

United States Senate

WASHINGTON, DC 20510-0609

July 28, 2021

The Honorable Dr. Michal Freedhoff
Assistant Administrator
Office of Chemical Safety and Pollution Prevention (OCSPP)
U.S. Environmental Protection Agency
1200 Pennsylvania Ave. N.W.
Washington, DC 20004

Dear Assistant Administrator Freedhoff,

Access to safe, effective pesticides is vital for allowing farmers to continue to efficiently and sustainably feed, clothe, and fuel the world. EPA conducts essential work in reviewing new and existing pesticides to ensure their use will not impact human health or the environment. However, it is vital that EPA use the best science possible in conducting pesticide registrations and rulemakings to ensure pesticide users are not being subject to unnecessary, unscientific conditions. I strongly encourage you to reconsider the scientific basis for the EPA's Endangered Species Act (ESA) biological evaluation (BE) process, as well as the Agency's thinking in its proposed rule for exempting certain plant incorporated protectants (PIP).

Pesticides play a crucial role in United States food production yet are commonly misunderstood and attacked by critics. Ironically, these products are essential for farmers to leave their land and world cleaner and better than they found it. Farmers need pesticides to carry out vital conservation efforts like, preparing sites for pollinator and wildlife habitat, terminating cover crops, or managing pests cover crops may refuge.

Prior to the widespread access to pesticides in the mid-20th century, farmers primarily used cultivation practices to control weeds and manage pests that would negatively affect crop production. The regular and widespread use of these methods ultimately led to land erosion and stripped the soil of valuable nutrients needed for proper plant growth. Not only did regular use of intensive farming methods emit more carbon, but it also impaired the soil's ability to store carbon. In fact, the common agricultural practices of the era helped create the circumstances that caused the Dust Bowl.

Crop protection products are the key to make no-till practical and efficient at a commercial level. They are the reason the government can discuss farmers sequestering the carbon produced by other industries in the U.S. If these tools are not available, farmers will be forced to revert to full tillage methods, which would ultimately set yields and conservation efforts back decades. The bottom line is, pesticides are necessary to continue an efficient, economical, and sustainable system of food, fiber, and biofuels production. Importantly for this administration, they are necessary to sequester the carbon released from other industries. To maintain good conservation practices and the benefits they offer, it is important growers can reasonably access and use pesticides.

However, I have significant concerns with the methods EPA is using to conduct its ESA BEs and the impact that may have on meaningful pesticide access. In its current BE model, EPA assumes the maximum use rate of chemistries permitted by the label – rates often many times greater than indicated by real-world grower survey and market usage data. Also, the BEs are mostly based on weak or moderate species data for how or where species and their habitats may be impacted. When compounded, these

overly-conservative usage assumptions coupled with ambiguous species data lead to very few “no effects” findings – far fewer than would likely occur if EPA were to use better, more realistic data.

When EPA finds the vast majority of endangered species and their habits are likely to be adversely affected, not only is this likely to significantly increase pesticide registration timelines, but it may require mitigations from pesticide users that might otherwise be found unnecessary if EPA were to use better data. Saddling farmers and other users with potentially unnecessary restrictions that do little to protect species or habitat makes it more difficult for growers to protect their crops or maintain conservation practices important to sustainable agricultural production. The ESA requires EPA and other agencies to “use the best scientific and commercial data available” to conduct these analyses – a standard I would contend is not being met by the current BE process. I welcome a dialogue with you to identify how Congress can better assist EPA to improve the BE process to ensure it is timely; it protects species and their habitats; and it allows for meaningful use of these essential tools.

Another tool I believe will be of vital importance for sustainable agricultural production in the years to come are technologies like gene editing. These powerful genetic tools can rapidly and precisely improve crop genetics, replicating what can occur through traditional breeding but in a fraction of the time. Swift access to additional PIPs could allow farmers to quickly deploy new pest-resistant crop varieties, reducing their need for chemical pesticides.

EPA’s proposed rule regarding the “Exemptions of Certain Plant-Incorporated Protectants (PIPs) Derived from Newer Technologies” is a step in the right direction as to how these products should be regulated. The PIPs exempted by the proposed rule are truly low-risk – certainly of no greater risk than their essentially identical, conventionally bred counterparts already exempted by EPA. However, the proposed rule would impose other requirements on these new varieties, such as mandatory notification and record keeping, to which their conventionally bred counterparts are not subject. Not only is there no scientific basis for these additional requirements, but I am concerned they could increase development costs for academics and small developers, as well as impede the technology’s use in minor crops that have not historically benefited from biotechnology. I support EPA finalizing its proposed PIP rule, however, EPA should ensure any requirements in the final rule imposed on developers and users of these technologies are scientifically-justifiable, equivalent with identical varieties, and will not risk stifling innovation in agriculture.

I thank you for your attention to these important issues, and hope to work more closely with you and your office in the future to ensure these important Agency activities can mutually benefit our environment and the agricultural producers who help to steward it.

Sincerely,

A handwritten signature in black ink that reads "Roger W. Marshall". The signature is written in a cursive, flowing style.

Roger Marshall, M.D.
United States Senator