Senate Committee on Agriculture, Nutrition & Forestry

Pesticide Registration under the Federal Insecticide, Fungicide, and Rodenticide Act: Providing Stakeholders with Certainty through the Pesticide Registration Improvement Act

May 11, 2017

Questions for Mr. Rick Keigwin

Chairman Pat Roberts (R-KS)

Roberts 1. Please describe to us EPA's role regarding endangered species under FIFRA, including EPA's ecological risk assessment. Are significant agency resources dedicated to this type of analysis?

EPA Response Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

[1] https://www.nap.edu/catalog/18344/assessing-risks-to-endangered-and-threatened-species-from-pesticides

Ex. 5 - Deliberative Process

Roberts 2. Under the Endangered Species Act, the EPA is charged with examining their actions to regulate pesticides. If a pesticide "may affect and is likely to adversely affect" a listed species, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service become involved in this regulatory process through formal consultation with the expert agency, here EPA. The Services then issue Biological Opinions providing documentation regarding whether a pesticide's use would jeopardize listed species or destroy or adversely modify critical habitat. Do the Services provide EPA with the best scientific and commercial data available in these processes? Does EPA have satisfactory access to this data, including any modeling done by the Services? In what ways could the Services improve their Biological Opinions provided to EPA, or towards the consultation process generally? Is there sufficient transparency in these processes?

EPA Response Ex. 5 - Deliberative Process

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Roberts 3. How much does it cost EPA from start to finish to complete a consultation with the Services? Please include any full time equivalent (FTE) estimate as well for the agency.

EPA Response: Ex. 5 - Deliberative Process

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[2] Available at www.regulations.gov in docket: EPA-HQ-OPP-2012-0442.

Ex. 5 - Deliberative Process

Roberts 4. "PRIA 4," which passed the House in a bipartisan manner on the suspension calendar, contains a reauthorization provision for 7 years. Can you please walk us through a timeline that illustrates how this 7-years will be used towards the registration of pesticides?

EPA Response: Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Roberts 5. The Texas State Department of Agriculture submitted a request to EPA for a Section 18 exemption for the emergency use of sulfoxaflor to deal with the Asian Citrus Psyllid, the vector for Huanglongbing (HLB or citrus greening). I understand EPA recently rejected this request. What impacts will this decision have on citrus growers in Texas and how will this impact the citrus industry more broadly? What recourse is available, if any, for EPA to reconsider this request?

EPA Response: Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Roberts 6. In your testimony you discuss an initiative launched by Administrator Pruitt - the "Back to Basics" agenda. Can you elaborate further on what EPA hopes to achieve through this effort, who are the stakeholders, and what action items should Congress anticipate from this?

EPA Respon Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Ranking Member Debbie Stabenow (D-MI)

Stabenow 1. One of PRIA's roles is providing the agency with resources for training agricultural workers in the safe and appropriate application of pesticides. These PRIA resources complement important rules that the EPA recently promulgated in this arena, including the Worker Protection Standard (WPS) Rule and the Certified Pesticide Applicator (CPA) Rule. Last week, just hours after our hearing concluded, Administrator Pruitt delayed the implementation of those recently finalized rules. Why were the aforementioned rules' implementation dates delayed?

EPA Response Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Stabenow 2. Stakeholders concerned with the WPS rule heard about the implementation delay through an agency letter responding to an association inquiry, instead of reading about it in the Federal Register. When will the WPS delay be published in the Federal Register?

EPA Response: Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Stabenow 3. The notice for the delay of the CPA rule included a public comment period lasting five business days. Why is the agency providing such a limited period for the public to comment on a rule that took several years to finalize?

EPA Response: Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Stabenow 4. Would EPA consider extending the comment period on the CPA rule delay proposal to accommodate requests from interested stakeholders for more time?

EPA Response: Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Stabenow 5. With regard to the WPS rule delay, EPA sent a letter to an outside stakeholder group on May 11, 2017 indicating that the agency was accepting the group's petition to delay implementation of the rule, despite EPA rejecting a nearly identical petition from the same group less than four months earlier. What caused EPA to change its position?

EPA Response: Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Stabenow 6. Does EPA feel that the delay in the two rules contradicts the provisions provided by Congress in FIFRA, which requires EPA to ensure that pesticides sold and applied in the U.S. "will not generally cause unreasonable adverse effects on the environment?"

EPA Response: Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

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Stabenow 7. Does EPA feel that accepting a petition for delay of the WPS rule without publishing notice of the delay in the Federal Register runs afoul of the agency's responsibilities under the Administrative Procedures Act, particularly because some of the requirements of the rule in question have already been in effect for months?

EPA Response: Ex. 5 - Deliberative Process

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Stabenow 8. During the implementation delays, does EPA intend to change the substance of either the Certified Pesticide Applicator Rule or the Worker Protection Standards Rule?

EPA Response: Ex. 5 - Deliberative Process

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Stabenow 9. If yes to the previous question, will such an effort be accompanied by a formal rulemaking and public notice and comment period, as is required for modifying rules that have already been finalized?

EPA Response: Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Stabenow 10. Two weeks ago, President Trump and Administrator Pruitt abruptly dismissed several members of the EPA's Board of Scientific Counselors. As you mentioned during the hearing, the primary scientific advisory board at EPA relating to pesticides is

the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel. Does the administration plan future dismissals of scientists from the FIFRA scientific advisory panel?

EPA Response: Ex. 5 - Deliberative Process

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Stabenow 11. Can you talk about the implications to the agency's mission of a potential future dismissal of scientists from the FIFRA panel?

EPA Response: Ex. 5 - Deliberative Process

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Stabenow 12. Would such a dismissal of scientists from the FIFRA panel conceivably cause a delay in pesticide approval and reregistration timelines?

EPA Response: Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Stabenow 13. The majority of biopesticide active ingredients have historically met the safety standards of Section 408 of the Federal, Food, Drug and Cosmetic Act, resulting in exemptions from the requirement of tolerance for a food or animal feed. Please explain if the EPA's policy for granting tolerance exemptions has changed with respect to biopesticide active ingredients?

EPA Response: Ex. 5 - Deliberative Process

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Senator Patrick Leahy (D-VT)

Leahy 1. With the EPA's recently announced a one-year delay until the new regulations for the certification and training of pesticide applicators come into effect, the Administrator cited the need for giving the regulated community adequate time to come into compliance with the regulations. How does the EPA plan to actually support education, guidance and training efforts for our farmers and state lead agencies to assist them in understanding the requirements to ensure we are protecting children, farmworkers, and pesticide applicators from exposure to pesticides?

EPA Response: Ex. 5 - Deliberative Process

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Leahy 2. Will the President's Fiscal Year 2018 budget request include any funding increases to support this work to ensure that this rule can finally move forward next year?

EPA Response: Ex. 5 - Deliberative Process

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Leahy 3. When the Pesticide Agricultural Worker Protection Standard Revisions were first proposed in 2014 and then finalized in 2015, they had been a long time coming and were the product of years of work by the EPA and received over 390,000 public comments. In the two years since the rule was initially finalized how has the EPA worked with the regulated community to educate and assist them with the transition to the updated requirements?

EPA Response Ex. 5 - Deliberative Process

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Leahy 4. The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) tasks the EPA's regional offices with overseeing states' pesticide-use programs and ensures that chemicals are actually used according to their label. In the past, some audits have found that different EPA regions were inconsistent in reporting or retaining records of issues discovered during reviews. How has the EPA strengthened its oversight to ensure adequate guidance and training on chemical use?

EPA Response Ex. 5 - Deliberative Process

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