

United States Senate

WASHINGTON, DC 20510

April 27, 2017

Arthur A. Elkins, Jr.
Inspector General
Office of Inspector General
Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

Dear Mr. Elkins:

We are writing today to request that you conduct an investigation of Environmental Protection Agency (EPA) Administrator Scott Pruitt's March 29, 2017 decision to reject a petition asking that the agency, using its authority under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), ban the agricultural use of the pesticide chlorpyrifos. This decision ignored the EPA's own scientific conclusions and reversed the EPA's proposed action that would have ended the use of this neurotoxin, and the action appears to be inconsistent with the legal standard for EPA decisions on banning hazardous pesticides.¹

On October 30, 2015, EPA proposed to revoke all FFDCA tolerances of chlorpyrifos—which would effectively end agricultural uses of this product. This decision came eight years after environmental organizations filed a petition asking the agency to do so, and after the 9th Circuit Court of Appeals ordered EPA to take action having found the delay to be “objectively extreme.” Over the next year, EPA updated its human health risk and drinking water exposure assessments, which were completed in November 2016. The final health assessment found that “expected residues of chlorpyrifos on food crops exceed the [FFDCA] safety standard” and that drinking water exposures “continue to exceed safe levels.”² Based on these assessments, the EPA was set to finalize its proposed rule revoking chlorpyrifos tolerances by March 31, 2017.

Administrator Pruitt was confirmed on February 17, 2017. In one his first formal actions as head of the EPA he disregarded the agency's “vast scientific record”³ that chlorpyrifos poses a risk to consumers and reversed the EPA's decision – based on more-than-a-decade of

¹ On March 29, 2017, EPA Administrator Scott Pruitt rejected a 2007 petition by the Pesticide Action Network North America (PANNA) and the Natural Resources Defense Council (NRDC) calling for the EPA to “revoke all tolerances for the pesticide chlorpyrifos under section 408(d) of the Federal Food, Drug and Cosmetic Act [(FFDCA)] and cancel all chlorpyrifos registrations under the Federal Insecticide, Fungicide, and Rodenticide Act [(FIFRA)].” <https://www.epa.gov/ingredients-used-pesticide-products/order-denying-petition-revoke-all-tolerances-pesticide>

² <https://www.epa.gov/pesticides/updated-human-health-risk-analyses-chlorpyrifos>

³ <http://www.npr.org/sections/thesalt/2017/03/29/521898976/will-the-epa-reject-a-pesticide-or-its-own-scientific-evidence>

accumulated scientific work and evidence – to ban the product. Mr. Pruitt claimed that the science exhibits “significant uncertainty” and that EPA should continue to “fully explore” the issue.⁴ Mr. Pruitt also stated that in making his decision about chlorpyrifos, “it is important that for many decades chlorpyrifos has been and remains one of the most widely used pesticides in the United States.”⁵

Administrator Pruitt's hasty reversal of this decision and intention to delay any further action to the full extent permissible under current law is difficult to understand. It appears not to be based on EPA's existing recent scientific findings about the risk, or any new information that contradicts the findings about the health and safety risks of chlorpyrifos. It does not appear to be consistent with the law, which requires that pesticide products cannot be used unless “there is reasonable certainty that no harm will result from the aggregate exposure to the pesticide chemical residue.”⁶ And his order indicates that Administrator Pruitt based his decision on at least one factor – that chlorpyrifos is “widely used” – that is not included in the law.⁷

To help determine how and why Administrator Pruitt made the decision to reject EPA science on the health and safety risks of chlorpyrifos, and to understand whether he complied with legal standards under relevant pesticide safety laws, we ask that you conduct an investigation of his decision to deny the petition to revoke tolerances for chlorpyrifos. We ask that the investigation address the following questions:

1. How did Mr. Pruitt reach the decision he announced on March 29, 2017? What was the timeline leading up to this decision? With whom did he communicate within EPA, the White House, or elsewhere in the Administration? With which outside entities did he communicate? Specifically, did Mr. Pruitt have any communication with staff or representatives of Dow Chemical or any pesticide industry trade groups including CropLife America?
2. What was the rationale for Mr. Pruitt's decision, and why did he reverse an agency decision that had been years in the making? How was this rationale developed? Was it based on any new information or evidence?
3. Was Mr. Pruitt's decision consistent with the requirements of the Administrative Procedures Act? Did he provide appropriate notice and comment and appropriately consider all relevant comments and information?
4. Was Mr. Pruitt's decision consistent with the requirements of the FFDCA, which establishes a standard that, to maintain a pesticide tolerance, there must be “reasonable certainty that no harm will result from the aggregate exposure to the pesticide chemical

⁴ <https://www.epa.gov/ingredients-used-pesticide-products/order-denying-petition-revoke-all-tolerances-pesticide>

⁵ https://www.epa.gov/sites/production/files/2017-03/documents/chlorpyrifos3b_order_denying_panna_and_nrdc27s_petition_to_revoke_tolerances.pdf

⁶ https://www.epa.gov/sites/production/files/2017-03/documents/chlorpyrifos3b_order_denying_panna_and_nrdc27s_petition_to_revoke_tolerances.pdf



⁷ https://www.epa.gov/sites/production/files/2017-03/documents/chlorpyrifos3b_order_denying_panna_and_nrdc27s_petition_to_revoke_tolerances.pdf

residue"⁸? Has the EPA met the "reasonable certainty [of] no harm" standard in the law? Why did Mr. Pruitt note that chlorpyrifos was "widely used" when he announced his decision? Was this "wid[e] use" a factor in Mr. Pruitt's decision, and, if so, was this appropriate under the law? What other factors were taken into consideration by Mr. Pruitt?

5. Is the EPA accurately and transparently presenting information to the public with regard to previous EPA actions concerning chlorpyrifos? For example, the EPA website for chlorpyrifos on January 2, 2017 contained information indicating that EPA "proposed to revoke all chlorpyrifos tolerances," and contained a link with detailed information about the health risks and the reasons for the EPA action.⁹ This reference to the proposed ban, and the link to the detailed EPA analysis are no longer available on the chlorpyrifos web page, and the link to the analysis (as of April 3, 2017) now gives a "Page Not Found" error.¹⁰

We appreciate your prompt and thorough investigation of these issues and the EPA's decision to not revoke chlorpyrifos tolerances. If you have any questions, please do not hesitate to contact Brian Cohen of Senator Warren's office at 202-224-4543 or Tiffany Guarascio of Representative Frank Pallone's office at (202) 225-4671.

Sincerely,


Sen. Elizabeth Warren
United States Senator
Rep. Frank Pallone
Ranking Member
House Energy and Commerce
Committee

⁸ https://www.epa.gov/sites/production/files/2017-03/documents/chlorpyrifos3b_order_denying_panna_and_nrdc27s_petition_to_revoke_tolerances.pdf

⁹ <https://web.archive.org/web/20170121171119/https://www.epa.gov/ingredients-used-pesticide-products/proposal-revoke-chlorpyrifos-food-residue-tolerances>

¹⁰ <https://www.epa.gov/ingredients-used-pesticide-products/proposal-revoke-chlorpyrifos-food-residue-tolerances>