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RE: MD HB 319, Pesticide Registration, PFAS Testing, Requirements

Position: Unfavorable

The American Chemistry Council appreciates the opportunity to provide testimony on House Bill 319, which creates annual PFAS testing requirements for the registration of all pesticides in Maryland. ACC's Center for Biocide Chemistries represents manufacturers of antimicrobial pesticides, including preservatives, disinfectants, industrial biocides, and antifouling paints. These antimicrobial products are critical for protecting public health, increasing the sustainability of everyday products and construction materials, and preventing contamination in industrial processes. This legislation risks the availability of these important products to Maryland consumers, hospitals, schools, and businesses. **ACC opposes this legislation as drafted**.

Existing Disclosure & Data Requirements

Antimicrobial registrants submit significant amounts of data to the U.S. Environmental Protection Agency (EPA) and state pesticide regulatory authorities before any registration is approved. These include environmental and human health toxicity data, exposure information, and any required efficacy data against public health pathogens. Registrants must also disclose all ingredients in their formulations to regulatory authorities, including inert ingredients. No ingredient can be used in a pesticide product unless it has been approved by EPA. These important reviews help ensure that the antimicrobial products on the market in Maryland and across the U.S. are safe to use as directed.

If a contaminant, such as PFAS, is known to be present in a pesticide product, registrants have reporting obligations to EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), Section 6(a)(2). This requires registrants to report to EPA additional factual information on unreasonable adverse effects, including metabolites, degradates, and impurities (such as PFAS). Under 40 CFR 159.155(a)(5), 6(a)(2), information about impurities must be received by EPA no later than the 30th calendar day after the registrant first possesses or knows of the information.

PFAS Testing Methods

While there are many tests that could be conducted to determine the presence of PFAS in pesticides, it is critical that registrants have validated, consistent, and

accurate test methods that can be used for the various types of pesticide products. No such test exists for pesticides, though there are EPA-validated test methods for testing some PFAS in drinking water and in oily matrices. The use of drinking water methods for other media requires labs to modify the methods, which makes comparison challenging and inconsistent.

Antimicrobial pesticides come in a variety of forms and have very different chemical profiles. There is currently no one-size-fits-all test method that can provide accurate, validated results. Simply because a lab can develop a protocol and test to detect PFAS in pesticides does not mean that the test has been validated, including by regulatory authorities, and represents an accurate measure of PFAS in a pesticide.

This bill requires registrants to not only submit results from the PFAS test, but also submit an affidavit certifying the accuracy of its results. Unless there is a validated test method that registrants can utilize, this requirement places significant liability on registrants that their chosen test method will have the same results as another test method. Registrants could have a passing test from an approved laboratory while a different laboratory could use a different method and come to a different conclusion. This creates a troubling level of legal liability for companies, even if they have a passing test on a particular lot of their products and would be a strong deterrent from selling pesticide products in Maryland.

PFAS Levels

The European Union recently proposed a broad, class-based ban on PFASs.[1] In the restriction report, the EU specifically exempts biocidal products (antimicrobial pesticides) from the restriction. Further, as part of its proposal, the EU restricts PFAS in most products through a clear definition of PFAS and set levels of concentration. HB 319 does not define what is meant by PFAS, nor are the thresholds for detection scientifically justified or consistent with the EU's stringent proposed restriction.

HB319 sets the threshold for "passing the PFAS test" as less than 100 parts per trillion based on "conventional testing" or less than 10 parts per billion in total organic fluorine. Conversely, the EU sets its threshold as 25 parts per billion for any PFAS or 250 parts per billion for the sum of PFAS. The EU's proposed level is based on years of research and analysis by governments and scientists developing this PFAS restriction.

The EU also recognizes that testing for total fluorine is not an accurate indicator of the presence of PFAS. Substances can contain fluorine without containing PFAS. Under the EU proposal, if total fluorine exceeds 50 mg F/kg the manufacturer, importer or downstream user shall upon request provide to the enforcement

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

authorities a proof for the fluorine measured as content of either PFASs or non-PFASs.

The Vermont Agency of Natural Resources Department of Environmental Conservation assembled a team of scientists in 2020 from the Vermont Departments of Environmental Conservation and Health to summarize PFAS analytical methods and toxicology. In their analysis of adsorbable or extractable organic fluorine, they noted that this approach is "Not specific to PFAS, so if samples contain fluorine, this could bias results high. This technique is not specific to PFAS, if there are other contaminants present that have fluorine (pharmaceuticals or pesticides) they would be reported in the results."[2]

While ACC has significant concerns with the EU's proposed PFAS restriction, we urge the House Health and Government Operations Committee to consider the EU's approach to PFAS detection levels and exemption for pesticides.

Laboratory Capacity

Even if appropriate test methods for the presence of PFAS in antimicrobial substances were developed, the bill requires that the test occur in an EPA or Maryland Department of Environment-approved laboratory. Lab capacity would need to expand exponentially to allow for annual testing of not just antimicrobials, but the thousands of registered pesticides in Maryland. Likely, there would be a significant backlog of testing, which could result in critical antimicrobial products used in hospitals, schools, industrial facilities, and homes to be pulled from the Maryland market. No other state requires such testing for pesticides.

Impact on Businesses

This new testing requirement will particularly impact small businesses, especially those with only one or two products registered in Maryland. Rather than complying with the additional testing burden, costs, and associated delays, it is likely that many registrants will pull products from the Maryland market. For larger companies, they may choose to reduce the amount of variety in antimicrobial products registered in Maryland.

Human Health and Environmental Impacts

Pesticides are designed to kill target organisms, and therefore must be carefully regulated and thoroughly tested. ACC strongly supports the continued regulation by federal and state governments to ensure pesticides on the market pose no unreasonable risk to human health or the environment. We are not aware of existing concerns with PFAS in antimicrobial pesticides. Rather, this bill could significantly hamper the availability of antimicrobials to kill germs, keep factories

[2] "Advance Notice on the Regulation of Perfluoroalkyl Polyfluroralkyl Substances (PFAS) As a Class," Agency of Natural Resources Department of Environmental Conservation Drinking Water and Groundwater Protection Division, August 17, 2020, Page 7.

running smoothly, and ensure the sustainability of products. **We urge the committee members to give this legislation an unfavorable report.**