

United States Senate

WASHINGTON, DC 20510

March 12, 2018

The Honorable Scott Pruitt
Administrator
U.S Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N. W.
Washington, DC 20460

Dear Mr. Administrator:

We write to express our alarm with the Environmental Protection Agency's (EPA) announcement that it seeks to open up for reconsideration two federal safeguards vital to the protection of the children, women and men that labor in agriculture and apply chemicals in agricultural, commercial and residential settings. With the lives of children and families across the country at stake, we urge you to preserve the protections provided by the final Agricultural Worker Protection Standard rule (WPS) and Certification of Pesticide Applicators rule (CPA) (as published in the Federal Register on November 2, 2015 and January 4, 2017, respectively), and to resolve any clarifications needed by the regulated community via additional guidance on the rules.

We recognize the important role that pesticides play in the United States, particularly in the agricultural sector. However, precautions must be taken to safeguard the public and the most exposed and vulnerable populations from pesticide related illness, injury and death caused by these potentially toxic chemicals. To this end, the EPA finalized revisions to the WPS in the fall of 2015, and the CPA rule in January 2017.

To understand the relevance of these two rules, we must first acknowledge the people whose lives they protect and how their training and wellbeing is inextricably linked to our health and safety. The WPS applies to workers and pesticide handlers that labor in farms, fields, nurseries, greenhouses and forests. The CPA rule governs the training and certification requirements of workers who apply Restricted Use Pesticides (RUPs) in, on, or around settings such as homes, schools, hospitals and industrial establishments. These rules protect not only the workers that handle and are exposed to pesticides, but also areas around agricultural land and the children who may incidentally come in contact with the pesticides. From our homes to children's schools and agricultural operations across the nation, these federal protections safeguard our families and weakening them undermines the health and safety of all.

We are concerned that the EPA is unjustifiably reconsidering the minimum age protections that prohibit children from applying pesticides, the right of farmworkers to access pesticide-application information and Safety Data Sheets (SDS) through a designated representative, and protections for bystanders through “application exclusion zones,” which requires that an applicator suspend pesticide application if “an unprotected/non-trained person” enters the area around the application equipment. We strongly feel that undermining these important protections cannot be justified, especially considering that the CPA rule governs the training and certification requirements for using RUPs in, on, or in residential settings, schools, hospitals, and industrial establishments.

RUPs are the most toxic pesticides on the market, and their misuse has resulted in serious harm and death. These pesticides are not available for purchase by the general public because they have “the potential to cause unreasonable adverse effects to the environment and injury to applicators or bystanders without added restrictions.” RUPs can only be used by an individual that is a certified pesticide applicator or is under the direct supervision of a certified applicator. These rules were revised to prevent farmworker poisonings and in the aftermath of pesticide misuse that led to serious harm for hundreds of homeowners and their families, and resulted in the tragic deaths of children. These tragic incidents – all of which could have been prevented with stronger safeguards in place – highlight the significance of ensuring that workers who handle pesticides are adequately trained and understand the hazards posed by the chemicals that they are applying so that they can effectively protect themselves and others from occupational and take-home exposures.

Congress specifically intended for the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) to protect workers and other persons from occupational exposure directly to pesticides or to their residues. Honoring this mandate is crucial to protecting the health and safety of rural communities and the broader public since it is up to the EPA and not the Occupational Safety and Health Administration to set minimum protections from pesticide exposure. Furthermore, without the life-saving requirements provided by the WPS and CPA rules, there is little to deter the unlawful use of hazardous pesticides since FIFRA only authorizes a misdemeanor charge even when pesticide misuse results in death.

Additionally, the agency is ignoring the advice of the Pesticide Program Dialogue Committee—a broadly representative federal advisory committee—that met to discuss these rules, raised the importance of education for the regulated community while echoing consensus about the preservation of the minimum age requirements, the designated representative provision, and the application exclusion zone to protect workers and bystanders from pesticides.

To set the record straight on misleading concerns about these fundamental requirements:

- The new rules prohibit employers from requiring youth under the age of 18 from applying pesticides or performing “early-entry” work in areas where pesticides were recently applied. This is extremely important because pesticides can impact developing brains and bodies. There are currently half a million children under the age of 18 working in agriculture, including some as young as elementary school age. The minimum age requirement in both rules accounts for the needs of family-owned businesses and operators by exempting immediate family of the owner-operator of agricultural establishments, and private or commercial pesticide applicator businesses. Specifically, “immediate family” is broadly defined to include the “owner’s spouse, parents, step parents, foster parents, father-in-law, mother-in-law, children, stepchildren, foster children, sons-in-law, daughters-in-law, grandparents, grandchildren, brothers, sisters, brothers-in-law, sisters-in-law, aunts, uncles, nieces, nephews, and first cousins.”
- The designated representative provision is critically important because there are many reasons why a worker may be unable to access information about the chemicals that they are exposed to, including but not limited to educational and language barriers as well as immigration status, illness or injury. This commonsense safeguard has been denied to farmworkers while workers in other industries have had these protections for decades. The safety information that would be accessible by a designated representative would be non-confidential, non-proprietary information about the pesticide a worker has been exposed to. There are several examples of injured farmworkers who have been denied access to safety information after injury. These farmworkers should be able to access this information on their own or through a representative that they trust, such as a co-worker, spouse, healthcare provider, union representative, social worker, or attorney.
- The application exclusion zone merely requires the common-sense precaution that if someone is applying pesticides and sees workers or other people around the equipment, they should try to avoid spraying them by suspending the application and resuming after a non-trained and unprotected person leaves the area. EPA does not account for workers or bystanders being sprayed with pesticides when it conducts risk assessments or registration decisions because it “assumes” that these exposures do not happen. Yet it is taking steps to undo one of the most meaningful safeguards against such exposures.

We ask that you protect the health and safety of children, workers, and consumers by preserving the final Agricultural Worker Protection Standard and the Certification of Pesticide Applicators rule. We look forward to receiving your response.

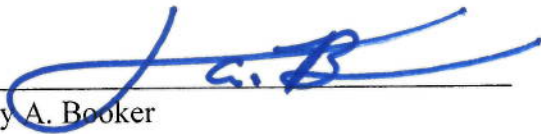
Respectfully,



Tom Udall



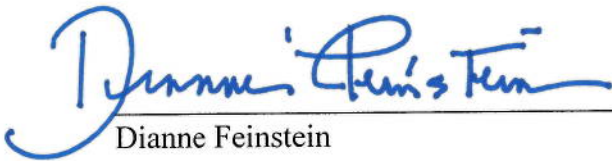
Kamala D. Harris



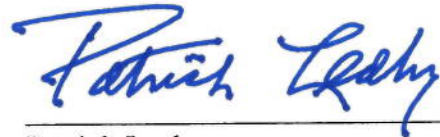
Cory A. Booker



Richard Blumenthal



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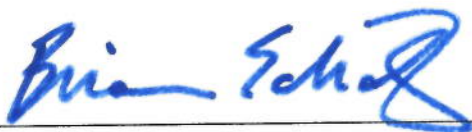
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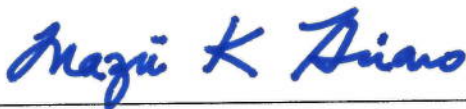
Elizabeth Warren

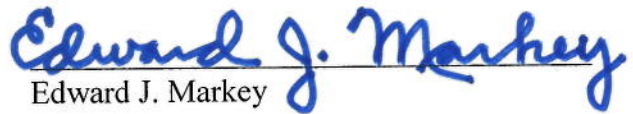

Robert Menendez

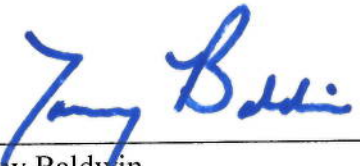

Kirsten Gillibrand


Patty Murray

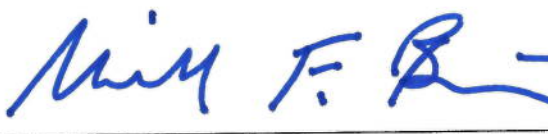

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