of the CWA.”

ARA recommends EPA oppose the settlement and focus on conducting proper ESA risk assessments during the pesticide registration and registration review process that uses peer-reviewed data and science to make decisions on the safe and approved sale, storage, handling, transportation, and use of pesticides.

Thank you for your review and consideration of our comments.

Sincerely,

A handwritten signature in blue ink that reads "Richard D. Gupton". The signature is written in a cursive style with a large, stylized initial 'R'.

Richard D. Gupton

Senior Vice President, Public Policy & Counsel