Environmental Protection Network

Resetting the Course of EPA

Strengthening Pesticide Regulation

This paper is part of the Resetting the Course of EPA project by the Environmental Protection Network (EPN), a bipartisan network of more than 500 former EPA career employees and political appointees across the country who served under multiple Democratic and Republican administrations.

Resetting the Course of EPA outlines specific and actionable steps that EPA leadership can take to reset the course of the agency to address the most significant and pervasive threats to public health and our environment. As there is no single roadmap, EPN looks forward to collaborating with others to advance the dialogue around the future of EPA and set ideas into motion that will better protect the health and wellbeing of everyone.

Additional Resetting the Course of EPA documents are available here:
https://www.environmentalprotectionnetwork.org/reset

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Summary

In recent years, EPA has failed to make adequate progress on pesticide regulation in a few key areas. First, EPA does not appear able to meet a major pending statutory deadline—the reevaluation by 2022 of all pesticides approved before 2007—and it will need supportive management oversight if it hopes to meet the deadline. Also, despite decades of effort, EPA still does not have a process for effectively and efficiently implementing the Endangered Species Act (ESA) for pesticides. Finally, EPA has diverged from its historical, transparent, science-based regulatory approaches in several instances, notably by its effort to roll back protections for disadvantaged farmworkers; by delaying a regulatory decision on the pesticide chlorpyrifos, despite being unable to determine it is safe; and by continuing registrations for "over-the-top" (OTT) use of the herbicide, dicamba, in the face of extensive off-site crop damage.

Recommendations

1. **Reinstate and enhance protections of farmworkers.** As part of a larger EPA focus on environmental justice, leadership should reverse the rollback of essential protections for agricultural workers, many of whom are low income and people of color; these protections were previously finalized after an extensive internal and external regulatory process. [Read More]

2. **Accelerate the reevaluation of previously approved pesticides.** Leadership should implement a strategy—addressing both policy choices and resource needs—to either meet or redefine the goal for the 2022 deadline for pesticide reregistration. [Read More]

3. **Address the challenge of implementing the ESA for pesticide decisions.** Leadership should impose sensible protections for the species most at risk and promote a new strategic, multi-stakeholder, public policy dialogue to break the decades-old stalemate that has led EPA to default on its duty to protect endangered and threatened species from pesticide risks. [Read More]

4. **Take a science-based approach to the pesticide chlorpyrifos.** Leadership should quickly update the chlorpyrifos human health risk assessment and determine whether the tolerances meet the safety standard established by the Food Quality Protection Act (FQPA) and move quickly to revoke any tolerances that do not meet that standard. [Read More]

5. **Take a transparent, science-based, common sense approach to the herbicide dicamba.** Due to extensive off-site crop damage caused by OTT use, leadership should disallow OTT use of dicamba unless EPA can find such use will not cause unacceptable off-field harm. [Read More]

Recommendation #1: Reinstate and enhance protections of farmworkers.

EPA's recent efforts to weaken protections of farmworkers from pesticides stand as an example of systemic racial bias. Farmworkers, who are largely people of color, are often low-income, may be undocumented immigrants, and bear the greatest risks of pesticide exposure because their labor requires handling pesticides and working in areas that have been treated with toxic chemicals. Yet they are among the groups least able to protect their interests. EPA has started to roll back farmworker protections that EPA established in 2015 even after extensive consultation with all affected stakeholder groups. Leadership should take steps to reverse these recent efforts and instead begin efforts to strengthen protections. Such actions would have big public health benefits and be consistent with a commitment to promote environmental justice.

Immediate Actions

- Withdraw the 2019 proposed rule or, if finalized, evaluate whether to defend the rule against judicial review.

Early Actions, Including the First 100 Days

- Announce a state initiative directed at compliance and enforcement of requirements added by the 2015 amendments to the Worker Protection Standard (WPS).

First Year and Sustained Actions

- Request an increase of $25 million+ in funding for programmatic and enforcement grants for state pesticide programs, and issue guidance that emphasizes programs to benefit farmworkers.
- Request additional funding to support expanded collection of incident data by Sentinel Event Notification System for Occupational Risk (SENSOR) to evaluate the impact of the WPS requirements added in 2015.
- Analyze SENSOR and other incident data to determine whether additional rulemaking is needed.
- Look for ways to accelerate the use of bilingual pesticide labeling on agricultural pesticides.

Recommendation #2: Accelerate the reevaluation of previously approved pesticides.

By October 1, 2022, EPA must reevaluate all pesticides approved before 2007. The Office of Pesticide Programs (OPP) will need supportive management to meet this deadline. A transparent evaluation of the status of the registration review program and the potential need for changes in its reevaluation goals will be essential. The program will need adequate resources, risks will need to be addressed as quickly as possible, and OPP will need to prepare for potential litigation if the 2022 deadline is likely to be missed.

Immediate Actions

- Assess the status of the registration review program's ability to meet the 2022 deadline given that the current goal includes making determinations on ESA (see Recommendation #3), as well as evaluating pesticides for their ability to disrupt the endocrine (estrogen, androgen, and thyroid) system.

Early Actions, Including the First 100 Days

- Develop budget requests for additional resources, as needed, and/or reallocate OPP resources as necessary for meeting the deadline for the registration review goal as currently defined and for meeting the deadline with a different goal (e.g., deferring ESA and certain endocrine decisions until the next review cycle).

First Year and Sustained Actions

- Convene a multi-stakeholder dialogue group to discuss limiting the scope of registration review for this round (e.g., exclude ESA and all endocrine effect evaluations, except estrogenic effects).
- Prioritize decision-making on chemicals that pose the worst/greatest risks and are of greatest interest to stakeholders—including organophosphates, carbamates, neonicotinoids, atrazine, and glyphosate.
- Identify alternatives and consider relative risks when making a final decision on each chemical undergoing reevaluation.
- Continue to work on screening methodology for androgen and thyroid effects and whole animal studies needed, if triggered, and rely on the results of the public policy dialogue (see Recommendation #3) to address ESA concerns.

Recommendation #3: Address the challenge of implementing the ESA for pesticide decisions.

Over the past 20 years, there have been many unsuccessful efforts, mostly among Executive Branch agencies, to develop a process to protect threatened and endangered (listed) species from pesticide risks. As a consequence, EPA has imposed almost no new restrictions on pesticide use to protect any of the approximately 2,000 listed species, such as the Karner Blue butterfly, the San Joaquin kit fox, the California condor, and Northwest salmon species. In fact, EPA has not met its basic ESA duties for most pesticides to assess their potential to adversely affect such species, leading to multiple lawsuits against EPA. To reverse this failure, EPA should work with the U.S. Fish and Wildlife Service and National Marine Fisheries Service (Services) to identify sensible interim protections for the most vulnerable species. Early success in identifying protections for vulnerable species with limited range would create an environment in which a multi-stakeholder dialogue process could develop a robust approach for broader species protection.

Immediate Actions

- Convene decision-makers from EPA, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service to outline the new strategy.

Early Actions, Including the First 100 Days

- Identify and implement preliminary conservation measures for listed species where the services have identified pesticides as a threat (e.g., in recovery plans); where a species has a limited, well-defined range (e.g., less than 10,000 acres); and which may be supported by other stakeholders (e.g., non-government organizations (NGOs), pesticide companies, agricultural groups).
- Initiate efforts to convene a multi-stakeholder public policy dialogue to (1) establish a priority for ESA analyses of pesticide active ingredients, and (2) look for efficient, science-based ways to quickly identify and implement additional needed protections.
- Convene the first meeting of a dialogue committee consisting of multiple stakeholders to outline the new strategy.

First Year and Sustained Actions

- Following implementation of preliminary conservation measures, build upon initial successes, identify additional steps for the process, and identify the next round of focused mitigation for species at risk from pesticides.
- Explore broadening the mandate of the group to accelerate the ESA review process for pesticides including, e.g., adding resources, streamlining the risk assessment process, and/or making regulatory changes.

Recommendation #4: Take a science-based approach to the pesticide chlorpyrifos.

Since 1996, when FQPA significantly strengthened the federal pesticide laws, EPA has systematically applied a new, more protective safety standard to the regulation of pesticide products. This has led to tighter restrictions (and, in some cases, prohibitions) on the use of many previously approved pesticides. Prior to 2017, after many years of careful scientific analysis and multiple reviews by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP), EPA determined that food tolerances for chlorpyrifos did not meet the safety standard of the FQPA and needed to be revoked. The agency reversed this finding and decided, without any scientific foundation, to take no action.

Immediate Actions

- In order to assure that any final action will survive judicial review, announce that EPA will conduct an expeditious update of the safety assessment of tolerances for chlorpyrifos using all available information. Also announce, as part of that update, that EPA will consider whether an additional SAP meeting would be appropriate.

Early Actions, Including the First 100 Days

- Commence the update of the risk assessment and, if appropriate, schedule the SAP meeting.

First Year and Sustained Actions

- Complete the updated risk assessment and make an expedited determination whether EPA can make a safety finding for some or all chlorpyrifos tolerances.
- To the extent that EPA cannot make a safety finding, begin action to modify or revoke tolerances and cancel registrations, as appropriate.
- Complete removal of unsafe pesticide products from the chain of commerce.
- In partnership with the U.S. Department of Agriculture, develop a transition plan to support users in meeting their pest control needs for discontinued chlorpyrifos uses.

Recommendation #5: Take a transparent, science-based, common sense approach to the herbicide dicamba.

EPA has continued dicamba registrations for OTT use on dicamba-tolerant crops in the face of years of extensive off-site crop damage. The OTT registrations were set to expire in fall 2020, but a recent court decision invalidated them. EPA may soon decide whether to renew them for 2021. If EPA renews the OTT registrations, EPA should make the careful consideration of the OTT use of dicamba a high priority to increase credibility with state co-regulators, segments of the user community hurt by dicamba, and NGOs. More broadly, EPA should take steps to produce a better understanding of dicamba's off-site transport and adverse effects, which would lead to improvements in the pesticide registration process. EPA should not allow OTT dicamba use unless the agency finds it will not cause significant injury to neighboring crops.

Immediate Actions

- Assess the current status of dicamba registrations to determine what further action, if any, is needed.
- Announce that EPA will not support OTT use unless it is demonstrated that such use will not cause significant harm.

Early Actions, Including the First 100 Days

- Initiate a public stakeholder effort to gather input from all parties that have been affected by off-target movement of dicamba. Key stakeholders include state regulatory agencies, extension programs, university researchers, and crop groups (i.e., both users and those whose crops have suffered damage from off-target dicamba movement).
- Compile and organize stakeholder input. Identify geographic extent and types of damage.
- Identify areas of particular interest, including economic impacts on growers managing small acreages and growers of specialty crops (e.g., fruits, vegetables, ornamentals).

First Year and Sustained Actions

- Refine the understanding of the science regarding off-site dicamba movement.
- Assess costs to states of enforcement activities related to damage from OTT dicamba use.
- Assess whether OTT use of dicamba is feasible given limitations on application timing and other restrictions on its use, and whether the feasibility varies geographically.
- Identify research needs to determine whether dicamba OTT use can continue safely.
- Convene an SAP meeting to address (1) whether the factors governing off-target dicamba movement are adequately understood and (2) whether significant off-site movement of dicamba can be prevented.
- Prohibit dicamba OTT use unless EPA finds it will not cause unacceptable off-field crop damage.

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Strengthening Pesticide Regulation

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