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RE: Maryland House Bill 319, Pesticide Registration – PFAS Testing – Requirements

Chair Pena-Melnyk, Vice Chair Kelly, and distinguished members of the Health and Government Operations Committee,

Thank you for the opportunity to provide testimony about HB 319, which would require new and additional testing and affidavits for pesticide products regulated by the Maryland Department of Agriculture (MDA) and by the United States Environmental Protection Agency (EPA). We respectfully oppose this legislation and request an unfavorable vote.

HB 319 is not necessary due to existing rigorous federal testing requirements for pesticides. HB 319's requirement for pesticide products to "pass a PFAS test" is not necessary to protect the public and it is unclear what purpose this "PFAS testing requirement" seeks to achieve. All pesticides, including those formulated with fluorinated chemistry, must already be registered by U.S. EPA prior to applying for and receiving state registration in Maryland. Before pesticides even enter commerce in Maryland, they must already be deemed safe by EPA. To approve a new pesticide product, EPA must determine based on data that the pesticide will not, when used in accordance with the label, and with widespread and commonly recognized practice, cause unreasonable adverse effects on the environment[1] and provides reasonable certainty of no harm to human health. EPA subjects all new pesticide products to rigorous human health and environmental review and testing requirements to satisfy these standards for registration. These testing requirements include, depending on the type of pesticide, the following:

- Product chemistry
- Physical and chemical properties
- Acute, sub-chronic, and chronic toxicity
- Efficacy testing (for public health uses)
- Ecological effects
- Environmental fate
- Applicator exposure
- Residue chemistry (for food use pesticides)

Several of these tests take months and years to complete and represent an investment of millions of dollars by pesticide companies in the science that supports all products available to Maryland residents, professional applicators, and growers. EPA expends significant resources to review and approve the testing data during a scientifically stringent process. It can take more than 10 years before a new product is registered for sale due to the rigorous registration process. Further,

[1] 7 U.S.C. §136a(c)(5).

EPA, must periodically review each registered pesticide active ingredient to ensure it continues to meet this robust safety standard. Pesticides are unique, with more scientific data available about them than for any other products available in commerce today with oversight from five federal agencies including EPA, Department of Agriculture, Food and Drug Administration, Fish and Wildlife Service, and National Marine Fisheries Service.

Further, the thoroughness of pesticide regulation and the full data set available for all registered pesticide products has also been recognized in a proposed and expansive policy to restrict PFAS substances published February 7, 2023, by the European Union and European Chemicals Agency. The proposal expressly excludes pesticides, stating "it is recognized that the use of these substances is specifically regulated in the EU with extensive evaluations and approval processes by designated bodies with specific expertise and experience."[2] The EU proposal also notes, as we state here, that testing for total fluorine is not an accurate indicator of the presence of PFAS. Substances can contain fluorine without containing PFAS.

While unnecessary, the only currently available test method cannot adequately test for the presence of PFAS in pesticide products. Compliance with HB 319 would be impossible for pesticide registrants and distributors because they cannot adequately test for the presence of all PFAS in pesticides (particularly at the parts per trillion or parts per billion level), so could not provide an affidavit about test results. The test methods referenced in the bill are EPA's PFAS test methods for wastewater, surface water, groundwater, soil, biosolids, sediment, landfill leachate and fish tissue—not pesticides.[3]

EPA has only one internally validated method for the detection of PFAS compounds in oily matrices, such as pesticides. This method can only detect 28 PFAS.[4] It is important to note that when this validated test method was used, PFAS that were previously detected using other methods, were not found in the samples.[5] Thus ensuring an appropriate validated method is used is critical, otherwise results obtained from the suggested method will be inconsistent and inaccurate. Again, we note that the presence of fluorine is not necessarily indicative of the presence of PFAS, and therefore would be an inappropriate test standard.

Even if a validated test method existed for the full diversity of pesticide products and ~9,900 different type of PFAS, the laboratories in the United States capable of performing PFAS testing would be overwhelmed by test requests from hundreds of pesticide registrants wanting to ensure they comply with Maryland's requirements. Commercial labs lack the capacity to handle the volume of pesticides that would need to be tested in order to be registered and sold in the state. Maryland should not impose an infeasible and highly burdensome requirement on pesticide companies that is not necessary.

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[2] ECHA Annex XV Restriction Report: Per- and polyfluoroalkyl substances (PFASs), page 4. https://echa.europa.eu/documents/10162/4e564987-9902-9d7e-3fab-2d7f73753053.

[3] See Summary of EPA Method 1633: https://www.epa.gov/cwa-methods/cwa-analytical-methods-and-polyfluorinated-alkyl-substances-pfas. See also EPA Methods for determining PFAS in drinking water by liquid chromatography/tandem mass spectrometry: https://www.epa.gov/pfas/epa-pfas-drinking-water-laboratory-methods.

[4] See https://www.epa.gov/pesticides/updates-epa-efforts-address-pfas-pesticide-packaging.

[5] See https://www.epa.gov/system/files/documents/2021-09/epa-pfas-mda-report_0.pdf. LC-MS/MS analyses led to a false positive that likely resulted from matrix interference.

The extraordinarily low levels required for a pesticide to "pass a PFAS test" does not provide additional public health protections. The state of Maryland has not demonstrated that the potential presence of PFAS at extremely low levels in a pesticide (100 ppt or 10 ppb) presents any unreasonable adverse effects on human health or the environment. The state has not presented any exposure data showing whether people are even exposed to PFAS in using registered pesticides in accordance with their directions for use. There is no evidence that this is a growing or widespread public health concern for pesticide users. Pesticide registrants are required to report adverse effects to EPA, and we are not aware of reports of adverse effects from the use of pesticides due to PFAS being present in the products in the ppb or ppt level. EPA monitors this information to ensure that pesticides are safe for use.

Levels of PFAS this low in pesticides are not toxicologically significant. To illustrate how miniscule this threshold is, 1 ppb is equivilant to 1 drop added to a large tanker truck and 1 ppt is equivilant to 10 drops added to the Rose Bowl stadium. EPA has approved fluorinated pesticide products and has not indicated it plans to take any action to withdraw approvals of these products. Maryland should not take action at this time or, at the very least, defer until EPA completes the evaluations necessary to determine whether restricting PFAS in pesticides is necessary.

HB 319 will disadvantage Maryland residents and growers because they will likely lose access to critical pest protection products. HB 319 will seriously disadvantage Maryland residents and the state itself from lost access to critical pesticides used to protect people and animals from mosquito-borne diseases through the activities of Maryland's public health officials as well as use of topical mosquito repellent sprays and lotions. Because they are public health tools, mosquito control pesticides are supported by additional scientific study requirements as part of the federal registration process. It would be impossible to manage mosquito populations in the state without pesticides.

HB 319 may jeopardize Maryland residents' access to other pesticides currently registered for sale in the state. The new testing requirements may result in a de facto ban on these important pesticide products–even if the products do not contain any PFAS. Companies will be forced to make difficult business decisions, which may result in diverting their products to other states due to the massive costs and burdens associated with creating and conducting tests as required by HB 319. All this could be avoided by relying on the rigorous evaluations already done by EPA. This would ensure that Maryland residents have access to pesticides for their own critical uses.

Essential products for protecting against termites, bedbugs, cockroaches, mice, and rats at home, in schools, in restaurants, in commercial buildings, and in public places may not be registered. Natural resource, utility, and transportation managers may no longer have the pesticide tools necessary for keeping rights of way clear, creating fire breaks in forests, and managing invasive insect and aquatic species that impact Maryland's environment and economy.

The state's agricultural producers would not have access to products available to competitors in neighboring states or have the ability to manage unique pest pressures in Maryland crops.

We respectfully oppose this legislation as it is not necessary due to existing federal testing requirements, as the test method cannot adequately test for the presence of PFAS, as the extraordinarily low levels required does not provide additional public health protections, as it will disadvantage Maryland residents and growers with no protections from pests, invasive

species, and non-native pest species. Thank you for the opportunity to provide our perspective on HB 319. We urge you to vote no on HB 319.

CropLife America (CLA) represents the manufacturers, formulators and distributors of crop protection products in the United States. CLA member companies produce, sell and distribute virtually all the crop protection products used by American farmers. Learn more at www.croplifeamerica.org.

RISE (Responsible Industry for a Sound Environment) is the national trade association representing manufacturers, formulators, distributors and other industry leaders engaged with specialty pesticides and fertilizers used by professionals and consumers. Learn more at www.pestfacts.org.