

# Congress of the United States

Washington, DC 20515

December 23, 2021

The Honorable Michael S. Regan  
Administrator  
Environmental Protection Agency  
1200 Pennsylvania Avenue N.W.  
Washington., D.C. 20460

Dear Administrator Regan,

We are writing to again express our serious concerns with the U.S. Environmental Protection Agency's (EPA) August 18, 2021, final rule revoking all tolerances for chlorpyrifos on food products.<sup>1</sup> As the Republican Leaders of Committees charged with ensuring that EPA's policy decisions are conducted in a transparent manner and rely on sound science, we believe that your actions on chlorpyrifos have failed these goals. We strongly encourage EPA to take immediate action to rectify these shortcomings. As you may know, numerous entities have filed objections to the final rule<sup>2</sup> and requested a hearing in accordance with the Federal Food, Drug, and Cosmetic Act.<sup>3</sup> In order to ensure due process for American agricultural stakeholders and to ensure that EPA rulemakings are based on thorough scientific analysis it is critical that EPA expeditiously grant the requests from multiple grower groups for a public hearing to bring transparency to the rule making process.<sup>4</sup> We also request that EPA take subsequent action to rescind the onerous August 18, 2021, Final Rule.

EPA's response to congressional oversight requests reinforces our concerns that EPA has failed to follow the robust body of scientific evidence on chlorpyrifos and is instead allowing activist litigation to drive regulatory decisions without affording the agricultural community an opportunity to voice concerns about the impacts of these actions.<sup>5</sup> EPA staff provided a briefing to Minority staff from both the House Committee on Oversight and Reform and the House Committee on Science, Space, and Technology on November 19, 2021.<sup>6</sup> EPA staff frequently

---

<sup>1</sup> Chlorpyrifos; Tolerance Revocations 86 Fed. Reg. 48,315 (Aug 30, 2021) (codified at 40 C.F.R. pt. 180); *see* EPA, Press Release, *EPA Takes Action to Address Risk from Chlorpyrifos and Protect Children's Health* (Aug. 18, 2021).

<sup>2</sup> See, e.g., Agric. Retailers Ass'n et al., Formal Written Objections and Request to Stay Tolerance Revocations: Chlorpyrifos (EPA-HQ-OPPP-2021-0523) (Oct. 19, 2021).

<sup>3</sup> § 408(g); 21 U.S.C. 346a(g).

<sup>4</sup> *Id.*

<sup>5</sup> *League of United Latin Am. Citizens v. Regan*, No. 19-71982 CJS, (9th Cir. Apr. 29, 2021).

<sup>6</sup> Briefing by Staff, Env'tl. Prot. Agency, for Staff, House Comm. on Oversight and Gov't Reform and House Comm. on Sci., Space, & Tech. (Nov. 19, 2021).

cited the sixty-day deadline that the Court of Appeals for the Ninth Circuit issued for them to issue a final regulation regarding a petition to revoke chlorpyrifos tolerances and admitted that this was an unusual case.<sup>7</sup> While EPA participated in discussions with agricultural stakeholders to preserve certain uses of chlorpyrifos, EPA did not satisfactorily resolve questions as to why this process ended unsuccessfully. This was especially surprising given that EPA's own assessment of chlorpyrifos as part of the pesticide registration process had already identified many regional uses on a variety of crops that meet the regulatory standards even when using the most conservative assumptions.<sup>8</sup>

Additionally, EPA staff met with petitioners in this aforementioned court case several times prior to the issuance of the final rule.<sup>9</sup> This timeline raises important questions about which agency officials may have influenced this process and the degree to which pressure from litigants that may have undermined discussions with the agricultural community and consideration of the available scientific evidence. In a briefing on the final rule with EPA career staff on November 19, 2021, it became apparent that during the rulemaking process attempts to preserve safe uses for grower groups were ultimately abandoned at the direction of EPA or other Biden Administration officials.<sup>10</sup> During the briefing, House Oversight and Reform Committee staff requested documents and information that would provide more insight into EPA's development of the final rule. To date, EPA has failed to provide any of that information despite repeated follow-up requests. It is critical that this important information be turned over to the Committee immediately.

As described in the many objections filed in response to the final rule, this rule will affect numerous subsets of the U.S. agricultural industry, including retailers, applicators, manufacturers, processors, cooperatives, and crop consultants, and potentially negatively impact an already struggling U.S. food supply chain. In light of the unusual nature of this rulemaking process and the previous lack of opportunity for all stakeholders to comment on the final rule prior to its publication, it is critical that EPA take the appropriate next steps to address feedback and thoroughly consider the available scientific evidence.<sup>11</sup> Due to the tremendous impact of the chlorpyrifos final rule on the agriculture industry, and, as a result, American consumers, we reiterate our request that you immediately grant the requests for a public hearing and take steps toward rescission of the August 18, 2021, final rule. Additionally, we ask that you provide all documents, communications, and information requested in our previous letters and by committee staff in briefings by December 31, 2021.<sup>12</sup>

---

<sup>7</sup> *Id.*

<sup>8</sup> EPA 2020 Proposed Interim Registration Review Decision document (Page 40-41, EPA-HQ-OPP-2008-0850).

<sup>9</sup> Env'tl. Prot. Agency, External Meetings Between EPA, and Chlorpyrifos Stakeholders (EPA-HQ-OPP-2021-0523-0002).

<sup>10</sup> *Id.*

<sup>11</sup> Letter from Agricultural Retailers Ass'n et al., to Hon. Michael Regan, Administrator, U.S. EPA, Sept. 1, 2021.

<sup>12</sup> Letter from Hon. James Comer, Ranking Member, H. Comm. on Oversight and Reform, to Hon. Michael Regan, Administrator, U.S. EPA, Sept. 20, 2021; Letter from Hon. Glenn Thompson, Ranking Member, H. Comm. on Agriculture, to Hon. Michael Regan, Administrator, U.S. EPA, Nov. 19, 2021.

To ask any follow-up questions, please contact Committee on Oversight and Reform Republican staff at (202) 225-5074. The Committee on Oversight and Reform is the principal oversight committee of the U.S. House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X. Additionally, with jurisdiction over environmental research and development pursuant to the Rules of the House of Representatives,<sup>13</sup> the House Committee on Science, Space, and Technology must ensure that federal agencies appropriately apply and rely on scientific analyses and data to make regulatory decisions. The Committee on Agriculture is the principal authorizing committee for all matters related to agriculture in the House of Representatives and “shall have general oversight responsibilities” as set forth in House Rule X.

Thank you in advance for your cooperation with this inquiry.

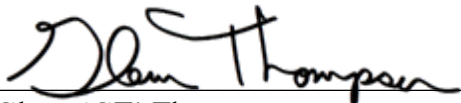
Sincerely,



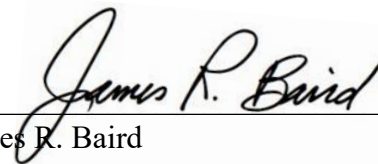
James Comer  
Ranking Member  
Committee on Oversight and Reform



Ralph Norman  
Ranking Member  
Subcommittee on Environment



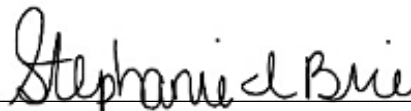
Glenn ‘GT’ Thompson  
Ranking Member  
House Committee on Agriculture



James R. Baird  
Ranking Member  
Subcommittee on Biotechnology,  
Horticulture, and Research



Frank D. Lucas  
Ranking Member  
Committee on Science, Space, and Technology



Stephanie Bice  
Ranking Member  
Subcommittee on Environment

---

<sup>13</sup> Rule X, cl. 1(p) (117<sup>th</sup> Cong.).

Administrator Michael S. Regan

Page 4

December 23, 2021

cc: The Honorable Carolyn Maloney, Chairwoman  
Committee on Oversight and Reform

The Honorable Ro Khanna, Chairman  
Subcommittee on Environment

The Honorable David Scott, Chairman  
Committee on Agriculture

The Honorable Stacey Plaskett, Chairwoman  
Subcommittee on Biotechnology, Horticulture, and Research

The Honorable Eddie Bernice Johnson, Chairwoman  
Committee on Science, Space, and Technology

The Honorable Mikie Sherrill, Chairwoman  
Subcommittee on Environment