NPMA
National Pest Management Association
Our Mission is Your Protection

May 15, 2017

Via Electronic Submission: http://www.regulations.gov

The Honorable Scott Pruitt
Administrator
Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460-001

Re: Docket ID No. EPA-HQ-OA-2017-0190
Evaluation of Existing Regulations

Dear Administrator Pruitt,

The National Pest Management Association (NPMA), the only national trade group for professional structural pest management companies, appreciates the opportunity to comment on the U.S. Environmental Protection Agency action *Evaluation of Existing Regulation*.

NPMA, a non-profit organization with more than 7,000 member companies from around the world, including 5,500 U.S. based pest management companies, which account for about 90% of the $7.6 billion U.S. commercial market, was established in 1933 to support the pest management industry. NPMA's member companies manage pests including rodents, ants, cockroaches, bed bugs, mosquitoes, spiders, stinging insects, termites and other pests in countless commercial, residential and institutional settings. NPMA members are committed to providing quality pest management services that protect public health, food and property.

The structural pest management industry has a very unique and important perspective to provide on pesticide policies that need to be fixed either by regulation or legislation to make the Agency more efficient to enable NPMA members the ability to better protect American citizens, their property and businesses from dangerous and deadly pests that threaten public health.

Modernize the Endangered Species Act

Pest management professionals are protectors of public health and stewards of the environment. The Endangered Species Act of 1973 (ESA) was signed into law on December 28, 1973, and provides for the conservation of species that are endangered or threatened and the conservation of the ecosystems on which they depend. ESA's intent to protect and preserve species and their

habitat is vital and necessary to conserve American ecosystems and our tremendous natural resources.

The Department of Interior, specifically the U.S. Fish and Wildlife Services and National Marine Fisheries Services (collectively the services) are tasked with implementing the ESA. Under Section 7 of ESA, Federal agencies must consult with the Services when any action the agency carries out, funds, or authorizes *may affect* a listed endangered or threatened species.

The Federal Insecticide and Rodenticide Act (FIFRA) designates the EPA, not the Services, as the lead federal agency tasked with the registration and review of all pesticides used in the U.S. EPA conducts comprehensive human health and ecological risk assessments and exhausts immense resources on the registration and review of pesticides and uses the most current science-based information and peer-reviewed scrutiny. Pesticides approved by EPA pursuant to FIFRA can not cause any unreasonable adverse effects on the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide. During the extensive review of pesticides, EPA implements the Endangered Species Protection Program (ESPP), which provides an additional review for those species listed as endangered and threatened.

Unfortunately, the collaborative consultation process is broken. Differing statutory standards and a lack of resources at the Services has led to a backlog of decisions. Further exacerbating the issue is a concerted effort by activists to use the ESA in the judicial branch to inhibit the use and registration of valuable life-saving pesticides. Since 2004, numerous citizen lawsuits have been brought by activists against the Services and EPA. The litigation against the Services and EPA asserts a failure to adequately perform consultation and has led to settlements and court orders that restrict the use of pesticides while creating unrealistic timelines to perform consultations in a piecemeal process. Neither the Services nor the EPA will be able to conduct full consultation as currently constituted.

The ESA needs to be fixed to ensure the development of innovative products to better protect people, their businesses, and their properties. The fix may need to be both a regulatory and a statutory fix, and we encourage EPA to be a leader on this issue because the path we are currently on will lead to the inability to use and register new and existing pesticides that are vital to protecting public health. NPMA suggest working towards the following:

- Highlight EPA's authority on pesticides, FIFRA designates the EPA not the Services as the lead agency on pesticides and FIFRA should have primacy over the ESA

- Revisit and work towards the process outlined in the 2004 "Counterpart Regulations" (50 CFR Part 402 9[2004]) which was a collaboration between the Services and EPA to streamline the process and provide more authority to EPA
- Provide resources to promote actual conservation rather than obstruct pesticide registration through unending lawsuits
- Understand and take into consideration the use patterns used by all pesticide applicators, specifically the structural use patterns, which rarely impact non-target organisms

Eliminate National Pollutant Discharge Elimination System (NPDES) Permits

The requirement for National Pollutant Discharge Elimination System (NPDES) permits is a result of a 2009 U.S. Sixth Circuit Court of Appeals decision in *Nat'l Cotton Council v. EPA*. The court determined that under the Clean Water Act (CWA) discharges of pollutants (chemical pesticides) into Waters of the United States (WOTUS) require an NPDES permit. The ruling came despite EPA's opposition and argument that pesticides applied in accordance with the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) are exempt from CWA's permitting requirements.

Could there be a better example of duplicative and unnecessary? Why is the EPA Office of Water (OW) telling the Office of Pesticide Programs (OPP) that their stringent peer-reviewed environmental and human health risk assessment are not enough? Under FIFRA, human health and environmental impacts are reviewed on all pesticides that are registered for use with strict directions for use on the EPA approved product label. A thorough review and accounting of impacts to water quality and aquatic species is included in every EPA registration and registration-review decision. Requiring water permits for pesticide applications is redundant and provides no additional environmental benefit while adding tremendous costs and a resource drain to the Agency (OPP and OW), state regulators and pesticide applicators.

NPMA is well aware that EPA fought against NPDES permits in court and after being compelled by the court, EPA attempted to craft a permit that was the least burdensome. Unfortunately, the result is that an expanded WOTUS definition, in conjunction with NPDES permit requirements, is now threatening the ability of our members to conduct valuable public health applications in and around WOTUS. The NPDES permit and CWA exposes applicators to civil liability, which recently occurred in a pending lawsuit in Ohio between a pesticide applicator and Ohio citizen. This has raised the question among our members; will I be sued for applying a pesticide registered for use in water in accordance with all EPA-approved label instructions? Water is a breeding ground for some of the most prominent and dangerous disease-transmitting insects, and the permit is becoming an impediment to managing pests that threaten public health.

Unfortunately, a regulatory fix through the promulgation of new rules will likely not fix this problem, and we, therefore, request the Agency to urge the 115th Congress to take action. Legislation has already been introduced to address this pressing issue. In the Senate, the Sensible Environmental Protection Act of 2017 (S. 340) which has been assigned to the Committee on Environment and Public Works awaiting further action. In the House, the Reducing Regulatory Burdens Act of 2017 (H. 953) has passed the Committee on Agriculture with bipartisan support and is now in the House Transportation and Infrastructure Committee. We strongly urge the Agency raise this issue as a top priority of this administration and eliminate the NPDES permit requirements for FIFRA registered and approved pesticides.

Streamline and Simplify Pesticide Labels

Unlike most other product labels, instructions found on a pesticide label are legally enforceable, with each label carrying the clear statement: "It is a violation of Federal law to use this product in a manner inconsistent with its labeling." The pesticide label is the chief enforcement vehicle for EPA and the State Lead Agencies charged with enforcing pesticide law and is intended to protect human health and the environment. As a result, pest management professionals are obligated under Federal law to read the label before mixing, applying, storing, or disposing of a pesticide product. Unfortunately, instead of being the critical tool for protecting health and the environment as it is intended, the pesticide label has become a stumbling block for applicators. Many pesticide labels encountered today are so full of dense, overly-complex language, and directions for use so terribly complicated by over-regulation, that even highly trained and certified applicators find compliance cumbersome, burdensome and inefficient. For example, one label for a product labeled for the control of important structural pests like termites, cockroaches, yellow jackets, ticks, spiders and ants contains a mind-boggling 51 pages of text. An applicator wanting to use this product for targeted applications to control ants must wade through more than 40 pages of text before finding instructions on how to mix and apply the product for ants. This is a cumbersome, inefficient and confusing process. Certainly, there must be a more modern, simplified method to convey the important safety and use information required for proper use.

An additional example of the complexity of label language that applicators must navigate if the EPA's Label Review Manual (LRM), which represents printed guidance for registrants in developing label language. The LRM is made up of more than 250 pages of instructions and compiles existing interpretations of statutory and regulatory provisions and reiterates existing Agency policies.

We encourage EPA to engage user groups, registrants and other stakeholders to identify a process to modernize pesticide labels, with a goal of streamlining labels to make them more succinct, easier to use, ensuring safe and effective use in the future.

Consider the Benefits and Unique Use Patterns of the Structural Pest Management Industry as Part of the Pesticide Registration and Review Process

FIFRA requires that all pesticides be registered by EPA to ensure that they do not cause "unreasonable adverse effects on man or the environment." Noted above when registering a pesticide FIFRA requires EPA to take into consideration the "economic, social, and environmental costs and benefits of the use of any pesticide." Accounting for the economic, social and environmental costs and benefits, when reviewing a pesticide intended to protect agricultural crops is a relatively straightforward process compared to evaluating the benefits of pesticide products and services intended for use in and around structures. Structural use patterns are not static, rather our members are continuously moving from location to location to remediate unexpected pest problems through integrated pest management and targeted pesticide applications in dose rates much smaller than generally perceived by EPA. We believe structural use patterns are sometimes overlooked and marginalized within EPA when they should be highlighted and are of paramount importance to protect public health. The following are a few examples illustrating the benefits of pesticides and structural pest management services.

- Wood destroying insects invade and damage countless homes, businesses and public buildings across the U.S. In fact, termites alone account for $5 billion in damages to structures each year, a cost that is not typically covered by homeowners insurance.
- According to the U.S. Centers for Disease Control and Prevention (CDC), rodents transmit over 35 diseases such as hantavirus, rat bite fever, trichinosis, plague, murine typhus, infectious jaundice, Weil's disease and leptospirosis. Rodents also transmit diseases like murine typhus and salmonellosis indirectly through their droppings, saliva, urine and hosting fleas.
- Cockroaches and rodents exacerbate allergies and asthma attacks as a result of allergenic proteins in their exoskeletons, droppings and urine.
- While some stinging insects are beneficial in that they pollinate plants, and eat other harmful insects, they also send more than half a million people to the emergency room every year. For most Americans, stings cause localized swelling and pain. However, 3 percent of the population experiences severe allergic reactions such as rashes, hives and shortness of breath or even life threatening anaphylactic shock.

- According to the U.S. Centers for Disease Control and Prevention, approximately 1 in 6 Americans get sick, 128,000 people are hospitalized and more than 3,000 people die from foodborne diseases each year. Structural pest management prevents and controls insect infestations that can lead to and spread food borne illness and disease
- Arthropod borne diseases like Zika, Dengue, West Nile Virus, and Lyme disease are transmitted by mosquitoes and ticks. Pesticides play an important role in Integrated Pest Management (IPM) plans designed to control these threats to public health.

We believe that the benefits of structural pest management are evident in the above examples. Pesticides intended for structural pest management are an integral part of pest prevention and control programs that benefit citizens where they live, work and play. The benefits that these products provide are immense, and we strongly encourage the Agency to engage with stakeholders and user groups earlier to better understand the unique use patterns employed by the structural pest management industry and carefully consider the benefits of pesticides intended for structural uses in all pesticide registration and review processes.

Conclusion

Thank you for the opportunity to provide comments on the proposed rule *Evaluation of Existing Regulations; Docket ID No. EPA-HQ-OA-2017-0190*. We are encouraged by the current Administration's regulatory agenda and willingness to engage stakeholders to seek input on EPA regulations that may be appropriate for repeal, replacement or modification. We believe we have provided concrete examples of regulations that should be repealed (NPDES), replaced (ESA) and modified (Pesticide Labels) and we also requested EPA to place greater emphasis on pesticide structural use patterns to protect public health. We look forward to working with the Agency on these pesticide reforms and will be available to provide additional assistance and information if requested.

Sincerely,

Jim Fredericks
Vice President of Technical & Regulatory Affairs

Andrew Bray
Vice President of Public Policy