

October 22, 2023

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Office of Pesticide Programs
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

RE: Draft Herbicide Strategy Framework to Reduce Exposure of Federally Listed Endangered and Threatened Species and Designated Critical Habitats from the Use of Conventional Agricultural Herbicides; Docket # EPA-HQ-OPP-2023-0365-0001

On behalf of the Agricultural Retailers Association (ARA), I am submitting comments on the U.S. Environmental Protection Agency (EPA) Office of Pesticide Program's "Draft Herbicide Strategy Framework to Reduce Exposure of Federally Listed Endangered and Threatened Species and Designated Critical Habitats from the Use of Conventional Agricultural Herbicides" and the draft technical support documents.

Statement of Interest

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.

Comments

Pesticides are an essential tool for farmers to grow more food using less land and water as it helps protect from pests, weeds, and diseases. Without the use of pesticides, America's agricultural production would likely be reduced by more than half. This necessary tool for modern agricultural production enables farmers to produce safe, quality, and affordable foods for the nation's consumers. Pesticides also help promote sustainable agricultural practice as no-till farming would be impossible without herbicides for weed control. Pesticides are also critical to help protect public health from the threat of insects, rodents, and microbes that cause and spread diseases.

ARA fully understands the need for the EPA to develop a plan to address and implement an effective Endangered Species Act (ESA) plan related to the registration and registration renewals of herbicides and other pesticide products as a requirement of the settlement agreement with anti-

pesticide groups to better protect endangered species from herbicides, insecticides, and other pesticide products. However, ARA believes that overly broad, unworkable mitigation measures should not replace product-specific risk assessments that look at the actual science and measurable data.

Impact of Proposed Mitigation Measures and Points System

The in-field practices of farmers are a major piece of the EPA draft herbicide strategy that will account for a significant majority of points required to be earned to continue to be able to produce a crop in Pesticide Use Limitation Areas (PULAs). The current one-size-fits all approach does not appear to consider regional or topographical differences between fields and cropping systems. Many parts of the country will not be able to earn enough points to use the product in the optimal manner. For example, most or all farms in Midwestern states such as Illinois and Iowa use a tile drainage system. Under the EPA proposal these farms would be required to install retention ponds in each of the fields to receive enough points to continue farming, which would be exorbitantly expensive for these agricultural operations and not economically feasible. ARA is concerned with the unknown liabilities that may fall on agricultural retailers and their commercial applicators hired to service agricultural operations as they are not in any position to determine whether their farmer customer has been in full compliance with the EPA's required mitigation measures. Our industry is concerned about frivolous litigation and the potential for additional civil and criminal enforcement measures on actions / activities outside the control of the agricultural retailer and commercial applicators.

ARA recommends that EPA recognize farmers for their in-field practices if that farmer is following an U.S. Department of Agriculture (USDA)- Natural Resource Conservation Service (NRCS) approved conservation plan, rather than requiring a one-size-fits-all approach and unattainable point system as proposed. In addition, commercial and private pesticide application practices like adjuvants, Drift Reduction Technologies (DRT), proper nozzles, and other precision agricultural technologies should receive recognition as important mitigation measures, like the current requirements on the FIFRA-approved labels.

Bulletins Live! Two

Another area of concern relates to the Bulletins Live! Two (BLT) platform and the impact it will have on PULAs related to the restricted application of herbicides and other pesticide products. The window of time between when a commercial or private pesticide applicator checks BLT and the date of application is critically important. ARA recommends that the time frame between a farmer's decisions on seed and agricultural pesticides made in the fall and extends through the spring application season should be the period used by EPA when posting any additional application requirements rather than following a strict 6-month window. A 9-month window or September 1 to June 30 is a better approach. For example, if a farmer wants to use Enlist or Xtendimax/ Engenia/ Tavium, typically they will need to make that seed decision in the fall. If EPA follows a 6-month notification notice on BLT, the farmer could have made the wrong seed purchase and herbicide

selections well before any EPA public notices are issued and they are stuck with unusable crop input products.

Endangered Species Act Vulnerable Listed Species Pilot Project

This draft herbicide strategy comes on top of the EPA's onerous ESA Vulnerable Listed Species Pilot Project. The proposed mitigations for the ESA Vulnerable Listed Species Pilot Project would effectively result in a de facto pesticide ban for many agricultural retailers, commercial applicators, farmers, and other pesticide users in the pilot range areas. Many of these pesticide users will be left defenseless against destructive pests, placing their agricultural operations in jeopardy from being able to continue to produce food, fuel, feed, and fiber for American consumers. The EPA's plan to implement pesticide restrictions and a one-size-fits all mitigation measures before the agency has made effects determinations or completed the necessary consultations. It appears as if the agency is taking a multi-layered approach utilizing the Vulnerable Listed Species Pilot Program, the Bulletins Live! Two Notifications, and the actual FIFRA approved label.

ARA and other impacted stakeholders have serious concerns with the agency implementing duplicative programs and potentially using inaccurate maps when creating the PULAs. As currently proposed, the PULAs could take millions of acres out of agricultural production. It is unnecessary to implement millions of acres PULAs when an endangered or vulnerable listed species only occupies under 100 acres of critical habitat. EPA already has ESA concerns incorporated into the FIFRA approved label and the Bulletins Live! Two program to make geographically specific amendments to the FIFRA labels. The addition of any extra / new requirements as part of the Vulnerable Listed Species Pilot Program appears unnecessary. All these programs in place at the same time could only add confusion to pesticide applicators and other end users and increase the risk for inadvertent violations and / or NGO lawsuits. EPA and its regional offices need to work with the U.S. Fish and Wildlife Service (FWS) along with Land Grant Universities, state lead agencies, and impacted stakeholders on more accurate maps when creating any PULA and consistency in the programs and compliance requirements imposed by EPA on the agricultural industry.

Concerns with Rate Reductions and Weed Resistance

ARA is concerned with EPA proposing significant rate reductions as a mitigation measure. Reduced herbicide application rates will create weed resistance management challenges and cause the product to be less effective in controlling invasive weeds. The use of lower pesticide rates than those recommended favors the survival and increased resistance of weeds or pest threats. Conservation tillage used in crop production has increased due to the adoption of broad-spectrum herbicides and herbicide-resistant crops, which is credited with reducing soil erosion, raising the amount of soil carbon, and lowering carbon emissions. A diversification of herbicide modes of action is also a key resistance strategy along with crop rotations, cover cropping, the crop planting date, seeding rate, soil fertility, and several other practices. It is important for EPA provide additional information on this proposed mitigation measure and how it will fully impact resistance management related issues.

ARA recommends EPA work with registrants on pilot plots to determine the potential disruption and unintended consequences this proposal may have on production agriculture.

Stakeholder Involvement with Herbicide Registration Reviews

As the EPA conducts registration and re-registration reviews with a more comprehensive coordination with the registrants, U.S. Fish and Wildlife Agency (FWS), National Marine Fisheries (NMF) and state lead agencies, it will be important for registrants-submitted data and information continue to play an integral role in the development of proper risk assessments and reasonable mitigation measures. It is also critical to ensure that any proposed mitigation measures implemented by commercial and private pesticide applicators on agricultural operations are reasonable, economical, and achievable. It is also important that the EPA continue to engage with the Interagency Working Group (IWG) and consult closely with USDA to utilize their expertise in registration and strategy decisions. Before any new FIFRA approved labels are issued for a class of pesticides that include new mitigation requirements, agricultural retailers, applicators, farmers, and other key agricultural end users should be part of the review process.

Conclusion

ARA and its members support efforts to improve the ESA registration review process for herbicides and other pesticide decisions. We recommend EPA ensure consistency between the various proposals currently under review (ESA draft herbicide strategy, Vulnerable Listed Species Pilot Program, Bulletins Live! Two, etc.) and closely work with all impacted stakeholders before any final plans are implemented. ARA strongly supports the comments submitted by the Pesticide Policy Coalition (PPC) and the coalition comments submitted by many national, regional, and state agricultural organizations.

Thank you for your review and consideration of these comments! Please contact me at richard@aradc.org or 202-595-1699 if we can be of any assistance as this process moves forward.

Sincerely,



Richard D. Gupton
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