

March 2, 2018

Charlotte Bertrand, Acting Principal Deputy Assistant Administrator  
Nancy Beck, Deputy Assistant Administrator  
Office of Chemical Safety and Pollution Prevention  
US Environmental Protection Agency  
1200 Pennsylvania Ave., NW  
Washington, D.C. 20460

Dear Acting Principal Deputy Assistant Administrator Bertrand and Deputy Assistant Administrator Beck:

We, the undersigned members of the Pesticide Program Dialogue Committee (PPDC) wish to express our concern regarding the EPA's characterization of our November 2017 meeting, particularly the summary of the meeting you provided to Senator Udall in a letter dated December 18, 2017 ("letter to Udall"), a copy of which is attached as Annex I. As PPDC members representing various stakeholder groups, we all attended and actively participated in the PPDC meeting described in the letter, which took place on November 1 and 2, 2017.

During the scheduled discussion on the three provisions of the worker protection rules (minimum age, designated representative and application exclusion zone, or "AEZ") there was broad consensus that these provisions were reasonable and that no further rule-making was necessary. In fact, the Director of EPA's Office of Pesticide Programs, Richard Keigwin, who was present during the entirety of the meeting, stated at its conclusion that he was pleased that consensus had been reached, including on the issue of a minimum age of 18, and suggested that any outstanding issues could be resolved by additional guidance in the case of the AEZ and the creation of a short-term workgroup in the case of the designated representative. The meeting transcript confirms this conclusion. We have attached excerpts of relevant sections of the transcript in Annex II for your reference.

The summary of the PPDC meeting in the letter to Udall is inaccurate. Regarding the minimum age provision, your letter acknowledges that PPDC stakeholders agreed that "for the most part, they are able to implement this provision as promulgated in the regulations." However, your letter goes on to add that "there was agreement that the "family exemption" provision was not flexible enough to accommodate family-owned and operated businesses of commercial applicators" and that "some stakeholders at the meeting expressed an interest in letting states determine a minimum age." These assertions are not correct, as the transcript shows. We are aware that an e-mail follow-up was later sent to Sen. Udall's staff on January 8, 2018 where the EPA corrected its erroneous assertion that stakeholders at the meeting expressed an interest in letting states determine a minimum age for agricultural handlers, clarifying that this input was actually not from the PPDC meeting, but from comments received as part of the Regulatory Reform docket. Though we appreciate this narrow clarification, the broader letter to Sen. Udall still misrepresents the overall context of consensus reached on the minimum age issue, as well as on the other protections which were the subject of our discussion. This specific misstatement also highlights the fact that the letter at times conflates the feedback received in the PPDC meeting with feedback received from other stakeholders by the EPA. However, these other stakeholders are not identified, thereby making it impossible to verify these inputs in an objective and balanced way.

Regarding the designated representative provision, your letter to Sen. Udall states that “[a]t the meeting, there was not agreement on a practical way to alleviate stakeholder concerns regarding who could qualify to be a designated representative and how the information could be used.” Again, this is simply not correct. In fact, there was a simple and efficient method of addressing these concerns put forth during the meeting: the establishment of a short-term workgroup on the issue. The way forward on this seemed so achievable that it prompted one industry representative to note “I don’t think it would take half an hour to resolve this.” As mentioned above, this solution was also explicitly proposed by EPA staff during closing remarks summarizing the discussion. See Annex II, excerpts from page 63, starting at line 20; page 123, line 14 onward.

Regarding the application exclusion zone (“AEZ”), the letter to Udall correctly notes that PPDC stakeholders commended the agency for its additional guidance issued. It also correctly notes that PPDC members identified some scenarios where there is need for additional guidance. However, it fails to mention that PPDC stakeholders expressed overwhelming support for this provision and that, as with the designated representative provision, there was a clear and feasible solution proposed. This suggested next step, as was also explicitly noted in the meeting’s closing remarks, was to issue additional guidance as needed - guidance which, according to your letter to Udall, the EPA was already working on in December 2017. In fact, additional guidance on the AEZ was recently released by the EPA and is now available on its website.

Given the broad consensus reached during the PPDC meeting on each of the three provisions highlighted in your letter, as well as the practical way forward laid out for each issue at the conclusion of the meeting, the PPDC meeting record cannot be construed as providing support for additional rule-making.

Additionally, we find it noteworthy that your letter dedicates four paragraphs to updating Senator Udall on the issue of chlorpyrifos, yet makes no mention of the PPDC’s discussion of that very subject during its November 1, 2017 meeting. During this discussion, many PPDC stakeholders, including various signatories to this letter, expressed serious concerns regarding the EPA’s decision to overturn its proposed ban on chlorpyrifos and the negative impacts of this decision on human and environmental health. However, this input is completely omitted from your letter.

As dictated by the Federal Advisory Committee Act (FACA), and as highlighted by the EPA’s own materials sent in preparation for the November PPDC meeting, the FACA process requires openness and transparency. In light of this fundamental requirement, the EPA’s misleading account of the PPDC meeting is concerning for various reasons. First, the summary of the meeting provided does not accurately reflect the actual discussion that took place. Perhaps this is due to a lack of careful review of the transcript of the meeting. An alternate and particularly troubling explanation is that this discrepancy is not inadvertent, but rather an intentional attempt to promote an anti-regulatory agenda and ultimately weaken the Worker Protection Standard (WPS) and Certification of Pesticide Applicators (CPA) rule. The sole purpose of federal advisory committees such as the PPDC is to provide guidance and expertise to federal agencies on the important matters before them. Yet, in spite of the clear input from multiple PPDC members during

the November meeting that further uncertainty would have a detrimental impact on states' ability to implement and enforce these rules, the EPA inexplicably has chosen to move forward with a costly and lengthy rule-making process on the aforementioned provisions.

The inaccuracies and omissions in the letter to Udall are particularly troubling given that the letter is addressed to a member of the U.S. Senate. As noted in the letter, Senator Tom Udall has been monitoring the EPA's actions regarding worker protection rules and has requested clarity on these issues on multiple occasions. Under the guise of providing clarity, the EPA instead provided a distorted account of what occurred at the PPDC meeting. We do not have an expectation that the EPA's decisions will always correspond with our specific points of view, yet we do expect our views to be heard and we certainly do not expect them to be ignored or mischaracterized simply because they do not fit into a pre-determined political narrative. Though having our efforts and proposals disregarded by the agency we have volunteered our service toward is of course disheartening, it is even more concerning to think that our participation may be used to validate or justify Agency actions which are completely at odds with both the EPA's mission and our own goals of protecting the workers who grow our food, and the communities that surround them, from the harmful effects of pesticides.

We hope that the PPDC will continue to be a public, transparent forum for the free exchange of ideas, with an equal voice for all stakeholders present, as required by federal law and as benefits good governance in a healthy democracy. We remain committed to assisting both the EPA and Congress in their important work. If you have any questions, or wish to discuss this issue further, please contact us at the e-mail addresses provided below.

Sincerely,

Iris Figueroa  
Farmworker Justice  
ifigueroa@farmworkerjustice.org

Amy Liebman  
Migrant Clinicians Network  
aliebman@migrantclinician.org

Steve Holmer  
American Bird Conservancy  
sholmer@abcbirds.org

Lori Ann Burd  
Center for Biological Diversity  
LABurd@biologicaldiversity.org

Sharon Selvaggio  
Northwest Center for Alternatives to Pesticides  
sselvaggio@pesticide.org

Nichelle Harriott  
Beyond Pesticides  
NHarriott@beyondpesticides.org

Leyla Erk McCurdy  
Children's Environmental Health Network  
LeylaMcCurdy@outlook.com

Cc: Richard Keigwin, Office of Pesticide Programs  
Sven-Erik Kaiser, Office of Congressional and Intergovernmental Relations