

February 7, 2022

The Honorable Michael Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, DC 20460-0001

Dear Administrator Regan,

As you are aware, EPA recently issued new seven-year registrations for the herbicides Enlist and Enlist Duo. While the grower community appreciates having continued access to these important tools to protect their crops and support vital conservation practices, for thousands of growers in certain regions of the country, this registration decision was not met with the same optimism. Many growers, despite having used these products historically, operate in counties prohibited from continued use of the product due to new Endangered Species Act (ESA) restrictions. It is our understanding EPA is now in possession of science that may possibly alleviate these challenges for many growers. We would ask EPA to consider this new data as expeditiously as possible and, in the future, avoid using rigid, county-level prohibitions or imposing new use restrictions so close to spring planting.

To be clear, for most growers the reregistration of Enlist and Enlist Duo was a very welcome announcement, and we appreciate EPA's work on this important effort. As we have conveyed to the agency in recent months, these tools are essential for many growers to protect their crops from economically-damaging weeds and support conservation practices, such as reductions in tillage, that allow growers to improve soil and water quality while reducing greenhouse gas emissions.

However, this announcement was of little consolation to those producers finding themselves in the 217 counties where ESA restrictions have now resulted in county-level prohibitions on these products. Producers in large swaths of Oklahoma, Texas, Nebraska, and other states now find themselves in a very difficult situation. By one estimate, these prohibitions have affected more than 50 percent of the soybean acres in Oklahoma and nearly 20 percent of soy acres in Nebraska. Based on recent cotton planted acreage data, the county prohibitions will impact over one million acres of cotton. And the decision impacts nearly 50 percent of corn acres in Nebraska. This challenge has been heightened by the close proximity of this announcement to spring planting, as many growers have already taken delivery of Enlist herbicide and seed they now cannot use. Switching to a different herbicide-tolerant seed is not an easy solution, as supply chain disruptions have impacted the cost and availability of alternative herbicides, and desired hybrids and varieties are likely already reserved and now unavailable.

While these challenges are substantial, we understand there may be opportunity for recourse for some affected growers. One of the species of concern identified in the Enlist decision is the American Burying Beetle (ABB), which resulted in most of the county-level prohibitions in Oklahoma, Nebraska, Kansas, and several other states. It is our understanding EPA has recently received new data regarding the status of ABB and any potential effects of Enlist on this species. We urge EPA to review this new data as expeditiously as possible in the event it might improve clarity on any effects to ABB or the need for protective mitigations. Further, under EPA's new ESA policy announced on January 11, 2022, which was used to issue the new Enlist registrations, we urge EPA to swiftly make a registration amendment addressing the need for these county-level prohibitions should this new data find them unwarranted. We feel the agency seizing an opportunity which might allow for the swift lifting of county-level

prohibitions will be viewed as a gesture of good faith that EPA is interested in making this new ESA policy workable for growers.

Again, we appreciate EPA's work on the new Enlist registrations. Continued access to these tools will help grant certainty for many growers. However, in the event it can help minimize the serious disruptions that have been imposed on many other growers, we request EPA review any additional new data regarding ABB as expeditiously as possible. Additionally, in the future we discourage announcements of new product restrictions so close to spring planting, especially when growers have already made input purchases expecting certain product use conditions. We also strongly urge EPA to avoid inflexible, county-level prohibitions which are very disruptive to growers and their ability to meet our food, fuel, and fiber needs and maintain important conservation efforts. We would be pleased to work with EPA moving forward to identify flexible, appropriate mitigations that may be necessary that will be both workable for growers and will protect species and their habitats.

Sincerely,

American Farm Bureau Federation
American Soybean Association
National Corn Growers Association
National Cotton Council

CC: The Honorable Tom Vilsack, Secretary, U.S. Department of Agriculture