

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY

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November 7, 2023

The Honorable Thomas J. Vilsack
Secretary
U.S. Department of Agriculture
1400 Independence Avenue, S.W.
Washington, D.C. 20250

Dear Secretary Vilsack:

The Committee on Oversight and Accountability is conducting oversight of the U.S. Department of Agriculture's (USDA) role in the U.S. Environmental Protection Agency's (EPA) August 18, 2021, final rule revoking *all* tolerances for chlorpyrifos on food products.¹ Your letter to Missouri lawmakers broke with EPA's controversial decision to ban the critical crop protection tool.² Specifically, you wrote that: "USDA-Pest Management Policy (OPMP) scientists believe EPA could retain certain chlorpyrifos uses that meet EPA's safety standard, based on EPA's proposed interim decision (PID)."³ EPA's decision instead to ban all tolerances of the pesticides and this revocation should have gone through interagency review.⁴ The 11 crop uses of the pesticide the EPA could retain—including alfalfa, apple, cherry, sugar beet, and wheat—represent more than \$59 billion dollars in annual value to the U.S. economy.⁵ The Committee previously wrote EPA explaining Office of Management and Budget guidance has been clear to direct the EPA to seek interagency review when EPA actions make pesticide tolerances "more stringent" which this ban does by placing severe economic strain on American distributors and growers.⁶ In fact, on November 2, 2023, the U.S. Court of Appeals for the Eighth Circuit struck down EPA's decision, finding it "arbitrary and capricious."⁷ We request USDA provide documents and communications to better understand USDA's position and input on EPA's controversial decision to revoke all tolerances for chlorpyrifos on food products.

¹ *Chlorpyrifos; Tolerance Revocations*, 86 Fed. Reg. 48315 (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) (emphasis added).

² Letter from Thomas J. Vilsack, Sec'y, U.S. Dep't of Agric., to Vicky Hartzler, et. al, Members of Congress (Sept. 20, 2022).

³ *Id.*

⁴ See Exec. Order 12866, 58 Fed. Reg. 51735 (October 4, 1993).

⁵ *Red River Valley Sugarbeet Growers Association et al. v. Regan*, No. 22-1294, (8th Cir., petition filed Feb. 9, 2022).

⁶ Letter from James Comer, Ranking Member, H. Comm. on Oversight and Reform, et al., to Michael Regan, Administrator, EPA (Nov. 4, 2022); OMB Memorandum for Heads of Executive Departments and Agencies, and Independent Regulatory Agencies, *Guidance for Implementing E.O. 12866*, at 15 (October 12, 1993).

⁷ *Red River Valley Sugarbeet Growers Association et al. v. Regan*, No. 22-1422, (8th Cir., opinion filed Nov. 2, 2023).

On January 19, 2023, in a staff-level briefing, EPA explained closed-door meetings between EPA and USDA staff did not change EPA's announcement of its Notice of Intent to Cancel (NOIC) the registration of chlorpyrifos.⁸ EPA advanced despite OPMP Director Kimberly Nesci slamming the EPA for setting "harmful precedent" by proceeding with the NOIC.⁹ According to Director Nesci, EPA departed from historical precedent and legal procedures for the product cancellations and tolerance revocations in its action regarding chlorpyrifos.¹⁰

Six months passed after the EPA staff-level briefing before USDA finally delivered a similar staff-level briefing on August 30, 2023.¹¹ USDA staff discussed the interactions of USDA with EPA regarding chlorpyrifos, specifically on the final rule to revoke all tolerances and the NOIC.¹² USDA confirmed conversations between USDA and EPA changed from disagreements on chlorpyrifos science to monitoring the *Red River Valley Sugarbeet Growers Association et al.* court decision in the U.S. Court of Appeals for the Eight Circuit after EPA decided to issue the NOIC in December 2022.¹³

Because of the massive impact of revoking all tolerances for chlorpyrifos on food products in upcoming growing seasons, we have an immediate need to receive this important information. Please provide the following documents and communications, covering the time period January 20, 2021, to present unless otherwise indicated, no later than November 21, 2023.

1. All documents and communications between and among USDA staff referring or relating to the August 2021 final rule revoking all tolerances for chlorpyrifos, including calendars, emails, memos, and presentations;
2. All documents and communications between and among USDA staff referring or relating to the NOIC, including the entirety of USDA coordination with EPA, and the August 11, 2022, draft NOIC;
3. All documents and communications referring or relating to your September 20, 2022, letter to Missouri lawmakers, including any drafts;
4. All documents and communications referring or relating to the September 11, 2022, letter from Kimberly Nesci, OPMP Director, to Edward Messina, Director, EPA Office of

⁸ USDA Briefing with H. Comm. Majority Staff (Aug. 30, 2023); EPA, *Chlorpyrifos; Notice of Intent to Cancel Pesticide Registrations* (Dec. 13, 2022) (EPA-HQ-OPP-2022-0417).

⁹ Letter from Kimberly Nesci, Director, USDA Office of Pest Management Policy, to Edward Messina, Director, EPA Office of Pesticide Programs (Sept. 11, 2022).

¹⁰ *Id.*

¹¹ See Letter from Glenn Thompson, Chairman, H. Comm. on Agric., to Thomas Vilsack, Sec'y, U.S. Dep't of Agric. (June 6, 2023).

¹² USDA Briefing with H. Comm. Majority Staff (Aug. 30, 2023).

¹³ *Id.*

Pesticide Programs, including any “input that could help inform EPA’s analysis and risk/usage characterization,”¹⁴ and any drafts; and

5. All documents and communications referring or relating to *Red River Valley Sugarbeet Growers Association et al. v. Regan*.

To arrange for delivery of responsive documents and communications, or ask any follow-up or related questions, please contact Committee on Oversight and Accountability Majority staff at (202) 225-5074. The Committee on Oversight and Accountability 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. Thank you in advance for your cooperation with this inquiry.

Sincerely,

A handwritten signature in black ink that reads "James Comer". The signature is written in a cursive style and is positioned above a horizontal line.

James Comer
Chairman
Committee on Oversight and Accountability

cc: The Honorable Jamie Raskin, Ranking Member
Committee on Oversight and Accountability

¹⁴ *Supra*, n. 9.