



# POLICY

Decades of pesticide policy and “reforms” have increased society’s dependency on toxic chemicals. The need for pesticides is assumed in law and regulatory review. The failure to regulate pesticides in a manner that incentivizes the marketplace to move to nontoxic and regenerative, organic practices results in crises that may be resolved in court after the damage is done—such as multi-million dollar court victories for cancer victims of glyphosate/Roundup exposure. However, the policies in place, as documented in this section, allow continued threats to pollinators and endangered species, hazardous exposure through pesticide drift, secret agency meetings with industry to recalculate risk levels, and more. Policy debates in Congress run the gamut, from advocacy to the phaseout of pesticides in National Wildlife Refuges to legislation that would further weaken existing pesticide law and take away local authority to adopt standards more restrictive than federal and state law.



PFAS AND REGULATORY FAILURE | FEBRUARY 18, 2022

## PFAS Adds to the Legacy of Persistent Toxics Hurting Generations of People and the Environment

An analysis conducted by [Safer States](#), and reported in [Environmental Health News](#) (EHN), concludes that in 2022 at least 32 states will consider 210 potential laws to ban or restrict one category of so-called “legacy” chemicals—the PFAS (per- and polyfluoroalkyl substances) family of compounds. “Legacy” or “forever” chemicals are those whose historical use, including many decades ago in some instances, has led to their toxic persistence in the environment and in organisms. In recent years, scientists, health and environment advocates, and policymakers have begun to recognize these as very serious contaminants and call attention to their ubiquity and impacts. Beyond Pesticides has identified multiple instances of such “legacies” (including those related to the [production of pesticides](#) and particularly, [the infamous DDT](#)), and will here discuss both PFAS, and concerns about such legacy chemicals as they may impact food producers.

The term “legacy” often connotes the ongoing influence or impact—generally salutary—of an individual’s activity, or a set of principles or activity inherited from one’s forebears. It is an apt description, minus the “salutary” part, for legacy chemicals—toxic “gifts that keep on giving” via persistent contamination of environments and bodies (human and other). In recent years, PFAS chemicals are increasingly being found in soil samples, in foods, in various kinds of water bodies and waterways, and in many drinking water sources. The environmental persistence of these compounds stems from the fact that they do not break down readily in the environment; hence, the “forever” moniker. Indeed, they [accumulate in the human body](#) (and no doubt in the bodies of other organisms, though that is less well studied) and are showing up many decades later in natural resources.

The highly toxic, fluorinated PFAS family of chemicals includes more than

9,000 compounds and two high-profile subcategories: PFOS (perfluorooctane sulfonate) and PFOA (perfluorooctanoic acid). PFAS compounds are associated, in humans, with occurrences of cancer (testicular, kidney, liver, and pancreatic), thyroid disease, high cholesterol, reproductive problems (pregnancy-induced hypertension, low birth weights, and decreased fertility), immune compromise, asthma, ulcerative colitis, developmental delays, and [disruption of the endocrine system](#), which can have myriad systemic impacts.

PFAS are found in many industrial (aerospace, automotive, construction, electronics, and military) and consumer products, including personal care products and cosmetics, cleaning products, carpeting, cookware, stain- and water-resistant products (clothing, textiles, and furniture), firefighting foam, and food packaging, among others. Despite Congressional attempts to ban these compounds in consumer goods, their

inclusion in food packaging and processing equipment, electronics, some cookware, cosmetics, and other goods continues to be legal federally. (See more on states' responses, below.)

Historically, some of these compounds ended up as part of waste that was dumped after industrial and military uses. Perhaps not all misbehavior is historical: *The Guardian* has reported that the U.S. military very recently (2016–2020) incinerated more than 20 million pounds of PFAS foam next to environmental justice communities. This occurred despite the lack of any evidence that incineration destroys the PFAS compounds; indeed, burning it discharges these toxic chemicals “into the air and onto nearby communities, farms, and waterways.” These legacy industrial and consumer chemicals are currently released into the environment via such products and the waste stream. Human exposure to them happens primarily through personal use of PFAS-contaminated products, through consumption of contaminated water or food, or via occupational exposures.

Estimates put the [number of people in the U.S. exposed to these chemicals](#) via drinking water between 110 and 200 million. The [Environmental Working Group \(EWG\) offers a PFAS map](#) of the U.S. that shows just how pervasive the problem is. Areas with widespread PFAS contamination of drinking water include large swaths of the Northeast (especially Massachusetts, Rhode Island, southeast New Hampshire, eastern Pennsylvania, Long Island, New Jersey, and Delaware), as well as significant portions of Michigan, Ohio, Illinois, Kentucky, North and South Carolina, Alabama, Florida, Colorado, and California. Beyond those, the map represents military (and other) sites of PFAS contamination unrelated to drinking water.

There has been precious little activity at the federal level to deal with PFAS (and some other legacy chemicals.) The U.S. Environmental Protection Agency (EPA) announced in 2019 that a “Comprehensive Nationwide PFAS Action Plan” would be forthcoming. [Since 1998, EWG notes](#), “despite mounting evidence

of PFAS' toxicity and contamination, EPA has inexcusably dragged its feet. The [agency] has failed to set a legal limit for any PFAS in tap water, and its unenforceable health advisory level for PFOA and PFOS is [70 times higher](#) than what independent studies show is needed. In 2019, EPA announced a toothless ‘[action plan](#)’ that would do nothing to reduce ongoing PFAS releases or clean up legacy PFAS pollution.”

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One small [example](#) of such negligence: at the very end of the Trump administration, the agency issued confirmation that high-density polyethylene (HDPE) containers used to store and transport pesticides are commonly treated with fluorine compounds to reduce risk of changes in chemical composition of the pesticides. Such treatment meant that the pesticide containers likely leached PFAS compounds into the pesticides, representing a potential and significant source of PFAS exposure throughout the country's conventional agriculture sector.

Another is the 2020 discovery that an EPA registered mosquito pesticide, [Anvil 10+10](#), contained PFAS compounds—thus exposing the public broadly when and wherever it was deployed. Beyond Pesticides Community Resource and Policy Director Drew Toher commented, “This is an issue that cuts to the core of what's wrong with our federal system for regulating pesticides. The finding makes it imperative

that EPA review and disclose full pesticide formulations before allowing the public to be exposed to unknown hazards.”

With the advent of the Biden administration, there has been more effort to address the problem. In the Fall of 2021, EPA Administrator Michael S. Regan announced an EPA PFAS Strategic Roadmap that purports to lay out a whole-of-agency approach to addressing PFAS. The [EPA website](#) notes, “The roadmap sets timelines by which EPA plans to take specific actions and commits to bolder new policies to safeguard public health, protect the environment, and hold polluters accountable. The actions described in the PFAS Roadmap each represent important and meaningful steps to safeguard communities from PFAS contamination. Cumulatively, these actions will build upon one another and lead to more enduring and protective solutions.”

For states and localities, who are on the front lines of PFAS contamination, this is welcome news *and* significantly tardy. Absent much protective action on forever chemicals at the federal level, including on persistent pesticides, states have been stepping up, particularly in the past five years or so, to deal with a problem that permeates many aspects of people's lives.

The Safer States [analysis](#) sets out these particulars:

- At least 19 states will consider regulation of PFAS, such as restricting use when such use is avoidable, requiring disclosure of PFAS when present in consumer goods, or restricting use in specific categories (e.g., cosmetics, textiles, and food packaging). AK, CA, CO, HI, IA, IL, MA, MD, MI, MN, NH, NC, NJ, NY, PA, RI, VT, WA, WI
- At least 17 states will consider policies on PFAS cleanup, management, and accountability, such as designating the chemicals as hazardous, restricting their disposal, or allocating resources toward cleanup. AK, CA, FL, IL, IN, MA, ME, MD, MI, MN, NH, NC, OK, RI, VT, WA, and WI
- At least 19 states will consider legislation related to contamination

of drinking water, groundwater, or soil with PFAS. AK, AZ, CT, FL, IA, IN, KY, ME, MN, NC, NH, NY, OH, RI, SC, VA, VT, WV, WI

- At least three states will consider banning PFAS in products labeled as recyclable. HI, MD, NJ
- At least six states will consider policies to strengthen existing safe-chemical policies for cosmetics or children's products. CA, MA, MI, NY, VT, and WA

According to EHN, Safer States National Director [Sarah Doll](#) commented: "State legislatures recognize the severity of the toxic PFAS crisis we're facing and they're taking action. . . . [They] continue to lead the way in addressing these serious problems with urgency and innovative solutions." [Michigan State Senator Winnie Brinks](#) issued a statement saying, "In Michigan, PFAS and other 'forever chemicals' have impacted my community for decades. We've made significant strides in assessing the scope of the problem statewide and filtering PFAS out of drinking water."

Not only is the public exposed to such chemicals; those who work in factories that create products that include PFAS, or workers who use such products regularly, have higher exposures. Safer Chemicals, Healthy Families noted in 2021, "Firefighting foams without PFAS are already used successfully around the world, but outdated federal guidelines have kept foams containing PFAS in use for training and firefighting at U.S. commercial and military airports." Across multiple states, [firefighters](#) have begun to bring lawsuits against manufacturers of the foams, charging that the companies knowingly made and sold products with these forever chemicals that put the workers' health at risk. Others who may be at greater-than-average [exposure risk](#) include pregnant or lactating people, and young children.

PFAS compounds are not the only ones that exhibit extreme persistence in the environment and accumulation in bodies. Some legacy pesticides, and notoriously DDT (dichlorodiphenyl-

trichloroethane) and its breakdown metabolite DDE (dichlorodiphenyldichloroethylene), are incredibly persistent in the environment. The insecticide DDT was banned in 1972, yet its impacts continue. Its primary metabolite, DDE, shows up in produce grown in soils that were treated—even decades ago.

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Beyond Pesticides recently wrote about the [Pesticide Data Program](#) Annual Summary (conducted by the U.S. Department of Agriculture), which showed once again that residues of a number of legacy pesticides—including DDT and DDE—continue to be present in foods. (DDT and DDE were particularly present in collards, broccoli, carrots, radishes, and winter squash.) Beyond Pesticides has written about the ongoing impacts of legacy DDT/DDE exposure [here](#), [here](#), and [here](#). It has reported on the impacts of [POPs](#) (Persistent Organic Pollutants), such as legacy and banned pesticides, on animals. Legacy impacts also show up, for example, as contamination of former fruit orchards that were treated with [lead arsenate](#) pesticides as much as 70 years ago.

Certainly, pesticides are found broadly in soils, as reported [here](#) and [here](#). But the ongoing detection of PFAS in various environments and soils is now threatening the ability of growers, including organic growers, to produce food that does not harbor these compounds. This contamination often occurs via the spreading of biosolids fertilizer (aka "biosludge" or sewage sludge), sometimes referred to as compost. (Compost under federal organic law cannot contain biosolids.) This is how that happens: PFAS compounds are

discharged in wastewater and solid waste (from consumer and other products), and move the problem "downstream," such that these chemicals inhabit biosolid fertilizers. These products are then sold and spread on agricultural land, contaminating local ground and surface waters, as well as animals that graze on such land and plants that are grown in the contaminated soils.

[Environmental Health News](#) reported in 2019 on this growing problem in Pennsylvania; PFAS showed up in the [Maine](#) dairy and livestock sector in 2016. The issue, as reported by [ECORI News](#), has migrated to the general consumer sector, as wastewater treatment operations are barely treating biosolids, and then repackaging the contaminated (with PFAS, pesticides, pharmaceuticals, and more) material as home fertilizer and compost.

A prime and very recent example of this biosolids problem in agriculture is that of a diversified crop operation, [Songbird Farm](#) in Unity, Maine. Farmers Adam Nordell and Johanna Davis, growers of Certified Organic grains and vegetables, recently learned that their [fields](#) are victims to such legacy PFAS contamination. They write in their website statement about the matter: "We were just blindsided to learn that our home farm and primary lease field were licensed for the spreading of biosolids in the early 1990s, (24 years before we purchased our farm and moved to Unity). Biosolids have been in the news recently for their correlation with PFAS chemical contamination. We hired a private soil scientist to sample and test our well water, and soil and produce. All three tests came back positive [for PFAS]. Our well water read at 400 times the state's recommended threshold. The results are preliminary and need to be cross-checked, but we feel it is critical that we stop our sales and have requested that our retail outlets pull our products from their shelves for now. This is not a product recall. This is a precautionary product pause while we gather more info."

This family's livelihood, and their investment of dollars and sweat and



review and BiOp are part of EPA's evaluation of whether [malathion](#)—an organophosphate insecticide that causes serious damage to many organisms—should retain its registration. The Executive Summary of the [BiOp](#) concludes: “Our findings suggest that no proposed species or candidate species would experience species-level effects from the action [i.e., registration and thus, permitted use of malathion], and, therefore, are not likely to be jeopardized. We also conclude the proposed action is not likely to destroy or adversely modify any proposed critical habitats.” Advocates view this BiOp as a terrible setback for biodiversity and wildlife, including [pollinators](#), aquatic organisms, and birds, and for fragile ecosystems.

More than a million pounds of malathion are used annually in the U.S. on cotton, corn, and other crops; as of 2018, another two million pounds was also in use for home gardens, miscellaneous purposes, and mosquito control. Pest management entities, whether private companies, states, or localities, deploy malathion for adulticiding of mosquitoes—a notoriously ineffective strategy that uses spray trucks in the hope of “knocking down” mosquitoes that happen to be in the immediate area at a given moment.

Malathion spray, whether for mosquitoes or on crops, can travel and impact a wide area, exposing nontarget organisms and humans alike. In humans, malathion [exposure](#) is linked with reproductive, endocrine, neurological, hepatic, renal, and developmental harms. Its terrible impacts on [wildlife](#) are well-documented. Further, as [Beyond Pesticides](#) covered in February 2022, widespread, intensive pesticide use for mosquito control has catalyzed development of resistance to those same pesticides in some mosquito populations—an inevitable outcome of chemical treatment of pests. A shift to alternative [strategies](#) is overdue.

The history of EPA and malathion is fraught. In 2017, after an [EPA](#) finding that use of organophosphate insecticides has negative impacts on more than 1,000 endangered and threatened

species—and that malathion, specifically, threatens 1,284 species—[Dow Chemical](#) pressured the Trump administration to ignore the studies that underlay that finding. Later that year, the administration sought a two-year [delay](#) in EPA's review of malathion. In 2019, the Center for Biological Diversity (CBD) discovered [documents](#) that showed that the Trump administration had this information on the harms to species in 2017 and suppressed it. Indeed, top officials at the Department of the Interior, including Acting Secretary David Bernhardt, knew of and stopped the release of a FWS BiOp that showed the extent of the dangers of this class of pesticides.

According to the [Associated Press](#), “[FWS] officials now say malathion could cause limited harm to hundreds of species, but is unlikely to jeopardize any of them with extinction as long as labels that dictate its use are changed,” but advocates insist that proposed changes to labels would do little to protect species that in some cases have dwindled to very few individuals.” In addition, this “no extinction” claim, even if borne out, would depend utterly on the voluntary compliance of farmers, pesticide applicators, and consumers to use the insecticide exactly according to label instructions—which will not even be developed for another 18 months. According to advocates, this BiOp represents an unacceptable gamble with endangered ecosystems and organisms.

The FWS opinion contradicts the agency's 2021 BiOp (no longer available on the EPA website), which asserts that, due to registration and use of the insecticide, “78 listed species could be jeopardized, and 23 critical habitats could be adversely modified by the use of malathion.” This final, 2022 BiOp also contradicts the agency's 2017 conclusion “that 1,284 species would likely be jeopardized by malathion.” According to the [Center for Biological Diversity](#), both that 2021 assertion and this final BiOp used “debunked Trump-era methodology promoted by the pesticide industry” as the bases for the opinion.

Only a week prior to the March 8 release of the final BiOp, FWS's

coequal agency, the National Marine Fisheries Service (NMFS), issued an [updated draft BiOp, which concludes](#) in part: “For malathion, we present draft conclusions that EPA's action is likely to jeopardize the continued existence of 37 species, and likely to destroy or adversely modify critical habitat for 36 species.” It also asserts that malathion (and two notorious cousin organophosphate pesticides) threaten nearly every endangered [salmon](#), sturgeon, and steelhead species in the U.S.

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CBD notes that this NMFS BiOp “debunks the Trump methodology that based harm analyses on historic use data known to be incomplete and unreliable.... Yet the Fish and Wildlife Service continued to heavily rely on the same historic use data in its analyses to reach conclusions that the pesticide would not harm endangered species.” CBD also writes, “The widely disparate findings by the two agencies were highlighted in harm assessments for bull trout and salmon, biologically similar species that share habitat in the Pacific Northwest. [FWS says] that malathion won't harm bull trout in Pacific Northwest streams; meanwhile [NMFS] has concluded that the use of the very same chemical in the very same streams is pushing every Pacific salmon to extinction.” CBD's environmental health director, [Lori Ann Burd](#), commented: “One's based on sound science, and one's based on industry-driven politics. [NMFS] is bravely taking a stand to prevent extinctions while [FWS] is continuing to cower to an anti-science, anti-endangered species agenda.”

EPA struck a cheerier note in its press release on the BiOp with the headline, “EPA Takes Steps to Protect Endangered and Threatened Species from Insecticide.” And FWS’s assistant director for ecological services, [Gary Frazer](#), frames the BiOp differently, saying that despite the 2021 BiOp, FWS “worked with EPA, the malathion registrants and USDA to develop general and species-specific conservation measures that significantly reduce many of the effects of malathion use on listed species and their critical habitats.”

FWS insists that implementation of new conservation measures—changes in the text on the pesticide’s label, reductions in the maximum number of allowable applications per year, establishment of buffers from aquatic habitats, and restrictions from application when rain is forecast or when certain crops are in bloom—will eliminate “the problems identified earlier.” EPA has said it will provide online details for protocols that users of malathion should

follow, such as no-spray zones in areas of critical wildlife habitat. But many of these have been designated as voluntary “guidelines,” rather than compulsory rules.

CBD has decried this final BiOp; Beyond Pesticides joins in this response to EPA’s shocking avoidance of the scientific evidence on malathion. CBD’s Brett Hartl [commented](#), “This is an enormous punt. There’s not a single endangered species that will see anything change on the ground because of this biological opinion for at least 18 months, but probably never.”

CBD’s Lori Ann Burd issued this [statement](#): “The Biden administration has squandered a[n] historic opportunity to rein in the dangerous use of one of the world’s worst neurotoxic pesticides. By ignoring the best available science and choosing to rely on unenforceable promises of good behavior by the pesticide makers rather than real, on-the-ground conservation measures, the Biden administration is condemning

wildlife to extinction with a wink and a nod. This decision to cave to powerful special interest groups will do far-reaching harm to our most endangered wildlife.”

**What to do:** Take action to ban malathion in your community and to learn more about impacts of malathion and other pesticides on biodiverse and functional organisms, wildlife, and ecosystems, see the work of the [Center for Biological Diversity](#), and Beyond Pesticides’ coverage: [Mosquito Control and Pollinator Health](#), [The Truth About Mosquitoes](#), [The Health Effects of Pesticides Used for Mosquito Control](#), [Pesticide Use Harming Key Species Ripples through the Ecosystem](#), and its [Daily News Blog archives on malathion](#).

**SOURCES:** Brown, Matthew, “US officials reverse course on pesticide’s harm to wildlife.” AP News. March 8, 2022; [CBD press release](#), March 8

## EXPOSURE: PESTICIDE DRIFT | MARCH 18, 2022

# Pesticide Drift or Chemical Trespass Continue Uncontrolled, Despite Successful Litigation

A 2020 lawsuit related to pesticide drift was resolved on March 8, 2022 in San Joaquin (California) Superior Court with a finding that Alpine Helicopter Services, which specializes in pesticide applications for government and tourism entities, had violated pesticide drift laws and endangered public health and safety. The court further found Alpine liable for damages related to its actions, though penalties in the case, brought by California state prosecutors and the California Department of Pesticide Regulation (DPR), have yet to be determined. The case exposes a handful of the many instances of pesticide drift, also known as “chemical trespass,” that occur every year in the U.S. In 2004, Beyond Pesticides covered the issue with [Getting the](#)

[Drift on Chemical Trespass](#); its monitoring of drift issues is ongoing, as can be seen in its [“Pesticide Drift” archives](#). The long history of nontarget exposure, contamination, and poisoning teaches that drift is a function of pesticide use, but not considered adequately by regulators who allow the marketing of poisons that

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**Pesticide drift is any airborne movement of pesticides from the target application site to any unintended area; pesticides can drift, according to multiple studies, for as much as several miles.**

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are known to move through the environment uncontrolled. Cases like the Alpine case highlight a relentless problem associated with the daily use of pesticides.

Pesticide drift is any airborne movement of pesticides from the target application site to any unintended area; pesticides can drift, according to multiple studies, for as much as several miles. Drifting pesticides might be apparent as a cloud of droplets or vapor, as “dust” particles during application, or as a noxious odor that lingers after application. However, drift can also have no odor, be invisible, and persist for days. Drift can happen whether the application is via aerial or ground spraying, as well as from applications that volatilize and move through air currents, exposing people, animals, crops, trees,





and non-crop plants to the toxic chemical compounds—most typically, insecticides, herbicides, and/or fungicides. In addition, soil and water resources can become contaminated, as well as the very air that people and animals are breathing.

Pesticide drift can cause acute poisoning and/or chronic health impacts in farmworkers or anyone in the application area or working in nearby fields being treated. Included among those at high risk from drift are families of [farmworkers](#) who live near agricultural parcels. Yet, as in this subject litigation, it also happens in other settings. [Schools](#), playground, recreational fields, and other facilities at which children are frequent visitors, have been affected by pesticide drift, which is all the more concerning because [children](#) have elevated vulnerability to chemicals, given their sizes and developmental stages.

[This litigation](#) charged Alpine with pesticide applications in four “spray drift,” or “chemical trespass” incidents. Three of those were in San Joaquin County; one was at a school (in 2017), another at a sports complex (2019), a third saw herbicides applied to nearly 5,000 acres of land, resulting in massive

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crop losses (2014), and a fourth occurred on a residential yard (2020). That sports complex was the San Joaquin County Regional Sports Complex in Stockton, a facility that serves people of color communities that already experience disproportionate exposure to, and impacts of, environmental pollution.

[California officials](#) registered their takes on the suit and the decision: DPR acting chief deputy director, Karen Morrison, commented, “The blatantly careless actions of Alpine threaten the health and safety of children and communities.” California Attorney General Bob Bonta [commented](#), “Today’s decision is an important win for the many in our state who live and work in agricultural communities. Alpine’s careless approach to pesticide application is unacceptable.” [According to Agri-Pulse](#),

he also said that the decision ought to send a powerful message to agricultural enterprises that the state “will hold them accountable if they violate the law when using ‘toxic chemicals.’”

In 2018, the California DPR published its [Pesticide Drift: Pocket Guide](#) as a primer on pesticide drift, geared to the general public and those who may have experienced or witnessed this kind of chemical trespass. It notes that in California, not all drift is illegal, but that “Pesticide laws focus on spray drift that causes harm, or has the potential to do so. The law specifically recognizes that pesticides may drift but says that ‘substantial’ drift is not allowed. The law prohibits applications if there is a reasonable possibility of harm to people or property.” Pesticide Action Network North America (PANNA) created something similar in 2017: [In Case of Drift: A Toolkit for Responding to Pesticide Drift](#). It had issued the 2004 report titled [Chemical Trespass: Pesticides in Our Bodies and Corporate Accountability](#).

A sense of the scale of pesticide applications—not all of which result in drift—can be gleaned from the Environmental Working Group’s (EWG) [coverage](#) of just one California county’s experience. Of course, Ventura County

hosts a lot of agricultural activity, so is not representative of all U.S. counties. But EWG research found that, from 2015 through 2020, roughly 963 acres were sprayed with more than 9.1 million pounds of pesticides—an average of more than 1.5 million pounds annually. This chemical intensity happened in *just one county*.

Some pesticides are far more prone than others to drift: the herbicide [dicamba](#) has been the poster child for this scourge. It is extremely prone to drift in warm temperatures, and even more so, when it is mixed with [glyphosate](#), another notorious herbicide. Dicamba, alone or paired with glyphosate, has been responsible for massive levels of [damage](#) to non-genetically modified crops (and other plants) that have no protection against the compound. As damage from dicamba has mounted, farmers have [litigated](#) left and right, [legislators in the states](#) have taken up measures to try to control the application (and therefore, the damage), and manufacturers are scrambling to keep the compound “palatable” to farmers. See more on dicamba [here](#) and [here](#).

In a Beyond Pesticides’ 2021 National Pesticide Forum session titled “[Fighting Chemical Trespass](#),” several victims of the phenomenon spoke about their experiences of damage to their farms, crops, livelihoods, and bodies. All of the participants suffered unwanted aerial spraying of their properties, and subsequent, lingering drift of the chemicals. (In one instance, inspectors found that pesticide residue levels were even higher seven days after the incident than at two days out, likely due to pesticide compounds that had landed on surfaces and then volatilized into the air.)

Two participants are organic farmers who could not sell their then-contaminated crops as organic, and one of them could not sell them at all because the compounds that were sprayed are illegal for use on food crops. That same farmer, who was formerly in robust health, has had massive chronic health consequences, is now legally disabled, and

has acquired \$100,000 in medical debt as a result of the chemical poisoning she endured across multiple incidents.

One of the farmers summarized that, as an organic producer, he has huge concerns about such chemical trespass—for the safety of the food he produces, for farmworker safety and health, for the health and integrity of [pollinators](#) and other [organisms](#), and the surrounding environment, and of course, economic issues of lost production and income. Towering over the immediate financial concerns is that, once contaminated, a USDA (U.S. Department of Agriculture) certified organic farm (or at least the affected parts) must exit the certification program for three years—a huge blow to a modest organic operation.

That same farmer contends that reform of drift policy at the state level—currently a kaleidoscope of varying, or no, [regulations](#)—is critical. He also suggests that organic farmers, in particular, secure personal liability insurance for any health/medical debt they might incur as the result of a drift or spray incident. Another farmer notes that there is a huge need for medical toxicology experts who can assist victims in the often-years-long process of discovery and documentation of evidence of the harms of the trespass incidents.

Most instances of chemical trespass are never litigated. When they have been, outcomes have been mixed, as evidenced [here](#), [here](#), [here](#), and [here](#). One of the real slogs for victims of drift is that the onus for proving what happened is entirely on them: getting inspectors out immediately, and subsequently, to validate and attach metrics to the

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damage, quantifying ongoing economic, health, and environmental damage, and more. Most people find these prospects entirely too daunting and expensive, and applicators and manufacturers are, thus, rarely held accountable.

The U.S. Environmental Protection Agency (EPA) addresses the drift issue on its [website](#), and assures the public that it “evaluate[s] potential for drift as a routine part of [its] pesticide risk assessments and [is] using new approaches for estimating drift impacts on communities living near fields where crops are grown, farmworkers, water sources, and the environment.” Beyond Pesticides Executive Director Jay Feldman notes, “It is rare, however, that EPA factors drift into its calculation of harm associated with pesticide use, and it is just as rare for those whose pesticide applications drift to be held accountable for the harm (short- and long-term) it causes.”

That same EPA [web page](#) also says the quiet part out loud: “As we assess new pesticides and reevaluate older pesticides, we evaluate the potential for each pesticide to drift and strengthen labeling as needed.” Advocates say “strengthening labeling as needed” is a feeble solution to the problem. Indeed, the many lawsuits that attempt to hold applicators responsible for health, crop, and environmental harms caused by pesticide drift—and the far, far greater number of incidents that never get reported or litigated—do not tend to happen because the labeling on the pesticide containers is not quite “strong” enough. They more often happen because, as in this subject lawsuit, human negligence, indifference, or error—and the profit motive—are at work.

The nonprofit Community Environmental Legal Defense Fund (CELDF) describes the [systemic situation](#) well: “The Environmental Protection Agency, or EPA, is an appointed government agency that is charged with ‘protecting’ people and the environment. But instead, it operates more as an agency that regulates how much harm can occur before government action is required. The requirements of EPA testing,

especially its lack of preventive measures, are alarming. In order to require testing of a new chemical, EPA must first show the potential risk. No evidence of harm is interpreted as no harm, from their perspective. The problem with this way of thinking is that many of the harmful effects of chemical trespass are worsened through prolonged exposure and are often not immediately seen in testing. It's a system designed to let corporations put toxins in our environment with no repercussions to them—but serious repercussions for people, communities, and nature."

**What to do:** One genuine fix for the problem would be to deregister pesticides, such as [dicamba](#), that are prone to drift. (Such action would be far more possible did industry not exert undue [influence](#) over EPA.) Another welcome

development, surely, would be more and improved legal, medical, forensic, and technical supports for those who are exposed to chemical trespass (whether through drift or application to non-targets), at the federal and state levels. Beyond Pesticides, recognizing how vulnerable organic farms can be to impacts of these chemical trespass incidents, might recommend that USDA's National Organic Program consider the issue of supports for organic farms in this unhappy "trespassed" circumstance. Ultimately, EPA must acknowledge the commonplace fact of drift and calculate the resulting exposure pattern and harm to people and property. If drift effects are fully calculated for their adverse impact, the "reasonableness" standard of allowable harm under EPA assessments is quickly exceeded. In this context, toxic pesticide use is unacceptable,

especially given the availability and economic viability of organic practices. Support organic by purchasing organic food and adopting and advocating for [organic](#) land management.

**SOURCE:** People of the State of California v. Alpine Helicopter Service, Inc., Superior Court of the State of California, County of San Joaquin. STK-CV-UEJ-2016-4746, consolidated with STK-CV-UBT-2020-7717; STK-CV-UCC-2020-9229. February 23, 2022. 2020; Franco, Victoria, "Helicopter Company Found Liable For Illegal Pesticide Drift." SFGATE, March 8, 2022.

"In a previous study in California that primarily looked at milkweed in agriculture and urban interfaces, we had looked at a small number of plants from retail nurseries, and found that they contained pesticides," study co-author Matt Forister, PhD, said.

"So we were prepared for this much larger scover contamination, but it was surprising mple of nursery plants to again unto see the great diversity of pesticides found in these plants.

## INDUSTRY INFLUENCE AT UN CHALLENGED | DECEMBER 22, 2022

# Groups Again Call for Urgent Action to Eliminate Pesticide Industry's Influence at the United Nations

International health and environmental groups submitted an urgent [letter](#) to the United Nations Food and Agriculture Organization (FAO) late last month demanding "greater [transparency and accountability](#)" through termination of the agency's two-year-old partnership with Croplife International (CLI), a global trade association representing the world's biggest pesticide manufacturers. Addressed to FAO Deputy Director Beth Bechdol ahead of [FAO Council 171](#) session in Rome and [COP15](#), the letter outlines a unique opportunity for the organization to lead the phaseout of fossil-fuel-based food systems and use of agrochemicals while upholding the agency's responsibility to act in response to conflicts of interest and human rights violations.

The original Letter of Intent ([LOI](#)), signed between CLI President and CEO Guilia Di Tommaso and FAO Director-General Qu Dongyu in October

2020, framed the partnership as a means to ensure humanity's freedom from hunger while advancing Sustainable Development [Goals](#). However, according to Pesticide Action Network (PAN) Europe Policy Officer Manon Rouby, "While the private sector has been working with FAO for years, this official agreement with Croplife directly threatens FAO's work on supporting farmers in the transition towards agroecology, while reducing the harms of synthetic pesticides worldwide. With Croplife members being the largest agrichemical companies in the world, this association is unacceptable and a direct threat to human rights. We once again urge the FAO to rescind this agreement."

According to the original letter's coauthors, [200,000](#) individuals from over 107 countries, from 430 civil society and Indigenous Peoples [organizations](#), nearly 300 [academics and scientists](#), and nearly 50 philanthropic

[groups](#), as well as the [Special Rapporteur](#) on the Right to Food, raised concerns in a report addressed in the 49th session of the UN Human Rights Council. While the backlash prevented the [LOI](#) from moving forward into a more formal Memorandum of Understanding earlier this year, as of today's publication, the agreement [remains](#) in place without a set expiration date, fundamentally undermining the agency's support for alternatives to generate ecologically-based agrifood systems without toxic pesticides.

With 11 subsidiary national [associations](#) and six member companies (BASF, Bayer, Corteva, FMC, Sumitomo Chemical, and Syngenta), CLI has a vested interest in maintaining the status quo. While claiming to champion the role of agricultural innovation in crop protection to advance sustainable agriculture, instead, the pesticide industry is leveraging "agricultural innovation



and digital technology” to expand market opportunities and increase profits in the Global South. Private sector investments are actively being facilitated through the FAO’s Hand-In-Hand Initiative; for example, in October 2020, the Director General actively appealed to CropLife for investments in low- and middle-income countries in his speech to the CLI Board of Directors.

While CLI has not made any direct financial contributions to FAO since 2011, member companies outsized political and economic influence on pesticide-related policies, alongside global export and distribution, is bearing fruit in lucrative markets like Nigeria. Between 2015 and 2019, the country’s National Agency for Food and Drug Administration and Control (NAFDAC) registered approximately 822 pesticides, of which 63% are classified as highly hazardous pesticides (HHPs), with [glyphosate](#) holding the highest share of imports (67.4 and 53.4 percent in kilograms and liters, respectively). Across all 46 countries in sub-Saharan Africa, FAO estimates that the use of pesticides increased by 150% between 2006 and 2019, attaining over 100,000 tons per year. In addition to highly

hazardous pesticide (HHP) sales being higher in the region, exponential impacts on health and environment reveal a vulnerability exploited by the partnership in the Global South. According to [a survey](#) by the Small-Scale Women Farmers Organization of Nigeria and Alliance for Action on Pesticides (AAPN) in Nigeria, 80 percent of pesticides used by women in four Northern Central states (Nasarawa, Benue, Plateau, and Abuja) are highly toxic to humans and require additional regulation.

While the increased level of use has resulted in negative health, environmental and economic [consequences](#) in-country and around the world, FAO continues to expand private partnerships in hosting regional [workshops](#) this year on the “proper management of pesticides” in the Middle East and North Africa region, with over a dozen countries participating in Jordan despite [obstacles](#) to implementation, such as insufficient staffing, lack of an adequate registration system, limited expertise, lack of risk assessment measures, and limited access to information.

Considering these negative impacts surrounding CSI’s expanding sphere of influence, the group’s urgent letter

strongly urges FAO to prevent CLI and its member companies from attaining permanent observer status, as such a move would “further the conflict of interest that exists between CLI and FAO, grant even greater privileges to the pesticide industry, and blur the areas of collaboration that already lack transparency.” Following the precedent pioneered by [UN Women](#), which ends its Memorandum of Understanding with investment firm BlackRock after receiving feedback from civil society, FAO has reached a turning point.

As an original signatory to the PAN UK June 9th letter, [Beyond Pesticides](#) echoes PAN UK in that it is imperative to “prioritize people-led agroecology as an innovative climate resilience solution and ensure that climate and science strategies do not give precedence to pesticide and fertilizer products, nor private sector entities affiliated with human rights violations or environmental destruction.” CSI’s fundamental objective is the maximizing of toxic pesticide sales and runs counter to reducing reliance. As [Beyond Pesticides](#) has constantly reiterated that “[sustainable](#)” pesticide use or incremental reductions will not prevent a variety of downstream

impacts and existential crises. Pesticides are damaging pollinator populations, adding to the human chemical body burden, catalyzing disease processes, launching trophic cascades, degrading agricultural soils, and so much more.

**What to do:** As [FAO](#) aims to “achieve food security for all and make sure that people have regular access to enough high-quality food to lead active, healthy lives,” truly sustainable, organic [production](#) with a focus on [regenerative](#) practices must lead the way. It is only through agricultural and other land management practices that eliminate petrochemical pesticides and fertilizers, and advance organic production on a global scale, from the United Nations to local communities in the Global South, that we stand a chance of making sustainable change in the long run for ourselves, our children, and the world at large.

Please consider helping Beyond Pesticides advocate for the transition to organic regenerative agriculture, and other benign land management approaches. You can [join/contribute](#), take up the issue in your local community, organize with others for state-level action, and more; let us know if we can help: [info@BeyondPesticides.org](mailto:info@BeyondPesticides.org) or 202.543.5450.

*Signatories to the late November letter included: Keith Tyrell, Chair, Pesticide Action Network International; Million Belay, Coordinator, Alliance for Food Sovereignty in Africa (AFSA); David Azoulay, Environmental Health Program Director, Center for International Environmental Law (CIEL); Sofia Monsalve, Secretary General, FIAN International; Kirtana Chandrasekaran and Martín Drago, Food Sovereignty Program*

*Coordinators, Friends of the Earth International; Sophia Murphy, Executive Director, Institute for Agriculture and Trade Policy (IATP); Andrea Carmen, Executive Director, International Indian Treaty Council (IITC); Pam Miller and Tadesse Amera, Cochairs, International Pollutants Elimination Network (IPEN); Sue Longley, General Secretary, International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF); Laurent Gaberell and Carla Hoinkes, Agriculture and Food Experts, Public Eye; and Chee Yoke Ling, Executive Director, Third World Network.*

**SOURCE:** Tyrell, Keith et al., Letter to Deputy Director Beth Bechdol, UN Food and Agriculture Organization, November 28, 2022.

## SUBSIDIES DRIVE ENVIRONMENTAL COLLAPSE | FEBRUARY 25, 2022

# Trillions in Subsidies Worldwide Are Driving Environmental Collapse Instead of Advancing Solutions

Together, governments of the world over are spending at least \$1.8 trillion annually—2% of global gross domestic product—on subsidies that drive the destruction of ecosystems and species extinction and exacerbate the climate crisis. This news comes from a study commissioned by [The B Team](#) and [Business for Nature](#), and released in a joint brief, [Financing Our Survival: Building a Nature Positive Economy through Subsidy Reform](#). The Business for Nature [website](#) offers a remedy to this entropy: “With political determination and radical public-private sector collaboration, we can reform these harmful subsidies and create opportunities for an equitable, nature-positive and net-zero economy.” To that end, the two organizations have issued, in their brief, calls to action to multiple sectors, including one to the governments participating

in the coming [UN Biodiversity Conference \(COP15\)](#): “Adopt a clear and ambitious target within the Global Biodiversity Framework . . . that commits governments to redirect, repurpose, or eliminate all environmentally harmful subsidies by 2030 and increase positive incentives to enable an equitable, net-zero, nature-positive world.”

A press [release](#) from The B Team reports that the fossil fuel, agriculture, and water sectors are the recipients of more than 80% of all environmentally harmful subsidies (EHS) annually, thus “depleting natural resources, degrading global ecosystems, and perpetuating unsustainable levels of production and consumption, in addition to exacerbating global inequalities.” Other recipients of significant subsidy include the forestry, construction, marine capture fishery, and transport sectors. Business for Nature ([BFN](#)) comments, “In other

words, public money is financing our own extinction.”

The release of the brief and study is timely, given the early March UN Convention on Biological Diversity (CBD) COP15 Open Ended [Working Group](#) meeting in Geneva; the follow-on UN Biodiversity Conference ([COP15](#)) scheduled for April 25–May 8 in Kunming, China; and the next UN Climate Change Conference ([COP27](#)) in Sharm El-Sheikh, Egypt (rescheduled for November 2022). The study and report hope to inform decision makers in government and business on the case for, and how to, reform these environmentally damaging subsidies.

EHS, as the brief defines them, are government support programs that—though often established (at least ostensibly) to solve socioeconomic problems—ultimately encourage unsustainable production and/or consumption patterns,



largely because they were deployed without consideration of environmental impacts. Beyond Pesticides notes that many of the health and environmental crises have arisen because of such a “siloeed” approach to problems, and that broadly, [precautionary and holistic approaches](#) can avoid such unintended and harmful impacts; see “[Scientific Findings Support Replacing Poisons with Precaution](#)” (p. 9).

The [World Economic Forum](#) puts failure to act robustly on climate, resulting extreme weather events, and biodiversity loss as the leading threats to humanity—catalyzed in part by the enormous amounts of money given by governments to support harmful industries and practices. The [research](#) finds that globally, the fossil fuel industry receives \$640 billion in EHS annually; the agriculture sector, \$520B; water, \$350B; forestry, \$155B; construction, \$90B; transport, \$85B; and marine capture fisheries, \$50B. (The report also mentions that, though no metrics are available on EHS for it, illegal gold mining accounts for billions of dollars in damage each year.)

These subsidies are significant contributors to many of the crises the world

faces: the rapidly heating climate, ecosystem and biodiversity loss, air and water pollution, land degradation, and social and economic inequality. A UN Development Programme and Food and Agriculture Organization [report](#) suggests, for example, that of the subsidies provided to farmers, nearly 90% distort prices or cause other harm, and that most fossil fuel subsidies hamper the critical and urgent need to transition to a clean energy economy globally.

The [report](#) also scolds governments for terrible follow-through on pledges made—and then ignored or unrealized.

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**The World Economic Forum puts failure to act robustly on climate, resulting extreme weather events, and biodiversity loss as the leading threats to humanity—catalyzed in part by the enormous amounts of money given by governments to support harmful industries and practices.**

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It notes, “During the 2010 UN CBD Summit, 190 countries committed to phasing out or reforming subsidies harmful to biodiversity by 2020 as part of the Aichi targets. Governments missed the target, and we cannot afford for history to repeat itself.”

The [brief](#) acknowledges the extreme difficulty of reforming these subsidies: “Many of [them] are so deeply embedded in our economies that attempts to define, measure and track them often struggle to be comprehensive, and progress to reform them has been slow. This is due not only to the power of vested interests, but also because both the governments and beneficiaries—including business—are unaware of the full scale of the subsidies and their impacts. Businesses often lobby for continued or increased government support that often has negative unintended environmental consequences.”

Among its observations are the needs for greater public awareness and visibility of EHS, and much more transparency and disclosure about subsidies from governments and recipient businesses. In the U.S., such subsidies tend to be “worked out” behind semi-closed doors among legislators, federal agencies,

lobbyists, and private business entities, and occasionally reported on by journalists—hardly the stuff of open, democratic, and accountable governance.

The report's summary asserts that reform adequate to the goals of reversing "nature loss" by 2030, and achieving net zero carbon emissions by 2050, will require roughly \$700 billion annually—*far less* than is currently spent on funding climate- and nature-destructive governmental subsidy programs. The researchers and authors, [Doug Koplow and Ronald Steenblik](#), say that these government efforts need to occur in parallel with (1) a realignment of all private financial flows so as to be "nature-positive," and (2) increased public and private financing that can deliver innovative financial solutions to protect, restore, and conserve nature.

"Nature-positive" is not comprehensively defined in the brief, but these outcomes can be inferred, from the brief itself and commentary on the BFN and The B Team websites, as qualifying: emissions reductions and the transition to renewably powered economies; restoration of damaged ecosystems and initiatives to arrest further biodiversity loss and restore damaged and endangered populations; support of social and economic needs of human populations, including redress of economic and environmental inequities; and support of nature-based solutions broadly. Importantly, [BFN](#) asserts that EHS reform must consider social and economic forces at play as it pursues "the imperative for a just and equitable transition. Reform managed sensitively means providing support for the poorest households and most vulnerable communities, such as via targeted cash transfers."

In the authors' view, such redirection of resources from harmful subsidies toward nature-positive outcomes would:

- free up substantial government resources to support social needs and local livelihoods
- redirect capital toward ecological restoration, including nature-based solutions
- close the biodiversity finance gap by reducing environmental degradation

and unlocking the funding needed to mitigate it

- send more accurate signals to public and private investors and producers on where to direct R&D efforts and future investments
- accelerate innovation to reduce greenhouse gases and environmental damage
- create a level playing field for businesses, which would further encourage rapid transformation of business models
- unlock social benefits such as poverty reduction, improvements in education and other social services, and more sustainable approaches to providing basic access to energy, clean air, and water

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**Importantly, BFN asserts that EHS reform must consider social and economic forces at play as it pursues "the imperative for a just and equitable transition. Reform managed sensitively means providing support for the poorest households and most vulnerable communities, such as via targeted cash transfers."**

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The brief calls on businesses and investors to advocate with governments for reform of EHS through their repurposing or redirection, or elimination, and funding of "an equitable, net-zero, and nature-positive world by 2030." In addition, it asks that businesses (1) collaborate broadly to increase awareness of reputational, competitive, and investor advantages of subsidy disclosure, and (2) support the development of international standards, frameworks, and guidance for mandatory ESG (environmental, social, and governance) disclosures, including subsidies.

The report goes on to make a compelling business case for reforming systems of subsidies that fund destructive

entities and practices by identifying risks and opportunities. Central to the risks is the inescapable fact that virtually all businesses rely on functional natural systems and resources for every aspect of their value chains. In addition, EHS, as noted above, distort pricing, investment decisions, and resource allocation; encourage unsustainable production and consumption (chickens will eventually come home to roost!), and unfair competition; and generate supply chain, reputational, and operational risks.

On the other side of the ledger, the draft points to opportunities that EHS reform and redirection of funding to nature-positive objectives would present. The authors assert that among those would be increased competitive positioning, increased ESG investor interest, reduction of the risks noted above, and progress on the "ambitions of the *Paris Climate Agreement*." (Inadequate as that particular set of accords is, that would still be a giant step in the right direction for many private enterprises.)

The [brief](#) summarizes: "Informed reform of subsidies can boost business and investment opportunities, create jobs, reverse nature loss and help ensure a sustainable future for our planet. Businesses can mobilize and implement change with speed (often faster than policymakers), setting a precedent for improvement across industry. Investors are starting to acknowledge the financial and sustainability risks of environmentally harmful subsidies and forward-looking companies recognize they need to prepare for subsidy reform."

The brief ends with a slew of endorsing comments from members of The B Team, business leaders, and advocacy groups. Several stand out to Beyond Pesticides:

- "It's time to stop the self-serving, short-sighted lobbying instead directing public money towards supporting responsible companies transition to nature positive business models." —Paul Polman, business leader and The B Team member
- "It is more important than ever to put in place ambitious targets to reverse nature loss and to redirect, repurpose

or eliminate all subsidies that harm our natural world.” —Marco Lamberini, Director General of [World Wildlife Fund International](#)

- “We must break down the siloed approach that has led to putting subsidies in place without consideration of their long-term environmental costs.” —Jennifer Morris, CEO, [The Nature Conservancy](#)

[Activist 360](#) reports the comment of Mary Robinson, former president of Ireland and member of The B Team: “Climate action is at a crossroads, in part because of the large scale of public money flowing to harmful industries and practices. We need to see thorough subsidy reform from governments and businesses, with social and environmental considerations at the heart, to ensure a just and equitable transition for all.”

Enacted, EHS reform could go a long way to mitigating climate and environmental harm, but such reform will likely be a slog, given the complexity and entrenched nature of national and international economic systems, the inherent conservatism—never mind the centrality of the profit motive—of most private enterprise, and the typically glacial pace of governments on reform efforts. Still, it is encouraging to see some portion of the business community stepping up to recognize its responsibility to

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remedy what it (as well as governments, militaries, and others) has caused, and advance the possibility of a livable and functional climate and environment.

**What to do:** Beyond Pesticides would add to the ambitious scope of this brief and its sponsors that EHS reform, and the implied reform of supply chains, should directly address the toxicity of so much of the global materials stream—particularly, synthetic pesticides and fertilizers, plastics, and chemical ingredients of industrial and consumer

products (see, e.g., this [Daily News Blog article on PFAS](#) and other toxics).

Multiple other articles have covered the need for companies to clean up their supply chains, and Beyond Pesticides advocacy on the issues—whether about garden center and other retail sale of [plants](#) treated with toxic pesticides, sale of contaminated “[biosludge](#)” as fertilizer, the ubiquity of [untested chemicals](#), including those in [plastics](#), or myriad others. Beyond Pesticides has also detailed the systemic ecosystem [impacts](#) of toxic chemicals and their damage to [biodiversity](#).

Many, many products and ingredients are integral in causing the harms this brief addresses, and whose authors and supporters hope will inform decision makers at [COP15](#) (the UN Biodiversity Conference). Beyond Pesticides encourages that the report be taken seriously, and that its influence leads to a genuine shift across the global business community toward nature-positive goals—redirection of policy and investment to repair and restore, rather than ravage, the climate and natural systems of this world.

**SOURCES:** Koplow, Doug and Steenblik, Ronald, *Protecting Nature by Reforming Environmentally Harmful Subsidies: The Role of Business*. Earth Track, February 2022.

**GENETICALLY ENGINEERED FOOD LABEL MISLEADING | JANUARY 7, 2022**

## USDA Genetically Engineered Food Label Misleads Consumers, Took Effect January 1

Unbeknownst to most Americans when they woke up on New Year’s Day 2022, a new [labeling](#) system for genetically modified-engineered foods—promulgated in 2019—which does not mention genetically engineered or GMO [genetically modified organisms] ingredients, went into effect. Consumer, food, and environmental [advocates](#) say that the new label is misleading, insufficiently trans-

parent, discriminatory, rife with loopholes, and confusing for consumers. The new labeling requirement mandates that genetically engineered foods bear labels that indicate that they have been “bioengineered” or that provide a text-messaging phone number or a QR code as avenues for further information. (“Additional options such as a phone number or web address are available to small food manufacturers or for small

and very small packages.”) The new labeling rule from the U.S. Department of Agriculture (USDA) aims, according to the agency, to eliminate the crazy quilt of labels affixed to [foods](#) and ingredients that have been scientifically altered. According to an agency [spokesperson](#), the rule is designed to “balance the need to provide information to consumers with the interest in minimizing costs to companies.” [In September,





2022, the U.S. District Court of Northern California [held](#) that the use of QR codes alone is unlawful and USDA must provide other disclosure options that provide wide access to all consumers.]

Genetically altered food items and ingredients have heretofore been called, and labeled as, “genetically engineered” (GE) or “genetically modified” (GM), or as containing “genetically modified organisms” (GMO). *The Washington Post* reports that, “The new rule requires food manufacturers, importers and retailers to disclose information whether foods are bioengineered or use bioengineered ingredients, doing away with well-established terms like ‘genetically engineered’ and ‘GMO’ on labels. However, other kinds of official certifications like USDA Organic and NON-GMO Project Verified will be allowed.”

The new labeling arises out of several developments in recent years. The first was the so-called *Safe and Accurate Food Labeling Act of 2015*, dubbed the DARK Act—the *Denying Americans the Right to Know Act*—by its many opponents. This legislation reacted to efforts in Vermont, Connecticut, and Maine to enact state laws that would mandate labeling of foods and ingredients that were genetically engineered,

or contained such ingredients. The food industry was not happy with such developments, and spent huge sums to thwart state efforts. Some food companies even stopped selling to Vermont grocers in order to avoid the extra costs of labeling and segregating such products. The passage of the DARK Act preempted Vermont’s successful GE labeling law, which required such items to be labeled as “produced with genetic engineering.”

Other contributing [developments](#) were: (1) the 2016 Congressional passage of the *National Bioengineered Food Disclosure Act*, which directed USDA to establish a “national mandatory standard for disclosing foods that

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**Today, as much as 75 percent of the food Americans buy at their local grocery store, from cereals to soups, include genetically modified ingredients. However, most consumers are not aware that the foods they are eating include these ingredients.**

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are or may be bioengineered,” and (2) the Trump USDA’s subsequent 2018 announcement of the [National Bioengineered Food Disclosure Standard](#) (NBFDS), which resulted in the 2019 announcement of the new labeling rule that became mandatory on January 1, 2022. That standard defined “bioengineered foods as those that contain detectable genetic material that has been modified through certain lab techniques and cannot be created through conventional breeding or found in nature.”

The *Harvard Political Review* sums up the status of GE/GMO foods in the U.S. marketplace, and the history of the battles over labeling of such food. “Genetically modified crops, which [primarily](#) include corn, soybeans, canola, and sugar beets, have been grown in the United States for 20 [years](#), and they have FDA [U.S. Food and Drug Administration] [approval](#). Today, as much as [75 percent](#) of the food Americans buy at their local grocery store, from cereals to soups, include genetically modified ingredients. However, most [consumers](#) are not aware that the foods they are eating include these ingredients.”

GE/GMO proponents argue that such foodstuffs are safe for human

consumption. Opponents have a variety of objections (health and safety, [pesticide contamination](#), ecosystem impacts, etc.) that are largely shared by [Beyond Pesticides](#), but the central issue has been consumers' right to know what they are purchasing and ingesting. Out of concern for all of those issues arose the "Just Label It" campaign, on which Beyond Pesticides partnered, and about which it [wrote](#), nearly a decade ago, "Beyond Pesticides' goal is to push for labeling as a means of identifying products containing GE ingredients and allow for consumer choice that will drive the market toward sustainable practices."

This shift to the term "bioengineered" for labeling has been roundly criticized by advocates. Director of the project on biotechnology for the Center for Science in the Public Interest, [Gregory Jaffe](#), has commented, "The worst part of this law is the use of the term 'bioengineered' because that's not a term most consumers are familiar with," adding that the move to the new jargon was made primarily because "GMO" had come to be perceived as pejorative.

In the summer of 2020, the Center for Food Safety (CFS) filed [suit](#) against the Trump administration's National Bioengineered Food Disclosure [Standard](#) and proposed labeling rule. CFS "seeks to have the court declare the regulations unlawful and nullify them, and then return the issue to USDA with orders to fix the unlawful portions of the rules." The organization claimed that the new regulation includes provisions that "will leave the majority of GMO-derived foods unlabeled; discriminate against tens of millions of Americans; prohibit the use of the widely known terms "GMO" and "GE"; and prohibit retailers from providing more information to consumers." [Court ruled in September that a standalone QR code is unlawful.]

Among the [objections](#) CFS cites in its case are:

- unprecedented allowance of electronic or digital disclosure on packaging, also known as "QR code" or "smartphone" labeling without requiring additional on-package labeling
- the discriminatory nature of such digital "portals" to information, given that "at least 20 percent of the American adult population—primarily poor, elderly, rural, and minority populations—have lower percentages of smartphone ownership, or live in areas in which grocery stores do not have internet bandwidth"; ([The Washington Post](#) reports that "the new rules [discriminate](#) against the more than 100 million Americans who do not have access to smartphones or cell service, because companies will be allowed to rely on smartphone-based scannable QR codes to share information with consumers.")

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### **USDA's Disclosure Standard strips away the hard-fought labeling requirements of states—requirements Congress sought to encompass—replacing them with inaccessible digital disclosures, unfamiliar terminology, and an extra-statutory definition of bioengineered food.**

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- the rule's restrictions on label language: when on-package text is used, the rules limit the adjective used to only "'bioengineered,' despite the fact that for 25 years, every aspect of the issue—[in] science, policy, and [the] marketplace—has used genetically engineered (GE) or genetically modified (GMO)"
- the "loopholes" that would exempt many GE foods from the new labeling requirements

In its litigation, CFS argues that the new rule violates the [National Bioengineered Food Disclosure Act](#), the [Administrative Procedure Act](#) (APA), and the U.S. Constitution. The first of those aimed to protect the public's right to know what is in their food and how it is produced;

USDA was tasked by that law with creating and implementing rules to achieve those aims. Plaintiff's case [documents](#) state: "USDA's final rule ignores virtually all the Disclosure Act's statutory provisions designed to ensure disclosure of all GE foods for all Americans. Instead, USDA's [Disclosure Standard](#) strips away the hard-fought labeling requirements of states—requirements Congress sought to encompass—replacing them with inaccessible digital disclosures, unfamiliar terminology, and an extra-statutory definition of 'bioengineered food.' USDA's flawed rationales for doing so violate the plain language of the Disclosure Act and are arbitrary and capricious under the APA."

The [suit](#) also asserts that "the Disclosure Standard violates regulated entities' First Amendment rights to provide disclosure to consumers, violates states' Tenth Amendment rights by overbroadly prohibiting state laws related to GE seed labeling, and violates the Fifth Amendment by using vague and contradictory language, allowing for arbitrary enforcement." CFS adds, in its case documents: "Left standing, the Disclosure Standard will result not only in de facto concealment of GE disclosures, but also a dangerous precedent for truthful and non-misleading commercial speech and for Congress's power to commandeer state governments. Accordingly, this Court should set aside the arbitrary and unconstitutional Disclosure Standard and sever and declare invalid constitutionally infirm provisions of the Disclosure Act." CFS filed a motion for summary judgment in the case in early December, 2021. (Such a motion asks a court for a judgment on the merits of a case prior to the actual trial; this is typically done when the dispute is about a question of law, rather than the facts of a case.)

The net impact of the new labeling schema, according to advocates, is that it puts a far greater burden on consumers to figure out what the labels mean, to "do their homework" so they are adequately informed (especially because there is, to date, no broad public campaign to apprise them of the change), and—if industry takes the least transparent path

of using QR codes and text messaging rather than labels—to have to resort to in-the-moment “research” in the grocery store via smart phones they may or may not have and in settings that may or may not have cell or Wi-Fi service.

An issue for many advocates is the vast number of food items that would not be covered by the new labeling requirements. [The NBFDS exempts](#) “(1) foods served in a restaurant, (2) very small food manufacturers with annual receipts of less than \$2.5 million, (3) food certified under the USDA National Organic Program, and (4) food in which no ingredient intentionally contains a bioengineered substance, with an allowance for inadvertent or technically unavoidable presence of up to 5% for each ingredient.”

CFS elaborates on this “[loophole](#)” [issue](#) and notes an additional concern: “The vast majority of GE foods (by some estimates over 70%) are not whole foods, but highly processed foods with GE ingredients, like sodas and oils. Yet in the final rule, USDA excluded these ‘highly refined’ products unless the GE material is ‘detectable.’ Lastly, the statute invalidates state GE seed labeling laws and prohibits future GE seed labeling laws in violation of states’ rights to regulate in the absence of federal regulation.” Even [Forbes](#) magazine has weighed in, writing that, “One failing of the bill is that even the Food and Drug Administration (FDA) [says](#) that the definition of ‘bioengineering’ in the bill is too narrow and would not apply to many foods that come from genetically engineered sources.”

CFS Executive Director [Andrew Kimbrell](#) wrote, in a late December 2021 update on the organization’s litigation, “These regulations are not about informing the public but rather designed to allow corporations to hide their use of genetically engineered ingredients from their customers. It is a regulatory scam which we are seeking to rescind in federal court. In addition, we are urging our million CFS members and others to become citizen

investigators and find and expose the companies that are using QR codes instead of on-package text or symbol labeling, thereby trying to keep us in the dark about what they have put in our food.”

Beyond Pesticides Executive Director Jay Feldman had this to say: “This label is recognition by USDA and ‘Big Food’ that full and honest disclosure of GMO/GE ingredients will hurt the market. In the end, lying to consumers will not work, but it may hurt the value and credibility of other USDA labels, such as the USDA Certified Organic label that we have worked so hard to create in order to convey meaningfully important information about organic criteria, standards, and enforcement.”

Few stakeholders appear thrilled by this rule at this moment in time. Some food [companies](#), according to their trade groups, are asserting that instituting this new rule mid-pandemic, and during a supply-chain crisis, puts a significant burden on a sector already struggling. The Consumer Brands Association has urged USDA to [pause](#) implementation temporarily; a spokesperson commented: “We believe the government must take a ‘do no harm’ position right now that allows companies to focus on delivering essential products to consumers.”

Long a proponent of transparency about the food supply, a few years ago Beyond Pesticides published [advocacy](#) points on the flaws of the

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**The vast majority of GE foods (by some estimates over 70%) are not whole foods, but highly processed foods with GE ingredients, like sodas and oils. Yet in the final rule, USDA excluded these “highly refined” products unless the GE material is “detectable.”**

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then-anticipated labeling schema, asking USDA to “ensure that labels are honest, transparent, and informative by adopting the following policies”:

- reject package labeling with unreliable “QR codes” and other discriminatory communication methods; such options discriminate against more than 100 million Americans—especially many in rural communities, as well as low-income, people of color, and elderly populations that tend disproportionately to lack access to these technologies
- require labeling to use only common, well-established labeling terms, such as GE or GMO; do not allow these to be replaced with the term “bioengineered”
- require all foods produced with genetic engineering—including highly processed oils and sugars—to be labeled
- include new and future methods of genetic engineering, such as CRISPR
- ensure harmonization with the European Union by requiring disclosure if unintended GE contamination exceeds the current level of detection

**What to do:** In light of the new labeling, consumers would do well to “do their homework” ahead of time, or in the grocery store, in order to parse the meaning of the new labeling. (*The Washington Post’s* [coverage](#) of the new rule includes a useful “What to Know” section to help consumers understand implications of the rule for foods they buy and consume.) Perhaps an easier approach, for those who want to avoid GE/GMO food items, is to [buy organic](#) much as possible because USDA National Organic [Standards](#) disallow the use of GEs/GMOs.

**SOURCE:** Reiley, Laura, “The USDA’s new labeling for genetically modified foods goes into effect Jan. 1. Here’s what you need to know.” *The Washington Post*, January 1, 2022; *Natural Grocers, et al. v. Thomas Vilsack, et al. USDA. U.S. District Court, Northern District of California. Case No. 20-CV-05151-JD. September 13, 2022.*



**SUPREME COURT UPHOLDS LAWSUITS AGAINST MONSANTO/BAYER | JUNE 22, 2022**

## Supreme Court Permits Large Jury Verdicts on Roundup, Appeals Court Finds EPA Registration Unlawful

**B**ad news is piling up for Bayer (Monsanto) and its carcinogenic flagship weed killer, glyphosate (Roundup). Last week, the Court of Appeals for the Ninth Circuit handed down a [ruling](#) that held the U.S. Environmental Protection Agency's (EPA) 2020 approval of its notorious weed killer glyphosate [unlawful](#). Then, yesterday, the U.S. Supreme Court declined to consider (deny certiorari) Bayer's "Hail Mary" [petition](#) attempt to save the company from being held accountable to those diagnosed with cancer after using Roundup (glyphosate) herbicides. In both cases, the courts are acting as a check on a company, while EPA regulators charged with stopping this behavior continue to rubber stamp the agricultural industry's dangerous decisions.

This is not the first time that the Supreme Court has upheld the rights of victims of the pesticide industry. In 2004, *Bates v. Dow Agrosciences* (U.S. Supreme Court, No. 03-388), the court found:

"The long history of tort litigation against manufacturers of poisonous substances adds force to the basic presumption against preemption. If Congress had intended to deprive injured parties of a long available form of compensation, it surely would have expressed that intent more clearly. See *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 251 (1984). Moreover, this history emphasizes the importance of providing an incentive to manufacturers to use the utmost care in the business of distributing inherently dangerous items."

"In rejecting Bayer's effort to reverse jury verdicts for harming people with its cancer causing weed killer glyphosate, the Supreme Court is preventing the company from running roughshod over the environment and public health, poisoning people and flaunting health and safety laws, while EPA regulators shrug off the rule of law," said Jay Feldman, executive director of Beyond Pesticides. Regarding the Ninth Circuit decision,

Mr. Feldman said: "EPA's failure to act on the science, as detailed in the litigation, has real-world adverse health consequences for farmworkers, the public, and ecosystems. Because of the Appeals Court lawsuit, the agency's obstruction of the regulatory process will not be allowed to stand, and EPA should start shifting food production to available alternative non- and less-toxic practices and materials that meet its statutory duty." Represented by Center for Food Safety, the petitioners in the lawsuit included the Rural Coalition, Farmworker Association of Florida, Organización en California de Lideres Campesinas, and Beyond Pesticides. A consolidated case is led by Natural Resources Defense Council and includes Pesticide Action Network North America.

In the Ninth Circuit decision, the court voided EPA's "[interim registration review](#)" decision approving continued use of glyphosate, issued in early 2020. "EPA did not adequately consider

whether glyphosate causes cancer and shirked its duties under the *Endangered Species Act* (ESA)," the court wrote in its [opinion](#).

The court held that EPA unlawfully concluded that glyphosate does not pose a cancer risk. Despite overwhelming [evidence](#) and Bayer's high profile lawsuits, EPA came to "no conclusion" on glyphosate's connection to non-Hodgkin lymphoma (NHL). Notably, the agency did not assess how much glyphosate gets into a user's bloodstream after skin contact with the herbicide, a major route of exposure for the chemical. Skin irritation was noted as one of the initial concerns for [Dewayne Johnson](#), the school groundskeeper who won the first legal case against Bayer/Monsanto after contracting NHL.

The court criticized EPA for its "disregard of tumor results;" its use of "bare assertions" that "fail[] to account coherently for the evidence;" making conclusions that do not "withstand[] scrutiny under the agency's own framework," and "fail[ing] to abide by" its cancer guidelines. In sum, the court noted EPA's "inconsistent reasoning" made its decision on cancer "arbitrary," and struck it down.

"We welcome and applaud the court on this significant decision," said Jeannie Economos, Pesticide Safety and Environmental Health Project Coordinator at the Farmworker Association of Florida, a plaintiff in the case. "While it comes too late for many farmworkers and landscapers who suffer after glyphosate exposure, we are grateful for the court's ruling, and hope that now EPA will act quickly to protect future workers from illness and disease resulting from this toxic pesticide."

The Ninth Circuit also held that EPA violated the *Endangered Species Act* in reapproving glyphosate. After this lawsuit was launched, EPA filed a [motion confessing](#) that the agency made [errors in its review of endangered species](#), including glyphosate's harm to imperiled [monarch](#) butterfly habitat. While asking the court for a re-do to study the dangers monarchs are already being subject to, EPA nonetheless asserted that glyphosate should stay on the market.

As a result of the decision, EPA is required to redo and/or finish all remaining glyphosate determinations within four months, by October 2022. Specifically, EPA must redo its ecological toxicity assessment, cost analysis on the impacts of pesticide harms to farmers, and its endangered species analysis and mitigation.

Advocates and court watchers reacting to the Ninth Circuit case had been concurrently waiting for the Supreme Court to issue a determination on whether it would take up Bayer's ongoing civil court cases holding it liable to those diagnosed with cancer after using Roundup (glyphosate). That case centers on the legal theory of preemption, with Bayer arguing that the "failure to warn" lawsuits it was subject to were preempted by federal law. In other words, Bayer argued that because EPA's registration process allowed the chemical to market, it was under no obligation to convey health dangers about its weed killer.

In response to the Supreme Court petition, the Biden administration's Solicitor General sided with Roundup victims and in an amicus brief urged the Supreme Court not to take up the case. In reaction, Bayer tried to get tough, and employed proxy organizations to put [pressure](#) on the Biden Administration and Department of Justice to rescind the letter, expressing "grave concern" about the Solicitor General's opinion.

As the Ninth Circuit case shows, EPA's review of glyphosate was lackluster, incomplete and failed to adequately capture the dangers posed by the herbicide. Of Bayer's "[Five Point Plan](#)" for addressing the catastrophe around glyphosate, a significant amount hinged on a favorable decision from the Supreme Court. Without review by the high court, Bayer will need to reengage with the over 31,000 plaintiffs it decided to ignore right after it launched its petition. According to news reports, the corporation "respectfully disagrees" with the Supreme Court decision. It also indicates it will continue to gum up federal courts with its frivolous requests.

"While [the Supreme Court] decision brings an end to the Hardeman case,

there are likely to be future cases, including Roundup cases, that present the U.S. Supreme Court with preemption questions like Hardeman and could also create a circuit split," Bayer said in a statement posted by [Progressive Farmer DTN](#) about a \$80 million jury verdict against the company in *Edwin Hardeman v. Monsanto Co.* "The company is strongly encouraged by the widespread support from public officials, agricultural organizations and other stakeholders following the U.S. government's legal reversal in Hardeman."

The "widespread support" Bayer enjoys is generally associated with its business alliances and efforts to wield corporate influence over elected officials and in regulatory affairs. While the courts continue to act as a last resort for the rule of law and science-based decision making, advocates are calling for the overhauling of government agencies that ensure that they are meeting their charge to protect people and the environment, not the profits of giant corporations like Bayer/Monsanto.

Without needed reforms, EPA redoing their work, as required by the Ninth Circuit ruling, is unlikely to result in an outcome that is clearly protective. Advocates insist that with clear evidence on the dangers posed by glyphosate-based herbicides like Roundup, there is no more time for games that placate industry at the expense of public health and environmental sustainability.

**What to do:** When challenged by the influence of concentrated money and power, Beyond Pesticides aims to bring scientific transparency, advocacy, sound policy, and meaningful legal actions to the table. But our success depends on your help in promoting these critical messages. Get active today by [taking action](#) to protect pollinators like the monarch butterfly, putting pressure on Congress to reform America's pesticide law.

**SOURCE:** NRDC, et al. v. U.S. Environmental Protection Agency. United States Court of Appeals for the Ninth Circuit. No. 20-70787, June 17, 2022; [Center for Food Safety press release](#), June 17, 2022.



**BILL TO BAN PESTICIDES ON NATIONAL WILDLIFE REFUGES | AUGUST 2, 2022**

## **U.S. Senators Urge Fish and Wildlife Service to Phase Out Pesticide Use in America's Wildlife Refuges**

**M**embers of the United States Senate are calling on the U.S. Fish and Wildlife Service (FWS) to phase out the use of toxic pesticides in National Wildlife Refuges in order to protect declining wildlife species and the country's unique natural resources. Led by Senator Cory Booker (D-NJ), the Senators sent a letter to FWS Director Martha Williams urging FWS to "expeditiously begin a rulemaking process to phase out the use of agricultural pesticides on National Wildlife Refuges." The move comes at a time when native wildlife and the ecosystems humans rely upon are under greater threats than ever before from climate change, habitat destruction, and the indiscriminate use of toxic pesticides.

"The Refuge System was established to provide sanctuary for listed threatened and endangered species, migratory birds, and other wildlife," wrote the Senators in a letter to U.S. Fish and Wildlife Director Martha Williams.

"The Refuges' migratory sanctuary and breeding grounds are especially critical for North American birds, as they have faced precipitous population declines; there are 3 billion fewer breeding birds in North America than there were in 1970. Unfortunately, these birds and other threatened species are being put at risk by pesticide use in the Refuges that were designed to protect them."

In 2012, Beyond Pesticides and other environmental groups, led by Public Employees for Environmental Responsibility (PEER) and Center for Food Safety (CFS), won a court battle to halt genetically engineered (GE) crops and related herbicide-tolerant herbicides on wildlife refuges in the southeast. This move was followed a year later by the FWS Pacific Region restricting the use of **neonicotinoids**, which are often applied to the seeds of GE crops, in their refuge areas.

Under the Obama Administration in 2014, the former Chief of the National Wildlife Refuge System officially **phased**

**out the use of genetically engineered crops and neonicotinoids insecticides on all U.S. wildlife refuges.** The decision, as outlined in a **memorandum** by former Chief James Kurth, was based on the fact that neonicotinoid use, and the harms associated with it, "is not consistent with Service policy...[]based on a precautionary approach to our wildlife management practices and not on agricultural practices."

Despite these important restrictions, other toxic agricultural pesticides registered by the U.S. Environmental Protection Agency continued to be sprayed in these sensitive and protected sites. A **report** by the Center for Biological Diversity (CBD) found that in 2016 alone over 270,000 acres were sprayed with more than 490,000 pounds of hazardous pesticides. These concerning statistics did nothing to phase the new, industry-friendly Trump administration. In 2018, the Fish and Wildlife Service released a **memorandum** reversing the 2014

restrictions on neonicotinoid pesticides, allowing use on a “case-by-case basis.”

This industry-friendly reversal unnecessarily exposes a broad range of threatened and endangered wildlife to chemicals that do not belong anywhere near protected natural areas. As the Senators write, these chemicals “leach into the surrounding groundwater and soil and are picked up by native flowering plants and pollinators.” Not only does this threaten nontarget organisms, the Senators note, but also the 53 million annual human visitors to U.S. Wildlife Refuges.

In 2019, CBD and CFS [sued](#) FWS and the Interior Department. “It’s frankly astounding that anyone would promote spraying dangerous pesticides on wildlife refuges but if anyone would, it’s the pesticide pushers in the Trump administration,” said CBD senior attorney, Hannah Connor, at the time. “This is nothing but a shameless giveaway to the pesticide industry with no regard for our

nation’s most vulnerable wildlife.”

A year later, a federal judge rejected the lawsuit, allowing rampant contamination of some of the nation’s otherwise most pristine sites.

An [update](#) to CBD’s report was released, finding pesticide use in 2018 expanded 34% since 2016 to more than 363,000 acres of wild lands. Use of the most dangerous pesticides increased by more than 70% within this time frame.

To remedy the situation, the Senators are calling for the refuge system to go further than before and work to eliminate all toxic pesticide use in favor of the least-toxic, yet still effective minimum risk products on the market compatible with [organic land care](#). The letter to FWS also asks for provisions that permit pesticide use on non-native species only for a limited basis, if compatible with a Refuge’s Comprehensive Conservation Plan. “As for a short-term fix,” the Senators say, “We ask that the 2014

memorandum issued by the United States Fish and Wildlife Service Chief James Kurth be reinstated, phasing out neonicotinoids.” In addition to Senator Booker, Senators Ed Markey (D-MA), Bernie Sanders (I-VT), Kirsten Gillibrand (D-NY), Elizabeth Warren (D-MA), Alex Padilla (D-CA), Dianne Feinstein (D-CA), and Martin Heinrich (D-NM) signed on to the letter.

**What to do:** Help support the efforts of these Senate champions by joining [calls](#) to urge FWS to reinstate Refuge System protections. Further support Senator Booker’s steadfast efforts to protect American children and the wider environment from toxic pesticides by [urging](#) your own Senators to join in cosponsoring the *Protect America’s Children from Toxic Pesticides Act*.

**SOURCE:** Booker, Cory, et al. Letter to Director Martha Williams, US Fish & Wildlife Service. Uly 22, 2022; [Senator Cory Booker \(D-NJ\) press release](#)

## LONG PHASEOUT OF WOOD PRESERVATIVE AFTER MARKET COLLAPSE | FEBRUARY 8, 2022

# With Market Collapse, EPA Cancels Highly Hazardous Wood Preservative Years after Worldwide Ban

**A**fter nearly a century of use, the U.S. Environmental Protection Agency is officially [cancelling](#) the highly toxic wood preservative pentachlorophenol (penta). As one of the most dangerous pesticides ever produced, penta poses unacceptable risks to workers and surrounding communities, as manufacturing plants often became superfund sites. See Beyond Pesticides’ report, [Poison Poles](#). According to the agency, “During the registration review process, EPA found that given the emergence of viable alternatives, the risks pentachlorophenol poses to workers’ health outweigh the benefits of its use.” Health and environmental advocates are pleased with the agency’s long overdue action on penta, but remain incredulous that EPA has provided a generous phaseout for the utility and

wood preservative industry, allowing use to continue for up to five years. Beyond Pesticides has been working to ban pentachlorophenol, creosote, and copper chromated arsenate since its founding in 1981. (See history of Beyond Pesticides’ [work](#) and [litigation](#).)

EPA’s statement on alternatives and workers’ health is a telling example for the public regarding the way in which the agency consistently places economic decisions above American’s safety. EPA has long known about the dangers penta poses to health, particularly the health of workers in penta production or treatment plants. In 2008, the agency determined that these occupational handlers had a 1 in 1,000 risk of developing cancer. Rather than cancel the chemical at that time to protect worker health, the agency opted to attempt

additional mitigation measures, requiring further personal protective equipment, engineering controls, and changes to treatment procedures. With no real-world evidence that this would make a difference, the agency expected these changes to drop the cancer risk to workers. However, in its most recent draft risk assessment, EPA found that this drastically high cancer risk remained the same. (EPA considers cancer risk between 1 in 10,000 and 1 in 1,000,000 cases to be “acceptable.”)

A close read of EPA’s statement makes it clear: workers were expendable until the wood preservative industry had economically viable alternative chemistries it could use. In fact, EPA’s cancellation decision still leaves workers at risk. According to EPA’s decision document, the agency “considered requiring



additional interim risk mitigation measures during the period prior to the cancellation,” but decided against doing so because they “may take several years to adopt and require significant financial resources in order to implement.” Instead, EPA opted to provide the wood preservative industry five more years to transition to other materials.

The agency will require registrants to voluntarily cancel their penta products by February 29, 2024. EPA will then provide another three years for registrants to utilize their leftover stocks of penta, placing a hard end date on February 29, 2027. In response to Beyond Pesticides’ comments, the agency does indicate it will require mandatory cancellation should current registrants not follow through voluntarily.

EPA’s rationale for their five-year phaseout is not to protect health or the environment. Simply, it is what the industry told the agency it wanted. “The Agency does not, however, support a phase-out period of less than 5 years due to the potential disruption in the utility pole market,” the final decision reads. When Beyond Pesticides asked pointedly in comments to speed

up the cancellation period, the agency indicated that five years was an acceptable compromise because some commenters requested a phase out period longer than five years.

It is worth noting that the agency has the authority to immediately cancel hazardous chemicals—particularly those like penta, which has an immense body of data on its harm that could withstand industry’s legal challenges. In this context, EPA’s approach to protection has been more focused on the wood preservative industry’s than on the environment, worker, or resident health. At every turn, once risks were identified, EPA took steps to keep penta on the market, and protect industry interests over human health.

In the late 1970s, a range of significant risks were identified, and penta underwent an EPA Special Review. The agency identified chronic harms from penta exposure, including contaminants such as hexachlorobenzene, furans, and polychlorinated dibenzo-p-dioxins, one of the most toxic substances known to humankind. But industry pressure resulted in EPA focusing on “risk reduction measures” rather than elimination. Products were restricted from residential use, but

significant use remained for railways and utility lines. And rather than require improved production processes that eliminated dioxin contamination, the agency negotiated with industry to allow it to phase down contamination levels over several years. (Despite decades of time to improve production processes, current EPA documents show hexachlorobenzene and dioxin remain at hazardous levels of contamination in penta treated wood [19.3ppm and .55ppm average in 2013]).

Beyond Pesticides then sued EPA in the early 2000s urging cancellation of the chemical. The suit was ultimately struck down over administrative issues. In one notable instance, penta review documents from EPA calculated a 2.2 in 10,000 cancer risk to children playing around treated poles. This rate was 200 times above EPA’s acceptable cancer threshold for children. But rather than protect children, EPA simply removed the exposure scenario for children and echoed a claim by the Penta Council, an industry group, that “play activities with or around pole structures would not normally occur.”

When the *Stockholm Convention on Persistent Organic Pollutants* (POPs)



considered an international ban of penta, EPA and the U.S. government engaged in the process, and [opposed listing](#) penta, despite not being a signatory to the *Stockholm Convention*. Ultimately, however, the U.S. failed to convince other nations that the risks were worth the benefits of penta use, given the availability of alternative pole materials and the ability to bury lines.

To finally ban penta in the U.S., it took grassroots advocates, intrepid reporters, and courageous lawmakers to eliminate the wood preservative's last economic opportunity. After the *Stockholm Convention* listed penta, it set a clock ticking on production plants throughout the world. The last plant in Mexico was set to be shuttered, leaving the U.S. as the only possible location left where this internationally banned material could be produced. As a result, Gulbrandsen Chemicals, a multinational company with ties to India, attempted to supply the U.S. market by proposing to build a penta plant in the majority low-income African American community of Orangeburg, South Carolina. Residents and local lawmakers fought back. A [series](#) of high-profile investigative reports, community advocacy, and political action upset the plans announced by Gulbrandsen Chemicals, and it withdrew its plan.

EPA cited this fact under "other considerations" in announcing the cancellation. In comments, *Beyond Pesticides* urged the agency to base its decisions not on the "uncertain future of pentachlorophenol production" and instead on the statutory requirements for *Federal Insecticide, Fungicide, and Rodenticide Act* (FIFRA) registration—that the chemical poses an unreasonable risk. For EPA's part, it denies that it based cancellation on the uncertain future of penta production—that point was simply noted to provide context, according to the agency. EPA reiterated that it based its decision on its risk/benefit calculation, as well as international support to ban penta. Opining for wood preservative manufacturers, "EPA expects that industry's decision to cease production of pentachlorophenol is a

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**To finally ban penta in the U.S., it took grassroots advocates, intrepid reporters, and courageous lawmakers to eliminate the wood preservative's last economic opportunity. After the *Stockholm Convention* listed penta, it set a clock ticking on production plants throughout the world.**

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reflection, not a cause, of the same factors," the agency's final decision reads.

Despite its failure to take immediate action, the agency did say, "[E]PA is requiring cancellation of pentachlorophenol based on the Agency's determination that the benefits of pentachlorophenol—in particular in light of the emergence of newer, safer alternatives. . .". To truly show it is evaluating hazardous wood preservatives based on the letter of the law, rather than the reflections of industry, EPA should take immediate action on other wood preservatives that have viable alternatives. Chief among the remaining alternatives is creosote, which was recently featured as part of EPA Administrator Regan's Journey to Justice tour, where he heard from residents of Houston, Texas's Greater Fifth Ward, which is still dealing with legacy contamination from a creosote railroad tie treatment plant.

Like penta, creosote production has resulted in immense suffering for workers and residents in fenceline communities near penta production and wood treatment sites. Like penta, there are a range of viable alternatives to its use, including alternative chemistries, as well as nontoxic products like steel, concrete, and fiberglass. And like penta, there is a small group of individuals profiting generously while people and the environment continue to be harmed. While EPA should be applauded for finally cancelling penta, its phase out period is far too generous. If the agency

wants advocates to see it is serious about protecting health and the environment, this action can only be the first step as part of broader, long-overdue efforts to clean up the wood preservative market.

**What to do:** Beyond Pesticides has published extensive documentation on the history of penta production and regulation. For more information see the following articles:

- [Poison Poles](#) (1997)
- [Pole Pollution](#) (1999)
- [Beyond Pesticides comments](#) to EPA on Wood Preservatives (2008)
- [Beyond Poison Poles](#): Elected officials say no to toxic utility poles in their communities (2014)
- United Nations Committee Recommends [Global Elimination of Toxic Wood Preservative](#) (2014)
- [EPA Seeks to Block a Worldwide Ban](#) of a Highly Toxic Wood Preservative (2014)
- [International Treaty Bans Pentachlorophenol](#), U.S. Continues Use on Utility Poles, and Railroad Ties (2015)
- Settlement Reached in Lawsuit [Over Dioxin Contamination](#) from Poison Poles in Central California (2018)
- As the World Bans Highly Toxic Wood Preservative, Pentachlorophenol, a [Low-Income U.S. Community May Be Home to the Last Production Plant](#) (2020)
- [Environmental Racism Strikes](#) South Carolina Community with Siting of a Pentachlorophenol Wood Preservative Plant (2021)
- [EPA Proposes Cancellation of Highly Toxic Wood Preservative Pentachlorophenol](#)

See Beyond Pesticides [Wood Preservatives web page](#). Take action in your community to ban utility poles and railroad ties treated with hazardous pesticides.

**SOURCE:** U.S. Environmental Protection. Pentachlorophenol: final Registration Review Decision, Case Number 2505, EPA-HQ-OPP-2014-0653. December 22, 2021, posted at [regulations.gov](https://www.regulations.gov), February 4, 2022



**DOG DEATH COVER-UP | APRIL 1, 2022**

## Cover-up of Dog Deaths at EPA, According to Internal Emails on Seresto Flea and Tick Collars

According to reporting by *E&E's Greenwire*, internal emails at the U.S. Environmental Protection Agency (EPA) show that career scientists at the agency expressed worry about pesticide-laced pet collars, such as the notorious **Seresto** flea and tick collars, but that EPA managers “instructed them to avoid documenting those worries in publicly accessible records.” The emails were released pursuant to a 2021 **FOIA** (*Freedom of Information Act*) lawsuit, brought by the Center for Biological Diversity (CBD), that sought records of internal communications. The documents evidence staff concern about the collars that has *not* been a part of EPA’s public communications on the subject. EPA staff, in the emails, expressed a range of degrees of outrage at managers’ behavior and at the very registration of the product, given the significant harms.

Seresto collars are plastic pet collars embedded with pesticides designed to kill fleas, ticks, and lice; they contain

the active ingredients **flumethrin** and **imidacloprid**. Flumethrin, a chemical in the **pyrethroid** class of synthetic neurotoxic insecticides, has been linked repeatedly to neurological issues, such as seizures and learning disabilities in children, to gastrointestinal distress, and to damage to nontarget invertebrates, according to EPA’s **own analysis**.

Imidacloprid is a commonly used pesticide linked to serious health and environmental decline. A neurotoxicant, endocrine disruptor, and immunosuppressant, the compound can have harmful reproductive impacts and is **linked to cancer**. It is toxic to birds, **bees**, and aquatic organisms, and persists in aquatic environments. Banned for outdoor use across the European Union, it is nevertheless allowed by EPA in pet collars and other treatments. Consistent with EPA’s track record, the potential **synergistic impacts** of exposures to flumethrin and imidacloprid via the Seresto collars have not been evaluated.

In 2020, Beyond Pesticides added to the litany of harms with its coverage of additional problems with pet flea treatments—the contamination of waterways in both **England** and the **U.S.**

In Spring 2021, **Beyond Pesticides** wrote about the collar’s link to nearly 1,700 pet deaths, as well as injuries to tens of thousands of animals and hundreds of people, and noted: “Numerous flea and tick prevention products (e.g., collars, topical treatments, sprays, and dusts) include pesticides such as **tetra-chlorvinphos (TCVP)**, **propoxur**, synthetic **pyrethroids**, and **fipronil**. A common trait among these pesticides is their toxicity, not just to dogs and nontarget organisms, but to humans, as well.” Advocates have warned about the **toxicity** of the pesticides embedded in such collars (and other pet treatments), which are a health threat not only to pets, but to humans and, especially, to children.

**CBD** notes that EPA has received more than 75,000 complaints about

the collars, associating their use with problems ranging from skin irritation to death. *Gizmodo* puts the current count of complaints to EPA about Seresto, since 2012, at more than 86,000—with 2,340 of those relating to pet deaths. CBD's environmental health director, [Lori Ann Burd](#), commented that—given EPA's estimate of the ratio of pesticide incidents “in the real world” to complaints filed with EPA as roughly 5:1—a sensible extrapolation is that many more pets wearing Seresto collars have been hurt or have died than are represented by reports filed with the agency.

EPA has, according to [Greenwire](#), dragged its feet for years on action on various pet collars (and related products). The Natural Resources Defense Council ([NRDC](#)) has brought multiple suits related to these collars, starting in 2007, because of their harms to children and pets. In addition to the controversy surrounding the Seresto collar, [EENews](#) reports, TCVP—used in collars manufactured and sold by the Hartz Mountain Corporation—has been a concern. In April 2020, a federal appeals court [judge](#) ordered EPA to act on an NRDC suit to ban the use of TCVP after EPA had denied previous NRDC petitions that sought the same.

An [NRDC](#) statement simultaneously marked the legal victory and called out the agency for its failure to act on the science: “In 2016, EPA scientists finally acknowledged the danger this toxic chemical poses to children, but the agency then failed to remove the dangerous pet products from the market. It's especially gratifying, on Earth Day, to have the court hold EPA accountable to its ‘core mission’ to ‘protect human health and the environment.’” Yet this toxic compound is still allowed for use by EPA. As NRDC asserts, despite six other dangerous [organophosphates](#) once used in pet products having been removed from the market, “use of TCVP in pet flea collars is the last remaining residential use of this toxic family of chemicals.”

CBD has filed a legal petition to ban the Seresto collar. CBD argues that the

Seresto product should be cancelled because of its unreasonable risks to pets, human health, and the environment. [CBD](#) notes that, “No other pesticide product has been the [subject](#) of this many incident reports, according to a former pesticide researcher and policy analyst for the EPA.”

CBD attorney [Hannah Connor](#) remarked in July 2021 that if EPA “wants to show that it has truly re-committed to its mission of using the best available science to protect human health and the environment, then it must take swift action to cancel its approval of this troubling product.” In July 2021, [EPA](#) announced the opening of a 60-day comment period on that petition, which period ended in [September 2021](#). EPA has said that it will respond to the petition after reviewing its evaluation of the product, but there has been no word as yet from the agency on the status of that evaluation.

[Greenwire](#) notes that EPA has been “vague” in its response to consumer concern about the Seresto collar. The agency said in a July 2021 [statement](#) that, “EPA understands and shares the public's concerns about reported incidents with Seresto pet collars. The agency is working to gather information about these incidents and will use this information to determine whether these pet collars still meet the legally required safety standard for registration under FIFRA [*Federal Insecticide, Fungicide, and Rodenticide Act*].” The sanguine tone of that announcement apparently belies what has gone on behind the scenes at EPA.

The released internal EPA emails demonstrate that career scientists and staffers inside the agency have pushed back internally with their concern and frustration about EPA's handling of the complaints about Seresto and harms to pets, and about the very registration of the product. Among the discoveries in the documents were these:

- In response to a query (from a staffer at the California Department of Fish and Wildlife) about use of Seresto collars on kit foxes in the southwest U.S., which asked who at EPA would

be the best person to consult about it, an [EPA scientist](#) responded: “It depends if you want the real answer or just some talking points to cover our ass for doing nothing.”

- One [EPA staff](#) member wrote, “Why is Seresto even registered? At the very least Seresto should not be used on the endangered San [Joaquin] kit fox”—to which a manager at EPA replied, “It would be inappropriate for you to respond in your official capacity and express your personal opinions.” The staffer fired back, noting that manager's (and others') previous directives to staff “not to express [their] concerns about Seresto in emails.”
- Another [EPA staff](#) member wrote, after seeing media articles that investigated the Seresto collar, “I hope this time someone can blow the lid off this travesty.”

Ms. Burd of CBD called the email exchanges “disturbing,” and said they raise further concerns about EPA's scientific integrity and transparency. She [commented](#), “You'd think the EPA would spring to action in response to these troubling reports. But these emails tell the story of an agency focused more on saving face than saving animals. . . . The heartbreaking tragedy is that behind each and every incident report is a story of very real pet suffering, from violent seizures, rashes, and hair loss to gastrointestinal problems and even deaths.”

In addition, Ms. Burd has pointed to a [systemic issue](#) with EPA's [pesticide incident reporting system](#)—the lack of any mandate for follow-up action. Although there are, she says, tens of thousands of incident complaints on record, “There's no automatic trigger for any action. It's just like, okay, you told us, thank you so much, and that's it. . . . Every time there's an incident, it's going into a black box.” This represents to her a bigger worry about EPA failure to report adverse pesticide impacts generally.

These internal email revelations are further and unfortunate evidence of the

state of EPA function in carrying out its fundamental mission “to protect human health and the environment”—which for EPA’s [Office of Pesticide Programs](#), would mean protection from the broadly damaging impacts of synthetic pesticides. Beyond Pesticides has chronicled EPA’s “capture” by industry influence and the [corruption](#) that has marked both agrichemical industry behavior and, occasionally, internal EPA actions, as well as specific instances of EPA failures, such as those (like the pesticide pet collars) that put [children](#) at risk, and those that continue to allow devastation of [critical species](#) (such as pollinators), critical ecosystems, and fragile habitats.

**What to do:** The public can learn more about keeping pets healthy through alternative management of pests with Beyond Pesticides’ [Keeping Our Companions Safe](#) web page, which offers multiple strategies. One suggestion that stands out, for those who may want to continue having pets treated with flea and tick products, is to have that done at the veterinarian’s office, thus, not needing to keep and dispense them in the home, and then monitoring pets for any adverse reactions.

For more on EPA functioning and how to influence critical reforms to how the agency does—or does not—enact

its mission, see Beyond Pesticides’ advocacy piece from November 2021, “[EPA and Congress Must Act to Correct a Failed Pesticide Program](#).” Please consider taking to heart the reforms suggested, and contacting your [U.S. Senators and Representative](#), as well as [EPA](#) directly, with your endorsement of them.

**SOURCES:** Crunden, E.A. “Fiery emails show EPA turmoil over pet collars tied to deaths,” *Greenwire*. March 25, 2022; Taft, Molly. “Seresto Flea Collars Linked to Dog and Cat Deaths Have Scientists Livid with the EPA,” *Gizmodo*. March 28, 2022



**FLEA COLLAR BANNED | OCTOBER 19, 2022**

## Over a Decade and Countless Children Poisoned, EPA Bans Hazardous Flea Collar Products

**P**et flea collars containing the insecticide tetrachlorvinphos (TCVP) are set to be banned by the U.S. Environmental Protection Agency (EPA), according to the agency’s long overdue response to a [petition](#) from the Natural Resources Defense Council (NRDC). The

highly toxic pesticide has not been used on crops since 1987, yet was permitted for decades in flea collars where children could be intimately exposed to the chemical while petting and playing with the family pet. The decade-long process of bringing use of these products to an

end exposes the failures of the U.S. pesticide regulatory system, and how federal pesticide law and EPA permit a marketplace filled with hazardous products. One may ask: How many veterinarians prescribed these dangerous flea collars to pet owners, assuming

that EPA has properly assessed exposure risks to their human owners? Advocates concerned about EPA's ongoing propensity to defer to the pesticide industry are urging an overhaul of the regulatory process and a reorientation toward toxic pesticide elimination and the adoption of organic in order to address serious health and environmental threats.

NRDC originally filed its petition to [ban](#) all uses of TCVP in 2009. The petition noted that the agency completely neglected to include exposures from pet collars in its risk assessment for residential uses of the chemical, despite finding that pet collar uses represent the highest level of exposure for adults. It further explained that EPA's review of risks to toddlers were flawed, and significantly underestimated their exposure. Specifically, the agency assumed that toddlers only interacted with one treated pet per day, for no more than one hour a day. EPA also ignored the potential for a toddler to touch food or another object with pesticide-contaminated hands, and then place that food or object in their mouth. Further, testing from NRDC contradicted EPA's assertion that exposure risks from TCVP pet collars were "insignificant," finding that residue levels found on pets exceeded the dose considered safe by the agency.

Despite strong evidence of flawed science, the agency denied NRDC's petition in 2014. A petition for review was filed and EPA requested a voluntary remand of its denial, which the court granted. Rather than investigate the specific issues raised by NRDC in its original petition, the agency explained it would incorporate new risk mitigation measures into its risk assessment for TVCP, and in 2017 proceeded to [reregister](#) all uses of the chemical. In doing so, the agency noted label precautions it said would protect pet owners, including not allowing children to play with TVCP collars, keeping TCVP out of the reach of children, and washing hands after handling. Advocates at the time noted how these precautions fly in the face of reality, as they suggest a scenario where kids must be prevented from petting and coming in

close contact with a family dog or cat.

Another [legal challenge](#) was filed in 2019, aimed at forcing the agency to respond. After ten years, the agency required TCVP's major manufacturers to provide data specifically on the release of TCVP from pet collars. A review of that data resulted in minimal mitigation measures, and ultimately, the agency denied the petition.

NRDC again challenged this decision, noting that EPA's analysis of the new test on the release of TCVP from pet collars was miscalculated and significantly underestimated exposure risks. "EPA's 2020 risk analysis was profoundly flawed in its approach and conclusions. It has needlessly delayed the removal of these dangerous products and further exposed millions of children to serious, life-long health risks," said Miriam Rotkin-Ellman, NRDC senior scientist. In April of this year, a federal [court agreed](#) with the group, vacated the denied petition yet again, and required EPA to provide a response by October 11, 2022.

In its latest response granting the cancellation request, the agency explains that a reevaluation of the data submitted for the 2020 assessment finds that it did not "adequately assess the physical form (liquid or dust) of TCVP released from the pet collars." At the same time, however, the agency explains that it is still waiting on outstanding data from manufacturers that may impact its decision and is retaining all other use of TCVP on the marketplace, including liquid and dust products intended for use on dogs and cats. "Other types of TCVP exposures, including residues on food, also pose worrisome health risks, particularly in combination with exposure from pet products, said Ms. Rotkin-Ellman. "EPA must act swiftly to prohibit other dangerous uses of this toxic pesticide. The health of our families can no longer wait."

TCVP and other organophosphates in its class work by inhibiting the enzyme acetylcholinesterase. Inhibition leads to the accumulation of acetylcholine and ultimately toxicity to the central and peripheral nervous system. Insects are killed through this mechanism, yet

with humans such toxicity can cause numbness, tremors, nausea, incoordination, blurred vision, difficulty breathing or respiratory depression, and slow heartbeat. Risks are most pronounced for young children, who have developing organ systems and take in more of a pesticide relative to their body weight than adults. In calling for a [ban](#) on all organophosphate use in the U.S., scientists noted how even low-level exposures to organophosphates put children at risk of neurodevelopmental disorders, and cognitive and behavioral deficits. A [study](#) published in 2020 shows the real-world effect of these risks. It finds that organophosphate pesticide exposure results in an estimated 26 million lost IQ points and 110,000 cases of intellectual disability, totaling roughly \$735 billion in economic costs to society based on data beginning in 2008.

EPA's characteristic response to non-profit groups critiquing its science stands in stark contrast to how it responds to industry groups doing the same. When it comes to protecting health and the environment, the agency drags its feet, strongly challenges criticism, and requires public interest groups to fight for years in the courts to implement critical protections. The fight over a different organophosphate, chlorpyrifos, is another example of this. In finally forcing EPA's hand on [chlorpyrifos](#), a federal court ruling took the agency to task, asserting, "The EPA has had nearly 14 years to publish a legally sufficient response to the 2007 Petition [filed by environmental and farmworker groups]. During that time, the EPA's egregious delay exposed a generation of American children to unsafe levels of chlorpyrifos."

Yet when the industry challenges EPA, the agency almost invariably capitulates. With the chemical paraquat, EPA allowed an [industry umbrella group](#) dubbed the Agricultural Handler Exposure Task Force to correct its data risks posed to workers, resulting in the agency changing its position within months. With the synthetic pyrethroid class of insecticides, EPA allowed an [industry group](#) to rework its methodology for

addressing pyrethroid risks to children, and followed the request of another industry group to allow the pyrethroids to be sprayed with smaller buffer zones during windier conditions. With the chemical glyphosate, despite overwhelming evidence of its [carcinogenic properties](#), the agency has refused to acknowledge this risk, even after a federal court chastised its [review process](#), and instead has acted on the behest of chemical manufacturers to [stop glyphosate from being banned](#) in other countries.

With federal protections consistently failing U.S. residents by harming their health and the environment on which they all rely, while contributing to oversized corporate profits, concerned residents can still join together to [push for change](#).

**What to do:** Join Beyond Pesticides in supporting changes to our pesticide laws by [urging your Senators](#) to cosponsor Senator Cory Booker's (D-NJ) *Protect America's Children from Toxic Pesticides Act*, and take further action to reform

our toxic and no longer functioning federal pesticide regulatory system. For more information on the risks pesticides pose to pets and how to address flea and tick problems without toxic pesticides, see [Beyond Pesticides' Pets and Pesticides](#) program page.

**SOURCE:** Messina, Ed. U.S. Environmental Protection Agency. "Agency Response to the Natural Resources Defense Council (NRDC), April 2009 Tetrachlorvinphos Petition." October 2022; [NRDC press release](#) and [TCVP case documents](#)



## REGULATIONS CONTINUE TO FAIL POLLINATORS | MAY 9, 2022

# With Decision on Insecticide, EPA Betrays Protection of Pollinators . . . Again

**W**hile the U.S. Environmental Protection Agency (EPA) updated its [guidelines](#) for pollinator risk assessment in 2014, the [agency continues](#) to either fail to conduct full assessments, or dismiss concerning data it receives. EPA appears to discount threats like the insect apocalypse, evidenced by a [75% decline](#) in insect abundance, which threatens not only

[global ecosystems](#), but also [food production](#) that depends on animal pollination. As pesticides move through the food web, [birds](#) are also at risk. Bird numbers are [down 29%](#) since Rachel Carson wrote *Silent Spring* in 1962.

The problem is highlighted by EPA's recent Interim Decision on fenbuconazole, in which the agency notes that, "For larval bees, RQs (risk quotients)

exceed the LOC (level of concern) for all pollinator attractive uses including when assessed at the lowest application rate of 0.0938 lbs a.i./Acre (RQ = 1.1)." Yet in the same document, the agency declares that "...the benefits of fenbuconazole (e.g., efficacy in management of fungal pathogens) outweigh any remaining risk and that continuing to register fenbuconazole provides significant

benefits, including its ability to increase crop yields and help with resistance management.” While the agency added additional restrictive language on spray drift, it implemented no new precautionary measures for pollinators. The agency continues to fail pollinators, farmers, and the public.

Exposure to this commonly used fungicide considered to be ‘slightly toxic or nontoxic’ to pollinators makes male mason bees less likely to find a mate, jeopardizing future generations of critically important pollinators. This determination comes from research recently published in the *Journal of Applied Ecology* by scientists at Germany’s University of Würzburg. The timing of these findings comes after the EPA re-approved uses of [fenbuconazole](#) late last year without completing all required studies on pollinator health effects.

EPA’s action on fenbuconazole follows other actions by the agency that threaten pollinators, such as neonicotinoid (neonic) insecticides. Despite EPA’s own [findings](#) of evidence of serious threats posed by neonics to pollinators, aquatic invertebrates, and other wildlife, it issued [interim decisions](#) on them in January 2020 that disregard the science on the pesticides’ impacts and it appears that the agency is prepared to finalize these registrations late in 2022. This would, barring further action, extend the use of these harmful compounds *for 15 years*.

EPA’s history of unenforceable and impractical pesticide label restrictions resulting in findings of ludicrously small or no risk continues with its announcement that allows the continued use of the deadly organophosphate insecticide [malathion](#)—another example of a federal agency falling far short, as the nation and world sit on the brink of biodiversity collapse and deadly pesticide-induced diseases. Malathion poses a threat to 97 percent of species listed under the *Endangered Species Act*, including Kirtland’s Warbler and Black-capped Vireo. Bats, who are valuable pollinators, insectivores, and seed dispersers, are at [high risk](#) from pesticide exposure.

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### **After registering over 300 products containing synthetic pyrethroid pesticides within the last six years, EPA has done nothing to safeguard endangered species from exposure to these toxic chemicals, despite a legal requirement to do so.**

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After registering over 300 products containing synthetic pyrethroid pesticides within the last six years, EPA has done nothing to safeguard endangered species from exposure to these toxic chemicals, despite a legal requirement to do so. Synthetic pyrethroid insecticides are synthesized derivatives of pyrethrins, which compared to their natural counterpart take significantly longer to degrade in the environment and thus pose longer term risks to humans and wildlife. The chemicals interfere with the proper function of the body’s sodium channels, resulting in harm to the central nervous system. Symptoms of poisoning include headache, nausea, incoordination, tremors, and facial swelling, with severe incidents causing diarrhea, convulsions, paralysis, and death. “The EPA admits pyrethroids’ wide-ranging harm to wildlife but still rubberstamps hundreds of pesticide products containing them without assessing their risks to endangered species,” [said](#) Lori Ann Burd, environmental health director at the Center for Biological Diversity.

#### **Letter to U.S. Environmental Protection Agency:**

While EPA updated its guidelines for pollinator risk assessments in 2014, the agency continues to either fail to conduct full assessments or dismiss concerning data it receives. EPA appears to discount threats like the insect apocalypse, evidenced by a 75% decline in insect abundance, which threatens not only global ecosystems, but also food production that depends on animal pollination. As pesticides move through the food web, bird numbers are down

29% since Rachel Carson wrote *Silent Spring* in 1962.

The problem is highlighted by EPA’s recent Interim Decision on fenbuconazole, in which the agency notes that, “For larval bees, RQs (risk quotients) exceed the LOC (level of concern) for all pollinator attractive uses including when assessed at the lowest application rate of 0.0938 lbs a.i./Acre (RQ = 1.1).” Yet in the same document, the agency declares that “...the benefits of fenbuconazole (e.g., efficacy in management of fungal pathogens) outweigh any remaining risk and that continuing to register fenbuconazole provides significant benefits, including its ability to increase crop yields and help with resistance management.” While the agency added additional restrictive language on spray drift, it implemented no new precautionary measures for pollinators. With the only indications that this chemical is dangerous to pollinators deep in EPA’s dense review documents the public rarely if ever reads, the agency continues to fail pollinators, farmers, and the public.

Exposure to this commonly used fungicide makes male mason bees less likely to find a mate, jeopardizing future generations of critically important pollinators, according to research published in the *Journal of Applied Ecology* by scientists at Germany’s University of Würzburg. These findings come after the EPA re-

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### **To help avert ecosystem collapse, EPA must complete pollinator assessments and ban pesticides, shown to imperil populations of insects and other pollinators.**

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proved uses of fenbuconazole late last year without completing all required studies on pollinator health effects.

EPA’s action on fenbuconazole follows actions on other pesticides that threaten pollinators, such as neonicotinoid (neonic) insecticides. Despite EPA’s own findings of evidence of serious

threats posed by neonics to pollinators, aquatic invertebrates, and other wildlife, interim decisions in January 2020 disregard the science on the pesticides' impacts, and it appears that the agency is prepared to finalize these registrations late in 2022, extending the use of these harmful compounds for 15 years.

EPA's history of unenforceable and impractical pesticide label restrictions resulting in findings of ludicrously small or no risk continues with its announcement that allows the continued use of the deadly organophosphate insecticide malathion—another example of an irresponsible federal agency falling far short, as the nation and world sit on the brink of biodiversity collapse. Malathion poses a threat to 97 percent of species listed under the *Endangered Species Act*, including Kirtland's Warbler and Black-capped Vireo. Bats, who are valuable pollinators, insectivores, and seed dispersers, are at high risk from pesticide exposure.

After registering over 300 products containing synthetic pyrethroid pesticides within the last six years, EPA has done nothing to safeguard endangered species from exposure to these toxic chemicals, despite legal requirement to do so. The chemicals interfere with channels, harming the central nervous system.

To help avert ecosystem collapse, EPA must complete pollinator assessments and ban pesticides, shown to imperil populations of insects and other pollinators.

### Letter to U.S. House of Representatives and Senate:

While EPA updated its guidelines for pollinator risk assessments in 2014, the agency continues to either fail to conduct full assessments or dismiss concerning data it receives. EPA appears to discount threats like the insect apocalypse, evidenced by a 75% decline in insect abundance, which threatens not only global ecosystems, but also food production that depends on animal pollination. As pesticides move through the food web, birds numbers are down

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The problem is highlighted by EPA's recent Interim Decision on fenbuconazole, in which the agency notes that, "For larval bees, RQs (risk quotients) exceed the LOC (level of concern) for all pollinator attractive uses including when assessed at the lowest application rate of 0.0938 lb a.i./Acre (RQ = 1.1)." Yet in the same document, the agency declares that "...the benefits of fenbuconazole (e.g., efficacy in management of fungal pathogens) outweigh any remaining risk and that continuing to register fenbuconazole provides significant benefits, including its ability to increase crop yields and help with resistance management." While the agency added additional restrictive language on spray drift, it implemented no new precautionary measures for pollinators. With the only indications that this chemical is dangerous to pollinators deep in EPA's dense review documents the public rarely if ever reads, the agency continues to fail pollinators, farmers, and the public.

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EPA's history of unenforceable and impractical pesticide label restrictions

resulting in findings of ludicrously small or no risk continues with its announcement that allows the continued use of the deadly organophosphate insecticide malathion—another example of an irresponsible federal agency falling far short, as the nation and world sit on the brink of biodiversity collapse. Malathion poses a threat to 97 percent of species listed under the *Endangered Species Act*, including Kirtland's Warbler and Black-capped Vireo. Bats, who are valuable pollinators, insectivores, and seed dispersers, are at high risk from pesticide exposure.

After registering over 300 products containing synthetic pyrethroid pesticides within the last six years, EPA has

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### EPA's history of unenforceable and impractical pesticide label restrictions resulting in findings of ludicrously small or no risk continues with its position that allows continued use of the deadly organophosphate insecticide malathion.

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done nothing to safeguard endangered species from exposure to these toxic chemicals, despite legal requirement to do so. The chemicals interfere with the proper function of the body's sodium channels, resulting in harm to the central nervous system.

To help avert ecosystem collapse, please ensure that EPA completes pollinator assessments and bans pesticides, including fungicides, insecticides, and herbicides, shown to imperil populations of insects and other pollinators.

**What to do:** See Beyond Pesticides' [Bee Protective](#) web page for additional actions you can take.

**SOURCE:** U.S. Environmental Protection Agency. "How We Assess Risks to Pollinators." <https://www.epa.gov/pollinator-protection/how-we-assess-risks-pollinators>; U.S. EPA. "Guidance for Assessing Pesticide Risks to Bees." June 19, 2014.





**FUMIGANT HAZARD REVIEW CORRUPT | JULY 26, 2022**

## Inspector General Finds Secret EPA Meetings with Industry and Use of Untested Science to Lower Cancer Risk for Dangerous Fumigant

Secret meetings with industry, the elevation of unqualified individuals to decision-making roles, using an untested scientific approach, failing to conduct a simple literature review, and an overall absence of public transparency. This is how the U.S. Environmental Protection Agency's (EPA) conducted its cancer review for the potent fumigant pesticide 1,3-Dichloropropane (1,3-D; brand name: Telone), according to a report from EPA's Office of Inspector General (OIG). EPA's actions allowed a product once considered to pose a 1 in 10,000 risk of cancer to Americans to increase exposure by 9,000% (from 7.7  $\mu\text{g}/\text{m}^3$  to 690  $\mu\text{g}/\text{m}^3$ ). "These departures from established standards during the cancer assessment for 1,3-D undermine the EPA's credibility, as well as public confidence in and the transparency of the Agency's scientific approaches, in its efforts to prevent unreasonable impacts on human health," the OIG report states. Yet, even with the agency's

failings laid out in clear view, EPA's lackluster response to OIG's corrective actions in this case adds insult to its injurious actions against public health.

OIG initiated a review of EPA's cancer assessment for 1,3-D after the submission of multiple complaints. 1,3-D is a highly toxic fumigant used on a variety of crops, but primarily on potatoes, tobacco, strawberries, peanuts, and tomatoes to manage nematode pests in soils. The chemical has increased in use by roughly 40% over the last 20 years, with almost 37 million pounds used on 300,000 acres across the United States each year. EPA first classified 1,3-D as "likely to be carcinogenic to humans" in 1985. The chemical retained that designation until the primary manufacturer, Dow Chemical Company (recently transferred to a subsidiary called Salt Lake Holding LLC), requested EPA conduct the current cancer reevaluation. EPA review resulted in 1,3-D being downgraded from "likely" to

"suggestive evidence of carcinogenicity."

As part of this new evaluation, a Cancer Assessment Review Committee (CARC) within EPA's Office of Pesticide Programs is tasked with determining whether to update a chemical's cancer classification. The process is relatively straightforward, and includes a literature search, statistical analysis, draft review, CARC vote and final posting on the pesticide's review docket. Yet, OIG found a range of serious discrepancies from the start.

One of the most basic steps—searching the open scientific literature for relevant studies on the chemical—was not properly conducted. While EPA searched for "1,3-D" and "Telone," the full chemical name "1,3-Dichloropropene" was not included, and no one raised a red flag when only eight search results were found. OIG notes that EPA rejected consideration of all eight of these studies, and did not provide a reason, failing to follow its own

guidelines. “Therefore, the OPP should have provided the rationale and methodology for excluding each study in 1,3-D’s draft human health risk assessment, but it did not,” the report notes.

In addition to this basic failing, EPA utilized a novel approach to evaluate 1,3-D’s carcinogenicity. Rather than following a process in place since 1978, EPA utilized an untested scientific approach outside of EPA’s guidance documents. At issue is how to determine the highest exposure that can occur without harming an animal long-term or causing other non-cancer effects. This value allows scientists to determine a pesticide’s carcinogenicity. Rather than the traditional maximum-tolerated-dose approach, EPA utilized an approach called kinetically-derived maximum dose (KMD).

This method is so new that without guidance determining how EPA applies the information it analyzes, third parties have no way to independently evaluate EPA’s determinations. OIG notes that even after EPA applied the approach, it has participated in symposiums questioning the value of the KMD and noting its rarity in assessments. Independent scientific literature has a range of assessments on this method, with one recent study including a [recommendation](#) “to abolish the KMD concept for selecting top doses in toxicity testing.”

Not only did EPA apply a novel process to evaluating the carcinogenicity of 1,3-D, OIG interviews with EPA CARC officials reveal that members lacked knowledge on how to implement the KMD approach. “Some believed that not all members possessed the appropriate scientific expertise for using and implementing the KMD approach for evaluating the evidence of the carcinogenic potential of 1,3-D,” the report indicates.

OIG notes that “novel, precedent-setting, or controversial influential scientific information” by the agency should be subject to external peer review. The report quotes from EPA’s own guidelines which explain that novel scientific procedures can “undercut the scientific credibility of a risk assessment.”

Beyond the nuts and bolts of the opaque process that OIG was able to reconstruct lies the failure of EPA officials to record meetings with the chemical’s primary manufacturer. Between 2016 and 2018, as EPA was in the midst of its cancer review for 1,3-D, officials met with Salt Lake Holding LLC/Dow Agrosiences at least five times. “No information from these meetings appeared in the pesticide-registration review docket, even though some of these meetings included discussions on the application of KMD for the 1,3-D cancer assessment,” the report reads.

EPA claims that its cancer-related meetings were not required to go on the pesticide’s registration review docket because those actions are separate. OIG rejected that argument out of hand, referencing the fact that EPA incorporated the cancer determination into its review documents.

At the end of its report, OIG made nine recommendations for corrective action by EPA. The agency accepted the recommendation to update the document with past meeting information, and issue guidance to clarify when meetings are reported to the docket. It also agreed to update CARC’s standard operating procedures, take steps to ensure individuals with the appropriate expertise are represented at each CARC meeting, and that the committee is regularly monitored and assessed to ensure it is following internal standards. EPA agreed with OIG over the need to require external peer review of risk assessments using novel approaches that set precedent for future risk assessments.

EPA also agreed to reconduct a comprehensive literature search on 1,3-D. Yet, the review conducted exemplifies EPA’s attitude both before and after the OIG report. In a [corrected memo](#) published the 1,3-D’s docket, EPA ascribes the mistake to a “transcription error.” Despite OIG finding over 100 studies, EPA explains that “no changes were necessary or made to our analysis or conclusion.” Rather than corrective, this response continues the agency’s disdain for independent, peer-reviewed literature in favor of untested, novel approaches

influenced by industry without any external peer review.

The recommendations EPA rejected from OIG bring this disdain into sharp relief. EPA rejected the idea that KMD represented a novel approach, and indicated the information was used merely to “interpret” tumor findings in mouse carcinogenicity studies. EPA is thus refusing to issue guidance on how to conduct KMD analysis, and instead proposed to link to a non-EPA, third-party website for guidance. OIG rejected this proposal and considers its recommendation for EPA to issue its own guidance unresolved.

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EPA also rejected OIG’s recommendation to conduct an external peer review of the 1,3-D cancer risk assessment. The agency’s reasoning? That “the external peer review sponsored by the registrant meets the intent of the recommendation to conduct an external peer review.” In other words, EPA is indicating that the review conducted by Dow Agrosiences for a chemical it intends to sell for profit is an acceptable form of peer review. OIG’s response is as follows: “While the registrant-sponsored peer review appears to have many similarities to a peer review that would be conducted by the FIFRA Scientific Advisory Panel, it lacks specific elements—such as independence from the regulated business, a preparatory public meeting to consider the scope and clarity of the draft charge questions

for the peer review, an opportunity for written public comments to be considered by the peer review, and public participation for oral comments during the peer review meeting. These elements are needed to improve the transparency and scientific credibility of the 1,3-D cancer-assessment process. Thus, Recommendation 8 is unresolved.”

EPA’s response to being caught playing fast and loose with a highly carcinogenic chemical shows that no lessons are being learned. Advocates are fed up with EPA’s behavior, as it perverts its mission to comply with as little as possible to protect public health while continuing to satisfy industry stakeholders and their executive compensation. “These are not honest mistakes but carry the earmarks of deliberate malfeasance,” stated Tim Whitehouse, executive director of Public Employees for Environmental Responsibility (PEER) and a former EPA enforcement attorney, noting that this fits a pattern of industry manipulation of EPA’s chemical regulation process. “This example of misconduct is egregious but, unfortunately, is not isolated.” PEER and other advocates raised the alarm about 1,3-D, and were joined in their concern by [eight Attorney’s General](#), which urged EPA to revise its health risk assessment for 1,3-D.

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### While EPA continues to function as a protective agency in many other areas, advocates say the agency is not just failing, but antagonistic to its mission to protect public health and the environment from toxic pesticides.

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For those that may consider this issue outside of their concern, note that a recent [study](#) focusing on the Western United States determined fumigant pesticides to be the class of chemicals most closely linked to county-level cancer rates. Regarding the cancer connection to fumigant use, study co-author Naveen Joseph, PhD, University of Idaho noted, “We have not seen it expressed in a fumigant like this before, and it’s absolutely striking.”

EPA was recently cited by a federal judge for its dangerously inept cancer review of glyphosate, holding that EPA unlawfully concluded that glyphosate does not pose a cancer risk. The court criticized EPA for its “disregard of tumor results;” its use of “bare assertions” that “fail . . . to account coherently for the evidence;” making conclusions that do not

“withstand . . . scrutiny under the agency’s own framework;” and “fail[ing] to abide by” its own cancer guidelines. In sum, the court notes EPA’s “inconsistent reasoning” made its decision on cancer “arbitrary;” and struck it down. The agency has a long history, such as with the synthetic pyrethroids, of uncritically accepting [industry-created health models](#) over those time-tested by peer-reviewed science.

**What to do:** It is time for meaningful change to our federal pesticide laws. While EPA continues to function as a protective agency in many other areas, advocates say the agency is not just failing, but antagonistic to its mission to protect public health and the environment from toxic pesticides. To remedy this, industry influence within the Office of Pesticide Programs must be rooted out. Only through pressure on our public officials can this occur. Tell your Senators to support needed reforms to EPA through the [Protect America’s Children from Toxic Pesticides Act](#) and [Saving America’s Pollinators Act](#).

**SOURCE:** Office of Inspector General, U.S. Environmental Protection Agency. *The EPA Needs to Improve the Transparency of Its Cancer-Assessment Process for Pesticides*, Report No. 22-E-0053, July 20, 2022; [PEER press release](#)

## FEDERAL BILL TO WEAKEN PESTICIDE RESTRICTIONS | JULY 29, 2022

# With Industry Support, a Republican U.S. Senator Introduces Bill to Codify Easier Access to Ag Pesticides—As If It Wasn’t Easy Enough

Perhaps attempting to capitalize on the recent [U.S. Supreme Court decision](#) limiting the U.S. Environmental Protection Agency’s (EPA’s) ability to regulate carbon emissions, U.S. Senator Roger Marshall of Kansas (R) has filed a bill in the Senate that seeks to limit the agency’s ability to regulate pesticide use. The so-called [EPA Transparency for Agriculture Products Act of 2022](#) is touted, on Senator Marshall’s website, as “a comprehen-

sive bill to prevent . . . EPA . . . from overregulating essential pesticides that the ag industry heavily depends upon.” In truth—and perversely, given that he is a medical doctor—the bill aims to provide *more* license to use toxic pesticides that harm human health, the environment broadly, and ecosystems already under assault from toxic, synthetic pesticides and fertilizers, habitat destruction, and climate change.

Couched in language about “feeding

the world,” the bill’s central concern seems to be financial impacts or challenges that farms (a good portion of which are giant, well-resourced agribusinesses) may face because of EPA pesticide regulations. Those regulations, of course, are promulgated by the agency to protect people, organisms, ecosystems, and natural resources from harmful impacts and risks from pesticide use (however well or poorly the agency manages to do that for specific pesticides).



The [bill](#) purports to “ensure pesticide registrations and rulemaking is (sic) based on proven science.” What it appears to do is throw monkey wrenches into EPA’s processes. How? By giving agro-industrial interests more rein and weight; by inserting economic considerations into EPA’s review processes (NB: this is not part of the agency’s mission or charge); by pulling into review processes “input” from other federal agencies; by dragging out effective dates of regulatory action; and by setting short deadlines for registration reviews, i.e., telling EPA it cannot employ more than two 60-day extensions for review of a label or labeling change, and then making approval of any such label automatic if EPA fails to take action on it before the final deadline (functionally, the end of 120 days of extension).

Among the bill’s overreaching features is [a requirement](#) that the director of the federal Office of Management and Budget (OMB) conduct an “interagency review of any proposed interim, interim, or final registration decision regarding nonvoluntary, more restrictive changes to a pesticide label under a registration review.” Another is stringing out the effective date by which an interim or final registration decision (issued as part

of a registration review of nonvoluntary, more restrictive changes to a pesticide label, including a revocation or cancellation of a registration) shall take effect to “one year after the date on which the interim decision or final decision, as applicable, and any comments submitted by the Secretary of Agriculture, are published in the Federal Register.”

Further, the bill wants to make EPA use industry data as part of its basis for registration review processes: “The Administrator shall base any decision issued as part of the registration review process on Department of Agriculture agronomic use data, *commercially available agronomic use data*, and *industry agronomic use data*” [emphasis by Beyond Pesticides].

The [bill](#) also seeks to constrain judicial purview over cases involving pesticides:

- In issuing a decision that would result in more restrictive changes to a pesticide label, including a revocation or cancellation of a registration, the court shall allow the continued use of the registration through the following growing season.
- Before issuing a decision that would result in more restrictive changes to a pesticide label, including a revocation or cancellation of a registration,

the court shall conduct a *de novo* review to determine whether there is a viable and affordable alternative to control the same target pest.

This bill would add to a section of [FIFRA](#) (the *Federal Insecticide, Fungicide, and Rodenticide Act*, the statute that governs the registration, distribution, sale, and use of pesticides) to mandate that the Agriculture Science Committee of EPA’s Science Advisory Board “review any decision or advice issued by the Scientific Advisory Panel (A) to determine whether the decision or advice would have an economic impact of more than \$100,000 on the agricultural industry; and (B) if the decision or advice would have an economic impact of more than \$100,000 on the agricultural industry, to consider and describe that economic impact.”

Any change could reach the \$100,000 level of impact, given that there are approximately two million farms in the country, as well as all the adjunct businesses.

Senator Marshall extolled the bill on [his website](#), saying, “At a time when Kansas’ farmers and ranchers are coping with record inflation and broken supply chains, the last thing they need

is the EPA revoking or severely limiting traditional farming tools and methods. Access to safe, effective pesticides is vital for allowing farmers to continue to efficiently and sustainably feed, clothe, and fuel the world.”

To approximately no one’s surprise, agrochemical and agro-industrial groups were immediately “all in” on this bill, and fell over themselves offering glowing commentary for use by the Senator on his [website](#).

A few examples:

- The president of the Kansas soybean association said, “It’s simple, farmers need critical crop protection tools like glyphosate to feed the world. Farmers use it on 40% of all acres in the US and it enables more than \$50 billion dollars of production annually. We appreciate this bill that will provide farmers with continued access to these and other crop protection tools prospectively.”
- The CEO of the Kansas Corn Growers Association offered this: “EPA is using regulatory tricks to drastically limit farmers (sic) use of critical inputs like Atrazine. A recent proposal would restrict its use on corn in almost all of Kansas leaving no cost-effective way to control herbicide resistance. EPA should refocus its attention on sound science and transparency is key to that.”
- The president of the Kansas Agribusiness Retailers Association and CEO of the Kansas Grain and Feed Association said, “Thank you, Senator Marshall for standing at the forefront in defense of our nation’s farmers who depend on these indispensable crop protection products allowing them to reliably feed, fuel and clothe the world.”

Prior to filing this bill, the Senator was involved in a Zoom call in January with EPA Administrator Michael Regan and other agency officials to “discuss the problematic direction EPA is head (sic) with decisions that restrict access to safe and necessary crop protection products.” In February, he and other conservative Senators (Chuck Grassley of Iowa,

Mike Braun of Indiana, and Joni Ernst of Iowa) sent a [letter](#) to EPA Administrator Regan that called on him “to redirect the EPA’s Office of Pesticide Programs away from their current propensity for overly precautionous, blanket bans and severe restrictions of necessary crop protection tools back towards a regular, risk-based regulatory process.” They specifically advocated for more lax regulation of [chlorpyrifos](#), [dicamba](#), [glyphosate](#), and triazine herbicides (such as [atrazine](#) and [simazine](#))—all very toxic and problematic pesticides for human and environmental health—and criticized EPA’s [approach to Biological Evaluations](#) required under the *Endangered Species Act*.

In a May 2022 [hearing](#) in the Senate Committee on Agriculture, Nutrition, and Forestry, Senator Marshall stressed to U.S. Department of Agriculture Secretary Tom Vilsack his insistence on the importance of the “crop protection” herbicide glyphosate; he urged Sec. Vilsack to “stand up to the Environment Protection Agency’s position on glyphosate that will restrict farmers’ access to the pesticide.” Then, in June 2022, Senator Marshall and conservative Republican Senators Cindy Hyde-Smith of Mississippi, Thom Tillis of North Carolina, Roger Wicker of Mississippi, and James Lankford of Oklahoma sent a [letter](#) to President Biden calling on him to “defend” glyphosate and other pesticides.

The Senator and his colleagues appear, through this bill, to want to reduce significantly the constraints and limits on pesticide regulation. In placing conventional agriculture’s “need” for toxic pesticides at the heart of this bill and above the well-being of people and the natural world, the Senator betrays not only disregard for that well-being, but also, a distinct lack of understanding of the broader agricultural universe in the U.S.

As Beyond Pesticides Executive Director Jay Feldman has pointed out, “The information on ‘need’ comes from those who are dependent on chemical-intensive management practices and, in fact, have established management practices that increase dependency over time. On the other hand, the fact that

there is a burgeoning [organic market](#) not reliant on toxic chemicals does not seem to factor into the calculation of ‘need.’ The bottom line is that there has to be a concerted and affirmative effort to wean agriculture from its toxic chemical dependency if this country is going to protect people and Nature from health threats, biodiversity collapse, and the climate emergency. This legislation takes us in the wrong direction and leads us down a path with dire consequences. We should be making it more difficult to use fossil-fuel-based, toxic chemicals in agriculture, not easier.”

Beyond Pesticides has written about the relationship between the climate emergency and the toxic chemical (and plastic) pollution crisis [here](#) and [here](#). Advancing a livable future requires a rapid realignment on both the toxics and climate fronts. Senator Marshall—who is an obstetrician/gynecologist, so one might think he would have a sense of the devastating impacts pesticides can have on a developing fetus—appears ignorant, willfully or otherwise, of these realities. The Senator, who refers to himself on his website as “Doc Marshall,” has perhaps forgotten the oath he took as a medical student, one of the promises of which is *primum non nocere*—first, do no harm.

Secretary General of the United Nations, António Guterres, recently captured the stakes: “We have a choice. Collective action or collective suicide. It is in our hands.” One is hard pressed not to conclude that the Senator and his Republican compatriots—inexplicably favor the latter choice.

**What to do:** Advocate for the [Protect America’s Children from Toxic Pesticides Act](#) and begin a campaign in your community for converting land management to organic practices. See [Parks for a Sustainable Future](#) and contact Beyond Pesticides at [info@beyondpesticides.org](mailto:info@beyondpesticides.org).

**SOURCES:** Marshall, Roger. U.S. Senate. “New Sen. Marshall Bill Aims to Maintain Availability of Vital Crop Protection Tools.” Press Release. July 21, 2022; Motter, Sarah. “New bill aims to safeguard pesticides for farmers from the EPA.” WIBW. July 21, 2022



**EPA IGNORES INDOOR CONTAMINATION WITH DISINFECTANTS | OCTOBER 21, 2022**

## While Allowing Indoor Pesticide Spray for Covid, EPA Seeks Advice on Improving Indoor Air Quality

The U.S. Environmental Protection Agency (EPA) has just made [two announcements](#), related to the quest for improved indoor air quality in buildings, that address mitigation of disease transmission—and that of Covid-19, in particular. Related to enactment of the [National Covid-19 Preparedness Plan](#), EPA issued [guidance](#) on the efficacy of antimicrobial products used on surfaces, and registered a [new pesticide](#) product the agency says can be used against influenza and corona viruses (some of the latter cause Covid-19 infections). In addition, EPA opened a 60-day [public comment](#) period “to solicit information and recommendations from a broad array of individuals and organizations with knowledge and expertise relating to the built environment and health, indoor air quality, epidemiology, disease transmission, social sciences and other disciplines.” Beyond Pesticides cannot help but note the irony of an intention to improve air quality

that EPA couples with registration of a new, airborne pesticide for indoor use.

EPA expands on its [RFI](#) (Request for Information) related to indoor air quality, saying that it is “seeking input from a diverse array of stakeholders . . . about actions, strategies, tools and approaches that support ventilation, filtration and air cleaning improvements, and other actions that would promote sustained improvements in indoor air quality in the nation’s building stock to help mitigate disease transmission.”

EPA provided interim guidance in 2020 on products that look to claim residual efficacy (ability to continue killing pathogens beyond immediate application). The new [guidance](#) identifies three categories of such products: (1) residual disinfectants, (2) antimicrobial surface coatings and films, and (3) fixed/solid surfaces, such as copper, or other impregnated materials. The “residuals” are standard disinfectants that generally show efficacy for up to

24 hours after application; the other two categories represent newer approaches for which EPA now requires a “stewardship plan” in order to gain (conditional) registration. In addition, the agency has issued guidance on [new antimicrobial testing](#) methods and standard procedures for evaluation of efficacy of disinfectants on hard surfaces against specific viruses and bacteria.

EPA’s October 6 [registration announcement](#) asserts that the newly registered pesticide, Lysol Air Sanitizer spray, is the first registered antimicrobial product that can kill both viruses and bacteria. EPA explains the utility of the new product: “When users spray the aerosol product in a closed, unoccupied room in accordance with the label use-directions, Lysol Air Sanitizer can kill bacteria and viruses in the air.” The product will reportedly kill 99.9% of airborne viruses when all doors, windows, air vents, and air returns in the room are closed, the product is sprayed for 30 seconds,

and the room left empty and closed up for 12 minutes. Product instructions do note that there is “no residual effect after room is reopened.” Given that last proviso, the practicality of such a product may be somewhat limited, but *Inside Energy and Environment* opines that it “may pave the way for other types of registered pesticides that kill airborne viruses and bacteria.” EPA has a history of registering fumigants, such as sulfuryl fluoride, and indoor sprays that leave residues in closed spaces and structural voids in the indoor environment, despite claims that ventilation clears the poison. In terms of efficacy, airborne viruses are being constantly introduced and reintroduced in public spaces, such as stores, schools, restaurants, and public spaces. So, in this public context, a sanitizer application to an indoor space only protects against the target virus as long as the building is not used by the public.

The active ingredient in Lysol Air Sanitizer spray is [dipropylene glycol](#) (DPG), an ingredient used in some cosmetics. The Environmental Working Group’s [Skin Deep](#) database considers it a generally low-risk compound, but has limited data available on the chemical; the web page also indicates that health risks can be greater if DPG is used in an inhalable form, which the Lysol product obviously deploys. [EPA’s review](#) finds low acute inhalation toxicity of DPG, but that assessment is based on studies of mostly acute, not chronic or subchronic inhalation.

The agency [announcement](#) adds that EPA “conducted a robust risk assessment on exposure from both household and commercial use. When used following label directions, this product poses no unreasonable adverse risks to human health or the environment.”

Two points require emphasis:

- EPA’s track record on what pesticides constitute a human health threat, and to what degree, is not stellar; consider reporting on, among other considerations, [risks](#) even with low-level exposures, potential [synergistic impacts](#) of multiple chemical exposures, and [industry influence](#) on agency risk assessments.

- Increasing numbers of people in the U.S. are reporting “chemical intolerance (CI)” —extreme sensitivity to one or more chemicals. A 2021 [research study](#) on CI reported that 15–36% of the population reports this experience and find no comfort in EPA’s “no unreasonable adverse risk” finding.

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**As a broader category, synthetic organic chemicals and their combustion products were the primary exposures associated with chemical intolerance. Such chemicals include pesticides, peroxides, nerve agents, anti-nerve agent drugs, lubricants and additives, xylene, benzene, and acetone.**

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A more-recent and -comprehensive concept (and moniker) is Toxicant-Induced Loss of Tolerance, or TILT—a disease theory that joins germ theory and immune theory to describe and explain what CI people may experience. A leading researcher on TILT is Dr. Claudia Miller, an allergist/immunologist, professor emerita in the Department of Family and Community Medicine at The University of Texas Health Science Center (San Antonio), and leader of its [Hoffman TILT Program](#). She was also a coauthor of the paper on the 2021 study referenced above, *Toxicant-induced loss of tolerance for chemicals, foods, and drugs: assessing patterns of exposure behind a global phenomenon*.

That work examines eight major exposure events that precede the onset of CI in groups of people who shared the same exposure experience. Those groups comprised, respectively: workers at EPA headquarters during renovations; Gulf War veterans; casino workers with pesticide exposures; workers with exposures to aircraft oil fumes; people who experienced the 2001 World Trade Center tragedy; people with surgical implants; those exposed to moldy

environments; and tunnel workers exposed to solvents. Study findings were that “mixed volatile and semi-volatile organic compounds (VOCs and SVOCs), followed by pesticides and combustion products, were most prevalent across TILT initiation events. As a broader category, synthetic organic chemicals and their combustion products are the primary exposures associated with chemical intolerance. Such chemicals include pesticides, peroxides, nerve agents, anti-nerve agent drugs, lubricants and additives, xylene, benzene, and acetone.”

[Dr. Miller](#) describes TILT: “It is a two-step process. First, initiation involves acute or chronic exposure to environmental agents such as pesticides, solvents, or indoor air contaminants, followed by triggering of multi-system symptoms by exposure to small quantities of previously tolerated substances such as traffic exhaust, cleaning products, fragrances, foods, drugs, or food-drug combinations.” The 2021 [study](#) identified that, for the initiation to occur, the exposure must “interact” with the human nervous system or immune system (or both) creating intolerance to later triggering events. The coauthors assert that too little is yet known about the nature of that requisite “interaction,” but clearly point to synthetic organics (e.g., pesticides) as one of several primary exposure sources.

In its coverage, [Beyond Pesticides](#) notes that, “In the second stage, affected individuals are ‘triggered’ even by minute exposures, not only to the chemical that affected them in the first place, but also to other chemicals that did not affect them previously.” These post-acute trigger exposures can result in a range of symptoms, some fairly debilitating: chronic fatigue; gastrointestinal (GI) issues; problems with memory, attention, and/or mood; headaches or migraines; asthma; rashes; muscle pain; and/or allergy-like symptoms.

[Beyond Pesticides](#) adds, “TILT sufferers are often bounced from doctor to doctor based on individual symptoms, have significant difficulties receiving a diagnosis, and must navigate a world filled with triggering compounds, ranging

from pesticides, to fragrances, molds, and other indoor air contaminants, traffic exhaust, pharmaceutical drugs, certain food, or food and drug combinations, or other volatile compounds. . . . The [fact] of TILT undermines [the] classical toxicological concept that ‘the dose makes the poison.’ . . . a better phrase may be that ‘[the] dose plus host makes the poison,’ with an understanding that past exposures and various genetic factors are likely at play in terms of individual tolerance to environmental pollutants. These factors play into why it is so difficult for affected individuals to receive treatment, let alone a diagnosis.”

About these triggers, [Dr. Miller](#) points out that the tens of thousands of pesticides, petrochemicals, and plastics in our materials stream broadly expose humans in industrialized countries to compounds with which humans did not coevolve, and that roughly 20% of the populations of such countries exhibit chemical intolerances. Dr. Miller has developed [diagnostic instruments](#) to help identify patients suffering from TILT-related

intolerances, including the Chemical Intolerance Self-Assessment ([QEESI](#)). For more information, read a [transcript](#) of a talk given by Doris Rapp, MD, and published in *Beyond Pesticides’ Pesticides and You* newsletter, and visit the UT San Antonio [website](#) on the Hoffman TILT program. See [Dr. Miller’s talk](#) at Beyond Pesticides National Forum Series, *Health, Biodiversity, and Climate: A Path for a Livable Future*.

The Hoffman program [page](#) lists, among other information, common triggers and alternatives to them. Among those triggers is the category “bleach, ammonia, disinfectants, and strong cleaning products.” The alternatives offered are “elbow grease, non-toxic soap and water, baking soda, and vinegar.” Great advice for general cleaning, but unlikely to seem sufficient to those looking for anti-Covid-19 “magic bullets”—an understandable desire, given the havoc this pandemic has wreaked. That said, EPA should be paying more, and more-granular, attention to vulnerable, chemically

intolerant segments of the population in its review of, and risk assessments for, new pesticide products, such as this new Lysol spray. Chemically intolerant people, as individuals and as a cohort, are given far too little consideration in this regard.

Beyond Pesticides has previously published articles and fact sheets on Covid-19 protective strategies (some from early in the pandemic), including: [EPA-allowed disinfectants increase vulnerability](#); [safer personal protection: a disinfectants factsheet](#); and [a Q&A on sanitizers and disinfectants](#).

**What to do:** Beyond Pesticides encourages responses to EPA’s Request for public comments, due no later than December 5, 2022.

**SOURCES:** U.S. Environmental Protection Agency. Request for Information: Better Indoor Air Quality Management To Help Reduce COVID-19 and Other Disease Transmission in Buildings: Technical Assistance Needs and Priorities To Improve Public Health. EPA-HQ-OAR-2022-0794

## PFAS BILL IN CONGRESS TO ADDRESS HARM | OCTOBER 28, 2022

# Bill in Congress Will Pay for Treating Illness and Financial Impact Caused by PFAS

The Maine Congressional delegation—Senators Collins (R) and Angus King (I), and Representatives Chellie Pingree (D) and Jared Golden (D)—along with New Hampshire Senator Jeanne Shaheen (D), have introduced a bipartisan and bicameral bill—the [Relief for Farmers Hit with PFAS Act](#)—to help farmers who have been impacted by the scourge of PFAS (perfluoroalkyl and polyfluoroalkyl substances) chemicals. (The [Senate version](#) of the bill is available; the House version should be soon.) PFAS contamination has, as Beyond Pesticides documented in two articles ([here](#) and [here](#)), become a huge, life-altering problem for agricultural producers in Maine and many other states.

An early 2022 [Safer States](#) analysis of state-level legislation on PFAS demonstrated the extent of the problem via the response: more than 32 states have begun to act on the issue. Beyond Pesticides has covered the presence of [PFAS in pesticides](#) and pesticide containers, and in so-called “biosludge” or “biosolids”—realities that only reinforce the call for a rapid transition off of chemical-dependent agriculture and to [regenerative organic agricultural practices](#) that do not carry the enormous health and environmental risks of pesticide products and contaminated fertilizers.

There are more than 9,000 synthetic (human-made) chemical compounds in the PFAS family, which includes the

most-well-known subcategories, PFOS (perfluorooctane sulfonate) and PFOA (perfluorooctanoic acid). These PFAS compounds, dubbed “forever chemicals” for their persistence in the environment (largely because they comprise chains of bonded fluorine-carbon atoms, those bonds being among the strongest ever created). This class of synthetic chemicals, found in drinking water, surface and ground water, waterways, soils, and the food supply, among other sources, is emerging as a ubiquitous contaminant. PFAS contamination of drinking water resources is a serious and growing issue for virtually all U.S. states, as Environmental Working Group (EWG) demonstrates via its [interactive map](#),





and [for hydrologic ecosystems](#) around the world.

The widespread presence of these compounds arises from multiple sources:

- extensive “legacy” (historic) uses in fabric and leather coatings, household cleaning products, firefighting foams, stain-resistant carpeting, and other products
- historic and current industrial uses in the aerospace, automotive, construction, and electronics sectors
- [current uses](#) in many personal care products (e.g., shampoo, dental flosses, makeup, nail polish, some hand sanitizers, sunscreens); water-and-stain-proof and -resistant fabrics and carpeting; food packaging; and non-stick cookware, among others

Although some of these uses have been phased out over the course of the past couple of decades, many persist, including several related to [food processing and packaging](#). The flooding of the materials stream, with thousands of these synthetic, persistent PFAS compounds since their first uses in the 1950s (notably by 3M), means that they remain widespread in the environment and in human bodies. People can be

[exposed](#) to PFAS compounds in a variety of ways, including occupationally, through food sources, via drinking contaminated water (another enormous emerging issue; see below), ingesting contaminated dust or soil, breathing contaminated air, and using products that contain, or are packaged in materials that use, the chemicals.

The U.S. Environmental Protection Agency (EPA) notes on one of its web pages that, “because of their widespread use and their persistence in the environment, many PFAS are found in the blood of people and animals all over the world and are present at low levels in a variety of food products and in the environment. PFAS are found in water, air, fish, and soil at locations across the nation and the globe. Scientific studies have shown that exposure to some PFAS in the environment may be linked to harmful health effects in humans and animals.” Among the potential [health risks](#) of some PFAS compounds for humans are:

- impacts on the immune system (including decreased vaccine responses)
- endocrine disruption
- reproductive impacts, including lowered infant birth weight

- developmental delays in children
- increased risk of hypertension, including in pregnant people (eclampsia)
- alterations to liver enzymes
- increased risk of some cancers, including prostate, kidney, and testicular
- increase in circulatory cholesterol levels
- increased risk of [cardiometabolic diseases](#) (via exposure during pregnancy)
- possible increased risk of [Covid-19](#) infection and severity

After years of advocate pressure, EPA in August proposed “to designate two of the most widely used per- and poly-fluoroalkyl substances [—PFOA and PFOS—] as hazardous substances under the *Comprehensive Environmental Response, Compensation, and Liability Act* (CERCLA), also known as ‘Superfund.’” That designation should mean that polluters must be more transparent about their pollution and be held accountable for cleanup of their PFAS contamination. EPA took the step pursuant to its recognition of “significant evidence that PFOA and PFOS may present a substantial danger to human health or welfare

or the environment. PFOA and PFOS can accumulate and persist in the human body for long periods of time and evidence from laboratory animal and human epidemiology studies indicates that exposure to PFOA and/or PFOS may lead to cancer, reproductive, developmental, cardiovascular, liver, and immunological effects.”

In addition, in June 2022 EPA issued interim updated drinking water health advisories for two PFAS compounds—perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS)—replacing those issued in 2016. The agency also issued final health advisories on two others that had been considered “replacement” chemicals for manufacturing uses: perfluorobutane sulfonic acid and its potassium salt (PFBS), and hexafluoropropylene oxide (HFPO) dimer acid and its ammonium salt (the so-called “GenX chemicals”).

In June 2022, EPA set “acceptable” exposure levels for PFOA and PFOS at 0.004 and 0.02 parts per trillion, respectively. These are lower than generally detectable levels (absent new, more-sensitive tests), so EPA now encourages municipalities or other water-supply entities to take action against PFOA and PFOS should any level be detected in a drinking water system. (See EPA’s factsheet [here](#).) Guidelines in individual states, if they even exist, are generally much higher than these new EPA parts-per-trillion levels.

PFAS compounds have been found to contaminate water and irrigation sources, and soils themselves—often through the use of fertilizers made from so-called “biosludge” from local waste treatment plants. In addition, these plants may discharge millions of gallons of wastewater into waterways, contaminating them; current waste and water treatment does not generally eliminate PFAS compounds from the treated effluent water. (Some water providers are now piloting PFAS remediation protocols, though they are currently both challenging and quite expensive.) **Biosolids** and **wastewater** have long been sources of exposure concerns related to pesticides, industrial chemicals, pharmaceuticals,

personal care products, and household chemicals; PFAS contamination is now rising as a specific and concerning addition to that nasty list.

**EWG** wrote, earlier in 2022, that these forever (and perhaps “everywhere”) compounds may be contaminating nearly 20 million acres of agricultural land in the U.S. A significant portion of producers, perhaps 5%, is using biosludge from local treatment plants as fertilizer on their acreage. Use of biosludge was thought by many, a decade ago, to be a sensible use of the waste products from treatment; it was even encouraged by many state agricultural department programs. Fast forward to the current recognition that these products have no business being spread on fields that produce food—or perhaps anywhere that presents the possibility of human, organism, or environmental exposures to potentially toxic PFAS compounds. It is notable that there are currently no federal requirements to test such sludge for the presence of PFAS.

The agricultural sector is increasingly experiencing very serious impacts from these compounds. Senator Collins, in her office’s news release on her bill, [noted](#), “PFAS contamination has prevented some Maine farms from selling their products, creating financial hardship for many family farmers. In 2016, a dairy farmer in Arundel discovered that the milk produced on his farm contained some of the highest levels ever reported for a PFAS contaminant. In 2020, a dairy farm in Fairfield found PFAS levels in its milk were 153 times higher than the Maine standard. An organic vegetable farm in Unity uncovered PFAS contamination last year, and the couple who farmed the land have higher PFAS levels in their blood than chemical plant workers who manufactured PFAS for decades. Numerous other Maine farmers have had their livelihoods disrupted due to PFAS contamination.”

**Beyond Pesticides** wrote about two of the instances Senator Collins references. One is the devastation of one organic Maine farm, Songbird Farm in Unity, which learned in 2021 that

its well water tested at 400 times the state’s recommended threshold for PFAS compounds. The farmers’ land, livelihood, and health are at stake, with few supports in place (at the time) to help them through this crisis. Another is an Arundel, Maine dairy farmer who has, for years, been testifying to the state legislature about the ruination of his multigenerational dairy operation by the discovery of PFAS in his water and soils, and in his cows’ milk—largely attributable, he says, to the wholesale contamination of the biosludge he had used on his silage crop fields for years.

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### **PFAS compounds have been found to contaminate . . . fertilizers made from so-called “biosludge” [biosolids, often called compost] from local waste treatment plants.**

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The federal government has been slow to acknowledge and act on the threats of PFAS. With the advent of the Biden administration, that has begun to change. In 2021, EPA Administrator Michael Regan announced the *PFAS Strategic Roadmap*, which purports to lay out a whole-of-agency approach to addressing the multiple PFAS problems. (Read about the *Roadmap* [here](#).) Beyond Pesticides covered PFAS (and other legacy chemicals) and [wrote](#), “For states and localities, who are on the front lines of PFAS contamination, this is welcome news *and* significantly tardy. Absent much protective action on forever chemicals at the federal level . . . states have been stepping up, particularly in the past five years or so, to deal with a problem that permeates many aspects of people’s lives.”

The **bill** proposed in Congress (S. 5070) aims to create and fund grant programs that, administered by states, will provide:

- health monitoring for affected farms, farmers, and families
- medical care for farmworkers and families exposed to PFAS, and for

anyone who experiences exposure-related health effects or has a blood level higher than that of the general U.S. population

- relocation assistance for farms found to be PFAS contaminated
- compensation for contaminated land or farm products
- investments in equipment, facilities, and infrastructure to help farmers transition to different cropping approaches, implement remediation strategies, and/or switch to an alternate revenue stream (with a focus on combining solar generation with agricultural uses)
- help with income replacement and mortgage payments
- improved PFAS testing and data management for states
- support for research to quantify the impact of PFAS on commercial farms and agricultural communities

[Senator Collins](#) commented on the need for the bill, “USDA needs to step up and provide support to farmers, who at no fault of their own, are at risk of losing their livelihoods. This is not just a problem in Maine—PFAS contamination has been discovered on farms in New Mexico and Michigan [and elsewhere], and this problem will only become more evident as testing becomes more readily available. Thus far, the federal government’s response has failed to keep pace with this growing problem.”

[Senator Shaheen](#) added in her press release, “The more we look for PFAS, the more we understand how widespread these chemicals are, and unfortunately our farming community is no exception. That’s why it’s imperative that we have a robust federal response for industries and communities that have been adversely impacted. . . . This bipartisan, bicameral proposal is a comprehensive approach to help farmers who’ve been hard hit by PFAS exposure, and it addresses everything from educational programs for individuals affected to increased water and soil testing and remediation. Our farmers face enough challenges and adversity from uncontrollable shifts in our climate and economy—reacting

to an expansive and troubling issue like PFAS contamination shouldn’t be another hurdle they have to face alone.”

Beyond Pesticides commends these legislators for filing this bill, which would, if passed and enacted, bring significant help to agricultural producers and their communities affected by PFAS. These groups currently are struggling to deal with the devastating discoveries of contamination of their soil, water sources, and/or agricultural products, largely without much governmental support. Beyond Pesticides recommends that the “transition to different cropping approaches” require the transition to organic systems.

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**These most-recent PFAS discoveries, and state legislative efforts to deal with them, underscore not only the federal failures, but also, the urgency and gravity of realigning federal and state agencies so that precaution becomes the guiding watchword.**

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For its part, Maine has been more proactive than most states on PFAS; the state legislature, for example, [passed](#) a bill in early 2022 to ban the use of pesticides and fertilizers contaminated with PFAS. It has also passed a [bill](#) to reduce toxic chemicals in packaging, and another that will ban the sale or distribution of carpets, rugs, or fabric treatments that use PFAS compounds (effective 2023), and in 2030, the use of PFAS in all consumer products in the state.

Meanwhile, according to [Maine Public \(radio\)](#), the Maine Department of Environmental Protection is now testing more than 700 sites in the state considered at high risk for PFAS contamination because they were licensed to receive applications of municipal biosludge. PFAS contamination has been found at more than 40 Maine farms (as a result of biosludge fertilizer applications).

[Maine Public](#) reports, in addition, that “hundreds more private drinking wells—as well as some school drinking water supplies—have . . . been found to be contaminated. In response, the administration of Gov[ernor] Janet Mills and state lawmakers have earmarked \$100 million for PFAS testing, response, remediation and research in recent years.”

Responding to the proposed federal legislation, Maine Organic Farmers and Gardeners Association Executive Director [Sarah Alexander](#) said, “I think this [proposed federal] legislation is really critical for setting a safety net for farmers . . . because we know that the problem of PFAS contamination on agricultural lands is not specific to Maine. We just happen to be the first state that’s looking for it.” She also noted that the federal bill mirrors some initiatives underway as the Maine response to increasing numbers of PFAS hotspots linked to contaminated sludge.

The “meta” issue, about which [Beyond Pesticides](#) wrote earlier this year, continues to be relevant: “These most-recent PFAS discoveries, and state legislative efforts to deal with them, underscore not only the [historical] federal failures, but also, the urgency and gravity of realigning federal and state agencies so that precaution becomes the guiding watchword. Legacy/forever chemical contamination is a dramatic demonstration of how the historical, non-precautionary ethic in the U.S. can cause egregious harm—even years and decades hence. Government regulation should, at the very least, stop making the problem worse through continued permitting of the use of PFAS compounds and toxic pesticides.”

**What to do:** [Tell Congress](#) to address contamination with PFAS and other legacy chemicals by cosponsoring the *Relief for Farmers Hit with PFAS Act*, H.R.9186 U.S. House of Representatives and S.5070 in the U.S. Senate.

**SOURCES:** Collins, Susan. U.S. House of Representatives. “Maine Delegation Introduces Bill to Support Farmers Affected by PFAS.” Press Release. October 21, 2022



**KEEPING ORGANIC STRONG | SEPTEMBER 12, 2022**

## **Organic Integrity Before the Public, Comments Due by September 29**

Comments are due by 11:59 pm EDT September 29. The National Organic Standards Board (NOSB) is receiving written comments from the public through September. This precedes the upcoming public comment webinar on October 18 and 20 and deliberative hearing October 25–27—concerning how organic food is produced. [Sign up](#) to speak at the webinar by September 29. Written comments must be submitted through [Regulations.gov](#) by 11:59 pm EDT September 29. Links to the virtual comment webinars and the public meeting will be posted on [this webpage](#) in early October.

The NOSB is responsible for guiding the U.S. Department of Agriculture (USDA) in its administration of the *Organic Foods Production Act* (OFPA), including the materials allowed to be used in organic production and handling. The role of the NOSB is especially important as we depend on organic production to protect our ecosystem, mitigate climate change, and enhance public health.

The NOSB plays an important role in bringing the views of organic producers and consumers to bear on USDA, which is not always in sync with organic principles. There are many important issues on the NOSB agenda this Spring. For a complete discussion, see [Keeping Organic Strong](#) and the [Fall 2022 issues page](#). Here are some high priority issues for Beyond Pesticides:

- **Organic Agriculture is Climate-Smart Agriculture.** The NOSB draft letter to

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Secretary of Agriculture Vilsack is an excellent primer on how organic agriculture responds to the climate emergency. However, the letter needs to stress the need for USDA to promote conversion to organic farming. More important to addressing the climate crisis than the questions posed by NOP are questions concerning how USDA programs can assist organic producers and those seeking to convert to organic. The draft letter addresses these as well.

It also points out the resiliency of organic agriculture: “Organic is the solution to mitigating climate change *and* responding to it.” In view of the climate benefits of organic and the incentives inherent in organic marketing, the real question is whether USDA will abandon its promotion of chemical-intensive agriculture supported by the biotech/chemical industry in favor of whole-hearted support for organic agriculture—because despite the astronomical growth in organic consumption in the U.S., conversion

to organic agriculture lags behind demand. USDA could and should make adoption of organic/climate-smart practices a prerequisite for receiving the benefits of its programs.

- **Biodegradable Biobased (Bioplastic) Mulch Film (BBMF)** is under consideration for sunset this year. This is part of a larger issue of the use of plastic in organic production and handling. Awareness is growing about the impacts of plastic—and the microplastic particles to which it degrades—on human health and the environment. BBMF should not be relisted. Moreover, the NOSB should initiate action to eliminate all uses of plastic in organic production and handling—including packaging.

- **The NOSB should use the sunset process** to eliminate non-organic ingredients in processed organic foods. Materials listed in §205.606 in the organic regulations are non-organic agricultural ingredients that are allowed to be used as ingredients as part of the 5% of organic processed foods that is not required to be organic. Materials should not remain on §205.606 if they can be supplied organically, and anything that can be grown can be grown organically. The Handling Subcommittee needs to ask the question of potential suppliers, “Could you supply the need if the organic form is required?” Two materials on §205.606 are up for sunset this year—pectin and casings. Both are made from

agricultural products that can be supplied organically and thus should be sunsetted.

**What to do:** Need help in submitting comments? Regulations.gov requires more than a single click, but it is not difficult. Please feel free to cut-and-paste the three comments above into Regulations.gov and add or adjust the text to personalize it. See this [instructional video](#). (Regulations.gov has changed its look since this video was made.) Thank you for keeping organic strong!

**SOURCE:** Beyond Pesticides. “Keeping Organic Strong: Changes in organic regulations and farming practice.” National Organic Standards Fall 2022 Meeting. <https://www.beyondpesticides.org/programs/organic-agriculture/keeping-organic-strong-fall-2022>

## PREEMPTION OF LOCAL AUTHORITY DECEMBER 19, 2022

# In New Congress, Republican-Led Legislation Would Prevent Local Governments from Protecting Health and Safety

As the new 118th Congress convenes on January 3, 2023, one of the key issues on the agenda led by Republicans in the U.S. House of Representatives is preemption of local authority to restrict pesticide use—undercutting the local democratic process to protect public health and safety. In the [117th Congress, H.R. 7266](#) was introduced to prohibit local governments from adopting pesticide laws that are more protective than federal and state rules. If [H.R. 7266](#) were to pass or be incorporated into the 2023 Farm Bill, as the pesticide industry and proponents of the legislation plan to do, this bill would overturn decades of precedent as well as prevent local governments from protecting their residents from hazardous chemicals in their environment.

This is a direct assault on nearly 200 communities across the country that have passed their own policies to restrict the use of toxic pesticides. Communities must maintain the right

to restrict pesticides linked to cancer, water contamination, and the decline of pollinators to protect their resident’s health and unique local ecosystems.

The bill hinges on the concept of preemption: a legal theory that allows one jurisdiction to limit the authority of a jurisdiction within it to regulate a specific issue. In 1991, the Supreme Court specifically upheld the authority of local governments to restrict pesticides throughout their jurisdictions under federal pesticide law in *Wisconsin Public*

*Intervenor v. Mortier*. The Court ruled that federal pesticide law does not prohibit or preempt local jurisdictions from restricting the use of pesticides more stringently than the federal government throughout their jurisdiction. According to *Mortier*, however, states may retain authority to take away local control.

In response to the Supreme Court decision, the pesticide lobby immediately formed a coalition, called the Coalition for Sensible Pesticide Policy, and developed boilerplate legislative language that restricts local municipalities from passing ordinances on the use of pesticides on private property. The Coalition’s lobbyists descended on states across the country, seeking, and passing, in most cases, preemption legislation that was often identical to the Coalition’s wording. Since the passage of those state laws, there have been numerous efforts to prohibit localities from developing policies reflecting the unique needs and values of the people living there.

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**Communities must maintain the right to restrict pesticides linked to cancer, water-contamination, and the decline of pollinators to protect their resident’s health and unique local ecosystems.**

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If the pesticide industry is successful, the impacts for public health and ecological stability would be devastating. Only states and the federal government would be able to regulate pesticide use. With most state agencies allowing all uses on labels approved by the U.S. Environmental Protection Agency (EPA), local jurisdictions would be forced to follow the rulemaking of an agency that has been documented to be captured by industry interests.

Preemption would quash a growing national grassroots movement encouraging alternatives to toxic pesticides where people live, work, and play. Federal preemption would prevent local governments from instituting pesticide regulations that are stricter than federal regulations, taking away communities' basic right to secure their own safety and interrupting a burgeoning movement of local pesticide restrictions. H.R. 7266 and its successor legislation in the new Congress would also prevent states from giving localities the right to regulate pesticides.

Many pesticides targeted by local city residents, including neonicotinoids, glyphosate, and atrazine, have been banned or restricted in other countries

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**With most state agencies allowing all uses on labels approved by the EPA, local jurisdictions would be forced to follow the rulemaking of an agency that has been documented to be captured by industry interests.**

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due to health or environmental concerns. However, in the U.S., EPA has not taken similar action on these pesticides. Given federal inaction and the previous administration's failure to follow sound science, it is imperative that local governments retain the ability to tailor laws so localities can respond to federal actions that permit the use of toxic chemicals that residents do not want in their community.

Having failed to curtail prohibitions against local restrictions into the 2018 Farm Bill after massive pushback from health advocates, local officials, and Congressional allies, the chemical industry is renewing its attack. The industry continues to flex its muscle

in Congress through attempts to add preemption language in the 2023 Farm Bill as a growing number of communities are deciding to act.

**What to do:** [Take action today](#) and tell your U.S. Representative and Senators to support communities by opposing H.R. 7266 (and successor legislation in the new Congress) and the inclusion of this anti-democratic language in the 2023 Farm Bill.

*Your support is needed to defend local governments' rights to pass regulations that protect their communities against toxic pesticides. If you are interested in taking action this January by contacting your local officials and encouraging them to send a letter to the new Congress opposing preemption, please check the box under "Additional Information" on the Action form and we will reach out to you with more information at the beginning of 2023.*

**SOURCE:** Davis, Rodney. U.S. House of Representatives. "Davis Introduces Legislation to Prevent Liberal Local Governments from Banning or Restricting Pesticide Use." Press Release. March 31, 2022