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March 11, 2022

The Honorable Michael S. Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Regan,

On behalf of the Triazine Network,¹ we write to express our concerns and request a meeting to discuss the potential adoption of a new aquatic ecosystem concentration equivalent level of concern (CE-LOC) for atrazine that could have widespread impacts on the use and effectiveness of atrazine herbicide products that continue to serve as the foundation of weed control programs for farmers across the nation.

We understand that the U.S. Environmental Protection Agency (EPA or the Agency) may announce a new CE-LOC of 3.4 parts per billion (ppb) and require the imposition of significant new label restrictions and mitigation measures. Doing so would reverse the Agency's decision to use a 15 ppb CE-LOC in the September 2020 Atrazine Interim Decision, a determination that was the result of more than a decade of exhaustive scientific and regulatory review. To justify the adoption of a much lower CE-LOC, EPA would rely on invalid studies and questionable conclusions that contradict the exhaustive scientific record, the overwhelming scientific consensus, and repeated findings and recommendations of EPA's own Scientific Advisory Panels (SAPs), not to mention the real-world evidence supplied by more than six decades of safe, on-farm use of atrazine products without observable impacts on aquatic ecosystems.

A. History of the Atrazine CE-LOC

In June 2016, EPA's Environmental Fate and Effects Division (EFED) released a preliminary Ecological Risk assessment as part of the atrazine registration review that proposed a 3.4 ppb CE-LOC. This CE-LOC was never adopted. Instead, in the September 2020 Atrazine Interim Decision, EPA confirmed that its October 2019 "decision to use the concentration of 15 µg/L as a 60-day average for the CE-LOC has not changed."² This decision was the result of a years-long scientific review process and reflected the

¹ The Triazine Network is a coalition of more than twenty grower organizations and individual farmers from across the nation that was established in 1995. The Triazine Network is committed to the use of sound science and established scientific methods to evaluate the potential health and environmental impacts of the triazine herbicides, including atrazine. The Triazine Network shares the concerns of the entire U.S. agricultural community that any regulatory action regarding atrazine be based on a thorough understanding of U.S. farming practices and a comprehensive, scientifically defensible evaluation of the best available scientific data.

² Atrazine Interim Decision (September 2020), available at <https://www.epa.gov/sites/default/files/2020-09/documents/atrazine-id-signed-final.pdf>.

Agency’s careful consideration of the extensive scientific record and “significant public comments [and] concerns” received from all stakeholders during the registration review process.³

In August 2021, less than a year later, EPA announced that it was “reevaluating” its atrazine CE-LOC, was considering the adoption of a 3.4 ppb CE-LOC, and planned to complete the review and announce its findings in 2022.⁴ Unlike its previous efforts, EPA has, to date, conducted this review as an entirely internal process.

We understand that Syngenta, the primary atrazine registrant, met with Assistant Administrator Freedhoff and other EPA personnel on March 3, 2022 to discuss the Agency’s CE-LOC reevaluation. Syngenta presented its concerns over the current reevaluation, including the history of EPA’s atrazine CE-LOC determinations, the scientific consensus in support of a CE-LOC of at least 15 ppb, and the potential widespread impacts of requiring mitigation and label restrictions on a county-wide basis using a 3.4 ppb CE-LOC.⁵ At the meeting, EPA informed Syngenta that it was planning to announce the adoption of a 3.4 ppb CE-LOC. EPA asserted, contrary to the record, that the Agency established two separate CE-LOCs, a 15 ppb “regulatory” CE-LOC and a 3.4 ppb “scientific” CE-LOC, that the Agency had “always” maintained that the 3.4 ppb CE-LOC was the “scientific” CE-LOC, and that the pending adoption of a 3.4 ppb CE-LOC was not a reversal of any scientific position by the Agency.

The Triazine Network is greatly concerned by the lack of transparency and openness in EPA’s CE-LOC reevaluation, its attempt to rewrite history and deny that it is changing its position on a scientific and regulatory determination, and a potential decision to adopt a 3.4 ppb CE-LOC that is contrary to the scientific record and scientific consensus and that could lead to mitigation measures and restrictions with substantial negative impacts on farmers’ ability to use a critical weed control tool.

B. Scientific Consensus Is Firmly Against a 3.4 ppb CE-LOC

The EPA’s CE-LOC reevaluation falls short in several respects of the Assistant Administrator’s commitment to “ensure that our activities will be conducted transparently, using the best available scientific information” and that “all our decisions will be well documented, transparently made, and will seek and incorporate input from all stakeholders.”⁶

First, the Atrazine Interim Decision clearly confirmed EPA’s decision to adopt 15 ppb as “the CE-LOC” that would be used to evaluate the potential need for mitigation measures and label restrictions instead of the 3.4 ppb CE-LOC proposed in the 2016 Draft Ecological Risk Assessment. The record does not support EPA’s contention that EPA has maintained separate “scientific” and “regulatory” CE-LOCs. Any decision to reverse a critical Agency determination like the 15 ppb CE-LOC, which was adopted after a years-long registration review process, must be presented and defended in a scientifically robust and straightforward manner. To date, EPA has not done so.

Second, while the Triazine Network’s own science evaluation showed higher acceptable limits,

³ Id.

⁴ Motion for Partial Voluntary Remand Without Vacatur, *Rural Coalition v. U.S. Env’t Protection Agency*, 20-73220 (August 30, 2021).

⁵ Syngenta Presentation, EPA Meeting: Atrazine CE-LOC Reconsideration (March 3, 2022), attached as Exhibit A.

⁶ Statement of Michal Freedhoff (May 12, 2021), available at <https://www.epw.senate.gov/public/?cache/files/8/1/81b26daa-ee3b-489c-bbc5-7eb2d8ef95bf/5CB9A1D4F84A9156F051A834CC0D4FB1.05-12-2021-freedhoff-testimony.pdf>.

the 15 ppb CE-LOC is a “scientific” CE-LOC, supported by the best available and most current scientific studies. It reflects the scientific consensus shown by successive SAPs and other peer reviews and incorporates extensive scientific input received during the public comment process. Along with many others, the Triazine Network submitted technical scientific comments in response to the 2016 Ecological Risk Assessment and its proposed CE-LOC of 3.4 ppb. These comments identified issues pertaining to “data quality and selection, errors, hyper-conservative assumptions, inadequate consideration of the best available science, and the procedures used to calculate the level of concern (LOC) for aquatic plants.”⁷ For example, EFED’s analysis relied on Lampert et al. (1989), even though successive SAPs and peer reviewed publications identified a fundamental flaw in the study design, the addition of a solvent (ethanol) in the treatment enclosures that was not present in the controls, which impacted the aquatic plant community and rendered the reported results invalid.⁸ The 2012 SAP and published scientific review articles identified 11 studies that should be excluded as unreliable or invalid or rescored as showing no effect.⁹ EFED ignored those recommendations and continued to rely on invalid studies and results in proposing the 3.4 ppb CE-LOC in the 2016 Ecological Risk Assessment. In 2019, EPA announced that it was adopting a 15 ppb CE-LOC, making clear that, among other things, it was finally adopting and following the recommendations of the 2012 SAP. Now, EPA says it is reversing its position to again rely on these 11 studies to support the 3.4 ppb CE-LOC. The overwhelming scientific consensus, including more recent published peer-reviewed studies, indicates that these studies are not the best available science and should not be used to support the CE-LOC determination and that the science supports a CE-LOC of at least 15 ppb.¹⁰

Third, the current CE-LOC “reevaluation” has not been open nor transparent. EPA convened no public meetings and solicited no public input before reaching its proposed conclusion. Moreover, in deriving its CE-LOC’s, EPA has applied a complex and opaque “uncertainty analyses” which have produced contrary results and results in CE-LOC ranges that are lower than the actual endpoints of the studies relied on. For example, an uncertainty analysis conducted in 2016 using a study set and scoring consistent with the 2012 SAP recommendations resulted in a CE-LOC range of 13.5- 40 ppb and a median of 20.8 ppb, compared to a 2019 analysis using the same studies and methods that resulted in a CE-LOC range of 1.9-26 ppb and a median of 8.5 ppb.¹¹ To understand this discrepancy, we understand

⁷ Moore et. al., Final Report, Review of EPA’s Ecological Risk Assessment for Atrazine (October 4, 2016) submitted by Triazine Network at page 6, available at <https://www.regulations.gov/comment/EPA-HQ-OPP-2013-0266-1035>. The 2012 SAP noted that it was “disappointed to see” that the 1989 Lampert study was still included in the dataset. The 2012 SPA was the third in a row to conclude the study should be excluded because the purported results were caused by the use of a solvent in the treated groups that was not present in the controls. SAP Meeting Minutes (September 2012) at 41-43, available at <https://www.epa.gov/sap/meeting-materials-september-11-14-2012-scientific-advisory-panel>.

⁸ Id. at 14-15.

⁹ Id. at 13-14.

¹⁰Giddings et al., Data quality scoring system for microcosm and mesocosm studies used to derive a level of concern for atrazine, *Integrated Environmental Assessment Management* 14 (4):489–97 (2018), available at <https://doi.org/10.1002/ieam.4050>; Moore, et al, A weight-of-evidence approach for deriving a level of concern for atrazine that is protective of aquatic plant communities, *Integrated Environmental Assessment and Management* 13:686-701 (2017), available at <https://doi.org/10.1002/ieam.1865>; Smith et al., Assessment of risks to listed species from the use of atrazine in the USA: a perspective, *Journal of Toxicology and Environmental Health, Part B*, 24:6, 223-306, DOI: 10.1080/10937404.2021.1902890 (2021), available at <https://doi.org/10.1080/10937404.2021.1902890>; Baxter et al., Atrazine does not affect algal biomass or snail populations in microcosm communities at environmentally relevant concentrations, *Environ Toxicol Chem.* 2011 Jul;30(7):1689-96, available at <https://pubmed.ncbi.nlm.nih.gov/21567448/>.

¹¹ Exhibit A at 6.

that Syngenta requested that EPA produce the records supporting the 2019 analysis, but EFED could not produce the records necessary to reproduce or assess the 2019 analysis.¹²

C. Conclusion

The Triazine Network is concerned about the significant potential implications – for growers, registrants, States, and other stakeholders – if EPA were to adopt the 3.4 ppb CE-LOC and require additional label mitigations and restrictions on that basis. Doing so would be a substantial step backwards in EPA’s commitment to transparency and the use of the best available science and would result in scientifically unsupported and unnecessary mitigation measures that could have significant negative effects on growers, the agricultural economy, and the nation’s food supply. At a minimum, before taking such a step, EPA should submit any new proposed CE-LOC for review by a SAP and should incorporate any recommendations resulting from such independent scientific review before adopting the CE-LOC.

Sincerely,



Greg Krissek, Co-Chair
Triazine Network

Cosigners:

National Corn Growers Association and its state affiliates

National Grain Sorghum Producers Association

Florida Fruit and Vegetable Association

And many other agricultural organizations who are involved with the Triazine Network.

cc: Michal Freedhoff, Assistant Administrator, OPPSC, EPA
Rod Snyder, Senior Agricultural Advisor, EPA
Thomas Vilsack, Secretary of Agriculture, USDA
Kimberly Nesci, Director, Office of Pest Management Policy, USDA
Cameron Douglass, Agronomist (Weed Scientist), OPMP, USDA

¹² Follow up to Response to FOIA Request (February 11, 2022), attached as Exhibit B.