August 23, 2018

The Honorable Sonny Perdue
Secretary
U.S. Department of Agriculture
1400 Independence Avenue, SW
Washington, DC 20250

The Honorable Andrew Wheeler
Acting Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Secretary Perdue and Acting Administrator Wheeler:

As organizations representing tens of thousands of American farmers and others who depend upon chlorpyrifos for pest management, we are deeply concerned about the recent decision of the U.S. Court of Appeals for the Ninth Circuit ordering EPA to revoke tolerances and registrations for this critical pesticide. This decision is unprecedented; no court has previously ordered EPA both to cancel uses and revoke tolerances for a pesticide. Its significance goes beyond just chlorpyrifos and threatens the established regulatory process for all crop protection tools.

Chlorpyrifos is used on 50 crops in 45 states, and has played a key role in pest management efforts in the U.S. and worldwide for over 50 years. Pesticides such as chlorpyrifos provide critical risk management tools to farmers and others by helping improve food production, protect health and safety, and ensure a vital and productive supply of food and fiber to our nation and world markets. For many invasive pests, growers face limited or no viable alternatives, and when an outbreak of a new pest occurs, users look to chlorpyrifos as a proven first-line of defense.

While the Court stated that EPA has not made a finding that chlorpyrifos tolerances satisfy the safety standard under the Federal Food, Drug, and Cosmetic Act ("FFDCA"), and has made conclusive scientific findings that chlorpyrifos is unsafe at the present regulatory standard, in fact the Agency has not changed its 2006 final determination done pursuant to statutorily-mandated reregistration that current chlorpyrifos uses meet the FFDCA's safety standard. The only EPA materials raising issues about that determination are preliminary, non-binding assessments made during the ongoing registration review of chlorpyrifos that are not final "findings." Moreover, these non-final assessments were based in large part on an epidemiology study that has been consistently criticized as unreliable for purposes of regulatory decision-making by EPA Scientific Advisory Panels, the U.S. Department of Agriculture, and many other interested stakeholders.

Further, the only legal avenue for EPA to "modify or revoke a tolerance" is to undertake the administrative process delegated to the Agency by Congress. That process has not been completed, and the Court cannot substitute its judgment for EPA and tell EPA the scientific conclusion it must reach. Finally, EPA's 2017 Order denying the administrative Petition to revoke tolerances, made after the Agency's consideration of relevant science-based comments from USDA and other interested stakeholders, expressed confidence that the current regulatory

standard is protective of human health. Two intensive reviews of chlorpyrifos completed in 2017 by the European Food Safety Authority and the government of Australia reached a similar conclusion.

The current EPA safety standard for chlorpyrifos properly rests on five decades of experience in use, health surveillance of manufacturing workers and applicators, and over 4,000 studies and reports that have examined the product in terms of health, safety and the environment.

Revocation of tolerances and cancellation of chlorpyrifos registrations would have a significant negative impact on growers and users in the United States and globally through effects on trade that need to be properly assessed. By eliminating through judicial action the science-based analysis and other steps that EPA must take under the FFDCA and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the Court would undercut the future ability of growers and users to employ essential risk protection tools. Further, by ordering EPA to rush into registration cancellation, the Court would force EPA to violate the longstanding procedural safeguards and other requirements provided by Congress under those statutes, robbing American growers, other users, and the registrant of their due process and other rights.

Based on the preceding, we respectfully urge EPA to petition for a rehearing en banc of this decision with the Ninth Circuit Court.

Sincerely,

Agricultural Retailers Association
Almond Alliance of California
American Farm Bureau Federation
AmericanHort
American Seed Trade Association
American Society of Sugar Beet Technologists
American Soybean Association
American Sugarbeet Growers Association
Beet Sugar Development Foundation
California Alfalfa & Forage Association
California Citrus Mutual
California Citrus Quality Council
California Cotton Ginners & Growers Association
California Dried Plum Board
California Fresh Fruit Association
California Specialty Crops Council
California Walnut Commission
Chemical Industry Council of Illinois
Cherry Marketing Institute
Corteva Agriscience™, Agriculture Division of DowDuPont™

Cranberry Institute
CropLife America
Delaware-Maryland Agribusiness Association
Delta Council
Florida Citrus Mutual
Golf Course Superintendents Association of America
Minnesota Crop Production Retailers
National Agricultural Aviation Association
National Association of Wheat Growers
National Corn Growers Association
National Cotton Council
National Council of Farmer Cooperatives
National Onion Association
National Sorghum Producers
New Jersey Farm Bureau
New Jersey Green Industry Council
New York State Chemistry Council
Northwest Horticultural Council
Oregonians for Food & Shelter
RISE – Responsible Industry for a Sound Environment
Schertz Aerial Service, Inc.
Society of American Florists
Texas Citrus Mutual
Texas Sorghum Producers
United Fresh Produce Association
U.S. Apple Association
US Beet Sugar Association
USA Dry Pea & Lentil Council
Washington Friends of Farms & Forests
Washington State Potato Commission
Western Agricultural Processors Association
Western Growers
Western Plant Health Association

Cc: Senate Agriculture Committee Chairman Pat Roberts
Senate Agriculture Committee Ranking Member Debbie Stabenow
House Agriculture Committee Chairman Michael Conaway
House Agriculture Committee Ranking Member Collin Peterson
The Honorable Jeffrey Wood, Acting Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice