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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

Chlorpyrifos; Notice of Intent to Cancel Pesticide Registrations	Docket Nos. FIFRA-HQ-2023-0001; EPA-HQ-OPP-2022-0417

VERIFIED WRITTEN STATEMENT: RAM SEETHAPATHI

I, Ram Seethapathi, declare as follows:

1. I am the President of Gharda Chemicals International, Inc. ("Gharda"). I am authorized to make this affidavit on behalf of Gharda and have personal knowledge of all facts set forth herein.

2. I have a degree in Agricultural Sciences with a specialization in Entomology from Tamil Nadu Agricultural University; I was a Gold Medalist there, with a 4.0 GPA. I also have a diploma in General Management from the Indian Institute of Management Ahmedabad. I have been working for over four decades in the agricultural chemical industry at various levels, first in field development with Bayer, then as Regional Sales manager for Shell, and finally for eighteen years with Dow AgroSciences LLC (now Corteva Agriscience) in the Agricultural Chemicals Division, with progressively increasing responsibilities as Commercial Manager, Business Leader, and Human Resources Leader. While at Dow AgroSciences, I was involved very closely in chlorpyrifos market expansion from the early phase of the product lifecycle, including assisting in establishing a new manufacturing site in India and providing extensive training to employees working there. I was also the Safety Coordinator for Dow AgroSciences for the Asia Pacific region. I joined Gharda sixteen years ago, providing leadership for their business in North America.

3. I also serve as Administrative Committee Chair for two important Industry taskforces, the Outdoor Residential Exposure Taskforce (ORETF) and the Agricultural Re-entry Taskforce (ARTF). In addition, I serve on the Executive Committee for the Agriculture Handler Exposure Taskforce (AHETF). These taskforces are consortia of agrochemical companies that coordinate to jointly develop scientific studies in support of pesticide registrations.

4. I submit this verified witness statement for use at the hearing on the Notice of Intent to Cancel ("NOIC") issued by EPA and published in the Federal Register on December 14, 2022, and in support of Gharda's Objections to the NOIC.

Background on Gharda and Its Role in the Chlorpyrifos Market

5. Established in 1967, Gharda is a research-based company leading in the field of agrochemical manufacturing. Gharda was founded by Dr. Keki Hormusji Gharda, a prominent chemical engineer and chemist. After obtaining a Master's degree and Ph.D. in Chemical Engineering from the University of Michigan, Ann Arbor, Dr. Gharda established Gharda Chemicals in a small, rented shed. More than four decades of innovation and investment in R&D has transformed Gharda into a successful pioneer agrochemical company. Gharda's product portfolio includes a wide range of insecticides and herbicides, including chlorpyrifos, for which it holds EPA registrations. Gharda sold end-use chlorpyrifos products under the brand name Pilot™ as well as technical grade chlorpyrifos for manufacturing use[1].

6. Chlorpyrifos is a vitally important agricultural tool, protecting over fifty valuable U.S. food crops from destruction due to insect pests, including alfalfa, cotton, soybeans, sugarbeets, and wheat. Crops that had been protected by chlorpyrifos were worth over a hundred million dollars annually to the U.S. economy. *See* EPA, Revised Benefits of Agricultural Uses of Chlorpyrifos at 5-7, EPA-HQ-OPP-2008-0850-0969 (Nov. 18, 2020) ("Revised Benefits") (PX 40 at 6-8). Chlorpyrifos had value to growers in protecting their crops and income, as well as value to consumers who enjoy affordable, healthy, and high-quality produce throughout the year.

[1] Gharda has the following chlorpyrifos registrations: (1) Pilot 4E Insecticide (93182-7); (2) Chlorpyrifos Technical (93182-3); and (3) Pilot 15G Insecticide (93182-8).

7. Chlorpyrifos's critical importance as an insect pest management tool is due to its broad-spectrum efficacy, favorable environmental characteristics, and affordability for growers. It was the leading active ingredient to control a broad spectrum of difficult-to-control insect pests, and for some destructive pests it was the only effective pest management tool available. PX 40 at 3.

8. Because of its broad-spectrum effectiveness, chlorpyrifos was often the first tool growers employed to control new or unknown insect pests, a long-standing problem but one that will be exacerbated by climate change. *See id.* at 13–14 (removal of "broad spectrum materials such as chlorpyrifos . . . from pest management programs can result in unexpected outbreaks of previously minor pests or even the emergence of new pests"). Chlorpyrifos is also less harmful to beneficial insect populations than other insecticides. It requires fewer applications and avoids the use of multiple chemistries to control certain pests, reducing overall insecticide use.

9. Gharda has long supported the registration of chlorpyrifos in the United States, including through an industry task force that provided financial and other support for comments, scientific data, and other materials submitted to EPA by Dow AgroSciences, LLC, now Corteva Agriscience.[2] Gharda has invested over Redacted - CBI in the development of data and other information to support the registration of chlorpyrifos in the United States.

10. In February 2020, Corteva announced that it would end production of chlorpyrifos by 2021. At that time, chlorpyrifos continued to be a critically important agricultural tool for many growers. As a result, many distributors and farm input suppliers began looking to Gharda to meet the market demand for chlorpyrifos. In response to this increase in demand, Gharda

[2] A list of many of the prior comments and submissions Gharda has supported through the task force is attached as Appendix A.

significantly increased its production of chlorpyrifos. Immediately prior to the Final Rule[3], Gharda was the primary supplier of chlorpyrifos for agricultural use in the United States.

11. Chlorpyrifos is one of Gharda's most important products. Revenues from sales of chlorpyrifos comprise a significant portion of Gharda's overall U.S. business, which prior to the Final Rule was only expected to increase. In 2020, Gharda's annual U.S. revenues from chlorpyrifos were approximately Redacted - CBI. 2021 U.S. revenues from chlorpyrifos totaled to Redacted - CBI prior to the Final Rule and were expected to increase to Redacted - CBI by year end. In 2022 and beyond, Gharda's annual U.S. revenues from chlorpyrifos were projected (before the Final Rule) to be approximately Redacted - CBI annually.

12. Gharda's position in the U.S. agrochemical industry is unique. Unlike many other registrants and leading suppliers of crop protection tools in the United States, Gharda does not have U.S.-based manufacturing facilities, which adds an additional level of complexity to the supply chain not encountered by U.S.-based manufacturers. Gharda ships materials to the United States and then uses tolling companies to package and label the technical and end use chlorpyrifos products for sale to U.S. distributors, creating significant employment opportunities. The pandemic exponentially increased the costs and time required to ship Gharda's materials to the U.S. for formulating, packaging, and labeling.

13. Currently, Gharda has a significant volume of raw materials on hand at its manufacturing facility in India. Gharda also has an inventory of U.S. labeled chlorpyrifos product on hand at its India facility valued at Redacted - CBI. In addition, Gharda has inventories of chlorpyrifos product ready for distribution in the U.S. valued at approximately Redacted - CBI. Because Gharda was unable to formulate, sell, and distribute these products for use in the 2022

[3] *See* Final Rule for Chlorpyrifos Tolerance Revocations, 86 Fed. Reg. 48,315 (Aug. 30, 2021) (the "Final Rule") (JX 3).

growing season and beyond, Gharda has suffered Redacted - CBI economic losses. These losses are in addition to the Redacted - CBI lost investment described above in Paragraph 9, and future annual lost sales similar to those set forth above in Paragraph 11.

EPA's Regulatory Processes Concerning Chlorpyrifos

14. Gharda has a vital interest in pesticide regulatory procedures and food safety standards, and in actions taken by the EPA with respect to agricultural crop protection tools, including actions that relate to pesticide residues found in or on food and the regulation of those residues under the Federal Food, Drug, and Cosmetic Act ("FFDCA") and Food Quality Protection Act ("FQPA"), and associated pesticide registration actions under the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA").

15. On December 7, 2020, as part of its Registration Review of chlorpyrifos pursuant to FIFRA, EPA published its Proposed Interim Registration Review Decision for Chlorpyrifos, EPA-HQ-OPP-2008-0850-0971 (the "PID"). *See* PX 41; 85 Fed. Reg. 78,849 (Dec. 7, 2020) . The PID is supported by analyses included in EPA's September 21, 2020 Third Revised Human Health Risk Assessment, EPA-HQ-OPP-2008-0850-0951 (the "2020 RHHRA") (PX 38), which in turn relies on, among other documents, a September 15, 2020 Updated Chlorpyrifos Refined Drinking Water Assessment for Registration Review, EPA-HQ-OPP-0850-0941 (the "2020 DWA") (PX 39). EPA's PID and 2020 DWA reflected a fulsome, measured, scientific assessment of the human health and drinking water risks of chlorpyrifos by EPA's expert scientists.

16. In its 2020 RHHRA and PID, EPA continued to use 10% red blood cell acetyl cholinesterase inhibition ("RBC AChE") as a regulatory endpoint or point of departure for human health risk assessments for chlorpyrifos. *See* 2020 RHHRA at 2. This long-standing

conservative and health-protective endpoint is supported by decades of scientific study. Moreover, EPA stated that it "remains unable to verify the reported findings" of epidemiology studies claiming links between prenatal exposure to chlorpyrifos and neurodevelopmental effects. *Id.* at 89–90.

17. EPA's PID relied on the 2020 DWA, which updated and refined the Agency's 2016 DWA. In the 2020 DWA, EPA focused on eleven uses (alfalfa, apple, asparagus, cherry, citrus, cotton, peach, soybean, sugar beet, strawberry, and wheat) that EPA determined to be high-benefit, critical crop uses. PID at 15–17. The 2020 DWA focused on select regions of the country where estimated drinking water concentrations of chlorpyrifos are below the drinking water level of concern. *Id*. In the 2020 RHHRA and PID, EPA conducted an assessment of potential risk to human health from aggregate exposure to chlorpyrifos residues, taking into account all anticipated dietary exposures from food, drinking water, and residential sources, pursuant to FFDCA Section 408(b). EPA determined that there were *no* potential risks of concern from exposure to chlorpyrifos in food or residential uses alone. 2020 RHHRA at 12; PID at 14, 18. EPA determined that risks from drinking water exposure exceeded safe levels taking into account *all* registered uses but, relying on its 2020 DWA, EPA found that risks were *below* the drinking water level of concern benchmark anticipating use only on the eleven high-benefit crops set forth above in certain identified regions of the country. PID at 18.

18. In its 2020 RHHRA and PID, EPA presented two potential approaches for assessing potential risks: (i) application of a 10X FQPA safety factor and limiting use of chlorpyrifos to the eleven high-benefit agricultural uses in select regions of the country due to "uncertainty" in "the science addressing neurodevelopmental effects," or (ii) application of a 1X FQPA safety factor, which would allow for the retention of all currently registered uses.

Regarding the first approach, EPA was unequivocal that "the agency has determined" that limiting use to the eleven "high-benefit agricultural uses" in the select geographic regions "**will not pose potential risks of concerns with an FQPA safety factor of 10X**." PID at 40 (emphasis added). EPA committed to "consider registrant and stakeholder input on the subset of crops and regions from the public comment period" and stated that it "may conduct further analysis to determine if any other limited uses may be retained." *Id.* EPA also indicated that it may further refine its assessment based on feedback and recommendations from the September 2020 FIFRA Scientific Advisory Panel. *Id.*

19. Gharda submitted comments on the PID on February 3, 2021. EPA-HQ-OPP-2008-0850-0999; PX 75. Gharda urged that the weight of the scientific evidence supported the application of a 1X FQPA safety factor, including a Corteva drinking water study of chlorpyrifos oxon submitted to the EPA on December 4, 2020, which shows that there are no drinking water risk concerns associated with chlorpyrifos oxon (the chlorpyrifos metabolite that exists in drinking water following chlorination). *See A Study of Cholinesterase Inhibition in Peripheral Tissues in Sprague Dawley Rats Following Exposure to Chlorpyrifos Oxon in Drinking Water for 21 Days*, MRID 51392601.

Gharda's Discussions With EPA Concerning a Potential Voluntary Cancellation of Chlorpyrifos Uses

20. In April 2021, EPA regulatory personnel reached out to me to discuss whether Gharda would entertain an agreement to voluntarily cancel some uses of chlorpyrifos. These discussions focused initially on uses identified in the PID as the 1X uses. EPA proposed a meeting with Gharda on April 20, 2021, and requested that Gharda confirm in writing in advance of that meeting Gharda's commitment to voluntarily cancel the 1X uses (while retaining the eleven high benefit crop uses identified as the 10X uses). In response, even though Gharda was

confident that all 1X uses are well supported, Gharda indicated that it would consider phasing out some 1X uses on a reasonable timetable and adopting potential geographic restrictions on crop uses and other risk mitigation measures. *See* PX 10 at 23-25. Gharda expressed concern with the Agency's proposed rushed timetable, however, given the impact of a phase-out on its business and on the grower community, and given that EPA had not yet reviewed stakeholder comments on the PID. *Id.* EPA cancelled the meeting with Gharda in order to discuss Gharda's letter further internally.

21. On April 29, 2021, the Ninth Circuit issued a decision in the lawsuit *League of United Latin American Citizens v. Regan*, consolidated Case Nos. 19-71979, 19-71982 ("*LULAC*"), which concerned EPA's handling of an administrative petition to revoke all tolerances filed by several nongovernmental organizations. In a 2-1 decision, a three-judge panel of the Ninth Circuit found that EPA's denial of objections to a 2017 order denying the administrative petition was at odds with the FFDCA because EPA did not make an affirmative finding that chlorpyrifos tolerances were "safe" in response to the petition, outside of its normal regulatory processes. *LULAC*, 996 F.3d 673 (9th Cir. 2021). The Ninth Circuit ordered EPA "either to modify chlorpyrifos tolerances and concomitantly publish a finding that the modified tolerances are safe," "or to revoke all chlorpyrifos tolerances." *Id.* at 678 (emphasis added). In making this ruling the court expressly recognized the importance of the PID. Indeed, the court stated that:

> [D]uring the pendency of this proceeding, in December 2020, the EPA issued a Proposed Interim Registration Review Decision proposing to modify certain chlorpyrifos tolerances. The EPA also convened another SAP in 2020. **If, based upon the EPA's further research the EPA can now conclude to a reasonable certainty that modified tolerances or registrations would be safe, then it may modify chlorpyrifos registrations rather than cancelling them.**

Id. at 703. (emphasis added). The court ordered EPA to "correspondingly modify or cancel related FIFRA registrations for food use in a timely fashion consistent with the requirements of 21 U.S.C. § 346a(a)(1)." *Id.* at 678.

22. After the Ninth Circuit issued its decision in *LULAC*, EPA reached back out to me to resume discussions about a potential voluntary cancellation of certain chlorpyrifos uses. EPA career supervisory personnel strongly urged Gharda to agree to voluntarily cancel the 1X uses and emphasized that the Agency had limited time to decide how to implement the court's decision. In response, Gharda expressed its disagreement with the Ninth Circuit decision in the hope that EPA would seek rehearing of and/or appeal the flawed decision. *See* PX 10 at 26-29. Nevertheless, in an effort to work cooperatively with EPA and believing it had little choice but to accept voluntary cancellation terms, Gharda committed to voluntarily cancel additional 1X crop uses, pursuant to scheduled phase-outs in accordance with appropriate existing stocks orders. *Id.* EPA strongly implied during these discussions the 10X uses would remain in place as long as Gharda voluntarily cancelled all 1X uses. *Id.*

23. In further discussions with EPA career supervisory personnel in late May 2021, EPA expressed to Gharda that EPA was willing to consider retention of only the 10X uses, and reiterated that it was under pressure to act quickly as a result of the Ninth Circuit decision. EPA urged Gharda to confirm in writing its agreement to voluntarily cancel all 1X uses. In response, and even though such a reduction in uses would eliminate more than 50% of Gharda's U.S. chlorpyrifos business, Gharda committed to continue working in good faith with EPA towards an agreement to voluntarily cancel all 1X uses. *See id.* at 30-32. To that end, **on June 7, 2021, Gharda confirmed in writing to EPA that it would voluntarily cancel all currently approved agricultural uses of chlorpyrifos, other than the uses identified in the PID as 10X**

uses. *Id.* In turn, Gharda requested that EPA (i) work with it to address the orderly exhaustion of its inventories for the uses to be voluntarily cancelled, particularly given its unique role in the U.S. agrochemical industry; (ii) agree on orderly processes and timing for revising labels; and (iii) agree on existing stocks provisions for the uses to be voluntarily cancelled, to mitigate disruption on growers and other users. *Id.*

24. EPA career supervisory personnel were receptive to Gharda's June 7 commitment, responding the next day to ask "if Gharda is prepared to move forward with discussing voluntary use cancellations" and proposing a call with EPA legal counsel. By the email dated June 8, 2021, EPA indicated that it was "considering the following dates for existing stocks:

- Technical grade active ingredient: Phase out most [1X] uses by the end of 2021; allow until the end of 2022 (12 to 18 months) for the remaining [1X] uses
- End-use products: 12 to 18 months from the technical registrants for sale/distribution of products
- End users, growers: Until exhausted

Id. at 33-35.

25. Gharda responded to EPA's June 8 email proposing a meeting with its attorneys, with the expectation that the parties were close to reaching final agreement on terms and could begin work on modifying labels. *Id.*at 36-39.

26. Then, on June 14, 2021, EPA career supervisory personnel advised Gharda that Gharda's commitment regarding the "voluntary" cancellation of uses was not sufficient for EPA's "leadership," and asked Gharda to consider voluntarily cancelling additional uses, this time including some 10X uses, or face possible revocation of all tolerances. EPA urged Gharda

to agree to voluntarily cancel all but five to six of its most important crop uses. This was the first time that EPA asked Gharda to consider voluntarily cancelling 10X crop uses. EPA also said that its leadership had raised occupational exposure concerns and asked that Gharda agree to eliminate the use of aerial application methods, even though these are not issues to be addressed under FFDCA but are instead issues to be addressed in Registration Review under FIFRA's risk/benefit standard. In subsequent calls, EPA also expressed concerns regarding ecological risks from chlorpyrifos, even though the ecological risk assessment for chlorpyrifos has yet to be completed. EPA nevertheless continued to indicate openness to an extended phase-out period for any voluntarily cancelled uses.

27. Gharda was confused, surprised, and disappointed at EPA's request that Gharda comply to voluntarily cancel 10X uses that EPA had confirmed, in a robust scientific assessment in its PID, would not exceed safe levels. Gharda was also concerned that EPA appeared to be relying on occupational and ecological concerns as the basis for its request, neither of which relate to the regulation of tolerances under the FFDCA. Despite this dramatic and unexpected shift in the discussions, Gharda remained willing to work with EPA to try to meet its demands. Gharda repeatedly urged EPA to ensure an orderly phase-out for manufacturers, distributors, growers, and others in the agricultural supply chain for the uses to be voluntarily cancelled, as EPA's demand would eliminate nearly 80–85% of the U.S. market for chlorpyrifos.

28. Gharda and EPA had a meeting on June 24, 2021, to further discuss the terms of Gharda's voluntary cancellation of registered crop uses. In a follow-up email dated June 24, 2021, approximately two months from the deadline for EPA to act in response to the Ninth Circuit order, ***EPA's Chemical Review Manager wrote Gharda*** "to confirm the uses that Gharda

has agreed upon for retention following our discussions over the past few weeks and on our call this afternoon" and outlined the following terms:

- Retain alfalfa, apple, asparagus, cherry (tart), citrus, peach, soybean, sugarbeet, and wheat (summer and winter) in select states as outlined in the December 2020 PID
- Cotton and strawberry will be phased out over two years (until 2023)
- Aerial application will be phased out over 2 years (until 2023)
- Provisions for existing stocks:
    - Technical products [with current labels] may be sold or distributed until 12/31/2021
    - End-use products [with current labels] may be sold or distributed until 12/31/2022

See id. at 40-42.

29. In emails dated June 25, 2021, Gharda sought clarification from EPA on some aspects of its June 24 proposal, including the details of various phase-out periods. In these emails, Gharda thanked EPA "for our good faith negotiations over the last few weeks" and said that it "looks forward to working with the Agency to finalize the above terms." *See id.* at 43-47. EPA proposed a meeting with its Office of General Counsel. It was Gharda's expectation that in involving legal counsel, the parties would be working to finalize a written agreement reflecting the agreed terms.

30. At EPA's request, on July 2, 2021, Gharda had a further call with EPA career supervisory personnel, during which EPA pressed Gharda to agree to voluntarily cancel even more 10X crop uses because of demands from EPA's leadership. EPA also indicated that it

would not be able to agree to an extended phase out period and that chlorpyrifos applications would need to cease after six months, instead of the phase-out periods that ***EPA had proposed*** one week earlier in its June 24 email. *See supra* ¶ 28; PX 10 at 40-42. EPA also raised concerns with air blast applications on orchard crops. Gharda offered to provide data on mitigation measures that would address EPA's concerns regarding occupational exposure, but EPA said it would not consider mitigation data. EPA asked Gharda to put forward its best, final proposal that EPA would take back to its leadership. Gharda was especially surprised and disappointed with this turn of events, as it in good faith believed that EPA's June 24 email, *see supra* ¶ 28; PX 10 at 40-42, had set forth the final terms of crop use retention and voluntary cancellation.

31. At EPA's request, Gharda had a call with EPA and its counsel on July 6, 2021. During the call EPA pressed Gharda to accept voluntary cancellation of all but three 10X uses and reiterated that it would be unable to allow use beyond six months from the effective date of a final rule. EPA explained that the six-month period was based on the WTO Agreement on the Application of Sanitary and Phytosanitary measures, not because of a need for the orderly phase-out of chlorpyrifos inventories and existing stocks. Gharda explained that six months would not be a meaningful time period, given that it would largely overlap with the off-season for chlorpyrifos use and because its customers purchase the product at least one to two years in advance of each growing season. Following this call, Gharda followed up in writing to offer voluntary cancellation of additional 10X uses and eliminate aerial and air blast methods of application; Gharda urged EPA to extend the phase out periods for formulation, distribution, and use, to allow for an orderly exhaustion of inventories and to minimize potentially catastrophic economic losses to Gharda and others in the supply chain, at a minimum until July 2022 to cover

part of the next growing season. *See* PX 10 at 48-50. After this exchange, EPA indicated that it was "very close" to reaching final agreement with Gharda.

32. At EPA's request, Gharda had a further call with EPA and its counsel on July 14, 2021, during which EPA indicated that Gharda's proposal was under review by EPA leadership, but that EPA hoped to have a final response within a week. EPA indicated that it would likely need a voluntary cancellation letter from Gharda quickly, to reference the voluntary cancellation in the published final rule. During the call, EPA, for the first time, indicated that its leadership believed that import tolerances would also need to be voluntarily cancelled. EPA could not explain the basis for this last-minute request, given that import tolerances do not raise drinking water or occupational concerns, and given that the PID did not identify any dietary (non-drinking water) risks associated with chlorpyrifos or import tolerances, even with the retention of the 10X safety factor. Nevertheless, believing it was very close to reaching final agreement with EPA and to avoid derailing months of negotiations, Gharda submitted a proposal to EPA for the cancellation of certain import tolerances. *See id.* at 51-52. Gharda followed up asking EPA to consider its points concerning import tolerances but stressed that it did not want the import tolerance issue to stand in the way of resolving voluntary cancellation of uses pursuant to the terms discussed, as summarized in Gharda's July 6 email. *See id.* at 53-55. EPA responded stating that it appreciated Gharda's engagement on this challenging issue. *See id.*

33. Following this submission and response, Gharda heard nothing further from EPA for weeks.

34. Growing increasingly concerned as the court deadline for EPA to issue a final rule was approaching, Gharda requested a meeting with EPA leadership. After Gharda's repeated outreach, EPA finally allowed Gharda to have a twenty-five-minute meeting with Assistant

Administrator Michal Freedhoff and others from EPA on August 16, 2021. During the meeting, Gharda reiterated its commitment to voluntarily cancel uses as set forth above, urged EPA to make a decision consistent with science and law, and again stressed the major supply chain disruptions and catastrophic losses that would result from a revocation of tolerances with immediate effect. EPA was silent during this meeting, indicating only that it was willing to "work collaboratively" with Gharda going forward.

35. The next day after its meeting with EPA leadership, Gharda discovered a posting on EPA's website announcing the August 2021 revocation of all tolerances for chlorpyrifos, which Gharda also discovered was posted days **before** its August 16 meeting with EPA leadership. When Gharda reached out to senior career leadership at EPA about the posting, EPA apologized for the posting and immediately removed it, but confirmed that the final rule would be consistent with the website posting. EPA indicated that there would be "elbow room" on the timing of the final rule's implementation.

36. The next day, the EPA Final Rule was announced. In the Final Rule, EPA stated that it was revoking all food use tolerances for chlorpyrifos, as "[b]ased on the currently available data and taking into consideration the currently registered uses for chlorpyrifos," it was unable to make a safety finding under the FFDCA. JX 3 at 1. The Final Rule stated that revocations of the tolerances would take effect on February 28, 2022, six months from the date of publication, to comply with international trade obligations. *Id*. at 20.

37. On August 18, 2021, the day the Final Rule was announced, EPA held a public briefing session regarding the Final Rule. EPA invited stakeholders to submit questions to EPA regarding about the Final Rule.

38. Following EPA's public briefing, Gharda and others submitted questions to EPA, concerning the Final Rule's scope, applicability, timing for implementation, and harmonization with FIFRA. Gharda specifically asked whether EPA would consider mitigation in light of Gharda's commitment to accept label modifications limiting use of chlorpyrifos to the select crop uses in select regions EPA determined in the PID were safe and what additional mitigation EPA believed it needed to act on its safety finding. Among other questions, Gharda also asked whether EPA had reviewed or was willing to consider the 2020 Corteva drinking water study.

39. On September 20, 2021, over a month after the Final Rule was announced, EPA posted responses to "Frequent Questions about the Chlorpyrifos 2021 Final Rule" ("FAQs") on its website,[4] and responded directly to Gharda's questions that were not addressed in the FAQs. *See* PX 10 at 56-58. EPA's responses did not appear to allow any "elbow room" or opportunities to "work collaboratively" on the Rule's timing and implementation, but instead directed interested parties to submit objections. EPA also did not respond to Gharda's question concerning label modifications consistent with the Agency's safety finding, and indicated that "due to time constraints" it was unable "to conduct additional scientific analysis beyond what was already available at the time of the court ruling." *Id.*

Eighth Circuit Lawsuit

40. Gharda and the Grower Petitioners[5] (together, "Petitioners") have challenged the Final Rule underlying the NOIC as arbitrary and capricious, in the lawsuit captioned *Red River*

[4] https://www.epa.gov/ingredients-used-pesticide-products/frequent-questions-about-chlorpyrifos-2021-final-rule#question-2.

[5] Grower Petitioners are the following: Red River Valley Sugarbeet Growers Association, U.S. Beet Sugar Association, American Sugarbeet Growers Association, Southern Minnesota Beet Sugar Cooperative, American Crystal Sugar Company, Minn-Dak Farmers Cooperative, American Farm Bureau Federation, American Soybean Association, Iowa Soybean Association, Minnesota Soybean Growers Association, Missouri Soybean Association, Nebraska Soybean Association, South Dakota Soybean Association, North Dakota Soybean Growers Association, National Association of Wheat Growers,

Valley Sugarbeet Growers Ass'n, et al. v. Regan, et al., Nos. 22-1422, 22-1530 (8th Cir.) (the "Eighth Circuit Lawsuit"). The Petitioners have asked the Court to vacate the Final Rule as to the eleven food uses of chlorpyrifos found safe by EPA in its PID ("Safe Uses"). All of Petitioners' filings in the Eighth Circuit Lawsuit are hereby incorporated by reference.

41. Importantly, Gharda cited in support of its request for stay of the Eighth Circuit Lawsuit the Declaration of Stephanie H. Stephens ("Stephens Declaration"). *See* PX 31 at 36 (Pet'rs Reply Br. citing Pet. App. 1795, Stephens Declaration). The Stephens Declaration is labeled as PX 16. The Stephens Declaration was provided in response to the government's argument that Gharda had the "option" of applying for new chlorpyrifos registrations, and explained the unreasonable and overly burdensome expense, resources, and time it would take for Gharda to obtain new chlorpyrifos registrations.

NOIC Proceedings

42. On December 14, 2022, the day before oral argument in the Eighth Circuit Lawsuit, EPA published in the Federal Register the NOIC. Chlorpyrifos; Notice of Intent to Cancel Pesticide Registrations, 87 Fed. Reg. 76,474 (Dec. 14, 2022) (JX 1). In the NOIC, EPA is seeking cancellation of the registrations of Gharda's chlorpyrifos products. EPA alleges that the chlorpyrifos registrations should be cancelled because the Agency had revoked tolerances for all food uses of chlorpyrifos by way of the Final Rule.

43. In the NOIC, EPA also challenges the sufficiency of voluntary cancellations and label amendments Gharda submitted in March 2022 and June 2022, which brought its

Cherry Marketing Institute, Florida Fruit and Vegetable Association, and Georgia Fruit and Vegetable Growers Association, and National Cotton Council of America.

chlorpyrifos registrations and labels in line with the Final Rule as to all but the Safe Uses that are the subject of the Eighth Circuit Lawsuit.

44. The NOIC depends in its entirety on the Final Rule—that is, without the Final Rule there would be absolutely no basis for the NOIC.

45. On January 6, 2023, Petitioners asked EPA to stay or withdraw EPA's NOIC pending a decision by the Eighth Circuit regarding the tolerances for the Safe Uses. Letter from Pet'rs to Michael S. Regan, Adm'r, EPA, Requesting Stay/Withdrawal of EPA's Notice of Intent to Cancel Registrations for Chlorpyrifos (Jan. 6, 2023) (PX 72). EPA denied Petitioners' request. Letter from EPA to Pet'rs Den. Req. to Stay/Withdraw Notice of Intent to Cancel (Jan. 11, 2023) (PX 73).

46. Gharda submitted objections to the NOIC and a request for stay of the NOIC on January 13, 2023. PX 42. With its objections, Gharda included amended product labels that add application rates for each of the Safe Uses. Gharda's addition of the application rates, developed by EPA in support of the PID, leaves no doubt that EPA has everything necessary to approve labels consistent with EPA's determination of Safe Uses. Moreover, EPA's claim that Gharda has submitted amended labels for only one of its two end-use products is not an accurate reflection of all of the label amendments (JX 9, JX 10, JX 11) that Gharda has submitted to EPA.

47. On March 31, 2023, the Administrative Law Judge presiding over the NOIC proceeding denied Gharda's request for a stay of the NOIC.

The NOIC Should be Dismissed Without Cancellation of Any of Gharda's Registrations for Chlorpyrifos

48. The NOIC is improperly based on the Final Rule, which incorrectly revoked tolerances for the Safe Uses. The validity of the Final Rule as to the Safe Uses is currently under

consideration by the Eighth Circuit. Oral arguments in the lawsuit occurred on December 15, 2022 (just one day after the NOIC was issued), and a decision is expected in the near future.

49. If the Eighth Circuit vacates or remands the Final Rule as to the tolerances for the Safe Uses, the NOIC's proposed basis for the cancellation action becomes moot.

50. In the event the Eighth Circuit vacates the Final Rule after Gharda's chlorpyrifos registrations are cancelled in the NOIC proceeding, it will be prohibitively expensive and time consuming for Gharda to have its registrations reinstated. *See* PX 16 at 3 ¶ 6 ("If Gharda were to submit applications for registration of new food uses and associated tolerances after EPA revoked all tolerances and cancelled all food uses, it would take approximately 38 months from the time of submission of the applications until possible EPA approval. EPA's fees for reestablishing U.S. food uses and associated tolerances would be approximately $875,000."); *See also* Stephens Witness Statement ¶ 8 (In 2023, these fees would be "approximately $1,079,356"). Due process is not met when a NOIC totally dependent on the Final Rule is forced upon Gharda before the decision in the Eighth Circuit Lawsuit.

51. Further, the NOIC erroneously signals an urgent need for registration cancellation. On the contrary, there is no urgency for the NOIC to address this because there are currently no chlorpyrifos products used on food in the stream of commerce.

52. On June 9, 2023, EPA published a notice of Gharda's request for voluntary cancellation of certain registrations' uses. JX 16. The voluntary cancellation seeks cancellation of all food uses except the 11 Safe Uses that are the subject of the Eighth Circuit Lawsuit. In EPA's notice, the Agency proposes a 180-day comment period before intending to grant Gharda's request and implementing the voluntary cancellation. If, as EPA argues, there was a public interest in moving forward with the cancellation proceeding before the Eighth Circuit's

decision, EPA would not permit a 180-day comment period during which the chlorpyrifos registrations remain unchanged. EPA is essentially proposing the status quo with respect to the registrations, further demonstrating no urgency for the NOIC pending the Eighth Circuit decision.

53. Congress crafted rigorous cancellation procedures to protect the rights of registrants and ensure that EPA's decisions to suspend or cancel a FIFRA registration are supported by scientific evidence and account for impacts to stakeholders. The legally protectable rights conferred on registrants by a FIFRA registration cannot be revoked without due process of law. Congress requires that before EPA may issue a notice of intention to cancel or a notice of intent to hold a hearing on cancellation, it must provide, among other safeguards, the registrant notice; the opportunity to correct the error(s), if possible; and the right to a public hearing. 7 U.S.C. § 136d(b). Such a hearing provides de novo review of a proposed cancellation's merits by an ALJ. *See id.*; 40 C.F.R. Part 164.

54. The NOIC violates FIFRA by ignoring several of the statutorily required steps that must precede registration cancellation, including the requirement to consider alternatives to cancellation, and by improperly attempting to narrow the scope of the ALJ's review.

55. FIFRA Section 6(b) provides that

> [i]n taking any final actions under this subsection, the Administrator shall consider restricting a pesticide's use or uses as an alternative to cancellation and shall fully explain the reasons for these restrictions, and shall include among those factors to be taken into account the impact of such final action on production and prices of agricultural commodities, retail food prices, and otherwise on the agricultural economy, and the Administrator shall publish in the Federal Register an analysis of such impact.

7 U.S.C. § 136d(b).

56. FIFRA's legislative history reinforces Congress's intent that cancellation decisions be made only after thorough consideration of potential agricultural impacts and the opportunity for meaningful public input. When Congress amended FIFRA in 1975 to require consultation with the U.S. Department of Agriculture ("USDA") during the cancellation process, it sought to respond to "strong criticism directed towards EPA for its not taking sufficient account of the impact of its decisions on the agricultural economy[,]" including food cost and supply, as the House and Senate Reports leading up to that amendment each explain. H.R. Rep. No. 94-497, at 6, 9 (1975); *accord* S. Rep. No. 94-452, at 8 (1975). Congress updated the cancellation procedures in Section 6(b) to "involve the Department of Agriculture in important phases of the decision-making process" and "tighten the degree of cooperation between the agencies." H.R. Rep. No. 94-497, at 6. Contrary to the mandate from Congress, EPA failed to meaningfully or sufficiently consult with USDA here. *See* JX 15 (USDA has "overarching concerns" and "legal concerns" around the NOIC and views the NOIC as "harmful precedent" and requesting that EPA "follow historical precedent and legal procedures"); *see also* Pet'rs' Rule 28(j) Submission (Dec. 14, 2022) (PX 32).

57. EPA has ignored FIFRA's requirement that EPA consider alternatives to registration cancellation because EPA did not consider the PID and the Safe Uses identified by the PID as an alternative to cancellation.

58. Further, EPA did not consider Gharda's repeated written commitment to the Agency before the Final Rule to voluntarily cancel all food uses of chlorpyrifos except the Safe Uses as an alternative to cancellation.

59. EPA has never provided evidence contrary to Gharda's commitment to ensure that its chlorpyrifos product does not enter the U.S. food supply while EPA's Final Rule remains under review by the Eighth Circuit.

60. EPA did not consider the impact of registration cancellation compared to the alternative of maintaining the Safe Uses on production and prices of agricultural commodities, retail food prices, and otherwise on the agricultural economy.

61. FIFRA Section 6(b) provides that "[i]n determining whether to issue any such notice [of the Administrator's intent to cancel a registration], the Administrator *shall* include among those factors to be taken into account the impact of the action proposed in such notice on production and prices of agricultural commodities, retail food prices, and otherwise on the agricultural economy . . . . [T]he Administrator shall provide the Secretary of Agriculture with [the] analysis of such impact on the agricultural economy." 7 U.S.C. § 136d(b) (emphasis added). This analysis is mandatory under FIFRA, but there is no evidence that it was performed. EPA states in the NOIC that it was able to conclude that "the cancellation action being proposed in this NOIC itself does not actually result in any impact on agricultural commodities, retail food prices, or the agricultural economy." 87 Fed. Reg. at 76,479. But EPA did not actually perform the analysis required by FIFRA to reach this conclusion. Nor did EPA provide an impacts analysis to the Secretary of Agriculture as required by FIFRA. Instead, EPA based its conclusion on the contention that the impacts have already occurred as a result of the revocation of tolerances and would not be attributable to registration cancellation. However, this *conclusion* is not the *impacts analysis* required by FIFRA; Congress did not relieve the Administration of his statutory obligation under FIFRA just because tolerance revocation precedes the NOIC. The NOIC attempts to completely divorce itself from the tolerance revocation that preceded it. That

is an inappropriate effort to narrow the scope of the NOIC and the ALJ's review. But for the tolerance revocation, the NOIC would have no basis. The FFDCA does not give the Agency a license to ignore the statutory requirements of FIFRA. *See* JX 15 (EPA's failure to conduct FIFRA-required impacts analysis as part of the NOIC for chlorpyrifos is contrary to proper process and serves as "harmful precedent").

62. EPA also contends that it could base its conclusion on a "benefits" analysis that the Agency performed as part of its PID. *See* 85 Fed. Reg. 78,849. But this was an analysis limited to potential economic impact on growers, not the broader analysis of the impacts "on production and prices of agricultural commodities, retail food prices, and otherwise on the agricultural economy." FIFRA clearly links the requirement of this analysis with the further requirement that the Administrator consider restricting a pesticide's use or uses as an alternative to cancellation in taking any final action. 7 U.S.C. § 136d(b) ("*In taking any final action* under this subsection, the Administrator *shall* consider restricting a pesticide's use or uses as an alternative to cancellation . . . and shall include among those factors to be taken into account the impact of such final action on production and prices of agricultural commodities, retail food prices, and otherwise on the agricultural economy. . ."") (emphasis added). Thus, based on the impacts analysis required by FIFRA the Administrator may decide, in taking any final action, that it is prudent to delay cancellation of the Safe Uses at issue in the Eighth Circuit Lawsuit until the court makes its decision, or that tolerances for the Safe Uses should be reinstated. Without the fulsome impacts analysis mandated by Congress, the Administrator is not in a position to make an informed final action under FIFRA. *See* JX 15 at 2 ("Rather than proceed with the NOIC under review, USDA would strongly support an Agency-initiated action to

reestablish tolerances for and ultimately retain chlorpyrifos uses that meet the Agency's safety finding . . . (in accordance with the 2020 PID).") (JX 15).

63. On March 30, 2022, Gharda submitted to EPA a request to voluntarily cancel all food uses of chlorpyrifos except the Safe Uses pending the outcome of the Eighth Circuit litigation. EPA did not publish its notice of receipt of Gharda's request for voluntary cancellation until June 9, 2023—more than 14 months after Gharda submitted the request. The Federal Register notice provides for a 180-day comment period on the request for voluntary cancellation. JX 16. EPA did not consider Gharda's request for voluntary cancellation in issuing the NOIC. EPA has not considered the amended product labels submitted by Gharda as a lesser alternative to cancellation as required by FIFRA.

The NOIC and Final Rule Continue to Cause Significant, Irreparable Harm

64. The Final Rule, and therefore the NOIC's implementation of the cancellation of registrations as provided in the Final Rule, has caused and will continue to cause significant and irreparable harm to Gharda and others in the agricultural value chain.

65. As a result of Gharda's increased production to meet market demand after Corteva's exit from the market, Gharda has a significant volume of raw materials and U.S. labeled product in inventory. Without the ability to formulate, distribute, and sell these products, Gharda will suffer Redacted - CBI economic losses, to say nothing of the nearly Redacted - CBI loss in its investment in chlorpyrifos and lost future sales of chlorpyrifos products in the U.S. of approximately Redacted - CBI annually. In total, the economic losses Gharda will face if the NOIC proceeds will be catastrophic.

66. Beyond these economic losses, Gharda has suffered and will continue to suffer significant reputational harm as a result of EPA's arbitrary action against chlorpyrifos. By revoking all tolerances, EPA has directly attacked the safety of chlorpyrifos in the eyes of

growers, processors, and consumers, and the credibility of Gharda in selling and distributing chlorpyrifos products. EPA has done this despite a finding by its own expert scientists that a subset of eleven high-benefit chlorpyrifos uses in certain geographic areas are safe, and in disregard of written commitments provided to EPA by Gharda ***prior to the Final Rule*** to modify Gharda's label consistent with EPA's safety finding in its PID.

67. EPA's revocation action has and will continue to strain Gharda's relationships with its customers, who distribute its products to suppliers and end users. Indeed, during its months of negotiations with EPA, Gharda assured its customers that it was working cooperatively with EPA to reach an agreement that would allow for many continued agricultural uses. Given EPA's scientific assessment in the PID which provided a clear scientific record on which to retain at least the 10X chlorpyrifos uses, neither Gharda nor its customers expected that EPA would take draconian action to eliminate all uses. EPA's abrupt departure from its own scientific findings has cast doubt on Gharda's credibility and resulted in a loss of customer goodwill.

68. In addition to the immediate and irreparable harm caused to Gharda by EPA's action, EPA's revocation action could create long-term irreparable harm to Gharda because of the stigma attached to the unfounded public statements by EPA that its action was taken "to ensure children, farmworkers, and all people are protected from the potentially dangerous consequences of this pesticide," and "follow[s] the science and put[s] health and safety first." EPA, *EPA Takes Action to Address Risk from Chlorpyrifos and Protect Children's Health* (Aug. 18, 2021) https://www.epa.gov/newsreleases/epa-takes-action-address-risk-chlorpyrifos-and-protect-childrens-health. There is no scientific basis for these statements, which are in fact directly at odds with EPA's Final Rule and the scientific findings set forth in the PID. *See, e.g.,*

86 Fed. Reg. at 48,324 (EPA "remains unable to make a causal linkage between chlorpyrifos exposure and the outcomes reported by [epidemiology studies reporting neurodevelopmental impacts in children]"); *id.* at 48,335 ("EPA has not conducted a formal EJ analysis for this rule"); PID at 10 ("the science addressing neurodevelopmental effects remains unresolved").

69. The stigma attached to EPA's public statements not only has the potential to cause ill-will against Gharda by customers, consumers, and the public, but will also adversely affect Gharda's ability to meet the needs of growers for effective pesticide products, compounding the ill-will against Gharda. Customers who abandon Gharda products now because of the Agency's action may not return to using products produced by Gharda even in the event of a final adjudication in Gharda's favor. Gharda may thus permanently lose a significant portion of its overall market share. Moreover, EPA's actions may trigger other federal or state regulatory requirements or bans, as well as restrictions by foreign governments, who look to EPA as the gold standard for making regulatory decisions based on science.

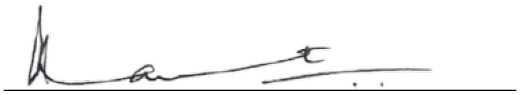
70. For these reasons, and those set forth in its Objections, Gharda believes that the NOIC should be dismissed without cancellation of Gharda's registrations for chlorpyrifos.

Authenticity of Exhibits

71. I have reviewed the following documents, and these exhibits are true and correct copies of documents generated, transmitted, or received by me in the course of my work as President of Gharda: PX 2, PX 8—11, PX 13—14, PX 16, PX 39—43.

I declare that the foregoing is true and correct to the best of my knowledge.

Dated: July 14, 2023



Ram Seethapathi
President

Appendix A
List of Comments and Other Submissions to EPA Gharda has Supported Through the Chlorpyrifos Industry Task Force

1. DAS Response to 2014 Revised Human Health Risk Assessment for Chlorpyrifos, (Apr. 29, 2015), EPA-HQ-OPP-2015-0653-0214;
2. Decl. of C. Burns in support of DAS Comments on EPA's Literature Review on Neurodevelopment Effects & FQPA Safety Factor Determination for Organophosphate Pesticides, (Dec. 22, 2015), EPA-HQ-OPP-2015-0653-0230 (submitted to docket EPA-HQ-OPP-2010-0119);
3. DAS Response to EPA's Proposed Rule to Revoke Chlorpyrifos Tolerances (including all references and appendices), (Jan. 4, 2016), EPA-HQ-OPP-2015-0653-0386;
4. DAS Legal and Policy Comments in Response to EPA's Proposed Rule to Revoke Tolerances for Chlorpyrifos, (Jan. 5, 2016), EPA-HQ-OPP-2015-0653-0266;
5. DAS Response to Chlorpyrifos-Methyl Human Health Draft Risk Assessment, (Sept. 15, 2015), EPA-HQ-OPP-2010-0119-0044;
6. DAS Legal and Policy Comments in Response to (i) EPA's Literature Review on Neurodevelopment Effects & FQPA Safety Factor Determination for Organophosphate Pesticides and (ii) EPA's Chlorpyrifos-Methyl Human Health Draft Risk Assessment, (Feb. 19, 2016), EPA-HQ-OPP-2010-0119-0033;
7. DAS Comments on 2016 Revised Human Health Risk Assessment and Refined Drinking Water Assessment for Chlorpyrifos, (Jan. 17, 2017), EPA-HQ-OPP-2015-0653-0651;
8. Decl. of C. Burns in support of DAS Comments on EPA's Response to Comments Related to Applying the FQPA 10X Safety Factor for the Organophosphate Pesticides (Dec. 29, 2016), EPA-HQ-OPP-2008-0316-0071, (submitted to docket EPA-HQ-OPP-2010-0119);

9. DAS Legal and Policy Comments on (i) EPA's Response to Comments Related to Applying the FQPA 10X Safety Factor for the Organophosphate Pesticides; (ii) Response to Occupational and Residential Exposure-Related Comments on the Preliminary Organophosphate Human Health Risk Assessments; and (iii) Response to Dietary-Related Comments on the Preliminary Organophosphate Human Health Risk Assessments, (July 24, 2017) (submitted to docket EPA-HQ-OPP-2010-0119);
10. DAS Response to Objections to EPA's Denial of Petition to Revoke Tolerances and Cancel Registrations for Chlorpyrifos (and supporting Declarations), (Aug. 27, 2018) (submitted to docket EPA-HQ-OPP-2007-1005-0526);
11. Br. of Amicus Curiae Dow AgroSciences in Supp. of EPA, LULAC v. Wheeler, Nos. 19-71979, 19-71982 (9th Cir. Mar. 6, 2020), ECF No. 53-2;
12. D. Juberg and J. Driver, A Review of Recent Studies - Red Blood Cell Cholinesterase Inhibition as a Point of Departure for Regulation of Chlorpyrifos is Protective Against Neurodevelopmental Toxicity, (June 17, 2020) ("DAS Review of Recent Studies");
13. D. Juberg and J. Driver, Scientific Bases and Perspectives on Uncertainty and Safety Factors for Assessing Risks Associated with Human Chlorpyrifos Exposures, (June 17, 2020) ("DAS Submission on Uncertainty and Safety Factors");
14. A Study of Cholinesterase Inhibition in Peripheral Tissues in Sprague Dawley Rats Following Exposure to Chlorpyrifos Oxon in Drinking Water for 21 Days, MRID 51392601, submitted by Corteva Agriscience, and
15. Corteva Agriscience's Comments on Chlorpyrifos Proposed Interim Registration Review Decision (Feb. 2, 2021).

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

Chlorpyrifos; Notice of Intent to Cancel Pesticide Registrations	Docket Nos. FIFRA-HQ-2023-0001; EPA-HQ-OPP-2022-0417

VERIFIED WRITTEN STATEMENT: STEPHANIE H. STEPHENS

I, Stephanie H. Stephens, state as follows:

1. I am currently a Principal Scientist at Exponent, Inc. ("Exponent"). I have worked on pesticide registration issues for consulting companies, pesticide industry, and the United States Department of Agriculture, Animal and Plant Health Inspection Service for 30 years. I am familiar with the facts set forth in this verified written statement and, if called as a witness, could and would testify competently to these facts under oath.

2. I am submitting this verified written statement on behalf of Petitioner Gharda Chemicals International, Inc. ("Gharda") for use at the hearing on the Notice of Intent to Cancel ("NOIC") issued by EPA and published in the Federal Register on December 14, 2022, and in support of Gharda's Objections to the NOIC.

3. Gharda cited in support of its request for stay of the Eighth Circuit Lawsuit my Declaration dated February 21, 2022 ("Stephens Declaration") (PX 16). *See* Pet'rs Reply Br., *Red River Valley Sugarbeet Growers Ass'n*, Nos. 22-1422, 22-1530 (8th Cir. Sept. 2, 2022) (ID No. 5194647) (citing Pet. App. 1795, Stephens Declaration). The Stephens Declaration was provided in response to the government's argument that Gharda had the "option" of applying for new chlorpyrifos registrations, and explained the unreasonable and overly burdensome expense, resources, and time it would take for Gharda to obtain new chlorpyrifos registrations.

4. Gharda has also referenced the Stephens Declaration during the NOIC proceeding. *See, e.g.*, Pet'rs' Req. for Certification of Order Denying Stay, Ex. 1. In that instance, the Stephens Declaration was provided in response to the government's statement that Gharda would need to follow the applicable process(es) for registration under FIFRA if Gharda's registrations were cancelled and tolerances for residues of chlorpyrifos were established in the future. *See* EPA's Resp. to Gharda's Req. for Stay of NOIC, at 10. The Stephens Declaration

was also provided to respond to the ALJ's determination that Gharda should not be back to "square one" in the event Gharda needed to submit new applications for registrations of food uses and associated tolerances after cancellation of registrations. *See* Order on Pet'r Gharda Chemicals International, Inc.'s Motion to Stay at 5.

5. On behalf of Gharda, throughout 2021 and through January 2022, I attended numerous discussions between Gharda and personnel from EPA's Office of Pesticide Programs, Pesticide Re-Evaluation Division ("EPA OPP PRD"). Leading up to EPA's August 2021 Final Rule revoking all tolerances for chlorpyrifos ("Final Rule"), these discussions focused on a possible voluntary cancellation of selected chlorpyrifos uses and associated tolerances with retention of other crop uses and associated tolerances.

6. After EPA's Final Rule[1], PRD proposed to Gharda that Gharda could submit an application for new food use(s) and associated tolerance(s). The applicable registration package(s) would be prepared and submitted to EPA's Registration Division ("RD"), which is responsible for pesticides that are considered conventional chemicals, and would be subject to the fees and timing under the current fee-for-service provisions for pesticide registrations under the Pesticide Registration Improvement Act of 2022 ("PRIA 5").[2]

7. In my experience, as I stated in my previous 2022 declaration (PX 16), if during the timeframe 2021/2022 Gharda were to submit applications for registration of new food uses and associated tolerances after EPA revoked all tolerances and cancelled all food uses, it would take approximately 38 months from the time of submission of the applications until possible

[1] Final Rule for Chlorpyrifos Tolerance Revocations, 86 Fed. Reg. 48,315 (Aug. 30, 2021) (the "Final Rule")
[2] https://www.epa.gov/pria-fees.

EPA approval. EPA's fees for reestablishing U.S. food uses and associated tolerances would be approximately $875,000.

8. In my experience, now in 2023 (on or after February 27, 2023), if Gharda were to submit applications for registration of new food uses and associated tolerances after EPA revoked all tolerances and cancelled all food uses, it would take approximately 38 months from the time of submission of the applications until possible EPA approval. EPA's fees for reestablishing U.S. food uses and associated tolerances would be approximately $1,079,356.

9. If Gharda's chlorpyrifos registrations were cancelled through the NOIC proceeding, Gharda would be back at square one in terms of submitting a new application for registration of food uses and associated tolerances. Despite that Gharda and EPA have previously undertaken negotiations related to modified chlorpyrifos registrations, such work would not reduce the effort, time, and cost necessary if Gharda were required to submit registration applications anew.

10. EPA's proposed path forward after all food uses and associated tolerances are cancelled is not a viable remedy because of the significant time required and associated costs.

I declare that the foregoing is true and correct to the best of my knowledge.

Dated: July 13, 2023

Stephanie H. Stephens

Stephanie H. Stephens

Exponent®
Engineering & Scientific Consulting

Stephanie Holmes Stephens

Principal Scientist | Chemical Regulation and Food Safety
1150 Connecticut Ave NW, Suite 1100 | Washington, DC 20036
+1-435-647-6209 tel | sstephens@exponent.com

Professional Profile

Ms. Stephens has more than 26 years of experience with EPA, FDA and USDA regulatory projects.

Ms. Stephens' experience includes pesticide (FIFRA) regulatory projects through her work in industry, consulting, and the Federal government. Her US work includes strategic planning, agency liaison activities, data development planning and management, submission and follow-on support for new food and non-food use active ingredient and product registrations for conventional chemicals, microbial and biopesticide registrations, inert ingredient approvals, import tolerances. In addition, she manages responses for Agency reviews of existing pesticides the pesticide reevaluation (registration review) process for existing chemicals under review. Ms. Stephens has significant experience planning global registration strategies with multi-disciplinary teams and has key contacts to support global registration efforts partnering with Exponent.

In addition to pesticide expertise, she has experience with FDA-regulated animal drug approvals, including assessing data requirements for New Animal Drug approvals (NADs) and obtaining and managing Investigational New Animal Drug approvals (INADs) for these types of products.

Ms. Stephens has also managed USDA APHIS program projects as a Federal employee and written, managed, and reviewed compliance projects under the National Environmental Policy Act (NEPA) both as a Federal employee and as a consultant. Ms. Stephens has expertise in permitting for non-genetically modified and genetically modified organisms regulated by USDA APHIS.

Academic Credentials & Professional Honors

M.S., Environmental Management , University of Maryland, College Park, 2005

B.A., Biology, Colorado College, 1987

Phi Kappa Phi academic honor society

Publications

Kurl RN, Holmes SC, Verney E, Sidransky H. Nuclear envelope glycoprotein with poly(a)polymerase activity of rat liver: isolation, characterization, and immunohistochemical localization. Biochemistry 1988; 27 (25):8974-8980.

Kurl RN, Holmes SC, Verney E, Sidransky H. Tryptophan binding to nuclei of rat liver and hepatoma. The Journal of Nutritional Biochemistry (Impact Factor: 4.55) 1995; 6(2):73-79.

Project Experience

Prepared and conducted multiple FIFRA training seminars for Federal (USDA) employees, industry and clients.

Led multiple large-scale, multi-year data development projects for new pesticide registrations on behalf of clients and industry. Projects included preparing registration strategic plans, negotiating with regulatory agencies, placing and monitoring studies at contract laboratories, reviewing study reports, assembling and submitting data packages, managing agency review process, managing multi-disciplinary scientist teams, and managing project costs and timing.

Led multiple multi-year EPA pesticide reevaluation projects, including preparing responses to EPA, negotiating with EPA staff on technical and administrative regulatory issues, and advising clients on strategies and approaches for responding to EPA.

Led due diligence and data compensation projects, including managing multi-disciplinary scientist teams, managing project costs and timing, assisting clients in preparing for testimony (data compensation cases) and preparing findings reports to clients.

Negotiated and managed jurisdictional consideration process for chemicals with potential multi-agency jurisdiction, including assisting with establishing lead jurisdiction agency on behalf of Federal and industry clients.

Led registration projects with multi-agency jurisdiction (EPA/USDA/FDA), including acting as primary communication between agencies, advising clients on strategies and approaches for achieving timely approvals/registrations.

Prepared, submitted and managed review process for numerous import tolerance petitions for pesticides to Canada, the US and other countries.

Conducted numerous facility-wide pesticide regulatory compliance audits (both on- and off-site) and presented findings and action items to clients.

Conducted program-wide pesticide regulatory compliance audits for Federal agency (USDA and associated Services), presented findings to staff and senior leaders, and implemented program-wide actions based on findings.

Authored multiple National Environmental Policy Act documents including Environmental Assessments, Environmental Impact Statements, and technical support documents for Federal and industry clients.

Managed regulatory compliance issues for animal drugs with FDA on behalf of USDA’s Wildlife Services.

Managed compliance program for USDA’s Wildlife Services Vertebrate Control Program. Provided technical and regulatory advice and project management for multiple USDA APHIS program projects including VS feral swine program, BRS permitting program, and PPQ commodity inspection activities.

Advisory Appointments

Regulatory Advisor, USDA National Institute of Food and Agriculture, Emergency Citrus Disease Research and Extension Program: Advanced testing and commercialization of novel defensin peptides and therapies for HLB control

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

Chlorpyrifos; Notice of Intent to Cancel Pesticide Registrations	Docket Nos. FIFRA-HQ-2023-0001; EPA-HQ-OPP-2022-0417

VERIFIED WRITTEN STATEMENT: MICHAEL AERTS

Florida Fruit and Vegetable Association
(FFVA)

I, Michael Aerts, state as follows:

1. I am the Vice President of Science and Regulatory Affairs at the Florida Fruit and Vegetable Association ("FFVA") and am authorized to make this statement on behalf of FFVA, based on my personal knowledge. I have worked for FFVA since 1999 and have been in my current position since 2020.

2. My responsibilities include representing grower interests on critical areas of importance to FFVA members including pest management, crop production practices, food safety and international marketing access related to crop production needs. The interests that FFVA seek to protect by filing its petition here-the continued use of chlorpyrifos consistent with EPA's previous safety findings-are central to the organizational purpose of FFVA.

3. I have solicited and reviewed information from numerous growers and members of FFVA regarding the consequences of EPA's Notice of Intent to Cancel (NOIC)[1] Gharda Chemicals International Inc.'s (Gharda) chlorpyrifos registrations. If the cancellation of registrations is granted, FFVA members will continue to not be able to use chlorpyrifos, even if the 8th Circuit Court of Appeals rules in favor of Grower Petitioners. This will impact Florida citrus production. This in turn can have detrimental impacts on the price of citrus and on retail foods which use citrus as an important component. EPA's assumption that its NOIC will not have an impact on the economy, because chlorpyrifos tolerances have already been revoked, is a fallacy. If the Eighth Circuit Court of Appeals[2] rules in favor of the Grower Petitioners and EPA has already cancelled Gharda's registrations, which are the last registrations remaining for chlorpyrifos, the Grower Petitioners will have no chlorpyrifos products available to protect their

[1] EPA Notice "Chlorpyrifos; Notice of Intent to Cancel Pesticide Registrations," 87 Fed. Reg. 76,474 (Dec. 14, 2022).
[2] Referring to the pending case *Red River Valley Sugarbeet Growers Ass'n et al. v. Regan,* et al., Nos. 22-1422, 22-1530 (8th Cir. filed Feb. 28, 2022).

crops. Growers would have to wait for registrants to submit new registrations to EPA and obtain approvals from EPA prior to sale or distribution of the pesticide. I understand that this process could take over 3 years. This hurdle would cause significant harm to Florida growers and disruptions in the economy.

4. FFVA seeks to enhance the business and competitive environment for producing and marketing fruits, vegetables and other crops. FFVA is Florida's leading full-service specialty crop organization, serving Florida's grower-shipper community since 1943. FFVA represents a broad range of crops, including vegetables, citrus, tropical fruit, berries, sod, sugar cane, tree crops and more.

5. Florida's citrus industry had an economic impact of more than $6.9 billion to the state and supported more than 32,500 jobs during the 2020-2021 season.

6. Florida ranks at the top in the United States in the production, acreage and total value of its citrus crops. Florida citrus farmers depend upon chlorpyrifos, as even after repeated decades of constant use, it remains an extremely effective and economical crop production tool. It is used as an insecticidal resistance management/rotational chemistry partner product in large part for controlling the Asian citrus psyllid.

7. The number one issue Florida citrus growers are facing that impacts yield is the health of our citrus trees and the threat to these trees from a foreign/invasive disease, citrus greening. The Asian citrus psyllid is the cause of the citrus greening disease. Citrus greening (Huanglongbing, HLB) is an incurable disease that affects all species of citrus trees. HLB is regarded as the most devastating citrus disease worldwide. For the 2021-2022 season, USDA reported that citrus production overall in Florida has decreased by more than 72 percent since the introduction of the Asian citrus psyllid and subsequent HLB infections this pest transmits. At the

height of the state's orange production, Florida was producing 244,000,000 boxes of oranges a year (Florida NASS 1998 Citrus July Forecast). During the production year 2004-05, the Florida citrus industry produced 162,250,000 boxes of citrus. For 2021-22 that figure was only 45,130,000 boxes. The most recent crop forecast by the USDA projects that Florida will produce only 15,800,000 boxes of oranges in 2023 (USDA NASS June 9, 2023 Citrus Forecast).

8. Because of HLB and the spread of the disease by the Asian citrus psyllid, growers annually face losses, and the entire industry has been capsizing. The number of citrus growers in Florida decreased from 7,389 in 2002 to 3,044 in 2017 (USDA NASS 2002 and 2017 Census of Agriculture); the number of juice processing facilities decreased from 41 in 2003/2004 to 14 in 2016/2017; and the number of citrus packinghouses decreased from 79 to 26 during the same period (Singerman, A., M. Burani-Arouca, and S. Futch. 2018. The profitability of new citrus plantings in Florida in the era of HLB. Hortscience. 53(11): 1655-1663). A total of 340,200 acres of Florida citrus was harvested in 2022 (Florida Citrus Statistics, 2021-2022, USDA NASS) whereas as recent as 1996, at the height of production and before the introduction of citrus greening disease, Florida grew its citrus crop on more than 857,687 bearing acres (USDA, NASS Florida Field Office - Florida Citrus Crop Statistics, printed October 2011).

9. Chlorpyrifos has been a part of the overall approach to managing the Asian citrus psyllid (and consequently HLB). Chlorpyrifos' importance towards the management of HLB cannot be overemphasized. EPA has estimated that over 95,000 acres of Florida oranges have used chlorpyrifos in the past. The high-end economic benefits from this use, as estimated by EPA is over 3 million dollars each year. U.S. EPA, Memorandum, Revised Benefits of Agricultural Uses of Chlorpyrifos (PC# 059101), EPA-HQ-OPP-2008-0850-0969, at 7 (Nov. 18, 2020), https://www.regulations.gov/document/EPA-HQ-OPP-2008-0850-0969.

10. In addition to its criticality for HLB, access to chlorpyrifos is needed as a part of existing integrated insect/mite management strategies, and to help sustain citrus production at necessary levels. Chlorpyrifos is an important crop protection tool in Florida and for the U.S. citrus industry in managing a multitude of insect/mite pests that attack citrus foliage and fruit.

11. Florida farmers relied on chlorpyrifos for its broad-spectrum insect management capabilities, its characteristics relating to long-term overall efficacy, its low cost, its tank mixing compatibilities, its residual effectiveness, and its ease of implementation into existing integrated pest management and resistance management programs.

12. Asian citrus psyllids, rust mites, spider mites, broad mites, scales, and Diaprepes root weevils historically all cause economic damage to citrus grown in Florida. More recently, the Lebbeck mealybug and the *Bulimulus bonariensis* snail have become a problem for Florida citrus growers. All of these aforementioned pests are targeted directly and managed effectively by the application of chlorpyrifos. In fact, chlorpyrifos is an effect "clean-up" pesticide. It was used only when needed for many of these pests and was the most effective pesticide tool that the citrus growers had available.

13. Effective alternatives to chlorpyrifos generally do not exist. Other available products are less effective, have increased costs, and result in lower crop yields.

14. Continued restrictions on chlorpyrifos application options would most likely lead to the formation of resistance to the insecticide chemical classes, because of a limitation to viable insecticides that operate using differing modes of action in season-long chemistry rotation programs.

15. FFVA objects to EPA's NOIC for Gharda's registrations. Florida citrus is one of the crops where EPA determined that chlorpyrifos could be used safely and is of high-benefit.

16. The decision to cancel Gharda's registrations will negatively impact our members and the agricultural economy. EPA must evaluate and consider these important impacts. It is critical that EPA maintain these important chlorpyrifos registrations and not consider action to cancel them until the 8th Circuit Court of Appeals has released their ruling.

I certify under penalty of perjury that the foregoing is true and correct.

Dated this 14th day of July, 2023.

Michael Aerts

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

Chlorpyrifos; Notice of Intent to Cancel Pesticide Registrations	Docket Nos. FIFRA-HQ-2023-0001; EPA-HQ-OPP-2022-0417

VERIFIED WRITTEN STATEMENT: JOHNIE WALTER BOATRIGHT, III

American Farm Bureau Federation
(AFBF)

I, John Walt Boatright (Johnie Walter Boatright, III), state as follows:

1. I am the Director of Government Affairs at American Farm Bureau Federation ("AFBF") and am authorized to make this statement on behalf of AFBF, based upon my personal knowledge. I have held this position since November 2022. In this capacity, I oversee Congressional and regulatory activities and priorities for AFBF pertaining to labor, immigration, pesticides, specialty crops and food safety.

2. My responsibilities include monitoring Congressional and regulatory activities and advocating AFBF policy objectives to lawmakers and agency officials. This includes drafting regulatory comments throughout the pesticide registration process, engaging with Congressional offices and appropriate agency officials, and collaborating with coalitions of similarly aligned trade associations to achieve shared goals and objectives. The interests that AFBF seek to protect by filing its petition here—the maintenance of chlorpyrifos registrations, consistent with EPA's previous safety findings—are central to the organizational purpose of AFBF.

3. I earned a B.S. in Food and Resource Economics and a minor in Agricultural and Natural Resource Law from the University of Florida in 2013.

4. I have solicited and reviewed information from numerous state Farm Bureau staff who are familiar with the use of chlorpyrifos regarding the consequences of cancelling chlorpyrifos registrations. This statement explains the adverse impact that EPA's Notice of Intent to Cancel (NOIC)[1] Gharda Chemicals International Inc.'s (Gharda) chlorpyrifos registrations will have on AFBF members.

[1] EPA Notice "Chlorpyrifos; Notice of Intent to Cancel Pesticide Registrations," 87 Fed. Reg. 76,474 (Dec. 14, 2022).

5. AFBF is the nation's largest general farm organization. We represent farmers and ranchers in all 50 states and Puerto Rico, and they are engaged in every conceivable facet of agricultural production, including farmers who utilize chlorpyrifos to mitigate insect pressures on their crops.

6. Should the 8th Circuit Court of Appeals rule in favor of Grower Petitioners, EPA's decision to cancel the Gharda registrations for chlorpyrifos will take away critically needed crop protection for which there is no equal replacement. Chlorpyrifos has more than 50 registered agricultural uses on numerous crops, many of which are high-benefit uses to protect against economically significant pests. Cancellation of Gharda's chlorpyrifos registrations would leave thousands of growers across the country defenseless against devastating pests.

7. On average, 8.8 million acres of agricultural crops were treated with chlorpyrifos annually from 2014 – 2018, including 6.6 million acres of agricultural crops where EPA determined that chlorpyrifos could be used safely and that EPA considered to be high benefit. EPA has estimated the total annual economic benefit of chlorpyrifos to crop production to be $19-$130 million. EPA acknowledges that in some cases effective alternatives to chlorpyrifos could not be found. U.S. EPA, Memorandum, Revised Benefits of Agricultural Uses of Chlorpyrifos (PC# 059101), EPA-HQ-OPP-2008-0850-0969, (Nov. 18, 2020), hereinafter, "Benefits Analysis", https://www.regulations.gov/document/EPA-HQ-OPP-2008-0850-0969.

8. EPA has acknowledged that there are potentially high benefits for some Minnesota and North Dakota sugarbeets, soybeans nationally, Southeast peaches, and apples nationally. The total cost for each of these crops is estimated to be above $7 million per year (Benefits Analysis).

9. I submit this statement in support of the Grower Petitioners in their opposition to EPA's NOIC. Grower Petitioners object to the EPA NOIC Gharda's chlorpyrifos registrations. AFBF represents farmers who grow all 11 high-benefit crops.

10. Chlorpyrifos has broad spectrum efficacy, is able to be used in multiple delivery systems, and has a relatively short persistence which makes it less harmful to beneficial insects. All of these attributes make chlorpyrifos an important tool within the Integrated Pest Management (IPM) programs followed by our growers. Chlorpyrifos is a proven tool that provides excellent control of many pests with one application during the course of the growing season.

11. The loss of chlorpyrifos also negatively impacts the environment. In addition to the lack of some of the high-benefit uses, without access to pesticide products like chlorpyrifos that provide targeted treatment, farmers will have to use greater quantities of less-effective products, contributing to resistance issues among insects.

12. Pesticide resistance is a serious problem for growers across the world as uncontrolled pests cause significant economic loss in agricultural production each year. For example, aphids, in some regions of the U.S., have developed a resistance to certain pyrethroid pesticides making these products ineffective in the field. When growing alfalfa, another high-benefit crop where EPA found chlorpyrifos could be safely used, chlorpyrifos is important for resistance management of the Egyptian weevil as pyrethroids are showing decreasing efficacy. For example, one alfalfa grower recently reported that when chlorpyrifos was available, he treated for the weevil one time per year with chlorpyrifos at a cost of $11/acre. This grower now has to treat twice a year with an alternative product that has a total cost of $17/acre total. The alfalfa grower is paying 54% more, applying twice the pesticide volume to the environment

compared to when he was able to use chlorpyrifos, and still had insect-related yield loses of 0.25 tons/acre per cutting. This results in a 1 ton per acre loss of revenue of $130/acre. Having growers pay more for less pest control, while applying more pesticide products to the environment, is not sustainable for growers or the environment.

13. EPA has correctly noted in their 2020 Benefits Analysis that "the loss of chlorpyrifos may accelerate the evolution of pest resistance against whatever alternative modes of action remain." EPA has not considered the impact of the NOIC on the agricultural economy.

14. EPA's decision does not account for applications of chlorpyrifos when an actual food crop is not present, such as to tree trunks before the fruit has developed, on dormant fields, or to crops subject to further processing in which residues would not be detected. Chlorpyrifos is particularly effective against the lessor peach tree borer. To treat this pest, peach trees trunks are sprayed in the fall before there are fruits present. Because chlorpyrifos is non-systemic, there is no risk of it getting into the fruit. One of our farmers has been looking at alternatives for over six years and has been unable to find an alternative commercial product that is effective against the lessor peach tree borer.

15. Chlorpyrifos is also the only effective chemistry the cherry industry has to protect from trunk borers. If cherry tree growers could not use chlorpyrifos it would leave them open to substantial loss of trees causing significant and irreparable harm. Trunk boring pests lay their eggs on the trunks of cherry trees, after which the larvae hatch and enter the trunk tissues. Chlorpyrifos is effective on adult, egg and larval stages of most trunk boring pests.

16. If the cancellation of registrations is granted AFBF members will continue to not be able to use chlorpyrifos, even if the 8th Circuit Court of Appeals rules in favor of Grower Petitioners. This will significantly impact agricultural production and the agricultural economy.

EPA's assumption that its NOIC will not have an impact on the economy, because chlorpyrifos tolerances have already been revoked, is a fallacy. If the Eighth Circuit Court of Appeals[2] rules in favor of the Grower Petitioners and EPA has already cancelled Gharda's registrations, which are the last registrations remaining for chlorpyrifos, the Grower Petitioners will have no chlorpyrifos products available to protect their crops. Growers would have to wait for registrants to submit new registrations to EPA and obtain approvals from EPA prior to sale or distribution of the pesticide. I understand that this process could take more than three years. This hurdle would cause significant harm to growers and disruptions in the economy.

17. The decision to cancel these registrations will negatively impact our members and the agricultural economy. EPA must evaluate and consider these important impacts. It is critical that EPA maintain these important chlorpyrifos registrations and not consider action to cancel them until the 8th Circuit Court of Appeals has released their ruling.

I certify under penalty of perjury that the foregoing is true and correct.

Dated this 14th day of July, 2023.

John-Walt Boatright

John Walt Boatright

[2] Referring to the pending case *Red River Valley Sugarbeet Growers Ass'n et al. v. Regan,* et al., Nos. 22-1422, 22-1530 (8th Cir. filed Feb. 28, 2022).

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

Chlorpyrifos; Notice of Intent to Cancel Pesticide Registrations	Docket Nos. FIFRA-HQ-2023-0001; EPA-HQ-OPP-2022-0417

VERIFIED WRITTEN STATEMENT: CHRIS BUTTS

Georgia Fruit and Vegetable Growers Association (GFVGA)

I, Chris Butts, state as follows:

1. I am the Executive Vice President of the Georgia Fruit and Vegetable Growers Association ("GFVGA") and am authorized to make this statement on behalf of GFVGA, based on my personal knowledge.

2. I have 14 years of experience doing agricultural association work. I joined GFVGA in 2020 and have also held the role of Public Affairs Director. I have been the Executive Vice President at GFVGA since December 2021.

3. My responsibilities include providing programs and services to the membership that are designed to increase production efficiencies, provide educational opportunities, promote new markets, monitor legislation, encourage applied research and improve communications between GFVGA members and industry suppliers.

4. I have solicited and reviewed information from numerous growers and members of GFVGA regarding the consequences of canceling the registrations for chlorpyrifos. I am familiar with the significant adverse impact EPA's Notice of Intent to Cancel (NOIC)[1] Gharda Chemicals International Inc.'s (Gharda) chlorpyrifos registrations will have on GFGVA members. If the cancellation of registrations is granted, GFGVA members will continue to not be able to use chlorpyrifos, even if the 8th Circuit Court of Appeals rules in favor of Grower Petitioners. This will impact fruit and vegetable production. This in turn can have detrimental impacts on the prices of these important commodities. EPA's assumption that its NOIC will not have an impact on the economy, because chlorpyrifos tolerances have already been revoked, is a fallacy. If the Eighth Circuit Court of Appeals[2] rules in favor of the Grower Petitioners and EPA has already cancelled

[1] EPA Notice "Chlorpyrifos; Notice of Intent to Cancel Pesticide Registrations," 87 Fed. Reg. 76,474 (Dec. 14, 2022).
[2] Referring to the pending case *Red River Valley Sugarbeet Growers Ass'n et al. v. Regan,* et al., Nos. 22-1422, 22-1530 (8th Cir. filed Feb. 28, 2022).

Gharda's registrations, which are the last registrations remaining for chlorpyrifos, the Grower Petitioners will have no chlorpyrifos products available to protect their crops. Growers would have to wait for registrants to submit new registrations to EPA and obtain approvals from EPA prior to sale or distribution of the pesticide. I understand that this process could take over 3 years. This hurdle would cause significant harm to growers and disruptions in the economy.

5. GFVGA provides a united voice to represent the fruit and vegetable industry in Georgia. GFVGA encourages efficient production, packing, handling, storing and processing of fruit and vegetables and develops marketing and promotional programs to increase public awareness of the health benefits of eating fruits and vegetables. GFVGA supports applied research that benefits its' industry and also works to encourage the consumption of more Georgia products.

6. I submit this statement in support of the Grower Petitioners in their opposition to EPA's NOIC Gharda's chlorpyrifos registrations. Five of the 11 crops that EPA determined could be safely grown, with chlorpyrifos use, are grown in Georgia. This includes apples, citrus, cotton, peaches and soybeans.

7. Fruit and vegetable production in Georgia is almost a billion dollar industry with over 170,000 acres in production. There are over 12,000 acres of peaches and 750 acres of apples farmed in Georgia.

8. As EPA's own evaluation has shown, the Georgia peach industry can use chlorpyrifos to produce a nutritional crop in a safe manner.

9. For peach growers in Georgia, chlorpyrifos used in the pre-bloom stage or post-harvest is most effective. One application per year had been permitted. Chlorpyrifos is particularly effective at treating scale and borers.

10. As EPA has noted in their 2020 Benefits Analysis, chlorpyrifos provides good to excellent season-long control against peach tree and lesser peach tree borers. All other alternatives are less effective. U.S. EPA, Memorandum, Revised Benefits of Agricultural Uses of Chlorpyrifos (PC# 059101), EPA-HQ-OPP-2008-0850-0969, at 49 (Nov. 18, 2020), hereinafter, "Benefits Analysis", https://www.regulations.gov/document/EPA-HQ-OPP-2008-0850-0969.

11. Where there is uncontrolled pest pressure, EPA's Benefits Analysis has found that this could yield losses of up to $430 per acre in Georgia. If we multiply EPA's value by the 12,000 acres of peaches that are grown in Georgia each year, the economic impact is over $5 million per year. EPA has not considered these impacts on the agricultural economy.

12. Chlorpyrifos is also important for our apple growers in Georgia. With one application per year, while the apple tree is a dormant, in the pre-bloom stage, chlorpyrifos is an important tool for the control of scale, stink bugs, aphids and borers in apple production. With a continued inability to use chlorpyrifos, yield loss, excessive production cost increases and application timing will be a concern for our apple crops.

13. Chlorpyrifos has broad-spectrum insect management capabilities, long-term overall efficacy, low cost, tank mixing compatibilities, and residual efficacy. And, it is easy to implement chlorpyrifos into existing integrated pest management and resistance management programs.

14. The decision to cancel Gharda's registrations will negatively impact our members and the agricultural economy. EPA must evaluate and consider these important impacts.

15. It is critical that EPA maintain these important chlorpyrifos registrations and not consider action to cancel them until the 8th Circuit Court of Appeals has released their ruling.

I certify under penalty of perjury that the foregoing is true and correct.

Dated this 14th day of July, 2023.

Chris Butts

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

Chlorpyrifos; Notice of Intent to Cancel Pesticide Registrations	Docket Nos. FIFRA-HQ-2023-0001; EPA-HQ-OPP-2022-0417

VERIFIED WRITTEN STATEMENT: NEIL BRODIE GRIFFIN

Amalgamated Sugar Company

I, Neil Brodie Griffin, state as follows:

1. I am the Vice President of Agriculture at Amalgamated Sugar Company ("Amalgamated Sugar") and am authorized to make this statement on behalf of Amalgamated Sugar, based upon my personal knowledge. I have been employed at Amalgamated Sugar since 2010. Amalgamated Sugar is a member of the U.S. Beet Sugar Association.

2. I grew up on a sugarbeet farm in Idaho and began working at a young age with my father on the farm. The sugarbeet industry has been a part of my life since I can remember, and I have always had a love for sugarbeet production. . I hold a Bachelor of Arts degree from Brigham Young University-Idaho and an Executive MBA from Boise State University. I have worked for Amalgamated Sugar and in the sugarbeet industry for 13 years. Before becoming the Vice President of Agriculture, I worked for 6 years as a district agriculture manager responsible for approximately 110,000 acres of sugarbeets grown in Southern Idaho and five years as a crop consultant out in the field advising Amalgamated Sugar's growers.

3. As the Vice President of Agriculture at Amalgamated Sugar, I am responsible for both the current production techniques and future technologies encompassing the growing, harvesting and delivering of sugarbeets for processing and providing this agronomic sugarbeet information and tools to our agricultural staff, allied industry, and members of the cooperative. In that capacity, I am intimately familiar with Amalgamated Sugar's operations and the significant adverse consequences of EPA's Notice of Intent to Cancel (NOIC)[1] Gharda Chemicals International Inc.'s (Gharda) chlorpyrifos registrations.

4. If the cancellation of registrations is granted, Amalgamated Sugar's members will continue to not be able to use chlorpyrifos, even if the 8th Circuit Court of Appeals rules in favor

[1] EPA Notice "Chlorpyrifos; Notice of Intent to Cancel Pesticide Registrations," 87 Fed. Reg. 76,474 (Dec. 14, 2022).

of Grower Petitioners. This will impact our sugarbeet production, which in turn can have detrimental impacts on the price of sugar and on retail foods which use sugar as an important component. EPA's assumption that its NOIC will not have an impact on the economy, because chlorpyrifos tolerances have already been revoked, is a fallacy. If the Eighth Circuit Court of Appeals[2] rules in favor of the Grower Petitioners and EPA has already cancelled Gharda's registrations, which are the last registrations remaining for chlorpyrifos, the Grower Petitioners will have no chlorpyrifos products available to protect their crops. Growers would have to wait for registrants to submit new registrations to EPA and obtain approvals from EPA prior to sale or distribution of the pesticide. I understand that this process could take over 3 years. This hurdle would cause significant harm to our growers and disruptions in the economy.

5. Amalgamated Sugar is a sugarbeet grower-owned and led company. We have over 700 members of our cooperative located in Idaho, Oregon and Washington. Our growers raise sugarbeets on approximately 180,000 acres of prime irrigated land, producing 7,000,000 tons of sugarbeets annually. Amalgamated Sugar provides high-quality jobs and stability to many families and approximately 3,000 individuals. We are dedicated to supporting our growers, the agricultural industry, and all of the customers and communities we serve.

6. In each step of the sugarbeet growth and sugar production process, our members work to minimize our footprint and be a good neighbor. We produce real sugar in the most technologically advanced and socially responsible manner. Since 1996, our processing facilities have used 28.2% less energy per bag of sugar produced. Our facilities have also increased the use of cleaner fuels and as a result, facilities have reduced greenhouse gases by 47.8% per bag of sugar produced. Our growers know the value of sustainability and recognize the importance of

[2] Referring to the pending case *Red River Valley Sugarbeet Growers Ass'n et al. v. Regan,* et al., Nos. 22-1422, 22-1530 (8th Cir. filed Feb. 28, 2022).

these efforts to their farms and factories. They continue to adopt innovative technologies, including advances in machinery, equipment, plant breeding, and weed and insect management, which lead to more sustainable farming methods. Amalgamated Sugar invests heavily in agronomic research to help growers more efficiently utilize fertilizers, thus reducing greenhouse gas emissions.

7. Each year, Amalgamated Sugar donates over 86,000 pounds of sugar to local food banks, senior centers, and other organizations whose mission is to end hunger in our local communities. Amalgamated Sugar also sponsors charitable events and organizations that benefit youth, STEM education, health & nutrition, and agriculture.

8. Chlorpyrifos was typically applied by Amalgamated Sugar members every year beginning in May to sugarbeets and other crops. Chlorpyrifos is critically important for protecting young sugarbeets from destruction due to insects endemic to the region. Through the use of various insect traps and an advance population forecasting system, our Agricultural Staff works on a one-on-one basis with each of our growers (who are licensed pesticide applicators) to make precise field applications of chlorpyrifos based upon a proven economic threshold developed by the University of Idaho entomology departments and the scientists in Amalgamated Sugar's Sugarbeet Quality Improvement Department. Amalgamated Sugar members have used chlorpyrifos to protect sugarbeets for decades because it is effective, has favorable environmental characteristics, and is affordable.

9. Chlorpyrifos is critically important for protecting sugarbeets from destruction due to the sugarbeet root maggot flies in which post emergent chlorpyrifos applications would occur if population levels warrant in the time period of late May to mid-June. Chlorpyrifos kills these flies and reduces the potential number of eggs that would be laid and then hatch into larvae that

feed upon the sugarbeet roots. Chlorpyrifos is the most effective post-emergence liquid insecticide for the control of sugarbeet root maggot flies. Registered alternatives to chlorpyrifos can only suppress sugarbeet root maggot, not control it, or are only registered for use on adult flies, not larvae.

10. Amalgamated Sugar has tracked sugarbeet root maggot levels in our growing areas for many years. Amalgamated Sugar places "sticky stakes" in numerous fields across Idaho, Oregon, and Washington to track sugarbeet root maggots and recorded this data to assist growers in timely and effective application of chlorpyrifos to control adult root maggot flies before they affect fields and to support Amalgamated Sugar's extensive sugarbeet maggot research projects. Despite a better year in 2022, due to weather impacts on the root maggots ability to hatch, Amalgamated Sugar has seen an increase in sugarbeet root maggot levels. This means the number of growers that need to treat for this pest is increasing. None of the existing products are as effective as chlorpyrifos had been in controlling sugarbeet root maggots. Cancellation of the chlorpyrifos registrations risks severe damage to sugarbeet crops and significant harm to individual growers and the agricultural economy as a whole.

11. "Sticky stakes" provide Amalgamated Sugar agricultural staff and growers information to effectively control adult root maggot flies with chlorpyrifos in a timely and efficient manner. As fly counts increase and before they reach the economic threshold, chlorpyrifos was used to control (kill) adult root maggot flies before the adults females could lay eggs next to the sugarbeet plants.

12. For Amalgamated Sugar members, chlorpyrifos was the only tool that was consistently effective in controlling destructive pests that would otherwise feed on the sugarbeet crops, particularly when temperatures exceed 80° F. The alternative options are pyrethroids,

which are not as effective as chlorpyrifos, particularly at those temperatures. Although other insecticides are commercially available, none are as effective in controlling pests that attack and consume sugarbeet crops.

13. Our growers are also concerned that the elimination of chlorpyrifos will lead to the formation of resistance to chemical classes, because of a limitation to viable insecticides that operate using different modes of action in season long chemistry rotation programs. In 2022, the Amalgamated Sugar tonnage yields were 37.99 tons/acre. In 2020, this value was 40.56 tons/acre.

14. In 2020, EPA evaluated the benefits of chlorpyrifos and considered its use on over 200,000 acres of sugarbeets. EPA recognized the high total benefits of chlorpyrifos use, estimating high-end benefits to be up to $32.2 million per year for sugarbeets. U.S. EPA, Memorandum, Revised Benefits of Agricultural Uses of Chlorpyrifos (PC# 059101), EPA-HQ-OPP-2008-0850-0969, at 49 (Nov. 18, 2020), https://www.regulations.gov/document/EPA-HQ-OPP-2008-0850-0969. EPA has not considered the economic impacts of the cancellation of the Gharda chlorpyrifos registrations on the production of sugarbeets, the price of sugar, and on the price of retail foods which use sugar as an important component. Nor has EPA considered the impacts on the agricultural economy, including on our sugarbeet growers.

15. In the Benefits Assessment EPA also estimated a high-end cost of $13/acre to replace chlorpyrifos in regions where our members operate. If we multiply this value by the 180,000 acres that our members use to grow sugarbeets, the average annual economic impact is over $2.3 million to our members alone. EPA has not considered this economic impact in its' decision to cancel the Gharda chlorpyrifos registrations.

16. EPA has also correctly noted in their 2020 Benefits Analysis that "the loss of chlorpyrifos may accelerate the evolution of pest resistance against whatever alternative modes of action remain." EPA has not considered this impact of the NOIC on the agricultural economy.

17. In addition to the grower losses described above, there is reason to think Amalgamated Sugar would likely incur additional losses during crop storage due to damaged sugarbeets being piled that could lead to deterioration in the pile and there-by also affecting undamaged sugarbeets that would have otherwise stored better. It should be noted that these losses could occur every year and as sugarbeet root maggot incidence increases the losses would exponentially grow.

18. Given the cooperative nature of our sugarbeet production, crop losses are not just felt by individual growers, but by all cooperative members. Yields reductions due to pest pressure means the fixed costs of the cooperative are spread over fewer pounds of sugar produced, thus payments to all growers in the cooperative are reduced. EPA has not considered these impacts on the agricultural economy.

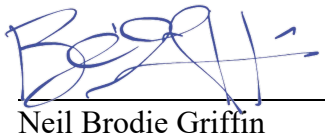
19. Amalgamated Sugar objects to the EPA NOIC for the use of chlorpyrifos on 11 crops, in specific locations, that EPA has determined are safe and are of high-benefit. Sugarbeets are one of the crops where EPA determined that chlorpyrifos could be used safely.

20. The decision to cancel these registrations will negatively impact our members and the agricultural economy. EPA must evaluate and consider these important impacts.

21. It is critical that EPA maintain these important chlorpyrifos registrations and not consider action to cancel them until the 8th Circuit Court of Appeals has released their ruling.

I certify under penalty of perjury that the foregoing is true and correct.

Dated this 14th day of July 2023.



Neil Brodie Griffin

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

Chlorpyrifos; Notice of Intent to Cancel Pesticide Registrations	Docket Nos. FIFRA-HQ-2023-0001; EPA-HQ-OPP-2022-0417

VERIFIED WRITTEN STATEMENT: LUTHER MARKWART

American Sugarbeet Growers Association
(ASGA)

I, Luther Markwart, state as follows:

1. I am the Executive Vice President of the American Sugarbeet Growers Association ("ASGA") and am authorized to make this statement on behalf of ASGA, based upon my personal knowledge. I have been employed with ASGA since 1982.

2. I have raised sugarbeets, just like my parents and my grandparents on our farm that has now been in our family for 100 years. I hold a Bachelor of Science degree from Michigan State University. Before working at ASGA, I spent three years working for hundreds of family farmers who grew sugarbeets in Michigan and Ohio.

3. As the Executive Vice President of ASGA, I unite sugarbeet growers in the United States and promote the common interest of state and regional beet grower associations, which includes legislative and international representation and public relations. The interests that ASGA seek to protect in this action-the continued use of chlorpyrifos consistent with EPA's previous safety findings-are central to the organizational purpose of ASGA.

4. I have also overseen and managed the sugarbeet plot at the U.S. Department of Agriculture garden on the National Mall in Washington D.C. This plot has been used to educate the public, Congress and USDA officials about sugarbeets.

5. ASGA members associations represent 10,000 family farmers in all 11 sugarbeet producing states (California, Colorado, Idaho, Michigan, Minnesota, Montana, Nebraska, North Dakota, Oregon, Washington, and Wyoming). The Board of Directors donate their time and talents to ASGA in order to represent their growers' interests in maintaining a strong, profitable, efficient and productive industry. They and their fellow farmers are dedicated to supplying a portion of the consumer's sweetener needs. It is a challenge and responsibility that they take seriously and proudly accept.

6. Our farmers and farmer-owned processing facilities account for over 100,000 rural jobs, and contribute over $10.6 billion annually to the U.S. economy. Our farmer-owners both grow and process over 56 percent of all sugar produced in the United States.

7. The U.S. beet sugar industry has become a global leader in environmental sustainability as we have invested in significant programs that preserve our natural resources, family farms, unionized workforces, and rural communities for future generations. As a result, our industry now produces 29 percent more sugar on 8 percent less land than 20 years ago, and sugarbeets now require significantly less land, water, fuel and fewer pesticide inputs to grow.

8. I have solicited and reviewed information from members of ASGA regarding the consequences of canceling the Gharda Chemicals International Inc.'s (Gharda) registrations for chlorpyrifos.

9. In 2020, EPA evaluated the benefits of chlorpyrifos and considered its use on over 200,000 acres of sugarbeets. EPA recognized the high total benefits of chlorpyrifos use, estimating high-end benefits to be up to $32.2 million per year for sugarbeets. U.S. EPA, Memorandum, Revised Benefits of Agricultural Uses of Chlorpyrifos (PC# 059101), EPA-HQ-OPP-2008-0850-0969, at 49 (Nov. 18, 2020), https://www.regulations.gov/document/EPA-HQ-OPP-2008-0850-0969. EPA has not considered the economic impacts of the cancellation of the Gharda chlorpyrifos registrations on the production of sugarbeets, the price of sugar, and on the price of retail foods which use sugar as an important component. Nor has EPA considered the impacts on the agricultural economy, including on sugarbeet growers.

10. Losing chlorpyrifos as a critical tool would be devastating to our sugarbeet growers and to the seed production growers. One of the primary pest targets for chlorpyrifos use in sugarbeets is the sugarbeet root maggot. Chlorpyrifos is the most effective post-emergence

liquid insecticide for the control of sugarbeet root maggot flies. Registered alternatives to chlorpyrifos can only suppress sugarbeet root maggot, not control it, or are only registered for use on adult flies, not larvae.

11. Sugarbeet root maggot levels continue to increase and we are seeing increases in the numbers of acres and the number of farms impacted by moderate and severe sugarbeet root maggot infestations each year. This means the number of growers that need to treat for this pest is increasing. None of the existing products are as effective as chlorpyrifos had been in controlling sugarbeet root maggots. Cancellation of the chlorpyrifos registrations risks severe damage to sugarbeet crops and significant harm to individual growers and the agricultural economy as a whole.

12. Chlorpyrifos is also an important tool against symphylan damage. Symphylans are a subterranean insect pest that negatively affects yield and sugarbeet seed production. Chlorpyrifos is the only fully registered rescue option available in early spring to control symphylans. Other than chlorpyrifos, there are no other options for symphylan control in sugarbeet seed production after the crop has been transplanted. Our 1.1 million acres of commercial sugarbeet production depend on an adequate quantity of seed.

13. As EPA's own data demonstrates, growers will experience severe financial harm from the loss of chlorpyrifos. While most growers buy federal crop insurance as a requirement to obtain operating loans or protect farm equity, they typically have to lose 30-50 percent of their crop to collect any indemnity. In these situations all profit is lost and a portion of the cost of production is not recovered. These losses also reduce future coverage and increases premiums for future crop coverage. Additionally, these losses also cause lenders to require more collateral to obtain operating loans for future crops because of the additional risk of crop loss due to the

lack of chlorpyrifos. Simply stated, there is no adequate crop insurance coverage for the revenue loss associated with having to use more expensive crop protection tools that are less effective and result in crop losses

14. Given the cooperative nature of sugarbeet production, crop losses are not just felt by individual growers, but by all cooperative members. Yields reductions due to pest pressure means the fixed costs of the cooperative are spread over fewer pounds of sugar produced, thus payments to all growers in the cooperative are reduced. Unlike other commodities, there are no other alternative sources of sugarbeets to process in the cooperative.

15. If EPA cancels all chlorpyrifos registrations, sugarbeet growers will continue to be prohibited from using chlorpyrifos, even if the 8th Circuit Court of Appeals rules in favor of Grower Petitioners. This will impact sugarbeet production. This in turn can have detrimental impacts on the price of sugar and the price of retail foods which use sugar as an important component. EPA's assumption that its Notice of the Intent to Cancel (NOIC)[1] Gharda's chlorpyrifos registrations will not have an impact on the economy, because chlorpyrifos tolerances have already been revoked, is a fallacy. If the Eighth Circuit Court of Appeals[2] rules in favor of the Grower Petitioners and EPA has already cancelled Gharda's registrations, which are the last registrations remaining for chlorpyrifos, the Grower Petitioners will have no chlorpyrifos products available to protect their crops. Growers would have to wait for registrants to submit new registrations to EPA and obtain approvals from EPA prior to sale or distribution of the pesticide. I understand that this process could take over three years. This hurdle would cause significant harm to growers and disruptions in the economy.

[1] [1] EPA Notice "Chlorpyrifos; Notice of Intent to Cancel Pesticide Registrations," 87 Fed. Reg. 76,474 (Dec. 14, 2022).
[2] Referring to the pending case *Red River Valley Sugarbeet Growers Ass'n et al. v. Regan,* et al., Nos. 22-1422, 22-1530 (8th Cir. filed Feb. 28, 2022).

16. EPA's NOIC action does not consider the interests of a multi-billion dollar industry that is responsible for over 100,000 jobs, and that has relied on chlorpyrifos for decades, as needed, to grow and process more than half of all sugar produced in the United States.

17. ASGA objects to the EPA NOIC for the use of chlorpyrifos on 11 crops, in specific locations, that EPA has determined are safe and are of high-benefit. Sugarbeets are one of the crops where EPA determined that chlorpyrifos could be used safely.

18. The decision to cancel these registration will negatively impact our members and the agricultural economy. EPA must evaluate and consider these important impacts. It is critical that EPA maintain these important chlorpyrifos registrations and not consider action to cancel them until the 8th Circuit Court of Appeals has released their ruling.

I certify under penalty of perjury that the foregoing is true and correct.

Dated this 14th day of July 2023.

Luther A. Markwart

Luther Markwart

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

Chlorpyrifos; Notice of Intent to Cancel Pesticide Registrations	Docket Nos. FIFRA-HQ-2023-0001; EPA-HQ-OPP-2022-0417

VERIFIED WRITTEN STATEMENT: PETER NELSON

Cherry Marketing Institute
(CMI)

I, Peter Nelson, state as follows:

1. I am the Crop Production Specialist for the Cherry Marketing Institute ("CMI"). I have held this position since June 2023. In this capacity, I provide knowledge to CMI focused on addressing crop management and protection issues, including pesticide use and regulation issues, integrated pest management, and maximum residue limit concerns.

2. I am authorized by the Board of Directors to make this declaration on behalf of CMI, based upon my personal knowledge and work relating to chlorpyrifos.

3. My responsibilities are focused on addressing grower concerns related to pest management and integrated pest management, working on maximum residue limits (MRLs) and pesticide use and regulations.

4. I hold a Bachelor of Science degree and a Master of Science degree in Entomology from Michigan State University. I also hold a Doctorate of Entomology from North Carolina State University. While earning my degrees at Michigan State University, I spent nearly a decade working in tree fruit laboratories. My dissertation research involved field work focusing on integrated pest management and tobacco production.

5 Before working for CMI, I owned and operated an independent consulting firm that assisted tree fruit producers, including cherry tree producers, with all facets of crop production. This work included assisting with integrated pest management, food safety, MRLs, and other international and domestic agricultural regulations.

5. I have solicited and reviewed information from numerous growers and members of CMI regarding the consequences of canceling Gharda Chemicals International Inc.'s (Gharda's) registrations for chlorpyrifos.

6. I am familiar with the significant adverse impact that EPA's Notice of Intent to Cancel (NOIC)[1] Gharda's chlorpyrifos registrations will have on CMI members. If the cancellation of registrations is granted, CMI members will continue to not be able to use chlorpyrifos, even if the 8th Circuit Court of Appeals rules in favor of Grower Petitioners. This will impact tart cherry production. This in turn can have detrimental impacts on the price of tart cherries and retail foods that use tart cherries as an important ingredient. EPA's assumption that its NOIC will not have an impact on the economy, because chlorpyrifos tolerances have already been revoked, is a fallacy. If the Eighth Circuit Court of Appeals[2] rules in favor of the Grower Petitioners and EPA has already cancelled Gharda's registrations, which are the last registrations remaining for chlorpyrifos, the Grower Petitioners will have no chlorpyrifos products available to protect their crops. Growers would have to wait for registrants to submit new registrations to EPA and obtain approvals from EPA prior to sale or distribution of the pesticide. I understand that this process could take over 3 years. This hurdle would cause significant harm to growers and disruptions in the economy.

7. CMI is a nonprofit national organization that represents the U.S. tart cherry industry and the Michigan sweet cherry industry on matters ranging from marketing to government relations. CMI's representation includes 295 tart cherry growers in Michigan who farm 30,500 acres with about 3.7 million tart cherry trees. The nation's tart cherry farmers are engaged in every conceivable facet of tart cherry production, including farmers who utilize chlorpyrifos to mitigate insect pressures on their trees.

[1] EPA Notice "Chlorpyrifos; Notice of Intent to Cancel Pesticide Registrations," 87 Fed. Reg. 76,474 (Dec. 14, 2022).
[2] Referring to the pending case *Red River Valley Sugarbeet Growers Ass'n et al. v. Regan,* et al., Nos. 22-1422, 22-1530 (8th Cir. filed Feb. 28, 2022).

8. The total U.S. tart cherry crop has the capacity to produce up to 360 million pounds annually, contributing more than $1.4 billion to the economy in 2021. Michigan produces about 70-75% of the total U.S. production and ranks number four in sweet cherry production. In 2022, 23,000 acres of tart cherries were harvested in Michigan, with a value of over $72 million.

(https://www.nass.usda.gov/Quick_Stats/Ag_Overview/stateOverview.php?state=MICHIGAN)

Chlorpyrifos is one of the most effective tools in the cherry growers' toolbox.

9. The U.S. tart cherry industry is challenged to continue to produce this crop in incredibly uncertain times. From low crop prices, subsidized foreign import competition, and invasive insect pests such as spotted wing drosophila, the industry continues to struggle to compete in providing healthy food options to the U.S. and around the globe. It is important that our famers have every available tool in their pest management toolbox.

10. Chlorpyrifos is the only effective chemistry the industry has to protect from trunk borers, and if our industry continues to be unable to use chlorpyrifos, it would leave our industry open to substantial loss of trees causing significant and irreparable harm. Trunk boring pests lay their eggs on the trunks of trees, after which the larvae hatch and enter the trunk tissues. Chlorpyrifos is effective against egg and larval stages of most trunk boring pests. In their 2020 Benefits Memo, EPA has acknowledged that borers (which include the American Plum Borer, the Lesser Peachtree Borer and the Peach Tree Borer) are a growing problem for which effective alternatives to chlorpyrifos are not available. U.S. EPA, Memorandum, Revised Benefits of Agricultural Uses of Chlorpyrifos (PC# 059101), EPA-HQ-OPP-2008-0850-0969, at 7 (Nov. 18, 2020), https://www.regulations.gov/document/EPA-HQ-OPP-2008-0850-0969. EPA has also stated that mating disruption is not a fully effective against the lesser peachtree borer. *Id.*

11. Peachtree borers are also a serious problem for cherry trees because they attack and feed on the root system. (https://archive.lib.ms.edu/DMC/Ag.%20Ext.%202007-Chelsie/PDF/e154/e154-2003.pdf) These borers can cause serious injury to the root of the cherry trees and can affect the vigor of the tree. In addition, in Michigan, the American Plum Borer is also a serious problem on tart cherries *Id.* Not controlling borers will lead to tree death and have a huge impact on the viability of the U.S. cherry farmers.

12. The U.S. tart cherry industry is one of mechanical harvest. This means that growers use "shakers" that grip the tree at the base to shake the cherries out of the canopy. Unfortunately, this method has the potential to crack the base of the tree. Furthermore, the climate that allows Michigan to be a great cherry growing state can also damage the trees. In the late winter - early spring, as temperatures rise above 32 degrees Fahrenheit in the day and drop below freezing at night, causing contraction and expansion, there is potential for cracking of the trunk as well. Damage from both events can further lead to inviting trunk borers to attack a tree.

13. I submit this statement in support of the Grower Petitioners in their opposition to EPA's NOIC Gharda's chlorpyrifos registrations. Tart cherries are one of the crops that EPA determined could be safely grown with chlorpyrifos use.

14. Michigan State University has estimated that it would cost growers $180 to replace a single tree. Each average cherry tree produces 150 pounds of cherries a year. Since it can take as much as 7 years before a cherry tree can be harvested, tree loss from trunk borers can cost a grower roughly $300 per tree in lost revenue (150 pounds x $0.28 cents/pound of cherries is $42 per tree per year). In addition, the wait period for new trees to arrive from a nursery is typically 2-3 years, further adding to the loss of revenue for growers. According to a 2018-2019 survey completed by the United States Department of Agriculture's National Agriculture

Statistics Service, Michigan alone has approximately 3.7 million tart cherry trees that would be susceptible to trunk borers without the use of chlorpyrifos. EPA's 2020 Benefits Memo estimated the high-end benefits of chlorpyrifos use to be over $400,000 per year.

15. The economic impact of losing cherry trees would extend far beyond cherry growers themselves. There would be economic harm and jobs lost at processing facilities and the communities they are located in. A shortage of cherries could lead to massive layoffs and the closing of food processing plants. The direct and indirect economic damage due to the loss of cherry trees that cannot be protected without chlorpyrifos would be massive. EPA has not considered these impacts on the agricultural economy.

16. The decision to cancel Gharda's chlorpyrifos registrations will negatively impact our members and the agricultural economy. EPA must evaluate and consider these important impacts.

17. It is critical that EPA maintain these important chlorpyrifos registrations and not consider action to cancel them until the 8th Circuit Court of Appeals has released their ruling.

I certify under penalty of perjury that the foregoing is true and correct.

Dated this 14th day of July, 2023.

Peter Nelson

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

Chlorpyrifos; Notice of Intent to Cancel Pesticide Registrations	Docket Nos. FIFRA-HQ-2023-0001; EPA-HQ-OPP-2022-0417

VERIFIED WRITTEN STATEMENT: BEN SCHOLZ

National Association of Wheat Growers
(NAWG)

I, Ben Scholz, state as follows:

1. I am a Past-President of the National Association of Wheat Growers ("NAWG") and am authorized to make this statement on behalf of NAWG, based on my personal knowledge. I have held leadership positions with NAWG from 2017 through 2021. In this capacity, I was responsible for ensuring that NAWG carried out its duties as directed by its Board of Directors which represents NAWG's 20 state affiliates.

2. Since 1970, I have managed a farm and ranch business that grows wheat and other crops. At one point we were farming 4500 acres. I have a Bachelor of Science degree in agricultural science and have managed farms, ranches, cotton warehouses, and real estate businesses throughout my career. I held multiple leadership positions on various local, state, and national organizations-all related to farm groups and farm commodity groups.

3. NAWG is a federation of 20 state wheat grower associations and industry partners that work to represent the needs and interests of wheat producers before Congress and federal agencies. NAWG is grower-governed and works in areas as diverse as federal farm policy, trade, environmental regulation, agricultural research, and sustainability.

4. I have solicited and reviewed information from numerous growers and members of NAWG regarding the consequences of canceling the registrations for chlorpyrifos. I am familiar with the significant adverse impact EPA's Notice of Intent to Cancel (NOIC)[1] Gharda Chemicals International Inc.'s (Gharda) chlorpyrifos registrations will have on NAWG members. If the cancellation of registrations is granted, NAWG members will continue to not be able to use chlorpyrifos, even if the 8th Circuit Court of Appeals rules in favor of Grower Petitioners. This will impact wheat production. This in turn can have detrimental impacts on the prices of wheat

[1] EPA Notice "Chlorpyrifos; Notice of Intent to Cancel Pesticide Registrations," 87 Fed. Reg. 76,474 (Dec. 14, 2022).

and on retail products that use wheat as an important ingredient. EPA's assumption that its NOIC will not have an impact on the economy, because chlorpyrifos tolerances have already been revoked, is a fallacy. If the Eighth Circuit Court of Appeals[2] rules in favor of the Grower Petitioners and EPA has already cancelled Gharda's registrations, which are the last registrations remaining for chlorpyrifos, the Grower Petitioners will have no chlorpyrifos products available to protect their crops. Growers would have to wait for registrants to submit new registrations to EPA and obtain approvals from EPA prior to sale or distribution of the pesticide. I understand that this process could take over 3 years. This hurdle would cause significant harm to growers and disruptions in the economy.

5. Over 35,000,000 acres of winter and spring wheat are harvested in the U.S. each year. Chlorpyrifos is an important pest management tool to address insect outbreaks. It is critical for growers to have access to a variety of tools with different modes of action to control such insect pressures and chlorpyrifos is one of these critical tools.

6. Continued access to chlorpyrifos would allow growers the flexibility in crop protection tools needed to address pest pressures that arise during the year.

7. EPA has acknowledged that there are potentially high benefits for spring and winter wheat grown in 12 states and that these uses were found to be safe in EPA's own scientific analysis. EPA has not considered these impacts on the agricultural economy.

8. I submit this statement in support of the Grower Petitioners in their opposition to EPA's NOIC Gharda's chlorpyrifos registrations. Spring wheat and winter wheat are included in the 11 crops that EPA determined could be safely grown, with chlorpyrifos use.

[2] Referring to the pending case *Red River Valley Sugarbeet Growers Ass'n et al. v. Regan,* et al., Nos. 22-1422, 22-1530 (8th Cir. filed Feb. 28, 2022).

9. The decision to cancel the registrations of chlorpyrifos will negatively impact wheat growers, the food supply, and the agricultural economy. EPA must evaluate and consider these important impacts. It is critical that EPA maintain these important chlorpyrifos registrations and not consider action to cancel them until the 8th Circuit Court of Appeals has released their ruling.

I certify under penalty of perjury that the foregoing is true and correct.

Dated this 14th day of July, 2023.

Ben Scholz

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

Chlorpyrifos; Notice of Intent to Cancel Pesticide Registrations	Docket Nos. FIFRA-HQ-2023-0001; EPA-HQ-OPP-2022-0417

VERIFIED WRITTEN STATEMENT: JORDAN SCOTT

American Soybean Association
(ASA)

I, Jordan Scott, state as follows:

1. I serve on the board of directors for the American Soybean Association, on which I was appointed in 2022. I previously served as president of the South Dakota Soybean Association. I am authorized to make this statement on behalf of the American Soybean Association, based on my personal knowledge.

2. In addition to my leadership roles within the American Soybean Association, I raise soybeans on land in South Dakota that has been farmed by my family since 1886. I grow 700 acres of soybeans, which account for approximately 50% of my farm's annual revenue. My wife and I have two sons who farm with me and my father. I am the fifth generation of our family to be farming on our land.

3. The American Soybean Association was founded in 1920, and includes 26 American Soybean Association member associations that represent 500,000 soybean farmers in 30 soybean-producing states. The American Soybean Association's principal place of business is in St. Louis, Missouri. The American Soybean Association's mission is to advocate for U.S. soy farmers on policy and trade. I am intimately familiar with the significant adverse impact EPA's Notice of Intent to Cancel (NOIC)[1] Gharda Chemicals International Inc.'s (Gharda) chlorpyrifos registrations will have on American Soybean Association members.

4. I submit this statement in support of the Grower Petitioners in their opposition to EPA's NOIC. Grower Petitioners object to the EPA NOIC for the use of chlorpyrifos on 11 crops, in specific locations, that EPA has determined are safe and of high-benefit (the 11 safe uses). Soybeans are one of the crops where EPA determined that chlorpyrifos could be used safely.

[1] EPA Notice "Chlorpyrifos; Notice of Intent to Cancel Pesticide Registrations," 87 Fed. Reg. 76,474 (Dec. 14, 2022).

5. I have solicited and reviewed information from members of the American Soybean Association regarding the consequences of canceling the Gharda chlorpyrifos registrations. If the cancellation of registrations is granted, American Soybean Association members will continue to not be able to use chlorpyrifos, even if the 8th Circuit Court of Appeals rules in favor of Grower Petitioners. This will impact soybean production. This in turn can have detrimental impacts on the price of soybeans and on retail foods which use soybeans as an important component. EPA's assumption that its NOIC will not have an impact on the economy, because chlorpyrifos tolerances have already been revoked, is a fallacy. If the Eighth Circuit Court of Appeals[2] rules in favor of the Grower Petitioners and EPA has already cancelled Gharda's registrations, which are the last registrations remaining for chlorpyrifos, the Grower Petitioners will have no chlorpyrifos products available to protect their crops. Growers would have to wait for registrants to submit new registrations to EPA and obtain approvals from EPA prior to sale or distribution of the pesticide. I understand that this process could take over 3 years. This hurdle would cause significant harm to growers and disruptions in the economy.

6. In 2020, United States soybean farmers planted 83.1 million acres and produced 4.14 billion bushels of soybeans. A bushel of soybeans weighs 60 pounds and produces about 12 pounds of oil and 47 pounds of protein-rich meal. For the 2019-2020 marketing year, the total value of the U.S. soybean crop was $30.5 billion. The United States Department of Agriculture reports that in 2020, soybeans represented 32% of the total crop area planted in the United States. These data are reported in the American Soybean Association's 2021 SoyStats publication, which is available at http://soystats.com/.

[2] Referring to the pending case *Red River Valley Sugarbeet Growers Ass'n et al. v. Regan,* et al., Nos. 22-1422, 22-1530 (8th Cir. filed Feb. 28, 2022).

7. EPA has estimated that over 3 million of soybeans have used chlorpyrifos in the past. The high-end economic benefits from this use, as estimated by EPA is over 12 million dollars annually. U.S. EPA, Memorandum, Revised Benefits of Agricultural Uses of Chlorpyrifos (PC# 059101), EPA-HQ-OPP-2008-0850-0969, at 7 (Nov. 18, 2020), https://www.regulations.gov/document/EPA-HQ-OPP-2008-0850-0969.

8. Our industry has found chlorpyrifos to be a critical crop protection tool available to fight pests that threaten our crops and cause economic harm. Soybean growers relied on chlorpyrifos to control numerous insect pests, but some of the highest-benefit and most critical uses are to control soybean aphids and two-spotted spider mites ("TSM") in the Upper Midwest. If left unchecked, these pests can cause up to 60 percent yield loss, and in some cases transmit secondary viruses that can cause further crop damage. Soybean aphids and TSM pose a serious threat to crops and are notoriously difficult to control. Aphid populations in the Upper Midwest have largely developed resistance to the pyrethroid class of insecticides, and very few control options exist for TSM. Chlorpyrifos is the only chemistry that reliably controls both aphids and TSM.

9. There is no one-to-one replacement for chlorpyrifos; growers will have to at a minimum spray two active ingredients to control these pests. This increases growers' operational costs by requiring them to purchase more pest control products and will reduce their ability to be good environmental stewards by requiring the application of greater volumes of pesticides in the environment.

10. In our analysis, the most plausible replacement scenario is the use of dimethoate to control TSM and an application of a 4A mode of action chemistry, such as imidacloprid, to

control aphids. While dimethoate is registered for use on aphids, its record at controlling the aphid pest is unreliable.

11. Based on a 2017 estimate, a gallon of a chlorpyrifos product would cost a grower $55.00. University of Nebraska-Lincoln. 2017. *Approximate Retail Price ($) per Unit of Selected Insecticides for Field Crops*. https://cropwatch.unl.edu/2017-CW-News/2017-documents/insect-management/UNL-EC130-Insecticide-Prices-2017.pdf. When assuming a standard application rate of one pint per acre, this results in a cost of $6.88/acre treated. Under this analysis, a common dimethoate product will cost a grower $47.00/gallon. When again assuming a common application rate of one pint per acre, the cost to the grower is $5.88/acre treated with dimethoate. A common imidacloprid product in this analysis will cost a grower $120.00/gallon. When assuming a label-directed application rate of 1.5 ounces/acre, the cost is approximately $1.41/acre treated for imidacloprid. Combining the costs of the dimethoate and imidacloprid treatments, a soybean farmer could expect to pay $7.29/acre to control these two pests under a scenario without chlorpyrifos, which is a $0.41 increase per crop acre treated than with chlorpyrifos. EPA's has not considered these economic impacts in its decision to cancel the Gharda chlorpyrifos registrations.

12. EPA's benefits analysis accounts only for immediate replacement product costs. Soybean famers use a variety of insecticides with multiple biochemical modes of action to prevent insect pests from developing resistance to any one chemistry or biochemical mode of action. By losing access to chlorpyrifos, farmers suffer the loss of a vital, effective pest management tool. As a result, farmers will have to increasingly rely on the few other remaining chemistries, expediting insect resistance to those other tools and, over time, ultimately resulting in greater crop damage. The ability of growers to be good environmental stewards will also be

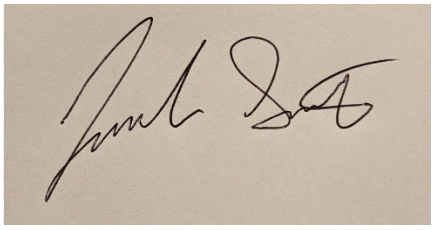
diminished, as growers will need to apply more active ingredients to control the same number of pests. Some of these tools also have greater environmental impacts than chlorpyrifos.

13. The American Soybean Association objects to the EPA NOIC for the use of chlorpyrifos on 11 crops, in specific locations, that EPA has determined are safe and are of high-benefit. Soybeans are one of the crops where EPA determined that chlorpyrifos could be used safely and is of high-benefit.

14. The decision to cancel these registrations will negatively impact our members and the agricultural economy. EPA must evaluate and consider these important impacts. It is critical that EPA maintain these important chlorpyrifos registrations and not consider action to cancel them until the 8th Circuit Court of Appeals has released their ruling.

I certify under penalty of perjury that the foregoing is true and correct.

Dated this 14th day of July, 2023.



Jordan Scott